

# EXPECTATIONS OF INTEGRITY IN THE PUBLIC OFFICE IN KENYA

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## 1. Definitions

- Integrity as defined in the Oxford Advanced Learner's Dictionary (2000, P.623) is, *"the quality of being honest and having strong moral principles"*.
- Public office is defined under Article 260 of the Constitution of Kenya, 2010 as, *"an office in the national government, a county government or the public service, if the remuneration and benefits of the office are payable directly from the Consolidated Fund or directly out of money provided by Parliament"*.
- This paper for discussion purposes is, however, based on the premise that public office includes state offices as specified under Article 260 and other positions in the civil service, semi-autonomous government agencies, state corporations, public universities, public schools and co-operative societies.

## 2. Background

- The history of initial attempts in the post-colonial Kenya to enforce integrity in the public office can be traced to the Republic of Kenya Code of Regulations (January 1966 & May 2006 Editions) and in particular Section G, which dealt with the rules of conduct in the public service.
- In the year 2003, the Public Officer Ethics Act was enacted by the Parliament of Kenya to provide for a code of conduct for public officers and periodic (once every two years) financial declaration of income, assets and liabilities of the officers, their spouses and dependent children below the age of eighteen years. Matters provided for under the general code of conduct and ethics for public officers include:
  - (i) *Performance of duties efficiently and honestly.*
  - (ii) *Professionalism at work.*
  - (iii) *Performance of duties in accordance with the law.*
  - (iv) *Prohibition from improper enrichment.*
  - (v) *Avoidance of conflict of interest.*
  - (vi) *Collections of and soliciting for funds.*

- (vii) *Prohibition from acting for foreigners.*
  - (viii) *Care of property.*
  - (ix) *Political neutrality.*
  - (x) *Avoidance of nepotism or favouritism.*
  - (xi) *Prohibition from misleading the public.*
  - (xii) *Conduct of private affairs.*
  - (xiii) *Outlawing of sexual harassment.*
  - (xiv) *Selection of public officers on the basis of integrity, competence and suitability.*
- The Constitution of Kenya, 2010 under Chapter Six has various provisions on leadership and integrity. Article 73(2) under the chapter stipulates the guiding principles of leadership and integrity as:
    - (i) *Selection based on personal integrity, competence and suitability.*
    - (ii) *Election in a free and fair election.*
    - (iii) *Objectivity and impartiality in decision making.*
    - (iv) *Selfless services based solely on the public interest.*
    - (v) *Accountability to the public for decisions and actions.*
    - (vi) *Discipline and commitment in service to the people.*
  - In addition, Article 232(1) of the Constitution provides for the values and principles of public service. These include:
    - (i) *High standard of professional ethics.*
    - (ii) *Efficient, effective and economic use of resources.*
    - (iii) *Responsive, prompt, effective, impartial and equitable provision of services.*
    - (iv) *Involvement of the people in the process of decision making.*
    - (v) *Accountability for administrative action.*
    - (vi) *Transparency and provision of timely and accurate information to the public.*
    - (vii) *Representation of Kenya's diverse communities.*
    - (viii) *Affording adequate and equal opportunities for appointment, training and advancement.*
  - In 2012, Leadership and Integrity Act was enacted to give effect to and provide mechanisms for implementing Chapter Six of the Constitution of Kenya. The

Act has prescribed the following matters under the general leadership and integrity code for state officers:

- (i) *Respect for and adherence to the Constitution and the law.*
  - (ii) *Exercise of authority and responsibility in the best interest of Kenyans.*
  - (iii) *Personal responsibility for any actions or omissions.*
  - (iv) *Performance of duties efficiently, honesty, transparently and in an accountable manner.*
  - (v) *Professionalism in the performance of duties.*
  - (vi) *Financial integrity including prohibition of unlawful enrichment and acceptance of personal loans/benefits.*
  - (vii) *Observance of high moral and ethical requirements.*
  - (viii) *Handling of gifts or benefits in kind.*
  - (ix) *Wrongful or unlawful acquisition of property.*
  - (x) *Conflict of interest.*
  - (xi) *Participation in tenders.*
  - (xii) *Public collection of funds.*
  - (xiii) *Opening or operating a bank account outside Kenya.*
  - (xiv) *Acting for foreigners.*
  - (xv) *Care of property.*
  - (xvi) *Misuse of official information.*
  - (xvii) *Political neutrality.*
  - (xviii) *Impartiality and non-practise of favouritism, nepotism, tribalism, cronyism, corruption or religious bias.*
  - (xix) *Giving of honest, accurate and impartial advice.*
  - (xx) *Prohibition from other gainful employment.*
  - (xxi) *Offers of future employment.*
  - (xxii) *Prohibition from misleading the public.*
  - (xxiii) *Falsification of records and mis-information.*
  - (xxiv) *Prohibition from holding dual-citizenship.*
  - (xxv) *Conduct of private affairs,*
  - (xxvi) *Payment of taxes, financial and legal obligations.*
  - (xxvii) *Outlawing of bullying.*
- Further initiatives to inculcate integrity in public office in Kenya can be found under Section J of human resource policies and procedures manual in the public service issued in May, 2016 by the Public Service Commission.

### **3. The Means to Achieving Integrity: Coercion, Incentives, Practices and Virtues**

#### **3.1 Coercion**

- It can be argued that the provisions in the Constitution under Chapter Six on Leadership and Integrity and Article 232 on Values and Principles Public Service, the Public Officer Ethics Act (2003), Leadership and Integrity Act (2012) and Commission on Administrative Justice Act (2011) are some of the coercive instruments which are at the disposal of the state for use to persuade or force those holding positions in both state and public offices to act with integrity. There are serious consequences and penalties for violating the guiding principles, ethical codes and requirements under chapter six and these legislations.
- Sections 32 and 35 to 39 of the Public Officer Ethics Act, 2003 deals with the offences and enforcement of the conduct and ethics under the Act. Similarly, Sections 40 to 45 and 46 to 49 of the Leadership and Integrity Act, 2012 deals with enforcement of the leadership and integrity code and offences and penalties, respectively under the Act.
- According to the relevant provisions of these laws failure by a public officer to submit a declaration on wealth or to submit correct information regarding the same may result in criminal proceedings and, if convicted to a fine not exceeding one million shillings or a jail term for a period not exceeding one year or both. In addition, whenever submission date of wealth declaration forms is due, public officers are normally warned by the heads of human resource in their ministries, departments and government agencies through circulars that payment of their salaries would be suspended if they do not comply.
- Additional specific coercive and deterrent provisions in the above laws for ensuring that public officers maintain integrity include, subjecting them in the event of breach of the respective code of ethics or any allegation thereof to; internal disciplinary action, public investigation/enquiry, suspension/dismissal from office and criminal/civil proceedings.

- Further, Commission on Administrative Justice Act, 2011 provides for the investigation by the Commission of any complaints or allegations concerning acts of omission, maladministration, unfair treatment, abuse of power, administrative injustice, unfair/unresponsive official conduct, incompetence, misbehavior or discourtesy in a state organ, state or public office.
- Section 23 of the Sexual Offences Act (2006) also acts as a deterrent to those who are holding public offices who may be tempted to engage in sexual harassment. Any person in a position of authority or holding a public office found guilty of sexual harassment offence is liable to a prison sentence for a period not less than three years or a fine not less than one hundred and fifty thousand shillings.

### **3.2 Incentives**

- Some of the incentives that have been used to enable public office holders to act with integrity include:
  - (i) Improving the terms and conditions of service including enhancement of salaries and remunerative allowances so that they are able to meet most of their fundamental needs and therefore, devote their time to serving the public instead of engaging in private business to make ends meet.
  - (ii) Introduction by the Public Service Commission of guidelines on managing training (February 2017) and implementation of performance rewards and sanctions (June 2017) in the public service, respectively. The end result of these guidelines is to facilitate in enhancing efficiency, professionalism and performance of public officers and, ultimately lead to improvement in the efficiency and effectiveness in delivery of services to the public.
  - (iii) Giving annual awards to those (public institutions/officers) who have exhibited a high level of integrity and/or performance, for example, the Commission of Administrative Justice, “Huduma(Service) Ombudsman Awards”.
  - (iv) Encouraging public officers to belong professional bodies by paying for their membership and annual subscription fees and participation in professional conferences and seminars. In addition, paying such officers non- practicing allowances. The aim is to have public officers who are bound as well by ethical standards and requirements of their

respective professions, with the expectations that such officers will espouse and practise high moral and ethical standards.

### 3.3 Practices

- Practices that have been introduced in the public sector to achieve integrity include:
  - (i) Open office plans and arrangements for transparency and to eliminate illegal activities and deals in public offices. This policy was introduced by the government in the year 2010 through a circular entitled, “Presidential Directive on Transformation of Government and Public Offices to Open Plan Work Spaces”.
  - (ii) Sensitization programmes for public officers on corruption preventions policies and strategies.
  - (iii) Institutionalisation of corruption preventions committees in ministries, departments and government agencies from the year 2003.
  - (iv) Introduction of one stop shops (huduma centres) in November 2013 for critical government services such as issuance, replacement and renewal of national identity cards, passports and driving licences. The main objective of these centres is to offer various critical government services in a transparent, accountable and efficient manner at the convenience of the citizens.
  - (v) Use of electronic fund transfer platforms to pay for government services and taxes.
  - (vi) Installation of corruption and complaints reporting boxes and hotlines in public offices.
  - (vii) Making publicly available as well as posting on the websites of the respective public institutions code of ethics/ conduct for the staff. A number of public universities have done so.
  - (viii) Reinforcing the need for public officers to remain politically neutral as for provided in the Public Officer Ethics Act and Leadership and Integrity Act by additional circulars during electioneering period.
  - (ix) Those who aspire to join public service/office in Kenya are normally recruited openly by advertising vacant positions in the local daily newspapers and shortlisted, interviewed and appointed on the basis of qualification and merit. This is besides others considerations in the Constitution such as the need to ensure representation of

Kenya`s diverse communities, people with disabilities and gender balance, respectively.

### **3.4 Virtues**

- Virtue is a behaviour or attitude that exemplifies high moral standards. Moral virtue as a behaviour or attitude is acquired through a just habit formed during one`s upbringing. However, there is a need to undertake a research to establish whether those who had virtuous upbringing are more likely to practice integrity in the public office.

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