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**ZIMBABWE HUMAN RIGHTS COMMISSION ACT [CHAPTER 10:30]**

*Act 2/2012*

ARRANGEMENT OF SECTIONS

**PART I**

PRELIMINARY

*Section*

1. Short title.
2. Interpretation.

**PART II**

ZIMBABWE HUMAN RIGHTS COMMISSION AND STAFF

3. Corporate status of Commission, etc.
4. Functions of Commission.
5. Deputy Chairperson of Commission.
6. Executive Secretary, and other staff of Commission and consultants.
7. Independence and impartiality of Commission, Commissioners, etc.
8. Reports of Commission.

**PART III**

PROCEDURE AND MANNER OF INVESTIGATIONS BY COMMISSION

9. Jurisdiction of Commission to conduct investigations.
10. Manner of making complaints.
11. Refusal to investigate.
12. Manner of conducting investigation.
13. Conflict of interest.
14. Proceedings after investigation.
15. Commission may institute actions for redress of human rights violations.
16. Commission may state case for High Court.

## PART IV

## FINANCIAL PROVISIONS

17. Funds of Commission.
18. Accounts of Commission and appointment of internal auditor.
19. Audit of Accounts.

## PART V

## MISCELLANEOUS PROVISIONS

20. Removal of Commissioner from office.
21. Immunity.
22. Provincial, district and other offices of Commission.
23. Regulations.

FIRST SCHEDULE: Provisions Applicable to Commissioners and Working Groups.

SECOND SCHEDULE: Ancillary Powers of Commission

THIRD SCHEDULE: Oath of Secrecy

# ACT

AN ACT to provide for the procedure of the Zimbabwe Human Rights Commission; to provide for the appointment of the Deputy Chairperson, Executive Secretary and staff of the Commission; and to provide for matters incidental to or connected with the foregoing.

WHEREAS section 100R of the Constitution provides as follows:

***100R Zimbabwe Human Rights Commission***

*(1) There is a commission to be known as the Zimbabwe Human Rights Commission which shall consist of—*

- (a) a chairman who has been qualified for at least five years to practise as a legal practitioner and who is appointed by the President after consultation with the Judicial Service Commission and the Committee on Standing Rules and Orders; and*
- (b) eight other Commissioners, at least four of whom shall be women, appointed by the President from a list of sixteen nominees submitted by the Committee on Standing Rules and Orders.*

*(2) If the appointment of a chairman of the Zimbabwe Human Rights Commission is not consistent with any recommendation of the Judicial Service Commission in terms of subsection (1)(a), the President shall cause the Senate to be informed as soon as practicable.*

*(3) Persons appointed to the Zimbabwe Human Rights Commission shall be chosen for their knowledge of and experience in the promotion of social justice or the protection of human rights and freedoms.*

(4) A Commissioner of the Zimbabwe Human Rights Commission shall, before entering upon his or her office, take and subscribe before the President or some person authorised by the President in that behalf the oath of office in the forms set out in Schedule 1.

(5) The Zimbabwe Human Rights Commission shall have the following functions—

- (a) to promote awareness of and respect for human rights and freedoms at all levels of society;
- (b) to promote the development of human rights and freedoms;
- (c) to monitor and assess the observance of human rights in Zimbabwe;
- (d) to recommend to Parliament effective measures to promote human rights and freedoms;
- (e) to investigate the conduct of any authority or person, where it is alleged that any of the rights in the Declaration of Rights has been violated by that authority or person; and
- (f) to assist the Minister responsible for the Act of Parliament referred to in subsection (8) to prepare any report required to be submitted to any regional or international body constituted or appointed for the purpose of receiving such reports under any human rights convention, treaty or agreement to which Zimbabwe is a party.

(6) The Zimbabwe Human Rights Commission may require any person, body, organ, agency or institution whether belonging to or employed by the State, a local authority or otherwise, to provide the Commission annually with such information as it may need for the purpose of preparing and submitting any report required to be submitted to any regional or international body constituted or appointed for the purpose of receiving such reports under any human rights convention, treaty or agreement to which Zimbabwe is a party.

(7) The Zimbabwe Human Rights Commission shall have power—

- (a) to take over and continue any investigation that has been instituted by the Public Protector in terms of section 108(1), where it determines that the dominant question in issue involves a matter pertinent to its function referred to in subsection (5)(e); or
- (b) refer to the Public Protector for investigation in terms of section 108(1) any matter in respect of which it determines that the dominant question in issue involves a matter pertinent to the functions of the Public Protector.

(8) An Act of Parliament may confer power on the Zimbabwe Human Rights Commission—

- (a) to conduct investigations on its own initiative or on receipt of complaints;
- (b) to visit and inspect prisons, places of detention, refugee camps and related facilities in order to ascertain the conditions under which inmates are kept there, and to make recommendations regarding those conditions to the Minister responsible for administering the law relating to those places or facilities;
- (c) to visit and inspect places where mentally disordered or intellectually handicapped persons are detained under any law in order to ascertain the conditions under which those persons are kept there, and to make recommendations regarding those conditions to the Minister responsible for administering the law relating to those places; and
- (a) to secure and provide appropriate redress for violations of human rights and for injustice.

NOW, THEREFORE, be it enacted by the President and the Parliament of Zimbabwe as follows—

## PART I

### PRELIMINARY

#### 1 Short title

This Act may be cited as the Zimbabwe Human Rights Commission Act [*Chapter 10:30*].

#### 2 Interpretation

In this Act—

“authority or person”, in relation to an authority or person against whom or which any complaint of a human rights violation has been made in terms of section 9, means any person, body, organ, agency or institution, whether belonging to or employed by the State, a local authority or otherwise;

“Chairperson” means the Chairperson of the Commission appointed in terms of section 100R (1) of the Constitution;

“Commission” means the Zimbabwe Human Rights Commission established in terms of section 100R of the Constitution;

“Commissioner” means a member of the Commission, and includes the Chairperson;

“complaint” means a complaint of a human rights violation made to the Commission in terms of this Act and “complainant” shall be construed accordingly;

“Committee on Standing Rules and Orders” means the committee referred to in section 57(2) of the Constitution;

“Deputy Chairperson” means the Deputy Chairperson of the Commission appointed in terms of section 5(1);

“Executive Secretary” means the Executive Secretary of the Commission appointed in terms of section 6(1);

“human rights violation” means a violation of—

- (a) the Declaration of Rights in the Constitution; or
- (b) any international human rights instrument that Zimbabwe is a party to;

“international human rights instrument” means any international treaty, convention, protocol or other agreement to which Zimbabwe is a party and—

- (a) is required in terms of the Constitution to be approved by Parliament; and
- (b) provides for any human right that is included in or additional to the Declaration of Rights in the Constitution;

“legal representative” means the representative recognised by law of any person who has died, or is an infant or a minor, or of unsound mind, or is otherwise under a disability;

“Minister” means the Minister responsible for Justice and Legal Affairs or any other Minister to whom the President may, from time to time, assign the administration of this Act;

“prescribe” means prescribed by regulations made in terms of section 23;

“principal officer,” in relation to an authority or person which is a Government Ministry or department or a statutory or corporate body, means the head of the Ministry or department in question, or the chairperson of the governing body or chief executive officer of the statutory or corporate body in question, by whatever title he or she may be called.

## PART II

### ZIMBABWE HUMAN RIGHTS COMMISSION AND STAFF

#### **3 Corporate status of Commission, etc.**

(1) The Zimbabwe Human Rights Commission shall be a body corporate capable of suing and being sued in its corporate name and, subject to this Act, of performing all acts that bodies corporate may by law perform.

(2) The First Schedule applies to the tenure of office and conditions of service of the Commissioners as well as to the procedure to be followed by the Commission at its meetings.

(3) The Second Schedule sets out the ancillary powers of the Commission.

#### **4 Functions of Commission**

In addition to the functions and powers set out in section 100R(6) and (7) of the Constitution, the Commission shall have the following functions and powers—

- (a) to conduct investigations on its own initiative or on receipt of complaints;
- (b) to visit and inspect prisons, places of detention, refugee camps and related facilities in order to ascertain the conditions under which inmates are kept there, and to make recommendations regarding those conditions to the Minister responsible for administering the law relating to those places or facilities;
- (c) to visit and inspect places where mentally disordered or intellectually handicapped persons are detained under any law in order to ascertain the conditions under which those persons are kept there, and to make recommendations regarding those conditions to the Minister responsible for administering the law relating to those places; and
- (d) to ensure and provide appropriate redress for violations of human rights and for injustice;
- (e) to co-operate with human rights institutions belonging to international, continental or regional organisations of which Zimbabwe is a member.

#### **5 Deputy Chairperson of Commission**

(1) After consulting the Committee on Standing Rules and Orders, the President shall appoint a Deputy Chairperson from among the Commissioners.

(2) If the office of the Chairperson is vacant or the Chairperson is absent from duty, the Deputy-Chairperson shall act as Chairperson.

#### **6 Executive Secretary, and other staff of Commission and consultants**

(1) The Commission shall—

- (a) appoint an Executive Secretary; and
- (b) employ such other staff as maybe necessary for the proper exercise of its functions, and engage consultants where necessary;

Provided that the Commission shall consult the Minister and the Minister responsible for Finance on the extent to which additional public moneys maybe required for this purpose.

(2) In order for a person to be appointed as Executive Secretary of the Commission, he or she must -

- (a) be qualified to be appointed as a judge of the High Court or the Supreme Court; or
- (b) have a graduate or postgraduate qualification in human rights law or humanitarian law or a related discipline.

(3) The offices of the Executive Secretary and other members of staff shall be public offices but not form part of the Public Service.

(4) The Executive Secretary shall, subject to the general control of the Commission—

- (a) be responsible for carrying out the decisions of the Commission and the day-to-day administration and management of the affairs, staff and property of the Commission; and
- (b) be the custodian of the Commission's records; and
- (c) attend all meetings of the Commission, but shall have no vote on any matter before the Commission; and
- (d) perform such other functions as may be assigned by the Commission.

(5) The Executive Secretary shall swear and subscribe to the oath of secrecy set out in Third Schedule, which shall be administered by the Chairperson.

## **7 Independence and Impartiality of Commission, Commissioners, etc**

(1) A Commissioner or a member of staff of the Commission shall serve impartially and independently and exercise or perform his or her functions in good faith and without fear, favour, bias or prejudice and subject only to the Constitution and the law.

(2) Neither the State or any person, body, organ, agency or institution belonging to or employed by the State, a local authority or otherwise shall interfere with, hinder or obstruct the Commission, its Commissioners or any member of staff of the Commission, in the exercise or performance of its, his or her functions.

(3) The State and any person, body, organ, agency or institution, belonging to or employed by the State, shall afford the Commission such assistance as may be reasonably required for the protection of the independence, impartiality and dignity of the Commission.

(4) No person shall conduct an investigation or render assistance with regard thereto in respect of a matter in which he or she has any pecuniary or any other interest which might preclude him or her from exercising or performing his or her functions in a fair, unbiased and proper manner.

(5) If any person fails to disclose an interest contemplated in subsection (4) and conducts or renders assistance with regard to an investigation, while having an interest so contemplated in the matter being investigated the Commission may take such steps as it deems necessary to ensure a fair, unbiased and proper investigation.

## **8 Reports of Commission**

(1) The Commission shall no later than sixty days after the end of each financial year submit to the Minister an annual report on its operations and activities during the preceding financial year.

(2) In addition, the Commission—

- (a) shall submit to the Minister any other report, and provide him or her with any other information, that he or she may require in regard to the operations and activities of the Commission; and

(b) may submit to the Minister any other report that it considers desirable.

(3) The Minister shall table before Parliament any report submitted to him or her by the Commission under subsections (1) and (2), no later than the thirtieth sitting day of whichever House of Parliament sits first after he or she has received such report.

### PART III

#### PROCEDURE AND MANNER OF INVESTIGATIONS BY COMMISSION

## **9 Jurisdiction of Commission to conduct investigations**

(1) The Commission may on its own initiative investigate any action or omission on the part of any authority or person that constitutes or may constitute a human rights violation.

(2) Any person affected by any actual or perceived human rights violation arising out of any action or omission on the part of any authority or person may make a written complaint to the Commission requesting it to investigate such action or omission.

(3) When a person by whom a complaint might have been made under this section has died or is for any reason unable to act for himself or herself, the complaint may be made by his or her legal representative or a member of his or her family or such other person as the Commission considers suitable to represent him or her.

(4) The Commission shall not investigate a complaint—

(b) unless the complaint is made within three years from the date on which the action or omission occurred:

Provided that such investigation shall not relate to an action or omission that occurred earlier than the 13<sup>th</sup> February 2009; or

(c) where the action or omission complained of is the subject-matter of civil proceedings before any court of competent jurisdiction; or

(d) where the action complained of relates to the exercise of the prerogative of mercy; or

(e) where the action or omission complained of involves relations or dealings between the Government and a foreign Government, unless there has been an allegation of a human rights violation by a citizen or resident of Zimbabwe.

## **10 Manner of making complaints**

(1) The Commission shall, in regulations, prescribe the general manner in which complaints to it should be made, including the particulars required to be completed in a form specified by the Commission in those regulations.

(2) The Commission may require a complaint to be supported by such evidence and documentation as it may prescribe or in any particular case.

(3) The Commission shall not refuse to investigate a complaint solely on the grounds that the complaint is not in proper form or not in compliance with the prescribed requirements or that it is not accompanied by the required documentation.

## **11 Refusal to investigate**

(1) The Commission shall refuse to investigate any complaint if it is satisfied that it is not authorised in terms of the Constitution and this Act to carry out an investigation.

(2) The Commission shall discontinue any investigation if it is satisfied by the evidence received that it is not authorised in terms of the Constitution and this Act to continue the investigation.

(3) If the Commission refuses to investigate a complaint or discontinues an investigation it shall, in writing—

- (a) inform the complainant and any party complained against of its decision, stating its reasons for the decision; and
- (b) if appropriate, advise the complainant of any other remedy that appears to it to be available to him or her.

## **12 Manner of conducting investigations**

(1) Subject to subsection (6) (concerning non-disclosure of certain evidence) the Commission may in its discretion conduct an investigation in the form of a public or closed hearing, for which purpose the Commission shall have the following powers—

- (a) to issue summons to any authority or person or the principal officer thereof to attend before the Commission and to produce any document or record relevant to any investigation by the Commission; and
- (b) to put any questions to any authority or person or the principal officer which the Commission considers will assist its investigation of the complaint in question; and
- (c) to require any person questioned by it to answer such questions and to disclose any information within such person's knowledge which the Commission considers relevant to any investigation by it; and
- (d) to request the assistance of the police during an investigation.

(2) In conducting a hearing the Commission shall not be bound by the strict rules of evidence, and it may ascertain any relevant fact by any means which it thinks fit and which is not unfair or unjust to any party.

(3) The Commission shall afford the authority or person or the principal officer thereof, who is alleged to be responsible for the human rights violation, an adequate opportunity to respond to such allegations.

(4) Any person appearing before the Commission may be represented by a legal practitioner.

(5) Information obtained by the Commission or any member of its staff at a closed hearing shall not be disclosed to any person except—

- (a) without disclosing the identity of any person who gave the information in confidence, for the purposes of the investigation and for any report to be made thereon; or
- (b) for the purposes of any proceedings for perjury alleged to have been committed in the course of an investigation.

(6) The Minister may, at any stage during the investigation of a complaint by the Commission, produce to the Commission a certificate in writing signed by him or her to the effect that the disclosure of any evidence or documentation or class of evidence or documentation specified in the certificate is, in his or her opinion, contrary to the public interest on the grounds that it may prejudice the defence, external relations, internal security or economic interests of the State, whereupon the Commission shall make arrangements for evidence relating to that matter to be heard *in camera* at a closed hearing and shall take such other action as may be necessary or expedient to prevent the disclosure of that matter.

(7) Upon receipt of a certificate in terms of subsection (6)—

- (a) the Commission or any member of the staff of the Commission shall not communicate any such evidence or documentation to any other person for any purpose, unless the Minister allows the Commission to do so, subject to such conditions as he or she may fix; and



- (b) an aggrieved person may, in accordance with the Administrative Justice Act [*Chapter 10:28*] (No. 24 of 2004), appeal against such certificate, and the court hearing the appeal shall treat any evidence or documentation subject to the certificate in the manner specified in section 8 (“Discretion to refuse or to restrict supply of reasons”) of the Administrative Justice Act [*Chapter 10:28*] (No. 24 of 2004).

(8) Any person who—

- (c) has been summoned by the Commission to give evidence or to produce any documentation for the purposes of an investigation and who fails to attend or to remain in attendance until excused by the Commission from further attendance, or refuses without sufficient cause, the onus of proof whereof lies upon him or her, to be sworn as a witness or to answer fully and satisfactorily a question lawfully put to him or her, or to produce the evidence or documentation requested; or
- (d) gives false evidence to the Commissioners, knowing such evidence to be false or not knowing or believing it to be true;

shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

(9) For the avoidance of doubt it is declared that the law relating to the competence or compellability of any person on the grounds of privilege to give evidence, answer any questions or produce any book or document before the Commission, shall apply.

(10) Any Commissioner or member of staff who without being authorised to do so by the Commission, discloses any information, evidence or documentation referred to in subsection (5) or (6), or makes any use of such information for his or her benefit, shall be guilty of an offence and liable to a fine not exceeding level twelve or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

### **13 Conflict of interest**

(1) No Commissioner shall participate in a hearing of a human rights violation or have a vote on any question before the Commission, whether or not involving any human rights violation, in which the Commissioner is aware that he or she has direct or indirect interest that may conflict with his or her functions as a Commissioner.

(2) A Commissioner who contravenes subsection (2) shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

### **14 Proceedings after investigation**

(1) If, after conducting an investigation, the Commission is of the opinion that the action or omission which was the subject-matter of the investigation constitutes a human rights violation and that—

- (a) the action or omission relates to any decision or practice on the part of any person or authority which needs to be abolished, cancelled, reversed, varied or altered; or
  - (b) the issue giving rise to the complaint should be given further consideration by the person or authority against whom or which the complaint was made; or
  - (c) the action or omission should be rectified; or
  - (d) any law on which the act or omission was based should be reconsidered; or
  - (e) reasons should have been given for any decision complained against; or
  - (f) any other steps should be taken in relation to the action or omission complained against;
- the Commission shall report its opinion, together with its reasons, to the authority or person against whom the complaint was made and may make such recommendations as it thinks fit and shall also send a copy of its report and recommendations to the Minister.

(2) In particular, the Commission may, where it considers it necessary, recommend—

- (a) the release of a person from prison; or
- (b) the payment of compensation to a victim of a human rights violation, or to such victim's family; or
- (c) that the complainant seek redress in a court of law.

(3) The Commission may request the authority or person in relation to whom or which it made any recommendation to notify it, within a specified time, of the steps, if any, that it proposes to take to give effect to its recommendation.

(4) If, within a reasonable time after a report is made in terms of subsection (1), no action is taken which, in the opinion of the Commission, is adequate and appropriate, the Commission may, if it thinks fit after considering the comments, if any, made by or on behalf of any authority or person affected, submit a special report on the case to the Minister for the Minister to present to the President and lay before Parliament.

## **15 Commission may institute actions for redress of human rights violations**

(1) The Commission may, if it thinks fit, where it has completed an investigation of any human rights violation—

- (a) on its own initiative in terms of section 9(1); or
- (b) on the basis of a complaint;

in its own name or on behalf of any complainant or class of complainants pursue any action in any court of competent jurisdiction for the redress of any human rights violation, for which purpose it shall, where it acts on the basis of a complaint, be cited as a joint party with the complainant or class of complainants in question.

(2) Where the Commission institutes any action against the State or any authority or person belonging to or employed by the State, the provisions of the State Liabilities Act [Chapter 8:14] shall apply to such action.

## **16 Commission may state case for High Court**

(1) If any question arises as to whether the Commission has jurisdiction to initiate, continue or discontinue an investigation or to exercise powers in connection therewith, the Commission may state a special case on the question for the decision of the High Court.

(2) In any case so stated the Commission shall state—

- (a) the facts which it has established ; and
- (b) the view of the law which it proposes to adopt in relation to the facts.

(3) Any expenses incurred by the Commission in the determination of any question referred to in subsection (1) shall be met from the funds of the Commission.

## **PART IV**

### **FINANCIAL PROVISIONS**

## **17 Funds of Commission**

(1) The funds of the Commission shall consist of—

- (a) moneys appropriated by Act of Parliament for the salaries and allowances payable to and in respect of members of the Commission and the recurrent administrative expenses of the Commission; and
- (b) any other moneys that may be payable to the Commission from moneys appropriated for the purpose by Act of Parliament; and
- (c) any donations, grants, bequests or loans made by any person or organisation or any government of any country to the Commission with the approval of the Minister; and

- (d) any other moneys that may vest in or accrue to the Commission, whether in terms of this Act or otherwise.
- (2) The Commission shall apply its funds to the fulfilment of its functions.
- (3) Moneys not immediately required by the Commission may be invested in such a manner as the Commission, with the approval of the Minister and the Minister responsible for finance, considers appropriate.

## **18 Accounts of Commission and appointment of internal auditor**

- (1) The Commission shall ensure that proper accounts and other records relating to such accounts are kept in respect of all the Commission's activities, funds and property, including such particular accounts and records as the Minister may direct.
- (2) As soon as possible after the end of each financial year, the Commission shall prepare and submit to the Minister a statement of accounts in respect of that financial year or in respect of such other period as the Minister may direct.
- (3) Section 80 of the Public Finance Management Act [*Chapter 22:19*] (No. 11 of 2009), shall apply, with such changes as may be necessary, to the appointment of an internal auditor to the Commission in all respects as if the Commission were a Ministry or department of a Ministry.

## **19 Audit of Accounts**

- (1) The accounts of the Commission shall be audited by the Comptroller and Auditor-General, who for that purpose shall have the functions conferred on him or her by sections 7 and 8 of the Audit Office Act [*Chapter 22:18*].
- (2) Any person under the authority or supervision of the Commission who refuses to provide the Comptroller and Auditor-General with an explanation or information required by him or her for the purposes of an audit or knowingly provides the Comptroller and Auditor-General with a false explanation or information, or an explanation or information that the person has no grounds for believing to be true, shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.
- (3) Notwithstanding anything contained in subsection (1), the Comptroller and Auditor-General may appoint a suitably qualified person to audit the accounts of the Commission and if he or she does so—
  - (a) subsections (1) and (2) shall apply in respect of the person so appointed as if he or she were the Comptroller and Auditor-General; and
  - (b) any expenses incurred by the person so appointed in carrying out his or her audit shall be met from the funds of the Commission.

## **PART V**

### **MISCELLANEOUS PROVISIONS**

## **20 Removal of Commissioner from office**

- (1) A Commissioner may be removed from office for inability to discharge the functions of his or her office, whether arising from infirmity of body or mind or any other cause, or for misbehaviour and shall not be so removed except in accordance with this Act.
- (2) A Commissioner shall be removed from office by the President if the question of his or her removal from office has been referred to a tribunal appointed under subsection (4) and that tribunal has advised the President that he or she ought to be removed from office for inability to discharge the functions of his or her office or for misbehaviour.

(3) If the question of removing a Commissioner has been referred to a tribunal appointed under subsection (4), the President may suspend that person from performing the functions of his or her office and any such suspension—

- (a) may at any time be revoked by the President; and
- (b) shall cease to have effect if the tribunal advises the President that the person should not be removed.

(4) The tribunal referred to in this section shall consist of a chairperson and two other members appointed by the President, and—

- (a) the chairperson shall be a person who is or has been a judge of the Supreme Court or the High Court;
- (b) at least one of the other members shall be a person who is and has been for not less than seven years, whether continuously or not, qualified to practise as a legal practitioner in Zimbabwe.

(5) In computing, for the purposes of subsection (4)(b), the period during which any person has been qualified to practise as a legal practitioner, any period during which he or she was qualified to practise as an advocate or attorney in Zimbabwe shall be included.

## **21 Immunity**

No legal proceedings shall lie against the Commission or any Commissioner or the Executive Secretary or any person acting under the direction of the Commission in respect of anything which is done in good faith and without gross negligence in pursuance of this Act.

## **22 Provincial, district and other offices of Commission**

The Commission shall endeavour to establish a principal office and offices at provincial, district and other administrative levels as it considers fit for the better performance of its functions.

## **23 Regulations**

(1) The Commission may make regulations—

- (a) prescribing anything which by this Act and its Constitutional mandate is required or permitted to be prescribed or which, in its opinion, is necessary or convenient to be prescribed for the carrying out or giving effect to this Act; and
- (b) providing for the conditions of service of the Executive Secretary and the staff of the Commission.

(2) The regulations of the Commission shall not have effect until they have been approved by the Minister and published in the *Gazette*.

FIRST SCHEDULE (*Section 3(2)*)

## PROVISIONS RELATING TO COMMISSIONERS AND WORKING GROUPS

*Paragraph*

1. Interpretation in First Schedule
2. Disqualifications for appointment to Commission.
3. Terms of office and conditions of service of Commissioners.
4. Vacation of office by Commissioners.
5. Filling of vacancies.
6. Procedure at meetings of Commission.
7. Working Groups of Commission.
8. Minutes of Proceedings.
9. Validity of decisions of Commission and Working Groups.

*Interpretation in First Schedule*

1. In this Schedule—

“Working Group” means any group established in terms of paragraph 7.

*Disqualifications for appointment to Commission*

2. (1) A person shall not be qualified for appointment as a member of the Commission, nor shall he or she hold office as an appointed member, if—

- (a) he or she is not a citizen of Zimbabwe or ordinarily resident in Zimbabwe; or
- (b) he or she is a member of any other statutory body; or
- (c) he or she is a member of Parliament; or
- (d) he or she is a member of a local authority or is in the full-time employment of a local authority; or
- (e) in terms of a law in force in any country—
  - (i) he or she has been adjudged or otherwise declared insolvent or bankrupt and has not been rehabilitated or discharged; or
  - (ii) he or she has made an assignment or composition with his or her creditors which has not been rescinded or set aside; or
- (f) he or she has been sentenced in any country to a term of imprisonment imposed without the option of a fine, whether or not any portion thereof has been suspended, and has not received a free pardon.

- (2) For the purposes of subparagraph (1)(b)—

- (a) a person who is appointed to a council, board or other authority which is a statutory body or which is responsible for the administration of the affairs of a statutory body shall be regarded as a member of that statutory body;
- (b) “statutory body” means—
  - (i) any commission established by the Constitution; or
  - (ii) any body corporate established directly by or under an Act for special purposes specified in that Act, the membership of which consists wholly or mainly of persons appointed by the President, a Vice-President, a Minister or any other statutory body or by a commission established by the Constitution.

*3. Terms of office and conditions of service of Commissioners*

3.(1) A Commissioner shall hold office for a term of five years and shall be eligible for reappointment for another term of office not exceeding five years.

(2) For the avoidance of doubt, it is declared that the terms of office of Commissioners shall be regarded as full terms of office.

*Vacation of office by Commissioners*

4. (1) The office of a Commissioner shall become vacant upon—

- (a) the death of the Commissioner; or
- (b) the resignation from office in writing under the Commissioner's hand addressed to the President; or
- (c) the Commissioner is convicted of an offence and sentenced to a term of imprisonment without the option of a fine; or
- (d) the Commissioner is absent without good cause from three consecutive meetings of the Commission of which he or she has received due notice; or
- (e) the Commissioner is declared insolvent by a court of competent jurisdiction; or
- (f) the Commissioner takes up, whilst in office, an appointment to a position which will render him or her incapable of qualifying for appointment as Commissioner; or
- (g) the Commissioner is removed from office by a tribunal pursuant to section 22.

(2) For the purposes of subparagraph (1) a Commissioner shall be deemed to have resigned his or her office and his or her office shall become vacant—

- (a) if he or she becomes disqualified for appointment to the Commission in terms of paragraph 2(1)(a),(b), (c), (d) or (e); or
- (b) on the date he or she begins to serve a sentence of imprisonment, whether or not any portion was suspended, imposed without the option of a fine—
  - (i) in Zimbabwe, in respect of an offence; or
  - (ii) outside Zimbabwe, in respect of conduct which, if committed in Zimbabwe, would have constituted an offence.

(3) The President shall notify the termination of the appointment of any Commissioner under this Act in the *Gazette*.

*Filling of vacancies*

5. On the death of, or the vacation of office by, a Commissioner, the President shall fill the vacancy within three months.

*Procedure at meetings of Commission*

6. (1) Subject to subparagraph (2), the Commission shall meet—

- (a) at such dates, times and places as may be fixed by the Chairperson:

Provided that the Commission shall meet at least once in every three months;

and

- (b) written notice shall be sent to each Commissioner not later than seven days before the meeting and shall specify the business for which the meeting has been convened.

(2) The Chairperson—

- (a) may convene a special meeting of the Commission at any time; and
- (b) shall convene a special meeting of the Commission on the written request of not fewer than two Commissioners, which meeting shall be convened for a date not sooner than seven days and not later than thirty days after the Chairperson's receipt of the request.

(3) Written notice of a special meeting convened in terms of subparagraph (2) shall be sent to each Commissioner not later than forty-eight hours before the meeting and shall specify the business for which the meeting has been convened:

Provided that a failure by a Commissioner to receive such a notice, or an inadvertent failure to send such a notice to a Commissioner, shall not invalidate the meeting.

(4) No business shall be discussed at a special meeting convened in terms of subparagraph (2) other than—

- (a) such business as may be determined by the Chairperson, where he or she convened the meeting in terms of subparagraph (2)(a); or
- (b) the business specified in the request for the meeting, where the Chairperson convened the meeting in terms of paragraph (2)(b).

(5) The Chairperson or, in his or her absence, Commissioner designated by him or her, shall preside at all meetings of the Commission.

(6) At any meeting of the Commission, five of Commissioners shall form a quorum.

(7) The Commission will endeavour to make decisions by consensus among the Commissioners present at a meeting of the Commission at which a quorum is present, failing which anything authorised or required to be done by the Commission shall be decided by a majority vote of the members at the meeting.

(8) At all meetings of the Commission each Commissioner present shall have one vote on each question before the Commission:

Provided that, in the event of an equality of votes, the Chairperson or person presiding at the meeting shall have a casting vote in addition to his or her deliberative vote.

(9) With the approval of the Commission, the Chairperson may invite any person to attend a meeting of the Commission, where the Chairperson considers that the person has special knowledge or experience in any matter to be considered at that meeting.

(10) A person invited to attend a meeting of the Commission in terms of subparagraph (9) may take part in the meeting as if he or she were a member of the Commission, but he or she shall not have a vote on any question before the meeting.

(11) Any proposal circulated among all Commissioners and agreed to in writing by a majority of them shall have the same effect as a resolution passed at a duly constituted meeting of the Commissioners and shall be incorporated into the minutes of the next succeeding meeting of the Commission:

Provided that, if a Commissioner requires that such a proposal to be placed before a meeting of the Commission, this subparagraph shall not apply to the proposal.

(12) Except as otherwise provided in this paragraph, the procedure for the convening and conduct of meetings of the Commission shall be as fixed from time to time by the Commission.

#### *Working Groups of Commission*

7.(1) For the better exercise of its functions the Commission may establish one or more Working Groups in which the Commission may vest such of its functions as it considers appropriate:

Provided that the vesting of any function in a Working Group shall not divest the Commission of that function and the Commission may amend or rescind any decision of the Working Group in the exercise of that function.

(2) On the establishment of a Working Group, the Commission—

- (a) shall appoint at least one member of the Commission as a member of the Working Group, and that member or one of those members, as the case may be, shall be chairperson of the Working Group; and
- (b) may appoint as members of the Working Group persons who are not members of the Commission and may fix terms and conditions of their appointment.

(3) The Working Groups established in terms of subsection (1) shall be based on human rights thematic areas including—

- (a) Children's Rights;
- (b) Gender Equality and Women's Rights;
- (c) Civil and Political Rights;
- (d) Economic Social and Cultural Rights; and
- (e) any other thematic area which the Commission may consider necessary.

(4) Meetings of a Working Group may be convened at any time and at any place by the chairperson of the Working Group.

(5) If the chairperson of a Working Group is absent from any meeting of the Working Group, the members present may elect one of their number to preside at that meeting as chairperson.

(6) A majority of members of a Working Group shall form a quorum at any meeting of the Working Group.

(7) Anything authorised or required to be done by a Working Group may be decided by a majority vote at a meeting of the Working Group at which a quorum is present.

(8) At all meetings of a Working Group each member present shall have one vote on each question before the Working Group:

Provided that in the event of an equality of votes the chairperson or person presiding at the meeting shall have a casting vote in addition to his or her deliberative vote.

(9) Subject to this paragraph, the procedure to be followed at any meeting of a Working Group shall be as fixed by the Commission.

#### *Minutes of proceedings*

8.(1) The Commission shall cause minutes to be taken at its meetings and the meetings of its Working Groups and enter them in books kept for the purpose.

(2) Any minutes which purport to be signed by the person presiding at the meeting to which the minutes relate or by the person presiding at the next following meeting of the Commission or the Working Group concerned, as the case may be, shall be accepted for all purposes as prima facie evidence of the proceedings and decisions taken at the meeting concerned.

(3) The Commission and any Working Group of the Commission shall cause copies of all minutes that have been signed to be sent to the Minister for his or her information.

#### *Validity of decisions and acts of Commission and Working Groups*

9.(1) No decision or act of the Commission and any Working Group or act done under their authority shall be invalid solely because—

- (a) the Commission or Working Group consisted of less than the number of persons for which provision is made in paragraphs 6 and 7; or
- (b) a disqualified person acted as a Commissioner or member of a Working Group at the time the decision was taken or the act was done or authorised;

if the decision was taken or the act was done or authorised by a majority vote of the persons who at the time were entitled to act as Commissioners or members of a Working Group.

(2) The decisions of the Commission shall be enforced by the High Court.



SECOND SCHEDULE (*Section 3(3)*)

## ANCILLARY POWERS OF COMMISSION

1. To acquire premises necessary or convenient for the exercise of its functions and for that purpose to buy, take on lease or in exchange, hire or otherwise acquire immovable property and any interest therein and any rights concessions, grants, powers and privileges in respect thereof.
2. To buy, take in exchange, hire or otherwise acquire movable property necessary or convenient for the exercise of its functions.
3. To maintain, alter or improve property acquired by it.
4. To mortgage any assets, or part of any assets and, with the approval of the Minister, to sell, exchange, lease, dispose or turn to account or otherwise deal with any assets or part of any assets which are not required for the exercise of its functions for such consideration as it may determine.
5. To open bank accounts in the name of the Commission and to draw, make, accept, endorse, discount, execute and issue for the purposes of its functions promissory notes, bills of exchange, securities and other negotiable or transferable instruments.
6. To insure against losses, damages, risks and liabilities which it may incur.
7. With the approval of Minister, to establish and administer such funds and reserves not specifically provided for in this Act as the Commission considers appropriate or necessary for the proper exercise of its functions.
8. To pay such remuneration and allowances and grant such leave of absence and to make such gifts, bonuses and the like to members of the Commission as it considers fit.
9. To provide pecuniary benefits for members of the Commission on their retirement, resignation, discharge or other termination of service or in the event of their sickness or injury and for their dependants, and for that purpose to effect policies of insurance, provident funds or make such other provision as may be necessary to secure for its members and their dependants any or all of the pecuniary benefits to which the provisions of this paragraph relate.
10. To purchase, take on lease or in exchange or otherwise acquire land for residential purposes or dwellings-houses for use or occupation by members of the Commission.
11. To construct dwellings, outbuildings or improvements for use or occupation by members of the Commission.
12. To provide or guarantee loans made to members of the Commission for the purchase of dwelling-houses or land for residential purposes, the construction of dwelling-houses and the improvement of dwelling houses or land which are the property of its members, subject to any conditions that may be imposed by the Commission from time to time.
13. To provide security in respect of loans by the deposit of securities, in which the Commission may invest such money as it may consider necessary for the purpose.
14. Subject to any conditions that may be imposed by the Commission from time to time, to provide loans to any members of the Commission—

- (a) for the purpose of purchasing vehicles, tools or other equipment to be used by the members in carrying out their duties; or
  - (b) not exceeding six months' salary or wages payable to the members concerned, for any purpose on such security as the Commission thinks adequate.
15. To do anything for the purpose of improving the skill, knowledge or usefulness of members of the Commission, and in that connection to provide or assist other persons in providing facilities for training, education and research, including the awarding of scholarships for such training.
  16. To provide such services as the Commission considers appropriate and to charge for such services such fees as the Commission, may from time to time determine.
  17. To engage in any activity, either alone or in conjunction with other organisations or international agencies, to promote better understanding of human rights violation issues.
  18. To provide advice or assistance, including training facilities, to the other human rights organisations from other countries.
  19. To do anything which by this Act or any other enactment is required or permitted to be done by the Commission.
  20. Generally to do all such things that are conducive to the performance of the functions of the Commission in terms of this Act or any other enactment.

### THIRD SCHEDULE (*Section 6(4)*)

#### OATH OF SECRECY

##### *Oath of Secrecy of Executive Secretary*

I, ..... having been appointed as Executive Secretary of the Human Rights Commission do swear [*or solemnly affirm*] that I will not, directly or indirectly, reveal any matters relating to such functions to any unauthorised persons or otherwise in the course of my duty.

So help me God.