



Kenya National Commission on Human Rights

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Corruption: A Serious Threat to the Enjoyment of Human Rights That **MUST** be Urgently Tamed

On 9th December, 2003, when the United Nations Convention against Corruption (UNCAC) was opened for Signature in Merida, Mexico, Kenya became the first country in the world to sign and simultaneously ratify UNCAC¹. The enthusiasm with which Kenya signed this convention can be attributed to two main factors. First, that Kenyans were expressing a strong sense of confidence and optimism that with a new regime in power, the country had what it took to break the yoke of corruption that had seen its economic fortunes plummet to levels where it was registering negative figures of “economic growth”. Second, Kenya was acting in solidarity with the civilized nations of the world who had identified corruption as a serious threat to good global citizenship and the well-being of humanity. Mr. Kofi Annan, the Former UN Secretary General quite succinctly captured the need to combat corruption when he stated that:

Corruption is an insidious plague that has a wide range of corrosive effects on societies. **It undermines democracy and the rule of law, leads to violations of human rights, distorts markets, erodes the quality of life and allows organized crime, terrorism and other threats to human security to flourish.** This evil phenomenon is found in all countries—big and small, rich and poor—but **it is in the developing world that its effects are most destructive. Corruption hurts the poor disproportionately by diverting**

¹ See a report by the Ethics and Anti-Corruption Commission (EACC) published in 2009 and titled: *Kenya: UN Convention against Corruption Gap Analysis Report and Implementation Plan*. Available online at <http://www.eacc.go.ke/docs/kenya-uncac-gap-analysis-report.pdf>

funds intended for development, undermining a Government's ability to provide basic services, feeding inequality and injustice and discouraging foreign aid and investment. Corruption is a key element in economic underperformance and a major obstacle to poverty alleviation and development².

Apart from the UNCAC, Kenya has established a number of legal and institutional arrangements to fight corruption, key among these being the following: The Constitution of Kenya 2010, and specifically at Article 10 (1) which states that all state and public officers will be bound by national values and principles of good governance, integrity, transparency and accountability in discharging their duties; the Office of the Auditor General; the Ethics and Anti-Corruption Commission; the Office of the Director of Public Prosecutions; the Anti-Corruption Court, which is a specialized Division of the High Court; and a number of Parliamentary Committees which are supposed to offer effective oversight against corruption by either exposing or prosecuting all those accused of corruption.

We are therefore alarmed that despite the existence of what appears to be a robust framework to fight corruption and its litany of accomplices, those charged with the responsibility of stopping corruption have not been able to do so. On the contrary, and what is alarming, is that Kenyans have in the recent past been treated to high drama in the form of news and allegations of elected and appointed leaders engaging in corruption, especially at Parliamentary Committees. Therefore, instead of having "Corruption Free Zones" as stated in most public places, we seem to have institutionalized a culture of impunity by condoning corruption.

The KNCHR wishes to take this opportunity to remind all those charged with the responsibility of protecting the country against the scourge of corruption that corruption is a serious threat to the enjoyment of human rights that must be urgently tamed. Corruption is a threat to human rights because the colossal sums of money irregularly withdrawn from the government kitty end up in private individuals' pockets. The funds and resources diverted by corruption have dire consequences on critical reforms, development and human rights in various sectors such as health, transport infrastructure, security and education, which are perpetually stifled of vital

² See foreword by Kofi Annan in, UNITED NATIONS CONVENTION AGAINST CORRUPTION. Available online at http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf

resources due to the selfish and criminal activities of corrupt individuals. It increases the cost of development, unless challenged it will stunt our developmental goals.

Indeed, the negative impact of corruption on human rights has been buttressed by the findings of a study by KNCHR in Mombasa, Busia and Kakamega counties which shows that Kenyans continue to suffer from lack of access to proper medical care in country-run government hospitals as well as deteriorating security and lack of quality education due to endemic cases of corruption in these counties. The KNCHR shall be releasing this report to the public in the coming days.

As the custodians of the Bill of Rights and alive to the fact that corruption kills the spirit of the democratic culture that we seek to nurture as a country, we want to assure Kenyans that KNCHR will not stand in silence as the principles of good governance are obliterated by those who seek to use illegal means to enrich themselves at the expense of the public. We will continue demanding for individual accountability from all those who have been adversely mentioned as merchants of corruption in line with the laws of the land. We therefore make the following recommendations:

1. We urge the President to henceforth and decisively translate his repeated public condemnation of corruption into action by asking those currently serving in various positions within the Executive and who have been adversely mentioned to step aside to facilitate independent investigations into the allegations of graft levelled against them. We are particularly concerned about continued appointment to public offices of persons adversely mentioned in corrupt practices, for instance the recent appointment of Chris Okemo to the Board of Kenya Seed Company. Okemo, a former Finance Minister together with others are battling extradition to the United Kingdom to face multiple charges of Money Laundering and Misconduct in Public Office. Such appointments should be revoked and must never happen again as they only perpetuate impunity and erode public confidence in the government's commitment to fight corruption.
2. All those who have benefitted from corruption be compelled to return the amount of monies that they have illegally acquired as stipulated in Article 226 (5) of the Constitution which provides that: ***“If the holder of a public office, including a political office, directs or approves the use of public funds contrary to law or instructions, the person is liable for any loss arising from that use***

and shall make good the loss, whether the person remains the holder of the office or not”.

3. We call for thorough investigations in the reported cases of corruption in parliamentary committees especially the Public Accounts Committee which is a key oversight organ of parliament in safeguarding public funds against misuse and pilferage. Stern action must be taken against those members of parliament found culpable in order to restore public confidence in the legislature.
4. The Office of the Auditor General be given sufficient operational autonomy to continue discharging its watchdog role over the use of public resources. We are therefore particularly concerned about the current Public Audit Bill, 2014 which seeks to “trim the powers” of the Office of the Auditor General especially in matters touching on national security expenditure. It is alarming that the bill proposes to exclude certain expenditures of the National Police Service, Kenya Defence Forces and National Intelligence Service from scrutiny by the Auditor-General. Given that claims of National Security seem to provide an easy avenue for corruption, we hereby state that Clause 40 of the said bill which purports to prohibit the Auditor-General from disclosing information **“that would be contrary to the public interest”** and **“would prejudice the security, defence or international relations of the Government of Kenya”** be expunged from the bill.
5. In line with the third pillar of its manifesto dubbed “Uwazi”, and which reads in part, *“The Jubilee Coalition will give the Ethics and Anti-Corruption Commission powers to prosecute corruption cases and that it will put an end to parliamentary immunity from corruption”*, we wish to remind the Jubilee Government of its pledge to fight graft and ask that it supports a strong and effective EACC as well as a strong and effective Office of the Director of Public Prosecutions so that the war against corruption can be effectively fought and won within the confines of the law. EACC must be insulated from undue interference and witch-hunting particularly in times like now when it has commenced court action against powerful individuals in relation to the infamous Anglo-Leasing and related scandals.
6. Finally we urge Kenyans to commit themselves in the war against corruption by desisting from engaging in corrupt practices in their day to day engagements.

Kenyans stop condoning and cheering public officers engaged in corruption but instead condemn and report them to relevant authorities so as to secure the future of our country.

In conclusion, we wish to state that this country can only march forward with confidence that it will attain the noble socio-economic and political development ideals espoused in Vision 2030 if and only if corruption is robustly confronted and defeated.

End//.....

Kagwiria Mbogori

A handwritten signature in black ink, appearing to read 'Kagwiria Mbogori', written over a light grey rectangular background.

Chairperson, KNCHR