THE NATIONAL COHESION AND INTEGRATION ACT

No. 12 of 2008

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AN ACT of Parliament to encourage national cohesion and integration by outlawing discrimination on ethnic grounds; to provide for the establishment, powers and functions of the National Cohesion and Integration Commission, and for connected purposes.

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY

Short title and commencement.

1. This Act may be cited as the National ~~Ethnic and Race Relations Commission~~ Cohesion and Integration Act, 2008, and shall come into operation on such date as the Minister may, by notice in the Gazette, appoint.

Interpretation.

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

"Commission" means the National Cohesion and Integration Commission established by section 15;

"commissioner" means a member of the Commission appointed under section 17;

"discrimination" means discrimination as defined under sections 3 and 4 of this Act;

"development issues" includes issues relating to development in socio-cultural, political and economic sectors;

"employment" means a situation where an employee does his work wholly or partly in Kenya, (for a fee or not), for the employer; or where the employee does work for the employer outside Kenya and the employee is ordinarily resident in Kenya, either at the time he applies for the job or at any time during the course of the employment and includes a situation where the employer is working through a representative, assign or where he has sub-contracted the employment;

"establishment" means a place of employment including aboard a ship or aeroplane registered in Kenya but operating internationally;

"ethnic relations" include racial, religious, tribal and cultural interactions between various communities, and the words "ethnic" and "ethnicity" shall be construed accordingly;

"ethnic group" means a group of person defined by reference to colour, race, religion, or ethnic or national origins, and references to a person's ethnic group refers to any ethnic group to which the person belongs.

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

"Secretary" means the secretary to the Commission appointed under section 20;

"financial year" means a period of twelve months ending on the thirtieth June in each year;

"Human Rights Commission" means the Kenya National Commission on Human Rights established under the Kenya National Commission on Human Rights Act, 2002; and

No. 9 of 2002.

"Minister" means the Minister for the time being responsible for matters relating to justice and human rights.

PART II- DISCRIMINATION TO WHICH ACT APPLIES

Ethnic discrimination

3.(1) For purposes of this Act. a person discriminates against another person if-

(a) on ethnic grounds he treats that other person less favorably than he treats or would treat other persons; or

(b) he applies to that other person a requirement or condition which he applies or would apply equally to persons not of the same ethnic group as that other person but-

(i) which is such that the proportion of persons of the same ethnic group as that other person who can comply with it is considerably smaller than the proportion of persons not of that ethnic group who can comply with it; and

(ii) which he cannot show to be justifiable irrespective of the colour , race, nationality or ethnic or national origins of the person to whom it applied; and

(iii) which is to the detriment of that other person because he cannot comply with it.

(2) A person also discriminates against another person if, in any circumstances relevant for the purposes of any provision referred to in subsection (1) (b), he applies to that other person a provision, criterion or practice which he applies or would apply equally to persons not of the same race or ethnic or national origins as that other, but-

(a) which puts or would put persons of the same race or ethnic or national origins as that other person at a particular disadvantage when compared with other persons,

(b) which puts that other person at that disadvantage; and

(c) which he cannot show to be a proportionate means of achieving a legitimate aim.

(3) For the purposes of this Act, segregating a person from other persons on ethnic grounds is treating him less favourably than they are treated.

(4) Subsection (1) does not apply to treatment of a person by reason of any allegation made by him if it is proven in a court of law that the allegation was false and not made in good faith.

Discrimination by way of victimization.

4. A person discriminates against another person by way of victimization in any circumstances relevant for the purposes of this Act, if he does any act that is injurious to the well-being and esteem of the person by treating the person victimized less favourably than, in those circumstances, he treats or would treat other persons, and does so by reason that the person victimized has-

(a) brought proceedings against the discriminator or any other person under this Act;

(b) otherwise done anything under or by reference to this Act in relation to the discriminator or any other person;

(c) given evidence or information in connection with proceedings brought by any person against the discriminator or any other person under this Act; or

(d) alleged that the discriminator or any other person has committed an act which (whether or not the allegation so states) would amount to a contravention of this Act, or by reason that the discriminator knows that the person victimized intends to do any of those things, or suspects that the person victimized has done, or intends to do, any of them.

Comparison of persons of different ethnic groups.

5. A comparison of the case of a person of a particular ethnic group with that of a person not of that group under sections 3 and 4 shall be such that the relevant circumstances in the one case are the same, or not materially different, in another.

Harassment on the basis of ethnicity.

6. (1) A person subjects another to harassment on the basis of ethnicity for the purposes of any provision referred to in section 4 (d) where, on ethnic grounds, he engages in unwanted conduct which has the purpose or effect of-

(a) violating that other person's dignity, or

(b) creating an intimidating, hostile, degrading, humiliating or offensive environment for him.

(2) Conduct shall be regarded as having the effect specified in subsection (1) (a) or (b) only if, having regard to all the circumstances, including in particular the perception of that other person, it should reasonably be considered as having that effect.

PART III - ACTS, CONDITIONS AND CIRCUMSTANCES DEEMED DISCRIMINATORY

Discrimination in employment.

7.(1) All public establishments shall seek to represent the diversity of the people of Kenya in the employment of staff.

(2) No public establishment shall have more than one third of its staff from the same ethnic community.

(3) It is unlawful for a person, his representatives or assigns, in relation to employment by him at an establishment, to discriminate against another-

(a) in the arrangements he makes for the purpose of determining who should be offered that employment;

(b) in the terms he offers him that employment; or

(c) by refusing or deliberately omitting to offer him that employment.

(4) It is unlawful for a person, in the case of a person employed by him at an establishment to discriminate against that employee-

(a) in the terms of employment in which he affords him;

(b) in the way he affords him access to opportunities for promotion, transfer or training or to any other benefits, facilities or services, or by refusing or deliberately omitting to afford him access to them; or

(c) by dismissing him, or subjecting him to any other detriment.

(5) It is unlawful for an employer, his representatives or assigns, in relation to employment by him at an establishment, to subject to harassment a person whom he employs or who has applied to him for employment.

(6) Except in relation to discrimination falling within section 4 or discrimination on ethnic grounds, subsections (4) and (5) do not apply to employment for the purposes of a private enterprise.

(7) In this section reference to the dismissal of a person from employment includes, where the discrimination is on ethnic grounds, reference to-

(a) the termination of that person's employment by the expiration of any period (including a period expiring by reference to an event or circumstances), not being a termination immediately after which the employment is renewed on the same terms; and

(b) the termination of that person's employment by an act of his (including the giving of notice) in circumstances such that he is entitled to terminate it without notice by reason of the conduct of the employer.

Exceptions to discrimination in the employment field.

8.(1) It shall not be deemed discriminatory under this Part where, having regard to the nature of the employment or the context in which it is carried out-

(a) being of a particular race or particular ethnic or national origin is a genuine and determining occupational requirement;

(b) it is appropriate to apply that requirement in the particular case and the person to whom that requirement is applied does not meet it;

(c) being of a particular ethnic group, is a genuine occupational qualification and ground for discrimination for a job only where-

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

(ii) the job involves a work of art,

visual image or sequence of visual images for which a person of that ethnic group is required for reasons of authenticity; or

(iii) the holder of the job provides persons of that ethnic group with personal services promoting their welfare, and those services can most effectively be provided by a person of that ethnic group.

(2) The provisions of subsection (1) (c) do not apply in relation to the filling of a vacancy at a time when the employer already has employees of the ethnic group in question –

(a) who are capable of carrying out the duties falling specified within that paragraph; and

(b) whom it would be reasonable to employ on those duties; and

(c) whose numbers are sufficient to meet the employer's likely requirements in respect of those duties without undue inconvenience.

Discrimination in membership of organizations.

9. (1) It is unlawful for an organization to which this section applies, in case of a person who is not a member of the organization, to discriminate against him-

(a) in the terms in which it is prepared to admit him to membership; or

(b) by refusing or deliberately omitting to accept his application for membership.

(2) It is unlawful for an organization to which this section applies, in the case of a person who is a member of the organization, to discriminate against him-

(a) in the way it affords him access to any

benefits, facilities or services, or by refusing or deliberately omitting to afford him access to them; or

(b) by depriving him of membership, or varying the terms on which he is a member; or

(c) by subjecting him to any other detriment.

(3) It is unlawful for an organization to which this section applies, in relation to a person's membership or application for membership of that organization, to subject him to harassment.

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

Discrimination by other agencies.

10. (1) Unless as provided under subsection (2), it is unlawful for a qualifying body, licensing authority, planning authority, public authority, employment agency, educational establishment or body offering training, to discriminate against prospective and current clients in the provision of services.

(2) Subsection (1) shall not apply-

(a) where it is proven that the alleged discriminatory act is a necessary requirement in the nature of business transaction and there is no alternative way of realizing this goal;

(b) in the case of public authorities-

(i) in relation to any judicial act (whether done by a court of law, tribunal or other person); or

(ii) any act done on the instructions, or on behalf, of a person acting in a judicial capacity; or

(iii) an action undertaken by the Minister for Immigration, under the Immigration Act, in relation to cases relating to immigration and nationality.

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Discrimination in access to and distribution of public resources.

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

(2) It shall be unlawful for any public officer, while in charge of public resources and without justification, to distribute resources in an ethnically inequitable manner.

(3) Resources shall be deemed to have been distributed in an ethnically inequitable manner when-

(a) the officer fails to use the criteria established under this Act or any other law in allocating resources by regions;

(b) specific regions consistently receive more resources than other regions and there is no clear justification for it; or

(c) more resources are allocated to regions that require remedial resources than to areas that require start up resources.

Discrimination in property ownership, management and disposal.

12. (1) It is unlawful for a person, in relation to public property, or property wholly meant for the public in Kenya or which he has power to manage, lease, let or dispose, to discriminate against another person-

(a) in the terms in which he offers, lets, manages or disposes to him the property;

(b) by unjustifiably refusing his proposal for sale or engagement in the person's business, where the same conditions do not apply to others who are not of the same ethnic group as the person;

(c) in his treatment of him in relation to any list of person in need of property of that description.

(2) It is unlawful for a person, in relation to public property, or property wholly meant for the public managed by him to discriminate against a person occupying premises-

(a) in the way he affords him access to any benefits of facilities, or by refusing or deliberately omitting to afford him access to them; or

(b) by evicting him or subjecting him to any other detriment.

(3) It is unlawful for a person, in relation to such premises as are referred to subsection (1) or (2), to subject a person who applies for, or as the case may be, occupies such premises, to harassment.

Hate speech.

13. (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

Exceptions to Part.

14. (1) Nothing contained in this Part shall render unlawful any act done-

(a) in affording persons of a particular ethnic group access to facilities or services to meet the special needs of persons of that group in regard to their education, training or welfare, or any ancillary benefits;

(b) by a person on grounds other than race or ethnic or national origins for the benefit of persons who are not Kenyan in affording them access to facilities for education or training or any ancillary benefits, where it appears to him that the persons in question do not intend to remain in Kenya after the period of education and training there.

(2) Nothing in this Part shall render unlawful any act done in relation to particular work by an person in or in connection with-

(a) affording only persons of a particular racial group access to facilities for training which would help to equip them for that work; or

(b) encouraging only persons of a particular ethnic group to take advantage of opportunities for doing that work, where it reasonably appears to that person that any time within the twelve months immediately preceding the doing of the act-

(i) there were no persons of that group among those doing that work in Kenya; or

(ii) the proportion of persons of that group among those doing that work in Kenya was small in comparison with the proportion of persons of that group among the population of Kenya.

(4) Where in relation to particular work it reasonably appears to any person that although the condition for the operation of subsection (2) is not met for the whole of Kenya it is met for an area within Kenya, nothing in this Part shall render unlawful any act done by that person in or in connection with-

(a) affording persons who are of the ethnic group in question, and who appear likely to take up that work in that area, access to facilities for training which could help to fit them for that work; or

(b) encouraging persons of that group to take advantage of opportunities in the area for doing that work.

(5) Subsections (2) and (3) shall not apply to any discrimination which is rendered unlawful by Part II.

PART IV—ESTABLISHMENT, POWERS AND FUNCTIONS OF THE COMMISSION

Establishment of the Commission.

15. (1) There is established a Commission to be known as the National Cohesion and Integration Commission.

(2) The Commission shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

(a) suing and being sued;

(b) purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;

(c) borrowing or lending money; and

(d) doing or performing all other things or acts for the furtherance of the provisions of this Act which may lawfully be done or performed by a body corporate.

Headquarters.

16. (1) The headquarters of the Commission shall be in Nairobi, but the Commission may establish branches at any place in Kenya.

(2) Subject to the provisions of any other written law as to the meetings of the Commission, the Commission may hold its sittings at any place in Kenya.

Membership of the Commission.

17. (1) The Commission shall consist of—

(a) a Chairperson appointed by the President from amongst the commissioners appointed under paragraph (b);

(b) eight commissioners nominated by the National Assembly in accordance with the First Schedule and appointed by the President;

(c) the Chairperson of the Kenya National Commission on Human Rights;

(d) the Chairperson of the National Commission on Gender and Development; and

(e) the Chairperson of the Public Complaints Standing Committee (Ombudsman).

(3) The commissioners shall, at their first meeting, elect a vice-chairperson from amongst the commissioners appointed under subsection (2) (b).

(4) In appointing members to the Commission, the principle of gender equity shall apply.

Qualifications of commissioners.

18. (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.

Term of office.

19. 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.

Secretary to the Commission.

20. (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.

Oath of office.

21. The Chairperson, the commissioners and the Secretary shall each make and subscribe before the Chief Justice the oath or affirmation set out in Second Schedule.

Vacancy.

22. (1) The office of the Chairperson or a

commissioner shall become vacant if the holder—

(a) dies;

(b) resigns from office by writing under his hand addressed to the President;

(c) is removed from office in accordance with the provisions of section 23;

(d) is convicted of an offence and sentenced to imprisonment for a term of three months or more without the option of a fine;

(e) is unable to discharge the functions of his office by reason of physical or mental infirmity;

(f) is absent from three consecutive meetings of the Commission without good cause; or

(g) is declared bankrupt.

(2) The President shall notify every vacancy in the Gazette within seven days of the occurrence of the vacancy.

Removal from office.

23. (1) The Chairperson or a commissioner may be removed from office by the President—

(a) for misbehaviour or misconduct; or

(b) if convicted of an offence involving moral turpitude,

but shall not be removed except in accordance with this section.

(2) A person who wishes to have a commissioner removed from office may apply for removal of the

commissioner to the President through the Minister, and such application shall be copied to the Chairperson.

(3) Where the subject of an application for removal from office under subsection (2) is the Chairperson, the application shall be made to the Minister and copied to the vice-chairperson.

(4) The Minister shall, within seven days of receipt of an application under subsection (2), forward the application to the relevant Parliamentary Committee, and the Committee shall inquire into the matter and report on the facts to the President through the Minister, giving its recommendations as to whether or not the Chairperson or the commissioner ought to be removed from office, and the Minster shall communicate the recommendations of the Committee to the President.

(5) Where the question of removing the Chairperson or a commissioner has been referred to the relevant Parliamentary Committee under subsection (4), the President may suspend the Chairperson or the commissioner concerned, and the suspension may at any time be lifted by the President and shall, in any case, cease to have effect if the Parliamentary Committee recommends that the Chairperson or the commissioner, as the case may be, should be removed.

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

Filling of vacancy.

24. (1) Where a vacancy occurs in the Commission as a result of death, disability, resignation or removal of a commissioner, the President shall appoint a replacement from among the short listed persons considered by the National Assembly in accordance with the First Schedule.

(2) A person who is appointed in place of a

commissioner whose office has become vacant under this section shall hold office for the remainder of the term of office of that commissioner.

Objects and functions of the Commission.

25. (1) The object and purpose for which the Commission is established is to facilitate and promote equality of opportunity, good relations, harmony and peaceful co-existence between persons of the different ethnic and racial communities of Kenya, and to advise the Government on all aspects thereof.

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

(a) promote the elimination of all forms of discrimination on the basis of ethnicity or race;

(b) discourage persons, institutions, political parties and associations from advocating or promoting discrimination or discriminatory practices on the ground of ethnicity or race;

(c) promote tolerance, understanding and acceptance of diversity in all aspects of national life and encourage full participation by all ethnic communities in the social, economic, cultural and political life of other communities;

(d) plan, supervise, co-ordinate and promote educational and training programmes to create public awareness, support and advancement of peace and harmony among ethnic communities and racial groups;

(e) promote respect for religious, cultural, linguistic and other forms of diversity in a plural society;

(f) promote equal access and enjoyment by persons of all ethnic communities and racial groups to public or other services and facilities provided by the Government;

(g) promote arbitration, conciliation, mediation and similar forms of dispute resolution mechanisms in order to secure and enhance ethnic and racial harmony and peace;

(h) investigate complaints of ethnic or racial discrimination and make recommendations to the Attorney-General, the Human Rights Commission or any other relevant authority on the remedial measures to be taken where such complaints are valid;

(i) investigate on its own accord or on request from any institution, office, or person any issue affecting ethnic and racial relations;

(j) identify and analyze factors inhibiting the attainment of harmonious relations between ethnic communities, particularly barriers to the participation of any ethnic community in social, economic, commercial, financial, cultural and political endeavours, and recommend to the

Government and any other relevant public or private body how these factors should be overcome;

(k) determine strategic priorities in all the socio-economic political and development policies of the Government impacting on ethnic relations and advise on their implementation;

(l) recommend to the Government criteria for deciding whether any public office or officer has committed acts of discrimination on the ground of ethnicity or race;

(m) monitor and review all legislation and all administrative acts relating to or having implications for ethnic or race relations and equal opportunities and, from time to time, prepare and submit to the Government proposals for revision of such legislation and administrative acts;

(n) initiate, lobby for and advocate for policy, legal or administrative reforms on issues affecting ethnic relations;

(o) monitor and make recommendations to the Government and other relevant public and private sector bodies on factors inhibiting the development of harmonious relations between ethnic groups and on barriers to the participation of all ethnic

groups in the social, economic, commercial, financial, cultural and political life of the people;

(p) undertake research and studies and make recommendations to the Government on any issue relating to ethnic affairs including whether ethnic relations are improving;

(q) make recommendations on penalties to be imposed on any person for any breach of the provisions of the Constitution or of any law dealing with ethnicity;

(r) monitor and report to the National Assembly the status and success of implementation of its recommendations;

(s) issue notices directing persons or institutions involved in actions or conduct amounting to violations of human rights on the basis of ethnicity or race to stop such actions or conduct within a given period; and

(t) do all other acts and things as may be necessary to facilitate the efficient discharge of its functions.

Powers of the Commission.

26. (1) The Commission shall have all the powers necessary or expedient for the proper performance of its functions under this Act.

(2) In the discharge of its functions under this Act, the Commission—

(a) shall not be subject to the direction

or control of any other person or authority;

(b) shall publish the names of persons or institutions whose words or conduct may undermine or have undermined or contributed towards undermining good ethnic relations, or who are involved in ethnic discrimination or the propagation of ethnic hate;

(c) may enter into association with such other bodies or organizations within or outside Kenya as it may consider desirable or appropriate and in furtherance of the purpose for which the Commission is established;

(d) control, supervise and administer the assets of the Commission in such manner and for such purposes as best promote the purpose for which the Commission is established;

(e) receive any grants, gifts, donations or endowments and make legitimate disbursements therefrom; and

(f) open a banking account or banking accounts for the funds of the Commission.

Power to summon witnesses.

27. The Commission shall have power to summon witnesses and to call for the production of books, plans and other documents and to examine witnesses and parties on oath.

Summons for attendance of witnesses.

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

Expenses of witnesses.

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

Conduct of business of the Commission.

30. The conduct and regulation of the business and affairs of the Commission shall be as provided in the Third Schedule but subject thereto, the Commission shall regulate its own procedure.

Delegation by the Commission.

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

Remuneration of commissioners.

32. The Minister shall, in consultation with the Treasury, determine the remuneration and allowances of the members of the Commission.

Staff of the Commission.

33. (1) The Commission may appoint such officers or staff as are necessary for the proper discharge of the functions of the Commission under this Act, upon such terms and conditions of service as the Commission may determine.

(2) The principles of ethnic and gender balance shall guide all staff appointments.

(3) The Government may, upon request by the Commission, second to the Commission such number of

public officers as may be necessary for the purposes of the Commission.

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

The seal of the Commission.

34. (1) The common seal of the Commission shall be kept in such custody as the Commission may direct and shall not be used except on the order of the Commission.

(2) The common seal of the Commission when affixed to a document and duly authenticated shall be judicially and officially noticed and unless and until the contrary is proved, any necessary order or authorization of the Commission under this section shall be presumed to have been duly given.

Protection from personal liability.

35. No matter or thing done by a member of the Commission or any officer, employee or agent of the Commission shall, if the matter or thing is done in good faith for executing the functions, powers or duties of the Commission, render the member, officer, employee or agent personally liable to any action, claim or demand whatsoever.

Liability of the Commission for damages.

36. The provisions of section 35 shall not relieve the Commission of the liability to pay compensation for damage to any person for any personal or proprietary interest sustained by the person as a result of the exercise of any power conferred by this Act or by the failure, whether wholly or partially, of any works.

PART V—FINANCIAL PROVISIONS

Funds of the Commission.

37. The funds of the Commission shall consist of—

(a) monies appropriated by Parliament for the purposes of the Commission;

(b) such monies or assets as may accrue to the Commission in the course of the exercise of its powers or the performance of its functions under this Act; and

(c) all monies from any other source provided for or donated or lent to the Commission.

Annual estimates.

38.(1) At least three months before the commencement of each financial year, the Commission shall cause to be prepared estimates of the revenue and expenditure of the Commission for that year.

(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—

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

(b) the payment of pensions, gratuities and other charges and in respect of benefits which are payable out of the funds of the Commission;

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

(d) the funding of training, research and development activities of the Commission;

(e) the proper maintenance, repair and replacement of any installation and of the equipment and other

movable property of the Commission;

(f) the creation of such funds to meet future or contingent liabilities in respect of benefits, insurance or replacement of buildings or installations or 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 Minister for approval and after the Minister has given approval, the Commission shall not increase any sum provided in the estimates without the written consent of the Minister.

(4) No expenditure shall be incurred for the purposes of the Commission except in accordance with the annual estimates approved under subsection (3), or in pursuance of an authorization of the Commission given with the prior approval of the Minister.

Accounts and audit.

39. (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.

(2) The Minister for the time being responsible for finance may prescribe the form of any book required to be kept under subsection (1) and unless a form has been prescribed, a form suitable for the purpose shall be used.

(3) Within a period of three months after the end of each financial year, the Commission shall submit to the Controller and Auditor-General the accounts of the Commission in respect of that year together with—

(a) a statement of the income and expenditure of the Commission during that financial year; and

(b) a statement of the assets and liabilities of the Commission on the last day of that financial year.

(4) The accounts of the Commission shall be audited and reported upon by the Controller and Auditor-General in accordance with the provisions of the Public Audit Act, 2003.

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Investment of funds.

40. (1) The Commission may invest any of its funds in securities in which for the time being trustees may by law invest trust funds or in any other securities which the Treasury may, from time to time, approve.

(2) The Commission may place on deposit with such bank or banks or financial institutions as it may determine, any moneys not immediately required for the purposes of the Commission.

Annual reports.

41. (1) The Commission shall cause an annual report to be prepared for each financial year.

(2) The Commission shall submit the annual report to the Minister within 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 considers appropriate relating to complaints to the Commission, investigations

by the Commission and reports by the Commission on the results of investigations;

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

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

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

Special reports.

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

PART VI— ENFORCEMENT

Complaint and compliance procedure

Complaints.

43. (1) Any person who claims that another person has contravened a provision of Part III of this Act in relation to that person may complain to the Commission.

(2) Two or more persons may complain jointly.

(3) A complaint may be made by or against an individual as well as a body of persons whether corporate or unincorporated.

(4) In order to complain to the Commission under this section, it is not necessary for the alleged contravention to relate exclusively to the complainant.

Lodging a complaint.

44.(1) A person shall complain to the Commission by lodging a written complaint to the Commission by hand, facsimile or other electronic transmission or post, setting out the alleged contravention.

(2) The Commission shall notify the respondent in writing of the complaint as soon as practicable after receiving it.

Commission may decline to entertain some complaints.

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

(a) is frivolous, vexatious, misconceived or lacking in substance;

(b) involves subject matter that would be more appropriately dealt with by a court;

(c) involves subject matter that has been adequately dealt with by a court; or

(d) relates to an alleged contravention of the Act that took place more than twelve months before the complaint was lodged,

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

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

to—

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

(b) produce any documents specified in the notice.

Application to strike out complaint.

46. (1) A respondent may apply in writing to the Commission to have a complaint or any part of it struck out on the grounds that it is frivolous, vexatious, misconceived or lacking in substance.

(2) An application under subsection (1) may be made at any time—

(a) before the respondent has been given a notice to attend under section 51 (a) or has otherwise been notified by the Commission or the Secretary of a date for conciliation; or

(b) after the conciliation has been completed but before the complaint is set down for hearing.

(3) The Commission shall begin to hear the application within fourteen days after reconciliation has failed and shall determine it as expeditiously as possible.

Commission may dismiss a stale complaint.

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

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

Minister may refer a matter to Commission.

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

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

Commission to refer complaints for conciliation.

49.(1) If the Commission considers it reasonably possible that a complaint may be conciliated successfully, the Commission shall refer the complaint to the Secretary.

(2) Subsection (1) does not apply to a complaint—

(a) that the Commission has declined to entertain under section 45 or dismissed under section 47;

(b) that the Minister has referred to the Commission under section 48; or

(c) if an application to the Commission by a respondent under section 46 is pending.

Where conciliation is inappropriate.

50.(1) If the Commission does not consider it reasonably possible that a complaint may be conciliated

successfully it shall notify the complainant and the respondent in writing.

(2) Within sixty days after receiving the Commission's notice under subsection (1), the complainant, by written notice, may require the Commission to set the complaint down for hearing and the Commission shall comply with such notice.

(3) If the complainant does not notify the Commission under subsection (2), the Commission may dismiss the complaint and the complainant may take no further action under this Act in relation to the subject matter of the complaint.

Conciliation by Commission.

51. The Commission shall make all reasonable endeavours to conciliate a complaint referred to it under section 49 and may, by written notice, require any person to—

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

(b) produce any documents specified in the notice.

Conciliation agreements.

52. If, following conciliation, the parties to the complaint reach agreement with respect to the subject matter of the complaint, the Secretary shall record the agreement and the parties shall be bound to comply with such agreement as if it were an order of the Commission.

Where Commission fails to conciliate.

53. (1) If the Commission does not consider it reasonably possible that a complaint may be conciliated successfully, or has attempted unsuccessfully to conciliate the complaint, it shall notify the complainant and the respondent in writing.

(2) Within sixty days after receiving a notice under subsection (1), the complainant, by written notice, may require the Commission to set down the complaint for hearing.

(3) If the complainant does not notify the Commission under subsection (2), the Commission may dismiss the complaint and the complainant may take no further action under this Act in relation to the subject matter of the complaint.

Special references.

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

(2) A special reference is—

(a) a matter that has been referred to the Commission by the Minister under section 48; or

(b) a complaint the resolution of which may have significant social, economic or financial effects on the community or a section of the community; or

(c) a complaint the subject matter of which involves issues of a particular complexity and the resolution of which may establish important precedents in the interpretation or application of this Act.

(3) The question of whether or not a matter is a special reference shall be determined by the chairperson.

Parties to a proceeding.

55.(1) The complainant and the respondent are parties to a proceeding in respect of a complaint referred to in section 43.

(2) The Minister shall not be a party to a proceeding in respect of a complaint referred to the Commission unless it has been joined as a party to the proceeding by the Commission.

Decisions of the Commission.

56. After hearing the evidence and representations that the parties to a complaint desire to adduce or make, the Commission may—

(a) find the complaint or any part of it proven and issue a compliance notice in the manner provided for under section 57;

(b) find the complaint or any part of it proven but decline to take any further action in the matter; or

(c) find the complaint or any part of it not proven and make an order that the complaint or part of it be dismissed.

Compliance notices.

57.(1) A compliance notice issued under section 56 shall require the person concerned to—

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

(b) inform the Commission, within thirty days of the date on which the notice is served, of the steps that the person has taken, or is taking, to comply with the duty specified in the notice.

(2) A compliance notice may also require the person concerned to furnish the Commission with such other written information as may be reasonably required

by the notice in order to verify that the notice has been complied with.

(3) The notice may specify—

(a) the time (no later than three months from the date on which the notice is served) at which any information is to be furnished to the Commission; and

(b) the manner and form in which any such information is to be so furnished.

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

Enforcement of compliance notices.

58.(1) The Commission may apply to a Magistrates Court for an order requiring a person to furnish any information required by a compliance notice if—

(a) the person fails to furnish the information to the Commission in accordance with the notice; or

(b) the Commission has reasonable cause to believe that the person does not intend to furnish the information.

(2) If the Commission considers that a person has not, within three months of the date on which a compliance notice was served on that person, complied with any requirement of the notice for that person to comply with a duty imposed by an order under section 57, the Commission may apply to a Magistrates Court for an order requiring the person to comply with the requirement of the notice.

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

Investigations by the Commission.

59.(1) If the Commission becomes aware of circumstances where a contravention of Part III of this Act may have occurred (other than an alleged contravention that is the subject of proceedings before the Commission), the Commission may initiate investigation.

(2) If, in the course of performing its functions under section 25, the Commission becomes aware of circumstances where a contravention of Part III of this Act may have occurred, the Commission may, with the consent of the Minister, investigate the matter.

(3) If, in the course of dealing with a complaint or investigating a matter under subsection (1) or (2), the Commission becomes aware of circumstances where a contravention of Part III of this Act may have occurred (other than the contravention alleged in the complaint or the contravention being investigated), the Commission may investigate those circumstances

Matters that may be investigated.

60.(1) A matter may be investigated under section 59 (1) or (2) only if—

(a) it is of such a serious nature that it warrants the investigation;

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

(c) the circumstances are such that the lodging of a complaint by one person only would not be appropriate.

(2) Any matter may be investigated under section 59(3).

Conduct of investigations.

61.(1) The Commission shall conduct an investigation under this Part in the same manner, as nearly as practicable, as if it were a complaint.

(2) If the Commission, after investigation, is satisfied that a person has contravened a provision of Part III, the Commission shall make all reasonable endeavours to conciliate the matter.

PART VII— MISCELLANEOUS

Offence of ethnic or racial contempt.

62. (1) Any person who utters words intended to incite feelings of contempt, hatred, hostility, violence or discrimination against any person, group or community on the basis of ethnicity or race, commits an offence and shall be liable on conviction to a fine not exceeding one million shillings, or to imprisonment for a term not exceeding five years, or both.

(2) A newspaper, radio station or media enterprise that publishes the utterances referred to in subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding one million shillings.

Offences.

63.A person who –

(a) subjects or threatens to subject the another person to any detriment because the other person, or a person associated with the other person—

(i) has made a complaint against any person;

(ii) has brought any other proceedings under this Act against any person;

(iii) has given evidence or information, or produced a document, in connection with any proceedings under this Act;

(iv) has otherwise done anything in accordance with this Act in relation to any person;

(v) has contravened a provision of Part III, unless the allegation is false and was not made in good faith;

(vi) has refused to do anything that would contravene a provision of Part III;

(b) fails to comply with a notice by the Commission under section 57;

(c) hinders or obstructs a Commissioner, member of staff of the Commission or the Secretary in the exercise of powers or the performance of functions under this Act;

(d) uses insulting language towards a Commissioner, member of staff of the Commission or the Secretary when the

member or Secretary is exercising powers or performing functions under this Act; or

(e) gives any information or makes any statement to the Commission, the Secretary or a person acting on behalf of the Commission or the Secretary in the exercise of powers or the performance of functions under this Act which the person knows is false or misleading in any material particular

commits an offence and shall be liable on conviction to a fine of two hundred thousand shillings or to imprisonment for a term of twelve months or to both.

Offences by body of persons.

64. In the case of an offence under this Act committed by a body of persons –

(a) where the body of persons is a body corporate, every director and officer of that body corporate shall also be deemed to be guilty of that offence; and

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

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

Contravention of Act not to create civil or criminal liability.

65. A contravention of this Act does not create any civil or criminal liability except to the extent expressly provided by this Act.

Secrecy of certain information.

66 (1) No person shall, either directly or indirectly, make a record of, disclose or communicate to any person any information to which this section applies unless it is necessary to do so for the purposes of, or in connection with, the performance of a function or duty or the exercise of a power under this Act or any other law.

(2) Subsection (1) applies to every person who is or has been—

(a) a member of the Commission;

(b) the Secretary;

(c) a member of staff of the Commission; and

(d) any other person acting under the authority of the Commission.

(3) This section applies to information concerning the affairs of any person that is or has been obtained by a person to whom this section applies—

(a) in the course of performing functions or duties or exercising powers under this Act; or

(b) as a result of another person performing functions or duties or exercising powers under this Act .

(4) A person who contravenes subsection (1) commits an offence and shall be liable on conviction to a fine of one hundred thousand shillings or to imprisonment for a term of six months or to both.

Effect of vacancy or defect in appointment

67. An act or decision by the Commission is not invalid only because of a vacancy in its membership, or a defect or irregularity in the appointment of any member.

Protection of persons giving evidence and information.

68. If—

(a) a complaint has been lodged; or

(b) a document or any information or evidence has been produced or given to the Commission or the Secretary under this Act—

a person is not personally liable for any loss, damage or injury suffered by another person by reason only of the lodging of the complaint or the production or giving of the document, information or evidence.

Regulations.

69. The Minister may, in consultation with the Commission, make regulations-

(a) generally for the better carrying into effect any of the provisions of this Act;

(b) for or with respect to –

(i) prescribing matters in connection with the exercise of powers by the Commission or the Secretary;

(ii) prescribing forms for the purposes of this Act;

(iii) prescribing penalties, not exceeding a fine of fifty thousand shillings or imprisonment for a term of six months, for breaches of the regulations; or

(c) generally prescribing any matters or things required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.

70. This Act binds the Government. Act binds Government.

FIRST SCHEDULE (s. 17)

PROCEDURE FOR NOMINATING COMMISSIONERS BY THE NATIONAL ASSEMBLY

1. The Clerk of the National Assembly shall, within fourteen days of the commencement of this Act, by advertisement in the Gazette and in at least three daily newspapers of national circulation, invite applications from persons qualified under this Act for nomination as commissioners.

2. An application under paragraph 1 shall be forwarded to the Clerk within twenty-one days of the advertisement and may be made by any—

(a) qualified person; or

(b) any person, organization or group of persons proposing the nomination of any qualified person.

3. The relevant Parliamentary Committee in consultation with the Minister shall, within seven days of the expiry of the period prescribed under paragraph 2—

(a) consider all the applications received under paragraph 2; and

(b) recommend to the National Assembly suitably qualified persons for nomination as commissioners.

4. The Committee shall rank and provide comments regarding each of the finalists to the National Assembly.

5. The National Assembly shall, upon receipt of the recommendations of the Committee under paragraph 3, nominate fifteen persons for appointment as commissioners and shall submit the list of nominees to the Minister for onward transmission to the President.

6. The Minister shall forthwith forward the names of the persons nominated in accordance with paragraph 5 to the President who shall, by notice in the Gazette, appoint therefrom eight commissioners.

7. In nominating or appointing persons as commissioners, the National Assembly and the President shall have regard to gender equity and regional balance.

SECOND SCHEDULE (s. 21)

OATH/AFFIRMATION OF THE OFFICE OF A COMMISSIONER/SECRETARY

I ..... having been appointed (a commissioner of/the Secretary to) the National Ethnic Relations Commission under the National Ethnic Relations Commission Act, 2008, do solemnly (swear/declare and affirm) that I will faithfully and fully, impartially and to the best of my ability, discharge the trust and perform the functions and exercise the powers devolving upon me by virtue of this appointment without fear, favour, bias, affection, ill-will or prejudice. (SO HELP ME GOD).

Sworn/Declared by the said .....

before me this ..... day of .....

.....
Chief Justice

THIRD SCHEDULE (s. 30)

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

Meetings generally.

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

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

Special meetings.

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

Quorum.

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

Presiding of meetings.

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

Decisions.

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

Invalidity of proceedings.

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

Common seal.

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

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

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

Minutes.

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

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