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TACKLING BRIBERY IN ACCESSING KENYAN CITIZENSHIP: TOWARDS IMPLEMENTING AND ENFORCING ANTI-CORRUPTION MEASURES

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ABSTRACT

Every Kenyan citizen has the right to acquire civic identification documents pursuant to article 12 of the Kenyan Constitution, 2010. This right allows Kenyans to apply for birth certificates, national identification documents and passports. These identification documents are crucial in proving that a person has a genuine link with Kenya which in turn unlocks their enjoyment of socioeconomic and political rights. Conversely, without identity documentation, a person's access to socioeconomic and political rights is limited. Consequently, one may face challenges in accessing education, adequate healthcare, opening a bank account, travelling abroad, owning property, voting and vying for political posts, among others. The Department of Civil Registration Services has the mandate of registering births and deaths, while the National Registration Bureau is tasked with providing national identification documents. Reports conducted by the Ethics and Anti-Corruption Commission (EACC) and the Kenya National Commission on Human Rights (KNCHR) indicate that some applicants seeking civic identification documents were asked for bribes by some registration officials in order to acquire the documentation or expedite the process. Kenya has made positive strides towards combating corruption through enacting extensive domestic anti-corruption legislation and ratifying international and regional legislation on anti-corruption. This paper argues that, successful implementation and enforcement of the existing anti-corruption laws by anti-corruption agencies will play a major role in curbing bribery that is experienced while accessing identification documents in Kenya.

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1. INTRODUCTION

Corruption has been in existence since the civilization of the human society.¹ It is an old phenomenon which occurs in developed and developing countries alike and affects all economies and societies.² Nonetheless, the effects of corruption are worse in developing countries.³ The vice negatively impacts the political, economic and social stability of African states⁴ and reduces a state's resources to fully realise the enjoyment of socioeconomic rights such as the right to health, education, social security and to adequate housing.⁵ Corruption aids human trafficking, organised crime and terrorism.⁶

Corruption in Kenya can be traced back to the pre-independence era.⁷ It is estimated that Kenya loses approximately 700 billion Kenyan shillings yearly to corrupt dealings.⁸ This amount is enough to enable Kenya to fulfil her obligations of realising the right to education, fulfil access to adequate health care and improving the infrastructure.⁹

Corruption exists in various forms including grand corruption, political corruption, petty corruption¹⁰ and manifests itself through illicit enrichment, embezzlement of public

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- 1 Mousavi P & Pourkiani M (2013) 'Administrative corruption; ways of tackling the problem' 2(3) *European Journal of Natural and Social Sciences* 178-187 at 179.
 - 2 United Nations Convention against Corruption (2005) paragraph 4 of the preamble.
 - 3 Tanzi V (1998) *Corruption around the world, causes, consequences, scope and cure*. International Monetary Fund International Monetary Fund at 7. See also United Nations Office on Drugs and Crime (2000) *United Nations Office on Drugs and Crime*, available at https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf (Accessed 19 September 2022).
 - 4 African Union Convention on Preventing and Combating Corruption (2006) paragraph 4 of the preamble.
 - 5 Engelbert A & Kaltenborn M (2019) *Corruption and social rights accountability*, IEE Working Papers, No. 213, ISBN 978-3-927276-99-4, Ruhr-Universität Bochum, Institut für Entwicklungsforschung und Entwicklungspolitik (IEE), Bochum at 2. See also Peiffer C & Rose R (2012) "Paying Bribes to Get Public Services: A Comparative Guide to Concepts and Measures" CSPP Studies in Public Policy No. 494 (2012) at 3.
 - 6 UNODC (2006) *Countering the global problem of corruption* available at <https://www.unodc.org/newsletter/200601/page004.html> (Accessed 12 September 2022).
 - 7 Lugulu J (2022) "Corruption in Kenya during the COVID-19 pandemic and the right to health: lessons learnt and future prospects" 6(1) *Journal of Anti-Corruption Law* 12-24 at 13.
 - 8 Ngasike L "NCCK: Kenya likely to lose Sh700 billion in corruption deals within twelve months" *The Sunday Standard* available at <https://www.standardmedia.co.ke/news/article/2001280852/kenya-to-lose-sh700-billion-in-corruption-deals-by-july-clerics> (Accessed 12 September 2022).
 - 9 Kariuki C (2013) *Towards a human rights based approach in fighting corruption in Kenya*. (Unpublished Master of Laws thesis) University of Nairobi.
 - 10 For more information about the different forms which corruption occurs in see, Transparency International, *What is corruption?* available at <https://www.transparency.org/what-is-corruption>

funds, fraud, nepotism, bribery, among others.¹¹ According to the World Bank, approximately \$1 Trillion US dollars are paid in bribes every year.¹² Many people illegally pay public officials' or private persons bribes to access education, health or speed up administrative services.¹³ Bribery undermines the realisation of social, economic and cultural rights which in turn reduces a state's ability to attain the Sustainable Development Goals by year 2030.¹⁴

Bribery thrives in countries that lack transparency in public procurement and where the vice is tolerated and largely goes unpunished.¹⁵ In 2017, the East African Bribery Index Report conducted a survey in Kenya, Uganda, Rwanda and Tanzania to measure the level of bribery amongst the respondents when seeking public services.¹⁶ The report indicated that bribery in the said countries mainly occurred within the police, judiciary, land services and in the civil registration offices.¹⁷ In Kenya, bribery occurs in various forms and affects various public sectors. Bribery occurs when first, Government contracts are offered to the firms which pay the highest bribes to some corrupt public officials in order to secure the contract.¹⁸ Secondly, motorists bribe some Kenyan traffic police officers in an attempt to avoid

(Accessed 2 July 2023). See also, Corrado G, Corrado L, Michele G, Salustri F (2013) "Are perceptions of corruption matching experience? Evidence from microdata " 3(63) *The British Journal of Criminology* 687–708 at 687.

- 11 Morris, Stephen D. (2011) : Forms of Corruption, CESifo DICE Report, ISSN 1613-6373, ifo Institut – Leibniz-Institut für Wirtschaftsforschung an der Universität München, München, Vol. 09, Iss. 2, pp. 10-14 at 10. See also, Vargas JG (2010) " The multiple faces of corruption: typology, forms and levels in Stachowicz- Stanusch A (ed) *Organizational immunity to corruption: building theoretical and research foundations* Charlotte: Information Age Publishing Inc at 133.
- 12 The World Bank (October 6,2020) *Early Detection of Fraud and Corruption in Public Procurement through technology*, available at <https://www.worldbank.org/en/events/2020/10/06/early-detection-of-fraud-and-corruption-in-public-procurement-through-technology#:~:text=According%20to%20the%20United%20Nations,5%25%20of%20annual%20global%20GDP> (Accessed 19 September 2022).
- 13 Peiffer C & Rose R (2018) "Why Are the Poor More Vulnerable to Bribery in Africa? The Institutional Effects of Services" 54(1) *The Journal of Development Studies* 18-29 at 22.
- 14 UNODC (2006) at iii. See also, para 1 and 2 of the preamble to the United Nations Convention against Corruption. Transparency International Kenya (2018) *Traffic Legislation gaps and drivers of corruption in traffic matters*, available at <https://tikenya.org/wp-content/uploads/2018/11/Drivers-of-Corruption-Report.pdf> (Accessed 19 September 2022).
- 15 Tanzi (1998) 7.
- 16 Transparency International Kenya (2017) *The East African Bribery Index*, available at <https://tikenya.org/wp-content/uploads/2017/09/East-African-Bribery-Index-EABI-2017-1-1.pdf> page 10 (Accessed 12 September 2022).
- 17 Transparency International Kenya (2017) 15.
- 18 van Rij (2021) "Corruption in Kenya. Understanding a Multifaceted Phenomenon", Notes de l'Ifri, Ifri at 12.

prosecution for minor traffic offences. Moreover, voter bribery occurs during the election period when corrupt competing candidates bribe citizen's to influence the voting outcome.¹⁹ Bribery also occurs in the civil registration sector where certain individuals bribe some registration officials to expedite the process of obtaining birth certificates, death certificates, a national identity card, or a passport.²⁰ These bribes are paid to ease access to public services or hasten the delivery of public services or avoid the prosecution of minor traffic offences or to influence the voting outcome.

As stated earlier, corruption exists in various forms. This article, however, limits itself to petty corruption which occurs when some registration officials abuse their power by demanding bribes from individuals in exchange for a legal identification document. It is noteworthy that Kenya has made commendable steps in fighting corruption through ratifying international and regional legislative frameworks on corruption and enacting various domestic laws which aim to fight corruption.²¹ The aim of this paper is to analyse bribery which involves corrupt public officials and to discuss the implementation and enforcement of the existing anti-corruption measures. This paper argues that successful implementation and enforcement of the existing anti-corruption laws will play a major role in curbing bribery that is experienced while accessing identification documents in Kenya.

This paper is divided into five main parts. It begins by examining how bribery affects the right to legal identity. The second part discusses bribery and access to legal identity. The third section examines the efforts which Kenya has made to combat bribery. The fourth part addresses the factors which undermine the legislative efforts to combat bribery. The fifth part discusses how to tackle bribery through implementing and enforcing anti-corruption measures. The last part provides concluding remarks.

19 Githinji P (2017) *Corruption in Kenya Police Force and Impacts on Kenyan security: investigating the need for police reforms*, available at <https://apps.dtic.mil/sti/citations/AD1042018> (Accessed 22 September 2022).

20 Transparency International Kenya (2017) 15.

21 Lugulu (2022) 12.

2. BRIBERY AND THE ACCESS TO LEGAL IDENTITY

This section explores how bribery affects the right to legal identity in Kenya. As previously mentioned, in the East African region, bribery occurs across various government agencies in Kenya, Uganda, Rwanda and Tanzania. According to the East African Bribery Index, bribery in Kenya is prevalent within the judiciary, the police and civil registration sectors.²² While bribery affects various government agencies in Kenya, this paper is limited to bribery that occurs when individuals access legal documentation in Kenya.

2.1 The right to a legal identity

Under international human rights law, every person has a right to be recognised under the law.²³ The importance of acquiring legal recognition is echoed in Target 16.9 of the Sustainable Development Goals which aims for states to provide legal identity to all by the year 2030.²⁴ The United Nations Legal Identity Agenda defines legal identity as

[t]he basic characteristics of an individual's identity e.g. name, sex, place and date of birth conferred through registration and the issuance of a certificate by an authorized civil registration authority following the occurrence of birth. In the absence of birth registration, legal identity may be conferred by a legally-recognized identification authority; this system should be linked to the civil registration system to ensure a holistic approach to legal identity from birth to death. Legal identity is proven by the issuance of a death certificate by the civil registration authority upon registration of death.²⁵

Drawing from the above definition, a legal identity is conferred through the registration of an individuals' vital characteristics from birth until death in accordance with the laws of a specific country. In addition, legal identity can be proven through the acquisition of a birth certificate, a national identity card or a death certificate. A birth certificate or a national identification document (ID) unlocks the enjoyment of social, economic and cultural rights. The registration of the birth of a child is important because the issuance of a birth certificate proves the legal

22 Transparency International Kenya (2017) 5.

23 Art 6 of the Universal Declaration on Human Rights. This right is echoed in Art of the International Covenant on Civil and Political Rights and Art 7 of the Convention on the Rights of the Child.

24 United Nations Strategy for Legal Identity for All (2019) *Concept note developed by the United Nations Legal Identity Expert Group*, available at <https://unstats.un.org/legal-identity-agenda/documents/UN-Strategy-for-LIA.pdf> (Accessed 20 September 2022).

25 United Nations Strategy for Legal Identity for All (2019) 10.

identity of the child while it enables the child to access the right to healthcare and education.²⁶ In addition, a birth certificate protects a child from trafficking, abuse and exploitation.²⁷ To repeat, the lack of proof of a legal identity is an obstacle to the enjoyment of social, economic and cultural rights. Without a birth certificate or a national identification document a person may face challenges in accessing their fundamental rights.

In the *Institute for Human Rights and Development in Africa (IHRDA) and Open Society Justice Initiative on behalf of Children of Nubian Descent in Kenya v. The Government of Kenya* (Nubian minors case) the African Committee of Experts on the Rights and Welfare of the Child (African Committee of Experts) stated that without an ID, it is difficult for a parent to register the birth of their child.²⁸ The African Committee of Experts further stated that a stateless child faces limitations in accessing the right to healthcare²⁹ and education.³⁰ A birth certificate is important because it unlocks one's access to basic education, adequate healthcare, and it allows one to apply for a national ID when they reach adulthood thus reducing their risk of statelessness.³¹ While an adult without an ID in Kenya cannot vote, contend for a political seat, own property, open a bank account or apply for a bank loan, among others.³² A person without a legal ID is at risk of becoming stateless because this he or she cannot prove their legal bond to a specific country. A stateless person is an individual who is not considered under the law as a national of any country.³³ In 2019, it was reported that there are

26 United Nations General Assembly, *Birth registration and the right of everyone to recognition everywhere as a person before the law. Report of the Office of the United Nations High Commissioner for Human Rights* available at https://www.ohchr.org/sites/default/files/HRBodies/HRC/RegularSessions/Session27/Documents/A_HRC_27_22_ENG.doc (Accessed 20 September 2022). See also UNICEF and ISI (2021) *The Child's right to a nationality and childhood statelessness Text and Materials* available at https://files.institutesi.org/crn_texts_materials.pdf (Accessed 20 September 2022).

27 UNICEF and ISI (2021) at 74.

28 Nubian minors case, paragraph 4 .

29 Nubian minors case, paragraph 59.

30 Nubian minors case, paragraph 63 .

31 Bronwen Manby *Legal identity for all and childhood statelessness in Institute of Statelessness and Inclusion (ISI) 'The World's Stateless children'* p 314-316 at 81. See also, Lugulu J (2022) "Update on Kenya's implementation of the decision in the Nubian minors' case." 6(1) *Kabarak Journal of Law and Ethics* 205–216 at 213.

32 Alice Edwards, 'The Meaning of Nationality in International Law in an Era of Human Rights' in Alice Edwards and Laura van Waas (eds), *Nationality and Statelessness Under International Law* at Cambridge University Press 2014, p.12-13.

33 Art 1(1) of the 1954 Convention Relating to the Status of Stateless Persons.

approximately one billion people around the world who are stateless.³⁴ These persons experience challenges in accessing human rights. The next section discusses bribery that occurs during the application of a birth certificate and a national identification document in Kenya.

2.2 The impact of bribery in the access of legal identity in Kenya

The Ethics and Anti-Corruption Commission (EACC) is a statutory body established under the Ethics and Anti-Corruption Commission Act, (EACCA). The EACC has a mandate of preventing and combatting corruption through law enforcement, recommending action to be taken against public officers who commit corruption, preventing these crimes, and raising public awareness on corruption.

In line with its duties, the EACC published a report which indicated that almost 40 per cent of the residents of Wajir, Meru and Trans Nzoia counties recorded the highest numbers of people who bribed public officials to obtain government services.³⁵ These persons bribed public officials to: collect or renew national IDs; access healthcare; or be considered for employment. The EACC report also indicated that persons collecting birth registration certificates, and collecting or replacing national identification documents were more prone to bribery. Those who paid bribes stated that they did so to first, access government services, second, expedite the processing of the documents, and third, because it was the norm.³⁶ The EACC report indicates that most of those who paid the bribe received the government services that they sought.³⁷

Corruption encountered in the process of acquiring proof of legal identity like birth certificates and national IDs negatively affects the enjoyment of civil, political, social and economic rights because without proof of nationality, it is challenging to access and enjoy human rights.³⁸ As mentioned, corruption results in the violation of fundamental rights and

34 United Nations Strategy for Legal Identity for All (2019) 2.

35 The Ethics and Anti- Corruption Research Report No.6 (2018) *National Ethics and Corruption Survey 2017*, available at <https://eacc.go.ke/default/wp-content/uploads/2018/11/EACC-ETHICS-AND-CORRUPTION-SURVEY-2017.pdf> (accessed 23 September 2022).

36 The Ethics and Anti- Corruption Research Report No.6 (2018) 11.

37 The Ethics and Anti- Corruption Research Report No.6 (2018) 47.

38 Kusol A *Safeguarding Human Rights Through Combating Corruption* available

freedoms which undermine democracy and the enjoyment of civil political, economic, social and cultural rights. It perpetuates discrimination in that those who bribe receive preferential treatment while those who do not bribe are discriminated against. This differentiation results in inequality and discrimination.³⁹ Moreover, bribery of registration officials during the civil registration process may deter applicants from registering for civil identification documents. Such documents prove that one has a legal identity and without them an individual may be at the risk of becoming stateless.. The next section discusses the efforts put in place by Kenya to combat bribery.

3. KENYA'S EFFORTS TO COMBAT BRIBERY

This section discusses the legislative measures which Kenya has taken to combat bribery. Article 2(6) of the Constitution of Kenya provides that, 'Any Treaty or Convention ratified by Kenya shall form part of the law of Kenya under this Constitution.' In the international sphere, Kenya has ratified the United Nations Convention against Corruption (UNCAC) and the International Code of Conduct for Public Officials. Regionally, Kenya has ratified the African Union Convention on the Preventing and Combating Corruption. Kenya has taken positive strides to comply with UNCAC in the ways discussed below.

In respect of the conduct of a public official, article 8 (1) of the UNCAC states, 'In order to fight corruption, each State Party shall promote, inter alia, integrity, honesty and responsibility among its public officials, in accordance with the fundamental principles of its legal system.' To fulfil its obligation in the aforementioned regard, Kenya enacted the Public Officers Act, 2003 (POEA) which tasks a public officer with the carrying out of his or her duties in an efficient and honest manner.⁴⁰ Section 11 (1) of POEA provides that a public officer, should not use his or her office to improperly enrich himself or others. The provision in POEA

<http://kenyalaw.org/ki/index.php?id=4527> (accessed 22 September 2022).

39 Kenya National Commission on Human Rights *The human rights dimensions on corruption* available <http://www.knchr.org/Portals/0/EcosocReports/Human%20Rights%20Dimensions%20of%20Corruption.pdf> (accessed 22 September 2022). See also Lichuma C (2018) "Economic Wrongs and Social Rights: Analyzing the Impact of Systemic Corruption on Realization of Economic and Social Rights in Kenya and the Potential Redress Offered by the Optional Protocol to the International Covenant on Economic, Social Rights and Cultural Rights" 5(63)*The Transnational Human Rights Review* at 10.

40 Section 8 of the Public Officer Ethics Act.

shows that Kenya has complied with the obligations laid out in UNCAC regarding the conduct of a public official.

Additionally, article 8(2) of the UNCAC obliges states parties to apply, within its own institutional and legal systems, codes or standards of conduct for the correct and proper performance of public functions. As a state's party to the UNCAC, Kenya provides for the conduct of public officials in Part III of the POEA Act which sets out a general code of conduct and ethics for public officials and requires a public officer to carry out their duties in an efficient and honest manner⁴¹ and in a way that maintains public confidence and upholds the integrity of the office.⁴² Article 15 of the UNCAC criminalises bribery of national public officials by providing that'

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally: (a) The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties; (b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

Kenya has enacted the Anti-Corruption and Economic Crimes Act No.3 of 2003 (ACECA) Section 2 of the ACECA defines corruption as bribery, fraud, embezzlement of funds, abuse of office, breach of trust, tax and election related offences. In addition, Kenya has enacted the Bribery Act, 2016 (Bribery Act) which objective is to prevent, investigate and punish bribery. In compliance with Article 15 of the UNCAC, section 5 (1) of the Bribery Act criminalises giving a bribe if the person offers or promises a financial advantage to another who knows that the acceptance of the bribe would constitute improper performance of a relevant function or activity. It does not matter if the advantage is offered to a third party.⁴³

Furthermore, section 6(1) of the Bribery Act criminalises the offence of receiving a bribe if a person requests or agrees to receive an advantage with the intention of improperly

41 Section 8 of the POEA Act.

42 Section 9 of the POEA Act.

43 Section 5(2) Bribery Act.

performing a function (by the person receiving the bribe or another). It does not matter if the advantage is received directly or through a third party to benefit the person who receives it or to benefit another person. Section 7 of the Bribery Act lays out the function to which the bribe relates, including any function carried out by a public officer who is supposed to perform the activity in good faith⁴⁴ and impartially.⁴⁵

In addition, section 18 of the Bribery Act lays out the penalties for receiving and giving of bribes. A person upon conviction shall be liable for imprisonment for a term not exceeding ten years or to a fine not exceeding five million Kenyan shillings or both. Moreover, section 18(b) of the Bribery Act provides that the convicted person may be liable to a mandatory fine if, as a result of the conduct constituting the offence, the person received a quantifiable benefit or any other person incurred a quantifiable loss. The mandatory fine referred to shall be— equal to five times the amount of the benefit or loss described in subsection (l)(b); if the conduct that constituted the offence resulted in both a benefit and loss described in subsection (1) (b), equal to five times the sum of the amount of the benefit and the amount of the loss.⁴⁶

Section 18(5) of the Bribery Act provides that the court may order the convicted person to pay back the amount or value of the advantage received by the person to the government. Further, section 18(6) of the Bribery Act provides that in addition to penalties, the court may order the confiscation of property acquired as a result of the advantage. In terms of section 18(8) of the Bribery Act, if the convicted person is a public officer, they are barred from holding public office. Lastly, the person convicted of bribery shall be disqualified from being elected or appointed to hold a state office for a period not exceeding 10 years.⁴⁷

It is important to note that through a private members motion, the Whistleblower Protection Bill, 2021 (the WP Bill) was presented to the Kenyan Parliament .⁴⁸ The WP Bill aims to facilitate the disclosure and investigation of serious matters relating to public and

44 Section 7(b) i of the Bribery Act.

45 Section 7(b) ii of the Bribery Act.

46 Section 18(2) of the Bribery Act.

47 Section 18(11) of the Bribery Act.

48 Kenya Law Bill Tracker <http://kenyalaw.org/kl/index.php?id=11332>.

private roles which may be unlawful and contrary to the public interest.⁴⁹ In addition, the WP Bill aims to: protect persons who make such disclosures; investigate the improper conduct; and reward individuals who report the improper conduct.⁵⁰ Section 11(d) of the WP Bill includes bribery as improper conduct.

Regionally, the African Union enacted the African Union Convention on Preventing and Combating Corruption, 2006 (AUCPCC). Kenya has signed and ratified the AUCPCC.⁵¹ Article 5 of the AUCPCC tasks states parties to adopt legislative measures to proscribe acts of corruption and related offences. Kenya has complied with this provision by enacting the Bribery Act, the POEA and the ACECA. These Acts proscribe corruption and related offences and prescribes the penalties for committing the offences. Article 5(3) of the AUCPCC obliges states parties to establish, maintain and strengthen independent national anti-corruption authorities. The Kenyan government has established the Ethics and Anticorruption Commission (EACC) to fight corruption.

While this section discussed Kenya's legislative measures against corruption, the next section discusses the extent to which these they have been implemented to combat bribery when persons apply for legal identity documents in Kenya.

3.1 Judicial decision on bribery

As earlier mentioned, Kenya has established the EACC to fight corruption. The EACC works in collaboration with other bodies like the police, the office of the Director of Public Prosecutions, the judiciary and the office of the Auditor General and Asset Recovery Agency- These bodies have the mandate of fighting corruption in Kenya through investigating, and prosecuting corruption and related offences and recovering stolen assets. In the financial year

49 Section 4(a) of the Whistleblower Protection Bill.

50 Section 4(c) (d) and (h) of the Whistleblower Protection Bill.

51 Kenya signed the AUCPCC on 17.12.2003 and ratified the treaty on the 03.02.2007 see African Union, List of countries which have signed, ratified/acceded to the African Union Convention on Preventing and Combatting Corruption available at <https://au.int/sites/default/files/treaties/36382-sl-AFRICAN UNION CONVENTION ON PREVENTING AND COMBATING CORRUPTION.pdf> (Accessed 27 June 2023).

2020/2021, the EACC investigated 2,029 reports. 31 per cent of the reports were related to bribery. These reports were investigated and 22 were taken to court.⁵²

In *Republic v Justina Syonzua Malea (2018) eKLR* the EACC investigated a case where the accused, a clerical officer in the Ministry of Interior and Coordination, had requested KES 2,500/- to facilitate the processing of a birth certificate for Syombua's nephew, Wayne Musyoka contrary to Section 6 (1), 17 and 18 of the Bribery Act. It was alleged that the clerical officer solicited and received a bribe to facilitate the production of an ID card. The EACC recommended the Chief Magistrates Court to prosecute the offence of bribery. The ODP investigated the crime and proved the crime beyond reasonable doubt.

In the case of *Paul Kuria Ngugi versus Republic (2019) eKLR*, there was an appeal against the Magistrates Court's decision where the accused, a public officer was charged with soliciting a bribe contrary to section 39(1) and section 39(3) of the ACECA. The accused was employed at the Ministry of Interior and Coordination of National Government as a senior chief. He solicited KES 25,000, to secure a letter of introduction which was required for one to acquire Kenyan citizenship. The High Court upheld the decision of the Magistrates Court which had imposed a fine of KES 250,000/-.

While the judicial decisions on bribery as demonstrated above, guard against bribery there are also obstacles to combatting this crime. The next section thus discusses factors which undermine Kenya's legislative efforts towards fighting bribery.

4. FACTORS UNDERMINING THE LEGISLATIVE EFFORTS TO FIGHT BRIBERY

In Kenya bribery is witnessed in various public sectors. Studies conducted indicate that over the years Kenya's fight against corruption has remained stagnated.⁵³ Complacency amongst Kenyans has enabled bribery to thrive despite the anti-corruption legislative efforts to fight it. Research indicates that Kenyan drivers or motorists bribe traffic police on a daily basis to

52 Ethics and Anti-Corruption Commission (2021) Report of Activities and financial statements for the financial year 2020/2021 available at <http://eacc.go.ke/default/wp-content/uploads/2022/05/EACC-Annual-Report-202021.pdf> (Accessed 21 September 2022).

53 van Rij (2021) 5.

avoid being prosecuted for traffic offences.⁵⁴ Similarly, during the election period, voters are bribed by politicians to influence the outcome of the vote.⁵⁵ Moreover, the EACC report indicated that persons bribed public officers because it was the norm to do so. Consequently, this shows that corruption has been socially accepted and institutionalised.

The EACC, the judiciary, the office of the Director of Public Prosecutions and the office of the Auditor General have the mandate of fighting corruption in Kenya through investigating, prosecuting and recovering stolen assets. These institutions have prosecuted corrupt individuals and recovered illegal assets, but the challenge is that these prosecutions seem to shield influential persons and those in power.⁵⁶ While some influential persons have been punished for committing bribery, for instance, in *Republic versus John Njoroge* (2020) the accused, Kasarani, a former Member of Parliament, allegedly solicited a bribe contrary to section 39 (3) (a) as read with section 48 (1) of the ACECA. He was found guilty of two counts of soliciting the bribe and fined Kshs. 1,300,000/- in default of two years imprisonment.

The number of corrupt state officials prosecuted for committing bribery in the Civil Registration Department which has the mandate of issuing birth certificates, and those of officials in the national registration bureau which issues national identification documents, does not reflect the high levels of bribery experienced by persons when they apply for birth certificates and identification documents. The low level of prosecutions of corrupt officials in the civil registry department and in the national registration bureau sends a message to possible offenders that bribery is rarely punished hence leading to the culture of impunity. It also does not deter potential offenders from committing bribery. In addition, the lack of public accountability among state officials has resulted in the high levels of bribery for persons applying for birth certificate and national IDs.⁵⁷

54 van Rij A (2021) 20. Karari P (2019) "Traffic Police Corruption, Vehicular Emissions and Disease: The Case of Kenyan Smoking Vehicle" *African Journal of Humanities and Social Sciences* 1(1) at 19.

55 van Rij A (2021) 17.

56 van Rij A (2021) 25.

57 Kempe R (2014) "Kenya's corruption problem: causes and consequences" *Commonwealth & Comparative Politics* 52(4) 494.

Lastly, inadequate implementation of the robust laws against bribery which Kenya has ratified and enacted undermines Kenya's fight against bribery. There is thus a need to take steps to stem the tide of bribery in this sector. To this end, the next section discusses the steps which Kenya may adopt to strengthen the fight against bribery.

5. TOWARDS IMPLEMENTING AND ENFORCING ANTI-CORRUPTION MEASURES

Kenya has made significant progress in enacting anti-corruption legislation as discussed in section 3. In addition, Kenya has established independent relevant enforcement agencies like the EACC, Office of the Attorney General, Directorate of Public Prosecution which fight corruption.

Despite the legislative measures and the extant enforcement agencies, Kenya needs to take more steps to tackle bribery in the civil registration process. To combat petty corruption more measures ought to be adopted. Below some additional measures are discussed.

First, the Kenyan Government could consider strengthening human and financial resources at the Kenyan National Bureau of Registration and the Civil Registration Department to enable the timely processing of legal identification documents.

Secondly, Kenya could consider increasing the financial and human resources capacity for anti-corruption agencies. This will enable them to conduct more investigations and prosecutions to implement the robust anti-corruption legislation. This would in turn deter corrupt public officials from soliciting or receiving bribes.

Thirdly, the Kenyan Parliament needs to pass the Whistle-blower Protection Bill, 2021 to encourage public officials and the general public to report incidences of bribery. The Bill will protect witnesses to bribery from victimisation. The Kenyan government could furthermore conduct regular training for public officials on petty corruption and the interconnection between bribery and access to a legal identity.

Finally, the Kenyan government needs to consider reviewing the school curriculum to include corruption and related offences. Similarly, awareness needs to be raised to educate the public on corruption and related offences and how to report bribery incidences.

6. CONCLUSION

Target 16.9 of the Sustainable Development Goals requires states to provide legal identity to all. Legal identity is proven through a birth certificate and a national ID. These vital documents are important because they enable persons to access socioeconomic rights. The article has argued that bribery has negatively affected access to legal identity. While there has been efforts to fight against bribery among public officials as evidenced by the case law discussed in this paper, the Kenyan government should adopt other measures to strengthen the fight against petty corruption. Kenya could consider increasing the financial and human resources capacity for the Kenyan National Bureau of Registration and the Civil Registration Department to enable the timely processing of legal identification documents. Secondly, the Kenyan government could increase financial and human resources capacity for anti-corruption agencies to enable them to conduct more investigations and prosecutions. Additionally, the Kenyan Parliament should consider passing the Whistle-blower Protection Bill, 2021 to encourage public officials and the general public to report incidences of bribery. Further, in strengthening the fight against corruption, the Kenyan government has to consider conducting training for public officials, introducing corruption awareness in the school curriculum and conducting civic education on corruption.