KENYA EDUCATION SECTOR

INTEGRITY STUDY REPORT
2010

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ABBREVIATIONS AND ACRONYMS

AIDS	Acquired Immunity Deficiency Syndrome
BoG	Board of Governors
CAG	(The) Controller & Auditor General
CBF	Constituency Bursary Fund
CDF	Constituencies Development Fund
CHE	Commission of Higher Education
DBE	Directorate of Basic Education
DEB	District Education Board
DEO	District Education Officer
ESF	Education Stakeholders Forum
FPE	Free Primary Education Programme
FSE	Free Secondary Education Programme
FY	Financial Year
GPA	General Purpose Account
HELB	Higher Education Loans Board
HIV	Human Immunodeficiency Virus
KACC	Kenya Anti- Corruption Commission
KESSP	Kenya Education Sector Strengthening Programme
KIPPRA	Kenya Institute of Public Policy Analysis
KNEC	Kenya National Examinations Council
Kshs	Kenya Shillings
MDGs	Millennium Development Goals
MoE	Ministry of Education
MP	Member of Parliament
NEAC	National Education Advisory Council
NGO	Non-Governmental Organisation
POEA	Public Officers Ethics Act
PPOA	Public Procurement Oversight Authority
PTA	Parents, Teachers Association
SAPs	Structural Adjustment Programmes
SEBF	Secondary School Education Bursary Fund
SIMBA	School Instructional Materials Bank Account
SMC	School Management Committee
TI	Transparency International
TSC	Teachers Service Commission
IFIs	International Finance Institutions

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EXECUTIVE SUMMARY

The purpose of the study

The Kenya Education Sector Integrity Study (2010) makes an objective assessment of the governance risks at the different levels of the education sector with a view to building an overall perspective and insights into the nature and extent of governance challenges facing the sector. It isolates the pertinent governance risks at the various levels of decision-making, resource allocation and utilisation.

Using the principles of agency independence, public trust and public accountability, it assesses, in particular, the effectiveness of integrity mechanism developed within the education sector in Kenya by identifying the institutional weaknesses and proposes strategies for strengthening such efforts to ensure transparency and accountability. The report recommends legal, institutional and administrative reforms requisite to plug the gaping holes and opportunities for pilferage, mismanagement, embezzlement among other forms of malpractice and corruption.

Good governance is a key pillar in all socio-economic and development endeavours globally. Improving governance is a key pillar in all socio-economic and development endeavours globally. Improving governance and enhancing institutional integrity in Kenya's education sector is a vital a step towards achieving our national educational goals and objectives.

The Methodology

To effectively assess and evaluate the governance risks and integrity challenges facing the education sector, the study largely adopted qualitative approaches of data collection. This is because the study of integrity issues does not lend itself easily to easy observation or measurement. The study commenced with a desk literature review and analysis of the legal statutes governing the education sector. The study also utilised the case study approach with complementary information sought through focused group discussions and key informant interviews. However, the research did not include a detailed risk opportunity study which would have analysed the macro and micro economic variables and factors. It therefore has some limitations as its findings and conclusions cannot be termed as absolutely representative.

The findings

The main findings of the study are divided into four main categories namely: the legal framework; the policy priorities; education financing and management, and human resources management.

Four key findings were isolated in the legal framework governing the sector:

1. The pervasive powers of the government (Minister of Education and the President) in the management of the education sector through unprocedural appointments. This is exacerbated by the lack of clear qualification criteria for appointees in the various educational institutions.

2. While all statutes considered impose a requirement on educational institutions to rely on the office of the Controller and Auditor General for financial audits, there is no explicit provision for the auditing of finances in primary and secondary schools.

3. The Ministry of Education and the Ministry of Higher Education, Science and Technology have dual policymaking and implementation roles. However, none of the two roles have been effectively discharged leaving a big lacuna, for instance, in the framework laws guiding the secondary and middle level education institutions.

4. The sector is governed by too many laws that are not harmonised and consequently, contradictory.

The findings on policy priorities and standard setting are twofold. First, the Ministry of Education came up with a laudable Policy Framework for Education, Training and Research, Sessional Paper No 1 of 2005 and the Kenya Education Sector Support Programme. This is commendable given the uncoordinated policy formulation processes that were the bane of the ministry in the past. However, little effort has been done

to operationalise the provisions of the education stakeholder forum and national education advisory council which would have played a key role in enhancing good governance in the sector. Second, most of the projects implemented are not well deliberated, leading to the haphazard implementation of projects for instance, the computer for schools and laboratory projects. Consequently, the ministry is unable to effectively discharge its dual roles of policy making and implementation.

With regard to education financing and management, two key findings are worth highlighting:

1. **Widespread mismanagement and general non-accountability in the sector.** This coupled with over-centralisation of decision-making and the exclusion of important stakeholders has made the governance situation in the education sector dire.

2. **The infrastructural development projects in secondary and primary schools are shrouded in secrecy** and often, the implementation of major projects, for example the computer-for-schools project, and the installation of fire and the laboratory equipment projects, have flouted procurement procedures. Therefore, such processes are open to abuse and exacerbate the integrity risks.

Nonetheless, most governance risks are petty; they tend to be systemic and entrenched as they have occurred over a long period of time. This is critical given that most of the resources misused are earmarked to enhance the efficiency and effectiveness of the education sector as a facilitator of the country's development goals. The main 'beneficiaries' are unscrupulous head teachers/principals, ministry of education and local government officials, contractors, book sellers and service providers, and even corrupt politicians.

Although the two education ministries have initiated numerous reform measures, although most of these could be largely described as 'soft',[1] the human resources management component in the ministries is perhaps the most riddled by governance and integrity risks. There are three main concerns in this area:

1. TheThere are high levels of corruption and integrity concerns in the recruitment, promotion and transfer of teachers.

2. The dual role of the Teachers Service Commission as an employer of teachers and a regulator of the teaching profession are sometimes at odds especially in regard to cases of indiscipline, non-performance and mismanagement. The TSC has not succeeded in registering all teachers, establishing and keeping a register of teachers, as required under the TSC Act section 7(1).

3. Although TSC has initiated some record management mechanisms and policies, it still has a poor reputation in the management of information and there is an urgent need to automate all records and develop an effective documentation, tracking and archiving system.

Overall, the research findings indicate that the governance risks in the education sector are predominantly petty but systemic in nature; they mainly involve comparatively small amounts of resources in relation to other cases of grand corruption in Kenya. However such resources are critical assets to students and the community, and the significance of their misuse or theft cannot be over-emphasised.

Conclusion and Recommendations
The governance risks in the sector call for far-reaching reforms involving the deployment of inclusive management practices, transparency in the allocation and utilisation of resources and accountability mechanisms to communities and other stakeholders. Further, mechanisms for promoting ownership and accountability through participatory planning deserve increased attention.

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1   Soft reforms include processes like the development and publication of service charters, training of staff on integrity and governance issues, setting up departments and hiring consultants to develop a whole range of policies. The hard reforms involve the implementation of policies to ensure timely and effective service delivery, and the sanctioning of errant officials.

As the Kamunge Taskforce on the Harmonisation of the Legal Framework on Education, Training and Research recommends, there is an urgent need to develop a legal framework to ensure that most key policies of the Sessional paper No. 1 of 2005 on governance and management of education and training are incorporated. There is a critical need to set up a National Education Management Authority to regulate and coordinate education institutions, while the Ministry retains the policy making and guidance role. Such an agency will directly supervise sub-agencies like the Kenya Institute of Education, Kenya National Examination Council, Kenya Institute of Special Education and the proposed Kenya Schools Equipment Scheme.

The is a dire need to develop a comprehensive Free Primary Education and Free Secondary Education policies to guide expansion, stakeholder involvement, participation and management outside the political manoeuvres of the day.

However, issues of governance go beyond ensuring better management of the public sector in general and education sector in particular. They include a concern for increasing ownership in the management of the sector by different stakeholders at different levels.

CHAPTER 1: INTRODUCTION

1.1 Background to the study

In 1989, the World Bank described the situation in Africa as a 'crisis of governance'. Since then, the term 'governance' and increasingly 'good governance' has permeated the development discourse.[2] However, there is no single universally accepted definition of 'good governance'. Many scholars and practitioners define 'governance' as a complex multilayered, multidisciplinary set of structures and processes, both private and public linking the local, national and global in management of their affairs and resources.[3]

This is clearly captured in a definition of governance as 'systems of rule, as the purposive activities of any collectivity, that sustain mechanisms designed to ensure its safety, prosperity, coherence, stability, and continuance'.[4] This definition emphasises the utility of 'governance' as an instrument or as a means or method of achieving certain communal normative and practical goals in the public or private sphere. To Kersbergen and Waarden (2004), therefore, governance signifies 'phenomena that go beyond a synonym for 'government' and the *traditional* legal authorities and *accountability* with which the polities are vested'.[5] In other words, 'governance' is not merely authority or management but it also includes a deliberate effort to create a structural and ethical relationship with stakeholders that is inclusive, transparent and responsive to their concerns.

Scholars have advanced three main reasons for this continuous shift from government to governance. First, they have argued that globalisation fast destabilises and blurs the previous hierarchical relationship of accountability and legitimacy and ushers in networks and new institutions.[6] Second, while some scholars agree that globalisation plays a role in the supposed shift, they single out 'contemporary economic globalisation'[7] or disciplinary globalisation[8] where a new form of constitutionalism is the main cause.

They argue that neo-liberalism and its new modes of de-territorialised mass production and retail revolution demands new structures and institutions.[9] Third, the materiality of contemporary economic globalisation as epitomised by new technologies especially digitalisation, biotechnology and nanotechnology has necessitated what some scholars call the 'network society' thus enabling easy linkages of previously far-apart codes.[10] However, it suffices to point out that at the heart of all these, we are witnessing the unfettered elevation of the notion of contract globally and attendant inequality disguised as 'right to property'. On the other hand, communities disgruntled with ineffective state-modelled 'development' are also utilising some of the structures that globalisation has created to form networks of resistance from the *mono-culturalisation* that hegemonic processes dictate.[11]

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2   Pagden, A. (1998) „The genesis of Âgovernanceʹand enlightenment conceptions of the Cosmopolitan World Order‰50, <u>International Social Science Journal,</u>7-15

3   See among others Kersbergen, K.V.,& Waarden, F.V.(2004) „ÂGovernanceʹas bridge between disciplines: Cross-disciplinary inspiration regarding shifts in governance and problems of governability, accountability and legitimacy‰43, <u>European Journal of Political Research</u>, 143-171

4   See Rosenau,J.N. (2000) „Change, Complexity and governance in globalising space‰in Pierre,J. (ed) <u>Debating Governance: Authority, Steering and Democracy</u> Oxford University Press, Oxford. at 171.

5   See Weiss, T.G. (2000) „Governance, good governance and global governance: conceptual and actual challenges‰21, <u>*Third World Quarterly*,</u>795-814 at 795(Emphasis added)

6   See, Kerbergen, Supra note 13

7   See generally, Hirst, P & Thompson G. (2008) Globalisation in Question: The International Economy and the Possibilities of Governance, 4th edn, Polity Press, Cambridge. See also Sklair, L. (2002) Globalisation: Capitalism and Its alternatives, 3rd edn, Oxford University Press, Oxford.

8   See generally, Gill, S. (2003) <u>Power and Resistance on the New World Order</u> (Palgrave Macmillan, London.

9   Ibid. For a different perspective that looks at what ought to be as measured by the criteria of justice and equality see Santos B., & Rodriguez-Gravito, C. (2005) „Law. Politics, and the Subaltern in Counter-Hegemonic Globalisation‰in Santos, B and Rodriguez-Gravito, C. (eds) <u>Globalisation from Below: Towards a Cosmopolitan Legality</u>, Cambridge Studies in Law and Society, Cambridge University Press, Cambridge.

10 For a detailed discussion See Castells, M. (2000) <u>The Rise of the Network Society</u> (2ⁿᵈ edn, Blackwell, Oxford. See Also, Castells, M. (ed) *The <u>Network Society: a cross-cultural perspective</u>* Edward Elgar Publishers, Cheltenham, UK; Northampton, Massachusetts.

11 Santos and Rodriguez-Gravito, Supra note 8 (Emphasis added)

While the debate continues on what governance is and if there has been a shift from government to governance, global institutions including the World Bank and International Monetary Fund have already appropriated it to ensure reduction in costs and increase in predictability of international business. The International Financial Institutions (IFIs) have narrowly conceptualised good governance in econometric, managerial and technocratic terms.[12] According to them, the governance discourse is necessary to ensure 'development' if creditors in the Core are to be certain that peripheral governments repay their debts. Thus, in seeking an explanation for the failed Structural Adjustment Programmes (SAPs) and all other 'development' efforts, initiatives like the World Governance Indicators project have been initiated.[13]

Several of these projects have returned a verdict of 'bad governance' as a cause of the failures hence the current orthodoxy with 'governance' reforms in general and anti-corruption initiatives in particular.

However, while we agree with scholars who opine that as the face of neo-liberalism, the global institutions could only be legitimating their work in developing countries after painful SAPs, [14] we believe that the governance discourse gives all development actors an opportunity to shape national governance. Thus, it has material value to local organisations and initiatives that seek to enhance citizens' participation and equity by limiting the social risks of developmental interventions.

For the purpose of this study, good governance simply entails the process and institutions by which authority in a country or a polity is exercised. In practical terms good governance implies the following:

1. The process through which governments are selected, held accountable, monitored, and even replaced. In measurable terms then we will assess the democratic voice and external accountability of the government. Good governance in this context could mean that citizens are able to claim opportunities and services to realise their rights not least the right to education. This aspect of governance ensures critical citizen input and the democratic voice of the key stakeholders in any process and external accountability. It ensures timely access to information, that is, transparency, accountability and full participation of all stakeholders in making decisions.

2. The capacity of the government to prudently manage public resources and provide services efficiently (often with a view to ensuring equity and universal access) and to formulate and implement sound policies and regulations. This implies that governments and their agents have the capacity to deliver high quality services to citizens. This is the aspect Nyong'o (2002) dwells on when he narrowly defines good governance to mean the effectiveness with which a government performs its work and promotes the public good.[15]

3. The respect for the institutions that govern social, economic, political and cultural interactions.

Good governance therefore must be seen beyond the Bretton Woods Institutions conceptualisation as it is evidently far broader than managing the economic dimension of relationships between the state and society. Eight characteristics distinguish what may be considered good governance: participation; rule of law, transparency; accountability; responsiveness; consensus orientation or institutional pluralism; equity and inclusiveness; effectiveness and efficiency. This report is therefore conceptualised within these aforesaid characteristics. Taken in concert, they minimise governance risks and contribute towards 'good governance'.

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12   Hirst and Thompson, Supra note 6

13   See Rajagopal, B. (1999) „Corruption, legitimacy and human rights: the dialectic of the relationship‰14, <u>Connecticut Journal of International Law,</u> 495-508. For a detailed discussion on Worldwide Governance Indicators see, Kaufman,D., Kraay,A. & Mastruzzi,M.(2007) „Governance Matters VI: Governance Indicators for 1996-2006‰World Bank Policy Research Working Paper No 4280 <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=999979 Visited 20 Sept 2009>

14   Ibid

15   Nyong'o, P. A. Governance, Poverty and Sustainable Development in Africa in Sustainable Development, Governance, Globalisation: African Perspectives (Nairobi: Heinrich Boll Foundation, 2002) P 38-54.

1.2 Organisation of the study

This study critically analyses the governance issues surrounding the education sector in Kenya, paying special attention to the legal, policy and institutional structures and systems that determine how resources channelled in the sector are utilised, managed and services are delivered.

First, the scope of the study, its objectives and the methodologies used are outlined. Second, a governance analysis section follows where applicable and relevant policies, legal and institutional regimes informing the operations in the Kenya education sector are examined in depth. Although policy and law are separate they often interface closely, with certain policy documents calling for the enactment of certain laws, and certain laws stipulating the need to formulate policy documents.

The study scrutinises the laws and policies to identify weaknesses, loopholes and oversights. Gaps and contradictions between laws and policies, as well as the overall efficacy of the strategies proposed are examined and compared with international trends, protocols and best practices in education management.

The study also includes an institutional framework section that examines the institutions governing the education sector and how they operate in reality compared to what the legal and policy frameworks proscribe. This section looks at the extent of [non] compliance to education sector laws, polices and other regimes.

Case studies showcasing some of the governance problems experienced by diverse actors in the education sector have also been presented in this study. The report also providesrecommends possible solutions to the governance problems uncovered byin the study.

1.3 Scope of the work and objectives

While governance risks in the private sector and in NGOs operating in the education sector in Kenya are undoubtedly important, the focus of this study is limited to the public education sector.

Study areas and questions:

Governance Thematic Areas: structural, macro and long term education policy; investment in education, equity in the provision of educational services, legislative, regulatory and institutional frameworks.

Corruption Prevention and Resistance Thematic Areas: regulation, planning and budgeting, donor financing, fiscal transfers, management and programme design, tendering and procurement, construction, operation and maintenance.

Education Sector Realities: Corporate ethical frameworks, public complaints mechanisms, leadership, human resources, service levels and targets, budgeting, procurement, audit procedures.

Integrity Systems:

- What are the existing systems of ensuring integrity and governance risk resistance in the education sector?

- To what degree is management committed to a strong system of internal control?

- Are appropriate reporting relationships in place among the organisational units?

- Is authority properly delegated and limited?

- Are policies and procedures clear to employees?

- Are budgeting and reporting procedures well specified and effectively implemented?

- Are financial and management controls, including the use of ICT-based systems well established and safeguarded?

- What are the practical challenges; what is the extent of the system/policy transfer at all levels in the public education sector in Kenya?

- Are there concerns on crosscutting management issues in the sector e.g. public procurement, project identification, implementation and monitoring?

- How are the financial and political risks apportioned *vis-à-vis* the public and the private sector?

Craft Intervention Mechanisms: Recommendations to respond to institutional, legal and policy weaknesses in the sector, recommendations to strengthen the service delivery practices in the sector, advice on and develop tools to aid in the monitoring of the education sector by main stakeholders.

This study investigates governance/integrity (standards) risks by focusing on:

1. The key role of grassroots stakeholders (school management committees, parents , CBOs etc) in ensuring integrity
2. The key constraints to accountability and transparency in the education sector
3. Theft, embezzlement/fraud, and leakage of public funds in the education sector
4. Flawed tendering and procurement processes
5. Unprocedural admission to colleges and schools
6. Inconsistent registration of schools as public or private and their attendant qualification for the disbursement of public funds.

1.4 Rationale for the study

The need for the study of integrity in the education sector is twofold. First, while several anti-corruption and integrity institutions (such as Kenya Anti-Corruption Commission and the Efficiency Monitoring Unit) and legal mechanisms (such as Anti-Corruption and Economic Crimes Act, Public Officers Ethics Act and Public Procurement and Disposal Act) have been established to fight corruption, malpractices such as embezzlement of funds, fraud and bribery are still rampant in the public sector. Thus institutional, policy and legal frameworks and anti-corruption bodies, have not made significant progress in addressing corruption and governance risks in public institutions in Kenya.

Transparency International's Corruption Perception Index 2009 ranks Kenya as one of the most corrupt countries in the world at number 147 out of 180. Bodies such as the Kenya Anti-Corruption Commission (KACC) themselves face governance and integrity challenges as evidenced by the unprocedural re-appointment of Aaron Ringera as its director in 2009. There is a general public feeling that the investments in the KACC (primarily in huge salaries for the director and top staff) cannot be justified in an environment where old cases of corruption involving top officials go unaddressed and new cases are exposed frequently in the media.

Second, the outright embezzlement of public funds by school heads and frequent cases of fraudulent projects have compromised the quality, relevance, efficiency and effectiveness of service delivery in the education sector. Cases of illegal delays, deductions or diversions of teachers' salaries; the imperfect tendering processes; the reported problems of ghost teachers or pupils and cases of sex for marks or admission to secondary schools or middle colleges are not rare.

The negative consequence of this situation is the high probability of rural and urban poor (who predominantly see public education for their offspring as a means of escaping from the poverty cycle) remaining in poverty. This adversely compromises the delivery of Kenya's Vision 2030 outcomes (and the MDGs). Given that the people living below the poverty line constitute a substantial proportion of the Kenyan population (56 per cent in 2009), poor governance and corruption in the education sector inevitably undermines long-term national development efforts.

Accordingly, an integrity study designed to isolate and document the extent of the governance risks in the education sector will go a long way in facilitating evidence-based and urgent interventions including - but not limited to - civil society advocacy.

In sum, the object of this study is to contribute to the growing culture of evidence-based policy, legislative and practice advocacy with a view to complementing the efforts by national and local level anti-corruption and good governance initiatives. The study adopts a new moralist approach.[16] This approach to corruption and integrity issues looks at the positives of good governance for the bigger society as opposed to the functionalist approach,[17] which looked at corruption as serving a function that normal markets could not or the geographical-morality approach,[18] which tended to paint certain areas especially Africa, Asia, and Latin America as the corrupt.

1.5 Methodology

This study mainly employs a case study approach. Acknowledging that corruption is a fluid and often surreptitious phenomenon and therefore does not lend itself to easy observation or measurement, the case study approach stands out as the most suitable methodology. Through the analysis of anecdotal evidence and cases either in the local press or in the public domain by members of civil society organisations involved in governance issues, TI-Kenya examined and tested the governance risks and suggests possible remedies to corruption and poor governance. This study endeavours to merge theory with practice. It relies on the critical literature review of statutes, policy papers, treaties and reports on corruption, governance and human rights. The study is contemporary in nature as it seeks to assess ongoing cases in the education sector in Kenya with a view to informing theory and practice on anti-corruption and promotion of good governance in the Kenyan public education sector. The study was carried out from August to October 2009 in 29 districts.

1.5.1 Desk Review

A desk review was initially conducted to establish the most recent developments and trends in the education sector, and advise the mode of conducting the quantitative and qualitative phases of the study. The desk review involved a comprehensive study of publications, reports and documentation on education governance in Kenya, and was conducted in two phases: the first phase was an informative review aimed at supporting the design of study tools, while the second phase was an analytical review which sought to answer some of the objectives of the study.

1.6 Limitations to the study

The main challenge to this study is the limited access to information; the Official Secrets Act and the lack of a freedom of information law limits access to vital information and reports from the ministry of education and other relevant public institutions. As such, this report relies on information that was surrendered to researchers by benevolent informants or information that is available in the public domain.

The other challenge is the fluidity of the concept of corruption and definitional problems attached to integrity studies. Further, the study did not employ a detailed risk analysis which would have looked at both the macro and micro economic variable and factors, therefore its conclusions are not absolutely representative.

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16   Kauffman et al supra 12.
17   See, Tanzi, V., (1998) „Corruption around the world: causes, consequences, scope and cures‰45, IMF Staff Papers, 559-594 < http://imf.org/external/Pubs/FT/staffp/1998/12-98/pdf/tanzi.pdf Visited 20 Sept 2009>.
18   See, Alai, P. (2000) „The Legacy of geographical morality and colonialism: A historical assessment of the current crusade against corruption‰33, <u>Vanderbilt Journal of Transnational Law</u>, 877-904. On the use of polychromic to mean it is tied in the social milieu See, Gesteland, R (2002) <u>Cross-cultural Business Behaviour</u>, 3 revised edition, Copenhagen Business school press, Copenhagen. Alai (200) supra.

CHAPTER 2: THE LEGAL FRAMEWORK GOVERNING THE EDUCATION SECTOR

2.1 Introduction

There are several statutes governing the education sector in Kenya. For purposes of analysis, these statutes may be categorised as Framework, Sectoral and Ancillary Acts. **Framework Acts** are intended to provide a basis for the establishment of key institutions and overall coordination of broad aspects of education. This study has identified the two key framework statutes i.e. The Education Act and the Universities Act. Sectoral statutes are meant to govern special sectors or issues regarding education. For the purpose of this study, we have analysed **Sectoral Statutes** creating specific educational institutions, for example, the University of Nairobi Act and Kenya Literature Bureau Act. **Ancillary Statutes** comprise laws that may not be specifically intended for the education sector, although their applications have direct consequences to the sector. They include the Public Procurement Act, Anti-Corruption and Economic Crimes Act, Public Officers Ethics Act among others.

This section provides an exposition of the legal framework by examining briefly each of the categories of statutes as hereinabove. The key aspects of governance that merit critical analysis are laid out. The governance risks that impact the integrity of education institutions are also explored in this chapter.

2.2 Framework Statutes

The principal statute is the Education Act[19]. The Act was enacted in 1970, ostensibly in line with the recommendations contained in the Ominde Report of 1964. The Act provides for the overall governance framework of the education sector including the institutional framework, registration and inspection of schools and examination as well as the examination process.

The Act provides for two categories of schools, that is, public and private. Public schools are referred to as aided or maintained schools and as such, are entitled to receive financial assistance from the ministry and personnel from the Teachers Service Commission.

Private schools on the other hand are referred to as unaided schools. The minister is bestowed with powers to register and revoke registration of private schools[20]. Thus, the legal existence of such schools is dependent on this ministerial power.

The Act creates the following institutions:

The Minister

The minister is the overall policymaking organ with ancillary functions of coordination and promotion of education[21]. The policymaking functions of the minister include development of an education plan, providing for the conduct of examinations and promulgation of regulations regarding the conduct and management of schools. The minister through the ministry plays a direct role in the implementation of the education policy through appointments to the management of public schools, inspection of schools and management of schools' financing system. In discharging his/her mandate, the Minister may establish advisory councils on the basis of regional or thematic considerations.

District Education Board (DEB)

The District Education Board is the organ through which the minister is expected to implement educational policy at the district level.[22] It comprises not less than ten appointees of the minister representing the ministry, local authorities, managers & sponsors and trade unions from a given district. The DEB has

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19   The Education Act, Cap 211 of the Laws of Kenya
20   Ibid Part IV
21   Ibid Section 3
22   Ibid Part IX

responsibilities over supervision of schools, receiving and managing grants, developing and implementing approved plans for the promotion of education and advising the minister on the establishment of new schools.

Local Authorities
As provided for in the Education Act, part IX, the Ministry of Education (MoE) can entrust a local authority to run education affairs within their jurisdiction. This empowers local authorities to set-up and run schools as part of the public education system. In this regard, the City Council of Nairobi and Mombasa Municipal Council are notable examples of local authorities under this category. However, the Minister may withdraw such entrustment under Section 5 of the Act.

Dr. Jane Wairimu Nyaga (City Councillor) and Mrs. Tabitha Kamau
(Chief Advisor to schools City Education Department)

Local authorities discharge their mandate through the Municipal Education Officer and Education committee constituted by appointed community representatives, sponsors[23] and other appointees of the minister.

Board of Governors[24] and School Committees[25]
These are the primary institutions of governance for public schools in Kenya. The BOG is established through a ministerial order comprising not less than 5 people- appointees of the Minister and representatives of the sponsor. The Minister is empowered to create one board for schools, declare a

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23   These are institutions that established schools (e.g. churches) prior to the Act but eventually
        transferred the same to the Ministry
24   Ibid Section 10 & 12
25   Ibid Section 9

BOG body corporate, suspend a board for impropriety and appoint an administrator to oversee a school if a board is suspended.

On the other hand, the school committee is responsible for the overall management of schools under the jurisdiction of local authorities. They comprise representatives of local authorities, sponsors and members of local communities.

The Universities' Act[26]
The Universities' Act is the principal legislation governing university education in Kenya. It was enacted pursuant to The Report on the Presidential Working Party on the Second University in Kenya (MacKay report, 1981).

The Act categorises universities as either public (maintained or assisted out of public funds) or private (established by funds other than public money). The Act creates the Commission for Higher Education (CHE) as the organ responsible for governing broad aspects of university education in the country including registration and accreditation of universities, planning, promotion and quality control of university education and advising the government on financing of university education. The CHE consists of presidential appointees, representatives of key government departments and co-opted members. The Act also provides for the procedures and operations of the CHE.

The power to establish a public university is vested with the Minister of Higher Education upon the advice of the CHE. However, private universities are established by a charter granted by the President[27].
The charter is the constitutive document for a private university and it contains *inter alia* the objectives, membership, governance, framework for regulations, and financial management of the university. The power to amend and revoke the charter is vested exclusively with the President.

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26   Cap 210B
27   Part IV

2.3 Sectoral Statutes
The Teachers Service Commission Act (TSC Act)[28]

This Act provides for the creation of the Teachers Service Commission (TSC) as the body responsible for regulating the teaching profession and acts on behalf of the government as the employer of teachers in public schools. The Commission comprises not more than 5 commissioners appointed by the Minister. To prevent a conflict of interest, teachers are excluded from appointment as members of the commission. Members of the commission who retire are precluded from joining the teaching profession for a period of three years.

The TSC is responsible for recruiting, transferring, promoting and dismissing teachers[29]. It also represents the government in the Teachers Service Remuneration Committee which periodically determines the remuneration payable to teachers[30].

With regard to regulation of the teaching profession, the TSC discharges this function in three ways; standard-setting and disciplinary enforcement. TSC is empowered to develop and apply a code of conduct governing the behaviour of teachers, review the standard of education, training and fitness. This enables the TSC to control the conduct and quality of teachers entering profession. TSC is empowered to register teachers (or deny registration) and maintain a register of teachers. Teachers who are found to have violated the code of conduct can be de-registered. By exercising its powers of (de)registration, the TSC is able to control the profession. Enforcement of discipline within the profession is to be carried out at the first instance by the TSC and on appeal, by the Teachers Service Appeals Tribunal. The Act provides for the due process safeguards such as fair notice, right to be heard, right to appeal among others.

Statutes establishing public universities

Public universities are statutory bodies[31]. An analysis of statutes establishing public universities reveals generic characteristics that include:

- Functions and objects that relate to the provision of university education, promotion of research and dissemination of knowledge and examination of students.
- An institutional framework that comprises the chancellor (titular head), vice-chancellor (chief executive), deputy vice-chancellors, the Senate (manages academic issues) and university council (governing organ).
- Financial management provisions that allow the controller and auditor general to audit the books of accounts of the university.
- The president is the chancellor of public universities, (though s/he can appoint another person to the position) and university council members are the presidential appointees.

Statutes establishing specialised educational institutions

These include the:

Kenya Literature Bureau Act (Cap 209) - creates the Kenya Literature Bureau as a parastatal publishing house that produces literary and educational materials.

Science and Technology Act (Cap 250) - establishes the National Council for Science and Technology (comprising government representatives and ministerial appointees) with the mandate of advising the government on a national science policy and promoting research and technology activities. The Council regulates science and technology activities and provides for research grants for educational institutions.

Higher Education Loan Board (Cap 213A) - established the Higher Education Loans Board (HELB) to manage a fund that provides grants to students pursuing higher education within and outside the country.

Kenya National Examinations Council Act (Cap 225A) - this Act provides for the establishment an

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28   Cap 212

29   Ibid Section 4(a)

30   Ibid Section 13-15

31   See University of Nairobi Act Cap 210, Kenyatta University Act Cap 210C, Moi University Act Cap 210A, Egerton University Act Cap 214, Maseno Universty Act Cap 210D, Masinde Muliro University of Science & Technology Act Cap 210F, Jomo Kenyatta University of Agriculture & Technology Act Cap210 E

examination body (Kenya National Examination Council) to administer national examinations for primary, secondary and tertiary institutions. The Council is dominated by government representatives and ministerial appointees. The secretary who is also the chief executive of the body is appointed by the Minister.

2.4 Ancillary Statutes

These include the :

Anti-Corruption and Economic Crimes Act (cap 65) - it creates the Kenya Anti-Corruption Commission (KACC) with the mandate of investigating and forwarding to the AG for prosecution, persons suspected to have engaged in corruption and economic crimes. The Act outlines offences constituting corruption and economic crimes. Of these, bribery[32], deceiving by agent[33], conflict of interest, abuse of office and bid-rigging are very relevant to the management of educational institutions, wherein the managers act as agents to the principals (the government).

Public Officers Ethics Act (POEA) Cap 183- The POEA was enacted in 2003 to enhance integrity within the public service. It sets out a general code of conduct and ethics which among other things sets standards for the discharge of public duties, prohibits unethical behaviour such as conflict of interest, political partisanship, nepotism, sexual harassment among others[34]. Pursuant to the Act, the Teachers Service Commission Code of Conduct governed the behaviour of teachers and employees of TSC. The Act requires public servants (including teachers and education officials) to submit wealth declarations, a tool useful in tracking illegally accumulated wealth. Pursuant to the Act, the Teachers Service Commission Code of Conduct governing the behaviour of teachers and employees of TSC. The Act requires all public servants (including teachers and education officials) to declare their income, asset and liabilities, including those of their spouses   and dependent children. Failure to declare their wealth is tantamount to a criminal offence liable to a maximum fine of Kshs 2 million ($25,000). While the law has been in force for the last six years it is largely unimplemented given that there is no agency tasked with and capable of verifying the accuracy of the filed returns. A recent research by the Efficiency Monitoring Unit revealed that nearly 25 per cent of public servants were routinely not filing their wealth declaration forms. The main culprits were the legislators and the judiciary. An attempt by a former minister of justice and constitutional affairs to empower the Kenya Anti-Corruption Commission to verify the declaration forms in 2007 was thwarted by parliament. However, as amended the law requires wealth declarations to be filed after every two years. Apart from lack of a verifying agency, there are no mechanisms to monitor whether teachers and other public officers in the education sector are amassing wealth illegally.

Public Procurement & Disposal Act-PPDA- Act No 3 of 2003- This was enacted in 2003 as part of the public sector reforms initiated by the NARC government. The Act governs all aspects of procurement and disposal of unserviceable goods in the public sector. It seeks to enhance efficiency, transparency and accountability in the process. The Act brings public procurement entities (including educational institutions) under the ambit of the Public Procurement Oversight Authority (PPOA) and outlines the various procedures to be adhered to. Corruption and conflict of interest are among the unethical practices prohibited in the Act. If applied to the letter, the Act has the potential for improving procurement within the education sector.

2.5 Critique of the legal framework

A critical analysis of the current legal framework reveals numerous conflicts, ambiguities and gaps. This was discussed in detail by the Kamunge Taskforce on the Harmonisation of the Legal Framework on Education, Training and Research.[35] Below are the specific concerns that have a great effect on the governance of the sector:

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32   Section 39 of ACECA criminalizes soliciting, giving and receiving inducements and rewards
      corruptly
33   Ibid Section 41 criminalizes deception by agent which results in loss or detriment to the principal
34   Part IV of Cap 183
35   Republic of Kenya (2008), Harmonisation of the Legal Framework on Education, Training and
      Research, Report of the Task Force chaired by James Mwangi Kamunge.

Pervasive and intrusive powers of the Executive (Minister and President)

In all the framework and sectoral statutes, the minister responsible for education or higher education is vested with excessive and discretionary powers that cannot be reconciled with the principles of democratic governance. In most educational institutions, the Minister has the power to appoint majority if not all members of the respective governing bodies and chief executives. In fact the legal framework provides for the centralisation of authority and decision making at the ministry headquarters. The provincial, district and institutional governance and management bodies must refer many cases for decision making to the ministry headquarters.[36]

For some institutions like the TSC, and those under the Education Act, the Minister can exert overwhelming control by giving directions of general character as to the exercise of functions granted to the respective institutions on matters, which in his/her view affect the 'public interest'. This power essentially undermines the overall independence of such vital educational institutions.

This state of affairs presents an obvious governance risk. The minister is a political appointee by virtue of the Constitution of Kenya. Given the weaknesses in the legal frameworks as delineated above and the attendant lack of checks and balances, the person designated as the minister in charge of education risks creating a patronage system in the organisations and institutions under him/her.

Having been appointed without public scrutiny on their capacity/qualifications or suitability for such public office, such appointees will owe loyalty first and foremost to the minister, and least to the institutions and stakeholders they are supposed to serve. It must be noted that the Kenyan Parliament has taken exception to the general system of ministerial appointments and is in the process of reviewing them. According to widely reported media accounts, Parliament has noted that ministers in the Grand Coalition Government have interfered in the process of appointing important office holders in their respective ministries and have been found to employ political allies and relatives to top positions.

FACT BOX 1

The enormous power of discretion vested on the minister is subject to abuse. Unfortunately, the statutes examined have not laid down parameters for the application of the discretionary powers of the minister. To prevent abuse, citizens have recourse by invoking the supervisory powers of the High Court or pursuing judicial review proceedings through which the court can lay down the said parameters. In addition, citizens can petition the Legislature to exercise increased oversight over ministerial appointments

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The limited space for meaningful stakeholder involvement in appointing members of governing organs of most educational institutions (apart from the TSC) vis-a-vis the preponderant role of the minister in the same denies the education sector an important mechanism for ensuring public participation/civic input and therefore enhancing transparency and accountability. In this regard, the education sector falls way behind other sectors (e.g. water and environment etc) that have embraced this concept following recent reform initiatives with considerable success.

Conflation of policymaking and implementation roles of the Ministry of Education

As explained elsewhere in this report, the Education Act confers on the minister of education both policymaking and implementation roles. This imposes a heavy burden on the ministry and thus it is possible that some mandates may be neglected for lack of capacity or coordination challenges associated therewith. Where the ministry is unable to discharge a particular mandate due to the aforesaid problems, it is possible for bureaucrats to take advantage of the situation and colonise the neglected mandates for personal gain.

Another related issue regards the limited accountability that can be demanded from an entity that plays the dual roles of policymaking and implementation. Such an institution is technically incapable of

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36   Kamunge Task force Report at xxii

undertaking an objective evaluation of its own policies. Due to that, enforcement of accountability is rather difficult.

Overlapping roles

There are far too many institutions involved in the education sector. This creates overlaps and confusion in mandates leading to suboptimal deployment of limited resources and jurisdictional conflicts. For instance, the KIE is mandated to undertake training and education of teachers, whereas the TSC is supposed to review standards of education and training of teachers. Ideally, the two roles are extremely similar and thus one institution should be better placed to manage the same. It is not clear why the Minister of Higher Education has the power to establish a public university, yet the President retains the power to upgrade an educational institution into a constituent college of a university without reference to the minister. It is also not clear why there is a dichotomy in the powers to establish public and private universities (between the minister and President respectively).

Audit Provisions

All statutes considered impose a requirement on educational institutions to rely on the office of Controller and Auditor General (CAG) for the audit of their finances. However, there is no explicit provision for audit of finances in primary and secondary schools. This arrangement creates a critical governance risk. Yet, there are far too many educational institutions falling under the ambit of the CAG. Given the capacity at the CAG, it is not unusual that audit reports for the sector are usually released two or three years after the expenditure under review. It is therefore difficult to address integrity issues emerging from audit reports on a timely basis and this erodes the importance attached to the audit function.

Governance and management

The Education Act does not provide for the Minister to cooperate with parents, communities, sponsors, the civil society and private sector who are stakeholders in education and training.[37] It also lacks explicit mechanisms for consultation between the Minister of Education and relevant ministers responsible for education and training in other government ministries. This situation is made dire by the concentration of decision making over management and professional matters at the Ministry Headquarters. There is, therefore, a need to establish a national institutional framework to enable various stakeholders to constructively consult and collaborate on matters of education and training as recommended by the national stakeholders' conference and the Sessional Paper No 1 of 2005 and decentralise the delivery of services to the districts and institutional governance and management.

Access to justice

Integrity is enhanced where stakeholders are able to seek remedial actions for breach of public duty owed by duty bearers. Effective enforcement of standards of performance and duty of care are vital judicial functions that promote accountability and transparency. In this regard, institutional and legal frameworks of public sector institutions ought to provide clear access to justice mechanisms in order to achieve the foregoing.

Other than the Teachers Service Appeals Tribunal, there is no other organ with comparable independence established to provide direct access to justice outside the formal judicial system. Thus, stakeholders are in the first instance forced to seek judicial review remedies from the High Court when challenging administrative decisions from educational officials or the minister. The challenges faced in accessing justice in Kenya's court system (e.g. delays, corruption, high costs etc) adversely affect those aggrieved by decisions and actions of the educational bureaucracy. This calls for administrative tribunals at the sectoral level as a means of enhancing access to justice. The idea of an education tribunal with jurisdiction to determine cases from the entire sector merits serious consideration.

Access to information

Some of the statutes interrogated impose a duty on educational institutions to produce and hold custody

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37   The Education Act section 10,11 and 12 and BOG Order No 10 provides for the appointment of BOGs however they lack a wide representation of relevant stakeholders.

of public information (e.g. the TSC is required to keep a register of teachers; the ministry of education is supposed to maintain a register of registered schools, financial records etc). There is however no requirements as to providing public access to this information. This is vital in ensuring transparency in the management of public affairs in the educational sector. It should be a mandatory requirement for private schools to publish information on their financial status to protect parents against monetary losses to unscrupulous managers.

Further, the various funds given to schools and other educational institutions should be publicised as is the practice with other funds such as the Local Authority Transfer Fund which publishes such information in the media.

Appointment of chief executive officers of educational institutions
The chief executive officers of educational institutions are ministerial appointees. There is no objective standard imposed on the minister in determining the capacities of the holders of these critical institutions. This deviates fundamentally from corporate governance norms that require the governing body (board) of an entity to appoint the CEO. In such arrangements, the CEO owes allegiance more to the appointing authority than to the governing body of his/her respective institution. One cannot rule out partisan political considerations in the appointments of the CEOs.

It is, however, encouraging that the chancellors of public universities, to whom the power of appointing vice-chancellors is bestowed, have been engaging human resource firms to select candidates for the positions. This nascent tradition is not founded in law therefore it can easily be discarded by retrogressive chancellors.

Lack of framework statutes for secondary and middle level education institutions
While the Education Act, section 10, 11, 12 and BOG Order No 10 and Schedule I and II provide for the management of public secondary and tertiary education and training institutions, it does not provide for the appointment of BOGs for all educational institutions, especially private and community institutions.

The framework statutes currently in place govern only primary and university education. The absence of such Acts for other institutions means that the framework of governance of these institutions is left to the bureaucrats at the ministry to determine thorough policy directives and arbitrary processes. However, the performance of the ministry in terms of policy development and transfer is rather suboptimal (as will be discussed in the subsequent sections of this report). These two levels of education are therefore exposed to governance risks due to the absence of a comprehensive framework dedicated to their operations. The BOGs lack a wide representation of relevant stakeholders and the Act does not provide for the qualification, experience and integrity criteria for those appointed as members.

CHAPTER 3: THE FINDINGS OF THE INTEGRITY STUDY

3.0 Introduction

The mandate of managing of the education sector is vested on the Minister for Education[38]. The powers and the legal mandate outlined in the previous chapter. This mandate can be clustered into three broad areas; policy, planning and standard-setting, resource allocation and management and general superintendence over the education sector.

In discharging this mandate, the Minister of Education has divided the ministry into four Directorates that is, the Directorate of Basic Education, Directorate of Policy and Planning, Directorate of Quality, Assurance and Standards and the Directorate of Secondary and Tertiary Education.[39] These directorates fall under the office of Education Secretary (who reports to the Permanent Secretary) and were established as part

Mr. Andiwo Obondoh-EYC Chairman, during the celebrations of the day of African Child

of ongoing educational reforms. Thereafter, the Secretary of Education and the directors were recruited through a transparent and competitive process[40]. However, it must be pointed out that although the establishment of an independent directorate of secondary and tertiary education is commendable, it is not informed by any policy or legal framework. In fact it goes against the principle of the Sessional Paper No 1 of 2005 which states in part that the government will "in the long term work towards

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38 However, following formation of government in April 2008 the Ministry of Education was split into two- Ministry of Basic Education and Ministry of Higher Education, each headed by a Minister

39   For details on the functions of each of the directorate see www.education.go.ke accessed 12 Oct,2009

40   See Republic of Kenya, *Kenya Education Sector Support Programme 2005-2010*, Ministry of Education, Science & Technology 2004 unpublished

integrating secondary education as part of basic education,"[41] unless efforts are clearly developed to show integration.

The Ministry of Higher Education, Science and Technology whose mandate includes science and technology innovation policy, research development, research authorisation and coordination of technical education comprises three directorates and one semi-autonomous government agency - the National Council for Science and Technology (NCST). These are the directorates of Technical Education, Research Development and Higher Education.

The Directorate of Basic Education is responsible for early childhood development, specific programmes on schools' physical and learning infrastructural development and primary teacher recruitment and training. The Directorate of Policy and Planning is responsible for policy development and review, statistics and coordination of programmes and reforms. The Directorate of Quality, Assurance and Standards (DQAS) is charged with the inspection of schools, examinations and development of standards. The Directorate of Higher Education (DHE) oversees all policy, coordination and financing aspects of secondary and tertiary education whereas the Directorate of Technical Education is responsible for technical and vocational institutions, career guidance and liaison with the industry.

Educational programmes in the country are implemented through Provincial and District Education Boards (DEBs) in those respective levels while boards of governors, school management committees and parent teacher associations (PTAs) are in charge of school management.

This section will examine the functions undertaken by the Ministry of Education and critically examine the governance risks that have a direct bearing on integrity at the national, district and school levels.

3.1 Policy priorities and standards setting in the education sector

The process of setting policy priorities is discernible in two ministerial mandates- development of policy documents and programmes for the education sector. In the last few years, the need to reform the education sector was prioritised, leading to the publication and subsequent adoption of the Sessional Paper No. 1 of 2005 on a Policy Framework for Education, Training and Research for meeting the challenges of Education, Training and Research in Kenya in the 21st Century. Prior to this, the government had identified education as one of the key components of the social pillars contained in the Economic Recovery Strategy for Wealth and Employment Creation (ERSWEC) 2003-2007.[42] This was also highlighted in the Kenya Vision 2030, which now forms the policy basis for undertaking broad based reforms within the sector. Other policy documents governing the sector include Medium Term Expenditure Framework and the annual budget.

3.1.1 Kenya Education Sector Support Programme (KESSP)

Perhaps in recognition of the uncoordinated policy formulation processes that were the bane of the Ministry in the past, the government initiated the Kenya Education Sector Support Programme (KESSP) as a collaborative effort between the government and development partners using the sector-wide approach (SWAP). The programme comprising of 23 investment programmes is based on the rationale of the overall policy goal of achieving Education for All (EFA) and the Government's commitment to the attainment of Millennium Development Goals (MDGs). As a sequel to the Sessional Paper No 1, KESSP provides a comprehensive framework for programme implementation. It also constitutes the first stage of the implementation of the new policy framework as laid out in Sessional Paper No 1 of 2005[43]. The

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41   See Sessional Paper No 1 of 2005, Meeting the Challenges of Education, Training and Research in Kenya in the 21st Century, A policy Framework for Education, Training and Research at p45.

42   Government of Kenya, (June 2003) Kenya Economic Recovery Strategy for Wealth and Employment Creation 2003-2007, Ministry of Planning and National Development, Nairobi, Kenya

43   Republic of Kenya, (July 2005) Kenya Education Sector Support programme 2005-2010, Delivering Quality \Education and Training to All Kenyans, Ministry of Education, Science and Technology, Nairobi, Kenya at

Sessional Paper proposed *interalia* the need for a lean education and training management structure at the ministry headquarters to provide policy direction, resource mobilisation, planning, quality assurance, maintenance of standards, coordination and decentralisation of delivery of services to the districts and educational institutions.

In terms of governance issues, the KESSP identified the need to enhance accountability and transparency in the education sector. This was to be achieved through the establishment of an inclusive and coordinated management framework that brings together the government, development partners, private sector and civil society. It proposed vertical and horizontal accountability mechanisms. [44]The programme proposed the establishment of the following institutions:

Education Stakeholder Forum (ESF): this would comprise the Minister, Permanent Secretary and representatives from the NGOs, CBOS, FBOs, private sector and trade unions. ESF's function would be to provide an institutional framework for coordination, information sharing between the government and non-state education providers as well as receive progress reports on the implementation of KESSP. This forum was expected to meet at least twice a year or when need arises.[45] **There was no evidence that this forum has been constituted and operationalised since the inception of KESSP.**

National Education Advisory Council (NEAC): this would comprise the Permanent Secretary and representatives from universities, private sector, NGOs, school head associations, National Environment Management Authority (NEMA), KIPPRA, KNUT as well as eminent industrialists and educationists. The Council was supposed to advise the Minister, mobilise resources and advocate on key issues regarding the education sector. The council ought to hold meetings twice a year or when need arises. **There was no indication during the research that the NEAC has been constituted and operationalised**.

Coordination structures: These included the Government- Development Partners Coordination Committee (to monitor KESSP and address resource mobilisation and utilisation issues), Inter-ministerial Coordination Committee (to coordinate efforts and roles of government departments with a stake in education and training) and KESSP Secretariat (to manage the implementation process of KESSP). Of all these coordination structures the consultative GoK-Development Partners Committee and the KESSP steering committee are the only ones operational. However, these structures were to comprise government representatives exclusively. This structural design portends governance risks as it allows the government to plan, implement and monitor itself.

The proposal to create ESF and NEAC were a significant departure from the manner in which the education sector has been governed. By including non-state actors in these two entities, it was expected that accountability would be upheld. However, these structures have not been constituted, due to the slow pace of reform implementation/policy transfer in the Ministry of Education. The proposed National Education Board has also not been made operational. In the absence of stakeholder participation in the policy structures of the ministry, it is difficult to ascertain the extent to which public interest is safeguarded in policy decisions that are made within the ministry.

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44   Ibid at xxxii-xxxxiii
45   Ibid at xxiii

> **FACT BOX 2**
> In the FY 2005/2006, the MoE set up the KESSP Primary School Infrastructure Investment Programme (SIIP) which focuses on improving existing school infrastructure, particularly in ASAL and high density areas with a budget of Kshs 5,786,920,000.00. The programme has two components-school improvement grants and construction of new primary schools. The programme is timely and likely to help schools in informal settlements and ASAL areas to develop given the inequity of the FPE that gave resources to schools on the basis of the enrolment figures. However, the initiative has been shrouded in mystery as the MoE has within the last financial year sent the funds to schools and then followed the disbursement with an official communication that the cash was erroneously sent to the school and the head teacher should await new instructions on how to treat the money. Ministry officials indicated that such correspondence was aimed at ensuring that proper management structures are established before expenditure.

Project development and management: The case of national schools

Water, Sanitation & Hygiene Promotion

In 2009, the Ministry launched the National Schools Water, Sanitation and Hygiene Promotion Strategy 2008-2015. The programme seeks to improve the learning environment in schools by providing safe water, sanitation facilities and hygiene promotion at the cost of approx Kshs 7.955billion[46]. These funds are to be sourced from the government, development partners and parents.

However, the initiation of the programme (design and planning) was largely undertaken by government and development partners. The parents, who are expected to provide a significant portion of the project funds, were not represented in the task force that designed the programme. Similarly, private sector and civil society organisations were excluded, notwithstanding the invaluable contribution they would have made in the design process.

The strategy provides for an implementation structure designed at three levels; national, district and school. It is noteworthy that parents and other stakeholders are not included in the national steering committee, which comprises government representatives only. The DEB (which is heavily dominated by government appointees) is to oversee the district level implementation of the programme. Thus parents are only effectively represented at the school level.

> **FACT BOX 3**
> There are indications that the person who was hired, but not through a competitive process, as a technical advisor to the Ministry of Education on matters of sanitation has once again, through single-sourcing been offered a tender to design public toilets/latrines for schools in collaboration with an architect from Ministry of Public Works seconded to the MoE. However, the ministry in a rebuttal indicated that the technical advisor was recruited competitively by DFID.

3.2 Education financing In Kenya

Nearly 73 per cent of government social sector expenditure and 40 per cent of the national recurrent expenditure is channelled to the education sector. Additionally, households spend between 5 and 7 per cent of GDP on education[47]. These enormous resources must not only be managed efficiently but their output must be of commensurate value to the immediate beneficiaries and society at large.

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46   See Republic of Kenya, National School Water, Sanitation and Hygiene Promotion Strategy 2008-2015, Ministry of Education 2009 Unpublished

47   Radical Reform for Kenya's Education Sector: Implementing Policies Responsive to Vision 2030

3.2.1 Integrity risks in the budgetary process

The Ministry of Education has over the years seen a steady increase in its budgetary allocations. However, the ministry has consistently under-spent its allocations for development spending as the figures below indicate.

Financial Year	Under-expenditure(Kshs)	As % of total budget
2002/3	617,707,037.80	41%
2003/4	2,984,288,857.75	35%
2004/5	2,141,369,096.40	36%
2005/6	3,295,000.000.00	33.8%

Source: Controller and Auditor General Reports

The reasons given for the under-expenditure include:
- Failure by donors to release funds which had been entered as 'appropriations- in-aid'
- Incessant delays by the Treasury to release funds
- Delays in the signing of project documents resulting delayed release of funds
- Non-submission of expenditure returns by donors: some donor funded projects account directly to donors and forward copies of their returns to the ministry. By the time the audit of the Ministry of Education is carried out, the returns from donors are usually not received by the Ministry and thus this expenditure is excluded from the audit report.

These present serious governance risks. Firstly, the delay in the receipt of funds has resulted in controversial payments of pending bills to contractors for education development projects. Contractors have forced the government to incur financial penalties for delayed payments for projects that had been allocated funds which were not released subsequently by Treasury.

CASE STUDY 1

A contractor was appointed in 1992 to undertake construction work at the Mosoriot Teachers Training College in Rift Valley province. The contractor completed the work in 1993 and relevant certificates were issued. However, a bill of Kshs 275,000 was not settled due to lack of funds. By the time the contractor threatened to sue the government in 2002, the bill had accumulated to Kshs 2,270,193. This amount was eventually settled in the FY 2004/5.

In a similar case, Egerton University paid out Kshs 808 million representing 202 per cent of the contract amount for the construction of buildings that were never completed, owing to delays in honouring the termination of contract agreement for similar reasons. It later emerged that this agreement was reached by the university without exercising due diligence. The project has stalled for 19 years and it is unlikely that the structures can be put into good use in spite of payment of the contractor's bill and penalties. The more viable option would have been to extend the contract and source resources to complete the construction.

Secondly, pressure on ministry officials to avoid returning unutilised funds to the Treasury has resulted in carrying forward expenditure from the current to the next financial year. This entails deducting from the budget surplus (constituting net under-expenditure) the final payments to contractors before the end of the financial year (June 30th). These payments are however settled in the subsequent financial year, upon completion of the project. The following table shows the trends discernible from the Controller and Auditor General (CAG) reports:

FY	Expenditure C/F (Ksh)
2002/3	1,400,032,305
2003/4	831,814,167.65
2004/5	1,330,000,000.00

Source: CAG reports

This budgetary practice distorts financial accounting by reducing or wiping out surpluses (under-expenditure), therefore concealing delays and poor performance by contractors – a common practice in development projects in the education sector. The practice can lead to questionable payments since the projects are usually concluded outside the contract period.

Thirdly, the trend has resulted in irregular payments to contractors in contravention of the government's financial regulations and parliamentary approvals as demonstrated in the case study below.

CASE STUDY 2
In the FY 2003/4, Kshs 31,299,052 was allocated for the construction of Mtihani House (headquarters of the KNEC) before June 30th 2004 without the required parliamentary approval. In the following year, Kshs 28 million was paid to KNEC for the construction of Mtihani house on 30th June without issuance of the requisite certificate of work done by relevant authorities. This constituted an irregular payment.

In the FY 2004/5, the government paid out Kshs 6.5 million to the Kenya Institute of Education for onward payment to a contractor for new textbook lists apparently printed in FY 2003/4. The CAG however could not ascertain whether or not this work was completed and therefore it was regarded as an irregular payment.

3.2.2 Un-surrendered imprest

Imprest is money advanced to a person (imprest holder) for expenditure to be incurred in respect to a particular purchase or activity. The imprest holder is expected to account for an imprest within 48 hours after expending the money, according to existing government financial regulations. From the CAG reports, it is evident that education officials within the ministry have persistently been flouting this regulation by failing to surrender imprest within the stipulated time.

In FY 2004/5, imprests worth Kshs 24.4 million had not been surrendered before the end of the financial year, out of which 54.5 per cent was held by junior officers (Job Group L and below), 42.6 per cent by senior officers (Job Group M and above) and 2.8 per cent by politicians (minister and assistant ministers). The figure was however reduced to Kshs 10 million by March 2006. In FY 2005/6, Kshs 25 million of outstanding imprests were reported out of which 26 per cent were held by senior officers (job group M and above), 68 per cent by junior officers (Job group L and below) and 5 per cent by politicians. By June 2006, only 11.8 per cent of the imprest had been recovered.

An un-surrendered imprest constitutes an irregular advance payment to a staff. Thus, reluctance or failure by public servants to surrender imprests is a clear breach of integrity and constitutes an offence under the Public Officers Ethics Act. The persistence of the malpractice indicates that the law has not been applied sufficiently to deter officials from using the imprest system for personal aggrandisement.

It is worrying that politicians (who are the key policymakers in the ministry) are responsible for failure to account for the largest imprest (per capita) money. This sets a bad precedence within the ministry and diminishes their ability to demand accountability from their staff.

3.2.3 Irregular allowances

CASE STUDY 3

An analysis of various audit reports of the MoE also reveals that in some instances, officers were paid allowances in contravention of existing financial regulations. For instance, in FY2002/3, meal allowances totalling Kshs 11,652,252 were granted to MoE staff and charged to other vote heads. The allowances were apparently claimed for work that falls under the normal job responsibilities of the said officers and this constitutes irregular payments, as per the provisions of the Public Officers Ethics Act. To date, there is no evidence from the KACC annual reports that action has been taken against any officer as the Act stipulates.

3.2.4 Irregular payments to contractors

Irregular payments to contractors for services feature significantly as an integrity issue within the government's procurement system over the years. Analyses of the CAG reports for the last few years reveal that the issue is also prevalent in the MoE expenditure. Irregular payments entail overpayments, payments for goods and services not delivered or payments not sanctioned by the relevant authorities.

CASE STUDY 4

During the FY2002/3, a total of Kshs 8,048,282 was overpaid to a contractor for landscaping and constructing a sports facility at Bondo Teachers' College. The government paid the contractor in September 2002 a further sum of Kshs 15,148,159.55, following a recommendation by a task force set up to review pending government bills. The payments were made although the quality of work was deemed unsatisfactory or incomplete. No officer has been brought to book for this irregular payment, nor has the government recovered the excess payment from the contractor.

The Egerton University case (mentioned in this chapter) is an example of payments made to a contractor for poor services. It is noteworthy that the 202 per cent overpayment by the university administration was done without due diligence (the Attorney General's office was not consulted before the university entered into the lopsided termination contract), indicating an under-the-table deal.

Similarly, the case of Mtihani House construction (also reported in this chapter) is an example of illegal payments to contractors for services that are not properly sanctioned by the respective authorities. In this particular case, there was no parliamentary approval for the construction of Mtihani house and therefore payments to the contractor were unlawful.

The government's typical response to this problem has been to constitute task forces for vetting pending bills. The efficacy of this response is questionable considering that the incidents of overpayments to contractors are recurrent each year. It would be more viable to create a standing body to continuously review pending bills, ascertain their authenticity and follow up payments to avoid incurrence of penalties. Another option would be the inclusion of this function within the mandate of the Public Procurement Oversight Authority.

3.2.5   District level risks

The reports of the Controller and Auditor General have revealed malfeasance at the district offices of the MoE. The District Education Officer (DEO) is designated as the Authority to Incur Expenditure (AIE) and therefore is accountable for the management of finances at that level. The common forms of malfeasance include failure by District Education Officers (DEOs) to surrender imprests, irregular payments for non-delivery of supplies and irregular payment of allowances.

Fuel purchases at the district level are the most common items for which irregular payments were made.

The following cases have been highlighted in the CAG reports:

FY	Details
2002/3	A Busia Education Officer bought fuel worth Kshs 461,050 though it is not clear if the fuel was delivered and/or used for official purposes. A similar case was noted in Wajir, where vehicles not bearing official GK number plates were recorded to have received thousands of litres of fuel on behalf of the DEO from a local petrol station.
2004/5	The Nandi District DEO made payments worth 404,000 for fuel supplies that were never delivered
2005/6	The Mandera DEO paid for fuel supplies worth Kshs 1.55M although no proof was tendered as evidence of delivery.

Source: CAG Report

The CAG reports reveal that non-surrender of imprests is not only a problem at the national (headquarters) level but also at the districts. For instance, in the FY2005/6 outstanding imprests at the Kericho DEO stood at Kshs 1.3M with Kshs 0.7M being held by four officers. This constitutes an irregular advance of cash to the officers who have failed to account for the imprests.

In the FY2004/5, the Mandera DEO could not account for meals and accommodation allowances totalling Kshs 1.39M. The audit revealed that the said allowances were paid out irregularly for activities that had not been regularly authorised. While the MoE indicates that such cases are addressed during audit follow-ups and that regulations do not allow an officer to have additional imprests until the earlier is cleared, the researchers could not access information on what action was taken on the specific cases raised. In sum, there is a big lacuna between the law, policy and practice especially with regard to financial management.

3.2.6 Allocation of money for free primary and secondary education

The Free Primary Education programme was implemented in the year 2003 as soon as the NARC Government came into power. In its election manifesto, NARC had pledged to offer free primary education in order to realise universal free primary education (UPE) and attain of Education for All Goals (EFA).

As a result levies were banned in all public primary schools and children were admitted into schools free of charge. Under the programme all children are admitted without discrimination and the clarion call is "Every child in school". The programme recognises that free education can only be offered in partnership with various stakeholders with each having a specific role to play.

On its part the Government of Kenya in collaboration with development partners provides teachers and critical teaching learning materials and operation expenses for all children enrolled in primary schools. The parents are expected to provide: - examination fees for standard eight pupils, school uniforms, school meals, boarding facilities, health care and transport to and from school.

In addition, the programme allows for community initiatives in the maintenance and development of facilities and services that are not funded under FPE. Schools are only allowed to collect extra levies after written authority is granted from the Ministry of Education. Even then no child is to be sent home due to non payment of extra levies.

Since the inception of Free Primary Education, schools have been receiving FPE funds directly into their bank accounts from electronic funds transfer (EFT) by the Ministry of Education. Schools maintain

two dedicated bank accounts namely: **S**chool **I**nstructional **M**aterials **B**ank **A**ccount (SIMBA), used for the purchase of instructional materials and **G**eneral **P**urpose **A**ccount (GPA), for meeting operational expenses.

Children following proceedings during the celebrations of the African Child

The SIMBA account which ought to receive Kshs 650 per pupil caters for the following items: text books, exercise books, supplementary readers and reference materials, pencils, dusters, chalks, registers and charts and wall maps. GPA on the other hand is responsible for operational expenses, support staff wages, repair, maintenance and improvements (RMI), activities, quality assurance, local travelling and transport, electricity, water and conservancy (EWC), postage/box rental/telephone and contingencies. Official records show that donors and the government, between 2003 and 2008, paid Kshs 28.3 billion into Account One and Kshs 19.2 billion in Account Two.

However, Treasury records show different figures. They detail that in 2003 the government paid more than it was required by Kshs 1,094 instead of Kshs 1,020 per pupil. However from 2004-2008 there has been a shortfall every year by varying margins. For instance in 2004, the amount transferred per pupil fell short by Kshs 75 translating to a shortfall of 622 million in total. In 2005, it was less by Kshs 140 translating to Kshs 1.16 billion and in 2006 by Kshs 350 implying a shortfall of Kshs 2.95 billion. 2007 and 2008 witnessed a reduction of Kshs 50 per child leading to a shortfall of about Kshs 830 million in total.

Given the introduction of FPE, school heads and management committees had to adjust to new roles beyond the traditional dimensions of curriculum administration. One such role is the efficient management of schools' resources.

While the introduction of FPE is laudable, one general concern on accessibility of education is that six years after the introduction of Free Primary Education in Kenya, access to education by children in urban

slums is still low as compared to non-slum urban and rural areas.[48] This calls for a detailed policy on FPE to ensure that more resources are allocated to areas and institutions that were lacking essential infrastructure.

However, the requirement by the Ministry of Education that all primary schools open and operate two accounts (SIMBA and GPA) is laudable, as most schools have complied.

Provision of instructional materials including textbooks was identified by many stakeholders as one of the major achievements of FPE. This was because it reduced the cost burden of education on parents leading to an influx of pupils to schools. However, a number of governance risks were identified within the FPE programme.

First, in most schools visited there is no clear record of all funds received from multiple sources like the Constituency Development Fund, Local Authority Transfer Fund and other sponsors. In fact in all schools, only records for FPE are kept. There is a need to have comprehensive records kept by each school and, the DEB and Provincial Education Boards have an obligation to monitor and share records with the Minister.

> **CASE STUDY 5**
> A primary school in Likoni, Mombasa which was opened over 50 years ago with support from the community, continues to receive undisclosed amounts of money from a tourist who was touched by the plight of learners during a visit over five years ago. The only indication was that the money from the sponsors and donors is used to pay six teachers employed by the school management committee.

Secondly, grant disbursement for the FPE funds is not done on time forcing head teachers to incur a lot of debts on behalf of the School Management Committees (SMC). This creates several challenges as school management committees only sit to approve payment of debts as the expenses have already been incurred.

> **CASE STUDY 6**
> In one of the primary schools assessed in Butere, the head teacher admitted borrowing money to support critical operations of the school following the delays in disbursement of FPE funds. The worrying fact however was that the borrowed funds came from the chairman of the SMC. Thus, when funds are eventually released to the school, they will be used to service debts.

The requirement that expenditure must be authorised first before the funds are disbursed from the general purpose account is a nullity because funds are expended even before receipt. The FPE programme did not anticipate such a scenario and therefore there are no guidelines regarding debts incurred by schools. This presents a clear governance risk, since the head teacher can easily collude with the borrowers to inflate expenditure and obtain kickbacks in the absence of clear policies regarding debts incurred under FPE.

There are also no specific guidelines on the maximum number of bank accounts a school is required to open and maintain. It is possible for a school to keep two or more separate bank accounts apart from the two labelled "**General Purpose Account**" or **"Simba Account".** The implication of this is that school heads or patrons can collude with SMC members in using the additional account for receiving donations or grants from other sources with teh aim of embezzling funds.

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48   Daraja Civic Initiatives, (2007) Falling Short: The Right to Free Primary Education: A Discussion Paper on the Status of Education in Slums in Nairobi, Nairobi

CASE STUDY 7
In Turkana District, some members of the SMC, with the area MP's approval opened a second "General Purpose Account" without involving the head teacher. This account is used to receive grants from the CDF, ostensibly to assist in the development of the school's infrastructure. However, the money withdrawn from the account hardly reaches the school. Thus, FPE guidelines need to specify that schools can only run one account for either of the two grants disbursed. All bank accounts opened in the name of a school should have school heads as mandatory signatories.

The allocation and disbursement of FPE funds to schools is based on the number of children enrolled (school population). Thus schools with a high number of students receive more funds than those with less. Critical factors are not taken into account such as the need for improvement of infrastructure, level of support received in the school by sponsors and number of school age children within the catchment of the school. Thus, a small school that is able to attract sponsors will receive less money from the FPE but in essence, it will be able to meet its financial needs. On the other hand, a large school that is unable to attract sponsorship will receive more funds from the FPE but will be unable to maintain or expand infrastructure to cope with the rising school population from its catchment area. A good example is Olympic Primary School in Kibera, Nairobi, which is the only public (registered) school in Kenya's largest slum.

Developed schools tend to receive more resources in net terms and are thus open to abuse by the managers unlike the emerging schools which need every cent to put in place the basic learning infrastructure. Exclusion of unregistered schools from the FPE implies that areas that require FPE funds cannot access the kitty, raising concern on equity in the distribution of the said funds. Small schools require a higher capitation grant and are ideally the best recipients of the school infrastructure investment programme.

The purchase of learning materials through the SIMBA account has attracted controversy. A total of Sh45 billion has since 2003 been disbursed to schools. However, a report by DFID indicates that 5.8 million books have been lost since the FPE began. The losses cover a period of six years (2003 to 2008) estimated at an average cost of Kshs 226 per book. This book attrition is unusually high in both quantity and cost. It is vital that some mechanism is developed for penalising or holding somebody accountable for these losses. There is a strong possibility that governance issues are at the core of this loss.

FACT BOX 4
The post-election violence has been blamed for the loss of books following acts of arson and vandalism witnessed during the mayhem. In Coast province, a total of Kshs 97 million worth of books was lost. Nairobi recorded a loss of Kshs 51 million from 198 schools that bought 3 million books out which 226,164 were lost. (In some cases, some head teachers have been accused of complicity in the loss in order to conceal under-expenditure since on official records, very few schools were affected by looting during the post-election violence).

The Kenya Book Sellers Association' (KBSA) management avers that it is possible for head teachers to collude with briefcase booksellers to defraud the Government since there are no clear guidelines on where to buy books[49]. It is said that there are a number of booksellers who only operate when the FPE money is being disbursed and then close shop to wait for the next disbursement. There also exists a massive conflict of interest where senior ministry officials who own bookshops, force head teachers to purchase books from them. Similarly, head teachers and book sellers collude to rip off schools by over-charging books supplied on credit, owing to delays in the disbursement of FPE funds. There are cases where books are never bought yet receipts for expenditure are submitted by head teachers.

While there are many policy guidelines on the implementation of FPE, starting with a circular released on January 8th, 2003 by the then Director of Education to the Education Sector Governance and Accountability

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49   Interview with KBSA official

Action plan,[50] the level of integrity in the management of funds is low owing to the aforementioned risks.

CASE STUDY 8
There is a leading school in Eldoret, which has numerous income generating initiatives ranging from vegetable, maize, dairy and pig farming amongst others. How the government appropriates funds to such a school in relation to an emerging school in rural West Pokot is a matter of interest to governance experts. The money generated in this school like many other learning institutions is never fully disclosed.

3.2.7 Financial management in secondary schools

Integrity concerns have emerged regarding the manner in which schools manage resources allocated from the ministry or generated internally. Like the Free Primary Education programme, the recently introduced Free Day Secondary Education (FDSE) policy aims at reducing the cost burden on parents through the provision of state subsidy to schools for enrolled students. Allocations to schools are based on the enrolled population of students. The inequality alluded to the allocation criteria applied under FPE also extends to the FDSE. Thus, schools that are able to generate significant internal revenue through agriculture, hiring of school facilities (buses, school halls or compounds) for social functions end up receiving more in net terms than schools that are relatively "poorer". Such additional income has therefore become a key vulnerable area for corruption in schools since accountability mechanisms on usage of such revenue are rather weak.

Another concern regards the perennial school development projects that are initiated with little or no consultation between school administrators and school communities. There are schools which have been fundraising for school buildings or buses in perpetuity. Mechanisms for financial oversight over such funds are minimal and thus the head teacher is able to manipulate the money collected under the pretext of paying for bills resulting from delays in disbursements from the ministry[51].

There are cases of school capture where some suppliers have monopolised services in some institutions. This was witnessed in a leading school in the North Rift which has had one main supplier for food for over 30 years and the head teacher indicated that there was no cause for concern as the school was satisfied with the services. The accounts in some schools are rarely monitored. Resources in those accounts are open to over-withdrawals due to overpriced services and goods.

This issue of undisclosed income is also witnessed in provincial and district schools that are officially registered as either two or three streamed schools yet they actually have four streams.

3.2.8 The Constituency Bursary Fund

The Secondary School Education Bursary Fund (SEBF) was established in 1993/4 through a presidential pronouncement. Its aim was to cushion the country's poor and vulnerable families against the high and increasing cost of secondary education and reduce inequalities that are necessitated and perpetuated by unequal access to education opportunities. It also aims to increase the enrolment in (and completion of) secondary school. The scheme was also designed to cushion households from the adverse impact of poverty, an increasingly unstable economy and devastating effects of the HIV/AIDS pandemic.

In 2003/4, the SEBF was transformed to the Constituency Bursary Fund, to be administered by constituency bursary committees. The objective of channelling bursary funds through constituencies each financial year is to ensure that all bright and needy students are identified and assisted through a process that

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50   Republic of Kenya, (2007) Education Sector Governance and Accountability Action Plan (Revised), Ministry of Education, Nairobi, Kenya.

51   Interview with chairman, PTA Secondary School in Western

involves local leaders. The allocation to each constituency is based on the secondary school enrolment and the poverty index of each constituency in relation to the overall national secondary school enrolment and poverty situation in the country. For instance, the national enrolment for 2004 was 786,129 students while the poverty index shows that among these 65%, or 471,674 students were poor and in need of assistance.

The Constituency Bursary Fund has since its inception attracted major controversies regarding the probity of its management. The fund is administered by a committee elected at the constituency level in a meeting of stakeholders convened by the DEO. The DEO (or his/her representative) chairs the meeting and is a signatory to the accounts of the CBF. All applications are considered by the committee using certain criteria. Successful applicants receive bursaries paid by cheques in favour of the recipient's school.

The fund has experienced many challenges that have sometimes led to delays in disbursement of funds from the ministry. These delays are caused partly by inefficiencies at the MoE or Treasury but also by the failure of CBF committees to account for funds received. For instance in the FY 2005/6, 98.9% of constituency bursary monies disbursed (representing Kshs 909M) was not been properly accounted for[52]. This indicates that bursary requests are also not considered promptly. This raises the possibility of some needy students missing out due to delays in the processing of requests.

There have been complaints that bursary application forms are in short supply or made applicable when schools are in session and this also denies potential applicants the chance to submit their requests.

Another significant problem regards the use of manual systems to manage the database of CBF beneficiaries. This leads to cases in which students residing in cosmopolitan areas have applied for bursaries and received money from their residence and rural constituencies. With the absence of networked databases, it is virtually impossible to detect the double allocation of bursaries. This occurrence also points to the complicity of school administrators in the vice, since CBF cheques are paid directly to the beneficiaries' schools.

Just like the FPE, CBF lacks a comprehensive policy framework. For this reason, many loopholes can be found in the processes entailing selection of beneficiaries and disbursement of bursaries, which present governance risks.

FACT BOX 5
There have been numerous complaints of members of the CBCs favouring students from influential but able families. Politicians (MPs and councillors) have not escaped blame for unfairly influencing allocations to undeserving students. The ministry's bursary allocations to individual constituencies remain inadequate, given the high poverty levels. This creates possibilities for corruption due to the overwhelming demand for bursaries.

3.3 Human resource management in the education sector

This section examines the functions of the Ministry of Education and Teachers Service Commission in the training, recruitment, regulation and dismissal of teachers. For lack of data, this function at tertiary education levels was not included in the study and could therefore form the basis of future research.

3.3.1 Primary School Teachers Recruitment and Training Processes

The responsibility for recruitment of trainees for public primary school teacher colleges has been assigned to the Directorate of Basic Education (DBE). The Ministry is supposed to set the qualifications criteria and oversee the process of selection. While the qualifications for persons wishing to join primary school teacher training colleges was set at D+ in the 1990s, the Ministry has since 2003 set academic requirements at KCSE C (plain) and above. [53] However, the guidelines allow a C- (minus) grade for candidates with either

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52   Controller and Auditor General, 2008

53   For details see Circular No PTTC.GEN 8/v/52, Programme and procedures for recruitment of trainees for public primary teacher colleges for year 2009, Ministry of Education at 3.2.1

total hearing challenges or those with total sight disabilities and those with both.

All applications are sent to the Ministry of Education through the respective District Education Officers (DEOs). The ministry through the DBE conducts the selection at the headquarters and communicates the results to successful applicants through the DEOs. The applicants are therefore expected to collect admission letters from the DEO's office. Failure by an applicant to report to the selected teacher training college results in forfeiture of admission and thus, the DBE undertakes a second selection process aimed at filling vacancies arising therefrom.

The candidates selected in the second stage must meet the criteria used at the first selection process although affirmative action may be applied to leverage orphans and other categories of candidates that are vulnerable. Once the second selection is concluded, no further selection is allowed.

The process of selecting teacher trainees has been marred with controversies, following allegations of corruption and inequitable distribution of admission chances. In 2009 for instance, the process was highly contested by applicants thus forcing the Ministry to initiate investigations and cancellation of the process in Trans Nzoia district[54]. However to date, no outcomes of the said investigations in other districts were released to the public nor action taken against those involved.

FACT BOX 6

The perceived lack of integrity in the teacher trainee selection process can be attributed to the following:

- **Inadequate transparency mechanisms:** The Ministry, unlike the Ministry of Health does not publish the list of successful applicants on its website, neither does it personally contact the successful applicants. Thus, unless successful applicants physically go to the education office, they will never know if they were successful. The criterion used in the second selection process is fluid, thus making it possible for the ministry to include persons whose qualifications are doubtful. The second selection process is also prone to manipulations to suit political and partisan interests.
- **Inadequate accountability:** Since the selection process is carried out by the Ministry (through the DBE), only Parliament can demand accountability if issues of controversy arise. This mechanism has its own limitations and may not be effective considering the timeframe within which the selection process occurs. A better approach would be to empower college heads to form joint admissions commissions/boards through which selection processes can be done (a similar model to the Universities' Joint Admission Board and secondary school selection process that is carried out by school heads) with the latter selection of Form 1 students for national and provincial schools automated and uploaded on the MoE website.

3.3.2 The Role of the Teachers Service Commission (TSC)

The TSC serves the dual roles of registering teachers for both public and private institutions and employment, regulation and management of teachers in public institutions. This combination of roles as a provider and a regulator conflicts with the government policy of separation of such function.[55] The TSC is headquartered in Nairobi but has a decentralised structure based on the existing administrative districts. It is headed by a team of commissioners who provide policy direction on all matters as per its legal mandate. The TSC secretariat is headed by the Secretary to the Commission.

Currently, there are five departments within TSC's secretariat; administration, finance, staffing, internal audit and human resources. The administration department registers teachers and provides support services to other departments such as (legal and secretarial). The finance department is responsible

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54   See for instance Daily Nation 19th October 2009 Edition at pg 4
55   Kamunge Taskforce Report at 64

for accounting, payment of salaries, and among others while the staffing department handles matters relating to the recruitment, promotion and transfer of teachers. The human resources department is responsible for reviewing/adjusting the salaries of teachers after appointments and handles promotions within the TSC secretariat staff. The internal audit section ensures that the commission complies with statutory and financial compliance.

3.3.2.1 Integrity concerns at the TSC
Deployment and recruitment of teachers
The TSC Code of Regulations for teachers and the manual for the staffing function provide a comprehensive policy guide on deployment of teachers. At the entry point, qualified persons interested in teaching positions are at liberty to apply in any province provided there are vacancies. However, the recruitment of teachers by the staffing department of the TSC is considered highly vulnerable to corruption and malpractices owing to persistent allegations of irregularities. Ever since the government abandoned the policy of automatic recruitment (supply-driven) for teachers upon completion of their respective studies in 1997, the TSC is now forced to recruit on a needs basis (demand-driven). While for over five years (2001-2005) there were no clearly laid down policies on the recruitment apart from regular policy guidelines and circulars, TSC in 2006 published the comprehensive policy on teacher recruitment and selection, limiting the wide discretion enjoyed by education officials in the recruitment exercise.[56] The policy has been operationalised by the publication of a staffing manual.

The decentralised recruitment process is today carried out by a panel comprising:
- The head teacher (as a TSC agent)
- DEO (or his/her representative also designated as a TSC agent)
- Representative of the school committee/BOG.[57]

The recruitment reports are then filed by the head teacher and DEO with the TSC. While the guidelines provide for the presence of the BOG and DEB representatives in the short-listing and interview process as an accountability mechanism, it is in practical terms tokenism because both the DEBs and BOGs are appointed of the minister. As such allegations of corruption persist despite the presence of BOGs and DEBs.

Ethnicity and political interference has become a major factor in the recruitment of teachers. In several districts in Kenya, politicians have tried to influence recruitment panels to either shortlist or recruit candidates who are politically expedient to them. In some cases, politicians BOGs and DEBs insisted on candidates being of certain ethnic groups, or belonging to certain clans. This comprises accountability of both the head teachers and the candidate to the performance review mechanism. It also contravenes the principles of fair competition and recruitment policies of the public service in Kenya.

Transfers and promotions
TSC as an employer also determines who gets promoted, when and how. While this is not an ad hoc process as it is based on three guiding instruments that stipulate how teachers should advance in their career growth,[58] and depend on the availability of vacancies and budget provisions for each financial year, there are incessant allegations of rent-seeking by senior education officials to facilitate positive recommendations for promotions. A brief discussion on transfers follows.

The transfer and promotion of teachers' falls under the staffing department. Under normal circumstances,

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56   Teachers Service Commission, (June 2006), Policy on Teacher Recruitment and Selection,
57   Teachers Service Commission, Guidelines for Recruitment for primary School Teachers (revised 2008), TSC/Circular No. 14/2008. For recruitment of teachers for technical institutions and TTC see TSC, Guidelines for selection of panels of technical institutions.TTC (Revised 2008), TSC/Circular No 10/2008.
58   TSC, (2007) Revised Scheme of Service for Non-Graduate Teachers, Nairobi, Kenya; TSC, (2007) Revised Scheme of Service for technical Teachers and Lecturers, Nairobi, Kenya; TSC, (2007) Revised Scheme of Service for Graduate Teachers, Nairobi, Kenya

Children during the celebation of the African Child

teaching positions in urban areas come with incentives such as possibilities of earning extra money from private tuition, higher housing and other allowances and business opportunities. Thus, transfers to teaching posts in urban areas are considered prime. There is no policy requiring neither TSC to disclose opportunities for transfers as they arise nor the considerations taken into account when transfer decisions are made. In fact, there are incessant cases of massive transfers of school heads and other senior teachers without proactive disclosures for the guiding principles and contexts.

Allegations of corruption have been levelled against TSC agents at the district and provincial level on grounds that they solicit money from teachers desperate to obtain transfers to urban areas or locations that suit their preferences. TSC officials are said to "sell" information regarding transfer opportunities (as and when they arise) to desperate teachers to enable them to influence the process at other levels. In addition, secondary school heads have a lot of discretion in the transfer of teachers under their jurisdiction or refusing to grant requests for any such transfers as they are the ones who must forward the application forms and advise TSC whether a replacement is warranted. However, interviews with TSC officials indicated that transfers to urban areas are handled at very senior levels of the commission therefore an officer selling the information may find it difficult to influence the outcome. Higher house allowances, better medical facilities and opportunities for further education on a part-time basis are among reasons why transfer requests to urban centres especially Nairobi, Mombasa and Kisumu are high. The tables below indicate the transfers granted in the last five years by source provinces as opposed to receiving provinces. TSC approved transfer requests for 585 primary school teachers and 457 for post primary teachers.

Table 5: SUMMARY OF PRIMARY SCHOOL TRANSFERS DONE FROM 2005-2009 AT PRIMARY LEVEL

S/No	Province	2005	2006	2007	2008	2009	TOTAL
1	Rift Valley	362	271	349	350	312	1644
2	Central	152	164	135	177	128	756
3	Eastern	186	128	155	250	179	898
4	Nairobi	78	31	39	26	73	247
5	N/Eastern	9	18	17	10	10	64
6	Coast	37	69	70	75	50	301
7	Western	123	124	119	146	97	609
8	Nyanza	215	169	154	169	136	843
TOTAL		**1162**	**974**	**1038**	**1203**	**985**	**5362**

Source: Teachers Service Commission

The discretion of determining who is to be transferred is vested with the staffing department with little or no participation of school communities. There are no guidelines on how long a teacher may work in one station apart from the five year caveat given to new teachers at deployment.

TABLE 5: SUMMARY OF TRANSFERS DONE FROM 2005-2009 AT POST PRIMARY LEVEL

S/No	Province	2005	2006	2007	2008	2009	TOTAL
1	Rift Valley	111	141	127	154	119	652
2	Central	188	230	241	118	128	905
3	Eastern	136	166	275	162	107	846
4	Nairobi	0	63	0	0	0	63
5	N/Eastern	9	9	26	22	9	75
6	Coast	54	80	116	76	34	360
7	Western	46	54	47	77	32	256
8	Nyanza	117	65	268	178	101	729
	Technical	84	49	44	41	25	243
TOTAL		**745**	**857**	**1144**	**828**	**555**	**4129**

Source: Teachers Service Commission

As indicated above promotion from one grade to another in the public teaching profession are guided by the detailed schemes of service and there have been few complaints about promotions to the second grade after entry. For instance, for graduate teachers' movement from grade 'K' to 'L'. However, promotions to job group 'M' considered by many teachers as the opening for administrative posts are fraught with integrity challenges, despite the fact that such promotions to administrative posts such as head teachers, deputy head teachers and heads of departments are administered by the commission in consultation with the TSC agents.

There have been media reports of unqualified teachers 'buying promotions' so as to qualify for appointment into administrative posts. In addition, appointment and confirmation to a position like the head of department is often subject to the discretion of the head teacher to recommend to the TSC. This role raises a great risk of head teachers creating a patronage system that undermines merit. In addition, teachers frequently 'stagnate' in one job group for inordinate periods as there seems to be no systematic way of regularly addressing this issue.

The table below shows the number of teachers promoted from one grade to another in 2008/9:

TABLE 6: TEACHERS PROMOTED FROM ONE GRADE TO ANOTHER IN 2008-2009

Job Group	Primary	Post Primary	Total
M	277	9,165	9,442
N	60	55	115
P	28 (PTTC)	115	143
Q	14	-	14
R	7	-	7
TPC	4,295	-	4,295
TOTAL	**4,681**	**9,335**	**14,016**

However, it is commendable that the names of those who qualified were published in the national daily newspapers. Mechanisms to institutionalise the practice should be entrenched to ensure that vacant posts are advertised every half year and qualified teachers asked to apply.

Discipline

While the Code of Regulation is detailed on the issue of teachers' discipline,[59] its implementation is considered largely ineffective by most education stakeholders interviewed. In schools visited in the course of this study, it emerged that there are many cases where teachers solicited or accepted sexual favours in exchange of educational services (facilitating admission of pupils and granting financial accommodation to parents who default in the payment of levies and holiday tuition fees). This was especially rampant in Coast and Nyanza provinces[60]. The main reason behind this finding was that female parents from poor families had little else to offer male teachers other than sex.[61] In spite of this, there were few disciplinary cases forwarded to TSC or dealt with comprehensively on this account.

In other situations, teachers were also accused of soliciting or accepting sexual favours from students with the promise of leaking exam papers. TSC's efforts to sensitise teachers on their obligations as espoused in the Code of Regulation and Code of Conduct and Ethics is laudable, but it is important to highlight cases of sexual abuse especially where the complaints are targeted at head teachers and teachers who are their close confidants. When investigations reveal a breach of the regulations, apart from being interdicted, such teachers must be barred from the teaching profession and their names made public.

Another area of malpractice identified in the study was the solicitation of fees for remedial classes/holiday tuition. In 2008, the MoE banned teachers from providing these classes as they encouraged exploitation of parents. The rationale was that teachers were supposed to teach students within the designated learning period as per the approved syllabus. However, this study found that the provision of remedial classes at a fee persists. The fact that some head teachers have teaching duties makes them complicit in the malpractice. Although TSC has interdicted some teachers for flouting the ministry's directive, there is a need for more concerted efforts to stop the practice and where a teacher is found guilty, he/she should refund the tuition money with interest.[62]

TSC usually responds to complaints against teachers by transferring culprits to far flung areas. The efficacy of this measure is doubtful, since most of the errant teachers tend to repeat the vice which attracted

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59   For details on the disciplinary process see TSC, (2005) Code of Regulation for Teachers, Chapter 10 and TSC, (2003) Code of Conduct and Ethics.

60   Data analysis from Community Level Integrity Monitoring Support by Transparency International (Kenya) Chapter

61   Interviews with parents from a Secondary School in Likoni, Mombasa , also see the community monitoring report by western alliance.

62   An example of a reactive measure was the interdiction of the teacher at Visa Oshwal.

retribution. The disciplinary process requires that complaints against teachers should be forwarded to TSC by either the DEO or the head teacher. In most cases, this process is problematic, considering the two are invariably members of the profession. In other cases, head teachers are complicit in the vices (e.g. attempt to conceal misconduct in order to keep the record of their schools clean). The absence of a known public complaint process within TSC makes it difficult for genuine complaints to find their way into TSC's disciplinary mechanism.

Payroll management

In 2007, TSC adopted an automated payroll system leading to a reduction in integrity concerns that affected the commission since its inception in 1967; however, some integrity concerns persist.

1. Inclusion in the payroll for new teachers is considered one of the greatest challenges within the profession. There is usually a long delay (of at least 3 months) before newly registered teachers are finally included into the system. This means that new teachers may not receive a salary for a long period. The process of following up the matter is expensive and time-consuming. This has created opportunities for corruption involving salary officers at TSC and teachers eager to get their first salary. Some school heads have to be paid by newly recruited teachers to file 'casualty' returns to TSC. Some teachers interviewed indicated it took them more than six months to earn a lump sum. The study appreciates the development of an induction manual that is given to new teachers when they are recruited, but sanctions must be given to head teachers who unduly withhold the casualty returns.

2. The deduction of third party payments (e.g. loan repayments, insurance premiums, hire purchase instalments among others) from teachers' salaries has bred integrity concerns. There are reported incidents in which teachers have discovered illegal deductions from their salaries. This is attributed to collusion between salary officers and errant officials from entities to which the third party payments are made. All this is facilitated by the manual payroll system, as it is vulnerable to manipulation by unscrupulous salary officials. Even when such discoveries are made, it is difficult to recover the money deducted and the procedure is long and tedious due to the slow nature of Kenya's judicial process.

Procurement

The TSC is subject to the provisions of the Public Procurement and Disposal Act. The commission has a tender committee with representation from various departments. However, the committee has attracted allegations of conflict of interest. Some members of the committee are said to own companies that have won bids to provide goods and services. It is also reported that some members "sell" tender information to prospective bidders thus defeating the importance of the secrecy and competitiveness attendant to the procurement process. The consequence of these anomalies is reflected in the inflated prices at which TSC procures its goods and services.

An example of flawed procurement is the construction of a building that will house the TSC headquarters. Even though the contractor was picked through the normal process, there were allegations that the committee was influenced in making its decision. The cost of constructing the building has been escalating in recent years prompting the Treasury to query the rising fees. While the Public Procurement and Disposal Act, section 47 (b) provides for price variation it is a good governance practice to ensure that such increments are not effected to cushion rent-seekers and that value for money is received. The architect who designed the building was informally asked by the commission to give suggestions on the interior design. After doing so, the firm presented an invoice of Kshs 14M; raising questions on whether a tender committee was held to procure interior design services and if the there were the other bidders.

3.3.2.2 Appraisal of governance risks and interventions by TSC

Conflation of mandates

The dual role of TSC as a regulator and employer (provider) is rather problematic from a governance perspective. As an employer, TSC is usually concerned with the teachers it seeks to employ and deploy in schools and educational institutions. Thus, if there are limited opportunities than there are qualified teachers, TSC will invariably register the teachers it needs. Registration of teachers comes with significant benefits; it entitles a registered teacher to obtain employment with the government (TSC), join any of the

two giant teachers' unions (KNUT or KUPPET) and career development opportunities. Thus, joining the teaching profession (through TSC) is usually a matter of life and death for many thus inviting opportunities for corruption.

As a regulator, the TSC is required to develop and enforce training standards and qualifications of teachers. However, it is rational to assume that the TSC carries out this mandate without the impartiality of an ideal regulator. Ideally, professional standards are set by a regulator to ensure that a given profession attracts the best practitioners in its field. One would expect TSC to set and enforce standards for the profession that will directly address its human resource requirements. If TSC decides that ethical conduct is not a critical human resource requirement, then ethical standards will not be a decisive factor in deciding who is admitted to the teaching fraternity.

Through registration of teachers, the government is able to maintain a database of members of the profession, and this is important in making critical planning decisions. Since the known lists of teachers comprise individuals registered by TSC, it is not clear how the government makes vital decisions regarding investment in the training and provision of opportunities for the teaching profession.

Limited stakeholder participation in TSC functions
It has been pointed out that school communities (as significant stakeholders in the education sector) are not sufficiently involved in the recruitment, deployment and dismissal of teachers. The TSC has instead vested much power on its agents (the head teachers and DEO) to oversee these processes.

Ideally, parents should have a role in a process that determines who will teach their children. TSC can argue that parents are represented by the members of the BOG/school committees. However, the appointment process of members of these structures precludes direct participation of school communities. The justification for this is that BOG/ School committees lack sufficient legitimacy to represent the concerns of the school communities. The only institution that appears sufficiently legitimate is the PTA. However, it lacks the legal status, therefore it is ignored in most formal processes. Thus, it is important to have representatives from PTA sitting in recruitment panels to ensure that the concerns of school communities are taken into account during recruitment.

There is no public complaint process within TSC that leads to disciplinary action against teachers. Instead, the only process starts with a head teacher who also happens to be a teacher. TSC should therefore provide for a parallel process through which school communities and the public can report errant teachers, including head teachers.

Inefficient Information Management Systems
A good information management system is critical in ensuring transparency and supporting accountability functions within an organisation. TSC has however lagged behind in updating its information systems, negatively impacting the integrity of the institution and teaching profession. The database of registered teachers is only accessible through the process outlined in the TSC Act and is therefore subject to official bureaucracy. There are no web-based databases hence the list of registered teachers is not easily accessible.

Although automated, the payroll system is subject to abuse as discussed elsewhere in this section. It is believed that beneficiaries of malpractices are resisting and obstructing efforts to fully automate the payroll system although the commission has engaged a consultant to develop an ICT policy and strategy.

The processes of recruitment, promotion and transfers are not aided by modern management systems. Perhaps TSC should take a cue from what the PSC has done to publicise information on the recruitment and promotion of public servants. The PSC website enables applicants to track these processes online. It is hoped that the consultant engaged to upgrade the documentation and file tracking system will ensure that TSC emerges as a pace-setter in ICT.

CHAPTER 4: CONCLUSION AND RECOMMENDATIONS

4.1 Conclusion

This study aimed at assessing the integrity and governance risks within the education sector and from these assessments, propose recommendations to improve the management of the sector and resources allocated to it for efficient and effective results.

It is evident that the education sector has recorded some laudable milestones in the last six years. The free primary and secondary programmes which have increased gross school enrolment are some of the highlights in the sector.

Another key milestone was the initiation of the stakeholder consultation forums that led to the drafting of the Sessional Paper no 1 of 2005 and the design and implementation of KESSP.

However, a number of issues pose governance challenges that could become monumental if not dealt with comprehensively.

1. The legal framework for running the education system is incoherent, vests too much power on the minister and creates too many uncoordinated educational institutions. There is an urgent need to review the law to facilitate the establishment of a few independent institutions like the Kenya Equipment Scheme Agency borrowing from the success of the Textbook Management Unit to manage infrastructural development at the various levels of the education sector.

2. The institutional framework for managing education in Kenya is dominated by government officials and agencies. It is time the government acknowledged the importance of stakeholder participation and representation in the framework. This has to be reflected at all levels. The institutional framework suggested in KESSP is commendable. Similarly, there is a lack of meaningful consultation in the ministry, across the different directorates and with key stakeholders. Teachers and parents are largely excluded in decision-making and when consulted, they are only requested to implement directives. This makes proper monitoring impossible.

3. It is unacceptable that six years after the implementation of a multi-billion shilling initiative like the Free Primary Education programme, there is no comprehensive policy framework to guide its implementation or deal with governance and integrity risks. That the ministry has developed the KESPP 2005-2010 framework is laudable but such documents should be advanced to policy levels if the gains are to be sustained. This gap has created several opportunities for corruption in the ministry. The continuous delay in the disbursement of funds across the departments has adversely affected the management of the free education kitties, has resulted in many pending bills whose validity is questionable.

4. The expanded role of head teachers does not promote good governance practices. This is because the teachers are the planners, implementers and monitors of the programme. This is exacerbated by the formation of phoney companies, by teachers, that supply books and building materials which are seen as some of the lucrative ventures to trade with schools.

5. The Ministry of Education has not fully embraced ICT. While this could be seen as a challenge they will deal with effectively as the country adopts modernisation and automation of systems, it creates a bigger governance challenge. For instance, the ministry does not upload trainee-teacher admissions on its website, creating room for rampant manipulation of the admission processes in teacher-training colleges and secondary schools. The computer selection process for national secondary schools has reduced avenues for manipulation. Further, the manual management of TSC payrolls continue to offer a lot of discretionary space for the public officials to rent-seek.

6. Several parents, especially those in the rural areas, are ignorant of their role in the management of schools and learning resources.

> **FACT BOX 7**
> From the above observation, a number of areas in the sector remain susceptible and open to governance risks and integrity concerns. One such area is admission to public learning institutions especially secondary schools, teacher training colleges and early childhood teacher-training centres

7. Another area prone to governance risks is procurement. This cuts across all educational institutions as there is very limited knowledge of the procurement guidelines and procedures and where there is knowledge, very little is applied in the actual acquisition of services and goods.

   Therefore several educational institutions are used to single-source for goods and services with approval from the heads of institutions, who collude with some school management committee members and local politicians. There are also several shady deals between heads of schools and suppliers.

8. The management of human resources in the education sector has inherent governance risks that have led to several malpractices. The selection and admission of teacher trainees is controlled by the government and is subject to a great deal of political interference and neo-patrimonialism. The TSC that acts as both employer and regulator of the teaching profession is beset by jurisdictional and operational problems that perpetuate integrity concerns. Failure by TSC to consult and work with school communities in discharging its role as an employer has reduced parents' role in decision-making processes. A situation where parents feel alienated and powerless in the education system. The review of TSC's mandate, institutional framework and operational procedures is due.

> **FACT BOX 8**
> Schools continue to charge tuition fees, although the education policy outlaws such remedial classes, on the pretext that it was approved by the parents and school management committees. Such a trend is also witnessed in charges like computer lessons' fees levied even by schools that do not offer computer classes. This was evident in a secondary school visited in Western Province, during the study. The institution has received computers from well-wishers, but it lacks the manpower and technical know-how to utilise them.

4.2   Recommendations

Overall governance and accountability
1. Harmonise the various laws governing education and training to include delegated functions and spell out both vertical and horizontal accountability mechanisms.

2. Establish a lean management structure at the ministry headquarters and concretely define the functions and authority of the ministry headquarters, the provincial structures, the district and the institutional levels on governance and accountability.

Legal framework
1. In tandem with the recommendations of the Kamunge Task Force, the pervasive powers of the government (the president and minister) in running the education sector through making appointments should be curtailed. Where permissible, the law should be reviewed to allow various stakeholders to propose nominees for appointment by the minister or the President. The qualifications to serve on the Board of Governors, District Education Boards and Provincial Education Boards must be upheld.
2. The dual policymaking and implementation roles of the ministry should be separated. The

ministry should retain policymaking and guidance roles while a specialised government agency (for instance, the Education Management Authority) or the National Education Board, proposed by the Kamunge Task Force to regulate for regulating and coordinate educational institutions should be set up.

The ministry should come up with policy guidelines, develop and approve budgets, set standards and make appointments to key educational institutions. The proposed Education Management Authority should ensure implementation of policy guidelines, supervise financial matters, enforce education standards, promote liaison and collaboration among various educational institutions and the two education ministries and, develop and implement education programmes in line with policy directives from the ministry.

The Education Management Authority could take up the functions of most of the existing institutions to avoid duplication of roles. For instance, the Kenya Institute of Education, Kenya National Examination Council, and Kenya Institute of Special Education amongst other institutions, could fall under the authority.

3. Learning institutions should be required to appoint independent auditors to inspect their financial records and prepare audit reports. The Controller and Auditor General (CAG) should inspect the records and compile a consolidated audit report.

4. An education tribunal should be set up as the sole administrative (quasi-judicial) body to enhance access to justice within the educational sector. This will ensure smooth and coordinated dispensation of justice at an affordable cost. Consequently, the functions of the Teachers Service Appeals Tribunal should be transferred to the new education tribunal.

5. The laws governing the education sector should be reviewed to entrench access of information within the sector. Education authorities should be obliged to disclose public information, accede to requests for information and periodically inform the public on pertinent educational matters.

6. The boards of educational institutions should be empowered to employ chief executive officers. The minister should not interfere with such appointments.

7. Framework statues for secondary and middle level education institutions should be enacted to ensure proper regulation of these institutions.

Education institutional framework
1. The administrative directive that school management committees be elected every year overturns the investments made in training them in financial management. School management committees should be chosen after every three years. This will also ensure transition especially after elections as politicians tend to interfere with the management of schools.

2. The appointment of members to BOGs and school management committee should adhere to clearly stipulated guidelines and individuals appointed should have a good track record in the education sector.

3. The education institutional framework should be revised to include such structures as the PTA, Education Stakeholders Forum and Education Advisory Council.

4. The Directorate of Quality Assurance and Standards should be strengthened by increasing its staff capacity especially at the district levels.

Policy priorities and standard setting
1. The government should as a matter of priority develop comprehensive free education policies to guide stakeholder involvement and participation. This will facilitate the formulation of clear

mechanisms to support less developed schools in offering quality education and sustain the developed ones.

2. Policy guidelines on programme development and management should be developed and implemented. These guidelines should place emphasis on public participation in all aspects of programme management.

3. Ongoing programmes should be urgently reviewed and stakeholder participation should be incorporated in their management.

Financial Management
1. The Public Procurement and Disposal Authority should have the power to hire and supervise procurement officers for each of the districts. This would free district education officials and teachers to do what they know best- teaching. The mandate of PPOA should also be expanded to include vetting of pending bills and ensure that the government settles these bills on a timely basis.

2. The government should establish a central professional body at the district or national levels to procure and distribute textbooks. This will ensure that teachers' time is not consumed by meetings on textbooks' selection and distribution. In fact, a revamped Kenya Equipment Scheme would be a worthwhile venture if modelled along the achievements of the Text Book Unit.

3. The books of accounts of primary and secondary schools should be audited annually.

4. The Public Procurement Oversight Authority (PPOA) should be mandated to review pending bills for authenticity and ensure that the government settles these bills on time.

5. Public officials responsible for financial losses incurred in shady deals with contractors should be brought to book under the relevant provisions of the existing anti-corruption laws.

Human resource management
1. A joint admissions commissions/board comprising heads of teacher training institutions should be established (under the proposed middle-level education framework statute) and given the responsibility of selecting primary school teacher trainees.

2. The process of recruiting teachers should be made more transparent by, for instance, publishing the names of successful candidates in the media and websites.

3. The mandate of TSC should be unbundled to separate its roles of regulator and employer. A separate body for the regulation of teachers (e.g. registration, accreditation and licensing of teachers and enforcement of discipline) should be created as is the case with other professions. The qualification of members, tenure of office and competitive criteria for their appointment should also be developed. The TSC should remain the government agency responsible for the employment and management of teachers and trainers in public basic and tertiary education and training institutions.

4. School communities (through PTAs, school committees and boards of governors) should play a direct role in the recruitment of teachers. The SMCs should be given a three-year tenure before elections with the exception standard representatives.

5. The TSC Policies on transfers should be made public and opportunities for transfers (arising out of vacancies) should be publicised widely on the TSC website and other media.

6. A policy on sexual harassment should be developed and applied by TSC with the school communities participation to discourage the prevalence of the vice (sexual favours) in accessing educational services.

7. The government should authoritatively state its policy on remedial (holiday) tuition classes. If the current ban on the classes is to be upheld, then it should be strictly enforced. If otherwise, the government should regulate the provision of these classes to prevent parents from exploitation by teachers.

8. TSC should publicise the existing public complaints process against teachers to ensure effective participation of school communities in reporting malpractices.

9. Establish KESI should be established as an education management training institute and its capacity should be enhanced to train education managers for short and long term courses. This will ensure that the ministry headquarters does not focus on capacity building workshops, an area that is fraught with non-accountability.

Overview of integrity in the education sector

Education services roles	Education sector actors	Transparency Rules and procedures in place; public reporting	Accountability Technical and financial audits; sanctions applied; complaints handled	Anticorruption Internal and external anticorruption tools applied	Users Participation Consultation; right and possibility to complain
Policy making ▪ Allocation rights ▪ Separation of powers	▪ MOE ▪ TSC ▪ Donor Group ▪ Sector Partners ▪ Parliamentary Committee on education ▪ Parliament	▪ Enacting legislation and guiding policies especially Freedom of Information law ▪ Publication of annual audit reports for scrutiny by the public	▪ Prudent and frugal resource utilisation expected on paper but not applied across the whole sector ▪ Oversight mechanisms are weak and susceptible to the executive control ▪ Patronage and neo-patrimonialism as opposed to merit thrives	▪ Ensuring policy implementation is not undertaken fraudulently ▪ Need to establish continuous monitoring and support for compliant officials	▪ Critiquing the policy options and proposing ▪ improvements ▪ The media makes reports but always after revelation and there is no direct access to information
Regulation ▪ Independence ▪ Enforceable control mechanisms	▪ MOE ▪ TSC ▪ GoK ▪ Parliament ▪ Judiciary	▪ Following up on enforcement benchmarks ▪ Need for further harmonisation of laws ▪ Supervision of private education providers low ▪ Errant teachers get away with malpractices as the system is not responsive	▪ TSC is a regulator and implementer and the same to the each of the Directorates in MOE ▪ Monitoring / application of laws and statutes is weak especially with regard to the Public Officers Ethics Act, Public Procurement and Disposal Act, Sexual Offences Act ▪ The Education Stakeholder Forum and the National Education council need to be formed and allowed to operate,	▪ Enforcing independence and accountability issues ▪ Anti corruption legislation applies to all education institutions but weak application or high level of complacency	▪ Supporting the enforcement of standards and quality expected ▪ Growing civic engagement and social accountability ▪ Part of setting school charges as PTA, BOG
Service development ▪ Intervention criteria concerted with national policies and local actors	▪ MOE ▪ CSOs ▪ DONOR GROUP ▪ Sector Partners	▪ Civic engagement expected but not actualised ▪ Overlapping roles of the MOE in mobilization of resources, allocation and supervision, ▪ No clear guidelines on each of the 23 projects/ programmes under the Kenya Education Sector Support Programme	▪ Overlapping roles of TSC and MOE ▪ Service delivered in line with allocated resources ▪ Effective and efficient use of the resources for improved out put	▪ Locating anti-corruption practices within the general national agenda ▪ No protection of whistleblowers ▪ Codes of conduct are available in TSC but rarely enforced fully except on donor funded projects	▪ Raising their observations about the sector and service delivery through their representatives ▪ Developing strategies for pro-poor targeting programmes like infrastructure etc

Service provision • Organisational structure and asset management	• MoE agencies and commisions e.g. TSC, • School management committees, Board of Governors	• Internal Integrity campaigns exist but are not as effective • Internal support systems and protection for whistle blowing not in place	• Commensurate quality and service to allocated funds and resources	• Making service provision a right without any inhibitions	• Liaising with policy implementers and quality assurance agencies on standards

BIBLIOGRAPHY

Books

Castells, M. (2000) *The Rise of the Network Society* (2nd edn, Blackwell, Oxford

Castells, M. (ed) *The Network Society: a cross-cultural perspective* Edward Elgar Publishers, Cheltenham, UK; Northampton, Massachusetts

Gesteland, R (2002) *Cross-cultural Business Behaviour,* 3 revised edition, Copenhagen Business School Press, Copenhagen.

Gill, S. (2003) *Power and Resistance on the New World Order* Palgrave Macmillan, London.

Hirst, P & Thompson G. (2008) *Globalisation in Question: The International Economy and the Possibilities of Governance,* 4th edn, Polity Press, Cambridge.

Pierre,J. (ed) *Debating Governance: Authority, Steering and Democracy* Oxford University Press, Oxford

Santos B., & Rodriguez-Gravito, C. (2005) "*Law. Politics, and the Subaltern in Counter-Hegemonic* Globalisation" in Santos, B and Rodriguez-Gravito, C. (eds) Globalisation from Below: Towards a Cosmopolitan Legality, Cambridge Studies in Law and Society, Cambridge University Press, Cambridge.

Santos, B and Rodriguez-Gravito, C. (eds) *Globalisation from Below: Towards a Cosmopolitan Legality,* Cambridge Studies in Law and Society, Cambridge University Press, Cambridge.

Sklair, L. (2002) *Globalisation: Capitalism and its alternatives*, 3rd edn, Oxford University Press, Oxford.

Journals and Reports

Kaufman,D., Kraay,A. & Mastruzzi,M.(2007) "*Governance Matters VI: Governance Indicators for 1996-2006*", World Bank Policy Research Working Paper No 4280 <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=999979 Visited 20 May 2008>

Pagden, A. (1998) "*The genesis of 'governance' and enlightenment conceptions of the Cosmopolitan World Order*",50, International Social Science Journal, European Journal of Political Research,

Rajagopal, B. (1999) "*Corruption, legitimacy and human rights: the dialectic of the relationship*", 14, Connecticut Journal of International Law,495-508.

Weiss, T.G. (2000) "*Governance, good governance and global governance: conceptual and actual challenges*", 21, Third World Quarterly,795-814.

Statutes, judgements and policy documents
Education Act, Cap 211

The Universities Act Cap 210B
The Teachers Service Commission Act Cap 212

University of Nairobi Act Cap 210,

Kenyatta University Act Cap 210C,
Moi University Act Cap 210A

Egerton University Act Cap 214

Maseno Universty Act Cap 210D

Masinde Muliro University of Science & Technology Act Cap 210F

Jomo Kenyatta University of Agriculture & Technology Act Cap210 E

Kenya Literature Bureau Act (Cap 209)

Science and Technology Act (Cap 250)

Higher Education Loan Board (Cap 213A)

Kenya National Examinations Council Act (Cap 225A)

Anti-Corruption and Economic Crimes Act (cap 65)

Public Officers Ethics Act (POEA) Cap 183

Public Procurement & Disposal Act-PPDA- Act No 3 of 2003

The TSC Code of Regulation for Teachers (2005)

The TSC Code of Conduct and Ethics (2003)

The Scheme of Service for Non-Graduate Teachers (2007)

The Scheme of Service for Graduate Teachers (2007)

The Scheme of Service for Technical Teachers and Lecturers (2007)

Policy on Teacher Recruitment and Selection (2006)

Manual on Staffing Functions (2008)

TSC Human Resources Manual (2006)

Policy on Management of Discipline of TSC Employees (June 2008)
TSC Annual Reports 2006/7, 2007/8

Republic of Kenya, (June 2003) <u>Kenya Economic Recovery Strategy for Wealth and Employment Creation 2003-2007</u>, Ministry of Planning and National Development, Nairobi, Kenya.

Republic of Kenya, (June 2008) <u>Kenya Vision 2030</u>, Ministry of Planning and National Development, Nairobi, Kenya

Republic of Kenya, (2004) <u>Kenya Education Sector Support Programme 2005-2010</u>, Ministry of Education, Science & Technology, Nairobi, Kenya

Republic of Kenya, (2005) Sessional Paper No 1 of 2005, Meeting the Challenges of Education, Training and Research in Kenya in the 21st Century, A policy Framework for Education, Training and Research, Nairobi, Kenya

Republic of Kenya, The Report of Controller & Auditor General 2002/3, 2003/4, 2004/5, 2005/6

Websites
http://www.education.go.ke
http://www.tsc.go.ke

TRANSPARENCY
INTERNATIONAL
KENYA

P.O. Box 198 - 00200, City Square
Tel +254 020 2730324/5 2727763/5, Fax: +254 20 2729530
3rd Floor, ACK Garden House,
1st Ngong Avenue off Bishop's Road
Nairobi, Kenya.
Email: transparency@tikenya.org
http://www.tikenya.org/