

**LEADERSHIP AND INTEGRITY: A STUDY OF WHICH LEGAL TEST  
BEST IMPLEMENTS CHAPTER SIX OF THE CONSTITUTION OF  
KENYA (2010)**

Submitted in partial fulfillment of the requirements of the Bachelor of Laws Degree (LLB),

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By

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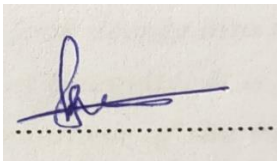
I give thanks to the Almighty God who granted me life and the fortitude to start and complete this project. I also want to thank Mr. Cecil Abungu, my supervisor, who provided helpful and insightful guidance throughout. I am also eternally grateful for my parents and my siblings for constantly praying for me and encouraging me to continue with this project. Lastly, I am incredibly appreciative of my friends who listened to me and helped me shape my arguments.



## Declaration

I, **THEURI GREGORY MUCHURA**, do hereby declare that this research is my original work and that to the best of my knowledge and belief, it has not been previously, in its entirety or in part, been submitted to any other university for a degree or diploma. Other works cited or referred to are accordingly acknowledged.

Signed:



Date: **February 27, 2024**

This dissertation has been submitted for examination with my approval as University Supervisor.

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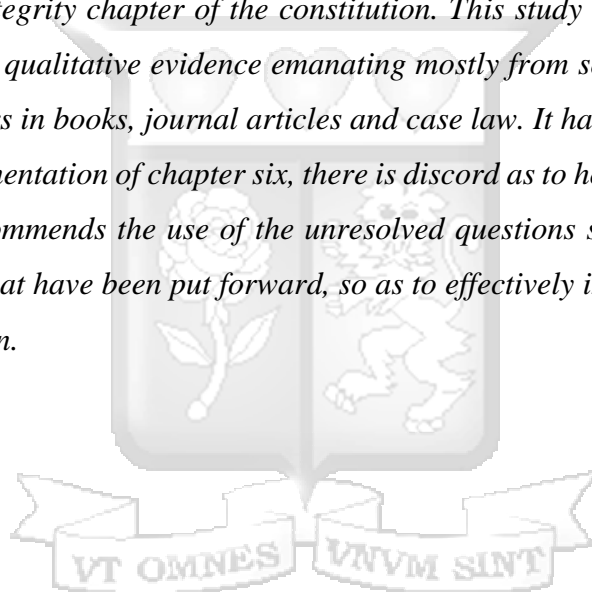


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## **ABSTRACT**

*The promulgation of the constitution in 2010 sought to present a clean break from Kenya's past marred by poor governance consisting of the political use of violence, corruption, tribalism and human rights violations among others. With chapter six therein seeking to set higher standards for persons seeking state office so as to enable good governance, there has been a variance as to what threshold best implements it. Courts have shared divided opinions as to whether to let actions determining lack of integrity rise to a threshold of criminality or not to rise to that threshold or even to look deeply into the facts of each case and determine if the allegations put forward consist of lack of integrity. It is for this reason that this study seeks to establish which test best suits the implementation of the integrity chapter of the constitution. This study was a desk-based project that has mostly relied on qualitative evidence emanating mostly from secondary sources such as research reports, chapters in books, journal articles and case law. It has found that indeed, while there is a need for implementation of chapter six, there is discord as to how it will be implemented. This study therefore recommends the use of the unresolved questions standard which is highest standard, among those that have been put forward, so as to effectively implement chapter six and the high standards therein.*



## **LIST OF ABBREVIATIONS**

AFRICOG- Africa Centre for Open Governance

CBK- Central Bank of Kenya

CSO- Civil Society Organization

EACC- Ethics and Anti-Corruption Commission

IEBC- Independent Electoral and Boundaries Commission



## **LIST OF CASES**

*Center for Public Interest Litigation v Union of India and Another* (2012), Delhi High Court.

*Center for Rights Education and Awareness & Another v John Harun Mwau & 6 others* [2012], eKLR.

*Democratic Alliance v President of RSA and Others* (2011), South Africa Constitutional Court.

*International Centre for Policy and Conflict and 5 Others v Attorney General and 4 Others* (2013) eKLR.

*Luka Lubwayo and Another v Gerald Kajwang and Another* (2013), eKRL.

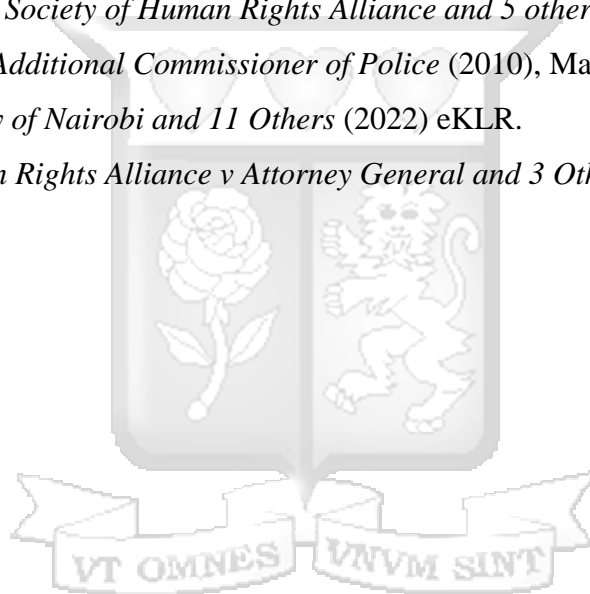
*Mugambi Imanyara and Another v Attorney General and 5 others* (2017), eKLR.

*Mumo Matemu v Trusted Society of Human Rights Alliance and 5 others* (2013), eKLR.

*R. Ravichandran vs The Additional Commissioner of Police* (2010), Madras High Court.

*Sonko v County Assembly of Nairobi and 11 Others* (2022) eKLR.

*Trusted Society of Human Rights Alliance v Attorney General and 3 Others* (2012) eKLR.



## **LIST OF LEGAL INSTRUMENTS**

*Constitution of Kenya (2010).*

*Ethics and Anti-Corruption Commission Act (Act no. 22 of 2011).*



## **1.0 INTRODUCTION**

### **1.1 BACKGROUND**

With the mention of the word ‘leadership’, there appears to be two common denominators. Firstly, the process of getting things done through others based on an interactive relationship, that is, between the leader and the followers. Secondly, achievement of mutual goals by influence of the leader.<sup>1</sup> Therefore, the ability to persuade others to pursue a mutually desired goal primarily defines leadership.<sup>2</sup> At its very best, leadership is the backbone of any endeavor’s success that ensures the people’s continued support, national unity and growth and development of a nation.<sup>3</sup>

In spite of this, leaders are regularly faced with moral and ethical dilemmas that may sway them from the desired mutual goals with their followers. In light of this, integrity, which involves consistently behaving in an honest, ethical and professional manner, promoting and advocating the highest standards of personal, professional and institutional behavior is crucial in a leader’s tenure.<sup>4</sup> Therefore, with the influence dimension of leadership which requires a leader to have an impact on the lives of those he leads, the followers must be wholeheartedly convinced of their leader’s integrity.<sup>5</sup>

A history of poor governance characterized by human rights violations and corruption, relating to misappropriation of public funds, tribalism and nepotism plagued post-independence Kenya.<sup>6</sup> However, in 2010, the new Constitution of Kenya was promulgated. In its transformative nature, it seeks to transform a hitherto oppressive state, marred by the aforementioned injustices, into a society based on equality of all people. More significantly is the demand for moral leadership in

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<sup>1</sup> Storr L, ‘Leading with integrity: A qualitative research study’ *Journal of Health Organization and Management*, 2004, 417-<  
<https://www.emerald.com.ezproxy.library.strathmore.edu/insight/content/doi/10.1108/14777260410569984/full/pdf?title=leading-with-integrity-a-qualitative-research-study> >- on 1 September 2023.

<sup>2</sup> AFRICOG, Implementation of chapter 6 of the constitution of Kenya 2010, 2015, 1.

<sup>3</sup> Constitution of Kenya Review Commission, *Final draft*, 2005, 221.

<sup>4</sup> Constitution of Kenya Review Commission, *Final draft*, 2005, 221.

<sup>5</sup> Storr L, ‘Leading with integrity: A qualitative research study’ *Journal of Health Organization and Management*, 2004, 417-<  
<https://www.emerald.com.ezproxy.library.strathmore.edu/insight/content/doi/10.1108/14777260410569984/full/pdf?title=leading-with-integrity-a-qualitative-research-study> >- on 1 September 2023.

<sup>6</sup> Transparency International Kenya, *The Verdict: An analysis of Interpretation of Chapter 6 by Kenyan Courts*, 12 December 2019, 3.

all spheres of Kenya's socio-economic and political transformation,<sup>7</sup> as firstly seen in Article 10(2), which enumerates good governance, integrity, transparency and accountability as part of national values and principles of governance binding on state officers.

Moreover, amongst its groundbreaking chapters is Chapter 6 on Leadership and Integrity. Firstly, the chapter places an indispensable obligation on the part of those exercising state authority to do so as trustees of such authority.<sup>8</sup> The foundational basis of this trusteeship is expressed in Article 1 which emphatically states that "All sovereign power belongs to the people and shall be exercised in accordance with the Constitution."

Moreover, the architecture and design of Article 73(1)(a) (ii-iv), demands integrity in the exercise of state authority in a way that innovatively aims at protecting the respect, honour and dignity of the people and the nation, and to foster public confidence in the integrity of the public office. Additionally, by the chapter providing on public trust to be exercised in a manner that promotes public confidence in the integrity of the office,<sup>9</sup> and conduct of public officers in a way that does not demean the office the officer occupies,<sup>10</sup> builds in an aspect of institutional integrity.

Herein, as seen in *Trusted Society of Human Rights Alliance v Attorney General (2012)*,<sup>11</sup> where the court cited *The Centre for PIL and another v Union of India* where the Delhi High Court in India noted that the obligations of an appointing committee required that they appoint someone whose background or experience would not jeopardize the "institutional integrity" of the position to which they were assigned. Therefore, personal integrity of an individual should be weighed against the institutional integrity of the state office and where the former adversely affects the institutional competence and functioning of the state office, such a candidate should not be recommended.<sup>12</sup>

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<sup>7</sup> Aluku S, 'The law and practice of leadership and integrity in Kenya' Unpublished LLM Thesis, University of South Africa, South Africa, 2021, 67.

<sup>8</sup> Article 73(1)(a), *Constitution of Kenya* (2010).

<sup>9</sup> Article 73(1)(a)(iv), *Constitution of Kenya* (2010).

<sup>10</sup> Article 75(1)(c), *Constitution of Kenya* (2010).

<sup>11</sup> *Trusted Society of Human Rights Alliance v Attorney General and 3 Others* (2012) eKLR.

<sup>12</sup> *Centre For Public Interest Litigation v Union of India and Another* (2012), Delhi High Court.

It is therefore evident that Chapter 6 of the Kenyan constitution seeks to set higher standards for people seeking state office, and promulgation of the Kenyan Constitution in 2010 then appeared to have signaled a new beginning in the governance of the Kenyan people.

Nonetheless, in *Luka Lubwayo & Anor v Gerald Otieno Kajwang & Anor (2013)*,<sup>13</sup> the court, in reaching a determination, cited *Trusted Society of Human Rights Alliance v Attorney General (2012)* which had in turn cited the *Democratic Alliance v President of South Africa*, which stated that a person is said to lack integrity where there are serious unresolved questions about his honesty, scrupulousness, reputation and soundness of moral judgement. Therefore, there is no requirement that the impugned conduct determining lack of integrity rises to the threshold of criminality.<sup>14</sup>

On the other hand, in *International Centre for Policy and Conflict & 5 Others v Attorney general & 4 others (2013)*,<sup>15</sup> the court recognized its role in interpreting and upholding Chapter 6 of the Constitution and the unresolved questions test as used in the *Trusted Society of Human Rights Alliance* and *Democratic Alliance* cases. However, it established that the third and fourth respondents had the right to be presumed innocent so as not to infringe their right to a fair trial in Article 50 of the Constitution. In other words, the impugned conduct determining lack of integrity, must rise to a threshold of criminality for one to be disqualified from seeking state office.

Additionally, in *Mumo Matemu v Trusted Society of Human Rights Alliance (2013)*,<sup>16</sup> the court put forward that in determining unsuitability of a person to hold office with regards to integrity, the court should evaluate material evidence provided, and in doing so, conduct an intensely fact-based inquiry, making the said court akin to a trial court. Moreover, the standard of proof should be higher than that of balance of probabilities but lower than that of beyond reasonable doubt.

It then appears that there are inconsistencies as to how to achieve the high standards of integrity envisaged in the leadership and integrity chapter in the Kenyan constitution. This is detrimental to constitutionalism as the goals in chapter 6 of the constitution may not be met. It may also be detrimental to the people of Kenya as persons who may be lacking in integrity may be charged

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<sup>13</sup> *Luka Lubwayo and Another v Gerald Otieno Kajwang and Another (2013)* eKLR.

<sup>14</sup> *Democratic Alliance v President of South Africa and Others (2011)*, South Africa Constitutional Court.

<sup>15</sup> *International Centre for Policy and Conflict and 5 Others v Attorney General and 4 Others (2013)* eKLR.

<sup>16</sup> *Mumo Matemu v Trusted Society of Human Rights Alliance (2013)* eKLR.

with public trust. Developing a good approach will then ensure that the goals of chapter 6 will be met, thereby fostering constitutionalism, and that only persons with integrity will be charged with public trust.

## **1.2 PROBLEM STATEMENT**

With the revolutionary chapter on Leadership and Integrity in the constitution seeking to set higher standards for people seeking state office, the problem arises in determining the test to use to achieve these high standards. In *Luka Lubwayo & Anor v Gerald Otieno Kajwang & Anor (2013)* and the *Trusted Society of Human Rights Alliance v Attorney General (2012)* cases, by dint of the unresolved questions test, there is no requirement that the impugned conduct of a person seeking state office to rise to the threshold of criminality for him/her to be disqualified from seeking the office. However, in the *International Centre for Policy and Conflict & 5 Others v Attorney general & 4 others (2013)*, the unresolved questions test was adjudged to be contrary to the principle of presumption of innocence and the right to a fair trial, hence, the impugned conduct must rise to a threshold of criminality for one to be disqualified from seeking state office. Additionally, in the *Mumo Matemu case*, courts should conduct an intensely fact-based inquiry based on evaluation of material evidence in determining lack of integrity. My study therefore examines which test chapter 6 requires to achieve the high standards of integrity it envisions for persons seeking state office.

## **1.3 RESEARCH OBJECTIVES**

1. To investigate the meaning of integrity and why it is required in leadership.
2. To assess the goals of chapter 6 of the Kenyan constitution.
3. To look into key issues arising in the attainment of the goals of chapter six.
4. To establish how the goals of Chapter 6 of the Kenyan constitution can be effectively met in relation to the key issues identified.

## **1.4 RESEARCH QUESTIONS**

1. a) What is integrity?  
b) Why is integrity required in leadership?
2. What are the goals of chapter 6 of the Kenyan constitution?

3. What are the key issues arising in the attainment of the goals of chapter six?
4. How can the goals of Chapter 6 of the Kenyan constitution be effectively met in relation to the key issues identified?

### **1.5 HYPOTHESIS**

The legal standard for integrity in chapter six of the constitution should be the unresolved questions test. With public trust, a central concept in leadership, mandating that state office should be used for the benefit of the public and public interest and integrity ensuring that leadership remains focused on the interests of the people, integrity promotes leader reliability and the concept of public trust. Additionally, by enabling actions in accordance with moral values in public service, integrity encourages good governance and discourages misuse of public authority and corruption. Moreover, with post-independent Kenya being plagued with a history of poor governance relating to corruption, human rights violations, and tribalism, the constitution of Kenya 2010 embodies the long awaited and strong desire for change among the people of Kenya. Chapter six therein, calls for value-based leaders and leadership, envisaging that in this new order, Kenyans and particularly their leaders will be led by certain ideals. There is therefore a need for the adoption of a high standard of integrity that guarantees that only the best persons are entrusted with the handling and control of public affairs. The unresolved questions test, being the highest test of those which have been established, makes it the most persuasive standard to best implement the high standards of integrity envisioned in chapter six. However, there is need to make the test more objective by defining what essentially is an unresolved question. This will also help in balancing the importance of elections in a democracy, with respect to elective office, vis-à-vis the importance of possession of integrity of those elected.

### **1.6 JUSTIFICATION**

There seems to be a variance regarding the tests to be used in achieving the high standards envisioned in chapter 6 of the constitution. As seen in *Luka Lubwayo & Anor v Gerald Otieno Kajwang & Anor (2013)* and the *Trusted Society of Human Rights Alliance v Attorney General (2012)* cases, impugned conduct of a person seeking state office need not rise to a threshold of criminality for such a person to be disqualified in seeking the office. However, in the *International Centre for Policy and Conflict & 5 Others v Attorney general & 4 others (2013)* case, it was held

that impugned conduct must rise to a threshold of criminality for one to be disqualified from seeking state office. Additionally, in the *Mumo Matemu case*, courts should conduct an intensely fact-based inquiry based on evaluation of material evidence in determining lack of integrity. My study will therefore assess the meaning of integrity, why it is important in public office, the goals of Chapter 6 of the Kenyan constitution and key issues arising in the attainment of these goals. Thereafter, by uniquely proposing how courts can achieve the goals of Chapter 6, my study will be useful to judges when faced with questions on disqualification of persons seeking state office based on integrity. Moreover, it will be useful to researchers as it will seek to settle down the debate on which test to use to disqualify people seeking state office based on integrity. Lastly, my study will be useful to the Anti-Corruption body, EACC, in conjunction with the electoral body, IEBC, as they disqualify people from seeking state elective office based on integrity issues.

## 1.7 CONCEPTUAL FRAMEWORK

### 1.7.1 Public office as a public trust

*Plato (The Republic) - No ruler, in so far as he is acting as ruler, will study or enjoin what is for his own interest. All that he says and does will be said and done with a view to what is good and proper for whom he practices his art.*<sup>17</sup>

*Cicero (De Officiis) - For the administration of the government, like the office of a trustee, must be conducted for the benefit of those entrusted to one's care, not for whom it is entrusted.*<sup>18</sup>

Floyd Russell Mechem defines a public office as the right, authority and duty, established and granted by law, by which for a predetermined amount of time, either set by law or lasting at the pleasure of the establishing power, a person is bestowed with some portion of the sovereign functions of government to be carried out by him for the public benefit.<sup>19</sup> The bestowed person is defined as a public officer. Public office therefore comes with political power. John Locke defines political power to be the authority that each person in the natural state, surrendered into the society, and the governors, whom the society has appointed, with their explicit or implicit confidence, that

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<sup>17</sup> Macdonald F, 'The Republic by Plato (Translation)'Oxford University Press, 1970-3, <[http://faculty.smc.edu/jwschroeder/Web/ETHR1002/Global\\_Justice\\_Readings\\_files/3.PlatoRepublic.pdf](http://faculty.smc.edu/jwschroeder/Web/ETHR1002/Global_Justice_Readings_files/3.PlatoRepublic.pdf)> on 3 November 2023.

<sup>18</sup> Miller W, 'e-Book of De-Officiis by Marcus Tullius Cicero 'The Project Gutenberg, 29 September 2014 <<https://www.gutenberg.org/files/47001/47001-h/47001-h.htm>> on 3 November 2023.

<sup>19</sup> Mechem F, *Public Offices and Officers*, Callaghan and Company, Chicago, 1890, 1.

such power will be employed for their benefit as well as the safeguarding of their property.<sup>20</sup> In attempting a definition of ‘public trust’ as used in Article VI of the US constitution, Jennifer Kreder posits that the Samuel Johnson’s classic 1755 dictionary defines ‘public’, when used as an adjective, as, regarding not private interest, but the good of a community.<sup>21</sup> In 1755, the word ‘trust’, when used as a noun, meant confidence and reliance on another.<sup>22</sup> Therefore, the American Founding Fathers likely understood ‘public trust’ to mean an entrustment of confidence and reliance for a public or community interest.<sup>23</sup>

That being the case, Paul Finn, in his article on public trust and public accountability, admonishes the history, practice and tradition in Australia that encourages a conception of the government as the public’s master and not its servant. He then posits three principles of the civil order. Firstly, sovereign power resides in the people from which it is derived. Secondly, where institutions and officials are entrusted with public authority for governmental purposes, they retain such authority to be deployed on behalf of the people, thereby making them public trustees. Thirdly, the trust comes with a corresponding burden of accountability to the public.<sup>24</sup> On that account, as put forward by Algernon Sidney, government is not instituted for the good of the governor, but of the governed and power is not an advantage, but a burden.<sup>25</sup>

It is for these reasons that Standing Order 117 of the U.S Senate states that the ideal concept of public office as a public trust signifies that the officer has been entrusted with public authority by the people, that the officer holds this authority in trust to be used only for the people’s benefit and never his own or for the benefit of a select few and that the officer must never conduct affairs in a way that conflicts with the public interest. Article 73 of the Kenyan constitution also conceptualizes authority assigned to a state officer to be a public trust, to be used to serve the

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<sup>20</sup> Gowan D and Greif C, 'e-Book of Second treatise of Government by John Locke' The Project Gutenberg, 25 December 2021, -< <https://www.gutenberg.org/files/7370/7370-h/7370-h.htm> >- on 3 November 2023.

<sup>21</sup> Samuel Johnson Dictionary, 1<sup>st</sup> ed.

<sup>22</sup> Samuel Johnson Dictionary, 1<sup>st</sup> ed.

<sup>23</sup> Kreder J, 'The Public Trust' 18(5) Journal of Constitutional Law, 2016, 1436.

<sup>24</sup> Finn F, 'Public Trust and Public Accountability' *Australian Quarterly*, 1993, 50, <[https://www.jstor.org.ezproxy.library.strathmore.edu/stable/20635720?searchText=public+office+as+public+trust&searchUri=%2Faction%2FdoBasicSearch%3FQuery%3Dpublic%2Boffice%2Bas%2Bpublic%2Btrust&ab\\_segments=0%2Fbasic\\_search\\_gsv2%2Fcontrol&refreqid=fastly-default%3Aeb3adc4cc2b0857b28658534ae3b2e2d](https://www.jstor.org.ezproxy.library.strathmore.edu/stable/20635720?searchText=public+office+as+public+trust&searchUri=%2Faction%2FdoBasicSearch%3FQuery%3Dpublic%2Boffice%2Bas%2Bpublic%2Btrust&ab_segments=0%2Fbasic_search_gsv2%2Fcontrol&refreqid=fastly-default%3Aeb3adc4cc2b0857b28658534ae3b2e2d) >-on 4 November 2023.

<sup>25</sup> West T, 'e-Book on Discourses Concerning Government by Algernon Sidney' The Online Library of Liberty, 2011 September, -< [http://files.libertyfund.org/files/223/Sidney\\_0019\\_EBk\\_v6.0.pdf](http://files.libertyfund.org/files/223/Sidney_0019_EBk_v6.0.pdf) >- on 4 November 2023.

people, rather than the power to rule them.<sup>26</sup> In accepting the mayoralty of Buffalo City, Grover Cleveland put forward that the fact that public officials are trustees of the people should be the highest inducement to a faithful and honest discharge of public duty.<sup>27</sup> In that regard, James Madison, in the fifty seventh of the Federalist Papers, stated that the aim of every political constitution is first, to obtain for rulers, men who possess the wisdom to discern and the most virtue to pursue the common good of the society.<sup>28</sup>

In the same vein, the Supreme Court of Kenya, in *Sonko v County Assembly of Nairobi and 11 others*, postulated that since Chapter six of the Kenyan constitution was not enacted in vain or for cosmetic reasons, the standard of leadership is premised on the foundation that only those who, by their words or deeds, in both public and official lives, as well as private lives, have demonstrated commitment to good governance, transparency and accountability should be accorded to lead and serve the people.<sup>29</sup>

Here, we can see that the concept of public office as a public trust generally mandates that state office should be used for the good of the people and therefore, public interest should override private interests. This concept therefore shows that integrity is of fundamental importance in leadership, as it ensures that leadership remains focused on the interests of the people,<sup>30</sup> thereby championing public trust. It is then evident that integrity and the concept of public trust are joined at the hip and inseparable. This concept will therefore be used to validate the use of the highest approach, when it comes to integrity standards for purposes of public office.

## 1.8 LITERATURE REVIEW

So far, the literature on integrity and chapter six of the constitution of Kenya 2010 has mostly focused on the importance of integrity in leadership,<sup>31</sup> high standards of integrity envisaged in the constitution for persons seeking public office,<sup>32</sup> and the unresolved questions approach vis-a-vis

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<sup>26</sup> Article 73, *Constitution of Kenya*, 2010.

<sup>27</sup> Bent A, 'Familiar short sayings of great men' Bartleby.com, 1887, -< <https://www.bartleby.com/344/109.html> >- on 4 November 2023.

<sup>28</sup> Madison J, 'The alleged tendency of the new plan to elevate the few at the expense of the many considered in connection with representation from the New York Packet' The Avalon project, 19 February 1788, < [https://avalon.law.yale.edu/18th\\_century/fed57.asp](https://avalon.law.yale.edu/18th_century/fed57.asp) >- on 4 November 2023.

<sup>29</sup> *Sonko v County Assembly of Nairobi and 11 Others* (2022) eKLR.

<sup>30</sup> Constitution of Kenya Review Commission, *final report*, 221.

<sup>31</sup> For instance, AFRICOG, *Implementation of chapter 6 of the constitution of Kenya 2010*, 2015,11.

<sup>32</sup> For example, Adili Report, *Integrity: The ultimate standard of leadership*, September 2012,1.

the right to a fair trial approach.<sup>33</sup> Although Juliet Okoth also proposes the use of the unresolved questions approach,<sup>34</sup> she does so by envisaging it in a unidimensional manner, that is, a person is said to lack integrity if there are serious unresolved questions about his conduct and hence this conduct need not rise to a threshold of criminality.<sup>35</sup> After comparing the unresolved questions test to other proposed standards and reaching the conclusion that the unresolved questions standard is the most persuasive, my study goes deeper and tries to conceptualize what may be considered an unresolved question. I therefore expect my work to be a unique contribution in its scope

### **1.8.1 On integrity and its importance in leadership**

In reaching a definition of integrity, Manjit Monga postulates that integrity has two dimensions, intrinsic and extrinsic. In doing this, she adopts a normative view where integrity is identified and defined in five different ways. By virtue of integrity evolving from the Latin adjective ‘integer’, which meant a state of being complete or whole, the first definition of integrity is the quality of being complete, that is, unbroken condition, wholeness and entirety. When applied to human beings, this relates to a combination of virtues that form a coherent character.<sup>36</sup>

The second definition of integrity is consistency between words and actions. This is known as behavioral consistency.<sup>37</sup> Shelley Kirkpatrick and Locke rely on this second definition as they define integrity as correspondence between word and deed.<sup>38</sup> However, this definition fails to take account the nature of the words leading to an action thus implying that the word given, or the promise made, may be immoral or unethical. As a result, integrity cannot be reduced to verbal and behavioral consistency. It is therefore necessary to analyze the content of the word and ensuing actions. The third definition of integrity relates to the first one and it is consistency in adversity. Herein, as put forward by Lynne Mcfall in her chapter on integrity, in the face of temptation or challenge, a person should uphold the set of moral values and principles they commit to.<sup>39</sup>

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<sup>33</sup> Okoth J, ‘The leadership and integrity chapter in the 2010 constitution: The elusive threshold’ in Mbondenyei M, Human Rights and Democratic governance in Kenya, Pretoria University Law Press, 2015, 275-290.

<sup>34</sup> Okoth J, ‘The Elusive Threshold’ 289.

<sup>35</sup> Okoth J, The Elusive Threshold, 276.

<sup>36</sup> Monga M, ‘Integrity and its antecedent: A unified conceptual framework of integrity’ 50(5) *The Journal of Developing Areas*, 2016, 417.

<sup>37</sup> Monga M, ‘Integrity and its antecedent: A unified conceptual framework of integrity’, 417.

<sup>38</sup> Kirkpatrick S and Locke E, ‘Leadership: Do traits matter’ 5 *Academy of Management Review* 2, 1991, 53.

<sup>39</sup> Mcfall L, ‘Integrity’ 98(1) *Ethics*, 1987, 9.

However, the fact that for integrity to be evident, unfavorable conditions, temptations and decisions that compromise integrity must exist in a certain situation,<sup>40</sup> conditionalizes this definition thereby limiting it.

The fourth definition of integrity is authenticity to oneself. It refers to true consistency between espoused values and enacted values. It therefore implies that a person may be acting according to certain values and principles, that they may not be believing in.<sup>41</sup> The fifth definition of integrity is moral behavior. Certain virtues such as honesty, justice, trustworthiness, respect and fairness are considered to be under the ambit of integrity on account of being values of morality.<sup>42</sup> It is this definition that Thomas Becker alludes to when he defines integrity as commitment to a morally justifiable set of principles and values, where reality serves as the standard for moral justification, rather than the mere acceptance of the values of the individual or a group of individuals.<sup>43</sup>

The definitions that fall in the intrinsic dimension are commitment to moral principles and authenticity to oneself. On the other hand, consistency between words and actions, consistency in adversity and moral behavior fall into the extrinsic dimension as they can be observed in an individual.<sup>44</sup>

Considering the foregoing comprehensive definition of integrity and on the importance of integrity in leadership, Jan Warren Duggar posits that the characteristic of trust is closely associated with integrity. This is because individuals with integrity are reliable and predictable in dealing with others and they are defenders of what is just, fair and acceptable. That being the case, they can not only be counted on to do what is expected of them but also what is right.<sup>45</sup>

Moreover, Lorna Storr defines leadership to have two denominators. Firstly, the process of getting things done through others based on an interactive relationship between the leader and the followers. Secondly, achievement of mutual goals by influence of the leader. With this, she posits that the influence dimension of a leader requires him to have an impact on the lives of the

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<sup>40</sup> Monga M, 'Integrity and its antecedent: A unified conceptual framework of integrity', 417.

<sup>41</sup> Monga M, 'Integrity and its antecedent: A unified conceptual framework of integrity', 417.

<sup>42</sup> Monga M, 'Integrity and its antecedent: A unified conceptual framework of integrity', 417.

<sup>43</sup> Becker T, 'Integrity in Organizations: Beyond honesty and conscientiousness' 23(1) *Academy of Management Review*, 1988, 157-158.

<sup>44</sup> Monga M, 'Integrity and its antecedent: A unified conceptual framework of integrity', 418.

<sup>45</sup> Duggar J, 'Role of integrity in individual and effective corporate leadership' *Ethics and Behavioral Studies*, 2009, 2-  
<https://citeseerx.ist.psu.edu/document?repid=rep1&type=pdf&doi=af7444c896f33fcca86c958f4a35e65d17d02eb0>  
>- on 21 September 2023.

followers. On that basis, leaders with integrity inspire confidence in the followers as their actions are in line with the aspirations of the followers.<sup>46</sup> It therefore becomes clear that integrity is of utmost importance in a leader's tenure,<sup>47</sup> because it ensures that leadership remains focused on the interests and aspirations of the people and that it is trusted and desired by the people.<sup>48</sup>

### **1.8.2 On the high standards of integrity envisaged in the Kenyan Constitution and tests applied by courts**

The Constitution of Kenya 2010 was supposed to present a clean break from Kenya's dark past that was characterized by corruption, human rights abuses, nepotism, negative ethnicity and abuse of power.<sup>49</sup> PLO Lumumba puts forward that it was envisaged that in this fresh dispensation, every Kenyan, especially those in leadership positions, will be patriots who will be led by certain ideals.<sup>50</sup> It is for this reason that the concepts of good governance and integrity permeate every chapter of the constitution. For the first time, the constitution calls for integrity as a guiding value and principle of governance, alongside such concepts as good governance, transparency and accountability.<sup>51</sup>

Seeing that ethics and integrity among public officials were placed at the center of the new order, it is not by accident that the drafters dedicated an entire chapter to leadership and integrity.<sup>52</sup> The chapter is founded on the premise that state officers are the nerve center of the republic and carry the greatest degree of responsibility and administration of state affairs, thus, their conduct should be beyond reproach.<sup>53</sup> Nevertheless, Samuel Kimeu and Herman Owiti seem to have the same reservation, that, while we agree on the need for integrity in leadership, we do not seem to be on

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<sup>46</sup> Storr L, 'Leading with integrity: A qualitative research study' *Journal of Health Organization and Management*, 2004, 417-424 -<  
<https://www.emerald.com.ezproxy.library.strathmore.edu/insight/content/doi/10.1108/14777260410569984/full/pdf?title=leading-with-integrity-a-qualitative-research-study> >- on 21 September 2023.

<sup>47</sup> AFRICOG, *Implementation of chapter 6 of the constitution of Kenya 2010*, 2015,11.

<sup>48</sup> Constitution of Kenya Review Commission, *Final Report of The Constitution of Kenya Review Commission*, 2005, 221.

<sup>49</sup> Ogotu K, 'Defending guardians of the constitution against ruinous criticisms' 4(2019) *Kabarak Law Journal*, 11 August 2020, 2.

<sup>50</sup> Lumumba P, 'The leadership Kenyans deserve' in Okombo D, *Challenging the Rulers*, East African Publishers Limited, Nairobi, 2011, 48.

<sup>51</sup> Adili Report, *Integrity: The ultimate standard of leadership*, September 2012,1.

<sup>52</sup> Ogotu K, 'Defending guardians of the constitution against ruinous criticisms' 4(2019) *Kabarak Law Journal*, 11 August 2020, 2.

<sup>53</sup> Okoth J, 'The Elusive Threshold', 275.

the same page on what constitutes lack of integrity for purposes of public office.<sup>54</sup> As Juliet Okoth puts it, the question that comes to mind is what is the constitutional threshold for integrity?<sup>55</sup>

Against this backdrop, she refers to the *Trusted Society of Human Rights Alliance* case where the court put forward that a person is said to lack integrity where there are serious unresolved questions about his honesty, financial probity, scrupulousness, fairness, reputation, soundness of moral judgement or his commitment to the national values enshrined in the constitution. Therefore, there is no requirement that a person's behavior, attribute or conduct in question must rise to the threshold of criminality.<sup>56</sup> On the other hand, she refers to the *International Center for Policy and Conflict* case where it was observed that the standards established by chapter six of the constitution must be weighed against the Bill of Rights in chapter four and since the latter is a cornerstone of the constitution, the rights it protects, including the right to be presumed innocent and the right to a fair trial, prevail over the demands of chapter six.<sup>57</sup>

Juliet Okoth and Samuel Kimeu appear to share similar criticisms towards the latter approach. They enunciate that a difference ought to be made between the process of determining guilt or innocence of a person to punish offenders in society and that of vetting persons for purposes of rewarding them with leadership positions.<sup>58</sup> Since a person rejected for a leadership position is not penalized, but simply by-passed in favor of one who is better placed to be entrusted with the affairs of the society, the latter approach of presumption of innocence and the right to a fair trial is only good for purposes of apportioning guilt and punishment.<sup>59</sup> Additionally, a declaration that one does not meet the standard of integrity is not commensurate to being guilty as it only requires resolution of outstanding questions of an individual while his desire to hold office is put on hold.<sup>60</sup>

Moreover, while referring to articles 2 and 259 of the Constitution of Kenya, Edward Paranta supports the supposition that provisions of the Constitution be read purposively and as a cohesive whole, without any particular provision destroying the other but each supporting the other.

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<sup>54</sup> Adili Report, *Integrity: The ultimate standard of leadership*, September 2012, 2.

Owiti H, 'Inadequacies in the Anti-Corruption Agenda and the quest for good governance in Kenya under the new constitutional dispensation' SSRN, 2012, 6-7.

<sup>55</sup> Okoth J, 'The Elusive Threshold', 283.

<sup>56</sup> Okoth J, *The Elusive Threshold*, 275-276.

<sup>57</sup> Okoth J, *The Elusive Threshold*, 277.

<sup>58</sup> Okoth J, 'The Elusive Threshold', 289.

<sup>59</sup> Adili Report, *Integrity: The ultimate standard of leadership*, September 2012, 2.

<sup>60</sup> Okoth J, *The Elusive Threshold*, 289.

Therefore, in as much as the Bill of rights is a central nerve of any functioning democracy, Chapter 6 of the Kenyan constitution is equally important,<sup>61</sup> and courts should avoid interpretations that pit provisions of the constitution against each other.

In the quest for higher standards of persons seeking public office, Transparency International Kenya, state that in applying the standard required in criminal law, Kenyan courts have imposed a high evidence-based threshold on matters involving corruption and lack of integrity, which is too onerous and restricts objectives and purposes of leadership and integrity provisions, which aim to preserve public trust in the public office. They argue that matters to do with leadership and integrity in public office are of public perception, that is, whether a person can be seen to be who is able to hold public office.<sup>62</sup> They therefore recommend that the standard of proof should be lowered by Kenyan courts.

In conclusion, it is evident that the constitution of Kenya 2010 takes note of the fact that integrity is an integral value in leadership and envisages higher standards of integrity for persons seeking state office. The question arising then is, what approach should be used in the determination of these higher standards?

### **Contribution**

Although there are scholars who have emphasized on the importance of integrity in office and the fact that the constitution of Kenya 2010 envisages higher standards of integrity for persons seeking state office, most of them have not discussed what approaches should be implemented so that these higher standards can be achieved. As seen, some, such as Samuel Kimeu, have merely criticized the right to a fair trial approach that has been used by courts, but they have not gone farther to expressly posit an approach.

This study therefore endorses the postulation by Juliet Okoth, of the unresolved questions approach. It also supports the reasoning that a declaration that one does not meet the standard of integrity for public office, based on the unresolved questions approach, is not a guilty verdict to the matters they are facing before a court of law. The uniqueness of the study comes in proposing

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<sup>61</sup> Paranta E, 'Leadership and Integrity, A new dawn or a false promise: Analysis of court decisions on chapter six, seven years after promulgation of Kenya's new constitution' Social Science Research Network, 2017, 12.

<sup>62</sup> Transparency International Kenya, *The Verdict: An analysis of Interpretation of Chapter 6 by Kenyan Courts*, 12 December 2019, 46.

mechanisms to decipher what an unresolved question is, so as to make the standard more objective. Herein, sanctions by a foreign state or embassy on account of corruption or human rights violations, blacklisting by the Ethics and Anti-Corruption Commission, blacklisting by multiple Civil Society Organization and findings of wrongdoing against a person by a Commission of Inquiry will form the basis of what an unresolved question may be considered to be.

## **1.9 METHODOLOGY**

My study will rely on qualitative evidence that will emanate mostly from secondary sources such as research reports, chapters in books, journal articles and case law. It will also rely on primary sources such as the Constitution of Kenya 2010. This study will be a desk-based project that will utilize a deductive approach, establishing premises from which the main claim will be derived.

To carry out the proposed research, my study will first examine the meaning of integrity and why it is integral in leadership. This will entail a philosophical analysis of scholarly work in books, theses and journal articles.

The study will then investigate the goals of chapter six of the Kenyan constitution. This will be done through a historical analysis of scholarly work in books, journal articles, reports and theses. It will then be evident that the Constitution of Kenya 2010 recognizes the importance of integrity in leadership and the concept of value-based leadership and leaders, and therefore seeks to set higher standards of integrity for persons seeking both elective and appointive state office. This will help in making the claim that the highest approach should be used as a standard of integrity when considering whether a person is fit to hold state office.

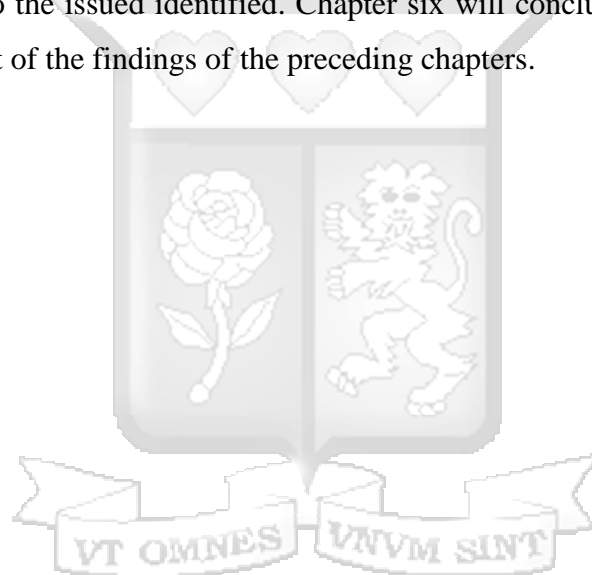
On that account, my study will proceed to highlight two key issues relating to application of integrity standards to elective and appointive office and the standards that have been put forward to implement chapter six. Thereafter, my study will propose and further develop the most suitable approach to be used to gauge whether a person is fit to hold public office based on integrity, so as to ensure that persons with integrity are charged with public trust and to fulfill the goals of chapter 6 of the Kenyan constitution.

## **1.10 CHAPTER BREAKDOWN**

Chapter one will be the prefatory chapter of the study. It delineates, among others, the research questions and objectives, the conceptual framework and the justification of the study, and on that basis, it will set the stage for the subsequent chapters. Chapter two will assess the meaning of integrity. It will then descriptively examine why integrity is essential in leadership.

Chapter three will investigate the goals of Chapter 6 of the Kenyan constitution. Subsequently, it will be evident that the framers of the constitution envisioned higher standards for persons seeking both elective and appointive state office in Kenya.

Chapter four will highlight central issues arising in attainment of chapter six goals. Chapter five will give a solution as to how Kenyan courts can attain the goals of chapter 6 of the Kenyan constitution in relation to the issues identified. Chapter six will conclude the study and provide recommendations in light of the findings of the preceding chapters.



## **2.0 THE MEANING OF INTEGRITY AND ITS IMPORTANCE IN LEADERSHIP**

### **2.1 Introduction**

This chapter will firstly seek to define integrity. In doing so, it will assess the various definitions put forward by various schools of thought to describe integrity. Thereafter, the author will adopt the most reliable definition. The chapter will then proceed to show the importance of integrity in leadership.

### **2.2 Defining Integrity**

The multivarious definitions postulated to explain the meaning of integrity have led to complexity with regards to integrity, to the extent that there appears to be no consensus and consistency as to what it means.<sup>63</sup> This part will examine various approaches used to define integrity with the aim of adopting an infallible definition.

#### **2.2.1 The two-tier normative approach**

In her article on Integrity, Gabriele Taylor's main claim is that the most fundamental conceptualization of integrity is one which considers a person who keeps his self-intact, whose life is of a piece, whose self is whole and integrated.<sup>64</sup> Herein, a person must have sound moral commitments and secondly, he must act in accordance to them. In the same breath, Manjit Monga in attempting to develop a unified conceptual framework of integrity, comes up with two dimensions of integrity, intrinsic and extrinsic dimensions. She then asserts that the intrinsic dimension consists of commitment to sound moral principles while the extrinsic dimension consists of consistency of words, actions and overall conduct to the moral principles in order to achieve a coherent character is observable in a person's conduct and actions.<sup>65</sup>

Lynne Mcfall, in her article titled 'integrity', firstly recognizes the above conceptualization of integrity. She categorizes this as moral integrity, on which she claims that it is influenced by social

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<sup>63</sup> Becker T, 'Integrity in organizations: Beyond honesty and conscientiousness' *Academy of Management Review*, 1996, 155 - <https://www.jstor.org/stable/259104?seq=1> – on 4 January 2024.

<sup>64</sup> Taylor G, 'Integrity' *Proceedings of the Aristotelian society*, 1981, 144 - <https://www.jstor.org/stable/4106856?seq=1> – on 4 January 2024.

<sup>65</sup> Monga M, 'Integrity and its antecedent: A unified conceptual framework of integrity' Kuala Lumpur conference, 2015, 4-7 - <https://www.jstor.org/stable/26415605?seq=1> – on 4 January 2024.

morality, which refers to the set of values and principles we uphold and those we anticipate everyone will uphold. She then proceeds to enunciate that integrity has also been conceptualized as personal integrity, meaning, conformity to personal principles, commitments and ideals, which may not necessarily conform to conventional standards or sound moral principles.<sup>66</sup>

From all the aforementioned definitions, we can see that integrity firstly comprises of having lower-order commitments, that is, personal commitments or sound moral/conventional commitments. Secondly, one acts in accordance to those commitments so as to attain a coherent, integrated and holistic character. It is for this reason that this section is titled two-tiered normative approach.

Nevertheless, with these definitions, ideals relativism as a downside, arises. With reference to personal integrity, since integrity is defined in reference to personal commitments, which may be against conventional commitments, a person is considered to have integrity for as long as he acts in accordance to his commitments. This means that a multitude of people will be considered to have the quality of integrity on the basis of their multivarious commitments and their resultant actions. This may also run the risk of extending the quality of integrity to people with immoral commitments and their resultant actions.

With regards to moral integrity, as explicated by Lynne Mcfall, this is influenced by social morality, which refers to the set of principles that we uphold that we expect everyone to uphold.<sup>67</sup> That being the case and as noted by Atonius Gea in his article on personal integrity and leadership, what is good and what is bad may vary in relation to the times one lives in or even in relation to the culture one is subjected to. To this, an example is that Adolf Hitler would be considered to have integrity in relation to his actions to the Jews, by members in the Nazi Era.<sup>68</sup> In other words, sound moral principles may not be viewed in the lens of objectivity, but may be viewed in the lens of subjective conventionalities and culture. The same is also recognized by Thomas Becker as he criticizes the

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<sup>66</sup> Mcfall L, 'Integrity' *Ethics*, 1987, 14-17 - <https://www.jstor.org/stable/2381289?seq=1> – on 4 January 2024.

<sup>67</sup> Mcfall L, 'Integrity' *Ethics*, 1987, 17 - <https://www.jstor.org/stable/2381289?seq=1> – on 4 January 2024.

<sup>68</sup> Gea A, 'Personal integrity and leadership' *Humaniora*, 2016, 362 - <https://media.neliti.com/media/publications/167317-EN-personal-integrity-and-leadership.pdf> - on 5 January 2024.

conceptualizations leading to personal and moral integrity as having principles that are valid, relative to individual, cultural and conventional norms.<sup>69</sup>

Another downside relating to moral integrity is that since it is influenced by social morality which appears to be shaped by subjective realities such as conventionalities and cultural norms, rather than an objective reality such as rationality, presents the need to come up with the notion of personal integrity. It is for this reason that personal integrity has been defined as conformity to personal principles, commitments and ideals, which may not necessarily conform to conventional standards. In other words, personal integrity and moral integrity are by themselves subjective. However, it is through how moral integrity has been couched that the need of conceptualizing personal integrity arises, and having the two together increases the subjectivity with regards to the concept of integrity.

### 2.2.2 The utilitarian approach

This approach to defining integrity is set forth by Elizabeth Ashford in her article on utilitarianism, integrity and partiality. The basis of this approach is the recognition of personal integrity and moral integrity bringing about the problem that moral obligations demanded by moral integrity might conflict with an agents' pursuit of their personal projects based on personal integrity. The author's claim is that there is a practicable state of the world in which moral obligations by moral integrity will not conflict with an agent's personal projects.<sup>70</sup>

On the basis that utilitarianism considers the action as that which maximizes overall wellbeing, the practicable state of the world enunciated by the author is one where the utilitarian impartial moral commitments will have merged with personal commitments of an individual. This will be attained through the fact that an impartial perspective of utilitarianism asserts that everyone's life is of equal value, thereby assigning none priority over the other and in doing so making an agent not to dissociate from her concern for her personal projects, when adopting an impartial moral

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<sup>69</sup> Becker T, 'Integrity in organizations: Beyond honesty and conscientiousness' *Academy of Management Review*, 1996, 154-155 - <https://www.jstor.org/stable/259104?seq=1> – on 4 January 2024.

<sup>70</sup> Ashford E, 'Utilitarianism, integrity and partiality' *Journal of Philosophy*, 2000, 421 - <https://www.jstor.org/stable/2678423> - on 5 January 2024.

point of view/moral integrity.<sup>71</sup> However, this approach may be impracticable as it appears to be merely modelled around the concept of utilitarianism.

### 2.2.3 The morals conflation approach

The Oxford,<sup>72</sup> Britannica,<sup>73</sup> and Cambridge,<sup>74</sup> dictionaries all define integrity as the quality of being honest. While the Collins dictionary defines integrity as adherence to moral principles, it gives honesty as its synonym. Additionally, Manjit Monga, Thomas Becker, Antonius Gea, Robert Audi and Patrick Murphy all recognize that virtues such as honesty, conscientiousness, humility, trustworthiness, justice and truthfulness have been used interchangeably and synonymously to refer to integrity. Here, we can see that virtues which form a substantive part of moral behavior are used as the definition of integrity.

Antonius Gea posits that this is understandable as one of the core notions of integrity is its integrational sense. By this, he means that a substantive feature of integrity is that it integrates various commitments/virtues and on top of that, actions in accordance to such commitments to form a coherent and harmonious structure.<sup>75</sup> However, Antonius Gea and all the other authors mentioned above, harmoniously posit that integrity in itself is a virtue that forms part of moral behavior and other virtues should not be conflated with integrity.

### 2.2.4 The objectivist approach

This is the approach that is posited by Thomas Becker. He uses objectivism, as a theory, to conceptualize integrity. He claims that objectivism holds that, firstly, reality does exist i.e. the external world is real and objective, rather than illusory. Secondly, human beings possess consciousness, which is, the ability to perceive reality. Thirdly, there are no contradictions in reality i.e. any entity is unique but non-contradictory in terms of identity, and finally, that human beings have volition, that is, the capacity to think or not to think and, correspondingly, to choose among different courses of action. On this basis, human beings are conscious and volitional

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<sup>71</sup> Ashford E, 'Utilitarianism, integrity and partiality' *Journal of Philosophy*, 2000, 435-439 <https://www.jstor.org/stable/2678423> - on 5 January 2024.

<sup>72</sup> Oxford Learner's dictionary.

<sup>73</sup> The Britannica Dictionary.

<sup>74</sup> Collins Dictionary.

<sup>75</sup> Gea A, 'Personal integrity and leadership' *Humaniora*, 2016, 361-362 - <https://media.neliti.com/media/publications/167317-EN-personal-integrity-and-leadership.pdf> - on 5 January 2024.

meaning that they must rely on reason, which is a cognitive faculty for organizing perceptual data (knowledge) using logic, so as to perceive reality effectively.<sup>76</sup>

Since human beings rely on reason, a person must act in a certain way, meaning that they must keep certain values directing his actions. Virtues are actions that are in accordance with values. Values and corresponding virtues will enable long-term human survival, a successful life and well-being. That being the case, objectivism identifies a number of virtues. Rationality is the recognition and acceptance of reason as human beings' only source of knowledge, only legitimate judge of values, and only valid guide to action. As such, rationality is the primary virtue and the most essential prerequisite of a successful life, long-term survival and wellbeing. Rationality is, in other words, an intrinsic sense of right or wrong. Other corollary virtues are honesty, justice, truthfulness, trustworthiness, etc. These corollary virtues are expressions of the basic virtue which is rationality.<sup>77</sup>

On that account, objectivists define integrity to mean loyalty to rational principles (from rationality) and values (corollary values to rationality). It therefore involves firstly, having a commitment to rational values, and resultantly creating a morally justifiable code of principles and values (emanating from rationality) and acting in accordance with rationality and the resultant moral values in each situation.

From this approach it can be seen that, the two-tier normative approach, which substantively involves commitment to principles and acting in accordance to such principles, is integrated herein. However, since such commitments and resultant actions stem from rationality herein, which is objectively present in every human being, makes this account more objective. This therefore means that there is no need to subdivide integrity into moral and personal integrity, which as we saw obscures the concept of integrity. This approach of defining appears to be the most reliable and it is what the author will adopt as a conceptualization of integrity.

### **2.3 Importance of integrity in leadership**

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<sup>76</sup> Becker T, 'Integrity in organizations: Beyond honesty and conscientiousness' *Academy of Management Review*, 1996, 156 - <https://www.jstor.org/stable/259104?seq=1> – on 4 January 2024.

<sup>77</sup> Becker T, 'Integrity in organizations: Beyond honesty and conscientiousness' *Academy of Management Review*, 1996, 156-159 - <https://www.jstor.org/stable/259104?seq=1> – on 4 January 2024.

In five different ways, this part will show how foundational integrity is to leadership.

### 2.3.1 Integrity as a super-virtue

While explicating the concept of integrity in their article on the many faces of integrity, Robert Audi and Patrick Murphy posit that the etymology of integrity, emanates from the Latin word *integritas*, meaning oneness. They continue to state that one of the words sharing a similar etymology is integration. They therefore establish integration as a word cousin of the word integrity. With this, they establish that there is an integrational aspect of integrity.<sup>78</sup>

In this integrational aspect, integrity is considered to comprise certain elements of character forming a coherent and harmonious structure. Additionally, the coherent and unified structure of the elements of character is in relation to commitment and adherence to a set of principles or moral values. This means that the integrational aspect of integrity is viewed in two ways. Firstly, commitment to certain principles, which are consistent with each other, to form a coherent being. Secondly, accompaniment of such commitments with resultant actions that are consistent with those commitments.

Additionally, Alejo Jose Sison posits that proposes that virtue is the basis of trust. He defines virtue as the excellence of character, that is, the possession and practice of behaviors appropriate for a human being within a specific sociocultural setting. To him, excellence of character refers to firstly commitment to certain consistent values and principles actions in accordance to those values and principles. He concludes by enunciating that virtue is synonymous with integrity, which also suggests wholeness and oneness of a person.<sup>79</sup>

It is through this integrational element, consisting of wholeness and oneness of character, integrity is viewed as a secondary-order virtue. In the words of Lynne Mcfall, integrity appears to be a higher-order virtue, of which to have, one must have some lower-order moral commitments.<sup>80</sup> This is essentially how integrity is a super-virtue.

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<sup>78</sup> Patrick M and Audi R, 'The many faces of integrity' *Business Ethics Quarterly*, 2006, 8-10 - <https://www.jstor.org/stable/3857724> - on 5 January 2024.

<sup>79</sup> <https://alejosison.files.wordpress.com/2017/12/leadershipcharactervirtuesaristotelianviewpoint.pdf> on 5 January 2024.

<sup>80</sup> Mcfall L, 'Integrity' *Ethics*, 1987, 14 - <https://www.jstor.org/stable/2381289?seq=1> - on 4 January 2024.

Transposing the adopted conceptualization of integrity to the importance of integrity in leadership, a leader considered to have integrity, will firstly need to have a commitment to rational values and corollary moral values.

### 2.3.2 Integrity, self-knowledge and leadership

Antonius Gea, in his article on personal integrity and leadership, defines leadership as the ability to influence a particular group to reach a certain goal. Against this background, qualities such as clear goal setting, consistency and empathy are crucial in leadership. Additionally, a leader should be able to motivate followers to reach a particular goal.<sup>81</sup>

That being the basis, he asserts that all serious leadership comes from within. For one to lead others, one must lead themselves successfully, making management and leadership of self, fundamental in management and leadership of others. A precursor to successful leadership of self is one knowing thyself. Management of self therefore arises from one having a deep understanding of their internal landscape, what is normally referred to as self-awareness.<sup>82</sup>

The conceptualization of integrity adopted in the foregoing, as noted in the foregoing, recognizes the integrational notion of integrity as a substantive aspect of integrity. Herein, a person's moral values are consistent with rationality, and such moral values are consistent with each other, forming a coherent character. In addition to this, resultant actions are consistent with such rational and moral values leading to self-intactness between espoused and enacted values.

Through this coherent character and self-intactness, a person becomes authentic, meaning that he knows what he wants and who he wants to be. Such a person has clear limits, meaning that he knows at which point his moral boundaries are crossed. He also possesses clear ideals meaning that he has a clear vision as to what he wants to achieve. Lastly, he has clear values, giving him important guidelines for his actions, his ideals and moral boundaries. In other words, by virtue of integrity, such a person has attained self-knowledge and self-awareness, leading to successful leadership of oneself, which is in turn fundamental in management and leadership of others.

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<sup>81</sup> Gea A, 'Personal integrity and leadership' *Humaniora*, 2016, 363 - <https://media.neliti.com/media/publications/167317-EN-personal-integrity-and-leadership.pdf> - on 5 January 2024.

<sup>82</sup> Gea A, 'Personal integrity and leadership' *Humaniora*, 2016, 364-366 - <https://media.neliti.com/media/publications/167317-EN-personal-integrity-and-leadership.pdf> - on 5 January 2024.

### 2.3.3 Integrity and follower trust

David Mineo puts forward that trust is the glue that binds the leader to his followers and provides the ability for organizational and leadership success.<sup>83</sup> Conjointly, John Modise elucidates that trust in a government is essential for it to operate well. This trust brings about acceptance and responsiveness to government policies, promotes the legitimacy of the government, political involvement of the citizenry, social cohesiveness and institutional credibility.<sup>84</sup> It is therefore evident that trust fundamental in leadership.

In his article on behavioral integrity as a critical ingredient for transformational leadership, Tony Simons considers the various ways within which trust has been defined. Herein, some conceptualizations of trust that he notes are firstly, as the reliance on the voluntary duty of another to acknowledge and defend the rights and interests of others engaged in a joint endeavor. It has also been defined as one's expectations or convictions about the likelihood that another's future actions will be beneficial, or at least not detrimental, to one's interests. Other definitions have also focused on the element of vulnerability or risk hence trust has been defined as the willingness of a party to be vulnerable to the actions of another party based on the expectation that the other will perform a specific action important to the trustor, regardless of the ability to monitor or control the other party. Additionally, other definitions have focused on its multidimensionality hence it has been defined as one party's willingness to be vulnerable to another party based on the belief that the other party is (a) competent, (b) open, (c) concerned, and (d) reliable. Regardless of the various definitions, the author points out that reliability of the trusted person is a central component however trust is defined.<sup>85</sup>

Concomitantly, Muel Kaptein postulates that a person of integrity is consistent, meaning that all his actions are straightforward hence does not employ crooked means, take short cuts or pursue

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<sup>83</sup> Mineo D, 'The importance of Trust in leadership' *Research Management Review*, 2014, 1 - <https://files.eric.ed.gov/fulltext/EJ1038828.pdf> - on 1 January 2024.

<sup>84</sup> Modise J, 'Improved Public Trust, Integrity and Good Governance with Respect to Corruption' *International Journal of Innovative Science and Technology*, 2023, 1-3 - [https://www.researchgate.net/publication/370496696\\_Improved\\_Public\\_Trust\\_Integrity\\_and\\_Good\\_Governance\\_with\\_Respect\\_to\\_Corruption](https://www.researchgate.net/publication/370496696_Improved_Public_Trust_Integrity_and_Good_Governance_with_Respect_to_Corruption) - on 15 January 2024.

<sup>85</sup> Simons T, 'Behavioral integrity as a critical ingredient for transformational leadership' *Journal of Organizational Change Management*, 1999, 92-94 - <https://www.emerald.com.ezproxy.library.strathmore.edu/insight/content/doi/10.1108/09534819910263640/full/pdf?title=behavioral-integrity-as-a-critical-ingredient-for-transformational-leadership> - on 2 January 2024.

heedless courses. Furthermore, such a person is coherent, meaning that there is unity between his behavior and his espoused values and ideals. Lastly, a person of integrity is constant, meaning that he acts in similar ways in similar situations. Since such a person's ideals match each other, and his actions and words match his ideals, that person is integrated, hence can be relied on.<sup>86</sup> It is therefore evident that possession of integrity breeds reliability, which is the basis of trust. Integrity is therefore by extension, the basis of trust, which is an important component in leadership as seen in the foregoing.

#### 2.3.4 Integrity and good governance

John Modise claims that good governance as a concept is tightly linked with the fight against corruption. That being the case, core principles of anti-corruption are the core principles of good governance. These principles include; participatory governance which involves active participation of all segments in the society; rule of law which involves maintenance of law and order and answerability to the law of all people and institutions in the society; transparency which involves the ability of those in the society to review decisions of those in authority; responsiveness which involves quick response to the demands of the citizenry, to enable citizen involvement in decision making; consensus orientation involving a consensus approach integrating the citizenry in decision-making; equity and inclusiveness where everyone is given a chance to enhance their wellbeing; government effectiveness and efficiency which involves the successfulness of government processes and institutions so as to satisfy societal requirements and lastly, governmental accountability which involves answerability and taking responsibility for one's actions, especially in regards to those entrusted with public mandate.<sup>87</sup>

On account of this, by virtue of integrity presupposing excellence of character consisting of adherence to rational values and resultant moral values, which ensures that leadership is centered on the people, it is the antithesis of corruption which is the misuse of authority for personal interests.<sup>88</sup> That being the case, possession of integrity in leadership will make it certain that the principles of anti-corruption are adhered to and implemented thereby enabling good governance.

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<sup>86</sup> Kaptein M, 'The Diamond of managerial integrity' *European Management Journal*, 2003, 5-6 - [https://www.researchgate.net/publication/227416264\\_The\\_Diamond\\_of\\_Manageirial\\_Integrity](https://www.researchgate.net/publication/227416264_The_Diamond_of_Manageirial_Integrity) - on 6 January 2024.

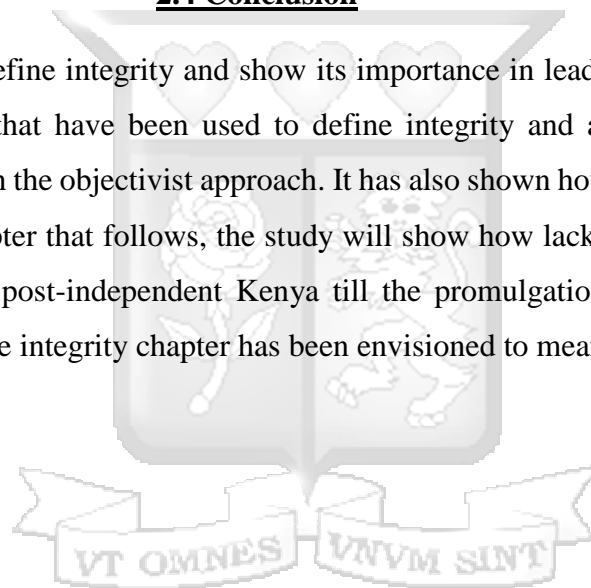
<sup>87</sup> Modise J, 'Improved public trust, integrity and good governance with respect to corruption' 8 *International Journal of Innovative Science and Research Technology* 3, 2023, 2577-2578.

<sup>88</sup> Modise J, 'Improved public trust, integrity and good governance with respect to corruption', 2574.

In the same breath, PLO Lumumba defines governance as the procedure for formulating and implementing decisions.<sup>89</sup> On its part, good governance is a value-loaded concept, recommending an ideal of administrative behaviour and rejection of behaviour that is unethical or questionable. Good governance therefore, is dependent on the morality of public service.<sup>90</sup> Leo Huberts defines integrity as a characteristic or a quality that refers to acting in accordance with the relevant moral values and norms. With reference to governance, he asserts that integrity is the concept that should be extended to the behavior of the participants in government decision-making and decision implementation.<sup>91</sup> That being the case, governance, coupled up with consistency in moral values, which is essentially integrity, by the public service, breeds good governance.

## **2.4 Conclusion**

This chapter set out to define integrity and show its importance in leadership. It has enumerated the various approaches that have been used to define integrity and adopted a comprehensive definition, that is, through the objectivist approach. It has also shown how integrity is fundamental in leadership. In the chapter that follows, the study will show how lack of integrity in leadership has manifested itself in post-independent Kenya till the promulgation of the constitution and thereafter look at what the integrity chapter has been envisioned to mean.



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<sup>89</sup> PLO Lumumba, 'The leadership Kenyans deserve' in Joseph Kwaka (ed), Okoth Okombo (ed), Barrack Muluka (ed) & Betty Sungura-Nyabuto (ed) Challenging the Rulers: A leadership model for good governance, East African Publishers, Kenya, 2011, 41.

<sup>90</sup> Said J, Alam M, Khalid M, 'Relationship between Good Governance and Integrity System: Empirical Study on the Public Sector of Malaysia' Humanomics, 2016, 3 - <file:///D:/User%20Documents/Downloads/J81.%20Good%20Governance%20and%20Integrity%20System%20%20Humanomics.pdf> - on 16 January 2024.

<sup>91</sup> Huberts L, 'Integrity: What it is and why it is important' Public Integrity, 2018, 3 - <https://secure-flevoland.gemeenteoplossingen.nl/documenten/Integriteit/L-W-C-J-Huberts-Integrity-What-it-is-and-Why-it-is-Important.pdf> - on 17 January 2024.

## **3.0 THE INTENTION BEHIND CHAPTER SIX OF THE KENYAN CONSTITUTION**

### **3.1 Introduction**

This chapter seeks to look into what the framers of the Constitution had in mind while drafting chapter six on Leadership and Integrity. The constitution is similar to a power map, which in its making, took into account past experiences and future aspirations.<sup>92</sup> Kenya's past experience with regards to leadership has been plagued by bad leadership, characterized by lack of integrity, which informed the inclusion of Chapter Six of the Constitution.<sup>93</sup> The first part of this chapter will therefore be a historical analysis, showing how such bad leadership, characterized by lack of integrity has plagued post independent Kenya up to the point of promulgation of the constitution. The next part will then deal with how chapter six has been interpreted to envision, with regards to leaders and leadership.

### **3.2 Lack of Integrity in Leadership in Post-independent Kenya**

In the preceding chapter, the author adopted integrity to mean actions in accordance to rational values or the intrinsic sense of right or wrong and resultant moral values. In showing the history of lack of integrity in leadership in post-independent Kenya, this part will feature an inexhaustive list of themes, that have a central element of egregious abdication from rational values and morality by political leaders and persons occupying offices of public trust.

#### **3.2.1 Land injustices on account of lack of integrity in leadership**

This part will show how lack of integrity by persons occupying offices of public trust, has led to loss of public land.

In 2003, then president, Mwai Kibaki established the Ndung'u Commission and tasked it with inquiring on the illegal and irregular allocation to private persons of land set aside for public purposes, by the previous regimes.<sup>94</sup> On urban lands, the commission found that among other

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<sup>92</sup> Ogendo O, 'constitutions without constitutionalism: Reflections on an African political paradox' in Douglas Greenberg (ed.), Stanley N Katz (ed.), Melanie Beth Oliviero (ed.), Steven C Wheatley (ed.) *Constitutionalism and Democracy: Transitions in the contemporary world*, American Council of Learned Societies, New York, 1988, 67.

<sup>93</sup> Paranta E, 'Leadership and integrity, a new dawn or false promise: Analysis of the Court Decisions on Chapter Six, Seven Years after Promulgation of Kenya's New Constitution' *Social Science Research Network (SSRN)*, 2017, 2.

<sup>94</sup> Kenya Law, *Final report of the commission of Inquiry into the illegal and irregular allocation of public land*, 1.

findings, there was firstly, abuse of presidential powers and discretion encapsulated in section 3 of the then Government Lands Act to make grants of freehold or leasehold on unalienated government land. Here, the commission found that in both regimes of President Jomo Kenyatta and Moi, the President used the aforementioned power that he had to grant freehold or leasehold unalienated government land to individuals without taking into account whether such allocations would serve the public interest. The commission therefore came to a conclusion that many of these presidential allotments were given for political patronage, thereby comprising illegal exercise of power.<sup>95</sup>

The commission also found that the Commissioner of Lands would usurp presidential powers under section 3 of the then Government Lands Act and on his own initiative, grant unalienated government lands to private persons, while purporting to be exercising the authority delegated to him by the president. Moreover, the Commission discovered that land designated for public purposes such as the building of schools, hospitals, sewerage. etc, was allocated to private persons, in total disregard of the law, by the Commissioner of Lands.<sup>96</sup> The commission thereafter concluded that it was during the tenures of Mr. Wilson Gachanja and Mr. Sammy Mwaita, as Commissioners of Lands, that such acts, comprising illegal and irregular allocations of public land, took place.<sup>97</sup>

Further, the Commission found that local authorities, such as chiefs, councilors and city councils, from which it would have been expected to stand up in defense of plunder of public land by corrupt persons, breached public trust and actively took part in the illegal and irregular distribution of public land. Some council minutes even indicate that meetings would be held for the sole purpose of allocating public utility lands to the councilors.<sup>98</sup>

That being the case, the general conclusion of the commission was that key public officers, entirely disregarding the substantive and procedural law relating to the allocation of public land, abused their authority and offices in the allocation of such public land. Additionally, many illegal allocations of public land were politically motivated and some of the officials did not see any moral or legal issues with transferring public land to private individuals, hence land grabbing was

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<sup>95</sup> Kenya law, *Final report of the commission of Inquiry into the illegal and irregular allocation of public land*, 74.

<sup>96</sup> Kenya Law, *Final report of the commission of Inquiry into the illegal and irregular allocation of public land*, 75.

<sup>97</sup> Kenya Law, *Final report of the commission of Inquiry into the illegal and irregular allocation of public land*, 80.

<sup>98</sup> Kenya Law, *Final report of the commission of Inquiry into the illegal and irregular allocation of public land*, 81.

something usual to them. Such officials and key public officers did not view their offices as positions of public trust meant to safeguard public land for present and future generations and the general economic welfare of the country.<sup>99</sup>

### 3.2.2 Inhumane treatment of individuals

This part will deal with inhumane and indignifying treatment relating to detentions without trial, political killings and assassinations, torture, etc., perpetrated by persons in leadership positions, for political considerations and expediency.

President Jomo Kenyatta traveled to Kisumu on October 25, 1969, to officially inaugurate the new Nyanza General Hospital. Kenyatta was greeted by an estimated 5,000 people at the hospital. While inspecting a guard of honor, a section of the crowd was shouting the rival Kenya People's Union (K.P.U) party slogan. Some minutes later, the president was heckled while making an address. Additionally, a part of the crowd pelted stones at the president's motorcade as it was leaving. That being the case, the president's bodyguards opened fire on the crowd, killing and injuring many people in what is commonly known as the Kisumu Massacre. There were eleven fatalities and numerous injuries. Thereafter, Kenya became a *de facto* one-party state on October 30, 1969, when Kenyatta banned K.P.U. using this incident as justification. Soon after key leaders of the party including Oginga Odinga, Achieng Onyko, Bildad Kaggia, Wasonga Sijeyo among others were arbitrarily detained. This was the first wave of detentions without trial in the history of independent Kenya.<sup>100</sup>

In 1975, the then MP for Butere, Martin Shikuku, was arrested in the precincts of parliament and detained. Shikuku had stated while adding to a motion, that KANU, the then ruling party, was dead. After a while, he came out of detention in clutches.<sup>101</sup>

In December 1977, Ngugi wa Thiong'o was detained without trial for publishing *Petals of Blood* and staging a play, *Ngahika Ndenda* (I will marry when I want), which he co-authored with Ngugi wa Mirii. The former, *Petals of Blood*, was a severe criticism of Kenya's post-independence political and economic injustices. The latter play, portrayed Africans who backed the colonial regime rising to prominence and prosperity, while the patriots who opposed the British during the

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<sup>99</sup> Kenya Law, *Final report of the commission of Inquiry into the illegal and irregular allocation of public land*, 182.

<sup>100</sup> Citizens for Justice, *We lived to tell: The Nyayo House story*, Friedrich Ebert Stiftung (FES), Nairobi, 11-12.

<sup>101</sup> Citizens for Justice, *We lived to tell: The Nyayo House story*, Friedrich Ebert Stiftung (FES), Nairobi, 10-11.

Emergency remaining poor and powerless. Such works were deemed dangerous by the establishment hence, the play was outlawed, and Ngugi was consequently taken into custody without trial.<sup>102</sup>

In 1978, Daniel Arap Moi assumed power. Nyayo torture chambers, attributed to President Moi's regime, were dungeons meticulously planned and built, using public funds, specifically to torture and kill Kenyans who were thought to be dissidents of the then KANU regime. In 1986, the government initiated a crackdown on a group of people referred to as Mwakenya activists.

Wachira Waheire,<sup>103</sup> and Ng'ang'a Thiong'o,<sup>104</sup> state that after being alleged to be members of Mwakenya and taken to Nyayo House, they were subjected to beatings and burning of their thighs and private parts with smouldering cigarettes. Additionally, Wachira Waheire was again submerged in a waterlogged cell for a further three days without food or drinking water, while Ng'ang'a Thiong'o recalls that there were cries from the adjacent rooms with men shouting and screaming at the top of their voices.

Torture in the Nyayo house basement even led to death. The most infamous case involved Peter Njenga Karanja, who was also purported to be a member of Mwakenya. Karanja passed away in February 1987 as a result of internal bleeding and open wounds sustained during two weeks of brutal torture at Nyayo House.<sup>105</sup>

From the foregoing, we can clearly see persons in positions of public trust, perpetrating inhumane acts to the very people they are supposed to be protecting, merely for personal and political considerations.

### 3.2.3 Grand Corruption by Leaders

Through grand corruption, vast amounts of taxpayers' money is lost to private interests, at the public's expense.<sup>106</sup> This part will deal with how persons in positions of public trust have been considered to have played a role in facilitating grand corruption.

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<sup>102</sup> Citizens for Justice, We lived to tell: The Nyayo House story, Friedrich Ebert Stiftung (FES), Nairobi, 10.

<sup>103</sup> Citizens for Justice, We lived to tell: The Nyayo House story, Friedrich Ebert Stiftung (FES), Nairobi, 37.

<sup>104</sup> Citizens for Justice, We lived to tell: The Nyayo House story, Friedrich Ebert Stiftung (FES), Nairobi, 33.

<sup>105</sup> Citizens for Justice, We lived to tell: The Nyayo House story, Friedrich Ebert Stiftung (FES), Nairobi, 40.

<sup>106</sup> 'Grand corruption' Transparency International, <https://www.transparency.org/en/our-priorities/grand-corruption> .

Hardly a month after being elected as president, Mwai Kibaki appointed a commission of inquiry led by Justice Bosire to look into one of the largest corruption scandals in the country, the Goldenberg Scandal, which occurred during the tenure of President Moi.<sup>107</sup> This scandal involved a company, known as Goldenberg International Limited (GIL), which after entering into a contract with the government for the export of diamond and gold, ended up defrauding the government billions of shillings.<sup>108</sup> The Commission of Inquiry then came up with a report.

Among others, the commission noted that George Saitoti and Charles Mbindyo who were the Vice-President and Minister for Finance and the Permanent secretary of Finance respectively, at the time GIL was incorporated. They granted the company sole and exclusive rights to engage in gold and jewelry export trade. Additionally, they allowed it 35% export compensation, exceeding the 20% maximum compensation which was allowed under the Local Manufactures [Export Compensation] Act, making such a decision ultra vires. The Commission also noted that almost all GIL's operations were during their tenures. However, as soon as they left the Ministry of Finance GIL's network started crumbling. The commission therefore reasonably inferred that the two supported the activities of GIL.<sup>109</sup>

President Kibaki came into power in 2002, riding on a promise to end corruption, which had plagued Kenya. However, the Anglo-Leasing scandal which was revealed in 2004 soiled his tenure. This scandal involved contracts including 2.7 billion shillings for passports for the immigration department, 4.7 billion shillings to supply and equip forensic science departments of the CID, 6 billion shillings for a new surveillance system to the police and purchase of four navy ships for 4.1 billion shillings, all awarded to companies, among them being Anglo Leasing company, which were entirely fictitious and whose main purpose was to receive the funds from the lucrative government contracts, then channel them back to those who planned the scheme.<sup>110</sup>

Many state officers were implicated. Among them were; Chris Murungaru who was the former Internal Security minister and who was also denied a visa and blacklisted by the UK for what was

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<sup>107</sup> Kenya Law, *Report of the commission of inquiry into the Goldenberg Affair*, 2005, 1-2.

<sup>108</sup> Kenya Law, *Report of the commission of inquiry into the Goldenberg Affair*, 2005, 44-91.

<sup>109</sup> Kenya Law, *Report of the commission of inquiry into the Goldenberg Affair*, 2005, 217-221.

<sup>110</sup> 'Exclusive: The Anglo Leasing truth' Nation Africa newspaper, 22 January 2006 - <https://nation.africa/kenya/news/exclusive-the-anglo-leasing-truth-511200> - on 14 February 2024.

believed to be his role in this scandal;<sup>111</sup> Sylvester Mwaliko who was the Home Affairs Permanent Secretary and who was found guilty and convicted for his role in the Anglo-Leasing scandal in 2012;<sup>112</sup> and former finance minister David Mwariria,<sup>113</sup> who later passed on.

In 2015, during the reign of president Uhuru Kenyatta, the NYS scandal was unfolded. This scandal involved fraudulent procurement payments, for goods and services not delivered, amounting to 791 million shillings.<sup>114</sup> Here, the Public Accounts Committee of the National Assembly found Mr. Peter Mangiti, who was the then Principal Secretary of the Ministry of Devolution as responsible for the loss of public funds and recommended his investigations and prosecution.<sup>115</sup> In what appeared to be a blame game, the former PS stated that Anne Waiguru, who was the Cabinet secretary of the ministry sidelined him from decision-making and had personal advisers reporting directly to her, thereby appearing to implicate her in the scandal.<sup>116</sup>

These are just some of the many grand-corruption scandals where we can see leaders playing a role in their facilitation, leading to loss of the public's money, at the expense of the public.

#### 3.2.4 Political use of violence and tribalism

This part will show how leaders have played a role in facilitating violence, among the citizenry, merely for political purposes. It will also show how leaders of successive governments have favored their tribes in the public service.

In relation to the use of political violence by political leaders, after President Moi begrudgingly agreed to allow multi-party democracy in the 1990s, his government went as far as instigating

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<sup>111</sup> 'UK bans 'corrupt' Kenyan minister' BBC News, 28 July 2005 - <http://news.bbc.co.uk/2/hi/africa/4723757.stm> - on 15 February 2024.

<sup>112</sup> 'Former PS Mwaliko convicted over Anglo Leasing Scandal' Nation Africa Newspaper, 5 September 2012 - <https://nation.africa/kenya/news/politics/former-ps-mwaliko-convicted-over-anglo-leasing-scandal-827124> - on 15 February 2024.

<sup>113</sup> 'Kenyan officials charged over Anglo Leasing Scandal' BBC World Africa, 4 March 2015 - <https://www.bbc.com/news/world-africa-31733052> - on 15 February 2024.

<sup>114</sup> Ngirachu J, 'Waiguru: I queried Sh 791m used to make 3.5km road' Nation Africa Newspaper, 29 December 2021 - <https://nation.africa/kenya/news/waiguru-i-queried-sh791m-used-to-make-3-5km-road-323274> - on 15 February 2024.

<sup>115</sup> Otieno D, 'Before you vote: The truth about money lost in the NYS scandal' Nation Africa Newspaper, 24 June 2017 - <https://nation.africa/kenya/newsplex/before-you-vote-the-truth-about-money-lost-in-the-nys-scandal-415390> - on 16 February 2024.

<sup>116</sup> Njagi J and Ngirachu J, 'Waiguru introduced changes that led to corruption, says Mangiti' Nation Africa Newspaper, 2 November 2016 - <https://nation.africa/kenya/news/waiguru-introduced-changes-that-led-to-massive-corruption/1056-3439182-15c62ee/index.html> - on 16 February 2024.

ethnic violence so as to demonstrate that the multi-party system was unsuitable for Kenya. To crush and eliminate the opposition, ethnic cleansing was introduced and implemented in "KANU-only zones."<sup>117</sup> To put it briefly, violence became a strategy for gaining political support, winning elections and securing political power.

On violence in Naivasha perpetrated by the outlawed Mungiki sect, the report of the Commission of Inquiry into the Post Election Violence puts forward that the Commission had evidence that prominent government and political figures in Nairobi, including high-ranking government officials may have actively participated in the planning and preparation of the attacks. This is due to the fact that key to the preparation and execution of such violence, were two meetings held in State House and Nairobi Safari Club in the run-up to the election, with the participation of senior members of the Government and other well-known Kikuyu figures.<sup>118</sup>

From the foregoing, leaders and persons in positions of public trust can be seen playing an active role in the facilitation and instigation of violence among the citizenry, rather than being the voice of reason and peace.

On tribalism and its perpetuation through leadership in Kenya, it is stated that from the very time Kenya got independence, meritocracy as an objective standard for appointment and promotion in the public service began to be abused. Here, with the presidency of Jomo Kenyatta, members from the Kikuyu community were primarily the first Africans that were appointed into the key positions that were left vacant by the departing senior white colonial state officers.<sup>119</sup>

After President Kenyatta's death, Kalenjinization of Kenya's civil service under President Moi began. Under his leadership, individuals from the Kalenjin community headed key state parastatals such as Agricultural Development Corporation (ADC), Kenya Commercial Bank (KCB), the Central Bank of Kenya (CBK), Kenya Posts and Telecommunication (KPT), Kenya Industrial

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<sup>117</sup> Adar K and Munyae I, 'Human Rights Abuse under Daniel Moi, 1978-2001' *Africa Studies Quarterly*, 2001, 8 - <https://asq.africa.ufl.edu/wp-content/uploads/sites/168/Adar-Munyae-Vol-5-Issue-1.pdf> - on 7 January 2024.

<sup>118</sup> Kenya Law, Report of the commission of inquiry into the Post Election Violence, 2005, 121-122.

<sup>119</sup> Mbai O, 'Public service accountability and governance in Kenya since independence' *African Journal on Political Science*, 2003, 119-120 - <http://erepository.uonbi.ac.ke/bitstream/handle/11295/38889/Fulltext?sequence=1&isAllowed=y> - On 9 January, 2024.

Estates (KIE), National Cereals and Produce Board (NCPB) and Kenya Grain Growers Cooperative Union (KGGCU).<sup>120</sup>

On their part, Joseph Kwaka and Thurania Mwenda assert that Kenya's third president, Mwai Kibaki not only allowed the practice of filling prestigious public office positions with members of his ethnic community (the Kikuyu) at the detriment of others, but also brought it to a peak during his administration. They further claim that the findings of the first audit of ethnic composition of the civil service which was published in April 2011, revealed that the Kikuyu constituted the largest and most prevalent ethnic group in all government departments and ministries.<sup>121</sup>

From the foregoing, it is evident that leaders of successive governments have engaged in favoritism, on the basis of tribes, in the public service.

### 3.2.5 Co-option and intimidation of independent offices and officers

This part will deal with compulsion or attempts of compulsion of persons occupying independent offices of public trust and having a primary duty to the citizenry, to act in the interests of persons in the government, against their will.

In 1986 and 1988, Parliament enacted Act No.14 and Act No.4 respectively, which provided for removal of security of tenure of the Attorney General, the Controller of Budget and Auditor General, judges of the High Court and judges of the Court of Appeal.<sup>122</sup> The Acts, by essentially removing the guarantee of legal protection from removal from office, fettered the independence of these offices. In relation to the Judiciary, British judges continued to serve Kenya in the 1980s as part of the British overseas development aid. The judges were seconded on contracts, the renewal of which was at the discretion of the Kenya government. Eugene Cotran, a former expatriate judge in Kenya, once stated that in cases in which the president had a direct stake, the government put pressure on the foreign judges to make rulings in favor of the state. Additionally, two expatriate judges, Justices Derek Schofield and Patrick O'Connor, resigned over what they described as a

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<sup>120</sup> Adar K and Munyae I, 'Human Rights Abuse under Daniel Moi, 1978-2001' *Africa Studies Quarterly*, 2001, 8 - <https://asq.africa.ufl.edu/wp-content/uploads/sites/168/Adar-Munyae-Vol-5-Issue-1.pdf> - on 7th January 2024.

<sup>121</sup> Kwaka J and Mutunga I, 'Contemporary Kenya and its Leadership' in Joseph Kwaka (ed), Okoth Okombo (ed), Barrack Muluka (ed) & Betty Sungura-Nyabuto (ed) *Challenging the Rulers: A leadership model for good governance*, East African Publishers, Kenya, 2011, 10.

<sup>122</sup> Adar K and Munyae I, 'Human Rights Abuse under Daniel Moi, 1978-2001' *Africa Studies Quarterly*, 2001, 4 - <https://asq.africa.ufl.edu/wp-content/uploads/sites/168/Adar-Munyae-Vol-5-Issue-1.pdf> - on 7 January 2024.

judicial system "blatantly contravened by those who are supposed to be its supreme guardians".<sup>123</sup> The judicial system was therefore at the behest of the government and could not effectively protect human rights, especially at a period where grave human rights violations were being perpetrated, as seen in the foregoing.

In his article on abuse of power and corruption in Kenya, Migai Aketch posits that during Presidents Moi and Kibaki eras, practical lack of security of tenure in the Public Service also meant that public servants frequently had to do the bidding of their seniors, government ministers, and the President. Because the President and his ministers had the power to dismiss or suspend public servants, they were able to intimidate public servants. He gives the example of Mrs. Jacinta Mwatela to exemplify this.

Mrs. Mwatela was a former Deputy Governor at the Central Bank of Kenya and the chair of the Central Bank's tender committee who was regarded to be an exceptional public servant of uncommon honesty within a highly corrupt system. In 2008 months before her resignation, she declined to sanction a tender for the printing of new currency because she believed that it violated the Public Procurement and Disposal Act of 2005. Immediately after this, despite her having a four-year contract to serve as the deputy governor of CBK, running till May 12 2009, the president removed her from the Central Bank by appointing her as the permanent secretary of the newly created Ministry of Development of Northern Kenya.<sup>124</sup> Mrs. Mwatela turned down the appointment by the President and resigned from public service.

From the foregoing, it is evident that there have been attempts, to cow persons with a primary duty to the citizenry, to act in favour of interests of other persons in government, which might not have been in concordance with the public interest.

### **3.3 What chapter six of the constitution has been interpreted to envision by courts, reports and scholars**

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<sup>123</sup> Adar K and Munayae I, 'Human Rights Abuse under Daniel Moi, 1978-2001' *Africa Studies Quarterly*, 2001, 5-  
<https://asq.africa.ufl.edu/wp-content/uploads/sites/168/Adar-Munayae-Vol-5-Issue-1.pdf> - on 7 January 2024.

<sup>124</sup> Aketch M, 'Abuse of power and corruption in Kenya: Will the new constitution enhance government accountability' *Indiana Journal of Global Legal Studies*, 2011, 363-364 -  
<https://www.jstor.org/stable/10.2979/indjglolegstu.18.1.341?seq=23> - on 9 January 2024.

The Constitution of Kenya (2010) embodies the long awaited and strong desire for change among the people of Kenya. With Chapter six, the framers of the constitution aimed to end the vicious cycle of Kenyan leadership characterized by mismanagement, misappropriation, nepotism and tribalism, abuse of power and impunity by outlining the expected qualities of leadership under the new constitutional dispensation. This part will therefore deal with how courts, reports and scholars have interpreted what chapter six envisions so as to establish what the intention behind the chapter was.

The Final Report of the Constitution of Kenya Review Commission termed leadership as the backbone of the success of any undertaking, be it at village level, community project, business, a local authority or even the country, and, at its very best, determines the continued support of the people, national unity, growth and development of a country. Linking it to integrity, it stated that integrity plays an important role in keeping leadership centered on the best interests of the people and desired by the people. Here, with leaders being faced with moral and ethical dilemmas on a daily basis, integrity, which essentially entails leaders behaving in an honest, ethical, and professional manner at all times, and promoting and advocating for the highest standards of personal, professional and institutional behavior, is crucial in their tenure.<sup>125</sup>

Additionally, while recognizing that the previous constitution did not have provisions on Leadership and Integrity, the report stated that the people of Kenya wanted mechanisms to ensure that if leaders stepped out of their bounds, there would be consequences to be met. The Kenyan citizenry therefore wanted leaders to be accountable for their actions. As noted in the report, this accountability will be determined by adherence to a code of conduct that the Kenyan people want fully incorporated in the new Constitution.<sup>126</sup> From the inception therefore, it is evident that leadership and integrity have been envisioned to go hand in hand.

On this basis, chapter six of the Kenyan constitution was encoded. Here, article 73 provides that the authority granted to state officers is vested in them as trustees for the public, meaning that all authority assigned to them should be used to serve the people, rather than be used as the power to rule them. Moreover, state officers must exercise authority in accordance with principles of leadership and transparency, including, personal integrity, competence, objectivity, impartiality,

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<sup>125</sup> Kenya Law, *Final report of the Constitution of Kenya Review Commission*, 2005, 221.

<sup>126</sup> Kenya Law, *Final report of the Constitution of Kenya Review Commission*, 2005, 222-223.

accountability, selflessness among others.<sup>127</sup> Article 74 provides on the oath of office of state officers,<sup>128</sup> while article 75 provides for how state officers should carry out their duties in all capacities, requiring that state officers should conduct themselves in a manner that protects the public interest thereby avoiding conflict of interest in their personal and public life.<sup>129</sup> Article 76 and 77 provide on restrictions on finances and other activities of state officers. The former provides on restrictions on personal gifts, donations and offshore bank accounts,<sup>130</sup> while the latter provides for restrictions on gainful employment outside public office.<sup>131</sup> Article 78 provides on citizenship and leadership,<sup>132</sup> while article 79 and 80 provide on legislation to establish the Ethics and Anti-Corruption Commission(EACC),<sup>133</sup> and legislation on leadership and integrity,<sup>134</sup> respectively.

Flowing from this, PLO Lumumba points out that leadership is service for society's benefit. Persons who aspire to be in leadership positions must therefore recognize and understand that they are trustees, chosen to serve under the terms of a covenant.<sup>135</sup> The same is expressly reiterated in Chapter six, as seen in the foregoing and as noted by Herman Omiti, as the chapter makes it clear that the power that public officers exercise is a public trust that is to be exercised to serve the people.<sup>136</sup> The people, therefore, have an onus to demand from their leaders the highest moral standards, on the basis of the concept of sovereignty of the people.<sup>137</sup>

On this backdrop, the Honourable court in *Trusted Society of Human Rights Alliance v Attorney General and 2 others*, put forward in relation to Chapter six that, "Kenyans were very clear with their intentions when they entrenched chapter six in the constitution. They were singularly desirous in cleaning up our politics and governance structures by insisting on high standards of personal integrity among those seeking to govern us or hold state office. The people of Kenya did not intend

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<sup>127</sup> Article 73, *Constitution of Kenya* (2010).

<sup>128</sup> Article 74, *Constitution of Kenya* (2010).

<sup>129</sup> Article 75, *Constitution of Kenya* (2010).

<sup>130</sup> Article 76, *Constitution of Kenya* (2010).

<sup>131</sup> Article 77, *Constitution of Kenya* (2010).

<sup>132</sup> Article 78, *Constitution of Kenya* (2010).

<sup>133</sup> Article 79, *Constitution of Kenya* (2010).

<sup>134</sup> Article 80, *Constitution of Kenya* (2010).

<sup>135</sup> Kwaka J and Mutunga I, 'Contemporary Kenya and its Leadership' ,42.

<sup>136</sup> Omiti H, 'Inadequacies in the anti-corruption agenda and the quest for good governance under the new constitutional dispensation: The role of a citizen' Social Science Research Network (SSRN), 6.

<sup>137</sup> Aluku S, 'The law and practice of leadership and integrity in Kenya: A disquisition of the post 2010 constitutional dispensation, University of South Africa, 2021, 9 - [https://uir.unisa.ac.za/bitstream/handle/10500/28692/dissertation\\_aluku\\_sw.pdf?sequence=1&isAllowed=y](https://uir.unisa.ac.za/bitstream/handle/10500/28692/dissertation_aluku_sw.pdf?sequence=1&isAllowed=y) – on 10 January 2024.

that these provisions on integrity be merely suggestions, superfluous or ornamental, they did not intend to make these provisions as lofty aspirations. In short, the people of Kenya intended that the provisions on integrity of our leaders and public officers will be enforced and implemented.” From this, it is clear that Chapter six views leadership as emanating from the people, hence positions of leadership are positions of public trust and persons occupying those positions are public trustees, on the basis of the concept of sovereignty of the people.

It has also been stated that chapter six of the constitution introduces the notion of entrenched ethics, where it is expected that ethics shapes the framework of governance and becomes intrinsic in considering the choice of leaders in both elective and appointive public offices as well as institutional integrity and fidelity to due process.<sup>138</sup> Here, it is envisaged in the new dispensation that all Kenyans, particularly the leaders, will be patriots who will be led by certain ideals.<sup>139</sup> In other words, the constitution demands that those aspiring for state office should be like Caesar’s wife: they must be beyond reproach.<sup>140</sup> This is because leaders, by virtue of being trustees and holders and guardians of public trust, are considered to be the nerve centre of the Republic who carry the highest level of responsibility in the management of state affairs. As stated by the Honourable court in *Republic v Ethics and Anti-Corruption Commission Ex Parte Nairobi City County Assembly & 13 Others [2019] eKLR*, “Under the Constitution Kenyans decreed that those whose conduct does not bring honor, public confidence and integrity have no place in the management of public affairs. This is to ensure that those entrusted with the management of public affairs and resources are persons of good character, probity and uprightness.” The Constitution therefore engenders value-based leadership.

It is evident that the constitution, under the auspices of the doctrine of sovereignty of the people, views leadership as a public trust and leaders as public trustees, and calls for value-based leaders and value-based leadership, to ensure that integrity is integrated in leadership. In doing so, the

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<sup>138</sup> Aluku S, ‘The law and practice of leadership and integrity in Kenya: A disquisition of the post 2010 constitutional dispensation, University of South Africa, 2021, 9 - [https://uir.unisa.ac.za/bitstream/handle/10500/28692/dissertation\\_aluku\\_sw.pdf?sequence=1&isAllowed=y](https://uir.unisa.ac.za/bitstream/handle/10500/28692/dissertation_aluku_sw.pdf?sequence=1&isAllowed=y) – on 10 January 2024.

<sup>139</sup> Kwaka J and Mutunga I, ‘Contemporary Kenya and its Leadership’, 48.

<sup>140</sup> Sebiyaga V, ‘When should courts bar a person from being nominated to contest or assume state office?’ Academia, [https://www.academia.edu/34761763/LEADERSHIP\\_AND\\_INTEGRITY\\_WHEN\\_SHOULD\\_COURTS\\_BARR\\_A\\_PERSON\\_FROM\\_BEING\\_NOMINATED\\_TO\\_CONTEST\\_OR\\_ASSUME\\_STATE\\_OFFICE](https://www.academia.edu/34761763/LEADERSHIP_AND_INTEGRITY_WHEN_SHOULD_COURTS_BARR_A_PERSON_FROM_BEING_NOMINATED_TO_CONTEST_OR_ASSUME_STATE_OFFICE) - on 11 January 2024.

decision-making and decision implementation processes (governance) will be done with integrity, that is, in accordance to rational and moral values, and ultimately, good governance will be achieved.

In conclusion, by the constitution calling for value-based leaders and leadership through integrity so as to attain good governance, it views integrity as a super-virtue, as explicated in the preceding chapter. By this, it adopts the most objective, reliable and comprehensive way in which this super-virtue quality of integrity is seen, which is the adopted objectivist approach, where integrity comprises an initial commitment to rational values or the intrinsic sense of right or wrong and resultant moral values.

### **3.4 Conclusion**

This chapter set out to show the goals of the integrity chapter in the constitution. By looking into the egregious abdication from rational and moral principles, that is, serious lack of integrity in leadership, in post independent Kenya till the promulgation of the constitution, the chapter has shown that indeed, history informed the making of the constitution and the integrity chapter. The chapter has also looked into how chapter six has been envisioned to mean and in doing so, established the goals of the chapter. The next chapter will deal with central issues that have arisen in implementation of the chapter and attainment of its goals.



## **4.0 CENTRAL ISSUES ARISING IN THE IMPLEMENTATION OF CHAPTER SIX**

### **4.1 Introduction**

This chapter will look into key issues that have arisen in the attainment of the goals of chapter six. The first part of the chapter will deal with whether there are different standards for elective offices vis-à-vis appointive offices. Further, on the basis that it appears that there is no proper guideline upon which the chapter on leadership and integrity may be implemented, the second part of the chapter will then look into the various thresholds that have been proposed so as to effectuate chapter six.

### **4.2 Whether there are different standards for state elective vis a vis appointive office**

Article 73(2)(a) of the Constitution provides that the guiding principles of leadership and integrity include selection on the basis of personal integrity, competence and suitability, or election in free and fair elections. It is by virtue of this provision that it has been proposed that the standards for elective and appointive offices differ.

Elections are the fundamental political events in a democratic society enabling many people to become directly involved in politics.<sup>141</sup> Through this, elections promote direct participation of the citizenry in democracy and governance, enable popular sovereignty which is important in promoting the legitimacy of a government, and give voice and control of governance to ordinary citizens thereby preventing elevation of privileged interests over the public interest.<sup>142</sup> Elections are therefore a special kind of decision-making process.

Against this background, in the case of *Luka Lubwayo and Another v Gerald Otieno Kajwang and Another*,<sup>143</sup> the Honorable Court, presided by Lenaola J, put forward that article 73 of the Constitution anticipates two situations. These situations are; with regards to an appointive position where the criterion is personal integrity, competence and suitability and with regards to an elective position where the criterion is election in a free and fair election. That being the case, in elective

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<sup>141</sup> Robbins J, 'Democracy and Elections' 21 *The Fletcher Forum of World Affairs* 1,1997, 1.

<sup>142</sup> Bulmer E, 'Direct Democracy' Institute For Democracy and Electors Assistance, 2014 - <https://www.idea.int/sites/default/files/publications/direct-democracy-primer.pdf> - on 20 February 2024.

<sup>143</sup> *Luka Lubwayo and Another v Gerald Kajwang and Another* (2013), eKRL.

positions, it is the electors who determine those to elect based on their assessment of the candidates including on their honesty, rectitude, uprightness and scrupulousness. To further explicate this point, the Honorable Judge put forward that it is for this reason that article 38(2) posits that every citizen has the right to free, fair and regular elections based on universal suffrage and *the free expression of the will of the electors* for any elective public body or office or any office of any political party.

Similarly, Golo Bokao, in his article on political integrity as irrational and hypocritical values firstly recognizes that article 38(3)(c) of the Kenyan constitution, provides that every adult citizen has the right, without unreasonable restrictions, to be a candidate for public office and if elected, to hold office. He therefore notes that there are reasonable restrictions to these rights. Among those reasonable restrictions, he mentions Chapter seven of the constitution on the electoral system and process and chapter eight on the legislature. However, in relation to chapter six, he posits that the integrity test therein is a new concept. That being the case, barring candidates from running for elective positions on account of Chapter Six, will limit the political rights of the candidate vying for public office and the right of citizens to freely elect representatives into office.<sup>144</sup>

On the other side of the coin, it has also been argued that chapter article 73(2)(a) does not envision different standards in relation to elective vis a vis appointive office. Here, all public officers, whether elected or appointed must have personal integrity, be competent and suitable to hold public positions.<sup>145</sup> This means that the standard of suitability, competence and personal integrity enunciated in article 73(2)(a) should apply indiscriminately to both appointive and elective office.

In the same light, Juliet Okoth enunciates that the effect of adopting different standards in relation to elective and appointive offices is that politicians will be excluded from integrity provisions in the constitution. Additionally, if such politicians are insulated from integrity provisions in the constitution, yet the constitution in itself requires them to participate in the selection and appointment of persons seeking appointive offices, then, how can they uphold integrity standards, that them themselves are not subject to? It therefore appears that the former interpretation makes

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<sup>144</sup> Bokao G, 'Political integrity as irrational and hypocritical values: Do the high standards of Chapter Six of the Constitution of Kenya breed a dangerous hypocrisy in the political class?' *Kabarak Law Journal*, 67 - <https://journals.kabarak.ac.ke/index.php/klr/article/view/240/213> - on 17 January 2024.

<sup>145</sup> Nyotah P, 'Public participation in the selection of public officers: A critical analysis of mechanisms in the Leadership and Integrity Act, University of Nairobi, Nairobi, 2012, 1.

a mockery of the integrity chapter, thereby beating its object and purpose. She concludes by putting forward that the theme of good governance runs throughout the constitution and is underpinned by the integrity chapter.<sup>146</sup>

In addition to this, Edward Paranta also notes that the former interpretation insulates politicians from integrity requirements thereby beating the essence and purpose of chapter six. To him, by virtue of the fact that article 260 of the constitution prescribes that persons occupying both state and appointive office are state officers means that integrity requirements enunciated in chapter six apply equally to both offices. To this, he adds that article 259 of the Constitution provides that the Constitution shall be interpreted in a manner that; promotes its purposes, values and principles; advances the rule of law and fundamental rights permits development of the law as well as in a manner that promotes good governance.<sup>147</sup>

Additionally, he cites the case of *Center for Rights Education and Awareness & Another v John Harun Mwau & 6 others [2012] eKLR*, where the Court of Appeal laid down principles to be taken into consideration in interpreting the Constitution. Here, the constitution should be interpreted as provided for by article 259, the spirit and tenor of the Constitution must preside and permeate the process of judicial interpretation, it must be interpreted broadly, liberally and purposively and the entire Constitution has to be read as an integrated whole and no one particular provision destroying the other but each sustaining each other. Taking into consideration the aforementioned rules of constitutional interpretation means that article 73(2)(a) will be interpreted in consonance with the goals of chapter six and it will also be interpreted in the context of other articles where good governance and integrity is encoded as a major theme, for example, article 10 where integrity and good governance have been enumerated as national values and principles of governance.<sup>148</sup>

#### **4.3 Proposed thresholds to implement chapter six**

From the introduction, it appears that there is a variance in regards to the threshold or test to be applied on questions of integrity, and therefore, to implement chapter six. This part will therefore look into various thresholds or standards that have been put forward.

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<sup>146</sup> Okoth J, 'The leadership and integrity chapter of the 2010 Constitution of Kenya: The elusive threshold' 292.

<sup>147</sup> Paranta E, 'Leadership and integrity, a new dawn or false promise: Analysis of the Court Decisions on Chapter Six, Seven Years after Promulgation of Kenya's New Constitution' Social Science Research Network (SSRN), 2017, 8.

<sup>148</sup> *Center for Rights Education and Awareness & Another v John Harun Mwau & 6 others [2012], eKLR.*

#### 4.3.1 The unresolved questions approach

In *Trusted Society of Human Rights Alliance v The Attorney General and Others*,<sup>149</sup> and *Luka Lubwayo and Another v Gerald Otieno Kajwang and Another*, the courts put forward that a person is said to lack integrity when there are serious unresolved questions about his honesty, financial probity, scrupulousness, fairness, reputation, soundness of his moral judgment or his commitment to the national values enumerated in the Constitution. Here, integrity being taken by the courts to mean soundness of moral principle or character presupposes that there is no requirement that an impugned behaviour rises to the threshold of criminality in adjudging whether a person has integrity or not. It is in fact enough if there are sufficient serious, plausible allegations which raise substantial unresolved questions about one's integrity. This therefore means that the fact that a person has not been convicted of a criminal offence is not relevant in determining whether they lack integrity or not. This is the unresolved questions approach.

Juliet Okoth postulates that this is a clearly high threshold of integrity. In approval of this, she asserts that good governance, integrity, transparency and accountability are among national values and principles of governance encapsulated in article 10 of the Kenyan constitution. Additionally, chapter six of the constitution mandates a state officer to exercise authority in a manner that is consistent with the purposes and objects of the Constitution, demonstrates respect for the people, brings honour to the nation and dignity to the office and promotes public confidence in the integrity of the office. That being the case, integrity must at all times inform all decisions relating to the governance of the people of Kenya, and is one of the key ideals that we as a nation aspire for. To her therefore, an ideal conceptualization of a person holding state office, is one of perfection, which would require the adoption of a high standard of integrity that ensures that only the best persons are entrusted with management of public affairs. The unresolved questions standard is therefore the most persuasive and appears to be the best possible constitutional threshold of integrity.<sup>150</sup>

Edward Paranta uses the concept of institutional integrity vis a vis personal integrity to support this approach. Here, institutional integrity is key in inspiring public trust in a given institution's practices, operations and policies. That being the case, where one's personal integrity is put to question, there is a high risk that his appointment or election to a public office runs the risk of

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<sup>149</sup> *Trusted Society of Human Rights Alliance v Attorney General and 2 Others* (2012), eKLR.

<sup>150</sup> Okoth J, 'The leadership and integrity chapter of the 2010 Constitution of Kenya: The elusive threshold', 288.

discrediting the public's trust in the said office or institution. In other words, questionable personal integrity of a state officer lowers the institutional integrity of the office one was appointed or elected to.

He proceeds to cite the Kenyan case of *Trusted Society of Human Rights Alliance v Attorney General & 2 others*, the South African case of *Democratic Alliance v The President of the RSA & others*,<sup>151</sup> and the Indian case of *Centre for PIL and Another v Union of India and Another*,<sup>152</sup> where the determination was that the appointment or election of a person with unresolved integrity issues, runs the risk of interfering with credibility, public trust and confidence of the institution to which the person has been appointed or elected to. The rationale for this was that the institutional integrity of an institution is a question of public interest that is greater than an individual. Therefore, the independence and impartiality of the institution must be preserved for the greater interest of the rule of law.<sup>153</sup> It then appears that here, institutional integrity of state office will be preserved if the unresolved questions test is applied.

Herman Omiti claims that chapter six makes it clear that the people who should occupy state offices must be individuals of integrity, meaning that, before any person occupies such positions, they must first prove that they are men and women of high integrity and must remain so while in office. He then notes that the challenge in the implementation of chapter six is to determine what exactly amount to integrity and at what point can a person be said to have acted without integrity. However, he adopts the unresolved questions test as postulated in the *Trusted Society of Human Rights Alliance case*, as what the requirement of integrity under chapter six of the constitution means.<sup>154</sup>

Quite similar to this test is the public perception approach that has been put forward by Transparency International. Herein, provisions on leadership and integrity in public office are questions of perception and thus should not be held to the same standards as that of a criminal trial. Therefore, public opinion on whether or not a state officer is guilty of corruption is to be held in

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<sup>151</sup> *Democratic Alliance v President of RSA and Others* (2011), South Africa Constitutional Court.

<sup>152</sup> *Center for Public Interest Litigation v Union of India and Another* (2012), Delhi High Court.

<sup>153</sup> Paranta E, 'Leadership and integrity, a new dawn or false promise: Analysis of the Court Decisions on Chapter Six, Seven Years after Promulgation of Kenya's New Constitution' Social Science Research Network (SSRN), 2017, 15-17.

<sup>154</sup> Omiti H, 'Inadequacies in the anti-corruption agenda and the quest for good governance under the new constitutional dispensation: The role of a citizen' Social Science Research Network (SSRN), 7-9.

high regard as this affects confidence in their offices.<sup>155</sup> As with the aforementioned unresolved questions approach, this notion of public perception overrides the question of guilt or innocence when it comes to matters of temporary removal from office.

India is used as a paragon, with regards to this approach. Here, in *R. Ravichandran vs The Additional Commissioner of Police*, involving suspension of a police officer on account of charges of receiving a bribe leading to the suspension of the police officer, the court put forward that the objective consideration of keeping away a government servant alleged charge of corruption from discharging his duties is arrived at by the government, and the Court should not interfere with the decision of the said authorities. Herein, it is the public interest which has to be given due importance in such matters and there is no question of considering private interests of the person.<sup>156</sup> Additionally, in *The Centre for PIL and Another v Union of India* where an appointee to India's Central Vigilance Commission (CVC) had unresolved issues pertaining to corruption allegations, the court held that personal integrity has a co-relationship with institutional integrity and when institutional integrity is in question, the touchstone should be public interest which has got to be taken into consideration by the High Powered Committee (HPC) and in such cases the HPC may not insist upon proof.<sup>157</sup> It is therefore evident that public perception herein plays an important role with regards to determining whether a person possesses or lacks integrity for purposes of public office.

Criticisms that may be put forward with regards to this standard is that it may be too vague thereby breeding uncertainty and subjectivity. Here, the questions that may be put forward are; What is a serious unresolved question? or; On what grounds is one disqualified from state office on the basis of public perception? Failure to answer these questions means that the grounds of disqualification on the basis of this approach will not be known and on the other side of the coin, any ground may be used to disqualify persons from state office based on this approach.

#### 4.3.2 The existing convictions approach

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<sup>155</sup> Transparency International, *The Verdict: An analysis of interpretation of chapter six by Kenyan courts*, 2019, 45-46.

<sup>156</sup> *R. Ravichandran vs The Additional Commissioner of Police* (2010), Madras High Court.

<sup>157</sup> *Centre for PIL and Another v Union of India* (2011), Delhi High Court.

In *International Centre for Policy and Conflict and 5 Others v The Hon Attorney General and 4 Others*,<sup>158</sup> relating to the disqualification of a presidential and deputy presidential candidate on the basis of confirmation of charges at the ICC, the court acknowledged the unresolved questions test as put forward in the *Trusted Society of Human Rights Alliance case*. However, in response to this, the court enunciated that the Bill of Rights is a cornerstone of the Kenyan constitution. Therein lies the right to a fair hearing under article 50 and the right to be presumed innocent until proven guilty under article 50 (2)(a). Under article 25, these rights cannot be limited or derogated from. That being the case, disqualification of the two candidates on the basis of confirmation of charges, rather than their conviction of a criminal offence would be inimical to their right to be presumed innocent and their right to a fair trial. In other words, disqualification of a candidate on the basis of integrity should extend once such a candidate has been convicted of a crime. This therefore means that the standard of proof when it comes to chapter six therefore is that of a criminal trial, beyond reasonable doubt.

This approach has been widely criticized. Juliet Okoth for example, sets forth that the process of determining the guilt or innocence of a person should be distinguished from the process of a person occupying a leadership position. In the latter process, one is being entrusted with management of affairs in relation to public interest, hence national values, the object for good governance in the constitution and the goals of chapter six should override individual rights. The right to be presumed innocent should only be extended to the particular circumstance of determining guilt or innocence of a person.<sup>159</sup>

In addition to this, she posits that a declaration that one is not fit to hold public office does not equate to guilt of such a person. Herein, the person is required to temporarily put on hold his desire to hold office until questions of his suitability and probity are answered. She then concludes by putting forward that such an approach makes the integrity chapter redundant, thereby being inimical to the meaning and purpose of the chapter.<sup>160</sup> Similarly, Linda Musumba posits that

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<sup>158</sup> *International Center for Policy and Conflict and 5 others v The Attorney General and 4 Others* (2013), Eklr.

<sup>159</sup> Okoth J, 'The leadership and integrity chapter of the 2010 Constitution of Kenya: The elusive threshold', 289.

<sup>160</sup> Okoth J, 'The leadership and integrity chapter of the 2010 Constitution of Kenya: The elusive threshold', 288.

chapter six of the constitution on integrity, should not be based on the strict evidentiary requirements of criminal trials as such an approach negates the very essence of the chapter.<sup>161</sup>

It has also been stated that this approach, having an effect of placing the bill of rights as having preeminence over chapter six is wrong. This is because, as in the *Mugambi Imanyara & another v Attorney General & 5 others* case, it was the holding of the court that there is no constitutional clause superior or inferior to another but only complementary to each other. Hence, as a rule of constitutional construction and under the rule of harmony in article 259 of the constitution, provisions of the Constitution are not to be considered or construed as segregated from each other but should all be interpreted as a whole to effectuate the greater purpose of the instrument.<sup>162</sup> That being the case, while the bill of rights is indeed the central nerve of any proper functioning democracy worldwide and Kenya is no exception, enforcement of chapter six of the Kenyan constitution is equally important. It is his opinion that courts should refrain from such interpretations whose effect renders integrity provisions repugnant to the letter and spirit of the Constitution.<sup>163</sup> On their part, Transparency International,<sup>164</sup> and ICJ Kenya,<sup>165</sup> enunciate that this approach, imposing a high evidence-based threshold in relation to integrity is too stringent and limits the purpose and object of the constitution.

#### 4.3.3 The intensely fact-based inquiry test

After his appointment was revoked in the *Trusted Society of Human Rights Alliance case* at the High Court and on the basis of the unresolved questions test, Mumo Matemu, the aggrieved party, appealed to the Court of Appeal. In relation to the allegations levelled against the appellant, the court highlighted that the High Court enunciated that they were not in a position to make any findings on whether the allegations were proved or not and that such proof will have to wait for

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<sup>161</sup> Musumba L, 'The case for comprehensive scenario building as a means for pre-testing the articles of a proposed constitution to ensure its viability post promulgation: A case study of Kenya' University of the Western Cape, 2013, 13 - [https://dullahomarinstitute.org.za/constitution-making-in-africa-conference/constitution-building-in-africa-conference-papers/Linda%20Musumba%20-%20Paper%20-%20SA%20Conference%20-%202002.09.2013\\_2.pdf](https://dullahomarinstitute.org.za/constitution-making-in-africa-conference/constitution-building-in-africa-conference-papers/Linda%20Musumba%20-%20Paper%20-%20SA%20Conference%20-%202002.09.2013_2.pdf) – on 20 January 2024.

<sup>162</sup> *Mugambi Imanyara and Another v Attorney General and 5 others* (2017), eKLR.

<sup>163</sup> Paranta E, 'Leadership and integrity, a new dawn or false promise: Analysis of the Court Decisions on Chapter Six, Seven Years after Promulgation of Kenya's New Constitution' *Social Science Research Network (SSRN)*, 2017, 12-13.

<sup>164</sup> Transparency International, *The Verdict: An analysis of interpretation of chapter six by Kenyan courts*, 2019, 38.

<sup>165</sup> <https://icj-kenya.org/news/judicial-interpretation-and-handling-of-chapter-six-leadership-and-integrity-in-public-office/> on 10 January 2024.

appropriate legal proceedings for that purpose. However, at the very moment, the allegations appeared serious enough for the court to make a finding of the unsuitability of the appellant to hold state office.

Nevertheless, in this circumstance, the court stated that a determination of unsuitability to hold public office is a factual issue that depends on evaluation of material evidence. Herein, courts should undertake an intensely fact-based inquiry, with a heightened standard of proof, above the normal balance of probabilities in constitutional cases. Therefore, a decision that has the effect of labelling a person as unsuitable to hold public office must be based on cogent and conclusive evidence, involving an intensely fact-based inquiry, dependent on evaluation of material evidence. Thereafter, the court went ahead and considered each and every allegation levelled against the appellant. After examining the allegations and the evidence tendered thereto, the court concluded that the evidence was not probative of any claims and later reversed the decision of the High Court. In response to the High Court putting forward that it was not in position to make a finding of proof of the allegations, as seen in the previous paragraph, the court stated that was the court itself noting the evidentiary shortcomings of the proof of allegations.<sup>166</sup>

Essentially, what the court is saying here is that in determining the suitability of a person to hold public office, courts should firstly evaluate material evidence tendered meaning that such a determination should be done on a case-by-case basis. Secondly and in relation to the intensely fact-based enquiry, the court must intrusively and deeply look at the facts and the evidence tendered akin to a trial court. It is on this basis that the court stated that only cogent and conclusive evidence should lead to the determination of unsuitability to hold state office. Lastly, such evidence must be proving the allegations on a heightened standard, higher than the balance of probabilities approach, but lower than the reasonable doubt standard.

#### **4.4 Conclusion**

This chapter sought to look into central issues that have arisen in the attainment of chapter six goals. It has looked into the question of standards in appointive and elective offices and the various thresholds of integrity that have been proposed to in the attainment of the goals of the chapter. In the next chapter, the author will give his opinion with regards to the two issues looked into herein.

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<sup>166</sup> *Mumo Matemu v Trusted Society of Human Rights Alliance and 5 others* (2013), eKLR.

## **5.0 PROPOSALS FOR ATTAINMENT OF GOALS OF CHAPTER SIX**

### **5.1 Introduction**

The previous chapter dealt with key issues arising in attainment of goals of chapter six. In this chapter, the author will give his opinion as to what is the best way to attain the goals of chapter six, in relation to the issues that have been pointed out.

### **5.2 On whether there should be different standards for elective and appointive offices**

While the author acknowledges that elections are the centerpiece of democracy as put forward in the preceding chapter, it is his position that article 73(2)(a) of the constitution should be interpreted to envision one high standard for elective and appointive offices, thereby agreeing with Juliet Okoth and Edward Paranta.

This discourse firstly showed by integrity ensuring that leadership remains focused on the interests of the people, it promotes the concept of public trust which mandates that state office should be used for the benefit of the public and which also undergirds leadership as a concept. This discourse has also shown the importances of integrity in leadership, which include; imbuing of follower trust by the very fact that integrity gives the sense of reliability and consistency in a person, enabling self-knowledge and self-management which are precursors to leadership and good governance, where decisions will be made and implemented in accordance to rational and moral values.

Furthermore, this disquisition has shown a history of lack of integrity, leading to bad governance constituting grand corruption, human rights abuses, tribalism and use of political violence, among others perpetuated leaders in both appointive and elective offices. In doing so, this discourse has made it evident that by Chapter six calling for value-based leaders and value-based leadership, in an effort to attain good governance, the Constitution of Kenya 2010 embodies the long awaited and strong desire for change in leadership among the people of Kenya. Therefore, in as much as elections are important in a democracy, the possession of integrity of those who are elected is equally important.

Moreover, as noted by Edward Paranta, article 260 of the constitution envisions state officers as those occupying both elective and appointive offices. This therefore means that even though elected and appointed state officers may have gotten their seats in different ways, at the end of the

day, they have substantively similar obligations generally relating to policy work for the people of Kenya and hence the duty to carry out their roles impartially, independently, efficiently, honestly, transparently, truthfully and in a way that is in the best interest of the people of Kenya. That being the case, an interpretation of article 73(2)(a) to envision differing standards for elective and appointive offices makes a mockery of and beats the purpose of chapter six.

To add insult into injury, and as noted by Juliet Okoth, such elected politicians are in most occasions involved in the selection and appointment of persons seeking appointive offices, for example, where the President appoints the Cabinet and Members of Parliament vet appointees of the President. How then can they uphold integrity standards, that them themselves are not subject to? That being the case, it is envisioned in the constitution that both elected and appointed state officers are subject to the same high standards of integrity encapsulated in Chapter six.

### **5.3 On which threshold best implements chapter six**

While the author recognizes that vagueness, uncertainty and subjectivity may emerge as a result of the unresolved questions approach, it is his position that this approach best implements chapter six. As will be seen later and in and in acknowledgement of and response to the argument that only electors should determine who to elect in regards to elective positions and to the criticisms levelled against the approach, the author will develop mechanisms that will firstly seek to balance the importance of elections in a democracy vis-a-vis the importance of possession of integrity of those elected and secondly, aim to make the approach more objective.

#### **5.3.1 On why the unresolved questions threshold best implements chapter six**

As noted in the foregoing, by showing that integrity imbues follower trust, that it enables self-knowledge which is a precursor to leadership and that it leads to good governance, which is essentially the aim of leadership, this discourse has shown the centrality of integrity in leadership. Additionally, the promulgation of the Constitution of Kenya in 2010 was an attempt to break off from the shackles of mismanagement, corruption, tribalism, nepotism, abuse of power and more importantly, impunity in the public service which for long plagued post independent Kenya. It is for this reason that a chapter on leadership and integrity was included in the constitution, that is, to place high standards of integrity on persons charged with leadership so as to ensure value-based leadership, value-based leaders and good governance.

This being the case, as posited by Juliet Okoth, an ideal conceptualization of a person holding state office, is one of perfection, which would require the adoption of a high standard of integrity that ensures that only the best persons are entrusted with management of public affairs. The unresolved questions test, being a high standard, appears to be the most persuasive constitutional threshold of integrity.

With the need of a high standard of integrity already established, this discounts the existing convictions approach, which as noted in the foregoing, adopts the strict evidentiary requirements of a criminal trial, thereby negating the essence and purpose of chapter six. Additionally, such an approach would be inimical to the rule of harmony of constitutional interpretation encoded in Article 259 of the Kenyan constitution. Moreover, and in relation to this discourse, the meaning of integrity has been adopted as concordance with rational values and moral values. Therefore, lack of integrity is not only constrained with conviction from a criminal trial. That being the case, and as put forward by Juliet Okoth, the process of determining the guilt or innocence of a person should be distinguished from the process of a person occupying a leadership position and the existing convictions approach, incorporating the right to be presumed innocent should only apply in the former scenario.

In relation to the intensely fact-based inquiry, the fact that this approach firstly requires evaluation of material evidence on a case-by-case basis, as noted in the foregoing, discounts this approach as it appears to be too subjective. Secondly, the fact that this approach will require a constitutional court to intrusively look into the facts and evidence tendered in relation to the allegations put forward also discounts this approach. This is because the court will be akin to a trial court, which should have been the appropriate legal channel to deal with the facts and evidence of allegations of lack of integrity. Lastly, the need for a high standard of integrity, implying the need for a low threshold of lack of integrity, on account of the importance of integrity in leadership, as already established in the foregoing, also discounts this approach. This is because the standard of proof required by this approach is a heightened one that is above the balance of probabilities standard, thereby appearing to be inimical to the goals and intention behind chapter six of the Kenyan constitution.

### 5.3.2 Application of the unresolved questions test

The unresolved questions test which has been adopted posits that a person is said to lack integrity when there are serious unresolved questions about his honesty, financial probity, scrupulousness, fairness, reputation, soundness of his moral judgment or his commitment to the national values enumerated in the Constitution. This therefore means that the impugned conduct need not rise to a level of criminality.

Moreso and in support of this, the definition of integrity was adopted in chapter one as concordance to rational and moral values, meaning that it is not only crimes that show lack of integrity. This makes the concept of integrity extra-legal, rather than within the strictures of legality and illegality. Nevertheless, and as noted in the foregoing, there is need to come up with mechanisms of implementing this approach so as to make it more objective and to balance the importance of elections in a democracy vis-s-vis the importance of possession of integrity of those elected.

A mechanism that may be used to denote that a person has serious unresolved questions is the designation or sanctioning of such a person by a foreign state or a foreign embassy. Herein, through laws such as the Global Magnitsky Act and the Department of State, Foreign Operations, and Related Programs Appropriations Act in the USA; the Global Human Rights and Anti-Corruption Regulations in the UK; the Canadian Victims of Corrupt Foreign Officials Act in Canada, and; the EU's Restrictive measures against serious human rights violations and abuses in the European Union, states are empowered to impose sanctions such as visa revocations on persons, on account of corruption and gross violations of human rights.<sup>167</sup> Where a person seeking state office has been designated or sanctioned by a foreign state or embassy, then this can be considered as a serious unresolved issue that may prevent such a person from such state office.

Another mechanism that may be used to denote serious unresolved questions is where such a person is cited for wrongdoing in reports by commissions of inquiry. Commissions of inquiry are ad hoc advisory bodies set up by the government to obtain information. In their working they are expected to make an assessment of the facts and later recommendations to the government in power,<sup>168</sup> for example, by way of reports. In those recommendations, the commissions may

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<sup>167</sup> Russell M, 'Global Human Rights Sanctions; Mapping Magnitsky laws: The US, Canadian, UK and the EU approach' European Parliament Research Service, November 2021 - [https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/698791/EPRS\\_BRI\(2021\)698791\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/698791/EPRS_BRI(2021)698791_EN.pdf) - on 20 February 2024.

<sup>168</sup> AFRICOG, *A study of commissions of inquiry in Kenya*, 2007, 3-4.

prescribe prosecution of persons in relation to the matter in which a commission was to look into, for example, the Commission of Inquiry into the Goldenberg scandal which recommended prosecution of Professor George Saitoti,<sup>169</sup> who was the then minister of finance at the time in which the scandal happened. That being the case, where one is cited of wrongdoing in a report of a commission of inquiry, then such a person can be considered to have serious unresolved questions.

Moreover, blacklisting by the Ethics and Anti-Corruption Commission may also denote unresolved questions of a person. The EACC is an independent commission established pursuant to article 79 COK and the EACC Act. Among its functions provided for in section 11 of the EACC Act include; investigating and recommending to the Director of Public Prosecutions the prosecution of any acts of corruption, bribery or economic crimes or violation of codes of ethics. The EACC has, in line with its functions, blacklisted persons seeking state office on account of integrity issues. In the run up to the 2022 general elections, for example, it blacklisted 241 aspirants. Examples include; Daniel Waithaka, seeking a Governorship seat in Nyandarua, blacklisted on account of EACC investigations establishing culpability on the part of the aspirant in relation to irregular tendering, and he was arraigned in court; Mwangi wa Iria, seeking Presidency, blacklisted on account of EACC investigations establishing culpability on his part for destruction of evidence and obstruction of EACC investigations and; Godhana Gadhae, seeking Governorship of Tana River, blacklisted on account of EACC investigations establishing culpability on his part for procurement irregularities and corruption and he was thereafter charged.<sup>170</sup> It therefore appears that EACC blacklists persons it reasonably believes are culpable, after doing its investigations. That being the case, where a person is blacklisted by the EACC, such a person may be considered to have serious unresolved issues.

Lastly, blacklisting by multiple Civil Society Organizations(CSO's), may also be used to denote serious unresolved questions of a person. Herein, CSO's may petition an appointing body or political parties not to nominate or the IEBC not to clear a person to seek state elective offices on the basis of lack of integrity. In doing so, the CSO's should provide credible evidence. An example

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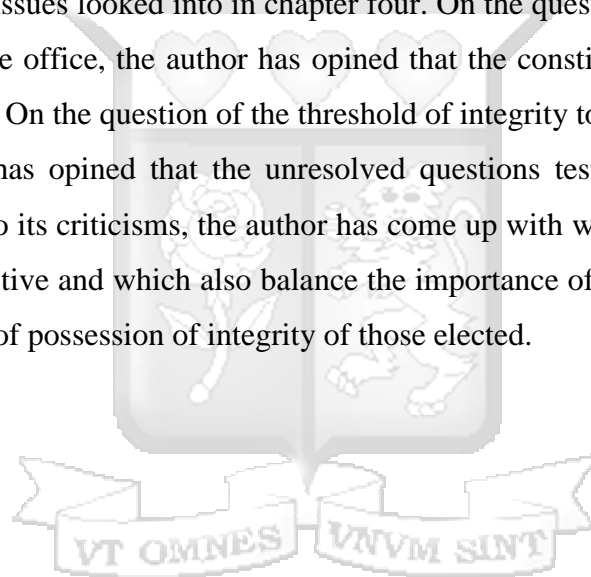
<sup>169</sup> Kenya Law, *Report of the Judicial commission of inquiry into the Goldenberg affair*, 2005, 301.

<sup>170</sup> Mukami L, 'The undesirables: List of political aspirants blacklisted by the EACC' Nation Africa newspaper, 2 June 2022 - [https://nation.africa/kenya/news/politics/the-undesirables-list-aspirants-blacklisted-eacc-3835694#google\\_vignette](https://nation.africa/kenya/news/politics/the-undesirables-list-aspirants-blacklisted-eacc-3835694#google_vignette) - on 20 February 2024.

of this is the Red Card Campaign, concertedly launched in the 2017 general elections by four Kenyan run civic organizations namely; the Transparency International Kenya, Society for International Development, Mzalendo Trust and Ni Sisi Trust, forming an umbrella body called the National Integrity Alliance (NIA). This campaign blacklisted 20 persons aspiring to hold state elective office, that is, through #RedCard20.<sup>171</sup> Therefore, where a person has been subject of a petition by multiple CSO's, then such a person may be considered to have serious unresolved questions.

#### **5.4 Conclusion**

In this chapter, the author set out to give his opinion on how to best attain the goals of chapter six, in relation to the central issues looked into in chapter four. On the question of different standards in elective and appointive office, the author has opined that the constitution envisions one high standard for both offices. On the question of the threshold of integrity to best achieve the goals of chapter six, the author has opined that the unresolved questions test appears to be the most persuasive. In response to its criticisms, the author has come up with ways in which the standard may be made more objective and which also balance the importance of elections in a democracy vis-à-vis the importance of possession of integrity of those elected.



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<sup>171</sup> <https://tikenya.org/2018/07/20/the-red-card-campaign/> - on 21 February 2024.

## 6.0

# CONCLUSION AND RECOMMENDATIONS

## 6.1 CONCLUSION

This disquisition set out to examine which legal standard best implements chapter six of the constitution and the high standards of integrity for persons seeking state office envisioned therein. In doing so, it has established that integrity involves commitment to rationality and moral values arising from rationality, which is an objective, reliable and comprehensive definition under the auspices of the objectivism theory explicated by Thomas Becker. Additionally, by showing how integrity is a super-virtue, how it promotes follower and public trust, how it enables self-knowledge and management which is crucial in leadership of others and how it enables good governance, this discourse has shown how integrity is fundamental in leadership.

In addition to this, through a historical analysis, this discourse has shown how leaders in post-independent Kenya have acted in total disregard of the requirements of integrity and on this basis, the discourse has shown that the constitution of Kenya (2010) views public office as a public trust and therefore engenders value-based leadership and leaders so as to attain good governance. This disquisition went farther and highlighted two key issues arising in the goal of attainment of good governance by the constitution. These are; firstly, on whether there are different standards of integrity for elective and appointive offices, and secondly, on which standard best implements the high standards enunciated for persons seeking state office in the constitution.

Through the penultimate chapter, the author has proposed ways in which the high standards in chapter six can be met. This was by putting forward and explaining that chapter six envisioned the same high standards of integrity for both elective and appointive offices. On the question of the test to implement chapter six, the author has explicated that by virtue of it being the highest standard established so far, the unresolved questions test best implements chapter six of the constitution. Lastly, by coming up with ways which can be used to define an unresolved question, the author has made the test more objective and in relation to elective office, has balanced the importance of elections in a democracy vis-à-vis the importance of possession of integrity of those elected.

## **6.2 RECOMMENDATIONS**

### **6.2.1 Recommendations to scholars and future researchers**

Scholars and future researchers should look into more ways in which an unresolved question should be defined. Additionally, they should look into how courts deal with questions relating to a person's integrity when their appointment was dealt with by another arm of government, for example, Parliament.

### **6.2.2 Recommendations to the Judiciary**

Courts should strive to apply the unresolved questions test over other standards that have been put forward, as it is the highest standard, making it more persuasive to implement chapter six of the constitution.



## **BIBLIOGRAPHY**

### **Books**

Citizens for Justice, *We lived to tell: The Nyayo House story*, Friedrich Ebert Stiftung (FES), Nairobi.

Gowan D and Greif C, *e-Book of Second treatise of Government by John Locke*, The Project Gutenberg, 25 December 2021.

Macdonald F, *The Republic by Plato (Translation)*, Oxford University Press, London, 1970.

Mechem F, *Public Offices and Officers*, Callaghan and Company, Chicago, 1890.

Miller W, *e-Book of De-Officiis by Marcus Tullius Cicero*, The Project Gutenberg, 2014.

West T, *e-Book on Discourses Concerning Government by Algernon Sidney*, The Online Library of Liberty, 2011.

### **Chapter in Books**

Kwaka J and Mutunga I, 'Contemporary Kenya and its Leadership' in Joseph Kwaka (ed), Okoth Okombo (ed), Barrack Muluka (ed) & Betty Sungura-Nyabuto (ed) *Challenging the Rulers: A leadership model for good governance*, East African Publishers, Kenya, 2011.

Lumumba P, 'The leadership Kenyans deserve' in Joseph Kwaka (ed), Okoth Okombo (ed), Barrack Muluka (ed) & Betty Sungura-Nyabuto (ed) *Challenging the Rulers: A leadership model for good governance*, East African Publishers, Kenya, 2011.

Mcfall L, 'Integrity' *Ethics*, 1987.

Ogendo O, 'Constitutions without constitutionalism: Reflections on an African political paradox' in Douglas Greenberg (ed.), Stanley N Katz (ed.), Melanie Beth Oliviero (ed.), Steven C Wheatley (ed.) *Constitutionalism and Democracy: Transitions in the contemporary world*, American Council of Learned Societies, New York, 1988.

Okoth J, 'The leadership and integrity chapter in the 2010 constitution: The elusive threshold' in Mbondenyei M, *Human Rights and Democratic governance in Kenya*, Pretoria University Law Press, 2015.

### **Journal Articles**

Adar K and Munyae I, 'Human Rights Abuse under Daniel Moi, 1978-2001' *Africa Studies Quarterly*, 2001.

Aketch M, 'Abuse of power and corruption in Kenya: Will the new constitution enhance government accountability' *Indiana Journal of Global Legal Studies*, 2011.

Ashford E, 'Utilitarianism, integrity and partiality' *Journal of Philosophy*, 2000.

Becker T, 'Integrity in organizations: Beyond honesty and conscientiousness' *Academy of Management Review*, 1996.

Bokao G, 'Political integrity as irrational and hypocritical values: Do the high standards of Chapter Six of the Constitution of Kenya breed a dangerous hypocrisy in the political class?' *Kabarak Law Journal*.

Duggar J, 'Role of integrity in individual and effective corporate leadership' *Ethics and Behavioral Studies*, 2009.

Finn F, 'Public Trust and Public Accountability' *Australian Quarterly*, 1993.

Gea A, 'Personal integrity and leadership' *Humaniora*, 2016.

Huberts L, 'Integrity: What it is and why it is important' *Public Integrity*, 2018.

Kaptein M, 'The Diamond of managerial integrity' *European Management Journal*, 2003.

Kirkpatrick S and Locke E, 'Leadership: Do traits matter' *5 Academy of Management Review* 2, 1991.

Kreder J, 'The Public Trust' 18(5) *Journal of Constitutional Law*, 2016.

Madison J, 'The alleged tendency of the new plan to elevate the few at the expense of the many considered in connection with representation from the New York Packet' *The Avalon project*, 19 February 1788.

Mbai O, 'Public service accountability and governance in Kenya since independence' *African Journal on Political Science*, 2003.

Mineo D, 'The importance of Trust in leadership' *Research Management Review*, 2014.

Modise J, 'Improved Public Trust, Integrity and Good Governance with Respect to Corruption' *International Journal of Innovative Science and Technology*, 2023.

Monga M, 'Integrity and its antecedent: A unified conceptual framework of integrity' 50(5) *The Journal of Developing Areas*, 2016.

Ogutu K, 'Defending guardians of the constitution against ruinous criticisms' 4 *Kabarak Law Journal*, 11 August 2020.

Omiti H, 'Inadequacies in the anti-corruption agenda and the quest for good governance under the new constitutional dispensation: The role of a citizen', *Social Science Research Network*, 2012.

Paranta E, 'Leadership and integrity, a new dawn or false promise: Analysis of the Court Decisions on Chapter Six, Seven Years after Promulgation of Kenya's New Constitution' *Social Science Research Network (SSRN)*, 2017.

Patrick M and Audi R, 'The many faces of integrity' *Business Ethics Quarterly*, 2006.

Robbins J, 'Democracy and Elections' 21 *The Fletcher Forum of World Affairs* 1,1997.

Said J, Alam M, Khalid M, 'Relationship between Good Governance and Integrity System: Empirical Study on the Public Sector of Malaysia' *Humanomics*, 2016.

Simons T, 'Behavioral integrity as a critical ingredient for transformational leadership' *Journal of Organizational Change Management*, 1999.

Storr L, 'Leading with integrity: A qualitative research study' *Journal of Health Organization and Management*, 2004.

Taylor G, 'Integrity' *Proceedings of the Aristotelian society*, 1981.

### **Conference Papers**

Musumba L, 'The case for comprehensive scenario building as a means for pre-testing the articles of a proposed constitution to ensure its viability post promulgation: A case study of Kenya' University of the Western Cape, 2013.

### **Newspapers**

'Exclusive: The Anglo Leasing truth' Nation Africa newspaper, 22 January 2006.

'Former PS Mwaliko convicted over Anglo Leasing Scandal' Nation Africa Newspaper, 5 September 2012.

'Kenyan officials charged over Anglo Leasing Scandal' BBC World Africa, 4 March.

'UK bans 'corrupt' Kenyan minister' BBC News, 28 July 2005.

Mukami L, 'The undesirables: List of political aspirants blacklisted by the EACC' Nation Africa newspaper, 2 June 2022.

Ngirachu J, 'Waiguru: I queried Sh 791m used to make 3.5km road' Nation Africa Newspaper, 29 December 2021.

Njagi J and Ngirachu J, 'Waiguru introduced changes that led to corruption, says Mangiti' Nation Africa Newspaper, 2 November 2016.

Otieno D, 'Before you vote: The truth about money lost in the NYS scandal' Nation Africa Newspaper, 24 June 2017.

## **Reports**

Adili Report, Integrity: The ultimate standard of leadership, September 2012.

AFRICOG, *A study of commissions of inquiry in Kenya*, 2007.

AFRICOG, *Implementation of chapter 6 of the constitution of Kenya 2010*, 2015.

Constitution of Kenya Review Commission, *Final Report of the Constitution of Kenya Review Commission*, 2005.

Kenya Law, *Final report of the commission of Inquiry into the illegal and irregular allocation of public land*.

Kenya Law, *Report of the commission of inquiry into the Goldenberg Affair*, 2005.

Kenya Law, *Report of the commission of inquiry into the Post-Election Violence*, 2005.

Transparency International Kenya, *The Verdict: An analysis of Interpretation of Chapter 6 by Kenyan Courts*, 12 December 2019.

## **Theses**

Aluku S, 'The law and practice of leadership and integrity in Kenya: A disquisition of the post 2010 constitutional dispensation' Unpublished LLM Thesis, University of South Africa, South Africa, 2021.

Nyotah P, 'Public participation in the selection of public officers: A critical analysis of mechanisms in the Leadership and Integrity Act, University of Nairobi, Nairobi, 2012.

## **Dictionaries**

Oxford Learner's dictionary.

Samuel Johnson Dictionary.

The Britannica Dictionary.

Collins Dictionary.

### **Other internet resources**

Bent A, 'Familiar short sayings of great men' Bartleby.com, 1887, -<  
<https://www.bartleby.com/344/109.html> >- on 4 November 2023.

Bulmer E, 'Direct Democracy' Institute For Democracy and Electors Assistance, 2014 -  
<https://www.idea.int/sites/default/files/publications/direct-democracy-primer.pdf> - on 20 February  
2024.

Grand corruption' Transparency International, <https://www.transparency.org/en/our-priorities/grand-corruption> .

[https://alejosison.files.wordpress.com/2017/12/leadershipcharactervirtuesaristotelianviewpoint.p  
df](https://alejosison.files.wordpress.com/2017/12/leadershipcharactervirtuesaristotelianviewpoint.pdf) on 5 January 2024.

[https://icj-kenya.org/news/judicial-interpretation-and-handling-of-chapter-six-leadership-and-  
integrity-in-public-office/](https://icj-kenya.org/news/judicial-interpretation-and-handling-of-chapter-six-leadership-and-integrity-in-public-office/) on 10 January 2024.

[https://icj-kenya.org/news/judicial-interpretation-and-handling-of-chapter-six-leadership-and-  
integrity-in-public-office/](https://icj-kenya.org/news/judicial-interpretation-and-handling-of-chapter-six-leadership-and-integrity-in-public-office/) on 10 January 2024.

<https://www.researchgate.net/publication/370496696> Improved Public Trust Integrity and Go  
od Governance with Respect to Corruption - on 15 January 2024.

<https://tikenya.org/2018/07/20/the-red-card-campaign/> - on 21 February 2024.

Russell M, 'Global Human Rights Sanctions; Mapping Magnitsky laws: The US, Canadian, UK  
and the EU approach' European Parliament Research Service, November 2021 -  
[https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/698791/EPRS\\_BRI\(2021\)698791  
EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/698791/EPRS_BRI(2021)698791_EN.pdf) – on 20 February 2024.

Sebiyaga V, 'When should courts bar a person from being nominated to contest or assume state  
office?' Academia,

[https://www.academia.edu/34761763/LEADERSHIP\\_AND\\_INTEGRITY\\_WHEN\\_SHOULD](https://www.academia.edu/34761763/LEADERSHIP_AND_INTEGRITY_WHEN_SHOULD)

COURTS BARR A PERSON FROM BEING NOMINATED TO CONTEST OR ASSUM  
E STATE OFFICE - on 11 January 2024.

