

**EFFECTIVENESS OF CONSTITUTIONAL PROVISIONS IN PROMOTING  
INTEGRITY AND ETHICS WITHIN THE PUBLIC SERVICE IN AFRICA; A  
CASE STUDY OF KENYA, NIGERIA AND SOUTH AFRICA**

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## **CHAPTER ONE**

### **INTRODUCTION**

#### **1.1 Background to the Study**

The purpose of this study is to address Kenyan people's concerns about integrity and the importance of ethics, transparency as well as accountability in the public sector, given the public sector's critical role in national government and development. Nepotism, the exploitation of public property for one's own financial benefit, the misuse of official travel, the rejection of meritocracy, immoral conduct, and corruption are among the most common unethical activities in Kenya's public sector. Kenya's democracy, development, and rule of law have all been harmed by unethical and corrupt actions. Kenyan President Uhuru Kenyatta revealed on January 18, 2021 that the country loses Sh2 billion per day (more than \$20 million) due to the fraudulent acts of public officials. Kenyans are asking whether there is an adequate legislative framework in place to promote integrity and ethics in the realm of the public sector as a result of these behaviours. Since Kenya improved by 4 points between 2012 and 2020 according to the Global Corruption Barometer, the study compares Kenya's legislative framework to that of South Africa and Nigeria to see if the legal actions already in place are sufficient to embed integrity and ethics in the public sector. Considering South Africa increased by one and Nigeria dropped by 2, the Study seeks to find out if Kenya's case is a positive effect of the Constitution and the implementing laws compared to Kenya's situation before implementation and vis-à-vis the other states.

## **1.2 Statement of Problem**

Kenya, Nigeria, and South Africa have each passed at least five pieces of legislation governing integrity and ethics in government. The Ethics and Anti-Corruption Commission (EACC) in Kenya, for example, has an umbrella Act for the public sector that contains the Code of Conduct and a principal organization in responsibility of investigating and/or punishing integrity and ethics offenses. They have additional legislation, such as the Promotion of Administrative Justice Act in South Africa, and enforcement mechanisms, such as the Public Complaints Commission in Nigeria, to combat various aspects of integrity and ethics. All three states have institutions that can prosecute cases involving integrity and ethics. EACC, the Directorate of Criminal Investigations, the Office of the Director of Public Prosecutions, and the Asset Recovery Agency are just a few of the Kenyan institutions. The NAFDAC, Public Protector, and Public Administration Ethics, Integrity, and Disciplinary Technical Assistance Unit in South Africa, and the EFCC, Special Investigative Unit, and ICPC in Nigeria, all have several institutions.

The purpose of this article is to examine the legal frameworks of the three nations and assess their efficiency in enforcing integrity and ethics in the public sector.

## **1.3 Theoretical Framework**

Kenyans are concerned that the legislative framework governing integrity and ethics is weak, resulting in egregious unethical behaviours for example, like the plundering noted by President Kenyatta. South Africa, Nigeria and Kenya on the other hand, have a number of institutions that control public servants' conduct and attempt to influence their professional behaviour.

The framework for the study analysis in this paper is institutional theory. Institutions, according to the notion, shape and constrain individual preferences, implying that institutions can affect the motivations that drive an individual's behaviour.<sup>1</sup> The Study will use rational choice institutionalism in particular. According to this view, public employees respond to the fundamental components of the regulations and incentives imposed by their employer. The rational choice theory demonstrates that institutions have no effect on the values of individual public servants.

The study will also cover deontological theory, which is an ethical approach for establishing the moral intent of a public worker's decision or aim. Deontology is a branch of normative philosophy that evaluates and guides human behaviour in the direction of morality. In other words, the morality of an activity should be determined by whether it is right or bad according to a set of laws.<sup>2</sup> The abject failure to shift from the letter of the law to the spirit of the law has rendered Kenya crippled with regard to instilling constitutional principles relating to integrity and ethics.

This research relies heavily on rational choice and deontological theories. They will discuss public servants' responsibilities in regards to the enforcement of ethical and integrity provisions as well as the protection of the law's spirit. They describe the processes that lead to the production, acceptance, adaptation, disuse, and decline of rules, norms, schema, structures, and routines as authoritative guidance for behaviour, tracking their creation, adoption, adaptation, disuse, and decline..

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<sup>1</sup> James G. March, and Johan P. Olsen. (1995). *Democratic governance*. New York: The Free Press. (1995).

<sup>2</sup> Immanuel Kant, 1785, *Groundwork of the Metaphysic of Morals*, H.J. Paton (trans.), New York: Harper and Row, 1964.

## 1.4 Literature Review

### 1.4.1 Introduction

Institutional values and principles allow public officials to perform their official duties in the public service of all countries. Traditional, changing, or newly adopted society ideals may not be reflected in these principles and values. A superb ethical framework, according to Gilman (2005), emphasizes both norms and principles.<sup>3</sup> He claims that the only way a code of integrity and ethics can be effective is if it is allowed to evolve in an enabling political and administrative environment. Furthermore, supporters of the code must exist inside senior political offices to ensure that the political desire is translated into administrative enforcement. Gilman emphasizes how a code of behaviour cannot succeed if public employees witness their peers or superiors breaching the code and getting away with it. The government must establish a social and organizational culture that encourages adherence to the code of conduct.<sup>4</sup>

### 1.4.2 African norms and values on integrity and ethics

Gyekye (2011) points out that there are no standard norms and values applicable to all African communities. Still, empirical and conceptual pointers show similarities in the principles, beliefs, and values of ethics across most African societies, which mostly revolve around a person's character and morality.<sup>5</sup> He notes the pervasive social morality or ethics where everyone concerns themselves with all other members of society's welfare and interests. Although there is some form of individualism, as Menkiti (1994)

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<sup>3</sup> Stuart, C. Gilman. "Ethics codes and codes of conduct as tools for promoting an ethical and professional public service: Comparative successes and lessons." *Prepared for the PREM, the World Bank* (2005), p. 37.

<sup>4</sup> Ibid, p. 39

<sup>5</sup> Kwame Gyekye. "African ethics." *Stanford encyclopedia of philosophy* (2011).



espouses, but Owoniyi (2015) states that society frowns upon extreme individuality as society sees it as potentially destructive to human values and the essence of the community.<sup>6</sup> Gyekye avers that since there is an added emphasis on natural socialisation, Africans display social ethics rather than individualistic ethics. That is, ethics not of rights, but of duty, which places a heavy emphasis on human welfare that extends to all persons regardless of their societies. Owoniyi adds that places responsibility above individual right ethics.

### 1.4.3 Arguments for the legal framework

Since the approval of the legal framework, there have been some significant advancement in terms of integrity and ethics. According to Gildenhuis (2004), the only method for South Africa to tackle corruption is through deterrence and punishment, which can only be achieved through strengthening institutions.<sup>7</sup> President Thabo Mbeki's decision to reinstate the Special Investigating Unit, for example, demonstrates his commitment to fighting corruption. "...even after a gloomy time, one is reassured that...the necessary anti-corruption institutions...exist and are working," writes J. P. Landman of Die Burger newspaper."<sup>8</sup> According to Gundu (2011), efforts aimed at regulating misconduct, implementing ethical laws and principles through the establishment of codes of conduct, and disciplinary procedures against wayward public workers have all been successful in Nigeria.<sup>9</sup> Kenyan institutions, such as the institution of wealth declaration and performance contracting, have had minimal accomplishments,

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<sup>6</sup> Sunday Awoniyi. "African cultural values: The past, present and future." *Journal of Sustainable Development in Africa* 17, no. 1 (2015): p. 8. 1-13

<sup>7</sup> Johannes, S. H. Gildenhuis. *Ethics and professionalism: The battle against public corruption*. AFRICAN SUN MeDIA, 2004. p. 209.

<sup>8</sup> Ibid 25, p. 212.

<sup>9</sup> Gabriel, A. Gundu. "Nigeria's experience in dealing with public service ethical dilemmas." *African Journal of Political Science and International Relations* 5, No. 3 (2011). p. 150.

according to the Task Force on Fighting Corruption in Kenya's 2015 Report. This is despite the fact that some of them are dealing with obsolete legislative and policy frameworks; enforcers are dealing with a large number of public servants with limited resources; and policies and legislation are being enacted slowly. The report also cites a poor adoption of technology to help with duties like manual wealth declaration processing, a weak infrastructure framework, a plurality of entities causing conflict and disagreement in budgetary allocations, and little integration of personnel databases.<sup>10</sup>

Guenter et al. (2007) report that in Madagascar, leadership development combined with a conventional legal framework aided in the implementation of public sector reform and governance.<sup>11</sup> In regards to continental Europe, a statement in the study by Verpeet et al. (2003) on Belgium claims that the country's legislative system incorporates ethical standards and values, which is why nurses in Belgium do not have a code of conduct..<sup>12</sup>

#### **1.4.4 Arguments against the constitutional provisions**

Opponents claim that you can't govern integrity and ethics in the public sector with a legislative framework. Gilman (2005) brings to the fore the reality of codes of conduct being products of crisis, which come about because of a public scandal or pressure from external organizations. For example, according to Sebola (2014), the South African government implemented a legal framework geared to the problems of Western countries without taking into account their own culture's distinctive position. As a result,

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<sup>10</sup> Kenya, Fighting Corruption In. "Report of the Task Force." (2015). p. 58.

<sup>11</sup> Heidenhof Guenter, Stefanie Teggemann, and Cia Sjetnan. *A Leadership Approach to Achieving Change in the Public Sector: The Case of Madagascar*. World Bank Institute. Washington, D.C. (2007)

<sup>12</sup> Ellen Verpeet, Tom Meulenbergs, and Chris Gastmans. "Professional values and norms for nurses in Belgium." *Nursing ethics* 10, no. 6 (2003): 654-665.

most public officials fall short of the standards set forth by those foreign laws, and instead spend the majority of their time devising ways to circumvent the system and exploit loopholes.<sup>13</sup> He goes on to say that, even if authorities are acting in good faith, the legislative framework's efficacy is dependent on the integrity of the officeholders in the institutions dealing with integrity and ethics concerns. According to Onyiloha (2015), various institutions were established to combat corruption in Nigeria, but they failed because the people who held the positions of power were corrupt.<sup>14</sup> Citizen oversight institutions, including Parliament and the Judiciary, are inefficient in Kenya, according to a study conducted by Odhiambo-Mbai (2003).<sup>15</sup> Gildenhuis also calls to question the independence of the public official. He believes that any realistic realizes that the government official is not responding to the wishes of the Executive and of the Parliament because democracy or laws mandate that they do so, or because elected politicians are representing the people's wishes.<sup>16</sup>

The proliferation of commissions and other bodies in France, according to Didier (1997), demonstrates the difficulties of establishing a body that can effectively give public sector ethics answers.<sup>17</sup> In the United Kingdom, according to Gay (2003), there

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<sup>13</sup> Mokoko P. Sebola. "Ethics in the South African public service: A paradox of culture, politics and ethics in the world of work." *Journal of Social Sciences* 40, no. 3 (2014). p. 298.

<sup>14</sup> Chiedu, A. Onyiloha. "An ethical appraisal of Nigerian policy on corruption vis-à-vis global anti-corruption practices." *Journal of Religion and Human Relations* 7, No. 1 (2015). p. 26.

<sup>15</sup> Odhiambo-Mbai, C. "Public service accountability and governance in Kenya since independence." *African Journal of Political Science* (2003). Vol. 8, No. 1. p. 135.

<sup>16</sup> Ibid 25, p. 120. Gildenhuis

<sup>17</sup> Jean-Pierre Didier. "Reaffirming ethics and professionalism in the French public service." *International Review of Administrative Sciences* 63, no. 4 (1997). p. 578

must be prudence when subjecting public servants to policing that penetrates into their public lives and infringes on their private ones.<sup>18</sup>

#### 1.4.5 Analysis of the critique

The change in the legal framework doesn't appear to be fixing the problem, as it turns out, it is enforcement. This, however, doesn't mean that things aren't getting better. In this writer's opinion, there are places for the offices, institutions, and legal framework in enforcing ethical and integrity standards in the public sector. There is still a boundary to be drawn between smoke and fire. It appears that regimes are holding on to power by creating new laws and filling new posts, thereby making it look like they are promoting integrity and ethics. Additionally, bills are usually developed with objectives and functionalities that other offices and bills would have achieved if just minor changes were made at the end of the day. Even if the legal method has only led to a never-ending cycle of rules and agencies, as Onyiloha (2015) notes.<sup>19</sup>

According to Rosenbaum (2006), institutional considerations, as well as norms, values, and procedural factors, help maintain public sector employees' ethical behavior in nations with developed economies.<sup>20</sup> Rosenbaum goes on to say that a noticeable characteristic of countries with the least incidence of corruption is extensive

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<sup>18</sup> Oonagh Gay. "Parliamentary Standards: A Developing Issue." *Political Quarterly* 74, no. 1:83–90. (2003)

<sup>19</sup> Ibid 28. Onyiloha

<sup>20</sup> Allan Rosenbaum. Implementing the UN Convention against Corruption in Developed Countries: Some Insights Drawn from the Case of the United States Ethics. *Ethics, integrity, and accountability in the public sector: Rebuilding trust in government through the implementation of the UN Convention against corruption*, (2006). p.15.

decentralization of governmental institutions, with a significant share of government expenditure occurring at the subnational level, such as Scandinavian countries.<sup>21</sup>

The next step is to devise methods for enforcing existing legislation. Even when new challenges arise, the best way to deal with them is to channel the spirit of the relevant law, rather than creating new regulations that will be obsolete in a few years anyhow.

## **1.5 Objectives of the Study**

### **1.5.1 Main objective**

The study's major objective is to look at how Kenya's, Nigeria's, and South Africa's legal frameworks promote integrity and ethics in public service.

### **1.5.2 Specific objectives**

The first objective is to look into how well the legal frameworks in Kenya, Nigeria, and South Africa preserve integrity and ethics in the public sector. Second, the study wants to see if other nations in the international community have successfully linked their legal frameworks for public services. Finally, the Study will include recommendations on how Kenya can improve its public sector integrity and ethics by implementing best practices.

## **1.6 Justification of the Study**

Kenya, South Africa, and Nigeria appear to have a variety of legal frameworks for integrity and ethics. On paper, they appear to be committed to maintaining and enforcing integrity and ethics, but the truth is that their residents are victims of unethical public

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<sup>21</sup> Ibid, p.18

service personnel every year. Transparency International provides a valuable global corruption barometer that seems to paint a picture of improved anti-corruption practices in Kenya, but as Gilman (2015) notes, the connection between reality and perception is at best, imperfect. This study is justified because it will examine the legal frameworks for integrity and ethics protection in South Africa Nigeria and Kenya as well as the differences and similarities, as well as the similarities and structural gaps between the three jurisdictions' legal frameworks on integrity and ethics, in order to discover a solution to Kenya's problems with integrity and ethics enforcement.

Furthermore, the selection of two comparable countries is warranted since they have similar legal frameworks and constitutional, as well as similar institutions to support the and integrity and ethics movement. Furthermore, they have a structure and institutions that are slightly older than Kenya's., having been established and created in the 1990s and early 2000s, whereas the majority of Kenya's laws occurred in the mid to late 2000s. All of this suggests that Kenya should examine its integrity and ethics framework, as well as its experience in dealing with ethical concerns, identify gaps in its practices, and devise strategies to improve its integrity and ethics framework in the public sector.

After the Study is completed, any government ought to be able to implement the suggestions to design policies that necessary institutions and personnel would be empowered, resulting in the implementation of legislation and constitutional requirements for public service integrity and ethics. In addition, the study will contribute to the literature on integrity and ethics protection and enforcement in Nigeria, Kenya and South Africa.

## 1.7 Research Hypothesis

All three countries have grappled with issues of integrity and ethics among their public servants, which opponents have blamed on an insufficient constitutional and legislative framework.

When you examine it more closely, you find a huge network of national culture and a set of ethical principles that all public servants must adhere to in all three countries, such as the Public Officer Ethics Act and Ethics and Anti-Corruption Act in Kenya, the Promotion of Administrative Justice Act and the Prevention and Combating of Corrupt Activities Act from South Africa, and the Public Service Rules & Regulations & Regulations & Regulations & Regulations & Regulations & Regulations & Regulations & Regulation The Code of Conduct Tribunal and the Ethics and Anti-Corruption Commission from Nigeria and Kenya, respectively, are institutions and commissions that deal with integrity and ethics issues.

Sure, there are flaws in the law, but they pale in comparison to the procedural, institutional, economic, social-cultural, political and bureaucratic elements impeding the promotion of integrity and ethics in government. The leadership and institutions have struggled to enforce the constitutional and legislative framework, despite the fact that the provisions in the three countries are among the most progressive in the world.

## 1.8 Research Questions

The following questions will be addressed in this study:

1. To what extent does the legislative system in Kenya, Nigeria, and South Africa preserve integrity and ethics in public service?

2. What are the similarities and differences in the legal frameworks, case law, and how the courts and commissions in the three countries implement integrity and ethics frameworks?
3. What structural gaps and best practices exist in the legal systems of the three countries when it comes to integrity and ethics?

### **1.9 Scope and Limitation**

After recognizing the substantial influence that integrity and ethics concerns have on Kenya's economy and growth, this study examines the institutional provisions and legal framework for integrity and ethics. It will focus on Kenya's legal framework and institutional provisions for public sector integrity and ethics, drawing influence from Nigerian and South African integrity and ethics models. There's nothing stopping you from researching the Study because all of the information is available online.

### **1.10 Research Methodology**

This study aims to evaluate the scope of the legislative frameworks in Nigeria, Kenya, and South Africa, as well as similarities and variations, and best practices in upholding integrity and ethics in public service in the three countries.

The Study will collect information from news stories, academic publications, conference papers, statutes, books, journals and other internet sources to accomplish this. Because this is a desktop study, it will be conducted entirely in Nairobi.



## CHAPTER TWO

### LEGAL FRAMEWORK FOR INTEGRITY AND ETHICS IN KENYA, SOUTH AFRICA, AND NIGERIA

#### 2.1 Historical background

The first attempt at enforcing public service integrity and ethics goes back to 1956 with the enactment of the Prevention of Corruption Act by Kenya's colonial government, a document that remained largely unchanged until 1991. Kenya used Section G of the Republic of Kenya Code of Regulations in 1966 to try to set standards to manage public officials' behavior.<sup>22</sup> In the year 2000, former President Moi set up the Commission for Constitutional Reform of Kenya, aiming at making the first major constitutional reform. Since no prosecutions ensued after the amendments to the Prevention of Corruption Act, Kenyans' calls to the government to rein in rampant corruption led to the repeal of the colonial act by the Anti-Corruption and Economic Crimes Act of 2003, which led to the formation of the Kenya Anti-Corruption Commission (KACC). In an effort to combat rising cases of corruption, parliament enacted the Public Officer Ethics Act in 2003 to provide a framework for public servants' code of conduct and ethics, which includes a declaration of wealth and liabilities once every two years by the civil servant, their spouse(s), and children under the age of 18 years. Although the NARC government came to power with a promise of 'zero tolerance towards corruption', and despite the intricate legal provisions, the government was rife with corruption issues and abuse of office for personal gain incidences. These occurrences and the failure of the legal provisions informed the decision of the Committee of Experts on the Constitutional

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<sup>22</sup> William Agunda. Expectations of Integrity in the Public Office in Kenya

Review, formed in 2008 after the failure of the proposed Constitution at the 2005 referendum, to come up with integrity and ethics -specific provisions in the new constitution to manage public officers' conduct.<sup>23</sup>

The first attempt at amending the constitution was the 2002 Kenya Review Commission draft, but it did not contain any integrity and leadership clauses, and neither did the draft report make any coherent mention of such, except in one of the 13 main points made by the people willing the government to put an end to corruption. Chapter 6 first made its appearance in the draft constitution that was up for a referendum in 2005, and similar provisions were in the 'Bomas Draft' drafted by a rival faction of the National Constitutional Conference (NCC).<sup>24</sup> The formal NCC draft report discussed leadership and integrity at length as they recognized leadership determines the success of any undertaking concerning development, growth, and national unity. They observed that integrity ensures the leaders focus on the best interests of the people since leaders face moral and ethical dilemmas every working day, ethical practices would help them deliver honest and professional behaviour. The commission argued that Kenya had to include leadership and integrity clauses in the constitution since other countries such as South Africa and Uganda had such provisions. Under the section of 'what people said', they reported that citizens expect an enactment of a Code of Conduct, seizing of corruption assets, punishment of corrupt people, and transparent public appointments.<sup>25</sup> The report recommended forming an Integrity and ethics Commission (EIC) to ensure compliance

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<sup>23</sup> Transparency International. *The Verdict: An Analysis of the Interpretation of Chapter Six by Kenyan Courts*, (2019). p. 3

<sup>24</sup> Republic of Kenya. *The Final Report of the Constitution of Kenya Review Commission*, Nairobi (2005), p. 217-219

<sup>25</sup> Ibid

with the Code of Conduct and disqualify those who breach it. EIC would receive declarations specified by the Code of Conduct.

## **2.2 Comparative analysis of the constitutional provisions on integrity and ethics between Kenya, Nigeria, and South Africa**

As Ghai and Ghai (2017) observe, Kenya has borrowed heavily from the South African constitution since the chair of the Kenya's constitutional drafting process was involved in drafting the South African Constitution.<sup>26</sup> Further, a member of the CKRC was an intern debating devolution at the Kenyan High Commission in South Africa, and one of the three foreign members of the Committee of Experts on the Constitutional Review, as set up by the Constitution of Kenya Review Act (2008), was South African. According to Ghai a Canadian legal drafter, Philip Knight, was in the panel that finalised the drafting of the South African constitution and was a drafter in phase 1 in Kenyan at the CoE stage.<sup>27</sup> As such, the two constitutions bare similarities in wording and phraseology, making it an apt inclusion in this comparative analysis. As Africa's largest democracy and economy by GDP, Nigeria has a relatively young constitution promulgated in 1999. Nigeria has consistently ranked lowly in corruption perception indices by Transparency International. Unlike the other African countries that placed lower, it is a stable, democratic government that has formed various institutions to enforce integrity and ethics provisions. Gilman's (2005) study<sup>28</sup> found that Nigeria and South Africa were

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<sup>26</sup> Jill Cottrell & Yash Ghai. The Contribution of the South African Constitution to Kenya's Constitution, in Rosalind Dixon & Theunis Roux (ed.), *Constitutional Triumphs, Constitutional Disappointments : A Critical Assessment of the 1996 South African Constitution's Local and International Influence*, (Cambridge University Press, March 2018), pp. 252-293.

<sup>27</sup> Ibid

<sup>28</sup> Stuart C. Gilman. "Ethics codes and codes of conduct as tools for promoting an ethical and professional public service: Comparative successes and lessons." *Prepared for the PREM, the World Bank* (2005)

more advanced in dealing with legal systems gaps than other countries in his sub Saharan Africa research, making the two countries prime candidates for this comparative analysis. The aim of this comparative analysis is to find parallels or differences between Kenya's integrity and ethics legal provisions, and its contemporaries in South Africa and Nigeria.

## **1. Kenya**

### **Constitutional provisions on integrity and ethics in the public service**

A public office, according to Kenya's Constitution, is one in the county government or national or the public service that receives benefits and remuneration from the Consolidated Fund or from parliament.<sup>29</sup> The Leadership and Integrity Chapter of Kenya's Constitution (2010) provides a number of broad provisions concerning integrity and ethics in the Kenyan public sector.

First and foremost, those who appoint public officials must do so on the basis of personal integrity, fitness, and competence. In addition, as elected officials, elected officials should give selfless service in the public interest, and be disciplined and dedicated to their duties as public servants and make choices with objectivity and impartiality. Unless exempted by the state, any gift received by a state officer belongs to the state, and they should not keep or run bank accounts outside the country, let the officers become involved in secret deals or activities that could endanger their reputation.<sup>30</sup> Public officials ought to be accountable to the public for their actions and decisions, be selfless and honest when carrying out their duties, ensure that their judgements are not swayed by

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<sup>29</sup> Article 260

<sup>30</sup> Article 76

favoritism or nepotism, and be the first to disclose any potential conflicts of interest.<sup>31</sup> A state officer is prohibited from engaging in additional employment and serving in political party roles, and if they are in receipt of a pension is not permitted to occupy profitable jobs within firms owned or controlled by the government when they are retired.<sup>32</sup>

State officers are required by Article 75 to extend their good behavior to their personal lives, ensuring that personal interests do not conflict with official duties. Article 232 also outlines the public servant's principles and values, which include using resources and maintaining high professional ethics in addition to delivering accurate and timely information when the public requests it; these character traits should also be evident in our responses. It also requires the public sector to include citizens in decision-making by providing fair and adequate chances for appointment, advancement, and training while representing Kenya's varied populations.

### **Statute law**

The Leadership and Integrity Act of 2012 was enacted to give effect to and create measures that would lead to the adoption of Chapter Six of Kenya's Constitution. Section 8 of the Constitution mandates that state officers use their powers in the best interests of the people. Public officers must respect and adhere to the law and the Constitution, care for public property, and pay all taxes and legal and financial duties, according to the general leadership and integrity code. Furthermore, they should not possess dual citizenship and should carry out their duties and wield their authority in the best interests of Kenyans. They should also not be bullies or deceive the public. They should accept

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<sup>31</sup> Article 73

<sup>32</sup> Article 77

personal responsibility for their actions and omissions, fulfill their jobs with professionalism, and adhere to high standards of integrity, ethics, and morality. Furthermore, they should not accept any gifts or advantages in kind, or improperly or unlawfully acquire any property, such as participating in tenders, future job offers, public money collection, or opening and managing a bank account outside of the country. Public workers should maintain political neutrality, provide objective, honest, and accurate advice, and refrain from favoritism, cronyism, corruption, nepotism, tribalism, and religious bias while on the job. Finally, they must refrain from falsifying public records or spreading false information.<sup>33</sup>

The Ethics and Anti-Corruption Commission is established by Article 79 of the Constitution. One of the tasks for the commission is to draft a Code of Ethics under the Ethics and Anti-Corruption Commission (2011) Act<sup>34</sup> and Implement the code of ethics that public officials prescribe.<sup>35</sup> Schedule Three stipulates that members and staff are unbiased and independent, that they serve independently of government, other public officials, the political party or any authority without fear, favor or prejudice.<sup>36</sup> It forbids the eligibility for appointment or nomination of any Member or employee to a public office or political post.<sup>37</sup> Section 2(2) bans members of the association, membership, behaviour or making statements that are designed to undermine the Commission's independence, harm its credibility, impartiality or integrity. Members must not utilize any confidential information for personal benefit or, unless in the course of their official duties, disclose data to third parties. If a member or employee has a direct or indirect

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<sup>33</sup> Sections 10 to 34

<sup>34</sup> S. 11 (1) (a) (ii)

<sup>35</sup> S. 11 (1) (f)

<sup>36</sup> S. 1 of the Third Schedule

<sup>37</sup> S. 2 & 3 (a) (b) of the Third Schedule

interest in a contract, a conflict of interest is therefore to be found. In that situation, the facts shall be revealed at the contract meeting and shall not be involved in the hearing, debate or voting as no member shall deal with the Commission.<sup>38</sup> Members shall not use their office for improper enrichment by donation, favors or use of data for their profit or for the benefit of any other person.<sup>39</sup> With respect to integrity, this applies to privacy as members or workers must conduct their privacy in a manner which supports public trust in the Commission. In addition, they must pay tax, make annual asset disclosures, avoid political actions which could jeopardize their neutrality, and avoid presiding over fundraisers.<sup>40</sup> Additional restrictions include sexual harassment, nepotism and foreign intervention to damage the security interests of Kenya.<sup>41</sup>

## **2. South Africa**

### **Constitutional provisions on public service integrity and ethics**

The Constitution provides for the overarching legislation, but public service departments adapt the regulations to their own circumstances. Officers must think and conduct ethically irrespective of what the laws dictate. Chapter 10 provides for the promotion and maintenance of high ethics, accountability, openness, fair and objective services, and the provision of access to accurate information.<sup>42</sup> The Code of Conduct, under which all public sector employees obey, is further reinforced by the collective agreement.<sup>43</sup>

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<sup>38</sup> S. 3 of the third schedule

<sup>39</sup> S. 5 of the third schedule

<sup>40</sup> S. 6 of the third schedule

<sup>41</sup> S. 7, 8, & 9 of the third schedule

<sup>42</sup> Section 195(1) of the South African Constitution

<sup>43</sup> Public Service Co-ordinating Bargaining Council Resolution 2 of 1999

## Statutes

The Guidelines on public servants' Code of Conduct for executive and legislative relations, public relations, fellow employees' relations, personal behaviour, personal concerns and how public servants perform their functions, are provided for in Chapter 2 of the Public Service Regulations (PSR), 2001. With regard to their contacts with executive and legislative offices, an employee should respect the republic and be committed to the constitution while first of all putting public interest in execution.<sup>44</sup> In addition, they should loyally execute government policies, which are contained in statutory provisions, in the execution of their tasks, and require familiarization with those statutory provisions and other instructions related to the performance of such responsibilities. The public worker should, finally, engage with public institutions that establish the Constitution or legislation while assuring the promotion of the public interest. As far as its connections with the public are concerned, public service employees should provide impartial services to build public service confidence, be courteous, reasonably accessible and helpful.<sup>45</sup> In order to do so, they should treat public members as their consumers, deserve the greatest level of service, and not misuse their position so that any interest groups or political parties can be promoted or harmed. This means being committed to uplifting and giving timely service for the growth of South Africa, taking account of public concerns when fulfilling their functions and decision-making. You should not discriminate on the basis of race, ethnicity or society, gender, colour, age, religion, religion, belief, culture, language or politics. Furthermore, the public employee shall respect, preserve and respect the dignity of public members as stipulated in the

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<sup>44</sup> Chapter 2, Section 3(1) of The Public Service Regulations, 2001, as amended

<sup>45</sup> Ibid, S. 3(2)



Constitution. In their behaviors with regard to their own age, sex, race, sexual orientation, religion, political belief, culture, or language or ethnic and social origin, employees shall cooperate with other employees to promote the public interest and to deal with employees fairly, equitably and professionally without regard to the overt activities of parties.<sup>46</sup> In working-related activities, the employee should also refrain from favoring friends and family, which means an abuse of his position. While fulfilling their tasks, an employee should pursue the institution's objectives most cost efficiently and in the public good by creating innovative solutions to address problems effectively and effectively within legislation, while executing their duties skillfully, professionally and promptly.<sup>47</sup> In addition, the employer must refuse to act, which could lead to inappropriate gains and conflict of interest in the performance of its official tasks. To increase their skills, workers must use training and personal growth to give them honest and objective counsel utilizing available evidence to address confidential issues, talks and documents efficiently while encouraging sound, transparent and responsible administration.<sup>48</sup> An employee should only be honest and accountable with public money for the stated goals. The same is true of public property since it needs to be utilized effectively and efficiently and for official use exclusively. The employee should not use his position to receive gifts or to benefit himself in the performance of his duties, in the course of their own interests and personal conduct, and should not accept benefits or gifts which are understood as bribes, nor engage in payment work without official duty. If they perform their official tasks, they should conduct and dress in a way that improves the reputation of the public service, and do not use their departments to obtain information

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<sup>46</sup> Ibid, S. 3(3)

<sup>47</sup> Ibid, S. 3(4)

<sup>48</sup> Ibid, S. 3(5)

that they give for the benefit of their personal interests or others. Finally, people should be responsible when using alcoholic beverages or other chemicals can cause poisoning. The same laws and regulations apply in accordance with the spirit of the legislation to municipal employees and supply chain managers, if not verbally<sup>49</sup>

For the management of public financial regulations, Chapter 3 of the 2001 Public Service Regulations stipulates that the number, nature and nominal value of the shares and financial interests held annually by employees in private, public or corporate entities, partnerships or directorates indicating the name and type of business activity performed by that corporation shall be disclosed to them. It is the same with regard to paid work outside the government, advisory services, retainer companies, sponsorships, property and land ownership within or outside of South Africa, gifts valued above R 350 and hospitality provided from sources other than their families. The local government must report this to the Council in writing to municipal workers or their wives, business associates or families, who obtain or are able to acquire direct benefit from a contract with the municipality.<sup>50</sup> A staff member may not solicit or accept any gift, favor, or reward for doing or not doing something within their duties or powers, disclosing confidential or privileged information, persuading the municipality's council or a functionary to exercise or perform any power, or making a representation to the municipality's council or any functionary of the council. Section 30 of the Public Service Act also forbids undertaking remunerative labor outside of a public servant's job without written approval from the department's executive authority<sup>51</sup>.

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<sup>49</sup> Schedule 2 to the Municipal Systems Act, 2000

<sup>50</sup> Schedule 2 Local Government Municipal Systems Act

<sup>51</sup> Act No. 103 of 1994

The Prevention and Combating of Corrupt Tasks Act of 2004 was passed to improve measures aimed at combating and preventing corruption, as well as providing investigative tools, identifying corruption offenses, and other related activities. It requires public officials in positions of authority to report certain corrupt practices, and it establishes a registry that lays limits on people or businesses guilty of contract or tender wrongdoing. Furthermore, it permits extraterritorial jurisdiction in cases of corruption.

The Promotion of Administrative Justice Act (2000) was enacted primarily to give effect to Section 33 of the Constitution. To put it another way, effect the right to reasonable, lawful, and procedurally fair administrative action, promote good governance and efficient administration, and foster a culture of openness, transparency, and accountability in public administration or when public servants exercise power for the public good.

The Promotion of Access to Information law (2000), however, enables voluntary and compulsory information acquisition methods to promote accountability, openness and good governance in a timely, uncomplicated and cost-efficient way.

Finally, it ensures that public bodies effectively monitor and take part in the decision-making process.

As regards the Municipal Finance Management Act (2003), it lays down the Municipal Supply Chain Management Rules, which lay down supply chain policy prohibiting awards to a person in state services, be they in a management, partner or other way related to an organizing body seeking such award, or be it a consultant or advisor to the municipal entity. Similarly, if the reward rises beyond the mark of R2 000, even though a person has left service within the last year, it will also apply to his spouse, kid, parent,

partners or family. In addition, the policy for the supply chain management should contain a code of conduct requiring officials to report all unlawful actions to the accounting officer, including alleged corruption, unfairness, fraud, the supplies chain management policy's favoritism and all violations of ethical standards and regulatory violations 47. (1). It also bans anyone providing the municipality with goods or services to give, incentives, favors or accommodation directly or indirectly to the official or role player involved in adopting that municipal supply chain policy.

South Africa introduced the Public Sector Integrity Management Framework to strengthen and manage integrity and ethics conduct in the public service. An ethics officer is appointed to champion ethical and integrity practices, and report to the Department of Public Service and Administration (DPSA).<sup>52</sup> Their duties include promoting integrity and ethical practices, administering and managing financial declaration forms, identifying and reporting corrupt and unethical behaviour to the head of department, keeping a register of public servants disciplined and under investigation for corruption, and providing such list to the DPSA Special Anti-corruption Unit. An executive authority in the Public Service will then take appropriate disciplinary steps against a head of department.<sup>53</sup> For lower ranking members of staff who do not comply with these provisions, the head of department and the Special Anti-corruption Unit shall discipline them, with all disciplinary actions reported to the Minister for Public Service. In 2019, the Minister for Public Service and Administration formed the Public Administration Ethics, Integrity, and Disciplinary Technical Assistance Unit (The Unit)<sup>54</sup> to provide technical assistance and support for managing integrity, ethics, and

<sup>52</sup> Public Sector Integrity Management Framework, Section 6.7

<sup>53</sup> Ibid, S. 6.8

<sup>54</sup> S. 15 of the Public Administration Management Act (No.11, 2014)

disciplinary matters in public administration; promote and develop norms and standards for integrity and ethics ; and strengthen oversight of integrity, ethics, and discipline.

In the national set-up, South Africa has adopted a multi-agency model of overseeing anti-corruption activities. There are several constitutionally based institutions and groups of agencies with similar but minor differences in objectives.<sup>55</sup> The National Prosecuting Authority (NPA) handles criminal proceedings related to corruption on behalf of the state; the Special Investigating Unit (SIU) has jurisdiction to investigate corruption at any level and recover losses through legal means. Independent Police Investigative Directorate (IPID) investigates corruption and abuse of office in the South African Police Service (SAPS), while SAPS investigates all forms of corruption; the Directorate for Priority Crime Investigations (DPCI) detects, combats and investigates all national priority offences. Finally, the Public Protector State investigates all forms of corrupt activities in the public domain, and reports them to the state institutions.

The Prevention and Combating of Corrupt Activities Act (PRECCA) is the main anti-corruption legislation in South Africa that obligates officers in authority to report incidences of corruption such as theft, extortion, and fraud.<sup>56</sup> It leaves the work of investigation to the primary constitutional body mandated to investigate and prosecute corruption and bribery, the SAPS and the National Prosecution Authority (NPA). Additionally, the Judicial Commission of Inquiry, colloquially known as the Zondo Commission has a mandate to launch investigations into allegations of fraud, corruption,

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<sup>55</sup> Pillay, P. "Anti-Corruption agencies in South Africa and Brazil and challenges." *African Journal of Public Affairs* 9, no. 8 (2017): p. 4.

<sup>56</sup> Section 34(1) of PRECCA

systemic corruption in state organs (state capture), and other related allegations in the public sector.

### **3. Nigeria**

#### **Introduction**

In accordance with Article 318(1) of the constitution of Nigeria, the government includes elected and appointed officials such as President and Vice President, Ministers and Commissioners, governors, members of legislative institutions, chairmen and corporate managers, where the government holds control shares. In accordance with Article 337(1) of the Constitution. Moreover, the public service includes parastatals, the parliament, the judiciary, schools, federal and local administrations and the police and military forces.<sup>57</sup>

#### **Constitutional provisions**

The code of behavior for public officials is laid down in Part 1 of the Fifth Schedule of the Constitution (1999) of Nigeria. In general, public officials do not need to position themselves where their interests conflict with their duties and responsibilities. Section 2(a) prevents a government official, unless his work is part-time, from conducting or managing a business, profession or private enterprise. Operating and keeping international accounts are further restricted<sup>58</sup> or acceptance as a director, chairman or employee of a governmental or parastatal institution following withdrawal and receipt of pensions of more than one paid posts.<sup>59</sup> Such limitations are not applicable when they are Legislative Members.<sup>60</sup> Further limitations prevent the serving or acceptance of

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<sup>57</sup> S. 169 of Nigeria's Constitution (1999)

<sup>58</sup> S. 3

<sup>59</sup> S. 4

<sup>60</sup> S. 14(a)

compensation from foreign businesses previous Presidents, Vice Presidents, Chief Justice, Governors and their deputies.<sup>61</sup> Section 6 bans receipt of benefits, gifts or property, of any sort, for the performance of their obligations, or for failure to do anything. Section 7 of this section covers the rejection of any loans by some senior civil service groups except when issued in a government, government or governmental or legal capacity, and the rejection of any benefits from such institutions by the representative or their agent. Moreover, a public official cannot take any bribes or incentives for the performance of his obligations,<sup>62</sup> while an officer shall not permit an injurious act to occur in its office in section 9. A public officer is not part of a society that weakens or is incompatible with the dignity or functions of their office.<sup>63</sup> Section 11 requires a civil servant, after three months of appointment and then every four years thereafter, or at the conclusion of their service, to submit their declaration of property, whichever comes first. For example, Article 020210 is comparable to the Constitutional Article 10 as it requires public officials to desist from the membership of secret companies unless they are ready to withdraw or withdraw from the service, as it does not compel them to withdraw from it.

### **Statute law**

Corrupt practices and other related violations (2000) lead to the offense of gratification,<sup>64</sup> whether the gratification was granted or received through the Agent of a Public Officer and whether or not acceptable.<sup>65</sup> It prohibits dishonest receipt or purchase of property<sup>66</sup>

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<sup>61</sup> S. 5

<sup>62</sup> S. 8

<sup>63</sup> S. 10

<sup>64</sup> S. 8

<sup>65</sup> S. 9, 10, & 17

<sup>66</sup> S. 12 & 13

or make false claims or assertions and make false and misleading declarations to the Commission.<sup>67</sup> The bribing of public officials, for either auction or support in the awarding of contracts are other prohibitions.<sup>68</sup> The officer concerned must disclose transactions of bribery.<sup>69</sup> Section 19 offends the public official to use their office for personal rewards and deal with property gained by this reward.<sup>70</sup>

The Economic and Financial Crimes Commission (EFCC) came to existence under the EFCC Establishment Act 2004 with the goal of investigating financial and economic crimes. It reports directly to the president, to ensure it does not lack funding, and have direct access to the president. Its sister agencies include the Independent Corrupt Practices and other Related Offences Commission (ICPC) formed under the Corrupt Practices and other Related Offences Act 2000 charged with investigating gratification, bribes, fraud, and abuse of office, but free from the influence of the president. The Code of Conduct Bureau and Tribunal Act, Chapter 58 LFN 1990 formed the Code of Conduct Bureau (CCB) with a mandate to ensure public officers' behaviour conforms to high standards of accountability and morality.

## **Conclusion**

Kenya, Nigeria, and South Africa all have robust provisions for integrity and ethics . They all provide directions for public service officer's professional behaviour, requiring them to be impartial; serve without fear or favour; without any influence from any person or authority; and to observe high standards of ethics, integrity, accountability, and morality.

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<sup>67</sup> S. 16 & 25

<sup>68</sup> S. 18, 21, & 22

<sup>69</sup> S. 23

<sup>70</sup> S. 24



The main difference arises in the enforcement mechanisms. Although the countries do have several agencies to manage ethics, corruption, and integrity issues, Kenya uses an independent body, the EACC, as its apex agency to enforce its ethics, integrity, and anti-corruption agenda. On the other hand, Nigeria uses three main agencies: the EFCC, is an agency formed to tackle corruption issues under the direction of the President; the ICPC, an independent body charged with oversight and investigating corruption and other related crimes; and its partner agency, the CCB, formed to ensure public employees adhere to high standards of morality and accountability. Conversely, South Africa has mandated two main institutions with investigating corruption and bribery matters, the SAPS and the NPA. The Public Protector, SIU, IPID, DPCI, and the Zondo Commission (a temporary commission) also have investigative mandates on bribery and corruption issues. SAPS is the only institution that can prosecute bribery and corruption matters as well. Moreover, the Ministry of Public Service in South Africa handles integrity and ethics issues internally, with integrity officers and the newly formed 'The Unit' monitoring integrity and ethics matters. A combination of an executive authority, department heads, and Special Anti-corruption Unit handle matters of disciplining errant public officers, and then report the disciplinary actions to the Minister of Public Service.

## **2.4 Analysis of Kenya's Top Integrity and ethics Enforcement Agency to Similar Agencies in Nigeria and South Africa**

### **Ethics and Anti-Corruption Commission's brief history**

Kenya has had a long-running fight against corruption, with several institutional bodies preceding the Ethics and Anti-Corruption Commission (EACC). In 1993, Kenya had a

specialist Anti-Corruption Squad based in the Police Department's Criminal Investigation Department. Allegations of bribery and little returns in prosecutions led to its disbandment in 1995. Following internal and external pressure after the unearthing of the Goldenberg scandal, the government amended the Prevention of Corruption Act, giving rise to Kenya Anti-Corruption Authority (KACA) in 1997. When the agency tried to prosecute high-ranking cases, it resulted in the removal from office of its Chairperson in 1998.<sup>71</sup> The *Gachiengo V R.* case dealt it a fatal blow as the court declared the agency unconstitutional.<sup>72</sup> When Mwai Kibaki came into power in 2002, he appointed a presidential advisor on anti-corruption, culminating in the repeal of the colonial Act by the Anti-Corruption and Economic Crimes Act of 2003, which led to the formation of the Kenya Anti-Corruption Commission (KACC). It kept that format until its replacement by EACC in 2011.

### **Appointment procedure and tenure**

Section 4 of the Act stipulates that the Commission shall constitute a chairperson and four members, as provided by the Act and the Constitution. To qualify to sit in the Commission, one must have prior knowledge and experience of not less than 10 years in at least one related discipline, such as law, leadership, ethics and governance, religious studies, or fraud investigation. That person must not be in the governing body of a political party, convicted felon, bankrupt, or removed from public office having contravened constitutional or statutory provisions.<sup>73</sup> The Chairperson and members are

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<sup>71</sup> Charles Hornsby, (2013). *Kenya: A history since independence*. London: IB Tauris

<sup>72</sup> (2000) 1 EA 52(CAK)

<sup>73</sup> S. 5

part-time members who serve for single six-year terms and cannot be re-appointed.<sup>74</sup> The Commission shall institute a transparent, open, and competitive recruitment process to appoint its Secretary, who has to gain the National Assembly's approval. To qualify for the Commission Secretary's position, the Kenyan citizen must have a postgraduate qualification and at least 10 years' experience in management level in the same fields described for the Commissioners. The Secretary shall hold one, 6-year, non-renewable term. The Commission shall announce the Secretary's vacancy at least three months before the incumbent's term expires.<sup>75</sup>

Whenever the Commission has a vacancy, the Public Service Commission shall invite applications from qualified persons through advertisements in two daily newspapers of national circulation, consider, and shortlist eligible candidates. They will interview the eligible candidates in public, make a shortlist of three names for each vacancy, and forward them to the President within 14 days.<sup>76</sup> Under S. 10(2), the President shall select his/her preferred candidate and forward the name to the National Assembly within 14 days. The National Assembly shall, within 21 days after its next sitting, vet the applicant to gauge their suitability and thereby reject or approve the applicant(s). If the National Assembly approves a person, the Speaker shall send the name back to the President for appointment, which the President shall do within seven days through a gazette notice.<sup>77</sup> If Parliament rejects a nominee, they shall communicate the same to the President within three days, who shall submit a fresh candidate from the list of three shortlisted candidates

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<sup>74</sup> S. 7

<sup>75</sup> S. 16(1)(2)(4)(5)

<sup>76</sup> S. 10(1)

<sup>77</sup> S. 10(2)(3)(4)(5)

within seven days.<sup>78</sup> If the National Assembly rejects all subsequent nominees, the process starts from subsection (1) and (2). Under S. 10(9), the Public Service Commission, the President, and National Assembly shall keep in mind the provisions relating to ensuring not more than two-thirds of the Commission consist of the same gender.

### **Jurisdiction and authority**

Kenya's apex institution charged with the oversight of integrity, ethics, and corruption is the EACC. It is an established commission courtesy of the Ethics and Anti-Corruption Commission Act. Under the general functions and powers conferred by Article 252 of the Constitution, the Commission can institute investigations on its own accord or following a complaint by a citizen. Additionally, section 3 of the EACC Act empowers the Commission to hold, acquire, charge, and dispose immovable and movable property, or perform other duties or acts to ensure it discharges its duties permissible by laws in the Act, Constitution, or any other written law. The Commission is to ensure its services are accessible to all parts of the country.

Section 13 provides the powers of the Commission, which constitute all powers necessary to execute its functions as provided by the EACC Act, Constitution, and other written laws. The Commission has the power to create preventive measures to curtail corrupt and unethical practices; investigate; create awareness, and educate on matters within its mandate; carry out negotiation and mediation. They can hire an expert to help them perform any duty. The Commission may form committees<sup>79</sup>, or co-opt an expert

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<sup>78</sup> S. 10(7)

<sup>79</sup> S. 14(1)

that can help such committees,<sup>80</sup> to help the Commission effectively discharge its functions. That knowledgeable person co-opted under subsection 2 can attend the Commission's meetings and offer their views, but they do not have voting powers. The Secretary is unanswerable to the Commission. Section 7 stipulates that the Secretary is the Commission's chief executive and accounting officer, responsible for the daily management and administration of the Commission, supervision of the Commission's employees, and carrying out and performing the duties and decisions of the Commission.

### **Actual successes and failures**

Kenya's Presidents have continually stated their support for EACC. Still, there is a perception that forces are working against the agency whenever it tries to fight corruption at the top levels. Take the case of a former EACC Chairman and his vice, suspended from office on recommendation of the Parliamentary Justice and Legal Affairs Committee, on charges of gross misconduct, incompetence, violation of the Constitution, and violation of various Acts of Parliament. The timing seemed odd considering EACC had commenced 175 cases against high-ranking government officials, including five cabinet secretaries, and had stated they would begin charging the officials within the upcoming two weeks.<sup>81</sup> A similar fate met a former anti-corruption KACC chair, Prof. Lumumba, who instituted charges against the Foreign, Industrialization, and Agriculture Ministers, who all stepped down. Parliament fought back, claiming he was using his office for personal gains, with many Parliamentarians against him under investigation by the graft boss. Parliament created amendments to rein in the powers of KACC, notably the power to prosecute, changes the Chairman of the National Council of NGOs warned as being a

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<sup>80</sup> S. 14(2)

<sup>81</sup> Business Daily, (2021). *Uhuru suspends Matemu and Keino*. Business Daily Africa.

personal attack on Lumumba, not meant to progress KACC. All the accused got back into government, including the country's current Vice-President. Other challenges include lack of human resources, logistical and budgetary challenges, and lack of specialised equipment.

Further, they face a weak legal and institutional framework arising from political hindrances, threats of legal action when performing duties, and attacks by suspects.<sup>82</sup> There is public lethargy<sup>83</sup> and a negative perception of the fight against corruption. The commissioners observed a lack of political will and felt the open hostility towards them from the judiciary and legislature, on the backdrop of questionable and partisan staff.<sup>84</sup> Previously, there was an inherited police culture at the agency, lack of expertise, and an entrenched culture of corruption that hindered attempts to make an impact.

However, there has been a recent change in fortunes for the agency. The EACC completed 234 investigations on economic and corruption crimes and forwarded the case files for prosecution, and a further 113 investigations into leadership and integrity violations during the 2018/2019 financial year, disrupting a possible loss of about Sh 14 billion, according to its presentation during its annual general meeting in 2019.<sup>85</sup> For instance, EACC arrested a junior accountant in 2020 who was on a salary of Sh 54,000, but had amassed more than Sh 100 million in three years during the Anglo-Leasing scandal period that started in 2004. In March 2021, the High Court ordered he forfeits the

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<sup>82</sup> Ibid, p. 25 EACC

<sup>83</sup> Grace Kaome Injene & Catherine Ngahu (2016). Challenges Faced By the Kenya Ethics and Anticorruption Commission in Implementing the Strategies Recommended By United Nation Convention against Corruption in Kenya. *European Journal of Business and Strategic Management*. P. 94

<sup>84</sup> Ibid p. 95. Grace

<sup>85</sup> EACC (2019). Winning the Fight Against Corruption in Eastern Africa: Lessons and Challenges. Presented during the 13<sup>th</sup> Annual General Meeting of the Eastern Africa Association of Anti-Corruption Authorities [EAAACA] held in Kampala, Uganda. P. 5

properties, as they were proceeds of crime.<sup>86</sup> EACC has been particularly effective in its investigations against county government officials. According to the Kenya Confidential news site, recent EACC investigations, as part of the lifestyle audit ordered by President Kenyatta back in 2017, revealed how a Nairobi County Government chief finance officer accumulated assets worth more than Sh 1.3 billion within five years. Further, the investigations uncovered how a treasury head had over 16 properties in Nairobi and Kisumu worth over Sh 420 million. A former KRA manager could not explain how he acquired assets worth over Sh 615 million. In total, over 500 county and central government officers attached to procurement and accounts were found to have acquired assets beyond their means by EACC during the exercise that was part of an attempt to recover assets worth Sh 10 billion. The Assets Recovery Agency Director added that his agency had recovered assets worth over Sh 3 billion from proceeds of corruption between 2017 and 2019.<sup>87</sup> The Standard Media group claims governors face a combined Sh 100 billion graft cases. In 2018, EACC arraigned in court former Nairobi governor Evans Kidero, on fraud charges leading to a loss of Sh 213 million. Apart from the Kiambu, Tharaka Nithi, Murang'a, and Taita Taveta governors under investigation, EACC released another list of governors under its investigation radar. They include Isiolo, Garissa, Bomet, Turkana, Meru, Machakos, Mombasa, Kilifi, Narok, Kitui, Makueni, Busia, Nairobi, Migori, and former Nandi Governor. So far, EACC has managed to have the Nairobi and Kiambu governors removed from office and impeached by Senate.

Additionally, the agency has charged the Sirisia MP for fraud of nearly Sh 300 million and successfully got him convicted for 67 years or a fine of Sh 1 billion. Kasarani Mp

<sup>86</sup> Business Daily. 2021. *Ex-Treasury boss loses apartments, five cars over Anglo Leasing scam*. [online]

<sup>87</sup> Kenya Confidential Corruption Awareness Editor, 2019. *Lifestyle Audit: Billions Recovered in Cash and Assets*. [online] kenyaconfidential.com, May 7, 2019.

was sentenced to 1 year or a fine of 1.3 million for soliciting a bribe. At the same time, a former Kenya Reinsurance Corporation Director was handed a year's imprisonment and a mandatory fine of Sh 14.4 million. The EACC asserted that as of January 2021, it had salvaged Sh 20 billion in assets in the past five years. Notable wins in that Sh 20 billion recovery exercise includes the return of a 1,800-acre land belonging to Kenya Agricultural and Livestock Research Organisation (Kalro) valued at 8.7 billion, Meteorological department land near industrial area worth Sh 5 billion, University of Nairobi land in Kilimani of value Sh 2 billion, and Kenya School of Law property in Nairobi worth Sh 700 million.<sup>88</sup> In its convictions report between July 2017 and September 2018, EACC recorded 49 convictions and an 80% conviction rate. In one of the cases, an accused was fined Sh 40 million, while the other received a Sh 37 million fine.<sup>89</sup>

In the *EACC vs. James Makura M'Abira* case, the Court of Appeal confirmed that the agency does not need the consent of the DPP to present charges in court against an economic crimes suspect.<sup>90</sup> That means EACC can file cases in court to recover corruptly acquired assets as provided in Section 32 of the Anti-Corruption & Economic Crimes Act, with section 23(3), which giving the Director, or an investigator, power to arrest and charge any person with an offence, or detain them for investigation purposes. As a result, EACC has moved away from the old ways of employing police prosecutors. The DPP has powers to delegate prosecution, a provision which the EACC has put to good use by

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<sup>88</sup> Roselyn Obala, and Daniel Wesangula, (2021). *EACC: We recovered Sh20 billion in assets and graft war on course*. [online] The Standard, 26 Jan 2021, and Paul Ogemba, (2020). *Governors battle Sh100 billion graft cases in courts*. [online] The Standard, 27 Dec 2020.

<sup>89</sup> Ethics and Anti-Corruption Commission, 2019. *Convictions between 1<sup>st</sup> July 1, 2017 to 30<sup>th</sup> September, 2018*. [online] Eacc.go.ke.

<sup>90</sup> Civil Appeal No. 27 of 2013



enlisting a vibrant legal team of qualified advocates and other legal professionals to undertake litigation and appeals, investigations, and drive the asset recovery process as its job advertisements reveal.

## **2.5 Nigeria's Independent Corrupt Practices and Other Related Offences Commission**

### **Preview**

Although Nigeria has three leading institutions charged with investigating corruption matters, the Independent Corrupt Practices and Other Related Offences Commission (ICPC) is an independent body charged with investigating and prosecuting corruption and other corruption-related transgressions, answerable to Parliament. Following rampant corruption incidences, lack of accountability, and Nigeria ranking second most corrupt country globally, there were calls by citizens and the international community on the Federal Government to provide policy response. President Obasanjo established the Act that led to the formation of the agency.

### **Appointment procedure and tenure**

The Corrupt Practices and other Related Offences Act, 2000 established ICPC, consisting of a chairperson and 12 members. Two from the six geo-political zones, a legal practitioner with 10 year's post-call experience, a woman, a retired public officer above the rank of Director, a youth above 21 but below 30 years of age at the time of appointment, a retired judge, a chartered accountant, and a retired officer ranking Commissioner of Police. The Chairperson must be qualified or has held an office of a

judge of a superior court in Nigeria.<sup>91</sup> To sit in the ICPC, the President appoints persons of proven integrity to be the Chairperson and members, after Senate confirmation and declaration of their assets and liabilities. The Chairperson has a five-year term of office, and can have the term renewed for no more than five more years, while the members hold office for four years, with a further four years but will not be eligible after that.<sup>92</sup> An officer will exercise their powers granted them by the Act, under the control of the Chairman or other officer that outranks them.<sup>93</sup> There shall be a Secretary of the Commission, an appointee of the President, who is in charge of the daily running of the Commission and keeping ICPC records.<sup>94</sup>

### **Jurisdiction and authority**

The general duties of ICPC are to investigate any reported offences and prosecute in some instances; to scrutinise systems or procedures that facilitate corruption or fraud; advise and assist agencies or parastatals find ways, or to point out changes in practices, to help eliminate corruption or fraud. ICPC also educates the public and enlists public support in fighting corruption, bribery, and related offences.<sup>95</sup> Whenever necessary, ICPC shall appoint investigators, commissioners, and superintendents.<sup>96</sup> An officer investigating or prosecuting a case has the same powers and immunities as a police officer provided under the Police Act.<sup>97</sup> If an officer notices an offence specified under another law but not specified by the ICPC Act while proceeding in court or during

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<sup>91</sup> S. 3(3) & (4)

<sup>92</sup> S. 3(6)

<sup>93</sup> S. 4(1)

<sup>94</sup> S. 4(6)

<sup>95</sup> S. 6

<sup>96</sup> S. 4(7)

<sup>97</sup> S. 5(1)

investigations, the officer must inform the Director of public prosecutions or any relevant officer to ensure justice.<sup>98</sup>

If an officer has reason to believe an offence has occurred following the filing of a report, they can investigate such a report.<sup>99</sup> A commission officer can summon anyone for examination, or produce any document, or make a written statement under oath or affirmation, if they deem it crucial to investigations.<sup>100</sup> If the President, Vice President, State Governor, or Deputy Governor faces accusations of corruption or contravenes the ICPC Act, the Chief Justice shall authorize an independent counsel to investigate the allegations with the help of the ICPC.<sup>101</sup> The provisions of the ICPC apply to offences done outside Nigeria by citizens, with the ICPC empowered to engage international bodies with skills to detect cross-border crime and tracing property, such as INTERPOL.<sup>102</sup> Nothing in the ICPC Act can stop the Police from investigating an offence under this Act. Still, they must inform the ICPC of any investigations or prosecutions of fraud, corruption, or bribery.<sup>103</sup>

### **Successes and failures**

Prof. Bolaji Owasanoye, the ICPC Chairman, released the “Nigeria Corruption Index: Report of a pilot survey” in which the ICPC placed the judiciary top of the Nigeria Corruption Index between 2018 and 2020, claiming they had been offered N. 458 billion (about \$1.1 billion). This followed a sting operation by the government in 2016 that recovered vast stashes of cash in Supreme Court judge’s houses, yet most of them did not

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<sup>98</sup> S. 5(2)

<sup>99</sup> S. 27(3)

<sup>100</sup> S. 28(1)

<sup>101</sup> S. 52

<sup>102</sup> S. 66(1)(3)

<sup>103</sup> S. 69

engage in business that dealt with large sums of money. While it might seem like the ICPC is conducting its duties as expected, others like Chief Ferdinand Orbih are not convinced. He wonders why ICPC has not prosecuted anyone after the report. The Chief reasons that the ICPC released the report without evidence or data. It did not verify any allegations, and neither did it do anything to trace the monies, investigate, or prosecute any lawyers or judges. He considers all this sensationalism and PR exercises, a fact strengthened by the fact that most of the judges exposed by the sting operation in 2016 were cleared of corruption charges.<sup>104</sup>

As the former Chairman of the ICPC Ekpo Nta puts it, there are enough laws in Nigeria to fight corruption effectively; the problem lies with implementation. According to Ikpeze (2013), there is a lack of political goodwill to help fight against graft as influential individuals in government abuse their power, use it for personal or third-party gain, and then cover their tracks by undermining the functioning of agencies such as the ICPC. For instance, the President granted a pardon to a former governor convicted of corruption.<sup>105</sup> As a result, Abdulrauf suggests that ICPC does not institute proceedings against members of the ruling party unless with direct 'presidential clearance,' bearing in mind instances such as the time the President refused to act on the report of the senate indictment of the former Secretary to the Government of the Federation.<sup>106</sup> Further, there are instances of interference from other state agencies. For example, the ICPC preferred criminal charges against a sitting minister, but the AG entered a *nolle prosequi*. The Chairman of the ICPC

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<sup>104</sup> Joseph Onyekwere (2021). *ICPC corruption verdict unsettles judiciary*. The Guardian Nigeria News - Nigeria and World News.

<sup>105</sup> Nnamdi Ikpeze. "Fusion of anti-corruption agencies in Nigeria: a critical appraisal." *Journal of Sustainable Development Law and Policy (The)* 1, no. 1 (2013): p. 160.

<sup>106</sup> Abdulrauf, Lukman Adebisi. "Using Specialised Anti-Corruption Agencies to Combat Pervasive Corruption in Nigeria: A Critical Review of the ICPC and EFCC." *African Journal of Legal Studies* 12, no. 3-4 (2020): p. 15.

was relieved of his position from the ensuing fallout.<sup>107</sup> An overburdened judiciary is a bottleneck as most corruption cases involving powerful members of society are stuck in court for years without resolution. There is a lack of adequate funding to bring the service of the ICPC to all the geo-political areas as requested in the ICPC Act, leaving the agency short on staffing, training capacity, and inadequate logistics. Finally, in as much as there are many laws to contain corruption, the legal framework is not adequate. The Act forming the ICPC is not entrenched in the Constitution, so Parliament can whittle down its powers through amendments.<sup>108</sup> Another instance is the ICPC Act not explicitly providing for the arrest of a person served with summons to appear before the Commission, a provision that the Supreme Court ruled unconstitutional in the *Attorney General of Ondo State v. Attorney-General of the Federation* case.

That said, the ICPC has its triumphs, as noted by the praise it received from the National Assembly in 2019 for its efforts toward asset recovery.<sup>109</sup> The agency recovered N16 billion in September 2020 from the Federal Ministry of Agriculture, as there were attempts to utilize the money away from the monitoring umbrella of the GIFMIS.<sup>110</sup> In 2002, the ICPC prosecuted the Speaker of House of Representatives and the Nigerian Federal Ministry of Education head in 2006. When making its achievements record public in 2015, the ICPC revealed it handled 267 criminal cases from 2001 and 142 civil cases from 2007.

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<sup>107</sup> Dayo Benson (2011). *What is Attorney General up to?* Vanguard.

<sup>108</sup> Ibid 25 Abdulrauf – p. 13

<sup>109</sup> NASS Commends ICPC, EFCC for Asset Recovery, 2019

<sup>110</sup> Nan, (2020). *Assets recovery: ICPC seizes N16b from Ministry of Agriculture*. The Guardian, 28 Sept 2020.

## 2.6 South Africa's National Prosecuting Authority

### History

Before the NPA Act came into existence, the attorneys-general were in charge of public prosecutions, with the President appointing each an attorney general for each High Court division. To develop a centralised system, they merged the Attorney's-general offices to form the NPA, with the National Director of Public Prosecutions at its head and the Attorney's-general newly designated as Directors of Public Prosecutions. Section 179 of South Africa's Constitution required the establishment of the foremost prosecution authority. Section 2 of the National Prosecuting Authority Act, 1998 led to the establishment of the National Prosecuting Authority (NPA), the apex institution charged with overseeing prosecution, with Section 3(a) establishing the National Director's office and section 3(b) and 6(1) establishing the seats of the offices of the prosecuting authority at the High Courts. The entire point of the NPA and other agencies was to complement the basic work the National Police Service was conducting to combat corruption and other integrity issues.

### Appointment procedure and tenure

The Office of the National Director (OND) consists of the National Director and its deputies, Directors and their deputies, and prosecutors.<sup>111</sup> Section 5(c) also establishes the office of Investigating Directors and Special Directors under the office of the National Director of Public Prosecutions. The President determines the holder of the seat of the OND.<sup>112</sup> Section 7 gives the President the power to establish Investigative Directorates in the OND by gazette notice following recommendations by the Minister overseeing the

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<sup>111</sup> S. 4 NPA Act

<sup>112</sup> S. 5(3)

OND, regarding criminal or unlawful activities as laid out in the proclamation subject to its submission to Parliament before Gazette Notice publication.<sup>113</sup> The head of an Investigating Directorate will be assisted by deputy directors, prosecutors, or other officers of any state department assigned to the Investigating Directorate, or appointed by the head of the Investigating Directorate. All the persons work under the guidance of the Investigative Directorate.<sup>114</sup>

When appointing members of the prosecuting authority, section 8 dictates that its members must portray the racial and gender composition of the South African people. For a person to be eligible for the post of the OND, they must be South African, be a fit and proper person, bear the necessary experience, integrity, and scrupulousness meriting their holding of the office, and have legal qualifications to practice across all courts in the country.<sup>115</sup> Per Section 179 of the Constitution, the President must select a qualified candidate to the OND.<sup>116</sup> At the same time, the President can appoint no more than four persons to the Offices of the Deputy National Directors following the Minister's recommendations and the National Director. The OND holds office for a single 10-year term, but will vacate the office once they attain 65 years of age, while the Deputies leave office at age 65. If the President and either the National Director or the Deputy National Director feel they can continue serving past the age of 65, barring mental and physical health, the President can extend their terms by no more than two years, granted the entire terms served do not exceed the 10 years.<sup>117</sup> The President may appoint a Director of Public Prosecutions to head an Investigating Directorate after consulting the Minister and

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<sup>113</sup> S. 7(1), (2)(a)(c)

<sup>114</sup> S. 4(a)

<sup>115</sup> S. 9

<sup>116</sup> S. 10

<sup>117</sup> S. 12 (1) (2) (4)

National Director, and the Directors shall serve until they attain 65 years of age. Prosecutors' appointments are subject to the recommendation of the National Director or member of the prosecuting authority, where they can serve in the OND, section 6 established offices, lower courts, or investigative directorates.<sup>118</sup> Under Section 16, the Minister, after consulting the National Director and the Directors, will prescribe the qualification of appointment of the prosecutors in the lower courts.

### **Jurisdiction and authority**

As contemplated in section 179(2) of the Constitution and other relevant Constitutional provisions, section 20(1) of the NPA Act grants the NPA the authority to commence and carry out criminal proceedings, any necessary functions incidental to such proceedings, or discontinue criminal proceedings on behalf of the State. The Deputy National Director will carry out these functions subject to the directions of the National Director,<sup>119</sup> while Directors will do so subject to their area of jurisdiction or offences they have been precluded from prosecuting.<sup>120</sup> Deputy Directors and Prosecutors exercise their powers in their appointed jurisdiction or prosecuting offences authorised in writing by the National Director or their designated assistant.<sup>121</sup> After consulting the Directors and in concurrence with the Minister, the National Director shall formulate prosecution policy concerning the institution of prosecutions in the High Court in respect of offences highlighted in Schedule 2 of the Criminal Law Amendment Act, 1997, and issue directives under section 179(5)(a) and other Constitutional provisions. The National Director is to issue the policy directives and prosecution policy within three months of the start of the

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<sup>118</sup> S. 16(1)(2)

<sup>119</sup> S. 20(2)

<sup>120</sup> S. 20(3)

<sup>121</sup> S. 20(4)(5)



Criminal Law (Sentencing) Amendment Act and table such prosecution policy in Parliament no later than six months after the National Director's appointment.<sup>122</sup>

As the head of the prosecuting authority, The National Director has the power to issue policy directives and regulate prosecution directives, intervene when a case contravenes policy and prosecution process, and review the decision to, or not to, prosecute, after consultations with the concerned Director, and receiving representations with the complainant, accused, or another relevant person.<sup>123</sup> Under Section 22(4), the National Director has the power to investigate the process envisioned in S. 22(2). The Investigating Directorates have the power to investigate, prevent, and combat any offence that the South African Police Service has the power to investigate. Anyone who suspects commission of a crime can report the matter to the head of any Investigating Directorate through affirmed declaration or affidavit.<sup>124</sup> An Investigating Director can investigate the commission of an offence on their own volition or under the instruction of the National Director.<sup>125</sup> If the Investigating Director feels evidence is not being investigated by an officer, he/she can alert the National Commissioner of the South African Police and furnish them with the details.<sup>126</sup> According to S. 28(2), the Investigating Director can appoint any member of the investigating directorate or prosecuting authority to represent him/her during an investigation that the Investigating Director commenced, or one brought by the Head of the Directorate for Priority Crime Investigation.<sup>127</sup> That person will bear the same powers as the Investigating Director, but they will investigate as per

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<sup>122</sup> S. 21

<sup>123</sup> S. 22(2)

<sup>124</sup> S 26, 27

<sup>125</sup> S. 28(1)(a)(b)

<sup>126</sup> S. 28(1)(d)

<sup>127</sup> S. 28(2)(a)(b)

the direction and discretion of the Investigating Director.<sup>128</sup> The prosecuting authority's powers, duties, and functions are accountable to Parliament, and the National Director must present an annual report, through the Minister, no later than 1<sup>st</sup> June. Still, he/she can report to the Minister or Parliament whenever she/he deems necessary.<sup>129</sup>

### **Failures and successes**

The NPA has had issues in the past, such as the notorious Wouter Basson case. He was accused of apartheid-era crimes against humanity, including infertility 'vaccines' and traceless poisons. However, the NPA did not prefer crimes against humanity charges against him. The Constitutional Court dismissed the charges, concluding that was an error, and announced the NPA would pursue those quashed charges, only for the NPA to declare weeks later that it would not. The government employed Basson in 1997. Similarly, the NPA did not prefer crimes against humanity in the Rodrigues case after Ahmed Timol's death. The Truth and Reconciliation Commission, established in 1996 and ended in 2003, handed over 300 cases to the NPA for investigation and prosecution, yet they have only handled a few of those cases.<sup>130</sup>

Further, Prof. de Villiers pointed out the issues with the agency's independence as the senior-most officials are political appointees, who themselves have a hand in the appointment of others within the same system. There is little autonomy of the OND as the President appoints and can fire the National Director of Public Prosecutions (NDPP), while the final decision to prosecute rests with the Minister in charge, another appointee of the President. The President is also in charge of establishing investigating directorates

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<sup>128</sup> S. 28(4)(5)

<sup>129</sup> S. 35

<sup>130</sup> Atilla Kislá, (2021). *The recently renewed NPA should show its teeth*. The Mail & Guardian.

in the agency. Moreover, the President can suspend the National Director and institute an inquiry to remove them from office,<sup>131</sup> proving the executive views it as an inferior agency, which it cannot tolerate when the NDPP tries to assert its influence. In the allegations levelled against Jacob Zuma in 1999, the first NDPP said that although there was a *prima facie* case against the President, his office would not prefer charges against him. Instead, his financial advisor faced corruption and fraud charges based on the same facts, receiving his conviction in 2005. The NDPP's successor tried to arrest the National Police Commissioner on corruption charges, but President Mbeki suspended him citing the irretrievable breaking down of his relationship with the Minister, with the justification that the NDPP was undermining national security and therefore, he was not a fit and proper person to hold the office. Understandably, the new NDPP in 2009 announced that it was impossible and undesirable for his office to prosecute Mr. Zuma.<sup>132</sup> When he eventually became President Zuma, he doubled down on his questionable choices of subsequent appointments, stating that he was exercising his discretionary powers; it was only him who was to be satisfied if a person was fit and proper.<sup>133</sup>

The fight for enforcing integrity and ethics has turned in the NPA's favour in recent times. In 2018, the Supreme Court of Appeal ruled the dropping of the charges against Zuma was irrational, with the new NDPP reinstating the charges. The NPA now has Constitutional backing, so it is not subject to the whims of the legislature. Shamila Batohi, the current head of the NPA, stated they are not winning the fight against corruption since the agency lacks enough prosecutors and investigators, but the situation

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<sup>131</sup> Judith February. "Protecting the public or politically compromised? South Africa's anti-corruption bodies." *ISS Southern Africa Report* 2019, no. 31 (2019): p. 4-5

<sup>132</sup> Ibid, p. 7. February

<sup>133</sup> Broughton T, *NPA boss 'told to resign'*, IOL, 30 May 2014, [www.iol.co.za/news/politics/npa-boss-told-to-resign-1696182](http://www.iol.co.za/news/politics/npa-boss-told-to-resign-1696182).

is getting better.<sup>134</sup> The agency has had some successes, per its Annual Report 2019-2020. It completed 417 forfeiture cases, obtaining confiscation orders valued at R455 million, compared to R3 billion in 2018/2019, and 326 freezing orders valued at R1.95 billion. The overall success rate stood at 98% conviction rate, while recoveries related to corruption against government officials was valued at R200,000 due to the slow court process. Notable cases the agency handled include the Amathole district tender fraud collusion between its employees and a paint supplier, with the agency managing to have R23 million restrained. In the Robert Abbu case, the agency got restraint orders for R51 million, which involved an attempt to circumvent supply chain management protocols. When municipal employees colluded with a toilet builder, the agency got restraint orders valued at R81 million. The Asset Forfeiture Unit (AFU), a branch under the NPA, got preservation of proceeds order valued at R18 million for tender fraud committed in Eastern Cape.<sup>135</sup> By 2019, the NPA had recovered more than R11 billion in the preceding five years from money laundering, the proceeds of corruption, and environmental and cyber-crimes.

## **2.7 Comparative analysis of Kenya's EACC to Nigeria's ICPC and South Africa's NPA**

Kenya's EACC has transformed over the years, first appearing as KACA in 1997 and then disappearing. It reappeared as KACC in 2003, complete with prosecutorial powers, only to morph into its current state as EACC in 2011 after the promulgation of the new Constitution and shorn of its prosecutorial mandate. Its equivalents in South Africa and

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<sup>134</sup> Jan Gerber, (2021). *South Africa not winning the fight against corruption, yet - NPA boss Shamila Batohi*. News24.

<sup>135</sup> National Prosecution Authority. "Annual Report 2019-2020." (2020)

Nigeria did not have to undergo such changes, largely remaining intact since their formations, although the NPA did lose its investigative capacity in 2009, it regained it in 2019. Nigeria formed the ICPC in the year 2000 while South Africa formed the NPA in 1998.

The EACC consists of four members, its chair, and secretary, while the ICPC constitutes of a chairperson and 12 members. ICPC can appoint commissioners, superintendents, and investigators to assist in its duties whenever it deems it necessary. The NPA is headed by the National Director, assisted by four Deputy National Directors, and a Chief Executive Officer. There are Investigating Directors and Special Directors under the Office of the National Director providing further support.

EACC can act, hold, charge, or dispose of any movable or immovable property as permitted by the Constitution or the EACC Act. The EACC Commission has the power to execute its functions, including educate, curtail corrupt practices, and investigate unethical practices, while the secretary is the Commission's chief executive, in charge of the daily running and the execution of the Commission's decisions. Under its new mandate, EACC can investigate ethics, corruption, and integrity concerns on its own accord or after a citizen's complaint. Like the EACC, the ICPC is an independent body charged with investigating corruption. Unlike the EACC, it can prosecute corruption and other related offences, but it only investigates reported cases. Its secretary is in charge of the daily running and keeping of ICPC records. ICPC can educate the public to aid the fight against corruption, and can assist and advise agencies to help eliminate fraud and corruption. The provisions of the ICPC Act apply to offenses outside Nigeria, so it can pursue overseas cases with the help of international policing agencies. Even when the

Police launch investigations or prosecutions on bribes, fraud, or corruption, they must inform the ICPC. The office of the NPA National Director has the power to institute criminal proceedings, including against perpetrators of corrupt practices. Investigative Directors can prevent or investigate any offence that the Police can legally investigate. An Investigative Director can institute an investigation of their own volition, or under instruction from the National Director. Formed in 1999, the Asset Forfeiture Unit has been instrumental in the civil and criminal seizure of assets of crime perpetration, which is used to compensate victims or fund law enforcement. Meanwhile, the Specialized Commercial Crime Unit (SCCU) has the mandate to prosecute economic offences. The NPA is an independent body only answerable to parliament, presenting its annual report to parliament via the Minister of Justice and Correctional Services.

## **CHAPTER THREE**

### **RECOMMENDATIONS AND CONCLUSIONS**

#### **3.1. Introduction**

This chapter shall dwell on the summary, conclusions, and recommendations gleaned from the analysis of the legislation on integrity and ethics in Kenya's Public Service, compared to similar provisions in Nigeria and South Africa.

#### **3.2. Chapter summary**

Chapter 1 dealt with and highlighted what this project would cover. That includes background to the study and the research questions and methodology. Additionally, the chapter covers the theoretical framework and in-depth literature review on the subject. It concludes by covering the objectives and justification of this study.

Chapter 2 spells out the legal provisions on integrity and ethics in Kenya, Nigeria, and South Africa. It starts by examining the background of Kenya's legal provisions on integrity and ethics, then offers an in-depth analysis of the three countries' integrity and ethics statutory, regulatory, and constitutional provisions, and concludes with a comparative analysis of their legal provisions on integrity and ethics. It also highlights the workings of the top agencies charged with enforcing integrity and ethics legal provisions in Kenya, Nigeria, and South Africa. It examines how Kenya's EACC came into existence, its appointment procedure, jurisdiction and authority, and its successes and failures. The study follows the same script when examining the workings of Nigeria's ICPC and South Africa's NPA. The chapter concludes by highlighting the similarities

and differences in operations between the three agencies. Finally chapter 3 contains the recommendations and the conclusion.

### **3.3. Conclusion**

The objective of this study was to find out if Kenya's legal provisions are sufficient in tackling integrity and ethics in its Public Service and comparing it to South Africa and Nigeria. That involved tackling the Statement of Problem and Research Objectives that questioned the viability of Kenya's Public Service legal provisions on integrity and ethics . This study succeeded by critically analyzing the legal provisions in the three countries, examining how successfully they have integrated the legal provisions and the workings of the leading agencies charged with overseeing integrity and ethics by highlighting their successes and failures.

This research is based on the hypothesis that Kenya has struggled with integrity and ethics issues in its Public Service. Some have called into question the quality of the legal provisions aimed at enforcing integrity and ethics. That is due to the impact of integrity and ethics violations, with international organizations such as Transparency International continually placing Kenya lowly in corruption perception indices.

However, after exhaustive research on Kenya's legal provisions, including the workings of its apex institution charged with overseeing integrity and ethics issues, and comparing the same with Nigeria's and South Africa's situation, Kenya should look at other avenues in its fight against the ills bedeviling integrity and ethics violations. That is because Kenya's EACC has achieved some measure of success. According to Transparency International, since the enactment of the new Constitution in 2010 and its allied statutory provisions, Kenya has steadily improved its corruption perception.



Specifically, this research concludes that Kenya should shift focus on the economic, political, institutional, social-cultural, and bureaucratic factors belittling the promotion of integrity and ethics in the Public Service. The institutions and leaders need to realize that Kenya may formulate many laws, but a law is only as good as its implementation. The executive should take the front step in ensuring implementation and that the agencies involved have a viable platform to enforce the constitutional and legislative framework.

Rosenbaum (2006) finds that the ethical behavior of public service staff is not separated from institutional variables in nations with developed economies, but includes standards, values and procedures. The broad decentralization of government institutions and significant government expenditure is an important feature of countries with the lowest amount of corruption and at sub-national level, such as Scandinavia.

### **3.4. Recommendations**

#### **3.4.1. Embrace African norms and values on integrity and ethics**

As Gyekye (2011) points out, there are no standard norms and values applicable to all African communities. Still, empirical and conceptual pointers show similarities in the principles, beliefs, and values of ethics across most African societies, which mostly revolve around a person's character and morality. He notes the pervasive social morality or ethics where everyone concerns themselves with all other members of society's welfare and interests. Gyekye avers that since there is an added emphasis on natural socialization, Africans display social ethics rather than individualistic ethics. That is, ethics not of rights, but of duty, which places a heavy emphasis on human welfare that extends to all persons regardless of their societies.

Kenya, in short, should avoid the situation in South Africa, emphasized by Mokoko (2014), in which the government created a legislative framework adapted to the problems of western countries, without regard to the distinctive position of its own culture. The effect is that most officials fail to comply with the standards required for foreign legislation and use the majority of their time to formulate techniques to overcome the system and to identify gaps. Instead, Kenya should enact laws that cater to its integrity and ethics situation and reality, using African norms and values.

### **3.4.2.politics**

One of the more pertinent issues affecting the EACC is the interference from politicians. There is a pattern of finding fault and dismissing the Commissioners whenever they try to prosecute high-ranking government officials. Kenya's efforts on integrity and ethics enforcement in the Public Service will never succeed if there is political interference in its workings.

On the other hand, EACC needs the support of the highest political offices to succeed. Having political champions has the added advantage of ending impunity as errant lower-level public officials will realize they do not have the backing of officials higher up the hierarchy. Political support should give integrity and ethics the boost it needs not only in perception, but in actual working.

### **3.4.3. Financial support**

Taking an example of the 2016-2017 financial year, EACC was allocated Sh. 4.3 billion, yet it could only staff 717 employees from the recommended 2,246. During the 2020-2021 year, they received Sh. 3.1 billion.

This is not enough to enable them adequately cover the scope of their duties. The less funding EACC gets yearly, the greater the backlog it accumulates. EACC should get the financing it requests to cover every town in Kenya and adequately attend every integrity and ethics issue before the agency.

#### **3.4.4. Strengthen legal framework**

Although opponents assert that you cannot use legislation to govern integrity and ethics in the Public Service, Gildenhuis (2004) argues that deterrence and punishment are the only way that the State can tackle corruption. Only by building stronger institutions can it achieve this. He quotes the South African daily Die Burger article, saying that "...even after a dreary period, one is motivated to...exist and operate right anti-corruption agencies." Gundu (2011) states that attempts to manage misbehavior, implement ethical laws and principles through the implementation of codes and disciplinary action against wrongdoing public workers have been implemented and that some progress has been achieved.

Therefore, Kenya would benefit immensely if it strengthened her legal framework. For instance, it would also help if Kenya reinstated the prosecutorial powers of EACC like its counterparts in South Africa and Nigeria. This should speed up the prosecution process and eliminate the bureaucracy of running a case through the DPP before prosecuting a suspect. Similarly, the agency would also benefit if the agents and other workers had the security of tenure, eliminating undue influence if they decide to go after higher-ranking government officials.

### **3.4.5. Learn from others and history**

Kenya should continue to learn from its history and from others who have succeeded in managing integrity and ethics in the Public Service. Guenter et al. (2007) observed in Madagascar for example that leadership development coupled with a traditional legal framework contributed to demonstrable reform and governance of the public sector. In contrast Verpeet et al. (2003) have emphasized that, due to robust legal rules including ethical standards and values, nurses in Belgium do not have a code of conduct.

Rosenbaum (2006) further notes that it's not that some people in some countries are more unethical than others; it just happens that those in established democracies have had decades and centuries to tackle integrity and ethical issues and have thus come up with institutional, procedural, and cultural mechanisms that limit such individual and institutional ethical and corruption infringements.

In the end, the way forward is the way in which existing regulations can be enforced. Even when new problems arise, it is better to channel the spirit of the legislation in question rather than to formulate additional provisions that would in a few years' time be redundant. Therefore, Kenya should strive to learn from others and its history to develop solutions that work for its unique perspective.

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The Municipal Finance Management Act, 2003

Local Government Municipal Systems Act

The Public Service Act, No. 103 of 1994

Nigeria's Constitution, 1999

The Prevention and Combating of Corrupt Activities Act, 2004

South African Constitution