

SPECIAL ISSUE

Kenya Gazette Supplement No. 86 (Bills No. 36)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

BILLS, 2012

NAIROBI, 6th August, 2012

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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 and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

PART I-PRELIMINARY

Short title.

1. This Act may be cited as the Leadership and Integrity Act, 2012.

Interpretation.

2.(1) In this Act, unless the context otherwise requires—

“asset” means a thing, tangible or intangible, owned, whether wholly or in part, or controlled by a person, which has an actual or determinable economic value and can be sold, exchanged or otherwise used or applied to meet an obligation or acquire something else in return;

“authorised officer” means a body or institution having jurisdiction under the Constitution or any other law to discipline the State officer in relation to whom the expression is used;

“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of, or in the name designated by, a customer of the bank or other financial institution and into which money is paid or withdrawn by or for the benefit of that customer or held in trust for that customer and in which the transactions between the customer and the bank or other financial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 General Leadership and Integrity Code prescribed under Part II and includes a specific Code of Leadership and Integrity prescribed under Part III of this Act;

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

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

“public entity” means-

- (a) the Government, including the national or County government, or any department, State organ, agency, service or undertaking of the national or County government;
- (b) the National Assembly or the Parliamentary Service Commission;
- (c) any corporation, council, board, committee or other body which has power to act under and for the purposes of any written law relating to the undertakings of a public utility or otherwise to administer funds belonging to or granted by the Government or money raised by rates, taxes or charges in pursuance of any such law; or
- (d) a corporation, the whole or a controlling majority of the shares of which are owned by a person or entity that is a public body by virtue of any of the preceding paragraphs of this definition; and
- (e) statutory public bodies;

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

“spouse” means a wife or husband ; and

“State officer” has the meaning assigned to it under Article 260 of the Constitution.

(2) Despite subsection (1), until after the first

elections under the Constitution, references in this Act to the expressions "Cabinet Secretary", "Principal Secretary" or "State department" shall be construed to mean "Minister", "Permanent Secretary" and "Ministry", respectively.

Guiding values,
principles and
requirements.

3. (1) The primary purpose of this Act is to ensure that State officers respect the values, principles and requirements of the Constitution.

(2) A State officer shall respect the values, principles and the requirements of the Constitution, including—

- (a) the national values and principles provided for under Article 10 of the Constitution;
- (b) the rights and fundamental freedoms provided for under Chapter Four of the Constitution;
- (c) the responsibilities of leadership provided for under Article 73 of the Constitution;
- (d) the principles governing the conduct of State officers provided for under Article 75 of the Constitution;
- (e) the educational, ethical and moral requirements in accordance with Article 99(1)(b) and 193(1)(b) of the Constitution;
- (f) in the case of County governments, the objectives of devolution provided for under Article 174 of the Constitution; and
- (g) in so far as is relevant, the values and principles of Public Service as provided under Article 232 of the Constitution.

(3) Nothing in this Act shall be construed as in any

way diminishing or derogating from the values and principles under subsection (2).

4. (1) Every person has the responsibility of implementing the provisions of this Act to the extent required by this Act.

Implementation of the Act.

(2) The Commission is responsible for overseeing and enforcing the implementation of this Act.

(3) In undertaking its mandate, the Commission may request a State organ to assist it in ensuring compliance with and enforcing Chapter Six of the Constitution and this Act.

(4) The Commission may require any public entity to carry out such functions and exercise such powers as may be necessary under this Act.

(5) Where a public entity has failed to comply with the requirements under subsection (3), the Commission may make an application before a High Court judge for appropriate orders requiring the public entity to comply.

5. The Commission may, by notice in the Gazette, delegate to a public entity or an authorised officer any of its powers and functions under this Act.

Delegation of functions by the Commission.

PART II - GENERAL LEADERSHIP AND INTEGRITY CODE

6. (1) This Part prescribes a general Leadership and Integrity Code for State officers.

General Code.

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

(3) Unless otherwise provided in this Act, the

No.4 of 2003. provisions of the Public Officer Ethics Act, 2003 shall form part of this Code.

(4) If any provision of this Act is in conflict with the Public Officer Ethics Act, 2003 this Act shall prevail.

Rule of law.

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

(2) A State officer shall carry out the duties of the office 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 unless otherwise expressly provided for in the law and in accordance with Article 24 of the Constitution.

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.

Responsibility and duties.

9. 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 the office.

Performance of duties.

10. A State officer shall, to the best of their ability-

- (a) carry out the duties of the office efficiently and honestly;
- (b) carry out the duties in a transparent and accountable manner;
- (c) keep accurate records and documents relating to the functions of the office; and

- (d) report truthfully on all matters of the organization which they represent.

11. A State officer shall—

Professionalism.

- (a) carry out the duties of the office in a manner that maintains public confidence in the integrity of the office;
- (b) treat members of the public and other public officers with courtesy and respect;
- (c) not discriminate against any person, except as is expressly provided by the law;
- (d) to the extent appropriate to the office, maintain high standards of performance and level of professionalism within the organisation; and
- (e) 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 or this Act.

12. (1) A State officer shall not use the office to unlawfully or wrongfully enrich himself or herself or any other person.

Financial integrity.

(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 the duties.

13. (1) For the purposes of Articles 99 (1) (b) and 193 (1) (b) of the Constitution, a person shall observe and maintain the following ethical and moral requirements—

Moral and ethical requirements.

No.4 of 2003.

- (a) demonstrate honesty in the conduct of public affairs subject to the Public Officer Ethics Act, 2003;
- (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 or personal benefit;
- (e) not misuse public resources;
- (f) not discriminate against any person, except as expressly provided for under the law;
- (g) not falsify any records;
- (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 commit offences and in particular, any of the offences under Parts XV and XVI of the Penal Code, the Sexual Offences Act, 2006 and the Children's Act, 2008.

No. 3 of 2006.
No. 8 of 2008.

(2) A person who wishes to be elected to a State office shall, for the purposes of this section, submit to the Commission a self declaration in the form set out in the First Schedule.

Gifts or benefits
in kind.

14. (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 State.

(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 is not monetary; and
- (c) the gift does not exceed such value as may be prescribed by the Commission in the regulations.

(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 legal relationship with the State officer's organisation;
- (b) accept gifts of jewellery or other gifts comprising of precious metal or stones, ivory or any other animal part protected under the Convention on International Trade in Endangered Species of Wild Fauna and Flora; or
- (c) any other type of gift specified by the Commission in the regulations.

(4) A State officer shall not receive a gift which is given with the intention of compromising the integrity, objectivity or impartiality of the State officer.

(5) Subject to subsection (2), a State officer who receives a gift or donation shall declare the gift or donation to the Commission and the public entity which the State officer represents.

(6) Every public entity shall keep a register of -

(a) gifts received by a State officer serving in the public entity; and

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

(7) The Commission shall make and publicize regulations regarding receipt and disposal of gifts under this section.

Wrongful or unlawful acquisition of property.

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

Conflicts of interest.

16. (1) A State officer shall use the best efforts to avoid being in a situation where 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 public entity or the Commission.

(4) The Commission or a public entity may give direction on the appropriate action to be taken by the State officer 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 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) In this section, “personal interest” includes the interest of a spouse, child, business associate or agent or any other matter in which the State officer has a direct or indirect pecuniary or non-pecuniary interest.

(7) Where a State officer is present at a meeting, where 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.

(8) A declaration of a conflict of interest under subsection (7) shall be recorded in the minutes of that meeting.

(9) Subject to Article 116 (3) and (4) of the Constitution, a member of Parliament or a member of a county assembly shall declare any direct pecuniary interest or benefit of whatever nature in any -

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

(10) For purposes of subsection (9), the Clerk of the Senate, the National Assembly or a county assembly shall maintain a register of conflicts of interest, which shall be open to the public for inspection.

(11) Every public entity shall maintain an open register of conflicts of interest in the prescribed form in which an affected State officer shall register the particulars of registrable interests, stating the nature and extent of the conflict.

(12) For purposes of section (11), the registrable interests include the interests set out in the Second Schedule.

(13) A public entity shall keep the register of conflicts of interest for five years after the last entry in each volume of the register.

(14) It shall be the responsibility of the State officer to ensure that an entry of registrable interests under subsection (11) is updated and to notify the public entity or the Commission of any changes in the registrable interests, within one month of each change occurring.

17. A State officer shall not directly or indirectly participate in a tender for the supply of goods or services to a public entity, but, the holding of shares by a public officer in any body corporate shall not be construed as indirect tendering unless the public officer has a controlling or substantial share interest in the corporate body.

Participation in tenders.

18.(1) A State officer shall not solicit for contributions from the public 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 .

Public collections.

(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.

19.(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.

Bank accounts outside Kenya.

(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 shall 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 subsection (1) and (2) , upon the commencement of this Act, a serving State officer who

operates a bank account outside Kenya shall close the account within six months or such other period as the Commission may, by notice in the Gazette, prescribe.

Acting for
foreigners.

20.(1) A State officer shall not be an agent of, or further the interests of a foreign government, organisation 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 foreign individual if the individual is not a citizen of Kenya; and

(b) an organisation is a foreign organization if it is established outside Kenya or is owned or controlled by a foreign government, organisation or individual.

Care of property.

21.(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 issuing authority all the public property in their custody, possession or control 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, this Act or any other law, be personally liable for any loss or damage to the public property.

22.(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.

Misuse of official information.

(2) The provisions of subsection (1), shall not apply where the information is to be used for the purposes of -

- (a) furthering the interests of this Act; or
- (b) educational, research, literary, scientific or other purposes not prohibited by law.

23.(1) An appointed State officer, other than a Cabinet Secretary or a member of a County executive committee shall not, in the performance of their duties -

Political neutrality.

- (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) An appointed State officer or public officer shall not 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.

(3) Without prejudice to the generality of subsection (2), a public officer shall not-

- (a) engage in the activities of any political party or candidate or act as an agent of a political party or a candidate in an election;

- (b) publicly indicate support for or opposition against any political party or candidate participating in an election.

Impartiality.

24. 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 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.

Gainful employment.

26. (1) Subject to subsection (2), a State officer who is serving on a full time basis shall not participate in any other gainful employment.

(2) For the purposes of this section, "gainful employment" does not include –

(a) directorship in a private company;

(b) any investment in a business undertaking or corporate body which does not require active participation of the State officer in the operations of the business undertaking or corporate body; or

No. 11 of 2007.

(c) any work which does not constitute employment under the Employment Act, 2007 and which does not require the active participation of the State officer.

Offers of future employment.

27. (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 public entity and the Commission, all offers of future

employment or benefits that could place the State officer in a situation of conflict of interest.

28.(1) A former State officer shall not be engaged by or act for a person or entity in a matter in which the officer was originally engaged in as a State officer, for at least two years after leaving the State office.

Former State officer acting in a government or public entity matter.

(2) Subject to Articles 33 and 35 of the Constitution, 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, a public entity or department with which he or she had a direct or substantial relationship.

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

Misleading the public.

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

Falsification of records.

31. (1) Subject to Article 78(3) of the Constitution, a State officer who acquires dual citizenship shall lose his or her position as a State officer.

Citizenship.

(2) A person who holds dual citizenship shall, upon election or appointment to a State office, not take office before officially renouncing their other citizenship in accordance with the provisions of the Kenya Citizenship and Immigration Act, 2011.

No. 12 of 2011.

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

Conduct of private affairs.

33. (1) A State officer shall pay any taxes due from him or her within the prescribed period.

Tax, financial and legal obligations.

(2) A State officer shall not neglect their financial or

legal obligations.

Bullying.

34. (1) A State officer shall not bully any person.

(2) For purposes of subsection (1), “bullying” includes repeated offensive behaviour which is vindictive, cruel, malicious or humiliating and is intended to undermine a person.

Acting through others.

35.(1) A State officer contravenes the Code if the officer.—

- (a) causes anything to be done through another person that would constitute a contravention of the Code if done by the State officer; or
- (b) allows or directs a person under their supervision or control to do anything that is in contravention of the Code.

(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 action.

Reporting improper orders.

36. (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 the Commission.

(2)The Commission shall investigate the report and take appropriate action within ninety days of receiving the report.

PART III — SPECIFIC LEADERSHIP AND INTEGRITY CODES

37. (1) Each public entity shall prescribe a specific Leadership and Integrity Code for the State officers in that public entity.

Establishment of specific Codes.

(2) The specific Leadership and Integrity Code prescribed by a public entity shall include all the requirements in the general Leadership and Integrity Code under Part II of this Act and may provide for the manner in which any requirements of the specific or general Code may be satisfied.

38. Until a public entity has prescribed a specific Leadership and Integrity Code under section 37, the general Code under Part II of this Act shall apply as though it were the specific Leadership and Integrity Code prescribed by the public entity.

Application of the general Code.

39. (1) A public entity shall submit the specific Leadership and Integrity Code prescribed under section 37 to the Commission for approval.

Approval and publication of specific codes.

(2) In considering the specific Leadership and Integrity Code submitted under subsection (1), the Commission shall ensure that it is consistent with the General Code prescribed under Part II of this Act, any other law and the Constitution.

(3) The Commission shall, within thirty days of receipt of a specific Leadership and Integrity Code, consider and approve it, with or without amendments, for publication in the Gazette.

(4) Subject to the provisions, of subsections (2) and (3), a public entity shall cause to be published the specific Leadership and Integrity Code in the Gazette within ninety days of the receipt of the approval from the Commission.

(5) Any specific Code of a public entity 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 Commission to ascertain its conformity with the General Code and approval within ninety days after the commencement of this Act.

PART IV—ENFORCEMENT OF THE LEADERSHIP AND INTEGRITY CODE

Application of the Code to elections and appointments.

40. (1) A person is not eligible for election or appointment to a State office if, after a fair administrative process has been undertaken, the person is found to have contravened the rules, regulations or the Code of any entity that do not contravene the Constitution or this Act on matters relating to ethics and integrity.

(2) Every public entity shall avail information to a selection panel for the election or appointment of a State office, the appointing authority or Parliament, as the case may be, regarding the non-compliance with the Code by a person seeking appointment or election to a State office.

(3) Upon appointment or election, a State officer shall sign and commit to the specific Leadership and Integrity Code issued by the public entity at the time of taking the oath of office or within seven days of assuming a State office.

Breach of the code.

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

(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 the procedure for removal or dismissal, the question of removal or dismissal shall be determined in accordance with the Constitution or that other law.

Lodging of complaints and investigations.

42. (1) A person who alleges that a State officer has committed a breach of the Code, may lodge a complaint

with the relevant public entity and the public entity shall register and inquire into the complaint.

(2) A public entity may authorize any of its officers to inquire into a complaint on its behalf and determine whether a State officer has contravened the Code.

(3) An investigation may be made at the instance of a public entity.

(4) A State officer being investigated under this section shall be informed by the investigating authority, of the complaint made against that State officer and shall be given a reasonable opportunity to make a representation relating to the issue, before the investigation is concluded.

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

(6) Where an investigation under this section is initiated while the State officer is in office, it may be continued even after the person under investigation has ceased to be a State officer.

(7) Subject to the Constitution and any regulations for the enforcement of the Code made under this Act, a State officer may be suspended from office pending the investigation and determination of allegations made against that State officer where such suspension is considered necessary.

(8) The Code may prescribe penalties for contravention of any of its provisions which may include—

(a) interdiction;

- (b) removal from office;
- (c) censure by the National Assembly;
- (d) a surcharge;
- (e) a warning;
- (f) a caution;
- (g) salary stoppage;
- (h) receipt of half-salary;
- (i) demotion;
- (j) dismissal from office;
- (k) vacation of office; or
- (l) a reprimand.

(9) The public entity or an authorized officer may take disciplinary action against a State officer serving in the public entity.

Referral for possible civil or criminal proceedings.

43.(1) If upon investigation under this Part, the public entity is of the opinion that civil or criminal proceedings ought to be preferred against the respective State officer, the public entity shall refer the matter to -

- (a) the Commission or the Attorney- General, with respect to civil matters;
- (b) the Director of Public Prosecutions, with respect to criminal matters; or
- (c) any other appropriate authority.

(2) Referral of a matter under subsection (1) shall not preclude the person, the State organ or public entity referring the matter from undertaking further

investigations or action into the matter.

(3) If a matter is referred to the Commission under subsection (1) (a) and in the opinion of the Commission, criminal proceedings ought to be preferred against the respective State officer, the matter shall be referred to the Director of Public Prosecutions.

(4) In addition to the prosecution of a State officer, the Commission may take any other action that it considers necessary.

(5) The prosecution of any State officer is not a bar to other steps that the Commission may consider necessary.

44. (1) A State officer or public entity may request the Commission to give an advisory opinion on any issue relating to the application of Chapter Six of the Constitution.

Advisory opinion.

(2) The Commission shall establish appropriate mechanisms and procedures for the provision of advisory opinions under subsection (1) in a confidential and timely manner.

45. (1) The Commission shall submit an annual report, containing all the information relevant to the enforcement of and compliance with the provisions of this Act, to the President and Parliament.

Reports of the Commission.

(2) The Commission shall publish the report made under subsection (1) in the Gazette and facilitate reasonable access of the report by the public.

PART V - OFFENCES AND PENALTIES

46.(1) A person shall not-

(a) without justification or lawful excuse,

Obstructing or hindering persons under Act.

obstruct, hinder, assault or threaten a person undertaking his or her duties under this Act;

- (b) deceive or knowingly mislead the Commission, a public entity or a person undertaking his or her duties under this Act;
- (c) destroy, alter, conceal or remove documents, records or evidence that the person believes, or has grounds to believe may be relevant to an investigation or proceedings under this Act; or
- (d) provide false information to the Commission, a public entity or a person acting under this Act.

(2) A person who contravenes subsection (1) 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 this Act.

47. A person who, without lawful authority, divulges information acquired in the course of the performance of their duties 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.

General penalty.

48. Any person who is convicted of an offence under this Act, for which no penalty is expressly provided, shall be liable on conviction to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both.

Breach of section 20.

49. A State officer who does not comply with the provisions of section 20 commits an offence and is liable, on conviction, to a fine not exceeding five million

shillings, or to imprisonment for a term of not exceeding five years, or to both.

50. (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 by the Commission or by an agent appointed by the Commission in trust for the Republic, until it is lawfully disposed of.

Forfeiture and compensation.

(2) The Commission may order a State officer referred to in subsection (1) to pay by way of compensation to the State such sum, including interest, as may be determined by the Commission as just, having regard to the loss suffered by the Government or public entity 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 the purposes of subsection (2), the rate of interest on any property or money irregularly obtained shall not be less than the prevailing lending rates and shall be payable with effect from the day such property or money was obtained.

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

PART VI — GENERAL PROVISIONS

51. Subject to this Act, no civil or criminal liability shall attach to an officer of the Commission or public entity acting on the instructions of the chief executive officer of a public entity, for anything done in good faith by that officer in the performance of the duties under this Act.

Protection of officers of the Commission or public entity.

52. (1) Where a violation of Chapter Six of the

Oversight over

the
Commissioners.

Constitution or this Act, which is not a violation as contemplated in Article 251 of the Constitution, is alleged against a member of the Commission, the President shall establish an independent review panel to inquire into the allegation.

(2) An allegation under subsection (1) shall be submitted to the Cabinet Secretary by way of petition setting out the alleged violation, who shall submit the petition to the President.

(3) The independent review panel established under subsection (1) shall comprise five State officers of good character and integrity drawn from any of the Commissions established under Chapter Fifteen of the Constitution.

(4) The independent review panel shall inquire into the alleged contravention or violation committed by a member of the Commission.

(5) If the inquiry discloses that a member of the Commission has violated Chapter Six of the Constitution, the independent review panel shall take the appropriate disciplinary action, or if it 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.

(6) Regulations made under section 40 (2) shall apply to the disciplinary procedures under this section.

(7) A person who is dissatisfied with the decision of the independent review panel may apply for a review within fifteen days from the date of the decision.

(8) The independent review panel shall review its decision within fifteen days after the application for review.

(9) A person who is dissatisfied with the decision of the independent review panel under subsection (8)

may appeal to the High Court and the Court shall make a decision within thirty days of the appeal.

53.(1) Pursuant to Article 80(c) of the Constitution, the provisions of Chapter Six of the Constitution and Part II of this Act except section 18 shall apply to all public officers as if they were State officers.*

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

(2) For the purposes of subsection (1), the relevant public entity recognized or established pursuant to section 3 of the Public Officer Ethics Act, 2003 shall enforce the provisions of this Act as if they were provided for under the Public Officer Ethics Act, 2003.

No.4 of 2003.

54. The Cabinet Secretaries responsible for leadership and integrity, constitutional affairs, education and the public service shall collaborate with the Commission and the relevant public entity for the purpose of developing and overseeing the provision of long term education and training on leadership and integrity to—

Leadership education and training generally.

- (a) all public officers;
- (b) all levels of the education system; and
- (c) the public.

55. (1) The Commission shall make Regulations for the better carrying out of the provisions of this Act.

Regulations.

(2) Without prejudice to the generality of subsection (1), the Commission may make Regulations to—

- (a) prescribe the limitations on the types of gifts that a State officer can receive under section 14;
- (b) prescribe for the maximum value of gifts that a State officer can receive under section 14;

- (c) prescribe for a mechanism for the receipt, collection, storage and disposal of gifts under section 14;
- (d) provide a mechanism and procedure for the opening, maintaining and publicizing of registers of conflict of interest under section 16;
- (e) prescribe the grounds and conditions for opening, registering, maintaining, controlling and closing bank accounts outside Kenya under section 19;
- (f) provide for the regulation on lodging of complaints, investigation and disciplinary processes and mechanisms on the enforcement of the Code under section 42.

PART VII - TRANSITIONAL PROVISION

Transitional provision.

56. For the purposes of section 13 and pending the assumption of office by members of the Commission, a person seeking to be elected to a State office shall submit the self declaration form to the Independent Electoral and Boundaries Commission.

FIRST SCHEDULE

(S.13)

SELF-DECLARATION FORM

1. GENERAL INFORMATION				
Title	Surname	First Name	Middle Name	Other Names
Mr./Mrs./Prof/ Miss/Ms/Dr.				
ID CARD	PASSPORT NO.	EXPIRY DATE OF		PIN NO.

NO.		PASSPORT	
SEX (Tick)	MALE	FEMALE	OCCUPATION
TELEPHONE NO.		MOBILE NO.	OTHER NUMBERS
RESIDENCE	ESTATE/TOWN/LOCATION		POSTAL ADDRESS
	DISTRICT		
	COUNTY		OTHER ADDRESSES
	COUNTRY		
3. BIRTH INFORMATION			
DATE OF BIRTH		BIRTH CERTIFICATE NO.	PLACE OF BIRTH
DISTRICT OF BIRTH		COUNTY OF BIRTH	COUNTRY OF BIRTH
4. NATIONALITY			
Kenyan	Dual	<input type="checkbox"/>	
(Provide details _____)			
5. MARITAL STATUS			
<input type="checkbox"/> SINGLE	<input type="checkbox"/> MARRIED	<input type="checkbox"/> SEPARATED	<input type="checkbox"/> DIVORCED
		<input type="checkbox"/> WIDOWED	
IF MARRIED GIVE NAMES OF THE SPOUSE (S) (surname, First name,			

middle name, others)		
NATIONALITY OF SPOUSE		
NAMES OF CHILDREN UNDER THE AGE OF 18 YEARS		
6. EDUCATIONAL QUALIFICATIONS		
<input type="checkbox"/> PRIMARY <input type="checkbox"/> SECONDARY <input type="checkbox"/> 'A' LEVEL <input type="checkbox"/> CERTIFICATE <input type="checkbox"/> DIPLOMA <input type="checkbox"/> DEGREE <input type="checkbox"/> MASTERS <input type="checkbox"/> PHD OTHERS _____		
HIGHEST ACADEMIC QUALIFICATION OBTAINED		
Qualification	Institution	Year
7. LANGUAGE SPOKEN		
First Language	Second Language	Other
8. MEMBERSHIP OF PROFESSIONAL ORGANIZATION(S) (IF ANY)		
Name of Organization	Date of Admission	Membership No.
10. REASON(S) FOR DECLARATION		

Purpose for which declaration is required		
<input type="checkbox"/> Election <input type="checkbox"/> Employment <input type="checkbox"/> Others (Specify)		
State office for which the declaration is being submitted		
11. MORAL AND ETHICAL QUESTIONS		
Answers to the following questions are mandatory. If YES to any question you must provide additional information on a supplementary sheet.		
a) Have you ever engaged in any form of dishonesty in the conduct of public affairs?	YES	NO
b) Have you ever abused a public office?		
c) Have you ever misrepresented information to the public?		
d) Have you ever engaged in wrongful conduct whilst in the furtherance of personal benefit?		
e) Have you ever misused public resources?		
f) Have you ever discriminated against anyone on any grounds other than as provided for under the Constitution or any other law?		
g) Have you ever falsified official or personal records?		
h) Have you ever been debarred or removed from the Register of Members of your professional organization?		
i) Have you ever had any occupational or vocational license revoked and/or otherwise subjected to any other disciplinary action for cause in Kenya or any other country?		
j) Have you ever been dismissed from employment on account of lack of integrity?		
k) If you have been a public officer, have you ever failed to declare your Income, Assets and Liabilities as required under the Public Officer Ethics Act?		
l) Have you ever been the subject of disciplinary or criminal proceedings for breach of the Public Officer Ethics Act or a Code prescribed thereunder?		
m) Have you ever been convicted of any offence and sentenced to serve imprisonment for a period of at least six months?		

n) Have you ever had an application for a Certificate of Clearance or a Certificate of Good Conduct or for a visa or other document authorizing work in a public office denied and/or rejected for cause in Kenya or any other country?		
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9. EMPLOYMENT INFORMATION

NAME OF EMPLOYER	POSITION/ RANK	DATE OF FIRST APPOINTMENT	DATE OF PRESENT APPOINTMENT
WORKSTATION	NATURE OF EMPLOYMENT (Constitutional/Elective/Permanent/Contractual/Other)		

OATH AND AFFIRMATION

I solemnly swear (or affirm) and certify, under penalty of false declaration under the Oaths and Statutory Declarations Act (Cap. 15 of the Laws of Kenya), that all the foregoing statements in this application are true and correct to the best of my knowledge.

Dated at, thisday of.....

SIGNATURE OF DECLARANT:

SWORN/DECLARED BEFORE ME

This day of.....,20.....,at.....

.....
Commissioner for Oaths/ Magistrate.

SECOND SCHEDULE

(s. 16(10))

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 the State officer's spouse or child substantially catered for by the office of the State officer).
11. Gifts, benefits and hospitality (to a State officer or the State officer's 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 the 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 business associate or firm.
15. Possession of dual citizenship or pending applications for dual citizenship and the status of such application.

MEMORANDUM OF OBJECTS AND REASONS

The object and purpose of this Bill is to give effect to the provisions of Chapter Six of the Constitution on leadership and integrity, pursuant to Article 80 of the Constitution. It sets the leadership and integrity standards applicable to State officers who hold the highest level of responsibility in the management of public affairs. The Bill is also informed by the provisions of the various regional and international instruments to which Kenya is a party, such as the African Union Convention on Preventing and Combating Corruption, the United Nations Convention against Corruption as well as the United Nations International Code of Conduct for Public Officials.

Part I (clauses 1-5) deals with preliminary matters.

Part II (clauses 7-36) contains the General Leadership and Integrity Code which provides for the conduct of State officers both in public and private affairs. Clause 13 is intended to give effect to Article 99 (1)

(b) by prescribing moral and ethical requirements while clause 14 sets out the conditions under which a State officer may or may not accept gifts and the manner of dealing with various kinds of gifts. The Part also provides for the manner in which State officers should deal with situations which may result in a conflict of interest between the officer's personal interests and their official duties. It further prohibits the opening or maintenance of foreign bank accounts by State officers except with the consent of the Ethics and Anti-Corruption Commission (referred to as "the Commission").

Part III (clauses 37-40) provides for the prescription of Specific Leadership and Integrity Codes by public entities for observance by the State officers under the public entities. The Part requires that such Codes be prescribed with the approval of the Commission.

Part IV (clauses 40-45) provides for the enforcement of the Leadership and Integrity Code by public entities. The Part provides for the application of the Code in the appointment or election of State Officers and for the manner in which a State officer or a public entity may seek an advisory opinion from the Commission on any issue relating to the application of Chapter Six of the Constitution. Clause 45 provides for the preparation and submission of an annual report to the President and the National Assembly by the Commission containing all relevant information on the enforcement of, and compliance with the provisions of the proposed Act.

Part V (clauses 46-50) provides for offences and penalties under the Act. Clause 48 sets out a general penalty while clause 50 provides a mechanism for forfeiture of property obtained in breach of this Act.

Part VI (clauses 51-56) contains general provisions. Clause 52 sets up a procedure for maintaining oversight over the members of the Commission. This procedure is not contained in the Ethics and Anti-Corruption Commission Act which established the Commission. The Part also provides for 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. 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.

The **First Schedule** sets out a self declaration form while the **Second Schedule** sets out the registrable interests.

The enactment of this Bill shall occasion additional expenditure of public funds which shall be provided for through the estimates.

Dated the 3rd August, 2012.

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