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LAWS OF KENYA

THE MEDIA COUNCIL ACT

CHAPTER 411B

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CHAPTER 411B

MEDIA COUNCIL ACT

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CHAPTER 411B

MEDIA COUNCIL ACT

[Date of assent: 24th December, 2013.]

[Date of commencement: 10th January, 2014.]

An Act of Parliament to give effect to Article 34(5) of the Constitution; to establish the Media Council of Kenya; to establish the Complaints Commission, and for connected purposes

[Act No. 46 of 2013.]

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the Media Council Act.

2. Interpretation

In this Act, unless the context otherwise requires—

"Cabinet Secretary" means the Cabinet Secretary responsible for matters relating to the media;

"code of conduct" means the code of conduct for journalists and media enterprises provided under section 45 and set out in the Second Schedule;

"Commission" means the Complaints Commission established under section 27;

"Council" means the Media Council of Kenya established under section 5;

"Court" means the High Court established under Article 165(1) of the Constitution;

"foreign journalist" means any journalist who is not a citizen of Kenya and accredited as such under this Act;

"journalism" means the collecting, writing, editing and presenting of news or news articles in newspapers and magazines, radio and television broadcasts, in the internet or any other manner as may be prescribed;

"journalist" means any person who is recognised as such by the Council upon fulfilment of a criteria set by the Council;

"media" means the production of electronic and print media for circulation to the public, but does not include book publishing;

"media enterprise" means an organization whose business involves the collection, processing and dissemination of news or news articles, or in entertainment and education through the media;

"political party" has the same meaning as assigned to it under Article 260 of the Constitution;

"programme" means sounds or visual images or combination of sounds and visual images that are intended to inform, enlighten or entertain;

"publication" means the dissemination to the public of any written, audio or video material, and includes materials disseminated through the internet.

3. Guiding principles

(1) In exercise of the powers and discharge of functions under this Act, the Cabinet Secretary, the Council and committees established under this Act shall be guided by values and principles enshrined in the Constitution.

(2) In exercise of the right to freedom of expression, the persons specified under section 4 shall—

- (a) reflect the interests of all sections of society;
- (b) be accurate and fair;
- (c) be accountable and transparent;
- (d) respect the personal dignity and privacy of others;
- (e) demonstrate professionalism and respect for the rights of others; and
- (f) be guided by the national values and principles of governance set out under Article 10 of the Constitution.

4. Application of the Act

This Act shall apply to—

- (a) media enterprises;
- (b) journalists;
- (c) media practitioners;
- (d) foreign journalist accredited under this Act; and
- (e) consumers of media services.

PART II – ESTABLISHMENT OF THE MEDIA COUNCIL OF KENYA

5. Establishment of the Media Council

(1) There is established a council to be known as the Media Council of Kenya.

(2) The Council is 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) purchasing or otherwise acquiring, holding, charging and disposing of moveable and immovable property;
- (c) entering into contracts; and
- (d) doing or performing all other things or acts necessary for the proper performance of its functions under this Act, which may lawfully be done or performed by a body corporate.

(3) The headquarters of the Council shall be in Nairobi.

(4) The Council may establish such offices as it considers necessary to undertake its functions.

6. Functions of the Council

(1) The functions of the Council are to—

- (a) promote and protect the freedom and independence of the media;
- (b) prescribe standards of journalists, media practitioners and media enterprises;

- (c) ensure the protection of the rights and privileges of journalists in the performance of their duties;
- (d) promote and enhance ethical and professional standards amongst journalists and media enterprises;
- (e) advise the government or the relevant regulatory authority on matters relating to professional, education and the training of journalists and other media practitioners;
- (f) set standards, in consultation with the relevant training institutions, for professional education and training of journalists;
- (g) develop and regulate ethical and disciplinary standards for journalist, media practitioners and media enterprises;
- (h) accredit journalists and foreign journalists by certifying their competence, authority or credibility against official standards based on the quality and training of journalists in Kenya including the maintaining a register of journalists, media enterprises and such other related registers as it may deem fit and issuance of such document evidencing accreditation with the Council as the Council shall determine;
- (i) conduct an annual review of the performance and the general public opinion of the media, and publish the results in at least two daily newspapers of national circulation;
- (j) through the Cabinet Secretary, table before Parliament reports on its functions;
- (k) establish media standards and regulate and monitor compliance with the media standards;
- (l) facilitate resolution of disputes between the government and the media and between the public and the media and intra media;
- (m) compile and maintain a register of accredited journalists, foreign journalists, media enterprises and such other related registers as it may consider necessary;
- (n) subject to any other written law, consider and approve applications for accreditation by educational institutions that seek to offer courses in journalism; and
- (o) perform such other functions as may be assigned to it under any other written law.

(2) In exercise of its powers and discharge of its function under this Act the Council and every person to whom this Act applies shall ensure—

- (a) that the provisions of Article 33(2) of the Constitution are safeguarded;
- (b) that the freedom and independence of media is exercised in a manner that respects the rights and reputations of others;
- (c) that the protection of national security, public order, public health and public morals is safeguarded; and
- (d) the compliance with any other written law.

(3) The Cabinet Secretary shall, in consultation with the Council, make regulations to give further effect to subsection (2).

7. Composition of the Council

- (1) The Council shall consist of—
- (a) a chairperson appointed in accordance with this section;
 - (b) one person nominated by the Cabinet Secretary;
 - (c) seven other members appointed in accordance with this section.
- (2) Within fourteen days of the commencement of this Act, or of the occurrence of a vacancy in the office of chairperson or member, the Cabinet Secretary shall—
- (a) by notice in the *Gazette* and in at least two newspapers of national circulation, declare vacancies in the Council, and invite applications from qualified persons; and
 - (b) convene a selection panel for the purpose of selecting suitable candidates for appointment as the chairperson or members of the Council.
- (3) The selection panel referred to under subsection (2), shall comprise of thirteen members nominated by the following organisations—
- (a) Kenya Union of Journalists;
 - (b) Media Owners Association;
 - (c) Kenya Editor's Guild;
 - (d) Law Society of Kenya;
 - (e) Kenya Correspondents Association;
 - (f) Public Relations Society of Kenya;
 - (g) National Gender and Equality Commission;
 - (h) Association of Professional Societies in East Africa;
 - (i) Consumers Federation of Kenya;
 - (j) the Ministry responsible for matters relating to media;
 - (k) Kenya News Agency; and
 - (l) two persons nominated by schools of journalism of recognized universities, one representing public universities and the other representing private universities.
- (4) their first meeting the Panel shall appoint a Chairperson and a vice-chairperson who shall be of opposite gender.
- (5) An application in respect of a vacancy declared under subsection (2), shall be forwarded to the selection panel within seven days of the publication of the notice and may be made by—
- (a) any qualified person; or
 - (b) any, person, organization or group of persons proposing the nomination of any qualified person.
- (6) The selection panel shall, subject to this section, determine its own procedure and the Cabinet Secretary shall provide it with such facilities and other support as it may require for the discharge of its functions under this section.
- (7) The selection panel shall consider the applications, shortlist and publish the names and qualifications of all the applicants and those shortlisted by the Panel in the *Gazette* and at least two daily newspapers of national circulation within seven days from the expiry of the deadline of receipt of applications under subsection (5).

(8) The selection panel shall interview the shortlisted applicants within fourteen days from the date of publication of the list of shortlisted applicants under subsection (7).

(9) After carrying out the interviews, the selection panel shall select one person qualified to be appointed as chairperson and seven persons qualified to be members of the Council, and forward the names to the Cabinet Secretary.

(10) The Cabinet Secretary shall, within seven days of receipt of the names, by notice in the *Gazette*, appoint a chairperson and seven members of the Council.

(11) The Cabinet Secretary may reject any nomination solely on any of the grounds set out in section 8(2), whereafter the Cabinet Secretary shall communicate the decision to the selection panel.

(12) Upon receipt of the notice of rejection under subsection (11), the selection panel shall select another person from the list of shortlisted applicants and submit his or her name to the Cabinet Secretary for appointment.

(13) Despite the foregoing provisions of this section, the Cabinet Secretary may, by notice in the *Gazette*, extend the period specified in respect of any matter under this section by a period not exceeding fourteen days.

(14) In selecting, nominating, approving or appointing the chairperson and members of the Council, the selection panel and the Cabinet Secretary shall—

- (a) ensure that the nominees to the Council reflect the interests of all sections of the society;
- (b) ensure equal opportunities for persons with disabilities and other marginalized groups; and
- (c) ensure that not more than two-thirds of the members shall be of the same gender.

(15) The selection panel shall stand dissolved upon the appointment of the chairperson or members of the Council.

8. Qualification for appointment as chairperson or member of the Council

(1) A person shall be qualified for appointment as chairperson or member of the Council if that person—

- (a) is a citizen of Kenya;
- (b) holds a degree from a university recognized in Kenya;
- (c) has knowledge and experience of at least ten years, in the case of the chairperson, or seven years, in the case of a member, in matters relating to any of the following fields—
 - (i) law;
 - (ii) journalism;
 - (iii) finance;
 - (iv) gender and human rights;
 - (v) performing arts;
 - (vi) advertising;
 - (vii) public relations;
 - (viii) religious studies;
 - (ix) communication;
 - (x) humanities and social sciences; or

- (xi) information technology;
- (d) meets the requirements of Chapter Six of the Constitution; and
- (e) has had a distinguished career in their respective fields.

(2) A person shall not be qualified for appointment as chairperson or a member of the Council if the person—

- (a) is a member of Parliament or county assembly;
- (b) is an official of a governing body of a political party;
- (c) has at any time within the preceding five years, held a political office;
- (d) is an undischarged bankrupt;
- (e) has been convicted of a felony;
- (f) has benefitted from, or facilitated an unlawful or irregular allocation, acquisition or use of land or other public property; or
- (g) has been removed from office for contravening the provisions of the Constitution or any other written law.

9. Committees of the Council

(1) The Council may establish such committees as may be necessary for the better carrying out of their function.

(2) The Council may co-opt such persons whose knowledge and expertise may be for the Council to undertake its functions.

10. Conduct of business

The business and affairs of the Council shall be conducted in accordance with the First Schedule.

11. Independence of the Council

The Council shall be independent of control by government, political or commercial interests.

12. Tenure and terms of office members of the council

(1) The chairperson and members of the Council shall hold office for a period of three years, and shall be eligible for re-appointment for a further and final term of three years.

(2) The chairperson and members of the council shall serve the Council on a part-time basis.

13. Vacancy in the office of the Council

The office of chairperson or a member shall become vacant if—

- (a) the holder—
 - (i) dies;
 - (ii) by notice in writing addressed to the Cabinet Secretary, resigns from office;
 - (iii) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months without an option of a fine; or
 - (iv) is removed from office in accordance with section 14(1);
- (b) the term of office of the holder expires.

14. Removal from office

(1) The chairperson or a member of the Council shall be removed from office on any of the following grounds—

- (a) violation of the Constitution or any other written law, including contravention of Chapter Six of the Constitution;
- (b) gross misconduct;
- (c) physical or mental incapacity that leads to inability to perform the functions of office;
- (d) incompetence or neglect of duty;
- (e) bankruptcy;
- (f) absence from three consecutive meetings of the Council without justifiable cause;
- (g) if the chairperson or a member becomes a director of any media enterprise or holds shares or has any other interest in a corporation, partnership or other body, directly or through another person, if holding those shares or having that interest would result in a conflict of interest with the officer's official duties; or
- (h) if the chairperson or member is convicted of a criminal offence and sentence to imprisonment for a period of more than six months without the option of a fine.

(2) A person desiring the removal of the chairperson or a member of the Council on any ground specified in subsection (1) may present a petition, in writing, to the National Assembly setting out the alleged facts constituting that ground.

(3) The National Assembly shall, within seven days, consider the complaint and if satisfied that it discloses a ground under subsection (1) submit the complaint together with its recommendations to the Cabinet Secretary.

(4) On receiving the recommendation made under subsection (3), the Cabinet Secretary shall suspend the member from office pending determination of the petition and shall appoint a tribunal comprising of—

- (a) a chairperson who shall be qualified to hold office as a Judge of the High Court;
- (b) two persons one man and one woman competent to assess and determine the petition.

(5) The tribunal shall consider the petition and if satisfied that it discloses sufficient grounds for removal, recommend to the Cabinet Secretary to remove the member from office.

(6) In determining the petition, the tribunal shall be guided by the principles of fair administrative justice set out in Article 47 of the Constitution.

(7) The Cabinet Secretary shall be bound by the recommendation made by tribunal under this section.

15. Filling of vacancy

Where a vacancy occurs in the membership of the Council under section 13 or 14, the appointment procedure provided for under this Act shall apply.

16. Allowances of the chairperson and members of the Council

The chairperson and members of the Council shall be paid such allowances as the Salaries and Remuneration Commission shall determine.

17. Appointment of the secretary

(1) There shall be a secretary to the Council who shall be competitively recruited and appointed by the Council.

(2) A person shall be qualified for appointment as a secretary to the Council 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 proven experience at management level;
- (d) has extensive experience in public administration; and
- (e) meets the requirements of Chapter Six of the Constitution.

(3) The secretary of the Council shall be the chief executive officer of the Council and shall be responsible to the Council for—

- (a) the day-to-day management of the affairs of the Council;
- (b) the maintenance of efficiency and discipline by all staff of the Council;
- (c) the management of the budget of the Council;
- (d) ensuring that funds of the Council are properly expended and accounted for;
- (e) maintaining such records of the Council as the Council may, from time to time, require; and
- (f) the performance of such other duties as the Council may, from time to time, assign.

(4) The secretary shall be an *ex officio* member of the Council.

(5) The secretary shall hold office for a term of five years and shall be eligible for re-appointment for a further term of five years.

18. Removal of Secretary

(1) The secretary may be removed from office by the Council in accordance with the terms and conditions of service for—

- (a) inability to perform the functions of the office of secretary arising out of physical or mental incapacity;
- (b) gross misconduct or misbehaviour;
- (c) incompetence or neglect of duty;
- (d) violation of the Constitution; or
- (e) any other ground that would justify removal from office under the terms and conditions of service.

(2) Before the secretary is removed under subsection (1), the Secretary shall be given—

- (a) sufficient notice of the allegations made against him or her; and
- (b) an opportunity to present his or her defence against the allegations.

19. Delegation by the Council

(1) The Council may, by resolution generally or in any particular case, delegate in writing, to a committee or any officer, member of staff 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.

(2) A delegation under this section—

- (a) shall be subject to any conditions as the Council may impose;
- (b) shall not divest the Council of the responsibility concerning the exercise of the powers or the performance of the duty delegated; and
- (c) may be withdrawn, and any decision made by the person to whom the delegation is made may be withdrawn or varied by the Council.

20. Staff of the Council

(1) The Council may competitively appoint such officers and other staff of the Council as may be necessary for the proper discharge of its functions under this Act or any other written law, upon such terms and conditions of service as the Council may determine.

(2) In the appointment of the staff of the Council referred to under subsection (1), the Council shall afford equal opportunity for appointment of men and women, members of all ethnic groups and persons with disabilities.

21. Seal of the Council

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

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

22. Protection of the Council from liability

An action shall not lie against the Council or any of its officers or other persons appointed or authorized to perform any function under this Act on behalf of or in respect of anything done or omitted to be done by them in good faith in the exercise of or performance of any power, authority or duty conferred or imposed by them under this Act.

PART III – FINANCIAL PROVISIONS**23. Funds of the Council**

The funds of the Council shall consist of—

- (a) such monies as may be allocated to the Council by the National Assembly;
- (b) such monies fees as may be charged by the Council for the issuance of any document of accreditation or registration to any journalist under this Act;
- (c) such monies or assets as may accrue to the Council in the course of the exercise of its powers or the performance of its functions under this Act; and
- (d) all monies from any other source provided, donated or lent to the Council.

24. Financial year

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

25. Annual estimates

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

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

- (a) payment of salaries, allowances and other charges in respect of the staff of the Council;
- (b) payment of pensions, gratuities and other charges in respect of staff of the Council;
- (c) proper maintenance of the buildings and grounds of the Council;
- (d) maintenance, repair and replacement of the equipment and other property of the Council;
- (e) payment of allowances of the members of the Council; and
- (f) creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance, replacement of buildings or equipment, or in respect of such other matters as the Council may consider.

26. Accounts and audit

(1) The Council shall cause to be kept proper books and other records of accounts of the income, expenditure, assets and liabilities of the Council.

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

- (a) a statement of income and expenditure during that financial year; and
- (b) a statement of the assets and liabilities of the Council as at the last day of that financial year.

(3) The audited accounts of the Council shall be published in at least two daily newspapers of national circulation

PART IV – COMPLAINTS AND DISPUTE RESOLUTION**27. Establishment of the Complaints Commission**

(1) There is established a Complaints Commission which shall consist of seven members appointed in accordance with this section.

(2) The provisions of section 7(2), (3), (4), (5), (6), (7) and (8) shall apply *mutatis mutandis* to the appointment of members of the Commission.

(3) After carrying out interviews, the selection panel shall select one person qualified to be appointed as chairperson and six persons qualified to be appointed as members of the Commission, and forward the names to the Cabinet Secretary.

(4) The Cabinet Secretary shall, within seven days of receipt of the names, by notice in the *Gazette*, appoint a chairperson and six members of the Commission.

(5) The Cabinet Secretary may, in writing, reject any nomination on reasonable grounds whereafter the Cabinet Secretary shall communicate the decision to the selection panel.

(6) Upon receipt of the notice of rejection under subsection (5), the selection panel shall select another person from the list of shortlisted applicants and submit his or her name to the Cabinet Secretary for appointment.

28. Membership of the Complaints Commission

(1) The Complaints Commission shall consist of—

- (a) a chairperson, who shall be a person who holds or has held a judicial office in Kenya or who is an advocate of the High Court of Kenya of not less than ten years standing; and
- (b) six other persons with knowledge and experience in any one of the following areas—
 - (i) journalism;
 - (ii) media policy and law;
 - (iii) media regulation;
 - (iv) business practice and finance;
 - (v) the performing arts or entertainment;
 - (vi) advertising practice; or
 - (vii) related social sciences.

(2) The members of the Complaints Commission shall, at their first meeting, elect a vice-chairperson of opposite gender from amongst themselves.

29. Appointments to the Complaints Commission

(1) The appointments to the Complaints Commission shall be done in a fair, transparent and competitive manner based on merit, suitability and competence.

(2) In selecting persons for appointment as chairperson and members of the Commission, the selection panel shall ensure that equal opportunities are accorded to persons with disability and that not more than two-thirds of the members of the Commission are of the same gender.

(3) The names of persons appointed as members of the Commission shall be published in the *Gazette*, and they shall before assuming office, take an oath or solemn affirmation before a judge of the High Court.

(4) The members of the Commission shall hold office for a period of three years and shall be eligible for re-appointment subject to a maximum of two terms.

(5) A person shall cease to be a member of the Commission only in terms of section 13(1) of this Act.

(6) Whenever a vacancy occurs in the Commission, the Commission shall notify the Cabinet Secretary at once, who shall, as soon as reasonably practical, initiate the process of filling the vacancy in accordance with section 27 of this Act.

30. Independence of the Complaints Commission

In performing its functions or exercising its powers, the Complaints Commission shall be independent in its operations and shall be guided by the provisions of Article 159 of the Constitution.

31. Functions of the Complaints Commission

The functions of the Complaints Commission are to—

- (a) mediate or adjudicate in disputes between the government and the media and between the public and the media and intra media on ethical issues;
- (b) ensure the adherence to high standards of journalism as provided for in the code of conduct for the practice of journalism in Kenya; and
- (c) achieve impartial, speedy and cost effective settlement of complaints against journalists and media enterprises, without fear or favour in relation to this Act.

32. Powers of the Commission in discharge of functions

The Commission shall have all the powers incidental to and necessary for the effective discharge of its functions under this Act and any other written law and shall—

- (a) establish and maintain an internal mechanism for the resolution of disputes;
- (b) prescribe procedures for determination of disputes relating to the media;
- (c) receive, investigate and deal with complaints made against journalists and media enterprises;
- (d) summon and receive information of evidence relating to any matter.

33. Powers of the Complaints Commission

(1) The Complaints Commission may, by notice in writing, require any person to—

- (a) give to the Complaints Commission reasonable assistance in the investigation of a complaint made under this Act; and
- (b) appear before the Complaints Commission for examination concerning matters relevant to the investigation of any complaint made under this Act.

(2) The Commission shall not be bound by the rules of evidence as set out in the Evidence Act (Cap. 80).

(3) Except as expressly provided for in this Act or any regulations made pursuant to this Act, the Complaints Commission shall regulate its own procedure.

34. Complaints

(1) A person aggrieved by—

- (a) any publication by or conduct of a journalist or media enterprise in relation to this Act; or
- (b) anything done against a journalist or media enterprise that limits or interferes with the constitutional freedom of expression of such journalist or media enterprise,

may make a written complaint to the Complaints Commission setting out the grounds for the complaint, nature of the injury or damage suffered and the remedy sought.

(2) A complaint under section 31 may be made—

- (a) orally, either in person or by any form of electronic communication; or

(b) in writing, given to the Registrar of the Complaints Commission setting out the grounds for the complaint, nature of the injury or damage suffered and the remedy sought.

(3) Where complaints are oral, the Commission may require them to be reduced in writing within seven days, unless it is satisfied there are good reasons for not doing so,

(4) A complainant shall disclose to the Commission—

(a) the complainant's name and address; and

(b) other information relating to the complainant's identity that the Commission reasonably requires.

(5) Despite subsection (4), the Commission may—

(a) keep information provided by a complainant confidential if there are special circumstances or the Commission considers it is in the complainant's interests to do so; or

(b) accept an anonymous complaint concerning an issue of public interest, or where no clearly identifiable person or group is affected.

(6) The Commission may ask a complainant to provide more information about the complaint within a reasonable time fixed by the Commission.

(7) The Commission may at any time require a complaint or information provided by a complainant to be verified by the complainant by oath or statutory declaration.

(8) Without prejudice to the functions of the Council set out in section 6 of the Act, the Council may take up a complaint on its own initiative, and forward the same to the Commission for determination where in its opinion the complaint has public interest implications.

(9) The Commission may refer a complaint made under subsection (1) to the Communications and Multimedia Tribunal established under the Kenya Information and Communications Act (Cap. 411A), where the Commission determines that the complaint relates to a matter which falls within the mandate of the Tribunal.

35. Procedure upon complaint

(1) Upon receipt of a complaint, the Complaint Commission shall notify, in writing, the party against whom the complaint has been made, within fourteen days of receipt of the complaint, stating the nature of the complaint, the breach, act or omission complained of and the date on which the matter shall be considered by the Commission.

(2) The notice referred to in subsection (1) shall require the person against whom the complaint is made to respond to the complaint in writing or appear before it at the hearing of the complaint.

(3) After considering each party's submissions, the Commission shall then conduct a preliminary assessment to determine the admissibility or otherwise of the complaints lodged within fourteen days.

(4) The Complaints Commission or any of its panels may, after conducting a preliminary assessment of a complaint, and being of the opinion that the complaint is devoid of merit or substance, dismiss such complaint and give reasons thereto.

(5) A party may within fourteen days from the date of dismissal, apply for review or variation of the Commission's decision under subsection (4).

(6) Where the Commission considers there is a breach of the Act or Code it may facilitate an early resolution of the complaint by a referral to an inter parties mediation process within fourteen days.

36. Mediation of disputes

(1) The chairperson of the Complaints Commission may appoint one of the members of the Commission as a mediator, to attempt to facilitate an early voluntary settlement of the dispute between the parties to the dispute.

(2) The mediation process shall be voluntary and shall be conducted in accordance with the rules made by the Commission under this Act.

(3) The mediation proceedings shall be—

- (a) private and confidential; and
- (b) conducted on a without prejudice basis.

(4) No person may refer to anything said at the proceedings during any subsequent proceedings, unless the parties agree in writing.

(5) Upon satisfactory determination of a mediation meeting, the mediator shall cause to be signed by both parties a certificate signifying acceptance of the decision which shall be adopted as a decision of the parties in the dispute.

(6) No person, including the member who acted as mediator, may be called as a witness during subsequent proceedings in the Commission or in any court to give evidence about what transpired during the previous mediation meetings.

(7) The mediation rules and procedure made pursuant to this section shall provide for—

- (a) the role and responsibilities of the mediator;
- (b) the roles and responsibilities of the parties;
- (c) the indemnification of the mediator in case of any claims for damages that may arise in any way from the mediation;
- (d) the protection of confidential information disclosed or obtained during mediation;
- (e) the inadmissibility in any legal proceedings of any statements made during the course of proceedings;
- (f) the settlement of the disputes in accordance with the Act and Code of Conduct;
- (g) the acceptance of the settlement and issuance of a certificate of acceptance of settlement;
- (h) the binding nature and the admissibility of the settlement agreement in court for enforcement purposes; and
- (i) the costs of the mediation.

37. Hearing of disputes

(1) Where the mediation fails or the parties or either of them objects to any mediation efforts, the Commission shall set down the complaint for determination and issue a date on which the matter shall be determined by the Complaints Commission after a full hearing.

(2) The chairperson of the Complaints Commission may establish hearing panels each consisting of three members of the Commission to deal with, hear and determine the Complaints admitted for hearing.

(3) The panels established under subsection (1) shall exercise all the powers and shall perform all the duties and functions of the Complaints Commission in relation to any matter before the panel.

(4) Members of a panel established under subsection (1) may, if necessary, consult with other members of the Complaints Commission for purposes of ensuring consistency of decisions of the Commission.

(5) The Complaints Commission shall, having heard the matter the subject of the complaint, make a report, issue any decision as it deems appropriate and give directions in connection with the complaint, and shall publish its findings if it considers it in the public interest to do so.

(6) The Complaints Commission shall communicate its decision to the parties concerned within seven days from the time the decision is made.

(7) The Complaints Commission shall conduct its hearings in public unless the Commission upon recorded compelling reasons certifies any particular session as closed.

(8) The Complaints Commission may publish or publicize its decision made under this section in any case where it thinks it appropriate to do so.

38. Decisions of the Complaints Commission

(1) The Complaints Commission or any of its panels may, after hearing the parties to a complaint—

- (a) order the offending party to publish an apology and correction in such manner as the Commission may specify;
- (b) order the return, repair, or replacement of any equipment or material belonging to a journalist confiscated or destroyed;
- (c) make any directive and declaration on freedom of expression;
- (d) issue a public reprimand of the journalist or media enterprise involved;
- (e) order the offending editor of the broadcast, print or on-line material to publish the Commission's decision in such manner as specified by the Commission;
- (f) impose a fine of not more than five hundred thousand shillings on any respondent media enterprise and a fine of not more than one hundred thousand shillings, on any journalist, adjudged to have violated the Act or Code of Conduct, where upon such a fine shall be a debt due to the Council and recoverable as such;
- (g) in its reasons for its findings, record a criticism of the conduct of the complainant in relation of the Complaint, where such criticism, is in its view, warranted;
- (h) recommend to the Council the suspension or removal from the register of the journalist involved;
- (i) make any supplementary or ancillary orders or directions that it may consider necessary for carrying into effect orders or directives made.

(2) The Complaints Commission or any of its panels may make any or a combination of the orders set out in subsection (1).

39. Allowances of the chairperson and members of the Complaints Commission

The chairperson and members of the Complaints Commission shall be paid such allowances as the Salaries and Remuneration Commission may determine.

40. Protection of the Complaints Commission from liability

A member of the Complaints Commission shall—

- (a) be free from any criminal or civil liability for anything done or said in his capacity as a member of the Commission; and
- (b) not be subject to court summons to give evidence on any proceedings before the Commission or any of its panels.

41. Record of proceedings

The Complaints Commission shall keep or cause to be kept a record of all proceedings of the Complaints Commission.

42. Appeals

(1) A person aggrieved by a decision of the Council may appeal to the Complaints Commission against that decision in such manner as may be prescribed.

(2) A party aggrieved by the decision of the Complaints Commission may, after thirty days after the Commission has made its decision, apply to the High Court for such orders as the court may, in exercise of its jurisdiction under Article 165(6) of the Constitution, think just.

43. Decisions of the Commission to be final

Where no application is made to challenge the decision of the Commission within thirty days of the date of the decision, the decision of the Commission shall be final and binding to the parties.

44. Procedures of the Complaints Commission

Except as expressly provided in this Act or any regulations made thereunder, the Complaints Commission shall have power to regulate its own procedure.

PART V – MISCELLANEOUS PROVISIONS**45. Code of conduct**

(1) The journalists and media enterprises shall keep and maintain professional and ethical standards and shall, at all times, comply with the code of conduct set out in the Second Schedule.

(2) The Cabinet Secretary on recommendation of the Council may, from time to time, amend the Second Schedule.

46. Accreditation of journalists

(1) The Council shall consider and approve applications by foreign journalists for accreditation to practice in Kenya and may charge such fees as the Cabinet Secretary in consultation with the Council, may by notice in the *Gazette* prescribe.

(2) The accreditation shall be valid for a renewable period of twelve months.

(3) In considering an application for accreditation of a foreign journalist in Kenya, the Council shall ensure that such accreditation does not prejudice the

employment opportunities of qualified and registered local journalists or other media practitioners.

47. Unaccredited institutions

(1) An educational institution that is not accredited under any written law or that has not been granted a charter shall not offer or teach courses in journalism.

(2) An institution that offers or teaches courses in journalism contrary to subsection (1) commits an offence and the proprietor, director or manager of such institution shall be liable, on conviction, to a fine not exceeding twenty-five thousand shillings or to imprisonment for a term not exceeding two years, or both.

48. Offences

(1) A person who—

- (a) without lawful justification fails or refuses to comply with the direction of the Council;
- (b) obstructs or hinders the Council in the exercise of its powers under this Act;
- (c) furnishes information or makes a statement to the Council which he or she knows to be false or misleading in any material particular; or
- (d) when appearing before the Council or any of its committees, for examination, makes a statement which he knows to be false or misleading in any material particular,

commits an offence.

(2) A person convicted of an offence under this section shall be liable to a fine not exceeding two hundred thousand shillings, or to imprisonment for a term not exceeding six months, or both.

(3) A person who is convicted of an offence under subsection (2) shall be liable, for any subsequent offence, to a fine not exceeding one million shillings, or to imprisonment for a term not exceeding two years, or to both.

(4) Where any offence mention in subsection (1) is committed by a body corporate, the body corporate, every principal officer or staff of the corporation directly responsible for the acts or omissions constituting the offence shall be liable to the fines and term of imprisonment specified in subsections (2) and (3).

49. General penalty

(1) A person who contravenes any provision of this Act or regulations made thereunder for which no penalty is specifically provided for shall be liable, upon conviction, to a fine not exceeding two hundred thousand shillings, or to imprisonment for a term not exceeding six months, or both.

(2) Where an offence under subsection (1) is committed by a body corporate, the corporate body and every principal officer or staff of the corporation directly responsible for the acts or omissions constituting the offence shall be liable to the fine not exceeding two million shillings or imprisonment for a term not exceeding two years or to both.

PART VI – PROVISIONS ON DELEGATED POWERS

50. Regulations

(1) The Cabinet Secretary shall in consultation with the Council, make regulations for the better carrying out of the provisions of this Act.

(2) Without prejudice to subsection (1), the council may make rules to govern its own procedures.

(3) For the purposes of Article 94(6) of the Constitution—

- (a) the authority of the Cabinet Secretary to make regulations under this Act will be limited to bringing into effect provisions of this Act and to fulfillment of the objectives specified under this section;
- (b) the principles and standards applicable to the regulations made under this section are those set out in the Interpretation and General Provision Act (Cap. 2) and the Statutory Instruments Act (Cap. 2A).

PART VII – REPEAL AND TRANSITIONAL PROVISIONS

51.

[Spent]

52.

[Spent]

FIRST SCHEDULE

[s. 10]

CONDUCT OF BUSINESS AND AFFAIRS OF THE COUNCIL

1. (1) The Council shall meet not less than four times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.

(2) Meetings of the Council shall be convened by the chairperson.

(3) Notwithstanding the provisions of subparagraph (1), the Chairperson shall convene a special meeting of the Council at any time upon receipt of a requisition signed by not less than five members of the Council calling upon the Chairperson to do so, and such special meeting shall be held not later than twenty-one days from the date of receipt of the requisition.

(4) Unless three quarters of the total members of the Council otherwise agree, at least fourteen days' written notice of every meeting of the Council shall be given to every member of the Council.

(5) The quorum for the conduct of the business of the Council shall be five members.

(6) The chairperson or, in the absence of the Chairperson, a member elected to act as chairperson at a particular meeting of the Council, shall preside at each meeting of the Council and the person presiding at any meeting shall have a casting vote.

(7) The decision of the Council shall be by a majority of the members present and voting at the meeting.

(8) Subject to paragraph (4), no proceedings of the Council shall be invalid by reason only of a vacancy among members thereof.

(9) Subject to provisions of this Schedule, the Council may determine its own procedure and for the attendance of other persons at its meetings and may make standing orders in respect thereof.

2. (1) If a member is directly or indirectly interested in any contract, proposed contract or other matter before the Council and is present at a meeting of the Council at which the contract, proposed contract or other matter is the subject

of consideration, he or she shall, at the meeting and as soon as reasonably practicable before or after the commencement thereof, disclose the fact and shall not take part in the consideration or discussion of, or vote on, ask questions with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter.

(2) A disclosure of interest made under this paragraph shall be recorded in the minutes of the meeting at which it is made.

(3) Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not be required to be under seal, may be entered into or executed on behalf of the Council by any person generally or specially authorized by the Council in writing for that purpose.

SECOND SCHEDULE

[s. 45]

CODE OF CONDUCT FOR THE PRACTICE OF JOURNALISM

1. Interpretation

In this code of conduct "a person subject to this Act" means a journalist, media practitioner, foreign journalist or media enterprise.

2. Accuracy and fairness

- (1) A person subject to this Act shall write a fair, accurate and an unbiased story on matters of public interest.
- (2) All sides of the story shall be reported, wherever possible.
- (3) Comments shall be sought from anyone who is mentioned in an unfavourable context and evidence of such attempts to seek the comments shall be kept.
- (4) Whenever it is recognized that an inaccurate, misleading or distorted story has been published or broadcast, it shall be corrected promptly.
- (5) Corrections shall present the correct information and shall not restate the error except when clarity demands.
- (6) An apology that results from the determination of the Council shall be published or broadcast whenever appropriate in such manner as the Council may specify.
- (7) A correction under this paragraph shall be given same prominence as that given to the information being corrected.
- (8) A person subject to this Act shall not publish a story that fall short of factual accuracy and fairness.
- (9) A person subject to this Act, while free to be partisan, shall distinguish clearly in their reports between comment, conjecture and fact.
- (10) Headings shall reflect and justify the matter printed under them.
- (11) Headings containing allegations made in statements shall either identify the body or the source making them or at least carry quotation marks.
- (12) A person subject to this Act shall present news fairly and impartially, placing primary value on significance and relevance.

- (13) A person subject to this Act shall treat all subjects of news coverage with respect and dignity, showing particular compassion to victims of crime or tragedy.
- (14) A person subject to this Act shall seek to understand the diversity of their community and inform the public without bias or stereotype and present a diversity of expressions, opinions, and ideas in context.
- (15) A person subject to this Act shall present analytical reporting based on professional perspective, not personal bias.

3. Independence

- (1) Journalists shall defend the independence of all journalists from those seeking influence or control over news content.
- (2) A person subject to this Act shall—
 - (a) gather and report news without fear or favour, and resist undue influence from any outside forces, including advertisers, sources, story subjects, powerful individuals and special interest groups;
 - (b) resist those who would buy or politically influence news content or who would seek to intimidate those who gather and disseminate news;
 - (c) determine news content solely through editorial judgement and not the result of outside influence;
 - (d) resist any self-interest or peer pressure that might undermine journalistic duty and service to the public;
 - (e) recognize that sponsorship of the news shall not be used in any way to determine, restrict or manipulate content;
 - (f) refuse to allow the interests of ownership or management to influence news' judgment and content inappropriately.

4. Integrity

- (1) Journalists shall present news with integrity and common decency, avoiding real or perceived conflicts of interest, and respect the dignity and intelligence of the audience as well as the subjects of news.
- (2) A person subject to this Act shall—
 - (a) identify sources whenever possible. Confidential sources shall be used only when it is clearly in public interest to gather or convey important information or when a person providing information might be harmed;
 - (b) clearly label opinion and commentary;
 - (c) use technological tools with skill and thoughtfulness, avoiding techniques that skew facts, distort reality, or sensationalize events;
 - (d) use surreptitious news gathering techniques including hidden cameras or microphones, only if there is no other way of obtaining stories of significant public importance, and if the technique is explained to the audience.
- (3) A person subject to this Act shall not—
 - (a) pay news sources who have vested interest in a story;
 - (b) solicit or accept gifts, favours or compensation from those who might seek to influence coverage;

- (c) engage in activities that may compromise their integrity or independence.

5. Accountability

A person subject to this Act shall recognize that they are accountable for their actions to the public, the profession and themselves therefore they shall—

- (a) actively encourage adherence to these standards by all journalists and media practitioners;
- (b) respond to public concerns, investigate complaints and correct errors promptly;
- (c) recognise that they are duty-bound to conduct themselves ethically.

6. Opportunity to Reply

- (1) A fair opportunity to reply to inaccuracies shall be given to individuals or organizations when reasonably called for. If the request to correct inaccuracies in a story is in the form of a letter, the editor has the discretion to publish it in full or in its abridged and edited version, particularly when it is too long, but the remainder shall be an effective reply to the allegations.
- (2) The summarized version of the reply shall not lose the core content.

7. Unnamed Sources

- (1) Unnamed sources shall not be used unless the pursuit of the truth will best be served by not disclosing the source who shall be known by the editor and reporter.
- (2) When material is used in a report from sources other than the reporter's, these sources shall be indicated in the story.

8. Confidentiality

A person subject to this Act have a professional obligation to protect confidential sources of information.

9. Misrepresentation

Journalists shall generally identify themselves and not obtain or seek to obtain information or pictures through misrepresentation or subterfuge. Subterfuge can be justified only in the public interest and only when material cannot be obtained by any other means.

10. Obscenity, taste and tone in reporting

- (1) In general, persons subject to this Act shall not publish obscene or vulgar material unless such material contains a news.
- (2) Publication of photographs showing mutilated bodies, bloody incidents and abhorrent scenes shall be avoided unless the publication or broadcast of such photographs will serve the public interest.
- (3) Where possible an alert shall be issued to warn viewers or readers of the information being published.

11. Paying for news and articles

A person subject to this Act shall not receive any money as an incentive to publish any information.

12. Covering ethnic, religious and sectarian conflict

- (1) News, views or comments on ethnic, religious or sectarian dispute shall be published or broadcast after proper verification of facts and presented with due caution and restraint in a manner which is conducive to the creation of an atmosphere congenial to national harmony, amity and peace.
- (2) News reports or commentaries shall not be written or broadcast in a manner likely to inflame the passions, aggravate the tension or accentuate the strained relations between the communities concerned.
- (3) Articles or broadcasts with the potential to exacerbate communal trouble shall be avoided.

13. Recording interviews and telephone conversations

- (1) Except in justifiable cases, A person subject to this Act shall not tape or record anyone without the person's knowledge. An exception may be made only if the recording is necessary to protect the journalist in a legal action or for some other compelling reason. In this context these standards also apply to electronic media.
- (2) Before recording a telephone conversation for broadcast, or broadcasting a telephone conversation live, a station shall inform any party to the call of its intention to broadcast the conversation.
- (3) This, however, does not apply to conversation whose broadcast can reasonably be presumed, for example, telephone calls to programmes where the station customarily broadcasts calls.

14. Privacy

- (1) The public's right to know shall be weighed against the privacy rights of people in the news.
- (2) Journalists shall stick to the issues.
- (3) Intrusion and inquiries into an individual's private life without the person's consent are not generally acceptable unless public interest is involved. Public interest shall itself be legitimate and not merely prurient or morbid curiosity.
- (4) Things concerning a person's home, family, religion, tribe, health, sexuality, personal life and private affairs are covered by the concept of privacy except where these impinge upon the public.

15. Intrusion into grief and shock

- (1) In cases involving personal grief or shock, inquiries shall be made with sensitivity and discretion.
- (2) In hospitals, journalists shall identify themselves and obtain permission from a responsible executive before entering non-public areas of hospitals or similar institutions to pursue enquiries.

16. Gender non-discrimination

Women and men shall be treated equally as news subjects and news sources.

17. Financial journalism

- (1) Journalists shall not use financial information they receive in advance for their own benefit, and shall not pass the information to others.
- (2) Journalists shall not write or broadcast about shares, securities and other market instruments in whose performance they know they or their close

families have a significant financial interest, without disclosing the interest to the editor.

- (3) Journalists shall not buy or sell, directly or through nominees or agents, shares or securities and other market instruments about which they intend to write in the near future.

18. Letters to the editor

An editor who decides to open a column on a controversial subject is not obliged to publish all the letters received in regard to that subject. The editor may select and publish only some of them either in their entirety or the gist thereof. However, in exercising this right, the editor shall make an honest attempt to ensure that what is published is not one-sided but presents a fair balance between the pros and the cons of the principal issue. The editor shall have the discretion to decide at which point to end the debate in the event of a rejoinder upon rejoinder by two or more parties on a controversial subject.

19. Protection of children

- (1) Children shall not be identified in cases concerning sexual offences, whether as victims, witnesses or defendants. Except in matters of public interest, for example, cases of child abuse or abandonment, journalists shall not normally interview or photograph children on subjects involving their personal welfare in the absence, or without the consent, of a parent or other adult who is responsible for the children.
- (2) Children shall not be approached or photographed while at school and other formal institutions without the permission of school authorities.
- (3) In adhering to this principle, a journalist shall always take into account specific cases of children in difficult circumstances.

20. Victims of sexual offences

The media shall not identify victims of sexual assault or publish material likely to contribute to such identification.

21. Use of pictures and names

- (1) As a general rule, the media shall apply caution in the use of pictures and names and shall avoid publication when there is a possibility of harming the persons concerned.
- (2) Manipulation of pictures in a manner that distorts reality and accuracy of news shall be avoided.
- (3) Pictures of grief, disaster and those that embarrass and promote sexism shall be discouraged.

22. Innocent relatives and friends

The media shall not identify relatives or friends of persons convicted or accused of crime unless the reference to them is necessary for the full, fair and accurate reporting of the crime or legal proceedings.

23. Acts of violence

- (1) The media shall avoid presenting acts of violence, armed robberies, banditry and terrorist activities in a manner that glorifies such anti-social conduct.

- (2) Newspapers shall not allow their columns to be used for writings which tend to encourage or glorify social evils, warlike activities, ethnic, racial or religious hostilities.

24. Editor's responsibilities

- (1) The editor shall assume the responsibility for all content, including advertisements, published in a newspaper.
- (2) If responsibility is disclaimed, this shall be explicitly stated before hand.

25. Advertisements

- (1) The editor shall not allow any advertisement which is contrary to any aspect of this Code of Conduct.
- (2) The editor shall be guided by the advertiser's code of conduct issued under this Act.

26. Hate speech

- (1) Quoting persons making derogatory remarks based on ethnicity, race, creed, colour and sex shall not be allowed.
 - (2) Racist or negative ethnic terms shall be avoided.
 - (3) Careful account shall be taken of the possible effect upon the ethnic or racial group concerned, and on the population as a whole, and of the changes in public attitudes as to what is and what is not acceptable when using such terms.
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