



ETHICS AND ANTI-CORRUPTION COMMISSION

Declaration of Income, Assets and Liabilities  
(Section 26 of the Public Officer Ethics Act, No. 4 of 2003)

Name of public officer:

(Last name) (First name)

Personal information:

Date of birth: \_\_\_\_\_

Place of birth: \_\_\_\_\_

Marital status: \_\_\_\_\_

Postal address:

\_\_\_\_\_

Physical address: \_\_\_\_\_



# WEALTH DECLARATION REPORT



AN ASSESSMENT OF COMPLIANCE WITH  
THE LAW ON DECLARATION OF INCOME,  
ASSETS AND LIABILITIES BY PUBLIC OFFICERS  
FOR THE YEAR 2019

Tuangamize Ufisadi, Tuijenge Kenya

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## **ABBREVIATIONS**

AUCPCC	African Union Convention on Preventing and Combating Corruption
CASB	County Assembly Service Boards
CPSB	County Public Service Boards
DIALs	Declaration of Income, Assets and Liabilities
EACC	Ethics and Anti-Corruption Commission
LIA	Leadership and Integrity Act, 2012
POEA	Public Officer Ethics Act, 2003
UNCAC	United Nation Convention Against Corruption

## FOREWORD

I am pleased to present the Ethics and Anti-Corruption Commission (EACC) Report on Wealth Declaration in the Public Sector for the 2019 Declaration Year. The Declaration of Income, Assets and Liabilities (DIALs) popularly known as “Wealth Declaration,” “Asset Declaration” or “Financial Disclosures” is a strategic and powerful anti-corruption tool used by many countries all over the world. Indeed, statistics from the World Bank indicate that more than 150 countries have introduced assets disclosure systems in the quest for accountability in the management of public affairs.

Kenya has signed and ratified both the United Nations Convention Against Corruption (UNCAC) and the African Union Convention on Preventing and Combating Corruption (AUCPCC), which contain provisions requiring establishment of appropriate mechanisms for public officials to declare their incomes, assets and liabilities. Notably, Kenya has been recognized as the first country to ratify UNCAC which led to the enactment of the Public Officer Ethics Act (POEA) in 2003. Part IV of the Act established a wealth declaration system under which all Public Officers are duty bound to periodically declare their income, assets and liabilities, as well as those of their spouse(s) and children under the age of 18 years.

The Ethics and Anti-Corruption Commission (EACC) is vested with the oversight and enforcement mandate on ethics and integrity standards in the public service. These standards are set out under Article 10, Chapter 6 and Article 232 of the Constitution. Remarkably, the wealth declaration framework is one of the key statutory frameworks towards realization of these constitutional values and principles.

The Commission has continued to rationalize its policies and strategies towards ensuring effective oversight over the management of the wealth declaration in the public sector. This includes establishment of a designated functional unit on Wealth Declaration within the Commission’s structure, development of technical guidelines to bolster compliance, automation of the Commission’s system for receipt and analysis of compliance Reports submitted by Responsible Commissions and public entities, and liaison with strategic actors such as the National Assembly on legal and policy reforms.

I urge all stakeholders, including members of the public, to effectively discharge their respective responsibilities in making wealth declaration a successful tool in the quest for a culture of integrity and public accountability in Kenya.

God bless Kenya.



**ARCHBISHOP (RTD) DR. ELIUD WABUKALA, EBS**  
**CHAIRPERSON, ETHICS AND ANTI-CORRUPTION COMMISSION**

## **PREFACE**

The Ethics and Anti-Corruption Commission (EACC) is established under section 3 of the Ethics and Anti-Corruption Commission Act, 2011 pursuant to Article 79 of the Constitution. The Commission is mandated to combat and prevent corruption and unethical conduct in Kenya through law enforcement, prevention, public education, and promotion of best practice in ethics and integrity.

One of the functions of the Commission is to oversee the management of Declaration of Income, Assets and Liabilities (DIALs) under part IV of the Public Officer Ethics Act, 2003 (POEA). The DIALs framework is managed by the public entities designated as Responsible Commissions under section 3 of POEA. The responsibility of EACC is to oversee the functions of the Responsible Commissions to ensure compliance with the law.

Over the years, the Commission has continued to take diverse measures, including development of support frameworks, to assist public entities in the discharge of their functions relating to DIALs. For instance, from the Financial Year 2018/2019, the Commission has been providing technical support to Responsible Commissions in developing their administrative procedures for DIALs. These procedures are a mandatory requirement for each Responsible Commission under Section 33 of POEA.

The purpose of the administrative procedures is to guide Responsible Commissions in their day to day administration of the DIALs framework in relation to the officers under their respective jurisdictions. In order to ensure effective enforcement of the law on DIALs, EACC requires all Responsible Commissions to make annual submissions of status Reports indicating the levels of compliance with the declaration requirements by Public Officers. The submissions provide useful information which informs various interventions by the Commission including enforcement action and technical advisories.

This Report presents an analysis of the submissions made to EACC by Responsible Commissions on the status of compliance with the declaration requirements in the 2019 Declaration Year, subsequent compliance measures taken by Responsible Commissions, and various reform interventions.

I therefore invite all Responsible Commissions, public entities, state and Public Officers to read and utilize the Report in enhancing compliance with their respective obligations under the law.



**TWALIB MBARAK, CBS**  
**SECRETARY/ CHIEF EXECUTIVE OFFICER**

## **ACKNOWLEDGEMENT**

The Ethics and Anti- Corruption Commission appreciates all the Responsible Commissions for their continued execution of their statutory obligation in ensuring compliance with the wealth declaration requirements under Part IV of the Public Officer Ethics Act within the prescribed timelines. It is those submissions that have culminated into this Report.

In equal measure, the Commission conveys its gratitude to all the officers who played diverse roles in the development of this Report. The officers include Ms. Lucy Kinuthia, MBS, Mr. Kairichi Marimba, Mr. Eric Ngumbi, Ms. Stella Mbelle, Ms. Janet Bett, Mr. Yattani Gollo, Ms. Diana Muia, Ms. Maureen Makori, Mr. Moses Tile, Mr. John Machanje and Ms. Consolata Lenairoshi.



## **EXECUTIVE SUMMARY**

The Ethics and Anti-Corruption Commission (EACC) is vested with the oversight mandate in the implementation of part IV of the Public Officer Ethics Act, 2003 (POEA) on the Declaration of Income, Assets and Liabilities. This mandate is derived from the Leadership and Integrity Act, 2012 (LIA) which provides under Section 6(3) that the provisions of POEA shall form part of LIA. Section 45 of the LIA also requires EACC to submit to the President and Parliament an Annual Report containing amongst other things, all the information relevant to the enforcement of, and compliance with the provisions of the LIA, which includes the provisions of POEA.

Part IV of POEA provides for Declaration of Income, Assets and Liabilities by Public Officers. Each Public Officer is required to make an initial declaration within 30 days of assuming public office, a biennial declaration after every two years and a final declaration within 30 days of ceasing to be a Public Officer. Declarations are to be submitted to a designated Responsible Commission as provided under Section 3 of POEA.

As part of enforcement of part IV of the Public Officers Ethics Act (POEA) on the Declaration of Income, Assets and Liabilities (DIALs), the Commission developed generic Administrative Procedures to be customized by the Responsible Commissions in both the National Government and the County Governments in developing their own procedures pursuant to section 33(1) of POEA.

Over the years, the Commission has worked closely with Responsible Commissions in a bid to bolster compliance with wealth declaration requirements. As part of this process, the Commission requires Responsible Commissions to submit annual and other periodic Reports on the status of compliance with the law relating to DIALs in their areas of jurisdiction.

Following the closure of the 2019 Declaration Year on 31<sup>st</sup> December 2019, all Responsible Commissions were required to undertake verification of the declarations submitted and seek clarifications from declarants on any identified discrepancies during the prescribed 6-month period ending on 30<sup>th</sup> June, 2020. Further, Responsible Commissions were expected to identify any breaches of the declaration requirements and take appropriate action, including administrative sanctions and referrals for criminal prosecutions. Thereafter, each Responsible Commission was expected to submit to EACC a Report in the prescribed form, by 31<sup>st</sup> July 2020.

In this regard, following the 2019 declaration year, EACC required Responsible Commissions to submit a Report on declarations of income, assets and liabilities in a prescribed template on the declarations by Public Officers, by 31<sup>st</sup> July 2020. The Commission has analyzed the 2019 submissions on DIALs and generated this Report. The Report envisages existence of a total of one hundred and eighteen (**118**) Responsible Commissions; twenty-four (24) Responsible Commissions in the National Government, forty-seven (47) County Public Service Boards (CPSBs) and forty-seven (47) County Assembly Service Boards (CASBs).

In 2019, a total of **116** Responsible Commissions (**98%**) out of the **118** submitted their biennial Reports to EACC on financial declarations. These were **23** Responsible Commissions (**96%**) in the National Government, **46** County Public Service Boards (**98%**) and **47** County Assembly Service Boards (**100%**).

From the analysis of the submissions, the following recommendations are made:

- i) Development and gazettement of Administrative procedures:** Responsible Commissions to prioritize the development and gazettement of pending administrative procedures on DIALs pursuant to Section 33 of POEA;
- ii) Automation of DIALs and Storage:** Responsible Commissions to adopt clear records management practices and automate filling and submission of the forms to enhance compliance and reduce the logistical costs;
- iii) Compliance guidelines:** EACC to issue standardized guidelines in relation to management of DIALs;
- iv) Technical Support:** Responsible Commissions to seek technical support from the EACC to enhance management of DIALs;
- v) Training:** Responsible Commissions to incorporate a training module on DIALs training in their induction programs for new entrants and undertake continuous education programs for their staff;
- vi) Enforcement:** Responsible Commissions to enforce compliance against non-compliant Public Officers as required by law;
- vii) Submission of Compliance Reports:** Responsible Commissions to submit their initial, final and biennial Reports on DIALs in the prescribed template provided by EACC;
- viii) Enhance monitoring:** EACC to conduct regular spot checks to verify and ascertain compliance information;
- ix) Non penal sanctions:** EACC in collaboration with other agencies to develop and standardize administrative actions/enforcement mechanism for non-compliance across all Responsible Commissions.

In Conclusion, the assessment established that there was a significant increase in submission of biennial Reports by Responsible Commissions to EACC. This is attributed to various strategies employed by the Commission and measures put in place by

Responsible Commissions to enhance compliance in their respective institutions as provided by administrative procedures on DIALs.

# CHAPTER ONE: BACKGROUND

## 1.0 Introduction

The Declaration of Income, Assets and Liabilities (DIALs) by Public Officers, commonly referred to as “*wealth declaration*” or “*financial disclosures*”, is one of the fundamental strategies employed by many countries towards the promotion of ethics and integrity within the public service. World over, countries have embraced financial disclosures as a tool to monitor how public officials use their positions of power and whether or not they disclose corruption and illegal activities.

Data from the World Bank indicates that more than 150 countries have introduced income and asset disclosure requirements for their public officials. Financial disclosures are the bedrock of lifestyle audits across various countries in the world and one with the widest scope of application in each country’s public sector.

Universally, financial disclosures are an influential tool used in the quest for public accountability and the fight against corruption. The objectives of asset declarations are:

- To increase transparency and the trust of citizens in public administration;
- To help heads of public institutions prevent conflicts of interest among their employees and to promote integrity within their institutions; and
- To monitor wealth variations of individual public officials and to help clarify the full scope of illicit enrichment or other illegal activity by providing additional evidence.

There is anecdotal evidence to suggest that there is a correlation between financial disclosures and levels of corruption. Transparency International published the Corruption Perception Index of 2019: Global Scores, which analysed 183 countries to determine the level of corruption. In East Africa, Tanzania was ranked at position 102 while Rwanda was rated the least corrupt African countries at position 57 with a score of 53 percent whereas Kenya appeared at position 141 with a score of 28 percent.

In Rwanda, the requirement for public officials to declare their income and assets is enshrined in their 2003 Constitution under Article 139. Law No.25 of 2003 establishes the office of the Ombudsman and the requirements that certain public sector employees and officials declare their income and assets upon taking up and on leaving office. These declarants include the President of the Republic, the President of the Senate, the Speaker of the Chamber of Deputies, the President of the Supreme Court, the Prime Minister and other members of the Cabinet. The office of the Ombudsman further focuses on monitoring submission compliance and verifying the accuracy of a small sample of the declarations submitted each year. Rwanda has managed to use the income and assets declaration system as an effective anti-corruption tool by prosecuting high ranking officials for corruption based on investigations stemming from the verification process of their income and asset declarations. In Tanzania, the ethics

secretariat receives and manages DIALs for 16,000 public leaders designated so by the Public Leadership Code of Ethics Act No.13 of 1995.

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. Kenya has been implementing this law since 2003, when the then President of the Republic, H.E Mwai Kibaki also made his declaration. During this period, the declarations were being made annually until the Act was amended in 2007 requiring Public Officers to make declarations biennially.

Article 79 of the Constitution of Kenya as read with Section 4(2) of the Leadership and Integrity Act, (LIA) 2012, mandates EACC to oversee and enforce the implementation of Chapter Six of the Constitution and related integrity laws including the Public Officer Ethics Act, 2003. By dint of section 6(3) of LIA, POEA has been incorporated under the LIA hence the Commission has oversight responsibilities in the implementation of the law on declaration of income, assets and liabilities.

In Kenya, the declarations are submitted to entities designated as Responsible Commissions under Section 3 of the Public Officer Ethics Act, 2003. Subsequently, each Responsible Commission is required to submit a Report on DIALs to EACC. It is these Reports that form the basis of the assessment on the status of compliance by Responsible Commissions in making submissions to EACC.

### **1.1 Justification of the Assessment**

Article 254 (1) of the Constitution of Kenya, Section 27 of the Ethics and Anti-Corruption Commission Act, 2011 and Section 45 of the Leadership and Integrity Act, 2012, require EACC to submit an annual Report, containing amongst other things, all the information relevant to the enforcement of and compliance with the provisions of the Leadership and Integrity Act, 2012, to the President and Parliament.

Previously, EACC had undertaken assessments of the status of compliance by Responsible Commissions in submission of DIALs Reports for 2015 and 2017 declaration years. A case of the 2015 and 2017 assessments undertaken indicated that out of 118 Responsible Commissions, 73 submitted their Reports in 2015 while only 47 submitted in 2017. The assessments further identified implementation gaps by Responsible Commissions including failure to submit declarations by the Public Officers, failure to verify contents in the declaration forms and failure to seek clarifications by the Responsible Commissions.

It is envisaged that the 2019 assessment will inform the EACC of the necessary interventions to be undertaken to support Responsible Commissions comply with the laws on DIALs. There is therefore need to establish the level of compliance by Responsible Commissions in meeting the requirement by EACC to submit DIALs Reports. It is also necessary to establish challenges faced by Responsible Commissions and make recommendations in addressing them.

## **1.2 Objectives of the Assessment**

The assessment sought to examine levels of compliance by Responsible Commissions in submission of biennial Reports on declaration of income, assets and liabilities for 2019. The specific objectives were to:

- Collate and compile data received from the various Responsible Commissions;
- Establish the level of compliance with the biennial declarations of income, assets and liabilities by Public Officers;
- Identify actions or sanctions taken by Responsible Commissions against non-compliant officers;
- Highlight legal and institutional challenges in the implementation of the law on DIALs; and
- Make recommendations to enhance compliance and management of DIALs as a tool in the fight against corruption and unethical practices.

## CHAPTER TWO: METHODOLOGY

### 2.0 Data collection strategies

The assessment relied on mixed research strategies and therefore used both qualitative and quantitative data collection techniques. The assessment used secondary data from studies and concerns raised in meetings that had been held previously and information from data collection templates that were self-administered by the Responsible Commissions. The methodology also involved an assessment of the Legal and Institutional Framework for DIALs and review of literature on existing financial disclosures nationally and globally.

### 2.1 Design and Scope of the Assessment

In this Report, the EACC focused on biennial submissions from 118 Responsible Commissions drawn from the two levels of government. The assessment focused on 24 Responsible Commissions (Annex 1) in the National Government, the 47 County Public Service Boards and the 47 County Assembly Service Boards. The Report collected & collated secondary data from Responsible Commissions for 2019 submissions of DIALs by Public Officers. For the purpose of the assessment, the title Public Officers will also refer to State Officers.

### 2.2 Data Collection and Processing

Data for the assessment was collected using a structured Reporting template developed by EACC. The template (Annex 2) was shared to all the Responsible Commissions and was self-administered. The Responsible Commissions were required to populate and submit the requisite data to EACC by 31<sup>st</sup> July 2020. Data processing and Report writing was undertaken by an EACC technical committee in a workshop.

### 2.3 Organization of the Report

This Report is organized in five chapters. Chapter One provides background information on the Declaration of income, assets and liabilities (DIALs) by Public Officers, justification of the assessment and objectives. Chapter Two details the methodology which was used in data collection and analysis. Chapter Three focuses on the Legal and Policy framework, both International and National legislative framework, regulating Declaration of Income, assets and Liabilities in Kenya. Chapter Four presents highlights on the findings of the submission of DIALs Reports by responsible commissions in the 2019 declaration year. Chapter 5 of the Report presents the conclusion and recommendations based on the submissions made by Responsible Commissions.

## CHAPTER THREE: LEGAL AND POLICY FRAMEWORK FOR REGULATING DIALS

### 3.0 Introduction

Declaration of income, assets and liabilities in Kenya is regulated by a legal framework comprising of the following International and national legal instruments:

- i) United Nations Convention Against Corruption (UNCAC), 2003;
- ii) Africa Union Convention for Preventing and Combating Corruption (AUCPCC), 2003;
- iii) International Code of Conduct for Public Officials;
- iv) Constitution of Kenya, 2010;
- v) Leadership and Integrity Act (LIA), 2012;
- vi) Public Officer Ethics Act (POEA), 2003;
- vii) Public Officer Ethics Regulations, 2003;
- viii) Public Officer Ethics (Management, Verification and Access to Financial Declarations) Regulations, 2011; and
- ix) National Ethics and Anti-Corruption policy, 2018

### 3.1 International Legal Instruments

Article 2(6) of the Constitution of Kenya, 2010 decrees that “any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution.” Kenya has ratified a number of international instruments which forms part of the legal framework for DIALs these are: United Nations Convention Against Corruption (UNCAC), Africa Union Convention on Prevention and Combating Corruption (AUCPCC) and The International Code of Conduct for Public Officials.

#### 3.1.1 United Nations Convention Against Corruption (UNCAC)

The UNCAC was signed and ratified by Kenya on 9<sup>th</sup> December 2003 in Merida, Mexico. This convention under Article 8 outlines the obligations of state parties who are expected to promote, *inter alia*, integrity, honesty and responsibility of its public officials. The state parties are required to implement these obligations including codes or standard of conduct within their institutional and legal systems. This allows state parties to apply the correct, honorable and proper performance of public functions.

State Parties are also required to establish measures and systems for public officials to make declarations to the relevant authorities regarding, *inter alia*, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may arise with respect to their duties. These measures and



systems should also include an enforcement mechanism where violations and breaches attract disciplinary action.

### **3.1.2 Africa Union Convention on Prevention and Combating Corruption (AUCPCC)**

The AUCPCC was ratified by Kenya on 3<sup>rd</sup> February 2007 and is geared towards preventing and combating corruption and related offences in the African continent. State Parties are required under Article 7 of the Convention to ensure "*all or designated public officials declare their assets at the time of assumption of office, during and after their term of office in the public service*".

### **3.1.3 The International Code of Conduct for Public Officials**

The United Nations General Assembly adopted the International code of conduct of public officials on December 1996 – resolution 51/59. The code defines the roles and responsibilities of public officials and includes provisions on conflict of interest, disclosure of assets, acceptance of gifts, disclosure of confidential information and political activity. With regard to the declaration of income, assets and liabilities, the code makes it mandatory, that, "*Public officials shall, in accordance with their position and as permitted or required by law and administrative policies, comply with requirements to declare or to disclose personal assets and liabilities, as well as, if possible, those of their spouses and/or dependents*".

## **3.2 National Instruments**

The National instruments that form part of the legal framework for DIALs include: The Constitution of Kenya, 2010; Leadership and Integrity Act (LIA), 2012; Public Officer Ethics Act (POEA), 2003; Public Officer Ethics Regulations, 2003; Public Officer Ethics (Management, Verification and Access to Financial Declarations) Regulations, 2011; and National Ethics and Anti-Corruption policy, 2018.

### **3.2.1 The Constitution of Kenya**

The Constitution of Kenya provides the normative framework for good governance and an ethical society. Articles 10, 73, 74, 75 and 232 of the Constitution set out the Principles of Governance and National Values which bind all state organs, State and Public Officers. In essence the above provisions of the Constitution encompass everything that is required to set, maintain or raise the standards in management of public affairs.

Chapter Six of the Constitution specifically outlines the guiding principles of leadership and integrity which include *selfless service based solely on the public interest, demonstrated by honesty in the execution of public duties; and the declaration of any*

*personal interest that may conflict with public duties;*" The implementation of the constitution directly rests on the legislation and or statutes including the Leadership and Integrity Act, 2012 and the Public Officer Ethics Act, 2003 which provide a framework on principles of public service.

### **3.2.2 Leadership and Integrity Act, 2012 (LIA)**

The Leadership & Integrity Act No. 19 of 2012 was enacted pursuant to Articles 79 & 80 of the Constitution. The Act was enacted for the purpose of giving effect to and establishing procedures and mechanisms for effective administration of Chapter Six of the Constitution. The primary purpose of the Act is to ensure that state and Public Officers respect the values, principles and requirements of the Constitution.

Section 6 of the Act states that the provisions of the Public Officer Ethics Act (No. 4 of 2003) form part of the Leadership and Integrity Act by virtue of subsection (3). This includes the provision on the declaration of income, assets and liabilities under part IV of the Public Officer Ethics Act, 2003.

### **3.2.3 Public Officer Ethics Act, 2003 (POEA)**

The Public Officer Ethics Act, 2003 (POEA) was enacted to advance the ethics of Public Officers by providing for a Code of Conduct and Ethics for Public Officers under Part III. Further, Part IV of the Act, provides for declaration of income, assets and liabilities by Public Officers. Section 26 makes it mandatory for every Public Officer to submit their declaration once every two years to a Responsible Commission for self, spouse(s) and dependent children under the age of 18 years. The statement date for a biennial declaration is the 1<sup>st</sup> day of November of the year in which the declaration is required. A Public Officer is also required under Section 27 to submit an initial declaration within thirty days of joining public service. The statement date is the first date the officer becomes a Public Officer. An officer who exits the public service is required to further submit a final declaration within thirty days after ceasing to be a Public Officer. The statement date of a final declaration is the date the Public Officer ceases to be a Public Officer.

### **3.2.4 Designation of Responsible Commissions**

Section 3 of POEA and its attendant regulations designates certain public bodies as the Responsible Commissions for the Public Officers under their jurisdiction. Section 3 (11) of POEA further provides- "*a body that is the Responsible Commission for a Public Officer by virtue of exercising disciplinary control over the Public Officer remains the Responsible Commission notwithstanding the delegation of any disciplinary powers with respect to that Public Officer.*" Responsible Commissions are empowered under Section

33 to establish procedures for the administration of declaration of income assets and liabilities with respect to the Public Officers for which it is the Responsible Commission.

Section 28 (1) of POEA requires the Responsible Commissions to ensure that a person who has submitted a declaration provides, without undue delay, any clarification requested by that Responsible Commission in writing. This clarification should be done within six months after the declaration is submitted to the Responsible Commission. Under Section 32 of POEA, *“a Public Officer who fails to submit a declaration or clarification or who submits, in such a declaration or clarification, information that he knows, or ought to know, is false or misleading, is guilty of an offence and is liable, on conviction, to a fine not exceeding one million shillings or to imprisonment for a term not exceeding one year or to both”*.

### **3.2.5 The Public Officer Ethics Regulations, 2003**

The Regulations were developed pursuant to section 42 of the Public Officer Ethics Act, 2003. It provides for additional Public Officers covered by the Act, additional Responsible Commissions and regulations relating to the code of conduct and ethics and its enforcement.

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

The Regulations provide the mechanisms for the management, verification, and access to financial declarations. It outlines the procedures for storage and access to information in declarations of income, assets and liabilities; management of declarations and general provisions for Responsible Commissions to establish a committee responsible to its chief executive, to oversee the management, verification, and access to declarations. These regulations were established pursuant to Section 42 of the Public Officer Ethics Act, 2003.

The Responsible Commissions are required to undertake the following functions with regard to the financial declarations: receive and keep custody of declarations, verify and seek clarifications on the declarations, investigate breaches, take administrative action on breaches, develop and implement administrative procedures for management of the declaration process, and monitor compliance on the declarations by Public Officers.

### **3.2.7 National Ethics and Anti-Corruption Policy, 2018**

The National Ethics and Anti-Corruption Policy, sessional paper No. 2 of 2018, is anchored on the Political Pillar of Kenya Vision 2030. The development of this Policy is also informed by the historical developments in the fight against corruption. The policy proposes the development of mechanisms and legal framework for conducting lifestyle audit and enhance management of DIALs by Public Officers.

## CHAPTER FOUR: FINDINGS

### 4.0 Introduction

During the 2019 declaration year, a total of **116** Responsible Commissions (**98%**) out of **118** submitted their biennial Reports to EACC on financial declarations within the specified timelines. These were **23** Responsible Commissions (**96%**) in the National Government, **46** County Public Service Boards (**98%**) and **47** County Assembly Service Boards (**100%**). Table 1 summarizes the submission of DIALs Reports by the three categories of Responsible Commissions.

**Table 1: Reports by Responsible Commissions in the 2019 Declaration Year**

<b>Responsible Commission</b>	<b>Commissions that submitted Reports to EACC</b>	<b>Level of Response</b>
National Government	23/24	95.8%
County Public Service Boards	46/47	97.9%
County Assembly Service Boards	47/47	100%
<b>Total</b>	<b>116/118</b>	<b>98.3%</b>

The only Responsible Commission in the National Government that did not submit Report on DIALs was the **Defence Council**. In addition, one (**1**) County Public Service Board namely **Vihiga** provided partial data and therefore was not analyzed.

### 4.1 Level of Compliance by Public Officers in Submission of DIALs in 2019

The level of compliance by Public Officers in submission of DIALs in 2019 was established by computing proportions of the number of Public Officers in the Responsible Commissions and the numbers of DIALs received from Public Officers.

#### 4.1.1 Level of Compliance by Public Officers in the National Government

The average level of compliance with submission of declarations by Public Officers to the **23** Responsible Commissions in the National Government was **99%**. Out of the **23** Responsible Commissions, **16** had **100%** compliance level by their Public Officers. Table 2 presents details of the level of compliance.

**Table 1: Reports Submitted by Responsible Commissions in the National Government**

	<b>Name of Responsible Commission</b>	<b>a. Total Number of Public Officers as at 31st December 2019</b>	<b>b. Number of financial declaration received by 31st December 2019</b>	<b>Number of financial declarations not received by 31st December 2019 ( Variance of a - b)</b>	<b>Percentage compliance level (%)</b>
1.	Central Bank of Kenya	1382	1382	0	100
2.	Commission on Administration of Justice	85	85	0	100
3.	Commission on Revenue Allocation	68	66	2	97.1
4.	Commission for University Education	23625	22487	1138	95.18
5.	Ethics & Anti-Corruption Commission	740	740	0	100
6.	Ethics Commission for Cooperative Societies	8595	8595	0	100
7.	Independent Electoral and Boundaries Commission	891	891	0	100
8.	Independent Policing Oversight Authority	204	204	0	100
9.	Judicial Service Commission	4738	4738	0	100
10.	Kenya National Commission on Human Rights	132	132	0	100
11.	National Gender and Equality Commission	109	109	0	100
12.	National Intelligence Service		All submitted	0	100
13.	National Land Commission	454	408	46	89.9
14.	National Police Service Commission (Senior police officers)		All submitted	0	100
15.	Office of the Auditor General	1588	1581	7	99.6

	<b>Name of Responsible Commission</b>	<b>a. Total Number of Public Officers as at 31st December 2019</b>	<b>b. Number of financial declaration received by 31st December 2019</b>	<b>Number of financial declarations not received by 31st December 2019 ( Variance of a - b)</b>	<b>Percentage compliance level (%)</b>
16.	Office of the Attorney General and Department of Justice	828	828	0	100
17.	Office of the Controller of Budget	124	124	0	100
18.	Office of the Director of Public Prosecution	1000	997	3	99.7
19.	Office of the Registrar of Political Parties	64	64	0	100
20.	Parliamentary Service Commission	1059	1059	0	100
21.	Public Service Commission	192484	188310	4174	97.83
22.	Salaries and Remuneration Commission	71	71	0	100
23.	Teachers Service Commission	324191	321078	3113	99

#### **4.1.2 Level of Compliance by Public Officers in the County Public Service Boards (CPSBs)**

The average level of compliance with submission of declarations by Public Officers in the County Public Service Boards was **95.2%**. Of the **46** CPSBs who submitted their complete declarations, **8** had 100% compliance level by their Public Officers.

Table 3 presents details on the level of compliance.

**Table 2: Reports Submitted by the County Public Service Boards (CPSBs)**

	<b>Name of Responsible Commission</b>	<b>a. Total Number of Public Officers as at 31st December 2019</b>	<b>b. Number of financial declaration received by 31st December 2019</b>	<b>Number of financial declarations not received by 31st December 2019 ( Variance of a - b)</b>	<b>Percentage compliance level (%)</b>
1.	Baringo	3888	3782	94	97.3
2.	Bomet	3252	3252	0	100
3.	Bungoma	6326	6325	1	99.98
4.	Elgeyo Marakwet	2148	2143	5	99.8
5.	Garissa	3593	2436	1157	67.8
6.	Homabay	4897	4134	763	84.4
7.	Isiolo	1374	1104	270	80.3
8.	Kajiado	2436	1934	502	79.4
9.	Kakamega	891	891	0	100
10.	Kericho	3709	3668	41	98.9
11.	Kiambu	7101	7055	46	99.4
12.	Kilifi	4259	3967	292	93.1
13.	Kisii	6026	5897	129	97.9
14.	Kisumu	4463	4164	299	93.3
15.	Kitui	3517	3517	0	100
16.	Kwale	3679	3297	382	89.6
17.	Laikipia	1654	1549	105	93.7
18.	Lamu	1202	1196	6	99.5
19.	Machakos	3648	3612	36	99
20.	Makueni	3758	3758	0	100
21.	Mandera	2169	2156	13	99.4
22.	Marsabit	2950	2950	0	100
23.	Meru	5451	5389	62	98.9
24.	Migori	3228	3053	175	94.6
25.	Mombasa	4357	4357	0	100
26.	Murang'a	3970	3835	135	96.6
27.	Nairobi	11796	11742	54	99.5
28.	Nakuru	5412	5209	203	96.2
29.	Nandi	4901	4898	3	99.9
30.	Narok	4984	4769	215	95.7
31.	Nyamira	4808	4808	0	100

	Name of Responsible Commission	a. Total Number of Public Officers as at 31st December 2019	b. Number of financial declaration received by 31st December 2019	Number of financial declarations not received by 31st December 2019 ( Variance of a - b)	Percentage compliance level (%)
32.	Nyandarua	1942	1854	88	95.5
33.	Siaya	1998	1593	405	79.7
34.	Samburu	1855	1855	0	100
35.	Taita Taveta	3185	3136	49	98.5
36.	Tana River	2035	1404	631	69
37.	Tharaka Nithi	2604	2572	32	98.8
38.	Trans Nzioa	3079	3046	33	98.9
39.	Turkana	2522	2488	34	98.7
40.	Uasin Gishu	4607	4604	3	99.9
41.	West Pokot	1883	1880	3	99.8
42.	Wajir	3288	3280	80	99.8
43.	Embu	3234	2990	244	92.4
44.	Nyeri	4198	4111	87	97.9
45.	Busia	3569	3497	72	98.0
46.	Kirinyaga	2683	2657	26	99.0
47.	Vihiga	Incomplete data	1581		

#### 4.1.3 Level of Compliance by Public Officers in the County Assembly Service Boards (CASBs)

The average level of compliance with submission of declarations by Public Officers to the **47** CASBs was **99.1%**. Table 4 presents details of the level of compliance.

**Table 3: Reports Submitted by the County Assembly Service Boards**

	Name of Responsible Commission	a. Total Number of Public Officers as at 31st December 2019	b. Number of financial declaration received by 31st December 2019	Number of financial declarations not received by 31st December 2019 ( Variance of a - b)	Percentage compliance level (%)
1.	Baringo	161	161	0	100
2.	Bomet	104	104	0	100



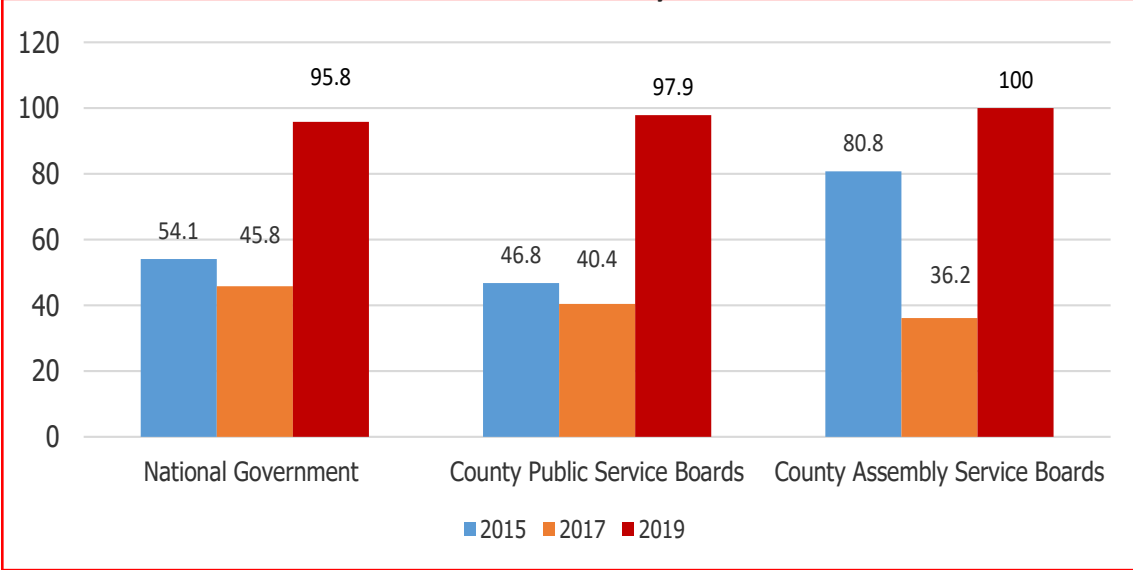
	<b>Name of Responsible Commission</b>	<b>a. Total Number of Public Officers as at 31st December 2019</b>	<b>b. Number of financial declaration received by 31st December 2019</b>	<b>Number of financial declarations not received by 31st December 2019 ( Variance of a - b)</b>	<b>Percentage compliance level (%)</b>
3.	Bungoma	137	123	14	89.8
4.	Busia	301	291	10	96.7
5.	Elgeyo Marakwet	104	104	0	100
6.	Embu	233	233	0	100
7.	Garissa	163	163	0	100
8.	Isiolo	235	235	0	100
9.	Homabay	172	168	4	97.7
10.	Kajiado	140	140	0	100
11.	Kakamega	187	187	0	100
12.	Kericho	135	135	0	100
13.	Kiambu	170	162	8	95.3
14.	Kilifi	187	187	0	100
15.	Kirinyaga	147	147	0	100
16.	Kisii	220	220	0	100
17.	Kisumu	261	261	0	100
18.	Kitui	142	142	0	100
19.	Kwale	176	176	0	100
20.	Laikipia	91	81	10	89
21.	Lamu	1202	1196	6	99.5
22.	Machakos	163	163	0	100
23.	Makueni	413	413	0	100
24.	Mandera	110	110	0	100
25.	Marsabit	115	115	0	100
26.	Meru	132	124	8	93.9
27.	Migori	125	124	1	99.2
28.	Mombasa	194	194	0	100
29.	Murang'a	260	260	0	100
30.	Nairobi	413	413	0	100
31.	Nakuru	194	194	0	100
32.	Nandi	123	123	0	100
33.	Narok	172	171	1	99.4
34.	Nyamira	159	159	0	100
35.	Nyandarua	159	158	1	99.4
36.	Nyeri	99	99	0	100

	<b>Name of Responsible Commission</b>	<b>a. Total Number of Public Officers as at 31st December 2019</b>	<b>b. Number of financial declaration received by 31st December 2019</b>	<b>Number of financial declarations not received by 31st December 2019 ( Variance of a - b)</b>	<b>Percentage compliance level (%)</b>
37.	Siaya	133	133	0	100
38.	Samburu	104	104	0	100
39.	Taita Taveta	123	123	0	100
40.	Tana River	107	107	0	100
41.	Tharaka Nithi	98	98	0	100
42.	Trans Nzioa	143	143	0	100
43.	Turkana	216	207	9	95.8
44.	Uasin Gishu	138	138	0	100
45.	Vihiga	216	216	0	100
46.	West Pokot	131	131	0	100
47.	Wajir	200	200	0	100

## **4.2 Comparative Analysis of Compliance Levels by the Responsible Commissions**

### **4.2.1 Comparison in Submission of Reports on DIALs**

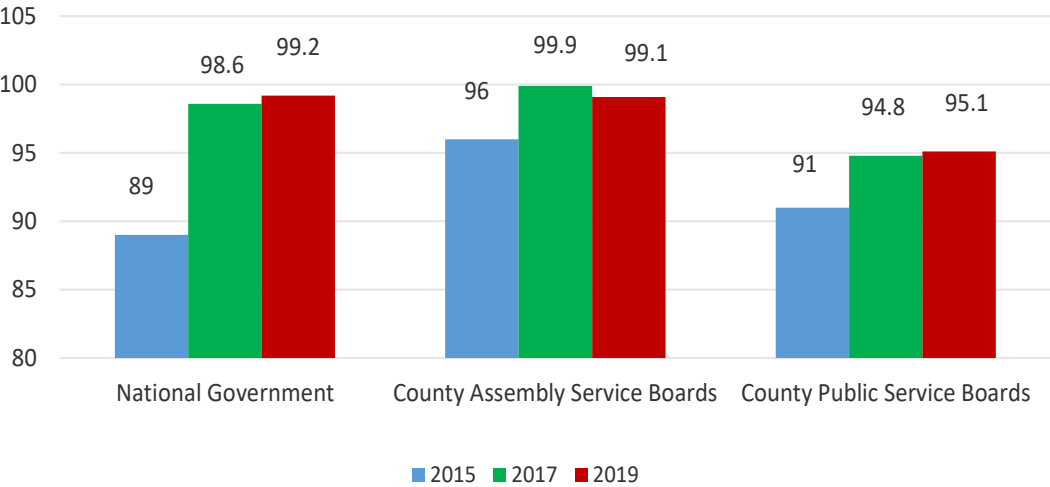
There was a decline in submission relating to the 2017 declaration year compared to the 2015 declaration year across the three categories of Responsible Commissions. In the 2019 declaration year, the Responsible Commissions in the national and county governments recorded the highest level of compliance with those in the National Government recording **(96%)**, CPSBs **(98%)** and CASBs at **(100%)**. The 2017 declaration year had the lowest level of compliance with those at the National Government recording **(46%)**, CPSBs (40%) and CASBs at **(36%)** as shown in Figure 1.



**Figure 1: Comparison in Submission of Reports on DIALs to EACC from 2015 – 2019 Declaration Years**

**4.2.2 Comparison in Submission of Declarations by Public Officers**

For the 2019 declaration year, the Public Officers in the national government and CASBs recorded the highest submission of DIALs at **99%** each whereas the CPSBs recorded **95%**. For the 2017 declaration year, an average of **97.8%** of the Public Officers submitted their declarations while in 2015 an average of **92%** of Public Officers submitted their declarations. However, some Responsible Commissions did not submit their declaration Reports hence their submissions are not factored in this Report. The details are shown in Figure 2.



## **Figure 2: Comparison in Submission of DIALs by Public Officers from 2015 – 2019 Declaration Years**

### **4.3 Administrative Action taken by Responsible Commissions against Officers who failed to Submit their DIALs**

The Declaration of Income, Assets and Liabilities is a mandatory requirement for all serving State and Public Officers.

Under Section 32 of the POEA, a person who fails to submit a declaration or clarification as required, or submits in such a declaration or clarification, information that he knows, or ought to know, is false or misleading, is guilty of an offence and is liable, on conviction, to a fine not exceeding one million shillings or to imprisonment for a term not exceeding one year or both.

By dint of section 6(3) of LIA, the provisions of POEA form part of the General Leadership and Integrity Code established under Part II. Section 41 of LIA states that “*a breach of the code amounts to misconduct for which the State Officer may be subjected to disciplinary proceedings*”. Further, Regulation 30 of the Leadership and Integrity Regulations, 2015, provides that where there has been a violation of the code by an officer, the Commission or a public entity may recommend a warning, suspension, dismissal or any other appropriate action against such officer. Responsible Commissions and public entities are also empowered to integrate the wealth declaration requirements as part of their codes of conduct and ethics.

Consequently, a number of administrative actions were undertaken by the Responsible Commissions as follows: stoppage of salaries, issuance of warning letters, show cause letters and reminders to comply.

### **4.4 Reasons for Failure by Public Officers to Submit their Declarations in 2019**

An analysis of the compliance Reports on DIALs from Responsible Commissions, provides the following reasons for non-compliance by Public Officers to submit their declarations of income, assets and liabilities:

- Refusal/ignorance by some Public Officers despite reminders and warnings issued;
- Fear of victimization by investigative agencies;
- Officers away on study or annual leave and thus were not in their working stations during the declaration period;
- Officers who had travelled outside the Country for official assignments;
- Officers transferred to other County departments or the National Government;
- Officers who had resigned, retired or their contracts had expired; and
- Officers who were deceased.

## **4.5 Challenges Encountered in the Management on DIALS**

There were challenges experienced in management of DIALs by Responsible Commissions and declarations by Public Officers as well as compliance Reports on DIALs made to EACC by Responsible Commissions. The challenges were categorized into legal and institutional challenges.

### **4.5.1 Legal Challenges**

- The Public Officer Ethics Act, 2003 (POEA) has not yet been aligned to the Constitution, 2010. The import is that there are no Responsible Commissions expressly designated for holders of the public offices established following the Constitution, 2010.
- Some Responsible Commissions have not developed and gazetted the administrative procedures as required by law;
- Low threshold for enforcement against non-compliance; and
- Manual submissions of the declarations reducing efficiency in analysis of the information.

### **4.5.2 Institutional Challenges**

- Delays in constituting County Public Service Boards after the expiry of the tenure of the previous Boards. This leaves a vacuum in the management of DIALs;
- Inadequate capacity to manage the declaration processes including clarification and verification of information as required by law;
- Lack of standardized administrative actions taken by the Responsible Commissions against non-compliant officers;
- Low awareness by Public Officers in filling out declaration forms;
- Delays in the development, approval and gazettelement of the administrative procedures on DIALs;
- Inadequate storage space to store the submitted DIALs forms;
- Non adherence to the prescribed Reporting template for submitting compliance Reports by Responsible Commissions as provided by EACC; and
- Despite the existence of designated Responsible Commissions, some Public Officers and Responsible Commissions erroneously submit their actual declaration forms to EACC.

## CHAPTER FIVE: CONCLUSION AND RECOMMENDATIONS

### 5.1 Conclusions

#### a) Submission to EACC of biennial compliance Reports on DIALs by the various categories of Responsible Commissions

The assessment established that there was an increase in submission of biennial Reports by Responsible Commissions to EACC. This is attributed to various strategies employed by the Commission such as issuance of notices, constant follow ups and provision of technical support on Chapter Six of the Constitution, LIA and management of DIALs across all levels of government.

#### b) Submission of declarations by Public Officers to Responsible Commissions

The assessment established that the submissions of DIALs by Public Officers in all Responsible Commissions had an average of **97.8%** compliance. This is as a result of measures put in place by Responsible Commissions to enhance compliance in their respective institutions as provided by administrative procedures on DIALs. In addition, EACC has made constant engagements, offered technical support and increased awareness on DIALs among Public Officers.

### 5.2 Recommendations

Based on the findings of this Report, the following recommendations are made to enhance compliance with the law on DIALs:

- **Amendment of POEA for alignment to the Constitution:** This should seal the gaps in the institutional frameworks for the management of DIALs.
- **Administrative procedures:** Responsible Commissions to prioritize the development and gazettment of pending administrative procedures on DIALs;
- **Automation of DIALs and storage:** Responsible Commissions to adopt clear records management practices and automate filling and submission of the forms to enhance compliance and reduce the logistical costs;
- **Compliance guidelines:** EACC to issue standardized guidelines in relation to management of DIALs;
- **Technical support:** Responsible Commissions to seek technical support from the EACC to enhance management of DIALs;
- **Training:** Responsible Commissions to incorporate a training module on DIALs training in their induction programs for new entrants and undertake continuous education programs for their staff;

- **Enforcement:** Responsible Commissions to enforce compliance against non-compliant Public Officers as required by law;
- **Submission of compliance Reports:** Responsible Commissions to submit their initial, final and biennial Reports on DIALs in the prescribed template provided by EACC;
- **Enhance monitoring:** EACC to conduct regular spot checks to verify and ascertain compliance information;
- **Non penal sanctions:** EACC in collaboration with other agencies to develop and standardize administrative actions/enforcement mechanism for non-compliance across all Responsible Commissions.

## 6.0 REFERENCES

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## **Annex 1: Responsible Commissions at the National Government**

- 1 Central Bank of Kenya
- 2 Commission for University Education
- 3 Commission on Administration of Justice
- 4 Commission on Revenue Allocation
- 5 Defence Council
- 6 Ethics and Anti-Corruption Commission
- 7 Ethics Commission for Co-operative Societies
- 8 Independent Electoral and Boundaries Commission
- 9 Independent Policing Oversight Authority
- 10 Judicial Service Commission
- 11 Kenya National Human Rights Commission
- 12 National Gender and Equality Commission
- 13 National Intelligence Service
- 14 National Land Commission
- 15 National Police Service Commission
- 16 Office of Controller of Budget
- 17 Office of the Attorney General & Department of Justice
- 18 Office of the Auditor General
- 19 Office of the Director of Public Prosecutions (ODPP)
- 20 Parliamentary Service Commission
- 21 Public Service Commission
- 22 Registrar of Political Parties
- 23 Salaries and Remuneration Commission
- 24 Teachers Service Commission

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

*(NB: use separate forms for Public Officers and for State Officers)*

NAME OF ENTITY: .....

DATE OF SUBMISSION: ..... DECLARATION YEAR: .....

NUMBER OF OFFICERS WITHIN JURISDICTION: STATE OFFICERS.....PUBLIC OFFICERS..... TOTAL NUMBER OF OFFICERS.....

NUMBER OF OFFICERS WHO SUBMITTED: STATE OFFICERS.....PUBLIC OFFICERS..... TOTAL NUMBER OF OFFICERS.....

NUMBER OF OFFICERS WHO DID NOT SUBMIT: STATE OFFICERS.....PUBLIC OFFICERS..... TOTAL NUMBER OF OFFICERS.....

**LIST OF OFFICERS WHO DID NOT SUBMIT DECLARATION OF INCOME, ASSETS AND LIABILITIES (DIALS)**

No	Full name	Designation/Position	Staff/File No	National Identity Card or Passport Number	Action taken/Remarks
1					
2					
3					

**Compiled by:** .....

**Designation:**..... **Date:**.....

**Authorized by:**..... **Date:**.....

*Accounting officer/CEO*

**Official Rubber stamp**

*(Completed form to be submitted to EACC)*