



LAWS OF KENYA

COMMISSIONS OF INQUIRY ACT

CHAPTER 102

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CHAPTER 102

COMMISSIONS OF INQUIRY ACT

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CHAPTER 102
COMMISSIONS OF INQUIRY ACT

[Date of assent: 28th May, 1962.]

[Date of commencement: 12th June, 1962.]

An Act of parliament to provide for the appointment of Commissioners to inquire into and report on matters of a public nature referred to them by the President, to prescribe their powers, privileges and duties, and to provide for other matters relating thereto

[Act No. 11 of 1962, L.N. 2/1964, L.N. 124/1964, Act No. 21 of 1966, Act No. 29 of 1967,
Act No. 5 of 2010.]

1. Short title

This Act may be cited as the Commissions of Inquiry Act.

2. Interpretation

In this Act—

“**commission**”, “**commissioner**” and “**inquiry**” mean respectively a commission issued, a commissioner appointed and an inquiry made under this Act.

3. Issue of commissions of inquiry

(1) The President, whenever he considers it advisable so to do, may issue a commission under this Act appointing a commissioner or commissioners and authorizing him or them, or any specified quorum of them, to inquire into the conduct of any public officer or the conduct or management of any public body, or into any matter into which an inquiry would, in the opinion of the President, be in the public interest.

(2) Every commission shall specify the matter to be inquired into, and shall direct where and when the inquiry shall be made and the report thereof rendered, and, where more commissioners than one are appointed, the commission may designate one such commissioner to be chairman, and, if the President so thinks fit, another such commissioner to be deputy chairman, of the commissioners.

(3) Without prejudice to any regulations made under section 18 of this Act, every commission shall direct how the commission shall be executed and, in particular, shall in a suitable case contain the following directions to be observed by the commissioner—

- (a) that the commissioner shall conform with the following instructions—
 - (i) that evidence adversely affecting the reputation of any person, or tending to reflect in any way upon the character or conduct of any person, shall not be received unless the commissioner is satisfied it is relevant to the inquiry, and that all reasonable efforts have been made to give such person prior warning of

Commissions of Inquiry

- (ii) that that person shall be given such opportunity as is reasonable and practicable to be present, either in person or by his advocate, at the hearing of such evidence, to cross-examine any witness testifying thereto, and to adduce without unreasonable delay material evidence in his behalf in refutation of or otherwise in relation to such evidence;
- (iii) that hearsay evidence which adversely affects the reputation of any person, or tends to reflect in any way upon the character or conduct of any person, shall not be received;
- (iv) that no expression of opinion shall be received in evidence of the character, conduct or motives of any person,

except in so far as the commissioner considers it essential, for ascertaining the truth of the matter into which he is commissioned to inquire, to depart from such instructions; and

- (b) that, in the event of any such departure from these instructions, the commissioner shall record his reasons therefor in the record of the inquiry, and shall report thereon, with his reasons therefor, in his report of the inquiry.

(4) A commission may direct that the public shall not be admitted to all or to any specified part of the proceedings of the inquiry; and subject to any such direction, every inquiry shall be held in public, but the commissioner may exclude any person or class of persons from all or any part of the proceedings of the inquiry if he is satisfied that it is desirable so to do for the preservation of order, for the due conduct of the inquiry, or for the protection of the person, property or reputation of any witness in the inquiry or any person referred to in the course of the proceedings thereof, and may, if he is satisfied that it is desirable for any of the purposes aforesaid so to do, order that no person shall publish the name, address or photograph of any such witness or person or any evidence or information whereby he would be likely to be identified, and any person who contravenes such an order shall, without prejudice to section 121 of the Penal Code (Cap. 63), be guilty of an offence and liable to a fine not exceeding two thousand shillings.

[L.N. 124/1964, Sch., Act No. 29 of 1967, First Sch.]

4. Power to appoint new commissioner and to revoke or amend commission

(1) The President may at any time, if he considers it advisable so to do, revoke, or issue a commission amending a commission previously issued, and, without prejudice to the generality of the foregoing power, may by any such amending commission appoint an additional commissioner or commissioners, vary the designation of the chairman or deputy chairman of the commissioners, or appoint a new commissioner in the place of any commissioner who is or becomes unable or unwilling to act or dies or is, in the opinion of the President, for any reason unsuitable to continue to serve as a commissioner.

(2) Where the President issues an amending commission under subsection (1), it shall not be necessary, unless in the amending commission the President otherwise directs, for the inquiry to be begun afresh, and any proceedings which have taken place under or in pursuance of the commission before such amendment shall be deemed, for all the purposes of this Act, to be part of the proceedings taking place under or in pursuance of the commission as so amended.

[L.N. 124/1964, Sch.]

5. Oath of office by commissioner

It shall be the duty of every commissioner appointed under this Act to make and subscribe before a judge of the High Court, prior to embarking on his duties as a commissioner, an oath in the prescribed form, and every such oath shall be deposited by the commissioner with the Attorney-General.

[L.N. 124/1964, Sch.]

6. Power to appoint secretary

The President may appoint a person to be secretary to the commissioner or commissioners appointed by a commission issued under this Act.

[L.N. 124/1964, Sch.]

7. Duties of commissioners

(1) It shall be the duty of a commissioner, after making and subscribing the prescribed oath, to make a full, faithful and impartial inquiry into the matter into which he is commissioned to inquire, to conduct the inquiry in accordance with the directions contained in the commission and on completion of the inquiry, to report to the President and to the National Assembly, in writing, the result of the inquiry and the reasons for the conclusions arrived at.

(1A) The report of a commissioner under subsection (1) shall include a full record of the proceedings of the commission.

(2) A commissioner may, and shall if so directed by the commission, include in his report recommendations as to any matter into which he is commissioned to inquire or any matter arising out of or connected with his inquiry.

[L.N. 124/1964, Sch., Act No. 5 of 2010, s. 2.]

8. Division of opinion of commissioners

If in any case the commissioners are divided on any question that arises during the proceedings of or in relation to their inquiry, the divergent views of the commissioners and the reasons therefor shall be recorded in the proceedings of the inquiry; and in the event of an equal division on any question requiring to be decided by the commissioners collectively, the chairman of the commissioners or, if the deputy chairman is presiding, the deputy chairman, shall have a second or casting vote:

Provided that nothing in this section shall be construed as preventing any commissioner from submitting to the President a minority report on any matter in regard to which he dissents from the views or conclusions of all or any of his fellow commissioners.

[L.N. 124/1964, Sch.]

9. Commissioner's power to regulate proceedings

A commissioner (or the commissioners, if more than one) may make such rules, not inconsistent with any regulations made under section 19 or with the terms of the commission, for the conduct and management of the proceedings of the inquiry, and for specifying the hours and times and places for sittings, as he or they may from time to time think fit, and may from time to time adjourn for such time and to such place as he or they may think fit, subject only to any such regulations and to the terms of the commission.

10. Commissioner's power to summon and examine witnesses

(1) Every commissioner shall have the powers of the High Court to summon witnesses, and to call for the production of books, plans and documents, and to examine witnesses on oath.

(2) All summonses for the attendance of witnesses or other persons, or for the production of documents, shall be in the prescribed form, and shall be signed by the commissioner, or by one of the commissioners if more than one, and oaths shall be administered by the commissioner, or by one of the commissioners if more than one, or by the secretary.

(3) Subject to the provisions of subsection (3) of section 3, where the commissioner considers it desirable for the purpose of avoiding expense or delay, or for any other good and sufficient reason, which shall be recorded in the record of the inquiry, he may receive evidence by affidavit.

11. Expenses of witnesses

(1) All persons summoned to attend and give evidence, or to produce books, plans or documents, at any sitting of a commissioner, shall be entitled to the same expenses as they would have been entitled to if they had been summoned to attend at the High Court in a criminal trial:

Provided that the commissioner may disallow the whole or any part of such expenses in any case if he thinks fit to do so in the circumstances of the case.

(2) Orders for the payment of witnesses' expenses shall be made as nearly as practicable in the same form and in the same manner as orders for the payment of such expenses made in the High Court, and payment shall be made in such manner as may be prescribed.

12. Appearance of advocates

Any person whose conduct is the subject of inquiry under this Act, or who is in any way implicated or concerned in any matter under inquiry, shall be entitled to be represented by an advocate in the proceedings of the inquiry or any part thereof, and any other person who desires to be so represented may, by leave of the commissioner, be so represented.

13. Inquiry to be judicial proceeding for certain purposes

(1) An inquiry shall be deemed to be a judicial proceeding for the purposes of Chapter XI and Chapter XVIII of the Penal Code (Cap. 63).

(2) No person giving evidence in the proceedings of an inquiry shall be compellable to incriminate himself, and every person shall, in respect of any evidence given by him in any such proceedings, be entitled to all the privileges and immunities to which a witness giving evidence before the High Court is entitled in respect of evidence given by him before that court.

14. Privilege of commissioner and secretary from suit

A commissioner, and the secretary to any commissioner, shall not be liable to any civil action or suit for or in respect of any matter or thing done or omitted to be done by him in good faith as such commissioner or secretary as the case may be.

15. Exemption from arrest under civil process

No commissioner shall be liable to arrest under civil process while going to, presiding in or returning from the place where an inquiry under this Act is being held by him.

16. Police officers may be detailed to attend commissioner

The President may direct the Commissioner of Police to detail police officers to attend upon a commissioner to preserve order during the proceedings of the inquiry, to serve summonses on witnesses and to perform such administrative duties as the commissioner may direct.

[L.N. 124/1964, Sch., Act No. 21 of 1966, First Sch.]

17. Remuneration of commissioner and expenses of inquiry

(1) A commissioner shall not be entitled to any remuneration unless the commission otherwise provides.

(2) Subject to the general or special directions of the Minister, a commissioner shall be paid the expenses incurred by him in holding the inquiry, including the cost of employing a secretary and any other persons employed in or about the inquiry and any other expenses attendant upon the carrying out of the commission.

18. Commissions, etc., to be published in Gazette

Every commission and every revocation of a commission, under this Act shall be published in the *Gazette*, and shall take effect, without prejudice to the provisions of subsection (2) of section 4, from the date of such publication.

19. Regulations

The Minister may make regulations for prescribing anything which by this Act is required to be prescribed, and generally for carrying out the purposes of this Act.

20. Repeal

The Commissions of Inquiry Act (Cap. 40) is hereby repealed.
