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**The State of Corporate Governance and Anti-
corruption in East Africa Partner States**

Background Paper

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Background

In the East African Community countries, namely Burundi, Kenya, Rwanda, Tanzania and Uganda corruption is rife. According to Transparency International's 2008 Corruption Perceptions Index Tanzania and Rwanda are perceived to be the least corrupt in the region followed by Uganda, Kenya and Burundi respectively.

Nonetheless, a remedy needs to be sought collectively for any substantial progress to be made since it costs the economy as a whole and the common man. Publicly, misappropriation of scarce government funds to the rich and powerful few reduces investment; and misallocation of resources hampers economic growth. Sound procurement law, simplified laws, regulations, government procedures, re-engineer processes and systems, are ways of combating corruption in the public sector.

The stakes for the private sector are high since when the corruption index goes up in a country, the opportunities for foreign direct investment become scarce. Moreover, corruption increases the cost of production which leads to lack of competitiveness leaving such businesses unable to survive in a highly demanding global economy. Implementation of good code of conduct and ethical practices in both public and private sectors ensures that corporate governance is observed including accountability, transparency, fairness and responsibility are paramount.

While it is true that the EAC countries have different anti corruption strategies, cooperation and initiatives between the governments and the private sector is vital. Collective action by the private sector enables companies to collaborate with industry peers and stakeholders to create markets where decisions are driven by economic considerations and not influenced by corruption. By working collectively, companies can help level the playing field between competitors, improve the quality of legal and regulatory systems, and create incentives to avoid bribery among individuals and organizations. Joint effort between public and private sector can introduce greater transparency and predictability to business transactions in corruption-prone countries. Additionally, collective action by the public and private sector will see that laws and regulations are enacted by the government to protect and enhance the interest of the private sector.

This paper¹ looks at corruption within the private and public sector in each of the five East African countries. The paper seeks to address the following issues;

- The state of company law (what is the view of business on need for changes)
- What codes or ethical guidelines are in place if any, for governments and for business

¹ EABC and CBC acknowledge the contribution of Rosemary Mburu, (Institute of Trade Development) in the development of this Background paper.

- Whether there is an anti-corruption commission or how corruption is being tackled by the government
- Is there any formal cooperation between business and government to address corruption (joint committees, initiatives)

In each country the government has made an effort to combat corruption via its anti-corruption measures such as passing of Acts, the establishment of Commissions and Agencies to investigate high profile corruption. Initiatives by non - governmental organization and the civil societies are also evident.

However, little or no action is seen by the private sector to combat corruption. Some of the large companies have adopted a code of ethics but majority of business have no ethical policy. On the one hand, business associations assert that corruption does exist and hamper businesses but no collective committees and commissions among themselves and with the government are formed to sort it out. Reasons for this are not given. It is notable that scientific statistics given hereunder are from studies carried out by the international community, for instance the World Bank and United States Agency for International Development (USAID). No specific local business has come forward to give views of corruption in their sector. It is only by a collective action of both the public and private sector, coupled by the review of company laws can the East African economies grow with reduced corruption.

1.0 Introduction

Corruption has become an issue of major political and economic significance in recent years and the necessity to take measures against it has become evident. Corruption is principally a governance issue – a failure of institutions and a lack of capacity to manage society by means of a framework of social, judicial, political and economic checks and balances. The growing global consensus on the importance of corruption as an impediment to development is reflected in the ratification of the UN Convention against Corruption (UNCAC). Corruption is a very serious impediment to the overall development of a country; it reduces competitiveness of the enterprises, reduces investment in all sectors and especially in programmes related to basic needs, such as sanitation, education and healthcare. It results in the misallocation of resources to the detriment of poverty reduction programmes. The attainment of the Millennium Development Goals is put at risk unless corruption is tackled as an integral part of overall development strategies by both public and private sectors. As stated below;

"Governance and Anti- Corruption is everyone's business"
President of the World Bank Group, Robert Zoellick.
December 6th 2007

1.1 Definitions

It is important to define the meaning of corporate governance and corruption before the start of an analysis of what is the State of Corporate Governance and Anti-corruption in East Africa Partner States.

1.1.1 Corporate Governance

Corporate Governance refers to the manner in which the power of a corporation is exercised in the stewardship of the corporation's total portfolio of assets and resources with the objective of maintaining and increasing shareholder value with the satisfaction of other stakeholders in the context of its corporate mission²

The OECD Principles on corporate governance (2004) constitutes a balanced benchmark for corporate governance and are intended to assist OECD and non-OECD governments in their efforts to evaluate and improve the legal, institutional and regulatory framework for corporate governance in their countries, and to provide guidance and suggestions for stock exchanges, investors and corporations.

² Principles for corporate governance in Kenya (November 1999)

1.1.2 Corruption

Transparency International defines corruption as the misuse of entrusted power for private gain.³ United Nation Development Programme (UNDP) defines corruption as the misuse of public power, office or authority for private benefit through bribery, extortion, influence peddling, nepotism, fraud, speed money or embezzlement

Corruption is encountered at three levels which are defined as follows:

- **Individual Corruption:** Corruption that takes place primarily in relations between individual citizens and public officials and authorities.
- **Business Corruption:** Corruption that takes place primarily in relations between enterprises/companies and public officials and authorities.

Political Corruption: Corruption that takes place in the higher echelons of public administration and on a political level.

1.1.3 Corporate Governance and corruption

Corporate governance strongly depends on the institutional development of a country. Corporate governance has become a critical element of business management and economic growth. Economic crises and corporate failures are closely associated with lack of good corporate governance. Lack of sound corporate governance has fuelled corruption while suppressing sound and sustainable economic decisions. Pillars of corporate governance include transparency, accountability, probity and respect for the rights of all stakeholders.

1.1.4 Cost of corruption

Economically, corruption leads to the depletion of national wealth.

- It is often responsible for the funneling of scarce public resources to uneconomic high-profile projects at the expense of less spectacular but more necessary infrastructure projects such as schools, hospitals and roads, or the supply of power and water to rural areas.
- Furthermore, it hinders the development of fair market structures and distorts competition, thereby deterring investment.
- The effect of corruption on the social fabric of society is the most damaging of all. It undermines people's trust in the political system, in its institutions and its leadership. Frustration and general apathy among a disillusioned public result in a weak civil society.
- That in turn clears the way for despots as well as un-democratically elected yet unscrupulous leaders to turn national assets into personal wealth. Demanding and paying bribes become the norm.

More specifically the private sector has to be wary of corruption mainly because:-

³ <http://www.tkenya.org/>

- A company that is perceived to be corrupt faces the danger of having a bad reputation and loss of business. Indeed “*It’s hard to measure the benefit you get from a good reputation, and sometimes it’s hard to imagine the danger or the disaster that can befall you if you run afoul of that.*”
- Failing to actively prevent corruption allows employees and third parties to rationalize stealing from the company
- As companies search for new markets they are exposed to countries that do not have good anti- corruption measures exposing themselves to undue risks. Companies that do not take steps to assess and manage corruption risk stand a greater chance of being caught in the anti-corruption net.
- Regulatory censure
- Cost of corrective action and possible fines

It is imperative that, in as much as the government is involved in eradicating corruption, the private sector should also drive the initiative.

1.1.5 Corruption in East Africa

The 2008 Corruption Perceptions Index (CPI)⁴ published by Transparency International (TI) viewed corruption in East Africa as follows⁵:

Country Rank	Regional Rank	Country	CPI Score 2008 ⁶
147	32	Kenya	2.1
126	25	Uganda	2.6
102	16	Tanzania	3.0
102	16	Rwanda	3.0
158	38	Burundi	1.9

⁴ The Transparency International Corruption Perceptions Index ranks countries in terms of the degree to which corruption is perceived to exist among public officials and politicians. It is a composite index, a poll of polls, drawing on corruption-related data from expert and business surveys carried out by a variety of independent and reputable institutions. The CPI reflects views from around the world, including those of experts who are living in the countries evaluated.

⁵ 2008 Corruption Perceptions Index Regional Highlights: Sub-Saharan Africa

⁶ 0 is for highly corrupt and 10 least corrupt

2.0 BURUNDI

2.1 State of Company Law

Burundian law recognizes the right of foreign and domestic private companies to establish and own business enterprises and engage in all forms of remunerative activity. Private businesses may freely establish, acquire, and dispose of interests in other business enterprises. A "competitive equality" standard is applied to private businesses in competition with public enterprises, with respect to access to markets, credit, and other business operations, such as licenses and supplies.

The legal system upholds the sanctity of contracts, and specific provisions within the Civil and Commerce Code have been adopted to provide substantial incentives to FDI. These include a Code of Commerce, an investment code to encourage foreign investment, and laws intended to create a free trade economic zone. No overall economic or investment strategy exists that creates discriminatory effects on foreign-owned investors, and, in contrast to many states in the region, there are no limits on foreign ownership or control of business.

2.2 Anti corruption measures

- Corruption is perceived to be a problem particularly in the areas of government procurement and taxation. Burundi has laws, regulations, and penalties in place to counter corruption. Enforcement is sporadic, but when applied they appear to be impartial, and no particular group, domestic or foreign, is discriminated against. Giving or receiving a bribe is a criminal act, punishable by up to five years in prison.
- Burundi is a signatory to the UN Anti-Corruption Convention and the OECD Convention on Combating Bribery. In 2006 the government established an anti-corruption commission and a specially designated anti-corruption court.
- Bribes by local companies to foreign officials are not adequately addressed by Burundian law; but local businesses cannot deduct bribes made to a foreign official from their taxes. Within the Ministry of Good Governance, an Inspector General operates as a "watchdog" against corruption in the government and private sector, and there are local NGOs who work specifically against corruption.
- The government hired an independent auditor to investigate claims that it mishandled the 2006 sale of the Presidential aircraft. It subsequently appointed a governmental commission to review the firm's findings, and in autumn 2007 the National Assembly created a second commission to analyze the aircraft sale.

2.3 Initiatives

- The Observatoire de la Lutte contre la Corruption et les Malversations Economiques (OLUCOME) Is the main anti corruption body in Burundi engaging in advocacy work such as organizing for seminars and workshops to raise awareness of the costs of corruption.
- Other civil society institutions, primarily the Christian churches and the Muslim Council, with their moral foundation, are also well-placed for dissemination and awareness rising.
- The Francophone Africa Capacity Building (FACB) programme aims at empowering civil society organizations in a number of francophone countries in sub-Saharan Africa to lead the fight against corruption on a national level by developing and enhancing their capacities in general NGO skills, such as strategic planning, and specific anti-corruption techniques.

2.4 Opinions of the businesses

There is a new legal framework that is intended to fight corruption in Burundi: The anti-corruption court and anti corruption brigade institutions are located in Ministry of Justice and the State Ministry of governance that has the mandate to define and apply governance policies. However the debate on corporate governance is not there! We are now at our institute trying to initiate studies on corporate governance of both private state owned companies! Even in school of business or law courses at the university, there are no corporate governance lessons! "I am the first to incorporate those issues in the course I give to MBA students!"⁷

...In order to improve the investment climate for corporations within and from outside of the region visible measures should be taken to establish the Rule of Law.....ensure business-friendly laws and simplify administrative procedures affecting business; implement effective anti-corruption measures on a regional scale⁸

⁷ Dr Alain Niyubahwe, Professional Researcher Economic Development Institute (IDEC)

⁸ Arun Devani, former Chairman of East African Business Council

3.0 KENYA

3.1 State of Company Law

The principal forms of business enterprises in Kenya are:

- ◆ Limited Company - private or public- The provisions concerning limited companies are contained in the Kenyan Companies Act of 1962
- ◆ Branch of a foreign company- A company incorporated outside Kenya may carry on business in Kenya through a branch. In order to establish a branch the following documents and details must be submitted to the Registrar of Companies under the Companies Act
- ◆ Partnerships- The law relating to partnerships is largely contained in the Partnership Act 1962. If partnerships exceed 50 partners they fall under the Kenyan Companies Act of 1962
- ◆ Sole Proprietorship
- ◆ Joint Venture - ventures with Government-owned agencies are encouraged
- ◆ Co-operative Society – Co-operatives Act

The statutory law governing corporate governance in public listed companies in Kenya is embodied in the Companies Act 1962 c.486 (the Companies Act). Kenya, a former British colony, adopted the Companies Act almost in entirety from England's Companies Act 1948 upon attainment of independence in 1963. The Companies Act deals with directors' duties and shareholder protection among other matters pertaining to corporate governance in Kenya. Other regulations that govern Kenya's corporate governance are the Capital Markets Authority Act 2002, the Nairobi Stock Exchange (NSE) Regulations and the Penal Code c.63.

3.2 Need for reform of the Company's Act?

The Kenya Institute of Certified Secretaries is of the view that the current Company's Act, enacted in the 1960s, is a colonial relic that did not adequately serve the interests of Kenyans in the wake of increased competition in the business world. The legislation, which has been undergoing piecemeal changes, needs a complete overhaul.⁹ The company law as it is has no measures to deal with directors or managers who may pursue goals for their own benefits rather than maximizing the wealth of shareholders or even have a consideration for their employees. Under the current company laws corporate governance has been challenged.

3.3 Codes or Ethical Guidelines in Place

Presently, Kenya uses the Sample Code of Best Practice for Corporate Governance in Kenya, 2002 as a framework for other companies to develop their own guidelines.¹⁰

⁹ Institute of Certified Public Secretaries of Kenya secretary and chief executive Joshua Wambua. Daily Nation Newspaper, 13th October, 2008

¹⁰ It can be accessed via http://www.ecgi.org/codes/documents/sample_code.pdf

3.4 Anti corruption measures- The Acts,

The following Acts have been enacted to curb corruption

- The Anti-Corruption and Economic Crimes Act 2003, (ACECA)- It seeks to provide a comprehensive framework for prevention, investigation and punishment of corruption and economic crimes,
- The Public Officer Ethics Act (POEA) - To enforce codes of conduct prescribing minimum ethical standards for the entire public service,
- The Kenya Anti Corruption Commission - established by The Anti-Corruption and Economic Crimes Act 2003, mandates the Commission to perform various functions such as advisor, educative and restitution functions,
- The Government Financial Management Act 2004, established procedures for lawful, authorized; and effective, efficient, economical and transparent systems for proper and effective management of government money and property. It is when there are no proper financial management systems corruption thrives,
- Public Procurement and Disposal Act 2005 - to promote more unified and transparent public procurements, and established a Public Procurement Oversight Authority to oversee all procurement matters,
- The Supplies Practitioners Management Act No. 17 of 2007 - An Act of Parliament to make provision for the training, registration and licensing of supplies practitioners; to regulate their practice and for connected purposes. This Act aim to develop professionalism in procurement, it also has anti-corruption measures for procurement practitioners,
- The Prevention of Corruption Act,
- The enactment of the Witness Protection Act, 2006 to protect the whistle blower from prosecution,
- The enactment of the National Commission of Human Rights Act in 2002, creating the National Commission of Human Rights (NCHNR).This commission acts as an Ombudsman. It is an independent body and acts free from political influence.

NGO and Other Initiatives

- The genesis of the e-Governance - There have been direct efforts to automate the tax and customs services which have, together with the reduction of the road transport licenses, drastically reduced direct contact between the Kenya Revenue Authority and the public.
- Transparency International is a non-governmental organization dedicated to increasing government accountability and curbing both international and national corruption.
- Mars Group is a private organization whose main goal is to create awareness and to generate demands for accountability from Kenya's leadership and to encourage Kenyans to hold to account those who have committed improprieties.

- Movement for Political Accountability- is a non-partisan coalition of organizations that brings together the private sector, religious leaders, civil society organizations and other stakeholders to promote accountability of elected leaders
- Clarion Kenya aims to contribute to processes that make public institutions more accountable and responsive to the needs and demands of Kenyans
- The Institute of Certified Public Secretaries (ICPS) is a professional organization which has spoken out against corruption and runs continuous education and training programmes for its members to promote integrity and professionalism. The ICPS aims to develop and promote good governance, enhance productivity in the private and public sectors of the economy through its members, by inculcating in them high standards of professional knowledge, expertise and competence in public secretarial practice, administration, public and corporate management and related disciplines.
- The Centre for Corporate Governance (CCG) is a private organization which works to develop and promote the adoption of sustainable best practices in corporate governance through training, education, research, advocacy, monitoring and evaluation

3.6 Codes of conduct

As part of improving governance, government agencies have developed codes of conduct and there are also ongoing reforms of the public financial management (PFM) system. These reforms in the PFM arena are meant to greatly enhance transparency and accountability in the utilization of public resources and thereby improve service delivery to the public. These reforms are complemented by a 2006 Ministry of Finance Staff Code of Conduct

3.7 Opinions of the businesses

Corruption is a major concern by the private sector, it add to the cost of doing business and reduce competitiveness of the companies and the country as a whole. According to *Trade Facilitation Study, 2007* by KAM, the following are the key areas of concern:

There is corruption at the Kenya Ports Authority and Department of Customs of Kenya Revenue Authority¹¹

There is corruption along the highways and especially Northern Corridor route where police road blocks and weighbridge stations are a haven for corruption¹².

Kenya Associations of Manufactures members assert that there is corruption in all the areas mentioned above as well as Kenya Bureau of Standards especially under Pre-Export Verification of Conformity (PVOC) programme. ***"In every area where the government put up high duty or penalty, this becomes a high incentive for corruption" said one importer.***

A general area of concern within the private sector is the rising incidence of

¹¹ Kenya Association of Manufacturers, *Trade Facilitation Study, 2007*, by Rosemary Mburu.

¹² Kenya Transporters Association, KAM Study on Trade Facilitation. 2007

corruption in engineering works and buying of promotion items and services. (A Procurement Director in one of the multinational in Kenya)

Other cited cases;

*"In fact, public sector corruption thrives upon and exists in tandem with private sector corruption. Both big and small business in this country fuel public sector corruption either as a short cut to super profits or as corporate surrender to the forces of corruption. There would be little or virtually no corruption in the areas of procurement, licensing, tax collection or standards were it not for the active involvement of the private sector. The crux of the matter therefore is that creating a corruption free business environment is as much the responsibility of the Government as it is of the private sector."*¹³

*".....Graft still oils the wheels of business in Kenya. Half of the firms surveyed said they had been asked for a bribe in the past year. Many also admitted to paying MPs, senior bureaucrats and judges in order to influence policy or to sway the result of a legal case....."*¹⁴

*"....Corruption tops the list of obstacles for doing business with 17.2% of the companies surveyed quoting it as the most problematic factor"*¹⁵

¹³ Key Note Address by Justice (Rtd) Aaron G. Ringera Director/ Chief Executive. Kenya Anti- Corruption Commission. 23rd Feb. 2006

¹⁴ BBC News, "Corruption besets Kenya". Article based on a survey by World Bank and Institute of Public Policy Research. Can be accessed via <http://news.bbc.co.uk/2/hi/africa/4206229.stm>

¹⁵ [Global Competitiveness Report 2007-2008](#),

4.0. RWANDA

4.1 State of Company Law

For a company to carry out business in Rwanda, it has to be incorporated under the laws in force. Nobody can carry out trade in the Republic of Rwanda without being registered in the register of commerce. This is a record for all businesses operating in Rwanda.

There are four types of companies that can be formed.

- Public limited company (société anonyme); A public limited company can be comprised of physical persons or moral persons limited to their shares.
- Limited liability company (société à responsabilité limitée) ; A limited liability company can be comprised of a maximum of 50 physical persons or moral persons Limited partnership (sociétés en commandite)
- Limited partnership is a kind of company, which comprises of two categories of shareholders i.e shareholders that are jointly liable for bad debts of the company; and those liable for debts according to their shares.
- General partnership (société en nom collectif) General partnership is comprised of two or more people.
- It is a pre-requisite to provide a notified copy of the memorandum and articles of association of the company (acte constitutif) to the Clerk of the Court of First Instance.

Need for reform?

Law no. 06/1988 of 12/2/1988 on organization of companies is currently under review to fit in with current business environment.

4.2 Anti corruption measures

The US Department of State's 2007 Investment Climate statement for Rwanda also supports the view that corruption in Rwanda is not as widespread as in many other African countries and the World Bank Enterprise Survey conducted in Rwanda in 2006 indicates that Rwanda performs relatively well in terms of corruption compared to other low income and African countries. Only 4.4 % of the firms surveyed identified corruption as a major constraint to doing business in the country. 20% of the firms report making unofficial payments to get things done, compared to an average of 48 % in other African countries.

However corruption still exists. Sectors perceived as most corrupt by the US Department of State's 2007 Investment Climate include the judiciary (30 %), public finance management (23%), public administration (21 %) and education (13 %) with

instances of tax and public funds embezzlement, fraudulent procurement practices, judicial corruption as well as high ranking officials involved in corrupt practices¹⁶.

Anti Corruption Institutions and measures in place are:-

- The National Tender Board (NTB) was established in 1997 to organize and manage the public procurement process and to implement the general public procurement policy on behalf of the government. The guiding principles for the NTB operations are transparency, economy and equity.
- The Anti-Corruption Unit in the Rwanda Revenue Authority (RRA) has good Code of Conduct and extensive and active internal campaign mechanisms to raise staff awareness of this code.
- The Auditor General's Office (OAG) was established in 1999 to audit government adherence to fiscal controls.
- The establishment of an Ombudsman's office in 2004 that monitors transparency and compliance to regulation in all governmental sectors.
- The government also adopted a code of conduct and rules of disclosure for public officials. Asset declarations for politicians and civil servants in Rwanda were adopted by the 2003 constitution, requiring public officials to declare their wealth.
- Rwanda acceded to the New Partnership for Africa's Development (NEPAD)'s African Peer Review Mechanism (APRM). The APRM encourages participating states to ensure that their policies and practices conform to the agreed political, economic and corporate governance values.

4.3 Opinions on the businesses

There is no structure for joint anti- corruption measures for both public and private sector. The clearing and forwarding association is however carrying out capacity building programme and, corporate governance is one of the areas covered. The President is very committed to anti-corruption measures and this help in reducing corruption since no one want be caught in the act¹⁷

20% of the firms report making unofficial payments to get things done, compared to an average of 48 % in other African countries according to Transparency International's 2008 Corruption Perceptions Index

¹⁶ U4 Expert answers. Overview of Corruption in Rwanda. Can be accessed via- <http://www.u4.no/helpdesk/helpdesk/query.cfm?id=164>

¹⁷ Mr. John Bosco Rusagara President, Association des Agences en Duone au Rwanda

5.0 TANZANIA

5.1 State of Company Law

Prior to the 1st of March, 2006, the main legislation relating to companies in Tanzania was the Companies Act Cap. 212 enacted in 1929. This legislation regulated trading companies and other associations including the imposition tax on nominal capital, regulation of dividends and surpluses and related matters. This legislation was in force for over 77 years which period covered not only the tail end of the colonial period but also the period of state-planned economy through to liberalisation in the 1990s.

Need for reform?

2006 saw the enactment of the Companies Act 2002(CA 2002) which embodies reforms in the following areas:

- Directors: - previously, Directors had various common law duties which have now been enshrined in the CA 2002, and are now statutory duties. These duties include a duty to act in good faith and in the best interests of the company. In addition, the Act also imposes a new duty to have regards for the interests of employees, to exercise powers for proper purpose, a duty of care. Director may also find himself personally liable for a company's debt if he is disqualified from being a director. The act also include certain prohibition such as the making of tax-free payments to directors and/or loans to directors of the company or its holdings company or any connected persons
- Capacity of the Company to Act- The new Act stipulates that it shall no longer be a defence that an act is invalid by reason of limitation of capacity by its memorandum, and this concept is rolled out to acts of directors, i.e. a company will be unable to disclaim liability by reason of a director's act being *ultra vires* ("*beyond his powers*").
- Investigation into a company's affairs- The Registrar of companies has the powers to call for information from the company, further to which the company has the duty to furnish to the Registrar all the information required by him.
- Arrangements, compromise, reconstruction and amalgamation- The CA 2002 introduces the concept of arrangements and reconstruction, which allow a company and its creditors or the company and its members to apply to the court.
- Additional protection for minority shareholders- including procedures for orders in cases of unfair prejudice and the institution of derivative actions (i.e. the right of a person to apply to court to prosecute, defend or bring an action in the name of and on behalf of the company or any of its subsidiaries).

- Insolvency of the company- The Act affords an orderly and fair process for insolvent companies and their creditors.

5.2 Anti corruption measures

The Government of Tanzania has committed itself to fighting corruption in all spheres of the economy. This commitment has come from both past and current presidents. During the inauguration of the current Parliament, the new president, Honorable Jakaya Mrisho Kikwete, made relentlessly:

“Serikali ya Awamu ya Nne itatimiza ipasavyo wajibu wake wa utawala na maendeleo, na . . . itaendeleza mapambano dhidi ya rushwa bila ya woga wala kuoneana muhali.”¹⁸

The Warioba report¹⁹ classified corruption into two categories. The first type relates to those who receive bribes to cater for their daily living needs (Petty Corruption) while the other group involves high level leaders and public officials, who are motivated by excessive greed for wealth accumulation and money (Grand Corruption). The Warioba Report had the further benefit of opening up public discussion on corruption.

This has led to the following:-

- Appointment of a good governance Minister, who is responsible for, among other things, monitoring overall strategy & implementation of anti-corruption measures,
- Adoption of Natural Anti-Corruption Strategy for Tanzania. The strategy focuses on the need for transparency and accountability in government,
- Appointment of the Prevention of Corruption Bureau (PCB). This is a unit that investigates and prosecutes corruption with the approval from the Director of Public Prosecutions (DPP),
- Establishment of the Commission for Ethics to deal with administering and enquiring into senior public appointee’s Declaration of Assets and making recommendations to the president,
- The Public Sector Reform Programme of Tanzania launched in 2002 aimed to transform the public service into a result-oriented public service. Among other things, it aims to create a public service of the high caliber and integrity that is both responsive to and supportive of national efforts to deliver service to be competitive, to ensure good governance and to facilitate poverty reduction.

¹⁸ Speech by Jakaya Kikwete to the Tanzanian Parliament on 30 December 2005

¹⁹ A report that was produced in 1996 after the conclusion of the Presidential Anti Corruption Commission of 1995

5.3 Private Initiatives and Committees

- Front Against Corruption Elements in Tanzania (FACEIT): This NGO performs research and advocacy on issues related to corruption.
- Research on Poverty Alleviation (REPOA) is an NGO that conducts research on poverty reduction and governance issues, including corruption. The organization also conducts workshops and training seminars.
- Lawyers' Environmental Action Team (LEAT) carries out policy research, advocacy, and selected public interest litigation. Its membership includes largely lawyers concerned with environmental management and democratic governance in Tanzania.
- Freedom of the press is guaranteed in Article 18 of the Constitution of the United Republic of Tanzania of 1977 Cap 2. Print and electronic media are active, but their impact is limited largely to the urban areas. This allows misconduct to be known by the general public without fear of prosecution

5.4 Opinions of businesses

„...the association is not involved in any joint initiative with the Government. However the association in 2006 adopted a code of corporate governance which emphasize on corporate integrity. The Tanzania Business Council represent the employer's association in campaigning for reduction of red-tape within the Government procedures. Another initiative is through on-going project on "Strengthening of Business Environment in Tanzania" The project has a strong emphazy on improving corporate governance and reducing corruption'.²⁰

The percentage of companies that reported corruption to be a 'major' or 'very severe' obstacle for enterprise operations and growth was 51% in the manufacturing sector, 55% in construction and 57% in tourism. Both domestic and foreign companies as well as exporters and non-exporters rank corruption among the top constraints for doing business.²¹

Micro enterprises (both formal and informal) rate corruption as a less severe obstacle for doing business than small- medium- and large enterprises. Micro enterprises avoid corruption by remaining unregistered within the informal sector thereby avoiding contact with corrupt government organs²²

²⁰ Dr. Aggrey K. Mulimuka Executive Director of the Association of Tanzania Employers

²¹ The World Bank & IFC's [2004 Investment Climate Assessment](#)

²² *Ibid*

6.0 UGANDA

6.1 State of Company Law

Uganda Companies Act is based on the 1948 British Act. The Companies Act Cap. 110.1 came into force in January 1961. The Companies Act deals with directors' duties and shareholder protection among other matters pertaining to corporate governance in Uganda. Other regulations that govern corporate governance are the Investment Code Act 1991, the Foreign Exchange Act, 2004 and the Trade Licensing Act 1969.

Need for reform?

There is a need for reform because;

- The vast majority of companies are small private enterprises. The Act was drawn with large public companies in mind. In 1993 there were 26,000 private and 390 public companies registered in Uganda. Many of the provisions of the 50-year old Companies Act do not apply to such small enterprises
- Further, in the private companies, the shareholders and the directors are the same people
- Rules relating to the capital structure of companies and capital maintenance have been found inflexible, complex and technical.

The reforms include:-

- New company law dealing only basic law on the formation and running of public and private companies,
- Provisions currently in the Companies Act covering areas such as insolvency, secured transactions, public offers of securities and prospectuses, non-profit organizations and partnerships will be incorporated into other more appropriate legislation yet to be drawn,
- Flexible capital structure; greater transparency for shareholders and creditors including requirements for private companies to file audited accounts;
- Deregulation provisions allowing private companies to opt out of some Company Act requirements; increasing protection of minority shareholders.

6.2 Anti corruption measures

There are two constitutional offices established to combat corruption and related offences specifically and crime generally, namely: the Inspector General of Government (IGG); and the Directorate of Public Prosecutions (DPP)

Anti Corruption measures include:-

- The Inspectorate of Government Act (Act No. 5 of 2002) provides for the functions and powers of the Inspectorate and all incidental matters in combating corruption.

- The Leadership Code Act (Act No. 17 of 2002) inter alia provides for minimum standards of behavior and conducts for leaders, requires leaders to declare their incomes, assets and liabilities and puts in place an effective enforcement mechanism. The Code is enforced by the Inspector General of Government
- The Prevention of Corruption Act, 1970 (Cap. 121) provides for the special powers of the Director of Public Prosecutions to investigate and prosecute corruption cases and all incidental matters. It should be noted that the Prevention of Corruption Act was enacted in 1970 before the office of the Ombudsman was established so up until 1988, the DPP had monopoly in prosecuting corruption cases. Efforts are underway before Parliament to consolidate the laws against corruption into one Act.⁶ The only challenge could be with regard to the implementation of the new law as it empowers both the DPP and IGG to concurrently investigate and prosecute corruption cases.
- As regards assets recovery, the Penal Code Act (Cap. 120), the Leadership Code Act, the Inspectorate of Government Act and the Prevention of Corruption Act inter alia empower the DPP and IGG to recover assets obtained through corrupt means or through any other illegal means.

6.3 Bodies and Initiatives by government

- Auditor General, the Public Accounts Committee of Parliament, the Directorate of Ethics and Integrity the Public Procurement and Disposal of Public Assets Authority that are involved in ensuring accountability of public funds and assets. The Criminal Investigation Directorate (CID) is the investigative arm of the Uganda Police that the other stakeholders rely on to assist in investigations and apprehending suspects.
- The Anti-Corruption Coalition of Uganda (ACCU) brings together 70 civil society organizations, individuals, religious leaders, academicians, media practitioners and key institutions involved in the fight against corruption in Uganda. It also acts as an umbrella for anti-corruption advocacy activities in Uganda.
- NGOs- Transparency International Uganda, Private Sector Foundation Uganda, African Parliamentarians Against Corruption Uganda, Uganda debt Network
- Regional bodies involved in eradicating corruption are Rwenzori Anti corruption Coalition (RAC), South Western Uganda Anti corruption Coalition (SWUAC), Teso Anti corruption Coalition (TAC), The Apac Anti Corruption Coalition (TAACC), Northern Uganda Anti Corruption Coalition (NUAC), Karamoja Anti corruption Coalition (KAC), Anti Corruption Coalition Koboko (**ACCK**), Buganda Cultural and
- Development Foundation (BUCADEF)

6.4 Anti- corruption policy documents

The government itself has developed several anti-corruption strategy policy documents including:-

- The Poverty Eradication Action Plan, which include good governance and anti – corruption measures.
- The Government Strategy and Plan of Action, the National Strategy for Mainstreaming Ethics and Integrity in all Sectors and all Institutions in Local Governments in Uganda

6.5 Opinions of businesses

"....As already said as per our telephone conversation, UMA as a Business Association we haven't addressed the issue of Corporate Governance and Anti-corruption Measures outside our Businesses and the Association.

However under Private Sector Foundation Uganda (PSFU) of which we are members, we associate ourselves with the Institute of Corporate Governance of Uganda whose main agenda is advocacy for Corporate Governance and Anti-corruption efforts. I am also not aware of any private/public joint committee on corporate governance anti-corruption²³

40% of the companies find it problematic obtaining access to land because of inconsistent and unpredictable regulations²⁴

45.5% of companies expect to give gifts in order to secure a government contract.²⁵

"...Foreign-owned and exporting companies are the biggest targets of government officials soliciting bribes, typically related to tax, customs or obtaining public services. These companies are known to pay almost 4% of their revenue in informal payments to 'get things done'.²⁶

..Crime, transport and tax rates are the main constrains to doing business in the country. These are followed closely by corruption, electricity, tax administration and access to finance.²⁷

²³ Mr. James Kalibala Chairman Uganda Manufacturers Association

²⁴ [The World Bank & IFC: Investment Climate Assessment 2004:](#)

²⁵ [The World Bank & IFC: Enterprise Survey 2006](#)

²⁶ The World Bank & IFC [Investment Climate Assessment 2004](#)

²⁷ Kenya Association of Manufactures Chairman Vimal Shah while addressing members of the National Economic and Social Council (NESCC) at a breakfast meeting on October 6,2008

7.0 Conclusion

In all EAC countries corruption is a major concern. There has been effort to put legal and regulatory framework to reduce corruption. The legal framework covers both public and private sector in most of these countries. Initiatives from private sector and civil societies seem strong in Uganda. Rwanda has low incidence of corruption and has a better image from the EAC countries and investors. What is clear is that joint initiatives between public and private sectors are limited. Private sector tends to have code of ethics at company level and in few cases at association level like in Tanzania.

In order to improve governance and reduce corruption the following recommendations are made;

1. Review the company laws and improve on governance in both public and private sectors.
2. Enact whistle blowing laws in all EAC countries to expose individuals involved in corruption. This will also act as deterrent due to fear of exposure.
3. Establish joint committees between public and private sectors to get involved in anti-corruption initiatives because; *“Governance and Anti- Corruption is everyone business.”*
4. Simplify government processes and procedures and develop systems with accountability and traceability to deter corruption.
5. Introduction of e-government would go along way in reducing corruption. If well implemented e-government in trade facilitation processes would reduce corruption at the port along the trade routes and at the border posts and other government departments.

According to the *United Nations Development Programmer's Asia-Pacific Development Information Programme (UNDP-APDIP) e-Note 8 / 2006, e-Government can reduce corruption, with India and Korea as an example.*

When e-government applications are used to fight corruption, it is critical that four key anti-corruption strategies – prevention; enforcement; access to information and empowerment; and capacity building are integrated in the design and implementation process.

A few case studies of e-government applications from the Asia-Pacific region report some impact on reducing corruption in several ways:

- **Prevention:** Introducing e-government applications provide an opportunity to simplify rules and procedures, and re-engineer processes and systems. The use of computers and online transactions eliminate gate keepers, depersonalize and standardize the delivery of services and thus, reduce abuse of discretion and other opportunities for corruption.
- **Enforcement:** Computerized procedures make it possible to track decisions and actions and thus, serve as an additional deterrent to corruption. Where data are centralized, unbiased sampling procedures can be applied for audit purposes.
- **Access to Information and Empowerment:** Publishing of government information online builds accountability by providing documentation to citizens to substantiate their complaints against corrupt practices.
- **Capacity Building:** Introducing e-government applications requires that telecommunication infrastructure is strengthened, human resources are developed in ICT literacy, and the culture of good governance promoted.

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