

OECD AFRICA (NAIROBI) ACADEMY FOR TAX CRIME INVESTIGATION – VIRTUAL

CONDUCTING FINANCIAL INVESTIGATIONS
(FOUNDATION)



BRIBERY & CORRUPTION

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Learning Objectives



01 • Explain the concept & definition of 'corruption'

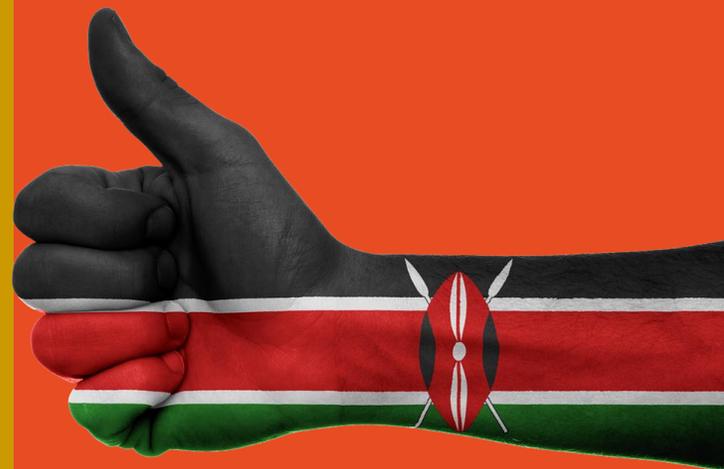
05 • Identify ways of combating corruption

02 • State the typology and forms of corruption

03 • Explain the psychology of corruption

04 • Explain the legal framework instruments (International Laws /legal instruments & Example. Kenya Domestic Laws)





Scope

Concept of corruption

Forms of corruption

Typology of corruption

Psychology of corruption

Regulatory framework

Anti Corruption Initiatives – KRA

Combating corruption

Case Examples

Emerging Jurisprudence – Kenya

Recommendation - Best Practices

Exercise

Conclusion

Introduction

Corruption is a **global problem**. It crosses borders and affects all countries and all sectors of our society.

It has received considerable attention from every country trying to curb it.

Corruption occurs where there is a **depletion of ethics** and integrity.

A country's attitude towards corruption will affect its commitment to fight it.

Concept of Corruption

The term “corruption” is derived from the **Latin word “corruptus”** meaning “to destroy”.

It Symbolizes destruction or breakdown in:

- Ethical and moral values
- Systems and institutions of governance
- Societal traditions and personal value system

Corruption is both behavioral (attitudes) and (systems problem)



Corruption Defined

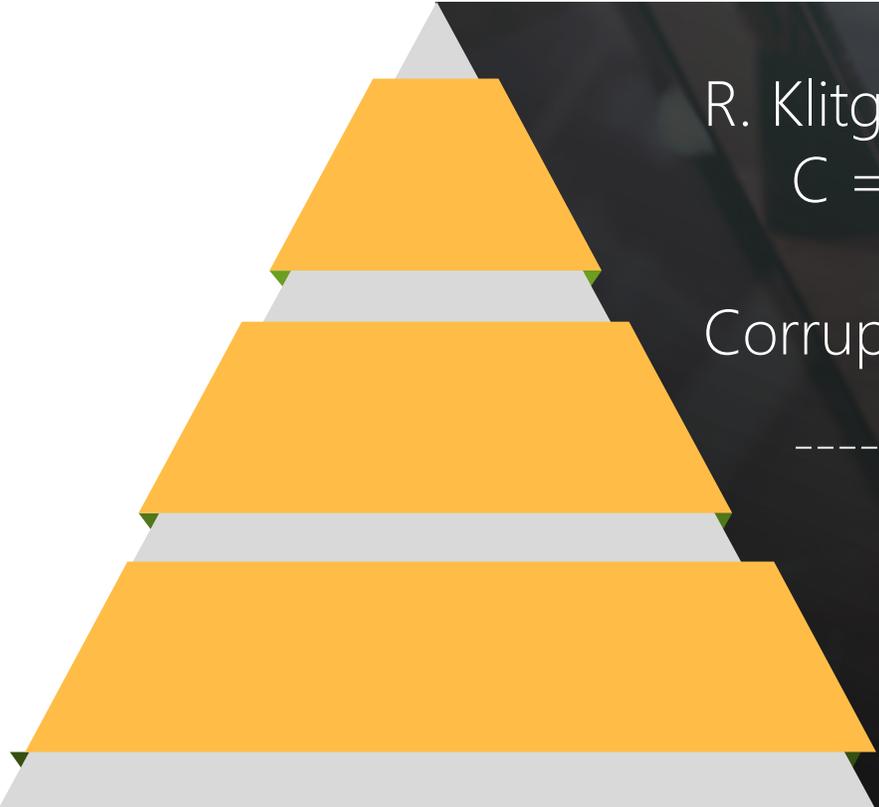
Pressure

Corruption = Inclination + Opportunity (S. Powell)
Corruption/Fraud = Pressure + opportunity
+ Rationalization

Opportunity

Rationalization

Corruption Defined



R. Klitgaard et. al. in 'Corrupt Cities of the World' .
 $C = M + D - A$

Corruption = monopoly + discretionary power - accountability

**Corruption
therefore is**

the systematic use of public office for private benefit whose impact is significant on access, quality, and equity in the human development process

Corruption Defined

The **abuse of power** for **personal gain** or for the benefit of a group to which one owes allegiance. It is **motivated by greed**, by the desire to retain or increase one's power
– World Bank (Stapenhurst and Sedigh, 1999).

The misuse of public office for private profit or advantage, acts of commission and omission in your employment resulting in loss or disadvantage to your employer and private gain to you or any other person associated with you. (Obasanjo, 1994).



The Corruption Problem

"Corruption is not primarily a problem of bad people, but of bad system."

- **Robert Klitgaard**





Forms of Corruption

- Bribery
- Fraud
- Embezzlement
- Misappropriation of public funds
- Abuse of office
- Conflict of interest
- Dishonesty
- Land grabbing
- Tax evasion
- Extortion
- Negligence
- Favoritism and tribalism



Typology of Corruption

'The aggregate happiness of the society, which is best promoted by the practice of a **virtuous policy**, is, or ought to be, the end of all government . . . !

George Washington.

Petty corruption

Involves small amounts of money but it can seriously hamper the delivery of basic services such as education and healthcare.

Grand corruption

It describes cases involving massive wealth acquired from the state by public officials through corrupt means. It can involve a network of individuals therefore difficult to trace the web.

Systemic corruption/endemic

corruption is integrated into the social, economic and political structures of an institution or country.

Sporadic corruption

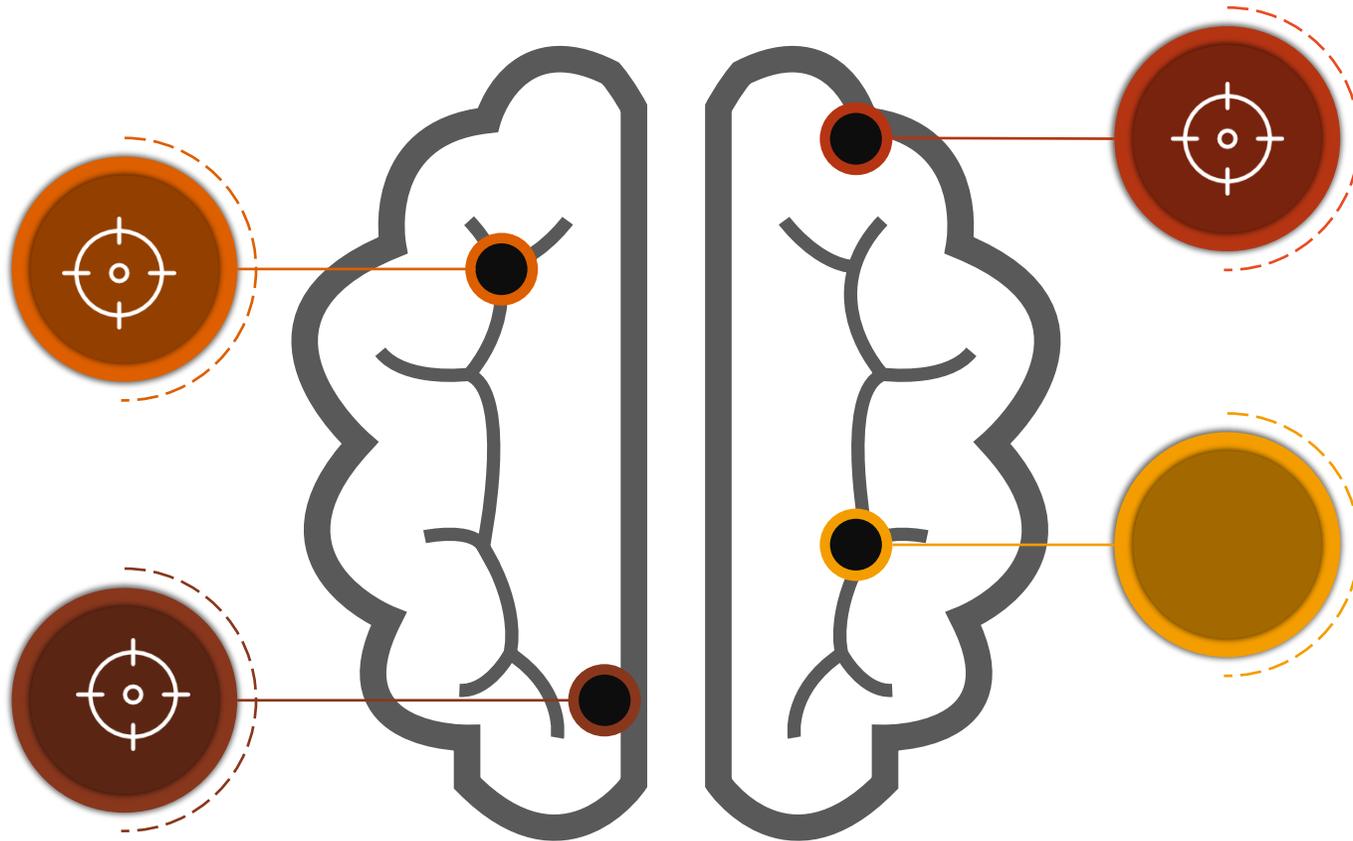
Involves individuals who occasionally misuse public resources.

Lootocracy

Psychology of Corruption

It is not in doubt that acts of corruption can only be explained in the realms of human behaviour

Explaining human behaviour in all its complexity is a difficult task



Before we behave as we do, there are internal psychological processes that energize or propel us to do the things we do

The Big Question

What motivates people to travel this treacherous slippery road of corruption?

Ethics, Integrity and Corrupt practices



Corruption thrives where ethics and integrity have been depleted

Is the anticorruption discourse necessary?

we all know what is right.....what prevents us from doing the right thing all the time?

WANGARI Maathai speaks

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



Regulatory Framework

➤ The legal framework instruments are illustrated on the table 1 below;

International Laws and legal Instruments	Kenya Domestic Laws	KRA Integrity Policies
<p>International Convention</p> <ul style="list-style-type: none"> • United Nations Convention Against Corruption (UNCAC) • International Code of Conduct for Public Officers Dec 1996 <p>Regional Convention</p> <ul style="list-style-type: none"> ▪ African Union Convention on Preventing and Combating Corruption (AUCPC) ▪ East African Community Protocol on Preventing and Combating Corruption (EACPPCC). 	<ul style="list-style-type: none"> ▪ The Constitution of Kenya, 2010 ▪ Leadership and Integrity Act 2012 ▪ Ethics and Anti-Corruption Commission Act, 2011 ▪ Bribery Act, 2016 ▪ KRA Act, CAP 469 ▪ Public Officers Ethics Act, 2003 ▪ Public Audit Act, 2003 ▪ Public Finance and Management Act, 2013 ▪ Public Procurement and Asset Disposal Act, 2015 ▪ Anti-Corruption & Economic Crimes Act, 2003 ▪ Proceeds of Crime & Anti-Money Laundering Act, 2009 	<ul style="list-style-type: none"> ▪ KRA Anti-Corruption Policy ▪ KRA Whistle-blower policy ▪ KRA Conflict of Interest Policy ▪ KRA Gifts Policy <p><i>(To enhance voluntary compliance)</i></p> <p><i>What Legal Instruments do you have in your country?</i></p>

The Bribery Act, 2016

Sec23

The Bribery Act No. 47 of 2016 became operational on 13th January 2017. Section 23 of the Act repealed Section 39 of the Anti- Corruption & Economic Crimes Act (ACECA), 2003.

Objectives



Providing a framework for the prevention, investigation and punishment of bribery and related offences in Kenya



Sec 3: The EACC shall be responsible for the enforcement the Act.



Sec 4: The Act shall apply to the Public, Public Officers and Private entities.

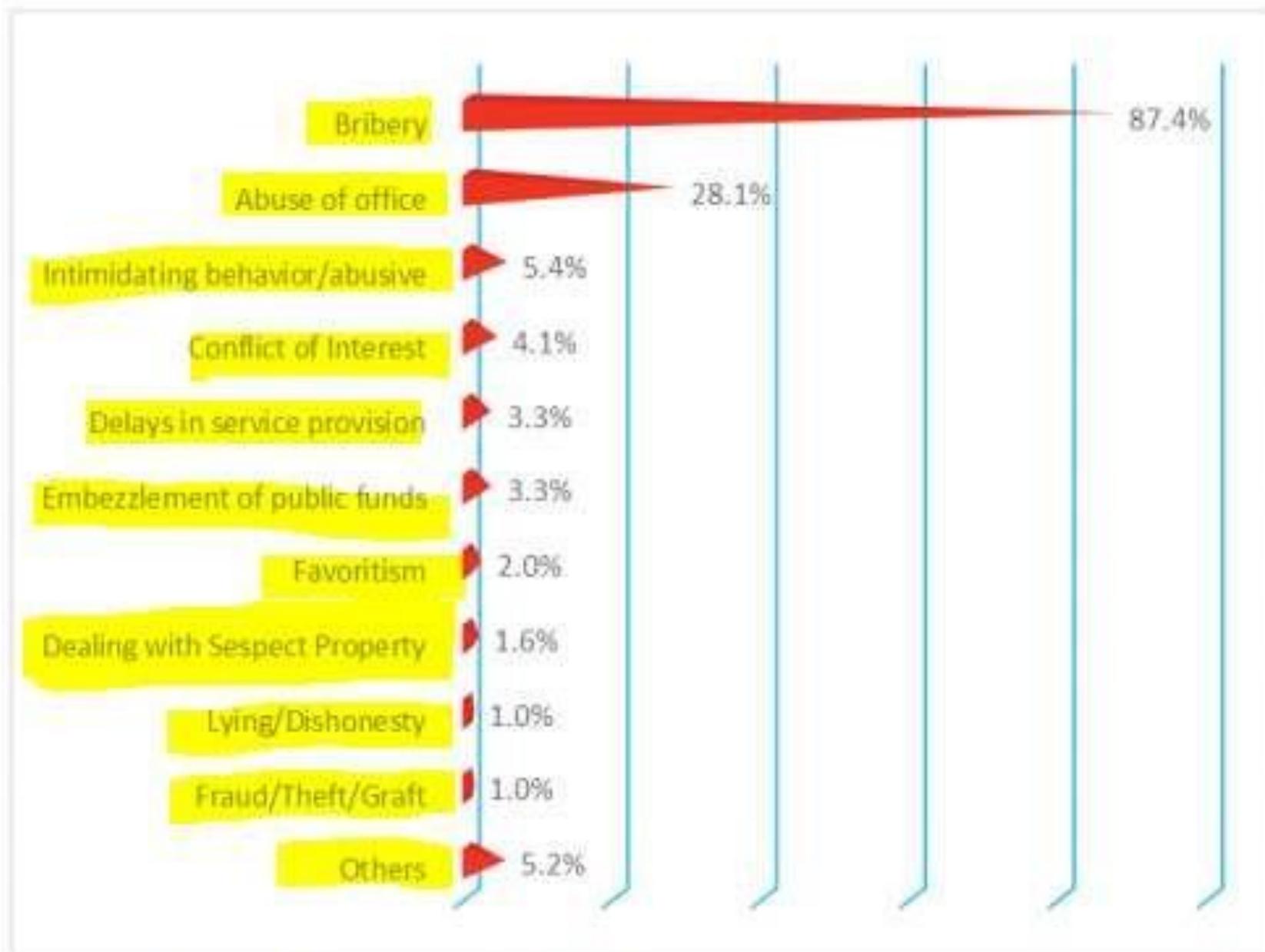


Figure 4: Forms of Corruption and Unethical conduct encountered

BRIBERY ACT, 2016

SALIENT PROVISIONS

SECTION 5 : GIVING A BRIBE

A person commits the offence of giving a bribe if the person **offers, promises or gives** a financial or other advantage to another person, who knows or believes the acceptance of the financial or other advantage would itself constitute the improper performance of relevant function or activity.



READ THE ACT

REJECT THE BRIBE

REPORT THE CASE

Contact Information: Email: integrity@kra.go.ke | Extension (IP): 2823 / 2825



BRIBERY ACT, 2016

SALIENT PROVISIONS

SECTION 6: RECEIVING A BRIBE

(1) A person commits the offence of receiving a bribe if:

- (a) He/she requests, agrees to receive or receives a financial or other advantage intending that, in consequence a relevant function should be performed improperly whether by that person receiving the bribe or by another.



READ THE ACT

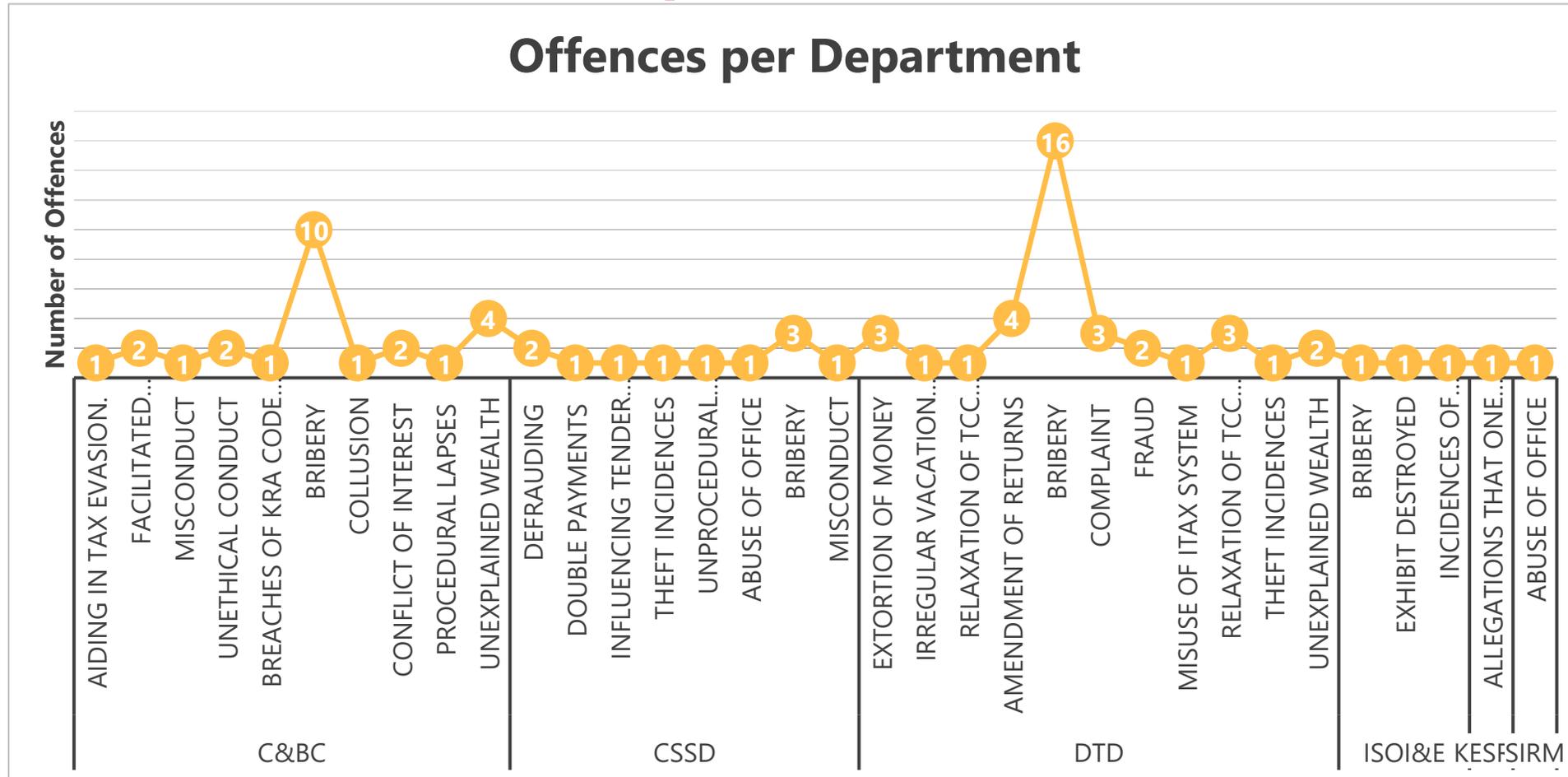
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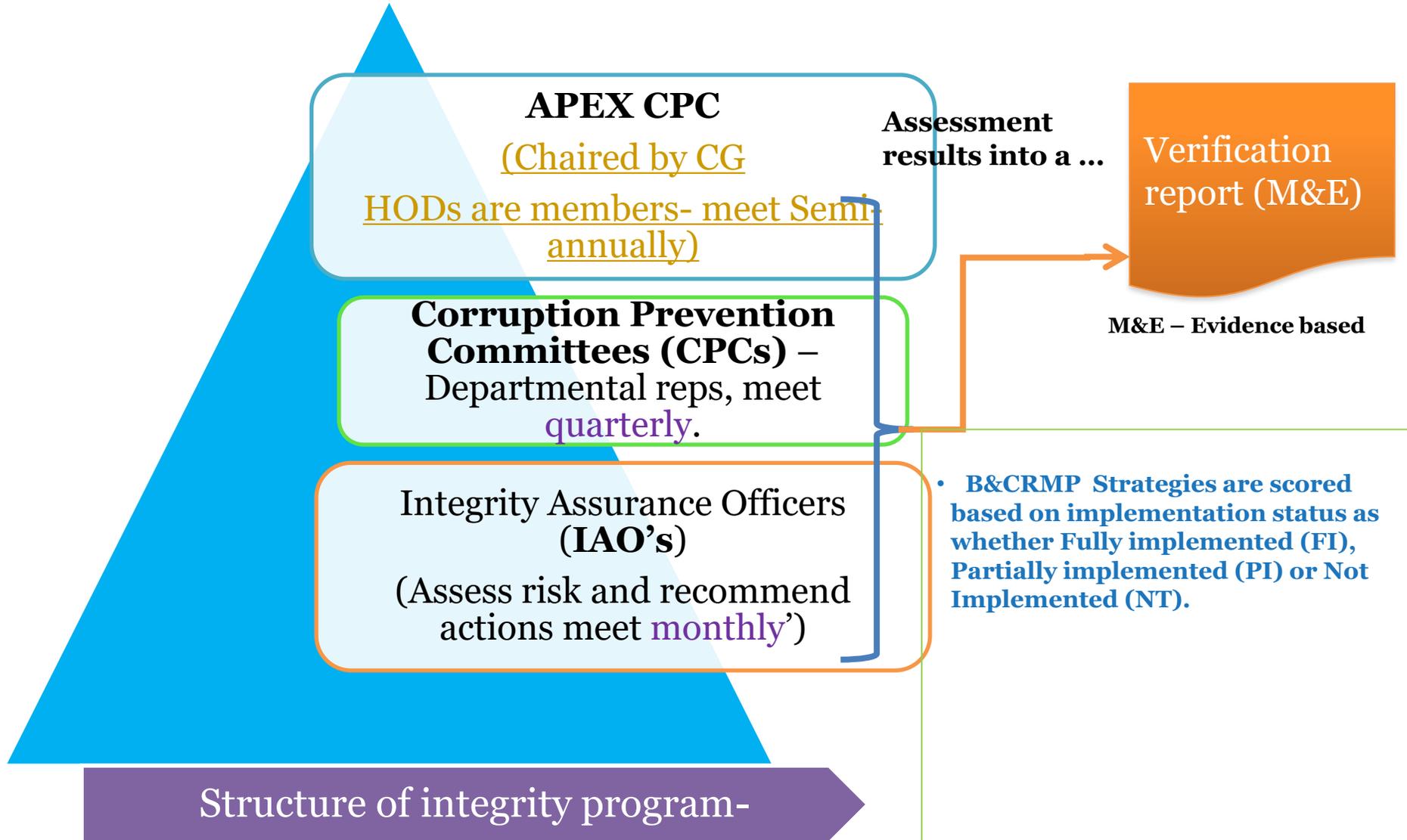


Summary on The Nature of Offences Investigated Per Department (KRA)

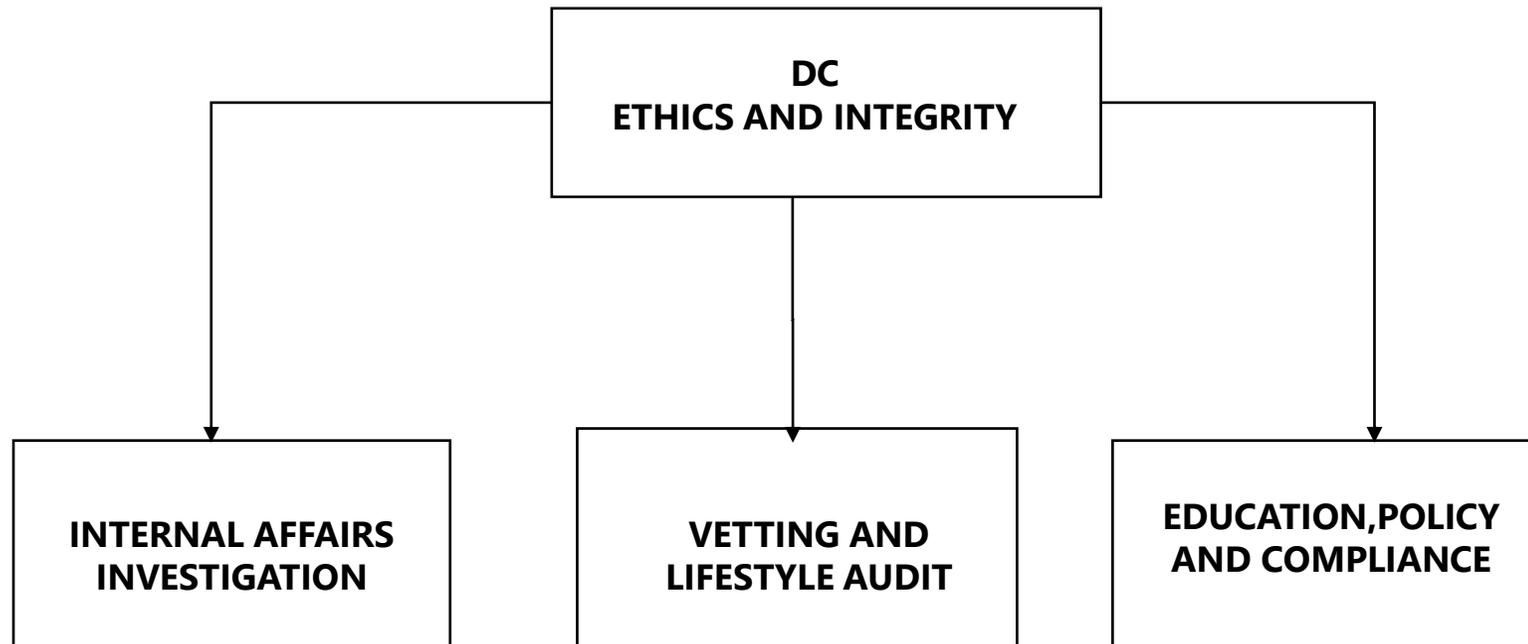


- ❑ Increase of **bribery cases** observed, there is need for the CPCs to focus on the measures of mitigating this emerging integrity phenomenon.

Case Study -Governance Structure of KRA Integrity Program



Ethics & Integrity Division



Internal Affairs Investigation



INTERNAL INVESTIGATION

- This entails investigation on corruption, fraudulent activities and unethical behavior or other staff malpractices which constitute a breach of the KRA Code of Conduct.
- Cases are initiated upon receipt of complaints or identified by the Authority through intelligence and other interventions.



INTEGRITY TESTING

- The Integrity Testing Programme (ITP) is a form of proactive investigation intended to monitor staff conduct while performing their duties as required by manuals, regulations, routine orders and various laws among other provisions to establish whether they are doing their work as required.

Trend Analysis (Statistics on Staff Investigations)

Details	Fiscal Year					
	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23
Balance of cases brought down	74	98	128	126	87	64
New cases registered	80	143	116	88	202	153
Total cases under investigations	154	241	244	214	289	217
Cases completed recommending DISC	46	93	64	46	94	39
Cases Closed for insufficient evidence	7	15	52	73	126	127
Cases referred to other Departments/Agencies	3	5	2	8	5	1

Internal Affairs Investigations Cont..

Integrity Tests

#	Results of the test	Financial Year					Totals
		2018/ 2019	2019/ 2020	2020/ 2021	2021/ 2022	2022/ 2023	
1	Fail	7	13	12	14	14	60
2	Pass	1	2	2	2	2	9
3	Inconclusive	2	1	3	1	2	9
4	Systemic/ procedural failures	-	0	1	2	2	5
5	Totals	10	16	18	19	20	83

Vetting and Lifestyle Audit



Background Checks

Refers to the process of screening potential employees before recruitment

Lifestyle Audits

Analysis of one's living standards to establish if consistent with known sources of income and if full declarations made

Vetting

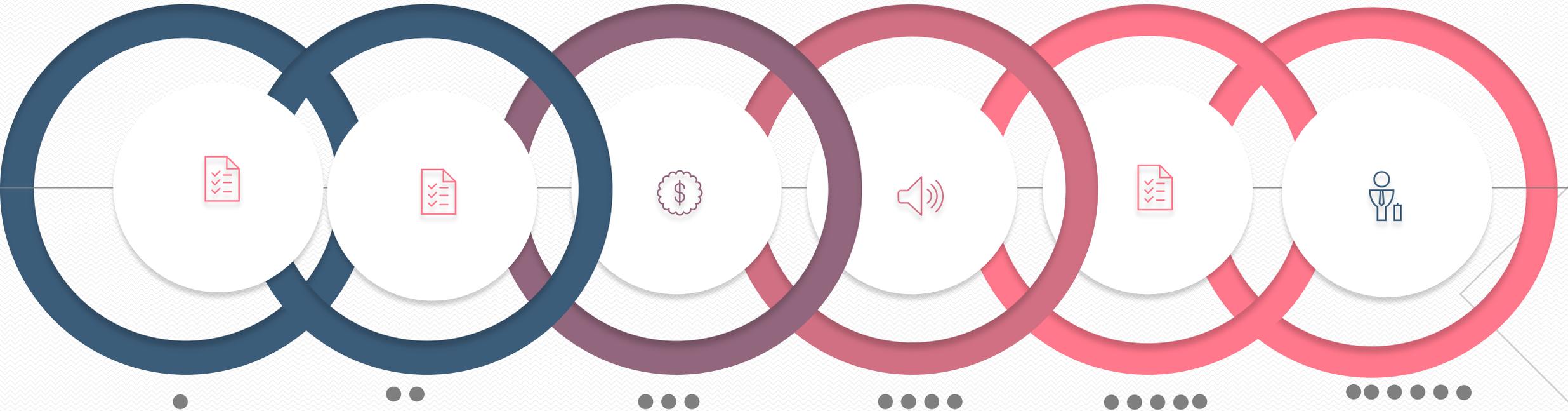
Vetting for promotion/ transfer or deployment to critical areas/renewal of contract.

Statistics of Vetting, Lifestyle Audit and Background Checks

	Financial Year				
	2018/19	2019/20	2020/21	2021/22	2022/23
Lifestyle Audit	-	15	18	38	69
Vetting	91	1,807	3,340	4,132	1,300
Background Checks	22	84	334	1,196	494



19th Cycle Corruption Prevention Guidelines



Constituting and operationalizing Integrity/Corruption Prevention Committee

Establishing sufficient mechanisms to facilitate efficient and effective reporting of bribery and corruption within the institution and to EACC.

Establishing mechanisms to encourage and protect whistle-blowers, informants and witnesses to report bribery and corruption. Evidence (such as a policy)

Provide for effective Communication, awareness creation and dissemination to internal and external stakeholders on the measures put in place to prevent bribery and corruption.

Evidence on measures put in place to be communicated in each quarter.

Designating a person or persons (committee) in authority to set up the enforcement structure. Evidence of the designated persons to be submitted in the first quarter

Requirements

b) Bribery and Corruption Risk Assessment and Management

	Key Indicator	Sub-Indicator	Weight	Total Weight
1.	Carryout a bribery and corruption risk assessment in all Directorates/Departments/sections and units and develop a plan to mitigate the risks.	A copy of an organizational structure (organogram) of the institution) submitted to EACC in the first quarter.	5%	45%
		A comprehensive Bribery and Corruption Risk Assessment & Mitigation Plan submitted to EACC showing the risks identified in the various Directorates/Departments/sections and units shown in the organogram	40%	
2.	Implement measures / strategies outlined in the Risk Mitigation Plan.	No of measures /strategies implemented and reported in the quarterly progress reports submitted to EACC together with supporting evidence.	35%	35%
3.	Submit quarterly performance reports to EACC using the prescribed reporting format	No of comprehensive reports submitted (not later than 15 th of the month following the end of the quarter)	10%	10%
4.	Monitor, Evaluate and Review effectiveness of measures put in place to.	A report of the monitoring, evaluation and review of the strategies submitted within 45 days after the end of the PC period.	10%	10%
	Total			100%

B&CRMP Template

S/NO.	IDENTIFIED RISKS	MITIGATION/PREVENTION STRATEGY	MITIGATION ACTIONS/ ACTIVITIES	RESPONSIBILITY	RESOURCE REQUIREMENTS(E.g.budget)	IMPLEMENTATION TIME FRAME
FUNCTIONAL AREA 1. INVESTMENTS DIRECTORATE						
	A. Bribery Risks					
	B. Corruption Risks					
FUNCTIONAL AREA 2. HUMAN RESOURCE MANGEMENT						
	A. Bribery Risks					
	B. Corruption Risks					



Reporting Template

QUARTERLY REPORTING FORMAT ON THE IMPLEMENTATION OF BRIBERY AND CORRUPTION RISK MITIGATION PLAN

Name of Ministry/Institution: Quarter:FOR FY 2022/2023

S.No	Identified Risks – (as per the BCRA&MP)	Mitigation/Prevention Measure - (as per the BCRA&MP)	Mitigation Actions/Activities –as per the BCRA&MP)	Outputs achieved (Measures / Activities undertaken)	Outcomes (Identified Change(s))	Emerging issues and challenges noted during implementation	Actions to address the issues and challenges
	FUNCTIONAL AREA 1						
	A. Bribery Risks						
1.							
2.							
	B. Corruption Risks						
1.							
2.							
	FUNCTIONAL AREA 2						
	A. Bribery Risks						
1.							
2.							
	B. Corruption Risks						
1.							
2.							

Chairperson of the Corruption Prevention/Integrity Committee

Signed: Date:

Secretary of the Corruption Prevention/ Integrity Committee

Signed: Date:

Note:

- 1) Institutions are required to implement Bribery and Corruption Risk Mitigation Plan and submit quarterly reports to the Ethics and Anti- Corruption Commission (EACC) using this template.
- 2) The outcomes refer to positive results or gains attributable to the measures undertaken. (Provide statistics where possible).
- 3) The reports **should be accompanied with relevant evidence** of the implemented bribery and corruption prevention strategies (mitigation measures). The submitted evidence should be cross-referenced to the respective implemented strategy / activity.
- 4) The EACC will periodically undertake spot checks to ascertain the accuracy of the reports.

Complaints and Corruption Reporting



Responsible for:

- Management of Corporate Corruption Reporting Function.
- Implementation and resolution of Corporate complaints.
- Management of complaints resolution in line with Commission of Administrative Justice (CAJ) Requirements.
- Implementation of the Informer Reward Framework.

Corruption reporting channel: ***iWhistle***

You Whistle. We Act!

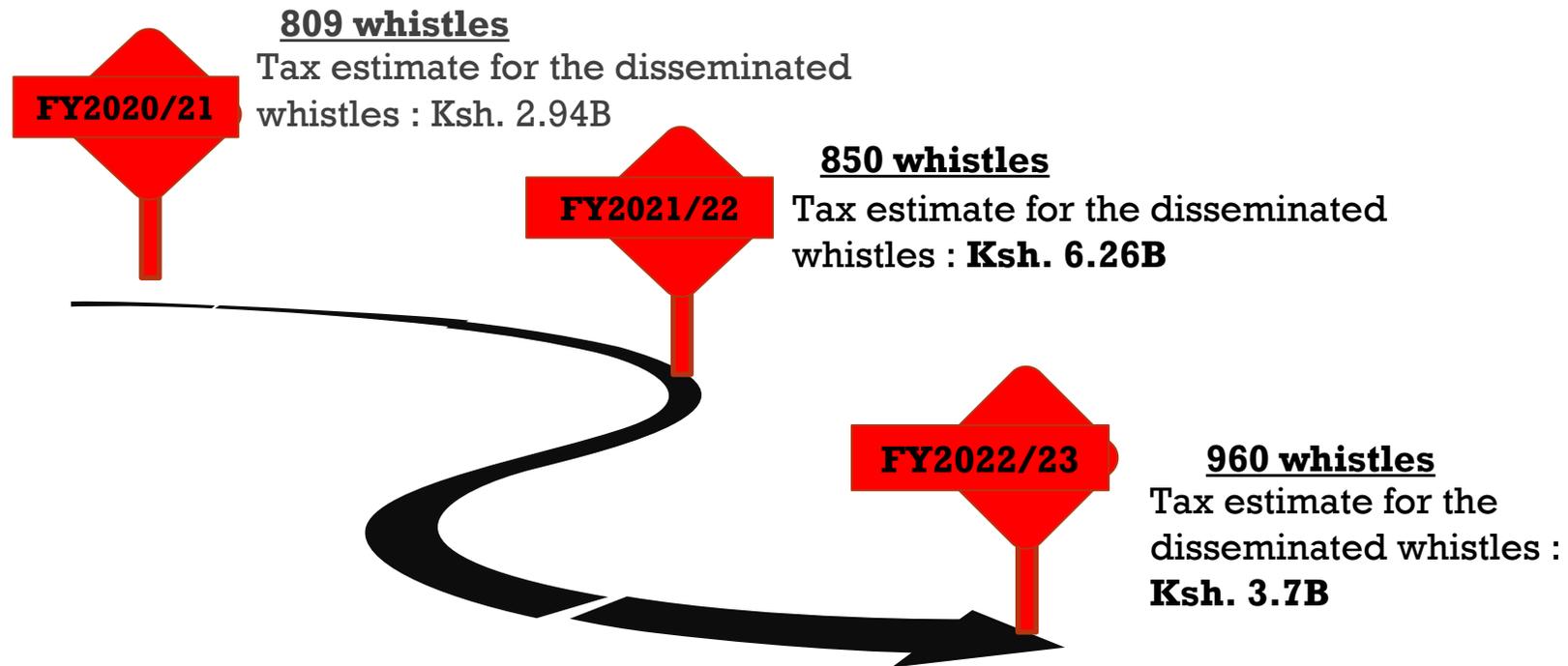
Report all bribery, concealment, abuse of office, conflict of interest, fraud, diversion of goods and tax evasion cases to <https://iwhistle.kra.go.ke/>

Your information will be treated with utmost confidentiality.



iwhistle

iWHISTLE PERFORMANCE



- ❑ Total number of whistles received: **2,640whistles**
 - ✓ Tax estimate for the disseminated whistles : **Ksh. 12.9B**
 - ✓ Assessment raised: **Ksh. 1.75B**
 - ✓ Amount recovered: **Ksh. 531M**

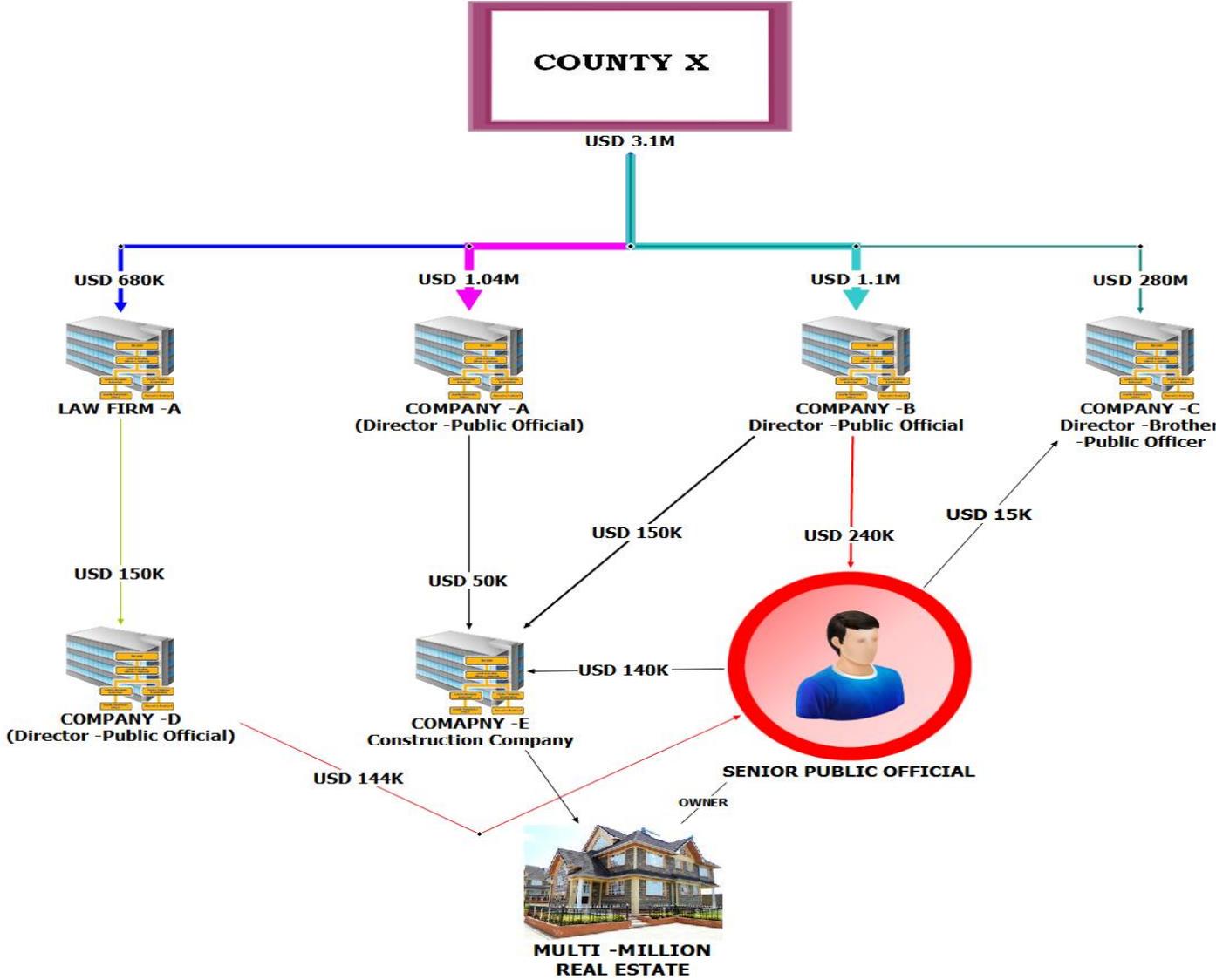
Combating corruption



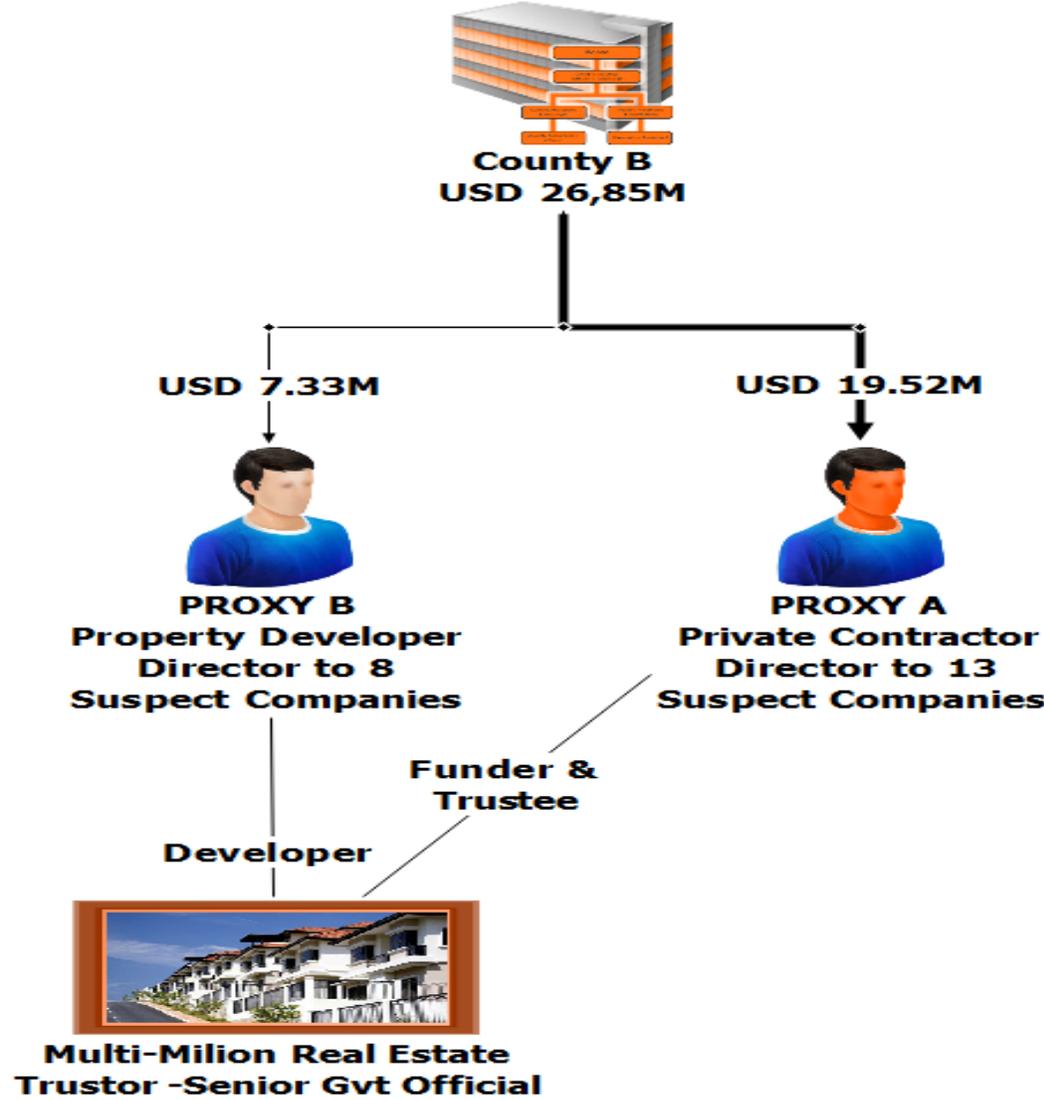
- Investigation of corruption related offences
 - Corruption Reporting system (Whistleblowing)
 - Staff Investigation Division
 - Lifestyle audit
 - Declaration of Income, Assets and Liabilities
 - Integrity testing and Intel gathering
 - Sharing information with Anti-corruption Institution
- Preventive Measures
 - Code of conduct and Ethics
 - Education on anti-corruption
 - Gift registers and policies
 - Declaration of conflicts of interest
 - Mapping of corruption risk areas/services
 - Corruption Prevention Measures & Procedures



Case Example 1: –Following the money



Case Example 2: –Following the money



Case Example 3 Lifestyle Audit



- Huge Spending in luxurious hotels
- Engagement in contracts where prices of supplies were inflated

Snips of Actual Judgement -Plaintiff



1) Round tube 1 $\frac{1}{2}$ " , cutting disc 9" , cutting disc14"grinding disc9" , Auto and central hardware prices was going at kshs610, kshs155, nil, and kshs245 respectively while at public works prices they were going at kshs 840, kshs180, kshs 500 and kshs300 respectively.

13. That using the unit prices obtained from the Ministry of Public Works, they arrived at the conclusion that NYS was overcharged in the two subject tenders a total sum of Kshs. 33,700,000 as follows;

- (i) Round tube 1 and 1/2" at a purchase price of kshs2,400 against public works price of kshs840 for a quantity of 15000.The price difference was Kshs1,500 giving a total difference of Kshs 23,400,000 as money fraudulently acquired and therefore the money required to be refunded.
- (ii) Cutting discs 9" at a purchase price of Kshs 1,650 against

Snips of Actual Judgement

On further cross examination she answered as follows;

“The public officers in this case are the Ministerial Tender Committee, the Evaluation Tender Committee and the P.S.”

71. Asked why she could not enjoin them in the suit, she responded that they had not been surcharged.
72. From these kind of evidence, it is clear that the defendants had no role to play in fixing the price to be awarded the contract. There was nothing irregular in quoting a higher price than anybody else. If there were 10 bidders in a contract, how come none quoted below the defendants' price. There is nothing unlawful in quoting a higher price at the risk of disqualification.
73. However, the Public Procurement and Disposal Act has a remedy under Section 30(3) and (4). Sub-Section 3 provides;
“Standard goods, services and works with known market prices shall be procured at the prevailing real market price.”

Emerging Jurisprudence-Kenya

A). The suspension of State Officers from office

XXXX vs ODPP

1. **Sec 62 (6) of ACECA**, which exempts State Officers, where the constitution provides mechanism for removal, was held **unconstitutional**.
2. It is discriminatory contrary to **Art 10**.
3. **Chapter 6** on leadership and Integrity demands public officers to safeguard the **honor** and **dignity** of the office and retain the **public trust** and **confidence**.
4. State officers are Public officers and **Chapter 6** and **Article 10** apply to ALL public officers.

B). Civil forfeiture of unexplained wealth.

Sec 26, Sec 55 , ACECA

Case: Former financial Controller

National Water Conservation Corporation.

Court of Appeal Judgments.

1. Civil proceedings takes **less time** to recover the assets.

2. It **evidentiary burden** is **lower** than criminal proceedings; balance of probability

3. If you cannot explain, you forfeit. (Shift of evidentiary burden to the accused).

4. Rights to property (**Art 40**) does not apply to **illegally acquired** property.

5. Being charged or accused of any Criminal offence is ~~not a requirement in asset recovery process.~~

C). Power to Search and preserve unexplained wealth under investigations.

Petition No.30 of 2019. EACC & Other vs Prof. Tom Ojienda SC & 2 Others. 7th Oct. 2022

1. It is **NOT Mandatory** for EACC to give Written Notice prior to investigation at all situations.
2. EACC can obtain warrants to search *ex parte*.
3. Powers of EACC are not administrative Action under Art 47 but special Powers.
4. The **notice to the party sec 28** is not required since it will defeat the purpose of investigations.
5. EACC can **register caveats** and **restrictions** on property under investigations.

Money Laundering as Stand-alone Offence.

Republic v Director of Public Prosecutions & Another Ex-Parte Patrick Ogola Onyango & 8 Others (2016) eKLR.

- Prosecution need not prove that there existed a conviction or an affirmation of a predicate offence prior to any charges of money laundering.
- The offence of money laundering must be deemed as **'stand-alone'** offence.

D) Gainful employment-Art 77(1), S 26 LIA

Public Officers servicing two public

Office jobs.

- *XYZ Vs AG & 3 Others [2016]*, Employee of KU cannot be the chair of CUE.
- *XYZ 2 v County Secretary County Gov't of Bomet & 3 others [2020]*
Employee was ordered to refund all the benefits and remunerations received as County Assembly Service Board member while serving as municipal manager and dismissed for lack of integrity.

E. The use of ADR in recovery

- The University of Nairobi Land, **5-acres**, in Upper hill Nairobi valued at **Kshs 2billion** from Aberdares Engineering Contractors Limited.
- The Recovery of **Kshs 24million** from officers of County Government of Bungoma for the irregular payments of allowances totaling to **Kshs 17million**.

The application of mandatory fines and maximum sentencing



XYZ 3– WARMA Finance Manager

Convicted of 5 counts for soliciting and receiving bribes totaling to Kshs 910,000/-.

Sentence to pay fine 7.6 million in default to serve 24 years.

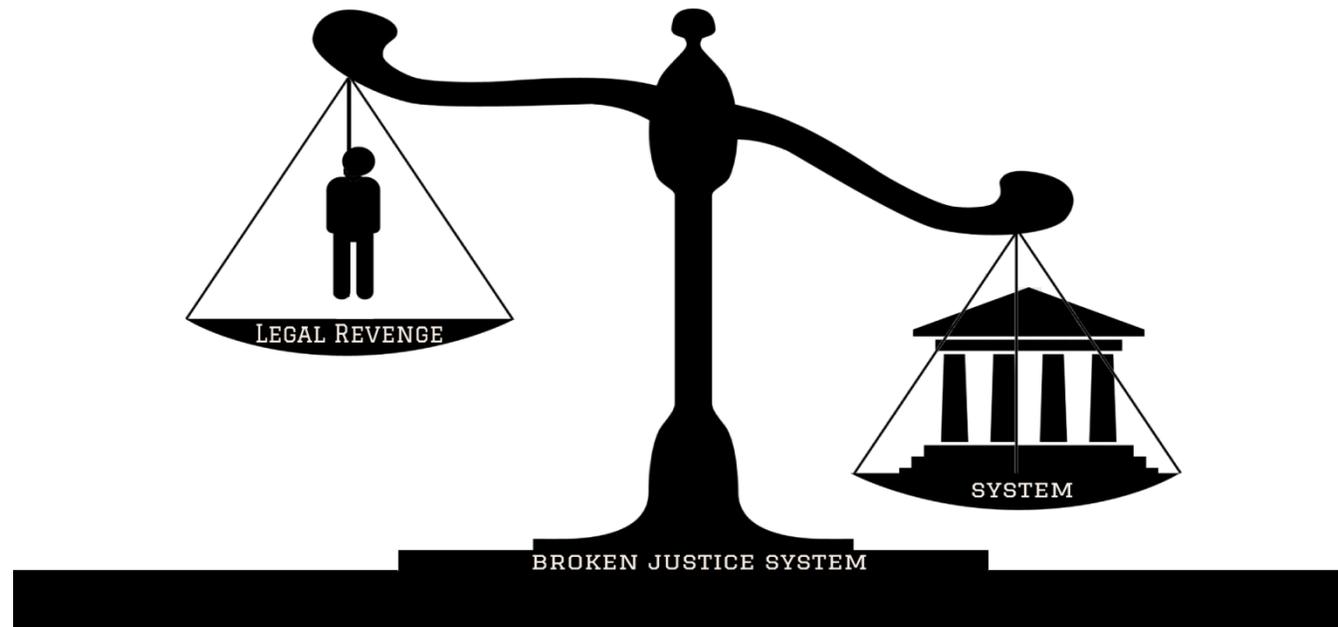
Pending appeal

NSSF – Discount Securities Ltd matter Case No ACC 15/2010

- NSSF Investment Manager was fined Kshs 2.6 billion for two counts of deceiving the principal and conspiracy to defraud NSSF Kshs 1.2 billion through irregular trading of shares in default to serve **14 years jail**.

Challenges in combating corruption

- Culture of corruption
- Political Interference
- Lack of coordination between Investigators and prosecutors
- Failed Institutions



Recommendation – Best Practices

Iso37001 - Anti-bribery Management System (ABMS)



- **ISO 37001** is an Anti-Bribery Management System (ABMS) standard by the International Organization for Standardization (ISO).
- ABMS provides guidance for **establishing, implementing, maintaining, reviewing** and **improving** an Anti-Bribery Management System in organizations.
- Designed to **address bribery** by the organization, or by its **personnel** or business associates acting on the organization's behalf or for its benefit.
- The ISO 37001 requirements are designed to be **integrated** with existing management processes & controls.
- Similar to ISO 9001 Standard, ISO 37001 follows the **common high-level structure** for ISO management system standards making it easy for integration.
- It is applicable to small, medium and large organizations in all sectors, including public, private and not-for-profit sectors.

Anti-bribery Management System (ABMS)

In readiness for implementation of the ISO 37001, the Authority:

1

It is certified to the ISO 9001:2015 Standard on Quality Management Systems. This shall make it easy during integration.

2

Has an approved Anti-Corruption Policy.

3

Complies with the Bribery Act of 2016. The associated regulations of the Bribery Act 2016 were gazetted on 22nd October 2021 via gazette notice number 11125.

4

Designated department and Division to enforce compliance to the ISO 37001 Standard.

5

Has a vibrant integrity programme that can easily adopt the Anti-bribery Management System (ABMS).

Benefits of Certification on ISO 37001



- Improved revenue collection resulting from sealing of loopholes that yield to bribery
- Improved Image and Reduction of the KRA Corruption perception index .
- Improved and sustained ethical work force.
- A strong accountable, effective and transparent Authority
- Reviewed and effective KRA Anti-Bribery Management System.
- Improved quality of service as a result of implementation of integrated ISO 9001:2015 and ISO 37001- Standards.
- Resilient prevention strategies against bribery and corruption.
- Increased corruption reports received through the iWhistle as stakeholders having faith in mechanisms to address bribery.



INTEGRITY AWARD FRAMEWORK

The **KRA Integrity Award Framework** was approved by Team One in May 2022 to be operationalised from 1st June 2022.

The aim of the framework is to **recognise** and **reward** outstanding KRA staff that have made significant contribution to tax administration with respect to upholding integrity.

Under the framework, individual staff that have accorded the Authority **outstanding support** in **promoting** integrity in tax administration will be honoured as appropriate.

For Comments:
Email: integrity@kra.go.ke | Extension (IP): 2825



Exercise

- **Group 1 & 2**
 - In your groups, Identify causes of corruption,
 - Two (2) types of corruption you have encountered,
 - Briefly explain how the cases were investigated
- **Group 3 & 4**
 - Identify how bribes are concealed in Business accounts
 - What information can be provided by banks in support of Corruption Investigation



CONCLUSION

Can Law be the Only Tool to Shape Behaviour?

*Morality cannot be **legislated** , but behavior can be **regulated**.
Judicial decrees may not change the heart, but they can
restrain the heartless."*

Martin Luther King Jr.



As I have said, the first thing is to be honest with yourself. You can never have an impact on society if you have not changed yourself... Great peacemakers are all people of integrity, of honesty, but humility.



QuoteHD.com

Nelson Mandela

Former President of
South Africa

(Born 1918)

**THANK
YOU!**

