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Useful Resources

This is the third Issue of Nguzo za Haki, (the Pillars of Rights), published by the Kenya National Commission on Human Rights (KNCHR). The KNCHR produces Nguzo za Haki twice a year, as part of its program of research and reports. It aims at keeping Kenyans and the world informed of the Commission’s activities, raising awareness on topical issues of human rights, and highlighting the challenges of human rights with a view to activating individual, collective and official action.

In publishing Nguzo za Haki, the Commission is determined to provide its readers with well researched analytical articles on human rights issues that should contribute to relevant policy formation, provide programmatic ideas on effective approaches to human rights work, and reviews of political, economic, social and cultural issues impacting on human rights. The publication carries a section “Editors Choice, In a Few Words” that reviews books and publications of choice.

The next Issue will be on Security and Human Rights. In each Issue of Nguzo za Haki, we will carry about four guest contributor articles. The Editorial Team invites contributors to send us articles on this theme (see pg 38 for details). Since we intend to reach the general public, the articles we invite should not be too technical as to be inaccessible to the intended audience. Case studies of innovative, practical ideas on enhancing the protection and promotion of human rights are particularly encouraged. Articles should not exceed 2,500 words. To be considered for publication guest articles must be received in October for the February Issue and May for the September Issue and sent to:

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From the Editor

Corruption: A complex phenomenon that undermines government’s capability of working for the poor

In this issue of Nguzo za Haki, we bring you a collection of articles on the theme of ‘Corruption and Human Rights.’ The Kenya National Commission on Human Rights has in the recent past been variously covered in the media making demands on government to deal with corruption decisively and non-selectively. The Commission’s demands have elicited mixed reactions especially within government circles with some loudly asking what corruption has to do with human rights and how therefore it becomes a Commission’s issue.

This issue seeks to put in perspective that relationship. From the outset we underline that corruption does not easily submit to simple analysis; its intentions, design manifestations, and effects are complex especially because all are intended to pass undetected. For clarity, the Commission adopts the World Bank definition of corruption which it considers most comprehensive in covering most aspects of corruption. It defines corruption as “the abuse of public office for private gains. Public office is abused when private agents actively offer bribes to circumvent public policies and processes for competitive advantage and profit. Public office can also be abused for personal benefit even if no bribery occurs through patronage and nepotism, the theft of state resources or the diversion of state resources.”

Corruption increases the cost of public services, lowers its quality and distorts government’s priorities as its beneficiaries give preference to those programs that offer the greatest opportunities for self-enrichment.

The government is a key duty bearer in securing and protecting the human rights for all people without discrimination. To effectively carry out this enormous responsibility the government must utilize the resources at its disposal in ways that progressively remove people from a threshold beneath which we cannot say they are living in human conditions. Unfortunately Kenya has millions of such people – homeless, people living at the brink of starvation, people dying from preventable diseases, people living in filthy conditions – no clean water, no drainage systems, heaps of garbage, hovels without privacy or any reasonable form of protection against the vagaries of weather.

Such people, the most vulnerable in our society, who invariably rely on public services and goods for survival, are disproportionately hurt by any form of corruption that diverts public resources from where they really ought to be going. To these people the Commission has both the moral and legal commitment and obligation to get their voices heard and their priorities reflected in public policies.

As Adam Smith observed over a Century ago, “no society can surely be flourishing and happy of which by far the greater part of the number are poor and miserable.”

The Commission’s anti-corruption campaign is geared towards getting Kenyans to see this nexus - that our inability to achieve meaningful economic development is inexorably related to the inability of Kenya’s successive governments to effectively protect public resources in order to utilize as much as possible to implement pro-poor policies that not only enhance public trust in government but also provide Kenyans with opportunities and capabilities that enables each one to live the life that she/ he values.

For greater clarity, our lead article, “Corruption and Human Rights” explains why corruption is a human rights issue. In another article, “A Society is as Corrupt as it Wishes” we emphasize the role each citizen has in fighting both grand and petty corruption, while “New legislation to curb wasteful expenditure” provides insights into the effort the government is managing public resources. We hope the menu in this issue helps all of us identify the roles we must play in this fight. It is a fight that must be fought collectively and decisively from wherever each is located.

I thank all the contributors and especially our new Editorial Coordinator, Linda Ochiel for their efforts in getting this issue ready.

NB: In the last issue, we wrongly attributed the writer of the article "Corporate Governance and Good Corporate Citizenship". The writer was Moses Mwaura of Multiple Skills Consultants for Africa, mkmwaura@mscafrica.com.

Wambui Kimathi
A survey conducted by the World Bank and the Kenya Institute for Public Policy Research and Analysis (KIPPRA), shows that graft still oils the wheels of business in Kenya. Approximately 50% of the firms surveyed reported having been asked for a bribe in the past year. Many admitted to paying Members of Parliament, senior government officers and members of the judiciary in order to influence policy and legal outcomes. Wananchi continue to pay bribes for mundane tasks such as the issuing of trade licenses, birth certificates and renewal of driving licenses.

The losses of public funds as well as the moral and ethical issues involved in corruption are widely acknowledged. But do people consider corruption as a violation of human rights? When human rights advocates condemn corruption, critics often dismiss them as busybodies and ask: *What does corruption have to do with human rights?* Nonetheless, the Kenya National Commission on Human Rights strongly believes, as do others involved in human rights arena, that corruption is seriously detrimental to the effective protection and promotion of human rights. It greatly undermines any efforts that the state takes not just in human rights work but also in other areas such as poverty reduction.

Corruption is found in all spheres of life and includes bribery, theft, embezzlement, fraud, even tax evasion among others. It is most commonly seen to have occurred when public power is misused for private gain. The World Bank as well as Transparency International, (TI), for example defines corruption as “the abuse of public office for private gain”. Defined in this manner, corruption entails acts in which public officers improperly and unlawfully enrich themselves, or those close to them, by the misusing the power entrusted to them by the public. A distinction is sometimes made between petty corruption and grand corruption. Petty corruption or conventional bribery involves public servants demanding and obtaining small payments or ‘speed money’, in return for the performance of their official duties. Grand corruption involves senior public officials receiving payment to influence government decisions such as large public contracts.

Kenya has the dubious distinction of being consistently ranked as one of the most corrupt nations in the world. On electing a new government that promised zero tolerance for graft in 2002, our hopes soared on the prospects of rendering corruption a thing of the past. However, two years down the line, we look back with a sense of déjà vu as scandal after scandal involving senior government figures crops up. With a sense of foreboding, we realize that corruption networks are back in place.

"The Commission strongly believes that corruption is seriously detrimental to the effective protection and promotion of human rights."
Acts of corruption are not a preserve of public officials- it is a two way process and mainly arises at the nexus between the public and private sectors. It is mainly driven by private interests wielding their influence to take advantage of public institutions in rent seeking.

Examined from a human rights perspective, corruption causes massive violations of fundamental human rights. In a working paper: Corruption - A violation of Human

"Honourable members will agree with me that corruption has undermined our economy, our politics and our national psyche. It has undermined our most important institutions and tarnished our reputations as Kenyan leaders."

President Mwai Kibaki, addressing Kenya’s 9th Parliament.

Rights? Nihal Jawawickrama observed that such violations occur in at least three ways:
• It prevents the full realisation of economic, social, and cultural rights
• It perpetuates discrimination
• It leads to the infringement of numerous civil and political rights.

Corruption and the realization of Economic, Social and Cultural Rights

Kenya is obligated under the International Convention on Economic, Social and Cultural Rights to take steps, individually and through international assistance and cooperation, to the maximum of available resources, with a view to achieving progressively the full realization of the rights to education, health and work among others. Corruption seriously inhibits the realization of these economic, social and cultural rights in many ways.

These fundamental rights are clearly violated when wananchi have to bribe their way into public schools and hospitals or to benefit from relief food. Grand corruption in particular diverts resources from the intended public use in realization of rights to decent livelihoods into to private bank accounts.

As a country still recovering from the aftermath of the Goldenberg scandal, we know the kind of human suffering wrought by such scams. Besides creating sudden and extreme income inequalities, the diversion of these kinds of resources causes massive human deprivations. Barney Pityana, former chair of the South Africa Human Rights Commission, is quoted as having told the Eighth Assembly of the World Council of Churches (WCC), that poverty could be eradicated across the continent if corruption in the management of public resources is eliminated.

Other indirect costs of corruption are equally disastrous. When public contracting is conducted corruptly, it results in sub standard and overpriced goods and services. The price that society pays in terms, for example, of construction of buildings that are structurally unsound may be very high. It has also been observed that grand corruption is often associated with large capital projects such as construction of dams and military security equipment. These sorts of large-scale expensive projects are particularly corruption prone because they provide both more opportunities and larger payoffs. Public funds diverted in this corrupt manner give rise to human rights violations in several ways: first, their merit of these large scale projects often lies mainly in the opportunities they provide for unjust enrichment and to this extent, they are wasteful. Secondly, their preference over more labour intensive projects deny many the right to work. Third, they often involve the displacement of people from traditional lands, violations of rights to self-determination and to a means of subsistence. Fourth and perhaps more important, this kind of corruption causes distortion of government expenditure: diverting public resources away from public services and pro-poor expenditure such as health and education. Recent empirical studies provide evidence suggesting a negative correlation between corruption and expenditure on both health and education. Reduced spending on health and education is likely to lead to a decrease in the quality of health care and educational attainment and is therefore clearly a violation of people’s rights.

Corruption also introduces uncertainties into the economic environment that discourages investments which are so critical for economic growth and poverty alleviation. Evidence suggests that corruption leads to lower capital inflows and lowers productivity, it deters foreign investments because it is often associated with a lack of secure property rights as well as bureaucratic red tape and mismanagement.

Surveys from West Africa, South Asia and Peru all suggest that corruption is particularly harmful to the poor- as it affects them more for two reasons. First, the bribes they pay constitute a greater share of their income. Secondly, they are more dependent on public services where corruption is rife. Corruption therefore worsens poverty and inequality within societies. There can be no doubt therefore that corruption denies people the fundamental economic and social rights guaranteed to them by the Universal Declaration of Human Rights as well as other covenants. But what about other rights?
Citizens have a right to be treated equally by public officials in the discharge of their duties and powers. The Universal Declaration of Human Rights for example provides that all human beings are born free and equal in dignity and rights, that everyone is entitled to all rights set forth in the Declaration irrespective of race, religion, social status, gender etc. Equality as well as equal protection before the law is also guaranteed under Article 26 of the International Convention on Civil and Political Rights.

Corruption makes a mockery of these entitlements. As Nihal Jayawickrama so well puts it: "When a person offers a bribe to a public official, and that bribe is accepted, he or she immediately acquires a privileged status in relation to other persons similarly placed who have not offered any such gratification. If the bribe is offered as "speed money" or "grease payment", that person will receive preferential treatment, whether it be in the processing of an application for a driving licence or a market stall, in obtaining an official document such as a passport or visa, in clearing goods or merchandise through customs or in securing telephone, power or water service. If the bribe is paid to obtain a service which the official is prohibited from providing, such as tax evasion or avoidance of prosecution, or preferential access to state employment, housing, medical care or education, it is no less discriminatory in relation to others with similar disabilities or needs. In each case, preferential treatment is secured by the payment of a bribe to a public official. A difference in treatment thus secured has no objective or reasonable justification, nor does it pursue a legitimate aim. It constitutes discrimination."

Because of the important role played by the judiciary in the protection of human rights, corruption is particularly harmful and poses great dangers when it becomes pervasive in the courts system. Every citizen has a right to equal protection before the law and to judicial remedy. The law is meant to be the same for everyone, it should be applied in the same way to all. By tilting the scales of justice, corruption denies citizens their right to legal redress when their freedoms are violated - it violates a person's right to a fair trial and recognition as an equal person before the law. A corrupt judiciary can lead to the breakdown of law and order through denials and delays in justice and the erosion of public confidence and trust in the existing legal institutions.

The world over, corruption in the political arena is particularly rampant. The TI Global Corruption Barometer, 2004, identifies political parties as the most corrupt institutions globally followed by the police and the judiciary. Myriad violations of rights arise when corruption permeates politics. When electoral outcomes are determined through vote buying and bribery, citizens are denied their right to political participation, their rights to vote through universal and equal suffrage is greatly watered down. The consequences of corruption in politics include incapable and weak leaders, patronage and sycophancy and the erosion of democratic principles. Kenyans have a sense of how destructive political corruption can get from our history of political appointments and irregular allocation of public land and other public resources to finance and influence elections.

The Kenya National Commission on Human Rights adopts a human rights approach to the fight against corruption based on the fact that corruption has serious deleterious effects on people and is bigger than mere misappropriation of public funds. It hampers national, social, economic and political progress. It results in inefficient allocation of resources and frustrates competent and honest citizens. A government that tolerates corruption fails to fulfil its obligation to promote and protect the fundamental human rights of its citizens. The fight against corruption is not just about punishing corrupt politicians and public officers - it is about saving human lives and protecting human rights.
What then is the Government doing to save and protect human lives?
The National Rainbow Coalition (NARC) government was elected on the platform of zero tolerance on corruption. Its handling of the numerous cases of alleged corruption have raised serious doubts about its commitment in what is describes as a war.

The Kenya National Commission understands zero tolerance for corruption to imply among other things, that political leaders such as cabinet ministers take responsibility for serious improprieties committed during their watch. Where serious issues of alleged corruption in their docket have been raised, such leaders ought to step aside to pave way for investigations. Despite the avalanche of petitions for such action over the last two years, ministers allegedly linked to corrupt activities continue to hold office.

A government that is committed to zero tolerance for corruption would not have an inordinate interest in down playing incidences of allegations of corruption (remember the “scandal that never was?” and the warning on the role of the Official Secrets Act to bar the release of information on alleged corruption?), nor would it adopt the kind of defensive approaches we witness in reacting to corruption allegations within its ranks. Zero tolerance on corruption demands political action even as “complex” investigations to gather evidence for prosecutions are undertaken. After all, as the government keeps reminding us, in this war perceptions are everything. To wait until enough evidence has been gathered undermines confidence and provides an opportunity for those implicated in corrupt activities not only to tamper with evidence but also to intimidate those carrying out investigations.

Many questions involving shady contracts with Anglo Leasing Finance Company continue to beg answers. The Passports system (worth $2.7 billion), the CID Forensic labs (worth $4 billion) and the police communications system contracts were all turn-key projects where a finance company took over responsibility for financing, commissioning, creating and delivering the system. In return for outsourcing all the work, the government was to pay huge commitment fees such as the commitment fees of $500m that Info talent systems wired back to Central Bank, and service expensive commercial loans. Why does the government continue to engage in such arrangements that are so open to abuse? Besides the fact that the contractor can bolt with the fees paid up front having done no work, sovereign debt is generally regarded as low risk and therefore attracts low interest. Why then does the Government persist to use agents in such contracts?

It is not enough for Government to claim that the money was returned. The fact that the taxpayers money had been stolen from Government by fake companies then sneaked back means that this can happen again and again. Further, why is the Government so reluctant to expose who owns the fake companies involved in numerous scandals in the country?

These matters constitute an unfortunate set back in the fight against corruption. Until political action is taken and those linked with corruption step aside to allow impartial investigations; unless anti-corruption and reform bodies receive necessary support to deliver their remits; and unless the fake companies involved in corruption are exposed, the Government’s commitment to anticorruption reforms will continue to be put to question.

“Corruption robs children of their future, and it kills. But it is preventable. Together, we can defeat it.”

Peter Eigen

By Maina Kiai, Chairman KNCHR mkiai@knchr.org

Zero tolerance on corruption demands political action
A society is as corrupt as its citizens wish it

Throughout the history of human society, the burden and responsibility of resisting oppression and man-made suffering has always been borne by the oppressed and downtrodden themselves. It is the victims of bondage who must throw off the yoke of oppression and embrace freedom.

The recent months have witnessed an unprecedented upsurge of tales about the phenomenon of corruption in Kenya. Both the electronic and print media are awash with what can generally be categorized as "the corruption debate". The general public is encapsulated in the discussion about corruption in our society. Allegations of grand corruption in Government abound. The Government, which was elected on an anti-corruption platform, is now being accused of condoning corruption in its midst and failing to take action against those cabinet ministers said to be perpetrating and benefiting from corruption by virtue of their positions. There is despair, disillusionment and outright anger in the air.

Over the last fifteen years or so, Kenya has attained the dubious distinction as one of the most corrupt countries in the world. It is only recently that the country dropped from the top ten of this negative aristocracy. This means that the current publicized fury about corruption is no indication that we are any more corrupt now than we have been in the past. Corruption has been an integral part of our body politic. It has pervaded our social fabric and become deeply embedded in our public psyche. What has changed is that unlike during the past regime, people now openly talk about corruption in government without fear of retribution by the state. In other words, the opening up of democratic space has raised the latent citizen vigilance to a certain degree. The people can now demand justice by way of punishment of those engaged in corrupt conduct. It is no wonder then that we hear calls for the sacking of ministers implicated in corruption. Even Members of Parliament who were recently classified as being the third most corrupt in the country have joined the chorus. >>
Why are we so corrupt?

Were a storyteller to turn the foregoing paragraphs into a fairy tale about a country that was once called Kenya to eagerly attentive children, he/she would be sure to be asked the following question at the end of the story:

Why were they so corrupt?

Like all other questions asked by children in their innocence, this one would not be easy to answer by the storyteller.

Why are we Kenyans so corrupt?

We must now pointedly ask. Is it that we are the wretched of the earth among the community of nations?

Are we so helpless that we cannot do anything about corruption even as it continues to destroy our dignity and threatens our very humanity?

Is it that Kenyans are by nature corrupt people and they therefore condone what is happening?

Is corruption so deeply entrenched in our society that it would be futile to attempt to deal with and eliminate it from our midst?

Or is it that we just do not care?

These and other questions bring into sharp focus the need for a social/corporate soul searching by the Kenyan people as to what are the real causes of corruption in the country.

Causes of Corruption

Many writings dot institutional and private shelves on the causes of corruption not just in Kenya but also in human society generally.

The main reasons that have been widely acknowledged as accounting for corruption are as highlighted in the following tables:

Bad Governance:

A society, which is not governed according to the dictates of democracy, justice, the rule of law, respect for human rights, and economic efficiency, is bound to be corrupt.

The leaders in such a political system are bound to act in disregard of the public interest by plundering the economy for their selfish interests. Absence of democracy would mean the citizens have no power of questioning their leaders' conduct.

Lack of transparency in governance would mean corruption thrives with no or little detection.

The political, legal and social dispensation in such a society would be conducive to corruption.

Weak or absent control systems in public administrative bodies or institutions:

It is now widely acknowledged that corruption thrives best in an environment where there are loose or no controls over administrative decisions and the exercise of discretion.

This scenario opens up many opportunities for corruption which the unscrupulous officers take advantage of. If avenues for corruption are either minimal or absent within a system, then the degree and extent of corruption will be negligible.

A watertight system would make it easy to detect acts of corruption and punish the perpetrators.

Corruption percolates through the entire social fabric to the degree of becoming cancerous.
A society is as corrupt as its citizens wish it (cont.)

A weak or non-existent ethical culture:

A society that is not built on a strong moral and ethical foundation is bound to condone corrupt conduct. An ethical culture is cultivated by administrative and disciplinary codes of conduct for public officers. These codes are usually anchored in law. Their content takes into account the totality of what is good, just and fair in human affairs. The codes set general standards to which public officers must conform in the performance of their duties. These standards will almost invariably eschew corrupt conduct. Thus public officers become accustomed to and even internalize the need to serve the public in an honest, diligent and transparent manner. The people on their part come to expect that kind of service and demand punitive action against errant officers. A culture of transparency and integrity is thus born. Absent such a culture, then corruption and impunity reign.

Negative ethnicity and nepotism:

In multi-ethnic societies, the challenge of nation-building is usually daunting where the political leadership sets out to deliberately consolidate its hold on power by manipulating ethnic differences. Where that happens, the principle of meritocracy, which only is the guarantor of fairness in the distribution of state responsibilities and rewards, becomes relegated as a national standard. This in turn leads to favouritism as the basis of the allocation of national resources instead of merit. Those charged with public responsibilities are then guided by negative ethnicity and nepotism in dealing with citizens. The seeds of corruption are thus planted, watered and nurtured by nepotism. Loyalties and the call to serve become anchored on patronage and sycophancy rather than integrity and transparency.

Human Greed:

The insatiable desire for material wealth by humans quite often drives them to resort to unethical, illegal and corrupt ways in their relentless drive to acquire more and more wealth. Where such greed succeeds, it means that benefits of human labour are inequitably shared. The corrupt and undeserving appropriate and accumulate public wealth at the expense of the majority exacerbating poverty. Poverty becomes a permanent characteristic of the lives of the deprived majority. Greed also drives people to take shortcuts in their search for self-fulfillment. By so doing, they avoid legal and ethical ways and procedures of conducting business. They consequently become prone to corruption. The poor on their part become disempowered in terms of the ability to demand their rights and reject the constant blackmail to which they are subjected by the corrupt.

Absence of a social solidarity against corruption:

Where there is an inadequate or a non-existent social indignation and rejection against corruption, the latter acquires acceptability in society. The phenomenon develops into a culture. The citizens come to internalize corruption as a way of life. Corruption percolates through the entire social fabric to the degree of becoming cancerous. It envelops everybody in its grip. It ceases to be a crime of the rich and crooked. It recruits even the “innocents” into its covetous fold. The practice of petty and grand corruption becomes rife. This is the most dangerous stage of corruption in any society because it consumes the body, mind and soul of a people.
As already indicated, the forgoing are not the only causes of corruption in society. However, in many situations where corruption is prevalent, they stand out as the main factors responsible for the culture and incidence of corruption in many a country. But identifying the causes of corruption does not answer the question I posed at the beginning of this short article. **Are we so helpless to stop corruption and stamp it out from our midst?** The resounding answer must be NO. Like all vices in human society, corruption has been defeated in many societies where it was even more virulent than in it is in Kenya.

A combination of the factors highlighted above is responsible for the endemic and pervasive nature of corruption in the country. But one factor that is hardly acknowledged by analysts of the anatomy of corruption is the contribution that the citizens make towards the resilience of corruption in society. Throughout the history of human society, the burden and responsibility of resisting oppression and man-made suffering has always been borne by the oppressed and downtrodden themselves.

It is the victims of bondage who must throw off the yoke of oppression and embrace freedom. In modern society, corruption has been acknowledged as being responsible for the impoverishment and destitution of the majority citizens wherever it thrives.

**To what extent have the Kenyan people resisted corruption if at all?** Or have they either actively or passively condoned corruption? A quick appraisal of how the people have reacted to corruption reveals a sad trend indeed. It should not be difficult for one to recall the fact that our society is one that admires wealth for its own sake however acquired. The ‘guests of honour’ invited to most harambees (fundraising ceremonies) for this or the other social facility or other function and who until the enactment of the Public Officers Ethics Act in 2003 appear to have gained the admiration of many, going by the number of functions they would be invited to preside. The question as to how these wealthy donors acquired their riches was never an issue.

Besides wealth, a survey of the literature on Kenya’s General Elections will reveal that other factors, which have influenced the manner in which the electorate behaves, are ethnicity, clanism, and nepotism.

People in Kenya mostly vote for the candidate with whom they can identify in terms of ethnic or clan origin. The qualities of the candidate are irrelevant in the minds of the electorate. Citizens are therefore ill suited to demand accountable leadership from a legislature, whose composition is in the first place recruited on basis other than what would engender an accountable leadership.

A critical look at our society will also reveal that those public servants, who toil honestly in the service of the nation and retire with modest material gains, are despised as fools. On the other hand, those who steal from public coffers and somehow escape punishment are admired by the community from which they hail. They are regarded as clever and shrewd operatives who should be aped by others. Society encourages children to adore wealth without the concomitance of hard work. When action is being taken or even just being contemplated to be taken against those alleged to be corrupt, the people rise up in "defence of their own". Soon one hears of cries to the effect that "our people are being finished." People in positions of leadership start asking why the accused should be condemned when he/she did not "anyone’s mother’s money". **A critical look at our society will also reveal that those public servants, who toil honestly in the service of the nation and retire with modest material gains, are despised as fools.**
Corruption is only condemned when it concerns “other people”. Public outrage against corruption becomes opportunistic, political and selective.

Further, reports abound in the daily press of ordinary citizens not only succumbing to extortions of bribery from public servants but actively engaging in the vice. People bribe the police, provincial administration, and personnel in public offices to get service or escape punishment for violating the law. In other words, the very victims of corruption are willing participants in the vice. By condoning corruption, the citizens not only sustain it, but also complicate any efforts at eradicating it. It is always difficult to fight and eradicate corruption from a society where there is negligible or non-existent social solidarity against the vice. The people must be their own keepers when it comes to resisting corruption.

If we re-visit the main causes of corruption highlighted above, it becomes quite clear that the war against corruption must be citizen-centered if it is to succeed. It is the citizens of a country who must demand good governance. The Kenyan people have since the colonial times been engaged in the struggle for accountable leadership. This struggle has made certain gains in terms of breaking down the networks of dictatorial rule and opening up democratic space. It is the people who must embrace and internalize a value system of integrity. They must constantly reject people who are corrupt and deny them leadership opportunities. They must resist and demonstrate outrage against corrupt conduct. In other words, the people must form a frontline against corruption, a social solidarity to resist and ultimately vanquish corruption. Above all the public anger against corruption must be replicated in the people’s determination to resist all temptations to be corrupt. Only then, can corruption be defeated.

Laws, policies and institutions to fight corruption are of course important. They provide a platform for a structured, informed, all-embracing and sustainable anti-corruption campaign. Through them, allegations of corruption can be professionally investigated and prosecuted. They avoid negative witch hunting in an anti-corruption war. Laws and institutions also avoid the pitfalls of personalizing an anti-corruption struggle and by so doing ensure that the campaign is a continuous one. However, when everything is said and done, without the unrelenting vigilance by the people against corruption, laws and institutions alone cannot succeed in stamping out corruption.

The Kenya Anti-Corruption Commission (KACC), having come to terms with the above reality, has placed a very high premium on anti-corruption education as one of its main strategies in the fight against corruption. While the Commission will continue to carry out its law enforcement mandate, through investigations, recommendations for prosecution and institution of civil proceedings for asset recovery, it is developing comprehensive educational programmes targeting all sectors of Kenyan society. In the long run, corruption must be stigmatized by the people themselves. This will only be possible if the citizens come to realize that the anti-corruption war begins and ends with them, hence the decision by the Commission to escalate anti-corruption education.

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A society is as corrupt as its citizens wish it (cont.)
Public Procurement: A mega bucks business that attracts corruptible practices

"Grand corruption" the world over, is almost always found in the area of procurement of goods and services. Any country therefore keen on fighting corruption has had to inevitably address itself to public procurement reform as this constitutes a key plank of anti-corruption strategies.

Public procurement refers to the acquisition of all goods and services that are required for use by the government that include hiring of consultants or contractors. The central government (ministries, judiciary and parliament), other government entities (parastatals, public universities and schools) and even the local authorities are amongst the offices that procure using public funds. Each of these offices has procurement officers whose task includes, but is not limited to: specifying the goods and services required; creating database of potential suppliers who will be called upon to bid when need arises; supervising the delivery of goods to ensure the meet the specifications provided and in the case of services contracted, the performance of consultants and contractors. Public procurement could therefore be said to be the hub of all government work.

According to the OECD Technical Paper No. 208 that assesses the public procurement processes of Kenya, Uganda and Tanzania, public procurement is different from private procurement because, besides the costing, public procurement must be transacted with other considerations in mind. These considerations include accountability, non-discrimination among potential suppliers and respect for international obligations.

The financial scope of public procurement gives some insight into the kind of money involved and why there is a growing realization in Kenya and beyond that the system is so susceptible to corruption. Government procurement takes up 7% of world GDP and 30% of world merchandise trade, a figure of over $2,000 billion, according to an OECD Report (2001). In Kenya it takes up about 10% of GDP, a figure in the range of Kshs.85 – 90 Billion.

Kenya's public procurement process is now governed by the Exchequer and Audit (Public Procurement) Regulations of 2001 passed by Legal notice No. 51. This was developed as a result of various study.
findings, key among them a World Bank/Government of Kenya study in 1997 to assess the country’s procurement processes and systems. The study revealed that Kenya’s procurement system lacked transparency, competition and that staff were inadequately trained. Further studies have subsequently led to a deliberate initiative of reforms in the procurement processes that focused mainly on the creation of procurement entities, oversight, monitoring and evaluation mechanisms, as well as procurement laws.

Currently the Public Procurement and Disposal Bill 2004 is yet to come up for debate in Parliament and will be seeking to institute wide-ranging reforms in the procurement process, notably the setting up of a Public Procurement Oversight Authority (PPOA) and Public Procurement Oversight Advisory Board (PPOAB). A Director recommended by the Advisory Body will head the Authority. The PPOAB will have a membership of nine people. The Police, Armed Forces, National Security and Intelligence Service (NSIS) and the Prison Service are exempted from the provisions of the Act in the interest of national security, but shall come up with a procurement process agreed to by the authority.

Public perception of procurement processes is that it is an obscure area of state activity, running “customized” tenders in dark rooms through a series of undisclosed agreements. In a public opinion poll carried out by Transparency International – Kenya in September 2003 called the Integrity Check, 60% of the respondents said that public procurement procedures are a key avenue for corruption in the government.

According to the highly cited Policy Brief by the Centre for Governance and Development, Seven Years of Waste, the Kenya Government lost Kshs.475 Billion between 1991 and 1997. The waste was due to...
procurement related cases. The study cites five incidences of waste or areas through which the government loses funds: wasteful expenditure; undelivered goods and services; irregular payments; unsurrendered/uncollected funds and pending/unpaid bills.

Loopholes in the procurement process have opened numerous doorways for corruption. Virtually every stage of the process has a loophole that allows for the procurement officers and suppliers to conspire to defraud the government. The disclaimer by the government that “it reserves the right to accept or reject any tender whether wholly or in part and does not bind itself to accept the lowest or any tender or to give reasons for its rejection” is usually placed at the bottom of tender notices, in a minute font, more like an afterthought akin to the “smoking is harmful to your health” notice on cigarette packets. It leaves a lot of room for tenders to be awarded for other reasons other than the laid down procedures and to be influenced by people higher up in the ranks of the organization or government ministry, and in some instances by others outside of government.

Vague clauses in the legal framework give way to unscrupulous procurement officers and contractors. Section 3 (2) of the Exchequer and Audit (Public Procurement) Regulations of 2001 reads as follows: “These regulations shall not apply where the Minister shall, in consultation with the head of the procuring entity, decide that it is in the interest of national security or national defence to use a different procedure, in which case the Minister shall define the method of procurement to be followed in order to secure the interest of economy and efficiency”.

Until last year, little had come out in the public realm about what kinds of goods and services escape public scrutiny by being designated as ‘security’ related. The Anglo Leasing scandal showed just how easily the ‘security’ tag could be used to rip off public funds. Unsurprisingly therefore, most of the cases cited as ‘new’ corruption in the recent past relate to security tenders undertaken by the Ministry of National Security in the Office of the President.

Other problems in Kenya’s procurement systems arise out of total disregard of the established procurement procedures by for example, making payments for non-delivered goods, or delivering goods that are defective or sub-standard. Other problems include the complexity of the procurement regulations and multiple documents that are not readily available. For a long time there was no reprimanding or prosecuting of procurement officers and others in the procurement chain. Even after the “historic” purge on all procurement officers above Job Group H by the Minister of Finance on May 2003, procurement scandals continue to indicate that there is a network, an established group of bureaucrats who have been at it for a long time and have mastered the art of circumventing procedures. Evidently changing individuals without reforming the system has greatly undermined the intended outcomes.

The impact of a poor and corrupt procurement process is widespread. As mentioned earlier, the government is said to have lost Kshs.475 Billion in seven years. One major impact is the reduction in the government’s ability to provide essential services to the people. Kenyans will continue to be taxed but will not get their money’s worth. Once the government is rendered ineffective in service provision, this leads to poor infrastructure especially with regard to transport, health, housing and education. This further increases poverty. Poverty is about more than inadequate income. It is about access to and quality of public services vital to the poor such as education, health and safe drinking water and sanitation. Corruption has many faces. But a common theme is that it hurts the poor disproportionately.

To begin reforming the process, the Public Procurement and Disposal Bill 2004 should be carefully analyzed by all stakeholders and policy analysts, debated and passed in Parliament as it seeks to bring harmony and fight corruption in the process. The much needed political will for its implementation is also crucial. The anti-corruption offices such as the Kenya Anti-Corruption Commission, the Efficiency Monitoring Unit and the Department of Governance and Ethics amongst others should be empowered to deal with procurement cases. A code of conduct specifically for public procurement officers in addition to that established by the Public Officers Ethics Act 2003 should be developed. This code should not only be signed and adhered to by public officers only but also by the private sector who play a major role as suppliers of the goods and services.
The Local Government Authorities are the most corrupt in Kenya. They contravene government’s tendering processes, are not able to deliver services to citizens and are also very arrogant when confronted with corruption matters. Most of the LATF (what is this in full) funds, constituency bursary funds, and constituency HIV/AIDS funds are mismanaged. Their benefits never trickle down to the common man. In Emali Ward of Nzio County Council, the funds that were supposed to have been used to build gabions improve the drainage system and improve the gravel roads have been mismanaged. Corrupt Local Government staff should be investigated and dismissed.

The NARC Government was voted in on a pledge on zero tolerance on corruption. The NARC government promised to realize Kenyans’ social-economic rights by constructing roads, and generally improving the infrastructure, improving security, providing healthcare, and creating 500,000 jobs among other pledges. Kenyans must hold the government accountable to deliver on its election pledges.

I welcome any measures by the law enforcement authorities to root out corruption within government structures. The law must now be allowed to take its cause.

Moses Muthiani, Emali, Makueni District

The fight against corruption must begin from the home, to school, to churches and to workplaces. With this culture looting, the youth lack role models.

Whilst good governance and transparency are essential to sustainable development, the Government of Kenya is not seriously committed to them.

There seems to be no genuine effort to root out corruption in Kenya. The youth in Kenya must now insist on transparency and good governance so that politicians grasp the challenge of fighting corruption at all levels.

The government must set an honest framework to fight corruption such that the rule of law is applied and enforced fairly, not arbitrarily.

There should be no sacred cows in the fight against corruption. Unless this is done, the youth who are the overwhelming majority in Kenya will never regain their confidence in the NARC and vote for it in the next general elections. However we must all cooperate and support

Government in the fight against corruption because we in our daily lives engage in small corrupt deals that we think are inconsequential. The public should not use poverty as an excuse since they exploit those who are jobless.

The fight against corruption must begin from the home, to school, to churches and to workplaces. With this culture looting, the youth lack role models. There is need for more youthful reformers in government to balance with those who have practiced corruption for so long that they have become experts.

Judy Kariuki, Administrator, International Life House
Kenyans have given up in the fight against corruption since senior members of the Government seems to be the most corrupt. I do not even think that any recommendations from Commission’s such as Goldenberg, will be acted upon; so why waste money? Institutions that are mandated to investigate corruption cannot function since they are appointees of government. The laws against corruption are only used on poor people. The police continue demanding bribes and in the NARC Government the bribe is bigger as the police claim they are risking. Top Government officials have no moral authority to castigate police officers since they are more corrupt.

Samwel Waweru Kihogu
Taxi Driver

Corruption can never end in Kenya. Corruption is firmly engrained in fabric of the society; it is in the blood of Kenyans such that it would take nothing to root it out not especially with a government characterized by gross mismanagement of resources and political bias. Very few Kenyans have probably been surprised by the recent disclosure of gross corruption in Government. What is astonishing however is that a bribery operation of such a magnitude had taken so long to capture the serious attention of the President to warrant thorough conclusive investigations. Kenyans are unwilling stop participating in small corrupt deals because of the massive corruption scandals in Government. But the cruel and immoral nature of corruption is best captured in the recent agitation of Members of Parliament to increase their allowance perks while 60% of those they represent live on less than one dollar a day. The taxes in Kenya are among the highest in the world. The prices of some of the basic commodities have thrice higher than what they used to be before the National Rainbow Coalition (NARC) government came to power.

Rashid Omar, Businessman in Nairobi

Corruption has been with us for along time, right from the Kenyatta and Moi regimes to the NARC Government. What took the Moi Government 24 years to destroy is taking the NARC government less than 2 years. It is a shame that the top Government officials implicated in corrupt scandals have refused to resign to clear their names. Since seemingly the Government is doing nothing to bring its corrupt leaders to justice, the common man has lost the motivation they had in 2002 to fight corruption. Corrupt individuals should be executed since they are worse than violent robbers; they kill the psyche and spirit of the entire nation. The top government officials should lead by example and condemn corruption at all cost. Members of Parliament should be more sensitive to the needs’ of the electorate rather than concentrating on increasing their allowances. Instead of MPs who have never agreed on anything important such as the constitution coming together to demand for more allowances, civil servants should be paid more. Medics in the private sector should also be barred from charging very high consultancy fees, as this is also a form of corruption.

Pyly Wanjiru, Engineer
The reduction of wasteful and fruitless expenditure of public funds remains a key lever of change for any public institution committed to increasingly improve service delivery. Because public funds have conventionally been seen to have no immediate ‘owner’, misuse, waste and outright theft have remained great challenges in the management of such funds. Since the ninth Parliament was sworn in it has enacted various pieces of legislation related to management of public funds.

This effort has recently received a boost with the enactment of the Government Financial Management Act, which was given assent by the President on 31 December, 2004. Whether or not this new legislation will have an impact remains to be seen. In spite of the Government putting in place an increasingly strong legal and institutional framework for fighting corruption, the vice remains. Evidently, in addition to strengthening the legal and institutional framework, there remain gaps in terms of the political commitment to deal with corruption.

The Government Financial Management Act seeks to consolidate and in some cases strengthen existing laws and administrative guidelines on the management of Government financial resources. It is the sort of generic legislation that development partners demand across the Third World countries. The Act primarily strengthens the Treasury in instilling and enforcing discipline in the management of public funds. Specifically the Act strengthens the hands of accounting officers, Permanent Secretaries in each ministry or similarly designated officers in constitutional and independent bodies such as the Kenya National Commission on Human Rights. The Act elaborates on such officers’ ‘job description’, which is presently contained in administrative circulars from Treasury. Using this job description, accounting officers are enabled to be firm with their Ministers or heads of their agencies in cases where Ministers or agency heads may, as has been alleged to have happened on occasions, want to give them self-serving instructions on use of public funds.

Ultimately, it is the accounting who bears responsibility for proper management of public resources under their watch. Amongst other roles, it is the duty of the
accounting officer to ensure that no expenditure is made unless it is lawful, authorized, effective and economical. The use of the term ‘economical’ is interesting. Accounting officers are being told that they have to ensure Kenyans get good value for their money. If accounting officers pay heed to their job descriptions, there will be less of buck-passing between Permanent Secretaries and their Ministers as has been witnessed in the ‘Anglo Leasing’ and ‘Forensic Laboratories’ scandals.

Of great importance too is the fact that the Act has extended personal accountability for the use of Government resources to all Government officers. Just like the accounting officers, all other public officers are required by Section 32 to ensure that resources within their area of responsibility are used in a way that is effective, efficient, economical and transparent. Resources can mean money, vehicles, stores, equipment etc.

The driver is thus accountable for efficient use of the vehicles under their charge, the secretary for the computer, everyone for their desks and chairs and the Permanent Secretary for the total assets of their Ministry. The novelty of this Section is the provision that a government officer is personally liable to the Government for any losses or damage occasioned under their watch. Although it is not specified, such responsibility can be both of a criminal nature (one can get charged for theft for example) and of a civil nature (one can be sued to recover the loss).

In Kenya, there is no history of public officers being sued to recover losses occasioned to the public by their acts or omissions and it was not because of a lack of a legal framework. We have to wait and see how this particular provision will be effected to make a difference in public resources management.

In Kenya, there is no history of public officers being sued to recover losses occasioned to the public by their acts or omissions and it was not because of a lack of a legal framework.

The Act strengthens Treasury’s hands in the management and supervision of accounting officers. Under Section 20 of the Act, if Treasury suspects impropriety on the part of an accounting officer, they can revoke the appointment and report them to the appointing authority. Treasury may in addition report the accounting officer to the police if a crime is adjudged to have been committed.

In curbing waste and leakage in other areas, the Act regulates the purchase of big fuel guzzling vehicles, which is one of the more conspicuous sites of wasteful consumption by the Government. Senior Government officers drive top of the range Nissans, Pajeros and Mercedes Benzes that even the captains of industry in the private sector would shy away from.

In 2004, following public outcry, Treasury issued a circular regulating the engine size of vehicles that could be bought out of public funds for use by senior officers. Since such regulations lacked the force of law, bureaucrats could still ignore them and get away with it.

Now however, the Government Financial Management Act has given these regulations the force of law. Section 7(1) of the Act provides that official vehicles purchased for use by Ministers, the Speaker of the National Assembly, the Chief Justice and the Head of the Public Service shall not exceed 2600 cc for saloon cars and 3000 cc for 4 x 4 utility vehicles. Vehicles for Permanent Secretaries and Judges of the Court of Appeal are limited to 2400 cc and 3000 cc for saloon and utility vehicles respectively.

While these limitations are welcome, the law still does not regulate the number of vehicles that senior public officials can put at their disposal. It is not uncommon to hear of situations in which senior officials have allocated vehicles to drive their
New legislation to Curb Wasteful Expenditure: (cont.)

spouses to and from work when officers at lower levels are forced to attend to official duties in public vehicles. There are no limits at all placed on the engine sizes for vehicles purchased for use by the President or Vice President.

The Government Financial Management Act also regulates the opening of bank accounts for administering government funds. Section 30 of the Act provides that no bank account for government purposes may be opened without the written authority of the Treasury. Banks are also required to ensure that such accounts are not overdrawn.

These provisions are welcome, and strengthen already existing Treasury guidelines. However, the provisions are in conflict with other statutes that expressly allow public bodies to open bank accounts on their own without a requirement for Treasury approval. For example, the law establishing the Kenya National Commission on Human Rights provides that the Commission shall open and maintain such bank accounts as are necessary for the performance of its functions.

In terms of cash advances (imprest), public officers who receive it and fail to fully account on time will be liable to pay interest on the money. Both the principal and the debt are recoverable from the officer’s salary and allowances. Again, this provision legislates on the obvious.

Kenyans need to see government officers being held responsible for significant delays in accounting for money or improper accounting. Effecting this provision will go a long way towards easing the work of the Auditor General by making corrective action more timely – usually Auditor General reports are forensic and recommended actions are hardly effected in time if at all.

Following public outcry, Treasury issued a circular regulating the engine size of vehicles that could be bought out of public funds for use by senior officers.
For this Act, and others that support anti-corruption efforts to make an impact, there is a lot of other hard work that remains. It is important to create a framework that promotes and protects whistle blowing within the public service. Whistle blowers need to know that their jobs will be safe. There is need to open up access to information from government to enhance public scrutiny of resources and their management. In this regard, the enactment of an Information Act and the repeal or amendment to the Official Secrets Act are important priorities.

Moreover, a lot more should be done to strengthen the accountability of accounting officers. They need to be insulated from politicians in their day-to-day work, something that is difficult as long as they remain political appointees of the President without any security of tenure, liable to be dropped any time or be shunted from one Ministry to another often with little prior notice.

So long as Permanent Secretaries need the patronage of politicians to keep their jobs, they will remain susceptible to manipulation. Indeed, in the Kenyan context, there is nothing permanent about ‘Permanent Secretaries’.

Such responsibility as contemplated by this Act on the part of Permanent Secretaries should also have demanded certain levels of professional experience and accomplishment for anyone who is appointed to an accounting officer’s position. Permanent Secretaries take charge of programs worth several millions and in some cases billions, manage several members of staff, and make important public programs decisions, which in themselves are a challenge for ill equipped appointees.

This is however an excellent piece of legislation. Ultimately, though, what counts most is sustained and demonstrable commitment to the fight against corruption by the political establishment.
Corruption, used here to mean the use of public office for private gain, is not the only serious negative reflection on the police force. The force is also perceived as being on the dictates of partisan political considerations.

**Forms of Corruption in the Police Force**

According to the Transparency International Urban Bribery Index, the most common form of corruption in the police force is bribery of police officers by members of the public. A study by the United Nations Development Programme, (UNDP), on corruption and good governance, provides useful insights through which corruption in Kenya’s Police Force can be understood. According to the study several situations give rise to the need to bribe the police. Firstly, the police are bribed to overlook violations of the law.

Secondly, the public pay bribes as an incentive to the police to have their personal jobs done promptly and effectively. Individuals will pay a bribe to avoid delay, especially where backlogs exist, or to overcome police inertia in a situation which requires immediate police action. For example, a complainant might be forced to bribe the police to secure the immediate arrest of a suspect who might otherwise escape.

Thirdly, in a country cited as corrupt such as Kenya is, corrupt businesses pay off the police and politicians for protection against the threat of law enforcement. Such payoffs cushion corrupt individuals and...
Reforms that would introduce civilian oversight of complaint procedures within the police force should be effected.

Established in 1963, the Police Service Commission was responsible for reviewing and updating all matters of salaries, allowances, and other conditions of service in the police force. The Commission was also responsible for keeping under review all matters relating to standards and qualifications for service in the force. Its abolition removed institutional support on issues affecting the Police Force.

Studies have linked the level of remuneration of public officials with susceptibility for corruption. Good pay will not, by itself, eliminate corruption. However, poor pay makes engaging in corruption a survival issue. The level of remuneration and other terms of service for the Kenya Police Force is much too low to afford the police a dignified livelihood. Housing conditions are often squalid, where such facilities exist. Improving terms and conditions of service is therefore relevant to the fight against corruption in the force.

At present, there is no civilian involvement in, or oversight over the police force. Complaints of misconduct by members of the force are handled by fellow police officers, using procedures that are far from transparent to the public. Abuse of such procedure is not unlikely.

Reforms that would introduce civilian oversight of complaint procedures within the police force should be effected. Civilians would have an overriding say with regard to complaints against members of the force. Further, complaints of this nature should be heard in public, or at least in the presence of all interested parties. Civilians oversight would encompass internal complaints by police officers. Clear complaint channels should be established and police officers with complaints should be encouraged to use such procedures.

In addition, punishment for errant officers must be sufficiently heavy and deterrent. Such punishment must be administered without delay. Officers undergoing investigation for misconduct must be suspended pending the outcome of such investigation.

One of the challenges that affect reform efforts in the police force lies in the structure of the unified force itself. The challenge emanates from the fact that, junior (and relatively poorly paid) officers are required to serve in any part of the country. The force should be re-organized with a view to achieving a level of decentralization. As part of this process, junior officers (non-commissioned officers) would serve only in their home areas and only senior officials may be required to serve nationally. There are several advantages:

- The living expenses of junior officers, who are invariably poorly paid, will be more affordable if they work near their homes.

Reforming the Police Force in Kenya

One of the important steps that could be undertaken as part of the police reform process in Kenya is to reinstate the Police Service Commission previously abolished.

Corruption in the police force is often organized hierarchically. Low level officials collect bribes and pass a share to higher-level officials. The share may be a pre-determined target or a pre-paid lump sum which the low level official has to pay in order to be assigned duties that provide an opportunity of receiving a bribe. For example, a traffic police officer may be required by his superior to periodically pay a pre-determined share of bribes collected on the road to the superior as a condition to remaining on traffic duty. Default will result in a transfer to duties that do not have opportunities for bribes.

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Reforming the Police Force in Kenya

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Curbing corruption in the police force (cont.)

There will relatively be more respect for the local community which they are part of;

There will be greater accountability to the local community to whom they owe immediate allegiance;

Family support, which junior offices often have to forego when they work away from home, will be assured.

The systems and procedures in police stations should be made more transparent. This would include requirements for clear details to be recorded in the Occurrence Book (OB) and security systems put in place for keeping evidence. This is because there have been various reports of tampering with evidence and at times, the evidence disappears from the police stations.

While the police, like other public servants must embrace the Public Officers Ethics Act, (POEA), that among other things requires persons holding public positions to declare their wealth introducing periodic or random monitoring of assets and lifestyles of police officers by an independent agency would also have salutary effects. Once found guilty of corruption, officers should have assets acquired through corruption seized.

Designing an optimal deterrence strategy, however, raises a paradox: the more severe are the penalties for officials, the lower is the incidence of corruption, but the higher the bribes. When the risk of detection is high, officials must receive a higher return for engaging in bribery. The only way around this is an expected penalty function that increases with the size of the bribe. Or if penalties on bribe payers are deterrent, the demand for corrupt services and the level of bribes will fall.

The vetting system for entrance into the police force needs to be made extremely stringent so as to ensure that people of dubious character or even former convicts do not get drafted into the force.

On allegations of extortion by police officers, systems of extorting money are set in place because individuals are given jurisdiction over a certain area. This may be solved by ensuring frequent transfers and also by giving officers overlapping areas of jurisdiction. It is much easier for one person to formulate an extortion system when he/she alone is answerable to the superior officers over that area. If officers are given overlapping jurisdictions, competition is likely to ensure that connivance is curbed.

Other conventional reforms such as training, intended to inculcate civic responsibility, should be administered to police officers. Such training should encompass human rights and anti-corruption among others.

Another important factor would be to ensure that those members of the public who provide evidence of the corruption of the police officers are given adequate protection to prevent a backlash. The police as the enforcers of the law are in a prime position to harass those who give evidence against them. Therefore it is necessary to put in place a watertight witness protection programme. This will give inducement to other members of the public who have evidence to come forward with it confidently.

The vetting system for entrance into the police force needs to be made extremely stringent to ensure that people of dubious character or even former convicts do not get drafted into the force.

By George Kegoro
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Access to public information: A key lever in the fight against corruption

There are many reasons as to why enactment of Freedom of Information Legislation, in Kenya would go a long way in fighting and stemming corruption.

First, the definitions of what information and public bodies are would be wide and inclusive enough to capture all departments of government and all sorts of information - both transient and written. The importance of this is that most forms of corruption are not supported by documentation. Telephone calls, unrecorded meetings, etc, wherein most deals are closed would be covered.

Currently, all information held by government is classified as privileged and secret - from what clearly is routine intra-government communication to the most important matters that have a bearing on national security.

All bodies supported by public funds including parastatals, commissions, learning institutions among others would be captured by the definition of public bodies. This means that even the newly set up institutions to fight corruption would have to release information on what they are doing, whom they are investigating, and what allegations there are. This would help inform the public on how the fight against corruption is being handled and in itself would be deterrence - removing the veil of secrecy under which most corrupt deals are made.

An important fact attendant to having Freedom of Information legislation is that the government would be bound to collate, store and record information in a manner and form that is easily retrievable. Corruption related fables of lost files or misplaced records would be a thing of the past. The public would be aware of what is happening in public offices. Through minutes of meetings taking place, the public will be informed of various deliberations and resolutions arrived at.

Enhanced transparency and openness heralded by the Freedom of Information legislation would make it very difficult for corruption to take place. The public would be part and parcel of all governmental acts, including the process of awarding government tenders. This would reduce instances of canvassing often associated with Government tenders.

Proper record keeping would help the public keep tabs on what is happening and encourage questioning irregularities immediately. Further it would help remove the generalization problem. For example, not all NARC Ministers are corrupt. The openness derived from access to information would help nail the culprits mostly well before the deals have been sealed and losses to the public occasioned. The reason why corruption continues unabated is because nobody feels personally responsible; the blanket condemnation of the whole government is usually provides a welcome cover for the corrupt.

However, it is important to acknowledge that there is information that the public should not be privy to because it would endanger national security or public interest. But even for this kind of scenario the government should give good reasons why it should not disclose particular information. Though harmful, if more good would be done by the disclosure by all means the information should be disclosed. A ready example here is affairs in the military and defence departments both of which have recently been accused of engaging in corrupt procurement processes. The public knowledge of a contractual dealing in the military has caused the cancellation of the procurement which has essentially forestalled enormous loss for the country without causing any harm to national security.

Information is key

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Access to public information (cont.)

Another important aspect of the fight against protection which would be covered in the Freedom of Information legislation is protection of whistle blowers. This would ensure that persons with information of malpractices taking place around them can come forward and disclose it without the fear of job loss or other form of retribution by those involved in the corrupt practices.

Besides strengthening the public to hold government accountable, access to information would be beneficial to the government too. There are instances when the government has suffered adverse publicity no such much because there were acts of commission, but mostly because the public had no or little information about what the true position regarding a matter was. For example it may well be that the picture on corruption in Government is not as bad, perhaps the government is doing a lot to fight corruption, but the public is uncertain. Lack of information may force the public to rely on reports from the media that are often inaccurate.

Another area that would benefit government in the fight against corruption is if information on Government planning and expenditure was availed to the public, in such a manner as would be understandable to an average Kenyan. Knowledge of what projects and programs that will be of benefit of to them would ensure that they are capable of tracking the implementation of such programs to completion. It is arguable that in such circumstances, there would be fewer or no avenues for grand corruption and embezzlement. The public would be able to question any overestimations, white elephant projects in which a lot of money is expended but with nothing to show. Members of the public would know what monies were allocated for what tasks, such that if the tasks are not performed the monies should remain in public coffers. Access to information in the budgeting process would help reduce budget lines intended or susceptible to corruption and embezzlement.

There are a few available avenues of accessing information on government expenditure like the Auditor General’s Office, Parliamentary Accounts Committee (PAC), and the Parliamentary Investment Committee (PIC). These committees are empowered by the National Assembly (Powers and Privileges) Act to seek information relating to public expenditure within all public institutions where the government has at least 51% equity shareholding. The aim is to ensure public accountability. In order to develop these reports, the Auditor General is supposed to have easy access to documents and information pertinent to his work. However, in all of the Auditor General’s reports there were numerous sections where he reported that information was not forthcoming from the relevant departments or officials.

Despite the advancement in information technology, storage of information in most ministries and government agencies is deplorable. It is manual, hence slow cumbersome and amenable to distortion and loss. The facilities for storage are rudimentary (cardex system). Very few ministries are computerized. An information act should require that government stores information in efficient, accessible and easily retrievable manner that it not easily manipulable by unscrupulous officers.

Whilst the NARC Government has taken commendable steps to stem corruption measures by establishing legislations such as the Public Officers Ethics Act that requires public officers to declare their wealth, failure to make such declarations public is counter productive. If this information were to be released to the public it would help fight corruption by monitoring to ensure that public officers live within their means and acquire their wealth legally.

Way forward

- The draft constitution that contains the rights to access of information should become law.
- Freedom of information legislation should thereafter be passed.
- Freedom of information legislation must be accompanied by institutional and organizational means and will to sanction public officers when they fall short of what is acceptable. A recalcitrant civil service can undermine even the most progressive legislation.
- Information storage and retrieval systems should be updated and made efficient. Computerization should be embraced.
- More government officers like those in public relations should be allowed to communicate to the public especially using through the press regularly.

By Philip Kichana
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Information on Government planning and expenditure should be availed to the public.
In India the Rights to Information National Campaign by Civil Society Organizations (CSOs), championed the enactment of Transparency laws to enable the public to access information and to demand for knowledge to rid them of ignorance on how the matters of state are handled.

It was agreed that people could know what official transactions are taking place and how, it would be difficult for corruption to remain undetected. The experience with public hearings known as Jan Sunvais conducted by NCPRI (what is this in full) has indeed shown that open public exposure of corruption in most cases is sufficient to bring corrupt officials to book.

Other than the civil society, in India, the struggle for access to public information has also taken the unique character initiated and sustained by the rural poor and designed to complement their quest for justice, empowerment and basic survival. Although immense work has been done by a large cross-section of civil society groups, the prime movers are rural groups of the most poor of India.

One example is the community group, Mazdoor Kisaan Shakti Sangathan (MKSS) (Organization for the Empowerment of Workers and Peasants), from the desert state of Rajasthan. Frustrated with severe economic and political deprivation, massive corruption in development and relief projects, the organization came up with a solution, corruption surgery, carried out through public hearings. The idea was simple - all documents relating to the administration of development projects were to be made available for a people's audit. Meetings were held at which all documents - from purchase vouchers to wages paid - would be read to the people.

Given the people's knowledge of their local situation, such as fraud as dead workers being paid, non-existent buildings being built and other common fraud tricks were unearthed. Public officials were called to defend themselves and community members fearlessly gave evidence against corrupt officials. The people's hearings have become fundamental to eradication of corruption at the local level and have reverberated in the entire country. The model is being replicated. The wave of the people's right to know grew from the poor community to become a national unstoppable movement.

By Linda Ochiel, Program Officer, KNCHR lochiel@knchr.org

A country's anti-corruption strategy is as strong as is the ease of access to public information. Aside from the weak institutions of accountability in the fight against corruption in most third world countries such as Kenya, one of the main reasons for the growth and institutionalization of corruption are: a culture of secrecy with lack of transparency and inadequate knowledge as tools to clump down the vice.
Domestic statutes and international conventions: complementary tools in fighting corruption

Increasingly, the world is beginning to see different governments coming together to curb cross border corruption by making it difficult for stolen money to be transferred across borders for investment or banking, or for individuals associated with corruptible practices to enjoy international travel. The US, for example, under its American Immigration and Nationality Act has such provisions. In Section 212, under Presidential Proclamation No. 7750, the Act prohibits entry into the US of persons suspected of involvement in corruption in their countries.

This is an invaluable development for anti-corruption fight in Kenya and elsewhere as it identifies international actors as important duty bearers in the national anti-corruption strategies. Grand corruption often involves local and international actors especially in cases where multi-million dollars projects are involved. Anglo–Leasing is said to have had offices in the UK, Switzerland and elsewhere in Europe.

In cases involving looting of high sums of money such as happened with the Goldenberg swindle in the previous regime, there are intricate money laundering operations that may succeed in completely concealing the tracks of such moneys. This is why in the case of the Goldenberg billions, the Government of Kenya had to hire the services of Kroll International, a firm of investigators based in London to try and unravel this scandal. In such cases, the structured cooperation between countries becomes necessary. Such cooperation can mainly be achieved through protocols, treaties, and other such arrangements that make it possible for countries to recover looted funds stashed in banks in other countries or to successfully extradite those suspected of involvement in corruption. This is important especially to countries with weak economies such as Kenya’s, which may not be in a position to spend monumental sums of money chasing after looted funds.

Already a number of instruments, both global and regional, exit and are geared towards creating synergy through cooperation in fighting corruption. The UN Convention Against Corruption (UNAC) and the African Union Convention Preventing and Combating Corruption (UCPCC) are such instruments. These instruments put emphasis on cooperation among different state regard to assets recovery efforts and extradition of suspects, among other important actions deemed necessary and useful to the fight against corruption. >>

This is why in the case of the Goldenberg billions, the Government of Kenya had to hire the services of Kroll International, a firm of investigators based in London to try and unravel this scandal.
UNAC is aimed at promoting and strengthening measures to prevent and combat corruption.

These include as provided in Article 1, international cooperation in respect of asset recovery and the promotion of integrity, accountability and proper management of public affairs and public property. It also lays emphasis on the following aspects:

- **Criminalization**: it requires governments to criminalize the bribing of their own and foreign public officials and other corruption related crimes including money laundering and embezzlement;
- **Prevention**: requires governments to take measures to prevent corruption, including those that promote integrity among public officials and increase participation of civil society in the fight against corruption;
- **International cooperation**: with emphasis on asset recovery; it opens up an important opportunity for governments to work together to extradite persons and exchange evidence regarding corruption offences and recover assets acquired by corrupt public officials; and
- **Cooperation in implementation**: creates an avenue for the sharing of expertise as well as technical assistance relating to individual governments’ anti-corruption initiatives. It is also an important channel for the monitoring of the implementation of the Convention.

The main purpose of UCPCC is to prevent, detect, punish and eradicate corruption and related offences in the public and private sectors. "This includes improved cooperation, the promotion of civil and political rights, and fostering transparency and accountability in the management of public affairs". The UCPCC principles include among other issues the respect for human and people’s rights in accordance with the African Charter on Human and People’s rights and other relevant human rights instruments. It requires

Briefly, the move to create anti-corruption legislation and institutions in Kenya was realised after protracted agitation ...

Remarkably, Kenya was the first country to sign and ratify the UNAC on December 9th, 2003 and though it is hard to conclude without factual evidence that the country’s anti-corruption laws - the Anti-Corruption and Economic Crimes Act [ACECA] and the Public Officers Ethics Act [POEA], both of 2003 – were put in place to actualise the Conventions, it is easy to discern the similarities between both the UNAC and the UCPCC with the current legislative framework.

Down south, the South African Development Community (SADC), Protocol Against Corruption also emphasises cooperation among members states in fighting corruption. After much pressure, the Kenya Anti-Corruption Authority [KACA], was put in place in 1997 after amendments were made to the Prevention of Corruption Act.

However, from the very beginning, the ruling elite then demonstrated lack of will to fight corruption, which seemed to be the key engine driving political ...
Domestic statutes and international convention

and economic processes in the country. A court ruling in December 2001, however, found the law that formed KACA to be defective in several ways and the institution, which had begun to show some signs that it could effectively bite, was grounded. The present institution, Kenya Anti-Corruption Commission (KACC), has barely been in place for two years having come into existence through the ACECA of 2003.

ACECA creates or reinforces already existing offences as a way of deterring corruption. Key offences include soliciting and receiving bribes, conflict of interest, deceiving principle, improper benefits to trustees for appointments, bid rigging, abuse of office and dealing with suspect property. It confers investigative, educational, advisory and research functions, among others, on the Commission in line with the provisions of UNAC.

The law has been criticised on its failure to vest prosecutorial powers on the Commission and several institutions and individuals including the country’s Chief Justice have called for the body to be vested with prosecutorial powers. As things stand now, after investigating an issue KACC is required to present its findings to the Attorney General for prosecution. Despite the obvious concern over possible delays, the history of manipulation and misuse of the AG’s office by the Executive branch of Government, does not instil confidence in this kind of arrangement.

In terms of the integrity of public officers, POEA establishes a general code of conduct emphasising professionalism, avoidance of conflict of interest situations, care and protection of public property under their care and “political neutrality” among others. One critical matter concerning integrity is the provision on declaration of wealth. Here the law fails by making the declaration of wealth secret. In fact, the law goes as far as criminalizing public access to forms [and information] on wealth declaration.

There is an obvious need to address the shortcomings of Kenya’s anti-corruption legislative framework. However, both the UNCAC and the UCPCC have provisions that can aid the fight against corruption in the country. The issue of recovering looted funds is especially important given that the government has been in the process of unearthing facts about funds looted and deposited abroad as part of its anti-corruption drive.

Though it is early yet to predict the impact that the regional and international conventions might have on Kenya’s anti-corruption drive, international cooperation is nonetheless an important consideration in fighting corruption today. Also adherence to the values set out in the international conventions can be an important milestone in the fight for integrity. Kenya’s institution building needs to take cognisance of the existing global anti-corruption instruments, including the UNCAC and UCPCC.
NGUZO: The mandate of the Kenya Anti-Corruption Commission (KACC) is to prevent, detect and investigate corruption and economic crimes and to institute civil proceedings for asset recovery. What have been the Commission’s main achievements and challenges as far as this mandate is concerned since its establishment in 2003?

Justice Ringera: At the outset, it is important to clarify the fact that the Kenya Anti-Corruption Commission was established in May 2003 following the enactment of the Kenya Anti-Corruption and Economic and Economic Crimes Act. In this regard, the Commission was only established in law but not in fact. There has been a misconception that with the enactment of the Act, the process of establishing the Commission was complete. Far from it. The passage of relevant legislation was only a first step in a long process. Readers will recall that it was not until September 2004 that the Director and three Assistant Directors of the Commission were formally appointed to take office.

Upon assumption of office, the Director and his three assistants had to embark upon the task of establishing the Commission in fact. This process has been on going from 2004 to date. The first phase was completed at the end of January 2005, with the appointment of 45 senior officers. The recruitment process is expected to be concluded in July 2005, when the Commission will be said to have been established and become fully operational. It is therefore important that when talking about the Commission’s achievements and challenges these facts be taken into account.

NGUZO: It is nevertheless possible to point at some achievement. Staffing the Commission is itself one of such.

Justice Ringera: On the achievement side, the Commission can now be said to be functional in terms of professional personnel and management systems. The four directorates have now put in place comprehensive programmes, activities and strategies for carrying out the Commission’s wide mandate of law enforcement, corruption prevention and public education. The Commission has continued to investigate old and new corruption cases and forwarded completed files to the Attorney General with recommendations for prosecution or other action. There are many active prosecutions, which are going on against senior former and current Government officers. A number of former permanent secretaries and chief executives of state
Corporations are facing prosecution before courts of law on corruption charges. Six (6) former Permanent Secretaries are before courts of law in this regard. Some of the cases had to be put on hold pending many constitutional references that had been filed in the High Court challenging the constitutionality of the charges and the anti-corruption courts. The constitutional court has so far dismissed many of those applications thus paving the way for prosecution to continue. By the same token, fourteen (14) former chief executives of state corporations are facing corruption charges. All these are on-going prosecutions not to mention the many others that are awaiting the Attorney General’s decision to either prosecute or not. Apart from the prosecutions in court, the Commission is actively investigating about 297 matters of both petty and grand corruption. From those investigations, the public should expect a steady flow of further prosecutions in the days ahead.

NGUZO: And the challenges?

Justice Ringera: Two main ones; first, is an impatient public, which is clamouring for immediate results in the arrest and prosecution of those alleged to be corrupt. Most people do not appear to appreciate the fact that investigating corruption offences (especially grand corruption) is usually a complex, time consuming and expensive exercise. Secondly, the Commission faces the challenges of misguided perceptions about its work and mandate. For example, judging from media reports, there is a general perception that the Commission is only investigating and recommending for prosecution the so called “Small Fry”. It has been alleged that only permanent secretaries and chief executives are being prosecuted for corruption and not cabinet ministers. I have time and again stated that nobody will be so high as to be above the law or so low as to be beneath it. However, the Commission will only act on the basis of sound evidence, not rumour, speculation or public clamour. That is what is known as the “Rule of Law” in a democratic society.

NGUZO: In the last regime, most Kenyans assumed corruption as part of life. When National Rainbow Coalition (NARC) took over power Kenyans were expectant that corruption, especially within Government would be systematically and surely be dealt with. The Government was determined to make corruption a thing of the past. Encouraged by initial rhetoric Kenyans staged personal fights against corruption, refusing to give bribes and arresting police officers taking bribes. Today, this enthusiasm is as good as dead. How is KACC planning to regain the cooperation of Kenyans in fighting graft?

Justice Ringera: It is true that Kenyans have lost the enthusiasm they initially had to participate in the fight against corruption. The state of affairs has been occasioned by the daily media reports alleging corruption in Government. The Kenya Anti-Corruption Commission intends to rekindle the fading flame to fight corruption among the people by doing two things, namely: aggressively investigating corruption and bringing the culprits to book through recommendations for prosecution and recovery of corruptly acquired property; conducting comprehensive public education programmes against corruption and fostering public support for the fight against the vice. This two-pronged approach should restore confidence in the public that corruption can actually be defeated. At the end of the day, the people must realize that fighting corruption is as much the Government’s responsibility as it is theirs.

NGUZO: How does KACC’s research and public information programs fit in with work being undertaken by other bodies such as the Anti Corruption Steering Committee mandated to
create public awareness of the causes and effects of corruption?

**Justice Ringera:** The Kenya Anti-corruption Commission derives its mandate to conduct research and public education programmes from the Anti-corruption and Economic Crimes Act. This is therefore a legislative mandate. It means that KACC must carry out this function without exception. Otherwise it will be failing in its duties. In doing so, KACC may and does collaborate with other institutions engaged in public awareness creating programmes and activities. In fact the Act mandates KACC to so cooperate with other public, private and civil society organizations. What KACC will however not do, is to surrender its mandate to any other institutions.

**NGUZO:** What mechanisms do you have in place to receive information from the public and what message would like to give the public about corruption?

**Justice Ringera:** The Commission has developed a very elaborate mechanism of receiving reports on corruption from members of the public at the Integrity Centre. Every person who has a report to make is received at our Report and Data Centre. His/her report is recorded and processed in accordance with established procedure. If the report falls within the mandate of the Commission in accordance with the Anti-corruption and Economic Crimes Act, it is then referred to the investigation arm of the Commission. The process continues until an appropriate recommendation is made to the Attorney General. Many of the reports we receive do not qualify to be characterized as corruption, strictly speaking. What the Commission has been doing in such situations is to advise the complainant accordingly and refer the matter to the appropriate agency for action. Many complainants have come back with information that their problems have been solved following the intervention by KACC.

**NGUZO:** One of the factors that lead to corruption is the culture of poor work ethics that pervades the public service. How is KACC going to tackle this?

**Justice Ringera:** The Commission is building upon the Public Sector Integrity programme, (PSIP), which the Anti-Corruption Police Unit had been implementing on behalf of the Government. The Commission’s Directorate of Research, Education, Policy and Preventive Services (REPPS) is in the process of redesigning and revamping the programme. The main objective is to mainstream professionalism and ethics in the public sector. The Department of Economic and Social Affairs, (UNDESA), of the UNDP has been assisting Governments, Civil Society and private sector organizations in Africa to develop national strategies for mainstreaming professionalism and ethics in the public sector so as to entrench a culture of accountability, integrity and professionalism. The Commission intends to utilize this support facility from the UNDP-UNDESA to develop and implement a long term and sustainable ethics-training programme for the public sector.

**NGUZO:** Might the recent tax waiver for Cooperative Minister by the Finance Minister be a case of ethics and if so will KACC be investigating this and other allegations relating to conflict of interest rules?

**Justice Ringera:** It is not in the scheme of the Commission’s way of doing things to disclose to the public matters concerning the investigations it either intends to conduct or is actually conducting. This is meant to avoid prejudice and other dangers that would attend such a disclosure.

**NGUZO:** Does KACC handle corporate corruption? If so, what is your progress so far as far as this is concerned?

The Commission handles all types of corruption, whether grand or petty, whether personal or corporate.
In a recent survey on corruption perception by the Transparency International, Kenya, the police department once again assumed the notorious first position as the public institution that the public perceive as most corrupt. Being the most visible arm of government, the department attracts much more scrutiny and therefore criticism than any other. In the past couple of years, the department has been involved in development a reform plan aimed at giving itself the necessary image, professionalism and most importantly the capacity to serve Kenyans efficiently and effectively and with respect to human rights.

Standards are invaluable in measuring performance as well in development targets for those keen on improving performance. The editor therefore invites the police, policy makers and other readers of Nguzo to review and consider the Global Standards to Combat Corruption in Police Forces/Services developed by Interpol to determine the extent to which such standards are reflected in the department’s reform strategy and importantly in its practice. The standards can also be accessed at www.interpol.int/Public/Corruption/Standard/Default.asp

Interpol has a membership of 182 countries including Kenya. The Global Standards were adopted in 2002 by the General Assembly of this membership.

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**Editor’s Choice – In a few words**

**Global standards to combat corruption in police forces/services**

**Article 1**

**Objectives**

a. To ensure that the police forces/services of each Member State of Interpol have high standards of honesty, integrity and ethical behaviour in and in connection with the performance of their policing functions.

b. To promote and strengthen the development by each Member State of Interpol of measures needed to prevent, detect, punish and eradicate corruption in the police forces/services within its national boundaries and to bring to justice police officers and other employees of police forces/services who are corrupt.

**Article 2**

**Definitions**

Corruption includes:

a. The solicitation or acceptance, whether directly or indirectly, by a police officer or other employee of a police force/service of any money, article of value, gift, favour, promise, reward or advantage, whether for himself/herself or for any person, group or entity, in return for any act or omission already done or omitted or to be done or omitted in the future in or in connection with the performance of any function of or connected with policing.

b. The offering or granting, whether directly or indirectly, to a police officer or other employee of a police force/service of any money, article of value, gift, favour, promise, reward or advantage for the police officer or other employee or for any person, group or entity in return for any act or omission already done or omitted or to be done or omitted in the future in or in connection with the performance of any function of or connected with policing.

c. Any act or omission in the discharge of duties by a police officer or other employee of a police force/service which may improperly expose any person to a charge or conviction for a criminal...
offence or may improperly assist in a person not being charged with or being acquitted of a criminal offence.

d. The unauthorized dissemination of confidential or restricted police information whether for reward or otherwise.

e. Any act or omission in the discharge of duties by a police officer or other employee of a police force/service for the purpose of obtaining any money, article of value, gift, favour, promise, reward or advantage for himself/herself or any other person, group or entity.

f. Any act or omission which constitutes corruption under a law of the Member State.

g. Participation as a principal, co-principal, initiator, instigator, accomplice, accessory before the fact, accessory after the fact or in any other manner in the commission or attempted commission or in any conspiracy to do or omit to do any act referred to in the preceding provisions of this Article.

Police force/service means each police force/service or other official body with a responsibility to perform policing functions within the national boundaries of the Member State.

Article 3

Principles

a. To make corruption within police forces/services a high-risk crime.

b. To promote and maintain a high standard of honesty, integrity and ethical behaviour within the police forces/services of each Member.

c. To foster the recruitment and training as police officers of persons of high levels of integrity, honesty, ethical standards and expertise.

Article 4

Measures

Each Member of the Organization commits to:

a. making corruption by a police officer or other employee of a police force/service a serious criminal offence;

b. having legislation enacted to allow the proceeds of corruption and related crimes to be forfeited;

c. establishing and maintaining high standards of conduct for the honest, ethical and effective performance of policing functions;

do. Such standards should be mandatory and be directed towards an understanding and application of honest, ethical and appropriate behaviour, the avoidance of conflicts of interest, the proper use of public resources in and in connection with the fair and impartial application of the law, the performance of policing functions, the reporting of acts of corruption in and in connection with the performance of policing functions, and the establishment and strengthening of public confidence in police officers and police forces/services as part of the system of justice;

d. Setting up and maintaining effective mechanisms to oversee and enforce the high standards of conduct required in and in connection with the performance of policing functions;

e. Bringing into being or causing to be brought into being such legislative, administrative and other measures as may be necessary to prevent, detect, punish and eradicate corruption in the police forces/services;

f. Conferring or causing to be conferred on a designated authority, whether internal or external, such powers to carry out investigations and bring to justice without fear, favour, affection or ill-will those who engage in corruption and dishonesty in the course of or in association with the carrying out of policing functions, and adequately resourcing and funding such authority;

g. Providing for a system for the recruitment of officers for such designated authority who are of high integrity and which ensures that such officers are not disadvantaged by recruitment to any such designated authority;

h. Providing adequate safeguards to prevent abuse of powers by those engaged in the anti-corruption system and to minimize unnecessary infringements of individual rights;

i. Having a system for instructing police officers and others engaged in and in connection with the
performance of policing functions of the standards and ethical rules applicable to the performance of such functions;
j. Establishing and enforcing procedures for the declaration and registration of the income, assets and liabilities of those who perform policing functions and of appropriate members of their families;
k. Establishing a mechanism such as an oversight body or bodies to monitor the systems and measures established for preventing, detecting, punishing and eradicating corruption within the police forces/services and the adequacy, application and effectiveness of such systems and measures;
l. Requiring public reporting at least once each year of the work and findings in relation to the monitoring of the systems and measures referred to in Article 4(k) and their adequacy, application and effectiveness;
m. Putting in place deterrents to the bribery of those performing policing functions;
n. Establishing mechanisms to encourage participation by civil society in activities and efforts to prevent corruption in the police forces/services;
o. Having and maintaining effective systems for the recruitment of police officers of high levels of integrity, honesty, ethical standards and expertise;
p. Ensuring that the systems for recruitment, posting, promotion and termination of police officers and other employees of the police forces/services are not arbitrary but are based on fairness, openness, ability and performance;
q. Having and maintaining a system for the training, including on-going training, of police officers and other employees in the police forces/services which reinforces the high standards of conduct referred to in Article(c);
r. Taking all practicable steps to ensure that the rates of remuneration for police officers and other employees of the police forces/services are such as to enable them and their families to maintain a reasonable standard of living without having to resort to other employment or to corruption;
s. Having and maintaining systems for the procurement of goods and services that are based on openness, efficiency, equity and certainty of the rules to be applied and that seek the best value for money;
t. Having and maintaining systems of revenue collection, money and property handling and for the control and preservation of evidence that ensure that those collecting or handling public money, dealing with evidence or handling property are accountable and that the systems are such as to deter corruption;
u. Having an effective system that obliges police officers and other employees of the police forces/services to report corruption, that enables them and members of civil society to report corruption, and that protects those who report corruption in good faith;
v. Continuing research in relation to current best practice for the prevention, detection, punishment and eradication of corruption in and in connection with the performance of policing functions;
w. Reviewing at appropriate and regular intervals the measures and systems for the prevention, detection, punishment and eradication of corruption in and in connection with the performance of policing functions;
x. Using their best endeavours to ensure that the mechanisms and systems for the prevention, detection, punishment and eradication of corruption in and in connection with the performance of policing functions in its police forces/services are kept abreast of current practice as recognized by the General Assembly of Interpol;
y. Reporting at least once each two years, or at such shorter intervals as the General Assembly may resolve, on the measures taken and the mechanisms and systems in place to implement the standards set out in this protocol and the effectiveness of such mechanisms, systems and measures;
z. Permitting the monitoring by and co-operating with such person or persons as may be appointed by the Secretary General for the purpose of monitoring the mechanisms, systems and measures in place in relation to its police forces/services to achieve the objectives and meet the standards referred to in this protocol and the effectiveness of such mechanisms, systems and measures.

Article 5

Review

The operation of this protocol shall be reviewed by the General Secretariat of Interpol on an ongoing basis and is to be the subject of a report to each session of the General Assembly that is held after the expiration of two years from the adoption of this protocol.
Kindly let us know what you think about "Nguzo za Haki". This information can also be sent to The Kenya National Commission on Human Rights (KNCHR) via our email address: info@knchr.org.

I/we..................................................................................................................

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□ Fairly informative  □ Generally informative  □ Quite informative

Signed .............................................................................................................. Date..................................................................................
Security is a fundamental need shared by individuals, communities, business and governments alike. While the primary responsibility for any state is to ensure security and protection of human rights for its citizens, there nevertheless exists a complex web of inter-relationships with other duty bearers who have one or other responsibility in ensuring that different aspects of security are assured. The primacy of security cannot be gainsaid – it safeguards and expands peoples fundamental freedoms to pursue the kinds of lives they have reason to value. It provides human beings with expectation and confidence that there will be tomorrow, that their future is secure and will not be arbitrarily put to an end through acts of crime. Consequently there is an intricate relationship between a state’s capacity to ensure security for all its citizens and the value it appears to put on human life. A state that fails to protect its people risks losing credibility and in effect legitimacy.

During the past decade or so, Kenyans have borne the heavy burden of the growing insecurity through loss of several lives, escalating cost of business and therefore cost of living. As a result there has been growing mistrust in the ability of government to protect life. In an apparent response to this situation, in April 2005, the Minister for National Security Hon John Michuki asked those in possession of illegal firearms to either surrender them voluntarily or they will be ‘finished’ by the police. A number of human rights organizations took issue with this ministerial directive and called for caution. However, several Kenyans quoted in both print and electronic media on this issue appeared to support the Hon Michuki’s ‘finishing’ approach to dealing with crime.

Elsewhere, according to the Human Rights Dialogue, Fall 2002 (a human rights publication by the Carnegie Council on Ethics and International Affairs) a public poll in Argentina in February 2000 “revealed an alarming trend. When asked to choose between public order and freedom, nearly half of the respondents said they favoured combating crime with a strong hand, even though this might entail abuses against suspected criminals.” These responses coming from worlds apart beg for answers. Why do people appear willing to surrender some of their rights for enhanced overall security? This is the core question of this Issue of Nguzo za Haki.

Contributors interested in sending articles should focus on any of the following themes (see timeline details on page 2):

1. What are the tensions that exist between human rights protection and security?

2. What have been the trends of crime in Kenya in the past ten (10) years and how have these challenged the capability of the state to respond effectively? What are the various social, political and economic factors contributing to these trends?

3. How have countries facing similar crime surges handled the situation? Reference to South Africa, Uganda, Brazil and others would be useful. What are the lessons learnt?

4. What justifies the position that human rights organizations have taken with regard to the ‘shoot to kill’ proposal. Suspects and victims have rights. How should this be reconciled?

5. Are there other duty bearers as far as security in the country is concerned? Who are they and what are their specific roles? How effective have they been? What improvement is required for enhanced effectiveness in delivering their part of accountability?

6. Is licensing guns to individuals and private security companies the way to go? What are the merits and demerits of this path?
Useful Resources on Corruption and Human Rights

 Websites

2. http://www.gwdg.de
5. http://www.cilc.nl

4. SADC), Protocol Against Corruption
5. Criminal Law Convention on Corruption Inter-America Convention against Corruption; www.oas.org
6. Transparency International (UN convention against corruption) www.corisweb.org
7. UN General Assembly against Corruption www.unis.unvienna.org
8. European Civil Law Convention on Corruption; www.conventions.coe.int

CONVENTIONS AND TREATIES AGAINST CORRUPTION

1. The United Nations Convention Against Corruption, (UNAC),

2. African Union Convention Preventing and Combating Corruption [UCPCC]


useful resources
OUR VISION

A country characterised by a strong and vibrant human rights culture founded on equality and social justice for all.

OUR MISSION

To lead in enhancing the Government’s role in protecting and promoting human rights in Kenya by initiating and advising on programmes and policies that transform Kenya into a society that respects human dignity, social justice and equality for all.

In carrying out its functions the Commission will be independent, fair, open, accessible and accountable. The Commission is committed to equality of opportunity for all and to the participation of others in its work. It will perform its functions in a manner that is efficient, effective, and in the interests of all the people of Kenya.

The Commission will contribute to the establishment of a society that respects human dignity, social justice and equal opportunity. To achieve this, the Commission will conduct:

- Investigations on human rights violations and provide redress to victims of violations
- Research and monitor compliance of human rights norms and standards
- Human rights education and training
- Campaigns, advocacy, and collaborate with stakeholders.

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