



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

NATIONAL ASSEMBLY BILLS, 2020

NAIROBI, 13th February, 2020

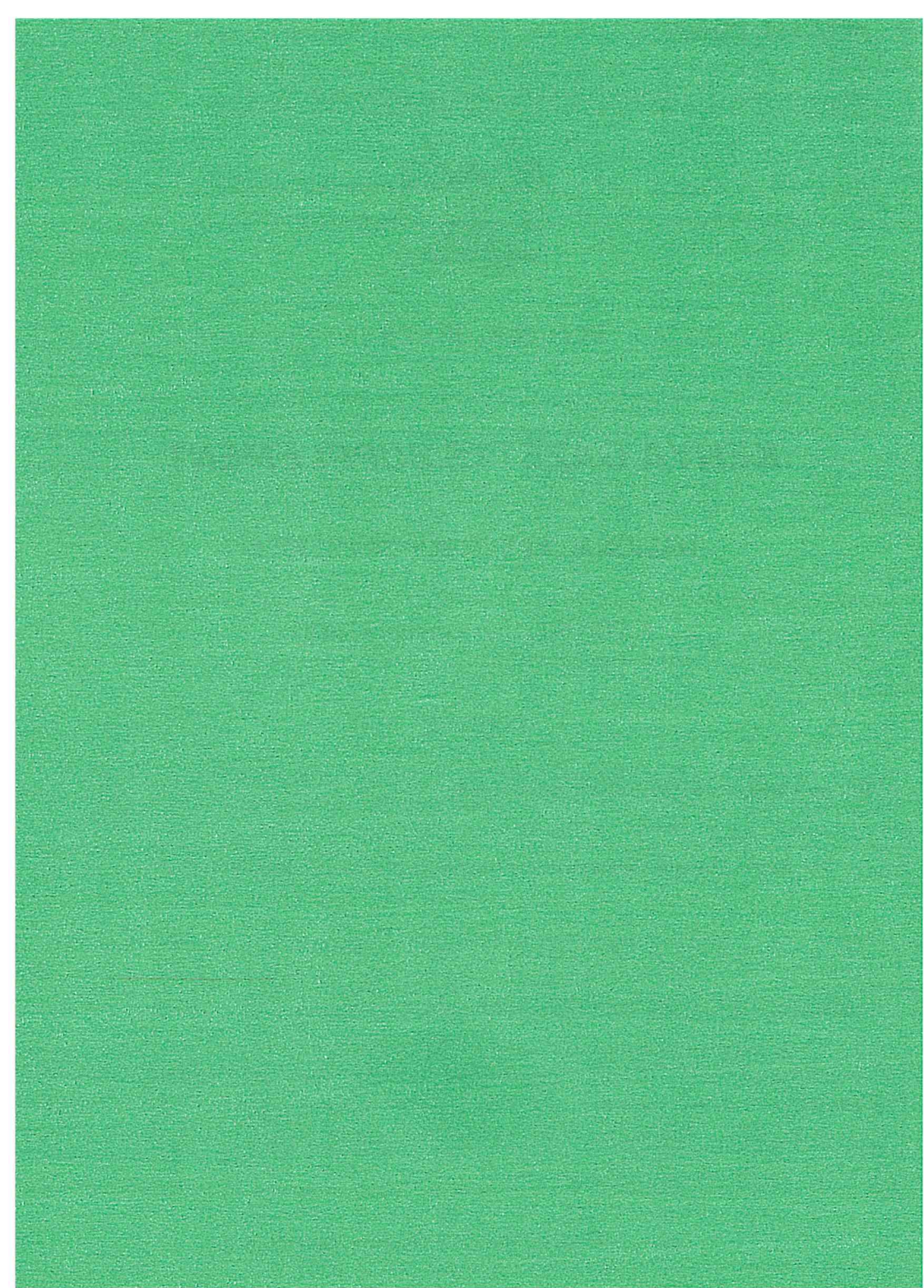
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THE KENYA NATIONAL COMMISSION ON HUMAN RIGHTS (AMENDMENT) BILL, 2020

A Bill for

AN ACT of Parliament to amend the Kenya National Commission on Human Rights Act and for connected purposes.

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Kenya National Commission on Human Rights (Amendment) Act, 2020.

2. The Kenya National Commission on Human Rights Act (hereinafter referred to as “the principal Act”) is amended in section 2 by—

- (a) deleting the definition of the term “commission”;
- (b) inserting the following new definitions in their proper alphabetical sequence—

“Commission” means the Kenya Human Rights and Equality Commission established under section 3;

“gender” means the social definition of women and men among different communities and cultures, classes, ages and during different periods in history;

“gender mainstreaming” means ensuring that the concerns of women and men form an integral dimension of the design of all policies, laws and administrative procedures including budgeting and budget implementation, and the monitoring and evaluation of programmes implementing such policies, laws and administrative procedures in all political, economic and societal spheres, so as to ensure that women and men benefit equally, and that inequality is not perpetuated;

“marginalised group” means a group of people who, because of laws or practices before, on or after the effective date, were or are disadvantaged by discrimination on one or more of the grounds in Article 27(4) of the Constitution;

“person with disability” means any person with any physical, sensory, mental, psychological or other impairment, condition or illness that has, or is perceived

Short title.

Amendment of section 2 of the Act, No 14 of 2011.

by significant sectors of the community to have a substantial or long term effect on an individual's ability to carry out ordinary day to day activities.

Amendment of
section 3 of No. of
No. 14 of 2011.

3. Section 3 of the principal Act is amended in subsection (1) by deleting the words "Kenya National Commission on Human Rights" and substituting therefor the words "Kenya Human Rights and Equality Commission".

4. The principal Act is amended in section 8—

Amendment of
section- 8 of No.
14 of 2011.

(a) in paragraph (d) by deleting the words " , except those relating to the violation of the principle of equality and freedom from discriminations under the gender and equality commission," appearing immediately after the words "abuses of human rights";

(b) in paragraph (f) by deleting the words "except those that relate to the rights of special interest groups protected under the law relating to equality and nondiscrimination";

(c) in paragraph (h) by deleting the words "the National Gender and Equality Commission and" appearing immediately after the words "work with";

(d) by inserting the following new paragraphs immediately after paragraph (h)—

“(ha) promote gender equality and freedom from discrimination in accordance with Article 27 of the Constitution;

(hb) co-ordinate and facilitate mainstreaming of issues of gender, persons with disability and other marginalised groups in national development and to advise the Government on all aspects thereof;

(hc) monitor, facilitate and advise on the development of affirmative action implementation policies as contemplated in the Constitution;

(hd) establish, consistent with data protection legislation, databases on issues relating to equality and freedom from discrimination

for different affected interest groups and produce periodic reports for national, regional and international reporting on progress in the realization of equality and freedom from discrimination for these interest groups.”

5. Section 57 of the principal Act is amended—

Amendment of
section 57 of No.
of 14 of 2011.

(a) in subsection (1), by deleting the words “Kenya National Human Rights and Equality Commission and the former Kenya National Commission on Human Rights” and substituting therefor the words “National Gender and Equality Commission”;

(b) by deleting subsection (2).

6. Section 58 of the principal Act is amended in by—

Amendment of
section 58 of No.
of 14 of 2011.

(a) inserting the words “and the National Gender and Equality Commission” immediately after the words “Kenya National Human Rights and Equality Commission”;

(b) deleting the word “was” appearing immediately after the words “Kenya National Human Rights and Equality Commission” and substituting therefor the word “were”.

7. Section 59 of the principal Act is amended in by inserting the following new subsections immediately after subsection (2)—

Amendment of
section 59 of No.
of 14 of 2011.

(3) Despite section 61—

(a) any order or notice made or issued by the National Gender and Equality Commission shall be deemed to have been made or issued under this Act;

(b) any function carried out by the National Gender and Equality Commission during the transition period shall be deemed to have been carried out under this Act;

(c) all assets and liabilities which immediately before the commencement of this Act were vested in the National Gender and Equality Commission shall vest in the Commission;

- (d) all rights, powers and duties, whether arising under any written law or otherwise which immediately before the coming into operation of this Act were vested in the National Gender and Equality Commission shall be transferred to, vested, imposed on, or be enforceable by or against the Commission;
- (e) all actions, suits or legal proceedings by or against the National Gender and Equality Commission shall be carried out on, prosecuted by or against the Commission and no such suit, action or legal proceedings shall abate or be affected by the coming into operation of this Act.
- (3) Despite section 9, the persons who were members of the National Gender and Equality Commission and the Kenya National Commission on Human Rights shall become members of the Commission upon the commencement of this Act for their unexpired terms of office and the membership of the Commission shall revert to the provisions of section 9 in appointing new Commissioners.
- (4) Any person who was a member of the National Gender and Equality Commission immediately before the commencement of this Act shall be a member of the Commission in the same capacity and on the same terms he or she was serving before the enactment of this Act.
- (5) The chairperson of the Kenya National Commission on Human Rights shall be the chairperson of the Kenya National Human Rights and Equality Commission for the unexpired term of office of that chairperson, and the chairperson of the National Gender and Equality Commission shall be the Vice-Chairperson of the Kenya National Human Rights and Equality Commission for that chairperson's unexpired term of office.
- (6) Despite subsection (5), the process of appointing new Commissioners under section 11 of this Act shall be commenced at least four

months before the expiry of that term of office.

(7) Any person who is an officer or employee of the National Gender and Equality Commission established under the National Gender and Equality Commission Act immediately before the commencement of this Act shall be an officer or employee of the Commission in the same capacity and on the same terms he or she was serving before the enactment of this Act.

No. 15 of 2011.

8. The principal Act is amended by inserting the following new section immediately after section 60—

Insertion of new section 61 of No. 14 of 2011.

Repeal of Act No. 15 of 2011.

61. The National Gender and Equality Commission Act, 2011 (No. 15 of 2011) is repealed.

MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to amend the Kenya National Commission on Human Rights Act (No. 14 of 2011) in order to merge both the Kenya National Commission on Human Rights and the National Gender and Equality Commission in order to retain the proposed Kenya National Human Rights and Equality Commission as established under the Article 59(1) of Constitution.

This is occasioned by several reasons. First, Article 59(4) of the Constitution empowers Parliament to enact legislation to restructure the Kenya National Human Rights and Equality Commission into two or more separate commissions. In 2011, Parliament in its wisdom, restructured the Kenya National Human Rights and Equality Commission into three commissions, to wit: the Kenya National Commission on Human Rights the National Gender and Equality Commission, and the Commission on Administrative Justice. Secondly, the functions of both the Kenya National Commission on Human Rights and the National Gender and Equality Commission can be merged and performed by one body— the Kenya National Human Rights and Equality Commission (KNHREC). Thirdly, the effectiveness of both institutions would be streamlined and this would be cheaper to the tax-payer. Lastly, there are no marked and diametrical differences in functions between the two institutions since gender issues fall within the sphere of human rights.

It is important to note that the Commission on Administrative Justice established under the Commission on Administrative Justice Act (No. 23 of 2011) will not be affected by this Bill. The Commission on Administrative Justice will continue carrying out its mandate on investigation of improper or prejudicial conduct of any State organ, State or public officer; investigation of complaints of abuse of power, among other duties.

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

This Bill does not delegate legislative powers to the Cabinet Secretary. nor does not limit any fundamental rights or freedoms.

Statement on whether the Bill concerns county governments

The Bill does not affect the functions of county governments and is therefore not a Bill concerning counties for purposes of Article 110 of the Constitution and the Standing Orders.

Statement on whether the Bill is a money Bill

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

Dated 3rd December, 2019.

JEREMIAH KIONI,
*Chairperson, Constitutional
Implementation Oversight Committee.*

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

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to human rights;

“chairperson” means the chairperson of the Commission appointed under section 11;

“Commission” means the Kenya National Commission on Human Rights established under section 3;

“Disciplined Service” includes—

(a) the National Youth Service;

(b) the Kenya Wildlife Service; or

(c) any other Disciplined Service established by any written law;

“former Kenya National Commission on Human Rights” means the Commission established under the Kenya National Commission on Human Rights Act, (No. 9 of 2002);

“human rights” means the fundamental rights and freedoms protected under the Constitution, and the Laws of Kenya;

“National Security Organs” means the national security organs established under Article 239(1) of the Constitution;

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

“secretary” means the secretary to the Commission appointed by the Commission under Article 250(12) of the Constitution in accordance with the procedure set out in section 21.

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

Section 3 of the principal Act which it is proposed to amend—

3. (1) There is established a Commission to be known as the Kenya National Commission on Human Rights.

(2) The Commission is established as a successor Commission pursuant to the provisions of Article 59(4) of the Constitution.

8. The functions of the Commission shall be to—

- (a) promote respect for human rights and develop a culture of human rights in the Republic;
- (b) promote the protection and observance of human rights in public and private institutions;
- (c) monitor, investigate and report on the observance of human rights in all spheres of life in the Republic;
- (d) receive and investigate complaints about alleged abuses of human rights, except those relating to the violation of the principle of equality and freedom from discriminations under the gender and equality commission, and take steps to secure appropriate redress where human rights have been violated;
- (e) on its own initiative or on the basis of complaints investigate or research matter in respect of human rights, and make recommendations to improve the functioning of State organs;
- (f) act as the principal organ of the State in ensuring compliance with obligations under international and regional treaties and conventions relating to human rights except those that relate to the rights of special interest groups protected under the law relating to equality and non discrimination;
- (g) formulate, implement and oversee programmes intended to raise public awareness of the rights and obligations of a citizen under the Constitution;
- (h) work with the National Gender and Equality Commission and the Commission on Administrative Justice to ensure efficiency, effectiveness and complementarity in their activities and to establish mechanisms for referrals and collaboration;
- (i) perform such other functions as the Commission may consider necessary for the promotion and protection of human rights; and
- (j) perform such other functions as may be prescribed by the Constitution and any other written law.

Section 57 of the principal Act which it is proposed to amend—

57. (1) All complaints, which immediately before the commencement of this Act were made to the Kenya National Human Rights and Equality Commission and the former Kenya National Commission on Human Rights at the commencement of this Act, shall be deemed to have been made to the Commission.

(2) The Commission shall transfer complaints relating to the mandate of the National Gender and Equality Commission and the Commission on Administrative Justice to these commissions unless the investigation or inquiry relating to the complaint is at such a stage that such transfer may result in a delay of justice for those involved.

Section 58 of the principal Act which it is proposed to amend—

58. The Commission shall be bound in all contracts, including contracts of service, if any, subsisting at the commencement of this Act and to which the Kenya National Human Rights and Equality Commission was party.

Section 59 of the principal Act which it is proposed to amend—

59. (1) Notwithstanding section 60—

- (a) any order or notice made or issued by the Kenya National Human Rights and Equality Commission and the former Kenya National Commission on Human Rights shall be deemed to have been made or issued under this Act;
- (b) any function carried out by the Kenya National Human Rights and Equality Commission and the former Kenya National Commission on Human Rights during the transition period shall be deemed to have been carried out under this Act;
- (c) all assets and liabilities which immediately before the commencement of this Act were vested in the Kenya National Human Rights and Equality Commission and the former Kenya National Commission on Human Rights shall vest in the Commission;
- (d) all rights, powers and duties, whether arising under any written law or otherwise which immediately before the coming into operation of this Act were vested in the Kenya National Human Rights and Equality Commission shall be transferred to, vested, imposed on, or be enforceable by or against the Commission;
- (e) all actions, suits or legal proceedings by or against the Kenya National Human Rights and Equality Commission shall be carried out on, prosecuted by or against the Commission and no such suit, action or legal proceedings shall abate or be affected by the coming into operation of this Act.

(2) Notwithstanding section 9, the persons who were members of the former Kenya National Commission on Human Rights and who became members of the Kenya National Human Rights and Equality Commission pursuant to section 26 of the Sixth Schedule to the Constitution shall

become members of the Commission upon the commencement of this Act for their unexpired term.

Provided that the process of appointing new Commissioners under section 11 of this Act shall be commenced at least four months before the expiry of that term.

