

EAST AFRICAN ASSOCIATION OF ANTI-CORRUPTION AUTHORITIES (EAAACA)



AUTHORITIES' REPORTS AND A COMMUNIQUE

PRESENTED AT

THE EAAACA 2ND ANNUAL GENERAL MEETING HELD
AT NOVOTEL HOTEL KIGALI, RWANDA 18TH – 19TH
SEPTEMBER 2008.

To promote zero tolerance to Corruption in the East African Region.

PREFACE

The 2nd Annual General meeting of East African Association of Anti-Corruption Authorities (EAAACA) was held on **18th – 19th September 2008** at Novotel Hotel in Kigali, Rwanda. The meeting was chaired by the President, Dr Edward G. Hoseah.

At this meeting, the heads of the Anti-corruption Authorities presented institution reports briefing on their mandates, powers, functions, structure, achievements, and challenges.

Dr. Tito Rutaremara, the Chief Ombudsman presented the Office of Ombudsman's report, the report of Prevention and Combating of Corruption Bureau was presented by Mr. Ernest K. Barulo on behalf of Dr. Edward G. Hoseah the Director General, PCCB, Justice Faith E. Mwondha, the Inspector General of Government presented the Inspectorate of Government of Uganda's report, Mrs Fatima Sichale, Deputy Director, presented the Kenya Anti-Corruption Commission's report, and Mr. Melchiade Nsopfabarusha, the Deputy General Commissioner gave a brief report for the Special Brigade Anti-Corruption, and A communiqué resulting from the 2nd EAAACA Annual General Meeting was presented.

The respective reports and the communiqué are contained in the Minutes of the 2nd Annual General Meeting of East African Association of Anti-Corruption Authorities (EAAACA) held on **18th – 19th September 2008** at Novotel Hotel in Kigali, Rwanda.

To promote zero tolerance to Corruption in the East African Region.

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To promote zero tolerance to Corruption in the East African Region.



REPORT OF OFFICE OF OMBUDSMAN

REPUBLIC OF RWANDA

THE OFFICE OF THE OMBUDSMAN



**Topic: The Mandate of the Office of the Ombudsman,
Achievements, Best practices, Lesson learned and challenges
faced.**

Kigali, 19/09/2008

INTRODUCTION

The Office of the Ombudsman is delighted to share its experience in the following matters:

- strengthening good governance and accountability;
- preventing and fighting corruption

In Rwanda the Office of the Ombudsman has been created in a context of struggling to establish democratic spaces which foster the welfare of communities. Rwanda had been destroyed by multifaceted violence and genocide after having stopped the genocide, some people took the resolution of building structures that enable the country to move towards sustainable human security.

The Office of the Ombudsman is one of those organisations that control if people access to a significant voice in all the major decisions that affect their life. It also controls if organisations fulfil suitably their mission and participates to spread the compliance of rules, good practices such as planning, reporting, delivering good service and so on.

This paper is prepared in the aim of sharing experience in regional form on strengthening public accountability and good governance in East Africa.

The main parts of this paper are the following:

- legal framework and the mandate of the Office of the Ombudsman;
- structure and powers;
- achievement;
- good practices and lessons;
- challenges;
- recommendations;

I. LEGAL FRAMEWORK AND MANDATE OF THE OFFICE OF THE OMBUDSMAN

The Office of the Ombudsman of Rwanda was instituted by the Constitution of 4th June 2003, in its article 182 as amended to date.

Its organization and functioning are established by the Organic law n° 25/2003 of 15th august 2003 as amended by the law n°17/2005 of 18/08/2005.

As the constitution stipulates in its article 182, the mission of the office are mainly the following:

- Act as a link between the citizen and public/private institutions;

- Prevent and fight against injustice, corruption and other related offences in public and private administration;
- Receives and examines, in the aforementioned context, complaints from individuals and independent associations against the acts of public officials or organs, and private institutions and to mobilise these officials and institutions in order to find solutions to such complaints if they are well founded.
- Receiving the faithful declaration of assets of senior civil servants and employees involved in public property management.

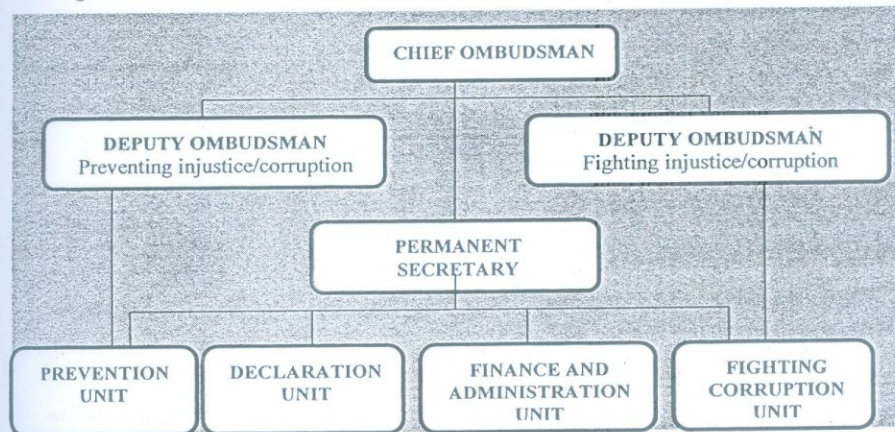
II. STRUCTURE AND POWERS

The Office of the Ombudsman is made up of the Chief Ombudsman and two Deputy Ombudsman. They are proposed by the Government and elected by the Senate.

The Chief Ombudsman has a mandate of four years renewable once, while the two Deputy Ombudsman have a three years mandate also renewable once. There is also the Permanent secretary.

As scheduled by the law establishing the organisation and the functioning of the Office as shown in the following chart.

The organizational chart of the Office of the Ombudsman



As shown in the diagram, the Office has four units:

1. Unit of prevention of injustice, corruption and other related offences;
2. Unit of declaration of assets;
3. Unit Administration and Finance;
4. Unit of fighting against injustice, corruption and other related offences.

NB. Very soon, with the publication of code of conduct law, the Office will have a unit in charge of professional ethics.

To fulfil this mission, the Office has several powers:

- the Chief Ombudsman and two Deputy Ombudsman have the powers of Judicial Police Officers. The other personnel of the Office may be granted such competence by the Minister having justice in his /her attributions;
- to request explanations on decisions or actions taken by Government or public institutions, private institutions and non government organizations when the population is not satisfied;
- to carry out investigations on actions done by Government institutions and those of private institutions which the population think are unjust;
- to point out laws hindering the good functioning of Government institutions or detrimental to the population;
- to submit to the Cabinet or the Chamber of Deputies proposals that may be included in draft bill or legal provisions that may be modified or put in place prior to identification of the relationship between the modification and the responsibilities of the Office;
- to request from Government and private institutions explanations required for investigation;
- to request for documents, testimonies and explanations necessary for its investigations from public, parastatals, private organs and non-government organizations. It may listen from any person and request him/her to give necessary testimonies for the smooth running of inquiry;
- to request for disciplinary sanctions to be imposed on any employee whether public or private who has been unjust towards a person, an establishment or independent association and to determine what should be done so that those who suffered injustice may find redress..

III. ACHIEVEMENTS

The mandate began in November 2003. So the activities of the Office really started in January 2004.

Up to now a lot of activities have been accomplished and others are still pending.

Among accomplished activities are as the following:

III.1. Visiting public organisations/entities

The Unit in charge of fighting against injustice, corruption and other related offences visit organizations, and examine the following matters:

- whether they function according to their regulations;
- whether those regulations do not have loopholes that can give room for corruption and injustice;
- whether they have an internal control system;
- how they make their planning and reports;

The Office of the Ombudsman preferred to make the functioning evaluation in the following order:

- ✦ Organizations which are nearest to the citizens and which appear almost in every part of the country like Local administrative entities and Rwanda National Police.
- ✦ Organizations in charge of control or organization whose actions have an impact on other organizations; the aim was that if they perform to their expectations in controlling or influencing the functioning, many other organizations would in return perform in the same line such as;
 - Office of the Auditor General,
 - Rwanda Public Procurement Authority;
 - Central Public Investment and External finance Bureau;
 - Rwanda Bureau of Standards;
 - Privatization Secretariat.
 - Rwanda Revenue Authority
- ✦ Organizations whose services benefit the majority like;
 - Rwanda Utilities Regulatory Agency;
 - Social Security Fund of Rwanda;
 - ELECTROGAZ;
 - ONATRACOM
- ✦ The evaluation was done in different Ministries with a view to monitor their activities
 - Evaluation reports from organizations and ministries monitored are submitted back for joint discussions between the office of ombudsman and evaluated institution and give necessary recommendations better service delivery. However where recommendations are not implemented sanctions may be imposed to non performers.

As a result, many organizations and ministries have changed in the following areas:

- the structure of some organisations has changed;
- many organisations are elaborating their own procedure manual describing the decision making process, determine the time limit for decision making and the related regulations;
- strong internal audit departments (quality assurance or internal audit);
- present report to relevant authorities;

III.2. Investigation

Some cases of corruption and related offences have been identified by the Office of the Ombudsman while it was visiting various organizations. Others came from information got in different ways.

Some of them have been submitted for follow-up, to respective organizations like Police, the office of prosecutor general.

Sometimes, the Office of the Ombudsman may on its initiative carry out investigations on corruption cases and thereafter submit the file to prosecution department to act on it.

The table below shows number of corruption cases investigated in different years.

Table 1

2004	2005	2006	2007
120	35	36	42

The above cases emerged from the following categories:

- recruitment;
- public procurement;
- human resource management;
- corruption in local government;
- Administration.

III.3. Sensitization

Usually, the employees of the Office visit sectors, districts and provinces. Seminars are thus organized for;

- peasant farmers;
- grass-root leaders;
- students of secondary schools;
- high institutions and universities students;

- civil servants;
- NGO's and International Organizations;

The target of organising seminars concerns the following:

- to sensitize the population about their rights in public organisations;
- to educate population about referral systems where to seek redress in case of injustice;
- delivering good services;
- how to prevent and fight against injustice, corruption and related offences;
- to sensitize population about the office of Ombudsman ; its powers functioning and organisation and limitation of its mandate.

III.4. Complaints resolution

Some complaints are brought to the Headquarter of the Office by concerned people; others are received during field visits in sectors, districts and provinces.

The complaints received from the various places may be classified into the following categories:

- Complaints on property and settlement;
 - o complaints on inheritance and polygamy;
 - o complaints on unfair compensation to evicted proprietors of plots on which villages (imidugudu) were constructed or other activities with general interest character .
 - o Complaints related to the sharing of land between Rwandan refugees of 1959 and citizens who were living in Rwanda before 1994.
- complaints on judicial process;
 - o delayed court cases ;
 - o non executed judgments;
- complaints concerning employment;
- complaints on salary arrears of government employees;
- Particular complaints in Districts and Towns.
 - o administrators who do not resolve citizens complaints;
 - o gender related complaints ;
 - o complaints on settlement;
 - o Employees that were not paid by different companies and projects in the country.

Table 2

Number of complaints received and their evolution

Year	Complaints	Resolved	Oriented	Pending
2004	3924	71%	0%	29%
2005	3056	73,8%	2,3%	23,9%
2006	961	71,4	0%	28,6%
2007	1099	65,6%	17,4%	17%

Figure 1 : Addressing complaints since 2004 up to 2007 in %

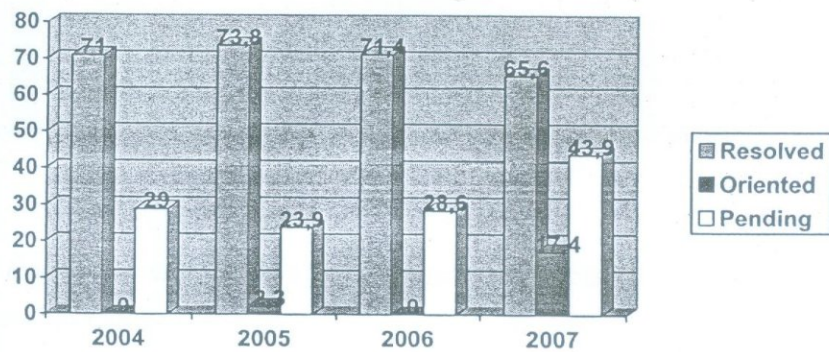
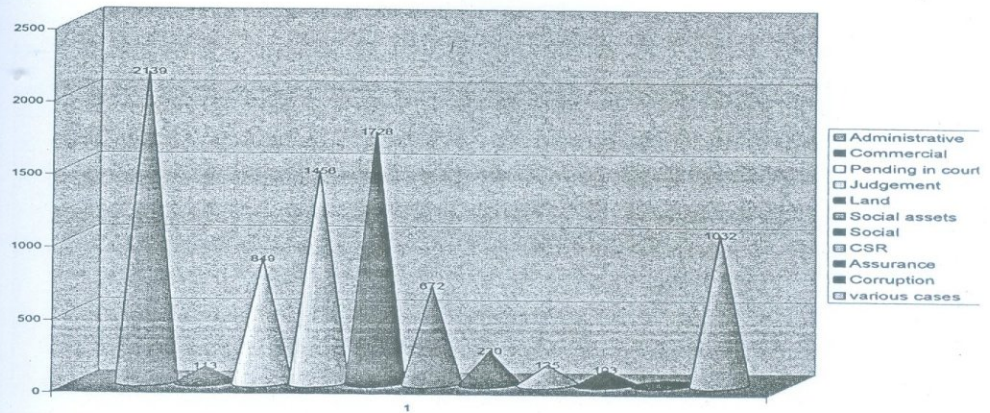


Table 3: Complaints by category

Year	2004	2005	2006	2007
Administrative case	300	714	320	242
Commercial	-	26	8	36
Judgement	680	360	187	225
Pending in court	110	257	81	69
Land	764	688	153	234
Family property	321	217	70	80
Social affairs	165	142	16	7
CSR	281	55	22	10
insurance	200	37	16	7
Various cases	192	164	88	189

Figure: Complaints 2004-2007 by categories



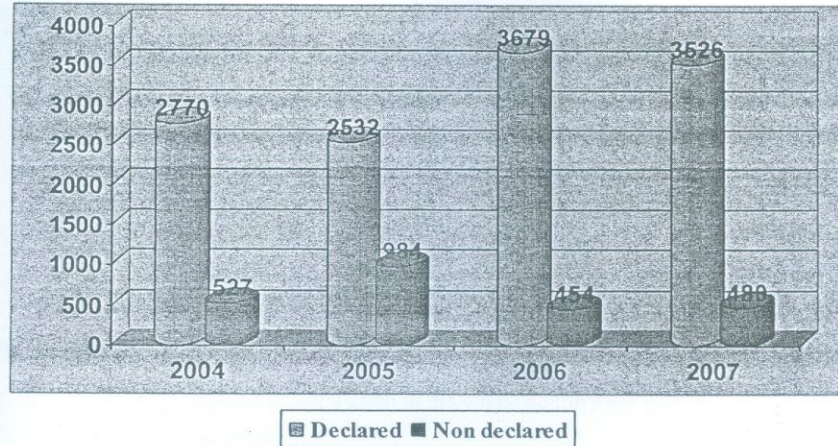
III.5. Receiving and verifying declaration of assets

The following table shows the annual number of people that have to declare their assets as it is stipulated by the law that were given forms of declaration of assets.

Table 3: Declaration of assets (in terms of %)

Year	Received	Non received	% of received of declaration
2004	2770	527	84
2005	2532	984	72
2006	3679	454	89
2007	3526	480	88

Figure 2 : Diagram of declaration form received and none received



III.6. other activities achieved so far include the following;

- to elaborate a bill modifying and complementing the law establishing the organization and functioning of the Office of the Ombudsman;
- to prepare a bill of law on the code of conduct of leaders;
- to carry out a study on the impact of the Office's activities on the population (2006)
- to participate at national seminars, workshops and conferences organised by various governmental departments and other organization.

IV. GOOD PRACTICE AND LESSONS

Any success rests on good opportunities. For good governance and accountability conditions are the followings:

- political will;
- legal framework;
- Institutional and organizational framework.
- Awareness of the people

IV.1. Good practice

- o to reward persons who gives information on corruption or embezzlement (RRA); the informer has a certain percentage on the amount recovered;

- evaluation which became an imperative for both performance measurement of programs and organizational effectiveness;
- the Office does the best it can to facilitate peaceful resolution of complaints. The Office tries to involve all actors concerned in the complaint;
- how the implementation of performance contract explaining the agreement entered in between the supervisory body and the deliberative assembly in public institution is effected.
- The performance contract shall determine the competence, rights and duties of either party in order to achieve the objectives of the public institution¹;
- the Office has its magazine used to spread information concerning the activities of the office and how its service are delivered to the masses.

IV.2. Lessons:

- ✚ a big number of population in the whole country are now aware of their fundamental rights
- ✚ With massive sensitization programme of the office the population is willing to denounce injustice and corruption tendencies committed in all administrative level in the government.
- ✚ The population is fully aware of where to take their complaints in case of injustice.
- ✚ Zero tolerance to corruption.
- After 1994, the government of Rwanda arises guidelines after consulting many persons in conferences held in Urugwiro Hotel (1998 – 1999); they were invited by the president's office and in those discussions and studies participated representatives of government levels, representatives of private sector, political parties, religion confession and others ... those conference dealt with many matters, among them the fight against corruption, good governance, compliance with rules and so on.
- Annually senior government officials do meet to evaluate how they are achieving the respective organization goals;
- Many speeches of high ranking government official denounce corruption tendencies and other related offences.

¹ Organic law n° 14/2004 of 26/5/2004 establishing general provisions governing public institutions

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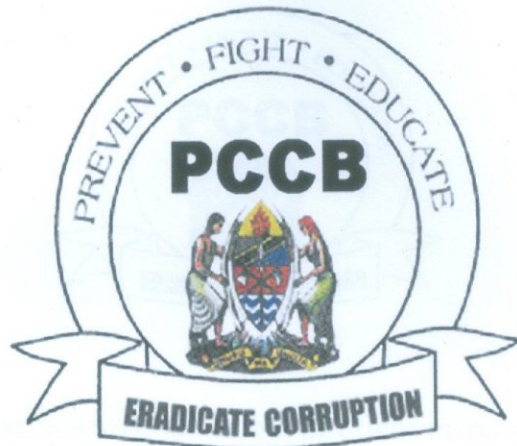
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The office looks forward to seek joint cooperation of regional anti- corruption institutions in continuing the campaign against corruption in order to create a region free of corruption tendencies by ensuring transparency, public accountability and good governance in the region.



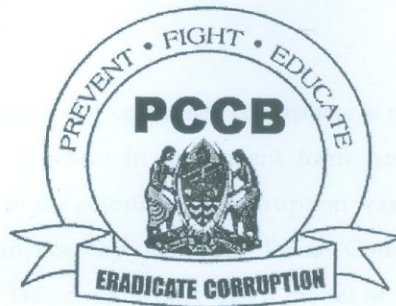
REPORT OF THE

COMMISSION FOR



**REPORT OF PREVENTION AND COMBATING OF
CORRUPTION BUREAU (PCCB)**

UNITED REPUBLIC OF TANZANIA



THE PREVENTION AND COMBATING OF CORRUPTION BUREAU

COUNTRY REPORT

PRESENTED AT THE SECOND ANNUAL GENERAL MEETING OF
EAAACA AT KIGALI, RWANDA

19TH SEPTEMBER 2008

THE UNITED REPUBLIC OF TANZANIA
THE PREVENTION AND COMBATING OF CORRUPTION BUREAU
COUNTRY REPORT

Background

Just as it is in many developing countries, corruption is a problem in Tanzania. The history of fighting this problem in its current form has a long history which its beginning can be traced in the colonial era. Corruption was first outlawed in Tanzania, then known as Tanganyika, by the first Penal Code passed by the colonial administration in 1930¹. This code, which was a model of the Indian Penal Code, was repealed and replaced by the second Penal Code of 1945². Official corruption continued to feature in this code as criminal offences until 1958 when a separate law, the Prevention of Corruption Ordinance³, was enacted by the same colonial administration to deal with the problem. This was an indication that corrupt practices were on the increase and needed a separate legislation to deal with them.

The operation of the Ordinance continued through independence era to 1971 when the Prevention of Corruption Act⁴ was passed by the independent Tanzania parliament and attempted to put the colonial legacy in the fight against corruption to an end. But the fundamental departure from this legacy came in 2007 with the passing of the new anti-

¹ Act No. 11 of 1930.

² Chapter 16 of the Laws of Tanganyika.

³ Chapter 400 of the Laws.

⁴ Act No. 16 of 1971.

corruption legislation, the Prevention and Combating of Corruption Act⁵. Currently the task to combat corruption in Tanzania is undertaken through legal and non-legal strategies.

The Anti-Corruption Legal Framework

Tanzania has an official policy to combat corruption embodied in the National Anti-Corruption Strategy and Action Plan (NACSAP)⁶. To implement this policy an anti-corruption legal framework is in place, and it includes, but not limited to, the following legislations:

- a) The Prevention and Combating of Corruption Act, 2007.
- b) The Economic and Organized Crime Control Act, 1984.
- c) The Public Leadership Code of Ethics Act, 1995.
- d) The Public Procurement Act, 2004.
- e) The Anti-Money Laundering Act, 2006.
- f) The Mutual Assistance in Criminal Matters Act, 1991.
- g) The Proceeds of Crime Act, 1991.
- h) The Evidence Act, 1967.
- i) The Criminal Procedure Act, 1985.

⁵ Act No. 11 Of 2007.

⁶ First adopted in November 1999.

Of the above listed legislations the Prevention and Combating of Corruption Act (PCCA) is the key anti-corruption law. This is a relatively new law, having come into force on the 1st July, 2007. The law makes twenty four corruption and other related offences, and it domesticates the UN Convention against Corruption (UNCAC).

Efforts to Combat Corruption

The PCCA establishes the Prevention and Combating of Corruption Bureau (PCCB)⁷ as an independent body to enforce the law and spearhead the fight against corruption. In this endeavor PCCB has developed partnership with other watchdog institutions: the Ethics Secretariat (established under the Public Leadership Code of Ethics Act, 1995 to enforce the leadership code of ethics), the National Audit Office, the Public Procurement Regulatory Authority, the Attorney General's Office/the DPP's Office, the Commission for Human Rights and Good Governance, and relevant Parliamentary Committees. These institutions are important to PCCB, in that they compliment the work of the institution. The Bureau has also forged cooperation with the private sector, civil society, media and professional bodies.

In enforcing the anti-corruption law, PCCB has adopted three-pronged approach: prevention, education, deterrence. In order to perform this role properly, the Bureau has established twenty six regional offices, one in every region of Tanzania Mainland⁸, 133 district offices. The above strategies are reflected at the headquarters, as well as at

⁷ It is the successor of the former Prevention of Corruption Bureau, established under the repealed 1971 legislation.

⁸ The mandate of PCCB does not extend to Zanzibar, the other part of the union.

regional and district levels. The Tanzania delegation to the second EAAACA Annual General Meeting has included a Regional Bureau Officer and a District Bureau Officer as a testimony of cascading the spirit of the Association.

The prevention, education and deterrence strategies represent the core functions of PCCB that are performed under the directorate of Research, Control and Statistics, directorate of Community Education, and the directorate of Investigation. In the performance of these functions the Bureau has a vision and mission, and has reviewed its Strategic Plan which now runs from year 2008/09-2012/13. Emphasized in this Plan is the on-going strategy of capacity building and training of staff to sharpen their various skills.

In the implementation of the three-pronged approach the focus is on breaking systems or networks of corruption, rather than concentrating on individual or sporadic corruption scandals. The focus also lies in raising the awareness of the youths (through Anti-Corruption Clubs that are being opened in schools countrywide⁹) and inculcating the culture of saying no to corruption. Through NACSAP, which entered into its second phase on the 10th December 2006, all MDA's, the public and private sectors are involved in the anti-corruption crusade. Focusing on specific key strategic goals, the approach taken by the plan is a holistic and pro-active one. One of these goals is the strengthening of anti-corruption mechanisms in all government ministries, departments and agencies, the introduction of systems of integrity, accountability and transparency in local government administrations (LGAs), and to empower and mainstream the private sector into anti-corruption processes. The Good Governance Coordination Unit is established within the President's Office to coordinate efforts to implement NACSAP.

⁹ Currently 1800 anti-corruption clubs have been opened, with 65,000 members.

Regional and International Cooperation

At the regional level PCCB is among the founder members of EAAACA, and continues to deepen its support of this landmark achievement in the fight against corruption in the East African region. Tanzania has also participated in two EAC meetings on the development of a regional framework on good governance and anti-corruption, which meetings have resulted into having in place a second draft of the East African Protocol on combating corruption. Tanzania has ratified the SADC Protocol against Corruption, and is founder member of the Southern Africa Front Against Corruption (SAFAC), and has continued to receive visitors from other anti-corruption bodies in African countries. Recently officers from Zambia and Malawi paid a learning and experience sharing visit.

At the international level, apart from ratifying the AU Convention on Preventing and Combating Corruption, Tanzania has also ratified the UNCAC, and has made efforts to implement its provisions, especially in the thematic areas of preventive measures, criminalization and law enforcement. Currently Tanzania is implementing more than thirty articles of the Convention, and is among the first 16th countries and the only African country that has volunteered to be part of the UNCAC Voluntary Pilot Review Programme. It is being reviewed by United Kingdom and the Netherlands. The first review was conducted in the first week of September, 2008 to see evaluate the implementing the Convention. Tanzania, together with France, reviews Finland, and with United States of America, it reviews Norway.

It is worth noting that in April 2008 PCCB signed a Memorandum of Understanding with the China Law Society, an institution that serves as a bridge and link between the people working in the judiciary and judicial fields in the People's Republic of China.

The Challenges

The challenges faced in the anti-corruption fight in Tanzania include: Insufficient budget for the Bureau, the need for enhancing capacity building, the need to sensitize and educate the people in the operation of the new anti-corruption law, shortfalls in the laws governing politics, winning more and more support from the people, and lack of specific legal provision on asset recovery and civil forfeiture¹⁰.

Various efforts are being made in Tanzania to address these challenges. For example, in relation to the shortfalls in laws governing politics, the President of the United Republic of Tanzania has directed the relevant authorities to work out a mechanism for political funding during elections, and separate business and politics. The Bureau occasionally mobilizes funds from development partners for purposes of training and improving its capacity and to acquire physical structures. The government is also in the process of putting in place whistleblowers protection legislation. On the issue of asset recovery, Tanzania is taking up this challenge, but we invite the region to review the mutual legal assistance schemes for the purposes of doing away with complexity and bureaucracy where it exists in order to deliver the expected results.

¹⁰ Criminalisation of corruption has encountered so many obstacles, e.g. the high standard of proof demanded by courts of law. In such situations civil forfeiture is one of the effective means of recovering stolen public property and to direct it to overcoming poverty.

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⁹ Currently 1800 anti-corruption clubs have been opened, with 65,000 members.

Regional and International Cooperation

At the regional level PCCB is among the founder members of EAAACA, and continues to deepen its support of this landmark achievement in the fight against corruption in the East African region. Tanzania has also participated in two EAC meetings on the development of a regional framework on good governance and anti-corruption, which meetings have resulted into having in place a second draft of the East African Protocol on combating corruption. Tanzania has ratified the SADC Protocol against Corruption, and is founder member of the Southern Africa Front Against Corruption (SAFAC), and has continued to receive visitors from other anti-corruption bodies in African countries. Recently officers from Zambia and Malawi paid a learning and experience sharing visit.

At the international level, apart from ratifying the AU Convention on Preventing and Combating Corruption, Tanzania has also ratified the UNCAC, and has made efforts to implement its provisions, especially in the thematic areas of preventive measures, criminalization and law enforcement. Currently Tanzania is implementing more than thirty articles of the Convention, and is among the first 16th countries and the only African country that has volunteered to be part of the UNCAC Voluntary Pilot Review Programme. It is being reviewed by United Kingdom and the Netherlands. The first review was conducted in the first week of September, 2008 to see evaluate the implementing the Convention. Tanzania, together with France, reviews Finland, and with United States of America, it reviews Norway.

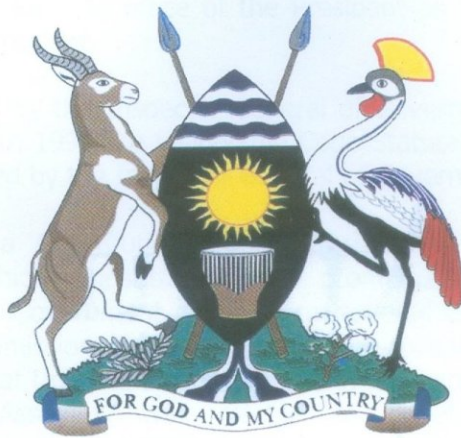
It is worth noting that in April 2008 PCCB signed a Memorandum of Understanding with the China Law Society, an institution that serves as a bridge and link between the people working in the judiciary and judicial fields in the People's Republic of China.

The Challenges

The challenges faced in the anti-corruption fight in Tanzania include: Insufficient budget for the Bureau, the need for enhancing capacity building, the need to sensitize and educate the people in the operation of the new anti-corruption law, shortfalls in the laws governing politics, winning more and more support from the people, and lack of specific legal provision on asset recovery and civil forfeiture¹⁰.

Various efforts are being made in Tanzania to address these challenges. For example, in relation to the shortfalls in laws governing politics, the President of the United Republic of Tanzania has directed the relevant authorities to work out a mechanism for political funding during elections, and separate business and politics. The Bureau occasionally mobilizes funds from development partners for purposes of training and improving its capacity and to acquire physical structures. The government is also in the process of putting in place whistleblowers protection legislation. On the issue of asset recovery, Tanzania is taking up this challenge, but we invite the region to review the mutual legal assistance schemes for the purposes of doing away with complexity and bureaucracy where it exists in order to deliver the expected results.

¹⁰ Criminalisation of corruption has encountered so many obstacles, e.g. the high standard of proof demanded by courts of law. In such situations civil forfeiture is one of the effective means of recovering stolen public property and to direct it to overcoming poverty.



**THE REPUBLIC OF UGANDA
INSPECTORATE OF GOVERNMENT**

REPORT OF INSPECTORATE OF GOVERNMENT

INSPECTORATE OF GOVERNMENT OF UGANDA

Background

- The Inspectorate of Government was established in 1986 on the assumption of state power by the N.R.M Government. By then it was an office under the office of the President as the Inspector General of Government.
- It was legalised by the Inspector General of Government Statute No. 2 of 1988. In 1992 the Leadership Code Statute was enacted and was enforced by the Inspector General of Government.
- It was made a Constitutional Body/ Institution in the 1995 Constitution which Constitution was promulgated after the appointment by Government of the Constitutional Commission in 1992. The Commission had the functions of soliciting for views and ideas of what Ugandans wanted to be in the Constitution. The Constitutional Assembly was elected to debate the draft Constitution made by the Constitutional Commission.
- It is a constitutional, independent Anti-Corruption institution under the Constitution of the Republic of Uganda, 1995.
- The Inspectorate is mandated to combat corruption, promote and foster strict adherence to the rule of law and administrative justice and enforcement of the Leadership Code of Conduct among other functions as provided in Article 225 of the Constitution.
- The Inspectorate of Government is only responsible to Parliament by way of submitting to it two reports in a year on what it has done to fulfil its functions.
- The Inspectorate of Government also performs the ombudsman function.

Legal frame work

The Inspectorate derives its mandate from the following laws:

- The Constitution of the Republic of Uganda – Chapter 13 and 14

And has operationalising laws like:

a) The Inspectorate of Government Act, 2002

b) The Leadership Code Act, 2002

- The Inspectorate of Government is headed by an Inspector General of Government. He/ she is deputised by a Deputy Inspector General of Government.
- The Inspector General of Government and the Deputy Inspector of Government are both appointed by the President with approval of Parliament.
- The Inspectorate has an appointments Board chaired by the Inspector General of Government which appoints other staff of the Inspectorate.

Functions of the Inspectorate of Government:

- To promote and foster strict adherence to the rule of law and principles of natural justice in administration.
- To eliminate and foster the elimination of corruption, abuse of authority and of public office.
- To promote fair, efficient and good governance in public offices.
- To enforce the Leadership Code of Conduct.
- To investigate any act, omission, advice, decision, or recommendation by a public officer or any other authority taken, made, given or done in exercise of administrative functions.

- To carry out public awareness about the values of constitutionalism in general and the activities of its office, in particular, through any media and other means it considers appropriate.
- To inquire into the methods by which law enforcing agents and the state security agencies execute their functions, and the extent to which the practices and procedures employed in the execution of such functions uphold, encourage or interfere with the rule of law in Uganda.
- To examine the practices and procedures of those offices in order to facilitate the discovery of corrupt practices and to secure the revision of methods of work or procedure which, in the opinion of the Inspectorate may be conducive to corrupt practices.

Jurisdiction of the Inspectorate of Government:

- The jurisdiction of the Inspectorate of Government covers officers or leaders whether employed in the public service or not, and also such institutions, organisations or enterprises as Parliament may prescribe by law.
- Inspectorate is a quasi judicial Institution.

Inspectorate has the following powers:

- Powers to prosecute and cause prosecution in respect of cases involving corruption, abuse of authority or public office.
- Powers of arrest and search.
- To inspect bank accounts.
- To freeze bank accounts during investigations and after.
- To lodge caveats on a leader's properties.

- To confiscate a leader's properties.
- To make an order for compensation by a leader.
- To call and examine witnesses during investigations.
- To order for production of any documents.

Investigations:

- Receives complaints from Complainants.
- Can initiate own investigations.

Enforcement of the Leadership Code:

- The Leadership Code is a law which sets minimum standards of behaviour and conduct for leaders.
- It requires leaders to submit their declarations of income assets and liabilities and those of their spouses and children and dependants to Inspector General of Government every two years, three months after appointment and six months before one ceases to be a leader.
- Inspectorate of Government carries out investigations into allegations of breach of by leaders.
- The Inspectorate also carries out verification of the leaders' declarations to establish correctness of the declarations.

Achievements of the Inspectorate of Government:

- The Inspectorate investigations result into prosecutions and administrative sanctions.
- During the period January 2007- June 2008, the Inspectorate of Government after carrying out investigations, arrested and charged 60 officials in court for abuse of office and corruption.

- During 2007, the Inspectorate secured convictions in cases where it has jurisdiction i.e. abuse of office/ and authority and corruption. 17 cases were successfully prosecuted and the persons involved sentenced either to imprisonment or fines.

Disciplinary actions;

- During 2006-2007 administrative action was taken against 178 public officials following Inspectorate of Government recommendations.

Tenders Cancelled:

- During the period 2006-2007 tender awards worth Ug shs 355,257,406,475 which were believed to have been awarded illegally due to corruption were cancelled while tenders worth shs 981,493,588 were upheld after the Inspectorate established no/ minor irregularities.

Civil litigations outcome:

- In the process of defending its reports the Inspectorate, shs 18.688 billion tax payers' money was saved.

Anti-Corruption Court:

- The Inspectorate played a big role in the establishment of the Anti-Corruption under the High Court Division.

Enforcement of the Leadership Code of Conduct

- There is good compliance with the Leadership Code in submitting declarations.
- 95% of the leaders submitted their declarations to the Inspectorate of Government.

- The Inspectorate has computerised the leaders' data and declarations.

Assets recovery:

- Inspectorate has an Asset Recovery account with Bank of Uganda, where funds recovered as a result of investigations and Leadership Code enforcement are deposited.
- Have made recoveries under the Leadership Code equivalent to Uganda shillings 300,000,000 in lieu of confiscation and forfeiture.
- The Inspectorate of Government has so far realised a total of Uganda shillings 310,000,000 in asset recovery.

Enforcement:

Prosecution of cases of corruption investigated by Inspectorate of Government

- Recommend administrative disciplinary action, for example dismissal and demotion.
- Order refund of funds.

Follow up enforcement of its recommendations;

- Under the Leadership Code Act, the leader is required to vacate office or be dismissed or make good the loss, or asset recovery through confiscation and forfeiture, or order compensation.
- Under the Leadership Code Act, a person removed from office through dismissal or vacation from office for breach of the Code, is disqualified from holding a public office for a period of 5 years from the date of removal.
- Defends its reports through civil litigation in case they are challenged.

Preventive measures:

- Public awareness programmes through radio programmes, T.V programmes, publications, workshops and seminars.
- Carry out policy and systems studies and issue reports.
- Formed youth Integrity forums in institutions of higher learning e.g. Universities.
- Carry out National Integrity surveys (NIS) every two years. There is one being carried out. The findings are disseminated to the public.
- PAF Inspections.

Reports

- The Inspectorate is by law required to prepare and submit bi annual reports its activities to Parliament and copy to the President. Parliament is required to table and discuss them.
- The Inspectorate issues reports of Investigations, verification of declarations directly to officers who by law are required to take disciplinary action against the offender.

Organisation structure:

- The Inspector General of Government heads the Inspectorate of Government and deputised by the Deputy Inspector General of Government.
- As in accordance with the functions of the Inspectorate is organised into the following six directorates:
 - i) Directorate of Operations.
 - ii) Directorate of Legal Affairs.
 - iii) Directorate of Regional offices and Follow up.

- iv) Directorate of Leadership Code.
- v) Directorate of Education and Prevention of Corruption.
- vi) Directorate of Civil Litigation.

- There is the Department of Administration and Finance headed by the Secretary.
- There are also support units;
 - i) Policy and systems unit.
 - ii) Internal Inspection and Information.

Challenges:

- Insufficient facilitation due to inadequate funding
- Inadequate staff remuneration which makes it difficult to attract senior and experienced, skilled investigators, prosecutors, accountants e.t.c.
- Leniency of Courts and failure by some magistrates and Judges to appreciate the fight against corruption.
- High public expectations irrespective of the challenges faced in fight against corruption.

Hon Justice Faith Mwendha
Inspector General of Government



**REPORT OF KENYA ANTI-CORRUPTION
COMMISSION**

COUNTRY REPORT ON THE FIGHT AGAINST CORRUPTION

INTRODUCTION

Corruption is a global problem that has entrenched itself in all sectors of society and is presently one of the major challenges facing the world. Its effects rank among those of terrorism and drug trafficking. Corruption, amongst other effects, undermines development and security besides denying people their basic rights and eroding people's trust in public institutions. An effective fight against it requires enabling legislation, specialized skills and a long-term commitment.

It is with this background that Kenya has enacted several laws to fight graft, among them Anti-Corruption and Economic Crimes Act, 2003, which establishes the Kenya Anti-Corruption Commission, Public Audit Act 2003, Government Financial Management Act 2004, Public Procurement and Disposal Act 2005, Privatization Act 2005, Witness Protection Act 2006 and the Political Parties Act 2007.

Apart from enacting anti-corruption laws, Kenya has put in place a number of institutions, among them, the following to fight corruption:

The Ministry of Justice and Constitutional Affairs was created to, among other functions, develop anti-corruption strategies, co-ordinate and facilitate the fight against corruption.

The Cabinet Committee on Anti-Corruption was established at the first Cabinet meeting and is chaired by the Minister of Justice and Constitutional Affairs. It comprises of Minister of State for Provincial Administration and National Security, Minister for Finance, Minister for Planning and National Development, Minister for Roads and Public Works and the Minister for Local Government. The Committee's mandate is to oversee the implementation of government policies on corruption and review the progress in the fight against corruption.

Kenya Anti-Corruption Commission was established under the Anti-Corruption and Economic Crimes Act, 2003 (ACECA). Under Section 7 of ACECA, KACC has wide powers to investigate corruption, prevent corrupt conduct, and advise public institutions on ways to prevent corruption, educate the public on the dangers of corruption, enlist public support in fighting corruption, and trace and recover corruptly acquired property.

Kenya Anti-Corruption Commission Advisory Board is also established under the ACECA. The Board consists of twelve (12) members and the Director of the Commission who is its Secretary. The members of the Board are drawn from civic, religious, professional and business organizations and associations. The Board's principal functions include: to recommend the appointment of a person as the Director or Assistant Director of the Commission to the National Assembly; to recommend the termination of the appointment of a person as Director or Assistant Director to the President for being adjudged bankrupt or upon conviction for an offence under the Penal Code or the ACECA; to recommend to the Chief Justice the establishment of a Tribunal for the purpose of considering the removal of a person as Director or Assistant Director for inability to perform his functions or for involvement in corruption; and to advise the Commission generally on the exercise of its powers and the performance of its functions.

The Efficiency Monitoring Unit is a unit under the Office of the President with the specific mandate of ensuring that public finances and revenues are utilized efficiently for the public good.

The State Law Office/Department of Public Prosecutions- the Public Prosecutions Department within the Attorney General's office is responsible for prosecuting criminal cases. The Director of Public Prosecutions with several State Counsels working under him heads it. The Department has to date recruited a number of Special Prosecutors specifically to prosecute corruption cases.

The Judiciary/Special Anti-Corruption Courts – Section 3 of the ACECA gives the Chief Justice power to appoint Special Magistrates to hear cases of corruption and economic crimes. Presently, there are Special Magistrates in the following stations: Nairobi, Kisumu, Embu, Bungoma, Kakamega, Kericho, Mombasa, Nyeri and Nakuru.

Parliamentary Finance Committee discusses the budget with the Minister of Finance in detail before he reads it in Parliament.

Public Accounts Committee (PAC) and Public Investments Committee are Parliamentary Oversight Committees charged with keeping government accountable on resolutions made during the Whole Committees of Ways Means and Supplies. Through these Committees, Parliament monitors government expenditure and asserts its constitutional role in authorizing, checking and auditing all public expenditure.

The National Anti-Corruption Steering Committee established under the Ministry of Justice National Cohesion and Constitutional Affairs spearheads the public awareness campaign against corruption. It draws its members from among the various stakeholders including the Government, religious organizations, civil society, media, universities, women's organizations and the private sector.

The Public Procurement Oversight Authority is established under the Public Procurement and Disposal Act, 2005. It is charged with the responsibility of:-

Ensuring that procurement procedures established under the Act are complied with;

Monitoring the procurement system and reporting on its overall functioning,

Assisting in the implementation and operation of the public procurement system and

Initiating a public procurement policy.

The Public Complaints Standing Committee (PCSC) is a Public body established under the Ministry of Justice National Cohesion and Constitutional Affairs by the President. The PCSC is mandated to receive, register, sort, classify and document all complaints against public officers in ministries, state corporations, statutory bodies or any other public institution. In addition, it is mandated to enquire into allegations of abuse of office, corruption, and unethical conduct, breach of integrity, maladministration, delay, injustice, discourtesy, inattention, incompetence, misbehaviour, inefficiency or ineptitude.

The Police Department especially the Criminal Investigations Department has specialized units such as the Economic Crimes Unit, which handles economic crimes.

The Commission as the lead anti-corruption agency has adopted a three-pronged approach in fighting corruption. That is, *law enforcement, prevention and public education.*

Mandate of the Commission

The mandate of the Commission is spelt out in section 7 of The Anti-Corruption and Economic Crimes Act specifically as follows:-

- a) To investigate any matter that, in the Commission's opinion, raises suspicion that any of the following have occurred or are about to occur:
 - i) Conduct constituting corruption or economic crime;
 - ii) Conduct liable to allow, encourage or cause conduct constituting corruption or economic crime;
- b) conduct of any person that, in the opinion of the Commission, is conducive to corruption or economic crime;
- c) To assist any law enforcement agency of Kenya in the investigation of corruption or economic crime;
- d) At the request of any person, to advise and assist the person on ways in which the person may eliminate corrupt practices;
- e) To examine the practices and procedures of public bodies in order to facilitate the discovery of corrupt practices and to secure the revision of methods of work or procedures that in the opinion of the Commission, may be conducive to corrupt practices;
- f) To advise heads of public bodies of changes in practices or procedures compatible with the effective discharge of the duties of such bodies that the Commission thinks necessary to reduce the likelihood of the occurrence of corrupt practices;
- g) To educate the public on the dangers of corruption and economic crime and to enlist and foster public support in combating corruption and economic crime;
- h) To investigate the extent of liability for the loss of or damage to any public property and:
 - i) To institute civil proceedings against any person for the recovery of such property or for compensation; and
 - ii) To recover such property or enforce an order for compensation even if the property is outside Kenya or the assets that could be used to satisfy the order are outside Kenya; and
- i) To carry out any other functions conferred on the Commission by or under the Act or any other law.

Administratively, the Commission is divided into four Directorates with each directorate exercising separate and distinct, but mutually complementary

mandates. The four Directorates, each headed by an Assistant Director are: (i) Directorate of Investigations and Asset Tracing; (ii) Directorate of Legal Services and Asset Recovery; (iii) Directorate of Preventive Services; and (iv) Directorate of Finance and Administration.

The top Management of the Commission was constituted sometime in September, 2004 and the first batch of senior officers in the Commission recruited in February, 2005. A greater part of the year 2004 and early 2005 was the formative period of the Commission with respect to recruitment and induction of the staff.

Enforcement of Anti-Corruption Laws – Investigations and Asset Tracing

The Commission has since its inception continued to enhance its capacity in information gathering, investigation, intelligence, asset tracing and that of its corruption reporting facility. It has installed an Investigation and Intelligence Management System (INTERCORE) and acquired an array of technical surveillance equipment that aid in investigation.

An Inter-Agency Forum comprising eleven investigative and oversight agencies established in 2006 provides an information sharing platform while an intelligence network covering the major public institutions was established and several informants recruited. Informal contacts were established with jurisdictions where investigations have been undertaken. The Commission has also developed an Operational Manual (Guide to Investigations) to provide standardized procedures and processes for conducting investigations.

During the period under review, the Commission detected corruptly acquired assets and investigated 88 cases. Meanwhile, the following assets were traced:

- 162 developed properties comprising of hospitals, hotels, blocks of flats, residential houses across the country etc. estimated to be worth 2.5 billion Kenya shillings.
- 8 farms estimated at 10 million Kenya shillings.
- 61 undeveloped plots valued at 12 million Kenya Shillings.
- 8 vehicles estimated at 10 million Kenya shillings.

- Cash amounting to 625.9 million Kenya Shillings, out of which 5 million was local and the rest is frozen in overseas accounts.
- Several assorted assets and revenue lost through tax evasion estimated at 7.5 billion Kenya shillings.

The Commission also managed to disrupt a number of corruption networks, notably a tender involving Kenya Sugar Board where Ksh. 1.56 billion which would have been irregularly awarded and a transaction also involving Kenya Sugar Board in which Ksh. 600 million would have been irregularly paid to a sugar research foundation.

Twenty (20) Letters of Requests and Letters Rogatoire were made to various jurisdictions where cross-border investigations have been conducted.

The Commission investigated 1105 complaints out of which 225 case files were finalized and forwarded to the Hon. Attorney General for prosecution; and 277 suspects arrested and charged in court. Six integrity tests were conducted 5 of which were in KACC and 1 in KRA. While 9 sting operations were conducted.

The Commission has continued to receive many corruption reports. The reports made in 2008 (up to May), were 1221, 6728 in 2007, 1548 in 2006 and 1445 in 2005. Out of these, 755, 1447, 1527 and 239 were investigated by the Commission in 2005, 2006, 2007 and 2008 respectively. The rest were referred to other investigative agencies, recommended for administrative action by relevant ministry/department, or closed.

During the period, an Intelligence Led Investigation Model (ILIM), which aims at providing clear standards and directions for tasking and coordinating processes at both the strategic and tactical levels, was developed.

Enforcement of Anti-Corruption Laws – Legal Services

During the period under review, the Commission filed two hundred and eight (211) suits for the recovery of public property lost through corruption and economic crimes as follows:

In the year 2005, six (6) suits for recovery of embezzled funds were filed; in the year 2006, forty five (45) suits for recovery of both public land and embezzled funds were filed; in 2007, one hundred and nineteen (119) suits for recovery of both public land and embezzled funds were filed while forty two (42) suits were filed in the first half of the year 2008 for the recovery of both irregularly/illegally alienated public land and embezzled funds.

Besides the recovery suits, the Commission also filed one hundred and sixty (160) applications under Section 56 of the ACECA and obtained orders to preserve suspect property pending investigations in various courts in the country. The approximate value of the property preserved pursuant to the said orders is in excess of **Kshs. 2,423,450,000.00**.

The Court of Appeal however (in NAI. 255 of 2007, Dakane A. Ali and Kenya Anti-Corruption Commission & 2 others) has expressed misgivings in the propriety of such applications before the filing of substantive suits; consequently the Commission has not filed such applications in 2008.

It is worthy of note that during the period under review, the Commission recovered through court proceedings or negotiated settlements landed public property illegally/irregularly allocated worth **Kshs 766,790,000** and **Kshs 12,858,597.30** comprising embezzled public funds and monies realised from proceeds of property put up using embezzled public funds. Among these is the recovery of 23 titles forming part of a portion of land comprising the Northern bypass in Nairobi.

The Commission also recovered 18 out of 103 City Council of Nairobi houses in Woodley /Joseph Kang'ethe Estate, which had been alienated in contravention of the Local Government Act. Most of the persons who surrendered the property never paid a cent to the City Council of Nairobi for the houses yet they had the land registered in their names. Presently there are 53 recovery suits pending in Court over some of the Woodley/Joseph Kang'ethe properties.

In addition, the Commission has recovered approximately sixty (60) acres of land forming part of Karura Forest illegally alienated in contravention of the Forests Act (now repealed). The Grantees surrendered the title documents and the registration of the court orders issued by consent of the parties to re-convey the land to the Government is on course. The land is estimated to be worth over **Kshs. 600, 000,000.00**.

The biggest recovery so far by the Commission is that of L.R. No. 209/9514 [Grand Regency Hotel] built using public funds unlawfully acquired from the Central Bank of Kenya. The court ordered the transfer of the property and

profits made over the period of court-ordered-receivership to the Central Bank of Kenya through a negotiated settlement under section 56B (2) & (4) of ACECA. The Hotel had been the subject of a High Court case in which the Commission sued for recovery of the hotel, amongst other prayers. The Hotel, with an estimated value of Kshs. 3 billion, and a sum estimated at Kshs. 341 Million held by the Receivers in the Hotel's bank account were transferred to the Central Bank of Kenya.

Besides the recovery suits, there have been a number of court decisions involving the Commission, the jurisprudential value whereof have had a positive impact on the fight against corruption.

The Commission does not prosecute criminal cases. It is however obligated under section 35 of the Act to prepare a report of the results of the investigation which include any recommendation the Commission may have that a person be prosecuted for corruption or economic crime and forward the same to the Attorney General. As at 30th September 2008, 454 reports on investigations had been made to the Attorney General. Out of these, 343 reports recommended the prosecution of named suspects, 92 recommended closure and 19 recommended administrative or other action.

Statistical summary of files forwarded to the Attorney General between May 2003 and September 2008

	May 2003- June 2004	July 2004- June 2005	July 2005- June 2006	July 2006- June 2007	July 2007- June 2008	July 2008- Sept 2008	Total
No. of files forwarded to the Attorney General	38	35	84	153	111	33	454
No. of files recommended for prosecution	26	23	70	112	86	26	343
No. of files recommended for administrative or other action	3	0	2	8	4	2	19

No. of files recommended for closure	9	12	12	33	21	5	92
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Statistical summary of forensic and bribe demand files forwarded to the Attorney General between May 2003 and September 2008

	May 2003- June 2004	July 2004- June 2005	July 2005- June 2006	July 2006- June 2007	July 2007- June 2008	July 2008- Sept 2008
No. of forensic investigation files forwarded to the Attorney General	31	17	32	58	38	14
No. of bribe demand forwarded to the Attorney General	7	18	52	95	73	19
Total	38	35	84	153	111	33

Out of the cases the Commission recommended for prosecution, a number of them involve high ranking and former high-ranking public officials.

From the foregoing tables, it is clear that there has been a progressive increase in the number of reports forwarded to the Attorney General. This is set to continue as the Commission expands its investigative capacity. In the year 2005/2006 a total of 84 investigation reports were forwarded to the Attorney General compared to 35 submitted in the preceding year. This translated to a 240% increase. The following year, 2006/2007, 153 reports were forwarded to the Attorney General, which reflects an increase of 182%. As at 30th June 2008, 111 investigation reports had been submitted to the Attorney General.

In recognition of the need to strengthen the anti-corruption legislative framework, the Commission made recommendations to the Attorney General and the Ministry of Justice and National Cohesion and Constitutional Affairs for amendment of various laws. Most of these recommendations were included in the Statute Law (Miscellaneous Amendments) Act, 2007 that amended

amongst other laws the Limitation of Actions Act, the Public Officer Ethics Act, ACECA and the Penal Code.

The Commission has continued to undertake research on complex and pertinent legal issues touching on its operations and cases involving it.

Kenya being the first country to sign and ratify the United Nations Convention against Corruption (UNCAC), is presently undertaking a Gap Analysis spearheaded by the Commission, to evaluate compliance of the national legislative framework with UNCAC and recommend action to redress governance gaps thereby making Kenya UNCAC compliant.

Corruption Prevention

The Commission has since its inception engaged in examination of policies, systems, procedures and practices prone to corruption; developing best practice guidelines and modules; conducting integrity and good corporate governance training; building local partnerships and coalitions; enlisting international support against corruption; institutionalizing integrity programmes in formal education; intensifying anti-corruption integrity public education; conducting sector specific integrity educational programmes; establishing through research the nature and extent of corruption in Kenya; building, modernizing and equipping the Resource Center with reference and research materials; development of Strategic plans in the Commission, public and private sectors; and developing and enforcing monitoring and evaluation of proposed programmes and reforms. Key outcomes achievements in the period under review include:

Development of Strategic plans in the Commission, public and private sectors

The Commission developed its first Strategic Plan covering the period 2006 to 2009, which was inaugurated for implementation in July 2006.

At the same time, the Commission reviewed and developed corporate plans for agencies, local government and government departments whose systems it examined.

Examination of policies, systems, procedures and practices prone to corruption

Eight examinations were conducted covering the Kenya Medical Supplies Agency (KEMSA), Registration and Licensing of Motor Vehicles and enforcement of traffic rules; Department of Immigration, City Council of Nairobi, the Roads Sub-sector; Teachers Service Commission (TSC); Pensions Department; Department of Civil Registration and the National Registration Bureau. In addition, one corruption risk assessment was conducted. These examinations assist public institutions to seal corruption loopholes.

Best Practice Guidelines and Modules

The Commission developed guidelines on codes of conduct and ethics and anti-corruption framework for public institutions.

Integrity and good corporate governance training

Eight hundred and fifty three public officers underwent the IAO training from more than 20 organizations. As part of IAO training, 431 Corruption Prevention Committee (CPC) members representing 22 CPCs were trained on the implementation of corruption prevention strategies in their institutions. 81 managers from the public sector were trained on integrity and good corporate governance.

Local partnerships and coalitions

The Commission developed a draft policy on Partnership and Coalition to provide a broad based approach to fighting corruption; maximization of available resources and cost sharing in anti-corruption initiatives; and sharing of skills and expertise. The Commission also established several liaison programmes and entered into memoranda of understanding with some institutions and organizations.

On the international front, the Commission established collaboration mechanisms established with the Botswana Directorate of Corruption and Economic Crime (BDCEC) the Southern Sudan Anti-Corruption Commission (SSACC) and the East African Anti-Corruption Authorities through the formation of East African Association of Anti- Corruption Authorities.

Institutionalization of integrity programmes in formal education

The Commission developed an anti-corruption curriculum in collaboration with the Ministry of Education and implemented the TRAG Programme in collaboration with UNDP and Egerton University to enhance good governance in public institutions in Kenya.

Various programmes to institutionalize integrity and ethics in institutions of learning and to inculcate a culture of integrity and ethics among the youth, among them sensitization in the education sector, co-curricular activities, dissemination of IEC materials and school based TV and radio programmes were rolled out.

Public education

The Commission has undertaken various outreach programmes including media education, exhibitions, sensitization and opportunity lectures, and community-based programmes.

In addition, the Commission developed and implemented sector-specific integrity educational programmes across various sectors such as public service, Prison's Department, Administration Police, the cooperative sector and the religious sector.

Surveys and research on the nature and extent of corruption in Kenya

The Commission successfully conducted five national perception surveys, namely; 1 National Enterprise Survey on Corruption, 3 National Corruption Perception Surveys (2005, 2006, 2007), and the Public Officers' Integrity Survey.

Three agency specific policy and operational reviews were conducted to establish extent and nature of corruption in the Kenya Medical Supplies Agency (KEMSA), the Motor Vehicle Inspection Unit (MVIU), and the Immigration Department of the Ministry of Immigration and Registration of Persons. While two (2) action and operational research on specific issues were conducted for the sugar and health Sectors. One government policy review was

conducted on the National Monitoring & Evaluating policy being promulgated by the Government.

Institutional Capacity

The Commission has continued to maintain, develop and nurture a robust and highly skilled staff with a view to strategically positioning itself to discharge its mandate. The Commission has staff complement of 260 employees out of an approved establishment of 270.

As part of its efforts to enhance its institutional capacity, The Commission purchased a piece of land measuring five acres in Karen Nairobi where it intends to develop its headquarters. Upon completion of the proposed development, the Commission will have appropriate and adequate physical facilities.

Key Challenges and Constraints

The fight against corruption in Kenya has been fraught with many challenges, some of which cut across the Commissions Directorates.

Investigations and Asset Tracing

Large-scale cases often involving trans-national investigations that have an international dimension require assistance by way of mutual legal assistance (MLA) to facilitate gathering of evidence in foreign jurisdictions. These jurisdictions invariably have different laws and procedures, which may not be compatible with our system.

Most corruption and economic crimes cases involve closed networks of friends and associates, usually well-resourced and connected senior public officials and powerful business people and therefore difficult for investigators to penetrate for necessary information or evidence.

Most persons under investigation have deep pockets. They use their vast financial resources to frustrate investigations by engaging skilled lawyers who use the lengthy judicial processes and other delaying tactics. Investigators also undergo intense institutional and psychological frustrations due to political and public pressure to deliver.

Access to the Commission by the public is limited since all reports are received and processed in Nairobi and the recently established Mombasa office. Persons who live outside Nairobi and Mombasa have to spend substantial time and money to report corruption.

Lack of a whistle blower protection mechanism hampers reporting as potential whistleblowers fear victimization. Meanwhile, some witnesses are reluctant to testify for fear of reprisal

Inhibitive secrecy law like the Official Secrets Act restricts access to information by the commission and discourages whistleblowers. Unavailability of documentary evidence due to destruction or concealment by suspects also impairs investigations.

Some of the persons under investigations opt to go to court to stop the Commission from investigating them or even seeking or receiving evidence from other countries.

The Commission's powers to compel disclosure of information have been curtailed by amendments to ACECA.

Legal Services and Asset Recovery

The slow judicial process coupled with numerous Constitutional Petitions, adjournments and Judicial Review proceedings seeking to stop on-going

investigations or criminal proceedings, compounded by the huge backlog of pending cases, has delayed the conclusion of the investigations to trace and recover assets and public property lost through corruption or economic crimes.

Partner institutions have in their midst personnel and officers the subject of investigations e.g. Judiciary, Parliament, Lands office, AG's chambers, et cetera. Such people, directly or indirectly, exert their influence to interfere with the investigative processes.

Most of the cases under investigation by the Commission relate to past corruption and material original documents necessary to prove the cases in a court of law are unavailable for various reasons associated with poor record keeping in government.

Whereas the ACECA is a big improvement on its predecessor, the Prevention of Corruption Act, Cap. 65 of the Laws of Kenya (repealed), it still requires to be strengthened.

There have been several judicial challenges to the Commission's mandate and powers, with the result that the judgements arising from these challenges have whittled down the Commission's powers.

Frequent transfers of Special Magistrates who preside over the Anti-Corruption Courts have caused delays in court proceedings, and have occasioned numerous court attendances, which wear down witnesses.

The Anti-Corruption and Economic Crimes Act does not provide an effective mechanism for encouraging and protecting informers and witnesses and this affects the quality of evidence given by witnesses.

Lack of Rules to guide the making of confessions: The rules that would make confessions obtained from suspects admissible as evidence are yet to be gazetted as provided by the Statute Law (Miscellaneous Amendment) Act 2007. This renders confessions generally inadmissible unless obtained before a Magistrate.

The procedure of reporting investigations pursuant to Section 35 to the Attorney General for further action is time consuming and duplex. The Commission has its own legal officers who do crime reading, the file once sent to the Attorney General is re read again and it takes inordinately long to dispose of the files.

The law in place on mutual legal assistance is not sufficient to facilitate timely investigations and prosecutions.

Prevention of Corruption

Preventive activities, such as integrity training, public education, examinations and research activities are large-scale in scope and coverage and demanding in nature thus requiring adequate financial and human resource base to effectively implement.

A number of public officers do not distinguish corruption prevention activities from investigative activities. This leads to resistance and suspicion from staff of institutions targeted for corruption prevention programmes. Under the circumstances, getting adequate support and cooperation is a tall order.

The ACECA does not compel examined institutions to implement recommendations of Examinations Reports and Advisories provided by the Commission. As a result, commitment to institutionalize corruption prevention strategies is luke-warm in some public sector organizations as there no sanction for non-compliance.

There is lack of support of the Commission's programmes and activities by some managers of public institutions. This has affected some of the KACC trained Integrity Assurance Officers (IAOs) who are expected to champion integrity and ethics in their institutions. This is compounded by bureaucratic processes in public institutions.

Sustainability of integrity programmes in public institutions is hampered by lack of an adequate pool of champions such as IAOs due to numerous transfers, change of jobs or lack of management support.

EAAACA COMMUNIQUÉ

V

THE KIGALI COMMUNIQUE OF THE EAST AFRICAN ASSOCIATION OF ANTI-CORRUPTION AUTHORITIES

We, the Heads of the National Anti-Corruption Authorities of the five States of the East African Community, having today held the Second Annual General Meeting in Kigali, Rwanda and:

RECOGNISING that corruption is a serious trans-national crime that has devastating effects on national economic development, good governance and administration of justice;

RECOGNISING FURTHER that corruption can seriously impede national efforts for poverty eradication, economic and gender empowerment, career development, and provision of essential services such as health care, education and security;

DETERMINED that there should not be any safe haven for corrupt persons and for proceeds of crime within the partner States of the East African Community;

DETERMINED FURTHER to ensure that the states of the East African Community are a region of zero tolerance to corruption;

HAVING FORMED the East African Association of Anti-Corruption Authorities (EAAACA) pursuant to the Kampala Declaration of the 28th September 2007 and the subsequent launch in Nairobi on the 9th November 2007;

NOTING that the 1st Annual General Meeting was held in Zanzibar, in the United Republic of Tanzania, on the 15th February 2008, at which forum Dr. Edward HOSEAH, Director General of the Prevention and Combating of Corruption Bureau (PCCB) was elected the First President of the Association;

ACKNOWLEDGING the important role of the media in public awareness and sensitization programmes on anti-corruption campaigns;

HAVING RECEIVED the country reports of the Member Authorities of the Association:

HAVE RESOLVED as follows:

1. That the Anti-Corruption Authorities shall cooperate with each other for detecting, tracing, investigating, confiscating and repatriation of assets and instruments tainted with corruption throughout the East African Community region;
2. That the Anti-Corruption Authorities shall provide Mutual Legal Assistance (MLA) to the fullest measure possible under the national laws of the Partner States of the East African Community;

3. That there should be joint training, research, public awareness campaigns and exchange programmes for staff of the Member Associations, particularly in the areas of assets recovery, trans-national investigations, intelligence-led operations and international best practices;
4. That the Anti-Corruption Authorities shall have a programme of exchanging information, experience and skills on investigation, prevention and recovery of ill-gotten wealth;
5. That the Anti-Corruption Authorities shall promptly pay membership fees and other contributions and where necessary seek donor funding to supplement the Association's budget;
6. That the Association shall seek to establish a good working relationship with the media to enhance the fight against corruption.

SIGNED at the Novotel Hotel, Kigali in the Republic of Rwanda this 19th day of September 2008 by:



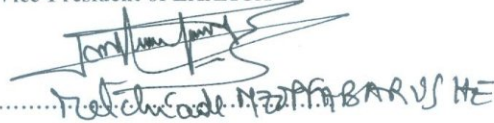
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Dr. Edward HOSEAH
 Director General
 Prevention and Combating of
 Corruption Bureau,
 TANZANIA
 President of EAAACA



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Justice Faith MWONDHA
 Inspector-General of Government,
 Inspectorate of Government,
 REPUBLIC OF UGANDA
 Vice-President of EAAACA



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Dr. Tito RUTAREMARA
 Chief Ombudsman of Rwanda,
 Office of the Ombudsman,
 REPUBLIC OF RWANDA
 Member of EAAACA



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 For: **Jean-Bosco BUTASI**
 Commissioner General, Special
 Brigade Anti-Corruption,
 REPUBLIC OF BURUNDI
 Member of EAAACA



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 For: **Justice Aaron RINGERA**
 Director/Chief Executive,
 Kenya Anti-Corruption Commission,
 REPUBLIC OF KENYA
 Member of EAAACA