

\ VA Critique of Kenya Anti-Corruption Commission's Initiatives in  
Combating Corruption and its Implications for Education in the Light  
of Aristotelian Concept of Akrasia I

By

Wycliffe Amukowa

PROPERTY of NAIROBI  
AFRICANA COLLECTION

Thesis submitted in Fulfilment of the Requirements for the Award of  
Doctor of Philosophy of the University of Nairobi

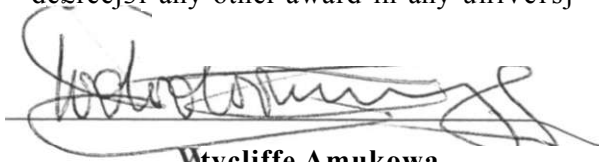
2010

University of NAIROBI Library

0472661 8

## Declarations

This thesis is my original work and it has not been submitted in support of any other award in any university



**Wycliffe Amukowa**

University of Nairobi

Department of Educational Foundations

This thesis has been submitted with our approval as university supervisors



**Dr. Samson O. Gunga**

University of Nairobi

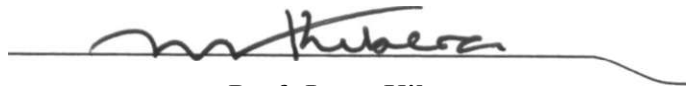
Department of Educational Foundations

*M uatZ*

**Dr. Henry E. Embeywa**

Kenyatta University

Department of Educational Communication and Technology



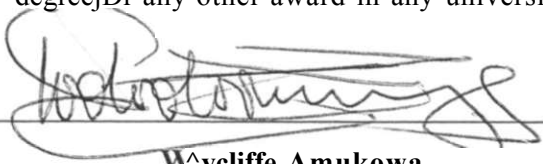
**Prof. Lucy Kibera**

University of Nairobi

Department of Educational Foundations

## Declarations

This thesis is my original work and it has not been submitted in support of a degree or any other award in any university



**Wycliffe Amukowa**

University of Nairobi

Department of Educational Foundations

This thesis has been submitted with our approval as university supervisors



1 / V ^

**Dr. Samson O. Gunga**

University of Nairobi


Department of Educational Foundations



**Dr. Henry E. Embeywa**

Kenyatta University

Department of Educational Communication and Technology



**Prof. Lucy Kibera**

University of Nairobi

Department of Educational Foundations

## **DEDICATION**

*To the memories and mind of my late father,  
Mr. Arthur Amukowa  
and the descendants of his family*

## ACKNOWLEDGEMENTS

This work is a synergetic product of many minds and its successful completion results from the interdependency on many great ideas. I am indebted to the inspiration, wisdom and the thinking of Aristotle, whose philosophical theorizations influenced my interest in the subject of akrasia.

I am grateful to the exemplary academic leadership and guidance of my supervisors. Dr. Samson Okuro Gunga, Dr. Henry Embeywa and Prof. Lucy Kibera, who made solid contributions through constructive critique and timely corrections to this study. I acknowledge the encouragement and guidance of Amb. Dr. Kipyego Cheluget. While I worked under him in the Ministry of Foreign Affairs, he always shaped my line of thought and gave me time off to write this work. In the same spirit I appreciate the support I got from H.E. Prof. Ruthie Rono, Ambassador, Kenya Embassy in The Hague, for giving me permission to be away to concentrate on this noble task. I am indebted to Amb. Prof. Philip Mwanzia, for his friendly and exceptional interest in my career and academics. Many thanks to Mr. Peter Kuria, who spent time doing the technical completion of this work.

Last but not least, I appreciate the support I got from the members of my family; my mother, Mrs. Paskalia Amukowa, Mrs. Rebecca Amukowa, Mrs. Salome Amukowa who are always there for me. I thank my wife Dorcas Jepchumba and my daughters Deidre Jerotich, Rebecca Osore and Pauline Kangogo, for withstanding the long times of loneliness occasioned by my absence from home. I thank my daughters for coping with the denial of freedom of play in the house to ensure a noise-free environment for my study.

*"May god %eep\*you aft, warm, safe and happy with each new day.*

## ABSTRACT

The causes and effects of corruption, and how to combat it, are issues that are attracting national and international agenda. On the international scene, the formation of the UN Convention against Corruption, the African Union Convention on Preventing and Combating Corruption, the UN Convention against Transnational Organized Crime, the UN Declaration against Corruption and Bribery in International Commercial Transactions, and the International Code of Conduct for Public Officials are self-explanatory testimonies.

Kenya was the first country worldwide to ratify the United Nations Convention against Corruption (UNCAC). She has also signed the African Union (AU) Convention on the Prevention and Combating of Corruption and has made considerable efforts towards vigorous enforcement of the Anti-Corruption and Economic Crimes Act, 2003 and the Public Officer's Ethics Act, 2003.

A striking anti-corruption initiative is the establishment of the Kenya Anti-corruption Commission in the year 2003. This constitutional establishment of KACC as a legal body to deal with incidences of corruption is an official admission that corruption is a serious problem in Kenya. Evidently therefore, the war against corruption is now a global concern and scholarly investigations need to pay closer attention to the development of theory and advancing research into unraveling the puzzle of corruption and relevant mechanisms towards its eradication.

This study investigated anti-corruption initiatives by the Kenya Anti-Corruption Commission (KACC) while seeking an educational model that could make solid contributions towards the fight against corruption. A synthesis of anti-corruption initiatives was done in light of Aristotle's concept of Akrasia and the role of education as an anti-corruption instrument analyzed in this context. In this regard, corruption was defined as the abuse of public office for private gain through misuse of the public power entrusted to an officer. Akrasia postulated as the lack of command over self in acting against one's better judgement. Better judgement has the import of choosing virtue against vice.

Within the context described in the preceding paragraphs, the objectives of this study were, to critically examine various anti-corruption initiatives by the Kenya Anti-corruption Commission, to investigate how educational practice could be useful in facilitating the fight against corruption in Kenya and to attempt the development of an educational model as an interventional\*}'

strategy in the fight against corruption. To achieve these objectives, the study applied the philosophical methods of inquiry, namely the Critical, the Analytical and the Speculative modes.

The study found out that despite considerable efforts by the Kenya Government to combat corruption, there seems to be no significant achievements as evidenced the high number of cases reported to KACC. It was established that the Anti-Corruption and Economic Crimes Act 2003 is not comprehensive in its definition of corruption and there is poor understanding of corruption by the public which is illustrated by the nature of reports made to KACC. It was further found out that some the provisions of the act establishing KACC are in contradiction with the Constitution of Kenya which has led to its being challenged in court. The study established that human beings have a tendency to break rules that they set to govern their conduct a theorization that led to the understanding that people will still engage in corruption despite being aware of their moral obligations and the legal implications of their acts. With regard to the practice of Anti-Corruption Education, the study established that KACC has not articulated the goals of Anti-Corruption Education in Kenya, which in turn have not been internalized by educational institutions. It was established that curriculum, teaching methodology and evaluation approaches for Anti-Corruption Education have not been articulated by KACC.

On the basis of the findings, the study recommends that there should be a policy within the practice of education that integrates anti-corruption education in the curriculum at all levels of education from primary to post secondary education. There should be a policy on the methodologies used to impart and instruct Anti-corruption Education and define training standards and curriculum development. The study further recommends that The Kenya Anti-Corruption and Economic Crimes Act 2003 should be reviewed to streamline departments of KACC to give it a broader mandate with differentiated responsibilities to attain a position of self-contained entity. The concept of corruption should be redefined to clarify the mandate of KACC to all stakeholders and KACC should adopt an educational model that would equip citizens with skills that are effective in being able to know how to act and translate this knowledge into action. The study recommends further research to identify other weaknesses that may make people to act akractically so as to enhance the fight against corruption.

## TABLE OF CONTENTS

<b>Title of the Study</b> .....	<b>i</b>
<b>Declaration</b> .....	<b>ii</b>
<b>Dedication</b> .....	<b>iii</b>
<b>Acknowledgements</b> .....	<b>iv</b>
<b>Abstract</b> .....	<b>v</b>
<b>List of Figures</b> .....	<b>xi</b>
<b>List of Abbreviations</b> .....	<b>xii</b>
<b>CHAPTER ONE</b> .....	<b>1</b>
<b>INTRODUCTION</b> .....	<b>1</b>
1.1 Background to the Study.....	1
1.2 Statement of the Problem.....	8
1.3 Objectives of the Study.....	9
1.4 Research Questions.....	9
1.5 Significance of the Study.....	9
1.6 Assumptions of the Study.....	10
1.7 Delimitations of the Study.....	10
1.8. Definition of Operational Terms.....	10
1.10 Organization of the Study.....	12
1.11 Chapter Summary.....	13
<b>CHAPTER TWO</b> .....	<b>14</b>
<b>REVIEW OF RELATED LITERATURE</b> .....	<b>14</b>
2.0 Introduction.....	14
2.1 The Meaning of Corruption and a Survey of its Most Common Forms.....	14
2.2. Forms of Corruption.....	16
2.2.1 Grand and Petty Corruption.....	17
2.2.2 Active and Passive Corruption.....	17
2.2.3 Bribery.....	18
2.2.4 Embezzlement, Theft and Fraud.....	20
2.2.5 Extortion.....	21
2.2.6 Abuse of Discretion.....	22
2.2.7 Favouritism, Nepotism and Clientelism.....	23
2.2.8 Conduct Creating or Exploiting Conflicting Interests.....	23
2.2.9. Improper Political Contributions.....	23



2. 3 Causes of Corruption.....	24
2.3.1 Taxation.....	26
2.3.2 Provision for Goods and Services at Below-Market Prices.....	26
2.3.3. Levels of the Bureaucracy.....	27
2.3.4 Level of Public Sector Wages.....	28
2.4 Impact of Corruption.....	29
2.5 Anti-corruption Initiatives in Kenya.....	31
2.5.1 The Kenya Anti-Corruption Authority (KACA).....	32
2.5.2 The Anti-corruption and Economic Crimes Act 2003.....	34
2.5. 3 Kenya Anti-Corruption Commission.....	35
2.5.3.1 Kenya Anti-corruption Commission's Advisory Board.....	35
2.5.3.2 Kenya Anti-corruption Commission.....	36
2.6.1 Economic Crimes Board.....	38
2.6.2 Economic Crimes Court.....	39
2.6.3 Parliament and corruption.....	40
2.6.4 Cabinet Committee on Corruption.....	40
2.6.5 Public Complaints Unit.....	40
2.6.6 Declaration of Assets and Wealth.....	41
2.6.7. Governance Dividend and the fight Against Corruption.....	41
2.6.8 Governance, Justice, Law & Order Sector Reform Programme.....	42
2.6.9 National Anti-Corruption Campaign.....	42
2.6. 10. The Public Officer Ethics Act, 2003.....	43
2.6. 11. International Legislation against Corruption.....	43
2.7.1 Goals of Anti- Corruption Education.....	43
2.7.2 Resolution on the Role of Education in Combating Corruption.....	48
2.7.3 Education International Declaration on Professional Ethics.....	50
2.8 Theorizing Akrasia as a Determinant of Human Conduct in Moral Obligations.....	54
2.8.1 An Overview of Aristotle's Theorization of Akrasia.....	56
2.8.2. Aristotle: The Two levels of Knowledge as a Basis of Understanding Akrasia.....	59
2.9 Studies Relating to Akrasia and Human Behaviour: Non-adherence.....	64
2.10. Conceptual Framework of the Study.....	67
2. 11 Summary of the Chapter.....	71
<b>CHAPTER THREE.....</b>	<b>72</b>
<b>RESEARCH METHODOLOGY.....</b>	<b>72</b>
3.0 Introduction.....	72
3.1 Research Design.....	73
3.2 The Analytical Method.....	73
3. 3 The Critical Method.*.....	75

3.4 Speculative Method .....	77
3.5 Summary' .....	78
<b>CHAPTER FOUR .....</b>	<b>79</b>
<b>KENYA ANTI- CORRUPTION COMMISSIONS' INITIATIVES IN FIGHTING CORRUPTION .....</b>	<b>79</b>
4.0 Introduction .....	79
4.1 Current Corruption Trends in the Country: A Critical Overview .....	79
4.2. KACC Strategies in the Fight against Corruption: A critical Overview .....	82
4.2.1 Law Enforcement (Investigation and Asset Tracing) .....	84
4.2.1.1 Reports Received by KACC .....	85
4.2.1.2 Investigations done by KACC .....	85
4.2.1.3 Asset Tracing Investigations .....	87
4.2.2 Cases Recommended for Recovery .....	88
4.2.3 Proactive Interventions by the Commission .....	88
4.2.4 Litigation and Asset Recovery .....	89
4.3 Kenya Anti-Corruption Commission's Prevention Initiatives .....	89
4.3.2 Review of Standard Tender Documents .....	90
4.3.3 Enhancing Good Governance in Local Authorities Procurement Systems .....	91
4.3.4 Management of Records in Public Institutions .....	91
4.3.5 Corruption Eradication Indicators for Performance Contracts .....	92
4.3.6 Integrity Awards Scheme .....	92
4.3.8 Integrity Assurance Officers (IAO) Training Programme .....	93
4.3.9 Corruption Prevention Committees (CPC) and Senior Management Training .....	94
4.3.10. Examination and Corruption Prevention Guidelines .....	94
4.4 KACC'S Education Initiatives to Fight Corruption .....	95
4.4.1 Public Education Initiative .....	95
4.4.2. Sectoral Integrity Education .....	95
4.5 Chapter Summary .....	96
<b>CHAPTER FIVE .....</b>	<b>97</b>
<b>A CRITIQUE OF THE KENYA ANTI-CORRUPTION COMMISSION'S INITIATIVES IN THE FIGHT AGAINST CORRUPTION .....</b>	<b>97</b>
5.0 Introduction .....	97

5.1 Successes of the Kenya Anti-Corruption Commission in the Fight against Corruption .....	97
5.1.1 Law Enforcement .....	98
a) Public Involvement and Co-operation .....	98
b) Support from other Government Sectors .....	100
c) Parliamentary Support .....	101
d) Civil Society Support .....	101
5.1.2 Investigations and Asset Tracing .....	102
a) Public Support .....	102
b) Parliament .....	103
c) International Support .....	103
5.1.3 Public Education .....	103
a) Schools .....	103
b) Community Based Organizations .....	104
c) Mass Media .....	104
5.2 Challenges Facing KACC'S Initiatives in the Fight against Corruption .....	105
5.2.1 Legal Challenges Facing KACC .....	105
a) The definition of corruption by the Act .....	105
b) Poor conception of the meaning of corruption .....	106
c) Limited KACC's Mandate with Regard to Law Enforcement .....	108
5.2.2 Operational Challenges Facing KACC .....	114
a) Operational Parameters .....	114
b) Co-ordination and Harmonization .....	115
c) Challenges facing the Investigations Initiative .....	117
d) Protection of Witnesses .....	118
e) Challenges in Anti-Corruption Education Programmes .....	119
5.8 Chapter Summary .....	122
<b>CHAPTER SIX .....</b>	<b>123</b>
<b>TOWARDS THE FOUNDATION OF EDUCATIONAL MODEL FOR ANTI-CORRUPTION INITIATIVES .....</b>	<b>123</b>
6.1 Introduction .....	123
6.2 The Precise Domains of Akrasia within Kenya Anti-Corruption Commission's Initiatives in the Fight against Corruption .....	123
6.2.1 Akrasia: An Overview .....	123
6.3.2 Aristotle's Conceptualization of Akrasia: An Overview .....	125

6.3.3 The Precise Domains of Akrasia .....	129
6.4 Educational Model and it Application to Anti-Corruption Initiatives .....	132
6.4.1 Anti-Corruption Education: An Understanding .....	140
6.4.2 The Curriculum Content for Anti-Corruption Education .....	141
6.4.3 Teaching Methodology of the Anti-Corruption Education .....	142
6.4.4 The Language of the Anti-Corruption Education .....	144
6.4.5. Evaluation of the Anti-Corruption Education .....	144
6.6 Chapter Summary .....	145
<b>CHAPTER SEVEN .....</b>	<b>146</b>
<b>SUMMARY, CONCLUSIONS AND RECOMMENDATIONS OF THE STUDY.....</b>	<b>146</b>
7.1 Summary of the Study .....	146
7.2. Findings of the Study.....	147
7.3 Conclusions of the Study.....	149
7.4 Recommendations of the Study.....	151
a) Educational Policy.....	152
b) Policy on Pedagogy.....	151
c) Strengthening KACC's Initiatives.....	151
d) Areas for Further Research .....	153
<b>REFERENCES.....</b>	<b>155</b>
 <b>LIST OF FIGURES</b>	
<i>Fig. 1 Schematic presentation of the Conceptual Framework.....</i>	<i>69</i>
<i>Figure 2: trends in corruption reporting for the period 2005/2006 and 2008/2009.....</i>	<i>99</i>
<i>Figure 3: Categorization of Corruption Reports by Action Taken.....</i>	<i>99</i>
<i>Fig. 4 Diagrammatic presentation the Anti-corruption model.....</i>	<i>133</i>

## **LIST OF ABBREVIATIONS**

**ACECA** - Anti-Corruption and Economic Crimes Act  
**APSEA** - Association of Professional Societies in East Africa  
**ASK** - Agricultural Society of Kenya  
**AU** - African Union  
**CBO** - Community Based Organizations  
**CDC** - Constituency Development Committee  
**CDF** - Constituency Development Fund  
**CEO** - Chief Executive Officer  
**CID** - Criminal Investigation Department  
**CPC** - Corruption Prevention Committees  
**CRA** - Corruption Risk Assessment  
**DANIDA** - Danish International Development Agency  
**DO** - Ditto  
**EDC** - Ethics Development Centre  
**EMU** - Efficiency Monitoring Unit  
**ENI** - Education for National Integrity  
**FiRe** - Financial Reporting  
**GITS** - Government Information Technology Services  
**GJLOS** - Governance Justice Law and Order Sector  
**GOK** - Government of Kenya  
**IAO** - Integrity Assurance Officers  
**ICDC** - Industrial Commercial and Development Corporation  
**ICPAK** - Institute of Certified Public Accountants of Kenya  
**ICT** - Information Communications Technology  
**IEC** - Information, Education and Communication  
**IFMIS** - Integrated Financial Management Information System  
**KACA** - Kenya Anti-Corruption Authority  
**KACC** - Kenya Anti-Corruption Commission

**KBC** - Kenya Broadcasting Corporation  
**KCSE** - Kenya Certificate of Secondary Education  
**KEMSA** - Kenya Medical Supplies Agency  
**KIA** - Kenya Institute of Administration  
**KNAD** - Kenya National Archives and Documentation Services  
**KENAO** - Kenya National Audit Office  
**KNEC** - Kenya National Examinations Council  
**KNH** - Kenyatta National Hospital  
**KPC** - Kenya Pipeline Corporation  
**KPLC** - Kenya Power and Lighting Company  
**KPLC-RBFS** - Kenya Power and Lighting Company Retirement Benefit Fund Scheme  
**KRA** - Kenya Revenue Authority  
**KRB** - Kenya Roads Board  
**KRWU** - Kenya Railways Workers Union  
**KTN** - Kenya Television Network  
**KUSCCO** - Kenya Union of Savings and Credit Co-operatives  
**KWS** - Kenya Wildlife Sendees  
**LATF** - Local Authority Transfer Fund  
**MOU** - Memorandum of Understanding  
**NACP** - National Anti-Corruption Plan  
**NCC** - Nairobi City Council  
**NEW KCC** - New Kenya Cooperative Creameries  
**NGO** - Non Governmental Organization  
**NHIF** - National Hospital Insurance Fund  
**NSIS** - National Security Intelligence Service  
**NSSF** - National Social Security Fund  
**OCS** - Officer Commanding Station  
**PAC** - Public Accounts Committee  
**PCID** 7 Prevention Coalitions and Intervention Department

**PIC** - Public Investment Committee  
**PIEC** - Professional Integrity and Ethics Committee  
**PSIP** - Public Service Integrity Programme  
**REP** - Representative  
**REPPS** - Research, Education, Policy and Preventive Service  
**RVIST** - Rift Valley Institute of Science and Technology  
**SACCO** - Savings and Credit Co-operative  
**TLB** - Transport Licensing Board  
**TOT** - Training of Trainers  
**TRAG** - Training, Research, Advocacy & Governance  
**UNCAC** - United Nations Convention Against Corruption  
**UNDP** - United Nations Development Programme  
**VAT** - Value Added Tax

# CHAPTER ONE

## INTRODUCTION

### 1.1 Background to the Study

This study critiqued the efforts made by the Kenya Anti-Corruption Commission (KACC) in the fight against corruption while seeking an interventional educational model that could make significant contributions to the spirit and results of anti-corruption initiatives. The choice of KACC was motivated by its constitutional mandate to investigate, research and educate the public in fighting corruption. A synthesis of anti-corruption initiatives was done in the light of Aristotle's concept of Akrasia and the role of education as an anti-corruption tool analyzed in this context. For the purposes of this study, corruption is defined as the abuse of public office for private gain through misuse of public power entrusted to an officer, while Akrasia is taken to mean lacking command over self in acting against one's better judgement as theorized by Aristotle (1952). Better judgement has the import of choosing virtue against vice.

According to the Kenya Anti-Corruption Commission (2007), unprecedented efforts have been made to raise awareness about corruption, its insidious nature and the damaging effects it has on the welfare of entire nations and their peoples. As Bardhan (1997) noted, corruption not only distorts economic decision-making, it also deters investment, undermines competitiveness and ultimately weakens economic growth. Indeed, according to Johnston (1997), the social, legal, political and economic aspects of development are all linked, and corruption in any one sector impedes development in them all.



As observed by Heidenheimer and Michael (2002), there is now increasing recognition throughout the public and private sector that corruption is a serious obstacle to effective government, economic growth and stability. Consequently, effective anti-corruption policies and legislations are urgently required at the national and international level.

KACC (2008) notes that efforts towards capacity building to combat corruption are still in their infancy stages in most countries, and reliable information about the nature and extent of domestic and transnational corruption is difficult to obtain. The problems of corruption are compounded by the very broad nature of the phenomenon and lack of consensus about legal or criminological definitions that could form the basis of international comparative research.

According to the United Nations (2001), corruption can be found in all walks of life. It hinders economic development, diverts investments in infrastructure, institutions and social services and also undermines efforts to achieve other country specific targets. As a result, the UN notes that the international community has become increasingly concerned with the problem of corruption and its negative impact on economic growth and poverty alleviation (UN, 2001:112).

The World Bank (1997) points out that development partners, international organizations, non-governmental organizations and academic experts on corruption have advocated for an integrated and comprehensive approach to fighting corruption around the globe. This- includes; introducing new or amended legislation aimed at reducing opportunities for public officials to build alliances with other governments in the struggle against corruption by

signing international anti-corruption agreements; and the implementation of anti-corruption programmes.

Action against corruption is high on the global agenda and anti-corruption efforts by the international community have led to the establishment of global and regional initiatives to fight corruption. Among them are the UN Convention against Corruption; the African Union Convention on Preventing and Combating Corruption; the UN Convention against Transnational Organized Crime; the UN Declaration against Corruption and Bribery in International Commercial Transactions; and the International Code of Conduct for Public Officials.

The United Nations Convention against Corruption, finalised on 30<sup>th</sup> September 2003 and adopted by the General Assembly in its resolution 58/4 of 31 October 2003, represents a major step forward in the global fight against corruption, and in particular in the efforts of UN Member States to develop a common approach to both domestic efforts and international cooperation. Through the Convention, the UN urges all Member States and competent regional economic integration organizations to sign and ratify the United Nations Convention against Corruption as soon as possible in order to ensure its rapid entry into force (UN, 2004:If).

The UN Convention can be seen as the most recent in a long series of developments in which experts have recognised the far-reaching impact of corruption and the need to develop effective measures against it at both the domestic and international levels. It is now widely accepted that measures to address corruption go beyond criminal justice systems. They should include the establishment and maintenance of the most fundamental structures of good governance, including strengthening of domestic and regional security. Other spheres of anti-corruption initiatives cover ensuring the rule of law and the existence of social and economic structures that are effective and responsive

in dealing with problems, and which use available resources as efficiently as possible.

The gradual understanding of both the scope and seriousness of the problem of corruption can be seen in the evolution of international action against it. This has progressed from general consideration and declarative statements, to the formulation of practical policy proposals, and the development of binding legal obligations and the emergence of numerous cases in which countries have sought the assistance of one another in the investigation and prosecution of corruption cases and the pursuit of proceeds. The States Parties to this UNCAC agreed to promote and strengthen measures to prevent and combat corruption more efficiently and effectively. The State Parties also agreed to promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including asset recovery and to promote integrity, accountability and proper management of public affairs and public property (UN, 2003: 5ff).

The Convention contains a compendium of preventive measures which go far beyond those of previous instruments in both scope and detail. This reflects the importance of prevention of corruption and the wide range of specific measures which have been identified by experts in recent years. Specific requirements include the establishment of specialized procedures and bodies to develop domestic prevention measures; private-sector prevention measures; measures directed at general prevention in the public sector as well as at specific critical areas such as public procurement and financial management and the judiciary; and measures to prevent money-laundering.

The Convention calls on State Parties to establish or maintain legislation against a series of specific criminal offences including not only long-

established crimes such as various forms of bribery and embezzlement, but also conduct which may not already be criminalised in many States.

Other measures found in the Convention include offences relating to obstruction of justice (Art.25) and money laundering (Art.23). State Parties are called upon to ensure establishment of jurisdiction to prosecute (Art.42), the seizing, freezing and confiscation of proceeds or other property (Art.31) protection of witnesses, experts and victims and others. Art.32-33 calls for measures on matters relating to investigations and prosecutions (Art.36- 41), and the requirement that some form of civil, criminal or administrative liability must be established for legal persons (Art.26).

Through the African Union Convention on Preventing and Combating Corruption (AUCPCC), the member states agreed on several anti-corruption measures; one is the promotion and strengthening of mechanisms required to prevent, detect, punish and eradicate corruption and related offences in the public and private sectors and the other is promote, facilitate and regulate cooperation among the State Parties to ensure the effectiveness of measures and actions to prevent, detect, punish and eradicate corruption and related offences in Africa. Another one is coordination and harmonization of policies and legislation between State Parties for the purposes of prevention, detection, punishment and eradication of corruption on the continent. Besides, this Convention was intended to promote socio-economic development by removing obstacles to the enjoyment of economic, social and cultural rights as well as civil and political rights; it was also to establish the necessary conditions to foster transparency and accountability in the management of public affairs (AU, 2003:1).

According to GoK (2004), Kenya ratified United Nations Convention against Corruption (UNCAC) on Dec 2003 and was the first country worldwide to

sign this treaty. The Kenya Government also signed the African Union Convention on the Prevention and Combating of Corruption (AUCPCC) (GoK, 2005). Kenya has made great strides in the fight against corruption; key among them is the publishing of the Witness Protection Act to provide for protection of whistle-blowers in line with the UNCAC. There are also vigorous measures for the enforcement of the Anti-Corruption and Economic Crimes Act, 2003 and the Public Officer's Ethics Act, 2003 (KACC, 2007).

KACC (2006) lists other initiatives undertaken by the Government of Kenya (GK) in the fight against corruption as: the abolition of harambees (public fund raising) in government offices and the proscription of public servants from presiding over harambees. Initiatives to end illegal and fraudulent land allocations in Kenya have also been put in place and the establishment of commissions of inquiry with mandates and responsibilities to address and resolve significant existing problems have been formed. For example, the Commission of Inquiry into the Goldenberg Affair and the Commission of Inquiry into Land-grabbing in Kenya referred to as the Ndung'u Land Commission were established. The purge on the Judiciary to weed out corrupt elements from the seat of Justice and the introduction of a professional and performance-driven, results-based, management style of government have also been put in place.

The Kenya Government further undertook an overhaul of the administration of state corporations or parastatals and semi-autonomous government agencies through execution of service charters, performance contracts by chief executive officers and the implementation of a Monitoring and Evaluation system by the central government. The return to meritocracy in public sector appointments, Enhancement and improvement of democratic space, transparency and accountability in all public institutions in Kenya, legislative

reforms geared towards combating corruption such as the Public Procurement and Disposal Act, 2005 and The Privatization Act, 2005 were carried out.

In 2003, the Kenya Government published the Anti-corruption and Economic Crimes Act, 2003, which led to the establishment of Kenya Anti-corruption Commission (KACC 2003). KACC became the main government statutory agency mandated to fight corruption in Kenya. Under section 5, the Act establishes the Commission.

Specifically, the Act provides that: (1) The Kenya Anti-Corruption Commission is established as a body corporate. (2) The Commission shall have all the powers necessary or expedient for the performance of its functions. (3) Without limiting the generality of subsection (2), the Commission shall have perpetual succession and a common seal and shall be capable of-(a) suing and being sued in its corporate name; and (b) holding and alienating moveable and immovable property (Kenya Anti-Corruption and Economic Crimes Act, 2003:9f). This Constitutional establishment of KACC as a legal body to deal with incidences of corruption is indeed an official admission that corruption is a serious problem in Kenya.

Despite the initiatives being undertaken by KACC, several reports show that there is no reduction in cases of corruption in Kenya. According to Transparency International (2006), Kenya remains in the bottom 10% of Transparency International's Corruption Perception Index (CPI), an indicator that Kenya is one of the world's most corrupt countries. Indeed, Kenya has been ranked 144<sup>th</sup> out of 159 countries for corruption. In its latest report on corruption, TI (2009) ranks Kenya the most corrupt country in East Africa.

As Kivutha and Oketch-Owiti (2005) observed, this poor performance of public institutions in Kenya has led to diminished public confidence in the

various initiatives aimed at addressing corruption. Indeed, the director of the KACC concedes that negative public perception of the work of KACC is a challenge (Ringera 2007). The public seems dissatisfied with the work of the Commission and perceive the Commission as targeting only minor offenders while most big time corrupt individuals are perceived to be untouchable (report refers to this as "Small fish" and "Big fish").

The intricacies of corruption as examined above present massive puzzles for philosophical inquiry. Indeed, there is need for academic research to take a leading role in unraveling these puzzles of corruption and stimulate efforts towards its eradication.

## **1.2 Statement of the Problem**

As noted in the background to this study, continued cases of corruption in Kenya are causing great concern. Despite the numerous anti-corruption initiatives, cases of corruption continue to abound. According to Njoroge (1988), nations have been observed to falter in their development, not because of lack of knowledge and technology, but due to defects in human character.

Irrefutable evidence suggests that corruption has severe negative effects on the development of a nation, yet there seems to be no apparent significant achievement in the fight against corruption in Kenya (T.I, 2006). Anti-corruption initiatives could perhaps begin with the acknowledgement of man's inability to actualize perfection. It is important that man should clearly know how to act as well as have the Will to act.

This study critically examined the effectiveness of Kenya Anti-corruption Commission to eradicate corruption. It also sought to develop an educational model of intervention in the fight against corruption.

### **1.3 Objectives of the Study**

- i) To critically examine the various anti-corruption initiatives which have been taken by Kenya Anti-corruption Commission in combating corruption.
- ii) To investigate how educational practice could be useful in facilitating the fight against corruption in Kenya.
- iii) To attempt the development of an educational model as an interventionary medium in the fight against corruption.

### **1.4 Research Questions**

- i. What challenges have hampered the anti-corruption initiatives of KACC?
- ii. What pedagogic approaches would best inform the practice of Anti-Corruption Education in Kenya?

### **1.5 Significance of the Study**

This study seeks to have complimentary relevance to efforts of the following institutions charged with the fight against corruption and public moral development:



- i. Kenya Anti-corruption Commission: The Commission has the mandate to educate the public on the fight against corruption. This study suggests pedagogic guidelines that the Commission may use to effectively carry out this mandate.
- ii. Educational Institutions: The model of educational intervention in the fight against corruption suggested in this study provides insights that educational institutions could use within the practice of education for the development of public morality.

### **1.6 Assumptions of the Study**

- i. The study assumes that education has a transforming function in the fight against corruption.
- ii. Human beings have the capacity to distinguish between virtue and vice.

### **1.7 Delimitations of the Study**

This is a philosophical study that employs the critical method in combination with the method of Rational Reflection. It does not therefore employ or appeal to statistical methods of social science research.

### **1.8. Definition of Operational Terms**

**Akrasia:** Is a Greek word that implies lack of command over self in acting against one's better judgement. In this study it has the import of choosing virtue against vice.

**Anti-corruption:** An approach employed to counter the occurrence of corruption. It is the deliberate attempt to put mechanisms in place so as to deter corruption.

**Anti-Corruption Education:** Is the practice of promoting values, attitudes and expectations that condemn corruption, and skills to resist it. In this study it leans towards the development people's understanding of their rights and responsibilities for preserving the public good.

**Attention:** The ability to focus selectively and concentrate some features of the environment to the (relative) exclusion of others. In this study it inclines towards being focussed on the need to eradicate corruption.

**Authenticity:** In this study it refers to the qualities of being genuine and trustworthy with regard to the need to refrain from corruption

**Awareness:** Consciously informed. In this study it has the import of having knowledge.

**Better Judgement:** In this study it is taken to the rational decision in choosing against vice.

**Commission:** A legally constituted body with mandate to investigate.

**Corruption:** Is contextualized as the abuse of public office for private gain through misuse of power.

**Curriculum:** set of courses, and their content, offered at a school or university.

**Duty:** An obligation entrusted to someone by virtue of status. The study contextualizes it with regard responsibilities within public offices.

**Economic crime:** an offence involving dishonesty under any written law providing the maintenance or protection of the public revenue. In this study it inclines towards corruption.

**Education:** A process of transmitting knowledge, skills and attitudes to facilitate desirable character.

**Ethical:** Acceptable as part of an organizational culture. In this study it has emphasis on moral values<sup>^\*</sup>

**Evil:** Morally unacceptable. It has the import of being morally harmful.

**Good:** Desirable and morally acceptable. Has inclination towards acceptability by the society.

**Habitual-Self:** Is what a person does in his/her daily life.

**Ideal-Self:** Is what a person wants to be. In this study it inclines towards a person who is free from engaging in corruption.

**Initiatives:** Efforts towards an achievement. In this study it focuses on efforts towards stopping corruption.

**Knowledge:** Justified true beliefs that portray a state of awareness.

**Law enforcement:** Instil law through prosecution.

**Legislation:** Constitutional rules, regulations or laws.

**Locus standi:** The ability of a party to demonstrate to the court sufficient connection to and harm from the law or action challenged to support that party's participation in the case.

**Pedagogy:** Social intercourse in the course of teaching and learning.

**Public officer:** An officer, employee or member of a public body.

**Real-self:** Is what a person is. In this study it inclines towards being corrupt or not.

**Will:** Inner-self or conscience

## **1.10 Organization of the Study**

Chapter One provides the contextualization of the study in which the background, problem, objectives and research questions are the main items. The chapter also presents significance, assumptions, delimitations and research methodology of the study. Chapter Two reviews literature related to the research problem. It explores and analyses studies and previous research and discourse on corruption; definition, forms and causes, anti-corruption initiatives, both global and local. Towards the end, the chapter presents an understanding of Akrasia as theorized by Aristotle before finally proposing a conceptual framework for this study. Chapter Three discusses KACC's initiatives in fighting corruption while Chapter Four critically examines the efficacy of the (KACC's) initiatives in the fight against corruption. Chapter Five discusses the foundations of an educational model for anti-corruption, while Chapter Six presents the summary, conclusions and recommendations of the study.

## **1.11 Chapter Summary**

This Chapter provides an introduction of the study, in the Background to the Study, Statement of the Problem, Objectives of the Study, Research Questions and Methodology of the Study are the main components. The Chapter also gives Significance, Assumptions and Delimitations of the Study. It is apparent from the chapter that there is need to intensify anti-corruption initiatives in the light of its effects to the society.

## CHAPTER TWO

### REVIEW OF RELATED LITERATURE

#### 2.0 Introduction

This chapter deals with the review and analysis of studies and literature related to corruption, its definition, forms and causes. It also explores various anti-corruption initiatives, both global and local with special reference to KACC's anti-corruption initiatives. Further, it discusses the concept of Akrasia under various sub-themes and finally concludes with a conceptual framework that forms the basis of the study.

#### 2.1 The Meaning of Corruption and a Survey of its Most Common Forms

The term "corruption" is used as a shorthand reference for a large range of illicit or illegal activities. Although there is no universal or comprehensive definition as to what constitutes corrupt behaviour, the most prominent definitions share a common emphasis upon the abuse of public power or position for personal advantage. *The Oxford Unabridged Dictionary (2002)* defines corruption as perversion or destruction of integrity in the discharge of public duties by bribery or favour while *Merriam Webster's Collegiate Dictionary(2006)* defines corruption as inducement to wrong by improper or unlawful means (as bribery).

The succinct definition utilized by the World Bank (1997) is: "the abuse of public office for private gain." This definition is similar to that employed by Transparency International (TI 2006), the leading NGO in the global anticorruption effort, it (TI) maintains that corruption involves behaviour on

the part of officials in the public sector, whether politicians or civil servants, in which they improperly and unlawfully enrich themselves, or those close to them, by the misuse of the public power entrusted to them.

Muthomi (2006) argues that the conception of corruption varies among scholars. The narrowest understanding of corruption sees the vice as the abuse of public office for private gain. Muthomi however notes that broadly defined, corruption is the abuse of not only public office but also private or commercial office for private gain. It invariably involves giving something to someone in a position of power either in government or in a corporation, so that he will (ab)use his power and act in a manner favouring the giver. It involves the offering, giving, soliciting or acceptance of an inducement or reward, which may influence the action of any person. (Muthomi, 2006:2)

According to Ruhiu (n.d), a definition of corruption depends on one's own experience. However, whichever way one looks at it, it is a moral disease that permeates all the levels of society. According to Procter (1980), corruption is a behaviour that is not honest or legal by people in official positions.

Van Tulden, Frank, and van der Torre (1997) observe that there is no single, comprehensive, universally accepted definition of corruption. Attempts to develop such a definition invariably encounter legal, criminological and, in many countries, political problems. Indeed, this observation is well illustrated by the efforts of the UN to define corruption. According to Monica (2004) when the negotiations of the United Nations Convention against Corruption began in early 2002, one option under consideration was not to define corruption at all but to list specific types or acts of corruption. Monica observed that proposals to require countries to criminalize corruption mainly covered specific offences, or groups of offences that depended on what type of conduct was involved, whether those implicated were public officials, whether

cross-border conduct or foreign officials were involved, and if the cases related to unlawful or improper enrichment (Monica, 2004:66).

According to the Kenya Anti-Corruption and Economic Crimes Act 2003, corruption means an offence that involves bribery, fraud, embezzlement or misappropriation of public funds, abuse of office, breach of trust; or an offence involving dishonesty- in connection with any tax, rate or import levied under any Act; or under any written law relating to the elections of persons to public office; (The Anti-Corruption and Economic Crimes Act, 2003:4f).

What emerges from the attempts to define corruption as reviewed above is that there seems to be no consensus on what really corruption is. In fact, as it emerges from the the Anti-Corruption and Economic Crimes Act 2003 in Kenya, corruption is synonymous with bribery, embezzlement or any such action as contained in the Act. This implies that anti-corruption initiatives are being directed towards something unknown. This Study henceforth noted that lack of conceptual clarity, could perhaps be one cause for the supposed failed attempts to fight corruption. Consequently, this study attempts a conceptual clarification of corruption.

## **2.2. Forms of Corruption**

Murphy, Shleifer and Vishny (1991) argued that corruption is better understood through its various manifestations. They noted that many specific forms of corruption are clearly defined and understood, and are the subject of numerous legal or academic definitions. Miller (2001) agreed with Murphy, Shleifer and Vishny (1991) and adds that many of the forms of corruption are criminal offences, although in some cases governments consider that specific forms of corruption are better dealt with by regulatory or civil law controls.

Muthomi (2006) argues that corruption manifests itself in one or more of various forms, viz. bribery, extortion, fraud, embezzlement and other forms of malfeasance by public or corporate officials. He maintains that though universal in its existence, the pervasiveness of corruption varies across nations and organizations. Corruption occurs in different forms, in different types of organizations and at different levels. Typologies of corruption include Grand Corruption, Political Corruption, Corporate Corruption, Administrative Corruption and Petty Corruption. Petty corruption is the common man's version of corruption. It is said that petty corruption involves small sums paid to low-level officials to "grease the wheels" or cut through bureaucratic red tape (Muthomi, 2006: 4). This section discusses in detail, some of the forms of corruption mentioned above in the sub-sections that follow.

### **2.2.1 Grand and Petty Corruption**

According to TI (2007), Grand corruption is corruption that pervades the highest levels of a national government, leading to broad erosion of confidence in good governance, the rule of law and economic stability. Petty corruption can involve the exchange of very small amounts of money, the granting of minor favours by those seeking preferential treatment or the employment of friends and relatives in minor positions (TI). The most critical difference between grand corruption and petty corruption is that the former involves the distortion or corruption of the central functions of government, while the latter develops and exists within the context of established governance and social frameworks.

### **2.2.2 Active and Passive Corruption**

Rose-Ackerman (1999) argues that in discussions of transactional offences such as bribery, "active)ribery" usually refers to the offering or paying of the



bribe, while "passive bribery" refers to the receiving of the bribe. In criminal law terminology, the terms may be used to distinguish between a particular corrupt action and an attempted or incomplete offence. For example, "active" corruption would include all cases where payment and/or acceptance of a bribe have taken place. According to UN (2004), it does not include cases where a bribe was offered but not accepted, or solicited but not paid. In the formulation of comprehensive national anti-corruption strategies that combine criminal justice with other elements, such distinctions are less critical. Nevertheless, care should be taken to avoid confusion between the two concepts.

### **2.2.3 Bribery**

Simis (1982) argues that bribery is the bestowing of a benefit in order to unduly influence an action or decision. It can be initiated by a person who seeks or solicits bribes or by a person who offers and then pays bribes. Anechiarico and Jacobs (1998) note that bribery is probably the most common form of corruption known. Definitions or descriptions appear in several international instruments, in the domestic laws of most countries and in academic publications. The "benefit" in bribery can be virtually any inducement: money and valuables, company shares, inside information, sexual or other favours, entertainment, employment or, indeed, the mere promise of incentives. The benefit may be passed directly or indirectly to the person bribed, or to a third party, such as a friend, relative, associate, favourite charity, private business, political party or election campaign (Anechiarico & Jacobs, 1998:78).

According to Ades & Di Tella (1997), the conduct for which the bribe is paid can be active: the exertion of administrative or political influence or it can be passive: the overlooking of some offence or obligation. Bribes can be paid

individually on a case-by-case basis, or as part of a continuing relationship in which officials receive regular benefits in exchange for regular favours. Ades & Di Telia maintain that in jurisdictions where criminal bribery necessarily involves a public official, the offence is often defined broadly to extend to private individuals offered bribes to influence their conduct in a public function, such as exercising electoral functions or carrying out jury duty (Ades & Di Telia, 1997:38).

Baker (2005) holds that public sector bribery can target any individual who has the power to make a decision or take an action affecting others and is willing to resort to bribery to influence the outcome. Politicians, regulators, law enforcement officials, judges, prosecutors and inspectors are all potential targets for public sector bribery.

Provisions that define or criminalize bribery include: article 8 of the UN Convention Against Transnational Organized Crime, GA/Res/55/25, Annex and article VI of the Inter-American Convention against Corruption of 29 March 1996 (OAS Convention), which require parties to criminalize offering of or acceptance by a public official of an undue advantage in exchange for any act or omission in the performance of the official's public functions. Article 1 of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and Article VIII of the OAS Convention require parties to criminalize the offering of bribes by nationals of one state to a government official of another in conjunction with a business transaction.

Articles 2 and 3 of the European Union Convention on the Fight Against Corruption Involving Officials of the European Communities or officials of member states of the European Union, Journal C 195, 25/06/1997, pp.2- 11 (1997), requires parties to criminalize the request or receipt by a public

official of any advantage or benefit in exchange for the official's omission in the exercise of his functions ("passive bribery"), as well as the promise or giving of any such advantage or benefit to a public official ("active bribery"). The Council of Europe's Criminal Law Convention on Corruption (ETS No. 173 (1998)), goes further by criminalizing "active" and "passive" bribery of, inter alia, domestic public officials, foreign public officials, domestic and foreign public assemblies, as well as private sector officials, trading in influence and account offences.

#### **2.2.4 Embezzlement, Theft and Fraud**

As noted by Ferrero and Brosio (1997), in the context of corruption, embezzlement, theft and fraud, all involve the taking or conversion of property or valuable items by an individual who is not entitled to them by virtue of his or her position or employment, has access to them (2001), holds that a number of recent international legal instruments sought to ensure that parties have offences addressing this type of crime with varying degrees of specificity. These include the Organization of American States' Inter-American Convention against Corruption (1996), the European Union's Convention drawn up on the basis of Article 17 of the Treaty on European Union, on the protection of the European Community's financial interests (1995).

Klitgaard, Ronald and Parris (2000) note that as with bribery and other forms of corruption, many domestic and international legal definitions are used to form the basis of criminal offences. Thus, they include only those offences involving a public official or where the public interest is crucially affected.

According to the UN Anti-Corruption Toolkit (2004), in some legal systems "theft" is limited to the taking of tangible items, such as property or

non-legal definitions tend to include the taking of anything of value, including intangibles such as valuable information. In the Toolkit, the broader meaning of "theft" is intended. Examples of corrupt theft, fraud and embezzlement abound. Virtually anyone responsible for storing or handling cash, valuables or other tangible property is in a position to steal it or to assist others in stealing it, particularly if auditing or monitoring safeguards are inadequate or non-existent. Employees or officials with access to company or government operating accounts can make unauthorized withdrawals or pass to others the information required to do so.

Brunetti and Weder (1998) argue that elements of fraud are more complex. Officials may create artificial expenses; "ghost workers" may be added to payrolls or false bills submitted for goods, services, or travel expenses. The purchase or improvement of private real estate may be billed against public funds. Employment-related equipment, such as motor vehicles, may be used for private purposes. In one case, World Bank-funded vehicles were used for taking the children of officials to school, consuming about 25 per cent of their total use (World Bank, 1997).

### **2.2.5 Extortion**

Ades and Di Telia (1997) observes that whereas bribery involves the use of payments or other positive incentives, extortion relies on coercion, such as the use or threat of violence or the exposure of damaging information, to induce cooperation. They (Ades and Di Telia, 1997) contend that as with other forms of corruption, the "victim" can be the public interest or individuals adversely affected by a corrupt act or decision. In extortion cases, however, a further "victim" is created, namely the person who is coerced into cooperation. While extortion can be committal by government officials or insiders, such officials can also be victims of it.

According to the African Union Convention (2003), parties are required to criminalize the use or presentation of false or incorrect representations or non-disclosure of information the effect of which is the misappropriation or wrongful retention of funds from the budget of the European Communities. The UN (2006) points out those officials in a position to initiate or conduct criminal prosecution or punishment often use the threat of prosecution or punishment as a basis for extortion. Alternatively, officials who have committed acts of corruption or other wrongdoings may be threatened with exposure unless they themselves pay up. Low-level extortion, such as the payment of "speed money" to ensure timely consideration and decision-making of minor matters by officials, is widespread in many countries.

#### **2.2.6 Abuse of Discretion**

According to Klitgaard, Ronald and Parris (2000) in some cases, corruption can involve the abuse of discretion, vested in an individual, for personal gain. For example, an official responsible for Government contracting may exercise the discretion to purchase goods or services from a company in which he or she holds a personal interest or propose real estate developments that will increase the value of personal property. Such abuse is often associated with bureaucracies where there is broad individual discretion and few oversight or accountability structures, or where decision making rules are so complex that they neutralize the effectiveness of any accountability structures that do exist.

#### **2.2.7 Favouritism, Nepotism and Clientelism**

Monica (2004) observes that generally, favouritism, nepotism and clientelism involve abuses of discretion. Such abuses, however, are governed not by the self-interest of an official but the interests of someone linked to him or her through membership of a family, political party, tribe, religious or other

group. If an individual bribes an official to hire him or her, the official acts in self-interest. If a corrupt official hires a relative, he or she acts in exchange for the less tangible benefit of advancing the interests of family or the specific relative involved (nepotism). As Hopkins (2002) reports, the favouring of, or discriminating against individuals can be based on a wide range of group characteristics: race, religion, geographical factors, political or other affiliation, as well as personal or organizational relationships, such as friendship or membership of clubs or associations.

### **2.2.8 Conduct Creating or Exploiting Conflicting Interests**

As noted in the United Nations Manual on Anti-corruption Policy (2004), most forms of corruption involve the creation or exploitation of some conflict between the professional responsibilities of a corrupt individual and his or her private interests. The acceptance of a bribe creates such a conflict of interest. Most cases of embezzlement, theft or fraud involve an individual yielding to temptation and taking undue advantage of a conflict of interest that already exists. In both the public and private sector, employees and officials are routinely confronted with circumstances in which their personal interests conflict with their responsibility that require them to act in the best interests of the state or their employer.

### **2.2. 9. Improper Political Contributions**

According to Kimberly (1997), one of the most difficult challenges in developing anti-corruption measures is to make the distinction between legitimate contributions to political organizations and payments made in an attempt to unduly influence present or future activities by a party or its members once they are in power. A donation made because the donor supports the party and wishes to increase its chances of being elected is not

corrupt; it may be an important part of the political system and, in some countries, is a basic right of expression or political activity protected by the constitution. A donation made with the intention or expectation that the party will, once in office, favour the interests of the donor over the interests of the public is tantamount to the payment of a bribe.

Tanzi, and Ludger (1997) argue that regulating political contributions has proved difficult in practice. Donations may take the form of direct cash payments, low-interest loans, the giving of goods or services or intangible contributions that favour the interests of the political party involved. Tanzi, and Ludger further note that one common approach to combating the problem is to introduce measures that seek to ensure transparency by requiring disclosure of contributions, thus ensuring that both the donor and recipient are politically accountable. Another is to limit the size of contributions to prevent any one donor from having too much influence (Tanzi & Ludger, 1997:34).

As it is apparent from this section, corruption is a multifaceted behaviour with varying forms of manifestation. Due to this pseudopodal character, anti-corruption agencies have adopted strategies by which they try to fight corruption in its varying forms. Accordingly therefore, the assumption seems to be that for example, when bribery or extortion is halted, then corruption has been stopped. In mathematical theorization, this seems to rest on an assumption that the sum total of parts of a thing is equal to the whole. To what extent this assumption could be entertained rests a philosophical reflection. This is part of the pillars upon which this study is founded.

### **2. 3 Causes of Corruption**

Without proper vigilance and effective countermeasures, corruption can occur anywhere. Corruption ca\$es exposed in the World Bank (1997) and the United

Nations (2004) have shown that any society or organization is susceptible, even where well established checks and balances are in place. Combating corruption, building integrity and establishing credibility require time, determination and consistency. When anti-corruption strategies are first instituted, a long-term process begins, during which corrupt values and practices are gradually identified and eliminated. In most cases, a complex process of interrelated elements is involved: reforms to individual institutions take place in stages as problems are identified; countermeasures are developed and implemented; personnel are reoriented and retrained.

Corruption is generally connected with the activities of the state and especially with the monopoly and discretionary power of the state. Therefore, as Gary Becker, Nobel Laureate in economics, pointed out in one of his *Business Week* columns if we abolish the state, we abolish corruption. But, of course, quite apart from the fact that corruption can exist in the private sector, a civilized society cannot function without a state, and in modern, advanced societies, the state must have many functions (Becker & Stigler, 1974:74).

Becker's argument seems to collide with the reality that some of the least corrupt countries in the world, such as Canada, Denmark, Finland, the Netherlands, and Sweden, have some of the largest public sectors, measured as shares of tax revenue or public spending in gross domestic product. Thus, the solution to the problem of corruption may not be as simple as just reducing the level of taxation or public spending. According to Miller (2001), the existence of these regulations and authorizations gives a kind of monopoly power to the officials who must authorize or inspect the activities. These officials may refuse the authorizations or may simply sit on a decision for months or even years. Thus, they can use their public power to extract bribes from those who need the authorizations or permits.



### **2.3.1 Taxation**

According to Tanzi (1998), corruption is likely to be a major problem in tax and customs administrations when the laws are difficult to understand and can be interpreted differently so that taxpayers need assistance in complying with them; the payment of taxes requires frequent contacts between taxpayers and tax administrators; the wages of the tax administrators are low; acts of corruption on the part of the tax administrators are ignored, not easily discovered, or when discovered penalized only mildly; the administrative procedures (e.g. the criteria for the selection of taxpayers for audits) lack transparency and are not closely monitored within the tax or customs administrations; tax administrators have discretion over important decisions, such as those related to the provision of tax incentives, determination of tax liabilities, selection of audits, litigations, and so on, and more broadly, the controls from the state (the principal) on the agents charged with carrying out its functions are weak (Tanzi, 1998:64ff).

According to Kpundeh (2006) in some countries, at one time, corruption became so endemic in the tax administration (e.g., Peru and Uganda) that the government decided to close down the existing administrations and to replace them with new ones. In several countries, customs administrations have been very corrupt, leading to the imprisonment of the director of customs and in several cases resulting in the replacement of the domestic customs organizations with the services of foreign companies.

### **2.3.2 Provision for Goods and Services at Below-Market Prices**

Rauch and Peter (1997) observe that in most countries, the government engages in the provision of goods, services, and resources at below-market prices for example, foreign exchange, credit, electricity, water, public

housing, some rationed goods, access to educational and health facilities, access to public land, and so on. Even access to some forms of pensions, such as those for disability, fall into this category because the individuals who get them have paid less in contributions to the pension funds over time than the pension they get once their disability status is approved. In some countries, disability pensions have been a fertile ground for corruption. In others, some individuals benefited enormously when they were able to get access to large amounts of credit or foreign exchange at below-market prices. Rauch and Evans argue that sometimes, because of limited supply, rationing or queuing becomes unavoidable. Excess demand is created and decisions have to be made to apportion the limited supply. These decisions are often made by public employees. Those who want these goods (the users) would be willing to pay a bribe to get access (or a higher access) to what the government is providing. It is thus not surprising that in all the areas mentioned above, cases of corruption have been reported (Rauch and Peter, 1997: 32).

Decisions such as those described above are often worth a lot to individuals or enterprises. Theobald (1990) argues that it is natural that attempts will be made by some of them to get favourable decisions, in some cases by paying bribes and in other cases by simply exploiting close personal relations with public officials. He held that the bribes may be paid to public officials whose salaries may be very low and whose "temptation price" may be far less than the value of the potential benefit from a favourable decision to the bribers (Theobald, 1990:24).

### **2.3.3. Levels of the Bureaucracy**

The quality of the bureaucracy varies greatly among countries. In some, public sector jobs give a lot of prestige and status; in others, much less so. Many factors contribute to that quality. Max Weber (1947), the outstanding

German sociologist, described what should be the characteristics of an *ideal* bureaucracy. Tradition and the effect that it has on the pride that individuals have in working for the government may explain why, all things being equal, some bureaucracies are much more efficient and much less vulnerable to corruption than others. Rauch and Peter (1997) have gathered information on the degree to which civil servants' recruitment and promotions are merit based for 35 developing countries. Their results indicate that the less recruitment and promotion are based on merit, the higher is the extent of corruption. Rauch and Evans concluded that absence of politically motivated hiring, patronage, and nepotism, and clear rules on promotions and hiring, in addition to some of the factors discussed separately below, all contribute to the quality of a bureaucracy (Rauch & Peter, 1997:56).

#### **2.3.4 Level of Public Sector Wages**

Over the years many observers have speculated that the wages paid to civil servants are important in determining the degree of corruption. For example, Assar Lindbeck (1998) attributes the low corruption in Sweden in this century partly to the fact that at the turn of the century, high-level administrators earned 12-15 times the salary of an average industrial worker. Assar Lindbeck says that one can speculate that there may be corruption due to greed and corruption due to need. The higher the wage level, the lower the level of corruption (Assar Lindbeck, 1998:67).

The relationship between wage level and corruption index has been tested empirically by Van Rijckeghem and Weder (1997). In other words, the fight against corruption, pursued exclusively on the basis of wage increases, can be very costly to the budget of a country and can achieve only part of the objective. Furthermore, as argued above, even at high wages some individuals may continue to engage in corrupt practices.

## **2.4 Impact of Corruption**

Many scholars have identified several effects of corruption. Kibwana (2001) observes that corruption tends to concentrate wealth, not only increasing the gap between rich and poor but providing the wealthy with illicit means to protect their positions and interests. This in turn, can contribute to social conditions that foster other forms of crime, social and political instability and even terrorism. Corruption can be found in all walks of life. It hinders economic development, diverts investments in infrastructure, institutions and social services and also undermines efforts to achieve other country specific targets (Kibwana, 2001: 63).

Braguinsky (1996) argues that whereas corruption may often occur in private, its implications for society in general are grave and this must form the basis for the unyielding response against it. Braguinsky maintains that irrespective of the perpetrators of corruption, there are costs borne by society, which is the basis for the refusal to tolerate it. Principally, corruption harms society and the economy by diverting resources towards less deserving people. In this manner the more deserving within the economy are short-changed. For instance due to corruption, resources may be allocated without considerations of priority and where the returns may be optimised (Braguinsky, 1996: 34f).

As Mbula (2008) notes, examples of the effects of corruption where resources are not optimally used are numerous in Kenya and do involve claims of favouritism of persons or regions at the expense of others. In this regard Mbula cautions that if this occurs repeatedly, the people or institutions that are capable of contributing to growth are stifled (Mbula, 2008: 5).

Crank and Caldero (2004) further argue that corruption is harmful to a society and the economy since its effect is equivalent to taxing honest work and

instead rewarding mediocrity and dishonesty. As such, genuine hardworking people are demotivated since merit ceases to be the basis of reward. They further observe that the competitive edge in institutions and people, which is essential to good service, is replaced by competition in corrupt practices and this distorts the nature of any market, and in turn the policies that govern such markets. A common argument heard in business circles is that survival is impossible without competition (Crank and Caldero, 2004: 123).

According to Kaufmann and Siegelbaum (1996), where corruption is perverse, injustice is perpetrated because those with an unethical orientation get privileged access to resources and services to which others are excluded. It is in this regard that they advance the proposition that this aggravates social injustice and increases poverty while this social and economic exclusion translates into class disharmony. Such exclusion maintaining the tensions increase to the extent that the whole society is under structural strain. Societies in which exclusion is reinforced by corruption do experience instability that may result in violence and massive destruction. Finally, at the purely commercial level, corruption does discourage investments because it raises substantially the transaction costs in the conduct of business. Due to the additional cost, goods and services procured through the corruption process are uncompetitive (Kaufmann and Siegelbaum, 1996:65).

Klitgaard (1991) further notes that corruption has severe implications for the economy because it causes a gradual depression in investments as the costs contingent to corruption cut down on the expected returns. Businesses then withdraw to places or countries where there is an atmosphere more conducive to investment. He maintains that the prime consequence to the economy is that corruption does cause the loss of investment, both local and foreign. Since no rational investor will knowingly establish a business in a corrupt country, the need to deal decisively with this problem is imperative (Klitgaard, 1991:47).

## **2.5 Anti-corruption Initiatives in Kenya**

The UN Convention against Corruption urges member states to enact legislations that would be useful in the fight against corruption. Similarly, the African Union Convention on the Prevention and Combating Corruption calls upon member countries to put in place measures to fight corruption. Kenya responded by enacting laws that initially established the Kenya Anti-Corruption Authority (KACA) and later the Kenya Anti-Corruption Commission (KACC).

As a show of commitment to the fight against corruption, Kenya was the first country worldwide to ratify the United Nations Convention against Corruption (UNCAC), signing this landmark international treaty prior to all other signatories, including the host country, Mexico. The Government has also signed the African Union (AU) Convention on the Prevention and Combating of Corruption. Kenya adopted the UN Convention against Corruption and has made significant progress in the fight against corruption (KACC, 2006:7). Other actions include the publishing of the Witness Protection Bill, to provide for protection of whistle-blowers in line with the UNCAC. There has also been vigorous enforcement of the Anti-Corruption and Economic Crimes Act, 2003 and the Public Officer Ethics Act, 2003.

The Kenya Government declared zero-tolerance on corruption. This is demonstrated by the drafting of the Anti-corruption and Economic -Crimes Bill, 2000 as well as its successor, the Anti-corruption and Economic Crimes Bill, 2001. Other measures include; a system of monitoring performance of civil servants, strengthening the Efficiency Monitoring Unit and establishing a permanent complaints office for the public to report any abuse of power by office holders. Monitoring performance of public servants involved in preparing legislation on codes of ethics for all public officers and working out

modalities and a wealth disclosure system for senior officers. While all these goals are appropriate in addressing corruption, there is need for both political will and government commitment, otherwise the plans are self-defeating.

All this is not new however since Kenya has had an anti-corruption legislation since 1956. The Prevention of Corruption Act (Cap.65) was in operation from August 1956 to May 2003 when the Anti-corruption and Economic Crimes Act, No.3 of 2003 became operational and repealed it. Initially, the Prevention of Corruption Act (Cap.65) was primarily to be enforced by the Police Department. However corruption grew over the years despite the existence of the Act. An effort was made to establish an Anti-corruption squad within the Criminal Investigation Department of the Kenya Police, but the squad was disbanded before it could make an impact. The Prevention of Corruption Act was amended in 1987 to provide for the establishment of the Kenya Anti-corruption Authority (KACA).

### **2.5.1 The Kenya Anti-Corruption Authority (KACA)**

The Kenya Anti-Corruption Authority was established under the Prevention of Corruption Act (Cap.65), which was passed in parliament in 1997. The Act was effected after the amendment of an earlier Act, last revised in 1993. KACA was institutionalized to concentrate fully on corruption cases. Its formation was a tacit admission of the problem of corruption in Kenya at that time. KACA investigated and proceeded to prosecute a number of public officials alleged to have engaged in corrupt practices as was defined by the Act.

According to Kibwana (2001) KACA's commitment to the achievement of the objectives under its mandate under the Act fell into three points: the consistent enforcement of the law against corruption, the prevention of corruption by

removing the opportunities that facilitate the crime and the education of the public and enlistment of their support in the fight against corruption. Kibwana (2001) observes that these three factors were complementary to one another and reflect the understanding that the fight against corruption must proceed cautiously and progressively. To improve on the enforcement of the law, KACA established telephone hotlines for the members of the public to report in confidence on any corrupt practices that they may have witnessed or of which they may be aware. There was need for the public, civil society and the private sector to work together in cleaning the political and economic environment of all corruption (Kibwana, 2001:143).

However, KACA did not live to see the light of the day. In December 2000, the High Court in the case of *Gachiengo vs Republic* (2000) 1 EA52 (CAK) held that the existence of KACA undermined the powers conferred on both the Attorney General and the Commissioner of Police by the Constitution of the Republic of Kenya. In addition the High Court further held that the statutory provisions establishing the KACA were in conflict with the constitution. This spelt the death of KACA and the vigour with which the Prevention of Corruption Act (Cap.65) had sought to fight corruption in Kenya.

After the dissolution of KACA however, efforts to resuscitate the fight against corruption continued. This culminated in the enactment of two pieces of legislation in April 2003, the Anti-corruption and Economic Crimes Act, No.3 of 2003 and the Public Officers Ethics Act, No.4 of 2003, which became operational on 2<sup>nd</sup> May 2003. The Prevention of Corruption Act (Cap.65) was repealed by section 70 of the Anti-corruption and Economic Crimes Act No.3 of 2003.

wt



### **2.5.2 The Anti-corruption and Economic Crimes Act 2003**

The object of the Anti-Corruption and Economic Crimes Act, 2003 (the Anti-Corruption Act) as stated in its preamble is to provide for the prevention, investigation and punishment of corruption, economic crimes and related offences and incidental matters. Part I of the Anti-Corruption Act comprises definitions. The Act embodies a broad conception of corruption viz. bribery, fraud, embezzlement or misappropriation of public funds, abuse of office, and breach of trust or an offence involving dishonesty in connection with any tax, rate or impost levied under any Act. The Act extends to an offence involving dishonesty under any law relating to the election of persons to public office. The most notable aspect of this part is the distinction between corruption and economic crimes. The latter is defined as an offence under section 45 or as an offence involving dishonesty under any written law providing for the maintenance or protection of the public revenue.

The Act further provides that it is an offence for a person involved in the administration, custody, maintenance, receipt or use of any part of the public revenue or public property to wilfully or carelessly fail to comply with any law or applicable procurement procedures or any procedures or guidelines relating to the allocation, sale or disposal of public property, tendering of contracts, management of funds or incurring of expenditures. It is an offence for a person involved in the administration, custody, maintenance, receipt or use of any part of the public revenue or public property to engage in a project without prior planning (The Anti-Corruption and Economic Crimes Act, 2003, Sections 45).

Part II of the Anti-Corruption Act provides for the appointment of special magistrates with exclusive jurisdiction to try offences specified in the Act. They are obliged, as far as is practicable, to hold the trial of an offence under

the Act on a day-to-day basis until completion. Part III of the Anti-Corruption Act is divided in two. Part III A establishes the Kenya Anti-Corruption Commission (KACC). This part further provides for the appointment of officers to the Commission while Part III B establishes the Kenya Anti-Corruption Advisory Board (the Advisory Board). Part IV deals with investigations and Part V establishes a number of offences under this Act. Such offences include bribing agents, secret inducements for advice, deceiving the principal, conflict of interest, improper benefits to trustees for appointments, bid rigging, abuse of office and dealing with suspect property. Part VI of the Anti-Corruption Act provides for compensation and recovery of improper benefits. Part VII deals with evidence where a court trying corruption or economic crime may take unexplained assets as corroboration that a person accused of corruption or an economic crime received a benefit. Part VIII and Part IX are deal with miscellaneous and repeal, transition and amendments which provide the general administrative matters.

### **2.5. 3 Kenya Anti-Corruption Commission**

The institution which in common parlance is known as the Kenya Anti-Corruption Commission is in reality two distinct bodies: The Kenya Anti-Corruption Advisory Board and the Kenya Anti-Corruption Commission.

#### **2.5.3.1 Kenya Anti-corruption Commission's Advisory Board**

The Advisory Board is a corporate body which is independent and answerable only to Parliament. It consists of thirteen members representing various sectors and interests through civic, religious, professional and business organizations/ associations and the director, as enumerated in section 16 of the Anti-Corruption and Economic crimes Act, 2003 (hereafter referred to as the Act). The chairman and board members are nominated by the specified

organizations, then vetted by Parliament and appointed by the President. The Director is the Secretary to the Advisory Board.

As provided in the Act, the board's functions are to advise the commission generally on the exercise of its powers and the performance of its functions under the Act; it also recommends to parliament persons to be appointed as director, assistant directors of the commission; it initiates the process of removal from office of the director or assistant directors for specified reasons; and approve grants and donations to the commission (KACC, 2006:10).

### **2.5.3.2 Kenya Anti-corruption Commission**

The Kenya Anti-Corruption Commission is established by the Act as a body corporate. It comprises of the director, the assistant directors and the staff. The commission has been structured to reflect its mandate and to achieve its goals and objectives. There are four directorates namely Investigation and Asset Tracing Preventive Services; and Legal Services and Asset Recovery; Finance and Administration. Each directorate consists of several departments and divisions with specific functions geared towards achieving the commission's mandate. The director is the chief executive of the commission and is responsible for its direction and management. He is assisted by three assistant directors. The director, as empowered by the Act, has appointed one of them to the position of deputy director. Under the office of the director are the functions of internal audit and public relations (KACC, 2006:9).

The directorate of investigation and asset tracing is responsible for the investigation of corruption and economic crimes and tracing of corruptly acquired assets. It comprises of four (4) departments namely, Report and Data Centre, Intelligence Production, Special Operations, and Forensic Investigations (...) (KACC, 2006:9).

The Directorate of Legal Services and Asset Recovery is tasked with the responsibility of enforcing the commission's mandate as spelt out under section 7(1) of the Act, namely to investigate the extent of liability for the loss of or damage to any public property and institute civil proceedings against any person for the recovery of such property, or seek compensation. The directorate has the broad responsibility of providing legal advice to the commission. It is in charge of all litigation undertaken by the commission, either on its own behalf or on behalf of third parties.

The commission is further mandated by Section 53(3) of the Act to recover on behalf of public bodies losses suffered by those bodies as a result of corruption and economic crimes. The directorate is responsible for auditing completed investigation files and preparing reports to the Attorney General on each completed investigation file as required by Section 35 of the Act. The directorate also prepares the quarterly reports stipulated under Section 36 of the Act. The directorate is divided into three (3) departments, namely: Civil Litigation and Asset Recovery; Crime Reading, and Research & Documentation.

The Directorate of Preventive Services is mandated to educate the public on the ills of corruption and economic crimes and to enlist and foster public support in combating corruption and economic crimes. To achieve this, the directorate is tasked with making policy and operational reform recommendations to prevent corruption in public and private institutions; building partnerships with other agencies involved in the fight against corruption; providing advisory services to the public and private sectors on anti-corruption and good governance; training integrity and quality assurance officers in the public and private sectors; conducting ethics and integrity education in the public and private sectors; disseminating and creating awareness on corruption prevention; and conducting research into corruption,

economic crimes and related activities (KACC, 2006:10). The directorate is divided into three departments namely; Prevention, Education, and Research and Planning.

The directorate of Finance and Administration provides administrative services to the other directorates. It is tasked with the following responsibilities: providing efficient and effective human resource management; managing financial resources; procuring all goods and services; providing general office management; providing information, communication and technology (ICT) services; and providing and creating a sustainable corporate image of the commission (KACC, 2006:10). The directorate comprises of three departments namely: Administration, Human Resources, and Finance and Accounts.

### **2.6.1 Economic Crimes Board**

Besides the establishment of KACC, the Government of Kenya has taken several other initiatives to enhance the fight against corruption as discussed in the following subsections.

Part 2 of the Prevention of Corruption Act (Cap.65) established the Kenya Anti-Corruption and Economic Crimes Board which worked in conjunction with the Kenya Anti-Corruption Authority (KACA). The Board was widely constituted and comprised of nominees from the Law Society of Kenya, the Institute of Certified Public Accountants, forum of religious organisations, Kenya Bankers Association, Federation of Kenya Employers, a member nominated by the International Federation of Women Lawyers (FIDA) and a Director General who would be an ex-officio member and the secretary to the Board. Among the principal functions of the board were to advise KACA on

the exercise of its powers under the proposed act and also to approve the acceptance of grants and donations to KACA.

### **2.6.2 Economic Crimes Court**

Apart from the Board and the Authority, the other significant public institution created by the bill was the Economic Crimes Court. Whereas the court remained subordinate to the High Court, it exercised unlimited jurisdiction in respect of crimes under the bill itself. This provision was calculated to ensure that the case backlog affecting the courts in general would not necessarily affect this court. However, appeals to the High Court were still available to any persons aggrieved by the Economic Crimes Court's findings.

The bill vested power in the KACA's officers to conduct investigations, obtain information necessary for presentation before the court, effect arrest for offences under the bill, and the interception of private information upon an *ex parte* application to the court. Sticklers for due process may raise queries regarding some of the search, arrest and seizure powers. Within the bill were also the definitions of economic crimes and the manner of establishing culpability of persons involved in the crimes themselves. Interestingly, the bill responded to the problem of abuse of public solicitation of fundraising (harambee) by making it an offence for public officers to use their offices for soliciting funds. In the punishment and deterrence of corruption, the bill also recognized the importance of protection of informers against intimidation by suspects. This elaborate bill reflects both the genuine quest to tackle corruption decisively as well as an admission of the failure of the existing mechanisms to meaningfully reduce corruption.

### **2.6.3 Parliament and corruption**

Kenyan legislators seem to respond to the public concern about corruption especially where public officials are directly implicated. In 1998, Parliament established the Parliamentary Anti-Corruption Select Committee (PACSC) with three mandates: to study the nature and extent of corruption in Kenya, to identify the key perpetrators of corruption in Kenya and to develop a more comprehensive Bill to widen the scope of the definition of corruption beyond Cap 65.

### **2.6.4 Cabinet Committee on Corruption**

The Cabinet Committee on Corruption is chaired by the Ministry of Justice and Constitutional Affairs and is composed of the Minister of State for Provincial Administration and National Security; Minister of Finance; Minister of Planning and National Development; Minister of Roads, Minister of Public Works and Housing; and the Minister of Regional Development. The Permanent Secretary, Governance and Ethics, acts as secretary to the Committee. The Committee actively advises the President on anti-corruption initiatives and on principles of better governance and is overseeing the tracking of public money hidden in foreign banks.

### **2.6.5 Public Complaints Unit**

A Public Complaints Unit (PCU) to serve as a central processing division is being established under the aegis of the Ministry of Justice and Constitutional Affairs. Uniquely in Kenyan history, the PCU will serve as a focal point for public complaints to the Government. The PCU will, on a confidential basis, receive complaints and allegations of corruption from the public and determine whether such complaints/<sup>it</sup>allegations disclose corrupt practice or

abuse of office, liaise with the relevant office/department to which the allegations/complaints may be addressed and provide the public with advice on appropriate modes of investigation and redress. It is also expected that the PCU will serve to provide the government and the public with analytical data on the state of corruption within public institutions.

#### **2.6.6 Declaration of Assets and Wealth**

The Department of Governance and Ethics, in conjunction with the Head of the Civil Service and the Ministry of Justice and Constitutional Affairs, is actively involved in this new initiative under the *Public Officers Ethics Act 2003* whereby all public servants are required to declare their wealth, assets and liabilities. A vast majority of public officers have filled out and sent in their forms. Initial indications are of compliance rates of up to 90%. The removal from the payroll of those public officers that do not comply with the regulations has already commenced.

#### **2.6.7. Governance Dividend and the fight Against Corruption**

The Department of Governance and Ethics actively pursues and promotes a .governance dividend., namely, the demonstration of the achievements of the government's anti-corruption reform programme and the resultant translation of improvements in the social and economic conditions of people. The government's policies have already had an important effect on investor's perceptions of the investment climate in Kenya by signalling a strong intention to reform. For example, the Feb. 2003 *International Country Risk Guide* demonstrates that the majority of indicators of institutional quality have improved, including corruption and law and order.



### **2.6.8 Governance, Justice, Law & Order Sector Reform Programme**

The Department of Governance and Ethics participates in the GJLOS Programme, a sector-wide development strategy based on the recognition of the interconnected nature of the justice sector. The campaign comprises representatives from the government, statutory commissions, public institutions, the private sector, civil society and faith-led organisations and has resulted in the creation of thematic groups in order to better address specific areas of concern. The Department of Governance and Ethics coordinates and heads the Ethics, Integrity and Anti-Corruption Thematic Group. Other thematic groups include: Democracy, Human Rights and Rule of Law; Justice, Law and Order; Public Safety and Security; Constitutional Development; Legal Services; and Leadership and Management.

### **2.6.9 National Anti-Corruption Campaign**

The Department of Governance and Ethics is represented on the Steering Committee of the National Anti-Corruption Campaign (NACC) initiated to evolve a mature anti-corruption culture and to ensure all stakeholders and citizens are effectively and meaningfully involved in rooting out corruption. In view of the critical requirement that all sectors of society are engaged in the fight against corruption, the Steering Committee of the NACC comprises representatives from the government, statutory commissions, public institutions, the private sector, civil society, national media associations, women's interest groups and all major Kenyan faith-led organisations. This nationwide campaign looks to reinforce the progress made in enacting new legislation and establishing new institutions. It is envisaged that the campaign will run for several years and will utilize multiple communication and mobilization strategies.

## **2.6. 10. The Public Officer Ethics Act, 2003**

The *Public Officer Ethics Act, 2003* was signed into law on 2nd of May 2003 paving the way for declarations of wealth by all Kenyan public servants. The Act also addresses the critical area of conflict of interest for public servants and sets new standards of service and professionalism for the entire government.

## **2.6. 11. International Legislation against Corruption**

Kenya was the first country worldwide to ratify the *United Nations Convention against Corruption*, on 9th Dec 2003, signing this landmark international treaty prior to all other signatories, including the host country, Mexico. Kenya is also actively preparing to ratify the African Union Convention on Corruption. With its ratification of such key regional and international treaties, Kenya can now begin its transformation from the epitome of corruption to being in the vanguard of anti-corruption reform.

### **2.7.1 Goals of Anti- Corruption Education**

According to TI (2008), anti-corruption education can be defined as the activity of teaching or sharing experiences that strengthens knowledge, skills and attitudes to resist corruption and to act against it. These three capacities, all of which can be used to act against corruption, can be further defined as Knowledge: To be informed about regulations and laws; about complaint mechanisms; about citizens' rights and duties; Skills: The ability to identify conflicts of interest and to confront ethical dilemmas; the ability to speak out vis-a-vis authorities; attitudes: interest in public affairs; responsible citizenship; taking responsibility for the public good; rejecting corruption. Education implies more than information since it aims to build ethical

consciousness among individuals and contribute to societies that do not tolerate corruption (TI, 2008:12).

According to Cut Subin (2006) Anti-corruption should be an indispensable part of moral education in colleges, secondary and primary schools. He emphasizes the function of school and education to not only promote scientific knowledge and advanced culture, but also nurture healthy and scientific values. Although anti-corruption education classes have encountered criticism as "making kids take pills for the adult's disease," more people have become aware that corruption has become a public social "villain" globally, and it's essential to build an effective prevention and punishment approach to corruption by ways of education and monitoring.

The role of education in articulating anti-corruption initiatives has been underscored and emphasized by many. The Kenya Anti Corruption Commission (KACC) noted that education is central in inculcating desired knowledge, skills and values that promote national cohesion, development and a positive culture. Corruption frustrates efforts to achieve these noble goals. In response, the Commission designs, develops and implements educational programmes that cover training on anti-corruption, good governance, ethics and integrity in the public, private and formal spheres (KACC, 2008:63).

In light of the foregoing, Justice Ringera, the Director of KACC says that this is as it should be because "I cannot see how we can succeed in the fight against corruption if members of the public are not brought on board. The people must appreciate the fact that corruption dehumanises them by denying them their fair dues in society. It denies them justice and rewards the unjust. It robs them of the fruits of their labour by diverting their taxes to unscrupulous individuals and syndicates. They must realize that it is their duty to fight corruption in all its manifestations. They must understand that the benefits of

eradicating corruption are many and long lasting. And they should understand that corruption has no real benefits. This is only possible through a comprehensive public education campaign". (Ringera, 2007: ix)

The Anti-Corruption and Economic Crimes Act, 2003 that establishes KACC indicates that one of the key roles of public education should be to inform the public about the dangers of corruption. The Section provides that the commission shall have the functions to educate the public on the dangers of corruption and economic crimes and to enlist and foster public support in combating corruption and economic crimes (Anti-Corruption and Economic Crimes Act, 2003:1 Of).

According to Transparency International (TI, 2008) anti-corruption education is a vital component of any anti-corruption strategy because of its informative function. TI (2006) points out that informed citizens are probably more effective in preventing corrupt and unethical behaviour of public servants than the most sophisticated codes of conduct, laws and regulations. Anti-corruption laws and institutions need people who do not tolerate corruption and who actively act against it: Without reports of corruption, corrupt acts cannot be sanctioned, ombudsmen cannot follow up on complaints, and the judiciary cannot prosecute (TI, 2008:1).

TI (2008) further observes that the goal of anti-corruption education is to build demand for accountability. Anti-corruption education promotes values, attitudes and expectations that condemn corruption, and skills to resist it. Anti-corruption education develops people's understanding of their rights and responsibilities for preserving the public good. It highlights the damage done by minor acts of corruption.

According to TI (2008) the goal of anti-corruption education is to build demand for accountability. Anti-corruption education promotes values, attitudes and expectations that condemn corruption, and skills to resist it. Anti-corruption education develops people's understanding of their rights and responsibilities for preserving the public good. It highlights the damage done by minor acts of corruption. TI observes that anti-Corruption education aims at strengthening individuals in their ethical decision-making. Values conflicts and ethical dilemmas frequently arise in the daily lives of people, for example when family values, such as loyalty, clash with work ethics such as impartiality. Ethics education should provide the skill to identify such conflicts and instil the motivation for solving them in the best interest. It aims at building a culture of zero-tolerance for corruption, through strengthening public awareness and participation in political life, and through mobilizing the public to stand up against corruption (TI, 2008:2).

Zengke (2000) argues that anti- corruption education is not an agenda on its own, but should be regarded as part of broader approaches to ethics and citizenship. It purposes to strengthen democratic processes and participation in politics, and promotion of inherent human dignity, enshrined in the equal and inalienable rights to, for example, take part in government, fair employment, adequate standard of living and many others.

Zengke (2000) observes that a corruption-resistant culture needs political commitment from the top, as well as an appropriate legal framework. It can develop in an environment where people have the skills and social power to stand up against corruption. It will be difficult to credibly promote anti-corruption in a culture of impunity or in a situation of extremely low salaries and in the absence of other incentives for ethical behaviour. Can anti-corruption education in such an environment still be credible? Yes, if it

addresses ethics and corruption honestly, and if it comes from people who transcend integrity and high ethical standards (Zengke, 2000:5).

Valentine, Juhie, Katy, Julio, (2004) observe that young people constitute a country's future political and economic leaders. Their education should be an important component of anti-corruption strategies. Youth anti-corruption education can be integrated in school subjects such as civics or citizenship education, but also history, politics, religion, life skills, peace education, economics or ethics. They noted that although most of the curricula may not explicitly refer to corruption, they are all implicitly linked to it in that they touch on moral issues and provide concepts such as the public good and social justice that are key to understanding the need for fighting corruption. Anti-corruption can of course also be taught outside the formal school system (Valentine, Juhie, Katy, Julio, 2004: 23).

Emphasizing on the value of Anti-corruption education for youth, TI (2008) recommended that when teaching anti-corruption, practice is better than theory. Successful methods include students' surveys and polls, role plays to facilitate the understanding of differing interests and to promote the ability for conflict resolution, public debates, and attending parliamentary sessions or visiting public institutions to understand how democracy works. School practice also is itself an important vehicle for transmitting values. The context in which integrity and ethics are taught needs to be free of repression and fear. Those who teach must themselves represent the values they teach (TI, 2008:3).

Zengke (2000) points out that youth anti-corruption education should be linked to themes that are particularly interesting to youth, for example by linking ethics with sports: the consequences of corruption in sports - the disrespect for the value of fairness - are obvious even to younger children. He

emphasizes that teaching should build on real life examples so that students can identify with ethical dilemmas. It is particularly important to respect students' values and rights, and to strengthen their capacities for moral judgement without indoctrination (Zengke, 2000:13).

The place of education in the fight against corruption was demonstrated during the Fourth World Congress of Education International (EI) held in Porto Alegre, Brazil from 22<sup>nd</sup> to 26<sup>th</sup> July 2004. This forum adopted a resolution on the role of education in combating mismanagement and corruption. Further it developed the EI Declaration on Professional Ethics adopted by the Third World Congress of Education International, meeting in Jomtien, Thailand, from 25<sup>th</sup> to 29<sup>th</sup> July, 2001.

### **2.7.2 Resolution on the Role of Education in Combating Corruption**

This resolution was passed during the Fourth World Congress of Education International (EI) meeting which was held in Porto Alegre, Brazil, from 22 to 26 July 2004. The considerations and notes of this meeting clearly tie the practice of education with the fight against corruption. In its opening paragraph, the resolution notes that mismanagement and corruption tend to develop at several levels in our societies, in both the private and public sectors, with an adverse impact on the economy, social activities and education. The resolution further considered that in tackling the issue of mismanagement and corruption in relation to education, two key aims should be distinguished: first, it is essential, to combat mismanagement and corruption wherever they are present in the education sector; but education should also be used as a means of combating corruption at all levels in our societies (EI, 2004:1).

The meeting took note of two scenarios with regard to education and corruption. It noted that whereas education is to be used to fight corruption, corruption occurs in the educational institutions. This issue raises the moral authority of such teachers in imparting anti- corruption education.

The resolution considered that a precondition for successfully combating corrupt practices among teaching staff, head teachers and education workers in general is the provision of adequate salaries enabling all education personnel to make a decent living from their regular work; that transparent and democratic functioning of decision structures is essential if corruption is to be stopped. It further considers that mismanagement and corruption in the education sector can be eradicated or significantly reduced through a genuine social dialogue in a concerted framework in which representative trade unions are heard and recognised by the authorities. The resolution underscored the fact that making teachers and education staff more aware of the issues involved in corrupt practices and their harmful effects is something that should be carried out in the context of these workers' initial and further training and should form part of their professional ethics (EI, 2004:2).

In this resolution the Fourth World Congress of Education International meeting made provisions for the learners. The resolution considered that the activities aimed at increasing students' and pupils' awareness of these issues should be carried out through programmes which are effectively integrated in human rights education and education to citizenship, that stress that money is not the only value that should motivate our society, that laws must be enforced, and that the corrupt must be severely punished (EI, 2004:2).

### **2.7.3 Education International Declaration on Professional Ethics**

The Third World Congress of Education International meeting in Jomtien, Thailand, from 25 to 29 July, 2001 emphasized the role of teachers as partners



in achieving Education for All. This declaration represents an individual and collective commitment by teachers and all others involved in education. It is complementary to the laws, statutes, rules and programmes that define the practice of the teaching profession. It is also a tool that aims at helping teachers and education personnel respond to questions related to professional conduct and at the same time to the problems arising from relations with the different participants in education.

The declaration opens by stating that quality public education, a cornerstone of a democratic society, has the task of providing equality of educational opportunity for all children and youth and is fundamental to the well being of society through its contribution to economic, social, and cultural development. Teachers and education personnel have a responsibility to foster confidence among the general public in the standards of service that can be expected from all engaged in this important task; the exercise of responsible judgement is at the heart of professional activity and the actions of caring, competent and committed teachers and education personnel to help every student reach his or her potential is a critical factor in the provision of quality education (EI Declaration on Professional Ethics, Section 2&3).

The declaration identifies necessary factors for optimal performance in the teaching profession. It proposes that the expertise and commitment of teachers and education personnel must be combined with good working conditions, a supportive community and enabling policies to allow quality education to take place. It is only when all necessary components are in place that it is possible for teachers and education personnel to fully meet their responsibilities to students and to the communities in which they work; the teaching profession may benefit greatly from a discussion about the core values of the profession. Such raising of consciousness about the norms and ethics of the profession may contribute to increasing job <sup>it</sup> Satisfaction among teachers and education

personnel, to enhancing their status and self-esteem, and to increasing respect for the profession in society (EI Declaration on Professional Ethics, Sections 4-5).

The declaration observes that teachers and education personnel and their unions, by virtue of their membership in Education International (EI), are committed to the promotion of education that helps develop a person's capacity to live a fulfilled life and to contribute to the wellbeing of society. It further states that the extent of the responsibilities inherent in the teaching process and the responsibility to attain and maintain the highest degree of ethical conduct towards the profession, to students, colleagues and parents, Education International member organisations should: a) actively promote the policies and resolutions adopted by the EI Congress and executive board including this Declaration on professional ethics; b) work to ensure that education personnel benefit from terms and conditions of work that allow them to fulfil their responsibilities by ensuring they have the rights guaranteed to all workers; c) work to ensure that their members have the rights outlined in the ILO/UNESCO recommendation concerning the status of teachers and the UNESCO recommendation concerning the status of higher education teaching personnel; d) combat all forms of racism, bias or discrimination in education due to gender, marital status, sexual orientation, age, religion, political opinion, social or economic status, national or ethnic origin; e) cooperate at the national level to promote quality government funded education for all children, to enhance the status and to protect the rights of education personnel; f) use their influence to make it possible for all children worldwide, without discrimination, and particularly child labourers, children from marginalised groups or those having specific difficulties to have access to quality education (EI Declaration on Professional Ethics, Sections 6-7).

EI recommended the adoption of the declaration in order to guide teachers and education workers and their trade unions in respecting the ethical standards required by the profession it states that education personnel shall: a) justify public trust and confidence and enhance the esteem in which the profession is held by providing quality education for all students; b) ensure that professional knowledge is regularly updated and improved; c) determine the nature, format and timing of their lifelong learning programs as an essential expression of their professionalism; d) declare all relevant information related to competency and qualifications; e) strive, through active participation in their union, to achieve conditions of work that attract highly qualified persons to the profession; f) support all efforts to promote democracy and human rights in and through education (EI Declaration on Professional Ethics, Section 9).

The declaration further calls for the commitment of education personnel with regard to the rights of students within the practice of education. It states that education personnel shall: a) respect the rights of all children, especially their students, to benefit from the provisions identified in the UN Convention on the Rights of the Child, particularly as those rights apply to education; b) safeguard and promote the interests and wellbeing of students and make every effort to protect students from bullying and from physical or psychological abuse; c) take all possible steps to safeguard students from sexual abuse; d) exercise due care, diligence and confidentiality in all matters affecting the welfare of their students; e) assist students to develop a set of values consistent with international human rights standards; f) maintain professional relations with students; g) acknowledge the uniqueness, individuality and specific needs of each student and provide guidance and encouragement to each student to realise his/her full potential; h) give students a feeling of being part of a community of mutual commitment with room for everyone; i) exercise authority with justice and compassion; j) ensure that the privileged

relationship between teacher and student is not exploited in any way but particularly in order to proselytise or for ideological control (EI Declaration on Professional Ethics, Section 10).

In section 11, the declaration mentions the conduct of education personnel towards each other stating that education personnel shall: a) promote collegiality among colleagues by respecting their professional standing and opinions and be prepared to offer advice and assistance particularly to those beginning their career or in training; b) maintain confidentiality of information about colleagues obtained in the course of professional service unless disclosure serves a compelling professional purpose or is required by law; c) assist colleagues in peer review procedures negotiated and agreed to between education unions and employers; d) safeguard and promote the interests and wellbeing of colleagues and protect them from bullying and from physical, psychological or sexual abuse; e) ensure that all means and procedures for the implementation of this declaration are the object of thorough discussions in each national organisation in order to ensure its best possible application (EI Declaration on Professional Ethics, Section 9).

The declaration demands that education personnel shall be knowledgeable of their legal and administrative rights and responsibilities, and respect the provisions of collective contracts and the provisions concerning students' rights and carry out reasonable instructions from management personnel and have the right to question instructions through a clearly determined procedure the declaration ends by stating that commitment to parents: Education personnel shall: a) recognise the right of parents to consultation, through agreed channels, on the welfare and progress of their child; b) respect lawful parental authority but give advice from a professional point of view that is in the best interest of the child; c) make every effort to encourage parents to be actively involved in the education of their child and to actively support the

learning process by ensuring that children avoid forms of child labour that could affect their education; commitment to the teacher: The community shall: a) make it possible for teachers to feel confident that they themselves are treated fairly while attending to their tasks; b) recognise that teachers have a right to preserve their privacy, care for themselves and lead a normal life in the community (EI Declaration on Professional Ethics, Sections 13& 14).

From the preceding sections, it emerges that anti-corruption initiatives are founded on the need to change human character. Perhaps an understanding of the nature of the human with regard to moral obligations and conduct would best inform the choice of mechanisms that you would results in the fecund end of these efforts. This way, the following section would explore the theorization of human nature as espoused in the Aristotle's understanding of Akrasia.

## **2.8. Theorizing Akrasia as a Determinant of Human Conduct in Moral Obligations**

According to Audi (1995), Akrasia, occasionally translated as *acacia* (from Greek, 'lacking command (over oneself) is the state of acting against one's better judgment. Although this technical term is usually employed in its Greek form (i.e., akrasia/akratic) in English texts, it was once the philosophers' English language convention to use the precise English equivalent of akrasia/akratic, incontinence/incontinent. But now, the correct conventional term is akrasia.

Much of the philosophical literature takes *akrasia* to be the same thing as *weakness of the will* Holton (1998) sees weakness of the will as a tendency to revise one's judgment about what is best too easily. Holton explains that for example, a smoker who wants to quit smoking but he/she is unable to do so,

acts against her better judgment (that quitting is best) due to a weak will. So the smoker might at one moment feel that she should give up, but at another, that the joy of smoking outweighs the risks, oscillating back and forth between judgments. Such a person has a weak will but is not acting akratically (Holton, 1998:87).

Christopher (2004) argues that incontinence, or weakness of the will occurs when someone consciously or deliberately makes a choice that he/she sincerely believes is wrong. Christopher using the example of a smoker held that:

(...)He/she decides to continue smoking in spite of sincerely acknowledging that it would be best, all things considered, to give up; or he/she reaches for a cigarette while fully aware of her/his resolve to smoke no more. Such phenomena are a distressingly common feature of most lives (Christopher, 2004:123).

Akrasia, then, involves conflicts between our evaluations and our commitments, or between our commitments and acts falling under them. Donald (1969) argues that when people act in their own better judgment, they temporarily believe that the worse course of an action is better, because they have not made it judgmental but only basing it on a subset of possible considerations.

Njoroge (1988) observes that the most interesting cases occur when both of the conflicting elements are fully conscious or readily available to consciousness. Njoroge argues that when people behave akratically, they are often aware that this is what they are doing; this is not a form of behaviour that has, somehow, to be kept secret. The incontinent smoker is fully conscious of her resolve to give up her habit just as she reaches out for another cigarette. Indeed, as she acts, she may be fully confident that she will

subsequently feel regret, shame or even guilt about what she is doing (Njoroge, 1998:89).

### **2.8.1 An Overview of Aristotle's Theorization of Akrasia**

Why do people act wrongly, when they know full well what right conduct demands? This phenomenon, known to philosophers as incontinence or akrasia, receives extensive treatment in Book Seven of Aristotle's *Nicomachean Ethics*. Aristotle holds that akrasia presents a special challenge for moral education. In this view *akrasia* is a form of practical judgment. More precisely, it is a form of practical judgment that has gone astray.

Aristotle argues that incontinent do possess knowledge of the good. In as much as akratics manage to achieve correct knowledge, they must be exercising reason. The first belief is thus mistaken: Akrasia connotes neither ignorance nor irrationality. Second, it is impossible to simultaneously possess both knowledge of the good and strong feelings of pleasure.

For Aristotle, *akrasia* has been wrongly defined as abandonment of reason, and to assume that it occurs in the face of appetite or pleasurable feelings is equally wrong. Nonetheless, Aristotle declares that:

(...) these common beliefs should not be discounted (...) while neither is entirely correct; each does contain a key insight regarding akrasia. The second premise is that the right to maintain that appetite is central to incontinence. What it fails to consider is the possibility that appetite is central to *continence* as well. (...) appetite is not the villain in the drama of akrasia. Its role must be explained in another way (Aristotle, 2000:232ft).

Aristotle holds that it is right to assume that correct reasoning leads to correct behaviour. However, he observes that this fails to entertain the possibility that reasoned judgment can conflict with a person's actual conduct. In Aristotle's view, it is precisely the conflict between reason and behaviour which makes *akrasia* so puzzling. He writes:

Though persuaded to act otherwise (...) the incontinent) still acts wrongly. The incontinent person thinks it is wrong to pursue (...) the pleasant thing at hand, yet still pursues it (...) (Aristotle, 2000:2751).

Exploring common beliefs about incontinence thus leads Aristotle to ask a series of questions which brings the dilemma of *akrasia* into focus. How is it possible for the akratic to arrive at correct conclusions, yet still act wrongly? What role do feelings and appetites play in the puzzle of *akrasia*? Aristotle considers two reasons to explain why knowledge and action conflict.

The first reason, Aristotle (2000, 280ff) says, derives from the fact that correct reasoning requires premises that are both universal and particular. Individuals, however, sometimes attend to one premise at the expense of the other. Concentrating exclusively on the universal premise leads to incorrect conduct, because it is the particular premise which controls action. Aristotle argues that:

Focusing solely on the particular premise is properly classified. Correct classification, cannot take place without universal premise, for it is the universal premise which articulates general concepts and categories. In so far as the universal premise is ignored, then, mis-classification is likely. Incorrect classification of the particular, in turn, results in incorrect action (Aristotle, 2000:261f).



The second reason why knowledge and behaviour sometimes conflict does not concern the knowing process but rather the conditions under which knowledge is achieved. Individuals may possess knowledge, but they also may be "asleep or mad or drunk." It is this second state of affairs which for Aristotle best describes *ab'asia*. Like those who are asleep or mad or drunk, the incontinent is affected by strong feelings. Aristotle asserts:

Such persons both have knowledge in a way and do not have it (...) people affected by strong feelings may say knowledgeable things (...) this does not mean, however, that these persons actually understand the words they espouse. In this respect, the incontinent is like an actor who can convincingly recite verses even though he does not comprehend them, or a young learner who is able to string together words without fully grasping their meaning (Aristotle, 200:283ff).

The central question thus comes into view: how, precisely, do appetites and strong feelings affect the reasoning process when persons knowingly act against their better judgment?

Aristotle offers this explanation: Suppose, then, that someone has (a) the universal belief, and it hinders him from tasting; he has (b) the second belief, that everything sweet is pleasant and this is sweet, and this belief (b) is active; and he also has appetite. Hence the belief (c) tells him to avoid this, but appetite leads him on, since it is capable of moving each of the (bodily) parts. The result, then, is that in a way reason and belief make him act incontinently. The belief (b) is contrary to correct reason (a), but only coincidentally, not in itself. For it is the appetite, not the belief, that is contrary (in itself to correct reason)

From the above explanation, Aristotle concludes that:

(...) beasts are not incontinent, because they have no universal supposition but (only) appearance and memory of particulars. (Aristotle, 2000: 293).

### **2.8.2. Aristotle: The Two levels of Knowledge as a Basis of Understanding Akrasia**

Aristotle (1952), argues that people always seek knowledge to do what is good for themselves, but it is surprising that they (people) fail to do what they know is right. The inconsistency between knowledge and action according to him sounds a normal human affair. For this reason, he thinks that it is ridiculous to repudiate the fact that incontinence or *akrasia* is a normal feature for human beings. This was a reaction against Socrates' theorization of the nature of man. The Socratic thesis is that:

It is conceivable that anyone should act contrary to his knowledge of what is best for himself. No one would willingly do what is bad (Aristotle, 1952:1145).

Aristotle's understanding of *akrasia* may be understood in the light of his criticism of the Socratic view quoted above. He argues that such thesis contradicts everyday experience. In his own words:

This view contradicts the observed facts and we must enquire about what happens to such a man (1952:1145f).

Akrasia is discussed in detail in chapter seven of Aristotle's book: *Nicomachean Ethics*. The chapter pays special attention to the question of whether akratic or incontinent people act knowingly or not. In this regard, Aristotle makes a distinction between the incontinent and wicked man. This distinction gives clarity to what Aristotle means when he talks of the incontinent man. He says that the incontinent person is:

Like a city which passes all the right decrees and has good laws, but makes no use of them... but the wicked man is like a city that uses its laws, but has wicked laws to use (Aristotle 1952: 1152).

The incontinent person enacts principles that are good. Such a person assents to follow them but fails to follow them when it comes. Both the incontinent and the wicked person do what is bad. However, the wicked person rationalizes such actions while incontinent does not. Aristotle says:

(...)The incontinent person does not know what he or she ought to do. Such a person is not ignorant of the principles that he or she enacts. Unlike the wicked person, the incontinent knows what is to his or her advantage (...) (Aristotle, 2000:1145f).

Aristotle argued that the actions of a wicked person emanates from choice, but, the incontinent acts not by choice, but acts contrary to his/her choice and judgement. Normally the incontinent person has the intention to do that which is good. Due to choice of pleasant and harmful things the incontinent fails to act on the good judgement or principles that he or she enacted. Aristotle maintains that:

The incontinent men (people) are at variance with themselves. They usually have appetites for some things and rational desires for others. (Aristotle: 1952:1166).

Aristotle further argues that the incontinent person possess a rational principle which is supposed to influence things that are for one's own good. However, appetites oppose this rational principle. The incontinent consequently performs that action which is contrary to the desires of the rational principle.

Aristotle explained incontinence as a resulting partly from the conflict between the principles in the Soul. He argued that when appetitive principle overcomes the rational principle, the incontinent person loses the capacity to do that which is consonant with his/her enacted principles. The incontinent person usually regrets his/her actions. Such a person therefore is curable of the weaknesses but the wicked person is incurable. Aristotle stated that:

There is no cure for that person who does not regret his/her errors. The incontinent man knows that he does is bad. He is therefore conscious, unlike the wicked person who is unconscious of his/her wickedness (Aristotle: 1952:1146).

Having distinguished the wicked person from the incontinent. Aristotle conceptualized *akrasia* with regard to knowledge, that is, that a person can have knowledge and act against it. He argued that:

An incontinent is a person who has knowledge yet he or she acts against such knowledge. Such a person has knowledge because one is not oblivious of the general principles that he/she has enacted. Knowledge is awareness of what one is required to do (Aristotle: 1952:1166ff).

From the above, it is important to understand what Aristotle means by knowledge. According to him, there are two senses that a person may be said to know something. He maintains that there are two senses of the word *know*. One may have knowledge without using it, or one may have knowledge and use it. There is nothing strange in saying that an incontinent person has knowledge of the former sense. However, saying that what he is doing is knowledge at work is absurd (Aristotle, 1952: 1246ff).

»

In Aristotle's distinction between the two senses of the "Know" lies a postulation of the difference between potentiality and actuality. Potentiality is a foundation to those states and forms that can be achieved or realized. The potentiality is realized only if effort is forthcoming. Actuality is the realization of the desired states and forms. It is a reality of a capacity inherent in a given thing. Aristotle explains that the knowledge that an incontinent man has is like that of a man who is asleep or drunk (Aristotle: 1952: 1116ff).

In other words as Aristotle further explains, this is a case of a man who has knowledge in one sense. He has acquired the potentiality that comes with the possession of such knowledge. In this case, Aristotle compares such knowledge to the case of an indisposed person. Such a person cannot act at that particular time for he/she is temporarily incapacitated or rendered impotent.

According to Aristotle, the main reason why a person may fail to act in a way consonant with the knowledge that he/she has lies in the non-translation of universals or general principles to particulars but the contrast is not always the same. Aristotle has in mind, a distinction within the class of universals or types. A universal is a general type while the particular is a specific type. In other places, the contrast is between types and individuals. Aristotle explains that:

(...) particulars are individuals while universals are types. The particulars may be understood in the two senses of knowledge as distinguished earlier. Knowledge of the particulars is specific while knowledge of the universals encompasses generalities. Universal means belonging to, done by all or affecting all (...) (Aristotle, 2000:1125f).

In Aristotle's view, the two levels allow the non-translation of knowledge into action by agents. A person may act against these professed principles. This

may result from the failure to see the action at hand as falling under the principles. It is not, therefore absurd to say that a person acts against knowledge. In the words of Aristotle:

There is nothing to prevent a person having both premise and acting against his/her knowledge, provided that he/she is using only the universal premises and not particular for it is the particular acts that have to be done (Aristotle, 1952:1146ff).

It appears from Aristotle's account that the inconsistency between knowledge and action is a failure to proceed from the universal principles to particular. Aristotle demonstrates this by practical syllogism. He gives form which all practical syllogisms must have. They must have two kind premises. The two represent the two levels of knowledge. He says that the premise or judgement is universal and the other deals with the particular .. first tells us that such a kind of man should, and such kind of act. and second that this is an act of the kind meant, and a person of the type inter (Aristotle, 952:11150ff).

Aristotle further argues that the universal premise is a judgement of value or imperative. For example, all citrus fruits are nutritious, or an imperative citrus fruits ought to be eaten. The conclusion following from the combination of such a universal premise with a minor, for example, this is a citrus fruit is not merely a statement. It is an action: the subject eats the fruit. Aristotle uses that the conclusion of a practical syllogism is an action.

Whereas the above explanation is plausible; the conclusion is not an action in the context that we know. It is a belief. In itself it does not tell a person to eat the fruit, for example. A person may thus never stand accused of a refusal to act. The conclusion as made by Aristotle is plausible as we can draw a sin

conclusion from a theoretical syllogism. However, what is clear is that Aristotle seems to have equated a belief with action. This had resulted in some confusion. One may have a belief and not act on the belief. This seems to be a weakness of the practical syllogism. We can conclude that the basic determinant of actions which may obtain or fail is when the practical syllogism absolves the weakness.

## **2.9 Studies Relating to Akrasia and Human Behaviour: Non-adherence**

In psychological literature, several models have been proposed to aid the understanding of how behaviour can be changed. These models are a product of psychology, sometimes called the science of behaviour, and more specifically of one of its relatively new fields, the psychology of health. The first model, the *Health Belief Model*, shows the importance of beliefs in the adoption of behaviour (Becker 1975).

The notion of motivation, in the form of the concept of intention, was introduced by the *Theory of Reasoned Action* (Fishbein and Ajzen 1975) and the *Theory of Planned Behaviour* (Ajzen 1985). The *Theory of Interpersonal Behaviour* (Triandis 1979) introduced the role played by habit. The *Self-Regulatory Model* showed that a subject's self-evaluation of behaviour creates a situation of feedback, which manifests itself not only at the cognitive, but also at the emotional level (Leventhal 1997).

The *Health Locus of Control* (Wallston 1978) and the *Socio-cognitive Theories* (Bandura 1991) highlights the psychological notion of self-efficacy. The *Trans-theoretical Model of Change* (Prochaska 1983) attempts to explain the adoption of a behaviour as a dynamic process, concerned not so much with what leads the subject to a change in behaviour, but rather with how to describe the stages of the change. In the *Theories of Reasoned Action and*

*Planned Behavior*, the likelihood of adopting a behaviour is closely associated with the *intention* expressed by the patient. In these models, the patient's intention to perform behaviour is a construct combining her attitude toward performing the behaviour and subjective norms, represented by beliefs, concerning the way the behaviour is perceived by persons who may be important to her.

No one of these models incorporates the concept of weakness of will — which is surprising, given for example that failure to diet or to refrain from smoking are routinely used by philosophers as examples of paradigmatic cases of weakness of will.

Stewart and Lorber-Kasunic (2007) while investigating the ethical curriculum argues that an ethical curriculum should seek to cultivate, in its students, not only an ability to recognise what is good and right, but a disposition to hold to that good in practice. Further, graduates of such a curriculum should be empathetically equipped to recognise particular sources of akrasia among those they design for. They argued that the desire to act sustainably or compassionately can be thwarted by pressures of time, lack of equipment, bad habits or simply exhaustion.

The study by Stewart and Lorber-Kasunic (2007) is informative with regard to setting goals and objectives of an ethical curriculum. However it falls short of proposing what models could be used to impart such desired values. Their study also gives a general approach to ethical curriculum, without targeting a specific problem that needs a solution. The current study endeavours to bridge the identified gaps by seeking an educational model that could be used in the practice of Anti-Corruption Education, while seeking clarity to why there continues to be corruption despite campaigns against it.



Pendlebury (2005) investigates whether the teaching of ethics can help to make people engage in genuine, non-corrupt business. In her work, she argues that this is not possible and gives three reasons to support her position. First, it is a mistake to assume that *akrasia* is only or primarily a moral problem. A man acting against his own best judgment does not always act immorally. If his best judgment is not in the interests of the good, then his akratic action may in a sense be more moral than an action consistent with his best judgment.

Second, it is a mistake to assume that the only or primary task of moral education is to address the problem of *akrasia*. The phenomenon of *akrasia* presents a special challenge to moral education: "Knowing what's right is easy. It's doing what's right that's hard." Presumably the special challenge for educators is to get people to do what's right and not simply to know what's right. She thus suggests that a central task for moral education today is to "engage everyone involved in defining just what 'the good' means."

Third, it is a mistake to assume that pluralism is the main reason why it is not easy to know what is right. Practical judgment can go wrong in several ways, not all akratic and any of which could lead us to act wrongly. For instance, we may do the wrong thing because we are insufficiently attuned to the fine details of a situation or because we do not always properly know what we are doing. While habituation of the right kind may be crucial in developing those virtues of character which are the mainstay of right action, right action also requires a proper judgment of the situation and of the conflicting concerns that have bearing on it.

Pendlebury's (2005) study underscores the role of education in changing people's behaviour with regard to moral obligations. The study further gives insights into how people act in accordance with their expectations, for instance it points out that "Knowing what's right is easy. It's doing what's

right that's hard." However, Pendlebury (2005), did not endeavour a model that could be used to make people translate knowledge into action. The current study focuses on this gap.

Kerdeman (nd) argues, correctly, that knowing what's right is an insufficient condition for doing what's right. Or, to put the matter more broadly, that judging what is in our own best interests (however these are conceived) is insufficient for acting accordingly. An important educational question, then, is how far and in what ways *akrasia* can be tackled at its source. We act against our own best judgments for many reasons, for instance: because of poor habits of action, mismatched with our desires or aspirations; because of a lack of the perceptual and imaginative habits required for seeing the preferred goods vividly (or for seeing, in concrete detail, the ways in which and the extent to which the akratic alternative might be damaging); because of a lack of subjective conviction in our own strength or in our own future. All these are instances of how powerlessness, in various forms, tends to *akrasia*. But, as Rorty (1996) points out, unrestricted or unusual power can have a similar tendency. Where power is unrestricted, the normal checks and balances which may serve on the side of right action are absent. The current study is an effort to bridge gaps as identified and complement the efforts by the two scholars.

## **2.10. Conceptual Framework of the Study**

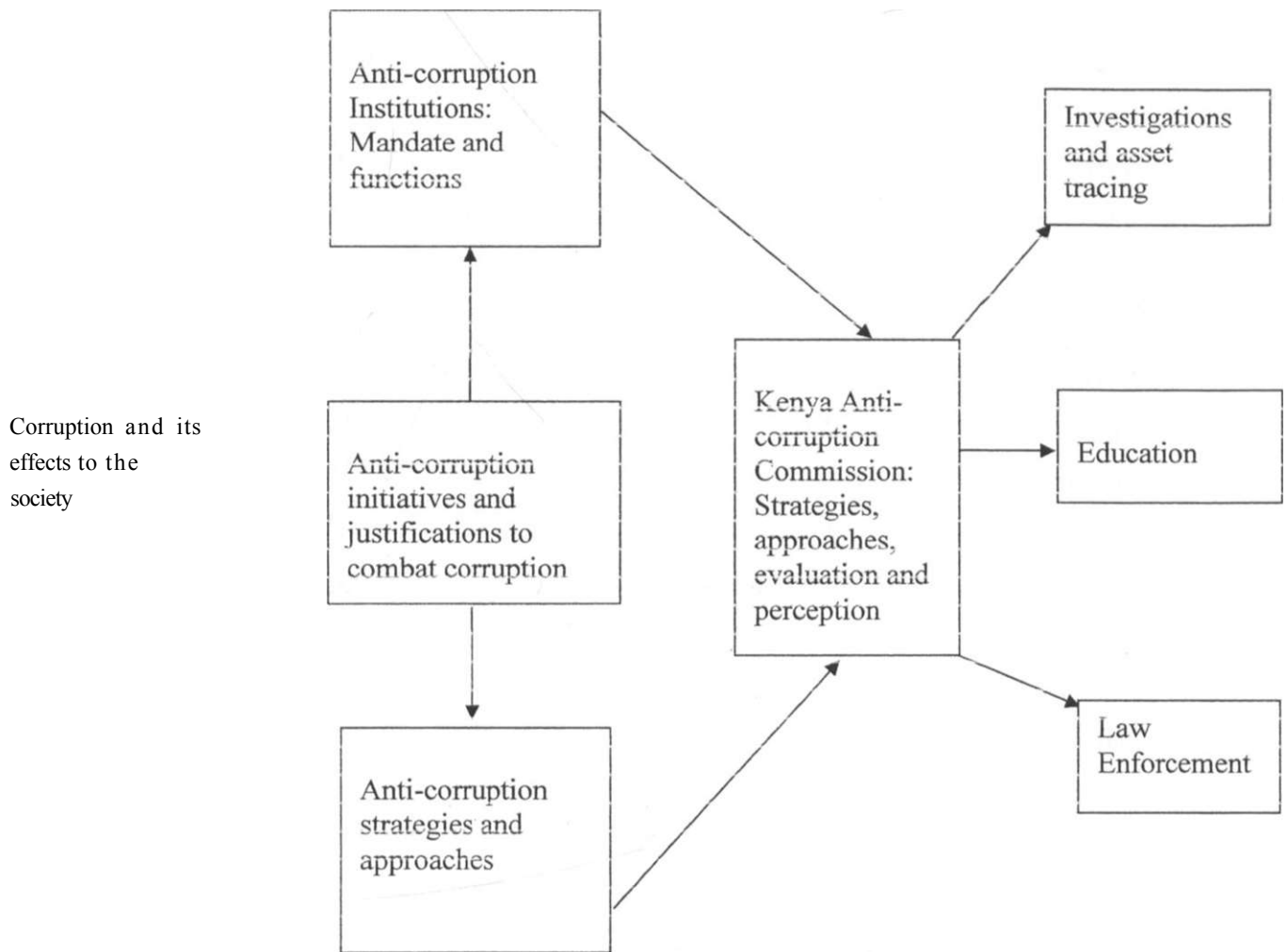
The meaning of corruption and description of its nature and several theorizations of *Akrasia* and human character when faced with a moral challenge has been set out fairly comprehensively in this chapter. Consequently, this study set out to critique the anti-corruption initiatives being undertaken by KACC, while seeking an interventionary educational model. Available sources of literature on how the character of anti-corruption drives

in the world generally and in Kenya specifically can be understood at several levels. Purposeful anti-corruption investigations undertaken by publicly-mandated bodies have catalogued information critical to the study of anti-corruption. In Kenya, these investigations are embodied in reports of the Parliamentary Accounts Committee (PAC), reports of the Public Investments Committee (PIC), reports of the Controller and Auditor-General, work of the Parliamentary Anti-Corruption Select Committee, work of the Kenya Anti-Corruption Authority (KACA) and more recently the work of the Kenya Anti-Corruption Commission (KACC).

As already indicated, a number of research studies have been undertaken whose effect has been to add to the sum total of knowledge on corruption in general and anti-corruption in particular. It is universally acknowledged that corruption - whether petty, grand- is endemic throughout the world in both developed and developing countries. Endeavours to combat corruption are consequently always being prepared and put in place throughout the world. As such, combating corruption requires multiple, inter-connected and concerted action from the whole global society.

The literature notes that several institutions have a role to play in the fight against corruption. The private sector should put self-regulatory mechanisms in place to foster best-practices. It should ensure that opportunities for external or internal corruption in the sector are managed. Civil society organisations such as professional bodies, religious organisations, non-governmental organisations and community-based organisations possess proactive functions and responsibilities to encourage and nurture a corrupt-free culture in the society through awareness-raising strategies. Other similar strategies include the preparation and institutionalisation of anti-corruption measures such as codes of conduct and the entrenchment of Anti-Corruption Education. This results in the conceptualization of corruption as illustrated below:

Fig. 1 Schematic presentation of the Conceptual Framework



Anti-corruption remedies are discussed under the broad albeit not exclusive themes of prevention, enforcement, public awareness and institution-building. Prevention as a strategy involves effective delivery of public services by cutting out bureaucracy, eliminating areas of discretion by public officers, depersonalizing government, paying public officers good wages and monitoring the income of government officers consistently, and through development of codes of conduct for the public and private sectors. Enforcement as a remedy entails the establishment of independent enforcement mechanisms to better enable the detection and punishment of corruption. This remedy should include appropriate powers such as of seizure and forfeiture of corruptly-acquired assets. The remedy of public awareness or education entails raising public awareness on the harm done by corrupt persons. The role of education and a suitable interventionary model is underscored within this context. Education in this regard would have to address the puzzle of *akrasia* as a determinant of human nature.

In this regard, it is noted that citizens should be educated on their right to service for a given price or at no cost. They should be made aware of the appropriate procedures when officials behave corruptly. Effective awareness-raising requires absence of media censorship, and enactment of freedom of information and defamation laws which do not fetter the media. The final remedy involving institution-building requires ensuring that anti-corruption institutions have adequate staff, clear ethical standards and codes and proper financial management systems, among others. The underlying assumption that people may have knowledge but fail to translate into desirable action becomes a central concern.

## **2. 11 Summary of the Chapter**

This chapter has reviewed and analysed studies on corruption, anti-corruption initiatives and Akrasia. It has presented a definition of corruption, its forms and causes. Other themes discussed in the chapter include, the root causes of corruption, effects of corruption anti-corruption efforts globally and locally. Current initiatives by Kenya through KACC to locally combat corruption have articulated and qualified on which the theoretical framework of the study is founded.

## CHAPTER THREE

### RESEARCH METHODOLOGY

#### 3.0 Introduction

This study utilized pure philosophical methodologies namely, critical, analytic and speculative methods. Given that philosophical methods are non-empirical thus neither using qualitative nor quantitative techniques, it can only be subjected to the benchmarks of philosophical study which are evaluated on grounds of intelligibility rather than the logic of scientific methodology.

According to Brabacker (1962), philosophical studies rely on argumentation generated from the 'ideas' which attempt to justify the assumptions that form the basis of secondary sources. This way, philosophizing involves thinking about thinking, in an attempt to provide the why of the grounds of various belief systems. It is in this sense that philosophy manipulates ideas expressed in 'arguments' in the technical sense and not data as is the case in natural or social sciences. It is in this regard that philosophers reject attempts to 'philosophize empirically' and instead encourage development of 'philosophy of disciplines' rather than allowing empirical research benchmarks to be used to validate philosophical methodology.

In this study criticism, analysis and speculation are the dominant methods used. This chapter delineates what each method involves and how it is used in this study.

### **3.1 Research Design**

The design of this study is founded on the Platonic dialects. Platonic dialects is an approach in which a philosophical inquiry occurs at three levels (Procter, 1980), thesis, anti-thesis and synthesis. For this reason, Chapters One, Two and Three of this study forms the bedrock, from which thesis, anti-thesis and synthesis are derived. Thesis occurs at Chapter Four, anti-thesis at Chapter Five while synthesis is at Chapter Six and Seven. The methodology of the study is chosen to correspond to this design as discussed below.

### **3.2 The Analytical Method**

According to Kneller (1964), Analytical Approach is primarily concerned with the analysis of language, statements and concepts used in different contexts. This aids in clarification and justification of meanings. It emphasizes logical and systematic thinking as it calls for thinking that is clear and one that makes necessary distinctions between what is essential and what is less important. Njoroge and Bennaars observe that the method requires a thinking that is logical and systematic; it should be clear thinking which makes necessary distinctions, separating clearly what matters, from what is accidental and less important (Njoroge & Bennaars, 1986:24).

Brightman (1957:33) observes that the Analytical method requires a complete analysis of perceived concepts or statements or objects into constituent parts. It requires an understanding of words and statements to the extent that clarity is achieved as opposed to ambiguity.

With regard to education, the Analytic method is used to examine the rationality of educational concepts and ideas, their consistency with other ideas and the logic and adequacy of matters they seek to explain. Since



quality of conceptions lie in their internal coherence and validity, analysis utilizes rational techniques to ensure that precision and clarity of concepts are achieved. Analytic method through the use of conceptual analysis helps to clarify problems associated with vagueness by delimitation and specification of the logical implications of the statements in which they occur.

In this study, Philosophical analysis is carried out in three phases: Linguistic analysis studies the meanings of terms within the conventional use of natural language. The starting point is the analysis of the acceptable social conventions that govern the use of terms in ordinary language. This was used in understanding the definition of corruption, an analysis of various anti-corruption declarations, for example, United Nations Convention against Corruption, African Union Convention on Preventing and Combating Corruption and other legislations that focus on corruption. An understanding of Akrasia and the practice of anti-corruption education was done on the same basis.

Conceptual analysis studies concepts that lie behind terms in ordinary language, and explicates them. By clarification and delineation of the meaning of a term, conceptual analysis delimits the extent of applicability of a term in specialist usage. This was applied in Chapter One of the study, with regard to operational definition of terms.

Philosophical analysis starts from having a verbal definition such as a dictionary may give or from conventional usage and goes further to elucidate the significance and implications of such a definition. The interest of analytic philosophy in education is therefore conceptual clarity as a preliminary to the justification of educational theory and practice. The implication of this position is that a conceptual analysis in education needs to yield some empirical implications although the analysis is not empirical.

Philosophical analysis in education should make educators and curricula planners aware of the assumptions and implications that educational concepts engender. The thrust of an analysis is to use the curriculum in such a way that the intellectual outcome will enable us to communicate bodies of knowledge whose verification is sound, with precise and exact meaning. Philosophical analysis as used in this study involves an understanding of guidelines that best inform the anti-corruption education curricular, teaching methods, concepts and evaluation approaches. This is utilized in Chapter Six.

### **3. 3 The Critical Method**

This method, according to Njoroge and Bennaars (1986), has been associated with Socrates, hence also called the Socratic Method. It is characterized by a state of doubt of premises that support a conclusion and even the conclusion itself. It is dominated by critical questioning of claims and assumptions. It tends to encourage honesty of thought and seeks to protect one from fanaticism and hypocrisy. It aims at liberating one from narrow-mindedness and points towards positive evaluation based on clear and distinct ideas. The primary concern is the clarification, liberation and extension of goods that inhere in man's function of experience.

The critical function of philosophy renders ideas more coherent, more secure and more significant in their application. It is the cornerstone of logical aid in exhibiting the unity of logical foundations of knowledge. In assessing the value of this method, Njoroge and Bennaars (1986) emphasize that using this method, the philosopher ultimately recommends or prescribes, in a normative manner, what ought to be done when man is judged to be facing a crisis, either as an individual or a society (Njoroge & Bennaars, 1986:23).

According to Njoroge (1998), the philosopher does not criticize for criticism's sake. Criticism is a positive evaluation of ideas. It is the judgment of things in the light of clear and distinct ideas. The philosopher institutes and perpetuates more enduring and extensive values until he or she reaches the clarification of the issues in question.

Philosophical issues are normally resolved against a background of competing and even conflicting but intelligible stand points. The method seeks justification of all claims and practices. In this study, the justification for the establishment of anti-corruption institutions and the resultant initiatives in the society is discussed in the wider context, whereas that of KACC is discussed in particular.

The Critical method has an interrogative out look on issues, explanations and problems with a view to widen the scope of their interpretations and understanding. This way, in Chapter Five, the study interrogates the initiatives of KACC in fighting corruption, thereby identifying gaps that undermine significant achievement in the fight against corruption. The study used this interrogative approach to find out the role of education in anti-corruption initiatives and the nature of human beings when faced with moral tasks. In this regard, the domains of Akrasia are identified that are used to inform the practice of education as an anti-corruption media.

The method was useful in subjecting the assumptions of KACC's educational practice to severe questioning. For instance, the study questioned the use of drama and music festivals as a way of raising knowledge of corruption. Here, it was established that people could be interested in the entertainment element of drama and music rather than knowledge of corruption. Methods of evaluating anti-corruption education were also questioned.

The critical method seeks to find purpose in resolution of issues and conflicts; solving problems; making judgments and choice; detecting fallacies in arguments which arise due to ambiguity, vagueness and equivocation. This way, this method was useful in suggesting an anti-corruption educational model that breaches the gaps in the current educational practice.

### **3.4 Speculative Method**

To speculate is to wonder, conjecture, and guess a kin to hypothesize. Speculation occurs where a particular kind of knowledge being sought for is not available. While the natural and social sciences largely exclude speculation from their methodology, philosophy includes it as one of the most important methods in philosophical deliberation. This is because philosophy endeavours to transcend the empirical methods of the natural and social sciences, as well as the formal method of mathematics. The speculative method of philosophy is most frequently seen in its attempt to solve metaphysical problems such as death, suffering and happiness, to which there are no simple answers. Consequently, philosophers rely mainly on the method of rational speculation in trying to arrive at answers to such questions (Njoroge and Bennaars 1986, 26-27).

According to Bali (1952) this method emphasizes the use of reasoning in explaining issues of daily life. Philosophers seek to challenge the human mind as far as possible in trying to understand basic issues such as being, suffering, pain, and death, happiness, good and evil, which they seek to explain by speculation. Njoroge and Bennaars (1986) emphasize that the Speculative Method endeavours to arrive at a whole field from arrays of facts. Here the human mind tends to look at a commodity of things as a whole not as parts. It attempts to put the various parts of a commodity into some synthesis before examination.

In this study speculative method was employed in Chapter Six and Seven. In Chapter Six the method helps to figure out the domains of Akrasia, the basis upon which anti-corruption education model is seen to work. The application of principles of education to empower people in the areas of related develop Authenticity, Attention, Temptation and Principleness are areas of speculative concern as they are available only to private consciousness but is believed to be amenable to the manipulation of human rationality through education.

. In Chapter Seven, the method helps to draw conclusions of the study

### **3.5 Summary**

The foregoing methods will be instrumental in resolving our research problem. Furthermore, on the basis of the Assumptions in section 1.6 about the capacity of education to improve human moral concern and social responsibility by empowering the will, the three methods are appropriate for an in depth analysis of how human rationality interacts with the will to act according to cherished beliefs. Our reflections are illuminated by Aristotle's beliefs on Akrasia.

## **CHAPTER FOUR**

### **KENYA ANTI- CORRUPTION COMMISSIONS' INITIATIVES IN FIGHTING CORRUPTION**

#### **4.0 Introduction**

From the literature reviewed in Chapter Two of this study, it is apparent that the Kenya Anti- Corruption Commission (KACC) has developed several strategies that reflect its initiatives in fighting corruption. These initiatives could be classified into three broad categories namely: law enforcement, corruption prevention and public education. The current chapter examines in detail, each of these three categories, preceded by an examination of the corruption situation in the country.

#### **4.1 Current Corruption Trends in the Country: A Critical Overview**

According to Ringera (2007), more often than not information about the incidence of corruption remains a matter of speculation and conjecture. However this scenario notwithstanding, it is still possible for a keen observer to authoritatively postulate about the trends of corruption in Kenya in terms of its occurrence, manifestation, frequency and intensity.

From the reports filed daily at the Kenya Anti-Corruption Commission, it is undeniable that corruption is still a reality in the country. Incidents of corruption are still rampant in public offices. Nor is corruption limited to the public sector, it also permeates the private sector. Agents of corruption remain undeterred by the possibility of apprehension and eventual punishment (Ngugi, 2007:8).

As demonstrated in the Chapter Two of this study, KACC receives between 80 and 100 reports of corruption on a weekly basis from members of the public. These reports indicate that corruption is not only pervasive but also systemic. KACC (2007) indicates that the cases reported to the Commission vary in a number of respects. Some are simple straightforward incidences of petty corruption, which, with quick and uncomplicated investigations, receive immediate action in terms of a recommendation for prosecution to the Attorney General. Others are complex cases of grand corruption that require skilled and expert investigations by the Commission. Most of these are likely to have taken place over a period of time and usually involve many actors from both the public and private sectors. These cases take a long time to investigate before a firm recommendation for prosecution can be made to the Attorney General (KACC, 2007:24).

As Muthomi (2006) puts it, the bottom line therefore, is that while acts of corruption are no longer brazenly executed with impunity as in the past, the perpetrators of this vice are becoming more adept and sophisticated in their schemes. Ringera (2007) notes that more often than not, as recent experiences show, the corrupt are now investing time and resources to cover their tracks upfront before carrying out their activities. The cover up may take the form of ensnaring law enforcement agencies in the corrupt ventures or establishing an elaborate and intricate network of defence in the event that the cover is blown and demands for punitive action against the perpetrator become the norm of the day.

Bellow (2003) argues that the strategy is what has in recent times been characterized as the ability of corruption to fight back, where attempts to slay the dragon do give rise to even more dangerous beasts. Bellow further observes that this impenetrable web of defence can take a social, political or legal form or a combination of all the three. The social strategy entails acts of

largesse directed to an unsuspecting or gullible public by the barons and cartels of corruption. Once as often happens, a corrupt individual succeeds in portraying himself as the benefactor of society, it becomes very difficult for state agencies to unmask him as a thief and therefore an enemy of the people (Bellow, 2003:67).

As Namwamba (2007) argues, on the political front, the line of defence takes the form of an appeal to tribal or ethnic emotions by the corrupt. According to KACC (2007), one of the most coveted instruments of self-protection, which has over the years been deployed with devastating effect against the anti-corruption war in Kenya, is the tendency for the corrupt to portray themselves as victims of a tribal witch-hunt. KACC notes that the strategy by which convicts to ethicize their own criminality has on many occasions succeeded in blackmailing those with the responsibility of enforcing the law into inaction (KACC, 2007:6).

Finally, the law itself is almost invariably deployed as the last bulwark against the anti-corruption war. As Ringera (2007) notes, the law in this regard is not just an instrument of social engineering but also a vehicle of maintaining the status quo. It becomes a tool for preserving the benefits and profits of corruption.

KACC conducted a survey that measured perceived corruption and compared the outcome with findings of the 2005 and 2006 surveys. The 2007 Survey was carried out during the months of August and September 2007 involving 5,207 respondents spread across the country. The highlights of the survey findings show that more than three quarters of the respondents (77.9%) understood corruption to mean giving and taking bribes. Other manifestations of corruption recognized include misuse of public resources, tribalism/nepotism/favouritism, extortion, fraud, illegal acquisition of public



property and tax evasion. Over three quarters of the respondents (77.6%) perceive corruption to be a major problem today while nearly all respondents (91.8% and 83%) believe that "grand" and "petty" corruption are both equally harmful to the economy (KACC, 2008:69).

According to the survey (KACC, 2008), on average, 44 percent of the respondents indicated that the level of corruption within public institutions has decreased, 34.3 percent believe it has increased, while 16 percent felt it has not changed. Respondents perceived the Police (Traffic, Regular and Administration) and the Provincial Administration as topping the list of public agencies most involved in bribery'. Government hospitals, local authorities. National registration bureau, Lands office, the judiciary and the department of immigration were also perceived as dens of corruption.

#### **4.2. KACC Strategies in the Fight against Corruption: A critical Overview**

The Kenya Anti-Corruption Commission is the premier institution for fighting corruption in the country. It is established by law (The Anti-Corruption and Economic Crimes Act 2003) and vested with a wide mandate to investigate corrupt conduct, trace and recover corruptly acquired public property, devise corruption prevention mechanisms and educate the public on the dangers of corruption. The Commission has adopted an all embracing and comprehensive strategy of executing this mission. It uses a three-pronged approach namely; investigation, prevention, and mobilization of public support (Public Education). This approach is reflected in the mandate given to the Commission by law to investigate corrupt conduct; trace and recover corruptly acquired public property, advice on corruption prevention mechanisms and educate the public on the dangers of corruption. This mandate is carried out through three directorates;\* The Directorate of Investigations and Asset

Tracing; the Directorate of Legal Services and the Directorate of Preventive Services (Ringera, 2007: xi).

The Directorate of Preventive Services is responsible for the implementation of four functions of the Commission as spelt out in Section 7 of the Anti-Corruption and Economic Crimes Act (No. 3 of 2003). The section states that at the request of any person, the Commission has the mandate to advise and assist the person on ways in which the person may eliminate corrupt practices; 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; 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 and 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 (Muthomi, 2006:13).

Preventive activities therefore focus on reforming policies, practices, and procedures with a view to seal corruption loopholes and other inefficiencies that may lead to loss, poor service delivery and other malpractices. This approach, according to Christopher (2000) attempts to reach the majority of the population who, given an environment where ethical values and good governance practices are institutionalized, will not engage in corrupt practices. Christopher notes that this approach clearly differentiates prevention from investigation as the latter is mainly carried out after a crime has been committed or is about to be committed. The importance of corruption prevention cannot be underrated as it has been recognized internationally as the most effective strategy in fighting corruption (Christopher, 2000: 113).

According to KACC (2007) this overall strategy is largely defined by the legislative mandate given to the Commission by the Act. It is premised upon a vision of attaining a society with zero tolerance for corruption. The Kenya Anti-Corruption Commission realizes that the attainment of this vision entails a clear, systematic, practical, sustained and a well-coordinated approach to combating corruption. The Commission also realises that no single individual or agency can eradicate corruption in Kenya. The strategy is therefore three pronged i.e. enforcement of the law against corruption, prevention of corruption and educating the public about and against corruption (KACC, 2007:2).

#### **4.2.1 Law Enforcement (Investigation and Asset Tracing)**

The Commission is empowered to investigate any conduct constituting corruption or economic crime. It is also empowered to assist any law enforcement agency in the investigation of corruption or economic crime. Where an investigation reveals that loss of, or damage to public property has been occasioned by the corrupt conduct of a public officer, the Commission is empowered to institute civil proceedings against such official for the recovery of the said property including, but not limited to public funds. This power extends to all property or funds outside Kenya. The KACC Annual Report 2007/2009 makes it clear that one of the core mandates of the Commission is to conduct investigations into corruption and economic crimes and related matters reported to or detected by the Commission. The Commission places more emphasis on proactive diction of corruption and economic crimes to disrupt corrupt activities. This pre-emptive approach saves the public money that would have otherwise been lost through corruption, dismantles corruption networks and saves on time and resources that would have been spent on post facto investigation and prosecution (KACC, 2008:4)

In pursuing law enforcement through investigation and asset tracing initiatives, the Commission performs three main functions, namely, receiving reports, carrying out investigations, litigation and asset recovery. This section examines the performance of the Commission in these functions in detail as follows:

#### **4.2.1.1 Reports Received by KACC**

According to KACC 2007/2008 Annual Report, in the period July 2007 to June 2008 the Commission received 4,485 complaints at the Commissions headquarters in Nairobi and a further 359 reports at the Mombasa regional office which became operational in June 2007. In comparison, the Commission received 8,188 reports in 2006-2007 and 7,888 reports in 2005-2006 (KACC, 2006 & 2007). However, the KACC 2007/2007 Annual Report notes that the drop in the number of reports received may be attributed to two main reasons: General elections campaigns which witnessed increased political activity in the period September to December 2007, and Post Election violence covering the months of January to March 2008 (KACC, 2008:4).

It becomes apparent from the foregoing that the drop is not due to reduced cases of corruption, but diminished access to reporting. Similarly, the view points to the fact that a drop in reported cases does not imply a reduction in corruption cases. This is because people may have declined to volunteer reports to the Commission or could have been compromised.

#### **4.2.1.2 Investigations done by KACC**

During the period 2007/2008, the Commission completed 389 investigations where 25 cases were referred to external agencies for investigations. These investigations according to KACC (2008) resulted in the arrest of 62 suspects.

Some of the major investigations the Commission continued to undertake include: Security Contracts (Anglo Leasing Contracts) investigations. According to KACC (2008) the Commission continues to pursue international assistance through mutual legal assistance and agency to agency-cooperation in an endeavour to cover the international aspects but with varied successes and challenges. The Commission explains that these international investigations, through the assistance of foreign agencies, are covering jurisdictions including the United Kingdom, Spain, the United States, Jersey, The Netherlands and Switzerland and extends to other jurisdictions as investigations progresses (KACC, 2008:7).

The Commission has launched further investigations to pending bills, in which the Commission continues to receive reports from the Pending Bills Closing Committee with recommendations for criminal investigation and civil recovery. The Commission has opened eighty (80) files with claims estimated at Kshs. 80 billion.

On the judiciary, the Commission has instituted five (5) inquiries targeting procurement and financial irregularities in the judiciary involving senior officials of the judiciary. The commission is also investigating the management of funds at the National Aids Control Council (NACC) where three (3) investigations on financial irregularities by officials and agents of the NACC have been instituted. KACC further reports that the Commission has continued to focus attention on the usage of devolved funds and has opened several inquiries on the use of Constituency Development Funds (CDF), the Local Authority Transfer Funds (LATF) and the Fuel Levy. Investigations have focused on the misuse of the funds by constituency development committees and parliamentarians, local authority staff and irregularities in the award and performance of road repair contracts through the use of fuel levy (KACC, 2008:7).

Investigations also continue in the sugar sector where the Commission has managed, through intelligence gathered, to disrupt irregular payment of huge sums of money. Several other inquiries are ongoing. After incessant complaints by the public in regard to irregular issuance of work permits, residence permits and citizenship, the Commission instituted investigations at the Directorate of Immigration Services. The investigations are on-going (KACC, 2008:8).

#### **4.2.1. 3 Asset Tracing Investigations**

In the year 2007-2008, 50 inquiry case files were opened. According to the KACC 2007/2008 annual report, some of the ongoing assets tracing investigations include investigations into allegations that a financial controller of a state corporation is engaged in corruption /economic crimes and is in possession of unexplained assets. KACC mentions that it was detected that the subject had suspect deposits amounting to over Kshs.128 million within one year. A search carried out in both the office and residence of the official recovered a total of KSh. 4,308,000/= in cash. Valuation of his immovable assets is approximately KSh. 56 million (KACC, 2008:8).

The KACC 2007/2008 annual report further reveals investigation into allegations that a chief accountant in a government ministry has accumulated wealth whose value is disproportionate to his known sources of income. In the report, it is shown that a search carried out in the suspect's residence recovered Kshs. 1,990,000/= in cash. Valuation of the unexplained assets is approximately Kshs. 73.7 million (KACC, 2008:8).

Other issues cover investigations into allegations that the Nucleus Estate of Miami Sugar Company (1989) Limited (under receivership) which comprises of 9,394 acres of land and developments thereon with an estimated value of

over Kshs. 2.3 billion was irregularly disposed of through a public auction. Investigation into allegations of illegal acquisition of public land in Mombasa estimated at Kshs. 5 million and investigations into allegations that the Kenya Sugar Board made irregular payments in the form of legal fees to the tune of Kshs. 181 million to an advocate are also underway.

#### **4.2.2 Cases Recommended for Recovery**

The Commission has recommended the recovery of Eldora Municipal Council properties and public utility land irregularly sold by a former mayor of the council. Similarly, it has recommended the recovery' of illegally acquired (grabbed) property valued at approximately Kshs 61 million belonging to the Municipal Council of Nauru (KACC, 2008:8).

#### **4.2.3 Proactive Interventions by the Commission**

According (KACC,2008), the Commission undertook the following preemptive actions: Kenya Sugar Board, in which the Commission detected and proactively disrupted a transaction in which Kshs. 2.2 billion was about to be irregularly approved and granted to a non-qualified applicant. The other case involves Mombasa Old Port, where a tax evasion ring in which unscrupulous traders evaded taxes running into millions of shillings was detected by the Commission as well as the Kenya Ports Authority in which KACC preventive services officers on routine systems examination at the Mombasa Port detected and reported flawed procurement in progress for two ship-to-shore cranes by KPA at a cost of Kshs. 1 billion.

#### **4.2.4 Litigation and Asset Recover}**

In carrying out its law enforcement mandate, the Commission performs functions towards the litigation and recovery of corruptly acquired asset. Under this function, the Commission investigates the extent of liability for the loss of, or damage to any public property and in appropriate cases to institute civil proceedings against any person for the recovery of such property or for compensation. The Commission notes that this function underscores the fundamental need to deprive the corrupt the benefit of their ill-gotten wealth, thereby removing the motivation to engage in corruption and economic crimes generally. (KACC, 2008:11).

Investigations undertaken by the Commission (KACC, 2008:11) are geared towards, among other things, the tracing, freezing, recovery and/or forfeiture of corruptly acquired wealth. These processes, as observed above, serve to deprive the motivation invariably underlying every corrupt transaction and break the corruption vicious cycle. The Commission maintains that effective implementation of these recovery processes is one of the criteria by which the status of compliance by states parties which are signatory to the United Nation Convention Against Corruption (UNCAC) and African Union Convention for Preventing and Combating Corruption (AUCPCC) are evaluated (KACC, 2008:11).

#### **4.3 Kenya Anti-Corruption Commission's Prevention Initiatives**

Having identified areas that seem to be plagued with rampant cases of corruption, and vested with the institutional mandate to prevent corruption in the country, KACC has developed several initiatives including: partnerships and coalitions, review of standard tender documents, enhancing good governance in Local Authorities procurement systems, management of



records in public institutions, corruption eradication indicators for performance contracts, Integrity Awards scheme, enhancing governance and integrity in private sector/professional associations, Integrity Assurance Officers (IAO) training programme, Corruption Prevention Committees (CPC) and senior management training, follow-up on Integrity Assurance Officers, examination and corruption prevention guidelines, follow-up on the implementation of recommendations of the examination report on the registration and licensing of motor vehicles and enforcement of traffic laws and the development of Corruption Prevention Guidelines (KACC,2008)

According to KACC annual report 2007/2008, the Commission partners and develops coalition activities mainly in public procurement; management of records in public institutions; development of governance instruments to support performance contracting, formulation of a template for use by public institutions to monitor the corruption eradication indicators under the performance contracts; development of the Public Service Integrity Award Scheme; and enhancing good governance and integrity among private sector/professional associations.

#### **4.3.2 Review of Standard Tender Documents**

The Commission collaborated with the Public Procurement and Oversight Authority (PPOA) to review the standard tender documents which provide the framework and the basis for procurement in public institutions. According to KACC (2008), there are 39 prescribed Standard Tender Documents. The exercise addresses loopholes exploited for corrupt practices and devises safeguards to reduce opportunities for corruption; and integrating anti-corruption conditions in the documents. Specific suggestions include instructions to bidders, general conditions of contract, selection of consultants, selection of individual professional consultants, procurement of works.

prequalification document. Confidential Business Questionnaire Form (CBQ): Anti-Corruption Declaration/ Commitment/ Pledge Form:

#### **4.3.3 Enhancing Good Governance in Local Authorities Procurement Systems**

In its endeavours to prevent corruption, KACC launched Enhancing Good Governance in Local Authorities Procurement Systems. The Commission, the Public Procurement Oversight Authority, and other stakeholders are implementing the programme targeting chief officers and members of Tender Committees in Local Authorities. Phase one of the programme exposes participants to the requirements of The Public Procurement and Disposal Act (PPDA) 2005, The Public Procurement and Disposal Regulations (PPDR) 2006, and how to address corruption loopholes in the procurement cycle. A practical module guides participants on the design and process of Corruption Risk Assessment (CRA) and consequent formulation of Corruption Prevention Plans (CPP) to address identified risks. So far, 170 chief officers and members of tender committees from Local Authorities from 5 provinces were trained.

#### **4.3.4 Management of Records in Public Institutions**

KACC (2006) observed that proper records are critical in enhancing service delivery and good governance in any institution. To help in streamlining records creation, tracking, control and maintenance in public institutions KACC collaborated with the Kenya National Archives and Documentation Services in the following activities:

#### **4.3.5 Corruption Eradication Indicators for Performance Contracts**

The Commission collaborated with the Office of the Prime Minister-Public Sector Reforms and Performance Contracting to develop measurable components of the "Corruption Eradication" indicators which were incorporated in the Performance Contracts (PC) of all public institutions in 2007/08. The five performance targets for the "Corruption Eradication" indicator were reviewed for incorporation into the performance contracts for 2008/09 for ministries, state-corporations, local authorities and tertiary institutions. Two components were added for implementation in the year 2008/09. A reporting template for use by public institutions to monitor implementation indicators was developed for quarterly and annual reporting.

#### **4.3.6 Integrity Awards Scheme**

The Integrity Award Scheme was launched in 2007, and an adjudication committee comprising representatives from the Cabinet Office, Ministry of State for Public Service, Office of the Prime Minister-Public Sector Reforms and Performance Contracting, the State Corporations Advisory Committee and the Kenya Anti-Corruption Commission was formed. The scheme sets standards for anti-corruption management systems. It is an opportunity for organizations to review their positions on corruption and identify further actions to minimize corruption risks.

#### **4.3.7 Enhancing Governance and Integrity in Private Sector/Professional Associations**

The Commission, in collaboration with the Association of Professional Societies of East Africa (APSEA) started outreach activities to enhance ethics and good corporate governance among professionals and the private sector as a corruption prevention strategy (KACC, 2007). The Commission continues to

undertake the training of Integrity Assurance Officers and Integrity/Corruption Prevention Committees. Other related activities involved follow up in two institutions to determine the efficacy of the programme.

#### **4.3.8 Integrity Assurance Officers (IAO) Training Programme**

KACC has trained a total of 488 Integrity Assurance Officers (IAOs) drawn from various sectors in the public service. A follow-up was conducted in the Kenya Ports Authority and the Kenya Wildlife Services to identify gaps that required intervention in the IAO training programme and to determine the impact of the IAOs in their organizations. It was observed that some top level managers in these institutions were not committed to the implementation of integrity initiatives. In the two institutions visited the Corruption Prevention Committees (CPCs) were not properly constituted and there was no evidence that any meetings took place. The IAOs trained expressed frustration due to inadequate management support and commitment to their work. Anti corruption policy, codes of conduct and corruption prevention plans were yet to be developed.

This follow-up has assisted in mainstreaming anti-corruption strategies in organizations. Training of top managers and Corruption Prevention Committee (CPC) members has enhanced appreciation of their obligations for corruption prevention and the need to own and drive the process. According to KACC (2008), many organizations are now setting aside finance and other resources to mainstream integrity through training and development of governance instruments in their respective organizations. These instruments include Corruption Prevention Plans (CPP) which profile corruption prevention initiatives in public organizations and set out levels of responsibility for implementation of the Plans thereby enhancing accountability.

### **4.3.9 Corruption Prevention Committees (CPC) and Senior Management Training**

According to KACC (2008), this training targets senior management and members of the Corruption Prevention Committees. The objective of this training is to equip senior managers and their committees on process of mainstreaming anti-corruption strategies through the development of appropriate policies and structures and to complement the work of Integrity Assurance Officers.

### **4.3.10. Examination and Corruption Prevention Guidelines**

As the KACC 2007/2008 annual report shows, the Commission, in accordance with its mandate, conducts examination of systems, policies, procedures and practices in the public and private sector agencies. The Commission also provides advisory services to various organizations on various corruption prevention methods. The Commission conducted examination of systems relating to procurement, storage and distribution of drugs and medical supplies; Registration and Licensing of Motor Vehicles and Enforcement of Traffic Laws; Municipal Council of Mombasa; Ministry of Immigration and Registration of Persons - Department of Immigration; the City Council of Nairobi; the Teachers Service Commission; the Roads Sub Sector and the Department of Pensions. Recommendations of these examinations are now being implemented.

Key recommendations from KACC (2008) to curb the loopholes indicated above include among others, the development of a national integrated policy on registration of persons, review of the Registration of Persons Act and its Subsidiary Legislation and the introduction of tamper proof birth certificates and identity cards. j

#### **4.4 KACC'S Education Initiatives to Fight Corruption**

In underscoring education as Key Avenue to fight corruption, KACC has developed two main initiatives as discussed below.

##### **4.4.1 Public Education Initiative**

The Anti-Corruption and Economic Crimes Act 2003 (GK. 2004) empowers KACC to educate members of the public on the dangers of corruption and economic crimes and to enlist and foster public support in combating corruption and economic crimes. Education is central in inculcating desired knowledge, skills and values that promote national cohesion, development and positive culture. Corruption frustrates efforts to achieve these noble goals. In response, the Commission designs, develops and implements education programmes that cover training on anti-corruption, good governance, ethics and integrity in the public, private and formal spheres (KACC, 2008:63).

The Commission has therefore come up with various educational programmes that include media education programming, community based anti-corruption programme, Young Farmers Clubs of Kenya, national and international days commemorations, Formal Integrity Education, school based anti-corruption curriculum, support materials development, end-term evaluation of the Training, Research, Advocacy and Governance (TRAG) Certificate course, mainstreaming anti-corruption and integrity content in co-curricula activities, governance training for the ministry of education officers and schools/colleges Visits and opportunity lectures

##### **4.4.2. Sectoral Integrity Education**

The Commission has engaged in a series of sectoral integrity education, among which include: Spiritual Sector Anti-Corruption Education, Law

Enforcement Agencies Anti-Corruption/Integrity Education and Curriculum Development, Kenya Institute of Administration (KIA) trainers lectures, The Cooperative Sector Integrity and Anti-Corruption Training, Community Based Organization (CBO) Anti-Corruption Project and Public Service Integrity Programme (PSIP).

#### **4.5 Chapter Summary**

This chapter has examined the Kenya Anti-Corruption Commissions' initiatives in the fight against corruption. It has presented the mandate of the Commission as the premier institution to fight corruption in Kenya namely: law enforcement, corruption preventions and public education. It has emerged from the chapter that the Commission is empowered to investigate any conduct constituting corruption or economic crime and assist any law enforcement agency in the investigation of corruption or economic crime. Kenya Anti-Corruption Commission (KACC) is empowered to take necessary measures aimed at preventing corruption in the public, parastatal and local authority sectors. In order to do this, the Commission examines the systems, practices and procedures within 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. With regard to public education initiative, The Anti-Corruption and Economic Crimes Act 2003 (GoK, 2004) empowers KACC educate members of the public on the dangers of corruption and economic crime and to enlist and foster public support in combating corruption and economic crime. It has been shown that education is central in inculcating desired knowledge, skills and values that promote national cohesion, development and positive culture.

## **CHAPTER FIVE**

### **A CRITIQUE OF THE KENYA ANTI-CORRUPTION COMMISSION'S INITIATIVES IN THE FIGHT AGAINST CORRUPTION**

#### **5.0 Introduction**

The Kenya Anti- Corruption Commission is the premier institution charged with the constitutional mandate to fight corruption in Kenya. To articulate its mandate, the commission uses a three-pronged approach in the fight against corruption. These are: Law enforcement (investigation), prevention, and mobilization of public support (Public Education). These approaches are reflected in the mandate given to the Commission by law to investigate corrupt conduct; trace and recover corruptly acquired public property, advice on corruption prevention mechanisms and educate the public on the dangers of corruption. This chapter will undertake a critical examination of the weaknesses inherent in the initiatives of KACC in fighting corruption. But first, the chapter presents some of the notable achievements of the Commission.

#### **5.1 Successes of the Kenya Anti-Corruption Commission in the Fight against Corruption**

Since its establishment, KACC has undertaken several initiatives in pursuance of its mandate and functions that have resulted in several successes. These are discussed below.



### **5.1.1 Law Enforcement**

#### **a) Public Involvement and Co-operation**

The Commission has gained public enthusiasm in reporting perceived cases of corruption. This has made it easier for the Commission to conduct investigations and law enforcement processes as the public come out not only to report, but also to volunteer giving evidence. For example KACC's consecutive annual reports show that in the period 2004/2005 KACC received a total of 3,234 complaints of incidences of suspected and alleged corruption and economic crimes. In the period 2005/2006, a total of 7,888 reports of alleged corruption and economic crime were brought to the Commission.

The Commission received 8,188 complaints, reports and other matters from members of the public in the period 2006/2007 while in the period 2007/2008, the Commission received a total of 4,485 complaints at the Commissions headquarters and a further 359 reports at the Mombasa regional office. This demonstrates that the Commission is continuing to gain public cooperation and support in combating corruption. This shows that the Commission has succeeded in making the public aware of the dangers of corruption and the need to fight it. A summary of trends in corruption reporting between the period 2005/2006 and 2008/2009 is presented in the figures below:

Figure 2: trends in corruption reporting for the period 2005/2006 and 2008/2009

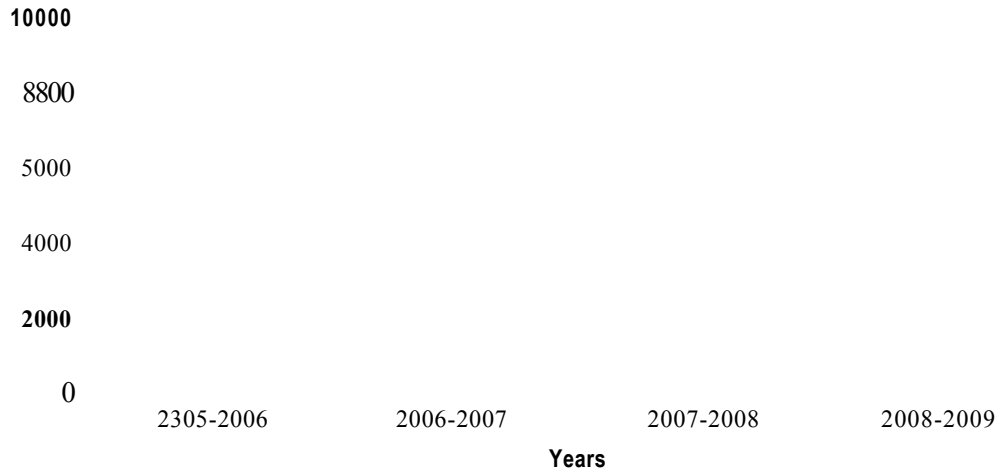
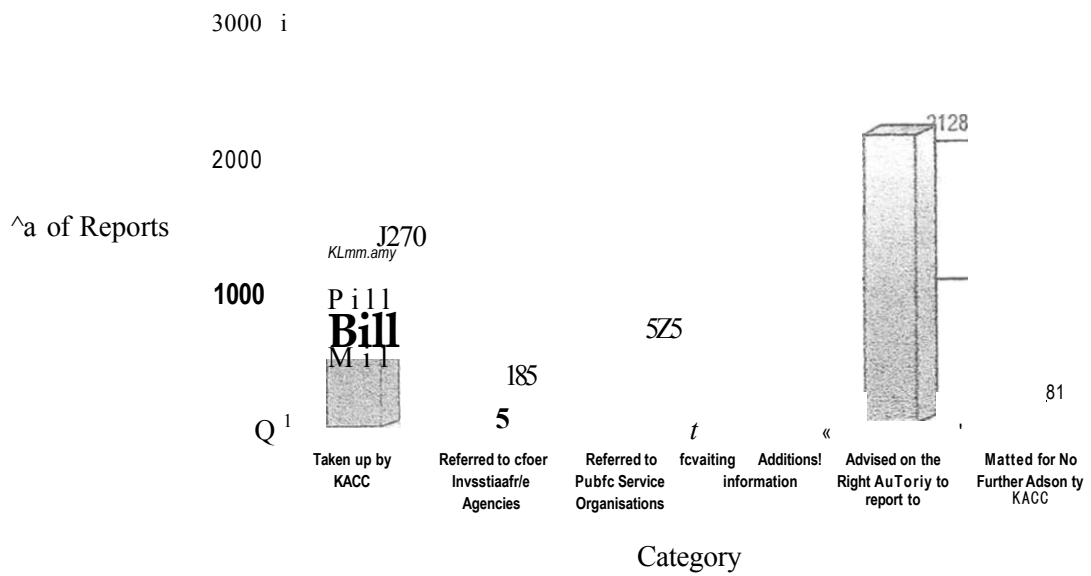


Figure 3: Categorization of Corruption Reports by Action Taken



## **b) Support from other Government Sectors**

Government ministries, parastatals and other public institutions have co-operated with the Commission by incorporating KACC's guidelines to fight corruption. For instance, public institutions have established corruption prevention committees, trained Integrity Assurance Officers, raised signs and posters warning against corruption, developed service charters as well as rules and regulations to govern against corrupt practices. For instance in the year 2005 the Commission reached 11,830 public sector employees. Sensitization of public officers on corruption and on how to stem and address the scourge in ministries and government departments continued in all eight provinces of Kenya.

The Commission undertook three one-month structured training courses involving 96 senior public officers under the Training, Research, Advocacy and Governance programme (TRAG). One hundred and forty three institution-based resource persons were trained under the Training of Trainers programme. A total of 351 integrity assurance officers from 50 public institutions were trained by the Commission. The Commission participated in high-volume forums such as annual agricultural shows and the Nairobi International Trade Fair.

Besides the above initiatives, the government has initiated the Cabinet Committee on Corruption chaired by the Ministry of Justice and Constitutional Affairs. The committee actively advises the president on anti-corruption initiatives and on principles of better governance and is overseeing the tracking of public money hidden in foreign banks. The government has also set up a Public Complaints Unit (PCU) to serve as a focus for public complaints to the Government. The Department of Governance and Ethics, in conjunction with the head of the civil service and

the Ministry of Justice and Constitutional Affairs, is actively involved in this new initiative under the Public Officers Ethics Act 2003 whereby all public servants are required to declare their wealth, assets and liabilities.

#### **c) Parliamentary Support.**

The Kenya Parliament has passed necessary legislations that empower KACC to pursue and perform its mandate and functions. Besides, parliament has also enacted other legislations that create institutions that compliment the fight against corruption. For instance besides passing the Anti-Corruption and Economic Crimes Act. 2003 that established KACC and the Witness Protection Bill, Parliament established the Parliamentary Anti-Corruption Select Committee (PACSC) with three mandates: to study the nature and extent of corruption in Kenya, to identify the key perpetrators of corruption in Kenya and to develop a more comprehensive Bill to widen the scope of the definition of corruption beyond Cap 65. This means that KACC's initiatives have won the confidence of parliament.

#### **d) Civil Society Support**

Civil society organizations, whether local or international have continued to show support for KACC's initiatives in the fight against. CSO's have been instrumental in evaluating the performance of the Commission and pointing its failures as well as areas that need attention. For example Transparency International (TI) has on several occasions evaluated anti-corruption initiatives in Kenya and made several revelations. In 2006 and 2007. TI showed Kenya remained in the bottom 10% of its Corruption Perception Index (CPI), an indicator that Kenya is one of the world's most corrupt countries. Kenya was then ranked 144<sup>th</sup> out of 159 countries for corruption. In

its latest report on corruption, TI (2009) ranks Kenya as the most corrupt country in East Africa. CSO's continue to provide checks and balances for KACC.

Members of the civil society have also agreed to take part in the anti-corruption initiatives of KACC. For example in the year 2007, a total of 66 participants drawn from civil society organizations in eight provinces were trained in two workshops conducted by KACC. These incidences do not critique KACC's efforts but provide insights and feedback.

### **5.1.2 Investigations and Asset Tracing**

In performing this function, the Commission enjoys public, parliamentary and international support.

#### **a) Public Support**

The Commission has succeeded in having members of the public come out to report perceived cases of corruption. For example in the period 2006/7 there was also an overwhelming increase of anonymous reports owing to the introduction of the web-based anonymous reporting system. Anonymous reports increased by 53% from 750 in the previous year to 1,151. Out of the reports received during the year, 1,611 were corruption related and were taken up for investigations. This reflected an increase of cases taken up for investigation from 15% last year to 20% during the year 2006/7. The Commission took up 1,611 reports for investigation. Out of these reports, 28% were handled through preliminary investigation, 26% special operations, 13% forensic investigation, and 33% were taken for intelligence development. This enables the Commission to start investigations and or asset tracing.

## **b) Parliament**

Parliament passed the Witness Protection Act that enables KACC to protect individuals who volunteer information that may be useful while carrying out investigations or tracing assets.

## **c) International Support**

The United Nations, African Union and other related international organizations have developed conventions that call for the independence of anti-corruption institutions such as KACC. The diplomatic community has remained committed to denying visas to those suspected of corrupt practices. Foreign governments have started freezing accounts of those suspected of corruption and some are in the process of having extradition agreements with Government of Kenya. This is enabling KACC to carry its investigations and asset tracing function.

### **5.1.3 Public Education**

Through public education, KACC has created awareness of the effects of corruption, the need to eradicate and report it when suspected cases occur. In this way, the Commission has achieved great success.

#### **a) Schools**

To address the need for anti-corruption course content in the education curriculum and in the schools system, the Commission sponsored the Kenya Drama Festival's anti-corruption theme which attracted many competing entries. Significantly, in 2005 Kenya Certificate of Secondary Education

(KCSE) English Literature examination paper. The schools have also incorporated anti-corruption campaigns in co-curricular activities such as music and drama. The fusion of anti-corruption themes in literature texts is another indicator of the support that the Commission enjoys from schools.

#### **b) Community Based Organizations**

Members of community based organizations have supported KACC's initiative in enhancing awareness about corruption through music and during public functions. This has strengthened anti-corruption campaigns, thereby showing that KACC has succeeded in winning community support.

#### **c) Mass Media**

Both print and electronic media remain paramount in anti-corruption campaigns. News reporters have continued to report on cases of alleged corruption. Further, they have carried anti-corruption messages and advertisements and have continued to condemn corruption. The media has remained vigilant in reporting corrupt practices. The Commission has also succeeded in having the media create awareness of its establishment and mandate and also give coverage to its works.

The Commission broadcast a radio programme, a total of 66 participants drawn from civil society in eight provinces were trained in two workshops. It also sponsored the 100,000 member strong Young Farmers Clubs of Kenya and a National Camp in which 250 participants drawn from eight regions countrywide participated in the event of Public Service Week. Other supported initiatives include the World Anti-Corruption Day.

a

## **5.2 Challenges Facing KACC'S Initiatives in the Fight against Corruption**

Several challenges continue to undermine the initiatives of the KACC, despite the successes it has made. These challenges could be grouped into two broad categories: legal and operational challenges.

### **5.2.1 Legal Challenges Facing KACC**

Some of the legal challenges facing KACC include the definition of corruption within the Act, poor conception of the meaning of corruption, and limited understanding of KACC's mandate with regard to Law enforcement

#### **a) The definition of corruption by the Act**

The Act defines corruption as an offence with respect to a benefit that is an inducement or reward for, or otherwise on account of, an agent - doing or not doing something in relation to the affairs or business of the agent's principal: or showing or not showing favour or disfavour to anything, including to any person or proposal, in relation to the affairs or business of the agent's principal, bribery, fraud, embezzlement or misappropriation of public funds, abuse of office, breach of trust; or an offence involving dishonesty in connection with any tax, rate or impost levied under any Act; or under any written law relating to the elections of persons to public office; (The Anti-Corruption and Economic Crimes Act, 2003).

The Anti-Corruption Act does not adequately address many of the offences created under UNCAC, e.g. bribery of foreign public officials and officials of public international organizations, illicit enrichment, laundering of the proceeds of crime, trading in influence and obstruction of justice. This has



also been illustrated in the Act, hence the Commission does not provide for the holistic understanding of corruption.

The Anti-Corruption Act does not have provisions to criminalize corruption in the private sector. The Act only commits public officers an implication that corruption does not occur in the private sector. This means that those people who engage in corrupt activities within the private sector can not be disciplined by KACC. It remains unclear how KACC will address a case in which for example a human resource officer in a private sector demands a bribe or elicits favours to award a tender or employment to deserving individuals.

The definition of corruption by the Act does not distinguish between corruption and economic crime. The latter is defined as an offence under section 45 or as offence involving dishonesty under any written law providing for the maintenance or protection of the public revenue. It appears from this that not all acts of corruption involve economic crimes. Equally, economic crimes need not always involve or amount to corruption, as for the most part, the consequences of corruption and economic crimes are identical. These pitfalls in the definition of corruption undermine KACC's initiatives in the enforcement of law as provided in its mandate.

#### **b) Poor conception of the meaning of corruption**

KACC's annual reports have shown that many of the alleged cases of corruption received from the public do not constitute corruption. For example during the period 2003/2004, a staggering 3,552 complaints were received. Out of these, KACC instituted investigations on 242 complaints that fell

within the KACC's mandate. The rest were handed over to the relevant agencies for further action while no action was taken on 229 complaints.

In the period 2004/2005 a total of 3,234 complaints of suspected and alleged corruption and economic crimes were received at the Commission (KACC 2004/2005:5). Of this number, only 384 (11.9%) were found to merit further investigation by the Commission under its statutory mandate to address corruption and economic crime. Out of 7,888 reports of alleged corruption and economic crimes brought to the Commission's attention by Kenyans, during the reporting year, only 15% of them fell within the mandate of the Commission, thereby meriting further action.

During the year 2006/7 the Commission received 8,188 complaints, reports and other matters from members of the public, public service, and watchdog agencies, as compared to 7,888 in the previous year, reflecting an increase of 300 reports or 3.8%. There was also an overwhelming increase of anonymous reports owing to the introduction of the web-based anonymous reporting system. Anonymous reports increased by 53% from 750 in the previous year to 1,151. Out of the reports received during the year, 1,611 were corruption related and were taken up for investigations reflecting an increase from 15% last year to 20% during the year 2006/7. Out of these reports, 28% were handled through preliminary investigation, 26% special operations, 13% forensic investigation, and 33% were taken for intelligence development. During the year, 237 investigations were completed while 115 were referred to external agencies for investigation. In addition, the Commission earned forward 857 cases from the previous years (KACC, 2007:4f.).

These observations points to the fact that the public does not have a clear understanding of corruption. As a result, the few cases that KACC is able to address, versus the reports received could create scepticism among those who

volunteer reports, hence the notion that KACC is not doing enough in fighting corruption.

### **c) Limited KACC's Mandate with Regard to Law Enforcement**

To enable KACC to effectively carry out its law enforcement function, under Section 3 and 4. the Anti-Corruption and Economic Act 2003 provides for the appointment of magistrates to try person who commit offences under this Act. However, the existence and jurisdiction of special magistrates has been challenged in court as was made in the High Court of Kenya (Nairobi) Miscellaneous Criminal Application No. 495 of 2003 in which it was stated that the court, had no relationship with the Anti-Corruption Act and therefore it was untenable for the applicant to impugn the Act. It becomes a concern on what the legal and procedural position of the court is with regard to the mandate of the Kenya Anti-Corruption.

Provisions in part II of the Anti-Corruption Act relate to the procedures and powers of special magistrates in which it is provided that a special magistrate may, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to an offence, tender a pardon to such person-on condition of his making a full and true disclosure of the whole circumstance within his knowledge relating to the offence and to every other person concerned, whether as principal or abettor, in the commission of the offence. Such pardon, when so tendered, is deemed a pardon for purposes of section 77(6) of the Constitution of Kenya. It emerges here that the Commission may effectively carry out its mandate given this seeming discrepancy.

Section 5 of the Anti-Corruption Act accords with the provisions of Article 37 of UNCAC, which obliges- State Parties to take appropriate measures to

encourage persons who participate in or who have participated in the commission of an offence established under the Convention to supply information useful to competent authorities for investigative and evidentiary purposes and to provide factual, specific help to competent authorities that may contribute to depriving offenders of the proceeds of crime and to recovering such proceeds. Section 5 of the Act provides that a special Magistrate may, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, an offence, tender a pardon to such person on condition of his making a full and true disclosure of the whole circumstance within his knowledge relating to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof and any pardon so tendered shall be a pardon for purposes of section 77(6) of the Constitution ( The Anti-Corruption and Economic Crimes Act, 2003: 8)

According to the Kenya Constitution, Protection of Fundamental Rights and Freedoms of the Individual is contained in Chapter Five and has sixteen sections that range from section 70 to section 86. Section 77 has provisions to secure protection of law and provides that every person who is charged with a criminal offence shall be presumed to be innocent until he is proved or has pleaded guilty (Kenya, Republic of, 1992). Section 77(6) states that no person shall be tried for a criminal offence if he shows 'that he has been pardoned for that offence (Kenya, Republic of, 1992).

In particular, the pardon provided by section 5 of the Anti-Corruption Act accords with the requirement for State Parties to consider the possibility of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with the provisions of the Convention.

The Convention states that each state party shall take appropriate measures to encourage persons who participate or who have participated in the commission of an offence established in accordance with this convention to supply information useful to competent authorities. This information is to be used for investigative and evidentiary purposes and to provide factual, specific help to competent authorities that may contribute to depriving offenders of the proceeds of crime and to recovering such proceeds.

The Convention further urges States Parties to consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence or consider providing for the possibility, in accordance with fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.(UN, 2004: 27). This seeming conflict of the legal provisions raises questions on the efficacy of the Commission in carrying out investigations and collection of evidence.

Part III of the Anti-Corruption Act establishes the Kenya Anti-Corruption Commission (KACC) and the Kenya Anti-Corruption Advisory Board (the Advisory Board). The establishment of KACC and the Advisory Board accord with Article 6 of UNCAC, which calls on State Parties to ensure the existence of a body or bodies that prevent corruption. As stipulated in the Anti-Corruption and Economic Crimes Act, KACC is obliged to investigate any matter that, in its opinion, raises suspicion that conduct constituting corruption or economic crime, or conduct liable to allow, encourage or cause conduct constituting corruption or economic crime, has occurred or is about to occur. KACC may examine the practices and procedures of public bodies in order to facilitate the discovery of corruption practices and to secure the revision of

methods of work or procedures that, in its opinion, may be conducive to corrupt practices.

KACC has underscored the central place of education in the fight against corruption by inculcating desired knowledge, skills and values that promote national cohesion, development and positive culture. Corruption frustrates efforts to achieve these noble goals. In response, the Commission designs, develops and implements education programmes that cover training on anti-corruption, good governance, ethics and integrity in the public, private and formal spheres (KACC, 2008:63)

Part IV of the Anti-Corruption Act deals with investigations. It states that the director or a person authorized by the director may conduct an investigation on behalf of KACC. While conducting investigations, the director or an investigator has the powers, privileges and immunities of a police officer in addition to other powers under the Anti-Corruption Act. KACC may by notice in writing require a person reasonably suspected of corruption or economic crime to furnish within a reasonable time specified in the notice a written statement enumerating his property and the times at which it was acquired, and stating in relating to any property that was acquired at or about the time of the suspected corruption or economic crime. Failure or neglect to comply with the notice is an offence for which the suspect, if convicted, is liable to a fine not exceeding three hundred thousand shillings or to imprisonment for a term not exceeding three years or to both. (The Anti-Corruption and Economic Crimes Act, 2003 Part IV).

It remains to be seen whether the provision for these notices infringes section 77(7) of the Constitution of Kenya, which provides that no person who is tried for a criminal offence shall be compelled to give evidence at the trial. It (section 77(7) of the Constitution of Kenya) states that no person who is tried

for a criminal offence shall be compelled to give evidence at the trial (Kenya, Republic of, 1992). Consequently it remains unclear whether while carrying out this mandate, the Commission will be infringing on this fundamental constitutional provision.

According to the Anti-Corruption and Economic Crimes Act 2003. KACC may, with a warrant, enter and search premises. The Act states that the director of KACC or an investigator has the power to arrest any person for and charge them with an offence, and to detain them for the purpose of an investigation, as a police officer would. (The Anti-Corruption and Economic Crimes Act, 2003).

These investigations as contemplated by the Act could be described as rudimentary in nature and, accordingly, below the standards contemplated by UNCAC. There is no provision for special investigative techniques like those contemplated by Article 50(1) of UNCAC. which states that in order to combat corruption effectively, each State Party shall, to the extent permitted by the basic principles of its domestic legal system and in accordance with the conditions prescribed by its domestic law, take such measures as may be necessary, within its means, to allow for the appropriate use by its competent authorities of controlled delivery and, where it deems appropriate, other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, within its territory, and to allow for the admissibility in court of evidence derived there from (UN, 2004:4 1).

Part V of the Anti-Corruption Act establishes a number of offences. As already earlier in this chapter and the preceding chapters of this study, such offences include bribing agents, secret inducements for advice, deceiving principal, conflict of interest, improper benefits to trustees for appointments, bid rigging, abuse of office and dealing with suspect property. The Act further

provides for the penalties under this offence. It states a person convicted of an offence under this part is liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding ten years or both. A convict is liable to an additional mandatory fine if, as a result of the conduct constituting the offence, the offender received a quantifiable benefit or any other person suffered a quantifiable loss. The mandatory fine shall be equal to two times the amount of the benefit or loss. If the offence resulted in a benefit and loss, the mandatory fine shall be equal to two times the sum of the amount of the benefit and the amount of the loss (The Anti-Corruption and Economic Crimes Act, 2003).

Part VI of the Anti-Corruption Act provides for compensation and recovery of improper benefits. Section 51 provides that a person who does anything that constitutes corruption or economic crime is liable to anyone who suffers loss as a result for an amount that would be full compensation for the loss suffered (The Anti-Corruption and Economic Crimes Act, 2003). Such provisions reflect the spirit of the provisions of UNCAC, which recognize the right of entities or persons who have suffered damage from corruption to initiate legal proceedings for compensation. The victim may be a public body or a private individual. Section 54 of the Act further states that the court must also order the convict to give to the rightful owner any property acquired in the course of or as a result of the conduct that constituted the corruption or economic crime an amount equivalent to the value of that property (The Anti-Corruption and Economic Crimes Act, 2003).

Though sections 48 on penalties and 51 on liability to compensation are laudable, they are not far from problematic. Besides failing to address the question of *locus standi*, (the ability of a party to demonstrate to the court sufficient connection to and harm from the law or action challenged to support that party's participation in the case) a literal reading of section 51 suggests



that liability to compensation only arises in respect of such losses as a claimant can quantify. Section 51 states that a person who does anything that constitutes corruption or economic crime is liable to anyone who suffers a loss as a result for an amount that would be full compensation for the loss suffered (The Anti-Corruption and Economic Crimes Act, 2003). The costs and consequences of corruption can be inter-generational and incapable of monetary quantification. It is probably with this in mind that UNCAC calls on State Parties to take measures to address consequences of corruption.

## **5.2.2 Operational Challenges Facing KACC**

### **a) Operational Parameters**

The Anti-Corruption and Economic Crimes Act, 2003 lacks many of the significant features and obligations imposed on State Parties under UNCAC. It does not, for instance, make sufficient provision for international cooperation and technical assistance in the prevention of and fight against corruption, yet Kenya is a signatory to UNCAC. Section 12(2) of the Anti-Corruption Act states that the Commission may in the performance of its functions work in co-operation with any foreign government or international regional organization (The Anti-Corruption and Economic Crimes Act, 2003). This provision by the Act is only a minimal provision on international cooperation, the Act does not provide for the mode and scope of international cooperation.

Further, since the Act does not address trans-boundary aspects of corruption, it can legitimately be argued that the cooperation envisioned under the Act only relates to matters touching on corruption or economic crimes committed in Kenya. In fact, section 67 of the Act which states that conduct by a citizen of Kenya that takes place outside Kenya constitutes an offence under this Act

if the conduct would constitute an offence under this Act if it took place in Kenya (The Anti-Corruption and Economic Crimes Act, 2003).

The implication of the above observation is that the Act only criminalizes extra-territorial offences committed by Kenyan citizens. In the absence of a local law domesticating the provisions of UNCAC, it is legitimate to argue that Kenya has no legal sanctions against transnational aspects of corruption. Consequently, KACC has no mandate on the offences being committed under these circumstances. It is therefore evident that KACC and its initiatives are limited to the citizens of Kenya, and for this matter as it will be shown, only those in the public sector.

The Anti-Corruption Act does not have provisions to criminalize corruption in the private sector (Muthomi, 2006). The Act only commits to public officers. This erroneously implies that corruption does not occur in the private sector. It further means that those people who engage in corrupt activities within the private sector can not be disciplined by KACC.

#### **b) Co-ordination and Harmonization**

The fact that the Anti-Corruption Act limits KACC to investigations without prosecutorial powers is a major shortcoming of the Act. It is noted that KACC "lacks the teeth" to bite corrupt officials. This is because the Attorney General may decide not to prosecute individuals even after investigations by KACC.

It is arguable that the establishment of KACC under the Anti-Corruption Act does not fully meet Kenya's obligations under Articles 5 and 6 of UNCAC. Article 5 of UNCAC obliges State Parties to develop and implement or maintain effective, coordinated anti-corruption policies that promote the

participation of society and reflect the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.

Article 5 of UNCAC states that each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability to establish and promote effective practices aimed at the prevention of corruption, endeavour to periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption as appropriate and in accordance with the fundamental principles of their legal system and to collaborate with each other and with relevant international and regional organizations in promoting and developing the measures referred to in this article. That collaboration may include participation in international programmes and projects aimed at the prevention of corruption (UN, 2004:9).

It appears that there is no coordination in implementing anti-corruption measures and policies. Though section 12 of the Anti-Corruption Act provides for cooperation between KACC and other bodies, for instance, we have witnessed conflicts between KACC and the office of the Attorney General. Though section 12 obliges public bodies and officers to cooperate with KACC, it should be contrasted with multiple constitutional and statutory provisions which provide that certain officers and bodies are not subject to the control and direction of any person or authority. KACC's success seems to be dictated by the Attorney General's office as it decides which cases to be prosecuted.

Still on coordination and harmonization of anti-corruption measures and policies, it is not clear whether officers of the Anti-Corruption Unit of the Kenya Police Force are answerable to the Commissioner of Police or Director of KACC. In short, the provisions of section 12 of the Anti-Corruption Act fall below the requirement set out in Article 38 of UNCAC. Under Article 38, each State Party is obliged to take such measures as may be necessary to encourage cooperation between its public officials and authorities on the one hand and its authorities responsible for investigating and prosecuting criminal offences under the Convention on the other. There are no known measures in Kenya, legal, policy or administrative, obliging public authorities and officials to assist and cooperate with KACC.

### **c) Challenges facing the Investigations Initiative**

From the arguments above, it is demonstrable that the Commission has faced several criticisms over the manner in which it has executed it mandated as provided in the Act. In fact the Commission admits this in its 2006/2007 annual report where the Commission states that weaknesses in the anti-corruption legislation, including the lack of transparency in wealth declarations, lack of a mechanism of investigating breaches of codes of conduct and ethics by public officers undermines the work of the Commission (KACC, 2007: 5).

The Commission points out that the recovery of looted public property is rendered virtually impossible because of the imitation of Actions Act (Cap. 22). According to this Act, the time limits for actions based on breach of contract, breach of trust and unjust enrichment is six years, while for actions based on tort such as theft or fraud it is three years. This means that most of

the misappropriated public funds could not be recovered unless the Act was amended to remove these limits.

#### **d) Protection of Witnesses**

Section 65(1) of the Anti-Corruption and Economic Crimes Act, No. 3 of 2003 attempts to protect informers but does not penalize those who breach this section. The Official Secrets Act, (Cap. 187 Laws of Kenya) is an impediment to public servants who would wish to report corruption, since it bars public officers from disclosing information that they come across in the course of their duties. The legislative protection of whistle blowers and witnesses has limited the number and quality of reports submitted to the Commission due to fear of victimization.

The Anti-Corruption Act does not embody key features of UNCAC on protection of witnesses, informers and victims of corruption and economic crime. It appears that the protection afforded to witnesses under section 65 of the Anti-Corruption Act only extends to protection from disclosure of an informers or witness' identity and protection from legal and disciplinary action.

Article 32 of UNCAC requires State Parties to take appropriate measures to provide effective protection from potential retaliation or intimidation for witnesses and experts who give testimony concerning offences established in accordance with the Convention (UN, 2004:25). The protection accorded under UNCAC extends to relatives and other persons close to the witness or expert. Further, unlike the Anti-Corruption Act, which merely provides for protection from the disclosure of the identity of a witness, UNCAC provides for physical protection and relocation as well as nondisclosure of the whereabouts of witnesses. There are virtually no provisions in the Act on

freezing, seizure and confiscation of assets or proceeds of corruption or economic crime.

#### **e) Challenges in Anti-Corruption Education Programmes**

The initiative by KACC towards anti-corruption education meets the requirements of Article 6(1) (b) of UNCAC, which obliges State Parties to ensure the existence of a body or bodies to increase and disseminate knowledge about the prevention of corruption as part of preventive measures. Article 6(1) (b) of UNCAC provides that each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies, as appropriate that prevent corruption by such means as increasing and disseminating knowledge about the prevention of corruption (UN, 2004:10).

The Kenya Anti- Corruption Commission has emphasized that people must appreciate the fact that corruption dehumanizes them by denying them their fair dues in society. It denies them justice and rewards the unjust. It robs them of the fruits of their labour by diverting their taxes to unscrupulous individuals and syndicates. They must realize that it is their duty to fight corruption in all its manifestations. They must understand that the benefits of eradicating corruption are many and long lasting. And they should understand that corruption has no real benefits. This is only possible through a comprehensive public education campaign (KACC, 2007:11).

The Commission has come up with various education programmes under its Public Integrity Education strategy discussed with the main aim of fostering social solidarity against corruption. These education programmes include: media education programming, community based anti-corruption programme, formal integrity education, school based anti-corruption curriculum support

materials development, end-term evaluation of the Training, Research, Advocacy and Governance (TRAG) certificate course, mainstreaming anti-corruption and integrity content in co-curricular activities governance training for the Ministry of Education officers, schools/ colleges visits and opportunity lectures, sectoral integrity education, spiritual sector anti-corruption education, law enforcement agencies anti-corruption/integrity education and curriculum development, Kenya Institute of Administration (KIA) trainers lectures, the Cooperative sector integrity and anti-corruption training, Community Based Organization (CBO) anti-corruption project and Public Service Integrity Programme (PSIP) (*For details see Chapter Two and Three of this Study*). Several gaps are visible in the KACC initiatives to educate the public about corruption.

The Commission has not articulated the goals of anti-corruption public education initiatives and neither has it necessarily drawn the objectives. Consequently, this undermines the drawing of curriculum content. It further undermines the logical structure of such content to meet the learning needs and levels of consumers (learners).

The current use of co-curricular activities presents a challenge in that, whereas corruption causes such devastating effects on mankind, the use of forums such music and drama paints a picture of people celebrating in their own tribulations. On many occasions one would see students dancing and celebrating that they have won the trophy and the accompanying joy of victory. Furthermore, composers may be making efforts in their work, not because they want to spread the message of anti-corruption, but to win the trophy and the fame. Ideally, what seems to be happening is that these public educational programmes are playing entertainment role rather educational. For example, when a school presents a dramatized dance it is not clear whether the audience came for the message "on corruption or came for love of drama and

therefore entrainment. The same thing applies to music. Furthermore, a team that scores the highest mark in drama or music it does not really imply that the team convinced many people to change their corruptive behaviour. It is because the team has applied the rules of drama or music correctly, as the final score is based on such aspects.

KACC also has challenges in entrenching the norms and ethics of the practice of Anti-Corruption Education. Raising of consciousness about the norms and ethics of the profession may contribute to increasing job satisfaction among teachers and education personnel. To enhance their status and self-esteem, and to increasing respect for the profession in the society, education personnel shall: a) justify public trust and confidence and enhance the esteem in which the profession is held by providing quality education for all students; b) ensure that professional knowledge is regularly updated and improved; c) determine the nature, format and timing of their lifelong learning programs as an essential expression of their professionalism; d) declare all relevant information related to competency and qualifications; e) strive, through active participation in their union, to achieve conditions of work that attract highly qualified persons to the profession; f) support all efforts to promote democracy and human rights in and through education (EI Declaration on Professional Ethics, Section 9). Besides the failure to provide for the professional qualification of those involved in the practice of public education, KACC has not provided for the ethical conduct as contained in the declaration.

The Commission has not developed any particular criteria to be used in evaluating learners. It has been shown in chapter three of this study that students were examined on themes on corruption. In fact the questions were compulsory. What emerges from such a practice could be an understanding that students who scored high marks in such an examination were less corrupt



than those who got less marks. This in itself cannot be entertained as learners could have studied for the purposes of passing examinations. Necessarily, learners could have such knowledge and fail to practice. As a matter of fact, KACC needed to come up with an evaluation blue print before introducing the idea of examinations.

As already mentioned without clear goals of public education, such evaluation did not have any goals and could not have achieved any purpose. Furthermore, KACC tested learners in school and have not shown how they tested those out of school. This observation implies that KACC lacks an evaluation mechanism or structure.

## **5.8 Chapter Summary**

This chapter has presented pitfalls in the anti-corruption initiatives as carried out by KACC. It has attempted a critical overview of the Anti-corruption and Economic Crimes Act 2003, while showing how this has undermined KACC's initiatives. The chapter also examined the short comings of the concept of corruption and its implications to KACC initiatives. Additionally, the chapter has critically examined KACCs law enforcement, investigation and public education initiatives while trying to identify pitfalls in each initiative.

## CHAPTER SIX

### TOWARDS THE FOUNDATION OF EDUCATIONAL MODEL FOR ANTI-CORRUPTION INITIATIVES

#### 6.1 Introduction

This Chapter endeavours to develop an understanding of the principles of *akrasia* and build an educational model for anti-corruption ethics. It presents an overview of *Akrasia* in general and Aristotle's theorization of *Akrasia* from which the precise domains of *Akrasia* are derived. The domains of *Akrasia* in turn inform the development of the educational model for anti-corruption education.

#### 6.2 The Precise Domains of *Akrasia* within Kenya Anti-Corruption Commission's Initiatives in the Fight against Corruption.

##### 6.2.1 *Akrasia*: An Overview

*Akrasia* occasionally translated as *acrasia* means lacking command over oneself. It is the state of acting against one's better judgment. Much of the philosophical literature takes *akrasia* to be the same thing as weakness of the will. Incontinence or weakness of the will occurs when someone consciously or deliberately makes a choice that he/she sincerely believes is wrong (Christopher, 2004). *Akrasia* involves conflicts between our evaluations and our commitments, or between our commitments and acts falling under them. When people act against their own better judgment, they temporarily believe that the worse course of action is better, because they have not made it judgmental but only basing it on a sunset of possible considerations. When people behave *akratically*, they are often aware that what they are doing is undesirable (Donald, 1969).

In philosophical theorization there are two broad views of akrasia: competitivist and precisionist Njoroge (1998). Competitivists approach to akrasia is built in terms of contest or competition (Njoroge, 1988). In the theorization of competitivists, man is portrayed as a being that has appetites, emotions and reason. These three elements are often in a contest for supremacy. This contest determines the outcomes of a person's judgment, decisions and actions. Reason is supposed to influence actions. If Reason acts above appetites and emotions, then this culminates in rational actions.

When the appetites and emotions overcome reason, a person acts against judgments, knowledge and decisions. While reason is concerned about the good of the person, the appetites are not. Due to these different aims or reason and the appetites, there is a conflict. Each of these elements desires to emerge the winner. If the appetites are behind such judgments, that is, they have overcome reason then, a person acts contrary to the judgments and knowledge.

The precisionist perspective is the view of man's actions as not conflicting with his judgments, knowledge, principles and decisions. It means acting on knowledge such that the action so resultant conforms to the knowledge. The actions are praiseworthy. Man's actions are such that he acts on edicts as given by society.

The precisionist perspective maintains that an agent always acts in conformity with moral requirements. Thus, it is a normal human feature for an agent to act in accordance with what is agreed to as good. Human behaviour does not therefore admit any inconsistency between knowledge and action. People prefer virtue against vice. The principles enacted for them are strong enough to show the benefit of virtue as against vice. What society desires manifests itself in the actions of an agent. The principle inclines the agent towards what

is good for self and the society. The greatest desire in an agent is self-realization. An individual realizes what is for his or her own good. A person's station in a community dictates the duties that promote the society's good (Bradley (1962)).

### **6.3.2 Aristotle's Conceptualization of Akrasia: An Overview**

Aristotle distinguishes two kinds of akrasia: impetuosity and weakness. The person who is weak goes through a process of deliberation and makes a choice; but rather than act in accordance with his reasoned choice, he acts under the influence of a passion. By contrast, the impetuous person does not go through a process of deliberation and does not make a reasoned choice; he simply acts under the influence of a passion. At the time of action, the impetuous person experiences no internal conflict. But once his act has been completed, he regrets what he has done.

Aristotle identifies that the above kinds of akrasia can be expressed in four forms; impetuosity caused by pleasure, impetuosity caused by anger, weakness caused by pleasure and weakness caused by anger. Aristotle characterized *akrasia* in terms of a conflict between reason and feeling. His idea seems to be that in addition to our full-fledged reasoning capacity, we also have psychological mechanisms that are capable of a limited range of reasoning. When feeling conflicts with reason, what occurs is better described as a fight between feeling-allied-with-limited-reasoning and full-fledged reason. Part of us, for instance, reason, can remove itself from the distorting influence of feeling and consider all relevant factors, positive and negative. But another part of us, feeling or emotion, has a more limited field of reasoning and sometimes it does not even make use of it.

The person who acts against reason does not have what is thought to be unqualified knowledge; in a way he has knowledge, but in a way does not. Aristotle argues that incontinent do possess knowledge of the good. In as much as akratics manage to achieve correct knowledge, they must be exercising reason. Aristotle holds that it is right to assume that correct reasoning leads to correct behaviour. However, he observes that this fails to entertain the possibility that reasoned judgment can conflict with a person's actual conduct. In Aristotle's view, it is precisely the conflict between reason and behaviour which defines akrasia. Though persuaded to act otherwise the incontinent still acts wrongly. The incontinent person thinks it is wrong to pursue the pleasant thing at hand, yet still pursues it (Aristotle, 2000).

Aristotle considers two reasons to explain why knowledge and action conflict. The first reason, Aristotle (2000) says, derives from the fact that correct reasoning requires premises that are both universal and particular. Individuals, however, sometimes attend to one premise at the expense of the other. Concentrating exclusively on the universal premise leads to incorrect conduct, because it is the particular premise which controls action. Focusing solely on the particular premise is properly classified. Correct classification, Aristotle says, cannot take place without universal premise, for it is the universal premise which articulates general concepts and categories.

In so far as the universal premise is ignored, then, mis-classification is likely. Incorrect classification of the particular, in turn, results in incorrect action. For example, a child may learn that stealing his/her parents' money is bad; this would be a particular instance of theft. However, this child may not develop an understanding that stealing is bad. This child may steal a friend's bag or pencil or money. This happens because the child has knowledge of particular and will steal other items except h<sup>s</sup>/her parents' money.

A universal is a general type while the particular is a specific type. In other places, the contrast is between types and individuals. Aristotle explains that particulars are individuals while universals are types. The particulars may be understood in the two senses of knowledge as distinguished earlier. Knowledge of the particulars is specific while knowledge of the universals encompasses generalities. Universal means belonging to, done by all or affecting all. A person may act against these professed principles. This may result from the failure to see the action at hand as falling under the said principles. It is not, therefore absurd to say that a person acts against this knowledge. It appears from Aristotle's account that the inconsistency between knowledge and action is a failure to proceed from the universal principles to the particular.

The second reason why knowledge and behaviour sometimes conflict does not concern the knowing process but rather the conditions under which knowledge is achieved. Individuals may possess knowledge, but they also may be "asleep or mad or drunk." It is this second state of affairs which, for Aristotle, best describes *akrasia*. Like those who are asleep or mad or drunk, the incontinent is affected by strong feelings. Such persons both have knowledge in a way and do not have it in another. People affected by strong feelings may say knowledgeable things but this does not mean, however, that these persons actually understand the words they espouse. In this respect, the incontinent is like an actor who can convincingly recite verses even though he does not comprehend them, or a young learner who is able to string together words without fully grasping their meaning (Aristotle, 2000).

Aristotle (1952), argues that people always seek knowledge to do what is good for themselves, but it is surprising that they (people) fail to do what they know is right. The inconsistency between knowledge and action according to him is a normal human affair. For this reason, he thinks that it is ridiculous to

repudiate the fact that incontinence or *akrasia* is a normal feature for human beings. Both the incontinent and the wicked person do what is bad. However, the wicked person rationalizes such actions while incontinent does not. The incontinent person does not know what he or she ought to do. Such a person is not ignorant of the principles that he or she enacts. Unlike the wicked person, the incontinent knows what is to his or her advantage.

Aristotle argued that the actions of a wicked person emanates from choice, but, the incontinent acts not by choice but acts contrary to his/her choice and judgement. Normally the incontinent person has the intention to do that which is good. Due to choice of pleasant and harmful things, the incontinent fails to act on the good judgement or principles that he or she enacted. Aristotle maintains that the incontinent men (people) are at variance with themselves. They usually have appetites for some things and rational desires for others (Aristotle: 1952).

The incontinent person possesses a rational principle which is supposed to influence things that are for one's own good. However, appetites oppose this rational principle. The incontinent consequently performs that action which is contrary to the desires of the rational principle. Aristotle explained incontinence as a resultant partly to the conflict between the principles in the Soul. He argued that when appetitive principle overcomes the rational principle, the incontinent person loses the capacity to do that which is consonant with his/her enacted principles. The incontinent person usually regrets his/her actions. Such a person therefore is curable of the weaknesses.

Aristotle conceptualized *akrasia* with regard to knowledge, that is, that a person can have knowledge and act against it. An incontinent is a person who has knowledge yet he or she act<sup>^</sup>against such knowledge. Such a person has knowledge because one is not oblivious of the general principles that he/she

has enacted. Knowledge is awareness of what one is required to do (Aristotle: 1952). According to him, there are two senses that a person may be said to know something. There are two senses of the word know. One may have knowledge without using it, or one may have knowledge and use it. There is nothing strange in saying that incontinent person has knowledge of the former sense (Aristotle, 1952).

According to Aristotle, the main reason why a person may fail to act in a way consonant with the knowledge that he/she has lies in the non-translation of universals or general principles to particulars but the contrast is not always the same. Aristotle has in mind, a distinction within the class of universals or types.

### **6.3.3 The Precise Domains of Akrasia.**

From Aristotle's theorization of Akrasia, several reasons could be advanced as to why people act contrary to what they hold. With regard to anti-corruption, it translates to the understanding that people may still engage in corruption despite their having knowledge of the devastating effects of such practices and/or the strict provisions of the law.

There are four weaknesses that make people act akratically: First, a person who usually does not stick to his or her original decisions as concerns cases where he or she needs to make decisions is not authentic. By being not authentic, it implies that such a person lacks a quality of sticking to what he or she judges to be good. Unauthentic person lacks the seriousness that would make him or her realize his or her potentialities. The authentic person heeds the voice of conscience. The non- authentic does not heed the voice of conscience. Such a person after d<sup>^</sup>ing what is contrary to his or her principles develops self-blame (Schopenhauer, 1958; Njoroge, 1988). Such is the person



who lacks authenticity. Sartre says that authenticity has to be earned by an individual. In his words: *my own authenticity only (...) under the influence of conscience. I launch out towards death, with resolution and decisions. as towards my own particular possibility* (Sartre, 1958:246). The non-authentic rarely have a self-belief in what they want to do. They do not believe themselves. They do not stick to decisions because of self-doubt. They do not stick to judgments. This is because they do not persevere in the light of difficulties.

Aristotle observed that individuals sometimes attend to one premise at the expense of the other. Concentrating exclusively on the universal premise leads to incorrect conduct, because it is the particular premise which controls action. Focusing solely on the particular premise also can be misleading. Correct reasoning requires that the particular premise be properly classified. Aristotle maintains that correct classification cannot take place without a universal premise, for it is the universal premise which articulates general concepts and categories. In so far as the universal premise is ignored, then, misclassification is likely. Incorrect classification of the particular, in turn, results in incorrect action.

Second, the person who discounts his or her principles lacks attention. Other things easily distract him or her. This person lacks concentration on the task at hand and is easily distracted through lack of self control. Attention with effort is all that any case of volition implies. The essential achievement of the will is to attend to a difficult object (James, 1952: 814). Aristotle explains that the reason why knowledge and behaviour sometimes conflict does not concern the knowing process, but rather the conditions under which knowledge is achieved. Aristotle observes that individuals may possess knowledge; but they also may be asleep or mad or drunk. These states are characterized by the presence of strong feelings. Such feelings distract their will from proper

judgment and consequent commitment to action, that is, from engaging in the action that is consonant with the judgment. With regard to the fight against corruption, individuals may lack attention of what is required of them. People may lack attention of their professional ethics and code of conduct.

Third, man though conceived of as rational, sometimes in the face of difficulties, has a tendency to opt for the easy course of action. If he finds that the principle that he has enacted for himself is difficult to live up to, he is bound to choose the easier course of action. He opts to choose the easier course of action even with its inherent evil rather than the hard course of action though perhaps with greater good. Aristotle says that a person who is weak goes through a process of deliberation and makes a choice; but rather than act in accordance with his reasoned choice, he acts under the influence of passion (Aristotle, 2000).

The impetuous person does not go through a process of deliberations and does not make a reasoned choice; he simply acts under the influence of a passion. Aristotle maintains that at the time of action, the impetuous person experiences no internal conflict. He argues that once his act has been completed, he regrets what he has done. One could say that he deliberates, if deliberation were something that post-dated rather than preceded action; but the thought process he goes through after he acts comes too late to save him from error.

With regard to anti-corruption initiatives, people may be fully aware of the dangers of corruption. They may also be aware of the consequences of such practices as provided by the law. However, under the influence of passion and appetites, they engage in the vice. Take for example, people who find pleasure in the possession of money and have passion for it, they will have a tendency to accept a bribe even if they did not intend to do it. People who are sexually

perverse will accept a sexual favour, not because of the benefits sexual intercourse gives them, but just out of weakness or passion for it, they indulge.

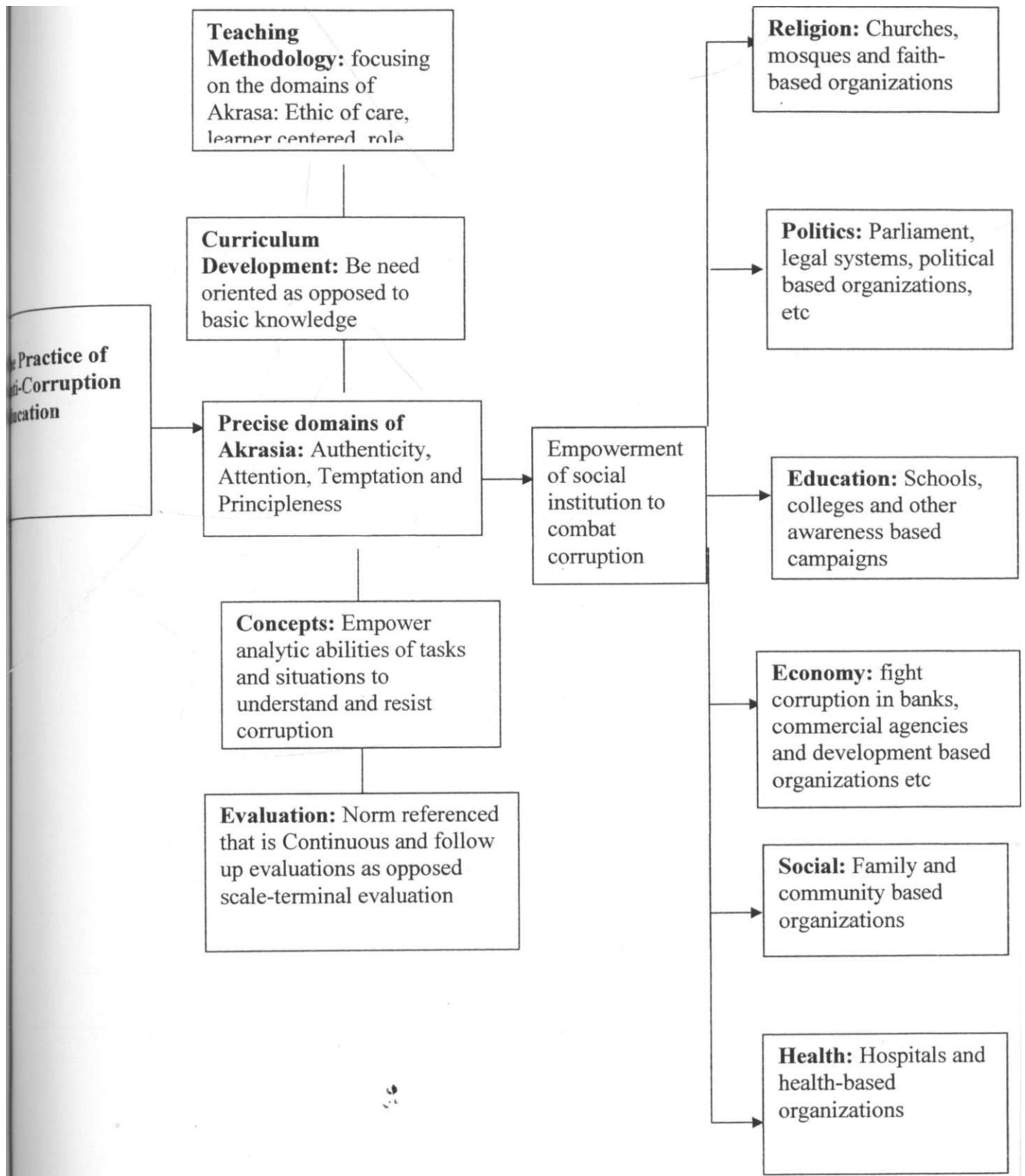
Fourth, the functionality of alternatives presenting themselves to the agent could also be a factor contributing to the discounting of principles. If, for example, the agent's principle is "I will never steal" and in the course of duty, money comes to his possession by virtue of his employment or duty, he may start thinking in terms of what the money could do for him. How the money could be used to achieve what he has desired in this world. The more he is convinced that he could become better than he is at present in terms of status, the more he/she may deviate from his principle. He eventually may choose to steal the money with the consequent effects that stealing entails. In such a case, the agent chooses the evil instead of the good.

As pointed above, reducing opportunities for temptations in the fight against corruption would facilitate the success of the efforts to stomp out the vice. It has been shown in chapter two of this study that sometimes low wages is a possible cause of corruption. However, it was also shown that there are incidences of grand corruption that are not motivated by low wages. Such cases would simply be the case of opportunities that offer themselves in the course of employment.

#### **6.4 Educational Model and its Application to Anti-Corruption Initiatives**

Based on the four precise domains of akrasia as deduced from Aristotle's theorization, an educational model could be developed that would tie the practice of education to the fight against corruption. Such model would endeavour the development of man's capacity towards the realization of authenticity, attentiveness, principles and resistance to temptation with regard to desire to combat corruption. This would in turn inform the theoretical and practical framework for the development of anti-corruption education.

Fig. 4 Diagrammatic presentation the Anti-corruption model



It is the thesis of this model that Anti-corruption Education should seek to foster the moral wellbeing of people. With an inherent moral wellbeing, people will act with regard to the interest of others (James, 1952). According to Noddings (2002), each person has a set of moral ideals that guide his/her behaviour. People derive these ideals from experiences, encounters, and caring relations with others. The educational model propounded in this study focuses educational pedagogy for authenticity, one of the four domains of akrasia.

Throughout moral development process, people adopt virtues of truth or goodness based on their experiences and societal norms, and their ideals are informed by these virtues. People attempt to live up to their ideals, but they are not always successful. Sometimes the habitual self takes precedence over the ideal self (Noddings 2002); sometimes the ideal self is obscured by the debased ideals of others around (Taylor 1991, 2001). People's ideals form part of their self or identity, and all are frequently changing, so it can be difficult to know whether their behaviour, self, identity, and ideals are consistent. Therefore, in attempting to behave in ways congruent with moral ideals and ideal self to the best of one's abilities, and in reflecting honestly on these ideals and on one's own behaviour in the context of relations with others, one can be considered authentic.

The morality underlying authenticity is based on the need to care and be cared for, and the desire to reciprocate others' care (Noddings, 2002). In this sense, moral behaviour and caring are important components of authentic behaviour and all authentic behaviour is oriented toward this basic assumption. In this regard the development of the 'self (or 'identity') and the moral ideals underlying authentic behaviour require connection, dialogue, and interaction with others.

In Taylor's (1989):35 words: "One is a self only among other selves. A self can never be described without reference to those who surround it". The self is under constant negotiation, development, and change based on experiences, critical reflection and evaluation. Noddings says, "...the self *is* a relation...it is dynamic, in continual flux" (2002: 99). Therefore, the ideal self is a moral construct we strive to live up to in our quest to be authentic; it is "that subset of the self regarded as best" (2002: 108). Authenticity requires honesty in all other circumstances because it fosters open communication and trust, which are fundamental to establishing genuine caring relationships.

According to Zaltz (2003) learning is most effective when educators and learners share the positions of "carer" and "cared-for" in the learning environment. Caring relations become paramount as each is called upon to trust the other, examine their own beliefs and actions, and support each other during this process. Just as caring relations are necessary to promote dialogue and self-reflection between friends and family, so are they necessary to promote the same actions between educators and learners of all ages.

Noddings (2002) supports the importance of caring and authenticity in education with three points. First, she says that caring, authentic relations should encourage and cultivate dialogue, questioning, debate, and moral judgment, which are essential components of education. Second, she asserts that teachers who base this type of encounter on an ethic of care do not attempt to wield power over students or coerce them into accepting certain points of view; rather, they are facilitators to the reflective process. They do not expect to have the answers at the outset, and may learn as much from the process as the students do. Relations in which participants have equal responsibility facilitate learning by allowing students to think for themselves, question their own circumstances, and create their own interpretation of what is moral and good. Third, there are certain assumptions about what is moral

and good in this framework, and educators must take care to "continually inspect, reflect upon, and revise their own practices and attitudes" (Noddings, 2002: 136), and aspire to be as authentic as possible in light of their role as models for learners.

The fundamental aim of education is to help learners grow in desirable ways. This is best accomplished by modelling, dialogue, practice, and confirmation. Modelling is very powerful, and it appears as a component in almost every form of moral education. To be effective it must be genuine; that is, an exemplar must not consciously exhibit one form of behaviour and then - caught off guard - act in a way that contradicts what he or she has modelled. Modelling may be more effective in the moral domain than in the intellectual because its very authenticity is morally significant (Noddings, 2002: 287).

While this process primarily refers to moral learning, caring relations may also facilitate academic or formal classroom learning. Teachers who care about their students and model authentic behaviour make students feel respected, trusted and worthwhile. As a result, students may be more motivated to participate and show interest in the subject matter, knowing that their participation will be recognized and appreciated. Returning to Vygotsky's (1978) theory, if learning is a social and cultural process, establishing a caring culture in a classroom would enable learning to occur more fluidly. In certain situations cooperative or mediated learning can often accomplish far more than individual learning; effective cooperation and mediation rely on trust and personal connection, which can be established more easily within an ethic of care.

Bai & Chinnery (2000:9) state, "[t]he more strongly one is interconnected with the world, the more cheerfully and reliably one would respond to it in showing compassion and good will. Thus the prerequisite to responsibility is

cultivation and realization of inter-being. From inter-being, responsibility naturally emanates". If we consider "the world" in this discussion to be the relationship between the teacher and student, the stronger the connection between the teacher and student, the more likely the student is to respond in the educational environment.

Similarly, we can consider "the world" to mean the classroom or learning environment, so that the student, through experiencing interconnectedness with other students, is motivated to show compassion and good will to classmates. With enough experiences like these, students may extend their compassion and good will habitually to others outside the classroom as well. This feeling of interconnectedness could only be fostered by an authentic educator.

It is also possible that in learning to care about and respond to one another in the classroom, students may begin to understand human connectedness, especially in their own communities. It is important for individuals to learn this in the home and other social settings, but the learning environment is an important place to emphasize these concepts.

Educators must demonstrate and encourage students to understand that we require fundamental connections in order to realize our selves and identities. This will encourage students to participate in democratic society, value the common good, and see themselves as part of a community. In this way, educators can discourage students from adopting undesirable character and the prevalent fixation on self-fulfilment and personal freedom. As Bai & Chinnery (2000) point out, "it is only through caring that requires self-reflective participation of the self in the other...that the self overcomes its private egoic intention and orientation" (2002:7).



Finally, cognitive dissonance is often a necessary part of learning. Frequently the most meaningful and memorable educational experiences are those that challenge our core beliefs and force us to make difficult decisions about them. It may sometimes be appropriate for educators to push students to a point where they experience cognitive dissonance. Authentic relations enable educators to develop relationships with students to prevent them from pushing students too far, and to care for them during the difficult process of evaluating their beliefs.

It is therefore the role of Anti-corruption Education to focus on the fight against corruption as a universal moral obligation, rather than focusing on the particular. That is, education should emphasize moral development of the people not just teaching the effects of corruption and why it should not be tolerated. As Aristotle says, concentrating on the particular as it is being done within the current practice of anti-corruption education will lead people to having knowledge of the particular and lack the universal understanding of man's moral obligations. Emphasizing on the moral wholeness will create an authentic person who has self-confidence in fighting corruption.

As explained by James (1952) attention is the taking possession by the mind, in clear and vivid form, of one out of what seem several simultaneously possible objects or trains of thought. Several approaches and initiatives could be taken through the practice of education to help such a person to remain attentive. First, as TI (2006) points out, individual self-regulation plays an important role in strengthening ethics. This concept is based on the notion that people with strong values and moral autonomy are more likely to make ethical decisions than those without them. A central focus of ethics training should therefore be to strengthen individual moral autonomy. With more self-assurance, individuals are more likely to address ethical dilemmas and make decisions in line with an organization's ethical framework.

A necessary point for any ethics training programme is to establish a common understanding of existing attitudes and values. A participatory "cultural audit" can be conducted to learn more about current ethical perceptions and practices within a particular organization, and can also contribute to an increased sense of ownership of ethics training programmes. Audits can be conducted in a number of ways - including via the study of documents, through focus-group discussions and through organization-wide surveys.

A second step is to compare existing attitudes and values with the organization's overall goals. Following this analysis, the objectives of the training campaign must be set. These may be to help learners understand what is meant by corrupt behaviour, or to develop ways to articulate and encourage attitudes that support ethical practice (for example awards for outstanding ethical behaviour).

Thirdly, the key messages of the training programme must be defined and an appropriate means of delivery chosen. Methods for communicating ethical messages can include posters, brochures, audio-visual material and ethics workshops. Role-play and case-study discussions are often effective training methods, but should be customized for the particular target-groups involved.

It should be the role of Anti-corruption Education to build people's capacity to be conscious and attentive at all times when discharging their obligations. This could be through the laying of emphasis on professional ethics and code of regulation as a whole, rather than emphasis on the particular issue of corruption. Anti-corruption Education should focus on building man's innate rational capacities and ability to withstand temptations. Education should develop in people capacities^to develop ways and skills of sealing off avenues of corruption, for example the use of technology to monitor financial

accounts, theft or forgery. The society should endeavour for technological equipment that would build a barrier for corruption.

This theorization as endeavoured is intended to develop people's capacity to stick to their principles and even when opportunity to engage in corruption offers. This way, a curriculum for the practice of Anti-Corruption education that entails content, teaching methodology, concepts and evaluation of anti-corruption could be conceived as explained below.

#### **6.4.1 Anti-Corruption Education: An Understanding**

This model defines Anti-corruption Education as the activity of teaching or sharing experiences that strengthens knowledge, skills and attitudes to resist corruption and to act against it. The goal of anti-corruption education is to build demand for accountability. Anti-corruption education promotes values, attitudes and expectations that condemn corruption, and skills to resist it. Anti-corruption education develops people's understanding of their rights and responsibilities for preserving the public good.

Anti-Corruption education aims at strengthening individuals in their ethical decision-making. Values conflicts and ethical dilemmas frequently arise everyday life, for example when family values, such as loyalty, clash with work ethics such as impartiality. Ethics education should provide the skill to identify such conflicts and instill the motivation for solving them in the best interest it aims at building a culture of zero-tolerance for corruption, through strengthening public awareness and participation in political life, and through mobilizing the public to stand up against corruption.

#### **6.4.2 The Curriculum Content for Anti-Corruption Education**

The practice for anti-corruption education should cut across all the levels of learning. This approach requires a need driven curriculum, in which the need to fight corruption should be guided principle to select such content. The content should be structured alongside the learner's ability to internalize and practise it.

The content of such anti-corruption education should focus on the development of the inner principles of the learner so as to guide his or her behaviour when faced with a moral obligation. This content should equally help the learner to actualize or realize moral development in wholeness. This moral wholeness will ensure that the learner remains responsive to moral obligations inclusively. For instance, the learner should be able to know and respond positively. For example one should know that accepting sexual favours to act with exception is equally as bad as taking money for the same purpose. This would help the learner to understand the concept of corruption in total and not in monetary terms as may be defined by law.

Anti-corruption education can be integrated in school subjects such as civics or citizenship education, but also history, politics, religion, life skills, peace education, economics or ethics. Although most of the curricula may not explicitly refer to corruption, they are all implicitly linked to it in that they touch on moral issues and provide concepts such as the public good and social justice that are key to understanding the need for fighting corruption. Anti-corruption can, of course, also be taught outside the formal school system (Valentine, Juhie, Katy, Julio, 2004: 23). KACC has not demonstrated whether it is approaching public education initiatives as a distinct subject within educational practice, or as an integral component of existing subjects.

### **6.4.3 Teaching Methodology of the Anti-Corruption Education**

Teachers of anti-corruption education should be well-trained in order to preside over the delivery of content to the learners. Such training must underscore the professional needs of teaching. In presiding over teaching, the practice should be to emphasize general principles rather than particulars. This calls for teaching that integrates both theory and practical experiences. Teaching should be focused on giving general understanding of moral obligations in which the understanding and development of virtue should take precedence.

Teachers and education personnel have a responsibility to foster confidence among the general public in the standards of service that can be expected from all engaged in this important task. The exercise of responsible judgement is at the heart of professional activity and the actions of caring, competent and committed teachers and education personnel to help every student reach his or her potential is a critical factor in the provision of quality education (EI Declaration on Professional Ethics, 2001). KACC has engaged in the practice of education without meeting the requisite professional requirements. There are no trained teachers to discharge these duties in Kenya. Consequently, all those involved in teaching this subject are untrained and this offends this EI Declaration and the entire teaching profession.

In the absence of pedagogical provisions, KACC's educational initiatives do not have lesson plans. Lessons are not planned nor are they schemed. Ideally, what seems to be happening is that these public educational programmes are playing the role of entertainment rather than educational. For example, when a school presents a dramatized dance it is not clear whether the audience came for the message on corruption or came for love of drama and therefore entertainment. The same thing applies to music. Furthermore, a team that

scores the highest mark in drama or music does not really imply that the team convinced the majority to change their behaviour. It is because the team has applied the rules of drama or music correctly, as the final score is based on such aspects.

Raising of consciousness about the norms and ethics of the profession may contribute to increasing job satisfaction among teachers and education personnel, to enhancing their status and self-esteem, and to increasing respect for the profession in society Education personnel shall: a) justify public trust and confidence and enhance the esteem in which the profession is held by providing quality education for all students; b) ensure that professional knowledge is regularly updated and improved; c) determine the nature, format and timing of their lifelong learning programs as an essential expression of their professionalism; d) declare all relevant information related to competency and qualifications; e) strive, through active participation in their unions, to achieve work conditions that attract highly qualified persons to the profession; f) support all efforts to promote democracy and human rights in and through education (EI Declaration on Professional Ethics, Section 9). Besides the failure to provide for the professional qualification of those involved in the practice of public education, KACC has not provided for the ethical conduct as contained in the declaration.

Teaching approaches should take into account the needs of the learner. This way, learner-centered approaches would be desirable. This should be done depending on the cognitive level of learners and their ability to utilize such methodology as chosen by the teacher.

When teaching anti-corruption, emphasis should be put on practice rather than theory. Successful methods include students' surveys and polls, role plays to facilitate the understanding of differing interests and to promote the ability for

conflict resolution, public debates, and attending parliamentary sessions or visiting public institutions to understand how democracy works. School practice also is itself an important vehicle for transmitting values. The context in which integrity and ethics are taught needs to be free of repression and fear. Those who teach must themselves represent the values they teach. Teaching should build on real life examples so that students can identify with ethical dilemmas. It is particularly important to respect students' values and rights, and to strengthen their capacities for moral judgement without indoctrination

#### **6.4.4 The Language of the Anti-Corruption Education**

Anti-Corruption education should help the learners to understand the meaning of concepts as used in the fight against corruption. This calls for the use of analytical language that embraces definitions and meanings of key concepts in the fight against corruption. The basic guideline for language selection should be the ability of the learner to grasp and apply such concepts in morally acceptable manner.

#### **6.4.5. Evaluation of the Anti-Corruption Education**

There should be constant evaluation of the anti-corruption education programmes to get feed back on areas that need improvement. Evaluation should further be done to test the learners' understanding and application of what has been taught. This way, practical observation of task performance, coupled with the principles of criterion evaluation would be more desirable than norm-referenced evaluation. However, for the sake of measuring for control purposes, both forms of evaluation should be appropriately utilized.

In chapter three of this study, it has been demonstrated that students were examined on themes of corruption and the questions were compulsory. What

emerges from such a practice could be an understanding that students who scored high marks in such an examination were less corrupt than those who got less marks. This in itself cannot be entertained as learners could have studied for the purposes of passing examinations. Necessarily, the learners could have such knowledge and fail to practice.

Similarly, without clearly demonstrated guarantees for achieving the goals of Public Education, such evaluation could not have achieved such a purpose. Furthermore, KACC tested learners in school and have not shown how they tested those out of school. This observation implies that KACC's evaluation approach if there is any, falls short of established educational standards.

## **6.6 Chapter Summary**

This chapter has presented an overview of KACC's anti-corruption initiatives and underscored the place of education in the fight against corruption. The chapter has also demonstrated that efforts to fight corruption could be undermined by the weakness of human Will or incontinence, popularly called *akrasia* in philosophical terms. The chapter identified the role of education in the fight against corruption in the light of *akrasia*, as that of building authentic people who heed the voice of conscience, helping people to be attentive in their moral obligations and develop people's rational capacities to resist corruption.



## CHAPTER SEVEN

### SUMMARY, CONCLUSIONS AND RECOMMENDATIONS OF THE STUDY

#### 7.1 Summary of the Study

This study focused on the need for a critical evaluation of efforts to reduce the level of corruption in Kenya. Particular emphasis was placed on the efforts of the Kenya Anti-corruption Commission (KACC) to fight corruption. The study adopted the Aristotelian concept of Akrasia. In this context, Akrasia was taken to mean lacking command over self in acting against one's better judgement. Better judgement has the import of choosing virtue against vice. A synthesis of anti-corruption initiatives was done and the role of education in shaping human character analyzed in this context.

Through literature review and documentary' analysis, the study noted that there are several efforts being made to combat corruption, globally, regionally and nationally. On the global and regional scene, are the UN Convention against Corruption; the African Union Convention on Preventing and Combating Corruption; the UN Convention against Transnational Organized Crime; the UN Declaration against Corruption and Bribery in International Commercial Transactions; and the International Code of Conduct for Public Officials.

At national level the Government of Kenya has ratified the United Nations Convention against Corruption (UNCAC). The Government has also signed the African Union (AU) Convention on the Prevention and Combating of Corruption. Kenya adopted the UN Convention against Corruption and has made great strides in the fight against corruption. Key among these is the

publishing of the Witness Protection Bill, to provide for protection of whistleblowers in line with the UNCAC. There is vigorous enforcement of the Anti-Corruption and Economic Crimes Act, 2003 and the Public Officer Ethics Act, 2003 (KACC, 2003:7). The Anti-Corruption and Economic Crimes Act, 2003 established KACC as the statutory body with the mandate to fight corruption in Kenya.

## **7.2. Findings of the Study**

After critically examining anti-corruption initiatives by KACC, this study found out that despite considerable efforts by the Kenya Government to combat corruption, there seems to be no significant achievements. This is evidenced by the high number of cases reported to KACC as observed both in chapter two and three of this study.

With regard to law enforcement and investigations, the study established that the Anti-Corruption and Economic Crimes Act 2003 is not comprehensive in its definition of corruption. For example, its definition of corruption does not distinguish between corruption and economic crime. The latter is defined as an offence under section 45 or as an offence involving dishonesty under any written law providing for the maintenance or protection of public revenue. It appears from this that not all acts of corruption involve economic crimes.

The study found out that there is poor understanding of corruption by the public which is illustrated by the nature of reports made to KACC. For instance, in the period 2004/2005 a total of 3,234 complaints of suspected and alleged corruption and economic crimes were received at the Commission. Of this number, only 384 (11.9%) were found to merit further investigation by the Commission under its statutory mandate. KACC further reveals that out of 7,888 reports of alleged \*corruption and economic crimes brought to its

attention, only 15% fell within the mandate of the Commission, thereby meriting further action.

It was found out that some the provisions of the act establishing KACC are in contradiction with the Constitution of Kenya which has led to its being challenged in court. For instance, the existence and jurisdiction of special magistrates has been challenged in court as was made in the High Court of Kenya (Nairobi) Miscellaneous Criminal Application No. 495 of 2003 in which it was stated that the court, had no relationship with the Anti-Corruption Act and therefore it was untenable for the applicant to impugn the Act.

The study established that human beings have a tendency to break rules that they set to govern their conduct. This theorization led to the understanding that people will still engage in corruption despite being aware of their moral obligations and the legal implications of their acts. This, from Aristotle's theorization of *akrasia* emanates from lack for authenticity, attention, failure to resist temptation and stick to principles when faced with a moral obligation.

When analysed in the light of anti-corruption initiatives developed by KACC the situation above supports an understanding that there exists a gap between knowledge and action resulting in people's inability to actualize perfection. As much as action is very important, people should have the Will to know how to act as well as the Will to act. As much as there is need for people to act, there seems to be lack of emphasis on the Will to know how to act. What is emphasized is the will to act. Such emphasis ignores this important fact (the Will to know how to act) as a determinant of what actions a person will engage in.

With regard to the practice of Anti-Corruption Education, the study established that KACC has not articulated the goals of Anti-Corruption Education in Kenya, which in turn have not been internalized by educational institutions. For instance, there is no syllabus, or general guidelines that KACC has provided to ensure professional practice of Anti-Corruption Education in Kenya.

The study established that curriculum, teaching methodology and evaluation approaches for Anti-Corruption Education have not been articulated by KACC. This is evidenced by the fact that there is no Anti-Corruption Education curriculum in Kenya, while teachers to preside over the pedagogic delivery have not been trained, furthermore there is no training package for these teachers. Given this scenario, the study found out that KACC has not been able to evaluate learners to establish its achievements.

### **7.3 Conclusions of the Study**

This study concludes that:

- 1) Corruption has devastating effects on human beings and is increasingly being seen as a serious crime with consequences such as wasteful spending, bigger budgetary deficits, great economic inequalities, disinvestment as well as unorthodox trading practices. It continues to undermine good governance and to distort public policy, leading to misallocation of resources. For this reason, anti-corruption initiatives find justification in the fact that eradication of corruption would keep human beings free from these effects thereby making life better.

- 2) Human beings have a tendency not to adhere to the conduct that they set to govern their behaviour. This condition which philosophers refer to as *akrasia* is assumed to be caused by four precise domains of *akrasia*. First is lack of authenticity, which implies that people may lack a quality of sticking to what they judge to be good. Second is lack of attention which implies that people may lack concentration on the task at hand and may be easily distracted through lack of self control. Third is the tendency to opt for the easy course of action. For instance people may find that the principles that they have enacted for themselves are difficult to live up to, may choose the easier course of action. Fourth, the functionality of alternatives presenting themselves to the agent; if, for example, the agent's principle is "I will never steal" and in the course of duty, money comes to his possession by virtue of his employment or duty, he may start thinking in terms of what the money could do for him. The more he is convinced that he could become better than he is at present in terms of status, the more he may deviate from his principle.
  
- 3) KACC's anti-corruption initiatives have focussed on how people should act without emphasis on the Will to know how to act. This way, people have the knowledge of the law and their moral obligations with regard to the fight against corruption; however, they are unable to translate this knowledge into desirable actions. This reveals a gap between knowledge and action resulting in people's inability to actualize perfection.
  
- 4) KACC has not articulated the goals of Anti-Corruption in Kenya and there is no elaborate curriculum content, teaching and evaluation methodologies and general pedagogy. This has undermined the fruitful use of education as a medium of anti-corruption initiatives in Kenya.

## **7.4 Recommendations of the Study**

This study makes the following recommendations:

### **a) Educational Policy**

It was shown in this study that KACC has not effectively articulated the goals of Anti-Corruption Education in Kenya. This has undermined the development of an elaborate Anti-Corruption in Education curriculum for all levels of learning. In this regard, this study recommends that there should be a policy within the practice of education that integrates anti-corruption education in the curriculum at all levels of education from primary to post secondary education. Such a policy may need to be passed as an Act of Parliament so that anti-corruption initiatives are made an integral part of educational practice in Kenya.

### **b) Policy on Pedagogy**

It emerged from this study that people may have knowledge, yet they may fail to translate it into action. This was qualified by the fact that people may be aware that engaging in corruption is against the law and the consequences they face if they breached this conduct. However, they still engage in corruption despite awareness campaigns. One such reason as propounded by this study is failure to know how to act. In order to help learners know how to act, this study underscored the need for trained teachers with skills to impart Anti-Corruption Education. Besides trained teachers, the study underscored the value of an elaborate curriculum and evaluation approaches. In light of this, the study recommends that there should be a policy on the methodologies used to impart and instruct Anti-corruption Education and define training standards and curriculum development.

### **c) Strengthening KACC's Initiatives**

- 1) The study established that there is a weakness of co-ordination and harmonization of the work of KACC and other government legal bodies such as the office of the Attorney General. For example it appears that there is no coordination in implementing anti-corruption measures and policies. Though section 12 of the Anti-Corruption and Economic Crimes 2003 obliges public bodies and officers to cooperate with KACC, it should be contrasted with multiple constitutional and statutory provisions which provide that certain officers and bodies are not subject to the control and direction of any person or authority. KACC's success seems to be dictated by the Attorney General's office as it decides on which cases to be prosecuted.

Still on coordination and harmonization of anti-corruption measures and policies, it is not clear whether officers of the Anti-Corruption Unit of the Kenya Police Force are answerable to the Commissioner of Police or Director of KACC. In short, the provisions of section 12 of the Anti-Corruption and Economic Crimes Act 2003 falls below the requirement set out in Article 38 of UNCAC. Under Article 38. each State Party is obliged to take such measures as may be necessary to encourage cooperation between its public officials and authorities on the one hand and its authorities responsible for investigating and prosecuting criminal offences under the Convention. There are no known measures in Kenya, legal, policy or administrative, obliging public authorities and officials to assist and cooperate with KACC. For this reason, The Kenya Anti-Corruption and Economic Crimes Act 2003 should be reviewed to streamline departments of KACC to give it a broader mandate with differentiated responsibilities to attain a position of self-contained entity.

- 2) It was shown in this study that there is poor understanding of corruption by the Kenyan public which is illustrated by the nature of reports made to KACC. For instance in the period 2004/2005 a total of 3,234 complaints of suspected and alleged corruption and economic crimes were received at the Commission. Of this number, only 384 (11.9%) were found to merit further investigation by the Commission under its statutory mandate. KACC further reveals that out of 7,888 reports of alleged corruption and economic crime brought to the Commission's attention by Kenyans, only 15% of them fell within the mandate of the Commission, thereby meriting further action. This calls for an elaborate and explicit definition of corruption. This study recommends that the concept of corruption should be redefined to clarify the mandate of KACC to all stakeholders.
  
- 3) It has been shown that KACC's anti-corruption education initiatives have focussed on how to act, without helping people to know how to act. This ignores the fact that the will to know how to act is a determinant of what actions a person will engage in. KACC should adopt an educational model that would equip citizens with skills that are effective in being able to know how to act and translate this knowledge into action.

#### **d) Areas for Further Research**

1. This study has recommended a pedagogical model that focuses on making citizens authentic in their thoughts with regard to corruption, develop their ability to be attentive and always stick to their decision regardless of the opportunities that may offer for them to engage in corruption. There is' need for further research to identify other



weaknesses that may make people to act akractically, hence complement anti-corruption initiatives.

2. This study was limited to philosophical methods and orientations of research. There is need for other social sciences to engage in empirical research to give more insights into this puzzle of corruption.
3. Although the study identified several gaps that undermine the efficacy of anti-corruption initiatives by KACC, for example weaknesses in the Kenya Anti-Corruption and Economic Crimes Act 2003, coordination problems among others, this study advances a model for the practice of Anti-Corruption Education. Further research is recommended on these challenges so that KACC's efforts could be fecund.
4. This study identified four domains of akrasia, namely, authenticity, attention, temptation and principleness as being instrumental in the fights against corruption. However, in its endeavour to develop an educational model for intervention, the study focussed on authenticity, thereby leaving out the other three upon which further research is recommended.

## REFERENCES

- Abed, G.T. and Gupta, S. (eds.), (2003). *Governance, Corruption. and Economic Performance*. Washington DC: International Monetary Fund.
- Ades, A, and DiTella, R. (1997). "Rents, Competition and Corruption." *American Economic Review*. New York.
- , 1997, "National Champions and Corruption: Some Unpleasant Interventionist Arithmetic," *Economic Journal* Vol. 107 (July).
- Adler, J.E. (2002). "Akratic Believing", *Philosophical Studies*, Vol. 110, No.7, (July 2002).
- African Union (2003). *African Union Convention on Preventing and Combating Corruption (A UCPC)*. The 2nd Ordinary Session of the Assembly of the Union in Maputo, Mozambique on 11 July 2003.
- Ajzen, I, & Fishbein, M. (1980). *Understanding attitudes and predicting behavior*. Englewood Cliffs, NJ: Prentice-Hall.
- American Convention against Corruption (1996): *Framework for Combating Corruption*. Washington. World Bank.
- Anechiarico, F. and Jacobs, J.B. (1998). *The Pursuit of Absolute Integrity: How Corruption Control Makes Government Ineffective*. Chicago: University of Chicago Press, 1998.
- Annan, K. (2006): Preface. In: *The UN Anti-corruption Tool Kit (2004)*. United Nations. New York.
- Aristotle. (2000). *Nicomachean Ethics*. Trns. Crisp, Roger. Cambridge. Cambridge University.
- Audi, P. (1995). *Cambridge Dictionary of Philosophy*. Cambridge. Cambridge University.
- (1952). *Nicomachean Ethics*. Trans. Jsean Nettlefield. Oxford. Oxford University Press.
- Bai, H. & Chinnery, A. (2000). *From Inter-being to Social Responsibility*. Presented at AME 2000 Conference, Glasgow, Scotland, (unpublished).

- Baker, R (2005). *Capitalism's Achilles Heel: Dirty Money and How to Renew the Free- Market System*. Indianapolis: Wiley.
- Bali (1952). *An Introductory Philosophy*. Jakarta. Winston.
- Bardhan, P, (1997). "Corruption and Development: A Review of Issues," *Journal of Economic Literature*, Vol. 35 (September).
- Baumol, W, (1990). "Entrepreneurship: Productive, Unproductive, and Destructive," *Journal of Political Economy*, Vol. 98 (October).
- Beck, P.J., and Michael W. Maher, (1986), "A Comparison of Bribery and Bidding in Thin Markets," *Economic Letters*, Vol. 20, No. 1.
- Becker, G.S. (1968). "Crime and Punishment: An Economic Approach," *Journal of Political Economy*, Vol. 76 (March/April).
- Becker, G.S., and Stigler, G.J. (1974). "Law Enforcement, Malfeasance, and Compensation for Employees," *Journal of Legal Studies* (January).
- Becker, M. H. (Ed.). (1975). The health belief model and personal health behavior. *Health Education Monographs*, 2(4).
- Bellow, A. (2003). *In Praise of Nepotism*. New York: Doubleday.
- Bint, A. K. (2006). *Corruption: A Global Phenomenon*. Washington DC. World Bank.
- Bovens, L. (1999). "The two Faces of Akratics Anonymous", *Analysis*, Vol.59, No.4., (October 1999).
- Bradley, F. H. (1962). *Ethical Studies*. Oxford. Clarendon Press.
- Braguinsky, S. (1996). "Corruption and Schumpeterian Growth in Different Economic Environments," *Contemporary Economic Policy*, Vol. 14 (July).
- Brightman, E.S (1957). *Doing Philosophy*. New York.Holt, Rinehard and Winston.
- Brubacher. B.J. (1962). *Philosophy*. New York. Holt, Reinhard and Winston.

- Brubacher, B.J. (1962). *Philosophy and Education*. New York. Unwin.
- Brunetti, Aymo, and Weder, B.(1998), "A Free Press Is Bad News for Corruption, " *WWZ Discussion Paper No. 9809*.
- Christopher, M. (2000). "*Corruption in the Court System*", in Andrew Mullei (Eds) *The Link Between Corruption and Poverty: Lessons from Kenya*, African Centre for Economic Growth, p. 123.
- Corpwatch. (2005) Forensic accountants trace Goldenburg Transaction reported at <http://en.wikipedia.org/wiki/Corruption-in-Kenya>
- Crank, J, and Caldero, M. (2004). *Police Ethics: The Corruption of Noble Cause*. Cincinnati: Anderson Publishing.
- Cut, S. (2006). *Plan: "Vaccinate" kids against corruption*. Beijing. (Xinhua).
- Davigo, P. (1998). *La Giubba del Re: Intervista sulla Corruzione* (Rome-Bari: Editorial Laterza).
- Donald, D. (1969). "How is Weakness of the Will Possible?", reprinted In: Davidson, D. *Essays on Actions and Events*. Oxford University Press, (Oxford). (Essay originally published in 1969.)
- Dreher, A., Kotsogiannis, C., McCorriston, S. (2004), *Corruption around the World: Evidence from a Structural Model*. Oxford. Oxford University Press.
- Ferrero, M. and Giorgio, B. (1997). "Nomenklatura Rule Under Democracy: Solving the Italian Political Puzzle," *Journal of Theoretical Politics*, Vol. 9 (October).
- Fishbein, M., & Ajzen, I. (1975). *Belief attitude, intention, and behavior*. Reading, MA: Addison-Wesley.
- Galasi, P. and Gabor, G. (1987). "The Spread of Bribery in a Centrally Economy," *Acta Oeconomica*, Vol. 34 (3-4).
- Galtung, F. (1997). "Developing Agencies of Restraint in a Climate of Systemic Corruption: The National Integrity System at Work," paper presented at the Third Vienna Dialogue on Democracy, Vienna, June 26-27.
- Gilead, A. (1969). "How is Akrasia Possible After All?", *Ratio*, Vol.12, No.3,

- (September 1999), pp.257 - 270. Holton, R., "Intention and Weakness of Will". *The Journal of Philosophy*, Vol.96, No.5, (May 1999).
- Goldman, M. (1997). "The Pitfalls of Russian Privatization," *Challenge*, Vol. 40 (May June).
- Grossman, G. (1982). "The Second Economy in the USSR," in *The Underground Economy in the United States and Abroad*, (ed) by Vito Tanzi (Lexington, Massachusetts: D.C. Heath), pp. 245-70.
- Gruzd, S. (2003). *Kicking corruption in Kenya*. The Electronic Journal of Governance and Innovation. August 3/2003
- Gupta, S., Hamid, D. and Rosa A. (1998). "Does Corruption Affect Income Inequality and Poverty?" IMF Working Paper 98/76 (Washington: International Monetary Fund).
- Haque, N., and Ratna, S. (1996). "Do Government Wages Cuts Close Budget Deficits? Costs of Corruption." *Staff Papers*, International Monetary Fund. Vol. 43 (December).
- Heidenheimer, A.J. and Michael, J. (eds.) (2002). *Political Corruption: Concepts and Contexts*, 3<sup>rd</sup> ed. London: Transaction Publishers.
- High Court of Kenya (2003). (Nairobi) Miscellaneous Criminal Application No. 495 of 2003. Nairobi.
- Hindes, K. (2001). *Political Corruption in the United States*. New York. Transaction Publishers.
- Hines, J.R. (1995). "Forbidden Payments: Foreign Bribery and American Business after 1977," NBER Working Paper No. 5266 (Cambridge, Massachusetts: National Bureau of Economic Research, September).
- Holton, R. (1998). *The Akratic Behaviour in Man*. Cambridge. Cambridge University press.
- Hookway, C. (1999). *'Epistemic Norms and Theoretical Deliberation in Ratio, XII*: This volume is also published as Jonathan Dancy (ed) Normativity. Oxford: Blackwell, 2000.

- Hopkins, J. (2002) "States, Markets and Corruption: A Review of some Recent Literature" *Review of International Political Economy* 9(3).
- Huntington, S. P. 1968, *Political Order in Changing Societies* (New Haven, Connecticut: Yale University Press).
- James, W. (1952). *The Principles of Psychology*. RM. Hutchins (ed). Chicago: Encyclopaedia Inc.
- Jiang, X - Y., (2000). "What Kind of Knowledge Does a Weak-Willed Person Have? *A comparative Study of Aristotle and the Ch 'eng-Chu School* *Philosophy East & West*, Vol.50, No.2, (April 2000), pp.242-253.
- Johnston, M. (1997), "Public Officials, Private Interests, and Sustainable Democracy: When Politics and Corruption Meet," in *Corruption and the Global Economy*, ed. by Kimberly Ann Elliott (Washington: Institute for International Economics).
- KACC (2004): *Kenya Anti-corruption Commission Annual Report 2003/2004*. Nairobi.
- KACC (2005): *Kenya Anti-corruption Commission Annual Report 2004/2005*. Nairobi.
- KACC (2006): *Kenya Anti-corruption Commission Annual Report 2005/2006*. Nairobi.
- KACC (2007): *Kenya Anti-corruption Commission Annual Report 2006/2007*. Nairobi.
- KACC (2008): *Kenya Anti-corruption Commission Annual Report 2007/2008*. Nairobi.
- Kanyinga, K. (2004). *New Anti-Corruption Governments: the Challenges of Delivery: A Case Study of Kenya*. Paper commissioned for the Kenya Meeting on New Governments, co-organised by the Government of Kenya, TI-Kenya and Transparency International, held in Nairobi, Kenya, in October 2004.
- Kaufmann, D. (1997). "The Missing Pillar of a Growth Strategy for Ukraine: Reforms-for Private Sector Development," in *Ukraine:*

*Accelerating the Transition to Market*, ed. by Peter Cornelius and Patrick Lenain (Washington: International Monetary Fund).

, and Siegelbaum, P. (1996), "Privatization and Corruption in Transition Economies," *Journal of International Affairs*, Vol. 50 (winter).

Kerdeman, D. (nd). *Educating Ethical Behavior: Aristotle's Views on Akrasia*. Washington. University of Washington.  
[www.ed.uiuc.edu/EPS/PES-yearbook/.../KERDEMAN.HTM](http://www.ed.uiuc.edu/EPS/PES-yearbook/.../KERDEMAN.HTM)

Kenya Embassy, The Hague, (2008). *Report of the Seventh Session of the Assembly of States Parties to the International Criminal Court (Rome Statute)*. The Hague, Kenya Embassy.

Kenya, Republic of (1992). *The Constitution of Kenya, Chapter V, Protection of Fundamental Rights and Freedoms of the Individual Section 77: Provisions to Secure Protection of Law* Revised Edition (1998) 1992. Nairobi. Government Printer.

Kenya, Republic of (2003). *The Anti-Corruption and Economic Crimes Act, 2003*. Nairobi. Government Printer.

Kenya, Republic of (2004). *The role of government in the anti-corruption fight as opposed to the role of individuals and organizations: Background notes to speech delivered to the leadership exchange forum on 26th august 2004 corruption*. Nairobi, Department of Governance & Ethics Office of the President.

Kenya, Republic of (2005). Report of the Public Investment Accounts Committee. Unpublished.

Kibwana, K. and Kichamu, S. (2001). *Initiatives against Corruption in Kenya Legal and policy Interventions, 1995-2001*. Nairobi. Clairpress.

Kichana, P, (2006). *Kenyan Laws Cannot Protect Whistle Blowers*.  
[www.tikenya.org/documents/adili81 .pdf](http://www.tikenya.org/documents/adili81.pdf)

Kimberly, A. E. (1997). *Corruption and the Global Economy*. New York. John Wiley and Sons.

- Kivutha, K., Smokin, W. Oketch-Owiti. (2005). *The Anatomy of Corruption in Kenya: Legal, Political and Socio-Economic Perspectives* (Review), Nairobi, a case study of the Goldenberg Export Compensation payments.
- Klitgaard, R. (1991). *Controlling Corruption*. Berkeley: University of California Press.
- Klitgaard, R., Ronald, M., and Lindsey, P. (2000). *Corrupt Cities: A Practical Guide to Cure and Prevention*. Oakland. CA: ICS Press.
- Klitgaard, R. E. (1988), *Controlling Corruption* (Berkeley, California: University of California Press).
- Kneller, G. (1964). *Introduction to Philosophy of Education*. London: Routledge and Kegan Paul.
- Kopits, G, and Jon, C. (1998), "Transparency in Government Operations," *IMF Occasional Paper No. 158* (Washington: International Monetary Fund).
- Kpundeh, G. (2006). *Legal Frameworks and the Roots of World's Corruptive Affairs*. New York. New York Press Ltd.
- Kpundeh, S. (1999). Corruption: Integrity Improvement Initiatives in Developing Countries. UNDP 1999 as quoted by Camerer, in *Terms of Endearment: Bilateral Donor Engagement in Fighting Corruption in South Africa*, Anti-corruption Strategies Project, Institute for Security Studies, Cape Town Volume 9 Number 5/6/2000.
- Krueger, A. (1974). "The Political Economy of the Rent-Seeking Society," *American Economic Review*, Vol. 64 (June).
- Langford, J. (1994). *Corruption, Character and Conduct*. Toronto: Oxford University Press.
- Langseth, P. and Rick, St. (1997), "National Integrity System: Country-Studies," Economic Development Institute Working Paper (Washington: World Bank).
- Larmour, P. and Nick, W. (2001), *Corruption and Anti-Corruption*. Canberra: Asia Pacific Press.



- Leff, N. (1964), "Economic Development Through Bureaucratic Corruption." *American Behavioural Scientist*, New York, Klipart.
- Leventhal, N. S. (1980). *Human inference: Strategies and shortcomings of social judgment*. Englewood Cliffs, NJ: Prentice-Hall.
- Lien, D. and Hsiang, D. (1986). "A Note on Competitive Bribery Games." *Economic Letters*, Vol. 22, No. 4.
- Lindbeck, A. (1998). "Swedish Lessons for Post-Socialist Countries" (unpublished; Stockholm: University of Stockholm Institute for International Economic Studies).
- Lipton, M. (1977). *Why the Poor stay Poor: Urban Bias in Development*, Harvard University Press Cambridge. Mass 1977 and *I.L.O. Meeting Basic Needs: Strategies for Eradicating Mass Poverty and Unemployment*, I.L.O., Geneva, 1977.
- Lui, F. T. (1985). "An Equilibrium Queuing Model of Bribery," *Journal of Political Economy*, Vol. 93 (August).
- , (1996). "Three Aspects of Corruption," *Contemporary Economic Policy*, Vol 14 (July).
- Manzetti, L. and Charles, B. (1997). "Market Reforms and Corruption in Latin America: New Means for Old Ways," *Review of International Political Economy*, Vol. 3 (Winter).
- Maroko, J. (2007). *The Anti-Corruption and Economic Crimes Act 2003 and the Reality of the Law*. The Monitor Newspaper. 24<sup>th</sup> April 2007.
- Mauro, P. (1995). "Corruption and Growth," *Quarterly Journal of Economics*, Vol. 110 (August).
- , (1997). "The Effects of Corruption on Growth, Investment, and Government Expenditure: A Cross-Country Analysis," in *Corruption in the Global Economy*, ed. by Kimberly Ann Elliott (Washington: Institute for International Economics).
- Mbula, K. (2008). How Kenyans Understand Corruption: *The Case of Knowledge versus Hearsay*. Unpublished Seminar Paper, Presented at the World Conference on the Challenges of Achieving Ivlillennium Development Goals, The Hague.

- Michael, J. (2005). *Syndromes of Corruption: Wealth, Power, and Democracy*. London. Oxford University Press.
- Miller, S. (2001). *Social Action: A Teleological Account*. New York: Cambridge University Press.
- Miller, Seumas and Blackler, J. (2005)., *Ethical Issues in Policing*. Aldershot: Ashgate.
- Miller, S, Peter, R & Edward, S. (2005) *Corruption and Anti-Corruption: An Applied Philosophical Approach*. New Jersey: Prentice Hall. 2005.
- Monica, A. (2004). "Networking Civil Society in Latin America", in *Supra* fn.
- Muite, P. (2007). No More Powers for KACC. Daily Nation 14<sup>th</sup> June 2007.
- Muthomi T. (2006). The Anti-Corruption and Economic Crimes Act, 2003; Has Kenya Discharged her Obligations to Her Peoples and the World?. Unpublished
- Morris, J. (1976). *The Transferability of the Western Management Tradition into the Public Service Sector. An East African Perspective* in *TAAMULI*, Vol. VI.
- Murphy, K. M., Andrei S. and Robert, W. V. (1991). "The Allocation of Talent: Implication for Growth," *Quarterly Journal of Economics*, Vol. 106 (May).
- Myrdal, G. (1968). *Asian Drama: An Inquiry into the Poverty of Nations* (New York: Twentieth Century Fund).
- Nick, W. (1997). Political Parties in Kenya, Formation, Policies and Manifestos, View Media, Nairobi.
- Nagel, E. (1976). *Philosophical Methods and Education*. Bombay. Holt and Holt.
- Namwamba, A. (2005). *Politics and Corruption: Understanding the Kenya's New Constitution draft*. Daily Nation. 23<sup>rd</sup> October 2005.

- Ngugi, A . (2007). Message from the Chairman. In: *Kenya Anti-corruption Commission Annual Report 2006/2007*. Nairobi.
- Njoroge, G. K. (1988). *Conceptualization of Akrasia in Kenya's Educational Policy*. M. ed. Thesis, Kenyatta University.
- (1988). *A critic of John Dewey's Concept of Work and Leisure with Reference to Education in Kenya*. PhD thesis, Kenyatta University.
- Njoroge, R. and, Benaar, G.A. (1986). *Philosophy and Education in Africa*. Nairobi. Transafrica.
- Njui, A. (n.d) Director, Catholic Justice and Peace Commission (CJPC) in an undated paper: "The Role of Religious Institutions and Civil Society in Elections".
- Noddings, N. (2002). *Starting at Home: Caring and Social Policy*. Berkeley, California: University of California Press.
- Noonan, J. T. Jr., (1984), *Bribes* (New York: Macmillan).
- Nye, J. (1967) "Corruption and Political Development: A Cost-benefit Analysis" *American Political Science Review* 61(2): 417-27, 1967.
- Obama, B. (2006). Public Lecture at the University of Nairobi, Taifa Hall. September 2006. Unpublished.
- Oniang'o, C.M.P. (1995). *Introductory Philosophy*. Nairobi. East Africa Educational Publishers.
- Pearson, Z. (2001). "An International Human Rights Approach to Corruption" in Larmour and Wolanin.
- Pendlebury, S. (2005). *Education: A Response to Deborah Kerdeman*. Johannesburg. University of the Witwatersrand.
- Plato (Trns. By W.K.C Guthrie, 1952). *The Republic*. Oxford. Oxford University Press.
- Pritchard and Michael, S. (1998) "Bribery: the Concept" *Science and Engineering Ethics* 4(3).

- Prochaska, J.O., & DiClemente, C.C. (1983). Stages and processes of self-change of smoking: Toward an integrative model of change. *Journal of Consulting and Clinical Psychology*, 51, 390-395.
- Procter, A. (1980). *Longmans Dictionary of Contemporary*. London. Longman.
- Rauch, J. E., and Peter B, (1997). "Bureaucratic Structure and Bureaucratic Performance in Less Developed Countries" (unpublished: San Diego, California and Berkeley, California; University of California at San Diego and University of California).
- Remnick, D. (1994). *Lenin's Tomb: The Last Days of the Soviet Empire* (New York: Random House).
- Ringera (2007). "Message From the Director." In: *Kenya Anti-corruption Commission Annual Report 2006/2007*. Nairobi.
- Ruhiu, M. (n.d) *Corruption: A moral Disease*. Nairobi. Lectern.
- Rose-Ackerman, S. (1997). "Corruption and Development," paper prepared for the Annual Bank Conference on Development Economies, Washington, D.C., April 30 and May 1.
- Rose-Ackerman, S. (1999). *Corruption and Government: Causes, Consequences and Reform*. Cambridge: Cambridge University Press.
- Rossouw, G. J. (1998). "Defining and Understanding Fraud: A South African Case Study" *Business Ethics Quarterly* 10(4).
- Rorty, D. (1996). "Pragmatism, education and the public sphere" *Studies in Philosophy and Education Journal*. Volume 15, Numbers 1-2 / March. 1996
- Ruzindana, A.(1997) "The Importance of Leadership in Fighting Corruption in Uganda," in *Corruption in the Global Economy*, (ed) by Kimberly Ann Elliott (Washington: Institute for International Economics).
- Sandbrook, R. (2000). *The Politics of Basic Needs. Urban Aspect of Assaulting Poverty in Africa*, H.E.B, London
- Shleifer, A. (1996). "Government in Transition," HIER Discussion Paper No. 1783 (Boston, Massachusetts: Harvard Institute for Economic Research). ^

- , and Vishny R.W. (1993). "Corruption," *Quarterly Journal of Economics*, Vol. 108 (August).
- Sifuna, D.N and Otiende, J.E (1995). *An Introductory History of Education*. Nairobi. Nairobi University Press.
- Simis, C. M. (1982). *USSR: The Corrupt Society. The Secret World of Soviet Communism* (New York: Simon and Schuster).
- Sjaifudian, S. (1997). "Graft and the Small Business." *Far Eastern Economic Review*, October 16, p. 32.
- Stewart, S. and Lorber-Kasunic, J. (2007). Akrasia and the Ethical Design Curriculum: The ethical curriculum Presentation Type: Research (Unpublished).
- Tanzi, V.(1995a). "Corruption, Arnvs-Length Relationships, and Markets," in *The Economics of Organised Crime*, ed. by Gianluca Fiorentini and Sam Peltzman (Cambridge, Massachusetts: Cambridge University Press), pp. 161-180.
- , (1995b). "Government Role and the Efficiency of Policy Instruments," IMF Working Paper 95/100 (Washington: International Monetary Fund). Also published in *Public Finance in a Changing World*, ed. by Peter Birch Sorensen (New York: Macmillan), pp.
- (1998). "Corruption and the Budget: Problems and Solutions," in *Economics of Corruption*, ed. by Arvind K. Jain (Boston, Massachusetts: Kluwer Academic Publishers).
- , and Hamid -Davoodi, (1997). "Corruption, Public Investment, and Growth," IMF Working Paper 97/139 (Washington: International Monetary Fund).
- Tanzi, V. and Ludge, S. (1997). "Reconsidering the Fiscal Role of Government: The International Perspective," *American Economic Review, Papers and Proceedings*, Vol. 87 (May).
- Taylor, C. (1989). *Sources of the Self: The Making of the Modern Identity*. Cambridge, Massachusetts: Harvard University Press.

- (1991). *The Malaise of Modernity*. Don Mills. Ontario: House of Anansi Press.
- (2001). *Multiculturalism: Examining the Politics of Recognition*. Princeton, NJ: Princeton University Press.
- Theobald, R. (1990). *Corruption, Development, and Underdevelopment* (Durham, North Carolina: Duke University Press).
- The Fourth World Congress of Education International (2004): *Resolution on the Role of Education in Combating Mismanagement and Corruption Meeting* held in Porto Alegre, Brazil, from 22 to 26 July 2004:
- Third World Congress of Education International (2001): *EI Declaration on Professional Ethics*. Meeting in Jomtien, Thailand, from 25 to 29 July, 2001.
- Thompson, D. (1995). *Ethics in Congress: From Individual to Institutional Corruption*. Washington DC: Brookings Institute, 1995
- Transparency International (2008): *anti-corruption education/education/other thematic issues/global* [www.transparency.org/global\\_priorities/other\\_thematic\\_issues/education/anti-corruption\\_education](http://www.transparency.org/global_priorities/other_thematic_issues/education/anti-corruption_education) - 21k.
- Transparency International (TI, 2007): 2007 Corruption Survey Index. Berlin. TI
- Transparency International (TI: 2006): 2006 Corruption Survey Index. Berlin. TI
- Tullock, G. (1996). "Corruption Theory and Practice," *Contemporary Economic Policy*, Vol. 14 (July).
- United Nations. (2001). *UNCAC*. UN. New York
- (2003). *Manual on Anti-corruption Policy*. (2003). UN. New York
- (2004). *The UN Anti-corruption Tool Kit (2004)*. UN. New York.
- (2006) *Anti-corruption Policy*. UN. New York

*Report of the World Summit for Social Development* in Copenhagen, 1995 p. 4. Specifically, programmes should target young people, putting emphasis on moral ethics. The Quarterly Newsletter of Transparency International (Kenya) on Fighting Corruption in East Africa, Issue One April 2001 in Daily Nation May 1.

- Valentine, A. J. S., Katy, S. and Julio, U. (2004). *Reducing Incentives for Corruption in the Mexico City Police Force*. International Workshop, Public Affairs 869 La Follette School of Public Affairs.
- Van Rijckeghem, C. and Weder, B. (1997). "Corruption and the Rate of Temptation: Do Low Wages in the Civil Service Cause Corruption?" IMF Working Paper 97/73 (Washington: International Monetary Fund).
- Van Tulden, F. and van der Torre, A. (1997). "Crime and the Criminal Justice System: An Economic Approach," paper presented at the 53<sup>rd</sup> Congress of the International Institute of Public Finance, Kyoto, Japan, August.
- Vygotsky, L. (1978). *Mind in Society: The Development of Higher Psychological Processes*.
- Wallston, K. A., Wallston, B. S. & DeVellis, R. (1978). Development of the multidimensional health locus of control (MHLC) scales. *Health Education Monographs*, 6, 160-170.
- Weber, M. (1947). *The Theory of Social and Economic Organization* (London: The Free Press of Glencoe).
- Wei, S. (1997). "How Taxing Is Corruption on International Investors?" *NBER Working Paper No. 6030* (Cambridge, Massachusetts: National Bureau of Economic Research).
- 1997b, "Why Is Corruption So Much More Taxing Than Tax? Arbitrariness Kills," *NBER Working Paper No. 6030* (Cambridge, Massachusetts: National Bureau of Economic Research).
- World Bank (1997). *Helping Countries Combat Corruption: The Role of the World Bank*. Washington DC: World Bank.

- Yamamoto, F. (2003). "Emerging Civil Society in the Asia Pacific Community." Japan. Japan Centre for International.
- Zalta, E. N (2005). "Corruption". Stanford Encyclopedia of Philosophy. Stanford University. Stanford.
- Zengke, H. (2000). *Corruption and anti-corruption in reform China*. Beijing. Elsevier Science Ltd.