



ETHICS AND ANTI-CORRUPTION COMMISSION

**THE LEADERSHIP AND INTEGRITY CODE
FOR
STATE OFFICERS
IN THE
ETHICS AND ANTI-CORRUPTION COMMISSION**

A commitment to abide by the requirements of the
Leadership and Integrity Act, 2012

THE LEADERSHIP AND INTEGRITY CODE FOR STATE OFFICERS IN THE ETHICS AND ANTI-CORRUPTION COMMISSION

Preamble

A Code for state officer in the Ethics and Anti-Corruption Commission pursuant to section 37 and 38 of the Leadership and Integrity Act, No 19 of 2012 and to give effect to Chapter Six of the constitution of Kenya. The Code is intended to establish standards of integrity and ethical conduct in the leadership of the Commission by ensuring that the State Officers respect the values, principles and requirements of the Constitution in the discharge of their duties.

PART I - PRELIMINARY

1. Citation

This Code may be cited as the Leadership and Integrity Code for State Officers in the Ethics and Anti-Corruption Commission.

2. Interpretation

In this Code, unless the context otherwise requires –

“*Act*” means the Leadership and Integrity Act, 2012;

“*Accounting Officer*” has the meaning and role assigned under the Public Finance Management Act 2012

“*Bank account*” means an account maintained by a bank or any other financial institution for and in the name of, or in the name designated by, a customer of the bank or other financial institution and into which money is paid or withdrawn by or for the benefit of that customer or held in trust for that customer and in which the transactions between the customer and the bank or other financial institution are recorded;

“*Business associate*” means a person who does business with or on behalf of a State officer and has express or implied authority from that State officer;

“*Cabinet Secretary*” means the Cabinet Secretary for the time being responsible for matters relating to leadership and integrity;

“*Code*” means the Leadership and Integrity Code for the Ethics and Anti-Corruption Commission;

“*Commission*” means the Ethics and Anti-Corruption Commission established under the Ethics and Anti-Corruption Commission Act, 2011;

“*General Code*” means the Code prescribed under Part II of the Act;

“*Personal interest*” means a matter in which a State officer has a direct or indirect pecuniary or non-pecuniary interest and includes the interest of his/her spouse, child, business associate or agent;

“*Regulations*” means the Regulations made by the Commission pursuant to Section 54 of the Leadership and Integrity Act, 2012;

“*Spouse*” means a wife or husband;

“*State Officer*” means a Chairperson, Member or Secretary/ Chief Executive Officer of the Ethics and Anti-Corruption Commission.

3. Application of Code

This Code applies to State Officers in the Commission.

4. Application of the Constitution, the Public Officer Ethics Act 2003 and the Ethics and Anti-Corruption

Commission Act, 2011

(1)The provisions of Chapter Six of the Constitution shall form part of this Code;

(2)Unless otherwise provided in this Code, the provisions of the Public Officer Ethics Act and the Third Schedule to the Ethics and Anti-Corruption Commission Act shall form part of this Code in so far as they conform to the provisions of the Leadership and Integrity Act.

5. State Officer to sign Code

(1) A State Officer appointed to the Commission shall sign and commit to this Code at the time of taking oath of office or within seven (7) days of assuming office.

(2) A serving State Officer shall sign and commit to this code seven (7) days after gazettment of the Code.

PART II - REQUIREMENTS

6. Rule of Law

(1)A State officer shall respect and abide by the Constitution and the law;

(2)A State officer shall carry out the duties of his/ her office in accordance with the law;

(3)In carrying out the duties of his/her office, a State officer shall not violate the rights and fundamental freedoms of any person unless otherwise expressly provided for in the law and in accordance with Article 24 of the Constitution.

7. Public trust

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 Commission and the people of Kenya.

8. Responsibility and duties

Subject to the Constitution and any other law, a State officer shall take personal responsibility for the reasonably foreseeable consequences of any actions or omissions arising from the discharge of the duties of his/ her office.

9. Performance of duties

A State officer shall, to the best of his/ her ability —

(1)carry out the duties of the office efficiently and honestly;

(2)carry out the duties of the office in a transparent and accountable manner;

(3)keep accurate records and documents relating to the functions of the office; and

(4)report truthfully on all matters of the Commission.

10. Professionalism

A State officer shall —

(1)carry out the duties of his/her office in a manner that maintains public confidence in the integrity of the office;

(2)treat members of the public, staff and other State and Public officers with courtesy and respect;

(3) to the extent appropriate to the office, maintain high standards of performance and level of professionalism within the Commission; and

(5)if the State officer is a member of a professional body, observe and subscribe to the ethical and professional requirements of that body in so far as the requirements do not contravene the Constitution, any other law or this Code.

11. Financial Probity

- (1) A State officer shall not use his or her office to unlawfully or wrongfully enrich himself or herself or any other person;.
- (2)Subject to Article 76(2)(b) of the Constitution, a State officer shall not accept a personal loan or benefit which may compromise the State officer in carrying out his or her duties;
- (3)A State Officer shall submit an initial declaration of income, assets and liabilities within thirty days of assuming office to the Accounting Officer of the Commission and thereafter biennially;
- (4) A State Officer shall pay any taxes due from him or her within the prescribed period;
- (5) A State Officer shall not neglect their financial or legal obligations.

12. Moral and ethical requirements

- (1)A State Officer shall observe and maintain the following ethical and moral requirements —
 - (a) demonstrate honesty in the conduct of his or her public and private affairs;
 - (b) not to engage in activities that amount to abuse of office;
 - (c) accurately and honestly represent information to the public;
 - (d) not engage in wrongful conduct in furtherance of personal benefit;
 - (e) not misuse public resources;
 - (f) not falsify any records;
 - (g) not sexually harass or have inappropriate sexual relations with other state officers, staff of the Commission or any other person;
 - (h) not engage in actions which would lead to the State officer’s removal from the membership of a professional body in accordance with the law; and
 - (i) not neglect family or parental obligations as provided for under any law
 - (j) not commit offences and in particular, any of the offences under Parts XV and XVI of the Penal Code, sexual offences Act, 2006, the Counter Tracking in Persons Ac, 2010, and the children’s Act, 2008.

13. Gifts or benefits in Kind

- (1)A gift or donation given to a State officer on a public or official occasion shall be treated as a gift or donation to the Commission;
- (2)Notwithstanding subsection (1), a State officer may receive a gift given to the State officer in an official capacity, provided that —
 - (a) the gift is within the ordinary bounds of propriety, a usual expression of courtesy or protocol and within the ordinary standards of hospitality;
 - (b) the gift does not exceed an amount prescribed by the Regulations under the Act or any other law.
- (3) A State officer shall not —
 - (a) accept or solicit gifts, hospitality or other benefits from a person who;
 - (i) is under investigation;
 - (ii) has a contractual relationship with the Commission

- (iii) has any interest that is directly or indirectly connected with the State officer's duties;
 - (b) receive a gift which has the potential of compromising his or her integrity, objectivity or impartiality; or
 - (c) accept any type of gift expressly prohibited under the Act.
- (4) Subject to section 13(2), a State Officer who receives a gift or donation shall declare the gift or donation to the Commission within fourteen days of receipt of the gift.
 - (5) The Commission shall maintain a register of all gifts received by State Officers as provided for in the regulations.

14. Wrongful or unlawful acquisition of property

A State officer shall not use the office to wrongfully or unlawfully acquire or influence the acquisition of property.

15. Conflict of interest

- (1) A State officer shall use the best efforts to avoid being in a situation where his or her personal interests conflict or appear to conflict with the State officer's 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 a conflict of the State officer's personal interests and the officer's official duties.
- (3) A State officer whose personal interests conflict with their official duties shall declare the personal interests to the Commission.
- (4) The Commission may give directions on the appropriate action to be taken by the State officer to avoid the conflict of interest and the State officer shall comply with the directions; and refrain from participating in any deliberations with respect to the matter. Any direction issued by the Commission under this subsection shall be in writing.
- (5) Notwithstanding any directions to the contrary under subsection (4), a State officer shall not award or influence the award of a contract to;
 - (a) himself or herself;
 - (b) the State officer's spouse or child;
 - (c) a business associate or agent; or
 - (d) a corporation, private company, partnership or other body in which the officer has a substantial or controlling interest.
- (6) Where a State officer is present at a meeting, and an issue which is likely to result in a conflict of interest is to be discussed, the State officer shall declare the interest at the beginning of the meeting or before the issue is deliberated upon.
- (7) A declaration of a conflict of interest under subsection (6) shall be recorded in the minutes of that meeting.
- (8) The Commission shall maintain a register of conflicts of interest in the prescribed form in which an affected State officer shall register the particulars of the registrable interests, stating the nature and extent of the conflict.
- (9) For purposes of subsection (8), the registrable interests shall include:-
 - (a) The interests set out in the Second Schedule of the Act;
 - (b) Any connection with a person or a company, whether by relation, friendship, holding of

shares or otherwise, which is subject of an investigation by the Commission;

- (c) Any application for employment or other form of engagement with the Commission, by a family member or friend of the State Officer or by a corporation associated with the State Officer;
 - (d) Any application to the Commission, by a family member or friend of the State Officer, for clearance with respect to appointment or election to any public office;
 - (e) Any other matter which, in the opinion of the State Officer, taking into account the circumstances thereof, is necessary for registration as a conflict of interest.
- (10) The Commission shall keep the register of conflicts of interest for five years after the last entry in each volume of the register;
 - (11) The Commission shall prepare a report of the registered interests within thirty days after the close of a financial year;
 - (12) A State Officer shall ensure that an entry of registrable interests under subsection (7) is updated and to notify the Commission of any changes in the registrable interests, within one month of each change occurring.

16. Participation in tenders invited by the Commission

- (1) A State officer shall not participate in a tender for the supply goods or services to the Commission.
- (2) Notwithstanding subsection (1), a company or entity associated with the State Officer shall not be construed as trading with the Commission unless:-
 - (a) The State officer has a controlling shareholding in the company or entity; or,
 - (b) The State Officer is a Director of the Company.

17. Public Collections

- (1) A State officer shall not solicit for contributions from the Commission or any other person or entity for a public purpose unless the President has, by notice in the Gazette, declared a national disaster and allowed a public collection for the purpose of the national disaster in accordance with the law;
- (2) A State officer shall not participate in a public collection of funds in a way that reflects adversely on that State officer's integrity, impartiality or interferes with the performance of the official duties;
- (3) Subject to subsection (2), a State Officer may, with the approval of the Commission, participate in a collection involving a private cause;
- (4) Nothing in this clause shall be constructed as prohibiting a state officer from making voluntary contribution.

18. Bank accounts outside Kenya

- (1) Subject to Article 76(2) of the Constitution or any other written law, a State officer shall not open or continue to operate a bank account outside Kenya without the approval of the Commission;
- (2) A State officer who has reasonable grounds for opening or operating a bank account outside Kenya shall apply to the Commission for approval to open or operate a bank account;
- (3) A State officer who operates or controls the operation of a bank account outside Kenya shall

submit statements of the account annually to the Commission and authorize the Commission to verify the statements and any other relevant information from the foreign financial institution in which the account is held;

- (4) Subject to subsections (1) and (2), a person who is appointed as a State officer in the Commission and has a bank account outside Kenya shall, upon such appointment, close the bank account within six months;
- (5) Subject to subsection (4), a State Officer may open or continue to operate a bank account outside Kenya as may be authorized by the Commission in writing.

19. Acting for foreigners

- (1) A State officer shall not be an agent of, or further the interests of a foreign government, organization or individual in a manner that may be detrimental to the security interests of Kenya, except when acting in the course of official duty.
- (2) For the purposes of this section —
 - (a) an individual is a foreigner if the individual is not a citizen of Kenya; and
 - (b) an organization is foreign if it is established outside Kenya or is owned or controlled by a foreign government, organization or individual.

20. Care of property

- (1) A State officer shall take all reasonable steps to ensure that public property in the officer's custody, possession or control is taken care of and is in good repair and condition;
- (2) A State officer shall not use public property, funds or services that are acquired in the course of or as a result of the official duties, for activities that are not related to the official work of the State officer;
- (3) A State officer shall return to the Commission all the public property in their custody, possession or control at the end of the appointment term;
- (4) A State officer who contravenes subsection (2) or (3) shall, in addition to any other penalties provided for under the Constitution, the Act or any other law, be personally liable for any loss or damage to the public property.

21. Misuse of official information

- (1) A State officer shall not directly or indirectly use or allow any person under the officer's authority to use any information obtained through or in connection with the office, which is not available in the public domain, for the furthering of any private interest, whether financial or otherwise.
- (2) A state Officer shall not be deemed to have violated the requirements of subsection (1), if the information is given;: —
 - (a) Pursuant to a court order
 - (b) For purposes of educational, research, literary, scientific or other purposes not prohibited by law.
 - (c) In compliance with Article 35 of the Constitution and the relevant law.

22. Political neutrality

- (1) A State officer, shall not, in the performance of his /her duties —
 - (a) act as an agent for, or further the interests of a political party or candidate in an election; or
 - (b) manifest support for or opposition to any political party or candidate in an election.
- (2) engage in any political activity that may compromise or be seen to compromise the political neutrality of the office subject to any laws relating to elections.

23. Impartiality

A State officer shall, at all times, carry out the duties of the office with impartiality and objectivity in accordance with Articles 10, 27, 73(2)(b) and 232 of the Constitution and shall not practice favouritism, nepotism, tribalism, cronyism, religious bias or engage in corrupt or unethical practices.

24. Giving of advice

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

25. Gainful employment

- (1) Subject to subsection (2), a full time State officer shall not participate in any other gainful employment.
- (2) In this section, “gainful employment” means work that a person can pursue and perform for money or other form of compensation or remuneration which is inherently incompatible with the responsibilities of the State office or which results in the impairment of the judgement of the State officer in the execution of the functions of the State office or results in a conflict of interest.

26. Offers of future employment

- (1) A State officer shall not allow himself or herself to be influenced in the performance of their duties by plans or expectations for or offers of future employment or benefits;
- (2) A State officer shall disclose, in writing, to the Commission, all offers of future employment or benefits that could place the State officer in a situation of conflict of interest.

27. Former State Officer In the Commission

A former State officer shall not be engaged by the Commission in a matter in which the State Officer was originally engaged in as a State officer, for at least two years after leaving the Commission.

28. Misleading the public

A State Officer shall not knowingly give false or misleading information to any person.

29. Falsification of records

A State officer shall not falsify any records or misrepresent information to the public.

30. Conduct of private affairs

A State officer shall conduct their private affairs in a manner that maintains public confidence in the integrity of the office.

31. Bullying

- (1) A State officer shall not bully another State Officer, a member of staff or any other person;
- (2) For purposes of subsection (1), “bullying” includes repeated offensive behavior which is vindictive, cruel, malicious or humiliating whether or not is intended to undermine a person.

32. Acting through others

- (1) A State officer shall not —
 - (a) cause anything to be done through another person that would constitute a contravention of this Code, the Constitution or any other law if done by the State officer; or
 - (b) allow or direct a person under their supervision or control to do anything that is in contravention of this Code , the Constitution or any other law.
- (2) Subsection (1)(b) shall not apply where anything is done without the State officer’s knowledge or consent or if the State officer has taken reasonable steps to prevent it.
- (3) A State officer who acts under an unlawful direction shall be responsible for his or her actions.

33. Reporting improper orders

- (1) If a State officer considers that anything required of them is in contravention of the Code or is otherwise improper or unethical, the State officer shall report the matter to Parliament;
- (2) Parliament shall investigate the report and take appropriate action within ninety days of receiving the report.

34. Confidentiality

Subject to Article 35 of the Constitution and any other relevant law, a State Officer shall not disclose or cause to be disclosed any information in his custody to any unauthorized person.

35. Duty to prevent occurrence of corruption or unethical practice in the Commission

A State Officer who believes or has reason to believe that a corrupt act or unethical malpractice has occurred or is about to occur in the Commission shall take all necessary measures to prevent it from continuing or materializing in addition to any other appropriate action.

36. Promotion of ethics, integrity and best practices in the Commission

State Officers in the Commission shall collectively and individually take measures to ensure that staff of the Commission uphold and practice the highest attainable degree of integrity in the performance of their duties.

37. Dress Code

A State Officer shall maintain appropriate standard of dress and personal hygiene at all times.

38. Breach of Code

- (1) Any person may lodge a complaint alleging a breach of this Code by a State Officer; to the public entity and or parliament.
- (2) Breach of this Code amounts to misconduct for which the State Officer may be subjected to disciplinary proceedings including removal from office;
- (3) Where a breach of this Code amounts to a violation of the Constitution, the State Officer may be removed from office in accordance with Article 95 (5) (a) and or 251 of the Constitution;

- (4) A person alleging a breach of this Code, other than a breach under Article 251 of the Constitution, may submit a petition setting out the alleged violation to the Cabinet Secretary;
- (5) The Cabinet Secretary shall submit the petition under subsection (4) to the President who shall constitute an Independent Review Panel to inquire into the allegations contained in the petition in accordance with section 51 of the Act;
- (6) At the close of inquiry, the Independent Review Panel shall take appropriate disciplinary action against the State Officer or where it does not have the power to take action or refer the matter to the appropriate body or person who is vested with such power to take action against the State Officer;
- (7) A person dissatisfied with the decision of the Independent Review Panel may apply for review of the Panel's decision within fifteen days of the decision.

39. Implementation of the Code

Each state officer shall take personal responsibility for compliance with the provisions of this Code

40. Review

The Code shall be reviewed at such intervals as the Commission may determine.

Signed..... dated this day of 2014

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MUMO MATEMU, EBS

HALAKHE D. WAQO, ACI Arb

CHAIRPERSON

SECRETARY/CHIEF EXECUTIVE OFFICER

ETHICS AND ANTI-CORRUPTION COMMISSION

COMMITMENT TO THE LEADERSHIP AND INTEGRITY CODE OF THE ETHICS AND ANTI-CORRUPTION COMMISSION

Iholder of National ID/Passport No. and Post Office Box No. having been appointed as Chairperson /Member /Secretary/Chief Executive Officer of the Ethics and Anti-Corruption Commission, do hereby confirm that I have read and understood the Leadership and Integrity Code for the Ethics and Anti-Corruption Commission and hereby commit to abide by the provisions of the Code at all times.

Sworn at }
By the said }
This.....day of.....20..... } Deponent
Before Me }
 }
Commissioner for Oaths/Magistrate }

ETHICS AND ANTI-CORRUPTION COMMISSION

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