

# REPORT ON THE STATUS OF COMPLIANCE BY RESPONSIBLE COMMISSIONS IN SUBMISSION OF RETURNS TO EACC AND ENFORCEMENT OF PART IV OF THE PUBLIC OFFICER ETHICS ACT, 2003 ON DECLARATION OF INCOME, ASSETS AND LIABILITIES FOR THE YEAR 2017

ETHICS AND ANTI-CORRUPTION COMMISSION
AUGUST 2019

#### **ABBREVIATIONS**

AUCPCC African Union Convention on Preventing and Combating Corruption

CASB County Assembly Service Board

CPSB County Public Service Board

DIALs Declaration of Income, Assets and Liabilities

EACC Ethics and Anti-Corruption Commission

LIA Leadership and Integrity Act, 2012

ODPP Office of the Director of Public Prosecutions

POEA Public Officer Ethics Act, 2003

UNCAC United Nations Convention Against Corruption

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#### INTRODUCTION

#### 1.1 Background

The declaration of income, assets and liabilities (DIALs) by public officers is one of the fundamental strategies employed by many countries towards the fight against corruption and the promotion of ethics and integrity within the public service. The DIALs is meant to address the following, among others:

- Detect and prevent corrupt practices;
- Evaluate potential conflicts of interest;
- Promote transparency and accountability; and
- increase public confidence in government.

Kenya is a signatory to international and regional Conventions relating to the fight against corruption and unethical practices. The United Nations Convention Against Corruption (UNCAC), and the African Union Convention on Preventing and Combating Corruption (AUCPCC) have provisions that require public officials to declare their income, assets and liabilities. Domestically, the Public Officer Ethics Act, 2003 (POEA), was enacted to advance ethical standards for public officers. Consequently, they are required to make a declaration of income, assets and liabilities for themselves, their spouse(s) and dependent children under the age of 18. These declarations are submitted to a designated Responsible Commission.

Section 26 and 27 of POEA, further provides for public officers to make declarations of income, assets and liabilities as follows:

- Initial declaration: made by a public officer within thirty days of joining the public service.
- Biennial declaration: made by a public officer every two-years.
- Final declaration: made by a public officer within thirty days of exiting the public service.

# **1.2** Mandate of Ethics and Anti-Corruption Commission (EACC) in the implementation of DIALS

The Ethics and Anti-Corruption Commission is, pursuant to Section 4(2) of the Leadership and Integrity Act (LIA), 2012, mandated to oversee and enforce the implementation of Chapter Six of the Constitution. The Public Officer Ethics Act is incorporated as part of the General Leadership and Integrity Code under the Leadership

and Integrity Act by virtue of Section 6 (3). In this respect, the Commission provides oversight in the implementation and enforcement of Part IV of the Public Officer Ethics Act on the declaration of income, assets and liabilities across the public sector.

In discharging the oversight mandate on the declaration of income, assets and liabilities, the Commission undertook the following activities:

- Provide technical support on management of DIALs for technical officers of Responsible Commissions in the national and county governments;
- Developed generic administrative procedures for management of DIALs for Responsible Commissions in the National and County Governments to support Responsible Commissions customize and gazette their respective procedures accordingly;
- Issued notices to all Responsible Commissions in the county governments to gazette administrative procedures on DIALs.

#### 1.3 Designation and Mandate of Responsible Commissions

Section 3 of POEA designates various public entities as Responsible Commissions for the management of DIALs by state and public officers under their jurisdiction. However, there are public entities that were established by the Constitution of Kenya 2010 which have not been designated as Responsible Commissions in POEA. These include the County Governments, Chapter fifteen (15) Commissions and Independent Offices. POEA was enacted in 2003 and therefore did not envisage the public entities established following the promulgation of the Constitution of Kenya in 2010. Therefore, these entities are considered to be Responsible Commissions in line with Section 3 (11) of POEA and by virtue of exercising disciplinary control over the public officers under their jurisdiction.

The mandate of Responsible Commissions under POEA in relation to part IV on DIALs includes the following functions:

- keep custody of declarations;
- verify content of declarations;
- investigate breaches;
- take administrative sanctions on breaches;
- develop and implement administrative procedures for management of the declaration process;
- monitor compliance on declarations made by public officers; and
- seek clarification of the declarations within six months from the date of submission by public officers.

#### 1.4 Objectives of the Report

- To establish the level of compliance by Responsible Commissions in making the biennial declaration of income, assets and liabilities.
- To identify challenges in the implementation of DIALs by Responsible Commissions
- To make recommendations for enhancing compliance on the implementation of DIALs by Responsible Commissions

#### 1.5 Scope of the report on DIALs

In this report, the Commission envisaged the existence of **one hundred and eighteen** (118) Responsible Commissions, **twenty-four** (24) in the National Government (*Annex 1*), **forty-seven** (47) in the County Assemblies (County Assembly Service Boards) and **forty-seven** (47) in the County Executive (County Public Service Boards). However, the audit did not include the powers and privileges committees of the County Assemblies (County Governments Act, 2012).

Upon submission of returns of the 2017 declarations by Responsible Commissions, the EACC undertook a compliance audit to establish the status of compliance in the national and county governments. Further, the findings from the audit undertaken were used to compare the 2017 and the 2015 declaration years' level of compliance by Responsible Commissions.

#### 1.6 Methodology

The source of data used in the preparation of this report was secondary data from returns submitted on the declaration of income, assets and liabilities by the various Responsible Commissions. The returns were submitted using a prescribed template provided by EACC (*Annex 2*).

However, most of the Responsible Commissions did not adhere to the prescribed template of reporting as provided to summarize their returns. Further, some of the returns submitted by Responsible Commissions did not differentiate between the state and public officers who had made their declarations thus making it difficult to analyze the submissions under those two categories. Lastly, some of the Responsible Commissions did not provide information on the total number of officers under their jurisdiction at the time of making the declarations.

## 2.0 STATUS OF COMPLIANCE WITH PART IV ON DIALS FOR THE DECLARATION YEAR, 2017

Preceding the 2017 declaration year, the Commission issued notices to **one hundred and eighteen (118)** Responsible Commissions requiring them to submit their returns on the filing of DIALs made by their respective public officers. In the National Government, **eleven (11)** Responsible Commissions submitted their returns while nineteen **(19)** County Public Service Boards and **seventeen (17)** County Assembly Service Boards submitted their returns within the specified timelines. A total of **forty-seven (47)** Responsible Commissions submitted their returns constituting **39.8 percent** of the Commissions *(Annex 3)*.

The table below summarizes the response rate by the various categories of Responsible Commissions.

Table 1: Response rate by Responsible Commissions in the national and county governments on the returns submitted to EACC for the 2017 declaration year

Category of Responsible Commission	No. of Responsible Commissions that submitted returns	Response rate
National Government	11/24	45.8%
County Public Service Boards	19/ 47	40.4%
County Assembly Service Boards	17/ 47	36.2%
Total	47/118	39.8%

In the 2015 declaration year, **seventy-three (73)** out of the **one hundred and eighteen (118)** Responsible Commissions complied in submitting returns to EACC representing **61.9 percent** response rate. The table below summarizes the comparison between the returns made in 2015 and 2017 declaration years.

Table 2: Comparison on the returns submitted to EACC in the 2015 and 2017 declaration years

Category of Responsible Commission	Declaration year	No. of Responsible Commissions that submitted returns	Response rate
National Government	2015	13/24	54.1%
	2017	11/24	45.8%
County Public Service Boards	2015	22/47	46.8%
	2017	19/ 47	40.4%
County Assembly Service Boards	2015	38/47	80.8%
	2017	17/ 47	36.2%
Total	2015	73/118	61.9%
	2017	47/118	39.8%

The statistics above show a significant decrease in the level of compliance by Responsible Commissions in the submission of returns for the 2017 declaration year as compared to 2015.

# 2.1 Compliance level by Responsible Commissions in the National Government in the 2017 declaration year

Under the National Government, the following **eleven (11)** out of **24** Responsible Commissions, representing **45.8 percent**, complied as summarized in the table below:

Table 3: Returns submitted by Responsible Commissions in the National Government in the year 2017

S/No.	Name of Responsible Commission	Category of officers	Total Number of officers	Number of officers who submitted declarations	Number that failed to submit declarations
1.	National Police Service Commission	State officers	-	-	-
	(Senior police officers)	Public officers	499	499	0
2.	Central Bank of Kenya	Public officers	1373	1370	3
3.	Independent Policing Oversight Authority	Public officers	121	121	0
4.	National Land	State officers	9	9	0
	Commission	Public officers	449	418	31
5.	Office of the Attorney	State officers	-	-	-
	General and Department of Justice	Public officers	869	869	0
6.	Kenya National	State officers	4	4	0
	Commission on Human Rights	Public officers	131	130	1
7.	Office of the	State officers	-	-	-
	Auditor General	Public officers	1253	1246	7
8.	Independent Electoral	State officers	-	-	-
	and Boundaries Commission	Public officers	894	893	1
9.	Commission on	State officers	-	-	-
	Revenue Allocation	Public officers	63	62	1
10.	Judicial Service	State officers	-	-	-
	Commission	Public officers	5460	5460	0
11.	Commission for	State officers	-	-	-
	University Education	Public officers	31820	29933	1887

From the table above, the following **six (6)** Responsible Commissions reported that all their state and public officers had submitted their declaration forms: -

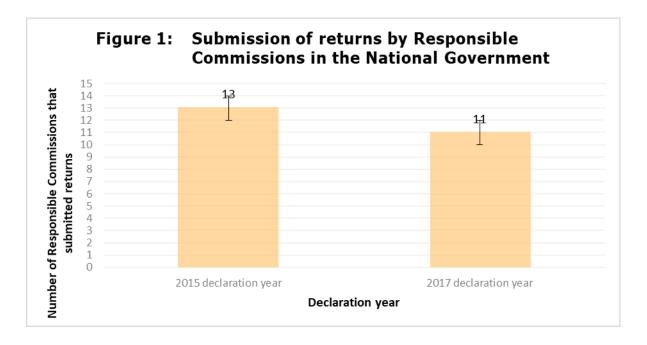
- 1. National Police Service Commission;
- 2. Independent Policing Oversight Authority;

- 3. Teachers Service Commission;
- 4. Commission on Revenue Allocation;
- 5. Office of Attorney General and Department of Justice; and
- 6. Judicial Service Commission.

Conversely, the following **seven (7)** Responsible Commissions reported partial compliance: -

- 1. The Central Bank of Kenya;
- 2. National Land Commission;
- 3. Kenya National Commission on Human Rights;
- 4. Office of Auditor General;
- 5. Independent Electoral and Boundaries Commission,
- 6. Commission on Revenue Allocation; and
- 7. Commission for University Education.

In the 2015 declaration year, **thirteen (13)** out of **twenty-four (24)** Responsible Commissions in the National Government submitted their returns to EACC as compared to 2017 where **eleven (11)** submitted. The figure below represents this information.



#### 2.2 Compliance level by the County Public Service Boards (CPSBs)

**Nineteen (19)** of the **forty-seven (47)** County Public Service Boards submitted returns to the EACC, comprising **40.4 percent** of the total number of boards. This information is summarized in the table below:

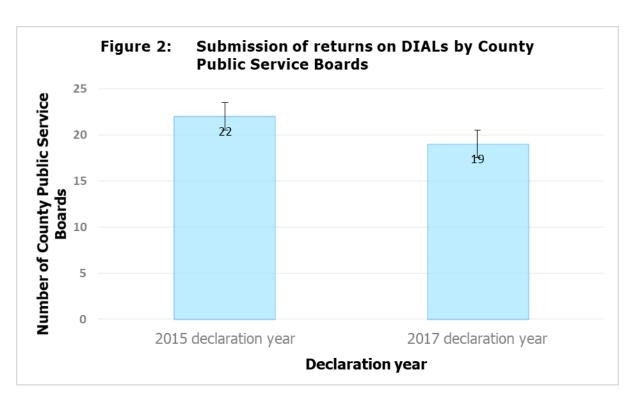
**Table 4: Returns submitted by the County Public Service Boards (CPSBs)** 

No	Name of Responsible Commission	Category of Officers	Total Number of officers	Number of officers who submitted declarations	Number that failed to submit declarations
1.	Kirinyaga County	State officers	12	12	-
	Public Service Board	Public officers	2671	2652	19
2.	West Pokot County	State officers	11	-	-
	Public Service Board	Public officers	1508	1483	25
3.	Migori County	State officers	-	-	-
	Public Service Board	Public officers	2574	2574	-
4.	Baringo County	State officers	24	24	-
	Public Service Board	Public officers	4110	4104	6
5.	Nandi County Public	State officers	-	-	-
	Service Board	Public officers	1669	1365	304
6.	Public Service Board	State officers	-	-	-
		Public officers	1496	1146	350
7.		State officers	10	10	-
	Service Board	Public officers	2899	2790	109
8.	Bungoma County	State officers	-	-	-
	Public Service Board	Public officers	6364	6129	235
9.	Nakuru County	State officers	-	-	-
	Public Service Board	Public officers	4958	4683	275
10.	Homabay County	State officers	-	-	-
	Public Service Board	Public officers	5369	4906	463
11.	Trans Nzoia County	State officers	9	9	-
	Public Service Board	Public officers	2928	2768	160
12.	Kiambu County	State officers	12	12	-
	Public Service Board	Public officers	5360	5063	297
13.	Taita Taveta County	State officers	-	-	-

No	Name of Responsible Commission	Category of Officers	Total Number of officers	Number of officers who submitted declarations	Number that failed to submit declarations
	Public Service Board	Public officers	3262	3256	6
14.	Murang'a County	State officers	-	-	-
	Public Service Board	Public officers	3655	3600	55
15	Embu County Public	State officers	-	-	-
	Service Board	Public officers	3099	2950	149
16.	Uasin Gishu County Public Service	State officers	17	11	6
	Board	Public officers	4241	4124	117
17.	Kitui County Public	State officers	-	-	-
	Service Board	Public officers	3149	3058	91
18.	Kisumu County	State officers	-	-	-
	Public Service Board	Public officers	4272	4126	146
19.	Narok County Public	State officers	-	-	-
	Service Board	Public officers	5031	4729	302

From the table above, **two (2)** out of **nineteen (19)** County Public Service Boards (Migori and Homabay) submitted returns indicating that all their state and public officers submitted their DIALs while 17 Responsible Commissions registered partial compliance.

In the 2015 declaration year, **twenty-two (22)** out of **forty-seven (47)** county public service boards submitted their returns to the Commission as compared to the 2017 declaration year when **nineteen (19)** boards submitted, as summarized in the graph below.



#### 2.3 Compliance level by County Assembly Service Boards (CASBs)

**Seventeen (17)** out of **forty-seven (47)** County Assembly Service Boards representing **36.2 percent** of the boards submitted their returns on DIALs as follows:

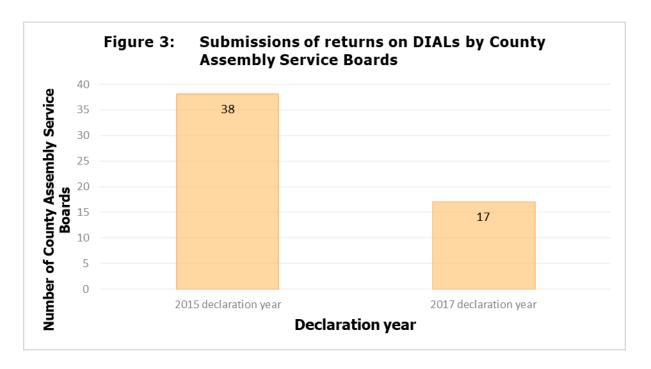
Table 5: Returns submitted by the County Assembly Service Boards for the year 2017

No	Name of Responsible Commission	Category of Officer	Total Number of officers	Number of officers who submitted declarations	Number that failed to submit declarations
1.	Bomet County	State Officers	37	37	-
	Assembly Service Board	Public Officers	70	70	-
2.	Turkana County	State Officers	50	50	-
	Assembly Service Board	Public Officers	212	208	4
3.	Nairobi County	State Officers	124	124	-
	Assembly Service Board	Public Officers	148	148	-
4.	Kisumu County	State Officers	51	51	-
	Assembly Service Board	Public Officers	65	65	-
5.	West Pokot	State Officers	34	34	-

	County Assembly Service Board	Public Officers	96	96	-
6.	Kilifi County Assembly Service	State Officers	56	56	-
	Board	Public Officers	119	119	-
7.	Kakamega County	State Officers	88	88	-
	Assembly Service Board	Public Officers	81	81	-
8.	Kiambu County	State Officers	-	All	-
	Assembly Service Board	Public Officers	-	All	-
9.	Kericho County	State Officers	48	48	-
	Assembly Service Board	Public Officers	87	87	-
10.	Laikipia County	State Officers	25	25	-
	Assembly Service Board	Public Officers	74	74	-
11.	Mombasa County	State Officers	43	43	-
	Assembly Service Board	Public Officers	147	147	-
12.	Baringo County	State Officers	46	46	-
	Assembly Service Board	Public Officers	90	90	-
13.	Nyandarua	State Officers	40	40	-
	County Assembly Service Board	Public Officers	88	88	-
14.	Marsabit County	State Officers	30	30	-
	Assembly Service Board	Public Officers	70	70	-
15.	Nakuru County	State Officers	79	79	-
	Assembly Service Board	Public Officers	91	91	-
16.	Kirinyaga County	State Officers	34	34	-
	Assembly Service Board	Public Officers	67	67	-
17.	Nandi County	State Officers	-		-
	Assembly Service Board	Public Officers	70	70	-

The table above indicates that all state and public officers in **sixteen (16)** out of **seventeen (17)** County Assembly Service Boards fully complied and submitted their DIALs. Partial compliance was registered by the Turkana County Assembly Board where **four (4)** public officers did not submit their DIALs.

A further comparison with the declarations made in 2015 indicate that **thirty-eight** (38) out of **forty-seven** (47) County Assembly Service Boards submitted their returns to EACC as compared to **seventeen** (17) in the 2017 declaration year.



# 2.4 Reasons for non-compliance by public officers to submit their declarations to their respective Responsible Commissions in the 2017 declaration year

The following were the reasons given by the Responsible Commissions for non-compliance by public officers under their jurisdiction: -

- Officers were away on leave (study/ annual) and thus were not in their working stations during the declaration period;
- Officers had travelled outside the Country for official assignments;
- Officers were transferred to other County departments or the National Government;
- Officers had resigned, retired or their contracts had ended;
- Officers were deceased.

#### 2.5 Administrative action taken by Responsible Commissions

The following are some of the administrative sanctions which the Responsible Commissions reported to have taken against the non-compliant public officers under their jurisdiction:

- Salary stoppage
- Issuance of show cause letters
- Interdiction of the officers
- Suspension of the officers

#### 3.0 CHALLENGES AND RECOMMENDATIONS

There was a decline in the number of returns submitted by the Responsible Commissions in the 2017 declaration year as compared to 2015. Below is a list of challenges that may have occasioned this decline and recommendations to address the same.

#### 3.1 Challenges

During the implementation and enforcement of part IV of the Public Officer Ethics Act, 2003, and engagements between EACC and the Responsible Commissions, the following challenges were highlighted: -

- 1. Lack of clarity for some state officers with respect to the designated Responsible Commission to which they are required to submit their declaration to;
- 2. Inadequate capacity by Responsible Commissions to manage the declarations submitted by public officers under their jurisdictions;
- 3. Absence of administrative procedures for management of DIALs;
- 4. Lack of standardized administrative action taken by the Responsible Commissions against non-compliant officers;
- 5. Manual submission of the declarations reducing efficiency in the analysis of the data.

#### 3.2 Recommendations

An effective DIALs system complements the fight against corruption and unethical conduct, serving as a deterrent to public officers, and, as an investigative tool to uncover and prosecute corrupt individual and illicit wealth accumulation. In addition to other on-going initiative to enhance the DIALs legal framework, the following recommendations are made to enhance compliance with declaration of income, assets and liabilities.

- 1. **Administrative Procedures:** Responsible Commissions to customize the generic administrative procedures developed by the EACC for standardization of management of DIALs across the public sector.
- 2. **Gazette Administrative Procedures:** Responsible Commissions to gazette their administrative procedures by 30th October, 2019 in readiness for the 2019 declarations.
- 3. **Automation of DIALs and Storage**: Responsible Commissions to adopt clear records management practices and automate filing and submission of the forms to enhance compliance and reduce the logistical costs.
- 4. **Technical Support:** Responsible Commissions to seek technical support from the EACC to enhance management of DIALs.
- 5. **Training:** Responsible Commissions to incorporate a training module on DIALs training in the induction program for new entrants.
- 6. **Submission of Returns:** Responsible Commissions to submit biennial returns to the EACC in July of each subsequent year after a biennial declaration.

#### 4.0 CONCLUSION

Ultimately the key elements of a successful financial disclosure system will include; an enhanced legal framework, automation, content verification and public access to disclosures. The EACC in undertaking its oversight mandate under Chapter Six of the Constitution, will continue to monitor compliance by state and public officers in declaring their income, assets and liabilities; and submission of returns by Responsible Commissions to EACC within the stipulated timelines. Responsible Commissions are urged to intensify enforcement and monitor compliance by state and public officers for which they are responsible for, including issuance of timely notifications when the declarations are due.

#### **REFERENCES**

Constitution of Kenya 2010. *National Council for Law Reporting* Leadership and Integrity Act, No. 19 of 2012.

Public Officer Ethics Act No.4 of 2003

The Public Officer Ethics (Management, Verification, and Access to Financial Declarations) Regulations, 2011

#### **ANNEXURES**

# Annex 1: Responsible Commissions Status of Submission of Returns to EACC by Responsible Commissions at the National Government

No.	Responsible Commissions	Status
1.	Commission on Administration Justice	Not Submitted
2.	National Land Commission	Submitted
3.	Public Service Commission	Not Submitted
4.	Parliamentary Service Commission	Not Submitted
5.	Kenya National on Human Rights Commission	Submitted
6.	Salaries and Remuneration Commission	Not Submitted
7.	Commission on Revenue Allocation	Submitted
8.	National Gender and Equality Commission	Not Submitted
9.	Office of the Controller of Budget	Not Submitted
10.	Defence Council, Ulinzi House	Not Submitted
11.	National Intelligence Service	Not Submitted
12.	Office of the Attorney General & Department of Justice	Submitted
13.	Office of the Director of Public Prosecutions (ODPP)	Submitted
14.	Registrar of Political Parties	Not Submitted
15.	National Police Service Commission	Submitted
16.	Independent Electoral and Boundaries Commission	Submitted
17.	Teachers Service Commission	Not Submitted
18.	Judicial Service Commission	Submitted
19.	Independent Policing Oversight Authority	Submitted
20.	Kenya National Audit Office	Not Submitted
21.	Commission for University Education	Submitted
22.	Ethics Commission for Co-operative Societies	Not Submitted
23.	Central Bank of Kenya	Submitted
24.	Ethics and Anti-Corruption Commission	Not Submitted

# Status of Submission of Returns to EACC by Responsible Commissions at the County Governments.

No	County Government	County Public Service	County Assembly Service
		Board	Board
1.	Mombasa	Not Submitted	Submitted
2.	Kwale	Submitted	Not Submitted
3.	Kilifi	Not Submitted	Submitted
4.	Tana River	Submitted	Not Submitted
5.	Lamu	Not Submitted	Not Submitted
6.	Taita-Taveta	Submitted	Not Submitted
7.	Garissa	Not Submitted	Not Submitted
8.	Wajir	Not Submitted	Not Submitted
9.	Mandera	Not Submitted	Not Submitted
10.	Marsabit	Not Submitted	Submitted
11.	Isiolo	Not Submitted	Not Submitted
12.	Meru	Not Submitted	Not Submitted
13.	Tharaka Nithi	Not Submitted	Not Submitted
14.	Embu	Submitted	Not Submitted
15.	Kitui	Submitted	Not Submitted
16.	Machakos	Not Submitted	Not Submitted
17.	Makueni	Not Submitted	Not Submitted
18.	Nyandarua	Not submitted	Submitted
19.	Nyeri	Not Submitted	Not Submitted
20.	Kirinyaga	Submitted	Submitted
21.	Muranga	Submitted	Not Submitted
22.	Kiambu	Submitted	Submitted
23.	Turkana	Not Submitted	Submitted
24.	West Pokot	Submitted	Submitted
25.	Samburu	Not Submitted	Not Submitted
26.	Trans-Nzoia	Submitted	Not Submitted
27.	Uasin Gishu	Submitted	Not Submitted
28.	Elgeyo-Marakwet	Not Submitted	Not Submitted
29.	Nandi	Submitted	Submitted
30.	Baringo	Submitted	Submitted
31.	Laikipia	Not Submitted	Submitted

32.	Nakuru	Submitted	Submitted
33.	Narok	Submitted	Not Submitted
34.	Kajiado	Not Submitted	Not Submitted
35.	Kericho	Not Submitted	Submitted
36.	Bomet	Not Submitted	Submitted
37.	Kakamega	Not Submitted	Submitted
38.	Vihiga	Not Submitted	Not Submitted
39.	Bungoma	Submitted	Not Submitted
40.	Busia	Not Submitted	Not Submitted
41.	Siaya	Not Submitted	Not Submitted
42.	Kisumu	Submitted	Submitted
43.	Homabay	Submitted	Not Submitted
44.	Migori	Submitted	Not Submitted
45.	Kisii	Not Submitted	Not Submitted
46.	Nyamira	Not Submitted	Not Submitted
47.	Nairobi	Not Submitted	Submitted

## Annex 2: Reporting template on the submission of Declaration of Income, Assets and Liabilities

(NB: use separate	ofinities Oforms for public officers a	and for state off	ficers)	
NAME OF ENTITY				
DATE OF SUBMISS	SION:	DECLAF	RATION YEAR:	
NUMBER OF OF OF Officers):	FICERS WITHIN JURISD	ICTION ( <i>differ</i>	rentiate for both State	and Public
NUMBER OF OFFI	CERS WHO SUBMITTED R	ETURNS:		
NUMBER OF OFFI	CERS WHO DID NOT SUBI	MIT RETURNS:		
LIST OF OFFICE LIABILITIES (D	RS WHO DID NOT SUB	BMIT DECLAR	ATION OF INCOME, A	SSETS AND
Full name	Designation/Positio n	Staff/File No	National Identity Card or Passport Number	Action taken/Remarks
Compiled by:				
Designation:		Date:		
-	counting officer/CEO	Date:		
Official Rubber	stamp			

(Completed form to be submitted to EACC)