

CORRUPTION AND HUMAN RIGHTS
Protecting Those Who Fight Against Corruption
By

Kivutha Kibwana
Centre for Law & Research International (CLARION) Kenya

I wish to thank the organisers of the 9th Anti-Corruption Conference for this important opportunity to make a few comments on the theme of protecting those who fight against corruption. Obviously no country can wage a successful war against corruption if those on the frontline feel perennially vulnerable, especially at the hands of the state.

Consensus seems to be emerging that there are five important levels (even phases) of addressing corruption. These are:

- The existence of open discussion and acknowledgement of the problem of corruption. Previously in many countries, it was deemed a crime to talk about corruption.
- Standards or norms setting and enhancement to ensure that a sound regulatory framework for dealing with corruption exists. This framework also encompasses the establishment of independent institutions whose mandate is to address corruption.
- Impartial implementation of the standards
- Protection of those who fight against corruption

Although we can now discuss corruption more openly, it does not mean that those who fight against it will be tolerated or encouraged by governments. On the issue of corruption, governments will continue for a long time to talk through two mouths.

Before we can design ways of protecting those who combat corruption, they have to be identified. These are, among others, employees in the public and private sectors, civil groups and corporations, police investigators and prosecutors, judicial officers, witnesses in judicial proceedings, media personnel, civil society activists, generally whistleblowers etc.

In the brief time I have, I wish to concentrate on the protection of civil society activists who fight corruption. I wish to suggest that those who are mostly at risk of persecution are grassroots organisations and actors who dare to challenge corruption especially that of senior state officials. These activists are not usually known nationally and internationally so that protection can be easily mobilised for them as is the case when national NGOs or activists cross swords with the state. If our war on corruption is to be successful, we must find ways of protecting this cadre of soldiers against corruption.

One method used by states to silence civil society activists who challenge corruption is political justice. These actors are taken to court on trumped up charges. Court action involves expense, loss of time and often loss of freedom.

Recently in Kenya, Tony Gachoka, an editor of an independent newspaper which focuses on corruption issues was jailed by the highest court of the land for accusing the judiciary of being corrupt. The Court of Appeal tried him in the first instance and therefore denied him

the right of appeal. At the grassroots level, several local leaders who oppose 'land grabbing' — the illegal allocation of public land to private persons - have found themselves accused in court. For example ex chairman, Makueni County Council Richard Ndile Kalembe and other local authority leaders in the district have been taken to court for challenging illegal privatisation of public land. This illegal use of the judicial system is intended to frighten the activists and potential activists into silence.

Other ways in which state officials gag civil society actors in the field of fighting corruption include inducing

- loss of jobs and businesses
- loss of freedom of association e.g. by de-registering organisations which crusade against corruption
- curtailing freedom of assembly and right of demonstration
- bribing activists so as to co-opt them.

Political justice against those who fight corruption must be discontinued by any country which enters the international fight against graft. Those who have been punished for fighting against corruption must be released and rehabilitated or their cases discontinued where these are still pending in the courts. This would be one sure signal that a country has begun to take the war against corruption seriously.

Critically both constitutional and legal provisions must protect those who fight against corruption. Indeed a country's constitution — especially in emergent democracies and markets — must provide for an independent institutional framework for fighting corruption. It is inadequate for the legal machinery to address corruption within ordinary statutes.

It is vital that efforts to support civil society actors who struggle against corruption include a legal defence fund. In this light, the UNDP proposed support for civil society activists in this field should consider a legal defence component.

International support for the fight against corruption can take several forms such as:

- fact finding to establish major corrupt practices in all countries so that whistle-blowing from international quarters is possible.
- Specific condemnation of corruption.
- Clear support of groups that work in the corruption area especially when they get into trouble
- Making the corruption issue part of all development work both bilateral and multilateral.

The potential for the world community to cushion those who fight against corruption is thus immense.

Ultimately pervasive civil education on corruption will enable large populations in any country to stand against corruption. The real war against corruption will start when in any country the citizens SAY NO TO CORRUPTION.

Mr. Chairperson, permit me to end this address by reading a poem that I have scribbled during this meeting on corruption by Africa's elite. It is called **Monster**.

Monster

(dedicated to the 9th International Anti-Corruption Conference, Durban, South Africa, 10 — 15 October 1999)

early yesteryear yesterday this morning
found monsters at table the meal Africa the saucy appetitif South of Africa
minerals, industries, land throughout the years the day sharp teeth ripped
Africa's belly forests, animals, rivers, public coffers vampires sucked Africa's
juices dry they salivated — belch — Sahara was the dessert
before a cool dusk drink of Mediterranean waters after decades of mauling
Africa and her peoples in a gluttonous orgy of corruption
rushed to the satiated monsters
lords of graft lords of poverty

will cut their small fingers, I swore to reclaim Africa

I woke up sweating.

Africa and the whole world cannot afford corruption. Corruption must be made expensive to engage in. If Africa's people feel protected from state functionaries, they will become the most reliable anti-corruption activists.