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REPUBLICOFKENYA

***KENYAGAZETTESUPPLEMENT***

#### SENATEBILLS,2018

NAIROBI,8thNovember,2018

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PROCEDUREOFTHECOMMISSION

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**THENATIONALCOHESIONANDPEACEBUILDINGBILL,2018**

**ABillfor**

**ANACTofParliamentto:providefortheestablishmentoftheNationalCohesionandPeaceBuildingCommission; outlawdiscriminationonethnicgrounds;providefortheestablishmentofaninstitutionalframeworkfornationalcohesionandpeacebuilding;andforconnectedpurposes**

**ENACTED**bytheParliamentofKenya,asfollows-

**PARTI-PRELIMINARY**

1. ThisActmaybecitedastheNationalCohesion Shorttitle.

andPeaceBuildingAct,2018.

1. InthisAct,- Interpretation.

"chairperson"meansthechairpersonoftheCommissionappointedinaccordancewithsection9;

"CabinetSecretary"meanstheCabinetSecretaryforthetimebeingresponsibleformattersrelatingtocohesion,integration,peace-buildingandconflictmanagement;

"codedlanguage"meansinformationwritten,spoken,orsentusingaspecialsystemofwords,letters,numbers,idioms,thatisexpressedinanindirectwaytounderminenationalcohesionandinstigateconflicts;andcanbeunderstoodbyafewotherpeople;

"Commission"meanstheNationalCohesionandPeaceBuildingCommissionestablishedundersection5;

"Commissioner"meansamemberoftheCommissionappointedundersection9;

"ethnicgroup"meansagroup ofpersonsdefinedbyreferencetocolour, race,religion,clan,nationalityorethnicornationalorigins;

"ethnicrelations"includeracial,religious,tribal,clanandculturalinteractionsbetweenvariouscommunities,andthewords"ethnic"and"ethnicity"shallbeconstruedaccordingly;

"peacebuilding"meansinterventionsdesignedtopreventconflictsortheirescalationmeasurestoconsolidate

peacefulrelationsthroughtransformativeshorttermandlongtennprocessesincludingconflictprevention,response,traditionaldisputeresolution,postconflictrecovery,mediationandreconciliation;

"Secretary"meanstheSecretarytotheCommissionappointedundersection21;and

"vilification"includessayingorwritingunpleasantthingsaboutapersonorpersonsofaparticular ethnicityandorreligionsothatotherpeoplemayhavealowopinionofthatethnicgrouporreligion.

3.TheobjectofthisActisto- ObjectoftheAct.

1. giveeffecttoArticlesl0and27oftheConstitutiononthepromotionofnationalunityandnon-discriminationonethnicgrounds;
2. provideaframeworkforthepromotionofnationalcohesion,unityandpeace-building;
3. providemechanisms forco-ordinationandimplementationofinterventionsaimedatpromotingnationalcohesionandpeace-building;and
4. provideaframeworkforthepromotionofnationalvaluesandprinciplesofgovernance.

**PARTII-ESTABLISHMENTOFTHENATIONALCOHESIONANDPEACEBUILDINGCOMMISSION**

**4.**(l)ThereisestablishedtheNationalCohesionandPeaceBuildingCommission.

1. TheCommissionshallbeabodycorporatewithperpetualsuccessionandacommonsealandshall,initscorporatenamebecapableof-
   1. suingandbeingsued;
   2. acquiring,holding,charginganddisposingofmovableandimmovableproperty;
   3. enteringintocontracts;and
   4. doingorperformingallsuchotherthingsoractsfortheproperdischargeofitsfunctionsundertheConstitution,thisActoranywrittenlaw,asmay

EstablishmentoftheNationalCohesionandPeaceBuildingCommission.

be lawfully done or performed by abodycorporate.

1. Thepromotion ofnational cohesionshallbeguidedbythe-
2. valuesandprinciplesofgovernancesetoutinArticlel0oftheConstitution;and
3. valuesandprinciplesofpublicservicesetoutunderArticle232oftheConstitution.
4. ThefunctionsoftheCommissionareto--
5. formulateandimplementstrategies,plansandprogrammesforthepromotionofnationalunity;
6. collaboratewithinstitutionsandstakeholderstogiveeffecttothepoliciesrelatingtocohesionandintegration;
7. makerecommendationstotheNationalandCountygovernmentsandanyotherrelevantentitieson-
   1. thereviewandreformofpractices,policiesandlegislationrelatingtocohesionandintegration;
   2. thecriteriafordecidingwhetheranypublicofficeorofficerhascommittedactsofdiscriminationonthegroundsofethnicity;
8. identifyfactorsinhibiting theattainmentofharmoniousrelationsamongdifferentsocialoriginsandputinplacemeasurestoaddresstheproblem;
9. promote-
   1. pursuanttoArticle27oftheConstitutionequalityandtheeliminationofdiscriminationongroundsofethnicity,raceandreligion;
   2. peaceful coexistence, tolerance,understandingandacceptanceofdiversityinallaspectsoflifeandencourageappreciationbyallethniccommunitiesofallsocial,economic,culturalandpoliticallifeofothercommunities;and

Guidingprinciples.

FunctionsoftheCommission.

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* 1. equalaccessandenjoymentbypersonsfromdifferentethnic,racialorsocialoriginsofpublicorotherservicesandfacilitiesprovidedbyGovernmentandprivateentities;

1. investigatecomplaintsofhatespeech,ethnicorracialcontemptanddiscriminationonthebasisofethnic,clan,religiousandracial originandmakerecommendationstotheDirectorofPublicProsecutionorotherrelevant authorityontheappropriatemeasurestobetakenwheresuchcomplaintsarevalid;
2. initiateinvestigationsonitsownaccordoronrequestfromanyinstitution,officeorpersonintoanyissueaffectingethnic,clan,racialorsocialrelations;
3. developpoliciesforthepromotionofnationalvaluesandprinciplesofgovernance;
4. undertakeresearchanddocumentfindingsonnationalcohesionandnationalvalues,peacebuildingandconflictmanagement;
5. fosterpartnershipswithrelevantstateactors,non­stateactors,bilateralandmultilateralagenciesonpeacebuildingandconflictmanagement;
6. establishearlywarningandearlyresponsesystemonconflictandputinplaceanemergencypreparednessandresponsesystemtocurbimminentconflict;and
7. performsuchotherfunctionsasmaybenecessaryfortheeffectivedischargeofitsmandateandexerciseofitspowers.
8. (1)TheCommission shallhaveallpowersnecessaryfortheeffectivedischargeofitsfunctionsunderthisAct.
9. Withoutprejudicetothegeneralityoftheforegoing,theCommissionshallhavepowerto--

(a)issueprohibitionnoticesdirectingpersonsorentitiesinvolvedinactionsorconductcontrarytonationalcohesion,integrationandpeacebuildingwithinsevendaystoceasesuchactionorconduct;

PowersoftheCommission.

1. summonwitnessesandcallfortheproductionofbooks,plans,andotherdocumentsandtoexaminewitnessesandpartiesonoath;
2. publishthenamesofpersonsorinstitutionswhosewordsorconductmayundermineorhaveunderminedorcontributedtowardsundermininggoodethnicrelations,orwhoareinvolvedinethnicdiscriminationsorpropagationofethnichatred;
3. enterintoassociationwithotherbodiesororganizations,withinoroutsideKenya,asitmayconsiderdesirableorappropriateandinfurtheranceoftheobjectiveforwhichtheCommissionisestablished;
4. control,superviseandadministertheassetsoftheCommissioninamannerandforpurposesthatbestpromotethepurposeforwhichtheCommissionisestablished;
5. receiveanygrantsgifts,donationsorendowmentsandmakelegitimatedisbursementstherefrom;and
6. openbankaccountsforthefundsoftheCommission.
7. (1)TheheadquartersoftheCommissionshallbeinNairobi.

(2)TheCommissionshallensurethatallitsservicesareaccessibletoallpartsofthecountryandmayestablishbranchesatanyplaceinKenyaasitmayconsidernecessary.

1. (1)TheCommissionshallconsistofachairpersonandthreeothermembersappointedinaccordancewiththeConstitutionandtheprovisionsofthisAct.
2. (1)ApersonisqualifiedforappointmentasthechairpersonormemberoftheCommissionifthatperson-
3. isacitizenofKenya;
4. holdsadegreefromauniversityrecognizedinKenya;
5. hasknowledgeandexperienceofatleasttenyearsinmattersrelatingtohumanrelations,publicaffairs,humanrightsorpeaceandsecurity;and

Headquarters.

MembershipoftheCommission.

Qualificationforappointmentofchairpersonandmembers.

(d)meetstherequirementsofChapterSixoftheConstitution.

(2)Apersonisnotqualifiedforappointmentundersubsection(I)iftheperson-

1. is amemberofagoverningbodyofapoliticalparty;
2. isundischargedbankrupt;
3. hasbeenconvictedofacriminaloffenceandsentencedtoimprisonmentforatermofatleastsixmonths.
4. (1)ThePresidentshall,withinfourteendaysofthecommencementofthisActorwheneveravacancyoccurs,conveneaselectionpanelforthepurposeofselectingsuitablecandidatesforappointmentasthechairpersonormemberoftheCommission.
5. Theselectionpanelconvenedundersubsection(l)shallconsistofonepersonfromeachofthefollowingbodies-
   1. theinter-religiouscouncilofKenya;
   2. theministryresponsiblefornationalcohesion;
   3. theministryresponsibleformattersrelatingtodevolution;
   4. theLawSocietyofKenya;
   5. the NationalCouncilforPersonslivingwithDisability;and
   6. thePublicServiceCommission.
6. TheministryresponsibleforPublicServiceshallprovidetheselectionpanelwithsuchfacilitiesandothersupportasitmayrequireforthedischargeofitsfunctions.
7. Theselectionpanelshall,subjecttothissectionbeguidedbytheproceduresetoutintheFirstSchedule.
8. Thecabinetsecretaryshall,withinsevendaysofreceiptoftheapprovednomineesfromParliament,bynoticeinthe*Gazette,*appointthechairpersonandmembersapprovedbyParliament.

Procedure for appointmentofchairpersonandmembers.

1. Thechairperson,membersandsecretaryshalleach Oathofoffice.

makeandsubscribe beforetheChiefJustice,theoathoraffirmationsetoutinthesecondschedule.

1. (1)Thechairpersonshall,withinsevendaysoftheappointmentofthemembers,convenethefirstmeetingoftheCommissionatwhichthemembersshallelectthevice­chairpersonofthecommissionfromamongstthemembers.
   1. Thechairpersonshall-
      1. presideoverallthemeetingsofthecommission;
      2. bethespokespersonoftheCommission;and
      3. superviseanddirecttheworkoftheCommission.
   2. Iftheofficeofthechairpersonbecomesvacantorifthechairpersonisunabletoexercisethepowersorperformthefunctionsofhisofficeowingtoabsence,illnessoranyothercause,thevice-chairpersonshallexercisethosepowersorperformthosefunctions.
2. (I)Thechairpersonshallserveforaterm ofsixyearsandisnotbeeligibleforreappointment.

(2)AmemberoftheCommissionshallserveforatermoffiveyearsandisnoteligibleforreappointment.

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1. (I)Theofficeofthechairpersonoramemberofthecommissionshallbecomevacantif theholder-
2. dies;
3. bynoticeinwritingaddressedtothePresidentresignsfromoffice;
4. isremovedfromofficeunderanyofthecircumstancesspecifiedunderArticle251andChapterSixoftheConstitution;
5. grossmisconductormisbehavior;
6. inabilitytoperformfunctionsoftheofficearisingoutof physicalormentalinfirmity;

(f)violationofthecodeofconductprescribedbytheCommission;

1. incompetenceorneglectofduty;or
2. bankruptcy.

(2)Thecabinetsecretaryshallnotifyeveryresignation,vacancyorterminationinthe*Gazette*withinsevendays.

1. ThechairpersonormemberoftheCommissionmayberemovedfromofficeinaccordancewithArticle251oftheConstitution.

Powersofthechairperson.

Termofoffice.

Vacancyof officeofchairpersonandmembers.

Removalfromoffice.

1. (1)WhereavacancyoccursinthemembershipoftheCommissionundersection15or16,theappointmentprocedureprovidedforunderthisActshallapply.

(2)Amemberappointedundersubsection(1)tofillavacancyshallserveforatermoffiveyearsandisnoteligibleforreappointment.

1. (1)TheCommission,mayfromtimetotimeestablish,committeesforthebettercarryingoutofitsfunctions.
2. TheCommissionmay-
   1. co-optintothemembershipofacommitteeestablishedundersubsection(1),otherpersonswhoseknowledgeandskillsarenecessaryforthefunctionoftheCommission;or
   2. hiresuchexpertsorconsultantsasarenecessaryforthefunctionoftheCommission.
3. (1)ThebusinessandaffairsoftheCommissionshallbeconductedinaccordancewiththeThirdSchedule.

(2)ExceptasprovidedintheThirdSchedule,theCommissionmayregulateitsownprocedure.

1. Thesalariesandallowancespayableto,andothertermsandconditionsofserviceofthechairpersonandmembersoftheCommissionshallbedeterminedbytheSalariesandRemunerationCommission.
2. (1)ThereshallbeasecretarytotheCommissionwhoshallbecompetitivelyrecruitedandappointedbytheCommission.
3. Thesecretaryshallholdofficeforatermoffiveyearsandiseligibleforre-appointmentforafurthertermoffiveyears.
4. ApersonisqualifiedforappointmentastheSecretarytotheCommissioniftheperson-
   1. isacitizenofKenya;
   2. holdsapostgraduatedegreefromauniversityrecognizedinKenya;
   3. hasatleasttenyears'experienceatseniormanagementlevel;

Fillingavacancy.

CommitteesoftheCommission.

Procedun:oftheCommission.

Termsandconditionsofservice.

SecretarytotheCommission.

* 1. hasexperienceinanyofthefollowingfields-
     1. law;
     2. economics;
     3. publicadministration;
     4. peace,conflictandsocialstudies;
     5. corporatemanagement;
     6. humanresourcemanagement;
     7. financialmanagement;and
     8. meetstherequirementsofChapterSixoftheConstitution.

1. ThesecretaryshallbethechiefexecutiveofficeroftheCommission.
2. (1)ThesecretarymayberemovedfromofficebytheCommissioninaccordancewiththetermsandconditionsofservice, for---
3. inabilitytoperformfunctionsoftheofficearisingoutofphysicalormentalinfirmity;
4. grossmisconductormisbehavior;
5. incompetenceornegligenceofduty;
6. violationoftheConstitutionoranyotherwrittenlaw;
7. violationofthecodeofconductprescribedbytheCommission;or
8. anyothergroundsspecifiedinthetermsandconditionsofservice.

(2)beforethesecretaryisremovedundersubsection(1)thesecretaryshallbegiven-

1. sufficientnoticeoftheallegationsmadeagainsthimorher;and
2. anopportunitytobeheardontheallegations.

RemovaloftheSecretary.

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1. (1)TheCommissionmayappointsuchstaffasmaybenecessaryfortheproperdischargeofitfunctionsunderthisAct, anduponsuchtermsandconditionsofserviceastheCommissionmaydetermine.

(2)Thestaffappointedundersubsection(1)shallserveonsuchtermsandconditionsofserviceastheCommission,shalldetermine.

1. (1)ThecommonsealoftheCommissionshallbekeptinsuchcustodyastheCommissionshalldirectandshallnotbeusedexceptontheorderoftheCommission.

(2)ThecommonsealoftheCommissionwhenaffixedtoadocumentanddulyauthenticatedshall bejudiciallyandofficiallynoticedand,unlessthecontraryisprovedanynecessaryorderorauthorizationoftheCommissionunderthissectionshallbepresumedtohavebeendulygiven.

1. NomatterorthingdonebyamemberoftheCommissionoranyofficeroftheCommissionshall,ifthematterisdoneingoodfaithwhileexecutingthefunctions,powersordutiesoftheCommission,renderthememberofficer,employeeoragentpersonallyliableforanyaction,claimordemandwhatsoever.
2. (1)IfanypersonhasapersonalorfiduciaryinterestinanymatterbeforetheCommission,andispresentatameetingoftheCommissionoranycommitteeatwhichthatmatteristhesubjectofconsideration,thatpersonshallassoonasispracticableafterthecommencementofthemeeting,declaresuchinterestandshallnottakepartinanyconsiderationordiscussionof,orvoteonanyquestiontouchingonsuchmatter.
3. Adisclosureofinterestmadeundersubsection(1)shallberecordedintheminutesofthemeetingatwhichitismade.
4. NomemberorstaffoftheCommissionshalltransactanybusinessortradewiththeCommissiondirectlyorindirectly.
5. Apersonwhocontravenesthissectioncommitsanoffenceandshallbeliable,uponconviction,toafinenotexceedingthreemillionshillingsortoimprisonmentforatermnotexceedingsevenyearsortoboth.

StaffoftheCommission.

CommonsealoftheCommission.

Protectionfrompersonalliability.

Conflictofinterest.

of-

### PARTIII-FINANCIALPROVISIONS

1. (1)ThefundsoftheCommissionshallconsist
2. moniesallocatedbyParliamentforpurposesoftheCommission;
3. suchmoniesorassetsasmayaccruetotheCommissioninthecourseofexerciseofitspowersorintheperformanceofitsfunctionsunderthisAct;and
4. moniesfromanyothersourceprovided,donatedorJenttotheCommission.
5. (I) Beforethecommencementofeachfinancial

FundsoftheCommission.

Annualestimates.

year,theCommissionshallcausetobepreparedestimatesoftherevenueandexpenditureoftheCommissionforthatyear.

(2)TheannualestimatesshallmakeprovisionforalltheestimatedexpenditureoftheCommissionforthefinancialyearconcernedand,inparticular,shallprovideforthe-

1. paymentofremunerationinrespectofthemembersandstaffoftheCommission;
2. paymentofpensions,gratuitiesandotherchargesinrespectofbenefitswhicharepayableoutofthefundsoftheCommission;
3. maintenanceofthebuildingsandgroundsoftheCommission;
4. fundingoftraining,researchanddevelopmentofactivitiesoftheCommission;and
5. anyotherexpenditurenecessaryforpurposesofthisAct.
6. ThefinancialyearoftheCommissionshallbetheperiodoftwelvemonthsendingonthethirtiethofJuneineachyear.
7. (1)TheCommissionshallcausetobekeptproperbooksandrecordsofaccountofthe income,expenditure,assetsandliabilitiesoftheCommission.

(2)Withinaperiodofthreemonthsaftertheendofeachfinancialyear,theCommissionshallsubmittothe

FinancialyearoftheCommission.

Accounts andaudit.

Auditor-GeneraltheaccountsoftheCommissioninrespectofthatyeartogetherwith-

1. astatementoftheincomeandexpenditureoftheCommissionduringthatyear;and
2. astatementoftheassetsandliabilitiesoftheCommission.

(3)TheannualaccountsoftheCommissionshallbeprepared,auditedandreporteduponinaccordancewiththeprovisionsofArticles226and229oftheConstitutionandtheprovisionsofthePublicFinanceManagementAct.

1. (1)TheCabinetSecretaryshall,prepareandsubmittoParliamentanannualreportinaccordancewithArticle153(4)oftheConstitution.

(2)Whereanyoftherecommendationscontainedinareportsubmittedunder subsection(1)havenotbeenimplemented,theCabinetSecretaryshallreporttoParliamentthereasonsthereof.

ActNo.12of2012.

Annualreport.

1. Theannualreportshallcontain,inrespectofthe •

yeartowhichitrelates,-

1. thefinancialstatementof theCommission;
2. a descriptionof theactivitiesoftheCommission;

(c)otherstatisticalinformationastheCommissionmayconsiderappropriaterelatingtothefunctionsoftheCommission;

1. anyrecommendationsmadebytheCommissiontoStatedepartmentsoranypersonandtheactiontaken;
2. theimpactoftheexerciseofanyofits offunction;

(f)anyimpedimentstotheachievementsof theobjectsandfunctionsundertheConstitution,thisActoranyotherwrittenlaw;and

(g)anyotherinformationrelatingtoitsfunctionsthattheCommissionconsidersnecessary.

1. TheannualreportshallbepublishedandpublicizedinsuchothermannerastheCommissionmaydetermine.

...

#### PARTIV-DISCRIMINATION,HATESPEECHANDNEGATIVEETHNICITY

**32.**(1)Apersondiscriminatesagainstanotherpersonif-

1. onthe basisofethnicityorreligion,thepersontreatsthatotherpersonlessfavorably thanheorshetreatsorwouldtreatanotherperson;or
2. heappliestoanotherpersonarequirementorconditionwhichappliesorwouldapplytopersonsnotofthesameethnicgroupasthatotherpersonbut-
   1. whichissuchthattheproportionofpersonsofthesameethnicgroupasthatotherpersonwhocancomplywiththeconditionorrequirementisconsiderablysmallerthantheproportionofpersonsnotofthatethnicgroupwhocancomplywithit;
   2. thepersoncannotshow to bejustifiableirrespectiveofthecolour,race,nationalityorethnicornationaloriginsofthepersontowhomitapplied;and
   3. )istothedetrimentofthatotherpersonbecausethatpersoncannotcomplywithit.
3. Apersondiscriminatesagainstanotherpersonundersubsection(1) (b),ifthatpersonappliestoanotherpersonaprovision,criterionorpracticewhichheorsheappliesorwouldapplyequallytopersonsnotofthesameraceorethnicornationaloriginsasthatotherperson,butwhich-
4. putsorwouldputpersonsofthesameraceorethnicornationaloriginsasthatotherperson ataparticulardisadvantagewhencomparedwithotherpersons;
5. putsthatotherpersonatadisadvantage;and
6. thediscriminatorcannotshowtobeaproportionatemeansofachievingalegitimateaim.
7. ForthepurposesofthisAct,treatingapersonlessfavorablythananotherpersonincludesthesegregationofapersonfromotherpersonsonethnicgrounds.

Ethnicdiscrimination.

1. Subsection(I)doesnotapplyto treatmentofapersonwhohasmadeanallegationifitisprovedinacourtoflawthattheallegationwasfalseandnotmadeingoodfaith.

33.Apersondiscriminatesagainstanotherpersonbywayofvictimizationifthepersoncarriesoutanactthatisinjurioustothewell-beingandesteemofthatpersonbytreatingthatpersonlessfavorablythanotherpersonsongroundsthatthepersondiscriminatedagainstintendstoorhas-

1. broughtproceedingsagainstthediscriminatororanyotherpersonunderthisAct;
2. doneanythingunderthisActinrelationtothediscriminatororanyotherperson;
3. givenevidenceorinformationinconnectionwithproceedingsbroughtbyanypersonunderthisAct;or
4. allegedthatthediscriminatororanyotherpersonhascommittedanactwhichwouldamounttoacontraventionofthisAct.

34.(I)ApublicentityshallensurerepresentationofthediversityofthepeopleofKenyaintheemploymentofstaff.

1. Apublicentityshallnotrecruitorhaveinitsemploymentmorethanonethirdofitsstafffromthesameethniccommunity.
2. Anemployershallensureequityintheemploymentofpersonsintherespectiveentityandshall,forthispurpose.
3. (1)ItshallnotbedeemeddiscriminatoryunderthisPartwhere,havingregardtothenatureoftheemploymentorthecontextinwhichitiscarriedout-
4. beingofaparticularraceorparticularethnicornationaloriginisagenuineanddeterminingoccupationalrequirement;and
5. it isappropriatetoapplythatrequirementintheparticularcaseandthe persontowhomthatrequirementisapplieddoesnotmeetit.

Discriminationbythroughvictimization.

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Oisctitnlnatiohinemployment.

Exceptionstodiscriminationintheemploymentfield.

1. Beingofaparticularethnicgroup,isanoccupationalqualificationandnotagroundfordiscriminationforajobwhere-
2. thejobinvolvesculturalentertainmentinacapacityforwhichapersonofthatethnicgroupisrequiredforreasonsofauthenticity;or
3. thejobinvolvesaworkofart,visualimageorsequenceofvisualimagesforwhichapersonofthatethnicgroupisrequiredforreasonsofauthenticity;or
4. theholderofthejobprovidespersonsofthatethnicgroupwithpersonalservicespromotingtheirwelfare,andthoseservicescanmosteffectivelybeprovidedbyapersonofthatethnicgroup.
5. Theprovisionsofsubsection(2)donotapplyinrelationtothefillingofavacancyatatimewhentheemployeralreadyhasemployeesoftheethnicgroupinquestion
6. whoarecapableofcarryingoutthedutiesfallingspecificallywithinthatparagraph;
7. whomitwouldbereasonabletoemployonthoseduties;and
8. whosenumbersaresufficienttomeettheemployer'slikelyrequirementsinrespectofthosedutieswithoutundueinconvenience.
9. (1)Anorganizationshallnottodiscriminateagainstapersonwhoisnotamemberoftheorganization.
10. inthetermsinwhichitispreparedtoadmitthatpersontomembership;or
11. byrefusingordeliberately omittingtoacceptthatperson'sapplicationformembership.

(2)Subsection(1)shall notapplytoan organizationwhosemembershipislimitedtoagivenreligiouspersuasionorprofession.

1. (1)Apublicorprivatebody,licensingauthority,planningauthority,publicauthority,employmentagency,educationalestablishmentorbodyofferingtraining,shall

Discriminationinmembershipoforganizations.

Discriminationbyotheragencies.

notdiscriminateagainstanypersonintheprovisionofservices.

1. Subsection(I)shallnotapply-
   1. whereitisproventhattheallegeddiscriminatoryactisanecessaryrequirementinthenatureofbusinesstransactionandthereisnoalternativewayofrealizingthedesiredgoal;
   2. topublicauthorities-
      1. inrelationtoany judicialactwhetherdonebyacourtofJaw,tribunalorotherpersonoranyactdoneontheinstructions,oronbehalf,ofapersonactinginajudicialcapacity;or
      2. foranyactionundertakenbytheCabinetSecretaryresponsibleformattersrelatingtoimmigration,underanylawonimmigration,

withrespecttocitizenship ornationalityofaperson.

accesstoand -

1. (I)Publicresourcesshall,asfarasispracticable,bedistributedequitablygeographicallytakingintoaccountKenya'sdiversity,populationandpovertyindex.
2. ItshallbeunlawfulforanyStateorpublicofficer,whileinchargeofpublicresourcesandwithoutjustification,todistributeresourcesinanethnicallyinequitablemanner.
3. Publicresourcesshallbedeemedtohavebeendistributedinanethnicallyinequitablemannerwhere-
4. anofficerfailstousethecriteriaestablishedunderthisActor anyotherlawinallocatingresourcesbyreg10ns;
5. aspecificregionconsistentlyreceivesmoreresourcesthananotherregionandthereisnoclearjustificationforit;or
6. moreresourcesareallocatedtoaregionthatrequiresremedialresourcesthantoanareathatrequiresstartupresources.
7. (I)Amanagerunderthissectionshall meanapersonwhohasthepowertolease,letordisposeofpublicpropertyorpropertythatiswhollymeantforusebythepublic

Discriminationin

distributionofpublicresources.

Discrimination inpropertyownership,managementanddisposal.

* 1. Itisunlawfulforamanagertodiscriminateagainstanotherperson-

1. inthetermssuchmanageroffers,lets,managesordisposesthepropertytoanotherperson;
2. by unjustifiablyrefusingtheotherperson'sproposalforsaleorengagementinthemanager'sbusiness,wherethesameconditionsdonotapplytopersonswhoareofthesameethnicgroupassuchmanager;
3. inamanager'streatmentofapersonwithregardtoanylistofpersonsinneedofpropertyofthatdescription.
   1. Itisunlawfulforamanagertodiscriminateagainstapersonoccupyingpremises-
4. inthewaysuchmanageraffordsapersonaccesstoanybenefitsorfacilities,orbyrefusingordeliberatelyomittingtoaffordapersonsuchaccess;or
5. byevictingapersonorsubjectingthatpersontoanyotherdetriment.
6. (1)NothingcontainedinthisPartshallrenderunlawfulanyactdone-
7. toaffordpersonsofaparticularethnicgroupaccesstofacilitiesorservicestomeetthespecialneedsofsuchpersonsinregardtotheireducation,trainingorwelfare,orotherancillarybenefits;or
8. ongroundsotherthanrace,ethnicornationaloriginforthebenefitofapersonwhoisnotaKenyancitizentoaffordthepersonaccesstofacilitiesforeducationortrainingorotherancillarybenefits,whereitappearsthatthepersonin questiondoesnotintendtoremaininKenyaaftertheperiodofeducationortraining.

(2)NothinginthisPartshallrenderunlawfulanyactdoneinrelationtoparticularworkbyapersoninorinconnectionwith-

1. affordingapersonofaparticularracialgroupaccesstofacilitiesfortrainingwhichwouldhelptoequipthemforthatwork;or

I.

Exceptionstodiscrimination/affirmativeaction.

1. encouragingapersonofaparticularethnicgrouptotake advantageofopportunitiesfordoingthatparticularwork,whereitreasonablyappearstothatperson,thatany time withinthetwelvemonthsimmediatelyprecedingthedoingofthatact-
   1. therewerenopersonsofthatgroupamongthosedoingthatworkinKenya;or
   2. theproportionofpersonsofthatgroupamongthosedoingthatworkinKenyawassmallincomparisonwiththeproportionofpersonsofthatgroupamongthepopulationofKenya.

(3)Whereinrelationtoparticularworkitreasonablyappearstoanypersonthatalthoughtheconditionfortheoperationofsubsection(2)isnotmetforthewholeofKenyaitismetforanareawithinKenya,nothinginthisPartshallrenderunlawfulanyactdonebythatpersoninorinconnectionwith-

1. affordingpersonswhoarcoftheethnicgroupinquestion,andwhoappearlikelytotakeupthatworkinthatarea,accesstotraininginpreparationforthatwork;or
2. encouragingpersonsofthatgrouptotakeadvantageofopportunitiesintheareafordoingthatwork.
3. (1)Apersonshallnotutter,publish,writeorpostwordsorimagesintendedtoincitefeelingsofcontempt,hatred,hostility,violenceordiscriminationagainstanyperson;
4. Apersonwhocontravenessubsection(I)commitsanoffenceandshallbeliable,uponconvictiontoafinenotexceedingonemillionshillings,ortoimprisonmentforatermnotexceedingfiveyears,ortoboth.
5. Awebsiteadministratorormediaenterpriseshallnotpublishpostswordsorimagesintendedtoincitefeelingsofcontempt,hatred,hostility,violenceordiscriminationagainstanyperson,grouporcommunityonthebasisofethnicityorrace;
6. Awebsiteadministratorormediaenterprisethatcontravenessubsection(3)commitsanoffenceandshallbe

Ethnicorracialcontempt.

liable,on convictiontoafinenotexceeding onemillionshillings,ortoimprisonmentforatermnotexceedingfiveyears,ortoboth.

1. Whereawebsiteadministratorormediaenterpriseisacorporationtheprincipalofficersshallbeheldpersonallyliableonconvictiontoafinenotexceedingfivemillionshillingsortoimprisonmentforatermnotexceedingfiveyears,ortoboth.
2. Apersonwho--
3. subjectsorthreatenstosubjectanotherpersontoanydetrimentbecausethatotherperson,orapersonassociatedwiththatotherperson-
   1. hasmadeacomplaintagainstanyperson;
   2. hasbroughtanyotherproceedingsunderthisActagainstanyperson;or
   3. hasgivenevidenceorinformation,orproducedadocument,inconnectionwithanyproceedingsunderthisAct;

commitsanoffenceandshall,onconviction,beliable toafinenotexceedingtwohundredthousandshillingsortoimprisonmentforatermnotexceedingoneyearortoboth.

1. Apersonwho--
2. withoutjustificationorlawfulexcuseobstructs,hindersorthreatensan officeractingunderthisAct;
3. submitsfalseormisleadinginformation;
4. failstohonoursummons;or
5. knowinglymisleadstheCommissionoramemberofstaffofthe CommissionactingunderthisAct,

commitsandoffenceandisliable,onconviction,toafinenotexceedingtwohundredthousandshillingsortoimprisonmentforatermnotexceedingoneyearortoboth.

### PARTV-COMPLAINTS,INVESTIGATIONSANDENFORCEMENT

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1. (l)Amattermaybeinvestigatedif-

Threats.

Offences.

Mattersthatmaybeinvestigated.

1. itisofsuchseriousnaturethatitwarrantsaninvestigation;
2. itconcernsapossiblecontraventioninrelationtoclassorgroupofpersons;and
3. the circumstancesaresuchthat thelodgingofacomplaintbyonepersononlywouldnotbeappropriate

(2)IftheCommissionafterinvestigationis satisfiedthatapersonhascontravenedaprovisionofpartIVofthisAct,theCommissionshallmakeallreasonableendeavorstoconciliatethematter.

1. AcomplainttotheCommissionmaybemadeon Complaints.

behalfofanaggrievedperson-

1. iftheaggrievedpersonisdeadorotherwisenotabletoactforhimselforherself,byamemberofhisorherfamilyorotherpersonsuitabletorepresenttheaggrievedperson;or
2. byamemberofParliamentwiththeconsentoftheaggrievedpersonorotherpersonwho,underparagraph(a),isentitledtomakethecomplaintonbehalfoftheaggrievedperson.
3. (I)ApersonwishingtolodgeacomplaintunderthisActmaydosoorallyorinwritingaddressedtotheCommission.
4. Whereacomplaintundersubsection(I)ismadeorally,theCommissionshallcausethecomplainttoberecordedinwriting.
5. Acomplaintundersubsection(I)shallbeinsuchformandcontainsuchparticularsastheCommissionmayprescribe.
6. Uponreceiptofacomplaintundersubsection(1),theCommissionmay-
7. callforinformationorareportregardingsuchcomplaintfromanypersonwithinsuchreasonabletimeasmaybespecifiedbytheCommission;and
8. withoutprejudicetoparagraph(a),initiatesuchinquiryasitconsidersnecessary,havingregardtothenatureofthecomplaint.

Formofcomplaint.

1. Iftheinformationorreportcalledforundersubsection4(a)isnotreceivedwithinthetimestipulatedbytheCommission,theCommissionmayproceedtoinquireintothecomplaintwithoutsuchinformationorreport.
2. IfonreceiptoftheinformationorreporttheCommissionissatisfiedeitherthatnofurtheractionisrequiredorthattherequiredactionhasbeeninitiatedbyaStateorganorotherbodyresponsibleforthematterscomplainedof,theCommissionshall,inwriting,informthecomplainantaccordinglyandtakenofurtheraction.
3. (1)TheCommissionmay,forthepurposeofconductinganyinvestigationpertainingtoaninquiry,employtheservicesofanypublicofficerorinvestigationagencyoftheGovernmentattheexpenseoftheCommission.
4. Forthepurposeofinvestigatinganymatterpertainingtoaninquiry,apublicofficeroragencywhoseservicesareemployedundersubsection(l)may,subjecttothedirectionandcontroloftheCommission--
5. summonandenforcetheattendanceofanypersonforexamination;
6. requirethediscoveryandproductionofanydocumentand;
7. subjecttotheConstitutionandanywrittenlawrequisitionanypublicrecordsandcopythereoffromanypublicofficer.
8. Thepublicofficeroranyagencywhoseservicesareemployedundersubsection(l)shallinvestigateanymatterpertainingtotheinquiryandsubmitareportthereontotheCommission.
9. The Commission shall satisfy itself on the
   * correctnessofthefacts statedandtheconclusion,ifanyarrivedatinthereportsubmittedtoitundersubsection(3)andforthatpurpose,theCommissionmaymakesuch

inquiry,includingtheexaminationofanypersonorperson'sshoesconductcanassistintheinvestigationasitconsidersnecessary.

1. IftheCommissiondecidesnottoinvestigateortodiscontinuetheinvestigationofacomplaint,the

Investigationsby

theCommission.

Noticeif

complaintwasnotinvestigated.

Commissionshallinformthecomplainantinwritingofthatdecisionandthereasonsforthatdecisionassoonasreasonablypossible.

1. BeforecommencinganinvestigationunderthisAct,theCommissionshallgivenoticeoftheintendedinvestigationtotheadministrativeheadoftheStateorgan,publicofficeororganization.

SO.(1)subjecttosubsection(2),ifatanystageofaninquirytheCommission-

1. considers itnecessarytoinquiryintotheconductofanyperson;or
2. isoftheopinionthatthereputationofanypersonislikelytobeprejudicedbytheinquiry,itshallgivethatpersonanopportunitytoappearbeforetheCommissionbyhimselforbyanadvocatetogiveevidenceinhisowndefence.
3. Thissectionshallnotapplywherethecredibilityofawitnessisbeingimpeached.
4. NostatementmadebyapersoninthecourseofgivingevidencebeforetheCommission shallsubjectsuchpersontoanycivilorcriminalproceedingsexceptforgivingfalseevidencebysuchstatement.
5. TheCommissionmay,uponinquiryintoacomplaintunderthisActtakeanyofthefollowingsteps-
6. wheretheinquirydisclosesacriminaloffence,referthemattertotheDirector ofPublicProsecutionoranyotherrelevant authority orundertakesuchotheractionastheCommissionmaydeemfitagainsttheconcernedpersonorpersons;
7. recommendtothecomplainantacourseofotherjudicialredresswhichdoesnotwarrantanapplicationunderArticle22oftheConstitution;
8. recommendtothecomplainantandtotherelevantgovernmentalagencyorotherbodyconcernedintheallegedviolation,otherappropriatemethodsofsettlingthecomplaintortoobtainrelief;
9. provideacopyof theinquiryreporttoallinterestedparties;and

Noticeofinvestigationtoorganization.

Personslikelytobeprejudicedoraffectedtobeheard.

StatementsmadebypersonstotheCommission.

Actionafterinquiry.

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1. submitsummonsesasitdeemsnecessary infulfillmentofitsmandate.
2. (1)AfterconcludinganinvestigationoraninquiryunderthisAct,theCommissionshallmakeareporttotheStateorgan,publicofficeororganizationtowhichtheinvestigationrelates.
   1. The reportshallinclude-
      1. thefindingsoftheinvestigationandanyrecommendationsmadebytheCommission;
      2. theactiontheCommissionconsidersshouldbetakenandthereasonsfortheaction;and
      3. anyrecommendationtheCommissionconsidersappropriate.
   2. TheCommissionmayrequiretheStateorgan,publicofficeororganizationthatwasthesubjectoftheinvestigationtosubmitareporttotheCommissionwithinaspecifiedperiodonthesteps,ifany,takentoimplementtherecommendationsoftheCommission.
   3. IfthereisfailureorrefusaltoimplementtherecommendationsoftheCommissionwithinthespecifiedtime,theCommissionmayprepareandsubmittoParliamentareportdetailingthefailureorrefusaltoimplementitsrecommendationsandParliamentshalltakeappropriateaction.

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1. If,afteraninvestigation,theCommissionisoftheopinionthatthereisevidencethataperson,anofficeroremployeeoftheStateorgan,publicofficeororganizationwhichwasinvestigatedunderthisActisguiltyofmisconduct,theCommissionshallreportthemattertotheappropriateauthority.
2. ThehearingsoftheCommissionduringaninquiryshallbeopentothepublic,exceptwheretheCommissiondecidesotherwise.
3. Apersonshallnotbeliableforanyloss,damageorinjurysufferedbyanotherpersonbyreasonoflodgingofacomplaintortheproductionofdocuments,informationorevidence.
4. (1)IftheCommissionconsidersthatacomplaintmaybeconciliatedsuccessfully,theCommissionshallreferthecomplainttotheSecretaryforconciliation.

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Reporttoorganization.

Reporttothecomplainant.

HearingsoftheCommission.

Protectionofpersonsgivingevidenceandinformation.

Commissionmayrefercomplainttoconciliation.

1. TheCommissionshallendeavortoresolveanymatterbeforeitthroughconciliation,mediationandnegotiation.
2. TheCommissionshallconstituteaconciliationcommitteefromamongstitsmembers.
3. Aconciliationcommitteeshall,bywrittennoticerequireanypersonto-
4. attendthecommitteesittingstodiscussthesubjectmatterofthecomplaint;or
5. produceanydocumentsspecifiedinthenotice.
6. (I)If,pursuanttosection53,thepartiestothecomplaintreachanagreement,theconciliationcommitteeshallrecordtheconciliationagreement.

(2)Thepartiesshallbeboundtocomplywiththeconciliationagreementundersubsection(I).

1. (I)TheCommissionmaydeclinetoconsideracomplaintifitconsidersthatacomplaint-
2. isfrivolous,vexatious,misconceivedorlackinginsubstance;
3. involvesasubjectmatterthatwouldbemoreappropriatelydealtwithbyacourtoflaw;or
4. relatestoanallegedcontraventionoftheActthattookplacemorethantwelvemonthsbeforethecomplaintwaslodged

(2)TheCommissionshallnotifythecomplainantandtherespondent ofitsdecisioninwritingwithinthirtydaysafterthecomplaintwaslodged.

1. (1)ArespondentmayapplyinwritingtotheCommissiontohaveacomplaintoranypartofitstruckoutongroundsthatitisfrivolous,vexatious,misconceivedorlackinginsubstance.
2. Anapplicationundersubsection(I)maybemadeatanytime-
3. beforetherespondenthasbeengivennoticetoattendundersection53orhasotherwisebeennotifiedbytheCommissionofadateforconciliation;or

Conciliationagreements.

CommissionmaydeclinetoentertainComplaint.

Applicationtostrikeoutcomplaint.

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1. aftertheconciliationhasbeencompletedbutbeforethecomplaintissetdownforhearing.
2. TheCommissionshallbegintoheartheapplicationwithinfourteendaysafterconciliationhasfailedandshalldetermineitasexpeditiouslyaspossible.
3. TheCommissionshallafter,hearingtheevidencethatthepartiestoacomplaint,adduce-
4. findthecomplaintoranypartofitprovenandissueacompliancenoticeinamannerprovidedforundersection63;or
5. findthecomplaintoranypartofitnotprovenandmakeanorderthatthecomplaintorpartofitbedismissed.
6. (1)TheCommissionmayissueacompliancenoticetoanypersonrequiringthepersontowhomitisissuedtocomplywiththedutyspecifiedtherein.
7. Apersonissuedwithacompliancenoticeundersubsection(l)shallinformthe Commissionwithinthirtydaysofthedateonwhichthenoticeisserved,ofthestepsthatthepersonhastaken,oristaking,tocomplywiththedutyspecifiedinthenotice.
8. Acompliancenoticeissuedundersubsection(I)mayrequirethepersonconcernedtofurnishtheCommissionwithsuchdocumentsrequiredbythenoticeinordertoverifythatthenoticehasbeencompliedwith.
9. Acompliancenoticeissuedundersubsection(1)mayrequirethepersonconcernedtofurnishtheCommissionwithsuchdocumentsrequiredbythenoticeinordertoverifythatthenoticehasbeencompliedwith.
10. Acompliancenoticeshallspecify-
    1. thedate,nolaterthanthreemonthsfromthedateonwhichthenoticeisserved,whenanyinformationspecifiedinthenoticeistobefurnishedtotheCommission;and
    2. themannerandforminwhichanyinformationistobefurnished.
11. Acompliancenoticeissuedunderthissectionshallnotrequireapersontofurnishinformationwhichthat

DecisionsoftheCommission.

Compliance Notice.

personwould notbecompelledtofurnishinevidenceincivilproceedingsbeforeacourtoflaw.

1. (1)TheCommissionmayapplytotheHighCourtforanorderrequiringapersontofurnishanyinformationrequiredbyacompliancenoticeif-
2. thatpersonfailstofurnishtheinformationtotheCommissioninaccordancewiththecompliancenotice;or
3. theCommissionhasreasonablecausetobelievethatthepersondoesnotintendtofurnishtheinformation.

(2)Ifapersonhasnotcompliedwithsection63,theCommissionmayapplytotheHighCourtforanorderrequiringthepersontocomplywiththerequirementofthenotice

1. (1)TheCommissionshall,inexercisingitspowers,expeditethedisposalofspecialreferences.
2. Aspecialreferenceis-
   1. acomplainttheresolutionofwhichmayhavesignificantsocial,economicorfinancialeffectsonacommunityorasectionofacommunity;or
   2. acomplaintthesubjectmatterofwhichinvolvesissuesofaparticularcomplexityandtheresolutionofwhichmayestablishimportantprecedentsintheinterpretationorapplicationof thisAct.
3. TheCommissionshalldeterminewhetherornotamatterbroughtbeforeitisaspecialreference.

## PARTVI-MISCELLANEOUSPROVISIONS

1. **(1)**ProceedingsagainsttheCommissionshallbedeemedtobeproceedingsagainsttheGovernmentandshallbesubjectto theGovernmentProceedingsAct.
2. Anynoticeorotherprocessinrespectoflegalproceedingsundersubsection(1)shallbeservedupontheSecretarytotheCommission.
3. **(1)**Apersonshallnot,eitherdirectlyorindirectlydisclose,communicate,ormakearecordofanyinformationobtainedduringtheperformanceoftheirfunctionsordutiesunderthisAct,unlessitisnecessaryto

EnforcementofComplianceNotice.

SpecialReferences.

LegalProceedingsagainsttheCommission.

Cap40.

Confidentialityofinformation.

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dosoforthepurposeoforinconnectionwith,theperfonnanceofafunctionordutyortheexerciseofpowerunderthisActoranyotherwrittenlaw.

* 1. Subsection(I)appliestoeverypersonwho-­
     1. isorhasbeen-
        1. amemberoftheCommission;
        2. theSecretarytotheCommission;
        3. amemberofstaffoftheCommission;or
        4. anyotherpersonactingundertheauthorityoftheCommission;
     2. hasobtainedinfonnationasaresultofanotherpersonperfonningfunctionsordutiesorexercisingpowersunderthisAct.
  2. Apersonwhocontravenessubsection(1)commitsanoffenceandshallbeliableonconvictiontoafinenotexceedingonehundredthousandshillingsortoimprisonmenttoatennnotexceedingofsixmonthsorboth.

1. IfacomplainthasbeenlodgedoradocumentoranyinfonnationorevidencehasbeenproducedorgiventotheCommission,apersonisnotpersonallyliableforanyloss,damage,orinjurysufferedbyanotherpersonbyreasononlyofthelodgingofthecomplaintortheproductionorgivingofthedocument,infonnationorevidence.
2. (1)AmemberoftheCommissionormemberofstaffcommitsanoffenceifheorshe-
3. causesanythingtobedonethroughanotherpersonthatwouldconstituteacontraventionoftheActifdonebythememberorofficer;or
4. allowsordirectsapersonundertheirsupervisionorcontroltodoanythingthatisincontraventionoftheAct.

(2)Subsection(I)(b)shallnotapplywhereanythingisdonewithoutthememberofstaffsknowledgeorconsentorifthememberofstaffhastakenreasonablestepstopreventit.

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Protectionofwitnessesandinfonnants.

Offences bymemberofstaff.

(3)Amemberofstaffwhoactsunderanunlawfuldirectionshallberesponsibleforhisorheraction.

1. (1)IfapublicofficerconsidersthatanythingrequiredofthemisincontraventionoftheActorisotherwiseimproperorunethical,thememberorofficershallreportthemattertotheCommission.

(2)TheCommissionshallinvestigatethereportandtakeappropriateactionwithinninetydaysofreceivingthereport.

1. (l)Apersonwho-
2. failstocomplywithanoticebytheCommissionissuedundersection64;
3. withoutreasonablejustificationorotherlawfulcausehindersorobstructsorusesinsultinglanguageagainstaCommissioner,memberofstaffoftheCommissionortheSecretaryintheexerciseofpowersortheperformanceoffunctionsunderthisAct;or
4. givesanyinformationormakesanystatementwhichthepersonknowsisfalseormisleadinginanymaterialparticulartotheCommission,theSecretaryorapersonactingonbehalfoftheCommission.

commitsanoffence,andonconviction, isliabletoafinenotexceedingonehundredthousandshillingsortoimprisonmentforatermnotexceedingoneyearortoboth.

1. AnypersonwhocommitsanoffenceunderthisActforwhichnopenaltyisprovidedisliable,onconviction,toafinenotexceedingonemillionshillingsortoatermofimprisonmentnotexceedingtwoyearsortoboth.

Reportingimproperorders.

Otheroffences.

Generalpenalty.

1. (l)ApersonwhoisaggrievedbyadecisionoftheCommissionunderthisActmay,withinfourteendays

applytotheCommissionforreviewofthatdecision.

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Review.

1. The Commission shall, within thirty days,determineandcommunicateitsdecisiontotheappellant
2. (1)TheCabinetSecretarymay,inconsultation Regulations.withtheCommissionmakeRegulationsfortheeffectiveimplementationofthisAct.

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1. Despite the generality ofsubsection (l)theCabinetSecretaryshallmakeRegulations-
2. promotingtheuseofalternativeandtraditionaldisputeresolutionmechanismssubjecttoArticle159oftheConstitution;
3. prescribingproceduresofcomplaints,conciliationcommitteeandotherbodiesestablishedunderthisAct;or
4. prescribingformsforthepurposesofthisAct.
5. TheNationalCohesionandIntegration Act,repealed.

#### PARTVIII-TRANSITIONALPROVISIONS

1. InthisPart-

IS RepealofActNo.

12of2008.

InterpretationofPart

"formerCommission"meanstheNationalCohesionandIntegrationCommissionestablishedundertheNationalCohesionandIntegrationAct.

1. Allcomplaints,whichimmediatelybeforethecommencementofthisActweremadetothe formerCommissionatthecommencementofthisAct,shallbedeemedtohavebeenmadetotheCommission.

77.TheCommissionshallbeboundinall contracts,includingcontractsofserviceifany,subsistingatthecommencementofthisActandtowhichtheformerCommissionwasparty.

ActNo.12of2008.

Transferofcomplaintsto theCommission.

Contracts.

**78.**(1)SubjecttothisAct,alltherights,duties, Savings.

obligations,assetsandliabilitiesoftheformerCommissionexistingatthecommencementofthisActshallautomaticallyandfullybetransferredtotheCommission

1. Notwithstandingsection76--
   1. anyorderornoticemadeorissuedbytheformerCommissionshallbedeemedtohavebeenmadeorissuedunderthisAct;
   2. anyfunction carriedoutbytheformerCommissionduringthetransitionperiodshallbedeemedtohavebeencarriedoutunderthisAct;
   3. allassetsandliabilitieswhichimmediatelybeforethecommencementofthisActwerevestedintheformerCommissionshallvestintheCommission;

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* 1. allrights,powersandduties,whetherarisingunderanywrittenlaworotherwisewhichimmediatelybeforethecommencementofthisActwerevestedintheNationalCohesionandIntegrationCommissionshallbetransferredto,vested,imposedonorbeenforceablebyoragainsttheCommission;
  2. allactions,suitsorlegalproceedingsbyoragainsttheformerCommissionshallbecarriedoutonorprosecutedbyoragainsttheCommissionandnosuchsuit,actionorlegalproceedingshallabateorbeaffectedbythecomingintooperationofthisAct

1. Thepersons,whoweremembersoftheformerCommission,shallbecomemembersof theCommissionuponthecommencementofthisActfortheirunexpiredterm.

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#### FIRSTSCHEDULE

**PROCEDUREFORNOMINATIONANDAPPOINTMENTOFCHAIRPERSONANDMEMBERS**

(1)Theselectionpanelshall,withinsevendaysofitsconvening,inviteapplicationsfromqualifiedpersonsandpublishthenamesandqualifications ofallapplicantsandtheirqualificationsinthe*Gazette*andtwodailynewspapersofnationalcirculation.

1. Theselectionpanelshallwithinsevendaysofreceiptofapplicationsundersubsection(1)considertheapplications,interviewandshortlistatleastthreepersonsqualifiedforappointmentasChairpersonandtenpersonsqualifiedformember,forappointmenttothePresident.
2. ThePresidentshallwithinsevendaysofreceiptofthenamesforwardedundersubsection(3)nominateonepersonforthepositionofChairpersonandthreepersonsforappointmentasmembersoftheCommissionandforwardthenamestoParliamentforapproval.
3. Parliamentshallwithintwentyonedaysofitssittingconsidereachnominationreceivedandapproveorrejectanyofthem.
4. WhereParliamentapprovesthenominees,theSpeakerofeitherHouseofParliamentshallwithinfivedaysforwardthenamesoftheapprovedapplicantstothePresidentforappointment.
5. WhereParliamentrejectsanyofthenomineesundersubsection(4),theSpeakerofeitherHouseofParliamentshallwithinfivedayscommunicatethedecisionofParliamenttothePresidentandrequestthePresidenttosubmitfreshnominationsfromamongstthenamesshortlistedandforwardedbytheselectionpanelundersubsection(3).
6. WhereParliamentrejectsanyorallofthesubsequentnomineessubmittedbythePresidentforapprovalundersubsection(4),theprovisionsofsubsection
7. and(4)shallapplywithafreshpanelbeingconstituted.

s.**11(3))**

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* 1. Inshortlisting,nominatingorappointing personsasChairpersonandmembersoftheCommission,thePresident,Parliamentandtheselectionpanelshall-

1. takeintoaccountthevaluesandprinciplessetoutinArticlesI0,27and232oftheConstitution;and
2. ensurethatnotmorethantwo-thirds ofthemembersareofthesamegender.
   1. Despitetheaboveprovisions,theCabinetSecretarymaybynoticeinthe*Gazette,*extendtheperiodspecifiedinrespectofanymatterunderthissectionbyaperiodnotexceedingtwenty-onedays.

(I0)TheselectionpanelshallstanddissolvedupontheappointmentoftheChairpersonandmembersunderparagraph(8).

#### SECONDSCHEDULE

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(s.12)

#### OATH/AFFIRMATIONOFOFFICEOFCHAIRPERSON/MEMBER/SECRETARY

* + 1. .......................havingbeenappointed(aChairpersonof*I*aMemberof/aSecretaryto)theNationalCohesionandIntegrationCommissionundertheNationalCohesionandPeacebuildingAct,dosolemnly(swear/declareandaffirm)thatIwillfaithfullyandfully,impartiallyandtothebestofmyability,dischargethetrustandperform thefunctionsandexercisethepowersdevolvinguponmebyvirtueofthisappointmentwithoutfear,favor,bias,affection,ill-willorprejudice.SOHELPMEGOD.

Sworn/Declaredbythe

said..................................................................

Beforemethis..........................dayof

ChiefJustice

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THIRDSCHEDULE (S.19)

MEETINGSANDPROCEDUREOFTHECOMMISSION

1. Meetings

(l)TheCommissionshalldecidewhenandwhereitmeetsandthemeetingsshallbeconvenedbytheChairperson.

1. TheCommissionshallhaveatleastfourmeetingsineveryfinancialyearandnotmorethanfourmonthsshalllapse betweenonemeetingandthenextmeeting.
2. Unlessthreequartersofthemembersotherwiseagree,atleastsevendays'noticeinwritingshallbegiventoeverymemberforameeting.
3. AmeetingshallbepresidedoverbytheChairpersonorinhisorherabsencethevice-chairperson.
4. ThemembersoftheCommissionshallelectavice-chairpersonfrom amongstthemselves-
   1. atthefirstsittingoftheCommission;and
   2. wheneveritisnecessarytofillthevacancyintheofficeofthevice-chairperson.
5. Thechairpersonandthevice-chairpersonshallnotbeofthesamegender.
6. TheCommissionmayinviteanypersontoattendanyofitsmeetings andtoparticipateinitsdeliberations,butsuchpersonshallnothaveavoteinanydecisionoftheCommission.
7. Quorum

(l)Subjecttosubparagraph(2),thequorumofthemeetingshallnotbelessthanhalfoftheappointedmembers.

(2)WherethereisavacancyintheCommission,thequorumofthemeetingshallnotbelessthantwoappointedmembers.

1. Voting

AquestionbeforetheCommissionshallbe decidedwithasupportingvoteofatleasttwo-thirdsof thememberspresent.

1. RulesofprocedureandminutesTheCommissionshall-
2. determinerulesofprocedurefortheconductofitsbusiness;and
3. keepminutesofitsproceedingsanddecisions.

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MEMORANDUMOFOBJECTSANDREASONS

StatementoftheObjectsandReasonsfortheBill

TheprincipalobjectofthisBillistorepealtheNationalCohesionandIntegrationAct(No.12of2008).ThemainaimistoprovideforacoordinatedstructureforpeacebuildingandcohesioninKenya.

TheBillinamendingtheNationalCohesionandIntegrationAct,theBillseekstocreatetheNationalCohesionandPeaceBuildingCommission.Itwillbechargedwithensuringtheformulationofstrategies,plansandprogramsforthepromotionofnationalunity.

UndertheBill,theCommissionisalsomandatedtoinvestigateandmakerecommendationstotheDirectorofPublicProsecutiononcomplaintsofhatespeech,ethnicorracialcontemptanddiscriminationonthebasisofethnic,clanorreligiousorigins.

ThetasksofvettingtheChairpersonandmembersoftheCommissionisvestedonaselectionpanelthatdrawsitsmembershipfromtheministryresponsibleformattersrelatingtonationalcohesion,theministryresponsibleformattersrelatingtodevolution,thePublicServiceCommission,theLawsocietyofKenya,andtheNationalCouncilforpersonslivingwithdisability.TheBillenvisagesthattheselectionpanelandthePresidentwilladheretothevaluesandprinciplesofpublicserviceininterviewingandnominatingpersonstoserveintheCommission.

Statementonthedelegationoflegislativepowersandlimitationoffundamentalrightsand freedoms

TheBilldoesnotdelegatelegislativepowersnordoesitlimitthefundamentalrightsandfreedoms.

StatementonhowtheBillconcernscountygovernments

Article10oftheConstitution bindsallstateorganstoadheretothenationalvaluesandprinciplesofgovernance.Nationalcohesionhasabearingonnationalunity,equality,inclusiveness,humanrights,non­discriminationandprotectionofthemarginalized.ThevaluesandprinciplesofgoodgovernancearethereforeapplicabletocountygovernmentshencetheyarerequiredtoputinplacemeasurestoensuretheactualizationofArticle10oftheConstitution

TheBillisthereforeaBillconcerningcountygovernmentsintermsofArticle110(I)(a)oftheConstitution.

StatementthattheBillisnotamoneyBill,withinthemeaningofArticle114oftheConstitution

ThisBillisnotamoneyBillwithinthemeaningofArticle114oftheConstitution.

Datedthe4thOctober,2018.

JUDITHPARENO,

*Senator.*

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