



Office of the Attorney
General and Department of Justice

COMPLIANCE WITH LEADERSHIP AND INTEGRITY REQUIREMENTS IN THE 2017 GENERAL ELECTIONS

I) INTRODUCTION:

This is a communication in regard to the August 2017 general elections. All stakeholders and the general public are hereby notified that a Working Group has been established under the auspices of the Office of the Attorney General and Department of Justice, bringing together the Independent Electoral and Boundaries Commission (IEBC), the Ethics and Anti-Corruption Commission (EACC), and the Office of the Registrar of Political Parties (ORPP) which are the key institutions mandated to oversee leadership and integrity matters as the country prepares to hold the 2017 general elections.

The need for collaboration by the relevant agencies is of utmost importance for purposes of ensuring that issues of ethics and integrity as envisaged under the Constitution in respect to aspirants/candidates are harmoniously and expeditiously addressed. However, each institution retains their constitutional, statutory and administrative independence in terms of the discharge of their respective mandates.

The main objectives for the establishment of this Working Group are:-

- to create awareness on the leadership and integrity requirements for candidates seeking election to various elective posts during the 2017 general elections;
- to clarify the roles and responsibilities of various actors in terms of ensuring compliance with leadership and integrity provisions under the Constitution of

Kenya, 2010, Elections Act, 2011, the Leadership and Integrity Act, 2012, and the Political Parties Act, 2011;

- to promote collaboration in the enforcement of Chapter Six of the Constitution of Kenya (on Leadership and Integrity) and other relevant laws;
- to provide an effective mechanism for ensuring issues of leadership and integrity are resolved expeditiously in order to support the electoral process; and,

The overall goal of the initiative is to ensure that only qualified candidates and who espouse integrity values are elected into public office, in order to facilitate the realisation of the ideals of our Constitution and Kenya Vision 2030.

II) MANDATE OF THE WORKING GROUP AGENCIES

a. Office of the Attorney General and Department of Justice

The Office of the Attorney General and Department of Justice (OAG&DOJ) is established pursuant to the provisions of Article 156 of the Constitution of Kenya. The Attorney General is the principal legal advisor of the Government, and has responsibility to promote, protect and uphold the rule of law and defend the public interest. The Office is vested with policy oversight over electoral processes, anti-corruption, leadership, integrity and ethics in public service.

b. Independent Electoral and Boundaries Commission

The Independent Electoral and Boundaries Commission (IEBC) is established under Article 88(1) of the Constitution. Its mandate includes the registration of candidates for elections; development of a code of conduct for parties and candidates participating in an election; monitoring of compliance with the law governing nominations by political parties and regulating the process by which parties nominate candidates for elections. This mandate obligates the IEBC to ensure that only qualified candidates participate in the electoral process.

c. Ethics and Anti-corruption Commission

The Ethics and Anti-Corruption Commission is established pursuant to Article 79 of the Constitution as read with the Ethics and Anti-Corruption Commission Act, 2011. It is principally mandated to enforce and ensure compliance with Chapter Six of the Constitution, the Leadership and Integrity Act, 2012 (LIA) and other anti-corruption legislation. In addition, the EACC combats and prevents corruption and economic crimes in Kenya through law enforcement, preventive measures and public education.

d. Office of the Registrar of Political Parties

The Office of the Registrar of Political parties is established by the Political Parties Act, 2011 pursuant to Articles 91 and 92 of the Constitution. The Office is mandated to inter-alia register, regulate, supervise political parties; and administer the political parties' fund. The office ensures that officials of political parties satisfy the requirements under Chapter Six of the Constitution, and monitor the implementation of the political parties' code of conduct.

III) LEGAL FRAMEWORK ON LEADERSHIP AND INTEGRITY FOR ELECTIVE OFFICES

The legal and policy framework for integrity verification of candidates in Kenya is provided for in various laws which include the Constitution of Kenya, the Leadership and Integrity Act, 2012; the Elections Act, 2011; Elections Regulations; Anti-Corruption and Economic Crimes Act, 2003; Public Officer Ethics Act, 2003; Independent Electoral and Boundaries Commission Act, 2011; and Political Parties Act, 2011.

Article 73(2) of the Constitution sets out the guiding principles on leadership and integrity. It requires that State Officers be selected on the basis of personal integrity, competence and suitability, or election in free and fair elections.

Articles 99 and 193 of the Constitution sets the framework for qualifications and disqualifications for elective state office. All the relevant state agencies are therefore obligated to collaborate to ensure that all candidates participating in an election meet the qualifications threshold.

IV) CHECKLIST OF ETHICAL, INTEGRITY AND OTHER REQUIREMENTS FOR ASPIRING CANDIDATES

The table below contains the mandatory requirements; lack of which a candidate is disqualified from contesting for various elective positions (President, Governor, County Woman Member in the National Assembly, Senator, Member of the National Assembly and Member of the County Assembly).

a. Mandatory Requirements for Qualification

	Qualification/ disqualification	Elective position	Guiding Notes
1	University degree	Presidency/ Deputy President; Governor/ Deputy Governor	<ul style="list-style-type: none"> • Genuine • Valid • If issued by a foreign university, it must be recognized in Kenya
2	Must satisfy the Moral/Ethical requirements set out in law	All	<p>A candidate must not have violated any of the requirements in section 13 of the LIA, which include-</p> <ul style="list-style-type: none"> • dishonesty in conduct of public affairs; • abuse of office;

			<ul style="list-style-type: none"> • inaccurate representation of information to the public; • misuse of public resources; • discrimination of persons; • falsification of records; • engaging in actions which would lead to removal from membership of a professional body; • commission of an offence under Part XV and XVI of the Penal Code; • Commission of any offence under the Sexual Offences Act, 2006, the Children's Act 2008 or the Counter-Trafficking in Persons Act, 2010.
3	Must not be a State officer or other Public Officer, other than a Member of Parliament; or a Member of the County Assembly.	All	A public officer is defined to include anyone who receives remuneration in whatever form from a public fund
4	Must be a Citizen of Kenya for at least 10 years	All	Presidential candidates must be citizens by birth
5	Must not hold Dual Citizenship	All	Holders of dual citizenship must renounce their other citizenship upon election, unless they have been made a citizen of another country by operation of that country's law without ability to opt out.
6	Must not be an Undischarged bankrupt	All	A candidate shall not be disqualified on these grounds;-
7	Must not be Subject to a sentence of imprisonment for at least six months at the date of registration of candidates or elections	All	<ul style="list-style-type: none"> • He or she has preferred an appeal or review against the sentence or decision; or • All possibility of appeal or review has not been exhausted.
8	Must not have been found, in accordance with any law to have abused or misused state or public office or contravened any of the requirements under	All	

	Chapter Six of the Constitution		
9	Must not have been dismissed or removed from public office for contravening the provisions of Articles 75, 76, 77 and 78 of the Constitution	All	

b. Additional Relevant Information on candidates

The following information may be obtained from relevant agencies with regard to candidates, which may be significant to the ethics or integrity standing of candidates.

1. Compliance with taxation laws in force in regard to payment of taxes;
2. Repayment or servicing of loans disbursed by the Higher Educations Loans Board and such other government bodies;
3. Ongoing criminal trials or investigations into criminal conduct;
4. Adverse findings by professional bodies.

c. Collaboration

For purposes of ensuring expeditious processing of information, the Working Group will seek to establish a collaborative relationship with other relevant state and non-state agencies to support the IEBC in the process of verification of candidates’ information. These include-

- i. The Judiciary
- ii. Office of the Director of Public Prosecutions
- iii. Public Service Commission of Kenya
- iv. Responsible Commissions under the Public Officer Ethics Act
- v. Commission for University Education
- vi. Higher Education Loans Board
- vii. Directorate of Criminal Investigations
- viii. Kenya Revenue Authority
- ix. The Official Receiver
- x. Kenya National Examination Council
- xi. Department of Immigration Services
- xii. Political Parties Liaison Committee
- xiii. Professional Bodies

V) ROLE OF OTHER STAKEHOLDERS IN ENHANCING LEADERSHIP AND INTEGRITY REQUIREMENTS IN THE 2017 ELECTION

It is the duty of every citizen, and indeed every stakeholder in the election process to ensure that candidates for election possess the required threshold of integrity. In particular, political parties, aspirants and the general public have an important role in this process.

Political Parties

All political parties participating in the August 2017 polls are called upon to ensure that the candidates they nominate for election are persons of the required ethical and moral standards. They must be alive to the implication of nominating candidates with integrity, ethical or moral issues who may later on be disqualified or their election annulled.

Aspirants

The law has laid down rigorous requirements for any person aspiring for elective position to comply with. It is the primary duty of the aspirants to ensure that they have complied with all such requirements. They have a duty to disclose all relevant information concerning themselves, even where the information may be prejudicial to their status as aspirants. They must not submit any information which is false in any respect, and that documents submitted are genuine.

The Public

Members of the public closely interact with aspirants and political parties on a daily basis. They have information which can greatly assist in the process of registering candidates. The public is therefore encouraged to come forward and share with the relevant public institutions any information they may have concerning the integrity of candidates.

VI) CONCLUSION

Prospective candidates and political parties in Kenya are advised to familiarize themselves with the applicable legal requirements pertaining to ethics and integrity; as the relevant agencies will strictly enforce the law during the August 2017 General Election.

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