



LAWS OF KENYA

**COMMISSION FOR THE IMPLEMENTATION
OF THE CONSTITUTION ACT**

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Implementation of the Constitution*

NO. 9 OF 2010

**COMMISSION FOR THE IMPLEMENTATION OF THE
CONSTITUTION ACT**

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NO. 9 OF 2010

**COMMISSION FOR THE IMPLEMENTATION
OF THE CONSTITUTION ACT**

[Date of assent: 27th October, 2010.]

[Date of commencement: See Section 1.]

An Act of Parliament to provide for the functions, powers, qualification of, and appointment procedure for members of the Commission for the Implementation of the Constitution and for connected purposes

[Act No. 9 of 2010.]

PART I – PRELIMINARY

1. Short title and Commencement

This Act may be cited as the Commission for the Implementation of the Constitution Act, 2010 and shall come into operation within two days of its publication in the *Gazette*.

2. Interpretation

In this Act, unless the context otherwise requires—

“**Chairperson**” means the Chairperson appointed in accordance with the Constitution and section 8 of this Act;

“**Commission**” means the Commission for the Implementation of the Constitution established under section 5 of the Sixth Schedule to the Constitution;

“**Parliamentary Select Committee**” means the Constitutional Implementation Oversight Committee established in accordance with section 4 of the Sixth Schedule to the Constitution;

“**Secretary**” means the Secretary appointed in accordance with section 13 of this Act.

PART II – ADMINISTRATION

3. Incorporation of the Commission

(1) The Commission shall in accordance with the Constitution, 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 and this Act.

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(2) The headquarters of the Commission shall be in Nairobi, but the Commission may establish branches at any place in Kenya.

4. Functions of the Commission

The functions of the Commission shall be to—

- (a) monitor, facilitate, and oversee the development of legislation and administrative procedures required to implement the Constitution;
- (b) co-ordinate with the Attorney-General and the Kenya Law Reform Commission in preparing for tabling in Parliament, the legislation required to implement the Constitution;
- (c) work with each constitutional Commission to ensure that the letter and the spirit of the Constitution is respected;
- (d) report at least once every three months to the Parliamentary Select Committee on—
 - (i) the progress in the implementation of the Constitution; and
 - (ii) any impediments to the implementation of the constitution;
- (e) exercise such other functions as are provided for by the constitution or any other written law.

5. Powers of the Commission

(1) The Commission shall have all powers generally necessary for the execution of its functions under the Constitution and this Act.

(2) At least five of the members, including the Chairperson, shall serve on a full time basis.

6. Membership of the Commission

The Commission shall consist of a Chairperson and eight other members appointed in accordance with the Constitution and the provisions of this Act.

7. Qualifications of Chairperson and members

(1) A person is qualified for appointment as the Chairperson or a member of the Commission if such person—

- (a) is a citizen of Kenya;
- (b) is the holder of a degree from a recognized university;
- (c) has knowledge and experience and has had a distinguished career of not less than five years in, but not limited to, any of the following fields—
 - (i) law;
 - (ii) public administration;
 - (iii) economics;
 - (iv) human rights; or
 - (v) government;
- (d) meets the requirements of Chapter Six of the Constitution.

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(2) The Chairperson of the Commission shall be a person who is qualified to hold the office of judge of the Supreme Court under the Constitution.

(3) No person shall be qualified for appointment as a member if such person—

- (a) is a State officer;
- (b) is a member of a local authority;
- (c) is bankrupt; or
- (d) has served as a member of the Committee of Experts appointed under the Constitution of Kenya Review Act, 2008 (No. 9 of 2008).

8. Procedure for appointment of members

(1) The President in consultation with the Prime Minister shall, within seven days of the commencement of this Act, by notice in the *Gazette* declare vacancies in the Commission and request for applications.

(2) An application under subsection (1) shall be forwarded to the Public Service Commission within fourteen days of the notice and may be made by any—

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

(3) The names of all applicants under subsection (2) shall be published in the *Gazette*.

(4) The Public Service Commission shall, within seven days of the expiry of the period prescribed under subsection (2), convene a Committee comprising of one representative from the—

- (a) Cabinet Office;
- (b) Office of the Prime Minister;
- (c) Ministry of Justice, National Cohesion and Constitutional Affairs;
- (d) State Law Office;
- (e) Ministry of State for Public Service; and
- (f) Public Service Commission,

for the purposes of considering the applications, interviewing and shortlisting at least three persons qualified for appointment as Chairperson and eighteen persons who qualify for appointment as members and shall forward the shortlisted names to the President and the Prime Minister for nomination.

(5) The President in consultation with the Prime Minister shall, within seven days of the expiry of the period prescribed under subsection (4), nominate one person for appointment as Chairperson and eight persons for appointment as members of the Commission, and shall forward the names of the persons so nominated to the National Assembly.

(6) The National Assembly shall, within fourteen days of receipt of the names under subsection (5), consider all the nominations received and approve or reject any nomination.

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(7) Upon consideration and approval by the National Assembly, the Speaker shall, within seven days, forward the names of the approved persons to the president for appointment.

(8) Where the National Assembly rejects any nomination, the Speaker shall, within three days, communicate its decision to the President and the Prime Minister to submit fresh nominations.

(9) Where a nominee is rejected by Parliament under subsection (6), the President in consultation with the Prime Minister shall, within seven days, submit to the National Assembly a fresh nomination from amongst the persons shortlisted and forwarded by the Public Service Commission under subsection (4).

(10) If Parliament rejects all or any subsequent nominee submitted by the President for approval under subsection (9), the provisions of subsection (8) shall apply.

(11) The President shall, within seven days of receipt of names from the Speaker, by notice in the *Gazette*, appoint the Chairperson and members approved and forwarded by the National Assembly.

(12) In shortlisting, nominating or appointing persons as Chairperson and members of the Commission, the shortlisting Committee, the National Assembly and the President shall ensure that not more than two-thirds of the members are of the same gender.

9. Chairperson

(1) The Chairperson and members of the Commission shall be appointed by the President in accordance with section 8.

(2) The Chairperson shall, within seven days of the appointment of the members, convene the first meeting of the Commission at which the members shall elect the Vice-Chairperson of the Commission from amongst the members.

(3) The Chairperson shall—

- (a) preside over all meetings of the Commission;
- (b) be the spokesperson for the Commission; and
- (c) supervise and direct the work of the Commission.

(4) In the absence of the Chairperson, the Vice-Chairperson shall act as the Chairperson and in the absence of both the Chairperson and the Vice-Chairperson, a member elected by the Commission shall act as the Chairperson.

10. Tenure of office of Chairperson and members

The term of office of the Chairperson or a member shall be from the date of appointment and shall, unless the office falls vacant earlier owing to any reason specified in the Constitution or section 11 of this Act, terminate on the dissolution of the Commission.

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11. Vacancy

(1) The office of the Chairperson or a member shall become vacant if the holder

- (a) dies;
- (b) by a notice in writing addressed to the President, resigns from office;
- (c) is removed from office under any of the circumstances specified in Article 251 and Chapter Six of the Constitution;
- (d) is unable to discharge the functions of his office by reason of physical or mental infirmity;
- (e) is absent from three consecutive meetings of the Commission without good cause; or
- (f) is declared bankrupt.

(2) The Chairperson or a member may be removed from office for misbehavior or misconduct incompatible with the functions of the Commission.

(3) The President shall notify every resignation, vacancy or termination in the *Gazette* within seven days.

12. Filling of vacancy

(1) Where a vacancy occurs in the membership of the Commission in accordance with section 11, the President, in consultation with the Prime Minister, shall nominate a member for approval by the National Assembly in accordance with section 8.

(2) Notwithstanding the provisions of subsection (1), the President, in consultation with the Prime Minister, may select a nominee from the list provided by the Public Service Commission under section 8(4) for the purposes of filling a vacancy.

(3) The member appointed under subsection (1) shall serve for the remainder of the term.

13. Appointment of secretary

(1) There shall be a secretary of the Commission and whose term of office shall be from the date of appointment until dissolution of the Commission unless the office falls vacant earlier owing to any reason specified under subsection (4).

(2) The secretary shall be the Chief Executive Officer of the Commission and the head of the Secretariat and shall be responsible to the Commission for—

- (a) the day to day administration and management of the affairs of the Commission;
- (b) the co-ordination of the studies, research and evaluation of the Commission;
- (c) the recording of the proceedings of the Commission;
- (d) the custody of all records and documents of the Commission; and
- (e) the performance of such other duties as may be assigned by the Commission from time to time.

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(3) The secretary shall be appointed by the Commission through a competitive recruitment process.

(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;
- (b) misbehavior or misconduct; or
- (c) incompetence.

(5) Before the secretary is removed under subsection (4), he shall be informed of the case against him and shall be given an opportunity to defend himself against any allegations against him.

14. Oath of office

The Chairperson, members and the secretary shall each make and subscribe before the Chief Justice, the oath or affirmation set out in the First Schedule.

15. Committees of the Commission

(1) The Commission may, from time to time, establish committees for the better carrying out of its functions.

(2) The Commission may hire experts or consultants whose knowledge and skills are found necessary for the functions of the Commission.

16. Procedure of the Commission

(1) Subject to this section, the Commission shall regulate its own procedure.

(2) The Commission shall hold such number of meetings in such places, at such times and in such manner as the Commission shall consider necessary for the discharge of its functions under the Constitution and this Act.

(3) The quorum of the Commission shall be two-thirds of its members.

17. Terms and conditions of service

(1) The salaries and allowances payable to, and other terms and conditions of service of the Chairperson and the members shall, pending the establishment of the Salaries and Remuneration Commission, be determined by the Public Service Commission in consultation with the Treasury.

(2) The salaries and allowances provided for under subsection (1) shall be charged on the Consolidated Fund.

18. Appointment of Staff

(1) The Commission may appoint such officers and other staff as are necessary for the proper discharge of its functions under this Act, upon such terms and conditions of service.

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

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(3) The Government may, upon request by the Commission, second to the Commission such number of public servants as may be necessary for the purposes of the Commission.

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

19. The common seal of the Commission

(1) The Common seal of the Commission shall be kept in such custody as the Commission shall direct and shall not be used except on the order of the Commission.

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

20. Protection from personal Liability

No matter or thing done by a member of the Commission or any officer, employee or agent of the Commission shall, if the matter or thing is done in good faith for executing the functions, powers or duties of the Commission, render the member, officer, employee or agent personally liable to any action, claim or demand whatsoever.

PART III – FINANCIAL PROVISIONS

21. Funds of the Commission

The funds of the Commission shall consist of—

- (a) monies provided by Parliament for the purposes of the Commission;
- (b) such monies or assets as may accrue to the Commission in the course of the exercise of its powers or the performance of its functions under this Act; and
- (c) all monies from any other source provided, donated or lent to the Commission.

22. Financial year

The financial year of the Commission shall be the period of twelve months beginning first July and ending on the thirtieth June in each year.

23. Annual estimates

(1) 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—

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

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- (b) The payment of pensions, gratuities and other charges and in respect of benefits which are payable out of the funds of the Commission;
- (c) The maintenance of the buildings and grounds of the Commission;
- (d) The funding of training, research and development of activities of the Commission;
- (e) The 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.

24. Accounts and audit

(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 the Constitution and the Public Audit Act, 2003 (No. 12 of 2003).

PART IV – MISCELLANEOUS PROVISIONS

25. Progress report

(1) The Commission shall prepare a progress report every three months and submit the report to the Parliamentary Select Committee and the President and the Prime Minister.

(2) The progress report shall—

- (a) state the progress in the implementation of the constitution;
- (b) identify any impediments to the implementation of the constitution;
- (c) recommend any legal and administrative measures to address specific concerns identified by the Commission; and
- (d) state any other information relating to its function that the Commission considers necessary.

(3) The Commission shall publish the report in the *Gazette* and in such other manner as the Commission may determine.

26. Annual report

(1) The Commission shall cause an annual report to be prepared for each financial year.

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(2) The Commission shall submit the annual report to the President and Parliament within 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 considers appropriate relating to the implementation of the Constitution;
- (d) any other information relating to its functions that the Commission considers necessary.

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

27. Duty to co-operate

(1) A public officer, State Organ or State office shall at all times co-operate with the Commission in ensuring the successful implementation of the Constitution and shall in particular—

- (a) respond to any inquiry made by the Commission;
- (b) furnish the Commission with periodic reports as to the status of implementation of the Constitution in respect of the question raised;
- (c) provide any other information that the Commission may require in the performance of its functions under the Constitution and any other written law.

(2) Any public officer who breaches any of the provisions of this Act shall be deemed to be in contempt of Parliament and shall be liable, on conviction, to a fine not exceeding two hundred thousand shillings, or to imprisonment for a term not exceeding one year, or to both.

28. Regulations

(1) The Commission may make regulations generally for the better carrying into effect of the provisions of this Act.

(2) The regulations made under subsection (1) shall be tabled in the National Assembly for debate and approval before publication in the *Gazette*.

29. Dissolution of the Commission

(1) The Commission shall stand dissolved five years after it is established or at the full implementation of this constitution as determined by Parliament, whichever is sooner, but the National Assembly may, by resolution, extend its life.

(2) Upon dissolution of the Commission under the Constitution and this Act, this Act shall lapse.

(3) During the period prescribed in subsections (1) and (2), the Commission shall ensure that its affairs are wound up in an orderly manner and, in particular shall ensure that—

- (a) those aspects of its work that will be of value to other institutions are preserved, documented and transferred; and

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(b) its files and records are preserved and transferred to the Kenya National Archives and Documentation Service.

(4) Upon the dissolution of the Commission under subsections (1) and (2), any assets and liabilities of the Commission, shall become assets and liabilities of the Government.

(5) The terms of the Chairperson and members shall expire upon dissolution of the Commission.

30. Criteria for vetting or approving appointments

(1) Until Parliament enacts the law contemplated under Article 250(2)(a), (3) and (4) of the Constitution, the criteria specified in the Second Schedule shall be used by Parliament or any of its committees for the purposes of vetting or approving appointments to public office under the Constitution or any other written law.

(2) For the purposes of considering the applications, interviewing and shortlisting persons under this Act, the Public Service Commission shall apply the criteria set out in the Second Schedule.

(3) This section shall lapse upon enactment by Parliament of the law referred to in subsection (1).

FIRST SCHEDULE

[Section 14.]

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

I having been appointed
(the Chairperson/member of /Secretary to) the Commission for the Implementation
of the Constitution under the Commission for the Implementation Commission Act,
2010, do solemnly (swear/declare and 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 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

.....
Chief Justice.

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SECOND SCHEDULE

[Section 30.]

CRITERIA FOR VETTING/APPROVAL OF NOMINEES FOR
APPOINTMENT TO PUBLIC OFFICE BY THE NATIONAL ASSEMBLY

QUESTIONNAIRE

Notes:

- (a) This questionnaire applies to appointments to public office arising by or under the Constitution where parliamentary approval is required.
 - (b) The questionnaire shall be used by the relevant parliamentary committee to vet a nominee appearing before the committee in the process of parliamentary approval.
 - (c) The questionnaire shall be filled and submitted by the nominee to the relevant parliamentary committee through the Clerk of the National Assembly on or before a date set by the committee.
 - (d) The submission of false information in the questionnaire is an offence and may result in prosecution.
 - (e) Any form of canvassing by a nominee shall lead to disqualification.
 - (f) The nominee must answer all the questions.
-

- 1. **Name:** (State full name).
- 2. **Position:** (State office to which you have been nominated).
- 3. **Sex:**
- 4. **Date of Birth:** (State year and place of birth).
- 5. **Marital Status:**
- 6. **Daytime phone number:**
- 7. **Mobile phone number:**
- 8. **E-mail Address:**
- 9. **ID Number:**
- 10. **PIN Number:**
- 11. **Nationality:**
- 12. **Postal Address:**
- 13. **Town/City:**
- 14. **Knowledge of Languages:** (Specify Languages).
- 15. **Education:** (List, in reverse chronological order, each university, college, or any other institution of higher education attended and indicate, in respect of each, the dates of attendance, academic award obtained, whether a degree was awarded, and the dates on which each such degree was awarded).
Employment Record: (List in reverse chronological order all government agencies, business or professional corporations, companies, firms or other enterprises with which you have been affiliated as an officer, director, partner, proprietor, employee or consultant).
- 16. **Honours and Awards:** (List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships,

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SECOND SCHEDULE—*continued*

- military awards and any other special recognition for outstanding service or achievement and in respect of each, state the date of award and the institution or organization that made the award).
17. **Professional Association (where applicable):** (List all professional associations of which you are or have a member and give any positions held and the respective dates when each such position was held).
18. **Memberships:** (List all professional, business, fraternal, scholarly, civic, charitable or other organizations, (other than those listed in response to Question 16) to which you belong or have belonged).
19. **Published Writings:**
- (a) List the titles, publishers and dates of books, articles, reports letters to the editor, editorial pieces or other published materials you have authored or edited.
 - (b) Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of any bar association, committee, conference or organization of which you were a member.
20. **Public Office, Political Activities and Affiliations:**
- (a) List chronologically any public offices you have held or are currently holding, including the terms of service and whether such positions were elected or appointed.
 - (b) List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities. Also include any linkage you have to a political party at present.
 - (c) Have you ever been dismissed or otherwise removed from office for a contravention of the provisions of Article 75 of the Constitution?
 - (d) Have you ever been adversely associated with practices that depict bias, favouritism or nepotism in the discharge of public duties?
21. **Deferred Income/Future Benefits:** (List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, etc.).
22. **Outside commitment during service in office:** (Do you have any plans, commitments or agreements to pursue outside employment with or without compensation during your service in office? If so explain).
23. **Sources of Income:** (List sources and amounts of all income received during the calendar year preceding your nomination and in the current calendar year).
24. **Tax Status:** (State whether you have fully complied with your tax obligations to the State to date).
25. **Statement of Net Worth:** (State your financial net worth).

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SECOND SCHEDULE—*continued*

26. **Potential Conflicts of Interest:**
- (a) Identify the family members or other persons, parties, categories of litigation or financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.
 - (b) Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.
27. **Pro-Bono/Charity Work:** (Describe what you have done by way of *pro-bono* or charity work, listing specific instances and the amount of time devoted to each).
28. Have you ever been charged in a court or law? If so, specify the nature of the charge, where the matter is ongoing, the present status of the matter, or where the matter is concluded, the judgment of the court, or otherwise, how the case was concluded.
29. Have you ever been adversely mentioned in an investigatory report of Parliament or any other Commission of inquiry?
30. Have you any objection to the making of enquiries with your present employer/referees in the course of consideration of your nomination?
31. **References:** (List three persons who are not your relatives who are familiar with your character, qualification and work).
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