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**THE NATIONAL COHESION AND PEACE
BUILDING BILL, 2018**

A Bill for

AN ACT of Parliament to: provide for the establishment of the National Cohesion and Peace Building Commission; outlaw discrimination on ethnic grounds; provide for the establishment of an institutional framework for national cohesion and peace building; and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY

1. This Act may be cited as the National Cohesion and Peace Building Act, 2018.

Short title.

2. In this Act,—

Interpretation.

“chairperson” means the chairperson of the Commission appointed in accordance with section 9;

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

“coded language” means information written, spoken, or sent using a special system of words, letters, numbers, idioms, that is expressed in an indirect way to undermine national cohesion and instigate conflicts; and can be understood by a few other people;

“Commission” means the National Cohesion and Peace Building Commission established under section 5;

“Commissioner” means a member of the Commission appointed under section 9;

“ethnic group” means a group of persons defined by reference to colour, race, religion, clan, nationality or ethnic or national origins;

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

“peace building” means interventions designed to prevent conflicts or their escalation measures to consolidate

peaceful relations through transformative short term and long term processes including conflict prevention, response, traditional dispute resolution, post conflict recovery, mediation and reconciliation;

“Secretary” means the Secretary to the Commission appointed under section 21; and

“vilification” includes saying or writing unpleasant things about a person or persons of a particular ethnicity and or religion so that other people may have a low opinion of that ethnic group or religion.

3. The object of this Act is to—

Object of the Act.

- (a) give effect to Articles 10 and 27 of the Constitution on the promotion of national unity and non-discrimination on ethnic grounds;
- (b) provide a framework for the promotion of national cohesion, unity and peace-building;
- (c) provide mechanisms for co-ordination and implementation of interventions aimed at promoting national cohesion and peace-building; and
- (d) provide a framework for the promotion of national values and principles of governance.

PART II– ESTABLISHMENT OF THE NATIONAL COHESION AND PEACE BUILDING COMMISSION

4. (1) There is established the National Cohesion and Peace Building Commission.

Establishment of the National Cohesion and Peace Building Commission.

(2) The Commission shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name be capable of—

- (a) suing and being sued;
- (b) acquiring, holding, charging and disposing of movable and immovable property;
- (c) entering into contracts; and
- (d) doing or performing all such other things or acts for the proper discharge of its functions under the Constitution, this Act or any written law, as may

be lawfully done or performed by a body corporate.

5. The promotion of national cohesion shall be guided by the—

Guiding principles.

- (a) values and principles of governance set out in Article 10 of the Constitution; and
- (b) values and principles of public service set out under Article 232 of the Constitution.

6. The functions of the Commission are to—

Functions of the Commission.

- (a) formulate and implement strategies, plans and programmes for the promotion of national unity;
- (b) collaborate with institutions and stakeholders to give effect to the policies relating to cohesion and integration;
- (c) make recommendations to the National and County governments and any other relevant entities on—
 - (i) the review and reform of practices, policies and legislation relating to cohesion and integration;
 - (ii) the criteria for deciding whether any public office or officer has committed acts of discrimination on the grounds of ethnicity;
- (d) identify factors inhibiting the attainment of harmonious relations among different social origins and put in place measures to address the problem;
- (e) promote—
 - (i) pursuant to Article 27 of the Constitution equality and the elimination of discrimination on grounds of ethnicity, race and religion;
 - (ii) peaceful coexistence, tolerance, understanding and acceptance of diversity in all aspects of life and encourage appreciation by all ethnic communities of all social, economic, cultural and political life of other communities; and

- (iii) equal access and enjoyment by persons from different ethnic, racial or social origins of public or other services and facilities provided by Government and private entities;
- (f) investigate complaints of hate speech, ethnic or racial contempt and discrimination on the basis of ethnic, clan, religious and racial origin and make recommendations to the Director of Public Prosecution or other relevant authority on the appropriate measures to be taken where such complaints are valid;
- (g) initiate investigations on its own accord or on request from any institution, office or person into any issue affecting ethnic, clan, racial or social relations;
- (h) develop policies for the promotion of national values and principles of governance;
- (i) undertake research and document findings on national cohesion and national values, peace building and conflict management;
- (j) foster partnerships with relevant state actors, non-state actors, bilateral and multilateral agencies on peace building and conflict management;
- (k) establish early warning and early response system on conflict and put in place an emergency preparedness and response system to curb imminent conflict; and
- (l) perform such other functions as may be necessary for the effective discharge of its mandate and exercise of its powers.

7. (1) The Commission shall have all powers necessary for the effective discharge of its functions under this Act.

Powers of the Commission.

(2) Without prejudice to the generality of the foregoing, the Commission shall have power to—

- (a) issue prohibition notices directing persons or entities involved in actions or conduct contrary to national cohesion, integration and peace building within seven days to cease such action or conduct;

- (b) summon witnesses and call for the production of books, plans, and other documents and to examine witnesses and parties on oath ;
- (c) publish the names of persons or institutions whose words or conduct may undermine or have undermined or contributed towards undermining good ethnic relations, or who are involved in ethnic discriminations or propagation of ethnic hatred;
- (d) enter into association with other bodies or organizations, within or outside Kenya, as it may consider desirable or appropriate and in furtherance of the objective for which the Commission is established;
- (e) control, supervise and administer the assets of the Commission in a manner and for purposes that best promote the purpose for which the Commission is established;
- (f) receive any grants gifts, donations or endowments and make legitimate disbursements therefrom; and
- (g) open bank accounts for the funds of the Commission.

8. (1) The headquarters of the Commission shall be in Nairobi.

Headquarters.

(2) The Commission shall ensure that all its services are accessible to all parts of the country and may establish branches at any place in Kenya as it may consider necessary.

9. (1) The Commission shall consist of a chairperson and three other members appointed in accordance with the Constitution and the provisions of this Act.

Membership of the Commission.

10. (1) A person is qualified for appointment as the chairperson or member of the Commission if that person –

Qualification for appointment of chairperson and members.

- (a) is a citizen of Kenya;
- (b) holds a degree from a university recognized in Kenya;
- (c) has knowledge and experience of at least ten years in matters relating to human relations, public affairs ,human rights or peace and security; and

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

(2) A person is not qualified for appointment under subsection (1) if the person—

- (a) is a member of a governing body of a political party;
- (b) is undischarged bankrupt;
- (c) has been convicted of a criminal offence and sentenced to imprisonment for a term of at least six months.

11. (1) The President shall, within fourteen days of the commencement of this Act or whenever a vacancy occurs, convene a selection panel for the purpose of selecting suitable candidates for appointment as the chairperson or member of the Commission.

Procedure for appointment of chairperson and members.

(2) The selection panel convened under subsection (1) shall consist of one person from each of the following bodies—

- (a) the inter-religious council of Kenya;
- (b) the ministry responsible for national cohesion;
- (c) the ministry responsible for matters relating to devolution;
- (d) the Law Society of Kenya;
- (e) the National Council for Persons living with Disability; and
- (f) the Public Service Commission.

(2) The ministry responsible for Public Service shall provide the selection panel with such facilities and other support as it may require for the discharge of its functions.

(3) The selection panel shall, subject to this section be guided by the procedure set out in the First Schedule.

(4) The cabinet secretary shall, within seven days of receipt of the approved nominees from Parliament, by notice in the *Gazette*, appoint the chairperson and members approved by Parliament.

12. The chairperson, members and secretary shall each make and subscribe before the Chief Justice, the oath or affirmation set out in the second schedule.

Oath of office.

13. (1) The chairperson shall, within seven days of the appointment of the members, convene the first meeting of the Commission at which the members shall elect the vice-chairperson of the commission from amongst the members.

Powers of the chairperson.

(2) The chairperson shall—

- (a) preside over all the meetings of the commission;
- (b) be the spokesperson of the Commission; and
- (c) supervise and direct the work of the Commission.

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

14. (1) The chairperson shall serve for a term of six years and is not be eligible for reappointment.

Term of office.

(2) A member of the Commission shall serve for a term of five years and is not eligible for reappointment.

15. (1) The office of the chairperson or a member of the commission shall become vacant if the holder—

Vacancy of office of chairperson and members.

- (a) dies;
- (b) by notice in writing addressed to the President resigns from office;
- (c) is removed from office under any of the circumstances specified under Article 251 and Chapter Six of the Constitution;
- (d) gross misconduct or misbehavior;
- (e) inability to perform functions of the office arising out of physical or mental infirmity;
- (f) violation of the code of conduct prescribed by the Commission;
- (g) incompetence or neglect of duty; or
- (h) bankruptcy.

(2) The cabinet secretary shall notify every resignation, vacancy or termination in the *Gazette* within seven days.

16. The chairperson or member of the Commission may be removed from office in accordance with Article 251 of the Constitution.

Removal from office.

17. (1) Where a vacancy occurs in the membership of the Commission under section 15 or 16, the appointment procedure provided for under this Act shall apply.

Filling a vacancy.

(2) A member appointed under subsection (1) to fill a vacancy shall serve for a term of five years and is not eligible for reappointment.

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

Committees of the Commission.

(2) The Commission may—

- (a) co-opt into the membership of a committee established under subsection (1), other persons whose knowledge and skills are necessary for the function of the Commission; or
- (b) hire such experts or consultants as are necessary for the function of the Commission.

19. (1) The business and affairs of the Commission shall be conducted in accordance with the Third Schedule.

Procedure of the Commission.

(2) Except as provided in the Third Schedule, the Commission may regulate its own procedure.

20. The salaries and allowances payable to, and other terms and conditions of service of the chairperson and members of the Commission shall be determined by the Salaries and Remuneration Commission.

Terms and conditions of service.

21. (1) There shall be a secretary to the Commission who shall be competitively recruited and appointed by the Commission.

Secretary to the Commission.

(2) The secretary shall hold office for a term of five years and is eligible for re-appointment for a further term of five years.

(3) A person is qualified for appointment as the Secretary to the Commission if the person—

- (a) is a citizen of Kenya;
- (b) holds a post graduate degree from a university recognized in Kenya;
- (c) has at least ten years' experience at senior management level;

- (d) has experience in any of the following fields—
 - (i) law;
 - (ii) economics;
 - (iii) public administration;
 - (iv) peace, conflict and social studies;
 - (v) corporate management;
 - (vi) human resource management;
 - (vii) financial management; and
 - (viii) meets the requirements of Chapter Six of the Constitution.

(4) The secretary shall be the chief executive officer of the Commission.

22. (1) The secretary may be removed from office by the Commission in accordance with the terms and conditions of service, for—

Removal of the Secretary.

- (a) inability to perform functions of the office arising out of physical or mental infirmity;
 - (b) gross misconduct or misbehavior;
 - (c) incompetence or negligence of duty;
 - (d) violation of the Constitution or any other written law;
 - (e) violation of the code of conduct prescribed by the Commission; or
 - (f) any other grounds specified in the terms and conditions of service.
- (2) before the secretary is removed under subsection (1) the secretary shall be given—
- (a) sufficient notice of the allegations made against him or her; and
 - (b) an opportunity to be heard on the allegations.

23. (1) The Commission may appoint such staff as may be necessary for the proper discharge of its functions under this Act, and upon such terms and conditions of service as the Commission may determine.

Staff of the Commission.

(2) The staff appointed under subsection (1) shall serve on such terms and conditions of service as the Commission, shall determine.

24. (1) The common seal of the Commission shall be kept in such custody as the Commission shall direct and shall not be used except on the order of the Commission.

Common seal of the Commission.

(2) The common seal of the Commission when affixed to a document and duly authenticated shall be judicially and officially noticed and, unless the contrary is proved any necessary order or authorization of the Commission under this section shall be presumed to have been duly given.

25. No matter or thing done by a member of the Commission or any officer of the Commission shall, if the matter is done in good faith while executing the functions, powers or duties of the Commission, render the member officer, employee or agent personally liable for any action, claim or demand whatsoever.

Protection from personal liability.

26. (1) If any person has a personal or fiduciary interest in any matter before the Commission, and is present at a meeting of the Commission or any committee at which that matter is the subject of consideration, that person shall as soon as is practicable after the commencement of the meeting, declare such interest and shall not take part in any consideration or discussion of, or vote on any question touching on such matter.

Conflict of interest.

(2) A disclosure of interest made under subsection (1) shall be recorded in the minutes of the meeting at which it is made.

(3) No member or staff of the Commission shall transact any business or trade with the Commission directly or indirectly.

(4) A person who contravenes this section commits an offence and shall be liable, upon conviction, to a fine not exceeding three million shillings or to imprisonment for a term not exceeding seven years or to both.

PART III—FINANCIAL PROVISIONS

27. (1) The funds of the Commission shall consist of— Funds of the Commission.

- (a) monies allocated by Parliament for purposes of the Commission;
- (b) such monies or assets as may accrue to the Commission in the course of exercise of its powers or in the performance of its functions under this Act; and
- (c) monies from any other source provided, donated or lent to the Commission.

28. (1) Before the commencement of each financial year, the Commission shall cause to be prepared estimates of the revenue and expenditure of the Commission for that year. Annual estimates.

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

- (a) payment of remuneration in respect of the members and staff of the Commission;
- (b) payment of pensions, gratuities and other charges in respect of benefits which are payable out of the funds of the Commission;
- (c) maintenance of the buildings and grounds of the Commission;
- (d) funding of training, research and development of activities of the Commission; and
- (e) any other expenditure necessary for purposes of this Act.

29. The financial year of the Commission shall be the period of twelve months ending on the thirtieth of June in each year. Financial year of the Commission.

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

(2) Within a period of three months after the end of each financial year, the Commission shall submit to the

Auditor-General the accounts of the Commission in respect of that year together with —

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

(3) The annual accounts of the Commission shall be prepared, audited and reported upon in accordance with the provisions of Articles 226 and 229 of the Constitution and the provisions of the Public Finance Management Act.

Act No. 12 of 2012.

31. (1) The Cabinet Secretary shall, prepare and submit to Parliament an annual report in accordance with Article 153 (4) of the Constitution.

Annual report.

(2) Where any of the recommendations contained in a report submitted under subsection (1) have not been implemented, the Cabinet Secretary shall report to Parliament the reasons thereof.

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

- (a) the financial statement of the Commission;
- (b) a description of the activities of the Commission;
- (c) other statistical information as the Commission may consider appropriate relating to the functions of the Commission;
- (d) any recommendations made by the Commission to State departments or any person and the action taken;
- (e) the impact of the exercise of any of its of function;
- (f) any impediments to the achievements of the objects and functions under the Constitution, this Act or any other written law; and
- (g) any other information relating to its functions that the Commission considers necessary.

(4) The annual report shall be published and publicized in such other manner as the Commission may determine.

**PART IV —DISCRIMINATION, HATE SPEECH
AND NEGATIVE ETHNICITY**

32. (1) A person discriminates against another person if— Ethnic
discrimination.

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

(2) A person discriminates against another person under subsection (1) (b), if that person applies to another person a provision, criterion or practice which he or she applies or would apply equally to persons not of the same race or ethnic or national origins as that other person, but which—

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

(3) For the purposes of this Act, treating a person less favorably than another person includes the segregation of a person from other persons on ethnic grounds.

(4) Subsection (1) does not apply to treatment of a person who has made an allegation if it is proved in a court of law that the allegation was false and not made in good faith.

33. A person discriminates against another person by way of victimization if the person carries out an act that is injurious to the well-being and esteem of that person by treating that person less favorably than other persons on grounds that the person discriminated against intends to or has—

Discrimination by
through
victimization.

- (a) brought proceedings against the discriminator or any other person under this Act;
- (b) done anything under this Act in relation to the discriminator or any other person;
- (c) given evidence or information in connection with proceedings brought by any person under this Act; or
- (d) alleged that the discriminator or any other person has committed an act which would amount to a contravention of this Act.

34. (1) A public entity shall ensure representation of the diversity of the people of Kenya in the employment of staff.

Discrimination in
employment.

(2) A public entity shall not recruit or have in its employment more than one third of its staff from the same ethnic community.

(3) An employer shall ensure equity in the employment of persons in the respective entity and shall, for this purpose.

35. (1) It shall not be deemed discriminatory under this Part where, having regard to the nature of the employment or the context in which it is carried out—

Exceptions to
discrimination in
the employment
field.

- (a) being of a particular race or particular ethnic or national origin is a genuine and determining occupational requirement; and
- (b) it is appropriate to apply that requirement in the particular case and the person to whom that requirement is applied does not meet it.

(2) Being of a particular ethnic group, is an occupational qualification and not a ground for discrimination for a job where—

- (a) the job involves cultural entertainment in a capacity for which a person of that ethnic group is required for reasons of authenticity; or
- (b) the job involves a work of art, visual image or sequence of visual images for which a person of that ethnic group is required for reasons of authenticity; or
- (c) the holder of the job provides persons of that ethnic group with personal services promoting their welfare, and those services can most effectively be provided by a person of that ethnic group.

(3) The provisions of subsection (2) do not apply in relation to the filling of a vacancy at a time when the employer already has employees of the ethnic group in question—

- (a) who are capable of carrying out the duties falling specifically within that paragraph;
- (b) whom it would be reasonable to employ on those duties; and
- (c) whose numbers are sufficient to meet the employer's likely requirements in respect of those duties without undue inconvenience.

36. (1) An organization shall not to discriminate against a person who is not a member of the organization.

Discrimination in membership of organizations.

- (a) in the terms in which it is prepared to admit that person to membership; or
- (b) by refusing or deliberately omitting to accept that person's application for membership.

(2) Subsection (1) shall not apply to an organization whose membership is limited to a given religious persuasion or profession.

37. (1) A public or private body, licensing authority, planning authority, public authority, employment agency, educational establishment or body offering training, shall

Discrimination by other agencies.

not discriminate against any person in the provision of services.

- (2) Subsection (1) shall not apply—
- (a) where it is proven that the alleged discriminatory act is a necessary requirement in the nature of business transaction and there is no alternative way of realizing the desired goal;
- (b) to public authorities—
- (i) in relation to any judicial act whether done by a court of law, tribunal or other person or any act done on the instructions, or on behalf, of a person acting in a judicial capacity; or
- (ii) for any action undertaken by the Cabinet Secretary responsible for matters relating to immigration, under any law on immigration, with respect to citizenship or nationality of a person.

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

Discrimination in access to and distribution of public resources.

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

(3) Public resources shall be deemed to have been distributed in an ethnically inequitable manner where—

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

39. (1) A manager under this section shall mean a person who has the power to lease, let or dispose of public property or property that is wholly meant for use by the public

Discrimination in property ownership, management and disposal.

(2) It is unlawful for a manager to discriminate against another person—

- (a) in the terms such manager offers, lets, manages or disposes the property to another person;
- (b) by unjustifiably refusing the other person's proposal for sale or engagement in the manager's business, where the same conditions do not apply to persons who are of the same ethnic group as such manager;
- (c) in a manager's treatment of a person with regard to any list of persons in need of property of that description.

(3) It is unlawful for a manager to discriminate against a person occupying premises—

- (a) in the way such manager affords a person access to any benefits or facilities, or by refusing or deliberately omitting to afford a person such access; or
- (b) by evicting a person or subjecting that person to any other detriment.

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

Exceptions to discrimination/
affirmative action.

- (a) to afford persons of a particular ethnic group access to facilities or services to meet the special needs of such persons in regard to their education, training or welfare, or other ancillary benefits; or
- (b) on grounds other than race, ethnic or national origin for the benefit of a person who is not a Kenyan citizen to afford the person access to facilities for education or training or other ancillary benefits, where it appears that the person in question does not intend to remain in Kenya after the period of education or training.

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

- (a) affording a person of a particular racial group access to facilities for training which would help to equip them for that work; or

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

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

- (a) affording persons who are of the ethnic group in question, and who appear likely to take up that work in that area, access to training in preparation for that work; or
- (b) encouraging persons of that group to take advantage of opportunities in the area for doing that work.

41. (1) A person shall not utter, publish, write or post words or images intended to incite feelings of contempt, hatred, hostility, violence or discrimination against any person;

Ethnic or racial contempt.

(2) A person who contravenes subsection (1) commits an offence and shall be liable, upon conviction to a fine not exceeding one million shillings, or to imprisonment for a term not exceeding five years, or to both.

(3) A website administrator or media enterprise shall not publish posts words or images intended to incite feelings of contempt, hatred, hostility, violence or discrimination against any person ,group or community on the basis of ethnicity or race;

(4) A website administrator or media enterprise that contravenes subsection (3) commits an offence and shall be

liable, on conviction to a fine not exceeding one million shillings, or to imprisonment for a term not exceeding five years, or to both.

(5) Where a website administrator or media enterprise is a corporation the principal officers shall be held personally liable on conviction to a fine not exceeding five million shillings or to imprisonment for a term not exceeding five years, or to both.

42. A person who—

Threats.

(a) subjects or threatens to subject another person to any detriment because that other person, or a person associated with that other person—

(i) has made a complaint against any person;

(ii) has brought any other proceedings under this Act against any person; or

(iii) has given evidence or information, or produced a document, in connection with any proceedings under this Act;

commits an offence and shall, on conviction, be liable to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding one year or to both.

43. A person who—

Offences.

(a) without justification or lawful excuse obstructs, hinders or threatens an officer acting under this Act;

(b) submits false or misleading information;

(c) fails to honour summons; or

(d) knowingly misleads the Commission or a member of staff of the Commission acting under this Act,

commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding one year or to both.

PART V—COMPLAINTS, INVESTIGATIONS AND ENFORCEMENT

44. (1) A matter may be investigated if—

Matters that may be investigated.

- (a) it is of such serious nature that it warrants an investigation;
- (b) it concerns a possible contravention in relation to class or group of persons; and
- (c) the circumstances are such that the lodging of a complaint by one person only would not be appropriate

(2) If the Commission after investigation is satisfied that a person has contravened a provision of part IV of this Act, the Commission shall make all reasonable endeavors to conciliate the matter.

45. A complaint to the Commission may be made on behalf of an aggrieved person—

Complaints.

- (a) if the aggrieved person is dead or otherwise not able to act for himself or herself, by a member of his or her family or other person suitable to represent the aggrieved person; or
- (b) by a member of Parliament with the consent of the aggrieved person or other person who, under paragraph (a), is entitled to make the complaint on behalf of the aggrieved person.

46. (1) A person wishing to lodge a complaint under this Act may do so orally or in writing addressed to the Commission.

Form of complaint.

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

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

(4) Upon receipt of a complaint under subsection (1), the Commission may—

- (a) call for information or a report regarding such complaint from any person within such reasonable time as may be specified by the Commission; and
- (b) without prejudice to paragraph (a), initiate such inquiry as it considers necessary, having regard to the nature of the complaint.

(5) If the information or report called for under subsection 4 (a) is not received within the time stipulated by the Commission, the Commission may proceed to inquire into the complaint without such information or report.

(6) If on receipt of the information or report the Commission is satisfied either that no further action is required or that the required action has been initiated by a State organ or other body responsible for the matters complained of, the Commission shall, in writing, inform the complainant accordingly and take no further action.

47. (1) The Commission may, for the purpose of conducting any investigation pertaining to an inquiry, employ the services of any public officer or investigation agency of the Government at the expense of the Commission.

Investigations by the Commission.

(2) For the purpose of investigating any matter pertaining to an inquiry, a public officer or agency whose services are employed under subsection (1) may, subject to the direction and control of the Commission—

- (a) summon and enforce the attendance of any person for examination;
- (b) require the discovery and production of any document and;
- (c) subject to the Constitution and any written law requisition any public records and copy thereof from any public officer.

(3) The public officer or any agency whose services are employed under subsection (1) shall investigate any matter pertaining to the inquiry and submit a report thereon to the Commission.

(4) The Commission shall satisfy itself on the correctness of the facts stated and the conclusion, if any arrived at in the report submitted to it under subsection (3) and for that purpose, the Commission may make such inquiry, including the examination of any person or person's shoes conduct can assist in the investigation as it considers necessary.

48. If the Commission decides not to investigate or to discontinue the investigation of a complaint, the

Notice if complaint was not investigated.

Commission shall inform the complainant in writing of that decision and the reasons for that decision as soon as reasonably possible.

49. Before commencing an investigation under this Act, the Commission shall give notice of the intended investigation to the administrative head of the State organ, public office or organization.

Notice of investigation to organization.

50. (1) subject to subsection (2), if at any stage of an inquiry the Commission—

Persons likely to be prejudiced or affected to be heard.

(a) considers it necessary to inquiry into the conduct of any person; or

(b) is of the opinion that the reputation of any person is likely to be prejudiced by the inquiry, it shall give that person an opportunity to appear before the Commission by himself or by an advocate to give evidence in his own defence.

(2) This section shall not apply where the credibility of a witness is being impeached.

51. No statement made by a person in the course of giving evidence before the Commission shall subject such person to any civil or criminal proceedings except for giving false evidence by such statement.

Statements made by persons to the Commission.

52. The Commission may, upon inquiry into a complaint under this Act take any of the following steps—

Action after inquiry.

- (a) where the inquiry discloses a criminal offence, refer the matter to the Director of Public Prosecution or any other relevant authority or undertake such other action as the Commission may deem fit against the concerned person or persons;
- (b) recommend to the complainant a course of other judicial redress which does not warrant an application under Article 22 of the Constitution;
- (c) recommend to the complainant and to the relevant governmental agency or other body concerned in the alleged violation, other appropriate methods of settling the complaint or to obtain relief;
- (d) provide a copy of the inquiry report to all interested parties; and

- (e) submit summonses as it deems necessary in fulfillment of its mandate.

53. (1) After concluding an investigation or an inquiry under this Act, the Commission shall make a report to the State organ, public office or organization to which the investigation relates.

Report to organization.

(2) The report shall include—

- (a) the findings of the investigation and any recommendations made by the Commission;
- (b) the action the Commission considers should be taken and the reasons for the action; and
- (c) any recommendation the Commission considers appropriate.

(3) The Commission may require the State organ, public office or organization that was the subject of the investigation to submit a report to the Commission within a specified period on the steps, if any, taken to implement the recommendations of the Commission.

(4) If there is failure or refusal to implement the recommendations of the Commission within the specified time, the Commission may prepare and submit to Parliament a report detailing the failure or refusal to implement its recommendations and Parliament shall take appropriate action.

54. If, after an investigation, the Commission is of the opinion that there is evidence that a person, an officer or employee of the State organ, public office or organization which was investigated under this Act is guilty of misconduct, the Commission shall report the matter to the appropriate authority.

Report to the complainant.

55. The hearings of the Commission during an inquiry shall be open to the public, except where the Commission decides otherwise.

Hearings of the Commission.

56. A person shall not be liable for any loss, damage or injury suffered by another person by reason of lodging of a complaint or the production of documents, information or evidence.

Protection of persons giving evidence and information.

57. (1) If the Commission considers that a complaint may be conciliated successfully, the Commission shall refer the complaint to the Secretary for conciliation.

Commission may refer complaint to conciliation.

(2) The Commission shall endeavor to resolve any matter before it through conciliation, mediation and negotiation.

(3) The Commission shall constitute a conciliation committee from amongst its members.

(4) A conciliation committee shall, by written notice require any person to—

- (a) attend the committee sittings to discuss the subject matter of the complaint; or
- (b) produce any documents specified in the notice.

58. (1) If, pursuant to section 53, the parties to the complaint reach an agreement, the conciliation committee shall record the conciliation agreement.

Conciliation agreements.

(2) The parties shall be bound to comply with the conciliation agreement under subsection (1).

59. (1) The Commission may decline to consider a complaint if it considers that a complaint—

Commission may decline to entertain Complaint.

- (a) is frivolous, vexatious, misconceived or lacking in substance;
- (b) involves a subject matter that would be more appropriately dealt with by a court of law; or
- (c) relates to an alleged contravention of the Act that took place more than twelve months before the complaint was lodged

(2) The Commission shall notify the complainant and the respondent of its decision in writing within thirty days after the complaint was lodged.

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

Application to strike out complaint.

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

- (a) before the respondent has been given notice to attend under section 53 or has otherwise been notified by the Commission of a date for conciliation; or

(b) after the conciliation has been completed but before the complaint is set down for hearing.

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

61. The Commission shall after, hearing the evidence that the parties to a complaint, adduce—

Decisions of the Commission.

(a) find the complaint or any part of it proven and issue a compliance notice in a manner provided for under section 63; or

(b) find the complaint or any part of it not proven and make an order that the complaint or part of it be dismissed.

62. (1) The Commission may issue a compliance notice to any person requiring the person to whom it is issued to comply with the duty specified therein.

Compliance Notice.

(2) A person issued with a compliance notice under subsection (1) shall inform the Commission within thirty days of the date on which the notice is served, of the steps that the person has taken, or is taking, to comply with the duty specified in the notice.

(3) A compliance notice issued under subsection (1) may require the person concerned to furnish the Commission with such documents required by the notice in order to verify that the notice has been complied with.

(4) A compliance notice issued under subsection (1) may require the person concerned to furnish the Commission with such documents required by the notice in order to verify that the notice has been complied with.

(5) A compliance notice shall specify—

(a) the date, no later than three months from the date on which the notice is served, when any information specified in the notice is to be furnished to the Commission; and

(b) the manner and form in which any information is to be furnished.

(6) A compliance notice issued under this section shall not require a person to furnish information which that

person would not be compelled to furnish in evidence in civil proceedings before a court of law.

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

Enforcement of
Compliance
Notice.

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

(2) If a person has not complied with section 63, the Commission may apply to the High Court for an order requiring the person to comply with the requirement of the notice

64. (1) The Commission shall, in exercising its powers, expedite the disposal of special references.

Special
References.

(2) A special reference is—

- (a) a complaint the resolution of which may have significant social, economic or financial effects on a community or a section of a community; or
- (b) a complaint the subject matter of which involves issues of a particular complexity and the resolution of which may establish important precedents in the interpretation or application of this Act.

(3) The Commission shall determine whether or not a matter brought before it is a special reference.

PART VI—MISCELLANEOUS PROVISIONS

65. (1) Proceedings against the Commission shall be deemed to be proceedings against the Government and shall be subject to the Government Proceedings Act.

Legal Proceedings
against the
Commission.

Cap 40.

(2) Any notice or other process in respect of legal proceedings under subsection (1) shall be served upon the Secretary to the Commission.

66. (1) A person shall not, either directly or indirectly disclose, communicate, or make a record of any information obtained during the performance of their functions or duties under this Act, unless it is necessary to

Confidentiality of
information.

do so for the purpose of or in connection with, the performance of a function or duty or the exercise of power under this Act or any other written law.

(2) Subsection (1) applies to every person who—

(a) is or has been—

- (i) a member of the Commission;
- (ii) the Secretary to the Commission;
- (iii) a member of staff of the Commission; or
- (iv) any other person acting under the authority of the Commission;

(b) has obtained information as a result of another person performing functions or duties or exercising powers under this Act.

(3) A person who contravenes subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding one hundred thousand shillings or to imprisonment to a term not exceeding of six months or both.

67. If a complaint has been lodged or a document or any information or evidence has been produced or given to the Commission, a person is not personally liable for any loss, damage, or injury suffered by another person by reason only of the lodging of the complaint or the production or giving of the document, information or evidence.

Protection of witnesses and informants.

68. (1) A member of the Commission or member of staff commits an offence if he or she—

Offences by member of staff.

- (a) causes anything to be done through another person that would constitute a contravention of the Act if done by the member or officer; or
- (b) allows or directs a person under their supervision or control to do anything that is in contravention of the Act.

(2) Subsection (1) (b) shall not apply where anything is done without the member of staff's knowledge or consent or if the member of staff has taken reasonable steps to prevent it.

(3) A member of staff who acts under an unlawful direction shall be responsible for his or her action.

69. (1) If a public officer considers that anything required of them is in contravention of the Act or is otherwise improper or unethical, the member or officer shall report the matter to the Commission.

Reporting improper orders.

(2) The Commission shall investigate the report and take appropriate action within ninety days of receiving the report.

70. (1) A person who—

Other offences.

- (a) fails to comply with a notice by the Commission issued under section 64;
- (b) without reasonable justification or other lawful cause hinders or obstructs or uses insulting language against a Commissioner, member of staff of the Commission or the Secretary in the exercise of powers or the performance of functions under this Act; or
- (c) gives any information or makes any statement which the person knows is false or misleading in any material particular to the Commission, the Secretary or a person acting on behalf of the Commission.

commits an offence, and on conviction, is liable to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding one year or to both.

71. Any person who commits an offence under this Act for which no penalty is provided is liable, on conviction, to a fine not exceeding one million shillings or to a term of imprisonment not exceeding two years or to both.

General penalty.

72. (1) A person who is aggrieved by a decision of the Commission under this Act may, within fourteen days apply to the Commission for review of that decision.

Review.

(2) The Commission shall, within thirty days, determine and communicate its decision to the appellant

73. (1) The Cabinet Secretary may, in consultation with the Commission make Regulations for the effective implementation of this Act.

Regulations.

(3) Despite the generality of subsection (1) the Cabinet Secretary shall make Regulations—

- (a) promoting the use of alternative and traditional dispute resolution mechanisms subject to Article 159 of the Constitution;
- (b) prescribing procedures of complaints, conciliation committee and other bodies established under this Act; or
- (c) prescribing forms for the purposes of this Act.

74. The National Cohesion and Integration Act, is repealed.

Repeal of Act No. 12 of 2008.

PART VIII—TRANSITIONAL PROVISIONS

75. In this Part—

Interpretation of Part

“former Commission” means the National Cohesion and Integration Commission established under the National Cohesion and Integration Act.

Act No.12 of 2008.

76. All complaints, which immediately before the commencement of this Act were made to the former Commission at the commencement of this Act, shall be deemed to have been made to the Commission.

Transfer of complaints to the Commission.

77. The Commission shall be bound in all contracts, including contracts of service if any, subsisting at the commencement of this Act and to which the former Commission was party.

Contracts.

78. (1) Subject to this Act, all the rights, duties, obligations, assets and liabilities of the former Commission existing at the commencement of this Act shall automatically and fully be transferred to the Commission

Savings.

(2) Notwithstanding section 76—

- (a) any order or notice made or issued by the former Commission shall be deemed to have been made or issued under this Act;
- (b) any function carried out by the former Commission during the transition period shall be deemed to have been carried out under this Act;
- (c) all assets and liabilities which immediately before the commencement of this Act were vested in the former Commission shall vest in the Commission;

- (d) all rights, powers and duties, whether arising under any written law or otherwise which immediately before the commencement of this Act were vested in the National Cohesion and Integration Commission shall be transferred to, vested, imposed on or be enforceable by or against the Commission;
 - (e) all actions, suits or legal proceedings by or against the former Commission shall be carried out on or prosecuted by or against the Commission and no such suit, action or legal proceeding shall abate or be affected by the coming into operation of this Act
- (3) The persons, who were members of the former Commission, shall become members of the Commission upon the commencement of this Act for their unexpired term.

FIRST SCHEDULE

s. 11(3))

**PROCEDURE FOR NOMINATION AND
APPOINTMENT OF CHAIRPERSON AND
MEMBERS**

(1) The selection panel shall, within seven days of its convening, invite applications from qualified persons and publish the names and qualifications of all applicants and their qualifications in the *Gazette* and two daily newspapers of national circulation.

(2) The selection panel shall within seven days of receipt of applications under subsection (1) consider the applications, interview and shortlist at least three persons qualified for appointment as Chairperson and ten persons qualified for member, for appointment to the President.

(3) The President shall within seven days of receipt of the names forwarded under subsection (3) nominate one person for the position of Chairperson and three persons for appointment as members of the Commission and forward the names to Parliament for approval.

(4) Parliament shall within twenty one days of its sitting consider each nomination received and approve or reject any of them.

(5) Where Parliament approves the nominees, the Speaker of either House of Parliament shall within five days forward the names of the approved applicants to the President for appointment.

(6) Where Parliament rejects any of the nominees under subsection (4), the Speaker of either House of Parliament shall within five days communicate the decision of Parliament to the President and request the President to submit fresh nominations from amongst the names shortlisted and forwarded by the selection panel under subsection (3).

(7) Where Parliament rejects any or all of the subsequent nominees submitted by the President for approval under subsection (4), the provisions of subsection (3) and (4) shall apply with a fresh panel being constituted.

(8) In shortlisting, nominating or appointing persons as Chairperson and members of the Commission, the President, Parliament and the selection panel shall—

- (a) take into account the values and principles set out in Articles 10, 27 and 232 of the Constitution; and
- (b) ensure that not more than two-thirds of the members are of the same gender.

(9) Despite the above provisions, 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.

(10) The selection panel shall stand dissolved upon the appointment of the Chairperson and members under paragraph (8).

SECOND SCHEDULE (s.12)

**OATH/AFFIRMATION OF OFFICE OF
CHAIRPERSON/MEMBER/SECRETARY**

I.....having been appointed (a Chairperson of / a Member of /a Secretary to) the National Cohesion and Integration Commission under the National Cohesion and Peacebuilding Act, do solemnly (swear/declare and affirm) that I will faithfully and fully, impartially and to the best of my ability, discharge the trust and perform the functions and exercise the powers devolving upon me by virtue of this appointment without fear, favor, bias, affection, ill-will or prejudice. SO HELP ME GOD.

Sworn/Declared by the
said.....

Before me this..... day of

.....

.....

Chief Justice

THIRD SCHEDULE**(S. 19)****MEETINGS AND PROCEDURE OF THE
COMMISSION****1. Meetings**

(1) The Commission shall decide when and where it meets and the meetings shall be convened by the Chairperson.

(2) The Commission shall have at least four meetings in every financial year and not more than four months shall lapse between one meeting and the next meeting.

(3) Unless three quarters of the members otherwise agree, at least seven days' notice in writing shall be given to every member for a meeting.

(4) A meeting shall be presided over by the Chairperson or in his or her absence the vice-chairperson.

(5) The members of the Commission shall elect a vice-chairperson from amongst themselves—

- (a) at the first sitting of the Commission; and
- (b) whenever it is necessary to fill the vacancy in the office of the vice-chairperson.

(6) The chairperson and the vice-chairperson shall not be of the same gender.

(7) The Commission may invite any person to attend any of its meetings and to participate in its deliberations, but such person shall not have a vote in any decision of the Commission.

2. Quorum

(1) Subject to subparagraph (2), the quorum of the meeting shall not be less than half of the appointed members.

(2) Where there is a vacancy in the Commission, the quorum of the meeting shall not be less than two appointed members.

3. Voting

A question before the Commission shall be decided with a supporting vote of at least two-thirds of the members present.

4. Rules of procedure and minutes

The Commission shall—

- (a) determine rules of procedure for the conduct of its business; and
- (b) keep minutes of its proceedings and decisions.

MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and Reasons for the Bill

The principal object of this Bill is to repeal the National Cohesion and Integration Act (No.12 of 2008). The main aim is to provide for a coordinated structure for peace building and cohesion in Kenya.

The Bill in amending the National Cohesion and Integration Act, the Bill seeks to create the National Cohesion and Peace Building Commission. It will be charged with ensuring the formulation of strategies, plans and programs for the promotion of national unity.

Under the Bill, the Commission is also mandated to investigate and make recommendations to the Director of Public Prosecution on complaints of hate speech, ethnic or racial contempt and discrimination on the basis of ethnic, clan or religious origins.

The tasks of vetting the Chairperson and members of the Commission is vested on a selection panel that draws its membership from the ministry responsible for matters relating to national cohesion, the ministry responsible for matters relating to devolution, the Public Service Commission, the Law society of Kenya, and the National Council for persons living with disability. The Bill envisages that the selection panel and the President will adhere to the values and principles of public service in interviewing and nominating persons to serve in the Commission.

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

The Bill does not delegate legislative powers nor does it limit the fundamental rights and freedoms.

Statement on how the Bill concerns county governments

Article 10 of the Constitution binds all state organs to adhere to the national values and principles of governance. National cohesion has a bearing on national unity, equality, inclusiveness, human rights, non-discrimination and protection of the marginalized. The values and principles of good governance are therefore applicable to county governments hence they are required to put in place measures to ensure the actualization of Article 10 of the Constitution

The Bill is therefore a Bill concerning county governments in terms of Article 110 (1) (a) of the Constitution.

Statement that the Bill is not a money Bill, within the meaning of Article 114 of the Constitution

This Bill is not a money Bill within the meaning of Article 114 of the Constitution.

Dated the 4th October, 2018.

JUDITH PARENO,
Senator.