

SPECIAL ISSUE

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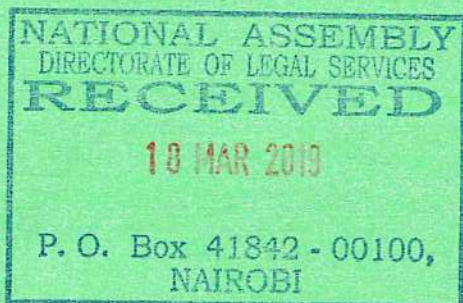
NAIROBI, 13th March, 2019

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**THE NATIONAL COHESION AND INTEGRATION
(AMENDMENT) BILL, 2019**

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

ENACTED by the National Assembly of Kenya as follows—

1. This Act may be cited as the National Cohesion and Integration (Amendment) Act, 2019. Short title

2. The principal Act is amended by deleting section 17 and substituting therefor the following new section— Repeal and replacement of section 17 of No. 12 of 2008

Membership of the Commission. — 17. (1) The Commission shall consist of

- (a) a chairperson nominated by the President and approved by the National Assembly in accordance with the First Schedule;
- (b) seven commissioners nominated by the President and approved by the National Assembly in accordance with the First Schedule;
- (c) the chairperson of the Kenya National Commission on Human Rights;
- (d) the chairperson of the National Gender and Equality Commission;
- (e) the chairperson of the Commission on Administrative Justice;

(2) The commissioners shall, at their first meeting, elect a vice-chairperson from amongst the commissioners appointed under subsection (1) (b).

(3) The chairperson and vice-chairperson of the Commission shall not be

(4) In appointing members to the Commission, the principles of gender equity, ethnic and regional representation shall apply.

3. The principal Act is amended by inserting the following new section immediately after section 17—

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

Powers of the chairperson. **17A.** (1) The chairperson shall —

(a) preside over the meetings of the Commission; and

(b) be the spokesperson of the Commission.

(2) If the office of the chairperson becomes vacant or if the chairperson is unable to exercise the powers or perform the functions of his or her office owing to absence, illness or any other cause, the vice-chairperson shall exercise those powers or perform those functions until a substantive chairperson is appointed.

4. The principal Act is amended by repealing section 18 and replacing with the following new section—

Amendment of section 18 of No. 12 of 2008.

Qualification of Commissioner. **18.** (1) A person qualifies for appointment as a commissioner if the person—

(a) is a citizen of Kenya;

(b) has knowledge and at least five years experience in the case of the chairperson, and at least two years experience in the case of a commissioner, in matters relating to race, ethnic and human relations, public affairs and human rights, peace and security;

(c) holds a degree from a university recognised in Kenya; and

(d) meets the requirements of Chapter Six of the Constitution.

(2) A person shall not be eligible for appointment as the chairperson or a member if such person—

(a) is a member of Parliament or a County Assembly;

(b) is a member of the governing body of or is actively involved in the affairs of a political party;

(c) has promoted sectoral, ethnic, racial or religious animosity or openly advocated for partisan ethnic positions or interests;

(d) is an undischarged bankrupt;

(e) has served as a Member of the Commission;

(f) has been removed from office for contravening the provisions of the Constitution or any other law; or

(g) has not met his or her legal obligations relating to tax and other statutory obligations.

5. The principal Act is amended by deleting section 19 and substituting therefor the following new section—

Repeal and replacement of section 19 of No. 12 of 2008.

Term of office.

19. The chairperson and members of the Commission shall be appointed for a single term of six years and are not eligible for re-appointment.

6. The principal Act is amended by deleting the First Schedule and substituting therefor the following new Schedule—

Repeal and replacement of the First Schedule to No. 12 of 2008.

PROCEDURE FOR APPOINTMENT OF
COMMISSIONERS

1. Whenever there is a vacancy in the Commission, the Cabinet Secretary shall within fourteen days of the occurrence of the vacancy, by notice in the *Gazette* declare the vacancy in the Commission.

2. For the purpose of the appointment of the Commissioners, the Cabinet Secretary shall within fourteen days of the declaration of the vacancy constitute a selection panel consisting of—

- (a) one person nominated by the Office of the President;
- (b) one person nominated by the Public Service Commission;
- (c) one person nominated by the Attorney-General;
- (d) one person nominated by the Ethics and Anti-Corruption Commission;
- (e) one person nominated by the National Gender and Equality Commission; and
- (f) one person nominated by the Judicial Service Commission.

3. The Public Service Commission shall—

- (a) convene the first meeting of the selection panel, at which the members of the selection panel shall elect a chairperson from among themselves; and
- (b) provide the selection panel with such facilities and other support as it may require for the discharge of its functions.

4. The selection panel shall, within seven days of convening, by advertisement in the media, invite applications from persons who qualify for nomination and appointment as Commissioners.

5. An application under paragraph 4 shall be forwarded to the Public Service Commission within fourteen days of the notice.

6. The names of all applicants under paragraph 5 shall be published in the *Gazette* and two daily newspapers of national circulation.

7. The selection panel shall within fourteen days of receipt of applications under paragraph 5 consider the applications, interview and shortlist at least fifteen persons qualified for appointment as members of the Commission and shall forward the names of selected candidates to the President for nomination.

8. The President shall, within twenty one days of receipt of the names forwarded under paragraph 7, nominate one person for appointment as chairperson and seven persons for appointment as members of the Commission, and shall forward the names of the persons to the National Assembly for approval.

9. The National Assembly shall, within twenty-one days of the day it next sits after receipt of the names of the nominees under paragraph 8, consider all the nominations received and may approve or reject any nomination.

10. Where the National Assembly approves the nominees, the Speaker shall forward the names of the approved persons to the President for appointment.

11. The President shall, within twenty one days of the receipt of the approved nominees from the National Assembly, by notice in the Gazette, appoint the chairperson and members.

12. Where the National Assembly rejects any nomination, the Speaker shall, within three days, communicate the decision of the National Assembly to the President to submit a fresh nomination.

13. Where a nominee is rejected by the National Assembly under paragraph 12, the President shall, within seven days, submit to the National Assembly a fresh nomination from amongst the persons shortlisted and forwarded by the selection panel under paragraph 7.

14. The selection panel may, subject to this section, determine its own procedure for the conduct of business and affairs.

15. The appointments to the Commission—

(a) shall be done in a fair, transparent and competitive manner based on merit, suitability and competence;

(b) shall take into account the values and principles under Articles 10, 27 and 232 of the Constitution;

(c) shall ensure that not more than two-thirds of the members are of the same gender;

(d) shall observe the principle of regional and ethnic balance and shall have regard to the principle of fair representation for persons with disabilities.

16. Despite the foregoing provisions of this Schedule, the Cabinet Secretary may by notice in the Gazette, extend the period specified in respect of any matter under this section by a period not exceeding twenty-one days.

MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to amend the National Cohesion and Integration Act, 2008 to amend the procedure for appointing Commissioners under the Act. This follows the judgement by the High Court to the effect that section 17 of the Act is unconstitutional. There is, therefore, need to amend the Act to align it with the Constitution.

The Bill also seeks to provide for matters incidental to the review of the Act including providing certain clarifications relating to the qualification for appointment as a member of the Commission and their term of office.

Clause 1 of the Bill provides for the short title.

Clause 2 of the Bill provides for the composition of the Commission.

Clause 3 of the Bill introduces a new section that prescribes the powers of the Chairperson.

Clause 4 of the Bill provides for the requirements for a person to qualify as a Commissioner and also incorporates any constitutional requirements.

Clause 5 of the Bill extends the term of office of the Members to six years as opposed to the current three year term with a possible extension of another three years.

Clause 6 of the Bill provides for the procedure of appointing the Commissioners to the Commission.

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

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

Statement that the Bill concerns county governments

The Bill does not affect the functions of the county governments and is therefore not a Bill concerning counties for purposes of the Standing Orders.

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

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

Dated the 20th February, 2019.

MAINA KAMANDA,
Member of Parliament.

Section 17 of the Act which it is proposed to amend -

Membership of the Commission

(1) The Commission shall consist of—

- (a) a Chairperson appointed by the President from amongst the commissioners appointed under paragraph (b);
- (b) eight commissioners nominated by the National Assembly in accordance with the First Schedule and appointed by the President;
- (c) the Chairperson of the Kenya National Commission on Human Rights;
- (d) the Chairperson of the National Commission on Gender and Development; and
- (e) the Chairperson of the Public Complaints Standing Committee (Ombudsman).

(3) The commissioners shall, at their first meeting, elect a vice-chairperson from amongst the commissioners appointed under subsection (2) (b).

(4) In appointing members to the Commission, the principle of gender equity shall apply.

Section 18 of the principal Act which it is proposed to amend -

Qualifications of commissioners

18. (1) A person shall be qualified for appointment as a commissioner if such person—

- (a) is a citizen of Kenya;
- (b) is a person of high moral character and proven integrity; and
- (c) has knowledge and experience in matters relating to race, ethnic and human relations, public affairs, and human rights.

(2) No person shall be qualified for appointment as a commissioner if such person—

- (a) is a member of the National Assembly;
- (b) is a member of a local authority;
- (c) is a member of the executive body of, or is actively involved in the affairs of, a political party;
- (d) has promoted sectoral, ethnic, racial or religious animosity or

Section 19 of the principal Act which it is proposed to amend -

19. Term of office

The Chairperson and the commissioners shall hold office for a term of three years and shall be eligible for re-appointment for one further term of three years.

Schedule to the Act which it is proposed to amend

FIRST SCHEDULE

[Section 17, Act No. 25 of 2015, Sch.]

PROCEDURE FOR NOMINATING COMMISSIONERS BY THE NATIONAL ASSEMBLY

1. The Clerk of the National Assembly shall, within fourteen days of the commencement of this Act, by advertisement in the Gazette and in at least three daily newspapers of national circulation, invite applications from persons qualified under this Act for nomination as commissioners.

2. An application under paragraph 1 shall be forwarded to the Clerk within twenty one days of the advertisement and may be made by any—

- (a) qualified person; or
- (b) any person, organization or group of persons proposing the nomination of any qualified person.

3. The relevant Parliamentary Committee in consultation with the Minister shall, within seven days of the expiry of the period prescribed under paragraph 2—

- (a) consider all the applications received under paragraph 2; and
- (b) recommend to the National Assembly suitably qualified persons for nomination as commissioners.

4. The Committee shall rank and provide comments regarding each of the finalists to the National Assembly.

5. The National Assembly shall, upon receipt of the recommendations of the Committee under paragraph 3, nominate fifteen persons for appointment as commissioners and shall submit the list of nominees to the Minister for onward transmission to the President.

6. The Minister shall forthwith forward the names of the persons nominated in accordance with paragraph 5 to the President who shall, by notice in the Gazette, appoint therefrom eight commissioners.

7. In nominating or appointing persons as commissioners, the National Assembly and the President shall have regard to gender equity and regional balance.

8. The provisions of this Schedule shall apply to appointment of new members of the Commission after the commencement of this Act.