

COUNTY GOVERNMENT OF BUNGOMA



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COUNTY ASSEMBLY OF BUNGOMA
OFFICE OF THE CLERK

COUNTY ASSEMBLY OF BUNGOMA
(LPCS)
04 SEP 2024
NOTICE ISSUED
By: *Ho. Clerk*

THIRD SESSION

COMMITTEE OF POWERS AND PRIVILEGES

REPORT ON THE INTEGRITY FRAMEWORK FOR BUNGOMA
COUNTY ASSEMBLY

COUNTY ASSEMBLY OF BUNGOMA
(LPCS)
04 SEP 2024
TABLED
By: *Ho. Clerk*

Clerks Chambers
County Assembly Buildings
P.O BOX 1886 - 50200
BUNGOMA, KENYA

August 2024

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CHAPTER ONE

PREFACE

Hon. Speaker,

The objectives of the report are:

- To assess the current integrity framework in the Bungoma County Assembly
- To identify challenges and areas for improvement
- To recommend strategies to strengthen integrity and ethical conduct among MCA's

ESTABLISHMENT AND MANDATE OF THE COMMITTEE

The County Assembly Committee of Powers and Privileges is established under Section 15(1) of the County Assemblies Powers and Privileges Act, 2017 (CAPP) and the County Assembly of Bungoma Standing Order 215

MEMBERSHIP

The Committee as currently constituted comprises of the following members:

NAME	DESIGNATION
1. Hon. Emmanuel Situma	Chairperson/Speaker
2. Hon. Brigid Katasi	Vice Chairperson
3. Hon. Ali Machani	Member
4. Hon. Milliah Masungo	Member
5. Hon. Vitalis Wangila	Member
6. Hon. Jack Kawa	Member
7. Hon. Benard Kikechi	Member
8. Hon. Tony Barasa	Member
9. Hon. Moureen Wafula	Member
10. Hon. Orize Kundu	Member
11. Hon. Eunice Kirui	Member

MANDATE OF THE COMMITTEE

The Committee of Powers and privileges derives its mandate from the Constitution of Kenya 2010; the County Assemblies Powers and Privileges Act, 2017; the Leadership and Integrity Act, 2012; The Public Officer Ethics Act, 2003 and the County Assembly of Bungoma Standing Orders.

The Committee is mandated under Section 15(4)(5) and (6) of the County Assemblies Powers and Privileges Act, 2017 to check the conduct of Members of the County Assembly amongst other roles. The Committee further executes its mandate in accordance with the provisions of Standing order 215(3) of the County Assembly of Bungoma which outlines the functions as follows;

- a) Inquire into the conduct of a member whose conduct is alleged to constitute a breach of privileges;
- b) Perform such other functions as may be specified by an Act of Parliament or any other legislation of Powers, Immunities and Privileges of members.

In the execution of its mandate, the Committee is guided by core Constitutional principles, established customs, traditions and best Commonwealth Parliamentary Practices and Usages.

Article 196(3) of the Constitution of Kenya 2010, provides that;


Parliament shall enact Legislation providing for the powers, privileges and immunities of County Assemblies, their committees and members.

It is against this background that the County Assemblies Powers and Privileges Act, No. 6 of 2017 was enacted with its key objective being to breathe life into the provisions of Article 196(3) of the Constitution; to provide for the powers, privileges and immunities of County Assemblies; their committees and members; to make provision regulating admittance to and conduct within the precincts of County Assemblies; and for connected purposes. Important to note is that the Committee of Powers and Privileges in the meaning of the County Assemblies Powers and Privileges Act No. 6 of 2017 is the only Committee that has an Act of Parliament governing its operations.

ACKNOWLEDGEMENT

I wish to most sincerely thank the Office of the Speaker and the Clerk of the County Assembly for the invaluable support accorded to the committee in the discharge of its mandate.

On behalf of the committee of Powers and Privileges, it is my pleasure and duty to present to the House, the committee's **Report on the Integrity Framework for Bungoma County Assembly**

Signed..........Date..... 27-08-2024

HON.EMMANUEL SITUMA

SPEAKER OF THE COUNTY ASSEMBLY/CHAIRPERSON

CHAPTER TWO

Introduction

Integrity is a fundamental value that underpins the effectiveness and credibility of any legislative body. This report outlines the current state of integrity within the Bungoma County Assembly, highlights challenges, and proposes measures to enhance ethical conduct and transparency among Members of the County Assembly (MCAs).

Objectives

- To assess the current integrity framework in the Bungoma County Assembly.
- To identify challenges and areas for improvement.
- To recommend strategies to strengthen integrity and ethical conduct among MCAs.

CURRENT INTEGRITY FRAMEWORK

a) Code of conduct as an integrity framework

A **Code of Conduct** is a formal set of guidelines and ethical standards that govern the behavior and responsibilities of Members in their official capacity. **Article 75**, which covers "Conduct of State Officers," emphasize that a state officer should not act in a way that conflicts with their duties or compromises the integrity of their office. The code ensures that MCAs act in the best interests of the public, maintain high ethical standards, and uphold the integrity of their office.

Bungoma County Assembly operates under the legal framework that includes the Constitution of Kenya, the Public Officer Ethics Act, the Speaker's Rule, and relevant standing Orders. The following guidelines, grounded in Chapter Six of the Constitution and the Public Officer Ethics Act, 2003, are established to ensure that State officers adhere to these standards:

1. Exercise of Authority

a) Public Trust (Chapter Six, Article 73(1)): Authority assigned to a State officer is a public trust that must be exercised in a manner consistent with the purposes and objects of the Constitution. This includes:

- Constitutional Consistency: Ensuring that all actions and decisions align with constitutional mandates, reflecting the core values of the Republic.
- Respect for the People: Demonstrating respect for the citizens by serving with humility, fairness, and consideration, as emphasized in Article 73(1)(a)(ii).
- Dignity and Honor: Conducting oneself in a way that brings honor to the nation, upholds the dignity of the office, and promotes public confidence in the integrity of the role, as stated in Article 73(1)(a)(iii) and (iv).
- Service Over Power (Chapter Six, Article 73(1)(b)): The authority vested in a State officer carries the responsibility to serve the people rather than to rule them. This principle mandates that State officers prioritize public service over personal gain.

2. Guiding Principles of Leadership and Integrity

a. Selection and Merit (Chapter Six, Article 73(2)(a)): State officers must be selected on the basis of personal integrity, competence, and suitability for the role, or through free and fair elections. This ensures that those in positions of authority are both qualified and morally sound.

b. Objectivity and Impartiality:

Impartial Decision-Making (Public Officer Ethics Act, Section 10): Decisions must be made objectively and impartially, free from influences such as nepotism, favoritism, or corrupt practices, in line with Article 73(2)(b) of the Constitution. Public officers are expected to make decisions based solely on merit and the public good.

c. Selfless Service (Chapter Six, Article 73(2)(c)):

Conflict of Interest (Public Officer Ethics Act, Section 12): State officers must demonstrate selfless service by acting with honesty and transparency in the execution of public duties. This includes declaring any personal interests that may conflict with public responsibilities, in accordance with Article 73(2)(c)(ii) of the Constitution.

d. Accountability (Chapter Six, Article 73(2)(d)):

Public Accountability (Public Officer Ethics Act, Section 11): State officers are accountable to the public for their decisions and actions. They must be open to scrutiny and willing to explain and justify their conduct and decisions, ensuring transparency and maintaining public trust.

e. Discipline and Commitment (Chapter Six, Article 73(2)(e)):

Commitment to Service (Public Officer Ethics Act, Section 4): A high level of discipline and commitment to serving the people is essential. State officers must perform their duties with diligence, adhering to the highest standards of discipline as expected by both the Constitution and the Public Officer Ethics Act.

3. Compliance with Procedural Rules

Speaker's Rules: All State officers and members of the County Assembly are required to comply with the Speaker's Rules, which provide guidelines on conduct, decorum, and the management of debates and proceedings. The rules ensure that officers act within the confines of the law and maintain the dignity of their office during public and official engagements.

Bungoma County Assembly Standing Orders: Members of the Bungoma County Assembly must adhere to the Standing Orders, which govern the conduct of business within the Assembly. The Standing Orders provide a framework for maintaining order, ensuring fairness, and promoting the effective and efficient conduct of Assembly proceedings. State officers are expected to respect these orders and act in a manner that upholds the integrity and functionality of the Assembly

4. Financial Probity of State Officers

In accordance with established ethical guidelines and the principles of financial probity, it is imperative that State officers uphold the highest standards of integrity in their conduct, particularly in matters involving financial transactions and the receipt of gifts

or donations. The following provisions are set forth to guide the behavior of State officers:

i. Handling of Gifts and Donations:

Under Section 76(1), any gift or donation received by a State officer in the course of public or official duties is considered a gift or donation to the Republic. Such gifts or donations must be promptly delivered to the State unless an exemption is provided under an Act of Parliament. This ensures that personal interests do not conflict with public duties and maintains the transparency and accountability of State officers.

ii. Acceptance of Personal Loans and Benefits:

As per Section 2(b), State officers are prohibited from seeking or accepting personal loans or benefits that may compromise their integrity. This provision is essential to prevent conflicts of interest and maintain public trust in the impartiality and objectivity of State officers. Any financial transactions or benefits that could potentially undermine the officer's ability to perform their duties with integrity must be strictly avoided.

b) Oversight mechanism as an integrity framework

Oversight mechanisms play a crucial role in maintaining integrity, accountability, and transparency within the Bungoma County Assembly. These mechanisms are designed to ensure that public officers, elected representatives, and the Assembly itself operate in accordance with the law and ethical standards, thereby fostering public trust and good governance. The following discusses key oversight mechanisms in place within the Bungoma County Assembly, alongside the relevant legal provisions:

1. Committees of the County Assembly

- **Public Accounts and Investment Committee (PAIC):** The PAIC examines the accounts of the County Government and its agencies, scrutinizing expenditures to ensure public funds are used appropriately and in line with budgetary allocations. This is mandated by **Article 185(3) of the**

Constitution of Kenya, 2010, which gives the County Assembly oversight powers, and **Section 14 of the County Governments Act, 2012**, which provides for the establishment of committees.

- PAIC oversees the management of public investments by the County Government, reviewing the performance of county-owned enterprises to ensure efficient resource management. This role is supported by **Section 39 of the County Governments Act, 2012**, which mandates the Assembly to monitor resource management.
- **Committee on Implementation:** This committee monitors the execution of resolutions and legislation passed by the County Assembly, ensuring that the County Executive implements policies and programs as intended. The committee's work is crucial in holding the Executive accountable as per **Section 149 of the Public Finance Management Act, 2012**, which requires regular financial reporting to the County Assembly.
- The **Powers and Privileges Committee** the Committee is a key element in the Bungoma County Assembly's integrity framework, reinforcing its oversight capabilities by ensuring that all members adhere to the highest standards of conduct and governance.
- **Sectoral Committees:** The committees oversee specific sectors like health, education, and infrastructure, scrutinizing policies, programs and projects within their jurisdictions to ensure alignment with the county's development goals and ethical standards.

2. Ethics and Anti-Corruption Commission (EACC)

The EACC has the mandate to investigate and recommend actions on matters of corruption, unethical conduct, and other integrity issues within the county. The Commission operates under the **Ethics and Anti-Corruption Commission Act, 2011 (Section 11)**, which details its functions, and the **Leadership and Integrity Act, 2012 (Section 12)**, which outlines ethical obligations for public officers.

3. Internal Audit Function

The internal audit function within the County Government of Bungoma ensures that internal controls are effective and that financial management practices adhere to regulations. This function is established under the **Public Finance Management Act, 2012 (Sections 155-157)**, which mandates internal audits to ensure accountability and transparency.

4. Public Participation and Accountability

- **Public Forums:** The County Assembly organizes public forums where citizens can provide input on issues like budgetary allocations and legislative proposals, ensuring decisions reflect public needs and promote transparency. This is supported by **Article 196(1)(b) of the Constitution of Kenya, 2010**, which mandates public participation in Assembly business, and **Section 87 of the County Governments Act, 2012**, which requires mechanisms for citizen engagement.
- **Feedback Mechanisms:** Channels for the public to report concerns about public officers or misuse of resources enhance citizen engagement. These are further reinforced by the **Public Participation Act (Bungoma County), 2014**, which establishes the legal framework for public participation in county governance.

5. Oversight by the Office of the Auditor General

The Auditor General audits and reports on the financial operations of the County Government, providing independent oversight. This role is enshrined in **Article 229(6) of the Constitution of Kenya, 2010**, which empowers the Auditor General to audit public entities and the **Public Audit Act, 2015 (Section 31)**, which specifies the Auditor General's powers to report findings to the County Assembly.

6. Standing Orders and Speaker's Rules

- **County Assembly Standing Orders:** The Standing Orders of the Bungoma County Assembly provide procedural rules for the conduct of business, ensuring

debates, motions and decisions are conducted transparently and within legal bounds. These orders are grounded in the **County Governments Act, 2012** and **Article 185 of the Constitution of Kenya, 2010**.

- **Speaker's Rules:** The Speaker's Rules govern the conduct of members during Assembly sessions, ensuring discipline and adherence to ethical standards as provided for in the **Leadership and Integrity Act, 2012**.

7. Role of the Media and Civil Society

The media and civil society organizations act as watchdogs, monitoring the activities of the County Assembly and reporting any irregularities. The freedom of the media is guaranteed by **Article 34 of the Constitution of Kenya, 2010** and the **Access to Information Act, 2016** provides the public with the right to access information held by public entities, enhancing transparency.

c) Disclosure requirements as an integrity framework.

Harvard law school defines conflict of interest as a situation where an individual's personal interests, or interests of a related party might interfere with their ability to make objective and fair decisions.

Documents in reference to conflict of interest

Leadership and Integrity Act of 2012

Section 16 outlines that a state officer or a public officer shall use the best efforts to avoid being in a situation where personal interests conflict or appear to conflict with the State officer's or public officer's official duties.

Section 32 of the act states that a state officer shall conduct private affairs in a manner that maintains public confidence in the integrity of the office.

Public Officer Ethics Act, 2003

Section 12 (1) States that a public officer shall use his best efforts to avoid being in a position in which his personal interests conflict with his official duties. A public officer whose personal interests conflict with his official duties shall declare the personal

interests to his superior or other appropriate body and comply with any directions to avoid the conflict and refrain from participating in any deliberations with respect to the matter

Section 26 (1) states that Every public officer shall, once every two years prescribed by section 27, (describes when the declarations shall be made December every second year) and submit to the responsible Commission for the public officer a declaration of the income, assets and liabilities of himself, his spouse or spouses and his dependent children under the age of 18 years.

ETHICS AND ANTI-CORRUPTION COMMISSION ACT , 2011 (EACC,2011)

Section 3 states that;

- If a member or employee has a direct or indirect interest in any contract, proposed contract, or other matter being discussed by the Commission, they must disclose their interest at the meeting.
- After disclosing their interest, they must abstain from participating in any discussions, consideration, or voting on the matter.
- They should also be excluded from the quorum for that specific matter.

- If a member or employee's personal interests conflict with their official duties, they must:
 - Declare their personal interests in writing to their supervisor or the relevant authority.
 - Follow any directions given to mitigate or avoid the conflict.
- They must refrain from participating in any discussions or decisions related to the matter.

Types of Conflict of interest

- Material personal interest

Conflict of interest that could affect the ability of an official to discharge his/her duties, personal interests could arise if the individual is a member of a recruitment panel and a friend or family member is being interviewed for a position or assessing tender process for a company owned by a family member or friend.

- Financial interests

This is where financial interests or prospects of financial gain that have the potential to conflict, or perception of a conflict, with the capacity of an individual to contribute without bias. Other financial interests include business interests, receiving royalties, intellectual property rights, consulting fees, support for conference attendance and ownership interest.

- Organisational interests

Individuals in senior roles within an organization might face conflicts if their decisions affect entities they are affiliated with, either through direct financial ties or organizational relationships.

COMPARATIVE STUDIES

South Africa

In South Africa, conflict of interest among public officials has been addressed by the Constitution, as the supreme law of the land, and relevant statute. Section 195(1) of the Constitution of the Republic of South Africa, 1996 sets out the basic values and principles that govern public administration and stipulates that services must be provided impartially, fairly, equitably and without bias, and that public administration must be accountable. The values and principles of public administration apply to administration in every sphere of government, organs of state and public enterprises.

Canada

Unlike Kenya and South Africa, Canada has in place a Conflict of Interest Act which establishes clear conflict of interest and post-employment rules for public office holders; minimizes the possibility of conflicts arising between the private interests and public duties of public office holders and provides for the resolution of those conflicts in the public interest should they arise, the Act establishes the Conflict of Interest and Ethics Commissioner whose mandate is to determine the measures necessary to avoid conflicts of interest and to determine whether a contravention of the Act has occurred.

United Kingdom

In the UK, conflicts of interest by public officials, especially Members of Parliament, are addressed by encouraging transparency rather than creating numerous restrictions or regulations on the activities of the parliamentarians. As such, parliamentarians can engage in outside employment or remunerated activity, but they have to disclose their private interests in writing under a registration system provided for and make oral declarations of any conflicts of interest at the onset of parliamentary proceedings. The registers on written private interests and of oral declarations on conflicts of interests are both available for public inspection.

Challenges to Conflict of Interest

a) Identification and Disclosure

Individuals often have multiple, overlapping interests that can be challenging to fully disclose, identifying all potential conflicts can be complex. Individuals may not always recognize when a conflict of interest exists, leading to unintentional non-disclosure.

b) Dynamic Nature of Interests

Personal or financial interests can evolve over time, requiring ongoing assessment and management of conflict of interest. New conflicts may arise as situations change necessitating continual vigilance and adaptation of policies.

c)Bias and Objectivity

Even the appearance of a conflict of interest can undermine trust in decision-making processes , regardless of whether actual bias occurs. The perception of bias can be just as damaging as actual bias.

d)Confidentiality Concerns:

Disclosure of personal interests or financial information may involve sensitive data raising privacy concerns for potential misuse of personal information.

CHAPTER THREE

COMMITTEE OBSERVATIONS AND RECOMMENDATIONS

COMMITTEE OBSERVATIONS

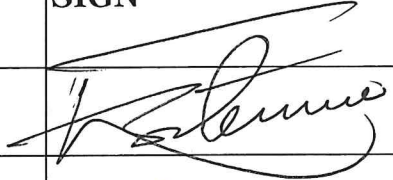

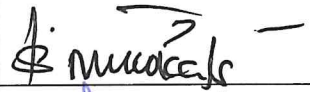


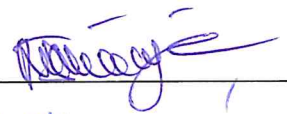


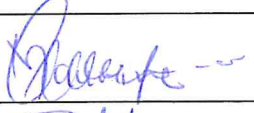

1. **THAT** there exist integrity framework in the County Assembly of Bungoma
2. **THAT** the Public Accounts Committee (PAIC), Committee on Implementation and Sectoral Committees are generally effective in their roles, although some of the recommendations in the reports are not followed up to the latter.
3. **THAT** there is a conflict of interest register where both MCAs and staff do register and document instances of conflict of interest prior to their recusal.

COMMITTEE RECOMMENDATIONS

1. **THAT** there is need to have frequent trainings and sensitization of available integrity measures and more importantly the preventive measurers
2. **THAT** budgetary allocation should be increased for oversight committees, including staffing, training, and financial resources, to improve their efficiency and effectiveness in monitoring and reporting.
3. **THAT** the Assembly should implement monitoring mechanisms to ensure recusal from discussions and decisions where there is a potential conflict of interest.

ADOPTION SCHEDULE

We the undersigned members of Powers and Privileges Committee affix our signatures adopting this report with the contents therein

No.	MEMBERS NAME	DESIGNATION	SIGN
1	Hon. Emmanuel Situma	Chairperson	
2	Hon. Brigid Katasi	Vice Chairperson	
3	Hon. Ali Machani	Member	
4	Hon. Milliah Masungu	Member	
5	Hon. Vitalis Wangila	Member	
6	Hon. Jack Kawa	Member	
7	Hon. Benard Kikechi	Member	
8	Hon. Tony Barasa	Member	
9	Hon. Moureen Wafula	Member	
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11	Hon. Eunice Kirui	Member	