
**THE ETHICS AND ANTI-CORRUPTION
COMMISSION BILL, 2011**

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**THE ETHICS AND ANTI-CORRUPTION
COMMISSION BILL, 2011**

A Bill for

AN ACT of Parliament to establish the Ethics and Anti-Corruption Commission pursuant to Article 79 of the Constitution, to provide for the functions and powers of the Commission, to provide for the qualifications and procedures for the appointment of the chairperson and members of the Commission, and for connected purposes

ENACTED by the Parliament of Kenya, as follows –

PART I—PRELIMINARY

Short title.

1. This Act may be cited as the Ethics and Anti-Corruption Commission Act, 2011.

Interpretation.

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

“chairperson” means the chairperson of the Commission appointed in accordance with Article 250(2) of the Constitution and the procedure set out in section 7;

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

“Kenya Anti-Corruption Commission” means the Kenya Anti-Corruption Commission established by section 6 of the Anti-Corruption and Economic Crimes Act, 2003;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to ethics and anti-corruption matters;

“Salaries and Remuneration Commission” means the Salaries and Remuneration Commission established under Article 230 of the Constitution;

“secretary” means the Secretary to the Commission appointed by the Commission under Article 250(12) of the Constitution, in accordance with the procedure set out in section 16.

(2) Despite subsection (1), until after the first general elections under the Constitution, references in this Act to the expression “Cabinet Secretary” shall be construed to mean “Minister”.

PART II-ADMINISTRATION

Establishment the Commission.

3. (1) There is established an Ethics and Anti-Corruption Commission.

(2) In addition to the powers of the Commission under Article 253 of the Constitution, the Commission shall have the power to—

(a) acquire, hold, charge and dispose movable and immovable property; and

(b) do or perform all such other things or acts for the proper discharge of its functions under the Constitution, this Act or any written law, as may lawfully be done or performed by a body corporate.

(3) The Commission shall ensure access to its services in all parts of the Republic accordance with Article 6(3) of the Constitution.

Composition and appointment of the Commission.

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

(2) The chairperson and members shall serve the Commission on a part-time basis for a single term of six years.

Qualifications for appointment as chairperson or member.

5. (1) A person shall be qualified for appointment as the chairperson if that person –

(a) meets the requirements of Chapter Six of the Constitution;

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

(c) has knowledge and experience of not less than fifteen years in any of the following fields –

- (i) ethics and governance;
- (ii) law;
- (iii) public administration;
- (iv) leadership;
- (v) economics;
- (vi) social studies;
- (vii) audit;
- (viii) accounting;
- (ix) fraud investigation;
- (x) public relations and media; or
- (xi) religious studies or philosophy; and

(d) has had a distinguished career in their respective field.

(2) A person shall be qualified for appointment as a member of the Commission if that person—

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

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

(c) has knowledge and experience of not less than ten years in any of the following fields –

- (i) ethics and governance;
- (ii) law;
- (iii) public administration;
- (iv) leadership;

- (v) economics;
- (vi) social studies;
- (vii) audit;
- (viii) accounting;
- (ix) fraud investigation;
- (x) public relations and media; or
- (xi) religious studies or philosophy; and

(d) has had a distinguished career in their respective field.

(3) A person shall not be qualified for appointment as a chairperson or as a member if the person—

- (a) is a member of a governing body of a political party;
- (b) is an undischarged bankrupt;
- (c) has been convicted of a felony; or
- (d) has been removed from public office for contravening the provisions of the Constitution or any other law.

(4) Subsection (3) (a) shall cease to apply to a person after two general elections have been held since the person ceased to hold such office.

Appointment of the chairperson and members.

6. (1) The President shall, within fourteen days after the commencement of this Act, constitute a selection panel comprising one person from each of the following bodies—

- (a) the Office of the President;
- (b) the Office of the Prime Minister;
- (c) the Ministry responsible for ethics and integrity;
- (d) the Judicial Service Commission;
- (e) the Kenya National Human Rights and Equality Commission;

(f) the Commission for the time being responsible for matters relating to gender;

(g) the Media Council of Kenya;

(h) the joint forum of the religious organisations described in subsection (2), and

(i) the National Council of Non-Governmental Organisations.

(2) The joint forum of religious organizations referred to in subsection (1)(i) shall consist of representatives of –

(a) the Supreme Council of Kenya Muslims;

(b) the Kenya Episcopal Conference;

(c) the National Council of Churches of Kenya;

(d) the Evangelical Fellowship of Kenya; and

(e) the Hindu Council of Kenya.

(3) The Public Service Commission shall –

(a) convene the first meeting of the selection panel, at which the members of the selection panel shall elect a chairperson from among their number; 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 at least two daily newspapers of national circulation, invite applications from persons who qualify for nomination and appointment for the position of the chairperson and members referred to under section 4.

(5) The selection panel shall—

(a) consider the applications received under subsection (3) to determine their compliance with the provisions of the Constitution and this Act;

- (b) short list the applicants;
- (c) publish the names of the shortlisted applicants and the qualified applicants in at least two daily newspapers of national circulation;
- (d) conduct interviews of the shortlisted persons in public;
- (e) shortlist three qualified applicants for the position of chairperson;
- (e) shortlist ten qualified applicants for the position of the members; and
- (g) forward the names of the qualified persons under to the President.

(6) The President shall, within fourteen days of receipt of the names of successful applicants forwarded under subsection (4) (g), select the chairperson and members of the Commission and forward the names of the persons so selected to the National Assembly for approval.

(7) The National Assembly shall, within twenty-one days of the day it next sits after receipt of the names of the applicants under subsection (5), vet and consider all the applicants, and may approve or reject any or all of them.

(8) Where the National Assembly approves of the applicants, the Speaker of the National Assembly shall forward the names of the approved applicants to the President for appointment.

(9) The President shall, within seven days of receipt of the approved applicants from the National Assembly, by notice in the Gazette, appoint the chairperson and members approved by the National Assembly;

(10) Where the National Assembly rejects any nomination, the Speaker shall within three days communicate its decision to the President and request the President to submit fresh nominations.

(11) Where a nominee is rejected by the National Assembly under subsection (9), 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 subsection (5).

(12) If the National Assembly rejects any or all of the subsequent nominees submitted by the President for approval under subsection (10), the provisions of subsections (1) to (6) shall apply.

(13) In short listing, nominating or appointing persons as chairperson and members of the Commission, the selection panel, the National Assembly and the President shall ensure that not more than two-thirds of the members are of the same gender.

(14) The selection panel may, subject to this section, determine its own procedure.

(15) After the first general elections under the Constitution, the member of the selection panel under subsection (1)(b) shall be replaced by a representative of the Public Service Commission.

(16) The selection panel shall stand dissolved upon the appointment of the chairperson and members under subsection (9).

(17) Where the provisions of subsection (11) apply, the selection panel shall continue to exist but shall stand dissolved upon the requisite appointments being made under subsection (12).

(18) Despite the foregoing provisions of this section, the President 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.

Term of office

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

(2) The chairperson and members of the Commission, shall serve on a part-time basis.

Oath of Office.

8. Before assuming office, the chairperson and members of the Commission shall take and subscribe to an oath of office as prescribed under the First Schedule.

Vacancy.

9. The office of the chairperson or a member shall become vacant if the holder —

- (a) dies;
- (b) resigns from office, by a notice in writing addressed to the President;
- (c) is convicted of a felony and sentenced to imprisonment)
- (d) is absent from three consecutive meetings of the Commission without good cause; or
- (e) is removed from office under any of the circumstances specified in Article 251 of the Constitution.

Filling of Vacancy.

10. (1) Where a vacancy occurs in the membership of the Commission, the President shall appoint a replacement in accordance with the procedure provided for under this Act.

(2) A member appointed under subsection (1) shall serve the Commission for a single term of six years.

Additional functions of the Commission.

11. (1) In addition to the functions of the Commission under Article 252 and Chapter Six of the Constitution, the Commission shall—

(a) in relation to State officers,—

(i) develop and promote standards and best practices in integrity and anti-corruption;

(ii) develop a code of ethics;

(b) work with other State and public offices in the development and promotion of standards and best practices in integrity and anti-corruption;

(c) receive complaints on the breach of the code of ethics a public officer;

(d) investigate and recommend to the Director of Public Prosecutions the prosecution of any acts of corruption or violation of codes of ethics or other matter prescribed under this Act or any other law enacted pursuant to Chapter Six of the Constitution:

Provided that where the Director of Public Prosecutions unreasonably fails or neglects to act on the recommendations of the Commission, or fails to do so within a reasonable time, the Commission may, with the leave of the Court, prosecute the matter.

(e) recommend appropriate action to be taken against State officers or public officers alleged to have engaged in unethical conduct;

(f) oversee the enforcement of codes ethics prescribed for public officers;

(g) monitor the enforcement of codes of conducts of members of professional bodies established under any law;

(h) advise, on its own initiative, any person on any matter within its functions;

(i) raise public awareness on ethical issues and educate the public on the dangers of corruption and enlist and foster public support in combating corruption but with due regard to the requirements of section 23D of the Anti-Corruption and Economic Crimes Act, 2003 as to confidentiality;

(j) monitor the practices and procedures of public bodies and private bodies to detect corrupt practices and to secure the revision of methods of work or procedures that may be conducive to corrupt practices;

(k) institute and conduct proceedings in court for purposes of the recovery or protection of public property, or for the freeze or confiscation of proceeds of corruption or related to corruption, or the payment of compensation, or other punitive and disciplinary measures, and

(l) perform such other functions as are conferred by the Constitution, this Act or any other law.

(2) The Commission may cooperate and collaborate with other State organs and agencies in the prevention, investigation and prosecution for corruption.

(3) The powers of the Commission under the Constitution, this Act or any other law shall apply extraterritorially.

(4) The Commission shall have all powers necessary or expedient for the efficient and effective execution of its functions, under the Constitution, this Act or any other written law.

(5) The Commission may request and obtain professional assistance or advice from such persons or organizations as it considers appropriate.

(6) The functions of the Commissioners shall be to-

(a) assist the Commission in policy formulation and ensure that the Commission and its staff, including the Secretary perform their duties to the highest standards possible in accordance with this Act;

(b) give strategic direction to the Commission in the performance of its functions as stipulated in this Act;

(c) establish and maintain strategic linkages and partnerships with other stakeholders in the rule of law and other governance sector;

(d) deal with reports, complains of abuse of power; impropriety and other forms of misconduct on the part of the commission or its staff;

(e) deal with reports of conduct amounting to

maladministration, including but not limited to delay in the conduct of investigations and unreasonable invasion of privacy by the Commission or its staff, and

(f) request the appointment by a tribunal by the Chief Justice for the removal of the Secretary or Deputy Secretaries.

(g) recommend the termination of the service of the Secretary or any of the Deputy Secretaries.

(7) The Commissioners shall meet and at least once every quarter or as often as the need arises for the execution of their functions.

General principles.

12. In fulfilling its mandate, the Commission shall, in addition to the values and principles under Article 10 of the Constitution, observe the following principles—

(a) accommodate the diversity of Kenyan people;

(b) impartiality and gender equity; and

(c) the rules of natural justice.

Powers of the Commission.

13. (1) The Commission shall have all powers generally necessary for the execution of its functions under the Constitution, this Act, and any other written law.

(2) Without prejudice to the generality of subsection (1), the Commission shall have the power to—

(a) educate and create awareness on any matter within the Commission's mandate;

(b) undertake preventive measures against unethical and corrupt practices;

(c) conduct investigations on its own initiative or on a complaint made by any person, and

(d) conduct mediation, conciliation and negotiation.

Committees of the Commission.

14. (1) The Commission may establish committees for the effective discharge of its functions.

(2) The Commission may co-opt into the membership of committees established under subsection (1) other persons whose knowledge and skills are found necessary for the functions of the Commission.

(3) Any person co-opted into the Commission under subsection (2) may attend the meetings of the Commission and participate in its deliberation, but shall have no power to vote.

Procedure for the Commission.

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

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

Secretary to the Commission.

16. (1) The Commission shall, through an open, transparent and competitive recruitment process, and with the approval of Parliament, appoint a suitably qualified person to be the Secretary to the Commission.

(2) A person shall be qualified for appointment as the Secretary of the Commission if the person—

(a) is a citizen of Kenya;

(b) possesses a postgraduate degree from a university recognised in Kenya;

(c) has had at least ten years proven experience at management level;

(d) has experience in any of the following fields—

(i) ethics and governance;

- (ii) law;
 - (iii) public administration;
 - (iv) leadership;
 - (v) economics;
 - (vi) social studies;
 - (vii) audit;
 - (viii) accounting;
 - (ix) fraud investigation;
 - (x) public relations and media; or
 - (xi) religious studies or philosophy;
- (e) meets the requirements of Chapter Six of the Constitution.

(2) The Secretary shall be a State officer and shall serve on such terms and conditions as the Commission may determine.

(3) Before assuming office, the Secretary shall take and subscribe to the oath of office set out in the First Schedule.

(4) The Secretary shall hold office for one term of six years and shall not be eligible for reappointment.

(5) Where the Commission does not intend to re-appoint the Secretary, the Commission shall cause the vacancy in the office of the Secretary to be advertised at least three months before the expiry of the incumbent's term.

(6) The Secretary shall, in the performance of the functions and duties of office, be responsible to the Commission.

(7) The Secretary shall be—

- (a) the chief executive officer of the Commission;
- (b) the accounting officer of the Commission; and
- (c) responsible for—
 - (i) carrying out of the decisions of the Commission;
 - (ii) day-to-day administration and management of the affairs of the Commission;
 - (iii) supervision of other employees of the Commission;
 - (iv) the performance of such other duties as may be assigned by the Commission.

Removal from office of the Secretary.

17. (1) The Secretary may be removed from office by the Commission for—

- (a) inability to perform functions of the office arising out of physical or mental incapacity;
- (b) gross misconduct or misbehaviour; or
- (c) incompetence; or
- (d) violation of the Constitution.

(2) Where the question of the removal of the Secretary under sub-section (1) arises, the Commission shall inform the Secretary in writing of the reasons for the intended removal and shall give the Secretary the opportunity to respond thereto in writing.

(3) Where the Commission is dissatisfied with the response of the Secretary under sub-section (2), the Commission shall request the Chief Justice to appoint a tribunal consisting of a chairperson and two other persons who hold or have held office as judge of a superior court, or who are qualified to be appointed as such, to inquire into the matter, and the Secretary shall, upon the appointment of

such tribunal stand suspended from office.

(4) The tribunal shall carry out its inquiry expeditiously and make binding recommendations to the Commission.

(5) The Commission shall act in accordance with the recommendations of the tribunal.

(6) Despite the foregoing provisions of this section, the remuneration and benefits payable to a Secretary who is suspended from office under this section shall be adjusted to one-half until the Secretary is removed from office or reinstated, as the case may be.

Appointment of Deputy Secretaries to the Commission.

18. The Commission may, through an open, transparent and competitive recruitment process, appoint such number of suitably qualified persons to be the Deputy Secretaries to the Commission as it may consider appropriate for the purposes of the Commission, to perform functions assigned to them by the Commission.

Staff of the Commission.

19. (1) There shall be a secretariat of the Commission.

(2) The secretariat shall comprise of—

(a) such professional, technical and administrative officers and support staff, as may be appointed by the Commission in the discharge of its functions under this Act; and

(b) such public officers as may be seconded by the Public Service Commission to the Commission upon its request.

(3) The employees of the Commission shall be appointed, on such terms and conditions as may be recommended by the Salaries and Remuneration Commission.

(4) For purposes of this Act, a public officer who is seconded to the Commission under subsection (2) (b), shall be deemed to be an employee of the Commission and shall

enjoy the same benefits and shall be required to comply with the Constitution, this Act and any other written law relating to matters of ethics, leadership and anti-corruption, and any instruction, orders and directions of the Commission in the same manner as an employee recruited directly by the Commission under this Act.

(5) The Commission shall, in the appointment of employees, ensure that –

- (a) at least one-third of the employees are of either gender;
- (b) the appointment reflect ethnic and regional diversity of the people of Kenya.

Seal of the Commission.

20. (1) The seal of the Commission shall be such device as may be determined by the Commission and shall be kept by the Secretary.

(2) The affixing of the seal shall be authenticated by the chairperson or any other person authorized in that behalf by a resolution of the Commission.

(3) Any document purporting to be under the seal of the Commission or issued on behalf of the Commission shall be received in evidence and shall be deemed to be so executed or issued, as the case may be, without further proof, unless the contrary is proved.

Protection from personal liability.

21. Nothing done by a member of the Commission or by any person working under the instructions of the Commission shall, if done in good faith for the purpose of executing the powers, functions or duties of the Commission under the Constitution or this Act, render such member or officer personally liable for any action, claim or demand.

Code of conduct.

22. Members and the employees of the Commission shall subscribe to the code of conduct set out in the Third Schedule.

PART III—FINANCIAL PROVISIONS

Funds of the Commission.

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

- (a) monies allocated by Parliament for purposes of the Commission;
- (b) any grants, gifts, donations or other endowments given to the Commission;
- (c) such funds as may vest in or accrue to the Commission in the performance of its functions under this Act or under any other written law.

(2) Any funds donated or lent to, or gift made to the Commission shall be disclosed and made public.

Expenses of the Commission to be a charge on the Consolidated Fund.

24. The administrative and other expenses of the Commission, including the salaries, allowances, gratuities and pensions of the members and employees of the Commission shall be a charge on the Consolidated Fund.

Remuneration and allowances.

25. A member of the Commission shall be paid such remuneration or allowances as the Salaries and Remuneration Commission shall determine.

Annual estimates.

26. (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.

(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) creation of such funds to meet future or contingent liabilities in respect of benefits, insurance or replacement of buildings or installations, equipment and in respect of such other matters as the Commission may think fit.

(3) The annual estimates shall be approved by the Commission before the commencement of the financial year to which they relate and shall be submitted to the Cabinet Secretary for tabling in Parliament.

Financial year of the Commission.

27. The financial year of the Commission shall be—

(a) the period begin on the day on which this Act comes into operation and ending on the following thirtieth June;

(b) the period of twelve months commencing on the first of July and ending on the thirtieth of June of the subsequent year.

Accounts and audit.

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

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(2) The annual accounts of the Commission shall be prepared, audited and reported upon in accordance with the Public Audit Act, 2003.

Reports.

29. (1) The Commission shall, at the end of each financial year cause an annual report to be prepared.

(2) The Commission shall submit the annual report to the President and the National Assembly three months after the end of the year to which it relates.

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

(a) the financial statements of the Commission;

(b) a description of the activities of the Commission;

(c) such other statistical information as the Commission may consider appropriate relating to the Commission's functions;

(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 mandate or function;

(f) any impediments to the achievements of the objects and functions under the Constitution, this Act or any written law; and

(g) any other information relating to its functions that the Commission considers necessary.

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

PART IV—MISCELLANEOUS PROVISIONS

Independence of the Commission.

30. (1) Except as provided in the Constitution and this Act, the Commission shall, in the performance of its functions, not be subject to the direction or control of any person or authority.

(2) For the avoidance of doubt, every individual member and employee of the Commission shall perform the functions and exercise the powers provided for in this Act independently and without direction or interference of—

- (a) any State officer;
- (b) any public officer;
- (c) any organ of the Government;
- (d) any political party;
- (e) any candidate; or
- (f) any other person or organization.

Management of information.

31. (1) The Commission shall publish and publicise important information within its mandate affecting the nation.

(2) A request for information by a citizen—

- (a) shall be addressed to the Secretary or such other person as the Commission may for that purpose designate;
- (b) may be subject to the payment of a reasonable fee; and
- (c) may be subject to confidentiality requirements of the Commission.

(3) Subject to Article 35 of the Constitution, the Commission may decline to give information to an applicant on the following grounds—

- (a) the request is unreasonable in the circumstances;
- (b) the information requested is at a deliberative stage by the Commission;
- (c) failure of payment of a prescribed fee; or
- (d) failure of the applicant to satisfy confidentiality requirements by the Commission

(4) The right of access to information under Article 35 of the Constitution is limited to the nature and extent specified under this section.

(5) Every member and employee of the Commission shall sign a confidentiality agreement

Publicity.

32. The Commission shall, in such manner as it shall consider appropriate, publish a notice for public information specifying—

- (a) the location of its principal office; and
- (b) its address or addresses, telephone numbers and other means of communication or contact with the Commission.

Legal advice.

33. The Commission may request legal advice from the Attorney General.

Regulations.

34. (1) The Commission may make Regulations for the better carrying out of this Act.

(2) Without prejudice to the generality of subsection (1), such regulations may provide for—

- (a) the appointment, including the power to confirm appointments of persons, to any office in respect of which it is responsible under this Act;
- (b) the disciplinary control and termination of appointments of employees of the Commission;
- (c) the practice and procedure of the Commission in the exercise of its functions under this Act;
- (d) any other matter required under the Constitution, this Act or any other written law.

PART V—SAVINGS AND TRANSITIONAL PROVISIONS

Savings.

35. Notwithstanding the provisions of this Act—

(a) any orders or notices made or issued by the Kenya Anti-Corruption Commission shall be deemed to have been made or issued under this Act;

(b) any function transaction, investigation, prosecution carried out by or on behalf of the Kenya Anti-Corruption Commission, civil proceedings or any other legal or other process in respect of any matter carried out under the Anti-Corruption and Economic Crimes Act, 2003 or any other law, before the commencement of this Act, shall be deemed to have been carried out under this Act.

(c) Save as otherwise provided for in this Act any undertaking or responsibility falling on the Kenya Anti-Corruption Advisory Board shall be assumed by the Commission.

Transfer of staff of the Kenya Anti-Corruption Commission.

36. (1) Subject to subsection (4), a person who immediately before the commencement of this Act was serving on contract as a member of staff of the Kenya Anti-Corruption Commission shall, at the commencement of this Act, be deemed to be an employee of the Commission for the unexpired period, if any, of the term.

(2) Every person who immediately before the commencement of this Act was an employee of the Government attached to the Kenya Anti-Corruption Commission shall, upon the commencement of this Act, be deemed to be an employee of the Commission for the unexpired period, if any, of the term of the contract.

(3) Notwithstanding subsections (1) and (2), and before appointing or employing any member of staff of the Kenya Anti-Corruption Commission who wishes to work for the Commission, the Commission shall —

(a) require such a person to make an application for employment or appointment to the Commission; and

(b) using the criteria determined by the Commission, vet such a person to ensure that he or she is fit and proper to serve in the position applied for as a member of staff of a Commission.

(4) An applicant who fails to meet the vetting criteria under subsection (3) shall not be employed or appointed by the Commission and the services of such applicant with the Commission shall be terminated in accordance with the terms of the contract of employment.

Transfer of assets, etc.

37. (1) All property, assets, rights, liabilities, obligations, agreements and other arrangements existing at the commencement of this Act and vested in, acquired, incurred or entered into by or on behalf of the Kenya Anti-Corruption Commission, shall upon the commencement of this Act, be deemed to have vested in or to have been acquired, incurred or entered into by or on behalf of the Commission to the same extent as they were enforceable by or against the Commission before the commencement of the Act.

(2) Where the transfer of any property transferred to or vested in the Commission under subsection (1) is required by any written law to be registered, the Commission shall, within three months from the commencement of this Act or within such other period as the written law may prescribe, apply to the appropriate registering authority for the registration of the transfer and thereupon the registering authority shall, at no cost to the Commission or any person by way of registration fees, stamp or other duties—

(a) make such entries in the appropriate register as shall give effect to the transfer;

(b) where appropriate, issue to the Commission a certificate of title or other statutory evidence of ownership of the property or make such amendments on such certificates or in the appropriate register as may be necessary; and

(c) make any necessary endorsements on such deeds or other documents as may be presented to such registering

authority relating to the title, right or obligation concerned.

Amendment of section 2 of No.3 of 2003.

38. The Anti-Corruption and Economic Crimes Act, 2003 is amended in section 2, by deleting the definition of "Commission" and substituting therefor the following new definition—

"Commission" means the Independent Ethics and Anti-Corruption Commission established under section 3 of the Independent Ethics and Anti-Corruption Commission Act, 2011, pursuant to Article 79 of the Constitution;

Repeal of Part III of No. 3 of 2003.

39. The Anti-Corruption and Economic Crimes Act, 2003, is amended by repealing Part III.

Insertion of sections 23A to 23J in No. 3 of 2003.

40. The Anti-Corruption and Economic Crimes Act, 2003, is amended by inserting the following sections immediately after section 23-

Investigation of complaints.

23A. Any person authorized by the Commission may conduct an investigation on behalf of the Commission.

Identification of investigators.

23B. (1) The Secretary shall sign and issue identification documentation to an investigator and such identification shall be evidence that the person to whom it is issued is an investigator.

(2) An investigator shall immediately on request surrender his identification documentation to the Secretary, and if he is unable to do so, he shall make a statement under oath or affirmed, explaining the reasons why he cannot do so and steps he has taken to locate his identification documentation.

Power to take over or hand over investigation.

23C. (1) Notwithstanding anything to the contrary in any other law, the Commission may at any time in its sole discretion, with prior written notice to the head of any public body which has powers to investigate offences, assume the responsibility and accountability for an investigation commenced by such other public body into offences under this Act.

Confidentiality

23D. (1) The Chairperson, a member, the Secretary and member of staff of the Commission shall in respect of an investigation maintain the confidentiality and secrecy of any matter, document, report and other information relating to the administration of this Act that becomes known to him, or comes in his possession or under his control.

(2) Except in accordance with this Act, or as otherwise authorised by law, neither a member nor an employee of the Commission shall-

(a) divulge any information obtained in the exercise of a power, or in the performance of a duty under this Act; or

(b) divulge the source of such information or the identity of any informer or the maker, writer or issuer of a report given to the Commission.

(3) For the purposes of an investigation under this act in respect of an offence committed in Kenya, the Secretary may, impart to an agency in Kenya or elsewhere, such information, other than the source of the information, as may appear to him to be necessary to assist an investigation into any offence.

(4) Any person who, without lawful excuse, fails to comply with this section commits an offence.

Search and seizures.

23E. (1) The Commission may, on the authorisation of a court warrant, enter upon and search any premises for any record, property or other thing reasonably suspected to be in

or on the premises, and if so authorized by the warrant, to seize any record, property or other thing for purposes of an investigation.

(2) The Commission shall before entering premises show the warrant to any person who ostensibly is in control of the premises, and to any other person on the premises who demands to see it.

(3) For purposes of this section-

“premises” includes a motor vehicle, train, aeroplane, boat or ship.

(4) The power conferred by this section is in addition to, and does not limit or restrict, a power conferred by any other provision of this Part.

Special analytical or detection techniques and electronic surveillance.

23F. (1) The Commission Secretary may, subject to a court order, in writing authorise an investigator or other employee of the Commission to make use of or carry out data, forensic analysis, or detection techniques, or to make use of electronic surveillance, taking into account the rights protected by the Constitution, where the use of such technique or surveillance is in the interests of justice, but only in respect of any particular case under suspicion or investigation.

(2) The Commission may appoint or commission handwriting or forensic experts to examine, investigate or analyze any document, record, object or thing it has come into possession of.

(3) A report by an expert appointed or hired in terms of or under subsection (1) is admissible in a court and constitutes proof of the contents thereof, unless the contrary is proved.

(4) Subject to the Constitution, the Commission may, in undertaking investigations, intercept or tap communication.

Protection of public property unlawfully acquired or obtained.

23G. Where any public property is suspected to have been unlawfully acquired or obtained, whether before or after the enactment of this Act, or where Article 40(6) of the Constitution is applicable, the Commission may seek to protect the rights of any public body by registering a caveat, caution, or restriction, or, subject to a Court Order, freezing, seizure or inhibition thereof until such time as the matter is finally resolved by court or otherwise the question of alleged unlawful acquisition is finally determined.

Admissibility of things produced or found.

23H. Anything provided by a person pursuant to a requirement under the provisions of this Part, or obtained on a search of premises, may be taken and retained by the Commission for such time as is reasonable for the purposes of the investigation concerned and is admissible in evidence in a prosecution of any person, including the person who produced it or from whom it was obtained, for an offence.

Witness protection.

23I. (1) The Commission shall ensure that where necessary, complainants or witnesses shall be protected in a witness protection programme.

Whistle blowers.

23J. (1) No action or proceeding, including a disciplinary action, may be instituted or maintained against a person in respect of-

(a) assistance given or promise to give assistance by the person to the Commission or an investigator; or

(b) a disclosure of information made by the person to the Commission or an investigator.

(2) The protection shall apply to persons identified as witnesses or whistleblowers under this Act or any other Act and will include protection afforded under such Acts.

(3) Subsection (1) does not apply with respect to a statement made by a person who did not believe it to be true.

(4) In a prosecution for corruption or offence under this Act or a proceeding under this Act, no witness shall be required to identify, or provide information that might lead to the identification of, a person who assisted or disclosed information to the Commission or an investigator.

(5) In a prosecution for corruption or offence under this Act or a proceeding under this Act, the Court shall ensure that information that identifies or might lead to the identification of a person who assisted or disclosed information to the Commission or an investigator is removed or concealed from any documents to be produced or inspected in connection with the proceeding.

(6) Subsections (4) and (5) shall not apply to the extent determined by the court to be necessary to ensure that justice is fully done.

(7) Any person who discloses the identity of person identified as a witness or whistleblower commits an offence.

Repeal of section 24 of No.3 of 2003.

41. The Anti-Corruption and Economic Crimes Act, 2003, is amended by repealing section 24.

Repeal of section 29 of No.3 of 2003.

42. The Anti-Corruption and Economic Crimes Act, 2003, is amended by repealing section 29.

Replacement of section 38 of No.3 of 2003.

43. The Anti-Corruption and Economic Crimes Act, 2003, is amended by repealing section 38 and replacing it with the following new section-

Meaning of "agent" and "principal".

38. (1) In this Part-
"agent" means a person who, in any capacity, and whether in the public or private sector, is employed by or acts for or

on behalf of another person;

“principal” means a person, whether in the public or private sector, who employs an agent or for whom or on whose behalf an agent acts, a trust, a beneficiary under a trust or estate.

(2) If a person has a power under the Constitution or an Act and it is unclear, under the law, with respect to that power whether the person is an agent or which public body is the agent’s principal, the person shall be deemed, for the purposes of this Part, to be an agent for the Government and the exercise of the power shall be deemed to be a matter relating to the business or affairs of the Government.

(3) For the purposes of this Part-

(a) a Cabinet Secretary shall be deemed to be an agent for both the Cabinet and the Government; and

(b) the holder of a prescribed office or position shall be deemed to be an agent for the prescribed principal.

(4) The regulations made under this Act may prescribe offices, positions and principals for the purposes of subsection (3) (b).

Insertion of new sections 47B-47P in No.3 of 2003.

44. The Anti-Corruption and Economic Crimes Act, 2003, is amended by inserting the following sections immediately after section 47A-

Bribery of foreign public officials.

47B. (1) A person who bribes a foreign public official commits an offence if his or her intention is to influence the foreign public official in the latter’s official capacity.

(2) For purposes of this section -

“Foreign public official” means an individual who-

(a) holds an administrative, legislative or judicial position of any kind, whether appointed or elected, in a country or

territory outside Kenya,

(b) exercises a public function-

(i) for or on behalf of a country outside Kenya, or

(ii) for any public agency or public enterprise of that country

(c) is an official or agent of a public international organization;

“Public international organization” means an organization whose members are any of the following –

(a) countries or territories,

(b) governments of countries or territories,

(c) other public international organizations, or

(d) a combination of paragraphs (a), (b) or (c).

Bribery in regards to public tenders.

47C. (1) This section applies with respect to a benefit that is an inducement or reward for conspiring to -

(a) refrain from submitting a public tender, proposal, quotation or bid;

(b) withdraw or change a public tender, proposal, quotation or bid; or

(c) submit a public tender, proposal, quotation or bid with a specified price or with any specified inclusions or exclusions.

(2) A person commits an offence if the person-

(a) receives or solicits or agrees to receive or solicit a benefit to which this section applies; or

(b) gives or offers or agrees to give or offer a benefit to which this section applies.

Bribery in regards to auctions.

47D. (1) Any person who, without lawful authority or reasonable excuse, conspires to offer any advantage to any other person as an inducement to or reward for or otherwise on account of that other person refraining or having refrained from bidding at any auction conducted by or on behalf of any public body, commits an offence.

(2) Any person who, without lawful authority or reasonable excuse, solicits, accepts or obtains any advantage as an inducement to or reward for or otherwise on account of his refraining or having refrained from bidding at any auction conducted by or on behalf of any public body, commits an offence.

Offences against protection of public property and revenue.

47E. (1) A public officer commits an offence if that public officer, fraudulently or otherwise unlawfully-

- (a) acquires public property or a public service or benefit;
- (b) mortgages, charges or disposes of any public property;
- (c) damages public property, including causing a computer or any other electronic machinery to perform any function that directly or indirectly results in a loss or adversely affects any public revenue or service; or
- (d) fails to pay any taxes or any fees, levies or charges payable to any public body or effects or obtains any exemption, remission, reduction or abatement from payment of any such taxes, fees, levies or charges.

(2) An officer or person whose functions relate to the administration, custody, management, receipt or use of any part of the public revenue or public property commits an offence if the person-

- (a) fraudulently makes payment or excessive payment from public revenues for-
 - (i) sub-standard or defective goods;

- (ii) goods not supplied or not supplied in full; or
- (iii) services or works not rendered or not adequately rendered;
- (b) wilfully or negligently fails to comply with any law or applicable procedures and guidelines relating to the procurement, allocation, sale or disposal of property, tendering of contracts, management of funds or incurring of expenditures; or
- (c) engages in a project without prior planning.

Reversion of corruptly-acquired property to the State.

47F. Where any person is convicted of an offence under this Act, the ownership of all property which is the subject of the relevant prosecution shall revert to the State, irrespective of whether or not it is held within or outside Kenya, and irrespective in whose name it is held, or by whom.

Cheating of public revenue.

47G. A public officer commits the offence of cheating the public revenue if as a result of his fraudulent conduct money is diverted from public revenue account thereby depriving it of the revenue it is entitled to.

Misuse of donor funds or property donated for the benefit of the public.

47H. (1) Any person who, being a member or an officer or otherwise in the management of any organization, whether a public body or otherwise, dishonestly appropriates anything whether property or otherwise, which has been donated to such body in the name, or for the benefit of the people of Kenya or a section thereof or to a public body, commits an offence.

(2) A person who dishonestly appropriates anything whether property or otherwise, which has been donated to himself or any other person in the name of or for the benefit of the people of Kenya or a section thereof or to a public body, commits an offence.

Transfer of proceeds of corruption.

47I. (1) Any person who –

(a) knowingly converts, transfers, or disposes of property that is the proceeds of corruption or related offences for the purpose of concealing or disguising the illicit origin of such property or helping any person who is involved in the commission of the offence to evade the legal consequences of his action;

(b) conceals or disguises the true nature, source, location, movement or ownership of or rights with respect to property which is the proceeds of corruption or related offences; or

(c) acquires, possesses or uses property knowing that such property is the proceeds of corruption or related offences,

commits an offence.

(2) Where the Commission has reason to believe that any person having illicitly received or acquired a benefit or property, the Secretary may upon obtaining a court order issue a notice to that person or to any other person to whom the assets or proceeds of corruption is believed to have been transferred or conveyed by the person suspected of having illicitly received or acquired it or by an agent of such person, directing the person to whom the notice is addressed not to transfer, dispose of or part with the possession of the property, assets or proceeds specified in the notice.

(3) The Secretary may, subject to subsection (1) issue a notice to any other person to whom the assets under this section may pass by operation of law.

(4) Every notice issued under subsection (2) shall remain in force and binding on the person to whom it is addressed for a period of six months from the date of the notice or, where proceedings for an offence under this Act or any other law in relation to the benefit or assets commenced against any such person until the determination of those proceedings.

(5) A person who has been served with a notice under subsections (2) and (3) who, in contravention of the notice,

transfers, disposes of, or parts with, the possession assets specified in the notice, commits an offence.

(6) In any proceedings for an offence under this section, it shall be a defence for an accused person if he satisfies the court that-

(a) the assets or proceeds were delivered to the Commission as directed in the notice;

(b) the assets or proceeds specified in the notice were deposited in court and have been retained by the court; or

(c) the notice was subsequently withdrawn by the Secretary in writing.

Electronic crime.

47J. (1) A person who causes an electronic device to perform any function with the intent to commit an offence in terms of or under this Act commits an offence.

(2) A person who causes the loss of property to the State or another person, with the intent to obtain an economic benefit, by the input, alteration or deletion of electronic device data, by restricting the access to such data or by preventing in any way the operation of an electronic device system, commits an offence.

(3) A person who unlawfully obtains a benefit, financially or otherwise, by the input, alteration or deletion of an electronic device data, by restricting the access to such data or by preventing in any way the operation of an electronic device system, commits an offence.

Using influence for contracts.

47K. (1) Any person who, whether in Kenya or elsewhere, gives or agrees to give or offers a monetary or other benefit to a public officer as an inducement or reward for or on account of such public officer giving assistance or using influence whether real or fictitious, or having given assistance or used influence, whether real or fictitious in-

(a) the promotion, execution, or procurement any contract or

subcontract with a public body for the provision of any service, the doing of anything or the supplying of any article, material or substance;

(b) the payment of the price, consideration or other moneys stipulated or otherwise provided for in any contract or subcontract referred to in paragraph (a); or

(c) obtaining for that person or for any other person, an advantage under any contract or sub-contract referred to in paragraph (a),

commits an offence.

(2) Any public officer who, whether in Kenya or elsewhere, solicits, accepts or obtains an advantage as an inducement to or reward for or otherwise on account of his giving assistance or using influence or having given assistance or used influence in-

(a) the promotion, execution or procurement for;

(b) the payment of the price, consideration or other moneys stipulated or otherwise provided for in; or

(c) obtaining for that person or for any other person, an advantage under,

such contract or subcontract as is referred to in paragraph (a) of subsection (1), commits an offence.

corruption by commercial organisations.

47L. (1) A commercial organization commits an offence under this section if a person associated with it offers to give or gives a public officer a benefit intending-

(a) to obtain or retain business for the commercial organisation; or

(b) to obtain or retain an advantage in the conduct of business for the commercial organisation.

(2) For the purposes of this section –

“commercial organization” means –

- (a) a body which is incorporated under any law of Kenya and carries on a business;
- (b) any other body corporate, irrespective of where it is incorporated, which carries on a business in Kenya;
- (c) a partnership formed under any law of Kenya and which carries on a business; or
- (d) any other partnership, irrespective of where it is formed which carries on a business in Kenya.

“partnership” means –

- (a) a partnership within the meaning of the Partnership Act; or
- (b) a firm or an entity of a similar character formed under the law of a country outside Kenya.

(3) For purposes of this section, a trade or a profession is a business.

(4) A commercial organisation does not commit an offence contemplated in subsection (1) if the commercial organisation can prove that it had in place adequate procedures designed to prevent persons associated with it from undertaking such conduct.

Failure to report corruption and bribery offences.

47M. (1) A public officer who is offered a monetary or other benefit in circumstances which constitutes an offence under this Act, or a person who gains knowledge of such an offer, shall report as soon as reasonably practicable to the Commission or a police officer—

- (a) the existence and nature of the advantage, or the offer of it; and
- (b) the name, if known, of the person by whom it was given or procured or offered or who agreed to give or procure it.

(2) A person who knows or reasonably suspects, or ought reasonably to have known or reasonably to have suspected, that any person has committed, is committing or is about to commit an offence under this Act, shall, as soon as reasonably practicable, report to the Commission or to a police officer, that knowledge or suspicion, and the information on which it is based, or cause such knowledge or suspicion to be so disclosed.

(3) A person who fails to comply with subsections (1) or (2) commits an offence.

(4) A person who intentionally takes any action harmful to any person, including interference with a person's lawful employment or occupation, on the ground, whether solely on this ground or together with other grounds, that a person has made or may make a disclosure in accordance with subsection (1) or (2), commits an offence.

Offences of partnership.

47N. (1) Proceedings for an offence under sections 47A and 47P alleged to have been committed by a partnership shall be brought in the name of the partners or the partnership.

(2) A fine imposed on the partnership on its conviction for an offence under this Act shall be paid out of the assets of the partnership.

False complaints.

47O. Any person who makes a malicious or false complaint or makes accusations to the Commission or a person acting under this Act knowing it to be false or likely to be false, commits an offence.

Prevention of victimization.

47P. Any person who—

(a) prevents any other person from giving any information to the commission, whether in terms of this Act or otherwise, concerning any offence under this Act;

(b) threatens or does any other thing calculated or likely to

deter any other person from giving any information to the commission, whether in terms of this Act or otherwise, concerning any offence under this Act; or

(c) does anything calculated or likely to prejudice any other person because that other person has given any information to the commission, whether in terms of this Act or otherwise, concerning any offence under this Act,

commits an offence.

Replacement of Section 48 of No.3 of 2003.

45. The Anti-Corruption and Economic Crimes Act, 2003, is amended by repealing section 48 and replacing it with the following new section-

Penalty for offence under this Act.

48. (1) Unless specifically provided for in this Act, a person convicted of an offence under this Part shall be liable to-

(a) a fine not exceeding ten million shillings, or to imprisonment for a term not exceeding twenty years, or to both; and

(b) an additional mandatory fine if, as a result of the conduct that constituted the offence, the person received a quantifiable benefit or any other person suffered a quantifiable loss.

(2) The mandatory fine referred to in subsection (1) (b) shall be determined as follows-

(a) the mandatory fine shall be equal to two times the amount of the benefit or loss described in subsection (1) (b);

(b) if the conduct that constituted the offence resulted in both a benefit and loss described in subsection (1) (b), the mandatory fine shall be equal to two times the sum of the amount of the benefit and the amount of the loss.

(3) The Commission shall recover a mandatory fine under subsection (2) as a civil debt.

FIRST SCHEDULE (S .8)

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

1 having been appointed (the Chairperson/member of /Secretary) to the Ethics and Anti-Corruption Commission do swear/ solemnly affirm that I will at all times obey, respect and uphold the Constitution of Kenya and all other laws of the Republic; that I will faithfully and fully, impartially and to the best of my knowledge and ability, discharge the trust, 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.

SECOND SCHEDULE (s. 15)

PROCEEDINGS OF MEETINGS OF THE COMMISSION

1. The Commission shall meet as often as may be necessary for the dispatch of its business but there shall be at least four meetings of the Commission in any financial year.
2. A meeting of the Commission shall be held on such date and at such time as the Commission shall decide.
3. The chairperson shall, on the written application of one-third of the members, convene a special meeting of the Commission.
4. Unless the majority of the total membership of the Commission otherwise agree, at least fourteen days' written notice of every meeting of the Commission shall be given to every member of the Commission.
5. The quorum for the conduct of business at a meeting of the Commission shall be two thirds of all the members of the Commission.
6. The Chairperson shall preside at every meeting of the Commission at which he is present and in the absence of the chairperson at a meeting, the vice-chairperson, shall preside and in the absence of both the chairperson and the vice-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.

7. Unless a unanimous decision is reached, a decision on any matter before the Commission shall be by concurrence of a majority of all the members.

8. Subject to paragraph 5, no proceedings of the Commission shall be invalid by reason only of a vacancy among the members thereof.

9. Unless otherwise provided by or under any law, all instruments made by and decisions of the Commission shall be signified under the hand of the Chairperson and the Secretary.

10. The Commission shall cause minutes of all proceedings of meetings of the Commission to be entered in books for that purpose.

11. Except as provided by this Schedule, the Commission may regulate its own procedure.

12. (1) If any person is present at a meeting of the Commission or any committee at which any matter is the subject of consideration and in which matter that person or that person's spouse is directly or indirectly interested in a private capacity, that person shall as soon as is practicable after the commencement of the meeting, declare such interest and shall not, unless the Commission or committee otherwise directs, take part in any consideration or discussion of, or vote on any question touching such matter.

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

(3) A person who contravenes subsection (1) commits an offence and upon conviction shall be liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding seven years or to both such fine and imprisonment.

(4) A member or employee of the Commission shall not transact any business or trade with the Commission.

THIRD SCHEDULE

(s. 21)

CODE OF CONDUCT FOR MEMBERS OF AND EMPLOYEES OF THE COMMISSION

Impartiality and independence of members.

1. (1) Every member and employee of the Commission shall impartially and independently perform the functions of a

member in good faith and without fear, favour or prejudice, and without influence from—

- (a) the Government;
- (b) any public officer;
- (c) any political party;
- (d) candidate participating in an election; or
- (e) any other person or authority.

Independence from political or public office.

2. (1) A member or employee of the Commission shall not, during tenure of office, be eligible for—

- (a) appointment or nomination to a political office; or
- (b) appointment to another public office.

(2) A member of the Commission may not—

(a) by their membership, association, statement, conduct or in any other manner place in jeopardy the perceived independence of the member, or in any other manner harm the credibility, impartiality, independence or integrity of the Commission;

(b) make private use of or profit from any confidential information gained as a result of being a member of the Commission; or

(c) divulge any information to any third party, save in the course of official duty

Disclosure of conflicting interests.

3. (1) If a member or an employee is directly or indirectly interested in any contract, proposed contract or other matter before the Commission and is present at any meeting of the Commission at which the contract, proposed contract or other matter is the subject of consideration, the member or employee shall, at the meeting and as soon as practicable after the commencement thereof, disclose the fact and shall not take part in the consideration or discussion of, or vote on, any questions with respect to the contract or other matter or be counted in the quorum of the meeting during consideration of the matter.

(2) A member or employee whose personal interest conflicts with their official duties shall—

(a) in writing, declare the personal interests to their supervisor or other appropriate person or body and comply with any directions given to avoid the conflict; and

(b) refrain from participating in any deliberations with respect to the matter.

(2) A member or employee whose personal interest conflicts with their official duties shall—

(a) in writing, declare the personal interests to their supervisor or other appropriate person or body and comply with any directions given to avoid the conflict;

(b) and refrain from participating in any deliberations with respect to the matter.

Professionalism.

4. A member or employee of the Commission shall—

(a) perform their duties in a manner that maintains public confidence in the Commission;

(b) treat the public and colleagues with courtesy and respect;

(c) discharge all their duties in a professional, timely and efficient manner and in line with the rule of law; and

(d) respect the rights and freedom of all persons that he may interact with.

Improper enrichment.

5. A member or employee of the Commission shall not—

(a) use their office or organization to improperly enrich themselves or others;

(b) accept or request gifts or favours from any person who may have a commercial interest with the Commission or any other interest that may be affected by the normal business of the Commission; or

(c) use information that is acquired during the course of their duties or connected to their duties for their benefit or for the benefit of others

Integrity in private affairs.

6. A member or employee shall conduct their private affairs in a manner that maintains public confidence in the integrity of their office and the Commission as a whole and shall—

- (a) not evade paying taxes;
- (b) not neglect their financial obligations;
- (c) submit an annual declaration of their income, assets and liabilities to the Commission responsible for such declarations from public officers;
- (d) not engage in political activity that may compromise or be seen to compromise the neutrality of their office, or the Commission; and
- (e) not preside over or play a central role in the organization of a fundraising activity.

Sexual harassment.

7. A member or employee shall not sexually harass a member of the public or colleague. Sexual harassment includes –

- (a) making a request or exerting pressure for sexual activity or favours;
- (b) making intentional or careless physical contact that is sexual in nature; or
- (c) making gestures, jokes or comments, including innuendoes regarding another person's sexuality

Nepotism.

8. A member or employee shall not practice favouritism on the grounds of tribe, race, kin, culture, sex or acquaintance or otherwise in performance of their duties.

Privileged information and security of interests of the State.

9. A member or employee shall—

- (a) not act for foreigners in a manner detrimental to the security interest of Kenya; and
- (b) safeguard privileged information that comes into their possession and protect it from improper or inadvertent disclosure.

Application of the Public Officers Ethics Act.

10. This Code is in addition to the provisions of the Public Officers Ethics Act and where there is a conflict between the Code and the Act, the provisions of the Act shall prevail.

Breach of code.

11. Any breach of the Code by a member or an officer of the Commission shall be treated as misbehaviour for a member and misconduct for an officer.

MEMORANDUM OF OBJECTS AND REASONS

The principal purpose of the Bill is to establish an independent Ethics and Anti-Corruption Commission as provided under Article 79 of the Constitution. The establishment of this Commission will ensure compliance with and enforcement of, the provisions of chapter six of the Constitution.

Part I of the Bill provides for preliminary matters.

Part II contains provisions on the administration of the Commission. These include the composition, qualifications and appointment procedure of members of the Commission, the functions and powers of the Commission as well as the appointment and terms and conditions of service of the Secretary Deputy Secretaries and staff of the Commission

Part III provides for the financial provisions with respect to the Commission. These include sources of funding for the Commission, expenses of the Commission, financial management and reporting by the Commission as well as monitoring mechanisms on the use of funds by the Commission.

Part IV contains miscellaneous provisions which include a reiteration of the independence of the Commission, management of information by the Commission, the right of the Commission to seek legal advice and the power of the Commission to make regulations for the better carrying out of the provisions of the Act.

Part V contains transitional and saving provisions in respect of the Kenya Anti-Corruption Commission established under the Anti-Corruption and Economic Crimes Act.

The **First Schedule** prescribes the oath or affirmation of office for the Chairperson, members and Secretary of the Commission; the **Second Schedule** provides for the management and conduct of business and affairs of the Commission while the **Third Schedule**

contains the code of conduct for members and employees of the Commission.

The enactment of this Bill shall occasion additional expenditure of public funds which shall be provided for through the estimates.

Dated the 19th August, 2011.

**MUTULA KILONZO,
Minister for Justice,
National Cohesion & Constitutional Affairs.**

The definition of "Commission" which it is proposed to delete-

"Commission" means the Kenya Anti-Corruption Commission established under Part III;

Part III of No. 3 of 2003 which it is proposed to repeal repeal-

PART III-KENYA ANTI-CORRUPTION COMMISSION AND ADVISORY BOARD

A-Kenya Anti Corruption Commission

Establishment of Commission.

6. (1) The Kenya Anti-Corruption Commission is hereby established as a body corporate.

(2) The Commission shall have all the powers necessary or expedient for the performance of its functions.

(3) Without limiting the generality of subsection (2), the Commission shall have perpetual succession and a common seal and shall be capable of –

- (a) suing and being sued in its corporate name; and
- (b) holding and alienating moveable and immovable property.

Functions of the Commission.

7. (1) The Commission shall have the following functions –

(a) to investigate any matter that, in the Commission's opinion, raises suspicion that any of the following have occurred or are about to occur –

- (i) conduct constituting corruption or economic crime;

(ii) conduct liable to allow, encourage or cause conduct constituting corruption or economic crime;

(b) to investigate the conduct of any person that, in the opinion of the Commission is conducive to corruption or economic crime;

(c) to assist any law enforcement agency of Kenya in the investigation of corruption or economic crime,

(d) at the request of any person, to advise and assist the person on ways in which the person may eliminate corrupt practices;

(e) to examine the practices and procedures of public bodies in order to facilitate the discovery of corrupt practices and to secure the revision of methods of work or procedures that, in the opinion of the Commission, may be conducive to corrupt practices;

(f) to advise heads of public bodies of changes in practices or procedures compatible with the effective discharge of the duties of such bodies that the Commission thinks necessary to reduce the likelihood of the occurrence of corrupt practices;

(g) to educate the public on the dangers of corruption and economic crime and to enlist and foster public support in combating corruption and economic crime;

(h) to investigate the extent of liability for the loss of or damage to any public property and –

(i) to institute civil proceedings against any person for the recovery of such property or for compensation; and

(ii) to recover such property or enforce an order for compensation even if the property is outside Kenya or the assets that could be used to satisfy the order are outside Kenya; and

(j) to carry out any other functions conferred on the Commission by or under this Act or any other law.

(2) A matter may be investigated by the Commission under subsection (1) at the request of the National Assembly, the Minister or the Attorney-General, or on receipt of a complaint, or on its own initiative.

(3) The Commission may refer any offence that comes to its notice in the course of an investigation under subsection (1) to any other appropriate person or body.

Director and staff of the Commission.

8. (1) The Commission shall have a Director, who shall be the chief executive officer of the Commission and who shall be responsible for its direction and management.

(2) The Commission shall have up to four Assistant Directors to assist the Director.

(3) The Director and Assistant Directors shall be persons recommended by the Advisory Board and approved by the National Assembly for appointment to their respective positions.

(4) On the approval of a person by the National Assembly under subsection (3), the President shall appoint the person concerned to the office in respect of which the approval was given.

(5) The terms and conditions of service of the Director and the Assistant Directors shall be determined by the Advisory Board.

(6) The Commission may, upon such terms and conditions of service as the Commission may determine, employ such staff or hire the services of such consultants, experts or independent investigators as may be necessary for the proper performance of its functions.

(7) The First Schedule shall have effect in respect of the staff of the Commission.

Deputy Director.

9. (1) The Director shall appoint one of the Assistant Directors as Deputy Director.

(2) The Director may at any time revoke an appointment under this section and appoint another Assistant Director as Deputy Director.

(3) During the illness or absence of the Director or a vacancy in the office of the Director, the Deputy Director shall have and may exercise and perform the powers and functions of the Director and shall be deemed to be the Director.

Independence of Commission and Director.

10. In the performance of their functions, the Commission and the Director shall not be subject to the direction or control of any other person or authority, and shall be accountable only to Parliament.

Cap. 446 not to apply

11. The State Corporations Act shall not apply to the Commission.

Co-operation with other bodies.

12. (1) The Commission may in the performance of its functions work in co-operation with any other persons or bodies it may think appropriate, and it shall be the duty of any such person or body to afford the Commission every co-operation.

(2) Without limiting the generality of subsection (1), such persons or bodies include the Controller and Auditor-General and the Director of the Criminal Investigation Department.

(3) The Commission may in the performance of its functions work in co-operation with any foreign government or international or regional organization.

Financial arrangement.

13. (1) The financial year of the Commission shall be the period of twelve months ending on 30th June in each year.

(2) At least three months before the commencement of each financial year, the Director shall cause estimates of the revenue and expenditure of the Commission for that year to be prepared and submitted to the Minister and the Treasury for approval.

(3) The estimates shall make provision for all the estimated expenditures of the Commission for the financial year and, in particular, shall provide for expenditures for –

(a) the payment of salaries, allowances and other charges in respect of the staff of the Commission;

(b) the payment of pensions, gratuities and other charges in respect of former staff of the Commission;

(c) the proper maintenance of buildings and grounds of the Commission;

(d) the maintenance, repair and replacement of the equipment and other property of the Commission; and

(e) the payment of allowances and expenses of the Advisory Board.

(4) The Commission shall make provision for the renewal of depreciating assets and the payment of pensions and other

retirement benefits by the establishment of sinking funds and for contributions to such reserve and stabilization funds as may be required.

(5) The expenditures of the Commission shall be charged on and issued out of the Consolidated Fund without further appropriation other than this Act.

(6) Without prejudice to subsection (5), there may be made to and accepted by the Commission such grants, gifts, donations or bequests as the Advisory Board may approve:

Provided that no grant, gift, donation or bequest shall be approved if it is made on any condition that the Commission perform any function or discharge any duty or obligation other than a function, duty or obligation aimed at achieving its objects.

Account and audit.

14. (1) The Commission shall cause to be kept proper books and records of account of its income, expenditure, assets and liabilities.

(2) The annual accounts of the Commission shall be prepared, audited and reported upon in accordance with the Exchequer and Audit Act.

Annual report.

15. (1) Director shall cause an annual report to be prepared for each financial year.

(2) The Director shall submit the annual report to the Advisory Board and the Minister within four months after the end of the year to which it relates.

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

(a) the financial statements of the Commission; and

(b) a description of the activities of the Commission.

(4) Without limiting what may be included in the annual report, the annual report shall include -

(a) the information set out in the quarterly reports under section 36 for the year to which the annual report relates;

(b) a summary of the steps taken, during the year, in each civil proceeding instituted by the Commission and the status, at the end

of the year, of each such civil proceeding; and

(c) such other statistical information as the Commission considers appropriate relating to complaints to the Commission, investigations by the Commission and reports by the Commission on the results of investigations.

(5) The Minister shall, within thirty days after receiving the annual report, transmit it to the National Assembly.

(6) The Commission shall cause the annual report to be published in the Gazette and in such other manner as the Commission may determine.

B-Kenya Anti-Corruption Advisory Board

Establishment of Advisory Board.

16. (1) The Kenya Anti-corruption Advisory Board is hereby established.

(2) The Advisory Board shall be an unincorporated body consisting of -

(a) one member nominated by each of the following -

(i) the Law Society of Kenya;

(ii) the Institute of Certified Public Accountants of Kenya;

(iii) the International Federation of Women Lawyers (FIDA) Kenya Chapter;

(iv) the Kenya Association of Manufacturers;

(v) the joint forum of religious organizations described in subsection (3);

(vi) the Federation of Kenya Employers;

(vii) the Kenya Bankers Association;

(viii) the Central Organisation of Trade Unions;

(ix) the Association of Professional Societies in East Africa;

(x) the Architectural Association of Kenya;

(xi) the Institution of Engineers of Kenya; and

- (xii) the Kenya Medical Association; and
- (b) the Director.

Functions of the Advisory Board.

17. (1) The principal function of the Advisory Board is to advise the Commission generally on the exercise of its powers and the performance of its functions under this Act.

(2) The Advisory Board shall have such other functions as may be conferred on it by or under this Act.

Independence of the Advisory Board.

18. In the performance of its functions, the Advisory Board shall not be subject to the direction or control of any other person or authority and shall be accountable only to Parliament.

Committees of the Board.

19. (1) For the better performance of its functions, the Advisory Board may establish committees in respect of the investigative, preventive and educational functions of the Commission or in respect of any other matter.

(2) The Advisory Board may delegate any of its powers and functions to any such committee, subject to subsection (3).

Chairman and Vice-Chairman

20. (1) The Advisory Board shall nominate one of its nominated members to be the Chairman of the Advisory Board and another of its nominated members to be its Vice-Chairman.

(2) The members so nominated shall be appointed to their respective offices by the President.

(3) Subject to an earlier resignation or termination, the Chairman and Vice-chairman shall each hold office until his current term as a member of the Advisory Board expires.

Secretary.

21. The Director shall be the secretary of the Advisory Board.

Procedure of the Advisory Board.

22. (1) The business and affairs of the Advisory Board shall

be conducted in accordance with the Third Schedule.

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

(3) Seven nominated members of the Advisory Board shall constitute a quorum for the transaction of any business of the Board.

(4) The Advisory Board may invite any person to attend any of its meetings and to participate in its deliberations, but such an invitee shall not have a vote in any decision of the Board.

Section 24 of No. 3 of 2003 which it is proposed to repeal –

Identification of investigation.

24. (1) The Commission shall issue identification documentation to an investigator and such identification shall be evidence that the person to whom it is issued is an investigator.

(2) The identification documentation issued by the Commission shall be signed by the Director.

Section 29 of No. 3 of 2003 which it is proposed to repeal-

Search of premises.

29. (1) The Commission may with a warrant, enter upon and search any premises for any record, property or other thing reasonably suspected to be in or on the premises and that has not been produced by a person pursuant to a requirement under the foregoing provisions of this Act.

(2) The power conferred by this section is in addition, and does not limit or restrict, a power conferred by section 23(3) or by any other provisions of this part.

Section 38 of No. 3 of 2003 which it is proposed to repeal-

Meaning of "agent" and "principal".

38. (1) In this Part –

"agent" means a person who, in any capacity, and whether in the public or private sector, is employed by or acts for or on behalf of another person;

"principal" means a person, whether in the public or private sector, who employs an agent or for whom or on whose behalf an agent

acts.

(2) If a person has a power under the Constitution or an Act and it is unclear, under the law, with respect to that power whether the person is an agent or which public body is the agent's principal, the person, shall be deemed, for the purposes of this Part, to be an agent for the Government and the exercise of the power shall be deemed to be a matter relating to the business or affairs of the Government.

(3) For the purposes of this Part –

(a) a Cabinet Minister shall be deemed to be an agent for both the Cabinet and the Government; and

(b) the holder of a prescribed office or position shall be deemed to be an agent for the prescribed principal.

(4) The regulations made under this Act may prescribe offices, positions and principals for the purposes of subsection (3) (b).

Section 48 of NO. 3 of 2003 which it is proposed to repeal –

Penalty for offence under this Part.

48. (1) A person convicted of an offence under this pan. this Part shall be liable to –

(a) a fine not exceeding one million shillings, or to imprisonment for a term not exceeding ten years, or to both; and

(b) an additional mandatory fine if, as a result of the conduct that constituted the offence, the person received a quantifiable benefit or any other person suffered a quantifiable loss.

(2) The mandatory fine referred to in subsection (1) (b) shall be determined as follows –

(a) the mandatory fine shall be equal to two times the amount of the benefit or loss described in subsection (1) (b);

(b) if the conduct that constituted the offence resulted in both a benefit and loss described in subsection (1) (b), the mandatory fine shall be equal to two times the sum of the amount of the benefit and the amount of the loss

MEMORANDUM OF OBJECTS AND REASONS

The principal purpose of the Bill is to establish an independent Ethics and Anti-Corruption Commission as provided under Article 79 of the Constitution. The establishment of this Commission will ensure compliance with and enforcement of, the provisions of chapter six of the Constitution.

Part I of the Bill provides for preliminary matters.

Part II contains provisions on the administration of the Commission. These include the composition, qualifications and appointment procedure of members of the Commission, the functions and powers of the Commission as well as the appointment and terms and conditions of service of the Secretary Deputy Secretaries and staff of the Commission

Part III provides for the financial provisions with respect to the Commission. These include sources of funding for the Commission, expenses of the Commission, financial management and reporting by the Commission as well as monitoring mechanisms on the use of funds by the Commission.

Part IV contains miscellaneous provisions which include a reiteration of the independence of the Commission, management of information by the Commission, the right of the Commission to seek legal advice and the power of the Commission to make regulations for the better carrying out of the provisions of the Act

Part V contains transitional and saving provisions in respect of the Kenya Anti-Corruption Commission established under the Anti-Corruption and Economic Crimes Act.

The **First Schedule** prescribes the oath or affirmation of office for the Chairperson, members and Secretary of the Commission; the **Second Schedule** provides for the management and conduct of business and affairs of the Commission while the **Third Schedule** contains the code of conduct for members and employees of the Commission.

The enactment of this Bill shall occasion additional expenditure of public funds which shall be provided for through the estimates.

Dated the 19th of August, 2011

MUTULA KILONZO,
*Minister for Justice,
National Cohesion & Constitutional Affairs.*