

**REFORMS IN GOVERNANCE IN KENYA**  
**Establishing / strengthening anti-corruption institutions, creating the  
enabling policy/legal environment and enhancing the rule of law.**

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## **1. BACKGROUND**

- 1.1 The war against corruption has generated intense debate among Kenyans as well as our development partners. NARC was elected on its promised commitment to fight corruption and restore integrity and accountability in the management of public affairs.

Corruption in Kenya had reached epidemic proportions. It had become a way of life and accepted in official circles as a means of accumulating wealth and power. The previous regime officially sanctioned corruption. Corruption is the single largest contributor to the decayed state of the economy, extreme levels of poverty and unemployment in Kenya, and the greatest obstacle to economic and social development. The Government remains committed to eradication of corruption. The war against corruption is at the top of priorities in the development agenda.

## **2. DEVELOPING THE INSTITUTIONAL FRAMEWORK FOR THE WAR ON CORRUPTION**

Very early in its war against corruption, the government realized that the war could not be won without effective institutions to develop appropriate policies, conduct investigations, undertake prosecution, determine cases and create awareness against the vice. The government therefore immediately commenced the process of creating or strengthening anti-corruption institutions. It also started developing the enabling policy and legal environment for a sustained war against corruption.

- 2.1 The **Ministry of Justice and Constitutional Affairs** was created to develop anti-corruption strategies, co-ordinate and facilitate the fight against corruption.
- 2.2 **The Cabinet Committee on Anti-Corruption** was established at the first Cabinet meeting and is chaired by the Minister for Justice and Constitutional Affairs and comprised of Minister of State for Provincial Administration and National Security, Minister for Finance, Minister for Planning and National Development, Minister for Roads and Public Works

and the Minister for Local Government. The Committee's mandate is to oversee the implementation of government policies on corruption and review the progress in the fight against corruption.

- 2.3 Legislation has also been enacted providing for the fight against corruption. In April, 2003, Parliament passed a new law - **the Anti-Corruption and Economic Crimes Act, 2003**. This comprehensive piece of legislation expands the definition of corruption and economic crime to cover various forms of abuse of office, conflict of interest, misappropriation, theft and plunder of public resources. It also establishes a powerful anti-corruption commission with investigative, prevention, public education and asset recovery functions.
- 2.4 Parliament has also enacted the **Public Officer Ethics Act, 2003**, which legislates mandatory separate codes of conduct for all public officers, including members of Parliament, the Judiciary, Civil Service, Co-operative societies, Local Government and the public Sector corporations. The codes of conduct, which are legally enforceable, prohibit dishonesty, conflict of interest, tribalism, and nepotism in the public service. The Act also makes it mandatory for all public officers from the messenger to the President, to declare their assets and liabilities at the end of every financial year.

The wealth declaration exercise has been conducted for the last two years. Officers, who did not comply in 2003, were removed from the pay roll, in addition to being liable to facing other penalties. (This law is intended to inculcate a culture of honesty, hard work and rejection of corruption in the public service).

The Ministry is developing regulations for the better implementations of the Act.

- 2.5 The Government has also either established or strengthened other bodies involved directly or indirectly in the war against corruption. These include:
  - (a) The **Kenya Anti-Corruption Commission**, which has now been fully established as a strong, independent and professional statutory body. The Director, his assistants and senior staff have been appointed and have commenced work.

- (b) The **Public Accounts Committee** - The Government has made every effort to encourage the work of the committee especially on its Anti-corruption efforts by fully cooperating with it.
- (c) The **Efficiency Monitoring Unit** - The unit has been actively involved on the evaluation of the public officers' wealth declaration exercise and its report is a useful pointer on the way forward.
- (d) **The State Law Office/Department of Public Prosecutions** - The Department is currently undergoing far-reaching reforms through which special units to deal with corruption have been established. The **Anti-Corruption, Serious Fraud and Asset Forfeiture Unit** has been set up as a specialized prosecution unit to deal with corruption, serious crime, fraud and asset forfeiture. The unit is housed on the 19<sup>th</sup> Floor at NSSF Building and 21 state counsels have been appointed to the unit.
- (e) **The Judiciary/Special Anti-Corruption Courts** - These have been established under the Anti-Corruption and Economic Crimes Act, 2003. Special efforts are being made to build the capacity of the Judicial officers in these courts to better handle Anti-corruption cases.

### 3. DEALING WITH THE PAST

This is the first of the Government's strategies in the fight against corruption. In 2003, the Government appointed 2 commissions to investigate mega corruption scandals in the previous regime. The findings will form lay the foundation for dealing with the past.

- 3.1 The **Judicial Commission into the Goldenberg Affair** - Appointed to look into the questionable payments of billions of shillings in export compensation and other unexplained remittances to Goldenberg International between 1990 and 1993. The Commission is specifically inquiring into:
  - (a) The origins of the proposal to award export compensation in respect of gold and diamond jewelry
  - (b) Allegations of irregular payments of export compensation to Goldenberg International.
  - (c) Alleged payment of US\$ 210 million by Central Bank to the Exchange Bank and/or Goldenberg International
  - (d) Establishing all persons involved, and

- (e) To recommend:
  - a. Prosecution or further criminal investigations
  - b. Ways, means and measures to be taken to prevent, control and eradicate such schemes or frauds in future.
  - c. Reimbursement or compensation to the Government
  - d. Any other policy action

The Commission has been quite successful in uncovering the intricate web surrounding the looting of public funds from the Central Bank of Kenya. The Commission has completed its hearings and is presently compiling its report.

3.2 The **Judicial Commission of Inquiry on Illegal and Irregular Allocation of Public Land (the Ndungu Committee)**: The Commission was established in July, 2003 as a transitional justice mechanism to look into the irregular and illegal allocations of public land since Kenya's independence in 1963. The lands and their inquiry include:

- (a) Urban, State Corporation and Ministry lands.
- (b) Settlement schemes and community trust lands
- (c) Forests
- (d) Game reserves, national parks, riparian river reserves and protected areas.
- (e) Key legal instruments - The Government Lands Act, the Registration of Titles Act and the Registered Land Act.

It has completed its work and the Report is now being implemented. The Commission has recommended *inter alia*:

- (a) Any measures taken to recover illegally allocated public land or to address the issue of illegal titles should be done within the law.
- (b) Establishment of **Land Titles Tribunal**, under the Government Lands Act, CAP 280, to handle all cases of revocation, rectification or validation of illegal titles.
- (c) In the interim, illegal titles issued on forests, like Karura, Government houses and offices should be revoked immediately.
- (d) Setting up of an Advisory task Force, within the Ministry of Lands and Housing, under Section 23 of the Constitution to work on alternative methods of recovering grabbed land.

- 3.3 **The Cabinet Committee on Pending Bills:** The Committee was appointed to deal with fictitious and fraudulent claims made by contractors and suppliers against the Government. (These claims are in excess of KShs 20 billion). Contract variations on public works have been a major method of looting of public funds through fictitious claims. Such funds have been used as vehicles for funding political activities including the 2002 General Elections. The Committee examined all the relevant material and took the decision to suspend the payment of all pending bills, pending further sampling and verification by a **Closing Bills Committee**. The Cabinet Committee has been gazetted and has commenced work.
- 3.4 **Asset Tracing and Recovery.** The object is to recover all stolen public funds hidden in secret accounts abroad. Kroll Associates has been retained for this exercise. Phase I of the exercise, which involved tracing and identification of these assets has been completed. Phase II will involve freezing of the accounts and assets. Legal experts for this purpose have been identified and are initially targeting the identified US\$ 1 billion for freezing. Further asset search, tracing and recovery, both local and international will be undertaken by KACC.
- 3.5 **The Task Force on *Harambees*.** The Task Force was appointed to:
- (a) Investigate the origins, relevance, and impact of public collections.
  - (b) Investigate the nature, forms and linkages of corruption, extortion and other abuses of *harambees*.
  - (c) Make policy and legislative proposals for transparency and accountability in *harambees*.

The Task Force was also successful. Recommendations and the work of the Task Force have in part been implemented and contributed to a massive reduction of pressure on public servants for involvement in *harambees*. The recommendations in brief are as follows:

- a) Abolishing of all national/presidential *harambees*.
- b) The Banning of *harambees* for construction of Government infrastructure.
- c) Funerals, pre-weddings and birthday fund raising activities should not be conducted outside family settings.
- d) A few *harambees* on community projects should be allowed but co-ordinated by a committee at vocational level.

- e) All *harambee* contributions should remain strictly voluntary.
- f) Amend the Public Officer Ethics Act to prohibit public officers from acting as promoters, collectors or guests of honour.
- g) Amending, enacting and strengthening of the legal framework to regulate several aspects of *harambee*.
- h) Setting up of various bodies for the better regulation of charities, public collections and constituency funds.

#### 4. CIVIL SERVICE AND JUDICIAL REFORMS

**4.1 Breaking up the past networks of corruption in Government.** The Government has investigated, arrested and is currently prosecuting top public officials especially in state corporations, who colluded with private sector leaders to loot and plunder public resources. Cases of being prosecuted include those of the directors of Euro Bank, NHIF, NSSF, Postal Corporation Of Kenya, Kenya Post Office Savings Bank, Pyrethrum Board of Kenya, Kenya Sugar Authority, Kenyatta National Hospital, Kenya Tourist Development Authority, National AIDS Control Council and the Kenya Pipeline Company Ltd. The Government has also administratively introduced high-level changes in the civil service and replaced all procurement officers and all the forest officers to destroy the networks of corruption in the public service. A more comprehensive reform of the entire civil service including pay reform is being implemented.

**4.2** The Government has instituted and is currently undertaking a comprehensive civil service reform programmed, through the Directorate of personnel management. This is meant to bring about change in service delivery in the public sector to ensure efficiency and result oriented approach to public affairs. This will see reduction in corruption opportunities.

#### **4.3 Sector Reforms**

The Government launched **Governance, Justice, Law and Order Sector Reforms Programmed (GJLOS)** in November, 2003. It brings together all the key institutions in the sector to provide a coherent and prioritized approach to addressing chronic problems relating to *inter alia* governance issues. The Ministry of Justice and Constitutional Affairs is collaborating with the Office of the President, the Judiciary, the Ministry

of Home Affairs, civil society and development partners, to implement a sector-wide reform of the Governance, Justice, Law and Order sector in Kenya, which will improve efficiency and service delivery in the entire criminal justice system, including, investigatory, prosecutorial, judicial and corrective services. The programme is made up of a number of thematic groups. The war on corruption is the specific focus of the ethics, integrity and anti-corruption. Reforms under GJLOS include review of legislation, modernization of the companies' registries and capacity building for effective and efficient service delivery.

#### 4.4 Judicial Reforms .

An independent, effective and efficient judiciary is essential for a just, transparent and accountable Government. Such a Judiciary is an integral part of any successful anti-corruption strategy. The state of the Judiciary in 2003 was far from this description. It was inefficient, ineffective and ridden with corruption, hence very weak. The systems in place were archaic and required an overhaul. The Government of Kenya immediately embarked on a comprehensive reform process. A part of this reform targets the integrity of the members of the bench.

An **Ethics and Integrity Committee** was established to look into the extent of corruption in the Judiciary. Its report was presented to the Chief Justice in September, 2003 and immediate action taken. This led to a historic, far reaching "*radical surgery*" of the Judiciary, in which, 6 out of 11 judges of the Court of Appeal, 17 out of 36 High Court judges and 82 out of 252 magistrates were suspended on allegations of corruption. Most of the suspended judges subsequently retired. Tribunals were established to investigate claims against 5 judges who contested the charges against them as provided for by the Constitution. The cases are being processed. 76 of the magistrates were retired in the public interest while the rest successfully responded to the allegations against them.

Other reforms in the judiciary include:

##### **Measures to expedite the disposal of cases**

- The rules committee is currently reviewing the civil procedure and appellate procedures rules for the filing and processing of cases in the

High Court and Court of Appeal respectively. Outdated rules that cause serious delays in the disposal of cases will be repealed.

- Alternative dispute resolution mechanisms will also be provided for in the reviewed rules to facilitate the quick resolution of commercial disputes.
- Establishing more courts in various parts of the country
- 16 magistrates court have been established in prisons and remand human to facilitate quick disposal of criminal cases
- Computerization of court registries is underway to over come the problem of 'missing files' which is a major avenue of corruption
- Automation of the recording of court proceedings is also on course starting with the piloting at the High Court and Milimani Commercial Courts.
- The judiciary has networked the Chief justice's office and registrars office for effective monitoring of work
- Law reports that ensure consistency in judgments of the various judges have been published after a long spell without law reporting. They are also available online for the first time

## **Merit Based Recruitment and Promotion of Judicial Officers**

Merit based recruitment and promotion of magistrates has been put in places. All positions for hiring and promotion are now advertised.

## **A Standing Committee on Ethics Is Being Established**

The committee will continuously receive corruption complaints and address them. It will also monitor the trends in the ethical conduct of judicial officers and take appropriate action.

## **5. CAPACITY BUILDING AND TRAINING IN GOVERNANCE INSTITUTIONS**

5.1 Through the Governance, Justice, Law and Order sector (GJLOS) programme, the Government is implementing substantial reforms to restore integrity and accountability in the management of public resources, efficient and fair administration of justice, respect for and enforcement of human rights and the rule of law as well as institutionalize democratic practices and nurture stable institutions of governance.

- 5.2 On the war against corruption, training has been extended to the professionals under KACC, State Law Office and the Judiciary. They will continue to undergo training in combating corruption effectively.
- 5.3 In this regard, priority is being placed on the acquisition and development of appropriate and modern training facilities for the Kenya School of Law. The Government has identified and acquired suitable premises for the institution and is now implementing a comprehensive training strategy and programme.
- 5.4 In addition, the Ministry of Justice and Constitutional Affairs, in collaboration with the Ministry of Lands and Housing, is under the programme, conducting a major training exercise of training clients, lay members of Land Control Boards and Tribunals, etc

## 6. SOCIAL AND CULTURAL CHANGE

- 6.1 The Government realizes that corruption is a complex moral, social, political and economic problem, which transcends the limits of law, crime and punishment. It is fundamentally a question of personal belief, ethics, cultural attitudes and behaviour. To attack the social and cultural roots of corruption, the Government with the support of the World Bank, Transparency International, religious organisations, the private sector and civil society organisations, in July, 2003 launched a **massive 5-year National Campaign Against Corruption**. The Campaign is intended to be a massive campaign similar to our national campaign against HIV/AIDS. This massive prevention campaign is intended to bring about a radical transformation of our society, and reinforce a culture of stigmatisation and rejection of corruption in all its forms. The fight against corruption will not only involve fundamental changes in our systems of governance, but in our own personalities, lifestyles and patterns of behaviour.
- 6.2 In May, 2004, the President appointed the **National Steering Committee Against Corruption**. The Committee is comprised of the civil society, religious groups, Government and the private sector. It involves largely the religious groups and the teaching fraternity. The Campaign planning has been completed and a Director has been appointed. Implementation was initially slowed down due to lack of funds but the government has now allocated some funding. The campaign has completed its strategic planning process and is due to be launched nationally in April, this year.

6.2 Kenya Law Reform Commission is working on a draft **Bill on Political Parties** to provide for their transparent and accountable funding. This has been necessitated by the trend, in particularly the multiparty era elections. Most political parties do not have clear financing mechanisms for fund their own elections and participation in the General Elections. Corruption has thrived as a source of financing. The Bill proposes a regulatory framework for the funding of political parties to curb corruption in the financing of politics. Mechanisms will be provided for disclosure of sources of funding and accountability for party funds. A ceiling on campaign financing will also be introduced.

## 7. CHALLENGES IN THE FIGHT AGAINST CORRUPTION

7.1 The Government immediately upon election into office adopted a zero-tolerance to corruption policy, which is now facing fundamental problems of implementation. **Networks of the past** have captured some civil servants, who have perpetuated the culture of corruption in the Government procurement systems.

7.2 The fight against corruption has also been complicated by the **transition process**. The NARC victory brought into power a coalition Government made up of political parties with diverse interests, political agenda and vision. While a common understanding of the need to fight corruption was generally assumed, there were (and still are) many in the coalition who stood (stand) to lose from an effective campaign against corruption. Though outwardly supportive of the fight against corruption, such persons are not enthusiastic in their support in the war against corruption. Many corrupt individuals have found political comfort and support among such persons. This has denied the Government critical support, which has slowed down the operationalisation of the anti-corruption programme. Unfortunately the political realities of transition politics necessitate political accommodation of all significant political interests.

7.3 The Government's anti-corruption programme has also been undermined by the **constitutional review process** which has substantially polarized the ruling coalition. This has made it difficult for the Government to speak with one voice against corruption. The delay in realizing the new constitution has also denied the fight against corruption a solid

foundation. Constitutional challenges against KACC are frequent. The government is determined to complete the review this year.

7.4 Over the years almost all institutions of governance had been run down and were hence not useful in the fight against corruptions. Initial efforts in the fight against corruption were therefore focused on restoring institutional integrity and capacity in the judiciary, police, central bank, treasury and many other vital institutions. The effects of the government's efforts are beginning to take root but it will take some time to effectively institutionalize the war against corruption. Corruption had been institutionalised by the former regime through a neo-patrimonial system. What came to be referred to as an 'eating' culture - where politicians seek political office and public officers seek public office with the specific motive of looting public resources- has been socialized and legitimized. It will require considerable effort and time to de-legitimize this culture. The institutions necessary for the fight against corruption are weak and ineffective. They need strengthening and support to function and support the war against corruption.

7.5 The corrupt elements of our society accumulated huge amounts of wealth, which is used to control and influence the media and political activity in Kenya. Corruption is fighting back. There is widespread perception that corruption is rampant in the Government, and the Government is doing nothing about it.

#### 7.6 **New and Emerging Corruption.**

We have recently been plagued by the new and emerging corruption through the "Anglo-Leasing Affair." The main player in the saga is a foreign company, Anglo-Leasing and Finance Company Ltd, who had been contracted by the Government through the Office of the President on 2 separate projects. One of the projects was on procuring the Forensic Sciences Laboratories, an idea mooted in 1998. Investigations are now complete and prosecutions of those involved have commenced. Other cases brought to the attention of the Government are being investigated by the KACC and decisive action will be taken as soon as investigations are completed.

7.7 The war against corruption must be seen in its long-term perspective. It will be a permanent struggle. Those who have benefited from corruption are fighting back using their ill-gotten proceeds to wage a hostile media

campaign against us; dismissing the fight against corruption as a tribal purge, a political vendetta and a witch-hunt.

## **8. THE WAY FORWARD**

- 8.1 To succeed in the war against corruption there is need to institutionalise the Government's efforts through the strengthening of all the institutions and agencies charged with the responsibility of detection, prevention and prosecution of corruption.
- 8.2 The institutions and agencies must be adequately funded to reflect the importance attached to the fight against corruption. The government has already released Ksh.1.2 billion to the Kenya Anti-corruption Commission. Efforts are being made at the Cabinet level to ensure that adequate funds are availed to NACC for its activities in the current financial year.
- 8.3 There is also need for a sustained public information campaign to keep the public informed of the efforts the government is making in the struggle against corruption. Unless an aggressive public information campaign is conducted the anti-corruption programme will be discredited through calculated disinformation from those who stand to lose from a successful anti-corruption programme.