



David Green CB QC, Director  
Serious Fraud Office,  
2-4 Cockspur Street  
London  
SW1Y 5BS

January 30, 2015

Dear Mr. Green,

Kenyans for Peace with Truth and Justice (KPTJ), a coalition of over 30 legal, human rights and governance civil society organisations would like to commend your office for the successful prosecution of Smith and Ouzman, and two of its directors for overseas corruption including the bribery of Kenyan election officials to obtain contracts for the printing of election materials.

We write this letter to give our perspective on the impact of corruption on elections. We do this in the hope that you will bring these matters to the attention of the court so that they may inform its deliberations on the sentencing of the Directors and the company and the subsequent confiscation hearing. We would also like to strongly suggest that the SFO call expert witness on this point so that the court can be fully informed on it. We would be happy to provide relevant names of experts in this area should the SFO need such assistance.

KPTJ was formed in the wake of the widespread violence that engulfed Kenya following the disputed 2007 presidential elections during which over 1,100 people were killed, over half a million displaced from their homes, hundreds of women and men sexually assaulted and property worth billions of shillings destroyed.<sup>1</sup> Kenya was saved from a full-scale civil war only by international mediation efforts led by former UN Secretary General Kofi Annan.

The mediation agreed on a raft of measures to address both the immediate crisis and the long-term underlying issues to bring permanent stability to the country, including constitutional and institutional reforms. A Commission of Inquiry appointed to review the elections recommended a complete overhaul of the electoral process, including the disbandment of the then Electoral Commission of Kenya (ECK) and a fresh registration of voters. The ECK was replaced by the Interim Independent Election Commission (IIEC), the body whose officials Smith & Ouzman subsequently bribed to obtain business from.

The above background is important in order to demonstrate a number of key points:-

First, both Kenyans and the international community invested a lot of time, money and hard work to ensure that the devastating political violence of 2008 would never occur again. This was done through reforming the election management body and the appointment of new commissioners, among other measures. The reforms were achieved at a high price including the deaths referred to above. For Smith & Ouzman to casually bribe the new election officials and justify it by claiming that they were just doing business 'the African way' is not

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<sup>1</sup> For more on KPTJ, please visit <http://kptj.africog.org/>

just an insult to Kenyans and Africans, it is to dance on the graves of those who paid the ultimate price as a result of the failed elections.

Second, Kenya has frequently paid a high price in terms of lives lost and property destroyed as a result of disputed elections, the 2007-08 post-election violence being only the most extreme example. Political violence in turn is often the direct consequence of having elections managed by officials of questionable integrity who cannot be trusted by the voting public to deliver a free and fair election. When Smith & Ouzman bribes officials of a national election management body to obtain contracts for printing election materials, the country not only incurs financial loss due to the inflated price it pays for the materials, it ultimately pays a much higher price in terms of the loss of integrity of the electoral body and the subsequent instability and political uncertainty that that loss brings. As far as financial consequences are concerned, it is notable that Kenya's elections have been said to be among the world's most expensive per capita, in spite of their generally poor quality.<sup>2</sup>

Third, an election body, like a bank, survives on public trust and election bodies derive their legitimacy and credibility not from the technical sophistication of their election materials, tools and procedures, but from public faith in their impartiality, competence and integrity. The revelations of the bribery of Kenya's election officials by Smith & Ouzman has led to the loss of public faith that the election body is capable of holding a national election that will not be disputed. This may lead to yet another round of violence.<sup>3</sup>

In determining the financial gain that Smith and Ouzman obtained by fraudulent means and what the Kenyan people lost as a result, the court should bear in mind not just calculations based on the 2010 referendum and subsequent by-elections, whose printing contracts were the subject of the prosecution. It should also take into consideration the printing contract for the 2013 General Election which was also awarded through direct procurement to the firm by the same officials that it has now been established to have had an ongoing corrupt relationship with. The latter contract was the subject of litigation in Kenyan courts by legitimate competitors who alleged that they had been unfairly denied business in favour of Smith and Ouzman.

The amount of money that Smith and Ouzman has been found to have paid in bribes may be relatively small, but the long-term impact of the crimes for which the firm and its directors have been convicted is devastating to the development of a young democracy like Kenya. The damage done to the country by the bribery extends to the reputational harm to the Kenyan electoral commission and consequent social and political damage described above. This must be borne in mind when the court passes sentence and determines the fines and other financial penalties that the company must pay.

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<sup>2</sup> *Why Kenyan election is world's most expensive,*

<http://www.nation.co.ke/News/politics/Why+Kenyan+election+is+world+s+most+expensive+/-/1064/1408842/-/6px6k9/-/index.html>

<sup>3</sup> See *CORD calls for sacking of IEBC boss Hassan, Energy CS Chirchir*, Statement by the opposition Coalition for Reforms and Democracy (CORD). <http://m.news24.com/kenya/MyNews24/CORD-calls-for-sacking-of-IEBC-boss-Hassan-Energy-CS-Chirchir-20141118>; *Cord demands resignation and arrest of IEBC boss Isaack Hassan over graft claims*, <http://mobile.nation.co.ke/news/Cord-Issack-Hassan-IEBC-chair-resign-over-graft-claims/-/1950946/2526760/-/format/xhtml/-/bcwcajz/-/index.html>

The Kenyan people are the ultimate victims of this abominable crime. In ordinary circumstances, any financial penalties levied against Smith & Ouzman would be paid directly to the Kenyan Government. However, the Kenyan government has historically proved to be one of the most corrupt in the world, frequently ranking poorly in the Transparency International Corruption Perception Index.<sup>4</sup>

Such is the tolerance towards corruption in the Kenya Government that, despite the conviction of Smith & Ouzman and its directors, those named as having received the bribes are still holding public office in Kenya, including Ahmed Issack Hassan who continues to head the successor to the IIEC, the Independent Election and Boundaries Commission, and Davis Chirchir who is currently the Energy Secretary. President Uhuru Kenyatta has also recently authorized payment of millions of dollars of taxpayers' money for a passport printing system and forensic lab that were never delivered in the infamous 'Anglo-Leasing scandal', through which the country lost some US\$ 770million, which your office is also aware of.

Given that the government has done nothing to hold to account the election officers implicated in the Smith and Ouzman bribery case, it is our opinion that giving the money directly and unconditionally to such a government would amount to little more than sending it back, if not to the same people who colluded with Smith & Ouzman to steal from the Kenyan people and undermine their electoral process, then to those who have neglected their solemn duty to ensure accountability for these crimes.

In the circumstances, we would like to recommend that whatever financial penalties are levied upon Smith & Ouzman and its directors should be given to the Ethics and Anti-Corruption Commission (EACC) of Kenya to be spent in a transparent and accountable way to strengthen its anti-corruption work in order to ensure that the crimes that were committed by the company and Kenya's election officials against the people of Kenya do not recur.

We look forward to your confirmation that the matters we raise in this letter will be placed before the court for its consideration during the sentencing and confiscation hearing.

Yours faithfully,

Kenyans for Peace with Truth and Justice.

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<sup>4</sup> In 2014, Kenya was ranked number 145 out of 175 in the Corruption Perception Index, a decline from the previous year when it was ranked 136 out of 177 states.