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**Public Procurement Oversight Authority: An assessment of its effectiveness in fighting corruption and promoting ethical practices in public procurement in Kenya**

Gachoka, Paul Mwaniki

Submitted in partial fulfillment of the requirements for the Degree of Masters of Arts in Applied Philosophy and Ethics at Strathmore University

School of Humanities and Social Sciences

Strathmore University

Nairobi, Kenya

June, 2016

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I declare that this study is my original work and has not been presented to any other institution of higher learning for an academic award. To the best of my knowledge and belief, the dissertation contains no materials previously published or written by another person except where due reference is made in the thesis itself.

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Gachoka, Paul Mwaniki

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## **Approval**

The thesis of Gachoka, Paul Mwaniki was reviewed and approved by the following;

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Senior lecturer

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Dean, School of Humanities and Social Sciences

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## **ABSTRACT**

The debate on corruption and financial impropriety has been raging in Kenya for the past 20 years. Procurement processes by public institutions has been identified as the main conduit for loss of public funds in the various reports by both the Ethics and Anti-Corruption Commission and the Public Procurement Oversight Authority. As part of the reform process to address this problem, the Public Procurement Oversight Authority was established. This study focused primarily on an in depth assessment of the PPOA and its effectiveness in fighting corruption and promoting ethical practices in public procurement in Kenya. It makes recommendations aimed at strengthening the institution. This study adopted a descriptive study design. Purposive sampling was used to select the study subjects and a total of 84 respondents were interviewed. Descriptive statistics was used to generate data on study variables and inferences made on the performance of the PPOA. Content and thematic analysis was used to analyze qualitative data on views and perceptions of the respondents. The findings show that the number of cases on corruption in Public procurement has increased since the establishment of PPOA. This may not necessarily mean that PPOA had failed with regard to promoting ethical practices. In fact, the study revealed that PPOA's performance was good and had achieved majority of targets set for the year especially on conducting Audits and assessment. The increasing trend could be as a result of expanded democratic space in Kenya since the enactment of the Constitution 2010 and the growth of the media which has made dissemination of information easy and the effect of the economic growth within the same period, which may have translated to more procurement. In addition, the findings revealed a well-defined institutional framework and elaborate structures put in place by PPOA. The PPOA has the capacity and strategies to fight corruption and promote ethical behavior in the procurement process. However, there is need to strengthen it by increasing the human capacity and resources, improve communication, intensify follow ups on audits done and enhance collaboration with other institutions like EACC and DPP for strict law enforcement. In addition, this research recommends collaboration with educational institutions to specifically incorporate ethics in the learning curriculum in order to mould individuals at an early stage. Also, further research should be done to assess the interaction of PPOA with the county governments and the impact on its capacity.

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## **List of abbreviations**

CTBs	Central Tender Boards
EACC	Ethics and Anti-Corruption Commission,
EWASCO	Embu Water and Sewerage Company
G.o.K	Government of Kenya
ICT	Information Communications Technology
IPPMT	Internal Procurement Performance Measurement Tool
KACC	Kenya Anti-Corruption Commission,
KEMSA	Kenya Medical Supplies Authority
KENAO	Kenya National Audit Office
NARC	National Rainbow Coalition
PPOA	Public Procurement Oversight Authority
PPAB	Public Procurement Advisory Board
PPARB	Public Procurement Administrative Review Board
PPD Act	Public Procurement and Disposal Act
PE	Procuring Entity
OECD	Organization for Economic Cooperation and Development
STD	Standard Tender Document

## **Acknowledgement**

I want to thank God for the grace that has brought me this far. Great appreciation goes to Dr. Thomas Kibua whose support and critique made me work harder. Let me also acknowledge the insightful input of Prof. Christine Gichure to this study. I cannot forget the role played by the entire members of the Department of Philosophy and Ethics especially Dr. John Branya who walked with me right from day one when I joined the MAPE class.

I also wish to appreciate my family: my wife Lucy and my children Denis, Jane and Michelle for their encouragement and dedication. My wife deserves gratitude for her immense support and patience in the course of my study. Many a times, I complained that she was behaving like a prefect, for her constant queries on the progress in doing my assignments and preparing for exams.

Appreciation also goes to respondents who made my data collection possible. I cannot forget my fellow classmates especially Caroline Wakori who gave me a lot of encouragement. Finally, my research assistants who helped me in data collection and proofreading of my work

## **CHAPTER ONE: INTRODUCTION**

### **1.0 Introduction**

This chapter outlines the introduction of the study that was assessing the effectiveness of Public Procurement Oversight Authority [PPOA], in fighting corruption and promoting ethical practices in public procurement in Kenya. However, a new law (Public Procurement and Asset Disposal Act, 2015) has been enacted and commenced on the 7<sup>th</sup> January, 2016. Amongst the changes introduced is the change of the name of the PPOA to Public Procurement Regulatory Authority [PPRA] (GOK, 2015). The chapter was organized to include the following: Background of the study, problem statement, research objectives, and scope of the study as well as the significance of the study.

### **1.1 Background of the Study**

Public procurement has been said to be the purchase by governments and public entities of goods and services from the private sector to carry out public functions (Financial Sector Deepening, 2008, Nzai & Chitere, 2006). It involves the massive expenditure of public funds in government development projects. It is, therefore, a critical subject. It is said to be the principal means through which governments meet development needs. For instance, the provision of physical infrastructure like railways to be achieved through the Standard gauge railway project (Kenya Railway Corporation, 2014), the Pipeline extension project (Kenya Pipeline Corporation, 2014) and the Olkaria IV power project and by extension the supply of essential products like medicines as done by Kenya Medical Supplies Authority (KEMSA)]. The Kenyan government uses public procurement to support the development of domestic industries, overcome regional economic imbalances and support minority or disadvantaged communities (Akech, 2005).

The ability to exercise discretion in the award of government contracts has been a source of valued political patronage and procurement a means of illicit transfer of funds from the government to private entities (Akech, 2005). This has been exemplified in the scandals on cemetery land in Athi River, Anglo-Leasing security contracts, maize importation scam, misuse of Free Primary Education (FPE) funds, sale of Grand Regency Hotel to

Libyan investors, purchase of Kenya's Embassy in Japan, and many others which relate to corruption in public procurement and which have cost Kenya over KSh700bn (USD 8.24 billion) (Mars Group, 2011).

The mentioned incidences of financial impropriety in state institutions have sparked the corruption debate in Kenya which has been continuing for the last twenty years. The fact that the issue has remained in the realm of public debate is an indicator that very little has been done in fighting the menace. The Annual Report of the Ethics and Anti-Corruption Commission for the year 2010/2011 states that out of the 18 concluded cases the total value of the money involved is a sum of Kshs. 1,652 337,000.00. In that year, the total money involved in 23 cases under investigation was Kshs. 12,737,265,000.00. As regards asset tracing investigation, the value of the completed cases was Kshs. 771,710,000.00 and the values of the on-going cases were Kshs. 3,893,400,000. Also, the Commission states that through proactive action, it disrupted corruption practices in 12 public entities and averted a loss of Kenya shillings 3,893,400,000 (*Ethics and Anti-Corruption Commission, 2010-2011*).

Furthermore, for the year 2011/2012, the annual report is instructive that 10 cases with a total value of Kshs 1,901,450,000 were investigated and completed within the same period, 21 cases were still under investigation all with a monetary value of Kshs 63,774,355,000. The EACC managed to successfully disrupt corrupt practices in 14 situations valued at Kshs 1,208,200,000. The commissions equally managed to successfully trace proceeds of corruption in 4 cases with an asset value of Kshs 126,500,000. Finally, 13 other cases were still under investigation with the ultimate aim of recovering assets valued at Kshs 19,757,896,386 (*Ethics and Anti-Corruption Commission, 2011-2012*).

The figures described which are for a period of two years clearly points to the main problem in public institutions especially those in the public procurement sector which is the large loss of public funds and assets. The Public Procurement Administrative Review Board (PPARB) equally published a case digest for the Years 2008 to 2010. The cases in

it revealed instances of malpractice which if left unchecked, would invariably lead to either loss of public funds or failure to achieve value for money. For instance, while dismissing an application filed by a losing bidder in a tender to construct a modern library at Kenyatta University, the PPARB cited communication through a letter made to the Procuring Entity (PE) by a Candidate when the evaluation process was in progress, amounted to influence or intimidation in breach of Section 38 of the PPD Act, 2005 and clauses of the tender documents, (*Ongata Works vs. Kenyatta University*, 2009). Similarly, in a tender for provision of inspection of petroleum import services by the Kenya Bureau of Standards, the PPARB in *Societe Generale De Surveillance SA (SGS) vs. Kenya Bureau of Standards* nullified the tender. One of the main reasons for the nullification was failure by the procuring entity to read out aloud the prices and recording the prices in the tender opening registration even after adopting the two envelope system for the technical and financial proposals. This was a spectacular failure to observe transparency and fairness and the Board seized this opportunity to correct the anomaly. Notably, a similar tender by Kenya Bureau of Standards was the subject of another case before the Review Board, and there were allegations of corrupt practices in the tender process (*East Africa Automobile Co Ltd vs. Kenya Bureau of Standards*, 2014).

Public procurement has undergone significant changes, from a crude system with no regulations to a legally regulated procurement system in line with the best international practices. Major reforms in public procurement in Kenya can be traced back to the year 1997 (Akech, 2005). A study by World Bank (1997) documented a number of weaknesses in the procurement system; first, was lack of uniformity in the procurement system for the public as a whole, the system did not provide for sanctions or penalties against individuals who breached the regulations in the Suppliers Manual, other than internal disciplinary action. Secondly, application of the rules was not strict, and many of the norms were not followed, while the Suppliers Manual did not cover procurement of works. Moreover, the disputes settlement mechanism relating to the award procedures as set out in the manual, were weak thus failed to provide a mechanism that promoted fairness and transparency. The records of procurement transactions too, in many cases,

were found to be inaccurate or incomplete which led to suspicion of dishonest undertakings at the tender boards (Akech, 2005).

When the NARC government rode into power in 2002, it came in with an official policy of implementation of good financial governance and anti-corruption measures, thus leading to the drafting of new public procurement legislation. Indeed, in the year 2005, the Public Procurement and Disposal Act (2005) was enacted and operationalized on 1st January 2007. Together with the Public Procurement and Disposal Regulations (2006), the PPD Act heralded meaningful public procurement reforms. Key institutions were created under the Act namely; the Public Procurement Oversight Authority (PPOA), the Public Procurement Advisory Board (PPAB) and the Public Procurement Administrative Review Board (PPARB).

Section 9 of the Act (PPD Act, 2005), sets out the roles of the PPOA as follows: Monitoring the procurement system and reporting on its overall function; initiating public procurement policy; ensuring that procurement procedures provided in the Act are adhered to and assisting in the implementation and operation of the public procurement system. In performing these functions, the main objective is to ensure that citizens get value for the money in which the funds are utilized in procurement. The focus of this study is to assess how effective the Authority has performed in fighting corruption and promoting ethical practices in Kenya as it discharges its mandate within the aforementioned legal bounds. The vastness of corrupt practices in Kenya has occurred in public procurement (Herbst, 1990). About 60% of government revenue is spent on procurement, (Kenya Ministry of the National Treasury, 2013); it is, therefore, simple to understand why public procurement has been at the center of corruption. The colossal sums of money lost through procurement related malpractices before and after the establishment of the PPOA call for a succinct assessment.

The reform of public procurement has not been limited to Kenya; rather it has been wide spread across continents. International focus on developing better performing public procurement system has largely been driven by international trade agenda that sought

cross-country trade much of which is linked to government spending (*OECD report, 2011*). This has led to countries developing fair, open and transparent public procurement systems.

In this regard, Brazil touted as one of the fastest growing economies in the world has experienced re-engineering of its public sector over the last decade. Brazil pursued procurement reform as part of the strategy to obtain benefits a well performing system provides to the overall performance of the public sector. Several laws had been enacted from late 1960's; mid 1980's and again in 1993. This later law was found to be complex and detailed. It was appraised in 10 years and revealed that 50% of the federal procurement was being undertaken using non-competitive methods (*Brazil Country Procurement Assessment report, 2004*). In 2004 onwards, Brazil introduced a simplified procurement system using technological innovations. This had the net effect of reducing non-competitive bidding by 20% (De Janvry, A., & Dethier, J. J., 2012).

Ghana faced challenges in her public procurement system akin to that experienced by Kenya (De Janvry, A., & Dethier, J. J. 2012). As part of the reform process, Ghana equally passed a law –the Public Procurement Act (Act 663) which came into effect in 2004. This law established among others the public procurement board later named public procurement authority. This institution is Ghana's version of PPOA. Equally established by law is an Appeals and Complaints panel. An assessment done later on the public procurement system in Ghana after the promulgation of the procurement Act using OECD/DAC assessment methodology confirmed substantive progress made since 2003 (De Janvry, A., & Dethier, J. J., 2012).

In East Africa, Rwanda makes for an incredible case study. In 2004, Rwanda was operating without a legal framework for the public procurement system (*World Bank Report, 2004*). A study conducted on the public procurement system resulted to a raft of recommendations to improve the system and built on legal, institutional operations and integrity pillars. The Key recommendations included formulation of new procurement

law, development of standard building documents, ensuring fraud and corruption were properly addressed in criminal laws et cetera. (De Janvry, A., & Dethier, J. J., 2012).

An appraisal done in 2007 revealed that Rwanda had established a public procurement law consistent with good international practices. That law established the Rwanda Public Procurement Agency (RPPA) whose mandate included undertaking regulation, oversight and capacity building (*OECD Report, 2011*). The common denominator amongst these countries is the evolution of public procurement systems, and reforms pegged on legal reform and establishment of a central institutional framework similar to PPOA. It can be noted that although the public procurement system in Brazil and Ghana improved in terms of effectiveness after the reforms, it's only in Rwanda that integrity and the fight against corruption was categorized as a key pillar for reform and effectiveness of the public procurement system.

## **1.2 Problem Statement**

### **Problem Statement**

In 1997, the World Bank funded a study to assess the public procurement process in Kenya. The study revealed a number of weaknesses in the public procurement sector including; lack of uniformity in the procurement system for the public as a whole, lack of sanctions or penalties against persons who breached the regulations in the Suppliers Manual, poor implementation and enforcement of the Rules and Regulations and there were no clear guidelines on procurement process. Additionally, the dispute settlement mechanisms relating to the award of procedures as set in the manual were weak in ensuring fairness, transparency and accountability hence the records of procurement transactions were found to be either inaccurate and/or incomplete. All this led to suspicion of dishonest and unethical practices.

As part of the reform process, the Public Procurement Oversight Authority (Supra) was created under the PPD Act in 2007. PPOA had been identified as the legal vehicle for streamlining the public procurement sector by ensuring that there was compliance with procurement rules.

However, after the establishment of the PPOA, a study by Engelbert, Reit & Westen, (2012), hold the view that Kenya's public procurement is still riddled with corruption years after its establishment. In view of the finding and taking into account the reports by the EACC, this study is an assessment of the effectiveness of PPOA in the fight against corruption and promotion of Ethics. In so doing, it is possible to say whether the ideals upon which PPOA was premised have been achieved.

### **1.3 Objectives of the Study**

#### **1.3.1 General Objectives**

The main objective of the study was to assess the effectiveness of the PPOA in fighting unethical practices in public procurement and make recommendations to strengthen the institution.

#### **1.3.2 Specific Objectives**

The specific objectives were:

1. To examine the incidences of corruption in public entities after the establishment of the PPOA.
2. To assess the performance of PPOA in the fight against corruption and promotion of ethics in public procurement.
3. To assess the availability of institutional framework and structures as well as the capacity of the PPOA in fighting corruption in public procurement.
4. To assess the effectiveness of the oversight strategies employed by PPOA to fight corruption and promote integrity in public procurement.

### **1.4 Research Questions**

The study was guided by the following questions:

1. What is the trend in the incidences of corruption after the establishment of the PPOA?
2. How has PPOA performed in the fight against corruption in public procurement?
3. Does the PPOA have the institutional framework, structures and the capacity to fight corruption and promote ethics in public procurement?

4. How effective are the strategies employed by PPOA in the fight against corruption and promotion of Ethics?

### **1.5 Scope of the study**

The PPOA is a National Government entity based in Nairobi County and has no branches in other Counties. Therefore, the study was done in Nairobi County. This study targeted the numerous public entities that use public money to procure goods and services. However, it was restricted to the public entities that deal with mega projects. That is the projects that cost billions of shillings. The rationale for restricting the study to procurement in these institutions is that the incentive to bribe and use of political influence is likely to be high. As regards the suppliers, these were selected from the selected procuring entities so that there could be consistency and cross-reference on the research questions. The study also targeted the staff of PPOA and members of the Public Procurement Administrative Review Board.

#### **1.5.1 Delimitation**

Since there are a large number of entities involved in public procurement, this study focused on the institutions that are involved in mega projects and which spend hundreds of millions of tax payer's money and loans that are paid using taxes. (See Annex 1).

#### **1.5.2 Limitations**

The procurement process is not in the public domain and confidentiality is a key factor. Therefore, accessing data was quite challenging especially among the suppliers. In addition, corruption is a two-way process.

### **1.6 Significance of the study**

The public procurement is a significant vein in the bloodline of this country. It cannot be gainsaid that it is the conduit through which essential goods and services are supplied. This is financed through hard earned taxes from the citizenry and what they deserve is value for their money. Ethics and integrity from persons working in public procurement is an essential starting point. Institutions like the PPOA with an institutional and legal

framework to ensure compliance with the set rules and regulations in public procurement need to be evaluated and revitalized every so often. The findings of this research, therefore, will be significant and will shed light on the effectiveness of the PPOA in fighting corruption and promoting ethics in public procurement.

## CHAPTER TWO: LITERATURE REVIEW

### 2.0 Introduction

This chapter reviews various theoretical concepts, scholarly material authored by other researchers and to a smaller extent, judicial and quasi-judicial views that bear heavily on the topic under study. Relevant theories that explain ethics and corruption are analyzed. Literature on the major themes of the research is explored, that is, incidences of corruption in public procurement; an appraisal of the performance of PPOA and the effectiveness of the framework and oversight strategies of PPOA in fighting corruption and promoting ethics in public procurement. Importantly, this chapter will equally include a theoretical and conceptual framework.

It is surprising that the topic under study is relatively new in the academic field, considering the acquisition of goods and services by public authorities using public money is as old as humanity. The question that lingers in mind is why ethics generally and more specifically ethical procurement had not been embraced as a topic until recently. This raises the question whether corruption in public procurement and the focus on procurement ethics is a new phenomenon or whether it is an accepted fact of life, which public authorities can utilize public resources without transparency and accountability.

The problem statement in this study shows that corruption in public procurement is a vice that is still bedeviling the Kenyan society. As a theoretical solution, it can be argued that there be need to lay more emphasis on promotion of ethics and integrity in the Kenyan society. The question that arises then is; at what stage are the concepts of good corporate governance and business ethics introduced in the Kenyan education system? Moreover, at what point of human development are good ethics inculcated in potential public servants for posterity? If these concepts are to be part of subjects to be taught at the tertiary institutions and as training courses for business executives, it is probably too late to change the character of the person. Moreover, if they value that ethics and morals can be instilled among serving and potential public servants, it should be done early enough.

As a further theoretical solution, it can be contended that corruption in public procurement can be reduced if it becomes a high risk and low rewarding exercise. It can be argued that the fact that many cases of corruption continue to be reported indicate that bending of the procurement process rules is a high reward and a low-risk exercise in Kenya. Weak structures and lack of capacity to monitor how the procuring entities undertake the procurement process will create opportunities for crooked personnel to award tenders to those who do not have the lowest evaluated prices.

Further, having adequate staff, who are properly trained and persons of high integrity, will ensure that there is value for money. The PPOA must work closely with other institutions like the Ethics and Anti-Corruption Commission (EACC) that are involved in the fight against corruption. Corruption is a multi-headed dragon that requires combined efforts of the many arms of government. Therefore, the ability of the PPOA to work closely with other institutions is paramount. An institution can only have an impact if its existence is known to the players in the field. The stakeholders in procurement sector who include the staff of the procuring entities and the suppliers ought to know that there is an eye that oversees their activities.

## **2.1. Ethical Theories**

Ethics holds a central position in the thesis under study. It can be described as moral principles that govern a person's behavior or the conducting of activity; or a branch of knowledge that deals with moral principles (Zajac, 1996). In a more prescriptive way, ethics can be described as the principle of conduct governing an individual or profession (Somerville & Wood 2008).

In his book on *Business ethics: concepts & cases*, Manuel Velasquez considers the subject of ethics within the conduct of businesses broadly. He defines ethics as the principles of conduct governing an individual or a group and further terms it as the study of morality (Velasquez, 2001). Flowing from these definitions, ethics in public procurement according to this research entails, moral principles governing the conduct of individuals, professionals or groups engaged in procurement activities in the public sector.

Ethics is divided into 3 categories; meta-ethics, normative ethics and applied ethics. In examining business ethics (Gulcan, 2013) begins by stating that many ethical areas emerged under the name applied ethics as opposed to the two other categories being modern day philosophical inventions.

This research takes on a more practical task and considers ethical theories that articulate good habits, duties that people should follow and consequences of their actions on self and others. Major aspects of public procurement fall within the realm of business ethics. Applied ethics uses theoretical ethics to resolve specific moral issues- dominant examples being business ethics and professional ethics for all sectors of life (Gichure, 1997).

It's on this basis that this research adopts the conceptual tools of normative ethics to examine ethical issues that arise in public procurement. This is because public procurement involves much human interaction. The main objective of the suppliers being to make a profit and for public entities to obtain goods and services at the right specifications and prices, thus, creating a business relationship.

### **2.1.1 Normative Ethics**

Under this theory the golden rule is, we should do to others what we would want others to do to us. It is also a single principle against which we judge all actions. Three classifications exist under this head, which are virtue ethics; duty ethics; and consequentialist theories.

### **2.1.2 Virtue Ethics**

In virtue ethics emphasis is placed on developing good habits of character not just for learning the rules of conduct. This research traces this concept to Socrates, who 400 years before the birth of Christ, was asking the questions; how ought I to live my life? Moreover, how we ought to live together, bound by Aristotle teachings whose complete work is documented in the book, *'The Nicomachean Ethics'*, as revised by Lesley Brown, (2009). Aristotle argued that happiness is the highest good and the end at which all our activities ultimately aim. Only happiness is an end in itself, as such it is the supreme good (Brown, 2009). The difficulty is that people do not agree on what makes for a happy or

good life, so the purpose of ethics becomes to find the answer to this question. He goes further and defines the supreme good as an activity of the rational soul by virtue (Brown, 2009).

In view of these and in relation to public procurement, the effectiveness of PPOA in achieving its objectives relies heavily on the performance of staff on one hand. It further depends to a considerable extent on its staffs' integrity to fight corruption in procurement processes while promoting integrity on the other hand. This makes it imperative to examine what individual staff would make for a happy or good life and where they derive their supreme good; is it in the quality and positive impact of their work or in the material and financial gain?

Moral virtue, according to Aristotle, is a disposition to behave in the right manner as a means between extremes of deficiency and excess, which are vices (Bostock, 2000) and that people learn moral virtue essentially through habit and practice as opposed to reasoning and instructions. Along the same lines, it is asserted that the best measure of moral judgment is a choice since choices are always made voluntarily using rational deliberations (Bostock, 2000). We always choose to aim at what is good, but people are often ignorant of what is good and so aim at some apparent good instead, which is, in fact, a vice.

Essentially, good laws on public procurement and those that tackle corruption can exist in statute books, but to achieve effectiveness the individual players ought to develop habits and practices that promote integrity and which aim at what is good as opposed to what is apparently good. This works better than when the procurement processes and system is left to the vagaries of reason and instructions. It follows then that PPOA puts in place a system where good habits like honesty and fidelity to the laid down laws are nurtured and practiced amongst its employees.

Further, moral philosopher Rosalind Hursthouse is critical of virtue ethics since 'it does not get anywhere' in terms of knowing what we ought to do on a virtue based theory

(Giersson, 2000). Hursthouse notes, there is no guidance on how to act morally, for instance, take the phrase, “Act as a virtuous person would act given the situation”. Although this phrase appears self-evident, on closer contemplation it is not so clear, since it raises more questions:” what is a virtuous person, how is virtuousness defined?” or “what situation is a specific person facing, and what are the factors involved?” In the same vein, although virtue ethics puts value on people it is culturally subjective, for instance, what is considered virtuous now may not have been considered virtuous years ago (Hursthouse, 1997).

These research places consideration on Aristotle’s point of view in assessing the institutional measures and actions that PPOA has undertaken to inculcate moral virtues in procurement officers and other employees in the procurement sector ostensibly to enable them handle temptations laid on their path by unscrupulous business persons.

Further and lending credence to the view held by Gichure (supra), HurstHouse (1999) surmises that virtue ethics is both a new and old approach to ethics, old as it dates back to the writings of Plato and more particularly Aristotle. New in that, as a revival of the ancient approach it is a fairly recent addition to contemporary moral theory.

In the book on ‘Virtue ethics’, (HurstHouse 1999), alludes to the fact that up until 30 years ago, normative ethics was dominated by just 2 theories; deontology, which took its inspiration from the 18<sup>th</sup> Century philosopher Immanuel Kant, and utilitarianism which derives its modern incarnation from the 18<sup>th</sup> and 19<sup>th</sup> Century Philosophers Jeremy Bentham and J.S Mill (HurstHouse, 1999).

This research has identified education of ethics and awareness on the cumulative negative effects of corruption as well as absence of role models as the gap that needs to be filled to reduce and ideally eradicate lack of values while promoting work ethics in public procurement. In the context of public procurement in Kenya, the procurement process is done in several stages, and what is needed is a workforce of individuals well-grounded in integrity and exemplary ethical practices to play by the rules as provided in the PPDA

and PPDA Regulations. In so doing these individuals should equally report and expose instances of malpractice in general and corruption in particular.

In addition, an important proposition about people's virtues and vices is that once acquired they are strongly entrenched, precisely because they involve so much more than mere tendencies to act in certain ways (HurstHouse, 1999). Carefully reviewed, this statement further reinforces the need to get good morals and habits inculcated to those who serve the public and in this context the public procurement sector as opposed to reversing the situation.

In the book, *'The sources of normativity'* Christine M Korsgaard, delves into the subject of normative ethics and sought grasp of normativity practically in distinct senses. Essentially, Korsgaard (1996) was not looking for an explanation for sociology of knowledge or a genealogy of morals but for a grasp of ways which normative claims may be vindicated. The endeavour to realize perfection is just as much as the endeavour to be what you are-to be good at what you are and so the ancient thoughts of human virtue aimed at excellence (Korsgaard, 1996).

The aforementioned author considers Plato's writing and concludes she is not sure how excellence is achieved on the basis of Plato's views. On the other hand, Aristotle renders that a well brought up person would not need to have excellence forced upon him. He should move naturally towards the achievement of his perfect form. Further, Aristotle isn't much interested in those who are not well brought up in the *Nicomachean Ethics* but they do come towards the end of the book where Aristotle suggests that in this case there is a remedy; it is law (Korsgaard, 1996).

In conclusion Korsgaard (1996) arrives at a conclusion that there is a revolution on moral thought in that, attention has now turned to the problem of fallen humanity since the fallen human being was reluctant, recalcitrant and resistant matter and that we humans are what is wrong with the world. This research in reflection of the above literature

equally looks at the habits and character of the acting person vis-à-vis, the law and other factors in the fight against corruption and promotion of ethics in public procurement.

Virtue ethics focuses on the nature of the acting person (Ndolo & Njagi, 2014). The actor should base his action on the right virtues. The author draws emphasis on the view that the central theme in virtue ethics is shaping people into morally upright, good and responsible creatures. The book by (Gichure 2008) makes a strong case for instilling ethics and good habits in business and organizations. The main aim of this research is to find out how the PPOA has performed as an organization in promoting ethical procurement and in fighting corruption in public procurement in Kenya.

### **2.1.3 Duty Ethics**

These are called non-consequentialist ethics since they deal with principles and are obligatory irrespective of the consequences that might follow from human actions. According to duty ethics, although the consequences of an act are good, some acts are wrong. In duty ethics, actions are judged as ethical or unethical based on duty or the intentions of an actor.

In regard to prepositions on duty ethics, the PPOA has published the Public Procurement Code of Ethics for procuring entities (2011). The purpose of this code is to enable employees of procuring entities to comply with the provisions of the PPDA and the Regulations. It makes it mandatory for employees of procuring entities participating at any stage of the procurement proceedings to sign the code. Employees of PPOA as a procuring entity are subject to this code as well.

Codes of ethics play a significant role not just in public procurement but in business generally. In the article, '*ethics issues prevail in supply chain management*', Saimaramnath, (2014), observes that a code of business ethics requires all participants in the supply chain process to exhibit high standards of professionalism, personal integrity, transparency and accountability. Equally the code promulgated by PPOA aims at setting and adopting of good practices and ethical standards. Further, PPOA is mandated to

undertake continuous training of staff of procuring entities to eliminate malpractices that arise from ignorance. This is a commendable step to start from in setting the pace for reinforcing the duty placed on individuals involved in public procurement to advertently promote integrity and ethical practices and fight corruption.

In conclusion this research considers Kant's categorical imperative put in context, rules out certain practices such as theft, fraud, coercion and so on in business life. Kant's categorical imperative constitutes some element of business ethics. However, it is said that Kantian business ethics is not simply a matter of following the demands of the categorical imperative. It is challenging to arrive at a universal rule based on moral principles that follow duty ethics. The duty ethics approach is practiced by organizations that follow legal and accepted moral norms. They tend to follow particular codes of ethics and by extension avoid improper behavior. This model would yield positive results if adopted by persons involved in public procurement.

In contrast, the effectiveness of codes of ethics is given evaluation by the British Institute of Facilities Management in its report, '*ethical behavior in the construction procurement process*'. The paper observes that the propensity to develop codes of practice is a 'normative' approach to ethical practice. It goes ahead to state, that the 'perennial' dilemma of the industry is that codes of ethics don't necessarily work in practice. That is the code of practice still remains much an ideal with very little embeddeness in industry practices (British Institute of Facilities Management Report, 2006). The upshot being that codifying the ethical values of the organization or profession may not be enough to deal with the ethical ambivalence created and maintained through reward system.

It is useful to note that procurement staffs are moral individuals with conflicting value systems, thus important to focus on individual values and professional ethics (Allen and Davis, 1993). Therefore, this research is concerned on how effective the strategy incorporating implementation of codes of conduct can be set up in public procurement but more importantly exposes the need to focus on the virtues of individual actors as a precursor of fighting corruption and promotion of ethical procurement.

#### **2.1.4 Utilitarian Ethics**

These entail the belief that an action is morally right if the consequences of the action are more favorable than any other action. The founder of classical utilitarianism is Jeremy Bentham (1748-1834). Bentham's theory is based on the utility principle. According to utilitarianism; an action is right from an ethical point of view if and only if the total of utilities produced by that act is greater than the total of utilities produced by any other act the agent could have performed in its place (Sprigge, 1968).

Utilitarian theories are divided into two types over the issue that "how the judgment is made that particular act is of maximum relative utility or relative minimum disutility" (Hull, 1979). These two types of Utilitarianisms are called; act utilitarianism and rule utilitarianism. Act utilitarians are concerned with the long-term benefit to harm ratios. Act utilitarianism also provides the cost-benefit analysis, so it is attractive to business persons. According to act utilitarianism, following some rules has utility in one society, but in another society has disutility. For example, bribery is always prohibited. However, following the rules 'never bribe' has utility in some society, but not following the rule has disutility in another society. Consequently, when utility maximization requires breaking some rules, it is ethical for act utilitarianism (Hull, 1979).

Another type of utilitarianism is rule utilitarianism. Utility maximization and rules play a central role in rule utilitarianism. According to rule utilitarianism, actions are judged as ethical or unethical based on the rules that lead to the greatest good. The difference between act utilitarianism and rule utilitarianism is that act utilitarianism holds to the consequences of an action, while rule utilitarianism holds to the conformity to rules of an action. Rule utilitarians believe that if a rule brings the greatest good, this rule is correct. It may be right to obey the rule for rule utilitarian (Smith, 2009). Thus, in utilitarianism rule actions are to be tested by rules and rules tested by their consequences. John Stuart Mills, in his brief but a brilliant treatise, *utilitarianism* accepts the position advanced by Bentham especially the phrase, "...the greatest happiness to the greatest number..." He noted that Bentham pegged his theory on quantitative terms and hoped to establish

utilitarian ethics on a completely scientific basis (Smith, 2009). Mill then modified the position and added a qualitative standard. He asserted that a human being with refined faculties is not satisfied with pleasures of mind but with the pleasure of the intellect, of feelings and imagination, and of the moral sentiment that have higher value than the pleasure of sensation (Smith, 2009).

In a project to construct a public railway line in Kenya, for instance, utilitarians would argue that regardless of whether the procurement process is above board, the cumulative positive impact of the infrastructural project to the greatest number of Kenyans far outweighs the cumulative negative impact and therefore it would be justified to proceed. This school of thought received practical application recently in a procurement dispute where the utilitarian principle as modified by John Stuart Mill was relied upon by the Court of Appeal in the case of *East African Cables Limited vs. The Public Procurement Complaints Review & Appeals Board & Another* (2007) eKLR. The court declined to stop the tendering process for the purchase of transformers by the Kenya Power and Lightning Company. The court aptly applied the utilitarian principle and reasoned that it was incumbent upon it in the circumstances, to choose between two ethical qualities, and was in favor of one that tends to produce the greatest happiness for the greatest number of people, and produce the most good.

In contrast, if the above case was determined on the basis of virtue ethics, it would mean the project was as good as the propriety of the procurement procedure involved in awarding the tender for the purchase of transformers. This is because virtue ethics instructs, that actors in this case government officials, must base their actions on the right virtues. Impliedly, the procurement process should have been conducted with scrupulous honesty and transparency above board within the laid down procedures.

## **2.2 Theoretical framework**

Ethical lessons emanating from the three schools of thought; virtue ethics, duty ethics and consequentialist theories are diverse and distinct. In relation to public procurement, they

all provide an ethical angle which can produce certain results if based upon in designing and implementation of policies to fight corruption and promote ethics.

Whereas duty ethics judges actions as ethical or unethical based on obligatory principles regardless of consequences or intentions of the actor, consequentialist theories in sharp contrast, is primarily founded on the belief that an action is right or wrong if the consequences are favorable than any other action. This would mean that applying duty ethics in public procurement would require and depend on promulgation of codes of conduct and ethics. This is not enough in itself, to be embedded in practice and to deal with ethical ambivalence more so because of the conflicting value system among individuals. On the other hand, consequentialist theories would require choosing amongst two or more ethical qualities and finally favoring one that produces the best benefits, happiness or good to the greatest number of people even if the process entails bending the legal provisions and procedures.

Duty ethics brings out the importance of following set rules and laws such as codes of conduct and ethics as well as public procurement rules. Under utilitarian ethics, consequences of actions are important to consider as an ethical approach in the fight against corruption and promotion of ethics. However, the conscientiousness of duty and consequences need the sensitivity to good actions that is, if virtue is imbued in society, then society will fulfill its duty to serve and the consequences will be good. Virtue ethics tackles the root problem of lack of ethics. It focuses on the character, habits and values of the acting person.

This research emphasis on the virtue ethics school of thoughts since inculcating and promoting ethical behavior requires an understanding of the individual and situational factors that influence character. The public procurement process even where it is automated will not change ethically unless those engaged in the practice are changed. This means that where it is driven by persons of high moral principles, the chances of unethical practices are likely to be low since it only needs one whistleblower to disrupt corrupt procurement. If these model is adopted it would proactively offer positive solutions in dealing with the complex phenomena of corruption and thus promote ethics in public procurement as compared to the other theories.

### **2.3 Ethical Issues In Public Procurement**

The process of procurement or the purchase of goods and services offers the most potential for ethical abuses or violations (Elshleman 2002). Ethical procurement practices need to be adopted to significantly lower or ideally eradicate ethical abuses or violations in public procurement. The following cardinal principles drive procurement ethics; impartiality or objectivity, openness and full disclosure, confidentiality, due diligence, competence and duty of care, fidelity and professional responsibility, avoiding potential or apparent conflict of interest (Lyson, 2006). These can be characterized by accountability, responsiveness, professionalism, transparency, open competition, confidentiality, non-discrimination and fair play (Lyson, 2006). To reflect these cardinal principles that drive procurement ethics, a lot is dependent on the legal, institutional framework and the individual players constituting personnel working within the public procurement system. The legal framework as enacted in 2005 appears to have anchored the much needed reforms aimed at streamlining public procurement. However, public procurement is dodged by malpractice. This research identifies the effectiveness of the institutional framework in place to fight corruption and promote ethics in public procurement as the areas that bear that ultimate response to these malpractices and which require urgent and in depth attention.

In any given sector where the relevant ethical issues of concern are identified and discussed. It often leads to a further question on when do these ethical issues become ethical problems. An observation from schlegelmilch and Oberseder (2007) in the article, *'ethical issues in global supply chain'*, weighing in on ethical issues pertaining to producers describe things like child labour, fair working conditions, fair wages, counterfeits among others as the ethical issues. In the same context and citing (Crane and Matten, 2007), the ethical problem arises when the companies fail to enforce regulations, such as wearing a safety helmet or passively permit workers to ignore appropriate safety regulations. In the same breadth it follows then that, corruption, dishonesty; unfair tendering prices are some of the ethical issues that arise in public procurement. Ethical problems emerge when institutions like PPOA fail to enforce regulations that fight

corruption and promote ethics in public procurement. This research seeks to assess this ethical problem and the effectiveness of PPOA in dealing with the ethical issues.

It is borne in the minds of Ndolo and Njagi (2014) that public procurement offers an opportunity for ethical violations, thus they argue, that the pressures which the marketplace exerts on purchasing departments makes it important for players in the procurement system to “recognize and understand” both professional and ethical standards required in the performance of their duties. The need to focus on the ethics of individuals in the public procurement sector, specifically those working with PPOA is clearly captured for these reasons. First, procurement staffs are the representatives of their organization in dealing with suppliers, thus the very important need to have and maintain sound ethical conduct. This not only earns respect and good will from the suppliers but also legitimizes the entire procurement process and the laid down systems.

Second, training in procurement ethics solutions tend to center on the need to indoctrinate students from the earliest ages through college, in the finer points of their civic and ethical responsibilities (Ndolo & Njagi, 2014). It's appreciated that PPOA is mandated to carry out training and capacity building to the various players and has equally published the code of conduct for staff of procurement entities with a view point of meeting this particular objective.

In looking at the various literatures on integrity and ethics in public procurement, this research notes that discourse on integrity and ethical standards in public procurement has not been robust especially within the African continent. This is reiterated by (Gichure 2008) in her statement that ethics is a relatively new academic field in Africa and elsewhere. She further states that whereas in the developed world it features prominently, in Africa this is yet to happen despite several countries being high on the list of world corruption for a long time. Ethics and corruption have a strong correlation. Corruption arises when individual and public ethics is at its lowest. Given the preceding, the question that comes to mind is why ethics in Africa was not embraced as a topic until recently and

why it is an integral component of public discourse. This section, reviews critically different ethical theories and gives their significance if applied in public procurement.

### **2.3.1 Corruption In public Procurement**

The main purpose of the procurement process is to ensure openness to all stakeholders involved in the procurement exercises. One of the ethical issues in public procurement that advertently negates openness and transparency and of considerable concern to this research is corruption. In the context of public procurement in Kenya, corruption is largely driven by individuals who misuse their position or influence to be awarded tenders. The literature on corruption gives a broad spectrum on the subject. Langseth (2006) provided the most widely cited typology in breaking down the concept of corruption. He classified it, as public-office-centered, market-centered, or public-interest-centered (Langseth 2006).

Equally, the involvement of public workers in private enterprise has been the root of corruption in public procurement because the rules created to guard against conflicts of interest have invariably been breached (Akech, 2005). For instance, the Magistrate's Court in its judgment in the criminal case of *R v Rebecca Mwikali Nabutola & 2 others (2012)*, [unreported] found the 3rd accused guilty of having engaged in business with the same state corporation on whose Board he was sitting. The PPD Act under *Sec 33* bars public officials and their relatives from participating in public tenders. The PPOA comes in to provide institutional safeguards in the exercise of its duties by ensuring compliance with this rule. This in itself is a mode of fighting corruption. The question is whether this has been done effectively. As reviewed by Akech (2005), it is important to note common practices in public procurement where public officers under the influence of powerful politicians and business people only invited preferred firms. This has equally been alluded to by Langseth (2006) who adds that corruption takes the form of creating situations of emergencies and urgencies so as to use single source bidding (Langseth 2006).

## **2.4 Incidences of Corruption in Public Procurement**

The lack of procurement laws to provide a basis and framework to fight corruption and promote ethics was widely decried before 2005. Large sums of money meant for purchase and provision of services to the public was wasted, misused and fraudulently acquired (*Mars Group, 2011*). The considerably high amounts of money spent on infrastructural projects and service delivery by public entities is funded by the exchequer and with the assistance of donors (*The National Treasury, 2015*). This necessitated, J.M.Migai Akech to interrogate the efficiency and the safety nets available or lack of them thereof in accounting for developmental funds but specifically donor funds in an Article titled, '*Development Partners and Governance of Public Procurement in Kenya: Enhancing Democracy in the Administration of Aid*', published in the New York Journal of International Law and Politics in 2005. Akech (2005), explains that donor countries have sought to abandon stand-alone projects in favor of 'sector-wide approaches', this is out of the realization that conditions rarely persuade developing countries to reform their policies and that those governments are often "overwhelmed by the sheer number of Donors and Donor projects with the result that public expenditure becomes an unplanned aggregation of Donor projects lacking a coherent framework of policies, priorities and service standards". The reforms referred to are in the public procurement where Donors made specifications and procurement reforms as a precondition for lending.

This Article was written and published against the backdrop of huge losses as a result of deficiencies in public procurement and way before the enactment of the PPD Act (Supra). Led by the World Bank, Donors pushed for reform of the procurement system in Kenya to make it more transparent and to a large extent in line with international standards.

The *Exchequer and Audit (Public Procurement) Regulations 2001* was enacted. Although the Regulations streamlined the procurement processes by abolishing the Central Tender Boards (CTBs) and established the Public Procurement Directorate (PPD), the latter had sufficient autonomy and enforcement powers. Akech (2005) further, affirms that the Regulations brought in sound public procurement principles in significant respects. However, he concludes that the regulations lacked a firm legal basis, for the Minister

could simply end the regime by repealing the regulations. The upshot of the Article is the recommendation by the author for the enactment of a strong public procurement law regime. He cites the tenor of the Public Procurement Disposal Bill, 2005; as a well cut out piece of legislation. He mentions the creation of the office of the Director General of PPOA, with the much-needed powers will curb corruption and improve efficiency. To Akech (2005) enactment of the PPD Act and the creation of the office of the Director General PPOA would go a long way in reducing corruption in public procurement.

However, the level of corruption in public procurement is still high. All major transactions require competitive bidding by law; yet foreign firms experience discrimination in the tendering process and report that corruption and favoritism typically influence the bidding on government projects (Investment Climate Statement, 2014). The Ethics and Anti-corruption commission, whose mandate is to combat and prevent corruption by enforcing the law, providing education to the public and promoting good practices, carried out a research in 2013 seeking to evaluate the level of corruption in public procurement. In the study, it was found that the procurement sector was very vulnerable to corruption and fraud. One of the reason cited being, the large amount of money and resources that the Government spends to provide services to its people. According to reports, in 2013/2014, EACC received 117 cases relating to irregularities in public procurement for investigations. The study recommended that there should be thorough and regular vetting of suppliers and all officers in procurement; use intelligence mechanism to gather information and e-procurement among others (EACC, 2013/14).

A similar study was conducted by Transparency International in 2013 and the findings showed that corruption is a serious problem in Kenya. Out of five Kenyans, three said that corruption is a problem most rampant in the public sector. They added that corruption remained a great challenge (Transparency International, 2013). Moving on, tendering fraud according to (PWC 2014) is the fastest growing economic crime in Kenya. The statistics go on to reveal that, one out of every three companies reports experiencing fraud in procurement during the past two years. In the same report, (PWC, 2014) is instructive that almost half of all businesses report extortion by Kenyan public

officials in exchange for winning a tender or getting business. This is happening despite the PPDA which sets up the PPOA and with clear objectives in *Section 2* that aims to promote good practices. These include among others transparency, fairness, non-discrimination, objectivity, accountability, integrity, maximization of the economy and efficiency. If these objectives are achieved, corrupt practices in the procurement sector will be reduced, if not eliminated. This research contends that the strategies employed by PPOA to monitor compliance play a big role in fighting corruption. However, as a lot of studies focus on examining regulatory compliance, this study identified a gap and looks at the effectiveness of the strategies PPOA has put in place in fighting corruption and promoting ethical practices from the perspective of individual actors.

This research further looks at the correlation of the incidences on corruption vis-à-vis the ethics of various individual actors in public procurement; comparatively from the perspective of Philippines as captured in book *‘Towards Improved Corporate Governance, A Handbook on Developing Anti-Corruption Program’* by the Asian Institute of Management, A question, which applies to Kenya, is asked; why is corruption prevalent in procurement? It observes in a study conducted by the Social Weather Station, that three of the four top government activities where corruption was perceived to be rampant are activities in procurement, namely the building of roads, providing textbooks to students in public schools and purchasing of office supplies and equipment. It states that the only non-procurement related activity is the collection of taxes. It states that the reason corruption is rampant in procurement in the Philippines is because it is a high rewarding – low-risk venture. This research appreciates the suggested causes of corruption as alluded and focuses on arriving at preventive measures by looking at the ethical angle and providing recommendations.

## **2.5 Ethics in Public Procurement in Kenya**

Corruption practices in public procurement before the establishment of PPOA, involved public officers often under the influence of powerful politicians and businessmen. They did this by inviting preferred tenders, favoring certain firms at short listing stage,

designing tender documents to favor particular firms and releasing confidential information (Odhiambo & Kamau, 2007).

After the establishment of the PPOA the fight against corruption as per its performance appears to be patchy, interminant and as a result reform is yet to take its intended form (Lewa 2007). This is contrasted with Uganda and Tanzania which Lewa (supra) argues have openly embraced and implemented economic-wide reforms in procurement. The scandals like Maize Scandal (2009/10), the sale of the Grand Regency Hotel (2009), Triton Oil Scandal (2009/10) (KACC, 2010) all occurred in public procurement and after the establishment of PPOA.

Although he identifies the lack of institutionalized morality (Kimani, 2012), in his conclusion he attributes corruption in public procurement to political patronage. The issue of morality at the institutional and individual players' level is the gap this research was intended to examine and show how effective PPOA has been in fighting corruption and promoting ethics. In a memorandum submitted to PPOA by The Institute for Social Accountability (TISA) titled, '*Towards a new integrity culture in local governance in Kenya*', Gikonyo (2010) focuses on the role of citizens in oversight of public procurement processes, she equally makes an assessment of performance PPOA thus far. The paper mentions that despite strong provisions contained in the procurement laws PPOA is not 'enforcing financial discipline' to reign on runaway corruption especially on public procurement undertaken by constituencies. This she attributes to lack of proper training to ministries and elected levels of government as well 'pervasive' secrecy which promotes corruption, and in this regard Gikonyo (2010), mentions lack of an open information policy and procurement records and supplier information being confidential. Other authors have written on ethics and public procurement in Kenya (Kangogo & Kiptoo, 2013) in a paper on *Factors affecting ethical standards in public procurement in Kenya*, state that public procurement is one of the most discussed topics in Kenya, and Africa's public domains. The authors state that through flawed public procurement, the Kenyan tax payer has lost billions of shillings over the last twenty years (Kangogo & Kiptoo, 2013). In addition, the paper identifies unethical practices as a major factor

contributing towards inefficiencies in procurement in major public institutions through fraud, favoritism and extravagance.

The paper partly concludes that the Kenyan procurement management is deficient of ethical inclination and recommends that it ought to employ ethical consideration to reinvent itself (Kangogo & Kiptoo, 2013). One of the issues identified as contributing to unethical behavior amongst the procurement profession is the salary and that better pay of the procurement professionals, tend to make procurement professionals observe the professional code of ethics. To that extent, a contentious issue and knowledge gap that calls for further examination comes out. This research contends that the question of a moral life does not depend on the level of wealth. The moral life is an inner disposition and a realization that by engaging in corruption one is devaluing his/her personhood. The assertion by (Kangogo & Kiptoo, 2013) that a high salary can reduce corruption can also be seen to suggest that the wealthier a person is, the lower the likelihood of engaging in corruption.

The paper has made generalized comments and has not examined in detail the various players in the procurement sector. Also it has not identified the various unethical practices that are common in the public procurement sector in Kenya. Instead, the authors have only identified the individual, organizational and environmental factors that affect ethical standards in public procurement in Kenya. The study recommends some measures that can improve the ethical standard that include; independent procurement audits and rigorous monitoring, proper documentation of procurement activities, review of the salaries of procurement professionals, enhancement of the procurement cycle and elimination of politics in the procurement process.

Equally, the authors have laid very little emphasis on the use of ethics as a tool for fighting corruption. As gleaned from Aristotle's philosophical work that repletion of good habits learns moral virtues. A salary increment to a corrupt person cannot change the character of the person. Finally, one of the questions that arise from the topic under study is how to assess the efficiency of PPOA in the fight against corruption. A useful

guide is found in a paper by The Hungarian Gallup Institute titled '*Basic methodological aspects of corruption measurement: lessons learned from the literature and pilot study*' (Hungarian Gallup Institute, 2009). The paper points out that there is an inherent paradox of all attempts for measuring corruption. It states that research that measures corruption has an assumption that there are a finite number of different corruptive activities that the research can count. It states that measuring corruption is a complex exercise as it is impossible to have a one-by-one definitive categorization. The paper states that whereas there is a consensus that real volume of corruption cannot be measured or calculated, there are approaches that indicate the spread of corruption in societies. It identifies three methods namely, measuring general or target group perception concerning corruption; measuring incidences of corruptive activities or the proxy method, and using of expert estimates.

## **2.6 Effectiveness of the Institutional Framework and Oversight strategies of PPOA**

PPOA carries out oversight with the objective of ensuring implementation of the PPDA, 2005 and the PPDA Regulations, 2006. This function is anchored on a comprehensive legislative and institutional framework. In this capacity, PPOA has set up compliance, capacity building, policy and research and ICT pillars as strategic pillars in discharging its mandate. Despite this clear mandate, several procurement audits reveal non-compliance with procurement laws and regulations. The PPOA report (2009) noted that there was low level of compliance in the sense that a low share of procurement was done through open tendering.

A study by KPMG International (2008), found that public procurement still suffers from fraud and misconduct. This research contends that this is attributable to the PPOA framework, structures and capacity to enforce the PPDA sanctioned compliance as well as bringing a sharp focus to its oversight strategies. PPOA conducted a review of procurement process of KPA and KRA in Mombasa County and found that there was deviation by the two procuring entities from the general and specific regulations and that there compliance level was low (PPOA, 2009) as cited by (Sang, 2014).

In ensuring compliance with policies, rules and regulations of PPDA, PPOA has managed to pilot assessment of the country's procurement system using OECD/DAC benchmarking methodology. Further, it has reviewed 38 PEs and revised the 1<sup>st</sup> procurement audit/ review manual and issued the 2<sup>nd</sup> edition (PPOA,2008-2013).This was coupled with conducting investigations in 10 procurement proceedings as well as developing an IPPMT for use by PEs and piloted the same in 20 PEs and initiated debarring proceedings of errant suppliers. In regard to capacity building, PPOA developed capacity building and training manuals. Over 30,000 persons were trained since 2008 (PPOA, 2008-2013). Policy and research was adopted as a strategy. PPOA developed, revised and distributed standard tender documents, procurement manuals, guidelines and standard procurement formats (PPOA, 2010).This went along with participation in sectorial, regional and national stakeholder forums. Importantly, PPOA produced periodicals containing a review of market price index of common user item (Supra). Finally, PPOA prequalified procuring agents and authorized insurance companies to issue bonds. It developed and has since re-designed the PPOA website. The administrative review board with the administrative support of the PPOA has listened and determined 374 cases between 2007 and 2012 and even decentralized hearing of cases having heard 3 cases in the county in 2012 (PPOA 2008-2013).

A number of studies have been done to assess the effectiveness of these strategies. In a study by (Amemba, Nyaboke. et al) to establish challenges affecting public procurement performance in Kenya, the researchers argue public procurement is faced by challenges because existing legislation does not foster use of technology in procurement process. The paper, *'factors affecting public procurement in Kenya'* concludes that public procurement can only be improved through review of existing legislation to encourage extensive use of technology in the management of the procurement process, fostering of long term buyer-supplier relations and stakeholder involvement through trainings and sensitization on practicing ethical behavior when conducting procurement. This points out to the various aspects of the effectiveness not only of the institutional framework but to the oversight strategies themselves. The research mentions the need of inculcating

ethical behavior as a tool of fighting corruption but has been given it little emphasis as a strategy. An aspect the contents of the topic under study has captured as a gap.

In another research titled, '*Effectiveness and efficiency of public procurement and disposal Act in shaping competitive purchasing in disposal in the civil service in Kenya*'. Alala & Deya (2013), state that most public servants are conversant with the PPDA but many are ignorant of the regulations and manuals. Their research equally reveals that, since the enactment of the PPDA which essentially establishes PPOA there has been an improvement in competitive purchasing and disposal in the civil services especially in achieving employment of standard procurement procedures and development of a workable legal regime.

The research concludes that generally the PPDA lacks 'implementers' and specifically has not been effective in improving public confidence in the procurement system achieving of transparency and in creating a reliable ICT system. It follows then that PPOA has not been entirely effective in its strategies notably that of capacity building and training. In another article, *factors affecting compliance with public procurement laws and regulations: A case study of public entities in Mombasa County*' by William Kipkemboi Sang, documented that there is weak enforcement mechanism of compliance to the PPDA and the PPDA Regulations. This creates an abuse of the system and at times with impunity (Hunja, 2003).

As an oversight strategy and in ensuring enforcement of compliance, PPOA ought to work in collaboration with other agencies. These agencies are EACC which can undertake further investigation and recommend prosecution of complaints and the offenders. Working in this area as well is the Kenya National Audit Office (KENAO) and the Internal Audit General (I.A.G) whereby internal audit is governed by the Public Finance Act, 2003 and this is done on an ongoing basis. KENAO carries out external audit and derives the mandate from the Constitution, 2010 and Public Audit Act, 2003 (Sang, 2010). This research identifies and interrogates collaboration with other agencies as a strategy in fighting corruption and fighting corruption in public procurement.

Likewise, a paper on *Internal Factors Affecting Public Procurement Process Of Supplies In The Public Sector; A Survey Of Kenya Government Ministries*, observed that, given the impact of procurement activities on the operation and effectiveness of public sectors in Kenya, it is essential that these activities be performed by qualified staff with high professional and ethical standards (Ngugi & Mugo, 2010). The authors further identified four factors that affect the procurement process namely; accountability, information communication technology, the internal of procurement and ethics. Regarding ethics, the authors state that ethical behavior encompasses the concepts of honesty, integrity, probity, diligence, fairness, trust, respect and consistency (Ngugi & Mugo, 2010).

Further, that ethical behavior includes avoiding conflict of interest and improper use of an individual's position. The study makes some conclusions, and one of them is that ethics has affected procurement process at Kenya Government ministries to a moderate extent (Ngugi & Mugo 2010). This is an understatement as persons who conduct the procurement process are the same ones who preside over a corrupt system. Ndolo and Njagi (2014) sought to establish the effect of ethics on the effectiveness of procurement process at the EWASCO-Embu. The study concluded that 99% of the respondents pointed out that the firm had no code of procurement ethics. The firm lacked training policy on the procurement process and had poor implementation records on Government policy as set in the Public Procurement and Disposal Act 2005, Public Procurement Regulations 2006 and the Procurement Manual. The study also found out that despite the fact that EWASCO had no procurement code of ethics, 85.7% of the respondents strongly believed that a code of ethics would lead quality purchase and less time of the procurement process and 97.1% strongly agreed that a code of ethics would make the procurement process less costly.

The researchers recommended that there be need for the establishment of a procurement training policy and a code of ethics as this could provide the staff involved in the process with much-needed knowledge (Ndolo & Njagi, 2014). Along the same lines, Awuor (2014) observes that ethical behavior in procurement has been and is still a central issue in supply chain matters. He further observes that despite immense issues in this area, few

studies have delved into the precursors that generate the recurrent malpractices in the procurement process (Awuor, 2014). The author states that ethical procurement leads to sustainable supplies relationship that is marked by mutually beneficial terms, fair practice and trust. Ethical procurement improves the supplier's liability and good ethical practice; it also enhances an institution's integrity and reputation. It is, therefore, important for procurement staff to be trained particularly on how to resolve ethical dilemmas, and competing priorities (Awuor, 2014).

In addition, the author observes that a procurement professional should have professional qualifications in procurement and supply management, and should be a member of a recognized professional association of procurement and supply. He observes that this definition leaves out the academic qualification that such a professional should possess and the Public Procurement Oversight Authority is supposed to define the required academic qualifications, (Awuor, 2014).

The research concludes and recommends that procurement staff should be trained on specific relevance of ethics in their work and how they can obtain guidance when facing dilemmas. The author further observes that the institute of business ethics suggests that ethical practices should be included in staff performance review to ensure that ethical commitments are lived up to. The author quotes Bailey, who has identified four elements that exist in an organization that makes ethical behavior conducive to an organization. The four elements necessary to quantify organizations ethics are; written code of ethics and standards, ethics training for executive managers and employees availability for advice on ethical situations and systems for confidentiality (Awuor 2014).

The study established that ethical procurement is depicted in organizations that follow stipulations of ethical organizational policy, where provisions of the ethical policy are reasonable and appropriate, where procurement professionals are recognized and where top management is supportive of implementation of ethical culture. Further, such organizations have in place, mechanisms to curb ethical malpractices such as communication channels to report incidents and with a structure that encourages staff

members to report incidents of unethical conduct. From the research finding on and the influence of purchasing maturity on ethical procurement- the finest deduction of this research is that indeed, purchasing maturity is a precursor to ethical procurement and organizations in Kenya are well on their path to a strategic dimension of purchasing and supplies which induces a proactive stance to ethical procurement.

The PPOA published *the Public Procurement and Disposal Manual* in the year 2009. The manual sets out the general public procurement law and general procurement principles. The manual has a section that deals with the applicable ethics in procurement. It states that to achieve value for money and promote efficiency, public procurement policy must adopt a strong ethical bent. It calls for the adoption of a strong sense of ethics such as avoiding collusion, discouraging fake completion, removing arbitrariness from the bid evaluation process, and avoiding conflict of interest (Public Procurement Oversight Authority, 2009).

## **2.7 Chapter Summary**

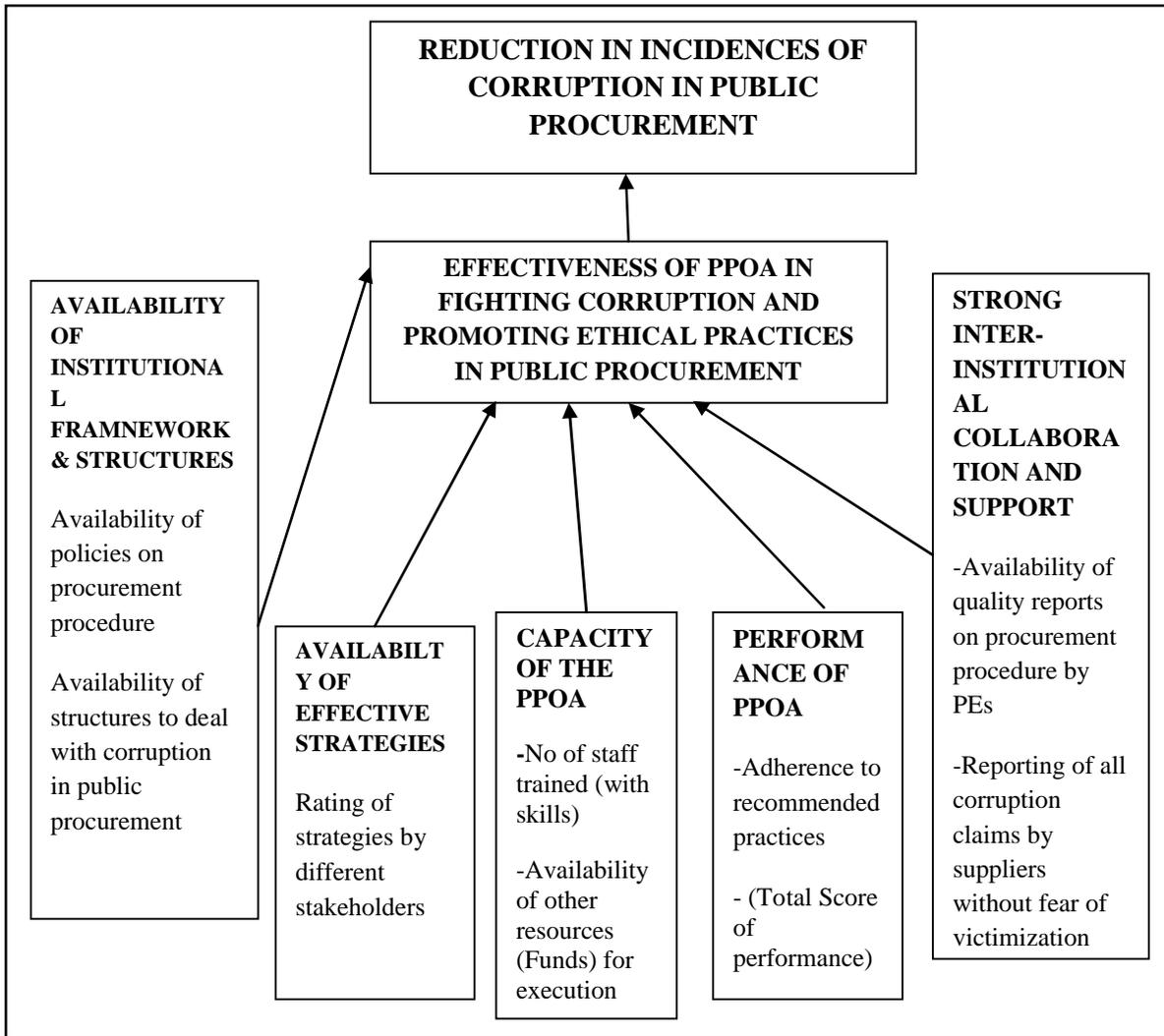
The literature on ethics and ethical procurement place a heavy burden of expectation on individual procurement staff while exposing the gap in instilling values and training-procurement ethics. Secondly, material on compliance with procurement procedures revealed that compliance is a challenge especially if no measures have been put in place. On the issue of corruption, the review established that corruption is difficult to eliminate in the procurement process, but its reduction has the potential of significantly increasing effectiveness and efficiency of resources allocation. In addition, monitoring and evaluation activities have also been established to be of utmost importance in the fight against corruption in procurement. The review also established that it is important to have policies and appropriate regulations in place to make sure that procurement practices are carried out as they should be. Despite detailed studies in this area, there exists a gap in relating these anticorruption measures to procurement authorities. The studies do not explain the effectiveness of bodies like PPOA in promoting ethics and fighting corruption by ensuring integrity through practices such as monitoring, policy implementation among

other anticorruption measures. This study focuses on the PPOA specifically with a view of filling the gap identified on the issue of corruption in public procurement.

## **2.8 Conceptual framework**

A conceptual framework is a set of ideas and principles which are taken from related fields of enquiry then used to structure a subsequent presentation (Biklen 2003). In this study, the conceptual framework was used to show the relationship between the dependent variables and the independent variables.

Figure 2.1: Conceptual framework on factors affecting effectiveness of PPOA



### 2.9.1 Dependent Variable

The dependent variable for this study was the effectiveness of the PPOA in fighting corruption and promotion of integrity which was measured by the number of cases or incidences of corruption in public procurement that have been reported or identified.

### 2.9.2 Independent Variables

The independent variables in this study were the items for which data was collected to demonstrate their influence on the effectiveness of PPOA in the fight against corruption and promotion of ethics in public procurement. They included the availability of effective institutional framework and structures created by PPOA towards fighting corruption, the

capacity of the PPOA in fighting corruption that was determined by exposure to training on the recommended package and availability of other resources like funds to facilitate operations of the PPOA.

The other independent variables included; presence or absence of effective strategies to fight corruption and promote ethics that were determined by the perceptions of different stakeholders towards different oversight strategies; the performance of the PPOA as determined by the performance score on compliance to the recommended practices and availability of institutional collaboration and support. That is the availability of quality records from procuring entities, availability of efficient followed ups by EACC on reported cases and continued reporting of all corruption complaints by suppliers without fear of victimization.

**Table 2.1 Research Variables Matrix**

The study variables are as shown in the matrix below;

Variable type	Variable	Measure
Dependent Variable	Promotion of integrity and fight against corruption	Number of cases or incidences of corruption reported in public procurement
Independent Variables	Availability of Institutional framework for addressing corruption and promoting ethics	-Presence or absence of effective structures and policies to fight corruption and promote ethics in public procurement -Availability of regulations and manuals in place
	Adequate capacity of PPOA in the fight against corruption and promotion of ethics	-Presence of an established institution -Presence of recruited staff -Exposure of the staff to training -Availability of adequate budgetary allocation for enhanced performance

		<p>-Presence of effective information technology information system</p> <p>-Effective reporting mechanism</p>
	Availability of effective strategies towards fighting corruption and promoting ethics	-Perception of different stakeholders on the efficacy of the oversight strategies towards fighting corruption
	Performance of PPOA towards fighting corruption and promotion of ethics	Score on achievement of the target by PPOA on the recommended practice in fighting corruption and promotion of ethics in public procurement
	Availability of institutional collaboration and support	<p>-The extent of internal anticorruption measures</p> <p>-The extent of external anticorruption measures</p> <p>-Availability of quality records from Procuring Entities</p> <p>-Continued reporting of all corruption complaints by suppliers without fear of victimization.</p>

## **CHAPTER THREE: METHODOLOGY**

### **3.0 Introduction**

This chapter examines various methods and procedures that were adopted in conducting the study to answer the research questions. It is organized as follows: research design, study variables, population and sample, data collection methods, sampling design and sample size, research procedures, data analysis methods and lastly the chapter summary.

### **3.1 Research Design**

This study adopted a cross-sectional design which allows a situational analysis of the PPOA's operations and interaction of other factors at a particular point in time to describe the effectiveness of the PPOA in reducing the incidences of corruption and promoting ethical practices in public procurement. It involves a one-time interaction with groups of people. In this study, the researcher interacted with the participants involving interviews to collect the necessary information. The design allowed deductions to be made by the researcher on the performance of PPOA with regard to fighting corruption and promotion of integrity in the procurement process. In this regard, the researcher was able to determine if PPOA as an institution had effectively succeeded in reduction of corruption and promotion of ethics.

### **3.2 Population and sampling**

#### **3.2.1 Target Population**

This study targeted to interrogate the main players in the procurement sector. These constituted the procuring entities, the Staff of PPOA, members of the Public Procurement Review Board, the procuring entities and the suppliers to the procuring entities. To start with, the study targeted all procuring entities (all parastatals) involved in the procurement process. This accounted to a total of 262 parastatals, (GOK, 2013). However, the focus of the study was on those parastatals which were involved in mega procurement thus, 30 parastatals were targeted. Likewise, the study targeted all procurement officers from the institutions considered to engage in mega procurement which accounted for 150 officers, (See table 3.1). The procurement officers were interviewed because of the important role they play in the procurement process. They participate in the drafting of the tender

documents; sat in the tender processing committee as well as overseeing the procurement matters in the procuring entities.

Secondly, the study targeted all staff of PPOA which accounted for 70 members since they were expected to give insights into the institutional structure of the PPOA, the tools used to monitor compliance, the schemes that have been implemented to promote ethics and integrity and how the institution collaborates with other institutions that are engaged in the fight against corruption. In addition, members of the Review Board (9 in total) were targeted since they determine the complaints arising from the tender process and it keeps a record of the cases that have been lodged by aggrieved suppliers.

Similarly, all suppliers involved in the mega projects of the selected parastatals (50 in number) were targeted since they were involved in the provision of goods and services. They have firsthand experience on the malpractices that occur in procurement. They receive a direct hit when there is a lack of transparency, fairness and accountability. Under *Section 3* of the PPD Act, aggrieved suppliers have a right to appeal to the Review Board and thus, their experience is vital in the assessment of the effectiveness of PPOA. This study also targeted a review of Ethics and Anti-corruption Commission (EACC) report on cases that have been investigated and prosecuted since the creation of the PPOA and how the two institutions collaborate.

### **3.2.2 Inclusion Criteria**

The Procuring entities selection was based on the monetary value of the projects targeting the ones that are involved in multi-billion projects. That is, the consideration was based on entities handling projects worth Kshs, 100 million and above as per the PPOA's of the year 2014 and 2015, (PPOA, 2015). This took into account the different sectors of the economy like health, transport and energy sectors. As regards the Suppliers, it targeted those who have participated in the procurements in the selected procuring entities.

### **3.2.3 Exclusion Criteria**

The staff of the PPOA and members of the Review Board who had served for less than one year were excluded as they may not have the necessary experience to give credible information.

### **3.2.4 Sampling Design and Sample Size**

#### **3.2.4.1 Sampling Design**

Capturing the variability in a population allows for more reliability of the study. The qualities of an effective population include diversity, representation, accessibility, and knowledge, (Kombo & Tromp, 2006). Purposive sampling was used to select the PPOA and members of the board to answer the research questions. A list of all members was generated and 30% computed to form the study sample. Thereafter, simple random sampling was done to select the respondents in the two categories.

With regards to procurement entities, purposive sampling design was adopted to select those involved in mega projects since the study was focusing on procuring entities that are involved in mega projects. They included; Kenya Railways; Kenya Pipeline Corporation; Kenya Ports Authority; KEMSA; Kenya Power and Lighting Company; Energy Regulation Authority; Kenya Generating Company; Kenyatta National Hospital; Geothermal Authority; Kenya National Highways Authority and the Kenya Airports Authority. In addition, the choice of the procurement officers to be interviewed was based on their involvement in top mega procurement projects in acquiring goods and services for the benefit of the public. The sampling frame, therefore, comprised of all procurement officers from 11 entities who met that criteria and a proportion of the total were considered for this study. Simple random sampling was used to select respondents from the list of procurement officers.

Likewise, purposive sampling was adopted in selecting the suppliers who had shown interest in challenging the decisions of the procuring entities when aggrieved, as guided by Section 3 of the Public Procurement and Disposal Act, 2005. The suppliers selected were those who had been involved in the supplies of goods and commodities in the mega

projects in the already selected procurement entities (Annex 2). Simple Random sampling was used to identify a proportion of suppliers to participate in the study.

### 3.2.4.2 Sample Size Determination

The sample size calculation was done using Mugenda & Mugenda (2003) recommended proportion of 20%. Therefore, a minimum of 30% proportion of all categories of the respondent was adopted. The distribution of all the respondents is shown in Table 3.1.

**Table 3.1 Sample Size Distributions**

Category	Population	Sample size (30%)
PPOA staff	70	21
Mega Suppliers	50	15
Mega projects procuring entities' staff	150	45
Review board members serving between 2007 to 2014	9	3
Total	<b>279</b>	84
EACC & PPOA	For secondary data	

## 3.3 Data Collection Methods

### 3.3.1 Research instruments

The research instruments that were used include questionnaires, interview schedule guide and a checklist for secondary data. This study relied mainly on primary data collection using questionnaires. The questionnaires were structured for each category of the population to be sampled. The research instruments focused on the respondents' views on the effectiveness of the legal institutional framework, the effectiveness of the PPOA in monitoring public procurement systems, the strategies that are in place to promote transparency and fairness in the process and the competence of the indicators used to establish corruption practices in the public sector. The instruments contained both open and closed ended questions to allow for detailed review of the questions by the respondents.

In addition, a checklist was used to guide the researcher while collecting the secondary data from the reports of the EACC and PPOA retrospectively for the last eight years since the establishment of the PPOA. The checklist was to capture data on; the number of cases of malpractices reported every year and number of cases terminated (successfully terminated).The data collected was used to describe the trends on the performance of PPOA in the fight against corruption and promotion of integrity in public procurement.

### **3.3.2 Data collection procedure**

Data collection involves gathering of information related to the study in question. In this study, the data focused on the effectiveness of the PPOA. The questionnaires were structured according to the objectives of the study and contained both open-ended and closed-ended questions. They were administered through drop and pick methods to allow the respondents enough time to fill the questionnaire. In addition, interviews were conducted using interview guides and there after a checklist used for the secondary data.

### **3.4 Data Analysis**

Analysis of data involved examination of information collected by the researcher to make deductions and inferences. This involved the uncovering of the underlying structures; extracting important variables, detecting any anomalies and testing any underlying assumptions. It is, therefore, clear that the main object of data analysis is to scrutinize data gathered and making inferences. In this study, it was critical to know whether the incidences of corruption have either decreased or increased after the creation of the PPOA. The first step was to clean code and edit the data. The output generated was used to describe and summarize the data in a meaningful way to allow easy interpretation. Descriptive statistics was summarized in frequencies and percentages supported by means, tables, frequency distributions and presented in the form of charts to present the findings.

Also, an evaluation of the practices of the PPOA was done to assess their compliance in fighting corruption. The researcher awarded a score of “1” for every recommended practice and score of “0” given for any recommended practice that was not adhered to.

The total scores were then computed for every adhered practice to determine the performance of the PPOA. This was categorized as below average, average performance and high performance for those with high scores. Likewise, the respondent' perceptions towards the effectiveness of the oversight strategies in fighting corruption and upholding integrity in public procurement were analyzed using the Likert scale. This involved respondents indicating the extent to which they find each oversight strategy as effective in curbing the menace.

Regarding capacity, the PPOA staff who had received the recommended package of training was considered as having adequate capacity while those found not having received the recommended package were termed as having inadequate capacity required to facilitate good performance with regard to fighting corruption in public procurement. In addition, a summary of all incidences of corruption since the creation of the PPOA was done. This was generated after a review of the secondary data from EACC and PPOA with the use of a checklist. This was compared with cases reported before the establishment of PPOA to determine the change that was associated with the effectiveness of the PPOA. That is, a reduction in number of corruption cases would have meant that PPOA was successful in its mandate of promotion of ethics in Public procurement while an increase in corruption incidences would have given an indication of poor performance thus the need to establish the hindrances to good performance.

Qualitative data containing views of the PPOA staffs, suppliers, procurement entities, members of the Review Board on oversight strategies structures and policies in place to fight corruption were coded in word for content and thematic analysis. This involved a detailed exploration of common themes and assigning of labels to variable categories. The categories or themes were identified in advance, in line with the objectives and scope of the assessment. The coding consisted searching for the common themes that were established as categories into which, later, information was inserted. The themes were clustered in a patterned order so as to identify variables that predict general concepts and isolate repetitions. Inferences were made from particular data under each theme and conclusions drawn from the research findings. Qualitative data was used for triangulation

of the findings, and to complement the quantitative data from rating score. Analyzed data was presented in pie charts, tables and graphs as per the objectives.

### **3.5 Research Quality**

In order to ensure quality of the research, both validity and reliability of the instruments was checked before commencing data collection. The validity and reliability of the instruments was determined through the judgment made by the panel of experts and supervisors in the area of study. Pretesting of instruments also took place before conducting the study. Necessary adjustments were done to enhance appropriateness of language and clear out ambiguity of words. The research assistants were trained to ensure that they used standard procedures and they collected the intended information.

### **3.6. Ethical considerations**

The researcher obtained a research permit from Strathmore University, post graduate school before commencing on data collection. Additionally, the researcher sought informed consent from respondents and indicated to the respondents that the exercise was voluntary and confidential. This was done by explaining to the respondents the purpose of the study, their expected roles in the study, the potential risks of participation, the need for them to cooperate by answering the questions as faithfully as they could and their freedom to withdraw from the study without any fear. Throughout the study, the researcher ensured high ethical standards and observed the ethical obligations in data collection of any sort be it interviews, case studies or even observation. Due to the issue of confidentiality, the data was accessed by only those people involved in the study.

### **3.7 Chapter Summary**

In summary, this chapter examined the different aspects of the methodology. This study adopted a descriptive study design with dependent variable being the performance of PPOA in fighting corruption and promoting ethical practices. The independent variables included the availability of effective institutional framework and structures created by PPOA towards fighting corruption and promoting ethical practices as well as the capacity

of the PPOA in fighting corruption that were determined by exposure to training on the recommended package.

Purposive sampling was used to select different categories of the study subjects while simple random sampling used to select the respondents. A total of 84 respondents were interviewed, (see table 3.1). Descriptive statistics was used to generate data on study variables. Inferences were made on the performance of the PPOA; this was drawn from the performance score. Also, content analysis was used to analyze qualitative data on views and perceptions of the respondents. This categorized the content in to study themes as per the objectives. The results were presented in tables, graphs and pie charts.

## CHAPTER 4: PRESENTATION OF RESEARCH FINDINGS

### 4.0 Introduction

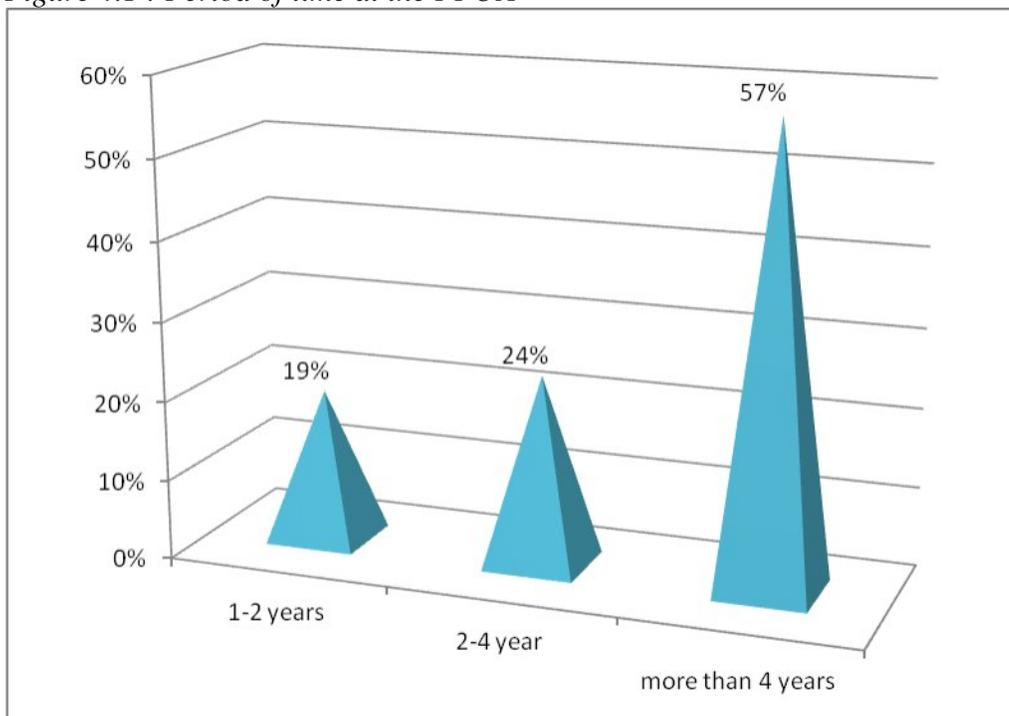
This chapter is a presentation of the study findings based on the data collected through interview questionnaires with the Procuring entities, public procurement Oversight Authority staff, Review Board members and the suppliers as well as secondary data from EACC and PPOA

### 4.1 General Information Of The Respondents

#### 4.1.1 Duration of time worked as PPOA Staff

The respondents were asked to state the period they had worked as PPOA staff. About half ( 57%) reported to have worked for more than fours years, 24% had worked for about 2 to 4 years while 19% had worked for less than 2 years (Figure 4.1).

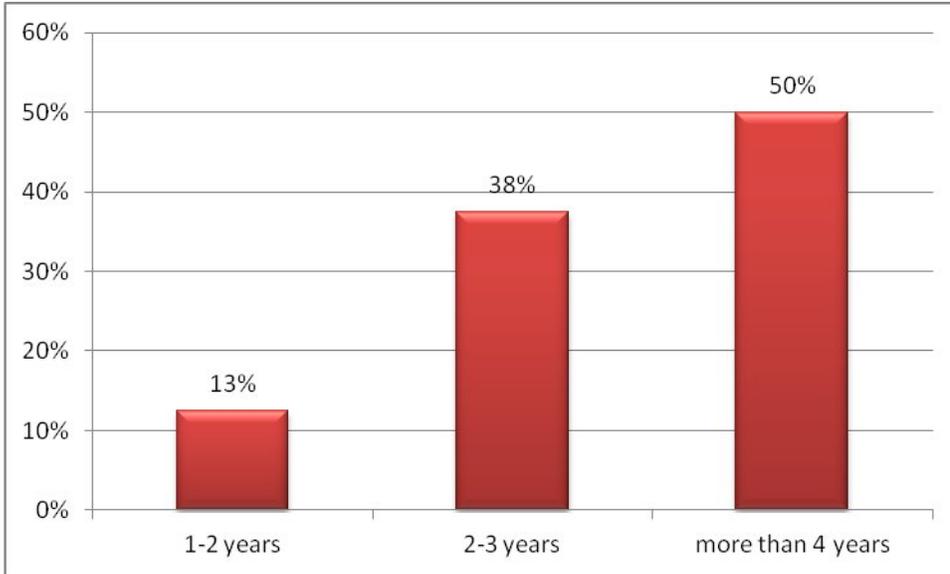
*Figure 4.1 : Period of time at the PPOA*



#### 4.1.2 Duration of the time worked as Staffs of Review board

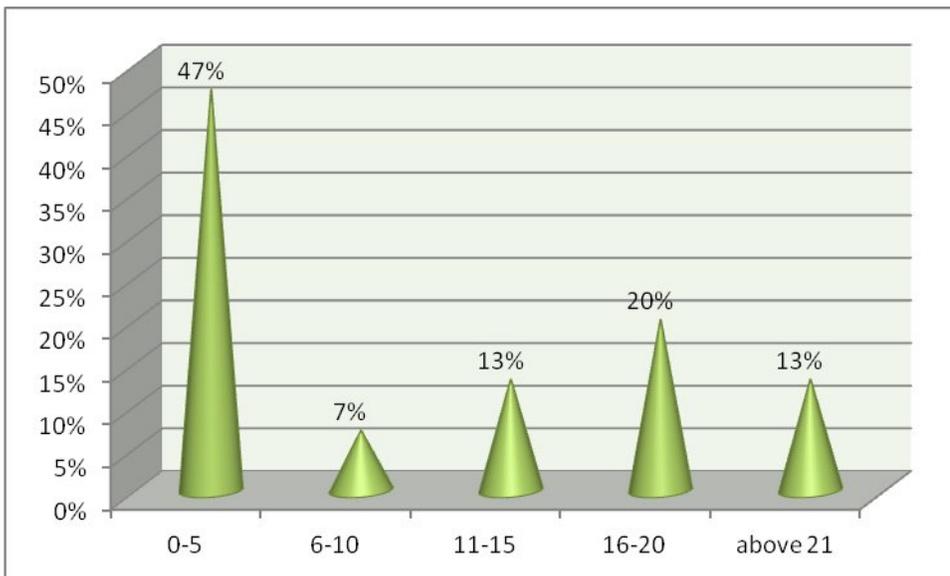
In addition the researcher sought to establish the duration of time in years that the respondents had worked as staffs of the review board. The findings in Figure 4.2 shows that half of them (50%), had worked for more than four years, 38% worked for 2-3 years while 13% had worked for a period of one to two years prior to the study.

Figure 4.2: Years of experience as a member of Review Board



#### 4.1.3 Duration of interaction between the suppliers and the PPOA staff

Figure 4.3: Number of years since the firms began procurement process



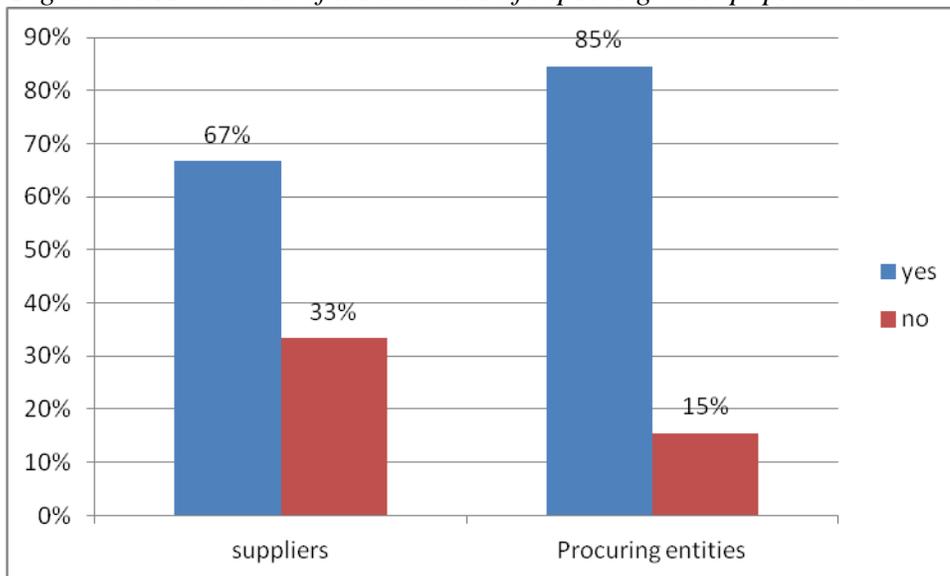
The suppliers were asked when their firms started participating in procurement. 47% indicated they had participated between 0-5 years, 7% indicated between 6-10 years 13% indicated between 11-15 years while 20% indicated between 16-20 years as shown in Figure 4.3.

## 4.2 Incidences of corruption in procurement since establishment of PPOA

### 4.2.1 Reporting mechanism

Different categories of respondents were asked to state if they were aware of any mechanisms of reporting corrupt practices. Majority of the of the respondents (85%) in procuring entities and 67% of the suppliers indicated that they were aware of the reporting mechanism while 15% of the procuring entities and 33% of suppliers respectively were aware of the mechanisms for reporting corruption practices.

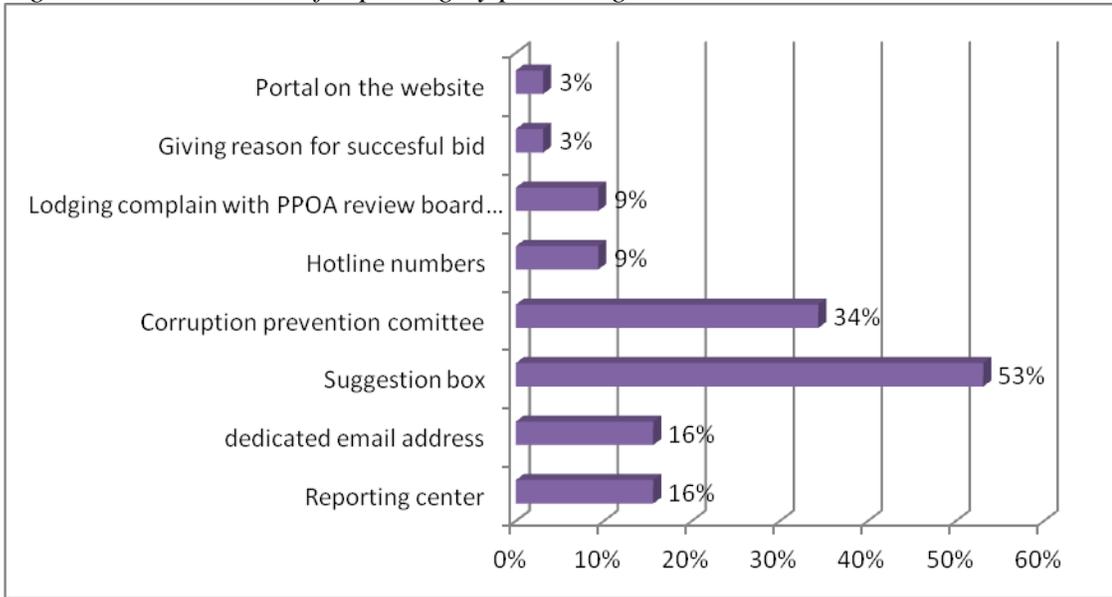
*Figure 4.4: Awareness of mechanisms of reporting corrupt practices*



### 4.2.2 Mechanisms for reporting listed by respondents

The respondents from the procuring entities further cited some of the mechanisms used to report malpractices in their procurement process. The most common mechanism was use of suggestion boxes as cited by about half of the respondents. This was followed by corruption prevention committee (34%), reporting center and dedicated email address both at (16%) as shown in figure 4.5.

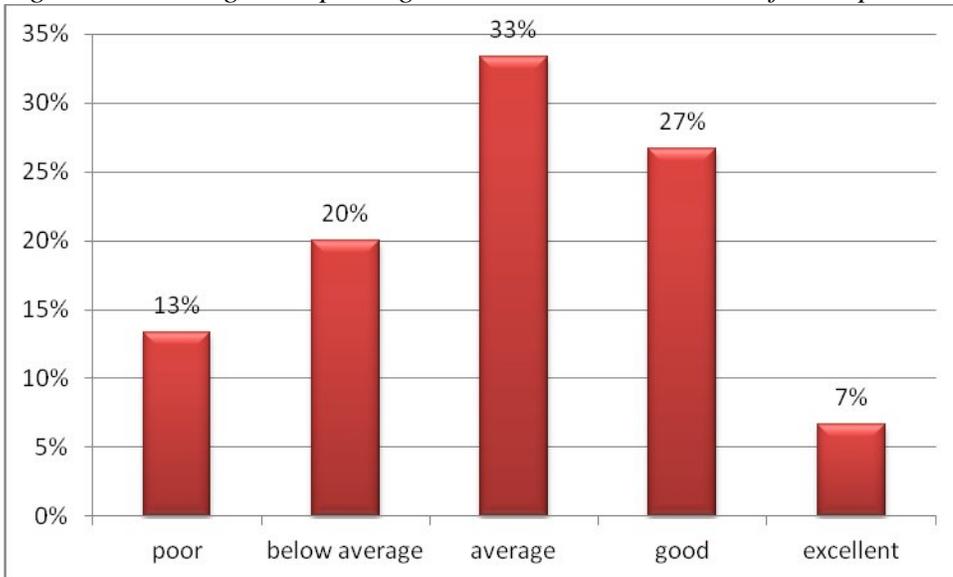
*Figure 4.5: Mechanism of reporting by procuring entities*



#### **4.2.2.1 Rating of the mechanisms for reporting**

The suppliers were also asked to rate the reporting mechanism on incidences of corruption in public procurement and 33% rated it as average, 27% rated it as good, 20% rated it as below average and only 7% rated it as excellent. Figure 4.6 shows the ratings.

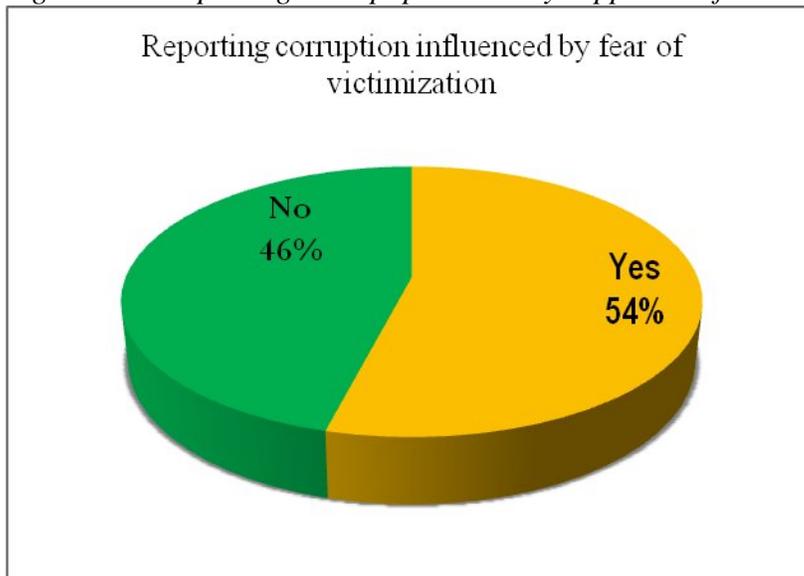
*Figure 4.6: Rating the reporting mechanism on incidences of corruption*



#### 4.2.2.2 Incidences when the respondents failed to report corruption

Moreover, the researcher sought to establish if there were times when incidences of corruption were not reported because of fear of victimization. More than half (54%) of the suppliers reported that there were instances that they couldn't report the corrupt practices while 46% said that their reporting was not influenced by fear of victimization.

Figure 4.7 : Reporting corrupt practices by suppliers influenced by fear of victimization

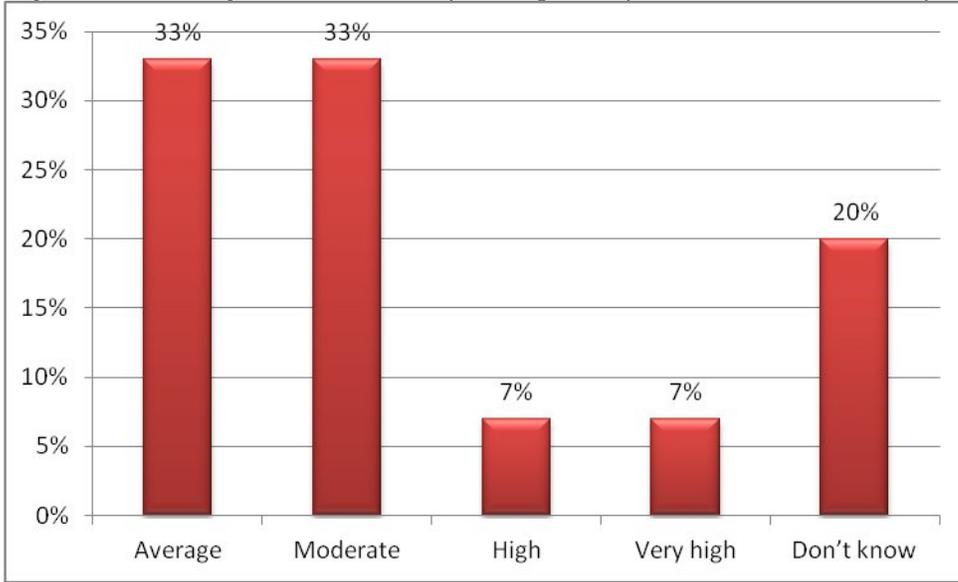


#### 4.2.3 Perception on the incidence of corruption

##### 4.2.3.1 Incidences of corruption since establishment of PPOA

The suppliers were asked to rate the incidences of corruption after the establishment of PPOA. 33% of the respondents felt that the incidences of corruption were average after the establishment of PPOA, a similar percentage rated it as moderate, 7% said it was high and 20% did not know while 7% rated it as very high as shown in figure 4.8.

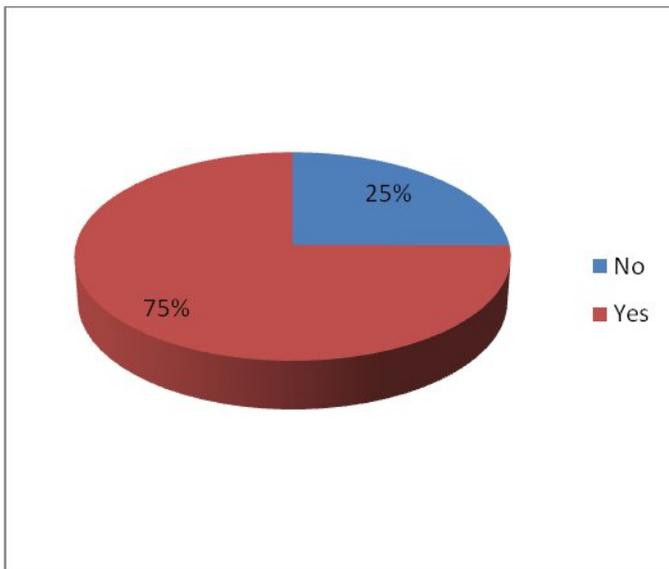
*Figure 4.8: Rating the incidences of corruption after the establishment of PPOA*



**4.2.3.2 Incidences of corrupt practices encountered by PPOA staff**

The respondents from PPOA were asked if in the process of their work they had encountered incidences of corrupt practices in the last two years. Majority of them (75%) reported to have encountered corruption practices while 25% had not.

*Figure 4.9 Incidences of corrupt practices encountered by PPOA staff*



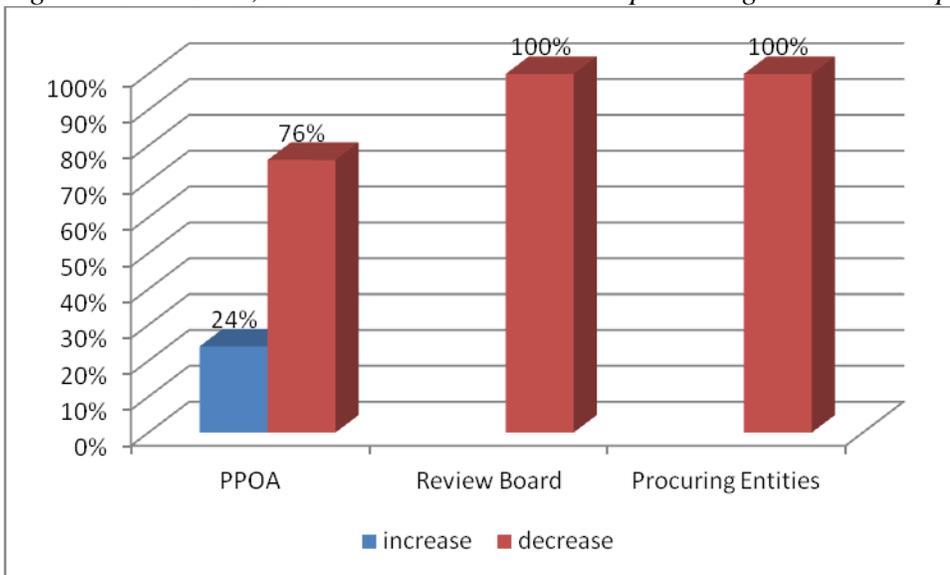
However, the respondents were quick to comment that some of the incidences they handled may not necessarily translate to corrupt practices and added it could be as a result of lack of information. The respondents further cited that some of the incidences related to non compliance, bid rigging, lack of awareness, capacity building and sensitization.

**4.2.4 Rating incidences of corruption**

**4.2.4.1 Perception on whether the rate of corruption has increased or decreased**

The respondents, that is, PPOA staff, members of the review board and procuring entities were further asked whether the rates of corruption had increased or decreased since the establishment of the PPOA. Majority of PPOA staff (76%) felt the corruption practices had decreased while 24% felt otherwise. However all (100%) respondents from procuring entities and members of the review board felt that incidences of corruption had decreased as shown in Figure 4.10.

*Figure 4.10: PPOA, Review board members and procuring entities corruption rating*



**4.2.4.2 Factors influencing increase or decrease of corruption**

The respondents were asked what they thought had influenced the increase or decrease of corruption. Those PPOA staff who had said it had decreased cited sensitization on

anticorruption practices and awareness, frequent assesment and reviews, presence of the authority among others. Those who said it had increased cited political interference as the main hinderance, (table 4.1).

*Table 4.1: Views on factors influencing Increase or Decrease of Incidences of corruption*

<b>Responses from PPOA staff (N=16)</b>		
<b>Factors influencing decrease of incidences of corruption</b>	<b>n</b>	<b>%</b>
Presence of the authority makes one comply with the law	3	18
Because of the frequent assessment and review	2	12
Due to establishment of county government there are checks and balances	2	12
Sensitization on anticorruption practices and awareness	4	25
Corporate decision making	2	12
Capacity building	2	13
<b>Factors influencing increase of incidences of corruption</b>		
Political interference	1	8
<b>Responses from Procuring entities N=26</b>		
<b>Factors influencing decrease of incidences of corruption</b>	<b>n</b>	<b>%</b>
Law enforcement	10	40
Equal opportunity especially the youth and women	3	10
Policy implementation by PPOA	3	10
Transparency and accountability	5	20
<b>Factors influencing increase of incidences of corruption</b>		
Impunity by senior government officials	4	15
Lack of transparency and accountability	1	5
<b>Responses from Review board members N=1</b>		
<b>Factors influencing decrease of incidences of corruption</b>	<b>n</b>	<b>%</b>
strict law and regulations	1	100

#### **4.2.4.3 Number of complaints handled by Review Board and EACC**

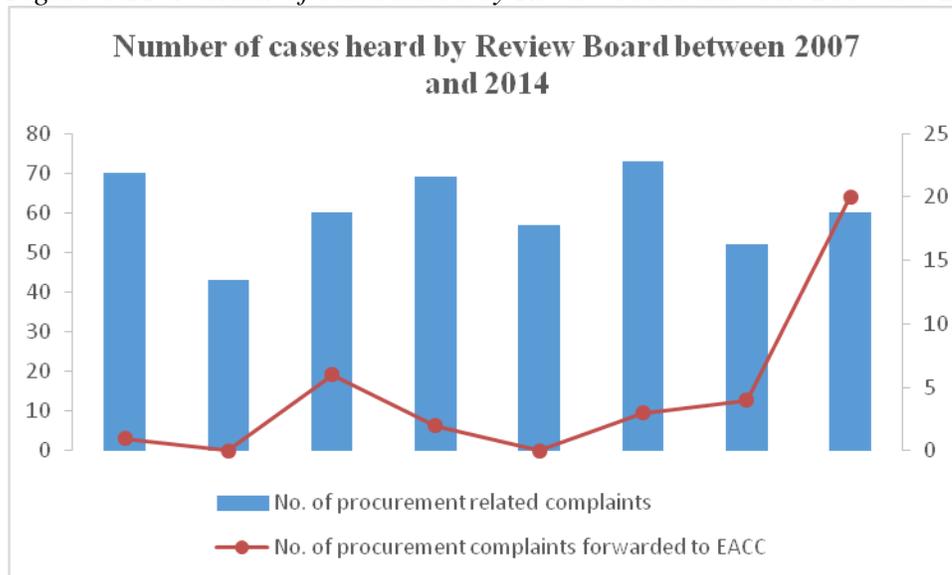
The study sought to find out procurement related complaints that had been handled by PPOA and EACC since the establishment of PPOA in 2007 to 2014. The summary of cases is shown in Table 4.2

Table 4.2: Number of cases heard by the Review board 2007-2014

Number of cases heard by the Review board since 2007		
Year	No. of procurement related complaints	No. of procurement complaints forwarded to EACC
2007	70	1
2008	43	0
2009	60	6
2010	69	2
2011	57	0
2012	73	3
2013	52	4
2014	60	20

The year 2012 had the highest number of procurement related complaints heard by the Review board at 73, followed by Year 2007 at 70, while Year 2008 recorded the least number of procurement complaints at 43. However year 2014 had the highest number of procurement related cases forwarded to EACC at 20, followed by year 2009 at 6 while year 2008 and 2011 did not forward any complaints related to procurement to EACC. The trend is shown in Figure 4.11

Figure 4.11: Number of cases heard by Review board between 2007 and 2014



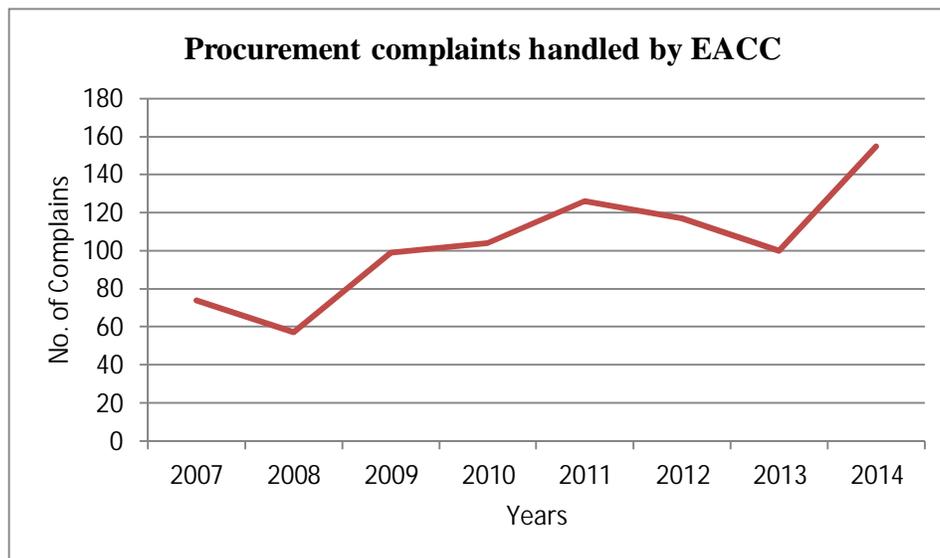
*Table 4.3 Number of cases handled by EACC between 2007- 2014*

Procurement related complaints handled by EACC	
2007	74
2008	57
2009	99
2010	104
2011	126
2012	117
2013	100
2014	155

The table indicates an increase of complaints handled by the EACC since 2007 to 2014 whereby year 2007 had 74 and year 2008 had 57 as the least while 2014 recorded the highest this shows an upward trend of procurement related complaints handled by EACC.

This can be presented in a line graph as shown in figure 4.12

*Figure 4.12: Number of cases handled by EACC between 2007 and 2014*

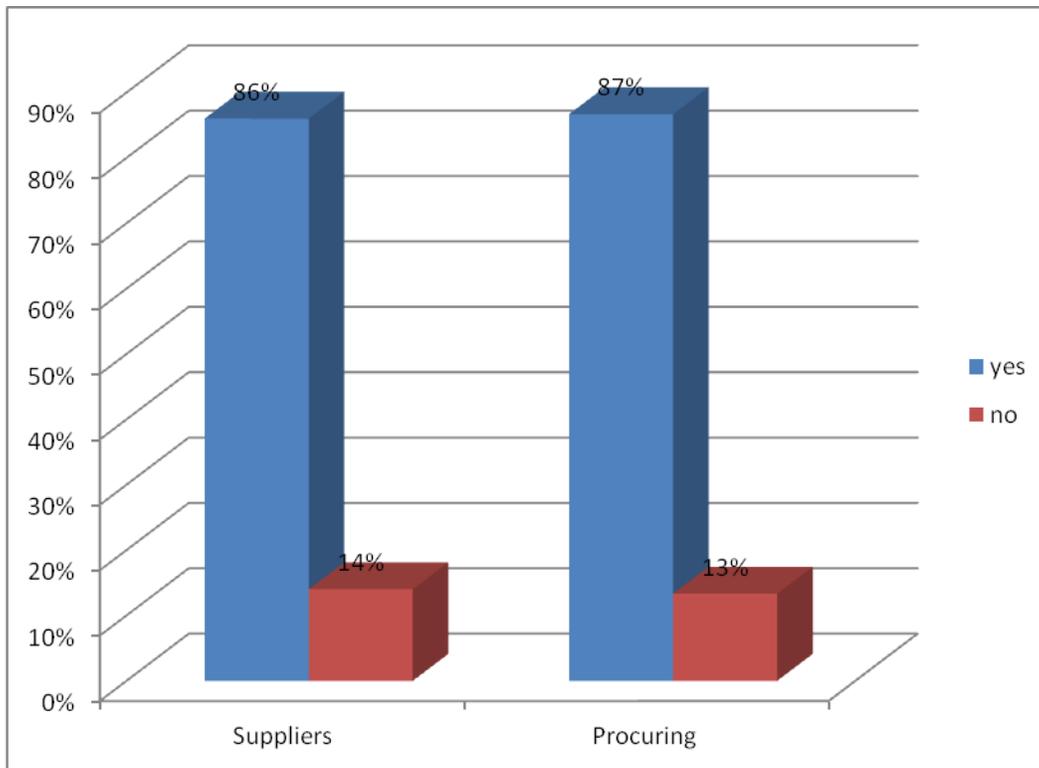


### 4.3 Performance of PPOA in fighting corruption and promotion of ethics

#### 4.3.1 Establishment of PPOA

The researcher also established if the the suppliers and the procuring entities were aware of the establishment of the PPOA. Majority of the respondents in the procuring entities (86% ) and suppliers (87%) were conversant with the establishment of PPOA while a few of the (14% of Suppliers and 13% of the Procuring ) were not aware.

*Figure 4.13: Percentage of Suppliers and procuring entities aware of PPOA establishment*

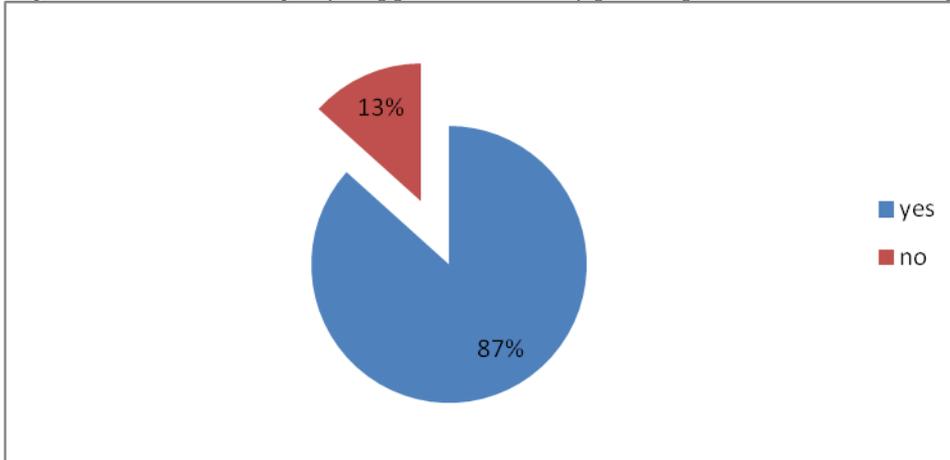


#### 4.3.2 Awareness of Public Procurement and Disposal Act

##### 4.3.2.1 Awareness of Public Procurement and Disposal Act

The suppliers were asked whether they were aware of the Public Procurement and Disposal Act. Majority of suppliers (87% ) reported to have been aware of the Act while 13% were not aware of the Act (Figure 4.14)

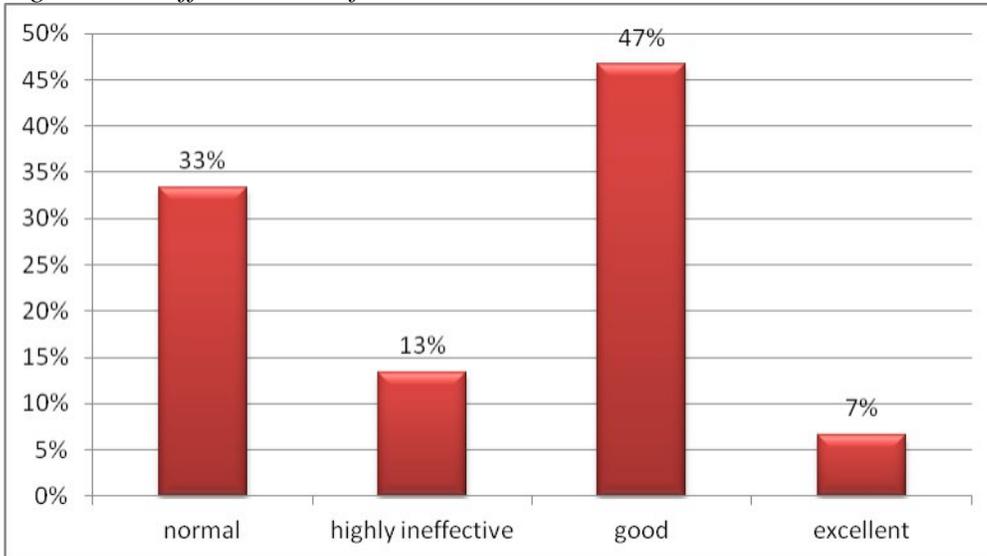
Figure 4.14: Percentage of Suppliers aware of public procurement and disposal Act



#### 4.3.2.2 Rating of effectiveness of PPOA in Fighting corruption by suppliers

Further, the suppliers were asked to rate the effectiveness of the PPOA in relation to fighting corruption and promotion of ethics. 47% rated it as good, 33% said it was normal, 13% said it was highly effective and 7% said it was excellent. Figure 4.15 shows the responses.

Figure 4.15: Effectiveness of the PPOA

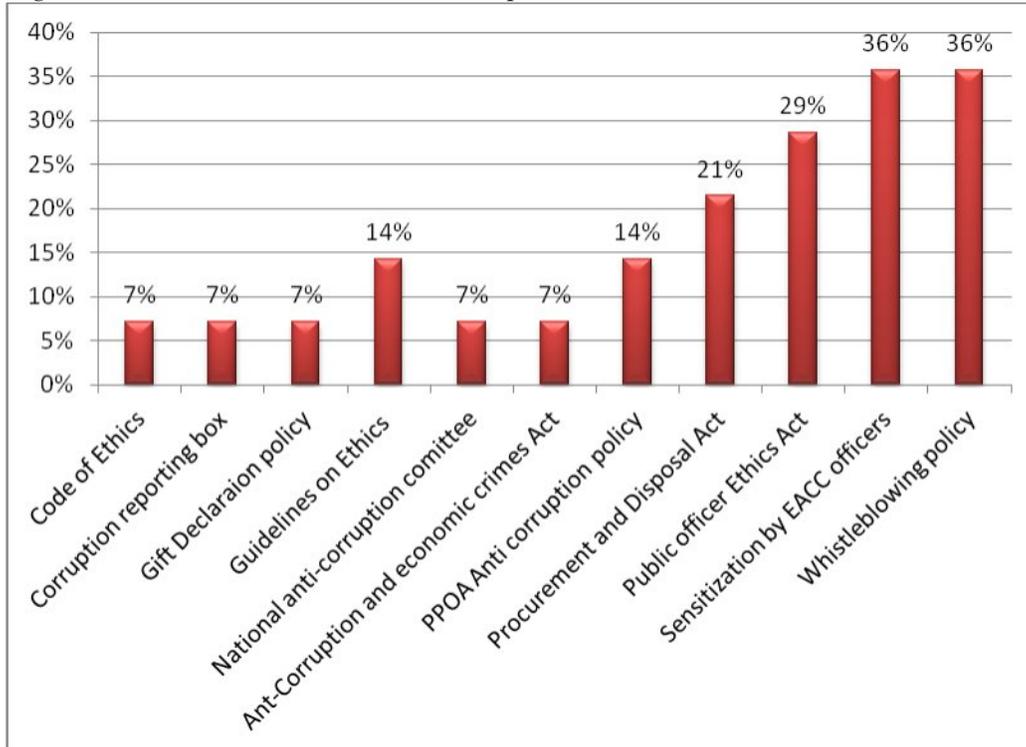


#### 4.3.3 Knowledge of the policies implemented by PPOA to promote ethics

The suppliers were asked whether they knew the policies and activities that had been implemented; 90% said Yes while 10% said No. Further, the respondents were asked to

list the policies and activities that have been implemented by PPOA to promote ethics. The figure 4.16 shows a summary of their views.

*Figure 4.16: Policies that have been implemented to Promote Ethics*



#### **4.3.4 Performance of PPOA in the fight against corruption and promotion of ethics**

##### **4.3.4.1 Activities undertaken by PPOA 12 months prior to the study**

The resercher sought to establish from the head of PPOA, the activities undertaken by the insitution 12 months prior to the study. A score of 1 was allocated for all achieved target. The activities are listed in Table 4.4.

*Table 4.4: Activities PPOA undertaken by PPOA 12 months prior to the study*

	<b>Recommended activities for PPOA(Target for 12 months)</b>	<b>1= Achieved</b>	<b>0= Not Achieved</b>	<b>Remarks</b>
<b>1</b>	Conduct 10 Public Procurement and Disposal Reviews/ Audits	<b>1</b>		10 done
<b>2</b>	Conduct 20 Public Procurement and Disposal assessments	<b>1</b>		120 Done
<b>3</b>	Conduct investigation of the reported cases		<b>0</b>	2 Investigations
<b>4</b>	Handling reported cases for debarment		<b>0</b>	2 firms
<b>5</b>	Address all complains raised by stakeholders/whistle blowers	<b>1</b>		Done Always
<b>6</b>	To review mandatory reports to PPOA	<b>1</b>		Done Always
<b>7</b>	Analysis of tenders and prequalification notices by the assigned desk officers	<b>1</b>		Done daily
<b>8</b>	Conduct contact audit	<b>1</b>		Always
<b>9</b>	Capacity building and empowerment	<b>1</b>		Done daily
<b>10</b>	Wide access to procurement information by the stakeholders	<b>1</b>		To PEs and bidders
<b>11</b>	Enabling accessibility and participation in public tenders	<b>1</b>		Through media, journals and website
<b>12</b>	Adoption of E-procurement	<b>1</b>		Partners with national treasury
<b>13</b>	Development and issuance of manuals and guidelines to simplify the procurement process	<b>1</b>		For frequently asked questions

From the findings, it is clear that PPOA achieved most of the activities that it had set to do. They had set to conduct 10 reviews/audits and this was achieved. They also surpassed their target to conduct 20 assessments and they conducted 100 more. PPOA also addresses complaints, review mandatory reports, do analysis of tender and pre-

qualification notices as well as capacity building always. Generally, most of the activities had been achieved. However, some were not achieved like conducting investigation of the reported cases, handling reported cases for debarment and the review of mandatory reports to PPOA.

#### **4.4 Institutional framework**

The researcher sought to assess the presence or absence of institutional framework and structures in PPOA to fight corruption and promote ethics in Public procurements,(See Appendix vii ; Interview guide for PPOA).The findings show that PPOA is headed by the Director General and has two directorates namely; the Directorate of Technical services and the Directorate of Finance and Administration each headed by a General Manager. The Directorate of Technical services is also structured into four functional departments which are: Compliance, Capacity building, Administrative Review Secretariat and Policy and Research.

The findings show that the compliance department ensures that there is compliance with rules, regulations, policies and procurement law. The capacity building department determines professionalism of all those who are involved in procurement process. For the Administrative review secretariat, they offer administrative functions to the review board while the policy and research department develops policy based on comprehensive and current data. The directorate of Finance and Administration is structured into three functional departments: Finance, Human Resource and Administration and Procurement. The authority has also the corporate services, internal Audit and ICT departments. The layout of the framework and departments are shown in Appendix viii.

##### **4.4.1 Capacity of PPOA in fighting corruption in public procurement**

When asked to rate the capacity of PPOA in relation to some pillars, the respondents in the PPOA, Supply, Review Boards Members, and Procuring Entities gave the following responses as shown in Table 4.5. In respect to Training on best practices, 44% of the suppliers rated it as above average while 28% rated it as below average, 44% of the respondents in the procuring entities rated it above average and 52% of the PPOA staff rated it as above average.

*Table 4.5: Rating capacity of the PPOA by Suppliers, Procuring entities , Review Board and PPOA staff*

		Suppliers Ratings N=14		Procuring entities ratings N=41		Review Board members Ratings N=5		PPOA Ratings N= 21	
		<b>N</b>	<b>%</b>	<b>n</b>	<b>%</b>	<b>n</b>	<b>%</b>	<b>n</b>	<b>%</b>
Training on best practices (regarding Procurement Law)	Below Average	4	28	6	15	2	40	5	24
	Average	4	28	17	41	1	20	5	24
	Above average	6	44	18	44	2	40	11	52
Technological capacity	Below Average	4	28	10	25				
	Average	5	36	21	50	4	83	10	45
	Above average	5	36	10	25	1	17	8	40
Innovation in enhancing transparency and fairness e.g. e-procurement	Below Average	5	36	12	29	1	20	3	15
	Average	4	28	17	42	1	20	11	52
	Above average	5	36	12	29	3	60	6	29
Ability to collaborate with other institutions engaged in the fight against corruption	Below Average	9	65	11	27	1	17	4	19
	Average	2	17	12	29	3	66	7	34
	Above average	3	18	18	44	1	17	10	47
Service delivery to stakeholders	Below Average	8	54	5	12	3	60	2	
	Average	2	14	14	34	1	20	6	29
	Above average	4	30	22	54	1	20	15	71
Availability of adequate budgetary allocation	Below Average	3	21	9	23	1	23	4	20
	Average	6	43	13	31	1	23	13	60
	Above average	5	36	19	46	3	54	4	20

Secondly, innovation in enhancing transparency and fairness was rated average by both suppliers and Procuring entities at 28% and 42% respectively, while PPOA indicated it was below average (52%)% and Review Board rated it above average (60%).

Further, ability to collaborate with other institution engaged in the fight against corruption was rated poor by suppliers at 65%, below average by the Review Board at 66%, average by procuring entities at 29% and above average by PPOA at 47%. With respect to Service delivery to stakeholder, the suppliers rated it below average at 54%, a similar number of the procuring entities rated it as above average while 60% Review Board rated it at below average. As regard to availability of adequate budgetary allocation 43% of the suppliers rated it as average, 46% of the procuring entities and 60% of the PPOA staff rated it as average.

#### **4.4.2. Rating of the effectiveness of PPOA by procuring entities**

Procuring entities were asked to rate the effectiveness of PPOA in relation to some pillars. With regard to transparency and accountability 55% rated it as effective while 4% rated it as ineffective. In relation to consistency, 74% of the respondents rated it as effective and 17% rated it as neutral. Concerning integration with other policies, 73% of the respondents rated it as effective (Table 4.6).

*Table 4.6: Rating of effectiveness of PPOA with Respect to principles/Pillars*

		<b>Procuring Entities N= 42</b>	
		<b>n</b>	<b>%</b>
Transparency and Accountability	Ineffective	2	4
	Neutral	2	4
	Effective	38	92
Efficiency	Ineffective	12	28
	Neutral	20	48
	Effective	10	24
Consistency	Ineffective	4	9
	Neutral	7	17
	Effective	31	74
Open and Effective Competition	Ineffective	7	17
	Neutral	14	33
	Effective	21	50
Ethics and fair dealings	Ineffective	1	2
	Neutral	4	10
	Effective	37	88
Integration with other policies	Ineffective	3	6
	Neutral	9	21
	Effective	30	73
	Ineffective	11	25
	Neutral	13	31
	Effective	18	44
Due Process and dispute resolution	Ineffective		
	Neutral	5	12
	Effective	37	88
Professionalism	Ineffective	12	24
	Neutral	10	34
	Effective	30	71

#### **4.5 Rating of oversight strategies applied by PPOA**

The suppliers were asked to rate the effectiveness of the oversight strategies employed by PPOA to fight corruption and gave the following ratings. The findings indicate that majority of the suppliers (72%) agreed that elimination of the red tape by having so many stages in the evaluation and award of tender would reduce corruption while 14%

disagreed. Asked about reduction of the period between advertisement of tenders and contact awarding , 57% agreed while 21% disagreed they participated. On existence of penalties to staff involved in corruption, 70% agreed while 15% were neutral. Table 4.7 shows their responses,

*Table 4.7 Oversight strategies employed by PPOA in fighting corruption and promotion of Ethics*

		<b>Suppliers Ratings N= 14</b>	
		<b>n</b>	<b>%</b>
Elimination of the red tape by having so many stages in the evaluation and award of tender would reduce corruption	Disagree	2	14
	Neutral	2	14
	Agree	10	72
Reduction of the period between advertisement of tenders and contract awarding	Disagree	3	21
	Neutral	3	21
	Agree	8	58
Standardizing the tender application forms	Disagree	1	8
	Neutral	2	15
	Agree	11	77
Establishment of a hotline to report corruption cases	Disagree	4	28
	Neutral	3	21
	Agree	7	51
Existence of penalties to staff involved in corruption	Disagree	2	15
	Neutral	2	15
	Agree	10	70
Severe penalties for suppliers involved in corruption	Disagree	2	15
	Neutral	3	23
	Agree	9	62
Thorough vetting of the individuals in the tender vetting board	Disagree	1	8
	Neutral	3	23
	Agree	10	69

**4.6 Rating the effectiveness of oversight strategies by PPOA staff, Procuring entities and Review Board members.**

*Table 4.8: Rating of oversight strategies*

		<b>PPOA Ratings N= 20</b>		<b>Procuring entities ratings N=40</b>		<b>Review Board members Ratings N=7</b>	
		<b>n</b>	<b>%</b>	<b>n</b>	<b>%</b>	<b>n</b>	<b>%</b>
Public Procurement and Disposal Reviews/ Audits	Below Average	2	10	3	8	2	29
	Average	1	5	11	28	1	14
	Above average	17	85	26	64	4	57
Public Procurement and Disposal Assessment	Below Average	2	5	2	5	1	14
	Average	1	10	11	28	3	43
	Above average	17	85	27	67	3	43
Investigations	Below Average	5	24	4	10	1	14
	Average	2	10	11	28	3	43
	Above average	13	66	25	62	3	43
Debarment	Below Average	9	45	8	20	2	29
	Average	4	20	8	20	2	29
	Above average	7	35	24	60	3	42
Addressing of complaints raised by stakeholders and whistleblowers	Below Average	4	19	5	13	1	14
	Average	3	14	15	58	2	29
	Above average	13	67	20	49	4	57
Review of Mandatory reports to PPOA	Below Average	6	29	9	23		
	Average	3	14	6	15	4	57
	Above average	11	57	25	62	3	43
Analysis of Tender and Pre-qualification notices	Below Average	2	10	8	20	2	29
	Average	2	10	16	40	2	29
	Above average	16	80	16	40	3	42
Audit of contracts	Below Average	3	15	8	19		
	Average	2	10	15	38	3	42
	Above average	15	75	17	43	4	58

The PPOA staff, Procuring entities and Review board members were also asked to rate the effectiveness of the oversight strategies in the fight against corruption and promotion of Ethics in public procurement.

Public procurement and disposal reviews/Audits was rated as effective by PPOA and procuring entities at 85% and 64% respectively while Review board member rated it effective at 57%.

In respect to Public Procurement and Disposal Assessment both 85% of the PPOA and 67% of the procuring entities rated it as effective while the 43% Review board rated it as neutral. Regarding Debarment 60% of the PPOA rated it as effective, 45% of the Procuring entities rated it as ineffective and 29% neutral by the review board member.

Concerning, addressing of complaints raised by stakeholders and whistle blowers, 49% of the PPOA rated it as effective, 67% of the Procuring entities rated it effective while 57% of the Review board rated it effective. The results are shown in Table 4.8.

#### 4.7 General Comments

The respondents made several general suggestions as shown in table 4.9;

*Table 4.9 Suggestions on strategies to improve procurement process*

<b>General suggestions on strategies to improve PPOA</b>	
i.	There is need to improve record keeping in all procuring entities
ii.	The entities should be sensitized on public procurement records management procedure
iii.	PPOA should automate the mandatory reporting platform
iv.	There should be public good will; each person has a responsibility to fight corruption and promote ethics
v.	PPOA should be given power to prosecute
vi.	PPOA should put more efforts training in best practices in procurement
vii.	A central database should be availed to P.Es to maintain mandatory documents and reports
viii.	There should be capacity building on e-procurement
ix.	The debarment process should be strictly enforced on errant suppliers
x.	PPOA should update its standard contract forms to reflect changes in the law

## **CHAPTER FIVE: DISCUSSION**

### **5.0 Introduction**

This chapter is a discussion of the study findings based on the data collected from interviews with the four categories of respondents including; the procuring entities, the suppliers, the review board members and the PPOA staff members as well as the secondary data obtained from EACC and PPOA. The findings are presented thematically in this section according to the research questions and objectives of this study.

### **5.1 Objective 1: Incidences of corruption in public entities after the establishment of PPOA**

The aim of this objective was to examine the trend in the incidences of corruption since the establishment of PPOA. At the outset, it was necessary to know whether the respondents were aware of the reporting mechanisms of corrupt practices. The results showed that 85% of the respondents in procuring Entities and 67% of the suppliers answered in the affirmative. This is a confirmation that the key players in the procuring sector know that there are institutions where corrupt practices can be reported. In a study done by EACC in 2009, it was found out that there existed some unethical practices in the procurement processes. The public officials were reported to hinder open and fair participation by the interested parties and even influenced the procurement outcomes.

An issue of concern arising from the findings is that though 67 % suppliers are aware of the reporting mechanism, 54% stated that they had failed to report corrupt practices for fear of victimization. This is a very high percentage, and it is critical for the PPOA to investigate why the confidence level in reporting corrupt practices is low and what can be done to remove the fear of victimization. As regards the mechanisms that are available for reporting corrupt practices the one that was rated highest at 53% is the Suggestion Box, with the portal on the PPOA website being rated the lowest at 3% and the hotline numbers at 9%. The last two methods ought to perform better as they are quicker to access from any place and probably what is required is dissemination of more information to the stakeholders on the existence of this mode of reporting.

The findings show that the suppliers, who are critical in reporting corrupt practices, were requested to give their view on the reporting mechanism and 33% rated it as average and only 27% rated it as good. It is thus clear that fear of victimization for reporting corrupt practices is an issue that requires urgent attention. It is also critical that a mechanism that will give comfort to aggrieved bidders be created otherwise if there is fear of victimization, corruption in public procurement will continue unabated.

Overall, the findings show that the majority of the Respondents were of the view that the incidences of corruption have decreased since the establishment of the PPOA. 76% of the Respondents in the PPOA stated it had decreased, whereas 100% of the Respondents in the Review Board and Procuring Entities were of the view that it had decreased. However, when these figures are contrasted with the views of the Suppliers, it is clear that Suppliers are of the view that the incidences have increased. Therefore, the recommendation by Akech (2005) that the enactment of the PPD Act and the creation of the office of the Director General in the PPOA would go a long way in reducing corruption in public procurement has been vindicated.

Regarding the actual incidences of corruption, the research relied on data on the reported cases. It was therefore necessary to get data from the bodies that handle complaints from aggrieved bidders in public procurement. The two bodies that handle such complaints are the Administrative Review Board and the EACC. It was noted that the number of the cases that were handled by the Review Board between 2007 and 2014 is an average of 50 cases per year. This is a very low number of cases compared to the overall number of procurements that are carried out by Procuring Entities in one fiscal year. As already noted, there is a high number of Suppliers who indicated that they fear to report corrupt practices for fear of victimization. Thus, this may call for a further examination of the appeal mechanism to confirm whether the bidders have confidence in it. Regarding the actual number of complaints that were reported to the EACC, the figure shows an upward trend with 77 cases reported in 2007 and 155 in 2014. Though the actual number of cases that were reported is not very high, it is noteworthy that they have doubled.

The findings on the incidences of corruption can be interpreted in different ways. Firstly, the view of the Respondents in the Procuring Entities, PPOA staff and the Review Board that incidences have gone down is probably influenced by the fact that in their opinion, the PPOA is playing a watchdog role and that its very existence is a deterrent factor. The contrasting view by the Suppliers that the incidences have increased shows that there is the need to reexamine the strategies that are being used to fight corruption especially the reporting mechanism.

Further, the fact that the data from EACC shows an increase in the number of complaints is a pointer that the information sharing between the PPOA and EACC needs to be enhanced. The data from EACC can also be looked at in a different perspective and may require further investigation before a conclusive determination that the incidences of corruption have increased can be made. First, there is need to examine the effect of the growth of the media, both print and electronic and more so the social media. It is possible that it is now easier to expose corrupt practices than it was before the year 2007. Secondly, it is necessary to examine the rate of economic growth since the establishment of the PPOA. Undoubtedly, an increase in economic growth means that more government projects are rolled out and the level of participation by the citizens increases.

Thirdly, the creation of an appeal mechanism by the PPD Act has given aggrieved bidders an avenue to lodge their grievances and if they are confident in the appeal mechanism, more cases are bound to be reported. Fourthly, another factor that calls for further examination is the creation of County Governments under the Kenyan Constitution 2010. The County Governments are receiving not less than 15% of the national budget as provided under Article 203 (2) of the Constitution. This means that there are many tenders that are being done at the County level. The lesson that can be emphasized is that there is the need for continuous monitoring to ensure that the bending of procurement rules ought to be a high risk and low reward exercise both at the county and national government levels.

In conclusion, it is arguable that going by the views of the Respondents and having a look at the secondary data, the creation of PPOA undoubtedly has had a positive effect. However, there is need to ensure that there are strong structures and adequate capacity in PPOA to monitor the procurement process so that value for money is achieved at all times. This must be a continuous exercise as shown in the literature review corruption in public procurement cuts across all the nations. The example drawn from Philippines- a country grappling with the problem of corruption in public procurement a question is asked; why is corruption so prevalent in public procurement?(Asian Institute of Management, 2005). The answer given is that corruption is rampant and a low risk- high reward exercise. This situation is similar to Kenya. In Kenya, corruption is a low risk-high rewards exercise which is evident by the high number of respondents who indicated that they fail to report corruption for fear of victimization a pointer that reporting corruption is a high risk exercise?

## **5.2 Objective 2: Assessment of PPOA's performance in the fight against corruption and promotion of Ethics**

At the risk of repetition, it is worth stating that the creation of PPOA was premised on the basis that there was the need to have a watchdog on the overall procurement process in the Country. That being the case, the researcher embarked on an exercise to assess the performance of the PPOA in the fight against corruption and more importantly on the promotion of ethics in procurement processes. It is beyond argument that a positive improvement in ethical behavior by those involved in the procurement process will lead to a decrease in corrupt practices and vice versa.

As a starting point, the research sought to know whether the existence of PPOA is well known. This is on the realization that an institution has to be known and felt by the consumers of its services; otherwise, it will have no impact at all. On this issue, it is gratifying to note that the knowledge of the existence of PPOA was rated at 86% and 87% by the Suppliers and the Procuring Entities respectively. It is also encouraging to

note that at least 87% of the Suppliers are aware of the existence of the Public Procurement and Disposal Act.

Knowledge of the existence of an Institution alone is not enough. Therefore, the Respondents were requested to rate the effectiveness of PPOA in fighting corruption and promoting ethics. 47% of the Respondents rated it as good, and 33% rated it as normal. Only 7 % rated it as excellent. As noted by the Hungarian Gallup Institute (2009), measuring corruption is a complex exercise as it is impossible to have a one-by one definitive categorization and that the real volume of corruption cannot be measured or calculated. The study states that one of the methods of measuring corruption is the general or target group perception concerning corruption. In a different study done by Zaman and Faiz-Ur-Rahim (2009) on corruption, the results show that commonly used measures of corruption are used less for their ostensible purposes. In many cases, they are calculated and used for political purposes. This was the reason why it was important for the respondents to give their views on the performance of the PPOA in the fight against corruption.

An issue that is of particular concern in this research is the promotion of ethics. This is based on the realization that the procurement process, even where it is automated relies on people. Therefore, the character of the individual and appreciation of the values of honesty, integrity and fairness are paramount. It is noteworthy that a high number of Respondents (90%) indicated that they were aware of the policies and activities that have been implemented by PPOA to promote ethics. However, when one looks at the specific policies that are within the knowledge of the Respondents, a keen student of ethics will be disheartened. This is because only 7 % of the Respondents were aware of the code of ethics and another 14% were aware of the guidelines on ethics. The highest known policies were sensitization by EACC Officers and whistle blowing policies that were both rated at 36%.

It is, therefore, not difficult to conclude that PPOA ought to put more emphasis on the training of ethics in its programs. This is because all the other policies that were known to the Respondents on the promotion of ethics are based on Acts of Parliament and

Regulations. Whereas the place of laws and regulations cannot be underemphasized, it is necessary to lay emphasis on changing the character of the people. In order to measure the performance of the PPOA in the fight against corruption and promotion of ethics, the research first identified the actual targets that the PPOA has set for itself as part of the evaluation of its performance. Where the target for the recommended activity has been achieved, a score of 1 was given and where the target was not achieved a score of 0 was given. It is important to note that these activities have been put in place to ensure that there is integrity in the procurement process which in turn means where the target is achieved; the chances of disrupting corrupt practices will be high.

One of the main recommended activities is the conduct of the Public Procurement and Disposal Reviews and Audits. The PPOA set a target of 10 such reviews and audit where it would carry out an in-depth analysis of procurements processes in targeted institutions. The research confirmed that they had conducted ten such reviews and audits as per the target set. The other target that had been set is the conduct of at least 20 Public Procurement and Disposal assessments. This assessment is not as detailed as the Audits but is a quick appraisal of the procurement system within a Procuring Entity. It is very encouraging that the PPOA exceeded its target by far and had conducted 120 assessments.

The other major activity is the conduct of investigations on the reported cases. Research established that two investigations had been concluded. Since the reported cases were more than two, this target was not met and thus there is need to give this pillar more attention. One of the key tools for fighting corruption is the punishment of suppliers who engage in unethical conduct, through debarment. This means that a supplier who is found guilty of engaging in unethical conduct is suspended from participating in Public Procurement for a given period. The research established that two cases had been reported and concluded and the firms involved had been debarred for five years.

The research also established that there are officers that are on standby to handle the following activities; review of mandatory reports to PPOA by procuring Entities; conduct

of contracts audit; promotion of information to stakeholders and development of manuals and guidelines to simplify the procurement process.

One other key activity that the PPOA has undertaken to improve the procurement process is the adoption of E-Procurement and it was noted that it has partnered with the National Treasury to promote this. The research established that it is now mandatory for all the Procuring Entities to undertake their procurement under the E- procurement platform. However, the effectiveness of this system is beyond the scope of this research. That notwithstanding, the role of E- procurement cannot be ignored. As stated by Akech (2005), it is important to note that corruption thrives in Public Procurement in instances where public officers act under influence to invite preferred firms, designing of tendering documents to favor certain companies and in releasing of confidential information. This can be eliminated or minimized if E- procurement is adopted as it highly reduces discretion in the procurement process.

It is thus clear that PPOA has identified various activities that are necessary to fight corruption practices but the fact that reports of corruption in public procurement is still high (Transparency International 2015), call for a further review of the strategies to enhance them and adopt new ones if need be. The literature review has shown that the concept of common good is critical. As Gichure (2005) observes, the good of each is necessarily related to the common good, the good of all, which in turn can be defined regarding the human person. This statement is relevant when assessing the performance of the PPOA since all the activities for fighting corruption are people driven. Thus the appreciation of the staff of the PPOA and all the other players in the procurement process that an act of one person affects the other either positively or negatively is critical.

### **5.3 Objective 3: Establishing institutional framework and structures as well as the capacity of the PPOA in fighting corruption in public procurement**

The research embarked on a situational analysis of the PPOA on the institutional framework and structure. The objective was to dig out whether as currently constituted

the PPOA has in place effective structures to fight corruption and promote ethics in Public Procurement.

The findings show that PPOA has an elaborate institutional framework and structures put in place. PPOA is headed by the Director General and has two directorates namely; the Directorate of Technical services and the Directorate of Finance and Administration each headed by a General Manager. The Directorate of Technical services is structured into four functional departments mainly compliance, capacity building, Administrative Review secretariat and policy and research. The compliance department ensures compliance with the policies, rules and regulations of public procurement and Disposal Act through audits, assessments and enforcement.

The capacity building department is mandated to develop, promote and support training and development of professionals and build the capacity of persons involved in public procurement. The administrative Review Secretariat was established with a mandate to facilitate the review board whose mandate is to review complaints from candidates who are aggrieved by the outcomes of procurement proceedings. The Secretariat offers administrative services to the Public Procurement Administrative Review Board.

The policy and research department develops, revises and distributes standard tender documents, procurement manuals, guidelines and standard procurement formats. The Directorate of Finance and Administration is structured into three functional departments: Finance, Human Resource and Administration and Procurement. The authority also has the corporate services, Internal Audit, and ICT departments. From the review of PPOA institutional framework, it is clear that PPOA has an active ICT department. This department has designed a website and a portal where all notices regarding procurement are posted. The department has also come up with an e-learning portal.

It is clear that as currently structured there is an elaborate institutional framework and structures in place. However, it is also easily discernable that the fight against corruption and promotion of ethics are activities that run across the various departments. There is no

department that has been created to specifically dedicate itself to fight corruption and promote ethics. Such a department would act as a good link and co-ordination of the various departments. It would also give the promotion of ethics the prominence that it deserves. With all these structures in place, one would expect that there should be a decrease of the incidences of malpractices in procurement. Therefore, since the existing literature shows an increase in corruption in procurement related cases, it may be concluded that some of these structures are not playing their roles effectively.

The second limb of this objective was to rate the capacity of the PPOA on specified pillars. Therefore, the respondents were also asked to rate the capacity of PPOA on some pillars. First, they were to rate PPOA in training on best practices; 29% of the suppliers rated it as average, and a similar number also rated it as good, 41% of the procuring entities rated it as average, 29% of the PPOA staff rated it as good. However, 40% of the respondents in review board rated it as poor. This shows that PPOA may not be doing much on training the suppliers and procuring entities on the best practices.

Asked to rate the technological capacity of PPOA, over 50% of the respondents from all the categories rated it as above average. Regarding innovation in enhancing transparency and fairness, over 50% of the suppliers rated it as above average, 41% of the procuring entities rated it as average, 60% of the review board members rated it as good while 52% of the respondents in PPOA rated it as below average. About the ability of PPOA to collaborate with other institutions engaged in the fight against corruption, 36% of the suppliers rated it as poor, 67% of review board members rated it as below average, and 29% of the respondents in PPOA rated it as below average.

Concerning service delivery to stakeholders, 31% of the suppliers rated it as average, 37% of the procuring entities rated it as good, 67% of the review board rated it as excellent while 52% of the PPOA staff rated it as good. Concerning availability of adequate budgetary allocation, 43% of the suppliers rated it as average, 31% of the procuring entities rated it as average, 32% of the review board members rated it as good,

and 30 % rated it as average. From the findings, it is obvious that a lot needs to be done on capacity buildings.

Firstly, on collaboration with the other institutions, this has to be enhanced as the fight against corruption cannot be fought by one institution. Corruption is a multi – headed dragon that has to be tackled from all angles and collaboration will ensure that the fight against corruption in Public Procurement is done optimally. From the literature Review, some of the bodies that could help PPOA in its oversight role against corruption include the EACC that can assist in thorough investigation of malpractices in procurement. Further, since one of the tools used to fight corruption is the conduct of review and Audits, collaboration with other government institutions like the Auditor General’s would help. In conclusion, it is instructive to note that on the issue of service delivery, most respondents rated it as average which means there is room for PPOA to improve capacity on service delivery to the stakeholders in the procurement field.

#### **5.4 Objective 4: Ascertaining the effectiveness of the oversight strategies employed by PPOA to fight corruption and promote Ethics in public procurement**

The fight against corruption and promotion of ethics can only be successful if PPOA is applying the right oversight strategies. Therefore, the Respondents were asked to rate the effectiveness of the PPOA on the strategies that have been implemented. First, the Respondents were asked to rate the effectiveness of the oversight strategies employed by PPOA to fight corruption and promote ethics in public procurement. The rating on the strategies was as follows; on the promotion of transparency and accountability, 92% said it was effective; regarding efficiency, 48% rated it as neutral, 25% of them said it was ineffective ;regarding consistency 74% of the respondents rated it as effective, and 17% said it was neutral; regarding open and effective competition, 50% rated it as effective, and 33% rated it as neutral ;88% rated ethics and fair dealing as effective; 73% rated the ability of PPOA to integrate with other policies as effective; 88% rated due process and dispute resolution as effective; and 71% rated professionalism as effective.

The findings show that the PPOA is rated very favourably regarding the pillar on transparency and accountability as 55% rated it as moderately effective and 36% as highly effective. An issue that is of particular concern is that only 37% of the Respondents rated PPOA as highly effective in professionalism. This is a good thought for the PPOA as a question may be asked whether there is unprofessionalism in PPOA. This is an ethical issue that calls for a critical review by the PPOA as the literature review has shown that effectiveness of an organization is largely driven by the staff of the organization. The staff of the PPOA must be at the forefront of promoting professionalism in the procurement sector. There are the generals, so to speak, in the war against malpractices in procurement. As stated by Gichure (2008) it is important that educative measures be undertaken to improve integrity and loyalty in officials that are entrusted with public responsibilities. Therefore, the staff of the PPOA has a great role to play in making the PPOA effective in its mandate. To achieve this, the staff has to be ethical and observe the rules of honesty, integrity, fairness and transparency in their work. The question that then arises is what the PPOA can do to enhance the effectiveness of the strategies that it is currently employing.

#### **5.4 Chapter Summary**

In addition to the specific questions that were asked, the respondents made key general comments that should be implemented to help in the fight against corruption and promote ethics. Key among them is embracement of technology, strengthening of institutional collaboration enhancement of training of the staff and the proper record keeping by all procuring entities. These general comments clearly show that all the respondents appreciate that PPOA is a key institution in promoting fairness, integrity and transparent in public procurement in Kenya.

## **CHAPTER SIX: CONCLUSIONS AND RECOMMENDATIONS**

### **6.0 Introduction**

Public procurement is a very critical function in a country. In addition to maintaining law and order, governments have to provide services to its citizens. To finance its activities, a government collects taxes from the citizens which are put in the consolidated fund. It is from this fund that money for public procurement is drawn from. Corruption occurs when those entrusted with the procuring of goods and services for the public betray the trust and use the funds for personal enrichment. Therefore, the importance of oversight bodies like the PPOA cannot be ignored as they have the primary responsibility of fighting malpractices in public procurement. It is with this objective in mind that this research sought to assess the effectiveness of the PPOA in fighting unethical practices in public procurement and make recommendations to strengthen the institution.

This chapter highlights the conclusions and recommendations for policy, practices and areas for further research with the expectation that they will lead to improvement of the public procurement process.

### **6.1 Conclusions**

#### **6.1.1 Incidences of corruption in public entities after the establishment of PPOA**

With regard to trends in the incidences of corruption after the establishment of PPOA, the secondary data from EACC showed an upward trend in the number of incidences of corruption since the creation of the PPOA. It is thus clear that the number of cases has doubled. However, this in itself may not be an indicator that PPOA has not been effective. There is need for a more in-depth analysis on the effect of the expanded democratic space in Kenya since the enactment of the Constitution 2010 and the growth of the media which has made dissemination of information easy. Further, it is also necessary to study the effect of the economic growth within the same period, as more growth means that more procurement was undertaken.

It is also worth noting that save for the suppliers, majority of the other Respondents were of the view that the incidences of corruption has gone down since the creation of the

PPOA. In addition, there is no Respondent who stated that the PPOA is not a critical institution and this is a confirmation that what is required is the strengthening of the institution to make it more effective.

### **6.1.2 Assessment of the PPOA's performance in the fight against corruption and promotion of ethics in public procurement**

The study established clearly that the PPOA has set specific yearly targets that are to be undertaken in its effort to fight corruption in public procurement. It was established that PPOA met and surpassed targets set for conducting audits and assessment. One other key activity that was identified is the debarment of suppliers who are guilty of corruption malpractices. This is critical as corruption is two way traffic involving the giver and the taker. It is therefore important that suppliers who engage in malpractices be disciplined. The findings show that some suppliers had been debarred and this is a clear message to suppliers that whoever is found guilty will face serious consequences.

In general, it can be concluded that PPOA had achieved the targets that had been set. However, this should not mean that PPOA should sleep on its laurels. It is necessary that the criteria for setting those targets be reviewed regularly to determine the impact of those activities in the fight against corruption in public procurement. One of the areas that need more attention is the handling of the complaints that are reported. A speedy conclusion of the complaints will complement the work of the Public procurement administrative review board and will also give confidence to the complainants. This is important as the findings showed that a very high number of respondents fear reporting corrupt practices for fear of victimization.

### **6.1.3 Establishing institutional framework and structures in place as well as the capacity of the PPOA in fighting corruption in public procurement**

The study found out that there is a well-defined institutional framework and elaborate structures put in place in PPOA. Some of these structures include the ICT department, the compliance department, the policy and research department as well as the Secretariat all

whose main objective is to make PPOA effective in its mandate of transforming procurement. These departments have been set up to ensure that PPOA achieves its functions as spelt out in the PPD Act. However, the existence of the departments alone is not enough. They must be manned by persons of high integrity to ensure that the procurement law is observed by all the stakeholders. The findings show that although PPOA has created a compliance department, it should consider setting up a fully-fledged department that is dedicated to fighting corruption and promotion of ethics. This in turn will mean that each procuring entity will also be required to form an anti-corruption and integrity committee and such committees should be reporting regularly to PPOA on the anticorruption and integrity measures that they have implemented.

On the issue of capacity, it was established that the PPOA has undertaken various activities in training of staff on best practices, enhancement of technology and implementation of e-procurement. However, key areas that were noted that require more attention is increase of its budgetary allocation, enhancement of service delivery and collaboration with other institutions that are engaged in the fight against corruption.

#### **6.1.4 Assessing the effectiveness of the oversight strategies employed by PPOA to fight corruption and promote Ethics in public procurement.**

The study established that the oversight strategies that are employed by PPOA are effective. The findings show that elimination of red tape by reducing the many stages in the evaluation of the tenders was rated highly. Further, the standardization of the tender application forms and the existence of severe penalties for those involved in corruption were also rated as effective strategies.

Despite these positive findings, a student of philosophy and ethics will be genuinely concerned on the attention that the promotion of ethics is given. Although the study confirmed that a code of ethics has been developed by the PPOA, very few respondents were aware of the code of ethics and guidelines on ethics. As already noted in this study, ethics and corruption have a strong correlation. Procurement even when done on the electronic platform is largely driven by the acting person. Therefore, the character of the

acting person is paramount and where it is driven by persons of high moral principles, the chances of malpractices are low. The procurement process is a chain and it only requires one ethical person in the chain to act as a whistleblower for a disruption of the corrupt practice to occur.

In my view, PPOA ought to re-examine the oversight strategies that it is using to fight corruption in public procurement and in the promotion of ethics. It must strictly enforce the strategies and the policies that it has set but more importantly it ought to conduct a critical examination of these strategies and policies to embrace new ones and discard those that are not appropriate. As an example it ought to enhance the reporting mechanism of corrupt practices by developing a secure and anonymous platform to address the fear of victimization.

Further, there is need for PPOA to collaborate with other institutions whose mandate is to fight corruption and to promote ethics such as the EACC and Auditor General's office. This is based on the fact that the fight against corruption cannot be won by one institution. For instance, PPOA does not have the authority to prosecute, and so it refers complaints that require investigation and prosecution to other bodies like the EACC and DPP. Thus PPOA ought to have strong collaboration with all the other bodies that are involved in the fight against corruption. Finally, it is important for PPOA to be robust in informing the public on the successful interventions and enforcement measures that it has undertaken as this will create confidence in the procurement process. This is important as the PPOA will not only be effective but seen to be effective if the incidences of corrupt practices are minimized as this is the only way that it can be deemed to be performing well.

## **6.2 Recommendations from this study**

### **6.2.1 Recommendations on practice**

Corrupt practices are activities that are done in secrecy and can only be fought effectively if those who are involved are exposed. One of the issues that came out clearly from the findings of this study is that suppliers, who are at the fore front of the procurement

process fear reporting corrupt practices for fear of victimization. This is an issue that PPOA should address urgently, as all what is required is creation of a reporting platform that is secure and which will not expose the details of those who are reporting corruption. In addition, education of the suppliers can be done to make them understand that every citizen has a duty to fight corruption even at the risk of suffering financial consequences.

The findings also revealed that the collaboration between PPOA and other bodies that fight corruption is not very strong. PPOA on its own cannot succeed unless it receives support from the other arms of government. Therefore, a deliberate effort must be made to enhance institutional collaboration. In addition, the findings confirmed that e-procurement is being implemented. The electronic platform will no doubt reduce discretion of the persons who are involved in the procurement process. Therefore, PPOA ought to ensure that the entire procurement process is automated from the point of advertisement, evaluation and award of tenders.

### **6.2.2 Recommendations on policy**

The findings revealed that promotion of ethics in procurement has not been given enough prominence. There is no doubt that the procurement law has to be enforced strictly and that the most of the oversight strategies that PPOA has implemented have a strong bias in law enforcement. However, one of the areas that require urgent address is the promotion of ethics by all the institutions of government. The findings confirmed that PPOA has developed a code of ethics and policies on training of ethics. However, the question that arises is at what stage the training of ethics is been introduced in the education system. The character of an individual has to be molded at an early age. Introduction of ethics once a person has been employed or in tertiary institutions is very late and PPOA and other institutions that are involved in the fight against corruption ought to develop policies with a strong bias in prevention. There is need to collaborate with institutions that develop the education curriculum to introduce ethical topics in primary schools going upwards. This will ensure that ethical values are instilled in children at an early age.

As already noted, public procurement is the life line of the economy of a country and due to the huge amount of money involved, the temptation to bend the rules by those involved will always remain. Therefore, PPOA must ensure that the policies to fight corruption are benchmarked with best practices in other countries. Therefore, although the findings show that PPOA has met the targets it has set, there is need for continuous evaluation of the oversight strategies. It is recommended that PPOA should undertake corruption mapping every two years to identify the sectors that are more susceptible to corruption. This way PPOA will be able to direct its resources in the critical sectors.

Finally on this issue, the findings showed that there is need for the government to give more resources to PPOA for it to enhance its capacity in terms of staff training, innovation in technology, education of all the stakeholders in best practices and for it to increase the number of activities that are geared towards the improvement of the procurement process.

### **6.2.3 Recommendations on further research**

The literature review in this study clearly shows that corruption in procurement is not confined to one country. It is recommended that one area that can be researched further is a comparison between the procurement process in Kenya and other countries that are ranked low in the corruption index. By so doing ,it will be possible to confirm whether the approach that Kenya has taken of forming one body to oversee the procurement process is the best or if there are other strategies that can be implemented to compliment the work of PPOA.

This study only concentrated on a few procuring entities that are involved in mega projects. In view of the fact that we now have the national and county governments, procurement is now being done at both levels. If ,as it is clear from this study, that there was corruption before the creation of the devolved governments, what measures have been put in place to ensure that corruption is not devolved. Indeed, it would be important to know how PPOA is interacting with the county governments and the impact of the county governments on its capacity.

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