



ETHICS AND ANTI - CORRUPTION COMMISSION

**REPORT ON ACHIEVEMENTS IN THE
FIGHT AGAINST CORRUPTION**

**PRESENTED DURING THE NATIONAL GOVERNANCE
AND ACCOUNTABILITY SUMMIT**

**STATE HOUSE, NAIROBI
18TH OCTOBER 2016**

1. Introduction

The Ethics and Anti-Corruption Commission (EACC) is created pursuant to article 79 of the Constitution of Kenya 2010 to implement provisions of Chapter 6 of the Constitution. It is mandated to spearhead the fight against corruption in Kenya. The Commission executes its mandate through investigations of corruption and ethical breaches, recovery of corruptly acquired assets, prevention of corruption, promotion of ethical conduct and education of the members of the public on the evils of corruption.

The Commission has over time stepped up the fight against corruption with specified innovative programmes. However, it is worth noting at the onset, the following areas have mutated militating against the fight.

A. Public Procurement

Corruption is most prevalent in the procurement sector contributing to 46% of all corruption cases. This involves collusion between public officials and suppliers. The proposed Bribery Bill that targets the private sector and the suppliers' code of conduct being prepared by the Public Procurement Regulatory Authority, which all government suppliers are expected to sign, hence mitigate corruption cases.

B. Investigation into Ethical Breaches

There is new emerging trend where Public Officers are violating the Leadership and Integrity Act, 2012. The Commission concluded 56 investigations on ethical breaches with recommendations for caution, administrative action and prosecution. Common breaches include falsification of record, certificates, and conflict of interest in procurement, employment irregularities and improper conduct by state/public officers such fighting in public, incitement (MCAs, MPs, senators, governor).

C. Rampant Corruption in the Police

The Police have dominated headlines over the years as the most corrupt entity in the public service. The Commission has arrested and charged in court 100 police officers mostly in the traffic department and forwarded 43 others to the IG for

administrative action. Disappointingly no action has been taken by the police on these cases.

D. Corruption in Counties both at Executive and Assemblies

Devolved units of Government have had an upsurge in corruption cases. Currently, the Commission is investigating cases in 20 Counties with various offences while some cases in 10 Counties are already in Court. Notable offences are:

- Over-pricing of procured items (thermos flask bought at kshs. 8,000; wheelbarrow at kshs. 109,000;),
- Female MCAs drawing of allowances while on maternity leave
- Drawing allowances without signing payment vouchers to the tune of kshs. 3 million.

2. Achievements

This report provides the highlights of the achievements that have been registered in the war against corruption by the Commission.

2.1 Assets Recovered

Total of **Kshs 9,768,095,110.19** traced and recovered from 2005-2016

FY	VALUE OF FIXED ASSETS	CASH
2004/2005		2,555,000.00
2005/2006	144,000,000.00	4,540,000.00
2006/2007	109,000,000.00	2,900,000.00
2007/2008	3,427,917,823.00	351,181,499.80
2008/2009	138,630,000.00	5,810,000.00
2009/2010	1,769,000,000.00	12,460,000.00
2010/2011	34,700,000.00	6,490,218.00
2011/2012	520,000,000.00	6,641,044.00
2012/2013	566,000,000.00	1,408,217.00
2013/2014	2,004,300,000.00	99,116,572.39
2014/2015	52,000,000.00	88,280,426.00
2015/2016	405,582,155	15,582,155
	9,171,129,978.00	596,965,132.19

2.1.2 Frozen/Preserved Assets : Kshs. 1,633,796,604.85

2.1.3 Pending Recovery Suits: 174 civil suits pending in court for

recovery of illegally acquired assets totaling approximately Kshs. **3 billion.**

2.1.4 International Preservations/Recoveries

a). **Kshs. 535 million** frozen by the Government of Jersey in relation to the KPLC contracts. Negotiations are ongoing to return the money to Kenya.

b). **USD 2 million** frozen by the Swiss Government on the Anglo Leasing.

c). **Kshs. 50 million** arising out of the conviction and sentence in the Smith and Ouzman (Chicken gate) in the UK. The money has been sent to Kenya and will be used to purchase 7 ambulances for the Kenyan government.

2.2 **Enforcement**

2.2.2 Investigations on Corruption and Economic Crime

2.2.2.1 Ongoing investigations

Currently investigating **434 cases** of corruption and economic crimes and **187 cases** related to unethical conduct.

2.2.2.2 Cases Pending in court

Currently, a total of **536 cases** are pending in courts in which **891 persons** have been charged with various corruption offences. Highlights of the major cases pending in court include;

a). Anglo-Leasing

b). Youth Fund

- C). NACADA
- d). Devolved Government

2.2.2.3 Cases investigated under the Multi-Agency Team (MAT)

- a). Nairobi City County Chief Finance officer's case
- b). Eurobond
- C). National Youth Service
- d). Imperial Bank

2.2.2.4 Bribery Cases in Court

The Commission has a total of **217 bribery** cases pending in various courts to date.

2.2.2.5 Convictions

18 cases were finalized in Court resulting in 8 convictions:
some are listed below

a). **Free Primary Education case:** Dr. Concelia Ondiek and Dorothy Ndia – convicted on 27th September, 2016 for two years imprisonment without an option of a fine for fraudulent acquisition of public property

b). **Constituency Development Fund Case:** An **MP** from Uasin Gishu County and 5 other officers were convicted on 7th October, 2016 and fined Kshs. 9 million for loss occasioned by procurement related offences.

c). **Nyeri County:** Two CEC members and a Chief of staff were convicted on 26th September, 2016 and fined Kshs. **7.8 million** or in default 2 years in jail each for various procurement related offences.

d). **Migori County Government:** Paul Fredrick Ogira Obade – Convicted on 30-9-2016 for a fine of Ksh. 100,000/= and in default to serve one Year imprisonment.

e). A traffic police officer - Convicted on 5th October, 2016 for a fine of Kshs. 20,000/=, in default 2 years imprisonment for corruptly soliciting and receiving a benefit.

f). **Ministry of Interior:** A Senior Chief of Eastleigh Location was convicted on 3rd June, 2016 by the Milimani Anti-Corruption Court and fined Kshs. **250,000/=**, in default to serve two years in jail.

g). **Nairobi County:** A procurement officer in Pumwani Maternity Hospital - Convicted on 11-3-2016 and sentenced to a mandatory jail term of two and a half years for conflict of interest in awarding a contract to his company.

There were also **7 acquittals** and 3 discharges from the 18 concluded cases.

2.3 **Corruption Prevention Interventions**

Systemic corruption is witnessed primarily due to the weaknesses of a public entity or process. The Commission regularly conducts system reviews, Corruption risks assessments, and public awareness to mitigate against the vice.

In the 2014/2015 the Commission undertook 3 systems reviews, 12 CRAs while FY 2015/2016 3 system reviews and 2 CRAs and 8 CRAs in County Governments.

2.3.2 Systems Reviews in FY 2015/2016

- a). Parliamentary Service Commission
- b). Ports of Entry
- C). Free Primary Education Programme

2.3.3 Corruption Risk Assessments in FY 2015/2016

- a). National Youth Service
- b). Kenya National Bureau of Statistics
- C). Counties: Kwale, Laikipia, Nyeri, Busia, Homabay and Tharaka Nithi
- d). Kisii, and Kericho County assemblies and executives.

2.3.4 Public Education and Awareness Creation

6 County Anti-Corruption Outreach Programmes in Kwale, Kericho, Kisii, Laikipia, Tharaka-Nithi and Busia counties.

2.3.5 Promotion of Integrity and Ethical Conduct

- a). Leadership and Integrity Codes for state officers
- b). Oversight in respect to declarations of income, assets and Liabilities
- C). Clearance /verification for appointments to public office/private sector

2.4 Other Interventions

- a) **Partnership** : Kenya Leadership Integrity Forum
- b) **Legal forms:** Taskforce Legal and institutional anticorruption framework
- c) **Regional and international Partnerships: EAACA,**

3 Challenges

- a. Politicization of corruption and integrity issue.
- b. Public apathy in the fight against corruption. There is need to intensify public engagement to create awareness and rally support in the fight against corruption.
- c. Indifferent Religious sector
- d. Lenient sentences meted by courts e.g.
 - Chinese National working in the SGR offered a bribe of Kshs. 30,000 to an NTSA official to forebear charges of overloaded truck which was carrying sand. The suspect was arrested and

charged in court for bribery and was convicted and sentenced to pay a fine of Kshs.80, 000. A driver in Kitale offered a bribe of Kshs. 35,000 but was fined Kshs. 50,000 by a Kitale court.

- A police in Nairobi charged with soliciting and receiving a bribe police officers was fine kshs 30,000 in default 3 months

e. Acquittals

- Traffic police officers cases in Mavoko
- Kericho Magistrate case in Nakuru

f. Unfavourable/adverse court rulings in anti-corruption matters

-The case where the high Court in Nakuru granted orders prohibiting prosecution of traffic police officers who were arrested for bribery.

- Justice Onguto's order on Nairobi County

g. Inadequate commitment by government institutions to fight corruption

h. Complexity of international dimension of investigations/cross border such as lengthy MLA process.

i. Inadequate legal framework. Some of the existing pieces of legislations require amendments.

j. Lack of a National Ethics and Anti-Corruption Policy (in the process of development by the Task Force on Policy, Legal and Institutional Anti-Corruption Framework)

k. Low rating of the anticorruption indicator (5%) in the performance contracting framework.

4 Way forward

a. Need for national campaign to mobilize the public in the war against corruption.

b. Change of the national value systems (through education system, religious forums, role modelling, leadership)

c. Finalize the development and implement the national ethics and anti-corruption policy

- d. Strengthening of the legal framework which is already ongoing and is being spearheaded by the Taskforce Committee
- e. Further enhancement of institutional capacity
- f. Strengthen systems and controls of management in public institutions by accounting officers
- g. Implementation of Administrative recommendations
- h. Strengthen collaborations and coalitions
- i. Accounting officers to demonstrate commitment to anti-corruption interventions
- j. Enhance bilateral and multilateral agreements to support international investigation dimensions
- k. Enhance weighting of the anti-corruption indicator in the performance contracting framework to about 15-20%.
- l. Need for deterrent sentences which will reflect the gravity of corruption as menace that should be dealt with ruthlessly.