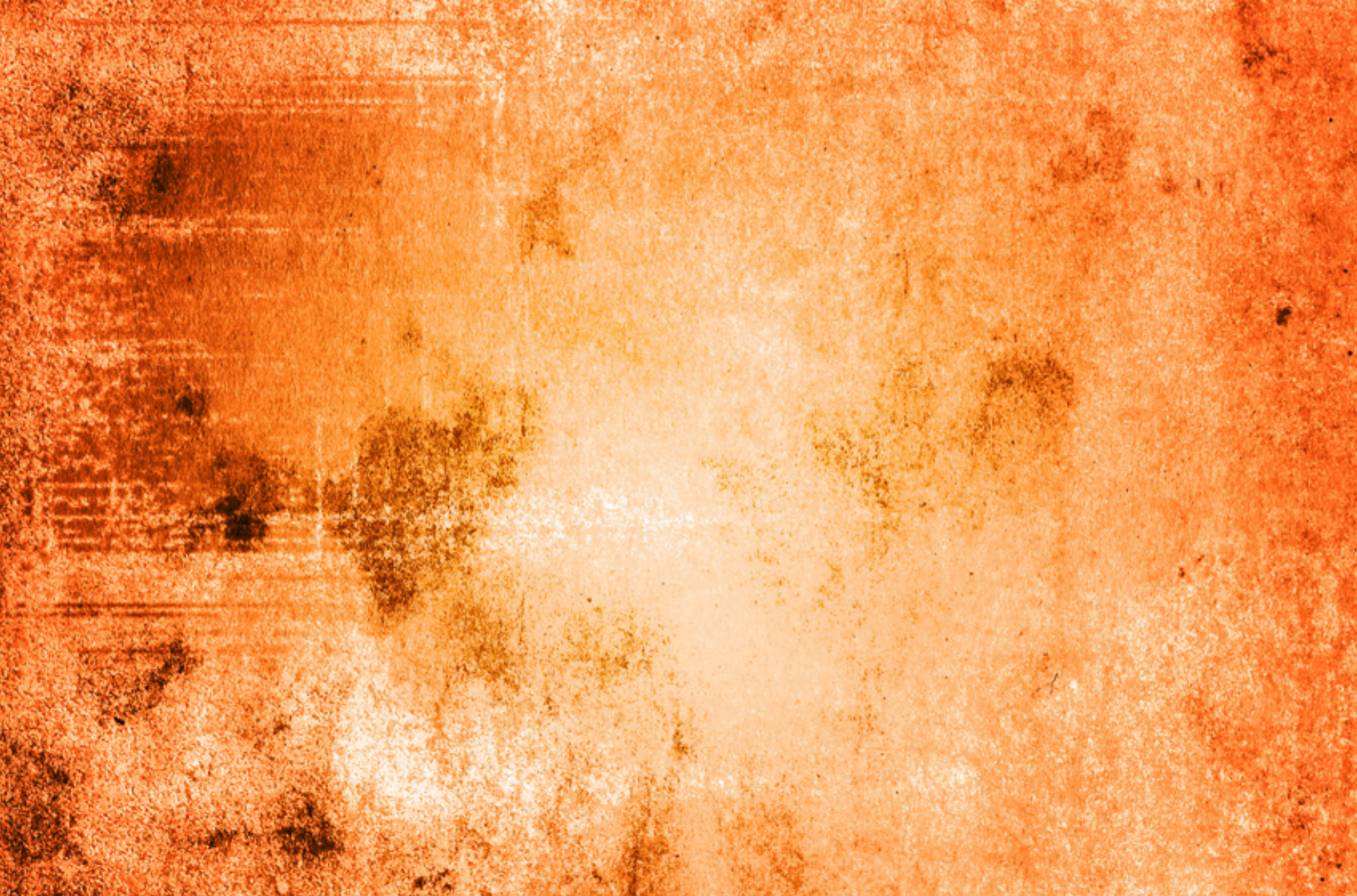




Small and Medium Enterprises in Kenya and

Corruption



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Introduction

Kenya's SME sector contributes an estimated 18 per cent of GDP¹, up from 3 per cent, thereby contributing to economic growth of the country but SME involvement in corruption means that their contribution to the GDP is reduced since their resources are turned towards corruption, and therefore their employment capacity and profit margins decline. SMEs in Kenya employ about 80 per cent of the Kenyan workforce² but have until now not incorporated and implemented sweeping compliance systems and/or codes of conduct geared towards prevention of corruption like larger companies have.³ Considering such significant contribution towards employment creation and growth of the country's economy, one of the goals outlined in Kenya's vision 2030, it is a matter of concern that SMEs' engagement in corruption will significantly reduce the number of people employed annually and retard economic growth. As it is, they possess, but are not reaching the potential of contributing up to 40 per cent or more to the country's economic growth and therefore to poverty reduction.⁴ The responsibility of fighting corruption falls on the SME sector itself as corruption impedes the growth and profit margins of the SMEs, but on the Government as well, because corruption in the SME sector has serious ramifications on the Kenyan economy.⁵

This report discusses the processes through which SMEs go through when starting their business and the corruption that they may take part in. It highlights the country's anti-corruption framework and the negative effects of corruption. It ends by putting forward recommendations towards the elimination of corruption in the SME sector and how SMEs can themselves take an active role in ensuring this is reached.

What are SMEs?

There is no clear definition for small and medium enterprises (SMEs); they are rather identified more by their characteristics than by explicit definition and may therefore vary in different jurisdictions. For example, in Britain, a small business is that with paid employees totalling less than 200,⁶ while in Kenya, a small business is that with 10-49 employees, and a medium business is that with 50-99 employees.⁷ It has been argued that the definition of SMEs is mainly derived from SMEs being entities engaged in an economic activity, irrespective of their legal form coupled with pre-determined thresholds in the total full time and part time staff headcount, the annual turnover and the annual balance sheet after all rebates have been paid out.⁸

- 1 Entrepreneur's toolkit for social and environmental entrepreneurs, *SMEs in Kenya* http://www.entrepreneurstoolkit.org/index.php?title=SMEs_in_Kenya (September 2010)
- 2 A Kenya Economic Survey 2011 released by the Minister of Planning, National Development and Vision 2030 in 2011 states that out of the 503,000 jobs created in the year 2010, 440,400 (80.6 per cent) were created by SMEs. Kenya: *SMEs Way to Go in Creating Employment for Youth*, Business Daily, <http://www.businessdailyafrica.com/SMEs+way+to+go+in+creating+employment+for+youth/-/539444/1167926/-/4mn4lbz/-/> (24 March 2011) and Dinfin Mulupi, "Lack of Knowledge and Information - holding back Africa's SMEs, April 23 2012- how we made it in Africa"
- 3 Input from SME representatives
- 4 SMEs NSE Listing, <http://www.kuzabiashara.co.ke/smes-nse-listing-the-financial-boost-7915/>, January 4th 2012
- 5 World Economic Forum, http://www3.weforum.org/docs/IP/2012/PACI/WEF_PACI_17thTaskForceMeeting_ExecutiveSummary_2012.pdf (2012)
- 6 Kenneth R. Gray, William Cooley, Jesse Lutabingwa, *Small-Scale Manufacturing in Kenya: Characteristics, Problems and Sources of Finance*, <http://www.sbaer.uca.edu/research/usasbe/1996/pdf/23.pdf>, page 3,4 (1996)
- 7 Presentation by M.G. Waweru, EBS, Commissioner General, Kenya Revenue Authority at the International Tax Dialogue Global Conference, Addressing the Different Tax Policy and Tax Administrative Challenges of Micro, Small and Medium Businesses, October 2007
- 8 European Commission, Enterprise and Industry Publications, *The new SME definitions, user guide and model declaration*, http://ec.europa.eu/enterprise/policies/sme/files/sme_definition/sme_user_guide_en.pdf (2005)

The table below offers more clarity:

Definitive characteristics of SMEs	Definitive characteristics of Large Enterprises
Management by their owners who are more centralized in their management	Management by persons employed specifically for this purpose, not necessarily having foundational ties to the enterprise
Being set up by persons seeking to venture out into self employment or being family run	Being set up by persons, groups of persons or other established companies.
Having substantially weaker delegation and departmentalization	Having concrete delegation and departmentalization for each functional need
Being more focused on short-term needs and medium-term survival than on long term profitability or market share ⁹	Being focused on long term profitability or market share ¹⁰
Requiring little capital and equipment for operations, in some cases, having employees with low-level skills and training	Requiring substantial amounts for capital and equipment for operations, and though having employees with low-level skills and training, needing employees with higher skills for management and other purposes
Being numerous and therefore making it difficult to keep track of and regulate	Are less numerous than SMEs and can therefore be easier regulated and brought together for joint efforts

Other characteristics of SMEs include: rampant competition within the SME sector with each SME fighting for market share; some SMEs being technology driven, in some cases, even having been set up as result of the changing technological innovations,¹¹ and SMEs also generally having difficulty accessing credit facilities¹² to get the necessary funds to run their operations.

Starting an SME in Kenya: The Process and the Laws

For any business to operate without hitches and interference from the authorities, it must comply with the rules set for the specific business type, whether by the central government or by the specific local authority in whose locality the business is situated. In Kenya there is a range of trade licenses and business permits that an entrepreneur is expected to possess, for them to be considered to be running a legitimate business.¹³

9 Tom Gibson, H. J. van der Vaart, *Defining SMEs: A Less Imperfect Way of Defining Small and Medium Enterprises in Developing Countries*, *Brookings global Economy and Development*, September 2008

10 Ibid

11 Kenneth R. Gray, William Cooley, Jesse Lutabingwa, *Small-Scale Manufacturing in Kenya: Characteristics, Problems and Sources of Finance*, <http://www.sbaer.uca.edu/research/usasbe/1996/pdf/23.pdf>, page 3,4 (1996)

12 Anthony Wanjohi, *Challenges facing SMEs in Kenya* http://smenetwork.co.ke/index.php?option=com_content&view=article&id=152:challenges-facing-smes-in-kenya&catid=45:business&Itemid=106 (*)

13 Simple Alliance, Kenya Limited, *Licences and permits*, <http://kenya.smetoolkit.org/kenya/en/content/en/54137/Licences-and-permits>

There exist general legal requirements that all registered businesses must acquire, including VAT number, Personal Identification Number (PIN), National Social Security Fund (NSSF) number, and the National Hospital Insurance Fund (NHIF) number while other requirements are specific to business type.¹⁴ Others will vary dependent on the number of employees.¹⁵

Registering a business name:

SMEs are required to register their business names in accordance with Business Names Act (Cap 265). These names must be registered with the Registrar General's office in Nairobi who has the authority to decide whether the enterprise is worth registering. The entire process takes 3 days and costs KES 100 per name reservation,¹⁶ while the company name reservation lasts 30 days but can be renewed for a similar period.¹⁷ Many SMEs do not comply with this law on registration mainly to circumvent tax obligations. Following registration of an enterprise, audited accounts must be compiled and filed with the registrar.¹⁸

Stamp duty:

Stamp duty is paid for by the person registering the business, at any commercial bank designated by the Kenya Revenue Authority (KRA). The relevant documents are assessed by the Stamp Duty Office before payment can be processed. This costs the person registering the business 1% of the business's nominal capital + Sh 2,005 (for memorandum and articles) and an additional Sh 100 as bank commission. This process takes 5-10 days to complete after which one is issued with a document confirming payment.

(Time to complete: 5-10 days).¹⁹ It is handled by the Kenya Revenue Authority and as an administrative requirement; the KRA requires the personal identification numbers (PINs) of all parties on whose behalf duty-stamped documents are submitted.²⁰

Compliance:

Depending on the type of business one is registering, he/she may be required to sign a declaration of compliance (Form 208) before a Commissioner of Oaths /Notary Public, in accordance with the Companies Act (Cap. 486)²¹. It takes approximately 1 day at a cost of KES 200²² and can be done simultaneously with the paying stamp duty above.²³

Incorporation:

In accordance with the Companies Act (Cap. 486), the Registrar of Companies is supplied with several documents for incorporation, including the statement of capital, the notice of situation of the registered business, the declaration of compliance with the Companies Act and approval of the name. The filing fee is KES 600,²⁴ and the process takes 7-14 days.²⁵

NHIF, NSSF and PAYE:

A person registering an SME also needs to register with the National Social Security Fund (NSSF) for the benefit of those who will be employed under the SME; the NSSF provides the employee with a lump-sum retirement benefit and participation therein is mandatory. The SME owner will pay a standard contribution of each employee's salary, subject to a maximum of KES 400*

14 *Doing Business in Kenya*, http://www.tradeinvestkenya.com/business_in_kenya/

15 *Licences-and-permits*, <http://kenya.smetoolkit.org/kenya/en/content/en/54137/>

16 Simple Alliance, Kenya Limited, *Licences and permits*, <http://kenya.smetoolkit.org/kenya/en/content/en/54137/Licences-and-permits>

17 *Starting a business in Kenya*, <http://www.doingbusiness.org/data/exploreeconomies/kenya/starting-a-business> (June 2012) OR <http://www.businesslicense.or.ke/index.php/index/index/id/16>

18 AIP, <http://www.amelinyangu.net/index.php?option=com>

19 Morris Muema, *How to start a business in Kenya*, <http://www.kenyanbusinessreview.com/559/how-to-start-a-business-in-kenya/> (September 2012)

20 Simple Alliance, Kenya Limited, *Licences and permits*, <http://kenya.smetoolkit.org/kenya/en/content/en/54137/Licences-and-permits>

21 The provision specifies that an advocate engaged in the formation of the company or a director or company secretary named in the Articles must sign Form 208, the declaration of compliance, which accompanies the registration documents to be submitted to the Registrar of Companies

22 Simple Alliance, Kenya Limited, *Licences and permits*, <http://kenya.smetoolkit.org/kenya/en/content/en/54137/Licences-and-permits>

23 *Starting a business in Kenya*, <http://www.doingbusiness.org/data/exploreeconomies/kenya/starting-a-business> (June 2012)/ <http://www.businesslicense.or.ke/index.php/index/index/id/16>

24 <http://www.doingbusiness.org/data/exploreeconomies/kenya/starting-a-business> (Starting a business in Kenya)(June 2012)/ <http://www.businesslicense.or.ke/index.php/index/index/id/16>

25 Simple Alliance, Kenya Limited, *Licences and permits*, <http://kenya.smetoolkit.org/kenya/en/content/en/54137/Licences-and-permits>

per month; half the contribution is deductible from the employee's salary. This registration takes 1 day and is done at no charge. In addition to this, the SME owner also needs to register with the National Hospital Insurance Fund (NHIF). He/she contributes a fixed sum, from the employee's salary to the National Hospital Insurance Fund (NHIF); this like the NSSF registration takes 1 day, at no charge. PAYE is also registered for with the KRA at no charge²⁶ (discussed here below in more detail.) The NHIF and NSSF were founded and are managed accordingly under the National Hospital Insurance Fund Act and the National Social Security Fund Act.

PIN:

Personal and company identification numbers are needed to register for VAT, local service tax and the pay-as-you-earn (PAYE) TAX, but the VAT registration requires PIN certificates of at least two shareholders/directors or a director and a company secretary. The person registering the SME is required to file the certificate of registration and a copy of the memorandum of articles of association, a process that takes 1-2 days to complete and is done free of charge.²⁷ All this is done at the Tax Department. With advancement in technology and the new online reforms, the application for a PIN and VAT registration can now be done concurrently online.²⁸ But unless the KRA has already received confirmation of incorporation of the company from the Companies Registry, one must still submit the relevant incorporation documents and receive log-in details from the KRA for the purpose of applying for a PIN and VAT registration.²⁹ This is done in accordance with the Income Tax Act (Cap. 470).

Business Permit:

The business permit is obtained from the relevant local authority and will vary depending on the type of business, number of employees, and size of the company's premises. The fee there for, is payable to the local authority's Licensing Department, which is the department that issues the business permit.³⁰ The fee schedule for business permits under the Nairobi City Council is:

- a) Medium trader, shop or retail service (5-20 employees and and/or premises 50–300 square metres): KES 5,000
- b) Mid-size business (50 employees and 300 square metres): KES 20,000 to KES 50,000 depending on the type of business.³¹

The Licensing Laws (Repeals and Amendments) Act, which took effect in 2007 amends the Local Government Act (Cap. 265) by reducing the number of business permits required for a distributor of goods or provider of services to carry on its business activities; applicants having obtained a business permit to operate from one local authority are not required to obtain another business permit in another local authority. In addition, business permit applicants will have an opportunity to elect whether to apply for a 1- or 2-year permit and the requirement to obtain a trading license in addition to the permit has been eliminated.³²

In addition to the above, before one can establish an SME, there must be approval by the National Environmental Management Authority (NEMA), which is charged with the responsibility of ensuring that businesses do not have a negative impact on the environment. A business, for example, must show that it has put in place a waste disposal system, or that it will not cause noise pollution in the vicinity of its location.

26 Simple Alliance, Kenya Limited, *Licences and permits*, <http://kenya.smetoolkit.org/kenya/en/content/en/54137/Licences-and-permits> and Starting a business in Kenya, <http://www.doingbusiness.org/data/exploreeconomies/kenya/starting-a-business> (June 2012)/ <http://www.businesslicense.or.ke/index.php/index/index/id/16>

27 Morris Muema, *How to start a business in Kenya*, <http://www.kenyanbusinessreview.com/559/how-to-start-a-business-in-kenya/> (September 2012)

28 Starting a business in Kenya, <http://www.doingbusiness.org/data/exploreeconomies/kenya/starting-a-business> (June 2012)/ <http://www.businesslicense.or.ke/index.php/index/index/id/16>

29 Simple Alliance, Kenya Limited, *Licences and permits*, <http://kenya.smetoolkit.org/kenya/en/content/en/54137/Licences-and-permits> and Starting a business in Kenya

30 Ibid

31 Morris Muema, *How to start a business in Kenya*, <http://www.kenyanbusinessreview.com/559/how-to-start-a-business-in-kenya/> (September 2012)

32 Starting a business in Kenya, <http://www.doingbusiness.org/data/exploreeconomies/kenya/starting-a-business> (June 2012)/ <http://www.businesslicense.or.ke/index.php/index/index/id/16>

Only when NEMA is satisfied that a business meets these requirements will it issue the Environmental Impact Assessment license which gives the business the go-ahead to start operations.³³ This is done in accordance with the Environmental Management and Coordination Act (EMCA) of 1999, under which NEMA is also established.

Other laws that apply to the general running of SMEs

It is important, when one starts an SME, to ensure that he/she has a clear understanding of the laws that touch on the field of operation of the SME, in order to avoid being on the wrong side of the law; SMEs, like all other businesses have to be conducted with integrity as this helps their success and growth.³⁴

For issues surrounding **employment:** SMEs will be bound by the general law of contract, as much as by the principles of common law that apply to employment.

These laws are the:

1. The Employment Act (Cap. 226) and the regulation of Wages and Conditions of Employment Act (Cap. 229) which collectively make rules governing wages, housing, leave and rest, health and safety, the special position of juveniles and women and termination of employment. The latter sets up a process through which wages and conditions of employment can be regulated by the Minister.
2. The Factories Act (Cap. 514) which deals with the health, safety and welfare of an employee who works in a factory and the Workmen's Compensation Act (Cap. 236) which provides for ways through which an employee who is injured when on duty may be compensated by the employer.³⁵

Civil Procedure Codes dictate the procedures that are to be taken under the various situations that a business owners may find themselves in, while giving guidelines whether for or against the business owner in accordance with the Civil Procedure Act.

Land and building laws (Stamp Duty Act, Registered Land Act, Transfer of Property Act, 1882, Building Societies Act, Physical Planning Act, 1996) are several Acts that touch on businesses that have a physical location; they stipulate and administrate over the dues/rates that a business owner has to pay in relation to their land and buildings.

Tax and trade laws such as the Income Tax Act, Value Added Tax, Customs and Excise Act, and Stamp Duty Act guide business owners on the dues expected of them by government as a result of a business establishment and touch on different types of business, as some apply across the board while others apply to specific businesses.

For purposes of maintaining health and sanitation, **The Public Health Act (Cap 242)** applies and addresses issues of public health regarding construction of premises, forbidding any nuisance or other injurious conditions dangerous to health on land or other property. In addition, the Act gives powers to the Local Authorities to pass by-laws that govern specifications of buildings, fittings and works with the aim of ensuring sufficient sanitation. All SMEs must comply with the provisions of this Act.

In addition to all the laws discussed above, more laws may be applicable, or more licences may need to be obtained for businesses with specific mandates. The appropriate licences will depend on the type of business concerned and specific legal advice may need to be sought in this regard in order to ensure compliance. However, the licences will be obtained from both the central government and local authority within which the business premises are situated in accordance with the usual procedures. Examples of such specific industries in various sectors of the economy are agriculture, mining, tourism etc. It is therefore prudent for the entrepreneur to identify the relevant legislation that regulates his industry and seek full compliance with all relevant laws.³⁶

33 David Karanja, *Legal Licenses Required in Setting Up a Business in Kenya*, http://www.ehow.com/list_7268882_legal-setting-up-business-kenya.html

34 Simple Alliance, Kenya Limited, *Business laws and regulations*, <http://kenya.smetoolkit.org/kenya/en/content/en/54131/Business-laws-and-regulations>

35 <http://kenya.smetoolkit.org/kenya/en/content/en/6186/Law-of-Contract>

36 William Maema, *Legal Considerations for Doing Business in Kenya* http://www.tresgarras.com/ikm/sites/default/files/downloads/legal_Considerations_for_Doing_Business.pdf

It is evident from the foregoing discussion that the regulations that govern the starting up of SMEs and the requirements that need to be met by business owners

are excessive. The arduous task of complying with these requirements and regulations is one of the factors that facilitate SMEs' tendency towards corruption.

The types of corruption that SMEs take part in

Corruption is defined as the abuse of entrusted power for private gain, hurting those who trust in the integrity of those positions of authority.³⁷

Bribery: This is an offer or receipt of any gift, loan, fee, reward or other advantage to or from any person as an inducement to do something which is dishonest, illegal or a breach of trust, in the conduct of the enterprise's business; the idea behind a bribe is to influence someone's action or decision.³⁸

Facilitation payments: Facilitation payments are a form of bribery made to expedite or facilitate the performance by a public official of a routine action/service and not to obtain or retain business or any other undue advantage; facilitation payments are typically demanded by low level and low income officials in exchange for providing services to which one is in any case legally entitled without such payments.³⁹

Fraud: This involves the use of deception, trickery and breach of confidence to gain some unfair or dishonest advantage, e.g. the falsification of one's accounting records in order to pay less tax.⁴⁰

Extortion: The use of the threat of violence, and other intimidation to force someone to do as you want; it is the illicit use of one's position or office to obtain money through coercion or threats, e.g. when customs officials request undue 'customs duties' from importers as a condition to clear their goods.⁴¹

Kickbacks: These are unlawful payments made to a person with the authority to decide or influence who is awarded a contract or selected for a transaction; it is essentially a bribe to obtain an undue advantage, where a portion of the said undue advantage is 'kicked back' to the person who gave or is supposed to give the undue advantage. It typically occurs in connection with a public procurement process when a company pays a procurement officer to illegally award the contract to the company in return for a bribe.⁴²

Also due to need for financing, SMEs can obtain false documentation that they use to acquire financing and also to get financial officials to grant them loans or grants without actually meeting the set requirements.⁴³

37 <http://www.transparency.org/whatwedo?gclid=CNmHqLXTILUCFcbLtAodWXUAOQ>

38 Transparency International's Business Principles for Countering Bribery, <http://www.cgu.gov.br/conferenciabrocde/arquivos/English-Business-Principles-for-Countering-Bribery-SME-Edition.pdf>

39 *Commonly Used Terms Related to Business and Corruption*, <http://www.business-anti-corruption.com/en/about-corruption/vocabulary/#Facilitation>

40 *Commonly Used Terms Related to Business and Corruption*, <http://www.business-anti-corruption.com/en/about-corruption/vocabulary/#Fraud>

41 *Commonly Used Terms Related to Business and Corruption*, <http://www.business-anti-corruption.com/en/about-corruption/vocabulary/#Extorttion>

42 *Commonly Used Terms Related to Business and Corruption*, <http://www.business-anti-corruption.com/en/about-corruption/vocabulary/#Kickbacks>

43 Input by SME representatives

How rampant is corruption in the SME sector?

Research carried out in Kenya shows that slightly more than:

- 79% of companies report that they expect to make informal payments to public officials to get things done;
- 29% of companies expect to give gifts to get an operating licence;
- 36% of companies expect to give gifts to get a construction permit; and
- 23%, 27% and 34% of companies expect to give gifts to get an electrical, phone, and water connection respectively. Most of these companies spoken of are indeed SMEs.⁴⁴

According to surveys, a large number of companies state that public procurement is an area of business where it is common to encounter corruption and requests for bribes and that the use of agents to facilitate business operations and transactions in Kenya is widespread and poses a risk for companies, particularly at the market entry and business start-up stage.⁴⁵ In addition, some of the policies passed by the local government or the KRA adversely affect businesses. Due to the difficulty in getting some businesses requirements, such as licenses, a corrupt environment is created which worsens things for growing entrepreneurs.⁴⁶

Excessive regulation leads to myriad things, one of them corruption, as confusing business regulations impose high risks and costs on formal businesses.⁴⁷

Accordingly then, one thing recommended was the guillotine, a means of rapidly reviewing regulations, and decisively eliminating those that are no longer needed, without the need for lengthy and costly legal action on each regulation.⁴⁸

The World Bank & The International Finance Corporation (IFC) ranked Kenya as one of the world's top ten reformers due to this reform programme, which has so far succeeded in eliminating and simplifying a large number of licences. Although these changes have streamlined business start-ups, cutting both the time and cost of obtaining building permits, there is still notable corruption among SMEs and for SME related activities.⁴⁹ There has been formation of www.licence.go.ke, an electronic business licensing registry which is an informational resource that carries information on what licences one needs to acquire for a business and the requirements needed to obtain the requisite licenses; it contributes significantly to improving transparency and to reducing regulatory risks and uncertainty for businesses.⁵⁰

Some success has been seen in the City Council of Nairobi with the implementation of new innovations such as the e- construction permit which is expected to reduce the time required to approve building plans and eradicate corruption loopholes in the city council as it automates all related payment systems.⁵¹ The government continues to make significant efforts to reform the regulatory framework for setting up businesses, resulting in less red tape and corruption,⁵² but again, business corruption is still widespread and companies frequently encounter demands for bribes and informal payments to 'get things done' in Kenya.⁵³

44 The World Bank & IFC: Enterprise Surveys 2007 and Doing business 2012

45 <http://www.business-anti-corruption.com/country-profiles/sub-saharan-africa/kenya/snapshot/>

46 <http://businessreviewkenya.com/small-business-challenges-kenya/>

47 Final Report of the Working Committee on Regulatory Reforms for Business Activity in Kenya Review of Business Licenses and Fees in Kenya, http://myadvisoryspace.org/bicf/KM%20Library/01_Measuring%20PSD%20and%20Investment%20Climate/03_PSD%20and%20IC%20-%20Reports%20and%20Values%20-%20Worldwide/2007_Kenya%20Licensing%20Reform.pdf (March 2007)

48 Ibid

49 Doing Business 2008

50 <http://www.businesslicense.or.ke/index.php/index/index/id/2>

51 Morris Muema, *WB hails City Hall's e-construction permit system*, <http://www.kenyanbusinessreview.com/664/world-bank-hails-city-halls-e-construction-permit-system/> (October 2012)

52 Bertelsmann Foundation 2012

53 Ibid

Actors involved in the corruption from the demand side and from the supply side

- a. Persons who intend to start SMEs
- b. Persons who are already proprietors of SMEs
- c. Government officials both from national and local government (city council officials, Kenya Revenue Authority tax officials, registrar of names, Kenya Revenue Authority customs officials, building and health inspectors etc)
- d. Agents⁵⁴ used by persons who want to start SMEs or proprietors of SMEs, to obtain licences/ registration or renew permits.
- e. Politicians and/or procurement officers if a tender is in question

Reasons why SMEs engage in corruption

There is a wide range of reasons for which SMEs engage in corruption.

1. Perception that corruption is the norm and that it is necessary if one is to safeguard his/her business interests or trump their competition

Corruption has become so widespread in the SME sector that it is, to a large extent accepted as common practice. Many SMEs will take part in it and therefore gain some sort of immediate advantage. Consequently, SMEs feel that corruption is essential to their existence since in refusing to engage in corruption, they stand to either lose out on a business opportunity or lose the business altogether when other SMEs but theirs resort to underhanded dealings. Public officials have been known to exert their power to extort SMEs and thus some SMEs give in, to safeguard their business interests.

As the SME sector is fast-growing with new enterprises setting up shop while existing SMEs expand their interests, heated competition for business and opportunities emerges. Corruption is used as a way to triumph in such situations and therefore those who do not engage therein often find themselves

at a disadvantage as their competition uses dubious means to triumph over them. A common example involves procurement, where two companies working in the same line of business with the same business experience are involved in a bidding war to supply goods to company X. Company A decides to give the procurement manager of Company X 'kitu kidogo'⁵⁵ with the promise of more to come once they win the supply bid. Company A receives the award; the procurement manager goes home a few thousands richer; it is a win-win situation for both of them. Company B, which decided to follow the correct procedures, end up the loser. Company A may have won unfairly, but the win still constitutes a win against the competitor.

2. Bureaucracy and lack of punishment/deterrent due to a corrupt judiciary

Bureaucracy can turn even the simplest process such as the renewal of a business permit into one that is unnecessarily lengthy. An SME may use corruption as a way to 'grease' the wheel and get things to move along faster. This is especially so in the local governments where SMEs acquire most of their documentation required to legally run their activities. Before the promulgation of the new constitution, the judiciary was rife with corruption. The public viewed the judiciary with mistrust as indicated in Transparency International's Global Corruption Barometer 2010/2011 where the judiciary was ranked second together with

⁵⁴ According to ACECA, an agent is a person who, in any capacity, and whether in the public or private sector, is employed by or acts for or on behalf of another person

⁵⁵ A common phrase used to refer to a bribe

the police as one of the most corrupt institutions in Kenya.⁵⁶ SMEs used corrupt court officials to either get cases they were involved in thrown out, delayed, or ruled on in their favour. This may change, however, with the recent reforms in the judiciary and increased public trust in the judicial system; public trust in the judiciary is on the rise⁵⁷ as the reforms continue to show the judiciary's increasing commitment to transparency and justice. A lack of transparency in licensing procedures and in payments for the same is certainly an enabling factor as well.

3. The lack of knowledge on laws and regulations

The lack of knowledge on laws and regulation and the procedures that they provide for is one of the major reasons that SMEs take part in corruption. This is perpetuated by non-transparent processes and lack of dissemination of information on the rights, and responsibilities of SME proprietors and other private and public officials that deal with SMEs. Lack of knowledge makes one susceptible to corruption offers from others (agents, public or private officials) as one may be taken advantage of based on what they do not know. For example, they may be misled about the length of a process and succumb to corruption for the purpose of circumventing a "long" process.

The same also makes one more prone to using corruption themselves in order to circumvent what they feel seems like an "arduous" process from the beginning. For example, breaking ground in a new market can be challenging and tedious and as earlier discussed, an SME must among other things, register and obtain the necessary documentation in order to start trading. Those who do not know the procedures or rules in totality are most likely to turn to corruption in order to get their SME off the ground with the least hassle. In addition, persons may be required to process or file documents and due to ignorance of the laws or timelines relating to such process, they may be vulnerable to public officials who require facilitation payments in order to perform these services for them.

In the same token, they expose themselves to fraud as they are dependent on other persons to ensure the legitimacy of all their documents. This is compounded by the fact that licensing procedures are at times bureaucratic; the more bureaucratic a procedure is, the less likely it is that the procedure can be known and understood well.

The SME sector in Kenya is divided into two groups, one with larger SMEs and the other with smaller SMEs. In addition, the knowledge base of SMEs is varied because SMEs are made up of semi-skilled persons, skilled persons and highly skilled persons all split between the two major groups with the smaller SMEs carrying a larger number of semi-skilled persons. There have been no efforts however, by the government or by civil society, to target the SME sector specifically for civic education or education on specific laws, regulations and procedures that apply to them. The division of the sector along lines dependent on the level of skills poses a challenge in terms of devising a strategy to pass one message and have it well received and understood by all persons in the same sector. For example when passing messages about corruption, even though all persons may know it is wrong, there has to be effective communication of its harmful effects to those with lower understanding of the same as they may not know about corruption to such a level. There is therefore need to tailor make messages for each of the groups, in accordance with their needs.

Negative effects of corruption on SMEs

1. Growth and Profits

Corruption negates a company's growth because it takes up part of the SME's resources which could otherwise have been used to grow and expand activities and operations. Research has shown that if bribery rates go up by one percentage point then the growth of a company reduces by 3 percentage points.⁵⁸

56 <http://gcb.transparency.org/gcb201011/>

57 A survey conducted by Infotrak Research and Consulting in 2012 showed that 70 percent of those polled were confident in the new Chief Justice, Willy Mutunga and the judiciary.

"Poll: Kenyans have confidence in CJ, judiciary" *The Standard*, 3 October 2012

58 Fisman, Raymond, and Jakob Svensson. "Are corruption and taxation really harmful to growth? Firm level evidence." IIES, Stockholm University, Processed. (<http://www.iies.su.se/~svenssoj/corrgrowth.pdf>)

The same monies, rather than going into corruption could be used by SMEs to build their capacity through training staff in their area(s) of operation. Similarly, the costs put towards corruption may be too steep for some SMEs, resulting directly in minimal profits or even losses, forcing them close shop; no SME wants to run at a loss when its main reason for existence is in fact to generate profits.

2. Quality of Goods and Services

In a situation where SMEs are able to, through corruption, bypass quality control rules set in the market, the result is the provision, by these SMEs, of poor services, or the production of substandard goods. These goods and services move on to the consumer who may reject them for their poor quality. It is alleged

that Kenyans perceive local products and services as inferior and would rather buy imported products.⁵⁹ This negative view will thus be reinforced as a result of the consumption of poor quality goods and services and ultimately result in a diminished market for local goods and services.

3. Criminal proceedings

Once found to have participated willingly or unwillingly in corruption, an SME may find itself entangled in criminal proceedings. Criminal proceedings can be lengthy and costly. In addition, if found guilty of corruption, an SME may be forced to close down by order of the law or may have to pay a hefty fine to resume operations. Taking into account that one of the characteristics of SMEs is limited resources, such a fine may paralyse SME operations.

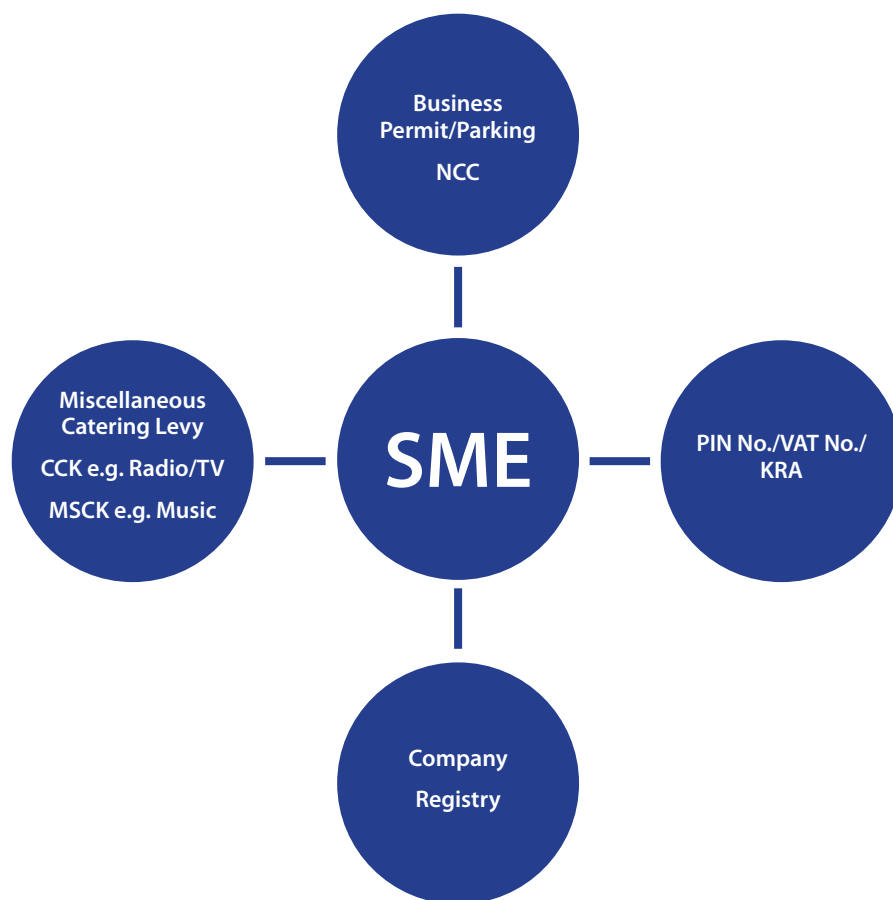
59 Input by SME representatives

Corruption

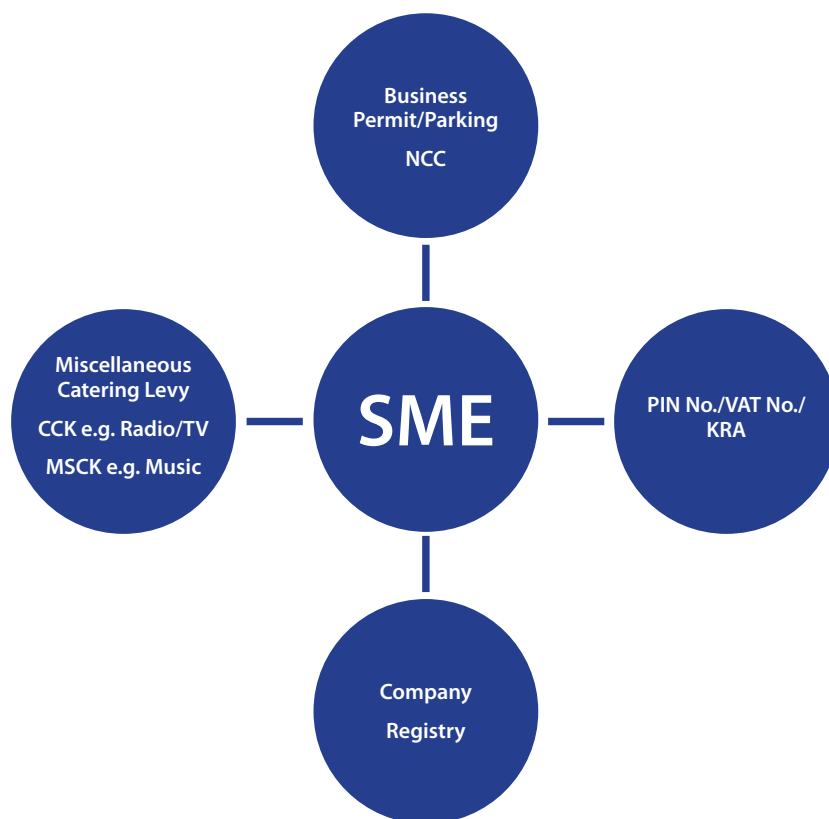
Illustration

A look at the requirements of a small cafe in the central business district helps to illustrate the myriad of conditions that are placed on SMEs.

Licensing for cafe



Compliance



In discussion with a café owner their views were that the Nairobi City Council is the bedrock of majority of corruption. However the Health and Safety department of the Nairobi city council is viewed as the most likely to seek bribes from businesses⁶⁰. As their mandate is broad spanning fire equipment, health of staff, handling of food etc. it provides the officials with great discretion and makes it prone to abuse.

The question arises as to why the SME owners do not try to corrupt their way out of paying taxes especially as this would increase their profits. While the catering levy a percentage of sales as well as the Income tax and ETR the KRA are viewed as pretty standard. However they incur hefty fines in the event of non-compliance. It would therefore seem that the two agencies; the Kenya Revenue Authority and the catering levy trust have in some instances managed to ensure that corruption is a high risk low return venture, thereby reducing the probability of the same occurring.

Kenya's Public Anti-corruption framework

Because the SME sector does not have compliance systems and/or codes of conduct to deal with corruption, it is currently dealt with under the country's overall anti-corruption legal framework.

Laws

1. The new constitution, **the Constitution of Kenya, 2010**: On 27 August 2010, Kenya, through promulgation of her new constitution made a large step forward in the fight against corruption, as the constitution which is founded on principles of 'good governance, integrity, transparency and accountability' cements the separation of powers, and seeks to entrench accountability and transparency in the public service, thereby creating an environment that is less susceptible to corruption.⁶¹ Although the constitution entrenches these principles and provides for the creation of mechanisms that will enhance

60 Input from SME representatives

61 General information, <http://www.business-anti-corruption.com/country-profiles/sub-saharan-africa/kenya/general-information/>

accountability, laws must be aligned with these values and principles if corruption is to be curbed.⁶² In both the public and private sector, there is need for all Kenyans to change their attitudes and embrace the anti-corruption agenda.⁶³ One of the most important anti-corruption institutions that is founded by the constitution is the Ethics and Anti-Corruption Commission.

2. The **Anti-Corruption and Economic Crimes Act (ACECA), 2003**: On enactment, Section 70 of this Act repealed The Prevention of Corruption Act (Cap.65) and established the Kenya Anti-Corruption Commission (KACC) as a body corporate, to which it gave powers to investigate corruption and recommend further action on the same.⁶⁴ This Act expands the definition of corruption and economic crime to include various forms of abuse of office, misappropriation, theft and plunder of public resources.⁶⁵ It criminalises corruption, even when attempted, active and passive bribery, bribing a foreign official, abuse of office, extortion, and bribery involving agents, all of which SMEs or agents working on behalf of SMEs can take part in.⁶⁶ Other related offences are secret inducement for advice; conflicts of interest; and dealing with suspect property.⁶⁷
3. The **Public Officers Ethics Act, 2003**: This Act sets out rules for transparency and accountability for public officers and defines graft and abuse of office by the same persons.⁶⁸ It legislates for mandatory separate codes of conduct for all public officers, including those working in local government. The codes of conduct, which are legally enforceable, prohibit corruption in public service.⁶⁹ As SME proprietors go about starting their business and

renewing licenses required to keep their businesses running, they usually come into contact with public officers working at the national and local levels; that there is a law that prohibits corruption by these officials, is therefore essential for the SME proprietors and employees to know.

4. The **Finance Act, 2006**: This Act addresses measures to be taken against tax fraud, and regarding value added tax (VAT), customs and excise duties and income tax. It lays out guidelines on tax administration.⁷⁰ Tax fraud is a form of corruption which this Act provides sanctions for, while expanding the tax bracket to capture a wider tax base, in order to reduce opportunities for tax evasion, another form of corruption.⁷¹ SMEs have problems relating to payment of tax due to their information gaps regarding the tax regime and also due to compliance processes that may appear to be arduous. Non-compliance, however, is considered a punishable offence in several pieces of legislation and in this one particularly.
5. The **United Nations Convention on Anti-Corruption (UNCAC)**

The United Nations Convention on Anti-Corruption (UNCAC) provides a basis upon which anti-corruption legislation of a high standard can be formulated. Kenya was the first country to ratify the convention on 9th December 2003. The aims of the UNCAC include promoting accountability, integrity and proper management of public property and public affairs, promoting the fight against corruption to be more effective and improving international technical assistance and cooperation in the fight against corruption in the public and private sectors.⁷²

62 Migai Akech, "Abuse of Power and corruption in Kenya: Will the New Constitution Enhance Government Accountability?" *Indiana Journal of Global Legal studies*, vol 18, no 1, (winter 2011)

63 Eric Ngumbi, *Kenya: Fighting Corruption And Impunity Demands More Than a Constitution*, <http://allafrica.com/stories/201106271542.html?page=2> (June 2011)

64 http://www.iaaca.org/AntiCorruptionAuthorities/ByCountriesandRegions/Kenyaajigou/201202/t20120209_801720.shtml

65 Mwalimu Mati, *Beyond Illusions A Report on the Status of the Struggle against Corruption in Kenya*, (December 2003)

66 ACECA part V

67 Ibid

68 *Public Anti-Corruption Initiatives*, <http://www.business-anti-corruption.com/country-profiles/sub-saharan-africa/kenya/initiatives/public-anti-corruption-initiatives/>

69 Mwalimu Mati, *Beyond Illusions A Report on the Status of the Struggle against Corruption in Kenya*, (December 2003)

70 Anti-corruption profile-Kenya, <http://www.trust.org/trustlaw/country-profiles/good-governance.dot?id=12600e6d-9822-41c2-bff1-579481b9108a>

71 *Public Anti-Corruption Initiatives*, <http://www.business-anti-corruption.com/country-profiles/sub-saharan-africa/kenya/initiatives/public-anti-corruption-initiatives/>

72 Kenya, UNCAC, <http://www.eacc.go.ke/docs/kenya-uncac-gap-analysis-report.pdf>

On 2nd May 2003, the Public Officer Ethics Act, 2003 and the Anti-Corruption and Economic Crime Act, 2003 were enacted, significantly boosting the fight against corruption in Kenya. The two laws helped Kenya recognize the significance of laying down suitable laws to combat corruption. The laws are similar to the convention in that they have provisions for the investigation, and prosecution of corruption as well as the seizure of and return/confiscation of proceeds of corruption.⁷³

The gap analysis

Kenya, after ratification of UNCAC undertook a self-evaluation (gap analysis) to establish the state of her corruption policies and laws, with reference to the standards set by UNCAC. The results of the gap analysis showed that Kenya is prepared to fully comply with the provisions of UNCAC, though more legal provisions should be put in place to aid in enforcement.⁷⁴

Among some of the laws that should be implemented, are laws on money laundering, which in itself is a form of corruption, but the passage of the Kenya anti-money laundering law was seen as a gimmick aimed at appeasing international partners.⁷⁵ There are numerous powerful interests backing the non-implementation of the law, lack of political will and shortage of capacity, both human and financial have a dampening effect on efforts to implement it.

The gap analysis was not only useful in determining the state of Kenya's anti-corruption legislation, it will also be useful in the future during the UNCAC review process as a background to how far the country is improving in implementation of the UNCAC and Kenya's constituent anti-corruption legislation.⁷⁶

UNCAC Review Mechanism

One of the main weaknesses of the UNCAC was the lack of an implementation review mechanism to evaluate the degree of implementation of the Convention by the countries who are party to the Convention.⁷⁷ In November 2009, the UNCAC Conference of States Parties meeting for a third time adopted a review mechanism for implementation of UNCAC, and the Terms of Reference according to which the review would be carried out.⁷⁸ According to the resolution under which the review mechanism was adopted, governments are encouraged to include civil society and private sector inputs (including SME inputs therefore), in to their self-assessment on implementation of UNCAC.⁷⁹

Civil society plays important function as an independent critic of governments' implementation of the UNCAC and of the transparency of the review process, with roles including monitoring and advocating for a transparent and inclusive review process through publicizing details of the focal points of review and key transparency points and also through publicizing the country's self-assessment and full country reports.⁸⁰

Implementation of UNCAC by SMEs in Kenya

The EACC's web-based anonymous reporting system known as the Business Keeper Monitoring System (BKMS) has gone a long way in encouraging SMEs to report corruption cases in Kenya.⁸¹ SMEs in Kenya have also partnered with government and other organisations to help combat corruption, albeit with limited success. The existence of corruption in the SME sector continues to greatly affect businesses in a negative manner. SMEs in Kenya now have a chance to participate in the UNCAC review process- to participate further in efforts towards implementation of strong anti-corruption law and therefore a reduction of corruption.

73 Kenya, UNCAC gap analysis report, <http://www.eacc.go.ke/docs/kenya-uncac-gap-analysis-report.pdf> (2009)

74 Ibid

75 Susan Anyangu-Amu, Global Issues. *KENYA: Proceeds of Crime and Anti-Money Laundering Bill Passes, But Does Govt Mean Business?*, <http://www.globalissues.org/news/2009/12/29/4067> (December 2009)

76 Kenya, UNCAC: <http://www.eacc.go.ke/docs/kenya-uncac-gap-analysis-report.pdf> (2009)

77 UNCAC, <http://www.business-anti-corruption.com/en/about-corruption/un/>

78 *UNCAC review mechanism*, <http://uncaccoalition.org/uncac-review/uncac-review-mechanism/>

79 Ibid

80 Ibid

81 <https://www.bkms-system.net/bkwebanon/report/clientInfo?cin=111KACC33&language=eng>

This can only be done subject to knowledge on when Kenya is being reviewed and what issues will be under review so that SMEs may participate effectively in the review process. This would ensure that the voice of the SME sector is heard; in terms of how the sector thinks corruption is being addressed in the country and also any recommendations the sector may have on the same subject.

The topics being reviewed in this first round are Criminalisation, Enforcement and Mutual Legal Assistance (UNCAC Chapters III and IV). The selection of the State Parties to be reviewed was carried out pursuant to resolution by the State Parties and terms of reference of the Review Mechanism; lots were drawn to select the State Parties to be reviewed in each of the first four years of the first review cycle.⁸²

Institutions and other Initiatives to Curb Corruption

1. The Ethics and Anti-Corruption Commission (EACC): The Kenya Anti-Corruption Commission was disbanded in 2011 by Kenya's political elite, despite some positive developments under director Patrick Lumumba.⁸³ The EACC took its place as the national anti-corruption agency, founded under Article 79 of the Constitution. The tasks of the EACC include, among others, the investigation of corruption and economic crimes.⁸⁴ The EACC now has the possibility to be given prosecutorial powers but currently, it still forwards cases to the directorate of public prosecutions. The EACC not only provides an avenue through which proprietors and employees of SMEs can report any corruption they encounter but it also provides an avenue through which members of the public can report instances of corruption by the SME proprietors or employees themselves.

Its work displays a reliance on whistle blowing but this is affected by the fact that there is no whistleblower protection Act in force in Kenya; there is however a Witness Protection Act, and the former is currently being advocated for.⁸⁵

2. The Ombudsman: The superintendence on integrity is not exclusively vested in the Ethics and Anti Corruption Commission (EACC).⁸⁶ In 2007, the government established the Public Complaints Standing Committee (PCSC) which was mandated to inquire into allegations of among other things, abuse of office, corruption, and breach of integrity. However, in November 2011, Parliament passed the Commission on Administrative Justice (CAJ) Act, establishing the Commission on Administrative Justice, which is designed on ombudsman-like responsibilities.⁸⁷ It has the mandate to ensure, in collaboration with sister commissions and organs, compliance with the ethics and integrity requirements in chapter six of the constitution, and to look into the conduct of all public officers at national and county level.⁸⁸ It is to investigate improper conduct and abuse of power and take remedial actions on the same.⁸⁹ The ease of access to the CAJ at national and county levels will enable any SMEs that experience corruption or a request for corruption in public offices to be able to report this and thereafter see appropriate remedial action taken thereon.

3. E-Governance: Kenya's e-Government program is meant to address two impediments to development faced by many countries: endemic corruption and inefficiency.⁹⁰ There have been direct efforts to automate the tax and customs services, which have, together with the reduction of the road transport licences, drastically reduced direct contact between

82 *United Nations Convention against Corruption: Review Mechanism*, <http://www.unodc.org/unodc/en/treaties/CAC/IRG-country-pairings.html>

83 *Public Anti-Corruption Initiatives*, <http://www.business-anti-corruption.com/country-profiles/sub-saharan-africa/kenya/initiatives/public-anti-corruption-initiatives/>

84 Section 13 EACC Act

85 <http://www.icegov2008.icegov.org/slides/ICEGOV2008%20InvitedSession7%20-%20GTZ.pdf>

86 Dr Regina Mwatha, *Administrative justice team's role*, <http://www.the-star.co.ke/news/article-94972/administrative-justice-teams-role> (November 2012)

87 *Public Anti-Corruption Initiatives*, <http://www.business-anti-corruption.com/country-profiles/sub-saharan-africa/kenya/initiatives/public-anti-corruption-initiatives/>

88 Editor, *Kenya: Commission on Administrative and Justice takes over office*, <http://ngonewsafrika.org/archives/10571> (November 22nd, 2011)

89 Sections 8 (d), 59 2 (i&j) and 59 (j) of the CAJ Act

90 <http://newmediadev2009.wikischolars.columbia.edu/Kenya+E-Government>, 2009. Also available at Kenya E-Government and Africa: E-Governance Leads to More Effective Government 19 November 2012. <http://allafrica.com/stories/201211200332.html>

the Kenya Revenue Authority and other local authorities with the public. The Internet portal of the Government of Kenya provides links to ministry websites and local authorities as well as to the Directorate of E-Governance and Kenya Revenue Authority, which offer valuable information and services to companies and individuals. This includes business registration, e-tax registration/payment, VAT refund claims forms, and road transport, customs and land rent forms.⁹¹ Through E-Government, the internet and email can be used to publicly report corruption because they afford greater privacy (even anonymity) than telephone and in-person reporting.⁹² The online tool established in Kenya has resulted in an improvement in the quality and quantity of reports the anti-corruption authority receives.⁹³ This is another avenue that SMEs can use to report corruption.

Recommendations towards reducing SME corruption

- a. The idea that corruption is the norm, that SMEs have to take part in it in order to thrive and the tolerance for corruption in the SME sector can be countered by highlighting, through advocacy efforts, the long term gains of abiding by the law and its requirements as opposed to the vast and long lasting negative effects of corruption on SMEs. SME support organisations can pass this message to the SMEs they work with and those that seek support from them. In addition, individual SMEs can also pass this message to other SMEs that they interact with. Furthermore SMEs can affirm their commitment to anti-corruption by committing to ethical business principals collectively and adopting simple but effective anti-corruption policies to the effect that they will not tolerate or take part in any kind of corruption in the course of their business transactions.
 - b. SMEs should report the instances of corruption that they experience in order to bring them to the light and facilitate their prosecution. This can be done through the reporting procedures at the EACC (the EACC's web-based anonymous reporting system known as the Business Keeper Monitoring System (BKMS) which allows for anonymous reporting of corruption. The newly reformed judiciary, when hearing cases of corruption can also help to develop jurisprudence that is adequately tough on corruption as this can also act as a deterrent for those who intend to take part in corruption.
- When you are in doubt about whether your actions amount to corruption, ask yourself:**
- i. Whether the intention of your action is to impact on the recipient's objectivity/make the recipient indebted to you or is just to ensure your company is remembered?
 - ii. Whether you are trying to buy influence by your actions, or using the same merely as an opportunity to network?
 - iii. How you would feel if your competitor did the same thing
 - iv. Whether you would be comfortable if people found out what you did?⁹⁴
- c. There ought to be continued advocacy for reforms geared towards entrenching transparency in licencing procedures (from application to payment) and a faster move towards open and transparent electronic means of obtaining all SME licenses. Electronic licencing will mean that less human officials are dealt with and also that payments are traceable, both of which will reduce the probabilities of corruption taking place. The government has embarked on this but SME stakeholders need to take up a more co-ordinated approach to get government to hasten reforms of such significance.

91 *Public Anti-Corruption Initiatives*, <http://www.business-anti-corruption.com/country-profiles/sub-saharan-africa/kenya/initiatives/public-anti-corruption-initiatives/>

92 *Kenya E-Government*, <http://newmediadev2009.wikischolars.columbia.edu/Kenya+E-Government> (2009)

93 Jessica Schultz, CHR. Michelsen Institute, *Reducing Risks of Reporting Corruption: Lessons from an Online Reporting System in Kenya*, <http://www.gaportal.org/resources/detail/reducing-risks-of-reporting-corruption-lessons-from-an-online-reporting-system-in-kenya> (2010)

94 Business Unity South Africa, An anti-corruption guide for South African SMEs http://www.busa.org.za/docs/BUSA_SME_Anti-corruption_guide.pdf, (August 2009)

- d. SMEs' lack of information on legal and regulatory requirements for licensing and permits can be addressed by targeted efforts to educate them and also giving them an opportunity to meaningfully participate in the making of policies and subsidiary legislation that concern them. This does not happen currently. A strategy for passing information on laws and regulations can be the simple but systematic organization of all relevant laws in one document which can be referred to easily. The first thing that may need to be done, however, is to have a review of the same laws, including the involvement of the SME sector so that they may know the laws better and also be able to identify and communicate where amendments should be made. Other important information to be passed can be focussed around the specific laws and regulations that apply to SMEs at different points as highlighted in this report, and also the rights and responsibilities that emanate therefrom in order to reduce vulnerability towards corruption at the hands of officials or agents. SME support organizations can take it upon themselves to not only tell the SMEs and the persons who come to them for information regarding SMEs about the laws and regulations but also about the corruption vulnerabilities associated with them and how to possibly avoid them. Any large scale strategy to educate SMEs would have to be informed by the variance in the sector in terms of skills and this would perhaps necessitate the tailoring of a message in several different ways dependent on skill level of the intended consumers.
- e. The gazettement of actions by government officials e.g. inspections, has been done in the past and has not contributed much to a reduction in corruption emanating from situations in which SME owners are not adequately prepared for the same. In this regard, there needs to be more communication to the SMEs by concerned government officials and an effort to "speak to SMEs in their language."⁹⁵ The responsibility of local authorities and national government is clearer in this case as officials from these authorities would have to be able to coherently communicate with the SME sector if the desired result is to be reached. If the reasons behind payments SMEs have to make and requirements they have to meet are clearly explained, then it would be easier for the same SMEs to follow through on their obligations. Another advantage of such action is that it would also contribute to repairing the currently adverse relationship between SMEs and the authorities.
- f. The lack of coerciveness between SMEs perpetuates the lack of knowledge as SMEs do not work together and do not consolidate their information for the purposes of sharing it. There have been, in the past (2010), efforts to work with the now defunct Kenya Anti Corruption Commission on eradicating corruption in the SME sector through an anti-corruption manual but these efforts flopped since there could not be agreement on one manual that could instil anti-corruption in ALL SMEs. There may be a need to target the different sections of the SME world differently but with a common aim/goal, although there has also been proof that when there is great need for positive change, the process can be started and other SMEs will join in, such as was the case in the development of an SME HIV policy, which some SME support organisations started without much support from other SMEs or government. At a later stage, these SMEs were joined by others and by government and the adoption of the HIV policy now in application became a sector wide success.
- g. Taking part in the UNCAC review mechanism: In accordance with the process specified above, Kenya was picked to be reviewed in the fourth year of the reviews, i.e., 2013. The first step for SMEs therefore, would be to start monitoring the topics being reviewed with regard to the functioning of SMEs, requesting the government to allow individual SMEs or representatives from the SME sector to make any input into the review process, or if the sector can prepare a report on implementation and submit it to the review team and to the government. SMEs can also prepare an analysis of the final country report of the review, especially the parts monitored, to confirm if the report reflects what the sector or individual SMEs submitted. This can be brought to the attention of Government, Review Group or Conference of State Parties as a national coalition or through international coalitions.

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