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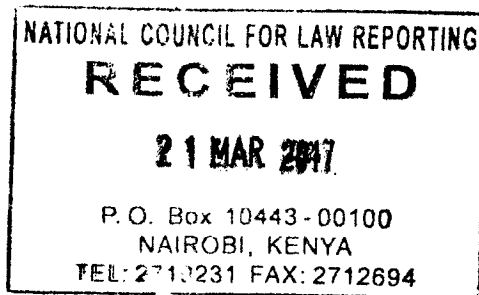
NAIROBI, 10th March, 2017

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**THE NATIONAL COHESION AND INTEGRATION
(AMENDMENT) BILL, 2017**

A Bill for

**AN ACT of Parliament to amend the National Cohesion
and Integration Act and for connected purposes**

ENACTED by the Parliament of Kenya, as follows —

1. This Act may be cited as the National Cohesion and Integration (Amendment) Act, 2017.

Short title.

2. The National Cohesion and Integration Act, 2008, hereinafter referred to as the “principal Act” is amended by deleting section 13 and substituting therefor the following new section—

Delete and substitute section 13 of No. 12 of 2008.

Hate speech.

13. (1) A person who—

- (a) uses threatening, abusive, insulting, vilifying words or behaviour, displays any written material or disseminates any ideas based on ethnic superiority or inferiority;
- (b) uses coded language, acts or makes gestures;
- (c) publishes, posts or distributes material in the print, electronic or social media;
- (d) presents or directs the public performance of a play with gestures depicting ethnic hatred;
- (e) distributes, shows or plays a recording of visual images or provides, produces or directs a programme which—
 - (i) depicts ethnic propaganda or stereotyping; or
 - (ii) contains gestures depicting ethnic hatred; or

- (iii) is threatening, abusive, insulting or vilifies others or involves the use of threatening, abusive, insulting or vilifying words or behaviour;
 - (f) wears or engages in the display of clothing, signs, flags, emblems and insignia with the intention to incite or stir up ethnic hatred or having regard to all the circumstances, ethnic hatred or social strife is likely to be stirred up, or social cohesion is likely to be disrupted, or show serious contempt for, or discrimination of or severe ridicule of, or incite acts of violence towards a person or group of persons, or towards any property of that person or group of persons, commits an offence.
- (2) Any person who commits an offence under this section shall upon conviction be liable to a fine not exceeding five million shillings or to imprisonment for a term not exceeding five years or to both.
- (3) In this section, “ethnic hatred” means hatred against an ethnic group.
- (4) A newspaper, radio station, television station, website administrator or other media enterprise that publishes or otherwise disseminates any of the acts under subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding ten million shillings.
- (5) Any person convicted of an offence under this section shall not be eligible to hold any public, political or elective office for a period of five years from the date of conviction.

3. The Principal Act is amended by inserting the following new section immediately after section 18—

Insertion of new
section 18A of No.
12 of 2008.

Procedure for
appointment of
chairperson and
members.

18A. (1) Whenever there is a vacancy in the Commission the President shall, within fourteen days of the occurrence of the vacancy, by notice in the gazette declare the vacancy in the Commission and request for applications.

(2) An application under subsection (1) may be made by any qualified person and shall be forwarded to the Public Service Commission within fourteen days of the notice.

(3) The names of all applicants under subsection (2) shall be published in the Gazette and two daily newspapers with national circulation.

(4) The Public Service Commission shall within seven days of receipt of applications under subsection (3) consider the applications, interview and shortlist at least three persons qualified for appointment as chairperson and fifteen persons qualified for appointment as members of the Commission and shall forward the names of selected candidates to the President for nomination.

(5) The President shall, within twenty one days of receipt of the names forwarded under subsection (5), nominate one person for appointment as chairperson and seven persons for appointment as members of the Commission, and shall forward the names of the persons nominated to the National Assembly.

(6) The National Assembly shall, within twenty-one days of the day it next sits after receipt of the names of the nominees under subsection (5), consider all the nominations received and may approve or reject any nomination.

(7) Where the National Assembly approves the nominees, the Speaker shall forward the names of the approved persons to the President for appointment.

(8) The President shall, within twenty one days of the receipt of the approved nominees from Parliament, by notice in the Gazette, appoint the chairperson and members approved by Parliament.

(9) Where the National Assembly rejects any nomination, the Speaker shall, within three days, communicate the decision of the National Assembly to the President to submit fresh nominations.

(10) 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 (4).

(11) If the National Assembly rejects all or any subsequent nominee submitted by the President for approval under subsection (10), the provisions of subsections (4) and (5) shall apply.

(12) The appointments to the Commission—

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

(13) 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.

4. The principal Act is amended by deleting section 19 and substituting therefor the following new section—

Deletion and substitution of section 19 of No. 12 of 2008.

Term of Office.

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

5. The principal Act is amended by deleting section 20 and substituting therefor the following new section—

Deletion and substitution of section 20 of No. 12 of 2008.

Secretary to the Commission.

20. (1) The appointment of the secretary shall be by the Commission through a competitive recruitment process.

(2) A person shall be qualified for appointment as a secretary to the Commission if the person—

- (a) is a citizen of Kenya;
- (b) holds a degree from a university recognized in Kenya;
- (c) has at least ten years proven experience at management level;
- (d) has extensive experience in public administration; and
- (e) meets the requirements of Chapter Six of the Constitution

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

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

6. The Principal Act is amended by inserting the following new section immediately section 70 is —

Insertion of new
section 70A of No.
12 of 2008.

Transition.

70A. (1) Notwithstanding section 19, persons who are members of the Commission in office immediately before the commencement of this Act shall continue in office for their unexpired term so as to constitute a term of six years from their date of appointment.

(2) Notwithstanding the provisions of section 20, the incumbent Commission secretary shall be deemed to have been appointed Commission secretary for the first term of five years.

MEMORANDUM OF OBJECTS AND REASONS

Statement of objects and reasons

The principal object of this Bill is to amend the National Cohesion and Integration Act to provide for a comprehensive definition of hate speech and to align provisions relating to appointment and the term of members and the secretary to align with the Constitution.

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

The Bill does not limit any fundamental rights or freedoms or delegate legislation power.

Statement that the Bill concerns county governments

The Bill does not concern County Governments in terms of Article 109(3) of the Constitution and it does not affect the functions and powers of County Governments recognised in the Fourth Schedule to the Constitution.

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

The enactment of this Bill shall occasion additional expenditure of public funds.

Dated the 2nd February, 2017.

SAMUEL CHEPKONG'A,
Chairperson, Justice and Legal Affairs Committee.

Section 13 of No. 12 of 2008 which it is proposed to amend—

13. Hate speech

(1) A person who—

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

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

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

Section 18 of No. 12 of 2008 which it is proposed to amend—

Qualifications of commissioners

(1) A person shall be qualified for appointment as a commissioner if such person—

- (a) is a citizen of Kenya;
- (b) is a person of high moral character and proven integrity; and
- (c) has knowledge and experience in matters relating to race, ethnic and human relations, public affairs, and human rights.

(2) No person shall be qualified for appointment as a commissioner if such person—

- (a) is a member of the National Assembly;
- (b) is a member of a local authority;
- (c) is a member of the executive body of, or is actively involved in the affairs of, a political party;
- (d) has promoted sectoral, ethnic, racial or religious animosity or openly advocated for partisan ethnic positions or interests.

Section 19 of No. 12 of 2008 which it is proposed to amend—

19. Term of office

The Chairperson and the commissioners shall hold office for a term of three years and shall be eligible for re-appointment for one further term of three years.

Section 20 of No. 12 of 2008 which it is proposed to amend—

20. Secretary to the Commission

(1) There shall be a Secretary to the Commission who shall be appointed by the Commission upon such terms and conditions as the Commission may determine.

(2) Subject to the general control of the Commission, the Secretary shall—

- (a) be responsible for the administration and day-to-day management of the affairs of the Commission and of the control of the other staff of the Commission; and
- (b) perform such other functions as may be assigned by the Commission.

