



## Whistleblowers Kenya needs them for the war against corruption to succeed



### In this issue...

Why Kenya needs a whistleblowers' policy and law..... Page 5

Whistleblowing: TI-Kenya's efforts to break the silence on corruption.....Page 6

TI-Kenya's 'Uwajibikaji Pamoja' helps bridge the information gap in Turkana County ..... Page 9

**By Samuel Kimeu**

A disturbing trend is taking root in Kenya. A culture of intolerance largely targeting individuals that expose wrongdoings by public officers is mounting.

On January 17th 2015, blogger Abraham Mutai was arrested in Mombasa and carted off to Nairobi where he was detained for close to 24 hours and then released. The arrest was closely followed by the temporary suspension of his Twitter account and blogs. Mr. Mutai had published information, backed by documentary evidence, of alleged corruption in a public agency and some county governments on his online platforms.

It is as surprising as it is disturbing

that a whistleblower rather than being embraced by the official system should be harassed and vilified for playing a most critical role of calling attention to wrongdoing.

This is inconsistent with the oft stated commitment to the fight against corruption and crime generally. It is worth noting that for every investigation or prosecution that is carried out, there is inevitably a whistleblower involved. It is becoming clear by the day that in our present environment, blowing the whistle carries a high personal risk – particularly when there is little legal protection against dismissal, humiliation or even physical abuse. Just as it was for David Munyakei in the Goldenberg scandal and John Githongo in the Anglo-Leasing

## Kenya needs whistleblowers for the war against corruption to succeed



scandal in the 1990s and 2000s respectively, whistleblowers in 2015 face retaliation in the form of harassment, dismissal from employment, blacklisting, threats and even physical violence, and their disclosures are routinely ignored.

One of the biggest challenges in preventing and fighting corruption lies in detecting and exposing bribery, fraud, theft of public funds and other acts of wrongdoing. This is especially true in Kenya as a vast majority of Kenyans will not report corruption when they encounter it. The East African Bribery Index 2014 published by Transparency International Kenya shows that nine out of 10 Kenyans who encountered bribery while seeking public services did not report the incident. Varied reasons were given for non-reporting, among them the fear of reprisal or intimidation.

Whistleblowing is one of the most

effective ways of detecting fraud and wrongdoing and facilitating measures to minimise or prevent further losses. One would therefore expect the relevant authorities to act on information provided by whistleblowers by conducting further investigations on the alleged corruption incidents, rather than oppress whistleblowers. Individuals that come forward to disclose wrongdoing should be embraced and protected, not harassed and ostracized.

In order to encourage whistleblowers in Kenya to step forward with information, we need to minimise the risks such whistleblowers face as a result of disclosure. An effective whistleblower management and protection system begins and ends with strong policies that clearly and emphatically send a two-fold message that:

the Government embraces good faith whistleblowing; and the whistleblower will suffer no adverse repercussions as a result of bringing an issue to the attention of those in authority or the public.

We recognise the effort that various stakeholders have invested so far in realising a whistleblower policy and law. The Department of Justice has been spearheading this process, which Transparency International Kenya supports. A good whistleblower protection policy and law will go a long way in protecting people like Mr. Mutai, who come forth with reports of corruption and attract reprisals for their actions.

Mr. Mutai's experience ought to add impetus to the process. The Office of the Attorney General, under which the Department of Justice falls, should expedite the finalisation of the legislation for tabling in Parliament, and eventual enactment.

As stakeholders focus on getting this important policy and legislation in place, public awareness is critical to de-stigmatise whistleblowing. Through public education, citizens can better understand how disclosing wrongdoing benefits the public good.

When witnesses of corruption are confident about their ability to report it, corrupt individuals cannot hide behind the wall of silence. In the case of Mr. Mutai, he should pursue the highlighted corruption cases with the Ethics and Anti-Corruption Commission so that full investigations can be conducted and culprits brought to book. We at Transparency International Kenya will very keenly watch how this matter unfolds.

**The writer is the Executive Director, Transparency International Kenya**



# Whistleblower

A person who exposes misconduct, dishonest or illegal activity occurring in an organisation / government.

**Whistleblowers expose:** Violations of a law, rule, regulation.



Direct threat to public interest, such as fraud, health and safety violations, and corruption.

## Whistleblowers take risks

Particularly when there is little legal protection against dismissal, humiliation or even physical abuse.



## Barriers that whistleblowers face



Controls on access to information.

Libel and defamation laws.

Inadequate investigation of whistleblowers' claims.

Whistleblower: An infographic

IMAGE: Collins Baswony /TI-Kenya

# Notable Kenyan whistleblowers

## David Munyakei

Blew the whistle on the Goldenberg scandal of the 1990s.

Munyakei, then a clerk at the Central Bank of Kenya (CBK), noticed that a company called Goldenberg International was receiving unusually large sums of money for the alleged export of gold and diamonds.

He blew the whistle on the Goldenberg scandal by providing CBK documents to opposition members of parliament. These documents revealed illegal transactions between the Central Bank and Goldenberg International.

Munyakei was arrested and sacked following his whistleblowing activities.



David Munyakei PHOTO/Wikipedia

## John Githongo

Blew the whistle on the Anglo-leasing scandal

A former Kenyan journalist, Githongo investigated bribery and fraud in Kenya and later, under the presidency of Mwai Kibaki, took on an official government position to fight corruption.

In 2005 he left that position, later accusing top ministers of large-scale fraud.

John Githongo moved to the UK to live in exile after claiming that there have been threats to his life.



John Githongo PHOTO/TI-Kenya

Notable Kenyan Whistleblowers: An infographic

IMAGE: Collins Baswony /TI-Kenya

# Why Kenya needs a whistleblowers' policy and law

By Elijah Ambasa

## Objectives

The main objectives of the Policy are:

1. To provide avenues for employees of both public and private institutions to raise concerns and define a way to handle these concerns.
  2. To enable senior level Public Officers (and employees of private entities) to be informed at an early stage about acts of misconduct.
  3. To reassure civil servants (and employees of private entities) that they will be protected from punishment or unfair treatment for disclosing concerns in good faith in accordance with this procedure.
  4. To help develop a culture of openness, accountability and integrity.
1. Every person whether in the public sector or in the private sector has an ethical responsibility to report suspected misconduct, maladministration, wastage of public funds, substantial and specific danger to public health and safety, the environment or a person with a disability, and reprisal action.
  2. The principle of natural justice (procedural fairness) will apply to all investigations of matters on the subject of whistleblower protection. The department is committed to treating the whistleblower appropriately and making the process fair for both the discloser and the person who is subject to the disclosure.
  3. The rights of any person who is subject to, or is in some way associated with, a disclosure will be safeguarded.
  4. The principle of good governance, integrity, transparency and accountability; and the principle and values of equality, human rights and non-discrimination

It is evident that for the fight against corruption to be successful in any jurisdiction, a whistleblower protection policy and law should be enacted to facilitate the anti-corruption crusade.

**“A whistleblower protection policy and law should be enacted to facilitate the anti-corruption crusade.”**

## Policy principles

The following shall be guiding the Principles for the Policy-

The writer is the Programme Officer, Governance and Policy, Transparency International Kenya

# THE DECLARATION AGAINST CORRUPTION

- ▶ I will not pay bribes
- ▶ I will not seek bribes
- ▶ I will work with others to campaign against corruption
- ▶ I will speak out against corruption and report on abuse
- ▶ I will only support candidates for public office who say no to corruption and demonstrate transparency, integrity and accountability

# Whistleblowing: TI-Kenya's efforts to break the silence on corruption



Transparency International Kenya's East African Bribery Index 2014 report indicates that 94% of Kenyans did not report bribery incidents encountered.

The same study showed that 20% of Kenyans did not report corruption because they felt that nothing would be done even if they reported. The report further highlights that one of the reasons Kenyans do not report corruption is the fear of self-incrimination as well as intimidation or reprisal. These trends are worrying to our economic growth as a nation.

Whistleblowers have been instrumental in uncovering all mega corruption scandals in Kenya. For the Goldenberg Scandal<sup>1</sup> it was David Munyakei while in the Anglo Leasing Scandal<sup>2</sup>

1 The Goldenberg Scandal involved the payment of millions of shillings for non-existent exports of gold and diamonds to Goldenberg International in the early 1990s. Officials who served in former president Daniel Arap Moi's administration are among those accused of operating the scheme, which became the focus of Kenya's biggest-ever corruption investigation.

2 The Anglo Leasing scandal involved 18 contracts for the financing and implementation of security related projects signed with shadowy firms on various dates between 1997 and 2003. The project contracts were also accompanied by credit totaling Ksh 56.3 billion in form of irrevocable promissory notes.

it was John Githongo. Life was never the same for these individuals after making these scandals public. Mr Munyakei was fired as a Central Bank of Kenya clerk and died jobless, in deep poverty. Mr Githongo, a former Permanent Secretary for Governance and Ethics went into exile for two years after receiving threats to his life.

Research has shown that whistleblowing is one of the most effective ways to detect fraud and wrongdoings in any country and facilitate measures to minimise or to prevent further losses. Whistleblowing promotes accountability by allowing an individual to disclose information on misconduct while protecting the person against sanctions of all forms.

The Government enacted the Anti-Corruption and Economic Crimes Act to criminalise corrupt practices. It also enacted the Public Officer Ethics Act, which requires public institutions to develop codes of conduct for their employees. However these are not sufficiently adequate in addressing the vice. Whistleblowing in Kenya has been faced with several challenges thus most people lack sufficient courage to disclose information that would be of public interest and stop the commission of an illegal act.

There are significant legal barriers to unauthorised disclosure of information in Kenya. Duty of loyalty and

confidentiality to the employer hinder whistleblowing as public servants commit to confidentiality clauses in their employment agreements. Therefore, for fear of breaching their contracts and facing legal consequences, public servants will shy away from disclosing information that may be interpreted as a breach of confidence. To curb these fears and other barriers, Kenya needs a whistleblower protection policy and law.

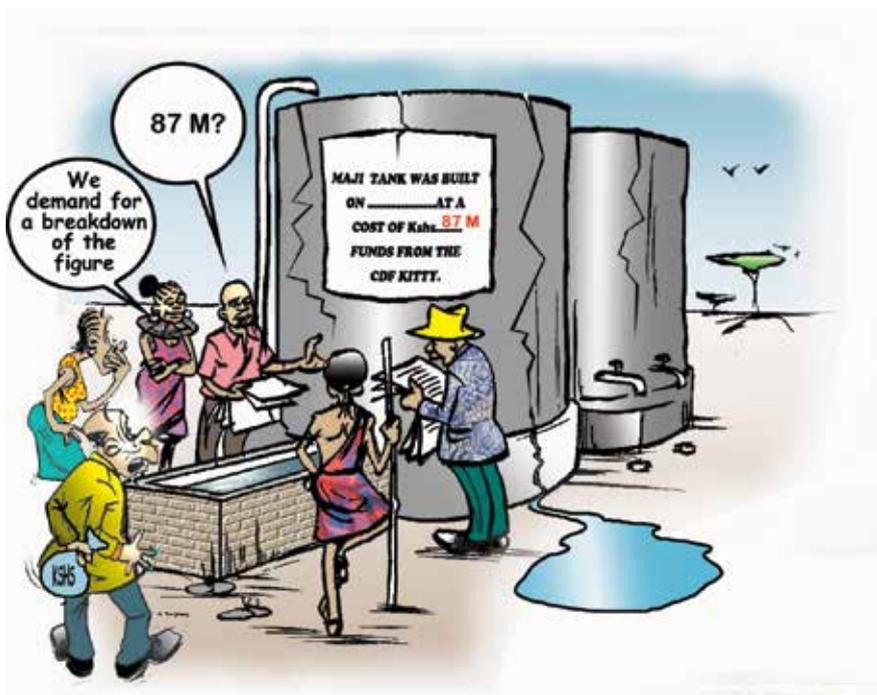
Transparency International Kenya has succeeded in setting an agenda for a Whistleblower Protection Policy and Law. This has been done through continuous engagement with the Department of Justice of the State Law Office in partnership with the Kenya Law Reform Commission (KLRC). A visit to the Attorney General's office in February 2014, by the then Chair of the Board of Directors, Transparency International, Dr Huguette Labelle added impetus to the push for a Whistleblower Protection Policy and Law.

The Department of Justice later convened a drafting session for the Bill and policy together with TI-Kenya as a primary stakeholder. During this session, TI-Kenya's draft Whistleblower Protection Policy and Bill was used as a primary reference point in drafting the Bill.



# Kaa CHONJO!

*Pamoja tuhakikishe usimamizi bora wa rasilimali zetu*



## Building civilian oversight in devolved governments in Nairobi and Uasin Gishu Counties

Supported by:



## Corruption complaints at police station cause a transfer

The residents of Kangundo Sub-County in Machakos County had continuously complained about the management of the Kangundo Police Station. Corruption was reported as one of the key concerns especially bribery demands targeting public service vehicles using the murram roads.

There were also allegations of tribalism within the police station with some of the officers grouping themselves according to ethnicity. This caused discrimination and victimisation of some officers who 'did not belong'. It was further alleged that some of the officers in charge of that station had worked there for over seven years thus compounding the problem.

Advocacy and Legal Advisory Centre,

Nairobi held a forum in Kangundo to educate the citizens on strategies of fighting corruption including reporting complaints to relevant authorities for action. This complaint of corruption at the station was raised at the forum.

ALAC Nairobi took it up and brought it to the attention of the Internal Affairs Unit of the Kenya National Police Service through a letter. The unit took up the matter and conducted investigations.

The officer in charge of the Kangundo Police Station was transferred to another station in a different county.

**This story was written by the Nairobi Advocacy and Legal Advisory Centre team**

### Advocacy and Legal Advisory Center (ALAC)

Advocacy and Legal Advisory Center (ALAC) is a walk-in, call-in centre or mail in center where a citizen can obtain free and confidential advice on corruption cases.

TI-Kenya in collaboration with government commissions and coalition partners against corruption in Coast (Mombasa), North Rift (Eldoret), Western (Kisumu) and Nairobi regions are working to empower citizens to actively participate in the fight against corruption in Kenya.



An ALAC Officer at a public forum at Sabaki area in Kilifi county.

PHOTO: Eucabeth Omwenga  
TI-Kenya

## Setting the land record straight in Mwakirunge

Sidi Pojo walked into the Advocacy and Legal Advisory Centre (ALAC) Mombasa office and complained that the area chief had sold his land in Mwakirunge in cahoots with the local land committee. ALAC wrote a letter to the chief

and asked him to respond to the allegations, which he did within a week.

The said chief indicated that there was a misunderstanding and that the land was returned to the rightful owner after a meeting of the local land

committee. Sidi was happy with the decision and is now enjoying peaceful possession of his land.

**This story was written by the Mombasa Advocacy and Legal Advisory Centre team**

All names in these stories have been changed to protect the identity of the complainants

# TI-Kenya's 'Uwajibikaji Pamoja' helps bridge the information gap in Turkana County



The relationship between Oxfam and a community is looking up thanks to the 'Uwajibikaji Pamoja' initiative coordinated by Transparency International Kenya in Turkana County.

Oxfam has been implementing a programme in Karebur-Lokitaung in Turkana County, targeting community groups to stimulate livelihoods and markets. In the course of implementing this program there were rumours of favouritism surrounding the allocation of funds to community groups.

In November 2014 a joint field outreach visit by the convener of Uwajibikaji Pamoja and Oxfam was conducted in Karebur, and the community members sensitized about their rights and how to complain against poor services from service providers through a toll free SMS service.

Following this sensitisation visit, a complaint was lodged into the

complaints portal by a community member, reading: "Lack of clear communication about the programme in most of the communities and delays due to lack of clear communication has caused mistrust. Why haven't we received the Ksh 750,000 funding even after writing a proposal for the same just as the other communities had?"

Once received the complaint was referred to Oxfam. The organisation saw this as an opportunity to positively engage the community in a conducive environment to address issues that were associated with the programme. The focal person in the Oxfam Turkana office together with the project staff organised a public meeting at Karebur to clarify any information concerning the programme.

This helped the community to understand the objective of the project and Oxfam operations much better. Within one month, this issue had been fully addressed and a good relationship between the organisation

and the beneficiaries was restored.

### About Uwajibikaji Pamoja

'Uwajibikaji Pamoja' is an Integrated Complaint Referral Mechanism that was set up to improve service delivery to the residents of Turkana County and facilitate the referral of complaints from one service provider to another.

The service enables members of the public to submit complaints or feedback concerning aid and service delivery through three channels: a toll-free SMS line, a web-based portal, or by filling out paper forms. People with no access to a mobile phone or internet can visit the nearest office of a participating organisation to lodge their complaints. The walk-in option also allows people who cannot read or write to report their cases.

'Uwajibikaji Pamoja' is currently being implemented in Wajir, Turkana and West Pokot Counties.

**By the Humanitarian Aid Integrity Programme team**

# TI-Kenya, partners conduct public awareness drive in Nyeri



1



2



3



4



5

1 Participants register for the stakeholders' breakfast meeting held in Nyeri town.

2 Stakeholders at the stakeholders' breakfast meeting. The breakfast meeting was held to inform county based stakeholders about the Sema! Piga Ripoti service and to win their support in promoting usage of the service

3 A Sema! Piga Ripoti Officer records performance of the theatre group on her mobile phone. The caravan employed the use of art to pass across key messages

4 A Sema! Piga Ripoti Officer explains the service to a member of the public.

5 A member of the public records the Sema! Piga Ripoti number on her mobile phone.

Transparency International Kenya in partnership with five state agencies visited Nyeri County between 26th February - 1st March 2015 to inform residents about Sema! Piga Ripoti, hosted at the Ethics And Anti-Corruption Commission Offices in Nyeri town

Sema! Piga Ripoti is a service that enables you to register your complaints on corruption, discrimination and

hate speech, administrative injustice, and human rights violations by visiting any of the agencies offices, emailing or calling in. The complaints' desks have been operational in Nyeri, Kisumu, Kitale, Wajir and Garissa towns.

It is an initiative of the Ethics and Anti-Corruption Commission (EACC), the Kenya National Commission on Human Rights (KNCHR), the National Cohesion

and Integration Commission (NCIC), the Commission on Administrative Justice (Ombudsman), the National Anti-Corruption Campaign Steering Committee (NACCSC) and Transparency International Kenya.

The initiative is supported by the German Development Corporation, GIZ.

# Anti-corruption and oversight institutions must be above reproach



Transparency International Kenya notes with great concern reports emerging in the media in the recent past calling into question the integrity of important institutions and public officials involved in the fight against corruption.

No significant progress has been made in the war against corruption. Few corruption cases have been successfully prosecuted, public officers accused of corruption continue to serve in their positions and only few resources lost through corruption have been recovered.

Kenya continues to be seen as a country with a major corruption issue. The 2014 Corruption Perception Index published by the Transparency International movement ranks Kenya poorly. Kenya scored 25 on a scale of zero to 100 (with zero perceived to be highly corrupt, and 100 very clean) and sits at position 145 out of 174 countries and territories ranked.

Considering the flood of reports of high level corruption in various institutions, Kenya's position among the community of nations could suffer even further. It is important that key

institutions such as the National Assembly where there have been allegations of corruption in various committees; and the Ethics and Anti-Corruption Commission (EACC), where some high level officials have been accused of impropriety, remain above reproach to maintain public confidence in the fight against corruption.

**Corruption allegations must be investigated**

EACC must cooperate with the Office of the Ombudsman to weed out any allegations of impropriety among its officers. Any officers of the EACC found culpable should face the full force of the law. The suspension of EACC's Deputy CEO Michael Mubea this morning to pave way for investigation into allegations of office malpractice is a step in the right direction.

Concerning the corruption in Parliamentary Committees, including the Parliamentary Accounts Committee (PAC), it is vital that the Speaker of the National Assembly ensures that these allegations are investigated, and the necessary action

taken to salvage the reputation of the house. Important also is the need to communicate the outcomes of any accountability processes instituted.

Suspension of the PAC is a good first step, but it is important that thorough investigations are carried out and those found culpable held to account. The leadership of the National Assembly must resist the urge to sweep corruption allegations against Parliamentarians and Parliamentary Committees under the carpet as has happened in the past and communicate the outcome of its processes to the public.

We welcome the proposal to institute an Internal Standards Unit to facilitate the reporting of corruption by whistleblowers, and the development and adoption of a code of conduct for legislators. Transparency International Kenya is ready to offer technical support towards these processes aimed at instituting integrity in the August House.

**This statement was issued by Transparency International Kenya on 10th March 2015**



*Connect with us:*

[www.tikenya.org](http://www.tikenya.org)



**TRANSPARENCY  
INTERNATIONAL  
KENYA**

## **ADVOCACY & LEGAL ADVISORY CENTRE**

**ALAC IS A WALK-IN, CALL-IN OR MAIL-IN CENTRE WHERE A  
CITIZEN CAN GET FREE & CONFIDENTIAL ADVICE ON  
CORRUPTION RELATED CASES**

**CALL TOLL-FREE 0800 720 721 OR SMS 22129**

[www.tikenya.org](http://www.tikenya.org)

[facebook.com/TransparencyKenya](https://facebook.com/TransparencyKenya)

[twitter.com/TIKenya](https://twitter.com/TIKenya)

'Adili' is a news letter produced by TI-Kenya's Communications Programme. The views and opinions expressed in this issue are not necessarily those of TI-Kenya.

The editor welcomes contributions, suggestions and feedback from readers.

Transparency International, 3rd Floor, Wing D, ACK Garden House, 1st Ngong Avenue. PO Box 198-00200, City Square,

Nairobi, Kenya. Tel.: 254-020-2727763/5, 0733-834659, 0722-296589; Fax: 254-020-2729530.

[communications@tikenya.org](mailto:communications@tikenya.org)