


# ANTI-CORRUPTION LEGAL FRAMEWORK IN KENYA



Kenya Anti-Corruption  
Commission



# Definition of corruption

- No universally accepted definition of corruption
- Different definitions by institutions, scholars, practitioners and writers
- Host of international, regional and local instruments on corruption
- Corruption is dishonest behavior where individuals or groups abuse public office for private gain

# International instruments on corruption

- United Nations Convention Against Corruption( UNCAC)
- Kenya was the first country to sign and ratify UNCAC on 9/12/2008
- UNCAC came into force on 14/12/2005 after ratification by 30 countries



# UNCAC HIGHLIGHTS

- **Prevention** of corruption
- **Criminalization** of corruption
- **International co-operation** i.e. mutual legal assistance in gathering and transferring evidence for use in court, extradition of offenders, tracing and recovery of assets
- **Asset recovery**- trace, freeze, seize and confiscate proceeds of corruption

# OTHER INTERNATIONAL LEGAL INSTRUMENTS

- UN Convention Against Transnational Organized Crime
- UN Declaration Against Corruption and Bribery in International Commercial Transactions
- International Code of Conduct for Public Officials

# ORGANISATION FOR ECONOMIC COOPERATION AND DEVELOPMENT(OECD)

- Has taken a role in co-ordinating international action against corruption and bribery
- 1999- Convention on Combating Bribery of Foreign Public Officials in International Business Transaction (Most important anti-corruption legislation before UNCAC)
- OECD Anti-Bribery Convention

# REGIONAL ANTI-CORRUPTION INSTRUMENTS( AFRICA)

- Southern Africa Development Community Protocol Against Corruption (SADC)
- Economic Community of West Africa States Protocol on the Fight Against Corruption (ECOWAS)
- African Union on Preventing and Combating Corruption (AUCPCC)-2001
- What about EAC? EAACA- East African association of Anti corruption Authorities.

# NATIONAL LEGISLATIVE INITIATIVES ON CORRUPTION

- Numerous anti-corruption measures since colonial times in 1920s
- 1956-Prevention of Corruption Ordinance( Cap 65)
- 1992- Formation of Anti-Corruption Police Squad by amendment of the Prevention of Corruption Act



# NATIONAL LEGISLATIVE MEASURES (CONT'D)



- Oct 1997- Further amendment of The Prevention of Corruption Act and formation of the Kenya Anti-Corruption Authority (KACA)
- Sept 2001-Formation of the Anti-Corruption Police Unit (ACPU)
- May 2003-Enactment of the Anti-Corruption and Economic Crimes Act (ACECA)
- May 2003-Public Officer Ethics Act

# OTHER IMPORTANT LEGISLATION ON GOOD GOVERNANCE

- **Privatisation Act, 2005-** to ensure transparent and accountable transfer of assets
- **Public Audit Act, 2003-** sets up the National Audit Commission, National Audit Office and generally streamlines the audit function of all public organizations
- **Government Financial Management Act, 2004**
- **Public Procurement and Disposal Act, 2005**
- **Penal Code**

# ANTI-CORRUPTION ENTITIES IN KENYA

- Kenya Anti-Corruption Commission (KACC) is the lead agency (independent)
- Ministry of Justice and Constitutional Affairs
- National Anti-Corruption Campaign Steering Committee –launched by the government in 2004 to spearhead a countrywide anti-corruption awareness raising campaign. Comprises representatives from government, civil society and private sector

# THE KENYA ANTI-CORRUPTION COMMISSION

- Established by ACEC Act as the main body with legal mandate to fight corruption in Kenya- through law enforcement, prevention and public education
- Headed by a Director assisted by 4 Assistant Directors
- Four Directorates;
  - a) Investigations and asset tracing
  - b) Legal Services and Asset Recovery
  - c) Preventive Services
  - d) Finance and Administration

# FUNCTIONS OF THE COMMISSION

- Outlined in Section 7 of ACEC Act
- Investigations
- Preventive/Advisory services
- Asset Tracing and Recovery
- Public Education

# THE KACC ADVISORY BOARD

- Consists of 12 members nominated by various civic, religious, professional/business organizations and associations( section 16)
- Director of KACC is a member of the board and also acts as Secretary
- Advises KACC generally on conduct of its affairs
- Recommends persons for appointment or termination as Director or Assistant Director

# SPECIAL MAGISTRATES

- Appointed by the Judicial Service Commission to hear cases of corruption
- Hear cases on daily basis until completion
- Ensure speedy hearing and punishment of offenders
- Are found within various law courts in the country

# LEGAL MEANING OF CORRUPTION

- Both the UNCAC and ACEC Act do not define corruption but list conduct or situations that would constitute an offence of corruption( section 2, sections 39-44, 47)
- Bribery
- Abuse of office
- Fraud
- Embezzlement or misappropriation of public funds
- Breach of trust
- An offence involving dishonesty in
  - (a) in relation to taxes or
  - (b) under any written law relating to elections of persons to public office

All these are described in section 2



# CORRUPTION OFFENCES ( CONT'D)

- Listed in Part V ACEC Act- section 39-44, 47
- Bribing agents e.g. gift, loan, fee, reward, service, favour, in cash or kind
- Secret inducements for advice( the benefit is intended to be a secret from the person advised)
- Deceiving the principal( give false misleading statements or documents
- Conflict of interest (direct or indirect private interest)
- Improper benefits to trustees( to influence or reward the appointment of a person as a trustee)

# CORRUPTION OFFENCES (CONT'D)

- Bid rigging .i.e. a benefit not submit a tender, withdraw or change it, or submit a tender with a specified price, inclusions or exclusions
- Abuse of office
- Dealing with suspect property( believes it was acquired corruptly)

# ECONOMIC CRIMES

- Any act or omission that results in loss of public property or resources
- ACEC Act defines economic crimes as;
  - Illegal or fraudulent acquisition of public property service or benefit
  - Fraudulently dispose, charge or mortgage public property
  - Unlawful damage to public property
  - Failure to pay taxes, fees, levies, charges to a public body
  - Cause or obtain non payment of taxes

# ECONOMIC CRIMES (CONT'D)

- Illegal or excessive payment for ;
- Substandard or defective goods
- Goods not supplied or under supplied
- Services not rendered or not adequately
- Failure to follow laws or applicable procedures on –procurement, allocation, sale or disposal of property, tendering of contracts, management of funds or incurring expenditure
- Engaging in projects without planning

# PENALTIES FOR OFFENCES UNDER THE ACT

- Fine up to 1 million shillings or imprisonment up to 10 years or both
- Additional compulsory fine- in case of benefit to the perpetrator or harm to another person
- Compulsory fine- 2x the amount of loss or gain, or 2x both loss and gain
- Compensation to the person or the public institution that has suffered loss
- KACC to sue on behalf of public body

# PENALTIES (CONT'D)

- **Administrative action**( section 64)
- **Suspension** on half pay upon being charged-He may however be suspended without pay or dismissed in accordance with terms of employment
- **Suspension without pay** upon conviction pending outcome of appeal
- Dismissal from service if he fails to appeal or appeal is unsuccessful
- Disqualification from holding public office or election for 10 years
- KACC to publish names of convicted persons in Kenya gazette every year

# UNEXPLAINED ASSETS

- Property that is beyond a person's income and he cannot account for it
- KACC empowered to file a civil suit to recover the property and forfeit it to state
- Property to be frozen pending hearing of case

# PUBLIC OFFICER ETHICS ACT, 2003

- Focus is on public servants-to improve performance of public duty
- Purpose – to advance the ethics of public officers by providing a code of conduct and ethics and requiring wealth declarations
- Has 5 focus areas
  - Definition of a public officer
  - Responsible Commissions
  - Codes of Conduct
  - Wealth declarations
  - Penalties under the Act



# WHO IS A PUBLIC OFFICER?

- Any officer/employee of ;
  - Government
  - National Assembly
  - Local authority
  - Corporation, Council, Board, Committee
  - Cooperative Society
  - Public University

# RESPONSIBLE COMMISSIONS

- Responsible for implementation of the Act
- Teachers Service Commission
- Electoral Commission
- Judicial Service Commission
- Public Service Commission

# SPECIFIC CODES OF CONDUCT AND ETHICS

- Each Commission to develop codes of conduct- observe constitutional rights and freedoms
- To include all provisions contained in General Code of Conduct and Ethics under Part II of POE Act

# GENERAL CODE OF CONDUCT - VALUES

- Selflessness
- Integrity
- Objectivity
- Accountability
- Openness
- Honesty
- Leadership

# GENERAL PRINCIPLES OF ETHICAL CONDUCT

- Performance of duty generally
- Maintain public confidence in integrity of their office
- Observe official working hours
- Maintain an appropriate standard of dress and personal hygiene
- Discharge duties in a professional manner
- Carry out duties in accordance with the rule of law

# GENERAL PRINCIPLES OF ETHICAL CONDUCT( CONT'D)

- Respect constitutional rights and freedoms of other people
- Not to use office to enrich oneself
- Avoid conflict of interest
- Not to use office to solicit or collect harambees
- Not to compromise security interests of Kenya
- Observe political neutrality

# GENERAL PRINCIPLES OF ETHICAL CONDUCT-CONT'D

- No nepotism or favoritism
- Give honest and impartial advice
- No misleading information to members of the public
- Proper conduct of private affairs
- Pay all lawful taxes



# GENERAL PRINCIPLES

- Do not neglect financial obligations
- No sexual harassment
- Appointments on basis of merit
- Report any improper instructions given



# WEALTH DECLARATIONS

- Declarations of assets, incomes and liabilities bi - annually
- Confidential but may be disclosed to ;
  - Authorised staff of the responsible Commission
  - The police
  - Any other law enforcement agency
  - Person authorised by the High Court
  - Person who declared or his representative

# OFFENCES AND PENALTIES

- To disclose or acquire information contained in a declaration- fine 2million shillings or 2 years or both
- Failure to submit a declaration or submit false information- fine 1,000,000 or 1 year or both
- Obstruct officers acting under the Act- fine 5,000,000 or 5 years or both
- Divulge information acquired under the Act- fine 5,000,000 or 5 years or both
- Disciplinary action by responsible Commission after investigations
- Matter may be referred to AG for criminal proceedings

**THANK YOU!**

