

CONSTITUTION OF KENYA REVIEW COMMISSION

THE COMMISSION SECRETARY'S MANDATE

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NOVEMBER, 2001

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INTRODUCTION

The constitution of Kenya Review Commission is the principal organ of the *Constitution of Kenya Review Act*¹ (hereinafter referred to as “the Act”) charged with the review of the Constitution of Kenya. The office of Secretary to the Commission is an office created under Section 11(1) of the Act which provides:

“There shall be a Secretary to the Commission who shall be appointed by the President from two persons nominated by the National Assembly².

The Secretary has several roles under the Act. There are:-

- (i) as an ex officio member of the Commission;
- (ii) as the Chief Executive of the Commission’s Secretariat;
- (iii) as the Chief Financial Accounting Officer of and for the Commission and its Secretariat.

I. THE SECRETARY AS COMMISSIONER

Section 6(4) of the Act provides that:-

The Commission shall consist of:-

- (a) The Chairperson appointed from amongst the Commissioners in accordance with Section 9;**

¹ Cap 3A, Laws of Kenya

² Section 11 (1). The Secretary was appointed by the President on 4th day of October, 2001 *vide* Kenya Gazette Notice No. 39.

(b) **Twenty-seven commissioners nominated by the National Assembly and appointed by the President in accordance with Section 7;**

(c) **The Attorney General or his representative and the Secretary who shall be ex officio commissioners without the right to vote.**

In his capacity as an ex officio commissioner the Secretary enjoys the rights and privileges of a commissioner but without the right to vote.

II THE SECRETARY AS A CHIEF EXECUTIVE OF THE COMMISSION'S SECRETARIAT

Section 21 (7) of the Act as read together with regulations 4³ of the Constitution of Kenya Review (General) Regulations, 2001 (hereinafter referred to as "the Regulations") provide that the Secretary shall:-

- (i) ***Supervise the day-to-day operations and functions of the Secretariat;***
- (ii) ***Send timely notices for all meetings of the Commission and ensure that minutes of such meetings are accurately recorded;***
- (iii) ***Ensure that Commissioners have access to the minutes of the Commission;***
- (iv) ***Facilitate the deposit of such records of the Commission as are required to be deposited with documentation centers;***

3 See Section 21(7) of the Act and regulations 4 of the Constitution of Kenya Review (General) Regulations, 2001 published as the Legal Notice no.121 of 27th July, 2001.

- (v) Ensure that the decisions of the Commission are followed up and implemented;*
- (vi) Provide adequate services for all committees of the Commission;*
- (vii) Keep custody of all records and property of the Commission;*
- (viii) Perform such other functions as the Commission may assign to him.*

III RECRUITMENT OF STAFF

At the Steering Committee Meeting 13th October 2001 and 24th October 2001 and Plenary Meeting ofthe Secretariat was mandated to assert itself and to deal with **ALL** staff matters.

The Secretary may delegate some of his non-core functions⁴ to any of his Deputy Secretaries or other officers in the Secretariat but remains ultimately accountable and responsible for the performance of any such functions. The buck stops with the Secretary.

IV THE SECRETARY AS THE CHIEF FINANCIAL ACCOUNTING OFFICER OF AND FOR THE COMMISSION

Section 30(1) of the Act establishes a Fund to be known as the Constitution of Kenya Review Fund, in the following manner:

⁴ See regulation 5(4) which provides: Notwithstanding the generality of sub-regulation(3) the Secretary may assign a Deputy Secretary to each of the committees of the Commission but such assignment shall not in any way prevent the Secretary from himself performing the functions that are the subject of such assignment.

“There is established a Fund to be known as the Constitution of Kenya Review Commission which shall be administered on behalf of the Commission by the Secretary”.

The Secretary is mandated to administer the Fund on behalf of the Commission and in doing so to consult with the Permanent Secretary, Treasury and be subject to the provisions of the Exchequer and Audit Act⁵.

It is noteworthy that in managing the Fund, the Secretary is singularly enjoined to promote the objects and purpose of the review process.

The Secretary has personal and direct responsibility for accounting to the National Assembly. This is further spelt out by the Permanent Secretary to the Treasury in his letter of 12th November, 2001 *vide* which he appointed the Commission Secretary as the administrator of the aforesaid Review Fund (see attached letter).

The letter provides *inter alia* that the Secretary shall:-

- (i) *be personally responsible for the Fund, ultimately, being accountable and answerable to Parliament through Treasury;*
- (ii) *be answerable to Parliament and Treasury for cash balances before opening any account;*
- (iii) *cause written authority to be received from Treasury before opening any account;*
- (iv) *operate such bank accounts as may be opened, in a manner consistent the operation of public accounts and in accordance with the existing financial regulations;*

⁵ Cap 412 (Section 4,5,and 6).

- (v) *prepare and sign Fund accounts at the closure of the financial year and submit the same to the Controller and Auditor-General;*
- (vi) *assist and co-operate with the Controller and Auditor-General in exercise of his power and discharge of his duties in relation to the accounts of the Commission;*
- (vii) *ensure strict compliance with all procurement regulations and procedures;*
- (viii) *ensure prompt payment for goods and services procured on behalf of the Commission;*
- (ix) *ensure good financial management and accounting practices in the administration of the Fund and the assets of the Commission;*
- (x) *record and account for all donor funds (grants, gifts, donations and bequests) and report the same to the Controller and Auditor-General with records.*

In a nutshell, the terms of this letter, as read together with the provisions of the Act and the Regulations, place direct and specific responsibility on the Secretary in the performance of his duty as the Chief Financial Accounting Officer for the Commission.

(V) CONCLUSION

The Secretary's financial responsibility and mandate as the administrator of the Fund is best summarized in the Permanent Secretary's letter thus;

“While it is your duty as an administrator in the last resort to obey any instruction given to you by your Chairman, should you at any time encounter or find yourself in conflicts with your Chairman or any other

authority in a matter affecting the financial administration of the Commission, it is your duty to do everything in your power to see that the administration of the Commission is carried out with efficiency and economy and strictly in accordance with the law and all Financial Regulations. You should not hesitate to represent your objection to any course of action, which you regard as inconsistent with your duty, and to place on record your disagreement with any decision you may find difficult to defend before the public Accounts Committee. In all cases you should inform the Treasury of action taken and the same be copied to the Controller and Auditor-General.

Signed:

PLO - LUMUMBA