

Swaziland Legal Annex

Reviewed Laws:

1. The Constitution of the Kingdom of Swaziland, 2005 (Act No. 001 of 2005)
2. The Prevention of Corruption Act, 2006 (Act No. 003 of 2006, assented to on 12th June 2006).
3. The Establishment of the Parliament Order, 1992 (King's Order in Council No. 1 of 1992) (relevant articles 20, 21, 28, 29, 38, 48, 50) – see in a separate file

Relevant Articles:

1. Constitution:

Art. 97

Disqualifications for membership of Parliament

97. (1) Notwithstanding the provisions of section 96, a person does not qualify to be appointed, elected or nominated as the case may be, a Senator or member of the House if that person –
- (a) has been adjudged or otherwise declared-
 - (i) insolvent under any law and has not been rehabilitated; or
 - (ii) to be of unsound mind;
 - (b) is under sentence of death or of imprisonment for more than six months for an act which is a criminal offence in Swaziland;
 - (c) is a member of the armed forces of Swaziland or is holding or acting in any public office and has not been granted leave of absence for the duration of Parliament;
 - (d) is not qualified to be a voter under any provision of this Constitution;
 - (e) is otherwise disqualified by law in force in Swaziland relating to general elections;
 - (f) has been found to be incompetent to hold public office under any law relating to tenure of public office whether elected or not;
 - (g) is a party to, or is a partner in, a firm or a director or manager, of a company which is a party to any subsisting Government contract and has not made the required disclosure of –

- (i) the nature of the contract;
- (ii) the interest of that person in the contract;
- (iii) the interest of that firm or company in the contract;

(h) holds or is acting in any office the functions of which involve any responsibility for or in connection with the conduct of any election or the compilation or a revision of any electoral register.

(2) For the purposes of subsection (1)(g), the required disclosure shall be –

- (a) in the case of an elected Senator, to the elected members of the House through the Speaker of the House soon after the election;
- (b) in the case of an appointed Senator or nominated member of the House, to the King through the President of the Senate or the Speaker of the House as the case may be soon after appointment is made;
- (c) in the case of an elected member of the House, during the period commencing with the writ for election in the Gazette and ending three days before the date of the election by publication of a notice in English in the Gazette and in English and Siswati in a newspaper circulating in Swaziland.

(3) Any disclosure made in terms of subsection 1(g) shall be posted conspicuously for a period of at least one month within the Parliament building.

(4) In this section “Government contract” means any contract with the Government for or on any account of the public service the consideration for which exceeds five thousand Emalangeni or such other amount as Parliament may prescribe or which forms part of a larger transaction or series of transactions in respect of which the amount or value or the aggregate amount or value of the transaction exceeds five thousand Emalangeni.

Voting in Parliament

125. (1) Except as otherwise provided in this Constitution, any question proposed for decision in either chamber of Parliament shall be determined by a majority of the votes of the members of that chamber present and voting.

(2) Subject to the provisions of subsection (3), the President or Deputy President of Senate or the Speaker or Deputy Speaker of the House or a member of either chamber presiding in that chamber shall have an original but not a casting vote.

(3) A President of the Senate or Speaker of the House who is elected from outside the Senate or House shall not have a right to vote in the chamber.

(4) The Attorney-General shall have no vote in the House.

(5) Where upon any question before either chamber the votes are equally divided the motion shall be lost.

(6) The rules of procedure of either chamber may make provision under which a member who votes upon a question in which that member has a direct pecuniary interest shall be deemed not to have voted.

Commission on Human Rights and Public Administration

163. (1) There shall be established within a year of the first meeting of Parliament after the commencement of this Constitution, a Commission on Human Rights and Public Administration in this Chapter referred to as “the Commission”.

(2) The Commission shall consist of -

- (a) a Commissioner for Human Rights and Public Administration; and
- (b) at least two Deputy Commissioners for Human Rights and Public Administration as may be necessary for the effective discharge of the functions of the Commission.

(3) The members of the Commission shall be appointed by the King on the advice of the Judicial Service Commission.

(4) Subject to subsection (5) (a), a person shall not qualify for appointment as Commissioner unless that person qualifies for appointment as judge of the superior courts.

(5) A person shall not be eligible for appointment as Deputy Commissioner unless that person -

- (a) is of high moral character and proven integrity; and
- (b) possesses considerable experience and demonstrated competence in the conduct of public affairs; or
- (c) is of high calibre in the conduct of public affairs.

(6) The first persons to be appointed Commissioner and Deputy Commissioner shall hold office for a term not exceeding seven years and five years respectively and may be re-appointed for a single term of five years each.

(7) A person appointed subsequent to the first appointment as Commissioner or Deputy Commissioner respectively shall hold office for a term not exceeding five years and may be re-appointed for a single term.

Functions of the Commission

164. (1) The Commission shall perform the following functions –
- (a) investigate complaints concerning alleged violations of fundamental rights and freedoms under this Constitution;
 - (b) investigate complaints of injustice, corruption, abuse of power in office and unfair treatment of any person by a public officer in the exercise of official duties;
 - (c) investigate complaints concerning the functioning of any public service, service commission, administrative organ of the Government, the Armed Forces in so far as the complaints relate to the failure to achieve acceptable delivery of services or equitable access by all in the recruitment to those services or fair administration by those services;
 - (d) take appropriate action for the remedying, correction or reversal of instances specified in paragraphs (a), (b) and (c) through such means as are fair, proper and effective, including -
 - (i) publicising the findings and recommendations of the Commission;
 - (ii) negotiation and compromise between the parties concerned;
 - (iii) causing the complaint and the findings of the Commission on that complaint to be reported to the superior of an offending person or institution;
 - (iv) referring matters to the Director of Public Prosecutions or the Attorney General for appropriate action to secure the termination of the offending action or conduct, or the abandonment or alteration of the offending procedures; and
 - (v) bringing proceedings to restrain the enforcement of any legislation or regulation by challenging the validity of that legislation or regulation where the offending action or

conduct is sought to be justified by reference to that legislation or regulation.

- (e) investigate instances of alleged or suspected corruption and the misappropriation of public moneys or property by officials and to take or recommend appropriate steps, including reports to the Attorney-General or the Director of Public Prosecutions or the Auditor General;
 - (f) eliminate or foster the elimination of corruption, abuse of authority or public office;
 - (g) promote and foster strict adherence to the rule of law and principles of natural justice in public administration;
 - (h) promote fair, efficient and good governance in public affairs;
 - (i) take such other measures incidental to the above as may be prescribed by Parliament.
- (2) The Commission may investigate any matter referred to in subsection (1) in any of the following circumstances –
- (a) where a complaint is duly made to the Commission by any person alleging that the complainant has sustained an injustice as a result of a fault in administration;
 - (b) where a member of Parliament requests the Commission to investigate the matter on the ground that a person or body of persons specified in the request has or may have sustained an injustice;
 - (c) in any other circumstances in which the Commissioner, in good faith, considers that the Commission ought to investigate the matter on the ground that some person or body of persons has or may have sustained an injustice.

CHAPTER XVI

LEADERSHIP CODE OF CONDUCT

Purpose of Code

239. The Leadership Code of Conduct seeks to ensure that those in leadership, whether elective or appointive -

- (a) are transparent in their activities and accountable to the people they represent or serve;
- (b) are committed to the rule of law and administrative justice;
- (c) adhere to the principles of service for the common good;
- (d) do not abuse office; and
- (e) do not engage in conduct that is likely to lead to corruption in public affairs.

Conflict of interest

240. A person who holds an office referred to in section 241 (2) shall not-

- (a) assume a position where personal interest conflicts or is likely to conflict with the performance of functions of office; and
- (b) engage in conduct that is -
 - (i) likely to compromise the honesty, impartiality and integrity of that officer;
 - (ii) likely to lead to corruption in public affairs; or
 - (iii) which is detrimental to the public good or welfare or good governance.

Declaration of assets and liabilities

241. (1) A person who holds an office mentioned in sub-section (2) shall submit to the Integrity Commission, a written declaration of all property, assets owned by, or any benefit gained or liabilities owed by the holder of that office whether directly or indirectly –

- (a) within six months after the commencement of the Integrity Commission or before taking office as the case may be;
 - (b) at the end of every two years; and
 - (c) at the end of his term of office.
- (2) Sections 240 and 241(1) apply to the holders of the following offices-

- (a) Prime Minister, Deputy Prime Minister and Minister;
- (b) member of the King's Advisory Council;
- (c) **member of Parliament including the Presiding Officers;**
- (d) Chairman and member of a Service Commission or Board;
- (e) Army Commander and Deputy Army Commander;
- (f) Commissioner of Customs;
- (g) Commissioner of Police and Deputy Commissioner of Police;
- (h) Commissioner of Labour;
- (i) Commissioner of Correctional Services and Deputy Commissioner of Correctional Services;
- (j) Commissioner of Taxes;
- (k) Justice of the Superior Court of Judicature and all judicial officers;
- (l) Ambassador, High Commissioner, and Head of Diplomatic or Consular Mission;
- (m) Secretary to the Cabinet;
- (n) Commissioner and Deputy Commissioner of the Integrity Commission;
- (o) Member of the Elections and Boundaries Commission;
- (p) Attorney-General and Deputy Attorney-General;
- (q) Head of Ministry of government or department;
- (r) Director of Public Prosecutions and Deputy Director of Public Prosecutions;
- (s) Managing Director, general manager and departmental head of a public corporation or company in which the Government has a controlling interest; and
- (t) in the public service and any other public institution as Parliament may prescribe.

(3) The Commissioner and Deputy Commissioner of the Integrity Commission shall make the declaration under this section to the Judicial Service Commission.

(4) The declaration made under this section shall, on demand be produced in evidence before -

(a) a court of competent jurisdiction; or

(b) an investigator appointed by the Integrity Commission.

(5) Any property or assets acquired by an officer after initial declaration required under this section and which is not reasonably attributable to income, government loan, inheritance or any other legitimate source shall be deemed to have been acquired in contravention of this Chapter unless duly declared.

(6) An allegation that an officer referred to in this section has contravened or has not complied with a provision of this Chapter shall be made to the Integrity Commission and in the case of a member of the Integrity Commission, to the Judicial Service Commission which shall, unless the person concerned makes a written admission of the contravention or non compliance, cause the matter to be investigated.

(7) The Integrity Commission or the Judicial Service Commission, as the case may be, may take such action as the commission considers appropriate in respect of the results of the investigation or admission.

Failure to comply with Code

242. (1) An officer who contravenes the Code may, after due process of law, be dismissed or removed from office by reasons of such breach or abuse and may be disqualified from holding any public office either generally or for a specified period.

(2) Any property or assets acquired after the initial declaration under this Chapter and which is not reasonably attributable to income, government loan, inheritance or any other legitimate source, shall, after due process of law, be forfeited to Government.

The Integrity Commission

243. (1) The Commission on Human Rights and Public Administration established in terms of section 163 of this Constitution shall for purposes of this Chapter, constitute the Integrity Commission.

(2) The Integrity Commission is responsible for receiving from time to time, declarations in writing of assets and liabilities of persons referred to in section 240(2), for enforcing the Code and supervising all matters connected with the Code as may be prescribed.

Penalties, etc

244. Parliament may make law -

- (a) prescribing penalties additional to those prescribed for breach of the Code;
- (b) prescribing procedures, guidelines and practices for ensuring the effective enforcement of the Code;
- (c) necessary for ensuring the promotion and maintenance of honesty, probity, impartiality and integrity in public affairs;
- (d) for the proper custody of declarations and other documents delivered to the Commission;
- (e) for the maintenance of secrecy in respect of all information received by the Commission in the course of its duties with respect to the assets, liabilities and income of any person referred to in section 240 (2); and
- (f) for a suitable judicial code of conduct.

Existing Parliament

263. Notwithstanding anything in this Constitution, the Parliament existing immediately before the coming into force of this Constitution shall continue in office and, as far as possible, exercise its powers and functions in such a manner and with such modifications as are necessary to bring them into conformity with the provisions of this Constitution.

Existing law

268. (1) The existing law, after the commencement of this Constitution, shall as far as possible be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring it into conformity with this Constitution.

(2) For the purposes of this section, the expression “existing law” means the written and unwritten law including customary law of Swaziland as existing

immediately before the commencement of this Constitution, including any Act of Parliament or subordinate legislation enacted or made before that date which is to come into force on or after that date.

2. The Prevention of Corruption Act:

Article 2

Interpretation

“Private body” means any person or organization not being a public body and it also means a voluntary organization, charitable institution, club, company, firm or partnership.

“Public body” means

- (a) any Government ministry or department or parastatal; or,
- (b) any other functionary or institution or traditional council (libandla) when exercising a power or performing a duty or function in terms of the Constitution or any other law or custom.

“Public office” includes judicial office or any office or position (whether fulltime or not) held by any person engaged in a public body or private body or any office or position (whether fulltime or not) in respect of which emoluments or allowances are payable from public funds or from Swazi National Treasury.

Article 10

Functions of the Commission

10. (1) The functions of the Commission shall be to-
- (a) take necessary measures for the prevention of corruption in public and private bodies including, in particular measures for-
 - (i) examining the practices and procedures of public and private bodies in order to facilitate the discovery of corrupt practices and secure the revision of their methods of works or procedures which, in the opinion of the Commissioner, may be prone or conducive to corrupt practices;

- (ii) advising public and private bodies on the ways and means of preventing corrupt practices, and on changes in the methods of work or procedures of those public and private bodies compatible with the effective performance of their duties, which the Commissioner considers necessary to reduce the likelihood of the occurrence of corrupt practices;
 - (iii) disseminating information on the evil and dangerous effects of corrupt practices on the society;
 - (iv) enlisting and fostering public support against corrupt practices;
- (b) receive and investigate complaints of alleged or suspected corrupt practice made against any person, and refer appropriate cases to the Director of Public Prosecutions;
 - (c) investigate any alleged or suspected offences under this Act, or any other offence disclosed during such an investigation;
 - (d) investigate any alleged or suspected contravention of any of the provisions of the fiscal and revenue laws of the country;
 - (e) assist any law enforcement agency of the Government in the investigation of offences involving dishonesty or cheating of the public revenue;
 - (f) investigate the conduct of any public officer which in the opinion of the Commissioner may be connected with or conducive to corrupt practices;
 - (g) instruct, advise and assist any person, on the request of that person, on ways in which corrupt practices may be eliminated by that person; and
 - (h) do all such things as may be necessary for the prevention of corruption and the furtherance of the objects of this Act.

(2) The Commission may decline to conduct an investigation into any complaint alleging an offence under this Act or to proceed further with an investigation if the Commission is satisfied that the complaint is trivial, frivolous, vexatious or not made in good faith.

(3) In every case where the Commission declines to conduct an investigation the Commission shall inform the complainant in writing of its decision, within a reasonable time, but shall not be bound to assign reasons for so declining.

Article 27

Conflict of interests

27 (1) A member or an employee of a public body commits an offence of corruption where that member or employee or an immediate member of the family of that member or employee has a direct or indirect interest in any company or undertaking with which that public body proposes to deal, or that member or employee has a personal interest in any decision which that public body is to make, and that member or employee, knowingly fails to disclose the nature of that interest, or votes or participates in the proceedings of that public body relating to that dealing or decision.

(2) It is a defence to a charge under this section where the person having an interest has first made in writing to the public body the fullest disclosure of the exact nature of interest and has been permitted after that disclosure to take part in the proceedings relating to that dealing or decision.

(3) For the purposes of this section “member of family” includes a paramour.

Article 30

Offences in respect of corrupt activities relating to politicians

30. A person who, directly or indirectly -

- (a) being a politician, demands or accepts or agrees or offers to accept any advantage from another person, whether for the benefit of that politician or for the benefit of any other person; or
- (b) gives or agrees or offers to give any advantage to a politician, whether for the benefit of that person or for the benefit of another person,

in order for that politician or that other person to act or to influence another person so to act, in a manner,

- (c) that amounts to the
 - (i) illegal, dishonest, unauthorized, incomplete, biased; or
 - (ii) misuse or selling of information or material acquired in the course of the

exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation

- (d) that amounts to the -
 - (i) abuse of a position of authority,
 - (ii) a breach of trust, or
 - (iii) the violation of a legal duty or a set of rules;
- (e) designed to achieve an unjustified result; or
- (f) that amounts to any other unauthorized or improper inducement to do or not to do anything,

commits an offence of corrupt activities relating to politicians.

SCHEDULE
(Under Section 30)

- 1. Senator
- 2. Member of Parliament
- 3. Member of Bucophu
- 4. Regional Administrator
- 5. King's (advisory) Counsellor
- 6. Chief and Chief's Counsellor
- 7. Municipal Councillor
- 8. Indvuna YeNkhundla

Article 34

Possession of property etc. without reasonable explanation

34. (1) Subject to the provisions of subsection (2), a person who being or having been a public officer –

- (a) maintains a standard of living above that which is commensurate with the present or past official emoluments of that person; or,
- (a) is in control of pecuniary resources or property disproportionate to the present or past official emoluments of that person

shall be presumed to have committed an offence under section 21, 22, 23, 24, 25, 26, 28, 29, 30, 31, 32 or 33 and accordingly liable to the penalty prescribed in section 35.

(2) The presumption referred to in subsection (1) shall not apply in a case where the public officer gives the Commissioner or investigating officer a satisfactory account or explanation of how the officer maintains that standard of living and how the pecuniary resources or property came under the control of that officer.

(3) Where the Commissioner has reasonable ground to suspect that any person who has no known source of income or who is not known to be engaged in any gainful employment possesses or is in control of any property or pecuniary resources, the Commissioner shall request that person to give satisfactory explanation in writing as to how the property or pecuniary resources have been acquired by or come under the control of that person.

(4) Where the person mentioned in subsection (3) is unable to give any satisfactory account or explanation that person shall be presumed to have committed an offence and liable on conviction to the penalty prescribed in section 35(1).

(5) Where a court is satisfied in the proceedings for an offence under subsection (1) or (4) that there is reason to believe that a person was holding pecuniary resources or property in trust or otherwise on behalf of the accused, or acquired those resources or that property as a gift or a loan without adequate consideration, from the accused, having regard to the relationship of that person to the accused, those resources or that property shall be presumed to have been in the control or in the possession of the accused.

(6) In this section “official emoluments” includes a pension or gratuity or any other retirement benefit payable under any law for the time being in force or under any terms and conditions of service or employment applicable to the public officer.

3. The Establishment of the Parliament of Swaziland Order, 1992

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