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THE HISTORY OF THE UNITED STATES

The history of the United States is a story of growth and change. From the first settlers to the present day, the nation has expanded its territory and diversified its economy. The early years were marked by exploration and the search for a permanent home. The American Revolution was a turning point, leading to the birth of a new nation. The 19th century was a period of westward expansion and industrialization. The 20th century has seen the United States rise to become a world superpower.

The American dream is a central theme in the nation's history. It is the belief that anyone can achieve success and prosperity through hard work and determination. This dream has inspired generations of Americans to seek a better life, both at home and abroad.

The United States has a rich cultural heritage. It is a melting pot of different ethnicities and traditions. This diversity has made the nation a unique and vibrant society. The American way of life is characterized by freedom, democracy, and a commitment to the well-being of all its citizens.

The United States has played a leading role in world affairs. It has been a champion of democracy and human rights. Through its actions, it has shaped the course of history and influenced the lives of people around the world.

The future of the United States is bright. With its vast resources and innovative spirit, it is well-positioned to meet the challenges of the 21st century. The American dream remains a guiding light, inspiring us to build a better future for all.

The United States is a land of opportunity. It offers a wide range of choices and possibilities. Whether you are looking for a new career, a better education, or a more peaceful life, the United States has what you need.

Join the millions of Americans who are making the most of their lives in the United States. Discover the freedom, the opportunity, and the American dream for yourself.

THE WHISTLEBLOWER PROTECTION BILL, 2021

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THE WHISTLEBLOWER PROTECTION BILL, 2021**A Bill for**

AN ACT of Parliament to provide for the procedure for the disclosure of information relating to improper conduct in the public and private sectors; to provide for the protection persons who make such disclosure against victimization, and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

PART I – PRELIMINARY

1. This Act may be cited as the Whistleblower Protection Act, 2021 and shall come into force on such date as the Cabinet Secretary may, by notice in the Gazette, appoint.

Short title and commencement.

2. In this Act, unless the context otherwise requires—

Interpretation.

appropriate authority" in relation to a public body means the individual or body that has authority to institute disciplinary measures against a person found to have engaged in improper conduct under this Act;

"Cabinet Secretary's" means the Cabinet Secretary for the time being responsible for matters relating to the administration of justice;

"chief officer" means the chief executive officer of a public or private body or any other prescribed by the regulations;

No. 23 of 2011

"classified information" means information of a particular security classification, the unauthorised disclosure of which would prejudice national security;

"clear and convincing evidence" means evidence indicating a high likelihood or substantial probability of occurrence of an action to which this Act relates;

"Commission" means the Commission on Administrative Justice established under section 3 of the Commission on the Administration of Justice Act, 2011;

"confidential information" includes—

(a) the identity or location of —

- (i) a whistleblower or any other person who is entitled to protection in accordance with this Act, or
- (ii) a person about whom a whistleblower has made a disclosure of improper conduct and who is under investigation by the Commission;

(b) information which, if disclosed, may compromise the security of a person identified in paragraph (a);

“designated person” means a person or an institution authorized to receive a disclosure in accordance with section 10(3) of this Act;

“disclosure” means any disclosure of information regarding any improper conduct, made by a person who has reason to believe that the information concerned shows or tends to show that improper conduct has been committed, is being committed or is likely to be committed;

“enforcement agency” includes—

- (a) any Government department, agency or other body set up by the National by or a County government, including a unit, section, division, department or agency of such Ministry, department, agency or body, conferred with investigative and enforcement functions by any written law or having investigation and enforcement powers;
- (b) a body established by law and conferred with investigative and enforcement functions; or
- (c) a unit, section, division, department or agency of a body established by law having investigative and enforcement functions;

No. 8 of 1999

“Fund” means the Whistleblower Reward Fund established under section 26;

“gross mismanagement” means management action or inaction that creates a substantial risk of significant adverse impact upon the ability of an organization, office or unit to carry out its mandate;

“health information” means any information, including genetic information, whether oral or recorded in any form or medium, which—

No.31 of 2016

- (a) is created or received by a health care provider, public health authority, employer, life insurer, or school or university or any other educational institution; and
- (b) relates to the past, present, or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to that individual.

"improper conduct" means any of the activities referred to in section 11 and any other conduct which adversely affects the public interest;

"individually identifiable health information" means information which is part of health information, including demographic information collected from an individual, which identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual;

No. 16 of 2006

"National Environment Management Authority" means the National Environment Management Authority established by the Environmental Management and Co-ordination Act, 1999;

"National Environmental Complaints Committee" means the National Environmental Complaints Committee established of the Environmental Management and Co-ordination Act, 1999;

"national security" has the meaning assigned to it under Article 238(1) of the Constitution;

"National Security Council" means the National Security Council established by Article 240(1) of the Constitution;

"national security organs" means the Kenya Defence Forces, the National Intelligence Service and the National Police Service established under the Constitution;

"personal information" has the meaning assigned to it under section 2 of the Access to Information Act, 2016;

private body includes any person, organization, company or other non-state actor which—

- (a) is listed on Nairobi Securities Exchange; or
- (b) whose nature of operations affects the public interest; or
- (c) is in possession of information which is of public interest; or
- (d) is engaged in business with the government or with any public entity; or
- (e) is a private academic institution of higher learning; or
- (f) any other body prescribed by regulation for the purposes of this Act.

“public body” includes—

- (a) the Government, including the national or county government or any department, State organ, Agency, service or undertaking of the national or county government;
- (b) the National Assembly, a County Assembly or the Parliamentary Service Commission;
- (c) any corporation, council, board, commission, committee or other body which has power to act under and for the purposes of any written law relating to the national government or a county government, public health or undertakings of public utility or otherwise to administer funds belonging to or granted by the government or money raised by rates, taxes or charges in pursuance of any such law;
- (d) a public educational institution; or
- (e) any other body prescribed by regulations for the purposes of this Act;

“public interest” means the collective interest of society in upholding the national values and principles of governance as set out in Article 10(2) of the Constitution of Kenya, 2010;

“reprisal” means—

- (a) any action causing injury, loss or damage;

- (b) intimidation, harassment or bullying;
- (c) interference with the lawful employment, livelihood or freedom of any person, including by discrimination, demotion, suspension, disadvantage, termination or other adverse treatment in relation to a person's employment, career, profession, trade or business or the taking of disciplinary action, or any other discriminatory action that would adversely affect the exercise of rights protected by this Act, and includes a threat to take any of the actions referred to in paragraphs (a), (b) (c) by any person, whether acting on their own or at the direction of any other person;

“whistleblower” means any person who has personal knowledge of or access to any data, information, fact or event constituting improper conduct and who makes a disclosure of that information in accordance with this Act, person who assists such individual;

“whistleblowing” means making a disclosure of improper conduct under this Act;

“whistleblower protection” means protection given to a whistleblower or other person under this Act.

“Witness Protection Agency” means the Witness Protection Agency established in accordance with the provisions of section 3A of the Witness Protection Act, 2006.

PART II – ADMINISTRATION

3. The object of this Act is to promote the public interest upholding the national values and principles of governance by protecting whistleblowers.

General object of the Act.

4. The purposes of this Act are—

Purposes of the Act.

- (a) to facilitate the disclosure and investigation of significant and serious matters in or relating to public or private bodies, which an employee or any other person believes may be unlawful, dangerous to the public or prejudicial to the public interest;
- (b) to enhance ethics and integrity in public and private bodies, and among State officers and public officers in the case of public bodies;

- (c) to protect all persons who make disclosures under this Act;
- (d) to manage, investigate and make recommendations respecting disclosure of improper conduct and reprisals;
- (e) to promote public confidence in the administration of public and private bodies;
- (f) to enhance the procedures and mechanisms for promoting the administration of justice;
- (g) to provide a framework for public participation in preventing and combating improper conduct;
- (h) to reward persons who contribute to preventing and combating improper conduct; and
- (i) to facilitate any other purpose prescribed in the regulations.

5. (1) The Commission shall be responsible for the enforcement of this the Act.

Implementation of the Act.

(2) In exercising any powers conferred under this Act or in implementing the provisions of this Act, the Commission shall be guided by the national values and principles provided for under Article 10 of the Constitution.

6. (1) This Act shall apply to all public bodies, and to such private bodies as may be determined by the Commission.

Application of the Act.

(2) For purposes of determining the private entities to which the Act shall apply in sub-section (1), the Commission shall develop and issue guidelines on the extent to which the Act shall apply to various private bodies, regard being had to the nature, size, operations and the public interest involved in the operations of such bodies.

7. The Commission shall—

- (a) assist public and private bodies in meeting their obligations under this Act in general and under section 21 in particular;
- (b) develop model policies and procedures for consideration and adoption by public and private

Responsibilities, powers and functions of the Commission under this Act.

bodies, with the necessary modifications, for purposes of complying with the requirements of section 21;

- (c) receive and investigate disclosures of improper conduct;
- (d) receive and investigate complaints of reprisal; and
- (e) ensure the protection for whistleblowers as provided in this Act

(2) For the purpose of subsection (1) the Commission shall establish a Whistleblower Review Committee in accordance with section 18 of the Commission on Administrative Justice Act, 2011, whose function shall be to receive and determine requests for reconsideration of a decision to revoke whistleblower protection.

(3) The Whistleblower Review Committee under subsection (2) shall consist of—

- (i) one member of the Commission;
- (ii) one senior official of the Commission appointed by the chairperson of the Commission; and
- (iii) one senior public officer, being a person eligible for appointment as a judge of the High Court of Kenya, appointed by the Attorney-General.

8. (1) The Commission shall have power to do all things expedient or reasonably necessary for, or incidental to, the exercise of its general powers under this Act.

Powers of the Commission.

(2) Without prejudice to the generality of subsection (1), the Commission shall have power to—

- (a) supervise, monitor and co-ordinate all efforts related to the implementation and enforcement of this Act;
- (b) subject to subsection (3), below, investigate all disclosures and complaints of reprisal made under this Act, and recommend appropriate action including prosecution if the improper conduct constitutes an offence under this or any other Act;
- (c) determine whether a whistleblower is entitled to protection as provided in this Act, or the Witness Protection Act, 2006;

No.16 of 2006.

- (d) refer requests for protection to the Witness Protection Agency;
- (e) undertake, in coordination and co-operation with the private and public sectors, a public awareness campaign on the provisions and benefits of this Act;
- (f) develop guidelines for public and private agencies to develop whistleblower mechanisms, policies and procedures in accordance with section 22;
- (g) approve whistleblower mechanisms, policies procedures developed by public and private agencies pursuant to the provisions of section 22, and
- (h) develop and implement incentive programs to encourage whistleblowing, including making orders for monetary awards in accordance with the provisions of this Act.

(3) The Commission may refuse to investigate a disclosure or complaint of reprisal if it determines that the allegation is frivolous or vexatious or made in bad faith:

Provided that the Commission shall communicate its decision under this subsection to the person making the disclosure or the complaint, giving reasons for the refusal.

(4) The Commission may develop procedures on the management and investigation of disclosures made by its members or staff or other persons.

(5) The powers conferred on the Commission under this Act are in addition to the powers of the Commission under the Commission on Administrative Justice Act, 2011.

9. (1) In the exercise of its investigative powers under this Act, the Commission may work in co-operation with any other enforcement agency or such other person as it may deems appropriate.

(2) If the Commission shares information with any other enforcement agency or person under subsection (1), that enforcement agency or person shall be subject to the provisions of this Act relating to protection of confidential information.

No.23 of 2011.

Co-operation with other agencies.

(3) Any person or enforcement agency to whom a request for cooperation is made by the Commission shall render all such necessary assistance as may be required by the Commission, including undertaking an investigation into a complaint of improper conduct if the nature of that conduct falls within the expertise or mandate of that person or enforcement agency.

(4) Where any person or enforcement agency undertakes an investigation into improper conduct in accordance with subsection (3), that person or enforcement agency shall prepare a report as required in section 32 of this Act and forward it to the Commission for further action and guidance in accordance with section 33.

10. No person shall be liable to any action, claim, suit or demand, whether criminal or civil, in respect of any disclosure made or anything done or omitted to be done by him in good faith in the exercise or purported exercise of a function conferred by or under this Act.

Immunity from
legal proceedings.

PART III—IMPROPER CONDUCT

11. The provisions of this Act shall apply in respect of the to which this Act following forms of improper conduct in public or private bodies—

Improper conduct
to which this Act
applies.

- (a) a contravention of an Act of Parliament or of a County Assembly, or a regulation made pursuant thereto;
- (b) an act or omission which creates a substantial and specific danger to the life, health or safety of persons, or to the environment;
- (c) gross mismanagement of public funds or a public asset;
- (d) bribery, corruption or economic crimes as defined in the Anti-Corruption and Economic Crimes Act, 2003 or any other written law;
- (e) misuse of public funds;
- (f) a criminal offence;
- (g) a violation of human rights and fundamental freedoms as set out in Chapter Four of the Constitution;

- (h) offer, solicitation or acceptance of any gift or other advantage which might reasonably be seen to influence the exercise of official duties or responsibilities;
- (i) failure by a person to comply with any legal obligation to which that person is subject;
- (j) unfair discrimination contrary to Article 27 of the Constitution or any law made pursuant thereto;
- (k) deliberately concealing the fact that any of the above has occurred; or
- (l) knowingly directing or counselling an individual to commit improper conduct mentioned in sub-sections (a) to (k).

(2) In making a determination that a person's conduct amounts to gross mismanagement under sub-section (1)(c), the Commission or other person making the determination shall have regard to—

- (a) the deliberate nature and frequency of the conduct;
- (b) the impact on the welfare of other persons in the public or private body, or department or division thereof;
- (c) the impact on the ability of the public or private body, or department or division thereof, to carry out its mandate; and
- (d) the impact of the conduct on the public interest and trust in the public or private body.

PART IV—PROCESS OF DISCLOSURE

12. (1) Every public or private body shall establish and maintain, in accordance with this Act, written procedures, including time periods, for managing and investigating disclosures by employees or persons the public or private body is responsible for.

Procedures to manage and investigate disclosures.

(2) The procedures established under subsection (1) shall include, at a minimum, the following—

- (a) procedures for receiving and reviewing disclosures, including setting time periods for

making recommendations to the concerned public or private body or any other person on any corrective measures that should be taken;

- (b) procedures for referring a disclosure to an appropriate public body if the disclosure would more appropriately be dealt with;
- (c) procedures for referring a disclosure to the Commission as soon as reasonably practicable if the designated officer reasonably believes that the matter to which the disclosure relates constitutes an imminent risk of a substantial or specific danger to the life, health or safety of individuals, or to the environment;
- (d) procedures for reviewing and investigating disclosures in accordance with the principles of procedural fairness and natural justice;
- (e) procedures for investigating other forms of improper conduct if, during the investigation of a disclosure, the designated officer has reason to believe that another form of wrongdoing has been committed or may be committed;
- (f) procedures for reporting an alleged offence if, during an investigation of a disclosure, the designated officer has reason to believe that an offence has been committed under an Act of Parliament or of a County Assembly;
- (g) procedures respecting the confidentiality of information collected in relation to disclosures and investigations, which procedures would apply unless there is an imminent risk of a substantial and specific danger to the life, health or safety of individuals, or to the environment;
- (h) procedures for protecting the identity of individuals involved in the disclosure process, including an employee or a person making the disclosure, individuals alleged to have committed the improper conduct and witnesses, subject to any other Act or regulation and to the principles of procedural fairness and natural justice;

- (i) procedures for reporting the outcomes of investigations of disclosures;
- (j) procedures for enforcement and follow-up of any disciplinary action or corrective measures taken or directed pursuant to this Act; and
- (k) procedures respecting any other matter specified in the regulations.

(3) The Commission may request the head of a public or private body to provide a copy of the procedures established under subsection (1) to the Commission.

(4) The Commission shall review the procedures submitted to it, including time periods, established by the concerned public or private body under subsection (1) to ensure there is compliance with this Act and the regulations.

(5) If the Commission determines that the procedures that have been established under subsection (1) do not meet the criteria set out in subsections (1) and (2), the Commission shall notify the concerned public or private body accordingly and direct that any future disclosures shall be made directly to the Commission until new procedures are established by the concerned public or private body and approved by the Commission.

(6) If the Commission determines that no procedures have been established under subsection (1), the Commission shall—

- (a) notify the head of the concerned public or private body that such procedures must be established; and
- (b) notify the employees for whom the chief officer is responsible that any future disclosures should be made directly to the Commission until procedures have been established by the concerned public body and are approved by the Commission.

(7) Any procedures required to be established by the concerned public or private body pursuant to subsection (5) or (6) shall be submitted for review and approval by the Commission.

(8) Once the procedures are approved by the Commission under subsection (7), the Commission shall notify the concerned public or private body of the approval and that all future disclosures, other than in the circumstances described in section 15(1) (b) to (i), should be made to the designated officer in accordance with the approved procedures.

(9) A public or private body may submit the procedures required to be established under this section to the Commission at any time for review to ensure there is compliance with this Act and the regulations.

(10) The Commission shall in its capacity as a public body develop procedures on the management and investigation of disclosures made by its members or staff or other persons and submit the said procedures to the Cabinet Secretary for approval.

13. (1) Each head of a public or private body shall ensure that information about this Act and the procedures established under section 12 are widely communicated to the employees of the concerned public or private body.

Information about the Act be communicated.

(2) Each public or private body shall ensure that the procedures established under section 12 are available for public scrutiny.

14. (1) A public or private body may designate a senior official to be the designated officer for the purpose of managing and investigating disclosures.

Designated officer.

(2) If no designation is made under subsection (1), the chief officer of the body concerned is the designated officer for the purposes of this Act.

15.(1) A disclosure as defined in this Act may be made by an employee or any person or a public or private body if that employee or person or public or private body has information that they reasonably believe is evidence of improper conduct that has or may have occurred, or is likely to occur.

Disclosures by law.

(2) A disclosure under this Act shall not qualify for protection if the person making the disclosure commits an offence by making it.

- (3) A disclosure may be made to—
- (a) the Commission;
 - (b) the Presidency;
 - (c) Parliament;
 - (d) the Judiciary;
 - (e) the Ethics and Anti-Corruption Commission or a Commission or Independent Office established under Chapter 15 of the Constitution;
 - (f) a Cabinet Secretary; the Attorney General;
 - (g) the Director of Public Prosecutions;
 - (h) a Governor;
 - (i) a Member of Parliament;
 - (j) a member of County Executive or County Assembly;
 - (k) an officer of the National Intelligence Service;
 - (l) a police officer;
 - (m) a military officer;
 - (n) the National Authority for Campaign Against Alcohol and Drug Abuse;
 - (o) the Kenya Revenue Authority;
 - (p) the National Environment Management Authority;
 - (r) the National Environmental Complaints Committee;
 - (s) the Chief Executive Officer of a public body;
 - (t) any other State or public officer;
 - (u) a professional body established by an Act of Parliament;
 - (v) the Media Council of Kenya;
 - (w) a registered newspaper or media house;
 - (x) the head of a public or a private body or a civil society organization;

- (y) a member of the family of the whistleblower;
- (z) an employer of a whistleblower;
 - (aa) a religious leader;
 - (bb) the head of an academic institution, or,
 - (cc) any other person or body prescribed by regulation.

(4) In determining the person or body to whom a disclosure may be made, a whistleblower shall take into account—

- (a) whether there is a reasonable belief or fear on the part of the whistleblower that the whistleblower may be subjected to dismissal, suspension, harassment, discrimination or intimidation in the place of employment;
- (b) whether there is a reasonable belief or fear that evidence relevant to the improper conduct may be concealed or destroyed;
- (c) whether the person to whom the disclosure is made is likely to frustrate the objective;
- (d) whether the impropriety is of an exceptionally serious nature so that expeditious action should be taken to deal with it;
- (e) the place where and the prevailing circumstances under which the whistleblower lives; and
- (f) the security clearance of the person receiving the disclosure, if the intended disclosure touches on an issue of national security.

(5) For purposes of this section, a person may make a disclosure directly to the Commission only—

- (a) if no procedures have been established by the Commission or the public or private body in which the person is employed;
- (b) if a person has made a disclosure in accordance with the procedures established under section 12 and an investigation in respect of the disclosure has not been completed in accordance with those procedures;

- (c) if the person has made a disclosure in accordance with the procedures established under section 12 and the matter has not been resolved within the time periods established under those procedures or the Commission has determined that those procedures do not meet the criteria set out in section 16 and 47;
- (d) if the person is dissatisfied with the final decision issued following a disclosure made previously;
- (e) if the subject-matter of the disclosure involves the supervisor or the chief executive or head of the public or private entity where the person works;
- (f) if the person reasonably believes that a matter presents an imminent risk of a substantial and specific danger to the life, health or safety of individuals, or to the environment, such that there is insufficient time to make a disclosure to another body or person;
- (g) if the person has made a disclosure in accordance with the procedures established under section 12 and is unable to complete the procedures because a reprisal has been taken or directed against the person;
- (h) if the person reasonably believes that a reprisal is likely to be taken or directed against them if the disclosure is made to any other person or body; or
- (i) in such other circumstances as may be prescribed in the regulations.

(6) With respect to a disclosure made under the procedures described in section 12(2) (c) or subsection (5) (f), if in the opinion of the Commission there is an imminent risk of a substantial and specific danger to the life, health or safety of individuals or to the environment, the Commission shall investigate the matter or refer the matter for investigation or appropriate action by the person or body that has a legal mandate to investigate and conclude the matter.

Provided that where the disclosure contains classified information for handling such information, the procedure prescribed information shall be complied with.

(7) Any person who deliberately and voluntarily gives false or misleading information in connection with a

disclosure of improper conduct commits of an offence and is liable on conviction to imprisonment for a term not exceeding fourteen years or a fine not exceeding ten million shillings or both.

16. (1) A disclosure made under this Act shall contain as far as practicable—

Information to be included in disclosure.

- (a) the full name and contact information of the whistleblower, unless the disclosure is made anonymously;
- (b) the nature of the improper conduct in respect of which the disclosure is being made;
- (c) identifying details of the person alleged to have engaged in improper conduct, including the name and contact information if known;
- (d) the time and location where the alleged improper conduct is taking place, took place or is likely to take place;
- (e) identifying details of any other person who may have witnessed or have information regarding the improper conduct, including the name and contact information if available; and
- (f) if the disclosure is related to the whistleblower's employment, whether the whistleblower remains in that same employment.

(2) The Commission may request such further information or particulars from the person making the disclosure as may be required for investigation.

17. (1) All disclosure made under this Act shall far as possible be in writing, and where a whistleblower makes a disclosure orally, the person to whom the disclosure is made shall cause the disclosure to be reduced into a written statement containing the particulars specified in section 16.

Disclosure to be in writing.

(2) The written statement made under subsection (1) shall be read over, interpreted and explained to the whistleblower in a language the whistleblower understands, and the whistleblower shall affirm that the information contained in the statement is true to the best of their knowledge, information and belief, before appending their signature or mark on it.

18. (1) When a disclosure is made under section 15(3), the person to whom it is made shall—

Action after receipt of disclosure.

- (a) make a record of the time and place where the disclosure is made;
- (b) give to the whistleblower an acknowledgment of receipt of the disclosure in writing; and
- (c) keep the statement received confidential and in safe custody pending investigation of the disclosure.

(2) Where the disclosure is made to a person or body that is not mandated to carry out the investigation, that person or body may instead of recording the disclosure as required under subsection (1) assist the whistleblower to make the disclosure to the Commission or any other appropriate authority.

(3) Where a disclosure touching on a public officer is made directly to the Commission pursuant to the provisions of section 15(5), the Commission shall —

- (a) unless the disclosure implicates the chief officer of the public body complained against, refer the matter to the chief officer of the concerned public body seeking a written response on the matter within a period of thirty days of the notification;
- (b) if upon the expiry of the thirty days' notice issued under paragraph (a), the concerned public body shall not have responded, or if the Commission is dissatisfied with the response provided, the Commission shall proceed to investigate the disclosure and conclude the matter as appropriate.

(4) Any person to whom a disclosure is made and who fails to keep the disclosure confidential, commits an offence and is liable on conviction to a fine not exceeding ten million shillings or to imprisonment for a term not exceeding fourteen years or both.

19. Where a disclosure is made to a person specified under section 15, other than the Commission, the person receiving it shall submit a copy of the written disclosure to the Commission within seven working days after receipt.

Submission of a copy of written disclosure to the Commission.

20. (1) A disclosure may be made anonymously, but the requirement for particulars in writing and a mark affirming

Anonymous disclosures.

the person's honest belief in the truth of the information shall equally apply to such disclosures.

(2) The Commission, or other enforcement agency or person as the case may be, shall investigate an anonymous disclosure to the best of its ability given the information provided.

PART V— REQUIREMENTS OF PUBLIC AND PUBLIC BODIES TO DEVELOP AND PUT IN PLACE WHISTLEBLOWER POLICIES AND PROCEDURES

21. (1) A public or private body shall develop and put in place put in place whistleblower policies and procedures appropriate to its size and whistleblower the scale and to the nature of its operations policies and procedures.

Duty to develop and put in place whistleblower policies and procedures.

(2) The Commission shall assist public and private bodies, and any other interested person, to develop and put in place appropriate whistleblower policies and procedures.

22. (1) Within six months of the coming into force of this Act, the Commission shall issue guidelines to public and private bodies on requirements to be put in place to give effect to this Act.

Policies and procedures to prohibit improper conduct and encourage disclosures.

(2) The guidelines issued in sub-section (1) above may—

- (a) include a procedure for confidential disclosures to be made to the Commission or a person other than the designated person, if the designated person is implicated in the improper conduct;
- (b) provide guidance on the determination of the status, qualifications, duties and responsibilities of a designated officer for purposes of this Act;
- (c) describe procedure for receipt of disclosures and referral
- (d) to the Commission as required in sub-section (3);
- (e) state that information received about improper conduct, including identifying information about any individuals involved, shall not be disclosed to any person other than the Commission for the purposes of investigating the disclosure, or as may otherwise be required by law;

- (f) state that the person who has made a disclosure will be informed of the results of the investigation and of any action that has been taken or that will be taken as a result of the investigation;
- (g) clarify the size and the scale and the nature of operations of public and private bodies which may be required to have in place the whistleblower policies and procedures required in section 12 and 21;
- (h) include the definition of reprisal in section 2 of this Act and the protections for whistleblowers set out in Part VI of this Act;
- (i) include a description of the offences and associated penalties set out in this Act;
- (j) the reports which public and private bodies may be required to submit to the Commission, under section 47 or any other provision or law, to demonstrate compliance or otherwise with the requirements of this Act; and
- (k) include any other elements prescribed by regulation.

(3) The guidelines issued by the Commission under this section shall be binding on public and private bodies.

(4) Public and private bodies shall apply the guidelines issued under this section to develop their own whistleblower policies and procedures for approval by the Commission.

23. (1) It shall an offence for a public or private body to fail to develop and put in place whistleblowers policies and procedures as required in Section 12 and 21.

Failure to develop and put in place whistleblower policies and procedures.

(2) Notwithstanding subsection (1), it shall be a defence for a public or private body to prove that it had in place adequate procedures designed to facilitate whistleblowing and to prevent improper conduct.

PART VI—PROTECTION OF WHISTLEBLOWERS

24. (1) A whistleblower shall be entitled to—

Whistleblower protection.

- (a) confidentiality of the information given;

(b) immunity from civil or criminal liability in relation to the disclosure; and —

(c) protection against reprisal.

(2) For the purpose of subparagraphs (1)(a) and (c), protection shall be extended to any person who may be in need of protection—

(a) by virtue of being related to a whistleblower; or

(b) on account of evidence given by the whistleblower; or

(c) for any other reason which the Commission may consider sufficient.

(3) Subject to section 29, the protection in this section shall not be limited or affected in the event that the disclosure does not lead to disciplinary action or prosecution of a person against whom the disclosure has been made.

(4) Subject to section 29, the motive or intention of a whistleblower in making a disclosure is not a consideration in whether the whistleblower or any other person is entitled to protection in accordance with this section.

(5) Upon determination by the Commission that a whistleblower has reasonable cause to believe that his or her life or property or the life or property of a member of his or her family is endangered or likely to be endangered as a result of the disclosure, the Commission may refer the matter to the Witness Protection Agency.

25. (1) No employer, person acting on behalf of an employer, or any other person may discharge, demote, suspend, transfer, threaten or harass, directly or indirectly, or in any other manner act adversely against, a person in the terms and conditions of employment because the person provided information in accordance with this Act.

Workplace reprisal.

(2) Subsection (1) shall apply in respect of any person whose terms or conditions of employment may be affected—

(a) by virtue of being related to a whistleblower; or

(b) because the person, being an employee, refuses to follow orders from senior employer or other person acting on behalf of an employer, which would cause the employee to violate this Act; or

- (c) for any other reason which the Commission may consider sufficient.

(3) For the avoidance of doubt, a person who is an applicant for employment or a former employee shall be entitled to protection from workplace reprisal.

26. No person acting or purporting to act on behalf of any public or private body shall—

Reprisal in relation to contracts.

- (a) terminate a contract;
- (b) withhold a payment that is due and payable under a contract; or
- (c) refuse to enter into a subsequent contract, because a party to the contract, or an employee of or person related to a party to the contract, is or has been or is found to be a whistleblower.

27. (1) A whistleblower may make a complaint to the Commission against any reprisal taken by any person against the whistleblower or against any person entitled to protection in accordance with this Act.

Complaints of reprisal.

(2) A person is deemed to commit acts of reprisal if —

(a) the person takes or threatens to take such acts because—

- (i) a whistleblower has made a disclosure of improper conduct; or
- (ii) the person believes that a whistleblower has made or intends to make a disclosure of improper conduct; or

(b) the person incites, instructs or permits another person to take or threaten to commit such acts for any reason under subparagraph (a)(i) or (ii).

(3) A person who commits acts of reprisal commits an offence unless the person demonstrates by clear and convincing evidence that they would have reasonably taken the same action in the absence of the actual or perceived disclosure.

(4) Any person who is determined to have engaged in acts of reprisal commits an offence and shall be liable, on conviction, to a fine not exceeding ten million shillings or

to imprisonment for a term not exceeding fourteen years or to both.

28. (1) A person who—

Confidential
information.

- (a) makes or receives a disclosure; or
- (b) obtains confidential information in the course of investigation into such disclosure, shall not disclose the confidential information or any part thereof to any other person.

(2) If any evidence in any civil, criminal or other proceedings in relation to this Act contains or relates to confidential information, the court, tribunal or other authority before which the proceedings are being held shall, unless it considers that the interests of justice require otherwise—

- (a) hold that part of the proceedings which relates to confidential information in private; and,
- (b) make such order to suppress the publication of evidence given before the court, tribunal or other authority as, in its opinion, shall ensure that the confidential information is not disclosed, which may include but not be limited to—
 - (i) that the confidential information be redacted from any documentary evidence that forms part of the public record;
 - (ii) that no witness in the proceedings, including a whistleblower, shall be required to answer a question, give any evidence, or provide any information, which may lead to the disclosure of confidential information; and,
 - (iii) that no person involved in the proceedings shall, during the proceedings, ask a question or make a statement which discloses or could disclose confidential information.

(3) Any term of any settlement arising from a claim under this section, insofar as it purports to impose an obligation of confidentiality on any party to the settlement in respect of information which is accurate and which was or was proposed to be disclosed, shall be unenforceable.

(4) In any proceedings for an offence for contravention of any statutory prohibition or restriction on the disclosure of information, it shall be a defence to show that—

- (a) in the circumstances, the disclosure was in the public interest; and
- (b) where the offence is alleged to have been committed by a public officer or a Government contractor and involves the disclosure of information obtained by the person in the person's position as such, the defendant had reasonable grounds to believe that the information was true before making the disclosure.

(5) Any person who, without lawful excuse, contravenes subsection (1) commits an offence and shall be liable on conviction, to a fine not exceeding ten million shillings or to imprisonment for a term not exceeding fourteen years or to both.

29.(1) The Commission may upon receipt of information under this Act order the following interim and final reliefs necessary to remedy a violation of this Act—

Orders for relief.

- (a) referral of a whistleblower or any other person entitled to protection in accordance with this Act to the Witness Protection Agency, if the circumstances prescribed by section 3 of the Witness Protection Act apply;
- (b) reinstatement to a position lost as a result of workplace reprisal;
- (c) compensation for loss of income;
- (d) specific performance of contractual obligations; or
- (e) that any person specified in such order desist from contacting the whistleblower or any other person entitled to protection under this Act for such specified period as may be necessary in the circumstances.

(2) The Commission may apply to the High Court for any other order that may be reasonably necessary to remedy a violation of this Act.

Revocation of
whistleblower's
protection.

30. (1) The Commission may revoke the protection conferred accorded to a whistleblower under this Act if it is determined that—

- (a) the whistleblower participated in the improper conduct complained about;
- (b) in the disclosure of improper conduct the whistleblower made a material statement which he or she knew or believed to be false;
- (c) the information disclosed is frivolous or vexatious, or
- (d) the disclosure principally involves questioning the merits of policy, except that protection may exist for disclosing the probable adverse consequences of a policy on the public interest.

(2) Where whistleblower protection is revoked, the Commission shall give the whistleblower written notice to that effect and the reasons therefor, and shall advise the Witness Protection Agency to take appropriate action.

31. (1) Any person aggrieved by a decision of the Commission to deny a request for interim or final relief, or revoking whistleblower protection, may request reconsideration of the decision within thirty days of the decision.

Reconsideration by
whistleblower
Review
Committee.

(2) A request for reconsideration shall be submitted in writing to the Whistleblower Review Committee and shall indicate—

- (a) the basis upon which the request is made;
- (b) submissions in support of the request;
- (c) materials, if any, in support of the request; and
- (d) the relief or protection measure being sought.

(3) A request for reconsideration shall only be granted where the Whistleblower Review Committee is satisfied that—

- (a) there are new facts or evidence that could not reasonably have been provided earlier; or
- (b) the person seeking reconsideration was not afforded adequate opportunity to disclose

information that could have affected the Commission's decision.

(4) Where the Whistleblower Review Committee refuses to grant the request for reconsideration, it shall communicate the refusal and reasons therefor in writing to the person making the request within fourteen days of the decision.

(5) In reconsidering a decision to deny relief or revoke whistleblower protection, the Whistleblower Review Committee may—

- (a) make a decision on the substance of the request without further information; or
- (b) investigate the matter further, including speaking again to any person who had previously been interviewed, or conducting an interview with any other person.

(6) A final decision on the substance of the request for reconsideration, the reasons therefor, and such consequential orders as may be necessary to give effect to the decision shall be communicated in writing by the Whistleblower Review Committee to the person who has requested reconsideration within sixty days of receiving the request.

(7) Any person aggrieved by the decision of the Whistleblower Review Committee may appeal to the High Court.

(8) The High Court may make an interim or final order with respect to the request made, and may also make such consequential orders as necessary to give effect to the order.

PART VII— OUTCOMES OF INVESTIGATION

32. (1) Upon concluding an investigation into a disclosure or complaint of reprisal under this Act, the Commission shall prepare a report which shall contain—

Investigation
report.

- (a) the findings of the investigation; and
- (b) recommendations for further steps if any, to be taken, based on the findings of the investigation.

(2) If a finding is made that improper conduct has occurred, the report in (1), including the identity of the wrongdoer, shall be publicly disclosed by the Commission.

33. (1) If the investigation finds that—

Report on
recommendations.

- (a) the disclosure is not substantiated, the Commission shall inform the whistleblower in a preliminary determination and seek comments before finalizing the matter; or
- (b) the improper conduct constitutes a criminal offence, the Commission shall refer the matter to the Director of Public Prosecutions, and in the case where—
 - (i) the Director of Public Prosecutions decides to prosecute; the Director of Public Prosecutions shall report periodically to the Commission on the status of the prosecution until the matter has been finally disposed of; or
 - (ii) the Director of Public Prosecutions decides not to prosecute; the Director of Public Prosecutions shall furnish the Committee with reasons in writing for that decision.

(2) If after considering any information provided by the appropriate authority it appears to the Commission that insufficient steps or no action has been taken to give effect to the finding or recommendation as required under subsection (1) (b), the Commission may submit a report to the Cabinet Secretary responsible for that public body, on the investigation, findings, recommendation and the response by the appropriate authority.

(3) The Commission shall inform the whistleblower of the result of the investigation and or other action taken pursuant to subsection (1) (b) above.

PART VIII—WHISTLEBLOWER REWARD FUND

34. There is established by this Act a Whistleblower Reward Fund.

Establishment of
the Whistleblower
Reward Fund.
Sources of the
Fund.

35. The Fund shall consist of —

- (a) monies appropriated by the National Assembly;
- (b) monies received by the Fund as grants, donations or gifts from nongovernmental or non-public sources;
- (c) income generated by investments made by the Board of Trustees;

- (d) interest accruing from the Fund;
- (e) any other monies from any other source donated or lent to the Fund.

36. The object of the Fund is to provide funds for payment of monetary rewards to whistleblowers. Object of the Fund.

37. A whistleblower who makes a disclosure which leads to the arrest and conviction of an accused person shall be rewarded with money from the Fund. Reward on conviction.

38. (1) A whistleblower whose disclosure results in the recovery of an amount of money or asset shall be rewarded from the Fund — Reward on recovery.

- (a) where the money is recovered, with ten percent of the amount of money recovered, or
- (b) in the case of the recovery of an asset, with ten percent of the value of asset recovered, or
- (c) such other amount of money as the Commission may determine.

(2) Notwithstanding subsection (1), the Commission may in cases where it is just to do so, grant monetary reward to a whistleblower whose disclosure does not fall within sub-section (1)(a) or (b).

39. Moneys for the Fund shall be paid into a bank account opened by the Commission with the approval of the Cabinet Secretary responsible for financial matters. Bank account of the Fund.

PART IX—ENFORCEMENT, OFFENCES AND PENALTIES

40. The Commission or any other person may apply to the High Court for enforcement of any order made by the Commission in accordance with this Act, including an order of the Whistleblower Review Committee. Enforcement of Commission's orders.

41. Any person who— Obstructing an investigation.

- (a) without justification or lawful excuse, obstructs, hinders, assaults or threatens a person acting under this Act;
- (b) deceives or knowingly misleads the Commission or a person acting under this Act, including by creating any false record or other evidence;

- (c) destroys, alters, conceals or removes documents, records or evidence that the person believes, or has grounds to believe, may be relevant to an investigation or proceeding under this Act;
- (d) makes false accusations to the Commission or a person acting under this Act; or
- (e) directs, counsels or causes, in any manner, a person to do anything mentioned in paragraphs (a) to (d),
commits an offence.

42. Any person who has knowledge that improper conduct has occurred or is likely to occur and who does not make a disclosure under this Act within two days thereof, commits an offence.

Obligation to make disclosure.

43. Any person who commits an offence under this Act for which no penalty is expressly provided, shall on conviction be liable to a fine not exceeding five million shillings or to imprisonment for a term not exceeding seven years or to both.

General penalty.

44. (1) Nothing in this Act authorises the disclosure of—

Limits on disclosure.

- (a) information or documents that would disclose the deliberations of the Cabinet or a committee of the Cabinet or the National Security Council or a Committee of the Council, or the proceedings of any of them;
- (b) information that is protected by advocate-client privilege;
- (c) in the case of a disclosure under section 15(5)(f)—
 - (i) classified information, within the meaning of the laws set out in the Schedule, or any other information which is subject to any restriction created by or under any other written law, or
 - (ii) any personal information or individually identifying health information, or
 - (iii) any information, document or matter or any class of information, documents or matters prescribed in the regulations.

(2) The Cabinet Secretary may by order in the Gazette amend the Schedule.

(3) Nothing in this Act authorizes the Commission or a public or private body or a designated person to publicly disclose personal information or individually identifying health information unless, in the opinion of the Commission or a public or private body or a designated person, it is necessary to disclose that information in order to carry out his or her duties and functions under this Act.

(4) Any person who knowingly discloses information whose disclosure is limited under this section, commits an offence and is liable, on conviction, to a fine not exceeding five million shillings, or to imprisonment for a term not exceeding six years or both.

(5) It shall be a defence to a charge under subsection (4) that the disclosed information limited under sub-section (1) was already in the public domain at the time of the disclosure.

(6) The Cabinet Secretary shall, in consultation with the Commission and the national security organs, make regulations respecting the procedures and mechanisms for the handling of classified information and the management and investigation of disclosures which would have been made and concluded, but for the limitations provided for under this Section.

PART X – MISCELLANEOUS PROVISIONS

45. Nothing in this Act relating to the making of a disclosure shall be construed as affecting the obligation of an employee or any other person under any other Act or regulation to disclose, report or otherwise give notice of any matter.

Other obligations to report not affected.

46. (1) The Cabinet Secretary may, by notice in the Gazette, exempt any person, class of persons, public entity, information, record or thing from the application of all or any portion of this Act or the regulations, subject to such conditions as the Cabinet Secretary may deem fit.

Exemption.

(2) The Cabinet Secretary shall provide reasons for giving an exemption under this section and shall ensure that the exemption, including any terms or conditions are made available to the public.

47. (1) Subject to any limitations provided for under this Act or regulations, every public or private body shall at the beginning of each year prepare and submit to the Commission a report on all disclosures made to it in the preceding year.

Annual report of a public or private body to the Commission.

(2) The report under subsection (1) shall include the following information—

- (a) the number and nature of disclosures received by the public or private body, the number of disclosures acted on and the number of disclosures not acted on by the public or private body;
- (b) the number of investigations commenced by the public or private body as a result of such disclosures;
- (c) the status of investigations into the disclosures taken up for investigations;
- (d) in the case of an investigation that results in a finding of improper conduct, a description of the improper conduct and any recommendations made or corrective measures taken in relation to the improper conduct or the reasons as to why no corrective measure was taken;
- (e) the average number of days taken by the public or private body to determine the appropriate mode of disposal of disclosures received by it; and
- (f) the number of full-time staff of the public or private body devoted to handling disclosures and the total amount of funds expended by the body for processing such disclosures.

(3) The report under subsection (1) shall be included in the annual report of the public or private entity if the annual report is made available to the public, and where it is not, the chief executive officer of the public or private body shall make the report under subsection (1) available to the public on request.

48. (1) The Commission shall report annually to the National the Assembly on the exercise and performance of the functions and duties of the Commission under this Act, setting out—

Annual Report of the Commission.

- (a) the number of general inquiries made to the Commission relating to this Act;
- (b) the number of disclosures received by the Commission under this Act, the number of disclosures acted on and the number of disclosures not acted on by the Commission or by a public or private body;
- (c) the number of investigations commenced by the Commission or a public or private body under this Act;
- (d) the number of recommendations the Commission has made and whether the public or private bodies to which the recommendations relate have complied with the recommendations;
- (e) the number of complaints of reprisals received by the Commission or a public or private body under this Act, the number of complaints of reprisals acted on and the number of complaints of reprisals not acted on by the Commission or by a public or private body;
- (f) whether, in the opinion of the Commission, there are any systemic problems that may give rise to or have given rise to improper conduct;
- (g) a summary of the reports of public and private bodies on the disclosures received and action taken, including action taken in response to reprisals;
- (h) an assessment of the compliance of public and private bodies with the provisions of this Act or its regulations; and
- (i) any recommendations for improvement that the Commission considers appropriate.

(2) The report under subsection (1) shall be given to the Speaker of the National Assembly, who shall table a copy of it in the National Assembly within two months after receiving it if the National Assembly is then sitting or, if it is not, within one month after the start of the next sitting.

(3) Where it is in the public interest to do so, the Commission may publish a special report relating to any matter within the scope of the Commission's responsibilities under this Act, including a report referring to and commenting on any particular matter investigated by the Commission.

(4) The Commission shall make its report under subsection (1) available to the public.

49. (1) A committee of Parliament may, at any time, refer to the Commission for investigation and report any petition or matter that is before the committee for consideration that may relate to improper conduct to which this Act applies.

Reports at request of a Committee of Parliament or the Cabinet Secretary.

(2) The Commission shall pursuant to subsection (1)

(a) subject to any special directions of the committee, investigate the petition or matter referred to the Commission insofar as it is within the scope of the Commission's mandate pursuant to this Act, and

(b) make any report to the Committee that the Commission thinks fit

(3) The Cabinet Secretary may, at any time, refer to the Commission for investigation and report any matter that is within the scope of the mandate of the Commission pursuant to this Act.

(4) Where the Cabinet Secretary makes a request under sub-section (3), the Commission shall—

(a) subject to any special directions of the Cabinet Secretary, investigate the petition or matter referred to the Commission insofar as it is within the scope of the Commission's mandate pursuant to this Act, and

(b) make any report to the Cabinet Secretary that the Commission deems fit.

(5) Where a reference is made to the Commission under sub-section (1) or (3) and the Commission concludes that it does not have a mandate over the matter, it shall refer the matter, to the body that is mandated by law to act

on the matter and the body to which the matter is referred shall act on the request and provide a report to the Commission or the National Assembly, as the case may be.

50. The expenses incurred in the implementation of this Act or the regulations shall be borne by the Commission.

Financing of operations.

51. Any person or public or private body may seek advice from the commission on the implementation of this Act or a particular provision thereof.

Request for advice.

52. (1) The Cabinet Secretary may make regulations for the better carrying out of the provisions of this Act.

Power to make regulations.

(2) Without prejudice to the generality of the subsection (1), the Cabinet Secretary may make regulations relating to—

- (a) the procedures to be followed by a public or private body or designated persons or by the Commission in managing and investigating disclosures and reporting the outcome of investigations, including setting time periods for action;
- (b) disclosures to the Commission, including when a person may make a disclosure directly to the Commission, and the circumstances and procedure generally for making a disclosure;
- (c) instructions by the Commission for a public body to investigate a disclosure which has been made directly to the Commission pursuant to the provisions of section 17(3);
- (d) disclosures by the employees of the Commission, including when an employee may make a disclosure directly to the Chairperson or the Secretary of the Commission, or an external agency, and the circumstances and procedure generally for making such a disclosure;
- (e) prescribing the procedure for referring a matter that constitutes a threat to national security or an imminent risk of a substantial or specific danger to life, health or safety of individuals or to the environment, including persons to whom the

matter may be referred and the time period for referring those matters;

- (f) designating persons or institutions which may receive disclosures under this Act;
- (g) prescribing other information to be included in a disclosure;
- (h) prescribing circumstances in which the Commission is not required to investigate a disclosure;
- (i) prescribing the time periods for an investigation into the allegations raised in a disclosure by the Commission or any other person or entity;
- (j) for the exemption of any person, class of persons, public entity, information, record or thing from the application of all or any part or provision of this Act;
- (k) prescribing the forms for making complaints respecting reprisals;
- (l) prescribing the circumstances in which the Commission may investigate a complaint respecting a reprisal;
- (m) prescribing any information, document, matter or classes of information, documents or matters which should not be included in a disclosure under this Act;
- (n) respecting the collection, use and disclosure of information, including personal information and individually identifying health information, for the purposes of this Act;
- (o) prescribing forms for any request, notice, order, declaration or other matter under this Act;
- (p) providing for the service or delivery of any request, notice, order, direction, instruction, requirement or other thing lawfully done under this Act;
- (q) prescribing elements to be included in a procedure established in accordance with section 13 of this Act;

- (r) prescribing requirements, criteria or other elements to be included in the Whistleblower reward program, including the payment of awards from the Fund, as provided for in Part VIII of this Act;
- (s) public education on whistleblowing; and
- (t) any other matter incidental to the foregoing.

SCHEDULE (S.44(1)(c))

**LAWS RELATING TO CLASSIFIED
INFORMATION**

1. The National Security Council Act, 2012 (No. 23 of 2012).
2. The National Intelligence Service Act, 2012 (No. 28 of 2012).
3. The Kenya Defence Forces Act, 2012 (No. 25 of 2012).
4. The Access to Information Act, 2016 (No. 31 of 2016).

MEMORANDUM AND OBJECTS OF REASONS

The object of this Bill is to set out the procedures for the disclosure of information on improper conduct within the public or private sectors, and to provide for the protection of the people making such disclosures (whistleblowers).

Part I of the Bill has preliminary provisions which include definitions of terms. "Improper conduct" is defined to include among other things, contravention of the law, acts which may endanger the life, health or safety of the members of the public, mismanagement of public funds, bribery and corruption, and acts which violate the Constitution.

Part II of the Bill provides for the administration of the Act. The Act when passed by Parliament will be administered by the Commission on Administrative Justice established under the Commission on Administration of Justice Act, 2011, which shall co-operate with other appropriate agencies in this process. The Act provides immunity from legal proceedings for a person making any disclosure under the Act.

Part III of the Bill sets out the forms of improper conduct and gross misconduct to which the Act relates.

Part IV of the Bill requires every private or public body to establish and maintain written procedures for the investigation of disclosures of improper conduct made by employees or other persons. Clause 15 in this part sets out the bodies and offices to which disclosures may be made. Clause 16 specifies what information should be put in the disclosure.

Clauses 18 and 19 set out the procedure for forwarding information to the Commission. Clause 20 provides that disclosures may be made anonymously.

Part V of the Bill requires public and private bodies to put in place whistleblower policies and procedures according to their size, in line with guidelines to be issued by the Commission.

Part VI of the Bill provides for the protection of whistleblowers. It provides for confidentiality of information, immunity from liability and protection against reprisals of any form as a result of the disclosure.

Clause 28 enjoins whistleblowers and those to whom disclosures are made to observe confidentiality. In addition, the Clause requires that confidentiality be observed where information received from a whistleblower is presented as evidence in a court case. Clause 29 of the Bill sets out the interim orders the Commission may make upon receipt of a complaint. These include reference to the Witness Protection Agency,

reinstatement to a position lost as a result of workplace reprisal, and compensation for loss of income among others.

Part VII of the Bill provides for the outcomes of an investigation by the Commission. The report of the Commission may recommend prosecution where appropriate or call upon the body in respect of which a complaint is made to take the necessary action.

Part VIII of the Bill provides for the establishment of a Whistleblower Reward Fund to be operated by the Commission to provide rewards to whistleblowers where a disclosure leads to recovery of money or an asset.

Part IX of the Bill prescribes penalties for offences against the Act, including making of false disclosures, misleading the Commission, or failing to make a disclosure while being aware that improper conduct has occurred or is likely to occur.

Part X of the Bill provides limits on disclosure under the Act. The Bill shall not authorize the disclosure of information relating to national security, classified information under specified law, or personal health information except in certain circumstances. This part also empowers the Cabinet Secretary to exempt classes of persons, public entities, and any information or record from the application of the provisions of the Act, with reasons for the exemption which shall be given to the public,

Annual reports under the Act are to be made —

- (a) by public and private bodies to the Commission on all disclosures made to them during the preceding year; and
- (b) by the Commission to the National Assembly, detailing, among others things, the number of disclosures made in the preceding year, the investigation conducted and the outcomes. In addition to the above a Committee of Parliament may refer a matter to the Commission for investigation and report.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

Clause 52 of the Bill provides that the Cabinet Secretary may make Regulations. The Bill therefore delegates legislative powers to the Cabinet Secretary. The Bill however does not limit fundamental rights and freedoms.

Statement that the Bill does not concern County Governments

The Bill does not concern County Governments in terms of Article 110(1)(a) of the Constitution as it does not contain provisions affecting the

functions and powers of County Governments recognized in the Fourth Schedule to the Constitution.

Statement that the Bill is a money Bill within the meaning of Article 114 of the Constitution

The enactment of this Bill shall occasion additional expenditure of public funds, to be provided through the estimates.

Dated the 6th October, 2021.

IRENE MUTHONI KASALU,
Member of Parliament.