

# Public Accountability and Good Governance in East Africa

Editor

**Sam Tindifa**

FOUNTAIN PUBLISHERS  
Kampala

Fountain Publishers  
P.O. Box 488  
Kampala  
E-mail: [sales@fountainpublishers.co.ug](mailto:sales@fountainpublishers.co.ug)  
[publishing@fountainpublishers.co.ug](mailto:publishing@fountainpublishers.co.ug)  
Website: [www.fountainpublishers.co.ug](http://www.fountainpublishers.co.ug)

On behalf of

Kituo cha Katiba: Eastern Africa Centre for Constitutional Development  
P.O. Box 3277, Plot 7, Estate Link Road, Off Lugogo by-pass  
Kampala, Uganda  
Tel: +256-414-533295  
Fax: +256-414-541028  
Email: [kituo@kituochakatiba.co.ug](mailto:kituo@kituochakatiba.co.ug)  
Website: [www.kituochakatiba.co.ug](http://www.kituochakatiba.co.ug)

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# ACRONYMS

ACCU	Anti-Corruption Coalition of Uganda
ACECA	Anti – Corruption and Economic Crimes Act
AG	Attorney General
APNAC	African Parliamentarians Network Against Corruption
AU	African Union
CAG	Controller and Auditor General
CBK	Central Bank of Kenya
CCM	Chama Cha Mapinduzi
CDF	Constituency Development Fund
CHRAGG	Commission for Human Rights and Good Governance
CID	Criminal Investigations Department
CPI	Corruption Perception Index
CSOs	Civil Society Organisations
CU	Customs Union,
CUF	Civic United Front
DAC	District Accounts Committee
DANIDA	Danish Development Agency
DEI	Directorate for Ethics and Integrity
DPP	Directorate (Director) of Public Prosecutions
EA	East Africa
EAC	East African Community
EAPAGF	East African Public Accountability and Governance Forum
EMU	Efficiency Monitoring Unit
EADB	East African Development Bank
EPA	External Payment Account
ERS	Economic Recovery Strategy
GDP	Gross Domestic Product

GJALOS	Governance, Justice, Law And Order Sector
GOU	Government of Uganda
HIV/AIDS	Human Immunodeficiency Virus/Acquired Immune Deficiency
IAF	The Inter-Agency Forum
IFIMS	Integrated Financial Information Management System
IG	Inspector of Government
IGG	Inspector General of Government
IMF	International Monetary Fund
KACC	Kenya Anti – Corruption Commission
KCK	Kituo Cha Katiba
KENAO	Kenya National Audit Officer
KRA	Kenya Revenue Authority
LATF	Local Authorities Transfer Fund
LGPAC	Local Government Public Accounts Committees
LGRP	Local Government Reform Program
LSRP	Legal Sector Reform Program
LVBC	Lake Victoria Basin Commission
LVFO	Lake Victoria Fisheries Organisation
MDAs	Ministries, Departments and Agencies
MFPEd	Ministry of Finance, Planning and Economic Development
MPs	Members of Parliament
NACCSC	National Anti – Corruption Campaign Steering Committee
NACP	National Anti-Corruption Plan
NARC	National Rainbow Coalition
NGOs	Non-Governmental Organisations
NIMES	National Integrated Monitoring and Evaluation system
NSDS	National Service Delivery Survey
PACs	Public Accounts Committees

PCIAC	Presidential Commission of Inquiry Against Corruption
PDEs	Procurement and Disposal Entities
PEM	Public Expenditure Management
PFMRP	Public Finance Management Reform Program
POEA	Public Officer Ethics Act
PPDA	Public Procurement and Disposal of Public Assets Authority
PPOA	Public Procurement Oversight Authority
PPP	Public Private Partnership
PSIP	Public Service Integrity Programme
PSRP	Public Service Reform Program
RBM	Results – Based Management
SADC	South Africa Development Community Syndrome
TB	Tuberculosis
UDN	Uganda Debt Network
UK	(The) United Kingdom
UN	United Nations
URA	Uganda Revenue Authority
USD	United States Dollars
VAT	Value Added Tax
WB	World Bank



# Introduction

*Sam Tindifa*

The importance of this book is its contribution to the debate on anti-corruption initiatives, the sustainability of accountability and transparency in government functions in East Africa. Corruption is one of the worst governance issues in the East African countries. The initiative by Kituo Cha Katiba (KCK) “to bring together representatives from lead regional institutions to dialogue and reflect on common approaches” in fighting corruption and strengthening public accountability is a commendable effort. It shows the concerns of civil society and its increasing contributions to the war against the scourge that undermines democratic governance and development. Participants at the workshop bore various experiences and absence of those directly involved in anti-corruption denied the workshop their knowledge and experience. Their presence would have enabled the sharing of experience with those institutions engaged in policy-making and implementation.

The book attempts to address the conceptualization, relevance and enforceability of ethics, accountability and transparency in the governance process and in the fight against corruption. Poor public accountability and high levels of corruption in East Africa is on the lips of every one on the streets or rural areas because of its prevalence on a day-to-day basis in the police, health sector or in the any other service. The problem has reached insurmountable levels, as it appears to be institutionalised, despite attempts by Governments in the region.

Transparence International Corruption Index of 2005 ranked Rwanda and Tanzania at 102, Uganda at 126, Kenya 146 and Burundi 158.<sup>1</sup> According to the Corruption Index for 2007, Tanzania ranked

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<sup>1</sup> Transparence International Corruption Perception Index-Wikipedia, the free encyclopedia, [http://en.wikipedia.org/wiki/Corruption\\_Perceptions\\_Index](http://en.wikipedia.org/wiki/Corruption_Perceptions_Index)

94, Uganda and Rwanda 111, Burundi 131 and Kenya 158.<sup>2</sup> The rankings indicate the magnitude of the problem. Although it is declining in some countries, it is still very high. What explains this? Is the decline in some of the countries owing to the measures adopted and the rise in others attributable to the ineffectiveness of the anti-corruption measures? This is an issue that needs further investigation. However, it is important to note the pressure from the donor community on these countries to respond to the problem of corruption. The decline in some of the countries could be a result of this pressure rather than being a genuine attempt to deal with the problem. However, it may be too early to evaluate the effectiveness of the anti-corruption initiatives, as attempts towards strengthening them are recent and confronting a historically and politically institutionalized problem.

Most of the papers were brief and focused mainly on anti-corruption initiatives in the respective member states of the East African Community (EAC). Analysis of causes of corruption was important although it was equally important, to analyze why these initiatives were having unnoticeable impact. While under funding of the anti-corruption initiatives may be a factor in the slow progress, it is not alone as pointed out by the participants in their explanations of the high incidence of corruption in these countries and low progress in the fight against it. State legitimacy, it seems, remains a fundamental factor responsible for the high levels of corruption, poor accountability and abuse of power in the region.

The presentations at the workshop and literature on corruption in the region point a finger to armed conflicts, state collapse and undemocratic or manipulated hold to power as the most important factors.<sup>3</sup> Therefore, poor governance characterized by armed conflict

2 Ibid.

3 Racham, Jawad, 2003, Institutionalized Corruption: an Instrument of Governance in the Middle east and North Africa? Centre for International Private Enterprise and Andrew Mwenda, Regional Report on Global

or civil strife seems to be the biggest impediment in the fight against corruption. Armed conflicts and state instability provide opportunities for corruption to thrive, like in Somalia, which is the last in the Corruption Index. Conflict allows or facilitates the plunder of natural resources and relief supplies as has happened in Kenya and Uganda.<sup>4</sup> These are mere examples.

How most governments in East Africa have come into and sustain their hold onto power, is a factor in enhancing corruption. All countries save for Burundi, which is in transition from nation wide armed conflict, have electoral processes which, nevertheless, are instruments to sustain hold onto power by certain groups and individuals. Dictatorship and overstay in power by individuals or one party, leads to the disempowerment of the public and civil society participation in governance and development process, which weakens the anti-corruption interventions. As pointed out earlier, all the EAC member states have adopted anti-corruption measures. While the time factor in the realization of these measures is crucial, one is left wondering about the adequacy of these interventions.

One of the papers argues that liberalization and privatization can lower corruption levels and increase accountability and transparency.<sup>5</sup> Yes, it is possible. However, why does corruption seem to have increased with the World Bank/International Monetary Fund (WB/IMF) liberalization process that has led to the privatization of the economy? It has created competition for accessing formerly state owned business enterprises in conditions of underdevelopment characterized by deep-rooted poverty. Without effective governance, competition for economic space and business opportunities inevitably creates conducive environment for corruption.

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Corruption, published on the Internet on 27/11/2002.

4 Mwenda, Andrew; *ibid*.

5 Bafokuzaara, Angela M.T, Strengthening Public and Governance in East Africa: Uganda's Experience. This was a paper presented at the Workshop.

Yasin Olum in his explanation of accountability and governance suggests some of the measures in the fight against corruption, promotion of transparency and accountability.<sup>6</sup> The challenge, therefore, is for policy and lawmakers, the anti corruption institutions, and those involved in ensuring and monitoring accountability, to test Olum's prescription.

Given international and regional anti-corruption standards in place, and that some of the EAC member states like Uganda are trying to incorporate these standards, it may be necessary for a critical review of these initiatives to identify their strengths and inadequacies, and to link them to the study of each country's experience. This, perhaps, could have been one of the issues on the workshop agenda. However, since the question is outstanding, it requires an assessment of the adequacy of these standards given the suggestion by Warioba that anti-corruption initiatives must "be truly a national agenda," requiring local initiatives to be pursued rather than relying on donor-driven mechanisms.<sup>7</sup> This is because understanding the phenomenon of corruption, inadequacies in accountability and transparency mechanisms requires understanding a country's political history, which produces the socio-economic and political institutions and style of governance that breeds and breeds corruption and lack of accountability.

Corruption is a threat to the proper functioning of economic integration and federation. Let us hope that regional initiatives and approaches as we get closer to political and economic integration of the East African region, will effectively address the lack of accountability and transparency. Uniformity and common standards in promoting accountability and transparency for all EAC member

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6 Olum, Yasin, Discussion Paper on Public Accountability and Governance in East Africa, presented at the workshop.

7 Warioba, J.S, Opening Statement at the Regional Workshop on Strengthening Public Accountability in East Africa.

states is vital but in developing these standards, there is need to bring on board each country's experiences and political development. This might require a study of corruption, accountability and transparency initiatives in each country to assess the history and levels of corruption, the differences and commonalities, policy, legal and administrative interventions, cultural perspectives, and the adequacy of the interventions.

Though one may agree with Warioba that anti-corruption initiatives, transparency and accountability mechanisms must be homegrown,<sup>8</sup> there may be a lot to learn from countries with very low levels of corruption such as Denmark, Sweden, New Zealand, Singapore, Norway or Botswana.<sup>9</sup> Botswana is one country with the lowest corruption levels on the African continent and one wonders how it has been able to achieve such standards.<sup>10</sup> This once again takes us back to the issue of state instability. Botswana is one of the countries with a well-established democracy and despite the anti colonial armed struggles that inflicted southern Africa, it has remained stable and democratic. Tanzania could fall in the same category; however, corruption levels are quite high in there. This justifies, as pointed out already, the need for further studies of governance in the region to understand why a country like Tanzania that has escaped political instability like Botswana has high corruption levels.

Ethical standards are crucial in the anti-corruption drive; however, political commitment of the decision makers is a pre-condition for the realization of these standards. Political commitment, a strong civil society and the private sector are strong indicators in the fight against corruption. Measures for the promotion of ethical standards, accountability and transparency, must be part of a wider political,

8 Ibid.

9 Transparency International Corruption Index; *ibid.* Botswana according to Transparency International Corruption Index for 2007 was ranked no 36

10 Ibid.

economic and social transformation if significant growth and sustainable development are to be achieved. The most important factor, however, is the political leadership's commitment. Imposition of criminal sanctions based on Western/Hong Kong models though important have proved insufficient and need to be accompanied by preventive measures.

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# 1

## Background

*Jacqueline Omara*

### **Forum Goals and Objectives**

This book is a synthesis of the proceedings of the “Regional Forum on Strengthening Public Accountability and Governance in East Africa”, held from 20-21 August, 2008 at the Impala Hotel in Arusha, Tanzania. The Forum was organised by Kituo Cha Katiba also known as the Eastern Africa Centre for Constitutional Development, with the support of the Ford Foundation.

Current studies suggest that corruption has reached endemic levels in developing countries in Africa. The backbone of development is good governance so, where there are weak public institutional structures and mismanagement, citizens are denied the opportunity to realise sustainable development. East Africa has not escaped this corruption phenomenon, and public institutions have become part and parcel of the problem. However, where principles and values such as those advocated by KCK are lacking, hope for the elimination of corruption remains minimal. It is for these reasons that KCK organised this Forum which had two main objectives. The first objective was to provide a forum for key anti-corruption institutions in East Africa to share experiences and hold dialogue on best practices, challenges faced and opportunities drawn from their work, in order to strengthen public accountability in the region. The second objective was to network and advocate around constitutionalism, good governance and democratic development to empower Eastern Africans to hold governments, national and

## 2 *Public Accountability and Good Governance in East Africa*

regional institutions accountable and responsive to their needs and rights.

The Forum involved a range of different professionals and scholars, representatives of ministries or departments of ethics and integrity, members of parliamentary committees responsible for anti-corruption and civil society members working in the field of anti-corruption. These participants were drawn from the East African countries of Kenya, Rwanda, Tanzania mainland, Uganda, and Zanzibar. It is important to note however, that KCK targeted a much larger group, including senior officials from the leading anti-corruption agencies, namely the Inspectorates of Government (IGG)/ombudsmen. Regrettably, none of the main anti-corruption agencies in the region attended.

### **About Kituo Cha Katiba**

KCK was established in 1997 with the mission of promoting constitution-making and democratic governance in the East African region. KCK provides a mechanism and neutral forum for activists, academics, and politicians to engage in dialogue, self reflection and critical debate over a wide variety of issues that are of critical contemporary relevance. The ultimate aim of the organisation is to promote the active participation of civil society in good governance and to inculcate a culture of constitutionalism, where the constitution is a living document that reflects the aspirations and needs of the common people. KCK currently carries out its activities in Kenya, Tanzania–Mainland, Tanzania–Zanzibar, Uganda, most recently Rwanda and Burundi. Although Zanzibar is part of the United Republic of Tanzania, KCK accords it special attention because it has its own president, constitution, parliament, judiciary, anthem and flag. KCK is currently governed by an eleven-member board comprising two members from each of the countries of Burundi,



Kenya, Rwanda, Tanzania mainland and Uganda, and one from Tanzania Zanzibar.

The Forum was a success, having provided room for the objective deliberation and sharing of experiences on issues of accountability and governance in the East African region, and collecting relevant recommendations on the topic.

### **Prior Efforts at Strengthening Public Accountability and Governance in East Africa**

Corruption is a disease still very prevalent in many public institutions in East Africa. Since the 1990s, it has developed in complexity as a result of globalisation and technological advancement. Starting in the same period, countless efforts by international, regional and national bodies have sought to minimise and eventually eradicate corruption.

At the national level, numerous reforms were undertaken to strengthen public accountability. East African countries transitioned from single-party rule to multiparty politics. These countries also identify themselves as democratic states justifying the transition as a forte for good governance, and it was hoped that multiparty rule would check executive control of power. In some countries, constitutional provisions were established to reduce the powers of the executive and reintroducing the concept of separation of powers. The judiciary and legislature would now become more effective functioning arms of government. In addition, structural reforms were instituted in public institutions, thereby promoting transparency and accountability in public administration and management, and ensuring appropriate service delivery. Many East African countries even introduced anti-corruption institutions, policy and legal frameworks such as ethics-related legislation, professional codes of conduct and other laws to regulate the most corruption-prone areas such as financial administration and public procurement.

With the progressive emphasis on good governance and democratisation, several changes became visible at the regional and international level. At the African regional level, the African Union (AU) called for strategies to combat corruption and it adopted a related instrument. The AU acknowledged that corruption remained one of the leading causes of underdevelopment in Africa. The EAC, in accordance with its vision to have a prosperous, competitive, secure and politically united East Africa, acknowledged that this vision is only achievable in the presence of a set of fundamental principles. Some of these fundamental principles, as highlighted in the EAC Treaty, are good governance, democracy, transparency and accountability. Existing efforts are also manifest in the several regional anti-corruption instruments. The first EAC draft Protocol on Anti-corruption, Ethics and Integrity (draft Protocol) is an example. This draft Protocol is based on ethics and integrity, good governance, transparency and accountability and zero tolerance of corruption. It prohibits the solicitation or acceptance by public officials of gifts, favours or promises for the performance of their public functions.

International non-governmental organisations (NGOs), international donors and even international financial institutions endorsed the new good-governance concept and resolved to fight corruption. Specifically, for donors, good governance as a prerequisite for aid became a mantra.

Almost two decades have evolved since these changes were introduced, yet today evidence reveals that corruption remains deep-rooted, not only in public institutions but amongst private citizens. Once more it is time to ask; “Where did we go wrong?” This Forum had the twin roles of confronting this question and making recommendations thereto.

## 2

# Opening Ceremony: A Summary

## Opening Remarks by the Chairperson of Kituo Cha Katiba

*Salum Toufiq*

Mr. Salum Toufiq welcomed and thanked the participants for attending the workshop. He extended a special welcome and thanks to the Guest of Honour, Honourable Beatrice Kiraso, the Deputy Secretary General in charge of the East African Political Federation for honouring the Forum with her presence and for accepting to officiate at the occasion. He also expressed KCK's gratitude to the EAC for their good working relations. Special thanks were also extended to Honourable Justice Joseph S. Warioba for his continued support to KCK in its various endeavours to advance constitutionalism and good governance in East Africa, and for accepting to deliver the keynote address.

The Chairperson noted that the objectives of the Forum arose from the current endemic and complex nature of corruption in East Africa, and its systemic impact on good governance, human rights and development. He reiterated the Forum's objectives and reaffirmed KCK's objectives to network and advocate constitutionalism, good governance and democratic development in the East African region, and to encourage participation of civil society to demand accountability from their respective governments. He provided an historical account of the organisation since its establishment in 1997, its current mandate and activities. He explained that one of KCK's objectives is to provide a neutral forum for activists, academicians and politicians to take part in dialogue, self reflection and critical deliberation regarding issues of crucial contemporary relevance.

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By way of conclusion, he urged participants to take advantage of the Forum to freely dialogue and reflect on the issues of public accountability in East Africa, and make propositions to address these concerns. He further expressed hope that the Forum would yield good results and wished the participants

## **Opening Remarks by the Deputy Secretary-General of the East African Community**

*Hon. Beatrice B. Kiraso*

In her opening remarks, Hon. Kiraso thanked KCK for organising the dialogue to discuss anti-corruption strategies and mechanisms for strengthening public accountability in East Africa.

She highlighted the EAC's vision, mission and objectives and emphasised good governance and public transparency as essential to EAC regional integration. She reiterated the EAC's call for adherence to good governance, democracy the rule of law and transparency, and in furtherance of these principles noted the EAC Council of Ministers' acknowledgement of the need to develop a regional framework on good governance.

She made an observation on the damaging impact of corruption on development, good governance and human rights, and the negative correlation between corruption and governance. Hon. Kiraso stated that corruption is exacerbated in the absence of transparency and accountability. She demonstrated this correlation by explaining that where low levels of corruption exist, government systems are free of abuse; the rule of law is observed; justice, law and order are independent and fair; public institutions are accountable and transparent; civil society participates freely; and protection and promotion of human rights are visible. She emphasised the fact that fighting corruption should exceed the expectation of having good policies and a legal framework, and extend to the existence of effective institutions with clear implementation strategies. Likewise, transparency is a requirement that will cultivate results, facilitates public monitoring of public institutions, ensure proper public institution administration and management, promote administrative reforms and encourage civil society participation.

Hon. Kiraso observed that EAC partner states are parties to continental and international instruments on corruption, which advocate zero tolerance to corruption. The EAC borrows from these instruments and plans to establish a regional framework on good governance encompassing principles relating to anti-corruption, ethics and integrity, social justice and equal opportunities, human rights and gender. The proposed regional framework is to incorporate five pillars, namely: democracy and the rule of law; anti-corruption, ethics and integrity; social justice and equal opportunities; and human rights and gender equality. The framework is expected to provide guidelines for the EAC countries on issues of good governance and public accountability. In this context, the EAC hopes to develop and negotiate a regional policy to complement each of the member country's efforts.

By way of conclusion, Hon. Kiraso expressed optimism about KCK and civil society's involvement in the regional policy consultation process.

# 3

## A Summary of Proceedings

### **A Summary of Keynote Address**

*Hon. Justice J.S Warioba.<sup>11</sup>*

In his opening statement, Hon. Justice Warioba underlined the theme of the workshop and emphasised that realising a positive outcome regarding strengthening public accountability in East Africa depends on sharing experiences to aid anti-corruption initiatives in East Africa. He traced the history of corruption in Africa, and revealed that while, at the time of independence, the problem had been limited to middle level public officials, corruption had since spread to all echelons of society. Today, corruption is entrenched in public institutions and politics, to the point that it is the norm to give bribes during elections.

Starting in the early 1990s, a simultaneous and, to an extent, parallel effort to deal with and prevent corruption became visible at national and international levels. At the national level, the democratisation process ushered in multiparty politics. This turn of events limited the executive's powers to control the legislative and judicial arms of government. On the international level, the AU, in 2002, adopted the Convention on Prevention and Combating Corruption, followed shortly by the United Nations (UN) establishing a convention against corruption in 2003. International

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11 Honourable Justice Joseph Sinde Warioba is a former judge at the East African Court of Justice, and former Chair of the Commission on Anti-Corruption in Tanzania. He also worked in the Tanzanian government as Attorney General, Minister of Justice, Prime Minister and Vice President of Tanzania.

financial institutions declared their own anti-corruption strategies, making good governance a conditionality for development aid.

These efforts, Hon. Warioba explained, did not achieve much in combating corruption. He identified two major hindrances namely, the international financial institutions' development aid conditionality and their narrow definition of corruption, and the effects of multi-party politics. Anti-corruption initiatives assumed by international financial institutions were too restrictive, focusing only on the effects of corruption on economic growth. Enacted policies and laws only targeted high-profile corruption and were in principle modelled along Western and Hong Kong models. In this respect, aid wholesale recipient governments (which include all the East African countries) adopted these models in a bid to continue receiving aid. Tanzania's Commission of Inquiry on Corruption, for instance, made recommendations for anti-corruption legislation, the result of which was the Prevention and Combating of Corruption Act. However, the Act focused largely on high-profile corruption. Hon. Warioba contends that the media has exacerbated the problem by also focusing on high profile corruption.

Despite the hope that the democratisation process would help reduce corruption, multiparty politics, instead caused corruption to flare up because of competition. Politicians resorted to corruption to win elections and bribery during elections is commonplace. In Tanzania, for instance, *takrima* has become a notorious form of corruption. Even the lead anti-corruption agencies purported to be independent by virtue of their mandate, are in reality either influenced by politics or have had their efforts frustrated by the corrupt.

Hon. Warioba proposed a national agenda for anti-corruption initiatives. The first point is to acknowledge that corruption in whatever form is detrimental to development and that denies citizens their right to appropriate services. The agenda should recognise



corruption at all levels in society, from the highest post in government to the lower levels, both in the private and public sector and society in general. Secondly, any measures taken should be inclusive of ordinary people. Educating the public on their entitlements, for instance, and the services available to them, would restrain officials from charging for services illegally. He suggested that strengthening anti-corruption agencies, which would address corruption, rather than establishing of several commissions of inquiry that simply give recommendations. He urged for strong leadership and partnership with the media and civil society, but cautioned that corruption has also penetrated the media. Though civil society has made important contributions, it continues to endorse the international community's approach to tackling corruption. Arguably, although international support is important, it should align with national strategies. In its current form, the international community is only exposing high-profile corruption, making national leadership answerable to the international community and not accountable to its citizenry. In this regard, the prescribed partnership between the international and national priorities should create avenues to instil transparency and accountability in the media and among civil society.

In concluding, Hon. Warioba reiterated that corruption is an immense problem in East Africa. Given that current efforts have not produced effective results, there is a dire need to devise new approaches to address the problem.

### **Plenary Discussion**

In the plenary discussions that followed, the participants raised some pertinent issues, namely the institutional and legal framework; the role of religion and traditional African values; the role of public officials in combating corruption; and zero tolerance of corruption. They stressed that leaders must be accountable to the people; this includes the president, whose role should be defined clearly. There

was consensus among participants and the presenter that petty corruption should be accorded the same attention as high-profile corruption. The participants recommended the early introduction of values of integrity amongst schoolchildren, and that resources to fight corruption should be allocated to civil society and not public officials, who usually misuse funding.

In response to the plenary discussion, Hon. Warioba re-emphasised the necessity of a culture of zero tolerance of corruption in society, and agreed on the role of religious leaders as active participants in the fight against corruption.

# 4

## A Summary of Country Papers

Six country papers were written for this Forum on the situation in Kenya, Rwanda, Tanzania, Uganda and Zanzibar. Papers were also prepared by delegates who discussed country papers at Forum discussions. A paper capturing developments in the area at EAC level was also presented.

### **Achievements, Best Practices and Lessons Learned, Challenges Faced and Recommendations for Strengthening the Anti-corruption campaign in Kenya and the Region <sup>12</sup>**

*Micah N. Nguli*

Nguli acknowledged the existence of corruption in Kenya, a phenomenon manifest in all sectors of the government, and a practice enmeshed with Kenya's history. He stated that, by the time the National Rainbow Coalition (NARC) government took over power in Kenya, the country's economy was in a state of decline, exacerbated by management inefficiencies in government institutions. Since 2003 however, Kenya under NARC made commendable efforts to address corruption and its antecedents through its Zero Tolerance to Corruption agenda, particularly with regard to the legislative and institutional framework.

Various anti-corruption initiatives and overall achievements were cited as attributable to the NARC government. These include a clear anti-corruption strategy outlined as corruption prevention

<sup>12</sup> This is a highlight of the paper written by Micah N. Nguli. Programme officer-Research and Advocacy from the National Anti-Corruption Campaign Steering Committee-Kenya.

and public education/awareness; investigation, and restitution. The NARC established key legislation and created and strengthened pertinent institutions like the judiciary, line ministries and other relevant institutions. The Kenya Anti-Corruption Commission (KACC) is the main independent anti-corruption body with investigatory powers.

Kenya's efforts extend to best practices in public administration and financial reforms, which have been noticeable in the last five years. By institutionalising good governance and the rule of law, issues of accountability and transparency seem to be expressed more confidently in public institutions which, in turn, encourage investor confidence and enhances economic growth. In addition to the establishment of general legislation on anti-corruption, specific legislation focussing on transparency and accountability in public office has been effected. A ministerial code of conduct is in place, and enforcement of annual declarations of assets and liabilities by public officers and their immediate family; and the dismissal of an entire cadre of procurement and forest officers, so as to maintain the integrity of recruitment to office effected. Other reforms include improving police capacity through leadership checks, and improving terms of service of the police force etc; a major up haul in the government's internal management of public resources, and administration through legal and institutional reform systems like the Results-Based Management (RBM) and Integrated Financial Information Management System (IFIMS); establishment of clear guidelines and rules of tax administration, as well as continuing education; and training in ethics and integrity for public servants. The results are evident as demonstrated by increased profits in public enterprises, issuing of dividends to the Treasury public enterprises and the reduction in transfer of resources to public enterprises.

Notwithstanding these accomplishments, Nguli stated that anti-corruption efforts still face significant obstacles. An important example, are the challenges faced through the transition process in Kenya. While the coalition government openly supports the fight against corruption, political realities have dictated the accommodation of diverse political interests, some of these compromises may not augur well with the fight against corruption. Additional challenges mentioned include a divided NARC, polarised by the constitutional review process; frequent constitutional challenges facing KACC stemming from the constitutional review process which undermined the anti-corruption programmes; and a culture of corruption entrenched by the previous regime that has permeated government institutions. In view of the above, most institutions have remained weak, despite increased efforts towards institutional strengthening and constitutional reform. Furthermore, because many officials and individuals in influential positions have benefited and continue to benefit from corruption, they continue to frustrate anti-corruption initiatives.

Nguli concluded by reinforcing Kenya's commitment to addressing corruption and promoting good governance. He underscored the need for government to prioritise implementation of existing reforms, speed up enactment and enforceability of pertinent legislation, and create a conducive environment for good governance.

## **Discussion**

*Dr. Kenneth Ombongi.<sup>13</sup>*

Dr Ombongi agreed with the presenter that Kenya has made efforts in combating corruption, as evident in the institution-building process. Nonetheless, he drew attention to existing critical

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13 Dr. Kenneth Ombongi is a lecturer in the History Department at University of Nairobi Kenya.

challenges. Of these he cited the many legal reforms that have not had concurrent changes. He argued that despite the existence of KACC, the Anglo-Leasing and Grand Regency scandals have not been dealt with satisfactorily. Citing the continuous police brutality, in spite of the Governance, Justice, Law and Order Sector (GJALOS) programme as an example, he argued that a number of reforms, which would otherwise have constituted best practices, had not been effectively implemented.

A change in style of governance was strongly recommended. The law should not be applied indiscriminately. Viable strategies, starting with identification of the inherent problems manifest in society, should be adopted. Addressing the root causes of the problems relating to corruption is critical, in order to deal with the paradoxes and the interrelated nature of these problem- which involves one problem triggering another. He explained this metaphorically, as “the paradox of the hunters becoming the hunted,” “of a growing economy without good living conditions for Kenyans,” “of reforms without change (the more things are reformed, the more they remain the same) and “the paradox of wide-ranging practices without wide-ranging results.”

## **The Mandate of the Office of the Ombudsman in Rwanda, Achievements, Best Practices, Lessons Learned and Challenges Faced**<sup>14</sup>

*Moses K. Mbombo*

Mbombo started by stating that Rwanda is committed to ensuring good governance, accountability, and preventing and addressing corruption. Rwanda's determination to achieve these goals is the result of its violent past, and reflects the need to establish a democratic environment to which its citizenry can emerge from this past.

The Office of the Ombudsman (the Office) established by the Rwandan Constitution of 4, June 2004 (as amended) is the lead organisation managing issues of institutional accountability and transparency in the country. Its mandate is spelt out in Organic Law No. 25/2003 of 15 August 2003 as amended by Law No. 17/2005 of 18 August 2005. The detailed functions of the Office include governing interaction between public/private institutions and citizens; managing transparency and accountability in public and private administration; and holding investigatory and examining powers in matters relating to corruption in public and private institutions. One stipulation under this law is that senior public officials and employees declare their assets as a means of preventing corruption. The Office is currently divided into four units, each with a separate function: to fight injustice, corruption and other related offences; to prevent injustice, corruption and other related offences; to manage declaration of assets; and administration and finance.

Mbombo highlighted the Office's achievements, which have included investigating corruption cases; public sensitisation on good governance issues; receiving and verifying asset declarations; and resolving up to 65.6% of the complaints received in 2007,

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14 This is a highlight of the paper written by Moses Katusime Mbombo who works in the Office of the Chief Ombudsman in Kigali, Rwanda.

though this percentage is lower than that of the preceding years. The Office has also managed to carry out inspections in government ministries and institutions, to evaluate their management and to make recommendations and, in some instances, impose sanctions. A commendable approach employed by the Office in conducting its evaluations has been to start with organisations closest to the people, and those that are spread throughout the country, for instance, local administration and the Rwanda National Police, and key government institutions like the Office of the Auditor-General, the Rwanda Public Procurement Authority, Central Public Investment and External Finance Bureau and the Social Security Fund of Rwanda etc. There has been an improvement in service delivery, transparency and respect for the rule of law in public institutions. In furtherance of its mandate, the Office has resolved to establish a professional code of conduct, assess the impact of the Office on Rwanda's people, and to participate in seminars and conferences organised by government institutions.

Mbombo linked the overall success of good governance initiatives in Rwanda to political will; a good legal, institutional and organisational framework, and public awareness. The Rwandan government has exhibited good political will, and is an active participant in the process of realising transparency and accountability.

Despite all these successes, the office faces a number of hurdles in the execution of its mandate like limited human and capital resources, failure by some officials to declare their assets, submission to the Office by the public of complaints outside the Office's mandate and reluctance of local leaders to hear citizen's complaints. Recommendations were given to enhancing transparency, provision of adequate resources for anti-corruption initiatives, further public sensitisation and encouraging local leaders to acknowledge and utilise decision-making processes. Mbombo concluded by expressing optimism about cooperation among anti-corruption institutions in the region.



## **Strengthening Public Accountability and Governance in Controlling Corruption in Tanzania: the Role of the Ethics Secretariat**<sup>15</sup>

*Coletha Kiwale*

In addition to providing conceptual definitions of terms such as corruption, public accountability, ethics and governance, Kiwale, in her introduction, contextualised corruption as a social and global phenomenon which affects developing countries, especially those emerging from socialism. She cites a country's history, political system, and level of socio-economic development as factors that determine the prevalence of corruption and which complicate the fight against corruption. She highlighted the correlation between corruption, ethics and accountability. She argued that the level of corruption is determined by the monopoly of power that officials enjoy and exercise, since this has a direct bearing on the degree of accountability they are expected to give for their actions. She postulates that where administrative rules and regulations are weak, discretionary power is extensive. She argues that accountability may be weak due to poorly defined ethical standards or ineffective watchdog agencies. She underscored the importance of ethics as a cornerstone of accountability, and the need for clear ethical standards as a measure of good governance, both of which are critical in maintaining and enhancing public confidence in government. Accordingly, a strong case is made for clear ethical standards within constitutional frameworks, statutory law and codes of ethics and conduct.

A number of reform programmes introduced by the United Republic of Tanzania to fight corruption and to strengthen its public accountability and governance were enumerated. Among

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15 Ms. Coletha Kiwale is the Principal Investigation officer and Zonal Head of the Ethics Secretariat, Arusha Tanzania

these are the Public Service Reform Programme, Public Finance Management Reform Programme, Legal Sector Reform Programme, strengthening the Prevention and Combating of Corruption Bureau; the establishment of the Presidential Commission of Inquiry Against Corruption, the Commission for Human Rights and Good Governance (CHRAGG), the Good Governance Coordination Unit; the establishment of the Code of Ethics and Conduct for Public Service, the Public Leadership Code of Ethics Act and the introduction of the National Anti-Corruption Strategy Action Plan. The paper devotes special attention to two of these namely, the Public Leadership Code of Ethics Act and the National Anti-Corruption Strategy Action Plan.

### **The Public Leadership Code of Ethics Act**

The Public Leadership Code of Ethics Act was born out of a constitutional amendment of 1995, and established the Ethics Secretariat as a department under the Office of the President. Some of the basic principles that underlie the Code include incontestable integrity among public leaders, decision making in accordance with the law and public interest, avoiding conflict of interest, a prohibition on solicitation and acceptance of gifts and benefits; confidentiality of public information, prohibition of misuse of government property for private benefit, and declaration of wealth and liabilities. The Secretariat is mandated to receive declarations of wealth by public leaders; receive complaints from the public regarding breach of the Code, and to inquire into allegations of breaches of the Code by public leaders including members of the executive, legislature, judiciary, police and the military.

A number of recommendations were made based on the belief that instilling ethics in humans is one of the most effective preventative approaches in the fight against corruption. The recommendations included:

- Promoting a culture of observance of ethics among public leaders as part of their daily lives and promoting ethics among the populace as a whole, at family and societal levels, through national school syllabi, religious and professional bodies and associations, the private sector and the media.
- Decentralising the functions of oversight and watchdog institutions, such as the Ethics Secretariat, closer to the people in order to strengthen public accountability.
- Increasing public awareness among both state and non-state actors about the codes of ethics applying to public leaders to ensure better public monitoring, and therefore improved adherence to ethical standards.
- Improving capacities of oversight and watchdog institutions as well as civil society organisations (CSOs) regarding monitoring of observance of ethics by public leaders.
- Continuous strengthening of legislation, regulations and codes of ethics.
- Introduction of a code of ethics for political parties.
- Institutional strengthening of oversight bodies, including the Ethics Secretariat, to enhance performance.

### **The National Anti-Corruption Strategy Action Plan(NACSAP)**

The NACSAP was introduced in 1999 to mainstream ethics in all anti-corruption strategies, with the first phase implemented in 2001-2005, and the second phase launched in 2006. As a result of the first phase, there was improved transparency and accountability in the public service, which triggered more foreign and local investment, a more open agenda on corruption, and enactment of new anti-corruption legislation the Prevention and Combating of Corruption

Law 2007. Phase II aims to improve and strengthen public delivery and the legal and judicial systems; strengthen oversight and watchdog institutions, and enhance collaboration between government departments and the private sector, civil society, including NGOs, and the media.

In conclusion, the author reemphasises the importance of values and integrity in building sustainable social systems and the importance of developing national ethics agendas. To ensure more effective control of corruption in the wake of the fight against corruption, oversight and watchdog institutions were challenged to address a number of issues: Where is the starting point for ethics interventions? Do ethical standards align with the national and international development agendas? How inclusive, participatory and collaborative are ethics interventions in ensuring accountability? Do the ethical standards stipulated in different laws reflect the national socio-economic frameworks? Is there a national policy on ethics? How effective and efficient is ethics mainstreaming in anti-corruption programmes?

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## **Discussion**

*Prof. Chris Maina Peter*<sup>16</sup>

Prof. Peter decried the alarming levels of impunity in corruption cases and the lacklustre attitude of public officials towards fighting corruption in the region. Like Hon. Warioba, Prof. Peter regrets the institutionalisation of bribery in Tanzania through takrima. Prof. Peter also condemned the culture of petty corruption, which has greatly eroded the capacity of people to fight for their rights. He regretted the fact that some people in Tanzania do not believe there can be “free legal service”. He also criticised the secrecy surrounding

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16 Prof. Chris Maina Peter is a Professor of Law and Senior Lecturer at the Faculty of Law at the University of Dar es Salaam in Tanzania.

what should be public information, and blamed the secrecy for promoting corruption. In this context he raised two important questions; why agreements between government and investors are confidential, and why declarations of wealth by leaders should be held secret. Like many of the participants, he raised concern about the lack of political will to fight corruption, which means laws are not enforceable. Furthermore, he pointed out that the lifestyles of the people, especially of politicians are sumptuous, but that people were not holding the leadership to account. He derided the presumption that low salaries justified corruption, citing contrary evidence to suggest that recipients of high salaries are equally corrupt. Lastly, regarding Tanzania, Prof. Peter emphasised the need to link corruption and ethics to the ideology of the ruling political party, Chama Cha Mapinduzi (CCM). It was on account of CCM's ideology that the government of Tanzania abolished recognition of people's expectations of their leaders, when it replaced the more effective Arusha Declaration with the limiting Zanzibar Declaration.

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## **Strengthening Public Accountability and Governance in East Africa: Uganda's Experience**<sup>17</sup>

*Angela M.T. Bafokuzaara*

Bafokuzaara was of the view that corruption has developed a complex and transnational form, thus calling for equally progressive anti-corruption strategies. She started by defining the scope of corruption, accountability and governance, and argued that the latter two should be addressed properly so as to control the spread of corruption.

She pointed out that Uganda's corrupt condition is an outcome of the country's politically unstable past, which triggered the breakdown of ethical behaviour and, in turn, affected governance and social morals. The effect is evident in institutional mismanagement and high levels of corruption. According to the National Service Delivery Survey of 2004, corruption is prevalent in most Ugandan institutions. The Survey revealed that the percentage of bribes received by officials in the justice, law and order, and the health sector were very high. Furthermore, according to the Transparency International's Global Corruption Perception Index (CPI), between 2002 and 2007, Uganda's corruption score increased from 1.9 in 2001 to 2.7 in 2006/2007.

The causes of corruption were described as diverse, and include political instability, an ineffective or inadequate institutional and legal framework, poor institutional administration and management, lack of resources, and lack of societal willingness to fight corruption. Corruption in terms of impact is detrimental to development, limiting access to appropriate and safe services to the citizenry. It is for these reasons that the government of Uganda has taken steps to fight corruption through national and regional efforts. Uganda's

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17 This is a highlight of the paper written by Angela M.T Bafokuzaara, Deputy Director of Ethics Education in the Directorate for Ethics and Integrity, Office of the President in Kampala, Uganda.

anti-corruption law is premised on the Constitution of Uganda, 1995 and is backed by international instruments on corruption. Uganda boasts a comprehensive legal framework governing leadership, management in public institutions, accountability and transparency. This framework comprises the Leadership Code Act 2002 as amended, the Inspectorate of Government Act 2002 as amended, the Access to Information Act, 2005 as amended, the Prevention of Corruption Act 1970, the Local Government Act 1997 as amended, and the Public Finance and Accountability Act, 2003. A number of other bills are yet to be passed by parliament. There has been quantum improvement in the institutional and policy framework, such as the establishment of the Inspectorate of Government, the Directorate for Ethics and Integrity, the Inter-Agency Forum, and a progressive judiciary, the law and order sector. Different policies, including the Decentralisation Policy 1993, the National Strategy and Plan of Action to Fight Corruption have been put in place, and a coalition between private sector, CSOs and the Inter-Agency Forum is being built.

Best practices and lessons learned were also highlighted. Best practices outlined include consultations during policy formulation, liberalisation of the media allowing it to promote good governance and publication, and circulation of the Local Government Public Accounts Committees (LGPAC) rules and regulations. Regarding lessons learnt, Bafokuzaara admitted that there was increased need for political will among members of the public and the political leadership to fight corruption; increased coordination and collaboration as an important tool for accessing resources and in implementation; partnering with civil society and the private sector and involvement of the media engaging public consultations.

These accomplishments notwithstanding, Bafokuzaara observed that Uganda's fight against corruption faces several challenges.

Firstly, corruption has become more complex and sophisticated, exacerbated by advancing technology. Secondly, many people benefit from corruption, prompting societal moral degeneration. Threats and attacks on persons who choose to fight corruption is also a major problem. The challenges posed by insufficient resources, ineffective mechanisms for investigation of corruption cases, poor management of public resources by local government, and the problem of case backlog, which curtail the pace at which cases are disposed of by the legal system were also listed.

In conclusion, the writer recommended further strengthening of the legal framework; building capacity in anti-corruption institutions; fostering attitude change regarding corruption among citizens, accountability and transparency by government and its partners; and reviewing of the Auditor General's report. She also urged government to develop a systematic national approach and maintain the East African regional partnership to fortify good governance and public accountability.

## **Discussion**

*Dr Yasin Olum*<sup>18</sup>

Dr Olum provided a definition and scope of accountability, public accountability and governance, and the inter-relationship between these concepts. His presentation was premised on governments' duty of accountability and transparency to the people, and he rationalised this requirement on pertinent rules and obligations. In accordance with international law, governments have the obligation to enforce human rights, which entail economic, social and cultural rights. Likewise, the public service derives its authority from citizens so, logically, public institutions should be accountable to the people. Aside from this rationale, reinforcing the need for public

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18 Dr. Yasin Olum is a senior lecturer and head of the Department of Political Science and Public Administration, Makerere University, Kampala.



accountability is necessary because citizens are sometimes unaware of the full extent of their rights and the state's responsibilities to them, resulting in the systemic denial of accountability in undemocratic countries.

In line with the need for good governance, a conducive environment should be created in which citizens have the ability to monitor the extent to which government and politicians are conducting their duties diligently and transparently. Similarly, the role of professional ethics and accountability in fighting corruption and promoting good governance was emphasised. Dr Olum acknowledged the political, economic and institutional challenges faced in promoting public accountability and good governance. Such challenges include government's limited capacity, inability of the citizenry to hold their governments accountable because of social and political reasons, a weak civil society, weak and inefficient government institutions, and poor coordination within public institutions.

Dr Olum called for multi-dimensional and integrated solutions to match the challenges he cited earlier regarding promotion of public accountability and governance. Among these solutions is the need for auditors of public companies to reinstate confidence, reliability and integrity in financial reporting; enforcing legislation relating to access to information; enforcing and supporting freedom of expression; ensuring provision of quality universal public services; instituting an enforceable code of ethics or conduct for public officials, reforming the electoral system to promote credibility; and creating a constructive and informed policy debate to increase legitimacy of government policy choices.

In summation, Dr Olum made the following important statements:

- There has been confusion in conceptualising public accountability.

- Public institutions, civil society and the media have made some legal and institutional reforms, but public accountability mechanisms are becoming increasingly complex.
- Effective governments are those that are evidently accountable and responsive to their citizens.
- Accountability controls in governments should be strengthened.
- Political capacity for parliament to hold the government and public service accountable should be strengthened.

## **The Dimension of Transparency, Accountability and Anti Corruption, Initiatives in Zanzibar: History, Current Policy and Legal Framework** <sup>19</sup>

*Othman Masoud Othman*

This paper reviewed the issues of transparency, accountability and the anti-corruption framework in Zanzibar. It demonstrated from a historical perspective how the above-mentioned good governance issues are fairly new to Zanzibar. The reason for their slow evolution is attributed to a government structure characterised by monopolistic politics, and a centralised and restrictive government administration - a predominant feature of immediate post-revolutionary Zanzibar. Established after the 1965 Zanzibar Revolution that overthrew the Sultan, the Revolutionary Council of Zanzibar had executive and legislative power, and abolished all forms of civil society participation. At the same time, social integration and economic activities were controlled by the state. For instance, under the Special Interest Appropriation Decree, Decree No. 15 of 1967, the president is empowered to appropriate a given amount of money to be paid by the accountant-general. The minister of Trade could declare a commodity a controlled commodity under the Commodity Control Decree, Decree No. 4 of 1966, and consequently no person, with the exception of a state-owned corporation, was permitted to engage in a wholesale trade of such commodity.

Othman postulated that, despite this post-revolutionary system of government, the level of corruption is believed to have been quite low at the beginning of the revolutionary period. It is contended that corruption became acute only after the death of the first Zanzibar president in 1972. An attempt to address the growing levels of corruption resulted in the first anti-corruption

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19 There are highlights of the paper written by Othman Masoud Othman, the Zanzibar director of public prosecutions.

legislation, the Prevention of Corruption Decree, No. 4 of 1975, which created corruption offences, established two anti-corruption commissions, charged the attorney-general with investigatory powers in corruption matters and granted the office a mandate to file charges or information to the high court. The Decree was amended twice between 1980 and 1985, before it was repealed in 1985. Othman argued that the provisions of the decree on corruption and abuse of office were narrow, inadequate and only relate to such issues as bribes, yet they remain in force under the current Penal Act, Act No. 6 of 2004 of the Laws of Zanzibar.

Unlike anti-corruption, accountability and transparency initiatives only began to make headway in the late 1970s. Premier developments in 1979, in the form of the Zanzibar Constitution 1979, established presidential elections, an electoral commission and a House of Representatives. Unfortunately members were not elected by the people, but appointed from local government councils, party organisations and revolutionary committees. Significant changes occurred within the constitutional framework with the repeal of the 1979 constitution and introduction of the current 1984 constitution. The writer noted a marked improvement in the framework compared to what it had been a decade before. The new constitution recognises the House of Representatives as the representatives of the people, the independence of the Office of the Controller and auditor-general, a presidential term limit, regular elections and a Bills of Rights section. It is also against the backdrop of the 1984 constitution that multiparty politics and elections emerged in 1992 and 1995 respectively, despite major political tensions between the opposition Civic United Front (CUF) party and the ruling CCM parties. An accord was later signed between CCM and CUF on governance issues, and a ministry of constitutional affairs and good governance established. The result of this accord and other related government initiatives implies progressive and tangible results for good governance.

Despite the progress, Othman states that, like other emerging democracies, several areas still require work, especially in relation to freedom of the judiciary and freedom of the press. He decries the fact that the House of Representatives continues to have a percentage of the representatives appointed by the president, a system he believes raises key questions regarding the effectiveness of the accountability, transparency and good governance mechanisms in general. Despite the gains in accountability and transparency issues, Zanzibar is yet to set up a formal anti-corruption strategy or policy framework. A draft bill of 2005 has not been passed, although an anti-corruption strategy is currently under construction. Similarly, without an independent anti-corruption authority, a highly constrained, small unit in the Criminal Investigation Department (CID) of the police force, to investigate corrupt public officials, remains in charge of corruption cases, though it is restricted by bureaucracy and corruption. As earlier noted, the Penal Act provisions on anti-corruption are narrow and inadequate. Othman argues that, without a clear policy and institutional framework and firm political will, developments regarding accountability and transparency are limited.

Nevertheless, the author remains optimistic that, albeit the limitations, some progress had been made in strengthening accountability and transparency in Zanzibar. He urges the isles to develop existing anti-corruption strategies and assure its people of its intentions to control corruption.

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## **Zanzibar initiatives in Transparency, Accountability and Anti-Corruption**

*Said M. Muhammed*<sup>20</sup>

In his discussion, Muhammed largely agreed with Othman's presentation; his historical account of Zanzibar's governance structure in the immediate post-revolutionary era and the low corruption levels attributable to the country's strict governance structure. However, he postulates that the structure adopted in the post-revolutionary period was a justified means to ensure peace and stability. Muhammed agrees that the situation has changed in Zanzibar, and that corruption has become a national problem, with a national impact. He cites the theft of public property, especially agricultural products, as a major concern that has contributed to denying people their right to essential goods and services. He reiterated the concern about separation of powers, which had dominated previous discussions at the Forum, and condemned the presidential appointments to the House of Representatives, especially the regional commissioners, which creates conflict of interest.

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### **Plenary Discussion**

With the exception of Zanzibar, which still has a feeble legal, policy and institutional framework for fighting corruption, and Rwanda, which has been lauded for its marked achievements in the area, overall, there was consensus at the Forum that, despite the existence of an institutional, policy and legal framework, corruption remains a major problem in the region.

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20 These are highlights of the presentation by Said M. Muhammed, Senior Governance Officer, in the ministry of Good Governance and Constitutional Affairs.

Rwanda's efforts to fight corruption were recognised and other EAC countries were urged to emulate the country and replicate its best practices. In particular, Rwanda was lauded for its fearless and courageous enforcement of the law, consistent and indiscriminate application of punishment of corrupt leaders, and for the president's personal initiative in the anti-corruption struggle. It was stated that the president is very strict on corruption and is quick to dismiss government officials involved in corruption, irrespective of whether they are members of the ruling party. Furthermore, at the initiative of the president, an evaluation of the country's achievements is made at the end of every year. On the contrary, very few incidents of such courageous encounters with the corrupt in the rest of region were recounted at the Forum. An exception was that of Hon. Mr Justice Ogoola, principal judge of Uganda, who fearlessly took on the anti-corruption crusade during the Global Fund probe in Uganda, in spite of intimidation by one of the suspect ministers who questioned the judge's credentials, as the judge allegedly didn't contribute to the fight to gain power.

Lack of government commitment, manifested by poor implementation/enforcement of the policy, legal and institutional framework, and a culture of impunity, were identified as key factors that have thwarted the anti-corruption crusade in the region, especially in Uganda and Kenya. The other factor that complicates anti-corruption efforts in the region is the fact that the same officials mandated to fight corruption participate in corruption themselves.

Expounding on the point of poor law and policy enforcement, and the culture of impunity, one participant observed that *wananchi* are aware of corruption and its evils, but the problem lies with law enforcement. Another participant questioned why bank accounts and assets of those involved in the Grand Regency, Goldenberg and Anglo-Leasing scams in Kenya had not been frozen immediately,

and why the individuals were not charged. Yet another noted that, in the African context, laws are not impartial codes that regulate behaviour. Instead, law enforcement relates to: Whose son are you? and Which ethnic group do you come from? An illustration, was given of the incident in the United Kingdom(UK), when prime minister Blair's son was found drunk in Trafalgar Square, and was officially warned by the police. Bringing the issue back home, the question was, "Would Kibaki do that?"

It was noted that the above state of affairs is often driven by strong executive control. In some countries in the region the presidency wields imperial powers and their decisions are not questioned. In other cases, government officials are very powerful and obstruct anti-corruption efforts. In Zanzibar, for instance, it was stated that the minister of Finance wields a lot of power and often acts as "president." Regrettably, it was noted that some government officials present a false picture of progress regarding the governance situation in their respective countries.

In some countries, like Zanzibar, the institutional framework to fight corruption is weak. Weak and corrupt judiciaries exacerbate the situation across the region. Furthermore, concern was raised that, in some instances, civil society actors, especially NGOs working the area of anti-corruption, have their own and different agendas.

In view of the above, participants agreed that political will is crucial in the fight against corruption and urged that sanctions should not be employed selectively. All persons involved in corruption should be dealt with in accordance with the law, irrespective of their positions in government, ethnic group or social class. The need for mainstreaming ethics in society was underlined. The role of professional ethics and accountability in anti-corruption initiatives, with particular emphasis on the link between accountability and good governance, was also stressed. Research as a precursor to developing effective strategies to fight corruption was recommended.



It was further advised that government officials need to depict true pictures of the governance issues in their respective countries. Accordingly, important issues, such as gaps in investigation and challenges faced by public institutions in fighting corruption, should be made known.

A recommendation was made to engage other creative ways of fighting corruption, for instance through culture, music and the arts. Creative propositions mentioned were the engagement of cultural icons such as musician Mzee Joseph Ngala, and exploring value-oriented literature in indigenous languages, and poetry and the arts. It was proposed that the youth should be targeted through pop music, and other age groups or sections of the population targeted through other programmes such as music and drama. EAC countries were urged to utilise and enforce traditional African values that propagate honesty and integrity and which continue to be held in high esteem.

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## **Parliamentarians and Corruption in Africa: The Challenge of Leadership and the Practice of politics**

*Hon. Augustine Ruzindana*<sup>21</sup>

Hon. Ruzindana's presentation was based on the above study in which he was a principal researcher, conducted under the auspices of the African Parliamentarians' Network Against Corruption (APNAC) in several African countries, which focused on the attitudes of African parliamentarians to corruption. Its aim was to investigate how corruption affects political behaviour, attitudes and practices of elected parliamentarians in Africa. Hon. Ruzindana asserted that the role of elected leadership is crucial in fighting corruption.

The paper revealed that Members of Parliament (MPs) have knowledge of corruption and its impact on development. Equally, there is widespread acceptance of corruption. There seems to be inconsistency in behavioural standards, which is blamed on behavioural norms in the practice of politics. The key drivers of corruption for parliamentarians were highlighted as poor remuneration of MPs, the need to raise resources for electoral campaigns and financial demands by constituents. Parliamentarians face a number of structural impediments in their efforts to combat corruption. The most severe impediments include strong executive control over the budget and distribution of state services, which disempowers MPs from enforcing accountability and transparency; weak anti-corruption commissions and enforceability of anti-corruption legislation which frustrate the efforts of MPs to raise public support in the fight against corruption; and weak parliamentary oversight committees, few of which are fully functional, which makes it impossible for MPs to scrutinise the behaviour of ministers and public servants. Closely linked with this is the practice of bribery

21 These are highlights of a paper presented Hon. Augustine Ruzindana a former inspector general of government in Uganda and a former member of parliament.

and political bullying of MPs. Other obstacles identified were weak and/or partisan media on the one hand, and undermining of press freedom and impartiality by those in power, including through intimidation and physical abuse on the other; a weak and/or partisan civil society/NGO sector; and acceptance of corruption amongst citizens. The presenter urged all concerned to not simply ask or question whether the political will exists, but to delve deeper into whether it actually exists. Donors were also condemned for indirectly permitting corrupt practices to continue because of their continued lending to corrupt governments.

By way of recommendation the study suggested short-to-medium term recommendations, and medium-to-long term recommendations, as follows:

**Short to Medium Term Recommendations**

- Educating parliamentarians on their roles vis-a-vis their constituents-beyond simple resource distribution;
- Partner with CSOs to educate constituencies about the roles of parliamentarians;
- Work to strengthen anti-corruption commissions through, among other measures annual reviews by parliament of the objectives of these bodies;
- Establishing a comprehensive strategy to assist election financing, which may include restrictions on sources and levels of donations, time limits on campaigns and rigorous application of disclosure regulations;
- Improving oversight mechanisms on locally disbursed funds, such as constituency development funds.

### **Medium to Long Term Recommendations**

- Build strategies to reverse negative behavioural norms that promote corruption, such as penalties systems to encourage and reward whistle blowing;
- Strengthen media independence;
- Strengthen anti-corruption institutions through parallel implementation strategies, such as increased education, and building strategies to reverse negative behavioural norms that promote corruption mentioned above;
- Donors, and especially international financial institutions, should prioritise anti-corruption on their agendas, and be willing to suspend funding to governments exhibiting high levels of corruption, as well as increase coordination of their anti-corruption goals and support to stakeholders in the fight against corruption;
- Address socio-economic factors that exacerbate corruption.

In sum, the study concludes that corruption poses a threat to development. One of the difficulties of fighting corruption is the manner in which it can act as a vortex. Accordingly, parliamentarians should play their role in addressing the corruption challenge and support anti-corruption initiatives aligned to reflect current circumstances.

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### **Discussion**

The discussion focussed on issues regarding the sustainability of anti-corruption initiatives, strong executive powers, and the commitment of MPs to fight corruption.

Responding to these comments, Hon. Ruzindana advised that a distinction should be made between the role of parliament as an institution, and MPs as individuals, in fighting corruption. He

advised that the oversight role of parliament can be effectively exercised during question time, when ministers appear before parliament, and scrutiny by the Public Accounts Committees (PACs) of parliament. Given these options, Hon. Ruzindana expressed confidence that if parliamentarians commit to fighting corruption, some tangible results would be achieved. However, in light of MP's extravagant promises and electoral bribery, a proposition was made to sensitise people about the role of MPs.

Rwanda was commended in its efforts to fight corruption. He however underlined the need for Rwanda to build institutions; otherwise the political will of the president in fighting corruption may not be sustained. He also cautioned that governance and enforceability of policies and laws is easier in smaller nations, thus the case of Rwanda should not be equated or adopted wholesale as a model. An examination of countries on a case-by-case basis was therefore proposed.

Hon. Ruzindana postulated that the building of exemplary institutions to fight corruption to a great extent lie with the executive power of the presidency. Citing the case of Uganda, where all power seems to vest in the president, he recommended an examination of the constitutional framework to streamline power structures so that the president's powers are limited. He also said that improving the credibility of weak public institutions would be the best means of reform.

On his role as first Inspector General of Government of Uganda, Hon. Ruzindana agreed that starting the IGG's office in Uganda and putting it on good footing was a difficult matter. He noted that once leaders or anti-corruption institutions become involved in corruption or become tainted, public credibility of these institutions compromised, which poses a major setback to anti-corruption efforts.

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## **Regional Efforts to Strengthen Public Accountability and Governance in East Africa<sup>22</sup>**

*Joseph Clifford Birungi*

The presentation shed light on public accountability and governance in East Africa (EA) and the efforts to strengthen these important tenets. Birungi provided an in-depth background on the EAC, its organs, vision and objectives, and highlighted relevant EAC Treaty provisions, as well as policy developments towards achieving good governance and fighting corruption.

The EAC goal to widen and deepen economic, political and cultural integration, in order to improve the quality of life of the people of East Africa through increased competitiveness, value-added production, trade and investment was reiterated. Birungi cited the fundamental principles of the EAC as stipulated in Article 6 of the Treaty, which guide the Community in the achievement of its objectives, namely adherence to principles of good governance and democracy, rule of law, transparency and accountability, social justice and maintenance of acceptable standards of human rights. In furtherance of these principles, the Treaty recognises the importance of political cooperation amongst the EA countries and aspires to establish an EAC Political Federation to deepen political integration and promote regional peace and stability.

Having recognised the importance of good governance, Birungi stated that the Community has taken pertinent steps to strengthen good governance by establishing an EAC Development Strategy 2006 – 2010, which provides for development of a regional framework on good governance. He elaborated that the EAC construes good governance as a broad phenomenon with several pillars, and had accordingly commenced to develop initiatives to prepare the region for the EAC Political Federation. This framework will provide regional standards and best practices to harmonise

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22 Principal International relations officer, East African Community.

the partner states' policies, strategies, programmes, practices and benchmarks on governance, democracy, rule of law, transparency and accountability and respect for human rights. By the time of the Forum, the framework was being developed with active engagement of partner states. Furthermore, initial meetings had been organised with respective sectors in the partner states, including anti-corruption authorities, electoral commissions and human rights commissions as well as other key actors in the justice, law and order sector. It was projected that the EAC would, at a future stage, also consult critical stakeholders including civil society, professional groups and private sector.

Other initiatives relating to good governance in which the EAC Council of Ministers had been involved were highlighted. These include a plan of action for promotion and protection of human rights; establishment of a sectoral committee on anti-corruption ethics and integrity; institutionalisation of meetings of heads of anti-corruption authorities on the EAC calendar of activities; and development of a protocol on anti-corruption, ethics and integrity that will provide standards and promote accountability for partner states, the EAC, its organs and institutions.

But like any initiative, existing challenges were outlined. Firstly, institutional and political challenges hamper efforts to build a system of good governance that is free of corruption. Secondly, governance issues are sensitive and require enhanced political will; and lastly another challenge highlighted was the existing disparities in governance structures and its practices.

In conclusion, Birungi recognised civil society as one of the critical stakeholders in the EAC integration, and commended the EAC for involving CSOs in its processes. He acknowledged KCK's contributions and called for other potential contributions by CSOs to be examined critically. He complemented the political will the EAC enjoys from the region's political leadership. Lastly, he stated

that the challenge that remains is developing regional policies and frameworks that lay the foundation for the East African Political Federation.

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## **Discussion**

During the discussion two key issues arose. One, was why the EAC was pursuing a political federation yet supra-national organizations, such as South African Development Community (SADC), had none. In response, Birungi observed that SADC, though more advanced than EAC, does not envisage a political federation. In East Africa, a central controlling authority was seen as a necessary driving force, hence the political federation and the fast-tracking of the political federation. Furthermore, since 80% of East Africans were supportive of the political federation, the EAC received regional support for the political federation from the majority of East Africans with divergence only arising with the fast tracking. Second, he affirmed that the EAC protocol on anti-corruption would be subjected to a validation process by different stakeholders. Although the presenter claimed that there is political will amongst the political leadership in the region to fight corruption, participants were skeptical about this view and maintained that immense government interference continued to thwart anti-corruption efforts in the region.



# 5

## Discussions, Recommendations and the Way Forward

The group discussion that followed focussed on three thematic areas, namely the conceptualisation, relevance and enforceability of ethics and accountability and the issue of corruption; experiences in public accountability and ethics and mechanisms for improvement; and recommendations for future cooperation among stakeholders.

### **Ethics, Accountability and Corruption**

There was consensus on the meaning of the key terms corruption, ethics and accountability, all of which, it was agreed, are important tools in promoting good governance. Ethics was defined as a branch of philosophy that inquires into the nature of ultimate value and the standards by which human actions can be judged as right or wrong. Accountability was defined as the obligation to answer publicly, fully and fairly, for the discharge of responsibilities that affect public service delivery. Corruption was defined as the misuse of public office for private gain, which involves the conversion of public funds and other resources or abuse of power by holders of public office for selfish ends.

On the basis of the above definitions, ethics and accountability were viewed as mutually reinforcing. Ethics were viewed as a requirement to set proper standards of behaviour, to which public institutions and society are held accountable, while accountability was considered important in the promotion of efficient public administration and management, which then ensures proper

allocation of resources and accessibility of efficient services by the people in an equitable, transparent and legitimate manner.

Other pertinent issues were also explored. Firstly, it was agreed that the existing institutional, policy and legal anti-corruption framework and mechanisms, are ineffective and lack coordination. Institutional weaknesses were partly blamed on the lack of initiative by the institutions to implement anti-corruption policies. Some anti-corruption institutions look to other institutions to take the lead. In addition, participants noted that laws are not enforced, because of lack of political will and selective enforcement. Participants thus proposed improved coordination and strengthening of these institutions to enable more effective implementation and enforceability.

Secondly, regardless of the current levels of awareness about corruption in the region, it was noted that there are difficulties in fighting corruption because of society's complacency towards corruption. It was conceded that corruption, in whatever form, petty or grand, remained corruption. To this end, a culture of zero tolerance to corruption in society was recommended. Additionally, petty corruption has been largely ignored, and that fighting it should be emphasised as part of the reformed anti-corruption initiative. In this respect, strategies identified included sensitisation at the individual, family, and local community levels including in school, religious and other peer groups, coupled with instilling social morals among schoolchildren at an early age and in society as a whole.

### **Experiences in Public Accountability and ethics and mechanisms for Improvement**

People-driven and people-oriented mechanisms were strongly advocated as a means of improving the fight against corruption. The people-centred approach of the revived EAC, with its involvement of the private sector, was lauded as an important attribute that

was lacking in the former EAC. Participants also recommended capacity and institutional building as opposed to simply building of personalities. It was argued that strong institutions can monitor and counter government and public officials that may try to limit anti-corruption initiatives. Despite acknowledging the existing legal and policy framework on anti-corruption, participants believed that some gaps still need to be filled. They suggested that countries be compelled to ratify and domesticate relevant international anti-corruption treaties as a stopgap measure. Lastly, there was a recommendation that, in the current environment of poor transparency and accountability, allocation of resources would be better placed with civil society than public institutions, since the latter are prone to misappropriating resources.

### **Recommendations for Future Cooperation of Stakeholders**

The way forward for the Regional Forum was captured under the above thematic area. While participants observed that foundational inroads had been made in achieving public accountability and transparency, they were equally cognisant of the existence of several challenges. To this end, participants recommended the following:

- i) Cooperation amongst the EAC and other stakeholders through the establishment of an East African Public Accountability and Governance Forum (EAPAGF), as an autonomous forum. The suggested functions of the Forum were clearly laid out as follows:
  - Sharing of information amongst the different stakeholders working in the area of public accountability and governance.
  - Reviewing existing framework(s) and strategies for effectiveness in good governance and public accountability.

- Making appropriate recommendations.
  - Engaging in enforcement mechanisms of national institutions through lobbying and advocacy and publicity in accordance with regional and international obligations, conventions, treaties and institutions.
  - Fostering coordination of the efforts of CSOs involved in public accountability and governance at local, national and regional level.
- (i) KCK was urged to facilitate the coordination, by operationalising the EAPAGF through drawing up a constitution, calling or organising stakeholder meetings, publicising EAPAGF and mobilising the necessary resources.

### **Concluding Remarks**

The Chairperson of KCK officially closed the Forum and on behalf of KCK, expressed his appreciation to the participants for taking part in the Forum and discussing the pertinent issue of strengthening public accountability and governance in East Africa. He expressed the hope that the experiences shared would provide useful lessons and best practices for the region. Finally, he extended KCK's gratitude to the Ford Foundation for supporting the event and to the KCK Secretariat for organising the Forum.

On their part, participants showed appreciation to the presenters for the wealth of knowledge they provided, and suggested that the presentations made at the Forum should be availed for further discussion at the APNAC meeting scheduled for October 2008 in Burundi.

# Annex: Papers

## **Opening Address by the Deputy Secretary General of the East African Community**

*Hon. Beatrice Birungi Kiraso*

### **Hon. Chairman, Hon. MPs, Distinguished participants, Ladies and Gentlemen**

On behalf of the Secretary General, East African Community (EAC), I am greatly honoured to give a welcoming address to this distinguished forum on strengthening public accountability and governance in East Africa. In my address, I would like to reflect on the vision, mission and objectives of the Community, and the negative impacts of lack of transparency and bad governance while highlighting some of the EAC's initiatives on the important issues of public accountability and governance in the regional integration process.

Before I move on, I would like to acknowledge the initiative by Kituo cha Katiba to bring together representatives from leading regional institutions to participate in dialogue and reflect on common approaches to fighting corruption and strengthening public accountability in the region. I must say the initiative is timely.

### **Introduction**

The Vision of the EAC is to have a prosperous, competitive, secure and politically stable united East Africa. The Mission is to widen and deepen economic, political and cultural integration in order to improve the quality of life of the people of East Africa through increased competitiveness, value-added production, trade and investment. The main goal for the EAC is to improve the standard of

living of the citizenry. According to the EAC Treaty, the vision of the Community is to be realised in an incremental progression through the stages of a customs union; a common market; a monetary union; and ultimately a political federation of the East African states.

Article 6 of the Treaty for the Establishment of the EAC, prescribes adherence to the fundamental principles of good governance, democracy, the rule of law, accountability and transparency for the achievement of the objectives of the Community. In pursuance of these principles, the Council of Ministers has acknowledged the need to develop a regional framework on good governance.

### **Reflection on the Link between Corruption and Governance**

Research on the negative impacts of corruption has established the link between corruption, underdevelopment and governance. Corruption facilitates diversion of public resources into private hands. It is most apparent in situations where there is no transparency and accountability is lacking. Corruption erodes the ability of states to provide social services for its citizenry, thereby threatening human security and the human rights of individuals. Indeed, the breakdown of social services and amenities leads to instability, insecurity and poverty. In this sense, corruption and improper management of public resources undermines economic development, leading to depletion of resources. The less advantaged suffer because states fail to provide them with welfare services.

There is a strong correlation between corruption and governance. Governance is considered to be good if it is free from abuse and corruption, pays due respect to the rule of law, facilitates organised and informed participation of the public in public affairs, has fair legal frameworks that are enforced impartially, protects and promotes human rights, and has an independent judiciary and impartial police force. Good governance also includes transparency in taking decisions that affect the public, responsiveness, consensus

building, inclusiveness, equity, effectiveness and efficiency and, above all, accountability to the public. The characteristics of good governance provide benchmarks for corruption or lack of it in a system of governance.

The fight against corruption requires more than good policies and legal frameworks. Establishment of independent anti-corruption authorities, and oversight institutions and ensuring the independence of the judiciary are efforts that are highly significant in the fight against corruption. Transparency is imperative in the fight against corruption; it makes it possible for the public to monitor actions of office bearers, the commitment to administrative reforms, development of codes of conduct, good practices for public servants, promotion of public participation and accountability and full participation of the media and civil society.

### **EAC Perspective**

For the EAC, good governance is one of the key fundamental principles provided for in the Treaty. It is noteworthy that EAC Partner States are party to continental and international instruments promoting zero tolerance of corruption. By virtue of this fact a number of protocols, treaties and conventions have been signed at international and continental levels. Though signing of protocols is not a panacea for combating corruption, negotiating legally binding instruments and frameworks to combat corruption and enforce public accountability is a good starting point.

The EAC has continued to grow since its revival. As the integration progresses, the regional framework on good governance will provide common guiding standards on anti-corruption, ethics and integrity. It will provide minimum standards that will guide the Partner States, organs and institutions of the Community on good governance and public accountability.

The EAC is developing a regional framework on good governance and it is intended to have five pillars, (1) democracy and rule of law; (2) anti-corruption; (3) ethics and integrity; (4) social justice and equal opportunities and (5) human rights. Human rights and gender equality are provided for in Article 6 (d) of the Treaty. The Council noted the need to develop a code of ethics and integrity for the Community, its organs and institutions, and a framework on anti-corruption, ethics and integrity.

Efforts are being undertaken in this sector to develop and negotiate a regional policy among the Partner States to complement national efforts to fight corruption. When the initiatives reach the stage of consultations with stakeholders, Kituo cha Katiba and other civil society organisations should be consulted.



## **The State of Corruption in East Africa**

*J. S Warioba*

The theme of this workshop is “Strengthening Public Accountability in East Africa.” The letter of invitation read as follows:

“The workshop is organized against the backdrop of the endemic corruption in East Africa, which is escalating in incidence, gravity and complexity and poses a serious governance problem. The specific objective of the workshop is to provide a forum for key anti-corruption institutions in East Africa to share experiences and hold dialogue on the best practices, challenges faced and opportunities present drawn from their work, with the aim of strengthening the anti-corruption campaign in the region.”

Among the participants are people who have held positions of responsibility in the fight against corruption. The success of this workshop will come from their sharing of experiences and best practices, which will in turn help East Africa to wage a serious war against corruption. My task is to stimulate a lively and fruitful discussion on the topic identified.

Corruption is not a new phenomenon. It is as old as the history of mankind and its association with power and authority is also as old. The Bible recounts that when Moses returned to Egypt to free the people of Israel, he left his wife and children with his father-in-law, Jethro. When Moses was in the desert Jethro travelled to see him and bring Moses’ wife and children. Jethro found Moses spending his time administering the affairs of Israel single-handedly. Jethro believed that that system was not good for Moses or his people. So he advised Moses to delegate some of his responsibilities to various people at levels of fifties, hundreds and thousands to limit his involvement in issues that were not beyond the ability of those below him. He further advised Moses to choose upright people who are not corrupt to be administrators below him.

At independence, corruption in most African countries was confined to middle-level public officials who misused their positions. Soon however, corruption spread to the highest level of political leadership.

Over the years corruption has continued to grow, both horizontally and vertically. At the lower level, petty corruption has almost become a way of life. Social services are provided at great cost to the poor. In some sectors bribery has assumed the nature of extortion. For instance, an expectant mother in labour who reports to a maternity ward at a hospital or clinic is told to part with money or she will not receive attention.

Ordinary people have developed the habit of ensuring they have money in their pockets when they have to conduct business with officials. In many cases, bribes are offered openly and as a matter of course any where.

Shortly after independence, high profile or grand corruption was not common. But now it is so pervasive that the media reports on it daily. Corruption in politics is the latest and most devastating manifestation of the phenomenon. Money is now the greatest “quality” in political leadership. Political parties have become business corporations. Even the lowest position in politics has become an economic asset. People pay to be elected to political committees and conventions and once there, they recoup their money through bribes from those who aspire to be nominated as candidates for positions such as councillor, MP or president. Once elected, people go on sprees of embezzlement of public funds.

Efforts to combat corruption are ongoing. One of the reasons given to justify military coups between in the 1960s and 1980s was combating corruption. The military leaders however, became even more corrupt. General Mobutu of the Congo and General Abacha of Nigeria stand out among the most corrupt heads of state in the world.

Under the banner of democratisation, numerous reforms were undertaken in the 1990's for the purpose of strengthening public accountability. Single-party rule was discarded and in its place multiparty politics instituted. Over time, constitutions have been amended to reduce the powers of the executive and enhance the power of the legislature and judiciary. Numerous public-service reforms have been carried out to establish transparency and accountability in public administration. Laws have been enacted to regulate the most corruption-prone areas, such as financial administration and public procurement. Numerous ethic-related laws have been put in place, including codes of conduct and asset declarations. Various types of institutions have been established to combat corruption, including agencies for preventing and combating corruption.

The involvement of the international community in efforts to fight corruption in Africa gained momentum in the 1990s. In 2002, the African Union adopted a convention on the prevention and combating of corruption, followed by a similar convention adopted by the UN in 2003. International financial institutions also made the fight against corruption part of the development agenda and by the late 1990s combating corruption had become part of the conditionalities of development aid.

None of these efforts however, eliminated or reduced corruption. It has continued to grow and today is one of the major impediments to good governance. Where did we go wrong? Two developments of the 1990s made the fight against corruption difficult.

The first was the involvement of the international community in fighting corruption in Africa. After international financial institutions instituted anti-requirements as a part of government conditionalities, numerous anti-corruption strategies, plans and institutions were developed across Africa to fight what was defined as corruption, and which undermines economic growth directly. New laws were enacted, placing heavy emphasis on grand or high-profile

corruption. The argument advanced was that if grand corruption is eliminated, resources would be devoted to economic development, the welfare of the people would improve and petty corruption would wither away. These laws were to a large extent, based on the Hong Kong and Western models, and focused on prosecution and ethics.

The anti-corruption agencies established during that time were intended to enforce the new prosecution and ethics-oriented legislation. In some countries the agencies were actually dictated by aid conditionalities laid down by donors and international financial institutions. For example, the Kenyan anti-corruption agency was established as a result of a conditionality imposed after the IMF stopped enhanced structural adjustment loans.

Up to the early 1990s the fight against corruption was a national agenda. Let us consider Tanzania as an example. Up to that time Tanzania was not known internationally as a country with a serious corruption problem. The Tanzanians, however, knew how serious the problem was and had been fighting it for about twenty years. During the 1995 elections the ordinary people made corruption a top campaign issue. They were tired of paying bribes to access basic social and economic services. As a result of this pressure from the people, after the elections a commission of enquiry into corruption was appointed by President Mkapa. I was privileged to chair that commission.

The contribution of the ordinary people to the contents of the commission's report was impressive. Indeed, the majority of those who voluntarily appeared before the commission were the ordinary people. Political leaders and senior officials attended as a result of summons by the commission. The ordinary people made telling comments and presented their views during the proceedings.

Efforts to curb corruption during the 1990s were very impressive, but corruption remained a serious problem in all African countries and indeed it continued to escalate.

At a meeting with elders one of them said he believed that being corrupt was one of the major attributes of leadership. When asked to explain, he gave the example of the chairman of the village council. The village had elected a very ordinary person who lived in grass thatched houses, wore ordinary clothing and slippers. After three years this man had built a modern house, wore suits with expensive shoes and every morning he had a lavish breakfast at the local restaurant. The position of village chairman had no salary. He only received a small sitting allowance at meetings. But he took bribe money for allocating plots of village land, making deals with teachers, the village militia and magistrates. Quite often he and the village secretary colluded with the militia to arrest and lock up people, demanding bribes for release. The elder said this is a common practice among people in authority. So his conclusion was that a person in authority was required to be corrupt.

At another meeting an elder wondered why a former prime minister was going around asking people whether there was corruption in the country. If the former prime minister did not know the state of corruption in the country then a huge mistake had been made to put him in that position. The elder believed the former prime minister and the entire leadership knew all there is to know about corruption. The establishment of the commission was simply a method of leaders awarding themselves fat allowances and the commission chairman's friend the president, had simply created the Commission so that he could pay his friend a fat allowance.

Yet another person said corruption is a way of life and he is used to carrying money when he goes to see any person in authority. "Whenever I go to see a teacher, nurse, a clerk, a tax official, anyone at all, I go with the appropriate envelope or some gift. The money in the envelope is the real story and the rest is *mazungumzo baada ya habari*. When someone goes to court he will hear citations of

sections of the law but what matters in the end is the section in the wallet. In court there is law but there is no justice,” he said.

At another meeting members of the commission were advised to drive around town on Friday afternoon and Saturday to see how busy the police were. On those days motor vehicles would be stopped and inspected and drivers would be required to show the relevant documents. Faults would be “discovered” and drivers would be fined on the spot without receipts being issued or “watazungumza” (talk things over) and allowed to drive off. On Fridays, police stations would be crowded with all sorts of characters arrested for one offence or another. Those who were stubborn would spend the weekend in the cell and appear in court on Monday. The “reasonable and clever” ones would post cash bail without receipts and the incident would be forgotten. In this way the police earned weekend money.

One person related two experiences at the local hospital. The first happened when he took his wife to give birth. The woman was in labour when they arrived. They were told that delivery accessories were not available and the man was advised to go and buy them. On “second thoughts,” the nurse advised him to give money and they could use what another woman had brought. The second woman was expected to deliver the next day and the nurse could arrange to replace her things. Of course there was no second woman and both parties knew that the money requested was a bribe.

The second experience was when had to arrange transportation of the body of his deceased relative to his home area for burial. He was advised to give money for the purchase of the necessary chemicals because they were in short supply. The mortuary attendant was given the money and then went around the corner and came back with the chemicals. It was hospital material. The man lamented that there is extortion to bring a new life in the world and there is also extortion to say farewell to life.

The commission submitted its report in December 1996. As stated earlier, it was around the same time that the international community had decided to make the issue of corruption development aid conditionality. Out of the recommendations made by the commission, international financial institutions selected those that fitted their agenda in fighting corruption (that is the elements that undermine economic growth) and came up with a strategy to assist Tanzania.

The legal and institutional framework has gradually changed in Tanzania. The previous law in Tanzania was the Prevention of Corruption Act. Though not much prevention work was done by the Prevention of Corruption Bureau, the philosophy behind the law emphasised prevention of corruption. Indeed, the commission made numerous recommendations for prevention and recommended that the Bureau should be restructured to do more preventive work.

Last year, a new law was enacted; the Prevention and Combating of Corruption Act. It is heavily prosecution oriented. The offences are elaborated clearly in the law are those which relate to grand corruption, but there is no elaboration which is appropriate for dealing with petty corruption. The media has focused on high profile corruption, but petty corruption, which affects millions of people directly, is hardly mentioned. The national agenda of 1995 has been put aside. Instead we have adopted the agenda of the international community.

The second development which has made the fight against corruption more difficult occurred in the political field. The establishment of multiparty politics changed the conduct of elections completely. Political competition between political parties and between individuals within political parties escalated. In some cases, the nomination process within parties became the real election campaign. Aspiring people began using money to win nominations and parties started using money to campaign and rig elections.

In most African countries we now have money politics. No one who does not have access to a lot of money dares to even think of becoming a candidate.

During elections people are mobilised through corrupt means. In Tanzania there is something called *takrima*. The normal meaning of the word is hospitality. In the electoral law, treating is an offence, but in 2000 an amendment was made to exclude traditional African hospitality from treating. The way this has been used has nothing to do with hospitality. Normally it is the host, not the guest or visitor, who offers hospitality. But in politics it is the visitors (candidates) who offer hospitality. It is outright bribery. In the 2005 elections money was used openly at every stage. During the nomination process delegates were given money openly. During the campaign money was dished out and people were also treated to food, drinks, clothes etc.

In fact, people have accepted bribery as a normal feature of the election campaign. It is harvest time for them. The candidate with the largest purse has the greatest chance of being nominated and elected. It is not easy to find a member of parliament who was elected without offering *takrima*. This has created the idea that it is acceptable to pay and accept bribes. Politicians and political parties devise dubious means to acquire the money needed for election campaigns. Most of the scams which have been the subject of commissions are perceived to be related to elections. As a result, ordinary people have no confidence in the leadership to fight corruption. Though *takrima* has been declared illegal by the High Court, the government has not changed the law. In his address to parliament in December 2005, the president promised that *takrima* was one of the issues his government would deal with. Three years on there is silence and it seems we will experience the 2010 elections with *takrima* in place.



Corruption at the top has encouraged corruption on lower levels. Officials at the lower level can demand bribes because they know the leadership does not have the moral authority to disapprove. During the nomination process a primary school teacher who is a delegate receives money, if she/he is a polling officer to rig the election. A policeman may be in attendance at a delegate's meeting and witness money being distributed. Later, that police officer accepts a bribe from a bus driver or when a nurse demands and accepts a small sum of money from her patient, how can this be seen as bribery?

The anti-corruption rhetoric we hear from leaders lacks moral authority. In most cases it is intended to achieve something, like regime change. A political party will campaign on an anti-corruption platform using corrupt means to stay in power or defeat their political opponents. Once in power corruption continues or even increases.

Although all countries have institutions that are responsible for preventing and combating corruption, the primary responsibility is placed on the anti-corruption agency by whatever name it is called, whether the Prevention and Combating of Corruption Bureau in Tanzania, IGG in Uganda, the Anti-Corruption Commission in Kenya, or the Economic and Financial Crimes Commission in Nigeria. These agencies by law are autonomous but are in practical terms heavily influenced by the executive. They are small in size and they are supposed to concentrate on grand corruption or what is defined as corruption which directly undermines economic growth.

In a situation where there is massive corruption in politics it is not easy for these agencies to be left to operate independently. In rare cases where they do well, they do not last. The South Africa Directorate of Special Operations (Scorpions) had done very well, but in the process it caused discomfort to the top political brass and was disbanded and merged into the police force. The Nigerian

Economic and Financial Crime Commission had also done some impressive work, but recent changes made by the government of Nigeria have blunted its powers.

In any case, the belief that if prosecution of senior officials is successful, grand corruption will be eliminated and petty corruption will wither away is a fallacy. Successful prosecution of senior officials has proved to be very difficult all over the world for legal, bureaucratic and political reasons.

Recently, I had a heated argument with an activist who maintained that in Tanzania we de facto have two types of law. There is a law for the common people and another law for the big people. In his view, when an ordinary person commits an offence the police will investigate and prosecute him in court. But when a senior official commits an offence a commission is established and reports of the commission seldom result in officials being taken to court. Reports of commissions are fodder for rhetoric but nothing is done to ease the pain that is inflicted on ordinary people. He said that these reports and the rhetoric of the leadership can be likened to an action film, which is simply entertainment. Our discussion was in the context of the current national discussion on “ufisadi.”

Currently in Tanzania there is a lot of rhetoric about “ufisadi.” In early 2008, a select committee of parliament issued a report on the Richmond affair that led to the resignation of the prime minister and two ministers. Richmond was one of the companies that was contracted to provide emergency electrical power when Tanzania experienced serious power shortage because of drought. The contract between the government and Richmond was found to be wanting, lending to a perception of corruption.

At the same time, another scam was discovered, involving the use of the External Payment Account (EPA) at the Central bank. Bogus companies had been formed in 2005 to buy foreign debts. Some of the 22 companies had presented forged assignment deeds

and collected enormous amounts of money; in total United States Dollar (USD) 133 million was stolen. This was discovered by an audit report by an international audit company. The government has set up a high-level task force consisting of the attorney general, the inspector general of police and the director general of the Prevention and Combating of Corruption Bureau. The task force has yet to submit its report but my activist friend was skeptical. He believed those involved included senior officials and rich business people who will not be prosecuted.

This drama is not peculiar to Tanzania. We all remember the Goldenberg saga in Kenya. A company was set up in the early 1990s to export gold, and as an incentive, it was paid an extra twenty percent of the value of the exported gold in Kenyan currency. Kenya does not produce a large amount of gold but the money involved was a huge amount. The government of the day set up a commission to investigate. The next government set up another commission to unearth the truth. In both cases nothing of substance was found by the commissions except anti-corruption rhetoric. Then attention was diverted to another scam called Anglo Leasing. In early 2004, it was discovered that a non-existent company called Anglo Leasing had been awarded several government contracts. In the end, the money involved was somewhere between USD 700 and USD 1,000 million. A commission was set up by a government which had been elected on the platform of fighting corruption, but which in no time was itself deeply emerged in corruption. Nothing of substance was revealed by the commission except high rhetoric. In fact, even before the dust has settled after the 2007 elections, Kenya is grappling with another problem i.e. the dubious sale of the Grand Regency Hotel.

In Uganda there is the case the Global Fund. The Global Fund had granted the Ugandan government USD 148 million to fight HIV-AIDS, malaria and tuberculosis. A commission established in 2005 found that a large amount had been misused. The Ministry

of Health had established a project management unit to administer the fund. Nepotism, not competence, characterised recruitment of staff; extremely high salaries and allowances were paid, executing agencies were untrustworthy and some of the money was used for political purposes. In the end, little of the money reached the targeted groups. Two former ministers of health are being prosecuted but there is little hope that they will be convicted.

Commissions of enquiry are normally established as a result of activism in parliament and pressure from the media. Parliamentary activism, in reality is simply power play. There is a perception that MPs take up a cause, not because they intend to eradicate corruption, but because they want to change the leadership, so that they in turn can occupy government positions. Sometimes those who seek to get elected pretend to support anti-corruption, yet secretly gave bribes to get elected, and once elected they continue to be corrupt. For others, commissions are a way of earning some extra money, because serving on a commission pays well.

In summary, corruption is a very serious matter in East Africa and it poses a serious governance problem. Efforts to fight it have not succeeded and the way to becoming more successful are not clear. The war against corruption must, however, continue. So, what is the way forward?

I would suggest that the first step to addressing corruption is to revert to a truly national agenda. The current agenda is influenced too much by donors and international financial institutions through economic aid conditionalities. Countries differ in many respects and a universal prescription will not work well in all countries.

To an ordinary person and in practical terms, good governance means the protection of the person and property so that he/she lives in peace and enjoys his/her human rights; that he/she can access social services such as education health care, water and sanitation, without hindrance; that he/she can get justice in court and can

access economic services without being forced to pay more than the specified charges.

The belief that petty corruption does not undermine economic growth is wrong. Who has calculated the cost to children who have missed vital education because of corruption? Who has calculated the cost in terms of people who have died or been disabled because they could not receive treatment? Who has calculated the economic loss of those people who have failed to access economic services because of corruption?

The economic policies of African countries aim to eliminate or alleviate poverty. Corruption causes people to miss education, and proper health care. Some might be unable to afford a hoe or a plough because the little money they had had to be given as a bribe. More than that, corruption undermines human value. If petty corruption is not eradicated a culture of corruption will set in.

Fighting petty corruption will involve all the people, including ordinary people. At the moment the ordinary people are spectators in the war against grand corruption. An ordinary person is unable to participate in big anti-corruption cases like the Richmond case, EPA, Anglo Leasing, Global Fund or Grand Regency. But their involvement at the local level, in local courts, the primary school and the local clinic etc. will encourage their effective participation in fighting corruption.

Special efforts should be made to establish transparency in administration at lower levels. For example, the administration at the local council, school, health centre etc. should be transparent. A person should know what services are offered at a rural dispensary and what the user charges are. An intensive public-awareness campaign should be undertaken so that people know what is legitimate and what is not, so that they demand to be treated fairly.

War on high profile corruption should be intensified by strengthening anti-corruption agencies. They need independence

and more autonomy. There should be less emphasis on commissions and task forces and more on work by anti-corruption agencies. It is possible that a strong anti-corruption agency would have done much better in the Goldenberg and Anglo Leasing cases in Kenya. Having the anti-corruption commission making recommendations to the executive is not sufficient. Similarly, a strong inspector general of government in Uganda would have done much better in investigating the Global Fund case than a commission. In Tanzania, a strong Prevention and Combating Corruption Bureau would certainly do a better job than a task force.

Reversing the process requires strong leadership, which is currently not easily available. Political leadership is tainted with corruption. But we can find leaders who can mobilise the people for a national agenda. The media and civil society is key in national mobilisation. Mobilised people will bring in new leaders to lead the fight against corruption. The media has played a crucial role in the fight against corruption. It has made corruption a continuing agenda and exposed scams and created storms that shame leaders into political retreats of one form or another. To borrow a friend's words, the combination of the media and parliamentary activism has had some effect, mainly in forcing heads to roll, as it were, and lessening executive impunity.

But the media suffers certain weaknesses. First, it is also corrupt. There is too much envelope journalism. It is not uncommon for corrupt politicians to retain able journalists to promote their causes during elections. Indeed, in normal circumstances some leaders call journalist they like, and presumably their retainees, to cover them.

Second, the media is more interested in high-profile corruption than in petty corruption. Although the media claims to do what it does in the interest of the people, it does not pay much interest to the petty corruption which hurts the ordinary people most. The cases they cite and harp on constantly are high profile cases. A perception

is emerging that the main interest of the media is leadership change rather than combating corruption. Other than calling for resignations and prosecution of senior officials, the media suggests very little on what could be done to prevent and fight corruption.

There is an emerging perception that some members of the media are becoming a group of political activists rather than professionals, are becoming arrogant and intolerant, and tending to be investigator, prosecutor and judge. They also tend to be intolerant to criticism and behave as if the media are above the law. Fortunately, the media as a whole can assist greatly in the war against corruption.

Civil society has done important work in fighting corruption, particularly in creating awareness about the problem. But civil society suffers the same weakness as the media. They work at the higher level, rather than in the valley where the people live. It is not surprising because most CSOs depend on donors whose agenda does not focus on petty corruption.

The support of the international community is important in fighting corruption, but it is crucial for it to be careful to avoid imposing itself unfairly. The fight against corruption should be national. The prescription of blanket strategies and plans of general application to all countries has not promoted the fight against corruption in all countries. The conditionalities imposed by donors and international financial institutions have in fact, contributed to the spread of corruption. Governments accept conditionalities because they need the money. Leaders understand that money is a tool of power and when they get it they will use it to maintain power or simply to get rich.

One of the effective ways to fight corruption is to focus on both high-profile and petty corruption. The international community is thus urged to pay attention to petty corruption as well.

Leaders should be accountable to the people. But in the current situation, where the assistance of the international community is

concentrated on high-profile corruption, leaders respond more to donors rather than to their own people. Helping ordinary people fight corruption means equipping them with the knowledge and ability to deal with petty corruption. Leadership and regime change, as a result of international pressure does not help very much if the next leader or regime is as corrupt as its predecessor.

In conclusion, corruption is a monster in East Africa; current efforts to tackle it are not working and a new strategy is needed. I hope this workshop will address that challenge.

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## **Opening Address by the Deputy Secretary General of the East African Community**

*Hon. Beatrice Birungi Kiraso*

Hon. Chairman, Hon. MPs, distinguished participants, ladies and gentlemen

On behalf of the Secretary General, East African Community (EAC), I am greatly honoured to give a welcoming address to this distinguished forum on strengthening public accountability and governance in East Africa. In my address, I would like to reflect on the vision, mission and objectives of the Community, and the negative impacts of lack of transparency and bad governance while highlighting some of the EAC's initiatives on the important issues of public accountability and governance in the regional integration process.

Before I move on, I would like to acknowledge the initiative by Kituo cha Katiba to bring together representatives from leading regional institutions to participate in dialogue and reflect on common approaches to fighting corruption and strengthening public accountability in the region. I must say the initiative is timely.

### **Introduction**

The Vision of the EAC is to have a prosperous, competitive, secure and politically stable united East Africa. The mission is to widen and deepen economic, political and cultural integration in order to improve the quality of life of the people of East Africa through increased competitiveness, value-added production, trade and investment. The main goal for the EAC is to improve the standard of living of the citizenry. According to the EAC Treaty, the vision of the Community is to be realised in an incremental progression through

the stages of a customs union; a common market; a monetary union; and ultimately a political federation of the East African states.

Article 6 of the Treaty for the Establishment of the EAC, prescribes adherence to the fundamental principles of good governance, democracy, the rule of law, accountability and transparency for the achievement of the objectives of the Community. In pursuance of these principles, the Council of Ministers has acknowledged the need to develop a regional framework on good governance.

### **Reflection on the Link between Corruption and Governance**

Research on the negative impacts of corruption has established the link between corruption, underdevelopment and governance. Corruption facilitates diversion of public resources into private hands. It is most apparent in situations where there is no transparency and accountability is lacking. Corruption erodes the ability of states to provide social services for its citizenry, thereby threatening human security and the human rights of individuals. Indeed, the breakdown of social services and amenities leads to instability, insecurity and poverty. In this sense, corruption and improper management of public resources undermines economic development, leading to depletion of resources. The less advantaged suffer because states fail to provide them with welfare services.

There is a strong correlation between corruption and governance. Governance is considered to be good if it is free from abuse and corruption, pays due respect to the rule of law, facilitates organised and informed participation of the public in public affairs, has fair legal frameworks that are enforced impartially, protects and promotes human rights, and has an independent judiciary and impartial police force. Good governance also includes transparency in taking decisions that affect the public, responsiveness, consensus building, inclusiveness, equity, effectiveness and efficiency and, above all, accountability to the public. The characteristics of good

governance provide benchmarks for corruption or lack of it in a system of governance.

The fight against corruption requires more than good policies and legal frameworks. Establishment of independent anti-corruption authorities, and oversight institutions and ensuring the independence of the judiciary are efforts that are highly significant in the fight against corruption. Transparency is imperative in the fight against corruption; it makes it possible for the public to monitor actions of office bearers, the commitment to administrative reforms, development of codes of conduct, good practices for public servants, promotion of public participation and accountability and full participation of the media and civil society.

### **EAC Perspective**

For the EAC, good governance is one of the key fundamental principles provided for in the Treaty. It is noteworthy that EAC Partner States are party to continental and international instruments promoting zero tolerance of corruption. By virtue of this fact a number of protocols, treaties and conventions have been signed at international and continental levels. Though signing of protocols is not a panacea for combating corruption, negotiating legally binding instruments and frameworks to combat corruption and enforce public accountability is a good starting point.

The EAC has continued to grow since its revival. As the integration progresses, the regional framework on good governance will provide common guiding standards on anti-corruption, ethics and integrity. It will provide minimum standards that will guide the partner states, organs and institutions of the Community on good governance and public accountability.

The EAC is developing a regional framework on good governance and it is intended to have five pillars, (1) democracy and rule of law; (2) anti-corruption; (3) ethics and integrity; (4) social justice

and equal opportunities and (5) human rights. Human rights and gender equality are provided for in Article 6 (d) of the Treaty. The Council noted the need to develop a code of ethics and integrity for the Community, its organs and institutions, and a framework on anti-corruption, ethics and integrity.

Efforts are being undertaken in this sector to develop and negotiate a regional policy among the partner states to complement national efforts to fight corruption. When the initiatives reach the stage of consultations with stakeholders, KCK and other CSOs should be consulted.

## **Achievements, Best Practices and Lessons Learned, Challenges Faced, and Recommendations for Strengthening the Anti-Corruption Campaign in Kenya and the Region**

*Micah N. Nguli*

### **Introduction**

Corruption is not a new phenomenon in Kenya; it is a manifestation of an ancient practice, deeply ingrained in all systems and processes of public service delivery, administration of justice and public-resource management. In the 1980s and 1990s, Kenya's economic performance deteriorated markedly, with growth falling below its potential. A number of factors contributed to this poor performance, including external shocks and a broad-based decline in productivity of investments, the near collapse of physical infrastructure and inefficient use of public resources. These problems were compounded by serious weaknesses in institutions of governance, which undermined competitiveness as well as investor confidence in the economy.

The NARC Government came into power with a promise to eradicate corruption. Based on a platform of "Zero Tolerance to Corruption," it set out ambitious and comprehensive programmes of economic renewal under the Economic Recovery Strategy (ERS) with emphasis on policy and institutional reforms. The strategy was aimed at: (i) accelerating sustained economic growth underpinned by stable macro-economic environment; (ii) enhancing equity and poverty reduction to improve the welfare of Kenyans; and (iii) improving governance to ensure efficiency and effectiveness of public service delivery and to create an enabling environment for sustainable business growth and development.

To ensure efficiency in the public sector and to facilitate private-sector participation in the economy, various structural reforms were implemented in the public sector, including restructuring of public enterprises and public financial management systems. Efforts were made to create fiscal space to shift resources to priority development areas including core poverty-reduction programmes, agriculture, and human-capital development by improving access to education and health services, revamping the nation's physical infrastructure and devolving resources through the Constituency Development Fund (CDF) and the Local Authorities Transfer Fund (LATF).

Kenya has in the past five (5) years made combating corruption a major priority of the development agenda. Anti-corruption efforts initiated by the NARC Government since 2003 have seen the war against corruption move to a high gear. These efforts have no doubt faced numerous challenges, including economic, social, political, and also the varied cultural contexts and perceptions of corruption.

### **Achievements**

Many bold reform measures have been implemented over the last four or so years to institutionalise good governance and the rule of law in Kenya. These measures are being implemented within the framework of a well designed anti-corruption strategy, namely:

- (i) corruption prevention and public education/awareness
- (ii) investigation
- (iii) restitution

The implementation of these measures has improved governance, transparency, accountability and efficiency in the management of public affairs, and as a result, made the public sector more effective regarding the delivery of services. As a result, investor confidence has been restored and the economy now enjoys a broad-based expansion, the highest in two decades. Real Gross Domestic Product (GDP)

expanded by 5.8 percent in 2005, up from 0.6 percent in 2002, while the inflation rate, exchange rate and interest rates have remained relatively stable since 2003.

The continued implementation of appropriate and prudent monetary and fiscal policies and various financial reforms have restored confidence in the money and capital markets, thus deepening capital development. The reforms have also resulted in: (i) an increase in revenue collection, from KShs 190.6 billion in 2002/03 to KShs 345.6 billion projected for 2006/07 (representing 81 percent growth over the period), due to improved tax administration.

## **Establishment of Institutions to Fight Corruption**

### **Establishment of the Kenya Anti-Corruption Commission**

The Kenya Anti-Corruption Commission (KACC) was established under the Anti-Corruption and Economic Crimes Act (ACECA) 2003 (No. 3 of 2003). This is an independent body corporate with immense powers relating to the fight against corruption, including instituting investigations, assisting other law enforcement agencies in conducting investigations, offering advice on effective anti-corruption measures, examining the practices and procedures of public bodies to seal loopholes for corrupt practices, education and awareness, and tracing and instituting proceedings for recovery of property both within the country and beyond. In terms of its operations the Commission is independent and only accountable to parliament. However, it does not have prosecutorial powers and refers cases to the Attorney General (AG) for prosecution.

### **The Attorney General**

The AG, is provided for under S. 26 of the Constitution. The AG, through the Director of Public Prosecution (DPP), carries out all prosecutions for corruption and other crime-related offences on behalf of the state as referred to it by the KACC, Investigation

CID, and Banking Fraud Investigation Units e.g. cases from private prosecutors. Key departmental sections have now been established i.e. the Anti-corruption, Economic Crimes, Serious Fraud Prosecution and Asset Forfeiture Section; the Counter Terrorism, Narcotics, Organised Crime and Money Laundering Prosecution Section and; the Extradition, Mutual Legal Association of International Co-operation (in the process of being set up).

### **The Judiciary**

The Judiciary, is provided for under Ss. 60-65 of the Constitution of Kenya. The chief justice has overseen the appointment of special magistrates and Anti-corruption courts to hear corruption and economic crime cases as provided in S. 3 of the ACECA 2003.

### **The Ministry of Justice and Constitutional Affairs**

The Ministry of Justice and Constitutional Affairs, was established in January 2003 through Government Circular No.1/2003, to among other things: develop anti-corruption policies and strategies and to co-ordinate and facilitate the war against corruption. After the 2007 General Election, the Ministry was given an additional responsibility, the National Cohesion docket; thus changing the name to Ministry of Justice, National Cohesion and Constitutional Affairs.

### **The National Anti-corruption Campaign Steering Committee**

The National Anti-corruption Campaign Steering Committee (NACCSC), is charged with conducting public campaigns against corruption. Members of the committee are drawn from public, private, media, religious sectors etc.

The committee has a broad mandate to fight corruption within all sectors of the society through public awareness creation and education campaigns. The aim of the campaigns is to sensitise and educate all Kenyans, on the negative effects of corruption with the



view of causing fundamental changes in people's behaviour and attitudes towards corruption.

### **Public Complaints Standing Committee**

Public Complaints Standing Committee, was established in June 2007 vide gazette notice No. 5826 of 29, June 2007 and No. 6327 of 13 July 2007. This committee was established in recognition of the number of complaints made to the KACC which require administrative measures. The functions of the committee are to receive, register, sort, classify and document all complaints against public officers in ministries, state corporations or any other public institution, and to inquire into allegations of misuse of office, corruption, unethical conduct, breach of integrity, maladministration, delay, injustice, discourtesy, inattention, incompetence, misbehaviour or ineptitude.

### **Efficiency Monitoring Unit**

The Efficiency Monitoring Unit (EMU), was established in 1991 via the executive order to monitor the implementation of policies, programmes and public projects through, inter-alia, undertaking investigations of reported irregularities or inefficiencies in government ministries, departments, state corporations and local authorities, with a view to advising the government on problems encountered in the implementation of policies, programmes and projects. It also reviews existing systems and procedures for public organisations to improve existing management systems, procedures and practices for collecting government revenue, and the monitoring of declaration of income, assets and liabilities by public officers in accordance with the Public Officer Ethics Act 2003 (No. 3 of 2003).

### **Kenya National Audit Office**

Kenya National Audit Office (KENAO), was established under S. 105 of the Constitution of Kenya and S. 34 Public Audit Act,

2003. The Comptroller and Auditor General through the minister of finance submit annual reports of audits of accounts for all government ministries.

### **Public Procurement Oversight Authority**

The Public Procurement Oversight Authority (PPOA), is provided for under S. 9 of the Public Procurement and Disposal Act 2005 (No. 3 of 2005). This authority is responsible for the overall functions and monitoring of the public procurement system. The PPOA conducts investigations and issues directives on proper processes to be employed for the better handling of the procurement process.

### **The Public Accounts and Public Investment Committees of Parliament**

The Public Accounts and Public Investment Committees of Parliament, carry out regular audits of reports as presented to parliament by the Controller and Auditor General.

### **Central Bank of Kenya**

The Central Bank of Kenya (CBK), was established by the Central Bank of Kenya Act of 1966 (as amended by the Central Bank of Kenya (Amendment) Act of 1996). Its main functions are to maintain price stability and foster liquidity, solvency and proper functioning of stable market financial systems. In order to do so, the bank issues policies such as prudential and risk-management guidelines to all banking institutions. It also has a banking fraud department to address fraud specifically as a corruption-related offence. The CBK, has powers to foreclose banks found to be in contravention of its Acts and/or regulations and has done so in the recent past.

### **Criminal Investigation Department**

The Criminal Investigation Department (CID), is a specialised department of the police dealing with complex criminal cases, including fraud, theft, corruption etc. The CID has specialised units for a number of serious criminal offences, which units include the anti-banking fraud unit, anti-terrorism unit, anti-narcotic units etc. After investigation, cases are forwarded to the DPP for prosecution.

### **Kenya Revenue Authority**

The Kenya Revenue Authority (KRA) was established by an act of parliament; Cap. 469, Laws of Kenya. The purpose of the authority is assessment, collection, administration and enforcement of the law relating to revenue. There are four revenue collection departments and four additional divisions thereunder to enhance operational efficiency. These divisions include the Investigations and Enforcement Department, which is charged with ensuring compliance with laws relating to revenue. As part of its reform and modernisation initiatives, KRA has introduced the SIMBA system, aimed at increasing revenue collected through reducing avenues of tax evasion. Tax evasion is an offence under the Anti-corruption and Economic Crimes Act (2003) No. 3 of 2003 and warrants a penalty of a fine not exceeding KShs 10 million or imprisonment of up to ten (10) years.

### **Legislative Actions Since 2003**

#### **Anti-Corruption and Economic Crimes Act**

The Anti-Corruption and Economic Crimes Act, No. 3 of 2003, set up the KACC as Kenya's premier anti-corruption institution, and provided for the criminalisation of corruption among, other things.

### **Public Officer Ethics Act 2003**

Public Officer Ethics Act 2003 (POEA). The Act introduced codes of conduct and ethics and requires public officers to file annual declarations of income, assets and liabilities.

### **The Public Audit Office Act (2004)**

The Public Audit Office Act (2004) established the Kenya National Audit Office.

### **The Public Procurement and Disposal Act 2005**

The Public Procurement and Disposal Act 2005 established an autonomous Public Procurement Oversight Authority (PPOA) responsible for the regulation of procurement in the public sector, including procurement of security-related contracts.

## **Best Practice**

### **Administrative Actions**

Various administrative measures have been implemented over the last four or so years to enhance prevention of corruption in Kenya. Such measures have included the improvement of transparency and accountability in public service. These include:

- Curbing abuse of the harambee systems by barring public officials from being guests of honour and/or soliciting for harambee in their places of work.
- Introduction of a ministerial Code of Conduct to complement the provisions of The Public Officer Ethics Act 2003 and improve ministerial accountability in public affairs management.
- Dismissal of the entire cadre of both procurement officers and forest officers to facilitate new recruitment based on integrity.

- Suspension by the KRA of several senior officers who worked at the port, pending investigations into their failure to achieve performance targets for customs revenues.
- Enforcement of POEA, which requires every public officer to make annual declarations of his/her assets and liabilities, and those of his/her spouse and children below the age of 18 years. Plans are also at an advanced stage to make asset declarations by ministers and senior officials open to public scrutiny and verification. All ministers declared their assets; the verification of these declarations is ongoing by KACC and a report will be submitted to the appointing authority.
- Improvement of the capacity of the Police Force through organisational reforms, including improved leadership and incentives to enhance enforcement of law and order.
- Among the interventions implemented include; (i) reorganization and appointment of officers with strong reform credentials; (ii) improving terms of service for the Force; (iii) provision of decent housing to staff; and (iv) efforts to strengthen oversight of the police.
- Examination by KACC of systems, policies, procedures and practices conducted on the Nairobi City Council, the Ministries of Transport and Health, the KRA, the Kenya Police, and the Kenya Medical Supplies Agency.
- Enhancing the administrative capacity of KACC to investigate and provide strong leadership in corruption prevention, the KACC launched its strategic plan, in mid 2006 which was developed through wide consultation with stakeholders. The strategy focuses on the Commission's operations and measures to be implemented to achieve the set objectives and to foster zero tolerance to corruption in Kenya.
- Other reforms implemented include:

(i) completion of surveys on perceptions of corruption and experience of corruption; (ii) interdiction of the head of the National AIDS Control Council pending conclusion of investigations into alleged fraud; and (iii) actions taken against CSOs involved in fraud.

### **Public Sector and Financial Management Reforms**

A central pillar of the government's governance and anti-corruption strategy is the reform of the internal management of public resources and administration, aimed at reducing the opportunity and incentives for corruption. This has entailed instilling a meritocracy with adequate pay and depoliticizing public administration, clarifying governance structures, enhancing transparency and accountability in fiscal management, and focussing policy reforms on improving the delivery of government services. The legal and institutional reforms implemented since 2003 include the following:

- Introduction of a RBM system as a tool for helping public sector institutions to focus their work and plan strategically, to ensure efficient and accountable use of public resources. The government has also introduced performance contracts to improve public service performance and accountability for all its senior officials, including those in parastatals.
- The government also adopted, in 2004, the policy of competitively hiring chief executives of parastatals from the labour market. These policies have already begun to bear fruit. For the first time in decades, public enterprises have been making large profits and issuing dividends to the Treasury, as well as paying taxes on time. This has facilitated reductions in transfers to public enterprises and created fiscal space for increased expenditure on social and economic programs.
- Public financial management, the government has rolled out an IFMIS in a number of ministries notwithstanding the slow

progress in operationalising the system. It has strengthened the expenditure commitment control systems, improved budget transparency by eliminating unclassified budget votes, and set out clear guidelines for Exchequer issues to line ministries, including requirement for up-to-date bank reconciliation, which underpins the Public Expenditure Management (PEM) reforms;

- The introduction of tax administration reforms has been aimed at reducing corruption and the cost of doing business in order to facilitate business and trade in Kenya. The measures implemented include (i) full integration of Income Tax and Value Added Tax (VAT) departments; (ii) introduction of computerised audits and (iii) implementation of customs modernisation reforms to reduce corruption and facilitate trade.
- The overhaul of the business licensing regime is aimed at reducing opportunities for corruption and the cost of doing business in Kenya. Specifically, the government has reviewed over 1,400 licenses with a view to streamlining the licensing regime, to ensure that only those licenses that serve a useful purpose are retained.
- Initiated anti-corruption awareness seminars in the public service under the auspices of the Public Service Integrity Programme (PSIP) of the Directorate of Personnel Management, Office of the President, in conjunction with the KACC.
- Economic Recovery Strategy for Wealth and Employment Creation 2003-2007 (ERS) is the government's blueprint for economic recovery and institutionalisation of good governance and anti-corruption strategies. It is the policy framework for realising the objectives of (i) reversing the trends of increasing poverty; (ii) engendering and sustaining good governance and; (iii) fighting corruption. The ERS recognises the key role of

governance and the fight against corruption. With the ERS ending in December 2007, the government is now pegged on realising Vision 2030.

- National Anti-corruption Plan (NACP) brings together a multi-sectoral committee spearheaded by the KACC and other representatives from the government, civil Society, the private sector and the media. The NACP sets out the responsibilities of various stakeholders (grouped into sectors) in the war against corruption, these are the legislature; executive; judiciary; KACC; enforcement agencies; watchdog agencies; media; private sector; religious organizations; civil society; labour and education sectors.
- The Governance, GJLOS Reform Programme launched by the Ministry of Justice and Constitutional Affairs on 11th July 2003: is a sector-wide approach to dealing with problems affecting the justice, law and order sector institutions. One of its key thematic areas is ethics, integrity and anti-corruption. The GJLOS programme has trained more than 27,665 government officers on reform oriented topics and built capacity for anti-corruption, crime prevention, culture and attitude change, result-based management etc. The programme covers four ministries and up to 32 departments and agencies.
- The introduction of the Ministerial Code of Conduct, which all cabinet ministers sign to bind them to interalia ethical conduct and integrity during their tenure of service.
- Introduction of the Integrated Financial Management Systems (IFMIS), which have strengthened the expenditure commitment control systems, improved budget transparency and set out clear guidelines for exchequer issues.



- Introduction of National Integrated Monitoring and Evaluation Systems (NIMES) to provide accurate and objective assessment of government initiatives.
- Preparation of Monthly Budget Out-turns and the Quarterly Budget Reviews for improved implementation of budget allocations.
- Government Financial Regulations and Procedures are published from time to time and deal with the administration of government finances and to ensure provisions for Exchequer accounts and the consolidated fund.
- Government's use of Budget Strategy Papers and Budget Outlook Papers to ensure effective linkages between policies, planning and budgeting.
- Public Sector Integrity Programme, through which officers in various government departments have been trained on governance, best practices, dangers and effects of corruption.
- Appointment of the National Task Force on Anti-money-Laundering Committee chaired by the Ministry of Finance, while the secretariat is provided for by the Central Bank of Kenya.
- Through the NACP several institutions come together under a multisectoral committee to set out responsibilities of various stakeholders (grouped into sectors) in the war against corruption. An annual stakeholders' conference is convened annually in July at which each sector reports on its progress, challenges faced and possible solutions or recommendations and work plans for the next year.
- The Interagency Committee of all Public Institutions involved in the war against corruption: is chaired by the minister of Justice and Constitutional Affairs. Participating institutions are the Ministry of Justice and Constitutional Affairs; judiciary;

National Assembly (Legal and Administration of Justice Committee); KACC; Kenya Police; CID; DPP; NACCSC; Efficiency Monitoring Unit and Kenya National Audit Office. This committee looks into improving the synergy required of all public institutions in this area.

- The Kenya Integrity Forum brings together leaders of all sectors in the country for purposes of fighting corruption under the ambit of the NACP.
- The Ministry of State for Public Service recently developed a training policy for all public officers. The policy is currently being implemented by various ministries, departments and agencies, such as the Directorate of Personnel Management.
- The East African Association of Anti-corruption Agencies promotes co-operation between countries, including joint forums for training of relevant officials.
- Kenya signed and ratified the United Nations Convention Against Corruption (UNCAC). The process of gap analysis is ongoing.

### **Challenges Experienced in the Fight against Corruption and in Strengthening Governance**

The war against corruption is still faced with many challenges. These challenges, both legislative and institutional, form the basis for the implementation of further reform measures. Among the specific challenges experienced while implementing various programs are the following:

- The government, immediately after election to office adopted a “zero-tolerance to corruption” policy, which is now facing fundamental implementation problems. Individuals who were previously involved in corruption influence civil servants

perpetuating the culture of corruption in government procurement systems.

- 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 agendas and visions. 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 of the war against corruption. Many corrupt individuals have found political comfort and support among such allies. 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.
- The government's anti-corruption programme has also been undermined by the constitutional review process, which has substantially polarised the ruling coalition. This has made it difficult for the government to speak against corruption with one voice. The delay in realising 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.
- Over the years almost all institutions of governance had been run down and were hence not useful in the fight against corruption. Initial efforts in the fight against corruption were therefore focussed on restoring institutional integrity and capacity in the judiciary, Police Force, Central Bank, Treasury and many other

vital institutions. The effects of the government's efforts are beginning to be seen but it will take some time to effectively institutionalise the war against corruption. Corruption was 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 socialised and legitimised. It will require considerable effort and time to delegitimise this culture. The institutions necessary for the fight against corruption are weak and ineffective. They need strengthening and support to function and sustain the war against corruption.

- 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. There is widespread perception that corruption is rampant in government, and the government is doing nothing about it.
- 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 government. They dismiss the fight against corruption as a tribal purge, a political vendetta and a witch-hunt.
- Weak co-ordination in the approach to the fight against corruption, including educational campaigns and awareness creation.
- Weaknesses in processes, systems and procedures within public entities, which expose them to rent-seeking opportunities and corruption-facilitative practices.
- Capacity constraints, including limited manpower, financial and physical resources and technological capabilities of the institutions leading in the war against corruption.

- Inadequate appreciation and empowerment of the citizenry to participate actively in the war against corruption.
- High and unrealistic public expectation without due regard to the complexity of investigations into corruption and economic crime and the due process of law. These unrealistically high expectations have created apathy among citizens, thereby discouraging broad-based citizen participation and support for corruption prevention.
- Inadequacy in the legal framework especially for cross-border investigations and restitutions of corruptly acquired assets.
- Lack of effective coordination among agencies responsible for investigation.
- Capacity constraints, including limited manpower, financial and physical resources and technological capabilities. These include limited skilled manpower, underdeveloped technological capability to tackle modern and sophisticated corruption and economic crime cases.
- New, untested legislation that has exhibited some weaknesses in the areas of:
  - (i) Constitutional challenges to the powers of the Commission to compel suspects to provide it with information required for investigation;
  - (ii) Challenges to the appointment of a receiver by the Commission over property suspected to be the proceeds of corruption;
  - (iii) Challenges to the Commission against powers to investigate and deal with Penal Code offences.

These weaknesses are being addressed when they arise through amendments.

### **Recommendations**

- The government of Kenya remains fully committed to zero tolerance to corruption. However, to be able to perform on the implementation of the various anti-corruption and governance initiatives, there is need to address the legislative and institutional challenges constraining the anti-corruption efforts expeditiously.
- The Proceeds of Crime and Anti-money-Laundering Bill should be passed into law.
- The Mutual Legal Assistance Bill should be passed into law urgently.
- To succeed in the war against corruption there is a need to institutionalise the government's efforts through the strengthening of all the institutions and agencies charged with the responsibility of creating awareness about corruption, and prevention, detection and prosecution of corruption.
- The institutions and agencies must be funded adequately to reflect the importance attached to the fight against corruption.
- There is a 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.
- Enhancement of capacity for public financial oversight, including preparing and publishing external audit reports of the Controller and Auditor General on time.

- Enhance the capacity of the PPOA ensuring its independence and objectivity.
- Further strengthening of the investigative capacity of KACC through specialised training and securing necessary equipment and technology.
- Enhance capacity for prosecution.

### **Conclusion**

The government of Kenya is fully committed to the reform agenda in the areas of governance and anti-corruption. For the improvement of governance, transparency, accountability and efficiency in the management of public affairs, and to make the public sector more effective in the delivery of services, it is imperative that the implementation of the various reform measures be given high priority. Private sector and civil society participation in the war against corruption depends on the level of government commitment on the issue of governance.

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## **The Mandate of the Office of the Ombudsman in Rwanda, Achievements, Best Practices, Lessons Learned and Challenges Faced.**

*Moses Katusime Mbombo*

### **Introduction**

The Office of the Ombudsman is delighted to share its experience in the following matters:

- strengthening good governance and accountability
- preventing and fighting corruption

In Rwanda, the Office of the Ombudsman was created in the context of the struggle to establish democratic space, which fosters the welfare of communities. Rwanda had been destroyed by multifaceted violence and genocide. After the genocide, people took the initiative to establish structures that would enable the country to move towards sustainable human security.

The Office of the Ombudsman is an organisation that links the people of Rwanda to public and private institutions, and empowers people to hold these institutions accountable. It also ensures that organisations fulfil their missions suitably, and works to encourage the compliance to rules and good practice, such as planning, reporting, delivering good service etc.

This paper aims to share experiences on strengthening public accountability and good governance in East Africa.

The main parts of this paper are the following:

- legal framework and the mandate of the Office of the Ombudsman
- structure and powers
- achievements
- good practices and lessons
- challenges
- recommendations

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## **Legal Framework and Mandate of the Office of the Ombudsman**

The Office of the Ombudsman of Rwanda was instituted by the constitution of 4th June 2003, in its Article 182 as amended to date. Its organisation and functioning are established by Organic law No. 25/2003 of 15th August 2003 as amended by law No. 17/2005 of 18th August 2005.

As the constitution stipulates in Article 182, the mission of the Office is mainly the following:

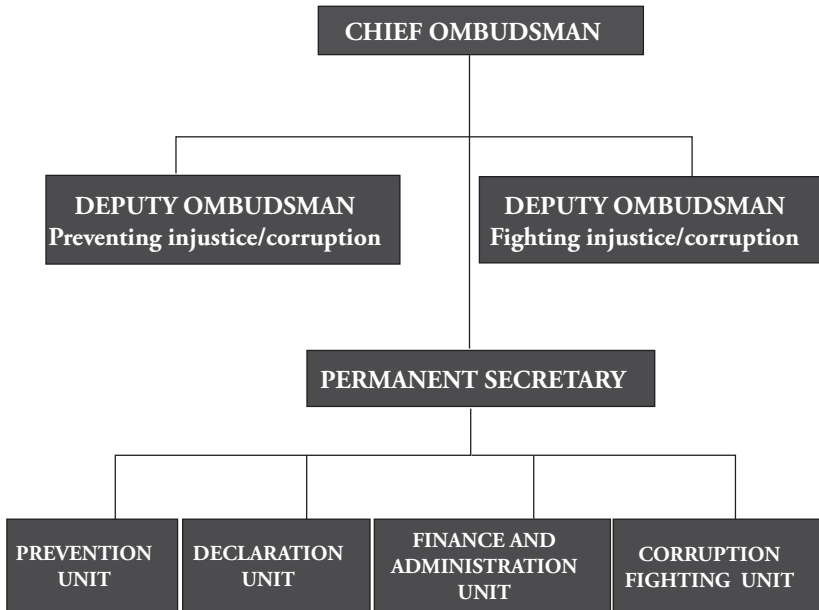
- Act as a link between the citizen and public/private institutions;
- Prevent and fight injustice, corruption and other related offences in public and private administration;
- Receive and examine, in the aforementioned context, complaints from individuals and independent associations about the acts of public officials or organs and private institutions, and to mobilise these officials and institutions in order to find solutions to such complaints, if they prove to be true;
- Receive the declaration of assets of senior civil servants and employees involved in public property management.

## **Structure and Powers**

The Office of the Ombudsman is made up of the chief ombudsman and two deputy ombudsmen. They are proposed by the government and elected by the senate. The chief ombudsman has a mandate of four years, renewable once, while the two deputy ombudsmen have three year mandates, also renewable once. There is also a permanent secretary.

The organisation and the functioning of the Office as scheduled by the law is shown in the following chart.

**The organisational chart of the office of the ombudsman**



In addition to the four units shown, soon, with the publication of the code of conduct law, the Office will establish a unit in charge of professional ethics too.

To fulfil its mission, the Office has the following powers:

- the chief ombudsman and two deputy ombudsmen have the powers of judicial police officers. The other personnel of the Office may be granted such competence by the minister responsible for justice;
- to request explanations on decisions or actions taken by government or public institutions, private institutions and NGOs when the population is not satisfied;
- to carry out investigations on actions taken by government institutions and those of private institutions which the population think are unjust;

- to identify laws hindering the good functioning of government institutions or detrimental to the population;
- to review draft bills and legal provisions and submit proposals thereto, to the cabinet or the Chamber of Deputies.
- to request from government and private institutions explanations required for investigation;
- to request documents, testimonies and explanations necessary for its investigations from public, parastatal, private organs and non-government organisations. It may listen to any person and request him/her to give testimony for the smooth running of an inquiry;
- to request disciplinary sanctions to be imposed on any employee, whether public or private, who has acted unjustly towards a person, an establishment or independent association and to determine what should be done so that those who suffered injustice may find redress.

### **Achievements**

The mandate began in November 2003, but the activities of the Office started in January 2004. Among the activities accomplished are the following:

#### **Visiting Public Organisations/Entities**

The Unit in charge of fighting injustice, corruption and other related offences visits organisations, and examines the following matters:

- Whether they function according to their regulations;
- Whether those regulations have loopholes that facilitate corruption and injustice;
- Whether they have internal control systems;
- How they plan and report.

The Office of the Ombudsman carries out the evaluations in the following order:

- Organisations which are nearest to citizens, and which appear in almost every part of the country, like local administrative entities and the Rwanda National Police.
- Organisations in charge of monitoring other institutions and regulatory bodies or organisations whose actions have an impact on other organisations. The idea is that if such organisations are performing efficiently, their performance will be emulated by other organisations. Examples of these organisations are as follows:

**Monitoring and Regulatory Organisations**

- Office of the Auditor General
- Rwanda Public Procurement Authority
- Central Public Investment and External finance Bureau
- Rwanda Bureau of Standards
- Privatisation Secretariat
- Rwanda Revenue Authority
- Rwanda Utilities Regulatory Agency

**Organisations whose Services Benefit the Majority**

- Social Security Fund of Rwanda
- Electrogaz
- Onatracom

The evaluation is done in different ministries with a view to monitoring their activities. Evaluation reports from organisations and ministries monitored are returned for joint discussions between the Office of the Ombudsman and the evaluated institution, and the necessary recommendations for better service delivery made.

However, where recommendations are not implemented, sanctions may be imposed for non-performance.

As a result, many organisations and ministries have made adjustments in the following areas:

- The structures of some organisations have changed.
- Many organisations are developing their own procedure manuals describing decision-making processes, determining the time limit for decision making and related regulations.
- Strong internal audit departments (quality assurance or internal audit) have been established.
- They present reports to the relevant authorities.

### **Investigation**

Some cases of corruption and related offences were identified by the Office of the Ombudsman when it visited various organisations. Others came from information received in different ways. Some of the cases were submitted for follow-up to respective organisations like the police and the office of the prosecutor general and so on.

The office of the ombudsman may on its own initiative, carry out investigations into corruption cases and thereafter, submit the file to the prosecution department for action.

The table below shows the number of corruption cases investigated over the years.

#### **Number of corruption cases investigated**

2004	2005	2006	2007
120	35	36	42

The above cases emerged from the following categories:

- recruitment;
- public procurement;

- human resource management;
- local government; and
- administration.

### **Sensitisation**

The employees of the Office visit sectors, districts and provinces to present seminars for:

- peasant farmers;
- grass-roots leaders;
- students of secondary schools;
- tertiary institutions and university students;
- civil servants; and
- NGOs and international organisations.

The aims of the seminars are the following:

- to sensitise the population about their rights in regard to public organisations;
- to educate the population about referral systems and where to seek redress in case of injustice;
- to inform people how to prevent and fight against injustice, corruption and related offences; and
- to sensitise the population about the Office of Ombudsman; its powers, functions and organisation and the limits of its mandate.

### **Complaints resolution**

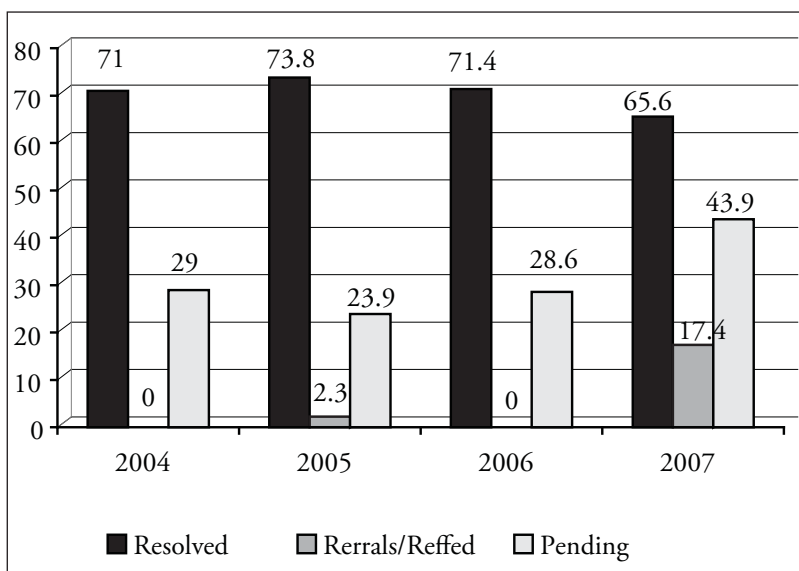
Some complaints are brought to the headquarters of the Office by concerned people; others are received during field visits to sectors, districts and provinces. The complaints received from the various sources may be classified into the following categories:

- complaints about property and settlement;
- complaints about inheritance and polygamy;

- complaints about unfair compensation to evicted proprietors of plots on which villages “imidugudu” were constructed or other activities with a general-interest character;
- complaints relating to the sharing of land between Rwandan refugees of 1959 and citizens who were living in Rwanda before 1994;
- complaints about the judicial process;
- delayed court cases;
- non-executed judgments;
- complaints concerning employment;
- complaints about salary arrears of government employees;
- complaints about districts and towns;
- administrators who do not resolve citizens’ complaints;
- gender-related complaints;
- complaints about settlement; and
- employees who were not paid by companies and projects in the country.

#### **Number of complaints received and their evolution**

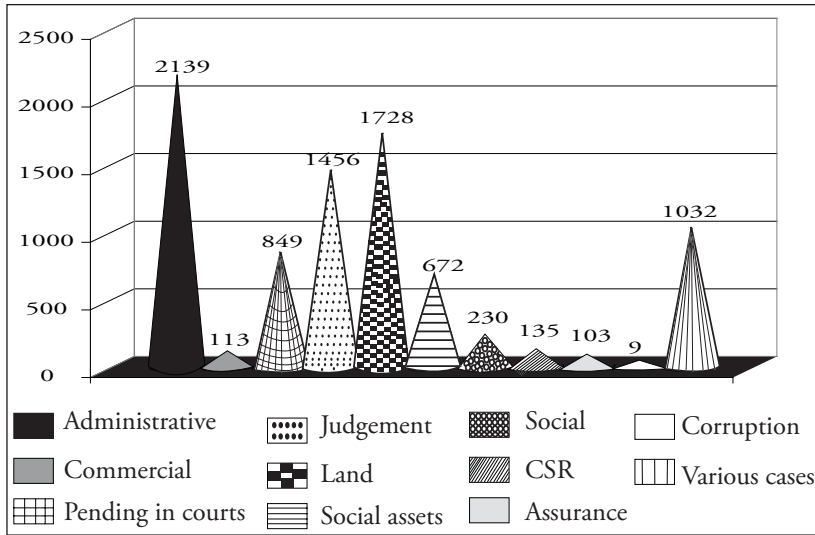
Year	Complaints	Resolved %	Referred %	Pending %
2004	3,924	71	0	29
2005	3,056	73.8	2.3	23.9
2006	961	71.4	0	28.6
2007	1,099	65.6	17.4	17

**Addressing complaints from 2004 to 2007 (percentage)****Complaints by category**

Year	2004	2005	2006	2007
Administrative cases	300	714	320	242
Commercial		26	8	36
Judgement	680	360	187	225
Pending in court	110	257	81	69
Land	764	688	153	234
Family property	321	217	70	80
Social affairs	165	142	16	7
Social Security Fund[Caisse Sociale du Rwanda (CSR)]	281	55	22	10
Insurance	200	37	16	7
Various cases	192	164	88	189



**Complaints 2004-2007 by category**



**Receiving and Verifying Declaration of Assets**

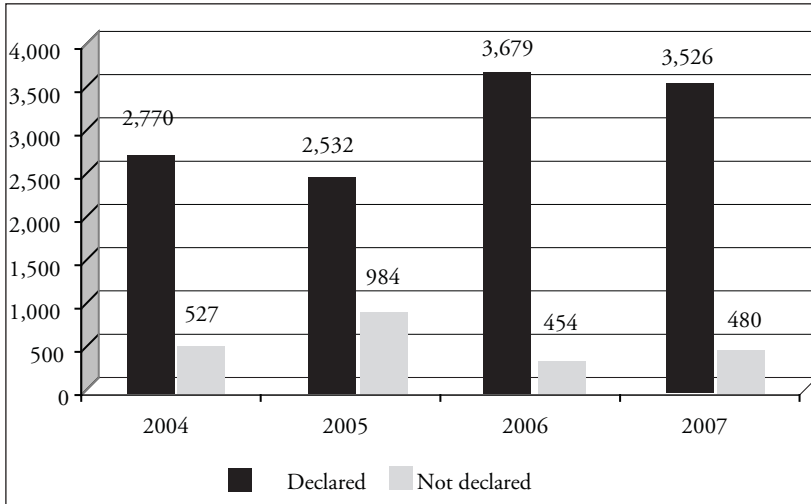
The following table shows the number of people who have to declare their assets annually as stipulated by law.

**Declaration of Assets (percentage)**

Year	Received	Not received	% received of declaration
2004	2,770	527	84
2005	2,532	984	72
2006	3,679	454	89

2007	3,526	480	88
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**Declaration Forms Received**



**Other achievements:**

- Initiated a bill modifying and complementing the law establishing the organisation and functioning of the Office of the Ombudsman.
- Prepared a bill on the code of conduct of leaders.
- Carried out a study on the impact of the Office’s activities on the population (2006).
- Participated at national seminars, workshops and conferences organized by various governmental departments and other organisation.

**Good Practice And Lessons**

Conditions essential for good governance and accountability are as follows:

- political will

- legal framework
- institutional and organizational framework
- awareness among the people

**Good Practice**

- The Office rewards people who provide information on corruption or embezzlement; the informer receives a certain percentage of the amount recovered.
- Evaluation is imperative for both performance measurement of programme and organisational effectiveness.
- The Office strives to facilitate peaceful resolution of complaints. The Office tries to involve all actors concerned in the complaint.
- The Office monitors the implementation of performance contracts in public institutions. Performance contracts are signed between the director general of public institution and the board of directors (which is the supervisory body) in order to supervise the performance of public institutions.
- The performance contract determines the competence, rights and duties of all parties in order to achieve the objectives of the public institution.
- Following the monitoring and evaluation of the public institutions, the Office writes a report with recommendations and directives for implementation to the concerned public institution and its board of directors.

- The Office uses its magazine to create awareness about the activities of the Office and how its service is delivered to the masses.

### **Lessons and Achievements**

- A large number of people throughout the country are now aware of their fundamental rights.
- After the Office's massive sensitisation programme, people are willing to denounce injustice and corrupt tendencies, which had been common at all administrative levels in the government in the past.
- The population knows where to take their complaints in case of injustice.
- Zero tolerance to corruption has been established.
- In 1994, the government of Rwanda published guidelines after consulting many people in conferences held in Urugwiro Hotel (1998 – 1999). The conference participants were invited by the president's office, and included representatives of government, the private sector, political parties, religion representatives and others, and participated in those discussions and studies. The conference dealt with many matters, among which was the fight against corruption, good governance and compliance with rules.
- Senior government officials meet annually to evaluate the extent to which they are achieving the respective organisational goals.
- Many speeches of high-ranking government officials denounce corrupt tendencies and other related offences.
- Since the Office started operations, leaders of different institutions and organisations have improved their service

delivery, respecting the rule of law and regulations governing institutions.

- Accountability has improved and transparency has become the norm.

### **Challenges**

- Limited resources to accomplish the mission of the Office.
- Limited number of staff to accomplish the mission of the Office.
- Reluctance of some local leaders to solve citizens' complaints
- Insufficient equipment necessary for carrying out study visits or to conserve evidence of complaints.
- As far as declaration of assets is concerned, certain organs delay submitting names of persons who are supposed to declare their property, which prevents the Unit from accomplishing its work.
- Some Rwandans are not yet well acquainted with the office of the Ombudsman, hence submit complaints which are not in the Office's sphere of responsibility.

### **Recommendations**

- Transparency must be emphasised.
- The budget must be increased to provide sufficient resources to accomplish the mission of the Office.
- Local leaders must be encouraged to make quick decisions regarding citizens' complaints.
- The campaign of sensitising the population about the mandate of the Office must continue.

- A favourable political space for good governance and accountability should be created.
- The Office looks forward to providing incentives for citizens who voluntarily report corruption.
- The Office looks forward to the joint co-operation of regional anti-corruption institutions, to continue the campaign against corruption, in order to create a region free of corruption, and to ensure transparency, public accountability and good governance in the region.

## **Strengthening Public Accountability and Governance in Controlling Corruption in Tanzania: The Role of the Ethics Secretariat**

*Colettha Kiwale*

### **Introduction**

Throughout history, corruption has been a global social phenomenon (Zemin, 2001). Developing countries and those making a transition from socialism are particularly at risk (Gray, 1997). Evidence from cross-country empirical studies has confirmed that corruption is a symptom of dysfunctional public service institutions (World Bank Institute, 1999). The complex nature of corruption is grounded in a country's culture and history, its political system, and its stage of economic and social development, which makes the fight complicated. Corruption often flourishes where public work ethics is absent or weak, and understanding of the concept of public accountability is not stated clearly.

Corruption has a number of adverse effects. It affects investment, competitiveness and economic growth negatively, it reduces productivity of capital, causes erosion of public confidence in the integrity of public servants and the government due to a decline in the quality of public services provided, it distorts decisions about investment, and budgets of countries, and diverts resources away from projects that contribute to the well-being of citizens, it diminishes social values and norms and, over time destroys the very fabric of society (Langseth et al, 1999, CSC Singapore, 2008).

Corruption is defined as "the misuse of public office for private gain" (Kaufmann, 1997:114). Public accountability refers to the "obligation to answer publicly, fully and fairly, for the discharge of responsibilities that affect the public in important ways...the answering is for intentions as well as results" (CCA, 2008:2). The

Advanced Learner's Dictionary (2000:395) defines ethics as "moral principles that control or influence a person's behaviour." Governance is defined as the "use of political authority and the exercise of control over society and the management of its resources for social and economic development," encompasses the "nature of functioning of a state's institutional and structural arrangements, decision-making processes, policy formulation, implementation capacity, information flows, effectiveness of leadership, and the nature of the relationship between rulers and the ruled" (Serageldin and Landell-Miss, 1991 in Johnson and Doig, 1999:19).

### **Ethics, Corruption, Accountability, and Governance: Causal Relationship**

Corruption, ethics and accountability are inseparable entities. Their inseparability is caused by their intrinsic relationship in the system of governance. The Klitgaard et al (2000) model explains the dynamics of corruption and expounds this relationship.

$$C \text{ (corruption)} = M \text{ (monopoly power)} + D \text{ (discretion)} \\ - A \text{ (accountability)}$$

In expounding the model, the extent of corruption depends on the amount of monopoly power and discretionary power that officials exercise and the degree to which they are held accountable for their actions. Discretionary power is often extensive where administrative rules and regulations are poorly defined (Klitgaard et al, 2000). Accountability may be weak as a result of poorly defined ethical standards of public service and financial systems, or ineffective watchdog agencies (Langseth et al, 1999). This scenario has an adverse effect on the whole system of governance.



### **Initiatives taken by the Government of Tanzania to Strengthen Public Accountability and Governance, as a way of controlling corruption and other misgovernance practices**

The concern about ethics in public service ought to focus on what is considered right and proper behaviour for all public officials i.e. public servants and political leaders. This includes being just and fair, which are expectations of the public from any rational bureaucracy. Ethics ought to provide the basis for accountability. The concept and practice of accountability is supposed to increase transparency and legitimacy, and to improve policy implementation. Clear ethical standards by public leaders in any country are essential for maintaining and enhancing public confidence in the government, which is a measure of good governance. These standards should be stipulated clearly in the constitution, laws, and in codes of ethics and conduct.

In this regard, the government of the United Republic of Tanzania (URT) has embarked on an ambitious reform agenda with a view to ensuring integrity and strengthening public accountability and governance, to fight corruption and other misgovernance practices. These reform agendas are

- Public Service Reform Program (PSRP) I and II
- Public Finance Management Reform Program (PFMRP)
- Local Government Reform Program (LGRP)
- Legal Sector Reform Program (LSRP)
- Strengthening the Prevention and Combating of Corruption Bureau, which supervises operationalisation of the Prevention and Combating of Corruption Act No. 11 of 2007
- Establishment of the Presidential Commission of Inquiry Against Corruption (PCIAC),

- Establishment of the CHRAGG, which supervises the operationalisation of Act No. 7 of 2001 and Act No. 12 of 2003 in Tanzania Mainland and Tanzania Zanzibar, respectively
- Establishment of the Good Governance Coordination Unit
- Establishment of the Code of Ethics and Conduct for Public Service of 2005
- Establishment of the Public Leadership Code of Ethics No. 13 of 1995
- Devising of the NACSAP I and II.

This paper will focus on the last two initiatives.

### **Establishment of the Public Leadership Code of Ethics Act No. 13 of 1995 (PLCE No. 13 Of 1995)**

In 1995 the Constitution of the URT was amended by the introduction of Article No. 132, which enacted the PLCE Act No. 13 of 1995. The Article enabled the establishment of the Ethics Secretariat, which is an extra-ministerial department of government under the Office of the President. The Ethics Secretariat has the duty to:

- (a) receive declarations which are required to be made by public leaders under the Constitution or any other law
- (b) receive allegations and notifications of breach of the Code by members of the public and
- (c) inquire into any alleged or suspected breach of the Code by public leaders who are subject to the Act

The PLCE Act No. 13 of 1995 establishes a statutory basis for the development of standards of ethics for public leaders. These standards aim to strengthen accountability and governance of specified bureaucrats and politicians defined as public leaders. These

public leaders serve in the executive, legislature, judiciary, police, and the military. The basic principles and provisions underlying the Code are the following

- **Incontestable integrity:** Public leaders are obliged to act with honesty, impartiality and openness (transparency).
- **Decision making:** In accordance with the law and in the public interest.
- **Avoiding situations of conflict of interest:** Resolve conflict of interest in favour of the public interest.
- **Public scrutiny:** Official duties and private affairs to be subjected to close public scrutiny (need for transparency).
- **Private interest:** Avoid conflict with leadership responsibility.
- **Gifts and benefits:** Refrain from soliciting or accepting economic benefit other than incidental gifts, customary hospitality or other benefits of nominal value.
- **Preferential treatment:** Refrain from stepping out of official roles to assist private entities or persons in their dealings with government.
- **Insider information:** Refrain from taking advantage of or benefiting from information obtained in the course of official duties/responsibilities and not generally available to the public.
- **Government property:** Public leaders are not allowed to directly or indirectly use or allow use of government property for private benefit.
- **Post-employment:** Refrain from acting in a manner that can cause ridicule to the service, or taking advantage of previous office (conflict of interest).

- **Declaration of Wealth: Assets and Liabilities.**

The principles and ethical standards prescribed in the PLCE Act No. 13 of 1995 aim to institutionalise accountability for public leaders, which will enhance transparency, openness, and fairness in decision-making processes, which are pillars of good governance, and hence limit corruption and misgovernance practices. The Ethics Secretariat has the important role of ensuring effective and efficient public scrutiny, which is the bedrock of public accountability.

### **Challenges and Prospects**

Some economic and administrative reforms intended to curb corruption in developing and transition economies have proven counter-productive. This observation poses a challenging scenario, especially when it comes to suggesting recommendations to control corruption. This paper focusses on mainstreaming ethics in every anti-corruption strategy as a preventive approach. Instilling ethics in human resources capital is of extreme importance, because it is humans who supervise economic and administrative reforms to control corruption. Only the right people will be able to do the right things. On the basis of this argument, this paper suggests the following:

- Making ethics part of everyday life of public leaders i.e. ensuring that a culture of observing ethics exists among the leadership. This can be done by appointing or electing leaders with proven records of ethical conduct as well as rigorously enforcing the Code of Ethics.
- Decentralising functions performed by Oversight and Watchdog Institutions (OWIs) to lower levels. In 2005 the Ethics Secretariat decentralised its responsibilities to the zonal level by opening six zonal offices. The opening of the zones was aimed at bringing functions performed by the Ethics Secretariat closer

to the public, in order to strengthen the process of ensuring accountability of public leaders to the public.

- Instilling in the general public awareness of the codes of ethics that public leaders are required to observe, as well as demanding accountability for any breaches committed. Civic education by both the state and non-state actors is key to achieving this goal. The Ethics Secretariat informs the public on their role in ensuring accountability of public leaders through reporting complaints of any breach of the Act. Also, it educates public leaders on their legal obligation to adhere to the ethical principles and standards prescribed under the Act.
- Improving the capacity of OWIs as well as CSOs to monitor the observance of ethics by public leaders. For example, the Ethics Secretariat supervises the implementation of the Facility for Ethics, Accountability, and Transparency (FEAT). The facility forms part of a wider Accountability, Transparency, and Integrity Programme (ATIP). Through the facility, the Ethics Secretariat has since 2007 been collaborating with civil society, in particular, NGOs and community based organisations (CBOs) that deal with good governance to promote ethics as a way of ensuring accountability from public leaders. The collaboration is expected to complement the Ethics Secretariat's efforts to disseminate information to the public. Also, the facility focuses on strengthening capacities of civil society by enabling them financially and materially. Access to the facility is demand driven.
- Strengthening legislations, regulations and codes of ethics governing public leaders at all levels in the public service. At the moment the Public Leadership Code of Ethics Act is under review.
- Need to promote ethics in Tanzanian society as a whole since leaders are a product of the society in which they live. This

would help to build a society that puts ethics at the forefront of its values. Ethics at the family level as well as in schools need to be to young people. A national syllabus for ethics in schools needs to be developed and implemented. Further, religious institutions also have a role to play by encouraging their faithful to abide by teachings of their faiths, all of which emphasise ethical conduct and behaviour.

- Professional associations and the private sector have a duty to ensure that their members abide by the set codes of ethics, and where breaches occur, impose appropriate sanctions.
- The role of the media should be unbiased. Currently a strong unity and solidarity among local media against corruption and other social evils has led to promotion of social justice and development issues.
- Recent political pronouncements have focussed on implementing with new vigour the Leadership Code of Ethics (Butiama Declaration) within the party rank and file.
- A Code of Ethics/Conduct for political parties in the country (6N No. 215 of 12th October 2007) has been introduced.
- There is a need to build organisational capacity for strategic, proactive, results-oriented, enhanced and effective performance of the Ethics Secretariat.

### **Why Ethics**

- To clarify minimum acceptable behaviour.
- To increase public confidence and trust in government and in public service.
- Adherence to ethics this creates and maintains confidence in government (trust in governance). Building trust in government requires the following:

- Effective policy formulation and implementation mechanism
- Leadership commitment
- Popular participation
- Effective democratic governance
- It forms the backbone of good governance and public administration.
- It is a pillar in the fight against corruption and unethical practices.
- A powerful regulator of power and authority entrusted to public leaders.

### **Mainstreaming Ethics in every Anti-corruption Strategy**

In order to incorporate ethics in every anti-corruption strategy, the government of Tanzania devised the NACSAP in 1999. NACSAP is a multi-pronged strategy guided by five key principles: prevention, law enforcement, institution building, public awareness, and the political will. The first phase of NACSAP was implemented from 2001 to 2005. This phase called for coordinated efforts to achieve the following objectives:

- Reforming government institutions to institute financial discipline and improve service delivery
- Raising public awareness in combating corruption
- Increasing transparency, accountability and integrity in government business
- Coordinating, monitoring and evaluating the progress of anti-corruption effort?
- Enacting and enforcing laws aimed at fighting corruption and enhancing good governance?

### **Achievements of NACSAP I**

Transparency and accountability in the public service has increased, corruption is now an open agenda, OWIs have been strengthened, foreign and local investments have improved tremendously, cumbersome regulations and procedures have been reviewed, a new anti-corruption law has been enacted by parliament i.e. The Prevention and Combating of Corruption Law, Act No. 11 of 2007.

The second phase was launched in 2006, and will emphasise achievement of the following:

- Improving and strengthening public delivery
- Strengthening oversight and watchdog institutions
- Improving and strengthening legal and judicial systems
- Collaborating, involving and promoting the involvement of private sector, CSOs and the media in the fight against corruption.

NACSAP II has been implemented by all ministries, departments and agencies at the central and local government, up to the district level.

### **Current Interest in Ethics/Threat at the Regional Level**

- The decline in moral values has resulted in a public outcry about rampant unethical conduct in the public service.
- Rampant corruption is seen as a consequence of disregard of ethics in the public service.
- There is a need to encourage ethical behaviour as the world is shrinking into a global village.
- Existing political will seems to be lacking proper and strong backing.



- There is inadequate support of enhancing capacity of OWIs in terms of resources.
- Development partners have a role to play.
- Sustained public support to government could decline if no concrete action is taken to fight corruption and other social evils.

### **Conclusion**

This paper has portrayed the path of the Ethics Secretariat towards ensuring accountability by public leaders as a means to warrant good governance, which is an indispensable attribute of controlling corruption and other misgovernance practices. The paper states clearly the importance of mainstreaming ethics in every anti-corruption strategy. Different economic and administrative reforms meant to control corruption, devised by some developing countries and those making a transition from socialism, have proved to be counter-productive. The author of this paper strongly believes that most anti-corruption strategies have failed because of a lack of emphasis on ethics as a means to control corruption. If the right economic and administrative anti-corruption reforms are implemented with the right people, and people adhere to ethical standards to govern behaviour and conduct in decision-making processes, then corruption will be controlled. It is of extreme importance to incorporate ethics in every anti-corruption strategy.

However, the process of mainstreaming ethics in every anti-corruption strategy is not easy. A number of challenges are involved. The following questions are worth asking regularly by watchdog agencies that promote ethics: Where is the starting point for ethics interventions? Do the ethical standards align with national and international development agendas? How do inclusive, participatory, and collaborative ethics interventions ensure accountability? Do the ethical standards stipulated in different laws reflect the nation's socio-economic frameworks? Is there a national policy on ethics?

How effective and efficient are ethics mainstreaming in anti-corruption programs? I challenge East African countries to obtain answers to these questions so as to be in better positions to control corruption.

The task of building an ethical society from which future leaders can be moulded should involve state and non-state actors at all levels. The late Mahatma Gandhi, with reference to the importance of values and integrity, once said:

“The things that will destroy us are: politics without principle; pleasure without conscience; wealth without work; knowledge without character and business without morality.” In so saying he emphasised the importance of values and integrity in building sustainable social systems.

Consequently the Ethics Secretariat advocates the formulation of a national policy on ethics to make ethics a national agenda.

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## **Strengthening Public Accountability and Governance in East Africa: Uganda's Experience**

*Angela M.T. Bafokuzaana*

### **Introduction**

Strengthening public accountability and governance in EA calls for efforts to promote integrity and rid society of corruption at all levels. As is commonly acknowledged, corruption has been around for as long as human beings have lived on earth. Also established is the fact that corruption has been evolving in the degree and form of its complexity, with corruption becoming more sophisticated and transnational. It is for this reason that the crusade against corruption must continuously develop advanced strategies to counteract its sophistication.

Corruption is commonly understood to mean the use of public office for private gain, and involves the conversion of public funds and other resources or abuse of power by holders of public office for selfish ends. In this discussion, the term accountability is understood to mean being answerable for one's actions or inactions in a public office, the underlying principle being that public offices and leadership positions are held in trust, confidence and respect. Similarly, governance has been used to mean the exercise of political administration and managerial authority and order, which is legitimate, accountable, transparent, efficient and equitable in allocating and using resources to promote human welfare and positive change of society. If accountability and governance are not addressed properly, this provides fertile ground for corruption to flourish in its numerous facets.

With regard to the Ugandan situation, it should be noted that the country went through a turbulent history that led, among other results to a breakdown of ethical values, which has impacted

significantly on governance and societal integrity. This has now led to high levels of moral degeneration, occurrence of unethical conduct and lack of integrity in the management of public and private affairs. High levels of corruption are a demonstration of the absence of ethics and integrity in society.

Since colonial timesperiod of, Uganda has experienced a series of forced regime changes and political instability. One of the most serious consequences of such changes has been the erosion of the moral fabric of people, who now have little or no regard for accountability and governance.

Available statistics can help us to appreciate the magnitude of corruption in Uganda. The Inspectorate of Government (IG) National Integrity Survey, (2003) reported “a marked reduction in the reported incidence of bribery since the 1998 survey,” whilst Transparency International’s Global Corruption Perception Index (CPI) score for Uganda improved from 1.9 in 2001 and 2.6 in 2004, to 2.7 in 2006/7 on a scale of 10, and achieved a ranking of 115 out of 180 countries surveyed in 2006/2007. The National Service Delivery Survey (NSDS 2004) in selected services shows corruption as prevalent in most institutions, as service users either knowingly or unknowingly pay for services for which they are expected to get freely. Bribery has been cited highest in the Central Police (33%), followed by the Local Administration Police (26%), high court (16%) and magistrates courts (16%), while in the health sector, 30% of patients were required to pay for health services, even though cost-sharing has been abolished.

It is also worth noting the report of the African Peer Review Mechanism (2007) on corruption in Uganda, which affirms that “all informants, including political leaders and appointed officials, agreed that corruption is now institutionalized.” Even public opinion consistently perceives high levels of corruption in political and public

institutions and believes that corruption impacts on every aspect of life in Uganda.

There are numerous causes of corruption, some of which include political instability, inadequate/ineffective laws, weak sanctions on the corrupt, weak administrative controls, poor pay and work conditions, lack of adequate facilities, insecure tenure of office, personal greed, insufficient judicial personnel capacity to attend court cases, weak procurement systems, and some negative practices of civil society. Commonly cited as reasons for corruption are the negative public beliefs and attitudes which glorify and exalt the corrupt, thereby reinforcing this evil practice.

The impact of corruption is devastating to development because it raises costs in both the public and the private sector and diverts resources from their productive use. For example, a large number of people find it difficult to access schools, health facilities and markets for their produce because roads are poor, as a result of funds for road building having been embezzled. Corruption further exposes the lives of the people to dangers that arise out of corrupt practices such as shoddy construction and theft of drugs from health centres.

The above examples clearly justify the urgency of the fight against corruption, and hence the need to strengthen public accountability and governance. In its fight against corruption, the government of Uganda (GOU) has taken cognisance of international best practices and international instruments. It has also recognised the need for concerted regional efforts to deal with organised transnational crime including laundering of the proceeds of crime. It is imperative that collaborative efforts are made to fight corruption.

Below some of the achievements of the Ugandan government over the years are listed and a few pointers on best practice, lessons learnt and challenges faced during this period are given.

## **Achievements of the GOU in Promoting Public Accountability and Governance**

### **Legal Framework**

Establishment of a strong legal and institutional framework has been a major step forward in the fight against corruption. The Constitution of Uganda (1995 as amended) is the basis of Uganda's anti-corruption legal framework from which all other laws derive their authority and function. It pronounces itself very clearly on corruption in article. 17 (1i) i.e. "all persons placed in positions of leadership and responsibility shall, in their work, be answerable to the people; all lawful measures shall be taken to expose, combat and eradicate corruption and abuse or misuse of power by those handling political and public office."

Constitutional provisions inform the specific anti-corruption legislative enactments, such as the Inspectorate of Government Act of 2002, the Leadership Code Act of (2002), and the Anti-Corruption Bill of 2008. There are other derived laws pronouncing on accountability and transparency, e.g. the Public Finance and Accountability Act, the Access to Information Act (2005) and the National Audit Act (2007) and the Public Procurement and Disposal of Assets Act (PPDA)(2003). These laws in turn conform to the international legal instruments on corruption ratified by Uganda, such as the United Nations Convention against Corruption and the African Union Convention on Prevention and Combating Corruption.

**The Leadership Code Act (2002):** This lays down minimum standards of behaviour and conduct for leaders, emphasising on transparency.

The constitution was amended to cater for new ways of implementing the Leadership Code Act. As a result, provisions for the anti-corruption court and leadership tribunal have been



incorporated. The amended Inspectorate of Government Act (2002), the amended Leadership Code Act (2002) and the Access to Information Act (2005) have all consequently come into force.

**The Inspectorate of Government Act (2002):** The office of the IGG was established under the Inspectorate of Government Statute of 1988. With the promulgation of the 1995 Constitution, a new act came into force in 2002 with provisions for special powers for the IGG to investigate and prosecute corruption, abuse of office and authority. Special courts have been created specifically to handle corruption cases.

**The Prevention of Corruption Act (1970):** This Act has been reviewed and a new bill, the Anti-Corruption Bill, containing tougher sanctions, is currently before parliament. This new bill incorporates Uganda's international obligations under the AU Convention on Preventing and Combating Corruption as well as the UN Convention against Corruption into the domestic legal framework. It is a penal law providing for corruption offences such as bribery, corruptly transacting with agents, and corruptly procuring the withdrawal of tenders. It expands the scope of the definition of corruption and provides for stronger sanctions against the corrupt, such as confiscation, and freezing and seizure of proceeds of corruption. The Bill defines CSOs role, which is reporting cases of corruption, and offers protection to those who report in good faith. This should go a long way in checking corruption.

**Qui tam Legislation:** This is an initiative designed to allow a private citizen to sue on behalf of government and receive a share of any financial penalties imposed, including government protection. It is a reward system for whistleblowers, which if properly implemented, can be effective to check corruption. The process of developing the bill is at the principles level.

**The Whistleblowers Protection Bill:** This Bill sets the procedures through which individuals in both the public and private sectors can disclose information in the public that relates to irregular, illegal or corrupt practices. Provision is also made for the protection against victimisation of persons who make disclosures regarding the conduct of other persons. Once enacted, the legislation will enable civil society to participate effectively in the procuring of evidence against the corrupt, thereby improving the prosecution and adjudication of corruption cases.

**Local Government Act (1997):** In order to strengthen transparency and accountability in local government, the Local Governments Act was amended to respond to other demands for increased accountability. In 2006, the Local Government (Amendment) Act (No. 2) and the supporting Local Government (Public Procurement and Disposal of Public Assets) Regulations (No. 39 of 2006) were brought into effect, with variations specific to local governments.

**The Public Finance and Accountability Act (2003):** Financial and auditing systems and other regulations are amended from time to time to meet the changing demands for transparency and accountability. The Ministry of Finance Planning and Economic Development (MFPED) streamlined its mechanisms to guide and monitor local governments in their financial affairs and continued to demand and receive monthly and quarterly accountability reports. Statutory bodies (the Local Government Public Accounts Committees, the District Service Committees) are now funded directly by the centre under the monitoring and accountability grant. This is a measure to reduce their allegiance to and influence-peddling by local leaders. MFPED now imposes sanctions on those local governments that delay accountability by withholding releases, a mechanism that has also helped most of them to produce their accounts. A new Public Finance and Accountability Law and the Treasury Accounting Instructions were passed, accompanied by a series of

capacity-building activities, including sensitisation workshops for all stakeholders. MFPED continues to carry out routine inspections for compliance with stores, records and operations requirements.

**The National Audit Act, 2008:** This was recently been passed by parliament. The legislation is designed to bring into effect the 2005 amendment of the constitution securing greater autonomy and independence as a function of the Office of the Auditor General. The law empowers the auditor general to approve the withdrawal of funds from the Consolidated Fund, and to audit and report on the public accounts of Uganda. These include accounts of all public offices, universities, public institutions, corporations or other bodies established by acts of parliament as well as private organisations to whom public monies are disbursed. The legislation also empowers the auditor general to review classified expenditure.

**Public Procurement and Disposal of Public Assets Act (2003):** The Act empowers the PPDA to make interventions to minimise corrupt practices in public procurement. The PPDA is similarly empowered to monitor the compliance of Procurement and Disposal Entities (PDEs) with the provisions of the Act, the regulations and any guidelines issued by the Authority. The law also empowers the public to report acts of violation or non-compliance with the law.

**Access to Information Act (2005):** This law is aimed at providing tools for efficiency, effectiveness, transparency, accountability, constitutionality and empowerment in the hands of the people, enabling them to high standards by demanding for information relating to matters of public interest.

### **Institutional Framework**

**Creation of the office of IGG:** The institution of the IGG is constitutionally established and mandated to fight corruption. Since its inception the Inspectorate of Government has established

ten (10) regional offices, which has brought the institution closer to where complainants and this has led to increased visibility of the institution. As a result, the role of the IGG is understood better. This is evidenced by the fact that, according to the 2003 integrity survey, 70% of households knew about the institution of the IGG and what it does, compared to 32% in 1998. This has led to an increase in cases received and dealt with at the regional offices. It is the obligation of the public to report cases of corruption and other related issues to the IGG. However, a lot more effort needs to be done to promote willingness to participate safely in corruption cases as witnesses in courts of law.

The IGG set up a Leadership Code Directorate to implement the Leadership Code Act with a clear mechanism to request, receive and process declarations from specified public officers. Declarations of public officers' statements of income, assets and liabilities have been made regularly and IGG has also taken action on the non-compliance according to the established procedures within the Leadership Code Act.

**The Directorate for Ethics and Integrity, (DEI):** was born out of the need for co-ordination and political representation of all government agencies with a role of fighting corruption. Its mandate is to co-ordinate government efforts in fighting against corruption and rebuilding ethics and integrity in public office and the private sector. It is also responsible for setting policies and standards that enhance accountability, ethics and integrity, and it also spearheads the development of the national strategy to fight corruption and rebuild ethics and integrity in society.

The DEI co-ordinates the efforts of the following institutions: IG, DPP, CID, Office of the Accountant General (OAG), PPDA, Ministry of Internal Affairs, Inspectorate of Courts, Local Government Finance Commission, Uganda Revenue Authority (URA), Public Service Commission, Ministry of Public Service, Ministry of Finance,

Planning and Economic Development, Ministry of Local Government – Inspectorate Directorate, Education Service Commission, Health Service Commission, and the Judicial Services Commission. The DEI is the co-ordinating arm of this forum.

**The Inter-Agency Forum (IAF):** This Forum comprises of government agencies that are charged with the responsibility of promoting accountability and transparency in the public office and fight against corruption.

Since 1998, anti-corruption agencies have recognised the importance of combining their efforts to plan and implement a national anti-corruption strategy. The formation of the IAF is an indicator of the interdependent nature of governance and accountability issues and the importance of close collaboration between these agencies to further a common agenda. Despite their specialised mandates and institutional functions, these agencies share a common goal. This joint forum has improved communication between the various anti-corruption agencies, built synergies, rationalised activities, shared experiences and information and pooled resources to achieve a common goal.

**The Judiciary:** The judiciary is responsible for ensuring that the administration of justice is done and is seen to be done. The administration of justice has been strengthened to make it more independent and self accounting. This has been achieved with the support of development partners, especially Danish Development Agency (DANIDA), which has assisted with the building of courts, the training of magistrates and the appointment of more judges. However, more needs to be done especially, regarding the need for judges.

**Criminal Investigation Directorate:** Has established a fraud unit to manage fraud cases and developed the capacity of its unit staff.

**Directorate of Public Prosecution:** The Prevention of Corruption Act is enforced by the DPP and the IGG. The DPP has special

investigative powers to examine a suspect's bank account information, power to order inspection of documents in possession of a suspect or his/her relations and the power to obtain forensic information such as sworn statements or certified copies of documents. The DPP is making active efforts to reduce the backlog of corruption cases.

**The Parliamentary Accounts Committee (PAC) and District Accounts Committees (DAC):** These committees have continued to monitor the utilisation of public resources budgeted for the implementation of government plans. A number of cases have been investigated, resulting in refunds of substantial sums of money and the prosecution of the culprits. They check accountability and transparency at both parliamentary and district levels.

**Accountability Sector:** The aim of the Sector is to establish a sectoral approach in fighting corruption and building systems of accountability. The Sector brings together institutions that perform complementary roles in the delivery of services and execution of other government programmes. It co-ordinates the following members: MFPED, Ministry of Public Service, DEI, IG, Office of the Auditor General, PPDA, Ministry of Local Government Inspectorate and representatives of the international development partners.

The institutions work in partnership to promote co-ordination, co-operation and information sharing, which enhance efficiency in planning and avoid duplication. This enables each institution to handle complementary activities of the sector from a point of comparative advantage or strength, which promotes efficient and effective use of available resources. The approach is currently being rolled down to the districts to reach the demand side of accountability by involving citizens in verifying, monitoring and evaluating of government programmes. When the sector is fully operationalised, citizens will have a platform to provide feedback about the quality of service delivery at the local levels, thereby ensuring increased value for money in supply of government goods and services.

## **Policies to Fight Corruption**

Another government achievement that is ongoing has been the development of policies that provide guidance to various institutions in the fight against corruption and promotion of accountability and good governance. They include the following:

**Decentralisation Policy (1993):** This was introduced to further government's commitment to devolve and transfer power, responsibilities and resources to local governments and to bring services closer to the people. The policy makes it possible for the public and CSOs to monitor and check public officials who are misusing public resources and authority. Under the Local Government Act, the policy empowers the District Councils to initiate, approve and execute their budgets. Decentralised planning captures the village-level public priorities and incorporates them upward to the district and the national levels and feed into the national priority areas for planning consideration. This ensures the inclusion of the lower government priorities as part of the national plan and it is easier to follow up implementation. The policy has encouraged public private partnership (PPP) down to the grass roots, and CSOs have been empowered to monitor the programmes. Anti-Corruption Coalition Uganda (ACCU) and Uganda Debt Network (UDN) monitor government service delivery in the districts and make reports to relevant offices. This has had a positive impact on the quality of public accountability in the districts.

**The National Strategy and Plan of Action to Fight Corruption:** First designed in 2000 - 2003, the strategy is a multi-agency approach that guides all national efforts to fight corruption and, to date, the third joint planning cycle for the period from 2008 – 2013 has been completed.

A national strategy aims at not only combating corruption, but also putting in place systems that ensure that authority in public

service is exercised transparently and with integrity. It provides for raising public awareness about corruption, and strengthening the capacity of the relevant agencies to manage corruption cases. Thus the strategy has a reactive part which deals with detection, investigation, prosecution and adjudication of the cases and/or subjecting them to administrative sanction. It also has a proactive approach, which concentrates on public mobilisation and education in ethics and integrity, and creating a conducive environment for the public to hold public officers accountable, thus making corruption a risky venture.

**National Values Policy:** It has been found, that our society needs to be assisted to identify common values that will provide a sense of direction regarding ethical standards of behaviour for managing a democratic society that would be cherished by all Ugandans.

In order for DEI to fulfil the stipulated best practice of consultation, country-wide soliciting of public views on what they would want to be included in the policy has been completed. This has been an opportunity for the public to reflect on the current status quo, and identify which commonly shared ethical values need to be documented as national values for Uganda, in order to create an environment of peace, and a productive and worthwhile corruption-free life. The policy aims at building a future values-based society by regenerating ethical values on which national integrity systems and ethical standards can be re-built. When implemented, it will enhance the behavioural change in society to appreciate the importance of integrity in public accountability.

**Coalition Building:** Efforts in this venture have seen the establishment of a collaborative framework between IAF and CSOs and the private sector, whereby joint plans are developed to promote sharing of information and experiences in their efforts to combat corruption and promote integrity in public life. As a result, a stronger



civil society is increasingly emerging and taking its rightful role of encouraging the public to demand accountability from their leaders. Mechanisms for strengthening the relationship with civil society have been designed under a three-year joint action plan to jointly implement activities that promote accountability. The partnership has encouraged civil society to monitor government more effectively and to hold it accountable. The relationship is based on mutual trust and commitment to the cause. The relevant institutions have responded regularly to media reports of corruption and, in a number of cases, have taken action.

Other policies that have been initiated by the government are economic liberalisation and privatisation as measures intended to reduce monopolies which provide fertile ground for corrupt practices. Civil service reform aimed at creating conditions for a professional civil service and many others measures.

### **Best Practices**

- Consultations are held during policy formulation to solicit public input before a policy is developed. The government has codified regulatory best-practice principles, which have to be followed and emphasis is on consultation, which in turn gives the public the opportunity and power to monitor implementation of government services. Information on monthly financial releases is shared with the public at both national and local levels.
- Publication and circulation of the LGPAC rules and regulations help the public to generally understand how government operates, so that they can play their role effectively.
- Liberalisation of the media has enabled it to play a key role in the promotion of good governance, by reporting corruption cases.

### **Lessons Learnt**

- Useful ideas have been generated through public consultations; this has been a confidence-building measure; it has also promoted a sense of ownership of decisions and policies. It has motivated the public to monitor and demand accountability.
- There is a need for political will at all leadership levels and public will to fight corruption. What has been happening in Uganda is that emphasis is placed on top leadership, yet the involvement of the public is necessary in fighting corruption. For instance, the public is needed to give evidence in court on corruption cases. Thus, emphasis should be placed on both the top leadership as well as the general public.
- Uganda embraced decentralisation ambitiously, resulting in a need to amend the act later. However, devolution is not a wholesale exercise but rather a systematic process that involves institutional capacity building.
- Co-ordination and collaboration provide stronger voices for lobbying for resources and implementation of the decisions taken. This synergy building, in turn, increases the attainment of positive and sustainable results.
- Experience has shown that improved investigative journalism skills among the media representatives, results in better quality reporting on corruption cases.
- It is important to consider positive rewards for people of integrity in both the public and private sectors as a motivating factor to anti-corruption crusaders.
- Partnership with CSOs and the private sector increases the zeal for serious monitoring of service delivery countrywide. It also justifies the need for CSOs to build their own capacity for effective monitoring.

## **Challenges**

- Moral degeneration makes it difficult to fight corruption. It is argued that corruption benefits outweigh the practices of morality. In a situation where the corrupt are not only glorified but have the capacity to swing public opinion in their favour, one can only hope for tougher actions against the corrupt will be effective.
- Increasing sophistication in the methods of engaging in corruption makes it extremely difficult to fight. This is further compounded by technological advances and information sharing/interaction.
- Threats to personal life are often reported by those who have been courageous enough to take a bold step against corruption. In some instances, such acts of intimidation have actually resulted in harm or damage. Similar to threats is the tactic of holding at ransom persons who are against corruption. The result is that evidence in corruption cases is either unforthcoming or destroyed by the corrupt.
- Insufficient/ineffective investigative capacity of the organs that are responsible for investigation often constrains the entire exercise. There is an acute lack of state of the art machinery and related accessories/ingredients such as those required in fingerprint interpretation and handwriting analysis.
- Inadequate capacity of local governments, especially the newly created ones, to manage public resources, has eroded the whole exercise of public accountability. It takes some time to recruit and train the relevant human resources to fulfil such functions.
- In several of the anti-corruption agencies, case backlogs curtail the pace at which corruption cases are exposed and disposed of within the legal system, due to shortage of staff.

### **Recommendations**

- The legal framework needs to be strengthened to make corruption a risky business. This involves handing down serious punishment and other deterring measures.
- The auditor general's reports should be reviewed expeditiously by all the relevant organs so that suspects are taken to court before they escape or interfere with the evidence.
- Governments and all partners in development should promote moral regeneration at all levels of society. That is why Uganda is pushing for a national values policy and the integration of ethical values in the school curriculum, to effect behavioural change that will enhance public accountability and good governance.
- There is a need to continue building capacities of anti-corruption institutions by, for instance, committing more resources, encouraging political will and strengthening their co-ordination.
- The efforts to strengthen regional collaboration in areas of accountability, transparency and good governance should be continued. This is paramount for a stronger EAC.
- Strengthening legal frameworks and policies against corruption is not enough; the attitudes of the people need to be addressed. Societal attitude is vital for success in curbing corruption. In a society where corruption is glorified, proactive strategies, in addition to reactive ones, need to be applied extensively to realise positive behavioural change.

### **Conclusion**

The foregone discussion attests to the fact that the phenomenon of corruption cannot just be wished away, but has to be tackled systematically. It should be noted that corruption in Uganda is not a cultural issue, but a result of socio-economic changes leading to

institutional breakdowns and a degeneration of ethical values among people.

Corruption continues to impose costs through the construction of sub-standard infrastructure, the weakening of the financial sector, losses in revenue collection, tax evasion, the inflation of prices in procurement, failure to render services in both civil and military, pay-roll and tender fraud

The challenges posed by corruption are not insurmountable and that is why the efforts of the Ugandan government in curbing corruption are commendable, given what has been achieved under its broad “zero tolerance policy framework.” Much, however, remains to be done. There is a need to create a very strong and supportive environment and to build sufficient capacity among anti-corruption agencies to detect promptly and deal decisively with incidences of corruption as a way of demonstrating commitment to the public.

In addition, government needs to devise a systematic approach, political commitment, effective coordination and collaboration between the various institutions, civil society, and regional governments. There is a need to encourage the public to act as a strong watchdog while providing incentives for the private sector to reduce its inducements to public officers to act in its favour.

Finally, governments within the East African region ought to strengthen their own governance systems in addition to establishing mechanisms for strengthening public accountability in the region.

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## **Public Accountability and Governance in East Africa**

*Dr Yasin Olum*<sup>23</sup>

### **Introduction**

Professional ethics, which in public service refers to the values underpinning impartiality, objectivity, integrity, efficiency, effectiveness and discipline of public servants when acting in the public interest in general and when exercising discretionary powers in particular (Rashid 1993), as well as accountability, are two critical themes for modern government because of the severe crisis of legitimacy (Hondeghe 1998) and governance in most African countries. Frequently, MPs fail to represent their constituencies as they wish to be represented, cabinet ministers misuse their executive authority and public servants fail to serve properly (Canada School of Public Service 2008), p. 1). Unfortunately, these shortcomings in East Africa are the normal course of events despite the inadequate record of performance by public bodies; some MPs act irresponsibly, some ministers behave in an ‘I don’t care’ manner, some public servants are not proficient, some public policies do not produce results citizens value, and the public services are forth-class and not citizen-centered. This malfeasance started to occur shortly after independence, when nationalist leaders took over well-functioning colonial civil services (Prah 1993, p. 553).

Thus, for development to take off in Africa in general and East Africa in particular, one of the key policy demands is the need

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23 Dr. Yasin Olum is a Senior Lecturer in, and head of, the Department of Political Science and Public Administration, Makerere University, Kampala, Uganda. He is a Fulbright Scholar-in-Residence (SIR) at Greensboro College, North Carolina, USA(2009). He specializes in public sector management. His academic and research interests include governance, public policy analysis, political economy, local government/decentralization and general management.



to focus on public accountability to achieve good government<sup>24</sup> Holding governments to account is both a technical process of monitoring based on facts and reliable statistics, and a political process of empowering the public and civil society to participate effectively in democratic processes.

The discussion in this paper, therefore, hinges on the fact that governments must fulfill their commitments to their people by being fully accountable to them and transparent in the use of public resources. Indeed, governments are obliged, under international law, to enforce human rights, including economic, social and cultural rights (Global Call Against Poverty 2009, p. 1). They are expected to meet this responsibility by delivering economies that are equitable and work for the poorest people, providing quality public services and ensuring decent work for all. In this regard, governments, institutions, and CSOs must ensure that the causes of corruption are fought aggressively, including in the private sector. Indeed, “there is now a global resurgence of interest on how to prevent all forms of unethical practices including corruption and fraud in the public and private sectors” (Rasheed and Olowu 1993, p. 1).

## **Explaining Accountability, Public Accountability and Governance**

### **Accountability**

Although accountability is a protean or amorphous concept and a placeholder for multiple contemporary anxieties (Marshaw 2007), it can be defined as a social relationship in which an actor feels an obligation to explain and to justify his or her conduct to some

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24 Other policy demands against poverty could include: debt cancellation, trade, justice, and a major increase in the quantity and quality of aid; see Global Call to Action Against Poverty (GCAP, 2008) “Holding Governments Accountable”. <http://www.whiteband.org/resources/issues/issues/PublicAccountability/HoldingGovernment>, p.1.

significant other (Bovens et. al. undated). Accountability ensures that actions and decisions taken by public officials are subject to oversight so as to guarantee that government initiatives meet their stated objectives and respond to the needs of the community they are meant to be helping, thereby contributing to better governance and poverty reduction.

The concept of accountability involves two distinct stages: answerability and enforcement. Answerability refers to the obligation of the government, its agencies and public officials to provide information about their decisions and actions and to justify these actions to the public and those institutions of accountability tasked with overseeing their work. Enforcement suggests that the public or the institution responsible for accountability can sanction the offending party or remedy the contravening behaviour. As such, different institutions of accountability might be responsible for either or both of these stages.

From a constitutional perspective, accountability can be considered as a bundle of rules and principles regarding checks and balances on public power (Curtin 2005). The argument is that, in design terms, public power must always be matched by public accountability, which can, but need not, take the top-down, principal-agent form. A horizontal model is more open to non-hierarchical forms, and non-delegatory political accountability forms.

In the accountability process, the relationship between the accountant (actor) and the accountee (forum) or the account-giving, usually consists of at least three elements or states (Ibid., p. 5). First, the actor must feel obliged to inform the forum about his or her conduct by providing various sorts of data about the performance of tasks, account outcomes, or account procedures. Second, the information can prompt the forum to interrogate the actor and to question the adequacy of the information or the legitimacy of the conduct (debating phase). Third, the forum usually passes judgement

on the conduct of the actor. In case of a negative judgement, the forum may impose some sort of sanction on the accountant, which may be formal, such as fines, disciplinary measures, or dismissals, but they can also be implicit or informal (such as negative publicity).

Thus, any accountability system should give priority to four key issues (Aucoin and Jarvis 2005). First, it must give priority to the transparency of records, files and data. Second, it must give priority to the independent audit of financial statements, management systems and transactions. Third, it must give priority to independent review of decisions and behaviour for compliance with the law and policy. Lastly, it must give priority to the public questioning of ministers and public officials about their policies and executive-administrative actions.

Recently, there has been a growing discussion within both academic and development communities about the different accountability typologies. The concept of accountability can be classified according to the type of accountability exercised and/or the person, group or institution the public official answers to. The different forms of accountability that are best conceptualised in reference to their opposing or alternate concepts, are: horizontal versus vertical accountability (social and diagonal accountabilities) and political versus legal accountability. Other forms of accountability include financial accountability, moral accountability and professional accountability.

Horizontal accountability is the capacity of a network of relatively autonomous powers (i.e. other institutions) such as parliament and judiciary, that can call into question, and eventually punish, improper ways of discharging the responsibilities of a given official. It is the capacity of state institutions to check abuses by other public agencies and branches of government, or the requirement for agencies to report sideways. Vertical accountability is the means through which citizens, mass media and civil society seek to enforce standards of

good performance on officials (parliament is also important here as it provides a vehicle for public hearings, committee investigations, public petitions and public “voices” through which citizens and civic groups can question government and seek parliamentary sanction, where appropriate).

Social accountability is an approach which builds accountability that relies on civic engagement, namely, a situation whereby ordinary citizens and/or CSOs participate directly or indirectly in executing accountability. Such accountability is sometimes referred to as society-driven horizontal accountability. Mechanisms of social accountability can be initiated and supported by the state, citizens or both, but very often they are demand-driven and operate from the bottom up. It is a form of horizontal accountability. Social accountability includes participatory budgeting, administrative procedures act, social audits and citizen report cards, all of which involve citizens in overseeing and controlling government. Government initiatives or entities include citizen advisory boards, which fulfill public functions. Through social accountability, legislators can play the role of providing weight to grassroots accountability. For example, MPs can represent the concerns of their constituents by questioning a minister during question time in parliament, or by requesting information directly from a government ministry or department.

Diagonal accountability entails vertical accountability actors. It seeks to engage citizens directly in the workings of horizontal accountability institutions. It augments the limited effectiveness of civil society’s watchdog function by breaking the state’s monopoly over responsibility for official executive oversight. The main principles of diagonal accountability are as follows: Participate in horizontal accountability mechanisms (community advocates participate in institutions of horizontal accountability, rather than creating distinct and separate institutions of diagonal accountability); information flow (community advocates can access information

about government agencies that would normally be limited to the horizontal axis, e.g., internal performance reviews, as well as accessing deliberations and reasons why horizontal accountability institutions make the decisions they do. Hence, community advocates bring first-hand experience about the performance of the government agency to the accountability process); officials can be compelled to answer (community advocates co-opt the horizontal accountability institution's authority to compel a government agency to answer questions), and capacity to sanction (community advocates acquire the authority of the horizontal accountability institution to enforce the findings or influence elected officials).

Political accountability usually manifests itself in the concept of individual ministerial responsibility, which is the cornerstone of the notion of responsible government. Parliament holds the executive politically accountable because it is a political institution. The judiciary holds the executive legally accountable because it can adjudicate on legal issues. Together, they provide ongoing oversight in order to keep the government accountable through its term in office.

Financial accountability simply means accounting for the funds under one's control to accounting and auditing bodies. Moral accountability refers to someone accounting for his or her moral turpitude after executing a particular activity. Professional accountability is the requirement that an individual conducts his or her actions within stipulated rules, regulations, ethical standards, procedures and expertise.

However, increasing accountability in an organization may also have adverse effects. O'Neil (2002) observes that beyond some critical threshold, further increases in accountability may actually decrease legitimacy and trust. The basis of his argument is that every glitch in a policy process and every disappointing policy outcome may become a source of public outrage and political bickering. In

addition, Brin (1998, p. 3) argues that too strong an emphasis on criticizing and sanctioning may lead to disdain for government, and paranoia. Hence, transparency and accountability are beneficial up to a certain point. This is why Power (1999) stresses that increased transparency may lead to a call for even more transparency, setting in motion a vicious circle of control and distrust.

### **Public Accountability**

Public accountability is not just another political catchphrase; it refers to legally and otherwise institutionalised practices of account giving (Bovens et. al., undated, p. 5). Public accountability means the obligation of authorities to explain publicly and fairly, before and after the fact, how they are carrying out responsibilities which affect the public in important ways (Citizens' Circle for Accountability 2008, p. 2). It is required that those who hold public trust should account for the use of that trust to citizens or their representatives. Therefore, public accountability signifies the superiority of the public will over private interests and tries to ensure that the former is supreme in every activity and conduct of a public official (Olowu 1993, p. 221).

The main objectives of all public accountability initiatives are to ensure that public money is spent most economically and efficiently, and, in addition, that there is minimum of wastage or theft. Finally, that the public actually benefits from public finance (Khan and Chowdhury undated, p. 1).

Significantly, public accountability condemns and works to combat corruption because it is one of the worst enemies of development, it diverts resources from development by weakening institutions, eroding the legitimacy and credibility of state action and ultimately by destroying citizens' trust in government and in each other. Clearly, practices in many countries demonstrate that

the misuse of public office for private gain does not bode well for either accountability or good governance.

The global trend is that, while the provision of goods and services can be privatized, governance cannot. This explains why holding to account means obtaining from authorities the public explanation they need at the time they need it, validating the reporting for its fairness and completeness and doing something sensible and fair with explanations to attain good faith. Accountability also means to promote democratic control, compliance and continuous improvement in the use of public authority and resources (Aucoin and Heintzman 2000, pp. 45-56). Accountability in democratic governance and public administration requires that those who exercise public authority be subject to scrutiny and evaluation by a superior public official or public body. Indeed, accountability imposes obligations: those who exercise authority must render accounts to superiors, and superiors must extract accounts and pass judgement on them. Should this judgement be negative, then superiors should take corrective measures or apply appropriate sanctions, as they deem necessary.

The requirement that decision-makers explain publicly their intentions and meet the standard of explanation produces useful information that citizens could not otherwise have, and creates an important self-regulating influence on authorities' actions. In other words, for every major responsibility affecting the public there is accountability. Indeed, governments, corporations and institutions affect people's lives in various ways, for example, through misuse of public money and refusal to uphold the principle of safety.

### **Good Governance and Public Accountability**

Given that full and fair public accounting is an imperative if society is to work properly, the question is whether the governing authorities know their obligation to account publicly but simply evade it. In

governance terms, what is being seen today is the transformation of governance towards a more participatory and democratic model (Kim 2003, p. 1). This transformation of is a result of the traditional bureaucratic state being reshaped by non-state actors, including civil society. Bovens et. al. (undated, p. 2) observe that the "... displacement or diffusion of national, state-based 'politics' is one of the crucial contemporary 'shifts in government'". Indeed, accountability is one of the cornerstones of good governance.

Even though the essence of what constitutes good governance or even governance remains ill-defined, it can be characterized as (Landell-Mills and Serageldin 1991): depending on the extent to which a government is perceived and accepted by the general citizenry to be legitimate; committed to improving general public welfare and responsive to the needs of the citizenry; competent in assuring law and order and in delivering public services; able to create an enabling policy environment for productive activities and, equitable in its conduct, favouring special interests or groups.

In other words, from a governance perspective, shareholders (with regard to public resources, the citizens are the shareholders) want assurance that their money is being well managed and that finite resources are being expended in the company's (or people's) best interest (National Round Table on the Environment and Economy 2007, p. 1). The link between public accountability and governance is that public accountability cannot exist in the absence of a governance system where citizens themselves participate fully (ECOSOC President 2008, p. 2).

In the governance sense, therefore, public accountability goes beyond citizen engagement, participatory governance and a constant and interactive process of making the governors answerable to the governed for their actions, to the essence of rule of law and good governance (Ibid., p. 2). Good governance is about good government and the inclusion of civil society, and the private sector, in the



management of public affairs. It is also about enabling the people to gain freedom, have their views heard, choose their representatives and associate freely with others. Therefore, citizens become right holders; and as right holders, they claim their rights through the use of responsible, effective and efficient institutions. The bottom line is that lack of good governance produces disparity, injustice, deprivation and lawlessness in the society in general and for the poor in particular.

What is the situation regarding public accountability and governance in East African countries? As observed elsewhere (Ibid., p. 2), in East Africa public accountability and governance is complex and multi-layered. Virtually everyone to whom an account is due is also accountable to someone else at a higher level. The ultimate authority is the electorate: citizens possess the constitutional right to pass judgement on those they have elected to parliament and indirectly on their government. Clearly, the effectiveness of public accountability and governance in East Africa has been called into question by several individuals, auditor-generals and CSOs.

This deficiency is the reason why there is need for public accountability in the public administration machinery of these countries. To this discussion I now turn.

### **The Importance of Public Accountability to Governance**

Why do we need public accountability at all? Is accountability important to governance? There are several reasons why we need public accountability, among which are the following:

- (a) We need fair and full accounting from authorities because public accountability is a simple concept but it has not been grasped and installed as a regulator of fairness by citizens and their elected representatives. Hence, evaluating the ongoing effectiveness of public officials or public bodies ensures that they are performing to their full potential, providing value for

money in the provision of public services, instilling confidence in the government and being responsive to the community they are supposed to be serving.

- (b) Citizens have been confusing the meaning of public accountability (the obligation to explain intentions, performance standards, results of action taken and how the available resources have been applied) with responsibility (the obligation to act).
- (c) The obligation to account publicly cannot be refused in a democracy. In fact, accountability is central to representative democracy. From a democratic perspective, the issue is that the accountability arrangements do not offer sufficient incentives to the accountant to commit to the agendas of the democratically elected accountees. From a constitutional perspective, an accountability arrangement should create the checks and balances needed for a balance of power.
- (d) Citizens have yet to set basic performance and public accounting standards for authorities and their elected representatives and standards for public validation of what they say.
- (e) Anti-corruption agencies and citizens' protests, outrage (Prah 1993, p. 49), and distrust of the intentions and performance of authorities show that they (authorities) are failing to win the battle for fairness, hence, the public demands greater or stronger accountability.
- (f) Citizens' placing blind trust in authorities simply condones a syndrome that has allowed unethical conduct to persist. This is mainly because citizens have never required adequate public explanation from authorities due to lack of awareness. It is arguable that unethical practices and the lack of accountability of public servants are not sufficiently aware of the overall social and economic costs of malpractices.

- (g) The effectiveness of the design and practice of accountability within governance and public administration invariably has affected significantly the behaviour and performance of public officials and public authorities, respectively.
- (h) Elected and non-elected representatives can achieve public accounting that meets a standard of explanation that citizens have the right to see met.

Several challenges interfere with the quest for public accountability and governance in the different public administrations in the East African region. The next section highlights these challenges.

### **Challenges**

Although there are several challenges that need to be overcome to enhance public accountability and governance in East Africa, this section mentions only the main challenges.

- (a) Civil society stakeholders are so weak that they cannot easily join together in partnership to collectively reflect on its best and worst practices and undertake rigorous political analysis to identify collectively tools and processes to hold governments accountable.
- (b) Governments face constraints with regard to limited capacities and resources (Alam 2002/3, p. 1).
- (c) Citizens are powerless to hold their governments to account due to ignorance, poverty and weak civil society that lack sufficient space to engage with governance issues.
- (d) There is high turnover in elective offices at local, national and regional levels, resulting from elections that tend to produce relatively inexperienced MPs and political leaders. In addition, representative systems and party leadership structures that give MPs and political leaders dominance have produced situations in which such leaders are not willing or perhaps unable to hold

their governments and public service to account. In a survey in Uganda commissioned by the Government's minister of Ethics and Integrity, Dr. Nsaba Buturo, and conducted in December 2007 by Steadman Group, the parliament was found to be the fourth most corrupt institution (Sunday Vision 2008, pp.1-2), thus reflecting the general lack of effective leadership and weak functioning of the legislature.

- (e) There is an insufficient regime of performance reporting (Olum 2004; 2008) by departments and agencies. Reports tend to constitute self-reporting and so they constitute only half of the accountability process.
- (f) Institutions are weak. For example, the judiciary and the legal sector experience serious challenges: there is a backlog of judicial cases, poor prison conditions, high detention rates, excessive use of force by the police and other armed forces, lack of a legal assistance system, corruption and limited internal control mechanisms and citizens have limited awareness and understanding of their rights as a result of political heritage and high levels of illiteracy.
- (g) The accountability arrangements do not respond adequately to the practice of the multilevel governance. Bovens et.al. (undated, pp. 40-5) note that "multilevel governance" has arisen in opposition to conceptualisations that assume hierarchical relations between clearly delineated "levels" of government – national government and local government. Multilevel governance is characterized by three main features, namely; a) the existence of decision-making centres at multiple levels of government, b) that are not clearly hierarchically ordered (even

though there may be formal relations between them), and, c) whose decision-making processes are mutually intertwined. In East Africa, it is arguable that the intergovernmental relations systems on different “levels” of government (global-centre, regional-centre, centre-centre, centre-local, centre-agency, local-local, and local-agency)<sup>25</sup> that tend to have profound consequences for policy-making and implementation as well as accountability norms and practices, are not only complex and therefore complicate accountability mechanisms, causing fragmentation and distance between accountors and accountees, (i.e. principal-agent), but are either not clearly defined or non-existent. Worse still, because the majority of the political leaders and public officials at different levels of government are unskilled and inexperienced, this leads to distinct accountability problems such as dispersion of influence and responsibility.

These challenges need to be confronted if public accountability and governance are to be embedded in the region. The next section discusses the strategies for attaining public accountability and governance in public administration in East African countries.

### **Strategies to Reform Public Accountability and Governance**

There is a need to reform oversight and improve public accountability and governance in East Africa. However, in identifying these strategies, it is worth realising that accountability and governance are complex issues and therefore multidimensional and integrated solutions are required. The following are strategies for achieving public accountability and governance:

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25 These relationships should be classified as top-down, side-side or horizontal, and bottom-up. Hence, the institutional relationship that is at play says much about the nature of public accountability and governance that is ongoing in that particular country.

- (a) There is a need for accountability of auditors of public companies, thereby enhancing the confidence, reliability and integrity of the financial reporting process. This means that the mandated bodies (auditor-general, IGG, etc.) must act independently and transparently and they report publicly on the means taken to oversee the auditing of reporting issues and the results achieved. The results of inspections published in a public report which is prepared annually should be posted online. Self-reporting should be complemented by independent performance reviews to evaluate departmental programme and their management. These reviews will be different from performance audits, which have a different focus and function. Hence, the need to develop and implement proactive national anti-corruption strategies) consistent with international conventions on anti-corruption (Republic of Uganda 2000).
- (b) A framework for professional experts should form a Public Accountability Board or Parliamentary Agency – a system of private-sector (but not “self”) regulation that would not be under the control of the accounting profession (Washington DC 2002, p. 1). This structure should supplement existing oversight and enforcement efforts by expanding the opportunities to detect and remedy lapses or deficiencies in competence, thereby complementing the existing authority’s enforcement efforts. While parliamentary committees could receive performance reviews, they should not undertake them themselves because MPs on either side of the House are hardly independent. Sometimes, they are seen as rubber stamp MPs because the president is very powerful, and MPs are greedy for power and resources. So, these reviews should be undertaken by professional experts who are “peer” of the professional public servants who manage departments and their programmes. There is, therefore, the need to configure existing and develop new accountability forms and practices to act as checks upon the evolving politics

of multilevel governance. There is the need to encourage public service occupational associations to institutionalize professional values. These associations can also be used as instruments in transmitting expectations of the public to their members. Further, they constitute channels through which the morale, feelings and attitudes of public servants can be communicated and maintained.

- (c) Access to Information Act by the public demanding information on any matter of interest to them should be enhanced and made easier. Such information-provision policies, as methods of soft accountability, should contribute to the legitimacy of any institution (Voermans 2007, pp. 148-159).
- (d) Enforce and support freedom of expression including freedom of the media and freedom of association. Specifically, the media should be seen as central to investigating and exposing all aspects that interfere with proper accountability and governance in the region. Of late, the liberalized media, especially the press and FM radio stations, have been vanguards of probity, and accountable public performance in African countries, despite the harassment they sometimes face from state operatives.
- (e) Ensure quality, universal public services for all (health, education, water, and utilities) and stop privatisation where it causes deprivation and poverty.
- (f) Enhance ethical behavior by public officials through the use of the codes of ethics or conduct (Republic of Uganda 1995 Constitution) which can be viewed on-line; the codes of conduct or ethics must be made more current, applicable and effective. Ethics ought to provide the basis for accountability. Indeed, the concept and practice of accountability is expected to make public officials responsible for their actions or inactions. Unfortunately, in the majority of African governments, widespread ethical violations and weak accountability only

help to destroy the effectiveness and image of government further (Rasheed and Olowu 1993, p. 3). Whistle-blowing mechanisms should be made available, say, through websites both internally to staff and externally, to outside stakeholders. In fact, an accountability arrangement should be able to stimulate administrative bodies and officials to achieve a higher awareness of the environment, increase self-reflection, and induce the ability to change so that public officials do not remain permanently in the bureaucratic mode of conducting public administration. Experts include scholar-statesmen, specialists, consultants, government experts, interpreters and entrepreneurs. The authority and legitimacy of these policy experts are based upon their knowledge and professional credentials. Professional accountability is traditionally dominant: experts are called to account by other experts. Professional norms and standards are important in guiding the actions and decisions of experts. In East African countries, emphasis on professional accountability weakens hierarchical and political accountability regarding expert input in policymaking. This is because experts do not feel a strong obligation to account for their actions to others than their peers. Yet increasing the transparency and expert input in policymaking has been advanced as a key solution to controlling technocracy and enhancing democratic accountability. Each person is responsible for his or her actions. Each person is to be held accountable for his or her own deeds or misdeeds. In this vein, to strengthen internal controls of self-restraint of public officials, there is a need to educate and train them so as to make them particularly sensitive to seeking and defending the public interest rather than the private interests, either their own or that of other special interest groups. However, professional and ethical standards can be enhanced when enabling conditions of service are fostered and promoted.

- (g) Fostering public-service professionalism acts as an important safeguard for ensuring ethical and accountable behaviour.



It remains a fundamental requirement of public service professionalism that recruitment should be carried out on the basis of ability, and advancement within the service must depend on merit – ethnic and gender factors notwithstanding. These are central elements of institutional capacity building in the region. But it also means having a sound educational system that is both relevant and responsible to development and professional needs, which is especially germane to public service career development and training needs in an environment characterized by changing demands and requirements.

- (h) Ensure more outcome-focused performance indicators for public officials and spell out service requirements in advance through a system like results-oriented management (ROM). The standards of accountability should be applied to public and private providers of services to clarify on the impacts it will have on their activities.
- (i) Establish the need, where responsibility for programme is collaborative, for a clear governance framework by, for instance, ensuring more participative and collaborative leadership. Duty to serve the public requires a psychology or culture of service in national political and public life. Because Africa's political leaders are expected to bear a heavy responsibility for promoting governance in all spheres of life they, therefore, need to promote such a psychology through their own example and actions. One of the key answers to Africa's socio-economic crisis and underdevelopment lies in visionary leadership and managerial excellence. Indeed, the capacity to create, manage and optimise the required potential resources is among the key challenges facing leadership and management in Africa.
- (j) Reform the electoral system so that leaders are elected credibly (all the countries in the region have recently become multiparty and so they are yet to become politically stable). Because political

institutions are still young and fragile there is domination in political and public space by some parties. What is clear is that the parliaments in the region are yet to play a more critical role in high quality political debates and to hold the executives to account because of the dominance of the latter over the former. In addition, the recent moves towards multiparty politics and democratic governance necessitate a clear scrutiny of electoral procedures and management to ensure that elections enjoy wide public support and efficient management by the responsible electoral bodies. Political parties to strengthen the position of MPs generally with their parliamentary leaders in order to diminish the extent to which party discipline undermines the capacity of parliaments to hold their governments and the public services to account.

- (k) A more constructive and informed policy debate is required to increase the legitimacy of the governments' policy choices, to foster national stability, strengthen the formal processes of audit, and help to remove governance-related barriers that constrain all accountability measures in the countries. This could be done by strengthening the multiparty system so that debates focus more on developmental issues than the bad historical past, and strengthening formal and informal mechanisms and institutions of accountability and governance; and sanctions, condemnation and punishments or public officials must impose on offenders to deter malpractices. Social reward, honour, and recognition should be bestowed on ethical practices in office. The ultimate safeguard of high standards of public ethics and accountability is the ability of average citizens not only to hold public officials accountable for their actions or inactions but also to ensure that public institutions fulfill their functions and responsibilities. In addition, there is a need to actively involve civil society, including the poor, women, children and socially excluded groups, including people with disabilities,

and indigenous peoples, in policy formulation decision-making and implementation of international and national development priorities, policies and plans (e.g. budgetary (Uganda Debt Network 2002) and employment processes). Although civil society groups in the region are increasingly raising their voices to oppose structures of state domination and helping in fostering the integrity, accountability and transparency of governance, they are still weak, disunited and lack adequate resources.

- (l) Create or strengthen internal and external institutions, which include the legislature (which scrutinises public accounts and oversight responsibilities over the executive) and legislature-based institutions, the judiciary (courts adjudicate among institutions, organises groups and individuals) and quasi-judicial (commissions of enquiry, tribunals, ombudsman, public/civil service commission, etc.) institutions,<sup>26</sup> the executive (exercises the powers of governance through ministerial agencies) and executive-based institutions, extra-legal forms (media, pressure, interest groups and political parties are formidable institutions that demand accountable performance from the public service, and elections and referenda<sup>27</sup>), and internal institutions (e.g. civil service rules and regulations, training, disciplinary/appraisal procedures, and inspection)<sup>28</sup> to ensure

26 The Judicial branch of government is often poorly resourced and manipulated, for example, through delays and the process of writing white papers, circumscribed or managed as part of the executive branch and largely ineffective in carrying out its constitutional responsibilities.

27 Elections and referenda are expected to give citizens an opportunity to change governments or government leaders. Although elections are being held periodically more than ever before, sometimes (and as happened in Kenya and Zimbabwe), elections are turned into a farce by ruling parties. Nevertheless, while elections cannot be regarded as effective forms of enforcing administrative accountability, they could be used to provide some form of political accountability.

28 Often civil service rules and regulations are outdated and, therefore, need review; are poorly disseminated within the civil service and induction training to appreciate the rule and regulations have become an exception. Formal

and sustain accountability and governance by making them more autonomous, less bureaucratic and well resourced (in funds, tools and skilled personnel), and enhance their public visibility and respect. A number of institutions are required to give accountability some force over a sustained period of time (Olowu 1993, p. 7). Unfortunately, focus is much on dispute accountability - disputes are about what particular institutions are meant to do and not how accountable they are in the doing of it (Mashaw 2007, p. 2). Hence, the institutions continue to be ineffective.

- (m) Research into the region's public and private sectors is essential, because a major part of the continent's management crisis is the fact that very little is known about her public services; and yet reforms are undertaken with counter-productive results (Rasheed and Olowu 1993, p. 6).
- (n) Improve on the economy so as to make it more productive to generate resources to inject in all governmental and non-governmental sectors, e.g., to pay public officials well. Endogenous factors which inhibit development efforts on the

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and informal training are poorly organised due to lack of clearly articulated policies on mandatory training (individuals seek training by themselves), and training departments are poorly resourced because training is not valued and so their budgets are the first to be slashed. The disciplinary/appraisal procedures are not only cumbersome and outdated, but they are weak and often make accountability and productivity improvements impossible; the performance review procedures have not been able to adopt modern appraisal techniques due to structural, operational and attitudinal obstacles. Most governments use various systems of inspection to ensure that lower-level organisations comply with ministry-wide regulations and directives; their effectiveness is variable. The inspectorate systems may be weak in terms of the skills of its personnel and equipment, especially for rapid communication and information analysis/dissemination. Second, even where the resources are provided, the desire of the official to control often supersedes their capacity to assist lower-level officials in positive ways.

continent which require attention include: poor planning, bloated bureaucracies, bad public expenditure policies, runaway inflation (e.g. in Zimbabwe), the lack of institutional structures for accumulation, based on indigenous cultural usages, lack of probity and unethical behavior by public servants, and patron-client networks which breed sectarian practices (Prah 1993, p. 2). The exogenous factors that interfere with development efforts include declining terms of trade, economically paralyzing debt burdens, socially and economically disabling structural adjustment programmes (SAPs) and globalisation.

- (o) In terms of modern democratic theory and practice, the basic principle is that the public service derives its authority from the citizenry, and its responsibilities and duties from the public interest. As such, it must be answerable or accountable to the general public through the official, ideally elected representatives of the populace. Hence, improved governance and greater democratisation of the polity are contingent upon the governments having greater capacity and willingness to make hard policy choices about how to prioritise allocation of resources across and within sectors, how to translate resources into better service delivery on the ground, and how to manage the political fallout from those choices – both within the domestic political arena and with donors (DFID undated, p. 1). This is the way the weak or broken link in the relationships between authority, responsibility and accountability can be restored.
- (p) Ultimately, public accountability and governance must be located squarely within the domain of politics because both (public accountability and governance) are, first and foremost, political acts. Hence, “politics” is defined in the Eastonian sense as the processes of deliberation and decision-making regarding the binding allocation of values for a community (Easton 1965). In this sense, the political will to tackle the problem of lack of

accountability and bad governance is essential. Political will at all levels enhance the capacities of the institutions of accountability to be more effectual.

In a nutshell, governments can be said to be accountable when they achieve the following (Alam 2002/3, p. 2): the duty bearers respect and are willing to practice their defined responsibilities; they take action in a way that ensures equitable treatment of all citizens and create space for others to take action; arrangements are in place to permit and enable stakeholders to participate in government decision making; measures to account for horizontal and lateral relationships are enhanced; related performance and outcomes of action and inaction are enforced, and mechanisms of sanction, by which citizens can criticize government and seek justice, including the application of voting rights to change their government are instituted.

### **Conclusion**

In light of developments in the practice of public accountability and governance over the past decades, there is need to better formulate the way their essential elements are understood, articulated and practiced. First, there is much confusion over what public accountability means. Second, although some legal reforms and institutional actions have been taken by governments and other organisations such as CSOs and the media, to improve public accountability and governance, the mushrooming of more accountability mechanisms have made the regime even more complex. Third, good governance necessitates accountability to the people. Power, according to the Actonian dictum, corrupts and absolute power corrupts absolutely. Thus, governments are most effective and responsive to their citizens' interest if they are accountable directly or indirectly, formally or informally to the people or their accredited representatives.

Today, due to immense pressures on local, national, regional, and global levels to address deficiencies in the public accountability

systems of developing countries, the controls, including the control elements of accountability such as audits and reviews that apply to departments and to government agencies that operate at arm's length from ministers, need to be strengthened further. Other changes that improve accountability, such as providing assurance to parliament and the public on the use of public authority and resources by governments, and promoting continuous improvement, should be put in place to better accomplish public accountability and governance. In addition, the political capacity of parliaments to hold the governments and the public service to account must be viewed as critical to improving public accountability and governance. However, the political capacity of parliaments will be determined largely by the extent to which governments dominate the parliaments; most executive arms of governments tend to overpower the parliament to the effect that the latter are rendered extremely impotent to contain the excesses of the former, thus interfering with the notion of parliamentary democracy which ingrains the principles of checks and balances.

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## **The Dimension of Transparency, Accountability and Anti-corruption Initiatives in Zanzibar: History, Current Policy and Legal Framework**

*Othman Masoud Othman*

### **Introduction: The Constitutional Setup**

Zanzibar is a political subdivision of the United Republic of Tanzania (URT) (referred as Tanzania in the rest of this article). Under the 1977 Tanzanian constitution, Zanzibar maintains a semi-autonomous government headed by the president of Zanzibar.<sup>29</sup> Other key government organs include the Zanzibar judiciary headed by the chief justice of Zanzibar, under which there are two limbs of subordinate courts; the Kadhi's courts which administer Islamic personal laws and the second limb, the ordinary courts which administer the rest of the laws. There is also a Zanzibar legislature, the House of Representatives, which enact non-Union laws within Zanzibar. It also exercises an oversight function over the Zanzibar government.

Further, under the Union constitution, there is a list of Union matters which are reserved for the exclusive mandate of the Union government.<sup>30</sup> The Zanzibar government has exclusive mandate within Zanzibar to administer all non-Union matters. Administration of justice and in particular criminal justice is not a Union matter. As such, Zanzibar has its own regime of penal laws<sup>31</sup> and criminal procedure law<sup>32</sup> distinct from Mainland Tanzania. There is also a DPP who has the mandate to prosecute all criminal cases for offences committed within Zanzibar, whether such offence is against the

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29 Article 4 of the Constitution of the United Republic of Tanzania, 1977.

30 Article 4(3) of the URT Constitution.

31 Zanzibar Penal Act, No 6 of 2004, the Act repealed an old Penal Decree, Cap. 13, which was enacted in 1934.

32 Zanzibar Criminal Procedure Act, No. 7 of 2004, it repealed the old Criminal Procedure Decree, Cap. 14 enacted in 1934 as well.

laws of Zanzibar or against the Union laws applicable to Zanzibar.<sup>33</sup> Governance is also a non-Union matter, as such; Zanzibar has its own Ministry of Good Governance<sup>34</sup> and other institutions of governance like the Controller and Auditor General.

It follows from the foregoing structure that matters relating to anti-corruption, accountability and transparency are not Union matters. The Zanzibar government is therefore responsible for developing policies, institutions, laws and implementation mechanisms in this area. The anti-corruption, transparency and accountability regime developed by the Union government does not extend to Zanzibar; it only applies to Mainland Tanzania.

### **The Post Revolution Governance Context**

To understand the current regime of transparency, accountability and anti-corruption, one has to have a clear understanding of the post-Zanzibar revolution<sup>35</sup> governance features. The reason why Zanzibar has been slow in embracing governance changes is partly explained by its recent past.

Post revolution governance was characterised by unique features, including the monopoly of politics and opinion making, highly centralised and restrictive decision making and economy, localised

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33 In the case of *Seif Shariff Hamad v. SMZ*, Criminal Appeal 171 of 1992 (unreported), the Court of Appeal of Tanzania gave this clear position; the DPP of the Mainland Tanzania has no locus to file a charge or information in respect of any offence committed in Zanzibar even if such offence is created by the Union legislation extended to Zanzibar.

34 The Ministry was formed in November 2000. In its portfolio are the Judiciary, the Attorney General's Chambers, the DPP Office, Wakf Commission, Mufti Office, the Office of the Controller and Auditor General, and the Anti-corruption and Ethics Authority (in the process of being formed).

35 The Zanzibar revolution, which overthrew the Sultan of Zanzibar as the head of state, took place in January 1964.

judiciary manned by lay people and state-orchestrated social integration.

### **Monopoly of Politics, Decision and Opinion Making**

The Legislative Power Law enacted immediately after the revolution<sup>36</sup> vested the executive and legislative powers to the Revolutionary Council. The Council had also an appellate jurisdiction over the decisions of the High Court of Zanzibar, as such it was the executive, the legislature and the Judiciary in one.

The Afro Shirazi Party Decree<sup>37</sup> declared this party<sup>38</sup> as the sole legitimate political party in Zanzibar. Further, the Decree abolished trade unions,<sup>39</sup> societies<sup>40</sup> and the rest of civil society regime.

Immediately after the revolution, the government promised an immediate election. Under the Constitutional Government and Rule of Law Decree, No. 5 of 1964, elections were to be conducted in 1965, but the Decree was amended through Decree No. 4 of 1965 which provided that the election would be conducted on the date to be appointed by the president. The president failed to announce an election date for the next twenty years.<sup>41</sup>

### **The 'Revolutionary' Legal System**

The Zanzibar court system stemmed from the Consular Courts established in 1841 and was later integrated with the Sultan Courts

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36 The Decree served as the post revolution constitution which gave the Revolutionary Council legitimacy to serve as the government. The Decree was not even numbered, but subsequent Decrees enacted by the Council were numbered accordingly.

37 Decree No. 11 of 1965.

38 The Afro Shirazi Party organised the 1964 revolution.

39 The Trade Union Decree, Chapter 176 of the laws of Zanzibar, was repealed by this Decree.

40 The Societies Decree, No. 20 of 1963 was also repealed by the Decree and all registered and non-registered societies were thereby abolished.

41 The first Zanzibar election was conducted after the current Zanzibar Constitution, 1984, was enacted.

in 1897. The system was reorganised in 1963 into a comprehensive two-tier court system. In 1969 the court system was overhauled and replaced by the Peoples' Court System.<sup>42</sup> Under this court system, each court<sup>43</sup> was constituted by three members, one of whom was the chairman; members were appointed and held office at the pleasure of the president.<sup>44</sup> They were not bound by rules of procedure or evidence and could formulate their own procedure.<sup>45</sup> Representation by advocate was not allowed in these courts but the law allowed representation by a relative or by a trusted neighbour.<sup>46</sup>

### **State Monopoly of the Economy**

The government took a number of steps to monopolise the economy. Among the key measures were the following:

- **Confiscation of land:** Under the Confiscation of Land Decree,<sup>47</sup> the government was empowered to confiscate any land or property without compensation.
- **Vest of Land:** Under the Vest of Land Decree,<sup>48</sup> all land was vested with the government.
- **Public Enterprises:** Under the Public Enterprises Decree<sup>49</sup> the president of Zanzibar was empowered to establish public enterprise as he deemed appropriate. Quite a number of

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42 The People's Courts Decree, No. 11 of 1969, established the new system.

43 The People's Courts were established in every district. They served like subordinate courts to the High Court.

44 The members were lay people and some of them were illiterate.

45 Section 9 of the Decree.

46 Section 10 of the Decree.

47 Decree No. 8 of 1964.

48 Decree No. 13 of 1964.

49 Decree No. 1 of 1966.

enterprises were established to undertake almost every aspect of the economy, from food imports<sup>50</sup> to tour guides.<sup>51</sup>

- **Commodity Control:** Under the Commodity Control Decree,<sup>52</sup> the minister of Trade was empowered to declare any commodity a controlled commodity. It was illegal for anybody to engage in wholesale business of controlled commodities, except Bizanje, a state-owned corporation. Further, under the Nationalisation of Motorcar Trade Decree,<sup>53</sup> private motor trading companies were nationalised and no one was allowed to engage in that trade except the State Motor Trade Corporation.
- **Public Finance:** This was essentially regulated by the Budget Decree<sup>54</sup> and Audit Decree.<sup>55</sup> However, one of the most interesting features of public finance was provided under the Special Interest Appropriation Decree.<sup>56</sup> Under this Decree the president had power to appropriate a certain amount of money of which the Accountant General could only pay on the instruction of the president.

### **Social Integration**

Though social integration is supposed to be a spontaneous process which develops from social dynamics, the post-revolution governments intervened legally to step up inter-ethnic-group marriages. Under the Marriage Solemnisation and Registration Amendment Decree,<sup>57</sup> a new section, 17A, was introduced. The section provided that it

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50 Importation of food stuff and other consumables was the exclusive mandate of Bizanje Corporation.

51 Zanzibar Tourist Friendship Bureau was the sole authorised tour agent operating in Zanzibar.

52 Decree No. 4 of 1966.

53 Decree No. 15 of 1966.

54 Decree No. 2 of 1965.

55 Decree No. 3 of 1965.

56 Decree No. 15 of 1967.

57 Decree No. 6 of 1966.



was an offence to withhold consent to marriage<sup>58</sup> except on grounds of an intended groom being convicted of theft, having a venereal disease, tuberculosis (TB), leprosy or mental illness. Penalty for the offence was imprisonment not exceeding six (6) years or a fine not exceeding 15,000 Shillings.

### **Protection of Public Property**

One of the most interesting features of post-revolution governance was the protection of public property. The government introduced some legislative interventions to step up this aspect of governance. Under the Penal (Amendment) Decree,<sup>59</sup> section 248 of the Decree was amended to increase the penalty for stealing government property, in particular, agricultural products or livestock from government plantations. The penalty was further increased in 1971 for stealing public property.<sup>60</sup>

It is clear from the foregoing that Zanzibar entered into a unique and very restrictive governance system. This governance system survived for almost 20 years, until 1984, when a new governance order was established by the Zanzibar Constitution. The next 10 years did not see real changes, especially in terms of accountability and transparency. The post-revolution governance “hangover” coupled with a single party system did little to change the system. This governance background contributed to a rough entry by multiparty politics and elections to Zanzibar in 1995.

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58 In most Islamic sects, consent of a father or guardian for a woman to marry is a mandatory requirement to validate the marriage. Inter-ethnic marriages were restrictive in Zanzibar because consent was withheld either on grounds of ethnic or economic differences.

59 Decree No. 6 of 1965.

60 The Penal Decree was further amended by the Penal (Amendment) Decree, No. 9 of 1971.

### **Background of Anti-Corruption Initiatives**

Despite highly restrictive and non-transparent governance, corruption is believed to have been low in the early post-revolutionary period. The problem grew to alarming proportions after the death of the first Zanzibar president in 1972. The first anti-corruption legislation was enacted in 1975. The Prevention of Corruption Decree<sup>61</sup> provided for an institutional and operational anti-corruption framework. It established two anti-corruption Commissions,<sup>62</sup> whose members were appointed by the president. The Decree provided for reporting of corruption allegations and powers to file charge or information before the High Court was given to the Attorney General (AG),<sup>63</sup> who also had extensive powers in relation to investigation of corruption cases. It also provided for a number of corruption offences. The Commissions were empowered to require any public officers to give account of their property. The Decree was amended in 1976.<sup>64</sup> The amendment introduced a requirement for public officers and their spouses to declare their property through a prescribed form. The amendment further vested powers of arrest to the Commission and granted immunity to commission members in the course of their duties.

The Prevention of Corruption Decree was amended further in 1980.<sup>65</sup> The amendment established among other things, a special anti-corruption unit, under the direct control of the president. The Unit consisted of a director and not more than four other members appointed by the president. The main function of the Unit was to assist the government and the ruling party in preventing corruption. The Unit also had powers to investigate corruption cases and refer

61 Decree No. 4 of 1975.

62 One commission was for Zanzibar and the second commission was for the sister island of Pemba; section 3(2) of the Decree.

63 Section 5 of the Decree.

64 The amendment was made through Decree No. 1 of 1976.

65 The amendment was made through Decree No. 2 of 1980.

matters to the AG for decision. The anti-corruption provisions under the 1975 Decree essentially targeted corruption and abuse of office committed by public officials. This Decree focused on public officials because at that time, the economy was government controlled, while the private sector had no significant role in the economy. For no apparent reason, the Prevention of Corruption Decree was repealed in 1985.<sup>66</sup> The Anti-corruption Unit was officially disbanded. The Decree re-introduced the old provisions on corruption and abuse of office, which are narrow and inadequate. Those provisions still apply as the anti-corruption law under the current Penal Act.<sup>67</sup>

### **Background of Accountability and Transparency**

Though anti-corruption initiatives came earlier in the post-revolution administration, accountability and transparency was not so easy to re-introduce. The first window opened in 1979, when the first post-revolution Zanzibar constitution was enacted. The constitution, among other things, introduced a separate legislature distinct from the executive. The legislature (the House of Representatives), was however constituted by non-elected members.<sup>68</sup> The constitution also introduced election of the president and established an “independent” electoral commission. The House and its standing committees had an oversight role over the government.

The 1979 constitution was repealed and replaced by the current 1984 Zanzibar constitution. This was a turning point in the Zanzibar governance and constitutional order. The constitution reconstituted the House of Representatives into a representative body. The majority of its members are either elected directly from the 50 Zanzibar constituencies or through proportional representation of

66 The repeal was made through Decree No. 10 of 1985.

67 Act No. 6 of 2004 of the Laws of Zanzibar.

68 Members of the House were drawn from local government councils; the revolutionary committees, party organisations like the party youth, women, parents and workers (“the trade union”) wings.

women's special seats. Quite a substantial number of representatives are appointed by the president.<sup>69</sup> The constitution also introduced a new court system<sup>70</sup> and thereby disbanded the People's Court system. It also entrenched a Bill of Rights, regular elections, limitation of presidential terms<sup>71</sup> and the Offices of Controller and Auditor General, which were independent and enjoyed a security of tenure. These changes however were not supported by any clear governance policy or comprehensive institutional framework. That shortcoming, coupled with an indifferent governance culture, brought no significant changes insofar as transparency and accountability is concerned.

## **Current Framework**

### **Transparency and Accountability**

Since the enactment of the 1984 constitution, major changes in governance came with the introduction of multiparty politics in 1992, followed by the first post revolution multi party elections in 1995. The first five years of the multiparty House of Representatives was essentially lost through political squabbles between the ruling party and the parliamentary opposition party. Major changes were introduced following the 2000 election. In the first place, the ministry responsible for Constitutional Affairs and Good

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69 The president has power to appoint a maximum of 16 members of the House. Out of those 16, six are ex officio members; five regional commissioners and the Attorney General.

70 The Zanzibar High Court was made the highest court of record and subordinate courts were established by legislation passed immediately after the enactment of the Constitution; Kadhis Courts Act, No. 3 of 1985 and the Magistrates Courts Act, No. 6 of 1985. They are composed of Regional, District and Primary Magistrate Courts on first limb. On the second limb there are Kadhis' courts: District Kadhis Court and the Appellate Chief Kadhi's Court.

71 The maximum presidential term limit is two consecutive terms of five years each.

Governance was introduced in November 2000.<sup>72</sup> This was followed by a political accord<sup>73</sup> between the ruling party and the opposition, which identified a number of governance areas to be improved. The political accord entailed a major constitutional amendment, which addressed quite a number of governance issues. A special Presidential Supervisory Commission was established to oversee the implementation of the accord.<sup>74</sup> Through those areas identified by the accord and the government's own governance initiatives, the following accountability and transparency issues were addressed and improved:

- The structure and management of public corporations were overhauled. Under the Public Investment Act,<sup>75</sup> establishment of public corporations was made subject to a comprehensive feasibility study being undertaken. Further, boards of directors were given greater supervisory roles and the commissioner of Public Investment was vested with wide oversight powers over public corporations. Interventions by sectoral ministers over their respective corporations were highly minimised. These initiatives, even though, they have brought more accountability and transparency in public corporations, have not cured the inability of most public corporations to compete in a free market. Quite a few have however benefited from these initiatives.<sup>76</sup>

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72 See footnote 34 above.

73 The ruling party and the opposition entered in to an agreement; the Accord, which identified a number of constitutional, legal and institutional weaknesses in Zanzibar and agreed to amend the identified areas. The areas included electoral laws and the electoral commission, the legal system, the Zanzibar constitution, public media and government paramilitary units.

74 The Commission was established under the Joint Presidential Supervision Commission Act, No. 10 of 2001. The Commission had equal number of members from the ruling party and the opposition; five members each.

75 Act No.4 of 2002.

76 The People's Bank of Zanzibar and the Zanzibar Insurance Corporation which were facing an imminent collapse before 2000 benefited from these

- The Office of the Controller and Auditor General were improved. Under the Controller and Auditor General (CAG) Establishment Act,<sup>77</sup> the institutional and operational aspects of the Office were addressed. Consequently, the Office managed to have clear policy and legislative directives for the implementation of its duties. The Office has improved its performance in the management of public finance through timely auditing, and timely preparation of audit reports, and has introduced a value-for-money audit scheme.<sup>78</sup> The establishment of Audit Service Board under the Act was intended to streamline the recruitment, carrier development and retention of professional staff of the CAG Office in order to improve the quality of public finance auditing.
- The extension to Zanzibar of the powers and functions of the CHRAGG Matters relating to human rights and good governance are not Union matters under the Tanzania constitution. The Union government established the Commission as an oversight body for human rights and good governance. The Zanzibar government has adopted this Commission and mandated it to operate in Zanzibar as a fully fledged Zanzibar oversight body as well. Under the Act,<sup>79</sup> which adopted and extended its functions to Zanzibar, the Commission is granted oversight powers and a reporting function. The Commission also advises the government on human rights and good governance issues.
- Major changes have been introduced in the administration of public finance. The Financial Administration Act, which

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initiatives. They are now doing a brisk business and compete in the market. The same is true regarding the Zanzibar Ports Corporation.

77 Act No. 11 of 2002. Though the Office of the CAG is established by the constitution, the Act lays down broad institutional and operational aspects of the Office.

78 See the CAG Report for the FY 2005/2006.

79 Act No. 12 of 2003.

was passed in 1996,<sup>80</sup> was not assented until the year 2001. Under the auspices of this law, radical financial administration changes have been introduced to bring more transparency and accountability to public finance. Among the changes is the use of the Bank of Tanzania as a Zanzibar government banker instead of the People's Bank of Zanzibar, which has been a government banker since 1966. Government's major accounts are now handled by the Bank of Tanzania. A ceiling committee has been established as a consultative body on public expenditure and disbursement of budget allocations to ministries, departments and agencies (MDAs). An integrated financial management system has been introduced. The system monitors and controls disbursement and expenditure of public funds in the most transparent manner.

- Another key aspect of transparency and accountability addressed is public procurement so far. Under the Public Procurement Act of 2005, which has been repealed and replaced in 2007, matters relating to public procurement and disposal of public assets were streamlined and improved. Before the enactment of this law, there were no clear guidelines in this respect. The Commissioner of Stock Verification has been given wider powers under the law to oversee proper procurement and disposal of public assets by public institutions. There is however no regulatory body on public procurement so far.
- A Department of Good Governance Co-ordination has been established under the Ministry of Good Governance to co-ordinate policy initiatives for purposes of improving good governance in general. One of the main assignments of the Department now is the development of Zanzibar's NGO policy.

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80 Act No. 8 of 1996.

- One of the most important interventions insofar as accountability is concerned, was the establishment of an independent prosecution authority. The DPP Office was established by the constitution in 2002. The Office has brought two important changes. In the first place, before its establishment, the AG who, being an *ex officio* member of the House of Representatives and cabinet, was an active politician. In the highly competitive politics of Zanzibar he was not only unlikely to be impartial, and he could never be seen to be impartial. Secondly, the seemingly politicised police force in Zanzibar had both prosecutorial and investigation powers. This was open to abuse and there was indeed founded allegation of abuse. The Office took over prosecution from the Attorney General and gradually took over the actual conduct of prosecution from the police force, through a special civilianisation of prosecution programme.<sup>81</sup>

It is clear from the foregoing key areas of intervention that the Zanzibar government has taken some bold initiatives to improve accountability and transparency. There is, however, still a long way to go. Areas such as free and independent media attract a lot of criticism. The legal regime is still very restrictive.<sup>82</sup>

### **Anti-corruption**

Zanzibar has, so far, neither a formal anti-corruption policy framework nor a formal anti-corruption strategy. In 2005, the government, through the Ministry of Good Governance, hired a consultant to develop modern anti-corruption legislation, and staffs were recruited in preparation of the new anti-corruption body. The draft law was developed, discussed by key stakeholders, and submitted to the cabinet. The draft Bill was endorsed, subject to

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81 The programme started in 2004 and has so far covered 100% of High Court and regional courts and 70% of the district courts.

82 Operation of media is regulated by an old legal regime, mainly the News Agents and Newspapers Registration Act of 1988.



some modifications. When the Bill was submitted for the second time before the cabinet, it was rejected and the Ministry was directed to conduct further study and examine thoroughly the provisions of the Bill. So far the Ministry has decided to compile a broad anti-corruption strategy. The strategy will serve as an anti-corruption policy guideline.<sup>83</sup> In the opinion of the Ministry, once the strategy has been approved by the government, it will be easy to amend the Bill.

Anti-corruption provisions under the Penal Act,<sup>84</sup> which are now applicable, are far from being adequate. In the first place there is no independent anti-corruption authority. Anti-corruption cases are still being handled by a small unit in the CID of the Police Force. They operate under the same scheme used for investigating any other ordinary crime. They are virtually unable to open an investigation on their own, but wait until a matter is reported to them. In corruption cases involving public officials this has not worked at all. Normally corrupt transactions are made in syndicate and by the time the auditors or the Minister reports the matter to the police, evidence has already been destroyed.<sup>85</sup>

Secondly, the provisions of the Penal Act cover very narrow aspects of corruption. The provisions essentially deal with bribes rather than corruption in its broadest sense. The provisions are far well below the international standard.

Thirdly, corruption is dealt with at the far end of the process. As such, the problem is addressed as a law enforcement problem and not an operational, institutional or social problem. There are

83 The Ministry of Good Governance Budget Speech for the FY 2008/2009.

84 Part XLI of the Penal Act, 2004.

85 So far, in all major corruption cases, the matter is reported to the police on the instruction of the Minister, cases involving corruption in the Zanzibar Electricity Corporation and in Ministry of Health, Ministry of Education and Ministry of Communication, the police could not start their investigation until the respective ministers authorised them to do so, and by then, the key evidence has been destroyed.

no provisions for the prevention of corruption in the law, neither are there are also no institutions dealing with public awareness and developing strategies for prevention of corruption.

### **Conclusion**

Zanzibar has passed through a difficult and unique governance framework. So far, it has made great headway in improving good governance. However, insofar as anti-corruption is concerned, Zanzibar has a lot to do to catch up with the rest of East Africa.

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## **Discussion on Zanzibar Initiatives in Transparency, Accountability and Anti-corruption**

*Said M. Muhammed*

I commend a good job done by the presenter in preparation of this work. It gives sufficient information and a clear picture of Zanzibar's situation in areas of transparency, accountability and anti-corruption initiatives of the past and current legal framework. It is difficult to comment about Zanzibar when it comes to these issues, as there is little to report. Zanzibar's slow pace of embracing governance changes in the immediate post-revolutionary era was necessitated by revolutionary motives of stabilising the situation to ensure peace. That could be the reason why executive and legislative powers were vested in the Revolutionary Council. For the same reason trade unions, societies and the rest of civil-society, including political parties which were struggling to come to power, were abolished.

During the whole colonial period, ownership of land was dominated by colonial masters and people who were close to them, and thus left the vast majority of Africans without land. Confiscation of land and vesting it with the government was a way of ensuring fair distribution of land to the people, who could develop it and make a living. In those early years, the government distributed three acres of land to each family. As for confiscation of property like buildings, many of those confiscated were used as government offices; others were used as dwelling places.

Zanzibar had experienced inequality during the whole colonial period and the post-revolution era was a very important period for building a coherent society, essential for her development endeavours to succeed. But a society which has experienced inequality among people for such a long period of time needed a special effort to bring changes to the society and to create social integration. The intervention to encourage inter-ethnic marriages was seen as forced

marriage. Although it was true to some extent, the result seems to have been positive. Zanzibar has a generation which is a hybrid of some kind, which reflects what was envisaged at that time.

Protection of public property is important if the country really wants to develop the welfare of her people. It is equally important for national resources to be shared equitably among citizens. Theft of public property denies people their right to enjoy their national cake. It is the responsibility of the government in power to ensure enjoyment of that right by the people. One of the good things that the government did was to introduce heavy penalties for stealing government property, especially agricultural products, which feed the populace.

It is stated that corruption is believed to have been low in the early post-revolutionary period. One of the reasons might have been fear of revolutionary measures that might be taken against perpetrators, as the revolutionaries were always very serious. As time went by the situation started to change. Enactment of the first anticorruption legislation in 1975 was a clear manifestation of the alarming situation and the measures were taken as a response to the prevailing situation to curb the problem. The legislation was among the best pieces of legislation, leaving no room for corrupt elements to destroy the social fabric of Zanzibar. It was unfortunate that the legislation was repealed and offences of corruption relegated to mere ordinary offences.

An Island economy has a tendency to produce a few individuals who become well-off economically and who control the whole economy. Because the population on a small Island is normally small, those who dominate the economy influence decisions at higher levels. The same is true for the police force. With a small population, people tend to know each other and relate to each other easily; the effectiveness of the police to contain wrong-doing is affected and the police tend to be seen as ineffective.

As for the first post-revolutionary constitution of 1979, which provided for a separate legislature, it was a step forward in the development history of Zanzibar. However, members of the House of Representatives were not accountable to the people, as they were representatives of organizations that appointed them to the posts. The 1984 constitution, which was seen to have made the House of Representatives a true representative body, still had some shortcomings as far as accountability is concerned. Much as there is a significant number of appointed members (30% of the total number of elected members); issues of accountability in the House raise concern. The constitution has given the president power to appoint ten members of the House who are, in principle, accountable to their appointing authority. There are some who say that, instead of appointing anybody to the House the president should be bound to appoint people who enjoy public support. The president also appoints regional commissioners, who then become ex-officio members of the House. Concerns have been raised over their effectiveness in discharging their duties, given the fact that by their being regional commissioners they ought to serve the people and be accountable to their regions. They also have to exhibit loyalty to the president and this can create conflicts of interest.

The current framework of transparency and accountability in Zanzibar shows that there have been developments and concerns as far as accountability is concerned. After the Ministry dealing with good governance was established, the ruling CCM and opposition CUF made an accord, which famously came to be known as MUAFAKA. The implementation of the accord though started smoothly, there were complaints that some of its critical aspects were not implemented due to mistrust between the two parties. The most critical was a dialogue between CCM and CUF that would culminate in sharing power. Although the two parties have engaged in serious dialogue, power sharing has not been effected, and there

were complaints from the opposition that CCM is employing delaying tactics and that it has no intention of sharing power. The recent decision of the CCM, to demand a referendum on the issue, was used by CUF to justify this argument.

Improvement of the Office of Controller and Auditor General is something to be reckoned with. The office needs to build the capacity of its human resources in specialised fields of auditing, such as value-for-money auditing, to be effective.

Adoption of Tanzania's CHRAGG was an important step towards observing human rights in Zanzibar. Much as this is to be commended, the enforcement took a long time to be effected. The Bill to extend the Commission's jurisdiction to Zanzibar was tabled in the House of Representatives in 2003; its enforcement started in 2006. When the Bill was sent to the House it was passed but there was a resolution that its enforcement would be effected only when the Union parliament had amended the Act that established the Commission to reflect the Union nature in discharging its duty. Three years was a long time to wait for this to have happened.

When Administration Public Finance was changed to effect greater transparency and accountability, it also had another side effect. The changes were aimed to improve financial accountability, but the introduction of a central payment system and the establishment of a central payment office caused many complaints, mainly of red tape and inefficiency, caused by inadequate human resource capacity.

The establishment of the Office of the DPP was a milestone as far as accountability in Zanzibar is concerned. There have been tremendous achievements in prosecutions and public confidence has been restored. Civilianisation of prosecutions has reduced public complaints in the area of prosecutions by a good margin. At least, now the public is confident that there is no fabrication of cases as was the case before. More capacity building is needed to roll out the civilianisation of prosecutions planned.

As it was stated, the anti-corruption bill needs further study and thorough examination of its provisions. Recently, the Ministry of Good Governance established a steering committee to examine it thoroughly and to propose a bill that will be acceptable to the people. The bill will provide for establishment of an independent anti-corruption authority. Concurrently the committee is developing an anti-corruption strategy.

Although Zanzibar has made great headway in improving governance it is high time that she expedites the formation of an anti-corruption authority, at least to assure the public practically that it will not tolerate corrupt practices.

## **Regional Efforts to Strengthen Public Accountability and Governance in East Africa**

*Joseph Clifford Birungi*

### **Introduction**

This presentation shades light on public accountability and governance in East Africa, and the efforts to strengthen these important tenets. It provides a background to the EAC, its vision and objectives highlights relevant Treaty provisions on, and policy developments towards achieving good governance and fighting corruption. The presentation concludes with an emphasis on the critical roles of civil-society and the private-sector in building a firm EAC integration.

### **The East African Community Vision, Mission and Objectives**

- The *Vision* of the EAC is to have a prosperous, competitive, secure and politically united East Africa.
- The *Mission* is to widen and deepen economic, political and cultural integration in order to improve the quality of life of the people of East Africa through increased competitiveness, value-added production, trade and investment.
- As one of the key objectives in the Treaty, the partner states agree to establish amongst themselves:-
- A customs union
  - common market
  - monetary union, and
  - Ultimately a political federation.



### **The Fundamental Principles of the Community**

The fundamental principles that guide achievement of the objectives of the Community provided for under Article 6 (d) of the EAC Treaty include:

- adherence to the principles of good governance and democracy
- rule of law
- transparency and accountability
- social justice and maintenance of accepted standards of human rights.

### **The Organs of the Community and Decision Making**

The Community organs and institutions are established as follows:

- The Summit with the mandate to give direction and guidance on implementation of the Treaty
- The Council of Ministers which is the policy-making organ
- The Court of Justice is the judicial organ
- The Assembly is the legislative organ of the Community
- Institutions of the Community i.e. Lake Victoria Basin Commission (LVBC), The East African Community/Customs Union (EAC/CU), Lake Victoria Fisheries Organisation (LVFO), The East African Development Bank (EADB), and other new institutions.

### **Co-operation in Political Matters**

The Treaty recognises the importance of political cooperation amongst state parties to the Treaty given the Community's mandate.

The mandate for cooperation in political affairs is to lay foundation for the establishment of the EAC political federation, deepening political integration and promoting peace and stability in the region.

To this end, chapter 23 of the Treaty clearly lays out the scope of co-operation in political matters as follows:

- Towards the EAC Political Federation
- Consolidation of good governance, democracy and rule of law,
- Transparency and accountability, promotion and protection of human rights
- Foreign policy co-ordination
- Regional peace and security for instance ways of dealing with the problem of small arms & light weapons.

### **Policy Initiatives on Good Governance**

Having recognised the importance of good governance as one of its fundamental principles, the Community has taken pertinent steps to establish good governance. The Community already has in place the EAC Development Strategy 2006 - 2010 which provides for development of the regional framework on good governance.

The EAC construes good governance as a broad phenomenon with several pillars, and has commenced the development of policy initiatives to prepare the region towards an EAC political federation.

The Council of Ministers decided on a comprehensive regional framework of good governance. This framework will provide regional standards and best practices to harmonise the partner states' policies, strategies, programmes, practices and benchmarks on governance democracy, rule of law, transparency and accountability and respect

for human rights. Currently, the framework is under development with active engagement of partner states. Initial meetings have been organised with respective sectors including anti-corruption authorities, electoral commissions and human rights commissions. In addition, meetings with the sectors responsible for upholding the rule of law including the judiciary, justice and constitutional affairs and law enforcement have also been organised.

It is projected that after input by these sectors is completed, a model good -governance framework will be used as a tool for consultation with other key and critical stakeholders, including civil-society, professional groups and the private sector.

### **Human Rights and Protection, Anti-Corruption, Ethics and Integrity**

The Council has also been involved in other initiatives which are related to good governance. These include the promotion of human rights and addressing corruption. Specifically the activities have included:

- A plan of action on promotion and protection of human rights in accordance with the provisions of the African Charter on Human and People's Rights adopted by the Council in March 2008. This plan of action is now under implementation.
- Establishment of a sectoral committee on anti -corruption, ethics and integrity, and institutionalisation of meetings of heads of anti-corruption authorities on the EAC calendar of activities.
- Development of a protocol on anti-corruption, ethics and integrity that will provide standards for the partner states, the EAC, its organs and institutions.

### **Framework on Anti-corruption, Ethics and Integrity**

The first draft protocol on Anti-corruption, Ethics and Integrity is due for consideration by the Council at its next meeting. This draft protocol is based on the following principles

- ethics and integrity
- good governance
- due process and fair trial
- adherence to the rule of law
- transparency and accountability
- zero tolerance to corruption

### **Public Accountability**

This draft protocol also makes provisions which ensure public accountability. The protocol prohibits,

- solicitation or acceptance by a public official, gifts, favours, promise in the performance of his or her public functions
- any act or omission in the discharge of his or her duties by a public official for the purpose of obtaining illicit assets, benefits and advantages
- diversion, mismanagement and embezzlement by a public official, for purposes unrelated to those for which they were intended

The protocol will also provide for an institutional framework for its implementation, follow up and monitoring.

In addition, as part of the public accountability drive, the Council established a Sectoral Committee on Public Service which will serve to harmonise partner states' codes of conduct.

## **Challenges**

- Good governance and anti-corruption are mutually reinforcing. A system of governance that is free from abuse, pays due respect to the rule of law, facilitates public participation, protects human rights, has fair legal frameworks that are enforceable, independent judiciary, and impartial police, will be accountable to the public and will be open to public scrutiny. Thus the challenge is to make inroads in achieving good governance while fighting corruption.
- Governance issues by their nature are sensitive and require enhanced political will.
- Disparities in governance structures and practices, which is the foundation for a central decision making mechanism is a challenge.
- The EAC partner states have in principle adopted the New Partnership for Africa's Development NEPAD Peer Review Mechanism for self assessment in governance matters.
- Disparities in governance structures and practices, which is the foundation for a central decision-making mechanism is a challenge.

## **Complementarity with Other Initiatives**

- The development of a suitable EAC Peer Review Mechanism to consolidate governance in East Africa will have positive results.
- The EAC acknowledges the gains already made by the partner states and all initiatives are geared towards complementing existing national, regional and continental efforts.

### **Role of Civil Society in Eac Integration**

- Civil society is one of the critical stakeholders in the EAC integration making it people centred and market driven.
- Civil society is also a double-edged sword as it can either build or decelerate integration. As such it is important to critically examine the contributions that it can make to the EAC integration.

### **Opportunities**

- At present, the EAC enjoys immense political will from the region's political leadership.
- In general, the panacea for political challenges is establishment of a political federation with one political authority and one central decision-making mechanism.
- Development of regional policies and frameworks that lay the foundation for the political federation.

List of Participants at the Regional Forum on Strengthening Public Accountability & Governance in East Africa  
Organized By Kituo-Cha- Katiba 20-21 August 2008, Arusha - Tanzania

No.	Name	Institution /Organisation.	Email address.
	Uganda		
1	Ms. Angela M. T. Bafokuzaara	Deputy Director/ Ethics Education, Directorate of Ethics and Integrity- Office of the President, Uganda.	angela234baf@yahoo.co.uk
2	Hon. Nathan Nandala Mafabi	MP, Parliament of Uganda.	nandala@parliament.go.ug nandala2003@yahoo.co.uk
3	Dr. Yasin Olum	Head of Department, Political Science and Public Administration, Makerere University	yolum@ss.mak.ac.ug
4	Ms. Edith Kibalama	Executive Director, KCK.	ekibalama@kituochakatiba.org
5	Hon. Augustine Ruzindana	African Parliamentarians Network Against Corruption (APNAC).	a_ruzindana@yahoo.com
6	Ms. Rose Sengendo	Principal Researcher and Advocate, Sengendo & Co. Advocates.	roseug@yahoo.com info@sengendoadvocates.co.ug
7	Hon. Beatrice Nyakaisiki Byenkya	MP, Parliament of Uganda.	<a href="mailto:bbyenkya@parliament.go.ug">bbyenkya@parliament.go.ug</a>

8	Mr. Jasper Tumuhimbise	Coordinator, Anti-Corruption Coalition, Uganda.	info@anticorruption.or.ug
9	Mr. Busobozi Denis	Programme Officer, KCK.	dbusobozi@kituochakatiba.org
	<b>Kenya</b>		
10	Hon. Boaz Kaino	MP, Parliament of Kenya.	suembova@yahoo.com
11	Mr. Micah Nguli	Programme Officer, Research and Advocacy- National Anti-corruption Campaign Steering Committee, Kenya.	micah_nguli@hotmail.com
12	Dr. Kenneth Ombongi	Department of History, University of Nairobi.	kombongi@hotmail.com 'kombongi@uonbi.ac.ke
13	Mr. Kenneth Mwige	Executive Director, The Public Complaints Standing Committee, Kenya.	ombudsmankenya@gmail.com
14	Mr. Mutua Mulonzya	Centre for Law and Research International (CLARION), Kenya.	mulonzya@yahoo.com
	<b>Tanzania</b>		



15	Ms. Coletha Kiwale	Principal Investigation Officer, President's Office, Northern Zone, Arusha- Tanzania.	colethaki@yahoo.com
16	Prof. Chris Maina Peter	Faculty of Law, University of Dar es Salaam.	peter1404@gmail.com
17	Hon. Justice Joseph S. Warioba	Former Justice of EAC J.	nwm@raha.com
18	Mr. Christopher Akonay.	Personal Secretary to the Hon Justice Warioba.	
19	Mr. Joseph Clifford Birungi	Principal International Relations Officer, EAC Secretariat.	josephbirungi@eachq.org
20	Hon. Beatrice Birungi Kiraso	Deputy Secretary General of the EAC.	-
21	Ms. Mengi Ntinginya	Project Technical Support Officer, Concern for Development Initiatives Africa (FORDIA) - Tanzania.	'mengi.ntinginya@fordia.org 'info@fordia.org
	<b>Zanzibar</b>		
22	Hon. Othman Masoud Othman	Director of Public Prosecutions, Zanzibar.	'omothmans@gmail.com

23	Mr. Salum Toufiq	Chairperson, Kituo cha Katiba.	's.toufiq@zantel.co.tz
24	Mr. Said M. Mohammed	-	
	<b>Rwanda</b>		
25	Mr. Mbombo K. Moses	Professional/ Prevention Unit, Office of the Ombudsman- Rwanda.	'mkatsb20@yahoo.com 'mbombo.moses@ombudsman.gov.rw
	<b>In Attendance</b>		
26	Mr. Claud Gwandu	Journalist.	
27	Mr. Zephania Ubwani	Journalist- The Citizen Newspaper.	
28	Ms. Queen Lema	Journalist- Changamoto Newspaper.	
29	Mr. Adam Ihucha	Journalist- The Guardian Newspaper.	
30	Mr. Filbert Rweyemamu	Journalist- This Day Newspaper.	
31	Mr. Magesa H. Magesa	Journalist- Business Times Ltd.	
32	Mr. Maximin Siyoi	Radio Uhuru.	
33	Mr. Hussein Ramadhani	Independence Television (ITV).	

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