

**Refugee Review Tribunal
AUSTRALIA**

RRT RESEARCH RESPONSE

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Questions

- 1. Please provide any information regarding the directorship of the Kenya Tea Agency.**
- 2. Please provide information on the structure and activities of the Kenya Tea Development Agency (KTDA).**
- 3. Are there any reports of fraud charges against the management of the KTDA?**
- 4. Is there anything to indicate that managers of tea cartels or figures prominent in the tea industry have been elected to parliament in Kenya?**
- 5. Please provide any information on corruption in the tea industry in Kenya.**
- 6. Please provide any information on government involvement in corruption in the tea industry.**
- 7. To what extent is the KTDA involved in combating corruption?**
- 8. Are there any reports of people being killed or otherwise seriously harmed as a result of advocating reform in the tea industry?**
- 9. What steps have the Kenyan authorities taken to address corruption in the tea industry or other industries?**
- 10. What protection is available to individuals who report or oppose corruption?**
- 11. What is the current situation for people of the Kikuyu ethnic group, particularly in Nairobi?**

RESPONSE

- 1. Please provide any information regarding the directorship of the Kenya Tea Agency.**

A search of the sources consulted regarding the Kenya Tea Development Agency (KTDA) and its predecessor, the Kenya Tea Development Authority (also known by the acronym

KTDA indicates that in 1997 the Kenya Tea Development Authority had a number of “directors” within its structure.

A news article dated 4 November 1997 makes specific reference to “KTDA managing director, Mr E.G. Karanja” and general reference to “the parastatal’s other directors”:

The KTDA managing director, Mr E.G. Karanja, told a press conference at organisation’s headquarters in Nairobi that green leaf production in 1996/97 was 522,132, 928 kilogrammes, down from the previous year’s 610,706,978 kilos. He was accompanied by the parastatal’s other directors (Kimemia, M. 1997, ‘Tea Farmers To Receive Sh5.6 Billion’, *AllAfrica*, source: The Nation, 4 November <http://allafrica.com/stories/199711040016.html> – Accessed 26 February 2009 – Attachment 1).

An article published in *The Nation* on 22 August 1999 refers to the election of KTDA directors in 1997 and to “an argument that the current directors are in office ‘illegally and irregularly’”. According to the article:

The root of the current problems started in June, 1997 when KTDA was directed to hold elections by President Moi. Between them, the Companies Act (Chapter 486) and the Memorandum and Articles of Association of the relevant tea factories state that there should be annual general meetings, that directors should be replaced at general meetings and that directors should be elected by shareholders. This was not carried out.

Instead, KTDA carried out a process of electing representatives at the respective buying centres as per circular KTDA/ED/1 and the former went on to elect the directors of the factories. This initial process did not ensure that all shareholders were able to exercise their democratic right and choice. For example, at Mataara Tea Factory sixty people were elected at the buying centres and went on to vote for the factory directors as opposed to an exercise whereby all 4405 shareholders would have had an opportunity to elect those directors by a direct voting process. As a result there is an argument that the current directors are in office “illegally and irregularly” and that they have been managing the affairs of the factories and the KTDA “illegally and without the shareholders’ mandate”.

Regardless of whether one accepts that argument or not what is very evident is that the KTDA, as it is today, is a classic example of mismanagement and downright squandering (‘KTDA: Poor management cause of woes’ 1999, *AllAfrica*, source: The Nation, 22 August <http://allafrica.com/stories/199908220018.html> – Accessed 2 March 2009 – Attachment 2).

An article published in *The Nation* in February 2000 mentions the KTDA and that “[t]he same board that was elected through a flawed and irregular delegates system in 1997, is still in place” (Shaw, R. 2000, ‘Kenya: Tea: Why Leakey must be more assertive’, *All Africa*, source: The Nation, 6 February <http://allafrica.com/stories/200002060007.html> – Accessed 2 March 2009 – Attachment 3).

2. Please provide information on the structure and activities of the Kenya Tea Development Agency (KTDA).

The KTDA website provides the following overview of the agency:

Having taken over the assets and liabilities of Kenya Tea Development Authority, the agency is today, the largest single producer and exporter of made tea in the country accounting for 28% of Kenya’s exporting earnings and also the second largest exporter of black tea in the world. Its

predecessor the Kenya Tea Development Authority had at its inception, inherited 19,000 growers from SCDA who were cultivating 4,700 hectares of tea and producing 2.8 million Kgs of green leaf annually. Three and a half decades later, the agency currently has about 400,000 growers cultivating over 86,000 hectares with an annual green leaf production in excess of 700 million Kgs, about 6,000/ha by year 2003.

... With about 400,000 small-scale tea growers, economically empowered directly from KTDA Ltd, it is estimated that another 3 million Kenyans directly and indirectly derive their livelihood from the Agency ('Annual Reports – Performance' (undated), Kenya Tea Development Agency website

http://www.ktdateas.com/index.php?option=com_content&task=view&id=16&Itemid=76 – Accessed 25 February 2009 – Attachment 4).

Information on the website regarding the agency's structure and activities includes the following from the "Tea Management Consultancy" page:

Kenya Tea Development Agency Limited (KTDA Ltd) was incorporated in June 2000 as a private company under Cap 486 of the Laws of Kenya becoming one of the largest private teas management Agency. The Agency was previously a parastatal (Kenya Tea Development Authority) that was formed in 1964 through a Legal Notice No. 42 of 1964 and took over the functions of the then Special Crops Development Authority (SCDA) to promote and foster the growing and development of tea growing among the indigenous tea farmers.

Capabilities of KTDA Ltd

KTDA Ltd is a market leader in the Kenyan tea industry. This has been enabled by diverse experience in the various fields of tea production, processing and marketing. The Agency can provide consultancy expertise in the following areas: -

Extension Services

The Agency has successfully undertaken:

- Establishment of tea and wood fuel nurseries,
- Supervision of:
 - Land preparation by the growers
 - Planting to the required specifications
 - Weeding
 - Fertilizer application
 - Tipping
 - Pruning
 - Proper plucking methods
 - Infilling and overall crop husbandly

The various factories affiliated to the Agency have directly employed qualified extension staff to oversee and co-ordinate this essential stage of tea production. The Agency also operates an annual fertilizer credit scheme that provides fertilizer to the farmers on credit and at reasonable prices. Currently, 65,000 metric tons of fertilizer are provided annually making it the largest single private fertilizer credit programme to farmers in Kenya.

Estate Management.

KTDA Ltd. manages Kangaita, Kagochi and Michimikuru tea estates among other smaller units. These estates achieve some of the highest production levels in the country.

Green Leaf Collection.

To enable streamline tea processing, the Agency coordinates logistics of green leaf collection from the field to the factories through fleets of purpose built leaf carriers.

Tea processing.

Currently, there are 53 operational tea-processing factories and four more are under construction. This will bring to a total of 57 factories with an annual installed processing capacity of 780 million kgs green leaf. The factories are spread in all the tea-growing areas of Kenya. Besides serving the small-scale tea growers, these factories also process leaf from the Nyayo Tea Zone Development Corporation estates. The factories under the management of KTDA are known the world over for production of high quality black CTC teas.

Marketing and Selling

The Agency handles the entire tea marketing for all the smallholder tea factory companies. The gross annual turn over is about US \$ 320 million.

Accounting and Financing

The Agency sources for external loan capital for expansion of existing factories and construction of new tea factory projects and co-ordinates repayment. It also receives and invests tea sales proceeds on behalf of the factories, makes payments to growers and performs Accounting and Internal Audit services for the Tea Factory Companies.

Information Technology

The Agency provides IT related services and also holds custody of data, information and statistical reports, communication and related activities ('Tea Management Consultancy' (undated), Kenya Tea Development Agency website http://www.ktdateas.com/index.php?option=com_content&task=view&id=27&Itemid=1 – Accessed 25 February 2009 – Attachment 5).

According to information on the KTDA website, the agency's functions in marketing tea include:

- Facilitating sale of teas in all the market outlets.
- Ensure prompt collection of tea proceeds from all buyers
- Undertake sales promotions of teas using cost effective method with the aim of expanding the market share
- Disseminate information on policy changes and tea production to the existing and potential buyers all over the world.
- Encouraging and supporting the local packers in order to expand and strengthen the local market
- Facilitate regular certification of KTDA Ltd teas as demanded by the international standard organisation (ISO) and the tea trade.
- Co-ordinate with the Chai Warehousing Ltd and ensure proper warehousing of all KTDA Ltd teas.

...

The bulk of tea sold by KTDA Ltd. on behalf of small scale growers is done through the Mombasa auction held every Monday except on public holidays ('Sales & Marketing' (undated), Kenya Tea Development Agency website http://www.ktdateas.com/index.php?option=com_content&task=view&id=25&Itemid=1 – Accessed 25 February 2009 – Attachment 6).

The KTDA website also provides information on the agency's varied management and support services ('Factory Management & Support Services' (undated), Kenya Tea Development Agency website http://www.ktdateas.com/index.php?option=com_content&task=view&id=24&Itemid=1 – Accessed 25 February 2009 – Attachment 7), and information indicating that the agency has

diversified into a number of areas including insurance brokerage ('Majani Insurance Brokers' (undated), Kenya Tea Development website http://www.ktdateas.com/index.php?option=com_content&task=view&id=19&Itemid=81 – Accessed 25 February 2009 – Attachment 8), trading and freighting ('Chai Trading Ltd' (undated), Kenya Tea Development Agency website http://www.ktdateas.com/index.php?option=com_content&task=view&id=20&Itemid=81 – Accessed 25 February 2009 – Attachment 9) and property investment, including ownership of the agency's head offices in Moi Avenue, Nairobi ('KTDA Farmers Building' (undated), Kenya Tea Development Agency website http://www.ktdateas.com/index.php?option=com_content&task=view&id=22&Itemid=81 – Accessed 25 February 2009 – Attachment 10).

The website provides details of the location and current directors of each KTDA tea factory ('Factories' (undated), Kenya Tea Development Agency website http://www.ktdateas.com/index.php?option=com_content&task=category§ionid=8&id=19&Itemid=89 – Accessed 25 February 2009 – Attachment 11), and the following information on the structure of the agency's management board:

The apex organ of the Agency is the Board of Directors that comprises 15 members. 12 are elected grower representatives, each representing a catchment area operationally referred to as a Zone and three Executive Directors (Managing Director, Operations Director and Finance Director) represent Management. The Chairman and Board Committee Chairmen are elected from the grower representatives ('KDTA Board – Organizational Structure' (undated), KDTA website http://www.ktdateas.com/index.php?option=com_content&task=view&id=15&Itemid=76 – Accessed 25 February 2009 – Attachment 12).

A report entitled 'Diagnostic Study of the Tea Industry in Kenya', published by the Export Promotion Council of Kenya in 2003, includes the following information and observations relating to role of the Kenya Tea Development Agency:

Compared to other sectors, the tea industry is a success story in this country where tea farmers are able to count on the commodity as an income earner. Despite some changes undertaken by the Government towards the liberalisation of the smallholder tea sub-sector since 1997, there are still issues within the subsector that may have a negative impact on the continued development of the industry and solutions should be sought to avoid deterioration of tea production in the sub-sector.

The main changes that have been undertaken by the government towards liberalisation of the smallholder tea production included the restructuring of the KTDA and tea factory ownership involving:

- Tea factory ownership by smallholder growers through purchase of any KTDA equity and shares in factories;
- Governance and management of tea factory companies by elected factory company directors;
- Redefinition of KTDA's role as a management agent for tea collection and processing but also with control over marketing of made tea;
- In June 2000 KTDA was incorporated as a private company, Kenya Tea Development Agency Ltd.

The KTDA still dominates provision of services to the smallholder farmers but parallel systems continue to emerge where farmers sell green tea leaf directly to private factories or to

middlemen for immediate payments without any contractual arrangements. If this practice is encouraged it is likely to lead to low tea production as a result of lack of inputs and services to smallholder farmers. Most farmers will certainly not use the money so earned to buy inputs for the tea.

Some of the problems appear to emerge from some dissatisfaction on the part of the farmers by KTDA services. KTDA provides farm inputs and management of smallholder tea as well as tea collection, processing and marketing of tea on behalf of the farmers. Part of the problem may be due to inadequate information flow between farmers and KTDA. Farmers do not appear to understand and appreciate the costs of the services they receive from KTDA and how much the same services would cost if supplied from other providers.

5.2 Conclusion

Some stakeholders in the tea sector have observed that further liberalisation of the smallholder tea sub-sector on the activities currently undertaken by KTDA may solve some of the problems which affect continued development of this sub-sector. This should however be done with caution and proper research should be done to identify the most appropriate services to be liberalised with a view to protecting the farmers from exploitation by agents, which already exists in other sectors (Kinyili, J.M. 2003, 'Diagnostic Study of the Tea Industry in Kenya' 2003, Export Promotion Council of Kenya website, October http://www.epckkenya.org/reportfile.asp?filename=Tea+Diagnostic+Study+2+_Submitted.pdf – Accessed 12 March 2009 – Attachment 13).

An article published in *Business Daily* on 8 May 2008 reported changes to the voting system in the election of directors of KTDA-managed factories, citing concerns that the changes would give control of the tea sector to the larger scale growers. According to the report:

The Government has now backed the new voting system adopted by the Kenya Tea Development Agency that gives farmers with more shares more say in the control and management of tea factories in their areas.

The move has crippled efforts by small-scale tea farmers who wanted to retain the traditional one-man one-vote pattern that saw directors elected on the strength of individual votes than the number of shares held.

Agriculture Permanent Secretary, Romano Kiome, has thrown a life line to the big farmers and for the first time Mr Kiome said the new voting method was part of recommendations of the Tea Task Force appointed by the Ministry of Agriculture early last year, and received presentations from growers on a wide range of issues, including on the new system of voting based on strength of shares.

The implementation of the new voting system has thrown wide the race for the management of Kenya's tea sector although it faced teething problems.

Each of the 54 KTDA-managed factories was to elect two new directors. Of the 51 factories that went for elections on Tuesday, 44 had full participation while elections did not take place in three factories as farmers were undecided on the mode. In four factories, election took place in one of the two electoral areas.

The new system, in line with the Companies Act, marks the first time that the new secret ballot system of method of one share one vote, is being introduced to replace the one man one vote.

The 54 KTDA-managed factory companies are all independent factories registered under Companies Act.

However, the elections were marked by protests, boycotts and confusion over change of voting system, with farmers rejecting proposals to switch to a polling system based on share strength, saying it would give a few of the large scale growers a chance to control the tea sector (Sambu, Z. 2008, 'Kenya: State Backs KTDA On New Voting System', *AllAfrica*, source: Business Daily, 8 May <http://allafrica.com/stories/200805081052.html> – Accessed 25 February 2009 – Attachment 14).

An article dated 19 July 2008 in *East African Business Week* reported plans by the government to “reclaim ownership” of the KTDA, “to enhance product marketing and enable government to protect tea farmers from exploitation”:

The Kenyan government plans to reclaim ownership of the cash-strapped Kenya Tea Development Authority (KTDA) a few years after its privatisation.

The move is aimed at boosting production and halting the mass exodus of farmers from the crop that has seen the tea sector face its worst times in years.

Agriculture Minister William Ruto has said plans for the takeover are in advanced stages adding that the Government would not watch as the multi-billion shilling sector stares at collapse.

Ruto said that the move to change the Authority back to a parastatal body was to enhance product marketing and enable government to protect tea farmers from exploitation.

The minister, while on a tour of former tea plantation farms that have now been changed to maize plantations, said it was disheartening that the Government’s privatisation programme was becoming counter-productive as businessmen and brokers exploit the public.

Tea has in the past been among the major foreign exchange earners of Kenya and the sector’s collapse could have serious repercussions for an economy struggling to recover from post-election violence.

He said that as part of the plan to restructure the Authority, the number of directors will be reduced. He also called on farmers to change their managerial election methods so they elected two or three directors instead of nine per factory, and to elect those who were in touch with modern farming technology (Lumiti, C. 2008, 'Kenya: Govt Plans to Reverse Privatisation of Tea Authority', *AllAfrica*, source: East African Business Week, 19 July <http://allafrica.com/stories/200807211043.html> – Accessed 26 February 2009 – Attachment 15).

An editorial published in *The Nation* on 12 August 2008 indicated that the Agriculture Minister had ordered that “a consultant undertake the task of determining the best management strategy” for the Kenya Tea Development Agency (‘Kenya: Tea Agency Has Failed’ 2008, *AllAfrica*, source: The Nation, 12 August <http://allafrica.com/stories/200808130432.html> – Accessed 26 February 2009 – Attachment 16).

No subsequent reports regarding restructure of the KTDA have been located amongst the sources consulted.

3. Are there any reports of fraud charges against the management of the KTDA?

A search of the sources consulted found many references to accusations of fraudulent activity by KTDA management, but only one specific reference to such accusations having been “followed up with a lawsuit” – in an article published in *The Globe and Mail* on 17 July 1996. That article also mentions other contentious issues relating to the Kenya Tea Development Authority, as follows:

Recently... KTDA has shown signs of strain and run into political controversy.

“I think that KTDA is suffering from its own successes,” said Kungu Gatabaki, the Commonwealth Development Corporation’s country executive in Kenya. “What they haven't got is the capability to match the growth itself.

“The whole infrastructure has not been matched by what companies would call research and development partly because KTDA operates in a parastatal environment.”

One result is that farmers are picking more tea leaves than the agency can collect or process on time. Roads in many tea producing areas are in disrepair, and KTDA’s year-end payments to farmers last year were half what they were the previous year.

Opponents of Kenya’s current president, Daniel arap Moi, quickly jumped on the issue. They persuaded several thousand farmers to boycott KTDA’s tea-processing factories.

A parliamentary group of opposition politicians followed up with a lawsuit. The association charged KTDA with fraud, illegal tendering, corruption and “outright looting” in Kenya’s high court last September, according to an opposition lawyer and member of the association.

...

KTDA officials dismiss the accusations as political nonsense and efforts to turn last year’s unfavourable tea-producing conditions into political hay for the opposition (Straus, S. 1996, ‘Tea time means prosperity on farms in Kenya’, *The Globe and Mail*, 17 July – Attachment 17.

Other mentions of accusations of fraudulent activities within the KTDA include a news article dated 25 February 2000 that refers to an auditor having found that the agency’s managers had “perpetrated outright fraud”. According to the article published by *Reuters News*:

The management of Kenya’s small scale tea industry in the last decade has been a catalogue of dishonesty, inefficiency and fraud, the government said on Thursday.

Agriculture Minister Chris Obure said the findings were set out in an audit report of the Kenya Tea Development Authority (KTDA) which he commissioned after revoking the board’s autonomy and removing some of its managers in September.

The report showed KTDA’s managers held irregular tenders for goods and services, had poor budgetary controls, undersold farmers’ tea, disposed of assets at throwaway prices and perpetrated outright fraud.

“The special audit report catalogues the extent to which dishonesty, mismanagement and indeed fraud had pervaded the operations of the... KTDA,” Obure said in a statement.

...

Obure, who earlier this year postponed privatisation of the KTDA to mid-year, said the government was determined to clean up the tea sector before privatising the body (Mutizwa, G. 2000, 'Govt report chronicles fraud in Kenya tea body', *Reuters News*, 25 February – Attachment 18).

An article published on 7 March 2000 by *Dow Jones Commodity Service* reported that the KTDA had dismissed the findings of the audit, claiming that it showed “obvious biases and prejudices”:

The Kenya Tea Development Authority has dismissed a recent government-ordered audit and called for an independent team to audit its books.

In an advertisement published in newspapers Monday, KTDA chairman Stephen M’Imanyara said the audit was suspect, partly because the government body wasn’t given the opportunity to respond to allegations against it.

The audit stated that fraud and mismanagement cost farmers over \$83.3 million in the past 10 years, according to a source close to the audit team.

The audit report detailed shoddy budgetary controls and the selling of tea at lower prices outside the Mombasa auction.

The audit report said between 1989 and 1999, the value of the tea farmers delivered rose by 381% while their income only went up by 315%.

The report said the authority sold assets at throwaway prices and told of irregularities in purchasing items like fertilizers.

“The report has failed miserably the test as the board wasn’t given an opportunity to answer any allegations against it. This demonstrated bias, calculated bad motive and writers of the report appear to have targeted particular persons with a hidden motive,” said M’Imanyara.

He said Richard Ndubai, head of the audit team that carried out the exercise is a director of Bicon Tea Brokers and thus is an interested party.

“His report is suspect and targeted at specified people in the board and outside. There are obvious biases and prejudices suggesting influence from people within the authority and outside who wished the report to take particular direction. The board welcomes an independent audit,” he said.

...

Last September the government amended the State Cooperation Act, giving its offices greater power to intervene in the badly managed state-controlled coffee and tea sectors.

The government then fired two top officials of the KTDA and Coffee Board of Kenya and ordered an audit team to look into both institutions’ books.

...

The government postponed until July KTDA’s privatization, which had been scheduled for January, to allow for adequate preparation and consultation (‘Kenya’s KTDA Dismiss Govt Audit, Call For Independent One’ 2000, *Dow Jones Commodity Service*, 7 March – Attachment 19).

An article dated 27 August 2006 in *The East African Standard* reported police investigations into alleged misappropriation of funds at a KTDA tea factory, as follows:

Detectives are investigating a scam at a tea factory.

The Kenya Tea Development Agency (KTDA) in Nyamira District is accused of paying millions of shillings to ghost workers.

The probe at Kebirigo Tea Factory Company was ordered by Kenya Anti-Corruption Commission (Kacc) director Aaron Ringera after a former director with the factory, Mr Thomas Abuga reported the scandal.

In a letter signed by Y M Ismail on behalf of Justice Ringera, the Nyanza Provincial Criminal Investigations Officer (PCIO) was directed to investigate alleged misappropriation of cess funds on diverse dates, between November last year and February.

“Investigate and take appropriate action against culprits,” the letter dated July 12 reads.

Abuga, who is a shareholder, has recorded a statement at the local CID office.

The detectives will be questioning the factory’s board of directors, the chairman, the vice-chairman, the factory unit manager, accountant, cess chairman and the supervisor.

But Abuga expressed concern yesterday over the outcome of the probe after some of the detectives summoned some of those implicated to a local bar hours after he had recorded his statement.

“I expected them to visit the factory or at least summon them to the office to obtain their side of the story, not to call them to a bar,” Abuya said (Gitonga, A. and Nyasato, R. 2006, ‘Kenya: CID Probe Tea Factory Over Payments Scandal’, *AllAfrica*, source: The East African Standard, 27 August <http://allafrica.com/stories/200608280475.html> – Accessed 2 March 2009 – Attachment 20).

An article dated 22 June 2007 in *The East African Standard* regarding allegations by a group of MPs accusing “top officers” of the KTDA of fraudulent activities, reported as follows:

Twenty-three MPs from tea growing areas are demanding the immediate disbandment of Kenya Tea Development Agency (KTDA) for allegedly defrauding farmers over Sh600 million. The lawmakers also want Kenya Anti-Corruption Commission to investigate KTDA’s top officers for engaging in the alleged illegal activities.

At a press conference held at Parliament Buildings, the MPs said KTDA’s fraudulent activities were hurting small-scale farmers.

Reading the press statement, Nominated MP, Mr Franklyn Bett said that on June 19, Agriculture minister, Mr Kipruto Kirwa had confirmed the fraudulent acts.

“The purchase of the 26 Continuous Fermenting Machines without following the procurement rules alone has cost factories Sh130 million,” said Bett.

He said that in March last year, the agency had sold tea worth Sh650 million without any security. To date only Sh400 million has been paid. Farmers could about Sh270 million.

The leaders further complained that KTDA has been involved in irregular deals such as purchase of fertiliser and overcharging of farmers for technical engineering and legal services.

However, KTDA management dismissed the claims, saying the agency was not a parastatal or Government agency.

A statement issued by the board chairman, Mr Stephen M'Imanyara, accused the MPs for being used by suppliers who failed to win the lucrative tender.

“We are aware that a few suppliers in collaboration with former factory directors are behind the allegations due to vested interests,” said M'Imanyara in a statement issued on Thursday.

In their allegations, the MPs said corruption in the organisation had led to skyrocketing cost of putting up new factories, while farmers continue to draw less payment as a result of the fraud.

Kitutu Chache MP, Mr Jimmy Angwenyi said he has prepared a Motion, which will be tabled in Parliament seeking to revert the organisation into an authority.

He said that the Government appeared powerless to deal with the agency, as it was a privately owned company.

“If Kenya Anti-Corruption Commission has any teeth, it should now start investigating KTDA's top officers. It is time punitive action was taken against them,” said Bett (Kareithi, A. and Kathuri, B. 2007, ‘Kenya: MPs Call for Disbandment of KTDA Over Sh600m Scam’, *AllAfrica*, source: The East African Standard, 22 June <http://allafrica.com/stories/200706220020.html> – Accessed 2 March 2009 – Attachment 21).

Searches of the sources consulted found no follow-up reports regarding the abovementioned matters.

4. Is there anything to indicate that managers of tea cartels or figures prominent in the tea industry have been elected to parliament in Kenya?

A search of the sources consulted found no specific reference to managers of tea cartels or other prominent figures in the tea industry having been elected to the Kenyan parliament.

An article dated 21 July 2007 refers, however, to accusations that politicians “habouring personal interests” had interfered with the management of the KTDA:

Leaders of tea farmers from the larger Murang'a District have protested against politicians for interfering with the management of Kenya Tea Development Agency (KTDA). Accusing politicians of harbouring personal interests, the farmers called for the intervention of President Mwai Kibaki over the issue. They alleged that some politicians are using parliament to muzzle KTDA in a bid to ensure the Government controlled it.

Murang'a North district has Kiru, Gatunguru, Githambo and Kanyenya-ini tea factories.

The farmers took issue with some former members of Coffee Tea Parliamentary Association (Cotepa) members who have come hunting the Agency they helped to build.

All MPs from coffee and tea growing regions were members of the association, which campaigned for the privatisation KTDA in May 2000.

“Those who fought hard to ensure KTDA was privatised converted to an agency through an Act of parliament are now focusing on reverting it back into an authority,” said Mr Peter Kamau from Kiru factory (Gikandi, B. 2007, ‘Kenya: Keep Off KTDA, Farmers Tell Politicians’, *AllAfrica*, source, The East African Standard, 21 July <http://allafrica.com/stories/200707201152.html> – Accessed 2 March 2009 – Attachment 22).

The current Minister for Agriculture in the coalition government in Kenya is William Samoei Ruto, and his Assistant Ministers are Japhet Kareke Mbiuki and Gideon Musyoka Ndambuki (‘Kenya: Full list of coalition government ministers’ 2008, source: Panapress, 13 April – Attachment 23).

- 5. Please provide any information on corruption in the tea industry in Kenya.**
- 6. Please provide any information on government involvement in corruption in the tea industry.**
- 7. To what extent is the KTDA involved in combating corruption?**
- 9. What steps have the Kenyan authorities taken to address corruption in the tea industry or other industries?**

Amongst the sources consulted, references were found to accusations of corruption in the tea industry in Kenya, although with limited detail regarding those involved and any actions taken to address or combat such corruption.

An article published in *The Nation* in November 1998 refers to accusations of corruption against the Kenya Tea Development Authority and to calls for a “watchdog” to protect small scale farmers:

The Kenya Tea Development Authority should be scrapped or restructured to meet the needs of farmers, a stakeholders’ seminar resolved yesterday.

The tea body was accused of “corruption, selfishness, inefficiency, inept handling of the marketing of the crop, and lack of transparency in the entire management”. The resolutions of the two-day workshop, attended by more than 25 MPs, were read to the Press by Imenti South MP Kiraitu Murungi.

The meeting was organised by the Centre for Democracy and Development at the Outspan Hotel, Nyeri. It was closed by the Democratic Party’s DP national chairman, Mr. Mwai Kibaki, who accused the KTDA of ignoring farmers’ interests.

He called for elections for the authority. Participants accused the KTDA of failing to protect the small scale farmers and recommended that another body, independent from the government, be formed to act as a watchdog for them (‘Kenya: Scrap or restructure KTDA, govt told’ 1998, *AllAfrica*, source: The Nation, 16 November <http://allafrica.com/stories/199811160038.html> – Accessed 4 March 2009 – Attachment 24).

An article dated 28 September 1999 reported that the head of the civil service had sacked the managing director of the Kenya Tea Development Authority, and observed that such efforts to effect change would be “resisted by powerful individuals who regard parastatals as sources of largesse and economic rent”:

The big question provoked by last week's sackings of top parastatal managers is what the new civil service regime portends for the State corporations sector and how wide it will cast its dragnet to edge out mediocre and corrupt officials.

Clearly, the changes effected last week demonstrated that the Dr Richard Leakey action team has not only acquired a great deal of clout, but also the will to improve governance in these important institutions.

In a matter of days, Dr Leakey, the civil service head, has sacked three managing directors of strategic parastatals: Mr. Eustace Karanja of the Kenya Tea Development Authority (KTDA), Mr. Alex Murunga of the Coffee Board of Kenya (CBK), and Mr. Lenny Mwangola of the Kenya Ports Authority (KPA)). Also fired was the chairman of the KPA, Mr. S.M. Maneno.

...
Dr Leakey has swung his axe in a very sensitive territory, and in his zeal to effect changes in the area, he will find himself at loggerheads with some of President Moi's closest cronies and supporters.

His efforts will also be resisted by powerful individuals who regard parastatals as sources of largesse and economic rent.

In the past, sacking wayward parastatal heads has proved difficult because most managing directors and chairmen of parastatals are politically influential individuals who have mastered the intrigues of lobbying and who are – in most cases – power brokers in their own right.

Indeed, the typical profile of a managing director of a parastatal in Kenya is one of a big-headed individual who concentrates on evolving and maintaining patronage relations with powerful politicians. They are always willing to commit resources in ostentatious things such as shows and fund-raising meetings, which allow them to win awards and get the opportunity to be photographed with President Moi.

Effecting changes in the institutions has also not been easy, because these institutions have been one of the main instruments used by the political leadership of the country to reward loyalty and to attract political support (Kisero, J. 1999, 'Kenya: Will Leakey team survive danger zone?', *AllAfrica*, source: The Nation, 28 September

<http://allafrica.com/stories/199909280077.html> – Accessed 4 March 2009 – Attachment 25).

A 2001 report entitled 'Initiatives against Corruption in Kenya – Legal and Policy Interventions, 1995-2001' by the Centre for Law and Research International (CLARION), a non-governmental organization in Kenya, notes indications of "a variance between policy pronouncements and the realities in the body-politic". According to the report, "exposure of selected political scandals by the government has become more of a public relations gimmick than an in-depth desire by the system to fight corruption". The report observed that:

Owing to increased public debate and pressure, coupled with concern from the international community, the Bretton Woods institutions and bilateral donors, the government, notably from 1997, in policy pronouncements at least, showed intentions of undertaking legal and other public policy reforms that would address corruption. The government took several steps towards this end, including the establishment of the Anti-Corruption Squad, the Kenya Anti-Corruption Authority (KACA), and the publication of a number of legislative proposals on corruption. These initiatives or intended initiatives created the impression in the minds of Kenyans that corruption would for the first time be more decisively tackled. The institution of prosecutions in relation to some formerly untouchable members of society such as ministers

and permanent secretaries on charges of corruption fortified the optimism that at last the Kenyan government had marshalled the political will to combat corruption.

...

The reading of the political landscape clearly indicates a variance between policy pronouncements and the realities in the body-politic. The Goldenberg scam remains unresolved, and many corrupt acts continue – grabbing of public utilities by politically correct individuals, illegal sale of public plots by government officials and otherwise unjustified excision of forest lands. To the political observer, there is considerable regression in the fight against corruption despite its consequences to exposure of selected political scandals by the government has become more of a public relations gimmick than an in-depth desire by the system to fight corruption. This is disturbing considering that a World Bank Report, for example, has singled out corruption as one of the factors inhibiting investment into Kenya after the initial phase of economic liberalization in trade and exchange field of the early 1990's (Kibwana, K., Akivaga, S.K., Mute, L.M. & Odhiambo, M. (eds) 2001, 'Initiatives against Corruption in Kenya – Legal and Policy Interventions, 1995-2001', Center for Law and Research International website, section 1.1.1

<http://www.clarionkenya.org/documents/initiatives.pdf> – Accessed 26 February 2009 – Attachment 26).

An article dated 31 July 2003 in *The Nation* reported that the Agriculture Minister had been urged by members of parliament to take disciplinary action against KTDA board members regarding irregularities and “shady deals”:

Members demanded the sacking of the Kenya Tea Development Authority boss over an irregular Sh1.4 billion contract.

They urged the Agriculture minister, Mr Kipruto arap Kirwa, to take action against Mr E. M Kimani and invite the Anti-corruption police to probe the authority's accounts.

The minister said he was aware of shady deals at the parastatal, but declined to state categorically what disciplinary action he would take against the official and the authority's board.

Mr Kirwa was answering a question by Mr Mwanicha Okioma (Kitutu Masaba, Ford People), who wanted to know if the minister was aware that KTDA had tendered for the supply of 65,000 tonnes of fertiliser irregularly.

Mr Kirwa said: “I am aware of the mess in the tendering system and we have taken the necessary remedial action to ensure it doesn't recur.”

...

But Mr John Sambu (Mosop, Kanu) demanded to be told why the minister was allowing the KTDA board to engage in fraud without taking disciplinary action against them.

Mr Kirwa responded: “This is a case of a horse that has bolted, we are now taking remedial measures to ensure it does not recur.”

...

Mr Gor Sunguh (Kisumu East Narc) demanded that anti-corruption police be called in to probe the KTDA.

Mr Nick Salat (Bomet, Kanu) accused the minister of double standards, saying the Narc government had declared war on corruption while he seemed to be protecting errant officials (Oriale, O. 2003, 'Kenya: Parliament: Members Demand Sacking of KTDA Boss Over Sh1.4b Tender', *AllAfrica*, source: The Nation, 31 July

<http://allafrica.com/stories/200307300217.html> – Accessed 2 March 2009 – Attachment 27).

An opinion piece published in *The Nation* on 27 June 2007 noted that the privatisation of the KTDA had been expected to insulate it from “the whims of well-connected contractors and their allies in Government”, and querying why parliament had persisted in “dealing with the KTDA as if it was still a parastatal”:

On a list of the ten most economically-strategic institutions in Kenya today, I would put the Kenya Tea Development Agency (KTDA) high up on that list.

...small-holder tea production is run through limited liability companies, separate entities with their own boards of directors. KTDA itself is also a limited liability company with a board elected by farmers.

Until 2000, the Government had the powers to meddle in KTDA because it was still legally a parastatal governed under the State Corporations Act.

WE REMEMBER THE PERENNIAL probe committees which the State would routinely appoint, especially when KTDA was about to invite tenders worth millions of shillings for the purchase of fertilisers, paper bags, boilers, or fleets of vehicles.

It was clear to keen observers that KTDA was more or less being used as the stage where well-connected suppliers and contractors tested their influence with top Government officials.

When they failed to influence the Government to get KTDA to cancel contracts, they would either instigate tea boycotts, or the removal of the managing director.

When the institution was converted into a private company in 2000, there was a sigh of relief from keen observers of the tea industry. At last, this strategic economic institution would be insulated from the whims of well-connected contractors and their allies in Government.

This why I find recent developments in Parliament confounding. A few weeks ago, there was a debate about the circumstances in which KTDA recently purchased fermenting machines for a number of tea factories.

I also gather that yet another group of MPs has raised several questions, most of them relating to procurement decisions by the company.

Then there this incident where some MPs said they would introduce a Bill in Parliament to seek to convert KTDA into a parastatal.

Why do we want to return this farmers' body back to Government control? Why does Parliament persist in dealing with KTDA as if it was still a parastatal?

These people should be reminded that KTDA became a limited liability company and is therefore under no obligation to purchase goods and services under the public procurement regulations.

If the KTDA management has made wrong procurement decisions, let it be censured by the board and shareholders of the company.

Which limited liability company reports to Parliament on matters such as procurement? The MPs are simply meddling. Period.

...

Parliament should allow KTDA to be run by “wenyewe” – the farmers, the board, and the shareholders (Kisero, J. 2007, ‘Kenya: These Meddling Politicians Should Leave KTDA Alone’, *AllAfrica*, source: The Nation, 27 June <http://allafrica.com/stories/200706270337.html> – Accessed 4 March 2009 – Attachment 28).

A 2008 Freedom House report noted that corruption was a serious problem in Kenya, including high-level corruption in government. The report states that:

Corruption continues to be a very serious problem threatening Kenya’s nascent democracy. Political parties, nongovernmental organizations (NGOs), and the press, as well as some official bodies, have unearthed examples of government corruption and malfeasance. The 2006 report by anticorruption campaigner John Githongo was merely the most serious of a number of credible reports of high-level corruption. Transparency International’s 2007 Corruption Perceptions Index ranked Kenya 150 out of 180 countries surveyed. Respondents to the 2007 Kenya Bribery Index stated that they encountered bribery in 54 percent of their interactions with public and private institutions. The report also suggested, however, that the average size of bribes has declined. The police continue to be viewed as the most corrupt governmental body (Freedom House 2008, ‘Freedom in the World Country Report – Kenya – 2008’, December – Attachment 29).

8. Are there any reports of people being killed or otherwise seriously harmed as a result of advocating reform in the tea industry?

The US Department of State’s reports on human rights practices in Kenya report “several violent incidences” related to the election of KTDA directors in 2000, as follows:

There were several violent incidents during the elections to the Kenya Tea Development Authority’s Board of Directors (the cooperative which represents the country’s 45 tea factories). On June 20, in Gatundu North Province, during fighting between police and farmers boycotting the elections at the Mataara tea center, police shot and killed two farmers and injured several others... Later that evening, armed farmers in Mataara killed a local policeman and seriously injured several other police officers apparently in retaliation. On June 21, during fighting between farmers and police in Guchu District, police shot three farmers and dozens of others were injured (US Department of State 2001, *Country Reports on Human Rights Practices for 2000 – Kenya*, section 1c – Attachment 30).

Amongst the sources consulted, the only other reports found of violence related to advocacy of reform in the tea industry date from 1998.

An editorial published in *The Nation* on 5 January 1998 referred to a demonstration in Nairobi by small-scale tea growers having been “brutally dispersed by police”:

The tea industry enters 1998 on a note of uncertainty following the apparent poor handling of grievances raised by farmers from major growing areas.

The first complaint had to do with the fact that multinational companies were buying tea directly from small-scale growers who are by law, required to channel their produce through the Kenya Tea Development Authority. Then there was a big demonstration in Nairobi organised by growers from Central and Eastern provinces, which was brutally dispersed by police. Their cries ranged from poor payments to lack of farm inputs.

They even demanded the disbanding of the regulatory organisation, the Kenya Tea Development Authority. And they left Nairobi after giving the KTDA management an ultimatum to respond to their grievances or face a strike next month ('Kenya: Avert looming tea sector crisis (Editorial)' 1998, *AllAfrica*, source: The Nation, 5 January <http://allafrica.com/stories/199801050002.html> – Accessed 2 March 2009 – Attachment 31).

An article dated 21 February 1998 in *The Nation* reported the end of a tea-picking boycott and that a member of parliament had “told police to stop harassing the striking farmers” in his constituency. According to the report:

The tea-picking boycott in parts of the country ended after 18 days yesterday, having cost the country an estimated Sh.270 million loss.

The permanent secretary in the Ministry of Agriculture, Mr Philemon Mwaisaka, welcomed the move, saying agriculture should not be politicised.

“It is unfortunate that some people engaged in violence, threatening lives and destruction of property. Why the wanton deeds when the Kenya Tea Development Association has served the small-scale tea farmers for a long time?” he wondered.

The decision to end the boycott was made by the National Small-scale Tea Owners' Task Force with the blessing of the unregistered Kenya Union of Small Tea Owners (KUSSTO).

The KUSSTO secretary-general, Mr George Kinyua, said the move followed KTDA's top management's acceptance of implementing “many of the proposals forwarded by farmers”.

...
Early this week, the KTDA managing director, Mr Eustace Karanja, said that only five factories were totally hit by the boycott. He put the loss at about Sh.15 million daily, with farmers directly losing Sh.12 million. He accused hired youths of harassing the farmers to boycott tea-picking.

Mr Karanja said that KUSSTO was composed of some directors who were defeated in the recent KTDA election and had no mandate to represent farmers. A number of houses in which some KTDA directors have been living – including that of the chairman – were burnt.

Earlier yesterday, tea farmers in Mathira Division said they would continue with the tea-picking boycott until the KTDA met their demands.

The resolution was passed during a meeting between representatives of KUSSTO attended by the Mathira MP, Mr Matu Wamae, at his Karatina office.

Mr Wamae, who issued a Press statement on behalf of the farmers, said that he fully supported the strike.

...
However, Mr Wamae advised the farmers not to use violence against those who had ignored the strike. He also told police to stop harassing the striking farmers ('Group agrees to end tea boycott' 1998, *AllAfrica*, source: The Nation, 21 February <http://allafrica.com/stories/199802210001.html> – Accessed 26 February 2009 – Attachment 32).

An article dated 25 December 1998 in *The Nation* reported that police had charged at and lobbed teargas at a group of “placard-waving farmers... accusing the top brass KTDA officials of alleged mismanagement”:

Police had to use teargas to disperse rowdy tea farmers who were demonstrating in Murang'a. The group had taken to the streets after they heeded the tea picking boycott call by officials of the unregistered Kenya Union of Small Scale Tea Owners.

...

The placard-waving farmers demonstrated along the Kiruri-Kairo road, accusing the top brass KTDA officials of alleged mismanagement. Anti-riot police officers from the Kiria-ini Police Post, who were monitoring their movements from a distance, charged at them and lobbed teargas at them.

...

The farmers were demanding a refund of Sh8 deducted from this year's bonus payment and an increase of the monthly benefits from Sh6 to Sh12 (Kariga, A. and Njeru, M. 1998, 'Kenya: Armed Police Disperse Tea Farmers' Demo', *AllAfrica*, source: The Nation, 25 December <http://allafrica.com/stories/199812250032.html> – Accessed 2 March 2009 – Attachment 33).

10. What protection is available to individuals who report or oppose corruption?

The 2008 report by Transparency International indicates that the Kenya Anti-Corruption Commission has implemented a “whistleblower system” allowing anonymous reporting and that Kenya has adopted a witness protection program – although the witness protection system does not extend to “whistleblowers in private corporations”. The Transparency International report advises:

- In December 2006 parliament **approved a witness protection programme**, coordinated by the attorney general on behalf of the police and other law enforcement agencies. The act provides for the establishment of new identities, the relocation of witnesses and financial assistance, but affords only limited cover outside the criminal legal arena. By limiting disclosure to the state, law enforcement agencies, courts and tribunals, the law fails to protect witnesses appearing before quasijudicial hearings, such as commissions of inquiry and parliamentary committees, nor does it apply to whistleblowers in private corporations. Notably, the law would not have protected the late David Munyakei, the whistleblower employed by the Central Bank of Kenya (CBK) who received TI's 2004 Integrity Award.

...

- In March 2007 the Kenya Anti-Corruption Commission (KACC) **implemented an internationally certified, webbased, anonymous reporting system**. The Business Keeper Monitoring System (BKMS®) is the only whistleblower system in the world whose anonymity has been certified by forensic investigators in Germany.

- On 24 May 2007 Chief Justice Evans Gicheru appointed an ethics and governance committee of the judiciary whose terms of reference are, *inter alia*, to **collect information on and determine the levels of corruption in the judiciary**, report on individual cases and recommend remedial measures (see *Global Corruption Report 2007*). The chief justice appoints these committees every two years.

- The KACC is one of the highest-funded institutions of its kind in the country, with combined revenues in 2005 and 2006 of US\$26 million. Critics have warned that the disparity in resource allocation between the investigative KACC and the office of the public prosecutions director could result in meticulously investigated corruption cases failing to lead to convictions because of **weaknesses in prosecution caused by resource constraints**. Efforts to empower KACC to prosecute suspects have been pursued through the Statute Law Miscellaneous Amendments Bill 2007, presented to parliament in July 2007. The bill was initially shelved, however, following a public outcry over proposed increases to MPs' perks attached to the same legislation ('Global Corruption Report 2008' 2009, Transparency International – Attachment 34).

A article entitled “Corruption in Kenya: How to ruin a country” in *The Economist* on 26 February 2009, refers to a recently published book on events relating to the self-exile of the head of the Kenya Anti-Corruption Commission, John Githongo, as “a devastating account of how corruption and tribalism ... reinforce each other” and indicates a lack of protection even for the government-appointed head of the Commission. According to *The Economist*:

THIS is the tale of the tragic failure of a brave and honest man appointed to expose corruption by a new Kenyan president who came to power on a wave of high-minded enthusiasm in late 2002, claiming to be a clean-handed reformer. Within a few years the brave man, John Githongo, is betrayed by the president, Mwai Kibaki, and by most of the big man’s closest colleagues, many of whom prove themselves to be patently corrupt. Mr Githongo is at first intensely loyal to Mr Kibaki, who gives him an office down the corridor in State House. But the whistleblower comes to realise that the president acquiesces in corruption of the grossest kind, and flees for his life into exile.

There is far more to this gripping saga than that. It is a down-to-earth yet sophisticated exposé of how an entire country can be munched in the clammy claws of corruption. It is also a devastating account of how corruption and tribalism – the author prefers the grander term ethno-nationalism – reinforce each other, as clannish elites exploit collective feelings of jealousy or superiority in an effort to ensure that their lot wins a fat, or the fattest, share of the cake. Hence the book’s Keywords: “It’s our turn to eat”.

This response was prepared by the Research & Information Services Section of the Refugee Review Tribunal (RRT) after researching publicly accessible information currently available to the RRT within time constraints. This response is not, and does not purport to be, conclusive as to the merit of any particular claim to refugee status or asylum. This research response may not, under any circumstance, be cited in a decision or any other document. Anyone wishing to use this information may only cite the primary source material contained herein.

...
After independence in 1963, Jomo Kenyatta and his mainly Kikuyu inner circle steadily plundered the country, ensuring that their fellow Kikuyus and closely related Meru and Embu groups, together comprising some 28% of Kenya’s people, acquired an ever-larger slice of the land. After his death in 1978, his successor, Daniel arap Moi, who hailed from the much smaller Kalenjin-speaking group of tribes, reckoned it was their turn to eat – and how. Eventually, in 2002, in what looked like a pan-ethnic revolt against Mr Moi’s lot, Mr Kibaki, another Kikuyu, won a multiparty election amid hopes that Kenya would at last have a decent, reasonably clean administration in which merit rather than tribe would be the way to advancement. Mr Githongo’s appointment as the government’s anti-corruption tsar was hailed as a happy sign of intent.

No such luck. Mr Githongo almost immediately spotted a massive scam, to be known after a murky company called Anglo-Leasing, that creamed off some \$750m mainly by overbilling the state – with ministerial connivance – in some 18 projects. He noted that more than half of these scams had originated in Mr Moi’s era but had deftly been carried over into the new and supposedly clean one. It soon became clear that not only were some of the most senior ministers in the government involved but also that the president was unwilling to do anything about it.

Moreover, as Mr Githongo made secret tapes of conversations with these villains, two more things became equally clear. The main perpetrators, bound by a tight code of ethnic solidarity, flagrantly appealed to him, as a fellow Kikuyu, to be loyal to his tribe. He also realised, even after he had fled into exile, that this so-called “Mount Kenya Mafia” was determined to use some of its ill-gotten gains to fill its party’s coffers in an effort to win the general and presidential elections due at the end of 2007. This group would stop at nothing to hold on to power.

In the event, when it seemed that Raila Odinga, the populist presidential candidate whose campaign was full of anti-Kikuyu innuendo, was winning the race in late 2007, the old guard around Mr Kibaki set about fiddling the result, prompting riots and ethnic massacres around the country in which some 1,500 perished and at least 300,000 were displaced. After two months of turmoil and political paralysis, a shabby and unwieldy compromise was reached under the aegis of the UN’s former secretary-general, Kofi Annan, whereby Mr Kibaki held on to the presidency while Mr Odinga became prime minister.

Kenya, meanwhile, had been torn apart as never before. Mr Odinga, like President Barack Obama’s father, is a Luo, Kenya’s third-most-populous group, which fiercely considered that it was its “turn to eat”. It had grievously missed out under two Kikuyu-dominated administrations and under Mr Moi’s Kalenjin one.

...
A year after the corrupt election fiasco of late 2007 and early 2008, nothing fundamentally has changed. Almost all the top ministers and civil servants fingered by Mr Githongo are still in office; so is Mr Kibaki. Even if Mr Odinga were president, as the majority of voters almost certainly intended him to be, few Kenya-watchers would be confident that the basics would have changed, except that a new elite would be “eating” better. The mixture of greed and ethnic exploitation is as potent and combustible as ever: a sorry state of affairs (‘Corruption in Kenya: How to ruin a country’ 2009, *The Economist*, 26 February http://www.economist.com/books/displaystory.cfm?story_id=13176864 – Accessed 3 March 2009 – Attachment 35).

The US Department of State’s most recent report on human rights practices in Kenya mentions police corruption and judicial corruption as human rights problems, and reports that government officials often engaged in corruption with impunity. According to the report:

The law provides criminal penalties for official corruption; however, the government did not implement these laws effectively, and officials often engaged in corrupt practices with impunity.

Frequent press reports of incidents of government corruption fueled a widespread public perception that large-scale corruption up to the highest levels of the government and in parliament persisted, and that little official action had been taken against the most corrupt. According to the Mars Group, an anticorruption think tank, 25 members of the 42-member cabinet were criticized in parliamentary inquiries into corruption. The World Bank’s 2007 Worldwide Governance Indicators reflected that corruption was a severe problem.

In 2003 the government created the Kenya AntiCorruption Commission (KACC) and in 2004 appointed a director and other staff. Local anticorruption watchdog groups continued to claim that the KACC had accomplished little, despite significant financial support provided by the government. Some civil society organizations reported that the government also used the anticorruption commission to harass critics. In 2007 both the NGO Name and Shame Corruption Network Campaign and the Center for Law and Research International claimed the KACC failed to investigate and prosecute influential persons and criticized its failure to address the 2006 Goldenberg and Anglo Leasing scandals. The KACC director told the media

he had forwarded 284 cases to the attorney general for prosecution. During President Kibaki's first term no top officials were charged with corruption, despite numerous scandals (US Department of State 2009, *Country Reports on Human Rights Practices for 2008 – Kenya*, February, Section 3 – Attachment 36).

An article dated 9 March 2009 on the website of Transparency International states that the current coalition government of Kenya “seems to be losing the war against corruption”. The article reports that:

In the wake of widespread starvation and rising costs of living, TI-Kenya's National Corruption Perceptions Survey shows that many Kenyans believe the government has the power, the ability but not the will to tackle corruption. Parliament stands especially indicted in the failure to uphold the common good.

The survey, which sought to assess the perceptions of Kenyans as regards progress on the war against corruption one year after the formation of the Grand Coalition, was conducted amongst a random sample of 1000 respondents between February and March of this year. TI-Kenya released its findings today at a launch presided over by the Chair of the International Board of Directors, Huguette Labelle.

Coinciding with reports of massive graft within the maize and oil sectors, the survey sought to establish whether the Kenyan citizen maintains confidence in the expressed intention of the Coalition to tackle corruption. The survey indicates a prevailing belief that the anti corruption agenda is being constrained by an apparent lack of political will: “The entire state has been captured to a certain extent by corrupt interests. Nearly every institution of governance and service delivery is working in the interest of a small group of people who profit from it,” said Job Ogonda, Executive Director, Transparency International-Kenya (“TI-Kenya National Corruption Perceptions Survey – One Year On: Do Kenyans Trust the Grand Coalition Government?” 2009, Transparency International website, 9 March http://www.transparency.org/news_room/latest_news/press_releases_nc/2009/2009_03_09_kenya_cpi_survey – Accessed 12 March 2009 – Attachment 37).

11. What is the current situation for people of the Kikuyu ethnic group, particularly in Nairobi?

The US Department of State's report on human rights practices in Kenya for 2008 provides information relevant to the current situation for people of the Kikuyu ethnic group. The report states that:

The population is divided into more than 40 ethnic groups, among whom discrimination and occasional violence were frequent. The 1999 census indicated that Bantu ethnic groups constituted approximately 67 percent of the population, of which the Kikuyu and closely related Embu and Meru accounted for 32 percent, the Luhya 16 percent, and the Kamba 10 percent; Nilotic groups constituted 30 percent, of which the Kalenjin accounted for 12 percent and the Luo 11 percent; and Cushitic groups – mainly Somalis – constituted 3 percent of the population. The Kikuyu and related groups dominated much of private commerce and industry and often purchased land outside their traditional home areas, which sometimes resulted in fierce resentment from other ethnic groups...

During the year postelection violence often had an ethnic component. Interethnic violence increased during the year after the December 2007 announcement of the presidential election results. In January mobs in opposition strongholds, such as the Rift Valley and the western provinces, violently targeted ethnic Kikuyu and others suspected of supporting the incumbent

president. In retaliation, Kikuyu mobs perpetrated vigilante attacks on non-Kikuyu residents in Central Province, Nakuru, Naivasha, and areas of Nairobi. The violence continued until the signing of a political power-sharing agreement in late February.

For example, in early January, a mob set fire to a church where Kikuyu residents sought sanctuary, killing 35 people, mostly women and children. On January 4, a Kikuyu mob stopped and burned a bus traveling to the western region of the country, killing all the passengers. The passengers were members of a tribe that supported the opposition. In late January Kikuyu mobs in Nakuru and Naivasha attacked non-Kikuyu residents of the town, killing 90 persons. NGOs and the media estimated that a total of 1,500 persons were killed, and the UN estimated that 500,000 persons were displaced during the postelection violence. In September KNCHR issued a report which concluded that much of the violence was organized and financed by politicians.

Through the provincial administrations, the government held public meetings to promote reconciliation in communities affected by the postelection violence and to establish a forum for dialogue and peaceful resolution of conflicts. NGOs reported that implementation of reconciliation efforts was not uniform. During the year NGOs and church organizations were also involved in attempts to reconcile communities affected by postelection violence. Land conflicts during the year took place between the Maasai and Kipsigis in southern Rift Valley Province in June and between Maasai and Kikuyu in Naivasha in September.

Many factors contributed to interethnic conflicts: longstanding grievances over land tenure policies and competition for scarce agricultural land, the proliferation of guns, the commercialization of traditional cattle rustling, the growth of a modern warrior/bandit culture (distinct from traditional culture), ineffective local political leadership, diminished economic prospects for groups affected by a severe regional drought, political rivalries, and the inability of security forces to adequately quell violence...

In private business and in the public sector, members of nearly all ethnic groups commonly discriminated in favor of other members of the same group. Some neighborhoods, particularly in slum areas of the capital, tended to be segregated ethnically, although interethnic marriage had become fairly common in urban areas (US Department of State 2009, *Country Reports on Human Rights Practices for 2008 – Kenya*, February, Section 5 – Attachment 36).

A *BBC News* article dated 27 December 2008 mentions a police report noting that “identified ethnic bigotry... as still a major threat to national security” in Kenya and reports the case of a Kikuyu man who had fled his home one year earlier after suffering an attack during the post-election violence. According to the article:

A police report released this month has identified ethnic bigotry, similar to that evident during the post-election violence, as still being a major threat to national security.

The report says the provinces most adversely affected are Rift Valley, Western, Nyanza and Nairobi, which were all flashpoints for ethnic violence after the elections.

Although the two political rivals, President Mwai Kibaki and Prime Minister Raila Odinga, have buried their differences and agreed to work together, many in the country worry that the underlying issues such as land ownership and ethnic animosity have not yet been addressed.

Mr Mweperi has been back to his home in Narok only once since the attacks, and he is convinced that it is not safe for him and his family to go back.

When the Commission of Inquiry into the Post Election Violence – known as the Waki Commission – traversed the country several months ago, Mr Mweperi was one of the witnesses.

He believed that his testimony would help to reveal the truth and punish those who committed the atrocities.

Now, he is a hunted man again and has received threats on his life because he dared to name his attackers.

Fear

In its final report, the Waki Commission said some of the attacks were based on “ethnicity and political leanings” and recommended the establishment of a local tribunal to try those implicated in organising and carrying out the attacks.

But Mr Mweperi says he does not believe that the establishment of a local tribunal will meet these goals.

“I don’t think it will succeed here in Kenya. Kenya is plagued by corruption and these same MPs incited the attacks. It’s like looking for a goat with the help of the goat thief,” he says.

As Kenya marks one year since the violence, another challenge the country is struggling with is the resettlement of more than 300,000 people who fled their homes.

While many have been able to go back home through the government’s Operation Rudi Nyumbani (Operation Go Back Home) programme, some like Mr Mweperi remain in camps.

...
They are afraid to go back home, fearing fresh attacks and, for Mr Mweperi, reprisals for testifying before the commission (Njeri, J. 2008, ‘Fear stalks Kenyans one year on’, *BBC News*, 27 December <http://news.bbc.co.uk/2/hi/africa/7792558.stm> – Accessed 13 March 2009 – Attachment 38).

In an article dated 30 December 2008 sourced from *Associated Press* similarly reports as follows:

The tensions that were laid bare during one of the darkest moments in Kenya’s history are still festering, a year after its election on Dec. 27, 2007 unleashed weeks of ethnic violence that killed more than 1,000 people.

The evidence is everywhere: in the displacement camps where tens of thousands of people still live; in the divided towns where ethnic groups had lived side-by-side since independence from Britain in 1963; and in growing disillusionment with a coalition government accused of ignoring the roots of the crisis.

“The lives of most Kenyans are no better today than they were a year ago,” said Ben Rawlence, a researcher at Human Rights Watch. “This is not the new chapter that Kenyans hoped for.”

...The Kenyan Red Cross says nearly 60,000 out of 350,000 displaced remain in camps. Less than half have gone home; nearly 130,000 are simply unaccounted for – either living with friends or family or moving from town to town.

In many areas, especially in western Kenya, the violence brought a bloody end to decades of coexistence among Kenya's ethnic groups, transforming the ethnic makeup villages, cities and towns. Some worry the change may be permanent, boding ill for democracy in this once-stable African country ('Kenya: 1 Year After Slaughter, Wounds, Ethnic Tensions Still Fester in Kenya' 2008, *Fox News*, source: Associated Press, 30 December – Attachment 39).

A search of the sources consulted found no reports relating specifically to the situation for people of the Kikuyu ethnic group in Nairobi.

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Online Subscription Services

Africa Confidential <http://www.africa-confidential.com>

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Topic Specific

Kenya Anti-Corruption Commission website <http://www.kacc.go.ke>

Kenya Tea Development Agency website <http://www.ktdateas.com/>

Transparency International website <http://www.transparency.org>

Search Engines

Copernic search engine

Databases:

FACTIVA (news database)

BACIS (DIAC Country Information database)

REFINFO (IRBDC (Canada) Country Information database)

ISYS (RRT Research & Information database, including Amnesty International, Human Rights Watch, US Department of State Reports)

MRT-RRT Library Catalogue

List of Attachments

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