

SPECIAL ISSUE

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REPUBLIC OF KENYA

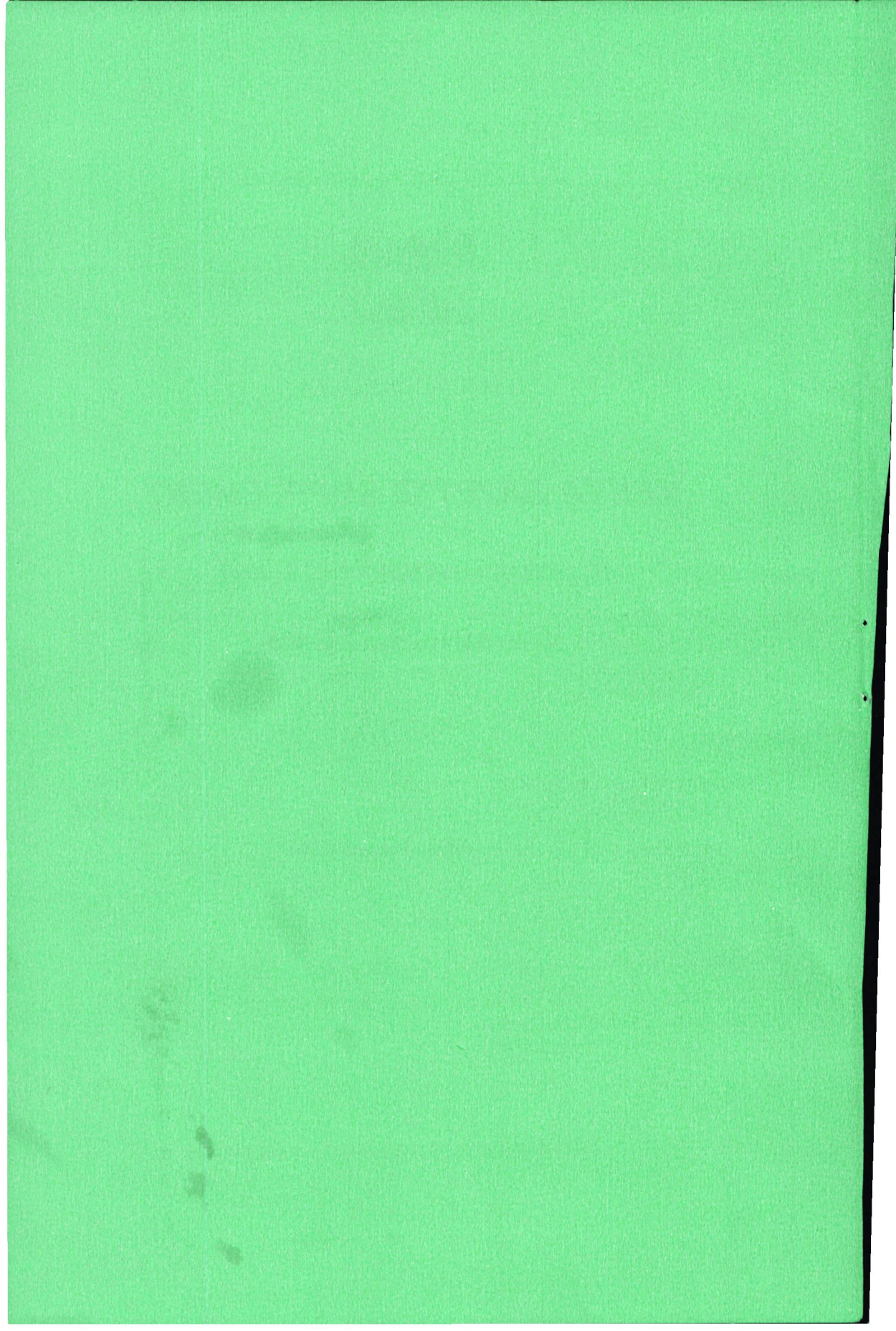
KENYA GAZETTE SUPPLEMENT

NATIONAL ASSEMBLY BILLS, 2022

NAIROBI, 21st January, 2022

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**THE NATIONAL COHESION AND INTEGRATION
(AMENDMENT) BILL, 2022**

A Bill for

AN ACT of Parliament to amend the National Cohesion and Integration Act, 2008 and for connected purposes

ENACTED by the Parliament of Kenya as follows—

1. This Act may be cited as the National Cohesion and Integration (Amendment) Act, 2022.

Short title.

2. Section 2 of the National Cohesion and Integration Act, 2008 (in this Act referred to as “the principal Act”) is amended—

Amendment of section 2 of No. 12 of 2008.

- (a) in the definition of “Commission” by deleting the word “by” and substituting therefor the word “under”;
- (b) in the definition of “ethnic group” by inserting the words “ancestry, social or cultural experience, language or dialect” immediately after the words “or national origins”;
- (c) in the definition of “ethnic relations” by inserting the word “social” immediately after the word “tribal”;
- (d) by deleting the definition of “Minister”;
- (e) by inserting the following new definitions in proper alphabetical sequence —

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to cohesion, integration, peace-building and conflict management;

“public officer” has the meaning assigned to it under Article 260 of the Constitution; and

“Public Service Commission” means the Public Service Commission established under Article 233 of the Constitution.

3. Section 3 of the Principal Act is amended—

Amendment of section 3 of No. 12 of 2008.

- (a) in subsection (1)—

- (i) by inserting the words “directly or indirectly” immediately after the word “person” in the opening statement;
 - (ii) by inserting the words “or she” immediately after the word “he” wherever it appears in paragraph (a);
 - (iii) by inserting the words “or she” immediately after the word “he” wherever it appears in paragraph (b);
- (b) in subsection (2) by deleting the word “he” wherever it appears and substituting therefor the words “the person”.

4. Section 4 of the Principal Act is amended by deleting the opening statement and substituting therefor the following new opening statement—

Amendment of section 4 of No. 12 of 2008.

“A person discriminates against another person by way of victimization in any circumstances relevant for the purposes of this Act if the person treats the person victimized less favourably than he or she treats or would treat other persons, and does so by reason that the person victimized has—”

5. Section 6 of the Principal Act is amended in subsection (1) by—

Amendment of section 6 of No. 12 of 2008.

- (a) deleting the word “he” appearing immediately after the word “grounds” in the opening statement and substituting with the words “the person”;
- (b) deleting the word “him” appearing immediately after the words “environment for” in paragraph (b) and substituting therefor the words “that other person”.

6. Section 7 of the Principal Act is amended —

Amendment of section 7 of No. 12 of 2008.

- (a) in subsection (1) by inserting the words “and shall afford adequate and equal opportunities for appointment, training and advancement at all levels of public service to members of all ethnic groups” immediately after the word “staff”;
- (b) by deleting subsection (3) and substituting therefor the following new subsection—

“(3) An employer or potential employer or his or her representatives or assigns, in relation to employment at an establishment, shall not discriminate against another person—

- (a) in the arrangements made for the purpose of determining who should be offered that employment;
 - (b) in the terms he or she offers the employment; or
 - (c) by refusing or deliberately omitting to offer that other person employment.”
- (c) by deleting subsection (4) and substituting therefor the following new subsection—

“(4) An employer shall not discriminate against his or her employee—

- (a) in the terms of employment afforded to the employee;
 - (b) in the way he or she affords the employee access to opportunities for promotion, transfer or training or to any other benefits, facilities or services, or by refusing or deliberately omitting to afford the employee access to them; or
 - (c) by dismissing the employee, or subjecting the employee to any other detriment.”
- (d) by deleting subsection (5) and substituting therefor the following new subsection—

“(5) An employer, his or her representatives or assigns shall not subject to harassment a person whom he or she employs or who has applied to him or her for employment.”

- (e) by deleting subsection (6).

7. Section 9 of the Principal Act is amended —

- (a) by deleting the word “of” appearing in the marginal note;
- (b) by deleting subsection (1) and substituting therefor the following new subsection—

Amendment of
section 9 of No. 12
of 2008.

“(1) An official, member, employee, assign or representative of a registered organisation shall not discriminate against a person who is not a member of the organisation—

- (a) in the terms in which it is prepared to admit the person to membership; or
- (b) by refusing or deliberately omitting to accept the person’s application for membership.
- (c) by deleting subsection (2) and substituting therefor the following new subsection—

(2) A membership organization shall not discriminate against a person who is a member of the organization on grounds of—

- (a) ethnicity; or
- (b) in the way it affords the member access to any benefits, facilities or services, or by refusing or deliberately omitting to afford the member access to them; or
- (c) by depriving the member of membership, or varying the terms on which he or she is a member; or
- (d) by subjecting the member to any other detriment.
- (d) by deleting subsection (3) and substituting therefor with the following new subsection—

“(3) It is unlawful for a membership organisation to subject to harassment a person who is a member of the organisation or a person applying to be a member of the organisation on the ground of ethnicity”.

- (e) by inserting the following new subsection immediately after subsection (4)—

“(4A) Any person who contravenes this section commits an offence and shall be liable, upon conviction, to a fine not exceeding one million shillings or to a term of imprisonment not exceeding one year, or to both”.

8. Section 10 of the principal Act is amended in subsection (2) (b) (iii) by deleting the words “Minister for Immigration, under the Immigration Act (Cap. 172)” appearing immediately after the words “undertaken by the” and substituting therefor the words “Cabinet Secretary responsible for matters relating to citizenship and the management of foreign nationals under the Kenya Citizenship and Immigration Act, 2011”.

Amendment of section 10 of No. 12 of 2008.

9. Section 11 of the principal Act is amended by inserting the following new subsection immediately after subsection (3)—

Amendment of section 11 of No. 12 of 2008.

“(4) Any public officer who contravenes this section commits an offence and is liable, on conviction, to a fine not exceeding one million shillings or to imprisonment for a term not exceeding three years, or to both”.

10. Section 13 of the principal Act is amended in subsection (1) by deleting paragraph (b) and substituting therefor the following new paragraph—

Amendment of section 13 of No. 12 of 2008.

“(b) publishes, posts or distributes material in print, electronic or social media”

11. Section 14 of the principal Act is amended in subsection (1) by deleting the words “to him” appearing immediately after the word “appears” in paragraph (b).

Amendment of section 14 of No. 12 of 2008.

12. The principal Act is amended by repealing section 20 and replacing it with the following new section—

Repeal and replacement of section 20 of No. 12 of 2008.

Secretary to the Commission.

20. (1) There shall be a Secretary to the Commission who shall be appointed by the Commission through a competitive recruitment process upon such terms and conditions as the Commission may, in consultation with the Salaries and Remuneration Commission, determine.

(2) A person shall be qualified for appointment as a secretary to the Commission if the person—

(a) is a citizen of Kenya;

(b) holds a degree from a university recognised in Kenya;

- (c) has at least five years' experience at management level; and
- (d) meets the requirements of Chapter Six of the Constitution.

(3) The Secretary shall be the chief executive officer of the Commission and head of the secretariat and shall be responsible to the Commission.

(4) The Secretary shall hold office for a term of five years and shall be eligible for re-appointment for one more term, upon satisfactory performance as evaluated by the Commission.

(5) A person who immediately before the commencement of this Act, is the Secretary to the Commission, shall remain in office for the remaining period of his or her term, in accordance with the terms and conditions of their appointment.

13. The principal Act is amended by inserting the following new section immediately after section 20—

Insertion of a new section 20A in No. 12 of 2008.

Removal of Secretary.

20A. (1) The Commission may remove the Secretary from office in accordance with the terms and conditions of service for—

- (a) inability to perform the functions of the office arising out of physical or mental incapacity as certified by a qualified medical doctor;
- (b) gross misconduct or misbehaviour;
- (c) incompetence or neglect of duty;
- (d) violation of the Constitution; or
- (e) any other ground that would justify removal from office under the terms and conditions of service.

(2) Before the secretary is removed under subsection (1), the secretary shall be given—

- (a) sufficient notice of the allegations made against him or her; and
- (b) an opportunity to present his or her defence against the allegations.

14. Section 22 of the principal Act is amended in subsection (1) (c) by inserting the words “or under any of the circumstances specified in Chapter Six of the Constitution” immediately after the words “section 23”.

Amendment of section 22 of No. 12 of 2008.

15. Section 23 of the principal Act is amended—

Amendment of section 23 of No. 12 of 2008

- (a) in subsection (2) by deleting the word “Minister” appearing immediately after the words “through the” and substituting therefor the words “Cabinet Secretary”;
- (b) in subsection (3) by deleting the word “Minister” appearing immediately after the words “made to the” and substituting therefor the words “Cabinet Secretary”;
- (c) in subsection (4) by deleting the word “Minister” wherever it appears and substituting therefor the words “Cabinet Secretary”.

16. The principal Act is amended by repealing section 24 and replacing it with the following new section—

Repeal and replacement of section 24 of No. 12 of 2008.

Filling of vacancy.

24. (1) Where a vacancy occurs in the membership of the Commission under section 22 or 23, the appointment procedure provided for under the First Schedule shall apply.

(2) A person appointed under subsection (1) to fill a vacancy shall serve for a term of six years but shall not be eligible for re-appointment.

17. Section 25 of the principal Act is amended—Amendment of
section 25 of No. 12
of 2008.

- (a) in subsection (1) by inserting the words “national unity, patriotism” immediately after the word “harmony”;
- (b) in subsection 2—
- (i) by inserting the words “and conflict management” immediately after the word “resolution” appearing in paragraph (g);
- (ii) by deleting the words “the Human Rights Commission” appearing in paragraph (h);
- (iii) by inserting the words “and policies” immediately after the word “acts” appearing in paragraph (m);
- (iv) by deleting paragraph (p) and substituting therefor the following new paragraph—
- “(p) generate, maintain and disseminate data on the status of social cohesion in Kenya”;
- (v) by deleting paragraph (s) and substituting therefor the following new paragraph—
- “(s) undertake ethnic audits of establishments and to issue notices for remedial measures to establishments found to be violating any provision of this Act”;

18. Section 26 of the principal Act is amended in subsection (2) by deleting paragraph (b).Amendment of
section 26 of No. 12
of 2008.**19. The principal Act is amended by inserting the following new section immediately after section 26—**Insertion of a new
section 26A in No.
12 of 2008Committees of the
Commission.

26A. (1) The Commission may, from time to time, establish committees for the better carrying out of its functions.

(2) The Commission may engage the services of such experts in respect of any of its functions in which the experts have special competence.

- 20.** Section 32 of the principal Act is amended by—
- Amendment of
section 32 of No. 12
of 2008
- (a) deleting the word “Minister” and appearing immediately after the word “The” and substituting therefor the words “Cabinet Secretary”;
- (b) deleting the word “Treasury” appearing immediately after the words “with the” and substituting therefor the words “Salaries and Remuneration Commission”.
- 21.** Section 38 of the principal Act is amended—
- Amendment of
section 38 of No. 12
of 2008.
- (a) in subsection (3) by deleting the word “Minister” wherever it appears and substituting therefor the words “Cabinet Secretary”;
- (b) in subsection (4) by deleting the word “Minister” appearing immediately after the words “approval of the” and substituting therefor the words “Cabinet Secretary”.
- 22.** Section 39 of the principal Act is amended—
- Amendment of
section 39 of No. 12
of 2008.
- (a) in subsection (2) by deleting the word “Minister” appearing immediately after the word “The” and substituting therefor the words “Cabinet Secretary”;
- (b) in subsection (3) by deleting the words “Controller and Auditor General” appearing immediately after the words “submit to the” and substituting therefor the words “Auditor-General”;
- (c) by deleting subsection (4) and substituting therefor the following new subsection—
- “(4) The accounts of the Commission shall be audited and reported upon by the Auditor General in accordance with the provisions of the Public Audit Act, 2015.”
- 23.** Section 41 of the principal Act is amended—
- Amendment of
section 41 of
No. 12 of 2008.
- (a) in subsection (2) by deleting the word “Minister” appearing immediately after the words “report to the” and substituting therefor the words “Cabinet Secretary”;

- (b) in subsection (4) by deleting the word “Minister” appearing immediately after the word “The” and substituting therefor the words “Cabinet Secretary”.

24. Section 42 of the principal Act is amended by deleting the word “Minister” appearing immediately after the words “through the” and substituting therefor the words “Cabinet Secretary”.

Amendment of section 42 of No. 12 of 2008.

25. The principal Act is amended in section 43 by deleting subsection (3) and substituting therefor the following new subsection—

Amendment of section 43 of No. 12 of 2008.

“(3) A complaint may be made by or against an individual, a body of persons whether corporate or unincorporated, the Government or a specific body or officer of the government.

26. The principal Act is amended by repealing section 44 and replacing it with the following new section—

Repeal and replacement of section 44 of No. 12 of 2008.

Lodging a complaint.

44. (1) A person may lodge a complaint with the Commission either orally or in writing.

(2) Where a complaint under subsection (1) is made orally, the Commission shall cause the complaint to be recorded in writing.

(3) A complaint made under subsection (1) shall be in such form and contain such particulars as the Commission may prescribe.

(4) The Commission shall require a complaint or information provided by a complainant to be verified by the complainant by oath or statutory declaration.

(5) Upon receipt of a complaint under subsection (1), the Commission shall notify the respondent in writing on the nature of the complaint and the date on which the matter shall be considered by the Commission within twenty-one days.

27. Section 45 of the principal Act is amended by subsection (1) by deleting paragraph (d).

Amendment of section 45 of No. 12 of 2008.

28. Section 46 of the principal Act is amended by deleting subsection (3) and substituting therefor the following new subsection—

Amendment of section 46 of No. 12 of 2008.

“(3) The Commission shall hear and determine the application within sixty days after conciliation has failed.”

29. Section 48 of the principal Act is amended —

Amendment of section 48 of No. 12 of 2008.

(a) in subsection (1) by deleting the word “Minister” wherever it appears and substituting therefor the words “Cabinet Secretary”;

(b) in subsection (2) by deleting the word “Minister” appearing immediately after the words “The” and substituting therefor the words “Cabinet Secretary”.

30. The principal Act is amended by inserting the following new section immediately after section 48—

Insertion of a new section 48A in No. 12 of 2008.

Alternative
Dispute
Resolution
mechanisms.

48A. The Commission may, in managing conflicts and resolving disputes, and where it deems appropriate —

(a) establish *ad hoc* or standing peace committees comprising representatives of affected ethnic groups and experts where necessary;

(b) establish mediation committees; and

(c) involve traditional justice mechanisms relevant to a particular community, local administration and relevant national and county government agencies.

31. The principal Act is amended by repealing section 49 and replacing it with the following new section—

Repeal and replacement of section 49 of No. 12 of 2008

Commission to refer
complaints for
conciliation.

49. (1) Where the Commission considers it reasonably possible that a complaint may be conciliated successfully, the Commission may appoint a conciliator to facilitate an early voluntary settlement of the complaint between the parties.

(2) The conciliation process shall be voluntary and shall be conducted in accordance with the rules made by the Commission under this Act.

(3) The conciliation proceedings shall be private and confidential, and shall be conducted on a without prejudice basis.

(4) No person may refer to anything said at the proceedings during any subsequent proceedings, unless parties involved in the dispute agree in writing.

(5) Any person who acted as conciliator may not be called as a witness during subsequent proceedings before the Commission or in any court to give evidence relating to conciliation proceedings.

(6) The Commission shall make rules and guidelines for the better carrying into effect the provisions of this section.

32. The principal Act is amended by repealing section 52 and replacing it with the following new section—

Repeal and
replacement of
section 52 of No. 12
of 2008.

Conciliation
agreements.

52. Upon satisfactory determination of conciliation, the conciliator shall cause to be signed by both parties a settlement agreement which shall be final and binding on the parties and enforceable as if it were a decision of the Commission.

33. The principal Act is amended by repealing section 53 and replacing it with the following new section—

Repeal and
replacement of
section 53 of No. 12
of 2008.

Where
conciliation fails.

53. (1) Where conciliation fails or the parties or either of them objects to any conciliation efforts, the Commission shall set down the complaint for determination and issue a date on which the matter shall be heard.

(2) The Commission may establish a hearing panel consisting of three members of the Commission to hear and determine complaints admitted for hearing.

(3) The panels established under subsection (2) shall exercise all the powers and shall perform all the duties and functions of the Commission in relation to any matter before the panel.

(4) Members of a panel established under subsection (2) may, if necessary, consult with other members of the Commission for purposes of ensuring consistency of decisions of the Commission.

(5) The Commission shall, having heard the matter that is the subject of the complaint, make a report, issue any decision as it deems appropriate and give directions in connection with the complaint within sixty days.

(6) The Commission shall communicate its decision to the parties concerned within seven days from the date the decision is made.

34. Section 54 of the principal Act is amended in subsection (2) by deleting the word “Minister” appearing immediately after the words “by the” in paragraph (a) and substituting therefor the words “Cabinet Secretary”.

Amendment of
section 54 of No.
12 of 2008.

35. The principal Act is amended by repealing section 55.

Repeal of section
55 of No. 12 of
2008.

36. Section 58 of the principal Act is amended—Amendment
of section 58
of No. 12 of
2008.

- (a) in subsection (1) by deleting the words “a Magistrates Court” appearing immediately after the words “apply to” and substituting therefor the words “the High Court”;
- (b) in subsection (2) by deleting the words “a Magistrates Court” appearing immediately after the words “apply to” and substituting therefor the words “the High Court”;
- (c) in subsection (3) by deleting the words “in more limited terms” and substituting therefor the words “in other terms that the Court may deem appropriate”;
- (d) by inserting the following new subsection immediately after subsection (3)—

“(4) A person who contravenes the provisions of this section shall be liable, upon conviction, to a fine not exceeding two hundred thousand shillings, or to imprisonment for a term not exceeding six months, or both.”

37. Section 59 of the principal Act is amended in subsection (2) by deleting the word “Minister” appearing immediately after the words “consent of the” and substituting therefor the words “Cabinet Secretary”.

Amendment
of section 59
of No. 12 of
2008.**38.** Section 60 of the principal Act is amended—Amendment
of section 60
of No. 12 of
2008.

- (a) in subsection (1)—
 - (i) by deleting the expression “section 59(1) or (2)” appearing immediately after the words “investigated under” and substituting therefor the expression “section 59”;
 - (ii) by deleting paragraph (c);
- (b) in subsection (2) by deleting the expression “section 59(3)” appearing immediately after the words “investigated under” and substituting therefor the expression “section 59”.

39. The principal Act is amended by repealing section 61.

Repeal of section
61 of No. 12 of
2008.

40. The principal Act is amended by repealing section 62 and replacing it with the following new section—

Repeal and replacement of section 62 of No. 12 of 2008.

Offences for which no penalty is prescribed.

62. A person who contravenes any provision of this Act for which no penalty is specifically provided for shall be liable, upon conviction, to a fine not exceeding two hundred thousand shillings, or to imprisonment for a term not exceeding six months, or to both.

41. The principal Act is amended by repealing section 65.

Repeal of section 65 of No. 12 of 2008.

42. The principal Act is amended by inserting the following new section immediately after section 67—

Insertion of a new section 67A in No. 12 of 2008.

Code of conduct.

67A. The Commissioners and the Commission staff shall keep and maintain professional and ethical standards and shall, at all times, adhere to and comply with the Commission's Code of Conduct.

43. Section 69 of the principal Act is amended by deleting the word "Minister" appearing immediately after the word "The" and substituting therefor the words "Cabinet Secretary".

Amendment of section 69 of No. 12 of 2008.

44. The Third Schedule to the Act is amended in paragraph 3 by deleting the word "seven" appearing after the words "shall be" and substituting therefor the word "five".

Amendment of the Third Schedule.

MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to amend the National Cohesion and Integration Act, 2008 to align it with the Constitution which was promulgated in 2010 after the enactment of this Act. The Bill also proposes amendments with a view to making the Commission effective while carrying out its functions. The Bill in particular proposes the following amendments —

Clause 1 of the Bill provides for the short title.

Clause 2 of the Bill proposes to align the definitions in the Act with the Constitution. It also introduces new definitions in line with the functions of the Commission.

Clause 3 of the Bill recognises both express and implied acts of discrimination. It also seeks to amend the Act to apply gender neutral terms.

Clause 4 and 5 of the Bill seek to amend the Act to apply gender neutral terms.

Clause 6 of the Bill proposes to obligate all public establishments to afford equal opportunities for members of all ethnic groups for training and advancement and seeks to amend the Act to apply gender neutral terms.

Clause 7 seeks to give clarity on discrimination in membership organizations. It also provides for penal provisions for non-compliance with the provisions of the section.

Clause 8 seeks to give the proper reference of the existing law and the provisions of the Constitution.

Clause 9 seeks to provide for a penalty provision for the offence of discrimination in distribution of public resources.

Clause 10 of the Bill seeks to include use of publications in print, electronic or social media that threatens or causes abuse as constituting hate speech.

Clause 11 of the Bill seeks to amend the Act to apply gender neutral terms.

Clause 12 of the Bill prescribes the qualifications for a person to be appointed as the Secretary to the Commission. It also provides for the term of office of the Secretary.

Clause 13 of the Bill introduces a new provision that guides the removal from office of the Secretary.

Clause 14 of the Bill includes the removal in accordance with the requirements of Chapter Six of the Constitution as a situation whereby a vacancy occurs in the position of a commissioner.

Clause 15 of the Bill replaces the term “Minister” with the term “Cabinet Secretary” in line with the Constitution.

Clause 16 of the Bill proposes that where a vacancy occurs in the office of a commissioner, the procedure as provided for in the Act shall apply. Further, the new commissioner shall serve for a non-renewable period of six years as opposed to the provisions of the Act which provides that they serve for the remaining term of the Commissioner who has left office.

Clause 18 of the Bill seeks to amend section 26(2)(b) of the Act on the powers of the Commission to publish names of persons or institutions involved in ethnic discrimination or ethnic hate.

Clause 19 of the Bill introduces a new section which allows the Commission to form committees to better discharge its functions. It also allows the Commission to engage experts where necessary.

Clause 20 of the Bill aligns the provisions in the Act with those in the Constitution by providing that the Cabinet Secretary shall consult with the Salaries and Remuneration Commission in determining the remuneration of the Commissioners.

Clause 21 of the Bill replaces the term “Minister” with the term “Cabinet Secretary” in line with the Constitution.

Clause 22 of the Bill replaces the word “Minister” with the words “Cabinet Secretary” and the words “Controller and Auditor General” with the words “Auditor –General” in line with the Constitution.

Clause 23 of the Bill replaces the term “Minister” with the term “Cabinet Secretary” in line with the Constitution.

Clause 24 of the Bill replaces the term “Minister” with the term “Cabinet Secretary” in line with the Constitution.

Clause 25 of the Bill includes the government as one of the institutions that a person may complain against. It also provides that a complaint against an employee as regards their duties will be deemed a complaint against the employer.

Clause 26 of the Bill enhances the process of lodging a complaint by requiring that the complaint be in such form and contain such particulars as the Commission may prescribe.

Clause 27 of the Bill allows the Commission to deal with any violation of the law despite the period it occurred.

Clause 28 provides for time lines within which the commission may hear and determine complaints after conciliation has failed.

Clause 29 of the Bill replaces the term “Minister” with the term “Cabinet Secretary” in line with the Constitution.

Clause 30 of the Bill recognises alternative methods of dispute resolution and the establishment of committees in resolving disputes. This will give the Commission flexibility in resolving disputes depending on the circumstances.

Clause 31 of the Bill elaborates on the conciliation process and provides a clear framework within which it is to be employed. It also provides that the proceedings of the conciliation process may not be used elsewhere unless the parties consent.

Clause 32 of the Bill seeks to amend section 52 of the Act to proscribe for binding and enforceable conciliation agreements.

Clause 33 of the Bill provides for the procedure in the event that conciliation fails or a party objects to it.

Clause 34 of the Bill replaces the term “Minister” with the term “Cabinet Secretary” in line with the Constitution.

Clause 35 of the Bill deletes section 55 of the Act, the provision is unnecessary.

Clause 36 of the Bill provides that the Commission should apply to the High Court as opposed to the Magistrates Court for various orders.

Clause 37 of the Bill replaces the term “Minister” with the term “Cabinet Secretary” in line with the Constitution.

Clause 38 of the Bill seeks to amend section 60 of the Act for clarity.

Clause 39 of the Bill seeks to repeal section 61 of the Act.

Clause 40 of the Bill introduces a general penalty clause for any offence for which a specific penalty has not been provided.

Clause 41 of the Bill repeals section 65 of the Act allows flexibility in the extent of criminal or civil liability arising from contravention of the Act.

Clause 42 of the Bill introduces the Code of Conduct and requires the Commissioners and staff to adhere to it.

Clause 43 of the Bill replaces the term “Minister” with the term “Cabinet Secretary” in line with the Constitution.

Clause 44 seeks to amend the Third schedule on quorum of the Commission.

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

The Bill does not limit any fundamental rights and freedoms as provided under the Constitution.

Statement on whether the Bill is a money Bill within the meaning of Article 114 of the Constitution

The enactment of this Bill shall not occasion additional expenditure of public funds.

Dated the 10th November, 2021.

MAINA KAMANDA,
*Chairperson National Cohesion
and Integration Committee.*

Section 2 of the Act which it is proposed to amend—

Interpretation

In this Act, unless the context otherwise requires—

“**Commission**” means the National Cohesion and Integration Commission established by section 15;

“**commissioner**” means a member of the Commission appointed under section 17;

“**development issues**” includes issues relating to development in socio-cultural, political and economic sectors;

“**discrimination**” means discrimination as defined under sections 3 and 4 of this Act;

“**employment**” means a situation where an employee does his work wholly or partly in Kenya, (for a fee or not), for the employer; or where the employee does work for the employer outside Kenya and the employee is ordinarily resident in Kenya, either at the time he applies for the job or at any time during the course of the employment and includes a situation where the employer is working through a representative, assign or where he has sub-contracted the employment;

“**establishment**” means a place of employment including aboard a ship or aeroplane registered in Kenya but operating internationally;

“**ethnic group**” means a group of person defined by reference to colour, race, religion, or ethnic or national origins, and references to a person’s ethnic group refers to any ethnic group to which the person belongs;

“**ethnic relations**” include racial, religious, tribal and cultural interactions between various communities, and the words “ethnic” and “ethnicity” shall be construed accordingly;

“**ethnic grounds**” means any of the following grounds, namely colour, race, religion, nationality or ethnic or national origins;

“**financial year**” means a period of twelve months ending on the thirtieth June in each year;

“**Human Rights Commission**” means the Kenya National Commission on Human Rights established under the Kenya National Commission on Human Rights Act, 2002 (No. 9 of 2002) (now repealed); and

“**Minister**” means the Minister for the time being responsible for matters relating to justice and human rights;

“**Secretary**” means the secretary to the Commission appointed under section 20.

Section 3 of the Act which it is proposed to amend—

Ethnic discrimination

(1) For purposes of this Act, a person discriminates against another person if—

- (a) on ethnic grounds he treats that other person less favourably than he treats or would treat other persons; or
- (b) he applies to that other person a requirement or condition which he applies or would apply equally to persons not of the same ethnic group as that other person but—
 - (i) which is such that the proportion of persons of the same ethnic group as that other person who can comply with it is considerably smaller than the proportion of persons not of that ethnic group who can comply with it; and
 - (ii) which he cannot show to be justifiable irrespective of the colour, race, nationality or ethnic or national origins of the person to whom it applied; and
 - (iii) which is to the detriment of that other person because he cannot comply with it.

(2) A person also discriminates against another person if, in any circumstances relevant for the purposes of any provision referred to in subsection (1)(b), he applies to that other person a provision, criterion or practice which he applies or would apply equally to persons not of the same race or ethnic or national origins as that other, but—

- (a) which put or would put persons of the same race or ethnic or national origins as that other person at a particular disadvantage when compared with other persons;
- (b) which puts that other person at that disadvantage; and
- (c) which he cannot show to be a proportionate means of achieving a legitimate aim.

(3) For the purposes of this Act, segregating a person from other persons on ethnic grounds is treating him less favourably than they are treated.

(4) Subsection (1) does not apply to treatment of a person by reason of any allegation made by him if it is proven in a court of law that the allegation was false and not made in good faith.

Section 4 of the Act which it is proposed to amend—

4. Discrimination by way of victimization

A person discriminates against another person by way of victimization in any circumstances relevant for the purposes of this Act, if he does any act that is injurious to the well-being and esteem of the person by treating the person victimized less favourably than, in those circumstances, he treats or would treat other persons, and does so by reason that the person victimized has—

- (a) brought proceedings against the discriminator or any other person under this Act;
- (b) otherwise done anything under or by reference to this Act in relation to the discriminator or any other person;
- (c) given evidence or information in connection with proceedings brought by any person against the discriminator or any other person under this Act; or
- (d) alleged that the discriminator or any other person has committed an act which (whether or not the allegation so states) would amount to a contravention of this Act, or by reason that the discriminator knows that the person victimized intends to do any of those things, or suspects that the person victimized has done, or intends to do, any of them.

Section 6 of the Act which it is proposed to amend—

Harassment on the basis of ethnicity

(1) A person subjects another to harassment on the basis of ethnicity for the purposes of any provision referred to in section 4(d) where, on ethnic grounds, he engages in unwanted conduct which has the purpose or effect of—

- (a) violating that other person's dignity; or
- (b) creating an intimidating, hostile, degrading, humiliating or offensive environment for him.

(2) Conduct shall be regarded as having the effect specified in subsection (1)(a) or (b) only if, having regard to all the circumstances, including in particular the perception of that other person, it should reasonably be considered as having that effect.

Section 7 of the Act which it is proposed to amend—

7. Discrimination in employment

(1) All public establishments shall seek to represent the diversity of the people of Kenya in the employment of staff.

(2) No public establishment shall have more than one third of its staff from the same ethnic community.

(3) It is unlawful for a person, his representatives or assigns, in relation to employment by him at an establishment, to discriminate against another—

- (a) in the arrangements he makes for the purpose of determining who should be offered that employment;
- (b) in the terms he offers him that employment; or
- (c) by refusing or deliberately omitting to offer him that employment.

(4) It is unlawful for a person, in the case of a person employed by him at an establishment to discriminate against that employee—

- (a) in the terms of employment in which he affords him;
- (b) in the way he affords him access to opportunities for promotion, transfer or training or to any other benefits, facilities or services, or by refusing or deliberately omitting to afford him access to them; or
- (c) by dismissing him, or subjecting him to any other detriment.

(5) It is unlawful for an employer, his representatives or assigns, in relation to employment by him at an establishment, to subject to harassment a person whom he employs or who has applied to him for employment.

(6) Except in relation to discrimination falling within section 4 or discrimination on ethnic grounds, subsections (4) and (5) do not apply to employment for the purposes of a private enterprise.

(7) In this section reference to the dismissal of a person from employment includes, where the discrimination is on ethnic grounds, reference to—

(a) the termination of that person's employment by the expiration of any period (including a period expiring by reference to an event or circumstances), not being a termination immediately after which the employment is renewed on the same terms; and

(b) the termination of that person's employment by an act of his (including the giving of notice) in circumstances such that he is entitled to terminate it without notice by reason of the conduct of the employer.

Section 9 of the Act which it is proposed to amend—

Discrimination in membership of organizations

(1) It is unlawful for an organization to which this section applies, in case of a person who is not a member of the organization, to discriminate against him—

(a) in the terms in which it is prepared to admit him to membership; or

(b) by refusing or deliberately omitting to accept his application for membership.

(2) It is unlawful for an organization to which this section applies, in the case of a person who is a member of the organization, to discriminate against him—

(a) in the way it affords him access to any benefits, facilities or services, or by refusing or deliberately omitting to afford him access to them; or

(b) by depriving him of membership, or varying the terms on which he is a member; or

(c) by subjecting him to any other detriment.

(3) It is unlawful for an organization to which this section applies, in relation to a person's membership or application for membership of that organization, to subject him to harassment.

(4) Subsection (1) shall not apply to cases where membership is limited to a given religious persuasion or profession.

Section 10 of the Act which it is proposed to amend

10. Discrimination by other agencies

(1) Unless as provided under subsection (2), it is unlawful for a qualifying body, licensing authority, planning authority, public authority, employment agency, educational establishment or body offering training,

to discriminate against prospective and current clients in the provision of services.

(2) Subsection (1) shall not apply—

- (a) where it is proven that the alleged discriminatory act is a necessary requirement in the nature of business transaction and there is no alternative way of realizing this goal;
- (b) in the case of public authorities—
 - (i) in relation to any judicial act (whether done by a court of law, tribunal or other person); or
 - (ii) any act done on the instructions, or on behalf, of a person acting in a judicial capacity; or
 - (iii) an action undertaken by the Minister for Immigration, under the Immigration Act (Cap. 172), in relation to cases relating to immigration and nationality.

Section 11 of the principal Act which it is proposed to amend—

11. Discrimination in access to and distribution of public resources

(1) Public resources shall be distributed equitably as far as is practicable geographically to take into account Kenya's diversity population and poverty index.

(2) It shall be unlawful for any public officer, while in charge of public resources and without justification, to distribute resources in an ethnically inequitable manner.

(3) Resources shall be deemed to have been distributed in an ethnically inequitable manner when—

- (a) the officer fails to use the criteria established under this Act or any other law in allocating resources by regions;
- (b) specific regions consistently receive more resources than other regions and there is no clear justification for it; or
- (c) more resources are allocated to regions that require remedial resources than to areas that require start up resources.

Section 12 of the principal Act which it is proposed to amend—

12. Discrimination in property ownership, management and disposal

(1) It is unlawful for a person, in relation to public property, or property wholly meant for the public in Kenya or which he has power to manage, lease, let or dispose, to discriminate against another person—

- (a) in the terms in which he offers, lets, manages or disposes to him the property;
- (b) by unjustifiably refusing his proposal for sale or engagement in the person's business, where the same conditions do not apply to others who are not of the same ethnic group as the person;
- (c) in his treatment of him in relation to any list of person in need of property of that description.

(2) It is unlawful for a person, in relation to public property, or property wholly meant for the public managed by him to discriminate against a person occupying premises—

- (a) in the way he affords him access to any benefits of facilities, or by refusing or deliberately omitting to afford him access to them; or
- (b) by evicting him or subjecting him to any other detriment.

(3) It is unlawful for a person, in relation to such premises as are referred to subsection (1) or (2), to subject a person who applies for, or as the case may be, occupies such premises, to harassment.

Section 13 of the principal Act which it is proposed to amend—

13. Hate speech

(1) A person who—

- (a) uses threatening, abusive or insulting words or behaviour, or displays any written material;
- (b) publishes or distributes written material;
- (c) presents or directs the performance the public performance of a play;
- (d) distributes, shows or plays, a recording of visual images; or
- (e) provides, produces or directs a programme, which is threatening, abusive or insulting or involves the use of threatening, abusive or insulting words or behavior commits an offence if such person intends thereby to stir up ethnic hatred, or having regard to all the circumstances, ethnic hatred is likely to be stirred up.

(2) Any person who commits an offence under this section shall be liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding three years or to both.

(3) In this section, “**ethnic hatred**” means hatred against a group of persons defined by reference to colour, race, nationality (including citizenship) or ethnic or national origins.

Section 14 of the principal Act which it is proposed to amend—

14. Exceptions to Part

(1) Nothing contained in this Part shall render unlawful any act done—

- (a) in affording persons of a particular ethnic group access to facilities or services to meet the special needs of persons of that group in regard to their education, training or welfare, or any ancillary benefits;
- (b) by a person on grounds other than race or ethnic or national origins for the benefit of persons who are not Kenyan in affording them access to facilities for education or training or any ancillary benefits, where it appears to him that the persons in question do not intend to remain in Kenya after the period of education and training there.

(2) Nothing in this Part shall render unlawful any act done in relation to particular work by any person in or in connection with—

- (a) affording only persons of a particular racial group access to facilities for training which would help to equip them for that work; or
- (b) encouraging only persons of a particular ethnic group to take advantage of opportunities for doing that work, where it reasonably appears to that person that any time within the twelve months immediately preceding the doing of the act—
 - (i) there were no persons of that group among those doing that work in Kenya; or
 - (ii) the proportion of persons of that group among those doing that work in Kenya was small in comparison with the proportion of persons of that group among the population of Kenya.

(4) Where in relation to particular work it reasonably appears to any person that although the condition for the operation of subsection (2) is not met for the whole of Kenya it is met for an area within Kenya, nothing in this Part shall render unlawful any act done by that person in or in connection with—

(a) affording persons who are of the ethnic group in question, and who appear likely to take up that work in that area, access to facilities for training which could help to fit them for that work; or

(b) encouraging persons of that group to take advantage of opportunities in the area for doing that work.

(5) Subsections (2) and (3) shall not apply to any discrimination which is rendered unlawful by Part II.

Section 20 of the principal Act which it is proposed to amend—

20. Secretary to the Commission

(1) There shall be a Secretary to the Commission who shall be appointed by the Commission upon such terms and conditions as the Commission may determine.

(2) Subject to the general control of the Commission, the Secretary shall—

- (a) be responsible for the administration and day-to-day management of the affairs of the Commission and of the control of the other staff of the Commission; and
- (b) perform such other functions as may be assigned by the Commission.

Section 22 of the principal Act which it is proposed to amend—

Vacancy

(1) The office of the Chairperson or a commissioner shall become vacant if the holder—

- (a) dies;
- (b) resigns from office by writing under his hand addressed to the President;
- (c) is removed from office in accordance with the provisions of section 23;
- (d) is convicted of an offence and sentenced to imprisonment for a term of three months or more without the option of a fine;
- (e) is unable to discharge the functions of his office by reason of physical or mental infirmity;
- (f) is absent from three consecutive meetings of the Commission without good cause; or
- (g) is declared bankrupt.

(2) The President shall notify every vacancy in the *Gazette* within seven days of the occurrence of the vacancy.

Section 23 of the principal Act which it is proposed to amend—

23. Removal from office

(1) The Chairperson or a commissioner may be removed from office by the President—

- (a) for misbehaviour or misconduct; or
- (b) if convicted of an offence involving moral turpitude, but shall not be removed except in accordance with this section.

(2) A person who wishes to have a commissioner removed from office may apply for removal of the commissioner to the President through the Minister, and such application shall be copied to the Chairperson.

(3) Where the subject of an application for removal from office under subsection (2) is the Chairperson, the application shall be made to the Minister and copied to the vice-chairperson.

(4) The Minister shall, within seven days of receipt of an application under subsection (2), forward the application to the relevant Parliamentary Committee, and the Committee shall inquire into the matter and report on the facts to the President through the Minister, giving its recommendations as to whether or not the Chairperson or the commissioner ought to be removed from office, and the Minister shall communicate the recommendations of the Committee to the President.

(5) Where the question of removing the Chairperson or a commissioner has been referred to the relevant Parliamentary Committee under subsection (4), the President may suspend the Chairperson or the commissioner concerned, and the suspension may at any time be lifted by the President and shall, in any case, cease to have effect if the Parliamentary Committee recommends that the Chair person or the commissioner, as the case may be, should be removed.

(6) A commissioner shall be removed from office if two thirds of the members of the National Assembly vote to remove the member, on the recommendation of the Parliamentary Committee.

Section 24 of the principal Act which it is proposed to amend—

24. Filling of vacancy

(1) Where a vacancy occurs in the Commission as a result of death, disability, resignation or removal of a commissioner, the President shall appoint a replacement from among the short listed persons considered by the National Assembly in accordance with the First Schedule.

(2) A person who is appointed in place of a commissioner whose office has become vacant under this section shall hold office for the remainder of the term of office of that commissioner.

Section 25 of the principal Act which it is proposed to amend—

25. Objects and functions of the Commission

(1) The object and purpose for which the Commission is established is to facilitate and promote equality of opportunity, good relations, harmony and peaceful co-existence between persons of the different ethnic and racial communities of Kenya, and to advise the Government on all aspects thereof.

(2) Without prejudice to the generality of subsection (1), the Commission shall—

- (a) promote the elimination of all forms of discrimination on the basis of ethnicity or race;
- (b) discourage persons, institutions, political parties and associations from advocating or promoting discrimination or discriminatory practices on the ground of ethnicity or race;
- (c) promote tolerance, understanding and acceptance of diversity in all aspects of national life and encourage full participation by all ethnic communities in the social, economic, cultural and political life of other communities;
- (d) plan, supervise, co-ordinate and promote educational and training programmes to create public awareness, support and advancement of peace and harmony among ethnic communities and racial groups;
- (e) promote respect for religious, cultural, linguistic and other forms of diversity in a plural society;
- (f) promote equal access and enjoyment by persons of all ethnic communities and racial groups to public or other services and facilities provided by the Government;
- (g) promote arbitration, conciliation, mediation and similar forms of dispute resolution mechanisms in order to secure and enhance ethnic and racial harmony and peace;
- (h) investigate complaints of ethnic or racial discrimination and make recommendations to the Attorney-General, the Human Rights Commission or any other relevant authority on the remedial measures to be taken where such complaints are valid;

- (i) investigate on its own accord or on request from any institution, office, or person any issue affecting ethnic and racial relations;
- (j) identify and analyze factors inhibiting the attainment of harmonious relations between ethnic communities, particularly barriers to the participation of any ethnic community in social, economic, commercial, financial, cultural and political endeavours, and recommend to the Government and any other relevant public or private body how these factors should be overcome;
- (k) determine strategic priorities in all the socio-economic political and development policies of the Government impacting on ethnic relations and advise on their implementation;
- (l) recommend to the Government criteria for deciding whether any public office or officer has committed acts of discrimination on the ground of ethnicity or race;
- (m) monitor and review all legislation and all administrative acts relating to or having implications for ethnic or race relations and equal opportunities and, from time to time, prepare and submit to the Government proposals for revision of such legislation and administrative acts;
- (n) initiate, lobby for and advocate for policy, legal or administrative reforms on issues affecting ethnic relations;
- (o) monitor and make recommendations to the Government and other relevant public and private sector bodies on factors inhibiting the development of harmonious relations between ethnic groups and on barriers to the participation of all ethnic groups in the social, economic, commercial, financial, cultural and political life of the people;
- (p) undertake research and studies and make recommendations to the Government on any issue relating to ethnic affairs including whether ethnic relations are improving;
- (q) make recommendations on penalties to be imposed on any person for any breach of the provisions of the Constitution or of any law dealing with ethnicity;
- (r) monitor and report to the National Assembly the status and success of implementation of its recommendations;
- (s) issue notices directing persons or institutions involved in actions or conduct amounting to violations of human rights on the basis

of ethnicity or race to stop such actions or conduct within a given period; and

- (t) do all other acts and things as may be necessary to facilitate the efficient discharge of its functions.

Section 26 of the principal Act which it is proposed to amend—

26. Powers of the Commission

(1) The Commission shall have all the powers necessary or expedient for the proper performance of its functions under this Act.

(2) In the discharge of its functions under this Act, the Commission—

- (a) shall not be subject to the direction or control of any other person or authority;
- (b) shall publish the names of persons or institutions whose words or conduct may undermine or have undermined or contributed towards undermining good ethnic relations, or who are involved in ethnic discrimination or the propagation of ethnic hate;
- (c) may enter into association with such other bodies or organizations within or outside Kenya as it may consider desirable or appropriate and in furtherance of the purpose for which the Commission is established;
- (d) control, supervise and administer the assets of the Commission in such manner and for such purposes as best promote the purpose for which the Commission is established;
- (e) receive any grants, gifts, donations or endowments and make legitimate disbursements therefrom; and
- (f) open a banking account or banking accounts for the funds of the Commission.

Section 32 of the principal Act which it is proposed to amend—

Remuneration of commissioners

The Minister shall, in consultation with the Treasury, determine the remuneration and allowances of the members of the Commission.

Section 38 of the principal Act which it is proposed to amend—

Annual estimates

(1) At least three months before the commencement of each financial year, the Commission shall cause to be prepared estimates of the revenue and expenditure of the Commission for that year.

(2) The annual estimates shall make provision for all the estimated expenditure of the Commission for the financial year concerned and in particular, shall provide for—

- (a) the payment of the salaries, allowances and other charges in respect of the staff of the Commission;
- (b) the payment of pensions, gratuities and other charges and in respect of benefits which are payable out of the funds of the Commission;
- (c) the maintenance of the buildings and grounds of the Commission;
- (d) the funding of training, research and development activities of the Commission;
- (e) the proper maintenance, repair and replacement of any installation and of the equipment and other movable property of the Commission;
- (f) the creation of such funds to meet future or contingent liabilities in respect of benefits, insurance or replacement of buildings or installations or equipment and in respect of such other matters as the Commission may think fit.

(3) The annual estimates shall be approved by the Commission before the commencement of the financial year to which they relate, and shall be submitted to the Minister for approval and after the Minister has given approval, the Commission shall not increase any sum provided in the estimates without the written consent of the Minister.

(4) No expenditure shall be incurred for the purposes of the Commission except in accordance with the annual estimates approved under subsection (3), or in pursuance of an authorization of the Commission given with the prior approval of the Minister.

Section 39 of the principal Act which it is proposed to amend—

Accounts and audit

(1) The Commission shall cause to be kept all proper books and records of account of the income, expenditure, assets and liabilities of the Commission.

(2) The Minister for the time being responsible for finance may prescribe the form of any book required to be kept under subsection (1) and unless a form has been prescribed, a form suitable for the purpose shall be used.

(3) Within a period of three months after the end of each financial year, the Commission shall submit to the Controller and Auditor-General the accounts of the Commission in respect of that year together with—

- (a) a statement of the income and expenditure of the Commission during that financial year; and
- (b) a statement of the assets and liabilities of the Commission on the last day of that financial year.

(4) The accounts of the Commission shall be audited and reported upon by the Controller and Auditor-General in accordance with the provisions of the Public Audit Act, 2003 (No. 12 of 2003).

Section 41 of the principal Act which it is proposed to amend—

Annual reports

(1) The Commission shall cause an annual report to be prepared for each financial year.

(2) The Commission shall submit the annual report to the Minister within three months after the end of the year to which it relates.

(3) The annual report shall contain, in respect of the year to which it relates—

- (a) the financial statements of the Commission;
- (b) a description of the activities of the Commission;
- (c) such other statistical information as the Commission considers appropriate relating to complaints to the Commission, investigations by the Commission and reports by the Commission on the results of investigations;
- (d) any other information relating to its functions that the Commission considers necessary.

(4) The Minister shall, within thirty days after receiving the annual report, transmit it to the National Assembly.

(5) The Commission shall cause the annual report to be published in the *Gazette* and in such other manner as the Commission may determine.

Section 42 of the principal Act which it is proposed to amend—

42. Special reports

The Commission may, at any time, submit a special report to the National Assembly through the Minister with respect to any aspect of the functions of the Commission which the Commission considers should, in

the national interest, be brought to the attention of the National Assembly because it affects a wide cross section of the populace and there could be disastrous consequences if a report thereon is not brought to the attention of the National Assembly.

Section 43 of the principal Act which it is proposed to amend—

Complaints

(1) Any person who claims that another person has contravened a provision of Part III of this Act in relation to that person may complain to the Commission.

(2) Two or more persons may complain jointly.

(3) A complaint may be made by or against an individual as well as a body of persons whether corporate or unincorporated.

(4) In order to complain to the Commission under this section, it is not necessary for the alleged contravention to relate exclusively to the complainant.

Section 44 of the principal Act which it is proposed to amend—

Lodging a complaint

(1) A person shall complain to the Commission by lodging a written complaint to the Commission by hand, facsimile or other electronic transmission or post, setting out the alleged contravention.

(2) The Commission shall notify the respondent in writing of the complaint as soon as practicable after receiving it.

Section 45 of the principal Act which it is proposed to amend—

Commission may decline to entertain some complaints

(1) If the Commission considers that a complaint—

(a) is frivolous, vexatious, misconceived or lacking in substance;

(b) involves subject matter that would be more appropriately dealt with by a court;

(c) involves subject matter that has been adequately dealt with by a court; or

(d) relates to an alleged contravention of the Act that took place more than twelve months before the complaint was lodged,

the Commission may decline to entertain the complaint by notifying the complainant and the respondent in writing within sixty days after the day the complaint was lodged.

(2) Before declining to entertain a complaint, the Commission may, by written notice, invite any person to—

- (a) attend before the Commission, or a member or member of staff of the Commission, for the purpose of discussing the subject matter of the complaint; or
- (b) produce any documents specified in the notice.

Section 46 of the principal Act which it is proposed to amend—

46. Application to strike out complaint

(1) A respondent may apply in writing to the Commission to have a complaint or any part of it struck out on the grounds that it is frivolous, vexatious, misconceived or lacking in substance.

(2) An application under subsection (1) may be made at any time—

- (a) before the respondent has been given a notice to attend under section 51(a) or has otherwise been notified by the Commission or the Secretary of a date for conciliation; or
- (b) after the conciliation has been completed but before the complaint is set down for hearing.

(3) The Commission shall begin to hear the application within fourteen days after reconciliation has failed and shall determine it as expeditiously as possible.

Section 48 of the principal Act which it is proposed to amend—

Minister may refer a matter to Commission

(1) If the Minister considers that any matter raises an issue of important public policy, the Minister may refer the matter to the Commission, whether or not a complaint has been lodged or the Commission has considered the complaint or the complaint is in the process of being conciliated.

(2) The Minister shall not be a party to a proceeding in a matter referred to the Commission under subsection (1) unless joined by the Commission.

Section 49 of the principal Act which it is proposed to amend—

49. Commission to refer complaints for conciliation

(1) If the Commission considers it reasonably possible that a complaint may be conciliated successfully, the Commission shall refer the complaint to the Secretary.

(2) Subsection (1) does not apply to a complaint—

(a) that the Commission has declined to entertain under section 45 or dismissed under section 47;

(b) that the Minister has referred to the Commission under section 48;
or

(c) if an application to the Commission by a respondent under section 46 is pending.

Section 50 of the principal Act which it is proposed to amend—

50. Where conciliation is inappropriate

(1) If the Commission does not consider it reasonably possible that a complaint may be conciliated successfully it shall notify the complainant and the respondent in writing.

(2) Within sixty days after receiving the Commission's notice under subsection (1), the complainant, by written notice, may require the Commission to set the complaint down for hearing and the Commission shall comply with such notice.

(3) If the complainant does not notify the Commission under subsection (2), the Commission may dismiss the complaint and the complainant may take no further action under this Act in relation to the subject matter of the complaint.

Section 51 of the principal Act which it is proposed to amend—

51. Conciliation by the Commission

The Commission shall make all reasonable endeavours to conciliate a complaint referred to it under section 49 and may, by written notice, require any person to—

(a) attend before the Commission for the purpose of discussing the subject matter of the complaint; or

(b) produce any documents specified in the notice.

Section 52 of the principal Act which it is proposed to amend—

52. Conciliation agreements

If, following conciliation, the parties to the complaint reach agreement with respect to the subject matter of the complaint, the Secretary shall record the agreement and the parties shall be bound to comply with such agreement as if it were an order of the Commission.

Section 53 of the principal Act which it is proposed to amend—

53. Where Commission fails to conciliate

(1) If the Commission does not consider it reasonably possible that a complaint may be conciliated successfully, or has attempted unsuccessfully to conciliate the complaint, it shall notify the complainant and the respondent in writing.

(2) Within sixty days after receiving a notice under subsection (1), the complainant, by written notice, may require the Commission to set down the complaint for hearing.

(3) If the complainant does not notify the Commission under subsection (2), the Commission may dismiss the complaint and the complainant may take no further action under this Act in relation to the subject matter of the complaint.

Section 54 of the principal Act which it is proposed to amend—

54. Special references

(1) The Commission shall, in exercising its powers, pay particular attention to and expedite the disposal of special references.

(2) A special reference is—

(a) a matter that has been referred to the Commission by the Minister under section 48; or

(b) a complaint the resolution of which may have significant social, economic or financial effects on the community or a section of the community; or

(c) a complaint the subject matter of which involves issues of a particular complexity and the resolution of which may establish important precedents in the interpretation or application of this Act.

(3) The question of whether or not a matter is a special reference shall be determined by the chairperson.

Section 55 of the principal Act which it is proposed to amend—

55. Parties to a proceeding

(1) The complainant and the respondent are parties to a proceeding in respect of a complaint referred to in section 43.

(2) The Minister shall not be a party to a proceeding in respect of a complaint referred to the Commission unless it has been joined as a party to the proceeding by the Commission.

Section 58 of the principal Act which it is proposed to amend—

Enforcement of compliance notices

(1) The Commission may apply to a Magistrates Court for an order requiring a person to furnish any information required by a compliance notice if—

- (a) the person fails to furnish the information to the Commission in accordance with the notice; or
- (b) the Commission has reasonable cause to believe that the person does not intend to furnish the information.

(2) If the Commission considers that a person has not, within three months of the date on which a compliance notice was served on that person, complied with any requirement of the notice for that person to comply with a duty imposed by an order under section 57, the Commission may apply to a Magistrates Court for an order requiring the person to comply with the requirement of the notice.

(3) If the court is satisfied that the application is well-founded, it may grant the order in the terms applied for or in more limited terms.

Section 59 of the principal Act which it is proposed to amend—

59. Investigations by the Commission

(1) If the Commission becomes aware of circumstances where a contravention of Part III of this Act may have occurred (other than an alleged contravention that is the subject of proceedings before the Commission), the Commission may initiate investigation.

(2) If, in the course of performing its functions under section 25, the Commission becomes aware of circumstances where a contravention of Part III of this Act may have occurred, the Commission may, with the consent of the Minister, investigate the matter.

(3) If, in the course of dealing with a complaint or investigating a matter under subsection (1) or (2), the Commission becomes aware of circumstances where a contravention of Part III of this Act may have occurred (other than the contravention alleged in the complaint or the contravention being investigated), the Commission may investigate those circumstances.

Section 60 of the Act which it is proposed to amend—

60. Matters that may be investigated

(1) A matter may be investigated under section 59(1) or (2) only if—

- (a) it is of such a serious nature that it warrants the investigation;
 - (b) it concerns a possible contravention in relation to a class or group of persons; and
 - (c) the circumstances are such that the lodging of a complaint by one person only would not be appropriate.
- (2) Any matter may be investigated under section 59(3).

Section 61 of the Act which it is proposed to amend—

61. Conduct of investigations

(1) The Commission shall conduct an investigation under this Part in the same manner, as nearly as practicable, as if it were a complaint.

(2) If the Commission, after investigation, is satisfied that a person has contravened a provision of Part III, the Commission shall make all reasonable endeavours to conciliate the matter.

Section 62 of the principal Act which it is proposed to amend—

62. Offence of ethnic or racial contempt

(1) Any person who utters words intended to incite feelings of contempt, hatred, hostility, violence or discrimination against any person, group or community on the basis of ethnicity or race, commits an offence and shall be liable on conviction to a fine not exceeding one million shillings, or to imprisonment for a term not exceeding five years, or both.

(2) A newspaper, radio station or media enterprise that publishes the utterances referred to in subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding one million shillings.

Section 65 of the principal Act which it is proposed to amend—

Contravention of Act not to create civil or criminal liability

A contravention of this Act does not create any civil or criminal liability except of the extent expressly provided by this Act.

Section 69 of the principal Act which it is proposed to amend—

Regulations

69. The Minister may, in consultation with the Commission, make regulations—

- (a) generally for the better carrying into effect any of the provisions of this Act;
- (b) for or with respect to—

- (i) prescribing matters in connection with the exercise of powers by the Commission or the Secretary;
 - (ii) prescribing forms for the purposes of this Act;
 - (iii) prescribing penalties, not exceeding a fine of fifty thousand shillings or imprisonment for a term of six months, for breaches of the regulations; or
- (c) generally prescribing any matters or things required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.

Third Schedule of the principal Act which it is proposed to amend—

THIRD SCHEDULE [Section 30.]

PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE COMMISSION

1. Meetings generally

(1) The Commission shall meet not less than four times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.

(2) Meetings of the Commission shall be held on such date and at such time as the Commission shall decide or, in the absence of such decision on a date and at a time determined by the Chairperson in consultation with the Secretary.

2. Special meetings

The Chairperson shall, on the application of at least three of the members, convene a special meeting of the Commission.

3. Quorum

The quorum for the conduct of business at a meeting of the Commission shall be seven members.

4. Presiding of meetings

The Chairperson shall preside at every meeting of the Commission and in the absence of the Chairperson, the members present shall elect one of their number who shall with respect to that meeting and the business transacted thereat, have all the powers of the Chairperson.

5. Decisions

Unless a unanimous decision is reached, a decision on any matter before the Commission shall be by a majority of votes of the members

present and in the case of an equality of votes, the Chairperson or the person presiding shall have a casting vote.

6. Invalidity of proceedings

Subject to paragraph 5, no proceedings of the Commission shall be invalid by reason only of a vacancy among the members thereof.

7. Common seal

(1) The common seal of the Commission shall be authenticated by the signature of the Chairperson and the Secretary and any document required by law to be made under seal, and all decisions of the Commission may be authenticated by the Chairperson and the Secretary.

(2) In the absence of either the Chairperson or the Secretary in any particular case or for any particular matter, the Commission shall nominate one member to authenticate the seal of the Commission on behalf of either the Chairperson or the Secretary.

(3) All instruments made by and decisions of the Commission not required to be under seal may be authenticated by the chairperson and the secretary.

8. Minutes

The Commission shall cause minutes of all proceedings of its meetings to be entered in books kept for that purpose.