

REPUBLIC OF KENYA



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THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT – SECOND SESSION – 2023

DIRECTORATE OF DEPARTMENTAL COMMITTEES

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

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ADDENDUM TO THE REPORT TABLED ON 3RD OCTOBER, 2023 ON THE
CONSIDERATION OF THE CONFLICT OF INTEREST BILL, 2023 (*NATIONAL ASSEMBLY
BILL NO. 12 OF 2023*)

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 29 NOV 2023	
DAY: WEDNESDAY	
TABLED BY:	CHAIRPERSON, JLAC HON GEORGE MURUGARA, MP
CLERK-AT THE TABLE:	FINLAYS MURIUKI

CLERK'S CHAMBERS

DIRECTORATE OF DEPARTMENTAL COMMITTEES

PARLIAMENT BUILDINGS

NAIROBI



NOVEMBER 2023

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LIST OF ABBREVIATIONS AND ACRONYMS

AG	-	Office of the Attorney-General
EACC	-	Ethics and Anti-Corruption Commission
KLRC	-	Kenya Law Reform Commission
KMPDU	-	Kenya Medical Practitioners Pharmacists and Dentists' Union
LSK	-	Law Society of Kenya
MPs	-	Members of Parliament
ODPP	-	Office of the Director of Public Prosecutions
POEA	-	Public Officer Ethics Act, 2003

ANNEXURES

Annexure 1: Adoption Schedule

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CHAIRPERSON'S FOREWORD

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

The Bill was read for the first time in the House on Tuesday 6th 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 Committee placed an advertisement in the print media on Monday 12th June, 2023 inviting the public to submit memoranda through written statements on the Bill. The Committee received nineteen (19) memoranda which it considered in the preparation of its report that it adopted on Tuesday 3rd October 2023. Thereafter, the Committee received additional submissions from the AG, EACC, KMPDU and the Hon. (Dr.) Otiende Amollo, SC, EBS, MP which it considered in the preparation of this report.

Arising from receipt of additional memoranda after the tabling of the Committee Report on the Bill and contributions made by Members during the Second Reading of the Bill on Thursday, 16th November, 2023, the Committee resolved to undertake further deliberations on the Bill. Consequently, the Committee held two sittings on Tuesday 21st November 2023, two sittings on Thursday 23rd November 2023 and Monday 27th November 2023 and a final sitting on Tuesday 28th November 2023 where it considered each clause of the Bill and adopted the addendum to the Report.

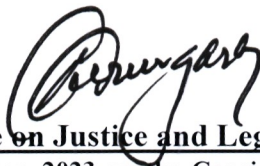
The Committee is grateful to the Offices of the Speaker and Clerk of the National Assembly for the logistical and technical support accorded to it during its sittings on consideration of the Bill. Finally, I wish to express my appreciation to the Honourable Members of the Committee and the Committee Secretariat who made valuable contribution towards the preparation and production of this report.

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 an Addendum to the Report Tabled on 3rd October, 2023 on the Consideration of the Conflict of Interest Bill (*National Assembly Bill No. 12 of 2023*). The two Reports are to be read together and in the event of any conflict in the recommendations, the contents and recommendations of the Addendum Report shall prevail.

Hon. Murugara George Gitonga, MP

Chairperson, Departmental Committee on Justice and Legal Affairs

Addendum to the Report tabled on 3rd October, 2023 on the Consideration of the Conflict of Interest Bill
(*National Assembly Bill No. 12 of 2023*)



CHAPTER ONE

1 ADDITIONAL PUBLIC PARTICIPATION AND STAKEHOLDER ENGAGEMENT ON THE BILL

1.1 Legal Framework on Public Participation

1. 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.”

2. 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.”

1.2 Memoranda Received on the Bill

3. The Committee received additional submissions from the KMPDU, the AG, the EACC and the Hon. (Dr.) Otiende Amollo, SC, EBS, MP. The memoranda are annexed to this report as **Annexure 3**.
4. The KMPDU submitted memoranda in support of the Bill with some reservations while the AG and the EACC submitted additional memoranda vide letter of Ref No. *EACC.7/10/6 (178)* dated 15th August 2023 with comments on the submissions by the other stakeholders.
5. The Hon. (Dr.) Otiende Amollo, SC, EBS, MP vide two letters dated 21st November, 2023 submitted memoranda opposing the Bill in its entirety on the ground that it is fundamentally unconstitutional, unnecessary and unimplementable.

Clause 1

6. The **Hon (Dr.) Otiende Amollo, SC, EBS, MP** submitted that while the title of the Bill refers to ‘Conflict of Interest’ and Clause 3 provides that it is intended to address only

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‘management of conflict of interest’, the Bill goes far beyond the conflict of interest to address inter alia: forfeiture of assets under Clause 6; declaration of income under Clause 31; divestiture under Clause 38; trusts under Clause 40 and recusal orders under Clause 45. He noted that the Bill vests the function of recovering undeclared or unexplained assets on the EACC without correlating this to the jurisdiction of the Asset Recovery Agency.

Committee Observation

7. The Committee did not agree with the proposal. In its view, the Bill largely deals with conflict of interest and connected matters.

Clause 2

8. The **Hon. (Dr.) Otiende Amollo, SC, EBS, MP** stated that Clause 2 defines a ‘public officer’ in terms directly contradictory to the definition in Article 260 of the Constitution and extends the definition to volunteers, consultants or persons who render ‘government services’ which term is also undefined.

Committee Observation

9. The Committee was of the view that the definition of “public officer” in the Bill is correctly extended to any other individual engaged in the public service whether temporary or permanent. The Committee noted that any individual with access to official information ought to be required to avoid conflict between their private interest and the public interest.

Clause 3

10. The **KMPDU** submitted that a new objective be included after sub-clause (e) to 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. KMPDU noted that all Kenyans deserve access to the highest standard of healthcare and some professionals are in limited numbers thus provisions must be made for such professionals to continue offering services to Kenyans without imposing the hurdle of conflict of interest.

Committee Observation

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11. The Committee noted that the Bill outlines the steps to be followed by a public officer whose private interests are likely to conflict with his or her official public duties. A public officer is required to take all reasonable steps to avoid a conflict of interest and always seek to resolve any conflict that arises in favour of the public. The provisions of the Bill would therefore guide public officers, even where limited in number and expertise, to act reasonably.

Clauses 5 and 6

12. The **Hon. (Dr.) Otiende Amollo, SC, EBS, MP** noted that the Bill refers to conflict of interest yet it covers areas generally of ethics and integrity. He noted that in seeking to appropriate ethical conduct of public officers for registration only by the EACC under Clause 5, the Bill seeks to oust the Constitutional jurisdiction of the Courts, Parliament and other Constitutional Commissions including the Judicial Service Commission, the Public Service Commission, the Parliamentary Service Commission and the Commission on Administrative Justice among others.

Committee Observations

13. The Committee agreed on the need to maintain the existing model of declarations to entities that directly supervise the conduct and ethics of the various categories of public officers as the EACC lacks sufficient capacity to process the declarations of all public officers and the supervision of certain bodies would affect their independence. However, the Committee did not agree with the proposal that the title of the Bill is unsuitable. The Committee noted that the Bill largely deals with conflict of interest and connected matters.

14. Clause 7

15. The **KMPDU** proposed that aspects of conflict of interest fall under the purview of professional misconduct which is regulated by professional societies/associations/unions such as the Kenya Medical Pharmacists and Dentists' Council. It was of the opinion that these aspects should first be adjudicated by the relevant professional bodies before being forwarded to the courts or EACC for prosecution.

Committee Observation

16. The Committee noted that the Constitution, the Ethics and Anti-Corruption Act, 2011 and the Leadership and Integrity Act, 2019 mandate the EACC and public bodies to ensure that public officers observe Chapter Six of the Constitution on Leadership and Integrity. It would therefore be imprudent to subordinate the role of the Commission and public bodies to professional associations.
17. The Committee was of the additional view that paragraph (a) of the Clause grants the EACC additional powers not contemplated under Article 252 of the Constitution.

Clauses 8 and 9

18. The **KMPDU** noted that the clauses lack significant information on ethics and codes of conduct as provided for in the POEA. Thus, it recommended the inclusion of clauses to provide for the expectations of professionalism, public service duty, adherence and implementation of professional codes of conduct. It was the view of the KMPDU that there is need to maintain professional codes of ethics as part of the new law. It added that comparison is to be borrowed from Part II and III of the POEA.

Committee Observation

19. The Committee noted that the proposals are already provided for under the Leadership and Integrity Act, 2012. It was of the further view that Clause 8 should be recast for purposes of clarity.

Clause 11

20. The **Hon. (Dr.) Otiende Amollo, SC, EBS, MP** submitted that in accordance with Article 1 of the Constitution and the Doctrine of Separation of Powers, Parliament enacted the Powers and Privileges Act, 2017 to regulate the question of conflict of interest in Parliament. Moreover, it was his submission that Parliament also has Standing Orders to guide this question in Parliament.
21. He added that Clause 11 of the Bill unconstitutionally yokes this jurisdiction from the Powers and Privileges Committee and Parliament and vests it on the EACC, a body outside Parliament. Furthermore, he stated that the same effect falls on the Judiciary, from the JSC to the EACC per Clause 5 and that this is an unconstitutional usurpation of powers.

22. The **Hon. (Dr.) Otiende Amollo, SC, EBS, MP** added that the Bill is discriminatory to the extent that while it is supposed to apply to all public officers, it unfairly and discriminatorily focuses on Members of Parliament and County Assemblies under Clause 11. Additionally, he noted that nowhere does the Bill mention the Presidency, Cabinet Secretaries, Principal Secretaries, the Attorney General, judges, ambassadors or any other public officers thus amounting to an unfair targeting of MPs.
23. Moreover, he added that Clause 11(2) would also impinge on Article 94(5) of the Constitution. It was his view that the implication of the clause is that no MP can participate in any legislation or policy discussion on issues of MPs salaries and benefits, pensions, loans and grants or matters NG-CDF/NGAAF. This would create a gap on who would debate and pass any law in respect of these matters.

Committee Observation

24. The Committee agreed with the Hon. (Dr.) Otiende Amollo, MP.

Clause 12

25. The **Hon. (Dr.) Otiende Amollo, SC, EBS, MP** submitted that the clause seeks to criminalize any conduct, even in good faith, and not influenced by corruption or inducement, as long as it is not provided for in law or policy. For instance, acts of favouring the old, the ill or Persons with Disabilities during voting; prioritizing women and children in food distribution; and like conduct not expressly provided for in any law or policy, would then amount to ‘special consideration’ as an offence. He noted that this is not only morally wrong but also contradicts constitutional requirements of criminal law requiring *mens rea* (wrongful intention) and *actus reus* (wrongful act itself).

Committee Observation

26. The Committee agreed with the Hon. (Dr.) Otiende Amollo, MP.

Clause 16

27. The **Hon. (Dr.) Otiende Amollo, SC, EBS, MP** was of the view that the clause goes beyond the ‘public officer’ to bring in ‘members of family’ and ‘relatives’ in the African context of usage. He noted that insofar as the clause creates an offence for actions/omission not done by

the public officer (no *mens rea* and *actus reus*), or seeks to punish relatives who are not public officers is unconstitutional.

Committee Observation

28. The Committee agreed with the Hon. (Dr.) Otiende Amollo, MP.

Clause 19

29. The **AG** and the **EACC** agreed with the proposal by TSC to amend the clause to include the place of proxies and such spouse(s) and children to avoid abuse by public officers and to protect the sanctity of the Public Procurement and Disposal Act, 2015.

Committee Observation

30. The Committee was of the view that the provision unfairly limits the affairs of public officers by restricting them from contracting across the entire public service. The Committee noted that public officers ought to only be restricted from contracting with the public body in which they are employed.

Clause 23

31. The **KMPDU** recommended deletion of Clause 23(2) and (3) on the requirement to register all other forms of gainful employment with the reporting authority and EACC and prohibition of the pursuit of alternative forms of gainful employment. KMPDU was of the view that 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 conflict with usual work schedules.
32. Moreover, the **KMPDU** stated that public officer economic empowerment should not be limited by statute as it increases the risk of desertion and fleeing of public service in pursuit of private profits which may be more rewarding than public service.
33. On restricted gainful employment under Clause 23, the **Hon. (Dr.) Otiende Amollo, SC, EBS, MP** stated that the clause is improper as Article 77 of the Constitution only restricts full-time State Officers from engaging in any other gainful employment yet the Bill purports to extend this restriction to all public officers including part-time officers, volunteers and

consultants. It was his view that this is unconscionable and impractical because there are commissions and positions in which persons serve on secondment from their employers.

Committee Observation

34. The Committee observed that the Clause is clear that only employment that is incompatible with the official duties of a public officer is prohibited. Further, a public officer who takes up any outside employment that is not incompatible with his or her official duties is obligated to declare the taking up of such additional employment for purposes of transparency.

Clause 27, 28 and 29

35. The **KMPDU** proposed deletion of clauses 27, 28 and 29 citing that public officer economic empowerment should not be limited by statute after termination of employment engagement. It was of the view that recusal can be cited on a case-by-case basis.

Committee Observation

36. The Committee did not agree with the proposal for the deletion of the Clauses as they are integral to ensuring public officers do not take advantage of their official duties and information related to such duties for their private benefit during their employment and for a specific period after the termination of their employment. The Committee further observed that Clause 29 of the Bill refers to a “former public officer” whose conduct may not be fully governed by the provisions of the Bill.

Clause 30

37. The **AG** and **EACC** agreed with the proposal by TSC to shift the burden of signing the declaration for recusal from the Commission to the reporting entity as the custodian of the minutes of the transaction in question.

Committee Observation

38. The Committee observed that requiring every public officer to individually file recusal declarations with both their reporting entity and the EACC would be a tedious exercise. The Committee agreed with the proposal that the recusal declarations be filed with an officer’s reporting authority which would then transmit the declaration to the EACC.

Clause 31

39. The **KMPDU** proposed amendment of the clause to provide for at least a one hundred per cent (100%) increase or decrease in the value of an income, asset or liability to account for material change. It also submitted that the current threshold of twenty-five per cent (25%) is too low and borders on extreme monitoring and scrutiny of economic empowerment and growth of persons.
40. The **Hon. (Dr.) Otiende Amollo, SC, EBS, MP** was of the view that Clause 31 requires a public officer to declare the income, assets and liabilities of himself, his spouse(s) and dependent children which constitutes a breach of Article 31 on the right to privacy. Furthermore, he noted that the clause further infringes on Article 35 by making public, private information not necessary for the exercise or protection of any right as provided for in Article 35(1)(b) of the Constitution.

Committee Observation

41. The Committee did not agree with the proposal by KMPDU and noted that the requirement to provide details of a 25% increase or decrease in the value of an asset is a critical tool for detecting any material and unexplained change in assets at an early stage.
42. The Committee partly agreed with the **Hon. (Dr.) Otiende Amollo, SC, EBS, MP** on the nature of the declaration of income and assets to be made. The Committee noted that the Bill should only concern itself with the affairs of a public officer and his or her dependent children.
43. Additionally, the Committee noted the need to maintain the existing model of declarations to entities that directly supervise the conduct and ethics of the various categories of public officers as the EACC lacks sufficient capacity to process the declarations of all public officers.

Clause 32

44. The **Hon. (Dr.) Otiende Amollo, SC, EBS, MP** noted that Clause 32(4) is unconstitutional to the extent that it proposes to impose a duty to fill and submit a declaration relating to financial affairs within thirty days after ceasing to be a public officer. He added that the clause amounts to bondage and servitude contrary to Article 30 of the Constitution. It was his

submission that once one ceases to be a public officer, the law cannot impose an obligation on you that properly belongs to public officers.

Committee Observation

45. The Committee observed that the requirement under Clause 32 only requires an officer who has exited the public service to make a final declaration as at the date of their exit for the completeness of the record on the final financial position of the officer.

Clauses 33 and 34

46. The **AG** and the **EACC** agreed with the proposal by Transparency International to amend Clause 33(1) to have the reporting entity analyse, process and verify declarations alongside the EACC.
47. The **KMPDU** proposed amendment of Clause 34 to provide for public access to a digital data repository on declarations at a minimal access fee. Further, it stated that in the digital age, it is important to include a publicly accessible digital repository for all state and public officers for assessment and checks on wealth declarations.
48. The **Hon. (Dr.) Otiende Amollo, SC, EBS, MP** noted that the artificial restriction to access the information proposed under Clause 34(1) and (9) infringes on Article 35(1)(a) of the Constitution as the information will now be held by the State and any citizen is entitled to it without let or hindrance.

Committee Observation

49. The Committee noted the need to maintain the existing model of declarations to entities that directly supervise the conduct and ethics of the various categories of public officers as the EACC lacks sufficient capacity to process the declarations of all public officers. Consequently, the Committee was of the view that the request for access to declarations be made to the various reporting entities. Additionally, the Committee agreed with the Hon. Dr. Otiende Amollo on the need to include due process safeguards on the access to declarations under the provision.

Clause 35

50. The **KMPDU** submitted that retention of information repository time be increased to between fifteen to twenty years so as to allow for adequate tracking and likely stashing of wealth that may have been ill-gotten and reclaimed.

Committee Observation

51. The Committee did not agree with the submission. In its view, the five-year period is sufficient.

Clause 36

52. The **Hon. (Dr.) Otiende Amollo, SC, EBS, MP** submitted that Clause 36(2) imposes an obligation on any reporting authority that fails to submit any information to pay a fine of three million shillings to EACC. He noted that the imposition of fines is a judicial function which cannot be exercised by the EACC. He added that the fine is an amount to be borne by the taxpayer.

Committee Observation

53. The Committee agreed with the submission by the **Hon. (Dr.) Otiende Amollo, SC, EBS, MP**.

Clause 38

54. The **KMPDU** noted that a public officer should register conflict of interest in the register unless where gross conflict of interest is likely then an individual can be forced to consider divestiture.
55. On divestiture, the **Hon. (Dr.) Otiende Amollo, SC, EBS, MP** noted that the clause refers to all public officers and makes no exception of elected officials including the President, Governors, Members of Parliament, Speakers and Members of County Assemblies. It was his view that a blanket clause imposing an obligation to sell or entrust your professional and business engagements even where they are not in conflict with your role as an elected member is onerous, unfair and discriminatory.

Committee Observation

56. The Committee agreed with the submission by the **Hon. (Dr.) Otiende Amollo, SC, EBS, MP**.

Clauses 41, 42, 43, 44, 45 and 46

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57. The **KMPDU** proposed the deletion of these clauses as they are not necessary to keep record of divestment options of persons since wealth is already declared. It was its view that where conflict of interest is proven, trackability of assets is to be undertaken to allow for government confiscation and sanctions. Moreover, it added that such matters are self-explanatory and where conflict of interest is apparent, a party should minimize their conflict of interest.

Committee Observation

58. The Committee agreed with the KMPDU noting that the Bill has already defined what constitutes a conflict of interest and provided adequate penal sanctions for any public official who contravenes the provisions on declaration of interests and recusal, where appropriate. Forcefully requiring an individual who strictly observes the preceding clauses of the Bill to divest him or herself of assets would therefore be unfair.

Clause 50

59. The **AG** and the **EACC** were of the view that Clause 50 speaks to suspension pending investigation while Section 62(1) of the Anti-Corruption and Economic Crimes Act, 2003 addresses the situation after the officer has been charged and that the two are in harmony and do not contradict each other.
60. The **Hon. (Dr.) Otiende Amollo, SC, EBs, MP** submitted that Clause 50 allows suspension of any state or public officer pending investigations. It was his opinion that since the clause does not specify who is to do the suspension, it follows that it would be the EACC under Clause 5. He noted that the EACC having been mandated to undertake the investigations and tasked with the authority to suspend, makes it a judge in its own case. Further, he stated that the clause does not exempt State Officers whose tenure is protected or elected officials including the President, Governors and MPs whose mode of removal is prescribed by the Constitution. Thus, he noted that the entire clause is unconstitutional.

Committee Observation

61. The Committee observed that the Clause will be subject to the Constitution and any other written law, including the Fair Administrative Actions Act, 2015. The Committee further noted that the Constitution adequately provides for the protection of fundamental rights and

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freedoms including the right to fair administrative action. The Clause relates to suspension for investigation purposes only and therefore an affected officer ought to be on full pay.

Clause 52

62. The **KMPDU** proposed the amendment of the clause to provide for a fine of up to two million shillings and up to three years imprisonment on the basis that an offence of conflict of interest should not be criminalized to levels of grand corruption instead legal frameworks on grand corruption should guide on heftier corruption crimes.
63. The **Hon. (Dr.) Otiende Amollo, SC, EBS, MP** submitted that the Bill, which can only fall under Article 80 of the Constitution, is contemplated to prescribe additional penalties in addition to the prescriptions in Article 75. It was his submission that Article 75 only prescribes disciplinary measures, including removal from office and being barred from holding office, additional prescriptions can only be disciplinary and not criminal in nature. Therefore, Clause 52 which prescribes the criminal penalty of four million shillings or ten years for conflict of interest is unconstitutional.

Committee Observation

64. The Committee did not agree with the proposals. In its view, the action by a public officer to take advantage of a private interest for his or her own benefit at the expense of the public interest constitutes a criminal offence whose penalty should mirror the penalty provided for economic crimes.

Clause 59

65. The **KMPDU** submitted that the Committee considers marrying the POEA with the Bill. It stated that the Bill be renamed to the Public Officer Ethics and Conflict of Interest Act, 2023.

Committee Observation

66. The Committee did not agree with the proposal. In its view, the Bill largely deals with conflict of interest and connected matters.

General Observation

67. **Hon. Dr. Otiende Amollo, SC, EBS, MP** vide letter dated 21st November proposed the deletion of all clauses of the Bill.

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Committee Observation

68. The Committee noted that procedurally, a Member who proposes the deletion of all the provisions contained in a Bill ought to move the House to either reject the Second Reading of the Bill; the Report of the Consideration of the Bill by the Committee of the Whole House; or the Third Reading of the Bill.

CHAPTER TWO

2 COMMITTEE RECOMMENDATIONS

The Committee, having considered the Conflict of Interest Bill (*National Assembly No. 12 of 2023*) and additional submissions from members of the public and stakeholders, **recommends** that the House passes the Bill with amendments as proposed in the Schedule of Amendments in Chapter 3 of this Addendum Report.

SIGNED.....



DATE.....

28/11/2023

HON. GEORGE GITONGA MURUGARA, MP

CHAIRPERSON

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

CHAPTER THREE

3 SCHEDULE OF AMENDMENTS

69. The Committee proposed the following amendments to the Bill:

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.

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) by deleting the definition “family”;

(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) by deleting the definition “relative”;

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

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;

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(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 Articles 73 and 75 of the Constitution.

CLAUSE 5

THAT, Clause 5 of the Bill be amended by inserting the words “reporting authorities and” immediately after the word “by”;

Rationale: To allow reporting authorities that are responsible for public officers to administer the provisions of the Bill.

CLAUSE 6

THAT, Clause 6 of the Bill be amended by—

(a) inserting the following new paragraph immediately after paragraph ((h)—

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

(b) deleting paragraph (i);

Rationale:

1. To empower the EACC with an additional function with regard to conflict of interest;
2. To delete a function already provided for under section 55 of the Anti-Corruption and Economic Crimes Act, 2003

CLAUSE 7

THAT, Clause 7 of the Bill be amended by deleting paragraph (a) and substituting therefor the following new paragraph—

“(a) conduct investigations on its own initiative or on a complaint made by a member of the public;”

Rationale: To align the powers of the Commission under the Act with the provisions of Article 252 of the Constitution.

CLAUSE 8

THAT, the Bill be amended by deleting Clause 8 and substituting therefor the following new Clause—

- Conflict of interest. of **8.** A public officer is in conflict of interest if the public officer—
- (a) exercises an official duty or function to further his or her private interests or the private interests of another person; or
 - (b) fails to declare and register a private interest that is in conflict with the public interest.

Rationale: to clarify what constitutes conflict of interest as an overt act done by a public officer to benefit of private interests.

CLAUSE 10

THAT, Clause 10 of the Bill be amended in paragraph (1) by deleting the words “or reasonably ought to know” appearing immediately after the word “knows”.

Rationale: To clarify that the state of mind applicable to the offence of “conflict of interest in decision-making” is first-hand knowledge by a public officer that a decision shall place them in a position of conflict of interest. The deletion avoids speculative victimization of public officers.

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, 2017 and the County Assemblies Powers and Privileges Act, 2017.

CLAUSE 12

THAT, Clause 12 of the Bill be amended by inserting the following new subclause immediately after subclause (2)—

“(3) Despite subsection (1), no proceedings shall lie against a public officer who grants special consideration, treatment or advantage in good faith.”

Rationale: To clarify that the giving of preferential treatment in good faith constitutes a defence to a charge under the Clause.

CLAUSE 13

THAT, Clause 13 of the Bill be amended in subclause (1) to delete the words “by the person” appearing immediately after the words “obtained”.

Rationale: For purposes of clarity. The Clause applies to misuse of official information obtained in the course of official duty by **any** person.

CLAUSE 15

THAT, Clause 15 of the Bill be amended in subclause (2) by deleting the words “to the Commission and” appearing immediately after the word “writing”.

Rationale: To require a public officer who accepts an offer of outside employment that is not incompatible with his or her official duties to only report that acceptance to his or her reporting authority.

CLAUSE 16

THAT, clause 16 of the Bill be amended—

- (a) in subclause (1) by deleting the opening statement and substituting therefor the following new opening statement—

“(1) A public Officer shall not accept or request a gift or favour from a person who—”;

- (b) in subclause (3) by deleting the expression “, a member of the public officer's family or a relative of the public officer” appearing immediately after the words “public officer”.

Rationale: To limit the application of the Clause on gifting and other benefits to a public officer.

CLAUSE 18

THAT, clause 18 of the Bill be amended—

- (a) in subclause (1) by deleting the expression “, member of the public officer's family or a relative of the public officer” appearing immediately after the words “public officer”;
- (b) in subclause (2) by deleting the expression “, member of the public officer's family or a relative of the public officer” appearing immediately after the words “public officer”;
- (c) in subclause (3) by deleting the word “person” appearing immediately after the word “A” and substituting therefor the words “public officer”

Rationale: To limit the application of the Clause on gifting and other benefits to a public officer.

CLAUSE 19

THAT, Clause 19 of the Bill be amended—

Addendum to the Report tabled on 3rd October, 2023 on the Consideration of the Conflict of Interest Bill (National Assembly Bill No. 12 of 2023)

- (a) in subclause (1) by deleting the words “with any” appearing immediately after the word “services” and substituting therefor the words “with his or her”;
- (b) in subclause (2) by deleting the words “with any” appearing immediately after the word “services” and substituting therefor the words “with his or her”;

Rationale: To only prohibit public officers from contracting with public bodies in which they are employed.

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, 2016” 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, 2016 with necessary safeguards.

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 or her office.”

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

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.

CLAUSE 30

THAT, Clause 30 of the Bill be amended—

- (a) by inserting the following new subclause immediately after subclause (1)—

“(1A) Subsection (1) shall not apply to a member of Parliament or a county assembly.”
- (b) in subclause (2) by deleting paragraph (b) and substituting therefor the following new paragraph—

“(b) a reporting entity shall, within sixty days after a day on which a recusal took place, transmit a declaration of the recusal to the Commission in the prescribed form.”

Rationale:

1. To exempt Members of Parliament and members of County assemblies from the provisions of the Clause on account of the freedom of speech and debate in legislative proceedings. The Standing Orders and the provisions of the Parliamentary Powers and Privileges Act, 2017 and the County Assemblies Powers and Privileges Act, 2017 provide adequately on the manner of declaring interests.
2. To require public officers to declarations of recusal to their reporting authority which in turn transmits them to the EACC.

CLAUSE 31

THAT, Clause 31 of the Bill be amended—

- (a) by deleting subclause (1) and substituting therefor the following new subclause—
 - (1) Every public officer shall submit to their responsible Commission a declaration of his or her income, assets and liabilities and the income, assets and liabilities of his or her dependent children.
- (b) in subclause (4) by deleting paragraph (c).

Rationale:

1. To limit the Clause to the affairs of a public officer and his or her dependent children.
2. To maintain the existing model of declarations to entities that directly supervise the conduct and ethics of the various categories of public officers as the EACC lacks sufficient capacity to process the declarations of all public officers.

NEW CLAUSE 31A and 31B

THAT, the Bill be amended by inserting the following new Clauses immediately after Clause 31—

Determination
of responsible
Commission.

31A. (1) This section determines what body is the responsible Commission for a public officer for the purposes of this Act.

(2) The committee of the National Assembly responsible for the ethics of members is the responsible Commission for—

- (a) the Cabinet;

- (b) members of the National Assembly;
 - (c) the Director of Public Prosecutions;
 - (d) the secretary to the Cabinet;
 - (e) members of the Judicial Service Commission;
 - (f) members of commissions and independent offices specified under Chapter Fifteen of the Constitution; and
 - (g) members of the Ethics and Anti-Corruption Commission and staff of the Commission holding the rank of Deputy Director and above.
- (3) The committee of the Senate responsible for the ethics of members is the responsible Commission for senators.
- (4) The committee of a county assembly responsible for the ethics of members is the responsible Commission for—
- (a) its respective county executive committee;
 - (b) members of the county assembly; and
 - (c) members and the secretary of its respective County Public Service Board.
- (5) The Public Service Commission is the responsible Commission for—
- (a) principal secretaries;
 - (b) high commissioners, ambassadors and diplomatic and consular representatives;
 - (c) public officers in respect of which it exercises appointive and disciplinary control, including advisors and personal staff; and
 - (d) public officers who are officers, employees or members of state corporations that are public bodies.
- (6) A County Public Service Board is the responsible Commission for—
- (a) public officers in respect of which it exercises appointive and disciplinary control, including advisors and personal staff; and

(b) public officers who are officers, employees or members of county corporations and entities that are public bodies.

(6) The Judicial Service Commission is the responsible Commission for judges, magistrates and the public officers in respect of which it exercises disciplinary control.

(7) The Parliamentary Service Commission is the responsible Commission for the public officers in respect of which it exercises disciplinary control.

(8) A County Assembly Service Board is the responsible Commission for the public officers in respect of which it exercises disciplinary control.

(9) The Teachers Service Commission established under the Teachers Service Commission Act (Cap. 212) is the responsible Commission for teachers registered under that Act.

(10) The Defence Council established under Article 241(5) of the Constitution is the responsible Commission for members of the armed forces, within the meaning of that Act.

No. 28 of 2012. (11) The National Intelligence Service Council established under the National Intelligence Service Act, 2012 is the responsible Commission for members of the National Intelligence Service established under that Act.

(12) The National Police Service Commission is the responsible Commission for members of the National Police Service.

No. 16 of 2006. (13) The Witness Protection Advisory Board established under the Witness Protection Act, 2006 shall be the responsible commission for the members of the Witness Protection Agency established under that Act.

(14) The responsible Commission for a public officer for which no responsible Commission is otherwise specified under this section is the commission, committee or other body prescribed by regulations.

(15) A body that is the responsible Commission for a public officer by virtue of exercising disciplinary control over that public officer remains the responsible Commission notwithstanding the delegation of any disciplinary powers with respect to that public officer.

Certain
delegations by
Public Service

31B. (1) Subject to subsection (2), the Public Service Commission may, by notice in the *Gazette* delegate to another person or body any of its powers and

Commission. functions in relation to declarations of income, assets and liabilities and enforcement of the code of conduct and with respect to specified classes of public officers over which it is the responsible Commission.

(2) The Public Service Commission may delegate powers and functions only with respect to public officers in a job group below job group “M” or its equivalent.

Rationale: To maintain the existing model of declarations to entities that directly supervise the conduct and ethics of the various categories of public officers as the EACC lacks sufficient capacity to process the declarations of all public officers.

CLAUSE 33

THAT, Clause 33 of the Bill be amended—

(a) by deleting subclause (1) and substituting therefor the following new subclause—

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

(a) whether the declaration raises possible issues of conflict of interest; and

(b) whether on the face of it, the declaration contains any discrepancy or inconsistency.

(b) in subclause (5) by inserting the word “responsible” immediately after the word “The”;

(c) in subclause (6) by deleting the word “fourteen” appearing immediately after the word “within” and substituting therefor the word “thirty”;

Rationale: To maintain the existing model of declarations to entities that directly supervise the conduct and ethics of the various categories of public officers and require clarifications to be made within thirty days.

CLAUSE 34

THAT, the Bill be amended by deleting Clause 34 and substituting therefor the following new Clause—

Access to
declarations. **34.** (1) Subject to subsection (2), the contents of a declaration or clarification under this Act shall be accessible to any person upon application to the responsible Commission in the prescribed manner if the applicant shows to the satisfaction of the responsible Commission that he or she has a legitimate interest and good cause in furtherance of the objectives of this Act, in such declaration or clarification.

Addendum to the Report tabled on 3rd October, 2023 on the Consideration of the Conflict of Interest Bill
(National Assembly Bill No. 12 of 2023)

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

(3) The responsible Commission shall, before making an affirmative decision under this section, grant the affected party an opportunity to make representations on the matter.

(4) Any person who—

(a) publishes or in any way makes public any information obtained under this section without prior permission of the responsible Commission;

(b) knowingly republishes or otherwise disseminates or discloses to another person information to which this section relates where—

(i) such information was disclosed to himself or to some other person; or

(ii) such information was obtained in contravention of this Act,

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.

Rationale:

1. To require the request for access to declarations be made to the various reporting entities.
2. To include due process safeguards on the access to declarations under the provision.

CLAUSE 35

THAT, Clause 35 of the Bill be amended by inserting the word “responsible” immediately after the word “The”.

Rationale: To maintain the existing model of declarations to entities that directly supervise the conduct and ethics of the various categories of public officers.

CLAUSE 36

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

Rationale: To remove the requirement of paying criminal fines to the EACC.

Addendum to the Report tabled on 3rd October, 2023 on the Consideration of the Conflict of Interest Bill
(National Assembly Bill No. 12 of 2023)

CLAUSE 38

THAT, the Bill be amended by deleting Clause 38.

Rationale: The Bill has already defined what constitutes a conflict of interest and provided adequate penal sanctions for any public officer who contravenes the provisions on declaration of interests, recusal, and conferring public benefits for private interests where appropriate. Forcefully requiring an individual who strictly observes the preceding clauses of the Bill to divest him or herself of assets would therefore be unfair and undermine socio-economic rights.

CLAUSE 39

THAT, the Bill be amended by deleting Clause 39.

Rationale: The Bill has already defined what constitutes a conflict of interest and provided adequate penal sanctions for any public officer who contravenes the provisions on declaration of interests, recusal, and conferring public benefits for private interests where appropriate. Forcefully requiring an individual who strictly observes the preceding clauses of the Bill to divest him or herself of assets would therefore be unfair and undermine socio-economic rights.

CLAUSE 40

THAT, the Bill be amended by deleting Clause 40.

Rationale: The Bill has already defined what constitutes a conflict of interest and provided adequate penal sanctions for any public officer who contravenes the provisions on declaration of interests, recusal, and conferring public benefits for private interests where appropriate. Forcefully requiring an individual who strictly observes the preceding clauses of the Bill to divest him or herself of assets would therefore be unfair and undermine socio-economic rights.

CLAUSE 41

THAT, the Bill be amended by deleting Clause 41.

Rationale: The Bill has already defined what constitutes a conflict of interest and provided adequate penal sanctions for any public officer who contravenes the provisions on declaration of interests, recusal, and conferring public benefits for private interests where appropriate.

**Addendum to the Report tabled on 3rd October, 2023 on the Consideration of the Conflict of Interest Bill
(National Assembly Bill No. 12 of 2023)**

Forcefully requiring an individual who strictly observes the preceding clauses of the Bill to divest him or herself of assets would therefore be unfair and undermine socio-economic rights.

CLAUSE 42

THAT, the Bill be amended by deleting Clause 42.

Rationale: The Bill has already defined what constitutes a conflict of interest and provided adequate penal sanctions for any public officer who contravenes the provisions on declaration of interests, recusal, and conferring public benefits for private interests where appropriate. Forcefully requiring an individual who strictly observes the preceding clauses of the Bill to divest him or herself of assets would therefore be unfair and undermine socio-economic rights.

CLAUSE 43

THAT, the Bill be amended by deleting Clause 43.

Rationale: The Bill has already defined what constitutes a conflict of interest and provided adequate penal sanctions for any public officer who contravenes the provisions on declaration of interests, recusal, and conferring public benefits for private interests where appropriate. Forcefully requiring an individual who strictly observes the preceding clauses of the Bill to divest him or herself of assets would therefore be unfair and undermine socio-economic rights.

CLAUSE 44

THAT, the Bill be amended by deleting Clause 44.

Rationale: The Bill has already defined what constitutes a conflict of interest and provided adequate penal sanctions for any public officer who contravenes the provisions on declaration of interests, recusal, and conferring public benefits for private interests where appropriate. Forcefully requiring an individual who strictly observes the preceding clauses of the Bill to divest him or herself of assets would therefore be unfair and undermine socio-economic rights.

CLAUSE 45

THAT, the Bill be amended by deleting Clause 45.

Rationale: The Bill has already defined what constitutes a conflict of interest and provided adequate penal sanctions for any public officer who contravenes the provisions on declaration of interests, recusal, and conferring public benefits for private interests where appropriate. Forcefully requiring an individual who strictly observes the preceding clauses of the Bill to divest him or herself of assets would therefore be unfair and undermine socio-economic rights.

CLAUSE 46

THAT, the Bill be amended by deleting Clause 46.

Rationale: The Bill has already defined what constitutes a conflict of interest and provided adequate penal sanctions for any public officer who contravenes the provisions on declaration of interests, recusal, and conferring public benefits for private interests where appropriate. Forcefully requiring an individual who strictly observes the preceding clauses of the Bill to divest him or herself of assets would therefore be unfair and undermine socio-economic rights.

CLAUSE 47

THAT, the Bill be amended by deleting Clause 47.

Rationale: The Bill has already defined what constitutes a conflict of interest and provided adequate penal sanctions for any public officer who contravenes the provisions on declaration of interests, recusal, and conferring public benefits for private interests where appropriate. Forcefully requiring an individual who strictly observes the preceding clauses of the Bill to divest him or herself of assets would therefore be unfair and undermine socio-economic rights.

CLAUSE 48

THAT, Clause 48 of the Bill be amended by inserting the following new subclause immediately after subclause (2)—

“(2A) A reporting authority and the Commission shall not conduct concurrent investigations over the same complaint.”

Rationale: To prevent reporting authorities and the EACC from conducting concurrent investigations that may be counterproductive.

CLAUSE 49

THAT, Clause 49 of the Bill be amended—

- (a) in subclause (1) by inserting the words “or a reporting authority” immediately after the word “Commission”;
- (b) by deleting subclause (2) and substituting therefor the following new subclause—

“(2) If the Commission or a reporting authority declines to commence investigations, the Commission or reporting authority shall inform the person who lodged the complaint and give reasons for the decision.”

Rationale: to extend the application of the Clause to include reporting authorities.

CLAUSE 50

THAT, Clause 50 of the Bill be amended by deleting subclause (1) and substituting therefor the following new subclause—

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

Rationale: To clarify that an officer suspended under the Clause shall be on full pay as the Clause relates to suspension for investigation purposes only.

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.

CLAUSE 53

THAT, Bill be amended by deleting Clause 53 and substituting therefor the following new Clause—

Addendum to the Report tabled on 3rd October, 2023 on the Consideration of the Conflict of Interest Bill
(National Assembly Bill No. 12 of 2023)

Confidentiality.

53. A responsible Commission, the Commission or any person acting on their 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 a responsible Commission or the Commission—

(a) essential for the purposes of carrying out of their functions and exercising the powers conferred on them under this Act; or

(b) is required by any law enforcement agency, after due process.

Rationale: To require the sharing of information with law enforcement agencies under the clause after observing due process.

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).

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.

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.

CLAUSE 59

THAT, Clause 59 of the Bill be amended by—

(a) deleting subclause (1);

(b) deleting subclause (3);

**Addendum to the Report tabled on 3rd October, 2023 on the Consideration of the Conflict of Interest Bill
(National Assembly Bill No. 12 of 2023)**

- (c) 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:

1. To maintain the existing model of declarations to entities that directly supervise the conduct and ethics of the various categories of public officers
2. 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.

FIRST SCHEDULE

THAT, the First Schedule to the Bill be amended—

- (a) by deleting paragraph 1;
- (b) in paragraph 2 by inserting the word “responsible” immediately after the words “Where the”;
- (c) in paragraph 3 by deleting the expression “his spouse or spouses and his dependent children under the age of 18 years” appearing immediately after the word “official”;
- (d) by deleting paragraph 4 and substituting therefor the following new paragraph—
 4. All public officers are required to complete and submit their declarations to their responsible Commission, unless their responsible Commission has delegated its functions to another body.
- (e) in paragraph 6 by inserting the word “responsible” immediately after the words “directly to the”;
- (f) in paragraph 12 by inserting the word “responsible” immediately after the words “issued by the”;
- (g) in paragraph 13 by deleting the words “or administrative procedures adopted by the Commission or any other competent authority” appearing immediately after the words “this Act”;
- (h) in paragraph 15 by inserting the word “responsible” immediately after the words “taken by the”.

Rationale: To maintain the existing model of declarations to entities that directly supervise the conduct and ethics of the various categories of public officers

THIRD SCHEDULE

Addendum to the Report tabled on 3rd October, 2023 on the Consideration of the Conflict of Interest Bill
(National Assembly Bill No. 12 of 2023)

THAT, the Third Schedule to the Bill be amended by—

- (a) deleting the proposed amendment to section 62(6) of the Anti-Corruption and Economic Crimes Act, 2003;
- (b) deleting the proposed amendment to section 59 of the Public Procurement and Asset Disposal Act, 2015.

Rationale:

1. To retain the current provision of section 62(6) of the Anti-Corruption and Economic Crimes Act, 2003 which exempts State Officers whose mode of removal is provided for under the Constitution from the application of the section;
2. To align section 59 of the Public Procurement and Asset Disposal Act, 2015 with the amendment proposed to section 19 of the Bill.

ANNEXURES

Annexure 1: Adoption Schedule



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

ADOPTION SCHEDULE

AGENDA: Consideration of the Report on the Conflict of Interest Bill, 2023 (National Assembly Bill No. 12 of 2023)

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	<i>Virtual</i>
11.	HON. MAINA JANE NJERI, MP	
12.	HON. GICHOHI KAGUCHIA JOHN PHILIP, MP	<i>Virtual</i>
13.	HON. MOGAKA STEPHEN M, MP	
14.	HON. ADEN DAUD, EBS, MP	
15.	HON. SIYAD AMINA UDGOON, MP	

Annexure 2: Minutes



**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 151ST SITTING OF THE JUSTICE AND LEGAL AFFAIRS
COMMITTEE HELD ON TUESDAY 28TH NOVEMBER, 2023 AT 12:00 PM AT
KOITALEL MBILI, WESTON HOTEL, NAIROBI COUNTY**

PRESENT

Members

- | | |
|--|---------------------|
| 1. Hon. Murugara George Gitonga, MP | - Chairperson |
| 2. Hon. Mutuse Eckomas Mwengi, OGW, MP | - Vice- Chairperson |
| 3. Hon. Francis Kajwang' Tom Joseph, MP | |
| 4. Hon. (Dr.) Otiende Amollo, SC, MP | |
| 5. Hon. Makali John Okwisia, MP | |
| 6. Hon. Mogaka Stephen M, MP | |
| 7. Hon. Muriu Wakili Edward, MP | |
| 8. Hon. Muchira Michael Mwangi, MP | |
| 9. Hon. Gichohi Kaguchia John Philip, MP | |
| 10. Hon. Maina Jane Njeri, MP | |
| 11. Hon. Aden Daud. EBS, MP | |

ABSENT

1. Hon. Maalim Farah, MP
2. Hon. Onyiengo Silvanus Osoro, CBS, MP
3. Hon. Junet Mohamed, CBS, MP
4. Hon. Siyad Amina Udgoon, MP

SECRETARIAT

- | | |
|---------------------------|------------------------|
| 1. Mr. Douglas Katho | - Clerk Assistant I |
| 2. Mr. Walala Ronald | - 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. Mr. Peter Mutethia | - Audio Officer III |

AGENDA

1. Prayers
2. Preliminaries
3. Confirmation of Minutes
4. **Clause by Clause consideration of the Conflict of Interest Bill, 2023 sponsored by the Majority Leader Hon. Kimani Ichung'wah, MP**
5. Any Other Business
6. Adjournment/ Date of the Next Meeting

MIN. NO/DC/JLAC/2023/753: PRELIMINARIES

The meeting was called to order at thirty minutes past twelve 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/2023/754: CONFIRMATION OF MINUTES

The agenda was deferred.

MIN.NO/DC/JLAC/2023/755: ADOPTION OF THE AGENDA

The agenda was adopted having been proposed by Hon. Mogaka Stephen M, MP and seconded by Hon. Aden Daud. EBS, MP.

MIN.NO/DC/JLAC/2023/756: CLAUSE BY CLAUSE CONSIDERATION OF THE CONFLICT OF INTEREST BILL, 2023 SPONSORED BY THE MAJORITY LEADER HON. KIMANI ICHUNG'WAH, MP

The Committee, having considered the Conflict of Interest Bill (*National Assembly No. 12 of 2023*) and additional submissions from members of the public and stakeholders, recommends that the House passes the Bill with amendments as proposed as stated : -

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.

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) by deleting the definition “family”;

- (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) by deleting the definition “relative”;

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

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 Articles 73 and 75 of the Constitution.

CLAUSE 5

THAT, Clause 5 of the Bill be amended by inserting the words “reporting authorities and” immediately after the word “by”;

Rationale: To allow reporting authorities that are responsible for public officers to administer the provisions of the Bill.

CLAUSE 6

THAT, Clause 6 of the Bill be amended by—

- (a) inserting the following new paragraph immediately after paragraph ((h)—

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

- (b) deleting paragraph (i);

Rationale:

1. To empower the EACC with an additional function with regard to conflict of interest;
2. To delete a function already provided for under section 55 of the Anti-Corruption and Economic Crimes Act, 2003

CLAUSE 7

THAT, Clause 7 of the Bill be amended by deleting paragraph (a) and substituting therefor the following new paragraph—

“(a) conduct investigations on its own initiative or on a complaint made by a member of the public;”

Rationale: To align the powers of the Commission under the Act with the provisions of Article 252 of the Constitution.

CLAUSE 8

THAT, the Bill be amended by deleting Clause 8 and substituting therefor the following new Clause—

Conflict of
interest.

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

- (a) exercises an official duty or function to further his or her private interests or the private interests of another person; or
- (b) fails to declare and register a private interest that is in conflict with the public interest.

Rationale: to clarify what constitutes conflict of interest as an overt act done by a public officer to benefit of private interests.

CLAUSE 10

THAT, Clause 10 of the Bill be amended in paragraph (1) by deleting the words “or reasonably ought to know” appearing immediately after the word “knows”.

Rationale: To clarify that the state of mind applicable to the offence of “conflict of interest in decision-making” is first-hand knowledge by a public officer that a decision shall place them in a position of conflict of interest. The deletion avoids speculative victimization of public officers.

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, 2017 and the County Assemblies Powers and Privileges Act, 2017.

CLAUSE 12

THAT, Clause 12 of the Bill be amended by inserting the following new subclause immediately after subclause (2)—

“(3) Despite subsection (1), no proceedings shall lie against a public officer who grants special consideration, treatment or advantage in good faith.”

Rationale: To clarify that the giving of preferential treatment in good faith constitutes a defence to a charge under the Clause.

CLAUSE 13

THAT, Clause 13 of the Bill be amended in subclause (1) to delete the words “by the person” appearing immediately after the words “obtained”.

Rationale: For purposes of clarity. The Clause applies to misuse of official information obtained in the course of official duty by **any** person.

CLAUSE 15

THAT, Clause 15 of the Bill be amended in subclause (2) by deleting the words “to the Commission and” appearing immediately after the word “writing”.

Rationale: To require a public officer who accepts an offer of outside employment that is not incompatible with his or her official duties to only report that acceptance to his or her reporting authority.

CLAUSE 16

THAT, clause 16 of the Bill be amended—

- (a) in subclause (1) by deleting the opening statement and substituting therefor the following new opening statement—

“(1) A public Officer shall not accept or request a gift or favour from a person who—”;

- (b) in subclause (3) by deleting the expression “, a member of the public officer's family or a relative of the public officer” appearing immediately after the words “public officer”.

Rationale: To limit the application of the Clause on gifting and other benefits to a public officer.

CLAUSE 18

THAT, clause 18 of the Bill be amended—

- (a) in subclause (1) by deleting the expression “, member of the public officer's family or a relative of the public officer” appearing immediately after the words “public officer”;
- (b) in subclause (2) by deleting the expression “, member of the public officer's family or a relative of the public officer” appearing immediately after the words “public officer”;
- (c) in subclause (3) by deleting the word “person” appearing immediately after the word “A” and substituting therefor the words “public officer”

Rationale: To limit the application of the Clause on gifting and other benefits to a public officer.

CLAUSE 19

THAT, Clause 19 of the Bill be amended—

- (a) in subclause (1) by deleting the words “with any” appearing immediately after the word “services” and substituting therefor the words “with his or her”;
- (b) in subclause (2) by deleting the words “with any” appearing immediately after the word “services” and substituting therefor the words “with his or her”;

Rationale: To only prohibit public officers from contracting with public bodies in which they are employed.

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, 2016” 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, 2016 with necessary safeguards.

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 or her office.”

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

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.

CLAUSE 30

THAT, Clause 30 of the Bill be amended—

(a) by inserting the following new subclause immediately after subclause (1)—

“(1A) Subsection (1) shall not apply to a member of Parliament or a county assembly.”

(b) in subclause (2) by deleting paragraph (b) and substituting therefor the following new paragraph—

“(b) a reporting entity shall, within sixty days after a day on which a recusal took place, transmit a declaration of the recusal to the Commission in the prescribed form.”

Rationale:

1. To exempt Members of Parliament and members of County assemblies from the provisions of the Clause on account of the freedom of speech and debate in legislative proceedings. The Standing Orders and the provisions of the Parliamentary Powers and Privileges Act, 2017 and the County Assemblies Powers and Privileges Act, 2017 provide adequately on the manner of declaring interests.
2. To require public officers to declarations of recusal to their reporting authority which in turn transmits them to the EACC.

CLAUSE 31

THAT, Clause 31 of the Bill be amended—

(a) by deleting subclause (1) and substituting therefor the following new subclause—

(1) Every public officer shall submit to their responsible Commission a declaration of his or her income, assets and liabilities and the income, assets and liabilities of his or her dependent children.

(b) in subclause (4) by deleting paragraph (c).

Rationale:

1. To limit the Clause to the affairs of a public officer and his or her dependent children.
2. To maintain the existing model of declarations to entities that directly supervise the conduct and ethics of the various categories of public officers as the EACC lacks sufficient capacity to process the declarations of all public officers.

NEW CLAUSE 31A and 31B

THAT, the Bill be amended by inserting the following new Clauses immediately after Clause 31—

Determination
of responsible
Commission.

31A. (1) This section determines what body is the responsible Commission for a public officer for the purposes of this Act.

(2) The committee of the National Assembly responsible for the ethics of members is the responsible Commission for—

- (a) the Cabinet;
- (b) members of the National Assembly;
- (c) the Director of Public Prosecutions;
- (d) the secretary to the Cabinet;
- (e) members of the Judicial Service Commission;
- (f) members of commissions and independent offices specified under Chapter Fifteen of the Constitution; and
- (g) members of the Ethics and Anti-Corruption Commission and staff of the Commission holding the rank of Deputy Director and above.

(3) The committee of the Senate responsible for the ethics of members is the responsible Commission for senators.

(4) The committee of a county assembly responsible for the ethics of members is the responsible Commission for—

- (a) its respective county executive committee;
- (b) members of the county assembly; and
- (c) members and the secretary of its respective County Public Service Board.

(5) The Public Service Commission is the responsible Commission for—

- (a) principal secretaries;
- (b) high commissioners, ambassadors and diplomatic and consular representatives;
- (c) public officers in respect of which it exercises appointive and disciplinary control, including advisors and personal staff; and
- (d) public officers who are officers, employees or members of state corporations that are public bodies.

(6) A County Public Service Board is the responsible Commission for—

- (a) public officers in respect of which it exercises appointive and disciplinary control, including advisors and personal

staff; and

- (b) public officers who are officers, employees or members of county corporations and entities that are public bodies.

(6) The Judicial Service Commission is the responsible Commission for judges, magistrates and the public officers in respect of which it exercises disciplinary control.

(7) The Parliamentary Service Commission is the responsible Commission for the public officers in respect of which it exercises disciplinary control.

(8) A County Assembly Service Board is the responsible Commission for the public officers in respect of which it exercises disciplinary control.

(9) The Teachers Service Commission established under the Teachers Service Commission Act (Cap. 212) is the responsible Commission for teachers registered under that Act.

(10) The Defence Council established under Article 241(5) of the Constitution is the responsible Commission for members of the armed forces, within the meaning of that Act.

No. 28 of
2012.

(11) The National Intelligence Service Council established under the National Intelligence Service Act, 2012 is the responsible Commission for members of the National Intelligence Service established under that Act.

(12) The National Police Service Commission is the responsible Commission for members of the National Police Service.

No. 16 of
2006.

(13) The Witness Protection Advisory Board established under the Witness Protection Act, 2006 shall be the responsible commission for the members of the Witness Protection Agency established under that Act.

(14) The responsible Commission for a public officer for which no responsible Commission is otherwise specified under this section is the commission, committee or other body prescribed by regulations.

(15) A body that is the responsible Commission for a public officer by virtue of exercising disciplinary control over that public officer remains the responsible Commission notwithstanding the delegation of any disciplinary powers with respect to that public officer.

Certain
delegations
by Public
Service

31B. (1) Subject to subsection (2), the Public Service Commission may, by notice in the *Gazette* delegate to another person or body any of its powers and functions in relation to declarations of income, assets and liabilities and enforcement of the code of conduct and with respect to specified classes of public officers over which it

Commission. is the responsible Commission.

(2) The Public Service Commission may delegate powers and functions only with respect to public officers in a job group below job group “M” or its equivalent.

Rationale: To maintain the existing model of declarations to entities that directly supervise the conduct and ethics of the various categories of public officers as the EACC lacks sufficient capacity to process the declarations of all public officers.

CLAUSE 33

THAT, Clause 33 of the Bill be amended—

(a) by deleting subclause (1) and substituting therefor the following new subclause—

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

(a) whether the declaration raises possible issues of conflict of interest; and

(b) whether on the face of it, the declaration contains any discrepancy or inconsistency.

(b) in subclause (5) by inserting the word “responsible” immediately after the word “The”;

(c) in subclause (6) by deleting the word “fourteen” appearing immediately after the word “within” and substituting therefor the word “thirty”;

Rationale: To maintain the existing model of declarations to entities that directly supervise the conduct and ethics of the various categories of public officers and require clarifications to be made within thirty days.

CLAUSE 34

THAT, the Bill be amended by deleting Clause 34 and substituting therefor the following new Clause—

Access to
declarations.

34. (1) Subject to subsection (2), the contents of a declaration or clarification under this Act shall be accessible to any person upon application to the responsible Commission in the prescribed manner if the applicant shows to the satisfaction of the responsible Commission that he or she has a legitimate interest and good cause in furtherance of the objectives of this Act, in such declaration or clarification.

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

(3) The responsible Commission shall, before making an affirmative decision under this section, grant the affected party an opportunity to make representations

on the matter.

(4) Any person who—

(a) publishes or in any way makes public any information obtained under this section without prior permission of the responsible Commission;

(b) knowingly republishes or otherwise disseminates or discloses to another person information to which this section relates where—

(i) such information was disclosed to himself or to some other person; or

(ii) such information was obtained in contravention of this Act,

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.

Rationale:

1. To require the request for access to declarations be made to the various reporting entities.
2. To include due process safeguards on the access to declarations under the provision.

CLAUSE 35

THAT, Clause 35 of the Bill be amended by inserting the word “responsible” immediately after the word “The”.

Rationale: To maintain the existing model of declarations to entities that directly supervise the conduct and ethics of the various categories of public officers.

CLAUSE 36

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

Rationale: To remove the requirement of paying criminal fines to the EACC.

CLAUSE 38

THAT, the Bill be amended by deleting Clause 38.

Rationale: The Bill has already defined what constitutes a conflict of interest and provided adequate penal sanctions for any public officer who contravenes the provisions on declaration of interests, recusal, and conferring public benefits for private interests where appropriate. Forcefully requiring an individual who strictly observes the preceding clauses of the Bill to divest him or herself of assets would therefore be unfair and undermine socio-economic rights.

CLAUSE 39

THAT, the Bill be amended by deleting Clause 39.

Rationale: The Bill has already defined what constitutes a conflict of interest and provided adequate penal sanctions for any public officer who contravenes the provisions on declaration of interests, recusal, and conferring public benefits for private interests where appropriate. Forcefully requiring an individual who strictly observes the preceding clauses of the Bill to divest him or herself of assets would therefore be unfair and undermine socio-economic rights.

CLAUSE 40

THAT, the Bill be amended by deleting Clause 40.

Rationale: The Bill has already defined what constitutes a conflict of interest and provided adequate penal sanctions for any public officer who contravenes the provisions on declaration of interests, recusal, and conferring public benefits for private interests where appropriate. Forcefully requiring an individual who strictly observes the preceding clauses of the Bill to divest him or herself of assets would therefore be unfair and undermine socio-economic rights.

CLAUSE 41

THAT, the Bill be amended by deleting Clause 41.

Rationale: The Bill has already defined what constitutes a conflict of interest and provided adequate penal sanctions for any public officer who contravenes the provisions on declaration of interests, recusal, and conferring public benefits for private interests where appropriate. Forcefully requiring an individual who strictly observes the preceding clauses of the Bill to divest him or herself of assets would therefore be unfair and undermine socio-economic rights.

CLAUSE 42

THAT, the Bill be amended by deleting Clause 42.

Rationale: The Bill has already defined what constitutes a conflict of interest and provided adequate penal sanctions for any public officer who contravenes the provisions on declaration of interests, recusal, and conferring public benefits for private interests where appropriate. Forcefully requiring an individual who strictly observes the preceding clauses of the Bill to divest him or herself of assets would therefore be unfair and undermine socio-economic rights.

CLAUSE 43

THAT, the Bill be amended by deleting Clause 43.

Rationale: The Bill has already defined what constitutes a conflict of interest and provided adequate penal sanctions for any public officer who contravenes the provisions on declaration of interests, recusal, and conferring public benefits for private interests where appropriate. Forcefully requiring an individual who strictly observes the preceding clauses of the Bill to

divest him or herself of assets would therefore be unfair and undermine socio-economic rights.

CLAUSE 44

THAT, the Bill be amended by deleting Clause 44.

Rationale: The Bill has already defined what constitutes a conflict of interest and provided adequate penal sanctions for any public officer who contravenes the provisions on declaration of interests, recusal, and conferring public benefits for private interests where appropriate. Forcefully requiring an individual who strictly observes the preceding clauses of the Bill to divest him or herself of assets would therefore be unfair and undermine socio-economic rights.

CLAUSE 45

THAT, the Bill be amended by deleting Clause 45.

Rationale: The Bill has already defined what constitutes a conflict of interest and provided adequate penal sanctions for any public officer who contravenes the provisions on declaration of interests, recusal, and conferring public benefits for private interests where appropriate. Forcefully requiring an individual who strictly observes the preceding clauses of the Bill to divest him or herself of assets would therefore be unfair and undermine socio-economic rights.

CLAUSE 46

THAT, the Bill be amended by deleting Clause 46.

Rationale: The Bill has already defined what constitutes a conflict of interest and provided adequate penal sanctions for any public officer who contravenes the provisions on declaration of interests, recusal, and conferring public benefits for private interests where appropriate. Forcefully requiring an individual who strictly observes the preceding clauses of the Bill to divest him or herself of assets would therefore be unfair and undermine socio-economic rights.

CLAUSE 47

THAT, the Bill be amended by deleting Clause 47.

Rationale: The Bill has already defined what constitutes a conflict of interest and provided adequate penal sanctions for any public officer who contravenes the provisions on declaration of interests, recusal, and conferring public benefits for private interests where appropriate. Forcefully requiring an individual who strictly observes the preceding clauses of the Bill to divest him or herself of assets would therefore be unfair and undermine socio-economic rights.

CLAUSE 48

THAT, Clause 48 of the Bill be amended by inserting the following new subclause immediately after subclause (2)—

“(2A) A reporting authority and the Commission shall not conduct concurrent investigations over the same complaint.”

Rationale: To prevent reporting authorities and the EACC from conducting concurrent investigations that may be counterproductive.

CLAUSE 49

THAT, Clause 49 of the Bill be amended—

- (a) in subclause (1) by inserting the words “or a reporting authority” immediately after the word “Commission”;
- (b) by deleting subclause (2) and substituting therefor the following new subclause—

“(2) If the Commission or a reporting authority declines to commence investigations, the Commission or reporting authority shall inform the person who lodged the complaint and give reasons for the decision.”

Rationale: to extend the application of the Clause to include reporting authorities.

CLAUSE 50

THAT, Clause 50 of the Bill be amended by deleting subclause (1) and substituting therefor the following new subclause—

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

Rationale: To clarify that an officer suspended under the Clause shall be on full pay as the Clause relates to suspension for investigation purposes only.

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.

CLAUSE 53

THAT, Bill be amended by deleting Clause 53 and substituting therefor the following new Clause—

Confidentiality.

53. A responsible Commission, the Commission or any person acting on their 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 a responsible Commission or the Commission—

- (a) essential for the purposes of carrying out of their functions and exercising the powers conferred on them under this Act; or

(b) is required by any law enforcement agency,
after due process.

Rationale: To require the sharing of information with law enforcement agencies under the clause after observing due process.

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).

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.

CLAUSE 59

THAT, Clause 59 of the Bill be amended by—

- (a) deleting subclause (1);
- (b) deleting subclause (3);
- (c) 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:

1. To maintain the existing model of declarations to entities that directly supervise the conduct and ethics of the various categories of public officers
2. 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.

MIN. NO/DC/JLAC/2023/757:

ADJOURNMENT

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

SIGNED.....DATE:
(CHAIRPERSON: HON. MURUGARA GEORGE GITONGA, MP)

28/11/2023



**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 149TH SITTING OF THE JUSTICE AND LEGAL AFFAIRS
COMMITTEE HELD ON MONDAY 27TH NOVEMBER, 2023 AT 3:00 PM AT 2ND
FLOOR COMMITTEE ROOM, CONTINENTAL HOUSE, PARLIAMENT
BUILDINGS**

PRESENT

Members

- | | |
|--|---------------------|
| 1. Hon. Murugara George Gitonga, MP | - Chairperson |
| 2. Hon. Mutuse Eckomas Mwengi, OGW, MP | - Vice- Chairperson |
| 3. Hon. Francis Kajwang' Tom Joseph, MP | |
| 4. Hon. (Dr.) Otiende Amollo, SC, MP | |
| 5. Hon. Makali John Okwisia, MP | |
| 6. Hon. Mogaka Stephen M, MP | |
| 7. Hon. Muriu Wakili Edward, MP | |
| 8. Hon. Muchira Michael Mwangi, MP | |
| 9. Hon. Gichohi Kaguchia John Philip, MP | |
| 10. Hon. Maina Jane Njeri, MP | |
| 11. Hon. Aden Daud. EBS, MP | |

ABSENT

1. Hon. Maalim Farah, MP
2. Hon. Onyiengo Silvanus Osoro, CBS, MP
3. Hon. Junet Mohamed, CBS, MP
4. Hon. Siyad Amina Udgoon, MP

SECRETARIAT

- | | |
|---------------------------|------------------------|
| 1. Mr. Douglas Katho | - Clerk Assistant I |
| 2. Mr. Walala Ronald | - 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. Mr. Peter Mutethia | - Audio Officer III |

AGENDA

1. Prayers
2. Preliminaries
3. Confirmation of Minutes
4. **Clause by Clause consideration of the Conflict of Interest Bill, 2023 sponsored by the Majority Leader Hon. Kimani Ichung'wah, MP**
5. Any Other Business
6. Adjournment/ Date of the Next Meeting

MIN. NO/DC/JLAC/2023/748: PRELIMINARIES

The meeting was called to order at three 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/2023/749: CONFIRMATION OF MINUTES

The agenda was deferred.

MIN.NO/DC/JLAC/2023/750: ADOPTION OF THE AGENDA

The agenda was adopted having been proposed by Hon. Muriu Wakili Edward, MP and seconded by Hon. Aden Daud. EBS, MP.

MIN.NO/DC/JLAC/2023/751: CLAUSE BY CLAUSE CONSIDERATION OF THE CONFLICT OF INTEREST BILL, 2023 SPONSORED BY THE MAJORITY LEADER HON. KIMANI ICHUNG'WAH, MP

Members resolved as follows: -

Under Clause 30

THAT, Clause 30 of the Bill be amended—

- (a) by inserting the following new subclause immediately after subclause (1)—

“(1A) Subsection (1) shall not apply to a member of Parliament or a county assembly or a county assembly.”
- (b) in subclause (2) by deleting paragraph (b) and substituting therefor the following new paragraph—
- (c) a reporting entity shall, within sixty days after a day on which a recusal took place, transmit a declaration of the recusal to the Commission in the prescribed form.

Under Clause 31

THAT, Clause 31 of the Bill be amended—

- (a) by deleting subclause (1) and substituting therefor the following new subclause—

(1) Every public officer shall submit to their responsible Commission a declaration of his or her income, assets and liabilities and the income, assets and liabilities of his or her dependent children.

(b) in subclause (4) by deleting paragraph (c).

Introduction of a new Clauses under Clause 31A and 31B

THAT, the Bill be amended by inserting the following new Clauses immediately after Clause 31—

Determination
of responsible
Commission.

31A. (1) This section determines what body is the responsible Commission for a public officer for the purposes of this Act.

(2) The committee of the National Assembly responsible for the ethics of members is the responsible Commission for—

- (a) the Cabinet;
- (b) members of the National Assembly
- (c) the Director of Public Prosecutions;
- (d) the secretary to the Cabinet;
- (e) members of the Judicial Service Commission;
- (f) members of commissions and independent offices specified under Chapter Fifteen of the Constitution; and
- (g) members of the Ethics and Anti-Corruption Commission and staff of the Commission holding the rank of Deputy Director and above.

(3) The committee of the Senate responsible for the ethics of members is the responsible Commission for senators.

(4) The committee of a county assembly responsible for the ethics of members is the responsible Commission for—

- (a) its respective county executive committee; and
- (b) members of the county assembly.

(5) The Public Service Commission is the responsible Commission for—

- (a) principal secretaries;
- (b) high commissioners, ambassadors and diplomatic and consular representatives;

(c) public officers in respect of which it exercises, disciplinary control; and

(d) public officers who are officers, employees or members of state corporations that are public bodies.

(6) A County Public Service Board is the responsible Commission for—

(a) public officers in respect of which it exercises, disciplinary control; and

(b) public officers who are officers, employees or members of county corporations and entities that are public bodies.

(6) The Judicial Service Commission is the responsible Commission for judges, magistrates and the public officers in respect of which it exercises disciplinary control.

(7) The Parliamentary Service Commission is the responsible Commission for the public officers in respect of which it exercises disciplinary control.

(8) The Teachers Service Commission established under the Teachers Service Commission Act (Cap. 212) is the responsible Commission for teachers registered under that Act.

(9) The Defence Council established under Article 241(5) of the Constitution is the responsible Commission for members of the armed forces, within the meaning of that Act.

No. 28 of 2012. (10) The National Intelligence Service Council established under the National Intelligence Service Act, 2012 is the responsible Commission for members of the National Intelligence Service established under that Act.

No. 16 of 2006. (11) The Witness Protection Advisory Board established under the Witness Protection Act, 2006 shall be the responsible commission for the members of the Witness Protection Agency established under that Act.

(12) The responsible Commission for a public officer for which no responsible Commission is otherwise specified under this section is the commission, committee or other body prescribed by regulation.

(13) A body that is the responsible Commission for a public officer by virtue of exercising disciplinary control over that public officer remains the responsible Commission notwithstanding the delegation of any disciplinary powers with respect to that public officer.

Certain delegations

31B. (1) Subject to subsection (2), the Public Service Commission may, by notice in the *Gazette* delegate to another person or body any of its powers and

by Public
Service
Commission.

functions in relation to declarations of income, assets and liabilities and enforcement of the code of conduct and with respect to specified classes of public officers over which it is the responsible Commission.

(2) The Public Service Commission may delegate powers and functions only with respect to public officers in a job group below job group “M” or its equivalent.

Under Clause 33

THAT, Clause 33 of the Bill be amended—

(a) by deleting subclause (1) and substituting therefor the following new subclause—

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

(a) whether the declaration raises possible issues of conflict of interest; and

(b) whether on the face of it, the declaration contains any discrepancy or inconsistency.

(b) In subclause (5) by inserting the word “responsible” immediately after the word “The”;

(c) In subclause (6) by deleting the word “fourteen” appearing immediately after the word “within” and substituting therefor the word “thirty”;

Under Clause 35

THAT, Clause 35 of the Bill be amended by inserting the word “responsible” immediately after the word “The”.

Rationale: To maintain the existing model of declarations to entities that directly supervise the conduct and ethics of the various categories of public officers.

Under Clause 36

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

Rationale: To remove the requirement of paying criminal fines to the EACC.

Under Clause 38

THAT, the Bill be amended by deleting Clause 38.

Rationale: The Bill has already defined what constitutes a conflict of interest and provided adequate penal sanctions for any public officer who contravenes the provisions on declaration of interests and recusal, where appropriate. Forcefully requiring an individual who strictly observes the preceding clauses of the Bill to divest him or herself of assets would therefore be unfair.

Under Clause 39

THAT, the Bill be amended by deleting Clause 39.

Rationale: The Bill has already defined what constitutes a conflict of interest and provided adequate penal sanctions for any public officer who contravenes the provisions on declaration of interests and recusal, where appropriate. Forcefully requiring an individual who strictly observes the preceding clauses of the Bill to divest him or herself of assets would therefore be unfair.

Under Clause 40

THAT, the Bill be amended by deleting Clause 40.

Rationale: The Bill has already defined what constitutes a conflict of interest and provided adequate penal sanctions for any public officer who contravenes the provisions on declaration of interests and recusal, where appropriate. Forcefully requiring an individual who strictly observes the preceding clauses of the Bill to divest him or herself of assets would therefore be unfair.

Under Clause 41

THAT, the Bill be amended by deleting Clause 41.

Rationale: The Bill has already defined what constitutes a conflict of interest and provided adequate penal sanctions for any public officer who contravenes the provisions on declaration of interests and recusal, where appropriate. Forcefully requiring an individual who strictly observes the preceding clauses of the Bill to divest him or herself of assets would therefore be unfair.

Under Clause 42

THAT, the Bill be amended by deleting Clause 42.

Rationale: The Bill has already defined what constitutes a conflict of interest and provided adequate penal sanctions for any public officer who contravenes the provisions on declaration of interests and recusal, where appropriate. Forcefully requiring an individual who strictly observes the preceding clauses of the Bill to divest him or herself of assets would therefore be unfair.

Under Clause 43

THAT, the Bill be amended by deleting Clause 43.

Rationale: The Bill has already defined what constitutes a conflict of interest and provided adequate penal sanctions for any public officer who contravenes the provisions on declaration of interests and recusal, where appropriate. Forcefully requiring an individual who strictly observes the preceding clauses of the Bill to divest him or herself of assets would therefore be unfair.

Under Clause 44

THAT, the Bill be amended by deleting Clause 44.

Rationale: The Bill has already defined what constitutes a conflict of interest and provided adequate penal sanctions for any public officer who contravenes the provisions on declaration

of interests and recusal, where appropriate. Forcefully requiring an individual who strictly observes the preceding clauses of the Bill to divest him or herself of assets would therefore be unfair.

Under Clause 45

THAT, the Bill be amended by deleting Clause 45.

Rationale: The Bill has already defined what constitutes a conflict of interest and provided adequate penal sanctions for any public officer who contravenes the provisions on declaration of interests and recusal, where appropriate. Forcefully requiring an individual who strictly observes the preceding clauses of the Bill to divest him or herself of assets would therefore be unfair.

Under Clause 46

THAT, the Bill be amended by deleting Clause 46.

Rationale: The Bill has already defined what constitutes a conflict of interest and provided adequate penal sanctions for any public officer who contravenes the provisions on declaration of interests and recusal, where appropriate. Forcefully requiring an individual who strictly observes the preceding clauses of the Bill to divest him or herself of assets would therefore be unfair.

Under Clause 47

THAT, the Bill be amended by deleting Clause 47.

Rationale: The Bill has already defined what constitutes a conflict of interest and provided adequate penal sanctions for any public officer who contravenes the provisions on declaration of interests and recusal, where appropriate. Forcefully requiring an individual who strictly observes the preceding clauses of the Bill to divest him or herself of assets would therefore be unfair.

Under Clause 48

THAT, Clause 48 of the Bill be amended by inserting the following new subclause immediately after subclause (2)—

“(2A) A reporting authority and the Commission shall not conduct concurrent investigations over the same complaint.”

Rationale: To prevent reporting authorities and the EACC from conducting concurrent investigations that may be counterproductive.

Under Clause 49

THAT, Clause 49 of the Bill be amended—

(a) in subclause (1) by inserting the words “or a reporting authority” immediately after the word “Commission”;

(b) by deleting subclause (2) and substituting therefor the following new subclause—

“(2) If the Commission or a reporting authority declines to commence investigations, the Commission or reporting authority shall inform the person who lodged the complaint and give reasons for the decision.”

Rationale: to extend the application of the Clause to include reporting authorities.

Under Clause 50

THAT, Clause 50 of the Bill be amended by deleting subclause (1) and substituting therefor the following new subclause—

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

Rationale: To clarify that an officer suspended under the Clause shall be on full pay as the Clause relates to suspension for investigation purposes only.

Under 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.

Under Clause 53

THAT, Clause 53 of the Bill be amended by inserting the words “after due process” immediately after the word “agency”.

Rationale: To require the sharing of information with law enforcement agencies under the clause after observing due process.

Under 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).

Under 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.

Under Clause 59

THAT, Clause 59 of the Bill be amended by—

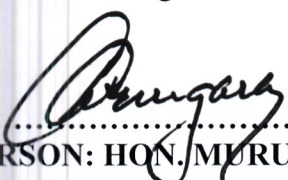
- (a) deleting subclause (1);
- (b) deleting subclause (3);
- (c) inserting the following new subclause immediately after subclause (3)

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

MIN. NO/DC/JLAC/2023/752:

ADJOURNMENT

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

SIGNED.....  **DATE:**
(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 148TH SITTING OF THE JUSTICE AND LEGAL AFFAIRS
COMMITTEE HELD ON WEDNESDAY 22ND NOVEMBER, 2023 AT 2:00 PM AT
2ND FLOOR COMMITTEE ROOM, CONTINENTAL HOUSE, PARLIAMENT
BUILDINGS**

PRESENT

Members

1. Hon. Murugara George Gitonga, MP
2. Hon. Mutuse Eckomas Mwengi, OGW, MP
3. Hon. Francis Kajwang' Tom Joseph, MP
4. Hon. (Dr.) Otiende Amollo, SC, MP
5. Hon. Makali John Okwisia, MP
6. Hon. Mogaka Stephen M, MP
7. Hon. Muriu Wakili Edward, MP
8. Hon. Muchira Michael Mwangi, MP
9. Hon. Gichohi Kaguchia John Philip, MP
10. Hon. Maina Jane Njeri, MP
11. 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. Siyad Amina Udgoon, MP

IN-ATTENDANCE

1. Hon. Shakeel Ahmed Shabbir

SECRETARIAT

- | | | |
|---------------------------|---|----------------------|
| 1. Mr. Douglas Katho | - | Clerk Assistant I |
| 2. Mr. Walala Ronald | - | 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. Mr. Peter Mutethia | - | Audio Officer III |

AGENDA

1. Prayers
2. Preliminaries
3. Confirmation of Minutes
4. **Clause by Clause consideration of the Conflict of Interest Bill, 2023 sponsored by the Majority Leader Hon. Kimani Ichung'wah, MP**
5. Any Other Business
6. Adjournment/ Date of the Next Meeting

MIN. NO/DC/JLAC/2023/743: PRELIMINARIES

The meeting was called to order at two 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/2023/744: CONFIRMATION OF MINUTES

The agenda was deferred.

MIN.NO/DC/JLAC/2023/745: ADOPTION OF THE AGENDA

The agenda was adopted having been proposed by Hon. Makali John Okwisia, MP and seconded by Hon. Mogaka Stephen M, MP.

MIN.NO/DC/JLAC/2023/746: CLAUSE BY CLAUSE CONSIDERATION OF THE CONFLICT OF INTEREST BILL, 2023 SPONSORED

**BY THE MAJORITY LEADER HON. KIMANI
ICHUNG'WAH, MP**

Members resolved as follows: -

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.

CLAUSE 12

THAT, Clause 12 of the Bill be amended by inserting the following new subclause immediately after subclause (2)—

“(3) Despite subsection (1), no proceedings shall lie against a public officer who grants special consideration, treatment or advantage in good faith.”

Rationale: To clarify that the giving of preferential treatment in good faith constitutes a defence to a charge under the Clause.

CLAUSE 13

THAT, Clause 13 of the Bill be amended in subclause (1) to delete the words “by the person” appearing immediately after the words “obtained”.

Rationale: For purposes of clarity. The Clause applies to misuse of official information obtained in the course of official duty by **any** person.

CLAUSE 15

THAT, Clause 15 of the Bill be amended in subclause (2) by deleting the words “to the Commission and” appearing immediately after the word “writing”.

Rationale: To require a public officer who accepts an offer of outside employment that is not incompatible with his or her official duties to only report that acceptance to his or her reporting authority.

CLAUSE 16

THAT, clause 16 of the Bill be amended—

- (a) in subclause (1) by deleting the opening statement and substituting therefor the following new opening statement—

“(1) A public Officer shall not accept or request a gift or favour from a person who—”;

- (b) in subclause (3) by deleting the expression “, a member of the public officer's family or a relative of the public officer” appearing immediately after the words “public officer”.

Rationale: To limit the application of the Clause on gifting and other benefits to a public officer.

CLAUSE 18

THAT, clause 18 of the Bill be amended—

- (a) in subclause (1) by deleting the expression “, member of the public officer's family or a relative of the public officer” appearing immediately after the words “public officer”;
- (b) in subclause (2) by deleting the expression “, member of the public officer's family or a relative of the public officer” appearing immediately after the words “public officer”;
- (c) in subclause (3) by deleting the word “person” appearing immediately after the word “A” and substituting therefor the words “public officer”

Rationale: To limit the application of the Clause on gifting and other benefits to a public officer.

CLAUSE 19

THAT, Clause 19 of the Bill be amended—

- (a) in subclause (1) by deleting the words “with any” appearing immediately after the word “services” and substituting therefor the words “with his or her”;
- (b) in subclause (2) by deleting the words “with any” appearing immediately after the word “services” and substituting therefor the words “with his or her”;

Rationale: To only prohibit public officers from contracting with public bodies in which they are employed.

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, 2016” 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, 2016 with necessary safeguards.

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 or her office.”

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

CLAUSE 28

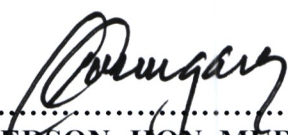
THAT, Clause 28 of the Bill be amended by deleting the word “preceding” appearing immediately after the word “immediately” and substituting therefor the word “after”.

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

MIN. NO/DC/JLAC/2023/747:

ADJOURNMENT

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

SIGNED..........DATE:
(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 147TH SITTING OF THE JUSTICE AND LEGAL AFFAIRS
COMMITTEE HELD ON WEDNESDAY 22ND NOVEMBER, 2023 AT 10:00 AM AT
2ND FLOOR COMMITTEE ROOM, CONTINENTAL HOUSE, PARLIAMENT
BUILDINGS**

PRESENT

Members

1. Hon. Murugara George Gitonga, MP
2. Hon. Mutuse Eckomas Mwengi, OGW, MP
3. Hon. Francis Kajwang' Tom Joseph, MP
4. Hon. (Dr.) Otiende Amollo, SC, MP
5. Hon. Makali John Okwisia, MP
6. Hon. Mogaka Stephen M, MP
7. Hon. Muriu Wakili Edward, MP
8. Hon. Muchira Michael Mwangi, MP
9. Hon. Gichohi Kaguchia John Philip, MP
10. Hon. Maina Jane Njeri, MP
11. 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. Siyad Amina Udgoon, MP

SECRETARIAT

- | | | |
|---------------------------|---|----------------------|
| 1. Mr. Douglas Katho | - | Clerk Assistant I |
| 2. Mr. Walala Ronald | - | 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. Mr. Peter Mutethia | - | Audio Officer III |

AGENDA

1. Prayers
2. Preliminaries
3. Confirmation of Minutes
4. **Clause by Clause consideration of the Conflict of Interest Bill, 2023 sponsored by the Majority Leader Hon. Kimani Ichung'wah, MP**
5. Any Other Business
6. Adjournment/ Date of the Next Meeting

MIN. NO/DC/JLAC/2023/738: PRELIMINARIES

The meeting was called to order at twenty 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/2023/739: CONFIRMATION OF MINUTES

The agenda was deferred.

MIN.NO/DC/JLAC/2023/740: ADOPTION OF THE AGENDA

The agenda was adopted having been proposed by Hon. Makali John Okwisia, MP and seconded by Hon. Mogaka Stephen M, MP.

MIN.NO/DC/JLAC/2023/741: CLAUSE BY CLAUSE CONSIDERATION OF THE CONFLICT OF INTEREST BILL, 2023 SPONSORED BY THE MAJORITY LEADER HON. KIMANI ICHUNG'WAH, MP

Members resolved as follows: -

CLAUSE 6

THAT, Clause 6 of the Bill be amended by—

- (a) inserting the following new paragraph immediately after paragraph ((h)—

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

- (b) deleting paragraph (i);

Rationale:

1. To empower the EACC with an additional function with regard to conflict of interest;
2. To delete a function already provided for under section 55 of the Anti-Corruption and Economic Crimes Act, 2003

CLAUSE 7

THAT, Clause 7 of the Bill be amended by deleting paragraph (a) and substituting therefor the following new paragraph—

“(a) conduct investigations on its own initiative or on a complaint made by a member of the public;”

Rationale: To align the powers of the Commission under the Act with the provisions of Article 252 of the Constitution.

CLAUSE 8

THAT, the Bill be amended by deleting Clause 8 and substituting therefor the following new Clause—

Conflict of interest.	8. A public officer is in conflict of interest if the public officer—
	(a) exercises an official duty or function to further his or her private interests or the private interests of another person; and
	(b) fails to declare and register the interest.

Rationale: to clarify what constitutes conflict of interest as an overt act done by a public officer to benefit of private interests.

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.

CLAUSE 10

THAT, Clause 10 of the Bill be amended in paragraph (1) by deleting the words “or reasonably ought to know” appearing immediately after the word “knows”.

Rationale: To clarify that the state of mind applicable to the offence of “conflict of interest in decision-making” is first-hand knowledge by a public officer that a decision shall place them in a position of conflict of interest. The deletion avoids speculative victimization of public officers.

MIN. NO/DC/JLAC/2023/742:

ADJOURNMENT

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

SIGNED:

DATE:

(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 146TH SITTING OF THE JUSTICE AND LEGAL AFFAIRS
COMMITTEE HELD ON TUESDAY 21ST NOVEMBER, 2023 AT 10:00 AM AT 5TH
FLOOR COMMITTEE ROOM, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS**

PRESENT

Members

- | | |
|---|---------------------|
| 1. Hon. Murugara George Gitonga, MP | - Chairperson |
| 2. Hon. Mutuse Eckomas Mwengi, OGW, MP | - Vice- Chairperson |
| 3. Hon. Francis Kajwang' Tom Joseph, MP | |
| 4. Hon. (Dr.) Otiende Amollo, SC, MP | |
| 5. Hon. Makali John Okwisia, MP | |
| 6. Hon. Aden Daud. EBS, MP | |
| 7. Hon. Mogaka Stephen M, MP | |
| 8. Hon. Muriu Wakili Edward, MP | |
| 9. Hon. Muchira Michael Mwangi, MP | |
| 10. Hon. Gichohi Kaguchia John Philip, MP | |
| 11. Hon. Maina Jane Njeri, MP | |

ABSENT

1. Hon. Maalim Farah, MP
2. Hon. Onyiengo Silvanus Osoro, CBS, MP
3. Hon. Junet Mohamed, CBS, MP
4. Hon. Siyad Amina Udgoon, MP

SECRETARIAT

- | | |
|---------------------------|------------------------|
| 1. Mr. Douglas Katho | - Clerk Assistant I |
| 2. Mr. Walala Ronald | - 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. Mercylyn Kerubo | - Audio Officer III |

AGENDA

1. Prayers
2. Preliminaries
3. Confirmation of Minutes
4. **Clause by Clause consideration of the Conflict of Interest Bill, 2023 sponsored by the Majority Leader Hon. Kimani Ichung'wah, MP**
5. Any Other Business
6. Adjournment/ Date of the Next Meeting

MIN. NO/DC/JLAC/2023/733: PRELIMINARIES

The meeting was called to order at twenty 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/2023/734: CONFIRMATION OF MINUTES

The agenda was deferred.

MIN.NO/DC/JLAC/2023/735: ADOPTION OF THE AGENDA

The agenda was adopted having been proposed by Hon. Makali John Okwisia, MP and seconded by Hon. Aden Daud. EBS, MP.

MIN.NO/DC/JLAC/2023/736: CLAUSE BY CLAUSE CONSIDERATION OF THE CONFLICT OF INTEREST BILL, 2023 SPONSORED BY

THE MAJORITY LEADER HON. KIMANI ICHUNG'WAH, MP

Members resolved as follows: -

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.

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) by deleting the definition “family”;

(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) by deleting the definition “relative”;

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

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 Articles 73 and 75 of the Constitution.

CLAUSE 5

THAT, Clause 5 of the Bill be amended by inserting the words “reporting authorities and” immediately after the word “by”;

Rationale: To allow reporting authorities that are responsible for public officers to administer the provisions of the Bill.

MIN. NO/DC/JLAC/2023/737:

ADJOURNMENT

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

SIGNED:  **DATE:**
(CHAIRPERSON: HON. MURUGARA GEORGE GITONGA, MP)

Annexure 3: Memoranda by Stakeholders



REPUBLIC OF KENYA
PARLIAMENT

Hon. Dr. Otiende Amollo, S.C., E.B.S., MP.

Litt. D, LL. M, LL.B, CPM, Dip. Law

Rarieda Constituency

Parliament Buildings
Tel: +254 20 2221291
P. O. Box 41842 - 00100
Nairobi, Kenya

Tel: +254 20 271601236
Mobile: +254 722 204 778
Fax: +254 202716017
Email: otiendeamollo@yahoo.com
rarieda@parliament.go.ke

21st November, 2023

To,

Rt. Hon. (Dr.) Moses M. Wetangula, EGH, MP,

Speaker of the National Assembly,

Parliament Buildings,

NAIROBI.

'Delivered by Hand'

Dear *Honourable Speaker*

RE: THE CONFLICT OF INTERST BILL 2023.

Kindly receive greetings from the good people of Rarieda and myself as their elected representative.

Hon. Speaker, I have had the occasion to read and consider the aforesated Bill, which has recently sailed through the first and second reading, and is now due for Committal to the Committee of the Whole House any time.



REPUBLIC OF KENYA
PARLIAMENT

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rarieda@parliament.go.ke

~~Having carefully examined the Bill, it is my considered view that the Bill is~~
fundamentally unconstitutional, unnecessary and unimplementable. Leaving out other issues, the same is unconstitutional on the following grounds;

1. While the Title of the Bill refers to "Conflict of Interest" and Clause 3 states that it is intended to address ONLY " management of Conflict of Interest", the Bill goes FAR BEYOND Conflict of Interest to address;

- Forfeiture of Assets (Cl.6)
- Declaration of income (Cl.31)
- Divestiture (Cl. 38)
- Trusts (Cl. 40)
- Recusal orders (Cl. 45), *inter alia*

It vests the function of recovering undeclared or unexplained assets on EACC without correlating this to the jurisdiction of the Asset Recovery Agency.

2. The Bill refers to "Conflict of Interest", yet the Bill covers areas generally of Ethics & Integrity. In seeking to appropriate ethical conduct of public officers for regulation ONLY by the Ethics & Anti-Corruption Commission(Clause 5),the Bill seeks to oust the Constitutional jurisdiction of the Courts, Parliament and other Constitutional Commissions (Judicial Service Commission, Public Service Commission, Parliamentary Service Commission, Commission on Administrative Justice and others)



REPUBLIC OF KENYA
PARLIAMENT

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3. ~~Clause 2 defines a "Public Officer" in terms directly contradictory to the~~
definition in Article 260 of the Constitution, and extends the definition to
volunteers, Consultants, or persons who render "government services", which
term is also undefined.
4. In accordance with A.1 of the Constitution and the doctrine of Separation of
Powers, Parliament enacted the Powers & Privileges Act, to regulate the
question of Conflict of Interest in Parliament. Additionally, Parliament also
developed Standing Orders to guide this question in Parliament.
Clause 11 of the Bill unconstitutionally yokes this jurisdiction from the Powers &
Privileges Committee and Parliament, and vests it on Ethics And Anti -Corruption
Commission (EACC); a body outside of Parliament.
The same effect falls on Judiciary, from the Judicial Service Commission to EACC,
per Clause 5. This is an unconstitutional usurpation of power
5. Additionally, the Bill is discriminatory. While it is supposed to apply to all Public
Officers, it unfairly and discriminatorily focuses on Members of Parliament and
County Assemblies in Clause 11. Nowhere does it mention the Presidency, Cabinet
Secretaries, Principal Secretaries, Attorney General, Judges, Ambassadors or any
others. This is an unfair targeting of MPS.



REPUBLIC OF KENYA
PARLIAMENT

Hon. Dr. Otiende Amollo, S.C., E.B.S., MP.

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6. Clause 16 goes beyond the "Public Officer" to bring in "Members of family" and "relatives" in the African context of usage. Insofar as the clause creates an offence for actions/omissions not done by the public officer (*No mens rea* and *actus reus*), or seeks to punish persons (relatives) not themselves Public Officers. Kindly note that the prescribed sentence is Ksh.4,000,000 or Ten Years(Cl 52). The clause is unconstitutional.
7. Clause 12 seeks to criminalize ANY conduct, even in Good faith, and NOT influenced by corruption or inducement, As LONG As it's not provided for in law or policy! Acts of favouring the old, ill or Persons With Disabilities during voting; prioritizing women and children in Food Distribution, and like conduct ,not expressly provided for in any Law or Policy, would then amount to "special Consideration" as to be an offence. This is not only morally wrong, but contradicts Constitutional requirements of Criminal Law, requiring *Mans rea* (wrongful intention) and *actus reus* (wrongful act itself).
8. Clause 11(2) would also impinge on A.94 (5) of the Constitution. The Implication of the clause is no MP can participate in any legislation or policy discussion on issues of MPs salaries & benefits, pensions, loans & grants or matters NG-CDF/NGAAF. Who then, would debate and pass any law in respect of these matters?



REPUBLIC OF KENYA
PARLIAMENT

Hon. Dr. Otiende Amollo, S.C., E.B.S., MP.

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9. The Bill, which can only fall under A.80 of the Constitution, is contemplated to prescribe additional penalties, in addition to the prescriptions in A.75. To the extent that A.75 only prescribes disciplinary measures, including removal from office and being barred from holding office, additional prescriptions can only be DISCIPLINARY not CRIMINAL! Clause 52, which prescribes criminal penalty of Ksh.4, 000,000/= or Ten Years for Conflict of Interest is therefore Unconstitutional.
10. Clause 31 requires a Public Officer to declare the income, assets and liabilities of himself, his spouse(s) and dependent children! Other than constituting a breach of A.31 on the right to privacy, it also infringes A.35 by making public private information not necessary for exercise or protection of any right (A.35 (1) (b)).
11. Further, the artificial restriction to access this information proposed under clause 34(1) & (9) then infringes on A.35 (1)(a), as the information will now be held by the state and any citizen is entitled to it without let or hindrance.
12. Clause 32 (4) proposes to impose a duty to fill and submit a declaration relating to financial affairs "Within Thirty Days after ceasing to be a Public Officer "This is clearly unconstitutional and amounts to bondage and servitude (A.30). Once you cease being a Public Officer, the law cannot impose an obligation on you that properly belongs to Public Officers!



REPUBLIC OF KENYA
PARLIAMENT

Hon. Dr. Otiende Amollo, S.C., E.B.S., MP.

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~~13. On restricted gainful employment (Clause 23) and Divestiture (Clause 36), the~~

same are improper for the following reasons

- a) A.77 of the Constitution ONLY restricts Full-Time STATE Officers from engaging in any other gainful employment. The Bill purports to extend this restriction to ALL PUBLIC OFFICERS, Including Part -time, volunteers and Consultants. This is unconscionable. It is also impractical because there are Commissions and Positions in which persons serve on secondment from their employers!
- b) The divestiture Clause refers to all Public Officers, and makes no exception of elected Officials (President, Governors, Members of Parliament, and Speakers & Members of County Assemblies). A blanket Clause that imposes an obligation to sell or entrust your professional and business engagements even where they are not in Conflict with your role as an elected member is onerous, unfair and discriminatory.

14. Clause 36(2) imposes an obligation on any reporting authority who fails to submit any information to pay a FINE of ksh.3, 000,000/= to EACC! imposition of fines is a Judicial Function which cannot be exercised by EACC! And that, away from the amount, which will still be borne by the taxpayer!



REPUBLIC OF KENYA
PARLIAMENT

Hon. Dr. Otiende Amollo, S.C., E.B.S., MP.

Litt. D, LL. M, LL.B, CPM, Dip. Law

Rarieda Constituency

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rarieda@parliament.go.ke

15. Clause 50 then allows suspension of any state or Public Officer pending investigations! Since it does not state WHO is to do the suspension, it follows it would be EACC under Clause 5! The EACC, itself undertaking the investigation, is then given authority to suspend; thus being a Judge in their own Cause. Further, the Clause does not exempt State Officers whose tenure is protected or elected officials (President, Governors, MPS), whose mode of removal is prescribed by the Constitution. The entire Clause is thus Unconstitutional!

Right Honourable Speaker, I believe I have demonstrated by the a foregoing ,that the Conflict of Interest Bill 2023, is so fundamentally flawed from a constitutional prism, that it should not be considered by the Committee of the Whole House. I therefore urge you to direct its recall and suspension from further debate, for a full and proper reconsideration.



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rarieda@parliament.go.ke

I humbly submit.

Yours faithfully,

HON.DR.OTIENDE AMOLLO,

MEMBER FOR RARIEDA.

CC.

1. HON. KIMANI ICHUNGWA,
MEMBER FOR KIKUYU CONSTITUENCY &
LEADER OF MAJORITY, NATIONAL ASSEMBLY.
2. HON. JAMES OPIYO WANDAYI,
MEMBER FOR UGUNJA,
LEADER OF MINORITY, NATIONAL ASSEMBLY.
3. HON. GEORGE GITONGA MURUGARA,
MEMBER FOR THARAKA CONSTITUENCY &



REPUBLIC OF KENYA
PARLIAMENT

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rarieda@parliament.go.ke

To,
Rt. Hon. (Dr.) Moses M. Wetang'ula, EGH, MP,
Speaker of the National Assembly,
Parliament Buildings,
NAIROBI.

**VERY
URGENT**

21st November, 2023

'Delivered by Hand'

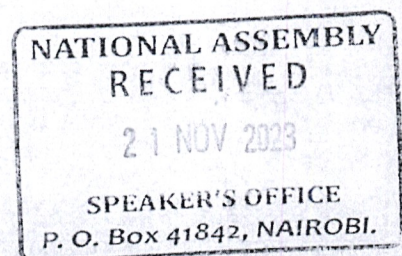
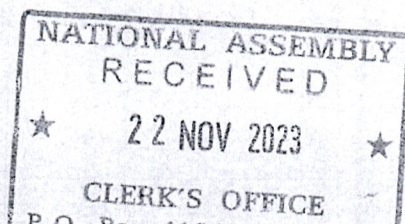
Dear

Hon Speaker,

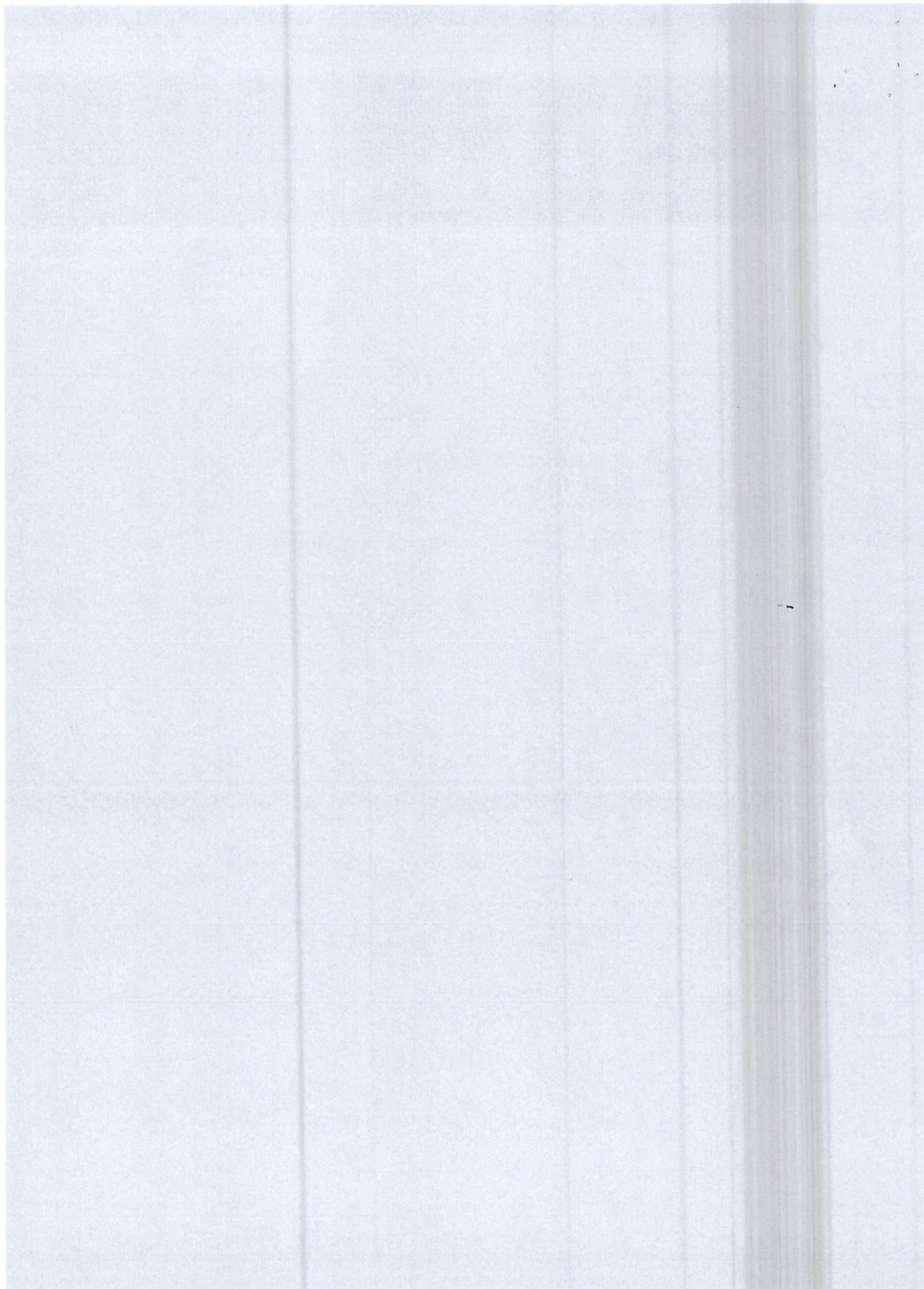
**RE: PROPOSAL FOR ENACTMENT OF THE CONFLICT OF INTEREST BILL, 2023 AND
REPEAL OF THE PUBLIC OFFICER ETHICS ACT, 2003**

Honourable Speaker, I am writing to propose deletion of the following Clauses of the Conflict of Interest Bill, 2023 (hereinafter referred to as 'the Bill'), as it proceeds to its Third (3rd) Reading at the National Assembly:

- 1- Short title and commencement - Delete
- 2- Interpretation - Delete
- 3- Objects of the Act- Delete
- 4- Application of this Act- Delete
- 5- Administration of this Act- Delete
- 6- Functions of the Commission- Delete
- 7- Powers of the Commission- Delete



- 8- Conflict of Interest- Delete
- 9- Obligation to avoid Conflict of Interest- Delete
- 10- Conflict of interest in Decision-making- Delete
- 11- Participation in proceedings before Parliament or County Assembly- Delete
- 12- Preferential treatment- Delete
- 13- Misuse of Official Information- Delete
- 14- Undue Influence- Delete
- 15- Offers of outside employment- Delete
- 16- Gifts and other benefits- Delete
- 17- Register of Gifts- Delete
- 18- Complimentary treatment- Delete
- 19- Contracts with public entities prohibited- Delete
- 20- Acquisition of interest in partnerships and private companies- Delete
- 21- Conflict in recruitment- Delete
- 22- Collusion by public officers to conceal Conflict of Interest- Delete
- 23- Restricted gainful employment- Delete
- 24- Register of conflict of interest- Delete
- 25- Political neutrality- Delete
- 26- Public collections- Delete
- 27- Prohibitions after leaving office- Delete
- 28- Prohibition against representing people before reporting entities- Delete
- 29- Exemption of former public officers- Delete
- 30- Duty to recuse- Delete
- 31- Declaration of income, assets and liabilities by public officers- Delete
- 32- Timelines for declarations- Delete
- 33- Clarifications- Delete
- 34- Access to declarations- Delete
- 35- Retention of information- Delete
- 36- Failure to submit information- Delete
- 37- False information- Delete
- 38- Divestiture - Delete
- 39- Methods of divestment- Delete
- 40- Blind trust requirements- Delete
- 41- Confirmation of blind trust or sale- Delete
- 42- Confidentiality of divestment- Delete
- 43- Assets given as security- Delete
- 44- Assets of minimal value- Delete
- 45- Compliance orders- Delete
- 46- Report on compliance with orders of the Commission- Delete
- 47- Publication of administrative mechanisms- Delete
- 48- Lodging of complaints and investigations- Delete
- 49- Right to decline commencement of investigations- Delete
- 50- Temporary vacation of office- Delete
- 51- Recommendations of the Commission- Delete
- 52- General penalty- Delete
- 53- Confidentiality- Delete
- 54- Protection of persons making disclosure- Delete



- 55-Protection from liability- Delete
- 56-Reports by reporting entities- Delete
- 57-Regulations - Delete
- 58-Repeal of Act No. 4 of 2003- Delete
- 59-Transitional provisions- Delete
- 60-Consequential amendments- Delete

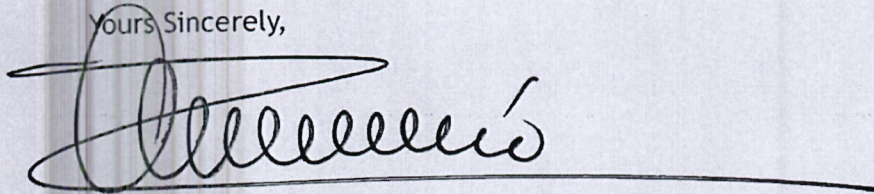
Justification:

The Bill in its entirety is unnecessary, unconstitutional and unimplementable.

Honourable Speaker, I kindly request your support in facilitating the presentation and discussion of these proposed amendments during the 3rd Reading of the Bill. I am prepared to provide detailed explanations and justifications for deletion of each of the above-stated Clauses.

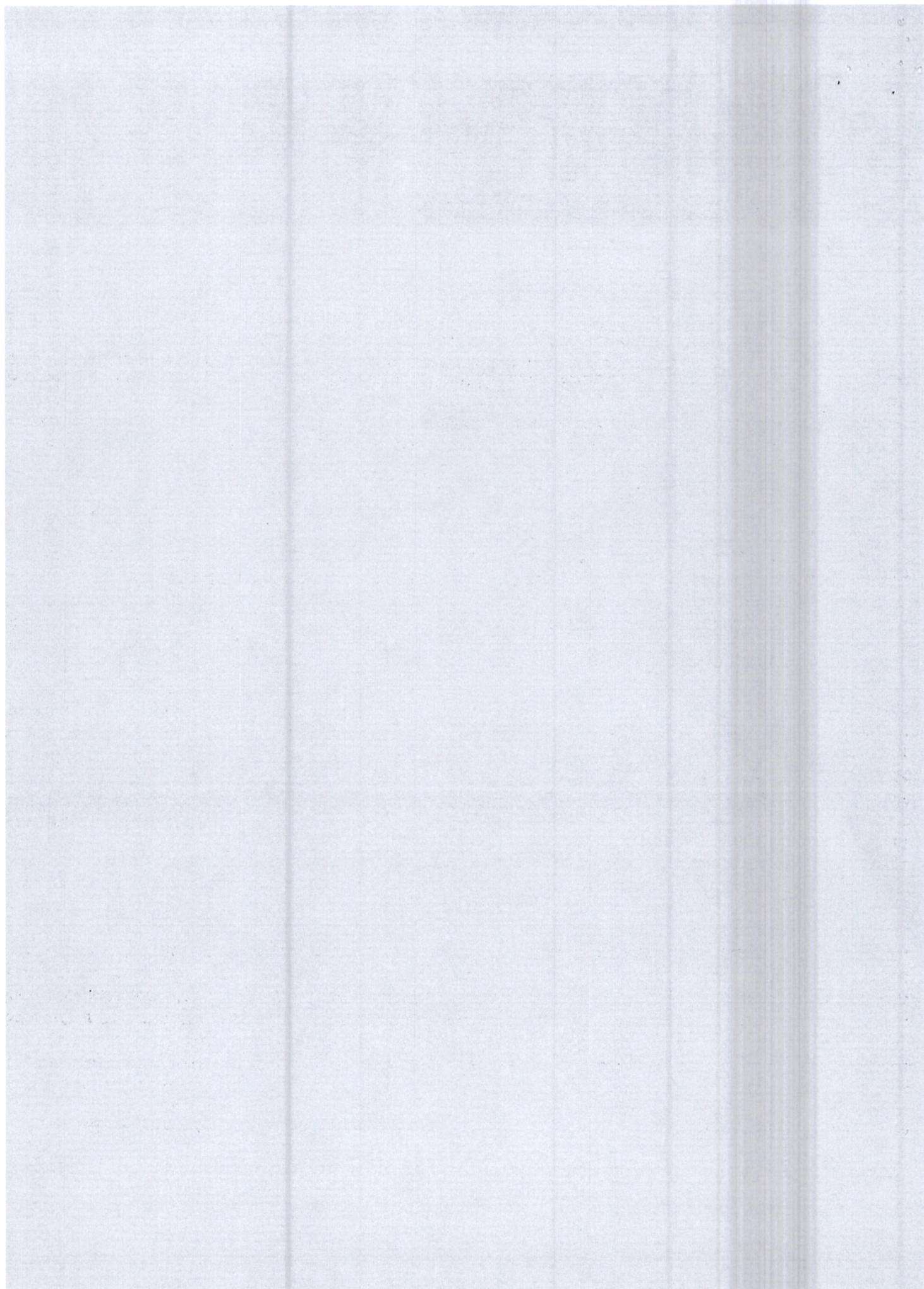
I thank you and assure you of my highest regards.

Yours Sincerely,

A handwritten signature in black ink, appearing to read 'Otieno Amollo', with a long horizontal line extending from the end of the signature.

HON. (DR) OTIENDE AMOLLO, SC, EBS, MP
RARIEDA CONSTITUENCY.

CC: Mr. Samuel Njoroge
Clerk of the National Assembly



D/DC

Please deal.

[Signature]

19/09/23



[Signature]
F.N.A
[Signature]
19/09/2023

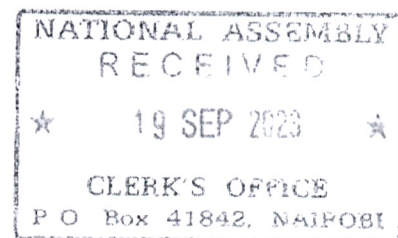
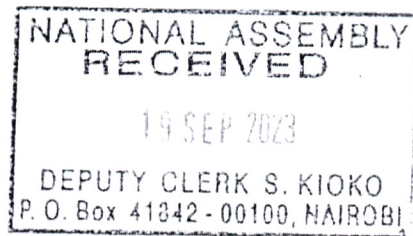
Mr. Douglas
Keele
Please deal.
[Signature]
19/09/2023

**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 / nec@kmpdu.org

Website: www.kmpdu.org



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

Clause 23(2) and (3)	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	Delete sub clauses (2) and (3)	delivery and increase access costs. Transparent working schedules could be created to allow for increased access to care. 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. Public officer economic empowerment should not be limited by statute. Risk of desertion and fleeing of public service in pursuit of private profit which may be more rewarding than public service.
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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

Clause 27,28,29	Prohibitions after leaving office	Delete clauses	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.
IV-Compliance measures Clause 31(4)(a)	Material change in value of income,asset or liability	Amend to provide for at least 100% increase of decrease in value of an income, asset or liability	Current threshold of 25% is too low and borders on extreme monitoring and scrutiny of economic empowerment and growth of persons
Clause 34	Digital data repository information missing	Amend to provide for public access to digital data repository on declarations: Can be accessed by payment of minimal access fee.	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.
Clause 35	Retention of information	Increase repository time to 15-20years	Allow adequate tracking and likely stashing of wealth that may have been ill gotten and reclaimed.

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 is 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: 31st August 2023

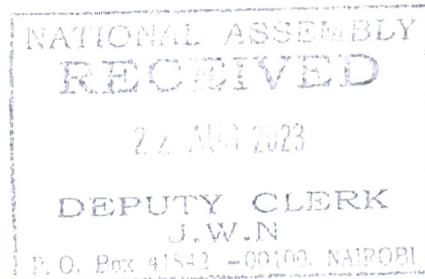
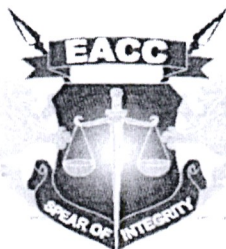


DR. DAVJI BHIMJI ATELLAH

SECRETARY GENERAL

KENYA MEDICAL PRACTITIONERS PHARMACISTS AND DENTISTS' UNION
(KMPDU).

Doc. 1100
22/10/23



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 WEBSITE: www.eacc.go.ke

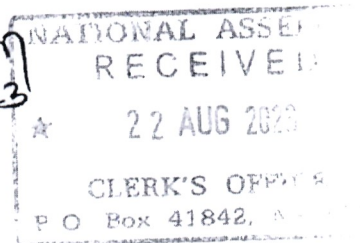
When replying please quote:

Our Ref: EACC.7/10/6 (178)

Mr. Samuel Njoroge
Clerk of the National Assembly
Main Parliament Buildings
P O Box 41842 - 00100
NAIROBI

Douglas Katho
pls facilitate
WJN
23/8/23

15th August 2023



Attn: Mr. Peter Chemweno/Jeremiah Ndombi, MBS

Dear

Clerk

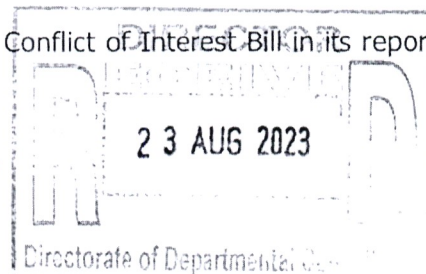
RE: SUBMISSION OF ADDITIONAL MEMORANDUM ON THE DRAFT CONFLICT OF INTEREST BILL, 2023

Reference is made to our letter **Ref: EACC/1/13 VOL II (127)** dated **27th June 2023** and the attached Memorandum on the Draft Conflict of Interest Bill, 2023. Please also refer to the appearance by the Commission and other stakeholders before the National Assembly Departmental Committee on Justice and Legal Affairs (JLAC) on **29th June 2023** and **8th August 2023** respectively, when the Committee received extensive submissions from stakeholders on the Bill.

Pursuant to the directions given by the JLAC at the stakeholder meeting held at the Safari Park Hotel on 8th August 2023, the Commission hereby submits an **additional Memorandum** to specifically address the issues that were agreed upon in the meeting. These are as follows: -

1. Provide a background and justification for the proposed law and management of conflict of interest;
2. The effect or implication of repealing the Public Officer Ethics Act as proposed in section 58 of the Conflict of Interest Bill;
3. Analyse and provide a commentary on the responses by the office of the Attorney General to the issues raised by stakeholders concerning the Bill during the stakeholder meeting held on 29th June 2023;
4. Respond to the additional issues of interest that came up during the stakeholder meeting held on 8th August 2023; and
5. Propose a suitable recommendation by the JLAC on the Conflict of Interest Bill in its report to the whole House.

Tuagamize Ufisadi, Tuijenge Kenya



The Commission hereby submits an additional Memorandum covering the above listed areas, for further consideration by the Committee (**attachment**). A soft copy of the Memorandum and the Appendix shall be emailed as directed.

Further, the Commission requests to be invited to participate in any other future stakeholder meetings on the Conflict of Interest Bill.

Yours *Sincerely*


fr **TWALIB MBARAK, CBS**
SECRETARY/CHIEF EXECUTIVE OFFICER

Encls.

ADDITIONAL MEMORANDUM BY THE ETHICS AND ANTI-CORRUPTION COMMISSION TO THE NATIONAL ASSEMBLY DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS ON THE DRAFT CONFLICT OF INTEREST BILL, 2023

1. INTRODUCTION

This is an Additional Memorandum on the Draft Conflict of Interest Bill, submitted by the Ethics and Anti-Corruption Commission to the Departmental Committee of the National Assembly on Justice and Legal Affairs (JLAC). The Bill, sponsored by the Leader of Majority in the National Assembly, is before the Committee for consideration and reporting to the House. The additional Memorandum is submitted in light of two stakeholder consultative meetings held by the JLAC on 29th June 2023 and 8th August 2023 respectively, when the Committee received extensive submissions by stakeholders on the Bill. This Additional Memorandum addresses the issues that arose during the submissions and ensuing plenary discussions during the two meetings.

Specifically, the Memorandum provide a background and justification for the proposed law on management of conflict of interest, and analyses the effect or implication of repealing the Public Officer Ethics Act as proposed in section 58 of the Conflict of Interest Bill. It analyzes and provides a commentary on the responses by the office of the Attorney General to the issues raised by stakeholders concerning the Bill during the stakeholder meeting held on 29th June, 2023, and also responds to the additional issues of interest that came up during the stakeholder meeting held on 8th August 2023. Finally, it proposes a recommendation by the JLAC on the Conflict of Interest Bill in its Report to the whole House.

2. BACKGROUND AND JUSTIFICATION FOR THE CONFLICT OF INTEREST BILL

Management of conflict of interest, especially in the public service, has been wanting. Personal conflict accounts for a huge proportion of corruption, economic crime and unethical conduct cases encountered in the course of exercising the Commission mandate. It was in the backdrop of these concerns that, during the National Anti-Corruption Conference held at Bomas of Kenya on the 23rd and 24th February 2019, concern on the prevalence of conflict of interest by public officers in Kenya was extensively discussed, and Attorney General was directed to develop a Conflict of Interest Bill. Pursuant to this directive a technical Committee was constituted on March 2019, comprising of representatives from the Office of the Attorney General and Department of Justice, Ethics and Anti-Corruption Commission (EACC), Parliament, Public Service Commission, Kenya Law Reform Commission(KLRC), Office of the Director of Public Prosecution(ODPP) and Executive Office of the President.

The following are some of the key considerations that informed the need for a dedicated law on management of conflict of interest in the country-

- a) Various provisions of the law on conflict of interest in the existing law are scattered in various statutes, and fail to provide a framework through which conflict of interest can be comprehensively managed in a coherent and coordinated manner. The Bill proposes a harmonized and coordinated policy, legal and institutional framework for the management of conflict of interest in Kenya;
- b) The Bill enhances the management framework, by introducing additional strategies for management of conflict, which are not currently entrenched in the existing law. Notable are

the compliance measures proposed in Part IV of the Bill, including divestiture of private interests upon appointment;

- c) Existing inadequacies and weaknesses on enforcement of conflict of interest by responsible commissions established under the POEA, especially taking into account that many public offices established under the Constitution in 2010 do not have a designated responsible commission to administer requirements under the Act;
- d) There is need to ensure that the legal framework in place on management of conflict of interest accords with the requirements in Article 7 of the United Nations Convention against Corruption, which requires State Parties to endeavor to adopt, maintain and strengthen systems that promote transparency and prevent conflict of interest;
- e) Development Partners have from time to time pointed out that the Kenyan systems for management of conflict of interest and financial disclosures for accountability and transparency in public service require strengthening. Specifically, the IMF has hailed the Conflict of Interest Bill as a landmark development towards the right direction, and has been following up on its development and progress towards enactment;
- f) A study of other jurisdictions which have fairly well established mechanisms to manage conflicts of interest in public service show that such countries have adopted a comprehensive strategy, which has been borrowed in developing the Conflict of Interest Bill. This is evident in countries such as France, United Kingdom, Germany, Belgium, Finland, Romania, Canada, United States, and Croatia;

The Bill has gone through a rigorous drafting process, involving many stakeholders including the PSC. The Draft was also subjected to stakeholder validation in a two-day exercise at the Kenyatta International Convention Centre on 28th and 29th November, 2019. The Bill was also considered and approved by the Cabinet prior to committal to the National Assembly.

3. IMPLICATION ON REPEAL OF THE PUBLIC OFFICER ETHICS ACT, 2003

Section 58 of the Conflict of Interest Bill seeks to repeal the Public Officer Ethics Act, 2003 (POEA). A number of stakeholders have raised a concern that repealing POEA will have negative effects. Issues raised include the disbandment of responsible Commissions established under section 3 of POEA, fate of the Codes of Ethics established in Part II of POEA, and whether the EACC has capacity to administer declarations of income, assets and liabilities for the entire public service. These concerns are addressed as follows-

- a) The Constitution of Kenya, 2010 provides an elaborate framework for regulating behaviours of public officials. Chapter Six of the Constitution 2010 and Leadership and Integrity Act, Part II of the Act lays an elaborate framework for codes of conduct. Section 6(3) of LIA provides that (3) unless otherwise provided in this Act, the provisions of the Public Officer Ethics Act (No. 4 of 2003) shall form part of this Code. Section 6(4) of LIA provides that if any provision of the Act is in conflict with the Public Officer Ethics Act, 2003, then LIA shall prevail. By dint of the said provisions, the codes of conduct under POEA are deemed as part of the LIA;
- b) A recommendation has also been made to revise section 58 of the Conflict of Interest Bill to provide a saving clause for the Codes of conduct so that it reads as follows-

58. (1) The Public Officer Ethics Act, 2003 is repealed.

(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.

- c) POEA was enacted in 2003, and has never been reviewed to be aligned with the Constitution 2010;
- d) The only other main provision under the POEA is declaration of income, assets and liabilities, which the Bill proposes to transfer to the EACC. Financial disclosures by public officers for accountability and transparency is one of the tools to manage conflict of interest, and therefore, going by best practice from other jurisdictions, declaration of income, assets and liabilities should be provided for in the Conflict of Interest Bill. As such, nothing will be lost in repealing the POEA and retaining the LIA with necessary amendments. In terms of the entity that should administer the declarations of income, assets and liabilities, it is proposed that, either-
 - The EACC as the entity implementing the Act becomes the central repository for all state and public officers; or
 - EACC administers the requirements in respect of State officers, while the other responsible commissions retain the mandate in respect of the officers that they are established.
- e) The Bill proposes establishment of procedures and mechanisms for implementation of the requirements under the proposed law, including online submission of declarations. In addition, the Bill proposes that EACC will have power to delegate some of the functions and powers to an entity. These measures will adequately address any capacity constraints that may arise during implementation;
- f) The Bill proposes development of subsidiary legislation in the form of regulations and other administrative procedures and mechanisms for implementation of the law, which will address some of the concerns raised by stakeholders.

4. ANALYSIS AND RESPONSE ON THE SUBMISSIONS BY STAKEHOLDERS

The EACC reiterates the proposed amendments to the Bill forwarded under cover of letter **Ref: EACC/1/13 VOL.II (127)** dated **27th June, 2023**. The Commission has also analyzed the submissions made by various stakeholders on the Bill, as well as the comprehensive responses prepared by the Office of the Attorney General on each of the issues. Attached to this Memorandum (Appendix) is a summary of the responses adopted by the Hon. Attorney General on each of the issues raised by the stakeholders, and the position of EACC *vis-à-vis* the response by the Hon. Attorney General.

(See Appendix attached)

5. PROPOSED RECOMMENDATION BY JLAC TO THE HOUSE

Taking into account the totality of the submissions made by the stakeholders and the subsequent plenary discussions on the Conflict of Interest Bill, the EACC proposes that the proposed amendments, which are agreeable to the Committee and other stakeholders, be incorporated in the Bill. Consequently, in its report to the House, JLAC should recommend-

"That the Conflict of Interest Bill, 2023 be read a second time with amendments"

CLAUSE	SUBMISSION	COMMENTS BY THE ATTORNEY GENERAL
	cater to provisions of the Public Officer Ethics Act, 2003, particularly, on sexual harassment.	We are in agreement that the bill does not adequately cater for provisions of the public officer ethics act 2003. Amend the bill as necessary. <u>EACC's POSITION</u> This will be adequately covered under the Leadership and Integrity Act, 2012 which applies to all state and public officers.
59 – Saving and transitional provisions	The ODP 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.	<u>AG's POSITION</u> Sections 59 and 60 be amended as necessary to provide for the continuance of any ongoing investigations and pending cases filed pursuant to any repeal provisions of the Anti-Corruption and Economic Crimes Act and that such investigation and cases be governed by the law applicable to it immediately prior to the commencement of this Act. <u>EACC's POSITION</u> Adopt the comments of the Attorney General.
	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.	<u>AG's POSITION</u> Though the Bill does not adequately cater for provisions of the Public Officer Ethics Act, amend the bill as necessary the proposed law under clause 4 is to apply to all reporting entities and public officers. Reporting entities is defined to include among others, state organ. The Constitution in article 260 provides that a "State organ means a commission, office agency or other body established under this Constitution. <u>EACC's POSITION</u> Adopt the comments of the Attorney General.

CLAUSE	SUBMISSION <i>identity of informants and witnesses</i>	COMMENTS BY THE ATTORNEY GENERAL
55 – Protection from liability	The TSC proposed the amendment of the clause to provide for a clearer format for the compliance reports referred to therein.	<u>AG's POSITION</u> This will be addressed in the regulations to be enacted pursuant to clause 57 of The Bill. <u>EACC's POSITION</u> Adopt the comments of the Attorney General.
58 – Repeal of the Public Officer Ethics 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.	<u>AG's POSITION</u> We agree with the sentiments by EACC. Add a savings provision for codes of conduct and ethics developed under section 5 and 6 of Public Officer 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.	<u>AG's POSITION</u> We agree with the proposal by Transparency international. <u>EACC's POSITION</u> The proposal by Transparency International is not practical. The other aspects of the POEA are adequately provided for under the Leadership and Integrity Act, 2012. The Act adequately covers 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.
	The TSC also submitted that the Bill does not adequately	<u>AG's POSITION</u>

CLAUSE	SUBMISSION	COMMENTS BY THE ATTORNEY GENERAL
52 – General Penalty	The TSC proposed amendment of Clause 52 to provide for a lesser fine as penalty.	<u>AG'S POSITION</u> The penalties are discretionary and thus not punitive. <u>EACC'S POSITION</u> Adopt the comments of the Attorney General.
	Transparency International proposed the introduction of an additional sub-clause (4) as follows: <i>"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."</i>	<u>AG'S POSITION</u> Adopt provision of section 64 of Anti-Corruption and Economic Crimes Act which provides that <i>"a person convicted of corruption or economic crimes shall be disqualified from being elected or appointed as a public officer for 10 years after the conviction."</i> <u>EACC'S POSITION</u> Adopt the comments of the Attorney General.
54 – Protection of person making disclosure	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.	<u>AG'S POSITION</u> We agree with the proposal. <u>EACC'S POSITION</u> Adopt the comments of the Attorney General.
	Transparency International proposed the addition of a new sub-clause to provide for the enhanced protection of whistleblowers and witnesses as follows: <i>"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"</i> <i>"Every reporting institution and law enforcement agency shall put in place reasonable mechanisms to protect the</i>	<u>AG'S POSITION</u> Adopt additional sub-clause proposed <u>EACC'S POSITION</u> Adopt the comments of the Attorney General.

CLAUSE	SUBMISSION	COMMENTS BY THE ATTORNEY GENERAL
	subjected to the provisions of law governing the operations of the reporting authorities and other statutes.	constitution and any written law, such as the Fair Administrative Actions Act. The constitution adequately provides for protection of fundamental rights and freedoms including the right to fair administrative action. <u>EACC's POSITION</u> Adopt the comments of the Attorney General.
	Transparency International proposed the addition of the phrase '<i>unless the person is charged in accordance with Section 51(1)(d) to Clause 50 (2)</i>' to align it to Section 62(1) of the Anti-Corruption and Economic Crimes Act, 2003.	<u>AG's POSITION</u> Clause 50 of the bill speaks on suspension pending investigation while Section 62(1) of the Anti-Corruption and Economic Crimes Act addresses the situation after the officer has been charged. The proposal in the Bill and Section 62(1) of the Anti-Corruption and Economic Crimes Act are in harmony and do not contradict each other. <u>EACC's POSITION</u> Adopt the comments of the Attorney General.
51 – Recommendations of the Commission	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. The ODPP recommended that the word 'prosecution' be substituted with 'prosecutions' as provided under Clause 51(1)(d) of the Bill.	<u>AG's POSITION</u> We agree with the proposal. <u>EACC's POSITION</u> EACC does not agree with the proposal. The nature of recommendations provided for under clause 51 are in the nature of compliance orders to be issued by the Commission, and require an enforcement mechanism for effective enforcement of the objects of the Bill. The safeguard against arbitrary recommendations is well taken care of in clause 51(2) where the High Court will adjudicate in the event of a dispute. <u>AG's POSITION</u> We agree with the proposal. <u>EACC's POSITION</u> Adopt the comments of the Attorney General.

CLAUSE	SUBMISSION	COMMENTS BY THE ATTORNEY GENERAL
49 – Discretion in 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.	Adopt the comments of the Attorney General. <u>AG's POSITION</u> The act clearly defines conflict of interest and instances where conflict of interest 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 reason why. <u>EACC's POSITION</u> Adopt the comments of the Attorney General. <u>AG's POSITION</u> Timelines can be addressed administratively to ensure complaints are addressed within a reasonable time. <u>EACC's POSITION</u> Adopt the comments of the Attorney General.
50 – Suspension from office	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. The Judiciary stated that suspension of public officers under investigation for breach of the 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. The TSC also submitted that the clause on suspension from office is subject to abuse and should instead be	We agree with the proposal. <u>EACC's POSITION</u> Although EACC adopts the comments by the Attorney General, it should be noted that the suspension envisioned under Article 168 of the Constitution only covers Judges, and does not extend to other judicial officers and the staff of the Judiciary. The proposal in the Bill was correct as it was and does not need any further amendment, because it made the suspension "subject to the Constitution and any other law". The Bill should not open the provision for exceptions. <u>AG's POSITION</u> The envisaged suspension from office is provided it will be subject to

CLAUSE	SUBMISSION	COMMENTS BY THE ATTORNEY GENERAL
	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. Transparency International proposed amending Clause 33(1) of the Bill to have the reporting authority analyse, process and verify the declarations alongside the EACC.	<u>AG's POSITION</u> We agree with the proposal. <u>EACC's POSITION</u> The proposition may not be practical, because the final declaration is supposed to incorporate the financial position at the time of exit. Retain. <u>AG's POSITION</u> We agree with the proposal. <u>EACC's POSITION</u> Adopt the comments of the Attorney General.
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.	<u>AG's POSITION</u> Abuse of powers by public bodies may be addressed by the court through judicial review proceedings. This will also be addressed under the administrative mechanisms to be developed under clause 47 of The Bill. <u>EACC's POSITION</u> Adopt the comments of the Attorney General.
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 with evidence to avoid filing of frivolous complaints and wasting the EACC's time. The TSC proposed that the clause be amended in whole to avoid abuse by expanding 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.	<u>AG's POSITION</u> This will be addressed in the statutory instrument to be made under clause 57 of the Bill. <u>EACC's POSITION</u> Adopt the comments of the Attorney General. <u>AG's POSITION</u> This will be addressed in the regulations envisaged under clause 57 of the Bill. We further note that opening up of the avenues for lodging complaints and carrying out of investigations may lead to institutional conflicts and forum shopping <u>EACC's POSITION</u>

CLAUSE	SUBMISSION	COMMENTS BY THE ATTORNEY GENERAL
liabilities by public officers	declaration of income, assets and liabilities for employees be submitted to the respective reporting authorities and not the EACC.	Declaration of income assets and liabilities for public officers. Such declarations can however be submitted to the commission through the reporting authorities. <u>EACC's POSITION</u> Adopt the comments of the Attorney General. Further, EACC may delegate this responsibility in line with clause 7(c) and 59. However, another option would be for the EACC to be the custodian of declarations by all State officers, while the responsible commissions and other entities administer DIALs for the respective officers for whom they are established.
	Additionally, the TSC proposed that sub-clause (4)(c) be deleted as it amounts to a violation of privacy contrary to the Article 31 of the Constitution.	<u>AG's POSITION</u> Marriage is a public affair registered with the Registrar of Marriages and there's nothing private about it. <u>EACC's POSITION</u> Adopt the comments of the Attorney General. The marital status of a public officer is an important component in a declaration.
32 – Timelines for declarations 33 – Clarifications	The EACC, ODPP and Transparency International noted a numbering error in the sub-clauses under Clauses 32, 33 and 34 of the Bill.	<u>AG's POSITION</u> We agree with the proposal.
34 – Access to declarations	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.	<u>AG's POSITION</u> It is our opinion that the one-year, provided is sufficient 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. <u>EACC's POSITION</u> Adopt the comments of the Attorney General.

CLAUSE	SUBMISSION	COMMENTS BY THE ATTORNEY GENERAL
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.	<u>AG's POSITION</u> The proposal is well covered under the Public Collection Act. The Act provides for the regulation of collections of money and property from the public. <u>EACC's POSITION</u> Adopt the comments of the Attorney General.
27 – Prohibition after leaving office 28 – Prohibition against representing people before reporting entities	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 practice of a profession. Furthermore, the provisions are in conflict with the principles in the Advocates Act, Cap 16.	<u>AG's POSITION</u> The proposal defeats the objective of The Bill. We propose retention of clauses 27, 28 and 29 of the Bill. <u>EACC's POSITION</u> Adopt the comments of the Attorney General.
29 – exemption of former public officers	The ODPP and EACC proposed substitution of the word 'after' with 'preceding' in Clause 28 of the Bill.	<u>AG's & EACC's POSITION</u> 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.	<u>AG's POSITION</u> 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. <u>EACC's POSITION</u> Adopt the comments of the Attorney General.
31 – Declaration of income, assets and	The Judiciary, TSC and Transparency International proposed that the clause be amended to provide that	<u>AG's POSITION</u> We propose that EACC retains the mandate of being the custodian of the

CLAUSE	SUBMISSION	COMMENTS BY THE ATTORNEY GENERAL
	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.	The term incompatible is borrowed from section 26(2) of the said Act and, its definition can be applied <i>mutatis mutandis</i> under clause 23 of The Bill. The term incompatible is borrowed from section 26(2) of the Leadership and Integrity Act and its definition under the Act can be applied <i>mutatis mutandis</i> under the proposed Bill. <u>EACC's POSITION</u> Adopt the comments of the Attorney General.
24 – Register of conflicts of interest	Mzalendo Trust was of the opinion 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.	<u>AG's POSITION</u> Opening the registry to members of the public may pose a challenge arising from frivolous 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. <u>EACC's POSITION</u> Adopt the comments of the Attorney General, with an addition that the Commission may inspect a register maintained in accordance with this section at any time upon a written request to the Reporting authority.
25 – Political neutrality	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. Transparency International proposed the inclusion of an additional sub-clause as follows; <i>“(c) engage in political activity that may compromise or be seen to compromise the political neutrality of his/her</i>	<u>AG's POSITION</u> We agree with the proposal. <u>EACC's POSITION</u> Adopt the comments of the Attorney General.
		<u>AG's POSITION</u> We agree with the proposal. <u>EACC's POSITION</u> Adopt the comments of the Attorney General.

CLAUSE	SUBMISSION	COMMENTS BY THE ATTORNEY GENERAL
prohibited	avoid abuse by public officers and to protect the sanctity of the Public Procurement and Disposal Act, 2015.	<u>EACC's POSITION</u> Adopt the comments of the Attorney General.
20 – Acquisition of interests in partnerships and private companies	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'.	<u>AG's POSITION</u> This proposal is addressed under clause 38, 39 and 40 of the Bill. Mechanisms for managing mechanisms for managing conflict of interest in such instances has also been outlined in the Bill. <u>EACC's POSITION</u> Adopt the comments of the Attorney General.
21 – Conflict in recruitment	Transparency International proposed deletion of sub-clause (2) which provides for the exemption of conflict in recruitment or in the alternative definition of 'personal staff'.	<u>AG's POSITION</u> 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 appointment of personal staff. <u>EACC's POSITION</u> Adopt the comments of the Attorney General.
23 – Restricted gainful employment	The SRC proposed the amendment of the sub-clause (1) in whole to read as follows: <i>"A public officer who accepts employment on a part-time basis in another public institution shall inform the institution offering them the employment, before accepting the employment offer of their full-time employment as a public officer."</i>	<u>AG's POSITION</u> We agree with the proposed amendment by SRC. <u>EACC's POSITION</u> Adopt the comments of the Attorney General, with an addition that the Clause as drafted is confusing and ambiguous. The proposed amendment should be harmonized with clause 23(2) of the Bill.
	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. Moreover, it added that sub-clause (2) ought to be expanded in scope by providing what amounts to gainful employment.	<u>AG's POSITION</u> The general rule on gainful employment by state offices is provided for under section 26(1) of the Leadership and Integrity Act. The Act requires that an officer who is serving on a full-time basis not participate in any other gainful employment.

CLAUSE	SUBMISSION	COMMENTS BY THE ATTORNEY GENERAL
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.	<u>AG's POSITION</u> Gifts are areas of potential conflict and should thus be declared in private registers. See clause 17. <u>EACC's POSITION</u> Adopt the comments of the Attorney General. However, to note that the Registers are not "private".
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 exemplary performance.	<u>AG's POSITION</u> The clause only creates an obligation to maintain a register of gifts which is in line with the objects of the Bill. <u>EACC's POSITION</u> Adopt the comments of the Attorney General.
	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.	<u>AG's POSITION</u> Adequately covered in clause 56 of the Bill. It provides for compliance measures by reporting entities. <u>EACC's POSITION</u> Adopt the comments of the Attorney General.
18 – Complimentary treatment	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.	<u>AG's POSITION</u> It does not criminalize as it provides exceptions in which complimentary treatment may accepted. However it is necessary that the exceptional circumstance alluded to in the clause be outlined under the Bill. <u>EACC's POSITION</u> The position is clarified in Clause 57(1)(a) of the Bill which provides that the Regulations will prescribe exceptional circumstances under which complimentary treatment may be accepted under the Act.
19 – Contracts with public entities	TSC submitted that this clause be amended to include the place of proxies such as spouse(s) and children to	<u>AG's POSITION</u> We agree with the proposal by the ODPP.

CLAUSE	SUBMISSION	COMMENTS BY THE ATTORNEY GENERAL
8 – Conflict of Interest	The TSC proposed that the deletion of the word 'perceived' under Clause 8(b) as it is subject to abuse.	AG's POSITION Deleting the word 'perceived' will increase the threshold of determining cases of conflict of interest, and will raise the standard of proof on the part of the Commission to determine an instance of conflict of interest. EACC's POSITION Adopt the comments of the Attorney General.
9 – Obligation to avoid conflict of interest	Transparency International recommended the addition of the words ' <i>to the reporting authority or Commission and comply with any directions to avoid the conflict</i> ' to ensure accountability by providing clarity on who a public officer should report to.	AG's POSITION We agree with the proposed amendment EACC's POSITION Adopt the comments of the Attorney General.
10 – Conflict of interest in decision making. 36 – failure to submit information 37 – False information	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. 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.	AG's POSITION 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. 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. EACC's POSITION Adopt the comments of the Attorney General. AG's POSITION We agree with the proposal by the ODPP. EACC's POSITION There are many laws that provide for administrative fines. An example is the Data Protection Act. Consider to retain the clause.

CLAUSE	SUBMISSION	COMMENTS BY THE ATTORNEY GENERAL
	<i>duties;</i> <i>(c) promote selfless service by public officers based solely on the public interest."</i>	
4 - Application of the Act	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 as provided for under the Act be reinstated in the Bill.	AG's POSITION 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. 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 requiring financial declaration from certain public officers. EACC's POSITION Adopt the comments of the Attorney General.
5 - Administration of the 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.	AG's POSITION The clauses do not affect the operation independence of JSC. EACC has the exclusive mandate to ensure compliance with, and enforcement of the provisions of Chapter 6 and all anti-corruption laws. EACC's POSITION Adopt the comments of the Attorney General. Further, it is noted that under Clause 7(c) of the Bill EACC is empowered to delegate any powers or functions to another organ or entity.
6 - Functions of the Commission	The Council of Governors proposed an additional function of the Commission as follows: <i>"Develop policies, standards, guidelines and promote best practices for the management of conflict of interest."</i>	AG's POSITION This is adequately covered under clause 6(c) of the Bill EACC's POSITION Adopt the comments of the Attorney General.



REPUBLIC OF KENYA

OFFICE OF THE ATTORNEY-GENERAL
&
DEPARTMENT OF JUSTICE

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2nd August, 2023

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

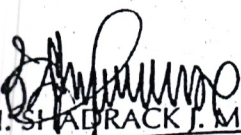
RE: THE CONFLICT OF INTEREST BILL, 2023

We refer to the above-captioned subject matter and our appearance before the Departmental Committee on Justice and Legal Affairs on the 27th 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

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MATRIX OF SUBMISSIONS FROM OFFICE OF ATTORNEY GENERAL

CLAUSE	SUBMISSION	COMMENTS BY THE HON ATTORNEY GENERAL
1 Short Title and Commencement	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. 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.	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 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 14th day after gazettelement. We however propose that the Bill commences within 6 months

CLAUSE	SUBMISSION	COMMENTS BY THE HON ATTORNEY GENERAL
2 -Interpretation	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, recommended that the definition be deleted. 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. 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. The TSC further proposed the inclusion of what constitutes a conflict of interest both directly and indirectly in the definitions.	We agree with the proposal by the ODPP. The definition on gainful employment provided under the Bill is broad. Clause 23 of the Bill sets out instances when it applies. 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. 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, 27th July 2023, was the insertion of the definition of 'conflict of interest' in the interpretation clause of the Bill. The AG proposed the inclusion of the following definition, based on the comments submitted to the House; "Conflict of interest" means:

CLAUSE	SUBMISSION	COMMENTS BY THE HON ATTORNEY GENERAL
	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.	“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” (OECD, 2003).
	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.	The Constitution in article 260 defines public officer to include a state officer.
	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.	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. In addition, a person is first presumed to have legally acquired assets unless there are circumstances that create reasonable suspicion.
	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.	Clause 2 on Interpretation is amended by introducing the meaning of “Whistleblower” “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

CLAUSE	SUBMISSION	COMMENTS BY THE HON ATTORNEY GENERAL
		information in accordance with this Act, or a person who assists such individual
3 – Objects of the Act	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: “(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;”	Accountability is already provided for under the Public Finance Management Act and the Constitution of Kenya. Adding this particular object on the Bill will not alter the substance of the Bill.
4 - Application of the Act	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.	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. 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

CLAUSE	SUBMISSION	COMMENTS BY THE HON ATTORNEY GENERAL
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

CLAUSE	SUBMISSION	COMMENTS BY THE HON ATTORNEY GENERAL
		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 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.	We agree with the proposed amendment.
10, 36 and 37 10 – Conflict of interest in decision making 36 – Failure to submit information 37 – False information	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. 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.	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. 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. We agree with the proposal by the ODPP.
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	Gifts are areas of potential conflict and should thus be declared but in private registers. See clause 17.

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	that such declaration only be made during suspicious circumstances of gifting.	
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 exemplary performance.	The clause only creates an obligation to maintain a register of gifts which is in line with the objects of the Bill.
	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.	Adequately covered in Clause 56 of the Bill. It provides for compliance measures by reporting entities.
18 – Complimentary treatment	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.	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.
19 – Contracts with public entities prohibited	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.	We agree with the proposal.
20 – Acquisition of interest in partnerships and private companies	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’.	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.

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21 – Conflict in recruitment	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’.	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.
23 – Restricted gainful employment	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.” 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.	We agree with the proposed amendment by SRC. 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. The term incompatible is borrowed from section 26(2) the said Act, and its definition can be applied mutatis mutandis under Clause 23 of the Bill. -The term incompatible is borrowed from section 26 (2) of Leadership and Integrity Act, and its

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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 representing people before reporting entities 29 – Exemption of former public officers	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 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.	The proposal defeats the objective of the Bill. We propose retention of the clauses 27, 28 and 29 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	We propose that EACC retains the mandate of being the custodian of declaration of income,

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	income, assets and liabilities for employees be submitted to the respective reporting authorities and not the EACC.	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	The EACC, ODP 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.
32 – Timelines for declarations	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.	It is our opinion that the one-year period provided is sufficient 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.
33 – Clarification		
34 – Access to declarations	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.

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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 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 will be addressed in the statutory instrument to made under Clause 57 of the Bill. 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	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	The Act clearly defines COI and instances where COI occurs.

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commencement of investigations	preliminary inquiry to determine whether conflict of interest is apparent or not.	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.
50 – Suspension from office	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
	The Judiciary stated that suspension of public officers under investigation for breach of the 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.	We agree with the proposal.
	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.	The envisaged suspension from office is provided to be “subject to Constitution and any written Law” (i.e. Fair Administrative Actions Act).

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		The Constitution adequately provides for protection of fundamental rights and freedoms including the right to fair administrative action.
	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.	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 The two laws work in harmony and do not contradict each other.
51 – Recommendations of the Commission	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.	We propose for the deletion of Clause 51(2) of the Bill.
	The ODPP recommended that the word 'prosecution' be substituted with 'prosecutions' as provided under Clause 51(1)(d) of the Bill.	We agree with the proposal.
	The TSC proposed amendment of Clause 52 to provide for a lesser fine as penalty.	The penalties are discretionary and thus not punitive.
	Clause 52 Transparency International proposed the introduction of an additional sub-clause (4) as follows:	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

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	“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.”	appointed as a public officer for ten years after the conviction”
54 – Protection of person making disclosure	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. 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.”	We agree with the proposal. Adopt additional sub-clause proposed.
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	We agree with the sentiments by EACC. Add a savings provision for Codes of Conduct and

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	sufficiently provide for a saving clause for the already existing Codes of Conduct and Ethics developed under sections 5 and 6 of the Act.	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 sexual harassment.	We are in agreement that the Bill does not adequately cater for provisions of the Public Officer Ethics Act, 2003. Amend the Bill as necessary.
59 – Transitional provisions	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.	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.

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	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.	Though the Bill does not adequately cater for provisions of the Public Officer Ethics Act, Amend the Bill as necessary 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.
	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.	The Constitution in article 260 provides that a “State organ” means a <u>commission</u>, office, agency or other body established under this Constitution; Concerns raised in relation to Clauses 31 and 50 of the Bill have been addressed above.

