

Free for all?



Misuse of Public Funds at the Electoral Commission of Kenya

Introduction

Good governance demands accountability and transparency in the use of public funds. While a lot has been said of the defunct ECK's mismanagement of the December 2007 elections, there has been little discussion on weaknesses in the institution that saw the public defrauded of millions of shillings over a span of 15 years. This is despite reports of the Controller and Auditor General (CAG) that consistently questioned how money was being spent at the ECK over this period.

Why Election Money is a Big Deal

The Independent Review Commission of Inquiry (IREC, also known as the Kriegler Commission after its Chair, Justice Johan Kriegler) was set up following the post-election violence to assess the management of the elections. Among its recommendations were a number of strong proposals for a radical reform of the ECK, or, alternatively, the creation of a new electoral management body which would have "a new name, image and ethos committed to administrative excellence in the service of electoral integrity" and "...with a properly-structured professional secretariat".

A culture of excellence is critical for any electoral body to deliver free and fair elections. This means putting in place sound administrative and governance

structures to minimise the chances of corruption and abuse of power, including in the matter of finances. Further, as a public institution, an electoral body owes it to the public to carry out its work as cost-effectively as possible, and to properly account for public funds.

Misuse of Funds at the ECK

This brief summarises the findings and recommendations of "Free for All?" a recent report by AfriCOG, on the misuse of public funds at the ECK between 1992 and 2007. By revealing the financial rot at the ECK, "Free for All?" points to the culture of patronage, impunity and poor management that the new electoral body must guard against.

800 Million Lost in Unauthorised Expenditure

Between 1991 and 2006, the ECK was entrusted with KES 15.8 billion for various electoral activities including voter education, voter registration and conducting elections. During that period, Kenya held three general elections at regular five-year intervals, as well as the 2005 Referendum on the Draft Constitution and a number of by-elections.

In various audit reports the CAG questioned how KES 1.93 billion was spent. This is roughly 12% of the amount disbursed to the Commission.



The highest questionable spending was unauthorized over-expenditure amounting to over KES 800 million, either reflecting weak budgeting by the Accounting Officer or poor resource flows from Treasury.

Outstanding imprests¹ of KES 6.5 million were of less concern, but nevertheless, reflect badly on the management capability of the accounting officer.

Unchecked Spending by Commissioners

The most blatant improprieties at the ECK were committed by the Commissioners themselves. Over a period of seven years from 1991, during which the late Retired Justice Chesoni served as Chairman, Commissioners benefited from over KES 148 million through irregularly-paid sitting and subsistence allowances as well as other expenses such as the wasteful hire of cars.

So casual was the management of funds that it was common practice for ECK commissioners to pay themselves both sitting and subsistence allowances for every day of the year including Saturdays, Sundays and public holidays, and in some instances, when they were out of the country. Subsistence allowances are usually paid to enable an officer to 'subsist' away from his or her duty station and cannot be paid together with sitting allowances. At one time, a commissioner who received an unauthorised KES 926,600 *ex-gratia*² refund of medical and travel expenses for treatment locally and abroad also received full sitting and subsistence allowances while incapacitated.

Yet there was no evidence (such as minutes of meetings) that the Commission was indeed in session every day of the year, which might have justified the sitting allowances. This practice continued despite the fact

that the CAG raised the matter over successive financial years.

When questioned by the Public Accounts Committee (PAC) about these irregularities, the accounting officer responded that it is the ECK's prerogative to decide whether or not to maintain records of its own meetings. Incredibly, the officer went on to say that since ECK meetings had no quorum, a sitting can be by one member, two members or the whole commission; which justifies payment of sitting allowances for 365 days a year.³ This flagrant mismanagement was clearly a result of political patronage that allowed the ECK to get away with such misuse of funds.

What Could Kenya Have Done with this Money?

Government estimates indicate that a dispensary serving about 10,000 people would cost about KES 10 million to build and equip, while a health centre serving 30,000 people would cost about KES 30 million for the same. This means that irregular payments to commissioners amounting to KES 148 million as indicated above would have built and equipped 22 dispensaries or 7 health centres. Even more alarming, the total amount questioned by the CAG would have provided Kenyans with 193 fully equipped dispensaries or 64 fully equipped health centres!

Were there Any Other Questionable Deals?

In what appears to be collusion between field offices and the headquarters, there were rampant irregularities in the hire and repair of vehicles and in the procurement of fuel, spares and stores.

In the case of motor vehicle spare parts for example, there are numerous instances where it is doubtful whether

The CAG questioned how the ECK spent over KES 1.93 billion - roughly 12% of the money it received from 1991 to 2007

1. Imprests are cash advances issued to officers to make timely, specific payments in the course of their duties, which cannot be conveniently paid through the cash office (petty cash).
2. Ex-gratia - with no legal obligation

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

SUMMARY OF AUDIT QUERIES FROM 1997-2007

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

* The late Retired Justice Chesoni headed the ECK from 1992-1997 while Samuel Kivuitu was the ECK Chair from 1997-2007.

the purchases were actually made. No inspection reports were available to confirm that the vehicle repairs and spares were necessary, no records were available to show receipt and issue of the spares reportedly bought and whether they were fitted to particular vehicles, and vehicles supposedly fitted with the new parts could not be identified. There is also no record of the disposal of old parts from vehicles.

Between 1997 and 2003, the CAG estimated that KES 29.4 million was probably lost through such malpractices. The Police Department, which should investigate these irregularities was the greatest procurement offender with KES 16.9 million of suspected losses - a whopping 62% of the total sum lost through dodgy procurement.

In addition, doubtful payments to short-term staff were rampant between 1992 and 1997. Whenever the ECK conducted nationwide exercises such as voter registration and general elections, short-term auxiliary staff were recruited for these labour-intensive assignments. Whereas the bulk of the recruits would be unemployed school leavers or tertiary-level students, active or retired civil servants usually filled senior positions. In some instances where payments were allegedly made to

civil servants, authority was not sought from the Directorate of Personnel Management (the Government's human resources department). This means that these civil servants received double pay for one task as delivery of ECK work could only have been at the expense of performing their regular work. Some of these payments amounted to over KES 69.5 million between 1993 and 2003.

How was Such Recklessness Allowed?

The ECK was plagued by numerous economic and political governance challenges, the most obvious being political patronage. This led to a deep and pervasive culture of spending with impunity, both at the headquarters and at district offices, leaving considerable amounts of public funds unaccounted for or even wrongly benefiting individuals in the institution.

Other problems that ensured continuing financial mismanagement at the ECK included:

1. Poorly-planned decentralisation resulting in ineffective financial management
2. Low cost-effectiveness of operations. The Kriegler Commission found the ECK's elections cost per registered voter was US\$13.74, compared

to US\$1.6 for Benin, US\$2.7 for Botswana, US\$ 0.7 for Ghana and US\$1.2 for Senegal. These costs are only comparable to very special cases of post-conflict elections such as in Angola, Afghanistan or Cambodia.

3. Poor internal auditing
4. Weak parliamentary committees (that are supposed to provide a check on institutions)
5. Lack of political will to reform

How can Kenya Ensure Proper Use of Election Money?

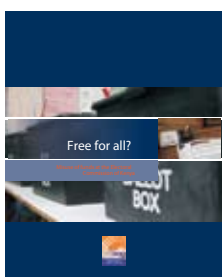
With these challenges in mind and the reconstitution of the electoral commission underway, Kenya must plan for critical structural reforms to avoid the corruption, inefficiencies and mistakes of the past and ensure the creation of a sound electoral body that can cost-effectively deliver free and fair elections to Kenyans. We can do this by:

1. **Rationalising the powers of the president/the executive in the appointment of top officials.** This is important so that public officers owe allegiance to the State and not to the President.
2. **Improving levels and flows of resources for better planning.** The new electoral body should have strengthened capacity to ensure greater efficiency. Computerisation of operations for greater transparency in activities, such

as voter registration, and financial management is part of this improved capacity.

3. **Strengthening the role of parliamentary committees, especially the Public Accounts Committee (PAC).** The PAC should be given the power and resources to act on its own recommendations. Further, measures must be taken to ensure that members of PAC and PIC (Public Investments Committees) are above reproach by enforcing the new Standing Orders to bar anyone with an unresolved public audit query from sitting on the committees⁴.
4. **Making past offenders face the law to deter future malpractices.** The Public Officers' Ethics Act, the Anti-Corruption and Economic Crimes Act and the Public Procurement and Disposal Act provide for this. Failure to successfully prosecute cases of grand corruption perpetuates the vice.
5. **Providing people-friendly audit reports to enable wananchi to see how taxpayers' money is spent.** Currently, both the language and length of the CAG reports makes them inaccessible to the average Kenyan. This hinders effective civic vigilance.

4. Section 162 of the new Standing Orders bars parliamentarians with pending audit queries from chairing parliamentary select committees



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About AfriCOG

AfriCOG is a civil society organisation dedicated to addressing the structural and institutional causes of corruption and bad governance in Kenya. Through this summary report, AfriCOG aims to contribute to the debate on institutional reform with objective information on financial management at the ECK as reported in the Controller & Auditor General's Reports between 1992 and 2007.

"Free for All?" is the first in AfriCOG's Budget Accountability Series. The Series monitors and profiles transparency and accountability in the use of public funds as reported by the Controller and Auditor General. The full report is available on www.africog.org

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