

Africa Centre for Open Governance

Annual Report 2007-2008



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Permanent civic vigilance

Message from the Board of Directors

As is well known, Kenya faces severe governance challenges. Of particular importance is the need to transform state institutions from their old, secretive, low-trust, corrupt and surveillance mentality to one of openness, trust and participation.

While there have been some significant reforms in the last decade, Kenya's institutions are still weak and prone to political patronage and manipulation. The enactment of progressive anti-corruption laws in 2003 has not been followed by adequate enforcement or implementation of related policies. Parliament's oversight role is weak and the Kenya Anti-Corruption Commission - the premier anti-corruption agency - has been ineffective due to lack of enforcement mechanisms and low political will. In the current context of the grand coalition government, brought about by the international mediation process led by Dr. Kofi Annan, Kenya is threatened by a veritable crisis of grand corruption.

Despite these challenges, AfriCOG made remarkable achievements in the reporting period; informing parliamentary debate, raising civic vigilance on key governance issues, and contributing to the international mediation process during the 2008 post-elections crisis.

AfriCOG remains committed to advocating for good governance and anti-corruption reform. We are also committed to learning from our experiences and those of like-minded partners. We do this in an effort to ensure permanent civic vigilance, and to encourage more sophisticated responses to complex governance problems.

We would like to thank our secretariat staff for their commitment in 2007-2008 and look forward to even greater achievements in the coming year.

Stella Chegeh, John Githongo, Maina Kiai, Duncan Okello

Message from the Executive Director

The Africa Centre for Open Governance (AfriCOG) is founded on the principle that citizens must be permanently vigilant over the conduct of public affairs - whether government appears to be functioning well or not. Our mission is to enable that vigilance. Central to this effort is strengthening the civil society anti-corruption and good governance coalition.

This annual report is AfriCOG's first and covers our programme activities from July 2007 to December 2008.

The defining event of the 2007-2008 period was the violence and destruction that followed the December 2007 General Elections. Despite the poll crisis and consequent shifts in the political, legal and social environment, AfriCOG's approach, which seeks to address the structural causes of Kenya's ongoing governance crisis was validated and significant work in its regular programme areas was undertaken, some of which is detailed in this report.

Looking forward, AfriCOG will continue to pursue its strategic priorities. Among these is a focus on economic governance and the protection of the public interest in the regulatory sector. Public financial accountability will continue to be promoted, beginning with an analysis of the Controller and Auditor General's reports on the Electoral Commission of Kenya. The post-election crisis exposed a weakness in civil society's capacity to provide strategic analysis, develop credible scenarios and possible mitigating responses. AfriCOG intends to help build up this capacity. Further, AfriCOG's partnership with the media will be strengthened through a competitive investigative journalism fellowship.

We thank all those who have contributed to the success of AfriCOG in 2007 and 2008, particularly our Board of Directors, staff, associates and funding partners.

Gladwell Otieno



Getting to the root of corruption and bad governance

AfriCOG's strategy focuses on addressing the enduring nature of Kenya's governance challenges. As such, we look beyond superficial responses to the structural, constitutional and institutional weaknesses that perpetuate corruption and poor governance. Our work approach is centred on evidence-based research, effective policy partnerships and building capacity in civil society for more effective advocacy.

AfriCOG's approach is partly informed by Kenya's experience in the 2007 post-election violence, which, while triggered by the botched presidential tally, was indicative of strong underlying grievances over long-standing governance failures.

AfriCOG's PROGRAMME AREAS

Implementation of AfriCOG's strategy entails:

1. Generating policy-relevant, cutting-edge research on corruption, governance and public ethics for use in evidence-based advocacy;
2. Mobilisation and collaboration through policy partnerships with civil society organisations, grass-roots interest groups, public institutions and the media;
3. Dissemination of timely, well-packaged information on the incidence, intensity and extent of corruption and governance problems;
4. Institutional strengthening of AfriCOG as an effective and accountable think-tank on governance and anti-corruption.

1. Research

The Research Programme forms the backbone of AfriCOG's work. It seeks to establish the underlying nature of corruption and governance challenges in Kenya and propose appropriate and sustainable responses to these challenges. This is achieved through:

Research into the structural dimensions of governance and anti-corruption

This programme highlights issues related to the structure, mandate, financing, autonomy, composition and accountability of key governance institutions such as the office of the Attorney-General, anti-corruption institutions, Controller and Auditor General and Parliament. AfriCOG's well-received work on the Telkom Kenya privatisation and Safaricom Initial Public Offer (IPO) pointed to the need to strengthen Kenya's regulatory framework for the protection of the public interest. AfriCOG has since embarked on a review of the performance and challenges of Kenya's regulatory bodies, specifically beginning with those dealing in utilities, media and communications and the financial sector.

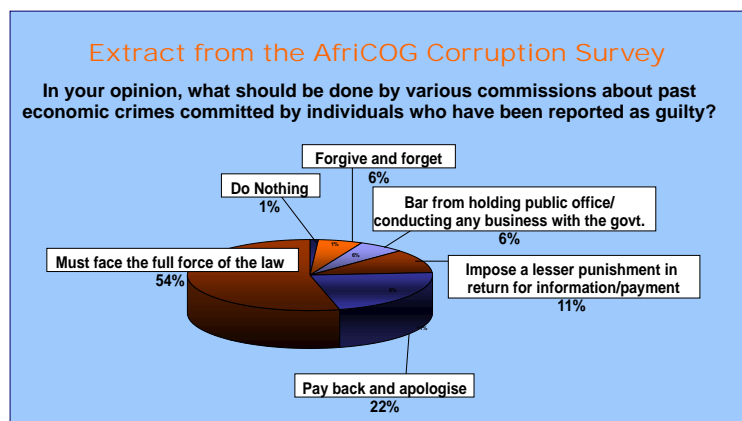
Responsive research and analysis

This is envisioned as providing an 'early warning' function on topical governance and anti-corruption issues. The post-election crisis exposed the dearth of political analysis and scenario-building on governance issues. AfriCOG is developing its capacity for strategic research to provide real-time analyses and intelligence briefs on topical issues to the media, civil society, policy makers and other interested parties.



Developing Tools and Templates

This initiative aims at developing objective, replicable tools to measure the performance of key anti-corruption institutions and processes over time. This will hopefully facilitate issues-driven public debate on Kenya's governance challenges.



2. Policy Partnerships

Effective partnerships are critical to advancing good governance and anti-corruption. AfriCOG's policy partnerships are founded on research. Through the policy partnership programme, AfriCOG seeks to build coalitions with progressive partners that have a vested interest in good governance, including the media and the private sector. Key thematic areas are:

Parliamentary initiatives

This theme undertakes policy advocacy and provides knowledge support, particularly to parliamentary oversight committees. The project works closely with other civil society members of the Parliamentary Initiative Network (PIN).

Budget Accountability

This theme monitors and profiles transparency and accountability in the use of public funds as reported by the Comptroller & Auditor General.

Partnering the media - Investigative Journalism

By providing short fellowships to competitively-selected journalists, this theme seeks to enhance expertise in investigative journalism and generate a body of incisive investigative reports on key governance, anti-corruption and public interest issues.

Partners' Institutional Development

A key motivation for AfriCOG's establishment was the need to rebuild and strengthen civil society's good governance and anti-corruption coalition. Through this theme, AfriCOG facilitates and hosts civil society coalitions and partnerships, among them, the Kenyans for Peace with Truth and Justice (KPTJ); the Movement for Political Accountability (MOPA); and the Constituency Development Fund (CDF) Accountability Project.

3. Dissemination and Linkages

This programme reinforces AfriCOG's other work by providing usable, professional and timely information on the incidence, intensity and extent of corruption to stakeholders and partners through various channels and products. These include confidential briefings on topical issues; situation reports; press briefing kits; issues papers; policy briefs; an up-to-date website; stakeholder meetings and public forums.

4. Institutional Strengthening

This area seeks to build AfriCOG as a leading, effective and accountable regional resource centre for governance reform and anti-corruption and to develop a public information system that is useful and accessible by different stakeholders in order to foster permanent civic vigilance.

HIGHLIGHTS OF THE YEAR

AfriCOG regularly reviews its strategic plan and priorities. In April 2008, AfriCOG convened a retreat to assess the relevance of its thematic programmes in view of the dramatic shifts in the legal, political and economic environment in early 2008. AfriCOG's strategic priorities were confirmed as relevant.

Through its institutional strengthening, research, policy partnerships, and dissemination and linkages programmes, AfriCOG was able to accomplish the following during this period:

The Telkom Privatisation and the Safaricom Initial Public Offering (IPO)

In December 2007, as part of its efforts at responsive research and analysis, AfriCOG conducted work to shed light on the privatisation of Telkom Kenya and the IPO for Safaricom - Kenya's largest mobile service provider. In June 2008, AfriCOG presented its findings to the Public Accounts Committee (PAC) which took the matter to the floor of the House through parliamentary questions. The contents of the report were extensively quoted during parliamentary debate. AfriCOG published press statements on these findings in December 2007 and March 2008 to widespread public attention.

Review of the Effectiveness of Commissions of Inquiry

This report examines the government's use of commissions of inquiry, and seeks to establish whether they serve any purpose,

deliver on their mandate and give value for money. The study found these commissions to be useful truth-seeking tools if they are established to deal with specific technical issues and provided their recommendations are implemented, or credible reasons given for failure to do so. However, the government has used them largely for political purposes, which negates their usefulness. The report was launched at a public forum held in Nairobi in August, 2008 which was also used to provide a mid-term audit of the performance of the post-election Commissions of Inquiry - the so-called Kriegler and Waki commissions.

Special Report on Electoral Politics and Electoral Corruption

AfriCOG collaborated with KWANI, Kenya's premier literary journal, on a special report of the 2007 electoral campaigns for KWANI's Creative Non-Fiction 2007 Election Coverage Project. The report complements conventional election observer reports, giving a detailed appreciation of the social and political economy of elections and electoral corruption. With support from AfriCOG, Kwani Trust held a series of training workshops between November 2007 and January 2008 for journalists and writers to report on eight constituencies during the polls. In February 2008, with AfriCOG's support, KWANI held Cub Reporter Workshops for young writers and photographers on capturing text and images from the post-polls crisis.

Evaluation of the NARC Government's Anti-Corruption Strategies

AfriCOG conducted an evaluation of anti-corruption performance





under President Mwai Kibaki and presented it at a public forum on 9th December, 2007 - International Anti-Corruption Day. Issues examined included the overall achievements and shortcomings of the NARC government's anti-corruption strategy, the use of commissions of inquiry in the fight against corruption, and the future of the Kenya Anti-Corruption Commission. The report emphasises three key areas that require urgent action: the

legislative oversight of government spending plans; parliamentary corruption; and asset recovery. Future reports will examine the policy implications of the collapsed post-2002 anti-corruption campaign for current and future governments.

Audit of the ECK's Financial Accountability

The December 2007 polls brought into question Kenya's electoral process and the role and performance of the Electoral Commission of Kenya (ECK). In 2008, AfriCOG conducted an audit of the Commission's financial accountability as reported in the Controller & Auditor General Reports between 1992 and 2006. The report documents the widespread abuse of public resources by officials over the years and will be published in early 2009.

Advocacy on the Anglo Leasing Scandal

Throughout 2007, AfriCOG conducted a campaign on this scandal together with partners in the civil society Task Force on Grand

Corruption. Anglo Leasing became the symbol of the government's retreat from its initial declaration of "zero tolerance on corruption". AfriCOG's Statements and articles were published in the local press and picked up by the international press. Members of Parliament were briefed and questions asked on the floor of Parliament. An indication of the impact of the campaign was the request from Treasury for a meeting with the Task Force to discuss the issues raised. This campaign continues, as do the demands for increased accountability of the Executive to Parliament and the public, and a more transparent approach to the acquisition of external credit.

Assessment of the Viability of the Recommendations of the Commission of Inquiry into illegal/Irregular Allocations of Public Land (The Ndung'u Report)

Various government and civil society reports have over the years shown that land issues in Kenya are complicated by endemic corruption and impunity amongst those with power over public land. The Ndung'u Report details illegal land awards made to prominent persons in Kenya including members of the Kenyatta and Moi families, former ministers, MPs, judges, civil servants and military officers, and proposes, among other recommendations, that the majority of these awards be revoked.

In 2008, AfriCOG assessed the viability of implementing the Ndung'u Report. Policy reform can only be effectively implemented if it is based on an accurate and realistic analysis of the reigning context and interests. AfriCOG has already shared its findings with the Minister for Lands, the Prime Minister's Office, and other key partners. The Report will be published in early 2009.

HIGHLIGHTS OF THE YEAR

A Study of the Grand (now Laico) Regency Hotel Sale

Following the contentious sale of the Grand Regency Hotel by the government, AfriCOG conducted a study of the sale transaction. The study critically examines Kenya's laws on the sale of public assets, assesses the value for money in the sale of the hotel and highlights some public concerns on the disposal of public assets. The Report will be published in early 2009.

Assessing Anti-Corruption Performance:

In 2007, AfriCOG undertook to take stock of existing approaches to measure the performance and impact of anti-corruption institutions. Tools and templates such as a Kenya Anti-corruption Commission "KACC Watch" tool and a detailed guideline to assess the anti-corruption performance of the Judiciary are being finalised. The anti-corruption performance of other institutions such as the Office of the Attorney General will also be assessed.



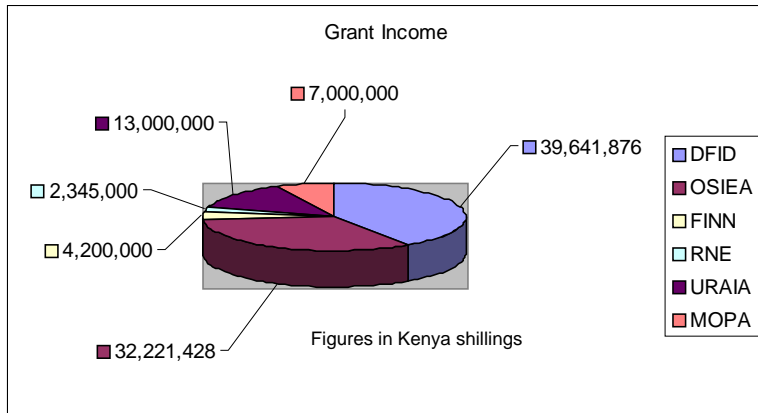
Survey on Corruption and the Treatment of Past Economic Crimes

In October 2007, AfriCOG conducted a major nationwide survey on corruption and the treatment of past economic crimes. The survey collected Kenyans' views on the government's anti-corruption efforts, electoral corruption, priorities for a new government and how to deal with past economic crime. Findings of the survey were used for media advocacy before the elections and widely cited by other organisations. The findings were used for media advocacy and to encourage wise

voting via a press advert published the day before the 2007 General Elections. The survey achieved AfriCOG's aim of returning the issue of corruption to the top of the public agenda before the elections. It was also used as a resource by Transparency International's U4 Helpdesk and the International Centre for Transitional Justice.

Financial report

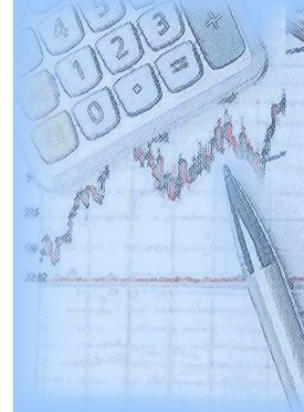
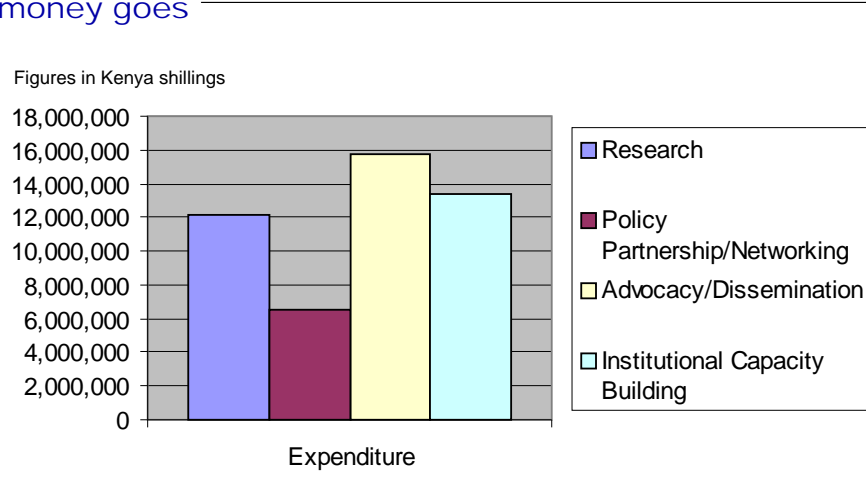
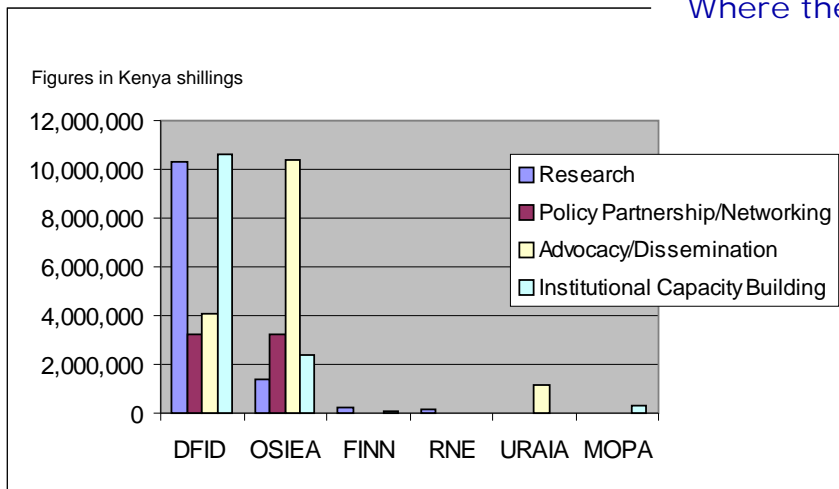
Where the money comes from



An audit of the DfID grant was carried out in December 2008.

Detailed Financial Reports are available to members at the AfriCOG Office.

Where the money goes



AfriCOG'S PARTNERS



Kenyans for Peace with Truth & Justice

AfriCOG is a founding member of KPTJ, an influential civil society coalition of over 30 Kenyan and East African legal, human rights, and governance organizations, conceived in the immediate aftermath of December 2007 failed presidential elections. KPTJ maintains that there can be no peace without truth and justice - truth and justice for the failed presidential election and the violence that followed. Justice requires that we face the truth of our history, and of the 2007

election, to address the deep chasms and inequities in Kenyan society.

KPTJ worked to influence political developments and develop viable ways out of the post-election crisis in 2008, and has since continued to monitor follow-up on the mediation agreement and carry out public education.

During the post-election crisis, KPTJ generated vital professional analysis, backed by verified data, of the electoral fraud and ensuing country-wide violence. KPTJ's reasoned position statements were used by the United Nations, the European Union, the United States

State Department, Senate, and Congress, and the African Union, to bring the Party of National Unity (PNU) - the incumbent government party at the time - to the negotiating table. KPTJ also mobilised progressives in Kenya, the Kenyan Diaspora, and the Pan-African movement, to actively campaign for a just resolution to the crisis.

KPTJ is currently active in the monitoring, implementation and enforcement of the mediation agreement, which was based on four main agenda items:

1. Immediate action to stop the violence and restore fundamental rights and liberties.
2. Immediate measures to address the humanitarian crisis, promote reconciliation, healing and restoration.
3. Overcoming the political crisis.
4. Long-term issues such as land, and devising sustainable solutions to these issues

Activities since KPTJ's inception have included:

- ▶ Documentation and Analysis
- ▶ Legal Advocacy
- ▶ International Advocacy
- ▶ Mediation Oversight
- ▶ Public Engagement



- KPTJ Member Organizations
- Africa Centre for Open Governance (AfriCOG)
 - Awaaz
 - Bunge la Mwananchi
 - Centre for the Development of Marginalised Communities (CEDMAC)
 - Centre for Law and Research International (CLARION)
 - Centre for Multiparty Democracy (CMD)
 - Centre for Rights, Education and Awareness for Women (CREAW)
 - Coalition on Violence Against Women
 - The Cradle - the Children's Foundation
 - Constitution and Reform Education Consortium (CRECO)
 - East African Law Society (EALS)
 - Fahamu
 - Foster National Cohesion (FONACON)
 - Gay And Lesbian Coalition of Kenya (GALCK)
 - Haki Focus; Hema la Katiba
 - Independent Medico-Legal Unit (IMLU)
 - Innovative Lawyering
 - Institute for Education in Democracy (IED)
 - International Commission of Jurists (ICJ-Kenya)
 - International Centre for Policy and Conflict
 - Kenya Human Rights Commission (KHRC)
 - Kenya Leadership Institute (KLI)
 - Kenya National Commission on Human Rights
 - Kituo cha Sheria
 - Mazingira Institute
 - Muslim Human Rights Forum
 - The National Civil Society Congress
 - National Convention Executive Council (NCEC)
 - RECESSPA
 - Release Political Prisoners Trust
 - Sankara Centre
 - Society for International Development (SID)
 - The 4 Cs
 - Urgent Action Fund (UAF)-Africa

Movement for Political Accountability



AfriCOG is currently hosting MOPA, a non-partisan coalition of organisations which brings together the private sector, religious leaders, civil society organisations and other stakeholders to advocate for greater accountability of elected leaders through a bottom-up approach. The coalition was active in the pre-election period, with aspirants for public office being mobilised to sign accountability charters. Roll out of post-election programmes is underway beginning with strategic planning.

Lack of accountability has negatively impacted on Kenya's socio-economic development leading to a culture of impunity and entitlement without focus on the needs of the majority of Kenyans.

MOPA is thus envisioned as an open citizens' campaign on political accountability where Kenyans can demand and obtain leaders who can be trusted to keep the promises they make.

Among the good governance principles that MOPA promotes are an equitable framework for salaries in public service; good management of public resources; security for all Kenyans; diligence in parliament; transparency and accountability and the domestication of all international human rights treaties and conventions which Kenya has signed and ratified.

The CDF Accountability Project

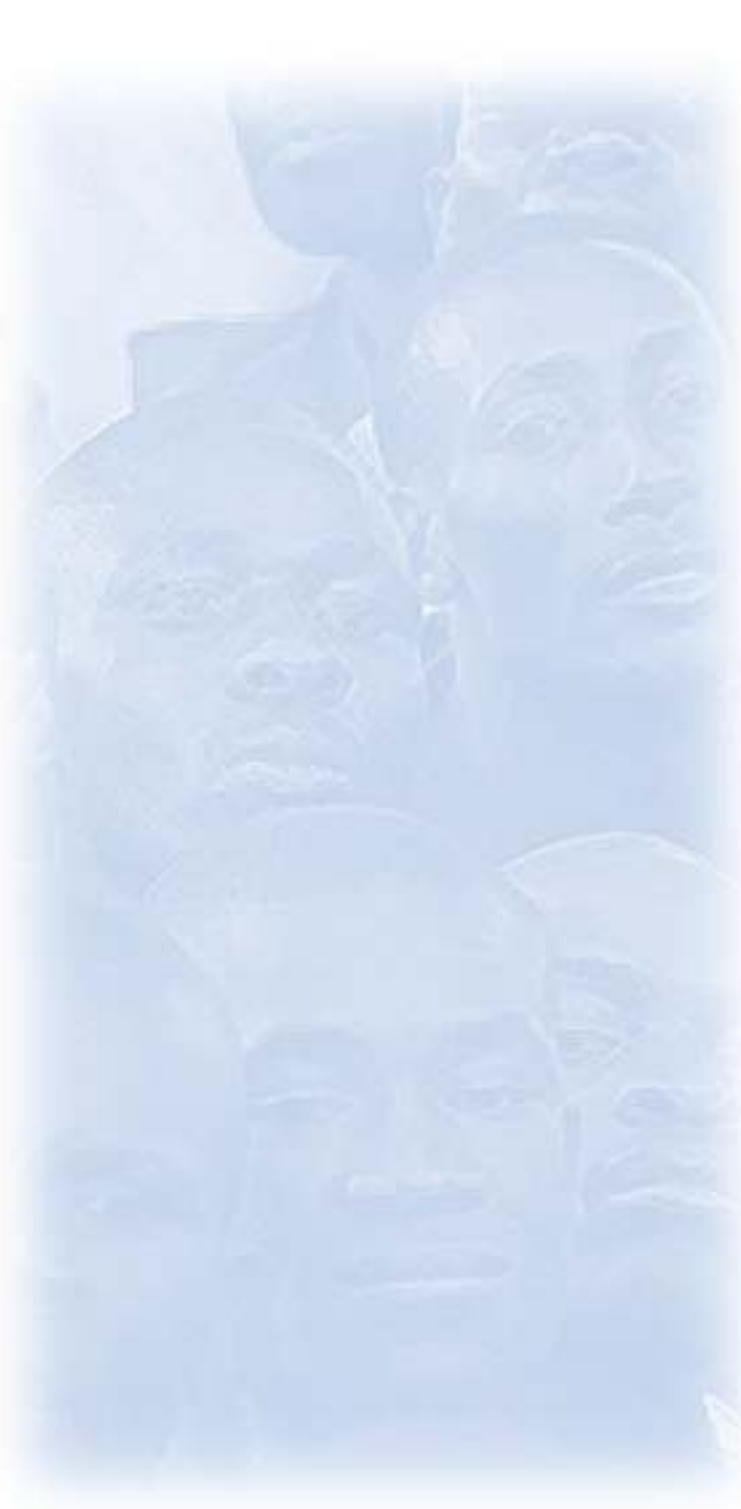
AfriCOG is also presently providing administrative cover to the Constituency Development Fund (CDF) Accountability Project, which focuses on budget transparency and accountability of CDF funds.



In spite of governance concerns, the CDF has evolved into a critical assessment tool for voters to gauge the performance of their MPs, which led to an unprecedented 70 per cent turnover in Parliament in the last election. The Constituency Development Fund was introduced in Kenya in 2003 with the passage of the CDF Act 2003 by the 9th Parliament of Kenya. The CDF Act provided that the government set aside at least 2.5% of its ordinary revenue for disbursement under the CDF program.

The CDF Accountability Project focuses on three key advocacy objectives: promoting good local governance; promoting people's participation in local governance; and promoting access to information.

The CDF Accountability Project is funded by the Open Society Initiative for East Africa (OSIEA).



WHO WE ARE

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

VISION

AfriCOG's vision is a Kenya in which citizens are permanently vigilant over public life, and civic institutions are alert and engaged in providing oversight to the management of both politics and the economy.

MANDATE

AfriCOG's mandate is to provide cutting-edge research on governance and public ethics issues; monitor select governance fundamentals and government and private sector performance on these; build the capacity of NGOs to meet new challenges and realities and be a lead think-tank and advisor on governance and anti-corruption issues in Kenya and the region.

BOARD MEMBERS

Stella Chegeh, John Githongo, Maina Kiai, Duncan Okello, Gladwell Otieno (ex-officio).

AfriCOG would like to thank the following for their support:

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



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