

THE EQUAL OPPORTUNITIES BILL, 2007

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A Bill for

AN ACT of Parliament to promote equal opportunities for all persons, to prohibit discrimination and provide for remedies for victims of discrimination and for connected purposes.

ENACTED by the Parliament of Kenya, as follows.

PART I - PRELIMINARY

Citation 1. This Act may be cited as the Equal Opportunities Act, 2007

Interpretation. 2. In this Act unless the context otherwise requires-

“Board” means the Equality Board established under section 16;

“club” includes an association of persons or an association of clubs that is established for any social, literacy, cultural, political, sporting, athletic, recreational, community service or any other similar lawful purpose, whether incorporated or otherwise and includes specifically the professional affairs of the club;

“discrimination” means an act or omission including any condition, requirement, policy, situation, rule practice that has or is likely to have the direct or indirect effect of unjustly or unfairly causing disadvantage to-

(a) a person or group of persons on one or more of the prohibited ground;

(b) a person or group of person on the basis of that person’s or that group’s actual or presumed association with another person who, or group which is, identified by any of the prohibited ground;

(c) a person or group of persons on the basis of a characteristic that

applies generally to persons who are identified by any of the prohibited ground;

- (d) a person or group of persons on the basis of a characteristic that is generally attributed to persons who are identified by any of the prohibited grounds;

and includes-

- (i) the failure to reasonably accommodate the specific needs of disadvantaged persons or groups of persons;
- (ii) sexual harassment;
- (iii) the failure to identify and take reasonable measures to remove any barriers to the full enjoyment of access to opportunities by person;

but does not include-

- (a) any affirmative action measures consistent with section 82(4)(d) of the Constitution and this Act or any other written law; or
- (b) the distinction, exclusion or preference of any person on the basis of an inherent and reasonable requirement of a job or a situation;

“disability” has the meaning assigned to it by section 2 of the Persons with Disabilities Act;

“employment” includes the engagement of an independent contractor

“ethnicity” in relation to a group of people, means the origin, characteristics, classification, language and distinctive cultural or aesthetic traditions of that group of people;

“health care services” include-

- (a) Services necessary to ensure a state of complete physical, mental and social well-being and not the absence of disease

and infirmity; and

- (b) services aimed at, but not limited to preventing, diagnosing, alleviating, curing, healing and treating conditions that threaten or compromise a person's state of complete physical, mental and social well being.

“health care benefits” include but are not limited to subsidies, health insurance and pensions;

“marital status: includes the condition of being-

- (a) single;
- (b) married whether in terms of the marriage Act, the African Christian Marriage and Divorce and Succession Act, the Hindu Marriage and Divorce and customary law;
- (c) divorced;
- (d) widowed;
- (e) in a relationship recognized by law or practice of marriage or partnership and in which the partners share or shared a reciprocal duty of support;

“Minister” means the minister for the time being responsible for justice and constitutional affairs;

“professional body” means a recognized body which is established to exercise, control, over and regulate the profession in question and its members;

“public body “ means any institution, agency, department, board, commission, authority, committee established for public purposes or funded from public funds;

“public facility” means any facility set up for use by members of the public whether or not the facility is set up using public resources.

“reasonable accommodation” means any modification, adjustment, change or action that is reasonably required to enable any person or group of persons identified on the basis of any of the prohibited grounds, to enjoy full equal access to, or to participate or advance equally in any area or sector;

“services” include services

- (a) relating to banking and the provision of grants, loans, credit or finance;
- (b) relating to entertainment; recreation, hospitality or refreshment;
- (c) relating to transport and travel;
- (d) provided by the State, including but not limited to, infrastructure, education, water, security, health and information;
- (e) relating to insurance

“sexual harassment” has the meaning assigned to it by section 23 of the Sexual Offences Act.

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| Objects of the Act. | 3. The objects of this Act are to promote equality of opportunity and to counteract direct and indirect discrimination on the grounds of gender, race, ethnicity, religion, disability or any of the prohibited grounds |
| Supercession. | 4. The provisions of this Act shall supersede the provisions of any other written law in the event of any conflict, in respect of any matter relating or incidental to the prohibition of discrimination and the promotion of equality for all persons. |

PART II – DUTY TO PROMOTE EQUALITY

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| Obligation of public bodies. | 5. (1) Public bodies, employers and providers of public services shall make active, targeted and systematic efforts to promote gender equality in all sectors of society, enterprise and organization.

(2) All public bodies and other bodies that are subject to statutory duty |
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shall prepare annual reports and shall in their reports give an account of the actual state of affairs as regards gender equality in the organization and shall also give an account of measures that have been implemented and measures that are planned to be implemented in order to promote equal opportunities for all persons and to prevent discrimination.

Composition of public bodies.

6. . (1) Public boards, bodies, Commissions and similar bodies set up by a statute or appointed by any Minister for the purpose of public management or for planning purposes of importance to the society shall endeavour to have an equal composition of women and men.

(2) Authorities or organizations which are to suggest members of boards, commissions shall suggest both a woman and a man and if more than one seat is to be filled an equal number of women and men shall be suggested, and in case of an uneven number of members only one more of one gender than of the other gender may be suggested.

(3) The authority or organisation may deviate from the provision laid down in subsection (1) if there are special reasons for doing so and shall, in such case, state the reason for doing so.

Other public administration bodies.

7. .(1) Boards, committees, Commissions or similar management authorities within the public state administration should have an equal composition of women and men.

(2) Boards, executive committees or similar collective managements of independent institutions, partnerships and private and public limited companies which do not fall under the public administration should, as far as possible, have a balanced composition of women and men.

(3) The minister concerned may decide that subsection (1) shall apply to the institutions and companies, mentioned in subsection (2).

(4) The minister concerned may decide that subsection (1) or (2) shall apply to specified independent institutions, partnerships or private or public companies if the costs of activities of the independent institutions are covered with more than fifty per cent out of state funds or if more than fifty per cent of the company is owned by the state. The minister concerned may

further decide that subsection (1) or (2) shall apply to companies exercising activities in accordance to a concession or similar public authorization.

PART III – EQUALITY REPORTS

Reports by
Ministries and other
state institutions

8. . (1) Ministries, state institutions and public enterprises shall every second year before the 1st of September give a report on gender equality:

Provided that state institutions and state enterprises shall only give a report if they have more than fifty employees.

(2) The reports shall include information about-

- (a) whether the Ministry, institution or enterprise has formulated a policy for gender equality, and if so, the content of this policy,
- (b) the gender-distribution in relation to the specific occupational categories, and
- (c) any other matters considered to be of importance for an evaluation of the activities in the field of gender equality of the Ministry, institution or enterprise.

(3) The reports from the institutions and enterprises mentioned in subsection (1) shall be submitted to the Minister responsible for the body or institution concerned.

(4) Each Minister shall within his or her portfolio examine the reports submitted and shall - before 1st of November of the year during which the reports are drawn up - submit a joint report and the enclosed specific reports to the Minister under this Act.

(5) The Minister may lay down rules concerning the content of the reports mentioned in sub-section (1)

(6) The Minister shall each year before 1st of March draw up a report and a National Action Plan for gender equality for the National Assembly.

(7) Public authorities, enterprises and organisations shall at request provide

the Minister with any information concerning gender equality which is necessary for the drawing up of the annual report and the perspective and action plan.

PART II- PROHIBITION OF DISCRIMINATION

General prohibition of discrimination.

- 9.** Every person is entitled to equality with respect to the following without discrimination and it shall be an offence to discriminate against any person on the basis of any of the prohibited grounds in-
- (a) employment;
 - (b) education and training;
 - (c) access and use of public facilities;
 - (d) health services and facilities;
 - (e) housing, goods, facilities and services including financial services;
 - (f) acquisition, change or retention of nationality and change of domicile;
 - (g) admission and membership into professional association or qualification without which as a matter of law or of practice, a person would find it difficult to carry on a particular profession (including any vocation or occupation); or
 - (h) inheritance.

(2) Where in the prosecution of any offence it is proved that discrimination played a part in the commission of the offence, this shall be regarded as an aggravating circumstance for purposes of the determination by the court of an appropriate sentence.

Prohibition of offensive behaviour

- 10.** (1) No person shall do any act which –
- (a) is reasonably likely in all the circumstances to offend, insult, humiliate or intimidate another person or group of persons on account of their gender, race, ethnicity, origin or religion; and
 - (b) which is done with the intention of inciting gender, racial or religious hatred

Modes of
discrimination.

11. No employer or prospective employer shall discriminate against any person in any manner, including the following- .

- (a) advertising in a manner which unjustly excludes or disadvantages potential applicants from any group of persons;
- (b) subscribing to and applying practices relating to selection and recruitment for employment including the conduct and content of interviews which have the effect of unjustly excluding persons from particular groups ;
- (c) in the terms or conditions on which employment is offered;
- (d) subscribing to and applying policies and practices that have the effect of unequal pay for work of equal value;
- (e) in the way the employer affords the person access to opportunities for promotion, transfer, training, retention or to any other benefit associated with the employment or by refusing or deliberately omitting to afford the person access to such benefits
- (f) failing to provide reasonable accommodation;
- (g) failing to allow an employee parent ninety days maternity and ten days paternity leave without forfeiting other employment benefits; and
- (h) failing to provide breastfeeding time for a nursing mother during working hours for at least two hours each day for up to one year.

Discrimination
respect
education..

in of **12.** (1) No person or educational establishment shall discriminate against any person in any manner including the following-

- (a) by refusing or failing to accept that person's application for

admission as a student to an educational institution including a student with special needs, or a pregnant student;

- (b) by failing to provide the necessary facilities for a student with special needs;
- (c) in the terms and conditions on which the person is admitted as a student;
- (d) by denying or limiting the person's access to scholarships, bursaries or any other form of assistance, benefits, facilities or services provided by or for the educational establishment;
- (e) by expelling the student or subjecting the student to any other detriment because of pregnancy or on the basis of any other prohibited ground;
- (f) in the forcible segregation of learners with special needs into special schools, based on their disabilities and on their educational interests or capabilities;
- (g) in the provision of reasonable accommodation, including mode of dressing relating to cultural and religious diversity;
- (h) in the provision of basic quality education;

(2) No person shall set educational or vocational assessment and evaluation procedures that discriminate against any person.

Discrimination in health care services. **13.** . No person shall discriminate against any person in the provision of health care services-in any manner, including the following:

- (a) by denying or refusing any person access to health care facilities accessible to any person;
- (b) in the nature or type of health care services provided;

- (c) in the terms, conditions or criteria in terms of which access to health care services are provided;
- (d) in the manner in which access to health care services is provided;
- (e) in the quality of health care services that are provided;
- (f) by denying persons with disabilities their reproductive rights or rights to family life solely on grounds of their disability;
- (g) by precluding a person from contributing to his or her medical care or treatment on the grounds that the person has any psychiatric disability including any psychiatric or mental handicap.
- (h) by refusing to provide standard treatment or health care services to a person on the grounds that the person has a disability;
- (i) subject to any written law relating to the control and management of any specific diseases, by revealing a person's health status to an employer, family member or other person or body without receiving the person's written permission or authorization.
- (j) by subjecting any person to any unfair disadvantage regarding access to health care services;
- (k) by refusing to provide emergency medical treatment on any of the prohibited grounds;
- (l) by subjecting any person to any unnecessary or excessive medical examination or procedures.

Discrimination in health care benefits.

14. . No person who is in authority of, or responsible for, the provision of health care benefits, either as a principal or in agent, shall discriminate against any person in any manner, including the following -

- (a) by refusing or denying a person or group of persons access to health care benefits or failing to make those health care benefits available and accessible to that person;
- (b) in the terms, conditions or criteria for eligibility for health care benefits;
- (c) in the nature or quality of health care benefits provided;
- (d) in the amount of health care benefits allocated for particular health care services in the manner in which a person can gain access to health care services.

Discrimination in respect of accommodation.

15. No person whether as principal or agent, shall discriminate against any person in relation to accommodation in any manner, including the following-

- (a) by refusing a persons application for accommodation on lease;
- (b) in the terms or conditions in respect of which accommodation or a lease agreement is concluded in favour of any person;
- (c) by giving a person's application for accommodation or lease agreement in that person's opinion, a lower order of precedence in any list of applicants for the accommodation or lease agreement in question;
- (d) by deferring the person's application or according the person a lower order of precedence in any list of applications for the accommodation;
- (e) by denying a person access to, or limiting his access to, any benefit associated with accommodation or leasehold occupied by the person in question connected with the accommodation;
- (f) by evicting or subjecting the person to any other detriment;

- (g) by subjecting a person to any other disadvantage in respect of accommodation or lease.

Discrimination in respect of property.

16. . No person, whether as principal or agent, shall discriminate against a person in respect of land or property in any manner, including the following-

- (a) by refusing or failing to dispose of or lease land or property or any other interest or right therein to any person;
- (b) in the terms or conditions in respect of which land or property or any interest or right therein is disposed or leased;
- (c) in any condition subject to which land or. property or any interest or right therein is disposed of, devolved, distributed, used or acquired;
- (d) by failing to provide accessible and reasonable accommodation in any development of land or property to any person;
- (e) by obstructing the realization of the constitutional rights to property in terms of section 75 of the Constitution.
- (f) in effecting any eviction from such land or property;
- (g) in the ownership and enjoyment of matrimonial property;
- (h) by subjecting a person to any other disadvantage in respect of accommodation or lease.

(2) No plan for the construction of any building shall be approved by any person if the plan does not make provision for the reasonable accommodation for all groups of persons who may reasonably be expected to use the building and in particular for persons with disability.

Discrimination in relation to provision of goods and services.

17. . No person who provides goods and services or makes facilities available whether for payment or not shall discriminate directly or indirectly against any person-

- (a) by refusing or failing to provide the goods or services in question or to make the facilities in question available;
- (b) in the terms or conditions on which the goods, services or facilities are provided or made available;
- (c) in the manner in which the goods, services or facilities are provided or made available;
- (d) by imposing terms, conditions or practices that perpetuate the consequences of past discrimination.

Discrimination in respect of associations. in of **18.** (1) No association shall discriminate directly or indirectly against any person -

- (a) in the manner in which members are recruited or membership is processed;
- (b) by refusing or failing to consider a person's application for membership of the association;
- (c) in determining the terms or conditions on which the association is prepared to admit or retain a person as a member;
- (d) by refusing or failing to accept a person's application;
- (e) by denying a person access to or limiting the person's access to any benefit provided by the association to members;
- (f) by depriving the person of his or her membership or varying the terms of the membership.

Discrimination in respect of clubs. in **19.** (1) No club, or committees, management or members thereof, shall unfairly or unreasonably discriminate directly or indirectly against any person who is not a member of the club in question, in any manner, including the following;

- (a) in determining the terms or conditions in terms of which the club in question is prepared to admit a person as a member;

- (b) by refusing or failing to consider a person's application for membership of the club;
- (c) in the manner in which members are recruited or membership is processed;
- (d) in the terms or conditions of membership which are afforded to a member;
- (e) by refusing or failing to consider a person's application for a different class or type of membership;
- (f) by denying or limiting access to any benefit arising from membership that is provided by the club;
- (g) by depriving a member of membership or varying the terms of membership;
- (h) by treating a member unfavourably in any manner in connection with the membership or affairs of the club;
- (i) by subjecting the member to any other disadvantage.

(2) All clubs and national and local sports structures which benefit directly or indirectly from public resources shall identify all forms of inequality and discrimination in this sector and take up steps to eradicate such inequality paying particular attention to the recruitment and equitable representation of designated groups in selection, administration, coaching and refereeing.

Discrimination by professional bodies.

20. . No professional body shall discriminate against any person in recruiting members to the profession, in any manner, including the following-.

- (a) in the manner in which members are recruited to the profession;
- (b) by refusing access to training;
- (c) by refusing or failing to accept a person's application for membership of the profession;
- (d) in the terms or conditions in respect of which the professional body is prepared to admit a person as a member of the profession;
- (e) in the terms or conditions of membership which are afforded to the member;
- (f) by denying the member access to, or by limiting the member's access to, any benefit or facility provided by the professional body;
- (g) by depriving a member of membership or varying the terms of membership of the professional body;
- (h) by subjecting the member to any other disadvantage;
- (i) by imposing terms and conditions which perpetuate present disadvantages emanating from the past.

Discrimination in appointments to public office.

21. . No person or appointing authority shall discriminate in any appointment to public office, against any person on any of the prohibited grounds.

PART III- NON-APPLICATION OF ACT

Defence to claim of discrimination.

22. . (1) It shall be a defence to a complaint of discrimination that the act or omission is reasonable and justifiable in the circumstances.

(2) The factors to be taken into account in deciding whether the act or omission is reasonable and justifiable in the circumstances include -

- (a) the purpose of the discrimination;
- (b) the nature and extent of the discrimination, including the nature and extent of the resultant disadvantage;
- (c) the relationship between the discrimination and its purpose; and
- (d) whether there are less restrictive and disadvantageous means to achieve the purpose.

(3) Whenever discrimination is alleged, there shall be no finding that the discrimination is reasonable and justifiable in the circumstances unless it is established that the person or group affected by the discrimination cannot be accommodated without unjustifiable hardship.

(4) In determining the term "unjustifiable hardship" all relevant circumstances shall be taken into account, including -

- (a) the nature of the benefit accruing to or disadvantage suffered by any person;
- (b) the effect of the disadvantage suffered by the person discriminated against;
- (c) the financial circumstances of the person who has a duty not to discriminate in the particular circumstances;
- (d) the estimated costs involved in addressing the discrimination.

Voluntary bodies

23. . Where a body is established and its activities are carried on otherwise than for profit, it is not a contravention of this Act to restrict -

- (a) the membership of that body; or
- (b) the provisions of benefits, facilities or services to a person of a particular sex or marital status.

Charities

24. This Act does not -

- (a) affect a provision of a deed, will or other instrument that confers charitable benefits or enables charitable benefits to be conferred on persons of a particular status; or
- (b) prohibit an act which is done in order to give effect to such a provision.

Exemption for religious bodies. **25.** . This Act shall not apply to -

- (a) the ordination or appointment of priests, nuns, ministers of religion or members of a religious order;
- (b) the training or education of persons seeking ordination or appointment as priests, ministers of religion or members of a religious order; or
- (c) the employment of persons in any school, college or institution established for the purposes of training of persons in a manner that conforms with the doctrines of that religion or is necessary to avoid injury to the religious feelings of the adherents of that religion.

PART IV- THE EQUALITY BOARD

Establishment of the Equality Board. **26.** There is established a Board to be known as the Equality Board which shall be a body corporate established and managed in accordance with this part

23. (1) The Board shall consist of nine members appointed proportionally from each gender except for the ninth member by the Minister in consultation with the Judicial Service Commission.

(2) The chairperson and at least one member of the Board shall be advocates of the High Court of at least ten years' standing.

(3) The members of the Board shall be appointed from among persons with training and experience in the field of law, industrial relations, disability, gender relations, sociology, administration or other such social discipline and who have served in either of these fields for a period of not less than ten years.

(4) Subject to subsection (6), a member of the Board shall be appointed for a period of five years and shall be eligible for re-appointment for a further one term.

(5) The members of the Board shall be engaged on the same terms as judges of the High Court.

(6) Section 62 of the Constitution shall apply to the tenure of the members of the Board.

Functions of the Board.

27. (1) The functions of the Board shall be -

- (a) to hear and determine complaints of discrimination or contravention of this Act referred to it by any person
- (b) to implement programs aimed at the elimination of all forms of discrimination and to promote equality of opportunity between persons of different states generally;
- (c) to receive, investigate and as far as possible conciliate allegations of discrimination;
- (d) to develop, conduct and foster research and educational programmes and other programmes for the purpose of eliminating discrimination and promoting equality of opportunity and good relations between persons of different status;
- (e) to advise the Government generally on the working of this Act and any other relevant law;
- (f) to review equality laws and policies;
- (g) to report to the Minister any change the Board considers necessary to the funding, functions, structures, powers and procedures of the Board;
- (h) to prepare for consideration draft amendments to any laws already enacted;
- (i) to inquire into any question referred to it by Parliament and report thereon;
- (j) to develop guidelines towards the elimination of discrimination in promotion at work, in matters of recruitment, pay equity and other matters connected thereto.

(2) The Board shall have jurisdiction -

- (a) to require persons to attend before it for the purpose of giving evidence and producing documents; and
- (b) to make such declarations, orders and awards of compensation as it thinks fit,

(3) Without prejudice to the generality of its jurisdiction under subsection (2), the Board shall if it is satisfied that discrimination has taken place as alleged, make an appropriate order in the circumstances, including-

- (a) an order for the payment of damages in the form of an award to a body or organisation responsible for addressing discrimination;
- (b) an order for the payment of damages in respect of any proven financial loss, including future loss, or in respect of impairment of dignity, pain and suffering or emotional and psychological suffering as a result of the discrimination in question;
- (c) an order restraining discriminatory practices;
- (d) an order directing that specific steps be taken to stop discrimination;
- (e) an order to make available specific opportunities and privileges unfairly denied in the circumstances, available to the complainant in question or to any person or group;
- (f) an order for the implementation of special measures including affirmative action to address the discrimination in question;
- (g) an order that an unconditional apology be made to any person or group;

- (h) an order requiring the respondent to submit to a report for audit of specific policies and practices;
- (i) an order suspending the licence of a person;

an order requiring the respondent to make regular progress reports to the Board regarding the implementation of its orders.

(4) The Board shall not have or exercise any jurisdiction in any criminal matter or entertain any criminal proceedings for any offence whether under this Act or otherwise.

(5) Where the Board is in doubt whether it has jurisdiction to hear and determine any question under this Act, it shall refer the matter to a two judge bench of the High Court for decision.

Oath of office.

28. . Before entering upon the exercise of the duties of their office, each member of the Board shall take and subscribe an oath or make an affirmation before the Chief Justice, that he or she shall faithfully and impartially perform the functions of his or her office.

Funds of the Board.

29. . (1) The funds of the Board shall consist of -

- (a) such sums as shall be provided by Parliament for that purpose;
- (b) such monies or assets as may come to vest in the Board in the course of the performance of its functions under this Act;
- (c) grants and donations.

(2) There shall be paid out of the funds of the Board such sums of money as are required to defray the expenditure incurred by the Board in the performance of its functions under this Act.

(3) The Board shall cause to be kept proper books and records of accounts of the income, and liabilities of the Board.

(4) The annual accounts of the Board shall be audited by the Auditor-General.

(5) The Board shall within three months of the end of each financial year submit to the Auditor General the accounts of the Board for that financial year.

Annual Report of the Board.

30. (1) The Board shall within four months after the end of each financial year submit report in respect of that year containing -

(a) financial statements of the Board;

(b) the Board's activities.

(2) The Minister shall cause the report and financial statements of the Board, together with the report of the Auditor-General, to be laid before Parliament within fifteen sitting days after the receipt thereof:

Provided that when Parliament is not sitting the Minister shall lay the report before Parliament fifteen days after the next parliamentary session begins.

Officers and staff of the Board.

31. (1) The Board shall, in consultations with the Minister, appoint on such terms and conditions as it shall think fit such officers and other staff as it shall consider necessary for carrying out its functions under this Act.

(2) The Board shall subject to sub-section (1) appoint a Secretary who shall head and manage its secretariat. The secretary to the Board shall be an Advocate of the High Court with no less than five years post bar admission experience.

Remuneration of Board members.

32. The members of the Board shall be paid such salaries and expenses as shall be determined by the Minister in consultation with the Treasury.

Procedure of the Board.

33. (1) The Board shall make Rules and Regulations -

(a) for the regulation of its proceedings, including the establishment of special and standing committees of the Board, the delegation to such committees of any of its duties, the fixing of quorums for

meetings of the Board or such committees;

(b) for the establishment of advisory committees consisting of members of the Board and persons other than members;

generally for the conduct and management of its activities.

(2) The Board may co-opt suitable persons to participate in its deliberations but a person so co-opted shall have no right to vote.

(3) The Board may in consultation with the treasury pay to a co-opted person such fees and allowances as it may determine.

PART V - COMPLAINTS TO THE BOARD

Lodging
complaint.

a **34.** (1) A person who alleges that some other person has discriminated against him or her or has contravened section 6 may lodge a written complaint with the Board setting out the details of the alleged act of discrimination.

(2) A complaint under subsection (1) shall be lodged with the Board within twelve months- from the date of the alleged act or discrimination.

(3) Notwithstanding subsection (2), the Board may, on good cause being shown, accept a complaint which is lodged more than twelve months after the date of the alleged act or discrimination.

Persons unable to
lodge a complaint.

35. (1) A person who because of a disability or any other reasonable cause is unable to lodge a written complaint under this Act may have a complaint on his or her behalf lodged by another person upon satisfying the Board that the person is not able to lodge such a complaint personally.

Investigation
complaints.

of **36.** The Board shall investigate each complaint lodged with it and may on its own motion initiate investigations.

Notice to concerned persons. **37.** . The Board shall by notice in writing -

- (a) require the person against whom a complaint has been made to respond to the complaint within the specified time;
- (b) require any person to furnish such information as shall be described in the notice;
- (c) specify the time within which the required information is to be furnished; and
- (d) require a person to attend at such time and place specified in the notice and to give oral evidence about and produce all documents in his or her possession or control relating to, any matter specified in the notice.

No grounds for complaint. **38.** . Where upon investigating a complaint the Board finds that there is no evidence of discrimination it shall inform the complainant in writing and shall give its reasons thereof, whereupon no further action shall be taken by the board.

Mediation. **39.** . (1) Where the Board finds that the subject matter of the complaint can be resolved by mediation, it may attempt to resolve the matter through mediation in accordance with subsection (2).

(2) The Board shall by notice require the following persons to attend the mediation:

- (a) the complainant;
- (b) the person who is alleged to have committed the act of discrimination which is the subject matter of the complaint;
- (c) any other person who-

(i) is likely to be able to provide information relevant to the proceedings of the mediation; or

(ii) whose presence at the proceedings is likely to assist in the settlement of matter,

and the Board shall in the said notice require any person so invited to produce such documents at the mediation as are specified in the notice.

Failure to comply with mediation notice. **40.** . A person who, without reasonable excuse, refuses or fails to comply with any requirement of a notice issued under section 34 and 36 (2) commits an offence and shall be liable on conviction-

(a) in the case of an individual, to a fine not exceeding five thousand shillings;

(b) in the case of a body corporate, to a fine of ten thousand shillings,

for every day that the individual or body corporate refuses or fails to comply with any requirement of a notice.

Mediation to be held in private. **41.** . The mediation shall be held in private and, subject to this Act, shall be conducted in such manner as the Board thinks fit provided that the Mediation shall be held within thirty days of the Complaint being lodged with the Board

Registration of mediation agreement. **42.** . Where a complaint has been settled by mediation, the settlement shall be embodied in a written agreement and registered by the Board and, upon registration, the agreement shall be deemed to be an order of the Board .

Hearing of complaint **43.** . (1) Where the Board is of the opinion that the subject matter of a complaint cannot be resolved by mediation or attempts made at mediation have been unsuccessful it shall proceed to full hearing of the matter and give a decision which shall be binding until successfully appealed against in the High Court.

(2) The chairperson shall fix the date, time and place of the hearing and the Board's Secretary shall, not less than fourteen days before the date so fixed,

notify all interested parties accordingly.

(3) The chairperson shall preside at all sittings of the Board.

(4) The chairperson and two other members of the Board of whom one shall be from each gender shall constitute a quorum at any sitting of the Board for the purposes of hearing claims under this part, but the chairperson shall as far as practicable ensure that all five members are present at any sitting at which in his or her opinion, difficult or important matters are to be considered.

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

Privilege
proceedings.

of **44.** (1) An advocate or other person appearing before the Board on behalf of a party shall have the same protection and immunity as an advocate has when appearing for a party in proceedings in the High Court.

(2) The Board shall as regards the attendance and examination of witnesses, the production and inspection of documents, the enforcement of its orders, the entry on the inspection of property and other matters necessary or proper for the due exercise of its jurisdiction, has all such powers, rights and privileges as are vested in the High Court on the occasion of an action.

(3) A summons signed by the Secretary of the Board shall have the same force and effect as any formal process capable of being issued in any action taken in the High Court for enforcing the attendance of witnesses and compelling production of documents.

Appearance
parties

of **45.** (1) The complainant and the person complained against shall appear at the hearing of the complaint and shall be heard in person or be represented by an advocate or by any other person with the leave of the Board .

(2) Any person, other than a party who satisfies the Board that he or she has a substantial interest in the proceedings shall appear and be heard and shall have the right to produce evidence and cross-examine witnesses.

(3) With the consent of the complainant and the respondent, the Board may order that written submissions be filed in addition to or in place of an oral hearing.

Hearing to be in public **46.** (1) Subject to this section, the hearing of proceedings before the Board shall be in public.

(2) Where the Board is satisfied that it is desirable to do so by reason of the confidential nature of any evidence or matter for any other reason, the Board may -

(a) direct that a hearing or part of a hearing shall take place in camera and give directions as to the persons who shall be present; or

(b) give directions prohibiting or restricting the publication of evidence given before the Board (whether in public or in private) or of matters contained in documents filed in the Board.

Powers of Board in hearing complaint. **47.** (1) The Board shall if it thinks fit -

(a) extend the time appointed by this Act for doing any act notwithstanding that the time appointed shall have expired;

(b) postpone the day or time fixed for, or adjourn the hearing of, any complaint;

(c) if the complainant and the respondent agree in writing upon the terms of a decision to be made by the Board, decide accordingly.

(2) Subject to this Act, the Board shall regulate its own procedure and make Rules in that connection and such Rules shall be gazetted.

(3) The Board may from time to time cause its decisions to be published in law reports.

Recovery of compensation, fines, awards etc.

48. (1) On the expiration of the time fixed for compliance with an order or award for the payment of compensation, damages or fines, the amount thereof shall become due and payable and recoverable in the manner provided for by this section.

(2) Compensation, damages or fines shall upon a certificate issued therein be due and payable under an order or award of the Board and shall be recoverable summarily as a civil debt or in the manner provided for under subsection (3) by the person for whose benefit the order or award for such compensation or damages was made or, in the case of an order for a fine, by the Secretary and the certificate of the Secretary under this subsection shall be conclusive.

(3) The Board shall execute its own orders.

Effective date of an order.

49. An order or award in any matter referred to the Board for determination shall take effect from such date as the Board may consider just and fair having regard to all the circumstances of the case.

Orders of the Board to be final.

50. The hearing and determination of any proceedings before the Board and an order or award or any finding or decision of the Board in any matter shall be final except on matters of law which shall be referred to the High Court for determination .

Binding effect of orders of the Board.

51. An order or award of the Board shall be binding on -
(a) all parties who appear or are represented before the Board;
(b) all persons who have been summoned to appear as parties, whether they have appeared or not.

PART VI -GENERAL

Unlawful disclosure of information. **52.** (1) It shall be an offence for any member of the Board or any member of staff assisting the Board, either directly or indirectly, except in the performance of a duty under this Act, to make a record of, or divulge or communicate to any person, any information concerning the affairs of any person acquired by him or her by reason of his or her office or employment under this Act.

(2) A person who commits an offence under subsection (1) is liable on conviction to a fine of one hundred thousand shillings.

Conflict of interest. **53.** (1) A member of the Board who has a direct or indirect interest in a matter being considered by the Board shall as soon as possible after the matter has come to his or her knowledge disclose the nature of his interest.
(2) A disclosure of interest made by a member under subsection (1) shall be recorded in the minutes of the Board or in the proceedings of the Board, and the member shall not be present or take part or vote during any deliberations on the matter.

(3) If a member of the Board has dealt with a complaint before such interest has been identified or disclosed, the investigation by the Board or the proceedings before the Board, as the case shall be, relating to such complaint shall be null and void.

Regulations. **54.** The minister may make regulations relating to -
(a) the powers, procedures, duties and functions of the Board ;
(b) the procedure to be followed at or in connection with an inquiry in terms of or under this Act, including the manner in which proceedings shall be instituted and the hearing of urgent matters;
(c) the form of any application, authority, certificate, consent, notice, order, process, register or subpoena to be made, given, issued or

kept in terms of or under this Act, and any other form required in carrying out the provisions of this Act;

- (d) the appearance of persons on behalf of the parties to the proceedings in court which may include suitable persons other than attorneys or advocates;
- (e) any matter required or permitted to be prescribed by regulation under this Act;
- (f) any other matter which it is necessary to prescribe in order to achieve the objects of this Act.