



STATEMENT BY THE DEVOLUTION FORUM ON HIS EXCELLENCY THE PRESIDENT'S STATE OF THE NATION ADDRESS

Issued on Sunday, 29th March 2015.

The Devolution Forum (TDF) is a multi-sectoral alliance convened by civil society, to bring together like-minded networks, organizations and individuals united for the promotion and protection of devolution and its implementation as enshrined in the Constitution of Kenya 2010.

The Devolution Forum is pleased to note that His Excellency the President used his State of the Nation address to suggest concrete actions to tackle the problem of corruption which has blighted the Jubilee administration. We particularly commend the President for speaking so quickly after this group called for his urgent response in our previous statement on **Friday 19th March** which chronicled corruption cases under the Jubilee Administration.

We commend the President's responsiveness, and would like to point out that the problems the country faces are well beyond the competence of any individual or institution working alone, and require the concerted efforts of the entire public to address. It is a sign of enlightenment on his part to recognize that it is necessary to court and maintain the support of a broad cross-section of Kenyan society during this time of difficulty.

However, while we commend the President for his response it would be remiss of us not to point out that Kenyans have every reason to remain sceptical on the President's real commitment to change. The vague terminology used in asking public servants to "step aside" until they are cleared raises concern. How does one "step aside"? What provisions govern this? Why does the President not simply dismiss those officials whom he has the mandate to dismiss and who have apparently lost his confidence? In addition, the EACC handing over a list of names of public officials who are expected to 'step aside' to the President is a curious, indeed dangerous step. It raises procedural and constitutional issues that need to be resolved. Additionally, it should be kept in mind that the death of anti-corruption agencies is often preceded by the use of such agencies for political purposes. We trust this is not the case for the EACC whose credibility is already dubious.

While appreciating the President's response regarding the national corruption crisis, we hereby point out that a number of critical things are still missing from the country's anti-corruption approach.

1. The President announced on a previous occasion that the government would audit all contracts that had been issued by his government. However, it remains unclear what the parameters of the proposed audit would be, when it is proposed to commence, what methods will be used, who will conduct the audit, what timelines it is proposed to take, and what are the expected outcomes of the exercise. It would also be useful to know what the role of the public will be in the audit, and what the scope of its coverage will be. It is not possible to hold the government accountable for the promised audit unless these answers are provided well in advance of the audit. It is proposed that an instrument like a notice in the Kenya Gazette, stipulating the answers to these questions, would be a reasonable way of starting out. We would like to use this occasion to suggest to the president and the anti-corruption leadership in his government ideas that might be employed and which we think would provide clarity to some of these issues.

The Jubilee government must publish a list of all the contracts that have been issued by the government whether or not these are going to be the subject of the proposed audit. There should be provided sufficient particulars in relation to each contract, including the purpose of the contract, the amount of money involved, the financing arrangements and commitments, the entity to which the contract was awarded and the current status of the contract. The publication of such a list will provide a shared data base and a common point of reference in relation to the exercise that has been announced.

A common problem with contracts awarded by the Jubilee government has been an underlying arbitrariness, one that has seen a consistent disregard of questions of fitness for purpose and sustainability. The audit must seek answers on what due diligence went into the contracts, what opportunities were provided for public consultation, whether feasibility studies were undertaken prior to the award of the contracts, and what amount of public consultation went into discussions leading to the award of the contracts.

2. There has been a systematic disregard of the Public Procurement Disposal Act in a large number of contracts, an egregious form of which has been the fact that a large number of these contracts were awarded without competitive bidding. The audit must make specific findings on whether or not the contracts were subject to the Public Procurement Act.

3. Secrecy has shrouded the identity of the entities that have benefited from the contracts. The directors and beneficial owners of a large number of the companies that have been awarded government contracts remain unknown. There are well-founded suspicions that in a number of these contracts, the beneficiaries are public officials who have adopted the convenient shroud of corporate secrecy to do business in circumstances that imply a conflict of interests. The fear of conflict of interest cannot be allayed unless the true identities of the persons that the government is doing business with are established.

4. Under the Jubilee government, there has been a systematic disregard of the provisions of Chapter Six of the Constitution. Indeed, this government can trace its origins to the crippling attack on Chapter Six that allowed the President and his Deputy to vie for elections despite the challenges they faced at the time. The consequence is that the government has tolerated a situation where a number of public officials who serve in the government would not pass the constitutional requirement regarding integrity. Examples of these individuals include the following:

***Mumo Matemu:** Although cleared by the Court of Appeal against a finding of lack of integrity, there are fresh allegations against him contained in a letter sent to the President six months ago. The letter remained secret and was only brought to light when the Ethics and Anticorruption Commission (EACC) fell into internal conflicts resulting from the charges brought on the Anglo Leasing cases.*

***Chris Okemo-** He is wanted in Jersey in relation to theft and money laundering of the public funds of Kenya. The Kenyan government has dragged its feet for years in the request for cooperation with the authorities in that country for his extradition to face charges. He has recently been appointed to the Kenya Seed Company Board.*

***Gideon Mwiti:** He is facing allegations of rape, the particulars of which are very grave. He continues in public office as Member of Parliament for Imenti Central. While the legal process will take its course, the political party to which he belongs, which happens to be the President's party, must take steps to suspend his membership until he is cleared of the allegations he faces.*

5. The Jubilee administration continues to nominate persons who are clouded by doubt over their integrity and independence. This is particularly so in the ongoing vetting of the President's nominees to the Judicial Service Commission whose impartiality and integrity have been called into question. In particular, the appointment of the former executive director of the President's political party is questionable and should be withdrawn.

6. The Jubilee administration and indeed other political parties continue to nominate and support individuals of dubious integrity to elective office. This has greatly contributed to corruption in the legislative assemblies as well as undermining the legislative mandate of this critical arm of government. The President failed to suggest ways in which his party will rein in unsuitable representatives. Indeed it continues to nominate individuals of dubious integrity such as the recent nomination of **Ferdinand Waititu**: *The High Court made a finding of lack of integrity against him, based on very offensive public utterances he made in 2012, targeting a particular ethnic community. He has now been cleared to run for office as Member of Parliament for Kabete in the by-election expected in that constituency.*

The above is only a very small selection of the individuals of questionable integrity who are occupying or have been appointed or elected to positions in public life. Of particular interest will be how the Deputy President intends to support the President's anti-corruption drive. It is not lost on Kenyans that his name has come up often in connection with cases of corruption. It is not lost on Kenyans that his name has come up often in connection with cases of corruption.

In conclusion, we note that the proof of commitment by the President and his administration will be the timeliness, impartiality, transparency and extent of the proposed actions. Any indication that this is yet another political ploy would indeed be a betrayal of the aspirations of Kenyans. We commit ourselves to continued vigilance in the fight against impunity and corruption in our beloved country, and vow to stand firm in defense of our constitution.