



**SPEECH BY MRS. FATUMA SICHALE – DEPUTY DIRECTOR,**

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*“The Role Played by the Kenya Anti-Corruption Commission in improving Governance and  
Justice in Kenya”*

DURING THE TRADE UNION FEDERATION OF EASTERN AFRICA (TUFEA)  
CONFERENCE AT THE NEW STANLEY HOTEL – NAIROBI 21<sup>ST</sup> FEBRUARY 2007

**Distinguished Ladies and Gentlemen,**

On behalf of the Kenya Anti-Corruption Commission (KACC), I wish to express sincere thanks and appreciation for this invitation – all the more so because the topic of governance and justice is so dear to the hearts of all people of the world including the region represented in this forum. On my part, it is personally a great pleasure and honour for me to speak to this respected group of leaders of National Trade Union Centres that comprise the Trade Union Federation of Eastern Africa.

Let me also acknowledge from the outset the fact that KACC is privileged to have in our Advisory Board among 12 other members none other than your very able Chairman of Trade Union Federation of Eastern Africa and Secretary General of COTU (K), **Brother Francis Atwoli**. The Advisory Board is composed of persons nominated by diverse bodies and institutions that represent the face of Kenya. The Board plays a very significant role of advising the Commission generally on the exercise of its powers and the performance of its functions. We have benefited greatly from their wise counsel on all matters pertaining to the operations of the Commission. However, any shortcomings of the Commission if at all that I may mention in this paper are purely our own and not the Board's.

## **Ladies and Gentlemen,**

Allow me to take the liberty to acknowledge the good work you are doing for your respective Union members. When you articulate social and financial causes for your members you play a significant role in the economic and social justice system. The concept of working people coming together to promote their common interests and prevent exploitation has been for the social good. There is strength in numbers, and in unity too. The determination of workers to fight for their rights is part of the dynamics of the justice regime. Accordingly it would be prudent to advise your members that in the course of fighting for their rights, they should always endeavour to do so within the law, for all rights and freedoms come with responsibilities for the common good of the community as a whole.

## **Historical perspectives of fighting corruption in Kenya**

**Ladies and gentlemen,**

When I have just mentioned about the workers fighting for their rights, it reminds me of the great determination and sacrifice that Kenyans have gone through in their quest for good and democratic governance and the elimination of corruption. We got independence in 1963. The period between entry of independence and the millennium was a changing one: from the flamboyant optimism of sixties it passed to the steadily growing pessimism of the nineties. The economy registered consistent decline in the nineties till the country achieved the unenviable mark of negative economic growth in year 2000. It was in the nineties when the most notorious

corruption scandals and economic crimes took place. The economy literally collapsed, poverty increased, there was high unemployment, and bribery plagued almost every sphere of social/political life including schools, hospitals and roads. State Corporations, land and other properties such as the KICC which you must have seen by now in Nairobi were signed away to individuals and groups of individuals. It is against this background that in year 2003 the Kenyans used their voting power to vote on the anti-corruption platform.

**Ladies and gentlemen,**

The rampant corruption that the country went through was not in a vacuum of law. Kenya has had the **Prevention of Corruption Act** since August

1956. The Act was enacted by the colonial government. There has always been law enforcement agencies to enforce the Act. One may then ask, where did we go wrong? A possible and simple fact is that energy was diverted from fighting corruption to fighting the institutions that were fighting corruption. In 1993 an **anti-corruption squad** was set up administratively in the Police department to investigate corruption; but it was disbanded and resurrected twice and then finally and officially dissolved in 1995. The people continued to clamour for an independent anti-corruption agency, and the law was amended in 1997 to establish the **Kenya Anti-Corruption Authority** (KACA). Its first director was appointed in December 1997 and then removed through a judicial tribunal in 1998; the second director, Hon. Justice Ringera, was appointed in 1998 and then removed through a High Court

ruling in 2000; and with his removal the KACA was also dissolved. The Court ruled that the establishment of KACA was unconstitutional.

Our historical experience is a vivid demonstration that it is not enough to have good laws and institutions in place. There is required the goodwill of everyone to uphold the law and to support the law-enforcement institutions. But I must recognize and salute the great resilience and determination of the Kenya people in their resolve to join hands communally and fight for their right of being governed with integrity. The platform and outcome of the elections of December 2002 reflect the vivid reality that governance must be conducted in such way as to justify itself to the involved and affected population in order to guarantee its legitimacy and effectiveness.



## **Governance and justice**

**Ladies and gentlemen,**

You have invited to make this presentation to you on the role played by KACC in improving Governance and Justice in Kenya.

For purposes of this paper I will define governance to mean the manner in which power and discretions are exercised in the management of a country or of any entity. The term “governance” is actually derived from a latin term which means “*steering*”. As a process, governance may be carried out for any

size of organization or entity ranging from a single human being to all of humanity. Governance may also be carried out for any purpose, good or evil, or for profit or not. As a rational society, we expect governance to be administered for good motives.

From the outset, let us be honest and admit that many African countries, perhaps including yours, have had governance problems at one time or the other, sometimes with disastrous consequences. But I think the tide today is that all people of the world (including Africa) are united in the belief and firm faith that they deserve to be governed with the highest level of public integrity. This is the only way the people can realize their full potential, both as individuals and as communities.

**Ladies and Gentlemen,**

You have asked me to present about what our Commission is doing towards improving governance and justice in Kenya. I have already told you how corruption devastated the economy of the country in the nineties, and how anti-corruption bodies were formed and dissolved almost at will. There are two lessons you draw from this scenario. First, our input manifested in our resolve to continue the fight undeterred by the shadow of the past history of anti-corruption bodies. You may already know that our Director, Justice Ringera, was previously in KACA when it was wound up. Second, that the people of Kenya have borne the brunt of corruption over the years, and,

having voted to eliminate corruption in 2002, they want to see a corrupt free-society soonest. This is the reason why despite the much we achieve, the public still say it is not enough. I will now highlight about the Commission and what it is doing.

## **Establishment of KACC**

When KACA was disbanded following the ruling I have referred to, this country went through tedious processes of attempting to establish an Anti-Corruption institution that would not be susceptible to intrigues of the kind that brought down KACA. The people however were not convinced there was political goodwill, hence the elections of 2002 were decisively won on the anti-corruption platform. The new regime moved fast to put in place

legislative, administrative and institutional measures to rejuvenate and give new impetus to the fight against corruption. The legislative measures included the passing of the **Anti Corruption and Economic Crimes Act, 2003** and the **Public Officer Ethics Act, 2003**. Both Acts became operational on 2<sup>nd</sup> May 2003.

**The Anti Corruption and Economic Crimes Act, 2003** established the KACC and its Advisory Board. It provides for the appointment of a Director who is the chief executive, and up to four Assistant Directors to assist the Director. The management assumed office in September 2004. The Commission has therefore been in existence for slightly more than 2 years.

There are three main ways in which the Commission is working to improve governance in Kenya. They constitute the three pronged approach to fighting corruption. These are:

- i) Law enforcement
- ii) Prevention
- iii) Education

## **Law enforcement**

There are various provisions in our laws directed towards the conduct of public officers whose aim is to promote integrity and therefore improve governance.

The Public Officer Ethics Act, 2003 declares a code of conduct and ethics for all public officers. The Act also requires every public officer to submit an annual declaration of wealth. KACC can investigate matters referred to it touching on offences under the Act. We have indeed investigated such cases and referred some of them to the Attorney General for prosecution.

The Anti-Corruption and Economic Crimes Act, 2003 declares several offences of corruption and economic crime. KACC investigates those offences and where there is sufficient evidence we recommend to the Attorney General that the suspects be charged in court. The law requires that when we complete an investigation we send the file to the Attorney General. I could mention that as of this month (February 2007) we have forwarded a total of 254 files. Out of those 254, we have recommended that persons be prosecuted in 185 of the files. In 11 files we have recommended that the officers face administrative disciplinary action, and in 58 files we have recommended closure for lack of sufficient evidence.



Of the 185 files recommended for prosecution, the Attorney General has accepted to prosecute in 162 cases, and refused to prosecute in 7 cases. Another 10 files have been accepted for prosecution but referred to the CID for re-evaluation of the evidence, and the rest are awaiting the decision of the Attorney General.

A major development introduced by the Anti-Corruption and Economic Crimes Act, 2003 is the provision for **recovery of public property**. The Act obliges a court that convicts a person of corruption or economic crime to make an order for compensation or return of property. This mode of recovery is therefore dependent upon the successful conviction of a person. The Act also empowers KACC to investigate the extent to which any person

is responsible for the loss of or damage to public property, and to institute proceedings for, and recover, compensation or the property in question.

Further, the Act empowers the Commission to institute proceedings against public officers for the forfeiture of unexplained assets. Kenya is one of the few countries of the world that have such a provision. If, in course of an investigation the Commission finds that a public officer has accumulated assets that are not commensurate to his/her income, it may call on the person to explain the disproportion; and if he/she fails to do so, or gives an explanation that is not convincing, the Commission may then file a case in court so that the officer be ordered to pay to the Government the value of the unexplained assets.

So far, in line with the mandate of asset recovery, the Commission has filed in court civil cases as follows:

- 94 suits for recovery of embezzled public funds totaling KShs 121,072,800.15; of which KShs 12,585,583.00 has already been recovered.
- 37 suits for recovery of public land corruptly allocated, and valued at KShs 909,000,000.00
- 48 applications for preservation of assets pending conclusion of investigations, valued at KShs 1.19billion.
- 1 application for joinder in on-going proceedings in order to protect public property valued at KShs 50million.

Besides the civil cases filed, the Commission has recovered 48 titles of land whose acreage is 89.4695 and valued at KShs 144 million.

The Act has a provision empowering KACC to call upon a person to enumerate his/her property and to explain how it was acquired. We have previously issued notices to 13 public officers of the current and former regimes to explain how they acquired their massive wealth. These notices were kept in abeyance when one of the persons applied to court to challenge the powers of KACC to issue such notices. The case has now been concluded and the court has re-affirmed that KACC has the full powers in law to issue such notices.

## **Prevention**

I have mentioned earlier that governance includes the steering of an organization of any size. In regard to government departments and state corporations, the Commission is empowered by law to move into those bodies and to study their systems and procedures so as to find out whether there are practices that are conducive to corruption. The aim of such study is to find out if there are loopholes that can allow corruption to take place. After the study, the Commission then advises on the revision of the systems and procedures so as to seal the loopholes. This results in improving governance and justice.

Prevention is based on the understanding that where systems are too lax, men are fallible and may succumb to corrupt practices. One basic difference between prevention and enforcement is that whereas enforcement occurs after the wrong has been done, prevention occurs earlier to prevent the wrong from occurring in the first place. Although law enforcement is important, it must be combined with preventive measures for success. As

**James Madison** observed 200 years ago;

*“If men were angels, no Government would be necessary. If angels were to govern men, neither external nor internal controls on Government would be necessary”.*

Since the power of Government in this world is held only by men and women, external and internal controls are necessary. Such controls will increase the difficulties and risks for those who are hungry for greater power and prestige. Moreover, vigorous controls will protect the greater number of employees who are honest and responsible.

KACC has already studied the systems of the following organizations and thus secured the revision of their practices so as to seal loopholes;

- i) [Kenya Medical Supplies Agencies \(KEMSA\)](#)
- ii) [Registration and licensing of motor vehicles and enforcement of traffic laws](#)
- iii) [Department of Immigration](#)

- iv) [The City Council of Nairobi](#)
- v) [Municipal Council of Mombasa](#)
- vi) [Examinations into the Road Sector and the Teachers Service Commission - Currently being undertaken](#)

The above are just a few instances that demonstrate the Commission's role in ensuring that systems and procedures in government departments are strengthened. This has an overall effect in strengthening institutions and eventually governance as the core of public stewardship. Governance cannot be healthy when institutions are weak or prone to corruption.



Besides, the Commission does conduct research through surveys into the nature, manifestation and trends of corruption in the country. Through such surveys, the Commission is able to generate credible and scientific knowledge on the state of corruption in the country and devise appropriate interventions and strategies.

One such survey was released to the public in June 2006. The findings of this Survey triggered remedial action on the part of the Government beginning with the Office of the President. The Government responded through what later came to be known as the Rapid Results Initiative (RRI) under the superintendence of the Public Sector Reform and Development Secretariat. The initiative is a **one hundred days** active intervention by government

ministries in areas that were highlighted in the Report as being corruption prone. This initiative is also changing the way government departments do business. It is hoped that it will become permanent.

## **Public education**

The Commission undertakes public education with a view to disseminate factual information on anti-corruption, ethics and integrity content. These trainings are designed to transfer skills on how to combat corruption. Some of these trainings include:-

- **The Public Service Integrity Programme (PSIP).** Under this programme 12,229 public sector employees have been trained to-date.
- **Training, Research, Advocacy and Governance (TRAG) Programme;** a total of 145 senior officers from the public, private and civil society sectors has been trained.

Further, the Commission has taken strategic interventions in mainstreaming anti-corruption, ethics and integrity content into the formal education system. To this end the Commission has worked with the Ministry of Education and related institutions. This has been through sponsorship of the Kenya Music Festival 2005 and 2006, sponsorship of Kenya Drama Festival 2006, sensitization seminars for all staff of Kenya Institute of

Education, all heads of secondary schools, Kenya National Examination Council and the sensitization of 96 provincial directors of education, district education officers and municipal education officers.

The Commission has mounted targeted media programming that focuses on broadcasting messages on anti-corruption, ethics and integrity. Subsequently several radio and TV messages have been broadcast or are being broadcast on various stations.

The rationale of education strategy is to sensitize the public of the dangers of corruption, and to enlist their help in fighting it. We aim to change people's attitudes, so that they can shun corruption and refuse it whenever it threatens

to occur. The teaching is their defence against corruption, for they are empowered to identify it and reject it. Training is not meant to add fear, but to give them a sense of confidence in making a mature and informed response to a real crisis. It cultivates moral and ethical character among the public. Person who are ignorant can be taken advantage of; but not those who know the truth.

## **Challenges**

**The work of the commission has not been without challenges. Some of the challenges that we have encountered are:**

- Deep-rooted problem: Corruption has gone on in this country for a very long time. Its roots had run deep, and it permeates through the organs of society at all levels. Much property now in innocent hands was originally acquired corruptly. The enormity of the task is big. When we began the efforts to fight it in September 2004, it will take time to overcome it. The hard facts are that laying the foundations of an institution and its processes takes time, and investigations cannot result in immediate prosecutions. Civil cases take years to go through the courts; hence to expect KACC to make big recoveries within two years would be a bit on the ambitious side. In regard to prosecutions, the matters are heaping up in court without

any real progress of hearing, because the accused persons have learnt many tricks of preventing the hearing.

- Attitude: The longevity of the problem has in turn led to attitudinal problem. The people have an ambivalent attitude towards corruption – an attitude of uncertainty compounded by tolerance, indifference or resignation, a feeling that corruption is so pervasive now that nothing can be done about.
- Misuse and abuse of legal process: The so-called due process of law has often been used and abused by accused to frustrate the hearing of cases against them. Their lawyers mount so much resistance that

it is virtually impossible to make any progress. There have been constitutional applications whose primary purpose was to prevent the progress of cases. Applications for adjournment on frivolous or false grounds have been made. Medical practitioners seem to readily issue certificates which have formed the basis of applications for adjournment.

- Corruption fighting back: The suspects do try to intimidate investigators and witnesses. They also spend the looted funds in fighting court battles; they would rather waste the money on litigation rather than return it without a fight.



- Politicisation: Politicians have often poured cold water on genuine anti-corruption efforts by politicizing issues. When it has suited them, they seek refuge in their party or tribe and turn the issues, alleging that it is not their corruption, but their tribe or party, that is being fought.
- New and emerging corruption: The corruption of today tends to attract a bigger chorus of condemnation than the corruption of the past. This poses a problem to on-going investigations. When the investigators are busy working on cases of past corruption, they get distracted by revelations of fresh scandals. The public expects the new corruption to be given instant attention and hence the

investigators are caused to abandon the old investigation so as to attend to the present cases.

- Weaknesses in existing legislation: **The existing legislation has some weaknesses which KACC has already pointed out to the relevant authorities for possible amendment.**
- Foreign investigations: **With modern technology, travel and commerce, the world has become a global village. International transactions of money and property can be concluded within minutes. Corrupt people can associate across borders without any hinderance. But not so for investigators. An investigator of one**

**country cannot cross the borders to continue investigations without a request to the foreign country.**

## **Concluding remarks**

**Ladies and gentlemen,**

Thank you for your patient attention. Despite the dark clouds of the past and the challenges of today and tomorrow, the laurels of a better life are at hand. The elections of 2002 heralded a new dawn, the promise of a commitment to values of honest governance, openness, just conduct, and the rule of law. The leaders led the way by submitting their wealth declarations,

enacting new laws, establishing an independent KACC and other anti-corruption institutions, and opening the space for press freedom and free expression. I am confident we are on the right track.

Our experience is that corruption is now an international problem, requiring the concerted efforts of the international community to fight it, working together to complement and assist each other's efforts. I call on you all to play your respective roles wherever and whenever, to eliminate the scourge of corruption.

Once more thank you and I wish you an enjoyable stay in Kenya and safe journey back to your respective places after the conference.