IPSAS & PFM WORKSHOP

Public Sector Ethics and Values

Isiolo, Northern Kenya, 26th – 28th April, 2017

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Outline

- Ethics and Values
- Legal Framework
- The Constitution of Kenya 2010
- Key Players in Ethics and Values
- Role of EACC
- Kenya’s Progress
- Ethical Issues in Kenya
- The Role of Accountants
Defining Ethics and Values

- **Ethics** is a moral law of human conduct or behaviour considered from the point of view of good or evil.
  - It is an action, which is morally good or morally evil.
- Ethics derives from the Greek noun “ethos” meaning "the customs and conventions of a given community”.
  - There is a similarity of the origin of the two words: ethics and morality. Hence often used as synonyms.
Defining Ethics and Values

- Human **values** is an expression of internal state of self worthiness of a person, or recognition of inherent worth of a person; the value of human life.

- The rapid progress in control and adoption of our material world has not been marched by corresponding advances in the development of human character, and/or values.

  - Many observe that moral values are disintegrating on all fronts, in both public and personal life.
Ethics – Professional Accountants

- Five fundamental principles (ICAEW):
  - Integrity
  - Objectivity
  - Confidentiality
  - Professional behavior
  - Professional competence and due care

How often do you reflect on these fundamental principles?
Legal Framework

- Constitution of Kenya 2010
- The Public Officer Ethics Act, 2003
  - The Public Service Code of Conduct and Ethics, 2016
  - Gives effect to the provisions of chapter 6 of the constitution.
- Public Service Values and Principles Act, 2015
  - Gives effect to Sec. 232 of the Constitution of Kenya
- Vision 2030 Economic Blueprint
  - Integrates national values in the political pillar.
Legal Framework II

- IFAC Code of Ethics
- The Accountants Act 2008
  - Section 30 – professional misconduct
- ICPAK Code of Ethics for Professional Accountants
  - Includes IFAC codes together with specific requirements under Kenyan context.
The Constitution of Kenya 2010

- CoK 2010 took a bold step towards reforms in leadership & public service
  - A new leadership code founded on ethics, national values, integrity & good governance
- It recognises fact that integrity & ethics quintessential to good governance
  - Undergird relationship between those who govern and the governed
- Calls for coherence of values, aims & behaviour
The Constitution of Kenya 2010

- CoK informed by immense cost of lack of integrity in governance
- CoK awash with ethics, integrity & good governance tenets
- It proposes governance based on essential values & moral standards
  - National values and principles of governance
  - Chapter 6 a comprehensive chapter on the leadership and integrity of State officers
The Constitution of Kenya 2010

- Public officers hold office as a trust
  - Exercise authority in manner that promotes dignity of office; public confidence in integrity of the office
- Be accountable to the public for decisions and actions
- Professional ethics and integrity among public officers
  - Independence & impartiality in public service
The Constitution protects public officers in the performance of their function and exercise of powers in an ethical manner

- Against intimidation, victimization, discrimination
- From dismissal, removal from office, demotion in rank or disciplinary action without due process of law.
Standards of Ethical Public Service

- Constitution establishes “rule of law” as a national value & principle of governance.
- Essence of rule of law ideal – people should be governed by law.
- Rule of law mandates adherence to principles and procedures.
- This is what lawyers mean when they talk of “fidelity to law” or the “culture of legality.”
Key Players in Ethics and Values

- Directorate of National Cohesion and Values
  - Established in 2008 through presidential circular No. 1 of May 2008 to spearhead the promotion of national cohesion and values.
  - The mandate is grounded in Articles 4 and 10 of National values and Principles of Governance and Articles 131(2) c, d and e and Article 132 (c) i and ii.
  - The mandate augments the exercise of the Presidential Authority and functions regarding the promotion of National Unity, Ethnic, National Values and Social Justice.
  - Coordinates implementation of Sessional Paper No. 8 of 2013 on National Values and Principles of Governance and Sessional Paper No. 9 of 2013 of National Cohesion and Integration.

- Ethics and Anti-Corruption Commission (EACC)
EACC at a Glance: The History

- 1956 – Prevention of Corruption Act (defunct)
  - In operation from 1956-2003

- 1993 – the Anti-Corruption Squad (a police dept.) constituted to enforce the Act.
  - Disbanded in 1995

- 1997 – the Act amended to create KACA
  - John Harun Mwau for 6 months: suspended and removed.
History of EACC

- 2001 – Anti-Corruption Police Unit (ACPU) created by Executive Order
  - Under Criminal Investigations Department (CID).
  - Two laws created:
    - The Anti-Corruption and Economics Crimes Act – repealed first Act; created KACC.
    - The Public Officer Ethics Act.
- 2004 - 2009 – Aaron Ringera
  - Compelled to resign together with other directors
History of EACC

- After Ringera;
  - 2010-2011 – PLO Lumumba; new law forced him out!

- 2011 – EACC created through Ethics & Anti-Corruption Act
  - 2013-2015 – Mumo Matemu
  - 2016-2016 – Philip Kinisu
  - 2017 to date – Eliud Wabukala

Is EACC designed to fail?
Role of EACC on Ethical Standards

- The EACC is a public body established under Section 3 (1) of the Ethics and Anti-Corruption Commission Act, 2011.

- Has the power to:
  - Educate and create awareness on any matter within the Commission’s mandate;
  - Undertake preventive measures against unethical and corrupt practices;
  - Conduct investigations on its own initiative or on a complaint made by any person, and,
  - Conduct mediation, conciliation and negotiation.
Performance of EACC

- From PBB FY 2017/18 ...

During the period under review the Commission completed 342 forensic investigations on corruption and economic crimes; disrupted 37 corruption networks and averted an estimated loss of Kshs.9.8 billion; completed the investigation of 13 case files on ethical breaches; Completed 50 asset tracing inquiries and recovered assets valued at Kshs.3.2 billion; Trained, educated and enlisted 14.2 million Kenyans to combat corruption; completed 10 system review and examinations; trained 4,676 Integrity Assurance Officers; received and processed 38,857 clearance requests for appointment to public offices; and undertake 3 national surveys to gauge the status of corruption and unethical conduct.
Performance of EACC?

- Funding vs. recoveries
  - In the 2016/17 budget, EACC was given Sh. 2.8 bn. It recovered Sh. 420mn worth of assets.
  - Since 2013, it has spent Sh. 8.6bn and only recovered Sh. 3.2bn worth of assets.
  - The 2017/18 budget proposes an allocation of Sh. 4bn. Is there value for money?

- Corruption rankings:
  - 4th most corrupt country in EA ~ TI, Jan. 2017
# Survey on Corruption

## Governors corrupt?

<table>
<thead>
<tr>
<th>Governors corrupt?</th>
<th>%</th>
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<tbody>
<tr>
<td>None</td>
<td>6.00</td>
</tr>
<tr>
<td>Some of them</td>
<td>41.28</td>
</tr>
<tr>
<td>Most of them</td>
<td>30.58</td>
</tr>
<tr>
<td>All of them</td>
<td>13.32</td>
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</tbody>
</table>

## How many MCAs do you think are involved in corruption?

<table>
<thead>
<tr>
<th>How many MCAs do you think are involved in corruption?</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>None</td>
<td>4.4</td>
</tr>
<tr>
<td>Some of them</td>
<td>42.0</td>
</tr>
<tr>
<td>Most of them</td>
<td>32.8</td>
</tr>
<tr>
<td>All of them</td>
<td>12.5</td>
</tr>
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</table>
### Survey on Corruption

<table>
<thead>
<tr>
<th>Level of corruption in Kenya</th>
<th>%</th>
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<tbody>
<tr>
<td>Increased</td>
<td>67.35</td>
</tr>
<tr>
<td>Stayed the same</td>
<td>10.19</td>
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<tr>
<td>Decreased</td>
<td>17.76</td>
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</table>

<table>
<thead>
<tr>
<th>Ordinary people can fight corruption?</th>
<th>%</th>
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</thead>
<tbody>
<tr>
<td>Disagree</td>
<td>36.21</td>
</tr>
<tr>
<td>Indifferent</td>
<td>5.25</td>
</tr>
<tr>
<td>Agree</td>
<td>53.97</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Reporting corruption</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Can report corruption without fear</td>
<td>19.32</td>
</tr>
<tr>
<td>Risk retaliation</td>
<td>77.30</td>
</tr>
</tbody>
</table>
Kenya’s Progress on Ethics/Values

- Directorate of National Cohesion and Values
  - Development of an institutional framework
  - Civic education and public awareness continuing
  - County value systems program done
  - Legal, policy and institutional review to integrate national values and principles of governance into national, county and sectoral policies done
  - Public service national values program to promote, uphold and enforce national values and principles of governance in public service put in place
Ethical Issues in Kenya

- **Uchumi saga**
  - CEO and senior managers doing business with retailer

- **Legislative ambivalences**
  - Kiambu County – Bill to make burial expensive in the county.
  - Also imposed tax on farmers before carcasses of their livestock and pets are collected for disposal.
  - Kakamega - awarding tenders to proxies.

Other ethical issues facing accountants you can think about?
Ciano was Uchumi’s top fresh produce supplier – new CEO
Feb. 01, 2016, 6:00 am | By LOLA OKULO

Outrage over Ciano Uchumi insider deals
Feb. 02, 2016, 5:30 am | By LOLA OKULO
Headlines ...

Even death is taxable in county’s bizarre Bill

Kiambu County’s new bill imposes tax on farming, cleanliness

MCAs on the spot over rampant corruption
Accountants in Championing Ethical Values in Kenya...

- Who is responsible for ethical conduct and how is it embedded?
  - Top management need to consistently set the tone
  - Communicate, don’t give one-way directives.
  - Support and train employees to embrace ethics
  - Provide whistle blowing/speak up platforms.
  - Help lines – internal and external
Championing Ethical Values in Kenya

How can the external environment be influenced?

- Be strong and say ‘no’ to unethical practices.
- Be known as a clean operator.
  - Maintain and build your reputation as an organisation that champions ethical business practices.
  - Actively engage and work with organisations with similar values and practices.
- Be sure to undertake safeguards and company checks before engaging with companies that you intend to do dealings with.
Can sectors and companies work together to combat corrupt practices?

- Work closely with other companies and sectors that practise the best ethical business practices.
- Share and discuss challenges faced between companies to get the best outcome and solutions.
- Keep abreast with current trends and information on ethical procedures and guides by connecting with these networks.
- Seek active support from regulatory authorities and the law.
What would be the most useful ethical information to gather and how would it be used?

- Set up focus group training for staff to help them understand and respond to ethical issues.
- Document ethical issues and provide the appropriate responses and disseminate this information to staff.
- Set up a grievance mechanism for staff and customers.
- Implement a qualitative audit to monitor ethical issues faced by staff e.g. HR surveys, etc.
- Always act on information and increase trust with key stakeholders.
What is the role of finance/accountants and are they objective in an ethical role?

- Company structures should maintain the independence and objectivity of the finance personnel.
- Finance should also be subject to regular audit to maintain its integrity.
- Any discrepancies identified by finance staff in relation to compromising standards should be highlighted and acted upon quickly.
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