

2013

Office of the Director of Public Prosecutions

No. 2

**THE OFFICE OF THE DIRECTOR OF PUBLIC
PROSECUTIONS ACT, 2013**

No. 2 of 2013

Date of Assent: 14th January, 2013

Date of Commencement: 16th January, 2013

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**AN ACT of Parliament to give effect to Articles 157
and 158 of the Constitution and for connected
purposes**

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY

Short title.

1. This Act may be cited as the Office of the Director of Public Prosecutions Act, 2013.

Interpretation.

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

“Director” means the Director of Public Prosecutions appointed in accordance with Article 157 (2) of the Constitution and section 8 of this Act;

“Inspector-General” means the Inspector-General of the National Police Service appointed in accordance with Article 245(2) of the Constitution and section 9 of the National Police Service Act, 2011;

No. 31 of 2011.

“Investigative Agency” in relation to public prosecutions means the National Police Service, Ethics and Anti-Corruption Commission, Kenya National Commission on Human Rights, Commission on Administration of Justice, Kenya Revenue Authority, Anti-Counterfeit Agency or any other Government entity mandated with criminal investigation role under any written law;

“National Police Service” means the National Police Service established by Article 243 of the Constitution;

“offence” means an act, attempt or omission punishable by law;

“Office” means the office of the Director of Public Prosecutions established under Article 157(1) of the Constitution;

“Prosecution Counsel” means the Director of Public Prosecutions, every legally qualified member of the office and any other legally qualified person appointed by the

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Director under this Act to undertake any prosecution under his or her general or special instructions;

“police officer has the meaning assigned to it under the National Police Service Act, 2011;

“prosecutor” means a person appointed under section 29 and 30 as a prosecutor and shall include Private Prosecutors;

“Prosecution assistant” means an officer in the National Police Service gazetted as a Public Prosecutor;

“public prosecutor” means the Director and such other persons exercising the delegated powers of the Director under Article 157(9) of the Constitution;

“prosecution” means a prosecution under the jurisdiction of the Director, a proceeding respecting any offence, the prosecution or prospective prosecution which is under the jurisdiction of the Director and related to such a prosecution or proceeding and includes extradition proceedings and any appeal, revision or other proceeding related thereto.

(2) Despite subsection (1), until after the first general elections under the Constitution, references in this Act to the expression “Cabinet Secretary” shall be construed to mean “Minister”.

Object of the Act.

3. The object of this Act is to give effect to the provisions of Articles 157 and 158 and other relevant Articles of the Constitution.

Guiding principles.

4. In fulfilling its mandate, the Office shall be guided by the Constitution and the following fundamental principles—

- (a) the diversity of the people of Kenya;
- (b) impartiality and gender equity;
- (c) the rules of natural justice;
- (d) promotion of public confidence in the integrity of the Office;

- (e) the need to discharge the functions of the Office on behalf of the people of Kenya;
- (f) the need to serve the cause of justice, prevent abuse of the legal process and public interest;
- (g) protection of the sovereignty of the people;
- (h) secure the observance of democratic values and principles; and
- (i) promotion of constitutionalism.

**PART II—COMPOSITION, ADMINISTRATION,
FUNCTIONS AND POWERS OF THE DIRECTOR**

Powers and functions of the Director.

5. (1) Pursuant to Article 157 of the Constitution the Director shall—

- (a) have power to direct the Inspector-General to investigate any information or allegation of criminal conduct and the Inspector-General shall comply with any such direction;
- (b) exercise State powers of prosecution and may—
 - (i) institute and undertake criminal proceedings against any person before any court (other than a court martial) in respect of any offence alleged to have been committed;
 - (ii) take over and continue any criminal proceedings commenced in any court (other than a court martial) that have been instituted or undertaken by another person or authority, with the permission of the person or authority; and
 - (iii) subject to Article 157 (7) and (8), discontinue at any stage before judgment is delivered any criminal proceedings instituted by the Director of Public Prosecutions or taken over by the Director of Public Prosecutions;

- (c) formulate and keep under review public prosecution policy;
 - (d) perform any functions and exercise any powers prescribed by legislation, in addition to the functions and powers conferred by the Constitution and this Act.
- (2) The Director shall exercise State powers of prosecution and may—
- (a) notwithstanding the provisions of any other law in force for the time being, perform all that is necessary to be done for the purpose of performing the functions of the Director; and
 - (b) direct that investigations be conducted by an investigative agency named in the direction.
- (3) Without prejudice to other provisions of this Act or any other law in force, the Director may assign an officer subordinate to him to assist or guide in the investigation of a crime and every investigative Agency shall give effect to that direction.
- (4) The Director shall—
- (a) promote appropriate standards of practice by public prosecutors, assistant prosecutors, and any other person exercising prosecutorial authority under this Act;
 - (b) implement an effective prosecution mechanism so as to maintain the rule of law and contribute to fair and equitable criminal justice and the effective protection of citizens against crime;
 - (c) cooperate with the National Police Service, investigative agencies, the courts, the legal profession and other Government agencies or institutions so as to ensure the fairness and effectiveness of public prosecutions;

- (d) set the qualification for the appointment of prosecutors;
- (e) review a decision to prosecute, or not to prosecute, any criminal offence;
- (f) advise the State on all matters relating to the administration of criminal justice; and
- (g) do all such other things as are necessary or incidental to the performance of its functions under the Constitution, this Act or any other written law.

Independence of
the Director.

6. Pursuant to Article 157(10) of the Constitution, the Director shall—

- (a) not require the consent of any person or authority for the commencement of criminal proceedings;
- (b) not be under the direction or control of any person or authority in the exercise of his or her powers or functions under the Constitution, this Act or any other written law; and
- (c) be subject only to the Constitution and the law.

Accountability and
reporting of the
Office.

7. (1) As soon as practicable after the end of each financial year, the Director shall submit a report to the President and Parliament on the performance and overall fulfillment of the object and purpose of the Office under the Constitution, this Act and any other written law.

(2) At any time, the President, the National Assembly or the Senate may require the Director to submit a report on a particular issue.

(3) Every report required from the Director under this section shall be published and publicised.

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(4) The Director shall prepare such other reports as may be required under any other written law.

(5) The Speaker of the National Assembly shall cause the report received under this section to be laid before the National Assembly for debate not later than seven days after the National Assembly first meets, after the Speaker has received the report.

Appointment of the
Director.

8.(1) Whenever a vacancy arises in the Office of the Director, the President shall within fourteen days constitute a selection panel comprising one person from each of the following bodies—

- (a) the Office of the President;
- (b) the Office of the Attorney-General;
- (c) the Ministry responsible for Public Service;
- (d) the Kenya National Commission on Human Rights;
- (e) the Law Society of Kenya;
- (f) the Central Organizations of Trade Unions; and
- (g) the Ethics and Anti-corruption Commission.

(2) The Public Service Commission shall—

- (a) convene the first meeting of the selection panel, at which the members of the selection panel shall elect a chairperson from among their number; and
- (b) provide the selection panel with such facilities and other support as it may require for the discharge of its functions.

(3) The selection panel shall, within seven days of convening, by advertisement in at least two daily

newspapers of national circulation, invite applications from persons who qualify for nomination and appointment for the position of the Director.

(4) The selection panel shall within fourteen days—

- (a) consider the applications received under subsection (3) to determine compliance with the Constitution;
- (b) shortlist the applicants;
- (c) publish the names of the shortlisted applicants and qualified applicants in at least two daily newspapers of national circulation;
- (d) conduct interviews of the short listed applicants;
- (e) shortlist three successful applicants in the order of merit; and
- (f) forward the names to the President.

(5) The President shall, within fourteen days of receipt of the names of successful applicants forwarded under subsection (4) (f), select one candidate and forward the name of the person so selected to the National Assembly for approval.

(6) The National Assembly shall, within twenty-one days of the day it next sits after receipt of the name of the applicant under subsection (5), vet and consider the nominee, and may approve or reject him or her.

(7) Where the National Assembly approves of the nominee, the Speaker of the National Assembly shall forward the name of the approved nominee to the President for appointment.

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(8) The President shall, within seven days of receipt of the approved nominee's name from the National Assembly, by notice in the Gazette, appoint the Director of Public Prosecutions approved by the National Assembly.

(9) Where the National Assembly rejects the nomination, the Speaker shall within three days communicate its decision to the President and request the President to submit a fresh nomination within 21 days.

Removal of the Director.

9. The Director may be removed from office in accordance with Article 158 of the Constitution.

Resignation of the Director.

10. (1) The Director may resign from office by issuing a one month notice to the President.

(2) The resignation under subsection (1) shall take effect upon receipt and acceptance, in writing, by the President.

Vacancy.

11. The office of the Director shall fall vacant if the holder—

(a) dies;

(b) resigns in accordance with Article 158(9) of the Constitution and section 10;

(c) is removed from Office in accordance with Article 158 of the Constitution; or

(d) is convicted of a felony and sentenced to imprisonment for a term exceeding six months without an option of a fine.

Deputy Directors.

12. (1) There shall be appointed such number of Deputy Directors to assist the Director in the execution of his or her powers and functions under the Constitution, this Act and any other written law.

(2) The Deputy Directors shall exercise the powers and functions subject to superintendence, directions and control of the Director.

(3) The Deputy Directors shall be appointed in a competitive and transparent manner.

Composition.

13. (1) The Office shall comprise of—

- (a) the Director appointed in accordance with Article 157 of the Constitution and section 8 of this Act;
- (b) Deputy Directors appointed under this Act;
- (c) Secretary of Prosecution Services;
- (d) Prosecution Counsel;
- (e) technical staff; and
- (f) such other members of staff of the Office as may be appointed from time to time.

(2) The Office shall have power to appoint, control and supervise its staff in a manner and for such purposes as may be necessary for the promotion of the purpose and the object for which the Office is established.

Access to service.

14. (1) Pursuant to Article 6 (3) of the Constitution, the Office shall ensure reasonable access to its services in all parts of the Republic.

(2) All public prosecutors appointed under this Act shall be under the immediate superintendence and control of the Director or such other officer as the Director may designate for better management and coordination of prosecution services.

(3) The Director may, by a directive under his hand designate an officer subordinate to him to be in charge of prosecution services in one or more counties as the Director may specify.

(4) An officer designated under subsection (3) shall have jurisdiction throughout the counties specified by the Director.

(5) In the performance of a public prosecutor's duties under this Act, a prosecutor shall—

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- (a) observe the guiding principles under section 4 of this Act;
- (b) carry out the prosecutor's functions impartially and avoid discrimination on any ground including race, gender, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth;
- (c) protect the public interest, act with objectivity, take account of the position of the suspect and the victim, and pay attention to all relevant circumstances, irrespective of whether they are to the advantage or disadvantage of the suspect;
- (d) keep matters in the possession of the prosecutor confidential, unless the performance of a duty or the needs of justice require otherwise; and
- (e) consider the views and concerns of a victim where necessary.

(6) A public prosecutor shall, in order to ensure the fairness and effectiveness of prosecution, cooperate with the National Police Service, the courts, the legal profession and other government agencies or institutions.

Protection from
Personal Liability.

15. No matter or thing done by a member of the staff of the Office or any officer, employee or agent of the Office shall, if the matter or thing is done in good faith in the execution of the functions, powers or duties of the Office, render the member, officer, employee or agent personally liable to any action, claim or demand whatsoever.

Advisory Board.

16. (1) There is established an advisory Board to the Office.

(2) The Board shall consist of—

- (a) the Principal Secretary for the time being responsible for matters relating to public service;
- (b) the Director of Public Prosecutions;
- (c) the Attorney-General;
- (d) the Principal Secretary for the time being responsible for Treasury;
- (e) the Chief Registrar of the Judiciary;
- (f) the Chairperson, Law Society of Kenya;
- (g) the Director, Witness Protection Agency;
- (h) the Chairperson, Kenya National Commission on Human Rights; and
- (i) the Inspector General of the National Police Service.

(3) The Director of Public Prosecutions shall be the chairperson of the Board.

(4) The Secretary of Prosecution Services shall be the secretary to the Board.

(5) The members of the Board may attend the meetings or any matter of the Board in person or through their appointed representatives.

(6) The office of a member shall become vacant—

- (a) if the member is absent, without reasonable excuse from three consecutive meetings of the Board of which the member has had notice;

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- (b) if the member is adjudged bankrupt;
- (c) if the member is convicted of an offence under this Act or any other written law and sentenced to imprisonment;
- (d) if the member is declared to be of unsound mind;
- (e) if a member ceases to hold the office to which that person is a member by virtue of that office;
- (f) upon the member's death; or
- (g) does not qualify to be a member of the Board pursuant to any other law in force.

Functions and powers of the Board.

17. (1) The principle functions of the Board shall be to advise the Office on—

- (a) recruitment and appointment of members of staff of the Office;
- (b) promotions;
- (c) discipline; and
- (d) any other matters that may be referred to the Board by the Director.

(2) Members of the Board shall be paid such allowances as the Cabinet Secretary responsible for Finance, in consultation with the Director, shall approve upon advise of the Salaries and Remuneration Commission.

(3) The Board shall meet at least four times in every financial year and not more than four months shall elapse between one meeting and the next meeting.

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

(5) The quorum at the meeting of the Board shall be six members or a greater number as determined by the Board.

(6) The chairperson shall convene and preside over the meetings of the Board or in the absence of the chairperson, a member of the Board elected by the members present from among their number.

(7) Matters before the Board shall be decided by a majority of the members present and voting and in the event of an equality of votes, the person presiding shall have a casting vote.

(8) The proceedings of the Board shall not be invalidated by reason of a vacancy among the members.

(9) A member of the Board or a person present at a meeting of the Board who has interest in a matter for consideration by the Board or by the Office shall disclose in writing the nature of that interest and is disqualified from participating in the deliberations of the Board or the office in respect of that matter, unless the Board or office decides otherwise.

(10) A member of the Board, the Director or a member of staff of the Office of the Director of Public Prosecutions shall not trade with the Office.

Tracing, forfeiture and recovery of assets.

18. Where the Office has conducted criminal proceedings under any law in force and as a result of the proceedings a person becomes liable to pay an amount to the Government or property is forfeited to the Government under a court order, the Office shall take any further proceedings or steps that may be required to recover the amount or enforce the recovery, forfeiture or order.

Prosecution counsel.

19. There shall be appointed by the Office such number of prosecution counsel as may be necessary for the proper and efficient provision of prosecution services.

Prosecution assistants.

20. (1) Pursuant to Article 157(9) of the Constitution the Director may, by a notice in a Gazette,

delegate any powers or functions conferred upon the office to a prosecution assistant.

(2) For purposes of this Act, a prosecution assistant shall be a person—

- (a) appointed as such by the Director in accordance with subsection (1);
- (b) not qualified to be appointed as prosecution counsel but with relevant experience and expertise; and
- (c) currently serving in the National Police Service and exercising prosecutorial powers as is, was or shall be delegated by the Director.

(3) A prosecution assistant shall exercise delegated authority under this section to the extent as shall be determined by the Director in the notice of appointment.

Practicing
certificate.

21. The Director and a prosecution counsel appointed by the Director under this Act shall, for the purposes of exercising the powers or performing the functions of the Office, be entitled to practice as a legal practitioner as if he or she were holding an unrestricted practising certificate issued under the law for the time being regulating legal practice in Kenya.

Delegation.

22. (1) The Director may subject to such conditions as he or she may impose in writing, delegate any power and assign any duty conferred on him or her in terms of this Act or any other written law to a subordinate officer.

(2) Any power exercised or functions performed under this Act by a prosecution counsel or a member of staff of the Office shall be deemed to have been exercised or performed by the Director.

(3) A delegation or assignment under subsection (1) does not prevent the Director from exercising the power in question himself or herself.

(4) A delegation under this section—

- (a) shall be subject to any conditions the Director may impose;
- (b) shall not divest the Director of the responsibility concerning the exercise of the powers or the performance of the duty delegated; and
- (c) may be withdrawn, and any decision made by the person so delegated to may be withdrawn or amended by the Director.

Control of
prosecutions.

23. (1) Notwithstanding the provisions of any other law, it shall be the function of the Director to —

- (a) decide to prosecute or not to prosecute in relation to an offence;
- (b) institute, conduct and control prosecutions for any offence;
- (c) carry out any necessary functions incidental to instituting and conducting such criminal prosecutions; and
- (d) take over and conduct a prosecution for an offence brought by any person or authority, with the consent of that person or authority.

Takeover of
criminal
proceedings.

24. (1) Subject to the Constitution, the Director may take over a prosecution or appeal for the purposes of this Act by giving notice in writing to the Magistrate before whom the matters is being heard or the Registrar and the affected persons, indicating the Director's intention to take over the matter.

(2) Where the Director has taken over a matter pursuant to subsection (1), the Director shall become the prosecutor, appellant or respondent, as the case may be in such proceedings.

Discontinuing of
criminal
proceedings.

25. (1) The Director may, with the permission of the court, discontinue a prosecution commenced by the Director,

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any person or authority at any stage before delivery of judgement.

(2) Pending the permission by the court in accordance with subsection (1), the Director may apply orally or in writing to the court for a stay of proceedings with a view that such proceedings may be taken over by the Director to prevent and avoid abuse of the legal process and to protect the public interest.

(3) Nothing in this section prevents the Director from continuing to conduct proceedings in the name of the person or authority that instituted those proceedings.

Duty of disclosure.

26. (1) The Inspector-General or any other investigative agency shall disclose to the Director all material facts and information collected in the course of an investigation that may be reasonably expected to assist the case of prosecution or defence.

(2) The Inspector-General or any other investigative agency shall—

- (a) conduct thorough investigations;
- (b) compile all evidence; and
- (c) submit all relevant information in relation to any investigation undertaken.

(3) The duty of disclosure under this section shall—

- (a) include privileged information; and
- (b) continue until the determination of the case.

(4) In this section “privileged information” means any information or material that would be exempted from production in court or disclosure, by any written law or for any other lawful or justifiable reason.

Duty to cooperate.

27. (1) A public officer, State Officer or State Organ, shall cooperate with the Director in the exercise of his or her

powers and discharge of functions under the Constitution, this Act or any other written law, and shall in particular—

- (a) respond to any inquiry by the Director;
- (b) comply with the lawful directions of the Director; and
- (c) furnish the Director with such information as the Director may require to discharge his or her functions under the Constitution, this Act or any other written law.

(2) Any public officer or State officer who contravenes subsection (1) shall be liable on conviction, to imprisonment for a term not exceeding one year or to a fine not exceeding three hundred thousand shillings or to both.

(3) In addition to the penalty prescribed under subsection (2), the public officer or State officer may be subjected to the relevant disciplinary procedures.

Private
prosecutions.

28. (1) Notwithstanding any provision under this Act or any other written law, any person may institute private prosecution.

(2) Any person who institutes private prosecution shall, within thirty days of instituting such proceeding, notify the Director in writing of such prosecution.

(3) In accordance with Article 157 of the Constitution and this Act, the Director may undertake, takeover or discontinue any private prosecution.

Power to appoint
Public Prosecutors.

29. (1) The Director may appoint any qualified person to prosecute on his or her behalf.

(2) A person appointed under subsection (1) shall be known as a public prosecutor.

(3) A public prosecutor appointed under subsection (1) shall be responsible to the Director and shall be bound to comply with all guidelines and instructions issued by the Director in respect of prosecutions.

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Appointment of private legal practitioners as public prosecutors.

30. (1) The Director may from time to time, and as need may arise, engage the services of a qualified private legal practitioner to assist in the discharge of his mandate.

(2) In engaging the services of a private legal practitioner under subsection (1), the Director shall comply with the relevant public procurement law and regulations.

Proceedings where the Director or the Office is a party.

31. In proceedings to which the Office is a party or in respect of which the Office otherwise has any function under this Act, the Director may appear in person or be represented by—

(a) any other officer subordinate to him; or

(b) a private legal practitioner engaged in accordance with section 30.

**PART III—ORGANIZATION, MANAGEMENT,
MONITORING AND SUPERVISION OF
PROSECUTION SERVICES**

Director may require information.

32. (1) Without prejudice to the provisions of any other law, the Director may, in accordance with subsection (2), issue a directive in writing to any officer for purposes of obtaining information relevant to an investigation or prosecution of an offence.

(2) Where the Director has instituted or taken over, or is considering whether to bring or take over, a prosecution or appeal, revision or any other proceedings in relation to an offence or suspected offence, a directive may be made for—

(a) any specified information, document or material or a specified kind of information, document or material, or for all relevant information, documents and material, to be furnished to the Director; or

(b) the provision of assistance, including the carrying out of an investigation or further investigation of a matter, in relation to the offence or suspected offence.

(3) An officer to whom a directive is made under this section shall comply with it and keep the Director informed of the progress made in complying with the directive.

(4) In this section—

"document" includes data recorded or stored mechanically, photographically or electronically and any tape, disc or other device or medium on which it is recorded or stored;

"officer" means—

- (a) the Inspector General or a member of the National Police Service, Prisons Service or any other investigative agency of the Government;
- (b) a person employed by an authority or corporation established under any law of Kenya and authorized by or under the law to investigate or to make a complaint in relation to an offence against a law in force in Kenya;
- (c) any officer or employee of the public service or of the Public Sector; or
- (d) any officer employed by or managing a private corporate body, a non-governmental organisation, or any other civil society organization whether duly registered or not.

**PART IV—PROCEDURE FOR APPOINTMENT,
REMUNERATION, TERMS AND CONDITIONS OF
SERVICE**

Composition of the
staff of the Office.

33. (1) The Composition of the staff of the Office shall reflect the—

- (a) regional and ethnic diversity of the people of Kenya;

- (b) gender equity; and
- (c) persons with disability.

(2) The Director shall comply with the values and principles under the Constitution in the appointment of members of staff of the Office.

Qualifications for appointment as prosecution counsel.

34. (1) A person shall qualify to be appointed as a prosecution counsel if that person is—

- (a) an Advocate of the High Court of Kenya; or
- (b) holds legal qualifications that would entitle the person to practice law in Kenya; and
- (c) is a fit and proper person with due regard to his or her experience conscientiousness and integrity, to be entrusted with the responsibilities of the office concerned.

Conditions of service of the Director.

35. The remuneration, allowances and other terms and conditions of service of the Director shall be determined by the Salaries and Remuneration Commission established under Article 230 of the Constitution.

Remuneration and conditions of service of staff of the Office.

36. (1) The members of staff of the Office appointed under this Act shall serve on such terms as the Director may, on the advice of the Salaries and Remuneration Commission, determine.

(2) The terms and conditions determined under this section shall commence not later than a year after the commencement of this Act.

(3) The publication of the terms, salaries and conditions of service shall be made as soon as possible after the commencement of this Act and thereafter such a publication shall be issued if circumstances, including any revision and adjustment of salaries and allowances of the Director, Judges, Magistrates and other judicial staff since the latest revision and adjustment of salaries of Director or Prosecution Counsel, so justify.

(4) The remuneration and benefits payable to the Director, Prosecution Counsel and other Staff shall not be varied or reviewed to their disadvantage and the retirement benefits shall not be varied to their disadvantage during their lifetime.

Staff of the Office.

37. There shall be such professional, technical and administrative officers and support staff as may be appointed by the Office under this Act.

Secondment of staff.

38.(1) A public officer may be seconded to the Office as the Office may, in consultation with the Public Service Commission, determine, for specific periods of time and on such terms and conditions as may be agreed upon between the Office and the Public Service Commission.

(2) The Office may, upon request, second any officer of the Office to any requesting agency, organization or institution on such terms and conditions as the Office in consultation with the agency to which the person is being seconded to agree upon.

(3) A public officer seconded to the Office shall, during the period of secondment, be considered an officer of the Office and shall be subject only to the direction and control of the Director.

Code of conduct.

39. (1) The Office shall within one year from the date of coming into effect of this Act issue and maintain a code of conduct to regulate the conduct of persons subject to this Act.

(2) A breach of the code of conduct referred to under subsection (1) shall be treated as misconduct by an officer and punishable with equal measure as a breach of a provision under this Act.

PART V—FINANCIAL PROVISIONS

Funds of the Office.

40. (1) Parliament shall allocate adequate funds to the Office to enable the Office perform its functions under the Constitution, this Act and any other written law and the budget shall be a separate vote in accordance with article 249 (3) of the Constitution.

(2) The funds of the Office shall consist of—

- (a) monies provided for by Parliament for the purposes of the Office;
- (b) such monies or assets as may accrue to the Office in the course of the exercise of its powers or the performance of its functions under this Act; and
- (c) all monies from any other source provided, donated or granted to the Office towards the achievement of the objects of the Office.

(3) The Office shall not accept any grant, gift, donation or bequests made on any condition that the Office performs any function or discharges any duty or obligation other than duties under the Constitution or this Act.

(4) The Office shall disclose any grants, gifts, donations or bequests made to it in each financial year.

(5) The Director, subject to the law, shall be charged with the responsibility of accounting for State monies received or paid out or on account of the Office.

(6) The receipts, earnings or accruals of the funding and the balance of the funding at the close of each financial year, shall be paid into the Prosecutions fund established under section 45.

Bank accounts.

41. The Office shall open and maintain such bank accounts as are necessary for the exercise of the functions of the Office.

Financial year.

42. The financial year of the Office shall be—

- (a) the period beginning on the day the Act comes into effect and ending on the following thirtieth June; or

- (b) the period of twelve months beginning first July and ending on the thirtieth June in each year.

Financial estimates.

43. (1) At least three months before the commencement of each financial year, the Office shall cause to be prepared, reviewed and forwarded to the National Assembly estimates of the revenue and expenditure of the Office for that year for tabling and approval in the National Assembly

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

- (a) the payment of the salaries, allowances and other charges in respect of the staff of the Office;
- (b) the payment of pensions, gratuities and other charges and in respect of benefits which are payable out of the funds of the Office;
- (c) the maintenance of the buildings and grounds of the Office;
- (d) the funding of training, research and development of activities of the Office;
- (e) the 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 Office may think fit.

(3) The annual estimates shall make provision for all estimated expenditure of the Office for the financial year to which they relate, including a reserve fund to provide for contingency in the event of an unforeseen increase in expenditure and other emergencies not contemplated at the time of making the estimates.

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(4) The Office shall review the estimates forwarded under subsection (1) and (2) and may make such alterations thereto as it may consider necessary, and shall forward to the National Assembly for approval.

(5) Upon approval of the estimates by the National Assembly, all monies from time to time required for the purposes of this Act shall be paid from the Consolidated Fund into the Office's Bank Account.

Accounts
audit.

and

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

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

(a) statement of the income and expenditure of the Office during that year; and

(b) statement of the assets and liabilities of the Office on the last day of that financial year.

(3) The annual accounts of the Office shall be prepared, audited and reported upon in accordance with the provisions of the Constitution and the Public Audit Act.

(4) For avoidance of doubt, laws and regulations relating to Public Financial Management shall apply to the operations of the Fund.

Prosecutions Fund.

45. (1) There is established a Fund to be known as the Prosecutions Fund which shall be utilised for the following purposes—

(a) enhancement of the operational capacity of the Office;

(b) the welfare of the personnel of the Office; and

(c) any activity approved by the Office.

(2) The sources of finance for the Fund shall be—

- (a) allocations by National Assembly;
- (b) grants and donations;
- (c) any other source as may be approved from time to time by the Director.

(3) The Prosecutions Fund shall be administered and managed in accordance with the law regulating matters of public finance.

PART VI—MISCELLANEOUS

Prejudicial disclosure.

46. (1) Subject to the Constitution, where the Director is satisfied that publication or disclosure of any information or material under this Act may—

- (a) be prejudicial to an investigation;
- (b) be prejudicial to prosecution;
- (c) place human life or safety of a person at risk; or
- (d) cause some other form of severe prejudice to any person,

the Director may withhold the material from publication so far as necessary to avoid that consequence.

(2) The withholding of any information or material under subsection (1) shall be reasonable and justifiable in an open and democratic society.

(3) The Director shall, upon request and in writing, provide reasons for withholding the information or material referred to under subsection (1).

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Judicial notice.

47. All Courts, Judges and persons exercising judicial authority shall take judicial notice of—

- (a) the official signature of a person who is or has been the Director or Deputy Director;
- (b) the fact that a person is or was the Director or Deputy Director as the case may be; and
- (c) the common seal of the Office.

The common seal of the Office.

48. (1) The common seal of the Office shall be such device as may be determined by the Director.

(2) The common seal of the Office shall be kept in such custody as the Director shall direct and shall not be used except on the order of the Director.

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

Social security scheme.

49. The Office shall, with the approval of the Cabinet Secretary responsible for Finance, establish a suitable social security scheme for the staff of the Office.

Regulations.

50. (1) The Director may make regulations generally for the better carrying out into effect of this Act.

(2) Without limiting the generality under subsection (1), the Director may make regulations providing for—

- (a) the procedure for cooperation with the relevant investigative agencies;
- (b) guidance and regulation in the submission of information and carrying out of investigations;
- (c) specification of cases or classes of cases to be handled by prosecution counsel or prosecution assistants;
- (d) classification of and prosecution of specified offences or class of offences; and
- (e) conditions to be complied with in prosecuting.

(3) The Director may by regulation upon consultation with the Inspector-General and other investigative agencies, issue guidelines on cooperation and collaboration in the investigation of crimes.

National
Prosecution Service
Convention.

51. (1) The Director may direct the convening of an annual National Prosecution Service Convention.

(2) The convention shall meet and discuss strategic issues involved in Prosecution for the purposes of improving the standards of prosecution and service delivery.

(3) The convention shall publish an annual public report.

(4) The expenses to be incurred in convening the convention shall be defrayed from the funds of the Office.

Inspection of the
Prosecution
Operations.

52. The Director may constitute a team of inspectors and issue guidelines on inspection of prosecution operations within the Republic.

Reports.

53. The Director shall issue guidelines on the filing of periodic reports by prosecution counsel in charge of the Counties.

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Disclosure of interest.

54. (1) If a member or any person is present at a meeting of the Office or any committee of the Office at which any matter is the subject of consideration and in which matter a member of staff of the Office or the member's spouse is directly or indirectly interested, in a private capacity, the member shall, as soon as is practicable after the commencement of the meeting, declare such interest and shall not, unless the Director or the committee otherwise directs.

(2) A declaration of interest made under this paragraph shall be recorded.

(3) Any person who contravenes subsection (1) commits an offence and is liable, upon conviction, to a fine not exceeding Kenya Shillings one hundred thousand or to imprisonment for a period not exceeding one year or to both.

Prohibition of disclosure of information to unauthorised persons.

55. (1) Subject to the Constitution, a person shall not, without the consent in writing given by, or on behalf of, the Director, publish or disclose to any person otherwise than in the course of duties, the contents of any document, communication or information which relates to, and which has come to that person's knowledge in the course of that person's duties under this Act.

(2) Any person who contravenes subsection (1) commits an offence and is liable, upon conviction, to a fine not exceeding Kenya Shillings two hundred thousand or to imprisonment for a period not exceeding two years, or to both.

(3) A person who, having any information which to the knowledge of that person has been published or disclosed in contravention of subsection (1), unlawfully publishes or communicates the information to any other person, commits an offence and is liable, upon conviction, to a fine not exceeding Kenya Shillings two hundred thousand or to imprisonment for a period not exceeding two years, or to both.

Offences.

56. (1) Any person who—

- (a) not being the Director or other member of staff of the Office, by words, conduct or demeanour falsely represents himself to be the Director or other member of staff of the Office;
- (b) exercises or attempts to exercise undue influence over the Director, or other member of staff of the Office which is calculated to prevent the Director or other officer or member of staff from carrying out his duties or encouraging him or her to perform any act which is in conflict with his duties; or
- (c) is an accomplice to the commission of any act whereby any lawful order given to any member of staff or any regulation or directive or other rule may be evaded,

commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding three years.

(2) An officer who wilfully refuses or neglects to comply with the directives issued under section 32 of this Act commits an offence and shall be liable upon conviction for imprisonment for a term not exceeding six months or to a fine not exceeding two hundred thousand shillings or to both.

(3) An officer who wilfully refuses obstructs or denies the Director or a prosecution counsel access to places where arrested, detained or convicted persons are held, commits an offence and is liable upon conviction, to a fine of one hundred thousand shillings or imprisonment for a term not exceeding six months, or to both.

(4) An officer who wilfully fails or neglects to comply with a directive issued under this Act commits an offence and shall be liable to a fine not exceeding one

hundred thousand shillings or imprisonment for a term not exceeding one year or to both.

(5) Any person who, without prior written authority of the Director, in connection with any activity carried out by him or her takes, assumes, uses or in any manner publishes any name, description, title or symbol indicating or conveying or purporting to indicate or convey or which is calculated or is likely to lead other persons to believe or infer that such activity is carried on under or by virtue of the provisions of this Act or under the patronage of the Office, commits an offence and shall be liable on conviction to a fine of two hundred thousand shillings or imprisonment for a term not exceeding three years or to both.

PART VII—SAVINGS, TRANSITIONAL AND CONSEQUENTIAL PROVISIONS

Savings.

57. (1) The application of this Act to offences, prosecutions, appeals, revisions and any other proceedings extends to offences committed and prosecutions, appeals, revision and any other proceedings brought or commenced before the commencement of this Act.

(2) Upon commencement of this Act—

- (a) all acts, matters and things lawfully made or done by or on behalf of or in the name of the Republic in relation to criminal proceedings shall be deemed to have been made or done by or on behalf of or in the name of the Office;
- (b) all documents served on or by or on behalf of or in the name of any other person in connection with criminal proceedings shall be deemed to have been served on or by or on behalf of the Office; and
- (c) all Public Prosecutors appointed under the Criminal Procedure Code Chapter 75 of the Laws of Kenya or whose appointments

were done pursuant to operation of any other law shall upon a notice to be issued by the Director under this Act cease to be Public Prosecutors.

(3) Notwithstanding the provisions of sub-sections (1) and (2) of this section, the operation of an authority, sanction or consent given before the commencement of this Act by the Attorney General, Director, or any other person so empowered, to commence proceedings in relation to an offence shall not be abated or affected thereby.

(4) This Act shall have the force of law throughout Kenya and shall in so far as the same is not inconsistent with the Constitution of Kenya, supersede any other law in force in Kenya in so far as that other law makes provisions regarding investigation, prosecution and any other matter relating to the enforcement of criminal law in Kenya.

(5) If an officer or employee in the Office, or Public Service is appointed as the Director of Public Prosecutions, the period of his or her service as Director of Public Prosecutions shall be reckoned as part of and continuous with his or her employment in the Public Service, for purposes of leave, pension and any other conditions of service and the provisions of any pension law applicable to him or her as such officer or employee or, in the event of his or her death, to his or her dependants and which are not inconsistent with this section, shall, with the necessary changes continue to so apply.

Preservation of rights
of staff of the Office.

58. (1) Any member of staff employed and deployed by the Public Service Commission immediately before the coming into effect of this Act in the Office of the Director of Public Prosecutions shall—

- (a) upon the coming into effect of this Act be deemed to be a member of staff of the Office;

- (b) retain any rights accrued or accruing to him or her as such an officer, contributor or person;
- (c) continue to contribute to any superannuation scheme to which he or she was a contributor immediately before being appointed as a member of staff of the Office;
- (d) be entitled to receive any deferred or extended leave and any payment, pension or gratuity as if he or she has continued to be such an officer, contributor or person during his or her service as a member of the Office;
- (e) be deemed to be an officer or employee of the Office for the purposes of any law under which those rights accrued or were accruing, under which he or she continues to contribute or by which that entitlement is conferred; and
- (f) be deemed to be an officer or employee for the purposes of the superannuation scheme to which he or she is entitled to contribute under this section.