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<p><b>A Bill for</b></p> <p><b>AN ACT of Parliament to; establish the Kenya National Human Rights Commission pursuant to Article 59 of the Constitution; to provide for the functions and powers, qualification of, and appointment procedure for members of the Commission and for connected purposes.</b></p>	
<b>ENACTED by the Parliament of Kenya as follows —</b>	
<b>PART I — PRELIMINARY</b>	
Short title and Commencement.	3. This Act may be cited as the Kenya National Human Rights Commission Act, 2011, and shall come into operation on the date of assent.
Interpretation.	<p><b>2.</b> In this Act, unless the context otherwise requires —</p> <p>“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for Justice and Constitutional Affairs;</p> <p>“Commission” means the Kenya National Human Rights Commission established by section 3;</p> <p>“Disciplined forces” include—</p> <p>(a) the Prison Service;</p> <p>(b) the National Youth Service;</p> <p>(c) the Kenya Wildlife Service; or</p> <p>(d) any other service established by law for the Republic of Kenya;</p> <p>“Human rights” means the fundamental rights and freedoms of any individual protected under the Constitution and any human rights provided for in any</p>

	<p>international instrument to which Kenya is a signatory; and</p> <p>“National Security Organs” include—</p> <p>(a) any of the defence forces;</p> <p>(b) the National Police Service;</p> <p>“Tribunal” means the National Human Rights Tribunal established by Section 14 of this Act.</p>
<p><b>PART II — ESTABLISHMENT, FUNCTIONS AND POWERS OF THE COMMISSION.</b></p>	
<p>Incorporation of the Commission.</p>	<p><b>3.</b> (1) There is established pursuant to Article 59(4) of the Constitution the Kenya National Human Rights Commission.</p> <p>(2) The Commission shall, in accordance with the Constitution, be a separate and independent Commission, a body corporate with perpetual succession and a common seal and shall in its corporate name, be capable of —</p> <p>(a) suing and being sued;</p> <p>(b) purchasing or otherwise acquiring, holding, charging and disposing of movable and immovable property; and</p> <p>(c) doing or performing all such other things or acts for the proper discharge of its functions under the Constitution and this Act.</p> <p>(3) The Commission is a successor Commission to the Kenya National Human Rights Commission in accordance with Article 59 (5) © of the Constitution.</p>
<p>General Principles</p>	<p><b>4.</b> In fulfilling its mandate, the Commission shall, in accordance with the Constitution, observe the following principles-</p> <p>(a) accommodate the diversity of Kenyan people;</p> <p>(b) impartiality and gender equity;</p> <p>(c) regard for all applicable international human rights standards and in particular the fact that human rights are indivisible, interdependent, interrelated and equal importance for the dignity of all human beings; and</p> <p>(d) the rules of natural justice.</p>

Headquarters	<p><b>5. (1)</b> The headquarters of the Commission shall be in Nairobi, but the Commission may establish branches at any place in Kenya.</p> <p><b>(2)</b> Subject to the provisions of any other written law as to the meetings of the Commission, the Commission may hold sittings at any place in Kenya.</p>
Functions of the Commission.	<p><b>6.</b> The functions of the Commission are—</p> <ul style="list-style-type: none"> <li>(a) to promote respect for human rights and develop a culture of human rights in the Republic;</li> <li>(b) to promote the protection and observance of human rights in public and private institutions;</li> <li>(c) to monitor, investigate and report on the observance of human rights in all spheres of life in the Republic including observance by the national security organs and the disciplined forces;</li> <li>(d) to receive and investigate complaints about alleged abuses of human rights and take steps to secure appropriate redress where human rights have been violated;</li> <li>(e) on its own initiative or on the basis of complaints, to investigate or research a matter in respect of human rights, and make recommendations to improve the functioning of state organs;</li> <li>(f) to act as the principal organ of the State in ensuring compliance with obligations under treaties and conventions relating to human rights;</li> <li>(g) to formulate, implement and oversee programmes intended to inculcate in the citizens of Kenya and other persons resident in Kenya, awareness of their civic responsibilities and an appreciation of their rights and obligations as free people;</li> <li>(h) to encourage the efforts of other institutions working in the field of human rights and co-operate with such other institutions for the purpose of promoting and protecting human rights in Kenya;</li> <li>(i) to perform such other functions as the Commission may consider necessary for the promotion and protection of human rights; and</li> <li>(j) perform such other functions as may be prescribed by the Constitution and any other written law.</li> </ul>
General Powers of the Commission.	<p><b>7.</b> The Commission shall have all powers generally necessary for the execution of its functions under this Act, and without prejudice to the</p>

	<p>generality of the foregoing, the Commission shall have the power-</p> <ul style="list-style-type: none"> <li>(a) to conduct investigations on its own initiative or on a complaint made by a member of the public;</li> <li>(b) to issue summons as it deems necessary for the fulfillment of its mandate; and</li> <li>(c) to require that statements be given under oath or affirmation and to administer such oath or affirmation.</li> </ul>
<p>Powers of a court.</p>	<p><b>8.</b> (1) In the performance of its functions under this Act , the Commission shall have the powers of a court to -</p> <ul style="list-style-type: none"> <li>(a) issue summonses or other orders requiring the attendance of any person before the Commission and the production of any document or record relevant to any investigation by the Commission;</li> <li>(b) question any person in respect of any subject matter under investigation before the Commission;</li> <li>(c) require any person to disclose any information within such person's knowledge relevant to any investigation by the Commission.</li> </ul>
<p>Powers relating to investigation.</p>	<p><b>9.</b> (1) The Commission may, for the purpose of conducting any investigation pertaining to an inquiry, utilise the services of any public servant or investigation agency of the Government and where a public servant is so utilised under this subsection, the Commission shall pay such public servant or agency for the service rendered.</p> <p>(2) For the purpose of investigating into any matter pertaining to an inquiry, a public servant or agency whose services are utilised under subsection (1) may, subject to the direction and control of the Commission-</p> <ul style="list-style-type: none"> <li>(a) summon and enforce the attendance of any person for examination;</li> <li>(b) require the discovery and production of any document; and</li> <li>(c) subject to the Official Secrets Act, requisition any public records or copy thereof from any public servant.</li> </ul> <p>(3) The provisions of section 11 shall apply in relation to any statement made by a person before any public servant or agency whose services are utilised under subsection (1) as they apply in relation to any statement made by a person in the course of giving evidence before the Commission.</p>

	<p>(4) The public servant or agency whose services are utilised under subsection (1) shall investigate any matter pertaining to the inquiry and submit a report thereon to the Commission in that behalf.</p> <p>(5) The Commission shall satisfy itself on the correctness of the facts stated and the conclusion, if any, arrived at in the report submitted to it under subsection (4) and for that purpose, the Commission may make such inquiry (including the examination of any person or persons who conducts or assists in the investigation) as it deems fit.</p>
<p>Inquiry into complaints</p>	<p><b>10.</b> (1) A person wishing to lodge a complaint of the violation of human rights shall do so orally or in writing addressed to the Secretary or such other person as may be duly authorised by the Commission for that purpose.</p> <p>(2) A complaint under subsection (1) shall be in such form and contain such particulars as the Commission may, from time to time, prescribe.</p> <p>(3) Upon receipt of a complaint under subsection (1), the Commission may –</p> <p>(a) call for information or a report regarding such complaint from the Government or any other body within such reasonable time as may be specified by the Commission:</p> <p>Provided that –</p> <p>(i) if the information or report is not received within the time stipulated by the Commission, the Commission may proceed to inquire into the complaint without such information or report;</p> <p>(ii) if on receipt of the information or report the Commission is satisfied either that no farther action is required or that the required action has been initiated by the Government or other body, the Commission shall, in writing, inform the complainant accordingly and take no further action;</p> <p>(b) without prejudice to paragraph (a), initiate such inquiry as it considers necessary, having regard to the nature of the complaint.</p>
<p>Persons likely to be prejudiced or affected to be heard.</p>	<p><b>11.</b> (1) Subject to subsection (2),if at any stage of an inquiry the Commission–</p> <p>(a) considers it necessary to inquire into the conduct of any person; or</p> <p>(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 appear before the Commission by himself or by an advocate to give evidence in his own defence.</p>

	(2) This section shall not apply where the credibility of a witness is being impeached.
Statements made by persons to the Commission	<p><b>12.</b> No statement made by a person in the course of giving evidence before the Commission shall subject such person to any civil or criminal proceedings except for giving false evidence by such statement:</p> <p>Provided that the statement –</p> <p>(a) is made in reply to a question which the person is required by the Commission to answer; and</p> <p>(b) is relevant to the subject matter of the inquiry.</p>
Steps after inquiry	<p><b>13.</b> The Commission may take any of the following steps after completing an inquiry into a complaint under this Act –</p> <p>(a) where the inquiry discloses a violation of human rights or negligence in the prevention of violation of human rights by a public servant, recommend to the Attorney-General or any other relevant authority –</p> <p>(i) the prosecution of the person suspected of violating the human rights or being negligent in the prevention of the violation; or</p> <p>(ii) such other action as the Commission may deem fit against the concerned person or persons; or</p> <p>(b) in its own name, commence and prosecute appropriate proceedings in the High Court under Article 22 of the Constitution for such orders, writs or directions as may be appropriate; or</p> <p>(c) recommend to the petitioner a course of other judicial redress which does not warrant an application under Article 22 of the Constitution; or</p> <p>(d) recommend to the petitioner and to the Government or other body concerned in the alleged violation of human rights other appropriate methods of settling the complaint or to obtain relief; and</p> <p>(e) provide a copy of the inquiry report to all interested parties; and</p> <p>(f) send a copy of its quarterly report together with its recommendations to the President.</p>
	<b>PART III – THE NATIONAL HUMAN RIGHTS TRIBUNAL.</b>
Human rights tribunal.	<b>14.</b> (1) There is hereby established a Tribunal to be known as the National



	<p>Human Rights Tribunal.</p> <p>(2) The Tribunal shall consist of a Chairperson and two other members appointed in accordance to the Constitution and the provisions of this Act.</p>
<p>Qualifications for the appointment as chairperson or member of the Commission.</p>	<p><b>15.</b> (1) the Chairperson of the Tribunal shall be a person who is qualified to hold the office of judge of the Supreme Court.</p> <p>(2) a person is qualified for appointment as a member of the Tribunal if such a person-</p> <ul style="list-style-type: none"> <li>(a) is a citizen of Kenya;</li> <li>(b) possess a degree from a recognized university;</li> <li>(c) has knowledge and experience of at least ten years in matters relating to human rights;</li> <li>(d) meets the requirements of chapter six of the Constitution; and</li> <li>(e) has had a distinguished career in their respective fields.</li> </ul>
<p>Procedure of appointment.</p>	<p><b>16.</b> (1) The Judicial Service Commission shall, within twenty-one days of the commencement of this Act, constitute a selection panel consisting of at least three members.</p> <p>(2) The panel convened under sub section (1) shall, within seven days of its constitution place a notice in the Gazette and at least one newspaper with nation wide circulation inviting applications from qualified persons.</p> <p>(3) The panel shall consider the applications, shortlist and interview the applicants within a period of twenty one days from the date it invited the applications.</p> <p>(4) The panel shall forward to the Judicial Service Commission the shortlisted names for Chairperson and members of the Tribunal to be approved for appointment by the President.</p> <p>(5) Upon consideration and approval by the President, the Judicial Service Commission shall within seven days, by notice in the Gazette, publish the names of the Chairperson and members of the Tribunal.</p> <p>(6) In short listing, nominating or appointing persons as Chairperson and members of the Tribunal, the selection panel, the Judicial Service</p>

	Commission and the President must ensure that not more than two-thirds of the members are of the same gender.
Tenure of office.	<b>17.</b> The members of the tribunal shall be appointed for a term of three years and shall be eligible for reappointment for a further term of three years.
Vacancy in the office of the Chairperson or member of the Tribunal.	<b>18.</b> the office of the Chairperson or member of the Tribunal shall become vacant if the holder- <ul style="list-style-type: none"> <li>(a) by notice in writing addressed to the President resigns from office;</li> <li>(b) is unable to perform the functions of his office by reason of mental or physical infirmity;</li> <li>(c) is convicted of an offence and sentenced to imprisonment;</li> <li>(d) is absent from three consecutive meetings of the Tribunal without good cause;</li> <li>(e) is declared bankrupt; or</li> <li>(f) If circumstances arise that, if the person were not a member of the Tribunal, would cause the person to be disqualified for appointment as such the holder.</li> </ul>
The Tribunal's proceedings	<b>19.</b> (1) The Tribunal shall not be bound by the strict rules of Evidence Act. (2) The Tribunal shall, upon an appeal made to it in writing by any party or a referral made to it by the Commission on any matter relating to this Act, inquire into the matter and make an award, give directions, make orders or make decisions thereon and every award, direction, order or decision made shall be notified by the Tribunal to the parties concerned, the Commission or any other relevant committee thereof as the case maybe. (3) The Tribunal shall sit at such times and in such places as it may appoint. (4) The proceedings of the Tribunal shall be open to the public save where the Tribunal for, good cause, otherwise directs. (5) Except as expressly provided in this Act or any regulations made thereunder, the Tribunal shall regulate its proceedings as it deems fit.
	<b>PART IV- ADMINISTRATION.</b>
Membership of the Commission.	<b>20.</b> The Commission shall consist of a Chairperson and two other members appointed in accordance with the Constitution and the provisions of this Act.

<p>Qualifications of Chairperson and Members.</p>	<p><b>21.</b> (1) A person is qualified for appointment as the chairperson or a member of the Commission if such person—</p> <ul style="list-style-type: none"> <li>(f) is a citizen of Kenya;</li> <li>(g) possess a degree from a recognized university;</li> <li>(h) has knowledge and experience of at least ten years in matters relating to any of the following fields — <ul style="list-style-type: none"> <li>(i) law,</li> <li>(ii) public administration,</li> <li>(iii) economics,</li> <li>(iv) gender,</li> <li>(v) human rights, or</li> <li>(vi) government;</li> </ul> </li> <li>(i) meets the requirements of chapter six of the Constitution.</li> <li>(j) has had a distinguished career in their respective fields.</li> </ul> <p>(2) a person is not qualified for appointment as the chairperson or as a member if such a person—</p> <ul style="list-style-type: none"> <li>(a) is a member of Parliament;</li> <li>(b) is a member of a local authority;</li> <li>(c) is a member of the executive body of a political party; or</li> <li>(d) is bankrupt.</li> </ul>
<p>Procedure for appointment of members.</p>	<p><b>22.</b> (1) The President shall, within twenty-one days of the commencement of this Act, by notice in the gazette declare vacancies in the Commission and request for applications;</p> <p>(2) An application under subsection (1) shall be forwarded to the Public Service Commission within fourteen days of the notice and may be made by</p>

<p>any –</p> <p>(a) qualified person; or</p> <p>(b) person, organization or group of persons proposing the nomination of any qualified person;</p> <p>(3) The names of all applicants under subsection (2) shall be published in the Gazette;</p> <p>(4) The Public Service Commission shall shortlist at least three persons qualified for appointment as chairperson and six persons who qualify for appointment as members;</p> <p>(5) The Public Service Commission shall within seven days forward the shortlisted names of Chairperson and members of the Commission to the President for nomination;</p> <p>(6) The President shall nominate within seven days a chairperson and two other persons for appointment as chairperson and members of the Commission respectively and forward the same to the National Assembly;</p> <p>(7) The National Assembly shall, within fourteen days consider all nominations received under subsection (6) and approve or reject any nomination;</p> <p>(8) Upon consideration and approval by the National Assembly, the Speaker shall within seven days forward the names of approved persons to the President for appointment;</p> <p>(9) Where the National Assembly rejects any nomination, the Speaker shall within three days communicate its decision to the President to submit fresh nominations;</p> <p>(10) Where a nominee is rejected by Parliament under subsection (7), the President shall within seven days, submit to the National Assembly a fresh nomination from amongst the persons short listed and forwarded by the Public Service Commission under subsection (5);</p> <p>(11) If Parliament rejects all or any subsequent nominee submitted by the President for approval under subsection (10), the provisions of subsection (7) shall apply;</p> <p>(12) The President shall, within seven days, by notice in the gazette, appoint the chairperson and members approved and forwarded by the National</p>
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	<p>Assembly;</p> <p>(13) In short listing, nominating or appointing persons as Chairperson and members of the Commission, the Public Service Commission, Parliament and the President shall ensure that not more than two-thirds of the members are of the same gender.</p>
<p>Powers of the Chairperson.</p>	<p><b>23.</b> (1) The chairperson shall, within seven days of the appointment of the members, convene the first meeting of the Commission at which the members shall elect the vice-chairperson of the Commission from amongst the members.</p> <p>(2) The chairperson shall—</p> <ul style="list-style-type: none"> <li>(a) preside over all meetings of the Commission;</li> <li>(b) be the spokesperson for the Commission; and</li> <li>(c) Supervise and direct the work of the Commission.</li> </ul>
<p>Tenure of office</p>	<p><b>24.</b> (1) The chairperson, vice-chairperson and members of the Commission shall be appointed for a single term of six years and are not eligible for re-appointment.</p> <p>(2) The chairperson and vice-chairperson of the Commission shall serve on a full-time basis.</p>
<p>Vacancy of the office of the Chairperson or member of the Commission.</p>	<p><b>25.</b> (1) The office of the chairperson or a member shall become vacant if the holder—</p> <ul style="list-style-type: none"> <li>(a) dies;</li> <li>(b) by a notice in writing addressed to the President resigns from office;</li> <li>(c) is convicted of an offence and sentenced to imprisonment;</li> <li>(d) is unable to discharge the functions of his office by reason of physical or mental infirmity;</li> <li>(e) is absent from three consecutive meetings of the Commission without</li> </ul>

	<p>good cause; or</p> <p>(f) is declared bankrupt.</p> <p>(2) The chairperson or a member may be removed from office for misbehavior or misconduct incompatible with the functions of the Commission.</p> <p>(3) The President shall notify every resignation, vacancy or termination in the Gazette within seven days.</p>
<p>Removal from office.</p>	<p><b>26.</b> The Chairperson or a member of the Commission may be removed from office in accordance with Article 251 of the Constitution.</p>
<p>Filling of vacancy.</p>	<p><b>27.</b> (1) Where a vacancy occurs in the membership of the Commission the appointment procedure prescribed under Section 15 shall be followed in order to fill the vacancy.</p> <p>(2) The member so appointed under subsection (1) shall serve for the remainder of the term.</p>
<p>Appointment of Secretary.</p>	<p><b>28.</b> (1) There shall be a Secretary of the Commission who shall be appointed by the Commission through a competitive recruitment process.</p> <p>(2) The Secretary shall be the Chief executive officer of the Commission and head of the Secretariat and shall be responsible to the Commission.</p> <p>(3) The Secretary shall hold office for a period of five years and shall be eligible for re-appointment for a further term of five years.</p> <p>(4) The Secretary may be removed by the Commission only for—</p> <p>(a) inability to perform the functions of his office arising out of physical or mental incapacity;</p> <p>(b) misbehavior or misconduct; or</p> <p>(c) incompetence.</p> <p>(5) The Secretary must, before being removed under subsection (4)-</p> <p>(a) informed in writing of the case against him;</p> <p>(b) given an opportunity to put in a defence against any such allegations either in person or through an advocate.</p>

Oath of office.	<b>29.</b> The Chairperson, members and the Secretary shall each make and subscribe before the Chief Justice the oath or affirmation set out in the First Schedule.
Committees of the Commission.	<b>30.</b> (1) The Commission may from time to time establish committees for the better carrying out of its functions.  (2) The Commission may co-opt into the membership of committees established under subsection (1) other persons whose knowledge and skills are found necessary for the functions of the Commission.
Procedure of the Commission.	<b>31.</b> (1) Subject to this section, the Commission shall regulate its own procedure.  (2) The Commission shall meet at such times and such places as the Commission shall consider necessary for the discharge of its functions under the Constitution and this Act but shall meet at least once every month.  (3) The quorum of the Commission shall be two-thirds of its members.
Terms and conditions of service.	<b>32.</b> (1) The salaries and allowances payable to, and other terms and conditions of service of the chairperson and the members shall be determined by the Salaries and Remuneration Commission.  (2) The salaries and allowances provided for under subsection (1) shall be charged on the Consolidated Fund.
Appointment of Staff.	<b>33.</b> (1) The Commission may appoint such officers and other staff as are necessary for the proper discharge of its functions under this Act, upon such terms and conditions of service.  (2) The officers and other staff appointed under subsection (1) shall serve on such terms and conditions as the Commission, in consultation with the Salaries and Remuneration Commission may determine  (3) The government may, upon request by the Commission, second to the Commission such number of public servants as may be necessary for the purposes of the Commission.  (4) A public servant seconded to the Commission shall, during the period of secondment, be considered an officer of the Commission

	and shall be subject only to the direction and control of the Commission.
The common seal of the Commission.	<p><b>34.</b> (1) The Common seal of the Commission shall be kept in such custody as the Commission shall direct and shall not be used except on the order of the Commission.</p> <p>(2) The common seal of the Commission when affixed to a document and duly authenticated shall be judicially and officially noticed and unless the contrary is proved, any necessary order or authorization of the Commission under this section shall be presumed to have been duly given.</p>
Protection from personal Liability.	<p><b>35.</b> No matter or thing done by a member of the Commission or any officer, employee or agent of the Commission shall, if the matter or thing is done in good faith for executing the functions, powers or duties of the Commission, render the member, officer, employee or agent personally liable to any action, claim or demand whatsoever.</p>
<b>PART V — FINANCIAL PROVISIONS.</b>	
Funds of the Commission.	<p><b>36.</b> The funds of the Commission shall consist of—</p> <p>(a) monies provided by Parliament for the purposes of the Commission;</p> <p>(b) such monies or assets as may accrue to the Commission in the course of the exercise of its powers or the performance of its functions under this Act; and</p> <p>(c) all monies from any other source provided, donated or lent to the Commission, provided that such donations and grants shall not be made or received for purposes of influencing the decision or ability of the Commission in any way and shall be disclosed in the annual report of the Commission.</p>
Financial year.	<p><b>37.</b> The financial year of the Commission shall be the period of twelve months beginning first July and ending on the thirtieth June in each year.</p>
Annual estimates.	<p><b>38.</b> (1) Before the commencement of each financial year, the Commission shall cause to be prepared estimates of the revenue and expenditure of the Commission for that year.</p> <p>(2) The annual estimates shall make provision for all the estimated expenditure of the Commission for the financial year concerned and in particular, shall provide for the —</p> <p>(a) payment of the salaries, allowances and other charges in respect of the</p>



	<p>staff of the Commission;</p> <p>(b) payment of pensions, gratuities and other charges and in respect of benefits which are payable out of the funds of the Commission;</p> <p>(c) maintenance of the buildings and grounds of the Commission;</p> <p>(d) funding of training, research and development of activities of the Commission;</p> <p>(e) 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 Commission may think fit.</p>
<p>Accounts and audit</p> <p>Act No. 12 of 2003</p>	<p><b>39.</b> (1) The Commission shall cause to be kept all proper books and records of account of the income, expenditure, assets and liabilities of the Commission.</p> <p>(2) Within a period of three months after the end of each financial year, the Commission shall submit to the Auditor-General the accounts of the Commission in respect of that year together with a —</p> <p>(a) statement of the income and expenditure of the Commission during that year; and</p> <p>(b) statement of the assets and liabilities of the Commission on the last day of that financial year.</p> <p>(3) The annual accounts of the Commission shall be prepared, audited and reported upon in accordance with the provisions of the Constitution and the Public Audit Act, 2003.</p>
<p>Bank accounts.</p>	<p><b>40.</b> The Commission shall open and maintain such bank accounts as are necessary for the performance of its functions.</p>
<p>Investment of funds.</p>	<p><b>41.</b> The Commission may —</p> <p>(a) invest any of its surplus funds in Government securities;</p> <p>(b) place on deposit with such banks as it may determine, any moneys not immediately required for the purposes of the Commission.</p>

**PART VI — MISCELLANEOUS PROVISIONS**

<p>Reporting by the Commission.</p>	<p><b>42.</b> (1) The Commission shall cause an annual report to be prepared for each financial year and submit to the President and the National Assembly within six months after the end of the year to which it relates.</p> <p>(2) The annual report shall contain, in respect to the year it relates—</p> <ul style="list-style-type: none"> <li>(a) the financial statements of the Commission;</li> <li>(b) the activities the Commission has undertaken;</li> <li>(c) recommendations on specific actions to be taken in furtherance of the Commission’s findings;</li> <li>(d) recommendations on legal and administrative measures to address specific concerns identified by the Commission; and</li> <li>(e) any other information the Commission may consider relevant.</li> </ul> <p>(3)The Commission shall publish the report in the Gazette and in at least one newspaper with national circulation.</p> <p>(4) At any time, the President, the National Assembly or the Senate may require the Commission to submit a report on a particular issue.</p>
<p>Report to the National Assembly on the implementation of report</p>	<p><b>43.</b> (1) The Cabinet Secretary shall, in accordance with Article 153(4)(b) of the Constitution, report to the National Assembly on an annual basis on the implementation of the Commission’s recommendations.</p> <p>(2) Where the implementation of any of the recommendations has not been complied with, the Cabinet Secretary shall inform the National Assembly of the reasons thereof.</p>
<p>Exclusion of certain matters.</p>	<p><b>44.</b> The Commission shall not investigate –</p> <ul style="list-style-type: none"> <li>(a) any matter which is pending before a court or a judicial tribunal;</li> <li>(b) a matter essentially involving the relations or dealings between the Government and the Government of any foreign state or international organisation recognized as such under international law; or</li> <li>(c) a matter relating to the exercise of the prerogative of mercy.</li> </ul>
<p>Regulations.</p>	<p><b>45.</b> The Commission may make regulations generally for the better carrying into effect of the provisions of this Act.</p>

	<b>PART VII- SAVING AND TRANSITIONAL PROVISIONS</b>
Saving Provisions	<p><b>46.</b> (1) A person who immediately before the commencement of this Act, was the Chairperson, Vice Chairperson or member of the Kenya National Commission on Human Rights shall on the enactment of this Act continue to hold or act in that office under the Constitution and this Act for the unexpired period, if any, of the term of the person.</p>
Transfer of staff of the Kenya National Commission on Human Rights.	<p><b>47.</b> (1) Every person who immediately before the commencement of this Act was an employee of the Government attached to the Kenya National Commission on Human Rights may, upon the commencement of this Act, be deemed to be an employee of the Commission for the unexpired period, if any, of the term of the person.</p> <p>(2) A person who immediately before the commencement of this Act has been serving on a contract as a member of staff of the Kenya National Commission on Human Rights shall, at the commencement of this Act be deemed to be an employee of the Commission for the unexpired period, if any, of the term of the person.</p>
Transition	<p><b>48.</b> Notwithstanding the provisions of this Act-</p> <p>(1) any orders or notice made or issued by the Kenya National Commission on Human Rights shall be deemed to have been made or issued under this Act.</p> <p>(2) any function carried out by the Kenya National Commission on Human Rights shall be deemed to have been carried out under this Act.</p> <p>(3) any appointment made by the President with the approval of the National Assembly before the first elections under the Constitution, shall be done after consultation with the Prime Minister; and</p> <p>(4) the functions of the Cabinet Secretary shall be performed by the Minister for the time being in charge of gender issues, until after the first election under the Constitution.</p>
Transfer of property to the Commission	<p><b>49.</b> All property which immediately before the commencement of this Act was vested in the Kenya National Commission on Human Rights shall, at the commencement of this Act, vest in the Commission subject to all interest,</p>

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	liabilities, charges, obligations and trusts affecting such property

<b>FIRST SCHEDULE</b>	
<b>OATH/AFFIRMATION OF THE OFFICE OF CHAIRPERSON/A MEMBER/SECRETARY</b>	
	<p>1 ..... having been appointed (the chairperson/member of /Secretary to) the Kenya National Human Rights Commission under the Kenya National Human Rights Commission Act, 2011, do solemnly (swear/ declare and affirm) that I will at all times obey, respect and uphold the Constitution of Kenya and all other laws of the Republic; that I will faithfully and fully, impartially and to the best of my ability, discharge the trust and perform the functions and exercise the powers devolving upon me by virtue of this appointment without fear, favour, bias, affection, ill-will or prejudice. (SO HELP ME GOD).</p> <p>Sworn/Declared by the said .....</p> <p>Before me this ..... Day of .....</p> <p>.....</p> <p>Chief Justice.</p>

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**MEMORANDUM OF OBJECTS AND REASONS**

The main object of this Bill is to provide for the qualifications and appointment procedure of chairperson and members of the Kenya National Human Rights Commission established under Article 59 of the Constitution. The Commission is established primarily to promote the respect and protection of human rights in the Republic.

The Constitution establishes a presidential system of Government. In such models, appointment to key offices originates from the Executive. Under Art 250 the role of Parliament is to approve the person nominated by the Executive.

**Part II** provides for the powers and functions of the Commission as provided for under the Constitution.

**Part III** provides for the National Human Rights Tribunal.

**Part IV** deals with the administrative framework of the Commission. **Clause 21** provides for the qualification of the Chairperson and members.

**Clause 22** provides for the procedure of appointment and requires the President to declare the vacancies at the Commission in the Gazette. Applicants can then forward their applications to the National Assembly. The National Assembly shall then cause the Committee to identify and shortlist persons qualified to hold the position of chairperson and members respectively. The Committee shall forward the names of the shortlisted person to the National Assembly which shall nominate twelve persons for appointment by the President in consultation with the Prime Minister.

**Clause 28** provides for the appointment of the Secretary to the Commission. It requires that the Secretary be appointed competitively.

**Part V** provides for the financial affairs of the Commission.

**Part VI** deals with miscellaneous matters. **Clause 42** requires the Commission to make its annual report six months after every financial year. The report is to be forwarded to the President and Parliament.

**Part VII** provides for the transition from the Kenya National Commission on Human Rights to the Commission established under this Act. **Clause 46** provides that the Chairperson, Vice-chairperson and members of the Kenya National Commission on Human Rights shall continue in office for the unexpired period, if any, of the term of their office. The Part also requires appointments under this Bill to be made by the President in consultation with the Prime Minister.

**Dated 9<sup>th</sup> March, 2011**