

THE INDEPENDENT POLICING OVERSIGHT AUTHORITY BILL, 2010

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A Bill for
AN ACT of Parliament to provide for oversight of the work of the Police; to
establish the Independent Policing Oversight Authority; to provide for its powers
and functions; and for connected purposes

ENACTED by the Parliament of Kenya as follows—

PART I—PRELIMINARY

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| Short title | 1. This Act may be cited as the Independent Policing Oversight Authority Act, 2010. |
| Application | 2. This Act shall apply to—

(a) the National Police Service established under Article 243 of the Constitution;

(b) any other person for the time being exercising police powers under any written law. |
| Interpretation | 3. In this Act, unless the context otherwise requires—

“Authority” means the Independent Policing Oversight Authority established under section 4;

“Board” means the Policing Oversight Board established under section 9;

“Director” means the Director of the Authority appointed under section 19;

“misconduct” means any action, or failure or refusal to act, which although it may not necessarily constitute a contravention of law, does not meet—
(a) the requirements or norms of policing contained in any regulation or official document, charter, standing orders or policy providing for standards of discipline, behaviour or ethics, rules of engagement, rules on the use or abuse of power or rules and regulations on the use of Police equipment, applicable to members of the Police or the Police itself;
(b) the values and norms applicable to policing in a democratic |

- society; or
- (c) applicable norms and standards provided for in international instruments applicable to Kenya;

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

“Police” means the persons or bodies referred to in section 2, or any person or body employed by it or acting on its behalf, its control or at its behest;

“policing” means the discharge of functions, exercise of the powers and performance of duties applicable the Police.

PART II — THE INDEPENDENT POLICING OVERSIGHT AUTHORITY

Establishment of
the Authority

4. (1) There is hereby established an Authority to be known as the Independent Policing Oversight Authority.
- (2) The Authority 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) acquiring, holding, charging and disposing of movable and immovable property; and
 - (c) doing or performing all such other things or acts as may lawfully be done or performed by a body corporate.
- (3) The headquarters of the Authority shall be in Nairobi: Provided that the Authority shall establish such provincial or district offices as it considers suitable for better performance of its functions.

Independence of
the Authority

5. (1) In the performance of its functions the Authority shall not be subject to any person, office or authority subject to sections 33 and 37.
- (2) The Authority shall observe the principle of impartiality and rules of natural justice in the exercise of its powers and

performance of its functions.

- (3) Every government officer or institution shall accord the Authority such assistance and protection as may be necessary to ensure its independence, impartiality, dignity and effectiveness.
- (4) No person or body may unlawfully or unduly interfere with the functioning or operations of the Authority.
- (5) Parliament shall ensure that the Authority is adequately funded for it to effectively and efficiently perform all of its functions.

Objectives of
the Authority

6. The objective of the Authority shall be to—
 - (a) monitor the professionalism, effectiveness and efficiency of the Police;
 - (b) hold the Police accountable to Parliament and to the public in the performance of their functions, in order to—
 - (i) enhance the confidence of the public in the Police;
 - (ii) improve the rendering of services by the Police; and
 - (c) to promote the fundamental rights and freedoms contemplated in the Constitution in respect of policing.

Functions of the
Authority

7. The functions of the Authority shall be to—
 - (a) monitor the implementation of policy relating to the services rendered by the Police;
 - (b) monitor the standard of performance of the functions of the Police, so as to ensure that internationally accepted standards of policing are maintained;
 - (c) investigate allegations of any unlawful action by any member of the Police or by a Police body itself or misconduct by the Police or a member of the Police, whether on its own motion or on receipt of complaints from the public, and make appropriate recommendations, including recommendations for prosecution, compensation, internal disciplinary proceedings or any other appropriate relief;

- (d) receive and investigate complaints by serving police officers;
- (e) monitor, review and audit investigations and actions taken by the Police in response to complaints against the Police;
- (f) co-operate with other institutions on issues of police oversight, including other levels of government in relation to services offered by the Police;
- (g) review the patterns of police behaviour and the functioning of the internal disciplinary process;
- (h) present any information it deems appropriate to an inquest conducted by a court of law;
- (i) take all reasonable steps to facilitate access to the Authority's services for the public;
- (j) publish findings of its investigations, monitoring, reviews and audits as it sees fit, including by means of the electronic or printed media; and
- (k) perform such other functions as may be necessary for promoting the objectives for which the Authority is established.

Powers of the Authority

- 8.** (1) The Authority shall have all powers generally necessary for the execution of its functions under this Act, and without prejudice to the generality of the foregoing, the Authority shall have the power—
- (a) to investigate complaints against the Police by members of the public or on its own motion, and for that purpose, to gather, by such lawful means as it may deem appropriate, any information it considers relevant, including requisition of reports, records, documents or any information from any source, irrespective of whether that source is located within or outside Kenya and irrespective of whether any other person or body, other than a court of law, has already instituted or completed a similar investigation or similar proceedings;
 - (b) to enter upon any establishment or premises, on the strength of a warrant, for any purpose which is material to the fulfilment of its mandate or any other written law subject to, in the event of the premises being a private home or dwelling;
 - (c) to seize and remove any object or thing from any premises

which may be related to the matter under investigation, in respect of which a receipt shall be given to the owner or person apparently in control of the object or thing;

- (d) to interview and take statements under oath or affirmation from any person, group or members of organizations or institutions and, at its discretion, to conduct such interviews, in private;
 - (e) subject to adequate provision being made to meet its expenses for the purpose, summon any person to meet with its staff, or to attend any of its sessions or hearings, and to compel the attendance of any person who fails to respond to its summons;
 - (f) to administer oaths or affirmations before taking evidence or statements;
 - (g) to summon any serving or retired Police officer to appear before it to produce any document, thing or information that may be considered relevant to the function of the Authority
 - (h) to take over on-going internal investigations into Police misconduct or failure to comply with any law if such investigations are inordinately delayed or manifestly unreasonable;
 - (i) where appropriate, to provide relevant information to enable a victim of unlawful Police conduct, to institute and conduct civil proceedings for compensation in respect of injuries, damages and loss of income;
 - (j) request the Director of Public Prosecutions to provide it with his response to any recommendation made by the Authority to prosecute any person or body;
 - (k) request any Police body to within a specified, reasonable time provide it with information on issues relating to policy, its implementation and its effectiveness, and its response to any recommendation made to it by the Authority; and
 - (l) exercise any other power provided for in this Act or any other applicable legislation or necessary for the effective performance of its functions.
- (2) The Authority may make rules relating to the initiation, hearing and disposal of complaints.
- (3) The Authority may in the exercise of its powers under this Act,

request and receive such assistance from the Police or any other governmental , international body or person as may solely in its own opinion be necessary in the enforcement of its powers.

- (4) The Authority may in exceptional circumstances regarding matters of national importance submit a report simultaneously to the National Assembly and the Cabinet Secretary if such a matter requires urgent consideration for the well-being of the people of Kenya.

The Board of the Authority

- 9.** (1) The Authority shall be governed by a Board to be known as the Independent Policing Oversight Board.
- (2) The Board shall have all powers necessary for the proper performance of the functions and the exercise of the powers of the Authority under this Act or any other applicable legislation (written law for the time being in force), and shall, without prejudice to the generality of the foregoing, have power to—
- (a) control, supervise and administer the assets of the Authority in such manner as best promotes the objectives for which the Authority is established;
 - (b) determine provisions to be made for capital and recurrent expenditure and for reserves of the Authority;
 - (c) receive any grants, gifts, donations or endowments and make legitimate disbursements there from;
 - (d) 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 objectives for which the Authority is established;
 - (e) open a banking account for the Authority; and
 - (f) exercise any other power provided for in this Act or any other applicable legislation.

Membership of the Board

- 10.** (1) The Board shall consist of—
- (a) a chairperson who shall be a person qualified to be appointed a judge of the High Court of Kenya;

- (b) one person with knowledge of and proven experience in matters related to public administration;
 - (c) one person with knowledge and experience in security matters; and
 - (d) three other persons appointed by virtue of their knowledge and proven experience in the fields of—
 - (i) human rights;
 - (ii) civil society; and
 - (iii) medicine,
 - (d) one person with extensive experience in community service at grassroots level.
- (2) The Chairperson of the Kenya National Human Rights and Equality Commission and the Chairperson of the Commission responsible for the investigation of complaints of abuse of power, unfair treatment, manifest injustice and unfair or unresponsive official conduct shall be *ex-officio* members of the Board.
- (3) The persons appointed to the Board shall be—
- (a) citizens of Kenya; and
 - (b) persons of high moral character and proven integrity.
- (4) The Board members shall at the first meeting of a newly constituted Board elect a vice-chairperson from among the members appointed under paragraph (1) (b) or (c).
- (5) The chairperson and vice-chairperson shall be of opposite gender.
- (6) The Director shall be the Secretary to the Board but shall not be entitled to vote.

Disqualifications

- 11.** (1) No person shall be qualified for appointment as a member if such person is—
- (a) a member of Parliament or a county assembly;

- (b) a member of the executive body of a political party;
 - (c) subject to any of the disqualifications contemplated in subsection (2).
- (2) A person is disqualified to be appointed or continue to serve as a member of the Board if he—
- (a) or his spouse, business partner or associate, holds an office in or is employed by or has any other interest whatsoever in a company or other entity which provides goods or renders services to the Authority;
 - (b) has been convicted, whether in Kenya or elsewhere, of an offence involving dishonesty or of any other offence for which such person has been sentenced to imprisonment without the option of a fine; or
 - (c) is an undischarged bankrupt.

Procedure for
appointment

- 12.** (1) The Public Service Commission shall, within fourteen days of the commencement of this Act or subsequent dissolution of a Board, by advertisement in at least three daily newspapers of national circulation, invite applications from persons qualifying under this Act for nomination as members of the Board.
- (2) An application under subsection (1) may be made by—
- (a) any qualified person; or
 - (b) any person, organization or group of persons proposing the nomination of any qualified person.
- (3) The Public Service Commission shall consider the applications received under subsection (1) to determine their compliance with the provisions of this Act and then forward the names of the persons so qualified to the Clerk of the National Assembly.
- (4) The Clerk of the National Assembly shall within seven days of receipt of the names under subsection (3), forward the same to the relevant House Committee for consideration and appropriate recommendations.

- (5) The National Assembly shall, on the recommendation of the Committee, recommend the nomination of ten persons for appointment and submit the same to the Cabinet Secretary.
- (6) The Cabinet Secretary shall forthwith forward the names submitted under subsection (5) to the President who shall, (in consultation with the Prime Minister), by notice in the Gazette appoint from the list a chairperson and six other persons to be members of the Board.
- (7) In nominating or appointing members under this section, regard shall be had to—
 - (a) Kenya’s ethnic, cultural, and social diversity; and
 - (b) the principle of gender equity, and shall ensure that at least one-third of the members are of either gender.

Term of office

13. The members of the Board shall hold office for a term of five years, and shall be eligible for re-appointment for one further term of a period not exceeding five years.

Oath of office

14. The Chairperson, the Members and the Director shall each make and subscribe before the Chief Justice the oath or affirmation set out in the Schedule.

Termination of membership of the Board

15. (1) A vacancy shall occur in the Board if a member of the Board—

- (a) dies;
- (b) resigns by a notice in writing addressed to the President through the Cabinet Secretary ;
- (c) is convicted of an offence whose penalty is a term of imprisonment for a period of six months or more;
- (d) is unable to discharge the functions of his office by reason by reason of physical or mental infirmity; or
- (e) is absent from three consecutive meetings of the Authority without good cause;
- (f) is declared bankrupt or enters into a scheme or arrangement

with his creditors.

- (2) A member of the Board, including the Chairperson, who at any time during his term of office becomes disqualified to be a member of the Board on any one of the grounds contemplated in this Act—
 - (a) shall immediately in writing inform the President and the Chairperson of the Board of that disqualification, and the President must then forthwith remove that member from the Board as contemplated in subsection (3); and
 - (b) shall not attend a Board meeting from the time he has so become disqualified until he is removed by the President.
- (3) The President may (in consultation with the Prime Minister), whether on receipt of representations from the public or on his own motion by notice in the Gazette, remove a member of the Board from office for conduct incompatible with the functions of the Authority, provided that the President shall—
 - (a) prior to taking a final decision on the removal of such a member afford the member in question a reasonable opportunity to make a written submission; and
 - (b) forthwith after the removal of such a member in writing provide the member in question with reasons for his removal.
- (4) The President shall forthwith after a resignation, vacancy or removal—
 - (a) make public such a resignation, vacancy or removal in the Gazette within seven days of receipt of the notice of resignation or occurrence of the vacancy, as the case may be; and
 - (b) in writing notify the Public Service Commission of such resignation, vacancy or removal.

16. Where a vacancy occurs in the membership of the Board, the vacancy shall forthwith be filled in the manner set out in this Act.

Vacancy

Conduct of the affairs of the Board

17. The conduct and regulation of the business and affairs of the Board shall be as provided in the Second Schedule and subject thereto, the Board may regulate its own procedure.

Remuneration of Board members

18. There shall be paid to the members of the Board such remuneration, fees or allowances as the Board may determine in consultation with the Cabinet Secretary for the time being responsible for finance.

Committees of the Authority

19. (1) The Board may, by resolution generally or in any particular case, in writing conditionally or unconditionally delegate to any Committee of the Board or any member, officer or agent of the Authority, the exercise of any of its powers or the performance of any of its functions under this Act, but the Board may despite such delegation continue to perform the functions or exercise the powers referred to in that delegation.

(2) The Board shall remain accountable for anything done under a delegation contemplated in subsection (1).

Confidentiality of Board meetings

20. The meetings, minutes and reports of the Board or any of its subcommittees are confidential, unless the Board in writing directs otherwise.

Appointment of Director of the Authority

21. (1) The Board shall appoint a Director of the Authority on such terms and conditions as may be specified in the instrument of appointment.

(2) A person shall be qualified to be appointed under subsection (1) if such a person holds an appropriate degree from a recognized university and has at least ten years' experience in any of the fields specified in section 9 (1) (b).

(3) The Director shall be the Chief Executive Officer of the Authority and responsible to the Board for the day-to-day management of the Authority.

(4) The Director shall take all reasonable steps to ensure the

safety and security of the staff, premises and assets of the Authority, and where required by the Board, the safety of persons providing information to the Authority and the security of all information provided to the Authority.

Appointment of Staff

22. (1) The Authority may appoint such staff as in its sole discretion may be necessary for the proper discharge of its functions under this Act, upon such terms and conditions of service as the Cabinet Secretary may, in consultation with the State Corporations Advisory Committee, approve,.

Cap 446.

(2) In this section “the State Corporations Advisory Committee” means the Committee by that name established by section 26 of the State Corporations Act.

(3) The Board shall ensure that all relevant members of staff are adequately trained for their respective positions, and in particular that all members of staff directly involved in investigations have undergone appropriate training on human rights and freedoms.

(4) The Board shall issue certificate of appointment bearing the common seal of the Authority to every employee of the Authority involved in investigations authorizing him to act under the provisions of section 8(1) (b), (c), (d) or (e), and the employee shall when exercising any of such powers produce his certificate of appointment for inspection by the person who is to be interviewed or who is apparently in control of the premises which are about to be entered or who is the owner or person apparently in control of a thing or object about to be seized, unless the nature of the investigation does not make it possible or desirable to do so.

PART III — FINANCIAL PROVISIONS

Funds of the Authority

23. The funds of the Authority shall consist of—

(a) monies provided by Parliament for the purposes of the Authority; and

- (b) such monies as may be granted, donated or lent to the Authority from any other source, with the approval of the Cabinet Secretary and the Cabinet Secretary for Finance.

Financial year

- 24.** The financial year of the Authority shall be the period of twelve months ending on the thirtieth June of each year.

Annual estimates

- 25.** (1) At least three months before the commencement of each financial year, the Authority shall cause to be prepared estimates of the revenue and expenditure of the Authority for that year.
- (2) The annual estimates shall make provision for all the estimated expenditure of the Authority 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 Authority;
 - (b) the payment of pensions, gratuities and other charges and in respect of benefits which are payable out of the funds of the Authority;
 - (c) the maintenance of the assets of the Authority;
 - (d) the funding of operations, training, research and development of activities of the Authority;
 - (e) the creation of such funds to meet future or contingent liabilities in respect of benefits, insurance or replacement of buildings or installations, equipment and in respect of such other matters as the Authority may think fit.
- (3) The annual estimates shall be approved by the Authority before the commencement of the financial year to which they relate and shall be submitted to the Cabinet Secretary for approval and after the Cabinet Secretary has given approval, the Authority shall not increase any such sum provided in the estimates without the consent of the Cabinet Secretary.
- (4) No expenditure shall be incurred for the purposes of the Authority except in accordance with funds voted or appropriated by Parliament or in pursuance of an authorization of the Authority given with the approval of

the Cabinet Secretary.

Accounts and audit

26. (1) The Authority shall cause to be kept all proper books and records of account of the income, expenditure, assets and liabilities of the Authority.

Act 12 of 2003

(2) The annual accounts of the Authority shall be prepared, audited and reported upon in accordance with the Public Audit Act, 2003.

PART IV— INVESTIGATION INTO COMPLAINTS

Lodging of
complaint and
investigation

27. (1) A person wishing to lodge a complaint against the Police may do so orally or in writing addressed to the Director or such other person as may be duly authorized by the Authority for that purpose.

(2) Where the complaint is made orally, the same shall be reduced into writing by the employee of the Authority with whom it is lodged, and that employee shall render all reasonable assistance to the complainant to ensure a proper investigation of the complaint.

(3) A complaint under subsection (1) shall contain such particulars as the Authority may from time to time prescribe.

(4) Upon receipt of a complaint under subsection (1) the Authority shall forthwith—

(a) call for information or reports regarding the complaint from the appropriate Government department or agency or any other body within a specified period; or

(b) without prejudice to paragraph (a), initiate such inquiry as it may consider necessary, having regard to the nature of the complaint and taking into account the fundamental rights and freedoms of the individuals concerned, including members of the Police, contemplated in of the Constitution.

(5) If criminal proceedings are instituted against a member of the Police in respect of a matter under investigation by the Authority, the Authority may suspend its investigation until

the conclusion of those proceedings, after which it may continue its investigation or in appropriate cases decide not to proceed.

- (6) In the event of the Police having conducted and concluded an internal investigation or internal disciplinary proceedings, the Authority may in appropriate cases and in its sole discretion decide to abide by the outcome of such investigation or proceedings and adopt the findings and recommendations of that investigation or those proceedings as its own, and conclude its own investigation.
- (7) The Authority shall during an investigation consider the impact of—
 - (a) circumstances which, if present during the incident under investigation, impede the effectiveness of policing; and
 - (b) unlawful action, if any, taken by the complainant, a victim or other person present during the incident under investigation.
- (8) In the event of a vexatious or frivolous complaint, the Authority may refuse to conduct an investigation.
- (9) The Authority may upon receipt of new evidence re-open any investigation which has been concluded, and may amend or withdraw any previous findings and recommendations.
- (10) Nothing in this section shall prevent an individual member of the Police from lodging a complaint in terms of this section: Provided that if the complaint deals with a matter in respect of which the member of the Police has not yet exhausted the mechanisms provided for in that respect, the Authority shall in its sole discretion decide whether or not to investigate such a complaint.
- (11) No member of the Police shall be subjected to disciplinary hearings or other disadvantage based solely on the fact that he has lodged a complaint with or given evidence before or information to the Authority.
- (12) Nothing in this Act shall prevent any person or body from lodging a complaint in terms of this section, or the Authority from conducting an investigation, even if the target, victim

or witness of Police action does not agree to or approve of such an investigation by the Authority.

- (13) Any law providing for the unlawfulness of—
- (a) the intimidation, harassment or interference with witnesses or potential witnesses to any matter under investigation by the Authority; or
 - (b) concealment, destruction, tampering or removal of evidence relevant to any matter under investigation by the Authority,

and any penalties prescribed by or under or in respect of such law apply *mutatis mutandis* to this Act and to any investigation undertaken by the Authority.

- (14) Notwithstanding any other law, any document or statement drafted or made or taken during an investigation shall remain confidential until the Authority in writing determines otherwise.
- (15) The Authority shall upon request from a complainant keep his identity confidential unless it is demonstrably in the interest of justice not to do so, until the investigation has been concluded: Provided that the Authority may in exceptional cases determine that the identity of a complainant may not be published even after conclusion of an investigation or only on terms determined by the Authority.

Mandatory
reporting of deaths
in Police custody

- 28.** (1) The Police shall, immediately after the death of a person who at the time of his death—
- (a) was in Police custody or under the control of the Police;
 - (b) was the target of a police operation; or
 - (c) a bystander during a police operation,
- take all steps to secure evidence which may be relevant to that death.
- (2) The Police shall forthwith after the death of a person contemplated in subsection (1) in writing notify the Authority such death, and shall supply the Authority with evidence of and all other facts relevant to the matter, including, if available, the names and contact details of all persons who may be able to assist the Authority should it

decide to conduct an investigation.

- (3) The Authority shall on receipt of the notice contemplated in subsection (2) decide whether or not to conduct an investigation into the death of that person.

Exclusion of certain matters.

29. The Authority shall not investigate any matter which is the subject of proceedings before a court of law or judicial tribunal.

Persons affected to be heard

30. (1) If at any stage of an inquiry the Authority—

- (a) considers it necessary to inquire into the conduct of any person; or
- (b) is of the opinion that the reputation of any person is likely to be prejudiced by the inquiry,

it shall give that person an opportunity to be heard and to appear before the Board in person or through an advocate.

Immunity of witnesses

31. No statement made by a person in the course of giving evidence before the Authority shall subject such a person to any civil or criminal proceedings except in cases where that person made that statement knowing it to be false.

Steps after inquiry

32. (1) The Authority may after completing an inquiry into a complaint under this Act—

- (a) where the inquiry in the Authority's sole opinion discloses a criminal act or negligence in the performance of duty by a member of the Police, recommend the prosecution of that member of the Police to the Director of Public Prosecutions;
- (b) recommend that the complainant take any other course of action suitable in the circumstances;
- (c) where the investigation discloses any shortcomings in the processes or procedures employed by the Police, recommend rectification thereof;
- (d) assist the complainant or any other victim with action

contemplated in section 8(1)(i); or

(e) take any other steps it may deem fit.

- (2) Where the Director of Public Prosecutions refuses to institute criminal proceedings against the member of the Police contemplated in paragraph (1) (a) or fails to do so within a reasonable time, the Authority may apply to a court of law with jurisdiction to be substituted as prosecutor.
- (3) The Authority may apply to the court for the enforcement of any of its recommendations contemplated in subsection (1).
- (4) The Authority's investigations, findings and recommendations provided for in this Act remain in force and effect despite the fact that—
 - (a) a person or body under investigation has since the commencement or conclusion of an investigation left the employment of the Police;
 - (b) or is no longer acting on behalf of the Police, under its control or at its behest.
- (5) If the Authority is substituted as prosecutor as contemplated in subsection (2), all state bodies and employees of the Police shall assist the Authority in any manner and to the extent and at any time that the Authority requests or determines.

Performance
Report

- 33.** (1) The Authority shall submit to the Cabinet Secretary at least once in every six months a report of the performance of the functions of the Authority, making such recommendations as it may consider necessary, and the Cabinet Secretary shall, within fourteen days after receiving such report, cause it to be laid before the National Assembly, or if the National Assembly is not then in session, on the day that the National Assembly resumes its sittings.
- (2) A copy of the report referred to in subsection (1) shall forthwith be forwarded by the Cabinet Secretary to the President and to the relevant Police body.
- (3) The Cabinet Secretary shall cause the report submitted under this section to be brought to the attention of the public in such manner as may be appropriate.

- (4) The report contemplated in subsection (1) shall include—
- (a) a list of all findings and recommendations made by the Authority during the period under review;
 - (b) the action taken by the responsible authorities in response to the Authority’s findings and recommendations, or lack thereof;
 - (c) matters contained in earlier reports contemplated in subsection (1) in respect of which the relevant authority has still not taken any action;
 - (d) the Authority’s recommendations on the efficacy of this Act and other relevant legislation;
 - (e) the Authority’s opinion on the adequacy of its funding;
 - (f) the Authority’s opinion on whether any person, authority or institution has attempted to unlawfully or unduly interfere with the operations of the Authority;
 - (g) any matter relating to the operation of the Authority which any minority of members of the Authority may wish to bring to the attention of the National Assembly, and
 - (h) any other matter the Authority wishes to bring to the attention of the National Assembly.

PART V—OFFENCES

Offences and Penalties

- 34. (1)** A person or body who, without lawful cause or justification—
- (a) disobeys a summons by the Authority;
 - (b) fails to produce any document, papers or thing on the order of the Authority;
 - (c) refuses to be examined before or to answer questions relating to an inquiry put to him by the Authority;

- (d) fails to comply with any lawful order or direction of the Authority;
- (e) presents to the Authority a false document or makes a false statement with the intent to deceive or mislead the investigation officers;
- (f) wilfully obstructs or hinders a person acting in the performance of functions or exercise of powers conferred by this Act;
- (g) in any way interferes with the functioning or operations of the Authority, whether unduly or unlawfully; or
- (h) fails to comply with any relevant provision of this Act

commits an offence and is on conviction liable to a fine not exceeding two hundred thousand shillings or imprisonment not exceeding one year or both.

- (2) Any person who in any way publishes a confidential document or statement in contravention of section 27(13) commits an offence and is on conviction liable to a fine not exceeding three hundred thousand shillings or imprisonment not exceeding three years or both.

PART VI—GENERAL PROVISIONS

Protection from personal liability

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

The common seal of the Authority

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

(2) The common seal of the Authority 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 Authority under this section shall be presumed to have been duly given.

Annual financial report

- 37.** (1) The Authority shall cause an annual report to be prepared for each financial year.
- (2) The Authority shall submit the annual report to the Cabinet Secretary 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 Authority;
 - (b) a description of the activities of the Authority;
 - (c) such other statistical information as the Authority considers appropriate relating to complaints to the Authority, investigations by the Authority and reports by the Authority on the results of the investigations;
 - (d) any other information relating to its functions that the Authority considers necessary.
- (4) The Cabinet Secretary shall within thirty days after receiving the annual report, transmit it to the National Assembly.
- (5) The Authority shall cause the annual report to be published in the Gazette and in such other manner as the Authority may determine.

Regulations

- 38.** The Authority may make regulations generally for the better carrying out of the provisions of this Act.

FIRST SCHEDULE (S.14)

OATH OF OFFICE

I ,.....being called upon to exercise the functions of chairman/vice-chairman/member of the Independent Policing Oversight Authority, do swear that I will to the best of my

ability to perform the functions of that office in accordance with the Independent Policing Oversight Authority Act, 2010.

SECOND SCHEDULE (S.17)
CONDUCT OF THE BUSINESS AND AFFAIRS OF THE BOARD

1. The Board 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. Notwithstanding subparagraph 1, the chairman may, and upon requisition by at least five members shall, convene a special meeting of the Board at any time for the transaction of the business of the Board.

3. The quorum for the conduct of the business of the Board shall be seven members including the chairman or the person presiding.

4. The chairman shall preside at every meeting of the Board at which he is present, but in his absence the vice-chairman shall preside, but in the absence of both the chairman and the vice-chairman the members present shall elect one of their number to preside, who shall, with respect to that meeting and the business transacted thereat, have all the powers of the chairman.

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

6. Subject to the provisions of paragraph 3, no proceedings of the Board shall be invalid by reason only of a vacancy among the members thereof.

7. The affixing of the common seal of the Authority shall be authenticated by the signature of the chairman and the Director, and any document not required by law to be under seal and all decisions of the Board may be authenticated by the signatures of the chairman and the Director.

8. Subject to the provisions of the Act and this Schedule, the Board may determine its own procedure.

MEMORANDUM OF OBJECTS AND REASONS

The principal purpose of this Bill is to provide for oversight of the work of the Police; to establish the Independent Policing Oversight Authority and to provide for its powers and functions.

PART I—PRELIMINARY

Part I (Clauses 1-3) of the Bill provides for preliminary matters; the short title of the Bill its application and interpretations. The Bill provides the Act will apply to the National Police Service and any other person for the time being exercising police powers.

PART II — THE INDEPENDENT POLICING OVERSIGHT AUTHORITY

Part II (Clauses 4-22) provides for establishment, independence, composition, functions and powers of the Authority.

Clause 4 and 5 establishes the Independent Policing Oversight Authority as a body corporate and provides that in the performance of its functions and exercise of its powers, the Authority shall be independent and not subject to the control of any body.

Clause 6 provides for the objective of the Bill which include monitoring the professionalism, effectiveness and efficiency of the Police, holding the police accountable to Parliament and the public and promoting the fundamental rights and freedoms contemplated in the Constitution in respect of policing.

Clause 7 and 8 provide for the functions and powers of the Authority. These include monitoring the implementation of policy relating to the service, monitoring the standard of performance of the functions of the Police to ensure that internationally accepted standards of policing are maintained and investigation of allegations of any unlawful action by any member of the Police or by a Police body itself or misconduct by the Police or a member of the Police.

Clauses 9 and 10 establish the Board of the Authority to be comprised of seven members with the necessary qualifications and experience to enable the Authority discharge its functions.

Clauses 11 to 22 provide for disqualifications, appointment procedures, termination of membership, filling of vacancies, conduct of the affairs of the Board and appointment of staff of the Authority.

PART III—FINANCIAL PROVISIONS

Part III (Clauses 23-26) makes provisions on financial matters.

Clause 23 provides that the funds of the Authority shall consist of monies provided by Parliament and such other monies as may be granted, donated or lent to the Authority from any other source.

Clauses 24-26 provides for the financial year of the Authority, preparation of annual estimates, financial reporting and audit.

PART IV— INVESTIGATION INTO COMPLAINTS

Part IV (Clauses 27-33 provides for investigation into complaints by the Authority.

Clause 27 provides for the procedure of lodging a complaint and the handling of complaints by the Authority.

Clause 28 requires the police immediately report any death of a person who was in police custody, a target of police investigation or a bystander during a police operation.

Clauses 29-33 provide for exclusion from investigation of matters before a court of law, inquiry procedures, rights of persons being investigated and immunity of witnesses appearing before the Authority.

PART V—OFFENCES

Part V Clause 34 provides for offences under the Act. It shall be an offence under the Act to disobey summons from the Authority, to fail to produce a document, refuse to be examined, fail to comply with lawful directions or to present a false document

PART VI—GENERAL PROVISIONS

Part VI (Clauses 35-38) makes provision for general matters including protection from personal liability members of the Board or employees of the Authority acting in good faith, common seal of the Authority and making of Regulations for the better carrying out of the provisions of the Act.

Hon. (Prof) George Saitoti, E.G.H, M.P,
Minister of State for Provincial Administration
and Internal Security

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