

# Spear of Integrity

A PUBLICATION OF THE ETHICS AND ANTI-CORRUPTION COMMISSION

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**YOUR RIGHT, YOUR  
ROLE, SAY NO TO  
CORRUPTION**

**PG 8**

**ROOTING INTEGRITY  
IN ORGANIZATIONAL  
LEADERSHIP**

**PG 16**



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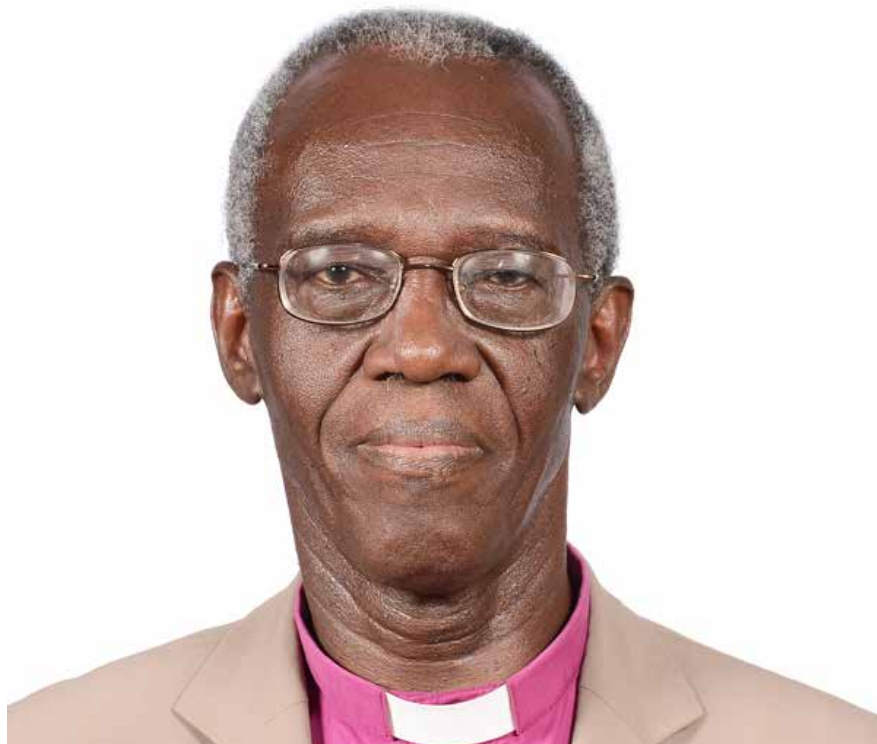
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## Chairman's Message

I am delighted to share with you the seventh issue of the *Spear of Integrity* Newsletter.

This publication by EACC is all about what the Commission is doing to fight corruption and promote integrity in the Kenyan society especially as we head towards the August 2022 General Election. I urge all of you to elect leaders of integrity in accordance with Chapter Six of the Constitution of Kenya. As Dwight D. Eisenhower (US 34th President) said: "The supreme quality for leadership is unquestionably integrity. Without it, no real success is possible, no matter whether it is on a section gang, a football field, in an army, or in an office."

First, I would like to thank all members of staff for ensuring that EACC achieves its vision and mandate by diligently executing their duties. Your commitment to the call of duty is what makes the difference as we continue to fight for a corruption-free and ethical Kenyan society.

I also take this opportunity to sincerely thank the three outgoing Commissioners,

Ms. Sophia Lepuchirit, Dr. Dabar Abdi Maalim and Ms. Rose Mghoi Macharia, for their service to the Commission and the entire nation. I wish them all the best in their next chapters of life.

In the same breath, I warmly welcome our new Commissioners, Colonel (Rtd.) Alfred Mtuweta Mshimba and Dr. Monica Wanjiru Muir. I congratulate them on their appointment and applaud them for joining us and believing in our vision and mission.

In conclusion, I would like to remind all of you that corruption remains a big challenge and poses a threat to the prosperity of our nation. I, therefore, challenge all of us to take personal responsibility and remain committed and united in the fight against corruption. In particular, I call upon you to uphold our national values and embrace patriotism.

**Archbishop (Rtd.) Eliud Wabukala,**  
**Chairman**  
**Ethics and Anti-Corruption**  
**Commission**

### Disclaimer

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# EACC CEO Elected to Executive Committee of the International Association of Anti-Corruption Authorities (IAACA)

The election of Mr. Mbarak to the prestigious international anti-corruption body represents an acknowledgment of recent gains in the war against corruption

By Lena Muye

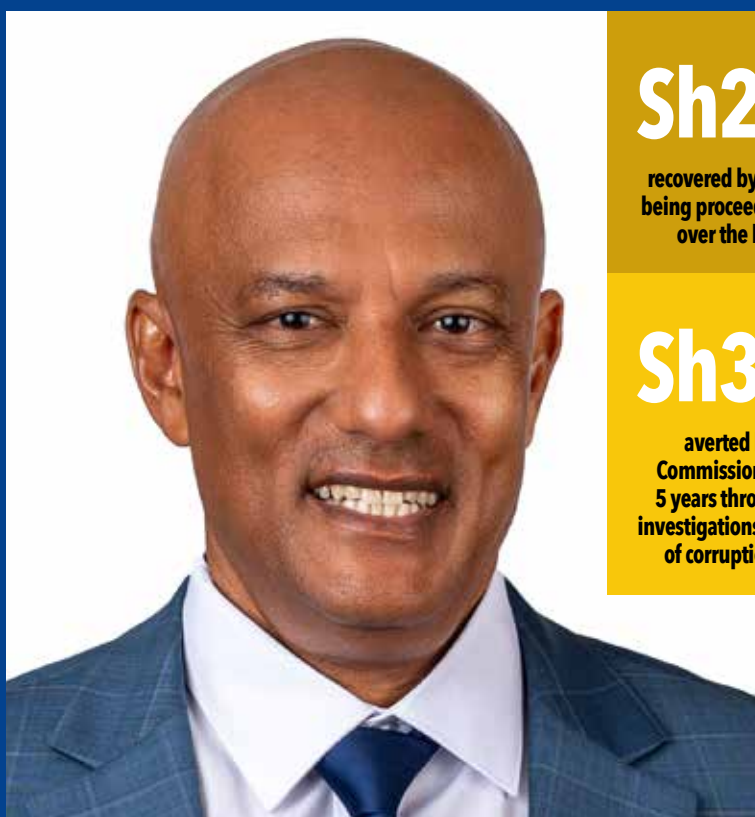
The Ethics and Anti-Corruption Commission's CEO Mr. Twalib Mbarak was on 5th January, 2022 elected to the executive committee of the [International Association of Anti-Corruption Authorities \(IAACA\)](#).

Mr. Mbarak will hold this position for a period of three years as one of the members from the African region alongside other ExCo representatives from Mauritius, Senegal and Morocco.

The occasion also saw Mr. Simon PEH, Head of the Independent Commission Against Corruption (ICAC), Hong Kong, China elected as President of IAACA.

The election of Mr. Mbarak to the prestigious international anti-corruption body represents an acknowledgment of recent gains in the war against corruption. Over the last 5 years, EACC has recovered assets worth over **Kshs. 25 billion** being proceeds of corruption. EACC has also conducted several high impact investigations resulting in high profile prosecutions and convictions. During the same period, EACC averted loss of approximately **Kshs. 38 billion** through proactive investigations and disruption of corruption networks.

Mr. Mbarak's nomination to the ExCo will afford Kenya the opportunity to explore informal channels for cooperation and coordination between anti-corruption authorities across the world. This comes shortly after media reports confirmed that Swiss banks have agreed to pass on details



## Sh25bn

recovered by EACC in assets being proceeds of corruption over the last 5 years.

## Sh38bn

averted loss by the Commission over the last 5 years through proactive investigations and disruption of corruption networks.

of accounts operated on behalf of Kenyan clients to the Swiss authorities who will, in turn, channel the information to Kenyan authorities. An example of this model is the [The Framework for the Return of Assets from Corruption and Crime in Kenya \(FRACCK\)](#) signed by the Governments of Kenya, Jersey, Switzerland and the UK in 2018 which facilitated repatriation of approx. USD 400,000 from the United Kingdom. The money was utilized to purchase 11 ambulances in support of the health sector.

IAACA is an independent, non-political anti-corruption organization established to promote the effective implementation

of the United Nations Convention against Corruption (UNCAC). IAACA's responsibilities include; promoting international cooperation in the prevention, investigation and adjudication of corruption offences and facilitating the exchange and dissemination of expertise and experience among anti-corruption authorities, promoting measures for the prevention of corruption in both the public and private sectors.

It is also the responsibility of IAACA to examine comparative criminal law, procedures and best practices.

# Why Anti-Graft Agenda Should Be a Factor in the 2022 Polls

This has an effect on recent gains in the development of a robust national discourse about improving the effectiveness of anti-corruption reform, and the crystallization of potentially viable legislative and constitutional reform agendas for promoting good governance

**By Mwongela Mbiti<sup>1</sup>**

Kenya has been rocked by a string of corruption scandals in government institutions over recent years. The episodes serve as a powerful reminder to both ordinary Kenyans and foreign investors that public-sector corruption remains pervasive.

There appears to be little or no effort from many government Ministries, Departments and Agencies (MDAs) to stop the pilferage of public resources through corruption. Notwithstanding the best efforts, including those of the highest office in the land, law enforcement agencies are overwhelmed by numerous cases resulting from MDAs' inaction.

Today, Kenyans view corruption as the biggest monster that has crippled the country's economy, besides foreign debt and the ravaging effects of COVID-19. But as the anti-corruption agencies intensify the fight against graft, political leaders have opened a tough political war. Each side has raised an accusing finger against the other, with unsubstantiated claims of weaponization of the graft fight to score political goals ahead of 2022 General elections.

Despite the tenacity of the country's anti-graft effort, the vast literature documenting the structural embeddedness, grotesque scale, and devastating consequences of grand corruption in Kenya threatens to overshadow the strides made in the anti-corruption war. This has an effect on recent gains in the development of a robust national



discourse about improving the effectiveness of anti-corruption reform, and the crystallization of potentially viable legislative and constitutional reform agendas for promoting good governance.

The Constitution of Kenya 2010, to a large extent cemented the gains from the national anti-corruption struggles by reformist political leaders and civil society activist ahead of the 2002 general elections, which were the hallmark of the National Rainbow Coalition (NARC) administration. These strategies involved depoliticizing key oversight institutions, curbing presidential discretionary powers, restructuring patronage-based fiscal policy, expanding and entrenching current transparency laws, and promoting participatory constitutionalism.

Lest we forget, Kenyans experienced a eureka moment on the elusive governance awakening during NARC's tenure. The administration rode into power on an anti-corruption wave on the mantra of 'zero tolerance' to corruption. It was a complete and enviable break from the past, a new

Kenya had come to birth. The political commitments made to the people on the need to revolutionize the fight against corruption was put on pen and paper.

Within months of the election, the new administration had embarked on an ambitious programme of reform that included, among other measures, the creation of a Ministry of Justice and Constitutional Affairs, appointment of a Permanent Secretary in charge of governance and ethics, and the appointment of a new director of public institutions, who was charged to create a special unit to address corruption, serious crime, fraud, and asset forfeiture. The Anti-Corruption and Economic Crimes Act of 2003 was signed into law by Kenya's new president, Mwai Kibaki. The process of institutionalizing the resultant Kenyan Anti-Corruption Commission as the premier anti-corruption agency was concluded at the end of 2004.

The government also created a specialized Cabinet Committee on corruption and institutionalized the declaration of income, assets and liabilities by public officials after passing the Public Officer Ethics Act in 2003. In addition, the Goldenberg Commission of Inquiry was established to get to the bottom of the Goldenberg scandal of the early 1990s, in which corrupt government officials hoodwinked the Kenyan taxpayer out of approximately US\$1 billion.

The political goodwill that came with the new government inspired Kenyans to

**“ Leaders seeking to form the next government should lay bare, in no uncertain terms, the strategies they will employ to prevent and combat corruption besides promises of an economic revolution. ”**

<sup>1</sup> Mwongela Mbiti is an advocate of the High Court of Kenya and Governance Practitioner.





**Hon. Justice (Rtd). Paul Kihara Kariuki, the attorney general making remarks during the 2021 IACD commemoration in Mombasa.**

believe that indeed things could be different and that corruption that had become a way of life during previous regimes could be a thing of the past. Although this feeling and belief did not last very long before the fall of NARC and the birth of the infamous Anglo-Leasing scandal, the Kibaki administration established a firm foundation, including legal and an institutional anti-corruption framework that we boast of today.

A general election for any country always presents an opportunity for a fresh start.

The anti-corruption agenda, in view of the milestones and challenges experienced post the Kibaki administration, ought to be a dominant issue in pre-election political conversations. *Leaders seeking to form the next government should lay bare, in no uncertain terms, the strategies they will employ to prevent and combat corruption besides promises of an economic revolution.*

In conclusion and in my view, there are three issues that must be addressed with regard to the future of the fight against

corruption in Kenya. First, national security and government procurement have become the last refuge of the corrupt and could be mitigated by e-procurement. Second, Kenyans electing leaders of questionable integrity and putting up their votes for the highest bidder: we must learn how to win elections without stealing money or getting resources from special interest groups. Third, we need to learn how to make the fight against corruption more effective.

## PROFILES NEW COMMISSIONERS

### Monica Wanjiru Muiru, PhD

Dr. Monica Wanjiru joins the Ethics and Anti-Corruption Commission, as a Commissioner a position to which she was appointed to on December 14, 2021. She is a trained, experienced and internationally exposed business professional and academic scholar, offering many years' experience in Accounting, Finance, Management, Leadership, Customer Service and Teaching across banking, media, higher education, government and technology sectors. She has previously worked for the Kenya Broadcasting Corporation (KBC), the East African Standard, the Mellon Bank in Pittsburgh USA, and the Motient Corporation, Reston, Virginia, USA. Dr Muiru has been guest speaker, facilitator and lecturer at various universities including Culver-Stockton College (USA), Continental College, St. Paul's University, Emmanuel Christian College (Goli, South Sudan), Copenhagen Business School's E-MBA, Astria Learning (USA), and at Egerton University where she currently teaches Finance and Accounting to both undergraduate and postgraduate levels and supervises graduate students. She has undertaken various consultancy engage-



ments in the field of Financial Management, done research and published several articles in peer-reviewed journals. Dr. Muiru was the recipient of the prestigious H.J. Heinz International Fellowship Program at the University of Pittsburgh, where she took courses at Graduate School of Public and International Affairs; and at the Joseph M. Katz Graduate School of Business. She is a fellow of the Chartered Institute of Marketing, a member of Zonta International, an Associate member of the American Chartered Institute of Accounting. Dr Muiru brings on a wide array of skills and experiences to the EACC.

### Colonel (Rtd) Alfred Mshimba

Colonel (Rtd), Alfred Mshimba was appointed to the Commission on 14 December, 2021. He is a highly resourceful retired career military officer with over 30 years experience in Leadership, Administration, Human Resource Management, Procurement and Diplomacy.

Col. Mshimba is an expert in logistics and supply chain management who once served as Defence Attaché in People's Republic of China. He holds an MBA in Strategic Management from the University of Nairobi and a Bachelor's Degree in Business Administration; Procurement and Supply Chain Management from Kenya Methodist University. He has also received extensive training in leadership, governance, security and management during his distinguished military career. He has been recognised for his service and was honoured by receiving the Military Observer, United Nations Western Sahara Morocco (MINURSO) Medal among other accolades. EACC is set to benefit greatly from his vast experience.



# Concerted efforts needed to win the fight against corruption

Every single person - young and old - has a role to play to prevent and counter corruption, to promote resilience and integrity at all levels of society

By EACC Reporter

While it is everyone's right to benefit from strong anti-corruption efforts, embezzlement, misappropriation of public funds, and irregularities in public procurement are frittering away valuable resources. Unfortunately, this is happening at a time when we most need the resources to respond and recover from the COVID-19 crisis. This calls for coordinated strategic efforts by all to defeat the vice.

Preventing corruption unlocks progress towards the Sustainable Development Goals, helps protect our country, creates jobs, achieves gender equality, and secures greater access to services such as healthcare and education.

This year's slogan for the International Anti-Corruption Day - IACD, "Your right, your role: Say no to Corruption", reminds us of our responsibility in the fight against corruption.

Indeed, "Every single person - young and old - has a role to play to prevent and counter corruption, to promote resilience and integrity at all levels of society." UNODC

The IACD marks a yearly drive commemorated every 9<sup>th</sup> day of December to raise awareness on corruption, with special emphasis on emerging challenges, and to promote cooperation in addressing corruption effects.

This year IACD seeks to highlight everyone's rights and responsibilities including Government officials, civil servants, law enforcement officers, media, the private sector, civil society, youth, and the public - in the fight against corruption.

The United Nations Convention against Corruption emphasizes the responsibility of Governments to put in place an effective



whistle-blower protection system to ensure that persons who speak up are protected from retaliation. These measures contribute to effective, accountable, and transparent institutions towards a culture of integrity and fairness.

EACC safeguards confidentiality of informants through an anonymous reporting system which can be accessed from a link on its website.

EACC calls upon you to protect your rights. To do this, you need to be aware of the role you play and the responsibilities you have in the fight against corruption. Speak up, "say #NoToCorruption".

## How EACC collaborates with other Sectors to promote ethics and integrity

The United Nations Convention against Corruption (UNCAC) requires States to implement "coordinated anti-corruption policies that promote the participation of society". The Kenya Leadership Integrity Forum (KLIF); is a multi-sector forum bringing together 20 sectors drawn from state and non-state actors for a unified and integrated fight against corruption. Some of the actors include;

- i) The Executive,
- ii) The Legislature,
- iii) The Judiciary,
- iv) Media,
- v) Private Sector,
- vi) Civil Society
- vii) Religious Organizations, among others.

### Reasons for commemoration:

- Raising awareness on the negative impact of corruption
- Reporting cases of corruption
- Promoting anti-corruption champions and publicizing success stories in fighting corruption
- Enhance commitment to an accountable and transparent lifestyle.

“Every single person - young and old - has a role to play to prevent and counter corruption, to promote resilience and integrity at all levels of society.”

UNODC

### How corruption and unethical practices affect us

- Increased cost of doing business
- Loss of confidence in public institutions
- Reduced investment
- Increased poverty levels
- High levels of unemployment
- Increased crime rates
- High cost of living
- Breakdown in the rule of law
- Inequitable distribution of resources and opportunities
- Poor infrastructure (roads, water, hospitals)

By Christine Nabwire

# Corruption Risk Assessments and Reviews to Seal Graft Loopholes

This allows the Commission to make recommendations and offer appropriate advice on ways of streamlining the systems to prevent corruption and enhance service delivery

**By Gitonga Gakii**

Recently the Ethics and Anti-Corruption Commission (EACC) released Corruption Risk Assessment (CRA) reports to the Nandi and Nyamira County executives and assemblies and is now undertaking system reviews for the Judiciary and Universal Health Coverage programme in the Ministry of Health. While handing over the CRA reports, EACC's Vice-Chair, Commissioner Sophia Lepuchirit said that "With this report the county executive will be in a position to put policies in place to avoid questions on integrity."

The reviews are a strategy for prevention of corruption. They entail examination of systems, policies, procedures and practices of work in order to identify and profile weakness, loopholes, avenues and opportunities leading to corruption.

This allows the Commission to make recommendations and offer appropriate advice on ways of streamlining the systems and sealing the identified loopholes in order to prevent corruption and enhance service delivery.

So far **34** system reviews have been conducted in various government Ministries, Departments and Agencies (MDAs), **23** corruption risk assessments in county executives and **21** in county assemblies.

Common findings include

- Inadequate standards to inform specifications for common procurable items.
- Weak monitoring systems on execution of tenders.
- Systemic weaknesses, inefficiencies and loopholes leading to unethical practices.

Consequently, the Commission recommended:

- The procurement of all common user items by the Ministry of ICT on behalf of all ministries, departments and agencies (MDAs).

- Accreditation of adequate number of firms for each ICT item category.
- Post-accreditation assessments to ensure registered firms retain the approved standards.
- Development and operationalization of a framework that clearly separates the roles of policy formulation and oversight, development and enforcement of standards and procurement of ICT items.
- Establishment of a structured framework (help desk) that would enable MDAs to obtain information and support related to centralized procurement more effectively among others.

One review at a ministry established loss of assets such as motor vehicles which were auctioned by a garage dealer due to unpaid bills. Other loopholes included lack of systems to manage salary advances resulting in losses through default in repayment.

In the counties, CRAs revealed:

- Lack of tools to monitor and evaluate the execution of County Integrated Development Plans among others.
- Failure to prepare valuation rolls for all the ratable properties for effective collection of land rates.
- Lack of guidelines for human resource planning.
- Failure by staff to surrender and account for imposts in time.
- Awarding tenders to entities not in the registered list of suppliers.
- Procurement of goods and services outside the Integrated Financial Management Information System (Ifmis).
- Stalled and incomplete county projects among others.

## Ministry of Immigration

An examination carried out in 2003 by the Kenya Anti-Corruption Commission, revealed loopholes such as:

1. Lack of comprehensive government policy on immigration in the country.
2. Shortage of immigration staff
3. Poor remuneration relative to other agencies working closely with the department
4. Lack of appropriate structures for

handling refugee matters

The Commission made a number of recommendations and follow-ups and, in collaboration with the Ministry, many improvements were observed. The Ministry is one of the success stories in line with its mandate and service delivery.

## National Youth Service

By contrast, a 2015 review identified weak systems that provided opportunities for corrupt officers to defraud the Service. These included:

**1** Lack of a clear procurement plan and poor prioritisation of procurement needs.

**2** Purchase of items at inflated costs. The review flagged this as an indication that NYS does not carry out market surveys to inform the pricing of items in the procurement plan, a loophole that leads to loss of public funds.

**3** The report also revealed the service does not conduct due diligence of some firms awarded contracts as bidders use different but related firms.

**4** Inviting the same suppliers to quote despite the availability of large numbers of prequalified supplies for different categories.

The Commission presented the report with a number of recommendations. However, the report notes that NYS ignored the recommendations leading to loss of millions of taxpayer's money.

Whereas the Commission may not compel public institutions to implement the recommendations made in such reviews and assessments, institutions have a responsibility to apply mechanisms of corruption prevention as required by the law. Furthermore, public institutions can increase their efficiency and improve service delivery as witnessed in the Immigration Department. Legislation may be required to empower EACC to enforce implementation of recommendations.



# Your Right, Your Role, Say No to Corruption

It seeks to articulate everyone's role and responsibility in the fight against graft

**By Gitonga Gakii**

This year's International Anti-Corruption Day theme, **Your right, your role, say no to corruption**, seeks to articulate everyone's role and responsibility in the fight against graft. Isiolo and Mombasa counties hosted the ceremonies dedicated to the theme.

In Mombasa, the national event was held at Mama Ngina Waterfront where Attorney-General Paul Kihara Kariuki, who spoke on behalf of President Uhuru Kenyatta, encouraged the public to have a spirited common purpose and individual commitment in the war against corruption as expressed in the theme.

"This year's theme is most apt as it places all stakeholders squarely at the centre of the efforts to slay the dragon of corruption" said the A-G.

Highlighting some of the government's efforts and achievements in the fight against

corruption, he cited the Mutual Legal Assistance programme with its goals of increased repatriation of proceeds of crime held outside the country, extradition of graft suspects, and the receipt of key evidence to support both local and international based cases. These, he said, are the steps the government is taking to catch those who hide their ill-gotten wealth beyond the borders. It is done in collaboration with international partners and relies a lot on the digitization of government services which he said continues to offer the greatest opportunity in the fight against corruption.

Noting that the country had made some progress in the war against corruption, he acknowledged that there were some challenges and urged the public: *"As this year's theme sagely recognizes, in the fight against corruption, each of us is a soldier at the frontline. Victory can be delivered but only if each of us plays our rightful role, and if we work closely together."*

He challenged the public to uphold values of integrity, hard work, and sacrifice, and to shun the corrupt, shame and refuse to place them on social pedestals. "I conclude

by reminding us all that we are all called to renew our commitment to a just, fair, and equitable society in which there is shared prosperity based on hard work, integrity, and corruption free success," he said.

On his part, the Ethics and Anti-Corruption Commission Chief Executive Officer, Mr Twalib Mbarak, urged the public to elect leaders of integrity as the country gears up for next year's General Election.

A series of anti-corruption activities was launched from the 2<sup>nd</sup> to 9<sup>th</sup> December in both Isiolo and Mombasa such as school and public outreaches, football matches, town hall youth engagement forums, trainings for public officers and interest groups like church and mosque engagements, public barazas and corruption risk assessments for county executives and assemblies.

## Background:

On 31st October, 2003, the General Assembly adopted the United Nations Convention Against Corruption and requested that the Secretary-General designate the United Nations Office on Drugs and Crime (UNODC) as the secretariat for the Convention's Conference of States Parties (resolution 58/4).

The Assembly also designated 9th December as the International Anti-Corruption Day to raise awareness of corruption and of the role of the Convention in combating and preventing it. The Convention came into force in December 2005.





# Important Facts about Making Your Wealth Declaration

By Christine Nabwire

The Ethics and Anti-Corruption Commission (EACC) is vested with the oversight mandate in the implementation of Part IV of the Public Officer Ethics Act, 2003 (POEA) on the Declaration of Income, Assets and Liabilities (DIALs). Over the years, EACC has worked closely with Responsible Commissions in a bid to bolster compliance with wealth declaration requirements.

## Who Should Declare?

Section 26 of POEA makes it mandatory for every public officer to submit their declaration once every two years to a designated Responsible Commission for self, spouse(s) and dependent children under the age of 18 years.

## What types of declarations do we have?

POEA provides for three types of declarations that are to be made by Public officers; Initial Declaration, Biennial Declaration and Final Declaration.

## What is the declaration period?

The declarations are to be submitted to the Responsible Commissions/entities by **31<sup>st</sup> December** each declaration year. This being a declaration year, the deadline is **31<sup>st</sup> December, 2021**.

## What are the Obligations of Responsible Commissions?

Responsible Commissions are encouraged to remind public officers under their purview to make declarations for this declaration year. Further, the Commissions are asked to provide declaration forms to public officers in ample time. They are also custodians of the completed declarations.

## Why are you required to declare your income, assets and liabilities?

Sections 26 and 27 of POEA require all public officers to declare their Income, Assets and Liabilities, commonly referred to as Wealth Declaration.

## What is EACC's mandate?

EACC provides oversight in the implementation and enforcement of Part IV of the Public Officer Ethics Act on declaration of income, assets and liabilities across the public sector.

## What are the consequences of failure to declare your wealth?

A public officer who fails to submit a declaration, or gives misleading information is guilty of an offence and, upon conviction, may be fined not more than KES. 1 million or jailed for a term not exceeding one year or both.

A person who reveals, publicizes, knowingly republishes, disseminates or discloses to another person contents of a declaration without authority is guilty of an offence and, upon conviction, may be fined KES. 500,000/= or jailed for five years.

## Sh1m

fine or a jail term not exceeding one year or both are the consequences a public officer who fails to submit a declaration, or gives misleading information is guilty of an offence and, upon conviction.

## Sh500,000

fine or a jail term for five years are the consequences a person who reveals, publicizes, knowingly republishes, disseminates or discloses to another person contents of a declaration without authority is guilty of an offence and, upon conviction.





Education & Public Awareness Assistant Director Ms. Lydia Manyasi takes participants through EACC Information, Education and Communication materials at an exhibition during the IACD 2021 national celebrations at Mama Ngina Water Front, Mombasa County.



EACC CEO Twalib Mbarak (Right), Former Vice Chair Sophia Lepuchirit (Center) and Corporate Communications Head Phillip Kagucia (Left) arrive at Mama Ngina Water Front, During the IACD ceremony in Mombasa.



EACC team pose for a photograph after a tree planting exercise at Karura Forest during the recently concluded CSR Activity.







# That a judicial officer has taken a position previously on a matter of law is not sufficient ground for recusal

By Mwongela Mbiti

Nairobi High Court Pet No. 36 of 2019; Hardi Enterprise Limited & 3 Others versus EACC & 2 Others;

## Brief facts

The petitioners had been arraigned before the trial court facing corruption related charges. They moved to the High Court challenging search warrants obtained by EACC to commence investigations without prior notice to them in violation of the law. They relied on the Ojienda Court of Appeal decision which required EACC to give notice to persons against whom search warrants are obtained in the course of investigations. The Supreme Court, during the pendency of this petition, stayed the application of the Court of Appeal decision pending the hearing and determination of an appeal by EACC.

The Hon. Lady Justice Mumbi Ngugi took a position regarding the interpretation of

and the import of the Supreme Court stay decision over Sections 27 and 28 of ACECA in Dr. Evans Odhiambo Kidero's case and which was the Petitioners key ground in support of their petition. Apprehensive that they would not get Justice before this Court, the petitioners filed the instant application for recusal of the Judge.

## Applicable law

The Judicial Service Code of Conduct and Ethics

## Issues

- I. Whether the application was *res judicata*
- II. Whether a judge who has pronounced himself/herself on a matter of law should be estopped from hearing and determining a similar question in future

## Holding of the Court

Both the oral application dated 10<sup>th</sup>

February 2020 and the present application are founded on the ground that the court has previously pronounced itself on a question of law similar to the one in issue in this petition and therefore the court should recuse itself from determining the same.

The petitioners' alleged apprehension of bias is as a result of a previous determination that is contrary to the decision they wish the court to make. The question of bias as a ground for recusal has been addressed in the Judicial Service Code of Conduct and Ethics. The petitioners failed to demonstrate that the court was conflicted and therefore incapable of rendering justice to the petitioners.

There was nothing in the authorities placed before court by the Petitioners or the regulations and principles governing Judicial conduct decreeing that when a court makes a particular decision on a matter of law, then the court should recuse itself forever from determining the same issue.

The petitioners, being of the view that the matter in controversy had been decided, and where no appeal had been preferred, were expected to order their lives in accordance with the said decision since courts of law are meant to set the law straight so that litigants may predict the outcome of their actions.

Therefore, since the court had pronounced itself on the matter, Petitioners having a similar issue ought not to seek that the same be heard by different judges in the hope of obtaining a different outcome.

Having failed to establish apprehension of bias, there was no basis in law for the Judge to recuse herself.

However, a court confronted with such unsubstantiated and unproven grounds for recusal has the discretion for the sake of personal conscience to recuse itself so that if a party were to lose a suit at the end of the trial, it should not hold the excuse that it had foreseen bias.





# Regional Backing in the Fight against Corruption

The Ethics and Anti-Corruption Commission (EACC) collaborates with other Anti-Corruption Agencies within Eastern Africa to enhance investigation and asset recovery

By Lena Muye

Stolen assets are often transferred to foreign jurisdictions, making the process of asset recovery even more complex and time consuming. The formal way of seeking information from these jurisdictions is Mutual Legal Assistance, a process in which one State's chief legal officer requests for information through his counterpart in another State. As such, having practitioners who know each other and are ready to informally provide assistance goes a long way in enhancing international cooperation in the pursuit and recovery of proceeds of crime.

For this reason, the Ethics and Anti-Corruption Commission (EACC) collaborates with other Anti-Corruption Agencies within Eastern Africa to enhance investigation and asset recovery. Article 1 of the United Nations Convention against Corruption (UNCAC), 2003; Article 19 of the African Union Convention on Preventing and Combating Corruption (AUCPCC); and Section 11 (3) of the Ethics and Anti-Corruption Commission (EACC) Act, 2011 provide the basis for which the Commission collaborates with other organizations beyond Kenya's borders.

Within the region, EACC is part of the Eastern Africa Association of Anti-Corruption Authorities (EAAACA) and its subsidiary, the Asset Recovery Inter-Agency Network for Eastern Africa (ARIN-EA).

## Eastern Africa Association of Anti-Corruption Authorities (EAAACA)

This umbrella association was created to provide a platform for, among other things, mutual assistance in training; detection; investigation; as well as exchange of information, intelligence, experiences and good practices aimed at combating

corruption in all its manifestations.

On 8<sup>th</sup> September 2007 in Kampala, Uganda the heads of the then Kenya Anti-Corruption Commission [now known as the Ethics and Anti-Corruption Commission (EACC)], the Prevention and Combating Corruption Bureau of Tanzania (PCCB) and the Inspectorate of Government of Uganda (IG) signed the Kampala Declaration of EAAACA. The Association was launched in Nairobi, Kenya on 9<sup>th</sup> November 2007, when the EAAACA Constitution was signed.

Currently, the Association whose headquarters are in Kampala, Uganda has a membership of eight Eastern Africa anti-corruption agencies, namely: EACC, PCCB - Tanzania, IG - Uganda, Office of the Ombudsman of Rwanda, Special Brigade of Anti-Corruption Commission of Burundi, Federal Ethics Anti-Corruption Commission (FEACC) of Ethiopia, Inspection General of the State of Djibouti and South Sudan Anti-Corruption Commission, (SSACC).

The vision of the Association is **"An Eastern Africa Region free from Corruption"** and its mission is to **"strengthen the capacity of EAAACA members to prevent and combat corruption through regional cooperation"**.

Through EAAACA, the Commission has benefited from exchange of information that boosts the fight against corruption in the region. Further, several capacity-building programmes have been organized and EACC staff have been beneficiaries of training in financial investigation and asset tracing. These skills aid the Commission's execution of its mandate.

## Asset Recovery Inter-Agency Network for Eastern Africa (ARIN-EA)

The Asset Recovery Inter-Agency Network for Eastern Africa (ARIN-EA), the asset recovery arm of EAAACA was launched on 6<sup>th</sup> November 2013 in Kigali, Rwanda. The Network's objective is to provide an informal network within the Eastern Africa region for the exchange of information that will ultimately lead to the recovery of assets acquired through crime. Its membership comprises three representatives, who serve as Focal Points, from each of the EAAACA member countries, with each country's anti-corruption agency having the Lead Focal Point.

ARIN-EA has made use of these informal associations to exchange information that has enhanced investigations and asset tracing within the region. Through the Network, the Commission recently assisted Scotland, Belgium, Romania and Tanzania in gathering information that aided their investigations. EACC has also benefitted from this alliance by obtaining crucial information from Tanzania, Uganda and Mauritius.

The Inspectorate of Government of Uganda (IG), through the Network, visited EACC to benchmark and gain skills related to investigations and asset recovery. Additionally, during the COVID-19 pandemic lock-down, the Network organized a virtual experience-sharing forum related to asset recovery for the EAAACA/ARIN-EA member countries where Kenya, through EACC, shared its success stories.

ARIN-EA works closely with other asset recovery regional networks, i.e., CARIN (Europe, Canada and USA), RRAG (Latin America), ARIN-AP (Asia-Pacific), ARINSA (Southern Africa) and ARINWA (Western Africa) in facilitating the exchange of information and enhancing international cooperation. Through the informal network asset recovery has been enhanced.

The Network has also facilitated trainings with other law enforcement and asset recovery agencies, as well as workshops with various stakeholders.

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The vision of the Association is "An Eastern Africa Region free from Corruption" and its mission is to "strengthen the capacity of EAAACA members to prevent and combat corruption through regional cooperation".

# EACC Features Four-Part Graft Docuseries on National TV

Packaged in both English and Kiswahili to appeal to a diverse audience, the Kiswahili version, "Shajara la Ufisadi" was broadcast after the 7.00 P.M. news while the English version, "Graft Diaries" aired after the 9:00 P.M. prime time news

**By Frankline Sewe**

The Commission aired a highly successful Docuseries on KTN News from 25<sup>th</sup> to 28<sup>th</sup> October, 2021. The four-part Docuseries provided insights into the Commission's milestones on asset recovery and unexplained wealth.

Packaged in both English and Kiswahili to appeal to a diverse audience, the Kiswahili version, "Shajara la Ufisadi" was broadcast after the 7.00 P.M. news while the English

version, "Graft Diaries" aired after the 9:00 P.M. prime time news.

The series debuted with an episode on how EACC recovered land belonging to the Kenya Agricultural and Livestock Research Organization (KALRO), valued at KES.1.2 billion. The episode at the same time revealed how the Commission recovered KES.18 million from a former National Land Commission Director in 2017 after a judge ruled that she could not explain the source of the huge sum of money.

Part two of the series disclosed how EACC recovered grabbed land worth KES. 5 billion belonging to Kenya Meteorological Department. Episode three, on the other hand, showcased how the Commission recovered a five-acre parcel of land valued at KES. 2 billion belonging to the University of Nairobi, which had been grabbed. The episode also revealed how the Commission

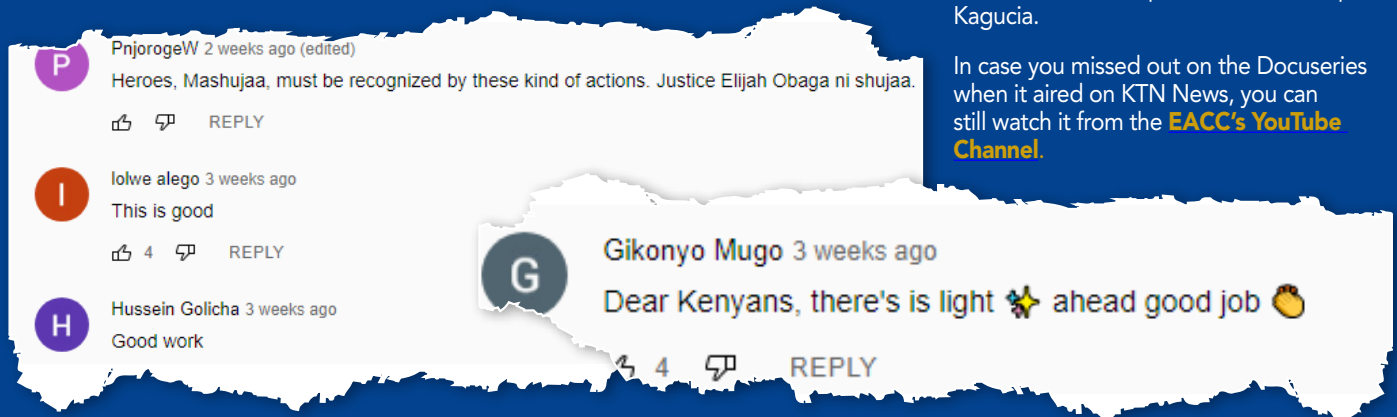
recovered over KES. 74 million from a former Kenya Ports Authority Managing Director after he failed to explain the source of his assets. The fourth and final episode of the Docuseries revealed how the Commission repossessed Woodley Estate that had been grabbed from subdued residents.

The Docuseries, also published across various social media platforms, received remarkable praise from members of the public.

In his YouTube comment, Gikonyo Mugo expressed his optimism regarding the future of the war against corruption.

"The Docuseries served to showcase the Commission's efforts and successes in the war against corruption. One very successful strategy is asset recovery which serves to take away the rewards of corrupt ventures." Head of the Corporate Affairs and Public Communication Department, Mr. Phillip Kagucia.

In case you missed out on the Docuseries when it aired on KTN News, you can still watch it from the [EACC's YouTube Channel](#).



## Summary of Four-Part Graft Docuseries on National TV

### Sh1.2bn

value recovered by EACC of land belonging to the Kenya Agricultural and Livestock Research Organization (KALRO)

### Sh5bn

recovered by EACC of grabbed land belonging to Kenya Meteorological Department

### Sh18m

recovered by the commission from a former National Land Commission Director in 2017 after a judge ruled that she could not explain the source of the huge sum of money

### Sh74m

recovered by the commission from a former Kenya Ports Authority Managing Director after he failed to explain the source of his assets



# Maadili Track a Path Towards Conserving Karura Forest

On December 3<sup>rd</sup>, 2021, EACC staff led by Chairman Archbishop retired Eliud Wabukala, Commissioner Mwaniki Gachoka and CEO, Mr. Twalib Mbarak planted 1,000 trees on a recovered parcel of land at Karura Forest Reserve, Sigiria Block Forest.

The Cabinet Secretary Ministry of Environment and Forestry, Mr. Keriako Tobiko, Chief Conservator of Forests, Julius Wambugu Kamau and the Vice Chair of Friends of Karura, Cristina Boelcke-Croze joined the EACC family in this initiative that saw over a thousand trees planted,

in a portion of land rehabilitated by the Commission.

The recovered parcel had been irregularly allocated to unscrupulous developers. The path leading to the site where the trees were planted was renamed "Maadili Track" in recognition of EACC's efforts to conserve the forest.

The Commission also donated seven benches where Karura Forest visitors can take a rest. CEO Twalib Mbarak committed to replicate this initiative in the eleven regions where the Commission has its offices.

**Group picture: (right to left) CS Keriako Tobiko, Chairman Archbishop (Emeritus) Dr. Eliud Wabukala, Vice Chair Friends of Karura Cristina Boelcke-Croze, CEO Twalib Mbarak, Commissioner Mwaniki Gachoka and Chief Conservator of Forests Julius Kamau.**





# Rooting integrity in organizational leadership

Integrity defines the wholeness of a leader beyond the technical and conceptual abilities and is a distinctive organizational capability thus not just a leadership cliché nor a corporate buzzword but a desired leadership quality

The quality of leadership has been the reason for organizational success or failure throughout civilizations. Strategic organizational leaders are uniquely positioned to identify, develop, and co-align distinctive capabilities and competencies which are inherently valuable, rare, inimitable and non-transferable. Integrity is an intangible strategic and distinctive organizational capability thus not just a leadership cliché nor a corporate buzzword but a desired leadership quality.





However brilliant, no amount of corporate regulations and legal pronouncements will ever replace integrity in the hearts and minds of leaders.

Integrity defines the wholeness of a leader beyond the technical and conceptual abilities. Ethics provides a structured approach to behaviour helping to direct who we should be as individual and corporate entities. However, ethical standards and codes mean nothing without the integrity of the individual and society. Therefore, like the proverbial animal farm, the affairs of corporate organizations reflect the ethical dispositions of the leaders. Such leaders, akin to Caesar's wife, are expected to be beyond reproach hence the character and conduct of leaders must, of necessity, be unquestionable, for believability and accountability.

Integrity is arguably an invaluable organizational asset which must be optimized for value delivery. In the history of organizational design and development across industries and sectors, once great institutions have been completely run down by leadership bereft of ethical values. Similarly, mediocre organizations have been raised to admirable levels of performance by transformational and ethical leaders. Unethical leadership in style and conduct, from the board room to the operational alleys, effectively plant and water the roots of organizational failure by raising a governance style devoid of integrity.

Civilizations have flourished guided by the principle of nurturing their best. Ethical leaders objectively and consistently develop and root for the best across the organization. When pushed against a wall, such leaders do not bow to the convenience of partisan affiliations, personal interests and politics of underhand deals in search of excellence.

Integrity is the principal guiding star. Unfortunately, in a number of public and private organizations, either by design or default, the tendency to enthrone mediocre leadership instead of excellence is a mark of ethical disposition. Such deficient behaviour remains a great undoing, often demeaning sustainable progress.

Despite the pressure to appease multiple stakeholders, ethical leaders embrace thought leadership, choosing not to take short cuts. However, organizations have been left battered due to alarming cases of ethical malpractices within *C-suites*, notwithstanding resident financial and human capital within such institutions. An integrity check should be a must-tick box in every decision at all levels of leadership. Such decisions should never be delegated, being a measure of maturity in organizational responsiveness, accountability, transparency and fairness.

McKinsey and Co., a consultancy firm, identified and developed the **7S** factors of organizational success: the hard-cores: strategy, systems, structure; and soft-cores: staff, skills, shared values and styles. Organizational structures, strategy and systems are as good as the people running

them. When the titles, perks and perquisites are gone, what sticks is who you are as a leader/manager. Commitment to shared values complemented by an inspirational style of leadership is critical in defining desired organizational culture.

Without a doubt integrity resides in the hearts and minds of staff. The extent to which organizational leadership embraces and espouses positive shared values epitomizes the existent organizational climate: positive or negative. Therefore, ethical leaders purpose to co-align these factors to build an enviable ethical organizational identity, performance and brand.

Transformational leaders are change focused thus build community in service to society and people. Such leaders are perceived more effective if they espouse ethical commitment through intellectual stimulation, inspirational motivation, individual consideration and idealized influence. They are therefore able to build an agile and innovative culture within the organization without compromising mutual and individual good. While charisma is admirable, transformational leaders transcend individual charisma to uphold timeless values of ethics and integrity.

Immense interest has been raised by research and literature on ethical leadership. Organizations are constantly challenged to develop a leadership culture that is driven by strong commitment to strong people: character, positive attitude, skills and experiences. We can no longer afford to behave anyhow anytime yet expect to positively influence results.

**By Atela Solomon**

**Education, and Public Awareness  
Department**

**Ethics and Anticorruption Commission**

“

**A true leader has the confidence to stand alone, the courage to make tough decisions, and the compassion to listen to the needs of others. He does not set out to be a leader, but becomes one by the equality of his actions and the integrity of his intent.”**

**Douglas McArthur**

# Transparency and Accountability: Role of Citizens

In the recent past, citizens have gained power through various platforms of engagement and participation in matters of interest to them. The Constitution of Kenya 2010, vests sovereign power in the citizens, as such citizens exercise the power either directly or indirectly through elected representatives. In the wake of public participation, attention is being focused to citizens' wellbeing.

The objective of citizen participation globally is to reinforce their role in promoting good governance through a responsive, inclusive, transparent and accountable public service. Activities that citizens can engage in to promote transparency and accountability in leadership include:

**By: Aisha Madikizela,  
Ethics Officer, EACC**

1

## Citizen Empowerment

Citizens have to be well versed in what goes on around them, their rights, responsibilities and those of their leaders. A knowledgeable citizen is in a better position to participate, follow and query activities of leaders and demand accountability for their actions. An empowered citizen holds leaders accountable and demands transparency through progress reports and development score cards. Citizens' voices can be organized in civil society or other formal or informal groups to ensure efficient service delivery.

2

## Election of leaders

All citizens have a right to elect a leader of their choice. Before casting votes, citizens should ensure that the leaders they elect subscribe to the ethical and moral requirements of Chapter Six of the Constitution. This is not limited to political sphere and can be applied to other leadership roles in the society.

3

## Vetting of candidates in leadership positions

Vetting is a crucial exercise in determining suitability of leaders holding public office. In the case of appointment of persons to public office, citizens participate in vetting by providing information regarding candidates nominated for those positions. Such information could disqualify a candidate who does not meet the moral and ethical requirements.

4

## Citizen engagement and public participation in public affairs

Citizens have a role to play in decision making and good governance demands that leaders provide avenues for public participation in matters of concern. Devolution is designed to enhance public participation. Active participation entails involvement in public planning activities, budgeting and decision-making process in public affairs. Failure to engage allows poor leadership to flourish.

5

## Access to and sharing of information

An informed citizenry is able to participate effectively in governance. Proliferation of social media and other communication channels has provided avenues for citizen and leaders to access and share valuable information. Citizens should thus use the information available to them to assess levels of transparency and accountability of their leaders. Further, e-government has granted citizens more access to information which they can validate to ensure good governance.

6

## Reporting corruption and unethical conduct

It is the responsibility of 'wanjiku' to raise the alarm with relevant authorities regarding corruption and unethical conduct through various channels of reporting.





## Uongozi ajibika, haki ya mwananchi

Bismillahi rabuka, Mola uliyetukuka  
Kalamu nnaishika, kutaja yalo hakika  
Uwazi kuwajibika, ndilo suala tajika  
Uongozi ajibika, haki ya mwananchi

Jukumu letu jamii, kumulika majangili  
Tuilinde rasilimali, asipotoshe bahili  
Asiipate nafasi, serikali kutapeli  
Uongozi ajibika, haki ya mwananchi

Usione ni udhia, wala sione dharubu  
Kila ukifumania, majanga yale adimu  
Tafuta kila njia, zimfikie Twalibu  
Uongozi ajibika, haki ya mwananchi

Viongozi musisite, mm sijitie eti eti  
Paruwanja muweke, mipango na mikakati  
Maamuzi sera zote, kwa zinazofaa nyakati  
Uongozi ajibika, haki ya mwananchi

**Aisha Madikizela, Ethics Officer, EACC, 2021**

## Tudumishe uadilifu - (shairi)

1. Yatupasa tuungane,  
Kwa pamoja tusimame,  
Tuangamize ufasidi,  
Tudumishe uadilifu.

2. Tuijenge nchi yetu,  
Tuchague kwa hekima,  
Viongozi wazalendo,  
Tudumishe uadilifu.

3. Kazi mbele tamaa nyuma,  
Uvivu tumekataa,  
Sisi sote tuwajibike,  
Kudumisha uadilifu.

4. Uongozi bila shaka,  
Ndio sisi tunataka,  
Uongozi wa uwazi,  
Uongozi wa uadilifu.

5. Kumulika ufasidi,  
Ni jukumu letu sote,  
Tuokoe rasilimali,  
Tudumishe uadilifu.

6. Watumishi wa umma,  
Tujitolee kwa utumishi,  
Tufanyapo kazi zetu,  
Tudumishe uadilifu.

7. Kila mama kila mwana,  
Vijana pia wazee,  
Tuungane kwa pamoja,  
Tudumishe uadilifu.

8. Hatimaye tutashinda  
Hatimaye tufaulu  
Tutajenga kenya yetu,  
Na kudumisha uadilifu.

**Margilenzo Querita**

## Actions Count

When you see or hear  
Resources lost dear  
Maintain no fear  
Miracles aren't near  
Act! Not in arrears!

Citizens please swear  
At forefront appear  
Make Leadership gear  
Of Transparency clear  
Accountability up-rear!  
Resources are rare  
So leaders we dare  
Information to share  
On what you prepare  
As citizens, we care!

This now here  
Reminds you there  
In leadership sphere  
Chapter 6 to adhere  
And citizens to cohere!

**Aisha Madikizela**



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