

**Governmental Reform in Developing Countries:
External Conditionality versus Peer Pressure**
The case of Kenya

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List of abbreviations

APRM	African Peer Review Mechanism
AU	African Union
CAS	Country Assistance Strategy
CPI	Corruption Perception Index
DFID	Department for International Development (UK)
EC	European Commission
ERS	Economic Recovery Strategy for the creation of employment and welfare
ESAF	Enhanced Structural Adjustment Facility
IFIs	International Financial Institutions
IMF	International Monetary Fund
KACC	Kenya Anti-Corruption Commission
KANU	Kenya African National Union
NARC	National Rainbow Coalition
NEPAD	New Partnership for Africa's Development
NGC	National Governing Council
PRSP	Poverty Reduction Strategy Paper
SAP	Structural Adjustment Programme
TI	Transparency International
UNDP	United Nations Development Programme
UNHDR	United Nations Human Development Report

Ten years of development initiatives in Kenya

1997:	IMF stops disbursements for ESAF due to insufficient progress in governance
2000:	PRSP document completed under KANU regime; lending restarts, but is suspended in Dec. 2000 due to evidence of grand corruption
Dec. 2002:	NARC government elected, IMF and WB willing to resume lending
2003:	Setup of Kenya Anti-Corruption Commission (KACC)
Mar. 2003:	Kenya joins APRM
May 2004:	ERS (reformulation of the PRSP under the new government) initiated
Oct. 2004:	APRM National Governing Council appointed
2004-2007:	CAS initiated (WB programme based on ERS)
Aug. 2005:	Draft APRM programme of action submitted; Internal Self-Assessment report completed
May 2006:	Review of APRM Kenya Report at AU summit in Banjul
Aug. 2007:	Transparency International Kenya Bribery Index reveals uneven progress in tackling corruption
2007:	Launch of Kenya Vision 2030 (domestically initiated long-term action plan)

Introduction

When the United Nations first used the term ‘governance’ some twenty years ago, it met resistance from those reluctant to accept this coinage into the political jargon. Only twenty years on, however, this has become the buzz-word of the international community. Good governance is unanimously seen as “critical to the development process and to the effectiveness of development assistance” (IDA. 12, 1998 in Kapur and Webb 2000). If poor governance is indeed to blame for the economic stagnation of many developing countries, in particular in sub-Saharan Africa, how then can governance best be improved? Is the conditionality advocated by International Financial Institutions an appropriate tool for promoting such reform? What balance of government ownership and donor conditions is needed to achieve meaningful change in developing countries?

This paper attempts to answer these hotly debated questions within the context of Kenya. Our work is the product of five weeks of one-the-ground research. This study departs from previous research on governance-related conditionality by its in-depth focus on a single country and its use of first-hand evidence. In particular, we rely on interviews conducted with actors directly involved and affected by the reform efforts. This paper contrasts two international projects geared towards governmental reform: a conditionality-based initiative under the auspices of the International Monetary Fund and World Bank, the Poverty Reduction Strategy Paper (PRSP, reformulated in Kenya as the Economic Recovery Strategy, ERS); and a regional, conditionality-free process, the African Peer Review Mechanism (APRM, conducted under NEPAD, the New Partnership on African Development). We compare these very different mechanisms in the hopes of determining which balance of donor influence and government ownership of reform is optimal for Kenya. Our findings suggest that these programmes have both been hampered by the weakness of political will in the Kenyan government; a merging of these approaches may be most conducive to encouraging sustainable, country-led reform.

Methodology:

This study relied extensively on primary evidence gathered in Kenya in April 2007. This includes interviews with representatives of the World Bank, IMF,

Transparency International Kenya, APRM Kenya, Ministry of Planning, Kenya Anti-Corruption Commission, European Commission, DFID Kenya, and the Friedrich Naumann Stiftung Foundation. The former British High Commissioner to Kenya and members of the general Kenyan public were also interviewed, and government offices and ministries were visited.

Secondary sources were also extremely valuable to this study; academic publications and journal articles reporting past studies were accessed via the internet or through the University of Warwick library. IMF, World Bank, United Nations and NEPAD official publications and country reports were accessed through the United Nations Headquarters library in Nairobi. Government of Kenya annual reports and supplements were accessed thanks to the cooperation of members of the Kenya Anti-Corruption Commission and of the Ministry of Finance.

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The Problem of Poor Governance

Governance refers to the effective rule of law, accountability, public participation, and transparency in the management of the public realm (World Bank, 1998 in Mutizwa-Mangiza 2006). The importance of sound institutional frameworks for economic growth is well-documented. As Douglass North (1990) argues, malfunctioning institutions that result from poor governance severely hinder investment, entrepreneurship, and innovation. Dalmazzo and de Blasio support this theory in their 2003 econometric study, which identifies investment as a central channel through which corruption and other institutional factors impede economic growth. Good governance structures are clearly a crucial pre-requisite for the success of economic reform in any country.

This problem is especially pressing in less developed countries, where appropriate institutional frameworks in which political competition and public scrutiny of the executive can occur are not in place (Clay 2006). Ghosal and Thampanishvong 2007 find that donor funding cannot hope to improve the well-being of the poor and to achieve the

Millennium Development Goals without an improvement in the governance of developing countries. In particular, unless frameworks can be built to tackle corruption within governmental institutions, “prospects for LDC development will remain very poor indeed” (Clay 2006).

Kenya and Governance

Since its independence in 1963, Kenya has become notorious for its poor governance; this is most clearly reflected in the country’s corruption record. Kenya has consistently ranked among the lowest ten percent of Transparency International’s Corruption Perceptions Index (NEPAD Kenya Secretariat 2007). Corruption involves the misuse of public funds by government officials for their personal benefit, as well as voluntary or forced bribery by citizens to obtain services which they should in principle be entitled to. In Kenya, the incidence of corruption in public institutions has long been a telling indicator of wider governance-related problems, such as lack of democratic space for Kenyan citizens and insufficient interest in political reform on behalf of the government. We will therefore use measures of governmental corruption as a proxy for the quality of Kenya’s governance; it is nonetheless important to note that corruption is only one of many symptoms of poor governance, and that in other countries these two problems may not always go hand-in-hand.

From 1978 until 2002, Kenya was led by President Daniel Arap Moi of the Kenya African National Union (KANU). While the state had a healthy economy and a relatively strong institutional framework at independence, corrupt practices soon became commonplace under the KANU regime and “perverted cultural values” (NEPAD Kenya Secretariat 2007; Mutizwa-Mangiza 2006). According to a German NGO combating corruption under KANU, by the time the Moi regime was replaced by the NARC (National African Rainbow Coalition) party in the 2002 elections, the Kenyan economy had been “looted dry” (Interview with Friedrich Naumann Stiftung Foundation representative). Poor fiscal management and inefficient public expenditure limited the possibilities for effective government investment, and widespread distrust of the executive amongst the Kenyan public hindered private investment. Indeed, the economy’s 2001 growth rate was the lowest of the post independence era, at -0.3%.

Kiringai (2001) attributes this principally to “weak governance, corruption, and inadequately coordinated and prioritised government actions”.

The election of President Mwai Kibaki (NARC) in 2002 revived hopes of political transformation, especially on behalf of the donor community. There nonetheless remains much progress to be made in improving the effectiveness of government expenditure: development expenditure in overall public spending has dropped from 20% in the 1970s to 8% in 2005, while gross investment has fallen from 28% to 17% of GDP in this time (UNDP 2005). Furthermore, the Public Expenditure Management Assessment (PEMA) indicates that Kenya only complies with four out of sixteen public expenditure targets. The greatest challenge currently facing fiscal policy is the need to reduce the government’s wage bill, still at 8.7% of GDP in 2004 (UNDP 2005).

Yet the NARC government has disappointed expectations not just in terms of policy, but especially in its battle against corruption. Transparency International’s 2006 Corruption Perception Index still rates Kenya at 2.2, up from an average of 2 in pre-election years (Transparency International Website). The CPI being on a scale of 0 to 10, where 0 is highly corrupt, this reflects very little improvement. Transparency International reports that Kenyans still perceive the government office as the country’s most corrupt body (Transparency International interview). For Former British High Commissioner to Kenya Sir Edward Clay, “the government which promised . . . a war on corruption and a new constitution, has instead embraced corruption and denied its citizens the constitutional reform it loudly advocated a few years before” (Clay 2006). Some believe that the current lack of progress was to be expected: as North’s institutional economic theory would predict, corrupt practices entrenched within institutions can take years to dismantle. Yet others accuse the apparent lack of political will on behalf of the government. As expressed by Shiverenje, “politics play a major role in the creation and persistence of poverty in Kenya”, and it would seem that the government is simply not deploying sufficient efforts to the improvement of governance (Shiverenje 2005).

How to improve governance? The conditionality approach

Conditionality is today viewed as one of the main pressure tools by which governance in developing countries can be improved. According to Kapur and Webb,

“good governance has become enshrined in the commandments that rule the International Financial Institutions” (Kapur and Webb 2000). An analysis of traditional conditionality (Section 1) indeed reveals that the omission of governance-related clauses may have undermined past adjustment programmes.

Governance-related conditionalities are however relatively new for the IMF and World Bank – an ensuing evaluation of current governance-gear conditional aid (Section 2) raises questions as to whether conditionality is an appropriate approach for tackling corruption and institutional reform.

1. Traditional conditionality: leaving governance out?

Conditionality-based aid, when it was first introduced by the Bretton Woods institutions in the 1970s, was designed to correct unsustainable macroeconomic imbalances in recipient countries and to preserve the IMF’s and World Bank’s financial integrity (Kapur and Webb 2000, Rahman 1993). The importance of conditionality grew in the 1980s following the oil crisis and the rise in international interest rates, as countries turned to these institutions for help in servicing their debt. Up until the 1990s, conditions for aid disbursement were mostly linked to economic structural adjustment, which included the market liberalization embraced by the Washington Consensus, privatisation, currency devaluation and reduction of public expenditures (Kiringai 2001).

These Structural Adjustment Programmes were not the panacea their proponents expected them to be, however. Although initially SAP implementation greatly reduced countries’ trade deficits, this came at the cost of neglected public spending and rising poverty levels. Countries did not have the institutional capacity to meet the ‘one-size-fits-all’ conditions demanded of them; IFIs’ attempts to counter these failures by increasing the number and detail of conditions in their programmes (the average number of conditions for the World Bank rose from 32 in 1980 to 56 by 1990) only burdened countries further by increasing their transaction and bureaucratic costs with donors (Kapur and Webb 2000).

Increasing criticisms of the nature of IFI lending has led to the emergence of a “three-cornered fight on conditionality”, between proponents of traditional conditionality and the rolling-back of state frontiers, critics who argue that conditionality can only

succeed if its focus is redirected towards poverty reduction and improved public expenditure, and “those who believe that the carrot and stick of aid is powerless in the medium term to shift the domestic political equilibrium in a direction other than the one in which it wants to go” (Kanbur 2000). The conditionality debate thus focuses on what *type* of conditions are necessary to promote growth and development, and on whether conditionality can work at all.

Empirical evidence clearly highlights the failure of traditional conditionality. On the basis of 220 World Bank adjustment programmes, Dollar and Svensson (2000) find “no evidence that any of the variables under the World Bank’s control affect the probability of success or failure of an adjustment loan”. Once donor effort variables are treated as endogenous to their model, they find that there is “no relationship between any of them and the success or failure of reform”, which depends instead on domestic political-economy forces. This conclusion shakes the very foundations of traditional IFI policies. Similarly, using the disbursement of at least 75% of a loan as a measure of compliance, Mussa and Savatsano find that less than half of all IMF programmes between 1973 and 1997 were complied with (Buirra 2003). According to the UNHDR report 2005, “only one quarter of IMF programmes are completed without interruption”, and in 1994 Kenya’s success rate of completed World Bank projects was only at 48.2% (Danaher and Yunus, 1994).

Many attribute these failures to deficiencies in the programmes themselves, which do not sufficiently take country specificities into account and may thereby harm recipient countries. The overloading of conditions (the “Christmas Tree effect”) furthermore makes compliance difficult to carry out and to evaluate, and leads to high transaction costs for the government, as too many resources are spent interacting with and reporting to donors (UNHDR 2005). First-hand research in Kenya confirms this: an interviewed representative of DFID Kenya claimed that, in his first three months in Kenya, “the government spent far more time accounting to donors rather than to the people” (Interview with DFID Kenya representative). Vagueness or lack of follow-up in conditions is also blamed for the poor progress of past SAPs (Kiringai 2001). Others highlight flaws in the internal structures of recipients: Burnside and Dollar (1997) argue that some countries, including Kenya, are not “fertile grounds for reform” and that “the

key to successful adjustment lending is to find good candidates to support”. Indeed, IMF funding to Kenya under the Enhanced Structural Adjustment Facility (ESAF) was suspended in 1997 due to “insufficient progress in the area of governance” (Shiverenje 2005). Both views clearly make the case for a dramatic restructuring or even dismantling of traditional conditionality.

Conditionality has also been criticised for undermining state sovereignty and asking governments to account to external bodies rather than to their own people. “A nation’s desperate need for short-term financial help”, Ariel Buira argues, “does not give the IMF the moral right to substitute its technical judgements for the outcome of the nation’s political process” (Buira 1998). It must however be noted that, unlike many of its neighbours, Kenya is not aid-dependent: donor support now represents less than 2% of the national budget and has not been factored into budget planning for the last two years (Interview with European Commission representative). The moral side of the conditionality debate is therefore altered – in fact, Ravi Kanbur remarks that in some cases donors may need the recipient country more than the recipients need them, due to democratic pressure from their constituencies to disburse effective aid (Kanbur 2005). Nonetheless, as interviewed NEPAD representatives noted, the “immoral and condescending” nature of externally-imposed conditionality provides little motivation for change within a recipient country (Interview with NEPAD representative).

The failure of economics-centred IFI structural adjustment programmes, coupled with increasing pressure from borrower countries and findings highlighting the importance of good governance to the success of programmes, has led to a dramatic shift in the nature of conditionality. Since the 1990s, governance-related conditions have taken centre stage in IFI lending.

2. Introducing governance into conditionality: Poverty Reduction Strategy Papers

As put by Kapur and Webb, “faced with the failure of their policies, [in the mid-1990s] the IFIs rediscovered the role of government”. In September 1997, the World Bank adopted a policy statement that “corruption should be explicitly taken into account in country risk analysis [and] lending decisions” (World Bank in Kapur and Webb, 2000). IMF and World Bank conditions have since been repackaged as Poverty

Reduction Strategy Papers (PRSPs), which show a novel focus on issues of governance, transparency, accountability and institutional reform. In Kenya, the PRSP's governance-related clauses include downsizing of the public sector, reduction of the government's bloated wage bill, setting up the Kenya Anti-Corruption Commission (KACC), and passing the Economic Crimes Bill and Public Officers Ethics Act (PRSP for Kenya, 2001-04).

A focus on government-owned reform

The PRSP's most fundamental deviation from traditional conditionality lies in its focus on government ownership of reforms. At their September 1999 annual meetings, the World Bank and IMF proposed that all their conditional lending be based on 'country-owned' poverty reduction strategies (Levinsohn in Buirra 2003). As Kapur and Webb (2000) explain, "it would seem intuitively obvious that reforms rarely succeed unless a government shares the conviction that they are essential, rather than agreeing to measures with reluctance". Stiglitz (1999) goes on to argue that in the absence of government ownership, conditionality is not only ineffective, but even detrimental. In response to such claims, PRSPs request that plans of action come from the recipient country itself rather than from the IFIs; after extensive consultation with civil society, the papers are drafted by the recipient governments themselves before submission to the Bank and Fund for approval. Only then can countries apply to the IMF's advisory board for funding (Levinsohn in Buirra 2003; Interview with IMF representative). Solutions are therefore decided upon through improved consultation with the recipient country and with reference to its particular circumstances. This "genuine change" from traditional lending initiatives (Levinsohn in Buirra 2003) wipes IFI consciences clean of arguments that, "the very logic and framework of structural adjustment policies require the repression of democratic rights" (Briones, in Buirra 2003).

3. Evaluating the ERS / PRSP effectiveness

In Kenya, although a PRS paper was completed in 2000 under the totalitarian Moi regime, funds were not disbursed for the programme due to strained relations with donors. The 2002 election of the NARC coalition however revived optimism for

improving governance: the PRSP was reformulated as the Economic Recovery Strategy for the creation of employment and welfare (ERS), and funding was renewed. We will investigate whether the ERS is truly a government-owned and widely consultative process (Section 1) and whether or not this new form of conditionality has been effective in improving governance (Section 2).

1 a. Government ownership

Interviews with donor agencies and with members of Kenyan ministries suggest that the ERS is truly country-owned. A representative of the European Commission had “never heard complaints that [the ERS] is donor-driven”. Similarly, the Ministry of Planning explained that donors simply supported what the government was already doing without interference, and felt that its government had full control of the plan of action. As underlined by a representative of the IMF to Kenya, the idea of conditionality in the context of poverty reduction strategies is to assess the country’s progress according to its own benchmarks. Thus, a country comes to the IMF with a proposed programme and, after consultation, the IMF approves this programme and a first tranche of the loan is disbursed. Yet for the next disbursement to occur (typically every six months), the Fund must demand evidence that the country is keeping to its intended plan of action. Ideally, the Fund thus bases its conditions on entirely government-generated targets (Interview with IMF representative). The focus on country-ownership was also a clear priority for representatives of the World Bank.

Yet as much as donors would like to assess countries on self-generated guidelines, as put an IMF representative, “that’s rarely the way it actually works out.” In practice, he explained, countries have a tendency to make these guidelines “as soft as possible”, or to set unrealistic targets with poor economic fundamentals. While the IMF is not interested in “making it as tough as possible,” it needs to have markers that give a clear indication that a project’s objectives will be met. This view was echoed by a World Bank economist who also stressed the need for setting firm conditions. In the case of Kenya, overly optimistic targets had to be revised in implementing the ERS, and meeting these has still proved problematic: whereas six disbursements should have occurred since 2004, none has. A further difficulty with the notion of government ownership is that many countries

lack the qualifications to draft a sound poverty reduction strategy (Levinsohn in Buirra 2003). Even in Kenya, which has access to high-level economists, the Bank and Fund often intervene to provide additional technical assistance, which they concede necessarily reflects their own policy preferences (Interview with IMF representative). For Levinsohn, the notion of country-driven strategies seems “extraordinarily hopeful” and may expect too much out of recipient countries. In the absence of sufficient analytical support on behalf of the country, he writes, “one just gets platitudes and . . . a discussion of what the country thinks the Bank and Fund want to hear.” (Levinsohn in Buirra 2003). Indeed, the IMF representative interviewed acknowledged that, while “one hopes that the government has done what it has because it has decided to do it, not because it is what the IMF has decided, . . . the ERS still allows governments to be pressured by donors on the commitments.” While country backing is crucial to the success of programmes like the ERS, many practicalities prevent the Kenyan government from taking full ownership of its poverty reduction strategy.

1 b. A consultative process

For the ERS to be fully country-owned, it is of course vital to consult not only the country’s government but also its population. Rather than simply depending on approval from the ministry of finance, developing an ERS requires the participation of many ministries, civil society, ethnic minorities and other stakeholder groups (Levinsohn in Buirra 2003). When interviewed, the Ministry of Planning explained that the government engaged in considerable consultation with Kenyan stakeholders when drafting the ERS; this involved a Consultative Group (CG) meeting with development partners in Nairobi in November 2003, followed by regular regional reunions with the Kenya Anti-Corruption Commission (KACC), civil society organisations, and members of the private sector (Shiverenje 2005, Interview with Ministry of Planning). The government also created a constituency development fund, whereby donor money is released to constituents who themselves determine the use of the funds. When asked about its involvement as a civil society organisation in the consultation process, the NGO Transparency International acknowledged that its opinion was frequently solicited.

However, staff members were sceptical as to the impact that their input really had on the final ERS (Interview with Transparency International). According to the Programme Officer for the Danish Association for International Cooperation in Kenya, “despite the interest of civil society in Kenya to participate in the process of monitoring [ERS] implementation, it is difficult to match it with practical realities on the ground”: Kenya lacks a systematic forum that can bring members of civil society together to share their findings, and monitoring by civil society organizations is disorganized due to lack of financial support. This has led to a deficit of participation and more critically to an exclusion of the poor from consultation (Shiverenje 2005). This suggests that additional procedures must be put in place to institutionalise the participation of various stakeholders before reform can truly be country-owned.

2. Effectiveness of implemented programmes

The ERS’s principal governance-related clauses all centre on tackling corruption; accordingly, we evaluate the programme’s effectiveness by observing the outcomes of its anti-corruption initiatives. These include the setup of the Kenya Anti-Corruption Commission in 2003 and the passing of numerous bills designed to monitor corruption (the Procurement Bill, Budget Overlook Paper, Performance Contract, Public Officers Ethics Act, and Public Officers’ Performance Act). Whilst interviewed representatives of the Ministry of Finance and of the KACC insisted on the effectiveness of these programmes, critics have questioned whether these moves are genuine, or implemented simply to meet the ERS conditions and secure donor funds. As suggested by interviewed representatives of the European Commission, “the government’s intention in Kenya [at times] seems to be to create a lot of new laws and studies, but not to improve anything.” It is moreover vital to note that seeking to improve governance by solely addressing issues of corruption is a very limited approach; the ERS would perhaps benefit from adopting a more comprehensive view of governance.

i) The Kenya Anti-Corruption Commission

Established under the Anti-Corruption and Economic Crimes Act in 2003, the KACC’s mandate includes the prevention, detection, and investigation of corruption, as

well as law enforcement against corruption practices. The body's stated functions include: investigating conduct conducive to corruption or economic crime; assisting Kenyan law enforcement in the investigation of corruption; providing advice concerning the elimination of corrupt practices; examining the practices of public bodies so as to facilitate the discovery of corrupt practices; educating the public on the dangers of corruption; and instituting civil proceedings for the recovery of illegally acquired public property. (Kenya Gazette Supplement, Acts 2003).

Since its inception the KACC has faced accusations of incompetence from the general public. Indeed, the KACC's structure appears to be rather limited in terms of sanctioning corruption: out of 7,888 reports of economic crime brought to the Commission in 2005-2006, only 15% fell under its mandate (KACC Annual Report 2005-2006). Furthermore, as the Commission itself has no powers of prosecution, the cases that it finds actionable must be submitted to Kenya's Attorney General, Hon. Amos Wako, before legal action is undertaken. As the Attorney General retains his functions from lengthy service in the Moi regime, however, he is feared to have vested interests in certain cases; indeed, no large-scale corruption cases have been brought to court since 2003 (Interviews with Transparency International, IMF Resident Representative). Some criticisms go further, condemning the KACC as "a total façade" which permits government interference and "cheats people by not giving the AG enough evidence" to prosecute cases (Interview with Friederich Naumann Stiftung former employee). Although 190 corruption cases were investigated in Kenyan courts in 2005-2006, many therefore argue that these are only "small fish" or cases of petty corruption, and that grand corruption remains undisclosed (Interview with Transparency International).

As a result, the public perception of the KACC has gradually worsened since its establishment – whilst the Commission offers a widely-advertised hotline number for corruption complaints, Kenyans are increasingly turning to the media and to Transparency International instead (Interview with Transparency International). The KACC's claims that it is "100% independent" from the government no longer seem credible. As put by a representative of the IMF, "the KACC makes it harder for you to steal, but if you succeed, you're okay". In the face of such accusations, representatives of the KACC object that the institution has made significant progress in the area of

prevention, primarily through civic education. The proliferation of KACC's anti-corruption posters and calendars throughout government ministries and across Nairobi testify to the Commission's awareness-raising activities. Some of these efforts have paid off: the Kenyan public's willingness to report bribes has increased slightly (from 9% to 14% of respondents since 2005); citizens' perceptions of improvement in the institutions that they interact with have also risen during this time, from 26% to 36% of encounters (Transparency International Kenya 2007 Bribery Report).

The Commission also undertakes "systems reviews" of public and private organizations, identifying loopholes in their structures that may facilitate corruption. It furthermore offers training on corporate governance and on corruption detection (KACC Annual Report 2005-2006). As noted by KACC's Principal Officer for Prevention Victoria Kattambo, although prevention is as important to combating corruption as prosecution is, if not more, this side of the KACC's role is often forgotten by critics and by the general public. The Commission further protests that, as 2005-2006 was its first year of full operation with a complete staff, it may simply be too early for prosecutions of grand corruption to have come to court. As suggested by a representative of the Ministry of Planning, the public "may be rushing to see results without considering the due process". One of the Commission's "key challenges" is therefore "the existing sky-high public expectation that corruption should be eliminated at once", which the Commission argues cannot yet be realistically met (KACC Annual Report 2005-2006). At present such arguments however appear insufficient in the face of growing discontent with the KACC; although the establishment of this body has been considered as an extremely positive step by donors, it seems that a re-evaluation of the institution is in order.

ii) Passed Anti-Corruption Bills

The second ERS-led initiative in terms of combating corruption has been the enactment of multiple acts and bills: the Procurement Bill, Budget Overlook Paper, Performance Contract, Public Officers Ethics Act, and Public Officers' Performance Act. The latter three aim to increase incentives for public officers to refuse bribes and to instil a culture of transparency in government offices. Under the Performance Contract, public officers must state what work they will undertake in a given time period and must show

that they have met their quotas; an interviewed representative of the Ministry of Planning claimed that this Contract has increased the efficacy of government offices and raised public awareness that, “if you go into an office, it *is* your right to be served”. The same representative also argued that the salary increment implemented under the Public Officers Ethics Act has “made people want to work more” and improved the working environment. He concluded that most of his colleagues had “grown to dislike bribes” and were now unwilling to take them, and that bribery was being “wiped away” with Kenya’s younger generation. European Commission representatives also expressed optimism, acknowledging that Kenya’s budget use had improved in 2005 since the enactment of the Procurement Bill and Budget Overlook Paper. Similarly, the Transparency International Kenya Bribery Index 2007 notes that, “most organisations that feature prominently in the 2005 index registered marked improvement”. Whilst the police force remains the country’s most corrupt body, bribery in state corporations and law enforcement has declined. This all suggests that, “the corporate governance and procurement reforms undertaken . . . are paying off”. (TI Kenya Bribery Index 2007).

Yet the effectiveness of the ERS’s anti-corruption clauses remains subject to much controversy. The Kenya Bribery Index 2007 reports that survey respondents encountered bribery in 54% of their interactions with public and private institutions, up from 47% in 2005; Kenya’s total bribe burden has increased by 50% over the last two years (TI Kenya Bribery Index 2007). Although little of this negative development is directly attributed to state bodies, the level of government interference in the enactment of anti-corruption bills has also raised criticism. The results of the 2003 Public Officials Act, whereby government officials including the President had to declare their wealth, were for instance never made public (Interview with Friederich Naumann Stiftung former employee). For representatives of Transparency International, “these laws are designed mostly to improve the record and to warm up to donors” rather than to initiate genuine change. Whilst bills requested by the ERS have improved transparency and awareness of “petty” corruption in Kenya, high-level corruption may well remain undisclosed in the absence of genuine political will. More importantly, this corruption signals wider dysfunctions within Kenyan governance, which the ERS is unable to address.

Is conditionality appropriate to governance?

Many critics claim that the ERS's impact is low simply because conditionality, though relatively successful in the macroeconomic realm, is an inappropriate tool for monitoring governance. Firstly, the IMF and World Bank may not have sufficient experience in the area of governance to justify the inclusion of governmental reform in their conditions: as an interviewed IMF representative admits, IMF decision-makers are “just a bunch of PhD economists . . . how far the IMF should go along the road of governance is an ongoing debate”. Adopting a far more negative stance, Transparency International representatives concluded that conditionality itself was harmful and “*created* avenues for corruption”: the moves required by donors may disrupt government-initiated efforts at regulating corruption themselves, and donor-initiated bodies (such as the KACC and the KACA before it) are too expensive for governments to run realistically and often have a “distorted lifespan”. Conditionality may thus be worsening the problems it attempts to solve by “imposing extra costs on countries and making governments shift their priorities”, leaving no room for local initiative (Interview with Transparency International).

Imposing conditions on governance may also generate a backlash on the recipient side, as “the government does not want to be dictated to” (Interview with APRM Programme Officer). Governance-related conditionality is resented because it involves donor countries adopting a morally superior standpoint vis-à-vis recipients. Compared to other regions, sub-Saharan Africa “stands out in its number of government-related conditions” (Kapur and Webb 2000) – this focus perpetuates the belief that corruption and bad governance are endemic to African countries, which, Transparency International representatives noted, is highly ironic given the recent corruption scandals within the World Bank itself. Furthermore, the World Bank definition of ‘good governance’ may be too limited, focusing excessively on financial management and corruption rather than on issues of political control.

The problem at the root of these moral and practical shortcomings is that IFI conditionality is externally defined and not internalised by recipient countries. Objections to using conditionality in the realm of governance are multiplying. Yet can governance be improved internally and without conditions? This critically depends on how much

political will exists in a country. An analysis of Kenya's prime alternative to conditionality, the African Peer Review Mechanism, is key to answering this question.

The 'Endogenous' Approach: The African Peer Review Mechanism

In 2002, member states of the African Union agreed to the AU Declaration on Democracy, Political, Economic and Corporate Governance; the signatories committed themselves to upholding standards of good governance in their respective countries. The following year, the African Peer Review Mechanism (APRM) was set up under the auspices of the New Partnership for Africa's Development (NEPAD) to assist governments in meeting their standards. This self-reviewing mechanism focuses on improving socio-economic development, democracy, and political, economic and corporate governance around the continent. The policies and practices of participating countries are periodically reviewed in light of these principles. The APRM is voluntarily acceded to by states and stresses national ownership of the plans of action; it differs from other multilateral approaches in that it is internal to Africa and entirely conditionality-free. It also adopts a more comprehensive view of governance, a significant improvement over IMF and World Bank initiatives. This effort is seen as "a friendly learning process" through which African countries assess each others' performances, share experiences, and identify both weaknesses and successful practices in improving governance (NEPAD Kenya Secretariat 2007).

Countries taking part in the APRM must volunteer to be evaluated; the first stage of this process is a self-assessment exercise, in which the government collects the views of a wide range of stakeholders. After presenting a self-assessment report and an accompanying programme of action, the country hosts a team of assessors from across the continent (the National Governing Council). This team checks the validity of the self-assessment, submits its own report and makes recommendations for what further measures need to be taken by the host country. The country responds to these recommendations before a Heads of State and Government Panel, and finally publishes the completed APRM report domestically (NEPAD Kenya Secretariat 2007). Kenya was the third member of the AU to volunteer for assessment in 2003. A 33-member independent APRM National Governing Council, nominated by stakeholders in

civil society, was set up in October 2004 to preside over the process. The final country report makes a number of recommendations and concludes on a note of great optimism, describing the government's August 2005 Self-Assessment Report as being "of a high quality" and entirely candid. This self-assessment is viewed as "the most thorough expression of public opinion to have ever occurred in Kenya", having drawn on eighteen months of household surveys, public forums and plenary sessions held across Kenya's eight provinces and involving rural and urban dwellers (Mutizwa-Mangiza 2006). The country report further views the subsequent review mission under Ms. Graca Machel to have been "a big success". Moreover, the report notes that "unlike his predecessor, President Kibaki has demonstrated courage and will to end corruption in the public sector" (NEPAD Kenya Secretariat 2007).

Interviewed NEPAD and NGO representatives echoed this sense of enthusiasm for the APRM. In particular, this initiative was seen as a substitute for conditionality-based approaches. It capitalises on competition between African states rather than on uneven donor-recipient relationships. The APRM may thus provide an incentive structure better suited to improving governance than does the traditional 'carrot-and-stick approach' (Interview with Friedrich Naumann Stiftung Foundation former staff member). It is therefore hoped that these reviews will "succeed in persuading the most hardened of the continent's leaders where lectures, browbeating, incentives and the rest of the donor paraphernalia have failed" (Clay 2006). Transparency International representatives indeed see the APRM as a more viable way of checking on corruption than conditionality. For the APRM Programme Officer to Kenya, this self-initiated project indicates a genuine will for reform in African countries, and is a sign that "conditionality is going to be a thing of the past".

An evaluation of the APRM

Views of the APRM as a "more credible alternative to conditionalities" (Interview with APRM Kenya programme officer) are however highly contested. For an interviewed representative of the European Commission, the APRM is "just another document", and, like the ERS, "a bit of a shopping list once again": poorly outlined priorities and the proliferation of clauses and bills "make it easy [for the government] to talk itself out of

the situation” and to claim that efforts are being made at improving governance even when none really are. The very logic of the APRM is also questioned – Herbst and Mills are sceptical of “the notion of states such as Nigeria, which have had demonstrably notorious governance records, becoming reviewers” (Mutizwa-Mangiza 2006). Furthermore, the mechanism lacks punitive structures: being entirely voluntary, the only incentive it provides for meeting agreed governance-based goals is the threat of a tarnished reputation vis-à-vis other African states in the case of non-compliance. There are also concerns with “the APRM [being] inevitably disposed to lean towards governments” – as Sir Edward Clay notes, “governments will not be too hard on fellow-governments . . . who knows when one government will not need a ‘Get Out of Jail Free’ card from the others?” (Clay 2006). The APRM may thus simply be granting African governments certificates of good conduct that they do not deserve. Unless all governments involved are genuinely committed to combating corruption, the APRM’s structures may be overly optimistic.

Since its implementation, the APRM process in Kenya has indeed suffered enough controversy to suggest that the necessary political will is severely lacking. The mechanism’s effectiveness was particularly shaken in July 2005, when Ms. Grace Akumu, former chairperson of Kenya’s APRM National Governing Council, publicly revealed that NEPAD’s offices had been barricaded by police after NGC officials questioned the use of funds and low levels of public involvement in writing the APRM review. Ms. Akumu claimed that, “the government is not supposed to interfere with the review . . . [this] is the government reviewing itself; the report will have no integrity” (Mutizwa-Mangiza 2006). Three APRM officials, including Ms. Akumu, were then decommissioned, and Kenya went on to rubbish the 2006 Country Report (NEPAD Kenya Secretariat 2007). These developments have raised serious doubts as to the autonomy and integrity of the review process.

Sir Edward Clay, former British High Commissioner to Kenya, highlights further evidence of government interference in the APRM process upon analysis of the July 2006 Country Report. Conducted over two years by a supposedly autonomous team led by Ms. Graca Machel, this report was hoped to be “an absolutely authoritative analysis” of the situation, which would “shame the Government of Kenya to acting differently from its

predecessors” (Clay 2006). The report however contains critical factual errors: whilst the notorious 2003 Anglo-Leasing scandal was for instance “freshly minted under the NARC government”, the report attributes this major scam to the former KANU regime. Likewise, the report’s claims that the government is currently prosecuting several Cabinet members for corruption charges appear to be untrue. Such errors are of extreme importance – “failing to check facts rigorously and independently”, Sir Clay notes, “is an indictment of the review process.” As it is, the APRM review casts the government’s stance on corruption in a misleadingly positive light; it is not the neutral evaluation process that was hoped for (Clay 2006).

As an endogenous, voluntary approach to improving governance in Africa, the African Peer Review Mechanism has promising fundamentals. However, the apparent lack of government commitment to change has significantly weakened its credibility in Kenya. Excessive government interference similarly undermined review processes in Mauritius, Ghana and Rwanda (Mutizwa-Mangiza 2006). The APRM’s main weakness is its lack of binding mechanisms and its reliance on African governments to denounce the very corruption from which they may themselves benefit. Yet conclusions that, “no further time should be lost in dropping . . . the APRM” (Clay 2006) may be overly pessimistic; given the significant problems with the donor-imposed approaches mentioned above, such a valuable opportunity to move beyond conditionality should not be too rapidly dismissed. As representatives of Transparency International remind us, “Kenya has just come out of twenty years of autocratic rule . . . the opening up of political space will take time”. Which balance of conditionality and government ownership will be optimal for Kenya in coming years ultimately depends on the emergence of genuine political will in the country.

Political will in Kenya: façade or reality?

The KACC Annual Report 2005-2006 proclaims that, “for the first time in Kenya’s history, the war on corruption is no longer sporadic, half-hearted and reactionary, but consistent, endorsed by all critical sectors of our society and proactive rather than reactive”. While certainly somewhat of an overstatement, this assertion reflects the remarkable optimism conveyed by many stakeholders during our interview

process. Members of civil society and international institutions generally agreed that Kenya was making determined efforts to improve governance under the NARC coalition. According to an officer of the Kenya Anti Corruption Commission, recent legislations such as the Performance Contract and the Rapid Reform Initiative could not have been introduced in the absence of political will.

An encouraging manifestation of this progressive mindset is the newly introduced 'Vision 2030'. This "long-term plan to transform the lives of Kenyans" is entirely government-designed and contains no trace of donor influence. Drawing inspiration from the national visions that contributed to spectacular economic and social progress in Chile, Malaysia, Thailand and South Korea since the 1960s, this programme aims at helping Kenya attain the Newly Industrialised Country (NIC) status by 2030. The government places particular emphasis on consultative processes, stressing that stakeholders "must all be mobilized and facilitated to own the vision and the required reforms". The vision's key political aspirations include "creating a sound legal system that protects property rights and effectively dispenses justice", and "building accountable leadership at all levels of government". With Vision 2030, the government explicitly recognises the importance of improving governance, stating that, "it is now understood that economic and social development are exceedingly dependent on the implementation of good policies and building of strong and effective institutions." (National Economic and Social Council of Kenya 2006). Whether or not Vision 2030 can achieve its ambitious targets, this self-generated initiative seems to suggest that, as expressed by the Ministry of Planning, "the will [for reform] is there and it is from the top."

Accordingly, certain donors such as the European Commission have begun budget support to Kenya, injecting money directly into government accounts rather than tying aid to specific projects. Since the Paris Declaration on Aid Effectiveness (2005), the donor community as a whole is gradually imposing less conditions on its funding. So far, the EC is however the only donor to have taken this step with Kenya; other parties such as DFID remain far more prudent, believing that political will is not yet strong enough for change to be implemented in Kenya in the absence of direct financial penalties. For a former staff member of the Friedrich Naumann Stiftung Foundation, the Kenyan government still needs the threat of withheld funds to prompt it towards reform. As he

expressed it, “our governments are not mature enough to be left alone.” Disappointing experiences with the APRM process, the insufficient progress signalled by Transparency International’s latest Bribery Index report, and the fact that cases of corruption are still being exposed, all reflect this need for caution. Had the Kenyan government truly been committed to reform, the APRM and ERS would clearly have been more successful in improving governance.

Conclusion

The APRM country report explains that “Kenya has many good laws, commissions, programmes and institutions that could make it the best run democracy in Africa.” (NEPAD Secretariat 2007). For almost half a century, however, corrupt practices and lack of government commitment have prevented this transformation from taking place. Our investigation of governance-related conditionality in the form of the Economic Recovery Strategy suggests that this approach is not optimal for promoting institutional reform in developing countries. As expressed by Joseph Stiglitz, “good policies cannot be bought, at least in a sustainable way” (Stiglitz 1999 in Kapur and Webb 2000). Externally-defined conditionality which defines governance mostly in terms of financial management cannot succeed; IFIs must re-conceptualise good governance as a more social, economic and political system, of which corruption and transparency are only one aspect. These conditions must furthermore be internalised by recipient countries: although government ownership is officially built into these programmes, there must be genuine dedication of the government to the reform process.

Contrasting conditionality-based lending to the African Peer Review Mechanism highlights the potential of such regional alternatives. The APRM improves over conditionality by soliciting greater input from Kenyan stakeholders and being more finely tuned to the country’s specific circumstances. However, its disappointing outcomes suggest that this programme cannot realistically function in the absence of any binding mechanisms. The APRM must be more objective and more action-oriented, and mobilise more independent expertise; linking with the United Nations, for instance, may give the initiative the neutrality and credibility it requires.

The crux of our findings rests upon the fact that political will is key to any successful institutional reform. It is clear that both the ERS and the APRM have suffered from a lack of genuine government commitment. As Transparency International, government ministries and DFID all remind us, “forty years of systems takes a while to dismantle”, and it may be unrealistic to expect radical transformation of Kenya’s political culture in the few years since the NARC election (Interview with DFID representative). Many interviewees are optimistic that a generational change in mindset may be on its way. Even more cynical stakeholders put across the view that “the new generation has Kenya at heart” (Interview with Friedrich Naumann Stiftung Foundation former staff member). To catalyse this evolution, we advocate using a peer-consultation initiative inspired by the APRM as a mechanism to stimulate political will. This improved assessment mechanism would include civil society and actors continent-wide in the definition of several binding conditions, provided that these indicators of good governance are also agreed upon with external institutions. Once this stricter, more objective and representative peer assessment is in place, Kenya could become the “fertile grounds for reform” called for by Dollar and Svensson – the potential for moving beyond the conventional conditionality logic might then be in place.

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Interviews with:

World Bank Lead Economist

April 14th 7:00 PM, Thigiri Gardens, New Muthaiga, Nairobi.

IMF Kenya Resident Representative

April 17th 12:00 PM, Kenyari Towers 10th floor, Upper Hill, Nairobi.

European Commission Desk Officer for Macroeconomics and Budget Support

April 16th 11:00 AM, Union Insurance House, Regati Road, Upper Hill, Nairobi.

Friedrich Naumann Stiftung Foundation representative

April 14th 11:00 AM, United Nations complex, Gigiri, Nairobi.

Transparency International Kenya Deputy Executive Director

April 17th 10:00 AM, Community Centre, ACK Garden House, Nairobi.

APRM Kenya Programme Officer

April 16th 12:00 PM, Liason House, Statehouse Avenue, Nairobi.

Ministry of Planning Macroeconomic Directorate staff member

April 16th 2:00 PM, Treasury Building, Nairobi.

Kenya Anti-Corruption Commission Principal Officer for Prevention

April 16th 4:30 PM, Integrity Centre, Nairobi.

Head for DFID Kenya

April 17th 11:00 AM, British High Commission, Upper Hill Road, Nairobi.

Former British High Commissioner to Kenya

June 25th, email interview.

Members of the general Kenyan public.