



**REPORT BY THE ETHICS AND ANTI-CORRUPTION COMMISSION (EACC) TO
THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS IN
RESPECT TO THE ETHICS AND ANTI-CORRUPTION COMMISSION
(AMENDMENT) BILL, 2024**

=====
*Presented to JLAC on
Wednesday
31st July 2024*
=====

REPORT BY THE ETHICS AND ANTI-CORRUPTION COMMISSION (EACC) TO THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS IN RESPECT TO THE ETHICS AND ANTI-CORRUPTION COMMISSION (AMENDMENT) BILL, 2024

Introduction

- The Ethics and Anti-Corruption Commission (EACC) is a statutory body established under the Ethics and Anti-Corruption Commission Act, 2011. The Act was enacted pursuant to the requirement under Article 79 of the Constitution of Kenya, 2010.
- The mandate of the Commission is to combat corruption and economic crime in Kenya through law enforcement, prevention, public education and promotion of standards and practices of integrity, ethics and anti-corruption.
- The Commission also derives its statutory mandate from a number of other statutes namely, the Anti-Corruption and Economic Crimes Act, 2003, the Leadership and Integrity Act, 2012, the Public Officer Ethics Act, 2003 and the Bribery Act, 2016 among others.
- This is a report to the Departmental Committee on Justice and Legal Affairs of the National Assembly in relation to the proposed Ethics and Anti-Corruption Commission (Amendment) Bill, 2024
- The report is submitted pursuant to a written request by the aforementioned Committee vide a letter **Ref: NA/DDC/JLAC/2024/065** dated **24th July, 2024**.

1. Proposed Amendment

The EACC (Amendment) Bill, 2024 seeks to amend Section 5 (1) of the EACC Act 2011 as follows:

Proposed Amendment	Current Provision
"The Chairperson of the Commission shall be a person who is qualified to hold the office of a judge of the High Court under the Constitution."	A person shall be qualified for appointment as the chairperson if that person— a) meets the requirements of Chapter Six of the Constitution; b) holds a degree from a university recognized in Kenya; c) has knowledge and experience of not less than fifteen years in any of the following fields— (i) ethics and governance; (ii) law; (iii) public administration;
<i>Saving provision:</i> The amendment does not apply to a person serving as a Chairperson of the Commission before the commencement of the Act.	

- (iv) leadership;
- (v) economics;
- (vi) social studies;
- (vii) audit;
- (viii) accounting;
- (ix) fraud investigation;
- (x) public relations and media; or
- (xi) religious studies or philosophy;
- and
- d) has had a distinguished career in their respective field

2. Justification

The Commission having carefully considered the proposed amendment **opposes** the Bill for the following reasons:

1. **Fully-fledged Legal Services Directorate:** The Commission has a fully established Directorate of Legal Services with some of its officers holding qualifications of a Judge of a superior court. The functions of the Directorate include reviewing evidence in the course of investigation to ascertain it meets the legal threshold and advising the Commission on any legal issue before it.
2. **Limited Diversity:** Restricting the role to the legal profession may limit diversity in the leadership of the Commission. Excluding candidates from other professions or backgrounds could result in a lack of diverse competencies and expertise.
3. **Narrow Skill Set:** Legal professionals may possess strong legal expertise but may lack skills and experience in leadership other areas relevant to anti-corruption work, such as investigation techniques, financial analysis, corruption prevention and advocacy.
4. **Missed Opportunities for Innovation:** Candidates from non-legal backgrounds may bring fresh ideas, innovative approaches, and diverse skill sets to the role of chairperson. Restricting the position to the legal profession could result in missed opportunities for innovation and improvement within the Commission.

Section 5 (1) of the EACC Act currently lists law as one of the professions from which a Chairperson may be appointed. The objective of the Bill may well be realized as an **issue of selection** as opposed to an amendment of the said provision.

It is noteworthy that the position of Chairperson has previously been filled by various professionals including a lawyer **qualified to hold the office of a judge of the High Court**. Based on our experience, there is no added advantage of having a lawyer over

the other professions. This is attributed to elaborate internal structures which have been established to review and advise on sufficiency of the evidence upon conclusion of investigations.

Further, the term of service for the EACC Chairperson is on **part time basis** with functions related to strategy and policy, and not operational in nature to warrant a legal mind.

Dated this Wednesday, 31st day of July 2024.



=====

**Twalib Mbarak, MGH, CBS
Secretary/Chief Executive Officer
Ethics and Anti-Corruption Commission (EACC)**