



**FACING THE CHALLENGE OF ETHICAL GOVERNANCE IN KENYA-
A CALL FOR ACTION**

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**PHILIP K B KINISU
CHAIRMAN
ETHICS AND ANTI-CORRUPTION COMMISSION**

**Council members present
Conference facilitators,
Participants,
Ladies and gentlemen**

Introduction

I am honored to have been invited to join you in this important event in the calendar of ICPAK and particularly so for asking me to participate in a conference that is addressing a theme that is pertinent to the mandate of EACC.

I note the broad spectrum of interest groups represented here today consisting of professionals from different sectors and ranks. It is an indication that honesty and taking responsibility are highly regarded in your pursuit of creating value for your organizations.

That your organizations have seen it fit to invest in your time to attend this conference is also a clear demonstration of their commitment to a culture of ethics, integrity and good governance. In the absence of these values, corruption thrives with the attendant consequences.

The topic and context

I have been asked to address you on the topic **“Facing the challenge of ethical governance in Kenya - A call for action”**.

I have been informed that during the conference you discussed various aspects of functions and responsibilities of Boards of Directors. You also did some introspection and deliberated on Code of Conduct for CPAs. These issues are very relevant to our endeavors to build a more ethical society.

The importance of ethical behavior has long been recognized even before the advent of modern societies. **Ethical behavior simply means** behavior that is appropriate and based on morals. And when one has to make a choice, they choose what is good and right.

Ethical governance thus refers to policies, procedures and administrative measures that when applied effectively can result to institutions conducting their affairs appropriately. And as accountants, it is our professional responsibility to ensure that institutions have in place policies and systems that ensure ethical behaviors in our area of work.

The Kenyan context

At this juncture, I would like to share with you just three slides.

The data in those slides is not describing a country in another galaxy, but our own Kenya. You are probably so familiar with it that you have developed a mental block and no longer process the data to consider its meaning. Fact is, our poor showing as country is the result of poor or unethical governance.

Governments the world over have incorporated ethical behavior as a tenet of the characteristics of government and the societies they govern. This is no surprise as the absence of ethical conduct jeopardizes the authority of the state by unleashing the dark forces of lawlessness and the failed state.

Studies have shown that where ethics in public service are weak, corruption, unethical conduct, inefficiency, poor services and general poverty of the citizenry abound. There has been established a strong correlation between public service management systems founded on strong ethical standards and prosperity of nations. The emergence of the so-called East Asian Tigers is a case in point.

In the more prosperous nations you find low societal tolerance for unethical conduct and its rewards, and effective systems for enforcing expected ethical conduct in public service.

The legal framework for ethical governance

For many years, Kenya has struggled with how to counter the effects of unethical behaviors and lack integrity in the management of public affairs.

The need for a specific law governing this area was recognized as far back as 1956 when the Prevention of Corruption Ordinance was enacted. But it is in the last decade or so that we have seen a flurry of activity on the legislative front with the passing of the Anti-Corruption and Economic Crimes Act, 2003; Public Officer Ethics Act, 2003; signing up to the African Union Convention on Preventing and Combating Corruption, 2003 and United Nations Convention Against Corruption, 2003; and The Constitution of Kenya, 2010 providing a strong anchor for the fight against corruption. Most recently the Proceeds of Crime and Money Laundering, Act 2015 was passed.

Enactment of the laws has been accompanied by establishment of institutions with specific mandates to combat unethical behaviors and corruption. The entities include EACC, ARA, FRC, Special Magistrates Courts and recently the establishment of the Anti-Corruption Division of the High Court.

As our society has evolved and citizens become more demanding, the heavy investment in the legislative agenda around ethics and good governance is testimony to the fact that ethical governance is recognized as a pillar to economic and social stability. And current consensus is that, save for tightening of provisions at the margins, we have sufficient laws for purposes of regulating ethics and good governance in Kenya.

If the law is good, what then is the problem?

1. Our society tolerates unethical conduct

In jurisdictions where anti-corruption regimes have delivered good results, the citizenry is engaged and readily provides information about suspicious transactions or unethical conduct. In the same vein, the citizens are more questioning about how people claim success. Citizens do not impress easily. Further, transparency around wealth is

required of individuals vying for leadership. In other words, integrity is part of culture.

You can contrast that to our situation. Individuals implicated in graft are defended; we admire them and regard them as success stories. Our youth want to emulate them. Such individuals come forward for elective offices and often succeed. The narrative in defence of the culprits is converted to defense of ethnic or political or regional interests. These bigotries rank primitive destructive instincts first before rational thinking and are an affront to our nationhood.

The state has a role in tackling the problem. Our Constitution is a solid anchor for the fight against corruption with provisions in Article 10 on National Values and Principles of Governance and in Chapter 6 on Leadership and Integrity. Provisions elsewhere in the document augment these principles. I earlier made reference to laws which have been passed to give effect to the intent in the Constitution.

2. Corruption and unethical conduct practiced with impunity

The leading reason cited by the public for the existence of corruption is that public officers demand bribes. If, coupled with this, action is not taken against the officers on a timely basis, then the problem will persist. But this point deals with what I consider to be petty corruption.

There is systemic corruption which arises when public officers take advantage of weak systems of internal control or when they circumvent the systems altogether through collusion. Corruption in the area of public procurement is of this nature and it is significant; by some accounts up to 70% of loss of public funds arises in this way.

When taken to a higher level, systemic corruption can become grand corruption. In this case, individuals in positions of significant state power subvert legal, economic and political systems to devise and

implement schemes to loot state resources. Many mega scandals we have experienced are in this category.

3. Political will to tackle unethical conduct

All societies have some level of corruption and unethical conduct. But it is when the vices reach certain proportions that they are unsustainable and must be brought under check. The ultimate consequence of unfettered corruption is state breakdown. It may take a long time but it will happen and all shall be losers, including those in power now and who refuse to act.

But the vice is not easy to tackle. It defines powerful political interests, some of which compete with the state in the extent of their power. This in part explains the reluctance we have witnessed from the political class to tackle the vice.

The call to action

Apart from passing laws, the state should act on a sustained basis to signal that unethical conduct is unacceptable. It should practice ethical governance. And because it has a monopoly of violence, it has numerous options to apply in how it signals its intolerance of corruption and unethical conduct. Holding people to account for fiduciary responsibilities in jobs is important.

There should be no sacred cows when it comes to matters of law. Impunity at whatever level is cancerous and must be resisted.

Faced with a formidable complex adversary that corruption is, our state could learn from the experiences of others to implement pragmatic solutions. The options range from total war against corruption cartels to dialogue and negotiation and settlement with

them in a truce. Draw a line in the sand beyond which corruption must not be tolerated.

And just as important, the public must reject corruption and unethical conduct in the management of public affairs. Citizens should know and demand their rights and not pay bribes to gain access to public service. We should value the rule of law and when caught on the wrong side of it, bear the consequences and not seek the shortcuts.

EACC strategies to promote ethical governance in Kenya

The law mandates the EACC to combat and prevent corruption and economic crimes through law enforcement and preventive measures. It is doing this, working with others, by following a strategy focused on areas where the risks of corruption and unethical conduct are high.

Specific elements of the strategy are as follows:

- (1) Supporting demands for accountability of senior officers in government on their fiduciary responsibilities. EACC will work with the leaders of all arms of government to ensure that this is effective.
- (2) Supporting institutions ranked as high corruption risk to implement turnaround activities and become stronger; have strong effective systems.
- (3) Conducting robust investigations into malpractices.
- (4) Collaborating with others to more effectively and efficiently recover corruptly acquired assets.
- (5) Implementing comprehensive programs of public education and advocacy against the vice.

Conclusion

For Ethical Governance to succeed there must be transparency and accountability. Leaders should embrace ethics by creating a climate of Integrity and Responsibility within institutions, expressed in both the written code and conduct.

Events such as this workshop take stock on where we are as a country and call for action to combat corruption and entrench ethical governance in public service. We can agitate for management of public affairs in ways that embrace appropriate values, codes and principles.

You, the accountants, are key in the fight against corruption. You can be soldiers for good or perpetrators, accomplices, or negligent watch dogs. You can be proactive risk managers and whistle blowers. You choose.

But it should be emphasized that the fight against corruption is not the responsibility of one individual or institution. It is complex and requires everyone and every institution to discharge their responsibility. And as you lament and point fingers about how corrupt Kenya is, ask yourself what your role is and what you have done about it.

THANK YOU.

CPA PHILIP KINISU

CHAIRMAN - EACC