Bill for Introduction into the National Assembly—

The Victims of Gross Human Rights Violations (Compensation) Commission Bill; 2012........................................................................................................6079
THE VICTIMS OF GROSS HUMAN RIGHTS VIOLATIONS (COMPENSATION) COMMISSION BILL, 2012

ARRANGEMENT OF CLAUSES

Clause

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(a) establish an accurate record of the victims of gross human rights violations in Kenya between 12th December, 1963 and 28th February, 2008 including, but not limited to gross human rights violations committed in the Northern Kenya counties of Garissa, Isiolo, Lamu, Mandera, Marsabit and Wajir; and

(b) provide for the compensation and rehabilitation of the victims of gross human rights violations in Kenya.

PART II – THE VICTIMS OF GROSS HUMAN RIGHTS VIOLATIONS (COMPENSATION) COMMISSION

6. (1) There is established a body to be known as the Victims of Gross Human Rights Violations (Compensation) Commission.

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

(a) suing and being sued;

(b) purchasing, acquiring, holding or disposing of property;

(c) entering into contracts; and

(d) doing or performing all such other acts as may be necessary for the proper performance of its functions under this Act.

7. (1) The headquarters of the Commission shall be in Nairobi.

(2) The Commission may establish offices in any other county within Kenya.

8. The functions of the Commission shall be to-

(a) establish an accurate and complete record of the victims of gross human rights violations in the Kenya between 12th December, 1963 and 28th February, 2008, including, but not limited to gross human rights violations committed in the Northern Kenya counties of Garissa, Isiolo, Lamu, Mandera, Marsabit and Wajir;

(b) determine the compensation due from the Fund to the victims;

(c) disburse the compensation due to the victims from the Fund;

(d) identify and recommend other forms of rehabilitation of the victims of gross human rights violations or their dependants;

(e) identify and recommend appropriate means for honouring the memory of the deceased victims of gross human rights violations including the establishment of a memorial centre or a museum;
(f) perform such other functions as are incidental to or necessary for the fulfillment of the objects and purposes of this Act.

9. (1) The Commission shall have all the powers necessary for the execution of its functions under this Act and shall not be subject to the direction or control of any person or authority.

(2) Without prejudice to the generality of sub-section (1), the Commission shall have the power to-

(a) gather all relevant information by any means it considers appropriate, including requisition of reports, records, documents or information from any source, including governmental authorities, and to compel the production of such documents, where necessary;

(b) visit any establishment or place and enter upon any land or premises for any purpose which is material to the fulfillment of the Commission's mandate;

(c) interview any person, group or members of an organization or institution either in public or, where the Commission considers it necessary, in private;

(d) summon any person, including a serving or a retired public officer, to appear before the Commission, and to compel the attendance of any person who fails to comply with the summons of the Commission;

(e) manage, control and administer the assets of the Commission in such manner and for such purposes as best promote the purpose for which the Commission is established;

(f) receive any gifts, grants, donations or endowments made to the Commission or any other monies in respect of the Commission and make disbursements from such monies in accordance with the provisions of this Act;

(g) enter into association with such other bodies or organizations within or outside Kenya as it may consider desirable or appropriate so as to aid the furtherance of the purposes for which the Commission is established;

(h) open and maintain a bank account or accounts for the funds of the Commission; and

(i) offer its services to any person upon such terms as the Commission may from time to time determine.

10. All persons, including officers of Government, shall cooperate with the Commission and shall provide unrestricted access to any premises or documents that the Commission or its officers may require for any purposes necessary in fulfillment of the Commission's mandate under this Act.
11. (1) The Commission shall comprise—
   (a) a chairperson;
   (b) four members;
   (c) the principal secretary in the ministry for the time being responsible for justice or a person designated by the principal secretary;
   (d) the principal secretary in the ministry for the time being responsible for finance or a person designated by the principal secretary; and
   (e) the Director of the Commission who shall be an ex officio member.

(2) The chairperson and a member of the Commission appointed under paragraph (b) of sub-section (1) shall, subject to Articles 10 and 232 of the Constitution, be appointed in accordance with the procedure set out in the First Schedule.

(3) A person shall be qualified for appointment as the chairperson of the Commission or as a member under paragraph (b) of sub-section (1) if the person—
   (a) holds a degree from a recognized university;
   (b) has knowledge and experience of not less than fifteen years in the case of the chairperson and ten years in the case of a member, in any of the following fields—
      (i) public administration;
      (ii) accounting;
      (iii) law;
      (iv) ethics and governance;
      (v) religious studies or philosophy;
      (vi) economics; or
      (vii) social studies.
   (c) has a distinguished career in the respective field of service; and
   (d) meets the requirements of Chapter Six of the Constitution.

(4) A person shall not be qualified for appointment as chairperson or as a member of the Commission under paragraph (b) of sub-section (1) if the person—
   (a) is a State officer or a public officer;
   (b) is a member of the governing body of a political party;
   (c) is an undischarged bankrupt; or
12. The Commission shall, at the first meeting of the Commission and whenever need arises, elect a vice-chairperson from amongst the members provided for under paragraph (b) of section 11(1).

13. (1) The Cabinet Secretary shall constitute a Selection Panel comprising—

(a) one person nominated by the Kenya National Human Rights and Equality Commission;
(b) one person nominated by the Judicial Service Commission;
(c) one person nominated by the Association of Professional Societies in East Africa;
(d) one person nominated by the Law Society of Kenya;
(e) one person nominated by the Federation of Kenya Women Lawyers; and
(f) two persons nominated by a joint forum of religious organizations comprising—
   (i) the Kenya Episcopal Conference;
   (ii) the National Council of Churches of Kenya;
   (iii) the Evangelical Alliance of Kenya;
   (iv) the Hindu Council of Kenya;
   (v) the Seventh Day Adventist Church; and
   (vi) the Supreme Council of Kenya Muslims.

(2) The Selection Panel shall elect a chairperson and a vice-chairperson of the Panel from amongst their number.

(3) The Selection Panel shall nominate suitable candidates for appointment to the Commission in accordance with the procedure stipulated in the First Schedule.

(4) Subject to the First Schedule, the Selection Panel shall determine its own procedure.

14. Subject to section 17, the chairperson and a member appointed under paragraph (b) of paragraph (b) of section 11(1) shall hold office from the date of appointment to office until the dissolution of the Commission.

15. The chairperson, members and director of the Commission shall take and subscribe to the oath or affirmation set out in the Second Schedule before embarking on the duties of the Commission.

16. (1) The office of the chairperson or of a member of the Commission appointed under paragraph (b) of section 11(1) shall
become vacant if the holder-

(a) dies;
(b) by notice in writing addressed to the Cabinet Secretary resigns from office,
(c) is convicted of an offence and sentenced to imprisonment for a term of more than six months without the option of a fine;
(d) is absent from three consecutive meetings of the Commission without good cause; or
(e) is removed in accordance with the provisions of the Constitution.

(2) The Cabinet Secretary shall as soon as practicable notify every resignation, vacancy or termination in the Gazette.

(3) Where a vacancy occurs in the membership of the Commission, the appointment procedure provided for in this Act shall, with necessary modifications, apply.

17. The Third Schedule shall apply in respect of the conduct of business and affairs of the Commission.

18. (1) The Commission shall, through an open, transparent and competitive recruitment process, appoint a suitably qualified person to be the Director of the Commission.

(2) A person shall be qualified for appointment as the Director if the person-

(a) holds a degree from a recognized university;
(b) has knowledge and experience of not less than ten years in any of the following fields-
(i) public administration;
(ii) accounting;
(iii) law;
(iv) ethics and governance;
(v) religious studies or philosophy;
(vi) economics; or
(vii) social studies.
(c) has a distinguished career in the respective field of service; and
(d) meets the requirements of Chapter Six of the Constitution.

(3) The Director shall, in the performance of the functions and duties of office, be accountable to the Commission.

(4) The Director shall be-
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(a) the chief executive officer of the Commission and shall be responsible for the day to day management of the Commission;

(b) the head of the secretariat;

(c) the custodian of all of the Commission's records;

(d) responsible for-

(i) executing decisions of the Commission;

(ii) facilitating, coordinating and ensuring execution of the Commission's mandate;

(iii) preparing and submitting for approval, by the Commission, programmes of work for the achievement of the Commission's mandate;

(iv) ensuring staff compliance with public ethics and values; and

(v) the performance of such other duties as may be assigned by the Commission or by any other written law.

(5) The Director may be removed from office by the Commission only on grounds of-

(a) inability to perform the functions of the office arising out of physical or mental incapacity;

(b) gross misconduct;

(c) bankruptcy; or

(d) incompetence.

(6) Before removal under sub-section (6), the Director shall be-

(a) informed, in writing, of the reasons for the intended removal; and

(b) given an opportunity to put in a defence against any such allegations either in person or through an advocate.

(7) Where the Commission does not intend to re-appoint the Director after the first term, the Commission shall notify the Director and shall cause the vacancy to be advertised at least three months before the expiry of the incumbent's term.

19. (1) There shall be a secretariat of the Commission.

(2) The secretariat shall comprise-

(a) such professional, technical and administrative officers and support staff as may be appointed by the Commission; and

(b) such public officers as may be seconded to the Commission upon its request.
(3) The staff of the Commission shall be appointed by the Commission subject to the Commission's approved establishment.

(4) The Commission shall ensure that in the appointment of its staff—

(a) not more than two-thirds of the staff shall be of the same gender;

(b) the regional and other diversity of the people of Kenya is taken into account; and

(c) persons with disabilities are afforded adequate and equal opportunities.

20. The Commission may, either generally or in a particular case, delegate to a member of the Commission or to an officer or agent of the Commission, the exercise of any of the powers or the performance of any of the functions or duties of the Commission under this Act.

21. Members of the Commission and the secretariat of the Commission shall subscribe to such code of conduct as the Commission may by Regulations prescribe.

22. (1) The seal of the Commission shall be kept in the custody of the Director.

(2) The affixing of the seal shall be authenticated by the chairperson of the Commission and the Director.

(3) Any document purporting to be under the seal of the Commission or issued on behalf of the Commission shall be received in evidence and shall be deemed to be so executed or issued, as the case may be, without further proof, unless the contrary is proved.

(4) Notwithstanding subsection (2), the Commission shall, in the absence of the chairperson or the Director, nominate one member of the Commission to authenticate the seal on behalf of either the chairperson or the Director.

(4) A deed, instrument, contract or other document executed in accordance with sub-section (2) shall bind the Commission.

PART III — THE VICTIMS OF GROSS HUMAN RIGHTS VIOLATIONS (COMPENSATION) FUND

23. (1) There is established a fund to be known as the Victims of Gross Human Rights Violations (Compensation) Fund which shall be administered by the Commission.

(2) The Fund shall consist of—

(a) gifts, grants or donations;

(b) other non-governmental sources of funds approved by the Commission;

(c) such monies as may, in future, be appropriated by Parliament for the purposes of the Commission.
(3) The operational and other expenses of the Commission, including the salaries and allowances of members and staff of the Commission, shall be met out of the monies of the Fund.

24. The Fund shall be applied to the following purposes—

(a) disbursement of compensation to the victims or to the dependants of the victims of gross human rights violations as determined under this Act; and

(b) general administration expenses of the Commission which, in each financial year, shall not exceed three per cent of the monies in the Fund.

25. The financial year of the Commission shall be the period of twelve months ending on the thirtieth day of June in every year.

26. (1) Before the commencement of each financial year, the Commission shall cause to be prepared estimates of the revenue and expenditure of the Commission for that financial year.

(2) The Commission shall approve the annual estimates before the commencement of the financial year to which they relate.

27. The Commission shall cause to be kept all proper books and records of accounts of the income, expenditure, assets and liabilities of the Commission and shall cause the accounts of the Commission to be audited within a period of three months from the end of the financial year.

28. The Commission may invest any of the funds of the Commission in such manner as the Commission may from time to time approve.

29. The Cabinet Secretary may exempt the Commission from such taxes, duties, fees or other charges as the Cabinet Secretary may, by notice in the Gazette, specify.

PART IV — MISCELLANEOUS

30. (1) If a person is present at a meeting of the Commission or of a committee of the Commission at which a particular matter is the subject of consideration and in which matter that person or that person's spouse is directly or indirectly interested in a private capacity, that person shall, as soon as is practicable after the commencement of the meeting, declare such interest and shall not, unless the Commission or committee otherwise directs, take part in any consideration or discussion of, or vote on any question touching on such matter.

(2) A disclosure of interest made under subsection (1) shall be recorded in the minutes of the meeting at which it is made.

(3) A person who contravenes subsection (1) commits an offence and is liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.
(4) No member of the Commission or staff of the Commission shall transact any business or trade with the Commission.

31. (1) No matter or thing done by a member of the Commission or by any officer or agent of the Commission shall, if the matter or thing is done bona fide for executing the functions, powers or duties of the Commission under this Act, render the member, officer or agent or any person acting on their directions personally liable to any action, claim or demand whatsoever.

(2) The provisions of subsection (1) shall not relieve the Commission of the liability to pay compensation or damages to any person for any injury to him, his property or any of his interests caused by the exercise of any power conferred by this Act or any other written law or by the failure, wholly or partially, of any works.

32. A person who-

(a) without lawful excuse ignores, fails to obey any instruction issued by a member of the Commission or officer or agent of the Commission in exercise of the powers or the performance of the functions of the Commission under this Act;

(b) willfully obstructs any member of the Commission or officer or agent of the Commission in the discharge of their lawful duties; or

(c) misrepresents, knowingly submits false or misleading information to any member of the Commission or officer or agent of the Commission in exercise of the powers or the performance of the functions of the Commission under this Act;

comits an offence and is liable, on conviction, to a fine not exceeding one million shillings or to imprisonment for a period not exceeding five years, or to both such fine and imprisonment.

33. (1) The Commission shall, within three months of the end of a financial year, prepare and submit to the National Assembly an annual report on the operations of the Commission for the preceding year.

(2) The annual report submitted under sub-section (1) shall include-

(a) the financial statements of the Commission; and

(b) a detailed report of the activities of the Commission.

34. (1) The Cabinet Secretary may, in consultation with the Commission, make Regulations generally for the better carrying out of this Act.

(2) Without prejudice to the generality of sub-section (1), the Regulations may provide for-

(a) the criteria for identifying the victims of gross human rights violations;
(b) where the victims are deceased, the criteria for identifying the dependants of the victims; and

(c) the formula for compensation of the victims or the dependants of the victims.

FIRST SCHEDULE [(section 11(2)]

PROCEDURE FOR APPOINTING MEMBERS OF THE COMMISSION

1. The Selection Panel shall, within fourteen days of the commencement of this Act, by advertisement in the Gazette and in at least three daily newspapers of national circulation, invite applications for nomination as the chairperson or as a member of the Commission under paragraph (b) of section 11(1).

2. An application under paragraph (1) shall be forwarded to the Selection Panel within twenty-one days of the advertisement and may be made by-

   (a) a qualified person; or

   (b) any person, organization or group of persons proposing the nomination of a qualified person.

3. The Selection Panel shall, within seven days of the expiry of the period prescribed under paragraph (2)-

   (a) consider all the applications received under paragraph (2);

   (b) nominate suitably qualified persons for appointment as the chairperson and as members under paragraph (b) of section 11(1); and

   (c) forward the names of the nominees to the National Assembly for approval by the Assembly.

4. The Selection Panel shall provide the National Assembly with comments regarding each of the persons nominated under paragraph (3).

5. The National Assembly shall, upon receipt of the recommendations of the Selection Panel under paragraph (3), consider the nominees and shall either-

   (a) approve the nominees and forward the names of the nominees approved to the Cabinet Secretary who shall, by notice in the Gazette, appoint the nominees to the Commission; or

   (b) reject all or any of the nominees.

6. Where the National Assembly rejects a nominee under paragraph (5), the provisions of paragraphs (3), (4) and (5) shall, with necessary modifications, apply to the nomination of a new nominee.
SECOND SCHEDULE [section 15]
OATH/ AFFIRMATION OF OFFICE OF THE CHAIRPERSON, A MEMBER OR THE DIRECTOR OF THE COMMISSION

I ........................................... having been appointed as (the Chairperson/ a Member/ the Director) of the Victims of Gross Human Rights Violations (Compensation) Commission do solemnly swear that I will faithfully and fully, impartially and to the best of my ability, discharge the trust and perform the functions and exercise the powers bestowed on me by virtue of this appointment without fear, favour, bias, affection, ill-will or prejudice.

SO HELP ME GOD.

Sworn/ Declared by the said .................
Before me this .......... day of ............

Chief Justice.

THIRD SCHEDULE [section 17]
PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE COMMISSION

1. (1) The Commission shall hold such number of meetings at such places and at such times as the Commission shall consider necessary for the proper discharge of its functions.

(2) Notwithstanding sub-section (1) the Commission shall meet not less than four times in each financial year.

(3) At least fourteen days notice shall be given prior to any meeting of the Commission.

2. The chairperson or any three members may call a special meeting whenever it is expedient for the transaction of the business of the Commission by giving not less than five days notice to the members.

3. (1) The chairperson shall preside at all meetings of the Commission.

(2) In the absence of the chairperson at a meeting, the vice-chairperson shall preside at that meeting of the Commission.

(3) In the absence of the chairperson and the vice-chairperson at a meeting, the members present shall elect a member to preside at that meeting of the Commission.

4. The quorum for the conduct of business at a meeting of the Commission shall be half of the members of the Commission.

5. (1) A decision on any matter before the Commission shall be by a majority of votes of the members present.

(2) In the case of an equality of votes, the chairperson or the person presiding shall have a casting vote.
6. Subject to the provisions of this Act or of Regulations made pursuant to this Act, the Commission may determine its own procedure.

7. Proceedings of the Commission shall not be invalid by reason only of a vacancy in the membership of the Commission or by reason of a defect in the appointment of a member.

8. (1) If a member of the Commission is directly or indirectly interested in a contract, proposed contract or other matter before the Commission and is present at a meeting of the Commission at which the contract, proposed contract or other matter is the subject of consideration, that member shall, as soon as is practicable after the commencement of that meeting, disclose the fact.

(2) A member to whom subsection (1) applies shall not participate in the consideration, discussion or voting on the matter in which the member has disclosed an interest.

9. The secretariat to the Commission shall keep a record of all proceedings and meetings of the Commission.
MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to provide an avenue for the compensation and rehabilitation of the victims of gross human rights violations committed in Kenya between 12th December, 1963 and 28th February, 2008, including, but not limited to gross human rights violations committed in the Northern Kenya counties of Garissa, Isiolo, Mandera, Marsabit and Wajir.

The history of Kenya bears witness to the human rights violations that have, over time, been committed against Kenyans in various parts of the country through unwarranted acts of public officers. That notwithstanding, and despite the scars, both physical and emotional of the violations committed against them, the victims of these violations have not benefited from any form of compensation or from any form of rehabilitation.

This Bill therefore seeks to establish the Victims of Gross Human Rights Violations (Compensation) Commission with the mandate of establishing an accurate and complete record of the victims of gross human rights violations in Kenya, including, but not limited to, the Northern Kenya Counties, and with the further mandate of determining and disbursing the compensation due from the Fund to the victims. The Commission will also be required to identify and recommend other means of rehabilitation of the victims of the gross human rights violations. The Bill further proposes the establishment of a Fund from which the compensation due would be disbursed.

The Bill provides for a 'sunset clause' so that the Act, once enacted into law, would cease to operate on a date to be fixed by the Cabinet Secretary by an Order published in the Gazette. This, it is envisaged, would be the date by which the matter of compensation to the victims of human rights violations in Kenya would have been brought to its logical conclusion.

The enactment of this Bill will provide a road-map to the conclusion of the long-outstanding matter of compensation to the victims of gross human rights violations committed against the people of Kenya.

The enactment of this Bill shall not occasion the additional expenditure of public funds.

Dated the 6th December, 2012.

MOHAMED A. AFFEY,
Member of Parliament.