

**KENYA LAW REFORM COMMISSION BILL, 2012**

**ARRANGEMENT OF SECTIONS**

**PART I—PRELIMINARY**

- 1—Short title and Commencement
- 2—Interpretation
- 3—Guiding Principles

**PART II—ESTABLISHMENT, OBJECT, FUNCTIONS AND POWERS OF THE COMMISSION**

- 4— Establishment of the Commission
- 5—Object and purpose
- 6—Functions of the Commission
- 7—Powers of the Commission
- 8—Composition of the Commission
- 9—Independence of Composition
- 10—Appointment of Chairperson and Commissioners
- 11—Term of office
- 12—Removal of Chairperson and Commissioners and filling of subsequent vacancy
- 13—Co-option of additional Commissioners
- 14—Terms of service of the Chairperson, Commissioners, Secretary and staff

**PART III—OPERATIONS OF THE COMMISSION**

- 15—Role of Chairperson
- 16—Secretary
- 17—Staff
- 18—Scheme of service
- 19—Departments, divisions, committees or units
- 20—Proceedings of the Commission
- 21—Records of the Commission
- 22—Seal of the Commission
- 23—Delegation of powers

**PART IV—FUNDS, ACCOUNTS AND AUDIT**

- 24—Funds of the Commission
- 25—Investment and surplus funds
- 26—Financial Year of the Commission
- 27—Estimates
- 28—Accounts and Audit

**PART VI—MISCELLANEOUS**

- 29—Exemption from stamp duty
- 30—Social security scheme
- 31—Protection from personal liability
- 32—Conflict of interest
- 33—Prohibition of publication without consent
- 34—Annual report and law reform programme
- 35—Rules and Regulations

**PART V—REPEAL AND TRANSITIONAL PROVISIONS**

- 36—Interpretation of part
- 37—Repeal of Cap 3
- 38—Savings
- 39—Transfer of staff

## KENYA LAW REFORM COMMISSION BILL, 2012

### A Bill for

**AN ACT of Parliament to reconstitute and incorporate the Kenya Law Reform Commission, to provide for the functions, powers, management and administration of the Commission, and for connected purposes**

**ENACTED** by the Parliament of Kenya, as follows—

#### **PART I - PRELIMINARY**

Short title and  
Commencement.

**1.** This Act may be cited as the Kenya Law Reform Commission Act, 2012.

Interpretation.

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

“Board of Commissioners” means the board established under section 8 and includes the Chairperson and all Commissioners;

“Chairperson” means the Chairperson of the Commission appointed under section 10;

“Commission” means the Kenya Law Reform Commission established under section 4;

“Commissioner” means any of the Commissioners referred to in section 8 [a], [b] and [c] and includes an additional Commissioner co-opted under section 13[4];

“Financial year” has the meaning assigned to it in section 27;

“Minister” means the Minister for the time being responsible for matters relating to law reform; and

“Secretary” means the secretary to the Commission appointed under section 16.

Guiding  
principles.

**3.** In achieving the object and purpose, or the performance of the functions or the exercise of the powers conferred under this Act, the Commission shall—

[a] appreciate that law reform is an integral aspect in the constitutional and governance process;

[b] be accountable to the people of Kenya;

[c] facilitate the conduct of law reform in a transparent and fair manner;

[e] promote and sustain fair procedures in its functioning and operations;

[f] endeavor to keep a modern approach to its operations, informed by international trends;

[g] have the technical and administrative competence to ensure that the requirements of the law reform process are fulfilled;

[h] adhere to its code of conduct and ethics as may by regulations be prescribed;

[i] be impartial in its orientation and in its operations; and

[j] apply and promote such other positive values as the Commission may by regulations prescribe.

## **PART II — ESTABLISHMENT, OBJECT, FUNCTIONS AND POWERS OF THE COMMISSION**

Establishment of the Commission.

**4.** [1] There is established as a body corporate a Commission to be known as the Kenya Law Reform Commission.

[2] The Commission shall have all the powers necessary or expedient for the performance of its functions.

[3] Without limiting the generality of subsection [2], the Commission shall have perpetual succession and a common seal and shall, in its corporate name, be capable of —

[a] suing and being sued;

[b] holding and alienating moveable and immovable property;

[c] borrowing or lending money; and

[d] doing or performing all other things or acts for the

furtherance of the provisions of this Act which may be lawfully done or performed by a body corporate.

Object  
purpose

and

**5.** [1]The object and purpose for which the Commission is established shall be to facilitate law reform that is conducive to social, economic and political development.

[2]The Commission shall achieve its object and purpose by making proposals for reform and keeping under review all the law of Kenya to ensure its systematic development and reform in compliance with the values and principles enshrined in the constitution.

Functions and of  
the Commission

**6.** (1) Without prejudice to the generality of section [5], the Commission shall —

[a]initiate or receive and consider any proposals for the reform of the law that may be made or referred to it;

(b) co-ordinate with the Attorney-General in preparing, for tabling in Parliament, the legislation required to implement the Constitution;

[c]formulate, by means of draft Bills or otherwise, any proposals for reform.

[d]undertake the examination of particular branches of the law and formulate proposals for their reform;

[e]prepare comprehensive programmes for the consolidation of the law;

[f]draw the attention of the Minister to any proposal for reform if, in the opinion of the Commission, such proposal has or is likely to have an adverse effect on the country as a whole or on any community or section of the country in particular;

[g]provide advice and information to national and county governments ministries, departments and agencies or any other person or authority with regard to the reform or amendment of a branch of the law appropriate to the ministry, department and agency or person or authority;

[h]solicit for funds for participation by the public in the

performance of the functions of the Commission;

[i]encourage international co-operation in the performance of its functions;

[j]encourage and promote public participation in the process of law-making and educate and sensitize the public on the content of the law through seminars, workshops, conferences and other public meetings; and

[k] do such other thing as may be conducive to the attainment of the functions of the Commission.

(2) A county government may seek assistance from the Commission in the development or reform of county legislation.

Powers of the Commission

**7.** The Commission shall have power to—

[a]control, supervise and administer its staff and assets in such manner and for such purposes as may be necessary for the promotion of the purpose and object for which the Commission is established;

[b] control and administer its funds;

[c] receive any grants, gifts, donations or endowments and make legitimate disbursements therefrom;

[d]enter into association with other bodies or organizations within or outside Kenya as it may consider desirable or appropriate and in furtherance of the object and purpose for which it is established;

[e]open a bank account or bank accounts for its funds; and

[f]invest the funds not currently required for its purposes in the manner provided in section 26.

Composition of the Commission and board

**8.** [1]The Commission shall consist of —

[a]a Chairperson appointed under section 10;

[b]three full-time Commissioners one of whom shall be a Vice- Chairperson appointed under section 10;

[c] five part-time Commissioners appointed under section 10;

[d] the Secretary to the Commission appointed under section 17; and

[e] Staff of the Commission.

[2] There shall be a Board of Commissioners which shall consist of the Chairperson and all Commissioners and shall collectively be responsible for setting the policy direction for the Commission.

[3] For the purposes of this Act, the Vice-Chairperson shall be the principal assistant to the Chairperson.

Independence of the Commission

**9.** [1] In the achievement of its object and purpose, the performance of its functions and the exercise of its powers, the Commission shall not be subject to the direction or control of any other person or authority.

[2] Notwithstanding the provisions of subsection [1], the Commission shall for the purposes of accountability, report to the Minister on the overall fulfillment of its object, purpose, functions and powers.

Appointment of Chairperson and Commissioners

**10.** [1] The Chairperson and the full-time commissioners shall be appointed by the President on the nomination of the Minister.

[2] For the purposes of subsection [1], the Minister shall adhere to the principle of gender equity, ethnic and other diversities of the Kenyan people.

[3] A person shall not be nominated under subsection [1] unless such person –

[a] is qualified to be appointed a Judge of the High Court; and

[b] has experience in legal research or legislative drafting.

[c] meets the requirements of Chapter Six of the Constitution.

[4]The part-time commissioners referred to in section 8 [1] [c] shall be appointed by the President on the recommendation of the Minister and shall consist of the following —

[a]one judge nominated by the Chief Justice;

[b]one advocate with at least seven years post-qualification experience nominated by the Law Society of Kenya;

[c]one person nominated by the Attorney-General; and

(d) two persons with knowledge in economics or other social sciences.

[5]For the purposes of subsection [4] each nominating authority shall adhere to the principle of gender equity, ethnic and other diversities of the Kenyan people.

Term of office

**11.** [1] Subject to section 12—

[a]the Chairperson shall hold office for a single term of six years;

[b]each full-time Commissioner shall hold office for a single term of five years; and

[c]each part-time Commissioner shall hold office for a single term of four years.

[2] Notwithstanding subsection [1], the Chairperson, Vice-Chairperson or a Commissioner whose term of office has expired shall continue in office until the successor is appointed.

Removal of  
Chairperson and  
Commissioners  
and filling of  
subsequent  
vacancy

**12.** [1] Notwithstanding the provisions of section 11, the Chairperson a Commissioner, other than an *ex-officio* commissioner —

[a]shall cease to hold office upon attaining the age of seventy years; or

[b]may at any time resign from office by notice in writing to President; or

[c]may be removed from office by the President; or if



such Chairperson or Commissioner-

[i] ceases to be qualified under section 10[3]; or

[ii] is absent from three consecutive meetings of the Commission without good cause; or

[iii] is so incapacitated by prolonged physical or mental incapacity as to be unable to attend to or perform his duties; or

[iv] is adjudged bankrupt; or

[v] is convicted of an offence punishable by a term of imprisonment exceeding six months; or

[vi] is incompetent or otherwise unable or unfit to discharge his duties.

[2] The Minister shall—

[a] notify every vacancy in the Gazette within fourteen days of the occurrence of the vacancy; and

[b] nominate or cause the nomination of a replacement of the Chairperson or a Commissioner within 30 days from the date of the Gazette notice.

Co-option  
additional  
Commissioners

**13.** [1] The Commission may on recommendation of the Chairperson, co-opt persons to be additional commissioners for the purposes of any specific task being undertaken by the Commission.

[2] The number of commissioners co-opted under this section shall not, at any one time, exceed two.

[3] No person shall be co-opted under subsection [1] unless such person would be qualified for nomination as a full-time Commissioner under section 10[3].

[4] Subject to subsection [5], a person co-opted as an additional Commissioner shall cease to act as such upon the completion of the task in respect of which such person was co-opted.

[5] Notwithstanding the provisions of subsection [4], section 10 shall apply to an additional commissioner co-

opted under this section.

Terms and  
Conditions of  
service of the  
Chairperson,  
Commissioners,  
Secretary and  
staff

- 14.** The terms and conditions of service of the Chairperson, Commissioners, Secretary and staff other than the term of office of Chairperson and Commissioners shall be such as may be determined Salaries and Remuneration Commission.

### **PART III – OPERATIONS OF THE COMMISSION**

Role of the  
Chairperson

- 15.** [1] The chairperson shall be the principal representative of the Commission and shall in that capacity have authority —

[a] to represent the Commission in its relations with other bodies or persons;

[b] to represent the Commission either personally or through counsel in any legal proceedings to which the Commission is a party; and

[c] to sign, individually or jointly with other persons, contracts concluded by the Commission.

[2] Nothing in this section precludes the Chairperson from delegating any of the powers under this section as provided under section 23 to the Vice-chairperson, a Commissioner, Secretary or staff of the Commission as the Chairperson may deem suitable.

Secretary

- 16.** [1] There shall be a Secretary to the Commission who shall be appointed by the Commission and who shall enjoy a status of not less than that of a Principal Secretary.

[2] No person shall be qualified for appointment as the Secretary under this section unless such person is an advocate of the High Court of Kenya and has since qualification practiced law in the public or private sector, or has been engaged in teaching or research for a period of not less than seven years, and has performed duties of an administrative nature for not less than three years.

[3] The secretary shall be the chief executive and accounting officer of the Commission and shall be responsible for the carrying out of the policy decisions

of the Commission, its day-to-day administration and management and the control of the other staff of the Commission.

[4] The secretary shall be an *ex-officio* member of the Commission with no right to vote at any meeting of the Commission.

[5] The secretary shall cause to be kept minutes of the proceedings of the meetings of the Commission and such other records as the Commission may direct.

[6] The Secretary shall perform such other function as may be assigned by the Commission.

[7] The Secretary may be removed by the Commission only for —

[a] inability to perform the functions of his office arising out of physical or mental incapacity;

[b] misbehavior; or

[c] incompetence; or

[d] violation of the prescribed code of conduct;

[e] bankruptcy; or

[f] violation of the provisions of Chapter Six of the Constitution; or

[g] any other sufficient cause.

[8] Before the Secretary is removed under subsection [7], he shall be informed of the case against him and shall be given appropriate opportunity to defend himself against any such allegations.

Staff

**17.** [1] The Commission may for the proper discharge of its functions under this Act appoint such other professional, technical, administrative and support staff to assist it in the discharge of its functions under the Constitution and this Act.

[2] There may be seconded to the Commission such number of public officers as the Commission may

arrange with the appropriate authority responsible for such public officers for such periods and on such terms and conditions as may be agreed between the Commission and the authority concerned.

[3]For purposes of this Act, a public officer who is seconded to the Commission under subsection [2], shall be deemed to be staff of the Commission and shall be subject only to the direction and control of the Commission.

Scheme of service of **18.**The Commission shall develop a scheme of service for the Secretary and staff, which scheme of service shall include provisions relating to—

[a] the appointment and confirmation of such staff;

[b] promotions, resignations, retirement, and termination of appointments;

[c] scale of salaries and allowances;

[d] designations and grades; and

[e] training and career development.

Departments, divisions, committees or units of the Commission **19.**The Commission may create within itself such departments, divisions, committees or units and appoint thereto such staff, on such terms and conditions of service, as it may determine.

Proceedings of the Commission **20.**[1]The Chairperson shall convene a meeting of the Commission at least once every month.

[2] Subject to this Act, the Commission shall have power to regulate its own procedure and the procedure of any of its committees.

Records of the Commission **21.**The Commission shall keep a record of the proceedings of every meeting of the Commission and its departments, units and committees.

Seal of the Commission **22.**The seal of the Commission shall be such device as may be determined by the Commission and shall be kept by the Secretary.

[a]The affixing of the seal shall be authenticated by the

Chairperson or any other person authorized in that behalf by a resolution of the Commission.

[b]Any document purporting to be under the seal of the Commission or issued on behalf of the Commission shall be received in evidence and shall be deemed to be so executed or issued, as the case may be, without further proof, unless the contrary is proved.

Delegation of powers

**23.** [1]The Chairperson may in writing delegate to a Commissioner, Secretary or staff of the Commission any of the Commission's powers under this Act except the power of delegation under this section and the power to make a report under this Act.

[2]Every delegation is recoverable at will and no delegation prevents the exercise by the Chairperson of any power so delegated.

[3]If the Chairperson by whom a delegation is made ceases to hold office, the delegation continues in effect until revoked by a succeeding Chairperson.

[4]Any person purporting to exercise a power of the Commission by virtue of a delegation shall, when required so to do, produce evidence of his authority to exercise the power.

#### **PART IV – FUNDS, ACCOUNTS AND AUDIT**

Funds of the Commission

**24.** [1]The funds of the Commission shall consist of —

[a] monies appropriated by Parliament for purposes of the Commission;

[b]any grants, gifts, donations or other endowments given to the Commission save that no grant, gift, donation or bequest shall be approved if it is made on any condition that the Commission perform any function or discharge any duty or obligation other than a function, duty or obligation aimed at achieving its objects; and

[c]such monies as may otherwise vest in or accrue to the Commission in the performance of its functions under this Act or under any other written law.

[2]The expenses of the Commission, including the remuneration and expenses of the Chairperson, Commissioners, Secretary and staff shall be paid out of the funds of the Commission.

Investment and  
surplus funds

**25.**[1]The Commission may invest any of its funds in securities in which for the time being trustees may by law invest trust funds, or in any other securities which the national treasury may, from time to time, approve.

[2]The Commission may deposit with such bank or banks as it may determine, any monies not immediately required for the purposes of the Commission.

Financial year

**26.**The financial year of the Commission shall be the period of twelve months ending on the thirtieth June in each year.

Estimates

**27.**[1]At least three months before the commencement of each financial year, the Secretary shall cause to be prepared estimates of the revenue and expenditure of the Commission for that year.

[2]The annual estimates shall be approved by the Commission before the commencement of the financial year to which they relate and shall for purposes of accountability, be submitted to the Minister for approval and thereafter, the Commission shall not increase the annual estimates without the consent of the Minister.

[4]No expenditure shall be incurred for the purposes of the Commission except in accordance with the annual estimates approved under subsection [3] or in pursuance of an authorization of the Commission given with the prior approval of the Minister.

Accounts and  
audit

**28.**[1]The Commission shall cause to be kept all proper books and records of account of the income, expenditure, assets and liabilities of the Commission.

[2]The annual accounts of the Commission shall be prepared, audited and reported upon in accordance with Public Audit Act.

## PART V – MISCELLANEOUS

Exemption from  
duty and other  
taxes

**29.** The Commission shall be entitled, upon application to the Minister responsible for finance, to exemption from duty and other taxes chargeable under the law in respect of any instrument executed by or on behalf of or in favour of the Commission which, but for this section, the Commission would be liable to pay.

Social Security  
Scheme

**30.** The Commission may—

[a] establish, control, manage, maintain and contribute to a contributory pension scheme for the Chairperson, Commissioners, Secretary and staff; or

[b] adopt a contributory optional superannuation, provident or medical fund or other scheme for the Chairperson, Commissioners, Secretary and staff for purposes of granting pensions, gratuities, retirement allowances or sickness, injury or other benefits to the Chairperson, Commissioners, Secretary and staff from any such fund upon their retirement from the service of the Commission or, as the case may be, to the dependants of any such person upon their death.

Protection from  
personal liability

**31.** The Chairperson, Commissioners, Secretary or staff shall not be personally liable for any act or omission done or omitted to be done in good faith in carrying out the functions of the Commission under this Act.

Conflict of  
interest

**32.** [1] If any person is present at a meeting of the Commission or any committee at which any matter is the subject of consideration and in which matter that person or that person's spouse is directly or indirectly interested in a private capacity, that person shall as soon as is practicable after the commencement of the meeting, declare such interest and shall not, unless the Commission or committee otherwise directs, take part in any consideration or discussion of, or vote on any question touching such matter.

[2] A disclosure of interest made under subsection [1] shall be recorded in the minutes of the meeting at which it is made.

[3] Commissioners and staff of the Commission shall not transact any business or trade with the Commission.

[4] A person who contravenes this section shall be guilty

of an offence and shall be liable upon conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

Prohibition on  
publication  
without consent

**33.** [1] A person shall not without the consent in writing given by, or on behalf of the Commission, publish or disclose to any person the contents of any document, communication, or information which the Commission itself has not made public and which has come to the person's knowledge in the course of the person's duties or association with the Commission under this Act.

[2] Any person who contravenes subsection [1] shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.

[3] If any person having information which to that person's knowledge has been published or disclosed in contravention of subsection [1] unlawfully publishes or communicates any such information to any other person, that person shall be guilty of an offence and shall be liable upon conviction, to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.

[4] The limitation on disclosure in this section shall not be construed to prevent the disclosure of criminal activity by a member or staff of the Commission.

Annual reports  
and law reform  
programmes

**34.** [1] The Commission shall within four months after the end of each financial year, make a report to the Minister on the activities of the Commission during the financial year.

[2] The Minister shall, upon receipt of the report under subsection [1], table it before the National Assembly within fourteen days of the day the Assembly next sits after the report is received.

[3] The Minister shall within sixty days of receipt, lay before the National Assembly any programme of law reform prepared by the Commission and any proposal for reform formulated by the Commission pursuant to



that programme.

[4]If the Minister fails to lay a report or law reform programme before the National Assembly as required under this section, the Chairperson shall forthwith submit a copy of the report to the Speaker of the National Assembly to be presented by him to the National Assembly.

Rules and Regulations

**35.**The Minister in consultation with the Commission may make rules and regulations for the better exercise of functions and powers of the Commission under this Act.

## **PART VI — REPEAL AND TRANSITIONAL PROVISIONS**

Interpretation of part

**36.**In this Part, "former Commission" means the Law Reform Commission established under the Law Reform Commission Act repealed by section 39.

Repeal of Cap. 3

**37.**Subject to section 40, the Law Reform Commission Act is repealed.

Savings

**38.**Notwithstanding the provisions of section 39—

[a] the persons who, immediately before the Commencement of this Act, were the Chairperson and Commissioners of the former Commission shall be deemed to be the Chairperson and Commissioners of the Commission until a Chairperson and Commissioners are appointed under this Act;

[b]the person who, immediately before the commencement of this Act, was the Secretary to the former Commission shall be deemed to be the Secretary to the Commission until a Secretary is appointed under this Act;

Transfer of staff

**39.**[1] Every person who immediately before the commencement of this Act was an employee of the Government attached to the former Commission shall, upon the commencement of this Act, be deemed to be staff of the Commission appointed under section 17.

[2] A person who fails to exercise the option conferred by subsection [2] within the period specified shall be referred to the Public Service Commission for

redeployment.

[3]Every valid contract entered into before the commencement of this Act shall continue to be in force to the extent that the terms and conditions thereof are not inconsistent with the provisions of this Act.

[4]All movable and immovable property and all the rights and liabilities previously attaching to the former Commission, and all the property movable or immovable held by any person on behalf of the former Commission, before the commencement of this Act shall vest in the Commission after the commencement of this Act.

## **MEMORANDUM OF OBJECTS AND REASONS**

The principal object of this Bill is to reconstitute and incorporate the Law Reform Commission in order to modernize and expand its functions and enhance its operational autonomy.

This will entail the repeal and replacement of the Law Reform Commission Act [Chapter 3 of the Laws of Kenya] under which the Commission is currently established.

**Part I** provides for the short title and commencement date of the Act, interpretation of terms and the principles by which the Commission will be guided in realizing its mandate.

**Part II** provides for the establishment and incorporation of the Commission and sets out its object, purpose, functions and powers. These include promoting law reform that is conducive to socio-economic and political development; initiating, receiving and considering proposals for law reform; undertaking examination of particular branches of the law; providing advice and information to Government ministries, departments and agencies; encouraging and promoting public participation in the process of law-making; and drawing the attention of the Minister to any proposal for reform that would have adverse effects on any segment of the society. The membership of the Commission comprises a Chairperson, three full-time Commissioners and five part-time Commissioners representing key stakeholders. Additional Commissioners may also be co-opted for particular tasks.

**Part III** provides for the operations of the Commission. The roles of the Chairperson are set out, a Secretary is provided for and the Commission is empowered to employ staff. Certain rules for the conduct of meetings of the Commission are also set out.

**Part IV** sets out financial provisions relating to the Commission. The funds of the Commission shall, in addition to money appropriate by Parliament, include grants, gifts, donations, endowments and other moneys obtained through the performance of the Commission's functions. The accounts of the Commission shall be audited in accordance with the Public Audit Act.

**Part V** sets out a number of miscellaneous provisions. Amongst these is a requirement that any law reform programmes drawn up by the Commission be laid before the National Assembly. The Commission will also prepare annual reports that will be submitted to the Minister and laid before the National Assembly.

**Part VI** provides for the repeal of the existing Law Reform Commission Act and includes a number of transitional provisions. The staff of the existing Commission shall be deemed to be employees of the new Commission, but shall have an option, within one year, to remain in the Commission or to be redeployed in the public service.

The enactment of this Bill shall occasion additional expenditure of public funds which shall be provided for through the estimates.

**Dated the..... of ....., 2012**

**MUTULA KILONZO**  
**Minister for Justice, National Cohesion and Constitutional Affairs**