

THE KENYA NATIONAL COMMISSION ON HUMAN RIGHTS ACT, 2002

No. 9 of 2002

Date of Assent: 24th October, 2002
Date of Commencement: 12th March, 2003

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SCHEDULE

AN ACT of Parliament to provide for the establishment of the Kenya National Commission on Human Rights for the better promotion and protection of human rights and for connected purposes

ENACTED by the Parliament of Kenya as follows:-

PART I – PRELIMINARY

1. This Act may be cited as the Kenya National Commission on Human Rights Act, 2002.
2. In this Act, unless the context otherwise requires -

“Commission” means the Kenya National Commission on Human Rights established by section 3;

“commissioner” means a commissioner appointed under section 4;

“committee” means the Parliamentary departmental committee responsible for legal and constitutional affairs;

“disciplined force” means –

- (a) any of the armed forces;
- (b) the Police Force;
- (c) the Prison Service;
- (d) the National Youth Service;
- (e) the Kenya Wildlife Service; or
- (f) any other force or service established by law for the Republic of Kenya;

“human rights” means the fundamental rights and freedoms of any individual protected

under the Constitution and any human rights provided for in any international instrument to which Kenya is a signatory;

“international instrument” means any treaty, convention, declaration or statement of principles relating to human rights adopted by the General Assembly of the United Nations, the Organization of African Unity or any other international or regional organization of which Kenya is a member;

“Minister” means the Attorney-General and “Ministry” shall be construed accordingly;

“public servant” means a person employed in the public service, that is to say, any person holding or performing with authority, the duties of any of the following offices (whether as principal or as deputy and whether such service is permanent or temporary, paid or unpaid) –

- (a) any office the holder of which is appointed or removed by the President or by any service commission;
- (b) any office the holder of which is appointed, elected or otherwise selected in pursuance of any written law;
- (c) any office the holder of which is appointed by any person or persons holding or performing, with authority, the duties of an office of one of the kinds specified in paragraph (a) or (b) and without prejudice to the generality of the foregoing, includes

- (i) an arbitrator or umpire in any proceedings or matter submitted or arbitration by order or with the sanction of any court or in pursuance of any written law;
- (ii) every member of a commission of inquiry or of a tribunal appointed or selected in pursuance of any written law;
- (iii) any person in the service of the disciplined forces;
- (iv) any person in the employment of the Government of any local authority;
- (v) any person acting in religious capacity, in respect of the exercise by him of any functions relating to marriage, birth, baptism, death or burial, but not in any other respect;

“service commission” means the Public Service Commission or the Judicial Service Commission;

“Standing Committee on Human Rights” means the Standing Committee on Human Rights established by the President on the 21st June, 1996;

“Tribunal” means a Tribunal appointed under section 11.

PART II – ESTABLISHMENT, POWERS AND FUNCTIONS OF THE KENYA NATIONAL COMMISSION ON HUMAN RIGHTS

3. (1) There is established a commission to be known as the Kenya National Commission on

Human Rights, which shall be the successor to the Standing Committee on Human Rights.

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

- (a) suing and being sued;
- (b) purchasing or otherwise acquiring, holding, charging or disposing of moveable and immoveable property;
- (c) borrowing and lending money; and
- (d) doing or performing all such other acts or things necessary for the proper performance of its functions under this Act which may be lawfully done by a body corporate.

4. The commission shall consist of -

- (a) a chairperson appointed from amongst the commissioners in accordance with section 6;
- (b) nine commissioners nominated by the National Assembly and appointed by the President in accordance with section 6.

5. (1) A person shall be qualified for appointment as a Commissioner if such person –

- (a) is a citizen of Kenya;
- (b) is a person of high moral character and proven integrity and has knowledge and experience in matters relating to human rights; and
- (c) in the case of the chairperson, is qualified to hold office as a Judge of the High Court of Kenya.

(2) No person shall be qualified for appointment as a commissioner if such person -

- (a) is a member of Parliament;
- (b) is a member of a local authority; or
- (c) is a member of the executive body of a political party.

6. (1) The National Assembly shall, within fourteen days of the commencement of this Act, by advertisement in the Gazette and in at least three daily newspapers of national circulation, invite applications from persons qualified under this Act for nomination as commissioners.

(2) An application under subsection (2) shall be forwarded to the National Assembly within twenty-one days of the advertisement and may be made -

- (a) by any qualified person; or
- (b) by any person, organization or group of persons proposing the nomination of any qualified person.

(3) The National Assembly shall, within seven days of the expiry of the period prescribed under subsection (2), cause the committee to -

- (a) consider all the applications received under subsection (2); and
- (b) recommend to the National Assembly suitably qualified persons for nomination as commissioners.

(4) The committee shall, within thirty days, consider all applications received under subsection (2) and shall recommend to the National Assembly therefrom, twelve persons for nomination as commissioners.

(5) In the performance of its functions under this section, the committee may co-opt any person who in its opinion possesses the relevant expertise in the field of human rights to assist it in its work.

(6) The National Assembly shall, upon receipt of the recommendations of the committee under subsection (4), nominate twelve persons for appointment as commissioners and shall submit the list of nominees to the Attorney-General for onward transmission to the President.

(7) The Attorney-General shall forthwith forward the names of the persons nominated under subsection (6) to the President who shall, by notice in the Gazette, appoint therefrom nine commissioners.

(8) In nominating or appointing persons as commissioners, the National Assembly and the President shall have regard to -

- (a) Kenya's ethnic, geographical, cultural, political, social and economic diversity; and
- (b) the principle of gender equity.

(9) The Attorney-General shall, within fifteen days of the appointment of the commissioners, convene the first meeting of the Commission at which the commissioners shall elect from amongst their number -

- (a) a chairperson; and
- (b) a vice-chairperson,

who shall be of opposite gender.

(10) The chairperson and the commissioners shall, upon appointment, hold office on a full time basis and shall enjoy -

- (a) in the case of the chairperson, the status of a judge of appeal; and
- (b) in the case of a commissioner, the status of a judge of the High Court.

7. (1) There shall be a Secretary to the Commission who shall be appointed by the Commission upon such terms and conditions of service as the Commission may determine and shall enjoy a status not less than that of a Permanent Secretary.

(2) Subject to the general control of the Commission, the Secretary shall -

- (a) be responsible for the carrying out of the policy decisions of the Commission and the day-to-day administration and management of the affairs of the Commission and the control of the other staff of the Commission; and
- (b) perform such other function as may be assigned by the Commission.

(3) The Secretary shall, unless in any particular case the Commission otherwise directs in writing, attend all meetings of the Commission but shall have no vote on any matter falling to be decided by the Commission at any such meeting.

(4) 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; or
- (b) misbehaviour or misconduct; or
- (c) incompetence.

(5) Before the Secretary is removed under subsection (5), he shall be informed of the case against him and shall be given an opportunity to defend himself against any allegations against him.

8. (1) The chairperson, the commissioners and the Secretary shall each make and subscribe to the oath or affirmation set out in the Schedule.

(2) Every oath or affirmation by the chairperson shall be administered by the Secretary and every oath or affirmation by a commissioner or the Secretary shall be administered by the chairperson.

9. Unless the appointment of the chairperson or a commissioner is earlier terminated under this Act, a person appointed as the chairperson or as a commissioner shall hold office for a term of five years from the date of appointment and shall be eligible for re-appointment for one further term of a period not exceeding five years:

Provided that in the case of the initial commissioners, the Commission shall, at its first meeting, elect -

- (a) four commissioners whose terms of office shall expire at the end of three years; and
- (b) four other commissioners whose terms of office shall expire at the end of four years

from the date of appointment.

10. (1) The salaries and allowances payable to, and other terms and conditions of service of the chairperson and the commissioners shall be such as may be determined by the Committee in consultation with the Treasury.

(2) The salaries and allowances provided for under subsection (1) shall be a charge on the

Consolidated Fund.

11. (1) The office of a person appointed as the chairperson or as a commissioner shall become vacant if the person -

- (a) dies; or
- (b) resigns from office by writing under his hand addressed to the President; or
- (c) is convicted of an offence and sentenced to imprisonment for a term of three months or more without the option of a fine; or
- (d) is unable to discharge the functions of his office by reason of physical or mental infirmity as certified by two registered medical practitioners; or
- (e) is absent from three consecutive meetings of the Commission without good cause; or
- (f) is declared bankrupt by a court of competent jurisdiction.

(2) The President shall notify the termination of the appointment of the chairperson or a commissioner under this section by notice in the Gazette.

(3) Without prejudice to subsection (1), the chairperson or a commissioner may be removed from office for misbehaviour or misconduct; or, if the commissioner is convicted of an offence involving moral turpitude but not sentenced to a term of imprisonment, but shall not be removed except in accordance with this section.

(4) Where the removal from office of the chairperson or a commissioner arises under subsection (3) -

- (a) the Chief Justice shall, by notice in the Gazette, appoint a Tribunal which shall consist of a chairperson and two other members selected by the Chief Justice from among persons who hold or have held offices as judges of the High Court;
- (b) the Tribunal shall inquire into the matter and report on the facts to the Chief Justice and recommend whether the chairperson or the commissioner ought to be removed from office and the Chief Justice shall communicate the recommendations of the Tribunal to the President.

(5) Where the question of removing the chairperson or a commissioner has been referred to a Tribunal under subsection (4), the President may suspend the chairperson or the commissioner from the Commission and the suspension may at any time be revoked by the President and shall in any case cease to have effect if the Tribunal recommends to the President that the chairperson or the commissioner, as the case may be, should not be removed.

(6) Where a vacancy occurs in the office of a commissioner, the National Assembly shall nominate a sufficient number of persons to fill the vacancies arising and two additional persons and the President shall, within a period of six months, appoint the required number of commissioners to fill the vacancies out of the total number of nominees.

(7) In the filling of vacancies under subsection (6), the procedure prescribed under section 6

shall, *mutatis mutandis*, apply.

(8) A commissioner who is appointed in place of a commissioner whose office has become vacant under this section shall hold office for the remainder of the term of office of that commissioner.

12. If the chairperson of the Commission vacates the office under subsection (1) of section 11 or is suspended under subsection (5) of that section, the vice-chairperson shall act as the chairperson until the appointment of a new chairperson or until the Tribunal recommends that the chairperson should not be removed.

13. No act or proceedings of the Commission shall be invalid by reason only of a vacancy or defect in the composition of the Commission.

14. (1) The principal office and meeting place of the Commission shall be in Nairobi.

(2) The Commission may establish such regional offices as it considers suitable for the better performance of its functions.

(3) Subject to subsection (1) and to any rules made under subsection (4), the Commission shall meet at such times and places as the Commission may deem appropriate but shall meet at least once in every month.

(4) Subject to this Act, the Commission may regulate its own procedure and formulate its own rules.

(5) The quorum for any meeting of the Commission shall be five commissioners.

(6) All orders and decisions of the Commission shall be authenticated by the chairperson or the Secretary or any other commissioner authorized in writing by the chairperson in that behalf.

(7) The common seal of the Commission shall be kept in such safe custody as the Commission may direct and shall not be used except on the order of the Commission.

(8) The common seal of the Commission when affixed to a document and duly authenticated shall be judicially and officially noticed and unless and until the contrary is proved, any necessary order or authorization by the Commission under this section shall be presumed to have been duly given.

(9) Subject to any regulations under section 35, the Commission may establish subcommittees of the Commission and co-opt into their membership such experts as may be necessary for the better exercise of the powers and carrying out of the functions of the Commission.

15. (1) The Commission may appoint such officers and other staff of the Commission as it

may consider necessary for the proper performance of its functions under this Act.

(2) The officers and other staff appointed under subsection (1) shall serve on such terms and conditions as the Commission, in consultation with the Treasury, may determine.

(3) The Public Service Commission may, upon the request of the Commission, second thereto such number of public servants as may be necessary for the purposes of the Commission.

(4) A public servant seconded to the Commission under subsection (3) shall, during the period of his secondment, be deemed to be an officer of the Commission and shall be subject only to the direction and control of the Commission.

16. (1) The functions of the Commission shall be-

- (a) to investigate, on its own initiative or upon a complaint made by any person or group of persons, the violation of any human rights;
- (b) to visit prisons and places of detention or related facilities with a view to assessing and inspecting the conditions under which the inmates are held and make appropriate recommendations thereon;
- (c) to inform and educate the public as to human rights for the purpose of enhancing respect for such rights by means of a continuing programme of research, publication, lectures and symposia and by such other means as the Commission may deem fit;
- (d) to recommend to Parliament effective measures to promote human rights, including provision of compensation to victims of violations of human rights or their families;
- (e) to formulate, implement and oversee citizens of and other persons resident in Kenya, awareness of their civic responsibilities and an appreciation of their rights and obligations as free people;
- (f) to act as the chief agent of the compliance with its obligations under international treaties and conventions on human rights;
- (g) to encourage the efforts of other institutions working in the field of human rights and co-operate with such other institutions for the purpose of promoting and protecting human rights in Kenya;
- (h) to investigate and conciliate complaints on its own initiative where the nature of the alleged human rights violation makes conciliation both possible and appropriate; and
- (i) to perform such other functions as the Commission may consider necessary for the promotion and protection of human rights.

17. In the performance of its functions under this Act, the Commission shall -

- (a) accommodate the diversity of the Kenyan people;
- (b) observe the principle of impartiality and gender equity;
- (c) have regard to all applicable international human rights standards and in particular, to the fact that human rights are indivisible, interdependent, interrelated and of equal importance for the dignity of all human beings; and
- (d) observe the rules of natural justice and fairness.

18. The Commission shall have all the powers necessary or expedient for the proper performance of its functions under this Act and shall not be subject to the direction or control of any other person or authority.

19. (1) In the performance of its functions under this Act, the Commission shall have the powers of a court to -

- (a) issue summonses or other orders requiring the attendance of any person before the Commission and the production of any document or record relevant to any investigation by the Commission;
- (b) question any person in respect of any subject matter under investigation before the Commission;
- (c) require any person to disclose any information within such person's knowledge relevant to any investigation by the Commission.

(2) The Commission may, if satisfied that there has been an infringement of any human right or freedom, order -

- (a) the release of any unlawfully detained or restricted person;
- (b) the payment of compensation; or
- (c) any other lawful remedy or redress.

(3) A person or authority dissatisfied with an order made by the Commission under subsection (2) may appeal to the High Court within twenty-one days of such order.

(4) An order of the Commission under subsection (2) may be filed in the High Court by any party thereto in such manner as the Commission may, in Regulations made in consultation with the Chief Justice, prescribe and such party shall give written notice of the filing of the order to all other parties within thirty days of the date of the filing of the order.

(5) If no appeal is filed under subsection (3), the party in favour of whom the order is made by the Commission may apply *ex parte* by summons for leave to enforce such order as a decree and the order may be executed in the same manner as an order of the High Court to the like effect.

(6) A person who -

- (a) fails to attend before the Commission in accordance with any summons or order issued under subsection (1)(a); or
- (b) having attended before the Commission, refuses to be sworn or to make an affirmation, or having been sworn or affirmed, refuses without lawful excuse, to answer any question or to produce any document; or
- (c) knowingly gives any false or misleading information to the commission; or
- (d) causes an obstruction or disturbance in the course of any proceedings before the Commission,

commits an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand shillings, or to imprisonment for term not exceeding six months, or to both.

20. (1) The Commission may, for the purpose of conducting any investigation pertaining to an inquiry, utilize the services of any public servant or investigation agency of the Government and where a public servant is so utilized under this subsection, the Commission shall pay such public servant or agency for the service rendered.

(2) For the purpose of investigating into any matter pertaining to an inquiry, a public servant or agency whose services are utilized under subsection (1) may, subject to the direction and control of the Commission -

- (a) summon and enforce the attendance of any person for examination;
- (b) require the discovery and production of any document; and
- (c) subject to the Official Secrets Act, requisition any public records or copy thereof from any public servant.

(3) The provisions of section 24 shall apply in relation to any statement made by a person before any public servant or agency whose services are utilized under subsection (1) as they apply in relation to any statement made by a person in the course of giving evidence before the Commission.

(4) The public servant or agency whose services are utilized under subsection (1) shall investigate into any matter pertaining to the inquiry and submit a report thereon to the Commission in that behalf.

(5) The Commission shall satisfy itself on the correctness of the facts stated and the conclusion, if any, arrived at in the report submitted to it under subsection (4) and for that purpose, the Commission may make such inquiry (including the examination of any person or persons who conducts or assists in the investigation) as it deems fit.

21. (1) The Commission shall submit an annual report to the President and to the National Assembly through the Minister and may at any time submit special reports to the President and to the National Assembly on any matter.

(2) The annual report submitted by the Commission under subsection (1) shall include an overall assessment by the Commission of the performance of the Government in the field of human rights during the period under review.

(3) The Minister shall lay the annual report of the Commission before the National Assembly within two months of receipt thereof, with any comments thereon which the Minister considers necessary:

Provided that the Minister may present the report to the National Assembly at its first sitting where the two months period under this subsection extends into the recess or prorogation of

the National Assembly.

22. (1) A person wishing to lodge a complaint of the violation of human rights shall do so orally or in writing addressed to the Secretary or such other person as may be duly authorized by the Commission for that purpose.

(2) A complaint under subsection (1) shall be in such form and contain such particulars as the Commission may, from time to time, prescribe.

(3) Upon receipt of a complaint under subsection (1), the Commission may -

(a) call for information or a report regarding such complaint from the Government or any other body within such reasonable time as may be specified by the Commission:

Provided that -

(i) if the information or report is not received within the time stipulated by the Commission, the Commission may proceed to inquire into the complaint without such information or report;

(ii) if no receipt of the information or report the Commission is satisfied either that no further action is required or that the required action has been initiated by the Government or other body, the Commission shall, in writing, inform the complainant accordingly and take no further action;

(b) without prejudice to paragraph (a), initiate such inquiry as it considers necessary, having regard to the nature of the complaint.

23. (1) Subject to subsection (2), if at any stage of an inquiry the Commission -

(a) considers it necessary to inquire into the conduct of any person; or

(b) is of the opinion that the reputation of any person is likely to be prejudiced by the inquiry,

it shall give that person an opportunity to appear before the Commission by himself or by an advocate to give evidence in his own defence.

(2) This section shall not apply where the credibility of a witness is being impeached.

24. No statement made by a person in the course of giving evidence before the Commission shall subject such person to any civil or criminal proceedings except for giving false evidence by such statement:

Provided that the statement -

(a) is made in reply to a question which the person is required by the Commission to answer;

and

(b) is relevant to the subject matter of the inquiry.

25. The Commission may take any of the following steps after completing an inquiry into a complaint under this Act -

(a) where the inquiry discloses a violation of human rights or negligence in the prevention of violation of human rights by a public servant, recommend to the Attorney-General or any other relevant authority -

(i) the prosecution of the person suspected of violating the human rights or being negligent in the prevention of the violation; or

(ii) such other action as the Commission may deem fit against the concerned person or persons; or

(b) in its own name, commence and prosecute appropriate proceedings in the High Court under section 84(1) of the Constitution for such orders, writs or directions as may be appropriate; or

(c) recommend to the petitioner a course of other judicial redress which does not warrant an application under section 84(1) of the Constitution; or

(d) recommend to the petitioner and to the Government or other body concerned in the alleged violation of human rights other appropriate methods of settling the complaint or to obtain relief; and

(e) provide a copy of the inquiry report to all interested parties; and

(f) send a copy of its quarterly report together with its recommendations to the President.

PART III – FINANCIAL PROVISIONS

26. (1) The funds of the Commission shall be derived from such sums as may, from time to time, be appropriated by Parliament for that purpose.

(2) The Commission may receive grants and donations from any other source:

Provided that such grants and donations shall not be made or received for purposes of influencing the decision or ability of the Commission in any way and shall be disclosed in the annual report of the Commission.

(3) There shall be paid out of the funds of the Commission, all expenditure incurred by the Commission in the exercise of its powers or the performance of its functions under this Act.

27. The Commission shall open and maintain such bank accounts as are necessary for the

performance of its functions.

28. The Commission may –

- (a) invest any of its surplus funds in Government securities;
- (b) place on deposit with such banks as it may determine, any moneys not immediately required for the purposes of the Commission.

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

30. 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 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.

(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 after the Minister's approval, the Commission shall not increase the annual estimates without the consent of the Minister.

31. (1) The Commission shall cause to be kept 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, the accounts of the Commission together with

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- (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) Notwithstanding the provisions of any other written law for the time being in force, the accounts of the Commission shall be audited by the Controller and Auditor-General.

PART IV – MISCELLANEOUS PROVISIONS

32. The Commission shall not investigate -

- (a) any matter which is pending before a court or a judicial tribunal;
- (b) a matter essentially involving the relations or dealings between the Government and the Government of foreign state or international organization recognized as such under international law; or
- (c) a matter relating to the exercise of the prerogative of mercy.

33. No suit or other legal proceeding shall lie against the Commission or any commissioner or any person acting under the direction of the Commission or appointed to serve on a subcommittee of the Commission in respect of anything which is done in good faith or intended to be done in pursuance of this Act or of any regulations or order made hereunder or in respect of any report, paper or proceedings of the Commission.

34. All property, except such property as the Minister may determine, which immediately before the commencement of this Act was vested in the Ministry for the use of the Standing Committee on Human Rights shall, at the commencement of this Act, vest in the Commission subject to all interests, liabilities, charges, obligations and trusts affecting such property.

35. The Commission, with the approval of the Minister, may make regulations prescribing anything which under this Act may be prescribed and generally for the better carrying out of the purposes and objects of the Act.

36. Notwithstanding the provisions of section 4, the Standing Committee on Human Rights shall continue in office until the President appoints the commissioners under this Act.

SCHEDULE

OATH/AFFIRMATION OF THE OFFICE OF A COMMISSIONER/THE SECRETARY

I having been appointed (a commissioner of/the secretary to) the Kenya National Commission on Human Rights under the Kenya National Commission on Human Rights Act, 2000 do solemnly (swear/declare and affirm) that I will faithfully and fully, impartially and to the best of my ability, discharge the trust and 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

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(Chairman/Secretary)
Kenya National Commission on Human Rights