

The Laws of Zambia

REPUBLIC OF ZAMBIA

THE HUMAN RIGHTS COMMISSION ACT

CHAPTER 48 OF THE LAWS OF ZAMBIA

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THE HUMAN RIGHTS COMMISSION ACT

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CHAPTER 48

HUMAN RIGHTS COMMISSION

Act
39 of 1996
Statutory Instrument
34 of 1997

An Act to provide for the functions and powers of the Human Rights Commission; to provide for its composition and to provide for matters connected with or incidental to the foregoing.

[12th December, 1996

PART I

PRELIMINARY

1. This Act may be cited as the Human Rights Commission Act. Short title

2. In this Act unless the context otherwise requires- Interpretation
 - "appropriate authority" means the authority to whom a recommendation is made by the Commission under section *thirteen*;

 - "appointed date" means such date as the President may appoint under section *one*;

 - "Chairperson" means the person appointed as Chairperson under section *five*;

 - "Commission" means the Human Rights Commission established under the Constitution;

 - "Commissioner" means a person appointed Commissioner under section *five*;

 - "Deputy Director" means a person appointed as Deputy Director under section *eighteen*;

 - "Director" means the person appointed as Director under section *eighteen*;

 - "Secretary" means the Secretary to the Commission referred to in section *eighteen*;

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"Staff" means the staff of the Commission appointed under section *eighteen*; and

"Vice-Chairperson" means the person appointed as Vice- Chairperson under section *five*.

PART II

THE HUMAN RIGHTS COMMISSION

- 3.** The Commission shall not, in the performance of its duties, be subject to the direction or control of any person or authority. Extent of Commission's autonomy
- 4.** (1) The seal of the Commission shall be such device as may be determined by the Commission and shall be kept by the Secretary. Seal of Commission
- (2) The affixing of the seal shall be authenticated by the Chairperson or the Vice-Chairperson and any other person authorised in that behalf by a resolution of the Commission.
- (3) Any document purporting to be under the seal of the Commission or issued on behalf of the Commission shall be received in evidence and shall be deemed to be so executed or issued, as the case may be, without further proof, unless the contrary is proved.
- 5.** (1) The Commission shall consist of the following Commissioners: Composition of Commission
- (a) the Chairperson;
- (b) the Vice-Chairperson; and
- (c) not more than five other Commissioners.
- (2) The Commissioners shall be appointed by the President, subject to ratification by the National Assembly.
- (3) The Chairperson and Vice-Chairperson shall be persons who have held, or are qualified to hold, high judicial office.

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6. (1) Every Commissioner shall, on appointment affirm or take an oath in Form I as set out in Part I of the Schedule, and such oath shall be administered by the President. Oath on appointment

(2) The Secretary and other members of staff shall on appointment, affirm or take an oath in Form 2 as set out in Part II of the Schedule and such oath shall be administered by a Commissioner for Oaths.

7. (1) A Commissioner referred to in subsection (1) of section *five* shall be appointed for a term not exceeding three years, subject to renewal: Tenure of office and vacancy

Provided that the first Commissioners shall be appointed for periods ranging from one to three years in order to facilitate retirement by rotation.

(2) A Commissioner may be removed from office for inability to perform the functions of the Commissioner's office, whether arising from infirmity of body or mind, incompetence or for misbehaviour.

(3) A Commissioner may resign upon giving one month's notice in writing to the President.

(4) The office of a Commissioner shall become vacant-

- (a) if the Commissioner is absent without reasonable excuse from three consecutive meetings of the Commission of which the Commissioner has had notice;
- (b) if the Commissioner is a declared bankrupt; or
- (c) upon the Commissioner's death.

8. If the office of a Commissioner becomes vacant before the expiry of the term of office, the President, may, subject to ratification by the National Assembly, appoint another person to be a Commissioner, for the unexpired term, in place of the Commissioner who vacates the office. Filling of casual vacancy

9. The functions of the Commission shall be to- Functions of Commission

- (a) investigate human rights violations;

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- (b) investigate any maladministration of justice;
- (c) propose effective measures to prevent human rights abuse;
- (d) visit prisons and places of detention or related facilities with a view to assessing and inspecting conditions of the persons held in such places and make recommendations to redress existing problems;
- (e) establish a continuing programme of research, education, information and rehabilitation of victims of human rights abuse to enhance the respect for and protection of human rights;
- (f) do all such things as are incidental or conducive to the attainment of the functions of the Commission.

10. (1) The Commission shall have powers to investigate any human rights abuses- Powers of Commission

- (a) on its own initiative; or
- (b) on receipt of a complaint or allegation under this Act by-
 - (i) an aggrieved person acting in such person's own interest;
 - (ii) an association acting in the interest of its members;
 - (iii) a person acting on behalf of an aggrieved person; or
 - (iv) a person acting on behalf of and in the interest of a group or class of persons.

(2) The Commission shall have powers to-

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

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- (d) recommend the punishment of any officer found by the Commission to have perpetrated an abuse of human rights.

(3) A witness summoned under subsection (2), shall be examined under oath and such oath shall be administered by the Chairperson.

(4) Subject to subsection 5, the Commission may where it considers it necessary recommend-

- (a) the release of a person from detention;
- (b) the payment of compensation to a victim of human rights abuse, or to such victim's family;
- (c) that an aggrieved person seek redress in a court of law: or
- (d) such other action as it considers necessary to remedy the infringement of a right.

(5) Notwithstanding subsection 4, the Commission shall not have powers where a matter is pending before a court.

11. (1) A complaint or allegation referred to in paragraph (b) of subsection (1) of section *ten* may be made orally or in writing and shall be addressed to the Secretary who shall, in the case of an oral complaint or allegation, reduce the same to writing. Complaints

(2) Every complaint or allegation shall-

- (a) be signed or thumb-printed by the person making it; and
- (b) bear the complainant's name and address.

(3) A complaint or allegation shall not be received by the Commission unless it is made within a period of two years from the date on which the facts giving rise to any such complaint or allegation become known to the person making the complaint or the allegation.

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(4) The Commission may refuse to conduct, or may decide to discontinue an investigation where it is satisfied that the complaint or allegation is malicious, frivolous, vexatious or the particulars accompanying it are insufficient to allow a proper investigation to be conducted, and shall indicate accordingly in the report.

(5) The Commission shall, in any case in which it decides not to conduct an investigation, or decides to discontinue an investigation inform the complainant in writing accordingly, and give reasons therefor.

(6) The Commission may in any inquiry make such orders and give such directions as it may consider necessary for the purpose of conducting any investigation.

12. The Commission shall-

Sittings of the
Commission to be
public

- (a) conduct all its sittings in public:

Provided that the Commission may hold its sittings in camera when the Commission considers it necessary; and

- (b) make all its reports in respect of such sittings public.

13. (1) The Commission shall-

Recommendation by
Commission

- (a) send written reports of its findings to the parties concerned; and

- (b) dependant on the findings made, make such recommendation as it considers necessary to the appropriate authority.

(2) The appropriate authority shall, within thirty days from the date of such recommendation make a report to the Commission, on any action taken by such authority to redress any human rights violation.

(3) Any person who contravenes the provisions of subsection (2) shall be guilty of an offence, and shall be liable, upon conviction, to a fine not exceeding ten thousand penalty units, or to imprisonment for a term not exceeding three years, or to both.

- (4) For the purposes of subsection (3), where an offence is committed by-

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- (a) a body corporate, every director or similar officer of the body shall be guilty of the offence;
- (b) a partnership, every partner shall be guilty of the offence; and
- (c) a public authority, the officer or officers charged with the responsibility of acting on a recommendation and making a report on such recommendation shall be guilty of the offence.

(5) A person shall not be guilty of an offence under subsection (3) if such person proves to the satisfaction of the court that-

- (a) the act constituting the offence was done without the knowledge, consent or connivance of such person; or
- (b) such person attempted to prevent the commission of the offence having regard to all the circumstances of the case.

14. (1) Subject to the other provisions of this Act, the Commission may regulate its own procedure.

Proceedings of
Commission

(2) The Commission shall meet for the transaction of business at least once every three months at such places and times as the Chairperson may determine.

(3) The Chairperson may at any time call a meeting of the Commission and shall call a special meeting to be held within fourteen days of receipt of a written request addressed to the Chairperson by at least four other Commissioners.

(4) If the urgency of any particular matter does not permit the giving of such notice as is required under subsection (3), a special meeting may be called by the Chairperson, upon giving a shorter notice.

(5) The Chairperson or Vice-Chairperson with four other Commissioners shall constitute a quorum at any meeting of the Commission.

(6) There shall preside any meeting of the Commission-

- (a) the Chairperson;
- (b) in the absence of the Chairperson the Vice-Chairperson; or

- (c) in the absence of both the Chairperson and the Vice-Chairperson, such other Commissioner as the Commissioners present may elect for the purpose of that meeting.

(7) A decision of the Commission on any question shall be by a majority of the Commissioners present and voting at the meeting and, in the event of an equality of votes, the Chairperson presiding at the meeting shall have a casting vote, in addition to such Chairperson's deliberative vote.

(8) The Commission may invite any person, whose presence is in its opinion desirable, to attend and to participate in the deliberations of the meeting of the Commission, but such person shall have no vote.

(9) The validity of any proceedings, acts or decisions of the Commission shall not be affected by any vacancy in the membership of the Commission or by any defect in the appointment of any Commissioner by reason that any person not entitled to do so, took part in the proceedings.

15. (1) The Commission may, for the purpose of performing its functions under this Act, establish such committees as it considers necessary, and delegate to any of those committees such of its functions as it considers fit.

Committees

(2) Subject to subsection (1), the Commission may appoint as members of a committee, persons who are, or are not, Commissioners except that at least one member of a Committee shall be a Commissioner.

(3) A person serving as a member of a committee shall hold office for such period as the Commission may determine.

(4) Subject to any specific or general direction of the Commission, a committee may regulate its own procedure.

16. (1) If any person is present at a meeting of the Commission or any committee at which any matter is the subject of consideration and which matter that person or that person's spouse is directly or indirectly interested in a private capacity, that person shall as soon as is practicable after the commencement of the meeting, declare such interest and shall not, unless the Commission or the committee otherwise directs, take part in any consideration or discussion of, or vote on, any question touching such matter.

Disclosure of interest

(2) A disclosure of interest made under subsection (1) shall be recorded in the minutes of the meeting at which it is made.

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(3) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence, and shall be liable, upon conviction, to a fine not exceeding five thousand penalty units.

17. (1) A person shall not without the consent in writing given by, or on behalf of the Commission, publish or disclose to any person otherwise than in the course of such person's duties, the contents of any documents, communication, or information which relates to, and which has come to such person's knowledge in the course of such person's duties under this Act.

Prohibition of disclosure of information to unauthorised persons

(2) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence, and shall be liable, upon conviction, to a fine not exceeding ten thousand penalty units or to imprisonment for a term not exceeding three years, or to both.

(3) if any person having information which to such person's knowledge has been published or disclosed in contravention of subsection (1), unlawfully publishes or communicates any such information to any other person, such person shall be guilty of an offence, and shall be liable, upon conviction, to a fine not exceeding ten thousand penalty units or to imprisonment for a term not exceeding three years, or to both.

PART III

THE DIRECTORATE OF THE COMMISSION

18. (1) The Commission shall appoint a Director and a Deputy Director of the Commission.

Director, Deputy Director and other staff

(2) The Director shall be-

- (a) the Secretary to the Commission;
- (b) responsible for the management and administration of the Commission;
- (c) a qualified advocate;
- (d) a full-time officer; and
- (e) responsible for the implementation of any matters referred to such Director by the Commission.

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(3) The Commission may appoint, on such terms and conditions as it may determine, such other staff as it may consider necessary for the performance of its functions under this Act.

(4) The Public Service Regulations shall apply to the staff appointed by the Commission.

(5) The Commission may engage the services of such advisors and experts as it thinks necessary.

19. Section *seventeen* shall apply, with the necessary modifications, to the staff.

Prohibition of disclosure of information by staff to unauthorised persons

20. (1) No proceedings, civil, or criminal, shall lie against any Commissioner or the staff, for anything done in the exercise of such person's functions under this Act.

Immunity of Commissioners and staff

(2) Subject to the provisions of this Act, a Commissioner or a staff member shall not be called to give evidence before any court or tribunal in respect of anything coming to such person's knowledge in the exercise of such person's functions under this Act.

(3) For the avoidance of any doubts, nothing in this section shall protect any Commissioner or the staff, for anything done outside the functions of such person's office.

21. (1) A person who-

Offences

- (a) is a witness before the Commission and without lawful excuse refuses to be sworn or affirmed, or having been sworn or affirmed refuses to answer fully and satisfactorily any question lawfully put to such person;
- (b) gives false testimony in any material particular to any matter under investigation;
- (c) insults, interrupts or otherwise obstructs any Commissioner or any member of staff in the performance of such person's functions under this Act; or
- (d) disobeys any order made under this Act;

shall be guilty of an offence, and shall be liable, upon conviction, to a fine not exceeding ten thousand penalty units, or to imprisonment for a term not exceeding three years, or to both.

PART IV

FINANCIAL AND OTHER PROVISIONS

22. (1) The funds of the Commission shall consist of such moneys as may- Funds of Commission

- (a) be appropriated by Parliament for the purposes of this Act;
- (b) be paid to the Commission by way of grants or donations; and
- (c) vest in or accrue to the Commission.

(2) The Commission may subject to the approval of the a President-

- (a) accept money by way of grants or donations from any source; and
- (b) raise by way of loans or otherwise, such moneys as it may require for the discharge of its functions.

(3) There shall be paid from the funds of the Commission-

- (a) the salaries, allowances, pensions and loans of the Commissioners and staff;
- (b) such reasonable travelling, transport and subsistence allowances for the Commissioners and members of any committee of the Commission, when engaged in the business of the Commission; and
- (c) any other expenses incurred by the Commission in the performance of its functions.

(4) A person summoned as a witness under this Act, may on the order of the Commission be paid such allowances as may be prescribed by the Commission.

23. The financial year of the Commission shall be the period of twelve months ending on 31st December in each year. Financial year

24. (1) The Commission shall cause to be kept proper books of account and other records relating to its accounts. Accounts

(2) The accounts of the Commission shall be audited annually by independent auditors appointed by the Commission.

(3) The auditors' fees shall be paid by the Commission.

25. (1) As soon as is practicable, but not later than ninety days after the end of the financial year, the Commission shall submit to the President a report concerning its activities during the financial year. Annual report

(2) The report referred to in subsection (1) shall include information on the financial affairs of the Commission and there shall be appended to the report-

- (a) an audited balance sheet;
- (b) an audited statement of income and expenditure; and
- (c) such other information as the President may require.

(3) The President shall not later than seven days after the first sining of the National Assembly next after receipt of the report referred to in subsection (1), lay the report before the National Assembly.

26. The Commission may, by statutory instrument, make rules for the- Rules

- (a) appointment, including the power to confirm appointments of persons, to any office in respect of which it is charged with responsibility under this Act;
- (b) disciplinary control of persons holding or acting in such offices;
- (c) termination of appointments and the removal of such persons from office;
- (d) practice and procedure of the Commission in the exercise, of its functions under this Act; and

(e) delegation of its functions or powers.

27. The Commission may, by statutory instrument, make regulations for the better Regulations carrying out of the purposes of this Act.

SCHEDULE

Form 1

PART I
(Section (6) (1))

OATH OF HUMAN RIGHTS COMMISSION

I, having been appointed as Chairperson/Commissioner of the Human Rights Commission will, discharge the functions of the office of Chairperson/Commissioner of the Human Rights Commission and that I will not, directly or indirectly, reveal any matters relating to such functions to any unauthorised persons or otherwise than in the course of duty.

SO HELP ME GOD

Sworn/Affirmed before me this day of
19.....

.....
President

PART II
(Section (6) (2))
OATH OF SECRETARY OR STAFF OF COMMISSION

I, having been appointed to exercise the functions of Secretary of the Commission/a member of the staff of the Commission, do swear/affirm that I will not, directly or indirectly, reveal to any unauthorised person or otherwise than in the course of duty the contents or any part of the contents of any document, communication or information whatsoever which may come to my knowledge in the course of my duties as such.

SO HELP ME GOD

Sworn/Affirmed before me this day of
19

.....
Commissioner for Oaths