



# THE CONSTITUTION OF KENYA

## REFERRAL *of* THE CONFLICT OF INTEREST BILL, 2025

### PRESIDENTIAL MEMORANDUM OF REFERRAL

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By **HIS EXCELLENCY, THE  
HONOURABLE WILLIAM SAMOEI RUTO,**  
Ph.D., C.G.H.

President and Commander-in-Chief of the  
Kenya Defence Forces.

Submitted to the:

**HON. SPEAKER OF THE NATIONAL  
ASSEMBLY; &  
HON. SPEAKER OF THE SENATE.**

**WHEREAS** a Bill titled "*An Act of Parliament to provide for the management and regulation of conflict of interest and for connected purposes*" was passed by the **National Assembly on the 5<sup>th</sup> December, 2024** and the Senate on the **8<sup>th</sup> April, 2025;**

**AND WHEREAS** in accordance with the provisions of the Constitution the Conflict of Interest Bill, 2025 was presented to me for assent on the 17<sup>th</sup> April 2025;





**NOW THEREFORE**, in exercise of the powers conferred upon me by Article 115 of the Constitution, I decline to assent to the Conflict of Interest Bill, 2025, and refer the Bill for reconsideration by both houses of parliament, for the reasons set out hereunder:

## **CLAUSE 2**

Clause 2 of the Bill defines the terms used in the Bill.

The absence of definitions of the words “family” and “relative” limits the scope of the Bill. Public officers can bypass conflict of interest restrictions by using family members and relatives as proxies, thereby compromising the integrity of the conflict of interest framework.

Public officers may conceal assets acquired through conflict of interest by failing to declare such assets. It is therefore important to empower the Commission to institute forfeiture proceedings against public officers who fail to disclose assets and to define the term “undeclared asset”.

## **RECOMMENDATION**

In view of the foregoing, I recommend that clause 2 of the Bill be amended by inserting the following new definitions in the proper alphabetical order—

“family” means—





- (a) the spouse, dependent child or parent of a public officer;
- (b) a dependent child of the spouse of a public officer;  
or
- (c) a parent of the spouse of a public officer;

"relative" means a person who is related to a public officer by birth, marriage, adoption or affinity; and

"undeclared asset" means any asset that is not disclosed in the prescribed manner in any declaration year.

## **CLAUSE 5**

Clause 5 of the Bill provides as follows—

This Act shall be administered by a reporting authority and the Ethics and Anti-Corruption Commission.

The provision introduces multiple administrative structures by assigning the administration of the Act to reporting authorities and the Ethics and Anti-Corruption Commission. Granting an institution other than the Ethics and Anticorruption Commission the power to administer the Act would be inconsistent with article 79 of the Constitution which provides that the Ethics and Anti-Corruption Commission shall ensure compliance with and enforcement of Chapter Six of the Constitution. Accordingly, the Ethics and Anti-corruption Commission should be granted the exclusive mandate to administer the Act.





## **RECOMMENDATION**

In view of the foregoing, I recommend that clause 5 of the Bill be amended by deleting the words "a reporting authority and" appearing immediately before the words "the Ethics".

## **CLAUSE 6**

Clause 6 of the Bill provides as follows—

The functions of the Commission under this Act shall be to—

- (a) oversee the management of conflict of interest for all public officers;
- (b) develop an effective system for reporting violation of this Act;
- (c) promote best practices and develop standards and guidelines for the management of conflict of interest;
- (d) receive and process requests related to the management of conflict of interest;
- (e) conduct inquiries on matters of conflict of interest and make recommendations to the relevant bodies;
- (f) provide advisory opinions on conflict of interest on its own volition or on request by any person;
- (g) conduct public awareness on the management of conflict of interest;





- (h) analyse, seek for clarification and verify conflict of interest disclosures; and
- (i) develop policies, standards, guidelines and promote best practices for the management of conflict of interest

The clause omits a key function of the Commission which is to institute forfeiture proceedings against public officers who fail to declare or explain assets. Public officers may conceal assets acquired through conflict of interest by failing to declare or explain such assets. It is therefore important to empower the Commission to institute forfeiture proceedings against public officers who fail to declare or explain assets.

### **RECOMMENDATION**

In view of the foregoing, I recommend that clause 6 of the Bill be amended by inserting the following new paragraph after paragraph (h)—

- (ha) institute proceedings for forfeiture of undeclared or unexplained assets.

### **CLAUSE 8**

Clause 8 of the Bill provides as follows—

A public officer is in conflict of interest if the public officer—





- (a) exercises an official power, duty or function to further his or her private interests or the private interests of another person; or
- (b) fails to declare and register a private interest that is in conflict with the public interest.

Conflict of interest entails real, perceived and potential conflict. The current clause does not provide for perceived and potential conflict of interest which affects the effectiveness of the compliance measures in the Bill.

### **RECOMMENDATION**

In view of the foregoing, I recommend that the Bill be amended by deleting clause 8 and substituting therefor the following new clause—

8. A public officer is in conflict of interest if—

- (a) the public officer exercises an official power, duty or function to further his or her private interests or the private interests of another person;
- (b) the private interests of the public officer can reasonably be perceived to impair or influence the public officer's ability to act objectively in the performance of an official duty; or



- (c) the public officer has private interests that could conflict with the duties of the public officer in future.

## **CLAUSE 12**

Clause 12 of the Bill provides as follows—

- (1) A public officer shall not, in the exercise of an official power or in the performance of a duty or function, grant a person, whether directly or indirectly, any special consideration, treatment or advantage beyond what is allowed by law or written policy.
- (2) A person who contravenes subsection (1) commits an offence.
- (3) Despite subsection (1), no proceedings shall lie against a public officer who grants special consideration, treatment or advantage in good faith.

The inclusion of a “good faith” exception negates the preventive purpose of subclause (1) and gives room for a public officer to justify unlawful conduct through subjective claims.





## **RECOMMENDATION**

In view of the foregoing, I recommend that clause 12 of the Bill be amended by deleting subclause (3).

## **CLAUSE 16**

Clause 16 provides as follows—

- (1) A public officer shall not accept or request a gift or favour from a person who—
  - (a) has an interest that may be affected by the carrying out, or not carrying out, of the public officer's duties;
  - (b) carries on regulated activities with respect to which the public officer's organization has a role; or
  - (c) has a contractual or similar relationship with the public officer's organization.
- (2) Notwithstanding subsection (1), a public officer may receive a gift given in an official capacity, provided that the gift—
  - (a) is received as a normal expression of courtesy or protocol;





- (b) is within the customary standards that normally accompany the public officer's position;
  - (c) is not monetary; or
  - (d) does not exceed such value as may be prescribed.
- (3) Subject to subsection (2), if a public officer accepts any gift or benefit, the public officer shall, within forty-eight hours of acceptance of such gift or benefit, or, if not on duty, within forty-eight hours of resumption of duty, make a declaration of such acceptance, giving sufficient details of the nature of the gift or other benefit accepted, the donor and the circumstances under which it was accepted.
- (4) A person who contravenes subsection (1) or subsection (3) commits an offence.

The clause does not provide for the management of conflict of interest that may arise as a result of gifts or other benefits granted to family members and relatives who may be used as proxies to indirectly influence public officers.

## **RECOMMENDATION**

In view of the foregoing, I recommend that clause 16 of the Bill be amended by—

- (a) adding the following new subclause after subclause (3)
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(3A) Where a public officer has knowledge that a family member or a relative has accepted a gift or favour under subsection (1), the public officer shall, within forty-eight hours of such knowledge, or, if not on duty, within forty-eight hours of resumption of duty, make a declaration of the acceptance, giving sufficient details of the nature of the gift or favour accepted, the donor and the circumstances under which it was accepted for purposes of assessment of potential conflict of interest.

(b) deleting subclause (4) and substituting therefor the following new sub clause—

(4). A person who contravenes this section commits an offence.

## **CLAUSE 17**

Clause 17 of the Bill provides as follows—

Every reporting authority shall maintain a register of—

- (a) gifts received by public officers serving in the reporting entity;
- (b) gifts given by the reporting entity to public officers; and





- (c) donations received by the reporting entity for a specific cause.

The clause excludes gifts granted by a reporting entity to persons who are not public officers. To prevent abuse of gifting by reporting entities, there is need to provide for an accountability framework that covers gifts given to all persons.

The Bill seeks to provide for the management of conflict of interest by a public officer. Therefore, the information that should be provided in a gift register should be limited to gifts received by a public officer and not by a reporting entity.

## **RECOMMENDATION**

In view of the foregoing, I recommend that clause 17 of the Bill be amended—

- (a) in paragraph (a) and (b) by deleting the words “public officers” and substituting therefor the words “any person”; and
- (b) by deleting paragraph (c).

## **CLAUSE 18**

Clause 18 of the Bill provides as follows—





- (1) A public officer shall not accept any complimentary treatment for any purpose unless the complimentary treatment offered is required in his or her official capacity or in exceptional circumstances.
- (2) Where a public officer accepts a complimentary treatment in the exceptional circumstances referred to in subsection (1), the public officer shall, within forty-eight hours of acceptance of the complimentary treatment, or, if not on duty, within forty-eight hours of resumption of duty, make a declaration of such acceptance, giving sufficient detail on—
  - (a) the nature of the complimentary treatment accepted;
  - (b) the donor; and
  - (c) the circumstances under which the complimentary treatment was accepted.
- (3) A public officer who contravenes subsection (1) or (2) commits an offence.

The clause does not provide for the management of conflict of interest that may arise as a result of complimentary treatment received by family members and relatives who may be used as proxies to indirectly influence public officers.

## **RECOMMENDATION**





In view of the foregoing, I recommend that clause 18 of the Bill be amended by—

- (a) inserting the following new subclause after subclause (2)—

(2A) Where a public officer has knowledge that a family member or a relative has accepted a complimentary treatment in the exceptional circumstances contemplated under subsection (1), the public officer shall, within forty-eight hours of such knowledge, or, if not on duty, within forty-eight hours of resumption of duty, make a declaration of the acceptance, giving sufficient details of the nature of the complimentary treatment accepted, the donor and the circumstances under which it was accepted for purposes of assessment of potential conflict of interest.

- (b) deleting subsection (3) and substituting therefor the following new sub clause—

(3) A person who contravenes this section commits an offence.

## **CLAUSE 20**

Clause 20 of the Bill provides as follows—

- (1) A public officer shall not acquire an interest in a partnership, private company or any other legal





entity that is a party to a contract with the reporting entity in which the public officer serves, under which the partnership, private company or legal entity receives a benefit.

- (2) Subsection (1) shall not apply to interests acquired through trading in the regulated financial markets provided that the public officer shall not acquire controlling shares in the entity.
- (3) A person who contravenes subsection (1) commits an offence.

A conflict of interest arises where a public officer either does business with the reporting entity in which he is employed or influences the award of a contract in that reporting entity. Additionally, a perception exists that a public officer has the capacity to influence the award of contracts in other reporting entities.

The clause only restricts a public officer from acquiring an interest in a business that is a party to a contract with his or her reporting entity. To ensure that there is no conflict of interest in government contracting, it is necessary to prohibit public officers from acquiring an interest in a business that is a party to a contract with any reporting entity.

## **RECOMMENDATION**





In view of the foregoing, I recommend that clause 20 of the Bill be amended by deleting subclause (1) and substituting therefor the following new subclause—

- (1) A public officer shall not acquire an interest in a partnership, private company or any other legal entity that is a party to a contract with any reporting entity under which the partnership, private company or legal entity receives a benefit.

### **CLAUSE 30**

Clause 30 of the Bill provides as follows—

- (1) A public officer shall recuse himself or herself from any discussion, decision, debate or vote on any matter in respect of which the public officer would be in conflict of interest.
- (2) Subsection (1) shall not apply to a member of Parliament or a county assembly.

Clause 11 of the Bill outlines the procedure through which a Member of Parliament or a member of a county assembly declares any interest in any debate or proceeding. Additionally, the clause grants the relevant Speaker or committee chairperson the discretion to evaluate the declaration of the conflict of interest and determine the question of whether the member should participate in the debate or proceeding.

It is therefore necessary to delete clause 30 (2).





## **RECOMMENDATION**

In view of the foregoing, I recommend that clause 30 of the Bill be amended by deleting subsection (2).

## **CLAUSE 31**

Clause 31 of the Bill provides as follows—

- (1) Every public officer shall submit to their responsible Commission a declaration of his or her income, assets and liabilities and the income, assets and liabilities of his or her spouse and dependent children under the age of eighteen years.
- (2) The declaration referred to under sub section (1), shall be in Form set out in the First Schedule.
- (3) Notwithstanding the generality of subsection (1), a public officer shall in a periodical or final declaration provide information on any material change in, or changes affecting any of the categories of income, assets or liabilities in the schedule of mandatory declarations that have occurred within the two-year period prior to the declaration.

There is need to define the term “material change” in relation to declaration of income assets and liabilities in order to enhance compliance with the requirements of the clause. Additionally, the lack of a definition leaves the term open to subjective interpretation and weakening enforcement.

## **RECOMMENDATION**





In view of the foregoing, I recommend that clause 31 of the Bill be amended by adding the following new subclause after subclause (3) —

- (4) For purposes of this section, **"material change"** means—
- (a) at least twenty five percent increase or decrease in the value of an income, asset or liability;
  - (b) the disposal or acquisition of an asset or liability;
  - (c) changes in marital status;
  - (d) appointment to or changes in directorships;
  - (e) changes in membership in companies or partnerships and other legal entities howsoever established; or
  - (f) changes in membership in social associations, societies, clubs, foundations or trusts.

### **CLAUSE 35**

Clause 35 (1) of the Bill provides as follows—

Upon receipt of the declaration made under section 31, a responsible Commission shall analyse the declaration to ascertain—





- (a) whether the declaration raises possible issues of conflict of interest; and
- (b) whether on the face of it, the declaration contains any discrepancy or inconsistency.

The provision does not explicitly allow a responsible commission to assess declarations for completeness or accuracy, which limits its oversight capacity.

### **RECOMMENDATION**

In view of the foregoing, I recommend that clause 35 of the Bill be amended in subclause (1) by adding the following new paragraph immediately after paragraph (b)—

- (c) its completeness and correctness.

**IN WITNESS THEREOF**, I hereunto have set my Hand and caused the Public Seal of the Republic, to be affixed on this 28<sup>th</sup> day of April, in the year of our **LORD TWO THOUSAND AND TWENTY-FIVE.**



**WILLIAM SAMOEI RUTO,**  
**PRESIDENT.**