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THE SENATE

TWELFTH PARLIAMENT

FOURTH SESSION, 2021

THE STANDING COMMITTEE

ON

NATIONAL COHESION, EQUAL OPPORTUNITY AND REGIONAL INTEGRATION
COMMITTEE

REPORT ON THE NATIONAL COHESION AND PEACE BUILDING BILL, 2021

Clerk's Chambers,
Parliament Buildings,
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PREFACE

Mr. Speaker Sir,

The Senate Standing Committee on National Cohesion, Equal Opportunity and Regional Integration was constituted during the First Session of the Twelfth Parliament pursuant to the provisions of Standing Order 218 of the Senate Standing Orders.

Mandate of the Committee

The Committee is mandated under the Second Schedule of the Senate Standing Orders to consider all matters relating to the pursuit of national and inter-community cohesion, the equalization of opportunities and improvement in the quality of life and status of all persons, regional integration, the East Africa Legislative Assembly and the Pan African Parliament.

Oversight

In executing its mandate, the committee engages with the following Ministries and Institutions-

- (i) Ministry of Interior and Co-ordination of National Government
- (ii) National Cohesion and Integration Commission (NCIC)
- (iii) The Ministry of Public Service and Gender
- (iv) Ministry of ICT, Innovation and Youth Affairs
- (v) The Kenya National Commission on Human Rights (KNCHR)
- (vi) The National Gender and Equality Commission
- (vii) National Council for Persons with Disability (NCPWD)
- (viii) Ministry of East African Community (EAC) and Regional Development

Membership of the Committee

The Committee is comprised of the following members:

- | | | |
|----|---|------------------|
| 1. | Sen. Naomi Shiyonga Masitsa, MP | Chairperson |
| 2. | Sen. Christine Zawadi Gona, MP | Vice-Chairperson |
| 3. | Sen. (Dr.) Christopher Andrew Lang'at, MP | Member |
| 4. | Sen. Iman Falhada Dekow, MP | Member |
| 5. | Sen. (Dr.) Lelegwe Ltumbesi, MP | Member |
| 6. | Sen. Samson Cherarkey, MP | Member |

ABBREVIATIONS

EAC	East African Community
FIDA-Kenya	Federation of Women Lawyers
KCPF	Kenya Christians Professionals Forum
KNHRC	Kenya National Human Right Commission
NCIC	National Cohesion and Integration Commission
NCPWD	National Council for Persons with Disability

- | | | |
|----|---|--------|
| 7. | Sen. Judith Pareno, MP | Member |
| 8. | Sen. Mercy Chebeni, MP | Member |
| 9. | Sen. (Dr.) Gertrude Musuruve Inimah, MP | Member |

Acknowledgement

The Committee wishes to thank the Offices of the Speaker and the Clerk of the Senate for the support extended to it in the conduct of stakeholder engagement. The Committee also expresses its gratitude to stakeholders who made submissions, both orally and in writing.

I also thank Members of the Standing Committee on National Cohesion, Equal Opportunity and Regional Integration for their tireless work in the consideration of the Bill.

Thank You,

Signed



CHAIRPERSON

(SEN. NAOMI SHIYONGA MASITSA, MP)

Date:13th October, 2021

EXECUTIVE SUMMARY

This report documents the consideration of the National Cohesion and Peace Building Bill (Senate Bills No.19 of 2021) sponsored by Senator Judith Pareno by the Senate Standing Committee on National Cohesion, Equal Opportunity and Regional Integration.

Chapter one of the Report provides a background and an overview of the Bill. The National Cohesion and Peace Building Bill (Senate Bills No.19 of 2021) sponsored by Senator Judith Pareno was read a first time on the floor of the House on Tuesday 6th July, 2021 and stood committed to the Committee for public participation pursuant to Article 118 of the Constitution and standing order 140(5) of the Senate Standing Orders.

The Bill had previously undergone the legislative process in the Senate and was referred to the National Assembly in line with the Constitution and the Senate Standing Orders. However, following the High Court Judgement *on petition No. 284 of 2019; Senate of the Republic of Kenya & 4 others v Speaker of the National Assembly & Another; Attorney General & 7 Others*, which inter alia, ordered republication of all Bills that had not undergone the concurrence process, the Bill was republished as the National Cohesion and Peace Building Bill (Senate Bills No.19 of 2021).

The Committee invited submissions from stakeholders and members of the public on the Bill via an advertisement in the local dailies dated 9th July 2021 and Parliament's website. The Committee held a Consultative workshop with the National Cohesion and Integration Commission (NCIC) on 29th to 31st July, 2021 in Mombasa County to deliberate on the Bill.

Further, the committee received written Memoranda from the following stakeholders:

- i. Ministry of Interior and Coordination of National Government, Directorate of National Cohesion and Values
- ii. National Cohesion and Integration Commission (NCIC)
- iii. Federation of Women Lawyers (FIDA-Kenya)
- iv. Kenya Christians Professionals Forum (KCPF)
- v. Kenya National Human Right Commission (KNHRC)

Chapter two of the Report provides the submissions by the various stakeholders that were captured in the matrix appended to the Report and in the summary provided.

Chapter three documents the observations made by the committee as indicated below:

The Committee **observed** as follows:

- 1) The role of the County Governments has not been clearly defined in the Bill hence there is need to provide for the role of County Governments in National Cohesion and Peace Building in the Bill.
- 2) On Clause 7(2)(c) of the Bill on publishing the names of persons and institutions without a conclusive investigation and fair trial, the Committee observed that this may infringe on rights to fair administrative action as provided for in Article 47 of the Constitution. Further that, publishing false statements which causes damages also qualifies as defamation. The Committee observed that there is need to provide that publication of names is done upon conviction by a competent Court.
- 3) On Clause 7 of the Bill on Powers of the Commission to compel attendance of witnesses, the committee proposed to explicitly elevate the Commission's summoning mechanism to that of the High Court to among others; compel documents, summon witnesses which failure to honour amounts to contempt, hence a culpable offence which upon conviction is punishable for a term of not less than six months and a fine not exceeding one million shillings or both. The Committee observed that such powers would ensure that summons are obeyed as lack of such powers will make the Commission toothless hence weak.
- 4) On Membership of the Commission under Clause 9 of the Bill, the Bill reduces the Membership of the NCIC from the current eight (Chairperson and seven Members) to five, that is, the Chairperson and four other Members. The Committee proposed the retention of the current membership made up of a chairperson and seven commissioners since the mandate of the Commission is wide, complex and thus requires more members in order to effectively discharge its functions. Additionally, the Constitution under Article 250(1) allows a maximum of nine members. The Committee observed that reducing the Commission's membership will greatly disadvantage it in the effective discharge of its functions.
- 5) On Clause 21 of the Bill on the Secretary to the Commission, the Bill proposed that the Secretary to the Commission shall hold office for a term of five years and is eligible for re-

appointment for a further term of five years. The Committee proposed that the Secretary holds office for a term of three years and be eligible for re-appointment for a further term of three years, as is the current practice in government institutions. Further, that the Commission Secretary shall also be the accounting officer to the Commission. The Committee observed that there is need to align the clause with the current Government best practice.

- 6) On Clause 31 of the Bill on Annual Report, the Committee observed that the Bill bestows the duty of preparation and submission of Annual Reports to the Cabinet Secretary in accordance with Article 153(4) of the Constitution. However, the Committee observed that this provision as provided would be undermining the independence of the Commission and therefore proposed that the Commission prepares and submits annual reports to the Cabinet Secretary and to both Houses of Parliament that is, the National Assembly and the Senate.
- 7) On Clause 32 of the Bill on ethnic discrimination, the Committee proposed that the Bill should adopt the definition of racial discrimination as provided in Article 1 of the International Convention on the Elimination of all Forms of Racial Discrimination. This is in order to enrich the definition and align it with the aforementioned Convention.
- 8) On Clause 34 of the Bill on discrimination in employment, the Committee observed that the scope of the provision should be enhanced to among others; require all public entities to submit annual compliance reports to the Commission, invalidating recruitment processes in contravention to the Clause as well as criminalising such contraventions.
- 9) The Committee observed that the Bill lacked a provision prohibiting hate speech and the sanctions therein.
- 10) On Clause 44 (1) (a) of the Bill on matters that may be investigated, the Committee proposed that the Bill ought to provide a criterion/checklist on which actions may be considered of a serious nature. Having no criteria may result in different interpretations of the clause and lack of uniformity.
- 11) The Committee observed that on Clause 2 of the Bill the definition of ‘ethnic group’ and ‘ethnic relation’ ought to be broadened in order to use definitions that reflect the unique nature and component of group interactions in Kenya.

- 12) The Committee observed that there is a need to prohibit discrimination on the basis of disability in the Bill.

Other Observations

- 13) FIDA Kenya in their submissions to the Committee opined that the National Cohesion and Peace Building Bill is a duplication of the National Cohesion and Integration Act No.12 of 2008 and therefore in FIDA's view the Bill was not necessary. The Committee however observed that this was incorrect since the proposed Bill, that is the National Cohesion and Peace Building Bill, 2021 seeks to repeal the National Cohesion and Integration Act No.12 of 2008 and not to duplicate it. The proposals by FIDA Kenya were therefore not adopted.
- 14) The Ministry of Interior and Coordination of National Government, Directorate of National Cohesion and Values herein termed as the Ministry in their submissions proposed that provisions of the proposed Bill encroached on the constitutional mandate of His Excellency the President as provided for under Articles 131 and 132.
- The Committee differed and observed that it is the work of Parliament to make legislation to give effect to Constitutional provisions and hence this cannot be termed as an infringement on the President's mandate. Additionally, the President does not perform these mandates on his own, but rather he uses different bodies and institutions mandated in law to execute them. Further, a Sessional Paper is not superior to an Act of Parliament. The mandate of the Commission is established in the Act and therefore cannot be said to infringe on the mandate of a department or institution established by a Sessional Paper. The proposals by the Ministry were therefore not adopted.
- 15) On submissions by the Kenya Christians Professionals Forum (KCPF), the committee observed that the stakeholder did not appreciate the intention of the Bill which was to repeal the existing legislation, that is, the National Cohesion and Integration Act No.12 of 2008 and replace it with the new legislation, that is, the National Cohesion and Peace Building Bill (Senate Bills No. 19 Of 2021). Contrary to the proposal by KCPF, these changes would not occasion financial expenditure since the infrastructure remains the same. The Bill also transitions all service contracts and assets of the former Commission to the new Commission. The proposals by KCPF were therefore not adopted.

Chapter **four documents the recommendations** made by the Committee as indicated below:

Recommendations:

- 1) That, the Bill in Clause 6 shall be amended to provide that the Commission in performance of its functions, collaborates with the county governments.
- 2) That, the Bill in Clause 7(2) provides that publications of names of persons and 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 shall be published upon conviction by a competent Court.
- 3) That the provision on the powers of the Commission be amended to enhance the Commission's powers to those of the High Court to among others, to summon witnesses and compel production of documents.
- 4) That the membership of the Commission be increased from five (5) to eight (8).
- 5) That the term of office of the Commission Secretary be reduced from five (5) years to three (3) years which may be renewed once. Additionally, the Commission Secretary shall also be the accounting officer to the Commission.
- 6) That the Bill be amended to provide for the Commission to prepare and submit to the Cabinet Secretary, the National Assembly and the Senate an annual report in accordance with Article 153(4) of the Constitution.
- 7) That Clause 32 of the Bill which provides for ethnic discrimination be amended in order to enrich the definition and align it with the definition under Article 1 of the International Convention on Elimination of all Forms of Racial Discrimination.
- 8) That the following provisions be added to Clause 34 of the Bill -
 - a) A public entity to afford adequate and equal opportunities for appointment, training and advancement of staff at all levels.
 - b) A public entity at the national level of government shall ensure that not more than one fifth of senior management positions are held by one ethnic community.
 - c) A requirement on all public entities to submit annual compliance reports to the Commission.
 - d) Invalidating any recruitment process that is in contravention of the provision of this Clause.
 - e) Criminalising contravention of any provision of the Clause.

- 9) That, a provision prohibiting hate speech be inserted in the Bill.
- 10) That, the provision on the matters that may be investigated be amended to broaden the scope of the investigative mandate of the Commission.
- 11) That Clause 2 of the Bill be amended to broaden the definition of 'ethnic group' and 'ethnic relation'.
- 12) That a provision prohibiting discrimination on the basis of disability be inserted in the Bill.

CHAPTER ONE

INTRODUCTION

1.0 Background

The National Cohesion and Peace Building Bill (Senate Bills No.19 of 2021) sponsored by Senator Judith Pareno was read a first time on the floor of the House on Tuesday, 6th July, 2021 and stood committed to the Standing Committee on National Cohesion, Equal Opportunity and Regional Integration for public participation pursuant to Article 118 of the Constitution and Standing Order(SO) 140(5) of the Senate Standing Orders.

The Bill had already undergone the legislative process in the Senate and had been referred to the National Assembly in line with the Constitution and the Senate Standing Orders. However, following the High Court Judgement *on petition No. 284 of 2019; Senate of the Republic of Kenya & 4 others v Speaker of the National Assembly & Another; Attorney General & 7 Others*, which inter alia, ordered republication of all Bills that had not undergone the concurrence process, the Bill was republished as the National Cohesion and Peace Building Bill (Senate Bills No.19 of 2021).

The Committee invited submissions from stakeholders and members of the public on the Bill via an advertisement in the local dailies dated Friday, 9th July 2021 and Parliament's website. The Committee held a consultative workshop with National Cohesion and Integration Commission (NCIC) from 29th to 31st July, 2021 in Mombasa County to deliberate on the Bill.

Further, the committee received written Memoranda from the following stakeholders:

- i. Ministry of Interior and Coordination of National Government, Directorate of National Cohesion and Values
- ii. National Cohesion and Integration Commission (NCIC)
- iii. Federation of Women Lawyers (FIDA-Kenya)
- iv. Kenya Christians Professionals Forum (KCPF)

v. Kenya National Human Right Commission. (KNHRC)

The Committee also held a series of meetings to deliberate on the Bill and consider the stakeholder submissions.

1.1 Purpose of the Bill

The Bill seeks to repeal the National Cohesion and Integration Act No.12 of 2008 and to provide for the establishment of an institutional framework for oversight, enforcement and coordination of national cohesion and peace-building in the country. Additionally, the Bill seeks to establish the National Cohesion and Peace Building Commission in place of the National Cohesion and Integration Commission NCIC).

1.2 Overview of the Bill

Clause 1 of the Bill provides for the short title while **clause 2** deals with definitions of terms used in the Bill.

The Bill introduces and defines some new words such as;

- (a) peace building which is defined to mean *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;*
- (b) coded language on the other hand is defined as *information written, or 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 and;*
- (c) “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.

Clause 3 of the Bill sets out broadly the object and purpose of the Bill which are based on Articles 10 and 27 of the Constitution which mainly provide as follows -

- (a) to create a unified, cohesive and non-discriminative society by giving effect to the provisions of the Constitution on the promotion of national unity and non-discrimination on ethnic grounds;
- (b) facilitating the promotion of national cohesion and unity through peacebuilding;
- (c) establishment of an institutional framework for national cohesion and peace building;
- (d) providing a mechanism for coordination and implementation of interventions aimed at promoting national cohesion and peacebuilding;
- (e) providing a framework for the promotion of national values and principles of governance; and
- (f) providing an opportunity for all persons to have the full right to equal enjoyment of all rights and fundamental freedoms under the law.

Clause 5

Sets out the guiding principles which seek to promote national cohesion as set out under Article 10 of the Constitution and the values and principles of public service under Article 232 of the Constitution.

Clause 6 sets out the functions of the National Cohesion and Peacebuilding Commission.

Some of the functions are-

- (a) to formulate and implement programmes for the effective promotion of national unity;
- (b) foster partnerships with relevant state actors, non-state actors, bilateral and multilateral agencies on peacebuilding and conflict management;
- (c) coordinate the National Conflict Early Warning and Early Response System;
- (d) facilitate the development of the national peace architecture; and
- (e) collaborate with institutions and stakeholders to give effect to the social, economic and political policies relating to cohesion and integration.

Clause 7

Gives the Commission the necessary powers for the effective discharge of its functions. Such powers include –

- (a) issuance of prohibition notices of seven days directing persons or entities involved in actions or conduct contrary to the Act to cease from doing so;
- (b) Summoning witnesses and interrogating them on oath;
- (c) Publishing the names of persons or institutions whose words or conduct undermine or have contributed to undermining good ethnic relations or have been involved in ethnic discrimination or propagation of ethnic hatred; and
- (d) entering into association with other bodies within or outside of Kenya in furtherance of its objectives.

Clause 10

Sets out the qualification for appointment as chairperson and member of the Commission as follows-

- (a) is a citizen of Kenya
- (b) holds a degree from a university recognized in Kenya
- (c) has knowledge and experience of **at least 10 years** in matters relating to race, ethnic and human relations, public affairs and human rights, peace and security; and
- (d) meets the requirements of Chapter Six of the Constitution.

A person is not qualified for appointment as a member of the Commission 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 for imprisonment for a term of at least six months

The membership of the Commission shall reflect the values and principles set out in Articles 10, 27 and 232 of the Constitution.

Clause 11 provides for the procedure for nominations and appointment of chairperson and members as set out in the first schedule to the Bill. The selection panel shall consist of one person from the following bodies—

- (a) the inter-religious council of Kenya;
- (b) the ministry responsible for matters of national cohesion;
- (c) the ministry responsible for devolution;

- (d) the Law Society of Kenya;
- (e) the National Council for Persons living with Disability; and
- (f) the Public Service Commission

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

Clause 14 of the Bill provides that the Chairperson shall serve for a term of six years and shall not be eligible for reappointment. The chairperson or member may be removed from office in accordance with Article 251 of the Constitution.

Clause 21 provides for the office of the Secretary to the Commission. The recruitment of the secretary shall be done through a competitive process by the Commission. The secretary to the Commission shall be the Chief Executive Officer and the accounting officer of the Commission. The Secretary shall hold office for a term of five years which is renewable once. The clause also sets out the qualifications as follows-

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.

Clause 22 of the Bill provides for the removal of the Secretary to the Commission from office in accordance with the terms and conditions of service for –

- (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; or
- (e) violation of the code of conduct prescribed by the Commission.

The Bill further provides that the Secretary shall be given sufficient notice of the allegations made and an opportunity to be heard.

Part IV of the Bill (**clause 32-42**) has provisions dealing with discrimination, hate speech and negative ethnicity.

Clause 32 provides for ethnic discrimination on the basis of a person's ethnicity or religion. The Bill provides that it is discrimination when a person treats another person less favourably than he treats or would treat another person on the basis of ethnicity and religion.

Clause 33 deals with discrimination through victimization and this is when a person does any act that is injurious to the well-being and esteem of another person by treating him or her less favorably than, other persons, on grounds that the person discriminated intends to or brought proceedings against the discriminator or any other person under this Act.

Clause 34 deals with discrimination in employment and requires that all public entities shall not recruit or have in its employment more than one third of its staff from the same ethnic community. The clause further requires an employer to ensure equity in the employment of persons in the respective entity and to put measures in place to ensure that such measures are adhered to.

Clause 38 deals with discrimination in access to public resources and provides that it shall be unlawful for any state or public officer, while in charge of public resources to distribute resources in an ethnically inequitable manner. The clause also provides for instances where public resources shall be deemed to have been distributed in an ethnically inequitable manner.

Such instances are where a specific region consistently receives more resources than another region and there is no clear justification for it.

Clause 41 deals with ethnic or racial contempt and provides that 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. A person who contravenes this provision is liable upon conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding five years or to both.

The clause also prohibits website administrators and media enterprises to publish posts, words or images intended to incite feelings of contempt, hatred, hostility, violence or discrimination against any group or community on the basis of ethnicity or race. The clause further provides that where a website administrator or media enterprise is found liable, the principal officers shall be held liable and shall pay a fine not exceeding five million shillings or to imprisonment for a term not exceeding five years or to both.

Part V of the Bill (**clause 44-64**) has provisions dealing with complaints, investigations and enforcement.

Clause 44 of the Bill provides for matters that may be investigated if –

- (a) it is of such serious nature that it warrants an investigation; and
- (b) it concerns a possible contravention in relation to a class or group of persons.

Clause 46 provides for the form of a complaint and requires that the Commission may call for information or a report regarding such complaint from any person within such reasonable time as may be specified by the Commission.

Clause 47 deals with investigation by the Commission. The Bill provides that the Commission may employ the services of any public officer or investigation agency of the Government at the expense of the Commission.

Clause 48 of the Bill requires the Commission to inform the complainant in writing if the Commission does not investigate or decides to discontinue the investigation of a complaint.

Clause 52 requires the Commission to refer a matter to the Office of the Director of Public Prosecution where the inquiry discloses a criminal offence or recommend to the complainant and to the relevant government agency or other body concerned the alleged violation or other appropriate method of settling the complaint. The Commission is also required to provide a copy of the inquiry report to all interested parties.

1.3 Consequences of the Bill

The Bill seeks to repeal the National Cohesion and Integration Act No.12 of 2008 and to provide for the establishment of an institutional framework for oversight, enforcement and coordination of national cohesion and peace-building in the country. Additionally, the Bill seeks to establish the National Cohesion and Peace Building Commission in place of the National Cohesion and Integration Commission.

CHAPTER TWO

SUBMISSIONS FROM STAKEHOLDERS

2.0 Attendance by stakeholders

The Committee, pursuant to Article 118 of the Constitution and Standing Order 140 (5), invited submissions from stakeholders and members of the public on the Bill via an advertisement in the local dailies dated Friday, 9th July 2021 and Parliament's website. The Committee held a consultative workshop with the National Cohesion and Integration Commission (NCIC) from 29th to 31st July 2021 in Mombasa County to deliberate on the Bill.

Further, the committee received written Memoranda from the following stakeholders:

- i. Ministry of Interior and Coordination of National Government, Directorate of National Cohesion and Values
- ii. National Cohesion and Integration Commission (NCIC)
- iii. Federation of Women Lawyers (FIDA-Kenya)
- iv. Kenya Christians Professionals Forum (KCPF)
- v. Kenya National Human Right Commission. (KNHRC)

The Committee also held a series of meetings to deliberate on the Bill and consider the stakeholder submissions.

2.1 Submissions from Stakeholders

The stakeholders submitted their comments and proposed amendments. The comments and proposed amendments are captured in the appended matrix and summary below;

- 1. With regard to proposed amendments by the Federation of Women Lawyers (FIDA-Kenya)**

- (i) FIDA Kenya submitted that the National Cohesion and Peace Building Bill is a duplication of the the National Cohesion and Integration Act 12 of 2008 and therefore in FIDA's view the Bill was not necessary.

The Committee observed that this was incorrect since the proposed Bill that is, the National Cohesion and Peace Building Bill seeks to repeal the National Cohesion and Integration Act No.12 of 2008 and not to duplicate it.

- (ii) Clause 7(2)(c) of the Bill; On publishing the names of persons and institutions without a conclusive investigation and fair trial, FIDA submitted that this may infringe on the right to fair administrative action as provided for in Article 47 of the Constitution. Publishing false statements which causes damages also qualifies as defamation.

The Committee was of a similar view, that is, that there is need to ensure that publications of names happens only after due process is concluded and does not infringe on fair administrative action rights as provided for in Article 47 of the Constitution.

2. With regard to proposed amendments by the National Cohesion and Integration Commission (NCIC)

- (i) Part 1 Preliminary on the Short Title of the Bill and Part II on the establishment of the Commission, NCIC proposed that it be changed from National Cohesion and Peace Building Bill to "National Cohesion and Peace Bill" and "National Cohesion and Peace Commission" respectively. NCIC proposed the word 'Peace Building' limits its mandate to only peace building activities as opposed to the wide array of activities carried out by the Commission.

The Committee observed that the Title should be retained as it is in the Bill since it does not limit the Commission's mandate.

- (ii) Part 1 Preliminary on the Interpretation, NCIC proposed to replace "**ethnic group**" with "**group**" and "**ethnic relations**" with "**group relations**". Consequently, NCIC proposed that "group" is defined as "a person or persons defined by reference to *colour, race, religion, nationality, ethnic group, tribe, sub-tribe, clan, sub-clan* among other terms. The committee observed it is in order to use definitions that reflect the unique nature and component of group interactions in Kenya.

- (iii) Clause 7 of the Bill on Powers of the Commission to compel attendance of witnesses, NCIC proposed that the Bill explicitly elevates the Commission's summoning mechanism to that of the High Court which failure to honor amounts to contempt, hence a culpable offence which upon conviction is punishable for a term of not less than six months and a fine not exceeding one million shillings or both.
- The Committee observed that such powers would ensure that summons are obeyed as lack of such powers will make the Commission toothless hence weak.
- (iv) Clause 9 of the Bill on Membership of the Commission, the Bill reduces the Membership of the NCIC from the current eight (Chairperson and seven Members) to five that is the Chairperson and four other Members. NCIC proposed the retention of the current membership made up of a chairperson and seven commissioners since the mandate of the Commission is wide, complex and thus requires more members in order to effectively discharge its functions. Additionally, the Constitution under Article 250(1) allows a maximum of nine members. The Committee observed that reducing the Commission's membership will greatly disadvantage it in the effective discharge of its functions.
- (v) Clause 21 of the Bill on the Secretary to the Commission, the Bill proposed that the Secretary to the Commission shall hold office for a term of five years and is eligible for re-appointment for a further term of five years. The Commission proposes that the Secretary holds office for a term of three years and be eligible for re-appointment for a further term of three years, as is the current practice in government institutions.
- The Committee observed that there is need to align the clause with the current Government best practice.
- (vi) Clause 31 of the Bill on Annual Report, NCIC proposed that the Bill bestows the duty of preparation and submission of Annual Reports to the Cabinet Secretary in accordance with Article 153(4) of the Constitution. NCIC submitted that this provision as provided for would be undermining the independence of the Commission and therefore, proposed that the Commission prepares and submits annual reports to Parliament and the President. The Committee observed that the term Parliament should be made clear to include the National Assembly and the Senate in order to cure the problem where reports are only tabled in one House. The Committee also agreed with the submission of the Commission.

- (vii) Part IV of the Bill on Discrimination, Hate Speech and Negative Ethnicity, NCIC submitted that the part only describes what discrimination is but for the most part does not provide for sanctions for discrimination. The heading of Part IV has hate speech and negative ethnicity while the provisions that follow do not have any provision on hate speech but are on ethnic or racial contempt. The Committee observed the need to include provisions that prohibit Hate speech and the sanctions thereof in the Bill.
- (viii) Part IV of the Bill defines what constitutes vilification. However, it fails to provide for the offence of vilification and hate speech and the sanctions thereof. NCIC proposed amendments in order to provide clarity and enrich the Bill. The Committee concurred with the views of NCIC.
- (ix) Clause 34 of the Bill on discrimination from employment, NCIC submitted that the provisions of Clause 34 subsection (1), (2) and (3) are limiting and do not address all aspects on matters discrimination. NCIC provided amendments in order to enrich the Bill. The Committee concurred with the submissions.
- (x) Clause 44 (1) (a) of the Bill on matters that may be investigated, NCIC submitted that the Bill should provide a criterion/checklist on which actions may be of serious nature. Having no criteria may result in different interpretations of the clause and lack of uniformity. The Committee observed that there is need to provide clarity to the provision.

3. With regard to proposed amendments by the Ministry of Interior and Coordination of National Government, Directorate of National Cohesion and Values herein termed as the Ministry;

- (i) Clause 3(a) and (d) of the Bill on the Object of the Act which is to give effect to Articles 10 and 27 of the Constitution, the Ministry proposed that these be deleted as Section 3(a) and (d) encroach on the constitutional mandate of His Excellency the President under Articles 131 and 132.

The Committee observed that it is the work of Parliament to make legislation to give effect to Constitutional provisions and hence this cannot be termed as an infringement on the President's mandate. Additionally, the President does not perform these mandates on his own, but rather he uses different bodies and institutions mandated in law to execute them. Further, that no Sessional Paper is superior to an Act of Parliament and that the

mandate of the Commission is established in the Act and therefore cannot be said to infringe on the mandate of a department established in a Sessional Paper.

- (ii) On Clause 3(c) of the Bill, the Committee observed that Part V of the Bill provides for complaints, investigation and enforcement mechanisms. The part further provides for reconciliation of warring parties. This is contrary to the observations made by the Ministry that the Bill did not provide coordinative mechanism as currently drafted.
- (iii) On Part II, Clause 6 (a), (c) (i), (h) of the Bill on the functions of the Commission, the Committee observed that the Commission does not usurp the powers of the President or any other institution contrary to the submissions by the Ministry.

4. With regard to proposed amendments by Kenya National Human Right Commission (KNHRC)

- (i) Clause 6 (c) of the Bill; On Functions of the Commission, KNHRC proposed ‘Make **actionable** recommendations to the National and County governments. The Committee observed using the term actionable would mean some recommendations are not actionable hence is ambiguous.
- (ii) Clause 15 (1) (e) of the Bill; On vacancy of office of chairperson and members, KNHRC proposed deletion of the phrase ‘**arising out of physical or mental infirmity**’ and replace with ‘**is unable to perform the functions of office for any reason**’. This is because it is potentially discriminatory against persons with psychosocial disabilities, who have a right to legal capacity, which entails continuing to perform the functions of office with support in line with Article 12 of the UN Convention on the Rights of Persons with Disabilities. The Committee observed that there is need to protect the rights of persons with psychosocial disabilities in the Bill.
- (iii) Clause 21 of the Bill; On the Secretary to the Commission, the KNHRC proposed that the Bill should provide for the functions of the Commission Secretary. The Committee observed it was necessary to provide for the functions of the Secretary in order to enhance accountability and transparency in terms of performance.
- (iv) Clause 32 of the Bill; On ethnic discrimination, KNHRC submitted that the Bill should adopt the definition of racial discrimination as provided in Article 1 of the International Convention on the Elimination of all Forms of Racial Discrimination. The Committee

observed that there is need to enrich the definition and align it with the definition on the International Convention on Elimination of all Forms of Racial Discrimination.

- (v) Clause 34 (2) of the Bill; On discrimination in employment, KNHRC proposed addition of a requirement for public entities to annually provide statistical data, disaggregated by sex, on the ethnic representation of staff in their organizations. The Committee was of a similar view.

5. With regard to proposed amendments by Kenya Christians Professionals Forum (KCPF)

- (i) The Committee observed that the stakeholder did not appreciate the intention of the Bill which was to repeal the existing legislation and replace it with the new legislation. Contrary to the proposal by KCPF these changes would not occasion financial expenditure since the infrastructure remains the same. The Bill also transitions all service contracts and assets of the former Commission to the new Commission.

CHAPTER THREE

COMMITTEE OBSERVATIONS

The Committee made the following **observations** based on their deliberations of the Bill and stakeholder input-

- 1) The role of the County Governments has not been clearly defined in the Bill hence there is need to provide for the role of County Governments in national cohesion and peace building in the Bill.
- 2) On Clause 7(2)(c) of the Bill on publishing the names of persons and institutions without a conclusive investigation and fair trial, the Committee observed that this may infringe on rights to fair administrative action as provided for in Article 47 of the Constitution. Further that, publishing false statements which causes damages also qualifies as defamation. The Committee observed that there is need to provide that publication of names is done upon conviction by a competent Court.
- 3) On Clause 7 of the Bill on Powers of the Commission to compel attendance of witnesses, the committee proposed to explicitly elevate the Commission's summoning mechanism to that of the High Court to among others; compel documents, summon witnesses which failure to honour amounts to contempt, hence a culpable offence which upon conviction is punishable for a term of not less than six months and a fine not exceeding one million shillings or both. The Committee observed that such powers would ensure that summons are obeyed as lack of such powers will make the Commission toothless hence weak.
- 4) On Membership of the Commission under Clause 9 of the Bill, the Bill reduces the Membership of the NCIC from the current eight (Chairperson and seven Members) to five, that is, the Chairperson and four other Members. The Committee proposed the retention of the current membership made up of a chairperson and seven commissioners since the mandate of the Commission is wide, complex and thus requires more members in order to effectively discharge its functions. Additionally, the Constitution under Article 250(1) allows a maximum of nine members. The Committee observed that reducing the Commission's membership will greatly disadvantage it in the effective discharge of its functions.

- 5) On Clause 21 of the Bill on the Secretary to the Commission, the Bill proposed that the Secretary to the Commission shall hold office for a term of five years and is eligible for re-appointment for a further term of five years. The Committee proposed that the Secretary holds office for a term of three years and be eligible for re-appointment for a further term of three years, as is the current practice in government institutions further that the Commission Secretary shall also be the accounting officer to the Commission. The Committee observed that there is need to align the clause with the current Government best practice.
- 6) On Clause 31 of the Bill on Annual Report, the Committee observed that the Bill bestows the duty of preparation and submission of Annual Reports to the Cabinet Secretary in accordance with Article 153(4) of the Constitution. However, the Committee observed that this provision as provided would be undermining the independence of the Commission and therefore proposed that the Commission prepares and submits annual reports to the Cabinet Secretary and to both Houses of Parliament that is the National Assembly and Senate.
- 7) On Clause 32 of the Bill on ethnic discrimination, the Committee proposed that the Bill should adopt the definition of racial discrimination as provided in Article 1 of the International Convention on the Elimination of all Forms of Racial Discrimination. This is in order to enrich the definition and align it with the aforementioned Convention.
- 8) On Clause 34 of the Bill on discrimination in employment, the Committee observed that the scope of the provision should be enhance to among others; require on all public entities to submit annual compliance reports to the Commission, invalidating recruitment processes in contravention to the Clause as well criminalising such contraventions.
- 9) The Committee observed that the Bill lacked a provision prohibiting hate speech and the sanctions therein.
- 10) On Clause 44 (1) (a) of the Bill on matters that may be investigated, the Committee proposed that the Bill ought to provide a criterion/checklist on which actions may be considered of a serious nature. Having no criteria may result in different interpretations of the clause and lack of uniformity.

- 11) The Committee observed that on Clause 2 of the Bill, the definition of ‘ethnic group’ and ‘ethnic relation’ ought to be broadened in order to use definitions that reflect the unique nature and component of group interactions in Kenya.
- 12) The Committee observed that there is a need to prohibit discrimination on the basis of disability in the Bill.

Other Observations

- 13) FIDA Kenya in their submissions to the Committee opined that the National Cohesion and Peace Building Bill is a duplication of the National Cohesion and Integration Act No.12 of 2008 and therefore in FIDA’s view the Bill was not necessary. The Committee however observed that this was incorrect since the proposed Bill that is the National Cohesion and Peace Building Bill, 2021 seeks to repeal the National Cohesion and Integration Act No.12 of 2008 and not to duplicate it. The Proposals by FIDA Kenya were therefore not adopted.
- 14) The Ministry of Interior and Coordination of National Government, Directorate of National Cohesion and Values herein termed as the Ministry in their submissions proposed that provisions of the proposed Bill encroached on the constitutional mandate of His Excellency the President as provided for under Articles 131 and 132.

The Committee differed and observed that it is the work of Parliament to make legislation to give effect to Constitutional provisions and hence this cannot be termed as an infringement on the President’s mandate. Additionally, the President does not perform these mandates on his own, but rather he uses different bodies and institutions mandated in law to execute them. Further, a Sessional Paper is not superior to an Act of Parliament. The mandate of the Commission is established in the Act and therefore cannot be said to infringe on the mandate of a department/institution established by a Sessional Paper. The submissions by the Ministry were therefore not adopted.
- 15) On submissions by the Kenya Christians Professionals Forum (KCPF) the committee observed that the stakeholder did not appreciate the intention of the Bill which was to repeal the existing Legislation, that is, the National Cohesion and Integration Act No.12 of 2008 and replace it with the new legislation, that is, the National Cohesion and Peace Building Bill (Senate Bills No. 19 Of 2021). Contrary to the proposal by KCPF these changes would not occasion financial expenditure since the infrastructure remains the same. The Bill also

transitions all service contracts and assets of the former Commission to the new Commission. The submissions by KCPF were therefore not adopted.

CHAPTER FOUR

COMMITTEE RECOMMENDATIONS

The Committee recommends as follows;

1. That the Bill in Clause 6 shall be amended to provide that the Commission, in performance of its functions, collaborates with the county governments.
2. That, the Bill in Clause 7(2) provides that publications of names of persons and institutions whose words or conduct may undermine, have undermined or have contributed towards undermining good ethnic relations or who are involved in ethnic discrimination or propagation of ethnic hatred shall be published upon conviction by a competent Court.
3. That the provision on the powers of the Commission be amended to enhance the Commission's powers to those of the High Court to among others, to summon witnesses, compel production of documents.
4. That the membership of the Commission be increased from five (5) to eight (8).
5. That the term of office of the Commission Secretary be reduced from five (5) years to three (3) years which may be renewed once. Additionally, the Commission Secretary shall also be the accounting officer to the Commission.
6. That the Bill be amended to provide for the Commission to prepare and submit to the Cabinet Secretary, the National Assembly and the Senate an annual report in accordance with Article 153(4) of the Constitution.
7. That Clause 32 of the Bill which provides for ethnic discrimination be amended in order to enrich the definition and align it with the definition under Article 1 of the International Convention on Elimination of all Forms of Racial Discrimination.
8. That the following provisions be added to Clause 34 of the Bill-
 - a) A public entity to affords adequate and equal opportunities for appointment, training and advancement of staff at all levels.
 - b) A public entity at the national level of government shall ensure that not more than one fifth of senior management positions are held by one ethnic community.
 - c) A requirement on all public entities to submit annual compliance reports to the Commission.

- d) Invalidating any recruitment process that is in contravention of the provisions of this Clause.
 - e) Criminalising contravention of any provisions of the Clause.
9. That, a provision prohibiting hate speech be inserted in the Bill.
 10. That, the provision on the matters that may be investigated be amended to broaden the scope of the investigative mandate of the Commission.
 11. That Clause 2 of the Bill be amended to broaden the definition of 'ethnic group' and 'ethnic relation'.

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- 2) Public Participation Matrix
- 3) Committee Stage Amendments
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- 5) Minutes

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**THE NATIONAL COHESION AND PEACE
BUILDING BILL, 2021**

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, 2021. 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 4;

“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 Prosecutions 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. The Commission shall consist of a chairperson and four 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 President 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 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) engages in gross misconduct or misbehavior;
- (e) is unable to perform functions of the office arising out of physical or mental infirmity;
- (f) violates the code of conduct prescribed by the Commission; or
- (g) is incompetent or neglects duty.

(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 functions;

(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 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 put measures in place to ensure that the principle of non-discrimination is adhered to.

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 employment.

- (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 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.

- (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;
- (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

Ethnic or racial
contempt.

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; and
- (b) it concerns a possible contravention in relation to a class or group of persons.

(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 by— Complaints.

- (a) a person acting in their own interest;
- (b) a person acting on behalf of another person who cannot act in their own name;
- (c) a person acting as a member of a group or class of persons;
- (d) a person acting in the public interest; or
- (e) an association acting in the interest of one or more of its members.

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

Notice if
complaint was not
investigated.

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 Office of 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 obtaining 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

Report to organization.

State organ, public office or organization to which the investigation relates.

(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 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.

Confidentiality of
information.

(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 62;
- (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.

(2) 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 paragraph (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 paragraph (2) nominate one person for the position of Chairperson and four 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 paragraph (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 paragraph (2).

(7) Where Parliament rejects any or all of the subsequent nominees submitted by the President for approval under paragraph (6), the provisions of paragraphs (2) and (3) 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.

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 18th February, 2021.

JUDITH PARENO,
Senator.

**STANDING COMMITTEE ON NATIONAL COHESION, EQUAL OPPORTUNITY AND REGIONAL
INTERGRATION.**

STAKEHOLDER VIEWS ON THE NATIONAL COHESION AND PEACE BUILDING BILL (SENATE BILLS

NO. 19 OF 2021)

Clause	Stakeholder	Proposed Amendment and Rationale	Observations /Comments	Resolution
1. Title	NCIC	<p>We recommend the Bill and the proposed Commission be titled as the “National Cohesion and Peace Bill” and “National Cohesion and Peace Commission” respectively.</p> <p><u>RATIONALE</u></p> <p>The Bill changes the National Cohesion and Integration Act to National Cohesion and Peace Building Act and consequently, changes the name of the Commission to National Cohesion and Peace Building Commission. The Commission notes the word “<i>Peace Building</i>” connotes the activity hence we are of the view that “peace” is a broader word which gives the Commission a greater latitude to deal with peace related issues</p>		

2.	Long Title	FIDA	<p>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.</p> <p><u>Rationale</u></p> <p>There is need to overhaul this Act as there seems to be duplicity of legislation.</p> <p>There is an Act of Parliament dubbed, “the National Cohesion and Integration Act,” 12 of 2008 whose objective/purpose is: “AN Act of Parliament to encourage national cohesion and integration by outlawing discrimination on ethnic grounds; to provide for the establishment, powers and functions of the National Cohesion and Integration Commission, and for connected purposes</p>		
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3.	Interpretation Clause 2	NCIC	<p>The Bill defines “ethnic group” to mean “a group of persons defined by reference to <i>colour, race, religion, clan, nationality or ethnic or national origins</i> and “ethnic relations” to include <i>racial, religious, tribal, clan and cultural interactions between various communities</i>”. These definitions do not reflect the unique nature and component of group interactions in Kenya.</p> <p>PROPOSAL</p> <p>The Commission proposes to replace “ethnic group” with “group” and the latter be defined as follows; “a person or persons defined by reference to <i>colour, race, religion, nationality, ethnic group, tribe, sub-tribe, clan, sub-clan, ancestry, language or dialect, cultural practices, social origin, class, work, political or geographical grouping, age, gender and sexual orientation and national origins</i>”.</p> <p>The Commission proposes to replace “ethnic relations” with “group relations”<i>mutatis mutandis</i>.</p>		
4.	Interpretation Clause 2	FIDA	<p>Clause 2: Interpretations “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.</p> <p>Rationale</p> <p>This clause be overhauled as it bears similarities with Clause 2 of the National Cohesion and Integration Act</p>		

5.	<p>3 (a) and (d)</p> <p>a) To give effect to article 10 and 27</p> <p>d) provide a framework for promotion of national values and principles.</p>	<p>Ministry.</p>	<p>1. The objects of the Act under Part I, Section 3(a) and (d) encroach on the constitutional mandate of H. E the President under Articles 131 and 132 of the constitution which include: -</p> <ul style="list-style-type: none"> (i) Promoting and enhancing the unity of the nation. (ii) Promoting respect for the diversity of the people and communities of Kenya. (iii) Protection of human rights and fundamental freedoms and the rule of law; and (iv) Promotion and reporting on national values referred to in Article 10. <p>Further under Part I, Section 3(a), the Act cannot: -</p> <ul style="list-style-type: none"> (a) Give effect to Article 10 of the constitution on the promotion of national unity because this is a direct mandate of the President which should not be a function of the Commission; (b) Provide a framework for the promotion of national cohesion, unity and peace building. This framework is already in place in existing Sessional papers approved by Parliament; (c) Provide mechanisms for implementing interventions for promoting national cohesion and peace building. These are clearly outlined in 	
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			<p>Sessional Paper No. 5 of 2014 on National Policy for Peace Building and Conflict Management and the Sessional Paper No. 9 on National Cohesion and Integration as well as the Sessional Paper No. 8 on National Values and Principles of Governance.</p> <p>(d) Provide a framework for the promotion of national values and principles of governance. This is a multi-sectoral function under Presidential mandate and functions. The framework is already provided in the constitution at Article 132(1) (c) (i) and (ii) and in Sessional Paper N0.8 on National Values and Principles of Governance approved by Parliament in 2015.</p>		
6.	3(b) Provide a framework for the promotion of national cohesion, unity and peace building.	Ministry	<p><u>Amend to read:</u> Provide for implementation of the framework for the promotion of national cohesion, unity and peacebuilding;</p> <p><u>Rationale</u> The framework already exists in Sessional Paper No. 9 of 2013 on national cohesion and integration.</p>		
7.	3(c) Provide a mechanism for coordination and implementation of interventions aimed at Promoting national cohesion and peace		<p><u>Delete the clause</u></p> <p><u>Rationale</u> The Bill does not contain any coordinative mechanism as currently drafted. It is ALL about the Commission. Should be noted that there are other Executive and Constitutional agencies performing similar mandates.</p>		

	building.					
8.	3(d) Provide a framework for the implementation of national values and principles of good governance.	Ministry	<p>Delete the clause</p> <p><u>Rationale</u> -The framework on the promotion of national values and principles of governance already exists in Sessional Paper No. 8 of 2013 on national values and principles of governance. -Promotion of national values is not the subject of this Bill.</p>			
9.	Clause 3 – Objects of the act	FIDA	<p>This clause be overhauled and incorporated in the National Cohesion and Integration Act</p> <p><u>Rationale</u> Incorporate these objectives in the National Cohesion and Integration (Amendment) Bill 2019 which seeks to amend the National Cohesion and Integration Act, 2008. National Cohesion and Integration Commission is established the Commission and its Function There seems to be duplicity of functions.</p>			
10.	Clause 4 - Establishment of National Cohesion and Peace Building Commission.	FIDA	<p>We recommend overhaul of this clause</p> <p><u>Rationale</u> Incorporate these objectives in the National Cohesion and Integration (Amendment) Bill 2019 which seeks to amend the National Cohesion and Integration Act, 2008 National Cohesion and Integration</p>			

			Commission is established the Commission and its Function There seems to be duplicity of functions		
11.	<p>Section 6(a) And (c) (i) Formulate and implement strategies....</p> <p>b) i) make recommendations on review and reform of practices, policy, legislation</p>	Ministry	<p>Part II, Section 6 (a) and (c) (i) on the functions of the Commission usurps the functions of other existing Government institutions as follows:-</p> <p>(a)Article 131(2) (c) assigns the mandate of promoting and enhancing the unity of the nation to the President. It is therefore the function of relevant Ministries and Departments to formulate, review and implement policies, strategies, plans and programmes and activities for the promotion of national unity. The function is currently being performed by the Ministry of Interior & Coordination of National Government through the Directorate of National Cohesion & Values and other Departments within the Ministry.</p> <p>The Government developed Sessional Paper No. 9 on National Cohesion and Integration which was approved by the National Assembly in 2015. This Sessional paper is the overall Government policy which guides all institutions involved in national cohesion, national unity and integration. It includes the strategies, plans and programmes currently being</p>		

			implemented by Government.		
12.	Clause 6(a)		<p>Delete the words ‘formulate and’ at the beginning.</p> <p><u>Rationale</u> Formulation of national policies is an executive function not performed by Commissions.</p> <p>Delete the entire clause</p> <p><u>Rationale</u> -Formulation of national policies/strategies is an executive function. -Promotion of national values is not the subject of this Bill. Part II, Section 6 (h) is a duplication of functions currently being performed by the State Department for Interior and Citizen Services.</p> <p>The Government developed Sessional Paper No. 8 on National Values and Principles of Governance of 2013, which was approved by the National Assembly in November, 2015. This Sessional paper guides all public institutions in the promotion, mainstreaming, reporting, monitoring and evaluation on national values and principles of governance. It is the responsibility of the Government not the Commission to develop national policies.</p>		
13.	Clause 6(h) Develop policies for the promotion of national values and principles of good governance.				

			There exists a Government Department in the Ministry of Interior and Coordination of National Government whose responsibility is to advise Government and develop policies on national values and principles of governance and coordinate the implementation of those policies. The Commission may not therefore be assigned this function.		
14.	6 (c) - Functions of the Commission.	KNHRC	Insert 'actionable' after the word 'make' to read as 'Make actionable recommendations to the National and County governments...' <u>Rationale</u> The Commission should make SMART recommendations		
15.	Clause 6(i)	Ministry	Delete the words 'and national values' in the statement. <u>Rationale</u> -Promotion of national values is not the subject of this Bill. Part II, Section 6 (i) of the Bill assigns the Commission the functions of national values, peace building and conflict management which are currently being executed by the Directorate of National Cohesion and Values and the National Steering Committee on Peace Building and Conflict Management in the State Department of Interior & Citizen Services		
16.	Clause 6 - Functions of the commission.	FIDA	We propose the overhaul of this clause as it lays out similar functions to those established under Section 25 of the National Cohesion and Integration Act. The power of the Commission are also similar to the power		

			of the commission established under the National Cohesion and Integration Act		
			Rationale Similarities with the National Cohesion and Integration Act		
17.	Clause 7- Powers of the Commission Power to compel attendance of witnesses	NCIC	<p>1. Power to summon witnesses to attend before the Commission and produce records/books is a mechanism which the Commission uses in ensuring compliance with its law. Failure to honour such summons and requirement to produce records/books should be made a serious offence so as to compel the citizens/suspect to assist the Commission in discharge of its mandate.</p> <p>2. Thus the Commission submits that the NCPB Bill should explicitly elevate the Commission's summoning mechanism to that of the High Court which failure to honour amounts to contempt, hence a culpable offence which upon conviction is punishable for a term of not less than six months and a fine not exceeding one million shillings or both.</p>		
18.	7. (2)(c) publish the names of persons or institutions whose words or conduct may undermine or have undermined or contributed towards	FIDA	<p>This Clause needs to be overhauled as it is a duplicity of Section 26(b) of the National Cohesion and Integration Act. Further we publishing the names of persons and institutions without a conclusive investigation and fair trial may infringe on their rights to fair administrative action. Publishing false statements which causes damages also qualifies as defamation.</p>		

	undermining good ethnic relations, or who are involved in ethnic discriminations or propagation of ethnic hatred.		<p><u>Rationale</u> Article 47 of the Constitution of Kenya provides for fair administrative action saying (1) Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair. (2) If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.</p>		
19.	Clause 9 – Membership of the Commission	NCIC	<p>The NCPB Bill reduces the membership of the Commission to four; a chairperson and three members. However, the nature and mandate of the Commission is wide, complex and thus requires more members in order to effectively discharge its functions. Additionally, the Constitution under Article 250(1) allows a maximum of nine members. Therefore, the Commission proposes the retention of the current membership made up of a chairperson and seven commissioners.</p>		
20.	Clause 8, 9 and 10 which speak to Headquarters of the Commission, Membership of The Commission and Qualifications of the Commissioner	FIDA	<p>We propose an overhaul of these sections since the National Cohesion and Integration Act already established the headquarters of the commission and functions and qualifications of members of the Commission under Section 16, 17 and 18.</p> <p><u>Rationale</u> National Cohesion and Integration Act already established the headquarters of the commission and functions and qualifications of members of the Commission under</p>		

			Section 16, 17 and 18.			
21.	11 (2) (e) Procedure for appointment of chairperson and members.	KNHRC	<p>Delete " ...persons living with disability" and replace with '<i>...National Council for Persons with Disability.</i>'</p> <p><u>Rationale</u> This is the body created by section 3 (1) of the Persons with Disability Act.</p> <p>The Commission proposes that the Chairperson and members of the Commission to serve for a single term of six years and are not eligible for re-appointment. This is in line with the provisions of Article 250(6)(a) of the Constitution and the current practices.</p>			
22.	Clause 14 – Term of office	NCIC				
23.	15 (1) (e) - Vacancy of office of chairperson and members	KNHRC	<p>Delete 'arising out of physical or mental infirmity' and replace with 'is unable to perform the functions of office for any reason'.</p> <p><u>Rationale</u> As drafted, it is potentially discriminatory against persons with psychosocial disabilities, who have a right to legal capacity, which entails continuing to perform the functions of office with support in line with article 12 of the UN Convention on the Rights of Persons with Disabilities.</p>			
24.	Clause 21- secretary to the Commission	KNHRC	<p>The Bill should provide for the functions of the Commission Secretary.</p> <p><i>The secretary shall-</i> <i>(a) be the Chief Executive Officer of the Commission;</i></p>			

			<p>(b) <i>be the accounting officer of the Commission;</i> (c) <i>be responsible for-</i> i. <i>carrying into effect the decisions of the Commission;</i> ii. <i>day-to-day administration and management of the affairs of the Commission;</i> <i>Supervision of the staff of the Commission; and Perform such other duties as may be assigned by the Commission.</i></p> <p><u>Ra</u> This shall enhance accountability and transparency in terms of performance.<u>tionale.</u></p>		
25.	Clause 21 - Secretary to the Commission	NCIC	<p>The NCPB Bill provides that the Secretary to the Commission shall hold office for a term of five years and is eligible for re-appointment for a further term of five years. The Commission proposes that the Secretary hold office for a term of three years and be eligible for re-appointment for a further term of three years, as is the current practice in government institutions.</p>		
26.	22 (1) (a)- Removal of the Secretary		<p>Delete 'arising out of physical or mental infirmity' and replace with 'is unable to perform the functions of office for any reason'.</p> <p><u>Justification</u></p> <p>As drafted, it is potentially discriminatory against persons with psychosocial disabilities, who have a right to legal capacity, which entails continuing to perform the functions of office with support in line with article 12 of the UN Convention on the Rights of Persons with Disabilities.</p>		

27.	<p>Part II Establishment of the Commission</p>	<p>KCPF</p>	<p>PART II OF THE BILL –Establishment of the national cohesion and peace building commission</p> <p>Section 4 (1) There is established the national cohesion and peace building commission.</p> <p>Section 6 the functions of the Commission are to—</p> <p>(a) Formulate and implement strategies, plans and Programmes for the promotion of national unity</p> <p>(b) Collaborate with institutions and stakeholders to give effect to the policies relating to cohesion and integration</p> <p>(c) Make recommendations to the National and County governments and any other relevant Entities on:</p> <p>(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</p> <p>(d) Identify factors inhibiting the attainment of harmonious</p>	
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			<p>relations among different social origins and put in place measures to address the problem</p> <p>(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 Functions of the Commission. The National Cohesion and Peace Building Bill, 2021 (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</p> <p>(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 Prosecutions or other relevant authority on the appropriate measures to be taken where</p>		
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			such Complaints are valid		
			<p>(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</p> <p>(h) Develop policies for the promotion of National Values and principles of governance</p> <p>(i) Undertake research and document findings on national cohesion and national values, peace Building and conflict management</p> <p>(j) Foster partnerships with relevant state actors, none state actors, bilateral and multilateral agencies on Peace building and conflict management</p> <p>(k) Establish early warning and early response system on conflict and put in place an emergency preparedness and response</p> <p>Recommendation</p> <p>The act seeks to repeal the National cohesion and integration commission and replace the same with the</p>		

			<p>national cohesion and peace building commission. However the functions are similar to the current functions of NCIC. We are of the opinion that what is in a name? That which we call a rose by any other name would smell as sweet. We opine that there is no need to change the name, better still we can strengthen the current NCIC so that it can effectively discharge its mandate. In so doing it will save the taxpayers money the struggles of having to put up a new commission all together as well as money which would otherwise be spent on the transition of the same.</p>		
28.	<p>Clause 11,12, 13, 14, 15,16,17,18, 19,20,21, 22, 23 which relate to the recruitment, selection, assumption of office and security of tenure</p>	FIDA	<p>We propose the overhaul of this enter Part as it is a duplicity of Part V of the National Cohesion and Integration Act</p> <p><u>Rationale</u> Duplicity of Sec.19,20, 21,22,23,24and33ofthe National Cohesion and recruitment, selection, assumption of office and security of tenure</p>		
29.	Clause 31 – Annual report	NCIC	The NCPB Bill bestows the duty of preparation and submission of annual reports to the Cabinet Secretary in accordance with Article 153(4) of the Constitution. The Commission submits that this provision as provided for		

			would be undermining the independence of the Commission and therefore, we propose that the Commission to prepare and submit annual reports to the Parliament and the President.		
30.	31(1) Annual report	KNHRC	Review the clause to read, "The Commission shall, prepare and submit to Parliament an annual report in accordance with Article 153 (4) of the Constitution. The Commission/Chairperson should be the one to report to Parliament as opposed to the Cabinet Secretary.		
31.	Clause 32 - ethnic discrimination	KNHRC	<p>Adopt the definition as provided in Article 1 of the International Convention on the Elimination of all Forms of Racial Discrimination. Article 1 of the International Convention on the Elimination of all Forms of Racial Discrimination defines racial discrimination as follows</p> <p><i>'any distinction, exclusion, restriction, or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in political, economic, social, cultural or any other field of public life.'</i></p> <p><u>Justification</u></p> <p>One of the recommendations in the concluding observations to Kenya by the Committee on the Elimination of Racial Discrimination was that the State should align the definition of racial discrimination with that in the Conventions since the</p>		

			Constitution and the NCICA do not provide for the same.		
32.	34 (2) discrimination in employment	KNCHR	<p>Remove the phrase "one third of its staff from the same community" and replace with "... have a proportional representation of ethnic groups....."</p> <p>Add a requirement for public entities to annually provide statistical data, disaggregated by sex, on the ethnic representation of staff in their organizations.</p> <p><u>Justification</u> The one third requirement may open up the Commission to lawsuits if strictly interpreted.</p> <p>Add a requirement for public entities to annually provide statistical data, disaggregated by sex, on the ethnic representation of staff in their organizations.</p> <p><u>Justification</u> One of the concerns raised by the Committee on the Elimination of Racial Discrimination in its Concluding Observations on the fifth to seventh periodic reports of Kenya and the initial to fourth periodic reports of Kenya was the lack of data offering a comprehensive appraisal of the enjoyment of Convention rights by different ethnic groups. The Committee recommended the provision of such disaggregated data by the Kenya National Bureau of Statistics "in order to provide it with an empirical basis on which to evaluate the equal enjoyment of rights under the convention.</p>		
33.	AS ABOVE	“			

34.	Part 111 On financial provisions	FIDA	<p>We propose the overhaul of this entire Part as it is a duplicity of Part V of the National Cohesion and Integration Act</p> <p><u>Rationale</u> Duplicity of Part V of the National Cohesion and Integration Act</p>			
35.	Part IV – Discrimination, Hate Speech and Negative Ethnicity	NCIC	<p>This part only describes what discrimination is but for the most part does not provide for sanctions for discrimination. The heading of Part IV has hate speech and negative ethnicity while the provisions that follow do not have any provision on hate speech but are on Ethnic or racial contempt.</p>			
36.	Clause 36 (1) Discrimination in membership of organizations	KNHRC	<p>delete the word “to” appearing between the words “not” and “discriminate”.</p> <p><u>Justification</u> For grammatical clarity.</p>			
37.	Part IV	NCIC	<p>The NCPB Bill defines what constitutes vilification. However, it fails to provide for the offence of vilification and hate speech. Consequently, the Commission proposes to include the said offences as follows;</p> <p><i>(1) A person who – (a) uses threatening, abusive, insulting, vilifying words or behaviour, displays any written</i></p>			

			<p><i>material or disseminates any ideas based on ethnic superiority;</i></p> <p><i>(b) uses coded language, acts or makes gestures;</i></p> <p><i>(c) publishes, posts or distributes material in the print, electronic or social media;</i></p> <p><i>(d) presents or directs the public performance of a play with gestures depicting ethnic hatred;</i></p> <p><i>(e) distributes, shows or plays a recording of visual images or provides, produces or directs a programme which-</i></p> <p><i>(i) depicts ethnic propaganda or stereotyping; or</i></p> <p><i>(ii) contains gestures depicting ethnic hatred;</i></p> <p><i>or</i></p> <p><i>(iii) is threatening, abusive, insulting or vilifies others or involves the use of threatening, abusive, insulting or vilifying words or behaviour;</i></p> <p><i>(f) wears or engages in the display of clothing, signs, flags, emblems and insignia,</i></p> <p><i>with the intention to incite or stir up ethnic hatred or having regard to all the circumstances, ethnic hatred or social strife is likely to be stirred up, or social cohesion is likely to be disrupted, or show serious contempt for, or severe ridicule of, or incite acts of violence towards a person or group of persons, or towards any property of that person or group of persons, commits an offence.</i></p> <p><i>(2) Any person who commits an offence under this section shall, upon conviction, be liable to a fine of not less five million shillings or to imprisonment for a term not less than five years or to both.</i></p>	
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			<p>(3) In this section, “hatred” means hatred against a person or group.</p> <p>(4) Any print, electronic, digital and social media, or other media enterprise that publishes or otherwise disseminates any of the acts under subsection (1) on any platform commits an offence and shall, on conviction, be liable to a fine of not less than ten million shillings or to imprisonment for a term of not less than ten years or both.</p> <p>(5) Pursuant to subsection (4), any licensed media enterprise shall upon conviction have their licenses revoked.</p> <p>(6) Any person convicted of an offence under this section shall not be eligible to hold any public nominative or elective office for a period of five years.</p>		
38.	<p>CLAUSE 34</p>	<p>NCIC</p>	<p>The NCPB Bill uses the terminology “public entity” and whereas the definition for the same is not provided for under the Bill, the Commission proposes adoption of the terminology “public establishment” because to its broader meaning and application. In the event, the Senate decides or opined to retain the term as proposed in the Bill, then the term “public entity” ought to be defined.</p>		
39.	<p>34 (2) discrimination in employment</p>	<p>KNCHR</p>	<p>Remove the phrase "one third of its staff from the same community" and replace with "... have a proportional representation of ethnic groups</p> <p><u>Justification</u></p> <p>Add a requirement for public entities to annually provide statistical data, disaggregated by sex, on the ethnic</p>		

			representation of staff in their organizations.		
40.	CLAUSE 34	NCIC	<p>The provisions of Clause 34 subsection (1), (2) and (3) are limiting and do not address all aspects on matters discrimination and therefore, the Commission proposes the following recommendations in order to address the inadequacy;</p> <p><i>(a) a public establishment/entity to take into account the diversity of the people of Kenya in the employment of staff; and</i></p> <p><i>(b) a public establishment/entity to afford adequate and equal opportunities for appointment, training, and advancement of staff at all levels.</i></p> <p><i>(c) a public establishment/entity shall not have more than one fifth of its staff at national level from the same ethnic community.</i></p> <p><i>(d) county public service boards, county assemblies board and the appointments by the office of the Governor to ensure that at least thirty percent of vacant posts are filled by candidates or persons who are not from the dominant ethnic community in the county and of the same ethnic community.</i></p> <p><i>(e) a public establishment/entity at the national level to ensure that not more than one fifth of senior management positions and other job cadres are held by one ethnic</i></p>		

			community. <i>(f) all employment agencies in the public service both at national and county level shall submit an annual report for each financial year, to the Commission in compliance with requirements under subsection 2A and 2B, with such other additional information as the Commission may require from time to time. (See attached NCI (Amendment) Bill)</i> <i>(g) the employment agencies shall submit the annual report to the Commission within three months after the end of each financial year.</i> <i>(h) failure by a public establishment/entity to submit the report referred to under section (g) shall constitute an offence punishable by imprisonment for a term not exceeding six months or a fine not exceeding one million shillings or both.</i> <i>(i) any recruitment or employment process in breach of these sections shall be null and void and the responsible party shall be surcharged for the costs incurred.</i>		
41.	Clause 41 – Ethnic or racial contempt	NCIC	The NCPB Bill does not state the grounds for discrimination under the offence of ethnic or racial contempt and thus a need to provide for the same.		
42.	44 (1) (a) Matters that may be investigated		The Bill should provide a criteria/ checklist on which actions may be of serious nature. <u>Justification</u>		

				Having no criteria may result in different interpretations of the clause and lack of uniformity.		
43.	Clause 44(2) – Matters that may be investigated	NCIC		The NCPB Bill requires the Commission, once it establishes the contravention of the law to make all reasonable endeavours to conciliate the matter. The said proviso limits the discretion of the Commission in remedial measures to be taken. Consequently, we propose the deletion of clause 44(2).		
44.	Clause 73 – Regulations	NCIC		The NCPB Bill empowers the Cabinet Secretary in consultation with the Commission to make Regulations for the effective implementation of the Act. This provision undermines the independence of the Commission and thus it is our considered view that the Commission should independently make the regulations.		
45.	Part VIII Transitional provisions	NCIC		The NCPB Bill does not cater and save the employment of the Commission secretary and staff who form the secretariat of the former Commission.		
46.	Part IV on discrimination, hate speech and negative ethnicity	FIDA		We propose the overhaul of this entire section as it is similar to Part 111 of the National Cohesion and Integration Act Rationale Similarity to Part 111 of the National Cohesion and Integration Act		
47.	Part V on Complaints, Investigations and	FIDA		We propose the overhaul of this part as it is similar to Part VI of the National Cohesion and Integration Act		

	Enforcement		<u>Rationale</u> Similarity to Part VI of the Integration Act	National Cohesion and	
48.	New Provision on the role of the County Governments	Committee on Cohesion.	To provide for collaboration between the Commission and the County Governments.		
49.	New Provision on disability	Committee on Cohesion	To provide for discrimination on the basis of disability		
50.	General Comments	KNHRC	The Commission wishes to draw the Committee's attention to the National Cohesion and Peace Building Bill, 2018 (Senate Bills. No. 35). The impugned Bill was introduced in the National Assembly and read the first reading on 1st August 2019 and was committed before the Select Committee on National Cohesion and Equal Opportunity for deliberations. In its report, the Select Committee found that majority of the provisions in		
51.			Kenya has a checkered history of unequal distribution of resources and negative ethnicity which have fueled skewed development, nepotism and political cronyism. This can be traced back to colonial legacy that promoted the principle of 'divide and rule' and ethnic stereotyping. Tribal politics pushed Kenya to the brink of precipice in the year 2007/2008 and violence was targeted based on ethnicity, a reminiscence of the 1992 and 1997 ethnic clashes. The ethnic factor was not any less significant as driver of politics and violence witnessed in the most General Elections in 2017 elections whereby scores were injured and lives lost		

52.			<p>The interlinkages between political power, ethnicity and perpetuated marginalization were noted by the Truth Justice and Reconciliation Commission (TJRC). Notably, ethnicity was instrumentalised through what the TJRC called the “evil triumvirate” of patronage, corruption and tribalism. The TJRC drew a clear link between political power and benefits to the community to which those in power belonged. More so, combating regional development imbalances as well as consolidating national cohesion and unity were some of the sticky sub issues under Agenda Item No. 4 of the Kenya National Dialogue and Reconciliation process forged after the 2007/2008 post electoral violence.</p>		
53.			<p>It is thus no wonder that national unity, inclusiveness, social justice, equity, equality, non-discrimination and protection of the marginalized were firmly etched in the 2010 Constitution as national values and principles of governance. This was in tandem with the aspirations of the drafters and the Kenyan people as evidenced in the preamble to the Constitution that proudly restates its ‘ethnic, cultural and religious diversity’ and the determination to, ‘<i>live in peace and unity as one indivisible nation</i>’. Devolution was to be a major antidote to securing inclusion and equitable sharing of resources. The Constitution further underscored the principles of equitable provision of services and representation of Kenya’s diverse communities as some of the values and principles of public service. Thus, the profound significance of ethnic inclusion and non-discrimination to human rights and indeed the conscience of the Kenyan nation cannot be overemphasized.</p>		
54.			<p>The principal object of the proposed Bill is to repeal the National Cohesion and Integration Act (No. 12 of 2008). The main aim, according to the memorandum of objects is to provide for a coordinated structure for peace building and cohesion in Kenya. The National Cohesion and Integration Act No. 12 of 2008 seeks to encourage national cohesion and integration by outlawing discrimination on ethnic grounds. The Bill sponsored by Senator Judith Pireno seeks to create the National Cohesion and Peace Building Commission. The Commission will be charged with</p>		

			ensuring the formulation of strategies, plans and programs for the promotion of national unity.		
55.			In terms of composition of the Commission, the Bill seeks to reduce number of commissioners from the current 8 and the chairperson to four commissioners and the chairperson. In addition, the bill seeks to remove the ex-officio members i.e. the Kenya National Commission on Human Rights from the current board. In the memorandum of objects and reasons, there is no justification given for the proposed membership of the Commission. 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.		
56.	General Comments.	Fida	<p>a) The impugned Bill has huge similarities with the National Cohesion and Integration Act, 2008 (the Parent Act) and the minor difference identified does not warrant an overhaul of the Act but amendment.</p> <p>b) The similarities of the National Cohesion and Integration Act, 2008 (parent Act) and the National Cohesion and Integration Bill 2018 are very evident from the purpose and objective of both documents: to encourage national cohesion and integration by outlawing discrimination on ethnic grounds; to provide for the establishment, powers and functions of the National Cohesion and Integration Commission.</p> <p>c) The impugned Bill was introduced in parliament for the first time on 31st July 2019 and was presented before the Select Committee on National Cohesion and Equal Opportunity for deliberations and the Select Committee's findings was that majority of the provisions in the Bill are similar to the provisions in the National Cohesion and Integration Act, 2008 and the minor differences do not warrant an overhaul of the NCI Act, 2008, (Attached and Mark FIDA-K 1 is a</p>		

			<p>copy of the report from the select committee).</p> <p>That before the National Assembly is the National Cohesion and Integration (Amendment) Bill 2019 which seeks to amend the National Cohesion and Integration Act, 2008 and incorporate the minor amendments contemplated in the National Cohesion and Peace Building Bill, (Attached and Marked FIDA-K 2 is a copy of the Amendment Bill 2019)</p> <p>d) The enactment of two legislations by the two houses of parliament whose purpose is to establish state organs that have similar function is ultra vires and an affront to Art 10 of the Constitution.</p> <p>e) State organs SHOULD NOT duplicate functions as this has a direction correlation on the ballooning wage bill, odious debt and national budget of the country.</p> <p>f) It also amounts to waste and improper management of public resources which is contrary to Kenya's international obligation on sustainable development.</p>		
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STAKEHOLDERS.

1. Ministry of Interior and Coordination of National Government, Directorate of National Cohesion and Values (Ministry)
2. The National Cohesion and Integration Commission (NCIC)
3. Federation of Women Lawyers (FIDA-Kenya)
4. Kenya Christians Professionals Forum (KCPF)
5. Kenya National Human Rights Commission. (KNHRC)

5th October, 2021

The Clerk of the Senate,
Parliament Buildings,
NAIROBI.

**RE: COMMITTEE STAGE AMENDMENTS TO THE NATIONAL COHESION
AND PEACE BUILDING BILL, SENATE BILLS NO. 19 OF 2021**

NOTICE is given that Sen. Naomi Shiyonga, Chairperson, Committee on National Cohesion, Equal Opportunity and Regional Integration intends to move the following amendments to the National Cohesion and Peace Building Bill, Senate Bills No. 19 of 2021, at the Committee Stage—

CLAUSE 6

THAT clause 6 of the Bill be amended by—

- (a) renumbering the existing provision as subclause (1);
- (b) inserting the following new subclause immediately after subclause (1) —
 - (2) The Commission shall, in performance of its functions, collaborate with the county governments.

CLAUSE 7

THAT clause 7 of the Bill be amended —

- (a) in subclause (2) by inserting the words “upon conviction by a competent court” at the beginning of paragraph (c);
- (b) by inserting the following new subclause immediately after subclause (2)—
 - (3) The Commission shall, in executing its powers under subsection (2)(b), shall have the same powers as the High Court—
 - (a) enforce the attendance of witnesses and examine them on oath,affirmation or otherwise; and
 - (b) to compel the production of documents.
 - (4) The summons for the attendance of a witness under subsection (3) shall be in the prescribed form and shall be signed by the Commission Secretary.

(5) Where a witness summoned does not appear, or appears but fails to satisfy the Commission, the Commission may impose upon the witness such fine, not exceeding one million shillings, having regard to the witness' condition in life and all the circumstances of the case.

(6) A person who fails to honor summons issued by the Commission commits an offence.

CLAUSE 9

THAT clause 9 of the Bill be amended by deleting the word “four” appearing immediately after the words “a chairperson and” and substituting therefor the word “seven”.

CLAUSE 21

THAT clause 21 of the Bill be amended —

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

(2) The Secretary shall hold office for a term of three years and is eligible for reappointment for a further term of three years.

(b) in subclause (4) by inserting the words “and the accounting officer” immediately after the words “chief executive officer”.

CLAUSE 31

THAT clause 31 of the Bill be amended—

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

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

(b) in subclause (2) by deleting the words “Cabinet Secretary” appearing after the words “been implemented the” and substituting therefor the word “Commission”.

CLAUSE 32

THAT clause 32 of the Bill be amended by—

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

(b) has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on equal footing, of human rights, fundamental freedoms in political, economic, social, cultural or any field of public life;

(b) in subclause (3) by inserting the words “and disability” immediately after the words “persons on ethnic”.

CLAUSE 34

THAT clause 34 of the Bill be amended by inserting the following subclauses immediately after subclause (3)

(4) A public entity shall afford adequate and equal opportunities for appointment, training and advancement of staff at all levels.

(5) A public entity at the national level of government shall ensure that not more than one fifth of senior management positions are held by one ethnic community.

(6) The Public Service Commission, county public service boards and any other public body corporate at the national level, shall within a period of three months after end of each financial year, submit to the Commission a report on the compliance of this section and such other information as the Commission shall require.

(7) A recruitment or employment process that results in the breach of this section shall be invalid.

(8) A public officer who oversees the recruitment of employees which results in the contravention of this section commits an offence and is liable on conviction, to a fine not exceeding five hundred thousand shillings or to a term of imprisonment not exceeding one year or to both.

CLAUSE 36

THAT clause 36 of the Bill be amended in subclause (1) by deleting the word “to” appearing immediately after the words “organization shall not” in the introductory clause.

CLAUSE 41

THAT the Bill be amended by deleting clause 41 and substituting therefor the following new clause—

41.(1) A person who –

- (a) uses threatening, abusive, insulting, vilifying words or behaviour, displays any written material or disseminates any ideas based on ethnic superiority;
- (b) uses coded language, acts or makes gestures;
- (c) publishes, posts or distributes material in the print, electronic or social media;
- (d) presents or directs the public performance of a play with gestures depicting ethnic hatred;
- (e) displays, publishes or otherwise disseminates a recording of visual images or provides, produces or directs a programme which-
 - (i) depicts ethnic propaganda or stereotyping; or
 - (ii) contains gestures depicting ethnic hatred; or
 - (iii) is threatening, abusive, insulting or vilifies others or involves the use of threatening, abusive, insulting or vilifying words or behaviour and;
- (f) wears or engages in the display of clothing, signs, flags, emblems and insignia, with the intention to incite or stir up ethnic hatred or having regard to all the circumstances, ethnic hatred or social strife or show contempt for, or severe ridicule of, or incite acts of violence towards a person or group of persons, or towards any property of that person or group of persons,

commits an offence.

(2) A person who, or media enterprise which publishes through print or electronic media or otherwise disseminates any information under

subsection (1) on any platform commits an offence and is liable on conviction, to a fine not exceeding ten million shillings or to imprisonment for a term not more than ten years or both.

(3) A person who commits an offence under this section is liable on conviction to a fine of not exceeding five million shillings or to imprisonment for a term not exceeding five years or to both.

(4) Where a media enterprise is found liable for an offence under this section, its licence shall stand revoked.

(5) A person who is convicted of an offence under this section is not eligible to hold any public nominative or elective office for a period of five years.

CLAUSE 43

THAT clause 43 of the Bill be amended by deleting paragraph (c).

CLAUSE 44

THAT clause 44 of the Bill be amended —

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

(a) it disrupts or is capable of disrupting peace

(aa) may incite violence between ethnic groups.

(b) by inserting the following new paragraph immediately after paragraph (b) —

(c) the Commission determines that it is necessary, in the public interest, that the matter be investigated.

NEW CLAUSE 40A

THAT the Bill be amended by inserting the following new clause immediately after clause 40 —

Prohibition of
against
discrimination.

40A. A person who subjects another person to any form of discrimination under this Part commits an offence and 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.

FIRST SCHEDULE.

THAT the first schedule be amended in paragraph 3 by deleting the word “four” appearing immediately after the words “of Chairperson and” and substituting therefor the word “seven”.

CLAUSE 2

THAT clause 2 of the Bill be amended by—

- (a) deleting the definition of the word “ethnic group and substituting therefor the following new definition—

“ethnic group” means a person or persons defined by reference to colour, race, religion, nationality, ethnic origin, tribe, sub-tribe, clan, sub-clan, ancestry, language or dialect, cultural practices, social origin, class, political or geographical grouping, age, gender and sexual orientation and national origins;

- (b) deleting the definition of the word “ethnic relations and substituting therefor the following new definition. —

“ethnic relations” include racial, religious, tribal, sub-tribal, clan, sub-clan, ancestral, cultural and political interactions between various groups.

Sen. Naomi Shiyonga.




Chairperson,

Committee on National Cohesion, Equal Opportunity and Regional Integration.

ANNEX 1: ADOPTION LIST

ADOPTION OF THE REPORT ON THE NATIONAL COHESION AND PEACE BUILDING BILL, 2021

We, the undersigned Members of the Senate Standing Committee on National Cohesion, Equal Opportunity and Regional Integration, do hereby append our signatures to adopt the Report-

1.	Sen. Naomi ShiyongaMasitsa, M.P. -	Chairperson	
2.	Sen. Christine ZawadiGona, M.P.	Vice-Chairperson	
3.	Sen. (Dr.) Christopher Andrew Lang'at, M.P.	Member	
4.	Sen. Judith Pareno, M.P.	Member	
5.	Sen. (Dr.) LelegweLtumbesi, M.P.	Member	
6.	Sen. Samson Cherarkey, MP.	- Member	
7.	Sen. (Dr.) Gertrude MusuruveInimah, M.P.	Member	
8.	Sen. Mercy Chebeni, M.P.	- Member	
9.	Sen. ImanFalhadaDekow, M.P.	- Member	

MINUTES OF THE EIGHTY EIGHTSITTING OF THE STANDING COMMITTEE ON NATIONAL COHESION, EQUAL OPPORTUNITY AND REGIONAL INTEGRATION HELD ON WEDNESDAY, 18TH AUGUST, 2021 ON THE ZOOM ONLINE PLATFORM AT 12.10 PM.

PRESENT

- | | |
|--|---------------------|
| 1. Sen. Naomi Shiyonga Masitsa, MP | -Chairperson |
| 2. Sen. Christine Zawadi Gona, MP | -Vice - Chairperson |
| 3. Sen. (Dr.) Gertrude Musuruve Inimah, MP | |
| 4. Sen. Judith Pareno, MP | |
| 5. Sen. Mercy Chebeni, MP | |
| 6. Sen. (Dr.) Christopher Lang'at, MP | |

ABSENT WITH APOLOGY

1. Sen. (Dr.) Lelegwe Ltumbesi, MP
2. Sen. Samson Cherarkey, MP
3. Sen. Iman Falhada Dekow, MP

IN ATTENDANCE

1. Mr. Ibrahim Ali Leruk
2. Ms. Regina Munyao
3. Ms. Anne Kigoro
4. Ms. Millicent Ratemo
5. Mr. Reuben Kimosop
6. Ms. Njeri Manga

SENATE

- Senior Clerk Assistant
- Legal Counsel
- Research Officer
- Audio Services
- Serjeant-at-Arms
- Media Relation Officer

MIN. NO. 435/2021

PRELIMINARIES

The Chairperson called the meeting to order at 12.13 p.m. followed by a word of prayer.

MIN. NO. 436/2021

ADOPTION OF THE AGENDA

Members adopted the agenda of the meeting after being proposed by Sen. Judith Pareno, MP and seconded by Sen. Mercy Chebeni, MP as follows-
Prayers;

1. Adoption of the Agenda;
2. Confirmation of Minutes;
3. **Consideration of Legislative Business – The National Cohesion and Peace Building Bill, 2021 submission from the Stakeholders;**
4. Any Other Business & Adjournment.

MIN.NO. 437/2021

CONFIRMATION OF MINUTES

The matter was deferred to the next sitting.

MIN.NO. 438/2021

**CONSIDERATION OF LEGISLATIVE BUSINESS –
THE NATIONAL COHESION AND PEACE
BUILDING BILL, 2021 SUBMISSION FROM THE
STAKEHOLDERS**

The Committee was briefed on the National Cohesion and Peace Building Bill, 2021 stakeholders matrix as follows –

- i. On the Title the National Cohesion and Integration Commission recommended the Bill and the proposed Commission be titled as the “National Cohesion and Peace Bill” and “National Cohesion and Peace Commission” respectively;
- ii. On the Long Title the FIDA recommended need to overhaul this Act as there seems to be duplicity of legislation;
- iii. On the Interpretation Clause 2 the National Cohesion and Integration Commission proposed to replace “ethnic group” with “group” and a new definition of group;
- iv. On the Interpretation Clause 2 the FIDA proposed overhauled as it bears similarities with Clause 2 of the National Cohesion and Integration Act;
- v. On the Clause 3 (a) and (d) the Ministry proposed deletion cause it encroach on the constitutional mandate of H. E the President under Articles 131 and 132 of the constitution;
- vi. On the Clause 3 (b) the Ministry proposed amendments to read Provide for implementation of the framework for the promotion of national cohesion, unity and peace building;
- vii. On the Clause 3 (c) the Ministry proposed deletion of the Clause as it doesnt contain any coordinative mechanism as currently drafted;
- viii. On the Clause 3 (d) the Ministry proposed deletion of the Clause since the promotion of national values and principles of governance already exists in Sessional Paper No. 8 of 2013 on national values and principles of governance;
- ix. On the Clause 3 objects of the act the FIDA proposed be overhauled and incorporated in the National Cohesion and Integration Act;
- x. On the Clause 4 the FIDA proposed proposed be overhauled since there seems to be duplicity of functions;
- xi. On the Clause 6 (a) and c(1) the Ministry proposed amendments since the functions of the Commission usurps the functions of other existing Government institutions;
- xii. On the Clause 6 (a) the Ministry proposed deletion of the words ‘formulate and’ at the beginning since Formulation of national policies is an executive function not performed by Commissions;
- xiii. On the Clause 6 (h) the Ministry proposed deletion of the entire clause since formulation of national policies/strategies is an executive function;

- xiv. On the Clause 6 (c) the KNHRC proposed insertion 'actionable' after the word 'make' to read as 'Make actionable recommendations to the National and County governments for SMART recommendations;
- xv. On the Clause 6 (c) the Ministry proposed deletion of the words 'and national values' in the statement since promotion of national values is not the subject of this Bill;
- xvi. On the Clause 6 on the functions of the Commission the FIDA proposed the overhaul of this clause as it lays out similar functions to those established under Section 25 of the National Cohesion and Integration Act;
- xvii. On the Clause 7 on the Powers of the Commission Power to compel attendance of witnesses, NCIC proposed amendments on Power to summon witnesses and explicitly elevate the Commission's summoning mechanism to that of the High Court;
- xviii. On the Clause 7 2 (c) FIDA proposed an overhauled of the Clause as it is a duplicity of Section 26(b) of the National Cohesion and Integration Act;
- xix. On the Clause 9 on the membership of the Commission the NCIC proposed retention of the current membership made up of a chairperson and seven commissioners;
- xx. On Clause 8, 9 and 10 which speak to Headquarter of the Commission, Membership of The Commission and Qualifications of the Commissioner FIDA proposed an overhaul of these sections since the National Cohesion and Integration Act contains these provisions;
- xxi. On the Clause 11 2 (e) the KNHRC proposed deletion "...persons living with disability" and replace with '..National Council for Persons with Disability';
- xxii. On the Clause 14 the NCIC proposed deletion proposes that the Chairperson and members of the Commission to serve for a single term of six years and are not eligible for re-appointment is in line with the provisions of Article 250(6)(a) of the Constitution and the current practices;
- xxiii. On the Clause 15 (1) (e) on the Vacancy of office of chairperson and members the KNHRC proposed deletion 'arising out of physical or mental infirmity' and replace with 'is unable to perform the functions of office for any reason';
- xxiv. On the Clause 21 on the secretary to the Commission the KNHRC proposed amendments for the Bill should provide for the functions of the Commission Secretary to enhance accountability and transparency in terms of performance;
- xxv. On the Clause 21 on the secretary to the Commission the NCIC proposed amendments for the Bill to provide tenure of office since as is the current practice in government institutions;
- xxvi. On the Clause 22 (1) (a)- Removal of the Secretary the NCIC proposed deletion of the words 'arising out of physical or mental infirmity' and replace with 'is unable to perform the functions of office for any reason';
- xxvii. On the Part II on the Establishment of the Commission the KCPF proposed amendments since the functions are similar to the current functions of NCIC;

- xxviii. On the Clause 11,12, 13, 14,15,16,17,18, 19,20,21, 22,23 which relate to the recruitment, selection, assumption of office and security of tenure the FIDA proposed an overhaul of this enter Part as it is a duplicity of Part V of the National Cohesion and Integration Act;
- xxix. On the Clause 31 on the Annual report the NCIC proposed amendments for the Bill for the Commission to prepare and submit annual reports to the Parliament and the President;
- xxx. On the Clause 31(1) on the Annual report the KNHRC proposed review to the Bill for the Commission/Chairperson to report to Parliament as opposed to the Cabinet Secretary;
- xxxi. On the Clause Clause 32 on the ethnic discrimination the KNHRC proposed review for the Bill to align itself with the Convention since the Constitution and the NCIC Act do not provide for the same;
- xxxii. On the Clause 34 (2) discrimination in employment the KNHRC proposed removal of the phrase "one third of its staff from the same community" and replace with "... have a proportional representation of ethnic groups....." since the one third requirement may open up the Commission to lawsuits if strictly interpreted;
- xxxiii. On the Part IV – Discrimination, Hate Speech and Negative Ethnicity the NCIC proposed amendments since the heading has hate speech and negative ethnicity while the provisions that follow do not have any provision on hate speech but are on Ethnic or racial contempt;
- xxxiv. On the Clause 36 (1) Discrimination in membership of organizations the KNHRC proposed deletion of the word “to” appearing between the words “not” and “discriminate”. for grammatical clarity;
- xxxv. On the Part IV the NCIC proposed amendments on the NCPB Bill to define what constitutes vilification but it fails to provide for the offence of vilification and hate speech;
- xxxvi. On the Clause 34 the Commission proposed adoption of the terminology “public establishment” because to its broader meaning and application;
- xxxvii. On the 34 (2) discrimination in employment the KNHRC proposed removal of the phrase "one third of its staff from the same community" and replace with "... have a proportional representation of ethnic groups to add a requirement for public entities to annually provide statistical data, disaggregated by sex, on the ethnic representation of staff in their organizations;
- xxxviii. On the Clause 34 the Commission proposed raft amendments recommending corrections on the inadequacy of the Commission that are limiting and do not address all aspects on matters discrimination;
- xxxix. On the Clause 41 on the Ethnic or racial contempt the Commission proposed amendments to provide for a criteria/ checklist on which actions may be of serious nature for reasons having no criteria may result in different interpretations of the clause and lack of uniformity;
- xl. On the Clause 44(2) on the Matters that may be investigated the Commission proposed deletion;
- xli. On the Clause 73 on the Regulations the Commission proposed amendments to allow the NCIC to independently make the regulations;

- xlii. On the Part VIII on the Transitional provisions the Commission proposed amendments since The NCPB Bill does not cater and save the employment of the Commission secretary and staff who form the secretariat of the former Commission;
- xliii. On the New Provision on the role of the County Governments the Committee proposed amendments to provide for collaboration between the Commission and the County Governments; and
- xliv. On the New Provision Governments the Committee proposed amendments to provide for discrimination on the basis of disability.

Recommendations

The Committee resolved as follows-

On the Title the proposal by NCIC was rejected since The word Peace Building captures the Objectives of the Act. It also with line with the practice and the United Nations has a Peace Building Commission;

On the Long Title the proposal by FIDA was rejected because the stakeholder did not appreciate the contents of the Bill. The Bill seeks to repeal the National Cohesion and Integration Commission Act no 8 of 2003. Therefore, the issue of duplication does not arise;

On the Interpretation Clause the proposal by NCIC was partially adopted to incorporate relevant words to enrich the definition;

Clause 7 on powers of the Commission to compel attendance of witnesses the proposal by NCIC was adopted since the powers will ensure that summons are obeyed, lack of such powers will make the commission toothless hence weak;

Clause 9 on Membership of the Commission the proposal by NCIC was adopted to enable the commission to effectively discharge its functions;

Clause 15 (1) (e) on the vacancy of office of chairperson and members, the proposal by KNHRC was adopted to protect the rights of people with psychosocial disabilities;

Clause 21 on secretary to the Commission, the proposal by KNHRC was fully adopted. The Committee adopted the proposal (a) and (b) to provide for the functions of the secretary;

Clause 21 on the Secretary to the Commission the proposal by NCIC was adopted to align the clause with the current Government practice;

Clause 31 on annual report, the proposal by NCIC proposal was partially adopted since there was need for the reports to be submitted by the commission to the National Assembly and the senate, to protect the independence of the Commission;

Clause 32 on the ethnic discrimination, the proposal by KNHRC was adopted to enrich the definition and align it with the definition on the International Convention on Elimination of all Forms of Racial Discrimination;

Clause 34 (2) on discrimination in employment the proposal by KNHRC was adopted to provide the Commission with data on adherence to the provision of the Act;

Part IV on Discrimination, Hate Speech and Negative Ethnicity the proposal by NCIC was adopted to provide for hate speech and sanctions for discrimination;
Clause 36 (1) on the discrimination in membership of organizations, the proposal by KNHRC was adopted to correct a typographical error;
Part IV the proposal by NCIC was adopted to provide clarity and enrich the Bill;
CLAUSE 34, the proposal by NCIC was adopted to enrich the Bill;
Clause 44 (1) (a) on matters that may be investigated, the proposal by NCIC was adopted to provide more clarity; and
New Provision on the role of the County Governments and the New Provision on disability the proposal by the Committee adopted.

MIN.NO. 439/2021

A.O.B. AND ADJOURNMENT

There being no other business, the meeting was adjourned at 12:40 p.m.

SIGNED:

W. M. M. S.

DATE:

8th September, 2021

MINUTES OF THE NINETY EIGHTH SITTING OF THE STANDING COMMITTEE ON NATIONAL COHESION, EQUAL OPPORTUNITY AND REGIONAL INTEGRATION HELD ON WEDNESDAY, 13TH OCTOBER, 2021 ON THE ZOOM ONLINE PLATFORM AT 12.20 PM.

PRESENT

1. Sen. Naomi Shiyonga Masitsa, MP -Chairperson
2. Sen. Mercy Chebeni, MP
3. Sen. Judith Pareno, MP
4. Sen. (Dr.) Gertrude Musuruve Inimah, MP
5. Sen. Iman Falhada Dekow, MP
6. Sen. (Dr.) Lelegwe Ltumbesi, MP

ABSENT WITH APOLOGY

1. Sen. Christine ZawadiGona, MP -Vice – Chairperson
2. Sen. Samson Cherarkey, MP
3. Sen. (Dr.) Christopher Lang’at, MP

IN ATTENDANCE

1. Ms. Veronicah Kibati
2. Mr. Ibrahim Ali Leruk
3. Ms. Regina Munyao
4. Ms. Anne Kigoro

SENATE

- Principal Clerk Assistant
- Senior Clerk Assistant
- Legal Counsel
- Research Officer

MIN. NO. 480/2021

PRELIMINARIES

The Chairperson called the meeting to order at 12.13 p.m. followed by a word of prayer.

MIN. NO. 481/2021

ADOPTION OF THE AGENDA

Members adopted the agenda of the meeting after being proposed by Sen. (Dr.) Gertrude Musuruve Inimah, MP and seconded by Sen. Mercy Chebeni, MP as follows-
Prayers;

1. Adoption of the Agenda;
2. Meeting with the Cabinet Secretary, Ministry of East African Community and Regional Integration on issues regarding infrastructural development and utilities necessary for enhanced Integration;
3. Consideration and Adoption of the Committee Report on the National Cohesion and Peace Building Bill, 2021; and
4. Any Other Business & Adjournment.

MIN.NO. 482/2021

**MEETING WITH THE CABINET
SECRETARY, MINISTRY OF
EAST AFRICAN COMMUNITY
AND REGIONAL INTEGRATION
ON ISSUES REGARDING
INFRASTRUCTURAL
DEVELOPMENT AND UTILITIES
NECESSARY FOR ENHANCED
INTEGRATION**

1. The Committee was informed of the apologies received from the Cabinet Secretary Ministry of East Africa Community and Regional Development as Cabinet Secretary he had other pre-planned official engagement; and
2. The Chair directed the Secretariat to re-schedule the meeting with the Ministry.

MIN.NO. 483/2021

**CONSIDERATION AND
ADOPTION OF THE
COMMITTEE REPORT ON THE
NATIONAL COHESION AND
PEACE BUILDING BILL, 2021**

The Committee adopted the report for tabling by consensus.

MIN.NO. 484/2021

A.O.B. AND ADJOURNMENT

There being no other business, the meeting was adjourned at 12:50 p.m.

SIGNED:



(CHAIRPERSON)

DATE:13th October, 2021