

THE INDEPENDENT POLICING OVERSIGHT AUTHORITY BILL, 2011

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THE INDEPENDENT POLICING OVERSIGHT AUTHORITY BILL, 2011

A Bill for

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

ENACTED by the Parliament of Kenya as follows —

PART I—PRELIMINARY

Short title.

1. This Act may be cited as the Independent Policing Oversight Authority Act, 2011.

Interpretation.

- 2.(1) In this Act, unless the context otherwise requires—

“Authority” means the Independent Policing Oversight Authority established under section 3;

“appointed member” means a member of the Board appointed other than an ex officio member of the Board;

“Board” means the Independent Policing Oversight Board established under section 8;

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

“complaint” means a complaint by any person alleging misconduct by one or more members of the Service;

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“disciplinary action” means imposition of any punishment against a member of the Service on account of breach of any code of conduct or misconduct;

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

“disciplinary proceedings” means proceedings under Part IX of the National Police Service Act;

“ex-officio member” means a person who is a member of the Board by virtue of the office the person holds;

“Inspector-General” means the Inspector-General appointed in accordance with article 245 of the Constitution.

“member of the Board” means a member of the Board appointed under section 10;

“internal Police investigation” means an investigation conducted by the Internal Affairs Unit of the Service;

“misconduct” means any action, or failure or refusal to act, which although it may not necessarily constitute a contravention of law, does not meet—

(a) the requirements or norms of policing contained in any regulation or official document, charter, standing orders or policy providing for standards of discipline, behaviour or ethics, rules of engagement, rules on the use or abuse of power or rules and regulations on the use of equipment, applicable to members of the Service;

(b) the values and norms applicable to policing in a democratic society and in particular those laid down in Articles 10, 232 and 244, of the Constitution and any law relating to ethics and leadership; or

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

“member of the Service” has the same meaning assigned to it under the National Police Service Act;

“police officer” has the same meaning assigned to it under the National Police Service Act;

“Police premises” has the same meaning assigned to it under the National Police Service Act;

“the Police” means the National Service and includes—

(a) any person or body—

(i) employed by it; or

(ii) acting on its behalf, under its control or at its behest; and

(iii) any other person for the time being exercising Police powers under any written law.

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“policing” means the discharge of functions, exercise of the powers and, performance of duties applicable to the Service;

“Service” means the National Police Service established by Article 243 of the Constitution;

“police station” has the same meaning assigned to it under the National Police Service Act;

(2) Despite subsection (1), until after the first elections under the Constitution, references in this Act to the expression “Cabinet Secretary” shall be construed to mean “Minister”.

PART II — THE INDEPENDENT POLICING OVERSIGHT AUTHORITY

Establishment of the Authority.

3.(1) There is hereby established an Authority to be known as the Independent Policing Oversight Authority.

(2) The Authority shall be a body corporate with perpetual succession and a common seal, and shall in its corporate name be capable of —

(a) suing and being sued;

(b) acquiring, holding, charging and disposing of movable and immovable property; and

(c) doing or performing all such other things or acts as may lawfully be done or performed by a body corporate.

(3) The headquarters of the Authority shall be in the capital city of Kenya, and the Authority shall devolve its services to the counties in accordance with Article 6 of the Constitution.

Independence of the Authority.

4. (1) In the performance of its functions the Authority shall subject to section 34, not be subject to any person, office or authority.

(2) The Authority shall observe the principle of impartiality and rules of natural justice in the exercise of its powers and the performance of its functions.

(3) Every Government officer or institution shall accord the Authority such assistance and protection as may be necessary to ensure its independence, impartiality, dignity and effectiveness.

(4) No person or body may interfere with the decision making, functioning or operations of the Authority.

(5) Parliament shall ensure that the Authority is adequately funded for it to effectively and efficiently perform all of its functions.

Objectives of the Authority.

5. The objectives of the Authority shall be to—

(a) hold the Police accountable to the public in the performance of their functions;

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(b) give effect to the provision of Article 244 of the Constitution that the Police shall strive for professionalism and discipline and shall promote and practice transparency and accountability; and

(c) ensure independent oversight of the handling of complaints by the Service.

Functions of the Authority.

6. The functions of the Authority shall be to—

(a) investigate any complaints related to disciplinary or criminal offences committed by any member of the Service, whether on its own motion or on receipt of a complaint, and make recommendations to the relevant authorities, including recommendations for prosecution, compensation, internal disciplinary action or any other appropriate relief, and shall make public the response received to these recommendations;

(b) receive and investigate complaints by members of the Service;

(c) monitor and investigate policing operations affecting members of the public;

(d) monitor, review and audit investigations and actions taken by the Internal Affairs Unit of the Service in response to complaints against the Police and keep a record of all such complaints regardless of where they have been first reported and what action has been taken;

(e) conduct inspections of Police premises, including detention facilities under the control of the Service;

(f) co-operate with other institutions on issues of Police oversight, including other State organs in relation to services offered by them;

(g) review the patterns of Police misconduct and the functioning of the internal disciplinary process;

(h) present any information it deems appropriate to an inquest conducted by a court of law;

(i) take all reasonable steps to facilitate access to the Authority's services for the public;

(j) subject to the Constitution and the laws related to freedom of information, publish findings of its investigations, monitoring, reviews and audits as it sees fit, including by means of the electronic or printed media;

(k) make recommendations to the Service or any State organ;

(l) report on all its functions under this Act or any written law; and

(m) perform such other functions as may be necessary for promoting the objectives for which the Authority is established.

Powers of the Authority.

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7. (1) The Authority shall have all the powers necessary for the execution of its functions under this Act, and without prejudice to the generality of the foregoing, the Authority shall have the power—

(a) to investigate the Service on its own motion or on receipt of complaints from members of the public, and for that purpose, to gather any information it considers necessary by such lawful means as it may deem appropriate, including by—

(i) requisition of reports, records, documents or any information from any source, including from the Police, irrespective of whether that source is located within or outside Kenya and irrespective of whether any other person or body, other than a court of law, has already instituted or completed a similar investigation or similar proceedings;

(ii) entering upon any establishment or premises, including Police premises, on the strength of a warrant, and subject to any relevant law, where the premises are a private home or dwelling;

(iii) seizing and removing any object or thing from any premises, including Police premises, which may be related to the matter under investigation, and in respect of which a receipt shall be given to the owner or person apparently in control of the object or thing;

(iv) interviewing and taking statements under oath or affirmation from any person, group or members of organizations or institutions and, at its discretion, to conduct such interviews in private;

(v) summoning any person to meet with its staff, or to attend any of its sessions or hearings, and to compel the attendance of any person who fails to respond to its summons;

(vi) administering oaths or affirmations before taking evidence or statements where necessary;

(vii) summoning any serving or retired Police officer to appear before it and to produce any document, thing or information that may be considered relevant to the function of the Authority;

(viii) ensuring that where necessary, the identities of complainants or witnesses are not disclosed to their detriment;

(ix) recommending to the Director of Public Prosecutions the prosecution of any person for any offence;

(x) investigating any death or serious injury occurring or suspected of having occurred as a result of police action.

(b) to take over on-going internal investigations into misconduct or failure to comply with any law if such investigations are inordinately delayed or manifestly unreasonable;

(c) where appropriate, to provide relevant information to enable a victim of unlawful police conduct, to institute and conduct civil proceedings for compensation in respect of injuries, damages and loss of income;

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- (d) require the Director of Public Prosecutions to provide it with his response to any recommendation made by the Authority to prosecute any person or body;
 - (e) require the Service to within a specified, reasonable time, provide it with information on issues relating to policy, its implementation and its effectiveness, and its response to any recommendation made to it by the Authority;
 - (f) subject to the approval of a complainant, and only if it is not a serious complaint, reconcile or mediate on any matter within its mandate; and
 - (g) exercise any other power provided for in this Act or any other law which is necessary for the effective performance of its functions.
- (2) The Authority may in the exercise of its powers under this Act, request and receive such assistance from the or any other governmental or international body or person as may in its opinion be necessary in the exercise of its powers.
- (3) The Authority may in exceptional circumstances regarding matters of national importance submit a report simultaneously to the National Assembly and the Cabinet Secretary if such a matter requires urgent consideration for the well-being of the people of Kenya.

The Board of the Authority.

8. (1) The Authority shall be governed by a Board to be known as the Independent Policing Oversight Board.

(2) The Board shall have all the powers necessary for the proper performance of the functions and the exercise of the powers of the Authority under this Act or any other applicable law, and shall, without prejudice to the generality of the foregoing, have power to—

- (a) control, supervise and administer the assets of the Authority in such manner as best promotes the objectives for which the Authority is established;
- (b) determine provisions to be made for capital and recurrent expenditure of the Authority;
- (c) receive any grants, gifts, donations or endowments and make legitimate disbursements therefrom;
- (d) enter into association with such other bodies or organizations within or outside Kenya as it may consider desirable or appropriate and in furtherance of the objectives for which the Authority is established;
- (e) open a banking account for the Authority; and
- (f) exercise any other power provided for in this Act or any other applicable legislation.

Membership of the Board.

9. (1) The Board shall consist of—

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(a) a chairperson who shall be a person qualified for appointment as a Judge of the High Court of Kenya;

(b) seven other persons appointed by virtue of their knowledge and at least fifteen years' experience in the fields of—

(i) criminology;

(ii) psychology;

(iii) law;

(iv) human rights and gender;

(v) medicine,

(vi) alternative dispute resolution;

(vii) security matters; or

(viii) community policing;

(c) the Chairperson of the Kenya National Human Rights and Equality Commission, who shall be an *ex-officio* member.

(2) The members shall at the first meeting of the Board elect a vice-chairperson from among the members appointed under subsection (1) (b).

(3) The chairperson and vice-chairperson shall be of opposite gender.

(4) The Director shall be the Secretary to the Board but shall not be entitled to vote.

Qualifications and disqualifications.

10. (1) A person shall be eligible to be appointed as a member of the Board if that person—

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

(b) is fit and proper to serve as a member of the Board charged with upholding and protecting ethics, professionalism, accountability and lawful conduct;

(c) is a Kenyan citizen;

(d) is not disqualified from serving in accordance with the provisions of subsection (2), and

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

(2) No person may be appointed or serve as a member of the Board if that person—

(a) has previously served as a member of the Board;

(b) is employed by or is associated with any person who supplies services or goods to the Authority, or whose spouse or other family member is so employed or associated;

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- (c) holds office in a political party;
 - (d) is a member of Parliament or a member of a county assembly or a Governor or Deputy Governor;
 - (e) is a serving police officer, or retired from being such an officer within the five years immediately preceding the commencement of this Act;
 - (f) has been convicted, whether in Kenya or elsewhere, of an offence involving dishonesty or of any other offence for which such person has been sentenced to imprisonment without the option of a fine; or
 - (g) is unable to perform the functions of office due to mental incapacity; or
 - (h) is an undischarged bankrupt.
- (3) A member of the Board, including the Chairperson, who at any time during his term of office becomes disqualified to hold office as a member of the Board under subsection (2) shall—
- (a) immediately and in writing inform the President and the Chairperson of the Board of that disqualification, and the President shall forthwith remove that member from the Board; and
 - (b) not attend any meeting of the Board from the time the member has so become disqualified.
- (4) A member of the Board who contravenes subsection (3) commits an offence.

Procedure for appointment of the members of the Board.

11. The President shall, within fourteen days after the commencement of this Act, constitute a selection panel comprising one person from each of the following bodies respectively —

- (a) the Office of the President;
- (b) the Office of the Prime Minister;
- (c) the Judicial Service Commission;
- (d) the Commission for the time being responsible for matters relating to anticorruption;
- (e) the Kenya National Commission on Human Rights; and
- (f) the Commission for the time being responsible for matters relating to gender.

(2) The Public Service Commission shall —

- (a) convene the first meeting of the selection panel, at which the members of the selection panel shall elect a chairperson from among their number; and

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(b) provide the selection panel with such facilities and other support as it may require for the discharge of its functions.

(3) The selection panel shall, within seven days of its convening, by advertisement in at least two daily newspapers of national circulation, invite applications from persons who qualify for nomination and appointment for the position of chairperson and members of the Board.

(4) The selection panel shall —

(a) consider the applications received under subsection (3) to determine their compliance with the provisions of the Constitution and this Act;

(b) short list the applicants;

(c) publish the names of the shortlisted applicants in at least two daily newspapers of national circulation; and

(d) conduct public interviews of the shortlisted persons in public;

(e) shortlist three qualified applicants for the position of chairperson;

(f) shortlist eight qualified applicants for the position of the members; and

(g) forward the names of the qualified persons under paragraph (e) and (f) to the President.

(5) The President shall, if he approves, within fourteen days of receipt of the names of successful applicants forwarded under subsection (4) (g), select the chairperson and members of the Commission and forward the names of the persons so selected to the National Assembly for approval.

(6) The National Assembly shall, within twenty-one days of the day it next sits after receipt of the names of the applicants under subsection (5), vet and consider all the applicants, and may approve or reject any or all of them.

(7) Where the National Assembly approves of the applicants, the Speaker of the National Assembly shall forward the names of the approved applicants to the President for appointment.

(8) The President shall, within seven days of receipt of the approved applicants from the National Assembly, by notice in the Gazette, appoint the chairperson and members approved by the National Assembly.

(9) Where the National Assembly rejects any nomination, the Speaker shall within three days communicate its decision to the President and request the President to submit fresh nominations;

(10) Where a nominee is rejected by the National Assembly under subsection (9), the President shall within seven days, submit to the National Assembly a fresh nomination from amongst the persons shortlisted and forwarded by the selection panel under subsection (5);

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(11) If the National Assembly rejects any or all of the subsequent nominees submitted by the President for approval under subsection (10), the provisions of subsections (1) to (6) shall apply.

(12) In short listing, nominating or appointing persons as chairperson and members of the Board, the selection panel, the National Assembly and the President shall ensure that not more than two-thirds of the members are of the same gender.

(13) The selection panel may, subject to this section, determine its own procedure.

(14) After the first general elections under the Constitution, the member of the selection panel under subsection (1)(b) shall be replaced by a representative of the Public Service Commission.

(15) The selection panel shall stand dissolved upon the appointment of the chairperson and members under subsection (9).

(16) Where the provisions of subsection (11) apply, the selection panel shall continue to exist but shall stand dissolved upon the requisite appointments being made under subsection (12).

Filling of Vacancy.

12. Whenever there is a vacancy in the Board, the procedure set out under section 11 shall apply.

Term of office.

13. The appointed members of the Board shall hold office for one term of six years.

Removal of a member of the Board.

14.(1) The chairperson or a member of the Board may be removed from office only for—

- (a) serious violation of the Constitution or any other law,
- (b) gross misconduct, whether in the performance of their functions or otherwise;
- (c) physical or mental incapacity to perform the functions of office;
- (d) incompetence; or
- (e) bankruptcy.

(2) A person desiring the removal of the chairperson or a member on any ground specified in subsection (1) may present a petition to the Public Service Commission setting out the alleged facts constituting that ground.

(3) The Public Service Commission shall consider the petition and, if at least two-thirds of the members present and voting agree that it discloses a ground for removal under subsection (1), the Commission shall recommend the removal from office of the chairperson or member, as the case may be, to the National Assembly.

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(4) The National Assembly shall consider the petition and, if it is satisfied that it discloses a ground for removal under subsection (1), shall forward the petition to the President.

(5) On receiving a petition under subsection (3), the President—

(a) shall appoint a tribunal in accordance with subsection (6) to hear and determine the petition; and

(b) may suspend the chairperson or member as the case may be, pending the outcome of the petition.

(6) The tribunal referred to in subsection (5) shall consist of—

(a) a person who holds or has held office as a judge of a superior court, who shall be the chairperson;

(b) at least two persons who are qualified to be appointed as judges of the High Court; and

(c) one other member who is qualified to assess the facts in respect of the particular ground for removal.

(7) The tribunal shall investigate the matter expeditiously, report on the facts and make a binding recommendation to the President, who shall act in accordance with the recommendation within seven days.

(8) A person suspended under this section shall be entitled to continue to receive one-half of the remuneration and benefits of the office while suspended.

Oath of office.

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

Conduct of business and affairs of the Board.

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

Remuneration of Board members.

17. (1) There shall be paid to the appointed members of the Board such remuneration as may be advised by the Salaries and Remuneration Commission, in consultation with the Cabinet Secretary for the time being responsible for Finance.

(2) Until the Salaries and Remuneration Commission recommends the remuneration specified under subsection (1) the appointed members of the Board shall be paid such remuneration as the Public Service Commission in consultation with the Treasury may determine.

Committees of the Board.

18. (1) The Board may, by resolution generally or in any particular case, in writing conditionally or unconditionally delegate to any Committee of the Board or any member,

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officer or agent of the Authority, the exercise of any of its powers or the performance of any of its functions under Section 6 of this Act, but the Board may despite such delegation continue to perform the functions or exercise the powers referred to in that delegation.

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

Director of the Authority.

19. (1) The Board shall appoint a suitably qualified person to be the Director of the Authority.

(2) The Director shall be appointed through an open, transparent and competitive recruitment process, and shall serve on such terms and conditions as the Board may determine.

(3) A person shall be qualified for appointment as the Director of the Authority if the person—

- (a) is a citizen of Kenya;
- (b) holds a degree from a university recognized in Kenya;
- (c) has had at least ten years experience at management level;
- (d) has proven relevant experience in any of the following fields—
 - (i) government;
 - (ii) law;
 - (iii) management;
 - (iv) finance;
 - (v) security; or
 - (vi) public administration; and
- (e) meets the requirements of Chapter Six of the Constitution.

(4) The Director shall be the chief executive officer of the Authority and responsible to the Board for the day-to-day management of the affairs of the Authority.

(5) The Director shall take all reasonable steps to ensure the safety and security of the staff, premises and assets of the Authority, and where required by the Board, the safety of persons providing information to the Authority and the security of all information provided to the Authority.

Filling of Vacancy in office of Director.

20. (1) Whenever there is a vacancy in the office of the Director, a new Director shall be appointed in accordance with section 19.

Removal of the Director.

21. (1) The Director may be removed from office only for—

- (a) serious violation of the Constitution, this Act or any other law;
- (b) gross misconduct;
- (c) physical or mental incapacity which renders the Director unable to perform the functions of office;
- (d) incompetence; or
- (e) bankruptcy.

(2) A person desiring the removal of the Director on any of the grounds specified in subsection (1) may present a petition to the Commission setting out the alleged facts constituting that ground.

Appointment of Staff.

22. (1) The Board shall appoint such staff as may be necessary for the proper discharge of its functions under this Act, upon such terms and conditions of service as the Public Service Commission may determine.

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

(3) The Board shall issue a certificate of appointment to every employee of the Authority involved in investigations and the employee shall, when exercising any of such powers, produce the certificate for identification by the person who is-

- (a) to be interviewed;
- (b) apparently in control of the premises which are about to be entered upon; or
- (c) the owner or person in control of a thing or object about to be seized, unless the nature of the investigation does not make it necessary or desirable to do so.

Requirement for consultations.

23. Where any appointment under this Act is required to be made with the approval of the National Assembly, such appointment shall before the first general elections under the Constitution be made by the President in consultation with the Prime Minister.

PART III— INVESTIGATION INTO COMPLAINTS

Lodging of complaint and investigation.

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24.(1) A person wishing to lodge a complaint against the Police may do so orally or in writing or in such other appropriate format as may be prescribed in the regulations.

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

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

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

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

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

(5) If criminal proceedings are instituted against a member of the Service in respect of a matter under investigation by the Authority, the Authority may suspend its investigation until the conclusion of those proceedings, after which it may continue its investigation or in appropriate cases, decide to discontinue.

(6) In the event of the Police having conducted and concluded an internal investigation or internal disciplinary proceedings, the Authority may in appropriate cases and in its sole discretion decide to abide by the outcome of such investigation or proceedings and adopt the findings and recommendations of that investigation or those proceedings as its own, and conclude its own investigation.

(7) The Authority shall during an investigation consider the —

(a) circumstances which, if present during the incident under investigation, impede the effectiveness of policing; and

(b) unlawful action, if any, taken by the complainant, the victim or any other person present during the incident under investigation.

(8) Where the Authority considers a complaint to be vexatious or frivolous it may refuse to conduct an investigation.

(9) The Authority may upon receipt of new evidence reopen any investigation which has been concluded, and may amend or withdraw any previous findings and recommendations.

(10) Nothing in this section shall prevent an individual Police officer from lodging a complaint, but the Authority may, at its discretion, refer any complaint back to the Internal Affairs Unit of the Service for redress.

(11) No member of the Police shall be subjected to disciplinary hearings or other disadvantage based solely on the fact that such member has lodged a complaint with or given evidence or information to the Authority.

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(12) Any person who subjects a Police officer to a disciplinary hearing or other disadvantage based solely on the fact that he has lodged a complaint with or given evidence before or information to the Authority, commits an offence.

(13) Nothing in this Act shall prevent any person or body from lodging a complaint in terms of this section, or the Authority from conducting an investigation, even if the target, victim or witness of the action does not agree to or approve of such an investigation by the Authority.

(14) Any law providing for the unlawfulness of—

(a) the intimidation, harassment or interference with witnesses or potential witnesses to any matter under investigation by the Authority; or

(b) concealment, destruction, tampering with or removal of evidence relevant to any matter under investigation by the Authority, shall apply with necessary modifications to the proceedings of the Authority.

(15) Notwithstanding any other written law, any document or statement drafted or made or taken during an investigation shall remain confidential until the Authority in writing determines otherwise.

(16) The Authority shall upon request from a complainant keep the complaint's identity confidential unless it is demonstrably in the interest of justice not to do so, until the investigation has been concluded:

Provided that the Authority may in exceptional cases determine that the identity of a complainant may not be published even after the conclusion of an investigation, or may be published only on terms determined by the Authority.

Deaths and serious injury in custody.

25. (1) The Authority shall investigate any death or serious injury including death or serious injury while in Police custody, which are the result of Police action or were caused by members of the Service while on duty.

(2) The Police shall upon a death or serious injury as contemplated in subsection (1) take all necessary steps to secure evidence which may be relevant for the investigation, including pictorial and written evidence, and shall in writing notify the Authority, and supply it with the evidence and all other facts relevant to the matter, including, if available, the names and contact details of all persons who may be able to assist the Authority should it decide to conduct an investigation.

(3) A Police officer who contravenes subsection (2) commits an offence.

Exclusion of certain matters.

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

Persons affected to be heard.

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

(a) considers it necessary to inquire into the conduct of any person; or

(b) is of the opinion that the reputation of any person is likely to be prejudiced by the inquiry, it shall give that person an opportunity to be heard and to appear before the Board in person or through an advocate.

Immunity of witnesses.

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

Steps after investigations.

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

(a) where the inquiry, in the Authority's opinion, discloses a criminal act by a member of the Service, recommend the prosecution of that member to the Director of Public Prosecutions;

(b) where the inquiry, in the Authority's opinion, discloses negligence in the performance of duty by a member of the Service, recommend disciplinary action be taken against such member;

(c) where the investigation discloses any shortcomings in the processes or procedures employed by the Authority, recommend improvement or rectification thereof;

(d) recommend that the complainant take any other course of action suitable in the circumstances;

(e) assist the complainant or any other victim with action contemplated in section 7 (1)(i); or

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

(2) Where the Director of Public Prosecutions fails or refuses to institute criminal proceedings against the member contemplated in paragraph (1) (a) or fails to do so within a reasonable time, or where the Authority is not satisfied by the response of the Director of Public Prosecutions, the Authority may, with leave of the Court, prosecute the person.

(3) The Authority may apply to the court for the enforcement of any of its recommendations contemplated in subsection (1).

(4) The Authority's investigations, findings and recommendations provided for in this Act shall remain in force and effect despite the fact that a person or body —

(a) under investigation, has since the commencement or conclusion of an investigation, left the employment of the Police; or

(b) is no longer acting on behalf of the , under its control or at its behest.

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(5) Where the Authority prosecutes any person as contemplated in subsection (2), all state bodies and employees of the Police shall assist the Authority in any manner and to the extent and at any time that the Authority requests or determines.

Performance Report.

30.(1) The Authority shall submit to the Cabinet Secretary, at least once in every six months, a report of the performance of the functions of the Authority, making such recommendations as it may consider necessary, and the Cabinet Secretary shall, within fourteen days after receiving such report, cause it to be publicized and laid before the National Assembly, or if the National Assembly is not then in session, on the day that the National Assembly resumes its sittings.

(2) A copy of the report referred to in subsection (1) shall forthwith be forwarded to the Inspector-General, the Commission and the County Assemblies.

(3) The Authority shall publicize the report in such manner as it may consider appropriate.

(4) The report contemplated in subsection (1) shall include—

(a) the recommendations made by the Authority during the period under review;

(b) the action taken by the responsible authorities in response to the Authority's recommendations or lack thereof;

(c) the trends emerging in cases handled;

(d) matters contained in earlier reports contemplated in subsection (1) in respect of which the relevant authority has still not taken any action;

(e) the action taken by the responsible authorities in response to the Authority's recommendations;

(f) how the Service has acted on the complaints referred to it by the Authority;

(g) statistics about disciplinary and criminal action taken as a consequence of complaints disposed of by the Authority;

(h) the Authority's recommendations on Police accountability;

(i) the Authority's opinion on whether any person, authority or institution has attempted to unlawfully or unduly interfere with the operations of the Authority;

(j) any matter relating to the operation of the Authority which any minority of members of the Authority may wish to bring to the attention of the public;

(k) any matter that highlights the need for reform or change in practice or policy regarding the Service; and

(l) any other matter the Authority wishes to bring to the attention of the National Assembly.

PART IV—OFFENCES

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Offences and Penalties.

31. (1) A person or body who—

- (a) disobeys a summons by the Authority;
- (b) fails to produce any document, papers or thing on the order of the Authority;
- (c) refuses to be examined before or to answer questions relating to an inquiry put to him by the Authority;
- (d) fails to comply with any lawful order or direction of the Authority;
- (e) presents to the Authority a false document or makes a false statement with the intent to deceive or mislead the investigating officers;
- (f) deliberately submits false information;
- (g) wilfully obstructs or hinders a person acting in the performance of functions or exercise of powers conferred by this Act;
- (h) fails to co-operate with the Authority on issues of Police oversight;
- (i) in any way interferes with the functioning or operations of the Authority, whether unduly or unlawfully; or
- (j) contravenes any provision of this Act for which no specific penalty is provided, commits an offence and shall be liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment not exceeding three years or to both.

(2) Any person who publishes a confidential document or statement in contravention of section 23(14) commits an offence, and shall be liable on conviction to a fine not exceeding three hundred thousand shillings or imprisonment for a term not exceeding three years or to both.

PART V— FINANCIAL PROVISIONS

Funds of the Authority.

32. (1) The funds of the Authority shall consist of—

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

(2) Notwithstanding subsection (1), no money shall be accepted by the Authority from the National Police Service.

Financial year.

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

Annual estimates.

34. (1) At least three months before the commencement of each financial year, the Authority shall cause to be prepared estimates of the revenue and expenditure of the Authority for that year.

(2) The annual estimates shall make provision for all the estimated expenditure of the Authority for the financial year concerned and in particular, shall provide for—

(a) the payment of the salaries, allowances and other charges in respect of the staff of the Authority;

(b) the payment of pensions, gratuities and other charges and in respect of benefits which are payable out of the funds of the Authority;

(c) the maintenance of the assets of the Authority;

(d) the funding of operations, training, research and development of activities of the Authority;

(e) the creation of such funds to meet future or contingent liabilities in respect of benefits, insurance or replacement of buildings or installations, equipment and in respect of such other matters as the Authority may think fit.

(3) The annual estimates shall be approved by the Authority before the commencement of the financial year to which they relate and shall be submitted to the Cabinet Secretary for approval and after the Cabinet Secretary has given approval, the Authority shall not increase any such sum provided in the estimates without the consent of the Cabinet Secretary.

(4) No expenditure shall be incurred for the purposes of the Authority except in accordance with funds voted or appropriated by Parliament.

Accounts and audit.

Act 12 of 2003.

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

(2) Within a period of three months after the end of each financial year, the Authority shall submit to the Controller and Auditor - General the accounts of the Authority in respect of that year together with—

(a) a statement of the income and expenditure of the Authority during that year; and

(b) a statement of the assets and liabilities of the Authority on the last day of that financial year.

(3) The annual accounts of the Authority shall be prepared, audited and reported upon in accordance with the provisions of Articles 226 and 229 of the Constitution and the Public Audit, 2003.

PART VI—MISCELLANEOUS

Protection from personal liability.

36. (1) In accordance with Article 236 of the Constitution, no matter or thing done by a member of the Authority or any employee or agent of the Authority shall, if the matter or thing is done in good faith for the performance and execution of the functions, powers or duties of the Authority, render the member, officer, employee or agent personally liable to any action, claim or demand.

(2) Subsection (1) shall not preclude a person from bringing legal proceedings against the Inspector-General in respect of an act or omission of the kind referred to in that subsection if the person can satisfy the court that the Police officer or other person would, but for that subsection, have incurred liability for the act or omission.

The common seal of the Authority.

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

(2) The common seal of the Authority when affixed to a document and duly authenticated shall be judicially and officially noticed and unless and until the contrary is proved, any necessary order or authorization of the Authority under this section shall be presumed to have been duly given.

Annual report.

38. (1) The Authority shall cause an annual report to be prepared for each financial year.

(2) The Authority shall submit the annual report to the Cabinet Secretary within three months after the end of the year to which it relates.

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

(a) the financial statements of the Authority;

(b) the Authority's opinion on the adequacy of its funding;

(c) a description of the activities of the Authority;

(d) such other statistical information as the Authority considers appropriate relating to complaints to the Authority, investigations by the Authority and reports by the Authority on the results of the investigations;

(e) any other information relating to its functions that the Authority considers necessary.

(4) The Cabinet Secretary shall within thirty days after receiving the annual report, transmit it to the National Assembly.

(5) The Authority shall cause the annual report to be published in the Gazette and in such other manner as the Authority may determine.

Regulations.

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39. The Authority may make regulations for the better carrying into effect of the purposes of this Act, and in particular for the following —

- (a) the mode of bringing complaints before the Authority;
- (b) the rules relating to the initiation, hearing and disposal of complaints;
- (c) the procedures of taking over of internal Police investigations;
- (d) generally for the good order and management of the Authority.

FIRST SCHEDULE

(s.15)

OATH OF OFFICE

..... having been appointed (the Chairperson/ Vice Chairperson / member of / Director) to the Independent Oversight Authority 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).

Sworn/Declared by the said

.....

Before me this Day of

.....

Chief Justice.

SECOND SCHEDULE

(s.16)

CONDUCT OF THE BUSINESS AND AFFAIRS OF THE BOARD

- 1.** The Board shall meet not less than four times in every financial year.
- 2.** Notwithstanding subparagraph 1, the chairperson may, and upon requisition by at least five members shall, convene a special meeting of the Board at any time for the transaction of the business of the Board.
- 3.** The quorum for the conduct of the business of the Board shall be at least half of the members including the chairperson or the person presiding.
- 4.** The chairperson shall preside at every meeting of the Board at which the Chairperson is present, but where absent of the vice-chairperson shall preside, but in the absence of both the chairperson and the vice-chairperson the members present shall elect one of their number to preside, who shall, with respect to that meeting and the business transacted thereat, have all the powers of the chairperson.
- 5.** Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a majority of the votes of the members present and voting, and in the case of an equality of votes the chairperson or the person presiding shall have a casting vote.

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6. Subject to the provisions of paragraph 3, no proceedings of the Board shall be invalid by reason only of a vacancy among the members thereof.
7. The affixing of the common seal of the Authority shall be authenticated by the signature of the chairperson and the Director, and any document not required by law to be under seal and all decisions of the Board may be authenticated by the signatures of the chairperson and the Director.
8. Subject to the provisions of the Act and this Schedule, the Board may determine its own procedure.

MEMORANDUM OF OBJECTS AND REASONS

The main object of this Bill is to establish the Independent Policing Oversight Authority to provide civilian oversight of the work of the Police.

Part II of the Bill establishes the Authority and assigns to it functions which include receipt from members of the Authority and investigation of complaints related to disciplinary or criminal offences by members of the Police Service and to recommend action, including prosecution, to the relevant authorities.

The Bill also confers powers which the Authority may exercise in the performance of its stated functions. These include requisition of reports, entering, upon premises, seizing materials, related to the investigations, and taking statements under oath. The Authority may also take over ongoing internal investigations into misconduct within the Police Service if the investigations are inordinately delayed.

The Part also creates the Board of the Authority and provides for the qualifications for appointment, the procedure for appointment and procedure for removal of members. It also provides for the appointment of a Director of the Authority who shall be the chief executive officer, and also for the appointment of staff.

Part III of the Bill sets out the procedure for investigation unto complaints. This Part specifies that the Authority shall not investigate any matter which is the subject of proceedings before a court or a judicial tribunal. It also provides for the steps the Authority may take after completing the investigations. These include recommending prosecution, or disciplinary action, or improvement of the procedures of the Authority.

The Part further requires that the Authority submit a performance report to the Cabinet Secretary once in every six months, which report should be laid before the National Assembly.

Part IV of the Bill prescribes offences and penalties for offences under the Act.

Part V of the Bill contains financial provisions with regard to the Authority.

Part VI of the Bill has miscellaneous provisions, including production of the annual report and making of regulations generally for the good order and management of the Authority, among other purposes.

The enactment of this Bill shall occasion additional expenditure of public funds.

Dated the 12th August, 2011.

GEORGE SAITOTI,
*Minister of State for Provincial
Administration and Internal Security.*