

THE LEADERSHIP AND INTEGRITY BILL, 2012
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MEMORANDUM OF OBJECTS AND REASONS

THE LEADERSHIP AND INTEGRITY BILL, 2012

A Bill for

AN ACT of Parliament to give effect to, and establish procedures and mechanisms for the effective administration of Chapter Six of the Constitution; to promote ethics, integrity and servant leadership among State officers; to provide for the extension of the application of certain provisions of Chapter Six of the Constitution and this Act to public officers and for connected purposes.

ENACTED by the Parliament of Kenya as follows—

PART I: PRELIMINARY

Citation.

1 **1.** This Act may be cited as the Leadership and Integrity Act.

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Interpretation

2 **2.** In this Act, unless the context otherwise requires—

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“asset” means a thing or item owned by a person such as property or chose-in-action, which has value and can be sold or used to pay a debt;

“authorised officer” means a body or institution which has jurisdiction over a person or a body authorised by the Constitution or this Act or under any other law to discipline a State officer in relation to whom the expression is used;

“bank account” means a financial account recording the deposits, withdrawals and other transactions between a customer and a bank, whether the account has a credit or debit balance;

“Cabinet Secretary” means the Cabinet Secretary responsible for integrity issues;

“Code” means the General Leadership and Integrity Code established under Part II of this Act, and includes a specific Code of Leadership and Integrity established under Part III;

“Commission on Administrative Justice” means the Commission established under section 3 of the Commission on Administrative Justice Act.

No. 23 of 2011

“declaration” means a declaration of the income, assets and liabilities of a State officer under section 48 of this Act;

“dependant” means a person whose means of support is partially or wholly from a State officer;

“designated State officer” means the holder of an office which has been designated as a State office under section 5 of this Act;

“Forum” means the Kenya Leadership and Integrity Forum established under section 68;

“government” includes a county government;

No. 2 of 1996

“Kenya Institute of Administration” means the Kenya Institute of Administration, including its successors, as established under the Kenya Institute of Administration Act;

Cap. 211

“Kenya Institute of Education” means the Kenya Institute of Education established under the Education Act;

Cap. 469

“Kenya Revenue Authority” means the Kenya Revenue Authority established pursuant to the provisions of the Kenya Revenue Authority Act;

Cap. 53

“Official Receiver” means the official receiver appointed pursuant to the provisions of section 74 of the Bankruptcy Act;

“public officer” has the meaning assigned to it under Article 260 of the Constitution;

“responsible Commission”, in relation to a State officer, means the Commission determined under section 3 to be the responsible Commission in relation to that State officer;

“spouse” means a wife or husband ;

“State officer” has the meaning assigned to it under Article 260 of the Constitution and includes a holder of an office which has been designated as a State office pursuant to the provisions of section 5 of this Act.

Assignment
responsible
Commissions.

of **3** **3.** (1) A responsible Commission shall be responsible for the
• State officers assigned to it under the First Schedule for the purpose
of this Act.

(2) The Ethic and Anti Corruption Commission shall be the responsible Commission for any other State officer to whom a responsible Commission has not been assigned.

(3) Where a State office is established or designated under any other written law, the Cabinet Secretary shall determine and assign a responsible Commission for the State officer.

(4) Subject to sub-section (3) the Cabinet Secretary may amend the First schedule.

(5) Where a function is assigned, under this Act, to a responsible Commission or authorised officer or person to undertake, and the responsible Commission or authorised officer or person is unable to carry out such a function, the function will be deemed competently carried out if it is carried out by the Ethics and Anti-Corruption Commission.

Delegation of
functions by the
Ethics and Anti-
Corruption
Commission

4. The Ethics and Anti-Corruption Commission may, by notice in the Gazette, delegate to a responsible Commission or an authorised officer any or all of its powers and functions under Part V and VI of this Act with respect to classes of State officers specified by the Commission.

Designated offices State 1. **5.** (1) The public offices listed in the Second Schedule are designated as a state office in accordance with Article 260 of the Constitution.

(2) A holder of a public office which has been designated as a State office in accordance with sub-section (1) shall be deemed to be a State officer for the purposes of this Act.

(3) The Cabinet Secretary may, by notice in the Gazette, amend the Second Schedule to this Act, to include additional designated state offices.

PART II: GENERAL LEADERSHIP AND INTEGRITY CODE

General Code. **6.** (1) This Part sets out a general Leadership and Integrity Code for State officers.

(2) The provisions of Chapter Six of the Constitution shall form part of the Code.

Rule of law **7.** (1). A State officer shall respect and abide by Constitution.

(2) A State officer shall carry out his duties in accordance with the law.

(3) In carrying out the duties of the office a State officer shall not violate the rights and fundamental freedoms of any person.

Public trust **8.** A State office is a position of public trust and the authority and responsibility vested in a State officer shall be exercised by the State officer in the best interest of the people of Kenya.

Transparency and accountability **9.** A State officer shall carry out his or her duties in a transparent and accountable manner.

Responsibility and duty **10.** A State officer shall take personal responsibility for the foreseeable consequences of his or her actions in the discharge of his or her duties.

Performance of duties

11. A State officer shall, to the best of his or her ability, carry out his or her duties efficiently and honestly.

Professionalism

12. A State officer shall—

- (a) carry out his or her duties in a way that maintains public confidence in the integrity of his or her office;
- (b) treat members of the public and other public officers with courtesy and respect;
- (c) to the extent appropriate to the office, seek to improve the standards of performance and level of professionalism in the organisation;
- (d) if he or she is a member of a professional body, observe and subscribe to the ethical and professional requirements of that body ;
- (e) observe the official working hours of the organization;
- (f) not be absent without proper authorization or reasonable cause;
- (g) mentor other officers to become leaders by example and training ;
- (h) promote team work and provide guidance and support to subordinates;
- (i) maintain an appropriate standard of dress, and,
- (j) discharge any professional responsibilities in a professional manner.

Financial integrity

13. A State officer shall not use the office to improperly enrich himself or herself or any other person.

Gifts or benefits in kind

14. (1) A gift or donation to a State officer on any public or official occasion shall be treated as a gift or donation to the

Government or the institution which is represented by the State officer.

(2) A State officer may receive a gift given to him or her in his or her official capacity provided that –

- (a) the gift is within the normal bounds of propriety, a normal expression of courtesy or protocol or within the normal standards of hospitality;
- (b) the gift is not monetary;
- (c) the gift does not exceed a value as may be prescribed by the Ethics and Anti-Corruption Commission;
- (d) the acceptance of the gift would not compromise the integrity of the office;
- (e) the acceptance of the gift will not affect the State officer's objectivity and impartiality in the performance of his duties.

(3) Without limiting the generality of subsection (2), a State officer shall not—

- (a) accept or solicit gifts, hospitality or other benefits from a person who –
 - (i) has an interest that may be achieved by the carrying out or not carrying out of the State officer's duties;
 - (ii) carries on regulated activities with respect to which the State officer's organisation has a role; or
 - (iii) has a contractual or similar relationship with the State officer's organisation;

(b) accept gifts of jewellery or other gifts comprising of precious metal or stones or ivory or any other animal part protected under the Convention on International Trade in Endangered Species of Wild Fauna and Flora.

(4) A State officer may receive and consume a gift of a perishable nature but the State officer shall declare the gift by disclosing the circumstances under which the gift was given within seven days to that State officer's organization, the responsible Commission and the Ethic and Anti-Corruption Commission.

(5) A State officer who receives a gift or donation shall declare the gift or donation to the Ethics and Anti-Corruption Commission and the organization which the State officer represents.

(6) Every organization shall keep a register of—

(a) gifts given to a State officer; and

(b) gifts given by the organisation to other State officers.

(7) The provisions of this section do not prevent a State officer from accepting a gift from a relative or a close friend given on a special occasion recognized by custom.

(8) The Ethics and Anti- Corruption Commission may, by notice in the Gazette, impose further restrictions on the receipt of gifts, hospitality or other benefits by State officers.

Unlawful
acquisition of land

(i) **15.** A State officer shall not use his or her office to acquire land or other property for himself or another person, whether or not the land or property is paid for.

Conflicts of interest

16. (1) A State officer shall use his or her best efforts to avoid being in a situation in which his or her personal interests conflict or appear to conflict with his or her official duties.

(2) Without limiting the generality of subsection (1), a State officer shall not hold shares or have any other interest in a corporation, partnership or other body, directly or through another person, if holding those shares or having that interest would result in the State officer's personal interests conflicting with his or her official duties.

(3) A State officer whose personal interests conflict with his or her official duties shall declare the personal interests to the responsible Commission or the Ethics and Anti-Corruption Commission.

(4) The responsible Commission may give direction on the appropriate action to be taken by the State office to avoid the conflict of interest and the State officer shall—

(a) comply with the directions; and

(b) refrain from participating in any deliberations with respect to the matter.

(5) Notwithstanding any directions to the contrary under subsection (4), a State officer shall not award a contract or influence the award of a contract, to—

(a) himself or herself;

(b) the State officer's spouse or child or relative or friend;

(c) a business associate or agent; or

(d) a corporation, private company or partnership or other body in which the officer has an interest.

(6) In this section, "personal interest" includes the interest of a spouse, child, relative or business associate.

(7) Where a State officer is present at a meeting, where an issue which is likely to pose a conflict of interest is to be discussed, he or she shall declare the interest at the beginning of the meeting or before the issue is deliberated.

(8) Subject to sub-section (7) a declaration of a conflict of interest shall be recorded in the minutes of that meeting.

(9) A Member of Parliament or a member of County Assembly shall declare any pecuniary interest or benefit of whatever nature, whether direct or indirect, in –

- (a) any debate or proceeding of the body of which he or she is a member;
- (b) any debate or proceeding in any committees of the body; and
- (c) in any transaction or communication which he or she may have with other members of the body, or with cabinet secretaries or county executive committee members or government officers.

(10) Every responsible Commission shall maintain an open Register of Conflicts of Interest, and in which an affected State officer shall register his or her particulars and an explanation of the nature and extent of conflict of interest situation, in a prescribed form.

(11) For purposes of subsection (10), the registrable interests include the interests set out in the Third Schedule.

(12) It is the responsibility of the State officer to ensure that an entry on registrable interests, under subsection (9) is up-to-date and to notify the responsible Commission or the Ethics and Anti-Corruption Commission of any changes in the registrable interests within one month of each change occurring.

(13) For purposes of subsection (9), the Clerk of the Senate, the

National Assembly and a county Assembly shall maintain a Register of Conflicts of Interest, which Register shall be open for public inspection.

(14) The Cabinet secretary may in consultation with the Ethics and Anti-Corruption Commission or a responsible Commission make regulations for purposes of the implementation of the requirements of this section.

Participation in tenders.

17. A State officer shall not —

- (a) in person;
- (b) through a spouse or child; or
- (c) through a private company;

participate in a tender for the supply of goods or services to the Government or a public body or a state corporation.

Public collections, etc.

18. (1) A State officer shall not—

- (a) use public assets, property or facilities to solicit for contributions from the public for an unofficial purpose;
- (b) participate in a public collection of funds in such a way that reflects adversely on his or her integrity or impartiality or interferes with the performance of his or her official duties.

(2) For purposes of this section, “unofficial purpose” means a purpose which is not provided for and regulated by a written law.

Bank accounts outside Kenya.

19. (1) A State officer shall not open or continue to maintain a bank account outside Kenya.

(2) A person who has a bank account outside Kenya before he or she is appointed or elected to or otherwise assumes a State office, the person shall on appointment or election, notify the

relevant responsible Commission or the Ethics and Anti-Corruption Commission and shall close the account within thirty days of assumption of office.

(3) Upon the commencement of this Act, a serving State officer who holds an account outside Kenya shall close that account within thirty days and notify the responsible Commission or the Ethics and Anti-Corruption Commission of the closure of the account.

(4) A State officer who has reasonable grounds for opening or maintaining a bank account outside Kenya shall apply to the Ethics and Anti-Corruption Commission for approval to open or maintain a bank account outside Kenya.

(5) The Ethics and Anti-Corruption Commission shall maintain a register of foreign accounts opened, maintained and closed by State officers.

Acting
foreigners. for

20. (1) A State officer shall in a manner that may be detrimental to the security interests of Kenya, be an agent for, or further the interests of, a foreign government, organisation or individual.

(2) For the purposes of this section-

(a) an individual is foreign if the individual is not a citizen of Kenya; and

(b) an organisation is foreign if it is established outside Kenya or if it is owned or controlled by foreign governments, organisations or individuals.

Care of property.

21. (1) A State officer shall take all reasonable steps to ensure that property that is entrusted to his or her care is taken care of and is used appropriately.

(2) A State officer shall not use public property, funds, services or information that is acquired in the course of, or as a result of, his or her official duties, for activities not related to his or her official work.

(3) A State officer shall return, to the issuing authority, all the property entrusted to his or her care, at the end of the appointment or election term.

(4) A State officer who contravenes subsection (2) or (3) shall, in addition to any other penalties provided for under the Constitution or this Act or any other law, be personally liable for loss or damage to public property.

Misuse of official information

22. (1) Subject to the Constitution or any other law relating to the handling of official information, a State officer shall not directly or indirectly use or allow any person under his or her control to use for furthering any private interest, whether financial or otherwise, any information obtained through or in connection with the office of the State officer and not made available to the public.

(2) A person shall not be held liable in civil proceedings for the publication of information arising from the manner in which the State officer has conducted himself or herself in public or private life or discharged the duties and responsibilities of his or her office, provided that the publication was made in the public interest and the publisher had honest belief in the veracity of the published information.

(3) The provisions of this section shall not apply if the information is to be used for the purpose of furthering the interests of this Act or for educational, research, literary, scientific or other purpose not prohibited by law.

]Political neutrality.

23. (1) An appointed State officer shall not hold office in a political party.

(2) A State officer shall not, in the performance of his or her duties—

(a) act as an agent of a political party;

(b) further the interest of a political party; or

- (c) demonstrate support for or opposition to any political party or candidate in an election.

(3) An appointed State officer shall not engage in political activity.

Impartiality, corrupt practices, etc.

24. A State officer shall not practise favouritism, nepotism, tribalism, cronyism, religious bias or engage in corrupt or unethical practices.

Giving of advice.

25. A State officer who has a duty to give advice shall give honest, accurate and impartial advice without fear or favour.

Other forms of employment and post-employment

26. (1) A State officer shall not allow himself or herself to be influenced in the performance of his or her duties by plans or expectations for or offers of future employment.

(2) A State officer shall disclose in writing to the responsible Commission and the Ethics and Anti-Corruption Commission all offers, of future employment that could place the State officer in a situation of conflict of interest.

Former State officer acting in a Government or public body matter.

27. (1) A former State officer shall not act for a person or entity in a matter in which—

(a) the Government or a public body is a party; or

(b) the former State officer previously acted for the Government or a public body.

(2) A former State officer shall not give advice to anyone using information that is not available to the public concerning programmes or policies of Government, public body or department with which he or she had a direct or substantial relationship, during the period of two years immediately prior to ceasing to be a State officer.

Misleading public.. the **28.** A State officer shall not knowingly give false or misleading information to any person.

Citizenship **29.** A person who acquires or is granted dual citizenship while still holding a State office shall —

(a) make a declaration of renunciation within ninety days of the grant of that secondary citizenship;

(b) provide evidence of renunciation to the responsible Commission; and

(c) submit a certified copy of the evidence of renunciation to the Ethics and Anti-Corruption Commission, the National Intelligence Service, and the Kenya Citizens and Foreign Nationals Management Service.

Conduct of private affairs. **30.** (1) A State officer shall conduct his or her private affairs in a manner that maintains public confidence in the integrity of the office.

Tax and financial obligations. **31.** (1) A State officer shall pay the taxes due from him or her within the prescribed period.

(2) A State officer shall not neglect his or her financial obligations.

Bullying **32.** A State officer shall not bully any person.

Submitting declarations. of 27. **33.** A State officer shall submit any declaration or clarification of income ,assets and liabilities in accordance with Part V of this Act.

Acting through others. 31. **34.** (1) A State officer contravenes the Code if he or she —

(a) causes anything to be done through another person that would, if the State officer did it, be a contravention of the Code ; or

(b) he or she allows or directs a person under his or her supervision or control to do anything

that is a contravention of the Code.

(2) Subsection (1) (b) does not apply with respect to anything done without the State officer's knowledge or consent if the State officer took reasonable steps to prevent it.

Reporting improper orders.

35. (1) If a State officer considers that anything required of him or her is in contravention of the Code or is otherwise improper or unethical, the State office shall report the matter to the Ethics and Anti-Corruption Commission.

(2) The Ethics and Anti-Corruption Commission shall establish appropriate mechanisms for confidential reporting and the protection of persons who may submit reports to the Commission pursuant to subsection (1).

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**3 PART III—SPECIFIC LEADERSHIP AND INTEGRITY
6 CODES**

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Establishment of specific Codes..

3 36. (1) Each responsible Commission shall establish a specific
7 Leadership and Integrity Code for the State officers for whom it is
. the responsible Commission.

(2) The specific Leadership and Integrity Code established by a Commission shall include all the requirements in the general Leadership and Integrity Code under Part II and may set out how any requirements of the specific or general Code may be satisfied.

Application of the general Code

3 37. Until a Commission has established a specific
8 Leadership and Integrity Code under this section, the general Code
. under Part II shall apply as though it were the specific Leadership
and Integrity Code established by the Commission.

Approval and publication of specific codes.

3 38. (1) A responsible Commission shall forward to the Ethics
9 and Anti-Corruption Commission the specific Leadership and
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Integrity Code established under section 37 for approval.

(2) In considering the specific Leadership and Integrity Code forwarded under this section, the Ethics and Anti-Corruption Commission shall ensure that the specific Leadership and Integrity Code is consistent with the general Leadership and Integrity Code under Part II or any other written law or the Constitution.

(3) The Ethics and Anti-Corruption Commission shall, within thirty days of receiving the forwarded specific Leadership and Integrity Code, consider the specific Leadership and Integrity Code and approve it for publication in the Gazette with or without amendments.

(4) Subject to the provisions of subsections (2) and (3) of this section, a responsible Commission shall publish the specific Leadership and Integrity Code in the Gazette within ninety days after the commencement of this Act.

(5) Any Code of a responsible Commission existing at the commencement of this Act shall be deemed to have been made under this Act and shall be submitted for approval by the Ethics and Anti-Corruption Commission within ninety days after the commencement of this Act.

**4 PART IV—ENFORCEMENT OF THE LEADERSHIP AND
0 INTEGRITY CODE**

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Application of the
Code in
appointments and
elections

Cap.183

4 39. (1) A person is not eligible for appointment or to stand
1 for election to a State office if that person has as a State officer,
. contravened the Code under this Act or while serving as a public
officer, has contravened the Public Officers Ethics Act.

(2) Subsection (1) shall apply only in cases where a person has been found guilty of a misconduct or gross misconduct in accordance with the provisions of this Act.

(3) Each responsible Commission shall be responsible for availing information to a selection panel, appointing authority or Parliament, as the case may be, regarding the compliance or

noncompliance, with the Code by a person seeking appointment or election to a state office.

(4) Upon appointment or election, a State officer shall sign and commit himself or herself to, the Leadership and Integrity Code issued by the relevant responsible Commission at the time of taking the oath of Office or within seven days of assuming a State office

Lodging
complaints
investigations

of
and

4 40. (1) A person who alleges that a State officer has committed a breach of the Code may lodge a complaint with the responsible Commission or the Ethics and Anti-Corruption Commission and the body to which the matter is reported shall register and inquire into the matter.

(2) The responsible Commission or an authorized officer may inquire into or investigate to determine whether a State officer has contravened the Code.

(3) An investigation shall be made at the initiative of a responsible Commission or the Ethics and Anti-Corruption Commission or the Commission on Administrative Justice or pursuant to a complaint by any person.

(4) A responsible Commission or other person may refer a matter to the Ethics and Anti-Corruption Commission or another appropriate body for investigation and that body shall investigate the matter within thirty days and submit a report to the requesting responsible Commission or any other requesting person, on its findings.

(5) A person who has lodged a complaint against a State officer is entitled to be informed of any action taken or to be taken in respect of his or a her complaint and shall be afforded a hearing.

(6) An investigation may be conducted even if the person under investigation has ceased to be a State officer.

(7) A State officer under investigation shall be required to step aside pending the outcome of the investigation.

(8) A State officer being investigated under this section shall be

informed, by the investigating authority, of the complaint against him or her and shall be given a reasonable opportunity to make his or her representation relating to the issue, before the investigation is concluded.

Disciplinary action

4 41. (1) If an investigation under this Part discloses that a State officer has contravened the Code, the responsible Commission shall, within the time prescribed under subsection (2), take the appropriate disciplinary action, or if the public body or person does not have the power to take the appropriate disciplinary action, refer the matter to a body or person who is vested with that power.

(2) The time period referred to under subsection (1) is within thirty days after the completion of the investigation, or if the Ethics and Anti-Corruption Commission or another body investigates the matter under section 40 subsection (4), within thirty days after the responsible Commission or public body receives the report of the Ethics and Anti-Corruption Commission or other investigating body.

(3) The responsible Commission shall inform the State officer concerned of any action it takes or intends to take under subsection (1) either before it takes the action or within thirty days after it does so.

(4) Subsection (3) does not affect any legal requirement to inform a State officer earlier than is required under that section.

(5) The disciplinary action imposed under this section shall be in accordance with the Constitution or any other applicable law or regulations governing the concerned State officer.

Publication of action taken

4 42.(1) The responsible Commission shall ensure that any action it takes under section 41 subsection (1) is made public in the manner prescribed in subsection (2), through publication in the Gazette and at least one newspaper with national circulation.

(2) In making the disciplinary action public, the public body or person shall ensure that at least the following is published –

(a) a description of the State officer's contravention of the

Code including the particulars and circumstances of the contravention and the degree of the State officer's culpability;

- (b) a summary of the evidence upon which the finding that there was a contravention was based; and,
- (c) a description of the disciplinary action the public body or person took against the State officer or, if the public body or person referred the matter to another body or person, the disciplinary action that other body or person considered appropriate.

(3) Where the Constitution or applicable law or regulations provide for an appeal, the action taken shall not be published under this section before the expiry of the time allowed for making the appeal.

(4) Where the concerned State officer has made an appeal, the action taken shall not be published under this section until a decision on the appeal has been made.

Referral for possible civil or criminal proceedings.

4 43. (1) If, as a result of an investigation under this Part, a person or responsible Commission is of the opinion that civil or criminal proceedings ought to be preferred against the concerned State officer, the person or responsible Commission shall refer the matter to —

- (a) the Ethics and Anti Corruption Commission, in the case of civil matters;
- (b) the Director of Public Prosecutions, in the case of criminal matters;
- (c) other appropriate authority for consideration and further action.

(2) Referral of a matter under subsection (1) is not a bar to further investigations or action over the matter, by the referring person or responsible Commission.

(3) If the investigations are carried out at the initiative of or after referral to the Ethics and Anti-Corruption Commission and the Commission is satisfied that a State officer, other than the President, has committed a criminal offence, it shall refer the matter to the Director of Public Prosecutions.

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(4) If the Ethics and Anti-Corruption Commission is satisfied that a State officer is guilty of misconduct in office, and it finds that it has no power under this Act or the Ethics and Anti-Corruption Commission Act or the Anti-Corruption and Economic Crimes Act it shall refer the matter to the appropriate authority as set out in the Fourth Schedule.

(5) If the Ethics and Anti-Corruption Commission has referred a matter to the Director of Public Prosecutions under subsection (3) and the Director of Public Prosecutions has not taken any action within a reasonable time, but the Commission is satisfied that the circumstances merit consideration for removal from office, it shall take action as provided for under subsection (4).

Ethical dilemmas

4 44. (1) Any person or a State officer may seek an advisory
6 opinion from the Ethics and Anti-Corruption Commission to resolve
. any issue giving rise to an ethical dilemma.

(2) The Ethics and Anti-Corruption Commission shall establish appropriate mechanisms and procedures for the provision of advisory opinions over ethical dilemmas, in a confidential and timely manner.

Notification
investigations

of **4 45.** (1) Where a responsible Commission or law enforcement
7 agency has commenced an investigation on an alleged breach of the
. Code, such responsible Commission or law enforcement agency
shall notify the Ethics and Anti-Corruption Commission in writing.

Reports
responsible
Commissions.

of **4 46.** (1) Each responsible Commission shall make an annual
8 report to the President and Parliament, and the Ethics and Anti-
. Corruption Commission, on the performance of its functions under
this Act.

(2) The report made under subsection (1) shall contain all the relevant information on its functions, duties and activities and such

other information the responsible Commission may consider necessary.

Reports of the
Ethics and Anti-
Corruption
Commission

47. (1) The Ethics and Anti-Corruption Commission shall make an annual report to the President and Parliament containing all the information relevant to the enforcement of and compliance with the provisions of this Act.

(2) The Commission shall publish in the Gazette and publicise in print and electronic media the report prepared in accordance with subsection (1).

PART V—DECLARATIONS OF INCOME, ASSETS AND LIABILITIES

Declaration .

48. (1) Every State officer shall submit to the Ethics and Anti-Corruption Commission, a declaration of income, assets and liabilities—

- (a) within thirty days of being appointed or elected and sworn-in as a State officer;
- (b) annually; and
- (c) within thirty days of ceasing to be a State officer.

(2) A declaration shall be made by the State officer in respect of—

- (a) the State officer;
- (b) the State officer's spouse; and
- (c) the State officer's dependants who under the age of eighteen years.

(3) The declaration shall be in the form set out in the Fifth Schedule.

(4) The declaration may be submitted as a hard or soft copy or in any other prescribed format.

(5) Where a soft copy of a declaration is submitted, it shall be considered valid if it bears a unique identification feature which can sufficiently identify the State officer making the declaration.

(6) A responsible Commission may obtain for free, from the Ethics and Anti-Corruption Commission, a copy of a declaration made by a State officer for whom it is the responsible Commission, for purposes of satisfying itself with the integrity and ethical standards maintained by the State officer.

Declarations
nominees
elective posts.

by
for

48. 49. (1) A person nominated for election to a State office shall submit to the Ethics and Anti-Corruption Commission, a declaration for himself or herself, his or her spouse and his or her dependants under the age of eighteen years.

(2) The Ethics and Anti-Corruption Commission shall issue a compliance certificate to the nominees who have complied with this section.

(3) The Ethics and Anti-Corruption Commission shall notify the Independent Electoral and Boundaries Commission of the compliance or otherwise of this requirement by the nominee within seven days of issuing the certificate of compliance.

(4) The Independent Electoral and Boundaries Commission may publish the contents or a summary of the contents of a declaration filed in accordance with this section, for candidates nominated for the posts of President, Deputy President, Governor and Deputy Governor.

Statement dates of
declarations.

49. 50. (1) The statement date for an initial declaration shall be the date the State officer is appointed.

(2) The statement date for an annual declaration shall be the first day of November. .

(3) The statement date for the final declaration shall be the date the State officer ceases to be a State officer.

Declaration period

51. (1) The declaration period for an initial declaration shall be the twelve months preceding the initial declaration.

(2). The declaration period for the annual declaration shall be from the last statement date to the date preceding the current statement date.

(3). The declaration period for the final declaration shall be from the statement date of the last declaration to the date the State officer ceases to hold the State office.

Ad hoc declarations

52. The Ethics and Anti-Corruption Commission may require a State officer to submit a declaration at any other time .

Clarifications

50. 53. The Ethics and Anti-Corruption Commission or a responsible Commission may seek clarification from a State officer relating to the information contained in the State officer's declaration form, as may be necessary.

Information to be correct

51. 54. It is the responsibility of the State officer to ensure that the information contained in the declaration is correct.

Access to declarations

52. 55. (1) The Ethics and Anti-Corruption Commission shall, facilitate access by a member of the public to the contents of a declaration or clarification made by a State officer.

(2) Subject to sub-section (1) a person shall make a written request to the Ethics and Anti-Corruption Commission stating the information that person is seeking and reason why that person is seeking that information.

(3) Any public body seeking access to the information contained in a declaration made by a State officer, for purposes of discharging its mandate shall be deemed to have satisfied the conditions set out in sub-section (2).

(4) Prior to the Ethics and Anti-Corruption Commission making an affirmative decision under this section, it shall grant the opportunity to the affected State officer to make representations on

the matter.

(5) The Ethics and Anti-Corruption Commission shall keep a register of the requests made and action taken, including the notification of the request made to the concerned State officer.

Custody
declarations
retention
information.

of
and
of

3 56. (1) The Ethics and Anti-Corruption Commission
1 shall receive, maintain, verify, analyse and store every declaration
· submitted by a State officer.

(2) For purposes of sub-section (1), the Commission may exercise all those functions or delegate some of the functions to various responsible Commissions or authorised officers or other designated agents.

(3) The information referred to under sub-section (3) may be stored electronically or in any other form as the Commission may consider appropriate.

Destruction
information.

of

3 57. (1) The Ethics and Anti-Corruption Commission
2 shall not destroy the information collected under this Part unless
· thirty years have lapsed from the date of the declaration.

(2) After the lapse of the thirty years, the information shall be transmitted to the Kenya National Archives and Documentation Service, and dealt with by the Service, in accordance with the Public Archives and Documentation Service Act.

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3
3
·

Disproportionate
income

3 58. (1) The Ethics and Anti-Corruption Commission or a
4 concerned responsible Commission may institute inquiries with
· relevant bodies and agencies including banks, tax authorities,
companies registry, insurance companies, the securities exchange
and other regulatory bodies.

(2) Whenever the Ethics and Anti-Corruption Commission or responsible Commission makes an enquiry or institutes an inquiry into a matter touching on the declaration of a particular State

officer, the requested institution will be under an obligation to provide the requested information.

(3) Where,

(a) a declaration is made by a State officer in respect of himself or herself or any person under this Part; and

(b) the State officer or that person is found to be in possession of assets and income disproportionate to the known source of income which he or she cannot satisfactorily account for,

the State officer shall be taken to have breached the Act.

Notification of failure to declare, etc.

3 59. (1) Where a State officer has failed to submit a **5** declaration or a clarification under this Part, the Ethics and Anti-Corruption Commission, in appropriate cases, shall notify the relevant responsible Commission or the authorised officer.

(2) Upon receiving a notification under subsection (1), the responsible Commission or the authorised officer, as the case may be, shall institute disciplinary proceedings against the concerned State officer and publish the action taken in accordance with section 42.

Special responsibilities of the Ethics and Anti-Corruption Commission

3 60. (1) The Ethics and Anti-Corruption Commission **6** shall be the principal agency of the State for the realization of the provisions of this Act .

(2) The Ethics and Anti- Corruption Commission shall—

(a) provide the declaration forms free of charge to any person;

(b) receive and retain custody of declarations made by State officers;

(c) ensure compliance with and enforce the

provisions on declarations under this Act;

- (d) receive and investigate complaints of failure to make declarations and where appropriate refer the matter to the authorised officer;
- (e) require a person to make a clarification as provided for under section 53;
- (f) make administrative procedures as provided for under section 61;
- (g) require a person to make an *ad hoc* declaration as provided for under section 52;
- (h) subject to the Constitution and any other law, require any public body or a person holding a public office to disclose any information in connection with a matter under investigation by the Commission;
- (i) inform and educate State officers on the need to make declarations under this Act;
- (j) make recommendations on the measures necessary for enhancing the effective administration and enforcement of this Act;
- (k) establish and maintain a data bank on the particulars of each State officer; and
- (l) perform any other functions and duties necessary for the effective administration and implementation of this Act.

Administrative
procedures

(**61.** (1) The Ethics and Anti-Corruption Commission shall make administrative procedures for the implementation of this) Part .

(2) The administrative procedures shall be established and published in the Gazette within ninety days after the commencement of this Act.

PART VI: OFFENCES AND PENALTIES

Breach of the Code

62. (1) Subject to subsection (2), a breach of the Code amounts to misconduct for which the State officer may be subjected to disciplinary procedures.

(2) Where an allegation of breach of the Code has been made against a State officer in respect of whom the Constitution or any other law provides for the procedure for removal or dismissal, the question of removal or dismissal shall be determined according to the procedure required by the Constitution or that other law.

(3) Where an allegation of the breach of the Code has been made against a State officer, and subsequently the Ethics and Anti-Corruption Commission is of the opinion that the procedures for removal or dismissal under subsections (1) and (2) of this section are ineffective or inefficient to work in the public interest, the Commission may initiate proceedings in the High Court for an order to compel the concerned body or person to perform the duties as required by law.

(4) While granting orders pursuant to an application under subsection (3), the High Court may issue a declaration to the effect that the concerned State officer is unfit to hold a state or public office, depending on the gravity of the breach.

Obstructing or
hindering persons
under Act

63. A person who, without lawful excuse, obstructs or hinders a person acting under this Act commits an offence and is liable, on conviction, to a fine not exceeding five million shillings or to imprisonment for a term not exceeding five years or to both.

Divulging
information
acquired under Act

64. A person who, without lawful excuse, divulges information acquired in the course of acting under this Act is commits an offence and is liable, on conviction, to a fine not exceeding five million shillings or to imprisonment for a term not exceeding five years or to both.

Offences relating to
declarations

65. A person who—

- (a) fails to submit a declaration or clarification as required under Part V ;
- (b) who submits a declaration or clarification late;
- (c) who submits a declaration or clarification, which contains information that he or she knows or ought to know is false or misleading; or
- (d) destroys information collected under this Part,

commits an offence and is liable, on conviction, to a fine not exceeding one million shillings or to imprisonment for a term not exceeding one year or to both.

Forfeiture and
compensation

66. (1) Where a State officer is proven to have obtained any property in breach of this Act, the State officer shall, subject to any appeal which the officer may make, forfeit the property and the property shall be held in trust for the Government or the concerned public body, by the Ethics and Anti-Corruption Commission or by an agent appointed by the Commission until it is lawfully disposed of.

(2) The Ethics and Anti-Corruption Commission may order a State officer referred to in subsection (1) to pay by way of compensation to the Government or the concerned public body such sum, including interest, as may be determined by the Commission as just, having regard to the loss suffered by the Government or public body and such order shall be deemed to be a decree under section 25 of the Civil Procedure Act and shall be executed in the manner prescribed under Part III of that Act.

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(3) For purposes of sub-section (2), the rate of interest on any property or money irregularly obtained shall be twelve per cent per annum, payable with effect from the day such property or money was obtained.

(4) The money or proceeds of the sale of property which are forfeited to the Government under this section shall be paid into the Consolidated Fund.

(5) Notwithstanding the provisions of subsection(4) may, by a resolution, authorise the Ethics and Anti-Corruption Commission to

retain and utilise up to thirty per cent of the monies or value of the properties recovered under this Section, for purposes of meeting the needs of the economic and social rights provided for under Article 43 of the Constitution.

Other penalties for breach of the Act

67. (1) Except as otherwise provided for under the Constitution or this Act or other law relating to the conduct of a State officer, a State officer who commits a breach of the Code established under this Act shall be liable to disciplinary action as provided in sub-section (2) to 10

(2) In the case of a breach under section 29, be liable to -

- (a) suffer automatic loss of Kenyan citizenship if another citizenship is acquired voluntarily;
- (b) removal from office, in the case of an elected state officer; and
- (c) dismissal, in the case of an appointed officer, where appropriate.

(3) In the case of a breach under section 14, be liable to –

- (a) forfeit the benefit equivalent to the gift, hospitality or benefit, to the Government or the affected state office and shall stand warned;
- (b) be warned in writing; or
- (c) dismissal.

(4) For the President, in the case of a breach under section 14,16,21,26,30 and 48, the President shall be liable to –

- (a) censure by the National Assembly; or
- (b) removal, by impeachment, under Article 145(1) (a) of the Constitution.

(5) For the Deputy President, in the case of a breach under section 14,16,21,26,30 and 48, the Deputy President shall be liable to –

(a) censure by the National Assembly;or

(b) removal under Article 150(1) (b) (i) of the Constitution.

(6) In the case of a breach under section 12, 14, 16, 19, 20, 21(1), 22, 23(2),26,and 33,, shall be liable to –

(a) in the case of a Cabinet Secretary to–

(i) censure by the National Assembly;or

(ii) dismissal, through a motion under Article 152(6) of the Constitution,

(b) in the case of a Member of Parliament to–

(i) cease to hold office under Article 103(1) (c), and 103(1)(g) of the Constitution;

(ii) recall under Article 104(2) of the Constitution; and,

(iii) censure,

(c) in the case of a County Governor to –

(i) removal under Article 168(1)(a) of the Constitution; or

(ii) censure,

(d) in the case of a member of a County Assembly-

(i) to vacate office under Article 194(1)(c) of

- the Constitution;
- (ii) to censure; or
- (iii) to surcharge,
- (e) in the case of a judge of a superior court to-
 - (i) removal under Article 168(1)(b) of the Constitution;
 - (ii) surcharge ;
 - (iii) reprimand,
- (f) in the case of the Chief Registrar, a Deputy Chief Registrar, and a magistrate to -
 - (i) removal under the Code of Conduct and Ethics applicable to registrars and magistrates;
 - (ii) surcharge;
 - (iii) reprimand,
- (g) in the case of the Director of Public Prosecutions to-
 - (i) removal from office under Article 158(1)(b) of the Constitution;
 - (ii) censure by the National Assembly;
 - (iii) surcharge
- (h) in the case of a member or secretary of a Commission or holder of an independent office to which Chapter Fifteen of the Constitution applies to-
 - (i) removal under Article 251(1)(a) of the Constitution;

(ii) censure by the National Assembly;

(iii) surcharge,

(i) in the case of an appointed State officer, subject to the Constitution or the applicable law to-

(i) be warned or cautioned;

(ii) interdiction;

(iii) salary stoppage or half-salary;

(iv) demotion;

(v) dismissal;

(vi) vacate office,

(7) In the case of a breach under sections, 11, 15, 24, 25, 29, and 30, be liable to –

(a) be warned or cautioned;

(b) demotion;

(c) dismissal;

(d) vacate office.

(8) In the case of a breach under section 21, be liable to –

(a) be warned or cautioned;

(b) be reprimand;

(c) be surcharged;

(d) vacate office.

(9) In the case of a breach under section 58, have the excess or undeclared property confiscated and forfeited to the Government.

(10) In the case of a breach under sections 51 and 59, be dismissed from or vacate office.

(11) A State officer who has been dismissed or otherwise removed from office in accordance with Article 75(3) of the Constitution or this section is disqualified from appointment or election or holding any other state or public office for a period of ten years from the date of dismissal or removal from office.

(12) Where a State officer who is held to be in breach of the foregoing provisions tenders a public apology and takes corrective measures as directed by the President or the Speaker of the National Assembly or the Speaker of the Senate or the Speaker of a County Assembly or by the Ethics and Anti-Corruption Commission, the same apology and any corrective action taken shall be taken into consideration by a court of law or the responsible Commission or the Ethics and Anti-Corruption Commission or the appointing authority, in determining whether or not a State officer should remain in office.

PART VII—KENYA LEADERSHIP AND INTEGRITY FORUM

Establishment of the Kenya Leadership and Integrity Forum

68. (1) There is established an unincorporated body to be known as the Kenya Leadership and Integrity Forum.

Composition

69. The Forum is composed of representatives nominated by —

- (a) the national government
- (b) county governments;

- (c) Parliament;
- (d) the Judiciary;
- (e) private sector;
- (f) civil society;
- (g) professional organizations;
- (h) faith-based organizations;
- (i) media organizations; and,
- (j) labour organizations,

in accordance with procedures made by the Ethics and Anti-Corruption Commission.

General mandate of the Forum

70. The Forum is established, pursuant to Article 80(d) of the Constitution, to foster the promotion of leadership and integrity principles through multi-sectoral consultations, implementation, and peer-review among public, private, civil society, professional and religious and other sectors.

Functions of the Forum

71. The functions of the Forum are to -

- (a) develop, facilitate, monitor, review and evaluate the implementation of a national integrity plan;
- (b) plan, prioritize, mainstream and implement activities that build and enhance public-private partnership in leadership, integrity and good governance;
- (c) hold national and regional consultative forums for the implementation of integrity and governance programmes and initiatives;
- (d) develop and prescribe an integrity pledge

that commits members to promote good governance, ethics and integrity in their respective sectors;

- (e) share information and best practices on sectoral leadership and integrity issues;
- (f) advise sectors on the improvement of good governance, and,
- (g) perform any other functions conferred on the Forum by the Cabinet Secretary or the Ethics and Anti-Corruption Commission or under any law.

Secretariat

72. The Ethics and Anti-Corruption Commission shall provide secretariat and co-ordination services for the Forum and shall finance its operations.

PART VIII: GENERAL

Certificate of compliance with Chapter Six of the Constitution

3 73. (1) The Ethics and Anti-Corruption Commission may, on application by any person, issue a certificate to that person or any other interested person or institution, confirming that a particular State officer or a candidate for election or appointment to a State office is compliant or not compliant with some or all of the provisions of Chapter Six of the Constitution and this Act.

(2) Before issuing the certificate referred to under sub-section (1), the Commission may consult with law enforcement agencies, professional associations, and public bodies, including but not limited to —

- (a) the National Intelligence Service;
- (b) the Kenya Police Service;

- (c) the Kenya Revenue Authority;
- (d) the Chief Registrar of the Judiciary;
- (e) the Commission on Administrative Justice;
- (f) the Higher Education Loans Board;
- (g) the relevant professional bodies or commercial organization;
- (h) the Official Receiver;
- (i) the Registrar of Political parties;
- (j) the Independent and Electoral Boundaries Commission;
- (k) the Kenya National Audit Office;
- (l) the Kenya Citizens and Foreign Nationals Management Service;
- (m) the relevant responsible Commission, in the case of a serving or retired state officer or public officer;
- (n) any other body or institution, as may be prescribed by regulation.

(3) An interested body or person may directly request and receive such certificates as they may require, on a particular issue, from any of the law enforcement agencies or public bodies.

(4)A body that has the responsibility to issue a clearance certificate shall issue the certificate applied for within fourteen days of the receipt of the application.

(5)Where the Commission issues a certificate under sub-section (1) confirming that a particular State officer or a candidate for election or appointment to a state office is not compliant with one or all the provisions of Chapter Six of the Constitution or this Act, that State officer or candidate shall not be eligible for election or appointment to a state or public office.

(6) A certificate of compliance issued under this section shall be

valid for six months, from the date of issuance.

(7) In addition to the information received from the Ethics and Anti-Corruption Commission and the bodies listed under subsection (2), the recruiting or appointing body or person may give full consideration of, and opportunity for, information about the past record of a candidate for election or appointment to a state office, for purposes of ensuring that a person with a propensity to violate Chapter Six of the Constitution is not appointed or elected.

(8) For the purpose of this section “past record” includes but is not limited to –

- (a) past trial;
- (b) convictions;
- (c) acquittals; and
- (d) any current charges.

(9) The Ethics and Anti-Corruption Commission may, as necessary, issue guidelines on the vetting criteria and issuance of certificates of compliance with the provisions of Chapter Six of the Constitution and this Act, to persons seeking to be appointed or elected to a state office.

(10) A person who is dissatisfied with the decision of the Ethics and Anti-Corruption Commission or any other public body acting under this section may appeal to the High Court.

Special powers of
the Ethics and Anti-
Corruption
Commission.

74. (1) Where a State officer has refused or failed to make a declaration or clarification as provided for under this Act or has breached a provision of the Code, and no reasonable explanation has been made to the Ethics and Anti-Corruption Commission for failure to declare, the Commission shall have power to, by way of a certificate published in the Gazette, declare the State officer unfit to hold a State office.

(2) Where the Ethics and Anti-Corruption Commission has published a certificate under subsection (1), anything done by the concerned person as a State officer after the publication shall be

void and no citizen shall be bound to obey the person in relation to the performance of his or her duties as a State officer.

(3) A State officer who is the subject of a certificate under subsection (2) shall be disqualified from appointment or election to any state or public office for ten years from the date of the publication.

(4) The Ethics and Anti-Corruption Commission shall not publish a certificate under subsection (1) unless sixty days have elapsed from the date the Commission notified the relevant responsible Commission or public body or person exercising disciplinary powers over the concerned State officer.

Commission on
Administrative
Justice to investigate
inaction, etc.

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75. (1) Pursuant to Articles 59(2) (h) to (k), and 59(4) of the Constitution, and the Commission on Administrative Justice Act, the Commission on Administrative Justice may inquire into or investigate any form of inaction by the Ethics and Anti-Corruption Commission or responsible Commission or any other responsible person or public body, over the implementation of the Code.

(2) Where the Commission on Administrative Justice has carried out an inquiry or investigation, it shall forward a copy of its report to the concerned responsible Commission and the Ethics and Anti-Corruption Commission and publish or cause to be published, in the Gazette and at least one newspaper with nationwide circulation, the outcome of the investigation or inquiry and the recommended form of action.

Protection of
informers
witnesses

76. (1) A person who provides information to a responsible Commission or the Ethics and Anti-Corruption Commission or any other law enforcement agency –

(a) shall be protected and his or her identity shall not be disclosed; and

(b) may be rewarded and paid such amount of money as the Ethics and Anti-Corruption Commission may determine.

(2) A person who in good faith gives information to a responsible Commission or the Ethics and Anti-Corruption Commission or any

other law enforcement agency or assists any of such bodies in the exercise of their functions shall not be punished for any misdeed resulting from giving that information.

Protection of
officers
responsible
Commissions,.

77. Subject to this Act, no civil or criminal liability shall attach to an officer of a responsible Commission or the Ethics Anti-Corruption Commission acting on the instructions of the chief executive officer of a responsible Commission or the Ethics and Anti-Corruption Commission or the Commission on Administrative Justice, for anything done in good faith by that officer in the performance of his or her duties under this Act.

Maintenance of
registers

78. (1) Each register that is required to be opened and maintained by the Ethics and Anti-Corruption Commission or a responsible Commission or an authorized officer shall be kept for thirty years after the last entry in each volume of a register.

(2) The registers required under this Act shall be available for public inspection for free.

Application of
Chapter Six of the
Constitution and this
Act to public
officers generally.

79. (1) Pursuant to the provisions of Article 80(c) of the Constitution, the provisions of Chapter Six of the Constitution, as read with section 6(2) of this Act, and sections 16,21,24,31,33,36,39,45,54,60,68, and 69(7) of this Act, shall apply to all public officers as if they were State officers under this Act.

(2) For purposes of subsection (1), the relevant responsible Commission recognized or established pursuant to the provisions of section 3 of the Public Officer Ethics Act, shall enforce the extended provisions of this Act as if they were provided for under the Public Officer Ethics Act.

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Leadership
education and
training generally

80. (1) The Cabinet secretaries responsible for integrity, constitutional affairs, education and public service shall collaborate with the Ethics and Anti-Corruption Commission and the responsible Commissions for purpose of developing and overseeing the provision of long term education and training to all public officers and at all levels of education and the public service.

(2) The Kenya Institute of Administration, the Kenya Institute of Education and the Ethics and Anti-Corruption Commission, and

any other institution prescribed by regulation by the Cabinet Secretary, shall, in consultation with the Public Service Commission, the Parliamentary Service Commission, and the Judicial Service Commission, and any other concerned public body, facilitate the development of a curriculum for purposes of this section.

Regulations

81. (1) The Cabinet Secretary may, in consultation with the Ethics and Anti-Corruption Commission, and the responsible Commissions provided for under this Act, make regulations for the better carrying out of the provisions of this Act.

(2) The regulations made under this section may prescribe as a penalty for contravention of any of the regulations, imprisonment not exceeding twelve months or a fine not exceeding one million shillings.

Amendment of
schedules

82. (1) Save as is provided for elsewhere in this Act and subject to subsection (2), the Cabinet Secretary, may by notice in the Gazette amend a schedule to this Act.

(2) The Cabinet Secretary may not amend a schedule to this Act unless the amendment has been laid before, and has been approved by resolution of the National Assembly and the Senate.

32PART IX: TRANSITIONAL PROVISIONS AND AMENDMENTS

Transfer of financial
declarations to the
Ethics and Anti-
Corruption
Commission

33. 83. (1) Upon the commencement of this Act, all the financial declarations kept by responsible Commissions in accordance with the Public Officer Ethics Act for public officers who are State officers in accordance with the provisions of Article 260 of the Constitution and section 5 of this Act shall be transferred to the Ethics and Anti-Corruption Commission.

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(2) Notwithstanding that a State officer may have filed an initial or biennial declaration under the Public Officer Ethics Act, within sixty days of the commencement of this Act or such other time as may be determined by the Ethics and Anti-Corruption Commission, every State officer shall file a new declaration pursuant to the provisions of this Act.

Cap. 183 (3) Where there are cases pending before a responsible Commission relating declarations made under the Public Officers Ethics Act, the cases shall be taken up and continued by the responsible Commission or the Ethics and Anti-Corruption Commission in cases where a responsible Commission is not provided for.

Prime Minister and Deputy Prime Ministers
No. 4 of 2008 **34. 84.** (1) For purposes of this Act, the offices of the Prime Minister and Deputy Prime Ministers established in accordance with the provisions of the former Constitution and section 3 of the National Accord and Reconciliation Act, shall be deemed to be State offices, for the period between the commencement of this Act and the appointment of the first Cabinet under the new Constitution or the lapse of the National Accord and Reconciliation Act, whichever is earlier.

(2) For greater certainty, references to Cabinet Secretary or Minister or the Cabinet in subsection (1) shall be deemed to apply to the Prime Minister, and a Deputy Prime Minister.

Cabinet Secretaries and Principal Secretaries **35. 85.** Until the provisions of Articles 132(3) (a) (c), 152(2), and 155 of the Constitution are operationalised, wherever this Act assigns a function to a Cabinet secretary or a Principal secretary, those functions will be deemed properly exercised if carried out by a Minister or Permanent Secretary, as the case may be, appointed or assigned duties and responsibilities pursuant to the provisions of the former Constitution.

Amendment of the Public Officer Ethics Act,
Cap. 183. **36. 86.** The Public Officer Ethics Act is amended to exclude all holders of State offices under Article 260 of the Constitution and the designated State offices under this Act, from the application of the Act.

FIRST SCHEDULE

(s.3)

STATE OFFICES FOR WHICH RESPONSIBLE COMMISSIONS ARE RESPONSIBLE

1. The Parliamentary Service Commission is the responsible Commission for—

- (a) members of Parliament;
- (b) the Speaker of the National Assembly;
- (c) the Speaker of the Senate;
- (d) members of a commission to which Chapter Fifteen of the Constitution applies;
- (e) the Clerk of the National Assembly; and,
- (f) the Clerk of the Senate.

2. The Judicial Service Commission is the responsible Commission for —

- (a) the Chief Justice;
- (b) the Deputy Chief Justice;
- (c) judges;
- (d) the Chief Registrar;
- (e) the Deputy Chief Registrars; and
- (f) magistrates.

3. The Ethics and Anti-Corruption Commission, is the responsible Commission for -

- (a) the President;
- (b) the Deputy President;

- (c) Cabinet Secretaries;
- (d) the Attorney General;
- (e) the Secretary to the Cabinet;
- (f) Principal secretaries;
- (g) the Director of Public Prosecutions;
- (h) the Controller of Budget;
- (i) the Auditor General;
- (j) the Chief of the Kenya Defence Forces;
- (k) a Commander of a service of the Kenya Defence Forces;
- (l) the Director-General of the National Intelligence Service;
- (m) the Inspector-General and the Deputy Inspectors-General of the National Police Service;
- (n) ambassadors, high commissioners or consular representatives of the Republic;
- (o) the Governor and Deputy Governor of the Central Bank of Kenya;
- (p) Secretaries or Chief Executive Officers of Constitutional Commissions;
- (q) the Commissioner General of the Kenya Revenue Authority;
- (r) the Commissioner of Prisons;
- (s) the Director of the National Youth Service;
- (t) the Director of the Kenya Wildlife Service;

- (u) the Chief Executive Officers/Accounting Officers of a state office and public body, other than a constitutional commission or a state corporation;
- (v) Chairpersons and members of a board of a State Corporation;
- (w) Chief Executive Officer / Accounting Officer of a state corporation;
- (x) the Registrar of Political Parties;
- (y) the Director General of the National Environmental Management Authority;
- (z) the Director of the Kenya Forestry Service; and
- (aa) member of the county assembly including, for greater certainty, the Governor, the speaker of the county assembly and a member of a county executive committee.

SECOND SCHEDULE

(s.5)

DESIGNATED STATE OFFICES

- 1.** Speaker of the National Assembly.
- 2.** Speaker of the Senate.
- 3.** Clerk of the National Assembly.
- 4.** Clerk of the Senate.
- 5.** Chief Registrar of the Judiciary.
- 6.** Deputy Chief Registrar of the Judiciary.
- 7.** Ambassador or High Commissioner or consular representative of the Republic.
- 8.** Governor and Deputy Governor of the Central Bank of Kenya.
- 9.** Secretary/Chief Executive Officer of a Constitutional Commission.
- 10.** Commissioner General, Kenya Revenue Authority.
- 11.** Commissioner of Prisons.
- 12.** Director of the National Youth Service.
- 13.** Director of the Kenya Wildlife Service.
- 14.** Chief Executive Officer/Accounting Officer of a state office or a public body.
- 15.** Chairperson and member of a board of state corporation.
- 16.** Chief Executive Officer / Accounting Officer of a state corporation.

- 17.** The Registrar of Political Parties.
- 18.** Director General of the National Environmental Management Authority.
- 19.** Director of the Kenya Forestry Service.

THIRD SCHEDULE

(s. 17(11))

REGISTRABLE INTERESTS

1. Directorships in public or private companies, whether or not remunerated directly or indirectly
2. Remunerated employment (including office, trade, profession or vocation which is remunerated or which the State officer has any pecuniary interest)
3. Securities (shares, bonds, debentures or any other similar holding) in a company or enterprise or undertaking the aggregate nominal or market value of which exceeds a prescribed value while the state officer was in office.
4. Contracts for supply of goods and services.
5. Plans or expectations for or offers of future employment
6. Public affairs advice and services to clients
7. Shareholdings (amounting or not amounting to a controlling interest)
8. Land and property
9. Sponsorship (from companies, trade unions, professional bodies, charities, universities or other organizations or individuals)
10. Travel facilities and overseas visits (made by a State officer or his or her spouse or child substantially catered for by the office of the State officer)
11. Gifts, benefits and hospitality (to a State officer or his or her spouse or partner or child or any other material benefit of a prescribed value, from a company, organization or person within Kenya or overseas, which relates substantially to the membership of a state office to a state office or Parliament or County Assembly).

12. Miscellaneous financial interests (not falling within the above categories but which a reasonable member of the public would think might influence the conduct of a State Office in his office).
13. Non-financial interests (which may reasonably be thought to affect the way a member discharges his or her duties in a State Office (such as unremunerated directorships; membership of public bodies such as hospital trusts, governing bodies of universities, colleges or schools, and other spheres of government; trusteeships, etc).
14. Pending civil and criminal cases touching on the State officer or his or her spouse, child, business associate or firm.
15. Possession of dual citizenship or pending applications for dual citizenship and the status of such applications.

FOURTH SCHEDULE

(43(4))

APPROPRIATE AUTHORITIES

The appropriate authority for the purpose of section 43 is –

- (a) in the case of the President or Deputy President, the Speaker of the National Assembly;
- (b) in the case of a superior court judge, magistrate, Chief Registrar, and Deputy Chief Registrar, the Judicial Service Commission;
- (c) in the case of a Cabinet Secretary, the National Assembly, or (without reason) President;
- (d) in the case of the Attorney-General, the President;
- (e) in the case of a member or secretary of a Commission under chapter 15, the Speaker of the National Assembly ;
- (f) in the case of the Auditor General or the Controller of Budget, the Speaker of the National Assembly;
- (g) in the case of the Director of Public Prosecutions, the Public Service Commission;

- (h) in the case of the Speaker of either house of the national Parliament, the majority and minority leaders in the relevant house;
- (i) in the case of the Speaker of a County Assembly, the leaders of the main parties in the assembly;
- (j) in the case of the governor of a county, to the Speaker of the County Assembly;
- (k) in the case of a member of a County Executive Committee, the Governor, and the Speaker of the County Assembly;
- (l) in the case of a member of the National Assembly other than the Speaker, the Speaker of the National Assembly;
- (m) in the case of a Senator other than the Speaker, the Speaker of the Senate;
- (n) in the case the Clerk of the National Assembly, the Parliamentary Service Commission;
- (o) in the case of the Clerk of the Senate, the Parliamentary Service Commission;
- (p) in the case of the Chief Registrar and the Deputy Chief Registrar of the Judiciary, the Judicial Service Commission;

- (q) in the case of an Ambassador or High Commissioner or Consular representative of Kenya, the President;
- (r) in the case of the Governor or Deputy Governor of the Central Bank of Kenya, the President;
- (s) in the case of the Registrar of Political Parties, the Speaker of the National Assembly;
- (t) in the case of a member of a County Assembly, other than the Speaker, the Speaker of the County Assembly;
- (u) in the case of a chairperson, member or chief executive officer of a statutory body or state corporation or any other public body, the appointing authority;
- (v) in the case of a public officer pursuant to the provisions of Article 80(c) of the Constitution and section 79 of this Act, the relevant responsible Commission;
- (w) in any other case where the appropriate authority is not specified, the Speaker of the National Assembly.

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FIFTH SCHEDULE

(s.48 (3))

DECLARATION OF INCOME, ASSETS AND LIABILITIES

Part I Information on State officer

1.) Personal Information *(Please tick (✓) where appropriate)*

Declaration Status						
	<input type="checkbox"/> Initial	<input type="checkbox"/> Annual	<input type="checkbox"/> Final			
Name of State Officer (Self)						
Surname		First Name		Other Names		
ID No.	Employee/Co-operative Society No.	PIN	Passport No.		Expiry Date of Passport	
Birth Information						
Date of birth		Place of Birth		Nationality		
County	Home area	District / City/Urban	Constituency	Ward/ Estate	Location/ Road	Sub-location/ House No.
Sex		Marital Status				
Male <input type="checkbox"/> Female <input type="checkbox"/>		Married <input type="checkbox"/> Single <input type="checkbox"/> Other _____				
Address						
Postal address	Residence(Estate/Location)	Telephone contacts	E-mail address	Other addresses		
Employment Information						
Name of employer	Job Group/Grade/Scale	Date of first appointment		Date of appointment	present	
		56				
Designation		Position		Rank		
Work Station		District		County		
Nature of employment						
Constitutional <input type="checkbox"/>	Permanent <input type="checkbox"/>	Temporary <input type="checkbox"/>	Contractual <input type="checkbox"/>	Other (specify) _____		

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2.) Information on spouse(s)

	Surname	First name	Other names	ID No.	PIN	Occupation

3.) Particulars of dependent children under the age of 18 years

	Surname	First name	Other names	Date of Birth

Part II Income, Assets and Liabilities

(1) Income

This includes but is not limited to–

- (a) General Income;
- (b) Business Income (e.g. from companies, partnerships etc)

Type of income	Self	Spouse(s)	Dependent(s)	Total (Kshs.).

(2) Financial assets

The Leadership and Integrity Bill, 2012

These include but are not limited to-

- (a) Cash in Banks and Financial Institutions;
- (b) Bonds, Stock and Shares(including shares in cooperatives, private and public companies)

	Name and Branch of bank/Financial Institution / Organization in which held	Account Name/ CDSC account/ Share Certificate/Sacco Membership number	Account Number/ CDSC account/ Share Certificate/Sacco Membership number.	Balance as at the beginning of statement period (Kshs.) /No. of Shares/ Acquisition value (Kshs.)	Balance as at statement date (Kshs.)/ Current Market value (Kshs.)
Self					
Spouse(s)					
Dependent(s)					

a) Foreign bank accounts

Account name.	Account number	Type of account	Name of the bank or financial institution;	Physical and postal and addresses of the bank or financial institution	Outstanding amount as at statement date	Country where the account is held	Purpose for which the account is maintained	Date account was opened	Account balance as of the statement date of the year of declaration.

b) Movable and Immovable assets.

These include but are not limited to-

- (i) Houses, Land, Leasehold interests, Buildings;
- (ii) Motor vehicles, plant and machinery, water vessels, generating plant, aircraft;
- (iii) Other assets (e.g. assorted household goods, jewellery, pets, artifacts and other works of art).

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	Location				Acquisition Details			
	Description e.g. acreage, g. Make/Type, Capacity/ Size	Identification-on particulars e.g. LR. No. Registration Number, serial number.	Location of asset	District/ County/ Country	Date Acquired	Means of acquisition (gift, purchase, mortgage, inheritance etc)	Value at acquisition (Kshs.)	Current market price (Kshs.)
Self								
Spouse(s)								
Dependent(s)								

c) Debtors

	Nature of debt (money, stock shop etc)	Name of debtor	Nationality of debtor	Date incurred	Outstanding amount as at statement date Current market price (Kshs.)
Self					
Spouse(s)		59			
Dependent(s)					

(c) Intellectual property

	Description	Certificate No./Registration No./Identifying No.(where applicable)	Approximate value Current market price (Kshs.)
Self			
Spouse(s)			
Dependent(s)			

2.) Liabilities

These include but are not limited to-

- a.) Liabilities in banks / financial institutions (Business loans, personal loans, overdraft, mortgage, SACCO loans, etc)
- b.) Other Liabilities (rent, levies, school fees, license fees, utility bills etc)
- c.) Donations and charitable contributions

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	Description	Creditor name and address	Date incurred	Nationality of creditor	Location of security	Amount advanced (Gross value of credit) (Kshs.)	Outstanding amount as at statement date Current market price (Kshs.)
Self							
Spouse(s)							
Dependent(s)							

Part III: Additional Information

Give any other information you may consider relevant and useful to your declaration

.....

Part IV: Declaration

I,, solemnly declare that the information I have given above is true, complete and correct to the best of my knowledge.

Date :

Signature of State officer:

FOR OFFICIAL USE

1. Date of declaration :
2. Date of receipt of declaration :

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3. Action taken :
- (a) Acknowledgement Slip issued:
 - (b) Filed :
 - (c) Sent for verification / clarification:
.....
.....
.....
 - (d) Comments
.....
.....
.....
.....

Name of Receiving Officer

Signature

DECLARATION OF INCOME, ASSETS AND LIABILITIES

ACKNOWLEDGEMENT SLIP

Name of responsible Commission:.....

Name of State officer.....

Personal/ Employee No :

Address :

Date of submission :

Comments :
.....
.....
.....

Name

For: (The Ethics and Anti-Corruption Commission)

Signature :

The Leadership and Integrity Bill, 2012

Date :

MEMORANDUM OF OBJECTS AND REASONS

The objective of this Bill is to make provision for leadership and integrity standards applicable to State officers. The focus on State officers is predicated upon the provisions of Chapter Six of the Constitution and the assumption that State officers ordinarily hold the highest levels of responsibility in terms of directing the management of public affairs in the country. The Bill is also informed by the provisions of various regional and international instruments, such as the African Union Convention on Preventing and Combating Corruption, the United Nations Convention against Corruption, and the United Nations International Code of Conduct for Public Officials (12 December 1996).

Thus, the Bill seeks to enhance the legal and institutional framework for the development and application of good leadership and integrity standards in the management of public affairs. Further, it seeks to take on board and give effect to the requirements of the Constitution of Kenya, especially Chapter Six thereof, as well as the provisions of the Public Officer Ethics Act, 2003. The proposed Act vests various responsibilities to the responsible Commissions established under Clause 3 of the Bill, which are: the Parliamentary Service Commission; the Judicial Service Commission, and the Ethics and Anti-Corruption Commission. However, the Ethics and Anti-Corruption Commission is the default responsible Commission and the main actor in the implementation of the Act.

The rationale for the establishment of the responsible Commissions is predicated upon the responsibilities given to various public bodies to handle administrative issues in accordance with Article 75(2) of the Constitution. The responsible Commission designated for the political class at the national and county governments is the Parliamentary Service Commission. This is based on recognition of the role of Parliament under Article 94 and the responsibilities of the Parliamentary Service Commission under Article 127, and more particularly under 127(6)(e)(ii) of the Constitution. The designation of the Judicial Service Commission as the responsible Commission for judicial officers is based on the provisions of Articles 159, 160, and 172 of the Constitution. The Ethics and Anti-Corruption Commission is designated as the responsible Commission for State officers within the Executive arm of Government, pursuant to the provisions of the Article 79 of the Constitution.

The proposed law seeks establish a separate statutory framework for a Leadership and Integrity Code for all State officers that is distinct from the Code of Conduct and Ethics prescribed for other public officers and others under the Public Officer Ethics Act. The new law will also facilitate the extension of the application of the provisions of the Act (Leadership and Integrity Act, 2012) and Chapter Six of the Constitution to various categories of public officers who are designated as State officers for purposes of the Act. The implementation of the extended provisions will be overseen by the responsible Commissions provided for under the Public Officer Ethics Act. This distinction and separate treatment is especially important given that most of the holders of the State offices have security of tenure while others are elected.

The implementation of the Act and the Codes established thereunder will be principally in the hands of the responsible Commissions, while the Ethics and Anti-Corruption Commission will provide the necessary enforcement framework in accordance with Article 79 of the Constitution. Responsible Commissions are given a significant role to play since ordinarily, they are the ones that oversee issues of discipline and accountability of the State officers they are responsible for.

The Bill also proposes to establish a Kenya Leadership and Integrity Forum, which is multi-sectoral forum, drawing membership from public, private, civil society, professional and religious sectors, among others, for purposes of ensuring a concerted approach towards planning and peer-review of implementation of ethics, integrity and anti-corruption programmes, in line with the provisions of Article 80(d) of the Constitution. It is built on the successes witnessed through the work and achievements of the Kenya Integrity Forum, which operates under the aegis of the Ethics and Anti-Corruption Commission.

It is also noteworthy that the Ethics and Anti-Corruption Commission will be the central depository of all declaration of income, assets and liabilities of State officers, for ease of analysis, verification and public access. This is a significant departure from the wealth declaration system under the Public Officer Ethics Act, which is essentially in the hands of responsible Commissions, and whose performance has been somewhat lacklustre owing to little or no technical capacity. Granted that State officers are comparatively fewer, it is expected that the objects of the wealth declaration process as an anti-corruption strategy will be fully met.

In addition, the proposed legislation is expected to facilitate the efficient and effective application of the Leadership and Integrity Code to the State officers and enable proper implementation of the law as it applies to State officers. In order to ensure a systematic implementation of the Code, responsible Commissions are mandated to establish Specific Leadership and Integrity Codes, which should borrow from the general Code provided for under the Act, but also deal with specific issues within the mandate of the concerned responsible Commission.

Part I (clauses 1-5) deals with Preliminary issues

Clause 1 gives the citation of the proposed Act.

Clause 2 defines various words and expressions used in the Bill. Some of the terms defined under this Part are “Government” (to include both national and county government), “spouse” to cover formally married partners as well as persons in “Common law” marriages, and “servant leadership”, among others.

Clause 3 determines the responsible Commission for various categories of State officers. The responsible Commissions recognized under the proposed Act are: the Parliamentary Commission; the Judicial Service Commission, and the Ethics and Anti-Corruption Commission. The default responsible Commission for any unspecified State officer is the Ethics and Anti-Corruption Commission.

Clause 4 provides for the delegation of some functions by the Ethics and Anti-Corruption Commission, to other responsible Commissions or public bodies.

Clause 5 provides for the designation of certain public offices as state offices for purposes of the proposed Act. It also provides for a Schedules (First Schedule), which be amended by the Cabinet Secretary to provide for additional state offices.

Part II (Clauses 6-36) contains the General Leadership and Integrity Code

Clause 6 establishes the General Leadership and Integrity Code for State officers, and incorporates the provisions of Chapter Six of the Constitution on Leadership and Integrity.

Clause 7 prescribes the various constitutional values, principles and requirements which every State officer has to meet. These are drawn from: Articles 10, 73, 75, 173, 232 and Chapter Four of the Constitution.

Clause 8 provides that a state office is a position of public trust and the authority vested on a State officer should be exercised in the best interest of the people. This provision is based on Article 73(1) of the Constitution.

Clause 9 requires that State officers should discharge their duties and conduct their affairs in a transparent and accountable manner. This provision is predicated upon Article 73(4) of the Constitution.

Clause 10 provides that a State officer should take responsibility for the foreseeable consequences of their actions, in accordance with Article 73(2) (d) of the Constitution.

Clause 11 requires State officers to perform their duties efficiently and honestly, in accordance with the provisions of Article 73(2) (c) of the Constitution.

Clause 12 sets out the leadership qualities and requirements of persons being elected or selected to serve in state offices as well as the responsibilities of State officers overseeing such selection or election. This provision is based on the provisions of Article 72(2) (a) of the Constitution. The Clause also proposes the limitation (in accordance with Article 24 of the Constitution) of the political rights (under Article 38(3) of the Constitution) of persons who have been convicted of past economic crimes from being elected or appointed to a State office.

Clause 13 provides for professionalism in the discharge of state duties in a manner that maintains public confidence in the integrity of a state office, as envisioned by Article 73(1) of the Constitution. It also provides that a person who has been debarred by their professional body for breach of a Code of Conduct and Ethics, of their professional body, may also be barred from election or appointment to a state office until the debarment is lifted.

Clause 14 provides for financial integrity and prohibits State officers from using their positions to improperly enrich themselves or others. The Clause is based on the provisions of Articles 73(2) (b), and 76(2) (b) of the Constitution.

Clause 15 sets out the conditions under which a State officer may or may not accept gifts and the manner of disposal for various kinds of gifts. The provision seeks to operationalise Article 76(1) of the Constitution. The provision applies to State officers and members of their family. The provision requires that public organizations maintain a gifts register – for gifts received or given out by a State office or State officer. It also allows the Ethics and Anti-Corruption Commission to impose further restrictions on acceptance of gifts by State officers.

Clause 16 prohibits unlawful acquisition of land by a State officer or another person. The provision seeks to strengthen the constitutional prohibitions against unlawful acquisition of property, as exemplified by Article 40(6) of the Constitution.

Clause 17 provides for the manner in which situations of conflicts of interest should be dealt with, for various categories of State officers, especially for Members of Parliament, and the County Assembly. It also requires responsible Commissions to maintain a Register of Conflicts of Interest, which is open to the public. Details of the registrable interests are provided for under the 3rd Schedule to the proposed Act.

Clause 18 prohibits State officers from using state assets, property or facilities to solicit public contributions for unofficial purposes or to participate in a public collection of funds in a manner that would adversely affect the impartiality of a concerned State officer.

Clause 19 prohibits the opening or maintenance of a foreign bank account by a State officer unless, for compelling reasons, they have applied to, and have been authorized to open or maintain such accounts by the Ethics and Anti-Corruption Commission. The Clause seeks to address the requirements of Article 76(2) (a) of the Constitution. The Commission is required to open and maintain a register of opened, maintained and closed foreign bank accounts of State officers. The section also provides for timelines within which serving or newly appointed or elected State officers should close their foreign bank accounts.

Clause 20 prohibits State officers from serving as agents of foreign governments or organizations or individuals in a manner that would adversely affect the interests of Kenya.

Clause 21 provides requirements that a State officer should protect the property entrusted to their care and requires a State officer to return such property to the issuing authority, at the end of their appointment or election term.

Clause 22 prohibits the misuse, by a State officer, of official information, which is not yet made public, for furthering personal or financial or private interests.

Clause 23 prohibits State officers from holding offices or serving as an agent in a political party or movement or from declaring open political support or opposition to a political party. Nonetheless, the President, the President, Governor, Deputy Governor, a Member of Parliament or of a County Assembly are exempted from those prohibitions. The provision is based on Article 77(2) of the Constitution.

Clause 24 provides that State officers should not engage in corrupt or unethical practices or demonstrate partiality, tribalism, nepotism, religious bias or favouritism in the discharge of their duties.

Clause 25 requires that a State officer who is required to give advice should honest, accurate and impartial advice.

Clause 26 prohibits full-time State officers from engaging in any other form of employment, whether full-time or part-time. It also requires disclosure of expectations for or offers for future employment which may raise a situation of conflict of interest. This provision is based on Article 77(1) of the Constitution.

Clause 27 prohibits a State officer from knowingly giving false or misleading information to any person.

Clause 28 reflects the provisions of Article 78 of the Constitution and prohibits the holding of dual citizenship by a State officer, save for those provided for under Article 78(3) of the Constitution, and requires that a person who acquires the citizenship of another country while still serving as a State officer should renounce the second citizenship within ninety

days of its grant. It further requires that the renunciation certificate be filed with the relevant responsible Commission and certified copies of the certificate supplied to the Ethics and Anti-Corruption Commission, the National Intelligence Service and the Director General of the Kenya Citizens and Foreign Nationals Service.

Clause 29 requires State officers to respect and promote the respect of, and care for the family, children, the youth, old persons, vulnerable persons and marginalized groups, in line with Articles 45, 53,54,55,56 and 57 of the Constitution.

Clause 30 requires State officers to promote national unity and respect national diversity.

Clause 31 provides that a State officer should conduct their private affairs in a manner that maintains public confidence in the integrity of his or her office. In addition, it requires a State officer to use official language while transacting official business except where circumstances may dictate otherwise.

Clause 32 prohibits a State officer from sexually harassing any person. It defines the ingredients of “sexual harassment” and “conduct of a sexual nature”.

Clause 33 prohibits a State officer from bullying another officer or person. It also provides the constituents of “bullying”.

Clause 34 requires every State officer to file their declaration of income, assets and liabilities, in accordance with Part V of the proposed Act.

Clause 35 sets out the circumstances under which a State officer will be considered to have contrived the Code, if they have acted through others to do anything that is prohibited under the Code.

Clause 36 provides a mechanism for a State officer to report improper or unethical or improper orders, to the Ethics and Anti-Corruption Commission.

Part III (clauses 37-39) provide for the establishment of Specific Leadership and Integrity Codes.

Clause 37 requires by each responsible Commission to establish a specific Leadership and Integrity Code, for State officers within their jurisdiction. The specific Code should include all the requirements set out in the general Leadership and Integrity Code (under Part II) but may also contain additional requirements as may be determined by the responsible Commission.

Clause 38 provides that until a responsible Commission has established a Specific Code, the general Code set out under Part II of the proposed Act shall continue to apply.

Clause 39 requires that the specific Leadership and Integrity Code be approved by the Ethics and Anti-Corruption Commission, and subsequently published in the Kenya Gazette. Each responsible Commission is expected to publish their Code within 90 days of the commencement of the proposed Act.

Part IV (Clauses 40-49) provides for the enforcement of the Leadership and Integrity Code.

Clause 40 provides for the application of the Code in appointments and elections. It seeks to bar persons who have been in breach of the Code or their respective Codes, in case of serving public officers, from being appointed or elected to a state office.

Clause 41 provides for the manner in which complaints, over the breach of the Code by a State officer, may be lodged and investigated. Investigations may be made at the initiative of a responsible Commission or the Ethics and Anti-Corruption Commission or the Commission on Administrative Justice or following a complaint by any person. The body to which the matter is reported may investigate the matter or refer it to an appropriate authority for investigations. A complainant is entitled to be heard before the complaint is dismissed by the body seised of the matter. A State officer who is under investigation will be required to step aside pending the conclusion of investigations.

Clause 42 provides for the manner in which disciplinary action may be taken against a State officer who is found to be in breach of the Code. Where the responsible Commission or the Ethics and Anti-Corruption Commission has no power under the Constitution to take disciplinary

action against the State officer, it is supposed to refer the matter to body or person who is vested with power to discipline the State officer.

Clause 43 requires that any disciplinary action that is taken against a State officer in accordance with Clause 42 of the proposed Act, should be made public through the Kenya Gazette and at least one daily newspaper with national circulation.

Clause 44 provides for circumstances under which, after an investigation, a person or responsible Commission may refer matters, for further consideration and appropriate action, to the Ethics and Anti-Corruption Commission, in case of civil matters, and to the Director of Public Prosecutions, in the case of criminal matters. Where the Ethics and Anti-Corruption Commission investigates a matter and it finds that it has no power under the proposed Act or the Ethics and Anti-Corruption Commission Act, 2011 or the Anti-Corruption and Economic Crimes Act, 2003, it is required shall refer the matter to an “appropriate authority” as defined under Clause 44(6) of the proposed Act. For instance, the “appropriate authority”, in case of breach by the President or Deputy President, is the Speaker of the National Assembly; in the case of a judge or magistrate, the “appropriate authority” is the Judicial Service Commission.

Clause 45 provides for the manner in which any person or a State officer may seek an advisory opinion from the Ethics and Anti-Corruption Commission, over an issue giving rise to an ethical dilemma.

Clause 46 requires a responsible Commission or law enforcement agency that commences investigations over an alleged breach of the Code by a State officer, to notify the Ethics and Anti-Corruption Commission of such an investigation.

Clause 47 proposes an orientation programme on leadership and integrity for all State officers, six months before or after assuming office. The Cabinet Secretary may, by notice in the Gazette, extend the time for compliance by up to six months.

Clause 48 requires each responsible Commission to submit reports to the President and the National Assembly, on the performance of its functions under the proposed Act.

Clause 49 requires the Ethics and Anti-Corruption Commission to prepare and submit to the President and the National Assembly, an annual report containing all the relevant information on the enforcement of, and compliance with the provisions of the proposed Act.

Part V (Clauses 50-63) on declarations of income, assets and liabilities by State officers.

Clause 50 requires a State officer to submit to the Ethics and Anti-Corruption Commission, the income, assets and liabilities of himself or herself, spouse and children, within 30 days of being elected or appointed and sworn-in, and an annual declaration and a final declaration, within 30 days of ceasing to be a State officer. The form of the declaration is set out in the Second Schedule to the proposed Act. The form may be completed and submitted in a physical or electronic or any other prescribed format. A responsible Commission may freely access or obtain, from the Ethics and Anti-Corruption Commission, a copy of a declaration of a State officer within its jurisdiction.

Clause 51 provides for declarations by nominees for elective positions. The declarations will be made to the Ethics and Anti-Corruption Commission and will relate to the income, assets and liabilities of a State officer. The Commission is required to issue compliance certificates to persons who are compliant and advise the Independent Electoral and Boundaries Commission accordingly. The Commission (Independent Electoral and Boundaries Commission) is authorized to publish the contents or a summary of the contents of declarations filed by nominees for the post of President, Deputy President, Governor and Deputy Governor.

Clause 52 specifies the statement dates for purposes of the initial, annual and final declarations of income, assets and liabilities.

Clause 53 sets out the declaration period for the initial, annual and final declaration of income, assets and liabilities of a State officer.

Clause 54 provides for *ad hoc* declarations. It empowers the Ethics and Anti-Corruption Commission to submit a declaration at any other time as the Commission may consider necessary.

Clause 55 allows a responsible Commission or the Ethics and Anti-Corruption Commission to seek clarifications, from a State officer, regarding his or her declaration of income, assets and liabilities.

Clause 56 provides that it is the responsibility of a State officer to ensure that the information he or she provides in a declaration or clarification is correct.

Clause 57 provides for public access to the declaration information of a State officer, subject to making an application to the Ethics and Anti-Corruption Commission. The applicant is required to demonstrate legitimate interest and good cause in the furtherance of the objectives of the Chapter Six of the Constitution and the proposed Act. A public body seeking information under this provision is deemed to have complied with those conditions – relating to legitimate interest and good cause. The affected State officer has a right to make a representation regarding the application to access his or her declaration or clarification.

Clause 58 makes provision for custody of declarations and retention of the information contained in declarations. It makes the Ethics and Anti-Corruption Commission the central depository for purposes of receiving, storage, access, analysis and verification of declarations by State officers. However, the Commission may delegate some of those functions to other responsible Commissions. The information collected from a State officer is supposed to be kept for up to 30 years after the State officer ceased to be in office.

Clause 59 provides for the disposal of the information collected under the Act regarding the declaration of income, assets and liabilities of a State officer. After the initial thirty years, the information should be transmitted to the Kenya National Archives and Documentation Service, for appropriate action in accordance with the provisions of the Public Archives and Documentation Service Act, Cap. 19.

Clause 60 provides that a State officer who is found to have disproportionate income compared to his or her known sources of income and the State officer cannot satisfactorily account for it, the State officer will be taken to be in breach of the provisions of the proposed Act. The Ethics and Anti-Corruption Commission and a concerned responsible Commission may make enquiries or institute an inquiry into the matter, and seek information from the relevant authorities.

Clause 61 deals with cases where a State officer fails to declare their income, assets and liabilities contrary to the provisions of the proposed Act. The Ethics and Anti-Corruption Commission is empowered to raise the matter with the relevant responsible Commission or appointing authority, for purposes of initiating disciplinary action in accordance with the provisions of Clause 43.

Clause 62 grants the Ethics and Anti-Corruption Commission various responsibilities for purposes of ensuring effective enforcement of the proposed Act.

Clause 63 empowers the Ethics and Anti-Corruption Commission to make administrative procedures for the implementation of Part V of the Act. The administrative procedures are supposed to be made within 90 days of the commencement of the proposed Act.

Part VI (clauses 64-69) relates to the proposed offences and penalties under the proposed Act.

Clause 64 provides that a breach of the Code will constitute a misconduct in respect of which a State officer may be subjected to the applicable procedures for removal or dismissal. Where the procedure for removal or dismissal is prescribed by the Constitution or any other law, that procedure shall be followed. However, if the Ethics and Anti-Corruption Commission finds that the procedures are inefficient or ineffective or not in the public interest, it will have power to initiate proceedings in the High Court, to compel the concerned body or person to perform their duties as per the law. While granting orders in such an application, the High Court may declare that the concerned State officer is unfit to hold a state or public office.

Clause 65 criminalises obstruction or hindering of persons acting under this Act and prescribes a fine of up to five million or imprisonment for a term of up to five years or both, upon conviction.

Clause 66 criminalises the act of divulging information of information acquired pursuant to the provisions of the proposed Act, and proposes a fine of up to five million shillings or imprisonment for a term of up to five years or both, upon conviction.

Clause 67 provides for various offences relating to declarations of income, assets and liabilities, such as failure to submit a declaration or a clarification or late submission of a declaration or providing false or misleading information or destroying information collected under Part V of the proposed Act. The penalty, upon conviction is a fine of up to one million shillings or imprisonment for a term not exceeding one year or both.

Clause 68 provides for a mechanism for forfeiture and compensation, in the case of property that is obtained by a State officer in breach of the provisions of the Act. Pending the determination of the matter or the conclusion of any appeal process, the property will vest in the Ethics and Anti-Corruption Commission or an agent appointed by the Commission. For purposes of compensation, the interest rate payable is 12 per cent per annum payable from the day the property or money was acquired. Although the recovered funds are payable into the Consolidated Fund, the National Assembly may, by a resolution, authorize the Ethics and Anti-Corruption Commission to utilize up to 30 per cent of the monies or properties recovered, for purposes of addressing the economic and social rights provided for under Article 43 of the Constitution.

Clause 69 prescribes a range of penalties for various breaches of some of the provisions of the proposed Act. The applicable penalty will be determined by the issue as to whether the concerned State officer enjoys constitutional or statutory protection from removal or dismissal or criminal or civil action while in office or whether the State officer is an appointed State officer who can be disciplined administratively. Some of the proposed penalties are: removal; censure; dismissal; recall; surcharge; reprimand; warning; caution; interdiction; salary stoppage or half-salary; demotion; vacation of office; banishment from holding a state or public office for at least ten years. However, the provision treats a public apology and restitution as mitigating circumstances for purposes of determining whether or not a State officer should or should not be removed from office.

Part VII (Clause 70) on the Kenya Leadership and Integrity Forum

Clause 70 establishes an unincorporated multi-sectoral consultative forum, to be known as the Kenya Leadership and Integrity Forum. The Forum will draw membership from the national and county governments

and various sectors such as: the Legislature; the Judiciary; Private Sector; Civil Society; Professional Organisations; Media, and Labour. The Forum is established to facilitate the realization of the provisions of Article 80(d) of the Constitution, through the fostering the promotion of leadership and integrity principles across all sectors in the country. The Ethics and Anti-Corruption Commission shall provide secretariat and co-coordination services of the activities of the Forum and finance its operations.

Part VIII (Clauses 71-80) contains General provisions

Clause 71 sets out the mechanism for issuance of certificates of compliance with the provisions of Chapter Six of the Constitution. The Ethics and Anti-Corruption Commission will issue such certificates to candidates seeking election or appointment to a state office. The institutions to be consulted by the Ethics and Anti-Corruption Commission before issuing a certificate are: the Kenya Revenue Authority; the Kenya Police; The National Intelligence Service; the Chief Registrar of the Judiciary; the Higher Education Board; the Official Receiver; the Registrar of Political Parties; the Independent Electoral and Boundaries Commission; the Kenya National Audit Office; the Kenya Citizens and Foreign Nationals Management Service; the relevant responsible Commission (for a serving State officer or public officer), and any other body or institution, as may be prescribed by regulation. The information sought will include, among other things, past record of the candidate (past trials, convictions, acquittals and any current charges). The certificate will be valid for six months. A person who is dissatisfied with the results of vetting process may appeal to the High Court.

Clause 72 provides special powers to the Ethics and Anti-Corruption Commission to issue certificates and publish them in the Kenya Gazette, barring persons who have not complied with the wealth declaration requirements of Part V of the proposed Act, from continuing to discharge their official duties.

Clause 73 provides for a watch-dog role for the Commission on Administrative Justice, established pursuant to the provisions of Article 59(2)(h) to (k) of the Constitution, and the Commission on Administrative Justice Act, 2011 (Act No. 23 of 2011), to inquire into allegations of inaction by the Ethics and Anti-Corruption Commission or responsible Commission or any other responsible person or public body over the implementation of the Code.

Clause 74 offers legal protection to informers and witnesses, who provide information necessary for the implementation of the proposed Act.

Clause 75 provides for the protection of officers working for the Ethics and Anti-Corruption Commission, the Commission on Administrative Justice or of a responsible Commission for work done in good faith for purposes of implementing the provisions of the proposed Act.

Clause 76 provides that any register that is required to be opened and maintained by the Ethics and Anti-Corruption Commission or a responsible Commission be kept for a period of not less than thirty years after the last entry in each volume of a register. The registers will also be open to public inspection for free.

Clause 77 provides for the extension of the application of some provisions of the proposed Act to public officers generally, in line with the provisions of Article 80(c) of the Constitution. The extended provisions are: Chapter Six of the Constitution as read with section 6(2) of the proposed Act, and clauses 16,19,22,29,30,33,36,45,54,60,68, and 69(7) of the proposed Act will apply to all public officers as if they were State officers under this Act. The responsible Commissions provided for under Section 3 of the Public Officer Ethics Act (Cap. 183) are expected to enforce the extended provisions to all officers within their jurisdiction.

Clause 78 provides for long term provision of leadership education and training to all public officers and at all levels of education and the public service. It seeks to establish a sustainable mechanism for the development of good leadership and the promotion of the principles of leadership and integrity, as provided for under Article 80(d) of the Constitution.

Clause 79 makes provision for the Cabinet Secretary, in consultation with the Ethics and Anti-Corruption Commission, and the responsible Commissions provided for under the proposed Act, to make regulations for the better carrying out of the provisions of the proposed Act.

Clause 80 empowers the Cabinet Secretary to amend a Schedule to the Act, through a notice in the Kenya Gazette, provided the proposed amendment is laid before, and approved through a resolution of, the National Assembly, and the Senate.

Part IX (Clauses 81-84) is on Transitional Provisions and Amendments

Clause 81 provides for the transfer, to the Ethics and Anti-Corruption Commission, of all the past financial declarations made by State officers or State officers who were initially public officers to various responsible Commissions under the Public Officer Ethics Act. Upon the commencement of the Act, all State officers will be required to file new declarations, within sixty days, in accordance the proposed Act.

Clause 82 provides for transitional provisions for holders of the posts of the Prime Minister and Deputy Prime Ministers, established in accordance with the provisions of the former Constitution, and Section 3 of the National Accord and Reconciliation Act, 2008. For purposes of the proposed Act, the Prime Minister and the Deputy Prime Ministers are treated as cabinet secretaries or Minister, until the positions cease to exist.

Clause 83 provides for transitional provisions relating to the carrying out of various functions by Ministers and Permanent Secretaries, pending the appointment of cabinet secretaries and principles secretaries as provided for under the Constitution.

Clause 84 amends the Public Officer Ethics Act, Cap. 183, to exclude all holders of state offices, as provided for under Article 260 of the Constitution, from the application of the provisions of the Public Officer Ethics Act, Cap. 183.

Schedules (1-3), of the Proposed Act contains three schedules

The First Schedule is based on clause 5 of the proposed Act and contains a list of designated state offices.

The Second Schedule is based on Clause 50(3) of the proposed Act and sets out the form of the declaration of income, assets and liabilities to be completed by State officers.

The Third Schedule is predicated upon Clause 17(11) of the proposed Act and contains a list of various categories of registrable interests which State officers will be required to register, in accordance with the provisions of the proposed Act.

The Leadership and Integrity Bill, 2012

The enactment of this Bill may occasion some additional expenditure of public funds.

Dated the, 2012.

EUGENE WAMALWA,
Minister for Justice, National Cohesion and Constitutional Affairs