

THE DRAFT TRIBUNALS BILL, 2015

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THE TRIBUNALS BILL 2015

A BILL FOR

An Act of Parliament to give effect to Articles 1(3)(c), 20(4), 47(3), 159(1) and 169 of the Constitution regarding Tribunals; to establish the Council of Tribunals; to provide for the structure and membership of the Council; to establish the Tribunals Appeals Board; to regulate the administration and functions of Tribunals; and for connected purposes.

ENACTED by Parliament as follows —

PART I — PRELIMINARY

Short title and commencement.

1. (1) This Act may be cited as the Tribunals Act, 2015 and comes into force on such date as the Cabinet Secretary may by notice in the Gazette appoint and different dates may be appointed for different provisions.

(2) Despite subsection (1), the Act comes into operation within six months of assent.

Interpretation.

2. In this Act—

“Appeals Board” means the Tribunals Appeals Board established under section 30;

“Cabinet Secretary” means the Cabinet Secretary responsible for justice;

“Chairperson” means the chairperson of the Council, Appeals Board or Tribunal;

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

“Council” means the Council of Tribunals established under section 5;

“Deputy Registrar” means a Deputy Registrar seconded to the Council;

“Fund” means the Tribunals Fund established by the Council under this Act;

“member” means a member of the Council, Appeals Board or Tribunal;

“secretary” means the Secretary to the Council;

“Regulations” means the regulations made under this Act;

“Rules Committee” means the Tribunal Rules Committee established under this Act; and

“Tribunal” means a Tribunal established by an Act of Parliament.

Objects and purposes of the Act.

3. The objects and purposes of this Act are to provide a legislative framework—

- (a) to rationalize and regulate Tribunals;
- (b) to streamline the governance and operations of Tribunals;
- (c) to provide for a reasonable standard for the establishment of Tribunals;
- (d) to set appropriate qualifications for chairpersons and members of Tribunals;
- (e) to bring all Tribunals under a single administrative regime and coordinate the functions of Tribunals;
- (f) to ensure expeditious settlement of disputes by Tribunals;
- (g) to enhance access to justice; and
- (h) to improve quality of service delivery by Tribunals.

Application of the Act.
No.4 of 1995

4. This Act applies to all Tribunals except those established by the Constitution and arbitral tribunals established under the Arbitration Act.

PART II —THE COUNCIL OF TRIBUNALS

Establishment and composition of the Council.

5. (1) There is established a Council to be known as the Council of Tribunals.

(2) The Council is a body corporate with perpetual succession and a common seal, and is in its corporate name 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 the Constitution, this

Act or any written law, as may be lawfully done or performed by a body corporate.

(3) The members of the Council comprise—

- (a) the Chief Justice who is the Chairperson;
- (b) the Attorney General;
- (c) the Chief Registrar of the Judiciary;
- (d) one person nominated by the Law Society of Kenya;
- (e) one person nominated by the Association of Professional Societies in East Africa;
- (f) two persons nominated by the Tribunals; and
- (g) the Secretary who is Chief Executive Officer of the Council.

(4) The Chairperson and members of the Council are appointed by the President.

(5) The agencies nominating persons under subsection (3) (d), (e) and (f) must—

- (a) submit the names of the nominees to the President within 21 days of the commencement of the Act;
- (b) ensure that the nomination process is competitive;
- (c) forward to the President, four names representing both genders; and
- (d) ensure the persons nominated meet the requirements of Chapter Six of the Constitution.

(6) The President appoints the members of the Council under subsection (3) within fourteen days of receipt of the names from the nominating agencies.

(7) The procedure for nomination and appointment of members under subsection (3) (d), (e) and (f) is prescribed by the Cabinet Secretary.

(8) The headquarters of the Council are in the capital city, but the Council may establish offices and Tribunals at any other place in Kenya.

(9) The Council must ensure access to its services in all parts of the Republic in accordance with Article 6(3) of the Constitution.

Tenure of members.

6. Members appointed under section 5 (3) (d), (e) and (f) are appointed for a term of three years and are eligible for re-appointment for one further term of three years.

Vacancy of office.

7. (1) The office of the chairperson or a member becomes vacant if the holder—

(a) dies;

(b) resigns from office by notice in writing addressed to the appointing authority;

(c) is convicted of a felony;

(d) completes the member's term of office;

(e) is absent from three consecutive meetings of the Council without good cause; or

(f) is removed from office on any of the following grounds —

(i) gross violation of the Constitution or any other written law;

(ii) gross misconduct or misbehavior;

(iii) inability to perform functions of the office arising out of physical or mental infirmity;

(iv) incompetence or neglect of duty; or

(v) bankruptcy.

(2) A vacancy under this section is filled within three months.

Functions and powers of the Council.

8. (1) The functions and powers of the Council are —

(a) to develop policies for the regulation of Tribunals and the Appeals Board;

(b) to ensure the enhancement of a fair, efficient and accessible Tribunal system and jurisprudence;

(c) to rationalize and determine the Tribunals to be established;

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- (d) to evaluate and recommend the necessity to establish or abolish Tribunals;
- (e) to regulate and oversee the functioning of the Tribunals;
- (f) to set standards and monitor the compliance with the standards by Tribunals in their functioning and service delivery;
- (g) to develop a Code of Conduct for Tribunals and Appeals Board;
- (h) to ensure that Tribunals and the Appeals Board adhere to the provisions of the law, regulations, policies, Code of Conduct, rules or guidelines;
- (i) to provide strategic direction to Tribunals and Appeals Board;
- (j) to facilitate training programmes for members and staff of the Council, Appeals Board and Tribunals;
- (k) to prepare and submit reports to Parliament on the status of the implementation of its functions and obligations under this Act or any other law;
- (l) to facilitate law reporting on decisions of Tribunals and the Appeals Board in consultation with the National Council for Law Reporting;
- (m) to facilitate public education on the role of Tribunals; and
- (n) to perform any other function as may be necessary for the proper discharge of its responsibilities under this Act.

(2) The Council has all powers incidental to and necessary for the effective discharge of its functions under the Constitution, this Act and any other written law.

(3) A ministry, department or agency at either level of government which proposes to establish a Tribunal must consult with the Council.

(4) Notwithstanding the provisions of any other law, no Tribunal is established without the approval of the Council.

(5) The Council may prescribe the manner and procedure for the approval under subsection (4).

(6) A member or employee of the Council who knowingly subverts the operations of Council or who knowingly obstructs the Council in the discharge of its functions or otherwise interferes with the functions of the Council commits an offence.

Conduct
business
quorum.

of
and

9. (1) The business and affairs of the Council are conducted in accordance with the First Schedule.

(2) Except as provided in the First Schedule, the Council may regulate its own procedure.

(3) Any five members present at a meeting of the Council constitute a quorum.

Delegation of powers.

10. The Council may by resolution either generally or in any particular case, delegate to any committee of the Council or to any member, officer, employee or agent of the Council, the exercise of any of the powers or the performance of any of the functions or duties of the Council under this Act.

Committees.

11. (1) The Council may, for the effective discharge of its functions, establish committees.

(2) The Council may co-opt into the membership of a committee established under subsection (1), any person whose knowledge and skills are considered necessary for the effective discharge of the functions of the Council.

Office of the Secretary.

12. (1) There is established the office of the Secretary of Tribunals.

(2) The Council appoints a suitably qualified person to be the secretary through an open, transparent and competitive recruitment process.

(3) A person is qualified for appointment as the Secretary to the Council if the person—

(a) is a citizen of Kenya;

(b) holds a postgraduate degree from a university recognized in Kenya;

(c) has had at least five years proven experience at management level; and

(e) meets the requirements of Chapter Six of the Constitution.

(4) The secretary serves on such terms and conditions of service as the Council may, on the advice of the Salaries and Remuneration, determine.

(5) The Secretary is the chief executive, accounting officer and secretary to the Council.

(6) The Secretary is responsible to the Council in the execution of duties and responsibilities of office.

Responsibilities of the Secretary.

- 13.** (1) The Secretary performs the functions and exercises the powers conferred on the Secretary under this Act or other written law.
- (2) The Secretary is responsible for the day to day management of the secretariat and affairs of the Council.
- (3) The Secretary oversees the general issues of administration of Council, Appeals Board and Tribunals.
- (4) The Secretary is in particular responsible for—
- (a) the establishment of a register of Tribunals and Appeals Board;
 - (b) the transmission and custody of documents in relation to Tribunals and Appeals Board;
 - (c) the enforcement of decisions of the Council, Appeals Board and Tribunals;
 - (d) causing to be kept records of the proceedings and minutes of the meetings of the Council, Appeals Board and Tribunals and such other records as the Council may direct;
 - (e) managing the assets and finances under this Act;
 - (f) preparing proposals on the staffing needs of the secretariats of the Council, Appeals Board and Tribunals;
 - (g) coordinating recruitment and supervision of staff of the Council, Appeals Board and Tribunals; and
 - (h) undertaking any other duties, in relation to the regulation and management of Council, Appeals Board and Tribunals, assigned by the Council under this Act or any other law.

Removal of Secretary.

- 14.** (1) The Secretary may be removed from office by the Council for—
- (a) inability to perform functions of the office arising out of physical or mental infirmity;
 - (b) gross misconduct or misbehavior;
 - (c) incompetence or negligence of duty;
 - (d) gross violation of the Constitution and any other written law;
 - (e) bankruptcy; or
 - (f) any other grounds specified in the terms and conditions of service of Secretary.
- (2) If the question of the removal of the Secretary under subsection (1)

arises, the Council must —

- (a) informs the Secretary in writing of the reasons for the intended removal; and
- (b) gives the Secretary the opportunity to be heard in accordance with the principles of fair administrative action prescribed under Article 47 of the Constitution.

Secretary's power to delegate.

15. Except as provided under this Act or any other law, the Secretary may delegate to a Deputy Registrar, any of the powers or responsibilities vested in the Secretary.

Temporary vacancy of the office of the Secretary.

16. Where the Secretary is temporarily absent from office, the Council may designate a Deputy Registrar to exercise any of the powers or perform any of the duties vested in or assigned to the Secretary by or under this Act or any other written law.

Common Seal.

17. (1) The seal of the Council is kept by the Secretary and is not be used except on order of the Council.

(2)The seal is authenticated by the signature of the chairperson or any other member authorized in that behalf by a decision of the Council and the Secretary.

(3)The seal is officially and judicially noticed and unless the contrary is proved, any order or authorization by the Council under this section is presumed to have been duly given.

Secretariat.

18. (1) There is to be a secretariat of a Tribunal as may be determined by the Council.

(2) The secretariat under subsection(1) consists of—

- (a) such judicial officers as may be seconded by the Commission upon request by the Council;
- (b) such public officers as may be seconded by the Public Service Commission upon the request by the Council; and
- (c) such technical and administrative officers and support staff as may be appointed by the Council under this Act;

(3) The officers and staff under sub-section (2) are appointed upon such terms and conditions of service as the Council may on the advice of the Salaries and Remuneration Commission, determine.

(4) Persons seconded by the Commission under subsection (2)(a) comprise such Deputy Registrars as may be necessary for the

performance of judicial and other administrative functions of the Council, Appeals Board and Tribunals.

PART III — ADMINISTRATION OF TRIBUNALS

Appointment of chairpersons and members of Tribunals.

19. (1) Every Tribunal consists of—

- (a) five members, one of whom is the chairperson; and
- (b) a Deputy Registrar.

(2) Subject to subsection (3), the chairperson of a Tribunal is appointed by the Commission.

(3) A Cabinet Secretary responsible for the administration of an Act of Parliament which establishes a Tribunal must through a competitive process, select three and eight suitable nominees for the positions of chairperson and members respectively, and forward their names to the Commission for appointment.

(4) The Commission subsequently appoints one of the three and four of the eight nominees as selected under sub-section (3) as chairperson and members of the Tribunal.

(5) In nominating and appointing chairperson and members of a Tribunal under this section, a Cabinet Secretary and the Commission must respectively take cognizance of the provisions of the Constitution relating regional and other diversities of the people of Kenya.

(6) The members of the Tribunal elect a vice-chairperson amongst themselves and the chairperson and the vice-chairperson must be persons of the opposite gender.

(7) The provisions of the Judicial Service Act relating to discipline of judicial officers apply with necessary modifications to members of a Tribunal.

Qualifications for appointment of chairperson and members of Tribunals.

20. (1) A person is qualified for appointment as the chairperson or a vice-chairperson of a Tribunal if that person—

- (a) is a Kenyan citizen;
- (b) holds a degree in law from a university recognized in Kenya and is an advocate of the High Court of Kenya;
- (c) has not less than ten years post qualification experience; and

(d) meets the requirements of Chapter Six of the Constitution.

(2) A person is qualified for appointment as a member of a Tribunal if that person—

(a) is a Kenyan citizen;

(b) holds a degree from a University recognized in Kenya;

(c) has knowledge and experience of not less than five years in the respective field; and

(d) meets the requirements of Chapter Six of the Constitution.

Disqualifications.

21. A person is not qualified for appointment as the chairperson or as a member of a Tribunal if the person—

(a) is of unsound mind;

(b) is an undischarged bankrupt;

(c) is convicted of a felony; or

(d) has been removed from any office for gross violation of the Constitution or any other written law.

Tenure of members of Tribunals.

22. (1) The chairperson of a Tribunal is appointed for a term of four years and is eligible for re-appointment for one more term of four years.

(2) A member of a Tribunal is appointed for a term of three years and is eligible for re-appointment for one more term of three years.

(3) A member of a Tribunal may serve on full or part time basis.

Vacancy in the office of chairperson or member of a Tribunal.

23. (1) The office of the chairperson or member of a Tribunal becomes vacant if the holder —

(a) dies;

(b) resigns from office by notice in writing addressed to the appointing authority;

(c) is convicted of a felony;

(d) completes their term of office;

(e) is absent from three consecutive meetings of the Tribunal without good cause; or

(f) is removed from office on any of the following grounds—

(i) gross violation of the Constitution or any other

written law;

(ii) gross misconduct or misbehavior;

(iii) inability to perform functions of the office arising out of physical or mental infirmity;

(iv) incompetence or neglect of duty; or

(v) bankruptcy.

(2) A vacancy under this section is filled within three months.

General principles.

24. Subject to this Act or any other law, a Tribunal seized of a matter —

(a) conducts its proceedings with the minimum formality;

(b) hears and determine the matter expeditiously;

(c) is not be bound by the rules of evidence and procedure;

(d) encourages mediation, arbitration and other forms of alternative dispute resolution;

(e) undertakes investigation of fact if the Tribunal is of the opinion that such investigation is necessary for the ends of justice; and

(f) acts according to equity, good conscience and the substantial merits of the case without undue regard to legal technicalities.

Quorum.

25. (1) The chairperson of a Tribunal presides at all sittings of the Tribunal at which the chairperson is present and in the absence of the chairperson, the vice-chairperson presides.

(2) The quorum of a Tribunal is three members including the chairperson or the person presiding as the case may be.

Tribunal may seek technical advice.

26. (1) A Tribunal may seek technical advice from persons whose specialized knowledge or experience may assist the Tribunal in its proceedings.

(2) A person whose advice is sought under subsection (1) must disclose any interest they may have in the matter before the Tribunal or any subsequent interest acquired relating to the matter in question.

- Jurisdiction of Tribunals.
27. (1) Except as provided by law, every Tribunal has jurisdiction to hear and determine any matter provided under the law establishing the Tribunal.
- (2) The jurisdiction of a Tribunal does not include the trial of any criminal offence.
- (3) A Tribunal has power to grant equitable relief including injunctions, penalties, damages and specific performance.
- Act 4 of 2015.
- (4) A Tribunal may in appropriate cases hear and determine a complaint before it arising under Articles 23(2) and 47(3) of the Constitution, the Fair Administrative Action Act or any other written law.
- Power to review own decision.
28. A Tribunal may, on its own motion or upon application by an aggrieved party, review its decision.
- Enforcement of decisions.
29. A decision of a Tribunal is executed and enforced in the same manner as that of a court of law.

PART V — TRIBUNALS APPEALS BOARD

- Establishment of the Tribunals Appeals Board.
30. (1) There is established an independent Tribunal Appeals Board whose function is to hear appeals from decisions of Tribunals.
- (2) Subject to subsection (3) the Appeals Board comprises the following members appointed by the President on the recommendation of the Commission—
- (a) two lawyers of whom one is the chairperson; and
- (b) three other expert persons from other disciplines.
- (3) The Commission nominates through a competitive process and forwards to the President the names of —
- (a) three persons for the post of chairperson; and
- (b) nine expert persons for the posts of members.
- (4) The President appoints the members of the Appeals Board within fourteen days of receipt of the names from the Commission.
- (5) A Deputy Registrar as designated by the Council is the secretary to the Appeals Board.

- No.1 of 2011. (6) The provisions of the Judicial Service Act relating to discipline of judicial officers apply with necessary modifications to the appointment of members of the Appeals Board.
- Qualifications for appointment as chairperson and members. 31. (1) A person qualifies to be chairperson of the Appeals Board if that person is qualified to be appointed as a judge of the Court of Appeal
- (2) A person qualifies to be a member of the Appeals Board if that person has a minimum of ten years post qualification experience in the relevant field and meets the requirements of Chapter Six of the Constitution.
- No.1 of 2011. (3) The procedure for appointment of judicial officers under the Judicial Service Act applies with necessary modifications to members of the Appeals Board.
- Quorum. 32. The quorum of the Appeals Board is three members.
- Appeals. 33. (1) A person aggrieved by a decision of a Tribunal may appeal to the Appeals Board within thirty days from the date of such decision.
- (2) Upon the hearing of an appeal under this section, the Appeals Board may—
- (a) confirm, set aside or vary the decision or order in question;
- (b) remit the proceedings to the relevant Tribunal with such instructions for further consideration, report, proceedings or evidence as the Appeals Board may consider necessary; or
- (c) make such other order as it may consider just, including an order as to costs of the appeal or of earlier proceedings in the matter before the Appeals Board.
- (3) Subject to section 35, the decision of the Appeals Board is final.
- (4) The Council may make regulations to govern the appeals process under this section.
- Procedure of the Appeals Board. 34. (1) The Appeals Board meets as and when there is need to exercise its jurisdiction under this Act.

(2) Unless a unanimous decision is reached, a decision on any matter before the Appeals Board is by a majority of the members present.

(3) The Appeals Board conducts its proceedings without procedural formality and observes the rules of natural justice.

(4) Except as provided under this Act, the Appeals Board regulates its own procedure.

Further appeal to the High Court.

35. (1) A person aggrieved by the decision of the Appeals Board under section 32 may with leave appeal against the decision to the High Court within thirty days of such decision.

(2) An appeal to the High Court under subsection (1) is only on a point of law.

(3) A determination of the High Court under this section is not subject to question in, or review by, any court.

FINANCIAL PROVISIONS

Funds of the Council.

36. (1) The funds of the Council consist of—

(a) such monies as may be provided by Parliament for the purposes of the Council;

(b) such monies or assets as may accrue to or vest in the Council in the course of the exercise of its powers or the performance of its functions under this Act;

(c) such sums as may be payable to the Council pursuant to this Act or any other written law, or pursuant to any gift or trust; and

(d) any other monies provided for, donated or lent to the Council.

(2) There is paid out of the funds of the Council, Appeals Board and Tribunals all expenditure incurred by the Council in the exercise of its powers or the performance of its functions under this Act.

(3) The Council may establish a fund to be known as the Tribunals Fund for the administrative expenses of the Council, Appeals Board and Tribunals and for such other purposes as may be necessary for the discharge of the functions of the Council.

- Financial year. **37.** The financial year of the Council is the period of twelve months ending on the thirtieth day of June in each year.
- Annual estimates. **38.** (1) Before the commencement of each financial year, the Secretary causes to be prepared estimates of the revenue and expenditure of the Council, Appeals Board and the Tribunals for that year.
- (2) The annual estimates make provision for all the estimated expenditure of the Council, the Appeals Board and Tribunals for the financial year concerned and in particular provide for—
- (a) payment of salaries, allowances, gratuities, pensions and other charges in respect of the members of the Council, Appeals Board, Tribunals and staff of the secretariat of the Council, Appeals Board and Tribunals;
 - (b) maintenance of buildings and grounds of the Council, Appeals Board and the Tribunals; and
 - (c) funding of training, research and development of activities in relation to the organization and functioning of the Council, Appeals Board and Tribunals.
- (3) The annual estimates are approved by the Council before the commencement of the financial year to which they relate, and are submitted by the Secretary for tabling in the National Assembly.
- (4) The annual estimates, once approved by the Council, shall not be amended before being tabled in the National Assembly.
- (5) No expenditure is incurred for the purposes of the Council, Appeals Board or Tribunals except in accordance with the annual estimates approved under subsection (3).
- Accounts and audit. **39.** (1) The Secretary causes to be kept proper books and records of account of the income, expenditure, assets and liabilities of the Council, Appeals Board and Tribunals.
- (2) Within a period of three months after the end of each financial year, the Secretary submits to the Auditor-General the accounts of the Council, Appeals Board and Tribunals in respect of that year together with—
- (a) A statement of the income and expenditure during that year; and
 - (b) A statement of the assets and liabilities on the last day

of that financial year.

(3) The annual accounts of the Council, Appeals and Tribunals are prepared, audited and reported upon in accordance with the law relating to public audit.

Annual report.

40. (1) At the end of each financial year, the Secretary prepares an annual report on the activities of Council, the Appeals Board and Tribunals.

(2) The annual report is submitted for tabling in the National Assembly not later than one month after the submission of the Auditor-General's report.

(3) The annual report contains—

(a) the financial statements of the Council, the Appeals Board and Tribunals;

(b) a description of the activities and outcomes of functioning of the Council, the Appeals Board and Tribunals; and

(c) any other information that the Council may consider relevant.

Bank accounts.

41. The Secretary may with approval of the Council, open bank accounts on behalf of the Tribunals and is, as the accounting officer, responsible for the proper management of the finances of Tribunals.

Remuneration of chairperson and members

42. The chairperson and members of the Council, Appeals Board and Tribunals are paid such allowances as the Commission may on the advice of the Salaries and Remuneration Commission, determine.

PART VI — MISCELLANEOUS PROVISIONS

Tribunal Rules Committee.

43. The Council may establish a Tribunal Rules Committee to develop rules and procedures for Tribunals in the areas specified in the Second Schedule.

Oath of office.

44. Members of the Council, Appeals Board and Tribunals must on appointment, subscribe to the oath contained in the Third Schedule.

Protection from personal liability.

45. Nothing done by a member of the Council, Appeals Board or Tribunal or by any person working under the instructions of the Council, Appeals Board or Tribunal, if done in good faith for the purpose of executing the powers, functions or duties of the Council, Appeals Board or Tribunal under the Constitution, this Act or any

other relevant law, renders such member or officer personally liable for any action, claim or demand.

Conflict of interest.

46. (1) The Chairperson or a member of the Council, who has a direct or indirect personal interest in a matter being considered or to be considered by the Council, must as soon as reasonably practicable after the relevant facts concerning the matter have come to their knowledge, disclose the nature of such interest.

(2) A disclosure of interest made under subsection (1) is recorded in the minutes of the meeting and the chairperson or member must not take part in the consideration or discussion on or vote during any deliberations on the matter.

(3) A person who fails to make the requisite disclosure under this section commits an offence.

(4) A member of the Appeals Board or Tribunal must recuse themselves from proceedings before the Appeals Board or Tribunal in which they have apparent or perceived conflict of interest.

Confidentiality.

47. (1) A member or staff of the Council, Appeals Board or Tribunal may not without the consent in writing given by, or on behalf of, the Council, 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) is not construed to prevent the disclosure of criminal activity by a member or staff of the Council, Appeals Board or Tribunal.

Duty to cooperate.

48. A person responsible for a matter in question before the Council, Appeals Board or Tribunal must co-operate with the Council, Appeals Board or Tribunal and must in particular—

(a) respond to any inquiry made by the Council, Appeals Board or Tribunal;

(b) furnish the Council, Appeals Board or Tribunal with a report in respect of the question raised; and

(c) provide any other information that the Council, Appeals Board or Tribunal may require in the performance of its functions under the Constitution, this Act or in any other written law.

Offences.

49. A person who—

- (a) without justification or lawful excuse, obstructs, hinders or threatens a member, an officer, employee or agent of the Council, Appeals Board or Tribunal acting under this Act;
- (b) submits false or misleading information to the Council, Appeals Board or Tribunal; or
- (c) makes a false representation to, or knowingly misleads a member, an officer, employee or agent of the Council, Appeals Board or Tribunal acting under this Act, commits an offence and is liable, on conviction, to a fine of not less than two hundred thousand shillings or to imprisonment for a term of not less than one year, or to both.

General penalty.

50. Any person who violates or fails to comply with any provision of this Act for which no other penalty is provided, commits an offence, and is liable on conviction to a fine not exceeding Kenya shillings two hundred and fifty thousand or imprisonment for a term not exceeding six months, or both.

Regulations.

51. (1) The Council may make regulations for the better carrying into effect of the provisions of this Act.

(2) Regulations made under this Act may provide for—

- (a) the framework for appointment of the other members of the Council under section 5;
- (b) clustering or classification of Tribunals, including categorization of Tribunals in terms of specialization;
- (c) decentralization of services of Tribunals, including their sitting anywhere in the country;
- (d) terms of and conditions of service of staff;
- (e) a framework for harmonization of standard procedures and rules for Tribunals;
- (f) the minimum standards of justice to be observed by Tribunals;
- (g) enhancement of access to justice and expeditious disposals of disputes;
- (h) alternative dispute resolution mechanisms;
- (i) mechanisms that mandate the courts to send cases to a Tribunal at initial stages if the Tribunal has jurisdiction to entertain a certain matter and vice versa;
- (j) reporting modalities made in consultation with the National Council for Law Reporting and ensuring accessibility of those reports to the public;
- (k) management and administration of the Tribunals Fund;
- (l) Code of Conduct and Ethics for Tribunals; and
- (m) standards of training for members and staff of the

Act No. 11 of 1994

Council, Appeals Board and Tribunals.

(3) Provisions of any regulations or rules made under this Act may—

- (a) apply generally or be limited in its application;
- (b) apply differently according to different kinds and status of Tribunals;
- (c) authorize any matter or thing to be done from time to time; or
- (d) do any combination of (a), (b) and (c).

Act to prevail.

52. Where the provisions of any Act under which a Tribunal is established conflicts with this Act, the provisions of this Act prevail.

Extension of time.

53. (1) Subject to subsection (2), the Cabinet Secretary may, on the recommendation of the Council, by notice in the *Gazette*, extend the period specified in respect of any matter under this Act by a period not exceeding twenty-one days.

(2) Despite subsection (1), the Appeals Board or Tribunal may, for sufficient cause shown, extend the time prescribed for doing any act or taking any proceedings before the Appeals Board or Tribunal upon such terms and conditions, if any, as may appear just and expedient.

PART IV —TRANSITIONAL PROVISIONS

Tenure of members of Tribunals.

54. (1) Subject to subsection (2), every person, who immediately before the commencement of this Act was a member of a Tribunal, remains in office for unexpired term or a period of eighteen months whichever is earlier.

(2) The Council may make regulations on the procedure to be followed with regard to pending cases or proceedings before Tribunals.

Transfer of staff.

55. (1) Within a period of eighteen months from the commencement of this Act, the Council competitively recruits staff to the secretariat of Tribunals from amongst persons who, immediately before the commencement of this Act were public servants serving a Tribunal.

(2) Despite subsection (1), the public servants must upon the commencement of this Act, given an option to elect whether to serve in the Council or to be redeployed to their respective ministries, departments or agencies.

(3) Before appointing or employing a person to whom subsections (1) or (2) apply, the Council may —

(a) require such person to make an application for employment or appointment to the Council; and

(b) using the criteria determined by the Council, vet such a person to ensure that the person is fit and proper to serve in the position applied for as a member of staff of the Council.

(4) An applicant who fails to meet the vetting criteria under subsection (3) is not employed or appointed by the Council.

Disposal of assets.

56. The Council may, where applicable, within a period of eighteen months from the date of commencement of this Act—

(a) conduct an assessment of assets and liabilities of Tribunals;

(b) in consultation with the relevant ministries, departments or agencies dispose of the assets not required by the Tribunals in accordance with the law relating to procurement and disposal of public assets; and

(c) liquidate all debts of Tribunals, failing which liabilities are transferred to the respective Ministry, Department or Agency.

Determination of pending matters.

57. (1) Subject to sub-section (2), proceedings awaiting hearing or determination before any Tribunal must be completed within a period of eighteen months upon commencement of this Act.

(2) A further extension of 6 months may in exceptional circumstances, be granted by the Council in the event that proceedings before any Tribunal are not concluded within the eighteen months.

Existing laws.

58. (1) Subject to section 50, all law establishing Tribunals immediately in force on or before the commencement of this Act is construed with the alterations, adaptations, qualifications and exceptions necessary to bring it into conformity with this Act.

(2) This section ceases to apply upon alignment of the laws establishing Tribunals with this Act.

FIRST SCHEDULE (s. 9) — CONDUCT OF BUSINESS AND AFFAIRS OF THE COUNCIL

- | | |
|--|---|
| Meetings | 1. The Council meets as often as may be necessary for the dispatch of its business but there are be least four meetings of the Council in any financial year. |
| Election of vice-chairperson | 2. At the first meeting, the Council elects a vice-chairperson amongst their number who must be a person of opposite gender. |
| Time and place of meetings | 3. A meeting of the Council is held on such date and at such time and place as the Council may determine. |
| Special meetings | 4. The chairperson must, on the written application of one-third of the members, convene a special meeting of the Council. |
| Quorum | 5. The quorum for the conduct of business at a meeting of the Council is the chairperson and any four members. |
| Voting | 6. The Chairperson presides at every meeting of the Council at which the chairperson is present and in the absence of the chairperson at a meeting, the vice-chairperson, presides and in the absence of both the chairperson and the vice-chairperson, the members present elect one of their number who has, with respect to that meeting and the business transacted thereat, have all the powers of the chairperson. |
| Decisions of the Council | 7. Unless a unanimous decision is reached, a decision on any matter before the Council is by concurrence of a majority of all the members present and voting at the meeting. |
| Vacancy. | 8. Subject to paragraph 5, no proceedings of the Council are invalid by reason only of a vacancy among the members thereof. |
| Signification of instruments and decisions of the Council. | 9. Unless otherwise provided by or under any law, all instruments made by and decisions of the Council are signified under the hand of the Chairperson. |

SECONDSCHEDULE (s. 43)
TRIBUNALS

— **RULES OF PROCEDURE OF**

Tribunal Rules
Committee to
develop Rules.

1. The Tribunal Rules Committee may develop rules for the Tribunals in the following areas —
 - (i) filing of cases;
 - (ii) the standards for minimum filing fees and other fees pro-rated in accordance with the value of the subject matter;
 - (iii) principles governing hearings;
 - (iv) evidentiary powers;
 - (v) parties;
 - (vi) representation;
 - (vii) costs;
 - (viii) appeals;
 - (ix) power to cure irregularities;
 - (x) correction of mistakes;
 - (xi) review of Tribunal decisions;
 - (xii) authorizing someone to take evidence;
 - (xiii) enforcement of decisions and orders;
 - (xiv) accessibility of evidence; or
 - (xv) any other area the Council considers necessary.

**THIRD SCHEDULE (s. 44) – OATH/AFFIRMATION OF THE OFFICES OF
CHAIRPERSON AND MEMBERS OF THE COUNCIL, APPEALS BOARD, TRIBUNAL
AND SECRETARY**

I..... having been appointed (the Chairperson/Member or Secretary) to the (Council/Tribunals Appeals Board / Tribunal,) do swear/ solemnly 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, fully and impartially and to the best of my knowledge and ability, discharge the trust, perform the functions and exercise the powers devolving upon me by virtue of this appointment without fear, favour, bias, affection, or prejudice. (SO HELP ME GOD).

Sworn/Declared by the said

Before me this day of

Chief Justice

MEMORANDUM OF OBJECTS AND REASONS

The principal objective of this Bill is to give effect to Articles 1(3) (c), 20 (4), 47 (3), 159 (1) and 169 of the Constitution in relation to the governance and administrative framework of Tribunals in Kenya. Pursuant to this objective, the Bill proposes to reform the Tribunal system in Kenya by inter alia, establishing the Council of Tribunals, providing for the structure and membership of the Council, establishment of the Tribunals Appeals Board and administration and functions of Tribunals. The Bill is divided into seven parts, namely: Preliminary, the Council of Tribunals, Administration of Tribunals, Appeals Board, Financial Provisions, General Provisions and Transitional Provisions.

Part I on Preliminaries provides for the short title and commencement, interpretation of certain terms used, objects and purposes and application of the Act. The application of the Act does not cover Tribunals established by the Constitution and arbitral tribunals set up under the Arbitration Act.

Part II on the Council of Tribunals provides for the establishment and composition of the Council which comprises the Chief Justice as Chairperson with the Attorney-General and Chief Registrar of the Judiciary and representatives of the Law Society of Kenya (LSK), Professional Societies in Eastern Africa (APSEA) and nominees of the Tribunals themselves will be the other members to be appointed by the President. The Council is the highest policy and decision making organ in the administration of Tribunals. Also canvassed extensively in this part are powers and functions of the Council which includes rationalization of the Tribunal regime in Kenya. The functions of the Council also include setting of standard operating procedures and development of policies to guide Tribunals. This part also creates the Office of Secretary and Chief Executive and Accounting Officer of the Council who sits therein as an ex-officio member. This part also seeks to create jurisprudence on decisions of the Tribunals by requiring the Council to have these reported by the national Council for Law Reporting.

Part III on Administration of Tribunals provides for the procedure for the appointment of chairperson and members of Tribunals and the qualifications for appointment of chairperson and members. The appointment of members of Tribunals is a joint function between the respective Cabinet Secretaries and the Judicial Service Commission (JSC) which process creates the desired linkage with the Judiciary. Significantly, this part also seeks to ensure professional expertise of Tribunals is maintained while recognizing their importance in the administration of justice. Of the staff to be seconded by the JSC to Tribunals will be Deputy Registrars who will perform both judicial and administrative functions of Tribunals which will also cement the requisite linkage with the Judiciary. Also recognized is the power of a Tribunal to review own decision and method of enforcing a decision of a Tribunal as that of a court of law.

Part IV on Tribunals Appeals Board provides for its establishment, qualifications for appointment as chairperson and members. The members of the Board are appointed by the

President on the recommendation of the JSC. The part allows a person aggrieved by the decision of the Appeals Board a window for further appeal to the High Court but with leave of the Court. The decision of the High Court under this part will not be amenable to further review by any court of law.

Part V on Financial Provisions provides for the funds of the Council, the financial year of the Council, annual estimates, accounts and audit, annual report, bank accounts and the remuneration of chairperson and members of the Council, Appeals Board and Tribunals as may be determined on the advice of the Salaries and Remuneration Commission. This part also proposes the establishment of a Tribunals Fund by the Council as a future contingency measure.

Part VI on Miscellaneous Provisions provides for the establishment of the Tribunals Rules Committee which will be the technical arm of the Council to make rules for Tribunals on a number of areas identified in a Schedule. Other standard provisions are those relating to protection of members and staff from liability, conflict of interest, confidentiality, a person's duty to cooperate in a matter in question before the Council, Appeals Board or Tribunal. Issues around offences, penalties and the power of the Council to make regulations are also contained here. For avoidance of doubt, this Part provides that the provisions of this Act will prevail where there exists conflicts with other laws of matters of Tribunals.

Part VII on Transitional Provisions provides for the unexpired tenure of current members of Tribunals, transfer of staff, disposal of assets, determination of pending matters and the place of existing laws under which Tribunals are established.

The enactment of this Act will occasion additional expenditure of public funds.

Githu Muigai

Attorney General

Dated. 2015