

# **TACKLING CORRUPTION IN KENYAN JUDICIARY & POLICE**

**Litunya Osaleh, 2015**

**IGI AGM**

**The Hotel Comfort, Nairobi Kenya**

Outline of the presentation

## **Introduction**

Generally speaking corruption is “the abuse of entrusted power for private gain”. Corruption can be classified as grand, petty and political, depending on the amounts of money lost and the sector where it occurs.

### ***Types of Corruption In Judiciary***

- ❖ Mainly bribery, given either in cash or in kind
- ❖ level of cash depended on the seriousness of the matter or rank of judicial officer
- ❖ corruption in kind took the form of gifts of land, livestock, the supply of building materials, supply of fuel; harambee contributions; personal entertainment and hospitality; and sexual favours
- ❖ The most prevalent type of bribery was cash and least
- ❖ prevalent the grant of sexual favours

### **Causes of corruption in the Judiciary**

- Poor terms and conditions of service
- Bad deployment and transfer policies and practices
- Delays in the hearing and/or determination of cases
- Non-merit based recruitment and promotion
- Greed
- Ignorance by the public on their legal rights, procedures and processes of the courts and the law
- Existence of wide discretion on the part of the judicial officers in both civil and criminal matters

- Entrenched culture of corruption in the society as a whole
- Excessive workload due to insufficient personnel and inadequate and/or antiquated equipment
- Inaction or ineffective action against identified
- corrupt judicial officers and paralegal staff
- Inadequate or non-existent supervision of judicial officers and staff
- Protection of corrupt officers by their godfathers and superiors
- Loss or misplacement of court files
- Interference by the Executive
- Retention in service of judicial officers after attaining the compulsory retirement age
- Conflict of interest on the part of judicial officers
- Inherent delays in the legal system
- Existence of procedural rules and regulations which are conducive to corruption
- Lack of sensitization of magistrates on corruption issues and anti-corruption legislation
- Poor accessibility of judicial services
- Widespread phobia for court and the legal process

### **Impact of corruption on the Judiciary**

- ✓ Rule of law undermined
- ✓ Capacity of the judiciary to be an independent and impartial arbiter compromised
- ✓ Judiciary could not champion and safeguard human
- ✓ rights and the rule of law
- ✓ Esteem of the judiciary as an institution lowered
- ✓ Contribution of the judiciary to the national development reduced

### **Recommended action**

#### *Impugned judicial officers*

- Judicial officers implicated in corruption, misbehavior and want of ethics to be prosecuted in the criminal courts and/or appropriate administrative disciplinary action be taken unless they resign

- Judicial officers implicated in misconduct in their extra-judicial capacities to be cancelled by CJ to live up to their personal obligations
- Public education on citizen's rights in the courts
- System of wealth declaration by judicial officers

### **Challenges facing the Judiciary in the fight against Corruption**

Chief Justice Willy Mutunga warned judges and magistrates against engaging in corruption, which he said had reached alarming levels. He said investigations into corruption cases were ongoing, and that the Judicial Service Commission would weed out all corrupt elements in courts.

According to the study published by the Ipsos Synovate group, public confidence in the Supreme Court has fallen by 12 per cent since November last year, while confidence in the High Court and local magistrate courts across the country fell by seven per cent.

The suspension of four senior figures in the Kenyan judiciary who have been accused of corruption has further damaged deteriorating public confidence in the country's court system.

Kakai Kissinger, deputy chief registrar in the national judiciary; its director of human resources, Dismas Obondo; the director of supply-chain management, Martin Okwata; and the director of information, communication and technology, Thomas Atak, were temporarily relieved of their duties on April 3 by Chief Justice Willy Mutunga.

In October 2013, the judiciary's then registrar, Gladys Shollei, was sacked for alleged mismanagement and abuse of office.

The JSC (Judicial Service Commission) has moved against judges and had tribunals established; sacked the accounting officer and five other top directors; and 65 staff members are undergoing disciplinary processes, 17 of whom are accountants or clerks on interdiction.

### **Greatest risks posed by corruption to the reforms under way in judiciary?**

The bottom line is, corruption defiles justice and that is unacceptable. In the administrative wing, it robs the public and defrauds it by not giving value for money. And there are at least three risk factors to the fight against corruption in the judiciary.

**One is political support.** Fighting corruption can only succeed in a political environment that is collectively interested and supportive. Two, overcoming *a long and hardened institutional*

*culture* of corruption and unaccountability. Three, not *fully developed internal institutional infrastructure*.

If the country, citizens and the political class, through moral conviction, ethical courage and political resolve, do not in a principled and consistent manner rise up against corruption, then we risk having corruption as the fourth, if not the only, arm of government.

Corruption is insidious, and it is fatal. It undermines our constitutional democracy and development in ways unimaginable. It gets worse when it interlocks with ethnicity, fuels electoral contests, compromises national stability and courses its way into the justice system.

The irreducible minimum for a successful corruption fight is a political leadership that is committed, one that is ready to pay an electoral price to win the war and one that, as I have learnt from the judiciary, is ready for smear and blackmail but remains steadfast and unceasing.

*As long as corruption continues to finance our elections, including from the highly abominable counterfeit and illicit trade resources, it will be hard to win this war. If we are not ready to pay a price in the war against graft, then we have no business starting it.*



*Deputy Chief Justice Kalpana Rawal (left) and Chief Justice Willy Mutunga attending the Annual Judges Conference at Sarova Whitesands Beach Resort and Spa on August 3, 2015.*

## **ACCOUNTABILITY**

“I have never understood why a judge, who is very well paid, enjoys security of tenure, has highly concessionary mortgage and car loan facilities, has an excellent medical cover, has probably had a previously successful career as an advocate or scholar for over a decade, should indulge in a practice so demeaning at both professional and personal level,”.

## **CORRUPTION IN POLICE**

Corruption has, over the years, become a reality of monumental proportions worldwide. In the recent past, it has grown bigger in terms of the participating personalities and the amount of money involved. Like an ogre, it refuses to let go of the Kenyan society. Thus if remedial measures are not put in place to quickly contain the vice, corruption could become perpetual.

Scholars, practitioners and experts have argued that in the management of corruption, one has to concentrate on the epicenter of corruption. In the case of Kenya, the epicenter of corruption is the public sector; especially in the police service. It is argued that if corruption within the police service could be cured, then other public service sectors could also be cured of the vice.

An analogy can be drawn between medical practice and corruption management. Corruption can be cured if the methodologies often prescribed are properly and effectively utilized just as a patient goes through a full dose to cure a disease. It is possible to achieve a corruption free police service but not by trial and error rather, through the correct prescription which will enable corruption to be reduced to sustainable levels.

### **Units in the police force**

Up until 2007 the police and administration police had various specialized units to deal with various forms of security threats. These included the Criminal intelligence department, the General Service unit, the police air-wing, the presidential escort, the Kenya Police College, the Kenya airport police unit, the tourist police, the railways police, the traffic police, dog unit and the anti-terrorism unit.

### **Forms of corruption in Kenya police force**

- I. misuse of authority.
- II. bribery or exchange of money or something of value between the police and the wrong doer.
- III. brutality
- IV. fake encounters
- V. sexual harassment
- VI. custodial crimes
- VII. illicit use of weapons

### **Corrupt acts by police officers**

Acts that have been committed by police officers have been classified as follows: **Corruption of authority**: police officers receiving free drinks, meals, and other gratuities. **Kickbacks**: receiving payment from referring people to other businesses. This can include, for instance, contractors and tow truck operators. **Opportunistic theft** from arrestees and crime victims or their corpse's **Shake downs**: accepting bribes for not pursuing a criminal violation. **Protection of illegal activity**: being "on the take", accepting payment from the operators of illegal establishments such as brothels, casinos, or drug dealers to protect them from law enforcement and keep them in operation. **"Fixing"**: undermining criminal prosecutions by withholding evidence or failing to appear at judicial hearings, for bribery or as a personal favor and direct criminal activities by law enforcement officers. **Internal payoffs**: prerogatives and perquisites of law enforcement organizations, such as shifts and holidays, being bought and sold. **The "frame up"**: the planting or adding to evidence, especially in drug cases, i.e. police hazing within law enforcement. **Ticket**: police officers canceling traffic tickets as a favor to the friends and family of other police officers

### **Causes of corruption in Kenya**

#### ***Tribalism***

One factor that fuels the problems of corruption in Kenya is tribal loyalty. People in Kenya are first and foremost loyal to their families, then their clan (extended family), then their tribe.

Member of the same clan or tribe often 'help' each other, even when it involves corruption. Tribal influences have waned over the years, but are still strong.

### ***Ignorance***

The general public is deliberately kept in a state of ignorance, which enables corrupt individuals to carry on their practices right in front of the people who have no idea what to do about it. Even when people are aware that a public servant is doing wrong, they are woefully ignorant of the actions they can take to deal with that person.

### ***The poor corporate practices of the state***

The state tells people what to do rather than the people telling the state what it should do, in which case there seems to be a master servant relationship between the government and its people. When people believe that the government is a master and they are servants, even basic services are converted from being rights to favors' hence citizens are ever willing to pay bribes to get what is theirs rightfully.

### ***Abuse of power***

The most glaring practice by government agents is misuse and abuse of the power of the offices they hold. Such administrators make decisions that are contrary to the common good, and then face no punishment for it.

## **Eradicating corruption in the service (Kenya Police Service Strategic plan 2003-2007)**

1. Carry out surveys to identify corruption prone areas
2. Assess all processes and procedures
3. Educate all officers and stakeholders on human rights and virtues of a corruption free society
4. Carry out Zero tolerance campaigns
5. Carry out regular book and manpower audit
6. Discard processes and procedures creating pockets for corruption
7. Operationalize crime prevention committee
8. Publicize identified corruption acts and perpetrators

In Kenya, the police is perceived by citizens as the most corrupt institution with 90% of the respondents perceiving the police to be corrupt or extremely corrupt and close to 60 % of those who had been in contact with the police in 2014 reporting paying bribes (Transparency International, 2014).

Corruption is rampant within Kenya's police. The Kenya National Police Service is ranked as the most corrupt institution in the country, and bribery is reported to be the only way to access the police and expedite services (TI Kenya, 2014). Kenya's police relentlessly engage in false imprisonment, abuse of human rights and fabrication of charges in exchange for illegal payments. Corrupt police officers are rarely arrested or prosecuted for corruption crimes Kenya's police reportedly extort millions of shillings in bribes from truck drivers crossing the border to Uganda, raising the cost of doing business and forcing companies to include bribes as part of their budget (Daily Nation, Feb. 2014).

Corrupt policemen are keeping abreast with technology, and turning to mobile phone transactions and brokers to avoid arrest. Indeed, reputable organizations have since 2001 reported that police are the most corrupt public officers in Kenya. But the discreet methods used by officers to receive bribes have not prevented researchers from gathering facts and presenting the annual indexes.

At a traffic roadblock, the bus conductor or matatu tout would drop a Sh100 note squeezed into a tiny ball as a police officer pretends to check the validity of insurance stickers on the windscreen. The officer allows the vehicle to proceed and picks the note after it drives away.

A driver could also hand over his license to an officer but with a bank note neatly placed inside. The officer would constantly stash the notes in a pouch hidden by the road and take away the money at the end of the day.

Recently, the Ethics and Anti-Corruption Commission found out such cases may have reduced, but warned that the level of corruption by traffic police officers remained high, thanks to advances in technology.

Detectives at the commission unearthed a new method by which corrupt officers receive bribes via mobile phone-based technology, like M-Pesa. Some of the cases under investigation show bribery is rampant among **traffic police** officers and those manning **weighbridges**.



It was discovered after officers on such assignments were found to be regularly receiving money through cashing agents of mobile phone companies. Regular senders were found to be matatu drivers and conductors, according to a EACC detective who spoke to the Nation.

Long distance truck transporters were also found to be culpable for regularly breaking highway regulations like overloading, exceeding axle limits, smuggling and transporting contraband goods. A typical policeman on a regular traffic beat receives **between Sh500 and Sh15,000 daily**, the detective disclosed.

A report by the commission seen by the Nation indicated: "Corruption in the police force has come under increasing scrutiny in recent times. Along with the increasing frequency of bribery, are special challenges presented by the sophisticated methods applied."

According to investigations, officers are also engaging the services of brokers to make it difficult for detectives to track the phone transactions. The brokers use their phones to cash money from agents and later hand it over to the officers for a small fee.

The technological advancement has caused an unprecedented challenge to detectives who had been following leads on corrupt officers using surveillance cameras and catching them red-handed.

Officers who spoke to the Nation said it was not an offence to receive money via the cellphone, unless it was proved that it was a bribe. The cellphone transactions have largely been traced to police officers in Nairobi and major towns.

A report released last month by Transparency International placed police on the top of the list of the most corrupt officials in government departments in 2014. The position has not changed since 2001. Reports for 2011, 2012 and 2013 also show police at the top, with almost a third of all cases under investigation involving police officers.

Between January and May, 35 per cent of suspects arrested by the anti-graft officials were police officers. On bribery alone, over 40 regular police officers and three Administration Police officers were arrested. Masoud mwinyi, an AP spokesman was also sacked over corruption matters.