

IPSAS & PFM WORKSHOP

Public Sector Ethics and Values

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

Outline

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- 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

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- **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

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- 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 matched 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

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- 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

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- 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

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- 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

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- 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

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- 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

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- 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 of Kenya 2010

II

- 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

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- 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

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- 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

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- 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.
 - ▣ 1999 – 2000 – Justice Aaron Ringera: court case killing KACA

History of EACC

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- 2001 – Anti-Corruption Police Unit (ACPU) created by Executive Order
 - ▣ Under Criminal Investigations Department (CID).
- 2003 – Kenya Anti-Corruption Commission (KACC) formed.
 - ▣ 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

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- 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

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- 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

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□ 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?

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- 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

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Governors corrupt?	%
None	6.00
Some of them	41.28
Most of them	30.58
All of them	13.32

How many MCAs do you think are involved in corruption?	%
None	4.4
Some of them	42.0
Most of them	32.8
All of them	12.5

Survey on Corruption

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Level of corruption in Kenya	%
Increased	67.35
Stayed the same	10.19
Decreased	17.76

Ordinary people can fight corruption?	%
Disagree	36.21
Indifferent	5.25
Agree	53.97

Reporting corruption	%
Can report corruption without fear	19.32
Risk retaliation	77.30

Kenya's Progress on Ethics/Values

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- 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


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- 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?

Headlines on Ethics

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Wednesday, April 26, 2017

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Ciano was Uchumi's top fresh produce supplier – new CEO

Feb. 01, 2016, 6:00 am | By LOLA OKULO

Wednesday, April 26, 2017

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Outrage over Ciano Uchumi insider deals

Feb. 02, 2016, 5:30 am | By LOLA OKULO

Headlines ...

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NEWS

POSTED 24/10/2013

Even death is taxable in county's bizarre Bill

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

By Eric Wainaina | Updated Sun, October 27th 2013 at 00:00 GMT +3

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MCAs on the spot over rampant corruption

By John Shilita | Updated Sat, June 18th 2016 at 00:00 GMT +3

Accountants in Championing Ethical Values in Kenya...

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- **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

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- **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.

Championing Ethical Values in Kenya

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- **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.

Championing Ethical Values in Kenya

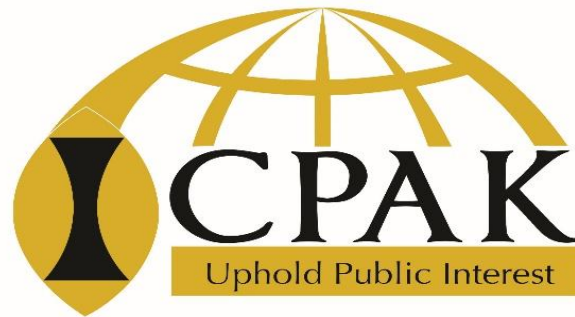
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- **What would be the most useful ethical information to gather and how would it be used?**
 - ▣ Set up focus group training for staff to help them understand and respond to ethical issues.
 - ▣ Document ethical issues and provide the appropriate responses 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.

Championing Ethical Values in Kenya

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- **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



Contacts:

Fredrick O. Odhiambo

Governance Consultant, ResearchPro Solutions

Loita Street, Finance House, 8th Floor

Tel: +254721977108

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