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# ETHICS IN PUBLIC FINANCE MANAGEMENT

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# OBJECTIVES

- a) Introduction
- b) Examples of corruption, economic crimes and unethical conduct allegations
- c) Investigations
- d) EACC Strategies to confront corruptions
- e) Offences
- f) Challenges of investigating corruption
- g) Way forward



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# INTRODUCTION

- Corruption is one of the major challenges facing the human race. It affects countries, corporations, institutions and individuals.
- Locally, Corruption allegations cut across public and private organizations, non-State Actors, different sectors of the economy and professions among others.
- There must be concerted and coordinated efforts from all stakeholders to deal with this menace.



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# INTRODUCTION

- Investigation, prosecution and recovery of corruptly acquired public property are essential components of the fight against corruption as they aim to deter corruption and ensuring those who engage in it are detected, prosecuted and assets recovered.
- The Government has put in place the legal and institutional framework to combat corruption, economic crime and unethical conduct.

# REGULATORY FRAMEWORK



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## Key Integrity and Anti-Corruption Laws

- The Constitution of Kenya- Chapter 12
- Anti-Corruption and Economic crimes Act, 2003
- The Public Officers Ethics Act, 2003
- Leadership and Integrity Act, 2012
- Bribery Act, 2016
- The Public Procurement and Asset Disposals Act, 2015
- Public Procurement and Disposal Regulations
- Public Finance Management Act, 2012
- Public Financial Management Regulations

# REGULATORY FRAMEWORK



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## Other laws dealing with corruption include:-

- The Public Audit Act, 2015
- The Accountant Act, 2008
- The State Corporations Act Cap 446
- Annual Appropriation Acts
- Government circulars issued from time to time
- The Company Act Cap 486.
- International Public Sector Accounting Standards (IPSAS)
- International Standards of Auditing (ISA)

# CORRUPTION & UNETHICAL CONDUCT



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- Bribery, kickbacks, nonpayment of taxes
- Procurement irregularities
- Public officials acquiring public property
- Channeling revenues to secret bank accounts
- Payment of goods / services / projects at exorbitant prices
- Payment for goods not supplied or projects not undertaken or not completed
- Receipt of allowances for trips / trainings not attended
- Use of government vehicles for private purpose
- Use of fictitious documents to account for expenses
- Irregularities / discrimination in recruitments-people not qualified, nepotism, based on ethnicity / county
- State/ Public officers assaulting colleagues and others



# CULTURE & CORRUPTION



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- Materialism-seeking after what they don't possess –cars, housing, clothing e.t.c
- Gifting and reciprocity-can be money, goods or services
- Power distance- between haves and have-nots
- Individualism-interest for individualism-greed
- Moral relativism-right or wrong is culturally based
- Instant gratification-focus on the now
- Mali ya Umma-public property-`its our turn to eat'
- Prosperity gospel
- Tribalism phrases `we are being finished', violence,
- Political assassinations, rigging of elections etc



# CAUSES AND PROMOTERS



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- Greed/self interest
- Poor remuneration
- Unprofessionalism
- Organizational culture
- Lack of supervision
- De-motivated staff
- Poor leadership-Tribalism, favoritism, nepotism and cronyism
- Cultural acceptance of corruption – tolerance for corruption
- Weak values Limited risks or exposure for punishment – inadequate controls, monitoring, detection and prosecution
- Weak institutions of governance -Wide authority and discretion, little or no accountability
- Availability of multiple opportunities for enrichment – in the procurement and revenue collection

# HIGH RISK AREAS OF CORRUPTION IN FINANCE



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All functional area in finance are prone to risk. Risk is however relative depending on nature of operations of the institution. However the most common risky areas include the following:

- Procurement of Goods and Services
- Payroll management
- Revenue and Debtors management
- Imprest management.
- Computerized financial management information systems.

# CORRUPTION AND UNETHICAL RISKS IN FINANCE



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- **Huge payments** made without raising vouchers; documentation after transaction have been illegally undertaken.
- **Variances** between final accounts statements and source records due to unexplained **omission** of entries and inaccurate accounts
- **Bureaucracy** – inefficiencies, complex systems
- **Slow /Lack of administrative action** in recovery of imprest and other advances
- **Incomplete keying in** of semi-computerized accounting system, Officers engaged in “Creative” accounting
- **Incorrect end of period adjustments or diversions of funds**

# CORRUPTION AND UNETHICAL RISKS IN FINANCE



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- **Under-collection & surrender of revenue and Appropriation in Aid, use at source**
- **Irregular expenditures and payment for Non-existent Goods/ services/Works**
- **Expenditure on stalled and abandoned projects/vehicles/ equipment**
- **Inappropriate authorization processes; favoritism especially suppliers payments**
- **Incompetency among staff member**
- **Failure to take responsibility or disciplinary action or inconsistencies in action.**

# CORRUPTION AND UNETHICAL RISKS IN FINANCE



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- Tyranny of ghosts: ghost projects, assets, liabilities, procurement, payroll etc.
- Investment of surplus funds without plans
- Favoritism- Nepotism, tribalism
- **Self-Dealing.** The practice of hiring one's own firm - or a firm belonging to close relatives or friends - to provide public services.
- **Prebendalism** - political systems where elected officials, and government officials feel they have a right to a share of government revenues, and use them to benefit their supporters, co-religionists and members of their ethnic group.
- In summary - **Abuse of office**



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# CORRUPTION AND UNETHICAL RISKS IN FINANCE

- Misappropriation and embezzlement
- **Shirking-** a widespread practice where public officials routinely come late to work, leave early, are routinely absent from work, or perhaps never come to work at all. AIE holders reporting only when cash has been disbursed.
- Patronage/ Political Corruption & Campaign Finance Improprieties.
- Abandoning existing infrastructure in favour of purchasing or renting at exaggerated costs
- Internal audit function under the control of management.
- Presence of staff with a history of corruption.



# STRATEGIES TO COMBAT CORRUPTION



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- Law enforcement –Investigation, recovery of assets and disruption, support prosecution and asset recovery.
- Prevention –Systems reviews and Corruption Risk Assessments (CRAs)
- Public education – IAO and CPC
- Promoting integrity and good governance –Leadership and Integrity Codes for State Officers and Codes of Conduct for Public Officers
- Establishing, maintaining and strengthen partnerships and networks against corruption and unethical conduct
- Support development of policy, legal and regulatory framework



# STRATEGIES TO COMBAT CORRUPTION



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## Institutional Capacity:

- Staff complement - 739;
- The Commission's regional presence was enhanced to twelve regions in the country (Nairobi, Mombasa, Malindi, Machakos, Nakuru, Kisumu, Kisii, Eldoret, Bungoma, Nyeri, Isiolo and Garissa)
- The Commission has presence in 49 Huduma Centres throughout the country.



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# 1. LAW ENFORCEMENT

## 1. Criminal Investigation:

Inquiry into a complaint, report or information that somebody known or unknown has committed an act or omission specifically prohibited by the law.

### Objectives of Criminal Investigations

- To establish if a criminal offence has been committed
- To detect and identify the offender
- To trace, identify and recover public property
- To produce the evidence against the offender in a court of law for (punishment and recovery)



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# 1. LAW ENFORCEMENT

Investigation into allegations of corruption, economic crimes and unethical conduct – 2017/2018

- 183 files on corruption and economic crimes completed and forwarded to DPP (135 for prosecution, 34 for closure and 14 for administrative action)
- 142 Sting operations
- Several investigations at different levels of completion



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# 1. LAW ENFORCEMENT

## 2. Tracing and recovery of unexplained and corruptly acquired public assets nationally and internationally: 2017/2018

- 14 Asset tracing files completed - Kshs 2.3 Billion
- Assets preserved for recovery - Kshs 2.6 Billion
- Civil suits filed for Recovery of Assets - 16 cases
- Assets Recovered - Kshs 352 Million
- Other ongoing asset tracing inquiries for illegally acquired public property



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# 1. LAW ENFORCEMENT

3. Disruption of corruption and economic crimes
  - Twelve (12) Proactive investigations which resulted in averting possible loss of public funds of approximately KES 4.7 Billion



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# 1. LAW ENFORCEMENT

4. Support prosecution of corruption, economic crimes and unethical conduct cases before Court
  - 414 Cases before several Courts and at different stages of trial
  - In 2017/ 2018, 49 cases completed in court resulting in 38 convictions and 11 acquittals.
  - 3 Anglo Leasing Type Security contracts cases before court- had stalled for over 12 years while others are under investigations
  - Other cases before court for Ministries, County Governments, other government agencies and companies among others
  - Persons charged in court – public and state officials in National and County Governments and directors and officials of contracting companies



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## 2. PREVENTION

Examination of systems, policies and procedures of public institutions and corruption risk assessments

- 2 systems reviews (Min. of Lands and Ports of entry)
- 8 corruption risks assessments undertaken in 8 county executives
- 734 advisories to public institutions
- Specialized groups like board members,
- Independent Commissions and Offices



### 3. PUBLIC EDUCATION



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- Aimed at preventing occurrence of corruption and unethical conduct
- Training of 1318 Corruption Prevention Committees - 81 institutions
  - Training of 1124 Integrity Assurance Officers - 137 institutions
  - Training of 322 Specialized groups like board members, Independent Commissions and Offices - 9 institutions

## 4. PROMOTING INTEGRITY



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Enforcement of chapter six of the Constitutions

- Investigation of unethical conduct – 8 cases before court
- Instituted several Petitions for removal of State Officers from office for violation of Chapter Six of the Constitution and the LIA.
- Review of codes of conduct- 47 in number
- 27 public entities trained on implementation of Chapter Six of the Constitution
- Facilitated 243 public entities to develop Specific Leadership and Integrity Codes for State Officers
- Developed and disseminated three Guidelines on Conflict of Interest, Gifts and Public Collections.
- Developed and gazetted the Leadership and Integrity Regulations, 2015



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# OFFENCES - ACECA

## Protection of public property - 45

- Fraudulent acquisition of public property – 45(1)(a)
- Failure to pay taxes – 45(1)(d)
- Making payment for sub-standard goods or goods not supplied – 45(2)(a)
- Willful failure to comply with any law or applicable procedures and guidelines relating to the procurement, management of funds - 45(2)(b)
- Conspiracy to commit an offence of corruption 47A
- Abuse of office - 46
- Conflict of interest - 42
- Bid rigging – 44
- Deceiving principal – 41



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# PENALTIES - ACECA

- Maximum fine 1M or 10 years imprisonment or both.
- Additional mandatory fine equal to 2 times the amount of benefit received/loss suffered by another or twice the sum of both benefit and loss;

## Administrative action

- Suspension at half pay, when charged
- Suspension without pay, if convicted pending outcome of appeal
- Dismissal from service, if appeal unsuccessful or if period for appeal lapses
- Disqualification from holding public office for ten years after conviction



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## OFFENCES – PFM Act

**196.** (1) A public officer shall not spend public money otherwise than authorized by the Constitution, an Act of Parliament or County legislation.

(2) A public officer shall not raise revenues other than in accordance with the Constitution, an Act of Parliament or an Act of a County Assembly.

(3) A public officer shall not enter into any obligation that has financial implications for the national government budget or a county government budget unless the obligation is authorised by the Constitution, an Act of Parliament or an Act of a County Assembly.



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## Offences by public officers.

(4) A public officer shall not borrow money, issue a guarantee, indemnity or security or enter into any other transaction that binds or may bind the national government entity or a county government entity to any future financial obligation, unless the borrowing, guarantee, indemnity, security or other transaction is authorised by this Act or by any other written law and, in the case of loans or guarantees, is within the limits provided under this Act.

(5) A public officer shall not direct another public officer to do an act that constitutes a contravention of, or a failure to comply with, this Act, the Constitution or any other written law.





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(6) A public officer who contravenes this section commits an offence and on conviction is liable to a term of imprisonment not exceeding **two years** or to a fine not exceeding **one million shillings**, or to **both**.

(7) Where a national government entity or a county government entity (a) engages in an action that it is prohibited from doing by this Act; or (b) fails to comply with an obligation imposed on it by this Act,

- a public officer who assisted or facilitated the act, or who was a party to, or contributed to, the failure, commits an offence and on conviction is liable to a term of imprisonment not exceeding **two years** or to a fine not exceeding **one million shillings**, or to **both** in addition to provisions under Article 226(5) of the Constitution.





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# Offences of financial misconduct.

**197.** (1) A public officer employed by the national government or a national government entity commits an offence of financial misconduct if, without lawful authority, the officer—

- (a) issues public government securities, or varies their terms and conditions;
- (b) opens a bank account in the name of the government;
- (c) lends money on behalf of the Government;
- (d) issues guarantees or indemnities on behalf of the Government;
- (e) issues securities for loans made to the government;
- (f) disposes of property belonging to, or under the control of that government or entity;



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- (g) fails to pay into a government bank account any public money entrusted to the officer or received by the officer for or on behalf of that government or that entity;
- h) incurs expenditure or makes a commitment on behalf of that government or entity;
- (i) incurs wasteful expenditure on behalf of that government or entity;
- (j) fails to deliver to that government or entity a gift or donation made on a public or official occasion in accordance with the Public Officers Ethics Act;
- (k) fails to provide any information in the officer's possession, or under the officer's control, in relation to the financial management, financial performance, or banking activities of that government or entity or in relation to the management or control of an asset or liability of that government or entity when required to do so;



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- (l) fails to keep proper records or conceals, or wrongfully destroys, information that is required to be recorded;
- (m) intentionally or recklessly obstructs or hinders a person while that person is acting in the performance or exercise of the person's functions or powers under this Act;
- (n) makes any statement or declaration, or gives any information or certificate, lawfully required by or under this Act knowing it to be false or misleading in a material respect;
- (o) for the purpose of procuring for the public officer or any other person or organisation—
  - (i) makes improper payment of public money belonging to or entrusted to that government or entity; or
  - (ii) makes improper use of any public property of that government or entity; or
- (p) fails to remit revenue received contrary to the provisions of sections 76(2) and 158(2) of this Act.



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## Other offences by public officers.

- 198.** (1) A public officer commits an offence if that officer—
- (a) takes possession of public funds or assets without lawful authority;
  - (b) misappropriates public funds or assets;
  - (c) conceals information on public finances to obtain a financial benefit either for the officer or another person; or
  - (d) engages in a corrupt act.
- (2) In this section, "corrupt act" includes soliciting or receiving an inducement.
- 199.** Except as otherwise provided by this Act, a person who is found guilty of committing an offence under this Act for which no other punishment is given, that person is liable on conviction to a term of imprisonment not exceeding **five years** or to a fine not exceeding **ten million shillings**, or to **both**



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# CHALLENGES OF DEALING WITH CORRUPTION

- Adverse Judicial decisions stopping certain processes - searches, warrants to investigate accounts
- Courts insist on direct evidence even where circumstantial evidence would suffice.
- Complex nature of some investigations- transnational crimes, off shore companies and middlemen
- Resource Constraints – staff shortage, specialized training and tools
- Delays in obtaining evidence from other jurisdictions
- Some service providers do not keep data for long.
- Collusion between suspects and witnesses to conceal nature and purpose of transactions





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# CHALLENGES OF DEALING WITH CORRUPTION

- Lack of verifiable information that is received from public servants or citizens
- Secret nature of corruption
- The 'absence of victims' that would come forward with information about an act of corruption ....
- In most of the cases, the bribe giver & receiver are happy & of course owing to the shame of corruption, all keep silent
- There are hardly any witnesses too, even those who report mostly do so because they are aggrieved



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## WAY FORWARD

- Enhanced enforcement of the law –intensify investigation - prosecution of culprits and recovery of unexplained and corruptly acquired assets in addition to prevention, public education and promotion of integrity.
- Cooperation and collaboration between law enforcement agencies and joint actions- prosecution for corruption, tax evasion, recovery of taxes – MAT framework.
- Strengthening legislation on corruption –stiff penalties, amend LIA to provide for effective implementation of Chapter 6. Establish National Ethics and Anti-Corruption Policy.





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## WAY FORWARD

- Additional anti-corruption magistrates, minimal transfers and push for timely adjudication of cases, timely disposal of judicial review and constitutional applications
- Sensitizing the citizens to support and own the war on corruption – public resources are their taxes.
- Close collaboration with stakeholders including non state actors - NGOs, Professionals bodies / societies, Religious Organizations, Media, Private Sector- have big influence and huge following/ membership to cause change



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## WAY FORWARD - ROLE OF INDIVIDUALS

- Abide by the Law
- Refuse to participate in any corrupt activity
- Mobilize people in your sector to resist & expose corruption
- Build a personal brand of integrity & professionalism-what do colleagues know you for?
- Strengthen probability of detection-be transparent in running office
- Protect highly vulnerable areas- (wet areas) stores, cash offices, records, project materials & resources, etc
- Permit proper management & oversight
- Role modeling & mentoring- teach by example
- Preach/educate the people about evils of corruption



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# WAY FORWARD - ROLE OF PROFESSIONALS

Accountants, lawyers, valuers, engineers, quantity surveyors  
procurement experts, human resource practitioners

- Not to engage in corruption or economic crimes – issuing certificates for works not done or shoddily done, issuing audit report / opinions on accounts not audited (for tender applications applications). Risk being charged in court
- Not to be conduits for proceeds of corruption or assist corrupt clients to launder proceeds of crime or assist in corrupt schemes
- Adhere to professional ethics; integrity, objectivity, professional competence & due care- public interest



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# WAY FORWARD - ROLE OF PROFESSIONALS

Accountants, lawyers, valuers, engineers, quantity surveyors  
procurement experts, human resource practitioners

- Disciplinary action on professionals who breach Codes of Ethics or engage in corruption - by Professional bodies, etc
- Report all cases of corruption and as an expert –support law enforcement- record statements, prepare report, testify. Bribery Act 2016 - Criminal offence not to report any knowledge or suspicion of corruption within 24 hours
- As a professional in public or private sector put / recommend measures to prevent bribery and corruption – Bribery Act 2016



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## PARTING SHOTS

*“Those who are corrupt prosper and are therefore often considered to be role models rather than those who retain their integrity but are poor and unsuccessful.”*

(Prof. Wangari Maathai - Nobel Peace Prize Laureate)



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## PARTING SHOTS

*“Corruption is worse than prostitution because, while the latter endangers the morals of an individual, the former endangers the morals of an entire country.”* (Karl Kraus - Writer)





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## PARTING SHOTS

*“Corruption is a kind of partnership though illicit, so too is the response to it, a partnership which is legitimate, desired and necessary.”* (Thabo Mbeki- 2005)



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