

FRAUDS AND CORRUPTION IN THE PUBLIC SECTOR – RELOOKING THE ROLE OF ACCOUNTANTS

PRESENTER

CPA JOHN LOLKOLOI

DEPUTY DIRECTOR

FORENSIC INVESTIGATIONS

ETHICS AND ANTI-CORRUPTION COMMISSION

**5th PUBLIC SECTOR ACCOUNTANTS CONFERENCE -
ICPAK**

OUTLINE

- a) Introduction
- b) Corruption and Economic Crimes Offences and penalties.
- c) Fraud and Corruption incidences in the Public Sector
- d) Strategies to Combat Fraud and Corruption
- e) Role of Accountants in combating Fraud and Corruption
- f) Challenges of dealing with Fraud and Corruption
- g) Proposals to address the challenges

REFLECTIONS

Robert M. Hutchin , President , University of Chicago to the 1935 Graduating Class commencement day

“My experience and observations lead me to warn you that the greatest , the most insidious , the most paralyzing danger you will face is the danger of corruption. Time will corrupt you, your friends, your wives or your husbands, your business or professional associates, your social, political and financial ambitions will corrupt you.

Getting on to be safe, to be sound, to be agreeable , to be inoffensive, to have no views on important matters not sanctioned by the majority, your supervisors or your group in the hope that we shall get on to some motion-picture paradise surrounded by fine cars, refreshing drinks and admiring ladies/ gentlemen.

Do not let practical men tell you to surrender your ideals because they are impracticable. Do not be reconciled to dishonesty, indecency and brutality. Take your stand now before time has corrupted you..”

DUBAI 1990



SAME STREET IN 2003



**Prudent
use of
resources
leads to
Transformation**

INTRODUCTION

- Corruption is a major challenge 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.

INTRODUCTION

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- The Government of Kenya has put in place the legal and institutional framework to combat fraud, corruption, economic crimes and other white collar crimes.

REGULATORY FRAMEWORK

Legislation on Fraud and Corruption

- The Constitution of Kenya 2010
- Anti-Corruption and Economic crimes Act, 2003
- Ethics and Anti-Corruption Act 2011
- 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
- Proceeds of Crime and Anti Money Laundering Act
- Mutual Legal Assistance Act, 2011

INSTITUTIONAL FRAMEWORK

Institutions charged with Combating Corruption, Fraud and other White Collar Crimes :-

- Ethics and Anti-Corruption Commission -EACC
- Directorate of Criminal Investigation -DCI
- ODPP –Office of Director of Public Prosecutions -ODPP
- Kenya Revenue Authority -KRA
- Financial Reporting Centre -FRC
- Asset Recovery Agency -ARA
- Central Bank of Kenya -CBK
- Office of the Auditor General -OAG
- Judiciary

DEFINITIONS

Fraud

Black's Law Dictionary defines fraud as:

...all multifarious means by which human ingenuity can devise, and which are resorted to by one individual to get an advantage over another by false suggestions or suppression of truth. It included all surprise, trick, cunning or dissembling, and any unfair ways by which another is cheated.

Put simply, fraud includes any intentional or deliberate acts to deprive another of property or money by guile, deception or other unfair means

DEFINITIONS

Elements of Fraud

- ❖ A material false statement
- ❖ Knowledge of its falsity
- ❖ Reliance on the false statement by the victim
- ❖ Damage suffered

DEFINITIONS

Principal categories of Fraud

- ❖ Misrepresentation of material facts
- ❖ Concealment of material facts
- ❖ Bribery
- ❖ Extortion
- ❖ Conflict of interest
- ❖ Forgery
- ❖ Theft of money or property
- ❖ Theft of trade secrets
- ❖ Breach of fiduciary duties
- ❖ Statutory offences

DEFINITIONS

Corruption

The Law (ACECA) does not define Corruption but states that Corruption is

- a) an offence ...under any of the provisions of Section 40-44, 46 and 47.
- b) Fraud
- c) Embezzlement or misappropriation of public funds
- d) Abuse of office
- e) Breach of trust
- f) Dishonesty in connection with any tax, rate or impost levied under any act, under any written law relating to election of persons to public office

DEFINITIONS

Economic Crime

The Law (ACECA) defines Economic Crime as

- a) an offence under Section 45 or
- b) An offence involving dishonesty under any written law providing for the maintenance or protection of the public revenue

OFFENCES - ACECA

- Fraudulent or unlawful 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
- Bribery – promising , giving , receiving of a financial or other advantages- Bribery Act 2016 Section 5 and 6

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 authorized by the Constitution, an Act of Parliament or an Act of a County Assembly.

OFFENCES – PFM ACT

196.

(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

(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**.

(i) incurs wasteful expenditure on behalf of that government or entity;

OFFENCES – PFM ACT

Other offences under PFM Act

- I. Failing to keep proper records or conceals, or wrongfully destroys, information that is required to be recorded;
- II. Making 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;
- III. Making improper payment of public money belonging to or entrusted to that government or entity; or
- IV. Improper use of any public property of that government or entity; or
- V. Failing to remit revenue received contrary to the provisions of sections 76(2) and 158(2) of this Act.

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

FRAUD AND CORRUPTION INCIDENCES IN THE PUBLIC SECTOR

National Gov –County Govs, Parastatals , Independent Commissions and other Government Entities

- Bribery, kickbacks,
- Conflict of interest
- Failure to pay taxes
- Procurement irregularities
- Public officials acquiring public property- acquire land for Government and using it to seek compensation –SGR , Over valuations
- 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
- Unexplained assets in possession of public officials
- Receipt of allowances for trips / trainings not attended
- Use of fictitious documents to account for expenses
- False accounting to conceal financial information

CULTURE & CORRUPTION

- Materialism-seeking after what they don't possess –cars, housing, clothing etc.
- 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

CAUSES AND PROMOTERS

- Greed/self interest
- Lack of professionalism
- 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

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.

STRATEGIES TO COMBAT CORRUPTION

- **Law enforcement** –Investigation, recovery of assets and disruption, support prosecution and asset recovery-EACC,DCI, ARA, AG, FRC,KRA
- **Prevention** –Systems reviews and Corruption Risk Assessments (CRAs)- EACC, OAG
- **Public education** – IAO and CPC- EACC, NACSC
- **Promoting integrity and good governance** –Leadership and Integrity Codes for State Officers and Codes of Conduct for Public Officers – EACC , NACSC
- **Establishing, maintaining and strengthen partnerships and networks** against corruption -EACC, DCI, DPP, ARA , FRC, AG ,OAG, KLIF, Non State Actors, Professional bodies and International Law Enforcement Agencies -FBI
- **Policy, Legal and Regulatory Framework**- EACC, AG, Parliament , other stakeholders

TRADITIONAL ROLES OF ACCOUNTANTS

- Maintain financial information in an organized manner- preparing financial statements
- Financial planning and budgeting
- Cost accounting
- Book keeping
- Giving Audit Opinion on financial statements
- Preparing payment vouchers, examining , authorizing payments
- Making payments
- Receipt of revenues
- Bank reconciliations

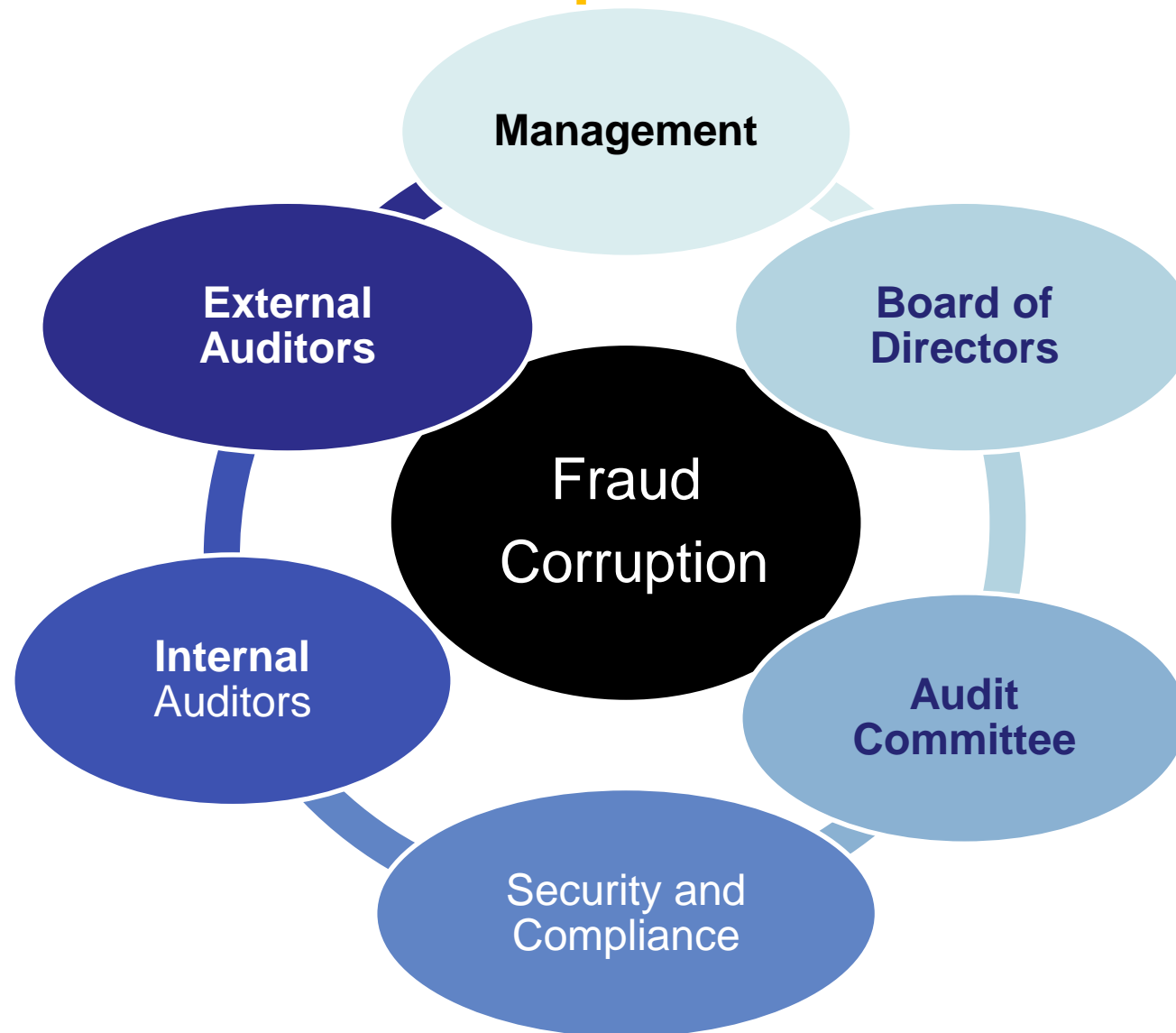
RE-LOOKING THE ROLE OF ACCOUNTANTS

1. Adhere to professional ethics; integrity, objectivity, professional competence & due care- public interest
2. Accountants to advise on best possible measures or policies to detect and prevent fraud and corruption
3. Accountants to be more vigilant and exercise due diligence in the execution of their duties to facilitate detection and exposure of fraud and corruption
4. Report all cases of corruption and support law enforcement- Bribery Act 2016 it is a criminal offence not to report any knowledge or suspicion of corruption within 24 hours
5. Disciplinary action on professionals who breach Codes of Ethics or engage in corruption – by the Professional body.
6. Accountants and the Institute's leadership to come out clearly and boldly to condemn fraud and corruption.

RE-LOOKING THE ROLE OF ACCOUNTANTS CONT'D

7. Not to engage in fraud , corruption or economic crimes - Risk being charged in court and disciplinary action by the professional body
8. Not to be conduits for proceeds of corruption or assist corrupt clients to launder proceeds of crime or assist in corrupt schemes
9. As a professional in public or private sector put / recommend measures to prevent bribery and corruption – Bribery Act 2016

Fraud and Corruption Control-Responsibilities



CHALLENGES OF DEALING WITH CORRUPTION

- Adverse Judicial decisions stopping certain processes - searches, warrants to investigate Bank accounts
- Slow judicial processes in determining cases
- Courts insist on direct evidence even where circumstantial evidence would suffice.
- Complex nature of some investigations- transnational crimes, off shore companies and middlemen
- Delays in obtaining evidence from other jurisdictions
- Collusion between suspects and witnesses to conceal nature and purpose of transactions

CHALLENGES OF DEALING WITH CORRUPTION

- Secret nature of corruption
- The ‘absence of victims’ that would come forward with information about an act of corruption e.g. in most of the cases, the bribe giver & receiver are happy & of course owing to the shame of corruption, all keep silent
- Collusion – among players including public official, suppliers and Banks in transactions

WAY FORWARD

- Enhanced enforcement of the law –intensify investigation - prosecution of culprits and recovery of unexplained and corruptly acquired assets.
- 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

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-

Conclusions

COK 2010- Article 73 –Responsibilities of Leadership

73(2)- The guiding principles of leadership and integrity include:

c) Selfless service based solely on the public interest ,
demonstrated by:

- honesty in the execution of public duties

d) Accountability to the public for decisions and actions

e) Discipline and commitment to the public for decisions and action

PARTING SHOTS

“Integrity , transparency and the fight against corruption have to be part of the culture. They have to be taught as fundamental values.”

Angel Gurría ,OECD Secretary General

