



## TRANSPARENCY INTERNATIONAL KENYA MEMORANDUM TO THE NATIONAL ASSEMBLY ON THE CONFLICT OF INTEREST BILL (NATIONAL ASSEMBLY BILL No. 12 of 2023)

### Organization

Transparency International - Kenya (TI-Kenya) is a not-for-profit organization founded in 1999 in Kenya with the aim of developing a transparent and corruption free society through good governance and social justice initiatives. TI-Kenya is one of the autonomous chapters of the global Transparency International movement that are all bound by a common vision of a corruption-free world. The vision of TI-Kenya is that of a transparent, accountable and corruption-free society.

### Introduction

The Conflict-of-Interest Bill, 2023 has been developed to make provisions for the management and regulation of conflict of interest and for connected purposes.

TI-Kenya is in support of the Bill noting that Conflict of Interest Legislation in Kenya is essential for upholding good governance, promoting ethical conduct, and safeguarding the public interest. It serves as a critical tool in preventing conflicts of interest, ensuring transparency, and enhancing accountability, ultimately contributing to the country's development and the well-being of its citizens.

TI-Kenya notes that the Bill proposes under section 58, to repeal the Public Officer Ethics Act No. 4 of 2003. We are of the opinion that the Public Officer Ethics Act covers a broad range of issues pertaining to ethics of public officers, with conflict of interest being only one of them, as expressly provided in section 12 of the Act. We are of the opinion that the Public Officer Ethics Act should not be repealed in its entirety since various important provisions on ethics of public officers will be left out. These provisions are expressly set out in the submissions below.

We also note that by strengthening the requirements and enforcement of wealth declarations, we can effectively deter illicit enrichment, abuse of power, and unethical practices. A comprehensive and rigorous system for wealth declarations ensures that

public officials are held accountable for their financial activities and helps to expose any discrepancies between their declared assets and their actual wealth.

Pursuant to the invitation for submission of memoranda on the Bill, TI-Kenya wishes to make the following recommendations;

Section	Provision of the Bill	Specific proposed amendment/ recommendation	Justification/ Rationale for Amendment Recommendation
2	Interpretation	Propose inclusion of the definition of a "whistle blower" as set out below:  <i>"whistle blower" means a person who makes a report to the Commission or the law enforcement agencies on acts or situations of conflict of interest.</i>	There are provisions to protect whistleblowers that have been introduced in section 54 (protection of person making disclosure)  Taking note that there is also a pending legislation on Whistleblower Protection Bill 2021 that has been pending in parliament and which would also be important to bolster the fight against corruption
3(2)(a)	(2)Without prejudice to the generality of subsection (1), the objects of this Act are to-	(a) promote objectivity and impartiality in <del>official</del> decision making <i>relating to the exercise of an official power or the performance of a duty or function of the public officer</i>	To enhance clarity scope of application and align with language used in other parts of the Bill e.g. section 8(a), 10(1), 12(1)

	(a) promote objectivity and impartiality in official decision making		
3(2)(c)	<p>Objects of the Act</p> <p>(c) enhance public confidence in the delivery of public services;</p>	<p>Propose rephrasing of the clause as below:</p> <p>(c) enhance public confidence in the <i>integrity of public office and</i> delivery of public services;</p>	<p>Introduce “<i>Public Office</i>” to align to constitutional provisions under Article 73 Responsibilities of leadership (1) Authority assigned to a State officer – (a) is a public trust to be exercised in a manner that –</p> <p>(iii) brings honour to the nation and dignity to the office; and</p> <p>(iv) promotes public confidence in the integrity of the office; and</p> <p>Article 75 Conduct of State Office</p> <p>(1) A State officer shall behave, whether in public and official life, in private life, or in association with other</p>

			<p>persons, in a manner that avoids—</p> <p>(a) any conflict between personal interests and public or official duties;</p> <p>(b) compromising any public or official interest in favour of a personal interest; or</p> <p>(c) demeaning the office the officer holds.</p>
	Objects of the Act	<p>Introduce new objects as below:</p> <p><i>(d) enhance accountability to the public for decisions and actions by public officers in execution of their duties;</i></p> <p><i>(e) promote selfless service by public officers based solely on the public interest;</i></p>	To align to provisions under arts. 73 and 75 of the Constitution
9(b)	A public officer shall -  (b) disclose details of any private interest of the public officer that affects the official duties of the public officer	<p>Propose additions as follows:</p> <p>(b) disclose details of any private interest of the public officer that affects the official duties of the public officer, <i>to the reporting authority or Commission and comply with any directions to avoid the conflict.</i></p>	To provide clarity on who a public officer should report/ disclose relevant details/ information to; which ensures accountability

20(1)	A public officer shall not acquire an interest in a partnership, private company or any other legal entity that is a party to a contract with the reporting entity in which the public officer serves, under which the partnership, private company or legal entity receives a benefit	Propose amendment of the section as follows:  a public officer shall not <del>acquire</del> <i>hold an a direct or indirect</i> interest in a partnership, private company or any other legal entity that is a party to a contract with the reporting entity in which the public officer serves, under which the partnership, private company or legal entity receives a benefit.	To provide for conflict of interest arising in situations where a public officer holds shares or interests in private legal entities, either directly or indirectly.
21 (2)	Subsection (1) shall not apply to appointment of personal staff permitted to the public officer as may be prescribed.	Delete sub section 2 which provides for the exemption or in the alternative define "Personal Staff"	Such staff should be appointed competitively as per the values and principles of public service - article 232(1)(g),(h),(i) and 232(2)
25(1)	Political neutrality	Propose addition of a new sub section as follows:  <i>(c) engage in political activity that may compromise or be seen to compromise the political neutrality of his/ her office.</i>	As it was provided for under s.16(2) of POEA  To avoid abuse of office and loss of public confidence in the independence and impartiality of

			public offices that are meant to be politically neutral.
31	Every public officer shall submit to the commission a declaration of the income, assets and liabilities of himself, his spouse or spouses and his dependent children under the age of eighteen years.	Propose the following amendments:  Every public officer shall submit to the commission <i>and to the reporting authority</i> a declaration of the income, assets and liabilities of himself, his spouse or spouses and his dependent children under the age of eighteen years.	The reporting authority should also receive the information, as the office or body responsible for a public officer. Further, the sheer volume of the declarations would make it difficult for the Commission alone to process and verify the declarations.
32	Provides for subsections (1), (3), (4)	Correct the numbering issue	For clarity purposes
33	Provides for subsections (1), (5), (6), (7) and (5)	Correct the numbering issue	For clarity purposes
33(1)	Upon the receipt of the declaration made under section 31 , the commission shall analyse the declaration to ascertain-	Upon the receipt of the declaration made under section 31, the commission <i>and reporting authority</i> shall analyse the declaration to ascertain-	The act introduces a reporting authority for which this clause should apply. It is more reasonable and efficient to have the reporting authority also analyse, process and verify the declarations. Further, the

			reporting authority has a direct interest in the declarations.
34	Provides for subsections (1), (8), (9), (10)	Correct the numbering issue	For clarity purposes
49(2)	If the Commission declines to commence an investigation, the Commission shall inform the person who lodged the complaint and give reasons for the decision.	(2) If the Commission declines to commence an investigation, the Commission shall inform the person who lodged the complaint and give reasons for the decision <i>within 90 days upon confirmation of receipt of the complaint.</i>	To allow a timeline within which complaints need to be addressed after acknowledgement of the complaint.
Section 50 (2)	Despite sub section (1), the period of suspension of a state officer or public officer shall not exceed ninety days	Propose the following additions:  Despite sub section (1), the period of suspension of a state officer or public officer shall not exceed ninety days <i>unless the person is charged in accordance with section 51(1)(d).</i>	To align with section 62(1) of the Anti-Corruption and Economic Crimes Act on suspension, if charged with corruption or economic crime  62(1) A public officer or state officer who is charged with corruption or economic crime shall be suspended, at half pay, with effect from the date of the charge until the conclusion of the case; Provided

			<p>that the case shall be determined within twenty-four months</p> <p>(3) The public officer ceases to be suspended if the proceedings against him are discontinued or if he is acquitted.</p>
52	General Penalty	<p>Introduce 52(4)</p> <p>A person who has been prosecuted and found guilty of an offence under this Act shall upon conviction be disqualified from holding any other Public Office.</p>	<p>In accordance with provisions under Art. 75(3) A person who has been dismissed or otherwise removed from office for a contravention of the provisions specified in clause (2) is disqualified from holding any other State office.</p>
54	Protection of person making disclosure	<p>Propose addition of the following new sub sections:</p> <p><i>A whistle blower, informant or a witness in a complaint or a case of conflict of interest shall not be intimidated or harassed for providing information to law enforcement institutions or giving testimony in a court of law.</i></p> <p><i>Every reporting institution and law enforcement agency shall put in place</i></p>	<p>To provide for enhanced protection of whistleblowers and witnesses</p>



		<i>reasonable mechanisms to protect the identity of informants and witnesses.</i>	
58	Repeal of the Public Officer Ethics Act No. 4 of 2003	<p>Propose that the Public Officer Ethics Act should not be repealed in its entirety since the following important provisions will be left out:</p> <ul style="list-style-type: none"> <li>5 - Establishment of specific codes of conduct</li> <li>8 - performance of duties</li> <li>9 - professionalism</li> <li>11 - no improper enrichment</li> <li>14 - Acting for foreigners</li> <li>15 - care of property</li> <li>18 - giving of advice</li> <li>19 - misleading the public</li> <li>20 - conduct of private affairs</li> <li>21 - sexual harassment</li> <li>25 - reporting improper orders</li> </ul>	<p>The provisions are relevant and contribute towards advancing the ethics of public officers and connected purposes.</p> <p>The Public Officer Ethics Act covers a broad range of issues pertaining to ethics of public officers, with conflict of interest being only one of them as expressly provided in section 12 of the Act</p>
Part VI	Miscellaneous provisions	<p>Propose addition of the following new clause:</p> <p><b><u>Duty to report</u></b></p>	To encourage disclosure of instances of conflict of interest

		<p><i>(1) Every public officer shall report to the Commission within a period of twenty-four hours any knowledge or suspicion of instances of conflict of interest</i></p> <p><i>(2) A public officer who, despite being aware of or suspicious of the commission of an offence under this Act, fails to report the act to the Commission within the specified period commits an offence.</i></p>	
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