

UNIT 6: INTEGRITY AND GOOD GOVERNANCE

Introduction

This unit covers Integrity and good governance as a strategy towards transforming education management. First we look at the concept of integrity and good governance, then discuss the malpractices that hinder integrity and good governance.

The principles and legal framework of integrity and good governance are also discussed.

The unit ends by looking at the tools that you can use to improve integrity and good governance in your institution.

The concept of integrity and good governance

- **Integrity:** is a concept of consistency of actions, values, methods, measures, principles, expectations, and outcomes. In ethics, integrity is regarded as the honesty and truthfulness or accuracy of one's actions. It entails a form of accountability and moral responsibility as a virtue.
- **Governance:** is defined as the process of decision-making and the process by which decisions are implemented.

Malpractices that hinder integrity and good governance

Corrupt practices

The Anti-Corruption and Economic Crimes Act explains corruption by setting out what constitutes corruption. Section 2 of the Act lays out the general parameters of what constitutes corruption which include: Breach of trust, an offence involving dishonesty in relation to taxes, or under any written law relating to elections of persons to public office.

- The offences under section 39-44, 46 and 47A of the Act are:
- Bribery involving Agents
- Secret inducements for advice
- Deceiving the principal
- Conflicts of interest
- Improper benefits to trustees for appointment
- Bid rigging
- Dealing with suspect property
- Attempts and Conspiracies

Forms of corruption

- a) **Bribery:** Bribery occurs when a person dishonestly gives or receives a benefit as an inducement or reward for doing or omitting to do what one is already under duty to do or omit to do.
- b) **Fraud:** This refers to a situation where a person intentionally makes a false statement or manipulates information in order to confer a benefit to oneself or other person(s) through dishonesty, deceit or trickery. It can also be described as an intentional act by one or more individuals among institution management and staff or third parties involving the use of a deception to obtain a benefit: unjust or illegal advantage. Unlike errors, fraud usually involves deliberate concealment of facts
- c) **Embezzlement /misappropriation of public funds:** Embezzlement refers to the dishonest acquisition and conversion of public funds or resources to one's use. Misappropriation, on the other hand, is the misallocation or wrongful use by a public officer of public funds placed under his/her care.

- d) **Breach of trust:** The public service is a public trust. Authority assigned to a public officer must be exercised in a manner that promotes integrity and the best interest of the people. Public service must also demonstrate respect for the people and bring dignity and honor to the public office. Members of the public expect public officers to render selfless service based solely on the public interest. This is demonstrated by honesty in the execution of public duties, accountability to the public in decision making, discipline and commitment in serving the people. Therefore, a public officer should do his or her best to discharge these duties in line with the Constitution. When a public officer does anything that is contrary to these expectations, he or she commits a breach of trust.
- e) **An Offence involving Dishonesty in relation to Taxes:** This occurs when a person denies the government revenue by evading or assisting someone to evade payment of any taxes and levies due to the government.

Causes of corruption

Corruption is mainly brought about by the following reasons:

- a) **Weak governance structures:** that is poor governance characterized by failure of institutions to manage society by means of a fair framework of social, judicial, political and economic checks and balances. Weaknesses in institutional structures results in non-implementation and non-enforcement of laws and policies that would otherwise ensure accountability and transparency.
- b) **Poor remuneration:** Corruption also thrives where there is poor remuneration or lack of incentives to public officials, worsened by disregard for merit in appointments. Individuals with meagre salaries who have opportunities to be corrupt, and who are unlikely to be caught or not severely punished if caught, are likely to engage in corrupt practices.
- c) **Weak law enforcement:** Poor or selective law enforcement or perceived impunity has for years led to corrupt practices. Non punishment of corruption and economic crimes has long facilitated corrupt behavior.
- d) **Soft control systems:** In the past soft control systems that allow indiscipline and render citizens passive and not willing to complain about corrupt practices has encouraged corruption.
- e) Other causes of corruption are poor leadership, political patronage, failure to adhere to professional ethics and standards, failure to implement recommendations of watchdog institutions, the mentality of not taking care of public resources and assets (*maliyaumma*), poor planning, greed and worship of material things, poverty and unemployment and lack of public awareness of the evils of corruption.

Effects of corruption

The effects of corruption include:

- a) Poor infrastructure, sanitation and housing
- b) Lack of confidence in public institutions
- c) Brain drain and migration of quality human resources
- d) Disregard of merit in awarding the available opportunities
- e) Poor delivery of services
- f) Prevalence of insecurity and social unrest
- g) Demoralization and demotivation of honest individuals
- h) Immorality and increased of social evil
- i) Delayed or stagnated development

Characteristics of good governance

According to ESCAP (2014) Good governance has 8 major characteristics, namely, participation, consensus oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive and follows the rule of law. These characteristics are presented in the section that follows:

- **Participation**

Participation involves engaging others in decision-making, either directly or through legitimate intermediate institutions that represent their interests/concerns. Participation needs to be informed and organized.

- **Rule of law**

Good governance requires fair legal frameworks that are enforced impartially. It also requires full protection of human rights, particularly those of minorities. Impartial enforcement of laws requires an independent judiciary and an impartial and incorruptible police force.

- **Transparency**

Transparency means that decisions made and their enforcement done in a manner that follows laid rules and regulations. It also means that information is freely available and directly accessible to those who will be affected by such decisions and their enforcement. It also means that enough information is provided and that it is provided in easily understandable forms and media.

- **Responsiveness**

Good governance requires that institutions and processes try to serve all stakeholders within a reasonable timeframe.

- **Consensus oriented**

There are several actors and as many viewpoints in a given society. Good governance requires mediation of the different interests in society to reach a broad consensus in society on what is in the best interest of the whole community and how this can be achieved.

- **Equity and inclusiveness**

A society's wellbeing depends on ensuring that all its members feel that they have a stake in it and do not feel excluded from the mainstream of society. This requires all groups, particularly the most vulnerable, have opportunities to improve or maintain their wellbeing.

- **Effectiveness and efficiency**

Good governance means that processes and institutions produce results that meet the needs of society while making the best use of resources at their disposal. The concept of efficiency in the context of good governance also covers the sustainable use of natural resources and the protection of the environment.

- **Accountability**

Accountability is a key requirement of good governance. Not only governmental institutions but also the private sector and civil society organizations must be accountable to the public and to their institutional stakeholders.

Who is accountable to who varies depending on whether decisions or actions taken are internal or external to an organization or institution. In general an organization or an institution is accountable to those who will be affected by its decisions or actions. Accountability cannot be enforced without transparency and the rule of law.

LEGAL FRAMEWORK FOR INTEGRITY AND GOOD GOVERNANCE

The Constitution of Kenya (2010)

The Constitution of Kenya produced a major shift in good governance in Kenya. There are many provisions in the constitution which aim at transforming governance in the public service.

Article 10(2) lists the national values and principles of governance as follows:

- Patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people;
- Human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalized;
- Good governance, integrity, transparency and accountability; and
- Sustainable development.

Articles 73-80 (chapter 6) focus on leadership and integrity

Role of state officers: 73(1) Authority assigned to a State officer—(a) is a public trust to be exercised in a manner that—(i) is consistent with the purposes and objects of the Constitution; (ii) demonstrates respect for the people; (iii) brings honor to the nation and dignity to the office; and (iv) promotes public confidence in the integrity of the office; and (b) vests in the State officer the responsibility to serve the people, rather than the power to rule them.

- **Principles of leadership and integrity:** 73(2) The guiding principles of leadership and integrity include—(a) selection on the basis of personal integrity, competence and suitability, or election in free and fair elections; (b) objectivity and impartiality in decision making, and in ensuring that decisions are not influenced by nepotism, favoritism, other improper motives or corrupt practices; (c) selfless service based solely on the public interest, demonstrated by—(i) honesty in the execution of public duties; and (ii) the declaration of any personal interest that may conflict with public duties;(d) accountability to the public for decisions and actions; and (e) discipline and commitment in service to the people.
- **Behavior of state officers:** 75. (1) A State officer shall behave, whether in public and official life, in private life, or in association with other persons, in a manner that avoids— (a) any conflict between personal interests and public or official duties; (b) compromising any public or official interest in favor of a personal interest; or (c) demeaning the office the officer holds.

- **Discipline:** 75(2) A person who contravenes clause (1), or Article 76, 77 or 78 (2)—(a) shall be subject to the applicable disciplinary procedure for the relevant office; and (b) may, in accordance with the disciplinary procedure referred to in paragraph (a), be dismissed or otherwise removed from office. (3) A person who has been dismissed or otherwise removed from office for contravention of the provisions mentioned in clause (2) is disqualified from holding any other State office.
- **Conflict of interest:** 76. (1) A gift or donation to a State officer on a public or official occasion is a gift or donation to the Republic and shall be delivered to the State unless exempted under an Act of Parliament. (2) A State officer shall not—(a) maintain a bank account outside Kenya except in accordance with an Act of Parliament; or (b) seek or accept a personal loan or benefit in circumstances that compromise the integrity of the State officer. 77. (1) A full-time State officer shall not participate in any other gainful employment. (2) Any appointed State officer shall not hold office in a political party. (3) A retired State officer who is receiving a pension from public funds shall not hold more than two concurrent remunerative positions as chairperson, director or employee of—(a) a company owned or controlled by the State; or (b) a State organ. (4) A retired State officer shall not receive remuneration from public funds other than as contemplated in clause (3).

Ethics and Anti-Corruption Commission (EACC) Act, 2011

- ▶ The Ethics and Anti-Corruption Commission (EACC) Act, 2011 established the EACC as a public body. The EACC is mandated to combat and prevent corruption through enforcement of the law, educating the public and enlisting their support against corruption and providing preventive services through promotion/ development of good practices to seal opportunities and loop holes that facilitate corruption.

The statutory functions of the EACC are to:—

- a) Educate and create awareness on any matter within the
 - b) Commission's mandate;
 - c) Undertake preventive measures against unethical and corrupt practices;
 - d) Conduct investigations on its own initiative or on a complaint made by any person, and,
- Conduct mediation, conciliation and negotiation

The Anti-Corruption and Economics Crimes Act, 2003

The Act makes the following key provisions in the investigation and punishment of corruption and economic crimes:

- a) Establishment of Special Magistrates
- b) Investigation of corruption
- c) Definition of corruption offences and the applicable penalties
- d) Compensation and recovery of improper benefits
- e) Procedures for recovery of unexplained assets

The Public Officers Ethics Act, 2005

One of the major purposes of this law was to enhance integrity of public officers by providing a General code of Conduct and Ethics which is Part III of the Public Officer Ethics Act. The code prescribes minimum ethical standards for the whole of public service, which includes police officers. Among other things, the code expects every public officer:

- a) To carry out duties efficiently and honestly.
- b) To treat members of the public and fellow officers with courtesy and respect.
- c) Not to use one's office to enrich oneself.
- d) Not to allow personal interests to conflict with official duties.
- e) Not to award a contract to oneself, a spouse, or business associate.
- f) To observe official working hours.
- g) To take care of property that one is entrusted with and not to misappropriate such property.
- h) Not to practice nepotism or favouritism.
- i) Not to sexually harass a member of the public or a fellow officer.
- To be professional while discharging duties and responsibilities.

The Public Procurement and Disposal Act, 2005

This Act, among other things, stipulates that;

- a) All procurement shall be within the approved budget of the procuring entity
- b) A tender committee comprising not less than 5 members shall be established
- c) Only a person who has satisfied certain criteria should be awarded a contract.

Other laws related to integrity and good governance in Kenya

- ▶ Audit Act
- ▶ Proceeds of Crime and Anti-Money Laundering Act
- ▶ Witness Protection Act, 2006
- ▶ Political Parties Act, No 11 of 2011

Integrity and good governance tools and practices

a) Corruption Risk Assessment (CRA)

You need to detect corrupt practices in in your institution before they become a culture. Remember the old adage ‘prevention is better than cure.’ This can be done by carrying out Corruption Risk Assessment (CRA). This involves identifying the following:

- ▶ The areas and activities that are most vulnerable to corruption tendencies
- ▶ The surface manifestation of the corrupt practices
- ▶ The participants in the malpractices (internal and external participants)
- ▶ List the losers and what is lost
- ▶ The remedial action or solution that can be applied
- ▶ The possible outcome of the remedial action

b) Fraud policy

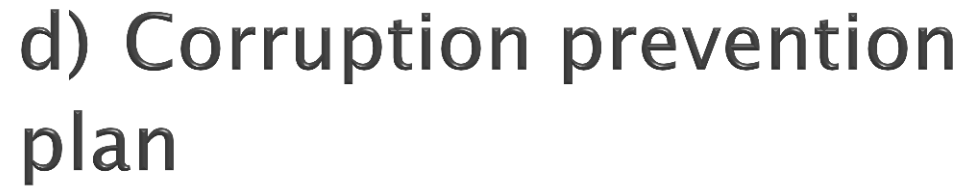
- ▶ The purpose of a fraud policy is to address the risk of fraud and to lay out the actions you as part of management should take when any suspected fraud is reported or discovered. A formal fraud policy statement indicates that the fight against fraud is endorsed and supported at the most senior level within the education sector. Institutions may wish to ensure all employees are aware of a zero-tolerance attitude to criminal breaches of institution practices which may be reported to the police.
- ▶ A fraud policy statement should be simple, focused and easily understood. The content may vary from institution to institution but it should include the institution's determination to:
 - Take appropriate measures to deter fraud; introduce/maintain necessary procedures to detect fraud; investigate all instances of suspected fraud; report all suspected fraud to the appropriate authorities; assist the police in the investigation and prosecution of suspected fraudsters among others. This policy should be reviewed and approved annually by the Board of Management.

c) Corruption prevention policy

The corruption prevention policy should include the following components:

- **Foreword:** include an introduction to the policy statement
- **Policy statement:** provide a statement that communicates how an organization will manage the issues of corrupt conduct and corruption prevention
- **Scope/applicability:** identify the persons to be bound by the policy
- **Definition of corruption:** make reference to the definition of corruption in Anti-Corruption and Economic Crimes Act.
- **Corruption risk areas and corrupt practices:** outline all the corruption risk areas and corrupt practices in all departments of your institution.
- **Composition of the corruption prevention or integrity committee:** outline the members of this committee which should include the CEO, heads of critical departments and an integrity assurance officer.
- **Mandate of corruption prevention or integrity committee:** outline the duties and responsibilities of this committee.

- **Internal audit reviews:** mention the crucial role of the internal audit committee.
- **How to report corruption internally and externally:** outline the avenues for such reporting.
- **Handling of corruption cases:** provide a statement of how corruption cases will be handled.
- **Protection of whistle blowers:** provide a statement on the protection of the people that disclose corrupt practices.
- **Disciplinary measures:** provide a statement on disciplinary procedures for those that breach this policy.
- **Training:** outline the commitment of the management to sensitizing staff on matters of integrity and ethics.
- **Management/implementation authority:** outline the person in management who will be responsible for the implementation of this policy.
- **Review:** indicate when the policy will be subjected to a review.
- **Effective date:** indicate the date when the policy comes to effect.



we want to achieve)	Current programs/activities (What we currently do to achieve this outcome)	Planned activities (What will be done to achieve this outcome)	Officer(s) responsible	Resources
The senior management is committed to successful implementation of the corruption prevention policy and the corruption prevention plan	Corruption prevention policy and the corruption prevention plan has been cascaded to all departments in the institution	Develop a code of conduct for corruption prevention Undertake training on integrity	Integrity assurance officer	Kshs. 0.05 mill. Kshs. 0.01 mill.
Corruption prevention is integrated into all other planning activities.	Heads of department have developed corruption risk assessments.	Corruption prevention initiatives will be included as a regular agenda item in all senior management meetings.	Integrity assurance officer	No cost.
		KEMI/DELM/MODULE 1		

e) Role modeling

- ▶ Leaders are role models for the people they lead. Leaders at the very top set the tone by acting out the values and displaying the behavior expected of employees in the organization. If the leader preaches honesty and transparency, the leader ought to be honest and transparent. If the leader wants others to be prudent, the leader ought to be prudent. If the leader asks for accountability, the leader ought to be accountable. If the leader wants loyalty and trustworthiness in others, the leader ought to be loyal and trustworthy. A leader who is a good role model has a positive influence on the team

Conclusion

- ▶ In this Unit, we have looked at the concept of integrity and good governance. We have examined malpractices that hinder integrity and good governance , In addition, we have discussed the legal framework for integrity and good governance, We have concluded by looking at tools that can be used to improve integrity and good governance in an institution.