



The
Ethics and
Anti-Corruption
Commission



Republic of Kenya



The Ethics and Anti-Corruption Commission



Tukomeshe Utisadi, Tuijenge Kenya



The
Ethics and
Anti-Corruption
Commission

The Fight Against Corruption, Dispensation of Justice and Observance of the Rule of Law

EACC Presentation to Staff of the South Eastern Kenya University (SEKU) on Thursday, 11th April 2019 at 10:00a.m.

EACC

PRESENTATION OUTLINE



The
Ethics and
Anti-Corruption
Commission

- Framing context
- State of corruption and unethical conduct in Kenya
- Constitutional perspective in the anti-corruption war
- Legal and Institutional framework, processes and ideals in the fight against corruption
- Responsibility of public entities
- Conclusion



The
Ethics and
Anti-Corruption
Commission

FRAMING CONTEXT: QUOTE ON FIGHTING CORRUPTION

"We must listen to the concerns of our people without dismissing them. When people see something wrong, there is something wrong. When our people see corruption, it means there is corruption. When our people see that their resources are being stolen by certain people, it means this is happening, and we should listen."

Cyril Ramaphosa



The
Ethics and
Anti-Corruption
Commission

FRAMING CONTEXT: QUOTE ON RULE OF LAW

"For a Court of law to shirk from its constitutional duty of granting relief to a deserving suitor because of fear that the effect would be to engender serious ill will and probable violence between the parties or indeed any other consequences would be to sacrifice the principle of legality and the dictates of the rule of law at the altar of convenience as would be to give succour and sustenance to all who can threaten with sufficient menaces that they cannot live with and under the law."

Odunga J, in Coalition for Reform and Democracy (CORD) & another v Republic of Kenya & another [2015] Eklr quoting *Kinyanjui vs. Kinyanjui* [1995-98] 1 EA 146

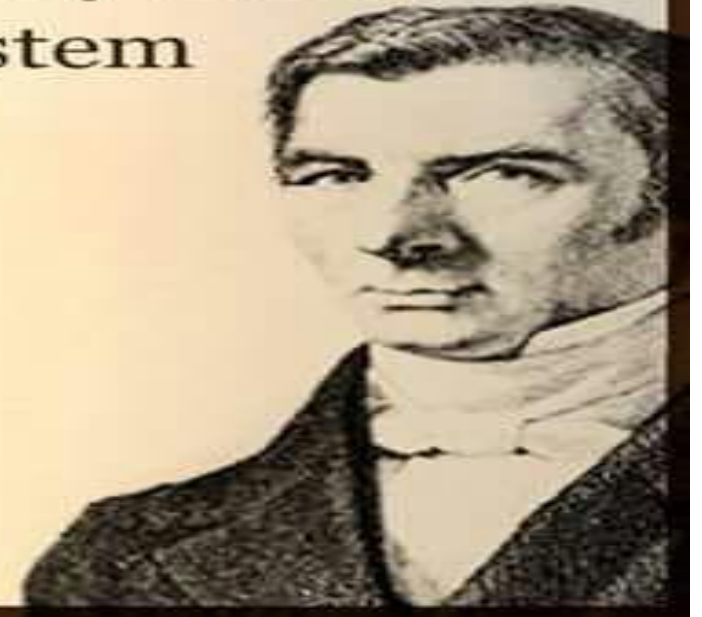
QUOTE ON EMERGENCE OF UNETHICAL CULTURE



The
Ethics and
Anti-Corruption
Commission

When plunder becomes a way of life for a group of men in a society, over the course of time they create for themselves a legal system that authorizes it and a moral code that glorifies it.

Frederic Bastiat





The
Ethics and
Anti-Corruption
Commission

Quote on African Values?

“.....The white man is very clever. He came quietly and peaceably with his religion. We were amused at his foolishness and allowed him to stay. Now he has won our brothers, and our clan can no longer act like one. He has put a knife on the things that held us together and we have fallen apart.....”

Chinua Achebe



The
Ethics and
Anti-Corruption
Commission

Categories of values

- Personal/Individual Values - core beliefs, values and philosophies that determine and influence personal actions.
- **Family Values**- ideals which guide family life and are passed down from one generation to another;
- **Cultural/ communal/Societal Values** - norms that are embraced by people who share a common identity and ancestry.
- **Religious/ Spiritual**- define what people expect of themselves and of others based on the beliefs common to the religions they practise.
- Organizational/ Institutional Values- are norms that inform an organization's conduct/ organizational culture



The
Ethics and
Anti-Corruption
Commission

Current state of values in Kenya

- **Discussion (5 Minutes)**
- What is your view on Kenya's moral fabric?



The
Ethics and
Anti-Corruption
Commission

Kenya's Values System

- Kenyans have through the Constitution 2010 determined the values to bind them;
- Codified under Article 10 of the Constitution
- Purpose of these values is to:
 - Define our identity, who we are, what we believe in, what we stand for;
 - Direct our society towards common good; promote good governance;
 - Ensure equal treatment of all; promote human rights and human dignity; and
 - Enhance the rule of law and democracy.



The
Ethics and
Anti-Corruption
Commission

FACTS ON CORRUPTION IN KENYA- *National Ethics and Corruption Survey, 2017*

- **70%** of Kenyans considered levels of corruption and unethical conduct in public service to be high compared to **79.4%** in 2016
- **62.2%** of Kenyans who sought services paid bribes;
- Average bribe dropped to **Kshs.5,058.75** from **Kshs.7,081.05** recorded in 2016;
- Fear of harassment and reprisals, rated at **77.6%**, was cited as the main reason why Kenyans do not report corruption and unethical conduct;
- **61.7%** of Kenyans have done nothing to support the war against corruption and unethical conduct;
- According to **59.4%** of Kenyans, government services improved from 2016 to 2017;



The
Ethics and
Anti-Corruption
Commission

RECENT DEVELOPMENTS IN THE ANTI-CORRUPTION WAR

- Recovery of corruptly acquired assets from suspects in addition to criminal charges
- Multi-agency approach in the war against corruption
- Increased political good will
- Strengthening of integrity legal framework
- Increased public clamor for good governance
- Enhanced integrity vetting of candidates for appointments
- Stakeholder involvement in the anti-corruption discourse



The
Ethics and
Anti-Corruption
Commission

THE CONSTITUTION OF KENYA: SALIENT FEATURES

- Article 1- All sovereignty of the people
- Article 10- national values and principles of governance
- **Chapter Six- leadership and integrity**
- Chapter 13- principles of public service
- Chapter 11- Devolved governments
- Judicial independence
- Public participation
- Constitutional Commissions and Independent offices
- Separation of powers



The
Ethics and
Anti-Corruption
Commission

CHAPTER 6 OF THE CONSTITUTION: GUIDING PRINCIPLES ON LEADERSHIP

- Appointment into public office on the basis of personal integrity, competence and suitability or election in free and fair elections
- Objectivity and impartiality in decision making
- Selfless service that puts public interest above all other interests
- **Accountability to the public for decisions and actions**
- Commitment to service



The
Ethics and
Anti-Corruption
Commission

Fighting Corruption: Legal Framework

- The Constitution, 2010
- Ethics and Anti-Corruption Commission Act, 2011
- Leadership and Integrity Act, 2012
- Public Officer Ethics Act, 2003
- Bribery Act, 2017
- Anti-Corruption and Economic Crimes Act, 2003
- Public Procurement and Asset Disposal Act, 2015
- Public Finance Management Act
- Public Service (Values and Principles) Act, 2015

Fighting Corruption: Institutional Framework



The
Ethics and
Anti-Corruption
Commission

- **Ethics and Anticorruption Commission (EACC)**
- Executive
- Parliament
- Office of the Director of Public Prosecutions (ODPP)
- Judiciary
- Directorate of Criminal Investigations(DCI)
- Witness Protection Agency
- Kenya Revenue Authority (KRA)
- Public service Commission
- Constitutional Commissions and Independent offices under Chapter 15 of the Constitution
- Kenya Law Reform Commission
- Public Procurement Regulatory Authority
- Financial Reporting Centre
- Asset Recovery Agency
- Multi Agency Team(MAT)
- Kenya Leadership Integrity Forum(KLIF)
- Commission on Administrative Justice
- Directorate of National Cohesion and Values
- National Anti-corruption Campaign Steering Committee
- Kenya National Integrity Academy (NIAca)
- **Public entities**

Fighting Corruption: Mandate of public entities



The
Ethics and
Anti-Corruption
Commission

- **S.9(1) of the Bribery Act, 2016-** Every public or private entity shall put in place procedures appropriate to its size and the scale and to the nature of its operation, for the prevention of bribery and of bribery and corruption;
- **Section 4(4)-** EACC empowered to require public entities to undertake certain functions
- **Section 42(1) of LIA-** suspected breaches of code to be reported to the public entity works
- Section 3 of the Public Officer Ethics Act, 2003
- Disciplinary procedures under the Employment Act;
- Functions of public entities under other statutes;
- Public Service Code of Conduct and Ethics, L.N. No. 54/2016
- Various PSC and other Government Circulars
- Institutional code of conduct and ethics



The
Ethics and
Anti-Corruption
Commission

Internal investigations: Meaning & Purpose

- Investigations central to combating and preventing corruption
- Process of establishing an alleged or suspected fact
- Helps an institution to:
 - Gain deeper knowledge of its employees and internal business to inform strategic decisions
 - Reduce reputation risk
 - Reduce disruptions in in business
 - Ensure early detection and prevention of malpractices
 - Preserve evidence for law enforcement
 - Strengthens internal controls



The
Ethics and
Anti-Corruption
Commission

Internal investigations: Trigger events

- External investigations- parallel process
- Receipt of credible reports
- Identification of red flags- internal suspicion
- Receipt of 3rd party litigation notification
- Public outcry
- Adverse change in institutional or organizational performance



The
Ethics and
Anti-Corruption
Commission

Internal Investigations: Process (Section 42 of LIA)

- Receipt and registration of complaint
- Preliminary inquiry to determine jurisdiction and merit
- Where applicable undertake and conclude in 60 days (R.22(3))
- Investigation may be at the instance of a public entity
- Concerned officer to be informed of the complaint and given reasonable opportunity to make representations relating to the issue before conclusion of investigation
- Complainant to be informed of any action taken or to be taken in respect of the complaint
- Investigation may be continued even after officer ceases to hold office
- Public entity to take disciplinary action or refer matter to a body with jurisdiction to take action
- Prosecution not a bar to other actions



The
Ethics and
Anti-Corruption
Commission

Internal investigations: Ideals

- Clear complaint process
- Reasonable assistance in making complaints
- Acknowledgement of receipt of written complaints
- Communication of outcome of investigations
- Objectivity and impartiality
- Confidentiality
- Responsiveness
- Avoidance of victimization of complainants
- Compliance with relevant laws, regulations and procedures
- Standard application of rules



The
Ethics and
Anti-Corruption
Commission

Internal investigations: Legal protection of actors

- **Section 50 of LIA-** Subject to this Act, no civil or criminal liability shall attach to an officer of public entity acting on the instructions of the chief executive officer of a public entity, for anything done in good faith by that officer in the performance of the duties under this Act.
- **Section 46 of LIA-** criminal offence for anyone to threaten, harm or otherwise interfere with a person discharging duties under the Act
- **ACECA s.65** - protection to persons who make report or give assistance to investigators
- Institutional policy



The
Ethics and
Anti-Corruption
Commission

Internal investigations: Legal protection of subjects

- **Constitutional safeguards** under Articles 10 (national values and principles of governance), 47 (fair administrative action) and 50 (fair resolution of disputes)
- **Statutory safeguards** under the Fair Administration Act, Employment Act and other laws
- **Policy safeguards** under relevant Public Service Manuals and institutional policies



The
Ethics and
Anti-Corruption
Commission

1. ANTI-CORRUPTION AND ECONOMIC CRIMES ACT: OFFENCES

- Bribery
- Fraud
- Dealing with suspect property
- Abuse of office
- Breach of trust
- Conflict of interest
- Favoritism or discrimination
- Tax evasion
- Bid rigging
- Deceiving principal
- Embezzlement or misappropriation of public funds
- Attempts and conspiracies
- Acquisition or disposal of public property
- Failure to pay taxes, fees, levies, or any charges payable to a public body.
- Failing to comply with procurement laws, procedures, or guidelines.



The
Ethics and
Anti-Corruption
Commission

2. THE LEADERSHIP AND INTEGRITY ACT, 2012: REQUIREMENTS

- **On Personal Conduct-** Personal integrity; Rule of law, professionalism, confidentiality, impartiality and objectivity, gifts and Benefits, Operation of bank accounts outside Kenya, Compliance with Tax, financial and legal obligations, financial integrity Dual Citizenship;
- **On Dealings with the public, colleagues and others-** Courtesy, respect, improper orders, transparency, accountability;
- **On Dealings with public property/ Resources/ opportunities in public service-** conflict of interest, compliance with relevant laws and regulations in operations



The
Ethics and
Anti-Corruption
Commission

Conclusion

"The illiterates of the 21st century will not be those who cannot read and write, but those who cannot learn, unlearn, and relearn."

ALVIN TOFFLER