

REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT – SECOND SESSION – 2023

DIRECTORATE OF DEPARTMENTAL COMMITTEES

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

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REPORT ON THE CONSIDERATION OF THE CONFLICT OF INTEREST, 2023 (*NATIONAL ASSEMBLY BILL NO. 12 OF 2023*)

THE NATIONAL ASSEMBLY PARLIAMENT	
DATE:	03 OCT 2023 TUESDAY
TABLED BY:	CHAIRPERSON, JUSTICE & LEGAL AFFAIRS HON. GEORGE MURUGARA, MP
CLERK AT THE TABLE:	Inzofu Mwale

CLERK'S CHAMBERS

DIRECTORATE OF DEPARTMENTAL COMMITTEES

PARLIAMENT BUILDINGS

NAIROBI

OCTOBER, 2023

Approved  
Boss D/SNA  
3/10/2023

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## **LIST OF ABBREVIATIONS AND ACRONYMS**

AG	-	Office of the Attorney General
EACC	-	Ethics and Anti-Corruption Commission
IEBC	-	Independent Electoral and Boundaries Commission
JSC	-	Judicial Service Commission
KLRC	-	Kenya Law Reform Commission
KNUT	-	Kenya National Union of Teachers
LIA	-	Leadership and Integrity Act, 2012
LSK	-	Law Society of Kenya
MCCP	-	Maendeleo Chap Chap Party
NLC	-	National Land Commission
NPSC	-	National Police Service Commission
POEA	-	Public Officers Ethics Act, 2003
PSC	-	Public Service Commission
ODM	-	Orange Democratic Movement
ODPP	-	Office of the Director of Public Prosecutions
SRC	-	Salaries and Remuneration Commission
TSC	-	Teachers Service Commission
UDA	-	United Democratic Alliance
WDM	-	Wiper Democratic Movement

## **ANNEXURES**

- Annexure 1: Adoption Schedule
- Annexure 2: Minutes
- Annexure 3: Conflict of Interest Bill, 2023
- Annexure 4: Advertisement inviting the public to submit memoranda on the Bill
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## CHAIRPERSON'S FOREWORD

This report contains the proceedings of the Departmental Committee on Justice and Legal Affairs on its consideration of the Conflict of Interest Bill (*National Assembly Bill No. 12 of 2023*) which was published on Monday 3<sup>rd</sup> April, 2023.

The Bill was read for the first time in the House on Tuesday 6<sup>th</sup> June, 2023 and thereafter committed to the Departmental Committee on Justice and Legal Affairs for consideration and reporting to the House pursuant to the provision of Standing Order 127.

The Bill has sixty (60) clauses and seeks to repeal the Public Officers Ethics Act, 2003 and amend provisions of the Leadership and Integrity Act, 2012; the Ethics and Anti-Corruption Commission Act, 2011; and the Anti-Corruption and Economic Crimes Act, 2003. The Bill seeks to provide for the management of conflict of interest in the discharge of official duties.

In compliance with Article 118(b) of the Constitution and Standing Order 127(3), the Clerk of the National Assembly placed an advertisement in the print media on Monday 12<sup>th</sup> June, 2023 inviting the public to submit memoranda by way of written statements on the Bill.

In addition, the Clerk of the National Assembly vide letter Ref. No. *NA/DDC/JLAC/2023/060* dated Friday 23<sup>rd</sup> June, 2023 invited key stakeholders to submit views on the Bill and attend a public participation forum on Thursday 29<sup>th</sup> June, 2023. The memoranda were to be received on or before Monday 26<sup>th</sup> June, 2023 at 5.00 pm (East African Time). By the close of the submission deadline, the Committee had received nineteen memoranda.

The Judiciary, the Office of the Attorney General (AG), the Council of County Governors (COG), the Independent Electoral and Boundaries Commission (IEBC), the Ethics and Anti-Corruption Commission (EACC), the Law Society of Kenya (LSK), the Kenya Law Reform Commission (KLRC), the Kenya Medical Practitioners Pharmacists and Dentist's Union (KMPDU), the Kenya National Union of Teachers (KNUT), the National Police Service Commission (NPSC), the Parliamentary Service Commission, the Public Service Commission (PSC), the Office of the Director of Public Prosecutions (ODPP), the Salaries and Remuneration Commission (SRC), the Teachers Service Commission (TSC), Transparency International, *Uraia* Trust, *Mzalendo* Trust and Dr. Donald Keya, PhD gave their views on the Bill which the Committee considered in the preparation of this report.

While considering the Bill, the Committee observed that while the Bill seeks to repeal the Public Officers Ethics Act, 2003, it does not adequately provide for fundamental aspects of ethics in the public service enumerated in the Public Officer Ethics Act, 2003.

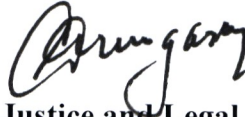
On behalf of the Departmental Committee on Justice and Legal Affairs and pursuant to the provisions of Standing Order 199(6), it is my pleasant privilege and honour to present to this House the Report of the Committee on its consideration of the Conflict of Interest Bill (*National Assembly Bill No. 12 of 2023*). The Committee is grateful to the Offices of the Speaker and Clerk of the National Assembly for the logistical and technical support accorded to it during its consideration of the Bill. The Committee further wishes to thank the Judiciary, the AG, the COG, the IEBC, the EACC, the LSK, the KLRC, the KMPDU, the KNUT, the NPSC, the Parliamentary Service Commission, the PSC, the ODPP, the SRC, the TSC, Transparency International, *Uraia* Trust, *Mzalendo* Trust and Donald Keya, PhD for submitting memoranda on the Bill.

**Report of the Departmental Committee on Justice and Legal Affairs on the Consideration of the Conflict of Interest Bill, 2023 (*National Assembly Bill No. 12 of 2023*)**

Finally, I wish to express my appreciation to the Honourable Members of the Committee and the Committee Secretariat who made useful contributions towards the preparation and production of this report.

It is my pleasure to report that the Committee has considered the Conflict of Interest Bill (*National Assembly Bill No. 12 of 2023*) and have the honour to report back to the National Assembly with the recommendation that the House approves the Bill with amendments as proposed in the Schedule of Amendments.

**Hon. Murugara George Gitonga, MP**  
**Chairperson, Departmental Committee on Justice and Legal Affairs**



## CHAPTER ONE

### 1 PREFACE

#### 1.1 Establishment of the Committee

1. The Departmental Committee on Justice and Legal Affairs is one of twenty departmental committees of the National Assembly established under **Standing Order 216** whose mandate pursuant to the **Standing Order 216 (5)** is as follows:

- i. *To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;*
- ii. *To study the programme and policy objectives of ministries and departments and the effectiveness of the implementation;*
- iii. *To, on a quarterly basis, monitor and report on the implementation of the national budget in respect of its mandate;*
- iv. *To study and review all legislation referred to it;*
- v. *To study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;*
- vi. *To investigate and inquire into all matters relating to the assigned ministries and departments as they may deem necessary, and as may be referred to them by the House;*
- vii. *To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments);*
- viii. *To examine treaties, agreements and conventions;*
- ix. *To make reports and recommendations to the House as often as possible, including recommendations of proposed legislation;*
- x. *To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*
- xi. *To examine any questions raised by Members on a matter within its mandate.*

## 1.2 Mandate of the Committee

2. In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider<sup>1</sup>:-
  - a) The Judiciary;
  - b) Tribunals;
  - c) Access to Justice;
  - d) Public prosecutions;
  - e) Ethics, Integrity and Anti-corruption;
  - f) Correctional services;
  - g) Community service orders and witness protection;
  - h) Constitutional Affairs;
  - i) Sovereign immunity;
  - j) Elections including referenda;
  - k) Human rights;
  - l) Political parties; and
  - m) The State Law Office' including insolvency, law reform, public trusteeship, marriages and legal education.
3. In executing its mandate, the Committee oversees the following Ministries/Departments:
  - a) State Department of Correctional Services;
  - b) State Law Office and Department of Justice;
  - c) The Judiciary;
  - d) Judicial Service Commission;
  - e) Office of the Director of Public Prosecutions;
  - f) Ethics and Anti-Corruption Commission;
  - g) Independent Electoral and Boundaries Commission;
  - h) Commission on Administrative Justice;
  - i) Office of the Registrar of Political Parties;
  - j) Witness Protection Agency;
  - k) Kenya National Commission on Human Rights;
  - l) Kenya Law Reform Commission; and

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<sup>1</sup> National Assembly Standing Orders, 6<sup>th</sup> Edition.

m) Council of Legal Education.

### 1.3 Committee Membership

4. The Departmental Committee on Justice and Legal Affairs was constituted by the House on 27<sup>th</sup> October, 2022 and comprises the following Members:

#### **Chairperson**

Hon. Murugara George Gitonga, MP  
Tharaka Constituency

#### **UDA Party**

#### **Vice-Chairperson**

Hon. Mutuse Eckomas Mwengi, OGW, MP  
Kibwezi West Constituency

#### **MCCP Party**

#### **Members**

Hon. Maalim Farah, MP  
Dadaab Constituency

#### **WDM-Kenya**

Hon. Francis Kajwang' Tom Joseph, MP  
Ruaraka Constituency

#### **ODM Party**

Hon. Junet Mohamed, CBS, MP  
Suna East Constituency

#### **ODM Party**

Hon. (Dr.) Otiende Amollo, SC, MP  
Rarieda Constituency

#### **ODM Party**

Hon. Onyiego Silvanus Osoro, CBS, MP  
South Mugirango Constituency

#### **UDA Party**

Hon. Muchira Michael Mwangi, MP  
Ol Jorok Constituency

#### **UDA Party**

Hon. Makali John Okwisia, MP  
Kanduyi Constituency

#### **FORD-Kenya**

Hon. Muriu Wakili Edward, MP  
Gatanga Constituency

#### **UDA Party**

Hon. Maina Jane Njeri, MP  
Kirinyaga (CWR)

#### **UDA Party**

Hon. Gichohi Kaguchia John Philip, MP  
Mukurweini Constituency

#### **UDA Party**

Hon. Mogaka Stephen M, MP  
West Mugirango Constituency

#### **Jubilee Party**

Hon. Aden Daud, EBS, MP  
Wajir East Constituency

#### **Jubilee Party**

Hon. Siyad Amina Udgoon, MP  
Garissa Township (CWR)

#### **Jubilee Party**

#### 1.4 Committee Secretariat

5. The Committee is well-resourced and facilitated by the following staff:

Mr. Douglas Katho  
**Clerk Assistant I/Head of Secretariat**

Mr. Ronald Walala  
**Senior Legal Counsel**

Ms. Vivienne Ogega  
**Research Officer III**

Mr. Stanley Lagat  
**Senior Serjeant-At-Arms**

Ms. Faith Jully  
**Public Communication Officer III**

Ms. Winnie Kiziah  
**Media Relations Officer II**

Mr. Antony Kariuki  
**Serjeant-At-Arms**

Mr. Omar Abdirahim  
**Fiscal Analyst II**

Ms. Fridah Ngari  
**Media Relations Officer III**

Ms. Jael Ayiego  
**Clerk Assistant III**

Mr. Peter Mutethia  
**Audio Officer III**

Mr. Abdikafar Abdi  
**Clerk Assistant III**

Mr. Alex Amwatta  
**Hansard Reporter III**

Mr. Alvin Ochieng'  
**Research Officer III**

Mr. Silas Opanga  
**Hansard Reporter III**

## CHAPTER TWO

### 2 OVERVIEW OF THE CONFLICT OF INTEREST BILL (*NATIONAL ASSEMBLY BILL NO. 12 OF 2023*)

#### 2.1 Background

6. The Bill which was sponsored by the Majority Leader, Hon. Kimani Ichung'wah, MGH, MP, was published on Monday 3<sup>rd</sup> April, 2023 and read for the first time in the House on Tuesday 6<sup>th</sup> June, 2023. It was thereafter committed to the Departmental Committee on Justice and Legal Affairs.

#### 2.2 Summary of Legal Provisions

7. The Conflict of Interest Bill seeks to repeal and replace the Public Officer Ethics Act, 2003 and establish a framework for managing conflicts of interest in the discharge of public duties under the general supervision of the Ethics and Anti-Corruption Commission.
8. The Bill contains sixty (60) clauses which provide as follows:
  - a) **Clause 3** of the Bill outlines the objectives of the legislation as promotion of objectivity and impartiality in official decision making; ensuring that the integrity of decision makers is not compromised by private interests; enhancing public confidence in the delivery of public services; providing a framework for the regulation and management of real, apparent or potential conflict between public interest and private interest; and providing an institutional framework for the management of conflict of interest.
  - b) **Clause 5** of the Bill provides for the administration of all aspects of the legislation to the Ethics and Anti-Corruption Commission. Under **Clause 6**, the Commission is mandated, among others, to institute proceedings for the forfeiture of undeclared or unexplained assets.
  - c) **Part III (Clauses 8-29)** of the Bill defines the nature and extent of conflict of interest and the attendant obligations on public officers. Public officers are under an obligation to avoid conflict of interest generally (**Clause 9**) and specifically with regard to decision-making (**Clause 10**); participation in legislative proceedings (**Clause 11**); preferential treatment (**Clause 12**); use of official information (**Clause 13**); use of their influence (**Clause 14**); receiving offers of employment (**Clause 15**);

receiving and giving gifts (**Clause 16 and 17**); accepting complimentary treatment (**Clause 18**); engaging in public procurement (**Clause 19**); ownership of private entities (**Clause 20**); recruitment of persons into the public service (**Clause 21**); outside employment (**Clause 23**); political neutrality (**Clause 25**); and public collections (**Clause 26**).

- d) **Clause 22** of the Bill precludes public officers from entering into any arrangement intended to conceal a conflict of interest while **Clause 27** of the Bill restricts former public officers from acting for or against the entity in which they were previously employed until the lapse of two years from the date of their termination. The Commission may, under, **Clause 29**, waive this restriction upon written application on the grounds, *inter alia*, that an officer was not directly involved in the decision-making over the matter in issue. Contravening the restrictions prescribed with regard to the specific conflict of interests constitute offences.
- e) **Clause 24** of the Bill obligates all public entities to maintain a public register of conflicts of interest in which the conflicts must be particularized.
- f) **PART IV (Clauses 30-47)** of the Bill contains Compliance Measures. Under the Bill, a public officer is under a duty to recuse themselves from any proceedings in which they are in a conflict of interest, formally record the nature and details of the conflict and file a declaration of the recusal with the EACC within sixty (60) days. Under **Clause 31 and 32** of the Bill, a public officer is required to file, with the EACC, a declaration of income, assets and liabilities within thirty (30) days of employment, biennially, and within thirty (30) days of ceasing to be a public officer.
- g) **Clause 33** of the Bill mandates the Commission to analyse all declarations made and to ascertain their completeness and correctness and whether they raise any possible issues of conflict or contain any discrepancies or inconsistencies. The Clause allows the EACC to seek clarifications within six (6) months of the filing of a declaration.
- h) **Clause 34** of the Bill provides for access to the declarations filed with the EACC upon satisfying the Commission of a legitimate interest in the declaration. **Clause 34(2)** allows law enforcement agencies unrestricted access to the declarations. The Clause precludes any person who has obtained access to the records from disclosing the contents of such records without the prior written authority of the Commission. A

person who contravenes this requirement for confidentiality is liable, upon conviction, to a fine not exceeding one million shillings or a term of imprisonment not exceeding two years, or both the fine and imprisonment.

- i) **Clause 35** of the Bill provides for the retention of information submitted to the Commission under the Bill for a period of at least five (5) years after a person exits the public service.
- j) **Clause 38, 39, 40, 41, 42, 43 and 44** of the Bill provide for the obligation on a public officer to divest private interests that would place an officer in a position of conflict; the manner in which one may divest such interests and the assets exempted from the mandatory divestiture. Under the Bill, a public officer may elect either to sell their interests in an arms-length transaction or establish a Blind Trust in which the officer has no direct control over within ninety days of appointment or employment. Only charged assets and assets of minimal value may be exempted from the requirement.
- k) **Clause 47** of the Bill obligates the EACC to develop and publicise in the *Kenya Gazette* the administrative mechanisms for the implementation of the Compliance Measures outlined under **Part IV** within twelve (12) months of the passage of the Bill.
- l) **PART V (Clauses 48-51)** of the Bill contain provisions on complaints and investigations. Under Clause 48, a public officer who is under investigation must be informed of the allegations and afforded an opportunity to make representation on the matter before conclusion of the investigations. A State or public officer may be suspended from office pending the investigation or determination of any allegations made against the officer under Clause 50 of the Bill. In terms of recommendations, Clause 51 of the Bill allows the EACC to either recommend disciplinary action against a State or public officer; appropriate measures to ensure compliance with or cessation of further violation of the provisions of the Bill; or prosecution by the Director of Public Prosecutions. The provision further allows the EACC to apply to the High Court for an appropriate order to compel the implementation of its recommendations.
- m) **PART VI** of the Bill contains miscellaneous provisions. **Clause 52** of the Bill levies a general penalty for offences under the Act where a convicted person is liable to a

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fine not exceeding four million shillings or imprisonment for a term not exceeding ten years, in the case of a natural person; or a fine not exceeding ten million shillings in the case of a body corporate. Where the conduct that constitutes an offence under the Bill results in a quantifiable benefit or loss, or both a benefit and a loss, an additional mandatory fine of two times the amount of the benefit, loss, or benefit and loss is to be added to the prescribed fine.

- n) **Clause 54(4)** precludes persons from providing false information that is maliciously intended to injure another person to the Commission. A person convicted of providing false information is liable to a fine not exceeding five hundred thousand shillings or imprisonment for a term not exceeding three years, or both the fine and imprisonment.
- o) **Clause 56** of the Bill obligates every reporting entity to file compliance reports in the prescribed form.
- p) **Part VII (Clause 58-60)** of the Bill contains provisions on the repeal and saving of the Public Officer Ethics Act, 2003 and consequential amendments.
- q) **Clause 58** repeals the Public Officer Ethics Act, 2003 while **Clause 59** saves the obligations undertaken by the existing “responsible Commissions” under the Act until the development of the administrative provisions established under the Bill by the EACC. Under the provision, a public officer shall be required to divest any private interests that place the officer in a position of conflict within twenty-four months of the commencement of the provisions of the Bill.
- r) **Clause 60** of the Bill amends the Public Procurement and Asset Disposal Act, 2015, the Leadership and Integrity Act, 2012, the Ethics and Anti-Corruption Commission Act, 2011, and the Anti-Corruption and Economic Crimes Act, 2003 in the manner outlined in the Third Schedule to the Bill. The Clause, as read with the Schedule seeks to—
  - a) repeal and replace section 59 of the Public Procurement and Asset Disposal Act, 2015 on the limitations imposed on public officers with regard to participating in public procurement.
  - b) amend the Leadership and Integrity Act, 2012 to—
    - (i) delete references to the Public Officer Ethics Act, 2003;

- (ii) delete section 14 of the Act on gifts;
  - (iii) delete section 16 of the Act on conflict of interest;
  - (iv) delete section 17 of the Act on participation in tenders;
  - (v) delete section 18 of the Act on public collections;
  - (vi) delete section 23 of the Act on political neutrality;
  - (vii) delete section 26 of the Act on other gainful employment;
  - (viii) delete section 27 of the Act on offers of future employment;
  - (ix) delete section 28 of the Act on former state officers acting in a government or public matter; and
  - (x) repeal and replace section 52 of the Act to apply all provisions of the Leadership and Integrity Act, 2011 to state and public officers. Currently, the requirements of the Act on public collections do not apply to public officers;
- c) amend section 11 of the Ethics and Anti-Corruption Commission Act, 2011 to include functions granted by statute as additional functions of the EACC;
- d) amend the Anti-Corruption and Economic Crimes Act, 2003 to—
- (i) delete section 44 on conflict of interest; and
  - (ii) delete section 62(6) of the Act. The subsection provides that suspension under the section, if charged with corruption, does not apply with respect to an office if the Constitution limits or provides for the grounds upon which a holder of the office may be removed or the circumstances in which the office must be vacated.

## CHAPTER THREE

### 3 PUBLIC PARTICIPATION AND STAKEHOLDER ENGAGEMENT ON THE BILL

#### 3.1 Legal Framework on Public Participation

9. Article 118 (1)(b) of the Constitution provides that:

*“Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees.”*

10. The National Assembly Standing Order 127 (3) and (3A) stipulates that:

*“(3) The Departmental Committee to which a Bill is committed shall **facilitate public participation on the Bill** through an appropriate mechanism including-*

*(a) inviting submission of memoranda;*

*(b) holding public hearings;*

*(c) consulting relevant stakeholders in a sector; and*

*(d) consulting experts on technical subjects.*

*(3A) The Departmental Committee shall take into account the views and recommendations of the public under paragraph (3) in its report to the House.”*

#### 3.2 Memoranda Received on the Conflict of Interest Bill

11. Pursuant to the aforementioned provisions of law, the Clerk of the National Assembly placed an advertisement in the print media on Monday 12<sup>th</sup> June, 2023 inviting the public to submit memoranda by way of written statements on the Bill. Further, the Clerk of the National Assembly vide letters Ref. No. *NA/DDC/JLAC/2023/060* and *NA/DDC/JLAC/2023/082* dated Friday 23<sup>rd</sup> June, 2023 and Thursday 3<sup>rd</sup> August, 2023, respectively invited key stakeholders to submit views on the Bill and attend a public participation forum on Thursday 29<sup>th</sup> June, 2023 and Tuesday 8<sup>th</sup> August, 2023 respectively.

12. To this end, the Departmental Committee on Justice and Legal Affairs received nineteen memoranda from the Judiciary, the Office of the Attorney General (AG), the Council of County Governors (COG), the Independent Electoral and Boundaries Commission (IEBC), the Ethics and Anti-Corruption Commission (EACC), the Law Society of Kenya (LSK), the Kenya Law Reform Commission (KLRC), the Kenya Medical Practitioners Pharmacists and Dentists’ Union (KMPDU), the Kenya National Union of Teachers (KNUT), the National Police Service Commission (NPSC), the Parliamentary Service Commission, the Public Report of the Departmental Committee on Justice and Legal Affairs on the Consideration of the Conflict of Interest Bill (*National Assembly Bill No. 12 of 2023*)

Service Commission (PSC), the Office of the Director of Public Prosecutions (ODPP), the Salaries and Remuneration Commission (SRC), the Teachers Service Commission (TSC), Transparency International, *Uraia* Trust, *Mzalendo* Trust and one public officer, Donald Keya, PhD. The memoranda are annexed to this report as *Annexure 7*.

13. The Judiciary, the AG, the COG, the IEBC, the EACC, the LSK, the KLRC, the KNUT, the NPSC, the PSC, the ODPP, the SRC, the TSC, Transparency International and *Mzalendo* Trust submitted memoranda in support of the Bill but with some reservations.
14. The Office of the Attorney General appeared before the Committee on Thursday 27<sup>th</sup> July, 2023 and submitted views in support of the Bill but with some reservations.
15. The ***Uraia* Trust** was of the view that the Bill complies with Article 10 of the Constitution and is a manifestation of true good governance thus its support for it.
16. The PSC opposed the Bill in its entirety stating that there was no justification for it as its contents are majorly a replica of already existing provisions of law and only introduces two new aspects of divestiture and establishment of blind trust.

#### **Clause 1**

17. The **Judiciary** submitted that while the long title of the Bill and its substantive provisions provide for the management and regulation of conflict of interest, it does not sufficiently provide for other aspects of ethics in the public service as provided for in the Public Officer Ethics Act, 2003. Hence, its recommendation that the Bill be expanded to cover all aspects of ethics in the public service.
18. ***Mzalendo* Trust** submitted that the commencement clause be amended to propose that the commencement of the Bill be guided by Article 116 of the Constitution.
19. The **NLC** submitted that the title of the Bill be amended to Integrity and Conflict of Interest Bill, 2023 as conflict of interest is a part of integrity in general and the contents of the Bill entail more aspects than just conflict of interest.

#### **Committee Observation**

20. The Committee was of the view that the submission by the Judiciary on the Clause was not adequately specific with regard to the items proposed for inclusion. The Committee agreed with the proposal by ***Mzalendo* Trust** on the need to align the commencement with Article

116 of the Constitution. The Committee was of the view that the title “Conflict of Interest Bill” adequately addresses the issues contained in it.

### **Clause 2**

21. The **Office of the AG** was of the view that a definition of “conflict of interest” be included in the Bill as follows:

*“conflict of interest” means a conflict between the public duty and private interests of a public official, in which the public official has private capacity interests which could improperly influence the performance of his official duties and responsibilities;*

22. The **IEBC** submitted that the definition of “public officer” be reviewed to align it with the meaning assigned to it under the Constitution.

23. The **ODPP** and the **NLC** noted that Clause 2 includes the common law definition of a “partner” which may result in a conflict of laws as the new marriage laws do not consider cohabitation as a form of marriage. It, therefore, recommended that the definition be deleted.

24. The **TSC** was of the view that the definition of gainful employment as drafted is narrow and restrictive and should be amended to specifically refer to a steady allowance arising out of steady employment. They further submitted an additional amendment to the definition of “reporting entity” to expressly include Constitutional Commissions which are part of the state organs and proposed the inclusion of what constitutes a conflict of interest both directly and indirectly in the definitions.

25. The **Council of Governors** proposed that the term “State officer” and its definition in the Constitution be included in the interpretation clause to make a distinction between State and public officers.

26. **Mzalendo Trust** proposed that the definition of “unexplained asset” as derived from Section 2 of the Anti-Corruption and Economic Crimes Act, 2003 be amended as it is limiting especially in the scope of what the Bill is intended to achieve as it would require someone to have been reasonably suspected of corruption or economic crime. It, thus, recommended that only subsection (b) of Section 2 of the Anti-Corruption and Economic Crimes Act, 2003 be applicable in the Bill.

27. **Transparency International** proposed the inclusion of the definition of a “whistleblower” being that the term has been used in Clause 54 of the Bill.

28. **Donald Keya, PhD** submitted that the definition of “relative” be amended and limited to only the members of the nuclear member of a public officer i.e. the spouse and children. He noted that the definition is too broad and purports to unjustly restrict the rights and freedoms of relatives of public officers.
29. The **Parliamentary Service Commission** proposed that the term “gainful employment” be rephrased to “other gainful employment” to explain the fact that the kind of employment referred to is additional employment to public engagement by the public official. It also stated that the definition of the word “Commission” be amended to mean “Commission or reporting authority responsible for the public official” in line with the view that conflict of interest arises differently for every public entity and hence can be best managed by the responsible commission or reporting entity that the public official reports to.
30. Further, the Commission added that there is a need to define “unexplained assets” in the context of the intended Conflict of Interest Act rather than adopting the definition in the Anti-Corruption and Economic Crimes Act which is tied to corruption and economic crimes.

### **Committee Observation**

31. The Committee agreed with the proposals on the definition of the terms “conflict of interest”; “family” (in relation to common-law partners); “relative” (in relation to common-law partners) “unexplained asset”; and “public officer” for purposes of uniformity, clarity and alignment with the provisions of the Constitution and existing laws. The Committee was of the further view that the definition of the term “State Officer” is subsumed in the definition of “public officer”; and that the terms “whistleblower” and “gainful employment” have ordinary meanings and therefore do not require further definition.

### **Clause 3**

32. **Transparency International** proposed that sub-clause (2)(a) be amended by deleting the word “official” to enhance clarity on the scope of its application and align it with the language used in other parts of the Bill, particularly, Clause 8(a), 10(1) and 12(1). It also submitted that sub-clause (2)(c) be amended by introducing the words “integrity of public office and” to align it to Articles 73 and 75 of the Constitution. Further, it proposed the introduction of two new objects:

*“(d) enhance accountability to the public for decisions and actions by public officers in execution of their duties;*

*(e) promote selfless service by public officers based solely on the public interest;”*

#### **Committee Observation**

33. The Committee was of the view that the word “official” has been consistently used throughout the Bill and does not create any ambiguity in the cited provisions.

34. The Committee agreed with the submissions on amending the subclause (2)(c) and the introduction of two additional paragraphs for purposes of clarity and alignment of the objects of the Bill with the provisions of Article 73 and 75 of the Constitution.

#### **Clause 4**

35. The **KLRC** noted that Clause 4 of the Bill excludes fundamental reporting entities including State officers and the private sector as was initially provided for under the Public Officer Ethics Act, 2003 which the Bill intends to repeal. It recommended that the original scope as provided for under the Draft Bill be reinstated.

#### **Committee Observation**

36. The Committee noted that the Public Officer Ethics Act, 2003 only applies to public officers and that the KLRC did not provide specific details on the items proposed for inclusion in the Bill.

#### **Clause 5**

37. According to the **Judiciary**, Clause 5 and 6 of the Bill mandates the EACC with the exclusive administration of the proposed law which takes away the constitutional functions of the Judicial Service Commission and offends various provisions of the Constitution including Articles 1, 159, 172 and 249. Consequently, it recommended that Clause 5 be revised to empower the Judicial Service Commission (JSC) to administer the proposed law with respect to State and public officers employed by the JSC.

38. The **PSC** submitted that the day-to-day administration and management of conflict of interest is better carried out by the individual reporting entities and that it would be redundant and untenable for the EACC to discharge that duty with respect to all public officers from various

reporting entities including TSC, JSC, the Parliamentary Service Commission and all the forty-seven (47) county public service boards among others. It added that it does not promote efficiency in dealing with malfeasance related to the code of conduct and is against the spirit of the United Nations Convention Against Corruption because EACC does not exercise disciplinary control over the public officers.

39. The **Parliamentary Service Commission** proposed that Clause 5 as read with Clauses 6 and 7 be rephrased to remove the administration of the proposed Act in terms of enforcement and implementation from the sole ambit of the EACC and be divested to the Commission or reporting authority for the public officer involved. It also noted that there should be a provision to specify who will be exercising the oversight role over EACC officials as related to conflict of interest.

### **Committee Observations**

40. The Committee did not agree with the proposals made by the Judiciary, PSC and the Parliamentary Service Commission. The Committee noted that the Constitution contains a specific Chapter on Leadership and Integrity which applies to all State and public officers. The Constitution further establishes three arms of government and Commissions and independent offices that are not subject to the direction or control of any other entity. As such, the proposal in the Bill for the EACC to administer the legislation on conflict of interest is derived from Chapter Six of the Constitution and does not affect the independence of the institutions established by the Constitution and the public and State officers who serve in the institutions.

### **Clause 6**

41. The **Council of Governors** proposed an additional function of the Commission as follows:  
“Develop policies, standards, guidelines and promote best practices for the management of conflict of interest.”

### **Committee Observation**

42. The Committee agreed to the proposal by the Council of Governors.

### **Clause 7**

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43. The **IEBC** noted that the Bill gives the EACC the power to summon witnesses and require them to give or produce evidence as the Commission may consider necessary contrary to Article 252(3) of the Constitution that expressly provides that the power to issue summons to a witness for purposes of investigation vests with the Kenya National Human Rights and Equality Commission (KNCHR), the Judicial Service Commission (JSC), the National Land Commission (NLC) and the Auditor General.

#### **Committee Observation**

44. The Committee did not agree with this view. Article 79 of the Constitution as read with the Ethics and Anti-Corruption Commission Act, establishes an independent ethics and anti-corruption commission with the status and powers of a commission under Chapter Fifteen of the Constitution for purposes of ensuring compliance with, and enforcement of, the provisions of the Constitution on Leadership and Integrity. EACC therefore possesses the powers to issue summons to assist it in investigations similar to that granted to the Commissions specified under Article 252 of the Constitution.

#### **Clause 8**

45. The **TSC** proposed the deletion of the word “perceived” under Clause 8(b) as it may be subject to abuse.

46. On Clause 8(c), the **NPSC** submitted that the word “perceived” be substituted with “can be demonstrated” as the former is not an objective measure of what would amount to actions or omissions that impair public officers’ ability to act perform their public duties. It further proposed substitution of “has interests” with “pursue interests” because public officers have diverse personal interests under Clause 8(c).

#### **Committee Observation**

47. The Committee did not agree with these views. The term “perceived” as used in the Clause connotes the perspective that a reasonable person or the court may hold with regard to an act or omission by a public officer and whether the same constitutes a conflict of interest.

48. The Committee was of the view that the proposal by the NPSC was vague.

#### **Clause 9**

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49. **Transparency International** recommended the addition of the words “to the reporting authority or Commission and comply with any directions to avoid the conflict” to ensure accountability by providing clarity on who a public officer should report to.

#### **Committee Observation**

50. The Committee agreed with the proposal and observed that adding the words proposed identifies the entity to which a public officer is required to report any conflict that arises during the discharge of his or her duties.

#### **Clauses 10, 36 and 37**

51. The **Law Society of Kenya** noted that these clauses fail to provide a penalty for the offences prescribed and hence are subject to the general penalty provided under Clause 52. Thus, it advised that the clauses be amended to provide for penalties to the offences stipulated therein as the general penalty is too harsh and limits the judicial discretion of the court.

52. The **ODPP** also submitted that Clause 36(2) be reworded as payment of fines is a judicial function by the courts and hence should not be vested with the EACC.

#### **Committee Observation**

53. The Committee was of the view that in the absence of an alternative proposal and rationale for an alternative penalty, the general penalty provided under Clause 52 of the Bill would apply. The Committee agreed to the deletion of Clause 36(2) to remove the requirement it imposes to pay criminal fines to the EACC.

#### **Clause 11**

54. The **Parliamentary Service Commission** submitted that the clause be deleted as it is already provided for in the Parliamentary Powers and Privileges Act, 2017 and the County Assemblies Powers and Privileges Act, 2017.

#### **Committee Observation**

55. The Committee agreed with the proposal.

#### **Clause 13**

56. The NPSC proposed substituting the phrase “interests of another person” with “private interests” under Clause 13(1). It stated that “interests” is a general term and the interests sought to be regulated in the Bill are “private interests”.

#### **Committee Observation**

57. The Committee noted that the Clause prohibits misuse of official information for both public and private interests. It did not agree with the proposal.

#### **Clause 15**

58. The NPSC proposed deletion of Clause 15(1)(b) it noted that receipt of an employment offer does not indicate any act or omission in the conduct of the public officer to act for private interests and could be unsolicited.

59. The Parliamentary Service Commission proposed deletion of reporting of acceptance of an offer of outside employment to EACC and instead recommended that such reporting be done to the responsible Commission or reporting authority within seven days.

#### **Committee Observation**

60. The Committee noted that subclause (3) clearly defines an “offer of outside employment” as a formal proposal made to a public officer to work for or privately do business with an entity which has official dealings with the reporting entity in which the public officer is serving. The Clause is therefore sufficiently clear as to the nature of offer that it applies to.

#### **Clause 16**

61. The LSK submitted that the provisions of Clause 16(3) on gifts and other benefits are too restrictive and intrusive to the privacy of a public officer. It proposed that the clause be amended to dictate that such declaration only be made during suspicious circumstances of gifting.

#### **Committee Observation**

62. The Committee did not agree with the proposal. It noted that the restrictions on gifting and obligations to report the receipt of gifts are integral to avoiding any real or perceived conflict of interest on the part of a public officer.

### **Clause 17**

63. The **TSC** submitted that the nature of gifts referred to in paragraph (b) be amended to exclude gifts awarded to employees for exemplary performance. Moreover, **Mzalendo Trust** submitted that this clause be amended by inserting a penalty clause on the responsible person for failure to maintain a register of gifts.

### **Committee Observation**

64. The Committee did not agree with the proposals. The Committee noted that Clause 17 only seeks to buttress the obligation to report the receipt of gifts under Clause 16 of the Bill. It is therefore not necessary to provide an exemption to nature of gifts that may be included in the Register or to penalise a registrar who relies on gifting information that may never be submitted.

### **Clause 18**

65. The **TSC** noted that Clause 18(1), as drafted, criminalizes all complimentary treatment. Also, it stated that Clause 18(2) is open-ended and should be expounded further by providing clear parameters of what exceptional circumstances entails.

### **Committee Observation**

66. The Committee did not agree with the proposal. The Committee noted that the Clause expressly outlines the circumstances under which complimentary treatment may be accepted by a public officer and guides on the manner of reporting such treatment.

### **Clause 19**

67. The **TSC** submitted that this clause be amended to include the place of proxies such as spouse(s) and children to avoid abuse by public officers and to protect the sanctity of the Public Procurement and Disposal Act, 2015.

68. The **NPSC** proposed the deletion of the word “beneficiary” under Clause 19(1). It stated that the proposal is against Articles 27(3)(4) and 40 of the Constitution on the right to economic opportunities and property. Further, it added that public officers have the right to property which includes stake in companies and shares in which beneficial interests are declarable in law.

69. **Donald Keya, PhD** proposed that Clause 19(1) be amended to restrict public officers from engaging in business only with their reporting entity and not all reporting entities. He noted that this restriction was unjust and would result in hesitations by professionals to offer their competence and expertise in the public service. Further, that the Clause portrays being a public officer as punitive and will lead to a decline in the skillset in the public service hence compromising on the quality of the public service.

70. The **Parliamentary Service Commission** proposed deletion of Clause 19(2) as the same is sufficiently provided for under the Public Procurement and Asset Disposal Act, 2015 and attendant regulations.

#### **Committee Observation**

71. The Committee did not agree with the proposals on the Clause. The Committee noted that the Bill relates to the affairs of public officers in their official capacity and that it is in addition to the existing provisions of the Public Procurement and Asset Disposal Act, 2015.

#### **Clause 20**

72. **Transparency International** proposed the amendment of Clause 20(1) to provide for conflict of interest arising in situations where a public officer holds shares or interests in private legal entities, either directly or indirectly by substituting the phrase “acquire an” with “hold a direct or indirect”.

#### **Committee Observation**

73. The Committee did not agree with the proposal. The Committee noted that the Clause seeks to regulate the **prospective** investment by public officers in entities that are party to government contracts. Other provisions of the Bill address the issue of existing investments by public officers.

#### **Clause 21**

74. **Transparency International** proposed the deletion of sub-clause (2) which provides for the exemption of conflict in recruitment or in the alternative definition of “personal staff”.

#### **Committee Observation**

75. The Committee did not agree with the proposal. The Committee noted that there may be a category of personal staff whose recruitment may require the participation of an affected State or public officer. Examples include a bodyguard, personal doctor, nurse; or assistant.

### **Clause 23**

76. The **SRC** proposed the amendment of the sub-clause (1) in whole to read as follows:

*“A public officer who accepts employment on a part-time basis in another public institution shall inform the institution offering them the job, before accepting the job offer of their full-time employment as a public officer.”*

77. The **TSC** also submitted that the use of the word “incompatible” in sub-clause (1) is vague and ought to be amended in line with Article 47 of the Constitution. Moreover, it added that sub-clause (2) ought to be expanded in scope by providing what amounts to gainful employment prohibited under the Act to avoid abuse. It also stated that sub-clause (3) is impractical as it is deemed to criminalize hard work and no employer would authorize an employee to seek gainful employment elsewhere.

78. The **NPSC** proposed deletion of Clause 23(3) as it is an intrusion to a person’s privacy where any other gainful employment that is not in conflict of interest with the reporting authority is pursued outside official duty and time.

79. The **Parliamentary Service Commission** submitted that since Clause 23(2) refers to the fact that public officials are generally permitted under the Act to engage in other gainful employment, Clause 23(1) should be amended to reflect this general rule.

### **Committee Observation**

80. The Committee did not agree with the proposals. The Committee noted that Clause 23 clearly outlines the circumstances under which a full-time public or state-officer may attempt to engage in any other gainful employment activity and even provides a requirement that the reporting entity to which an officer belongs must be notified of such additional employment activities.

### **Clause 24**

81. The **Office of the AG** noted that having the register of conflict of interest open to the public may pose a challenge. Hence, it proposed that the register only be accessible to an applicant

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with a legitimate interest to ensure that the Commission is not burdened with frivolous requests for inspection of the register. It was of the opinion that clause 24(2) be amended by deleting paragraph (c) and substituting therefor the following new section:

*“be open to any person for inspection upon making an application to the reporting authority if the applicant satisfies the reporting authority that he has a legitimate interest and good cause in the furtherance of the objectives of this Act.”*

82. **Mzalendo Trust** thought that the clause be amended by expressly providing for ways in which the register of conflict of interest is to be made open to the public in compliance with the Access to Information Act, 2016.

#### **Committee Observation**

83. The Committee agreed with the proposals. The Committee noted that it would be prudent for the Bill to expressly prescribe the manner in which the Register should be accessible to the public in line with the Access to Information Act with necessary safeguards.

#### **Clause 25**

84. The **ODPP** was of the view that sub-clause (1) on political neutrality be aligned with Article 77(2) of the Constitution as the clause provides that Cabinet Secretaries and members of the County Executive Committee can hold office in political parties contrary to the Constitution.

85. **Transparency International** proposed the inclusion of an additional sub-clause as follows:

*“(c) engage in political activity that may compromise or be seen to compromise the political neutrality of his/her office.”*

86. The **NPSC** noted that Cabinet Secretaries as well as members of a County Executive Committee are public officers who should be politically neutral thus, proposed amendment of Clause 25(1) to read as follows:

*“An appointed public officer including a Cabinet Secretary or a member of a County Executive Committee, shall not, in the performance of his duties-”*

#### **Committee Observation**

87. The Committee did not agree with the proposal by the ODPP and the NPSC. The Clause does not allow any appointed State Officers to hold office in a political party. The Committee

agreed with the submission by Transparency International for purposes of clarifying the neutrality of the duties carried out by other public officers.

#### **Clause 26**

88. The **IEBC** noted that the terms “official social media platforms” be defined to specify the said platforms to avoid creating room for conjecture.

89. Further, the **ODPP** submitted that sub-clause (1)(c) be amended to provide for various exemptions such as social contributions for welfare purposes for colleagues such as medical bills and burial contributions among others.

#### **Committee Observation**

90. The Committee did not agree with the proposals. The Committee noted that the Clause precludes public officers from conducting public collections in the discharge of their official duties. Such collections constitute a major conflict of interest and may affect the quality of services given to a member of the public who refuses to participate in such a collection.

#### **Clauses 27, 28 and 29**

91. The **IEBC** submitted that there lacks a succinct justification for Clause 27. In addition, it was of the view that there is need for clarity by providing a timeline within which a public officer should refrain from engaging in subsequent activities that have the potential for conflict of interest.

92. The **TSC** proposed the deletion of Clauses 27, 28 and 29 on the basis that they amount to a violation of the rights of certain professionals especially Advocates in the public service. According to them, the provisions impede the right to earn a living from the practice of a profession. Furthermore, the provisions conflict with the principles in the Advocates Act, Cap 16.

93. On the other hand, the **ODPP**, the **NLC** and **EACC** proposed the substitution of the word “after” with “preceding” in Clause 28 of the Bill.

94. The **NPSC** submitted that the term “State” is quite broad and only the reporting entity to which a former public officer was engaged as an employee should be considered as there was privity of relationship. It, therefore, proposed amendment of Clause 27(1)(a) to read as follows:

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*“A former public officer shall not –*

*(a) act for or on behalf of any person in connection with any specific proceeding, transaction, negotiation or case in which the reporting entity is the immediate former employer and is a party and with respect to which the former public officer had acted for, or provided advice to that reporting entity.”*

95. The NPSC further submitted that Article 35 of the Constitution guarantees access to information held by the State subject to legal limitations hence it was their submission that the only information that should be limited is anti-competitive or classified information or misinformation. Further, it stated that Clause 27(1)(c) has the potential to limit witnesses in legal proceedings who advance the rule of law and constitutionalism. It thus proposed amendment of the clause to read as follows:

*“A former public officer shall not –*

*(c) use classified information obtained in his official capacity to further the interests of another person or entity.”*

96. The **Parliamentary Service Commission** proposed deletion of Clauses 27, 28 and 29. It noted that the restriction should be dealt with the responsible commission or reporting authority on case by case basis depending on demonstrable conflict of interest.

### **Committee Observation**

97. The Committee did not agree with the proposals made by the IEBC, TSC, NPSC and the Parliamentary Service Commission. The Committee noted that prohibition from working against the interests of an institution in which one was employed is consistent with the normative guidelines of employment in a bid to prevent a former employee from using privileged information acquired in the course of their service to the detriment of the former employer. The clauses are aimed at realizing public service integrity and to ensure professional and conscientious discharge of official duties by public officer regardless of their future prospects of employment by other entities.

98. The Committee agreed to the proposals by the ODPP, NLC and EACC on amendment of section 28 of the Bill to clarify the prohibition to the employment activities of a public officer applies “after” they leave the public service.

### **Clause 30**

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99. The **TSC** noted that the sub-clause (2)(b) places an unnecessary burden to file a declaration of recusal with the Commission and recommended that instead, the reporting authority bears it as it is the custodian of the register of conflict of interest.
100. The **Parliamentary Service Commission** submitted that Clause 30(2)(b) should be amended to mandate the responsible commission to report to EACC periodically instances of recusal of public officers under their jurisdiction and conflict that was avoided.

#### **Committee Observation**

101. The Committee did not agree with the proposals. The Committee noted that the requirement to report the recusal to both the reporting entity and the EACC is an accountability mechanism that ensures a proper record of the recusal is maintained.

#### **Clause 31**

102. The **Judiciary, TSC and Transparency International** proposed that the clause be amended to provide that declaration of income, assets and liabilities for employees be submitted to the respective reporting authorities and not the EACC.
103. Additionally, the **TSC** submitted that sub-clause (4)(c) be deleted as it amounts to a violation of privacy contrary to Article 31 of the Constitution.
104. The **Parliamentary Service Commission** proposed amendment of the clause to allow the responsible commission or reporting authority to be responsible and enforce compliance with declaration of income, asset and liabilities and report on non-compliance measures to EACC. Further, it proposed that the clause be amended to allow a public officer to only declare incomes, assets and liabilities of a spouse that are in joint names of the spouses.

#### **Committee Observation**

105. The Committee did not agree with the proposals. The Committee noted that the Constitution contains a specific Chapter on Leadership and Integrity which applies to all State and public officers. The Constitution further establishes three arms of government and Commissions and independent offices that are not subject to the direction or control of any other entity. As such, the proposal in the Bill for the EACC to administer the legislation on conflict of interest is derived from Chapter Six of the Constitution and does not affect the independence

of the institutions established by the Constitution and the public and State officers who serve in the institutions.

106. Additionally, the Committee noted that the requirement to include information to a change in the marital status of a public officer in their declarations is to allow the EACC to interrogate the extent to which the conduct of a public officer and the persons within the definition the officer's "family" complies with the requirements of the Bill and the Constitution.

### **Clauses 32, 33 and 34**

107. The **Office of the AG, IEBC, EACC, NLC ODPD and Transparency International** noted a numbering error in the sub-clauses under Clauses 32, 33 and 34 of the Bill.

108. The **LSK** submitted that the timeline for declaration provided under Clause 32(1) of the Bill is too short and inadequate to determine the financial liquidity of a person. Hence, it proposed that the clause be amended to increase that period from one year to three or five years.

109. The **TSC** proposed that Clause 32(4) be amended to provide that a public officer files the final declaration thirty days prior to exit as opposed to after ceasing to be a public officer to allow the reporting entity to enforce the provision.

110. **Transparency International** proposed amending Clause 33(1) of the Bill to have the reporting authority analyse, process and verify the declarations alongside the EACC.

111. The **NPSC** submitted that the declaration referred to in Clause 34(1) excludes wealth declaration as it contains personal information subject to the right to privacy. It added that the consent of a public officer should be sought when such private information is to be shared in accordance with the Data Protection Act, 2019.

112. On Clause 34(8), the **NPSC** submitted that the enforcement agency referred to in the clause be defined to specifically provide for a person employed by the EACC and not all enforcement officers generally. It also proposed the deletion of the words "unrestricted access to the disclosures with" and replacement with "reasonable access upon request on notice to reporting entities". It noted that the right to privacy and access information should be managed through transparent, accountable and lawful means.

### **Committee Observation**

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113. The Committee agreed with the proposals relating to the numbering errors identified in Clauses 32, 33 and 34 of the Bill.

114. The Committee, however, did not agree with the other proposals by the LSK, TSC, NPSC and Transparency International relating to the three Clauses. The Committee notes that save for the entity to which reporting is made, the proposals in the Clauses are modelled on the wealth declaration model that is currently followed under the Public Officer Ethics Act, 2003. No compelling justification has been provided to alter this model. Additionally, the proposal for dual scrutiny by the EACC and the entity in which a public officer serves may lead to unnecessary duplication and hamper the realisation of the objectives outlined under the Bill.

### **Clause 36**

115. The NLC proposed the deletion of the words “commits an offence” and substitution with “will be subjected to administrative action for a maximum of two failures and/or violations upon service with Notice of submission of Information”. It noted that the clause as drafted is extremely punitive and that an administrative action such as warning for a first failure suffices. Further, that an offence can only take maximum effect after a maximum of two violations or on the third violation and that proof of service of notice to the person is not necessary.

### **Committee Observation**

116. The Committee agreed with the view that Clause 36(2) is unnecessarily punitive and noted that if further irregularly requires payment of fines to the EACC.

### **Clause 45**

117. The TSC submitted that the clause be reworded to avoid abuse such that the power to take any compliance measures by the Commission is exercised after due process including a fair hearing.

### **Committee Observation**

118. The Committee agreed with the proposal. The Committee noted that it would be prudent for the EACC to observe the various rights guaranteed under the Constitution, including the right to fair hearing and fair administrative action.

#### **Clause 48**

119. The **IEBC** and **ODPP** submitted that the clause does not provide the nature and procedure for lodging complaints and investigations. It was its submission that the clause be amended to provide that complaints be lodged attached with evidence to avoid filing frivolous complaints and wasting the EACC's time.

120. The **TSC** proposed that the clause be amended in whole to avoid abuse by expounding it to include other players in the justice sector including the National Police Service and the Directorate of Criminal Investigations in the reporting process, providing the procedure through which information may be processed, and the modalities of investigations.

121. The **Parliamentary Service Commission** proposed that the clause be amended to allow investigations by the responsible commission or reporting authority for complaints of contravention of the provisions of this Act and the responsible commission or reporting authority to report its finding with recommendations within a prescribed period to EACC.

#### **Committee Observation**

122. The Committee did not agree with the proposals. The Committee noted that the Clause as read together with clause 49 outlines a comprehensive procedure for the lodging of complaints and the manner in which they are to be processed.

#### **Clause 49**

123. The **TSC** was of the view that Clause 49, as drafted, is pre-emptive and thus, should be amended to provide for some form of preliminary inquiry to determine whether a conflict of interest is apparent or not.

124. **Transparency International** proposed that sub-clause (2) be amended to allow a timeline within which complaints ought to be addressed after acknowledgement of the complaint.

#### **Committee Observation**

125. The Committee did not agree with the proposals. The Committee noted that the Clause as read together with clause 48 outlines a comprehensive procedure for the lodging of complaints and the manner in which they are to be processed. Given the nature of investigations relating to leadership and integrity and cautious not to unduly fetter the investigations, the Committee noted that it would be imprudent to prescribe a timeline for the conclusion of the investigations by the EACC.

### **Clause 50**

126. The **Judiciary** stated that suspension of public officers under investigation for breach of the proposed Act, as provided for under Clause 50, conflicts with Article 168 of the Constitution which outlines a different procedure for handling investigations against judicial officers and staff of the Judiciary. Thus, it submitted that the Clause be amended to ensure further clarity and to avoid conflict with the Constitution and Judicial Service Act, 2011.
127. The **TSC** also submitted that the clause on suspension from office is subject to abuse and should instead be subjected to the provisions of law governing the operations of the reporting authorities and other statutes.
128. **Transparency International** proposed the addition of the phrase “unless the person is charged in accordance with Section 51(1)(d)” to Clause 50 (2) to align it to Section 62(1) of the Anti-Corruption and Economic Crimes Act, 2003.
129. The **NLC** proposed the addition of the words “may be suspended on full pay” to Clause 50(1) to avoid a declaration of guilty until proven innocent.
130. The **Parliamentary Service Commission** proposed that the suspension of a public official pending investigations be done by the responsible commission or reporting authority where there is a likelihood of interference with evidence, witnesses or the investigations.

### **Committee Observation**

131. The Committee did not agree with the proposals. The Committee noted that the opening statement of subclause (1) clearly subjects the operation of the Clause to the provisions of the Constitution and any other written law. Article 168 of the Constitution would still be the applicable provision to judges. Additionally, the Committee noted that the suspension prescribed under the Clause is to operate pending the laying of charges against a public officer.

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### **Clause 51**

132. The **TSC** proposed deletion of Clause 51(2) on the grounds that recommendations from EACC should not be binding instead, they should remain as best practices.
133. The **ODPP** recommended that the word “Prosecution” be substituted therefor with “Prosecutions” as provided under Clause 51(1)(d) of the Bill.

### **Committee Observation**

134. The Committee did not agree with the proposal by the TSC. The Committee noted that the Constitution mandates the Judiciary to hear and determine cases. As such EACC can rightfully make an application to the High Court for appropriate orders for breach of provisions of the Bill.
135. The Committee agreed with the proposal of the ODPP.

### **Clause 52**

136. The **TSC** proposed amendment of Clause 52 to provide for a lesser fine as a penalty.
137. **Transparency International** proposed the introduction of an additional sub-clause (4) as follows:

*“A person who has been prosecuted and found guilty of an offence under this Act shall upon conviction be disqualified from holding any other public office.”*

### **Committee Observation**

138. The Committee did not agree with the proposals. The Committee noted that the general penalty prescribed is adequate is a measure likely to deter public officers from engaging in the conduct to which the Bill applies. The Committee further noted that Article 75 of the Constitution clearly outlines the penalty that awaits a person who violates Chapter Six of the Constitution will face.

### **Clause 54**

139. The **ODPP** proposed that Clause 54(1) be reworded to replace the words “is of public interest” with “is in the public interest” to align it to Clause 54(2) of the Bill.
140. **Transparency International** proposed the addition of a new sub-clause to provide for the enhanced protection of whistleblowers and witnesses as follows:

*“A whistleblower, informant or a witness in a complaint or a case of conflict of interest shall not be intimidated or harassed for providing information to law enforcement institutions or giving testimony in a court of law. Every reporting institution and law enforcement agency shall put in place reasonable mechanisms to protect the identity of informants and witnesses.”*

#### **Committee Observation**

141. The Committee agreed with the proposal by the ODPP to amend Clause 54(1) and insert the correct phrase. The Committee was, however, of the view that the submission by Transparency International on the protection of whistleblowers is adequately covered in subclause (1).

#### **Clause 55**

142. The **Parliamentary Service Commission** submitted that there is need to define what “good faith” means in the context of the Act since the same can be open to numerous interpretations despite grave impact of the intended legislation on public officials.

#### **Committee Observation**

143. The Committee noted that there is no definite and exhaustive definition of the phrase “good faith” and that this would be determined on a case-by-case basis by judicial authorities.

#### **Clause 56**

144. The **Office of the AG** and **TSC** proposed the amendment of the clause to provide for a clearer format for the compliance reports referred to therein to aid in the implementation and enforcement of the conflict of interest legislation. The **Office of the AG** further stated that the clause be deleted and substituted therefor with the following new clause:

*“Every reporting entity shall, within six months after the end of the financial year, file compliance reports with the Commission in the prescribed form.”*

#### **Committee Observation**

145. The Committee agreed with the proposal.

#### **Clause 58**

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146. The **EACC** stated that while Clause 58 of the Bill provides for the repeal of the Public Officer Ethics Act, 2003 it does not sufficiently provide for a saving clause for the already existing Codes of Conduct and Ethics developed under sections 5 and 6 of the Act.
147. The **IEBC** and **Transparency International** proposed that the Public Officer Ethics Act, 2003 should not be repealed in its entirety since some of its key aspects have not been adequately addressed in the Bill i.e. Part III of the Act on the general code of conduct and ethics; the establishment of specific codes of conduct; performance of duties; professionalism; no improper enrichment; acting for foreigners; care of property; giving of advice; misleading the public; conduct of private affairs; sexual harassment; and reporting improper orders.
148. The **TSC** also submitted that the Bill does not adequately cater to provisions of the Public Officer Ethics Act, 2003, particularly, on sexual harassment.
149. The **PSC** proposed that the Public Officers Ethics Act, 2003 should not be repealed. It noted that the Act was enacted to operationalize Articles 7 and 8 of the United Nations Convention Against Corruption aimed at promoting meritocracy in appointments in the public service.
150. The **Parliamentary Service Commission** submitted that the Bill has a narrow and special focus on conflict of interest leaving out other aspects of ethics in the public service which are well covered under the Public Officers Ethics Act, 2003. It thus proposed that the Bill should amend specific aspects of the POEA that relate to conflict of interest and preserve the POEA as concerns other aspects of ethics in the public service that the Bill has left out.

### **Committee Observation**

151. The Committee did not agree with the proposals. The Committee noted that majority of the provisions contained in the General Code of Conduct and Ethics under the Public Officer Ethics Act, 2003 were reproduced in the General Leadership and Integrity Code under the Leadership and Integrity Act, 2012. The provisions of the Leadership and Integrity Act, 2012 which are proposed for deletion in the Third Schedule to the Bill have been reintroduced in the main body of the Bill. Additionally, the Committee noted that under the Leadership and Integrity Act, 2012, all public bodies are under an obligation to formulate and publish Specific Leadership and Integrity Codes in addition to the General Code.

### **Clause 59**

**Report of the Departmental Committee on Justice and Legal Affairs on the Consideration of the Conflict of Interest Bill (National Assembly Bill No. 12 of 2023)**

152. The **ODPP** submitted that Clause 59, as a saving clause, does not adequately provide for the conduct of ongoing investigations and case pending before the court brought under Section 42 of the Anti-Corruption and Economic Crimes Act, 2003 which it proposes to repeal.
153. The **Judiciary** submitted that the Bill does not contain a substantive clause that would anchor the Codes of Conduct by responsible Commissions as currently provided for under Sections 5 and 6 of the Public Officer Ethics Act, 2003. They urged Parliament to revise the Bill to include a substantive clause empowering the JSC and other responsible Commission to promulgate Codes of Conduct.

### **Committee Observation**

154. The Committee agreed with the proposals by the ODPP on saving any ongoing investigations and prosecutions in relation to offences that the Bill seeks to delete.
155. With regard to the submission by the Judiciary, the Committee was of the view that that majority of the provisions contained in the General Code of Conduct and Ethics under the Public Officer Ethics Act, 2003 were reproduced in the General Leadership and Integrity Code under the Leadership and Integrity Act, 2012. The provisions of the Leadership and Integrity Act, 2012 which are proposed for deletion in the Third Schedule to the Bill have been reintroduced in the main body of the Bill. Additionally, the Committee noted that under the Leadership and Integrity Act, 2012, all public bodies are under an obligation to formulate and publish Specific Leadership and Integrity Codes in addition to the General Code.

### **Third Schedule: Consequential Amendments**

156. The **KNUT** submitted that Section 42 of the Anti-Corruption and Economic Crimes Act, 2003 should not be deleted as it will amount to encouraging agents of public officers and State officers to engage in activities that would cause conflict between the private interests and official duty. It also stated that Section 62(2) of the Anti-Corruption and Economic Crimes Act, 2003 should not be deleted as it is protected by the virtue that it does not apply with respect to an office if the Constitution limits or provides for the grounds upon which a holder of the office may be removed or the circumstances in which the office must be vacated.
157. The **KNUT** further submitted that Section 2(2) of the Leadership and Integrity Act, 2012 (LIA) should not be deleted as it emphasizes the change of title as stated in the Constitution.
- Report of the Departmental Committee on Justice and Legal Affairs on the Consideration of the Conflict of Interest Bill (National Assembly Bill No. 12 of 2023)**

Additionally, the Union stated that Section 6(3) of the LIA should not be deleted because it is integral that the POEA forms part of this Code.

158. The **KNUT** noted that Section 59 of the Public Procurement and Asset Disposal Act, 2015 (PPADA) should not be deleted as proposed in the Bill as it will encourage conflict of interest in the discharge of official duties, hence encourage corruption. It thus, proposed that the words “or a Board member of a committee or Board of that State organ or public entity” under Section 59(a) and the words “an officer of that Public entity or State organ” under Clause 59(b) be retained. It further noted that the words “himself and herself” under Section 2(a) of the PPADA should not be deleted.

#### **Committee Observation**

159. The Committee did not agree with the proposals. It noted that the consequential amendments contained in the Third Schedule are integral to the shift to one legislation to govern the issue of conflict of interest by public officers.

## CHAPTER FOUR

### 4 COMMITTEE OBSERVATIONS

160. Upon reviewing the Bill and the submissions received, the Committee made the following observations:

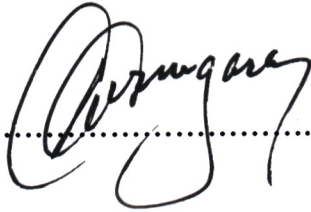
- a) The Title of the Bill may be misleading as to its contents and the matters that the Bill seeks to regulate.
- b) The Bill is aimed at regulating the conduct of public officers to enhance integrity in the public service. However, it is important to strike a balance between the public interest and the individual interests of the public officers to avoid imposing unjust restrictions on the activities of public officers.
- c) The Bill makes consequential amendments to delete section 42 of the Anti-Corruption and Economic Crimes Act, 2003 without prescribing adequate saving mechanisms for any offences with ongoing investigations or prosecutions under the provision; and
- d) The Bill seeks to repeal the entire Public Officer Ethics Act, 2003 without providing clear guidance on the status of the provisions that have not been reintroduced substantively in the Bill.
- e) The Bill contains various typographical and cross-referencing errors. The Bill would, therefore, require several amendments to 'clean up' the affected provisions.
- f) The public participation exercise highlighted the need to amend various provisions of the Bill to correct grammatical errors; align the contents with the provisions of the Constitution and written law and to include missing provisions for purposes of clarity and completeness of the proposed legislation.

CHAPTER FIVE

5 COMMITTEE RECOMMENDATIONS

161. The Committee, having considered the Conflict of Interest Bill (*National Assembly No. 12 of 2023*) and the submissions from members of the public and stakeholders, **recommends that the House approves the Bill with amendments as proposed in the Schedule of Amendments.**

SIGNED.....



DATE.....

3/10/2023

HON. GEORGE GITONGA MURUGARA, MP

CHAIRPERSON

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

## CHAPTER SIX

### 6 SCHEDULE OF AMENDMENTS

162. In view of the observations made, the Committee proposed the following amendments to the Bill:

#### (1) CLAUSE 1

**THAT**, Clause 1 of the Bill be amended by deleting the words “and shall come into force on such date as the Attorney-General may, by notice in the Gazette, appoint”.

Rationale: To align the commencement of the Act with the provisions of Article 116 of the Constitution.

#### (2) CLAUSE 2

**THAT**, Clause 2 of the Bill be amended—

(a) by inserting the following new definition in proper alphabetical sequence—

“conflict of interest” means a conflict between the public duty and private interests of a public official, in which the public official has private capacity interests that could improperly influence the performance of his official duties and responsibilities;

(b) in the definition “family” by deleting the words “common-law partner” appearing in paragraph (a) and (b);

(c) by deleting the definition “unexplained asset” and substituting therefor the following new definition—

“unexplained asset” means an asset of a person whose value is disproportionate to his or her known sources of income at or around that time and for which there is no satisfactory explanation.

(d) by deleting the definition “public officer” and substituting therefor the following new definition—

“public officer” has the meaning assigned to it by Article 260 of the Constitution

(e) in the definition “relative” by deleting the words “common lay partnership”

Rationale: To amend the definitions for purposes of uniformity, clarity and alignment with the provisions of the Constitution and existing laws.

**(3) CLAUSE 3**

**THAT** Clause 3 of the Bill be amended in subclause (2) by—

(a) deleting paragraph (c) and substituting therefor the following new paragraph—

“(c) enhance integrity of public office and public confidence in the delivery of public services;

(b) inserting the following new paragraphs after paragraph (e)—

“(f) enhance accountability to the public for decisions and actions by public officers in execution of their duties;

(g) promote selfless service by public officers based solely on the public interest;”

Rationale: for purposes of clarity and alignment of the objects of the Bill with the provisions of Article 73 and 75 of the Constitution.

**(4) CLAUSE 6**

**THAT**, Clause 6 of the Bill be amended by inserting the following new paragraph immediately after paragraph (i)—

“(j) Develop policies, standards, guidelines and promote best practices for the management of conflict of interest.”

Rationale: to empower the EACC with an additional function with regard to conflict of interest

**(5) CLAUSE 9**

**THAT**, Clause 9 of the Bill be amended in paragraph (b) by inserting the words “to the reporting authority or Commission and comply with any directions to avoid the conflict” immediately after the word “officer”.

Rationale: To identify the entity to which a public officer is required to report any conflict that arises during the discharge of his or her duties.

**(6) CLAUSE 11**

**THAT**, the Bill be amended by deleting Clause 11

Rationale: Declaration of conflict of interest in parliamentary debate is adequately covered under the Parliamentary Powers and Privileges Act, 2015 and the County Assemblies Powers and Privileges Act, 2017.

**(7) CLAUSE 24**

**THAT**, Clause 24 of the Bill be amended in subsection (2)(c ) by inserting the words “subject to the provisions of the Access to Information Act, 2012” immediately after the words “public”.

Rationale: to expressly prescribe the manner in which the Register of Conflict of Interests should be accessible to the public in line with the Access to Information Act, \_\_\_\_ with necessary safeguards

**(8) CLAUSE 25**

**THAT**, Clause 25 of the Bill be amended by in subclause (1) inserting the following new paragraph immediately after paragraph (b)—

“(c) engage in political activity that may compromise or be seen to compromise the political neutrality of his/her office.”

Rationale: to add the need for political neutrality in carrying out public duties.

**(9) CLAUSE 28**

**THAT**, Clause 28 of the Bill be amended by deleting the word “preceding” appearing immediately after the word “immediately” and substituting therefor the word “after”.

Rationale: to clarify the prohibition on the employment activities of a public officer applies “after” they leave the public service.

**(10) CLAUSE 36**

**THAT**, Clause 36 be amended by deleting subclause (2).

Rationale: To remove the requirement it imposes to pay criminal fines to the EACC.

**(11) CLAUSE 45**

THAT, Clause 45 of the Bill be amended by

(a) renumbering the existing provision as subclause (1);

(b) inserting the following new subclause immediately after subclause (1)—

“(2) In issuing an order under subsection (1), the Commission shall observe the right to fair hearing and fair administrative action.”

**(12) CLAUSE 51**

**THAT**, Clause 51 be amended in subclause (1) (d) by deleting the words “Public Prosecutions” appearing immediately after the word “Director” and substituting therefor the words “Public Prosecutions”.

Rationale: To include the proper title of the DPP as provided in the Constitution.

**(13) CLAUSE 54**

**THAT**, Clause 54 be amended in subclause (1) by deleting the words “is of” appearing immediately after the words “if the disclosure” and substituting therefor the words “is in the”.

Rationale: To align the subclause with the phrase used in subclause (2).

**(14) CLAUSE 56**

**THAT**, the Bill be amended by deleting Clause 56 and substituting therefor the following new clause—

Reports by reporting entities.	56. Every reporting entity shall, within six months after the end of the financial year, file compliance reports with the Commission in the prescribed form.
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Rationale: To provide for a clearer format for the submission of compliance reports to aid in the implementation and enforcement of the conflict of interest legislation.

**(15) CLAUSE 59**

**THAT**, Clause 59 of the Bill be amended by inserting the following new subclause immediately after subclause (3)

“(4) Any criminal proceedings commenced under the provisions in the Third Schedule proposed for repeal before the commencement of this Act shall be continued.”

**Rationale:** To save the conduct of ongoing investigations and case pending before the court brought under Section 42 of the Anti-Corruption and Economic Crimes Act, 2003 which is proposed for repeal.



THE NATIONAL ASSEMBLY  
13<sup>TH</sup> PARLIAMENT – SECOND SESSION - 2023  
JUSTICE AND LEGAL AFFAIRS COMMITTEE

ADOPTION SCHEDULE

**AGENDA:** Adoption of the Report on the Consideration of the Conflict of Interest Bill, 2023 by Hon. Kimani Ichung'wah, MP (Kikuyu Constituency)

No.	HON MEMBER	SIGNATURE
1.	HON. MURUGARA GEORGE GITONGA, MP – <i>Chairperson</i>	
2.	HON. MUTUSE ECKOMAS MWENGI, MP – <i>Vice Chairperson</i>	
3.	HON. MAALIM FARAH, MP	
4.	HON. FRANCIS KAJWANG' TOM JOSEPH, MP	
5.	HON. JUNET MOHAMED, CBS, MP	
6.	HON. ONYIEGO SILVANUS OSORO, CBS, MP	
7.	HON. (DR.) OTIENDE AMOLLO, SC, MP	
8.	HON. MUCHIRA MICHAEL MWANGI, MP	
9.	HON. MAKALI JOHN OKWISIA, MP	
10.	HON. MURIU WAKILI EDWARD, MP	
11.	HON. MAINA JANE NJERI, MP	
12.	HON. GICHOHI KAGUCHIA JOHN PHILIP, MP	
13.	HON. MOGAKA STEPHEN M, MP	
14.	HON. ADEN DAUD, EBS, MP	
15.	HON. SIYAD AMINA UDGOON, MP	

# ANNEXURES

# Annexure 1: Adoption Schedule

# Annexure 2: Minutes



**REPUBLIC OF KENYA  
THE NATIONAL ASSEMBLY**

**THIRTEENTH PARLIAMENT - SECOND SESSION - 2022**

**DIRECTORATE OF DEPARTMENTAL COMMITTEES**

**DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS**

**MINUTES OF THE 117<sup>TH</sup> SITTING OF THE JUSTICE AND LEGAL AFFAIRS  
COMMITTEE HELD ON 3<sup>RD</sup> OCTOBER, 2023 AT 10:00 AM AT THE NG-CDF BOARD  
ROOM, HARAMBEE SACCO PLAZA 10<sup>TH</sup> FLOOR, NAIROBI**

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**PRESENT**

**Members**

1. Hon. Murugara George Gitonga, MP
2. Hon. Mutuse Eckomas Mwengi, OGW, MP
3. Hon. Francis Kajwang' Tom Joseph, MP
4. Hon. Makali John Okwisia, MP
5. Hon. Mogaka Stephen M, MP
6. Hon. Muchira Michael Mwangi, MP
7. Hon. Gichohi Kaguchia John Philip, MP
8. Hon. Aden Daud. EBS, MP

**- Chairperson**

**-Vice- Chairperson**

**ABSENT**

1. Hon. Maalim Farah, MP
2. Hon. Onyiengo Silvanus Osoro, CBS, MP
3. Hon. Junet Mohamed, CBS, MP
4. Hon. (Dr.) Otiende Amollo, SC, MP
5. Hon. Maina Jane Njeri, MP
6. Hon. Muriu Wakili Edward, MP
7. Hon. Siyad Amina Udgoon, MP

**SECRETARIAT**

- |                           |   |                      |
|---------------------------|---|----------------------|
| 1. Mr. Douglas Katho      | - | Clerk Assistant I    |
| 2. Mr. Walala Ronald      | - | Senior Legal Counsel |
| 3. Mr. Omar Abdirahim     | - | Fiscal Analyst       |
| 4. Ms. Jael Ayiego Kilaka | - | Clerk Assistant III  |
| 5. Mr. Abdikafar Abdi     | - | Clerk Assistant III  |
| 6. Ms. Vivienne Ogega     | - | Research Officer III |

- |                       |   |                  |
|-----------------------|---|------------------|
| 7. Mr. Peter Mutethia | - | Audio Officer    |
| 8. Mr. Silas Opanga   | - | Hansard Reporter |
| 9. Mr. Stanley Lagat  | - | Serjent-at-Arms  |

**AGENDA**

1. Prayers
2. Preliminaries
3. Confirmation of Minutes
4. **Consideration and Adoption of the Report of the Conflict of Interest Bill (National Assembly No. 12 of 2023)**
5. Any Other Business
6. Adjournment/ Date of the Next Meeting

**MIN. NO/DC/JLAC/2023/570: PRELIMINARIES**

The meeting was called to order at fifteen minutes past ten o'clock by the Chairperson followed by a word of prayer from the Chairperson and thereafter Members of the Committee introduced themselves.

**MIN.NO/DC/JLAC/2023/571: CONFIRMATION OF MINUTES**

The agenda was deferred.

**MIN.NO/DC/JLAC/2023/572: ADOPTION OF THE AGENDA**

The agenda was adopted having been proposed by Hon. Makali John Okwisia, MP and seconded by Hon. Muchira Michael Mwangi, MP

**MIN.NO/DC/JLAC/2023/573: CONSIDERATION AND ADOPTION OF THE REPORT OF THE CONFLICT OF INTEREST BILL (NATIONAL ASSEMBLY NO. 12 OF 2023)**

**Committee Observations**

The Committee considered the Conflict of Interest Bill, 2023, submissions from members of the public and stakeholders and made the following observations:

- a) That the Title of the Bill may be misleading as to its contents and the matters that the Bill seeks to regulate.
- b) That the Bill is aimed at regulating the conduct of public officers to enhance integrity in the public service. However, it is important to strike a balance between the public interest and the individual interests of the public officers to avoid imposing unjust restrictions on the activities of public officers.

- c) That the Bill makes consequential amendments to delete section 42 of the Anti-Corruption and Economic Crimes Act, 2003 without prescribing adequate saving mechanisms for any offences with ongoing investigations or prosecutions under the provision; and
- d) That the Bill seeks to repeal the entire Public Officer Ethics Act, 2003 without providing clear guidance on the status of the provisions that have not been reintroduced substantively in the Bill.
- e) That the Bill contains various typographical and cross-referencing errors. The Bill would, therefore, require several amendments to 'clean up' the affected provisions.
- f) That the public participation exercise highlighted the need to amend various provisions of the Bill to correct grammatical errors; align the contents with the provisions of the Constitution and written law and to include missing provisions for purposes of clarity and completeness of the proposed legislation.

**Committee Recommendations**

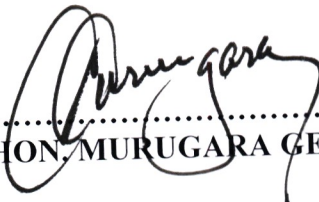
The Committee, having considered the Conflict of Interest Bill (*National Assembly No. 12 of 2023*) and the submissions from members of the public and stakeholders, **recommends that the House approves the Bill with amendments as proposed in the Schedule of Amendments.**

The report was adopted having been proposed by Hon. Gichohi Kaguchia John Philip, MP and seconded by Hon. Aden Daud, EBS, MP.

**MIN. NO/DC/JLAC/2023/574:**

**ADJOURNMENT**

There being no other business, the meeting was adjourned at twenty minutes past twelve o'clock. The next meeting will be held on notice.

SIGNED: .....  ..... DATE: 3/10/2023 .....

(CHAIRPERSON: HON. MURUGARA GEORGE GITONGA, MP)



**REPUBLIC OF KENYA  
THE NATIONAL ASSEMBLY  
THIRTEENTH PARLIAMENT - SECOND SESSION - 2023  
DIRECTORATE OF DEPARTMENTAL COMMITTEES  
DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS**

**MINUTES OF THE 87<sup>TH</sup> SITTING OF THE JUSTICE AND LEGAL AFFAIRS  
COMMITTEE HELD AT THE MAIN CHAMBERS, MAIN PARLIAMENT BUILDINGS,  
NAIROBI ON THURSDAY 29<sup>TH</sup> JUNE, 2023 AT 11.00 A.M.**

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**PRESENT**

**Members**

- |  |                     |
|--|---------------------|
| 1. Hon. Murugara George Gitonga, MP      | - Chairperson       |
| 2. Hon. Mutuse Eckomas Mwangi, OGW, MP   | - Vice- Chairperson |
| 3. Hon. Maalim Farah, MP                 |                     |
| 4. Hon. Junet Mohamed, CBS, MP           |                     |
| 5. Hon. Onyiengo Silvanus Oso, CBS, MP   |                     |
| 6. Hon. Gichohi Kaguchia John Philip, MP |                     |
| 7. Hon. Muchira Michael Mwangi, MP       |                     |
| 8. Hon. Makali John Okwisia, MP          |                     |
| 9. Hon. Muriu Wakili Edward, MP          |                     |
| 10. Hon. Maina Jane Njeri, MP            |                     |
| 11. Hon. Aden Daud EBS, MP               |                     |
| 12. Hon. Mogaka Stephen M, MP            |                     |
| 13. Hon. Siyad Amina Udgoon, MP          |                     |

**ABSENT**

1. Hon. Francis Kajwang' Tom Joseph, MP
2. Hon. (Dr.) Otiende Amollo, SC, MP

**IN ATTENDANCE**

- |                         |                                     |
|-------------------------|-------------------------------------|
| 1. Mr. Paul Ndemo Maina | - Deputy Chief Registrar Judiciary  |
| 2. Mr. Joseph Were      | - Senior Principal Magistrate       |
| 3. Mr. Oliver Waindi    | - Ex. Director, URAIA Trust         |
| 4. Mr. Collius Odhiambo | - Law Society of Kenya              |
| 5. Mr. Abdi Mohamud     | - Deputy CEO, EACC                  |
| 6. Mr. Bellinda Akello  | - National Land Commission          |
| 7. Ms. Dorcus Oduor     | - Director, ODPP                    |
| 8. Ms. Sheila Masinde   | - Transparency International- Kenya |

- |                         |   |                                   |
|-------------------------|---|-----------------------------------|
| 9. Mr. Titus Gitonga    | - | Transparency International- Kenya |
| 10. Mr. Philip Gichana  | - | Mzalendo Trust                    |
| 11. Ms. Sylvia Ngere    | - | Teachers Service Commission       |
| 12. Mr. Cavin Anyuor    | - | Teachers Service Commission       |
| 13. Mr. James Nombi     | - | Kenya Law Reform Commission       |
| 14. Mr. Peter Leley     | - | CS/CEO NPSC                       |
| 15. Ms. Lucy Mitu       | - | DD/HCM                            |
| 16. Ms. Wairimu Rweriji | - | M-Legal Affairs, NPSC             |

#### **SECRETARIAT**

- |                           |   |                               |
|---------------------------|---|-------------------------------|
| 1. Mr. Douglas Katho      | - | Clerk Assistant I             |
| 2. Mr. Ronald Walala      | - | Senior Legal Counsel          |
| 3. Ms. Jael Ayiego Kilaka | - | Clerk Assistant III           |
| 4. Mr. Abdikafar Abdi     | - | Clerk Assistant III           |
| 5. Ms. Vivienne Ogega     | - | Research Officer III          |
| 6. Ms. Jully Faith        | - | Public Communications Officer |
| 7. Ms. Fridah Ngari       | - | Media Relations Officer       |
| 8. Mr. Peter Mutethia     | - | Audio Officer                 |
| 9. Mr. Stanley Langat     | - | Senior Serjeant-At-Arms       |
| 10. Mr. Antony Kariuki    | - | Serjeant-At-Arms              |

#### **AGENDA**

1. Prayers
2. Preliminaries
3. Confirmation of Minutes of previous sittings
4. Matters arising
5. **Bills;**  
**Public hearing from stakeholders on the Conflict of Interest (Amendment) Bill, 2023**
6. Any Other Business
7. Adjournment/ Date of the Next Meeting

#### **MIN. NO/DC/JLAC/2023/410: PRELIMINARIES**

The meeting was called to order at thirty minutes past ten o'clock by the Chairperson followed by a word of prayer from the Chairperson and thereafter Members of the Committee introduced themselves.

#### **MIN.NO/DC/JLAC/2023/411: ADOPTION OF THE AGENDA**

The agenda was adopted having been proposed by Hon. Aden Daud, EBS, MP and seconded by Hon. Mutuse Eckomas Mwengi, OGW, MP.

#### **MIN.NO/DC/JLAC/2023/412: CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING**

The agenda was deferred.

**MIN.NO/DC/JLAC/2023/413:**

**PUBLIC HEARING FROM STAKEHOLDERS  
ON THE CONFLICT OF INTEREST  
(AMENDMENT) BILL, 2023:**

**MZALENDO**

Mr. Philip Gichana appeared before the Committee and submitted that:

The Commencement clause the Bill shall come into force on such a date as the Attorney General may by notice in the Gazette, appoint.

Mzalendo proposed the deletion of the referenced statement and propose that the commencement of the Bill be guided by Article 116 of the Constitution.

Clause 2. Definition of unexplained asset makes reference to, Mr. Philip informed the meeting that the definition is limiting especially in the scope of what the Act is intended to achieve as it would require someone to have been reasonably suspected of corruption or economic crime.

Clause 17. Every reporting authority shall maintain a register of gifts and donations, Mzalendo Trust proposed an insertion of a penalty Clause on the responsible person for failure to keep the register for purposes of compliance.

Maintaining a register of conflict of interest and ensuring it is open to the public for inspection, Mzalendo Trust proposed an insertion to the Clause to specifically provide for ways in which the register is to be made open to the public to include compliance of the Access to Information Act if a request is sought and other online official channels like website.

**LAW SOCIETY OF KENYA**

Mr. Collius Odhiambo appeared before the committee and submitted:

Under section 10, Mr. Collius suggested that this section be amended to provide for the penalty for the offence committed.

Under section 16(3), Mr. Collius proposed that this section be amended to dictate that a declaration shall be made only during suspicious circumstances of gifting.

Under Section 32(1) he suggested that this section be amended to increase the financial period that declaration should be made for three or five years' prior attachment.

Under section 36, Mr. Collius proposed that this section be amended to provide for the penalty spelled out under this section.

Under section 37, Mr. Collius proposed that this section be amended to provide for the penalty spelled out under this section.

Under Section 48, Law Society of Kenya proposed that this section be amended to provide that complaints should be lodged attached with evidence to avoid filing of frivolous complaints and wasting of the commission's time.

**OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTION**

Ms. Dorcus Oduor appeared before the Committee and submitted that:

The meeting was informed that family has been defined in the current bill to also include common-law partner and there is no law in Kenya that defines what a common-law partner is.

Under Clause 59, to insert a saving and transitional provision for Clause 42 of the Anti-Corruption and Economic Crimes Act (ACECA) - which is proposed to be repealed by

clause 19 of the Conflict of Interest Bill, 2023, this is due to the fact that there are ongoing investigations and cases pending before court where persons have been charged under section 42 of the ACECA which is proposed to be repealed.

Under Clause 25(1) on political neutrality to align the clause with Article 77(2) of the Constitution, the meeting was informed that Article 77(2) of the Constitution indicates that any appointed state officer shall not hold office in a political party yet clause 25 gives an exemption to Cabinet Secretaries and members of the County executive committee.

Under section 26(1)(c), Ms. Dorcus proposes to amend or provide for exemptions the section seems too wide as to cover prohibitions against social contributions by officers for welfare purposes for colleagues such as medical bills and burial contributions.

Under section 36(2) the committee to consider rewording the same for payment of fines to commission may be challenged for being a judicial function which should be done by the Courts.

#### **TEACHERS SERVICE COMMISSION**

Mr. Cavin Anyuor appeared before the Committee and made the following submissions: Under preliminary Mr. Cavin proposed gainful employment as defined is narrow and restrictive. The meeting was informed that gainful employment should refer to steady allowance arising out of steady employment meaning the employee will have steady work and payment to allow self-sufficiency.

The Committee in defining Conflict of Interest in Preamble to delete the word "perception" in section 8(b) as it is subject to abuse and define what constitutes conflict of interest both directly and indirectly.

Mr. Cavin informed the Committee to add the Constitutional Commissions as part of the reporting entity

The meeting was also informed that clarification on the nature of gifts referred therein, that you may exclude gifts awarded to own employees e.g. for exemplary performance. Under section 51(2) to delete provision for the recommendation from EACC should not be binding, they should remain as best practices.

#### **ETHICS AND ANTI-CORRUPTION COMMISSION**

Mr. Abdi Mohammed appeared before the committee and submitted:

Under Section 28 to substitute the word "preceding" with the word "after".

Under Section 32, 33 and 34 there is a numbering error in all the subsections provided under the said sections.

Under section 58 there is need to provide a saving clause for the codes of conduct and Ethics developed pursuant to sections 5 and 6 of the Public Officer Ethics Act (POEA).

#### **NATIONAL POLICE SERVICE COMMISSION**

The National Police Service Commission submitted that-

Under section 8(b) 'perceived' is a not an objective measure, therefore there should be actions or omissions by the public officer that give factual indication of influence on the impairment of ability.

Under section 8(c), the Commission proposes to delete 'has interests' and rephrase as 'pursue interests that conflict with the duties of the public officers'.

Under section 13(1) the Commission proposes to qualify 'interests of another person' to read the ' private interests'

Under Section 15, the Commission proposes to delete this subsection as the receipt of an offer does not indicate any action/omission in the conduct of the public officer to act for private interests and could be unsolicited.

The Commission further added that, the Bill should be cognizant of the impact of the Bill to limit:

Transparency and whistleblowing policies of reporting entities

Witnesses who have exited public entities but have primary evidence to issues of their former reporting entities

The Commission should have a data protection policy that has been subjected to stakeholders and public participations

The impact on Court officers who have an oath of duty to advance constitutionalism and rule of law through public interest litigation.

**MIN. NO/DC/JLAC/2023/414: ADJOURNMENT**

There being no other business, the meeting was adjourned at two o'clock. The next meeting will be held on notice.

SIGNED.....



DATE: .....

06-07-2023

(CHAIRPERSON: HON. MURUGARA GEORGE GITONGA, MP)



**REPUBLIC OF KENYA**  
**THE NATIONAL ASSEMBLY**  
**THIRTEENTH PARLIAMENT - SECOND SESSION - 2023**  
**DIRECTORATE OF DEPARTMENTAL COMMITTEES**  
**DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS**

**MINUTES OF THE 86<sup>TH</sup> SITTING OF THE JUSTICE AND LEGAL AFFAIRS  
COMMITTEE HELD AT THE MAIN CHAMBERS, MAIN PARLIAMENT BUILDINGS,  
NAIROBI ON THURSDAY 29<sup>TH</sup> JUNE, 2023 AT 10.00 A.M.**

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**PRESENT**

**Members**

- |  |                     |
|--|---------------------|
| 1. Hon. Murugara George Gitonga, MP      | - Chairperson       |
| 2. Hon. Mutuse Eckomas Mwangi, OGW, MP   | - Vice- Chairperson |
| 3. Hon. Maalim Farah, MP                 |                     |
| 4. Hon. Junet Mohamed, CBS, MP           |                     |
| 5. Hon. Onyiengo Silvanus Osoro, CBS, MP |                     |
| 6. Hon. Gichohi Kaguchia John Philip, MP |                     |
| 7. Hon. Muchira Michael Mwangi, MP       |                     |
| 8. Hon. Muriu Wakili Edward, MP          |                     |
| 9. Hon. Aden Daud EBS, MP                |                     |
| 10. Hon. Makali John Okwisia, MP         |                     |
| 11. Hon. Maina Jane Njeri, MP            |                     |
| 12. Hon. Mogaka Stephen M, MP            |                     |
| 13. Hon. Siyad Amina Udgoon, MP          |                     |

**ABSENT**

1. Hon. Francis Kajwang' Tom Joseph, MP
2. Hon. (Dr.) Otiende Amollo, SC, MP

**IN ATTENDANCE**

- |                         |                                     |
|-------------------------|-------------------------------------|
| 1. Mr. Paul Ndemo Maina | - Deputy Chief Registrar Judiciary  |
| 2. Mr. Joseph Were      | - Senior Principal Magistrate       |
| 3. Mr. Oliver Waindi    | - Ex. Director, URAIA Trust         |
| 4. Mr. Collius Odhiambo | - Law Society of Kenya              |
| 5. Mr. Abdi Mohamud     | - Deputy CEO, EACC                  |
| 6. Mr. Bellinda Akello  | - National Land Commission          |
| 7. Ms. Dorcus Oduor     | - Director, ODPP                    |
| 8. Ms. Sheila Masinde   | - Transparency International- Kenya |

- |                         |   |                                   |
|-------------------------|---|-----------------------------------|
| 9. Mr. Titus Gitonga    | - | Transparency International- Kenya |
| 10. Mr. Philip Gichana  | - | Mzalendo Trust                    |
| 11. Ms. Sylvia Ngere    | - | Teachers Service Commission       |
| 12. Mr. Cavin Anyuor    | - | Teachers Service Commission       |
| 13. Mr. James Nombi     | - | Kenya Law Reform Commission       |
| 14. Mr. Peter Leley     | - | CS/CEO NPSC                       |
| 15. Ms. Lucy Mitu       | - | DD/HCM                            |
| 16. Ms. Wairimu Rweriji | - | M-Legal Affairs, NPSC             |

#### **SECRETARIAT**

- |                           |   |                               |
|---------------------------|---|-------------------------------|
| 1. Mr. Douglas Katho      | - | Clerk Assistant I             |
| 2. Mr. Ronald Walala      | - | Senior Legal Counsel          |
| 3. Ms. Jael Ayiego Kilaka | - | Clerk Assistant III           |
| 4. Mr. Abdikafar Abdi     | - | Clerk Assistant III           |
| 5. Ms. Vivienne Ogega     | - | Research Officer III          |
| 6. Ms. Jully Faith        | - | Public Communications Officer |
| 7. Ms. Fridah Ngari       | - | Media Relations Officer       |
| 8. Mr. Peter Mutethia     | - | Audio Officer                 |
| 9. Mr. Stanley Langat     | - | Senior Serjeant-At-Arms       |
| 10. Mr. Antony Kariuki    | - | Serjeant-At-Arms              |

#### **AGENDA**

1. Prayers
2. Preliminaries
3. Confirmation of Minutes of previous sittings
4. Matters arising
5. **Bills;**  
**Public hearing from stakeholders on the Conflict of Interest (Amendment) Bill, 2023**
6. Any Other Business
7. Adjournment/ Date of the Next Meeting

#### **MIN. NO/DC/JLAC/2023/405: PRELIMINARIES**

The meeting was called to order at ten o'clock by the Chairperson followed by a word of prayer from the Chairperson and thereafter Members of the Committee introduced themselves.

#### **MIN.NO/DC/JLAC/2023/406: ADOPTION OF THE AGENDA**

The agenda was adopted having been proposed by Hon. Aden Daud, EBS, MP and seconded by Hon. Mutuse Eckomas Mwengi, OGW, MP.

#### **MIN.NO/DC/JLAC/2023/407: CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING**

The agenda was deferred.

The Legal Counsel informed the Members THAT\_

1. The Bill is a government Bill sponsored by the Leader of the Majority Party. It seeks to repeal and replace the Public Officer Ethics Act, 2003 and establish a framework for managing conflicts of interest in the discharge of public duties under the general supervision of the Ethics and Anti-Corruption Commission.
2. The Members were taken through the Bill clause by clause, the Legal Counsel stated the following:
  - i. **Clause 3** of the Bill outlines the objectives of the legislation as promotion of objectivity and impartiality in official decision making; ensuring that the integrity of decision makers is not compromised by private interests; enhancing public confidence in the delivery of public services; providing a framework for the regulation and management of real, apparent or potential conflict between public interest and private interest; and providing an institutional framework for the management of conflict of interest.
  - ii. **Clause 5** of the Bill provides for the administration of all aspects of the legislation to the Ethics and Anti-Corruption Commission. Under Clause 6, the Commission is mandated, among others, to institute proceedings for the forfeiture of undeclared or unexplained assets.
  - iii. **Part III (Clauses 8-29)** of the Bill defines the nature and extent of conflict of interest and the attendant obligations on public officers. Public officers are under an obligation to avoid conflict of interest generally (**Clause 9**) and specifically with regard to decision-making (**Clause 10**); participation in legislative proceedings (**Clause 11**); preferential treatment (**Clause 12**); use of official information (**Clause 13**); use of their influence (**Clause 14**); receiving offers of employment (**Clause 15**); receiving and giving gifts (**Clause 16 and 17**); accepting complimentary treatment (**Clause 18**); engaging in public procurement (**Clause 19**); ownership of private entities (**Clause 20**); recruitment of persons into the public service (**Clause 21**); outside employment (**Clause 23**); political neutrality (**Clause 25**); and public collections (**Clause 26**).
  - iv. **Clause 22** of the Bill precludes public officers from entering into any arrangement intended to conceal a conflict of interest while **Clause 27** of the Bill restricts former public officers from acting for or against the entity in which they were previously employed until the lapse of two years from the date of their termination. The Commission may, under, **Clause 29**, waive this restriction upon written application on the grounds, *inter alia*, that an officer was not directly involved in the decision-making over the matter in issue. Contravening the restrictions prescribed with regard to the specific conflict of interests constitute offences.

- v. **Clause 24** of the Bill obligates all public entities to maintain a public register of conflicts of interest in which the conflicts must be particularized.
- vi. **PART IV (Clauses 30-47)** of the Bill contains Compliance Measures. Under the Bill, a public officer is under a duty to recuse themselves from any proceedings in which they are in a conflict of interest, formally record the nature and details of the conflict and file a declaration of the recusal with the EACC within sixty (60) days. Under **Clause 31 and 32** of the Bill, a public officer is required to file, with the EACC, a declaration of income, assets and liabilities within thirty (30) days of employment, biennially, and within thirty (30) days of ceasing to be a public officer.
- vii. **Clause 33** of the Bill mandates the Commission to analyse all declarations made and to ascertain their completeness and correctness and whether they raise any possible issues of conflict or contain any discrepancies or inconsistencies. The Clause allows the EACC to seek clarifications within six (6) months of the filing of a declaration.
- viii. **Clause 34** of the Bill provides for access to the declarations filed with the EACC upon satisfying the Commission of a legitimate interest in the declaration. **Clause 34(2)** allows law enforcement agencies unrestricted access to the declarations. The Clause precludes any person who has obtained access to the records from disclosing the contents of such records without the prior written authority of the Commission. A person who contravenes this requirement for confidentiality is liable, upon conviction, to a fine not exceeding one million shillings or a term of imprisonment not exceeding two years, or both the fine and imprisonment.
- ix. **Clause 35** of the Bill provides for the retention of information submitted to the Commission under the Bill for a period of at least five (5) years after a person exits the public service.
- x. **Clause 38, 39, 40, 41, 42, 43** and **44** of the Bill provide for the obligation on a public officer to divest private interests that would place an officer in a position of conflict; the manner in which one may divest such interests and the assets exempted from the mandatory divestiture. Under the Bill, a public officer may elect either to sell their interests in an arms-length transaction or establish a Blind Trust in which the officer has no direct control over within ninety days of appointment or employment. Only charged assets and assets of minimal value may be exempted from the requirement.
- xi. **Clause 47** of the Bill obligates the EACC to develop and publicise in the *Kenya Gazette* the administrative mechanisms for the implementation of the Compliance Measures outlined under **Part IV** within twelve (12) months of the passage of the Bill.
- xii. **PART V (Clauses 48-51)** of the Bill contain provisions on complaints and investigations. Under Clause 48, a public officer who is under investigation must be informed of the allegations and afforded an opportunity to make representation on the matter before conclusion of the investigations. A State or public officer may be suspended from office

pending the investigation or determination of any allegations made against the officer under Clause 50 of the Bill. In terms of recommendations, Clause 51 of the Bill allows the EACC to either recommend disciplinary action against a State or public officer; appropriate measures to ensure compliance with or cessation of further violation of the provisions of the Bill; or prosecution by the Director of Public Prosecutions. The provision further allows the EACC to apply to the High Court for an appropriate order to compel the implementation of its recommendations.

- xiii. **PART VI** of the Bill contains miscellaneous provisions. **Clause 52** of the Bill levies a general penalty for offences under the Act where a convicted person is liable to a fine not exceeding four million shillings or imprisonment for a term not exceeding ten years, in the case of a natural person; or a fine not exceeding ten million shillings in the case of a body corporate. Where the conduct that constitutes an offence under the Bill results in a quantifiable benefit or loss, or both a benefit and a loss, an additional mandatory fine of two times the amount of the benefit, loss, or benefit and loss is to be added to the prescribed fine.
- xiv. **Clause 54(4)** precludes persons from providing false information that is maliciously intended to injure another person to the Commission. A person convicted of providing false information is liable to a fine not exceeding five hundred thousand shillings or imprisonment for a term not exceeding three years, or both the fine and imprisonment.
- xv. **Clause 56** of the Bill obligates every reporting entity to file compliance reports in the prescribed form.
- xvi. **Part VII (Clause 58-60)** of the Bill contains provisions on the repeal and saving of the Public Officer Ethics Act, 2003 and consequential amendments.
- xvii. **Clause 58** repeals the Public Officer Ethics Act, 2003 while **Clause 59** saves the obligations undertaken by the existing “responsible Commissions” under the Act until the development of the administrative provisions established under the Bill by the EACC. Under the provision, a public officer shall be required to divest any private interests that place the officer in a position of conflict within twenty-four months of the commencement of the provisions of the Bill.
- xviii. **Clause 60** of the Bill amends the Public Procurement and Asset Disposal Act, 2015, the Leadership and Integrity Act, 2012, the Ethics and Anti-Corruption Commission Act, 2011, and the Anti-Corruption and Economic Crimes Act, 2003 in the manner outlined in the Third Schedule to the Bill.

**MIN. NO/DC/JLAC/2023/409: PUBLIC HEARING FROM STAKEHOLDERS ON THE CONFLICT OF INTEREST (AMENDMENT) BILL, 2023:**

**ATTORNEY GENERAL**

The meeting was informed that the Attorney General was out of the country and therefore unable to attend the public hearing. The Office of the Attorney General was to send a letter reporting on the same and requesting for the meeting to be rescheduled to a later date.

**Committee Resolution**

1. The Committee resolved that the Electoral Law and Governance Institute for Africa (ELGIA) will be invited to come up with a comprehensive electoral reforms pathway toward 2027 elections.
2. The Chair invited the stakeholders for a two-day engagement to receive acceptable submissions on the Conflict of Interest Bill and further informed the Transparency International Organization to meet costs related to its participation in the meeting.

**MIN. NO/DC/JLAC/2023/410: ADJOURNMENT**

There being no other business, the meeting was adjourned at thirty minutes past ten o'clock. The next meeting will be held at eleven in the same venue.

SIGNED: .....  ..... DATE: 06-07-2023 .....  
(CHAIRPERSON, HON. MURUGARA GEORGE GITONGA, MP)

# Annexure 3: Conflict of Interest Bill, 2023

**SPECIAL ISSUE**

*Kenya Gazette Supplement No. 41 (National Assembly Bills No. 12)*

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REPUBLIC OF KENYA

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**KENYA GAZETTE SUPPLEMENT**

**NATIONAL ASSEMBLY BILLS, 2023**

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**NAIROBI, 3rd April, 2023**

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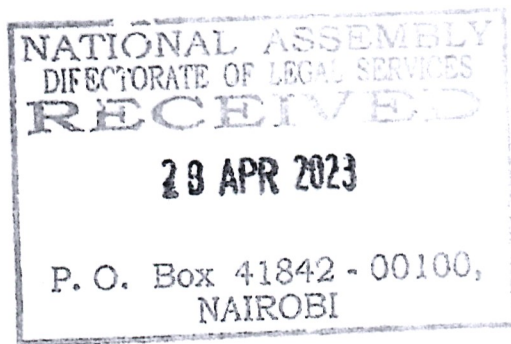
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**THE CONFLICT OF INTEREST BILL, 2023**  
**ARRANGEMENT OF CLAUSES**

*Clause*

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- 2—Interpretation.
- 3—Objects of the Act.
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- 6—Functions of the Commission.
- 7—Powers of the Commission.

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- 17—Register of gifts.
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- 20—Acquisition of interest in partnerships and private companies.
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- 22—Collusion by public officers to conceal conflict of interest.
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- 38—Divestiture.
- 39—Methods of divestment.
- 40—Blind trust requirements.
- 41—Confirmation of blind trust or sale.
- 42—Confidentiality of divestment.
- 43—Assets given as security.
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- 45—Compliance orders.
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**PART V—COMPLAINTS AND CONDUCT OF INVESTIGATIONS**

- 48—Lodging of complaints and investigations
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**PART VI—MISCELLANEOUS PROVISIONS**

- 52—General Penalty.
- 53—Confidentiality.
- 54—Protection of person making disclosure.
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- 56—Reports by reporting entities.
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**PART VII—REPEALS, SAVINGS AND TRANSITIONAL PROVISIONS**

- 58—Repeal of Act No. 4 of 2003.
- 59—Transitional provisions.
- 60—Consequential amendments.

**FIRST SCHEDULE**

**FORM 1**

**SECOND SCHEDULE**

**REGISTRABLE INTERESTS**

**THIRD SCHEDULE**

**CONSEQUENTIAL AMENDMENTS**

## THE CONFLICT OF INTEREST BILL, 2023

### A Bill for

**AN ACT of Parliament to provide for the management and regulation of conflict of interest and for connected purposes**

**ENACTED** by the Parliament of Kenya, as follows—

### PART I—PRELIMINARY

**1.** This Act may be cited as the Conflict of Interest Act, 2023, and shall come into force on such date as the Attorney-General may, by notice in the Gazette, appoint.

Short title and commencement.

**2.** In this Act, unless the context otherwise requires—

Interpretation.

“accounting officer” has the meaning assigned to it under section 2 of the Public Finance Management Act, 2012;

No. 18 of 2012.

“Commission” means the Ethics and Anti-Corruption Commission established under section 3 of the Ethics and Anti-Corruption Commission Act, 2011;

No. 22 of 2011.

“complimentary treatment” means a treat offered free of charge as a favour or out of courtesy by a person who has significant official dealings with a public entity and includes offers for travel, holiday, hospitality, training, scholarship or medical treatment;

“family” means—

- (a) the spouse, common-law partner, dependent child or parent of a public officer;
- (b) a dependent child of the spouse or common-law partner of a public officer; or
- (c) a parent of the spouse or common law partner of a public officer;

“gainful employment” means work that a person pursues and performs for money or other form of compensation or remuneration;

“official duty” means any task that a public officer is mandated to perform within the specific scope of his employment as defined by a contract of employment, an Act of Parliament or the Constitution;

“private interest” means a personal benefit, privilege, exemption or advantage that a public officer or a person affiliated to a public officer may gain from the office that the public officer holds and which may influence the judgement of a public officer in the exercise of a public duty, but does not include interest in a decision or matter that—

- (a) is of general application;
- (b) affects a public officer as a member of a broad class of persons; or
- (c) concerns the remuneration or benefits received by virtue of being a public officer;

“public officer” means any person who renders government services, whether appointed or elected, full time or part time or permanent or temporary, and includes a state officer and a member, employee, consultant or volunteer of a reporting entity;

“relative” means a person who is related to a public officer by birth, marriage, common law partnership, adoption or affinity and includes a public officer’s father, mother, son, daughter, brother, sister, uncle, aunt, great aunt, great uncle, first cousin, nephew, niece, husband, wife, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, step-mother, stepson, stepdaughter, stepbrother, stepsister, half-brother, half-sister, or who is the grandfather or grandmother of the spouse of the public officer;

“registrable interests” means the interests set out in the Second Schedule;

“reporting authority” in relation to a public officer, means an office or body that is responsible for a public officer for the purposes of this Act and includes an accounting officer, a person who exercises executive control over the resources of the entity or any office or entity exercising a function delegated by the Commission;

“reporting entity” means—

- (a) a state organ;
- (b) the national government or any organ or department of the national government;

- (c) a county government or any organ or department of a county government;
- (d) a state corporation within the meaning of State Corporations Act;
- (e) a public school within the meaning of the Basic Education Act, 2013;
- (f) a public university within the meaning of the Universities Act, 2012; Cap. 446.
- (g) a company owned by the National Government or a county government; No. 14 of 2013.
- (h) a body that uses public assets in any form of contractual undertakings including public private partnerships; No. 42 of 2012
- (i) a company in which the national or county government has controlling shares in accordance with section 125 of the Companies Act, 2015; No. 17 of 2015.
- (j) a college or other educational institution maintained or assisted out of public funds;
- (k) an entity which renders a service involving the collection or administration of a levy, fee or funds authorized by legislation;
- (l) any entity that uses public money in the delivery of government programmes or services, whether for profit or not;

“significant official dealing” means an engagement with an entity by a public officer at a level which, in ordinary circumstances, and taking into account the totality of the circumstances, would be construed as capable of influencing the decision of the public officer in relation to the entity, including—

- (a) engagement as an employee or agent of an entity;
- (b) undertaking a consultancy for or on behalf of an entity;
- (c) rendering of advice to an entity, whether directly or indirectly, and whether formally requested or not;

- (d) any dealing with an entity in a contractual relationship for supply of goods, services or works; or
- (e) any engagement where the public officer exercises regulatory or oversight functions over the affairs of the entity, in whatever form.

“undeclared asset” means any asset that is not disclosed in the prescribed manner in any declaration year;

“unexplained asset” has the meaning assigned to it in the Anti-Corruption and Economic Crimes Act, 2003; and

No. 3 of 2003

“windfall gain” includes unexpected income which may result from inheritance, lottery prizes, gambling winnings, payroll bonuses, proceeds from insurance claims, settlement from lawsuits, discoveries from treasure hunting or bounty rewards.

3. (1) The object of this Act is to provide for the management of conflict of interest in the discharge of official duties.

Objects of the Act.

(2) Without prejudice to the generality of sub section (1), the objects of this Act are to—

- (a) promote objectivity and impartiality in official decision making;
- (b) ensure that the integrity of decision makers is not compromised by private interests;
- (c) enhance public confidence in the delivery of public services;
- (d) provide a framework for the regulation and management of real, apparent or potential conflict between public interest and private interest; and
- (e) provide an institutional framework for the management of conflict of interest.

4. This Act shall apply to all reporting entities and public officers.

Application of the Act.

## PART II— ADMINISTRATION

**5.** This Act shall be administered by the Ethics and Anti-Corruption Commission.

Administration of this Act.

**6.** The functions of the Commission under this Act shall be to—

Functions of the Commission.

- (a) oversee the management of conflict of interest for all public officers;
- (b) develop an effective system for reporting violation of this Act;
- (c) promote best practices and develop standards and guidelines for the management of conflict of interest;
- (d) receive and process requests related to the management of conflict of interest;
- (e) conduct inquiries on matters of conflict of interest and make recommendations to the relevant bodies;
- (f) provide advisory opinions on conflict of interest on its own volition or on request by any person;
- (g) conduct public awareness on the management of conflict of interest;
- (h) analyse, seek for clarification and verify conflict of interest disclosures; and
- (i) institute proceedings for forfeiture of undeclared or unexplained assets.

**7.** The Commission shall, in the performance of its functions under this Act, have the power to—

Powers of the Commission.

- (a) summon witnesses and require them to—
  - (i) give evidence, orally or in writing, on oath or on affirmation; and
  - (ii) produce any evidence or exhibits that the Commission considers necessary;
- (b) request for and obtain professional assistance or advice from any person or organization as it considers appropriate;
- (c) delegate to another person or body, by notice in the *Gazette*, any of its powers or functions under

this Act in respect to classes of public officers specified by the Commission and that person or body shall be deemed to be responsible for the administration and management of conflict of interest; and

- (d) cooperate and collaborate with other public entities or agencies, any foreign governments and international or regional organizations in the management of conflict of interest and enforcement of this Act.

**PART III—CONFLICT OF INTEREST**

**8.** A public officer is in conflict of interest if the public officer—

Conflict of interest.

- (a) exercises an official power, duty or function to further his private interests or the private interests of another person or of his family, relative or associate;
- (b) is in a situation where the private interests of the public officer can reasonably be perceived to impair or influence the public officer's ability to act objectively in the performance of an official duty; or
- (c) has private interests that could conflict with the duties of the public officer in future.

**9.** A public officer shall—

Obligation to avoid conflict of interest.

- (a) take reasonable steps to avoid any real, apparent or potential conflict of interest in connection with the official duties of the public officer; and
- (b) disclose details of any private interest of the public officer that affects the official duties of the public officer.

**10. (1)** A public officer shall not make a decision or participate in making a decision relating to the exercise of an official power or the performance of a duty or function if the public officer knows or reasonably should know that, in the making of the decision, the officer would be in conflict of interest.

Conflict of interest in decision making.

(2) A person who contravenes subsection (1) commits an offence.

**11.** (1) Subject to the Constitution or any other relevant written law a member of Parliament or a member of a county assembly shall declare any direct pecuniary interest or benefit of whatever nature in any—

Participation in proceedings before Parliament or county assembly.

- (a) debate or proceeding in the relevant House of Parliament or county assembly, as the case may be;
- (b) debate or proceeding in any committee of the relevant House of Parliament or county assembly, as the case may be; or
- (c) transaction or communication which the member may have with another person or other members of the relevant House of Parliament or county assembly, as the case may be.

(2) A Member of Parliament or a member of a county assembly who makes a declaration under subsection (1) shall not—

- (a) participate in any deliberations in respect of which the member has made the declaration; or
- (b) use any information obtained by the member in the discharge of the member's constitutional role to advance the member's private interests.

(3) A person who contravenes subsection (1) or (2) commits an offence.

**12.** (1) A public officer shall not, in the exercise of an official power or in the performance of a duty or function, grant a person, whether directly or indirectly, any special consideration, treatment or advantage beyond what is allowed by law or written policy.

Preferential treatment.

(2) A person who contravenes subsection (1) commits an offence.

**13.** (1) A public officer shall not, directly or indirectly, use or allow any person under the officer's authority to use any information that is obtained by the person in the course of performing official duties and is not available to the public to improperly further or seek to further the interest of the officer or the interests of another person.

Misuse of official information.

(2) A person who contravenes subsection (1) commits an offence.

14. (1) A public officer shall not use his position to influence the decision of another person or another public officer so as to further his private interests or the private interests of another person.

Undue influence.

(2) A person who contravenes subsection (1) commits an offence.

15. (1) A public officer shall—

Offers of outside employment.

(a) not allow himself to be influenced in the exercise of an official power or performance of a duty or function by plans for or any offer of outside employment; and

(b) disclose in writing to the reporting authority any offer of outside employment that could place the officer in a situation of conflict of interest, within seven days of receiving the offer.

(2) A public officer who accepts an offer of outside employment shall, within seven days of acceptance, disclose his acceptance of the offer in writing to the Commission and to the reporting authority.

(3) For purposes of this section “offer of outside employment” means a formal proposal made to a public officer to work for or privately do business with an entity which has official dealings with the reporting entity in which the public officer is serving.

(4) A person who contravenes subsection (1) or (2) commits an offence.

16. (1) A public officer, a member of the officer’s family or a relative of the public officer shall not accept or request a gift or a favour from a person who—

Gifts and other benefits.

(a) has an interest that may be affected by the carrying out, or not carrying out, of the public officer’s duties;

(b) carries on regulated activities with respect to which the public officer’s organisation has a role; or

(c) has a contractual or similar relationship with the public officer’s organisation.

(2) Notwithstanding subsection (1), a public officer may receive a gift given in an official capacity, provided that the gift—

- (a) is received as a normal expression of courtesy or protocol;
- (b) is within the customary standards that normally accompany the public officer's position;
- (c) is not monetary; or
- (d) does not exceed such value as may be prescribed.

(3) Subject to subsection (2), if a public officer, a member of the public officer's family or a relative of the public officer accepts any gift or benefit, the public officer shall, within forty-eight hours of acceptance of such gift or benefit, or, if not on duty, within forty-eight hours of resumption of duty, make a declaration of such acceptance, giving sufficient details of the nature of the gift or other benefit accepted, the donor and the circumstances under which it was accepted.

(4) A person who contravenes subsection (1) or (3) commits an offence.

17. Every reporting authority shall maintain a register of—

Register of gifts.

- (a) gifts received by public officers serving in the reporting entity;
- (b) gifts given by the reporting entity to public officers; and
- (c) donations received by the reporting entity for a specific cause.

18. (1) A public officer, member of the officer's family or a relative of the public officer shall not accept any complimentary treatment for any purpose unless the complimentary treatment offered is required in his official capacity or in exceptional circumstances.

Complimentary treatment.

(2) Where a public officer, member of the officer's family or a relative of the public officer accepts a complimentary treatment in the exceptional circumstances referred to in subsection (1), the public officer shall, within forty-eight hours of acceptance of the complimentary

treatment, or, if not on duty, within forty-eight hours of resumption of duty, make a declaration of such acceptance, giving sufficient detail on—

- (a) the nature of the complimentary treatment accepted;
- (b) the donor; and
- (c) the circumstances under which the complimentary treatment was accepted.

(3) A person who contravenes sub section (1) or (2) commits an offence.

19. (1) A public officer shall not be a party to or beneficiary of a contract for the supply of goods, works or services with any reporting entity.

Contracts with public entities prohibited.

(2) A public officer shall not be a party to or beneficiary of a contract for the disposal of goods with any reporting entity.

(3) A public officer shall not, in the exercise of official power, duty or function, award or influence the award of a contract in which the officer has a private interest.

(4) A person who contravenes any provision of this section commits an offence.

20. (1) A public officer shall not acquire an interest in a partnership, private company or any other legal entity that is a party to a contract with the reporting entity in which the public officer serves, under which the partnership, private company or legal entity receives a benefit.

Acquisition of interest in partnerships and private companies.

(2) Subsection (1) shall not apply to interests acquired through trading in the regulated financial markets provided that the public officer shall not acquire controlling shares in the entity.

(3) A person who contravenes subsection (1) commits an offence.

21. (1) A public officer shall not—

Conflict in recruitment.

- (a) participate in or influence a recruitment and selection process in which the public officer has a private interest; or

(b) canvass for a candidate in a recruitment and selection process in which the public officer has a private interest.

(2) Subsection (1) shall not apply to appointment of personal staff permitted to the public officer as may be prescribed.

(3) A person who contravenes subsection (1) commits an offence.

**22.** (1) A public officer shall not enter into an arrangement with a public officer of another reporting entity in furtherance of an action which would amount to concealing conflict of interest.

Collusion by public officers to conceal conflict of interest.

(2) A person who contravenes subsection (1) commits an offence.

**23.** (1) A public officer shall, while serving in a reporting entity, not engage in any other gainful employment which—

Restricted gainful employment.

(a) is inherently incompatible with the official duties of the public officer;

(b) results in the impairment of judgment of the public officer in the execution of official duties;

(c) results in conflict of interest; or

(d) the public officer is mandated to regulate or exercise oversight.

(2) Where a public officer engages in gainful employment which is not prohibited under this Act, the officer shall, within thirty days of taking up the employment, make a declaration of the employment in the prescribed form and register the declaration with the reporting authority and the Commission.

(3) A public officer shall not engage in any other gainful employment without permission from the reporting authority.

(4) A person who contravenes any provision of this section commits an offence.

**24.** (1) The reporting authority of a reporting entity shall maintain a register of conflict of interest in the prescribed manner.

Register of conflict of interest.

- (2) The register referred to in subsection (1) shall—
- (a) contain the particulars of the registrable interests of a public officer set out in the Second Schedule;
  - (b) state the nature and extent of a conflict; and
  - (c) be open to the public for inspection.

**25.** (1) An appointed public officer, other than a Cabinet Secretary or a member of a County Executive Committee, shall not, in the performance of his duties—

Political  
neutrality.

- (a) act as an agent for, or further the political interests of a political party or political candidate; or
- (b) manifest support for or opposition to any political interests of a political party or political candidate.

(2) A person who contravenes subsection (1) commits an offence.

**26.** (1) An appointed public officer shall not—

Public collections.

- (a) solicit for contributions from the public unless the President has, by notice in the *Gazette*, declared a national disaster and allowed a public collection for the purpose of the national disaster;
- (b) participate in collection of funds from the public, either as a collector or promoter in a way that reflects adversely on the integrity and impartiality of the public officer or interferes with the performance of the of the duties of the public officer; or
- (c) use official social media platforms or his place of work as a venue for soliciting or collecting funds.

(2) A public officer shall not use his official position to solicit funds or coerce any person to contribute towards a private fund collection.

(3) A person who contravenes subsection (1) or (2) commits an offence.

**27.** (1) A former public officer shall not—

Prohibitions after  
leaving office.

- (a) act for or on behalf of any person in connection with any specific proceeding, transaction, negotiation or case in which the State is a party

and with respect to which the former public officer had acted for, or provided advice to the State;

- (b) be engaged by or act for or against his former employer for at least two years after ceasing to be a public officer;
- (c) use information obtained in his official capacity and which is not available to the public to further the interests of another person or entity; or
- (d) accept any appointment to a board of directors of, or employment with, a private entity with which the public officer had significant official dealings during the period of two years immediately preceding the termination of his service.

(2) The official dealings referred to in sub section (1) (d), may be either directly on the part of the public officer or through private affiliations.

(3) A person who contravenes subsection (1) commits an offence.

**28.** A former public officer shall not, during the period of two years immediately preceding the termination of service represent, vouch for or defend any person, whether for remuneration or not, before any reporting entity with which the former public officer had direct and significant official dealings.

Prohibition against representing people before reporting entities.

**29.** (1) A former public officer may, upon making an application in writing, be exempted by the Commission from the provisions of section 27 and 28, on the grounds that—

Exemption of former public officers.

- (a) the former public officer was not directly involved in decision making in the reporting entity;
- (b) the former public officer had no access to important policy information in the reporting entity; or
- (c) the former public officer possesses expertise that is rare in the public service.

(2) The Commission shall, within thirty days from the date of the application, in writing, communicate the decision made to the former public officer who applied for the exemption.

**PART IV—COMPLIANCE MEASURES**

**30.** (1) A public officer shall recuse himself from any discussion, decision, debate or vote on any matter in respect of which the public officer would be in conflict of interest.

Duty to recuse.

(2) Where a public officer recuses himself under subsection (1)—

- (a) the recusal shall be recorded in the minutes of the transaction in question; and
- (b) the public officer shall, within sixty days after the day on which the recusal took place, file a declaration of the recusal with the reporting authority and the Commission in the prescribed form, providing sufficient details as to identify the conflict of interest that was avoided.

**31.** (1) Every public officer shall submit to the Commission a declaration of the income, assets and liabilities of himself, his spouse or spouses and his dependent children under the age of eighteen years.

Declaration of income, assets and liabilities by public officers.

(2) The declaration referred to under sub section (1), shall be in Form 1 set out in the First Schedule.

(3) Notwithstanding the generality of subsection (1), a public officer shall in a periodical or final declaration provide information on any material change in, or changes affecting any of the categories of income, assets or liabilities in the schedule of mandatory declarations that have occurred within the two year period prior to the declaration.

(4) For purposes of this section, “material change” means—

- (a) at least twenty five percent increase or decrease in the value of an income, asset or liability;
- (b) the disposal or acquisition of an asset or liability;
- (c) changes in marital status;
- (d) appointment to or changes in directorships;
- (e) changes in membership in companies or partnerships and other legal entities howsoever established; or

- (f) changes in membership in social associations, societies, clubs, foundations or trusts.

32. (1) A public officer shall, within thirty days of appointment as a public officer, submit an initial declaration relating to his financial affairs for the period of one year prior to appointment.

Timelines for declaration.

(3) Every public officer shall, once every two years within the period of service, submit a declaration relating to the financial affairs of the public officer as at 1<sup>st</sup> of November of the declaration year, and such declaration shall be made within the month of December next following.

(4) A public officer shall, within thirty days after ceasing to be a public officer, submit a final declaration relating to his financial affairs as at the date he ceases to be a public officer.

33. (1) Upon receipt of the declaration made under section 31, the Commission shall analyse the declaration to ascertain—

Clarification.

- (a) its completeness and correctness;
- (b) whether the declaration raises possible issues of conflict of interest; and
- (c) whether on the face of it, the declaration contains any discrepancy or inconsistency.

(5) The Commission may, within six months of receipt of a declaration, request, in writing, for clarification from the public officer who submitted the declaration under section 31.

(6) A public officer from whom clarification is sought under sub section (2) shall, within fourteen days of receipt of the request, provide the clarification to the Commission.

(7) A request for clarification may include a requirement that—

- (a) the omitted information be provided; or
- (b) any discrepancy or inconsistency, including a discrepancy or inconsistency arising out of the omission, be explained or corrected.

(5) The Commission may verify any information provided in the declaration.

34. (1) Any declaration made under this Act shall be accessible to any person upon making an application to the Commission in the prescribed manner, if the applicant satisfies the Commission that he has a legitimate interest and good cause in the furtherance of the objectives of this Act.

Access to declarations.

(8) Notwithstanding subsection (1), a law enforcement agency shall have unrestricted access to the disclosures and compliance reports made by a public officer under this Act.

(9) A person who obtains information under subsection (1), shall not publish or in any way make public such information without prior written authority of the Commission.

(10) A person who contravenes sub section (3) commits an offence and shall on conviction be liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding two years, or both.

35. The Commission shall keep information collected under this Act concerning a person for at least five years after the person ceases to be a public officer.

Retention of information.

36. (1) A public officer who fails to submit any information required under this Act, within the prescribed period, commits an offence.

Failure to submit information.

(2) A reporting authority who fails to submit any information required under this Act, within the prescribed period, shall pay to the Commission a penalty of three million shillings.

37. A public officer who submits information that the public officer knows, or ought to know, is false or misleading, commits an offence.

False information.

38. A public officer shall within ninety days after the date of appointment or in the course of employment divest any private interest that would place the public officer in a conflict of interest situation.

Divestiture.

39. The private interests referred to in section 38 may be divested by—

Methods of divestment.

- (a) selling them in an arm's-length transaction; or
- (b) placing them in a blind trust that meets the requirements of section 40.

**40.** (1) A blind trust shall provide that—

Blind trust  
requirements.

- (a) the assets to be placed in trust shall be registered to the trustee unless they are in a registered retirement savings plan account;
- (b) the public officer shall not have any power of management or control over the trust assets;
- (c) the trustee shall not seek or accept any instruction or advice from the public officer concerning the management of the assets;
- (d) the assets placed in the trust shall be listed in a schedule attached to the instrument or contract establishing the trust;
- (e) the term of any trust shall be for as long as the public officer who establishes the trust continues to hold the office or until the trust assets are depleted;
- (f) the trustee shall deliver the trust assets to the public officer when the trust is terminated;
- (g) the trustee shall not provide information about the trust, including its composition, to the public officer except for information that is required by law to be filed by the public officer and periodic reports on the overall value of the trust;
- (h) the public officer may receive any income earned by the trust and add to or withdraw from the capital funds in the trust;
- (i) the trustee shall be at arm's length from the public officer and the Commission is to be satisfied that an arm's length relationship exists;
- (j) the trustee may be—
  - (i) the public trustee;
  - (ii) a registered trustee; or
  - (iii) a listed company or a subsidiary wholly owned by a listed company, including a trust

company or investment company, that is qualified to perform the duties of a trustee; or

- (k) the trustee shall provide the Commission, on every anniversary of the trust, with a written annual report verifying the accuracy, nature and market value of the trust, a reconciliation of the trust property, the net income of the trust for the year preceding, and the fees of the trustee, if any.

(2) Despite subsection (1), general investment instructions may be included in a blind trust instrument or contract but only with the prior approval of the Commission.

(3) Oral investment instructions shall not be given with respect to a contract or instrument that establishes a blind trust.

**41.** A public officer shall submit to the Commission—

Confirmation of blind trust or sale.

- (a) a copy of any instrument or contract establishing a blind trust; or
- (b) proof of sale of any asset, gift, inheritance or other private interests that are the subject of divestment.

**42.** The Commission shall, unless otherwise required by law, keep confidential any information provided by a public officer relating to a divestment under this Act.

Confidentiality of divestment.

**43.** (1) A public officer shall not be required to divest an asset that has been given as security to a lending institution.

Assets given as security.

(2) Despite subsection (1), a public officer shall—

- (a) disclose to the Commission the discharge of the secured asset referred to in subsection (1); and
- (b) where the interests of the public officer in the asset would place the officer in a conflict of interest situation, take the necessary steps to divest the discharged asset in accordance with this Act.

(3) A public officer shall not charge an asset in order to defeat divestiture requirements under this Act.

(4) A person who contravenes sub section (2) or (3) commits an offence.

44. A public officer shall not be required to divest an asset if, in the opinion of the Commission, the asset is of such minimal value that it does not pose any risk of conflict of interest in relation to the duties and responsibilities of the officer.

Assets of minimal value.

45. The Commission may order a person, in respect of any matter, to take any compliance measure that the Commission considers necessary for the compliance with this Act, including divestment or recusal.

Compliance orders.

46. A report on compliance with an order made by the Commission under section 45 may contain a description of—

Report on compliance with orders of the Commission.

- (a) the asset or the interest and the method used to divest it;
- (b) the process to be put in place by the public officer to effect the recusal; and
- (c) the steps taken by the public officer to comply with the order.

47. The Commission shall, within twelve months after the commencement of this Act, develop and publish in the Gazette, administrative mechanisms for the implementation of the requirements of this Part.

Publication of administrative mechanisms.

## **PART V— COMPLAINTS AND CONDUCT OF INVESTIGATIONS**

48. (1) A person who alleges that a public officer has contravened any provision of this Act may lodge a complaint with the reporting authority or the Commission and the report shall be recorded in a register of complaints.

Lodging of complaints and investigations.

(2) The reporting authority or the Commission may investigate the complaint and determine whether the public officer has contravened this Act.

(3) A reporting authority or the Commission may initiate an investigation on its own volition.

(4) A public officer who is under investigation under this section shall be informed of the allegations made and shall be given a reasonable opportunity to make a representation relating to the issue before the investigation is concluded.

(5) A person who lodges a complaint against a public officer shall be informed of any action taken or to be taken in respect of the complaint.

(6) Where an investigation under this section is initiated while the public officer is in office, the investigations may be continued even after the public officer has ceased to be in office.

(7) The reporting entity or a reporting authority may take disciplinary action against a public officer serving in a reporting entity.

**49.** (1) Despite section 48, the Commission shall not commence investigations if—

Discretion in investigations.

- (a) the subject matter of the request does not disclose an issue of conflict of interest under this Act;
- (b) the subject matter of the request has been adequately dealt with, or could more appropriately be dealt with according to a procedure provided for under another Act of Parliament; or
- (c) the substance of the request is frivolous, vexatious or made in bad faith.

(2) If the Commission declines to commence an investigation, the Commission shall inform the person who lodged the complaint and give reasons for the decision.

**50.** (1) Subject to the Constitution and any written law, a State officer or public officer may be suspended from office pending the investigation and determination of allegations made against that officer where such suspension is considered necessary.

Suspension from office.

(2) Despite sub section (1), the period of suspension of a State officer or public officer shall not exceed ninety days.

**51.** (1) The Commission may, pursuant to an investigation conducted under this Act—

Recommendations of the Commission.

- (a) recommend to a public entity to take disciplinary or other administrative action against a State or public officer alleged to have contravened the provisions of this Act;

- (b) recommend to a public entity, appointing authority or the public officer, to take such measures as may be appropriate to ensure compliance with, or cessation of further violation of, the provisions of this Act;
- (c) recommend to any other relevant public body to take appropriate action against a state or public officer, an associate to a state or public officer or a company in which a state or public officer has a controlling interest in; or
- (d) recommend to the Director of Public Prosecution the prosecution of a person who contravenes this Act.

(2) Where a public entity, Appointing Authority or public officer fails to implement the recommendations under subsection (1) (a) (b) or (c), the Commission may make an application before the High Court for appropriate orders requiring the public entity, authorized officer or public officer to comply.

#### **PART VI—MISCELLANEOUS PROVISIONS**

**52.** (1) A person who contravenes any provision of this Act for which no penalty is provided shall, upon conviction, be liable to—

General Penalty.

- (a) if the person is a natural person, a fine not exceeding four million shillings or to a term of imprisonment not exceeding ten years, or to both; or
- (b) if the person is a body corporate, a fine not exceeding ten million shillings; and

(2) In addition to the penalty under subsection (1), the person shall be liable to a further mandatory fine if as a result of the conduct that constituted the offence the person received a quantifiable benefit or any other person suffered a quantifiable loss.

(3) The mandatory fine referred to in subsection (2) shall be determined as follows—

- (a) the mandatory fine shall be equal to two times the amount of the benefit or loss described in subsection (2); or

- (b) if the conduct that constituted the offence resulted in both a benefit and loss described in subsection (2), the mandatory fine shall be equal to two times the sum of the amount of the benefit and the amount of the loss.

53. The Commission or any person acting on its behalf shall not, unless required by law, disclose any information that comes to their knowledge in the performance of their duties under this Act, unless the disclosure is, in the opinion of the Commission, essential for the purposes of carrying out its functions and exercising the powers conferred on it under this Act or is required by any law enforcement agency.

Confidentiality.

54. (1) A person shall not be penalized in relation to any employment, profession, voluntary work, contract, membership of an organization, the holding of an office or in any other way, as a result of having made or proposed to make a disclosure of information which the person obtained in confidence in the course of that activity, if the disclosure is of public interest.

Protection of person making disclosure.

(2) For purposes of subsection (1), a disclosure which is made to a law enforcement agency or to an appropriate public entity shall be deemed to be made in the public interest.

(3) A person shall make a disclosure under subsection (1) or (2) where such person has reasonable belief in the veracity of the information.

(4) Any person who provides false information maliciously intended to injure another person commits an offence and is liable, on conviction, to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding three years, or to both.

(5) Disclosure of information under subsection (1) and (2) shall be information on conflict of interest.

(6) For the purpose of this section, a person is penalized if the person is dismissed, discriminated against, made the subject of reprisal or other form of adverse treatment or is denied any appointment, promotion or advantage that otherwise would have been provided or any other personnel action provided under the law relating to

whistle blower, and the imposition of any such penalty in contravention of this section shall be actionable as a tort.

**55.** No criminal or civil proceedings shall lie against the Commission or any person acting on behalf of the Commission, for anything done, reported or said in good faith in the exercise of any power, or the performance of any function of the Commission under this Act.

Protection from liability.

**56.** Every reporting entity shall file compliance reports with the Commission in the prescribed form.

Reports by reporting entities.

**57.** (1) The Attorney-General may make regulations for the better carrying out the provisions of this Act.

Regulations.

(2) Without prejudice to the generality of sub-section (1), the Attorney-General may make regulations prescribing—

- (a) exceptional circumstances under which complimentary treatment may be accepted under this Act;
- (b) the mechanism and procedure for the opening, maintaining and publicizing of registers of conflict of interest; and
- (c) anything required to be prescribed under this Act.

#### **PART VII—REPEALS, SAVINGS AND TRANSITIONAL PROVISIONS**

**58.** The Public Officer Ethics Act, 2003 is repealed.

Repeal of Act No. 4 of 2003.

**59.** (1) Notwithstanding section 31, any entity which immediately before the commencement of this Act was designated as a responsible commission shall, upon such commencement, remain the responsible commission in respect of any declaration made by a public officer under this Act, until the administrative mechanisms referred to in section 47 are developed by the Commission.

Saving and transitional provisions.

(2) Any statutory instrument made under the repealed Act shall remain in force, so far as it is not inconsistent with this Act, until it is revoked or repealed by a statutory instrument made under this Act, and shall be deemed for all purposes to have been made under this Act.

(3) A public officer who is in office at the commencement of this Act shall divest his assets in

accordance with the provisions of this Act within twenty-four months of the commencement of this Act.

**60.** The Leadership and Integrity Act, the Ethics and Anti-corruption Commission Act and the Anti-Corruption and Economic Crimes Act are amended in the manner specified in the Third Schedule.

Consequential amendments.

**FIRST SCHEDULE****FORM 1 [s. 31(2)]****DECLARATION OF INCOME ASSETS AND LIABILITIES**

*The attention of all public officers is drawn to their obligation to declare their Income, Assets and Liabilities under the Conflict of Interest Act (No.....). Public officials are advised to familiarize themselves with the provisions of the Act and the applicable Code of Conduct and Ethics for their respective reporting entity.*

**GUIDELINES ON THE COMPLETION OF THE DECLARATION OF INCOME, ASSETS AND LIABILITIES.**

*A public officer should read these guidelines carefully and follow the instructions in the form before completing it. When completing the form, a public officer shall write legibly, type or print the required information.*

1. The form may be downloaded from the Ethics and Anti-Corruption Commission website ([www.eacc.go.ke](http://www.eacc.go.ke)).
2. Where the Commission has a web application for filing the declaration, a public officer may fill and submit the declaration online. In such a case, a physical signature or delivery acknowledgment slip will not be necessary.
3. The declaration is for the income, assets and liabilities of a public official, his spouse or spouses and his dependent children under the age of 18 years.
4. All public officers are required to complete and submit their declarations to the Commission, unless the Commission has delegated its functions to another body or the reporting authority of the concerned public officer.
5. The obligation to make declarations applies to all state and public officers including those on leave, under disciplinary action, secondment and overseas assignments, unless the Attorney General has granted a dispensation exempting an officer or a certain category of public official from filing their declarations, for reasons to be published in the *Gazette*.
6. The responsibility of ensuring that a declaration has been received by the appropriate reporting authority or its agent lies on the public officer. Provided that where the officer sends the form under confidential cover directly to the Commission, the officer should label the envelope with the words "Declaration of Incomes, Assets

- and Liabilities". The organization and job group of the officer should also be indicated on the envelope.
7. A public officer is required to complete an *initial* declaration within thirty days of appointment and the statement date of the declaration will be the date the officer became a public officer.
  8. A public officer is required to make a *biennial* declaration on or before the 31st day of December every other year or as may be provided for under the Act. The statement date for the biennial declaration will be 1st of November of the year in which the declaration is required.
  9. A public officer is required to make a *final* declaration within thirty days of ceasing to be a public officer. The statement date of the *final* declaration shall be the date the public official ceased to be a public official.
  10. A person submitting a declaration or providing a clarification shall ensure that the declaration or clarification is correct to the best of their knowledge.
  11. If space on the form is not adequate, additional information may be included on separate sheets, while clearly indicating the number and paragraph being continued.
  12. For each form submitted, there will be an acknowledgment slip issued by the Commission or its agent.
  13. Where a declaration is submitted electronically in accordance with the regulations made under this Act or administrative procedures adopted by the Commission or any other competent authority, the declaration shall be valid notwithstanding the absence of a signature or acknowledgement stamp or receipt or slip.
  14. Income, assets and liabilities that a public officer may have outside Kenya, should be declared. Joint assets, properties, personal and business accounts within and outside Kenya should also be declared.
  15. Where a public officer has contravened the provisions of the Code of Conduct and Ethics relating to the declaration of Income, Assets and Liabilities, appropriate disciplinary action will be taken by the Commission, or other appropriate authority, in accordance with the applicable disciplinary procedures.

**PART I: INFORMATION ON PUBLIC OFFICER****1.) Personal Information (Please tick (✓) where appropriate)**

<b>(a) Declaration Status</b>				
Initial <input type="checkbox"/> Biennial <input type="checkbox"/> Final <input type="checkbox"/>				
<b>(b) Name of Public Officer (Self)</b>				
Surname		First Name		Other Names
ID No.	Employee/Co-operative Society No.	PIN	Passport No.	Expiry Date of Passport
<b>(c) Birth Information</b>				
Date of Birth	Place of Birth	Nationality		Mode of acquisition of nationality (e.g., birth, registration, etc)
County	Sub-County	Location	Sub-location	Village
<b>(d) Sex</b>		<b>(e) Marital Status</b>		
Male <input type="checkbox"/> Female <input type="checkbox"/>		Married <input type="checkbox"/> Single <input type="checkbox"/> Other _____		
<b>(f) Address</b>				
Postal address	Residence (Area/County)	Telephone contacts	E-mail address	
<b>(g) Employment Information</b>				
Name of employer	Job Group/Grade/Scale	Date of First appointment	Date of Present appointment	

<i>Designation</i>	<i>Position</i>		<i>Rank</i>	
<i>Work Station</i>	<i>Sub-County</i>		<i>County</i>	
<b>(h) Nature of employment</b>				
<i>Permanent</i> <input type="checkbox"/>	<i>Temporary</i> <input type="checkbox"/>	<i>Contractual</i> <input type="checkbox"/>	<i>Others (specify)</i>	
<i>Offers of future employment</i>	<i>Membership of remunerative Boards and Committees</i>	<i>Date of Retirement (if on Permanent and/or Pensionable employment)</i>	<i>Expected date of expiry of contract or temporary employment or membership of remunerative Boards or Committees</i>	

**2.) Information on spouse(s)**

<b>Surname</b>	<b>First name</b>	<b>Other names</b>	<b>ID No.</b>	<b>PIN</b>	<b>Occupation</b>

**3.) Particulars of dependent children under the age of 18 years**

<b>Surname</b>	<b>First name</b>	<b>Other names</b>	<b>Date of Birth</b>

**PART II: INCOME, ASSETS AND LIABILITIES****(1) Income**

*This includes but is not limited to-*

*(a) General Income;*

*(b) Business Income (e.g. from companies, partnerships etc.)*

<b>Type of income</b>	<b>Self</b>	<b>Spouse(s)</b>	<b>Dependant(s)</b>	<b>Total (Kshs.).</b>

**(2) Assets****(A) Financial assets**

*These include but are not limited to-*

*(a) Cash in Banks and Financial Institutions;*

*(b) Bonds, Stock and Shares (including shares in cooperatives, private and public companies)*

	<i>Name and Branch of bank/Financial Institution / Organization in which held</i>	<i>Account Name/ CDSC account/ Share Certificate /SACCO Membership number</i>	<i>Account Number/ CDSC account/ Share Certificate/ SACCO Membership number.</i>	<i>Balance as at the beginning of statement period(Kshs. ) /No. of Shares/ Acquisition value (Kshs.)</i>	<i>Balance as at statement date(Kshs.) /Current Market value (Kshs.)</i>
<i>Self</i>					
<i>Spouse(s)</i>					
<i>Dependant(s)</i>					





**(D) Intellectual property**

	<i>Description</i>	<i>Certificate No./Registration No./Identifying No.(where applicable)</i>	<i>Approximate value Current market price (Kshs.)</i>
<b>Self</b>			
<b>Spouse(s)</b>			
<b>Dependant(s)</b>			

**(3) Liabilities**

*These include but are not limited to-*

- (a) Liabilities in banks / financial institutions (Business loans, personal loans, overdraft, mortgage, SACCO loans, etc)*
- (b) Other Liabilities (rent, levies, school fees, license fees, utility bills etc)*
- (c) Donations and charitable contributions*

	Description	Creditor name and address	Date incurred	Nationality of creditor	Location of security	Amount advanced (Gross value of credit) (Kshs.)	Outstanding amount as at statement date Current market price (Kshs.)
Self							
Spouse(s)							
Dependant (s)							

**PART III: ADDITIONAL INFORMATION**

Give any other information you may consider relevant and useful to your declaration

.....

.....

.....

.....

.....

**PART IV: DECLARATION**

I, ....., solemnly declare that the information I have given above is true, complete and correct to the best of my knowledge.

Date : .....

Signature of Public Official: .....

**FOR OFFICIAL USE**

- 1. Date of declaration: .....
- 2. Date of receipt of declaration: .....
- 3. Action taken: .....
  - (a) Acknowledgement Slip issued:.....
  - (b) Filed: .....
  - (c) Sent for verification / clarification: .....
  - (d) Comments:
    - .....
    - .....
    - .....
    - .....
    - .....

Name of Receiving Official : .....

Signature .....

**DECLARATION OF INCOME, ASSETS AND LIABILITIES**

**ACKNOWLEDGEMENT SLIP**

Name of the reporting entity:.....

Name of the reporting authority (*where applicable, e.g. Principal Secretary, Ministry of ...*): .....

Name of Public Official: .....

Personal/ Employee No. ....

Address: .....

Date of submission: .....

Delivered by: .....

Comments

.....

.....

.....

.....  
.....

Name: .....

*For: (The Commission or agent)*

Signature : .....

Date.....:

Stamp : .....

**SECOND SCHEDULE. [s. 2 , S. 24(2)(a)]****REGISTRABLE INTERESTS**

For purposes of Section 24 (2) the following are categories of income, assets and liabilities which a public official must declare—

**(a) Income—**

- (i) Windfall gains
- (ii) Rental income
- (iii) Business income from any trade or profession
- (iv) Employment Income
- (v) Farming income
- (vi) Dividends
- (vii) Interest
- (viii) Investment Returns
- (ix) Pensions and annuities
- (x) Royalties
- (xi) Cash or material awards
- (xii) Insurance bonuses
- (xiii) Grants
- (xiv) Any other income that is taxable

**(b) Assets**

- (i) Ownership of or interest in a scheme, fund or entity howsoever established or structured or administered;
- (ii) cash at hand and at bank;
- (iii) Land, whether developed or undeveloped;
- (iv) any trusts in respect of which a public official or a member of his or her family is a beneficiary;
- (v) works of art, antiques, precious metals, jewelry or collectibles;
- (vi) automobiles, marine vessels and aircrafts;
- (vii) treasury bonds and bills;

- (viii) publicly traded securities of corporations and foreign governments, whether held individually or in an investment portfolio account such as, but not limited to, shares, stocks, bonds, stock market indices, trust units, closed-end mutual funds, commercial papers and medium-term notes;
- (ix) equity held in an entity that is not publicly listed or traded whether registered in Kenya or another jurisdiction;
- (x) retirement savings plans, education savings plans and retirement income funds;
- (xi) commodities, futures and foreign currencies held or traded for speculative purposes;
- (xii) stock options, warrants, rights and similar instruments registered retirement savings plans, education savings plans, insurance and other life saving plans, annuities;
- (xiii) investments in mutual funds;
- (xiv) primary and secondary residences, recreational property, farmland and buildings;
- (xv) personal loans of not less than Ksh.100,000 receivable from relatives and other persons;
- (xvi) debts owed to the public official including by previous employer, client or partner; public and private sector debt financing not guaranteed by a level of government, such as university and hospital debt financing.

**(c) Liabilities—**

- (i) Secured and unsecured loans;
- (ii) Mortgages;
- (iii) Debts owed by the official;
- (iv) Outstanding imprest due to the Government;
- (v) Outstanding Salary advance.

**THIRD SCHEDULE**

[s.59].

**CONSEQUENTIAL AMENDMENTS**

<b>Written Law</b>	<b>Provision</b>	<b>Amendment</b>
The Anti-Corruption and Economic Crimes Act No.3 of 2003	Section 42	Delete
	Section 62(6)	Delete
The Ethics and Anti-corruption Commission Act, No. 22 of 2011.	Section 11	Amended in subsection (1) by inserting the following new paragraph immediately after paragraph (l)—  (k) perform any other functions and exercise any other powers conferred by an Act of Parliament.
The Leadership and Integrity Act, No. 19 of 2012.	Section 2 (2)	Delete
	Section 6 (3)	Delete.
	Section 6 (4)	Delete
	Section 13(1)(a)	Delete and substitute therefor the following new paragraph—  <b>13. (1)(a) demonstrate honesty in the conduct of public affairs;</b>
	Section 14	Delete
	Section 16	Delete
	Section 17	Delete
	Section 18	Delete
	Section 23	Delete
	Section 26	Delete
	Section 27	Delete
	Section 28	Delete
Section 52	Delete and substitute therefor the following new section—	

		<p>52. Pursuant to Article 80(c) of the Constitution, the provisions of Chapter Six of the Constitution and this Act shall apply to all public officers as if they were State officers.</p>
<p>The Public Procurement and Assets Disposal Act, No. 33 of 2015</p>	<p>Section 59</p>	<p>Delete and substitute therefor the following new section—</p> <p>59. (1) A state organ or public entity shall not enter into a contract for procurement with a state or public officer.</p> <p>(2) A state or public officer shall not directly or indirectly award or influence the award of a contract to—</p> <ul style="list-style-type: none"> <li>(a) the state officer's or public officer's spouse or child;</li> <li>(b) the officer's business associate or agent; or</li> <li>(c) a corporation, private company, partnership or other body in which the officer has a substantial or controlling interest.</li> </ul> <p>(3) A state officer or public officer who has an interest in a matter under consideration in a public procurement or asset disposal shall disclose in writing, the nature of that interest and shall not participate in any procurement or asset disposal relating to that interest.</p>

## MEMORANDUM OF OBJECTS AND REASONS

### Statement of objects and reasons for the Bill

The principal object of the Bill is to provide for the management of conflict of interest in the discharge of official duties.

**Part I** of the Bill provides for the preliminary matters including the application of the Bill and interpretation.

**Part II** of the Bill provides for the administration of the Act and vests the administration of the Act on the Ethics and Anti-Corruption Commission. It sets out the functions and powers of the Commission in relation to the management of conflict of interest.

**Part III** of the Bill defines situations that amount to conflict of interest and imposes obligations on public officers to avoid situations that would result in conflict of interest. It prohibits public officers from engaging in activities that would cause conflict between private interests and public interest or official duty. The part also creates offences for engaging in prohibited activities that result in conflict of interest or for failing to declare situations where private interests conflict with or are likely to conflict with public interests. It also prohibits former public officers from engaging in activities that would result in conflict of interest after ceasing to be a public officer.

**Part IV** of the Bill provides for compliance measures. It sets out the steps that a public officer should take in situations where the public officer's private interests conflict or are likely to conflict with public interests and official duty. The steps include recusal, declaration of income, assets and liabilities by public officers and divestiture.

**PART V** provides for the lodging of complaints and conduct of investigations. It sets out the procedure for reporting any violation of the Act to the Commission and to reporting entities. It also provides for temporary vacation of office by public officers who are under investigations and stipulates the recommendations that may be made by the Commission to a reporting entity upon the conclusion of investigations.

**PART VI** contains miscellaneous provisions that provide for the general penalty, the filing of returns by reporting entities, the power of the Attorney-General to make regulations and the repeal of the Public Officers Ethics Act.

**PART VII** encompasses the repeal, savings and transitional provisions. It provides for the repeal of the Public Officers Ethics Act and the consequential amendment of the Leadership and Integrity Act, the

Ethics and Anti-corruption Commission Act, the Anti-Corruption and Economic Crimes Act and the Public Procurement and Assets Disposal Act.

**Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms**

Clause 56 of the Bill delegates the power to make regulations to the Attorney-General. The Bill does not limit any fundamental rights and freedoms.

**Indication of whether the Bill concerns counties**

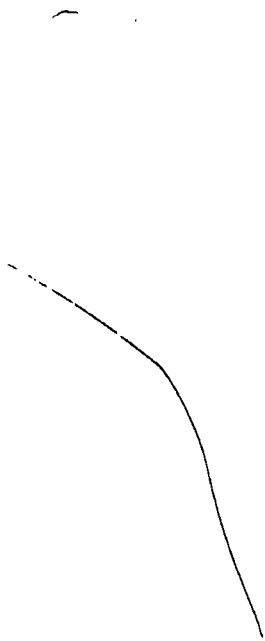
This Bill is a Bill concerning county governments.

**Statement as to whether the Bill is a money Bill within the meaning of Article 114 of the Constitution**

The enactment of this Bill shall occasion additional expenditure of public funds.

Dated the 21st March, 2023.

**KIMANI ICHUNG'WAH,**  
*Leader of the Majority Party.*



Annexure 4: Advertisement  
inviting the public to submit  
memoranda on the Bill



REPUBLIC OF KENYA  
**THE NATIONAL ASSEMBLY**  
**THIRTEENTH PARLIAMENT – SECOND SESSION**

IN THE MATTER OF ARTICLE 118 (1)(b) OF THE CONSTITUTION  
AND  
IN THE MATTER OF CONSIDERATION BY THE NATIONAL ASSEMBLY OF:

1. **THE REGIONAL DEVELOPMENT AUTHORITIES BILL (NATIONAL ASSEMBLY BILL NO. 7 OF 2023);**
2. **THE CONFLICT OF INTEREST BILL (NATIONAL ASSEMBLY BILL NO. 12 OF 2023);**
3. **THE FOOD AND FEED SAFETY CONTROL COORDINATION BILL (NATIONAL ASSEMBLY BILL NO. 21 OF 2023); AND**
4. **THE PRIVATISATION BILL (NATIONAL ASSEMBLY BILL NO. 22 OF 2023)**

**INVITATION FOR PUBLIC PARTICIPATION AND SUBMISSION OF MEMORANDA**

**WHEREAS**, Article 118(1) (b) of the Constitution requires Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees and Standing Order 127(3) of the National Assembly Standing Orders requires House Committees considering Bills to facilitate public participation;

**AND WHEREAS**, the Regional Development Authorities Bill (National Assembly Bill No. 7 of 2023); the Conflict of Interest Bill (National Assembly Bill No. 12 of 2023); the Food and Feed Safety Control Coordination Bill (National Assembly Bill No. 21 of 2023); and the Privatisation Bill (National Assembly Bill No. 22 of 2023) were read a First Time on **Tuesday, 6<sup>th</sup> June 2023** and thereafter referred to the relevant Departmental Committees for consideration and reporting to the House;

**IT IS NOTIFIED that:**

1. **The Regional Development Authorities Bill (National Assembly Bill No. 7 of 2023)** is a Bill sponsored by the **Member for Sigor Constituency (The Hon. Peter Lochakapong, MP)** with the principal object being to consolidate the laws relating to regional development and to provide for the establishment, powers and functions of the six (6) existing regional development bodies. The Bill seeks to standardise the functions of regional development authorities subject to the unique areas of operation of each regional development authority and also standardise the membership of the Boards of each regional development authority to eleven (11) members in line with best practices in corporate governance.
2. **The Conflict of Interest Bill (National Assembly Bill No. 12 of 2023)** is a Bill sponsored by the **Leader of the Majority Party (The Hon. Kimani Ichung'wah, MGH, MP)** with the principal object being to provide for the management of conflict of interest in the discharge of official duties.
3. **The Food and Feed Safety Control Coordination Bill (National Assembly Bill No. 21 of 2023)** is a Bill sponsored by the **Leader of the Majority Party (The Hon. Kimani Ichung'wah, MGH, MP)** seeking to provide for coordination of public institutions involved in the control of food and feed safety; to establish the Office of the Food Safety Controller and to provide for the role of county governments in food and feed safety. This is aimed at ensuring the supply of safe food and feed to consumers. The Bill also seeks to ensure that food is safely produced, distributed, processed, marketed and prepared for human consumption from the farm to consumption.
4. **The Privatisation Bill (National Assembly Bill No. 22 of 2023)** is a Bill sponsored by the **Leader of the Majority Party (The Hon. Kimani Ichung'wah, MGH, MP)** with the principal object being to provide a revised regulatory framework for the privatisation of public entities with a view of improving the efficiency and competitiveness of Kenya's productive resources.

**NOW THEREFORE**, in compliance with Article 118(1) (b) of the Constitution and Standing Order 127(3) the Clerk of the National Assembly hereby invites the public and stakeholders to submit memoranda on the Bills to the respective Departmental Committees listed below:

S/ NO.	BILL	COMMITTEE
1.	The Regional Development Authorities Bill (National Assembly Bill No. 7 of 2023)	Regional Development
2.	The Conflict of Interest Bill (National Assembly Bill No. 12 of 2023)	Justice and Legal Affairs
3.	The Food and Feed Safety Control Coordination Bill (National Assembly Bill No. 21 of 2023)	Agriculture and Livestock
4.	The Privatisation Bill (National Assembly Bill No. 22 of 2023)	Finance and National Planning

Copies of the Bills are available at the National Assembly Table Office, Main Parliament Buildings or on [www.parliament.go.ke/the-national-assembly/house-business/bills](http://www.parliament.go.ke/the-national-assembly/house-business/bills).

The memoranda may be forwarded to the **Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi**; hand-delivered to the **Office of the Clerk, Main Parliament Buildings, Nairobi**; or emailed to [cna@parliament.go.ke](mailto:cna@parliament.go.ke) to be received on or before **Monday, 26<sup>th</sup> June 2023** at **5.00 p.m.**

**S. NJOROGI**  
**CLERK OF THE NATIONAL ASSEMBLY**

12<sup>th</sup> June 2023

**For the Welfare of Society and the just Government of the People**

Annexure 5: Letter from the  
Clerk of the National  
Assembly inviting relevant  
stakeholders to submit  
memoranda on the Bill



**THE NATIONAL ASSEMBLY  
OFFICE OF THE CLERK**

P. O. Box 41842-00100  
Nairobi, Kenya  
Main Parliament Buildings

Telephone: +254202848000 ext. 3300  
Email: [cna@parliament.go.ke](mailto:cna@parliament.go.ke)  
[www.parliament.go.ke/the-national-assembly](http://www.parliament.go.ke/the-national-assembly)

When replying, please quote:

Ref: NA/DDC/JLAC/2023/079

19<sup>th</sup> July, 2023

**Hon. Shadrack Mose**  
The Solicitor General  
State Law Office  
Sheria House, Harambee Avenue,  
**NAIROBI.**

Dear

**RE: REVIEW OF THE CONFLICT OF INTEREST BILL, 2023 BY THE  
DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS (JLAC)**

The Departmental Committee on Justice and Legal Affairs is established pursuant to Standing Order 216 of the National Assembly Standing Orders, and is mandated to, inter alia, '*study and review all legislation referred to it.*'

The Committee during its Sitting on Thursday 29<sup>th</sup> June, 2023 received oral and written submissions on the Conflict of Interest Bill, 2023 from various stakeholders. A copy of the matrix of submissions is attached for your reference.

Consequently, the Committee hereby invites you, among other Stakeholders for a further engagement on the Bill before reporting to the House. The meeting will be held on Thursday 27<sup>th</sup> July, 2023. The exact venue of the meeting will be communicated.

You are requested to provide twenty copies of your written submissions. A soft copy of the submissions may be sent to [cna@parliament.go.ke](mailto:cna@parliament.go.ke) at least two days before the meeting.

Our Liaison Officers on this matter are **Mr. Douglas Katho** who may be contacted on tel. no. **0722333145** or email: [douglas.katho@parliament.go.ke](mailto:douglas.katho@parliament.go.ke) or **Ms. Jael Ayiego Kilaka** on tel. no. **0725385945** or email: [jael.kilaka@parliament.go.ke](mailto:jael.kilaka@parliament.go.ke) or **Mr. Abdikafar Abdi Sheikh** on tel. no. **0715456503** or email: [abdikafar.sheikh@parliament.go.ke](mailto:abdikafar.sheikh@parliament.go.ke)

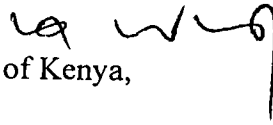
Yours *Sincerely,*

**PETER K. CHEMWENO**  
**For: CLERK OF THE NATIONAL ASSEMBLY**

Encls

Copy to:

**Hon. Justin Muturi, EGH**  
The Attorney General of the Republic of Kenya,  
Sheria House, Harambee Avenue,  
NAIROBI.





**THE NATIONAL ASSEMBLY  
OFFICE OF THE CLERK**

P. O. Box 41842-00100  
Nairobi, Kenya  
Main Parliament Buildings

Telephone: +254202848000 ext. 3300  
Email: [na@parliament.go.ke](mailto:na@parliament.go.ke)  
[www.parliament.go.ke/the-national-assembly](http://www.parliament.go.ke/the-national-assembly)

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When replying, please quote

**Ref: NA/DDC/JLAC/2023/060**

**23<sup>rd</sup> June 2023**

**Ms. Anne Amadi,**  
Chief Registrar Judiciary of Kenya / Secretary  
Judicial Service Commission  
Supreme Court Building  
**NAIROBI**

**Maj. (Rtd) Twalib Mbarak, CBS**  
Chief Executive Officer  
Ethics and Anti-Corruption Commission  
Integrity Centre, Jakaya Kikwete/Valley Road Junction  
**NAIROBI**

**Mrs. Dorcas Oduor**  
Principal Deputy Director of Public Prosecutions  
ODPP House, Ragati Road, Upper Hill  
**NAIROBI**

**Mr. Marjan Hussein Marjan**  
Chief Executive Officer/Commission Secretary  
Independent Electoral and Boundaries Commission  
University Way, Anniversary Towers, 6<sup>th</sup> floor,  
**NAIROBI**

**Mr. Bernard Mogesa**  
Chief Executive Officer,  
Kenya National Commission on Human Rights  
1<sup>st</sup> Floor, CVS Plaza, Lenana Road  
**NAIROBI**

**Mr. Joash Dache, MBS**  
Chief Executive Officer/Commission Secretary  
Kenya Law Reform Commission,  
Reinsurance Plaza, 3<sup>rd</sup> Floor, Taifa Road,  
**NAIROBI.**

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**Dr. Simon K. Rotich, CBS**  
Chief Executive Officer/Commission Secretary  
Public Service Commission  
Commission House,  
Harambee Avenue  
**NAIROBI**

**Ms. Florence Muturi,**  
Chief Executive Officer  
Law Society of Kenya (LSK)  
Lavington, Opposite Valley Arcade, Gitanga Road  
**NAIROBI**

**Ms. Christine Gakii Nkonge,**  
Executive Director  
Katiba Institute, House No.5 -the Crescent-Off Parklands Road  
**NAIROBI**

**Dr. Mshai Mwangola**  
Chairperson,  
Uraia Trust  
Jacaranda Avenue, off Gitanga Road  
**NAIROBI**

**Ms. Caroline Gaita**  
Executive Director,  
Mzalendo Trust  
ACK Garden House, 2 nd Floor, Wing A,  
1 st Ngong Avenue  
**NAIROBI**

**Dr. Annette Mbogoh**  
Executive Director  
Kituo cha Sheria  
Ole Odume Rd, Off Argwings Kodhek Rd  
**NAIROBI**

**Mr. Irungu Houghton**  
Executive Director,  
Amnesty International,  
Riverside Studios,  
**NAIROBI**

**Dr. Nancy Njeri Macharia**  
Chief Executive Officer,  
Teachers Service Commission  
Kilimanjaro Avenue,  
Upper Hill  
**NAIROBI**

**Mr. Peter Kiptanui Leley**  
Chief Executive Officer/Commission Secretary  
National Police Service Commission  
Skypark Plaza, 2<sup>nd</sup> Floor,  
Westlands  
**NAIROBI**

**Ms. Anne R. Gitau, MBS**  
Chief Executive Officer  
Salaries and Remuneration Commission  
Williamson House, 6<sup>th</sup> Floor  
4<sup>th</sup> Ngong Avenue,  
**NAIROBI**

**Ms. Kabale Tache Arero**  
Chief Executive Officer/Commission Secretary  
National Land Commission  
316 Upper Hill Chambers  
2<sup>nd</sup> Ngong Avenue, Off Ngong Road  
**NAIROBI**

**Prof. Mike Kuria**  
Chief Executive Officer/Commission Secretary  
Commission for University Education  
Parklands/Highridge Red Hill Road  
Off Limuru Road, Gigiri  
**NAIROBI**

**Ms. Sheila Masinde**  
Executive Director  
National Integrity Alliance  
Kindaruma Road, Off Ring Road, Kilimani  
Next to Commodore Office Suites  
**NAIROBI**

Dear **Ms. Amadi,**

**RE: INVITATION TO SUBMIT VIEWS ON THE CONFLICT OF INTEREST BILL,  
2023**

---

The Departmental Committee on Justice and Legal Affairs is established under National Assembly Standing Order 216 and is mandated to amongst others, *"study and review all legislation referred to it"*.

The Conflict of Interest Bill 2023, sponsored by the Leader of the Majority Party, Hon. Kimani Ichung'wah, CBS, MP is before the Committee for consideration and reporting to the House. The Bill seeks to provide for the management of conflict of interest in the discharge of official duties.

Article 118(1)(b) of the Constitution of Kenya and the National Assembly Standing Order 127(3) require Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees. Due to great public interest in the Bill, the Committee has resolved to meet critical stakeholders to make submissions on the Bill.

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In this regard, the Committee has scheduled to meet with you on **Thursday 29<sup>th</sup> June, 2023 at 11.00 am** in the **Mini Chamber, First Floor, County Hall, Parliament Buildings**. *(A copy of the schedule attached)*

You are requested to prepare your written submissions in a matrix format that indicates the section of the Act, specific clause, proposed amendment and justification. Twenty (20) hard copies of the submissions be availed at the meeting while soft copies should be delivered to the Office of the Clerk, Main Parliament Building or emailed to [cna@parliament.go.ke](mailto:cna@parliament.go.ke).

Hard copies of the Bill are available at the National Assembly Table Office, Main Parliament Building, while an electronic copy may be accessed on the Parliamentary website: [www.parliament.go.ke/the-national-assembly/house-bills](http://www.parliament.go.ke/the-national-assembly/house-bills) for reference.

Our Liaison Officers on this matter are **Mr. Douglas Katho** who may be contacted on Tel. No. 072233145 or email: [douglas.katho@parliament.go.ke](mailto:douglas.katho@parliament.go.ke), **Ms. Jael Ayiego Kilaka** Tel. No. 0725385945 or email: [jael.kilaka@parliament.go.ke](mailto:jael.kilaka@parliament.go.ke) and **Mr. Abdikafar Abdi Sheikh** Tel. No. 0715456503 or email: [abdikafar.sheikh@parliament.go.ke](mailto:abdikafar.sheikh@parliament.go.ke).

Yours *Sincerely,*



**PETER K. CHEMWENO**

**For: CLERK OF THE NATIONAL ASSEMBLY**

Annexure 6: Letter from the  
Clerk of the National  
Assembly inviting relevant  
stakeholders to attend the  
public participation forum



**THE NATIONAL ASSEMBLY  
OFFICE OF THE CLERK**

P. O. Box 41842-00100  
Nairobi, Kenya  
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Telephone: +254 20 2848000 ext. 3300  
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Chief Executive Officer,  
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Chief Executive Officer/Commission Secretary  
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2023**

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---

In this regard, the Committee has scheduled to meet with you on **Thursday 29<sup>th</sup> June, 2023 at 11.00 am** in the **Mini Chamber, First Floor, County Hall, Parliament Buildings.** (*A copy of the schedule attached*)

You are requested to prepare your written submissions in a matrix format that indicates the section of the Act, specific clause, proposed amendment and justification. Twenty (20) hard copies of the submissions be availed at the meeting while soft copies should be delivered to the Office of the Clerk, Main Parliament Building or emailed to [cna@parliament.go.ke](mailto:cna@parliament.go.ke).

Hard copies of the Bill are available at the National Assembly Table Office, Main Parliament Building, while an electronic copy may be accessed on the Parliamentary website: [www.parliament.go.ke/the-national-assembly/house-bills](http://www.parliament.go.ke/the-national-assembly/house-bills) for reference.

Our Liaison Officers on this matter are **Mr. Douglas Katho** who may be contacted on Tel. No. 072233145 or email: [douglas.katho@parliament.go.ke](mailto:douglas.katho@parliament.go.ke), **Ms. Jael Ayiego Kilaka** Tel. No. 0725385945 or email: [jael.kilaka@parliament.go.ke](mailto:jael.kilaka@parliament.go.ke) and **Mr. Abdikafar Abdi Sheikh** Tel. No. 0715456503 or email: [abdikafar.sheikh@parliament.go.ke](mailto:abdikafar.sheikh@parliament.go.ke).

Yours *Sincerely,*



**PETER K. CHEMWENO**  
**For: CLERK OF THE NATIONAL ASSEMBLY**



THE NATIONAL ASSEMBLY  
OFFICE OF THE CLERK

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Main Parliament Buildings

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[www.parliament.go.ke/the-national-assembly](http://www.parliament.go.ke/the-national-assembly)

When replying, please quote

Date

Ref: NA/DDC/JLAC/2023/082

3<sup>rd</sup> August 2023

**Ms. Anne Amadi,**  
Chief Registrar Judiciary of Kenya / Secretary  
Judicial Service Commission  
Supreme Court Building  
**NAIROBI**

**Maj. (Rtd) Twalib Mbarak, CBS**  
Chief Executive Officer  
Ethics and Anti-Corruption Commission  
Integrity Centre, Jakaya Kikwete/Valley Road Junction  
**NAIROBI**

**Mrs. Dorcas Oduor**  
Principal Deputy Director of Public Prosecutions  
ODPP House, Ragati Road, Upper Hill  
**NAIROBI**

**Mr. Marjan Hussein Marjan**  
Chief Executive Officer/Commission Secretary  
Independent Electoral and Boundaries Commission  
University Way, Anniversary Towers, 6<sup>th</sup> floor,  
**NAIROBI**

**Mr. Bernard Mogesa**  
Chief Executive Officer,  
Kenya National Commission on Human Rights  
1<sup>st</sup> Floor, CVS Plaza, Lenana Road  
**NAIROBI**

**Mr. Joash Dache, MBS**  
Chief Executive Officer/Commission Secretary  
Kenya Law Reform Commission,  
Reinsurance Plaza, 3<sup>rd</sup> Floor, Taifa Road,  
**NAIROBI.**

**Dr. Simon K. Rotich, CBS**  
Chief Executive Officer / Commission Secretary  
Public Service Commission  
Commission House,  
Harambee Avenue  
NAIROBI

**Ms. Florence Muturi,**  
Chief Executive Officer  
Law Society of Kenya (LSK)  
Lavington, Opposite Valley Arcade, Gitanga Road  
NAIROBI

**Ms. Christine Gakii Nkonge,**  
Executive Director  
Katiba Institute, House No.5 -the Crescent-Off Parklands Road  
NAIROBI

**Dr. Mshai Mwangola**  
Chairperson,  
Uraia Trust  
Jacaranda Avenue, off Gitanga Road  
NAIROBI

**Ms. Caroline Gaita**  
Executive Director,  
Mzalendo Trust  
ACK Garden House, 2<sup>nd</sup> Floor, Wing A,  
1 st Ngong Avenue  
NAIROBI

**Dr. Annette Mbogoh**  
Executive Director  
Kituo cha Sheria  
Ole Odume Rd, Off Argwings Kodhek Rd  
NAIROBI

**Mr. Irungu Houghton**  
Executive Director,  
Amnesty International,  
Riverside Studios,  
NAIROBI

**Dr. Nancy Njeri Macharia**  
Chief Executive Officer,  
Teachers Service Commission  
Kilimanjaro Avenue,  
Upper Hill  
NAIROBI

**Mr. Peter Kiptanui Leley**  
Chief Executive Officer/Commission Secretary  
National Police Service Commission  
Skypark Plaza, 2<sup>nd</sup> Floor,  
Westlands  
**NAIROBI**

**Ms. Anne R. Gitau, MBS**  
Chief Executive Officer  
Salaries and Remuneration Commission  
Williamson House, 6<sup>th</sup> Floor  
4<sup>th</sup> Ngong Avenue,  
**NAIROBI**

**Ms. Kabale Tache Arero**  
Chief Executive Officer/Commission Secretary  
National Land Commission  
316 Upperhill Chambers  
2<sup>nd</sup> Ngong Avenue, Off Ngong Road  
**NAIROBI**

**Prof. Mike Kuria**  
Chief Executive Officer/Commission Secretary  
Commission for University Education  
Parklands/Highridge Red Hill Road  
Off Limuru Road, Gigiri  
**NAIROBI**

**Ms. Sheila Masinde**  
Executive Director  
National Integrity Alliance  
Kindaruma Road, Off Ring Road, Kilimani  
Next to Commodore Office Suites  
**NAIROBI**

Dear *Ms Masinde*

**RE: MEETING WITH THE DEPARTMENTAL COMMITTEE ON JUSTICE AND  
LEGAL AFFAIRS ON THE CONSIDERATION OF THE CONFLICT OF  
INTEREST BILL, 2023**

---

The Departmental Committee on Justice and Legal Affairs is established under National Assembly Standing Order 216 and is mandated to amongst others, *"study and review all legislation referred to it"*.

The Committee acknowledges your attendance and submissions on the Conflict of Interest Bill, 2023 during its Sitting on Thursday 29<sup>th</sup> June 2023.

Consequently the Committee hereby invites you, for a further engagement on the Bill before reporting to the House. The meeting will be held on **Tuesday 8<sup>th</sup> August, 2023 at 10:00 am**. The exact venue of the meeting will be communicated.

You are requested to prepare additional written submissions in a matrix format that indicates the section of the Act, specific clause, proposed amendment and justification. Twenty (20) hard

copies of the submissions should be availed at the meeting and soft copy emailed to [cna@parliament.go.ke](mailto:cna@parliament.go.ke)

Our Liaison Officers on this matter are **Mr. Douglas Katho** who may be contacted on Tel. No. 072233145 or email: [douglas.katho@parliament.go.ke](mailto:douglas.katho@parliament.go.ke) and **Ms. Jael Ayiego Kilaka** Tel. No. 0725385945 or email: [jael.kilaka@parliament.go.ke](mailto:jael.kilaka@parliament.go.ke).

Yours



**JEREMIAH NDOMBI, MBS**  
**For: CLERK OF THE NATIONAL ASSEMBLY**

Annexure 7:Memoranda by  
Stakeholders

# Judiciary,



# THE JUDICIARY

OFFICE OF THE CHIEF REGISTRAR OF THE JUDICIARY

Date: June 27, 2023

Our Ref: CRJ 48

Your Ref: NA/DDC/JLAC/2023(049)

Clerk of the National Assembly  
The National Assembly  
Office of the Clerk  
P. O. Box 41842-00100  
**NAIROBI**

Dear Sir,

**RE: COMMENTS ON THE CONFLICT OF INTEREST BILL, 2023**

We refer to your letter Ref: NA/DDC/JLAC/2023(049) dated 18<sup>th</sup> May 2023 inviting comments on the above referenced Bill for consideration by the Justice & Legal Affairs Committee of the National Assembly.

While we laud Parliament's initiative to enhance the law on conflict of interest in the public sector in Kenya, we would like to draw the attention of the Committee to the following provisions of the Constitution:

- i. Article 1(3)(c) of the Constitution which guarantees the separation of powers between the three arms of Government;
- ii. Article 2(1) and 3(1) of the Constitution which binds and obligates all persons and all State organs to respect, uphold and defend the Constitution; and
- iii. Article 2(4) of the Constitution which provides that any law that is inconsistent with the Constitution is void and any act or omission in contravention of the Constitution is invalid.

We also urge the Committee to note the following provisions as it considers the Bill:

- iv. Article 160(1) of the Constitution which provides that the exercise of Judicial authority shall not be subject to the control or direction of any person or authority, and
- v. Article 249(2) of the Constitution which provides that independent Commissions are subject only to the Constitution and the law, and are independent and are not subject to the direction or control by any person or authority.

We have reviewed the Bill and have noted that several provisions offend these provisions of the Constitution.

Against this backdrop, we forward herewith a matrix with recommendations to enrich and ensure the Bill is aligned with the Constitution.



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We appreciate the opportunity to provide feedback

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on the Bill and hope the Committee finds these comments useful to its deliberations.

Yours Sincerely,

**ANNE A. AMADI, CBS**  
**CHIEF REGISTRAR OF THE JUDICIARY**

Copy To:  
The Chairperson,  
**Judicial Service Commission**



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*through* **Access to Justice**

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## COMMENTS FROM THE JUDICIARY ON THE CONFLICT OF INTEREST BILL 2023

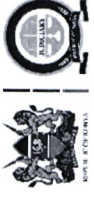
CLAUSE	CURRENT PROVISION	OBSERVATION	RECOMMENDATION
1.	<p>The long title states that the Act is for the management and regulation of conflict of interest and for connected purposes.</p>	<p>The Bill will repeal the Public Officer Ethics Act which address conflict of interest among other matters concerning ethics in the public service. It is evident from the long title and the substantive provisions of the Bill that it is intended as a special legislation focused solely on conflict of interest in relation to public service. This, coupled with the proposed repeal of the Public Officer Ethics Act, will leave out other aspects of ethics in the public service.</p>	<p>The name and contents of the Bill be expanded to cover all aspects of ethics in the public service.</p>



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2.	Clause 5 & 6	The clause leaves the administration of the proposed law exclusively in the hands of the Ethics & Anti-Corruption Commission. The functions of the EACC in administering the Act will include overseeing the management of conflict of interest for all public officers (Clause 6). The definition of 'public officers' in Clause 2 of the Bill is broad enough to include Judges, Magistrates and Staff of the Judiciary.	This takes away the constitutional functions of the Judicial Service Commission and offends various provisions of the Constitution including Article 1, 159, 172 and 249.	Clause 5 be revised to empower the Judicial Service Commission to administer the proposed law with respect to State and Public Officers employed by the Commission. (Similar to the current provisions of the Public Officer Ethics Act)
3.	Clause 31	The clause mandates all public officers to submit their Wealth Declarations to the EACC. This is a departure from the Public Officer Ethics Act which provides that Wealth Declaration Forms are to be submitted to each responsible Commission.	The JSC has constitutional mandate over public officers working in the Judiciary. This mandate covers questions regarding conflict of interest that can be determined upon review of Wealth Declaration Forms.	The clause be amended to provide that Wealth Declaration Forms for employees of the Judiciary/JSC be submitted to the JSC.



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4.	Clause 50	The clause states that public officers under investigation for breach of the proposed Act may be suspended from office for a period not exceeding 90 days.	The procedure for proceedings against Judges who are accused of breaching the Code of Conduct is provided for expressly in Article 168 of the Constitution, with further provisions in the Judicial Service Act which also carries the procedure for handling investigations against Judicial Officers and Staff of the Judiciary.	The Clause be revised to ensure further clarity and to avoid conflict with the provisions of the Constitution and the Judicial Service Act respecting investigations and proceedings against Judges, Judicial Officers and Staff of the Judiciary.
5.	Clause 59	Clause 59(2) saves statutory instruments made under the Public Officer Ethics Act. These include the Codes of Conduct promulgated by various responsible Commissions, such as the Code of Conduct for Judges, Judicial Officers and Staff promulgated by the JSC.	Whereas the Bill saves statutory instruments made under the Public Officer Ethics Act (and gives them new life as if they had been made under the proposed Act), the Bill does not have a substantive clause that would anchor Codes of Conduct by responsible Commissions as is presently provided for under Section 5 and 6 of the Public Officer Ethics Act;	The Bill be revised to include a substantive clause empowering the JSC and other responsible Commissions to promulgate Codes of Conduct.



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**Office of the Attorney  
General (AG),**



REPUBLIC OF KENYA

OFFICE OF THE ATTORNEY-GENERAL  
&  
DEPARTMENT OF JUSTICE

DD c-11-21  
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Our Ref: DOJ/LJM/2/168/VOL I

2<sup>nd</sup> August, 2023

Mr. Samuel Njoroge  
Clerk of the National Assembly  
Parliament Building  
NAIROBI.

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RE: THE CONFLICT OF INTEREST BILL, 2023

We refer to the above-captioned subject matter and our appearance before the Departmental Committee on Justice and Legal Affairs on the 27<sup>th</sup> of July, 2023.

The Committee informed our delegation that stakeholders had submitted proposed amendments to the Conflict of Interest Bill and requested for our comments on the proposed amendments.

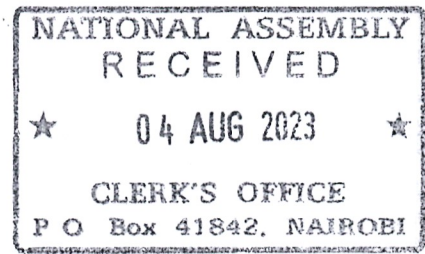
We have reviewed the proposed amendments and submit our comments in the matrix attached hereto for your kind consideration.

We thank you once again for your continued support.

  
HON. SHADRACK J. MOSE  
SOLICITOR GENERAL

Copy to: Hon. J.B.N. Muturi, E.G.H.  
ATTORNEY GENERAL

*Mr. Douglas Kitha*  
*Pls TNA. DM 07/08/23*



MATRIX OF SUBMISSIONS FROM OFFICE OF ATTORNEY GENERAL

CLAUSE	SUBMISSION	SUBMISSIONS BY THE OFFICE OF ATTORNEY GENERAL
<p>1 Short Title and Commencement</p>	<p>The Judiciary submitted that while the long title of the Bill and its substantive provisions provide for the management and regulation of conflict of interest, it does not sufficiently provide for other aspects of ethics in the public service as provided for in the Public Officer Ethics Act, 2003. Hence, its recommendation that the Bill be expanded to cover all aspects of ethics in the public service.</p>	<p>The Bill seeks to repeal Public Officers Ethics Act, 2003 (POEA). It has adequately captured the main provisions that underpinned POEA. It provides for, among others, a Declaration of income, assets and liabilities by public officers. However, a notable omission is provisions on codes of conduct and ethics which are not adequately covered</p>
	<p>Mzalendo Trust submitted that the commencement clause be amended to propose that the commencement of the Bill be guided by Article 116 of the Constitution.</p>	<p>The constitution prescribes timelines within which a Bill passed by Parliament shall be assented and gazetted. Though the Bill does not prescribe timelines within which it shall come into force, in terms of art.116 it shall automatically come into force on the 14<sup>th</sup> day after gazettelement.</p> <p>We however propose that the Bill commences within 6 months of gazettelement.</p>
<p>2 -Interpretation</p>	<p>The ODPP noted that Clause 2 includes the common law definition of a partner which may result in a conflict of laws especially because the new marriage laws do not consider cohabitation as a form of marriage. It, therefore,</p>	<p>We agree with the proposal by the ODPP.</p>

CLAUSE	SUBMISSION	SUBMISSIONS BY THE OFFICE OF ATTORNEY GENERAL
	<p>recommended that the definition be deleted.</p> <p>The teachers Service Commission (TSC) was of the view that the definition of gainful employment as drafted is narrow and restrictive and should be amended to specifically refer to steady allowance arising out of steady employment.</p> <p>The TSC also submitted an additional amendment to the definition of 'reporting entity' to expressly include Constitutional Commissions as they are part of the state organs.</p> <p>The TSC further proposed the inclusion of what constitutes a conflict of interest both directly and indirectly in the definitions.</p>	<p>The definition on gainful employment provided under the Bill is broad. Clause 23 of the Bill sets out instances when it applies.</p> <p>Reporting entity is defined under the Bill to mean, among others, a state organ. Under art. 260 "State organ" means a <u>commission</u>, office, agency or other body established under this Constitution.</p> <p>The Hon. Attorney General presented and shared his comments on the Bill. One of the recommendations proposed in the comments presented to the Departmental Committee on Legal Affairs on Thursday, 27<sup>th</sup> Jly 2023, was the insertion of the definition of 'conflict of interest' in the interpretation clause of the Bill.</p> <p>The AG proposed the inclusion of the following definition, based on the comments submitted to the House;</p> <p>"Conflict of interest" means:</p> <p>"A conflict between the public duty and private interests of a public official, in which the public official has private capacity interests which could improperly influence the performance of their official duties and responsibilities"</p>

CLAUSE	SUBMISSION	SUBMISSIONS BY THE OFFICE OF ATTORNEY GENERAL
	<p>The Council of Governors proposed that the term 'State officer' and its definition in the Constitution be included in the interpretation clause to make a distinction between State and public officers.</p>	<p>(OECD, 2003).</p> <p>The Constitution in article 260 defines public officer to include a state officer.</p>
	<p>Mzalendo Trust proposed that the definition of 'unexplained asset' as derived from Section 2 of the Anti-Corruption and Economic Crimes Act, 2003 be amended as it is limiting especially in the scope of what the Bill is intended to achieve as it would require someone to have been reasonably suspected of corruption or economic crime. It, thus, recommended that the only subsection (b) of Section 2 of the Anti-Corruption and Economic Crimes Act, 2003 be applicable in the Bill.</p>	<p>The definition of 'unexplained asset' as derived from Section 2 of the Anti-Corruption and Economic Crimes Act, 2003 is proper. The definition cannot be adopted in part as it may result in conflicting interpretations.</p> <p>In addition, a person is first presumed to have legally acquired assets unless there are circumstances that create reasonable suspicion.</p>
	<p>Transparency International proposed the inclusion of the definition of a 'whistle blower' being that the term has been used in Clause 54 of the Bill.</p>	<p>Clause 2 on Interpretation is amended by introducing the meaning of "Whistleblower"</p> <p>"whistleblower" means any person who has personal knowledge of or access to any data, information, fact or event constituting conflict of interest and who makes a disclosure of that information in accordance with this Act, or a person who assists such individual</p>

CLAUSE	SUBMISSION	SUBMISSIONS BY THE OFFICE OF ATTORNEY GENERAL
3 – Objects of the Act	<p>Transparency International was of the view that sub-clause (2)(a) be amended by deleting the word ‘official’ to enhance clarity on the scope of application and align it with the language used in other parts of the Bill, particularly, Clause 8(a), 10(1) and 12(1). It also submitted that sub-clause (2)(c) be amended by introducing the words ‘integrity of public office and’ to align it to Articles 73 and 75 of the Constitution. Further, they also proposed the introduction of two new objects:</p> <p>“(d) enhance accountability to the public for decisions and actions by public officers in execution of their duties;</p> <p>(e) promote selfless service by public officers based solely on the public interest;”</p>	<p>Accountability is already provided for under the Public Finance Management Act and the Constitution of Kenya.</p> <p>Adding this particular object on the Bill will not alter the substance of the Bill.</p>
4 - Application of the Act	<p>The Kenya Law Reform Commission (KLRC) noted that Clause 4 of the Bill excludes fundamental reporting entities including State officers and the private sector as was initially provided for under the Public Officer Ethics Act, 2003 which the Bill intends to repeal. It recommended that the original scope of as provided for under the Act be reinstated in the Bill.</p>	<p>Clause 4 does not exclude State officers. Clause 4 is explicit that it applies to public officers. The Constitution in Article 260 defines “public officer” to mean any State officer.</p> <p>The scope of application of Public Officers Ethics Act did not extend to the private sector as submitted. The purpose of the Act was to advance the ethics of public officers by providing for a Code of Conduct and Ethics for public officers and</p>

CLAUSE	SUBMISSION	SUBMISSIONS BY THE OFFICE OF ATTORNEY GENERAL
		requiring financial declarations from certain public officers.
5 – Administration of this Act	According to the Judiciary, Clause 5 and 6 of the Bill mandates the EACC with the exclusive administration of the proposed law which takes away the constitutional functions of the Judicial Service Commission and offends various provisions of the Constitution including Articles 1, 159, 172 and 249. Consequently, it recommended that Clause 5 be revised to empower the Judicial Service Commission (JSC) to administer the proposed law with respect to State and public officers employed by the JSC.	The clauses do not affect the operational independence of JSC. EACC has the exclusive mandate to ensure compliance with, and enforcement of the provisions of Chapter Six and all anti-corruption laws.
6 – Functions of Commission	The Council of Governors proposed an additional function of the Commission as follows:- “Develop policies, standards, guidelines and promote best practices for the management of conflict of interest.”	This is adequately covered under Clause 6 (c) of the Bill.
8 – Conflict of Interest	The TSC proposed that the deletion of the word ‘perceived’ under Clause 8(b) as it is subject to abuse.	Deleting the word ‘perceived’ will increase the threshold of determining cases of conflict of interest.  Deleting the word “perceived” would increase the standard of proof on the part of the Commission to determine an instance of conflict of interest.
9 – Obligation to avoid conflict of interest	Transparency International recommended the addition of the words ‘to the reporting authority	We agree with the proposed amendment.

CLAUSE	SUBMISSION	SUBMISSIONS BY THE OFFICE OF ATTORNEY GENERAL
	or Commission and comply with any directions to avoid the conflict' to ensure accountability by providing clarity on who a public officer should report to.	
<p>10, 36 and 37</p> <p>10 – Conflict of interest in decision making</p> <p>36 – Failure to submit information</p> <p>37 – False information</p>	<p>The Law Society of Kenya noted that these clauses fail to provide a penalty for the offences prescribed hence are subject to the general penalty provided under Clause 52. Thus, it advised that the clauses be amended to provide for penalties to the offences stipulated therein as the general penalty is too harsh and limits the judicial discretion of the court.</p> <p>The ODPP submitted that Clause 36(2) be reworded as payment of fines is a judicial function by the courts and hence should not be vested with the EACC.</p>	<p>Penalties provided are discretionary. There is no mandatory fine or term of imprisonment. It is capped to a maximum fine and maximum term of imprisonment.</p> <p>The proposed term of imprisonment of 10 years might appear harsh in light of some petty offences created under the Act, but considering that the proposed term is not mandatory, the courts will have the discretion to impose sentences befitting the circumstances of each case.</p> <p>We agree with the proposal by the ODPP.</p>
16 – Gifts and other benefits	LSK submitted that the provisions of Clause 16(3) on gifts and other benefits are too restrictive and intrusive to the privacy of a public officer. It proposed that the clause be amended to dictate that such declaration only be made during suspicious circumstances of gifting.	Gifts are areas of potential conflict and should thus be declared but in private registers. See clause 17.
17 – Register of gifts	The TSC submitted that the nature of gifts referred to in sub-clause (b) be amended to exclude gifts awarded to employees for	The clause only creates an obligation to maintain a register of gifts which is in line with the

CLAUSE	SUBMISSION	SUBMISSIONS BY THE OFFICE OF ATTORNEY GENERAL
	<p>exemplary performance.</p> <p>Mzalendo Trust submitted that this clause be amended by inserting a penalty clause on the responsible person for failure to maintain a register of gifts.</p>	<p>objects of the Bill.</p> <p>Adequately covered in Clause 56 of the Bill. It provides for compliance measures by reporting entities.</p>
<p>18 – Complimentary treatment</p>	<p>The TSC noted that Clause 18(1), as drafted, criminalizes all complimentary treatment. Also, it stated that Clause 18(2) is open-ended and should be expounded further by providing clear parameters of what exceptional circumstances entails.</p>	<p>It does not criminalize as it gives exceptions in which such complementary treatment may be accepted. However, it is necessary that the exceptional circumstances alluded to in the Clause be outlined under the Bill.</p>
<p>19 – Contracts with public entities prohibited</p>	<p>TSC submitted that this clause be amended to include the place of proxies such as spouse(s) and children to avoid abuse by public officers and to protect the sanctity of the Public Procurement and Disposal Act, 2015.</p>	<p>We agree with the proposal.</p>
<p>20 – Acquisition of interest in partnerships and private companies</p>	<p>Transparency International proposed the amendment of Clause 20(1) to provide for conflict of interest arising in situations where a public officer holds shares or interests in private legal entities, either directly or indirectly by substituting the phrase ‘acquire an’ with ‘hold a direct or indirect’.</p>	<p>This proposal is addressed under Clause 38, 39 and 40 of the Bill. Mechanisms for managing conflict of interest in such instances have also been outlined in the Bill.</p>
<p>21 – Conflict in recruitment</p>	<p>Transparency International further proposed deletion of sub-clause (2) which provides for the exemption of conflict in recruitment or in the alternative definition of ‘personal staff’.</p>	<p>The exemption in Clause 21 (2) is not absolute as it will be subject to regulations to guide the manner and instances in which a public officer will be permitted to have a hand in appointed of personal staff.</p>

CLAUSE	SUBMISSION	SUBMISSIONS BY THE OFFICE OF ATTORNEY GENERAL
23 – Restricted gainful employment	<p>The SRC proposed the amendment of the sub-clause (1) in whole to read as follows:</p> <p>“A public officer who accepts employment on a part-time basis in another public institution shall inform the institution offering them the job, before accepting the job offer of their full-time employment as a public officer.”</p>	<p>We agree with the proposed amendment by SRC.</p>
	<p>The TSC also submitted that the use of the word ‘incompatible’ in sub-clause (1) was vague and ought to be amended in line with Article 47 of the Constitution.</p> <p>Moreover, it added that sub-clause (2) ought to be expanded in scope by providing what amounts to gainful employment prohibited under the Act to avoid abuse.</p> <p>It also stated that sub-clause (3) is impractical as it is deemed to criminalize hard work and no employer would authorize an employee to seek gainful employment elsewhere.</p>	<p>The general rule on gainful employment by state officers is provided for under section 26 (1) of the Leadership and Integrity Act . The Act requires a State officer who is serving on a full-time basis not to participate in any other gainful employment.</p> <p>The term incompatible is borrowed from section 26(2) the said Act, and its definition can be applied <i>mutatis mutandis</i> under Clause 23 of the Bill.</p> <p>The term incompatible is borrowed from section 26 (2) of Leadership and Integrity Act , and its definition under the Act can be applied <i>mutatis mutandis</i> under the proposed Bill.</p>
23 - Restricted gainful employment	Mzalendo Trust was of the opinion that the clause be amended by expressly providing for ways in which the register of conflict of	Opening the register to members of the public may pose a challenge arising from frivolous

CLAUSE	SUBMISSION	SUBMISSIONS BY THE OFFICE OF ATTORNEY GENERAL
	interest is to be made open to the public in compliance with the Access to Information Act, 2016.	requests from the public. We advise that access to the register be limited to applicants with legitimate interest and a good cause in furtherance of the objectives of the Act.
25 – Political neutrality	<p>The ODPP was of the view that sub-clause (1) on political neutrality be aligned with Article 77(2) of the Constitution as the clause provides that Cabinet Secretaries and members of the County Executive Committee can hold office in political parties contrary to the Constitution.</p> <p>Transparency International proposed the inclusion of an additional sub-clause as follows: “(c) engage in political activity that may compromise or be seen to compromise the political neutrality of his/her office.”</p> <p>Committee Resolution</p>	We agree with the proposal.  We agree with the proposal
26 – Public collections	The ODPP submitted that sub-clause (1)(c) be amended to provide for various exemptions such as social contributions for welfare purposes for colleagues such as medical bills and burial contributions among others.	This proposal is well covered under the Public Collection Act. The Act provide for the regulation of collections of money and property from the public.
27, 28 and 29 27 – Prohibition after leaving office 28 - Prohibition against	The TSC proposed deletion of Clauses 27, 28 and 29 on the basis that they amount to a violation of the rights of certain professionals especially, Advocates in the public service. The provisions impede the right to earn a living from the	The proposal defeats the objective of the Bill. We propose retention of the clauses 27, 28 and 29 of the Bill.

CLAUSE	SUBMISSION	SUBMISSIONS BY THE OFFICE OF ATTORNEY GENERAL
representing people before reporting entities 29 – Exemption of former public officers	practice of a profession. Furthermore, the provisions are in conflict with the principles in the Advocates Act, Cap 16.	
	The ODPP and EACC proposed substitution of the word ‘after’ with ‘preceding’ in Clause 28 of the Bill.	We agree with the proposal.
30 – Duty to recuse	The TSC noted that sub-clause (2)(b) places an unnecessary burden to file a declaration of recusal with the Commission and recommended that instead, the reporting authority bears it as it is the custodian of the register of conflict of interest.	We support the proposed amendment in relation to clause 30 (2) (b) and recommend that the burden of filing the declaration for recusal be shifted to the reporting authority as the custodian of the minutes of the transaction in question.
31 – Declarations	According to the Judiciary, TSC and Transparency International proposed that the clause be amended to provide that declaration of income, assets and liabilities for employees be submitted to the respective reporting authorities and not the EACC.	We propose that EACC retains the mandate of being the custodian of declaration of income, assets and liabilities for public officers. Such declarations can however be submitted to the Commission through the reporting authorities.
	Additionally, the TSC that sub-clause (4)(c) be deleted as it amounts to a violation of privacy contrary to the Article 31 of the Constitution.	Marriage is a public affair registered with Registrar of Marriages and thus nothing private about it
32, 33 and 34 32 – Timelines for declarations	The EACC, ODPP and Transparency International noted a numbering error in the sub-clauses under Clauses 32, 33 and 34 of the Bill.	We agree with the proposal.
	The LSK submitted that the timeline for declaration provided	It is our opinion that the one year period provided is sufficient

CLAUSE	SUBMISSION	SUBMISSIONS BY THE OFFICE OF ATTORNEY GENERAL
33 – Clarification  34 – Access to declarations	under Clause 32(1) of the Bill is too short and inadequate to determine the financial liquidity of a person. Hence, it proposed that the clause be amended to increase that period from one year to three or five years.	as the significance of the initial declaration is not to access what the officer had before entering the public service but to use the information to track what will be acquired during the period they are in public service.
	The TSC proposed that Clause 32(4) be amended to provide that a public officer files the final declaration thirty days prior to exit as opposed to after ceasing to be a public officer to allow the reporting entity to enforce the provision.	We agree with the proposal.
	Transparency International proposed amending Clause 33(1) of the Bill to have the reporting authority analyse, process and verify the declarations alongside the EACC.	We agree with the proposal.
45- Compliance orders	The TSC submitted that the clause be reworded to avoid abuse such that the power to take any compliance measures by the Commission is exercised after due process including a fair hearing.	Abuse of powers by public bodies may be addressed by the courts through Judicial review proceedings  This will also be addressed under administrative mechanisms to be developed under Clause 47 of the Bill.
48 – Lodging of complaints and investigations	The ODPP submitted that the clause does not provide the nature and procedure for lodging complaints and investigations. It was its submission that the clause be amended to provide that complaints be lodged attached	This will be addressed in the statutory instrument to made under Clause 57 of the Bill.

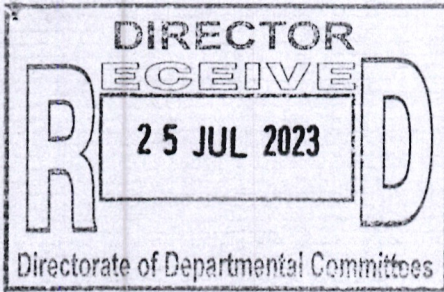
CLAUSE	SUBMISSION	SUBMISSIONS BY THE OFFICE OF ATTORNEY GENERAL
	with evidence to avoid filing of frivolous complaints and wasting the EACC's time.	
	The TSC noted that the clause be amended in whole to avoid abuse by expounding it to include other players in the justice sector including the police and the DCI in the reporting process, providing the procedure through which information may be processed, and the modalities of investigations.	This can be addressed by regulations envisaged under clause 57 of the Bill.  Of further note is that opening up the avenues for lodging complaints and carrying out of investigations may lead to institutional conflicts and forum shopping.
49 – Right to decline commencement of investigations	The TSC was of the view that Clause 49, as drafted, is pre-emptive and thus, should be amended to provide for some form of preliminary inquiry to determine whether conflict of interest is apparent or not.	The Act clearly defines COI and instances where COI occurs.  Scrutiny of the complaints should be an internal process by the Commission. Furthermore, the Section provides that; should the commission decline to commence an investigation, the person who lodges a complaint shall be informed of the reasons why.
	Transparency International proposed that sub-clause (2) be amended to allow a timeline within which complaints ought to be addressed after acknowledgement of the complaint.	Timelines can be addressed administratively to ensure complaints are addressed within a reasonable time
50 – Suspension from office	The Judiciary stated that suspension of public officers under investigation for breach of the	We agree with the proposal.

CLAUSE	SUBMISSION	SUBMISSIONS BY THE OFFICE OF ATTORNEY GENERAL
	<p>proposed Act, as provided for under Clause 50, is in conflict with Article 168 of the Constitution which outlines a different procedure for handling investigations against judicial officers and staff of the Judiciary. Thus, it submitted that the Clause be amended to ensure further clarity and to avoid conflict with the Constitution and Judicial Service Act, 2011.</p>	
	<p>The TSC also submitted that the clause on suspension from office is subject to abuse and should instead be subjected to the provisions of law governing the operations of the reporting authorities and other statutes.</p>	<p>The envisaged suspension from office is provided to be “subject to Constitution and any written Law” (i. Fair Administrative Actions Act).</p> <p>The Constitution adequately provides for protection of fundamental rights and freedoms including the right to fair administrative action.</p>
	<p>Transparency International proposed the addition of the phrase ‘unless the person is charged in accordance with Section 51(1)(d) to Clause 50 (2) to align it to Section 62(1) of the Anti-Corruption and Economic Crimes Act, 2003.</p>	<p>Clause 50 of the Bill speaks on suspension pending investigations while Anti-Corruption and Economic Crimes Act addresses the situation after the officer has been charged</p> <p>The two laws work in harmony and do not contradict each other.</p>
<p>51 – Recommendations of the Commission</p>	<p>The TSC proposed deletion of Clause 51(2) on the grounds that recommendations from EACC should not be binding instead, they should remain as best practices.</p>	<p>We propose for the deletion of Clause 51(2) of the Bill.</p>

CLAUSE	SUBMISSION	SUBMISSIONS BY THE OFFICE OF ATTORNEY GENERAL
	<p>The ODPP recommended that the word 'prosecution' be substituted with 'prosecutions' as provided under Clause 51(1)(d) of the Bill.</p>	<p>We agree with the proposal.</p>
	<p>The TSC proposed amendment of Clause 52 to provide for a lesser fine as penalty.</p>	<p>The penalties are discretionary and thus not punitive.</p>
	<p><b>Clause 52</b>  Transparency International proposed the introduction of an additional sub-clause (4) as follows:    "A person who has been prosecuted and found guilty of an offence under this Act shall upon conviction be disqualified from holding any other Public Office."</p>	<p>Adopt provision of section 64 of Anti-Corruption and Economic Crimes Act which provides that "a person convicted of corruption or economic crime shall be disqualified from being elected or appointed as a public officer for ten years after the conviction"</p>
<p>54 – Protection of person making disclosure</p>	<p>The ODPP proposed that Clause 54(1) be reworded to replace the words 'is of public interest' with 'is in the public interest' to align it to Clause 54(2) of the Bill.</p>	<p>We agree with the proposal.</p>
	<p>Transparency International proposed the addition of a new sub-clause to provide for the enhanced protection of whistleblowers and witnesses as follows:    "A whistleblower, informant or a witness in a complaint or a case of conflict of interest shall not be intimidated or harassed for providing information to law enforcement institutions or giving testimony in a court of law.</p>	<p>Adopt additional sub-clause proposed.</p>

CLAUSE	SUBMISSION	SUBMISSIONS BY THE OFFICE OF ATTORNEY GENERAL
	Every reporting institution and law enforcement agency shall put in place reasonable mechanisms to protect the identity of informants and witnesses.”	
56 – Protection from liability	The TSC proposed the amendment of the clause to provide for a clearer format for the compliance reports referred to therein.	This will be addressed in regulations to be enacted pursuant to clause 57 of Bill.
58 – Repeal of Act No. 4 of 2003	The EACC stated that while Clause 58 of the Bill provides for the repeal of the Public Officer Ethics Act, 2003 it does not sufficiently provide for a saving clause for the already existing Codes of Conduct and Ethics developed under sections 5 and 6 the Act.	We agree with the sentiments by EACC. Add a savings provision for Codes of Conduct and Ethics developed under sections 5 and 6 of Public Officers Ethics Act.
	Transparency International proposed that the Public Officer Ethics Act, 2003 should not be repealed in its entirety since some of its key aspects have not been adequately addressed in the Bill i.e. the establishment of specific codes of conduct; performance of duties; professionalism; no improper enrichment; acting for foreigners; care of property; giving of advice; misleading the public; conduct of private affairs; sexual harassment; and reporting improper orders.	We agree with the proposal by Transparency International.
	The TSC also submitted that the Bill does not adequately cater to provisions of the Public Officer Ethics Act, 2003, particularly, on	We are in agreement that the Bill does not adequately cater for provisions of the Public Officer Ethics Act,2003. Amend the Bill

CLAUSE	SUBMISSION	SUBMISSIONS BY THE OFFICE OF ATTORNEY GENERAL
	sexual harassment.	as necessary.
59 – Transitional provisions	<p>The ODPP submitted that Clause 59, as a saving clause, does not adequately provide for the conduct of ongoing investigations and case pending before the court brought under Section 42 of the Anti-Corruption and Economic Crimes Act, 2003 which it proposes to repeal.</p>	<p>Sections 59 and 60 be amended as necessary to provide for the continuance of any ongoing investigations and pending cases filed pursuant to any repealed provisions of the Anti-Corruption and Economic Crimes Act and that such investigations and cases to be governed by the law applicable to it immediately prior to the commencement of this Act.</p>
	<p>The Bill does not contain a substantive clause that would anchor the Codes of Conduct by responsible Commissions as currently provided for under Sections 5 and 6 of the Public Officer Ethics Act, 2003. They urged Parliament to revise the Bill to include a substantive clause empowering the JSC and other responsible Commission to promulgate Codes of Conduct.</p>	<p>Though the Bill does not adequately cater for provisions of the Public Officer Ethics Act, the proposed law under Clause 4 is to apply to all reporting entities and public officers. Reporting entities is defined to include, among others, a state organ.</p> <p>The Constitution in article 260 provides that a “State organ” means a <u>commission</u>, office, agency or other body established under this Constitution;</p>
	<p>The National Land Commission (NLC) submitted that Clauses 31 and 50 be amended in line with the National Land Commission Act as amended in 2016.</p>	<p>Concerns raised in relation to Clauses 31 and 50 of the Bill have been addressed above.</p>



REPUBLIC OF KENYA

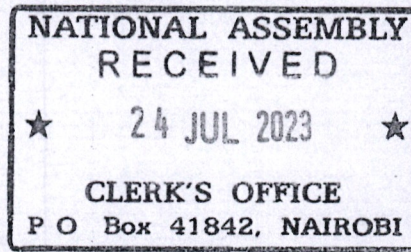
OFFICE OF THE ATTORNEY-GENERAL  
&  
DEPARTMENT OF JUSTICE

*DDC-1101  
25/07/23*

Our Ref: DOJ/LJM/2/168/VOL I  
Your Ref: NA/DDC/JLAC/2023/059

19th July, 2023

Mr. Samuel Njoroge  
Clerk  
The National Assembly  
Parliament Building  
NAIROBI.



*Douglas Katio  
pls facilitate  
25/7/23*

RE: COMMENTS ON THE CONFLICT OF INTEREST BILL, 2023

We make reference to your letter under Ref. No. NA/DDC/JLAC/2023/059 dated the 23<sup>rd</sup> June, 2023 on the subject matter captioned hereinabove and inviting us to appear before the National Assembly to submit views on the Conflict of Interest Bill, 2023.

In the first instance, as conveyed earlier vide telephone conversation with your Office, please accept our apologies for not appearing before the Committee on the proposed date due to prior engagements and exigencies of work. We have submitted the Bill to further review and submit the following comments on the same to the National Assembly for consideration.

	Clause	Comment	Justification
1.	Clause 2 Interpretation	Amend clause 2 by inserting the definition of "conflict of interest" in the proper alphabetical order—  "conflict of interest" means a conflict between the public duty and private interests of a public official, in which the public official has private capacity interests which could improperly influence the	'Conflict of interest' has not been defined under Clause 2 on interpretation.  The definition and interpretation clause (in this instance Clause 2) as a matter of best practice, ordinarily provide for definition of legal

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DEPARTMENT OF JUSTICE  
CO-OPERATIVE BANK HOUSE, HAILLE SELLASIE AVENUE P.O. Box 56057-00200, Nairobi-Kenya TEL: Nairobi 2224029/ 2240337  
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	Clause	Comment	Justification
		performance of his official duties and responsibilities;	concepts in Acts of Parliament.
2.	Clause 24 (2)(c)	<p>Clause 24 be amended in sub section (2) by deleting paragraph (c) and substituting therefor the following new paragraph—</p> <p>(c) be open to any person for inspection upon making an application to the reporting authority if the applicant satisfies the reporting authority that he has a legitimate interest and good cause in the furtherance of the objectives of this Act.</p>	<p>In our opinion, having the register of conflict of interest open to public inspection may pose a challenge.</p> <p>We propose that the register should only be accessible to an applicant with a legitimate interest and a good cause in the furtherance of the objectives of the Act, or by relevant parties such as persons declaring such conflict of interest, the reporting authority and the Commission. Limiting access to the register ensures that the Commission is not burdened with frivolous requests for inspection of the register.</p>
3.	Clause 34	Correct the numbering of the sub clauses in clause 34.	<p>There is a numbering problem in the sub-clauses under clause 34.</p> <p>This should be rectified for good order.</p>
4.	Clause 50	Delete clause 50 of the Bill.	Administrative action is satisfactorily provided for under the Fair Administrative

	Clause	Comment	Justification
			Action Act, 2015, as well as under individual employment codes/employment contracts, organization code of conducts.
5.	Clause 56	The Bill be amended by deleting clause 56 and substituting therefor the following new clause—  56. Every reporting entity shall, within six months after the end of the financial year, file compliance reports with the Commission in the prescribed form.	The Bill should specify the timelines within which reporting entities will be required to file compliance reports.  This aids in implementation and enforcement of the Conflict of Interest legislation that may be occasioned by undue delay in filing compliance reports by reporting entities.

We thank you for your continued support and indulgence.

  
Hon J.B.N Muturi, EGH  
**ATTORNEY GENERAL**

Copy to: Hon. Shadrack J. Mose  
**SOLICITOR GENERAL**

**Council of County  
Governors (COG),**



**COUNCIL OF GOVERNORS**

DDCmt  
29/06

DIRECTOR GENERAL  
30 JUN 2023  
Directorate of Departmental Committees

Westlands Deloitte House 2<sup>nd</sup> Floor, Waiyaki Way,  
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Our Ref: COG/6/12/1A (6)

26<sup>th</sup> June, 2023

**Mr. Samuel Njoroge**  
Clerk of the National Assembly  
Parliament Building  
**NAIROBI**

*Douglas Katho*  
*to facilitate*  
*LA UN*  
*30/6/23*

Dear Mr. Njoroge

**SUBMISSIONS ON THE CONFLICT OF INTEREST BILL (N.A BILL NO. 12 OF 2023)**

Greetings.

Having reviewed the **Conflict of Interest Bill 2023** in its entirety, the Council of Governors on behalf of the 47 County Governments makes its submissions on the Bill as per the attached Legislative Memorandum.

The Council notes that currently, there are various laws, policies and administrative documents providing for the management of conflict of interest. Further, conflict of interests is managed by various institutions leading to multiplicity of efforts. A single framework will provide a single declaration framework and avoid the multiplicity of disclosures. The Council therefore takes this opportunity to laud the efforts made in developing the law, which when passed will provide a framework to address issues of conflict of interest which is one of the primary driver of corruption

Thank you for the continued support.

Yours sincerely,

**Mary Mwiti**  
**Chief Executive Officer**

NATIONAL ASSEMBLY  
RECEIVED  
★ 29 JUN 2023 ★  
CLERK'S OFFICE  
P O Box 41842, NAIROBI

Copy : All Excellency Governors

All County Attorneys



**LEGISLATIVE MEMORANDUM ON THE CONFLICT OF INTEREST BILL, 2023**

**TO THE NATIONAL ASSEMBLY**

**FROM THE**

**COUNCIL OF GOVERNORS**

## **INTRODUCTION**

The Council of Governors,

**In recognition** of Article 1(4) of the Constitution of Kenya, that sovereign power of the people is exercised at the National level and the County level;

**In further recognition** of Article 6 (2) that Governments at the National and County levels are distinct and interdependent; and

**Aware** of the need for coordination and consultation between the National Government and County Governments to ensure that frameworks developed respond to the key issues facing devolution and the needs of society, and further reflect the spirit and objects of devolution.

The Council appreciates the work and efforts made towards the development of the **CONFLICT OF INTEREST BILL, 2023** which is not only timely but very critical as conflict of interest has deeply permeated various sectors of the economy, and posed a serious risk to national security and prosperity.

The Council SUBMITS as follows;

### **1. General comments**

- i. The Bill seeks to repeal the Public Officer Ethics Act, 2003. It is important that other legislation that address conflict of interests like the Leadership and Integrity Act, the Anti-Corruption and Economic Crimes Act are reviewed to establish if the provisions conflict with the draft law.

## 2. Specific comments

The tabulated analysis below provides specific areas of concern to the Council of Governors that should be considered/addressed in the bill:

Clause of the Bill	Provision of the Bill	CoG Proposal	Justification
2	Interpretation	Include the term state officers in the interpretation clause and assign it the definition in the Constitution.	While the Bill states that a public officers include state officers, it is key to define the term state officer for certainty.
6	Functions of the Commission.	review and add the following function "Develop <b>policies</b> , standards, <b>guidelines</b> and promote best practices for the management of conflict of interest	This is key as policies will guide the development of other frameworks for effective management of conflict of interest.

**Independent Electoral and  
Boundaries Commission  
(IEBC),**

INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION

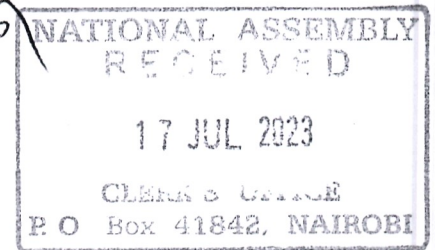


REF: IEBC/DLS/CORR/07/2023

7<sup>th</sup> July, 2023

Office of the Clerk  
The National Assembly  
P. O. Box 41842-00100  
NAIROBI

*Douglas Katbo*  
*pls facilitate*  
*18/7/23*



Att: Mr. Peter K. Chemweno

**RE: SUBMISSIONS ON THE CONFLICT OF INTEREST BILL, 2023**

Your letter Ref.NA/DDC/JLAC/2023/060 dated 23<sup>rd</sup> June, 2023 on the above subject matter refers.

The Independent Electoral and Boundaries Commission (IEBC) regrets the delay in submitting its comments on the Conflict of Interest Bill, 2023 occasioned by competing Commission activities. However, we have made comments on the specific clauses of concern in matrix format for your consideration.

Kindly find attached the Commission's submissions on the Bill as requested.

  
Marjan Hussein Marjan, MBS  
Commission Secretary/CEO

Encl. (1): Submissions on the Conflict of Interest Bill, 2023





## THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION

### SUBMISSIONS ON THE

### THE CONFLICT OF INTEREST BILL, 2023

Dated 30<sup>th</sup> June, 2023

Independent Electoral & Boundaries Commission (IEBC)

Anniversary Towers, 6<sup>th</sup> Floor, Off University Way

P.O. Box 45371 – 00100, Nairobi – Kenya

Telephone: + 254 (0) 20 29925

## A. INTRODUCTION

1. The Independent Electoral and Boundaries Commission (IEBC) is a Constitutional Commission established under Chapter 15 of the Constitution of Kenya with its objects provided for under Article 249(1).
2. Article 88(4) of the Constitutions outlines the Commission's specific mandate to conduct or supervise referenda and elections to any elective body or office established by the Constitution and any other election as prescribed by an Act of Parliament.
3. Section 16 of the Leadership and Integrity Act, 2012 places an obligation on state and public officers to avoid a situation where their personal interests conflict or appear to conflict with the discharge of their official duties. Further, in the event of potential conflict of interest, an officer is required to declare that conflict.
4. Members and employees of the Independent Electoral and Boundaries Commission being public officers are required upon employment or appointment to subscribe to a Code of Conduct for Members and Employees of the Commission prescribed under the Fourth Schedule to the Independent Electoral and Boundaries Act, 2011.
5. In particular, Paragraph 3 of the Fourth Schedule provides that a member or employee whose personal interests conflicts with their official duties must declare that interest, comply with any directions given to avoid the conflict and refrain from participating in any deliberations on the matter in question.
6. The IEBC notes the Conflict of Interest Bill, 2023 and makes the following submissions:

## Purpose of the Bill

7. The Bill seeks to provide for the management and regulation of conflict of interest in the discharge of official duties of public and state offices.
8. We welcome the Bill and wish to make some general comments on it as outlined below.

## B. General Comments

9. While the Conflict of Interest Bill, 2023 makes salient proposals to manage matters relating to conflict of interest by State and public officers, the following provisions directly affect the Commission:
  - i. **Maintenance of a register of gifts:** received by public officers serving in the Commission, gifts given by the Commission to public officers and donations received by the Commission for a specific cause.
  - ii. **Maintenance of a register of conflict of interest** in the prescribed manner.
10. The Commission appreciates the concerns raised in the Bill for amendment. However, we propose that the said Bill be reviewed on the issues identified in the matrix below.

## Specific Comments

11. This Bill intends to provide for management and regulation of conflict of interests for public officers.
12. The IEBC has endeavored to highlight its submissions in matrix format the relevant clause in the Bill, observations on the clause and its proposal on the same.

Table: Matrix of IEBC's comments on the Conflict of Interest Bill, 2023

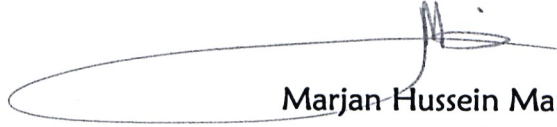
S No.	Clause of the Bill	Observations	IEBC Comments
1.	Clause 2	Definition of public officer	That the definition should carry the meaning assigned to it under the Constitution.
2.	7 – Powers of the Commission	The Bill gives the Ethics and Anti - Corruption Commission (EACC) power to summon witnesses and require them to give or produce evidence as the Commission may consider necessary.	Article 252(3) of the Constitution of Kenya provides that only 3 Commissions have the power to issue summons to a witness for the purposes of investigation and EACC is not listed as one of those Commissions.  The Bill is likely to fall foul of the Constitutional prescription in the Article cited.
3.	26 (1) (c) public collections	.....Use official social media platforms or his place of work as a venue for soliciting or collecting funds.	We note that there is no definition of official social media platforms and therefore there is need to specify the said platforms and not leave it open ended as this may create room for conjecture.
4.	27 – Prohibitions after leaving office	The clause prohibits former public officers from engaging in activities that would result in conflict of interest after ceasing to be a public officer.	There is no succinct justification for this provision. There is need for clarity by providing a timeline within which a public officer should refrain from engaging in subsequent activities that

		27(1) (d) places a restriction on a former public officer to be employed or be appointed in a private entity that the officer had significant official dealings with two (2) years preceding termination of service.	have the potential of conflict of interest.
5.	32, 33, 34,	There is an error in the numbering of the sub – clauses in these clauses.	The Clauses need to be renumbered for correctness of the Bill and ease of flow.
6.	48 – Lodging of complaints and investigations	Clause 48(7) gives a reporting entity or authority power to take disciplinary action against a public officer who is under investigation for contravening the provisions of the Act.	There is need to qualify the provision by either giving it a uniform standard for all public officers or qualify the provision to the HR Manual/ procedures of an institution.
7.	58 – Repeal of Public Officers Ethics Act, 2003	The Bill seeks to repeal the Public Officers Ethics Act.	While it captures the essence of the provisions of the Act, it is important to ensure that no important provision has been left out. E.g Part III of the Public officers Act, 2007 on the general code of conduct and ethics.

**B. CONCLUSION**

13. The Commission submits that the intention of the Bill's is appreciated. However, we have some reservations on the issues identified in the matrix and urge this Honourable House to consider the proposals herein.

.....



**Marjan Hussein Marjan, MBS**  
**Commission Secretary/CEO**

# **Ethics and Anti-Corruption Commission (EACC),**



## ETHICS AND ANTI-CORRUPTION COMMISSION

INTEGRITY CENTRE (Jakaya Kikwete/Valley Road Junction) P.O. Box 61130 – 00200, NAIROBI, Kenya

TEL.: 254 (020) 4997000, MOBILE: 0709 781000; 0730 997000

FAX: 254 (020) 2240954 EMAIL: [eacc@integrity.go.ke](mailto:eacc@integrity.go.ke) WEBSITE: [www.eacc.go.ke](http://www.eacc.go.ke)

EACC. 1/13 VOL.11 (127)

27<sup>th</sup> June, 2023

**Mr. Samuel Njoroge**

Clerk of the National Assembly

Main Parliament Buildings

P. O Box 41842-00100

**NAIROBI**

*Attn: Mr. Peter Chemweno*

Dear *Clerk*

**RE: INVITATION TO SUBMIT VIEWS ON THE CONFLICT OF INTEREST  
BILL, 2023**

---

This is to acknowledge receipt of a letter **Ref: NA/DDC/JLAC/2023/060** dated **23<sup>rd</sup> June 2023**.

With respect to the Draft Conflict of Interest Bill, 2023, the Ethics and Anti-Corruption Commission (EACC) is the entity prescribed to **administer** the requirements under the proposed law. The Commission spearheaded the development of the Bill in conjunction with the Office of the Attorney General and Department of Justice and other stakeholders.

The Commission therefore writes to communicate its **support** for the proposed law to provide a framework for the management of Conflict of Interest in the discharge of official duties. The law will also go a long way to augment the fight against corruption.

Further, we confirm the attendance and participation of **Mr. Abdi Mohamud, MBS-Deputy Chief Executive Officer** during the meeting scheduled on **Thursday, 29<sup>th</sup> June 2023** at **11:00 am** in the **Mini Chamber, First Floor County Hall, Parliament Buildings**.

Attached hereto is a Memorandum with comments on areas to be given further consideration, as the Bill progresses for enactment (**attachment**).

Yours *Sincerely*

*for* **Twalib Mbarak, CBS**  
**SECRETARY/CHIEF EXECUTIVE OFFICER**

*Tuangamize Uffsadi, Tuijenge Kenya*



**MEMORANDUM BY THE ETHICS AND ANTI-CORRUPTION COMMISSION ON  
THE DRAFT CONFLICT OF INTEREST BILL, 2023**

<b>Section</b>	<b>Provision</b>	<b>Comment/Observation</b>
Section 28	Prohibition against representing people before reporting entities	<p>Substitute the word "<i>preceding</i>" with the word "<i>after</i>" so that the section reads as follows-</p> <p><i>A former public officer shall not during the period of two years immediately <b>after</b> the termination of service represent, vouch for or defend any person whether for remuneration or not before any reporting entity with which the former public officer had direct and significant official dealings.</i></p>
Sections 32, 33 and 34	Timelines for declarations, Clarifications and Access to declarations	<p>There is a numbering error in all the subsections provided under the said sections.</p> <p>To renumber the subsections appropriately.</p>
Section 58	Repeal of the Public Officer Ethics Act, 2003	<p>There is need to provide a Saving Clause for the Codes of Conduct and Ethics developed pursuant to sections 5 and 6 of the Public Officer Ethics Act (POEA).</p> <p>The section is therefore proposed as follows-</p> <p><i>58. (1) The Public Officer Ethics Act, 2003 is repealed.</i></p> <p><i>(2) Notwithstanding the repeal of the Public Officer Ethics Act, any Code of Conduct and Ethics established by an entity in accordance with Part II of the repealed Act shall be deemed to remain in force in respect of the public officers for which it was established.</i></p>

**Law Society of Kenya  
(LSK),**

<p><b>Section 48 on lodging of complaints and investigations</b></p>	<p>penalty for the offence.</p> <p>This section provides that;  <i>"a person who alleges that a public officer has contravened any provision of this act may lodge a complaint with the reporting authority or the commission and the report shall be recorded in a register of complaints"</i></p> <p>This section should provide the nature in which complaints should be made</p>	<p>We propose that this section be amended to provide that complaints should be lodged attached with evidence to avoid filing of frivolous complaints and wasting of the commission's time</p>
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In conclusion, we humbly submit that our comments be considered before enacting the Bill.

Yours faithfully,



**Eric Theuri**  
President Law Society of Kenya

Provision of the bill	Issue	Proposal
Section 10 on Conflict of Interest in decision making	<p>This section provides that ;  <i>"(2) any person who contravenes subsection (1) commits an offence"</i></p> <p>This section is vague as it only provides for an offence with no penalty</p>	<p>We suggest that this section be amended to provide for the penalty for the offence committed.</p>
Section 16(3) on gifts and other benefits	<p>This section provides that;  <i>" subject to subsection(2), if a public officer, a member of the public officer's family or a relative of the public officer accepts any gift or benefit, the public officer shall within forty-eight hours of resumption of such gift or benefit, if not on duty, make a declaration of such acceptance , giving sufficient details of the nature of the gift or other benefit accepted , the donor and the circumstances under which it was accepted"</i></p> <p>The provisions in this section are too restrictive and intrusive to the privacy of a public officer</p>	<p>We propose that this section be amended to dictate that a declaration shall be made only during suspicious circumstances of gifting.</p>
Section 32(1) on timelines for declaration	<p>Section 32(1) provides -</p> <p><i>" a public officer shall within thirty days of appointment as public officer, submit an initial declaration relating to his financial affairs for a period of one year prior to appointment"</i></p> <p>One year is too short a period to make declaration on since it is not sufficient period to determine the financial liquidity of a person</p>	<p>We suggest that this section be amended to increase the financial period that declaration should be made for three or five years prior appointment</p>
Section 36 on failure to submit information	<p>This section provides that;</p> <p><i>"a public officer who fails to submit any information required under this act , within the prescribed period commits an offence"</i></p> <p>This section fails to provide for the penalty for the offence.</p>	<p>We propose that this section be amended to provide for the penalty spelled out under this section.</p>
Section 37 on false information	<p>This section provides that;</p> <p><i>"a public officer who submits information that the public officer knows or ought to know, is false or misleading commits an offence"</i></p> <p>This section fails to provide for the</p>	<p>We propose that this section be amended to provide for the penalty spelled out under this section</p>

# **THE CONFLICT OF INTEREST BILL, 2023**

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## **Introduction**

The Law Society of Kenya is a professional statutory body established under the Law Society of Kenya Act, No. 21 of 2014 with a mandatory membership of all Advocates in Kenya currently numbering to over 21,000.

The organs of the Society are the General Membership, the Council, the Branches and the Secretariat. The Council is the governing body of the Law Society of Kenya. It comprises a President, a Vice- President and eleven other members, all of whom must be members of the Law Society of Kenya. Council members are elected every two years by the members of the Society by means of a secret ballot conducted in accordance with the Law Society of Kenya Act.

Currently, the Council is comprised of The President, The Vice-president and 11 Council members namely:

- **President**, Eric Theuri
- **Vice President**, Faith Mony Odhiambo
- **General Membership Representatives**, Chrysostom Akhaabi, Kabata Mwaura, Tom K'opere
- **Nairobi Representatives**, Cohen Amany, Njoki Mboce, Ochieng Gor
- **Up-country Representatives**, Byron Menezes, Lindah Kiome, Michael Wabwile, Vincent Githaiga
- **Coast Representative**, Riziki Emukule
- **Secretary/CEO**, Florence W. Muturi

One of the Law Society of Kenya statutory objects as provided in section 4(a) of the Act is to assist the Government and the courts in all matters affecting legislation and the administration and practice of law in Kenya. Pursuant to the statutory mandate, the Law Society of Kenya makes the following submissions on the Conflict Of Interest Bill, 2023

## **SPECIFIC COMMENTS ON THE CONFLICT OF INTEREST BILL, 2023**



LAW SOCIETY OF KENYA  
Lavington, Opposite Valley Arcade  
Gitanga Road  
P.O. Box 72219-00200  
NAIROBI  
Tel. 387 4664  
0720 904983

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MEMORANDUM TO  
PARLIAMENT  
ON

THE CONFLICT OF INTEREST BILL, 2023  
JUNE 2023

**Eric Theuri, President Law Society of Kenya**  
**Lavington, opp Valley Arcade,**  
**Gitanga Road P.O Box 72219 - 00200 Nairobi | Kenya**  
**Tel: +254 111 045 300**  
Email: [lskpresidenttheuri@gmail.com](mailto:lskpresidenttheuri@gmail.com)/ [president@lsk.or.ke](mailto:president@lsk.or.ke)  
Website: [www.lsk.or.ke](http://www.lsk.or.ke)

**Kenya Law Reform  
Commission (KLRC),**



## COMMENTS ON THE PROPOSED CONFLICT OF INTEREST BILL, 2023

### A. Introduction

The Kenya Law Reform Commission, hereinafter referred to as “KLRC”, *Vide* a letter dated 3<sup>rd</sup> August, 2023, received a request from the National Assembly, for comments on the proposed Conflict of Interest Bill, 2023.

The KLRC having previously been involved in the development of the Bill, makes the following observations—

### B. Analysis of the Bill

Draft Bill	Published Bill	Recommendation
Application- clause 4 (a)public officers; (b) any person serving in any capacity in the delivery of government programmes or services, whether for remuneration or not, including temporary staff, consultants, volunteers, trainees or interns; (c) a person serving in an entity that renders a service involving the collection or administration of a levy, fee or funds authorized by legislation; (d) an entity rendering a service of a public nature which includes— (i) cooperative societies; (ii) retirement benefit schemes; (iii) public private partnerships; or (iv) a strategic public utility	Reporting entities and public officers.	The application clause in the draft Bill should be reinstated. The Bill applies to both public and private entities.

## **Clarifications**

Whether the Public Officers Ethics Act is being repealed?

### **Why repeal of POEA?**

Provision relating to conflict of interest exist in a number of legislation in the statute book. The idea to repeal POEA was to harmonize and consolidate those provisions into one regime of law.

**Kenya Medical Practitioners  
Pharmacists and Dentist's  
Union (KMPDU),**

D/DC

Please deal.

*[Signature]*

19/09/22



*[Signature]*  
 F.M.A  
*[Signature]*  
 19/09/2023

*Mr. Douglas*  
 Please deal.  
*[Signature]*  
 20/09/2023

**KENYA MEDICAL PRACTITIONERS  
 PHARMACISTS AND DENTISTS' UNION**

5th Flr, Suite 506, Blue Violets Plaza,  
 Kindaruma Lane, Nairobi, Kenya  
 P.O. Box 157 – 00202 KNH, Nairobi, Kenya  
 Cell: 020 2166212

Email: [admin@kmpdu.org](mailto:admin@kmpdu.org) / [nec@kmpdu.org](mailto:nec@kmpdu.org)

Website: [www.kmpdu.org](http://www.kmpdu.org)

NATIONAL ASSEMBLY  
 RECEIVED  
 19 SEP 2023  
 DEPUTY CLERK S. KIOKO  
 P. O. Box 41842 - 00100, NAIROBI

NATIONAL ASSEMBLY  
 RECEIVED  
 ★ 19 SEP 2023 ★  
 CLERK'S OFFICE  
 P O Box 41842, NAIROBI

DIRECTOR  
 RECEIVE  
 19 SEP 2023  
 Directorate of Departmental Committees

# MEMORANDA ON THE PROPOSED CONFLICT OF INTEREST BILL, 2023

## EXECUTIVE SUMMARY

Kenya Medical Practitioners, Pharmacists and Dentists Union (KMPDU) is a registered trade union in Kenya championing for the rights of health workers in the country and the progressive realization of right to healthcare.

Pursuant to requirements of public participation as stipulated by the Constitution of Kenya, 2010, Article 10 on principles and values of good governance, and following requests for submission of memorandum, we make the following proposals on the draft bill:

CLAUSE	PROPOSAL IN BILL	PROPOSAL BY KMPDU	JUSTIFICATION
I-Preliminary Clause 3 Objects of the act	Add new missing objective after (e)	Provide for mechanisms of balance between private and public sector engagement in situations where service delivery may not be controllable as in the case of essential service providers such as healthcare workers whose expertise and numbers are limited within the country	All Kenyans deserve access to the highest standard of healthcare and some professionals are in limited numbers. Provisions must be made for such professionals to continue offering services to Kenyans without imposing the hurdle of conflict of service
II-Administration Clause 7(c)	Delegation to another entity powers	Proposal to have aspects of conflict of interest fall under the purview of Professional	Some aspects of conflict of interest fall under professional misconduct

<p>Clause 23(2) and 3)</p>	<p>Requirement to register all other forms of gainful employment with the reporting authority and EACC and prohibition of pursuit of alternative forms of gainful employment</p>	<p>Delete sub clauses (2) and (3)</p>	<p>delivery and increase access costs.</p> <p>Transparent working schedules could be created to allow for increased access to care.</p> <p>There is no clear justification as to why a public officer would have to seek permission to perform other engagements within their qualifications and training and while off duty and not in any conflict with usual work schedules.</p> <p>Public officer economic empowerment should not be limited by statute.</p> <p>Risk of desertion and fleeing of public service in pursuit of private profit which may be more rewarding than public service.</p>
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	and functions by EACC	Societies/Associations/Unions or regulator KMPDC	where it applies to healthcare workers and respective professional societies/associations/unions or regulatory authorities could be used to adjudicate on matters before having the matters forwarded to the courts or EACC for prosecution.
III-Conflict of Interest Clause 8,9	Missing information  Addition of information on specific and general code of conduct and ethics	Add clauses to provide for expectations of professionalism, public service duty, adherence and implementation of professional codes of conduct.  Provide for exemption of conflict of interest for essential healthcare providers where circumstances limit and prejudice members of the public from enjoying essential healthcare services	Need to maintain professional codes of ethics as part of the new law.  Comparison to be borrowed from part II and III of Public Officer Ethics Act of 2003  Kenya does not have enough healthcare personnel in specialized fields and limiting professional practice and access to care by citizens may end up promoting unbalanced care

<p>Clause 27,28,29</p>	<p>Prohibitions after leaving office</p>	<p>Delete clauses</p>	<p>Public officer economic empowerment should not be limited by statute after termination of employment engagement. Recusal however can be cited on case by case basis.</p>
<p>IV-Compliance measures Clause 31(4)(a)  Clause 34  Clause 35</p>	<p>Material change in value of income,asset or liability  Digital data repository information missing  Retention of information</p>	<p>Amend to provide for at least 100% increase of decrease in value of an income, asset or liability  Amend to provide for public access to digital data repository on declarations; Can be accessed by payment of minimal access fee.  Increase repository time to 15-20years</p>	<p>Current threshold of 25% is too low and borders on extreme monitoring and scrutiny of economic empowerment and growth of persons  In the digital age it is important to include a publicly accessible digital repository for all state and public officers of assessment and checks on wealth declarations.  Allow adequate tracking and likely stashing of wealth that may have been ill gotten and reclaimed.</p>

Clause 38	Divestiture	Register conflict of interest in register	Register conflict of interest in register unless where gross conflict of interest is likely should an individual be forced to consider divestiture
Clause 41,42,43,44,45,46	Reporting of Divestiture and assets given as security; Orders on compliance	Delete clauses Not necessary to keep record of divestment options of persons since wealth is already declared.	Where conflict of interest proven track-ability of assets to be undertaken to allow for government confiscation and sanctions.  Matters are self-explanatory and where conflict of interest is apparent a party should consider to minimize their conflict of interest
V-Complaints and Conduct of Investigations			
VI-Miscellaneous provisions Clause 52	Amend general penalty	Amend to a fine of up to 2million shillings and up to 3yrs imprisonment or both	An offence of conflict of interest should not be criminalized to levels of grand corruption. Legal frameworks on grand corruption to guide on heftier corruption crimes.

VII-Repeals and Savings Clause 58	Repeal of Public Officer Ethics Act,2003	Keep act for actions that it serves to serve on ethics or consider to rename the Conflict-of-interest bill to "Public Officer Ethics and Conflicts of Interest Act,2023"	Repeal sections of act that have been duplicated in conflict-of-interest bill  Consider to marry the public officers ethics act and conflict of interest bill
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Signed By:

Date: 31<sup>st</sup> August 2023



**DR. DAVJI BHIMJI ATELLAH**  
**SECRETARY GENERAL**  
**KENYA MEDICAL PRACTITIONERS PHARMACISTS AND DENTISTS' UNION**  
**(KMPDU).**

**National Police Service  
Commission (NPSC),**



# National Police Service Commission



**THE NATIONAL POLICE SERVICE COMMISSION'S SUBMISSIONS**

**TO**

**THE NATIONAL ASSEMBLY**

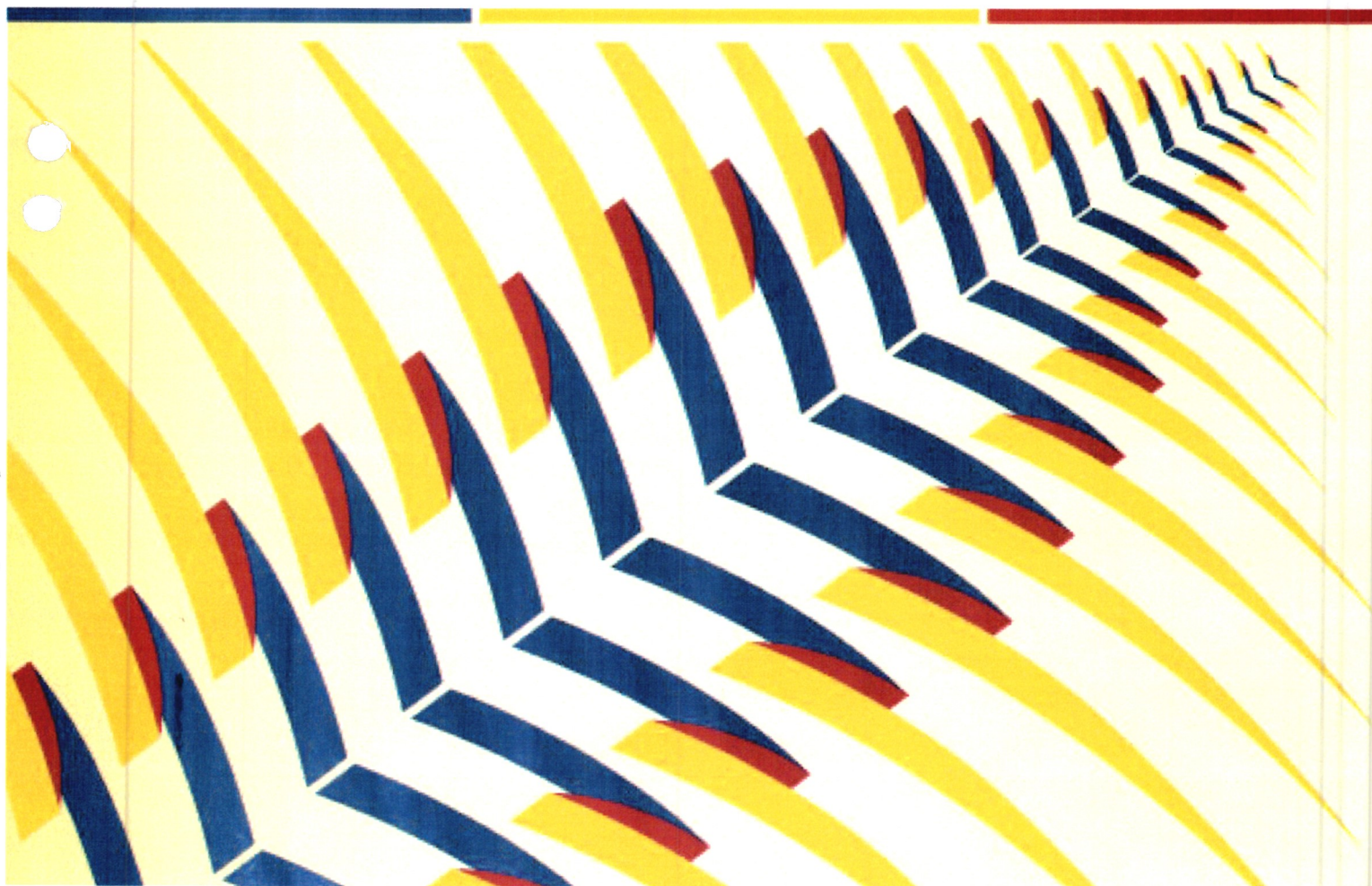
**DEPARTMENTAL COMMITTEE ON JUSTICE & LEGAL AFFAIRS**

*PRESENTED BY*

**PETER LELEY**

**CS/ CHIEF EXECUTIVE OFFICE, NATIONAL POLICE SERVICE COMMISSION**

**TUESDAY, 8<sup>TH</sup> AUGUST, 2023**



# **OUTLINE**

1.0 Background

1.1 National Police Service Commission

1.2 Submissions on the Conflict of Interest Bill, 2023

## **1.0 BACKGROUND**

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The National Assembly Departmental Committee on Justice and Legal Affairs has invited the Commission Secretary/ Chief Executive Officer, National Police Service Commission to submit views on the National Assembly Bill No. 12 of 2023-Conflict of Interests Bill. This is pursuant to Article 118 (1) (b) of the Constitution of Kenya, 2010 as well as Order 127 (3) of National Assembly Standing Orders.

The invitation requests the National Police Service Commission to make its submissions on the proposed Conflict of Interest Bill, 2023 in the public participation forum with stakeholders on Tuesday 8<sup>th</sup> August, 2023 via a letter Ref: NA/DDC/JLAC/2023/082 dated 3<sup>rd</sup> August, 2023.

### **1.1 NATIONAL POLICE SERVICE COMMISSION**

The National Police Service Commission is established by Article 246(1) of the Constitution of Kenya 2010 and identifiable under Article 248 (2)(j) as one of the Chapter Fifteen Commissions and Independent Offices.

The mandate of the Commission is stipulated in Article 246 (3)(a)(b)(c) and it is also a Service Commission as spelt out in Article 234 (3)(c)(iv) which entails general Human Resource Management Function of Members of the National Police Service.

The National Police Service Commission consequently makes the following submissions:

## 1.2 SUBMISSIONS BY NATIONAL POLICE SERVICE COMMISSION

S/ NO	SECTION OF THE BILL	SPECIFIC CLAUSE	PROPOSED AMENDMENT	JUSTIFICATION
1.	S. 8 (b)	<i>“is in a situation where the private interests of the public officer can reasonably be perceived to impair or influence the public officers’ ability to act objectively perform a public duty”</i>	Substitute the phrase “can reasonably be perceived” to “can be demonstrated” to impair...	“perceived” is not an objective measure.  There should be actions or omissions by the Public officer that give factual indication of influence on the impairment of ability.
2.	S. 8 (c)	<i>“has private interests that could conflict with duties of the public officer in future”</i>	Delete “has interests” and rephrase as “pursue interests that conflict with the duties of the public officer	Public Officers have diverse personal interests. It is far reaching to predict what may conflict in the future the action or omission that causes conflict is what is in issue.
3.	S. 13 (1)	<i>A public official shall not, directly or indirectly, use or allow any person under the official’s authority to use any information that is obtained by the official in the course of performing official duties and is not available to the public to improperly further or seek to further the interest of the officer or interests of another person.</i>	Qualify the “interests of another person” to read the “private interests”	Interests are general term and the interests sought to be regulated are “private interests”
4.	S. 15 (1)(b)	<i>“disclose in writing to the reporting authority, any offers of outside employment that could place the officer in a situation of conflict of interest within seven days of receiving the offer”</i>	Delete this subsection	Receipt of an offer does not indicate any action/ omission in the conduct of the public officer to act for private interests and could be unsolicited.

S/ NO	SECTION OF THE BILL	SPECIFIC CLAUSE	PROPOSED AMENDMENT	JUSTIFICATION
5.	S. 19 (1)	<i>“A public officer shall not be party to or beneficiary of a contract for the supply of goods, works or services with any reporting entity”</i>	Delete the word “beneficiary”	This proposal is against Articles 27 (3) (4) and 40 of the Constitution of Kenya on right to economic opportunities and property.  Public officers have right to acquire property which includes stake in companies, shares in which beneficial interests are declarable in law.
6.	S. 23 (3)	<i>“A public official shall not engage in any gainful employment without permission from the reporting authority and the Commission”</i>	Delete the subsection	This is intrusion to person’s privacy where any other gainful employment that is not in conflict of interest with the reporting authority is pursued outside official duty and time.
7.	S. 25 (1)	<i>An appointed public officer other than a Cabinet Secretary or a member of a County Executive Committee, shall not, in the performance of his duties-</i> <i>(a) Act as an agent for political party...</i>	Amend to read:  “An appointed public officer <b>including</b> a Cabinet Secretary or a member of a County Executive Committee, shall not, in the performance of his duties-	These are public officers who should be politically neutral and discharge their functions for the good of the public like all public officers.
8.	S. 27 (1)	<i>“A former public officer shall not-</i>  <i>(a) Act for or on behalf of any person in connection with any specific proceeding, transaction, negotiation or case in which the State is a</i>	Amend the paragraph to read:  “A former public officer shall not-  Act for or on behalf of any person in connection with any specific proceeding, transaction, negotiation or case in which the <del>State</del> Reporting	The State is a broad term for and including whole of government. Only the former reporting entity in which a former public officer was engaged as employee should be considered as there was privity of relationship.

S/ NO	SECTION OF THE BILL	SPECIFIC CLAUSE	PROPOSED AMENDMENT	JUSTIFICATION
		<i>party and with respect to which the former public officer had acted for, or provided advice to the State;</i>	entity is the immediate former employer and is a party and with respect to which the former public officer had acted for, or provided advice to <del>the State</del> that Reporting entity;”	
9.	S. 27 (1) (c)	<i>“Use information obtained in his official capacity and which is not available to the public to further the interests of another person or entity”</i>	Qualify the subsection by rephrasing as follows: “Use classified information obtained in his official capacity to further the interests of another person or entity”	Article 35 of the Constitution guarantees access to information held by the State subject to legal limitations and other legal provisions.  The only information limited therefore should be anti-competitive information, classified information or mis-information.  This proposal has potential to limit witnesses in legal proceedings who advance rule of Law and constitutionalism where they have first-hand information on issues where there are legal proceedings.
10.	S. 34 (1)	<i>“Any declaration made under this Act shall be accessible to any person upon making an application to the Commission that he has legitimate interest and good cause in the furtherance of the objectives of this Act”.</i>	Qualify the declaration referred to excluding Wealth declaration by a Public Officer.	Wealth declarations contain personal information that is subject to Right to privacy.  A Public Officer should be informed when such information touching on their private information has been requested.  The Commission should have proper guidelines on how this information is requested or

S/ NO	SECTION OF THE BILL	SPECIFIC CLAUSE	PROPOSED AMENDMENT	JUSTIFICATION
				conveyed and the purpose declared in this requisition.
11.	S. 34 (8)	<i>“Notwithstanding subsection (1), a law enforcement agency shall have unrestricted access to the disclosures and compliance reports made by a public officer under this Act”</i>	Define enforcement officer to a person employed by the Commission (EACC) and not all enforcement officers generally.  Replace unrestricted access to the disclosures with: reasonable access upon request on notice to reporting entities.	Right to privacy and access to reporting entities information should continue to be managed through transparent but accountable and lawful channels and persons

### 1.3 OTHER COMMENTS

The Bill should be cognizant of the impact of the Bill to limit:

- i. Transparency and whistleblowing policies of Reporting entities.
- ii. Witnesses who have exited public entities but have primary evidence to issues of their former reporting entities.
- iii. The Commission (EACC) should have a data protection policy that has been subjected to stakeholders and public participations.
- iv. The impact on Court officers who have an oath of duty to advance constitutionalism and rule of law through public interest litigation.



**National Police Service Commission**  
**P.O. Box 47363 - 00100, Nairobi**  
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**Email: [info@npsc.go.ke](mailto:info@npsc.go.ke)**  
**[www.npsc.go.ke](http://www.npsc.go.ke)**

**Parliamentary  
Commission,**

**Service**

REPUBLIC OF KENYA



Telegraphic Address  
Commission  
'Bunge', Nairobi  
Telephone 2848000  
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E-mail: [cSenate@parliament.go.ke](mailto:cSenate@parliament.go.ke)

PARLIAMENT  
CLERK OF THE SENATE/ SECRETARY TO THE PARLIAMENTARY SERVICE COMMISSION

Parliamentary Service

Parliament Buildings  
P. O. Box 41842 -00100  
NAIROBI, Kenya

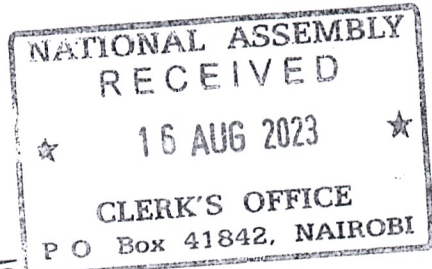
*D/DCS*  
*For attention of the*  
*Committee (JLAC).*  
*OT*  
*CWA*  
*16/8/23*

Our ref: DLC/ADM/2/1/JW

16<sup>th</sup> August, 2023

Your ref: NA/DDC/JLAC/2023/089

Mr. Samuel Njoroge,  
Clerk of the National Assembly,  
Main Parliament Buildings,  
NAIROBI.



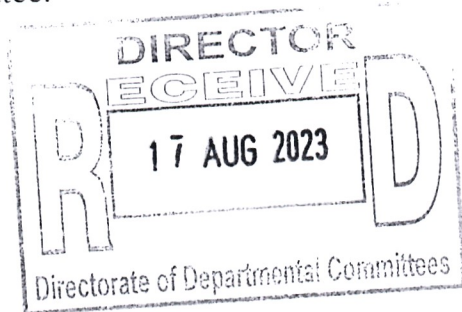
Dear

*Sir*  
*Douglas Koko*  
*pk facilitate*  
*re 11/8/23*

**INVITATION TO SUBMIT VIEWS ON THE CONFLICT OF INTEREST BILL, 2023**

Please refer to your letter ref: NA/DDC/JLAC/2023/089, dated 11<sup>th</sup> August, 2023 requesting the Clerk of the Senate/ Secretary, Parliamentary Service Commission to appear before the Departmental Committee on Justice and Legal Affairs of the National Assembly and present written memorandum on the proposed Conflict of Interest Bill, 2023 on behalf of the Parliamentary Service Commission.

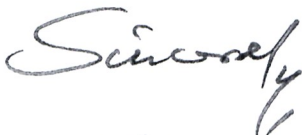
Kindly note that I am unable to meet the Committee on Thursday, 17<sup>th</sup> August, 2023 due to the ongoing Devolution Conference in Eldoret. I am therefore regretfully forced to humbly request the Committee to reschedule the meeting to another date next week convenient to the Committee.




In the meantime, please find attached the written memorandum by the Parliamentary Service Commission. A soft copy of the same has been sent to your email.

Thank you for your continued cooperation.

Yours



 **J. M. NYEGENYE, CBS,**  
**CLERK OF SENATE/SECRETARY,**  
**PARLIAMENTARY SERVICE COMMISSION**

**REPUBLIC OF KENYA**



**PARLIAMENTARY SERVICE COMMISSION**

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**MEMORANDUM BY THE PARLIAMENTARY SERVICE  
COMMISSION ON THE CONFLICT OF INTEREST BILL, 2023**

**PRESENTED TO THE NATIONAL ASSEMBLY'S COMMITTEE ON  
JUSTICE AND LEGAL AFFAIRS**

**PARLIAMENT BUILDINGS  
NAIROBI**

**AUGUST, 2023**

## **Introduction**

1. The main object of the Conflict of Interest Bill, 2023 is to provide for the management and regulation of conflict of interest for public officials in the discharge of their official duties.
2. The Bill proposes changes in the management and regulation of conflict of interest of public officials and it is therefore important to analyze the provisions of this Bill *vis- a- vis* the provisions of other laws in relation to conflict of interest and the mandate of other organs in the management and regulation of the conflict of interest for public officials.

## **General Observations on the Provisions of the Bill**

### **a) Repeal of the Public Officer Ethics Act, 2003 (POEA, 2003)**

3. The Conflict of Interest Bill, 2023 proposes to repeal the Public Officers Ethics Act, 2003 (hereinafter referred to as the POEA, 2003) which has been a general law that covers various aspects of the ethics of public officers including conflict of interest.
4. On the other hand, the intended Conflict of Interest Act is a special legislation focused solely on conflict of interest in relation to public service, hence leaving out other aspects of ethics in the public service such as professionalism, among others.

### **b) Implementation and Enforcement of the Intended Legislation**

5. The Bill tasks the Ethics and Anti-Corruption Commission (EACC), with the implementation and enforcement of the intended Conflict of Interest Act. Under Clause 6 of the Bill, the functions of EACC shall be to:-

- (a) oversee the management of conflict of interest for all public officials;
- (b) develop an effective system for reporting violations of this Act;
- (c) promote best practices and develop standards and guidelines for the management of conflict of interest;
- (d) receive and process requests related to management of conflict of interest;
- (e) conduct inquiries on matters of conflict of interest and make recommendations to the relevant bodies;
- (f) provide advisory opinions on conflict of interest on its own volition or on request by any person;
- (g) conduct public awareness on the management of conflict of interest;
- (h) analyse, seek for clarification and verify conflict of interest disclosures; and
- (i) institute proceedings for forfeiture of undeclared and unexplained assets.

6. The Bill also empowers EACC to delegate its powers or functions under the Act to any person or body by notice in the Gazette which will then be deemed to be the Commission responsible for administration and management of conflict of interest in respect of a class of public officials specified by EACC.

7. In essence, the Bill aims to bring all public officials under the ambit of EACC. This however, is likely to raise a conflict with the jurisdiction and mandates of various entities with special powers over certain classes of public officials. This will likely cause a conflict in the implementation of the Bill.

8. Some provisions of the Bill are in contrast with those currently under POEA, where the implementation and enforcement of POEA, 2003 has been left to the responsible Commission for each public officer. These are likely to result in conflict.
9. For instance, the Parliamentary Service Commission is responsible under Article 127 (6) of the Constitution to appoint and supervise office holders. Further, section 6 of the Parliamentary Service Act, 2019 gives the Commission the power to prescribe a Code of Conduct for the parliamentary service and provide for among other things for disclosure of interest and taking measures to avoid any conflict of interest (real or apparent) in connection with the service.
10. Under Article 172 of the Constitution as read together with the Judicial Service Act, the Judicial Service Commission is specifically responsible for the conduct of judges, magistrates and other judicial officers and staff.
11. The Parliamentary Powers and Privileges Act, 2017 was enacted by Parliament pursuant to Article 117 of the Constitution to provide for the powers, privileges and immunities of Parliament, its committees, the Leader of the Majority Party, the Leader of the Minority Party, the Chairpersons of Committees and Members and to make provision regulating admittance to and conduct within the precincts of Parliament.
12. The Act establishes Committee of Powers and Privileges in each House. Section 15(4) of this Act provides for the functions of the Committee as follows –

*The functions of the Committee of Powers and Privileges shall be to—*

- (a) *inquire into the conduct of a member whose conduct is alleged to constitute breach of privilege in terms of section 16;*

*(b) perform such other functions as may be specified in this Act.*

13. Further section 26 of this Act regulates conflict of interest of Members of Parliament in discharge of their duties. Section 26 provides—

***26. Improper Influence of Members.***

*(1) A person shall not, by fraud, intimidation, force, insult or threat of any kind, or by the offer or promise of any inducement or benefit of any kind, or by any other improper means—*

*(a) influence a member in the performance of the member's functions as a member;*

*(b) induce a member to be absent from Parliament or a committee at a particular time; or*

*(c) attempt to compel a member to declare himself or herself in favour or against a matter pending before or proposed or expected to be submitted to Parliament or a committee.*

*(2) A member shall not solicit, receive or accept any fee, compensation, gift, reward, favor or benefit of any kind for the member or another person for in respect of—*

*(a) voting in any particular manner or not voting on a matter before Parliament;*

*(b) promoting or opposing anything pending before or proposed or expected to be submitted to Parliament; or*

*(c) making a representation to Parliament.*

*(3) A person who contravenes this section commits an offence*

14. The Act further provides under the Fourth Schedule to the Act, the Code of Conduct for Members of Parliament. Clause 5 and 6 of the Code provides as follows—

**5. *Member not to accept improper reward***

*Members of the House shall not—*

- (a) accept or agree to accept any financial inducement as an incentive or reward for the performance of their duties;*
- (b) seek to profit or profit from membership of the House by accepting or agreeing to accept payment or other incentive or reward in return for providing parliamentary advice or services; or*
- (c) incur a financial or other obligation that unduly influences the Member in the performance of his or her duties.*

**6. *Members to register interests***

*(1) Members of the House shall—*

- (a) register with the relevant Speaker all financial and non-financial interests that may reasonably influence their parliamentary actions;*
- (b) before contributing to debate in the House or its Committees, or communicating with State Officers or other public servants, declare any relevant interest in the context of parliamentary debate or the matter under discussion; and*
- (c) observe any rules agreed of the House in respect of financial support for Members or the facilities of the House.*

(2) *A relevant interest is an interest that may be seen by a reasonable member of the public to influence the way in which a Member discharges his or her parliamentary duties.*

(3) *Members shall ensure that registered interests are accurate and updated within one month of any change in particulars.*

15. The Act empowers the Powers and Privileges Committee in each House to enforce the Code and have power to recommend penalties for breach.
16. Further, in line with the provisions of the Powers and Privileges Act, 2017, the POEA mandates the Powers and Privileges Committees of the two Houses of Parliament as being responsible for conduct of its members. Further, the National Assembly is responsible for the ethics of the President, the Speaker and the Attorney General; and members of several commissions and independent offices.
17. The enactment and implementation of the proposed Bill will likely result in conflict with the provisions of the Constitution particularly Articles 127, 172 and the independence of other organs to manage their affairs. Further, some provisions of the proposed law are likely to result in conflict with the provisions of the Powers and Privileges Act given that the proposed law does not seek to amend the provisions of other laws that give specific mandate over conduct of public officers. It is therefore our recommendation that the provisions of the Bill be amended to align it with the specific mandate given to other public entities with special mandates over conduct of certain classes of public officers.
18. Further, it is proposed that the Bill be reviewed to empower the reporting entities as the reporting authorities of first instance with regard to implementation and

enforcement of the provisions of the Bill and to make periodical reports to EACC.

19. Pursuant to clauses 17 and 24 of the Bill, the reporting authorities are custodians of the register of gifts and register of conflict of interest, it therefore would be proper to give them enforcement powers.

**c) Power to investigate complaints**

20. The Bill empowers the reporting authority and EACC to investigate complaints and determine whether a public officer has contravened any law or regulation. The investigations may also be carried out on the volition of the reporting entity or EACC.

21. It is not clear from the provisions of the Bill at what point the reporting authority and EACC would commence investigations or whether there can be concurrent investigations with both bodies or multiple bodies.

22. In this regard, it is recommended that the Bill be amended to allow internal investigations by the reporting authority to be carried out and finalized within certain timelines and further to oblige the submission of a report within a specific time period to EACC who may carry out further investigations if need be.

23. Further, the Bill under clause 50 provides that a public officer may be suspended from office pending the investigations and determination of allegations against that officer. It is not clear who will recommend this suspension given the investigation can be carried out both by the EACC and the reporting authority.

24. It is therefore recommended that the Bill be amended to provide that an officer can only be suspended pending investigations where there is a likelihood to interfere with evidence, witnesses or the investigations. Further, where

investigations are carried out by EACC, the EACC shall recommend to the reporting authority to suspend the officer.

25. The timelines of the investigation should ideally be specified in the Bill to ensure that the reporting entity complies with the constitutional right to fair administrative action and to further avoid onerous litigation that may result from the said suspension.

**d) Declaration of Income, Assets and Liabilities**

26. The Bill requires every public officer to make a declaration of income, assets and liabilities of himself, his spouse or spouses and his dependent children under the age of eighteen years. In a complete departure from the provisions of POEA, the Bill requires declaration to be made directly to EACC. The Bill further requires declaration for income of spouse including bank accounts, shares and membership to organizations.

27. It is recommended that the Bill be reviewed to allow public officers to submit their declarations to the reporting authorities as is the case under the POEA. Further, spouses should only be obligated to declare income assets and liabilities that are in joint names of both spouses. Requiring a spouse to mandatorily declare income, assets and liabilities of the other spouse would infringe on the constitutional rights of the other spouses to privacy, dignity and to own property.

**e) Conflict with the Public Procurement and Asset Disposal Act,2015 and attendant regulations**

28. Clause 19 of the Bill prohibits a public officer from being a party or a beneficiary of a contract for the disposal of goods with any reporting entity.

29. Section 166 of the Public Procurement and Asset Disposal Act provides that an accounting officer shall not dispose off assets to an employee of the public entity or a member of a board or committee of the public entity **except as expressly allowed under this Act and the regulations**. The Public Procurement and Asset Disposal Regulations, 2020 provide for circumstances under which the disposal can be made to a public officer. Regulation 202 sets out the procedure to be followed to dispose off unserviceable, obsolete stores, assets and equipment to an employee of a procuring entity, or a member of a board or committee of a public entity as follows:

- a) the time and cost required to dispose to any other person is disproportionate to the value of the unserviceable, obsolete, obsolescence stores and equipment to be disposed.
- b) the employee is in possession of the stores item or equipment to be disposed and may be given the first priority to purchase the same
- c) assets, stores and equipment are to be disposed of by taking into consideration the net book value or minimum acceptable price set by the technical expert under section 164(3) of the Act, where applicable, at the time of disposal based on government policy

30. It is our proposal therefore that this concern has been sufficiently taken care of by the Public Procurement and Asset Disposal Act and attendant regulations and therefore clause 19 (2) of the Bill should be deleted.

**f) Prohibition after leaving office**

31. The Bill under clauses 27 and 28 makes prohibitions for public officers against representing people against the reporting entity and representing any one before

a reporting entity within a period of two years after leaving employment with the reporting entity.

32. This provision may be interpreted to target only a section of the profession specifically lawyers which may turn out to be discriminatory. This also limits the right of a person to be represented by a person of their choice.

**g) Oversight over EACC officers**

33. The Bill provides for protection from liability for anything done, reported or said in good faith by EACC in exercise of any power under the Act. In essence, no criminal or civil liability shall lie against EACC or anyone acting on its behalf.

34. However, with the repeal of POEA, 2003, EACC officials will be exercising an oversight role over themselves. As such, there is need to specify under the Bill who will be exercising an oversight role over EACC officials as concerns conflict of interest.

**Specific Recommendations**

In view of the above, we propose the following amendments to the Bill-

CLAUSE	RECOMMENDATION
Clause 2	<p>a) The term ‘gainful employment’ should be rephrased to ‘other gainful employment’ to explain the fact that the kind of employment referred to is additional employment to public engagement by the public official.</p> <p>b) Redefine ‘Commission’ to mean ‘Commission or reporting authority responsible for the public official’ in line</p>

	<p>with the view above that conflict of interest areas arise differently for every public entity hence can be best managed by the responsible commission or reporting authority that the public official reports to.</p> <p>c) Need to define 'unexplained assets' in the context of the intended Conflict of Interest Act rather than adopting the definition in the Anti-Corruption and Economic Crimes Act which is tied to corruption and economic crimes.</p>
Clauses 5-7 on the administration of the Act	<p>These clauses need to be rephrased to remove administration of the intended Act in terms of enforcement and implementation from the sole ambit of EACC. The same should be divested to the Commission or reporting authority for the public officer involved.</p> <p>There should also be a provision to specify who will be exercising the oversight role over EACC officials as relates to conflict of interest.</p>
Clause 11	Should be deleted as it's already provided for in the Parliamentary Powers and Privileges Act, 2017 and the County Assemblies Powers and Privileges Act, 2017.
Clause 15	Reporting to EACC should be deleted. Reporting of acceptance of an offer of outside employment be reported to the responsible Commission or reporting authority within seven days.

Clause 19	Clause 19 (2) should be deleted as the same is sufficiently provided for under the Public Procurement and Asset Disposal Act, 2015 and attendant regulations.
Clause 23	Since clause 23 (2) of the Bill refers to the fact that public officials are generally permitted under the Act to engage in other gainful employment, clause 23 (1) should be amended to reflect this general rule.
Clauses 27-29	Should be deleted and the restriction be dealt with the responsible commission or reporting authority on case by case basis depending on demonstrable conflict of interest.
Clause 30	Clause 30 (2) (b) should be amended to mandate or allow the responsible Commission to report to EACC periodically instances of recusal of public officers under their jurisdiction and conflict that was avoided.
Clause 31	Be amended to allow responsible Commission or reporting authority to be responsible and enforce compliance with declaration of income, asset and liabilities and to report the same EACC on compliance and measures taken for non-compliance.  Be amended to allow a public officer to only declare income, assets and liabilities of the spouse, which income, assets and liabilities are in joint names of the spouses.
Clause 48	Be amended to allow investigations by the responsible commission or reporting authority for complaints of

	<p>contravention of the provisions of this Act and the responsible commission or reporting authority to report its finding with recommendations within a prescribed period to EACC.</p>
<p>Clause 50</p>	<p>Suspension of a public official pending investigations be done by the responsible Commission or reporting authority where there is a likelihood of interference with evidence, witnesses or the investigations.</p>
<p>Clause 55</p>	<p>Clause 55 of the Bill protects EACC officials from personal liability, both in civil and criminal proceedings for actions taken in good faith pursuant to the intended Act. There is need to define what 'good faith' means in the context of the Act since the same can be open to numerous interpretations despite grave impact of the intended legislation on public officials.</p>
<p>Clause 58 and 59</p>	<p>The intended legislation has a narrow and special focus on conflicts of interest leaving out other aspects of ethics in the public service which are well covered under POEA, 2003.</p> <p>Therefore, instead of repealing the entire POEA, the Bill should amend specific aspects of POEA that relate to conflict of interest and preserve POEA as concerns other aspects of ethics in the public service that the Bill has left out.</p>

**Public Service Commission  
(PSC),**

REPUBLIC OF KENYA



PUBLIC SERVICE COMMISSION

MEMORANDUM OF THE PUBLIC SERVICE  
COMMISSION

ON

THE CONFLICT OF INTEREST BILL

AUGUST, 2023

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### 1. Introduction

Hon Chairman and Members of the National Assembly Departmental Committee on Justice and Legal Affairs, the Secretariat, Ladies and Gentlemen, we wish at the onset to convey greetings from the Public Service Commission.

### 2. Invitation

The Clerk of the National Assembly through Letters No. NA/DDC/JLAC/2023/060 and 082 of 23<sup>rd</sup> June and 3<sup>rd</sup> August, 2023 invited the Commission to meet this Committee with written memorandum on the Conflict of Interest Bill, 2023.

### 3. Replication of existing legislation

Hon Chairman the Bill for the most part replicates what already exists in the Public Officer Ethics Act and the Leadership and Integrity Act as demonstrated below

CLAUSE	SUBJECT MATTER	OBSERVATION
6(a)	EACC to administer and manage conflict of interest under the Act for all public officials.	Administration and management are day to day activities. This power is better carried out by individual institutions. It is
8, 9, 10& 11	Conflict of interest	Provided for in Section 16 of the Leadership and Integrity Act, 2012(LIA) and Section 12 Of the Public officer Ethics Act, 2003( POEA)
13	Misuse of official information	Provided for in Section 22 of LIA
16	Gifts and benefits	Provided for in Section 14 of LIA
23	Gainful employment	Provided for in Section 26 of LIA
24	Register of Conflict of Interest	Provided for in Section 16(11) of LIA
26	Public Collections	Provided for in Section 18 of LIA and Section 13 of POEA
27	Offers of employment	Provided for in Section 27 of LIA
28	Declaration of Income Assets and Liabilities	Provided for in Section 12 of POEA
29	Timelines for Declarations	Provided for in Section 27 of POEA
31	Clarifications	Provided for in Section 28 of POEA
32	Access to information	Provided for in Section 30 of POEA
33	Retention of Information	Provided for in Section 31 of POEA

#### 4. Statutory Harmony

The Kenya Law Reform Commission, in its publications “A guide to the legislative process in Kenya” guides as follows in terms of statutory harmony.

*“Arguably, there are hardly any completely new ideas in the public sphere. Virtually, all situations legislated on or otherwise, have, invariably been previously encountered and addressed in some form or other. **It is important therefore for persons engaged in the legislative process to undertake detailed research to establish amongst other relevant issues whether a legislative proposal before them has previously been legislated, who or which entity is or has been responsible for its execution, which other existing legal framework can be modified, amended or repealed to allow for the situation at hand to be redressed, and which other mechanism other than a legislative measure can be employed to deal with the matter.**”*

Conflict of Interest is addressed both in the Public Officer Ethics Act and the Leadership and Integrity Act. Any identified gaps can be addressed by amending the already existing legislation as opposed to drafting a new Act which basically replicates the existing legislation. No justification has been provided for repealing the existing legislation.

The new addition is **divestiture** and **establishment of blind trust**, Clauses 38 -41. These two issues could be accommodated in the existing legislation.

#### 5. Proposed repeal of the Public Officer Ethics Act and making Ethics and Anti-corruption Commission the repository for wealth declarations for all public officers

Clause 58 of the Bill seeks the repeal of the Public Officer Ethics Act, 2003.

It is to be observed that the Public Officer Ethics Act, 2003 was enacted to operationalize Articles 7 & 8 of the United Nations Convention Against Corruption. The two Articles aim at promoting meritocracy in appointments in the public service. It also seeks to promote professionalism and good conduct among public officers by requiring development and implementation of Codes of Conduct. An officer who breaches the Code is to be disciplined.

The Public Officer Ethics Act has a part dealing with the general code of conduct for all public officers and a part dealing with wealth declaration and provides for disciplinary action to be taken against officers who breach the requirements of the Act.

Parliament in its wisdom placed the responsibility of administering the Public Officer Ethics Act, 2003 in various responsible commissions. With each Commission being in charge of the officers it exercises disciplinary control over. This was necessary to ensure that in the event of breach, disciplinary action is taken expeditiously.

The proposal to have the Ethics and Anti-corruption Commission the responsible commission for all public officers and rendering all other responsible commissions including TSC, JSC, and Parliamentary Service Commission, all 47 county public service boards redundant is not tenable.

It does not promote efficiency in dealing with malfeasance related to the code of conduct and is against the spirit of the United Nations Convention Against Corruption because EACC does not exercise disciplinary control over the public officers.

**6. General Observation**

In any event declaration of assets and liabilities, as currently exists is a voluntary process. The information given voluntarily sometimes becomes a subject of criminal investigating. Making Ethics and Anti-corruption Commission is an investigating agency. Making it the repository amounts to making public officers provide information, which could be self-incriminating to an investigator without having cautioned hem thus breaching the miranda rights. There is no justification why the Public Officer Ethics Act should be repealed and Ethics and Anti-corruption Commission made the central repository.

**7. Recommendation**

It is neater to amend the existing legislation and address gaps ,if any ,instead of developing a new law which only replicates what already exists. And which could result in confusion when it comes to implementation.

**8. Conclusion**

The Commission wishes to thank you Hon Chairman and Hon Members of the Committee for granting the Commission the opportunity to present memorandum on the Conflict of Interest Bill.

Dated this 7<sup>th</sup> ..... day of August ..... 2023

Signed AK .....

**AMB. ANTHONY M. MUCHIRI, CBS  
CHAIRPERSON  
PUBLIC SERVICE COMMISSION**

**Office of the Director of  
Public Prosecutions (ODPP),**



**OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS**

Telegraphic address: "Personnel", Nairobi  
Telephone: Nairobi 2732090  
Mobile: 0723202888/0787880580  
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When Replying please quote

ODPP House  
Ragati Road, Upper Hill  
P O BOX 30701 – 00100  
NAIROBI  
KENYA

Ref. No: ODPP/SPP/GEN

Date: 29<sup>th</sup> June, 2023

**The Clerk of the National Assembly**  
National Assembly  
Main Parliament Buildings  
P. O. Box 41842 -00100  
**NAIROBI.**

**RE: OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS (ODPP)  
SUBMISSIONS ON THE CONFLICT OF INTEREST BILL, 2023**

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Forwarded herewith are the ODPP Submissions on the conflict of Interest bill, 2023 for your further action.

  
**DORCAS ODUOR, SC, EBS, OGW**  
**SECRETARY, PUBLIC PROSECUTIONS**

**OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS (ODPP)  
SUBMISSIONS ON THE CONFLICT OF INTEREST BILL, 2023**

Section of the Bill	Specific Clause	Proposed Amendment	Justification
1.	PART 1 – Preliminary  2 – Interpretation	<p>Include a definition for common – law partner</p> <p>common – law partner - means a person who is cohabiting with a public office holder in a conjugal relationship, having so cohabited for a period of at least one year. (from the Canada Conflict of bill Act).</p> <p><b>Or</b> consider deleting the term “common Law partner as it may be a bit contentious in Kenya.</p>	<p>Family has been defined in the current bill to also include common – law partner and there is no law in Kenya that defines what a common – law partner is. This is especially so in light of the fact that the new marriage laws do not consider cohabitation as a form of marriage (see MNK v POM; Initiative for Strategic Litigation in Africa (ISLA) (Amicus Curiae) (Petition 9 of 2021) [2023] KESC 2 (KLR) (Family) (27 January 2023) (Judgment)<sup>1</sup></p>

<sup>1</sup> <http://kenyalaw.org/caselaw/cases/view/249856/>

2.	PART VII- Repeals, savings and transitional provisions	Clause 59	<p>Insert a saving and transitional provision for clause 42 of the Anti Corruption and Economic Crimes Act (ACECA) - which is proposed to be repealed by clause 19 of the conflict of interest 2023 bill.</p> <p>pending investigations and trials regarding Conflict of interest matters instituted before the commencement of this Act shall be continued in accordance with the law applicable before the commencement date of this Act.</p>	<p>This is due to the fact that there are ongoing investigations and cases pending before court where persons have been charged / being investigated under section 42 of the ACECA which is proposed to be repealed.</p>
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3.	PART III	Clause 25(1) on Political neutrality	To align the clause with Article 77 (2) of the Constitution	Article 77 (2) of the Constitution indicates that any appointed state officer shall not hold office in a political party yet clause 25 gives an exemption to Cabinet Secretaries and members of the County executive committee.
4.	PART III	Section 26(1) (C)	To amend or provide for exemptions	The section seems too wide as to cover prohibitions against social contributions by officers for welfare purposes for colleagues such as medical bills, burial contributions etc.

5.	PART III	Section 28	The use of the word <i>preceding</i> seems to have been intended to be <i>after</i> or <i>succeeding</i> .	The word <i>preceding</i> means before.
6.	PART IV	Section 34	To renumber the whole section	The same does not follow the sequence of numbering
7.	PART IV	Section 36 (2)	To consider rewording the same	Payment of fines to the commission may be challenged for being a judicial function which should be done by the Courts
8.	PART V	Section 51(1)(d)	To add S to the word prosecutions so as to read Director of Public Prosecutions	
9.	PART VI	Section 54 (1)	To reword s. 54(1) to replace “is of public interest” with “is in the public interest”	To make it in line with subsection S.54(2).

# **Salaries and Remuneration Commission (SRC),**



DDC-11  
28/06

Salaries & Remuneration Commission  
Rewarding productivity

Ref. No. SRC/TS/8 (59)

27<sup>th</sup> June, 2023

**The Clerk of the National Assembly**  
The National Assembly  
P O Box 41842-00100  
**NAIROBI**

*Douglas Katho*  
*to facilitate*  
*29/6/23*

**Attn: Mr. Peter Chemweno**

**INVITATION TO SUBMIT VIEWS ON THE CONFLICT OF INTEREST BILL, 2023**

Reference is made to your letter Ref. No:NA/DDC/JLAC/2023/063 dated 23<sup>rd</sup> June, 2023 on the above subject.

The Salaries and Remuneration Commission (SRC) is established under Article 230 of the Constitution of Kenya, 2010, to: a) set and regularly review the remuneration and benefits of all State State officers; and b) advise the national and county governments on the remuneration and benefits of all other public officers. In the execution of its mandate, SRC is guided by constitutional principles set out in Article 230(5) of the constitution and Section 12 of SRC Act, 2011.

The National Assembly Departmental Committee on Justice and Legal Affairs (JLAC) vide the letter under reference invited SRC together with other institutions to submit views on the Conflict of Interest Bill, 2023.

SRC is unable to appear before the Committee on 29<sup>th</sup> June 2023 as requested, owing to other commitments scheduled prior to the invitation. However, SRC has reviewed the Bill and supports the provisions proposed therein. To enhance the provisions on restricted gainful employment, engagement of public officers in public procurement and to provide for operation of accounts in foreign jurisdictions, SRC proposes inclusion of additional provisions as per the attached table.

The purpose of this letter, therefore, is to convey the Commission's inability to appear before the Committee on 29<sup>th</sup> June 2023 and to provide the Commission's written views. SRC will be available for the meeting at a later date if its attendance is required further to the views forwarded herewith.

The Commission appreciates your continued cooperation and support as we discharge our respective mandates.

**MRS. ANNE R. GITAU, MBS**  
**COMMISSION SECRETARY/CEO**



**Table: Proposals by SRC for inclusion in the Conflict of Interest Bill 2023**

ESUS WUL e s

<b>Provision</b>	<b>Proposed Provision</b>
Clause 23	A public officer who accepts employment on a part-time basis in another public institution shall inform the institution offering them the job, before accepting the job offer of their full-time employment as a public officer.
New	Inclusion of a clause guiding on the modalities/procedures for public officers in opening and operating overseas bank accounts.
New	Inclusion of a clause regulating participation in local tendering processes by offshore registered companies whose directors are public officers.

It is SRC's view that the provision proposed for inclusion will address the employment of public officers on part-time basis in other public institutions and avoid double provision of benefits by different employers to the same public officer during the same period. Further, the two additional clauses proposed for inclusion will enhance transparency in the banking system and strengthen the integrity of public procurement processes.

**Teachers  
Commission (TSC),**

**Service**

**TEACHERS SERVICE COMMISSION**



**MEMORANDUM ON THE CONFLICT OF INTEREST BILL**  
**PRESENTED TO THE JUSTICE AND LEGAL AFFAIRS COMMITTEE OF THE**  
**NATIONAL ASSEMBLY**

By

**THE TEACHERS SERVICE COMMISSION**

**MEMORANDUM ON THE CONFLICT OF INTEREST BILL**  
**PRESENTED TO THE JUSTICE AND LEGAL AFFAIRS COMMITTEE OF THE**  
**NATIONAL ASSEMBLY**

<b>PROVISION IN THE BILL</b>	<b>WHAT IS YOUR PROPOSAL/INPUT</b>	<b>WHAT IS YOUR JUSTIFICATION/COMMENT FOR THE PROPOSED CHANGES</b>
Part 1 Preliminary	Gainful employment as defined is narrow and restrictive	Gainful employment should refer to steady allowance arising out of steady employment meaning the employee will have steady work and payment to allow self-sufficiency.
Section 8	Define Conflict of Interest in the Preamble Delete word 'perception' in Section (8) (b) as it is subject to abuse.	Define what constitutes conflict of interest both directly and indirectly.
Part 1	Add the Constitutional Commissions as part of the reporting entity	The Constitutional Commissions are part of the state organs
Section 17 (b)	Clarification on gifts referred therein referred to.	Clarification on the nature of gifts referred therein. You may exclude gifts awarded to own employees e.g. for exemplary performance.
Section 18 (1)	Restrict the treatment meant to influence the Public Officer	The provision as drafted criminalizes all complimentary treatment.
Section 18 (2)	The provision appears open ended	It should be expounded/qualified and probably define exceptional circumstances.
Section 19	Place of use of proxies such as spouse and children be addressed	To avoid abuse by public officers and to protect the sanctity of the PPDA.
Section 23 (1) (a)	The provision appears vague e.g. use of the word incompatible	In line with Article 47 of the Constitution, the same should be qualified.
Section 23 (2)	Expound the provision to bring out what is acceptable, what is prohibited or not	To avoid abuse
Section 23 (3)	Not practical	No employer will give the permission referred to. The provision appears to criminalize hard work.

Section 27, 28, 29	Delete provision	<ul style="list-style-type: none"> <li>▪ This is a violation of rights of certain professionals especially Advocates in the Public Service. It impedes constitutional rights to exercise the practice of a profession.</li> <li>▪ It conflicts with the principles in the Advocates Act.</li> <li>▪ It impedes the right to earn a living from the practice of a profession.</li> </ul>
Section 30 (2) (b)	The provision places upon a Public Officer an unnecessary burden should be recast.	The Reporting Authority should bear this burden as it is the custodian of the register of Conflict of Interest.
Section 31	Our concern is whether the Commission (EACC) has the capacity to receive all declaration forms from the entire Public Service.	Declarations be made to the various Reporting Authorities.
Section 31 (4) ©	Delete	It is a violation of the right of privacy.
Section 32 (4)	Amend to the final declaration being made 30 days prior to exit.	The Reporting Entity will be in a position to enforce the provision when the public officers are still under their employment.
Section 45	The provision should be recast to avoid abuse	This power ought to be exercised after due process including fair hearing.
Section 48	The whole provision should be recast	Reporting of a crime should be multifaceted to avoid abuse. The provision should expound to bring on board other players in the justice sector for process e.g. police, DCI Provide how the information is processed. Modalities of investigations should be provided in the Act.

Section 49	Entire provision be recast	As is, the provision is pre-emptive. It can provide for some form of preliminary inquiry to determine if conflict of interest is apparent or not.
Section 50	Provide for remuneration, salary, emoluments etc	The provision should be subjected to law governing operations of reporting authority and other statutes. As is, it is subject to abuse since these are administrative. Also, these should be left to criminal courts.
Section 51 (2)	Delete provision	Recommendations from EACC should not be binding, they should remain as best practices.
Section 52	Recast provision e.g. the penalty referred to has not been disclosed.	The fine prescribed is excessively high.
Section 55	Expound on the provision	Is the reporting entity an agent of the Commission (EACC)? Provide format for the Compliance Reports referred to. They could also be defined as statutory requirements in the preliminary.

**Transparency International,**



**TRANSPARENCY INTERNATIONAL KENYA MEMORANDUM TO THE NATIONAL ASSEMBLY ON THE  
CONFLICT OF INTEREST BILL (NATIONAL ASSEMBLY BILL No. 12 of 2023)**

**Organization**

Transparency International - Kenya (TI-Kenya) is a not-for-profit organization founded in 1999 in Kenya with the aim of developing a transparent and corruption free society through good governance and social justice initiatives. TI-Kenya is one of the autonomous chapters of the global Transparency International movement that are all bound by a common vision of a corruption-free world. The vision of TI-Kenya is that of a transparent, accountable and corruption-free society.

**Introduction**

The Conflict-of-Interest Bill, 2023 has been developed to make provisions for the management and regulation of conflict of interest and for connected purposes.

TI-Kenya is in support of the Bill noting that Conflict of Interest Legislation in Kenya is essential for upholding good governance, promoting ethical conduct, and safeguarding the public interest. It serves as a critical tool in preventing conflicts of interest, ensuring transparency, and enhancing accountability, ultimately contributing to the country's development and the well-being of its citizens.

TI-Kenya notes that the Bill proposes under section 58, to repeal the Public Officer Ethics Act No. 4 of 2003. We are of the opinion that the Public Officer Ethics Act covers a broad range of issues pertaining to ethics of public officers, with conflict of interest being only one of them, as expressly provided in section 12 of the Act. We are of the opinion that the Public Officer Ethics Act should not be repealed in its entirety since various important provisions on ethics of public officers will be left out. These provisions are expressly set out in the submissions below.

Pursuant to the invitation for submission of memoranda on the Bill, TI-Kenya wishes to make the following recommendations;

Section	Provision of the Bill	Specific proposed amendment/ recommendation	Justification/ Rationale for Amendment/ Recommendation
2	Interpretation	Propose inclusion of the definition of a "whistle blower" as set out below:  <i>"whistle blower" means a person who makes a report to the Commission or the law enforcement agencies on acts or situations of conflict of interest.</i>	There are provisions to protect whistleblowers that have been introduced in section 54 (protection of person making disclosure)  Taking note that there is also a pending legislation on Whistleblower Protection Bill 2021 that has been pending in parliament and which would also be important to bolster the fight against corruption
3(2)(a)	(2)Without prejudice to the generality of subsection (1), the objects of this Act are to-  (a) promote objectivity and impartiality in official decision making	(a) promote objectivity and impartiality in <b>official</b> decision making <i>relating to the exercise of an official power or the performance of a duty or function of the public officer</i>	To enhance clarity scope of application and align with language used in other parts of the Bill e.g. section 8(a), 10(1), 12(1)
3(2)(c)	Objects of the Act  (c) enhance public	Propose rephrasing of the clause as below:  (c) enhance public confidence in the <i>integrity of</i>	Introduce " <i>Public Office</i> " to align to constitutional provisions under

	<p>confidence in the delivery of public services;</p>	<p><i>public office and delivery of public services;</i></p>	<p>Article 73 Responsibilities of leadership (1) Authority assigned to a State officer – (a) is a public trust to be exercised in a manner that –</p> <ul style="list-style-type: none"> <li>(iii) brings honour to the nation and dignity to the office; and</li> <li>(iv) promotes public confidence in the integrity of the office; and</li> </ul> <p>Article 75 Conduct of State Officer</p> <p>(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 –</p> <ul style="list-style-type: none"> <li>(a) any conflict between personal interests and public or official duties;</li> <li>(b) compromising any public or official interest in favour of a personal interest; or</li> <li>(c) demeaning the office the officer</li> </ul>
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	Objects of the Act	Introduce new objects as below:  <i>(d) enhance accountability to the public for decisions and actions by public officers in execution of their duties;</i>  <i>(e) promote selfless service by public officers based solely on the public interest;</i>	holds.  To align to provisions under arts. 73 and 75 of the Constitution
9(b)	A public officer shall -  (b) disclose details of any private interest of the public officer that affects the official duties of the public officer	Propose additions as follows:  (b) disclose details of any private interest of the public officer that affects the official duties of the public officer, <i>to the reporting authority or Commission and comply with any directions to avoid the conflict.</i>	To provide clarity on who a public officer should report/ disclose relevant details/ information to; which ensures accountability
20(1)	A public officer shall not acquire an interest in a partnership, private company or any other legal entity that is a party to a contract with the reporting entity in which the public officer serves, under which the partnership, private	Propose amendment of the section as follows:  a public officer shall not <del>acquire</del> <i>hold as a direct or indirect</i> interest in a partnership, private company or any other legal entity that is a party to a contract with the reporting entity in which the public officer serves, under which the partnership, private company or legal entity receives a benefit.	To provide for conflict of interest arising in situations where a public officer holds shares or interests in private legal entities, either directly or indirectly.

	company or legal entity receives a benefit		
21 (2)	Subsection (1) shall not apply to appointment of personal staff permitted to the public officer as may be prescribed.	Delete sub section 2 which provides for the exemption or in the alternative define "Personal Staff"	Such staff should be appointed competitively as per the values and principles of public service – article 232(1)(g),(h),(i) and 232(2)
25(1)	Political neutrality	Propose addition of a new sub section as follows:  <i>(c) engage in political activity that may compromise or be seen to compromise the political neutrality of his/her office.</i>	As it was provided for under s.16(2) of POEA  To avoid abuse of office and loss of public confidence in the independence and impartiality of public offices that are meant to be politically neutral.
31	Every public officer shall submit to the commission a declaration of the income, assets and liabilities of himself, his spouse or spouses and his dependent children under the age of eighteen years.	Propose the following amendments:  Every public officer shall submit to the commission <i>and to the reporting authority</i> a declaration of the income, assets and liabilities of himself, his spouse or spouses and his dependent children under the age of eighteen years.	The reporting authority should also receive the information, as the office or body responsible for a public officer. Further, the sheer volume of the declarations would make it difficult for the Commission alone to process and verify the declarations.
32	Provides for subsections	Correct the numbering issue	For clarity purposes

	(1), (3), (4)		
33	Provides for subsections (1), (5), (6), (7) and (5)	Correct the numbering issue	For clarity purposes
33(1)	Upon the receipt of the declaration made under section 31, the commission shall analyse the declaration to ascertain-	Upon the receipt of the declaration made under section 31, the commission <i>and reporting authority</i> shall analyse the declaration to ascertain-	The act introduces a reporting authority for which this clause should apply. It is more reasonable and efficient to have the reporting authority also analyse, process and verify the declarations. Further, the reporting authority has a direct interest in the declarations.
34	Provides for subsections (1), (8), (9), (10)	Correct the numbering issue	For clarity purposes
49(2)	If the Commission declines to commence an investigation, the Commission shall inform the person who lodged the complaint and give reasons for the decision.	(2) If the Commission declines to commence an investigation, the Commission shall inform the person who lodged the complaint and give reasons for the decision <i>within 90 days upon confirmation of receipt of the complaint.</i>	To allow a timeline within which complaints need to be addressed after acknowledgement of the complaint.
Section	Despite sub section (1), the period of suspension of a	Propose the following additions:	To align with section 62(1) of the Anti-Corruption and Economic Crimes Act

50 (2)	state officer or public officer shall not exceed ninety days	Despite sub section (1), the period of suspension of a state officer or public officer shall not exceed ninety days <i>unless the person is charged in accordance with section 51(1)(d).</i>	on suspension, if charged with corruption or economic crime 62(1) A public officer or state officer who is charged with corruption or economic crime shall be suspended, at half pay, with effect from the date of the charge until the conclusion of the case: Provided that the case shall be determined within twenty-four months (3) The public officer ceases to be suspended if the proceedings against him are discontinued or if he is acquitted.
52	General Penalty	Introduce 52(4) A person who has been prosecuted and found guilty of an offence under this Act shall upon conviction be disqualified from holding any other Public Office.	In accordance with provisions under Art. 75(3) A person who has been dismissed or otherwise removed from office for a contravention of the provisions specified in clause (2) is disqualified from holding any other State office.
54	Protection of person making disclosure	Propose addition of the following new sub sections: <i>A whistleblower, informant or a witness in a complaint or a case of conflict of interest shall not</i>	To provide for enhanced protection of whistleblowers and witnesses

		<p><i>be intimidated or harassed for providing information to law enforcement institutions or giving testimony in a court of law.</i></p> <p><i>Every reporting institution and law enforcement agency shall put in place reasonable mechanisms to protect the identity of informants and witnesses.</i></p>	
58	<p>Repeal of the Public Officer Ethics Act No. 4 of 2003</p>	<p>Propose that the Public Officer Ethics Act should not be repealed in its entirety since the following important provisions will be left out:</p> <ul style="list-style-type: none"> <li>5 - Establishment of specific codes of conduct</li> <li>8 - performance of duties</li> <li>9 - professionalism</li> <li>11 - no improper enrichment</li> <li>14 - Acting for foreigners</li> <li>15 - care of property</li> <li>18 - giving of advice</li> <li>19 - misleading the public</li> <li>20 - conduct of private affairs</li> <li>21 - sexual harassment</li> </ul>	<p>The provisions are relevant and contribute towards advancing the ethics of public officers and connected purposes.</p> <p>The Public Officer Ethics Act covers a broad range of issues pertaining to ethics of public officers, with conflict of interest being only one of them as expressly provided in section 12 of the Act</p>

	25 - reporting improper orders	
Part VI	<p>Miscellaneous provisions</p> <p>Propose addition of the following new clause: <i><u>Duty to report</u></i></p> <p>(1) <i>Every public officer shall report to the Commission within a period of twenty-four hours any knowledge or suspicion of instances of conflict of interest</i></p> <p>(2) <i>A public officer who, despite being aware of or suspicious of the commission of an offence under this Act, fails to report the act to the Commission within the specified period commits an offence.</i></p>	To encourage disclosure of instances of conflict of interest

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NAIROBI, KENYA

# ***Mzalendo* Trust**



29<sup>th</sup> JUNE 2023.

Clerk of the National Assembly,  
Parliament Buildings,  
P.O Box 41842  
00100  
NAIROBI.

Our Ref: MT/NA/12/23

Your Ref: NA/DDC/JLAC/2023/060

**RE: Memorandum on the Conflict of Interest Bill, 2023**

[Mzalendo](#) ('Patriot' in Swahili) Trust is a Kenyan non-partisan Parliamentary Monitoring Organization started in 2005 and whose mission is to 'promote open, inclusive, and accountable Parliaments in Kenya and Africa.' We do so by creating and managing civic tech tools, producing evidence-based research, and leading and facilitating advocacy and partnerships with Parliaments, citizens, and other relevant stakeholders. We believe that success in our work will build more effective and responsive legislation and political processes that ultimately support Kenya's national development goals. In line with our [Strategic Plan](#) 2021-2025, we anchor our work on three main pillars: Openness, Inclusion, and Accountability.

In addition, Mzalendo Trust convenes various networks and collaboration initiatives to facilitate engagement in the legislative [process](#). Key among this is the Civil Society Parliamentary Engagement Network (CSPEN), a network of about 28 organizations with an interest in working in Parliament. In addition, Mzalendo is also the Convenor of the CSO partners within the Open Government Partnership framework and the lead for the Public Participation and Legislative Openness Commitment as articulated in the 4<sup>th</sup> National Action Plan currently under implementation.

We have reviewed the Bill and agree that it is timely and would enhance professionalism and integrity in public service, our specific comments are as hereunder.

Clause	Proposed Amendments / Ramifications	Comments on Proposed Amendments/ Recommendations
1.	<p>The Commencement clause, <i>..the Bill shall come into force on such a date as the Attorney General may by notice in the Gazette, appoint.</i></p> <p>In some instances, a number of legislations have failed to commence since the designated authority has failed to give notice, the Public Benefits Organizations Act is a case in point.</p>	<p>We propose deletion of the referenced statement and propose that the commencement of the Bill be guided by Art. 116 of the Constitution.</p>
2.	<p>Clause 2. Definition of unexplained asset makes reference to</p> <p><i>Section 2 of the Anti-Corruption and Economic Crimes Act (ACECA) defines "unexplained asset" to mean:</i></p> <p><i>"Assets of a person:</i></p> <p><i>(a) acquired at or around the time the person was reasonably suspected of corruption or economic crime; and</i></p> <p><i>(b) whose value is disproportionate to his known sources of income at or around that time and for which there is no satisfactory explanation."</i></p>	<p>This definition is limiting especially in the scope of what the Act is intended to achieve as it would require someone to have been reasonably suspected of corruption or economic crime.</p> <p>We propose that the second limb of the definition, <i>whose value is disproportionate to his known sources of income at or around that time and for which there is no satisfactory explanation</i>, be applicable to this section.</p>
17	<p>Clause 17</p> <p>Every reporting authority shall maintain a register of gifts and donations.</p>	<p>We propose an insertion of a penalty Clause on the responsible person for failure to keep the register for purposes of compliance.</p>

24	Maintaining a register of conflict of interest and ensuring it is open to the public for inspection.	We propose an insertion to the Clause to specifically provide for ways in which the register is to be made open to the public to include compliance of the Access to Information Act if a request is sought and other online official channels like websites.

We hope our proposals will be considered during the deliberations of the Bill.

Sincerely,



**Caroline Gaita,**  
**Executive Director.**

**Dr. Donald Keya, PhD**

**Donald Keya, PhD,**  
P.O Box 12023, 00100,  
**Nairobi.**  
E-mail: [dmkeya@gmail.com](mailto:dmkeya@gmail.com)

14<sup>th</sup> August, 2023.

**The Clerk of National Assembly,**  
Parliament Buildings,  
**Nairobi.**

Dear Sir,

*ATTN: Departmental Committee on Justice and Legal Affairs*

**RE: MEMORANDA ON THE CONFLICT-OF-INTEREST BILL  
(NATIONAL ASSEMBLY BILL NO. 12 OF 2023)**

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Reference is made to the above captioned subject matter, of which I write in my capacity as a public officer, whose contents of the Bill will affect, among other public officers, if passed into law.

I present my submissions as follows:

***a) Submission on Clause 19***

1. Clause 19 of the Bill provides as follows:

*"(1) A public officer shall not **be a party to or beneficiary of a contract for the supply of goods, works or services with ANY reporting entity.***

*(2) A public officer shall not be **a party to or beneficiary of a contract for the disposal of goods with any reporting entity.***

*(3) A public officer shall not, in the exercise of official power, duty or function, award or influence the award of a contract in which the officer has a private interest.*

- (4) *A person who contravenes any provision of this section commits an offence.*"
2. Whereas the Clause purports to prevent conflict of interest, **it unjustly restricts public officers from engaging in business contrary to Articles 27, 40 and 43 of the Constitution.**
  3. Article 27 provides for the right to equality and freedom from discrimination. Sub-article (3) expressly provides that:  
*"Women and men have the **right to equal treatment** including **the right to equal opportunities** in political, **economic**, cultural and social spheres."*(emphasis added)
  4. Furthermore, Article 40 provides for the protection of the right to property by stipulating as follows:  
*"...every person has the right, either individually or in association with others, to acquire and own property –  
(a) of any description; and  
(b) in any part of Kenya."*
  5. In the interpretation of this Article, 'property' is defined under Article 260 as;  
*"property' includes any vested or contingent right to, or interest in or arising from–  
(a) land, or permanent fixtures on, or improvements to, land;  
(b) goods or personal property;  
(c) intellectual property; or  
(d) money, choses in action or negotiable instruments."*
  6. Notably, while the public interest seems to be served best when all public officers are restricted in relation to professional practice, other gainful employment and business, the public interest of having qualified and competent professionals in the public service is equally undermined.
  7. **Proper conflict of interest entails a case-by-case approach as opposed to unqualified restrictions in public service engagement.**

Such restrictions as outlined in Clause 19 will result in hesitations by professionals to offer their competence and expertise in the public service. **Clause 19 as drafted, portrays being a public officer as punitive and will lead to a decline in the skillset in the public service thus compromising on the quality of the public service.**

8. It is, therefore, imperative that the Clause be amended to strike a balance between managing conflict of interest and the rights of public officers.
9. It is therefore my proposal that Clause 19(1) be amended to restrict public officers from **engaging in business ONLY with their reporting entity (employer) and NOT all reporting entities.**
10. A more successful approach to the management of conflict of interest has been witnessed in the United Kingdom. The United Kingdom has adopted a principles-based approach where civil servants are expected to act with integrity and declare and record conflict of interest.
11. It is for this reason that I submit, that the Bill should instead provide for the procedure of addressing instances of conflict of interest to guide reporting entities in formulating internal policies and guidelines to deal with conflict of interest.
12. In conclusion, although enacting **a conflict-of-interest legislation seems necessary, the primary goal should be to build the capacity of public officials** to be able to identify a conflict of interest and how to balance their public duties and their private interests for the public benefit.<sup>1</sup>

### ***b) General Comment on the Bill***

13. The Bill also purports to restrict the rights and freedoms of the relatives of public officers with respect to receiving gifts and complimentary treatment. The definition of 'relative' outlined in the Bill is too broad and

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<sup>1</sup> Ojienda, Prof. T., & Adude, L. M. (n.d.). *Conflict of Interest and Public Office in Kenya* By: Prof. Tom Ojienda, SC\* and Lydia Mwalimu Adude\*\*. Journal of CMSD. <http://journalofcmsd.net/wp-content/uploads/2021/07/Conflict-of-Interest-and-Public-Office-in-Kenya.pdf>

covers a wide range of persons. **It even makes reference to a common-law partner; which is no longer recognized in Kenyan law.** This is an unfair limitation on other persons by virtue of merely being related to a public officer(s). The definition provided under Clause 2 is as follows:

*"relative' means a person who is related to a public officer by birth, marriage, **common-law partnership**, adoption or affinity and includes a public officer's father, mother, son, daughter, brother, sister, uncle, aunt, **great-aunt, great uncle**, first cousin, nephew, niece, husband, wife, **grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, step-mother, stepson, stepdaughter, stepbrother, stepsister, half-brother, half-sister, or who is the grandfather or grandmother of the spouse of the public officer;"***

14. **It is my view and proposal that this definition be amended and limited to only the nuclear members of a public officer i.e., the spouse and children of a public officer.**

I humbly submit the above for the Committee's kind consideration.

Yours faithfully,



**Donald Keya, PhD**