

REPUBLIC OF KENYA



THE JUDICIARY

OFFICE OF THE FORMER CHIEF JUSTICE

**KEYNOTE ADDRESS BY CHIEF JUSTICE (EMERITUS)
HONOURABLE DAVID KENANI MARAGA, EGH, FCIArb, 14TH
CHIEF JUSTICE OF THE REPUBLIC OF KENYA DURING THE
3RD EACC-UNODC ANTI-CORRUPTION WORKSHOP FOR
MEDIA PRACTITIONERS HELD AT SAFARIPARK HOTEL,
NAIROBI ON THURSDAY, 25TH APRIL 2024**

Protocols

**Chairperson, EACC, Bishop David Oginde;
Twalib Mbarak, MGH, CBS; Secretary/Chief Executive Officer
Mr. David Omwoyo Omwoyo, MBS; Chief Executive Officer of
the Media Council of Kenya (MCK)
Representative of the United Nations Office on Drugs and
Crime (UNODC), Madam Jennifer Githu;
Senior Officials from EACC and the Media;
Distinguished participants;
Ladies and Gentlemen.**

Good morning,

[1] I am delighted to join you this morning in this 3rd EACC-UNODC Workshop for Media Practitioners in Kenya. Thank you Dr. Oginde for the honour and privilege of the invite to come and open this workshop.

[2] When I received the invitation, it brought back fond memories of my interactions with the media when I served as the Chief Justice of this great Republic. I worked very well with the media.

[3] I am delighted to see that EACC is still working closely with UNODC in the fight against corruption. When I served as Chief Justice, UNODC provided invaluable assistance to the Judiciary. Besides sponsoring many capacity building workshops and seminars in and out of the country, UNODC partnered with the Judiciary in many justice sector activities such as strengthening of court administration systems, entrenching of judicial integrity and improvement of judicial governance. Madam Kagwi, please pass my best wishes to the UNODC leadership.

Ladies and gentlemen,

[4] The theme of this workshop is the **Role of the Media in the Fight Against Corruption in Kenya**. Corruption still remains a major problem world over and is acknowledged as a major impediment to good governance and the social, economic, political

and cultural well-being of the people for whom governments ordinarily exist. While the vice is a global challenge, in African countries, corruption is deeply embedded in the body public and has permeated all sectors of the economy. Here in Kenya, we have unfortunately allowed it to be institutionalized and internalized as a way of life.

[5] Corruption is a disease that cripples our society and hinders development. It siphons resources that should be used for essential services like health, education, and infrastructure, denying citizens the basic needs they deserve. It corrodes democratic institutions, undermines the rule of law, discourages investment and aid, and promotes inequality. Corruption erodes the public's trust in government and disenfranchises large segments of our society.

[6] In Kenya, the vice has, sadly, defined almost every aspect of the Kenyan society, despite the numerous efforts made to tame it. Corruption has permeated and found home in our education system; healthcare; infrastructural development; job creation; environment; foreign investment; and economy, all of which are important aspects of national prosperity. It is lack of integrity in the Kenyan society that has led to this widespread corruption and unethical behaviour in the public sector.

Ladies and gentlemen,

[7] In 2010, the people of Kenya, fed up with decades of corruption and poor governance, enacted a new Constitution with a whole Chapter dedicated to leadership and integrity. In doing so, Kenyans hoped to reverse the culture of corruption and impunity, clean up their politics and see to it that only men and women who meet the integrity threshold occupy public office. In particular, the objective of Chapter Six of the Constitution was to insulate public trust from abuse by ensuring that persons appointed or elected to public office meet the prescribed moral, ethical and integrity requirements.

[8] Sadly, however, nearly 14 years later, Kenyans are yet to realize the ideal values embedded in the integrity Chapter as they have largely been honoured in breach. The integrity suitability requirements for public office have hardly been enforced. This is because impunity in public service is merely a reflection of a larger societal moral decadence. Values of honesty, fairness, equity, patriotism and generally what could be described as national consciousness are lacking in our motherland. This state of affairs calls for decisive and effective mechanisms for enforcing the standard of integrity under Chapter Six of the Constitution. As a nation, we cannot bury our heads in the sand and ignore this unfortunate situation. We must join hands and take resolute action to rid our country of this menace.

Ladies and gentlemen,

[9] Today, many officials in public leadership use their official authority to advance the private interests of their families, friends,

and associates or those of sectarian groups such as political, tribal, religious, or other groups. These interests include access to Government contracts, job opportunities, protection from legal consequences attendant to violation of laws such as non-payment of taxes, and outright diversion or embezzlement of public funds. In my view, corruption remains the biggest obstacle in the decades of search for national prosperity since independence.

[10] No nation can prosper without ethical and accountable leadership. Public leaders who adhere to moral principles are more likely to make decisions that prioritize the common good over personal interests. They are accountable to their citizens, maintain transparency in their actions, and work towards reducing corruption. Ethical governance not only ensures that resources are allocated efficiently but also builds public confidence in the government's ability to foster development.

Ladies and gentlemen,

[11] Kenya is currently witnessing rampant cases of forgery of academic certificates. In some cases, there are Universities accused of fraudulently selling academic transcripts and degree certificates to individuals who never set foot in any classroom, in exchange for money. Given the danger that these malpractices pose to Kenya's education system, there is need for the Government to establish a mechanism, including a Commission of Inquiry if need be, to inquire into the root causes of this menace and how it should be effectively addressed.

[12] Despite these vices, Kenyans have over the years demonstrated a tendency of not caring much about the integrity of persons entrusted with public office. Although citizens may largely hate corruption and its consequences, they are guilty of embracing, defending and standing in solidarity with those accused of embezzling their resources. There is, therefore, need for Kenyans to recognize their role in the governance process and demand accountability from their leaders. For this to be effective, Kenyans should desist from the culture of glorifying corrupt leaders, pursuing shortcuts to prosperity or offering bribes to police officers on the roads or officials at public service delivery points. We must all embrace the culture of doing the right thing and upholding the rule of law. Only then shall we have the moral authority to demand accountability and ethical standards from public officials.

[13] To enhance efficiency in the fight against corruption, there is need to strengthen the capacity of key agencies such as EACC, Judiciary, Office of the Auditor General and ODPP. It is in the public domain that these institutions have lamented that lack of sufficient funds has and keeps hampering the effective discharge of their respective mandates. There is therefore a compelling need for the Government to enhance their budgetary allocations; guarantee their independence; and review the law to ensure that corruption cases are heard and determined within prescribed timeframes in the same manner as election petitions.

[14] Courts have the potential and ability to catalyse realization of the reforms that Kenya desires, including bringing to an end the culture of corruption and impunity, through progressive jurisprudence. This is evident in the various matters such as the recovery of corruptly acquired assets and unexplained wealth where the Kenyan Judiciary has and keeps developing sound jurisprudence.

[15] While we appreciate the great men and women in our Judiciary who have infused the concepts of patriotism and public interest in their judicial reasoning, it should be noted that our Judges could still do more to support the fight against corruption. For example, there is urgent need for the Judiciary and other actors in the justice chain to work out mechanisms for arresting what I am told EACC considers as an emerging culture of judicial forum shopping by corruption suspects to delay justice in the enforcement of anti-corruption laws. I'm told there are examples where suspects likely to be charged with corruption offences before the Anti-Corruption Court in Nairobi have abandoned Nairobi High Court Division on Anti-Corruption and Economic Crimes and travelled far and wide to preferred High Court Stations upcountry in pursuit of conservatory orders.

[16] To avoid such forum shopping endeavors being construed by the public as a corruption scheme for defeating the course of justice and create an impression of judicial protection of high-profile corruption suspects, EACC should engage the Chief Justice for a possible review of the applicable Practice Directions towards

ensuring that all Applications relating to corruption charges are henceforth filed at the High Court Division on Anti-Corruption and Economic Crimes, which was established for that purpose. This is not only essential to clear the impression of judicial forum shopping but also for the development of consistent jurisprudence on the subject.

[17] Further, when determining Applications for conservatory orders to stop corruption investigations, suspension from office, arrest and prosecution of suspects, Judges should never lose sight of the urgent need for the country to effectively fight corruption which threatens the wellbeing of the nation. The rights of individual suspects, should of necessity, be balanced with the overwhelming and greater public interest in expeditious conclusion of investigations, recovery of the stolen assets and arraignment of persons found culpable.

[18] Let us all appreciate that despite the drawbacks experienced in the fight against corruption in Kenya over the decades, significant effort has been made and notable progress realized. I particularly applaud EACC for the tremendous milestones that it continues to make, especially in the recovery of public assets stolen by the corrupt. I encourage the Commission to intensify these recoveries as they serve to extinguish the underlying motivation for corrupt conduct.

[19] The quest for an ethical Kenyan society where integrity and corruption intolerance thrive, requires multiple approaches and

strategies, by different actors. Consequently, the Government should take appropriate measures to advance the following key ideals in the effective fight against corruption:

- i) Respect for the rule of law
- ii) Political will
- iii) Free and independent oversight and law enforcement agencies
- iv) Public empowerment and citizen engagement
- v) Merit based public appointments
- vi) Leadership commitment to integrity and good governance
- vii) Secure and credible whistle-blowing systems
- viii) Limited discretion in the exercise of public authority
- ix) Civic responsibility and proactive public participation in governance processes
- x) Cultural and attitude change among citizens
- xi) Vibrant civil society
- xii) Free and independent media
- xiii) Effective enforcement of ethics and integrity frameworks

Ladies and gentlemen,

[20] This workshop seeks to enhance the watchdog role in the fight against corruption and impunity in our country. I have been briefed by CEO Major Twalib Mbarak that this is the third workshop of this nature, bringing together media practitioners to enhance their technical skills for better performance of their roles in promoting social justice. Historically, the media has played a very critical role in highlighting corruption in Government. And

honestly, hardly does a day pass without traumatizing stories of theft of public resources.

[21] The Kenyan media has largely remained vibrant in its watchdog role over governance affairs. I must congratulate our journalists for registering remarkable achievements in the fight against corruption. We have seen our Journalists act as whistleblowers in piling pressure on government officials to account for their actions and omissions; in public education; and, in investigative journalism. I encourage you to do more of this. Journalism is a great calling and you should continue using that platform to foster positive changes in our society.

[22] I am aware of the myriad of challenges that you face in your noble profession, including retrogressive laws, defamation suits, intimidation by state agencies and adverse business environment. Despite these challenges, you have largely remained steadfast and focused. I want to believe under this partnership with EACC, you will play a key role in changing the ethical narrative of our country.

[23] In 2014 by the U.S. based Society of Professional Journalists (SPJ) adopted three principles of ethical journalism which I recommend to our media practitioners. They are to “seek truth and report it”, to “act independently” and to “minimize harm.”

[24] In the “**Seek truth and report it**” principle all journalists take responsibility for what they report. That is what responsible

journalism is all about. The special responsibility of being watchdogs over the Government and public affairs and in our case today reporting on corruption requires reliable sources of information.

[25] The second principle, to “**Act independently**”, calls upon journalists to always remember that their primary responsibility of is to serve the public. As such, they must put the public first and reject all forms of manipulation and invitations to serve sectarian interests at the expense of the public. Here in Kenya, ladies and gentlemen of the media, you will be offered money, plum government positions, and many other incentives to betray the cause. I urge you not betray our country.

[26] The third and final principle is the call to “**Minimize harm.**” Bearing in mind the power and social status of most of the perpetrators of corruption and impunity, this principle calls upon the media to show ‘heightened sensitivity’ to news coverage that may lead to the identification of the whistleblowers. This together with the tension between the competing goals of publishing information for the greater public good and refraining from sharing such information to protect the alleged perpetrators’ individual privacy rights raises ethical questions and requires you to consider and weigh various factors in these strategic decisions.

Ladies and gentlemen,

[27] Legislative change and institutional oversight are important cornerstones in the fight against corruption. However, no law will change our society if it does not become part of a country's culture and if it does not affect people's everyday lives. Corruption is not a legal issue alone. Corruption is also an issue of society, and of culture. To fight corruption, we need to change the culture that enables corruption, not only the laws that prohibit it.

[28] Media is an important pillar of culture and also an important political player as it influences our perceptions of what is right and what is wrong. In this regard, there are three mechanisms through which the media could influence our perceptions and shape our culture of zero tolerance to corruption: media as watchdog, agenda setters, and public forum or a diverse set of voices.

[29] First, in their watchdog role, journalists monitor government behavior and guard the public interest by highlighting cases of misadministration, abuse of power, and corruption. By covering such cases, you help in ensuring accountability and transparency of governments and other powerful factions.

[30] Secondly, as agenda setters, the media can put corruption on the public and the political agenda. Agenda setting is one of the media's most crucial democratic functions. By discussing issues and putting them on the public agenda they draw attention to problems in society.

[31] Thirdly, the media also provides a public forum for citizens to voice their opinions on and experiences with corruption. This mechanism goes back to the idea of the public sphere, which posits that communication flows between state and citizens form a space where accountability and legitimacy are exchanged between both sides.

[32] In conclusion, Ladies and Gentlemen, I wish to reiterate what I have, in the past, repeatedly said. That Kenya is a great country with a huge potential. In my view, if we manage our affairs well, we do not need to borrow even a penny. It is for this reason that I once again wish to laud the partnership between EACC and the media practitioners for the good work you are doing in the fight against corruption. Please do not tire telling Kenyans that corruption kills.

[33] With those many remarks, **ladies and gentlemen,** it is now my singular honour and privilege to declare the 3rd EACC-UNODC Anti-Corruption Workshop for Media Practitioners officially open and I wish you fruitful deliberations.

Thank you for listening to me.

**CHIEF JUSTICE (EMERITUS) DAVID MARAGA, FCIArb, EGH.
CHIEF JUSTICE OF THE REPUBLIC OF KENYA (2016-2021)**

