

CHAPTER 171

THE LAW REFORM COMMISSION OF TANZANIA ACT

[PRINCIPAL LEGISLATION]

ARRANGEMENT OF SECTIONS

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CHAPTER 171

THE LAW REFORM COMMISSION OF TANZANIA ACT

An Act to establish the Law Reform Commission of Tanzania.

[15th August, 1983]

[G.N. No. 124 of 1983]

Acts Nos.

11 of 1980

10 of 1999

PART I

PRELIMINARY PROVISIONS (ss 1-2)

[PCh171s1]1. Short title

This Act may be cited as the Law Reform Commission of Tanzania Act.

[PCh171s2]2. Interpretation

In this Act, unless the context otherwise requires—

"Chairman" means the Chairman of the Commission appointed under section 5;

"Commission" means the Law Reform Commission of Tanzania established by section 3;

"Commissioner" means a person appointed to be Commissioner under section 5, and includes the Chairman;

"high judicial office" means the office of a Judge of the Court of Appeal of the United Republic or of a Judge of the High Court of the United Republic or the High Court of Zanzibar;

"Minister" means the Minister for the time being responsible for legal affairs;

"reference" means a reference by the Attorney-General to the Commission under this Act.

PART II

THE LAW REFORM COMMISSION OF TANZANIA (ss 3-6)

[PCh171s3]3. Establishment of the Commission

There is hereby established a Commission which shall be known as the Law Reform Commission of Tanzania.

[PCh171s4]4. Functions of the Commission

(1) The functions of the Commission shall be to take and keep under review all the laws of the United Republic with a view to its systematic development and reform.

(2) In particular, but without prejudice to the generality of subsection (1), the Commission may, whether at its own instance or otherwise—

(a) review any law or branch of the law and propose measures necessary for—

(i) bringing that law or branch of the law into accord with current circumstances of Tanzania;

(ii) eliminating anomalies or other defects in the law, repealing obsolete or unnecessary laws and reducing the number of separate enactments; and

(iii) the proper codification and simplification of that law or branch of law;

(b) consider and advise on proposals for the adoption of new or more effective methods for the administration of the law and the dispensation of justice;

(c) from time to time, prepare and submit to the Attorney-General programmes for the examination of different branches of law with a view to reforming those laws, including recommendations as to the agency, whether the Commission or another body, by which any such examination should be carried out;

(d) at the request of the Attorney-General, prepare comprehensive programmes for the consolidation and revision of laws, and undertake the preparation of any draft Bills pursuant to any such programme approved by the Attorney-General;

(e) at the instance of the Attorney-General provide advice and assistance to any Ministry or department or any public authority or institution by undertaking the examination of any particular branch of the law and making recommendations for reform so as to bring it into accord with current circumstances.

(3) The Commission may, for the purposes of the more effective performance of its functions, establish and maintain a system of collaboration, consultation and

co-operation with any person or body of persons within or outside the United Republic engaged in law reform and may, for that purpose—

(a) establish a system for obtaining any information relating to the legal systems of other countries which appears to the Commission likely to facilitate the performance of any of its functions;

(b) publish or facilitate the publication, in Tanzania, of materials relating to law reform in other countries;

(c) convene, or facilitate or promote the convention of, seminars, workshops, public lectures and other meetings of the public for the purposes of discussion on or dissemination of information or matters relating to law reform in Tanzania.

[PCh171s5]5. Composition of the Commission

(1) The Commission shall consist of a Chairman and not less than four nor more than six other Commissioners, all of whom shall be appointed by the President.

(2) A person may not be appointed to be a Commissioner unless he—

(a) holds or has previously held, or is qualified for appointment to, a high judicial office in the United Republic;

(b) is a person who has been enrolled as an advocate in the United Republic for not less than five years;

(c) is a person who is a graduate in law of a University whose degree awards in law are recognised by the Government of the United Republic, and who has since graduation had experience in the practice of law for not less than five years;

(d) is a teacher of law in a University or other institution of equivalent or similar status who has a teaching experience of not less than five years; or

(e) is a person who, in the opinion of the President is, by reason of his special qualifications, training or experience in the social, economic or political affairs of Tanzania, able to contribute to the proper and effective discharge of the functions of the Commission or is otherwise suitable for appointment to the Commission.

[PCh171s6]6. Tenure of office of Commissioners

(1) The Chairman shall be appointed as a full-time Commissioner and shall, unless he sooner resigns or ceases to be a Commissioner in any other way, hold office for a term of five years from the date of his appointment, and shall be eligible for re-appointment.

(2) A Commissioner other than the Chairman shall be appointed either as a full-time or a part-time Commissioner and shall, unless he sooner resigns or ceases to be a Commissioner in any other way, hold office for a term of three years from the date of his appointment, and shall be eligible for re-appointment.

(3) The appointment of Commissioners and the reappointment of Commissioners at the expiration of their term of office shall be so made as to ensure the continuity of the informed and effective performance of the functions of the Commission.

(4) The holder of a high judicial office shall not be appointed as a full-time Commissioner other than the Chairman, unless the Chairman is the holder of a high judicial office.

(5) Where a person holding an office in the public service, other than a high judicial office, is appointed as a full-time Commissioner, he shall cease to hold that first

mentioned office but his service as a Commissioner shall be deemed to be continuous with his previous employment in the public service for the purposes of determining his entitlement to any pension, gratuity or other superannuation benefit, and at the expiration of his term of office as a Commissioner he shall, subject to the provisions of the law for the time being in force relating to retirement, be reinstated in the public service in such office or capacity as the President shall determine.

(6) The appointment of, or service by, a person who holds a high judicial office as a Commissioner shall not affect his tenure of that high judicial office or his rank, title, status, precedence, salary or allowance of any kind or other rights or privilege as the holder of that office and, for all purposes, his service as a Commissioner, whether full-time or part-time, shall be taken to be service as the holder of that high judicial office.

(7) Subject to the provisions of this Act, the instrument of appointment of each Commissioner shall specify the term and conditions of his appointment.

PART III

PROCEDURE AND POWERS OF THE COMMISSION (ss 7-16)

[PCh171s7]7. Repealed

[Repealed by Act No. 10 of 1999 Sch.]

[PCh171s8]8. Attorney-General to refer matters to the Commission Act No. 10 of 1999 Sch.

(1) The Attorney-General shall, from time to time, refer to the Commission matters which the Commission may, subject to the provisions of this Act, examine and

report upon and make recommendations with a view to reforming the law in relation to those matters.

(2) The Attorney-General may, in pursuance of the provisions of subsection (1), refer to the Commission matters connected generally with a specific enactment or category of enactments.

(3) The Attorney-General may—

- (a) modify the terms of any reference; or
- (b) give directions to the Commission as to the order in which it shall deal with references.

(4) The Attorney-General shall not refer to the Commission any matter which he knows to be the subject of proceedings in any court in the United Republic to which the United Republic is a party, or matters in respect of which it is intended to commence proceedings in a court.

[PCh171s9]9. Commission may initiate own work

(1) The Commission may, subject to informing the Attorney-General in that behalf, undertake the examination of any matter without waiting for a reference on it by the Attorney-General.

(2) Notwithstanding the generality of the power conferred by subsection (1), the Commission shall not undertake the examination of any matter which it knows to be the subject of proceedings in any court in the United Republic to which the United Republic is a party.

[PCh171s10]10. Commission to involve the public in its work

(1) In carrying out an examination of any matter whether or not in pursuance of a reference, the Commission may so arrange its work as to enable it to educate the public on the issues involved in that matter and to obtain the views of the greatest possible number of the people of Tanzania on the issues in question.

(2) For the purposes of complying with the provisions of subsection (1), the Commission may do all such acts as in its opinion are necessary to achieve participation by the public in the work of the Commission and may, in particular–

(a) organise and hold seminars for the discussion of matters of public concern relevant to the subject or reference;

(b) arrange for public lectures to be given by the Commission;

(c) call for and promote public debates at meetings called by, or for the purposes of, the Commission or through the mass media;

(d) establish and publish a bulletin, periodical or other publication for the purposes of disseminating information on law reform;

(e) do anything which, in the opinion of the Commission, is necessary or desirable for the purposes of publicizing its tentative reform recommendations and to obtain awareness of and response to them, by the public.

[PCh171s11]11. General powers of the Commission

(1) The Commission may appoint a Committee or committees for the purpose of dealing with any particular matter or matters referred to the Commission or intended to be proposed by the Commission to the Attorney-General.

(2) For the purposes of dealing with any particular matter referred to it, the Commission may co-opt such number of persons to assist it in the collection and organisation of material as it may deem necessary.

(3) The Commission may call upon any person to furnish to it such information as may be specified by the Commission.

(4) [Repealed by Act No. 10 of 1999 Sch.]

[PCh171s12]12. Commission to act independently

Subject to the provisions of this Act, the Commission shall, in the performance of its functions under this Act, act independently in its deliberations and formulation of its recommendations.

[PCh171s13]13. Matters to be taken into account

(1) Without prejudice to the independence conferred by section 12, in the performance of its functions under this Act, the Commission shall take into account the need for having in Tanzania laws which are in accord with, and which facilitate the implementation of, the policy of Ujamaa and self-reliance.

(2) In particular, the Commission shall consider and make proposals for law reform with a view to ensuring that the laws of the United Republic are so made as to—

(a) promote and expand the principles and practice of human equality and freedom as stipulated in the Constitution of the United Republic of Tanzania;

(b) promote and secure the decolonisation of the law of Tanzania by the refinement of and adaptation of the customs, traditional values and beliefs of the people of

Tanzania which are suitable for application in conjunction with modern progressive legal ideas;

(c) promote interest in, and ensure respect for, the rule of law by discouraging arbitrariness, officialism and excessive bureaucracy;

(d) ensure the development of a just system for the equal dispensation of justice and the better protection of communal and individual property of the people of Tanzania;

(e) promote and enhance respect for human rights by all persons in their conduct of official business and personal affairs.

[PCh171s14]14. Submission of conclusions

(1) Subject to subsection (2), where the Commission reaches definite conclusions on any matter for the time being under its consideration, it shall draw up a report in suitable form, incorporating such recommendations as it thinks fit, and submit it to the Minister.

(2) Where the Attorney-General has referred a matter to the Commission—

(a) the Commission may, at any time before making its report in pursuance of the reference, submit to the Minister an interim report on its work under the reference; and

(b) the Attorney-General may, at any time before the Commission makes its report in pursuance of the reference, direct the Commission to submit to the Minister an interim report on its work under the reference.

[PCh171s15]15. Publication of reports Act No. 10 of 1999 Sch.

(1) The Minister shall, as soon as practicable, but not later than twelve months after receiving it, cause every report submitted to him by the Commission to be tabled before the National Assembly and its contents to be brought to the attention of the public.

(2) The Minister may, either upon tabling any report pursuant to the provisions of subsection (1) or on a subsequent occasion, as the case may be, make a statement in the National Assembly indicating what action the Government proposes to take in respect of any of the recommendations of the Commission made in the report in question.

(3) The Commission may, after the Minister has tabled the report before the National Assembly, release the report to the general public.

[PCh171s16]16. Referring matters back for reconsideration

Where the Government determines that any recommendation made in any report submitted by the Commission is unsuitable for implementation on the ground solely, or on several grounds which include the ground that certain matters relevant to a reference, or to any matter examined by the Commission, or that certain matters or situations reasonably expected to be permanent, have arisen which the Commission did not have in contemplation or which affect considerably any or all of the recommendations of the Commission, that recommendation or the part or parts of the report of the Commission in question shall be referred back by the Attorney-General to the Commission and the Commission shall make a supplementary report to the Minister on any matters referred back to it.

PART IV

STAFF OF THE COMMISSION (ss 17-19)

[PCh171s17]17. Public department and officers

Subject to the provisions of this Act, the provisions of any law for the time being in force in relation to public departments shall apply to the Commission, and the office of Commissioner, Secretary to the Commission and any other office under the Commission shall be public offices in the service of the United Republic.

[PCh171s18]18. Secretary Act No. 10 of 1999 Sch.

(1) The President shall appoint, on such terms as he may determine, a public officer to be the Secretary to the Commission.

(2) A person may not be appointed to be Secretary to the Commission unless he holds a degree in law from a university whose awards in law are recognised by the Government of the United Republic, and has since graduation practised law, or been engaged in teaching or research in law, for a period of not less than five years.

(3) The Secretary of the Commission shall, subject to the provisions of this Act, be the executive officer of the Commission and shall in that capacity, subject to the direction of the Chairman, be responsible to the Commission for the day to day operations and the management of the records of the Commission.

[PCh171s19]19. Staff of the Commission Act No. 10 of 1999 Sch.

(1) Subject to the provisions of this section, the provisions of any law for the time being in force in relation to the constitution of offices in the civil service shall apply to the constitution of offices under the Commission, and the Permanent Secretary shall, on a recommendation by the Attorney-General, second or transfer persons holding office in the service of the United Republic to offices under the Commission.

(2) Notwithstanding the provisions of subsection (1), and subject to the relevant Civil Service employment regulations and procedures, the Commission may engage on permanent terms such persons who are qualified and suitable to work for the Commission.

(3) With prior consultation with the Minister, the Commission may engage on temporary terms such persons who are experts in fields of learning for the time being relevant to the matter which is being examined by the Commission.

(4) Payment of salaries, allowances or other payments and the conditions and terms of service of persons who may be engaged on permanent or temporary terms by the Commission shall be as may be determined by the Permanent Secretary in consultation with the permanent Secretary Central Establishment and as specified in the instrument of appointment of each of such persons.

(5) Where a person is seconded or transferred to the service of the Commission under this section, his terms and conditions of employment with the Commission shall not be less favourable than those of his previous employment in the public service, and his service with the Commission shall be deemed to be continuous with his previous employment in the public service for the purposes of determining his entitlement to and quantum of pension, gratuity or other superannuation benefit.

(6) Where a person engaged as an expert by the Commission is the holder of another office in the public service, he shall not be required to perform the duties of his other office, but his service with the Commission shall not affect his tenure of that other

office or his rank, title, precedence, salary or other entitlement as the holder of that other office.

(7) For the purposes of this section, "Permanent Secretary" means the Permanent Secretary to the Ministry whose responsibilities for the time being include matters relating to the recruitment and development of manpower for the public service.

PART V

MISCELLANEOUS PROVISIONS (ss 20-25)

[PCh171s20]20. Expenses of Commission

Except as otherwise provided in the Public Officers (Salaries and Allowances) Act * all other expenditure payable or incurred under or in the administration of this Act shall be payable out of money to be appropriated by Parliament.

[PCh171s21]21. Salaries and allowances of Commissioners

(1) There shall be paid to the Commissioners such salaries or remuneration as shall be determined by the President, and those salaries and remuneration shall be charged on the Consolidated Fund.

(2) As soon as the President determines the salaries and remuneration payable to Commissioners the Minister shall, by order published in the Gazette, specify the amount of salaries and remuneration payable in each calendar year to each Commissioner, and such specification shall have effect as if it had been a provision made in this section, and the Schedule to the Public Officers (Salaries and Allowances) Act * (which specifies the salaries of certain persons holding office in the service of the United Republic which are charged on the Consolidated Fund) shall then be deemed to have been amended by this

section by adding in the appropriate columns of the Schedule, in appropriate alphabetical order, new items relating to the salaries and remuneration of the Commissioners.

[PCh171s22]22. Meetings of the Commission

(1) The Chairman shall convene such meetings of the Commission, and at such times and places, as may be necessary for the efficient conduct of its affairs.

(2) At any meeting of the Commission three Commissioners shall constitute a quorum.

(3) The Chairman shall preside at all meetings at which he is present, or in the absence of the Chairman at any meeting, the Commissioners present shall elect one of their number who is a full-time Commissioner to preside at that meeting, and if there is no full-time Commissioner, any of the other Commissioners shall be elected to preside at that meeting.

(4) All questions arising at a meeting of the Commission shall as much as possible, be decided by consensus of the members present at the meeting, but in the event of absence of consensus the question in point shall be decided by a majority of the votes of the members present and voting; and in the event of an equality of votes, the person presiding at the meeting shall have a casting vote in addition to his deliberative vote.

(5) The Commission may regulate and conduct the proceedings at its meetings as it thinks fit, and the Secretary to the Commission shall keep and maintain a correct record of those proceedings.

(6) The validity of the exercise or performance of the functions or powers, and the proceedings of the Commission shall not be affected by reason only of there being a vacancy in the office of a Commissioner.

[PCh171s23]23. Annual reports

(1) The Chairman shall, as soon as practicable after the thirtieth day of June in each year, cause to be submitted to the Controller and Auditor-General of the United Republic the accounts and financial records of the Commission, who shall then inspect and audit them and prepare a report on those accounts, in pursuance of the provisions of the Public Finance Act *.

(2) The Chairman shall, as soon as practicable after the thirtieth day of June in each year, cause to be prepared and submitted to the Minister a report in suitable form, containing—

(a) a summary of the activities of the Commission during the year to which the report relates;

(b) an outline of law reform references or matters currently under examination by the Commission;

(c) a copy of the audited accounts of the commission for the year to which the report relates;

(d) a copy of the auditor's report on those accounts; and

(e) such other information as the Minister may direct to be included in the report.

(3) The Minister shall as soon as possible after receiving it, lay the annual report of the Commission before the National Assembly.

[PCh171s24]24. Records of Commission to be public records

The records of the Commission shall be public records for the purposes of the Records and Archives Management Act *.

[PCh171s25]25. Regulations

(1) The Minister may make regulations prescribing all matters which are required or permitted to be prescribed or which are necessary or convenient to be prescribed or provided for in order to facilitate or secure the effectual performance of the functions of the Commission and to ensure the better carrying out or giving effect to the objects and purposes of this Act.

(2) Regulations made under this section shall be published in the Gazette.