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THE NATIONAL COHESION AND INTEGRATION BILL, 2023

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THE NATIONAL COHESION AND INTEGRATION BILL, 2023

A Bill for

AN ACT of Parliament to outlaw discrimination on ethnic grounds; provide for the establishment of an institutional framework for national cohesion and peace building; to establish the National Cohesion and Integration Commission; 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 Integration Act, 2023.

Short title.

2. In this Act—

Interpretation.

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

“Commission” means the National Cohesion and Integration Commission established under section 4;

“Commissioner” means a member of the Commission appointed under section 11;

“development issues” includes issues relating to development in socio cultural, political and economic sectors;

“ethnic grounds” means any of the following grounds, namely colour, race, religion, nationality or ethnic or national origins;

“ethnic group” means a group of persons defined by reference to colour, race, religion, clan, nationality, ethnic origins, national origins, ancestry, social or cultural experience, language or dialect;

“ethnic relations” include racial, religious, social, 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;

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

“Secretary” means the Secretary to the Commission appointed under section 24.

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;
- (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;
- (d) promote the values and principles of public service set out under Article 232 of the Constitution; and
- (e) advise the government on the matters pertaining to paragraphs (a) to (d).

PART II— ESTABLISHMENT, FUNCTIONS AND POWERS OF THE NATIONAL COHESION AND INTEGRATION COMMISSION

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

Establishment of the 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) taking, purchasing or otherwise acquiring, holding, charging and disposing of movable and immovable property;
- (c) borrowing money;
- (d) entering into contracts; and
- (e) 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 functions of the Commission are to---

Functions of the
Commission.

- (a) formulate and implement strategies, plans, educational and training programmes to create public awareness and support on the importance of national unity;
- (b) collaborate with institutions and stakeholders to give effect to the policies relating to cohesion, integration and peace-building;
- (c) make recommendations to the national government and any other relevant entities on—
 - (i) the review and reform of practices, policies and legislation relating to cohesion, integration and peace-building; and
 - (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 ethnic communities and put in place measures to address the problem;
- (e) promote—
 - (i) pursuant to Article 27 of the Constitution, equality and the elimination of all forms of discrimination;
 - (ii) peaceful co-existence, tolerance, respect, understanding and acceptance of diversity in all aspects of life and encourage appreciation by all ethnic communities of the social, economic, cultural and political life of other communities; and
 - (iii) equal access and enjoyment by persons of different ethnic, racial or social origins to services and facilities provided by government and private entities;
- (f) develop policies for the promotion of national values and principles of governance;

- (g) undertake research on national cohesion, national values, peace building and conflict management and make recommendations to the relevant government agencies;
- (h) foster partnerships with relevant state actors, non-state actors, bilateral and multilateral agencies on peace building and conflict management;
- (i) establish early warning and early response system on conflict and put in place an emergency preparedness and response system to curb imminent conflict; and
- (j) perform such other functions as may be necessary for the effective discharge of its mandate and exercise of its powers.

6. (1) The Commission shall have all the powers necessary or expedient for the proper performance 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) enter into association with other bodies or organisations, within or outside Kenya, as it may consider desirable or appropriate and in furtherance of the objective for which the Commission is established;
- (b) 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;
- (c) receive any grants, gifts, donations or endowments and make legitimate disbursements therefrom; and
- (d) open bank accounts for the funds of the Commission.

7. (1) The Commission shall have power to summon witnesses for the purpose of giving evidence or for the production of books, plans and other documents.

Power to summon.

(2) Where the Commission requires that the information under subsection (1) be verified, the Commission may cause such witness to be examined under oath.

8. Summons for the attendance of witnesses or other persons or for the production of books, plans and other documents shall be in such form as may be specified by the Commission and shall be signed by the Secretary.

Summons for attendance of witnesses.

9. Every person summoned to attend and give evidence or produce books, plans or other documents at any sitting of the Commission shall be bound to obey the summons served upon him or her as if such summons were issued by the High Court, and shall be entitled to like expenses as a witness summoned to attend the High Court on a civil trial.

Expenses of witnesses.

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

Headquarters and regional offices.

(2) The Commission shall establish nine regional offices in the country to be administered by a commissioner.

(3) The Commission shall ensure that its services are accessible to all parts of the country and shall establish branches in each county in Kenya.

11. (1) The Commission shall consist of a chairperson and eight other members nominated by the President and approved by the National Assembly in accordance with the First Schedule.

Membership of the Commission.

(2) The commissioners shall, at their first meeting, elect a vice-chairperson who shall not be of the same gender as the chairperson.

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

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

Qualification and disqualification for appointment as chairperson and member.

(a) is a citizen of Kenya;

(b) holds a degree from a university recognized in Kenya;

(c) has knowledge and at least ten years experience in the case of the chairperson, and at least two years experience in the case of a member, 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.

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

- (a) is a State Officer;
- (b) is a member of the governing body or is actively involved in the affairs of a political party;
- (c) has promoted sectoral, ethnic, racial or religious animosity or openly advocated for partisan ethnic positions or interests;
- (d) is an undischarged bankrupt;
- (e) has served as a Member of the Commission;
- (f) has been removed from office for contravening the provisions of the Constitution or any other law; or
- (g) has not met his or her legal obligations relating to tax and other statutory obligations.

13. 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.

14. (1) The Chairperson shall —

Powers of the chairperson.

- (a) preside over all the meetings of the Commission; and
- (b) be the spokesperson of the Commission.

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

(3) If the offices of the Chairperson and Vice – chairperson become vacant or if the Chairperson and Vice – chairperson are unable to exercise the powers or perform the functions of their office owing to absence, illness or any other cause, the members shall elect one of their number who shall exercise those powers or perform those functions.

15. The Chairperson and members of the Commission shall be appointed for a term of three years and are eligible for re-appointment for one further term only.

Term of office.

16. The office of the Chairperson or a member of the Commission shall become vacant if the holder—

Vacancy.

- (a) dies;
- (b) resigns from office by notice in writing addressed to the President;
- (c) is in serious violation of the Constitution or any other law;
- (d) is in gross misconduct, whether in the performance of the member's or office holder's functions or otherwise;
- (e) is convicted of an offence and sentenced to imprisonment for a term of six months or more without the option of a fine;
- (f) is absent from three consecutive meetings of the Commission without good cause;
- (g) is declared bankrupt;
- (h) is unable to perform the functions of the office arising out of physical or mental infirmity;
- (i) violates the Code of Conduct prescribed by the Commission; or
- (j) is incompetent or neglects duty.

17. (1) A person desiring the removal from office of a Commissioner may present a petition to the President through the Cabinet Secretary.

Removal from office.

(2) The Cabinet Secretary, shall within seven days of receipt of the petition, forward the petition to the relevant Committee of the National Assembly.

(3) The Committee shall inquire into the matter and report on the facts to the President through the Cabinet Secretary, giving its recommendations as to whether or not the Commissioner ought to be removed from office.

(4) Where the question of removing a Commissioner has been referred to the relevant Committee of the National

Assembly under subsection (2), the President may suspend the Commissioner concerned.

(5) The President may lift the suspension at any time and the suspension shall cease to have effect if the Committee recommends that the Commissioner should be removed.

(6) A commissioner shall be removed from office if two thirds of the members of the National Assembly vote to remove the member, on the recommendation of the Committee.

18. (1) Where a vacancy occurs in the membership of the Commission under section 16 or 17, the appointment procedure set out under the First Schedule shall apply.

Filling of a vacancy.

(2) A person appointed under subsection (1) shall serve for a term of three years and is eligible for re-appointment for one further term.

19. The Commission may establish committees for the better carrying out of its functions.

Committees of the Commission.

20. The Commission may engage the services of such experts in respect of any of its functions in which the experts have special competence.

Experts.

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

Procedure of the business and affairs of the Commission.

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

22. The Commission may, by resolution either generally or in any particular case, delegate to any committee of the Commission or to any member, officer, employee or agent of the Commission, the exercise of any of the powers or the performance of any of the functions or duties of the Commission under this Act.

Delegation by the Commission.

23. The Chairperson and members of the Commission shall be paid such remuneration and allowances as the Cabinet Secretary may, in consultation with the Salaries and remuneration Commission, determine.

Terms and conditions of service.

24. (1) There shall be a secretary to the Commission who shall be appointed by the Commission through a competitive recruitment process upon such terms and

Secretary to the Commission.

conditions as the Commission may, in consultation with the Salaries and Remuneration Commission, determine.

(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 upon satisfactory performance as evaluated by the Commission.

(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 degree from a university recognised in Kenya;
- (c) has at least five years' experience at management level; and
- (d) meets the requirements of Chapter Six of the Constitution.

(4) The Secretary shall be the chief executive officer of the Commission and head of the secretariat and shall be responsible to the Commission.

25. (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 the functions of the office arising out of physical or mental infirmity;
- (b) gross misconduct or misbehaviour;
- (c) incompetence or neglect 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.

26. (1) The Commission may appoint such staff as are 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 Commission shall in the appointment of employees —

- (a) ensure that a person is employed on merit; and
- (b) afford equal opportunity to men and women, youth, persons with disabilities and minorities and marginalised groups.

(3) The Government may upon request by the Commission, second to the Commission such number of public officers as may be necessary for the purposes of the Commission.

(4) A public officer seconded to the Commission shall, during the period of secondment, be deemed to be an officer of the Commission and shall be subject to the direction and control of the Commission.

27. (1) The common seal of the Commission shall be kept in the custody of the Secretary 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.

28. (1) 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.

(2) Any expenses incurred by any person in any suit or prosecution brought against him or her in any court, in respect of any act which is done or purported to be done by him or her under the direction of the Commission, shall, if the court holds that such act was done *bona fide*, be paid out of the funds of the Commission, unless such expenses are recovered by him or her in such suit or prosecution.

29. The provisions of section 28 shall not relieve the Commission of the liability to pay compensation or damages to any person for any injury to him or her, his or her property or any of his or her interests caused by the exercise of any power conferred by this Act or any other written law or by the failure, wholly or partially, of any works.

Liability for damages.

30. (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) In the event the person having an interest under subsection (1) is the Chairperson, he or she shall in addition to declaring the interest, recuse themselves from such meeting.

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

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

(5) 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

31. The funds of the Commission shall consist of —

Funds of the Commission.

(a) monies allocated by the National Assembly 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.

32. (1) At least three months 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 in accordance with the provisions of the Public Finance Management Act.

Annual estimates.

No. 18 of 2012.

(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.

(3) The Cabinet Secretary shall present the estimates approved by the Commission under subsection (2) to the relevant committee of the National Assembly.

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

Financial year.

34. (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 the Public Audit Act.

No. 34 of 2015.

35. (1) The Commission shall cause an annual report to be prepared for each financial year which shall be submitted to the National Assembly within three months after the end of the year to which it relates.

Annual report.

(2) The annual report shall contain —

- (a) the financial statements 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.

(3) The Commission shall publish and publicise the report.

36. The Commission shall, after every three months, prepare a report which shall be submitted to the National Assembly containing the following information—

Quarterly reports.

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

37. (1) The Commission may at any time, submit a special report to the National Assembly with respect to any aspect of the functions of the Commission which the Commission considers should, in the national interest, be brought to the attention of the National Assembly because it affects a wide cross section of the populace and there could be disastrous consequences if a report thereon is not brought to the attention of the National Assembly.

Special Report.

(2) The President or the National Assembly may at any time require the Commission to submit a report on a matter within the mandate of the Commission.

PART IV — DISCRIMINATION AND NEGATIVE ETHNICITY

38. (1) A person discriminates against another person directly or indirectly if—

Ethnic discrimination.

- (a) on ethnic grounds the person treats that other person less favourably than he or she would treat other persons; or
- (b) he or she applies to that other person a requirement or condition which would apply to persons of another ethnic group 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 is applied; and
- (iii) is to the detriment of that other person because that person cannot comply with it.

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

(3) 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.

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

Discrimination
through
victimisation.

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

40. A person subjects another to harassment on the basis of ethnicity if he or she engages in unwanted conduct which has the purpose or effect of—

Harassment on the
basis of ethnicity.

- (a) violating that other person's dignity; or
- (b) creating an intimidating, hostile, degrading, humiliating or offensive environment for that other person.

41. (1) A public entity shall ensure representation of the diversity of the people of Kenya in the employment of staff and shall afford adequate and equal opportunities for appointment, training and promotion at all levels of public service to members of all ethnic groups.

Discrimination in employment.

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

(3) An employer or potential employer or his or her representatives or assigns, in relation to employment at an establishment, shall not discriminate against another person—

- (a) in the arrangements made for the purpose of determining who should be offered that employment;
- (b) in the terms he or she offers the employment;
- (c) by deliberately omitting to offer that other person employment;
- (d) in the way he or she affords the employee access to opportunities for promotion, transfer or training or to any other benefits, facilities or services, or by refusing or deliberately omitting to afford the employee access to them; or
- (e) by subjecting the employee to any other detriment.

(4) An employer, his or her representatives or assigns shall not subject to harassment a person whom he or she employs or who has applied to him or her for employment.

(5) A person who contravenes this section commits an offence and is liable, on conviction, to a fine not exceeding five million shillings or to imprisonment for a term not exceeding three years, or to both.

42. (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 only where—

- (a) the job involves cultural entertainment in a capacity for which a person of that ethnic group is required for reasons of authenticity;
- (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.

43.(1) An official, member, employee, assign or representative of a registered organization shall not discriminate against a person who is not a member —

Discrimination in membership organisation.

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

(2) A membership organization shall not discriminate against a person who is a member of the organisation on grounds of—

- (a) ethnicity;
- (b) in the way it affords the member access to any benefits, facilities or services, or by refusing or deliberately omitting to afford the member access to them;
- (c) by depriving the member of membership, or varying the terms on which he or she is a member; or
- (d) by subjecting the member to any other detriment.

(3) It is unlawful for a membership organisation to subject to harassment a person who is a member of the organisation or a person applying to be a member of the organisation on the ground of ethnicity.

(4) Subsection (1) shall not apply to cases where membership is limited to a given religious persuasion or profession.

(5) Any person who contravenes this section commits an offence and shall be liable, upon conviction, to a fine not exceeding one million shillings or to a term of imprisonment not exceeding one year, or to both.

44. (1) A public or private body shall not discriminate against any person in the provision of services.

Discrimination by other agencies.

(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 realising the desired goal; or
- (b) in the case of 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

citizenship and the management of foreign nationals under the Kenya Citizenship and Immigration Act.

No. 12 of 2011.

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

Discrimination in access to and distribution of public resources.

(2) A public officer who is in charge of public resources shall distribute the resources in an ethnically equitable manner.

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

- (a) an officer uses 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 a clear justification for it; or
- (c) more resources are allocated to a region that requires start up resources than to an area that requires remedial resources.

(4) A public officer who contravenes this section commits an offence and is liable, on conviction, to a fine not exceeding one million shillings or to imprisonment for a term not exceeding three years, or to both.

46. (1) A manager under this section shall mean a person who has the power to control, 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 his or her proposal for sale or engagement in the property, where the same conditions do not apply to others who are not of the same ethnic group as the manager; or
- (c) in his or her 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 harassing or subjecting that person to any other detriment.

47. (1) A person who—

Ethnic or racial
contempt.

- (a) uses threatening, abusive or insulting words or behaviour, or displays any written material;
- (b) publishes, posts or distributes material in print, electronic or social media;
- (c) presents or directs the performance of a play to the public;
- (d) distributes, shows or plays, a recording of visual images; or
- (e) provides, produces or directs a programme, which is threatening, abusive or insulting or involves the use of threatening, abusive or insulting words or behaviour commits an offence if such person intends to stir up ethnic hatred, or having regard to all the circumstances, ethnic hatred is likely to be stirred up.

(2) A person who commits an offence under this section shall be liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding three years or to both.

(3) In this section, “ethnic hatred” means hatred against a group of persons defined by reference to colour, race, clan, sub tribe, nationality, ethnic or national origins.

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

Exceptions to
discrimination.

- (a) to afford a person of a particular ethnic group access to facilities or services to meet the special needs of such a person 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 was no person 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 is 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.

PART V—COMPLAINTS, INVESTIGATIONS AND ENFORCEMENT

49. A matter may be investigated if –

Matters that may
be investigated.

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

50. (1) 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.

(2) A complaint may be made by or against an individual, a body of persons whether corporate or unincorporated, a public or private organisation, the Government or a specific body or officer of the government.

51. (1) A person may lodge a complaint with the Commission either orally or in writing.

Lodging a
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) The Commission shall require a complaint or information provided by a complainant to be verified by the complainant by oath or statutory declaration.

(5) Upon receipt of a complaint under subsection (1), the Commission shall within twenty-one days, notify the respondent in writing on the nature of the complaint and the

date on which the matter shall be considered by the Commission.

52.(1) If the Commission considers that a complaint—

Complaints not entertained by the Commission.

- (a) is frivolous, vexatious, misconceived or lacking in substance;
- (b) involves a subject matter that would be more appropriately dealt with by a court; or
- (c) involves a subject matter that has been adequately dealt with by a court,

the Commission may decline to entertain the complaint by notifying the complainant and the respondent in writing within thirty days after the day the complaint was lodged.

(2) Before declining to entertain a complaint, the Commission may, by written notice, invite any person to—

- (a) attend before the Commission, or a member or member of staff of the Commission, for the purpose of discussing the subject matter of the complaint; or
- (b) produce any documents specified in the notice.

53.(1) A respondent may apply in writing to the Commission to have a complaint or any part of it struck out on the 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 a notice to attend under section 51(5) or has otherwise been notified by the Commission or the Secretary 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 hear and determine the application within sixty days of filing the application or after conciliation has been completed under subsection (2) (b).

54. (1) The Commission may dismiss a complaint, and shall notify the complainant accordingly, if the Commission has had no substantive response from the complainant in the period of twelve months following a request by the Commission for a response in relation to the complaint.

Dismissal of stale complaint.

(2) A complainant may take no further action under this Act in relation to the subject matter of a complaint dismissed under this section.

55. (1) If the Cabinet Secretary considers that any matter raises an issue of important public policy, the Cabinet Secretary may refer the matter to the Commission, whether or not a complaint has been lodged or the Commission has considered the complaint or the complaint is in the process of being conciliated.

Referral by the Cabinet Secretary.

(2) The Cabinet Secretary shall not be a party to a proceeding in a matter referred to the Commission under subsection (1) unless invited by the Commission.

56. The Commission may, in managing conflicts and resolving disputes, and where it deems appropriate—

Alternative Dispute Resolution mechanisms.

- (a) establish *ad hoc* or standing peace committees comprising representatives of affected ethnic groups and experts where necessary;
- (b) establish mediation committees; and
- (c) involve traditional justice mechanisms relevant to a particular community, local administration and relevant national and county government agencies.

57. (1) Where the Commission considers it reasonably possible that a complaint may be conciliated successfully, the Commission may appoint a conciliator to facilitate an early voluntary settlement of the complaint between the parties.

Commission to refer complaints for conciliation.

(2) The conciliation process shall be voluntary and shall be conducted in accordance with the rules made by the Commission under this Act.

(3) The conciliation proceedings shall be private and confidential, and shall be conducted on a without prejudice basis.

(4) No person may refer to anything said at the proceedings during any subsequent proceedings, unless the parties involved in the dispute agree in writing.

(5) Any person who acted as conciliator may not be called as a witness during subsequent proceedings before the Commission or in any court to give evidence relating to the conciliation proceedings.

(6) The Commission shall make rules and guidelines for the better carrying into effect the provisions of this section.

58. The Commission shall make all reasonable endeavours to conciliate a complaint referred to it under section 57 and may, by written notice, require any person to—

Conciliation by
the Commission.

(a) attend before the Commission for the purpose of discussing the subject matter of the complaint; or

(b) produce any documents specified in the notice.

59. Upon satisfactory determination of conciliation, the conciliator shall cause to be signed, by both parties, a settlement agreement which shall be final and binding on the parties and enforceable as if it were a decision of the Commission.

Conciliation
agreements.

60. (1) Where conciliation fails or the parties or either of them objects to any conciliation efforts, the Commission shall set down the complaint for determination and issue a date on which the matter shall be heard.

Where
conciliation fails.

(2) The Commission shall, having heard the matter that is the subject of the complaint, make a report, issue any decision as it deems appropriate and give directions in connection with the complaint within sixty days.

(3) The Commission shall communicate its decision to the parties concerned within seven days from the date the decision is made.

61. (1) The Commission shall, in exercising its powers, pay particular attention to and expedite the disposal of special references.

Special
references.

(2) A special reference is—

- (a) a matter that has been referred to the Commission by the Cabinet Secretary under section 55;
- (b) a complaint the resolution of which may have significant social, economic or financial effects on the community or a section of the community; or
- (c) 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 question of whether or not a matter is a special reference shall be determined by the Commission.

62. (1) A compliance notice issued under section 69 (e) shall require the person concerned to—

Compliance notices.

- (a) comply with a duty specified in the notice; and
- (b) 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.

(2) A compliance notice may also require the person concerned to furnish the Commission with such other written information as may be reasonably required by the notice in order to verify that the notice has been complied with.

(3) The notice may specify—

- (a) the time, no later than three months from the date on which the notice is served, at which any information is to be furnished to the Commission; and
- (b) the manner and form in which any such information is to be so furnished.

(4) A compliance notice shall not require a person to furnish information which the person could not be compelled to furnish in evidence in civil proceedings before the High Court.

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 notices.

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

(2) If the Commission considers that a person has not, within three months of the date on which a compliance notice was served on that person, complied with any requirement of the notice for that person to comply with a duty imposed by an order under section 62, the Commission may apply to the High Court for an order requiring the person to comply with the requirement of the notice.

(3) If the court is satisfied that the application is well-founded, it may grant the order in the terms applied for or in other terms that the Court may deem appropriate.

(4) A person who contravenes the provisions of this section shall be liable, upon conviction, to a fine not exceeding two hundred thousand shillings, or to imprisonment for a term not exceeding six months, or both.

64. The Commission shall have the power to issue a prohibition notice directing a person or entity involved in an action or conduct contrary to national cohesion, integration and peace building to cease such action or conduct within seven days.

Prohibition notice.

65. (1) The Commission may, for the purpose of conducting any investigation pertaining to an inquiry, employ the services of a 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) requisition any public records and copies thereof from any public officer, subject to the Constitution and any written law.

(3) A 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 within six months.

(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.

66. If the Commission decides to discontinue the investigation of a complaint, the Commission shall inform the complainant in writing of that decision and the reasons for that decision within thirty days of making the decision.

Notice if investigation on complaint is discontinued.

67. Before commencing an investigation under this Act, the Commission shall give notice of the intended investigation to the administrative head of a state organ, public office or organisation.

Notice of investigation to organization.

68. (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 inquire 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 herself or through an advocate to give evidence in his or her own defence.

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

69. 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;

- (b) recommend to the complainant a course of other judicial redress;
- (c) recommend to the complainant and to the relevant government 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;
- (e) issue a compliance notice or summons as it may deem necessary; or
- (f) find the complaint or any part of it not proven and make an order that the complaint or part of it be dismissed.

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

Report to
organisation.

(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 organisation that was the subject of the investigation to submit a report to the Commission within a period of sixty days 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 the National Assembly a report detailing the failure or refusal to implement its recommendations and the National Assembly shall take appropriate action.

71. The hearings of the Commission during an inquiry shall be open to the public except where the Commission for justifiable reasons decides otherwise.

Hearings of the
Commission.

PART VI—MISCELLANEOUS PROVISIONS**72. A person who—**

Offences.

- (a) subjects or threatens to subject another person to any detriment because the other person, or a person associated with the other person—
 - (i) has made a complaint against any person;
 - (ii) has brought any other proceedings under this Act against any person;
 - (iii) has given evidence or information, or produced a document, in connection with any proceedings under this Act;
 - (iv) has otherwise done anything in accordance with this Act in relation to any person;
 - (v) has contravened a provision of Part IV, unless the allegation is false and was not made in good faith;
 - (vi) has refused to do anything that would contravene a provision of Part IV;
- (b) fails to comply with a notice by the Commission under section 69 (e);
- (c) hinders or obstructs a Commissioner, member of staff of the Commission or the Secretary in the exercise of powers or the performance of functions under this Act;
- (d) uses insulting language towards a Commissioner, member of staff of the Commission or the Secretary when the Commissioner, member of staff or Secretary is exercising powers or performing functions under this Act; or
- (e) gives any information or makes any statement to the Commission, the Secretary or a person acting on behalf of the Commission or the Secretary in the exercise of powers or the performance of functions under this Act which the person knows is false or misleading in any material particular,

commits an offence and shall be liable, on conviction, to a fine not exceeding five hundred thousand shillings or

to imprisonment for a term not exceeding twelve months, or to both.

73. In the case of an offence committed by a body of persons under this Act—

Offences by body of persons.

- (a) where the body of persons is a body corporate, every director of that body corporate shall also be deemed to be guilty of that offence; and
- (b) where the body of persons is a firm, every partner of that firm shall also be deemed to be guilty of that offence:

Provided that no such person shall be deemed to be guilty of an offence under this Act, if the person proves that the offence was committed without his or her knowledge or that the person exercised all due diligence to prevent the commission of the offence.

74. The members and staff of the Commission shall keep and maintain professional and ethical standards and shall adhere to and comply with the Commission's Code of Conduct.

Code of conduct.

75. This Act binds the Government.

Act binds Government.
Legal Proceedings against the Commission.

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

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

77. (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; or

(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 five hundred thousand shillings or to imprisonment to a term not exceeding one year or to both.

78. 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.

79. A statement made by a person in the course of giving evidence before the Commission shall not subject such person to any civil or criminal liability except where such statement is false.

Statements made by persons to the Commission.

80. (1) A 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 him or her; 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 the thing is done without the member of staff's knowledge or consent or if the member of staff has taken reasonable steps to prevent it.

81. (1) If a public officer considers that anything required of them is in contravention of this Act or any other Act or is otherwise improper or unethical, the member or officer may 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.

82. 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 one year, or to both.

General penalty.

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

Review.

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

PART VII — PROVISIONS ON DELEGATED POWERS

84. (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; and
- (c) prescribing forms for the purposes of this Act.

(3) For the purpose of Article 94(6) of the Constitution—

- (a) the purpose and objective of the delegation under this section is to enable the Cabinet Secretary to make rules to provide for the better carrying into effect the provisions of this Act;
- (b) the authority of the Cabinet Secretary to make regulations under this Act shall be limited to bringing into effect the provisions of this Act and fulfillment of the objectives specified under this section;
- (c) the principles and standards applicable to the rules made under this section are those set out in the Interpretation and General Provisions Act and the Statutory Instruments Act.

Cap. 2.

No. 23 of 2013.

PART VIII—TRANSITIONAL PROVISIONS

85. The National Cohesion and Integration Act is repealed.

Repeal of Act No. 12 of 2008.

86. In this Part —

Interpretation of Part.

“former Commission” means the National Cohesion and Integration Commission established under the National Cohesion and Integration Act, 2008.

Act No. 12 of 2008.

87. All rights, obligations and contracts which, immediately before coming into operation of this Act, were vested in or imposed on the former Commission shall by virtue of this section, be deemed to be the rights, obligations and contracts of the Commission.

Rights and obligations.

88. Upon the commencement of this Act, any member of the former Commission shall be deemed to be a member of the reconstituted Commission for the unexpired period of his or her term of service.

Members of the former Commission.

89. A person who immediately before the commencement of this Act, is the Secretary to the Commission, shall remain in office for the remaining period of his or her term, in accordance with the terms and conditions of their appointment.

Secretary to the former Commission.

90. Every person who, immediately before the commencement of this Act, was a member of staff of the former Commission, not being then under notice of dismissal or resignation shall be a member of staff of the Commission.

Transfer of Staff.

FIRST SCHEDULE**(s. 11)****PROCEDURE FOR APPOINTMENT OF COMMISSIONERS**

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

Vacancy in the Commission.

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

Selection panel.

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

3. The Public Service Commission shall—

Role of the Public Service Commission.

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

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

Advertisement for applications.

- | | |
|--|--|
| <p>5. An application under paragraph 4 shall be forwarded to the Public Service Commission within fourteen days of the notice.</p> | <p>Period to submit application.</p> |
| <p>6. The names of all applicants under paragraph 5 shall be published in the <i>Gazette</i> and two daily newspapers of national circulation.</p> | <p>Publication of the names of all applicants.</p> |
| <p>7. The selection panel shall within fourteen days of receipt of applications under paragraph 5 consider the applications, interview and shortlist at least fifteen persons qualified for appointment as members of the Commission and shall forward the names of selected candidates to the President for nomination.</p> | <p>Shortlist to be forwarded to the President.</p> |
| <p>8. The President shall, within twenty one days of receipt of the names forwarded under paragraph 7, nominate one person for appointment as chairperson and eight persons for appointment as members of the Commission, and shall forward the names of the persons to the National Assembly for approval.</p> | <p>Nomination of Chairperson and members of the Commission.</p> |
| <p>9. The National Assembly shall, within twenty-one days of the day it next sits after receipt of the names of the nominees under paragraph 8, consider all the nominations received and may approve or reject any nomination.</p> | <p>Approval or rejection by the National Assembly.</p> |
| <p>10. Where the National Assembly approves the nominees, the Speaker shall forward the names of the approved persons to the President for appointment.</p> | <p>Procedure if the National Assembly approves a nominee.
Gazettement by the President of the Chairperson and members.</p> |
| <p>11. The President shall, within twenty one days of the receipt of the approved nominees from the National Assembly, by notice in the <i>Gazette</i>, appoint the chairperson and members.</p> | |
| <p>12. Where the National Assembly rejects any nomination, the Speaker shall, within three days, communicate the decision of the National Assembly to the President to submit a fresh nomination.</p> | <p>Communication of rejection of nominee by the Speaker.</p> |
| <p>13. Where a nominee is rejected by the National Assembly under paragraph 12, the President shall, within seven days, submit to the National Assembly a fresh nomination from amongst the persons shortlisted and forwarded by the selection panel under paragraph 7.</p> | <p>Procedure if the National Assembly rejects a nominee.</p> |

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

Procedure for the selection panel.

15. The appointments to the Commission-

Principles to be observed while making appointments to the Commission.

- (a) shall be done in a fair, transparent and competitive manner based on merit, suitability and competence;
- (b) shall take into account the values and principles under Articles 10, 27 and 232 of the Constitution;
- (c) shall ensure that not more than two-thirds of the members are of the same gender; and
- (d) shall observe the principle of regional and ethnic balance and shall have regard to the principle of fair representation for persons with disabilities.

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

Extension of period by the Cabinet Secretary.

SECOND SCHEDULE**(s. 13)****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 Integration 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, favour, 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. 21)

**PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS
OF THE COMMISSION**

1. (1) The Commission shall meet not less than four times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.

Meetings
generally.

(2) Meetings of the Commission shall be held on such date and at such time as the Commission shall decide or, in the absence of such decision on a date and at a time determined by the Chairperson in consultation with the Secretary.

2. The Chairperson shall, on the application of at least three of the members, convene a special meeting of the Commission.

Special meetings.

3. The quorum for the conduct of business at a meeting of the Commission shall be five members.

Quorum.

4. The Chairperson shall preside over every meeting of the Commission and in the absence of the Chairperson, the members present shall elect one of their number who shall with respect to that meeting and the business transacted thereat, have all the powers of the Chairperson.

Presiding of
meetings.

5. Unless an unanimous decision is reached, a decision on any matter before the Commission shall be by a majority of votes of the members present and in the case of an equality of votes, the Chairperson or the person presiding shall have a casting vote.

Decisions.

6. Subject to paragraph 3, no proceedings of the Commission shall be invalid by reason only of a vacancy among the members thereof.

Invalidity of
proceedings.

7. (1) The common seal of the Commission shall be authenticated by the signature of the Chairperson and the Secretary and any document required by law to be made under seal, and all decisions of the Commission may be authenticated by the Chairperson and the Secretary.

Common seal.

(2) In the absence of either the Chairperson or the Secretary in any particular case or for any particular matter, the Commission shall nominate one member to authenticate

the seal of the Commission on behalf of either the Chairperson or the Secretary.

(3) All instruments made by and decisions of the Commission not required to be under seal may be authenticated by the Chairperson and the Secretary.

8. The Commission shall cause minutes of all proceedings of its meetings to be entered in books kept for that purpose. Minutes.

MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and Reasons for the Bill

The principal object of this Bill is to provide for a co-ordinated structure for cohesion and peace building and in Kenya. Further, the Bill seeks to align the Act with the present constitutional dispensation and structure of government by repealing the National Cohesion and Integration Act (No.12 of 2008) whose enactment was before that of the Constitution.

Part I (clauses 1-3) provides for the preliminary provisions.

Part II (clauses 4-30) provides for the establishment, functions and powers of the Commission.

Part III (clauses 31-37) provides for funds of the Commission.

Part IV (clauses 38-48) provides for discrimination and negative ethnicity.

Part V (clauses 49-71) provides for complaints, investigations and enforcement.

Part VI (clauses 72-83) provides for miscellaneous provisions.

Part VII (clause 84) provides for delegated legislation.

Part VIII (clauses 85-90) provides for transitional provisions.

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

The Bill delegates legislative powers to the Cabinet Secretary and the Commission. It does not limit any fundamental rights and freedoms.

Statement that the Bill concerns county governments

The Bill concerns county governments in terms of Article 110 of the Constitution.

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

This Bill is a money Bill within the meaning of Article 114 of the Constitution.

Dated the 9th November, 2023.

ADAN HAJI YUSSUF,
*Chairperson, Committee on National
Cohesion and Equal Opportunity.*

