

Kenya Prevention of Corruption Act, 1956 (repealed)

Prevention of Corruption (Repealed)

Arrangement of Sections

- 1 - Short title.
- 2 - Interpretation.
- 3 - Corruption in office.
- 4 - Corrupt transactions with agents.
- 5 - Increase of maximum penalty in certain cases.
- 6 - Public servant obtaining advantage without consideration
- 7 - Presumption of corruption in certain cases.
- 8 - Principal may recover any secret gifts.
- 9 - Invalidity of appointment, etc., no bar to prosecution.
- 10 - Special powers of investigation.
- 11 - Special rules of evidence.
- 11A - Attorney-General may prohibit transfer of advantage, etc. or property corruptly acquired.
- 11B - Anti-Corruption Squad.
- 11C - False claims as to corrupt transaction.
- 12 - Sanction to prosecute. (Repealed)

1 - Short title.

1. This Act may be cited as the Prevention of Corruption Act.

2 - Interpretation.

2. In this Act—

"advantage" includes any office or dignity, and any forbearance to demand any money or money's worth or valuable thing, and any aid, vote, consent or influence, or pretended aid, vote, consent or influence, and any promise or procurement of, or agreement or endeavour to procure, or the holding out of any expectation of, any gift, loan, fee, reward, consideration or advantage, as before defined;

"agent" includes—

(a) any person in the employment (whether under a contract of service, a contract for service or otherwise, whether permanent or temporary, whether paid or unpaid, and whether full-time or part-time and whether such person is a natural person or a body of persons) of, or acting for, another,

(b) a trustee;

(c) an administrator or an executor; and

(d) a person serving under the Government or under any public body;

"Authority" means the Kenya Anti-Corruption Authority established under section 11B;

"Director" and "Assistant Director" mean a Director and an Assistant Director of the Authority appointed under section 11B;

"consideration" includes valuable consideration of any kind, any discount, commission, rebate, bonus deduction or percentage and also employment or services or an agreement to give employment or render services in any capacity;

"principal" includes an employer, and a beneficiary under a trust, and a trust estate as though it were a person, and any person beneficially interested in the estate of a deceased person, and the estate of a deceased person as though the estate were a person, and, in relation to a person serving under the Government or under a public body, the Government or the public body, as the case may be;

"public body" includes the Government, any department, service or undertaking of the Government, the Cabinet, the National Assembly and any local or public authority, and also any corporation, council, board, commission or other body which has power to act under and for the purposes of any law in force in Kenya relating to local government, the public health or undertakings of public utility or otherwise to administer funds belonging to or granted by the Government or money raised by rates, taxes or charges in pursuance of any law in force in Kenya;

"public office" means any office or employment, whether permanent or temporary, whether paid or unpaid and whether whole-time or part-time, of a person as a member, officer or servant of a public body;

"public servant" has the meaning assigned to the expression "person employed in the public service" in the Penal Code and where, in accordance with the provisions of any Act, any person is deemed to be a person employed in the public service for the purposes of the Penal Code (whether those words or words to the same effect are used), then such a person shall also be deemed to be a public servant for the purposes of this Act;

3 - Corruption in office.

3.(1) Any person who shall by himself, or by or in conjunction with any other person, corruptly solicit or receive, agree to receive, for himself or for any other person, any gift, loan, fee, reward, consideration or advantage whatever, as an inducement to, or reward for, or otherwise on account of, any member, officer or servant of a public body doing, or for bearing to do, or having done or forborne to do, anything in respect of any matter or transaction whatsoever, actual or proposed or likely to take place, in which the public body is concerned shall be guilty of a felony.

(2) Any person who shall by himself, or by or in conjunction with any other person, corruptly give, promise or offer any gift, loan, fee, reward, consideration or advantage whatever to any person, whether for the benefit of that person or of another person, as an inducement to, or reward for, or otherwise on account of, any member, officer or servant of any public body doing or forbearing to do, or having done or forborne to do, anything in respect of any matter or transaction whatsoever, actual or proposed or likely to take place, in which the public body is concerned shall be guilty of a felony.

(2A) For the purposes of subsection (2), where a person gives, promises or offers any gift, loan, fee, reward, consideration or advantage to another person, knowing or having reasonable cause to believe that his doing so may lead to the doing of an act by that other person which constitutes an offence under subsection (1), he shall be taken to have acted corruptly.

(3) Any person who commits an offence under this section shall be liable—

(a) to imprisonment for a term—

(i) not less than five years and not more than ten years where the amount or value of the gift, loan, fee, reward, consideration or advantage exceeds ten thousand shillings; or

(ii) not less than one year and not more than five years where the amount or value of the gift, loan, fee, reward, consideration or advantage does not exceed ten thousand shillings; and

(b) in addition—

(i) where such person is an agent, to be ordered by the court to pay to his principal, in such manner as the court may direct, the amount or value of any gift, loan, reward, consideration or advantage received by him or any part thereof; or

(ii) whether such person is an agent or not, to be ordered by the court to forfeit the whole or such part as the court may direct, of the amount or value of any gift, loan, reward, consideration and advantage received by him, and that the whole or part of the residue be forfeited; or

(iii) whether such person is an agent or not to be ordered by the court to forfeit the whole or such part as the court may deem fit of the amount or value of any gift, loan, fee, reward, consideration or advantage by him;

and upon conviction shall, unless the court for special reasons otherwise orders, be liable to be adjudged to be forever incapable of being elected or appointed to any public office, and to be incapable for seven years from the date of the conviction of being registered as an elector, or of voting at an election, of members of any public body in Kenya, and if at the date of the conviction he has been elected as a member of any public body his seat shall be vacated from that date; and any written law in force in Kenya for preventing the voting and registration of persons declared by reason of corrupt practices to be incapable of voting shall apply to a person adjudged in pursuance of this section to be incapable of voting.

4 - Corrupt transactions with agents.

4.(1) If—

(a) any agent corruptly accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gift, loan, fee,

reward, consideration or advantage whatever, as an inducement or reward for doing or forbearing to do, or having done or forborne to do, any act in relation to

his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business; or

(b) any person corruptly gives or agrees to give or offers any gift, loan, fee, reward, consideration or advantage whatever, to any agent as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business; or

(c) any person knowingly gives to any agent, or any agent knowingly uses with intent to deceive his principal, any receipt, account or other document in respect of which the principal is interested, and which contains any statement which is false or erroneous or defective in any material particular, and which to his knowledge is intended to mislead the principal,

he shall be guilty of a felony.

(2) Any person who commits an offence under this section shall be liable to imprisonment for a term not exceeding seven years or to a fine not exceeding ten thousand shillings or to both such imprisonment and fine, and, in the case of an agent, to be ordered in addition to pay to his principal, and in such manner as the court may direct, the amount or value of any gift, loan, fee, reward, consideration or advantage received by him or any part thereof.

(3) Where, under subsection (2) of this section or under paragraph (b) of subsection (3) of section 3, a court orders the payment of the amount or value of any gift, loan, fee, reward, consideration or advantage, that order shall for the purpose of any appeal be deemed to form part of the sentence of the court.

5 - Increase of maximum penalty in certain cases.

5. A person convicted of an offence under section 3 or section 4 shall, where the matter of transaction in relation to which the offence was committed was a contract or a proposal for a contract with the Government or any public body, or a subcontract to execute any work comprised in such a contract, be liable to imprisonment for a term not exceeding fourteen years:

Provided that nothing in this section shall prevent the infliction—

(i) in addition to imprisonment, of such punishment other than imprisonment as may be inflicted under subsection (3) of section 3, or under subsection (2) of section 4; or

(ii) in lieu of the punishment provided for by this section, of any punishment which may be inflicted for an offence under section 3 or section 4.

6 - Public servant obtaining advantage without consideration

6.(1) Any person who, being a public servant solicits, accepts or obtains or agrees to accept or attempts to obtain, for himself or for any other person, any gift, loan, fee, reward, consideration or advantage without lawful consideration or for lawful consideration which he knows or has reason to believe to be inadequate, from any person whom he knows or has reason to believe to have been, or to be, or to be likely or about to be, concerned in any matter or transaction with himself as a public servant, or any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to or acting for or on behalf of the person concerned, or having such connection, shall be guilty of an offence and shall be liable to imprisonment for a term—

(a) not less than five years and not more than ten years where the amount or value of the gift, loan, fee, reward, consideration or advantage exceeds ten thousands shillings; or

(b) not less than one year and not more than five years

where the amount or value of the gift, loan, fee, reward, consideration or advantage does not exceed ten thousand shillings;

and, in addition, the court may order that the amount or value of any gift, loan, fee, reward, consideration or advantage received by him, or any part thereof, be forfeited.

(2) For the purposes of subsection (1), any gift, loan, fee, reward, consideration or advantage received, with the knowledge of the accused person, by any person, where the court is satisfied, having regard to his relationship to the accused person or to any other circumstance, that that person has received it for or on behalf of the accused person or otherwise on account of or in connection with the office or official duties of the accused person, shall be deemed to have been received by the accused person.

7 - Presumption of corruption in certain cases.

7.(1) Where, in any proceedings under this Act, it is proved that any money, gift, loan, fee, reward or other consideration or advantage has been paid, offered, promised, lent or given or agreed to be given to, or received or agreed to be

received by, a person in the employment, whether permanent or temporary, whether paid or unpaid and whether whole-time or part-time, of the Government or of a public body by or from a person, or agent of a person, holding or seeking to obtain a contract from the Government or from any public body, the money, gift, loan, fee, reward, consideration or advantage shall be deemed to have been paid, offered, promised, lent or given or agreed to be given, and received or agreed to be received, corruptly as such inducement or reward as is mentioned in section 3 or section 4 unless the contrary is proved.

(2) Where, in any proceedings under subsection (1) of section 6, it is proved that any person solicited, accepted or obtained, or agreed to accept or attempted to obtain, any gift, loan, fee, reward, consideration or advantage whatever in any of the circumstances set with in that subsection, then that gift, loan, fee, reward, consideration or advantage shall be deemed to have been solicited accepted or obtained or agreed to be accepted or attempted to be obtained corruptly, unless the contrary is proved.

8 - Principal may recover any secret gifts.

8.(1) Where any gift, loan, fee, reward, consideration or advantage has in contravention of this Act been given by any person to an agent, the principal may recover as a civil debt the amount or the money value thereof from the agent, and no conviction or acquittal of the agent or of that person in respect of an offence under this Act shall operate as a bar to proceedings for the recovery of the amount or money value.

(2) Nothing in this section shall prejudice or affect any right which any principal may have under any law in force in Kenya to recover from his agent any money or property.

9 - Invalidity of appointment, etc., no bar to prosecution.

9.A person shall not be exempt from punishment under this Act by reason of the invalidity of the appointment, nomination or election of a person to a public office.

10 - Special powers of investigation.

10.(1) Notwithstanding anything in any other law contained, the Director may, if it is proved to his satisfaction that there is reasonable cause for suspecting that an offence under this Act has been committed by any person, authorize in writing any named police officer of or above the rank of Assistant Superintendent, or any other officer of the Authority, with or without a named accountant, to investigate any bank account, share account or purchase account of that person or his wife or

child, or of any specified person reasonably believed by the Director to be a trustee or agent for that person, and that authority shall be sufficient warrant for the production of such accounts and documents as may be required for scrutiny by the officer so authorized; and the officer may take copies of any relevant entry in any such account or document:

Provided that nothing in this subsection shall prejudice or derogate from any privilege from disclosure which attaches in law to professional communications between advocate and client.

(2) Any authority issued under this section shall be addressed to a named person and shall only apply to accounts held by that person.

(3) Any person who fails to produce any such account or document to any person who produces due authority under subsection (1) or to permit any such authorized person to scrutinize the same or to take copies of any relevant entry therein or gives a false account shall be guilty of an offence and liable to imprisonment for a term not exceeding three years or to a fine not exceeding fifty thousand shillings, or to both such imprisonment and fine.

11 - Special rules of evidence.

11.(1) In any trial or inquiry by a court of or into an offence punishable under this Act, the fact that an accused person is in possession, for which he cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income, or that he had, at or about the time of the alleged offence, obtained an accretion to his pecuniary resources or property for which he cannot satisfactorily account, may be proved and may be taken into consideration by the court as corroborating any other evidence in the trial or inquiry that the accused person received or obtained any money, gift, loan, fee, reward or other consideration or advantage.

(2) An accused person shall, for the purposes of subsection (1), be deemed to be in possession of resources or property, or to have obtained an accretion thereto, where the resources or property are held or the accretion is obtained by any other person and the court is satisfied, having regard to his relationship to the accused person or to any other circumstances, that that other person is holding the resources or property or has obtained the accretion for or on behalf of the accused person or, in the case of the husband, wife, child, father, mother, sister or brother of an accused person, as a gift from the accused person.

11A - Attorney-General may prohibit transfer of advantage, etc. or property corruptly acquired.

11A.(1) Where a person has been charged with an offence under this Act and the Director has reason to suspect any person of having corruptly received or acquired any advantage, gift, loan, fee, reward or property, he shall apply to the court, ex parte, which may, upon evidence that the person concerned has corruptly received or acquired the advantage, gift, loan, fee, reward or property or that there is any other person to whom there is evidence that the advantage, gift, loan, fee, reward or property or part of the proceeds or value thereof has been transferred or conveyed, order that the property, money or advantage in question shall not be transferred or disposed of, for such period, not exceeding six months, as it shall deem fit.

Provided that the court may, on the application of the Director, by order extend the period for such further period as it shall deem fit.

(2) Any person who is served with an order under subsection (1) may, within fifteen days of such service, apply to the court for the discharge of the order, and the court may, after hearing the parties, either maintain, vary or discharge the order.

(3) Any person who has been served with an order under subsection (1) and who, in contravention of the order, transfers, disposes of or parts with the possession of the sum of money or property specified in the order, shall be guilty of an offence and liable to imprisonment for a term not exceeding two years.

4) In any proceedings for an offence under subsection (3), the accused person shall be acquitted if he satisfies the court—

(a) that the sum of money or other property specified in the order was delivered to a police officer, or to some other person as directed in the order; or

(b) that the sum of money or other property specified in the order was produced to the court and has been retained by such court; or

(c) that the order has been discharged by the court before the transfer, disposal, or parting with possession complained of.

11B - Anti-Corruption Squad.

11B.(1) There is established an Authority to be known as "the Kenya Anti-Corruption Authority" (hereinafter referred to as "the Authority") which shall be a body corporate with perpetual succession and a common seal, with power, in its corporate name, to—

(a) sue and be sued;

(b) take, purchase or otherwise acquire, hold, charge or dispose of both movable and immovable property;

(c) borrow or lend money;

(d) enter into contracts; and

(e) do or perform all such things or acts necessary for the proper performance of its functions under this Act which may be lawfully done by a body corporate.

(2) The Authority shall consist of a Director who shall be the chief executive and such number of Assistant Directors, not exceeding three, all of whom shall be appointed by the President on the recommendations of the Advisory Board appointed under subsection (7).

(2A). The Director and Assistant Directors shall hold office for terms of four years each but shall be eligible for reappointment:

Provided that no Director or Assistant Director shall hold office for more than two terms.

(2B). The Director and Assistant Directors shall be appointed at different times so that the respective expiry dates of their terms of office shall fall at different times.

(2C). A Director or an Assistant Director may resign his office by writing under his hand addressed to the President which resignation shall take effect one month from the date of receipt of the letter of resignation by the President.

(2D). If a Director or an Assistant Director resigns or otherwise vacates office before the expiry of his term of office,, the President shall appoint another person in his place.

(2E). Where a Director or an Assistant Director is unable to perform the functions of his office due to any temporary incapacity which is likely to be prolonged, the President may appoint a substitute for that Director or Assistant Director until such time as the President determines that his incapacity has ceased.

(2F). No person shall be appointed as a Director or an Assistant Director who is—

(a) a member of the National Assembly; or

(b) a salaried employee of any public body (except on a secondment basis).

(2G). The President shall terminate the appointment of: a Director or Assistant director who—

- (a) becomes subject to any of the disqualifications specified in subsection (2F);
- (b) is adjudged bankrupt or enters into a composition or scheme of arrangement with his creditors;
- (c) is convicted of an offence involving dishonesty or fraud or moral turpitude;
- (d) is adjudged or is otherwise declared to be of unsound mind;
- (e) is absent without the leave of the Authority from three consecutive meetings of the Authority;
- (f) becomes for any reason, incapable or incompetent of properly performing the functions of his office.

Provided that the appointment of a Director or Assistant Director shall not be terminated under this paragraph until the question of his removal from office has been referred to a tribunal under subsection (2H), and the tribunal has recommended to the President that the Director or Assistant Director ought to be removed from office on grounds of incapability or incompetence as aforesaid.

(2H). Where the President intends to remove a Director or Assistant Director from office under paragraph (f) of subsection (2G), then—

- (a) the President shall appoint a tribunal which shall consist of a chairman and two other members selected by the President from among persons—
 - (i) who hold or have held office as Judges of the High Court or the Court of Appeal;
 - (ii) who are qualified to be appointed as Judges of the High Court or the Court of Appeal; and
- (b) the tribunal shall inquire into the matter and report on the facts to the President and recommend to him whether the Director or Assistant Director ought to be removed from office.

(2I) Where the question of removing the Director or an Assistant Director has been referred to the tribunal under this section, the President may suspend the Director or Assistant Director from the exercise of the functions of his office and any such suspension may at any time be revoked by the President, and shall in any

case cease to have effect if the tribunal recommends to the President that the Director or Assistant Director should not be removed.

(3) The functions of the Authority shall be—

(a) to take necessary measures for the prevention of corruption in the public, parastatal and private sectors;

(b) to investigate, and subject to the directions of the Attorney-General, to prosecute for offences under this Act and other offences involving corrupt transactions; and

(c) to advise the Government and the parastatal organizations on ways and means of preventing corruption;

(d) to inquire and investigate the extent of liability of any public officer in the loss of any public funds and to institute civil proceedings against the officer and any other person involved in the transaction which resulted in the loss for the recovery of such loss;

(e) to investigate any conduct of a public officer which is connected with or conducive to corrupt practices and to make suitable recommendations thereon.

(f) to undertake such further or other investigations as may be directed by the Attorney-General;

(g) to enlist members of the public in fighting corruption by the use of education and outreach programmes.

(4) In the performance of their functions the members of the Authority shall have all the powers of a police officer of or above the rank of Assistant Superintendent of Police and the provisions of the Police Act conferring upon police officers powers necessary or expedient for the prevention, investigation and prosecution of offences shall apply in relation to members of the Authority as if references in those provisions included references to members of the Authority.

(5) The Director may assume the responsibility for any investigation or prosecution commenced by the police for an offence involving corruption.

(6) The Authority may appoint such officers or servants or hire the services of such consultants, experts or independent investigators as may be necessary for the proper discharge of its functions under this Act or any other written law, upon such terms and conditions of service as the Authority may determine.

(7) The funds of the Authority shall comprise—

(a) moneys provided by Parliament for that purpose;

(b) such moneys or assets as may accrue to or vest in the Authority in the course of the exercise of its powers or the performance of its functions under this Act;

(c) all moneys from any other source provided for or donated or lent to the Authority;

(8) There shall be paid out of the funds of the Authority, such sums of money as are required to defray the expenditure incurred by the Authority in the exercise of its powers or the performance of its functions under this Act.

(9) The Authority shall cause to be kept proper book and records of account of the income, expenditure, assets and liabilities of the Authority.

(10) The provision of Part VII of the Exchequer and Audit Act shall apply to the Authority.

(11) There is established an Advisory Board which shall comprise seven members appointed by the President, all of whom shall be persons knowledgeable or experienced in law, monetary and financial matters, accountancy and fraud investigation.

(12) The purpose for which the Advisory Board is established shall be—

(a) to recommend to the President persons for appointment as Directors or Assistant Directors pursuant to the provisions of subsection (2);

(b) to advise the Authority generally on the exercise of its powers and the performance of its functions under this Act.

(13) The President may make regulations—

(a) setting out the procedure for appointing the members of the Advisory Board established by subsection (7) and prescribing the terms and conditions of service of such members;

(b) generally for the better carrying out of the provisions of this section.

11C - False claims as to corrupt transaction.

11C. Any person who without reasonable or probable cause, makes a false allegation that any person is engaged in corrupt practices or transactions in contravention of this Act shall be guilty of an offence and liable to imprisonment for a term not exceeding five years.

12 - Sanction to prosecute. (Repealed)

12. A prosecution for an offence under this Act shall not be instituted except by or with the written consent of the Attorney-General*:

Provided that a person charged with such an offence may be arrested, or a warrant for his arrest may be issued and executed, and he may be remanded in custody or on bail, notwithstanding that the consent of the Attorney-General to the institution of a prosecution for the offence has not been obtained, but no further or other proceedings shall be taken until that consent has been obtained.

*Power delegated to the Director of Public Prosecutions where the amount of Value of the gift, loan, fee, reward consideration of advantage in respect of which the offence is alleged to have been committed does not exceed KSh. 10,000, and to the persons for the time being holding the offices of Deputy Public Prosecutor, Assistant Deputy Public Prosecutor, Provincial State Counsel, Coast Province, Provincial State Counsel, Central Province, Provincial State Counsel, Eastern Province, Provincial State Counsel, Nyanza Province, Provincial State Counsel, Western Province, where the amount or value of the gift, loan, fee, reward consideration or advantage in respect of which the offence is alleged to have been committed does not exceed KSh. 1,000. (L.N.332/1996).