

**THE KENYA LAW REFORM COMMISSION ACT****No. 19 of 2013**

*Date of Assent: 14th January, 2013*

*Date of Commencement: 25th January, 2013*

**ARRANGEMENT OF SECTIONS****Section****PART I—PRELIMINARY**

- 1—Short title.
- 2—Interpretation.
- 3—Guiding Principles.

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

- 4—Establishment of the Commission.
- 5—Powers of the Commission.
- 6—Functions of the Commission.
- 7—Headquarters.
- 8—Composition of the Commission.
- 9—Qualification for appointment of chairperson and members.
- 10—Disqualification.
- 11—Appointment of Chairperson and members.
- 12—Term of office.
- 13—Oath of office.
- 14—Vacancy.
- 15—Removal from office.
- 16—Remuneration and allowance.
- 17—Procedure of the Commission.
- 18—Committees of the Commission.
- 19—Secretary to the Commission.
- 20—Removal from office of the secretary.
- 21—Staff of the commission.
- 22—Secondment of staff.
- 23—Seal of the Commission.
- 24—Protection from personal liability.
- 25—Code of conduct.
- 26—Conflict of interest.
- 27—Records of the Commission.

**PART III—FUNDS, ACCOUNTS AND AUDIT**

- 28—Funds of the Commission.
- 29—Annual estimates.
- 30—Financial Year of the Commission.
- 31—Accounts and Audit.
- 32—Annual reports.

**PART IV—MISCELLANEOUS**

- 33—Independence of the Commission.
- 34—Disclosure.
- 35—Regulations.
- 36—Offence and penalty.

**PART V—REPEAL AND TRANSITIONAL PROVISIONS**

- 37—Interpretation of Part.
- 38—Repeal of Cap 3.
- 39—Savings.
- 40—Transfer of staff.

**SCHEDULES****FIRST SCHEDULE—OATH OF THE CHAIRPERSON/ MEMBER  
OF/SECRETARY TO THE COMMISSION****SECOND SCHEDULE—THE CONDUCT OF THE BUSINESS AND  
AFFAIRS OF THE COMMISSION****THIRD SCHEDULE—CODE OF CONDUCT FOR  
CHAIRPERSON/MEMBERS AND  
STAFF OF THE COMMISSION**

**THE KENYA LAW REFORM COMMISSION  
ACT, 2013**

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

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

**PART I—PRELIMINARY**

Short title.

**1.** This Act may be cited as the Kenya Law Reform Commission Act, 2013.

Interpretation.

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

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to law reform ;

“chairperson” means the chairperson of the Commission appointed in accordance with section 11;

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

“member” means a member of the Commission appointed in accordance with section 11;

“Salaries and Remuneration Commission” means the Salaries and Remuneration Commission established by Article 230 of the Constitution;

“secretary” means the secretary to the Commission appointed in accordance with section 19.

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

Guiding principles.

**3.** In fulfilling its mandate, the Commission shall act in accordance with the values and principles set out in the Constitution and any other written law.

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

Establishment of the  
Commission.

**4.** (1) There is established the Kenya Law Reform Commission.

(2) The Commission shall be a body corporate with perpetual succession and a common seal, and shall in its corporate name be capable of—

- (a) suing and being sued;
- (b) acquiring, holding, charging and disposing of movable and immovable property; and
- (c) doing or performing all such other things or acts for the proper discharge of its functions under the Constitution, this Act or any written law, as may be lawfully done or performed by a body corporate.

Cap. 3.

(3) The Commission shall be the successor of the Law Reform Commission established under the Law Reform Commission Act.

(4) Subject to this Act, all the rights, duties, obligations, assets and liabilities of the Law Reform Commission existing at the commencement of this Act shall be automatically and fully transferred to the Commission.

Powers of the  
Commission.

**5.** The Commission shall have all powers incidental to and necessary for the effective discharge of its functions under the Constitution, this Act and any other written law.

Functions of the  
Commission.

**6.** (1) The Commission shall—

- (a) keep under review all the law and recommend its reform to ensure—
  - (i) that the law conforms to the letter and spirit of the Constitution;
  - (ii) that the law systematically develops in compliance with the values and principles enshrined in the Constitution;

- (iii) that the law is, among others, consistent, harmonized, just, simple, accessible, modern and cost-effective in application;
  - (iv) the respect for and observance of treaty obligations in relation to international instruments that constitute part of the law of Kenya by virtue of Article 2(5) and (6) of the Constitution;
  - (v) keep the public informed of review or proposed reviews of any laws; and
  - (vi) keep an updated date of all laws passed and reviewed by Parliament;
- (b) work with the Attorney-General and the Commission for the Implementation of the Constitution in preparing for tabling, in Parliament, the legislation and administrative procedures required to implement the Constitution;
  - (c) provide advice technical assistance and information to the national and county governments with regard to the reform or amendment of a branch of the law;
  - (d) upon request or on its own motion, undertake research and comparative studies relating to law reform;
  - (e) formulate and implement programmes, plans and actions for the effective reform of laws and administrative procedures at national and county government levels;
  - (f) consult and collaborate with State and non-State organs, departments or agencies in the formulation of legislation to give effect to the social, economic and political policies for the time being in force;
  - (g) formulate, by means of draft Bills or otherwise, any proposals for reform of national or county government legislation;
  - (h) upon request or on its own motion, advise the national or county governments on the review and reform of their legislation;

- (i) undertake public education on matters relating to law reform; and
- (j) perform such other functions as may be prescribed by the Constitution, this Act or any other written law.

Headquarters.

7. (1) The headquarters of the Commission shall be in the capital city, but the Commission may establish offices at any other place in Kenya.

(2) The Commission shall ensure access to its services in all parts of the Republic in accordance with Article 6(3) of the Constitution.

Composition of the Commission.

8. (1) The Commission shall consist of—

- (a) a chairperson appointed by the President through an open and competitive process;
- (b) two members appointed by the Cabinet Secretary through an open and competitive process;
- (c) two members appointed by the Attorney-General;
- (d) a representative of the Attorney-General appointed in writing; and
- (e) a representative of the Cabinet Secretary appointed in writing;

(2) The chairperson and members of the Commission shall be appointed in accordance with section 11.

(3) The representatives of the Attorney-General and the Cabinet Secretary shall be *ex-officio* members of the Commission.

(4) The members of the Commission referred to in subsection (1) (c) and (d), shall be officers from the Office of the Attorney-General and the respective State Department.

Qualifications for appointment as chairperson or member.

**9.** (1) A person shall be qualified for appointment as the chairperson of the Commission if that person—

- (a) holds a postgraduate degree in law from a university recognized in Kenya;
- (b) is an Advocate of the High Court of Kenya of not less than fifteen years standing and has at least seven years experience in management level;
- (c) has had a distinguished career in their respective field; and
- (d) meets the requirements of Chapter Six of the Constitution.

(2) A person shall be qualified for appointment as a member of the Commission if that person—

- (a) holds a postgraduate degree from a University recognized in Kenya;
- (b) has knowledge and experience of not less than ten years in any of the following fields—
  - (i) law;
  - (ii) economics;
  - (iii) social sciences; or
  - (iv) research and development;
- (c) has had a distinguished career in his or her respective field; and
- (d) meets the requirements of Chapter Six of the Constitution.

Disqualification.

**10.** A person shall not be qualified for appointment as the chairperson or as a member if the person—

- (a) is a member of a governing body of a political party;

- (b) is an undischarged bankrupt;
- (c) has been convicted of a criminal offence and sentenced to a term of imprisonment;
- (d) has been removed from any public office for contravening the provisions of the Constitution or any other written law;
- (e) is a member of Parliament or county assembly;  
or
- (f) has not met his or her legal obligations relating to tax and other statutory obligations.

Appointment of  
chairperson and  
members.

**11.** (1) The President or the Cabinet Secretary shall, whenever a vacancy arises in the office of the chairperson or member of the Commission, constitute a selection panel comprising one person from—

- (a) the Office of the President;
- (b) the Office of the Attorney-General;
- (c) the National Council for Science and Technology;
- (d) the National Economic and Social Council;
- (e) the Association of Professional Societies of East Africa;
- (f) the Law Society of Kenya;
- (g) the Federation of Women Lawyers; and
- (h) the National Council for persons with disabilities.

(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 its 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 chairperson and members of the Commission.

(4) The selection panel shall within twenty one days—

- (a) consider the applications received under subsection (3) to determine their compliance with the provisions of this Act;
- (b) short list the applicants;
- (c) publish the names of the shortlisted applicants and the qualified applicants in at least two daily newspapers of national circulation;
- (d) conduct interviews of the shortlisted persons in an open and transparent process;
- (e) shortlist three qualified applicants for the position of chairperson;
- (f) shortlist eight qualified applicants for the position of the members; and
- (g) forward the names of the qualified persons under paragraphs (e) and (f) to the President or the Cabinet Secretary.

(5) The President or Cabinet Secretary shall, within fourteen days of receipt of the names of the qualified applicants pursuant to subsection (3)(g), by notice in the Gazette, appoint the chairperson and members of the Commission.

(6) In short listing, nominating or appointing persons as chairperson and members of the Commission,

the selection panel and the President or Cabinet Secretary shall ensure that there are equal opportunities for the youth and persons with disabilities and that not more than two-thirds of the members are of the same gender.

(7) The selection panel may, subject to this section, determine its own procedure.

(8) After the first general elections under the Constitution, the member of the selection panel under subsection (1)(b) shall be replaced by a the chairperson of the Public Service Commission.

(9) Until after the first general elections under the Constitution, the President shall, in the appointment of chairperson or members of the Commission, consult the Prime Minister.

(10) The selection panel shall stand dissolved upon the appointment of the chairperson and members under subsection (4).

(11) Despite the foregoing provisions of this section, the Cabinet Secretary may, by notice in the Gazette, extend the period specified in respect of any matter under this section by a period not exceeding twenty-one days.

Term of office.

**12.** (1) The chairperson shall be appointed for a single term of six years and is not eligible for re-appointment.

(2) A member of the Commission shall be appointed for a single term of five years and is not eligible for re-appointment.

(3) The chairperson and members of the Commission, other than the *ex-officio* members, shall serve on a full time basis.

Oath of Office.

**13.** Before assuming office, the chairperson and members shall take and subscribe to an oath of office as prescribed under the First Schedule.

Vacancy.

**14.** The office of the chairperson or a member of the Commission shall become vacant if the holder —

(a) dies;

- (b) resigns from office by notice in writing addressed to the President;
- (c) is convicted of a criminal offence and sentenced to a term of imprisonment;
- (d) term of office expires;
- (e) is absent from three consecutive meetings of the Commission without good cause; or
- (f) is removed from office for any of the following grounds—
  - (i) violation of the Constitution or any other written law;
  - (ii) gross misconduct or misbehaviour;
  - (iii) inability to perform functions of the office arising out of physical or mental infirmity;
  - (iv) incompetence or neglect of duty; or
  - (v) bankruptcy.

Removal from office.

**15.** (1) A person desiring the removal of chairperson or a member on any ground specified in section 14 may present a complaint to the Public Service Commission setting out the alleged facts constituting that ground.

(2) Subject to Article 47 of the Constitution, the Public Service Commission shall consider the complaint and, if it is satisfied that it discloses a ground under section 14, shall—

- (a) investigate the matter expeditiously;
- (b) report on the facts; and
- (c) make its recommendation to the President or Cabinet Secretary.

(3) Where the Public Service Commission finds that there is no case to answer, the Commission shall dismiss the petition and inform the petitioner in writing the grounds for dismissal.

(4) The President or Cabinet Secretary shall, within twenty one days of receipt of the recommendation under subsection, (2) act in accordance with the recommendation.

(5) The President or the Cabinet Secretary may adopt, partially or wholly or reject the recommendations made under subsection (2) and where the recommendations are rejected or partially adopted, the President or Cabinet Secretary shall give reasons for such rejection or partial adoption.

Remuneration and allowances.

**16.** The chairperson, members and the staff of the Commission shall be paid such remuneration or allowances as the Public Service Commission may, on the advice of the Salaries and Remuneration Commission, determine.

Procedure of the Commission.

**17.** (1) The business and affairs of the Commission shall be conducted in accordance with the Second Schedule.

(2) Except as provided in the Second Schedule, the Commission may regulate its own procedure.

(3) Any three members present at a meeting of the Commission shall constitute a quorum.

(4) The presence or absence of an ex-officio member of the Commission shall not be considered in the determination of the quorum of a meeting of the Commission.

Committees of the Commission.

**18.** (1) The Commission may, for the effective discharge of its functions, establish committees.

(2) The Commission may co-opt into the membership of a committee established under subsection (1), any person whose knowledge and skills are considered necessary for the effective discharge of the functions of the Commission.

(3) Any person co-opted into a Committee under subsection (2) may attend the meetings of the Committee and participate in its deliberations, but shall not vote at such meeting.

Secretary to the  
Commission.

**19.** (1) The Commission shall, through an open, transparent and competitive recruitment process, appoint a suitably qualified person to be the secretary to the Commission.

(2) A person shall be qualified for appointment as the secretary to the Commission if the person—

- (a) is a citizen of Kenya;
- (b) holds a postgraduate degree from a university recognized in Kenya;
- (c) has had at least five years proven experience at management level;
- (d) has experience in any of the following fields—
  - (i) ethics and governance;
  - (ii) law;
  - (iii) economics;
  - (iv) social studies;
  - (v) research; or
  - (vi) corporate management; and
- (e) meets the requirements of Chapter Six of the Constitution.

(3) The secretary shall serve on such terms and conditions as the Commission may determine.

(4) The secretary shall hold office for a term of five years but may be eligible for reappointment.

(5) The secretary shall, in the performance of the functions and duties of office, be responsible to the Commission.

(6) The secretary shall—

- (a) be the Chief Executive Officer of the Commission;
- (b) be the accounting officer of the Commission;
- (c) be responsible for—
  - (i) carrying into effect the decisions of the Commission;
  - (ii) day-to-day administration and management of the affairs of the Commission;
  - (iii) supervision of the staff of the Commission; and
- (d) perform such other duties as may be assigned by the Commission.

Removal from office  
of the Secretary.

**20.** (1) The secretary may be removed from office by the Commission in accordance with the terms and condition of service, for—

- (a) inability to perform functions of the office arising out of physical or mental infirmity;
- (b) gross misconduct or misbehaviour;
- (c) incompetence or negligence of duty;
- (d) violation of the Constitution and any other written law; or
- (e) any other grounds specified in the terms and conditions of service of secretary.

(2) Where the question of the removal of the secretary under subsection (1) arises, the Commission shall—

- (a) inform the secretary in writing of the reasons for the intended removal; and
- (b) give the secretary the opportunity to be heard in accordance with the principles of fair administrative action prescribed under Article 47 of the Constitution.

Staff of the  
Commission.

**21.** (1) There shall be a secretariat of the Commission.

(2) The secretariat shall comprise of—

- (a) such professional, technical and administrative officers and support staff, as may be appointed by the Commission in the discharge of its functions under this Act; and
- (b) such public officers as may be seconded by the Public Service Commission to the Commission upon the request of the Commission.

(3) The Commission shall, in the appointment of employees, ensure

- (a) equalization of opportunity for persons with disabilities;
- (b) equalization of opportunities for the youth;
- (c) that not more than two thirds of its staff are of the same gender; and
- (d) that the appointment reflect ethnic and regional diversity of the people of Kenya.

Secondment of staff.

**22.** (1) In addition to the staff appointed by the Commission, the national and county governments may, upon request by the Commission, second to the Commission such number of public officers as may be necessary for the due performance of the functions of the Commission.

(2) A public officer seconded to the Commission shall, during the period of secondment, be deemed to be an officer of the Commission and shall be subject only to the direction and control of the Commission.

Seal of the  
Commission.

**23.** (1) The seal of the Commission shall be such device as may be determined by the Commission and shall be kept by the Secretary.

(2) The affixing of the seal shall be authenticated by the chairperson or any other person authorized in that behalf by resolution of the Commission.

(3) Any document purporting to be under the seal of the Commission or issued on behalf of the Commission shall be admissible in evidence in the absence of any proof to the contrary, and shall be deemed to be so executed or issued, as the case may be, without further proof.

Protection from personal liability.

**24.** Nothing done by a member of the Commission or by any person working under the instructions of the Commission shall, if done in good faith for the purpose of executing the powers, functions or duties of the Commission under the Constitution or this Act, render such member or officer personally liable for any action, claim or demand.

Code of conduct.

**25.** (1) The members and the employees of the Commission shall subscribe to the code of conduct set out in the Third Schedule.

(2) The Commission may make further regulations prescribing the code of conduct for its members and employees.

Conflict of interest.

**26.** (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 connected to such matter.

(2) The disclosure of interest shall be recorded in the minutes of the meeting at which it is made.

(3) The chairperson, member, or staff of the Commission shall not transact any business or trade with the Commission.



(4) A person who contravenes this section commits an offence and shall be liable, upon conviction, to a fine not exceeding one million shillings or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

Records of the  
Commission

**27.** The Commission shall keep a record of the proceedings of every meeting of the Commission.

### **PART III—FUNDS ACCOUNTS AND AUDIT**

Funds of the  
Commission.

**28.** (1) The funds of the Commission shall consist of—

- (a) monies allocated by Parliament for purposes of the Commission;
- (b) any grants, gifts, donations or other endowments given to the Commission; and
- (c) such funds as may vest in or accrue to the Commission in the performance of its functions under this Act or any other written law.

(2) Any funds donated or lent to, or gift made to the Commission shall be disclosed to the National Assembly and made public before use.

Annual estimates.

**29.** (1) At least three months before the commencement of each financial year, the Commission shall cause to be prepared estimates of the revenue and expenditure of the Commission for that year.

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

- (a) payment of remuneration in respect of the members and staff of the Commission;
- (b) payment of pensions, gratuities and other charges in respect of benefits which are payable out of the funds of the Commission;

- (c) maintenance of the buildings and grounds of the Commission;
- (d) funding of training, research and development of activities of the Commission;
- (e) 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 Commission may think fit; and
- (f) any other expenditure necessary or purposes of this Act.

(3) The annual estimates shall be approved by the Commission before the commencement of the financial year to which they relate and shall be submitted to the Cabinet Secretary for tabling in Parliament.

Financial year of the Commission.

**30.** The financial year of the Commission shall be—

- (a) the period commencing on the day on which this Act comes into operation and ending on the thirtieth day of June next following;
- (b) the period of twelve months commencing on the first of July and ending on the thirtieth of June of the subsequent year.

Accounts and audit.

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

- (a) statement of the income and expenditure of the Commission during that year; and
- (b) statement of the assets and liabilities of the

Commission on the last day of that financial year.

(3) The annual accounts of the Commission shall be prepared, audited and reported upon in accordance with the provisions of Articles 226 and 229 of the Constitution and the law relating to public audit.

Annual report.

**32.** (1) The Commission shall, at the end of each financial year cause an annual report to be prepared.

(2) The Commission shall submit the annual report to the President and the Parliament three months after the end of the year to which it relates.

(3) The annual report shall contain in respect of the year to which it relates—

- (a) the financial statements of the Commission;
- (b) a description of the activities of the Commission;
- (c) such other statistical information as the Commission may consider appropriate relating to the Commission's functions;
- (d) any recommendations made by the Commission to State departments or any person and the action taken;
- (e) the impact of the exercise of any of its mandate or function;
- (f) any impediments to the achievements of the objects and functions under the Constitution, this Act or any written law; and
- (g) any other information relating to its functions that the Commission considers necessary.

(4) The annual report shall be published and publicized in such other manner as the Commission may determine.

**PART IV—MISCELLANEOUS PROVISIONS**

Independence of the Commission.

**33.** Except as provided for under this Act, the Commission shall, in the performance of its functions, not be subject to the direction or control of any person or authority.

Disclosure of information

**34.** (1) Subject to Article 35 of the Constitution, the Commission shall publish and publicize any important information within its mandate affecting the nation.

(2) A request for information by any citizen shall be—

(a) addressed to the secretary or such other person as the Commission may for that purpose designate; and

(b) dealt with in accordance with Article 35 of the Constitution and the law relating to data protection and freedom of information.

Regulations.

**35.** The Commission may make Regulations generally for the better carrying out into effect of the provisions of this Act.

Offence and penalty.

**36.** Any person who contravenes the provisions of this Act shall commits an offence and is liable, on conviction, to a fine not exceeding one million shilling or to a term of imprisonment not exceeding two years or to both.

**PART V—REPEAL, SAVINGS AND TRANSITIONAL PROVISIONS**

Interpretation of part.

**37.** In this Part, “former Commission” means the Law Reform Commission established under f the Law Reform Commission Act.

Repeal of Cap. 3

**38.** The Law Reform Commission Act is repealed.

Savings.

**39.** The chairperson and commissioners who immediately before the commencement of this Act were serving at the former Commission shall, upon commencement of this Act, continue in office for the unexpired period of their term.

Transfer of staff.

**40.** (1) A person who was, immediately before the commencement of this Act, was an employee of the Government and who was serving at the former Commission shall, upon the commencement of this Act, be deemed to be an employee of the Commission.

(2) Despite subsection (1), all the employees of the Government who were serving at the former Commission shall upon the commencement of this Act be given an option to elect to serve in the Commission or be redeployed in the Public Service within a period of one year.

### FIRST SCHEDULE

(s.13)

#### OATH/AFFIRMATION OF THE OFFICE OF CHAIRPERSON/ MEMBER/SECRETARY

I..... having been appointed (the Chairperson/member or secretary to) the Kenya Law Reform Commission do swear/ solemnly affirm that I will at all times obey, respect and uphold the Constitution of Kenya and all other laws of the Republic; that I will faithfully and fully, impartially and to the best of my knowledge and ability, discharge the trust, perform the functions and exercise the powers devolving upon me by virtue of this appointment without fear, favour, bias, affection, ill-will or prejudice.  
(SO HELP ME GOD).

Sworn/Declared by the said .....

Before me this ..... day of .....

.....

Chief Justice.

### SECOND SCHEDULE

(s. 17)

#### THE CONDUCT OF BUSINESS AND AFFAIRS OF THE COMMISSION

Meetings.

**1.** The Commission shall meet as often as may be necessary for the dispatch of its business but there shall be at least four meetings of the Commission in any financial year.

Election of vice-chairperson.

**2.** At the first meeting, the Commission shall elect a vice-chairperson amongst their number and regard shall be taken to ensure that the chairperson and vice-chairperson shall be of opposite gender.

- Time and place of meetings. **3.** A meeting of the Commission shall be held on such date and at such time and place as the Commission may determine.
- Special meetings. **4.** The chairperson shall, on the written application of one-third of the members, convene a special meeting of the Commission.
- Quorum. **5.** The quorum for the conduct of business at a meeting of the Commission shall be any three members excluding ex-officio members of the Commission.
- Voting. **6.** The Chairperson shall preside at every meeting of the Commission at which he or she is present and in the absence of the chairperson at a meeting, the vice-chairperson, shall preside and in the absence of both the chairperson and the vice-chairperson, the members present shall elect one of their number who shall, with respect to that meeting and the business transacted thereat, have all the powers of the chairperson.
- Decisions of the Commission. **7.** Unless a unanimous decision is reached, a decision on any matter before the Commission shall be by concurrence of a majority of all the members present and voting at the meeting.
- Validity of proceedings. **8.** Subject to paragraph 5, no proceedings of the Commission shall be invalid by reason only of a vacancy among the members thereof.
- Signification of instruments and decisions of the Commission. **9.** Unless otherwise provided by or under any law, all instruments made by and decisions of the Commission shall be signified under the hand of the Chairperson.

### THIRD SCHEDULE

(s. 25)

#### CODE OF CONDUCT FOR MEMBERS OF AND STAFF OF THE COMMISSION

- Impartiality and independence of members and employees. **1.** (1) The chairperson, every member and member of staff of the Commission shall impartially and independently perform his or her functions in good faith and without fear, favour or prejudice, and without influence from—

- (a) the National or County Government;
- (b) any public officer;
- (c) any political party;
- (d) any candidate participating in an election; or
- (e) any other person or authority.

Independence from political or public office.

**2.** (1) The chairperson, member or member of staff of the Commission shall not, during the tenure of office, be eligible for —

- (a) appointment or nomination to a political office; or
- (b) appointment to another public office.

(2) A member of the Commission may not—

- (a) by their membership, association, statement, conduct or in any other manner place in jeopardy the perceived independence of the member, or in any other manner harm the credibility, impartiality, independence or integrity of the Commission;
- (b) make private use of or profit from any confidential information gained as a result of being a member of the Commission; or
- (c) divulge any information to any third party, save in the course of official duty or in conformity with Article 35 of the Constitution.

Conflict of interests.

**3.** (1) If the chairperson, member or member of staff is directly or indirectly interested in any contract, proposed contract or other matter before the Commission and is present at any meeting of the Commission at which the contract, proposed contract or other matter is the subject of consideration, the member or employee shall, at the meeting and as soon as practicable after the commencement thereof, disclose the fact and shall not take part in the consideration or discussion of, or vote on, any questions with respect to the contract or other matter or be counted in the quorum of the meeting during consideration of the matter.

(2) The chairperson, member or member of staff whose personal interest conflicts with their official duties shall—

- (a) declare the personal interests to their supervisor or other appropriate person or body in writing and comply with any directions given to avoid the conflict; and
- (b) refrain from participating in any deliberations with respect to the matter.

Professionalism.

4. The chairperson, member or member of staff of the Commission shall—

- (a) perform their duties in a manner that promotes and maintains public confidence in the Commission;
- (b) treat the public and colleagues with courtesy and respect;
- (c) discharge all their duties in a professional, timely and efficient manner and in line with the rule of law; and
- (d) respect the rights and freedom of all persons that he or she may interact with.

Improper enrichment.

5. The chairperson, member or member of staff of the Commission shall not—

- (a) use their office or organization to improperly enrich themselves or others;
- (b) accept or request gifts or personal favours from any person who may have a commercial interest with the Commission or any other interest that may be affected by the normal business of the Commission; or
- (c) use information that is acquired during the course of their duties or connected to their



duties for their benefit or for the benefit of others

Integrity in private affairs.

**6.** The chairperson, member or member of staff of the Commission shall conduct their private affairs in a manner that maintains public confidence in the integrity of their office and the Commission as a whole and shall—

- (a) not evade paying taxes;
- (b) not neglect their financial obligations;
- (c) submit an annual declaration of their income, assets and liabilities to the Commission responsible for such declarations from public officers;
- (d) not engage in political activity that may compromise or be seen to compromise the neutrality of their office, or the Commission; and
- (e) not preside over or play a central role in the organization of a fundraising activity.

Sexual harassment.

**7.** (1) The chairperson, member or member of staff of the Commission shall not sexually harass a member of the public or colleague.

(2) Sexual harassment includes—

- (a) making a request or exerting pressure for sexual activity or favours;
- (b) making intentional or careless physical contact that is sexual in nature;
- (c) making gestures, jokes or comments, including innuendoes regarding another person's sexuality; or
- (d) committing any other act that is classified as sexual harassment under the Sexual Offences Act, 2006.

Favouritism.

**8.** The chairperson, member or member of staff of the Commission shall not practice favouritism on the grounds of tribe, race, kin, culture, sex or acquaintance or otherwise in performance of their duties.

Privileged information and security of interests of the State.

**9.** The chairperson, member or member of staff of the Commission shall—

(a) not act for foreigners in a manner detrimental to the security interest of Kenya; and

(b) safeguard privileged information that comes into their possession and protect it from improper or inadvertent disclosure.

Application of No. 4 of 2003.

**10.** This Code is in addition to the provisions of the Public Officers Ethics Act, 2003 and where there is a conflict between the Code and the Act, the provisions of the Act shall prevail.

Breach of code.

**11.** Any breach of the Code by a member or officer of the Commission shall be treated as gross misconduct.