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~~Amthumi~~
28.03.2024
DSS.



REPUBLIC OF KENYA

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THIRTEENTH PARLIAMENT | FIRST SESSION

THE SENATE

STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS

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

PAPERS LAID	
DATE	28/03/2024
TABLED BY	Sen. Wakieli Sikei
COMMITTEE	Justice, Legal Affairs & HR [JLAHR]
CLERK AT THE TABLE	Carolynne Chesop

Clerk's Chambers,
The Senate,
Parliament Buildings,
NAIROBI.

MARCH, 2024

TABLE OF CONTENTS

Abbreviations and Acronyms	(ii)
Preliminaries	(iii)
Foreword by the Chairperson.....	(iv)
Adoption of the Report	(vii)
Chapter 1: Introduction	
Introduction.....	1
Object of the Bill.....	1
Consequence of the Bill	1
Overview of the Bill.....	2
Chapter 2: Public Participation on the Bill	
Introduction.....	4
Overview of Stakeholder Submissions on the Bill	5
<i>Reinstatement of provisions which provided for divestiture.....</i>	<i>18</i>
Chapter 3: Committee Observations and Recommendations	
Committee Observations.....	19
Committee Recommendations	21
Annexures	

LIST OF ABBREVIATIONS/ACRONYMS

CAF	-	The County Assemblies Forum
CoG	-	The Council of County Governors
EACC	-	The Ethics and Anti-Corruption Commission
ICS	-	Institute of Certified Secretaries
KLRC	-	Kenya Law Reform Commission
NPSC	-	The National Police Service Commission
OAG	-	Office of the Attorney-General
OPCS	-	Office of the Prime Cabinet Secretary
PSC*	-	The Parliamentary Service Commission
PSC	-	The Public Service Commission
SRC	-	The Salaries and Remuneration Commission
TI	-	Transparency International – Kenya
TSC	-	The Teachers Service Commission
UKCS	-	Union of Kenya Civil Servants

PRELIMINARIES

Establishment and Mandate of the Committee

The Standing Committee on Justice, Legal Affairs and Human Rights is established under the Standing Orders of the Senate and is mandated *'to consider all matters relating to constitutional affairs, the organization and administration of law and justice, elections, promotion of principles of leadership, ethics, and integrity; agreements, treaties and conventions; and implementation of the provisions of the Constitution on human rights.*

Membership of the Committee

The Committee is comprised of –

- | | |
|--|--------------------|
| 1) Sen. Wakili Hillary Kiprotich Sigei, MP | - Chairperson |
| 2) Sen. Raphael Chimera Mwinzagu, MP | - Vice-Chairperson |
| 3) Sen. Fatuma Adan Dullo, CBS, MP | - Member |
| 4) Sen. William Cheptumo Kipkiror, CBS, MP | - Member |
| 5) Sen. Hamida Kibwana, MP | - Member |
| 6) Sen. Catherine Muyeka Mumma, MP | - Member |
| 7) Sen. Veronica W. Maina, MP | - Member |
| 8) Sen. Karen Njeri Nyamu, MP | - Member |
| 9) Sen. Andrew Omtatah Okoiti, MP | - Member |

Minutes of the Committee in considering the Conflict of Interest Bill, 2023 (National Assembly Bills No. 12 of 2023) are attached to this Report as ***Annex I***.

FOREWORD BY THE CHAIRPERSON

Hon. Speaker,

Honourable Senators, the Conflict of Interest Bill, 2023 (*National Assembly Bill No. 12 of 2023*) was sponsored by the Leader of Majority Party in the National Assembly and published on 3rd April, 2023. The Bill was passed by the National Assembly, with amendments, on 30th November, 2023 and referred to the Senate for consideration in accordance with Article 110 of the Constitution. The Bill was read a first time in the Senate on Wednesday, 14th February, 2024 and committed to the Standing Committee on Justice, Legal Affairs and Human Rights for consideration for consideration.

Hon. Speaker

The Bill seeks to repeal the Public Officer Ethics Act, of 2003 and put in place a framework for the management of conflict of interest in the performance of public duties. The Ethics and Anti-Corruption Commission and other State organs including committees of Parliament and county assemblies responsible for the ethics of members, the Public Service Commission and the Judicial Service Commission shall be responsible for the administration of the Act.

Hon. Speaker

Pursuant to Article 118 of the Constitution and Standing Order 145 (5) of the Senate Standing Orders, the Committee undertook public participation on the Bill. In that regard, the Committee published an advertisement in the *Daily Nation* and *Standard* newspapers on Friday, 16th February, 2024 inviting members of the public to submit written memoranda to the Committee on the Bill. Additionally, the Committee sent invitations to key stakeholders inviting them to submit their comments on the Bill.

The Committee received written memoranda from the Ethics and Anti-Corruption Commission (EACC), the National Police Service Commission (NPSC), the Teachers Service Commission (TSC), the County Assemblies Forum (CAF), the Union of Kenya Civil Servants (UKCS), the Kenya Law Reform Commission (KLRC), the Institute of Certified Secretaries (ICS), the Council of County Governors (CoG), the Salaries and Remuneration Commission (SRC), the Transparency International – Kenya (TI), the Office of the Prime Cabinet Secretary (OPCS), the Public Service Commission (PSC), the Parliamentary Service Commission (PSC), The Judiciary, and the Office of the Attorney-General (AG) on the Bill which the Committee considered in the preparation of this report.

(13)

Committee concurred with majority stakeholders and observed that while the Bill seeks to repeal the Public Officers and Ethics Act, 2003, it does not adequately speak to and provide for fundamental aspects of the Ethics spelt out in the Public Officers Ethics Act, 2003. The proposed amendments in this report are a product of extensive deliberations and consultations that have taken place to ensure that we have a good law in place that will stand test of time.

Hon. Speaker,

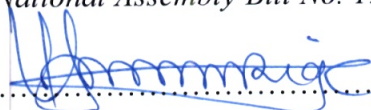
I wish to thank the Offices of the Speaker and the Clerk of the Senate for the logistical and technical support accorded to the Committee during the extensive consideration of the Bill. The Committee wishes to thank the Stakeholders for their extensive submissions and comments that greatly enriched our consideration on the Bill.

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

Hon. Speaker,

On behalf of the Departmental Committee on Justice Legal Affairs and Human Rights Affairs; and pursuant to Senate Standing Orders Standing Order 148 (1) present the Report of the Standing Committee on Justice, Legal Affairs and Human Rights on the Conflict of Interest Bill, 2023 (*National Assembly Bill No. 12 of 2023*).

Signed



Date.....

27.03.2024

**SEN. WAKILI HILLARY KIPROTICH SIGEL, MP
CHAIRPERSON, STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND
HUMAN RIGHTS.**

**ADOPTION OF THE REPORT OF THE STANDING COMMITTEE ON JUSTICE,
LEGAL AFFAIRS AND HUMAN RIGHTS ON THE CONFLICT OF INTEREST
BILL, 2023 (NATIONAL ASSEMBLY BILLS NO. 12 OF 2023**

We, the undersigned Members of the Standing Committee on Justice, Legal Affairs and Human rights, do hereby append our signatures to adopt this Report.

No	Name	Signature
1.	Sen. Wakili Hillary Kiprotich Sigei, MP (<i>Chairperson</i>)	
2.	Sen. Raphael Chimera Mwinzagu, MP (<i>Vice-Chairperson</i>)	
3.	Sen. Fatuma Adan Dullo, CBS, MP	
4.	Sen. William Cheptumo Kipkiror, CBS, MP	
5.	Sen. Hamida Kibwana, MP	
6.	Sen. Catherine Muyeka Mumma, MP	
7.	Sen. Veronica W. Nduati, MP	
8.	Sen. Karen Njeri Nyamu, MP	
9.	Sen. Andrew Omtatah Okoiti, MP	

CHAPTER ONE: INTRODUCTION

1.1 Introduction

1. The Conflict of Interest Bill, 2023 (*National Assembly Bill No. 12 of 2023*) was sponsored by the Leader of Majority Party in the National Assembly and published on 3rd April, 2023. The Bill was passed by the National Assembly, with amendments, on 30th November, 2023. A copy of the Bill as passed by the National Assembly and referred to the Senate is attached to this Report as *Appendix 2*
2. Pursuant to Article 110(4) of the Constitution, the Bill was transmitted to the Senate where it was read a First Time on Wednesday, 14th February, 2024, and thereafter the Bill stood committed to the Standing Committee on Justice, Legal Affairs and Human Rights for consideration. A copy of the Message from the National Assembly conveying the Bill to the Senate is attached. *Appendix 3*

1.2 Object of the Bill

3. The Conflict of Interest Bill, 2023 (*National Assembly Bill No. 12 of 2023*) seeks to repeal the Public Officer Ethics Act, of 2003 and put in place a framework for the management of conflict of interest in the performance of public duties. The Ethics and Anti-Corruption Commission and other State organs including committees of Parliament and county assemblies responsible for the ethics of members, the Public Service Commission and the Judicial Service Commission shall be responsible for the administration of the Act.

1.3 Consequence of the Bill

4. The Bill seeks to repeal the Public Officer Ethics Act, of 2003 and put in place a framework for the management of conflict of interest in the performance of public duties. Matters the Bill provides including conflict of interest and declarations by public officers are provided for under the Public Officers Ethics Act, Anti-Corruption and Economic Crimes Act and the Leadership and Integrity Act. This Bill brings all these provision under one law.
5. Additionally, the Public Officer Ethics Act was enacted in the year 2003 before adoption of the new Constitution which restructured governance and introduced devolved system of governance. The law as currently is does not address devolved system of governance. The Bill addresses this by bringing on board devolved system of governance including conferring responsibilities on devolved entities on matters conflict of interest.

1.4 Overview of the Bill

6. The Bill contains fifty one (51) clauses arranged into Seven parts and three schedules. **Part I** of the Bill provides for the preliminary matters including interpretations, objective and application of the Bill. The objective of the Bill is set out under **clause 3**, which is to provide for the management of conflict of interest in the performance of official duties. In this regard, the Bill seeks to -
 - a) promote objectivity and impartiality in official decision making;
 - b) ensure that the integrity of decision makers is not compromised by private interests;
 - c) enhance integrity of and public confidence in the delivery of public services;
 - d) provide a framework for the regulation and management of conflict between public interest and private interest;
 - e) enhance accountability to the public for decisions made;
 - f) promote selfless service by public officers; and
 - g) provide an institutional framework for the management of conflict of interest.
7. **Part II** of the Bill provides for the administration of the Act which is vested on the Ethics and Anti-Corruption Commission (EACC). **Clause 6** of the Bill sets out the functions of EACC, which include -
 - a) overseeing the management of conflict of interest for all public officers;
 - b) developing an effective system for reporting violation of the Act;
 - c) promoting best practices and developing standards and guidelines for the management of conflict of interest;
 - d) receiving and processing requests related to the management of conflict of interest;
 - e) conducting inquiries on matters of conflict of interest and making recommendations to the relevant bodies; and
 - f) instituting proceedings for forfeiture of undeclared or unexplained assets.
8. **Part III** of the Bill sets out situations that amount to conflict of interest and imposes obligations on public officers to avoid situations that would result in conflict of interest. Situations where conflict of interest may arise include participation in proceedings before Parliament or a county assembly, preferential treatment, use of official information, undue influence, offers of outside employment, acceptance of gifts, recruitment and public collections. Public officers are prohibited from engaging in activities that would cause a conflict between private interests and public interest. The part also creates offences for engaging in prohibited activities that result in conflict of interest or for failing to declare situations where private interests conflict with or are likely to conflict with public interests.
9. **Part IV** of the Bill provides for compliance measures. It sets out the steps that a public officer should take in situations where the public officer's private interests conflict or

are likely to conflict with public interests. The steps include recusal, and declaration of income, assets and liabilities by public officers and divestiture.

10. **PART V** of the Bill provides for the lodging of complaints and conduct of investigations. It sets out the procedure for reporting any violation of the Act to EACC and to reporting authorities. It also provides for suspension from office where a public officer is under investigations and stipulates the steps to be taken by EACC and a reporting entity upon the conclusion of investigations.
11. **PART VI** provides for miscellaneous provisions that provide for the general penalty, confidentiality, protection for persons making disclosure, the filing of returns by reporting entities, and the power of the Attorney-General to make regulations.
12. **PART VII** of the Bill provides for repeal, savings and transitional provisions. It provides for the repeal of the Public Officers Ethics Act and consequential amendments to the Leadership and Integrity Act, the Ethics and Anti-corruption Commission Act, and the Anti-Corruption and Economic Crimes Act.

CHAPTER TWO: PUBLIC PARTICIPATION ON THE BILL

2.0 Introduction

13. The Conflict of Interest Bill, 2023 (*National Assembly Bill No. 12 of 2023*) read a First Time on Wednesday, 14th February, 2024 and thereafter the Bill stood committed to the Standing Committee on Justice, Legal Affairs and Human Rights for consideration. A copy of the Message from the National Assembly conveying the Bill to the Senate is attached. *Appendix 3.*
14. The Committee pursuant to the provisions of Article 118 of the Constitution and Standing Order 145 (5) of the Senate Standing Orders proceeded to undertake public participation on the Bill.
15. In this regard, the Committee published an advertisement in the *Daily Nation* and *Standard* newspapers on Friday 16th February, 2024 inviting members of the public to submit written memoranda on the Bill. A copy of the advertisement is annexed to this Report as *Appendix 4.*
16. Additionally, the Committee sent invitations to key stakeholders inviting them to submit their comments on the Bill.
17. In response to the advertisement and invitation, the Committee received written submissions from fourteen Stakeholders which are –
 - a) The Ethics and Anti-Corruption Commission (EACC);
 - b) The National Police Service Commission (NPSC);
 - c) The Teachers Service Commission (TSC);
 - d) The County Assemblies Forum (CAF);
 - e) Union of Kenya Civil Servants (UKCS);
 - f) Kenya Law Reform Commission (KLRC);
 - g) Institute of Certified Secretaries (ICS);
 - h) The Council of County Governors (CoG);
 - i) The Salaries and Remuneration Commission (SRC);
 - j) Transparency International – Kenya (TI);
 - k) Office of the Prime Cabinet Secretary (OPCS);
 - l) The Public Service Commission (PSC);
 - m) The Teachers Service Commission (TSC)
 - n) The Office of the Attorney General.
 - o) The Judiciary
18. Copies of the said submissions are attached as *Appendix 5(a) to 5(n)*, with a summary thereon in the form of a matrix attached as *Appendix 6.*

19. The Committee proceeded to consider the Bill, together with the stakeholder submissions received thereon.

2.1 Overview of Stakeholder submissions on the Bill

20. Below is a summary of the stakeholder submissions on the The Conflict of Interest Bill, 2023 (*National Assembly Bill No. 12 of 2023*) together with consideration by the Committee.

Clause 1.

21. TSC submitted that the title of the Bill be amended to retain the title Public Officers Ethics Act so as to capture other aspects of ethics expected of a public officer.

The Committee disagree with the proposal noting that the Bill specifically addresses conflict of interest and that other provisions touching on ethics have been provided for in other laws such the Leadership and Integrity Act and the Anti-Corruption and Economic Crimes Act.

Clause 2

22. CAF and ICS proposed that the definition of “conflict of interest” be reviewed. CAF was of the view that reviewing it will provide a clear and consistent understanding of the concept, while ICS observed that the review will complement section 8 which provide for acts that may amount to a conflict of interest. The Judiciary on its part proposed that the use of the term “public official” in the definition of “conflict of interest” be replaced with “public officer” so as to be in line with Article 260 of the Constitution.

The Committee observed that “conflict of interest” has been adequately defined and further elaborately provided for under Part of the Bill.

23. CAF and TI proposed the inclusion of the definition of “whistleblower”. Providing for such a definition will enhances the overall efficacy of the legislation as well as serving as a foundational element to the provisions outlined in clause 54 that address the protection of individuals making disclosures.

The Committee observed that the word whistleblower has only been used once in the Bill, under clause 45 of the Bill in reference to a law providing for whistleblower. As a result, defining the word will not serve any meaningful purpose.

24. CoG submitted that the term “State officer” be defined in line with the definition under the Constitution to ensure clarity.

It was noted that Bill has defined “public officer” in line with the Constitution, which definition encompasses a State officer.

25. TSC proposed that gainful employment should refer to steady allowance arising out of steady employment meaning the employee will have steady work and payment to allow self-sufficiency. This is because the term as currently defined is narrow and restrictive. Additionally, it was submitted that there is need to include Constitutional Commissions as part of “reporting entity” to encompass Article 248 Commissions.

The Committee observed that gainful employment has been adequately defined and provided for in the Bill and that the definition of “reporting entity” includes a “State organ” which under Article 260 of the Constitution includes constitutional commissions.

Clause 3

26. CAF proposed that clause 3(2)(a) be reviewed so as to enhance clarity and scope of application and align with language used in other parts of the Bill e.g. in clauses 8(a), 10(1), 12(1). Additionally, it was proposed that clause 3(2)(c) be reviewed in order to align it to Article 73(1) of the Constitution on Responsibilities of leadership, and Article 75(1) on conduct of State office.

Whereas the Committee agreed with the proposal to review clause 3(2)(c) so as to align it to the Constitution, the Committee observed that the clarity sought to be addressed by reviewing clause 3(2)(c) has already been addressed under clause 3(1) which has provided that the conflict of interest sought to be managed is in relation to the discharge of official duties.

Clause 6

27. PSC * proposed that clause 6(a) be amended to provide that EACC shall perform the function in liaison with responsible commissions and reporting entities. This is to allow bodies exercising disciplinary control over public officers to continue overseeing the management of conflict of interest of their officers.

The Committee noted that in the performance of its functions, EACC will as of necessity collaborate with reporting entities and responsible commissions who also have various roles under the Bill in managing conflict of interest.

28. EACC proposed that the function by EACC to institute proceedings for forfeiture of unclaimed or unexplained assets which was provided in the original Bill be reinstated. This is because in enforcing provisions on declaration of income, assets and liabilities under Part IV of the Bill, EACC noted that it may come across cases of undeclared assets hence the need for forfeiture. On the other hand, the Judiciary proposed that the clause be reviewed to provide that the functions of EACC under the Bill are in addition to the of EACC under Article 252 of the Constitution and 11 of the Anti-Corruption and Economic Crimes Act.

The Committee observed that whereas there could be instances requiring forfeiture of undeclared assets, forfeiture of such assets has been elaborately provided for under the Anti-Corruption and Economic Crimes Act. On the proposal by the Judiciary, the Committee noted that a State organ can be given further functions through legislation as long as the functions are analogous or auxiliary to the main functions of the State organ.

Clause 7

29. EACC proposed the reinstatement of the power by EACC to summon witnesses as was provided in the original Bill. It was noted that whereas EACC may have such powers under other laws such as ACECA, it is necessary for the powers in the Conflict of Interest law be self-implementing.
30. PSC* on its part submitted that it should not be left to the discretion of EACC to delegate a function that is performed by a responsible commission in clause 31A as currently provided for under clause 7(c).

The Committee noted that the power to investigate necessarily encompasses the power to invite/summon witnesses. As regards delegation by EACC, the functions and powers that EACC can delegate as provided for under clause 7(c) are the functions and powers within the province of the EACC and that it cannot delegate a function to be performed by another government entity.

Clause 8

31. EACC proposed that the original provision be reinstated. They were of the view that the current provision is narrow in scope contrary to the spirit of the Bill. The original provision included potential conflict of interest that may arise in the future and conflict situations which are not necessarily criminal in nature but require management.
32. TSC on its part proposed that conflict of interest be defined in the preamble, the word 'perception' in clause 8(b) be deleted as it is subject to abuse, and that clause 8(c) be redrafted as it is anticipatory.

The Committee noted that the provision as amended by the National Assembly is clearer than the original provision. With respect to submissions by TSC, it was noted that the submissions related to provisions which were contained in the original Bill and were deleted by the National Assembly.

Clause 9

33. CAF and TSC submitted that clause 9(1)(b) be reviewed in order to provide clarity on who a public officer should report/disclose relevant details/information to which ensures accountability.

The Committee noted that reporting mechanisms including disclosure of information have been adequately provided for in the Bill, in particular under Part IV which provides for compliance measures.

Clause 12

34. EACC proposed that clause 12(3) be deleted for the reason that the provision shields public officers from criminal or civil proceedings if any action is done in good faith. What amounts to good faith has not been defined thereby rendering the provision inoperable as the defence of good faith becomes absolute. Additionally, CoG proposed that “good faith” be defined so as to avoid differing interpretations.

The Committee noted that there could be instances where a public officer may grant special consideration or treatment in good faith. Such actions should not be penalised. With regard to the need to define “good faith” it was noted that, unless contrary intention is intended, words are assigned their ordinary unless a contrary intention is intended. In the present case, no contrary intention is intended to warrant defining the term.

Clause 13

35. NPSC proposed that clause 13(1) be reviewed so as to be clear that the interest of another person being referred to is a private interest. This is because interests are a general term and the interest sought to be regulated are “private interests”.

The Committee agrees with the submissions and resolved to review the clause for clarity purposes.

Clause 15

36. NPSC proposed that clause 15(1) be deleted or reviewed so as to provide that disclosure should be done once offer of outside employment has been received. NPS was of the view that receipt of an offer does not indicate any action/omission in the conduct of the public officer to act for private interests and could be unsolicited.

The Committee agreed with the proposal by NPSC and noted that indeed offers by themselves do not amount to or pose potential for conflict of interest breach on the part of a public officer.

Clause 16

37. The Judiciary submitted that it is necessary to indicate “prescribed where” in clause 16(2)(d) so as to avoid ambiguity.

The Committee noted that when a law uses the word “prescribed” it means as provided for under regulations. Therefore, there is no need to set out where such matters will be prescribed.

Clause 17

38. TSC proposed that clause 17(b) be amended and clarify on whether gifts referred to are gifts to entity’s employees. The justification is to avoid abuse of the provision and harassment of public officers.

The Committee noted that the clause is clear and that the gifts being referred to are gifts given to public officers, whether working with the entity or any other public entity.

Clause 18

39. TSC proposed that clause 18(1) be redrafted as it criminalizes all complementary treatment. Also, clause 18(2) is open-ended and should be expounded further by providing clear parameters on what exceptional circumstances entail.

The Committee disagreed with submissions by TSC and noted that the provision does not criminalize all complementary treatment and that exceptional circumstances will be further elaborated through regulations to be made in accordance with clause 48(2)(a).

Clause 19

40. NPSC proposed that the word “beneficiary” in clause 19(1) be deleted. The justification for the proposal is that the inclusion of “beneficiary” in the provision is against Articles 27(3) & (4) and 40 of the Constitution on the right to economic opportunities and property, and that public officers have the right to acquire property which includes stakes in company shares in which beneficial interest are declarable in law.
41. TSC proposed that clause 19 be amended and situations of use of proxies such as spouse and children be addressed. The justification for the proposal is to avoid abuse of the provision by public officers and protect the sanctity of the PPDA.
42. EACC on its part was of the view that there is need for consensus as to whether public officers should be barred from trading with the Government and not just the employer.

The Committee in agreeing with the proposal by the NPSC noted that barring a public officer from being a party to any contract with the employer suffices and that extending it to being a beneficiary is too onerous. Additionally, the Bill has elaborately provided for disclosures of conflict of interest as well as acquisitions of interests in partnerships and private companies.

Clause 20

43. CAF proposed that clause 20(1) be reviewed so as 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.

The Committee disagreed with the submission by CAF and noted that provision is clear.

Clause 21

44. CAF proposed that clause 21(2) which provides for the exemption be deleted. In the alternative “personal staff” be defined. The justification for the proposal was that such staff should be appointed competitively as per the values and principles of public service set out under Articles 232(1)(g), (h), (i) and 232(2) of the Constitution.
45. OPCS proposed that provisions be provided with respect to appointment of members and staff of State Corporations. The justification for the proposal is that State Corporations have experienced conflicts relating to the recruitment of CEOs, other staff members and respective Boards and the proposals will provide a solution for such conflicts.

46. UKCS proposed that provision be added providing that recruitment must be undertaken on the basis of fair competition and merit, representing Kenya's diverse communities, adequate and equal opportunities to all gender, youths, members of all ethnic groups, persons with disabilities and minorities. Additionally, clause 21(2)(b) should provide penalty for violation.

The Committee disagreed with the submissions by the stakeholders for the reason that both the Constitution and relevant laws providing for the employment staff provide for the requirements for persons to be appointed into positions as well as other relevant considerations to be taken into account.

On the issue to include a penalty in clause 21(2)(b), the Committee noted that clause 43 has provided for general applicable to all offences where penalty has not been specified.

Clause 23

47. TSC proposed that the use of the word 'incompatible' in clause 23(1) (a) be amended on grounds of being vague. Moreover, it added that clause 23(2) be expanded in scope to bring out what is acceptable and what is prohibited or not, to avoid abuse. The TSC also noted that clause 23(3) is not practical on the basis that no employer will give the permission as referred to in the Clause and can be deemed to criminalize hard work.
48. TI proposed the inclusion of the word "business" to the marginal note, and in clauses 23(1), (2) and (3) so as to align with Section 28 providing on the prohibition against representing people before reporting entities.
49. NPSC proposed that clause 23(2), for the reason that it should be sufficient that the employment is not in conflict with the public officer's engagement and making a wealth declaration stating the income from the employment is sufficient. Further, NPSC proposed that the reporting authority in 23(3) be deleted so as to allow the mandate to solely be the Commission's. The Commission should develop rational criteria for evaluation of the activity for which permission is sought for all agencies for uniformity across the public service and does the notification to reporting entities.

50. The Judiciary noted that clause 23(3) as crafted entails that a public officer would have to seek permission even where the other gainful employment is not incompatible with official duty, does not impair judgment or does not result in conflict of interest. The requirement of seeking permission to engage in such gainful employment from the reporting authority is subject to abuse and it is sufficient to just declare such gainful employment to the reporting authority as provided for under 23(2).

51. SRC proposed the inclusion of a clause to the effect that a public officer shall not accept employment on a part-time basis in another public institution. The justification for the proposal was that the Employment and Labour Relations Court in Nyeri in ELRC Cause No. 3 of 2022: Agnes Gatama vs EACC & Others held that a full-time public officer is not eligible for part-time employment in another public institution, and that the provision will also address the avoidance of double provision of benefits by different employers to the same public officer during the same period.

The Committed noted that clause is clear and has adequately provided for the issue of gainful employment including circumstances such employment can be undertaken. Additionally, the provision is in line with the decision in Agnes Gatama case.

Clause 24

52. EACC proposed that reference to Access to Information Act in clause 24(2)(c) be deleted. The justification for the proposal was that an open register for conflict of interest is an important requirement for implementation of the law as a lot of information on violations will be derived by members of the public who have knowledge of situations where public officers are conflicted. To subject access to the register to the Access to Information Act will curtail this principle. In addition, the provision may be misinterpreted or misapplied by public officers or entities to restrict or deny access to the register by law enforcement agencies.

The Committee not disagreed with the proposal by EACC for the reason that such a register will contain information regarding a public officer including personal relating to the officer and other persons. Such personal information requires to be protected in line with the right to privacy as provided for under the Constitution and other laws.

Clause 27

53. TSC proposed that the clause be deleted on the basis that it violates the rights of certain professional particularly the advocates in the public service.

54. NPSC proposed that the word “State” in clause 27(1)(a) be replaced with “reporting entity”. The justification for the proposal was that State is a broad term which includes the whole government. Only former reporting entity in which a former public officer was engaged as an employee should be considered as there was privity of relationship. Additionally, it was proposed that it should be provided that information referred to in 27(1)(c) is “classified” information. The reason for this is that Article 35 of the Constitution guarantees access to information held by the State subject to legal limitations. Therefore, the only information limited should be anti-competitive information, classified information or mis-information. Further, the proposal may limit witnesses in legal proceedings who advance the rule of law and constitutionalism where they have first-hand information on issues where there are legal proceedings.
55. PSC* proposed that clause 27(b) be deleted for the reason that the provision bars retired employee as well as former members of Parliament from being engaged by PSC* to support PSC* including training and capacity building. This is against PSC* resolution to engage former members of Parliament and retired staff of PSC*.
56. The Judiciary observed that the provision requires more context and that it is ambiguous and may be discriminatory depending on the circumstances. They expressed fears as to a former or retired judge can or cannot be engaged by the Judicial Service Commission to lecture at the Kenya Judiciary Academy.

Whereas the Committee disagreed with submissions by the stakeholders for the reason that the clause has adequately provided for prohibition after leaving employment, it was noted that the restriction provided for in clause 27(1)(a) is too broad. There is therefore need to confine the restriction to matters which a former public officer acted for in relation to the former public employer. Additionally, the Committee observed that there is need to allow witnesses and representation of persons in courts of law so as to ensure the upholding of fundamental rights and freedoms.

Clause 28

57. NPSC proposed for an exception for witnesses for the reason that the proposal may lead to miscarriage of justice where the person who left the reporting entity is a key witness to the proceedings and therefore akin to gagging witnesses.
58. TSC proposed that the clause be deleted on the basis that it violates the rights of certain professional particularly the advocates in the public service.

The Committee observed that there is need to allow witnesses and representation of persons in courts of law so as to ensure the upholding of fundamental rights and freedoms.

Clause 29

59. TSC proposed that the clause be deleted on the basis that it violates the rights of certain professional particularly the advocates in the public service.

The Committee observed that there is need to provide for exemption in respect of witnesses and representation of persons in courts of law so as to ensure the upholding of fundamental rights and freedoms.

Clause 30

60. NPSC proposed that clause 30(2)(b) be amended in order for EACC to create a portal for reporting similar to Public Procurement Authority where reporting commissions can periodically update this information for efficiency in compliance. Provisions should be made for annual reporting for all conflict of interest issues.
61. UKCS proposed that all public and state officers should recuse themselves in matters relating to conflict of interest. They were of the view that the clause as is currently is discriminatory and favours State officers which amount to conflict of interest.
62. ICS proposed that there is need to provide a detailed procedure for disclosure as to allow full compliance; and clarity and comprehensiveness of the disclosure requirements. The justification for the proposal is to facilitate easier understanding and compliance thereby creating a more transparent government.
63. TSC proposed that clause 30(2)(b) be amended by recasting it on the basis that the provision places unnecessary burden to file a declaration with the EACC. Conversely, the TSC submits that the reporting authority should shoulder as it is the custodian of the register of conflict of interest.

The Committee disagreed with submissions by the stakeholders noting that matters relating to the establishment of a portal are matters within the administrative competence of the relevant body, recusal of members of Parliament and county assemblies are provided for under the respective standing orders. With respect to submissions by TSC the Committee noted what is proposed is what the clause provides for. Further, it was noted that the clause ICS submitted on did not exist and that disclosures have been provided for under clauses 6(h), 9(b), 15 and 45.

Clause 31

64. TSC submitted that clause 31 be amended and authorize the declaration to be made to various reporting authorities as well for easier management. The justification being EACC may not have requisite capacity to receive all declaration forms the entire Public Service. Further, it was submitted that clause 31(4) (c) be deleted as it amounts to violation of the right to privacy as provided under Article 31 of the Constitution.
65. UKCS submitted that there is need to specify children dependents age when declaring income, assets and liabilities so that only children under 18 years should have their assets, if any, declared. Additionally, it was providing for failure to submit a declaration or clarification.
66. CAF proposed that clause 31(1) be amended to reporting authorities to also receive the information, as the office or body responsible for a public officer. Further, the sheer volume of the declarations would make it difficult for the Commission alone to process and verify the declarations.

The Committee noted that declarations are to be submitted to the responsible commissions who have been set out under clause 31A and not just to EACC as has been wrongly understood. Additionally, it was noted that failure to submit declarations has been provided for under clauses 36 and 37.

Clause 31A

67. EACC submitted that there is need to designate several responsible commissions such as the Board of Directors of Central Bank of Kenya currently responsible for officers of CBK and financial institutions licensed under the Banking Act and State corporations which have been omitted. The justification the omission of these entities leaves a vacuum in respect of officers for whom they are established, and that the independent nature of their operations dictate that they should be the responsible commissions.
68. EACC further submitted that it should remain the responsible commission for its officers other than the CEO for the reason that there is no proper justification for some members of staff of EACC, Deputy Director and above, should declare their income, assets and liabilities to the Committee of the National Assembly. The Committee will not be able to enforce the requirements in respect of staff over which it has no disciplinary control.
69. TI proposed inclusion of a clause that provides that the President be included in the list of State Officers answerable to Parliament (a joint Committee of members drawn from both the National Assembly and the Senate) as the responsible commission.

The Committee did not agree with the submissions by EACC and TI for the reason that clause 31A(15) provides that regulations may specify a responsible commission where one has not been specified. On the inclusion of the President, it was noted that clause 31A(2)(a) provides for Cabinet which under Article 152 of the Constitution includes the President.

Clause 32

70. TSC proposed that clause 32(3) be amended so that the final declaration is made 30 days prior to exit to allow the reporting entity to enforce the provision when the public officers are still under the employment.

The Committee disagreed with the proposal and observed the time within which an officer is required to make final declaration is reasonable.

Clause 33

71. CAF proposed that clause 33(1) be amended to include a reporting authority. The justification for the proposal is that the Act introduces a reporting authority for which this clause should apply. It is more reasonable and efficient to have the reporting authority also analyse, process and verify the declarations. Further, the reporting authority has a direct interest in the declarations.

The Committee noted that CAF misapprehended the provision and that it is responsible commissions who are responsible for analysing the declarations and not just EACC.

Clause 34

72. EACC proposed the deletion “due process” in clause 34(2) for the reason that “due process” has not been defined making it vague as to whether a law enforcement body can be granted unrestricted access or not. Further, unrestricted access to declarations by a law enforcement agency is an international best practice, especially in investigation of cases for unexplained assets.
73. PSC* proposed the insertion of a new clause 32(2A) defining “due process” to provide for guidance on how law enforcement officers can access the declarations.
74. NPSC submitted that there is need to qualify the declaration referred under 34(1) to exclude wealth declaration by a public officer. The justification for the proposal is that wealth declarations contain personal information that is subject to the right to privacy. Hence, a public officer should be informed when such information touching on their private information has been requested.

75. NPSC further submitted that there is need to define enforcement officer to mean a person employed by EACC, and not all enforcement officers generally, and also amend clause 34(2) to include that a person intending to access the information has to demonstrate reasonable cause to require the information. The justification for the proposal is that the right to privacy and access to reporting entities information should continue to be managed through transparent but accountable and lawful channels and persons.

The Committee noted that “due process” may be too broad and restrictive in relation to access to information as envisaged under the clause. Therefore, there is need to review clause 34(2) and subject the access to information to the right to privacy as provided for under the Constitution and pursuant to a court order or the Access to Information Act.

Clause 39

76. EACC submitted that investigation should be under the exclusive jurisdiction of EACC so as to ensure uniformity, harmony and consistency in dealing with cases of conflict of interest. EACC observed that the provision infringes on the constitutional mandate of EACC by purporting to preempt it from conducting investigation if a reporting authority has commenced investigation into the matter. A person can stop investigations by EACC through the initiation of investigation by a reporting authority thereby allowing forum shopping.

77. EACC further noted that the provision creates a lacuna and confusion as it does not clarify what happens in the event that EACC and a reporting authority were to find out that they are conducting concurrent investigations, and that many of the reporting authorities do not have the mechanisms/capacity to undertake investigations.

78. PSC* proposed inclusion of a new clause 39(2A) to avoid concurrence investigations by both the reporting authority and EACC.

79. The Committee noted that whereas there could be instances of lodging of complaints with EACC and reporting authority, details on how complaints shall be made will ordinarily be set out under regulations. Additionally, the sort of investigations contemplated can be undertaken by reporting authorities who can make recommendations for further action by relevant bodies pursuant to clause 42.

Clause 45

80. The Judiciary submitted that the penalty in 45(4) should be one million shillings or imprisonment for a term not exceeding three years or both. Justification for the proposal is that a conflict of interest accusation is a serious allegation. Therefore, penalty for providing false information should be steep to deter and prevent abuse.

The Committee noted that the penalty provided for is sufficient hence there is no need to review the same.

Clause 49

81. CoG submitted that only section 12 of the Public Officer Ethics Act should be repealed and not the entire Act. the justification for the proposal is that the Public Officer Ethics Act should not be repealed in its entirety, since other ethical aspects of public officers such as sexual harassment and not covered under the Bill will be left out. Similar proposals were made by CAF.

The Committee observed that whereas there are matters such codes of conducts which are provided for under the Public Officer Ethics Act and have not been provided for under the Bill, such matters are provided for in various other laws including the Leadership and Integrity. Hence the failure to provide for them does not cause any prejudice or result in gap in the law.

Reinstatement of provisions which provided for divestiture

82. PSC and EACC proposed the reinstatement of provisions that provided divestiture in the original Bill. It was noted that the compliance measures which had been provided were mostly new and novel innovations not contained in law.

The Committee noted that provisions required a public officer of dispose of property owned by such an officer if there is likelihood that a conflict of interest will arise. The observed that provisions in the Bill adequately address the issue of conflict of interest and to require a public officer to dispose of property legally acquired and owned will be prejudicial and onerous.

**CHAPTER THREE:
COMMITTEE OBSERVATIONS**

83. Having considered the Conflict of Interest Bill, 2023 (*National Assembly Bill No. 12 of 2023*) and the submissions received thereon, the Standing Committee on Justice, Legal Affairs and Human Rights made the following observations-

- a) The Bill is crucial as it seek to put in place a framework for the management and regulation of conflict of interest in the discharge of public duties. Additionally, stakeholders made important submissions, some of which were adopted with a view to enrich the Bill.
- b) The Committee observed that clause 3(2)(c) of the Bill need to be reviewed in line with submissions by the CAF so as to align the provision with Article 73(a)(iv) of the Constitution on promotion of public confidence in the integrity of public office.
- c) The Committee observed that clause 13(1) in not clear as to whether the interest of the officer or of another person refers to private interest. In line with submissions by the NPSC, it was recommended that the clause be reviewed to ensure that the interests being referred to are private interests.
- d) As regards clause 15(1)(b), a public officer is required to disclose in writing to the employer any offer of outside employment. NPSC proposed that receipt of an offer does not disclose any breach by an officer. Disclosure should be required where an officer has accepted an offer of outside employment. The Committee recommended that disclose should be required where an officer has actually accepted the offer.
- e) The Committee agreed with the TSC comment to delete the word “beneficiary” on Clause 19 on grounds that the proposal is against **Articles 27(3) & (4) and 40** of the Constitution on the right to economic opportunities and property.
- f) The Committee adopted the Proposal by NPSC to replace the word “State” in 27(1)(a) with “reporting authority” on the basis that State is a broad term which includes the whole government.

- g) On clauses 27, 28 and 29, the Committee agreed with the proposal by TSC and NPSC to provide for exemptions in respect of witnesses and persons representing another in courts of law as well as tribunals established by legislation. This is to ensure the upholding fundamental rights such fair hearing and preventing miscarriage of justice.
- h) Under clause 34(2), a law enforcement officer can access disclosure and compliance reports by public officers after due process. PSC* submitted that there is need to define what due process is. The Committee observed that there is need to define what due process entails for purposes clarity.
- i) The Committee adopted the proposal by CAF clause 41 to limit the suspension period of a State officer or public officer to not more than ninety days. Further, that where investigations are not concluded within 90 days, the investigations shall be deemed to have been concluded and the officer shall resume his or her duties.

CHAPTER FOUR: COMMITTEE RECOMMENDATIONS

84. Arising from its Observations as set out in the preceding Chapter, the Standing Committee on Justice, Legal Affairs and Human Rights makes the following recommendation on Conflict of Interest Bill, 2023 (*National Assembly Bill No. 12 of 2023*) –

That having considered the Conflict of Interest Bill, 2023 (*National Assembly Bill No. 12 of 2023*) and the submissions received thereon, the Standing Committee on Justice, Legal Affairs and Human Rights recommends that the Senate passes the Bill with amendments as proposed by the Committee.

ANNEXURES

Annexure 1: Minutes of the sittings of the Committee in considering the Bill

Annexure 2: Copy of the Conflict of Interest Bill (National Assembly Bill No. 2 of 2023)

Annexure 3: Copy of the Message conveying the Bill to the Senate

Annexure 4: Advertisement Published in the *Daily Nation* and *Standard* Newspapers on
Friday, 16th February 2024

Annexure 5: Copies of the Stakeholder Submissions on the Bill

Annexure 6: Matrix on the Committee's Consideration of the Stakeholder Submissions

Annexure 7: Text of proposed Committee stage amendments to the Bill

ANNEX I: Minutes of the sittings of the Committee in
considering the Bill



13TH PARLIAMENT | 3RD SESSION

MINUTES OF THE 107TH SITTING OF THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON WEDNESDAY, 28TH FEBRUARY, 2024 AT 8.00 A.M. IN COMMITTEE ROOM 5, 1ST FLOOR, PARLIAMENT BUILDINGS AND ON THE ZOOM ONLINE MEETING PLATFORM

PRESENT

- | | |
|--|-----------------------------------|
| 1. Sen. Wakili Hillary Kiprotich Sigei, MP | - Chairperson (<i>Chairing</i>) |
| 2. Sen. Fatuma Adan Dullo, CBS, MP | - Member |
| 3. Sen. Hamida Ali Kibwana, MP | - Member |
| 4. Sen. Veronica W. Maina, MP | - Member |
| 5. Sen. Karen Njeri Nyamu, MP | - Member |
| 6. Sen. Andrew Omtatah Okoiti, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|--|--------------|
| 1. Sen. Raphael Chimera Mwinzagu, MP | - Vice-Chair |
| 2. Sen. William Cheptumo Kipkiror, CBS, MP | - Member |
| 3. Sen. Catherine Muyeka Mumma, MP | - Member |

SECRETARIAT

- | | |
|-------------------------|---|
| 1. Mr. Moses Kenyanchui | - Legal Counsel I |
| 2. Ms. Lilian Waweru | - Legal Counsel II |
| 3. Ms. Lynn Aseka | - Clerk Assistant III (<i>Taking Minutes</i>) |
| 4. Mr. Jackson Osore | - Research Officer III |
| 5. Mr. Josphat Ng'eno | - Media Relations Officer III |
| 6. Ms. Rosebella Ngesa | - Public Communications Officer III |
| 7. Ms. Judith Aoka | - Assistant Audio Officer |
| 8. Mr. David Barasa | - Assistant Serjeant at Arms |

MIN. NO. 28/2024

PRELIMINARIES

The Chairperson called the meeting to order at five minutes past eight O'clock and opened with a word of prayer.

MIN. NO. 29/2024

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted having been proposed by Sen. Hamida Kibwana, MP and seconded by Sen. Andrew Omtatah Okoiti, MP.

MIN. NO. 30/2024

CONFIRMATION OF MINUTES OF THE PREVIOUS MEETING

The Minutes of the 106th Sitting held on Tuesday, 27th February, 2024 were confirmed as a true record of proceedings, after being proposed by Sen. Hamida Ali Kibwana, MP and seconded by Sen., Andrew Omtatah Okoiti, MP.

MIN. NO. 31/2024

CONSIDERATION OF THE CONFLICT OF INTEREST BILL, 2023 (NATIONAL ASSEMBLY BILLS. NO. 12 OF 2023)

The Committee commenced consideration of the Conflict of Interest Bill (National Assembly Bills No. 12 of 2023) and was taken through a Legal Brief.

The Committee noted that the Bill seeks to repeal the Public Officer Ethics Act, of 2003 and put in place a framework for the management of conflict of interest in the performance of public duties. Matters the Bill provides including conflict of interest and declarations by public officers are provided for under the Public Officers Ethics Act, Anti-Corruption and Economic Crimes Act and the Leadership and Integrity Act. This Bill brings all these provision under one law.

Additionally, the Public Officer Ethics Act was enacted in the year 2003 before adoption of the new Constitution which restructured governance and introduced devolved system of governance. The law as currently is, does not address devolved system of governance. The Bill addresses this by bringing on board devolved system of governance including conferring responsibilities on devolved entities on matters conflict of interest.

During deliberations, the Committee was informed that an advertisement inviting submission of memoranda was published on Friday, 16th February, 2024 in both the Daily Nation and Standard newspapers. In addition, the Committee was informed the secretariat had written letters to targeted Stakeholders inviting for comments on the Bill.

Members further raised concerns on –

- a) The Title of the Bill. Members had an opinion that the title would need to be relooked because part six (6) of the Bill does not talk about Conflict of Interest rather, it provides for miscellaneous provisions that provide for the general penalty,

confidentiality, protection for persons making disclosure, the filing of returns by reporting entities, and the power of the Attorney-General to make regulation ;

- b) The Committee directed the secretariat to do a detailed research on Clause 13 ;
- c) Under part five (5), Clause 39 of the Bill, what action would be taken against EACC or a reporting authority had failed to conclude their investigations within the given ninety days; and
- d) What happens when a suspended public officer is back to the office because the ninety (90) investigation days have lapsed and EACC or a reporting authority has not commenced investigations on the case.

Thereafter, the Committee directed the Secretariat to do an in-depth research on Clause 13 and further recommended for a one day retreat to go through the Bill Clause by Clause.

MIN. NO. 32/2024 **ADJOURNMENT**

The Chairperson adjourned the meeting at nine minutes past nine O'clock. The next meeting was scheduled to be held on Thursday, 29th February, 2024 at nine O'clock.

SIGNED:



DATE: 27.03.2024



13TH PARLIAMENT | 3RD SESSION

MINUTES OF THE 110TH SITTING OF THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON TUESDAY, 12TH MARCH, 2024 AT 8.00 A.M. AT THE BILATERAL II, KICC BUILDINGS AND ON THE ZOOM ONLINE MEETING PLATFORM

PRESENT

- | | |
|--|-----------------------------------|
| 1. Sen. Wakili Hillary Kiprotich Sigei, MP | - Chairperson (<i>Chairing</i>) |
| 2. Sen. Raphael Chimera Mwinzagu, MP | - Vice-Chair |
| 3. Sen. Catherine Muyeka Mumma, MP | - Member |
| 4. Sen. Veronica W. Maina, MP | - Member |
| 5. Sen. Karen Njeri Nyamu, MP | - Member |
| 6. Sen. Andrew Omtatah Okoiti, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|--|----------|
| 1. Sen. Fatuma Adan Dullo, CBS, MP | - Member |
| 2. Sen. William Cheptumo Kipkiror, CBS, MP | - Member |
| 3. Sen. Hamida Ali Kibwana, MP | - Member |

SECRETARIAT

- | | |
|-------------------------|---|
| 1. Mr. Charles Munyua | Senior Clerk Assistant |
| 2. Mr. Moses Kenyanchui | - Legal Counsel I |
| 3. Ms. Lilian Waweru | - Legal Counsel II |
| 4. Ms. Lynn Aseka | - Clerk Assistant III (<i>Taking Minutes</i>) |
| 5. Mr. Jackson Osore | - Research Officer III |
| 6. Mr. Josphat Ng'eno | - Media Relations Officer III |
| 7. Ms. Judith Aoka | - Assistant Audio Officer |
| 8. Mr. Abdalla Mbore | - Serjeant at Arms |

MIN. NO. 44/2024

PRELIMINARIES

The Chairperson called the meeting to order at twenty-five minutes past eight O'clock and opened with a word of prayer.

MIN. NO. 45/2024

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted having been proposed by Sen. Karen Njeri Nyamu, MP and seconded by Sen. Veronica W. Maina, MP.

MIN. NO. 46/2024 **CONFIRMATION OF MINUTES OF THE PREVIOUS MEETING**

Confirmation of Minutes of the previous meeting were deferred.

MIN. NO. 47/2024 **CONSIDERATION OF THE DRAFT REPORT ON THE STATUTORY INSTRUMENTS (AMENDMENT) BILL (NATIONAL ASSEMBLY BILLS NO. 2 OF 2023)**

The Committee was taken through and considered the draft Report on the Statutory Instruments (Amendment) Bill (National Assembly Bills No. 2 of 2023). Members made proposals to be incorporated as observations and recommendations at chapter Three of the report, following which the report will be scheduled for adoption.

MIN. NO. 48/2024 **CONSIDERATION OF THE MATRIX OF STAKEHOLDER SUBMISSIONS ON THE CONFLICT OF INTEREST BILL, 2023 (NATIONAL ASSEMBLY BILLS NO. 12 OF 2023)**

The Committee resumed consideration of the Conflict of Interest Bill (National Assembly Bills No. 12 of 2023) and commenced consideration of the matrix on the stakeholder submissions.

Due to lapse of time, and noting the volume of submissions received, the Committee resolved to resume consideration of the matrix at a physical meeting to be held on Monday, 18th March, 2024.

MIN. NO. 49/2024 **ADJOURNMENT**

The Chairperson adjourned the meeting at forty-three minutes past nine O'clock. The next meeting was scheduled to be held on Monday, 18th March, 2024 at nine O'clock.

SIGNED: 

DATE: 27.03.2024.



13TH PARLIAMENT | 3RD SESSION

MINUTES OF THE 111TH SITTING OF THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON TUESDAY, 18TH MARCH, 2024 AT 8.00 A.M ON THE ZOOM ONLINE MEETING PLATFORM

PRESENT

- | | |
|--|-----------------------------------|
| 1. Sen. Wakili Hillary Kiprotich Sigei, MP | - Chairperson (<i>Chairing</i>) |
| 2. Sen. Raphael Chimera Mwinzagu, MP | - Vice-Chair |
| 3. Sen. Fatuma Adan Dullo, CBS, MP | - Member |
| 4. Sen. Andrew Omtatah Okoiti, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|--|----------|
| 1. Sen. William Cheptumo Kipkiror, CBS, MP | - Member |
| 2. Sen. Hamida Ali Kibwana, MP | - Member |
| 3. Sen. Catherine Muyeka Mumma, MP | - Member |
| 4. Sen. Veronica W. Maina, MP | - Member |
| 5. Sen. Karen Njeri Nyamu, MP | - Member |

SECRETARIAT

- | | |
|-------------------------|---|
| 1. Mr. Charles Munyua | Senior Clerk Assistant |
| 2. Mr. Moses Kenyanchui | - Legal Counsel I |
| 3. Ms. Lilian Waweru | - Legal Counsel II |
| 4. Ms. Lynn Aseka | - Clerk Assistant III (<i>Taking Minutes</i>) |
| 5. Mr. Jackson Osore | - Research Officer III |
| 6. Mr. Josphat Ng'eno | - Media Relations Officer III |
| 7. Ms. Rosebella Ngesa | - Protocol Officer III |
| 8. Ms. Judith Aoka | - Assistant Audio Officer |

MIN. NO. 50/2024

PRELIMINARIES

The Chairperson called the meeting to order at eighteen minutes past eight O'clock and opened with a word of prayer.

MIN. NO. 51/2024

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted having been proposed by Sen. Raphael Chimera Mwinzagu, MP and seconded by Sen. Fatuma Adan Dullo, CBS, MP.

MIN. NO. 52/2024 **CONSIDERATION AND ADOPTION OF THE COMMITTEE REPORT ON THE STATUTORY INSTRUMENTS (AMENDMENT) BILL (NATIONAL ASSEMBLY BILLS NO. 2 OF 2023)**

The Committee deferred adoption of the Report as there were less than five (5) Members present.

MIN. NO. 53/2024 **CONSIDERATION OF A BRIEF ON THE CONSTITUTION OF KENYA (AMENDMENT) (NO.2) BILL (SENATE BILLS NO. 52 OF 2023)**

The Committee was taken through the Brief on the Constitution of Kenya (Amendment) (No. 2) Bill (Senate Bills No. 52 of 2023).

Following deliberations, the Committee resolved –

- i) to hold a meeting with the eight (8) stakeholders who have submitted written comments on the Bill, on Monday, 15th April, 2024, in Machakos County;
- ii) to hold a public hearing on the Bill on Friday, 3rd May, 2024 at a venue in Mombasa County; and
- iii) thereafter, to consider, adopt and table its Report in the Senate before 14th May, 2024

MIN. NO. 54/2024 **CONSIDERATION OF THE SUBMISSIONS RECEIVED ON THE CONFLICT OF INTEREST BILL, 2023 (NATIONAL ASSEMBLY BILLS, NO. 12 OF 2023)**

The Committee resumed consideration of the submissions received on the Conflict of Interest Bill (National Assembly Bills No. 12 of 2023).

Due to lapse of time, the Committee resolved to resume consideration of the matrix at a subsequent meeting to be held on Wednesday, 20th March, 2024 at 8.00 a.m.

MIN. NO. 55/2024 **ADJOURNMENT**

The Chairperson adjourned the meeting at forty-four minutes past nine O'clock. The next meeting was scheduled to be held on Wednesday, 20th March, 2024 at eight O'clock.

SIGNED:

[Handwritten signature]

DATE: 27.03.2024.



13TH PARLIAMENT | 3RD SESSION

MINUTES OF THE 112TH SITTING OF THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON WEDNESDAY, 20TH MARCH, 2024 AT 8.00 A.M ON THE ZOOM ONLINE MEETING PLATFORM

PRESENT

- | | |
|--|-----------------------------------|
| 1. Sen. Wakili Hillary Kiprotich Sigei, MP | - Chairperson (<i>Chairing</i>) |
| 2. Sen. Hamida Ali Kibwana, MP | - Member |
| 3. Sen. Catherine Muyeka Mumma, MP | - Member |
| 4. Sen. Veronica W. Maina, MP | - Member |
| 5. Sen. Andrew Omtatah Okoiti, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|--|--------------|
| 1. Sen. Raphael Chimera Mwinzagu, MP | - Vice-Chair |
| 2. Sen. William Cheptumo Kipkiror, CBS, MP | - Member |
| 3. Sen. Fatuma Adan Dullo, CBS, MP | - Member |
| 4. Sen. Karen Njeri Nyamu, MP | - Member |

SECRETARIAT

- | | |
|-------------------------|---|
| 1. Mr. Charles Munyua | Senior Clerk Assistant |
| 2. Mr. Moses Kenyanchui | - Legal Counsel I |
| 3. Ms. Lilian Waweru | - Legal Counsel II |
| 4. Ms. Lynn Aseka | - Clerk Assistant III (<i>Taking Minutes</i>) |
| 5. Mr. Jackson Osore | - Research Officer III |
| 6. Mr. Josphat Ng'eno | - Media Relations Officer III |
| 7. Ms. Judith Aoka | - Assistant Audio Officer |

MIN. NO. 56/2024

PRELIMINARIES

The Chairperson called the meeting to order at twenty-two minutes past eight O'clock and opened with a word of prayer.

MIN. NO. 57/2024

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted having been proposed by Sen. Hamida Ali Kibwana, MP and seconded by Sen. Andrew Omtatah Okoiti, MP.

MIN. NO. 58/2024

CONSIDERATION AND ADOPTION OF THE COMMITTEE REPORT ON THE STATUTORY INSTRUMENTS (AMENDMENT) BILL (NATIONAL ASSEMBLY BILLS NO. 2 OF 2023)

The Committee was taken through and considered the draft Report on the Statutory Instruments (Amendment) Bill (National Assembly Bills No. 2 of 2023) with the proposed amendments incorporated as observations and recommendations at chapters three and four of the Report.

Thereafter, the Committee adopted the Report, having been proposed by Sen. Catherine Muyeka Mumma, MP and seconded by Sen. Veronica W. Maina, MP.

MIN. NO. 59/2024

CONSIDERATION OF A LEGISLATIVE PROPOSAL: THE ADVOCATES (AMENDMENT) BILL, 2024 BY SEN. MOGENI ERICK OKONG'O, SC, MP

The Committee commenced consideration of the legislative proposal on the Advocates (Amendment) Bill, 2024 by Sen. Mogeni Erick Okong'o SC, MP and was taken through the Legal Brief.

Members noted that the legislative proposal seeks to amend section 81(3) of the Advocates Act, Cap 221 to include Senators and the Speaker of the Senate who hold a practising certificate in the exemption from undertaking continuing legal education.

Thereafter, the Committee resolved that the comments and observations of the Committee be transmitted to the Honourable Speaker of the Senate, pursuant to Standing Order 130(3) of the Senate Standing Order.

MIN. NO. 60/2024

CONSIDERATION OF THE SUBMISSIONS RECEIVED ON THE CONFLICT OF INTEREST BILL, 2023 (NATIONAL ASSEMBLY BILLS NO. 12 OF 2023)

The Committee resumed consideration of the submissions received on the Conflict of Interest Bill (National Assembly Bills No. 12 of 2023).

Due to lapse of time, the Committee resolved to resume consideration of the matrix at a later date.



13TH PARLIAMENT | 3RD SESSION

MINUTES OF THE 115TH SITTING OF THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON WEDNESDAY, 27TH MARCH, 2024 AT 8.00 A.M ON ZOOM ONLINE MEETING PLATFORM

PRESENT

- | | |
|--|-----------------------------------|
| 1. Sen. Wakili Hillary Kiprotich Sigei, MP | - Chairperson (<i>Chairing</i>) |
| 2. Sen. Fatuma Adan Dullo, CBS, MP | - Member |
| 3. Sen. Veronica W. Maina, MP | - Member |
| 4. Sen. Andrew Omtatah Okoiti, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|--|--------------|
| 1. Sen. Raphael Chimera Mwinzagu, MP | - Vice-Chair |
| 2. Sen. William Cheptumo Kipkiror, CBS, MP | - Member |
| 3. Sen. Hamida Ali Kibwana, MP | - Member |
| 4. Sen. Catherine Muyeka Mumma, MP | - Member |
| 5. Sen. Karen Njeri Nyamu, MP | - Member |

SECRETARIAT

- | | |
|-------------------------|---|
| 1. Mr. Moses Kenyanchui | - Legal Counsel I |
| 2. Ms. Lilian Waweru | - Legal Counsel II |
| 3. Ms. Lynn Aseka | - Clerk Assistant III (<i>Taking Minutes</i>) |
| 4. Mr. Jackson Osore | - Research Officer III |
| 5. Mr. Josphat Ng'eno | - Media Relations Officer III |
| 6. Ms. Judith Aoka | - Assistant Audio Officer |

MIN. NO. 71/2024

PRELIMINARIES

The Chairperson called the meeting to order at eighteen minutes past eight O'clock and opened with a word of prayer.

MIN. NO. 72/2024

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted having been proposed by Sen. Veronica W. Maina, MP and seconded by Sen. Andrew Omtatah Okoiti, MP.

MIN. NO. 73/2024

**CONSIDERATION OF THE RECEIVED FROM THE
PUBLIC ON THE CONFLICT OF INTEREST BILL,
2023 (NATIONAL ASSEMBLY BILLS NO. 12 OF
2023)**

The Committee resumed consideration of the submissions received on the Conflict of Interest Bill (National Assembly Bills No. 12 of 2023).

During deliberations, the Committee made proposed amendments to be done on various clauses of the Bill. Thereafter Members made proposals to be incorporated as observations and recommendations at chapter Three of the report, following which the report will be scheduled for adoption.

Thereafter, the Committee directed the Secretariat to proceed and prepare a draft Report with the proposed amendments for consideration and adoption by the Committee.

Consequently, the Committee resolved to hold a subsequent meeting on the same day at eleven o'clock to consider and adopt the draft Report on the Conflict of Interest Bill, 2023 (National Assembly Bills No. 12 of 2023)

MIN. NO. 74/2024

ANY OTHER BUISNESS

The Committee was informed that it was scheduled to meet with the Chief Registrar of Judiciary to deliberate on the Statement sought by Sen. Mohamed Chute, MP concerning the status of court construction projects in Keenya on Thursday, 28th March, 2024 at 9.00 a.m., however, a written request had been received from the Office of the Chief Registrar of Judiciary to appear before the Committee at a later date to allow the new Chief Registrar to settle into office and prepare adequately to respond to the above stated Statement.

MIN. NO. 75/2024

ADJOURNMENT

The Chairperson adjourned the meeting at thirty minutes past nine O'clock. The next meeting was scheduled to be held on Wednesday, 27th March, 2024 at eleven O'clock.

SIGNED:



DATE: 27.03.2024



13TH PARLIAMENT | 3RD SESSION

MINUTES OF THE 116TH SITTING OF THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON WEDNESDAY, 27TH MARCH, 2024 AT 11.00 A.M IN COMMITTEE ROOM 5, 1ST FLOOR, PARLIAMENT BUILDINGS

PRESENT

- | | |
|--|-----------------------------------|
| 1. Sen. Wakili Hillary Kiprotich Sigei, MP | - Chairperson (<i>Chairing</i>) |
| 2. Sen. Raphael Chimera Mwinzagu, MP | - Vice-Chair |
| 3. Sen. Fatuma Adan Dullo, CBS, MP | - Member |
| 4. Sen. Veronica W. Maina, MP | - Member |
| 5. Sen. Andrew Omtatah Okoiti, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|--|----------|
| 1. Sen. William Cheptumo Kipkiror, CBS, MP | - Member |
| 2. Sen. Hamida Ali Kibwana, MP | - Member |
| 3. Sen. Catherine Muyeka Mumma, MP | - Member |
| 4. Sen. Karen Njeri Nyamu, MP | - Member |

SECRETARIAT

- | | |
|-------------------------|---|
| 1. Mr. Moses Kenyanchui | - Legal Counsel I |
| 2. Ms. Lilian Waweru | - Legal Counsel II |
| 3. Ms. Lynn Aseka | - Clerk Assistant III (<i>Taking Minutes</i>) |
| 4. Mr. Jackson Osore | - Research Officer III |
| 5. Mr. Josphat Ng'eno | - Media Relations Officer III |
| 6. Ms. Judith Aoka | - Assistant Audio Officer |

MIN. NO. 76/2024

PRELIMINARIES

The Chairperson called the meeting to order at ten minutes past eleven O'clock and opened with a word of prayer.

MIN. NO. 77/2024

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted having been proposed by Sen. Raphael Chimera Mwinzagu, MP and seconded by Sen. Andrew Omtatah Okoiti, MP.

MIN. NO. 78/2024

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

The Committee was taken through and considered the draft Report on the Conflict of Instrument Bill, 2023 (National Assembly Bills No. 12 of 2023) with the proposed amendments incorporated as observations and recommendations at chapters three and four of the Report.

Thereafter, the Committee adopted the Report, having been proposed by Sen. Fatuma Adan Dullo, CBS, MP and seconded by Sen. Veronica W. Maina, MP.

MIN. NO. 79/2024

ADJOURNMENT

The Chairperson adjourned the meeting at forty minutes past eleven O'clock. The next meeting was scheduled to be held on Monday, 15th April, 2024 at nine O'clock.

SIGNED:



DATE: 27.03.2024.

ANNEX 2: Copy of the Conflict of Interest Bill, 2023
(National Assembly Bills No. 12 of 2023)



REPUBLIC OF KENYA

PARLIAMENT

NATIONAL ASSEMBLY BILLS

(Bill No. 12 of 2023)

THE CONFLICT OF INTEREST BILL, 2023

(A Bill published in the Kenya Gazette Supplement No. 41 of 2023 and passed by the National Assembly, with amendments, on November 30th, 2023)

N.A./B/No. 12/2023

THE CONFLICT OF INTEREST BILL, 2023
ARRANGEMENT OF CLAUSES

Clause

PART I—PRELIMINARY

- 1—Short title.
- 2—Interpretation.
- 3—Objects of the Act.
- 4—Application of the Act.

PART II—ADMINISTRATION

- 5—Administration of this Act.
- 6—Functions of the Commission.
- 7—Powers of the Commission.

PART III—CONFLICT OF INTEREST

- 8—Conflict of interest.
 - 9—Obligation to avoid conflict of interest.
 - 10—Conflict of interest in decision making.
 - 11—Participation in proceedings before Parliament or county assembly.
 - 12—Preferential treatment.
 - 13—Misuse of official information.
 - 14—Undue influence.
 - 15—Offers of outside employment.
 - 16—Gifts and other benefits.
 - 17—Register of gifts.
 - 18—Complimentary treatment.
 - 19—Contracts with public entities prohibited.
 - 20—Acquisition of interest in partnerships and private companies.
 - 21—Conflict in recruitment.
 - 22—Collusion by public officers to conceal conflict of interest.
-

- 23—Restricted gainful employment.
- 24—Register of conflict of interest.
- 25—Political neutrality.
- 26—Public collections.
- 27—Prohibitions after leaving office.
- 28—Prohibition against representing people before reporting entities.
- 29—Exemption of former public officers.

PART IV—COMPLIANCE MEASURES

- 30—Duty to recuse.
- 31—Declaration of income, assets and liabilities by public officers.
- 31A—Determination of responsible Commission.
- 31B—Certain delegations by Public Service Commission.
- 32—Timelines for declaration.
- 33—Clarification.
- 34—Access to declarations.
- 35—Retention of information.
- 36—Failure to submit information.
- 37—False information.
- 38—Publication of administrative mechanisms.

PART V—COMPLAINTS AND CONDUCT OF INVESTIGATIONS

- 39—Lodging of complaints and investigations
- 40—Right to decline commencement of investigations.
- 41—Temporary vacation of office.
- 42—Recommendations of the Commission.

PART VI—MISCELLANEOUS PROVISIONS

- 43—General Penalty.
- 44—Confidentiality.

- 45—Protection of person making disclosure.
- 46—Protection from liability.
- 47—Reports by reporting entities.
- 48—Regulations.

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

- 49—Repeal of Act No. 4 of 2003.
- 50—Transitional provisions.
- 51—Consequential amendments.

FIRST SCHEDULE

FORM 1

SECOND SCHEDULE

REGISTRABLE INTERESTS

THIRD SCHEDULE

CONSEQUENTIAL AMENDMENTS

THE CONFLICT OF INTEREST BILL, 2023

A Bill for

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

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Conflict of Interest Act, 2023.

Short title.

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

Interpretation.

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

No. 18 of 2012.

“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;

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

No. 22 of 2011.

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

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

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

“private interest” means a personal benefit, privilege, exemption or advantage that a public officer or a person affiliated to a public officer may gain from the office that the public officer holds and which may influence the

judgement of a public officer in the exercise of a public duty, but does not include interest in a decision or matter that—

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

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

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

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

“reporting entity” means—

- (a) a state organ;
- (b) the national government or any organ or department of the national government;
- (c) a county government or any organ or department of a county government;
- (d) a state corporation within the meaning of State Corporations Act; Cap. 446.
- (e) a public school within the meaning of the Basic Education Act, 2013; No. 14 of 2013.
- (f) a public university within the meaning of the Universities Act, 2012; No. 42 of 2012
- (g) a company owned by the National Government or a county government;
- (h) a body that uses public assets in any form of contractual undertakings including public private partnerships; No. 17 of 2015.
- (i) a company in which the national or county government has controlling shares in accordance

with section 125 of the Companies Act, 2015;

- (j) a college or other educational institution maintained or assisted out of public funds;
- (k) an entity which renders a service involving the collection or administration of a levy, fee or funds authorized by legislation;
- (l) any entity that uses public money in the delivery of government programmes or services, whether for profit or not;

“responsible Commission” in relation to a public officer, means the entity determined under section 31A to be the responsible Commission in relation to a public officer;

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

- (a) engagement as an employee or agent of an entity;
- (b) undertaking a consultancy for or on behalf of an entity;
- (c) rendering of advice to an entity, whether directly or indirectly, and whether formally requested or not;
- (d) any dealing with an entity in a contractual relationship for supply of goods, services or works; or
- (e) any engagement where the public officer exercises regulatory or oversight functions over the affairs of the entity, in whatever form.

“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; and

“windfall gain” includes unexpected income which may result from inheritance, lottery prizes, gambling

winnings, payroll bonuses, proceeds from insurance claims, settlement from lawsuits, discoveries from treasure hunting or bounty rewards.

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

Objects of the Act.

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

- (a) promote objectivity and impartiality in official decision making;
- (b) ensure that the integrity of decision makers is not compromised by private interests;
- (c) enhance integrity of public office and public confidence in the delivery of public services;
- (d) provide a framework for the regulation and management of real, apparent or potential conflict between public interest and private interest;
- (e) provide an institutional framework for the management of conflict of interest.
- (f) enhance accountability to the public for decisions and actions by public officers in execution of their duties; and
- (g) promote selfless service by public officers based solely on the public interest.

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

Application of the Act.

PART II—ADMINISTRATION

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

Administration of this Act.

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

Functions of the Commission.

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

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

Powers of the Commission.

- (a) conduct investigations on its own initiative or on a complaint made by a member of the public;
- (b) request for and obtain professional assistance or advice from any person or organization as it considers appropriate;
- (c) delegate to another person or body, by notice in the *Gazette*, any of its powers or functions under this Act in respect to classes of public officers specified by the Commission and that person or body shall be deemed to be responsible for the administration and management of conflict of interest; and
- (d) cooperate and collaborate with other public entities or agencies, any foreign governments and international or regional organizations in the management of conflict of interest and

enforcement of this Act.

PART III—CONFLICT OF INTEREST

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

Conflict of interest.

- (a) exercises an official power, duty or function to further his 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.

9. A public officer shall—

Obligation to avoid conflict of interest.

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

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

Conflict of interest in decision making.

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

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

Participation in proceedings before Parliament or county assembly.

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

(2) A member of Parliament or a member of a county assembly who makes a declaration under subsection (1) shall not use any information obtained by the member in the discharge of the member's constitutional role to advance the member's private interests.

(2A) The Speaker may allow a member of Parliament or a member of a county assembly to speak to a matter under deliberation after considering the nature, extent, and effect of the interest declared under subsection (1).

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

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

Preferential treatment.

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

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

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

Misuse of official information.

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

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

Undue influence.

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

15. (1) A public officer shall—

Offers of outside employment.

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

employment; and

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

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

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

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

16. (1) A public Officer shall not accept or request a gift or favour from a person who—

Gifts and other benefits.

- (a) has an interest that may be affected by the carrying out, or not carrying out, of the public officer’s duties;
- (b) carries on regulated activities with respect to which the public officer’s organisation has a role; or
- (c) has a contractual or similar relationship with the public officer’s organisation.

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

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

(3) Subject to subsection (2), if a public officer accepts any gift or benefit, the public officer shall, within forty-eight hours of acceptance of such gift or benefit, or, if

not on duty, within forty-eight hours of resumption of duty, make a declaration of such acceptance, giving sufficient details of the nature of the gift or other benefit accepted, the donor and the circumstances under which it was accepted.

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

17. Every reporting authority shall maintain a register of—

Register of gifts.

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

18. (1) A public officer shall not accept any complimentary treatment for any purpose unless the complimentary treatment offered is required in his official capacity or in exceptional circumstances.

Complimentary treatment.

(2) Where a public officer accepts a complimentary treatment in the exceptional circumstances referred to in subsection (1), the public officer shall, within forty-eight hours of acceptance of the complimentary treatment, or, if not on duty, within forty-eight hours of resumption of duty, make a declaration of such acceptance, giving sufficient detail on—

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

(3) A public officer who contravenes sub-section (1) or (2) commits an offence.

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

Contracts with public entities prohibited.

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

or her reporting entity.

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

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

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

Acquisition of interest in partnerships and private companies.

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

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

21. (1) A public officer shall not—

Conflict in recruitment.

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

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

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

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

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

Collusion by public officers to conceal conflict of interest.

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

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

Restricted gainful employment.

employment which—

- (a) is inherently incompatible with the official duties of the public officer;
- (b) results in the impairment of judgment of the public officer in the execution of official duties;
- (c) results in conflict of interest; or
- (d) the public officer is mandated to regulate or exercise oversight.

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

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

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

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

Register of conflict of interest.

(2) The register referred to in subsection (1) shall—

- (a) contain the particulars of the registrable interests of a public officer set out in the Second Schedule;
- (b) state the nature and extent of a conflict; and
- (c) be open to the public, subject to the provisions of the Access to Information Act, 2016, for inspection.

No. 31 of 2016.

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

Political neutrality.

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

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

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

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

Public collections.

(a) solicit for contributions from the public unless the President has, by notice in the *Gazette*, declared a national disaster and allowed a public collection for the purpose of the national disaster;

(b) participate in collection of funds from the public, either as a collector or promoter in a way that reflects adversely on the integrity and impartiality of the public officer or interferes with the performance of the of the duties of the public officer; or

(c) use official social media platforms or his place of work as a venue for soliciting or collecting funds.

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

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

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

Prohibitions after leaving office.

(a) act for or on behalf of any person in connection with any specific proceeding, transaction, negotiation or case in which the State is a party and with respect to which the former public officer had acted for, or provided advice to the State;

(b) be engaged by or act for or against his former employer for at least two years after ceasing to be a public officer;

(c) use information obtained in his official capacity and which is not available to the public to further the interests of another person or entity; or

(d) accept any appointment to a board of directors of, or employment with, a private entity with which the public officer had significant official dealings

during the period of two years immediately preceding the termination of his service.

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

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

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

Prohibition against representing people before reporting entities.

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

Exemption of former public officers.

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

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

PART IV—COMPLIANCE MEASURES

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

Duty to recuse.

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

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

- (a) the recusal shall be recorded in the minutes of the

transaction in question; and

- (b) 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.

31. (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 spouse and dependent children.

Declaration of
income, assets and
liabilities by
public officers.

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

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

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

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

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

Determination of
responsible
Commission.

(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.

(7) The Judicial Service Commission is the

responsible Commission for judges, magistrates and the public officers in respect of which it exercises disciplinary control.

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

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

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

Cap. 212.

(11) 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.

(12) 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. 28 of 2012.

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

(14) 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.

No. 16 of 2006.

(15) 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.

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

Certain
delegations by
Public Service
Commission.

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.

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

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

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

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

- (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.

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

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

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

- (a) the omitted information be provided; or

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

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

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.

Access to
declarations.

(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.

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

Retention of information.

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

Failure to submit information.

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

False information.

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

Publication of administrative mechanisms.

PART V— COMPLAINTS AND CONDUCT OF INVESTIGATIONS

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

Lodging of complaints and investigations.

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

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

Provided that an investigation commenced against a public officer shall be concluded within ninety days.

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

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

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

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

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

40. (1) ~~Despite section 48, the Commission or a reporting authority shall not commence investigations if—~~ Discretion in investigations.

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

(2) If the Commission 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.

41. (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.

Suspension from office.

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

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

Recommendations of the Commission.

- (a) recommend to a public entity to take disciplinary or other administrative action against a State or public officer alleged to have contravened the provisions of this Act;
- (b) recommend to a public entity, appointing authority or the public officer, to take such measures as may

be appropriate to ensure compliance with, or cessation of further violation of, the provisions of this Act;

- (c) recommend to any other relevant public body to take appropriate action against a state or public officer, an associate to a state or public officer or a company in which a state or public officer has a controlling interest in; or
- (d) recommend to the Director of Public Prosecutions the prosecution of a person who contravenes this Act.

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

PART VI—MISCELLANEOUS PROVISIONS

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

General Penalty.

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

(b) if the person is a body corporate, a fine not exceeding ten million shillings; and

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

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

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

(b) if the conduct that constituted the offence resulted in both a benefit and loss described in subsection

(2), the mandatory fine shall be equal to two times the sum of the amount of the benefit and the amount of the loss.

44. 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—

Confidentiality.

(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.

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

Protection of person making disclosure.

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

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

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

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

(6) For the purpose of this section, a person is penalized if the person is dismissed, discriminated against, made the subject of reprisal or other form of adverse treatment or is denied any appointment, promotion or

ANNEX 3: Message from the Speaker of the National
Assembly



**REPUBLIC OF KENYA
THIRTEENTH PARLIAMENT - SECOND SESSION**

**THE NATIONAL ASSEMBLY
MESSAGES**

MESSAGE TO THE SENATE

_____ (No. 023 of 2023) _____

**SUBJECT: PASSAGE OF THE CONFLICT OF INTEREST BILL
(NATIONAL ASSEMBLY BILL NO. 12 OF 2023)**

PURSUANT to the provisions of Standing Order 41(1) and 142 of the National Assembly Standing Orders, I hereby convey the following Message from the National Assembly—

WHEREAS, the Conflict of Interest Bill (National Assembly Bill No. 12 of 2023) was published *vide* Kenya Gazette Supplement No. 41 of 3rd April 2023 as a Bill seeking to provide for the management and regulation of conflict of interest in the discharge of official duties and subsequent repeal of the Public Officer Ethics Act, 2003;

AND WHEREAS, on Wednesday, 29th November 2023 and Thursday, 30th November 2023, the National Assembly considered the Conflict of Interest Bill (National Assembly Bill No. 12 of 2023) and passed it **with amendments** and in the form attached herewith;

NOW THEREFORE, in accordance with the provisions of Article 110 of the Constitution and Standing Orders 41(1) and 142 of the National Assembly Standing Orders, I hereby refer the Bill to the Senate for consideration.


**THE RT. HON. (DR.) MOSES F.M. WETANG'ULA, EGH, MP
SPEAKER OF THE NATIONAL ASSEMBLY**

Wednesday, 6th December 2023

ANNEX 4: Advertisement Published in the *Daily Nation* and
Standard Newspapers on Friday, 16th February,
2024

REPUBLIC OF KENYA



THIRTEENTH PARLIAMENT | THIRD SESSION THE SENATE

INVITATION FOR SUBMISSION OF MEMORANDA

At the sitting of the Senate held on Wednesday, 14th February, 2024, the Bills listed at the second column below were introduced in the Senate by way of First Reading and thereafter stood committed to the respective Standing Committees indicated at the third column.

Pursuant to the provisions of Article 118 of the Constitution and standing order 145 (5) of the Senate Standing Orders, the Committees now invite interested members of the public to submit any representations that they may have on the Bills by way of written memoranda.

The memoranda may be submitted to the Clerk of the Senate, P. O. Box 41842-00100, Nairobi, hand-delivered to the Office of the Clerk of the Senate, Main Parliament Buildings, Nairobi or emailed to clerk.senate@parliament.go.ke and copied to the email addresses of the respective Committee indicated at the fourth column below, to be received on or before **Friday, 1st March, 2024 at 5.00 p.m.**

Bill	Committee Referred To	Email Address
a) The Conflict of Interest Bill (National Assembly Bills No. 12 of 23)	Standing Committee on Justice, Legal Affairs and Human Rights	senatejlahrc@parliament.go.ke
b) The Gambling Control Bill (National Assembly Bills No. 70 of 2023)	Standing Committee on Labour and Social Welfare	laboursocialwelfarecomm.senate@parliament.go.ke
c) The Wildlife Conservation and Management (Amendment) Bill (Senate Bills No. 46 of 2023)	Standing Committee on Land, Environment and Natural Resources	landenvironcommittee.senate@parliament.go.ke
d) The Nuts and Oil Crops Development Bill (Senate Bills No. 47 of 2023)	Standing Committee on Agriculture, Livestock and Fisheries	agriculturelfcommittee.senate@parliament.go.ke
e) The Constitution of Kenya (Amendment) (No. 2) Bill (Senate Bills No. 52 of 2023)	Standing Committee on Justice, Legal Affairs and Human Rights	senatejlahrc@parliament.go.ke

The Bills may be accessed on the Parliament website at <http://www.parliament.go.ke/the-senate/house-business/bills>.

**J.M. NYEGENYE, CBS,
CLERK OF THE SENATE.**

ANNEX 5(a): Teachers Service Commission (TSC)

TEACHERS SERVICE COMMISSION

TELEPHONE: 020 2892000
EMAIL: info@tsc.go.ke
WEBSITE: www.tsc.go.ke

When Replying Please Quote:

Our Ref:CS/TSC/78/VOL.IV



TSC HOUSE, UPPERHILL,
KILIMANJARO ROAD,
OFF MARA ROAD,
PRIVATE BAG - 00100,
NAIROBI, KENYA.

Date:4th MARCH, 2024

J. M. Nyegenye, CBS
Clerk of the Senate
Clerks Chambers
Parliament Buildings
P.O. Box 41842-00100
NAIROBI

SUBMISSION OF COMMENTS ON THE CONFLICT-OF-INTEREST BILL (NATIONAL ASSEMBLY BILLS NO. 12 OF 2023)

The above matter and your letter Ref:SEN/DGAC/DGC/JLAHRC/2024/10 dated 23rd February, 2024 refers.

Enclosed hereto, please find a detailed response for further action.

CAVIN ANYUOR
FOR: SECRETARY/CHIEF EXECUTIVE

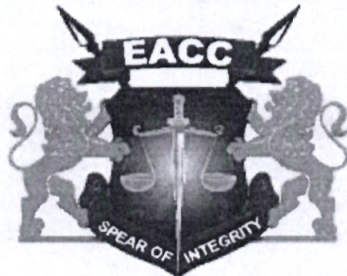
FORM FOR SUBMISSION OF COMMENTS ON THE CONFLICT OF INTEREST BILL
NAME OF THE ORGANISATION: TEACHERS SERVICE COMMISSION
CONTACTS: EMAIL & PHONE: dirllir@tsc.go.ke 0202892013

PROVISION IN THE BILL	WHAT IS YOUR PROPOSAL/INPUT	WHAT IS YOUR JUSTIFICATION/COMMENT FOR THE PROPOSED CHANGES
Part 1 –Title	Should consider retaining the current title Public Officer Ethics Act.	Conflict of interest is just one component of ethics expected of public officers.
Part 1 Preliminary	Gainful employment as defined is narrow and restrictive	Gainful employment should refer to steady allowance arising out of steady employment meaning the employee will have steady work and payment to allow self-sufficiency. It is further aptly defined in the Leadership & Integrity Act.
Part 1 Preliminary	In the definitions, include Constitutional Commissions as part of 'reporting entity'	To encompass Article 248 of the Constitution.
Section 8	Define Conflict of Interest in the Preamble Delete word 'perception' in Section (8) (b) as it subject to abuse. Section 8 (c) is anticipatory. Consider recasting it.	Define what constitutes conflict of interest both directly and indirectly.
Section 9 (b)	Propose additions as follows: (b) disclose details of any private interest of the public officer that affects the official duties of the public officer, to the reporting authority or Commission and comply with any directions to avoid the conflict.	This will provide clarity on who a public officer should report/ disclose relevant details/ information to; which ensures accountability
Section 17 (b)	Clarification if gifts referred therein refer to gifts to entity's employees.	To avoid abuse of the provisions and harassment of public officers.
Section 18 (1)	Restrict the treatment meant to influence the Public Officer	The provision as drafted criminalizes all complimentary treatment.
Section 18 (2)	The provision appears too open ended	It should be expounded/qualified and probably define exceptional circumstances.
Section 19	Place of use of proxies such as spouse and children be addressed	To avoid abuse by public officers and to protect the sanctity of the PPDA.

Section 23 (1) (a)	The provision appears vague e.g. use of the word incompatible	In line with Article 47 of the Constitution, the same should be qualified.
Section 23 (2)	Expound the provision to bring out what is acceptable, what is prohibited or not	To avoid abuse
Section 23 (3)	Not practical	No employer will give the permission referred to. The provision appears to criminalize hard work.
Section 27, 28, 29	Delete provision	This is a violation of rights of certain professionals e.g. Advocates in the Public Service. It's Unconstitutional
Section 30 (2) (b)	The provision places upon a Public Officer an unnecessary burden should be recast.	The Reporting Authority should bear this burden as it is the custodian of the register of Conflict of Interest
Section 31	Our concern is whether the Commission (EACC) has the capacity to receive all declaration forms from the entire Public Service.	Declarations be made to the various Reporting Authorities as well for easier management.
Section 31 (4) (c)	Delete	It is a violation of the right of privacy.
Section 32 (4)	Amend to the final declaration being made 30 days prior to exit.	The Reporting Entity will be in a position to enforce the provision when the public officers are still under their employment.
Section 45	The provision should be recast to avoid abuse	This power ought to be exercised after due process including fair hearing.
Section 48	The whole provision should be recast	Reporting of a crime should be multifaceted to avoid abuse. The provision should expound to bring on board other players in the justice sector for process e.g. police, DCI Provide how the information is processed. Modalities of investigations should be provided in the Act.
Section 49	Entire provision be recast	As is, the provision is pre-emptive. It can provide for some form of preliminary inquiry to determine if conflict of interest is apparent or not.
Section 50	Provide for remuneration, salary, emoluments during the suspension period etc	The provision should be subjected to law governing operations of reporting authority and other statutes. As is, it is subject to abuse since these are administrative. Also these should be left to criminal courts.
Section 51 (2)	Delete provision	Recommendations from EACC should not be binding, they should remain as best practices.

Section 52	Recast provision e.g. the penalty referred to has not been disclosed.	The fine prescribed is excessively high.
Section 55	Expound provision	Is the reporting entity an agent of the Commission (EACC)? Give format of the Compliance Reports referred to. They could also be defined as a statutory requirement in the preliminary.
Section 58	Repeal of the POEA	<p>The POEA covers a wide range of issues and ethics pertaining to ethics and the standard required of public officers including conflict of interest. We note that some critical provisions of POEA have not been brought forward to this Bill e.g.</p> <ul style="list-style-type: none"> 5 – Establishment of specific codes of conduct 8 – performance of duties 9 – professionalism 11 – no improper enrichment 14 – Acting for foreigners 15 – care of property 18 – giving of advice 19 – misleading the public 20 – conduct of private affairs 21 – sexual harassment 25 – reporting improper orders <p>We suggest that Parliament should instead consider amending POEA as opposed to enactment of this Bill.</p>

ANNEX 5(b): Ethics and Anti-Corruption Commission (EACC)



ETHICS AND ANTI-CORRUPTION COMMISSION

INTEGRITY CENTRE (Jakaya Kikwete/Valley Road Junction) P.O. Box 61130 – 00200, NAIROBI, Kenya
TEL.: 254 (020) 4997000, MOBILE: 0709 781000; 0
730 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 (182)

29th February 2024

J. M. Nyegenye, CBS
Clerk of the Senate
Main Parliament Buildings
P O Box 41842-00100
NAIROBI

Dear *Mr. Nyegenye,*

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

Reference is made to your letter **Ref: SEN/DGAC/DGC/JHAHRC/2024/10(b)** dated **23rd February 2024** calling for submission of comments on the Conflict of Interest Bill (National Assembly Bills No. 12 of 2023).

The Ethics and Anti-Corruption Commission, being a key stakeholder in the enforcement of the proposed conflict of interest legal framework, has analyzed the Bill and submits the attached Memorandum for consideration by the Senate Standing Committee on Justice, Legal Affairs and Human Rights.

A soft copy of this Memorandum shall be emailed to clerk.senate@parliament.go.ke and copied to senatejahrc@parliament.go.ke as guided.

Yours

Sincerely

Abdi A. Mohamud, MBS
Deputy Chief Executive Officer
FOR: SECRETARY/CHIEF EXECUTIVE OFFICER

(EACC Analysis of COI Bill, 2023)



ETHICS AND ANTI-CORRUPTION COMMISSION

**MEMORANDUM TO THE SENATE COMMITTEE ON
JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS**

**ANALYSIS OF THE CONFLICT OF INTEREST BILL, 2023
(BEING THE NATIONAL ASSEMBLY BILL NO. 12 OF 2023)
SUBMITTED BY THE NATIONAL ASSEMBLY TO THE SENATE**

=====
4th March 2024
=====

ANALYSIS OF THE CONFLICT OF INTEREST BILL, 2023 SUBMITTED BY THE NATIONAL ASSEMBLY TO THE SENATE

A. INTRODUCTORY BACKGROUND

The Conflict of Interest Bill, 2023 (National Assembly Bill No. 12 of 2023) is sponsored by the Leader of Majority in the National Assembly. The Bill was developed by a multi-agency Technical Committee comprised of representatives from key agencies in governance and anti-corruption. It has undergone the following legislative steps-

- Draft COI Bill was approved by the **Cabinet on 28th February, 2023;**
- Bill was then submitted to and introduced in the **National Assembly on 3rd April 2023**. The 1st reading was on **6th June 2023**, after which it was committed to the Justice and Legal Affairs (JLAC) Committee;
- JLAC held several consultative meetings with stakeholders, specifically on **29th June 2023; 27th July 2023; and 8th August 2023;**

In **October 2023**, the Bill underwent **3rd reading** and debate in the National Assembly. Due to the numerous issues raised during the debate, it was remitted back to JLAC for further consideration. On **29th November**, the Bill was debated further in the National Assembly, where it was **approved with amendments**, and thereafter referred to the **Senate** for consideration;

- It was tabled for the **1st reading** in the Senate on **14th February, 2024**, and was thereafter committed to the Senate Standing Committee on Justice, Legal Affairs and Human Rights for consideration.

This Memorandum is submitted to the Senate Standing Committee on Justice, Legal Affairs and Human Rights pursuant to a letter **Ref. SEN/DGAC/JLAHRC/2024/10(b)** dated **23rd February 2024** for its consideration. The Ethics and Anti-Corruption Commission is a key stakeholder in enforcement of the legal framework on management of conflict of interest, and has analyzed the current Bill under consideration by the Senate. The analysis in this Memorandum factors in the provisions in the Bill *vis-à-vis* the provisions which were contained in the initial draft that was debated in the National Assembly and passed with amendments.

(The initial Draft Bill, and the final approved National Assembly Bill as forwarded to the Senate for consideration, are attached as Appendix I and II respectively)

B. COMMENTS/OBSERVATIONS ON THE CONFLICT OF INTEREST BILL, 2023

1.	Functions of the Commission	
	Initial Provision in the Bill (Section 6) EACC was vested with the function to institute proceedings for forfeiture of undeclared or unexplained assets. The definition of "unexplained asset" was provided in section 2, but "undeclared asset" was not defined.	Status in the Bill before Senate (Section 6) This function has been removed in the current Bill, and the definition of "unexplained asset" that was provided in section 2 also removed.
	Proposal The function to institute proceedings for forfeiture of undeclared or unexplained assets should be reinstated in the current Bill, together with the definition of "unexplained asset" that was provided in section 2. There was a presumption that in enforcing the provisions on declaration of income, assets and liabilities provided for in Part IV of the Bill, the Commission would come across cases of undeclared assets, which would be subjected to forfeiture. An undeclared asset is different from an unexplained asset, hence the reason that this function was included. It is also necessary to include a definition of the term " <i>undeclared asset</i> " in section 2, as follows- <ul style="list-style-type: none">• "<i>Undeclared asset</i>" means an asset which is determined to be owned or controlled by a public officer but has not been declared in accordance with a requirement under the Act or Regulations.	
2.	Powers of the Commission	
	Initial Provision in the Bill (Section 7) The initial Bill vested EACC with the power to summon witnesses and require them to give evidence orally or in writing, on oath or on affirmation; and to produce any evidence or exhibits as the Commission considers necessary.	Status in the Bill before Senate (Section 7) This power has been removed in the current Bill
	Proposal	

<p>Whereas the Commission may have such powers under other laws, such as ACECA, it is necessary for the powers in the Conflict of Interest law to be self-implementing. It is therefore proposed that the power be reinstated in the Bill.</p>	
3. Definition of what amounts to conflict of interest	
<p>Initial Provision in the Bill (Section 8)</p> <p>The description of and provisions as to what amounts to conflict of interest was broad. It included potential conflict that may arise in the future; and conflict situations, which are not necessarily criminal in nature but require management.</p>	<p>Status in the Bill before Senate (Section 8)</p> <p>In the Current Bill, the description has been narrowed to only include conflict of interest that is criminal in nature. This adopts a narrower scope contrary to the spirit of the Bill.</p>
<p>Proposal</p> <p>The Act is meant to provide for management of different situations of conflict of interest, whether criminal or administrative in nature. It is proposed that the initial provisions in section 8 be reinstated, with necessary amendments, so as to read as follows-</p> <p>Conflict of Interest</p> <p><i>A public officer is in conflict of interest if the officer-</i></p> <ul style="list-style-type: none">(a) <i>exercises an official power, duty or function that provides an opportunity to further the official's private interests or to improperly further another person's interests;</i>(b) <i>is in a situation where the official's private interests can reasonably be perceived to impair or influence the official's ability to act objectively, or</i>(c) <i>has private interests that could conflict with the official's duties in future.</i>	
4. Preferential Treatment	
<p>Initial Provision in the Bill (Section 12)</p> <p>In the Initial Bill, the provision states as follows-</p> <p><i>"A public officer shall not, in the exercise of an official power or in the performance of a duty or function, grant a person, whether directly or indirectly, any special consideration, treatment or</i></p>	<p>Status in the Bill before Senate (Section 12)</p> <p>The National Assembly introduced a new sub clause (3) that shields public officers from any criminal or civil proceedings if any action is done <u>in good faith</u>.</p> <p>However, what amounts to 'good faith' has not been defined, thereby it renders the</p>

	<i>advantage beyond what is allowed by law or written policy"</i>	whole provision inoperable as the defense of good faith becomes absolute
	Proposal The proviso in sub-clause 3 should be deleted.	
5.	Engaging in contracts with public entities	
	Initial Provision in the Bill <i>(Section 19)</i> A public officer was completely barred from entering into contracts for the supply of goods, works or services, or disposal of goods with <i>any</i> public entity.	Status in the Bill before Senate <i>(Section 19)</i> The prohibition has been changed so that public officers are only required to avoid trading with their reporting entity, meaning the employer of the public officer.
	Proposal There is need for consensus on whether the new law should revert to the position prior to 1971 when public officers could not engage in any contract with any public entity, a position that changed following the recommendations made by the Ndegwa Commission in 1971 from whence public officers were allowed to trade with government entities except their employer.	
6.	Registers for conflict of interest	
	Initial Provision in the Bill <i>(Section 24(2)(c)</i> A public entity was required to maintain a register of conflicts of interest open to the public for inspection.	Status in the Bill before Senate <i>(Section 24(2)(c)</i> This has been changed so that access to COI register to the public for inspection, is subject to the provisions of the Access to Information Act.
	Proposal An open register for conflict of interest is an important requirement for implementation of the law, as a lot of the information on violations will be derived by members of the public who have knowledge of situations where public officers are conflicted. To subject access to the register to requirements under the Access to Information Act will curtail this fundamental principle. In addition, the provision may be misinterpreted or misapplied by some public entities or public officers to restrict or deny access to such registers by law enforcement entities. It is proposed that the reference to Access to Information Act in this section be deleted.	

7. Establishment of responsible commissions to administer declaration of income, assets and liabilities for public officers	
Initial Provision in the Bill (Section 31) EACC was vested with the responsibility to administer declaration of income, assets and liabilities in the entire public service.	Status in the Bill before Senate (Sections 31A and 31B) The National Assembly introduced new Clauses 31A and 31B establishing various responsible Commissions to administer the function. This reverts the status quo as was in the POEA, but tries to cure the latent lacuna in POEA where some public officers were not covered.
Observations and Proposals <ul style="list-style-type: none">❖ Some responsible Commissions established under or pursuant to the Public Officer Ethics Act, 2003, and which have been administering the functions of a responsible commission since 2003, have been omitted from the list in section 31A of the Bill. The entities should be re-designated under this section, as their omission will leave a vacuum in respect of the officers for whom they are established. These include the following-<ol style="list-style-type: none">i. The Board of Directors of the Central Bank of Kenya designated under the POEA Regulations, 2003 to be the responsible commission in respect of officers and employees of the Central Bank of Kenya, and banks/financial institutions licensed under the Banking Act that are state corporations;ii. The Commission for University Education, designated under the POEA Regulations, 2003 to be the responsible commission in respect of officers and employees of a public university including members of a council of a public university other than members who are in the public service for whom the Public Service Commission is the responsible Commission;iii. The Ethics Commission for Co-operative Societies, designated under the POEA Regulations, 2003 to be the responsible commission in respect of officers of a co-operative society established under the Co-operative Societies Act, including members of the governing body of the co-operative society;iv. The Ethics and Anti-Corruption Commission, designated through Gazette Notice No. 2435 dated 31st March, 2005 to be the responsible commission in respect of members of staff of the Commission. <i>(The POEA Regulations, 2003 and Gazette Notice No. 2435 dated 31st March, 2005 are attached as Appendix III and IV)</i>	

- ❖ There are a number of Constitutional Commissions and independent offices established under the Constitution that have also been administering DIALs in respect of their members of staff. In addition to these are entities which, though not expressly established under the Constitution, came into existence upon implementation of the constitutional and statutory framework after the promulgation of the Constitution in 2010. The independence nature of their operations dictates that they should also be the responsible commissions for purposes of the POEA, and they ought to be designated as responsible commissions under section 31A of the Bill. The constitutional commissions, independent offices and other entities referred to in this context include the following-
 - i. Commission on Administration of Justice
 - ii. National Police Service Commission
 - iii. Independent Electoral and Boundaries Commission
 - iv. Kenya National Human Rights Commission
 - v. Salaries and Remuneration Commission
 - vi. National Gender and Equality Commission
 - vii. Office of Controller of Budget
 - viii. Registrar of Political Parties
 - ix. Office of the Director of Public Prosecutions (ODPP)
 - x. Office of Auditor General
 - xi. Commission on Revenue Allocation
 - xii. National Land Commission
- ❖ There is no proper justification why only some members of staff of EACC, those at the level of Deputy Director and above, should declare their income, assets and liabilities to a Committee of the National Assembly. The Committee will not be able to enforce the requirements in respect of staff over which it has no disciplinary control.
- ❖ In addition, it is noted that no responsible commission has been designated for members of staff of EACC below the level of Deputy Director.
- ❖ It is not a desirable scenario where staff in an institution declare their income, assets and liabilities to different responsible Commissions as it will bring confusion, particularly those in an acting capacity in the position of Deputy Director.
- ❖ It is proposed that the EACC remains the responsible commission for all staff of the Commission other than the Secretary/CEO.

8.	Access to information contained in a declaration made under the COI law	
	Initial Provision in the Bill (Section 34) A law enforcement agency was granted unrestricted access to declarations made by a public officer under the Act.	Status in the Bill before Senate (Section 34(2)) The section has been amended to subject requests for access by law enforcement bodies to "due process" However, the term "due process" has not been defined.
	Observations and Proposals <ul style="list-style-type: none">❖ Unrestricted access to declarations by a law enforcement agency is an international best practice, especially in investigation of cases for unexplained assets.❖ The use of the term "due process" which is not defined, makes it vague whether a law enforcement body can be granted unrestricted access or not.❖ The words "due process" should be deleted so as to guarantee unfettered access to declarations by a law enforcement agency.	
9.	Provisions on compliance measures (Part IV of the Bill)	
	Initial Provisions in the Bill (Sections 38, 39, 40, 41, 42, 43, 44, 45) There were elaborate provisions on various compliance measures. One of the measures was through divestiture, which includes sale of an interest at an arm's length transaction or placing assets in a blind trust. In addition, the Commission was empowered to issue compliance orders to a public officer and oversight the process of compliance.	Status in the Bill before Senate All the provisions relating to divestiture as a compliance measure, and the power of the Commission to issue such compliance orders, have been deleted.
	Observations and Proposal <ul style="list-style-type: none">❖ The compliance measures contained in Part IV were mostly new and novel innovations that were not to be found in the existing law.❖ Their deletion means that the COI Bill will not introduce anything new in management of COI other than consolidate what was fragmented in various laws.❖ The same should be reinstated into the Bill.❖ The Commission should be empowered to undertake continuous sensitization and education on the said mechanisms.	

10.	Lodging of Complaints and Undertaking of Investigations	
	Initial Provisions in the Bill <i>(Section 48)</i> The Commission or a reporting authority had been given mandate and power to undertake an investigation on any matter under the Act.	Status in the Bill before Senate <i>(Section 39)</i> Although the function and mandate of investigation is provided to both the Commission and a reporting authority, a new sub clause (2A) has been inserted to provide that a reporting authority and the Commission shall not conduct concurrent investigations.
	Observations and Proposal <ul style="list-style-type: none">❖ This provision infringes on the Constitutional mandate of the Commission, by purporting to preempt it from conducting an investigation if another reporting entity has commenced an investigation into the matter;❖ It also means that a person can forestall an investigation by the Commission, through the initiation of an investigation by any other reporting entity, effectively allowing forum shopping;❖ The provision also creates a lacuna and confusion in that it does not clarify what happens in the event that the Commission and a reporting authority were to find out that they are conducting concurrent investigations.❖ Many of the reporting authorities do not have the mechanisms or capacity for undertaking investigations.❖ It is proposed that investigation into any matter touching on conflict of interest be under the exclusive jurisdiction of the EACC, so as to ensure uniformity, harmony and consistency in how cases of conflict of interest are dealt with.	

C. APPENDIX

- I. Initial Conflict of Interest Bill dated 3rd April, 2023
- II. Conflict of Interest Bill submitted to the Senate
- III. Public Officer Ethics Regulations, 2003
- IV. Gazette Notice No. 2435 of 31st March, 2005

===== END =====

ANNEX 5(c): National Police Service Commission (NPSC)



REPUBLIC OF KENYA

Sky Park Plaza, 5th Floor
Woodvale Close, Westlands
P.O. Box 47363 - 00100 GPO
NAIROBI

National Police Service Commission



Website: www.npsc.go.ke
Email: info@npsc.go.ke
Tel: 0709 099 000

Our Ref: NPSC/1/ 29/12A/VOLI/15

Date: 4th March, 2024

J.M. Nyegenye, CBS,
The Clerk of the Senate,
Main Parliament Building,
P.O Box 41842-00100,
NAIROBI.

Dear *clerk,*

SUBMISSION OF COMMENTS ON THE CONFLICT OF INTEREST BILL, (NATIONAL ASSEMBLY BILLS NO.12 OF 2024

The National Police Service Commission acknowledges receipt of your letter **Ref: SEN/DGAC/DGC/JLAHC/2024/10i** dated **23rd February, 2023** with regard to the above subject matter.

The purpose of this letter therefore is to forward to your office the Commission's written Memoranda on the Conflict of Interest Bill of 2024.

Submitted for your information.

Yours

faithfully,

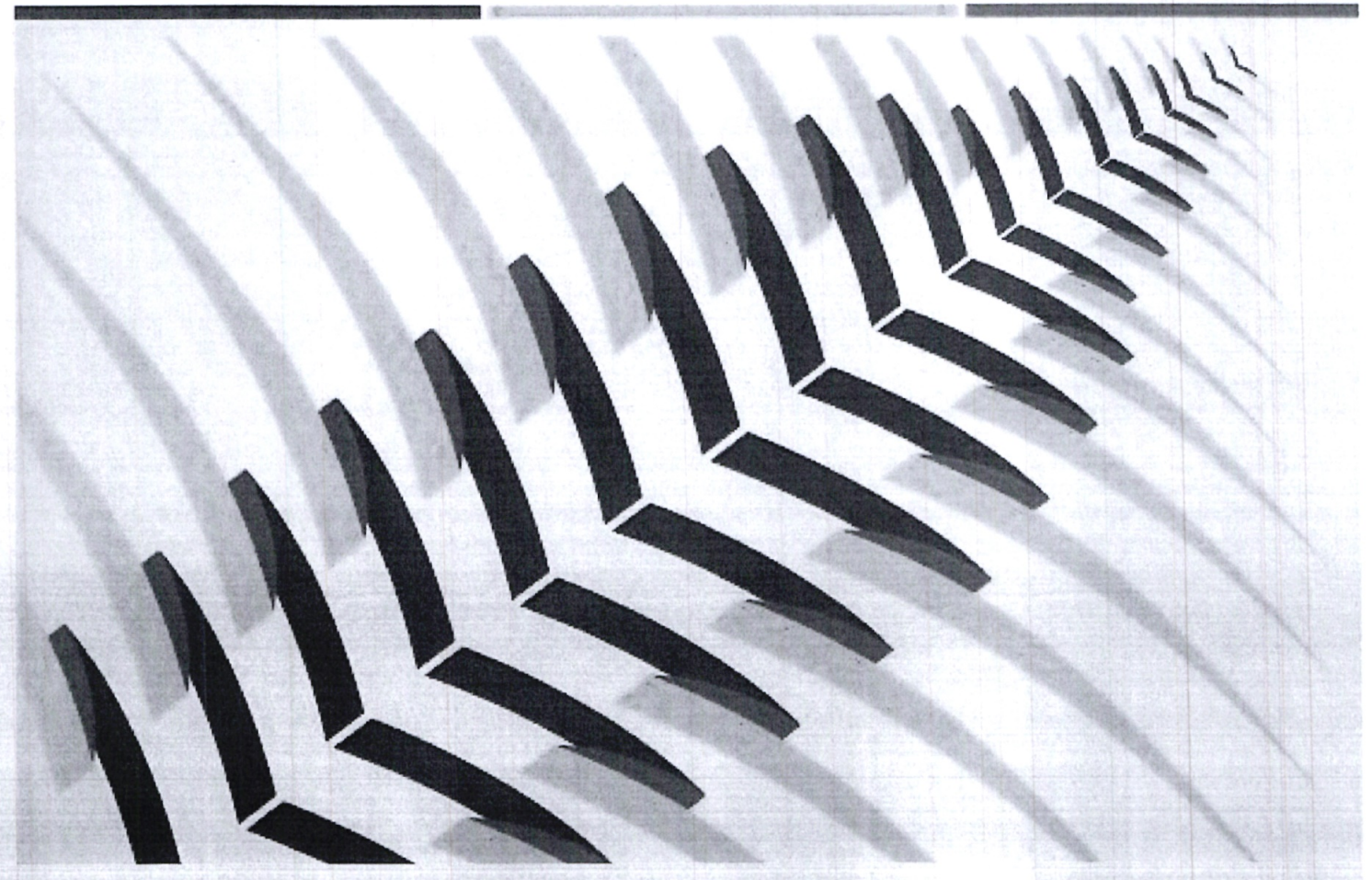
Peter Leley
CS/Chief Executive Officer
NATIONAL POLICE SERVICE COMMISSION



National Police Service Commission



**THE NATIONAL POLICE SERVICE COMMISSION'S SUBMISSIONS
ON CONFLICT OF INTEREST BILL (NATIONAL ASSEMBLY) NO. 12 OF 2023
TO THE SENATE
PRESENTED BY PETER LELEY
CS/ CHIEF EXECUTIVE OFFICE, NATIONAL POLICE SERVICE COMMISSION
MONDAY, 4TH MARCH, 2024**



OUTLINE

- 1.0 Background
- 1.1 National Police Service Commission
- 1.2 Submissions on the Conflict of Interest Bill, 2023
- 1.3 Other Comments

1.0 BACKGROUND

The National Assembly Departmental Committee on Justice and Legal Affairs has invited the Commission Secretary/ Chief Executive Officer, National Police Service Commission to submit views on the National Assembly Bill No. 12 of 2023- Conflict of Interests Bill. This is pursuant to Article 118 (1) (b) of the Constitution of Kenya, 2010 as well as Order 127 (3) of National Assembly Standing Orders.

The invitation requests the National Police Service Commission to make its submissions on the proposed Conflict of Interest Bill, 2023 via written memoranda vide letter dated 23rd February, 2024 and Ref: SEN/DGAC/DGC/JLAHRC/2024/10(i).

1.1 NATIONAL POLICE SERVICE COMMISSION

The National Police Service Commission is established by Article 246(1) of the Constitution of Kenya 2010 and identifiable under Article 248 (2)(j) as one of the Chapter Fifteen Commissions and Independent Offices.

The mandate of the Commission is stipulated in Article 246 (3)(a)(b)(c) and it is also a Service Commission as spelt out in Article 234 (3)(c)(iv) which entails general Human Resource Management Function of Members of the National Police Service.

The National Police Service Commission consequently makes the following submissions:

1.2 SUBMISSIONS BY NATIONAL POLICE SERVICE COMMISSION

S/ NO	SECTION OF THE BILL	SPECIFIC CLAUSE	PROPOSED AMENDMENT	JUSTIFICATION
1.	S. 13 (1)	<i>A public official shall not, directly or indirectly, use or allow any person under the official's authority to use any information that is obtained by the official in the course of performing official duties and is not available to the public to improperly further or seek to further the interest of the officer or interests of another person.</i>	Qualify the "interests of another person" to read the "private interests"	Interests are general term and the interests sought to be regulated are "private interests"
2.	S. 15 (1)(b)	<i>"disclose in writing to the reporting authority, any offers of outside employment that could place the officer in a situation of conflict of interest within seven days of receiving the offer"</i>	Delete this subsection or qualify it to "...after accepting the offer"	Receipt of an offer does not indicate any action/ omission in the conduct of the public officer to act for private interests and could be unsolicited.
3.	S. 19 (1)	<i>"A public officer shall not be party to or beneficiary of a contract for the supply of goods, works or services with any reporting entity"</i>	Delete the word "beneficiary"	This proposal is against Articles 27 (3) (4) and 40 of the Constitution of Kenya on right to economic opportunities and property. Public officers have right to acquire property which includes stake in companies, shares in which beneficial interests are declarable in law.

S/ NO	SECTION OF THE BILL	SPECIFIC CLAUSE	PROPOSED AMENDMENT	JUSTIFICATION
4.	S. 23(2)	<i>Where a public officer engages in gainful employment which is not prohibited under this Act, the officer shall, within thirty days of taking up the employment, make a declaration of the employment in the prescribed form and register the declaration with the reporting authority and the Commission.</i>	Delete this sub-section	It should be sufficient that the employment is not in conflict with the public officers' engagement and making a wealth declaration stating the income from the employment is sufficient.
5.	S. 23 (3)	<i>"A public official shall not engage in any gainful employment without permission from the reporting authority and the Commission"</i>	Delete the Reporting Authority and allow mandate to solely be the Commission.	The Commission should develop rational criteria for evaluation of the activity for which permission sought for all agencies for uniformity across public service and does the notifications to Reporting entities. We propose amendment to section 10(1)(c) of NPSC Act, 2011 so that the applicable Law on conflict of interests regulating trade is the same regulation operationalizing Article 80 of the Constitution.
6.	S. 27 (1)	<i>"A former public officer shall not-</i> <i>(a) Act for or on behalf of any person in connection with any specific proceeding, transaction, negotiation or case in which the</i>	Amend the paragraph to read: "A former public officer shall not- Act for or on behalf of any person in connection with	The State is a broad term for and including whole of government. Only the former reporting entity in which a former public officer was engaged as employee should be considered as there was privity of relationship.

S/ NO	SECTION OF THE BILL	SPECIFIC CLAUSE	PROPOSED AMENDMENT	JUSTIFICATION
		<i>State is a party and with respect to which the former public officer had acted for, or provided advice to the State;</i>	any specific proceeding, transaction, negotiation or case in which the State Reporting entity is the immediate former employer and is a party and with respect to which the former public officer had acted for, or provided advice to the State that Reporting entity;	
7.	S. 27 (1) (c)	<i>“Use information obtained in his official capacity and which is not available to the public to further the interests of another person or entity”</i>	Qualify the subsection by rephrasing as follows: “Use classified information obtained in his official capacity to further the interests of another person or entity”	Article 35 of the Constitution guarantees access to information held by the State subject to legal limitations and other legal provisions. The only information limited therefore should be anti-competitive information, classified information or mis-information. This proposal has potential to limit witnesses in legal proceedings who advance rule of Law and constitutionalism where they have first-hand information on issues where there are legal proceedings.

S/ NO	SECTION OF THE BILL	SPECIFIC CLAUSE	PROPOSED AMENDMENT	JUSTIFICATION
8.	S. 28	<i>“A former public officer shall not, during the period of two years immediately after the termination of Service represent, vouch or defend any person, whether for remuneration or not, before any reporting entity with which the former public officer had direct and significant official dealings”</i>	Create an exception for witnesses.	<p>This has potential to lead to miscarriage of justice where the person who left the reporting the entity is a key witness to the proceedings and therefore akin to gagging witnesses.</p> <p>Though they may vouch for a person based on the facts they encountered first-hand, this is different from representation.</p>
9.	S. 30(b)	<i>“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”.</i>	Amend this sub-section	<p>The Commission (EACC) should create a portal for reporting similar to Public Procurement Authority where the reporting commissions can periodically update this information for efficiency in compliance.</p> <p>Provisions should be made for annual reporting for all conflict of interest issues.</p>
10.	S. 34 (1)	<i>“Any declaration made under this Act shall be accessible to any person upon making an application to the responsible Commission that he has legitimate interest and good cause in the furtherance of the objectives of this Act”.</i>	Qualify the declaration referred to excluding Wealth declaration by a Public Officer.	<p>Wealth declarations contain personal information that is subject to Right to privacy.</p> <p>A Public Officer should be informed when such information touching on their private information has been requested.</p> <p>The Commission should have proper guidelines on how this information is requested or</p>

S/ NO	SECTION OF THE BILL	SPECIFIC CLAUSE	PROPOSED AMENDMENT	JUSTIFICATION
				conveyed and the purpose declared in this requisition.
11.	S. 34 (2)	<i>“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”</i>	<p>Define enforcement officer to a person employed by the Commission (EACC) and not all enforcement officers generally.</p> <p>Replace after due process with - having demonstrated reasonable cause shall have access to the disclosures with: reasonable access upon request on notice to reporting entities.</p>	Right to privacy and access to reporting entities information should continue to be managed through transparent but accountable and lawful channels and persons

1.3 OTHER COMMENTS

The Commission (EACC) and responsible Commissions should have data protection policies in place for personal data and signed commitments on handling of online processed data.



National Police Service Commission
P.O. Box 47363 - 00100, Nairobi
Telephone: 0709 099 000
Email: info@npsc.go.ke
www.npsc.go.ke

ANNEX 5(d): County Assembly Forum (CAF)

REPUBLIC OF KENYA



COUNTY ASSEMBLIES FORUM (CAF)

Flamingo Towers, 5th Floor Wing B, Mara Road, Upper Hill P.o Box 73552- 00200 Nairobi Kenya Tel: 0701 046 933
Email:communication@countyassembliesforum.org www.countyassembliesforum.org

CAF MEMORANDUM ON THE CONFLICT OF INTEREST BILL(NATIONAL ASSEMBLY NO. 12 OF 2023)

TO: Mr. Jeremiah Nyegenye, CBS
Clerk of the Senate, Parliament of Kenya.

FROM: The County Assemblies Forum.

DATE: 04th MARCH 2024.

SUBJECT: CAF Memorandum on the Conflict of Interest Bill ,2023

1.0 INTRODUCTION

1. The County Assemblies Forum (CAF) is the coordinating body of the 47 County Assemblies in Kenya. The primary mandate of CAF is to promote networking and synergy among the 47 County Assemblies, coordinate intergovernmental relations and enhance good practice in legislative development. Our Mission is to provide effective leadership and coordination of the 47 County Assemblies and through policy and legislative action, promote a conducive working environment for all its members, and in that way deliver quality services to the people.
2. As one of the pillars of the devolved government system, CAF is committed to engage in processes that lead to the further strengthening of the fight against corruption.

2.0. BACKGROUND

- 2.1. The Conflict of Interest Bill seeks to establish a comprehensive framework for preventing and addressing conflicts of interest in Kenya. The Bill defines a conflict of interest as a situation where an individual's private interests conflict with their public duties or responsibilities, creating a potential for bias or improper influence.

- 2.2. Key provisions of the Bill include:-

Declaration of Interests: The Bill requires public officials to declare their financial and non-financial interests that could give rise to a conflict of interest. This includes interests of spouses, children, and other close family members.

Disclosure of Conflicts: Public officials must disclose any conflicts of interest that arise during the course of their duties. This disclosure must be made to the relevant supervisor or ethics committee.

Avoidance of Conflicts: Public officials must take reasonable steps to avoid situations where a conflict of interest may arise. This may involve recusing themselves from decision-making or delegating tasks to others.

Management of Conflicts: If a conflict of interest cannot be avoided, the public official must manage it appropriately to minimize potential bias or improper influence. This may involve declaring the conflict, seeking guidance from an ethics advisor, or taking other measures to ensure neutrality.

Penalties and Enforcement: The Bill establishes penalties for violating its provisions, including fines, imprisonment, and dismissal from office. The Ethics and Anti-Corruption Commission (EACC) is responsible for enforcing the Bill.

3.0. GENERAL COMMENTS.

- 3.1. CAF appreciates parliament in developing this bill which will strengthen the fight against Corruption in our Country.
- 3.2. The Conflict of Interest Bill takes a commendable step in promoting transparency by requiring public officials to declare their interests. This provision allows the public to scrutinize decision-making processes, fostering greater accountability among public servants.
- 3.3. The Bill provides a comprehensive framework for preventing and addressing conflicts of interest in Kenya. By addressing financial and non-financial interests, including those of spouses and close family members, it ensures a holistic approach to minimizing potential bias or improper influence. By addressing conflicts of interest, the Bill aims to restore public trust in the integrity of public institutions and decision-makers.
- 3.4. The inclusion of penalties such as fines, imprisonment, and dismissal from office demonstrates the seriousness with which the Bill addresses conflicts of interest. This can act as a strong deterrent, discouraging public officials from engaging in activities that compromise their duties.
- 3.5. The effectiveness of the Bill relies heavily on the willingness of public officials to declare and disclose conflicts of interest. There is a risk that some individuals may not fully comply, undermining the overall impact of the legislation.
- 3.6. While transparency is crucial, there is a need to strike a delicate balance between protecting the public interest and respecting the privacy of public officials. Overly stringent disclosure requirements may discourage qualified individuals from serving in public office, potentially limiting the pool of qualified candidates. Careful consideration should be given to mitigating any unintended consequences in this regard.
- 3.7. CAF appreciates the opportunity to contribute to this Bill and on the basis of the foregoing proposes the following amendments:

4.0 SUMMARY MATRIX OF THE PROPOSED AMENDMENTS.

	CLAUSE	AMENDMENT	JUSTIFICATION
1.	Clause 2 Interpretation	<p>Kindly amend Clause 2 of the bill to provide definition of Conflict of Interest and whistle-blower:-</p> <p>“Conflict of interest” means when a person has a direct or indirect personal interest that could reasonably be perceived to impair their objectivity, judgment, or impartiality in the performance of their duties or responsibilities.</p> <p>“Whistle Blower” mean a person who makes a report to the Commission or the law enforcement agencies on acts or situations of conflict of interest.</p>	<p>Defining conflict of interest within the bill provides a clear and consistent understanding of the concept. This clarity is essential for public officers, regulatory bodies, and the public, ensuring that everyone interprets and applies the term in the same way.</p>
			<p>The explicit definition of a whistleblower within the Conflict of Interest Bill is a crucial aspect that enhances the overall efficacy of the legislation. The inclusion of a</p>

				clear and comprehensive definition serves as a foundational element to the provisions outlined in Section 54, specifically addressing the protection of individuals making disclosures
2.	<p>Clause 3(2)(a)</p> <p>(2) Without prejudice to the generality of subsection (1), the objects of this Act are to (a) promote objectivity and impartiality in official decision-making</p>	Amend the Clause by stating	<p><i>"promote objectivity and impartiality in decision making relating to the exercise of an official power or the performance of a duty or function of the public officer"</i></p>	To enhance clarity scope of application and align with language used in other parts of Bill e.g. section 8(a), 10(1), 12(1)
3.	<p>Clause 3 (2) (c)</p> <p>Objects of the Act</p> <p>(c) enhance public confidence in the</p>	Amend the Clause to state: -	<p><i>"(c) enhance public confidence in the integrity of public office and delivery of</i></p>	Introduce "Public Office" to align to constitutional provisions under Article 73 Responsibilities of

	<p>delivery of public services;</p>	<p><i>public services;</i>"</p>	<p>leadership (1) Authority assigned to a State officer—</p> <p>(a) is a public trust to be exercised in a manner that—</p> <p>(iii) brings honour to the nation and dignity to the office; and</p> <p>(iv) promotes public confidence in the integrity of the office; and</p> <p>Article 75 Conduct of State Office (1) A State officer shall behave, whether in public and official life, in private life, or in association with other 4 persons, in a manner that avoids—</p> <p>(a) any conflict between personal interests and public or official duties; (b) compromising any public or</p>
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			official interest in favour of a personal interest; or
			(c) demeaning the office the officer holds
4.	<p>Clause 9(b)</p> <p>A public officer shall –</p> <p>(b) disclose details of any private interest of the public officer that affects the official duties of the public officer</p>	<p>Amend the Clause to state as follows:</p> <p><i>“(b) disclose details of any private interest of the public officer that affects the official duties of the public officer, to the reporting authority or Commission and comply with any directions to avoid the conflict.”</i></p>	<p>To provide clarity on who a public officer should report/disclose relevant details/information to; which ensures accountability</p>
5.	<p>Clause 20 (1)</p> <p>A public officer shall not acquire an interest in a partnership, private company or any other legal entity that is a party to a contract with the reporting entity in which the public officer serves, under which the partnership, private company</p>	<p>Amend the Clause to state as follows:-</p> <p><i>“a public officer shall not hold a direct or indirect interest in a partnership, private company or any other legal entity that is a party to a contract with the reporting entity in which the public officer serves, under which the partnership, private company or legal entity receives a benefit.”</i></p>	<p>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.</p>

	or legal entity receives a benefit		
6.	<p>Clause 21(2) Subsection (1) shall not apply to the appointment of personal staff permitted to the public officer as may be prescribed</p>	<p>Amend by deleting sub section 2 which provides for the exemption or in the alternative define "Personal Staff"</p>	<p>Such staff should be appointed competitively as per the values and principles of public service – article 232(1)(g),(h),(i) and 232(2)</p>
7.	<p>Clause 31 (1) Every public officer shall submit to the commission a declaration of the income, assets and liabilities of himself, his spouse or spouses and his dependent children under the age of eighteen years</p>	<p>Amend the Clause to state: "Every public officer shall submit to the commission and to the reporting authority a declaration of the income, assets and liabilities of himself, his spouse or spouses and his dependent children under the age of eighteen years."</p>	<p>The reporting authority should also receive the information, as the office or body responsible for a public officer. Further, the sheer volume of the declarations would make it difficult for the Commission alone to process and verify the declarations.</p>
8.	<p>Clause 33(1) Upon the receipt of the declaration made under section 31, the commission shall analyse the declaration to ascertain</p>	<p>Amend the Clause to state: "Upon the receipt of the declaration made under section 31, the commission and reporting authority shall analyse the declaration to ascertain"</p>	<p>The act introduces a reporting authority for which this clause should apply. It is more reasonable and efficient to have the reporting authority also analyse, process and verify the</p>

			declarations. Further, the 7 reporting authority has a direct interest in the declarations
9.	<p>Clause 49 (2)</p> <p>If the Commission declines to commence an investigation, the Commission shall inform the person who lodged the complaint and give reasons for the decision</p>	<p>Amend the Clause to state:</p> <p><i>"(2) If the Commission declines to commence an investigation, the Commission shall inform the person who lodged the complaint and give reasons for the decision within 90 days upon confirmation of receipt of the complaint"</i></p>	To allow a timeline within which complaints need to be addressed after acknowledgement of the complaint.
10.	<p>Clause 50(2)</p> <p>Despite sub section (1), the period of suspension of a state officer or public officer shall not exceed ninety days</p>	<p>Amend the clause by stating:</p> <p><i>"Despite sub section (1), the period of suspension of a state officer or public officer shall not exceed ninety days unless the person is charged in accordance with section 51(1)(d)."</i></p>	<p>To align with section 62(1) of the Anti-Corruption and Economic Crimes Act on suspension, if charged with corruption or economic crime 62(1) A public officer or state officer who is charged with corruption or economic crime shall be suspended, at half pay, with effect from the date of the charge until the conclusion of the case; Provided</p>

			that the case shall be determined within twenty-four months (3) The public officer ceases to be suspended if the proceedings against him are discontinued or if he is acquitted.
11.	Clause 54 Protection of person making disclosure	Consider the addition of the following sections: <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. Every reporting institution and law enforcement agency shall put in place reasonable mechanisms to protect the identity of informants and witnesses."</i>	To provide for enhanced protection of whistleblowers and witnesses
12.	Clause 58 Repeal of the Public Officer Ethics Act No. 4 of 2003	Propose that the Public Officer Ethics Act should not be repealed in its entirety since the following important provisions will be left out:	The provisions are relevant and contribute towards advancing the ethics of public officers and connected purposes. The Public

	<p>5 – Establishment of specific codes of conduct</p> <p>8 – performance of duties</p> <p>9 – professionalism</p> <p>11 – no improper enrichment</p> <p>14 – Acting for foreigners</p> <p>15 – care of property</p> <p>18 – giving of advice</p> <p>19 – misleading the public</p> <p>20 – conduct of private affairs</p> <p>21 – sexual harassment</p> <p>25 – reporting improper orders</p>	<p>Officer Ethics Act covers a broad range of issues pertaining to ethics of public officers, with conflict of interest being only one of them as expressly provided in section 12 of the Act</p>
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Thank you.
Yours sincerely,



HON. PHILEMON K. SABULEL,
CHAIRPERSON CAF

ANNEX 5(e): Union of Kenya Civil Servants (UKCS)



"We serve the Nation"

UNION OF KENYA CIVIL SERVANTS

Ufundi Co-op. Plaza, 8th Floor,
Moi Avenue, Next to Jeevanjee Gardens
P.O. Box 48083-00100 GPO, Nairobi
Tel: 0722 225 908, 0737 435 755
Email: info@ukcs.or.ke

UKCS/CS/VOL. 1(02)

1st March 2024

The Clerk of The Senate
P.O. Box 41842 – 00100
NAIROBI

Dear Sir,

**RE: SUBMISSION OF MEMORANDUM ON THE CONFLICT-OF-INTEREST BILL
(NATIONAL ASSEMBLY BILLS NO. 12 OF 2023)**

Conflict of interest has permeated in all spheres of life both in private of public entities. It is with this interest that I take this opportunity to make the following observations and comments in relation to the aforementioned bill.

First, Chapter six of our Kenyan constitution of 2010 on leadership and integrity, Article 73 (2)(c) (i & ii) states that the guiding principles of leadership and integrity includes selfless service based solely on the public interest demonstrated by honesty in the execution of public duties and the declaration of any personal interest that may conflict with public duties.

Further, Article 75 (1) (a) (b) expressly states that a state officer shall behave, whether in public and official life, in private life, or in association with other persons, in a manner that avoids any conflict of interests and public or official duties as well as compromising any public or official interest in favor of a personal interest or demeaning the office the officer holds.

Pursuant to the above citations, **Part II on Administration**, the commission through legislation be given prosecutorial powers to execute their mandate without hinderance and serve justice to the members of the public without delay. Prosecution procedure need to be reduced similar to Small Claim Courts to serve justice.

Part III on Conflict of Interest, Section 20 on acquisition of interest in partnership and private companies. **Add 2 (i)** a public officer who is serving a full-time basis shall not participate in any gainful employment.

National Chairman	- Alisakor M. Ishaq	Secretary General	- Tom M. Odege	National Organising Secretary	-
1st National Vice Chairman	- Tiffi Mbwana	1st Deputy Secretary General	-	Deputy National Organising Secretary	- Wilson Asingo
2nd National Vice Chairman	- Benedict Makuthu	2nd Deputy Secretary General	- Confat Ademba	National Treasurer	- Abdul Malik Abdalla
		1st Ass. Secretary General	- Julius Mello	Deputy National Treasurer	- Judy Wangari
		2nd Ass. Secretary General	- Francis Atelo	Women Leader	- Mary Mukiri
				National Young Worker	- Elion Cheruiyot

ALL CORRESPONDENCE SHOULD BE ADDRESSED TO THE SECRETARY GENERAL

Also **Add 2 (ii)** recruitment must be undertaken on the basis of fair competition and merit, representing Kenya's diverse communities, adequate and equal opportunities to all gender, youths, members of all ethnic groups, persons with disabilities and minorities.

Conflict in recruitment, Section 21 (2) (b) Add, the penalty to be meted on a public officer who contravenes the Act.

Part IV on Compliance Measures. Add Section 31 (5) to read, an officer who fails to submit a declaration or clarification as required or who submits information that he/she knows is false or misleading shall be liable to disciplinary action.

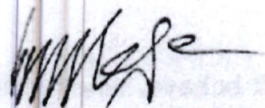
Duty to recuse, Section 30 (1) (1A), its implication is discriminatory and favors state officers which amount to conflict of interest. All public officers and state officers should recuse themselves in matters relating to conflict of interest.

Section 31 (1) on declaration of income, assets, and liabilities by public officers

There is need to specify children dependents age when declaring income, assets and liabilities. Only children under 18 years their assets if any to be declared.

We hope the above comments and additions will add value to the jurisprudence in our legislative arm of government.

Yours faithfully,



HON. TOM M. ODEGE, MP
SECRETARY GENERAL

ANNEX 5(f): Kenya Law Reform Commission (KLRC)

KENYA LAW REFORM COMMISSION



"A Vibrant Agency for Responsive Law Reform"
 Telegrams: "LAWREFORM" NAIROBI
 Telephone: Nairobi, +254-20-2241186/2241201
 Fax: +254-20-2225786
 www.info@klrc.go.ke

When replying please quote

Ref. No. KLRC/8/86(27)
 and Date



KENYA LAW REFORM COMMISSION
 REINSURANCE PLAZA
 3RD FLOOR
 TAIFA ROAD
 P.O. Box 34999-00100
 NAIROBI, KENYA

4th March, 2024

J. M. Nyegenye, CBS
 Clerk of the Senate
 Clerks Chambers
 The Senate
 Parliament Buildings
 P O Box 41842 - 00100
 NAIROBI.



DGAC
 DG

⑧ HD-Governance
 Lead Clerk - JLAHRC
 Kindly deal & 25/03/2024
 kindly deal -
 Ed as/03/2024

Dear

RE: INVITATION TO SUBMIT COMMENTS ON THE STATUTORY INSTRUMENTS (AMENDMENT) BILL (NATIONAL ASSEMBLY BILLS NO 2 OF 2023)

Your letter Ref SEN/DGAC/DGACC/JLAHRC/2024/(6) dated 19th February, 2024 on the above subject refers..

The Kenya Law Reform Commission (KLRC) is established under the Kenya Law Reform Commission Act No. 19 of 2013 with the mandate of keeping the law under review and recommending its reform to ensure among other things that the law conforms to the Constitution; is consistent, harmonized, just, simple, accessible, modern and cost-effective in application.

The KLRC has studied the Bill and makes the following comments.

Clause	Comments	Rationale
1-Short title	No comments	Standard clause
2- Amendment	The requirement by the	A statutory instrument which has not

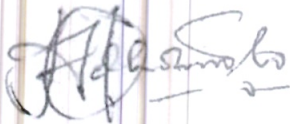
05 MAR 2024

of section of Cap 2A	Committee to the statutory-making authority under the proposed subsection (5) should be accompanied by a requirement to re-publish the statutory instrument.	been laid before the House shall have ceased to have effect immediately after the last day it was supposed to have been laid before the House. For it to be properly laid before the House again, it has to be first published.
3-Amendment of section 12 of Cap 2A	It is not necessary to delete Section 12 (3) of Cap 2A since it is intended to ensure separation of powers between Judiciary and the Legislature. It is proposed to retain the section as is.	Deletion of section 12(3) will mean that that the Chief Justice will be required to lay Rules of Court before Parliament. Rules of Court govern procedures for conduct of business in courts, nature of pleadings and court fees. In other jurisdictions including Zambia and Botswana there are specific provisions requiring that Rules of Court shall not be laid before Parliament.
4-Amendment of section 18 of Cap 2A	No comments	It is proper to publish the annulment of a statutory instrument for record and information purposes.
5- Amendment of section 19 of Cap 2A	There is need to harmonize section 19 as it currently stands with the proposal to insert a new 19(2) requiring publication of revocation of a statutory instrument.	Section 19 already provides that the regulation-making authority shall publish the revocation within fourteen days. The new proposal means that the revocation will be required to be published twice by two different agencies.
6-Amendment of section 23 of Cap 2A	The proposed amendment to section 23 may occasion difficulties in interpretation of the exact date of commencement of a statutory instrument since the date of consideration by Parliament is not exact.	The current provision that a statutory instrument comes into operation on the date specified in that statutory instrument or, if no date is so specified, then, on the date of its publication in the Gazette is intended to provide with the exact date of commencement. This date is important especially for time-bound events, revenue collection and

		determination of the date of automatic revocation.
7-Amendment of section 24 of Cap 2A	No comment	Review of limitations for penal clauses for breach of statutory instruments is welcome. The current restriction of statutory instrument penalty, not exceeding twenty thousand shillings or term of imprisonment not exceeding six months is out of sync with the economic status and other penalties in the statute book.

As always, we thank you for your continued cooperation.

Yours sincerely,



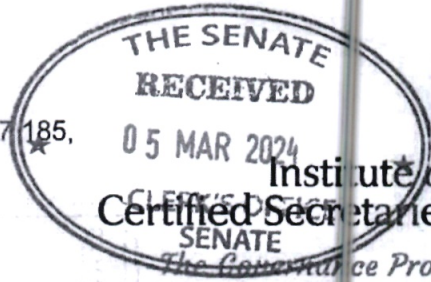
Joash Dache, MBS
SECRETARY/CEO

Copy to Ms. Christine A. Agimba - To see file copy
Chairperson, KLRC

ANNEX 5(g): Institute of Certified Secretaries (ICS)

CPS Governance Centre
 Kilimanjaro Road, Upper Hill
 P. O. Box 46935-00100
 Nairobi, Kenya

Tel: +254 792 164 772, +254 792 167 185,
 +254 734 603173.
 info@ics.ke
 www.ics.ke



Date: February 29, 2024

Mr. Jeremiah Nyegenye, CBS,
 The Clerk, Senate
 P.O BOX 41842-00100
 Nairobi



05 MAR 2024

DDGAC (2) Had Governance Lead Clerk J...
 Dny
 Kindly deal
 05/03/24
 Kindly deal.
 E
 07/03/2024

Dear Sir,

RE: MEMORANDUM ON THE CONFLICT-OF-INTEREST BILL 2023.

BACKGROUND

The Institute of Certified Secretaries (ICS) is a statutory professional membership organization under the National Treasury and Economic Planning and established under the Certified Public Secretaries of Kenya (CPSK) Act, Cap. 534 Laws of Kenya. In line with its core mandate, ICS has over the years been partnering with various stakeholders in the public, private, and civil society sectors in the promotion of good governance practices. Such partnerships include the development/review of board charters, policies, codes, and other governance documents; training; governance assessments; board evaluations; and mentorship, among others.


The ICS strongly supports the enactment of the Conflict-of-Interest Bill 2023 and believes it represents a significant step forward in strengthening ethical standards and transparency in Kenyan governance. We commend Parliament for initiating this crucial legislation.

SUBMISSIONS

PROVISIONS OF THE BILL	RECOMMENDATION	JUSTIFICATION
Section 2 Scope	We commend the comprehensiveness of the Bill; the inclusion of a broad range of public officers and situations.	This scope ensures wider application and impact.
Section 2 Expansion of the definition of Conflict of Interest.	To expand the definition and or types of conflict of interest to include: a. Actual conflict of interest which arises when an individual has real conflict between official duties and private interest. b. Potential conflict of interest which refers to circumstances where it is foreseeable that a conflict may arise in future and steps should be taken now to mitigate that future risk.	The provision will complement section 8 of the Bill which provides for acts that may amount to a conflict of interest.



PROVISIONS OF THE BILL	RECOMMENDATION	JUSTIFICATION
	c. Perceived conflict of interest arises when third parties or public form the view that a director's private interests could improperly influence their decisions or actions, now or in the future.	
Section 30 Disclosure Requirements	Introduce a detailed procedure for disclosure so as to allow full compliance. Improve clarity and comprehensiveness of the disclosure requirements.	This will facilitate easier understanding and compliance, creating a more transparent environment.
Section 48 Conflict Resolution Mechanisms	Defined and effective mechanisms for resolving conflicts of interest are crucial for ensuring accountability and addressing potential ethical breaches. The Bill may enact provisions including anonymous submission of complaints.	This will promote accountability and equally give justice to all parties who may be affected.
Part IV Enhanced Ethical Standards through Governance assessments to enhance Compliance.	Institutions should be required to perform annual governance assessments by a certified governance auditor accredited by the institute. Every reporting organization should have an Ethics and Integrity officer whose duties will be among others assess and track compliance on Conflict of Interest.	This would include adherence to the conflict-of-interest provisions thus improving the realization of the mandate of the COI Bill.
PART IV Compliance Mechanisms	Under Part IV of the Bill covering Compliance Mechanisms, a section ought to be included providing for the establishment of an Ethics and Integrity Officer. The section may stipulate as follows: Every public institution shall, within twelve months from the effective date, employ an Ethics and Integrity Officer who shall be qualified under the Certified Public Secretaries of Kenya Act Cap 534 and shall be a member of the Institute of Certified Public Secretaries of Kenya (ICPSK) in good standing. Qualifications for the Ethics and Integrity Officer shall include: a. Membership in good standing with the Institute of Certified Public Secretaries of Kenya (ICPSK). b. Demonstrated knowledge and expertise in governance, ethics, and integrity matters. c. Compliance with any additional requirements set forth by regulatory bodies or governing authorities.	The Ethics and Integrity Officer shall be responsible for providing professional support to the institution on compliance with the Conflict-of-Interest Act, and other relevant ethical standards.

PROVISIONS OF THE BILL	RECOMMENDATION	JUSTIFICATION
	<p>The duties and responsibilities of the Ethics and Integrity Officer shall include, but not be limited to:</p> <ul style="list-style-type: none"> a. Developing and implementing conflict of interest policies and procedures in accordance with the Act and relevant regulatory frameworks. b. Providing guidance and training to employees, board members, and other stakeholders on ethical conduct, conflict of interest disclosure requirements, and mitigation strategies. c. Establishing mechanisms for confidential disclosure of potential conflicts of interest and ensuring proper handling of reported conflicts. d. Conducting regular reviews and assessments to identify, evaluate, and manage actual or potential conflicts of interest within the institution. e. Advising senior management and the governing body on matters related to conflicts of interest and ethical governance. f. Monitoring compliance with conflict-of-interest policies and procedures and initiating corrective actions as necessary. g. Serving as a liaison with external stakeholders, including regulatory agencies, to address conflict of interest concerns and promote transparency and accountability. h. Maintaining accurate records of conflict-of-interest disclosures, investigations, and resolutions. i. Reporting periodically to the relevant oversight bodies on the institution's compliance with conflict-of-interest requirements and the effectiveness of related measures. <p>The Ethics and Integrity Officer shall have the authority to access relevant information, documents, and personnel necessary to fulfill their duties, subject to applicable laws and confidentiality requirements.</p> <p>The Ethics and Anti-Corruption Commission shall establish guidelines and procedures for the implementation of this clause, including but not limited to the recruitment, appointment, and performance evaluation of Ethics and Integrity Officers.</p>	

CONCLUSION

Additionally, the ICS requests the opportunity to present our detailed insights and recommendations on the Bill in person to the relevant Parliamentary Committee. We believe our expertise and experience in promoting ethical standards and good governance practices can significantly contribute to the understanding and effective implementation of this important legislation.

Should you require any further information or clarification, please do not hesitate to contact CS Gloria Kikete on GKikete@ics.ke or the undersigned on ceo@ics.ke

Yours sincerely,



FCS Jeremiah N. Karanja, MBS
CHIEF EXECUTIVE OFFICER

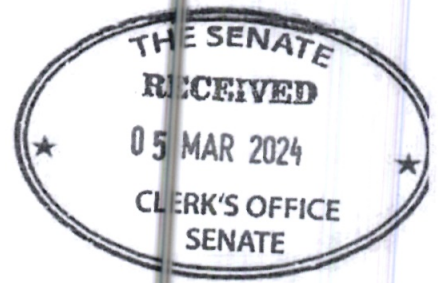
ANNEX 5(h): Council of County Governors (CoG)



COUNCIL OF GOVERNORS

Westlands Delta House 2nd Floor, Waiyaki Way.
P.O. BOX 40401-00100,
Nairobi.

Tel: (020) 2403314, 2403313
E-mail: info@obg.go.ke



Our Ref: COG/6/12 Vol. 12 (100)

4th March 2024

J. M. Nyegenye, CBS
The Clerk of the Senate
P.O Box 41482-00100
Nairobi.



Dear Clerk,

**SUBMISSION OF LEGISLATIVE MEMORANDA ON THE CONFLICT-OF-INTEREST BILL
(NATIONAL ASSEMBLY BILLS NO. 12 OF 2023)**

We refer to the above subject matter.

The Council of Governors has reviewed the Conflict-of-Interest Bill (National Assembly Bills No. 12 of 2023) and hereby forwards the legislative memorandum attached herewith for your consideration.

Please be assured of our highest esteem and consideration.

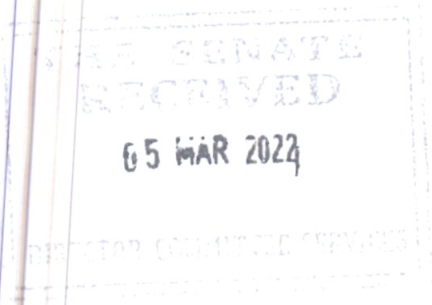
Yours sincerely,

Mary Mwiti
Chief Executive Officer

① DGAC
DLG

Kindly deal

Ep
05/03/2024



② HOD - Governance
Head Clerk - JLASR
Kindly deal
05/03/2024



LEGISLATIVE MEMORANDUM ON THE CONFLICT OF INTEREST BILL, 2023

TO

THE SENATE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS

FROM

THE COUNCIL OF GOVERNORS

INTRODUCTION

The Council of Governors,

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

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

Aware of the need for coordinated action between the National and County Governments to ensure that legislation properly respond to the key issues, and further reflects the spirit and purpose of devolution.

The Council appreciates the work and efforts made towards the development of the **CONFLICT OF INTEREST BILL, 2023**, which is not only timely but very critical as conflict of interest has deeply permeated various sectors of the economy, and poses a threat to good governance and economic prosperity.

Having reviewed the Conflict of Interest Bill, 2023, the Council of Governors on behalf of the 47 County Governments submits the proposals highlighted herein below for consideration:

A. GENERAL COMMENTS

1. The Bill seeks to repeal the Public Officer Ethics Act, 2003 that generally advances the ethics of public officers. A major drawback of repealing the Public Officer Ethics Act, 2003 is that other ethical aspects of public officers will be left out. For instance safeguards against sexual harassment and potential conflict of interest that would stem from interactions with foreigners.
2. The Council proposes that the Public Officer Ethics Act, 2003 should not be repealed entirely given its inclusion of various provisions that foster ethical conduct amongst public officers. Consequently, we recommend a targeted repeal of specific sections that deal with conflict of interest while preserving the Act's remaining provisions in order to safeguard the ethical standards underpinning public service.

3. Further, it is important for Parliament to review other relevant legislations, including the Leadership and Integrity Act and the Anti-Corruption and Economic Crimes Act, to ensure consistency and alignment with the provisions of the Bill.

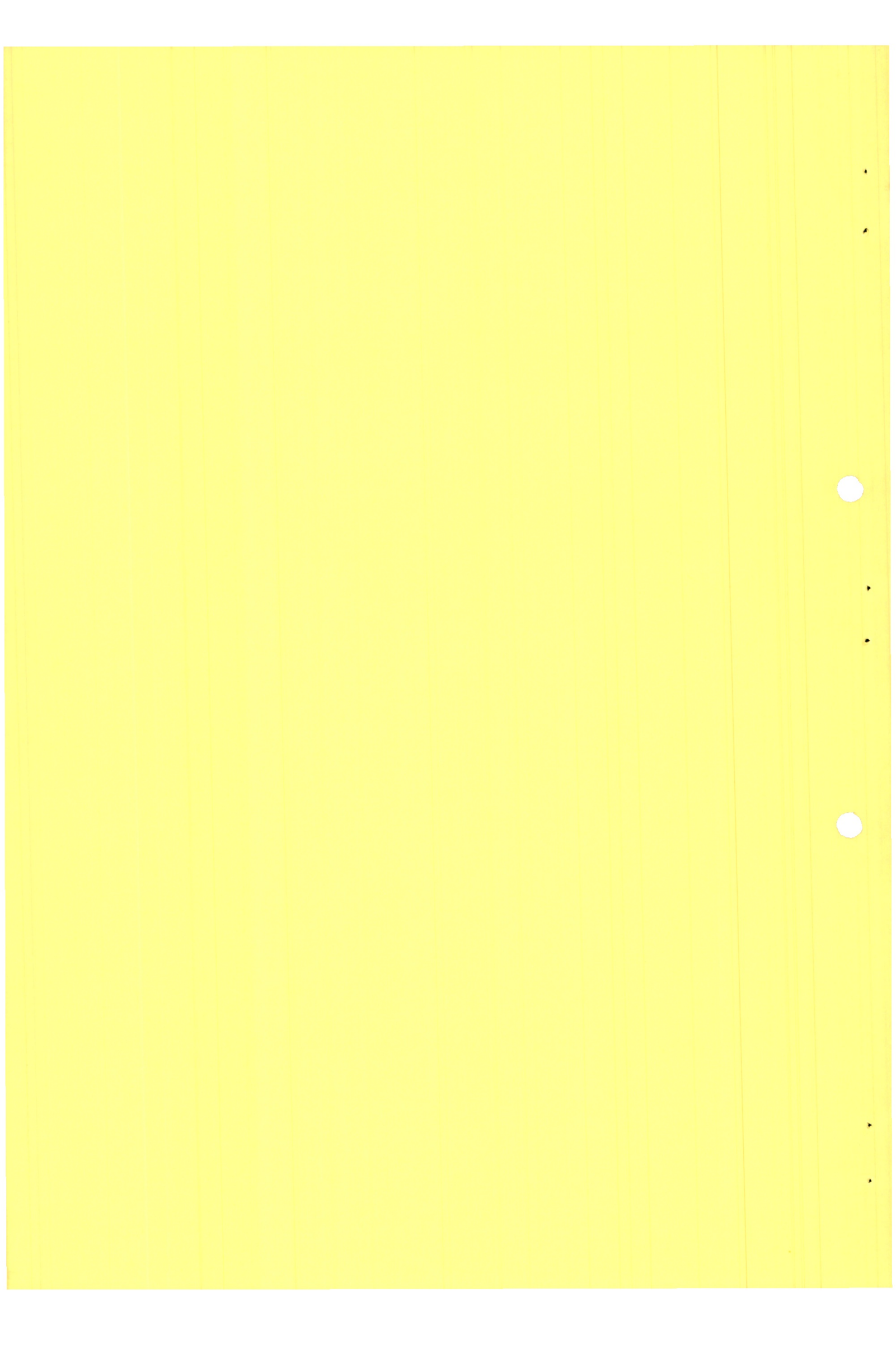
B. SPECIFIC CONCERNS

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

Clause of the Bill	Provision	Council of Governors' Proposal	Rationale/Justification
2	Interpretation	Include the term state officers in the interpretation clause and assign it the definition in the Constitution.	While the Bill states that a public officers include state officers, it is key to define the term state officer for certainty.
12(3)	12. (3) Despite subsection (1), no proceedings shall lie against a public officer who grants special consideration, treatment or advantage in good faith .	The Bill should incorporate the definition of the term " good faith "	There is need to define what " good faith " means in the context of the Bill. This imprecision could lead to divergent interpretations of the Bill's provisions, despite its significant impact on public officers.

46	46. No criminal or civil proceedings shall lie against the Commission or any person acting on behalf of the Commission, for anything done, reported or said in good faith in the exercise of any power or in the performance of any function of the Commission under this Act.	Incorporate the definition of the words "good faith"	It is essential to provide a clear definition of the words " good faith " within the framework of the Bill to void ambiguity. Such vagueness could result in varied understandings of the Bill's provisions, notwithstanding its considerable impact on public officers.
49	49. The Public Officer Ethics Act, 2003 is repealed	We recommend against repealing the Public Officer Ethics Act, 2003 in its entirety. Alternatively, the Council recommends repealing of Section 12 of the Public Officer Ethics Act, 2003 which specifically addresses conflict of interest. Amend to read as follows: Section 12 of the Public Officer Ethics Act, 2003 is repealed.	While the primary focus of this Bill is to tackle conflicts of interest among public officers, the Public Officer Ethics Act, 2003, covers various ethical concerns related to public officers, including conflict of interest. Therefore, we opine that repealing the Public Officer Ethics Act, 2003 will create a regulatory void by leaving out other significant aspects of ethics in public service including but not limited to safeguarding against sexual harassment and potential conflict of interest stemming from interactions with foreigners.

ANNEX 5 (i): The Salaries and Remunerations Commission
(SRC)



08 March 2024



Salaries & Remuneration Commission
Rewarding productivity

DGAC
DLG

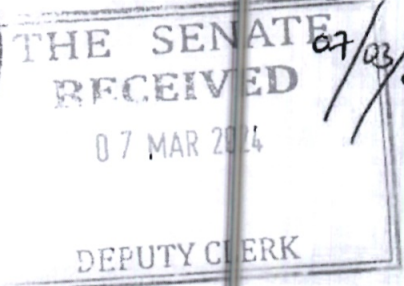
Kindly amend.

EF

4th March, 2024

Ref. No: SRC/TS/8/ VOL. I (94)

J. M. Nyengenyé, CBS
Clerk of the Senate
Main Parliament Buildings
P.O Box 41842 – 00100
NAIROBI



07/03/2024

Dear Mr. Nyengenyé,

INVITATION TO SUBMIT VIEWS ON THE CONFLICT OF INTEREST (NATIONAL ASSEMBLY BILL NO. 12 OF 2023)

Reference is made to your letter Ref. No. SEN/DGAC/JLAHRC/2-24/10(f) dated 23rd February, 2024 on the above subject.

The Salaries and Remuneration Commission (SRC) is established under Article 230 of the Constitution of Kenya with the mandate to: a) set and regularly review the remuneration and benefits of all State officers; and b) advise the national and county governments on the remuneration and benefits of all other public officers.

The Senate Standing Committee on Justice, Legal Affairs and Human Rights (JLAHRC) vide the letter under reference invited SRC together with other institutions to submit views on the Conflict of Interest Bill, No. 12 of 2023. SRC has reviewed the Bill and supports the provisions proposed therein. Further, SRC notes that its earlier proposal to the National Assembly to enhance the provisions on restricted gainful employment were not incorporated into the Bill. In addition, the Employment and Labour Relations Court in **Nyeri ELRC Cause No. 3 of 2022: Agnes Gatama -vs- EACC & Others** held that a full-time public officer is not eligible for part-time employment in another public institution. SRC, therefore, proposes the following to be included under Clause 23 of the bill:

Provision	Proposed provision
Clause 23	A public officer shall not accept employment on a part-time basis in another public institution.
New	Inclusion of a paragraph guiding the modalities/procedures for public officers opening and operating overseas bank accounts.
New	Inclusion of a paragraph regulating participation in local tendering processes by offshore registered companies whose directors are public officers.

Lead Clerk
JLAHRC
Please clear
07/03/2024

It is SRC's view that the provision proposed for inclusion will address the employment of public officers on part-time basis in other public institutions and avoid double provision of benefits by different employers to the same public officer during the same period.

Further, the two additional paragraphs proposed for addition will enhance the transparency in the banking system and strengthen the integrity of the public procurement processes.

The Commission appreciates your continued cooperation and support as we discharge our respective mandates.

Yours

A handwritten signature in black ink, appearing to read 'Anne R. Gitau', written over the printed name.

**Mrs. Anne R. Gitau, EBS
COMMISSION SECRETARY/CEO**

ANNEX 5(j): Office of the Prime Cabinet Secretary (OPCS)



**EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF THE PRIME CABINET SECRETARY
STATE CORPORATIONS ADVISORY COMMITTEE**

Telephone: +254 2227411
When replying please quote

OFFICE OF THE SECRETARY
KICC, 9TH FLOOR
P.O. Box 42145 – 00100
NAIROBI, KENYA

Ref. No. OP/SCAC.1/2/10

4th March, 2023

J. M Nyegenye, CBS
Clerk of the Senate
Office of the Clerk of the Senate
Parliament Buildings
NAIROBI

**RE: INVITATION TO SUBMIT COMMENTS ON THE CONFLICT OF
INTEREST BILL (NATIONAL ASSEMBLY BILLS NO. 12 OF
2023)**

This has reference to letter Ref. No. SEN/DGAC/DGC/JLAHRC/2024/10(o) of 23rd February, 2024 (*copy attached*) vide which you sought for comments on the Conflict of Interest Bill.

It is noted that part 21 of the Bill on Conflict in recruitment has provided that:-

- 21. (1) A public officer shall not—*
- (a) participate in or influence a recruitment and selection process in which the public officer has a private interest;*
 - or*
 - (b) canvass for a candidate in a recruitment and selection process in which the public officer has a private interest.*
- (2) Subsection (1) shall not apply to appointment of personal staff permitted to the public officer as may be prescribed.*
- (3) A person who contravenes subsection (1) commits an offence.*

It is observed that State Corporations space has encountered a number of conflicts of interest related cases in the recruitment of CEOs, other staff members and respective Boards.

It is there for our recommendation the above section be rewritten as follows;

21. (1a) A public officer shall not—
- a) participate in or influence a recruitment and selection process in which the public officer has a private interest;
 - b) canvass for a candidate in a recruitment and selection process in which the public officer has a private interest.
 - c) Be appointed as a Chairperson or Member/Director of a public entity or State Corporations if they have served in the same entity as an employee in the preceding five years.
 - d) Be appointed as an employee of a public entity or State Corporations if they have served in the same entity as a Chairperson or Member/Director of the Board in the preceding five years.

or

(1b) An individual serving in acting capacity shall not—

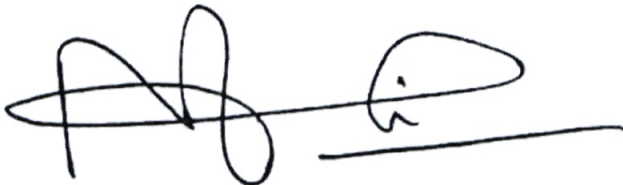
- a) Take part in the preceding processes (e.g. development of indent, sourcing for a recruitment firm, selection of shortlisting panel, shortlisting among others) towards substantive appointment to the same position if they are themselves interested in the same position while in still acting.

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

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

(4) Any appointment done in contravention of subsection (1) will be deemed null and void.

Kindly consider.



Simon M. Indimuli, OGW., MBS.,
SECRETARY

ANNEX 5(k): The Public Service Commission (PSC)

THE SENATE
RECEIVED
06 MAR 2024
DEPUTY CLERK



PUBLIC SERVICE COMMISSION

OFFICE OF THE CLERK-SENATE
SECRETARY
06 MAR 2024
PSC
P.O. Box 41842 - 00100, NAIROBI

5th March, 2024

PSC/LEG/019/14/158/VII (31)

J. M. Nyegenye
Clerk of the Senate
Clerk's Chambers
Parliament Buildings
P O Box 41842 - 00100
NAIROBI

DGAC
DHS

Kindly deal.

Dear Mr Nyegenye,

THE SENATE
RECEIVED
07 MAR 2024

ep
06/03/2024

RE: INVITATION TO SUBMIT COMMENTS ON THE CONFLICT OF INTEREST BILL NATIONAL ASSEMBLY BILLS NO. 12 OF 2023

The above subject matter refers.

Attached herewith find comments on the Conflict of Interest Bill National Assembly Bill No. 12 of 2023 from Public Service Commission for your necessary action.

Yours
Sincerely,

② HUSD - Governance
Lead Clerk - JLUHR

**FCS, DR. SIMON K. ROTICH, CBS
SECRETARY/CEO
PUBLIC SERVICE COMMISSION.**

Kindly deal
07/03/2024



A MEMORANDUM OF THE PUBLIC SERVICE COMMISSION
ON
THE CONFLICT-OF-INTEREST BILL, 2023
TO
THE SENATE STANDING COMMITTEE ON LEGAL AFFAIRS AND HUMAN RIGHTS

Introduction

The Commission received a letter REF: SEN/DGAC/DGC/JLAHRC/2024/10(C) dated 23th February 2024 requesting the Commission to submit its views on the Conflict of Interest Bill No. 12 of 2023.

The Commission had a chance of appearing before the National Assembly Departmental Committee where it presented its views on the Bill.

The Commission observes that, save for the clause on responsible commissions which now allows for multiple responsible commissions as opposed to the Ethics and Anti-Corruption Commission being the sole repository, the rest of the issues remain the same.

Additionally, some clauses which were in the Bill that was before the national Assembly, and which in the opinion of the Commission provided a practical guide in dealing with conflict of interest have been deleted.

The Commission raises the following issues:

1. Proposed repeal of the Public Officer Ethics Act, 2003

Clause 49 of the Bill seeks the repeal of the Public Officer Ethics Act, 2003. The public Service Commission observes that the Public Officer Ethics Act, 2003, was enacted as part of the State's commitment to the United Nations Convention Against Corruption (UNCAAC) international

convention which Kenya is party to. The Act, operationalizes Articles 7 & 8 of UNCAC. The two Articles aim at promoting meritocracy in appointments in the public service. It also seeks to promote professionalism and good conduct among public officers by requiring development and implementation of Codes of Conduct.

The Public Officer Ethics Act has a part dealing with the general code of conduct for all public officers and a part dealing with wealth declaration and provides for disciplinary action to be taken against officers who breach the requirements of the Act.

The Commission observes that no reasons have been put forward to justify the repeal of the Public Officer Ethics Act, 2003 and therefore objects to the proposed repeal.

2. Replication of existing legislation

The Kenya Law Reform Commission, in its publication "A guide to the legislative process in Kenya" guides as follows in terms of statutory harmony.

"Arguably, there are hardly any completely new ideas in the public sphere. Virtually, all situations legislated on or otherwise, have, invariably been previously encountered and addressed in some form or other. It is important therefore for persons engaged in the legislative process to undertake detailed research to establish amongst other relevant issues whether a legislative proposal before them has previously been legislated, who or which entity is or has been responsible for its execution, which other existing legal framework can be modified, amended or repealed to allow for the situation at hand to be redressed, and which other mechanism other than a legislative measure can be employed to deal with the matter."

The Bill, for the most, part replicates what already exists in the Public Officer Ethics Act and the Leadership and Integrity Act, 2012.

Part III of the Bill replicates Part II of the Leadership and Integrity Act, 2012 on the General Code, specifically sections 6(3) 6(4), 14,16,17,18,23,26,27 and 28), while Part IV is a replica of Part IV of the Public Officer Ethics Act, 2003 Sections 26 to 33.

From the foregoing, it is evident that the issue proposed for legislation is already legislated. There is no need for a new legislation. Any identified gaps can be addressed through amending the existing legislation.

The Commission therefore is of the view that the existing legislation be amended to address any gaps that may exist as opposed to enacting a totally new legislation.

3. Impact of repeal /deletion of sections on development of Specific Codes of Conduct

It is proposed in the bill that sections 6(3) (64), 14,16,17,18,23,26,27 and 28 of the Leadership and Integrity Act be deleted. These sections form part of the general Code of Conduct. The consequence of deletion/repeal of these sections is that very little remains of the general code of

conduct. This impacts on Part III of the Leadership and Integrity Act which requires institutions to develop specific codes aligned to the general code. With the proposed deletion, there will be little left for institutions to anchor their specific codes on.

This further supports the proposal by the Commission for existing legislation to be retained and amended to address any identified gaps.

4. Offices excluded from the Public Service Commissions mandate

Clause 31A (5) (a) & (b) proposes that the Public Service Commission be the responsible Commission for Principal Secretaries and high commissioners, ambassadors and diplomatic and consular representative

This clause offends the Constitution because Article 234(3) is explicit on which offices are exempt from the powers and functions of the Public Service Commission. The Article exempts the following offices from the powers of the Commission:

- (a) State offices;
- (b) an office of high commissioner, ambassador or other diplomatic or consular representative of the Republic;
- (c) an office or position subject to—
 - (i) the Parliamentary Service Commission;
 - (ii) the Judicial Service Commission;
 - (iii) the Teachers Service Commission;
 - (iv) the National Police Service Commission; or
- (d) an office in the service of a county government, except on hearing of appeals .

In view of the above, the Commission proposes that should the Senate allow enactment of this Bill into law then the Principal Secretaries, being state officers, should submit their declarations to the National Assembly Committee responsible for ethics just like other state officers as per clause 31(a)(2)

As for High Commissioners, Ambassadors and other Diplomatic and Consular representatives, the Commission proposes the responsible Institution be the Head of Public service or secretary to the cabinet which is an office established in the constitution.

5. Deleted clauses which are useful for managing conflict of interest.

The Commission observes there were some clauses in the earlier Bill which provided practical measures for managing conflict of interest and which the Commission proposes that they be reinstated if the Senate decides to approve the Bill or should the senate decide the existing law be amended to address gaps, then they should be integrated in the Leadership and Integrity Act.

These are the clauses which dealt with divestiture and establishment of blind trusts which provided as follows:

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

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

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

40(1) A blind trust shall provide that—

(a) the assets to be placed in trust shall be registered to the trustee unless they are in a registered retirement savings plan account;

(b) the public officer shall not have any power of management or control over the trust assets;

(c) the trustee shall not seek or accept any instruction or advice from the public officer concerning the management of the assets;

(d) the assets placed in the trust shall be listed in a schedule attached to the instrument or contract establishing the trust;

(e) the term of any trust shall be for as long as the public officer who establishes the trust continues to hold the office or until the trust assets are depleted;

(f) the trustee shall deliver the trust assets to the public officer when the trust is terminated;

(g) the trustee shall not provide information about the trust, including its composition, to the public officer except for information that is required by law to be filed by the public officer and periodic reports on the overall value of the trust;

(h) the public officer may receive any income earned by the trust and add to or withdraw from the capital funds in the trust;

(i) the trustee shall be at arm's length from the public officer and the Commission is to be satisfied that an arm's length relationship exists;

j) the trustee may be —

- (i) the public trustee;
- (ii) A registered trustee
- (iii) A listed company or subsidiary wholly owned by a listed company, including a trust company or investment company, that is qualified to perform the duties of a trustee; or
- (iv) the trustee shall provide the Commission, on every anniversary of the trust, with a written annual report verifying the accuracy, nature and market value of the trust, a reconciliation of the trust property, the net income of the trust for the year preceding, and the fees of the trustee, if any.

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

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

41. A public officer shall submit to the Commission —

(a) a copy of any instrument or contract establishing a blind trust; or

(b) proof of sale of any asset, gift, inheritance or other private interests that are the subject of divestment.

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

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

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

(a) disclose to the Commission the discharge of the secured asset referred to in subsection (1); and

(b) where the interests of the public officer in the asset would place the officer in a conflict of interest situation, take the necessary steps to divest the discharged asset in accordance with this Act.

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

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

Conclusion

The Commission reiterates, as it did before the National Assembly, that it is more practical to amend the existing legislation and address any identified gaps as opposed to enacting a new law which merely replicates what already exists. The existing law ought to be amended to provide for divestiture and establishment of blind trusts.

The Commission wishes to thank the Chairperson of this Committee for according the Commission a chance to contribute to the Bill.

Dated and this 4th day of March,2024



Anthony Muchiri (Amb.)
CHAIRPERSON
PUBLIC SERVICE COMMISSION

ANNEX 5(D): The Judiciary

642



THE JUDICIARY

OFFICE OF THE CHIEF JUSTICE AND PRESIDENT
OF THE SUPREME COURT OF KENYA

CJ/34/1

The Senate
Clerk's Chambers
Parliament Buildings
P.O Box 41842-00100
Nairobi



13th March, 2024



Dear Sir,

**RE: INVITATION TO SUBMIT COMMENTS ON THE CONFLICT OF INTEREST
BILL (NATIONAL ASSEMBLY BILLS NO. 12 OF 2023)**

Greetings and Compliments from the Office of the Chief Justice and President of the Supreme Court of Kenya.

Your letter of Reference: SEN/DGAC/DGC/JLAHRC/2024/10(e) on the above subject refers.

Forwarded herewith is our memoranda with comments on the Bill for your consideration.

Kindly acknowledge receipt by stamping and signing a copy of this letter.

Yours faithfully

Faith Muguongo
Faith Muguongo
Deputy Registrar
Office of the Chief Justice

19 MAR 2024

DGAC
DLG

*② HOD - Governance
Lead Clerk - JLAHRC
Kindly Deal
19/03/24*

Kindly deal.

EP
18/03/2024

Copy to: Hon. Paul Ndemo, OGW
Ag. Chief Registrar of the Judiciary/
Ag. Secretary, Judicial Service Commission
Supreme Court Building
NAIROBI



Social Transformation
through Access to Justice

Supreme Court Building | Ground Floor | P.O. Box 30041-00100 | Nairobi
Tel. +254 0730 181600/700/800 | chiefjustice@courts.go.ke | www.judiciary.go.ke

Justice Be Our Shield and Defender



OFFICE OF THE CHIEF JUSTICE AND
PRESIDENT OF THE SUPREME COURT OF KENYA

MEMORANDA ON THE CONFLICT OF INTEREST BILL (NATIONAL
ASSEMBLY BILLS NO. 12 OF 2023)

Section 2

Definition of conflict of interest: the use of public official should be substituted with public officer as under Article 260 a public officer encompasses a) State Officer; or b) any other person, other than a State Officer, who holds a public office. In addition, a substantial part of the bill makes reference to a public officer as opposed to public official.

The term '**Special consideration**' referred to under Section 12 should be defined in the interpretation section of the bill.

Section 6

Functions of the Commission: It is prudent to add: "*In addition to the functions of the Commission under Articles 79 and 252 of the Constitution, and Section 11 of the Ethics and Anti-corruption Commission Act, the functions of the Commission under this Act shall be to-..*"

Section 16 (2) (d): Provides that 'does not exceed such value as may be prescribed'. It is necessary to indicate **prescribed where** to prevent ambiguity.

Section 23(3) provides that a public officer shall not engage in any other gainful employment without permission from the reporting entity.

The definition under the bill of gainful employment is, '**work that a person pursues and performs for money or other form of compensation or**



remuneration'. Consequently, the above provision (Section 23(3)) as crafted entails that a public officer would have to seek permission even where the other gainful employment is not incompatible with his official duty, does not impair his/her judgment in execution of his official duties, does not result in conflict of interest.

The requirement of seeking permission to engage in such gainful employment from the reporting entity is subject to abuse and it is sufficient to just declare such gainful employment to the reporting authority as proposed under Section 23(2).

Section 27

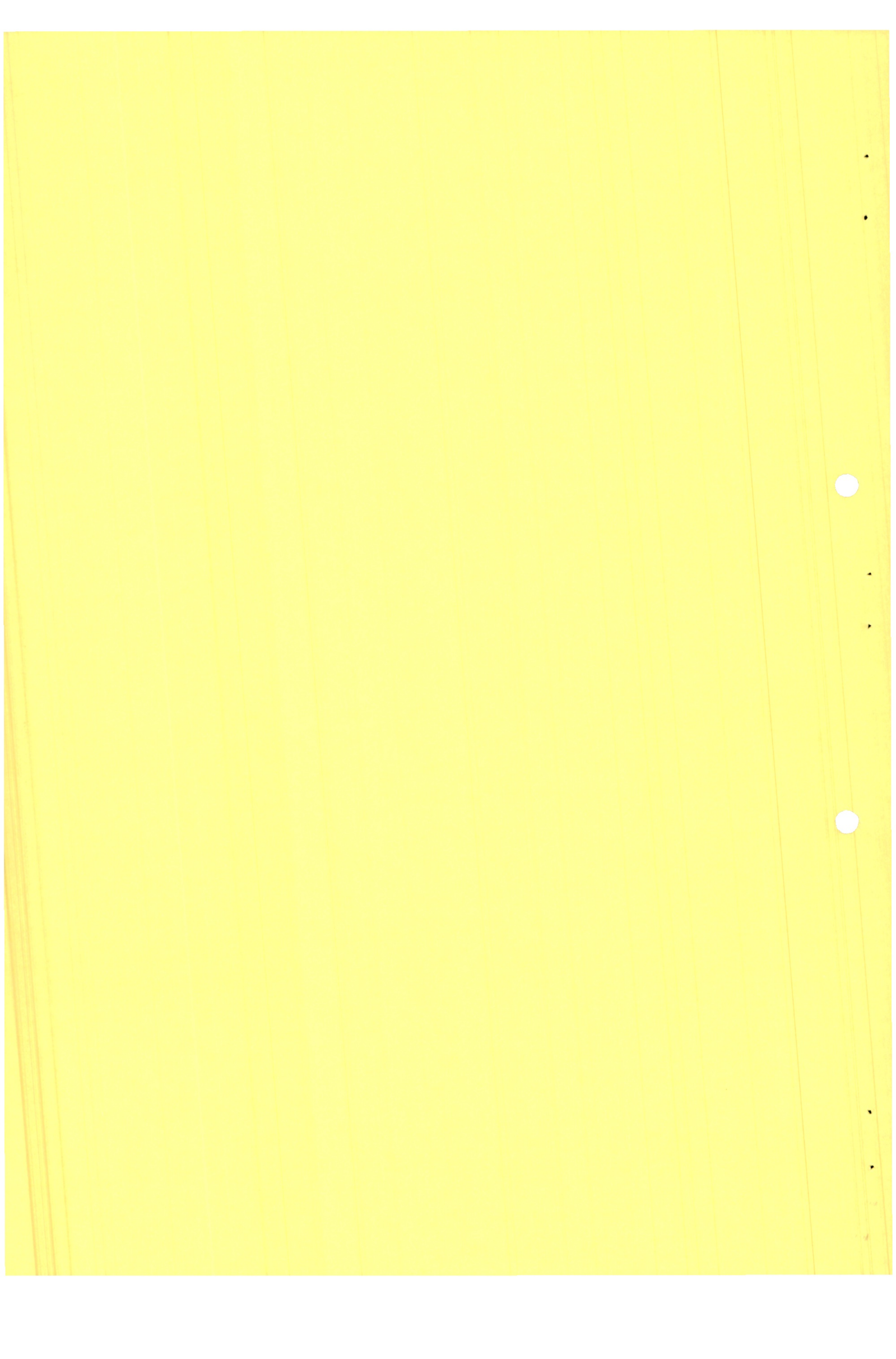
Requires more context. It is ambiguous and may be discriminatory depending on the circumstances. For instance, does it mean that a former or retired Judge cannot be engaged by the Judicial Service Commission to lecture at the Kenya Judiciary Academy?

Section 45

Section 45 (2) provides for the penalty for providing false information. A conflict of Interest accusation is a serious allegation. The penalty for providing false information should be steep to deter and prevent abuse. The fine should be one million Kenya shillings or to imprisonment for a term not exceeding three years or both.

.....END.....

ANNEX 5(m): The Parliamentary Service Commission (PSC*)



REPUBLIC OF KENYA



Telegraphic Address
'Bunge', Nairobi
Telephone 2848000
Fax: 2243694
E-mail: clerk.senate@parliament.go.ke

Parliamentary Service Commission
Parliament Buildings
P. O. Box 41842 -00100
NAIROBI, Kenya

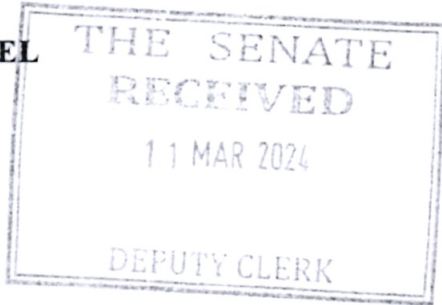
CLERK OF THE SENATE/ SECRETARY TO THE PARLIAMENTARY SERVICE COMMISSION

Ms Waweru
You are dealing
12/3/2024

When replying please quote:
Ref: **DLC/PSC/COM/01/2024/EL**

6th March, 2024

Ms. Eunice Gichangi, MBS
Deputy Clerk of the Senate,
P.O. Box 41842-00100
NAIROBI.



DGAC
DHG

Dear *Ms. Gichangi*

Kindly deal

RE: INVITATION TO SUBMIT COMMENTS ON THE CONFLICT OF INTEREST BILL (NATIONAL ASSEMBLY BILLS NO. 12 OF 2023)

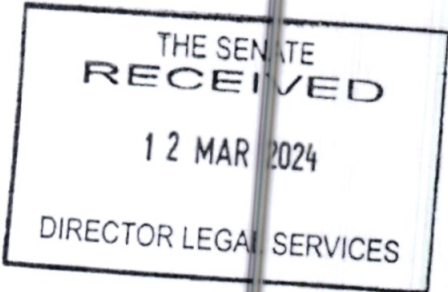
EP
12/3/2024

Reference is made to your letter Ref. SEN/DGAC/DGC/JLAHRC/2024/10(d) on the above subject dated 23rd February, 2024 requesting the Parliamentary Service Commission (the Commission) to submit representations on the Conflict of Interest Bill (National Assembly Bills No. 12 of 2023).

Please find attached a Memorandum of the Commission on the Bill for consideration by the Senate Standing Committee on Justice, Legal Affairs and Human Rights.

Yours *[Signature]*

J. M. NYEGENYE, CBS
CLERK OF THE SENATE/SECRETARY,
PARLIAMENTARY SERVICE COMMISSION



Encl

llc

REPUBLIC OF KENYA

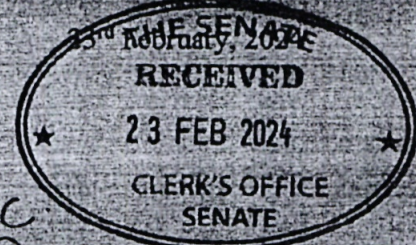
Telegraphic Address
'Bunge', Nairobi
Telephone 2848000
Fax: 2243684
E-mail: clerk.senate@parliament.go.ke



The Senate
Clerk's Chambers
Parliament Buildings
P. O. Box 41842-00100
NAIROBI, Kenya

PARLIAMENT
OFFICE OF THE CLERK OF THE SENATE

Ref. SENDGAC/DGC/JLAHRC/2024/10(d)



Mr. J. M. Nyegenye, CBS,
Clerk of the Senate/ Secretary,
Parliamentary Service Commission,
Parliament Buildings,
NAIROBI

*ODLC
Please prepare a PSC
Memorandum for 26/2/24*

Dear Sir,

RE: INVITATION TO SUBMIT COMMENTS ON THE CONFLICT OF INTEREST BILL (NATIONAL ASSEMBLY BILLS NO. 12 OF 2023)

The Standing Committee on Justice, Legal Affairs and Human Rights is established under standing order 228(1) of the Senate Standing Orders and is mandated to consider all matters relating to constitutional affairs, the organization and administration of law and justice, elections, promotion of principles of leadership, ethics, and integrity; agreements, treaties and conventions; and implementation of the provisions of the Constitution on human rights.

The Committee is presently considering the Conflict of Interest Bill (National Assembly Bills No. 12 of 2023) following its First Reading in the Senate on Wednesday, 14th February, 2024, whereupon it stood committed to the Committee for consideration.

The principal object of the Bill is to provide for the management and regulation of conflict of interest and for connected purposes.

Pursuant to the provisions of Article 118 of the Constitution and standing order 145 (5) of the Senate Standing Orders, the Committee now invites you to submit any representations that you may have on the Bill by way of written memoranda. Enclosed is a copy of the Bill, as passed by the National Assembly on Thursday, 30th November, 2023, and referred to the Senate.

The memoranda may be submitted to the Clerk of the Senate, P. O. Box 41842-00100, Nairobi, hand-delivered to the Office of the Clerk of the Senate, Main Parliament Buildings, Nairobi or emailed to clerk.senate@parliament.go.ke and copied to senatejlhrc@parliament.go.ke, to be received on or before **Monday, 4th March, 2024** at 5.00 p.m.

@ Likendu, DD

*Please prepare the memorandum
note the timelines.
ATW
27/2/24*



Mr. Charles Munyua, Senior Clerk Assistant (charles.munyua@parliament.go.ke, 0720250607) is the Clerk to the Committee and is responsible for facilitating this matter

Yours

faithfully,

EJ
EUNICE GICHANGI, MBS,
DEPUTY CLERK, SENATE,
FOR: CLERK OF THE SENATE

Encls.

REPUBLIC OF KENYA



PARLIAMENTARY SERVICE COMMISSION

**MEMORANDUM TO THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN
RIGHTS**

ON

THE CONFLICT OF INTEREST BILL (NATIONAL ASSEMBLY BILLS NO. 12 OF 2023)

**PARLIAMENT BUILDINGS,
NAIROBI**

MARCH, 2024

BACKGROUND

1. The Conflict of Interest Bill, 2023 (National Assembly Bills No. 12 of 2023) is a Bill sponsored by the Leader of Majority in the National Assembly.
2. The Bill seeks to among others give effect to Chapter 6 of the Constitution, repeal the Public Officer Ethic Act, 2003 and introduce various amendments to the Leadership and Integrity Act, No. 19 of 2012, the Ethics and Anti-corruption Commission Act, No. 22 of 2011 and the Anti-Corruption and Economic Crimes Act, No. 3 of 2003.
3. The Parliamentary Service Commission has reviewed the Bill in its original form and as amended by the National Assembly and supports the Bill in its current form. The PSC however takes makes further proposals/recommendations as contained in the table below:

CLAUSE	CURRENT PROVISION	PROPOSAL BY PSC	RATIONALE
6(a)	The functions of the Commission shall be to-(a) oversee the management of conflict of interest for all public officers	The functions of the Commission shall be to-(a) in liaison with the responsible Commission and reporting entities, oversee the management of conflict of interest for all public officers	This is to allow the bodies exercising disciplinary control over public officers to continue overseeing the management of conflict of interests of their officers
7(c)	The Commission shall, in the performance of its functions under this Act, have the power to- (c) delegate to another person or body, by notice in the gazette, any of its powers or functions under this Act in respect to classes of	Delete sub-clause 7(c)	It should not be left to the discretion of the EACC to delegate a function that is performed by a responsible Commission-The Bill has recognized the responsible Commissions in Clause 31A.

	public officers specified by the Commission and that person or body shall be deemed to be responsible for the administration and management of conflict of interest		
Clause 27(b)	A former public officer shall not-(b) be engaged by or act for or against his former employer for at least two years after ceasing to be a public officer	Propose deletion of sub-clause b	The import of the provision is that retired employees of the Commission including Members of Parliament cannot be engaged to support the Commission even in training and capacity building for at least two years after leaving the Service. This goes against the resolution of the PSC to engage former Members and retired staff in training and capacity building of Members of Parliament and staff of the Parliamentary Service.
Clause 31 and 33	Responsibility to administer the Declaration of Income, Assets and Liabilities	The PSC supports the provision in the Bill as amended by the National Assembly to the effect that public officers are required to submit the Declaration of Income, Assets and Liabilities to their respective responsible Commissions and not to the Ethics and Anti-Corruption Commission (EACC).	This is because the bodies responsible for exercising disciplinary control over public Officers are the ones best placed to administer the declarations and to analyze the same.
Clause 34	Access to Declarations of Income, Assets and Liabilities	The PSC supports the provision in the Bill as amended by the National Assembly Insert a new sub-clause (2A) to	This is because the responsible Commission will be the body charged with custody of the declarations and therefore only them can grant access to the

		read: For purposes of this section, due process means	declarations by members of the public
		pursuant to a court order or subject to the rights under the Access to Information Act and the rights to privacy under the Constitution.	Further, the amendment will provide guidance on how law enforcement officers can access the declarations
Clause 39	Investigation is vested in the Reporting Authority or the Commission but the two are not required to undertake concurrent investigations	Insert new sub-clause 39(2B) to read: If the reporting authority or the Commission commences investigations against a public officer for contravention of any provision of this Act, the state organ that has commenced investigations shall notify the other state organ in writing of the nature of the investigations within seven (7) days of the commencement.	To avoid concurrent investigations by both the Reporting Authority and the Commission, the state organ that commences investigations against a public officer shall inform the other state organ so that the state organ that has not commenced investigations does not initiate a duplicate investigation.

ANNEX 5(n): Office of the Attorney General

THE SENATE
RECEIVED
18 MAR 2024
DIRECTOR LEGAL SERVICES



OFFICE OF THE ATTORNEY-GENERAL
&
DEPARTMENT OF JUSTICE



Our Ref: DOJ/LJM/2/168/VOL II

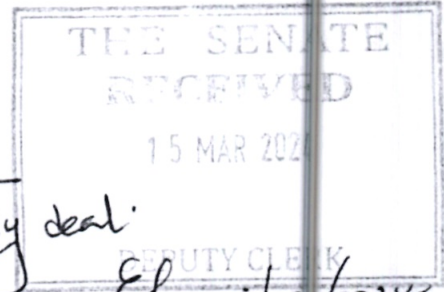
12th March, 2024

Your Ref: SEN/DGAC/DGC/JLAHRC/2024/10 (a)

Mr. Jeremiah M. Nyegenye, CBS
Clerk of the Senate,
Parliament Building
NAIROBI.

DGAC
DLS

Kindly deal.



Ef 15/03/2024

RE: COMMENTS ON THE CONFLICT OF INTEREST BILL, 2023

We make reference to the above captioned subject matter and your letter dated 23rd February, 2024 inviting the Office of the Attorney General to submit views on the Conflict of Interest Bill, 2023 to the Senate.

We have reviewed the Conflict of Interest (National Assembly Bills) No. 12 of 2023) and note that, while the proposal for the enactment of legislation to address conflict of interest was meant to address gaps in the Public Officer Ethics Act, CAP 1853 and the Leadership and Integrity Act. However, the original Bill has been altered in a way that the final legislation will be a claw back on gains in the anti-corruption legislative framework by weakening the existing laws. For instance, one of the departures from the original Bill is the deletion of the following provisions from the on divestiture of shareholding on appointment to public office:

- i) Clause 38- Divestiture;
- ii) Clause 39-Methods of divestment;
- iii) Clause 40-Blind trust requirements;
- iv) Clause 41-Confirmation of blind trust or sale;
- v) Clause 42-Confidentiality of divestment;
- vi) Clause 43-Assets given as security;
- vii) Clause 44-Assets of minimal value;

Ms Waweru.
You are dealing.
15/3/2024

SHERIA HOUSE, HARAMBEE AVENUE
P.O. Box 40112-00100, NAIROBI, KENYA. TEL: +254 20 2227461/2251355/07119445555/0732529995
E-MAIL: info.statelawoffice@kenya.go.ke WEBSITE: www.attorney-general.go.ke

DEPARTMENT OF JUSTICE
CO-OPERATIVE BANK HOUSE, HAILLE SELLASIE AVENUE P.O. Box 56057-00200, Nairobi-Kenya TEL: Nairobi 2224029/ 224037
E-MAIL: legal@justice.go.ke WEBSITE: www.justice.go.ke

ISO 9001:2008 Certified



viii) Clause 45-Compliance orders; and,

ix) Clause 46-Report on compliance with orders of the Commission.

Divestiture of assets is an emerging best practice compliance measure since disclosure of a private interest does not in itself resolve a potential conflict (enclosed herewith please find a copy of the original version of the Bill for your perusal). The above deleted clauses on divestiture were meant to replace and enhance the provisions in section 12 (2) of the Public Officers Ethics Act (POEA) which is set to be repealed with the enactment of the Conflict of Interest Bill.

Section 12 (2) of POEA provides as follows;


12. Conflict of Interest

(1) A public officer shall use his best efforts to avoid being in a position in which his personal interests conflict with his official duties.

(2) Without limiting the generality of subsection (1), a public officer shall not hold shares or have any other interest in a corporation, partnership of other body or through another person, if holding those shares or having that interest would result in the public officer's personal interests conflicting with his official duties.

We therefore request the Senate to consider and reinstate the deleted provisions from the original Bill and to include the provisions of Section 12(2) of POEA in the current Bill to address conflicts of interest that may arise in public service.

We thank you for your continued support.


Hon J.B.N Muturi, EGH
ATTORNEY GENERAL

Copy to: Hon. Shadrack J. Mose
SOLICITOR GENERAL

ANNEX 5(o): Transparency International Kenya (TI)

**TRANSPARENCY INTERNATIONAL KENYA MEMORANDUM TO THE SENATE ON THE
CONFLICT OF INTEREST BILL (NATIONAL ASSEMBLY BILL No. 12 of 2023)**

Organization

Transparency International - Kenya (TI-Kenya) is a not-for-profit organization founded in 1999 in Kenya to develop a transparent and corruption-free society through good governance and social justice initiatives. TI-Kenya is one of the autonomous chapters of the global Transparency International movement bound by a common vision of a corruption-free world. The vision of TI-Kenya is that of a transparent, accountable, and corruption-free society.

Introduction

The Conflict-of-Interest Bill, 2023 has been developed to make provisions for the management and regulation of conflict of interest and connected purposes.

TI-Kenya is in support of the Bill noting that Conflict of Interest Legislation in Kenya is essential for upholding good governance, promoting ethical conduct, and safeguarding the public interest. It serves as a critical tool in preventing conflicts of interest, ensuring transparency, and enhancing accountability, ultimately contributing to the country's development and the well-being of its citizens.

TI-Kenya notes that the Bill which has presently been transmitted to the Senate has captured many of the recommendations suggested to the Justice and Legal Affairs Committee during the initial public participation exercises in 2023.

Under the invitation for submission of memoranda on the Bill, TI-Kenya wishes to make the following additional recommendations;

Section	Provision of the Bill	Specific Proposed amendment/Recommendation	Justification/ Rationale for the Amendment/Recommendation
2	interpretation	Propose inclusion of the definition of a "whistleblower" as set out below.	There are provisions to protect whistleblowers that have been introduced in

Section	Provision of the Bill	Specific Proposed amendment/Recommendation	Justification/ Rationale for the Amendment/Recommendation
		<p><i>"whistleblower" means a person who makes a report to the Commission or the law enforcement agencies on acts or situations of conflict of interest.</i></p>	<p>section 54 (protection of person making disclosure)</p> <p>TI-Kenya notes that there is also pending legislation on Whistleblower Protection Bill 2021 that has been pending in parliament and which would also be important to bolster the fight against corruption</p>
Section 23	Restricted gainful employment	<p>Propose inclusion of the word "business" to the marginal note, to read as follows: -</p> <p>"Restricted gainful employment and business"</p> <p>Thereafter, add the phrase "and business" immediately after the word "employment" in Sub-sections 1, 2, and 3</p>	To align with Section 28 providing on the prohibition against representing people before reporting entities
Section 31 A	Determination of the responsible Commission	<p>Propose that the President be included in the list of State Officers answerable to Parliament as the responsible commission.</p> <p>We propose a joint Committee of Members drawn from both the National Assembly and the Senate.</p>	The High Court in the BBI Case applied article 259 to purposively interpret article 143 (2) to the effect that where the President acts in contravention of the Constitution he/she could be held personally responsible for any loss that may ensue as a result of his action or inaction.

Section	Provision of the Bill	Specific Proposed amendment/Recommendation	Justification/ Rationale for the Amendment/Recommendation
			In this regard, the President can therefore be subjected to the provisions of the Conflict of Interest Act.

CONTACT INFORMATION:

Sheila Masinde

Transparency International Kenya

PO BOX 198 - 00200, City Square,

Tel: +254 (0) 202 727 763/5 Mobile: +254 (0) 722 296 589

Kindaruma Road, Off Ring Road, Kilimani Gate No. 713; Suite

No. 4.

Email: transparency@tikenya.org

NAIROBI, KENYA

ANNEX 6: Matrix on the Committee's Consideration of the Stakeholder Submissions

THE SENATE



MATRIX

THE CONFLICT OF INTEREST BILL, 2023 (NATIONAL ASSEMBLY BILLS NO. 12 OF 2023)

Stakeholders:

1. The Ethics and Anti-Corruption Commission (EACC);
2. The National Police Service Commission (NPSC);
3. The Teachers Service Commission (TSC);
4. The County Assemblies Forum (CAF);
5. Union of Kenya Civil Servants (UKCS);
6. Kenya Law Reform Commission (KLRC);
7. Institute of Certified Secretaries (ICS);
8. The Council of County Governors (CoG);
9. The Salaries and Remuneration Commission (SRC);
10. Transparency International – Kenya (TI);
11. Office of the Prime Cabinet Secretary (OPCS);
12. The Public Service Commission (PSC);
13. The Parliamentary Service Commission (PSC*)

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
1	TSC	Amend the title of the Bill to retain the title “Public Officer Ethics Act”	Conflict of Interest is just one component of ethics expected of public officers.	
2	CAF	Provide the definition of “conflict	Defining conflict of interest will provide a	

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
		<p>of interest” and “whistle-blower” as follows:</p> <p>“conflict of interest” means when a person has a direct or indirect personal interest that could reasonably be perceived to impair their objectivity, judgment, or impartiality in the performance of their duties or responsibilities.</p> <p>“whistleblower” means a person who makes a report to the Commission or the law enforcement agencies on acts or situations of conflict of interest.</p>	<p>clear and consistent understanding of the concept. This clarity is essential for public officers, regulatory bodies, and the public, ensuring that everyone interprets and applies the term in the same way.</p> <p>Defining whistleblower enhances the overall efficacy of the legislation. The inclusion of a clear and comprehensive definition serves as a foundational element to the provisions outlined in clause 54, specifically addressing the protection of individuals making disclosures.</p>	
	TI	<p>Include definition of a “whistleblower” as follows –</p> <p>“whistleblower” means a person who makes a report to the Commission or the law enforcement agencies on acts or situations of conflict of interest.</p>	<p>There are provisions to protect whistleblowers that have been introduced in Section 54 (protection of people making disclosure). TI-Kenya notes that there is also pending legislation on Whistleblower Protection Bill, 2021 that has been pending in Parliament and which would be important to bolster the fight against corruption.</p>	
	CoG	<p>Define the term “State officer” in line with the definition under the Constitution.</p>	<p>For certainty.</p>	
	ICS	<p>Expand the definition of “conflict of interest” to include –</p> <p>a) actual conflict of interest which</p>	<p>To complement section 8 which provide for acts that may amount to a conflict of interest.</p>	

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
		<p>arises when an individual has a real conflict between official duties and private interest;</p> <p>b) potential conflict of interest which refers to circumstances where it is foreseeable that a conflict may arise in future and steps should be taken now to mitigate that future risk;</p> <p>c) Perceived conflict of interest arises when third parties of public form the view that an individual's private interest could improperly influence the decisions or actions now or in the future.</p>		
	TSC	<p>1. Gainful employment should refer to steady allowance arising out of steady employment meaning the employee will have steady work and payment to allow self-sufficiency. It is aptly defined in the Leadership and Integrity Act.</p> <p>2. Include Constitutional Commissions as part of "reporting entity".</p>	<p>Gainful employment as defined in the Bill is narrow and restrictive.</p> <p>To encompass Article 248 of the Constitution</p>	
3	CAF	<p>Amend 3(2)a) to read:</p> <p>(a) promote objectivity and</p>	<p>To enhance clarity scope of application and align with language used in other parts of the Bill e.g. clauses 8(a), 10(1), 12(1).</p>	

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
		<p>impartiality in decision making relating to the exercise of an official power or the performance of a duty or function of the public officer;</p> <p>Amend 3(2)(c) to read:</p> <p>(c) enhance public confidence in the integrity of public office and delivery of public services;</p>	<p>Introduce “public office” to align to Article 73(1) of the Constitution on Responsibilities of leadership, and Article 75(1) on conduct of State Office.</p>	
6	EACC	<p>Reinstate the function to institute proceedings for forfeiture of unclaimed or unexplained assets which was provided in the original Bill.</p>	<p>In enforcing provisions on declaration of income, assets and liabilities under Part IV of the Bill, EACC would come across cases of undeclared assets which would be subject to forfeiture.</p>	
	PSC*	<p>Amend 6(a) to read –</p> <p>(a) in liaison with the responsible commission and reporting entities, oversee the management of conflict of interest for all public officers;</p>	<p>To allow bodies exercising disciplinary control over public officers to continue overseeing the management of conflict of interest of their officers.</p>	
7	EACC	<p>Reinstate the power by EACC to summon witnesses as was provided in the original Bill</p>	<p>Whereas EACC may have such powers under other laws such as ACECA, it is necessary for the powers in the Conflict of Interest law be self-implementing.</p>	
	PSC*	<p>Delete 7(c).</p>	<p>It should not be left to the discretion of EACC to delegate a function that is performed by a responsible commission in clause 31A.</p>	

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
8	EACC	Reinstate the original provision.	The current provision is narrow in scope contrary to the spirit of the Bill. The original provision included potential conflict of interest that may arise in the future and conflict situations which are not necessarily criminal in nature but require management.	
8	TSC	Define Conflict of Interest in the Preamble Delete the word 'perception' in 8(b) as it is subject to abuse. Redraft 8(c) as it is anticipatory.		
9	CAF	Amendment 9(1) to read: (b) disclose details of any private interest of the public officer that affects the official duties of the public officer, to the reporting authority or Commission and comply with any directions to avoid the conflict.	To provide clarity on who a public officer should report/disclose relevant details/information to which ensures accountability.	
	TSC	Amend 9(b) to read – (b) disclose details of any private interest of the public officer that affects the official duties of the public office, to the reporting authority or Commission and comply with any directions to avoid conflict	This will provide clarify on who a public officer should report/ disclose relevant details/ information to; which ensures accountability.	
12	EACC	Delete 12(3)	The provision shields public officers from	

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
			criminal or civil proceedings if any action is done in good faith. What amounts to good faith has not been defined thereby rendering the provision inoperable as the defence of good faith becomes absolute.	
	CoG	Define the term “good faith”.	To avoid divergent interpretations provisions of the Bill.	
13	NPSC	Qualify the “interest of another person” in 13(1) to read the “private interest”.	Interests are general term and the interest sought to be regulated are “private interests”.	
15	NPSC	Delete 15(1)(b) or qualify it to “... after accepting the offer”.	Receipt of an offer does not indicate any action/omission in the conduct of the public officer to act for private interests and could be unsolicited.	
17	TSC	Clarify on whether gifts referred to in 17(b) refer to gifts to entity’s employees.	To avoid abuse of the provisions and harassment of public officers.	
18	TSC	1. Restrict the treatment meant to influence the Public Officer in 18(1). 2. Expound/qualify and define exceptional circumstances.	The provision as drafted criminalizes all complimentary treatment. The provisions appears too open ended	
19	NPSC	Delete the word beneficiary in 19(1).	The proposal is against Articles 27(3) & (4) and 40 of the Constitution on the right to economic opportunities and property. Public officers have the right to acquire property which includes stakes in company shares in which beneficial interest are declarable in law.	
	TSC	Place of use of proxies such as spouse and children be addressed.	To avoid abuse by public officers and to protect the sanctity of the PPDA.	

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
	EACC	There is need for consensus as to whether public officers should be barred from trading with the Government and not just the employer.		
20	CAF	Amend 20(1) to read: A public officer shall not hold a direct or indirect interest in a partnership, private company or any other legal entity that is a party to a contract with the reporting entity in which the public officer serves, under which the partnership, private company or legal entity receives a benefit.	To provide for conflict of interest arising in situations where a public officer holds shares or interests in private legal entities, either directly or indirectly.	
	UKCS	Add the following provisions in 20(2) – (i) A public officer who is serving a full-time basis shall not participate in any gainful employment; (ii) Recruitment must be undertaken on the basis of fair competition and merit, representing Kenya’s diverse communities, adequate and equal opportunities to all gender, youths, members of all ethnic groups, persons with disabilities and minorities.		

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
21	CAF	Deleting 21(2) which provides for the exemption, in the alternative define “personal Staff”.	Such staff should be appointed competitively as per the values and principles of public service set out under Articles 232(1)(g), (h), (i) and 232(2) of the Constitution.	
	OPCS	<p>1. Include the following provisions in 21(1) providing that a public officer shall not –</p> <p>c) Be appointed as a Chairperson or Member/Director of a public entity of State Corporations if they have served in the same entity as an employee on the preceding 5 years.</p> <p>d) Be appointed as an employee of a public entity of State corporations if they have served in the same entity as a Chairperson or Member/Director of the Board in the preceding five years or</p> <p>2. Include the following new clauses</p> <p>(1b) An individual serving in acting capacity shall not –</p> <p>a) Take part in the preceding processes (e.g. development of indent, sourcing for a recruitment firm, selection of shortlisting panel, shortlisting among others) towards substantive appointment to the</p>	State Corporations have experienced conflicts relating to the recruitment of CEOs, other staff members and respective Boards and the proposals will provide a solution for such conflicts.	

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
		same position if they are themselves interested in the same position while in still acting.		
		(4) Any appointment done in contravention of subsection (1) will be deemed null and void.		
	UKCS	Provide for the penalty in 21(2)(b).		
23	NPSC	<p>1. Delete 23(2).</p> <p>2. Delete the reporting authority in 23(3) and allow mandate to solely be the Commission.</p>	<p>It should be sufficient that the employment is not in conflict with the public officer's engagement and making a wealth declaration stating the income from the employment is sufficient.</p> <p>The Commission should develop rational criteria for evaluation of the activity for which permission is sought for all agencies for uniformity across the public service and does the notification to reporting entities. Amend section 10(1)(c) of the NPSC Act so that the applicable law on conflict of interests regulating trade is the same regulation operationalizing Article 80 of the Constitution.</p>	
	SRC	Include a clause to the effect that a public officer shall not accept employment on a part-time basis in another public institution.	<p>The Employment and Labour Relations Court in Nyeri in ELRC Cause No. 3 of 2022: Agnes Gatama vs EACC & Others where it was held that a full-time public officer is not eligible for part-time employment in another public institution.</p> <p>This provision will also address the</p>	

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
			avoidance of double provision of benefits by different employers to the same public officer during the same period.	
	TI	<p>1. Include the word “business” to the marginal note, to read as follows –</p> <p>“Restricted gainful employment and business”</p> <p>2. Add the phrase “and business” immediately after the word “employment” in 23(1), (2) and (3).</p>	To align with Section 28 providing on the prohibition against representing people before reporting entities.	
	TSC	<p>1. 23(1)(a) appears vague e.g. use of the word incompatible.</p> <p>2. Expound 23(2) to bring out what is acceptable, what is prohibited or not.</p> <p>3. 23(3) is not practical.</p>	<p>In line with Article 47 of the Constitution, the same should be qualified.</p> <p>To avoid abuse.</p> <p>No employer will give the permission referred to in the Clause. The provision appears to criminalize hard work.</p>	
24	EACC	Delete reference to Access to Information Act in 24(2)(c).	An open register for conflict of interest is an important requirement for implementation of the law as a lot of information on violations will be derived by members of the public who have knowledge of situations where public officers are conflicted. To subject access to the register to the Access to Information Act will curtail this principle. In	

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
			addition, the provision may be misinterpreted or misapplied by public officers or entities to restrict or deny access to the register by law enforcement agencies.	
27	NPSC	<p>1. Replace the word “State” in 27(1)(a) with “reporting entity”.</p> <p>2. Provided that information referred to in 27(1)(c) is “classified” information.</p>	<p>The State is a broad term which includes the whole government. Only former reporting entity in which a former public officer was engaged as an employee should be considered as there was privity of relationship.</p> <p>Article 35 of the Constitution guarantees access to information held by the State subject to legal limitations. Therefore, the only information limited should be anti-competitive information, classified information or mis-information.</p> <p>The proposal may limit witnesses in legal proceedings who advance the rule of law and constitutionalism where they have first-hand information on issues where there are legal proceedings.</p>	
	TSC	Delete	The clause violates the rights of certain professional e.g. advocates in the Public Service. It is unconstitutional.	
	PSC*	Delete 27(b).	The provision bars retired employee as well as former members of Parliament from being engaged by PSC* to support PSC* including training and capacity building.	
			This is against PSC* to engage former members of Parliament and retired staff of PSC*.	

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
28	NPSC	Create an exception for witnesses.	The proposal may lead to miscarriage of justice where the person who left the reporting entity is a key witness to the proceedings and therefore akin to gagging witnesses.	
	TSC	Delete	The clause violates the rights of certain professional e.g. advocates in the Public Service. It is unconstitutional.	
29	TSC	Delete	The clause violates the rights of certain professional e.g. advocates in the Public Service. It is unconstitutional.	
30	NPSC	Amend 30(2)(b).	EACC should create a portal for reporting similar to Public Procurement Authority where reporting commissions can periodically update this information for efficiency in compliance. Provisions should be made for annual reporting for all conflict of interest issues.	
	UKCS	All public and state officers should recuse themselves in matters relating to conflict of interest.	The clause as is currently is discriminatory and favours State officers which amount to conflict of interest.	
	ICS	1. Provide a detailed procedure for disclosure as to allow full compliance; and 2. Improve clarity and comprehensiveness of the disclosure requirements.	To facilitate easier understanding and compliance thereby creating a more transparent government.	
	TSC	Redraft the 30(2)(b).	The provision places upon a Public Officer an unnecessary burden. The reporting authority should bear this burden as it is the custodian of the register of Conflict of Interest.	

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
31	CAF	Amend 31(1) to read: Every public officer shall submit to the Commission and to the reporting authority a declaration of the income, assets and liabilities of himself, his spouse or spouses and his dependent children under the age of eighteen years.	The reporting authority should also receive the information, as the office or body responsible for a public officer. Further, the sheer volume of the declarations would make it difficult for the Commission alone to process and verify the declarations.	
	TSC	1. Declaration be made to the various reporting authorities as well for easier management. 2. Delete 31(4)(c).	EACC may not have the capacity to receive all declaration forms from the entire Public Service. It is a violation of the right to privacy.	
	UKCS	1. There is need to specify children dependents age when declaring income, assets and liabilities. Only children under 18 years should have their assets, if any, declared. 2. Add the following new provision – (5) An officer who fails to submit a declaration or clarification as required or who submits information that he/she knows is false or misleading shall be liable to disciplinary action.		
31A	EACC	1. Designate several responsible	The omission of these entities leaves a	

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
		<p>commissions which have been omitted. They include – The Board of Directors of CBK currently responsible for officers of CBK and financial institutions licensed under the Banking Act as state corporations; Commission for University education currently responsible for officers in public universities; EACC currently responsible for EACC officers as well as officers in co-operative societies; Commission on Administrative Justice; Kenya National Human Rights Commission.</p> <p>2. EACC to remain the responsible commission for its officers other than the CEO</p>	<p>vacuum in respect of officers for whom they are established. The independent nature of their operations dictate that they should be the responsible commissions.</p> <p>There is no proper justification for some members of staff of EACC, Deputy Director and above, should declare their income, assets and liabilities to the Committee of the National Assembly. The Committee will not be able to enforce the requirements in respect of staff over which it has no disciplinary control.</p>	
	TI	Include a clause that provides that the President be included in the list of State Officers answerable to	The High Court in the BBI Case applied Article 259 to purposively interpret Article 143(2) to the effect that where the President	

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
		Parliament (a joint Committee of members drawn from both the National Assembly and the Senate) as the responsible Commission.	acts in contravention of the Constitution, he/she could be held personally responsible for any loss that may ensue as a result of his action or inaction. Therefore, the President can be subjected to the provisions of the Conflict of Interest Act.	
32	TSC	Amendment 32(3) so that the final declaration is made 30 days prior to exit	The reporting entity will be in a position to enforce the provision when the public officers are still under employment.	
33	CAF	Amendment 33(1) to read: Upon the receipt of the declaration made under section 31, the commission and reporting authority shall analyse the declaration to ascertain...	The Act introduces a reporting authority for which this clause should apply. It is more reasonable and efficient to have the reporting authority also analyse, process and verify the declarations. Further, the reporting authority has a direct interest in the declarations.	
34	NPSC	1. Qualify the declaration referred under 34(1) to exclude wealth declaration by a public officer. 2. In 34(2) define enforcement officer to mean a person employed by EACC, and not all enforcement officers generally. Replace after due process with	Wealth declarations contain personal information that is subject to the right to privacy. A public officer should be informed when such information touching on their private information has been requested. The Commission should have proper guidelines on how this information is requested or conveyed and the purpose declared in the request. The right to privacy and access to reporting entities information should continue to be managed through transparent but accountable and lawful channels and persons.	

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
		— having demonstrated reasonable cause shall have access to the disclosures with: reasonable access upon request on notice to reporting entities.		
	EACC	Delete the words “due process”	“due process has not been defined making it vague as to whether a law enforcement body can be granted unrestricted access or not. Unrestricted access to declarations by a law enforcement agency is an international best practice, especially in investigation of cases for unexplained assets.	
	PSC*	Insert the following new clause (2A) For purposes of this section, due process means pursuant to a court order or subject to the rights under the Access to Information Act and the right to privacy under the Constitution.	To provide guidance on how law enforcement officers can access the declarations.	
Part IV	EACC	Reinstate clauses 38, 39, 40, 41, 42, 43, 44 and 45 of the original Bill.	These compliance measures were mostly new and novel innovations not contained in law. Their deletion means that the law will not introduce anything new in the management of conflict of interest other than consolidating what was fragmented in various laws.	
39	EACC	Investigation should be under the exclusive jurisdiction of EACC.	The provision infringes on the constitutional mandate of EACC by purporting to preempt it from conducting investigation if a reporting authority has commenced	

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
			<p>investigation into the matter.</p> <p>A person can stop investigations by EACC through the initiation of investigation by a reporting authority thereby allowing forum shopping.</p> <p>The provision creates a lacuna and confusion as it does not clarify what happens in the event that EACC and a reporting authority were to find out that they are conducting concurrent investigations.</p> <p>Many of the reporting authorities do not have the mechanisms/capacity to undertake investigations.</p> <p>So as to ensure uniformity, harmony and consistency in dealing with cases of conflict of interest.</p>	
	PSC*	<p>Insert the following new subclause –</p> <p>(2B) If the reporting authority or the Commission commences investigations against a public officer for contravention of any of the provisions of this Act, the State organ that has commenced investigations shall notify the other State organ in writing of the nature of the investigations within seven days of the commencement.</p>	To avoid concurrence investigations by both the reporting authority and EACC.	
45	TSC	Redraft to avoid abuse.	This power ought to be exercised after due process including fair hearing.	
46	CoG	Define the term “good faith”	To avoid ambiguity as a result of varied understandings.	

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
48	ICS	Include provisions providing for anonymous submission of complaints.	Will promote accountability and give justice to all persons who may be affected.	
	TSC	Redraft the entire clause.	Reporting of a crime should be multifaceted to avoid abuse. The provisions should bring on board other players in the justice sector for processes e.g. police and DCI, provide how information is processed as well as provide for modalities of investigations should.	
49	CAF	Amend 49(2) to read If the Commission declines to commence an investigation, the Commission shall inform the person who lodged the complaint and give reasons for the decision within 90 days upon confirmation of receipt of the complaint.	To allow a timeline within which complaints need to be addressed after acknowledgement of the complaint.	
	TSC	Redraft the entire clause.	The clause is pre-emptive. It can provide for some form of preliminary inquiry to determine if conflict of interest is apparent or not.	
	CoG	Only repeal section 12 of the Public Officer Ethics Act.	The Public Officer Ethics Act should not be repealed in its entirety, since other ethical aspects of public officers such as sexual harassment and not covered under the Conflict of Interest Bill will be left out. Only repeal provisions dealing with conflict of interest.	

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
50	CAF	Amend 50(2) to read – Despite sub section (1), the period of suspension of a State officer or public officer shall not exceed ninety days unless the person is charged in accordance with section 51(1)(d).	To align with section 62(1) and (3) of the Anti-Corruption and Economic Crimes Act on suspension. Section 62(1) provides that if charged with corruption or economic crime, a public officer or state officer who shall be suspended, at half pay, with effect from the date of the charge until the conclusion of the case; Provided that the case shall be determined within twenty-four months. Section 62(3) on the other hand provides that, the public officer ceases to be suspended if the proceedings against him are discontinued or if he is acquitted.	
	TSC	Provide for remuneration, salary, emoluments during the suspension period etc.	The provision should be subjected to law governing operations of reporting authority and other statutes. As is, it is subject to abuse since these are administrative. Also, these should be left to criminal courts.	
51	TSC	Delete 52(2).	Recommendations from EACC should not be binding, they should remain as best practices.	
52	TSC	Redraft, the penalty has not been provided.	The fine prescribed is excessively high.	
54	CAF	Include the following provisions – 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	To provide for enhanced protection of whistleblowers and witnesses.	

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
		<p>enforcement institutions or giving testimony in a court of law.</p> <p>Every reporting institution and law enforcement agency shall put in place reasonable mechanisms to protect the identity of informants and witnesses.</p>		
55	TSC	Explain the clause.	<p>Is the reporting entity an agent of EACC?</p> <p>Give format of the compliance reports referred to. The reports should also be defined as a statutory requirement in the preliminary.</p>	
58	CAF	The Public Officer Ethics Act should not be repealed in its entirety.	<p>The following important provisions will be left out:</p> <ul style="list-style-type: none"> 5 – Establishment of specific codes of conduct 8 – Performance of duties 9 – Professionalism 11 – No improper enrichment 14 – Acting for foreigners 15 – Care of property 18 – Giving of advice 19 – Misleading the public 20 – Conduct of private affairs 21 – Sexual harassment 25 – Reporting improper orders <p>The provisions are relevant and contribute towards advancing the ethics of public</p>	

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
			officers and connected purposes. The Public Officer Ethics Act covers a broad range of issues pertaining to ethics of public officers, with conflict of interest being only one of them as expressly provided in section 12 of the Act.	
	TSC	Amend the Public Officer Ethics Act as opposed to enacting this Bill.	Similar reasons as those advanced by CAF above.	

General/Other Comments

1. KLRC – Concur with the Bill for the reason that they participated in the development of the Bill and made submissions on the Bill when it was being considered by the National Assembly.
2. NPSC – EACC and responsible commissions should have in place data protection policies for personal data and signed commitments on handling of online processed data.
3. CoG – proposed that Parliament reviews other relevant laws including the Leadership and Integrity Act and the Anti-Corruption and Economic Crimes Act so as to align them with the Bill.
4. UKCS - proposes that EACC be given prosecutorial powers. Prosecution procedure be similar to Small Claim Courts to serve justice.
5. ICS – on Part IV, ICS proposes that there should be enhanced ethical standards through assessment to enhance compliance. Institutions should be required to perform annual governance assessments by a certified governance auditor accredited by the institute and give a report on the effectiveness of the law. Additionally, reporting organizations should have an ethics and integrity officer responsible for assessing and tracking compliance on conflict of interest. A new clause is proposed providing for the requirement to appoint such an officer, qualifications as well as their responsibilities.
6. SRC proposed inclusion of the following new provisions so as to enhance the transparency in the banking system and strengthen the integrity of the public procurement processes –

- a) a Clause that guides the modalities/procedures for public officers opening and operating overseas bank accounts; and
 - b) a Clause that regulates participation in local tendering processes by offshore registered companies whose directors are public officers.
7. PSC proposes amending existing legislations so as to address identified gaps such divesture and establishment of blind trusts as opposed to enacting a new law which merely what is already provided for. The following are the reasons for the proposal –
- a) The Public Officer Ethics Act was enacted as part of the Kenya’s commitment to the United Nations Convention Against Corruption. It seeks to promote professionalism and good conduct among public officers by requiring development and implementation of codes of conduct. No reason has been advanced for the repeal of the Public Officer Ethics Act;
 - b) The Bill replicates what is already provided for under the Public Officer Ethics Act and the Leadership and Integrity Act;
 - c) The Bill proposes to repeal sections of the Leadership and Integrity Act which form part of the general code of conduct. Hence there will be very little left for institutions to anchor their specific codes on.

Additionally, PSC proposes that clauses 38 to 43, all inclusive, which provided for divesture and establishment of blind trusts and were deleted by the National Assembly be reinstated. These clauses provided practical measures for managing conflict of interest.

ANNEX 7: Text of proposed Committee stage amendments to
the Bill

27th March, 2024

The Clerk of the Senate
Parliament Buildings
NAIROBI

RE: COMMITTEE STAGE AMENDMENTS TO THE CONFLICT OF INTEREST BILL, NATIONAL ASSEMBLY BILLS NO. 12 OF 2023

NOTICE is given that Sen. Wakili Hillary Kiprotich Sigei, Chairperson to the Standing Committee on Justice, Legal Affairs and Human Rights, intends to move the following amendments to the Conflict of Interest Bill, National Assembly Bills No. 12 of 2023 —

CLAUSE 3

THAT clause 3 of the Bill be amended in subclause (1) deleting paragraph (c) and substituting therefor the following new paragraph —

- (c) enhance public confidence in the integrity of public office and delivery of public services.

CLAUSE 13

THAT clause 13 of the Bill be amended in subclause (1) by deleting the words “interest of the officer or the interests” appearing immediately after the word “to further the” and substituting therefor the words “private interest of the officer or”.

CLAUSE 15

THAT clause 15 of the Bill be amended in subclause (1)(b) by deleting the word “offer” appearing immediately after the words “reporting authority any” and substituting therefor the word “acceptance”.

CLAUSE 19

THAT clause 19 of the Bill be amended —

- (a) in subclause (1) by deleting the words “or beneficiary of” appearing immediately after the words “be a party to”; and
- (b) in subclause (2) by deleting the words “or beneficiary of” appearing immediately after the words “be a party to”.

CLAUSE 27

THAT clause 27 of the Bill be amended in subclause (1) by deleting paragraph (a) and substituting therefor the following new paragraph –

- (a) act for or on behalf of any person in connection with any specific proceeding, transaction, negotiation or case in which a reporting authority is a party and with respect to which the former public officer had acted for, or provided advice to the reporting authority;

CLAUSE 29

THAT clause 29 of the Bill be amended by inserting the following new subclause immediately after subclause (2) –

- (3) The provisions of this section and sections 27 and 28, shall not apply to a former public officer representing another person in any proceedings before a court of law or tribunal established by law including as a witness.

CLAUSE 34

THAT clause 34 of the Bill be amended in subsection (2) by deleting the words “after due process” appearing immediately after the words “agency shall” and substituting therefor the words “subject to the right to privacy as provided for under the Constitution and pursuant to a court order or the Access to Information Act”.

CLAUSE 41

THAT clause 41 of the Bill be amended by inserting the following new clause immediately after subclause (2) –

- (3) If the Commission or a reporting entity fails to conclude the investigations within ninety days, the investigations shall be deemed to have been concluded at the expiry of the ninety days and the officer shall resume his or her duties.

CLAUSE 42

THAT clause 42 of the Bill be amended in subsection (1) by inserting the words “or a reporting authority” immediately after the words “the Commission”.

Dated 27.03.2024 2024.



.....
Wakili Hillary Kiprotich Sigei.
Chairperson.

Standing Committee on Justice, Legal Affairs and Human Rights.