THE KENYA LAW REFORM COMMISSION BILL, 2006

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A Bill for

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

ENACTED by the Parliament of Kenya, as follows:-

PART I - PRELIMINARY

1. This Act may be cited as the Kenya Law Reform Commission Act, 2006 and shall come into operation as soon as it receives Presidential assent.

2. In this Act, unless the context otherwise requires -

“chairperson” means the chairperson of the Commission appointed under section 6;

"Commission" means the Kenya Law Reform Commission established under section 3;

"commissioner" means any of the commissioners referred to in paragraphs (b) and (c) of section 5, and includes an additional commissioner co-opted under section 10;

"financial year" has the meaning assigned to it in section 22;

“secretary” means the secretary to the Commission appointed under section 13;

“minister” means the Minister for the time being responsible for law reform.

PART II – ESTABLISHMENT, FUNCTIONS AND POWERS OF THE COMMISSION

3. (1) There is established a Commission to be known as 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) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable or 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.

4. (1) The object and function for which the Commission is established shall be to keep under review all the laws of Kenya to ensure their systematic development and reform including, in particular, the integration, revision, unification and codification of the law, the elimination of anomalies, the repeal of obsolete and unnecessary enactments and generally the simplification and modernization of the law.

(2) Without prejudice to the generality of subsection (1), the Commission shall -

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

(b) undertake the examination of particular branches of the law and the formulation of proposals for their reform;

(c) prepare comprehensive programmes for the consolidation of the law and undertake the drafting of Bills pursuant to any proposed programme of reform;

(d) draw the attention of the Minister to any Bill if, in the opinion of the Commission, such Bill 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;

(e) provide advice and information to ministries and departments in the Government or any other institutions with regard to the reform or amendment of a branch of the law appropriate to the ministry, department concerned or institution;

(f) solicit for funds for participation by the public in the performance of the functions of the Commission through seminars, workshops, conferences and other public meetings;

(g) encourage international co-operation in the performance of the functions of the Commission;
(i) encourage and promote public participation in the process of law-making and educate and sensitize the public on law-making through seminars; and

(h) do such other things as may be conducive to the attainment of the functions of the Commission.

(3) The Commission shall have all the powers necessary or expedient for the proper performance of its functions under this Act and in particular, the Commission shall have power to –

(a) control, supervise and administer the assets of the Commission in such manner and for such purposes as best promote the purpose for which the Commission is established;

(b) control and administer the funds of the Commission;

(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 the Commission may consider desirable or appropriate and in furtherance of the purpose for which the Commission is established;

(e) open a bank account or bank accounts for the funds of the Commission; and

(f) invest the funds of the Commission not currently required for its purposes in the manner provided in section 21.

5. (1) The Commission shall consist of –

(a) a chairperson appointed under section 6;

(b) three full-time commissioners appointed under section 6;

(c) five part-time commissioners consisting of –

(i) the head of the Legislative Drafting Department in the office of the Attorney General;

(ii) four commissioners appointed under section 7;

(d) the secretary to the Commission appointed under section 13; and

(e) the staff.
(2) There shall be a Board of the Commission which shall consist of –
(a) the chairperson;
(b) the four full-time commissioners;
(c) the five part-time commissioners.

6. (1) The chairperson and the full-time commissioners shall be appointed by the President on the nomination of the Attorney General.

(2) For the purposes of subsection (1), the Minister shall nominate at least twice as many persons as there are positions to be filled.

(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.

7. (1) The part-time commissioners referred to in section 5 (1) (c) (ii) shall be appointed by the President and shall consist of the following –
(a) one judge nominated by the Chief Justice;
(b) one person nominated jointly by the faculties of law in the public universities;
(c) two persons at least one of whom shall be a woman, conversant with matters relating to legal aid, the licensing of advocates and human rights, nominated by the Law Society of Kenya; and
(d) one person nominated by the National Assembly.

(2) Each nominating person or body under subsection (1) shall nominate at least twice as many persons as there are positions to be filled by way of such nomination.

8. Subject to section 9 –
(a) the chairperson shall hold office for a term of six years and shall be eligible for re-appointment for one further term of six years;
(b) each full-time commissioner shall hold office for a term of five years and shall be eligible for re-appointment for one further term of five years; and
(c) each part-time commissioner appointed under section 7 shall hold office for a term of four years and shall be eligible for re-appointment for one further term of four years.
9. Notwithstanding the provisions of section 8, the chairperson or a commissioner, other than an *ex-officio* commissioner –

(a) shall cease to hold office upon attaining the age of seventy-four years; or

(b) may at any time resign from office by notice in writing to the President; or

(c) may be removed from office by the President; or if such chairperson or commissioner -

(i) ceases to be qualified under section 6(3); or

(ii) is absent from three consecutive meetings of the Commission without good cause;

(iii) is so incapacitated by prolonged physical or mental illness as to be unable to attend to or perform his duties;

(iv) is adjudged bankrupt;

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

(vi) is otherwise unable or unfit to discharge his duties.

10. (1) The Commission may, co-opt persons to be additional commissioners for the purposes of any specific task being undertaken by the Commission

Provided that the number of commissioners co-opted under this section shall not, at any one time, exceed two.

(2) No person shall be co-opted under subsection (1) unless such person would be qualified for nomination as a full-time commissioner under section 6(3).

(3) Subject to subsection (4), 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.

(4) Notwithstanding the provisions of subsection (3), section 9 shall apply to an additional commissioner co-opted under this section.

11. The chairperson and commissioners shall be paid such remuneration by way of salaries, allowances, pensions or gratuities, as the Commission shall determine in consultation with the Treasury.
PART III – OPERATIONS OF THE COMMISSION

12. (1) The chairperson shall be the chief executive and 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) The chairperson may delegate any of his powers under this section to the commissioners or officers of the Commission as the chairperson may deem suitable.

13. (1) There shall be a secretary to the Commission who shall be appointed by the Commission, on such terms and conditions of service as the Commission may determine who shall enjoy a status of not less than that of a permanent 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 graduation 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 accounting officer of the Commission and shall be responsible for its management and administration.

(4) The secretary shall be an ex-officio member of the Commission but shall have no right to vote 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.

14. The Commission may, upon such terms and conditions as it may determine, appoint such officers and other staff as are necessary for the proper discharge of its functions under this Act.

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

16. Subject to this Act, the Commission may regulate its own procedure.
17. (1) The Commission shall meet at least once a month at such times and in such places as the chairperson may determine.

(2) The quorum for a meeting of the Commission shall be half of the total number of commissioners.

(3) The chairperson shall preside over every meeting of the Commission at which he is present and in the absence of the chairperson, the Commission shall appoint any of the commissioners to preside.

(4) Each meeting of the Commission shall be attended by the secretary or in his absence, by such other officer or employee of the Commission as the Commission may designate.

(5) A decision of the Commission on any question shall be by a majority of the commissioners present and voting at the meeting, and, in the event of an equality of votes, the chairperson or the person presiding shall have a casting vote in addition to his deliberative vote.

(6) For the purposes of subsections (2) and (6), “commissioners” includes the chairperson but does not include the secretary or any additional commissioners co-opted under section 10.

18. The Commission may delegate any of its functions to –

(a) a committee established by the Commission; or

(b) a committee established by a ministry or department of the Government if at least one of the members of the committee is the chairperson or a commissioner.

19. If a person present at a meeting of the Commission or a committee thereof is directly or indirectly interested in a matter under consideration at the meeting, the person shall, as soon as reasonably practicable after the commencement of the meeting, disclose such interest, and such disclosure shall be recorded in the minutes of the meeting and the person shall not take part in any consideration or discussion of, or vote on, any question touching on such matter.

PART IV – FINANCIAL PROVISIONS

20. (1) The funds of the Commission shall consist of –

(a) monies provided by parliament for purposes of the Commission;
(b) any grants, gifts, donations or other endowments given to the Commission; 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 and the commissioners shall be paid out of the funds of the Commission.

21. (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 Treasury may, from time to time, approve.

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

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

23. (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 estimated expenditure of the Commission for the financial year and in particular, the estimates shall provide for:-

(a) the payment of the salaries, allowances and other charges in respect of the staff of the Commission;

(b) the payment of pensions, gratuities and other charges in respect of the staff of the Commission;

(c) the proper maintenance of the buildings and grounds of the Commission;

(d) the maintenance, repair and replacement of the equipment and other property of the Commission;

(e) the cost of the law reform activities of the Commission; and

(f) the creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance or replacement
of buildings or equipment, or in respect of such other matter as the Commission may deem appropriate.

(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 “Minister for approval” and there after, the Commission shall not increase the annual estimates without the consent of the Minister.

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

(2) Within a period of four months from the end of each financial year, the Commission shall submit to the Controller and Auditor-General or to an auditor appointed under this section, the accounts of the Commission together with -

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

(b) a statement of the assets and liabilities of the Commission on the last day of that year.

(3) The accounts of the Commission shall be audited and reported in accordance with the Public Audit Act.

25. The Commission shall be entitled, upon application to the Minister responsible for finance, to exemption from duty chargeable under the Stamp Duty Act 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.

26. The Commission may, subject to the approval of the Treasury, establish, control, manage, maintain and contribute to pension and provident funds for the benefit of the secretary and other staff of the Commission and may grant pensions and gratuities from any such fund to the said officers and other staff upon their retirement from the service of the Commission or, as the case may be, to the dependants of any such secretary or other member of staff upon his death.

PART V – MISCELLANEOUS

27. (1) 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.
(2) The Commission shall make an annual report to the Minister on its proceedings and the Minister shall within sixty days of receipt lay that report before the National Assembly with any comments thereon that he considers appropriate.

28.(1) No person shall, without the written consent of the Commission, publish the contents of any document, communication or information which has come to his knowledge in the course of his duties under this Act.

(2) A person who contravenes this section commits an offence and shall be liable, on conviction, to a fine not exceeding ten thousand shillings, or to imprisonment for a term not exceeding six months, or to both.

29. No commissioner, officer or employee of the Commission, including the chairperson shall be personally liable for any act or omission done or omitted to be done in good faith in carrying out any function under this Act.

30. The Minister in consultation with the Commission may make regulations –

(a) providing for the charging of consultancy fees by the Commission;

(b) providing for the publication and dissemination of proposals for law reform;

(c) providing for public lectures and debates relating to matters under review by the Commission; and

(d) generally for the better carrying out of the provisions of this Act.

PART VI – REPEAL AND TRANSITIONAL PROVISIONS


32. Subject to section 33, the Law Reform Commission Act is repealed.

33. Notwithstanding the provisions of section 32 –

(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;

34. (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 a member of staff of the Commission appointed under section 14:

Provided that such person shall, within twelve months of such commencement, have and exercise by writing under his hand, the option to remain in the Commission or to be redeployed in the public service.

(2) A person who fails to exercise the option conferred by subsection (1) within the period specified shall be referred to the Public Service Commission for redeployment.
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 II provides for the establishment and incorporation of the Commission and also sets out the functions and powers of the Commission. These include receiving and considering proposals for law reform, undertaking examination of particular branches of the law and drawing the attention of the Minister to Bills that would have adverse effects on all or part of the country. The membership of the Commission comprises a chairperson, three full-time commissioners and five part-time commissioners. 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 appropriated 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 Exchequer and Audit Act 2002.

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 17th February, 2006