

# Fraud and Corruption Legislations in Kenya: Effectiveness of Multiagency Approach

## **OUTLINE**

- Brief of the current legislations on corruption and fraud offences
- Challenges in enforcement of Fraud and corruption legislations
- Why the need for the Multiagency approach.
- Is Multiagency approach effective?

# Anticorruption and Fraud laws

- The Constitution –Chapter 6
- Ethics and Anticorruption Commission Act 2011
- Anti-corruption and Economics crime Act 2003
- Government Financial Management Act 2012
- Public Procurement and Disposals Act 2015
- Witness Protection Act 2006
- Proceeds of Crime and Anti-Money Laundering act 2009(revised 2016)
- Leadership and Integrity act, 2012
- Public Audit Act, 2012
- Bribery Act 2016
- Central Bank Act, 2015

# Provisions of the constitution

- Article 10: National values and principles of governance include: Good governance, integrity, transparency and accountability
- Chapter 6: Principles of leadership and integrity:
  - ✓ Meritocracy in selection, objectivity, accountability for decision making
  - ✓ Conduct of state officers; conflict of interest, financial probity (policy on gifts, donations to public officers, bank accounts outside the country and pecuniary embarrassment)
- Article 201: principles of Public Finance - equity and accountability in use of public funds

# Ethics and Anti-corruption Act, 2011

- Establishes EACC Pursuant to Art 79 of the Constitution whose functions include:
  - ✓ Develop code of ethics for state officers
  - ✓ Receive complaints on breach of code of ethics
  - ✓ Investigate and recommend to ODPP on acts of corruption or violation of code of ethics
  - ✓ Institute court proceedings for recovery/protection of public property or freeze/confiscate proceeds of corruption

# Aceca, 2003

- Provides for:
  - ✓ Establishment of special magistrates to hear and determines corruption and economic crimes
  - ✓ Investigation of crimes
  - ✓ Definition of corruption offences and penalties
  - ✓ Compensation and recovery of improper benefits
  - ✓ Procedure of recovery of unexplained assets

# Aceca 2003

- Corruption offences include:
  - ✓ Secret inducement for advice(soliciting benefits)
  - ✓ Deceiving principle(misleading)
  - ✓ Conflict of interest
  - ✓ Bid rigging(tender arrangements)
  - ✓ Abuse of office (personal benefit)
  - ✓ Dealing in suspect property

# Aceca 2003

- Economic crimes include:
  - ✓ Unlawful acquisition of public property, service or benefit
  - ✓ Charging or disposal of public property
  - ✓ Damaging public property
  - ✓ Embezzlement/misappropriation of public property
  - ✓ Failure to adhere to laws/regulations on procurement
- Unexplained assets-persons suspected of corruption and is unable to adequately account for properties(sec 55)
- Protection of informers sec 65(no disciplinary action for informers)
- RELIANCE ON ODPP FOR PROSECUTION



# Proceeds of crime and anti-money laundering act 2009(revised 2016)

*`The concealment of the origins of DIRTY money, typically by transfers involving foreign banks or legitimate businesses`*

- Sec 3: Dealing with property that forms part of **proceeds of crime** and whose effect will be to conceal or disguise the nature, source, location or movement of the said property;
- Sec 4 :-Acquisition, possession or use of proceeds of crime committed by self or by another person, commits an offence.
- Sec 5-failure to report suspicious transaction



# Proceeds of crime and anti-money laundering act 2009(revised 2016)

- FINANCIAL REPORTING CENTRE
  - receive, analyse and interpret—
  - ✓ *reports of usual or suspicious transactions* made by reporting institutions or persons pursuant to section 12;
  - ✓ information disclosed to it pursuant to section 42 of the Prevention of Terrorism Act, 2012; and
  - ✓ information received sent to appropriate law enforcement authorities, any intelligence agency, or any other appropriate supervisory body for further handling if, having considered
  - ✓ FRC provides a repository of data but does not investigate.

# Proceeds of crime and anti-money laundering act 2009(revised 2016)

## ASSET RECOVERY AGENCY

- The functions of the Agency shall be to implement the provisions of Parts VII to XII of POCAMLA:-
  - ✓ *Criminal forfeiture*: confiscation and restraint orders on all Proceeds of crime
  - ✓ *Civil forfeiture*: recovery, preservation and forfeiture of assets,
  - ✓ Criminal assets recovery fund,
  - ✓ international assistance on investigations and recovery.
  - ✓ all cases of recovery of the proceeds of crime or benefits accruing from any predicate offence in money laundering,
- ASA has a mandate similar to EACC

# Public Audit act,2015

- Established under article 229 of the Constitution
- ✓ The Auditor General give assurance of the effectiveness of the internal controls, risk management and overall governance at national and county governments
- ✓ Independence of the office not to be subject to any other authority or order.
- ✓ Powers to obtain information(sec 21) authority to get information from a public body or any person in there custody
- ✓ Power to examine bank accounts(sec 22) through a court order
- ✓ Outsourcing of audit services(sec 23)
- ✓ KENAO reports to parliament on the audits.

# Public procurement and Asset Disposal act 2015

- Enacted to give effect to Article 227 of the Constitution in relation to procurement of goods and services and asset disposal.
- Recognizes the role of certain bodies in respect to public procurement and asset disposal:
- (National Treasury, Sec 6; Public Procurement Regulatory Authority, Sec 8; Public Procurement Administrative Review Board, Sec 27; County Government, Sec 33).
- To ensure compliance, Authority carries out investigations on its own initiative or upon request in writing by public institution or any person.
- PPRA Role is Referral.

# Other legislations to support the war on fraud and corruption

- Anticorruption and Economic crimes Division in the judiciary
- Witness protection Act-witnesses under threats
- Public Financial Management Act 2012-proper management of public funds
- Bribery Act 2016-bribery offences for public and private.
- Competition Act 2010-collusive tendering of private undertakings.
- National Intelligence Services act,2012-security intelligence and support and aid law enforcement agencies in detecting and preventing crime-vetting.
- National Police Service Act,2011-Directorate of Criminal Investigations (investigations on serious crimes economic crimes-Penal code of criminal law with abuse of office, stealing, frauds and false accounting offences)

# Challenges in enforcement of Fraud and corruption cases

- No institution can realise mandate independently
- *Standard of proof* for criminal cases is high.
- *Political influence*-retreat to tribal enclaves
- *Institutional rivalry*-winner take it all tendency
- *Societal cultural* problem-if its me it okay.
- *Witnesses*- fatigue and bribery
- *Integrity of the court process*-allegations of bribery
- *Ownership* of cases at the prosecution level
- *Length of time in courts*-courts workload, adjournments and legal objections.
- *Less sharing of information* between enforcement agencies
- Whistle blowers protection bill



# Why there is need for multi-agency approach?

- *Information analysis* of offenders and information sharing- Reporting of the suspicious transactions-FRC and other agencies
- *Capacity*:-Skills variation among the enforcement agencies, document examination.
- *Complexity of cases* with cross cutting offences-corruption and money laundering
- *Concurrent jurisdiction*-Asset recovery agencies-EACC and ASA(capacity)
- *Cross border nature* of crimes-police signals,MLA
- *Witness* identification, protection and accused repatriation.
- *Expedition of investigations* and prosecution(interagency teams)



# Multi agency approach in Kenya

- Currently there is a multiagency framework for handling corruption-Asset recovery Agency, DCI, EACC, CBK, FRC, ODPP, KRA, NIS, KWS, Immigration Department and AG.
- It uses the strengths of various institutional mandates to jointly trace and freeze assets, investigate corruption cases.
- The MA approach intends to introduce curricula and studies on leadership, ethics and integrity.
- The United Convention against corruption(UNCAC) has credited Kenya in expediting cases-NYS.

# Is multi agency approach effective?

- misuse of data-gutter press
- Risk during data retention associated with data theft and network security threats.
- Bureaucracy(consulting perpetually)
- Differing priorities of the various agencies
- Institutional problems that hinder effective coordination(frequent change of leadership)

# Conclusion

- Need to amend legislations to establish levels of links between agencies
- Need to have a data privacy legislation to guard against misuse by overzealous agencies.
- Leadership and culture of cooperation
- Uphold confidentiality of information.
- Empowering of institutions



**END**

**THANK YOU**