

BILLS SUPPLEMENT

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Bill No. 28

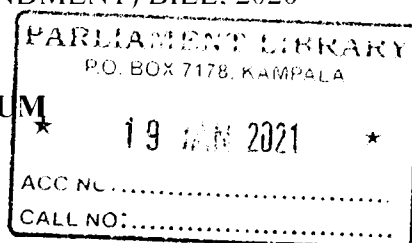
Leadership Code (Amendment) Bill

2020

THE LEADERSHIP CODE (AMENDMENT) BILL, 2020

MEMORANDUM

1. The principles of the Bill



The objects and principles of this Bill are to amend the Leadership Code Act, 2002, Act No.17 of 2002 (Act), to clarify what constitutes interest in property by a leader; to require all public officers to declare their income, assets and liabilities to the Inspector General, to extend the jurisdiction of the Leadership Code Tribunal to complaints made by any person aggrieved by the decision of the Inspectorate of Government under section 7(7) of the Code, to prescribe remedies for breach of the Code and to provide for other related matters.

The proposal to amend the Act is intended to further empower the Inspectorate and the Leadership Code Tribunal to enforce the values of integrity and proper conduct in the leadership of Uganda, values which are critical in the pursuit of development, democracy, good governance and the promotion of rule of law.

2. Defects in the existing law

Parliament in 2017, passed the Leadership Code (Amendment) Act, 2017. The Act establishes the Leadership Code Tribunal that is responsible for enforcing the Act. The Leadership Code Tribunal is now operational. Various loopholes have however been identified in the Act that will hinder the effectiveness of the Tribunal in enforcing the Leadership Code of Conduct.

The penalties prescribed in the Leadership Code (Amendment) Act, 2017 are not aligned to the breaches in the Code. Prior to the amendment of the Act, penalties for breach of the Code were provided for in section 35 of the Act. Each of the prescribed penalties corresponded with a particular section regarding breach of the law.

When the provisions were amended and substituted, there was no consequential amendment of section 35 to correspond with the substituted provisions. For example, section 35(b) imposes a punishment of dismissal from office upon a leader who breaches section 4(6) and section 4(8). The original section 4(6) and section 4(8) under Act No. 17 of 2002, referred to failure to submit a declaration within the specified time, and failure to submit a declaration respectively, which would result in dismissal under section 35(b). However, the amended section 4(6) refers to a leader having an interest in a property, while section 4(8) refers to proof of ownership of the declared assets. The two provisions (*section 4(6) and (8)*) are requirements under the law and not breaches yet, they attract dismissal under section 35(b). This will jeopardize the enforcement of the Act since, it is untenable to enforce the law as is without breaches and corresponding penalties.

3. Remedies

It is necessary to amend the Act to enable the Inspectorate and the Leadership Code Tribunal to enforce the Code effectively and to align the breaches with the penalties.

Provisions of the Bill

4. **Clause 1** of the Bill seeks to amend section 2 of the Leadership Code Act (the principal Act), to define the authorised person in respect to public officers.
5. **Clause 2** of the Bill seeks to amend section 4 of the principal Act, to clarify what constitutes interest in property by a leader and to provide for breach of the Code where a leader fails to submit a declaration or submits a false declaration. This is aimed at ensuring that leaders do not illicitly enrich themselves.
6. **Clause 3** seeks to replace section 4A of the principal Act, to require all public officials to declare their income, assets and liabilities to the Inspector General. The wording of section 4A 'as is' mandates persons commencing work in the Public Service after the coming into force of the 2017 amendment Act, to declare their income, assets and liabilities. However, the proposed amendment requires all public officers to declare their income, assets and liabilities which will provide vital information and evidence in investigating corruption.
7. **Clause 4** seeks to amend section 4B of the principal Act, to widen the scope of the offence of anticipatory declaration of income, assets and liabilities to cover public officers as well as leaders.

8. **Clause 5** seeks to amend section 4C (8) of the principal Act, to increase the period within which the Inspectorate may undertake a verification of a declaration from sixty days to ninety days.
9. **Clause 6** seeks to amend section 4D of the principal Act, to empower the Inspectorate to verify declarations made by public officers.
10. **Clause 7** seeks to amend section 5 of the principle Act, to extend the powers of the Inspector General to require clarification from a public officer on matters in connection with a declaration made by the public officer.
11. **Clause 8** seeks to amend section 6 of the principal Act, to extend the application of the provision to public officers.
12. **Clause 9** seeks to amend section 7 of the principal Act, to empower the Leadership Code Tribunal to hear appeals from any person whose application to access a declaration has been rejected by the Inspectorate. The clause also seeks to extend application of the procedure of public access to a declaration form made by public officers under section 4A.
13. **Clause 10** seeks to amend section 10 of the principal Act, to extend the application of the provision to public officers.
14. **Clause 11** seeks to amend section 11 of the principal Act, to extend the application of the provision to public officers.
15. **Clause 12** seeks to amend section 12A (4) of the principal Act, to clarify what constitutes conflict of interest.

16. **Clause 13** seeks to amend section 13 of the principal Act, to extend its application to public officers.
17. **Clause 14** seeks to amend section 14 of the principal Act, to extend its application to public officers.
18. **Clause 15** seeks to amend section 15 of the principal Act, to extend its application to public officers.
19. **Clause 16** seeks to amend section 16 of the principal Act, to extend its application to public officers.
20. **Clause 17** seeks to amend section 17 of the principal Act, to extend its application to public officers.
21. **Clause 18** seeks to amend section 18 of the principal Act, to extend its application to public officers.
22. **Clause 19** seeks to amend section 19 of the principal Act, to extend its application to public officers.
23. **Clause 20** seeks to amend section 19B of the principal Act, to extend the jurisdiction of the Leadership Code Tribunal to complaints made by any person aggrieved by a decision of the Inspectorate under the Code and to clarify functions of the Tribunal.
24. **Clause 21** seeks to amend section 19Q of the principal Act, to extend the jurisdiction of the Tribunal to complaints made by any person aggrieved by a decision of the Inspectorate under the Code.
25. **Clause 22** seeks to amend section 20 of the principal Act, to extend its application to public officers.

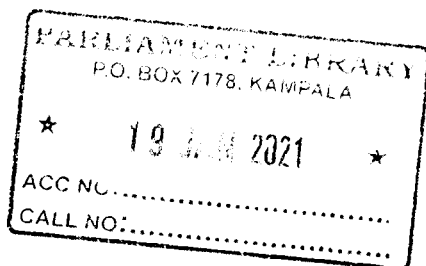
26. **Clause 23** seeks to amend section 21 of the principal Act, to extend its application to public officers.
27. **Clause 24** seeks to amend section 22 to extend its application to public officers.
28. **Clause 25** seeks to replace section 35 of the principal Act to prescribe penalties for breach of the Code.

REV. FR. SIMON LOKODO (MP)
Minister of State for Ethics and Integrity

THE LEADERSHIP CODE (AMENDMENT) BILL, 2020**ARRANGEMENT OF CLAUSES***Clause*

1. Amendment of section 2 of Leadership Code Act, 2002
2. Amendment of section 4 of principal Act
3. Replacement of section 4A of principal Act
4. Replacement of section 4B of principal Act
5. Amendment of section 4C of principal Act
6. Replacement of section 4D of principal Act
7. Replacement of section 5 of principal Act
8. Replacement of section 6 of principal Act
9. Amendment of section 7 of principal Act
10. Amendment of section 10 of principal Act
11. Amendment of section 11 of principal Act
12. Amendment of section 12A of principal Act
13. Amendment of section 13 of principal Act
14. Amendment of section 14 of principal Act
15. Amendment of section 15 of principal Act
16. Amendment of section 16 of principal Act
17. Amendment of section 17 of principal Act
18. Amendment of section 18 of principal Act

19. Amendment of section 19 of principal Act
20. Amendment of section 19B of principal Act
21. Amendment of section 19Q of principal Act
22. Amendment of section 20 of principal Act
23. Amendment of section 21 of principal Act
24. Amendment of section 22 of principal Act
25. Replacement of section 35 of principal Act



A Bill for an Act

ENTITLED

THE LEADERSHIP CODE (AMENDMENT) ACT, 2020

An Act to amend the Leadership Code Act, 2002, to clarify what constitutes conflict of interest; to require all public officers to declare their income, assets and liabilities to the Inspector General; to extend the jurisdiction of the Leadership Code Tribunal to complaints made by any person aggrieved by the decision of the Inspectorate under section 7(7) of the Code; to prescribe remedies for breach of the Code and to provide for other related matters.

BE IT ENACTED by Parliament as follows:

1. Amendment of section 2 of the Leadership Code Act, 2002

The Leadership Code Act, 2002 in this Act referred to as the principal Act, is amended in section 2 (1), by substituting for the definition of “authorised person,” the following—

“authorised person” means a person or body authorised by law to discipline the leader or public officer in relation to whom the expression is used;”

2. Amendment of section 4 of principal Act

The principal Act is amended in section 4—

- (a) by substituting for subsection (6) (a), the following—

“(6) In this section, a leader shall be taken to have an interest where—

- (a) in case of an income or an asset—

- (i) it is owned or developed by the leader;
- (ii) it is jointly owned or developed by the leader with another person;
- (iii) it is acquired by the leader or developed by the leader for another person;
- (iv) it is held in trust by the leader for another person; or
- (iv) it is contained in a joint account for the benefit of the leader and another person.”

- (b) by inserting immediately after subsection (9), the following—

“(10) A leader who makes declaration under this section, and is found not to have declared certain assets, income and liabilities or if the declaration is found to be false, the leader shall be taken to have breached this Code.

(11) A leader who fails, without reasonable cause to submit a declaration under this section commits a breach of this Code.”

3. Replacement of section 4A of the principal Act

The principal Act is amended by substituting for section 4A the following—

“4A. Declaration of income, assets and liabilities by public officer

(1) Subject to subsection (16), a public officer who is not a leader and to whom section 4 of this Code does not apply, shall—

- (a) within three months after the commencement of this Code; and
- (b) thereafter, every five years during the month of April,

submit to the Inspector General, a written declaration of his or her income, assets and liabilities in the prescribed form.

(2) For purposes of a declaration under subsection (1), the public officer shall only declare the income, assets and liabilities in which he or she has an interest.

(3) In this section, a public officer shall be taken to have an interest where—

- (a) in case of an income or an asset—
 - (i) it is owned or developed by the public officer;
 - (ii) it is jointly owned or developed by the public officer with another person;
 - (iii) it is acquired by the public officer or developed by the public officer for another person;
 - (iv) it is held in trust by the public officer for another person; or
 - (v) it is contained in a joint account for the benefit of the public officer and another person;

(b) in case of a liability, it was acquired, guaranteed or is payable by the public officer or on behalf of another person.

(4) A public officer making a declaration under this section shall ensure that all the information contained in the declaration is true and correct to the best of his or her knowledge.

(5) A public officer who makes a declaration under this section, and is found not to have declared certain assets, income and liabilities or if the declaration is found to be false, the public officer shall be taken to have breached this Code.

(6) A public officer, who without justifiable cause submits a declaration to the Inspector General, any time after the period prescribed in subsection (1) commits a breach of this Code.

(7) A public officer who fails, without reasonable cause to submit a declaration under this section commits a breach of this Code.

(8) The Inspectorate may verify the contents of a declaration submitted by a public officer under this Code.

(9) The Inspectorate shall, within seven days of making the decision to verify the contents of a declaration under subsection (8)—

- (a) inform the public officer of the decision by notice in writing; and
- (b) appoint a date on which the verification shall commence.

(10) The Inspectorate may, in verifying the contents of a declaration submitted by the public officer—

- (a) access or require the production of any document relating to the income, assets and liabilities declared by the public officer, in possession of the public officer or any other person or institution;
- (b) access the physical location of all immovable property declared by a public officer;
- (c) access bank accounts or any other financial records relating to a declaration made by the public officer; or
- (d) do any other act necessary for the enforcement of this Code.

(11) The Inspectorate shall during the verification process, comply with the rules of natural justice.

(12) A public officer whose declaration is being verified may, during the verification process be present personally or be represented by any person of his or her choice.

(13) The Inspectorate shall, three months after carrying out the verification of the contents of a declaration, submit to the public officer, a report of the findings of the verification.

(14) Where the verification reveals a breach of this Code, the Inspectorate shall take any action prescribed under this Code.

(15) The Inspectorate shall ensure that the verification process is carried out within a reasonable time, in any case not later than ninety working days from the date of commencement of the verification.

(16) The Minister shall, by statutory instrument, specify the categories of public officers for the purposes of declaration of assets, income and liabilities under this section."

4. Replacement of section 4B of principal Act

The principal Act is amended by substituting for section 4B the following—

“4B. Prohibition of anticipatory declaration of income, assets and liabilities.

A leader or public officer who includes in a declaration submitted to the Inspectorate, income, assets or liabilities that he or she does not own or has not yet acquired or has no interest in, at the time he or she makes a declaration, commits a breach of this Code.”

5. Amendment of section 4C of principal Act

The principal Act is amended in section 4C—

- (a) by substituting for subsection (5) the following—

“(5) The Inspectorate shall three months after carrying out a verification of the contents of a declaration, submit to the leader, a report of the findings of the verification.”

- (b) by substituting for subsection (8), the following—

“(8) The Inspectorate shall ensure that the verification process is carried out within a reasonable time, in any case not later than ninety working days from the date of commencement of the verification.”

6. Replacement of section 4D of principal Act

The principal Act is amended by substituting for section 4D the following—

“4D. Request for verification of a leader or public officer

A person who—

- (a) obtains a declaration under section 7 of this Code;

- (b) has reason to believe that the declaration made by a leader or public officer does not reflect the actual income, assets or liabilities of the leader or public officer; or
- (c) has information concerning the income, assets or liabilities of a leader or public officer,

may, by notice in writing, avail the information to the Inspectorate and the Inspectorate may verify the information availed by the person and the declaration made by the leader or public officer.”

7. Replacement of section 5 of principal Act

The principal Act is amended by substituting for section 5, the following—

“5. Power of the Inspector General to require clarification

(1) The Inspector General may, by notice in writing require a leader or public officer to account for any matter in connection with a declaration submitted by him or her, including—

- (a) the omission of anything in the opinion of the Inspector General, that should have been included in the declaration; or
- (b) any discrepancies appearing in the declaration, or occurring between the declaration and any other statement or information available to the Inspector General,

and a leader or public officer shall comply with that requirement.

(2) A leader or public officer who, without reasonable cause, fails to comply with the Inspector General’s request for clarification within sixty days after receipt of the notice, commits a breach of this Code and is liable to—

- (a) a warning or caution;
- (b) dismissal; or
- (c) vacation of office.”

8. Replacement of section 6 of principal Act

The principal Act is amended by substituting for section 6, the following—

“6. Failure to submit correct information

A leader or public officer who knowingly or recklessly submits a declaration or gives an account of any matter which is false, misleading or insufficient in any material particular, commits a breach of this Code.”

9. Amendment of section 7 of the principal Act

The principal Act is amended in section 7—

- (a) by substituting for subsection (7) the following—

“(7) Where the Inspectorate rejects the application or does not grant access to the declaration within the time prescribed under subsection (5), the applicant may apply to the Leadership Code Tribunal for redress.”

- (b) by inserting immediately after subsection (9) the following—

“(10) This section shall apply, with necessary modification to declarations made by a public officer.”

10. Amendment of section 10 of principal Act

The principal Act is amended in section 10 by inserting the words “or public officer” immediately after the word “leader”, wherever it appears.

11. Amendment of section 11 of principal Act

The principal Act is amended in section 11 by inserting the words “or public officer” immediately after the word “leader”, wherever it appears.

12. Amendment of section 12A of principal Act

The principal Act is amended in section 12A—

- (a) in subsection (1), by inserting the words “or public officer” immediately after the word “leader”, wherever it appears;
- (b) by substituting for subsection (4), the following—

“(4) Notwithstanding any direction to the contrary under subsection (3)(a), a public officer shall not influence the award of a contract to—

- (a) himself or herself;
- (b) any person related to him or her by blood or by marriage;
- (c) a business associate, agent or partner; or
- (d) a company, partnership, or other entity or body in which the public officer, any person related to him or her by blood or marriage, has an interest.”

13. Amendment of section 13 of principal Act

The principal Act is amended in section 13 by inserting the words “or public officer” immediately after the word “leader”, wherever it appears.

14. Amendment of section 14 of principal Act

The principal Act is amended in section 14 by inserting the words “or public officer” immediately after the word “leader”, wherever it appears.

15. Amendment of section 15 of principal Act

The principal Act is amended in section 15 by inserting the words “public officer” immediately after the word “leader” wherever it appears.

16. Amendment of section 16 of principal Act

The principal Act is amended in section 16 by inserting the words “public officer” immediately after the word “leader” wherever it appears.

17. Amendment of section 17 of principal Act

The principal Act is amended in section 17 by inserting the words “public officer” immediately after the word “leader” wherever it appears.

18. Amendment of section 18 of principal Act

The principal Act is amended in section 18 by inserting the words “public officer” immediately after the word “leader” wherever it appears.

19. Amendment of section 19 of principal Act

The principal Act is amended in section 19 by inserting the words “or public officer” immediately after the word “leader” in subsections (2) (a) and (3), wherever it appears.

20. Amendment of section 19B of principal Act

The principal Act is amended in section 19B—

(a) by substituting for paragraph (a) the following—

“(a) receive, examine and adjudicate—

(i) any breach of this Code referred to it by the Inspectorate; and

(ii) any complaint referred to it by any person aggrieved by the decision of the Inspectorate under section 7(7) of this Code.”

(b) by repealing paragraph (c).

21. Amendment of section 19Q

The principal Act is amended by substituting for section 19Q, the following—

“19Q. Jurisdiction of the Tribunal

The Tribunal shall have jurisdiction to hear and determine—

- (a) all breaches referred to it by the Inspectorate under section 19 of this Code; and
- (b) all complaints made by persons aggrieved by decisions of the Inspectorate under section 7(7) of this Code.”

22. Amendment of section 20 of principal Act

The principal Act is amended in section 20—

- (a) in subsection (5) by inserting immediately after the word “leader” the words “or public officer”;
- (b) in subsection (6) by inserting immediately after the word “leader” the words “or public officer”;
- (c) by substituting for subsection (7), the following—

“(7) A leader or public officer who is dismissed or removed from office as a result of the decision of the Tribunal, shall not hold any other public office whether appointive or elective for a period of five years from the date of dismissal or removal from office.”

23. Amendment of section 21 of principal Act

The principal Act is amended in section 21 by inserting the words “public officer” immediately after the word “leader” wherever it appears.

24. Amendment of section 22 of principal Act

The principal Act is amended in section 22 by inserting the words “public officer” immediately after the word “leader” wherever it appears.

25. Replacement of section 35 of principal Act

The principal Act is amended by substituting for section 35 the following—

“35. Penalties for breach of Code

A leader or public officer who commits a breach of this Code shall—

- (a) in the case of a breach under sections 4 (10) and 4A (5)—
 - (i) have the excess or undeclared property confiscated and forfeited to the Government; or
 - (ii) forfeit the monetary equivalent of the excess or undeclared property to the Government;
- (b) in the case of a breach under sections 4(9), 4(11) and 4A (6) and 4A (7)—
 - (i) be liable to pay a fine not exceeding twenty currency points per month for the initial three months of non submission of the declaration;
 - (ii) after three months referred to in subparagraph (i), be liable to pay a fine not exceeding forty currency points per month for two months;
 - (iii) after the period of failure to submit the declaration referred to in subparagraph (ii), have his or her emoluments withheld;

- (iv) in addition to the remedies in subparagraphs (i), (ii) and (iii), be liable to a warning, demotion, dismissal or to vacate office;
- (c) in the case of a breach under sections 4B, 6, 11, 12A (1), 15(6) and 16(2), be liable to—
 - (i) pay a fine not exceeding two hundred currency points;
 - (ii) demotion;
 - (iii) dismissal from office; or
 - (iv) vacate office;
- (d) in the case of a breach under subsection (6) of section 10, be liable to—
 - (i) forfeit the benefit equivalent to the gift, hospitality or benefit, to the Government or institution;
 - (ii) caution or warning in writing;
 - (iii) demotion;
 - (iv) dismissal from office; or
 - (v) vacate office.

