

State Organ Status, Public Service Character, and the Leadership & Integrity Act (Cap 182) Umbrella

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In Kenyan legal practice, a persistent misconception surrounds the administrative and operational status of **Independent Tribunals** and their members. Litigants and state agencies frequently question whether an independent tribunal established outside Chapter 10 of the Judiciary possesses authentic state authority or if its adjudicators are bound by public integrity statutes.

A thorough examination of the constitutional text and enabling legislation establishes that independent tribunals are **expressly designated State organs**, their members form an integral part of the **public service architecture**, and their adjudicative conduct is bound by the **Leadership and Integrity Act (Cap 182)**.

CONSTITUTIONAL & STATUTORY INTEGRITY MATRIX	
CONSTITUTION OF KENYA 2010	
ARTICLE 1(3)(c) STATE ORGAN Delegated Sovereign Adjudicative Authority (Independent Tribunals)	ARTICLE 260 Public Service Character (Organ Functionaries)
LEADERSHIP & INTEGRITY ACT (CAP 182)	
SECTION 2: PUBLIC ENTITY DUTIES Tribunal maintains conflict registers, codes of conduct & integrity logs	SECTION 52 EXTENSION Applies Chapter 6 & LIA to all tribunal officers (Art. 80(c))

Direct Constitutional Designation as State Organs

Rather than deriving state organ status indirectly through complex statutory construction, independent tribunals are explicitly classified as State organs in the foundational text of the Constitution itself:

- **The Article 1(3) Direct Designation:** Article 1(3) delegates sovereign power directly to specific State organs, explicitly listing *"the Judiciary and independent tribunals"* under sub-clause (c).
- **Verbatim Textual Alignment (Article 260):** Article 260 defines a *"State organ"* as *"a commission, office, agency or other body established under this Constitution."*
- **Legal Result:** Because independent tribunals are explicitly enumerated in Article 1(3), they meet the verbatim definition of Article 260 per se as constitutional State organs. They do not function as private informal panels; they act as formal organs of the state executing sovereign power.

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Office Holders and the Public Service Architecture

A parallel question concerns the legal status of individuals who sit on independent tribunals (such as roster members presiding over **AITAR**, **AISTAR**, or **AIETAR** proceedings).

THE PUBLIC SERVICE ARCHITECTURE	
STATE ORGAN DESIGNATION	PUBLIC SERVICE FUNCTION
Article 1(3)(c) & Article 260 Independent Tribunals are textually classified as State organs.	Article 260 Definition “Collectivity of individuals ... performing a function within a State organ”.

Under Article 260 of the Constitution, the *"public service"* is defined as *"the collectivity of all individuals, other than State officers, performing a function within a State organ."*

While independent tribunal adjudicators may not always be salaried "public officers" drawing direct monthly stipends from the Consolidated Fund, they perform adjudicative functions within an Article 1(3)(c) State organ. Consequently, tribunal members form an integral part of the **public service architecture** of Kenya under Article 260, holding formal public responsibilities when executing their duties.

The Supportive Statutory Integrity Framework: Leadership & Integrity Act (Cap 182)

While Chapter Six of the Constitution directly targets "State officers," its ethical requirements and integrity mandates are extended to independent tribunals through the **Leadership and Integrity Act (Cap 182)**:

CAP 182 INTEGRITY ENFORCEMENT REGIME
1. PUBLIC ENTITY STATUS (Section 2 LIA) State organ status automatically makes the tribunal a “public entity” under Cap 182.
2. STATUTORY EXTENSION TO OFFICERS (Section 52 LIA / Art. 80(c)) Extends Chapter 6 standards, gift disclosures (s. 14), conflict of interest rules (s. 16), and tender limits (s. 17) to all adjudicators.
3. INSTITUTIONAL AUDIT & REFERRAL DUTIES (Sections 16, 37-43 LIA) Mandates active conflict registers, code administration, and referrals to the DPP and EACC for breaches.

1. Tribunals as "Public Entities" (Section 2 LIA)

Section 2(a) of Cap 182 defines a "public entity" to include any State organ. Because an independent tribunal is an Article 1(3)(c) State organ, it operates as a public entity under the statutory oversight of Cap 182.

2. Statutory Extension to Public Officers (Section 52 LIA & Article 80(c))

Enacted pursuant to Parliament's mandate under Article 80(c), Section 52(1) of Cap 182 commands that Chapter Six and Part II of the Act apply to all public officers as if they were State officers. As a result, tribunal adjudicators are bound by:

- **Gift Disclosures and Limitations (Section 14)**
- **Conflict of Interest Rules & Disqualification (Section 16)**
- **Tendering and Commercial Restrictions (Section 17)**

3. Institutional Integrity Duties

As public entities, independent tribunals are required to maintain active **Conflict of Interest Registers** (Section 16(11)), enforce a statutory **Leadership and Integrity Code** (Sections 37–39), investigate internal integrity complaints (Section 42), and refer criminal or civil breaches directly to the Director of Public Prosecutions (DPP) or the Ethics and Anti-Corruption Commission (EACC) (Section 43).

Operational Application Across Dispute Frameworks

Institutional Framework	Functional Scope	State Organ Status	Integrity Standard Applied
AITAR (General Administrative)	General & Commercial Adjudication/Arbitration	Article 1(3)(c) State Organ	Cap 182 / Art. 10(2)(c) Integrity Umbrella
AISTAR (Succession & Estates)	Mass-Market Probate Adjudication	Article 1(3)(c) State Organ	Schedule A Integrity Oath & Cap 182 Compliance
AIETAR (Electoral & Representation)	Fast-Track Election Adjudication	Article 1(3)(c) State Organ	Non-derogable Public Service Ethics & Cap 182

Core Takeaway for Practitioners and Registries

Independent tribunals are not informal private panels, nor are their members exempt from statutory ethics.

They are **constitutionally designated State organs** whose members carry out public service duties under Article 260. Supported by the Leadership and Integrity Act (Cap 182), independent tribunals enforce high standards of transparency, accountability, and ethical conduct. This structural integrity ensures that every **Registry-Ready Determination** issued under Section 4 of the Fair Administrative Action Act carries full lawful authority to bind public land registries, commercial banks, and state authorities.