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Beyond Criminal or Civil Asset Forfeiture in Kenya

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Abstract

Notwithstanding the enactment of anti-corruption sanctions on the statute books, corruption in Kenya continues unabated. There has arisen need to deploy non-conviction based civil forfeiture to supplement the use of criminal forfeiture. The landmark *Stanley Mombo Amuti case* is illustrative. In 2019, the Court of Appeal upheld the constitutionality of Section 55(4) of the Anti-Corruption and Economic Crimes Act, which burdens a defendant to explain the source of his disproportionate wealth. However, the Court merely required the defendant to forfeit only one-third of the Kshs. 141 million (1.3 million $ USD) demanded by the government. The case expresses leniency in application of corruption sanctions. This paper compares corruption sanctions using economic assumptions based on the rational self-interested maximizer. Because of the enormous profits which accrue from embezzlement, and because of the weak legal framework, public officials may not be deterred from corruption offences, whether by criminal or civil forfeiture. Instead, two 2019 Bills seek to introduce minimum sanctions and prohibit corrupt culprits from holding public office in future. The paper claims that civil forfeiture is limited to punishing money laundering, which constitutes but one phase of a criminal transaction. Forfeiture thus seems designed to circumvent the rigorous process of proving the predicate offence. This alternative procedure alleviates the prosecution from the onerous burden of proving guilt beyond reasonable doubt, which attaches to criminal sanctions. However, increasing certainty of perfect disgorgement does not deter potential embezzlers. Reforms propose that non-conviction based forfeiture should necessarily be accompanied by payment of damages equivalent to twice the amount stolen or double the prison duration for ordinary fraud offences under the Penal Code.

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1. Introduction

The penalties meted out by Kenyan courts under section 48(1) of the Anti-Corruption and Economic Crimes Act (No. 3 of 2003) appear inordinately low. This suggests a failure to distinguish the seriousness of corruption from ordinary fraud offences under the Penal Code (Chapter 63 Laws of Kenya). Corruption is "the abuse of entrusted power for private gain" (Transparency International). It is renounced during the second stage of the social compact, during an agreement on how people are to be governed. This is the constitution proper (Ghai 2013: p. 76) as distinct from the first phase. The state is neutral and values each citizen equally so that corrupt officials undermine the very reason for entering into the social contract in the first place. Corruption causes social disintegration.

Other justifications exist for punishing corruption more severely than simple theft. First, because wealthy criminals who manipulate books of accounts may easily cover their tracks, since they can afford the services of more sophisticated defence counsel. Therefore corrupt elites are more costly to apprehend and difficult to prosecute than conventional thieves. Second, because corruption tends to resemble victimless crimes, like prostitution, gambling or sale of illegal drugs (Cooter and Ulen 2008: p. 289). Unless morally-sensitive whistleblowers take it upon themselves to sound an alarm, or until auditors unravel mischievous accounting practices, corrupt practices do not manifest themselves to causal observers. Third, because corporate corruption is perpetrated collectively, they are even harder to prosecute and punish than ordinary corruption. Agents who perform an abstract entity's actions are different from its directors, who are its mind. Therefore, conventional crime definitions like *actus reus* and *mens rea* do not comfortably fit corporate crimes (Dervan and Podgor 2007). Moreover, corporations lack a physical body to kick or jail and thus responses to their wrongdoing require special counter organizational measures in addition to counter personnel measures (Cohen 2020). Therefore, countries like Australia, go further to impose culture-based theories which criminalize corporations for failing to carry out due diligence (Colvin 2008). Enterprise entity theory even attributes culpability on foreign parent corporations for breaches by a domestic subsidiary (Dearborn 2009).

2. Teething Problems in Punishing Corruption

Given the difficulty in proving corruption, in order to circumvent the high standard of proof required to convict criminal offenders, some countries opt for an alternative remedies such as non-conviction-based forfeiture of unexplained assets. Recently, Kenyan courts have upheld a legal provision which permits such civil forfeiture by anti-corruption courts. However, this paper questions whether perfect disgorgement of embezzled funds

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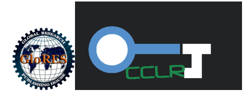

provides full atonement for the criminal culpability of corruption. Two questions arise. First, to what extent have public resources, been misappropriated by corrupt public officials? Second, how have domestic anti-corruption laws, policies and institutions responded to complex corrupt practices? Upon evaluating the effectiveness of anti-corruption measures, any shortcomings in domestic strategies may be supplemented.

Section 3 postulates that the economic "assumption that criminals, victims and law enforcers are rational, that is they all respond in predictable ways to changes in costs and benefits" (Veljanovski 1996: p. 55). However, section 4 argues that in an ethnic context, group solidarity may be deployed to buttress, rather than defeat corruption. Considering that the potential considerable benefits accruing from corruption are both economic and political, the paper claims that perfect disgorgement provides insufficient punishment to deter corrupt practices. Section 5 critically analyses the Kenyan Court of Appeal's landmark decision in *Stanley Mombo Amuti v The Ethics and Anti-Corruption Commission* (Waki, Gatembu and Odek, JJA 2019, hereafter *Amuti's case*). Although it upheld the principle of asset recovery, curiously, the suspect retained more than Kshs 100 million of allegedly unexplained assets and forfeited only Kshs 41 million to the government. This was partly because the EACC relied on a quantity surveyor, instead of a forensic accountant to support its claim. Section 6 insists that beyond civil forfeiture, reasonable people who perceive that a public official's wealth is disproportionate to their earnings, are aggrieved by such manifestly unaccountable behavior. This is comparable to public nuisance. The paper concludes that widespread annoyance and discomfort arising from such incongruence constitute the crime of public nuisance (Eagle 2018: p. 94). It is therefore insufficient for the law to merely punish corruption by criminal forfeiture, by way of a fine which is equivalent to the sum of public monies corruptly stolen. Rather, in order to mark the seriousness of corruption's distortion of democratic values, its fines should be twice the amount of moneys stolen (ACECA section 48). It follows that in default of repayment the culprits should serve an imprisonment term which is twice that of seven years for the ordinary crime of fraudulent false accounting by directors under the Penal Code. Kenya's Anti-Corruption and Economic Crimes Act currently prescribes a maximum of ten years imprisonment. It should be enhanced to 14.

3. Deterrence Theory Meets Systemic Corruption

3.1 Deterrence

Apprehending and convicting corrupt officials is particularly costly in terms of specialist manpower, considerable time perusing documentation, and even equipment. Yet fines simply deter by the *threat* that they will be imposed. Significantly, "[t]o achieve 1 percent reduction in property crime by greater policing would require an annual expenditure of over 51 million. This is 10 times the cost of achieving the same reduction through an increase in the imprisonment rate or the length of imprisonment" (Veljanovski 1996: p. 57). Thus the costs of enforcing the criminal law and detecting crime can be lowered by progressively lowering the severity of the fine whilst reducing the conviction rate (ibid. p. 56).

Economics can also be used to analyse legal procedure: "the disposition of cases through pre-trial negotiation is cheaper and offers 'gains' to both prosecutor and defendant. The prosecutor trades a lower sentence for the certainty of conviction, thereby saving the costs of 'proving' guilt beyond reasonable doubt" (ibid. p. 61). The accused is encouraged to plead guilty by trading the uncertainty of a trial which may impose a more severe sentence if he insists on pleading his innocence, with the certainty of a lower sentence if he pleads guilty.

3.2 Corruption by Rational Public Officials

For Holmes the best model of man to base our law on is that we should constrain the "bad man" (Holmes 1897: p. 478). Similarly for Hobbes "every man ought to be supposed to be a knave, and to have no other end, in all his actions, than a private interest" (Hobbes 1985). However, if everyone is a knave, "how does the public good of peace ever come to be produced," Riker (1971: p. 377) poses? Cooperation begins when a political entrepreneur undertakes to produce it. Despite the payment of politicians to produce beneficial public goods, they have a temptation to defect from cooperative tasks in their own self-interest (ibid. p. 376). What maintains the social contract in the face of such temptation is some combination of force and custom. Corrupt public officers should be prevented from free-riding on the integrity of honest ones. In the absence of a culture of integrity as is prevalent in certain developing countries, honesty must be enforced by threats of sanctions, ultimately physical violence, through a police and judicial system. However, force is expensive not only to apply, but also because of the animosity it arouses. Crucially, since money bribes are small, silent and secret, therefore using force to repress corruption requires even greater justification.

The alternative to force is persuasion. To suppress corruption, states propagate an ethic of patriotism. To this end, Kenya's Constitution contains an entire chapter on "Leadership and Integrity" (Constitution 2010: Ch. 6). Without complying with these values, it is not possible for any person to hold state office. Employing civil servants who believe in public ethics make integrity easier. Not only does the Constitution create a plethora of political offices, commissions and other state offices, but also, state officers highly remunerated. However, many citizens may be unwilling to pay high taxes to sustain highly paid politicians. Therefore the court has recently determined that only the

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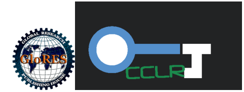

independent Salaries and Remuneration Commission can increase the remuneration and emoluments of Members of Parliament [ibid. Art. 230(4)]. Hence, before resorting to force, civic education seeks to manipulate public officials to internalize and serve the public good.

Although force must be used on all those involved in embezzlement, police action alone will not suffice to prevent it, since it costs too much to hire specialist auditors who can detect corruption in all its forms, investigate, prosecute and punish culprits. Society, particularly low-income developing countries, is unwilling or unable to bear the costs of fighting corruption. Philanthropists need to support the cause though donations. Core donations may be applied directly to development projects, but others should be applied to capacity-building of public officers, and ultimately, sanctions. The fight against corruption begins by electing officials who possess public ethics to refrain from it. Hence Kenya's Constitution requires that Governors must hold a university degree (Elections Act 2011). This supposes that religious norms, such as "thou shalt not steal," or Kantian ethics to "do unto others as you would have them do unto you" are essential corruption antidotes. Public officials should internalize and obey ethical rules.

Since all citizens can contribute to corruption, everyone should have a conviction to internalize integrity. Citizens should not vote for candidates with corrupt records. However, in developing countries, the electorate is not merely illiterate and innumerate, but also poor and desperate. Besides, the electoral process itself is riddled with malpractices. While citizens should desist from offering bribes, many feel that providing due process to suspects is too time consuming and ineffective. Although public order values are the same for everyone, in the short term it is the poor who stand to lose the most from corruption, since public goods shall be undersupplied. The rich only suffer corruption's long-term effects upon rioting, robberies and widespread social unrest which erupts among the masses (Riker 1971: p. 381). Ultimately, peace as the absence of fear of crime is threatened by risk of social upheaval. Yet, the extent to which individuals tend to be acutely conscious of risk is a subjective factor and varies from culture to culture. Experience of risk depends on one's level of education, religious beliefs and other circumstances such as access to private security. How can the government construct sanctions so that fewer public officials wish to adopt noncooperative strategies in producing anti-corruption as a public good?

3.3 Civil Servants and Business: The Ndegwa Commission

Society can attach a cost to non-cooperation by punishing public officials who fail to produce public ethics. That is what we do when we add anti-corruption forensic investigators, train them in forensic accounting and equip them with tracing tools and powers for search, seizure and freezing of accounts. These actions have the value of increasing cooperation. To be effective, they need not reduce the amount of corruption to zero or a negative amount. They need merely make corruption less attractive than ethical behavior. The other way to manipulate the dilemma is to increase the value of cooperation. This may be achieved by enhancing the perks, prestige or salary packages for public officer positions. Naturally, a society with limited means cannot reward everyone in this way. Lowly paid public officers are especially prone to corruption because they have no stake in the system. Society can increase the stake of this select class by finding nonpublic jobs through with they may supplement their income (ibid. p. 382).

In 1972, to restructure public service and remuneration in Kenya, the Ndegwa Commission permitted public servants to engage in private business to augment their wealth. It broke a longstanding colonial rule. Hence the report was withheld for three years. Since 1975, public servants consequently face acute conflict of interest by delivering their own private services to the state with little accountability and oversight (Khamisi 2018, Chapter 6, citing the Constitution of Kenya 2010). Therefore, a 2020 Report of the Steering Committee on the Implementation of the Building Bridges to a United Kenya Taskforce Report (BBI 2019) proposes to rescind the Ndegwa Commission's recommendations as a measure to reduce conflicts of interest between public officers and suppliers who secure public tenders to produce public goods. BBI proposes that state officers should be restricted from doing business with the government. With the proposal to have corporate bodies disclose their owners when under investigations, people will steer clear of looting to guard their reputation. The proposal to digitize all government services will go a long way in minimizing corruption. BBI has recommended speedy prosecution and conclusion of corruption cases. The corrupt have been getting away with their misdeeds by using delaying tactics in courts, waiting for something new to come up to take attention away from them. It also proposes stiffer sentences and punitive fines for those found culpable. This shall include recovery of stolen property or property acquired through suspect means (Martin, 2020).

3.4 Reprisal or Redistribution?

To apply Riker's reasoning, if the number of people tempted by noncooperative behavior is relatively small – that is, the level of ethical behavior is relatively high because most public officials appreciate the benefit of cooperation, then reprisal is an efficient method. In such cases, fraud is committed by few officials who are either too sick, or too stupid or too shortsighted to recognize the benefits of cooperation anyway. Physical restraints and reprisals are the only devices that can work on them (Riker 1971: p. 382). Conversely, if the number of public officials tempted by fraud represent a large class of relatively normal officials then it is impossible to use reprisals methods. Large scale reprisal on a scale

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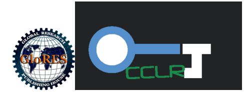

sufficiently repressive to prevent corruption in this case amounts to a surveillance, if not a police state, which may precipitate a civil war. All three are inordinately costly. An unwilling public may prefer the corruption that is being put down to the surveillance or repressive policing involved in putting it down. This seems to be the predicament in ethicized polities. In Kenya, corruption suspects appeal to ethnic identities to shield them from prosecution. Political instability which prosecuting powerful suspects may precipitate dampens the fight against corruption. Therefore, one must use redistribution, at least in part. Hence this paper shall consider more recent proposed Bills to enhance corruption sanctions by introducing minimum fines by criminal courts, given leniency of non-conviction based forfeiture measures.

4. Applying the Rationality Model to Anti-Corruption Policy

How would a rational criminal respond to the expected punishment schedule? Under certain assumptions, a rational amoral decision-maker will embezzle money so long as the benefit exceeds to expected punishment. Only when the punishment still exceeds perfect disgorgement does the public official expect to be worse off for engaging in corruption. So embezzlement will not occur. Reducing the seriousness of corruption in Kenya has been effected through pursuing non-conviction-based asset forfeiture. Yet, this paper claims that this strategy would not deter the rational public official from corruption. Instead, it is recommended that civil asset forfeiture should be accompanied by aggravated or exemplary damages and committal to civil jail for contempt of court in default of payment. This punitive aspect resembles criminal forfeiture where a custodial sentence may be imposed in default of a fine equivalent to twice the amount embezzled. Deterrence theory suggests that when the amoral decision-maker gains more than they would expect to lose, then they would embezzle some money. "When the expected punishment exceeds perfect disgorgement, the criminal experts to be worse off for the crime. So embezzlement will not occur" (Cooter and Ulen 2008: p. 496).

On one hand, more certain and severe punishment reduces the seriousness of the offence committed by rational criminals in order to reduce the risk be faces in the increased punishment schedule (ibid.). Hence to stop corruption requires not only an increase in severity of sanctions such by imposing custodial sentences. It may also be deterred by enhancing the certainty of punishment through detection, arraignments, prosecution and conviction. The paper recommends enhancing the power of the EACC to detect corruption through employing forensic accountants and rewarding whistleblowers.

However, the corruption prosecution strategy should be tailored to suit country-specific contexts. Where particular types of corruption are so widespread, prosecuting would not be cost-effective. Instead, a redistribution strategy would be more practical. Deterrence, through certainty of prosecution and conviction, is only viable in situations where most normal public officials shun corruption.

5. Kenya Supreme Court's Forfeiture of Unexplained Assets in the *Stanley Mombo Amuti Case*

Article 232 paved way for the enactment of the Ethics and Anti-Corruption Commission Act (No. 22 of 2011) which established the Ethics and Anti-Corruption Commission pursuant to the provisions of Article 79 of the Constitution. Sec 7 of the Act gives EACC the mandate to investigate any matter that raises suspicion that corruption or economic crime has occurred or is about to occur. In *EACC v Stanley Mombo Amuti* [2015], it was noted that the Commission does not infringe on the right to a fair trial, right to own property and right to silence by proceeding with the investigation. The burden of proof is with the Commission but it can shift to the respondent if the court orders so. The standard required is that of a balance of probability. Sec 55 provides for the forfeiture of unexplained assets. In the case of *Director of Assets Recovery Agency & Ors, Republic versus Green & Ors* [2005], the court stated that: "In civil proceedings for recovery under Part 5 of the Act the Director need not allege the commission of any specific criminal offence but must set out the matters that are alleged to constitute the particular kind or kinds of unlawful conduct by or in return for which the property was obtained." The case of *Stanley Mombo Amuti* [2018] the Judge of Appeal Otieno Odek stated that the concept of "unexplained assets" and its forfeiture under Sections 26 and 55(2) of ACECA is neither founded on criminal proceedings nor conviction for a criminal offence or economic crime. Sections 26 and 55 of ACECA are non-conviction based civil forfeiture provisions. A non-conviction-based confiscation occurs independently of any criminal proceeding and is directed at the property itself, having been used or acquired illegally. Conviction of the property owner is not relevant in this kind of confiscation. This clarifies why at times we don't have people jailed for the offence of corruption, but the money stolen is paid back. Our country is democratic with rule of law which implies due process.

This section evaluates the Kenyan court's interpretation of the asset forfeiture provision in the *Amuti case*. The facts were that in July 2008, upon receiving complaints about his disproportionate wealth the EACC obtained warrants to search Amuti's office and home seized cash, bankers' cheques, motor vehicle log books as well as numerous land title deeds all valued at approximately 1 Million Euros. He worked as the financial controller of the National Water Conservation and Pipeline Corporation at a gross monthly salary of Kshs. 306,000/= (2,787.65 $USD). In his previous public office, he earned Kshs. 255,000/= (2,323.04 $USD). Although he had worked for 26 years as an accountant, nonetheless, his assets were grossly disproportionate to his income. He allegedly received over Kshs. 140 Million (or 1 Million Euros) into his account during a 10 month period

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between September 2007 and June 2008. Two key issues before the High Court were first: "whether the defendant is in possession of 'unexplained assets' pursuant to the provisions of the ACECA." Second "whether he should be condemned to pay the Government of Kenya Kshs 140,976,020/= (1,284,285.49 $USD) being the cumulative bank deposits made between September 2007 and 30 June 2008 and Kshs 32,500,000/= (296,073.61 $USD) being the value of the amount of landed properties constituting unexplained assets." In *Kenya Anti-Corruption Commission v Stanley Mombo Amuti* [2011], High Court Lady Justice Kalpana Rawal (as she then was) stuck down section 55(4) as unconstitutional for reversing the burden of proof by requiring the defendant to prove his innocence, contrary to his due process rights. However, in 2015, the Court of Appeal reversed her opinion and returned the civil forfeiture proceedings to the High Court for determination on merits [Koome, Okwengu and Azangalala JJA *Ethics and Anti-Corruption Commission (The legal successor of Kenya Anti - Corruption Commission) v Stanley Mombo Amuti* 2015]. In 2017, Amuti forfeited Kshs. 41 Million, courtesy of a High Court decision by Lady Justice Lydia Achode. The Court of Appeal upheld that decision in 2019. The Supreme Court dismissed his appeal from the Court of Appeal, since it lacks jurisdiction to consider non-constitutional questions (Maraga, CJ & P, Mwilu, DCJ & V-P, Ibrahim, Wanjala and Lenaola, SCJJ *Stanley Mombo Amuti v Kenya Anti-Corruption Commission* 2020). Under ACECA, Parliament has not infringed a defendant's fair trial rights since they have a reasonable opportunity to explain the sources of their disproportionate assets before its forfeiture. Ken Obura contends that the fight against corruption should strike a balance between society's need to eradicate corruption and the corresponding need to protect the rights of affected individuals (Obura 2020). However, this paper observes a gap in the literature arises since the EACC's recovery mechanism was only 2/3 successful in the *Amuti case*.

6. Corruption as Public Nuisance

6.1 Ingredients of Public Nuisance

This paper draws an analogy from the law of public nuisance. It observes that the purpose of civil forfeiture proceedings is to freeze a defendant's assets and prevent them from benefiting from illicit proceeds. By definition, public nuisance is a condition that is the free use of property so as to interfere with the comfortable enjoyment of life or property by an entire community or neighborhood or by a considerable number of persons (Kiwanda and Mutyaba 2015: p. 255). Public nuisance should be accompanied by damages (Cooke 2011:

p. 369), where there is social harm by corruption by the loss of public faith in the social contract. Hence for effective deterrence to obtain, a liable defendant should forfeit more than the sum equivalent to the embezzled moneys, or serve civil jail in default.

6.2 Proposed Enhancement of Sanctions

Theoretically, a corruption fine under ACECA should be substantively greater than the seven years provided under the Penal Code. The latter include frauds by trustees and persons in a position of trust, and false accounting (Penal Code sec. 327), fraudulent disposal of trust property (ibid. sec. 328), fraudulent appropriation or accounting by directors or officers (ibid. sec. 329), false statements by officials of companies (ibid. sec. 330), or fraudulent false accounting by clerk or servant which provide for a maximum seven year imprisonment term. Indeed, the Penal Code provides that those convicted of "false accounting by public officer" (ibid. sec. 331) "shall be liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding ten years or to both."

The current provision of section 48 of ACECA provides a fine of not more than one million shillings. To stem the surge in corruption in the country, a new Anti-Corruption and Economic Crimes (Amendment) Bill (2019a) seeks to substitute the *maximum* one million shilling fine for corruption and economic crimes under paragraph (a) of section 48, with a *minimum* fine. It proposes that:

> A person convicted of an offence under this Part shall be liable to –
>
> (a) a fine not *less than* one million shillings, or to imprisonment for a term not exceeding ten years, or to both; and (emphasis supplied)
>
> (b) an additional mandatory fine if, as a result of the conduct that constituted the offence, the person received a quantifiable benefit or any other person suffered a quantifiable loss.
>
> (2) The mandatory fine referred to in subsection (1)(b) shall be determined as follows – (a) the mandatory fine shall be equal to two times the amount of the benefit or loss described in subsection (1)(b);
>
> (b) if the conduct that constituted the offence resulted in both a benefit and loss described in subsection (1)(b), the mandatory fine shall be equal to two times the sum of the amount of the benefit and the amount of the loss.

Moreover another 2019 Bill to amend ACECA seeks to impose personal liability on "[a] person who is convicted of an offence of corruption or economic crime and who was involved in the management of a public company, institution or state organ that suffered pecuniary loss as a result of that corruption or economic crime" and to "completely bar anyone convicted of an offence under the Act from holding office as a public or state officer" [Anti-Corruption and Economic Crimes (Amendment) Act (2019b, sec. 50A].

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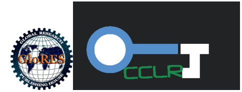

6.3 Beyond Criminal and Civil Forfeiture

6.3.1 The Preventive-Fault Doctrine

The preventive-fault doctrine of corporate culpability or corporate compliance program finds liability when a corporation fails to put in place an effective internal system of controls to prevent commission of the crime. Sentencing Guidelines issued by the United States Sentencing Commission (1988 [2015]) practically mandate organizations to follow the compliance programme to prevent criminal activity. The Guidelines provide beneficial treatment to corporations by setting forth lower penalties if they have implemented effective compliance programmes prior to the commission of the offence. It convinces prosecutors that the company and its senior managers took all reasonable steps to prevent errant conduct (Gruner 2007).

6.3.2 Corporate Crime as Negligence

The corporate cultural corruption is the focus of the Australian Penal Code [1995, section 12.4 (2)] which introduces some form of aggregation of negligence. The body corporate's conduct is deemed negligent by aggregating the conduct of its employees, agent or officers. Corporate negligence may exist even without proof of individual employees' negligence. Furthermore under the Australian Criminal Code, negligence can be shown in one of two ways. First, by showing inadequate corporate management control or supervision of the conduct of the corporation, employees, agents, or officers. Second, by showing that the body corporate has failed to provide adequate system for conveying relevant information to the relevant persons.

7. Conclusion

Beyond protection from physical violence or involuntary property transfers, in a good society private citizens should be protected from the perception that wealth has not been legitimately earned. This is particularly concerning the wealth of public officials. They should not only *obey* but also *internalize* ethical rules. Hence under section 55(4) of ACECA, which provides for non-conviction based forfeiture of unexplained assets, there is no requirement for the EACC to prove that the unexplained assets are actually the proceeds of any predicate crime. Rather, the onus is on the defendant to show that it is possible, on a

balance of probabilities, for their wealth to have been earned legitimately. In *Amuti's case*, he did not.

Two questions are answered. First procedural. Kenyan law permits the EACC to commence civil proceedings using a lower standard of proof of a balance of probabilities so as to forfeit a defendant's unexplained assets. Second, evidentiary. The quality of evidence required in order a defendant's assets to be forfeited to the government require the use of sophisticated forensic techniques such as asset tracing. However, much of the EACC's evidence in *Amuti's case* was rejected by the High Court because it was adduced by a quantity surveyor, rather than a forensic accountant. Although investing in detection, prosecution and conviction increases the rate of conviction, it is also costly. There is therefore need to develop theories from which decision makers may infer corruption from the face of conspicuous consumption of unexplained assets and *threaten* increased sanctions. Thus in 2019, two Bills were published to increase the sanctions for corruption under ACECA. It is further recommended that, procedurally, the accounting profession should harmonize its standards in order to facilitate freezing and forfeiture of assets squirrelled across transnational borders. Substantially, the UN Convention against Corruption [2003 Article 57(5)] can be implemented by agreements for the final disposal of confiscated property.

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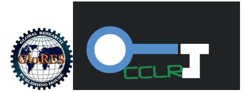

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