

SPECIAL ISSUE

Kenya Gazette Supplement No. 10 (Bills No. 1)



NATIONAL COUNCIL FOR
LAW REPORTING
LIBRARY

REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

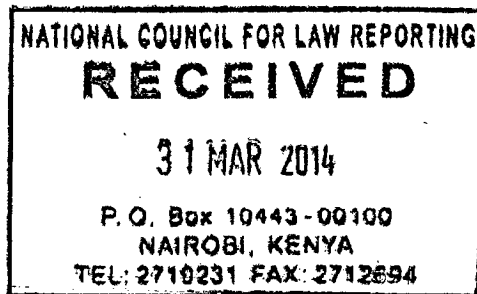
NATIONAL ASSEMBLY BILLS, 2014

NAIROBI, 21st February, 2014

CONTENT

Bill for Introduction into the National Assembly—

	PAGE
The Kenya National AIDS Authority Bill, 2014.....	1



THE KENYA NATIONAL AIDS AUTHORITY BILL, 2014
ARRANGEMENT OF CLAUSES

Clause

PART I—PRELIMINARY

- 1—Short title.
- 2—Interpretation.

PART II— THE KENYA NATIONAL AIDS AUTHORITY

- 3—Establishment of the Authority.
- 4—Headquarters and offices of the Authority.
- 5—Functions of the Authority.
- 6—Board of management.
- 7—Conduct of business and affairs of the Board.
- 8—Qualifications for appointment of chairperson and members
- 9—Disqualification for appointment.
- 10—Powers of the Board.
- 11—Procedure for appointment of chairperson and members.
- 12—Delegation by the Board.
- 13—Tenure of office.
- 14—Oath of office.
- 15—Vacancy.
- 16—Director-General of the Authority.
- 17—Staff of the Authority.
- 18—Seal of the Authority.
- 19—Protection from personal liability.
- 20—Terms and conditions of service

PART III—FINANCIAL PROVISIONS

- 21—Funds of the Authority.
- 22—Financial year.
- 23—Annual estimates.
- 24—Accounts and audit.

PART IV—MISCELLANEOUS PROVISIONS

25—Declaration by Cabinet Secretary.

26—Reports.

PART V—PROVISIONS ON DELEGATED POWERS

27—Regulations.

FIRST SCHEDULE—Provisions as to the Conduct of Business and
Affairs of the Board

SECOND SCHEDULE— Transitional Provisions

**THE KENYA NATIONAL AIDS AUTHORITY
BILL, 2014**

A Bill for

AN ACT of Parliament to establish the Kenya National AIDS Authority, to provide for its composition, functions and powers and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Kenya National AIDS Authority Act, 2014.

Short title.

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

Interpretation.

“Acquired Immune Deficiency Syndrome (AIDS)” has the meaning assigned to it under section 2 of the HIV and AIDS Prevention and Control Act, 2006 and HIV and AIDS shall be construed accordingly;

“Authority” means the Kenya National AIDS Authority established by section 3

“Board” means the Board of Management of the Authority established by section 6;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to HIV and AIDS;

“Human Immuno-deficiency Virus (HIV)” has the meaning assigned to it under section 2 of the HIV and AIDS Prevention and Control Act, 2006.

“Stakeholders” means all parties concerned in HIV and AIDS programming and management including government departments, non governmental organisations, faith based organisations research bodies, universities and the private sector.

**PART II—THE KENYA NATIONAL AIDS
AUTHORITY**

3. (1) There is established an Authority to be known as the Kenya National AIDS Authority.

Establishment of the Authority.

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

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;
- (c) borrowing, lending and granting money;
- (d) entering into contracts; and
- (e) doing or performing all other acts or things for the proper performance of its functions under this Act which may lawfully be done or performed by a body corporate.

(3) The Authority shall be the successor to the Council known as the National AIDS Control Council existing immediately before the commencement of this Act established under the State Corporations Act.

4. (1) The headquarters of the Authority shall be in Nairobi.

(2) The Authority shall ensure access to its services in all parts of the Republic and may establish offices in the county headquarters or such other offices as it may deem necessary.

(3) The Authority shall be responsible to the county executive committee on the utilisation of funds granted to it by that county government.

(4) The county office shall be responsible to the Authority on the discharge of functions of the Authority and the exercise of its powers at the county level.

5. The functions of the Authority are to—

- (a) develop policies and guidelines relevant to the prevention, control and management of HIV and AIDS;
- (b) regulate, monitor and evaluate implementation of HIV and AIDS programmes in the country;
- (c) co-ordinate, in accordance with this Act, other written law or such manner as may be prescribed, HIV and AIDS programmes in the country;
- (d) develop specific frameworks and strategies to deal with all aspects of the HIV and AIDS epidemic;

Cap.446
L.N 170 /1999

Headquarters and
offices of the
Authority.

Functions of the
Authority.

- (e) mobilise resources for HIV and AIDS control, prevention and management, and provide grants to implementing agencies;
- (f) mobilise all stakeholders to participate in HIV and AIDS control and prevention;
- (g) collaborate with local and international agencies which work in HIV and AIDS control and prevention.

6. The Authority shall be administered by a Board of management which shall consist of a chairperson and six other members appointed in accordance with the provisions of this Act.

Board of management.

7. (1) The conduct and regulation of the business and affairs of the Board shall be as provided in the First Schedule.

Conduct of business and affairs of the Board.

(2) Except as provided in the First Schedule, the Board may regulate its own procedure.

8. (1) A person shall be qualified for appointment as the chairperson of the Board if the person—

Qualifications for appointment of chairperson and members.

- (a) has knowledge and at least twelve years experience in matters relating to HIV and AIDS;
- (b) holds a degree from a university recognized in Kenya; and
- (c) meets the requirements of Chapter Six of the Constitution.

(2) A person shall be qualified for appointment as a member of the Authority if the person—

- (a) holds a degree from a university recognized in Kenya;
- (b) has knowledge and at least ten years experience in matters relating to any of the following fields—
 - (i) HIV and AIDS;
 - (ii) gender and social development;
 - (iii) social sciences;
 - (iv) health and medicine;
- (c) has had a distinguished career in their respective fields; and

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

Disqualifications for appointment.

9. A person shall not be qualified for appointment as the chairperson or a member if such person—

- (a) is a member of Parliament or a county assembly;
- (b) is a undischarged bankrupt; or
- (c) has been removed from office for contravening the provisions of the Constitution or any other law.

Powers of the Board.

10. The Board shall have all powers necessary for the proper performance of the functions of the Authority under this Act and in particular, but without prejudice to the generality of the foregoing, the Board shall have power to—

- (a) mobilise resources for the prevention, control and management of HIV and AIDS;
- (b) manage, control and administer the assets of the Authority in such manner and for such purposes as best promote the purpose for which the Authority is established;
- (c) determine the provisions to be made for capital and recurrent expenditure and for the reserves of the Authority;
- (d) receive any grants, gifts, donations or endowments to the Authority and make legitimate disbursements there from;
- (e) enter into association with such other bodies or organizations within or outside Kenya as it may consider desirable or appropriate and in furtherance of the purposes for which the Authority is established;
- (f) open such bank accounts for the funds of the Authority its funds as may be necessary;
- (g) invest any surplus funds of the Authority not immediately required for its purposes as may be permitted by law for the time being in force; and
- (h) undertake any activity necessary for the fulfilment of any of the functions of the Authority.

11. (1) Upon commencement of this Act or whenever there is a vacancy in the Board, the President shall, within

Procedure for appointment of chairperson and members.

fourteen days of the occurrence of the vacancy, appoint a selection panel for the purpose of selecting suitable candidates for appointment as the chairperson or member of the Board.

(2) The selection panel appointed under subsection (1) shall consist of one person nominated by—

- (a) the President;
- (b) the Cabinet Secretary responsible for matters relating to HIV and AIDS;
- (c) the Public Service Commission;
- (d) the National Council for Persons with Disabilities;
- (e) a joint forum of religious organizations consisting of the Supreme Council of Kenya Muslims, the Kenya Episcopal Conference, the National Council of Churches of Kenya, the Evangelical Fellowship of Kenya and the Hindu Council of Kenya;
- (f) the most representative association representing persons living with HIV AIDS as may be determined by the Cabinet Secretary; and
- (g) the Association of Professional Societies in East Africa.

(3) The selection panel shall, subject to this section, determine its own procedure, and the Cabinet Secretary responsible for public service shall provide it with such facilities and such other support as it may require for the discharge of its functions.

(4) The selection panel shall, within seven days of its convening, invite applications, in at least two newspapers of national circulation from qualified persons to be submitted within twenty-one days from the date of the invitation.

(5) The selection panel shall within seven days of receipt of applications under subsection (4) consider the applications and publish the names and academic qualifications of all shortlisted applicants in at least two daily newspapers of national circulation.

(6) The selection panel shall within fourteen days of the publication under subsection (5) interview and identify three persons qualified for appointment as chairperson and ten persons qualified for appointment as members of the Authority and shall forward the names of the selected candidates to the President for nomination.

(7) The President shall, within seven days of receipt of the names forwarded under subsection (6), nominate one person for appointment as chairperson and six persons for appointment as members of the Authority, and shall forward the names of the persons nominated to the National Assembly.

(8) The National Assembly shall, within twenty-one days of the day it next sits after receipt of the names of the nominees under subsection (7), consider all the nominations received and may approve or reject any nomination.

(9) Where the National Assembly approves the nominees, the Speaker shall forward the names of the approved persons to the President for appointment.

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

(11) Where the National Assembly rejects any nomination, the Speaker shall, within three days, communicate the decision of the National Assembly to the President to submit fresh nominations.

(12) Where a nominee is rejected by the National Assembly under subsection (11), the President shall, within seven days, submit to the National Assembly a fresh nomination from amongst the persons shortlisted and forwarded by the selection panel under subsection (6).

(13) If the National Assembly rejects all or any subsequent nominee submitted by the President for approval under subsection (12), the provisions of subsections (6) and (7) shall apply.

(14) The selection panel convened under subsection (1) shall stand dissolved upon the appointment of the chairperson or member of the Authority whichever is the later.

(15) In short listing, nominating or appointing persons as chairperson and members of the Authority, the selection panel, the National Assembly and the President shall observe the principle of gender equity, regional and ethnic balance, transparency, openness and competitiveness and shall have due regard to the principle of equal opportunities for persons with disabilities.

Delegation by the Authority.

12. The Authority may, by resolution either generally or in any particular case, delegate to any committee or to any member, officer, employee or agent of the Authority, the exercise of any of the powers or the performance of any of the functions or duties of the Authority under this Act or under any other written law.

Tenure of office.

13. The chairperson and members of the Authority shall be appointed for a term of three years and shall be eligible for re-appointment for one further term.

Oath of office.

14. Before assuming office, the chairperson and members of the Authority shall take and subscribe to an oath of office as may be prescribed.

Vacancy.

15. (1) The office of the chairperson or a member of the Authority shall become vacant if the holder—

- (a) dies;
- (b) resigns from office, by a notice in writing addressed to the President;
- (c) is absent from three consecutive meetings of the Authority without good cause; or
- (d) is removed from office in accordance with subsection (2).

(2) A member of a Authority, may be removed from office only for—

- (a) serious violation of the Constitution or any other law, including a contravention of Chapter Six;
- (b) gross misconduct, whether in the performance of the member's or office holder's functions or otherwise;
- (c) physical or mental incapacity to perform the functions of office;
- (d) incompetence; or
- (e) bankruptcy.

Director General to
the Authority.

16. (1) The Board shall, through an open, transparent and competitive recruitment process appoint a suitably qualified person to be the Director General to the Authority.

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

- (a) is a citizen of Kenya;
- (b) has knowledge and at least ten years experience in matters relating to HIV and AIDS;
- (c) possesses a postgraduate degree from a university recognised in Kenya in any of the following areas—
 - (i) HIV and AIDS;
 - (ii) public health or Biomedical sciences; or
 - (iii) humanities and social sciences;
- (d) has had at least ten years proven experience in leadership or at senior management level;
- (e) meets the requirements of Chapter Six of the Constitution.

(3) The Board shall cause the vacancy in the office of the Director General to be advertised at least three months before the expiry of the incumbent's term.

(4) The Director General shall be the chief executive officer and secretary to the Board and shall, subject to the directions of the Board, be responsible for—

- (a) day-to-day administration and management of the affairs of the Authority;
- (b) all income and expenditure of the Authority;
- (c) all assets and the discharge of all liabilities of the Authority;
- (d) carrying out of the decisions of the Authority;
- (e) supervision of other employees of the Authority; and
- (f) the performance of such other duties as may be assigned by the Board.

17. (1) The Board may appoint such staff as may be necessary for the discharge of the functions of the Authority under this Act.

Staff of the
Authority.

(2) The Board may engage such experts or consultants to assist it in the discharge of the functions of the Authority upon such terms as the Board may determine.

(3) The Board shall, in the appointment of the staff of the Authority, ensure that—

- (a) at least one-third of the staff are of either gender;
- (b) the appointment reflects ethnic and regional diversity of the people of Kenya.

18. (1) The seal of the Authority shall be such device as may be determined by the Board and shall be kept by the Director General.

Seal of the Authority.

(2) The affixing of the seal shall be authenticated by the chairperson or any other person authorized in that behalf by a resolution of the Board.

(3) Any document purporting to be under the seal of the Authority or issued on behalf of the Authority 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.

19. Nothing done by a member of the Board or by any person working under the instructions of the Board shall, if done in good faith for the purpose of executing the powers, functions or duties of the Authority under the Constitution or this Act, render such member or officer personally liable for any action, claim or demand.

Protection from personal liability.

20. (1) The chairperson and members of the Authority shall be paid such allowances or other remuneration as determined upon the advice of the Salaries and Remuneration Authority.

Terms and conditions of service.

(2) The Director General shall serve on such terms and conditions as the Board may determine upon the advice of the Salaries and Remuneration Authority.

(3) The staff of the Authority shall be engaged on such terms and conditions of service as determined by Board upon the advice of Salaries and Remuneration Commission.

PART III—FINANCIAL PROVISIONS

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

Funds of the Authority.

- (a) monies allocated by Parliament for purposes of the Authority in accordance with subsection (2);

- (b) monies allocated to county offices of the Authority by the county assemblies;
- (c) any grants, gifts, donations or other endowments given to the Authority;
- (d) such funds as may vest in or accrue to the Authority in the performance of its functions or exercise of its powers under this Act or under any other written law.

(2) There shall be made to the Authority, out of monies provided by Parliament by virtue of paragraph 12 of the National AIDS Control Council Order, 1999 for that purpose, grants towards the expenditure incurred by the Authority in the exercise of its powers or the performance of its functions under this Act.

L.N.170/1999

(3) The receipts, earnings or accruals of the Authority and the balances at the close of each financial year shall not be paid into the Consolidated Fund but shall be retained for the purposes for which the Authority is established.

Financial year.

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

Annual estimates.

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

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

- (a) payment of allowances or other charges in respect of members of the Board;
- (b) payment of remuneration in respect of the staff of the Authority;
- (c) payment of pensions, gratuities and other charges in respect of benefits which are payable out of the funds of the Authority;
- (d) maintenance of the buildings and grounds of the Authority;
- (e) funding of training, research and development of activities of the Authority; and

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

(3) The annual estimates shall be approved by the Board before the commencement of the financial year to which they relate and shall be submitted to the Cabinet Secretary for tabling in Parliament.

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

Accounts and audit.

(2) The annual accounts of the Authority shall be prepared, audited and reported upon in accordance with the Public Audit Act, 2003.

No. 12 of 2003.

PART IV—MISCELLANEOUS PROVISIONS

25. (1) The Cabinet Secretary responsible for HIV and AIDS or other disasters may, by notice in the Gazette, declare HIV and AIDS as a national disaster among other disasters.

Declaration by
Cabinet Secretary.

(2) Upon a declaration under subsection (1), the national government shall make appropriate and necessary budgetary provisions to fund and support the fight against HIV and AIDS.

26. (1) The Authority shall, at the end of each financial year cause an annual report to be prepared.

Reports.

(2) The Authority shall submit the annual report to the President and the National Assembly three months after the end of the year to which it relates.

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

- (a) the financial statements of the Authority;
- (b) a description of the activities of the Authority;
- (c) such other programme and statistical information as the Authority may consider appropriate relating to the Authority's functions;
- (d) any recommendations made by the Authority to Government Ministries, departments or any person and the action taken;

- (e) the impact of the exercise of any of its mandate or function;
- (f) any challenges to the achievements of the objects and functions under this Act or any written law; and
- (g) any other information relating to its functions that the Authority considers necessary.

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

PART V—PROVISIONS ON DELEGATED POWERS

Regulations.

27. (1) The Authority may, with the approval of the National Assembly, make regulations generally for the better carrying into effect of any provisions of this Act.

(2) Without prejudice to the foregoing, Regulations made under this section may provide for—

- (a) the appointment, including the power to confirm appointments of persons, to any office in respect of which the Authority is responsible under this Act;
- (b) the disciplinary control and termination of appointments of employees of the Authority; and
- (c) the practice and procedure of the Authority in the exercise of its functions under this Act.

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

- (a) the purpose and objective of the delegation under this section is to enable the Cabinet Secretary to make regulations to provide for the better carrying into effect of the provisions of this Act and to enable the Authority to discharge its functions more effectively;
- (b) the authority of the Cabinet Secretary to make regulations under this Act will be limited to bringing into effect provisions of this Act and to fulfilment of the objectives specified under this section;
- (c) the principles and standards applicable to the regulations made under this section are those set

out in the Interpretation and General Provisions Act (Cap 2) and the Statutory Instruments Act, 2013.

28. The National AIDS Control Council Order, 1999 is repealed.

Repeal of L.N
170/1999.

(2) Notwithstanding the repeal under subsection (1), the provisions of paragraph 12 of the National AIDS Control Council Order, 1999 shall continue to apply to the Authority in accordance with section 21 (2) of this Act.

(3) The transitional provisions specified in the Second Schedule shall apply upon commencement of this Act.

FIRST SCHEDULE (s.7)

PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD

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

Meetings.

(2) Notwithstanding the provisions of subparagraph (1), the chairperson may, and upon requisition in writing by at least four members shall, convene a special meeting of the Board at any time for the transaction of the business of the Board.

(3) Unless five members of the Board otherwise agree, at least fourteen days' written notice of every meeting of the Board shall be given to every member of the Board.

(4) The quorum for the conduct of the business of the Board shall be four members including the chairperson or the person presiding.

(5) The chairperson shall preside at every meeting of the Board at which he is present but, in the chairperson's absence, the members present shall elect one of their numbers to preside, who shall, with respect to that meeting and the business transacted thereat, have all the powers of the chairperson.

(6) Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a majority of votes of the members present and voting and, in the case of an equality of votes, the chairperson or the person presiding shall have a casting vote.

(7) Subject to subparagraph (4), no proceedings of the Board shall be invalid by reason only of a vacancy among the members thereof.

Committees of the Authority.

2. (1) The Board may establish committees for the effective discharge of its functions.

(2) The Board may co-opt into the membership of committees established under subsection (1) other persons whose knowledge and skills are found necessary for the functions of the Board.

(3) Any person co-opted into the Board under subsection (2) may attend the meetings of the Board and participate in its deliberation, but shall have no power to vote.

Disclosure of interest.

3. (1) If a member of the Board is directly or indirectly interested in a contract, proposed contract or other matter before the Board and is present at a meeting of the Board 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.

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

Execution of instruments.

4. Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not require to be under seal, may be entered into or executed on behalf of the Board by any person generally or specially authorized by the Board for that purpose.

Minutes.

5. The Board shall cause minutes of all resolutions and proceedings of meetings of the Board to be entered in books kept for that purpose.

SECOND SCHEDULE (s.28(3))

TRANSITIONAL PROVISIONS

Interpretation.

1. In this Schedule—

“appointed day” means the day on which this Act comes into force;

“assets” include all property movable or immovable and all estates, easements and rights whether equitable or legal in, over or out of property, choses-in-action, money or goodwill of the former institutions whether situated in Kenya or elsewhere;

“Council” means the National AIDS Control Council established by Legal Notice No. 170 of 1999 and is existing immediately before the commencement of this Act;

“liabilities” means liabilities, debts, charges, duties and obligations of every description, whether present or future, actual or contingent, and whether to be observed or performed in Kenya or elsewhere; and

“rights” means all rights, powers, privileges and immunities whether actual, contingent or prospective, whether observed or performed in Kenya or elsewhere.

2. (1) On the appointed day, all the funds, assets and other property, both movable and immovable, which immediately before such day were vested in the Council shall, by virtue of this paragraph, vest in the Authority.

Assets and liabilities.

(2) On the appointed day, all rights, powers and liabilities, which immediately before such day were vested in, imposed on or enforceable against the Council shall, by virtue of this paragraph, be vested in, imposed on or enforceable against the Authority.

(3) If, on the appointed day, any suit, appeal, arbitration or other proceedings of whatever nature and wheresoever instituted in relation to the business of the Council which is, by virtue of this paragraph, transferred to the Authority, shall not abate, be discontinued or be in any way prejudicially affected by reason of such transfer of the business of the Council or of anything contained in this Act, and any suit, appeal arbitration or other proceedings shall be continued, and enforced by or against the Authority.

(4) In the case of assets and liabilities arising under any loans which vest in the Authority on the appointed day, the Authority may enter into such arrangements or agreements over such rights and liabilities with the Government or any other third party.

Reference to
Council.

3. Any reference in any written law or in any document or instrument to the Council shall, on and after the appointed day, be construed to be a reference to the Authority.

Proceedings.

4. Any proceedings pending immediately before the appointed day to which the Council was a party shall be continued as if the Authority was a party thereto in lieu of the Council.

Agreements, deeds,
etc.

5. Every agreement, deed, bond or other instrument to which the Council was a party or which affected the Council and whether or not of such a nature that the rights, liabilities and obligations thereunder could be assigned, shall have effect as if the Authority were a party thereto or affected thereby instead of the Council and as if for every reference (whether express or implied) therein to the Council there were substituted in respect of anything to be done on or after the appointed day.

Administrative
decisions.

6. The administrative decisions made by the Council which are in force immediately before the appointed day shall, on or after such day, have force as if they were directions made by the Authority under this Act.

Members of the
Council to serve
their unexpired term.

7. Notwithstanding section 8, the persons who were members of the Council immediately before the commencement of this Act shall continue in office until new members of the Authority are appointed under this Act.

Staff.

8. (1) Any person who, at the commencement of this Act, is a member of staff of the Council shall, on the appointed day, become a member of staff of the Authority on the same or improved terms and conditions of service as may be specified by the Authority:

Provided that a member of staff of the Council may retire on the basis of abolition of office in accordance with the existing regulations.

(2) Notwithstanding section 16, the person who was the Director of the Council immediately before the commencement of this Act shall continue in office as Director General until a new Director General is appointed under this Act.

Disciplinary
proceedings.

9. (1) Where on the appointed day—

- (a) any disciplinary proceedings against any member of staff of the Council are in the course of being heard or instituted, or have been heard or investigated by the Council but no order or decision has been made thereon;
- (b) any such member of staff is interdicted or suspended,

the Authority shall—

- (i) in the case of paragraph (a), carry on and complete the hearing or investigation and make an order or render a decision, as the case may be; and
- (ii) in the case of paragraph (b), deal with such member of staff in such manner as it deems appropriate having regard to the offence committed by him or her, including the completion of disciplinary proceedings that have been commenced against that member of staff.

(2) Where on the appointed day, any penalty, other than dismissal, has been imposed on any member of staff of the Council pursuant to disciplinary proceedings against him or her and the penalty has not been, or remains to be, serviced by such member of staff, he or she shall, on his or her transfer to the Authority, serve or continue to serve such penalty to its full as if it had been imposed by the Authority.

10. (1) A member of staff of the Council who becomes a member of staff of the Authority may continue to be governed by the existing Government pension scheme.

Pension.

(2) Where any person whose services are transferred to the Authority is, on the appointed day, a member of any statutory voluntary pension scheme or provident fund, the person shall for the purpose of this Act, continue to be governed by the same regulations under those schemes or funds, as if he or she had not been so transferred, and for purposes of the regulations governing those schemes or funds, service with the Authority shall be deemed to be service in the Council.

MEMORANDUM OF OBJECTS AND REASONS

The objective of this Act is to provide a legal framework for the establishment, powers and functions of the Kenya National AIDS Authority. The Authority is established as a successor to the National AIDS Control Council. In its current state the National Aids Control Council is a State Corporation established vide the National AIDS Control Council Order published in legal Notice No 170 of 1999.

Even though the Council has made significant steps towards the prevention and spread of the AIDS scourge in the country, a number of defects have been noted which lead to the conclusion that better progress could have been made. Most of these concerns revolve around the operations of the Council.

A number of times, questions have also arisen as to the proper utilisation of resources allocated to the Council. The process of appointment of officials and membership to the Council has often also been criticized as being opaque and subject to patronage while also lacking in meritocracy.

In the current state the Council operates under and reports to the Office of the President. This raises serious questions of autonomy which may end up hampering the effective operations of the Council due to the noted issues. This lack of autonomy may also be a limiting factor in the body exercising general functions. The situation is made worse by the fact that the funds that the Council is dependent on are drawn from the ministerial allocations.

The Bill seeks to reverse this state of affairs by establishing the Authority as a body corporate with perpetual succession and a common seal. This gives it the full autonomy that comes with the status of a corporate body including the capability to sue and be sued, to enter into contracts and to own and transfer property in its own name. The funds to the Authority will also now be directly allocated by the National Assembly which further strengthens the Authority.

The Bill also intends to strengthen the institutional structures of the Authority by providing for a transparent and meritorious system for the appointment of the members of the Authority. The Chair and members of the Authority are made subject to and protected by the provisions of the Constitution as relates to state officers. The appointment process includes nomination by a panel and parliamentary approval.

Part I contains preliminary provisions.

Part II contains provisions on the establishment, powers and functions of the Kenya National AIDS Authority as the body responsible

for the formulation of policy and co-ordination of all matters pertaining to the prevention and control of HIV and AIDS.

Part III contains financial provisions which seek to grant the Authority financial autonomy and also subject the resources to transparent audit processes.

Part IV contains miscellaneous provisions including the repealing of the National AIDS Control Council Order, 1999 is repealed.

Part V contains provisions on delegated powers.

The First Schedule sets out regulations regarding the conduct of business and affairs of the Authority.

The Second Schedule sets out the transitional provisions.

PROVISIONS ON DELEGATED POWERS

This law when enacted will confer on a number of bodies and persons Authority to make provisions having the force of law in Kenya in terms of Article 94 (6) of the Constitution of Kenya, 2010.

The Authority with the approval of the National Assembly for instance is given Authority by section 27 of this Act to make regulations. The purpose and objectives of making these regulations include the following:

to provide for the appointment, including the power to confirm appointments of persons, to any office in respect of which the Authority is responsible under this Act;

- (a) to provide for the disciplinary control and termination of appointments of employees of the Authority; and
- (b) to provide for the practice and procedure of the Authority in the exercise of its functions under this Act.

Limits of the Delegated Authority

The regulations made under this Act by the Authority will be limited to bringing into effect provisions of this Act and will therefore affect the appointments of persons, to any office in respect of which the Authority is responsible under this Act, the disciplinary control and termination of appointments of employees of the Authority and the practice and procedure of the Authority in the exercise of its functions under this Act.

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

Dated the 17th February, 2014.

JARED ODHIAMBO OPIYO,
Member of Parliament.