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THE JUDICIAL SERVICE ACT, 2011

AN ACT of Parliament to make provision for judicial services and administration of the Judiciary; to make further provision with respect to the membership and structure of the Judicial Service Commission; the appointment and removal of judges and the discipline of other judicial officers and staff; to provide for the regulation of the Judiciary Fund and the establishment, powers and functions of the National Council on Administration of Justice, and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

PART I — PRELIMINARY

Short title.

1. This Act may be cited as the Judicial Service Act, 2011.

Interpretation.

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

No.5 of 2004.

“accounting officer” means an accounting officer appointed under section 17 of the Government Financial Management Act, 2004;

“authorized officer” means the Chief Registrar;

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

“Chairperson” includes the Vice Chairperson or any other member of the Commission when discharging the functions of the Chairperson;

“Chief Registrar” means the Chief Registrar of the Judiciary referred to in Article 161 of the Constitution;

“Commission” means the Judicial Service Commission established by Article 171 of the Constitution;

“Committee” means a unit of the Commission formed to exercise any delegated power or perform any function of the Commission under the Constitution, this Act or any regulations made thereunder, and includes a Panel;

“Council” means the National Council on the Administration of Justice established by section 34;

“effective date” means the 27th of August, 2010;

“Fund” means the Judiciary Fund established by Article 173 of the Constitution;

“judicial officer” includes a registrar, deputy registrar, magistrate, Kadhi or the presiding officer of any other court or local tribunal as may be established by an Act of Parliament, other than the courts established to hear and determine disputes relating to employment and labour relations and the environment and the use and occupation of, and title to, land;

“judicial staff” means persons employed in the Judiciary but without power to make judicial decisions, and includes the staff of the Commission;

“judge” means the presiding officer of a superior court;

“principal judge” means the head of a superior court, other than the Supreme Court and the Court of Appeal;

“Secretary” means the secretary to the Commission appointed in accordance with the Constitution and includes the Deputy Chief Registrar or any other member of staff of the Commission when discharging the functions of the secretary;

“superior courts” mean the courts referred to under Article 162 of the Constitution.

Object and
purpose of Act.

3. The object and purpose of this Act is to, among other things, ensure that the Commission and the Judiciary shall—

- (a) be the organs of management of judicial services and, in that behalf, shall uphold, sustain and facilitate a Judiciary that is independent, impartial and subject only to the provisions of the Constitution and the law;
- (b) facilitate the conduct of a judicial process designed to render justice to all;
- (c) be accountable to the people of Kenya;
- (d) facilitate a judicial process that is committed to the expeditious determination of disputes;
- (e) facilitate a judicial process that is committed to the just resolution of disputes;
- (f) support and sustain a judicial process that is committed to the protection of the people and of their human rights;
- (g) promote and sustain fair procedures in its functioning and in the operations of the judicial process, and in particular, be guided in all cases in which it has the responsibility of taking a decision affecting a judicial officer of any rank or its own employee, by the rules of natural justice;
- (h) be the administrative manifestation of the Judiciary's autonomy and inherent power to protect and regulate its own process, achieving these objects through application of principles set out in the Constitution and other laws;
- (i) facilitate accessibility of judicial services to all Kenyans;

- (j) facilitate the promotion of gender equity in the Judiciary and the protection of vulnerable children in the administration of justice;
- (k) be guided in their internal affairs, and in the discharge of their mandates by considerations of social and gender equity and the need to remove any historical factors of discrimination; and
- (l) apply modern technology in their operations.

4. In the exercise of the powers or the performance of the functions conferred by this Act, the Commission and the Judiciary shall, among other things—

Standard of service.

- (a) have the technical, infrastructural and administrative competence to ensure that the requirements of the judicial process are fulfilled;
- (b) adopt quality service as a core principle and, to uphold this principle, the Commission and the Judiciary shall formulate a modern and constantly updated scheme of judicial and other training for all categories of Judges, judicial officers and staff of the Commission;
- (c) be guided in their activities by the relevant provisions of the Constitution;
- (d) uphold the judicial service code of conduct and ethics as may, by regulations, be prescribed;
- (e) be non-partisan and non-political in orientation and operations;
- (f) promote and uphold honesty and integrity in its operations, and give fulfilment to all values essential for the discharge of judicial functions; and

- (g) apply and promote such other positive values as the Commission may, by regulations, prescribe.

PART II – ADMINISTRATION OF THE JUDICIARY

Functions of the Chief Justice and the Deputy Chief Justice.

5.(1) The Chief Justice shall be the head of the Judiciary and the President of the Supreme Court and shall be the link between the Judiciary and the other arms of Government.

(2) Despite the generality of subsection (1), the Chief Justice shall—

- (a) assign duties to the Deputy Chief Justice, the President of the Court of Appeal, the Principal Judge of the High Court and the Chief Registrar of the Judiciary;
- (b) give an annual report to the nation on the state of the Judiciary and the administration of justice; and cause the report to be published in the Gazette, and a copy thereof sent, under the hand of the Chief Justice, to each of the two Clerks of the two Houses of Parliament for it to be placed before the respective Houses for debate and adoption;
- (c) exercise general direction and control over the Judiciary.

(3) As the Deputy Head of the Judiciary and the Vice-President of the Supreme Court, the Deputy Chief Justice shall be responsible to the Chief Justice in the exercise of the functions and duties of the office.

(4) In the event of the removal, resignation or death of the Chief Justice, the Deputy Chief Justice shall act as the Chief Justice for a period not exceeding six months pending the appointment of a new Chief Justice in accordance with the Constitution.

6.(1) The President of the Court of Appeal and the Principal Judge shall serve for a non-renewable term of five years.

The President of the Court of Appeal, the Principal Judge of the High Court, County Judge and Division Heads.

(2) The President of the Court of Appeal and the Principal Judge shall, in consultation with the Chief Registrar, be responsible to the Chief Justice for the administration of the Court of Appeal and other superior courts respectively, other than the Supreme Court.

(3) A County Judge and the head of a High Court Division shall, in consultation with the Chief Registrar, be responsible to the Principal Judge of the High Court for the administration of their station or division.

(4) Despite the generality of subsection (3), a County Judge shall, in particular—

- (a) supervise the courts within the judicial region in which the High Court is situate; and
- (b) present the necessary status reports to the Chief Justice through the Chief Registrar.

7. Every Judge shall have a legal researcher who shall be an advocate of the High Court with at least two years post-qualification experience.

Legal researchers.

8.(1) In addition to the functions conferred by Article 161 of the Constitution, the Chief Registrar shall, in particular—

Functions and powers of the Chief Registrar.

- (a) be responsible for the overall administration and management of the Judiciary;
- (b) perform judicial functions vested in the office of the Chief Registrar by law;
- (c) exercise powers vested in the office of the Chief Registrar by virtue of any law or regulation and

- give effect to the directions of the Chief Justice;
- (d) account for any service in respect of which monies have been appropriated by Parliament and for which issues are made from the exchequer account;
 - (e) be the authorized officer for the Judiciary, who shall be responsible for the efficient management of the day-to-day operations and administration of human resources in the judicial service;
 - (f) be incharge of support services in the Judiciary and in particular planning, and development, and the organization of staff;
 - (g) monitor and enhance administration and office procedures to maximize on efficiency and the quality of service;
 - (h) plan, prepare, implement and monitor the budget and collect, receive and account for revenue;
 - (i) prepare reports and proposals on administrative issues;
 - (j) be incharge of the procurement of all stores, and the management and maintenance of all physical facilities;
 - (k) maintain and develop co-operation with key staff in the public service and other institutions and agencies; and
 - (l) ensure the efficient devolution of the administrative units to county levels, including a High Court Division in each county;

- (m) perform such other duties as may be assigned by the Chief Justice from time to time.

(2) The Chief Registrar shall have all the powers necessary for the execution of the functions of the office under the Constitution and this Act.

9. A person shall not be qualified for appointment as the Chief Registrar unless such person—

Qualifications for appointment as Chief Registrar.

- (a) is an advocate of the High Court of Kenya and has, since qualification —
- (i) become eligible for appointment as a Judge of the High Court;
 - (ii) served for at least ten years as a professionally qualified magistrate; or
 - (iii) attained at least ten years' experience as a distinguished academic or legal practitioner or such experience in other relevant legal field; or
 - (iv) held the qualifications specified in paragraphs (i) to (iii) for a period amounting, in the aggregate, to ten years; and
- (b) has demonstrated competence in the performance of administrative duties for not less than three years.

10.(1) There shall be appointed a Deputy Chief Registrar and such other Deputy Registrars and Assistant Registrars as may be necessary for the discharge of judicial service.

Deputy Chief Registrar, etc.

(2) Of the Registrars appointed under subsection (1), there shall be a Registrar for each Superior Court, the Commission and Subordinate Courts.

(3) All the Registrars appointed under subsection (2) shall be responsible to the Chief Registrar in the performance of their duties.

Temporary vacancy in the office of the Chief Registrar.

11. Where the office of the Chief Registrar temporarily falls vacant or if, for any reason, the Chief Registrar is unable to exercise the functions of the office, the Deputy Chief Registrar, and in their absence, any officer who for the time being is qualified to perform the duties of the Chief Registrar under section 9, shall have and may exercise all the functions, duties and powers of the Chief Registrar, subject to such conditions, exceptions or qualifications as the Commission may, in writing, direct.

Suspension or removal of the Chief Registrar.

12. (1) The Chief Registrar may at any time, and in such manner as may be prescribed under this Act, be suspended or removed from office by the Commission for-

- (a) inability to perform the functions of the office, whether arising from infirmity of body or mind;
- (b) misbehaviour;
- (c) incompetence;
- (d) violation of the prescribed code of conduct for judicial officers;
- (e) bankruptcy;
- (f) violation of the provisions of Chapter Six of the Constitution; or
- (g) any other sufficient cause.

(2) Before the Chief Registrar is removed under subsection (1), the Chief Registrar shall be informed of the case against him or her in writing and shall be given reasonable time to defend himself or herself against any of the grounds cited for the intended removal.

PART III – JUDICIAL SERVICE COMMISSION

13.(1) In addition to the powers of the Commission under Article 253 of the Constitution, the Commission shall have the power to -

Powers and functions of the Commission.

- (a) purchase or otherwise acquire, hold, charge and dispose of movable or immovable property;
- (b) borrow and lend money;
- (c) enter into contracts;
- (d) do or perform all such other things or acts necessary for the proper performance of its functions under the Constitution and this Act which may be lawfully done or performed by a body corporate.

(2) Members of the Commission shall be guided in the discharge of their responsibilities by the principles contained in the Constitution and in this Act.

(3) The Commission shall have all the necessary powers for the execution of its functions under the Constitution and this Act.

14. Subject to the provisions of the Constitution or any other law, the Commission may hire such experts or consultants, or delegate such of its functions as are necessary for the day-to-day management of the judicial service to subcommittees or to the secretariat.

Delegation by the Commission.

15.(1) Where the members are to be appointed by the President under Article 171 (2)(h) of the Constitution, the following procedure shall apply—

Procedure of appointment.

- (a) until after the first elections under the Constitution, the President shall, subject to the National Accord and Reconciliation Act, 2008 and after consultation with the Prime Minister,

No.4 of 2008

within seven days of the commencement of this Act, submit the names of the nominees to the National Assembly;

- (b) the National Assembly shall, within seven days after it first meets after receiving the names of the nominees—
 - (i) consider the nominees and either approve or reject the nominees; and
 - (ii) notify the President as to the approval or rejection;
- (c) if the National Assembly approves the nominees under Article 171 (2) (h), the President shall, within three days after receiving the notification from the National Assembly, appoint the nominees as members of the Commission;
- (d) if the National Assembly rejects a nominee submitted by the President, the President shall, within three days after receiving the notification from the National Assembly, submit the name of a new nominee to the National Assembly and the provisions of this subsection shall apply with necessary modifications with respect to the new nominee.

(2) Where the nominations are to be made by bodies specified under Article 171(2)(b), (c), (d), (f) and (g) of the Constitution —

- (a) the respective nominating body shall submit the name of its nominee to the President; and
- (b) the President shall, within three days of receipt of the names, appoint the nominees as members of the Commission.

16. Where it is required that a nominating body conducts an election to identify its nominee, such election shall be by secret ballot:

Provided that the nominating body shall ensure that its nominees comply with the requirements set out in the Constitution.

17. Within seven days after any vacancy arises in the membership of the Commission, the Commission shall request the respective nominating body to submit the name of a fresh nominee within twenty one days of the request.

Vacancies in the Commission.

18. A person holding any of the following offices shall relinquish that office on appointment as a member of the Commission—

Commissioners to relinquish certain offices.

- (a) a member of Parliament;
- (b) a member a local authority; or
- (c) a member of the executive committee of a political party.

19.(1) There shall be such sections, departments or divisions of the Commission, and such categories and classifications of staff under the Commission as the Commission may, from time to time, determine.

Structure of the Commission.

(2) The units referred to in subsection (1) shall be set up with specific mandates.

(3) The Commission may, from time to time—

- (a) allocate functions to any such units; and
- (b) make such arrangements as may appear to the Commission to be expedient in connection with the division, amalgamation or abolition of any such units.

(4) Nothing in this section shall be construed as precluding the Commission from constituting such

Committees or Panels for the effective discharge of its mandate.

Secretariat and staff.

20.(1) There shall be a secretariat of the Commission which shall comprise—

- (a) such judicial officers and other staff as the Commission may appoint to assist it in the discharge of its functions under the Constitution and this Act; and
- (b) such public officers as may, upon the request of the Commission, be seconded to the Commission.

(2) A public officer who is seconded to the Commission under subsection (1), shall, during the secondment, be deemed to be an officer of the Commission and subject to its direction and control.

Functions of the Secretary.

21. (1) As Secretary to the Commission, the Chief Registrar shall, in relation to the proceedings before the Commission, act in accordance with the provisions of the Constitution, this Act and any other written law and shall, in particular, be responsible for—

- (a) the acceptance, transmission, service and custody of documents in accordance with this Act;
- (b) the enforcement of decisions of the Commission;
- (c) certifying that any order, direction or decision is an order, direction or decision of the Commission, the Chairperson or a member, as the case may be;
- (d) causing to be kept records of the proceedings

and minutes of the meetings of the Commission and such other records as the Commission may direct; and

- (e) undertaking any duties assigned by the Commission.

(2) With the authorization of the Commission, the Secretary may consider and dispose of procedural or administrative matters in accordance with this Act.

(3) Any administrative function of the Secretary under this Act may in the Secretary's absence, be performed by any member of staff of the Commission whom the Chairperson may authorize for that purpose.

22.(1) The Chairperson shall convene a meeting of the Commission at least once every three months.

Meetings.

(2) There shall be given to members a notice of seven clear days for every meeting called by the Commission.

(3) Despite the provisions of subsection (1), the Chairperson may, at any time, convene a special meeting of the Commission and shall, within seven days of the receipt of a written requisition therefor signed by at least three members, convene a special meeting.

(4) Subject to subsection (5), the Commission shall hold such number of meetings, in such places, at such times and in such manner as the Commission shall consider necessary for the discharge of its functions under the Constitution and this Act.

(5) The quorum of the Commission and any of its Committees shall be six and three members respectively.

(6) The Commission may invite any person, whose presence is in its opinion desirable, to attend and to

participate in the deliberations of the meeting of the Commission, but such person shall have no power to vote.

(7) All the questions before the Commission or a Committee thereof shall be determined by consensus, but in the absence of consensus, decisions of the Commission shall be determined by a majority of the members present and voting.

Records of the
Commission.

23. The Commission shall keep a record of the proceedings of every meeting of the Commission and its Committees.

Seal of the
Commission.

24. (1) The seal of the Commission shall be such device as may be determined by the Commission and shall be kept by the Secretary.

(2) The affixing of the seal shall be authenticated by the Chairperson or any other person authorized in that behalf by a resolution of the Commission.

(3) Any document purporting to be under the seal of the Commission or issued on behalf of the Commission shall be received in evidence and shall be deemed to be so executed or issued, as the case may be, without further proof, unless the contrary is proved.

Retirement and
resignation of
judicial officers
and staff of the
Commission.

25.(1) A judicial officer or member of staff of the Commission shall retire on attaining the mandatory retirement age for public officers.

(2) A person in respect of whom subsection (1) applies may, after attaining the age of fifty five years, elect to retire at any time.

(3) Despite the provisions of subsection (2) the Commission may, in such manner and for such reasons as may be prescribed by regulations under this Act, require a

judicial officer or member of staff to retire or resign from service at any time.

PART IV – FINANCIAL PROVISIONS

26.(1) The expenses of the Commission and the Judiciary incurred in the execution of their functions under the Constitution and this Act shall be charged on and issued out of the Consolidated Fund.

Expenses of the Commission and the Judiciary.

(2) Without prejudice to subsection (1), there may be made to the Commission and the Judiciary grants, gifts, donations or bequests towards the achievement of the objects of the Commission and the Judiciary.

(3) The Commission and the Judiciary shall not accept any grant, gift, donation or bequest made on any condition that the Commission and the Judiciary performs any function or discharges any duty or obligation other than duties under this Act.

27. (1) There shall be paid into the Judiciary Fund—

Sources of the Judiciary Fund.

- (a) such monies as may be appropriated out of the Consolidated Fund pursuant to this Act;
- (b) any grants, gifts, donations or bequests; and
- (c) such monies as may be allocated for that purpose from investments, fees or levies administered by the Judiciary.

(2) There shall be paid out of the Fund payments in respect of any administrative expenses incurred by the Judiciary in pursuance of the provisions of this Act and any other related law.

(3) The receipts, earnings or accruals of the Fund and the balance of the Fund at the close of each financial year, shall be paid into the Consolidated Fund.

(4) Subject to this section and any other law on the regulation of the Fund for the time being in force, the Chief Justice shall, by regulations, provide for the management and administration of the Fund and for anything incidental to or connected therewith.

(5) For the avoidance of doubt, laws and regulations relating to public financial management shall apply to the operations of the Fund.

Bank accounts.

28. The Judiciary shall open and maintain such bank accounts as are necessary for the exercise of the functions of the Commission and the Judiciary.

Financial estimates.

29.(1) At least three months before the commencement of each financial year, the Chief Registrar shall cause to be prepared, estimates of all the expenditure required for the purposes of this Act for that year, and shall present such estimates to the Commission for review.

(2) The Commission shall review the estimates forwarded under subsection (1) and may make such alterations thereto as it may consider necessary, and shall thereafter forward them to the National Assembly for approval.

(3) Upon the approval of the estimates by the National Assembly, all monies from time to time required for the purposes of this Act shall be paid from the Consolidated Fund into the Judiciary Fund.

PART V— PROCEDURE FOR APPOINTMENT AND REMOVAL OF JUDGES AND DISCIPLINE OF OTHER JUDICIAL OFFICERS AND STAFF

Appointment of Judges.

30.(1) For the purposes of transparent recruitment of judges, the Commission shall constitute a selection panel consisting of at least five members.

(2) The function of the selection panel shall be to shortlist

persons for nomination by the Commission in accordance with the First Schedule.

(3) The provisions of this section shall apply to the appointment of the Chief Justice and Deputy Chief Justice except that in such case, a person shall not be appointed without the necessary approval by the National Assembly.

(4) Members of the selection panel shall elect a chairperson from amongst their number.

(5) Subject to the provisions of the First Schedule, the selection panel may determine its own procedure.

31.(1) The procedure governing the conduct of a tribunal set up for the purposes of removing the Chief Justice, Deputy Chief Justice or a judge shall be as set out in the Second Schedule. Removal of judges.

(2) If the tribunal referred to in subsection (1) is for the removal of a judge, other than the Chief Justice, the appointing authority shall appoint the chairperson and the members shall elect a vice-chairperson of the tribunal from amongst their number.

(3) The chairperson and vice-chairperson appointed for purposes of removal of a Chief Justice or Deputy Chief Justice or elected under subsection (2) shall be persons of opposite gender.

(4) The appointing authority may appoint a counsel to assist the tribunal.

(5) Subject to the provisions of the Second Schedule, the tribunal may determine its own procedure.

32.(1) For the purposes of appointment, discipline and removal of judicial officers and staff, the Commission shall constitute a Committee or Panel which shall be gender representative. Appointment, discipline and removal of judicial officers and staff.

(2) Notwithstanding the generality of subsection (1), a person shall not be qualified to be appointed as a magistrate by the Commission unless the person—

- (a) is an advocate of the High Court of Kenya;
- (b) has high moral character, integrity and impartiality;
- (c) has demonstrable management skills;
- (d) has proficiency in computer applications; and
- (e) has no pending complaints from the Advocates Complaints Commission or the Disciplinary Committee.

(3) The procedure governing the conduct of a Committee or Panel constituted under this section shall be as set out in the Third Schedule.

(4) Members of the Committee shall elect a chairperson from amongst their number.

(5) Subject to the provisions of the Third Schedule, the Committee or Panel may determine its own procedure.

Commission to provide secretariat.

33. The Commission shall provide secretariat services to the Committee or Panels constituted under this Part.

PART VI—THE NATIONAL COUNCIL ON ADMINISTRATION OF JUSTICE

Establishment and composition of the Council.

34. (1) There is established an unincorporated body to be known as the National Council on the Administration of Justice.

(2) The Council shall be composed of —

- (a) the Chief Justice who shall be the chairperson;
- (b) the Cabinet Secretary for the time being responsible for matters relating to the Judiciary, or his or her representative appointed in writing;
- (c) the Attorney-General, or his or her representative appointed in writing;
- (d) the Director of Public Prosecutions, or his or her representative appointed in writing;
- (e) the person for the time being exercising command over the National Police Service, or his or her representative appointed in writing;
- (f) the Commissioner of Prisons, or his or her representative appointed in writing;
- (g) the Chairperson of the Law Society of Kenya, or his or her representative appointed in writing;
- (h) the Principal Secretary for the time being responsible for matters relating to the Cabinet and the public service, or his or her representative appointed in writing;
- (i) the Principal Secretary for the time being responsible for matters relating to gender, women and children's affairs, or his or her representative appointed in writing;
- (j) the Principal Secretaries for the time being responsible for matters relating to labour, environment and land, or their representatives appointed in writing;

- (k) the Director of the Witness Protection Agency, or his or her representative appointed in writing;
- (l) the Director of Probation and After-care Services, or his or her representative appointed in writing;
- (m) a representative of an organisation or association dealing with human rights issues and the provision of legal aid to women;
- (n) a representative of an organization or association dealing with human rights issues and the provision of legal aid to children;
- (o) a representative of the private sector; and
- (p) a representative of Non-Governmental Organizations dealing with human rights issues and the provision of legal aid.

(3) The Chief Registrar shall be the secretary to the Council.

(4) The Commission shall provide secretariat services to the Council.

(5) Not more than two-thirds of the members of the Council shall be of one gender and the chairperson of the Council shall, during the first meeting of the Council, ensure that this requirement has been met.

(6) The persons nominated under subsection (2)(m), (n) and (p) shall be appointed by the Cabinet Secretary from

organisations with national coverage and known track records in their respective fields and shall serve for a term of three years which may be renewed for one further term of three years.

35.(1) It shall be the duty of the Council to ensure a co-ordinated, efficient, effective and consultative approach in the administration of justice and reform of the justice system. Purpose and functions of the Council.

(2) To achieve the objectives set out under subsection (1), the Council shall—

- (a) formulate policies relating to the administration of justice;
- (b) implement, monitor, evaluate and review strategies for the administration of justice;
- (c) facilitate the establishment of court user committees at the county level; and
- (d) mobilize resources for purposes of the efficient administration of justice.

(3) The Council shall —

- (a) liaise with the Council of the National Crime Research Centre in carrying out its mandate;
- (b) review and implement the reports of the Court users committees; and
- (c) oversee the operations of any other body engaged in administration of justice.

(4) The Council shall have all the necessary powers for the execution of its functions under this Act.

36.(1) The Council shall meet at least once every three months. Meetings of the Council.

(2) Subject to the provision of this Part, the Council may regulate its own procedure.

Reports of the Council.

37. The Council shall prepare and submit annual reports on its activities to the Cabinet Secretary for onward transmission to the National Assembly.

PART VII — ANNUAL REPORT AND AUDITED ACCOUNTS OF THE COMMISSION AND THE JUDICIARY

Annual report.

38.(1) The Commission and the Judiciary shall each cause an annual report to be prepared for each financial year.

(2) The annual report shall contain, in respect to the year to which it relates—

- (a) the financial statements of the Commission and the Judiciary; and
- (b) a description of the activities of the Commission and the Judiciary.

(3) Without limiting what may be included in the annual report, the annual report shall include—

- (a) the information set out in the reports of the committees to which the annual report relates;
- (b) a summary of the steps taken during the year, in the identification, selection and appointment of judicial officers and staff;
- (c) information relating to disposal of cases;
- (d) information on issues of access to justice;
- (e) information relating to performance of the judiciary and attendant challenges; and
- (f) such other statistical information as the

Commission and the Judiciary considers appropriate relating to their functions and judicial activities.

(4) The Commission and the Judiciary shall cause the annual report to be published in the Gazette and shall send a copy of the report to each of the two Clerks of the two Houses of Parliament for it to be placed before the respective Houses for debate and adoption.

39.(1) The Chief Registrar shall ensure that proper books and records of accounts of the Commission and Judiciary are kept and maintained. Accounts and audit.

(2) Within three months after the end of each financial year, the Chief Registrar shall submit to the Auditor-General the accounts of the Commission and the Judiciary for the year.

(3) The accounts of the Commission and the Judiciary shall be audited annually and shall form part of the annual report.

(4) The accounts of the Commission and the Judiciary shall be audited and reported on in accordance with the provisions of the Public Audit Act, 2003. No. 12 of 2003

PART VIII—MISCELLANEOUS PROVISIONS

40.(1) The chairperson and members of the Commission shall, on first appointment, take the oath or make the affirmation in the form prescribed in the Third Schedule to the Constitution. Oath of office of members, Chief Registrar, other judicial officers and staff.

(2) The Chief Registrar and such other judicial officers and staff of the Commission as the Commission may require so to do, shall, on first appointment, take the oath or make the affirmation in the prescribed form.

41. Members of the Commission shall receive such allowances as may be determined by the Public Service Commission pending the establishment of the Salaries and Remuneration Commission. Remuneration of members.

Powers of the Commission and the duty to co-operate.

42. The Commission may summon any public officer or other person to appear before it or its committee or to produce any document or thing or information that may be considered relevant to its functions and it shall be the duty of any such public officer or person to co-operate with the Commission.

Confidentiality.

43.(1) A member or staff of the Commission shall not without the consent in writing given by, or on behalf of, the Commission, publish or disclose to any person otherwise than in the course of the person's duties the contents of any document, communication, or information which relates to, and which has come to the person's knowledge in the course of the person's duties under this Act.

(2) The limitation on disclosure referred to under subsection (1) shall not be construed to prevent the disclosure of criminal activity by a member or staff of the Commission.

Conflict of interest.

44.(1) If any member is present at a meeting of the Commission or any committee at which any matter is the subject of consideration and in which matter that person or that person's associates or family members are directly or indirectly interested in a private capacity, that person shall as soon as is practicable after the commencement of the meeting, declare such interest and shall not, unless the Commission or committee otherwise directs, take part in any consideration or discussion of, or vote on any question touching such matter.

(2) A disclosure of interest made under subsection (1) shall be recorded in the minutes of the meeting at which it is made.

Protection from personal liability.

45.(1) A member, the Chief Registrar, Registrar or judicial officers or a member of staff of the Commission shall not be liable to any civil action or suit for or in respect of any matter or thing done or omitted to be done in good faith as a

member, Registrar, judicial officer or member of staff of the Commission.

(2) A member of the Commission or the Chief Registrar shall not be liable to arrest under civil process while participating in any meeting of the Commission or of any Committee thereof.

(3) A person who appears before the Commission shall not, whether such appearance is in pursuance of any summons by the Commission under this Act or not, be liable to any criminal or civil proceedings, or to any penalty or forfeiture whatsoever in respect of any evidence or information given to the Commission by such person.

46.(1) Any person who—

Offences and penalties.

- (a) in connection with an application by the person or by any other person for employment, appointment or promotion by the Commission, or in connection with any matter on which it is the duty of the Commission to inquire, wilfully gives to the Commission or to any member of the Commission any information which is false or misleading in any material particular; or
- (b) without the consent, in writing, of the Chairperson, publishes or discloses to any unauthorized person or otherwise than in the course of duty, the contents or any part of the contents of any document, communication or information which has come to their knowledge in the course of their duties under this Act, and any person who knowingly acts in contravention of this section; or
- (c) otherwise than in the course of duty, directly or indirectly by themselves or by any other person in any manner influences or attempts to influence any decision of the Commission or of any member thereof; or

- (d) disobeys any order made by the Commission or a committee for attendance or for production of papers, books, documents or records,

commits an offence and is liable on conviction to a fine not exceeding one million shillings, or to imprisonment for a term not exceeding three years, or to both.

(2) Notwithstanding the provisions of subsection (1) (c) of this section, nothing shall prohibit any person from supplying any information or assistance upon formal request made by the Commission.

Regulations.

47.(1) The Commission may make regulations for the better carrying out of the purposes of this Act.

(2) Without prejudice to the generality of subsection (1), such regulations may provide for—

- (a) the code of conduct and ethics for judges, other judicial officers and staff;
- (b) the administration and management of the services and facilities of the Commission for the discharge of judicial functions;
- (c) preliminary procedures for making any recommendations required to be made under the Constitution;
- (d) the financial procedures of the Commission;
- (e) orientation and training for judicial officers and staff;
- (f) the management of issues of conflict of interest;
- (g) performance appraisal system of the Judiciary;
- (h) the security of judicial officers and staff; and

- (i) mainstreaming of gender and regional equity in the Judiciary.

(3) Regulations made under this section shall be presented to the National Assembly for debate and approval before they take effect.

48.(1) Every valid contract entered into before the commencement of this Act shall continue to be in force to the extent that the terms and conditions thereof are not inconsistent with the provisions of this Act or any other written law.

Transition and saving.

(2) All movable and immovable property and all the rights and liabilities previously attaching to the Judiciary, and all the property movable or immovable held by any person on behalf of the Judiciary, before the commencement of this Act shall vest in the Judiciary or where applicable, the Commission, after the commencement of this Act.

(3) Until after the first elections under the Constitution, references in this Act to the expressions "Cabinet Secretary" or "Principal Secretary" shall be construed to mean "Minister" or "Permanent Secretary" respectively.

49. The Service Commissions Act is amended—

Amendments to Cap 185.

- (a) in section 2, by deleting from the definition of "Commission" the words "the Judicial Service Commission as established under the Constitution of Kenya" and substituting therefor the words "any other Commission to which, by or under the Constitution or any written law, this Act applies".
- (b) in section 4 by deleting the words "and the Judicial Service Commission".

FIRST SCHEDULE**(s.30)****PROVISIONS RELATING TO THE PROCEDURE FOR
APPOINTMENT OF JUDGES****PART I—PRELIMINARY**

Application.

1. (1) These procedures apply to the selection of applicants for recommendation for appointment as Judges, the criteria for determining their qualifications and for connected purposes.

(2) Despite the generality of paragraph (1), Parts III, IV, V, VI and VII of this Schedule specify—

(a) the steps to be taken by an applicant in order to be considered for a judicial appointment; and

(b) the steps to be taken by the Commission to ensure that applicants are fairly evaluated and that the most qualified are nominated.

(3) The procedures referred to under subparagraph (2) shall be published in the Commission's annual reports and posted on the Commission's website.

Interpretation.

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

“Applicant” means any person making an application to the Commission for consideration for appointment as a Judge.

PART II—VACANCIES AND APPLICATIONS

Notice of vacancy.

3. (1) Where a vacancy occurs or exists in the office of a judge, the Chief Justice shall within fourteen days place a notice thereof in the Gazette and the Commission shall thereafter—

(a) post a notice on its website;

