

**INDEPENDENT COMMUNICATIONS COMMISSION OF KENYA  
BILL, 2010**

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**THE INDEPENDENT COMMUNICATIONS COMMISSION OF  
KENYA BILL, 2010**

**A Bill for**

**AN ACT of Parliament To provide for the establishment of the Independent Communications Commission of Kenya; to provide for the dissolution of the Communications Commission of Kenya; to transfer the functions of the Communications Commission of Kenya to the Independent Communications Commission of Kenya; to amend the Media Act 2007, The Information and Communications Act, 1998 and to provide for matters connected therewith.**

**PREAMBLE**

Recognizing that technological advancements has resulted in convergence in the fields of broadcasting, information technology and telecommunications, ;

Acknowledging that the establishment of an independent body to regulate the airwaves and other forms of signal distribution is required in compliance with the Constitution of Kenya, 2010.

**ENACTED** by Parliament of Kenya, as follows —

**PART 1  
INTRODUCTORY PROVISIONS**

**1. Definitions**

1. In this Act, unless the context indicates otherwise, any word or expression defined in the Information and Communications Act, 1998 has the meaning assigned to it in the Act and:

**"Commission"** means the Independent Communications Commission of Kenya established by section 3;

**"effective date"** means the date determined as such by the Minister by notice in the *Gazette*;

**"former Commission"** means the Communications Commission of Kenya established under section 3 of the Information and Communications Act;

**"family member"**, in relation to any person, means his or her parent, child

or spouse, and includes a person living with that person as if they were married to each other;

"**Minister**" means the Minister for the time being in charge of Information and Communications;

"**Consolidated Fund**" means the Fund referred to in section 213 of the Constitution

"**prescribe**" means prescribe by regulation;

"**President**" means the President of the Republic;

"**Information and Communications Act**" means the Information and Communications Act, 1998 (Act No. 2 of 1998);

"**This Act**" includes any regulation made under the Information and Communications Act;

**2. Object of Act** 2. The object of this Act is to establish an independent Commission which :-

- (a) is independent of control by government, political or commercial interests;
- (b) reflects the interests of all sections of the society;
- (c) sets media standards and regulate and monitor compliance with those standards as required by section 34 of the Constitution
- (d) regulate communications in the public interest; and
- (e) Achieve the objects contemplated in the Act.

## **PART II**

### **INDEPENDENT COMMUNICATIONS COMMISSION OF KENYA**

**3. Establishment of** 3. (1) There is hereby established the Independent Communications Commission of Kenya.

**Independent  
Communications  
Commission  
of Kenya**

- (2) The Commission 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 for the proper discharge of its functions under this Act.
- (3) The Commission acts through the Chairman as contemplated in section 5.
- (4) The Commission is independent, and subject only to the Constitution and the law, and must be impartial and must perform its functions without fear, favour or prejudice.
- (5) The Commission must function without any political or commercial interference.

**4. Functions of  
Commission**

- 4.(1) The Commission —
- (a) must perform the duties imposed upon the former Commission by or under the Act;
  - (b) may exercise and continue the exercise of the powers conferred upon the former Commission by or under the Act;
  - (c) subject to CHAPTER 4, Part 2 of the Constitution, must act in a manner that is consistent with the obligations of the Republic under any applicable international agreement.
- (2) The Commission is subject to the Public Finance Management Act, 1999 (Act No. 1 of 1999).

**5. Constitution of  
and appointment  
of Commissioners  
to Commission**

5. (1) The Commission consists of seven Commissioners appointed by the President on the recommendation of the Public Service Commission according to the following principles—
- (a) The Minister in consultation with the Public Service Commission shall, within seven days of the commencement of this Act, by notice in the Gazette declare vacancies in the Commission and request for

applications.

- (b) An application under subsection (a) shall be forwarded to the Public Service Commission within fourteen days of the notice and may be made by any –
    - (i) qualified person; or
    - (ii) person, organization or group of persons proposing the nomination of any qualified person;
  - (c) The Public Service Commission shall consider the applications, interview and shortlist at least two persons qualified for appointment as chairperson and nine persons who qualify for appointment as members;
  - (d) The President shall, within seven days, by notice in the Gazette, appoint the chairperson and members approved and forwarded by the Public Service Commission.
- (2) In the absence of the chairperson, the remaining Commissioners must from their number elect an acting chairperson, who, while he or she so acts, may perform all the functions of the chairperson.
- (3) Persons appointed to the Commission must be persons who—
- (a) are committed to fairness, freedom of expression, openness and accountability on the part of those entrusted with the governance of a public service; and
  - (b) when viewed collectively—
    - (i) are representative of a broad cross section of the population of the Republic; and
    - (ii) possess suitable qualifications, expertise and experience in the fields of, amongst others, broadcasting telecommunications, law, media, and economics, or any other related expertise or qualifications.
- (4) A Commissioner appointed under this section shall, before he or she begins to perform his or her functions, take an oath or affirm that he or she—
- (a) is committed to fairness, freedom of expression, openness and accountability; and

- (b) will uphold and protect the Constitution and the laws of the Republic, including this and other Acts.

**6. Disqualification**

- 6. (1) A person may not be appointed as a Commissioner if he or she—
  - (a) is not a citizen of the Republic;
  - (b) is a public servant or the holder of any other remunerated position under the State;
  - (c) is a member of Parliament, any county legislature, local authority or any state official;
  - (d) is an office-bearer or employee of any party, movement or organization of a party political nature;
  - (e) or his or her family member has a direct or indirect financial interest in the sector;
  - (f) or his or her business partner or associate holds an office in or with, or is employed by, any person or body, whether corporate or unincorporated, which has an interest contemplated in paragraph (f);
  - (g) is an un-discharged bankrupt;
  - (h) has been declared by a court to be mentally ill or disordered;
  - (i) has at any time been convicted, whether in the Republic of elsewhere, of—
    - (j) theft, fraud, forgery or uttering a forged document, perjury, an offence in terms of the Anti-Corruption and Economic Crimes Act, 2003 (Act No. 94 of 2003), or any other offence involving dishonesty; or
    - (k) an offence under this Act or the underlying statutes;
  - (l) has been sentenced to a period of imprisonment of not less than one year without the option of a fine; or
  - (m) has at any time been removed from an office of trust on account of misconduct.

- (2) A person who is subject to a disqualification contemplated in subsection (1) (b) to (i) may be nominated for appointment as a Commissioner, but may only be appointed if at the time of such appointment he or she is no longer subject to that disqualification

**7. Terms of office**

- 7. (1) The chairperson holds office for a period of five years as from the date of his or her appointment
- (2) the other Commissioners hold office for a period of four years as from the date of their appointment
- (3) A Commissioner may at any time, upon written notice tendered to the President, resign from office.
- (4) Despite subsections (1) and (2), the Commissioner remain in office after expiry of their term of office until the commencement of the term of office of their successors, but the extended term of office may not exceed 45 days
- (5) A Commissioner may at the end of his or her term of office be reappointed in terms of section 5 for one additional term.
- (6) Every Commissioner serves in a full-time capacity to the exclusion of any other remunerative employment, occupation or office which is likely to—
  - (a) interfere with the exercise by any such Commissioner of his or her functions in terms of this Act or other law; or
  - (b) create a conflict of interests between such employment, occupation or office and his or her office as Commissioner.

**8. Removal from office**

- 8. (1) Subject to subsection (2), a Commissioner may be removed from office on account of—
  - (a) a serious violation of the Constitution or any other law including a contravention of Chapter Six of the Constitution;
  - (b) gross misconduct, whether in the performance of the

member's or office holder's functions or otherwise inability to perform the duties of his or her office efficiently;

- (c) absence from three consecutive meetings of the Commission without the permission of the Commission, except on good cause shown;
- (d) physical or mental incapacity to perform the functions of office;
- (e) incompetence; or
- (f) Bankruptcy
- (g) a contravention of section 7(6);
- (h) failure to disclose an interest in terms of section 12(2)(a) or voting or attendance at, or participation in, proceedings of the Commission while having an interest contemplated in section 12(1); or
- (i) his or her becoming disqualified as contemplated in section 6(1).

**9. Vacancies**

9. (1) A vacancy in the Commission occurs if a Commissioner —
- (a) becomes subject to a disqualification referred to in section 6;
  - (b) tenders his or her resignation as contemplated in section 7(3) and the resignation takes effect;
  - (c) is removed from office in terms of section 8;
  - (d) dies; or
  - (e) becomes permanently incapable of doing his or her work.
- (2) (a) Where a vacancy has arisen as contemplated in subsection (1), the procedure contemplated in section 5 applies.

**10. Remuneration**

10. The Chairperson and other Commissioners shall be paid such remuneration and allowances and be entitled to such benefits as the Minister



may determine with the concurrence of the Minister of Finance, subject to any applicable national legislation envisaged by Section 230 of the Constitution.

**11. Meetings of Commission**

11. (1) (a) Meetings of the Commission shall be held at such times and places as the Commission may determine.

(b) However, the first meeting must be held at such time and place as the Chairperson determines.

(2) (a) The Chairperson may at any time convene a special meeting of the Commission, which must be held at such time and place as the Chairperson determines.

(b) If at least three Commissioners request a special meeting in writing, the chairperson shall convene such a meeting within seven days after receiving the request.

(c) If the Chairperson fails to convene a special meeting within seven days after receiving the request, the Commissioners concerned may convene a special meeting

(3) The quorum for any meeting of the Commission is a majority of the Commissioners in office at the time.

(4) (a) Subject to subsection (3), a decision of the Commission is taken by resolution agreed to by the majority of Commissioners at any meeting of the Commission.

(b) In the event of an equality of votes regarding any matter the chairperson has a casting vote in addition to his or her deliberative vote.

**12. Conflict of interest**

12. (1) (a) A Commissioner may not vote at, attend or in any other manner participate in, any meeting or hearing of the Commission, nor be present at the place where the meeting is held if—

(b) in relation to an application relating to a licence, he or she or his or her family member is a director, member or business partner or associate of or has an interest in the business of the applicant or of any person who made representations in relation to the application;

or

(c) in relation to any matter before the Commission, he or she has any interest which may preclude him or her from performing his or her functions as a Commissioner in a fair, unbiased and proper manner

- (2) (a) If, during the course of any proceedings before the Commission, there is reason to believe that a Commissioner has any interest contemplated in subsection (1), that Commissioner must immediately fully disclose the nature of his or her interest and leave the meeting or hearing in question so as to enable the remaining Commissioners to discuss the matter and determine whether or not that Commissioner should be allowed to participate in the proceedings.
- (b) The disclosure, and the decision taken by the remaining Commissioner, must be recorded in the minutes of the proceedings in question.
- (3) If any Commissioner fails to disclose any interest as required by subsection (2) or, subject to that subsection, if he or she is present at the place where a meeting of the Commission is held or in any manner participates in the proceedings of the Commission, the relevant proceedings of the Commission shall be null and void.
- (4) A Commissioner is guilty of an offence and liable on conviction to a fine not exceeding Kshs2,000,000 or to imprisonment for a period not exceeding five years, or to both such fine and imprisonment, if he or she—
- (a) contravenes subsection (1); or
- (b) fails to disclose any interest or fails to leave the meeting or hearing as required by subsection (2).

**13. Validity of proceedings**

13. Subject to section 12, a decision taken by the Commission or an act performed under that decision is not invalid merely by reason of—
- (a) any irregularity in the appointment of a Commissioner;
- (b) a vacancy in the Commission ; or

- (c) the fact that any person not entitled to sit as a Commissioner sat as such at the time when the decision was taken provided such decision was taken by a majority of the Commissioners present at the time and entitled so to sit, and those Commissioners at the time constituted a quorum.

**14. Staff to the Commission**

14. (1) The Commission shall establish its own administration to assist the Commission in the performance of its functions and to this end the Commission shall appoint—

- (a) a suitably qualified and experienced person designated as the Director-General to the Commission as the chief executive officer of the Commission for the purpose of assisting the Commission, subject to the Commission's direction and control, in the performance of all financial, administrative and clerical functions and work arising from the administration of this Act; and
- (b) such other staff as the Commission may deem necessary to assist the Commission with all such work as may arise through the performance of its functions.

(2) The Commission shall, in the appointment of its staff—

- (a) provide for the advancement of persons disadvantaged by unfair discrimination, with the aim that its staff, when viewed collectively represents a broad cross-section of the population of the Republic
  - (b) subject to paragraph (a), apply equal opportunity employment practices.
- (3) The Commission may pay to the persons in its employ such remuneration and allowances and provide them with such pension and other employment benefits as the Commission may determine and subject to any applicable national legislation envisaged by section 230 of the Constitution.

**15. Financing of and accounting by Commission**

15. (1) The funds of the Commission shall be as envisaged in Section 17 of the Information and Communications Act, No. 2 of 1998.

(2) The chief executive officer contemplated in section 14(1)(a) is, in accordance with section 36 of the Public Finance Management Act,

1999 (Act No. 1 of 1999), the accounting officer of the Commission and charged with the responsibilities referred to in that Act which include, amongst others, responsibilities regarding auditing, financial control, budgetary control and reporting

**16. Annual report**

16. (1) The Commission shall—

- (a) supply the Minister with an annual report of the operations of the Commission for the immediately preceding year or such information and particulars as he or she may in writing require ; and
- (b) as soon as may be reasonably practicable after the end of each financial year but in any event within three months of the end of the financial year, supply the Minister with a copy of

the annual report of the Commission ;

(2) For purposes of this section, the annual report referred to in subsection (1)(b)(i) must include, amongst others—

- (a) information regarding licences granted, renewed, amended, transferred, suspended or revoked; and
- (b) such other information in connection with the activities of the Commission as the Minister may in writing require.

(3) The Minister shall table a copy of the annual report in Parliament within 30 days after it has been received by him or her if Parliament is then sitting and, if Parliament is not in sitting, within 14 days after the next ensuing sitting of Parliament,

**PART III**

**COMMITTEES**

**17. Standing and special committees**

17. (1) The Commission may establish standing committees or special committees for such purposes as the Commission may deem necessary with a view to assisting it in the effective exercise and performance of its powers and duties.

- (2) Each committee established in terms of this section must consist of—
  - (a) one or more Commissioners designated by the Commission ; and
  - (b) such additional members as the Commission may determine.
- (3) The additional members referred to in subsection (2)(b) must be persons who—
  - (a) are not subject to any disqualification contemplated in section 6(1)(d) to (i); and
  - (b) on account of their expertise, qualifications and experience are suited to serve on the relevant committee.
- (4) The Commission shall appoint the chairperson of each committee from the Commissioners designated in terms of subsection (2)(a).
- (5) A committee shall perform such functions as may be delegated or assigned to it.
- (6) The meetings of a committee (including any special meetings) shall be convened by the chairperson, who determines the procedure at the meeting.
- (7) Section 11 is applicable, with the necessary changes, as regards the meetings of any committee.
- (8) The members of any committee, who are not Commissioners or members of the staff of the Commission shall be paid such remuneration and allowances as the Commission may determine.

#### **PART IV**

#### **TRANSITIONAL PROVISIONS**

**18. Dissolution of CCK and first meeting of the Commission**

18. (1) The CCK is hereby dissolved with effect from the effective date.
- (2) (a) The Board of the former Commission referred to in section 3 (2) of

the Information and Communications Act, 1998 remain in office until immediately before the commencement of the first meeting of the Commission .

- (3) The first meeting of the first Commission constituted in terms of section 5 must be held within three months of the effective date.

**19. Transfer of staff**

19. (1) (a) Every person appointed under section 14 of the Information and Communications Act, 1998 who is in the service of the CCK immediately before the effective date, is, as from that date, hereby transferred to the service of the Commission

- (b) Every person so transferred must be regarded as having been appointed in terms of section 14.

(2) The remuneration and other terms and conditions of service of any person transferred as contemplated in subsection (1) may not be less favourable than the remuneration terms and conditions applicable to that person immediately before the effective date, and he or she remains entitled to all rights, benefits and privileges to which he or she was entitled immediately before that date, including, where applicable -

- (a) membership of a pension fund;
- (b) membership of a medical aid scheme;
- (c) employer contributions in connection with the memberships contemplated in paragraphs (a) and (b);
- (d) accrued pensionable service;
- (e) accrued leave benefits; and
- (f) retirement at a specific age.

(3) Any person transferred to the service of the Commission as contemplated in subsection (1), who immediately before such transfer was a member of a pension fund of the former Commission, remains a member of that pension fund upon such transfer despite any provision to the contrary in any law or in the rules of that pension fund and the Commission must contribute to the pension fund in respect of that person to the same extent as an employer is required in terms of the laws and rules regulating that pension fund to contribute in respect of

an employee who is a member of that fund.

**20. Transfer of rights, liabilities, obligations**

20. (1) All assets, rights, liabilities and obligations which, immediately before the effective date, vest in the former Commission pass to the Commission on that date.

(2) The registrar of deeds must make the necessary entries or endorsements for the transfer of any property in terms of subsection (1), and no transfer fee, office fee or other charge is payable in respect of that entry or endorsement.

(3) All licences issued, rights granted and undertakings given by the former Commission by or under the underlying statutes shall be deemed to have been issued, granted or given by the Commission.

**21. Legal proceedings**

21. (1) Any application, proceedings or similar matter pending before the former Commission at the effective date must be dealt with by the Commission under the relevant law.

(2) Any order, ruling or direction made or given by the former Commission immediately before the effective date must be regarded as having been made or given by the Commission.

**22. Legality of acts**

22. (1) Anything done before the commencement of this Act under or in terms of a provision repealed or amended by this Act must be regarded, unless clearly inappropriate, to have been done under or in terms of the corresponding provision of this Act.

(2) Any reference to the former Commission in any law must be regarded, unless clearly inappropriate, to be a reference to the Commission.

(3) The Commission is the legal successor of the former Commission in the event of any conflict between the provisions of this Act and any other prior law relating to the regulation of broadcasting and telecommunications, the provisions of this Act prevail.

**23. Amendments to Statute Law**

23. The Several written laws specified in the First Column of the First Schedule are amended, in the provisions thereof specified in the Second column, in the manner respectively specified in the Third Column.

**FIRST SCHEDULE**

**LAWS AMENDED OR REPEALED**

<b>First Column</b>	<b>Second Column</b>	<b>Third Column</b>
	<b>Year of law and Number</b>	<b>Extent of Amendment or Repeal</b>
	1998, Act Number 2	<p>(1) The amendment of section 1 by the substitution for the definitions of the following definitions, respectively:</p> <p>(a) " Commission" means the Independent Communications Commission of Kenya established by section 3 of the Independent Communications Commission of Kenya Act, 2010;"</p> <p>(b) " 'chairperson' means the chairperson appointed under section 5(1) of this Act,</p> <p>(c) Substitution of the word " Board" with "Commission"</p> <p>(d) " Commissioner" means any Commissioner appointed under section 5(1) of this Act,</p> <p>(2) The repeal of section 3(1)</p> <p>(3) The repeal of section 6.</p> <p>(4) The repeal of section 8.</p> <p>(5) The repeal of section 9.</p> <p>(6) The repeal of section 10.</p> <p>(7) The repeal of section 11.</p> <p>(8) The repeal of section 12.</p> <p>(9) The repeal of section 13.</p>



Media Act, 2007

- (10) The repeal of section .....
- (11) The repeal of section .....
- (12) The repeal of section .....
- (13) The repeal of section 46S
- (14) The First Schedule
- (15) The Repeal

### **MEMORANDUM OF OBJECTS AND REASONS**

The principal object of the Bill is to provide for the establishment of an Independent Communication Commission to carry out the functions under the Information and Communications Act, 1998 and in keeping with the requirements of the Constitution of Kenya.

The Bill is borne of the realization that any law that is inconsistent with the Constitution is null and void to the extent of the inconsistency

**Part I** of the Bill contains preliminary provisions.

**Part II** contains provisions on the establishment of the Independent Communications Commission of Kenya and appointment of Commissioners, their disqualification, Terms of office, Removal from offices, Vacancies and Remuneration

The part further provides for Meetings of the Commission, resolution of sittings at meetings in case of Conflicting interests, Validity of proceedings

It also provides for the Staff and Financing of and accounting by Commission including reporting mechanisms in the Annual report

**Part III** contains provisions on the setting up of standing and other Committees of the Commission.

**Part IV** contains provisions on transitional issues in relation to staff, assets, liabilities, proceedings, licences amongst others in relation to the Commission and the former Commission.

**Part V** contains powers and remedies of the Commission in relation to violation of data protection principles and provides for damages that may be awarded.

The enactment of this Bill will not occasion additional expenditure of public funds.

Dated the ....., 2010.

**SAMUEL POGHISIO,**  
**Minister of Information and Communications.**