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## THE TANZANIAN COMMISSION FOR HUMAN RIGHTS AND GOOD GOVERNANCE

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### PART A. INTRODUCTORY COMMENTARY

#### 1 Introduction

The United Republic of Tanzania, established on 26 April 1964, is a union of two states, the Republic of Tanganyika and the People’s Republic of Zanzibar. Prior to their union, they were independent states each with its own distinct history. The history of Tanganyika, in particular, shows that the creation in 2000 of the Commission for Human Rights and Good Governance (hereafter CHRAGG or the Commission) was a product of the struggle for the protection and promotion human rights in the country. Some notable aspects of that history are key to understanding the context of the government’s decision to establish the Commission.

Tanganyika was granted independence by Britain on 9 December 1961 via the Independence Constitution of 1961. Unlike the case in most other former British colonies, this constitution did not contain a bill of rights, as the idea had been rejected by the Tanganyika African National Union (TANU) led by Julius Nyerere. The government maintained that the rule of law could be upheld “[by] having independent judges administering justice free from political pressure”,<sup>1</sup> and not necessarily by guaranteeing basic human rights in the form of a bill of rights. The government’s stand on human rights was also manifested in a statement by the then vice president, Rashid Kawawa, who categorically described a bill of rights as

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1 Proposals of the Tanganyika Government for a Republic, Government Paper No 1 (1962), p 6.

“as a luxury which merely invites conflicts”<sup>2</sup> and said the government’s priority was to bring development to the people. However, this position could not be sustained owing to the political and other changes that later took place in the country. Key amongst them was the union of Tanganyika and Zanzibar and demands for a stronger human rights system at the national level.

The state of union in 1964 necessitated the promulgation of the Interim Constitution of 1965. One of the demands made during the preparation of this constitution was for human rights to be protected in a bill of rights. The government’s response was the establishment in 1966 of the Permanent Commission of Inquiry (PCE),<sup>3</sup> the first ombudsperson in Tanzania as well as in Africa. The Interim Constitution<sup>4</sup> gave the President the power to appoint five commissioners with varying qualifications. The PCE was composed of a chairperson, commissioners, an executive secretary, directors, heads of divisions, administrative officers, investigation officers, and supporting staff.

The PCE dealt solely with maladministration in the public sector, yet though it did not have a specific human rights mandate, some of its investigations concerned matters with human rights implications. The PCE’s functions were to conduct investigations on all complaints relating to the abuse of office and maladministration after internal complaints-handling procedures in this regard had been exhausted, and to educate the public on the system of administration. One notable feature of the PCE is that it reported directly to the President, who then decided how to deal with its findings and recommendations. Despite these efforts by the government to address abuses of public office, the establishment of the PCE did not quell demands specifically for a bill of rights.

Following internal and external pressure, in 1984 a bill of rights was incorporated for the first time in the Constitution of the United Republic of Tanzania of 1977. However, its justiciability was suspended for a period of three years on the ground that the government needed some time “to put its house in order”. The Bill of Rights thus became justiciable in 1988, notwithstanding that the legislation prescribing the procedure for

2 L. Kalunga, “Human Rights and Preventive Detention Act, 1962 of the United Republic of Tanzania: Some Operative Aspects”, 11(14) *Eastern Africa Law Review* (1978-1981), p 281.

3 Permanent Commission of Inquiry Act 25 of 1966. This Act was repealed by the CHRRG Act of 2001.

4 Article 68.

enforcing the rights was enacted only in 1994.<sup>5</sup> Be that as it may, the inclusion of a bill of rights in the Constitution was not an end in itself but rather a catalyst for further improvement in the country's human rights system.

In the 1990s there was a national call for reforming Tanzania's legal sector and human rights institutional framework. The government, with the World Bank's financial assistance, initiated the Financial and Legal Management Upgrading Project (FILMUP) in 1992. Under this project, the Legal Task Force was formed to undertake a broad review of the legal sector. It submitted its report to the government through the Minister for Justice and Constitutional Affairs in early 1996, and, among other things, recommended the establishment of a national human rights commission in Tanzania.

Subsequently, the government approved the proposal in its White Paper No 1 of 1998. The White Paper also invited the public to provide its views on the proposal under the coordination of the National Constitutional Review Committee. The public consultation process culminated in the Kisanga Report, which, inter alia, recommended the establishment of a national human rights commission.

However, before the Constitution was amended to establish a national human rights institution (NHRI), the government sought more views through a national consultative process with civil society which was coordinated by the United Nations Association of Tanzania (UNA). On the basis of the recommendations of a workshop held in January 1998, UNA and the Zanzibar Legal Service Centre (ZLSC) prepared a draft bill for the establishment of an independent national human rights commission. The full text of the bill was advertised in newspapers in various regions and discussed at a series of regional workshops. Later, at a meeting of stakeholders held in Dar es Salaam in September 1999 under the auspices of the Ministry of Justice and Constitutional Affairs, a revised draft of the proposed bill was produced and submitted to the government for the necessary action.<sup>6</sup>

In a parallel development during the fiftieth anniversary of the Universal Declaration of Human Rights in 1998, civil society organisations (CSOs) in Tanzania had used the opportunity to demand the establishment of a more elaborate and appropriate human rights institution

5 Basic Rights and Duties Enforcement Act, Chapter 3 of the Laws of Tanzania, Revised Edition 2002.

6 CHRAGG, *Ten Years of the Commission for Human Rights and Good Governance: Reflection of a Journey (2002-20012)*, p 6.

in the country.<sup>7</sup> All these efforts from within and outside the government bore fruit and prepared the way for the establishment of an NHRI with a clear and broad mandate to deal with human rights and matters of good governance.

## 2 Establishment and evolution of the CHRAGG

The CHRAGG was established in 2000 through the Thirteenth Amendment<sup>8</sup> of the Constitution. It replaced the former PCE and assumed its functions; in fact, it inherited 2,237 matters, which it continued to handle when it began its operations. The CHRAGG officially became operational on 1 July 2001 on the coming into force of the CHRAGG Act.<sup>9</sup> Its inauguration took place in March 2002 after the appointment of its commissioners by the President of the United Republic of Tanzania.

Despite the fact that the CHRAGG Act<sup>10</sup> applies in Mainland Tanzania and Tanzania Zanzibar, the Commission initially operated only in Mainland Tanzania until such time as its geographical mandate was extended to Zanzibar through the Commission for Human Rights and Good Governance (Extension) Act.<sup>11</sup> After this law was passed, the Commission officially began to perform its functions in Zanzibar in 2006.

In carrying out its mandate, the Commission is guided by the vision of “a society in which human rights and principles of good governance are promoted and protected”. To achieve this vision, the Commission has the mission “to promote and protect human rights and good governance in collaboration with stakeholders”. The values core to its work are independent decision-making, integrity, teamwork, transparency, accountability, respect for human rights, impartiality, equality, and a results-orientation.

The Commission’s role is double-pronged in that it serves both as a human rights commission and an ombudsperson. Specifically, the Commission is an “independent” national oversight institution for the protection and promotion of human rights and good governance in the country.

7 CP Maina, “Human Rights Commissions in Africa – Lessons and Challenges”, in A Bösl and J Diescho (eds) *Human Rights in Africa: Legal Perspectives on their Protection and Promotion*, Macmillan Education Namibia, Windhoek (2009), pp 363-364.

8 Act 3 of 2000.

9 Act 7 of 2001.

10 Section 3.

11 Act 12 of 2003.

### **3 The nature of the CHRAGG**

#### **3.1 Legal framework and administration**

The Commission is established under Article 129 of the Constitution. However, Parliament is given power under the Constitution<sup>12</sup> to enact specific legislation for the purposes of setting out detailed provisions on matters such as its powers and procedures and the legal immunities of its commissioners. In this regard, Parliament in 2001 enacted the Commission for Human Rights and Good Governance Act<sup>13</sup> to provide for the “powers, privileges and other matters of the Commission for Human Rights and Good Governance and related matters”.<sup>14</sup> This legal basis conforms to the Paris Principles,<sup>15</sup> which require the composition and mandate of a national institution to be set out in a constitution or legislation.<sup>16</sup>

Administratively, the Commission is part of the Ministry of Constitutional and Legal Affairs, along with other organs, namely the Judiciary of Tanzania; Office of the Attorney-General; National Prosecutions Office; Law Reform Commission; Judicial Service Commission; Office of the Solicitor General; Registration, Insolvency and Trusteeship Agency; Law School of Tanzania; and Institute of Judicial Administration – Lushoto.<sup>17</sup>

The Commission is composed of a chairperson, vice chairperson, five commissioners, and assistant commissioners whose number is not specified in the law. The Commission has a secretariat, which is responsible for managing day-to-day activities and is headed an executive secretary. The secretariat is composed of divisions, each of which is headed by a director; divisions in turn are made up of sections, which are overseen by heads of sections.

12 Article 131.

13 Act 7 of 2001.

14 See the long title of the Act.

15 The Paris Principles are contained in UN General Assembly Resolution 48/134 of 20 December 1993.

16 See Section I(2) of the Paris Principles.

17 See Ministry of Constitution and Legal Affairs Budget Speech, 2018/2019, available at <https://bit.ly/2XNO8Hb> (accessed 15 March 2019), p 5.

## **3.2 Independence and financial autonomy**

### **3.2.1 Independence**

In terms of the law, the Commission operates as an independent government department with commissioners who perform their functions without the direction or control of any person or authority except as provided for under the Constitution.<sup>18</sup> According to the Commission's annual reports, the Commission has been functioning independently without any interference and influence from private persons or government authorities.

The appointment procedure for the commissioners is clearly laid down in regulations made under the CHRAGG Act. Their tenure is three years, renewable once. The procedure for removing a commissioner from office requires the formation of a special tribunal that enquires into the matter and advises the President accordingly. However, during the inquiry by the special tribunal, the President has the power to suspend the commissioner from duty. Commissioners are removable from office for inability to perform functions due to illness or to any other reason, or for behaviour inconsistent with the ethics of office or any law concerning the ethics of public leaders.

### **3.2.2 Financial autonomy**

The Commission's sources of funds include money allocated by Parliament; money from any other source; or donations and grants from sources within or outside the country.<sup>19</sup> The law rightly recognises that the government alone cannot sufficiently fund the operations and activities of the Commission.

Parliament allocates money to it through the Ministry of Constitutional and Legal Affairs, under which it is administratively placed. However, since the establishment of the Commission, there have been ongoing concerns about its funding in that it has not been receiving its full allocated budget and in some years that allocated budget has been dramatically reduced. This is evident in the available data below.

The Commission's approved budget for the year 2013/2014 was Tanzanian shillings (TZS) 3,795,802,000, but the amount actually received was TZS 1,549,114,131. Again, in 2014/2015 its allocated budget

18 Section 14 of the CHRAGG Act and Article 130(2) of the URT Constitution.

19 Section 29 of the CHRAGG Act.

was TZS 4,556,012,000, but the amount actually received was TZS 1,882,505,315. Surprisingly, for the 2016/2017 period the approved budget dropped to TZS 1,178,854,026; by 31 December 2016, the Commission had received only TZS 556,391,226. According to the Commission, the money allocated enables it only to pay salaries and cover the administrative costs for running its four offices.<sup>20</sup>

In its annual reports, the Commission points to inadequate funding as one of its major challenges. For example, in its 2002/2003 annual report it said it needed adequate resources to be able to carry out its activities.<sup>21</sup> During the 2015/2016 financial year, the money set aside for the Commission was TZS 5,005,949,000; however, until June 2016 it had received only TZS 1,241,701,100, which was 55 per cent of the approved amount. The money set aside for development purposes was TZS 382,122,000, but in actuality the Commission received only TZS 324,212,100, or 84 per cent of the approved amount.<sup>22</sup>

In 2016 the Network of African Human Rights Institutions (NANHRI)<sup>23</sup> made the following observation about the weaknesses of the CHRAGG:

The Commission's [Commission] faces funding challenges to effectively handle its wide mandate of human rights and maladministration issues. Due to the wide mandate, the Commission is also faced with issues of understaffing and limited expertise in the diverse fields of human rights [and] maladministration. The wide mandate also requires high funding to effectively implement various mandates.<sup>24</sup>

It is hence clear that government funding of the Commission is insufficient. Although there is no evidence that the independence of the Commission is affected by this situation, it is obvious that inadequate funding prevents it from executing its functions under the law effectively.

20 See Tanzania Human Rights Defenders Coalition, "Statement to the President of the United Republic of Tanzania on the Situation of the Commission for Human Rights and Good Governance since the Expiry of the Commissioners' Terms in January 2018", available at <https://bit.ly/2XokKrI> (accessed 17 February 2019).

21 CHRAGG, 2002/2003 Annual Report (2005), p 253.

22 CHRAGG, 2015/2016 Annual Report, p 115.

23 A Mapping Survey of the Complaint Handling Systems of African National Human Rights Institutions (2016), available at <https://bit.ly/2LEnVV8> (accessed 19 February 2019).

24 *Ibid*, p 37.

To fill this gap the Commission has benefited over the years from the financial and technical assistance of donors and partners. Selected cases of assistance are worth mentioning:

- Since 2001, the Denmark Development Cooperation Agency (DANIDA) has extended material support to the Commission in a number of ways. It financially supported the construction of the Commission's head office building in Dar es Salaam; furnished and equipped the office; facilitated capacity-building for commissioners and staff; and supported various studies.
- In 2006, research and public inquiries on child abuse in 11 regions of Tanzania Mainland were made possible thanks to financial assistance by UNICEF; in 2008, the same support was provided to cover all the regions of Zanzibar. Similarly, in 2011 UNICEF funded capacity-building to enable staff to monitor children's rights during inspections of detention facilities. At various times between 2007 and 2010, UNICEF provided support for the development of training manuals for, and delivery of training to, CSOs and community development officers regarding child-rights monitoring in Tanzania Mainland and Zanzibar.

Other bodies to have worked closely with the Commission on research projects and capacity-building include the following:

- The International Labour Organization (ILO) undertook capacity-building for staff and stakeholders on issues of child labour, and supported research and public enquiries on the same issues in Mwanza, Lindi and Dar es Salaam.
- The Office of the High Commissioner of Human Rights (OHCHR) and UN Tanzania supported training on investigation and human rights monitoring, in addition to which they built capacity on the role of stakeholders in the new Universal Periodic Review (UPR) process.
- The Canadian International Development Agency (CIDA) supported the preparation of a road-map, in the form of an outcome charter, for monitoring the implementation of UPR recommendations.
- ARTICLE 19, a non-governmental organisation (NGO) based in Nairobi, Kenya, also contributed to the preparation of the UPR report, while the African Policing Civilian Oversight Forum (APCOF) provided training to CHRAGG investigators.

The Commission has also enjoyed the assistance of other stakeholders, among them the Legal Sector Reform Programme (LSRP); Public International Law and Policy Group (PILPG); Public Service Reform Programme (PSRP); and Penal Reform International (PRI).<sup>25</sup>

Overall, the Commission's budgetary situation shows that its financial autonomy is under threat.

25 CHRAGG, Ten Year Report; *ibid*, pp 76-79.

### **3.3 Appointment procedure, professional skills and knowledge**

The application, selection and appointment of the commissioners of the CHRAGG are governed by the Constitution, the CHRAGG Act,<sup>26</sup> and the Commission for Human Rights and Good Governance (Appointments Procedure for Commissioners) Regulation.<sup>27</sup> The Constitution<sup>28</sup> establishes a Nomination Committee which is responsible for obtaining potential candidates for appointment. In the CHRAGG Act<sup>29</sup> and the Appointments Regulations,<sup>30</sup> this Committee is referred to as the “Appointments Committee”. The members of the Appointments Committee are the Chief Justice of the Court of Appeal; the Speaker of the National Assembly; the Chief Justice of Zanzibar; the Speaker of the House of Representatives [Zanzibar]; and the Deputy Attorney-General, who is the Secretary of the Committee.

As regards the process, a public advertisement inviting applications for the posts of chairperson, vice chairperson, commissioners or assistant commissioners is required to be made and should clearly state all the relevant qualifications. An applicant must be a person who has knowledge and experience in matters relating to law, government, politics, or social affairs; is morally upright and competent in human rights and good-governance matters; demonstrates a strong commitment to human rights; can write and communicate effectively in English and Kiswahili; possesses strong conflict-resolution skills; and can handle delicate social and political matters. In addition, he or she must be a person who can act fairly and expeditiously and be able to work in a team as well as independently. For the post of chairperson, the applicant must, in addition to the foregoing, be a person who qualifies for appointment as a judge of the High Court or the Court of Appeal.<sup>31</sup>

All applicants are subjected to a screening process after which a shortlist of candidates is prepared. Shortlisted candidates are published in newspapers and on television, with the public being invited to submit comments on their suitability – these comments may be considered by the Appointments Committee in its selection process. Thereafter, the shortlisted candidates are invited for an interview with the Appointments Committee.

26 Section 7.

27 Government Notice No 89 (11 May 2001).

28 Article 129(4).

29 Section 4.

30 Regulation 3.

31 For the detailed qualifications, see Regulation 4 of the Appointments Regulations.

After the interviews, the Appointments Committee is required to submit to the President not less than three candidates it recommends to be appointed as chairperson; not less than three candidates it recommends to be appointed as vice chairperson; at least five more than the number of candidates to be appointed as commissioners; and at least five more than the number of candidates to be appointed as assistant commissioners. Additionally, the chairperson and the vice chairperson must be appointed on the principle that they do not both come from the same part of the Union – that is, if the chairperson hails from Mainland Tanzania, the vice chairperson must come from Zanzibar, and vice versa.<sup>32</sup> (However, since the establishment of the Commission, the chairperson has been a person from Mainland Tanzania).

Upon submission of the names to the President, he or she makes a formal appointment and swears in the appointed commissioners. The tenure of the commissioners, as noted, is three years, and they are eligible for reappointment for a second term of not more than three years.<sup>33</sup>

There are two notable challenges in the appointment of commissioners. The first concerns lack of succession planning and the second, delays in making appointments. With regard to succession, the tenure of the commissioners is not staggered; as a result, the end of the tenure sees all of them leaving the employ of the Commission at the same time, a practice which is not healthy for the sustainability of the Commission's work. For example, in 2008 all the commissioners left the Commission after completing their terms. According to Chris Maina Peter,<sup>34</sup> the arrangement does not help to maintain the institutional memory of the Commission.

Secondly, there have been instances of delays in appointing commissioners. For example, when the tenure of the commissioners expired in January 2018, it was not until November of that year that new appointments were made. This was so despite the fact that the commissioners whose terms expired still qualified for reappointment for another term of three years and that some members who had applied for the job had been interviewed. This leadership vacuum rendered the Commission unable to perform many of its core functions effectively.

In terms of professional skills and knowledge, the Commission's approach has been to ensure the existence of a team with diverse

32 Section 7(1)(b) of the CHRAGG Act, and Article 129(2)(b) of the URT Constitution.

33 Section 8(1) of the CHRAGG Act.

34 See note 8.

professional skills and knowledge, especially given that human rights and good governance are cross-cutting matters and therefore not the sole preserve of lawyers. A look at the profile of the commissioners and executive secretary as it was in 2003 sheds more light on the Commission's mixture of expertise.

**Table 6: Profile of CHRAGG commissioners and executive secretary, 2003**

<b>Name</b>	<b>Position</b>	<b>Professional qualifications</b>
Judge Robert Kisanga	Chairperson	Law and economics
Ambassador Mohamed Ramia Abdiwawa	Vice Chairperson	Economics and international relations
Catherine H M Kivanda	Commissioner	Education and public administration
Stephen Z. Mwaduma	Commissioner	Education and political science
Jecha Salim Jecha	Commissioner	Political science, international relations and public administration
Robert V Makaramba	Commissioner	Law
Safia Masoud Khamis	Commissioner	Law
Gad J K Mjemmas	Executive Secretary	Law

Source: CHRAGG 2002/2003 Annual Report, pp xi-xiv

In an attempt to tap into the potential of its members, the Commission has devised a system of "thematic areas". Under this system, staff are assigned to focus on one or more of 16 different human rights thematic areas as a way of ensuring that responsibilities are efficiently met.<sup>35</sup>

35 The 16 thematic areas are: indigenous peoples' rights; rights of persons with disabilities; women's rights, gender and children; anti-trafficking in persons, African Ombudsman and Mediators Association (AOMA), International Ombudsman Institute (IOI); business and human rights, International Criminal Court (ICC), Office of the High Commissioner for Human Rights (OHCHR); Freedom of Expression and Opinion and Media Rights; rights to education and health; employment matters, the East African Community (EAC) and the Southern Africa Economic Community (SADC); refugees, internally displaced persons, African Commission on Human and Peoples' Rights, NAHRI, African Court on Human and Peoples' Rights and GANHRI; relationship with criminal justice institutions, enforced disappearances, arbitrary and summary executions, relationship with police, prisons, prisoners' and remand prisoners' rights, acts of violence, and the death penalty; the elderly and pension funds; children's desk; right to water and environmental laws; right to own

### 3.4 Relationship with civil society, networking and partnership

The Commission has been working closely with CSOs, faith-based organisations (FBOs) and the media both in its promotional undertakings to raise awareness of human rights and good governance and in its monitoring of human rights violations and acts of poor governance. By 2012, it had entered into collaboration agreements with more than ten NGOs<sup>36</sup> for the purposes of delivering education on human rights and good governance to target groups in the country.

Some the major challenges that have limited the effectiveness of the Commission's working relationship with civil society are limited financial resources to implement joint projects; poor accountability and low levels of responsiveness in some quarters of civil society; limited technical capacity in executing programmes; and inadequate skills and capacity in dealing with human rights issues.<sup>37</sup>

The Commission is a member of various international networks, including the Network of African Human Rights Institutions, International Ombudsman Institute (IOI), African Ombudsman Association, and International Network of National Human Rights Institutions, which operates under the International Coordinating Committee (ICC) of the Human Rights Council. It is also an affiliate member of the African Commission on Human and Peoples' Rights. According to the Commission, the networks are an important opportunity for accessing technical and financial support.

### 3.5 Accessibility

The head office of the Commission is in Dar es Salaam, in addition to which it has a branch office in Zanzibar and a zonal office in Wete on Pemba Island. In Mainland Tanzania, it has zonal offices in Mwanza, located alongside Lake Victoria, and Lindi, in the southern part of the country. The Commission is supposed to serve all 26 regions of Mainland Tanzania and the five regions of Zanzibar. As such, it plans to open

property and land rights; principles of accountability, the Prevention and Combating of Corruption Bureau (PCCB) and Ethics Secretariat; and rights of farmers and people working in rural areas. See CHRAGG 2015/2016 Annual Report, p 23.

36 The organisations are NOLA, Kivulini, KIKANGONET, LINGONET, KCSOF, HUREP-Trust, Network Against Female Genital Mutilation (NAFGEM), TAWG, Umoja wa Walemavu Zanzibar (UWZ) and ZLSC.

37 CHRAGG Ten-Year Report, p 79.

additional offices to make itself more accessible to the populace; it also intends to relocate its head office to Dodoma, after which the current head office in Dar es Salaam will become a branch office.

The Commission has a website, but though it provides contact information (physical and postal address, phone number, fax and email) for each of the offices, much of it is outdated. Even more importantly, there is little or no information on crucial issues such as strategic plans, legal instruments on the establishment and mandate of the Commission, the Commission's activities, participation in international events, human rights treaties, and developments in international human rights law.

## **4 Mandate of the Commission**

The mandate of the CHRAGG is spelt out in the Constitution<sup>38</sup> and CHRGG Act.<sup>39</sup> Its overall function is to promote, protect and preserve human rights and uphold principles of good governance in the country. It discharges these functions through its promotional, protective, advisory and mediatory or conciliatory role. Moreover, the Commission's advisory role makes it the principal advisor to the government on matters of human rights and good governance.

With regard to other institutions with a similar mandate, the High Court is vested with original jurisdiction to receive and hear human rights petitions.<sup>40</sup> It also has jurisdiction to receive applications for judicial review of executive actions. A victim of human rights violations or administrative injustice can thus decide to take the matter before either the Commission or the Court. In this sense the two institutions have complementary rather than competing mandates. It is then up to the victim to decide which avenue would better address his or her problem after assessing the nature of the issue and its legal implications.

### **4.1 Commenting on existing and draft laws**

One of the Commission's functions is to comment on existing and draft laws. The CHRAGG Act requires the Commission, inter alia, "[to] make recommendations relating to any existing or proposed legislation, regulations, or administrative provisions to ensure compliance with

38 Article 130(1).

39 Section 6.

40 Section 4 of the Basic Rights and Duties Enforcement Act and Chapter 3 of the Laws of Tanzania, Revised Edition of 2002.

human rights norms and standards and with the principles of good governance”.<sup>41</sup>

On several occasions the Commission has identified and reviewed legislation and bills with a view to ensuring their compliance with human rights standards. These include the Prevention of Terrorism Act of 2002, the Persons with Disabilities Act of 2010, the Law of the Child Act of 2009, and the Constitutional Review Bill of 2011.<sup>42</sup>

However, the Commission has noted that the “bad laws” in the Tanzanian legal framework identified by the Nyalali Commission in 1990 remain a barrier to the realisation of human rights in that they are outdated and do not conform to international human rights standards. Some of the “bad laws” are the Law of Marriage Act of 1971 and the Local Customary Laws Declaration Order No 4 of 1963.<sup>43</sup>

## 4.2 Monitoring domestic human rights situations

The Commission conducts regular monitoring with a view to determining the human rights situation in the country at various levels. For the Commission, monitoring is an essential tool for enhancing protection of human rights and strengthening the role of the state in realising human rights and upholding principles of good governance. For example, in 2008 the United Nations Development Programme (UNDP) Country Office provided it with financial support to monitor the human rights situation in eight regions in Mainland Tanzania with the aim of gathering information on the causes of human rights violations and administrative injustices and proposing appropriate ways of addressing the identified challenges.<sup>44</sup>

## 4.3 Monitoring and advising on compliance with international standards

The Commission is mandated to promote ratification of or accession to human rights treaties and to advise on harmonisation of national legislation with the treaties. It has a duty to monitor the state’s compliance with international human rights standards under the treaties to which the country is a party.<sup>45</sup> The Commission is also required to cooperate with

41 Section 6(1)(k).

42 CHRAGG Ten-Year Report, p 64.

43 *Ibid*, p 65.

44 CHRAGG Ten-Year Report, p 62.

45 Section 6(1)(l), CHRAGG Act.

global, regional and national institutions of other countries in the area of human rights and administrative justice.<sup>46</sup>

As a result of this, the Commission has participated in the UPR of the Human Rights Council. In 2011 it submitted its report for the UPR and coordinated 46 CSOs in the country in preparing a joint report that was also submitted to the Council. The Commission, acting in collaboration with UPR stakeholders, has established that its role in ensuring the implementation of the UPR recommendations consists of coordination and monitoring of implementation of the recommendations; development of guidelines and follow-up strategies; mobilisation of resources; conducting awareness campaigns and advocacy programmes; seeking accreditation of local NGOs to participate in UPR activities at the United Nations level; convening meetings of thematic groups; assessing the level of implementation of the recommendations; and building the capacity of stakeholders on various UPR activities.

The Commission also facilitated the formation of four thematic groups as a strategy to lobby for the implementation of UPR recommendations. These groups relate to the administration of justice; economic, social and cultural rights; special groups; and freedom of expression. The roles of the groups were to devise an inclusive formula for lobbying for UPR recommendations; create and maintain strategic dialogue with the government on various aspects of implementation; undertake awareness-raising in the country on UPR issues; coordinate stakeholders in the country in UPR activities; build CSOs' technical capacity and enhance their understanding of international human rights systems; seek a common understanding with the government on UPR commitments; and translate UPR documents into Kiswahili.<sup>47</sup>

In addition, the Commission has been interacting with regional and international human rights mechanisms at different levels, specifically with regard to monitoring the implementation of concluding observations and recommendations stemming from the mechanisms. A number of achievements are worth mentioning. These include successful lobbying that led, first, to Tanzania's ratification of the Convention on the Rights of Persons with Disabilities (CRPD) in 2008 and its domestication in 2010; and, secondly, the domestication of the Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of Children (ACRWC). In this regard, Mainland Tanzania passed the Law of the Child Act of 2009 and Zanzibar, the Children Act of 2011.

46 *Ibid*, section 6(1)(m).

47 CHRAGG Ten-Year Report, p 81.

The Commission was also at the forefront in implementing the Vienna Declaration and Plan of Action of 1993 and developing of the National Human Rights Action Plan, the implementation of which spanned from 2003-2017.<sup>48</sup> The Commission encouraged the government to accept the competence of the African Court on Human and Peoples' Rights, as a result of which individuals and local NGOs are now allowed to institute cases directly before the Court. It has also been pushing the government to ratify the Convention against Torture (CAT), efforts which are likely to bear fruit.<sup>49</sup>

More importantly, the Commission has demonstrated its ability to prepare and submit shadow reports to treaty-monitoring bodies. For example, in January 2016 it submitted a shadow report on Tanzania's seventh and eighth report on the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).<sup>50</sup> The report highlighted what the government has been doing to realise women's rights but so too challenges that needed to be addressed, such as witch-killings, limited access to health care, and poor prison facilities for women.

#### 4.4 Research, educating and training

One of the core functions of the Commission is to conduct research and educate the public on human rights and good governance issues.<sup>51</sup> It has used various means to fulfil this function. For example, between 2002 and 2012 the Commission conducted awareness-raising activities through outreach programmes in all regions in Mainland Tanzania and Zanzibar. The programmes entailed holding public meetings in selected villages, primary and secondary schools and colleges; meetings were held in police stations and prison facilities too. The Commission prepared and disseminated educational communication materials such as fliers, posters, copies of the Bill of Rights, t-shirts with human rights messages, and newsletters.

To reach more people, it used print media, radio and television programmes, dramas and jingles. Similarly, as a strategy to enhance its publicity, the Commission participated in national and regional exhibitions such as Local Government Week, an international trade fair popularly known as *Saba*, a farmers' week called *Nane*, and the African Public Service Week Exhibition. At these exhibitions, the Commission

48 The formulation of a second National Human Rights Action Plan is under way.

49 CHRAGG Ten-Report, p 85.

50 Available at <https://bit.ly/2Xu4Wnz> (accessed 15 March 2019).

51 Article 130(1)(d) of the URT Constitution and section 6(1)(d) of the CHRAGG Act.

displayed its work, disseminated information documents, received complaints from the people, and provided legal advice.

With regard to networking, the Commission worked with the Ministry of Education and Vocational Training in developing the National Strategy on the Implementation of Human Rights Education in Tanzania (2011-2016)<sup>52</sup> and establishing human rights clubs in schools and higher learning institutions as a strategy to advance human rights education and instil a human rights culture among students.<sup>53</sup>

The Commission collaborated with a variety of stakeholders in raising awareness on human rights issues through seminars, training and workshops. The stakeholders included police and prison officers, the judiciary, the media (editors and journalists), Members of Parliament, ward executive officers, village executive officers, and CSOs. To ensure sustained impact, the Commission prepared training manuals on child-rights monitoring (2008) and human rights monitoring (2007), along with a toolkit for multi-agency monitoring of places of detention of children (2012), and guidelines for facilitators of human rights education. Other materials were entitled *Human Rights Education and Principles of Good Governance*, which was targeted at local government leadership at ward level, and *Simplified Procedures for Observance of Human Rights among Legal Sector Institutions* (written both in Kiswahili and English).

The Commission has encountered many challenges in its education and training programmes. Besides the problem of inadequate funds, which limits the number of people in rural areas to whom training and public education can be offered, trainees have had inadequate basic knowledge of human rights issues and the Commission has been unable to conduct a needs assessment or assess baseline knowledge levels among target groups before offering training.

Unfortunately, the website of the Commission, which could be an important tool in educating the public about its work, contains very limited information. Efforts should be made to address this problem, given that in the digital world the first point of reference for people searching for information is the Commission's website.

52 CHRAGG Ten-Year Report, p 69.

53 CHRAGG 2015/2016 Annual Report, p 78.

#### **4.5 Receiving and dealing with complaints**

There are three methods for submitting a complaint to the Commission: first, by way of a letter; secondly, by personal presentation of the complaint at any of the Commission's offices; and, thirdly, by sending a text message to the Commission's mobile number. A complainant can also use the Commission's email address to send further information in case a text message cannot provide it all. A person who uses the text-message method has an opportunity to follow up on the complaint by sending the word 'STATUS', followed by his or her assigned file number, to the Commission's mobile number.<sup>54</sup> The manner of receiving and dealing with complaints is detailed in the CHRAGG (Complaints Handling Procedure) Regulations.<sup>55</sup>

#### **4.6 Monitoring government compliance with advice and recommendations**

Soon after its establishment, the Commission was confronted with a matter that set an important precedent as far as the implementation of its recommendations is concerned. A portion of land in the Serengeti District was registered under the law as Nyamuma Village. In 1994 a large part of this village was expropriated by the government to establish the Ikongoro Game Reserve. As a result of an order issued by the district commissioner, the villagers who were living on the remaining land of Nyamuma Village were forcefully evicted on 12 October 2001 after having been given four days' notice through a loudspeaker.

Following the incident, the Legal and Human Rights Centre (LHRC) – a local human rights NGO – and 135 affected villages filed a complaint with the CHRAGG against the district commissioner, the police officer in charge of the district, and the Attorney-General. The Commission carried out an investigation, interviewing 138 witnesses for the complainants and 20 for the respondents.

Its findings, released on 13 December 2004, were that the government had, by so acting, violated the rights of the complaints. The government was directed to resettle the complainants and pay compensation to the victims to the tune of more than TZS 800 million. But instead of implementing the recommendations, on 18 May 2005 the government, through the Attorney-General, responded in writing to the chairperson of

54 Commission's website at <https://bit.ly/2XLjNJv> (accessed 11 January 2019).

55 Government Notice No 144 (23 May 2003).

the Commission, stating that after conducting its own investigation, it had come to the conclusion that it had not violated any human rights violation during the evictions.

Acting under section 28(3)<sup>56</sup> of the CHRAGG Act, the Commission asked the LHRC to file a suit in the High Court on behalf of the affected villagers in order to claim resettlement and compensation. The LHRC filed the suit in the High Court (Main Registry) for enforcing the recommendation on compensation and a claim in the High Court (Land Division) for demanding resettlement of the villagers. Both cases were dismissed by the High Court on the ground that the Court had no jurisdiction to enforce the recommendations of the Commission.

In September 2006, the LHRC filed an appeal in the Court of Appeal (the highest court) to challenge the High Court's decision. On 2 January 2005 the Court of Appeal handed down its decision, stating that the High Court had erred in its failure to entertain the matter on merit and that it was proper of the LHRC to have filed the application to enforce the Commission's recommendation. The Court of Appeal ordered the matter to be referred back to the High Court. It also suggested that the Commission advise the Minister of Constitutional and Legal Affairs to make regulations on the procedure for enforcing the recommendation of the Commission.<sup>57</sup> Following the Court of Appeal's decision, the LHRC and the 135 affected villages filed a successful claim in the High Court.

More generally, the Commission has noted that most of its recommendations are complied with.<sup>58</sup>

#### **4.7 Limitations to the Commission's mandate**

The broad mandate of the Commission is not without limitations. The Commission does not have the power to investigate the following: the decision of a judge or magistrate or of the court or tribunal; a matter which is pending before a court or tribunal; a matter involving the relations or dealings between the government and the government of any foreign state or an international organisation; a matter relating to the prerogative of mercy; any matter which is mentioned in any law; or a matter which the

56 The section empowers the Commission to bring an action before any court or recommend to any competent authority to bring such action against any department, authority or person that fails to implement its recommendation(s).

57 The regulations were drafted by the Commission and submitted to the Attorney-General for approval. To date, however, they have not been finalised.

58 CHRAGG Ten-Year Report.

President directs otherwise in accordance with the provisions of the Constitution.<sup>59</sup>

With regard to the last point, the President has the power to give orders or directives to the Commission in respect of any matter or state of affair when the public interest so requires and the Commission is bound to comply.<sup>60</sup> In this sense, the President can direct the Commission not to investigate a particular matter if he or she is of the opinion that the investigation may pose a real or substantial risk to national defence or security. The direction must be in writing and accompanied by reasons.<sup>61</sup> However, since the establishment of the Commission in 2000, the President has never issued such direction.

Moreover, the national Constitution<sup>62</sup> and the Constitution of Zanzibar<sup>63</sup> grant immunity from criminal and civil proceedings to the President of the United Republic of Tanzania and the President of Zanzibar, respectively. By virtue of the CHRAGG Act,<sup>64</sup> the said constitutional provisions bind the Commission and therefore it has no power to investigate or institute proceedings against any of the two presidents.

With regard to investigations, there are also limitations. Generally, the Commission is required to deal with any complaint it receives. However, a complaint may be dismissed if the Commission can establish that it relates to an act which the complainant knew of for more than 24 months before submitting it to the Commission; that the alleged victim was supposed to exhaust other reasonably available legal procedures; that the complaint is frivolous and vexatious; or if the Commission does not have jurisdiction over the matter.<sup>65</sup> The 24-months limitation is further qualified by the law to the effect that the Commission is allowed to deal with the matter if the same would ensure that the ends of justice are met; the complaint is constitutionally significant; or the nature of the complaint and the situation of the complainant require the Commission to act.<sup>66</sup>

59 See Articles 130(5) and 131(2) of the URT Constitution and section 16(2) of the CHRAGG Act.

60 Article 130(3) of the URT Constitution.

61 See section 16(3) of the CHRAGG Act.

62 Article 46.

63 [Revised Edition 2006], Article 36.

64 Section 16.

65 Section 22(4), CHRAGG Act.

66 *Ibid*, section 22(5).

## 5 Public accountability

The law requires the Commission to prepare an annual report within six months after the end of each financial year.<sup>67</sup> The report has to be submitted to the National Assembly through the Minister of Constitutional and Legal Affairs, and must contain a copy of the audited accounts of the Commission, together with the auditor's report on those accounts, a report on the operations of the Commission during that financial year, and such other information as the minister may require. The minister is responsible for causing the report to be laid before the National Assembly. The Commission also has to submit an annual report on Zanzibar matters to the minister responsible for human rights in Zanzibar.<sup>68</sup> The Commission is required, furthermore, to submit a copy of the annual report to the President of the United Republic of Tanzania and the President of Zanzibar.

With respect to laying the report before the National Assembly, the law is silent on important practical details. Before the CHRAGG Act was amended in 2004,<sup>69</sup> the minister was required to cause the report to be laid before the National Assembly for debate within three months after receiving the report or at the next meeting of the Assembly. The effect of the 2004 amendment was to remove the time for laying the report before the National Assembly and the purpose (i.e. debate) of laying it. However, the Constitution provides that the minister is required to table the report as soon as practicable.<sup>70</sup> So, currently, the law is silent on what follows after the report is laid before the National Assembly. This position has a serious implication because, for the report to be made public, it first must be laid before the National Assembly.

On the part of Zanzibar, by virtue of the CHRAGG (Extension) Act,<sup>71</sup> once the Commission submits the annual report to the minister responsible for human rights, the minister is required to submit this to the House of Representatives for debate.<sup>72</sup> Since the "debate" component of laying the report was removed in 2004 through an amendment to the CHRAGG Act, this may mean too that debate requirement in Zanzibar was also removed. However, this is on the condition that the said amendment was approved

67 See Article 131(3) of the URT Constitution and section 33 of the CHRAGG Act.

68 Section 3(1)(b) of the Commission for Human Rights and Good Governance (Extension) Act 12 of 2003.

69 The Written Laws (Miscellaneous Amendments) Act 3 of 2004.

70 Article 131(3).

71 *Ibid*, Section 3(1)(b) of the CHRAGG (Extension) Act.

72 *Ibid*.

by the House of Representatives in Zanzibar, because the CHRAGG (Extension) Act requires all amendments to the CHRAGG Act to be approved by the Zanzibar House of Representatives before they can apply to Zanzibar.<sup>73</sup>

Stopping the report from being debated by the National Assembly means limiting the publicity of the Commission and making its importance less known to the people. Mindful of the paradox in human rights law that, while the state is the custodian of rights, it remains the principal violator of the same rights, one could argue that the amendment aimed to avoid shaming the government, given that in many instances it is the government that is involved in human rights violations and administrative injustices. In other words, no state would wish to wash its dirty linen in public.

Apart from the annual report, the Commission may, where circumstances so require, produce special and other reports.<sup>74</sup> A special report may be prepared by the Commission at any time when it is desirable to do so and submit the same to the minister. The report may cover any matter which is incidental to the performance of the functions of the Commission.<sup>75</sup> With regard to other reports, the law allows the Commission to prepare any report in the public interest or in the interest of any person or authority in relation to the general functions of the Commission; any matter which requires the attention of the President of the United Republic of Tanzania, the President of Zanzibar, the minister, the National Assembly or any other person or authority; or any specific case investigated by the Commission.<sup>76</sup> However, the law is silent on what follows, or should follow, after the submission of the reports – which, arguably, is a major flaw.

The Commission's relationship with stakeholders is a key aspect of its public accountability and a measure of its effectiveness: given the fact that human rights and good governance are cross-cutting matters, efforts to realise them must involve key stakeholders. The Commission has a good relationship with its many stakeholders, which include local government authorities, CSOs, government departments, the media, and regional and international human rights and ombudsman institutions and networks.<sup>77</sup>

73 *Ibid*, section 4 of the CHRAGG (Extension) Act.

74 Article 131(4) of the URT Constitution.

75 Section 34 of the CHRAGG Act.

76 *Ibid*, section 35.

77 CHRAGG Ten-Year Report, p 94.

## 6 Concluding remarks

The Global Alliance of National Human Rights Institutions (GANHRI)<sup>78</sup> ranked the CHRAGG under its “A” institutions (that is, those fully compliant with the Paris Principles) following a review in November 2017. In previous reviews in 2003,<sup>79</sup> 2006 and 2011, the Commission also got an “A”. Given how the Commission functions in actuality, though, it is doubtful if the GANHRI’s assessment is realistic. What this chapter reveals is that the Commission has been inadequately funded by the government since its inception; conversely, without the technical and financial assistance of development partners, the Commission would have been unable to accomplish most of what it has achieved so far. There are, moreover, other challenges, such as delays in the appointment of Commissioners, an inadequate number of staff, limited staff capacity, and a limited number of zonal or branch offices, all of which are factors impairing the effectiveness of the Commission.

Despite these challenges, the Commission has been able to perform most of its functions with clear, positive results. For it to deliver effectively on its mandate, it must be adequately funded and given the resources it needs, including the required number of staff and branch offices. Furthermore, the reports of the Commission are an important means by which to make the work of the Commission known to the people. Efforts must be taken to ensure that the reports are accessible online and available in key libraries across the country.

The overall finding of this chapter that the Commission does not have all that it needs to deliver effectively on its mandate. However, going on the basis of what it has managed to achieve nonetheless since its establishment, it is clear that with more resources, support and capacity, the Commission would indeed be able to function more effectively.

78 See GANHRI, *Chart of the Status of National Institutions* as of 26 January 2018, available at <https://bit.ly/2XQ60Bp> (accessed 17 February 2019).

79 In 2003 the “A” status was given with a reservation because the insufficient documentation was submitted to confer “A” status. Other categories used by GANHRI are “B”, which indicates partial compliance with the Paris Principles, and “C”, which indicates non-compliance. Before 2008 there was another category “A(R)”, which meant accreditation with reservation and was given where insufficient information was submitted to grant “A” status. This classification is no longer used by GANHRI.

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## **PART B. SELECTED HUMAN RIGHTS DOCUMENTS AND MATERIALS**

### **B.1 Constitutional framework**

The constitutional framework of the Tanzanian Commission for Human Rights and Good Governance is laid down in Chapter 6, articles 129-131 of the Constitution. This states as follows:

#### **CHAPTER SIX**

#### **PART I**

#### **THE COMMISSION FOR HUMAN RIGHTS AND GOOD GOVERNANCE**

(Articles 129-131)

129(1) There shall be a Commission to be known as the Commission for Human Rights and Good Governance whose functions shall be as prescribed in Article 130 of this Constitution.

(2) The Commission for Human Rights and Good Governance shall consist of the following Commissioners –

- (a) the Chairman, who shall be a person who possess qualifications for appointment as a Judge;
- (b) the Vice Chairman, who shall be appointed on the basis of principle if the Chairman hails from one part of the United Republic, that other person shall hail from the other part of the United Republic;
- (c) other Commissioners not exceeding five who shall be appointed from amongst persons who possess skills, experience and wide knowledge in matters relating to human rights, law, administration, political or social affairs; and
- (d) Assistant Commissioners.

(3) All Commissioners and the Assistant Commissioners shall be appointed by the President after consultation with the Nomination Committee.

(4) There shall be a Nomination Committee for purposes of this Article which shall consist of the following members -

- (a) the Chief Justice of the Court of Appeal;
- (b) the Speaker of the National Assembly;
- (c) the Chief Justice of Zanzibar;
- (d) the Speaker of the House of Representatives; and
- (e) the Deputy Attorney General, who shall be Secretary of this Committee.

(5) A Chairman, Vice Chairman and all other Commissioners, shall each hold office for a period of three years and may be re-appointed for another only one term of three years.

(6) For purposes of protection of Commissioners from conflict of interests, any person who is appointed as Commissioner of the Commission shall immediately abandon any office held by him in any political party or any other office which shall be mentioned on that behalf by a law enacted by the Parliament.

(7) A Commissioner or Assistant Commissioner may only be removed from office for reasons of failure to discharge his duties or due to illness or any other reason, or for reason of his misconduct that affects code of conduct for Commissioner.

(8) The Commission may discharge its duties notwithstanding that there is vacant office among the seats of Commissioners or that one of the members is absent.

130(1) Commission for Human Rights and Good Governance shall discharge the following functions –

- (a) to sensitise countrywide about preservation of human rights and duties to the public in accordance with the Constitution and the laws of the land;
- (b) to receive complaints in relation to violation of human rights in general;
- (c) to conduct inquiry on matters relating to infringement of human rights and violation of principles of good governance;
- (d) to conduct research, to impart or disseminate to the public countrywide education in respect of human rights and good governance;
- (e) if necessary, to institute proceedings in court in order to prevent violation of human rights or to restore a right that was caused by that infringement of human rights, or violation of principles of good governance;
- (f) inquire into the conduct of any person concerned and any institution concerned in relation to the ordinary performance of his duties or functions or abuse of the authority of his office; and
- (g) to advice the Government and other public Institutions and private sector in respect of human rights and good governance;
- (h) to take necessary action in order to promote and enhance conciliation and reconciliation among persons and various institutions appearing or being brought before the Commission.

(2) The Commission shall be an autonomous department, and without prejudice to other provisions of this Article, in exercising its powers in accordance with this Constitution, the Commission shall not be bound to comply with directive or orders of any person or any department of government or any opinion of any political party or of any public or private sector institution.

(3) The provisions of sub article (2) shall not be construed as restricting the President from giving directive or orders to the Commission, nor are they conferring a right to the Commission of not complying with directions or orders, if the President is satisfied that in respect of any matter or any state of affair, public interest so requires.

(4) The Commission shall conduct inquiry in accordance with the provisions of this Article and of any law enacted in that behalf by the Parliament, and shall inquire into the conduct of any person concerned or of any institution concerned whenever the President directs to conduct inquiry; likewise, except as the President directs the Commission not to conduct investigation, the Commission may conduct investigation whenever it deems necessary to inquire into the conduct of any person concerned, or any institution concerned with the provisions of this Article who is suspected or which is suspected to have abused the authority of his office, misused the authority of his office or the functions of such institution or for violation of human rights and principles of good governance.

(5) The Commission shall not have powers, either pursuant to this Article or any provisions of any law enacted by the Parliament for purposes of this Chapter of this Constitution to inquire into decision of any Judge, Magistrate or of the Court if such decision was made in the course of exercise of the powers of his office; likewise, the Commission shall not have a power to inquire into any decision made by any Tribunal established in accordance with a law if that decision was made in the discharge of its functions.

(6) The provisions of this Article shall apply to persons employed in the service of the Government of the United Republic and those of the Revolutionary Government of Zanzibar, employees and leaders of the political parties who deal with public affairs, members and employees of all Commissions of the Government of the United Republic and the Revolutionary Government of Zanzibar, parastatal organizations and other public or private organs, companies, community, associations, trustees or any other schemes, as prescribed by the law enacted by the Parliament; but these provisions shall not apply to the President or Leader of the Revolutionary Government of Zanzibar, except only in accordance with the provisions of Article 46 of this Constitution or Article 36 of the Constitution of Zanzibar, 1984.

131(1) Without prejudice to other provisions of this Article, the Parliament may enact a law pursuant to the provisions of this Chapter of this Constitution for purposes of prescribing provisions in respect of authority of the Commission, procedures for conducting its business and legal immunities for Commissioners and employees of the Commission which shall enable them to discharge their duties without legal constraints.

- (2) The Commission shall not inquire the following matters, for purposes of discharging its functions, that is to say –
- (a) any matter which is before a Court or any Tribunal;
  - (b) any matter concerning relationship or cooperation between the Government and a foreign Government of any country or international organization;
  - (c) any matter concerning powers of the President to award remission; or
  - (d) any other matter that is mentioned in any law.
- (3) In any financial year, the Commission shall prepare and submit to the Minister responsible for human rights a report in respect of –
- (a) activities of the Commission in the preceding year; and
  - (b) implementation of preservation of human rights in the United Republic, and, the Minister shall table before the National Assembly each report submitted to him as soon as practicable after receipt.
- (4) The provisions of sub article (3) shall not be construed as restricting the Commission from submitting any other report to any person or any other authority.

## **B.2 Legislative and regulatory instruments**

The main piece of legislation is the Commission for Human Rights and Good Governance Act. In addition to this, there are other pieces of legislation that regulate different aspects of the Commission.

### **B.2.1 CHAPTER 391, THE COMMISSION FOR HUMAN RIGHTS AND GOOD GOVERNANCE ACT**

#### **[PRINCIPAL LEGISLATION]**

#### **ARRANGEMENT OF SECTIONS**

#### **Section**

#### **PART I: PRELIMINARY PROVISIONS**

- 1) Short title.
- 2) Construction.
- 3) Application.
- 4) Interpretation.

## **PART II: THE COMMISSION**

- 5) Act to regulate the Commission.
- 6) Functions of the Commission.
- 7) Composition.
- 8) Tenure and conditions of service.
- 9) Members to relinquish certain offices.
- 10) Removal of Commissioners.
- 11) Executive Secretary and other staff of Commission.
- 12) Oaths.

## **PART III: STATUS, POWERS AND COMPETENCE OF COMMISSION**

- 13) Commission a public department.
- 14) Independence of the Commission.
- 15) Powers of the Commission.
- 16) Limitations and restrictions on investigations.
- 17) Status of proceedings, decisions and witnesses.
- 18) Proceedings in public.
- 19) Secrecy and confidentiality.
- 20) Procedure for hearings.
- 21) Meetings and decisions of the Commission.

## **PART IV: COMPLAINTS AND INVESTIGATIONS**

- 22) Manner of bringing complaints.
- 23) Representation.
- 24) Notice of complaint and opportunity to be heard.
- 25) Special powers of investigation.
- 26) Procedure in respect of investigation.
- 27) Evidence at investigations.
- 28) Procedure after investigations.

## **PART V: FINANCES, AUDIT AND REPORTS**

- 29) Resources of the Commission.
- 30) Accountability.
- 31) Estimates of revenue and expenditure.
- 32) Audit.

- 33) Annual reports.
- 34) Special reports.
- 35) Other reports.

## **PART VI: MISCELLANEOUS PROVISIONS**

- 36) Procedure, etc., of the Commission.
- 37) Offences and penalties.
- 38) Regulations.
- 39) [Repeal of Act No 25 of 1966.]
- 40) Transitional.

## **SCHEDULE**

### **CHAPTER 391**

#### **THE COMMISSION FOR HUMAN RIGHTS AND GOOD GOVERNANCE ACT**

An Act to make provisions in pursuance of article 131 of the Constitution in relation to the functions, powers, privileges and other matters of the Commission for Human Rights and Good Governance and related matters.

[9<sup>th</sup> May, 2001]

[G.N. No 67 of 2001]

Acts Nos.

7 of 2001

16 of 2001

#### **PART I: PRELIMINARY PROVISIONS (ss 1-4)**

##### **1. Short title**

This Act may be cited as the Commission for Human Rights and Good Governance Act.

##### **2. Construction**

This Act shall be read together with the Constitution.

### 3. Application

This Act shall apply to Mainland Tanzania as well as to Tanzania Zanzibar.

### 4. Interpretation

In this Act, unless the context requires otherwise—

“**Appointments Committee**” means the committee established by Article 129(4) of the Constitution;

“**appropriate Authority**” includes any person or authority, whether corporate or otherwise, to whom or to which a recommendation is made by the Commission under the provisions of section 28;

“**Chairman**” means the Chairman of the Commission or, where appropriate, a Commissioner performing the functions of the Chairman;

“**Commission**” means Commission established by Article 129 of the Constitution;

“**Commissioner**” and “**Assistant Commissioner**” means a Chairman or other members of the Commission appointed in pursuance of Article 129 of the Constitution;

“**Constitution**” means the Constitution of the United Republic of Tanzania;

“**enquiry**” means an enquiry carried out by the Commission in pursuance of the provisions of this Act;

“**Government**” includes the Government of the United Republic, the Revolutionary Government of Zanzibar, or a local government discharging the power or authority of or on behalf of a local government authority;

“**High Court**” means the High Court of the United Republic or the High Court of Zanzibar;

“**member**” means a Commissioner or Assistant Commissioner;

“**Minister**” means the Minister for the time being responsible for human rights;

“**public officer**” or “**public office**” means every officer or department vested with or performing duties of a public nature, and includes an officer or department under the control of a local government authority, the Community or a public corporation or other authority by whatever name called.

## **PART II: THE COMMISSION (ss 5-12)**

### **5. Act to regulate the Commission**

The composition, functions, powers, privileges and other matters in relation to the Commission for Human Rights and Good Governance established by Article 129 of the Constitution shall be regulated by the provisions of this Act.

### **6. Functions of the Commission**

- 1) The Commission shall carry out the following functions –
  - (a) to promote within the country the protection and the preservation of human rights and of duties to the society in accordance with the Constitution and the laws of the land;
  - (b) to receive allegations and complaints in the violation of human rights generally;
  - (c) to conduct enquiries into matters involving the violation of human rights and the contravention of the principles of administrative justice;
  - (d) to conduct research into human rights, administrative justice and good governance issues and to educate the public about such issues;
  - (e) when necessary, to institute proceedings in court designed to terminate activities involving the violation of human rights or redress the right or rights so violated, or the contravention of the principles of administrative justice;
  - (f) to investigate the conduct of any person to whom or any institution to which the provisions of this section apply in the ordinary course of the exercise of the functions of his office or discharge of functions in excess of authority;
  - (g) to investigate or inquire into complaints concerning practices or actions by persons holding office in the service of the government, public authorities or other public bodies, including private institutions and private individuals where those complaints allege abuse of power, injustice, unfair treatment of any person, whether complainant or not, in the exercise of their official duties;
  - (h) to 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 making recommendations to redress the existing problems in accordance with the provisions of this Act;
  - (i) to take steps to secure the remedying, correction, reversal or cessation of instances referred to paragraphs (e), (f), (g) or (h) through fair, proper and effective means, including the institution of legal proceedings;
  - (j) to provide advice to the government and to other public organs and private sector institutions on specific issues relating to human rights and administrative justice;

- (k) to make recommendations relating to any existing or proposed legislation, regulations, or administrative provisions to ensure compliance with human rights norms and standards and with the principles of good governance;
  - (l) to promote ratification of or accession to treaties or conventions on human rights, harmonization of national legislation and monitor and assess compliance, within the United Republic, by the government and other persons, with human rights standards provided for in treaties or conventions or under customary international law to which the United Republic has obligations;
  - (m) under the auspices of the government, to cooperate with agencies of the United Nations, the OAU, the Commonwealth and other bilateral, multilateral or regional and national institutions of other countries which are competent in the areas of protection and promotion of human rights and administrative justice;
  - (n) to take such measures as may be appropriate for the promotion and development of mediation and reconciliation amongst the various persons and institutions who come or are brought before the Commission;
  - (o) to perform such other functions as may be provided for by any other written law.
- 2) Without prejudice to provisions of subsection (1), the Commission shall, generally in relation to members of the public, use Commission's good office to promote, protect and where necessary to provide assistance to persons whose human rights have or are in imminent danger of being violated.

## 7. Composition

- 1) The Commission shall consist of-
  - (a) a Chairman, who shall be a person qualified for appointment as Judge of the High Court or a Judge of the Court of Appeal;
  - (b) a Vice-Chairman who shall be appointed on the basis of the principle that where the Chairman hails from one part of the United Republic then the Vice-Chairman shall be a person who hails from the other part of the Union;
  - (c) not more than five other Commissioners appointed from amongst persons who have knowledge, experience and a considerable degree of involvement in matters relating to human rights, law, government, politics or social affairs;
  - (d) Assistant Commissioners.
- 2) The President shall, acting upon recommendations of the Appointments Committee, appoint the Commissioners and Assistant Commissioners.
- 3) A person shall be qualified for appointment as a Commissioner or Assistant Commissioner who is of the highest reputation and is known for his high morality, integrity, impartiality and competence in matters of human rights and good governance.

- 4) The Minister shall make regulations providing for the procedure to be followed by the Appointment Committee and involvement of the civil society in scouting the candidates for appointment to be the Commissioners and Assistant Commissioners.

## **8. Tenure and conditions of service**

- 1) A Commissioner shall hold office for a period of three years, and shall be eligible for reappointment for no more than a second term not exceeding three years.
- 2) There shall be paid to the Commissioners such salaries or remuneration as shall be determined by the President, and those salaries shall be charged on the consolidated fund.
- 3) A Commissioner may resign his office upon giving one month's notice in writing to the President.
- 4) The office of a Commissioner shall become vacant –
  - (a) upon the Commissioner's resignation or removal from office;
  - (b) if the Commissioner is declared bankrupt;
  - (c) upon the Commissioner's retirement or death.

## **9. Members to relinquish certain offices**

- 1) In addition to any office held in any political party which in accordance with Article 129(6) of the Constitution a person appointed a Commissioner is required to vacate, on appointment as a Commissioner a person holding any of the following offices shall forthwith vacate that office, that is to say –
  - (a) the office of member of Parliament;
  - (b) the office of member of the Zanzibar House of Representatives;
  - (c) the office of Speaker of the National Assembly;
  - (d) the office of Speaker of the Zanzibar House of Representative;
  - (e) the office of Judge or other judicial office;
  - (f) any office in the Public Service;
  - (g) the office of member of an Electoral Commission;
  - (h) the office of member of a local government authority and any office in the service of any local government authority;
  - (i) any other public office.
- 2) Where a person has been appointed a Commissioner and has in accordance with subsection (1) vacated any of the offices specified in it, other than an office the holder of which is required by any written law to be elected by any body of persons, that person may, upon his ceasing to be a Commissioner, be reappointed to that office by the appropriate appointing authority and, where that person is so reappointed, his service in that office subsequent to the reappointment shall, and notwithstanding the provisions of any written law or of any contract of service affecting

that person to the contrary, be deemed to be continuous with his service in that office prior to his appointment as a Commissioner.

- 3) Where a person is reappointed to any office in accordance with subsection (2) and his service in that office subsequent to that reappointment is deemed to be continuous with his service in it prior to his having vacated it under subsection (1) –
  - (a) the period between his having vacated the office and his reappointment to it shall not be taken into account for the purposes of computing the amount of any pension gratuity or other retirement benefit payable to him upon his retirement from that office;
  - (b) the period during which he actually served as a Commissioner shall be taken into account for the purposes of computing the length of service in that office for determining whether that person is eligible for any pension, gratuity or other retirement benefit as if that person had not vacated the office during that period.
- 4) In this section –

“appropriate appointing authority” in relation to any office means that person or authority having the power to make appointments to that office;

“civil service office” and “judicial officer” have the meaning ascribed to those terms in the Public Service Act and the Judicial Service Act, respectively.

## 10. Removal of Commissioners

- 1) Subject to this Act, a Commissioner may be removed from office only for inability to perform the functions of his office, due to illness or to any other reason, or for misbehaviour inconsistent with the ethics of office or any law concerning ethics of public leaders.
- 2) Where the question of the removal of a Commissioner arises and the President is satisfied that the matter be investigated –
  - (a) he shall appoint a special tribunal consisting of a chairman and not less than two other members, the Chairman and at least half of the other members of the tribunal being persons who are Judges of the High Court or of the Court of Appeal of Tanzania;
  - (b) the special tribunal shall investigate the matter and within 90 days from the date on which the special tribunal was formed, make a report to the President on the whole matter and advise on whether or not the Commissioner concerned should be removed from office in accordance with the provisions of this section;
  - (c) if the special tribunal advises the President that the Commissioner concerned be removed from office on any of the grounds stipulated in subsection (1), then the President shall remove that Commissioner from office.
- 3) Where the question of removing a Commissioner from office has been referred to the special tribunal pursuant to this section, the President may suspend the Commissioner concerned from duty, and he may at any time rescind the suspension and in any case such suspension shall lapse if the

special tribunal advises the President not to remove the Commissioner concerned.

## **11. Executive Secretary and other staff of Commission**

- 1) There shall be the Executive Secretary of the Commission who shall be appointed by the President after consultation with the Commission from among persons holding or who have held senior position in the service of the Government.
- 2) A person may not be appointed Executive Secretary of the Commission unless he holds a degree in law from a university whose awards in law are recognised by the Government and has had experience in public administration or management since graduation, practised law or been engaged in teaching or research in law, for a period of not less than five years.
- 3) The Executive Secretary shall be the chief executive of the Commission and, subject to the general direction and control of the Commission, shall –
  - (a) be responsible for the carrying out of the policy decisions of the Commission and the day to day administration and management of the affairs of the Commission;
  - (b) be responsible for arranging the business for and the recording and keeping of the minutes of all decisions and proceedings of the Commission at its meetings; and
  - (c) perform any other function assigned to him by the Commission or by or under any written law.
- 4) The Secretary shall, unless in any particular case the Commission otherwise directs in writing, attend all meetings of the Commission but shall have no vote on any matter falling to be decided by the Commission at any such meeting.
- 5) There shall be such other officers and staff of the Commission as may be appointed by the Commission under this section.
- 6) The Commission shall, acting in consultation with the Civil Service Department, be responsible for the appointment, control and discipline of its officers and employees and may, in accordance with the provisions of the Public Service Act terminate appointments.
- 7) Public officers may, at the request of the Commission, be seconded to the service of the Commission.

## **12. Oaths**

- 1) Every Commissioner and the Secretary of the Commission shall, before entering upon the duties of his office, take and subscribe the oath of allegiance and the oath for the due discharge of the functions of his office set out in the Schedule to this Act, which oaths shall be administered by the President.

- 2) Every person appointed to an office under the Commission shall, before entering upon the duties of his office, take and subscribe the oath of secrecy set out in the Schedule to this Act, which oath shall be administered by a Commissioner.

### **PART III: STATUS, POWERS AND COMPETENCE OF COMMISSION (ss 13-21)**

#### **13. Commission a public department**

- 1) Subject to the provisions of the Constitution and of this Act, the provisions of any law relating to public departments shall apply to the Commission, and the office of the Commission and any office established under the Commission shall be public offices in the service of the United Republic.
- 2) For the purposes of the better performance of its functions, the Commission may, where it considers it necessary or appropriate, establish branch offices away from its headquarters in such geographical areas as it may deem necessary and may establish divisions or departments and assign to them particular responsibilities in respect of the functions of the Commission.
- 3) There shall be an Assistant Commissioner or a person appointed by the Commission at every branch office to be its representative.
- 4) An assistant Commissioner or a representative of the Commission shall –
  - (a) receive complaints from the public;
  - (b) make such on-the-spot investigation as may be necessary; and
  - (c) discharge any other duties relating to the functions of the Commission as may be assigned to him by the Commission.

#### **14. Independence of the Commission**

- 1) Except as provided by the Constitution, the Commission shall be an independent department and the Commissioners shall not, in the performance of their functions, be subject to the direction or control of any person or authority.
- 2) The Government, public authorities and other bodies shall provide such assistance and co-operation as may be required to ensure the effectiveness of the provisions of subsection (1).

#### **15. Powers of the Commission**

- 1) The Commission shall have power to investigate any human rights abuses or maladministration –
  - (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 interests of its members; or
  - (iii) a person acting in the interest of a group or class of persons.
- 2) After conducting an investigation under this Act, the Commission shall have power to –
    - (a) where appropriate, promote negotiation and compromise between the parties concerned; or
    - (b) causing the complaint and the findings of the Commission to be reported to the appropriate authority or person having control over the person in respect of whose act or conduct an investigation has been carried out by the Commissioner; or
    - (c) recommending to the relevant person or authority such measures, or requiring that authority to take such measures, as will provide an effective settlement, remedy or redress.
  - 3) Notwithstanding the provisions of subsection 2 of this section, for the purposes of performing its functions under the Constitution and this Act, the Commission may bring an action before any court and may seek any remedy which may be available from that court.

## **16. Limitations and restrictions on investigations**

- 1) The provisions of article 46 of the Constitution of the United Republic of Tanzania and article 36 of the Constitution of Zanzibar shall bind the Commission, and the Commission shall have no power to investigate or institute any proceedings against the President or the President of Zanzibar.
- 2) The Commission shall not investigate –
  - (a) a matter which is pending before a court or other judicial tribunal;
  - (b) a matter involving the relations or dealings between the Government and the Government of any foreign State or an international organisation;
  - (c) a matter relating to the prerogative of mercy;
  - (d) a matter on which the President directs otherwise in accordance with the provisions of the Constitution.
- 3) Where the President is minded to direct that the Commission shall not carry out an investigation in accordance with the provisions of the Constitution or this Act, he shall so direct in writing and furnish the Commission with the reasons for such direction and the Commission shall within 30 days of the decision inform the complainant, if any, of the decision and the reasons for it.
- 4) Any such direction shall be made in accordance with the provisions of article 130 of the Constitution if the President considers that there is a real and substantial risk that an investigation would prejudice matters of national defence or security.
- 5) Nothing in this section shall be construed as precluding any person from otherwise seeking redress in the High Court under the provisions of article 30 (3) of the Constitution.

## **17. Status of proceedings, decisions and witnesses**

- 1) The decisions of the Commission shall have the status of a recommendation to the appropriate authority or person having control over the person in respect of whose act or conduct an investigation has been carried out.
- 2) The proceedings of the Commission and its decisions and any information, document or thing produced by any person in relation to an inquiry under this Act shall be privileged in the same manner as the proceedings and other matters before a court.
- 3) No inquiry, proceeding or process of the Commission shall be invalid on the grounds only of any error or irregularity of form and, except on the ground of lack of jurisdiction, no inquiry, proceeding, process or report of the Commission shall be liable to be challenged, reviewed, quashed or called in question in any court.
- 4) No proceeding shall lie against the Commissioners, officers and employees of the Commission and other persons authorised by the Commission for anything done or omitted to be done in the exercise of their functions under this Act unless it is shown that the act or omission was done or omitted in bad faith.
- 5) No Commissioner or any other person referred to in subsection (4) shall be called to give evidence in any court or in any other proceedings of a judicial nature in respect of the proceedings in any inquiry or anything coming to his knowledge in the exercise of his functions under this Act.
- 6) Nothing in subsection (4) or (5) shall apply in the case of any proceedings for an offence under the National Security Act, for an offence contrary to sections 102, 103, 106, 108 or 109 of the Penal Code in relation to an inquiry, or for an offence contrary to section 37 of this Act.
- 7) A witness before the Commission shall be entitled to the same privileges as a witness before the High Court.

## **18. Proceedings in public**

Subject to section 19, proceedings during an inquiry before the Commission shall be conducted in public.

## **19. Secrecy and confidentiality**

- 1) The Commission may, on its own initiative or on an application, take appropriate measures and make any order it considers necessary to ensure the confidentiality of an inquiry or any part of it if, having considered all available alternative measures, the Commission is satisfied that –
  - (a) there is a real and substantial risk that–
    - (i) the disclosure would prejudice the national security or sovereignty of the State, its defence or international relations;

- (ii) a confidential source of information in relation to the inquiry or to the enforcement of the criminal law would be identified or compromised; or
  - (iii) the fairness of the inquiry is such that the need to prevent disclosure outweighs the interests of having the inquiry or that part of the inquiry conducted in public;
- (b) there is a likelihood that the life, liberty or physical safety of a person or the interests of vulnerable persons, including children will be endangered.
- 2) The Commission may prohibit or restrict the publication of any evidence given before it or the identity of any person if it considers that the reasons for ordering such a prohibition or restriction outweigh the public interest in the publication of that evidence or identity.
  - 3) Every member of the Commission and every person employed by the Commission shall take reasonable precautions to avoid disclosing any matter the disclosure of which is prohibited or restricted by the Commission under subsection (1) or subsection (2).

## **20. Procedure for hearings**

- 1) The Commission shall have power to determine its own procedure for the conduct of hearings of matters brought before it but may otherwise be guided by such procedures as may be prescribed by regulations made under this Act.
- 2) In conducting an inquiry, the Commission shall observe the rules of natural justice but shall not be bound by any legal or technical rules of evidence applicable to proceedings before the courts; and all proceedings shall be conducted informally and expeditiously.
- 3) In proceedings under this Act, a decision of the majority of the members present at a meeting, if the members present constitute a quorum, shall be the decision of the Commission; and in the event of any equality of votes on any matter, the member presiding shall have a casting vote in addition to his deliberative vote.

## **21. Meetings and decisions of the Commission**

- 1) The meetings of the Commission shall be presided over by the Chairman or in his absence by the Vice-Chairman, and in the absence of both, the Commissioners present shall appoint one of their number to preside over the meeting.
- 2) The quorum for a meeting of the Commission shall be formed by the presence of more than half of the members of the Commission other than Assistant Commissioners, and where the meeting is not constituted for lack of required number of Commissioners, an Assistant Commissioner may be invited to attend for purpose of a quorum.
- 3) A meeting of the Commission for the purpose of conducting an inquiry shall comprise a Commissioner and not less than two senior officers of the Commission as may be appointed by the Commission on the basis of

their knowledge, experience and competence to deal with a given subject matter of an enquiry.

- 4) A meeting of the Commission for the purpose of conducting an enquiry shall be duly constituted if it comprises an Assistant Commissioner and two senior officers.

## **PART IV: COMPLAINTS AND INVESTIGATIONS (ss 22-28)**

### **22. Manner of bringing complaints**

- 1) All complaints to the Commission may be made orally or in writing and shall be recorded in such form as may be prescribed by the Commission.
- 2) Subject to any relevant law where a letter written by –
  - (a) a person in custody; or
  - (b) a patient in a hospital,

is addressed to the Commission, it shall be immediately forwarded unaltered to the Commission by the person to whom it is entrusted.

- 3) A complaint under this Act may be made by any individual or a body of persons whether corporate or unincorporated
- 4) The Commission shall deal with every complaint brought before it unless the Commission is satisfied that –
  - (a) the complaint relates to a decision, recommendation, act or omission of which the complainant has had knowledge for more than 24 months before the complaint is received by the Commission; or
  - (b) the alleged victim of the act or acts complained of ought to exhaust grievance or other procedures prescribed by law otherwise reasonably available;
  - (c) the complaint is frivolous, vexatious or made in bad faith; or
  - (d) the complaint is not within the jurisdiction of the Commission.
- 5) The Commission may deal with any complaint which it would otherwise reject for the reason that the complainant has had knowledge for more than 24 months before the complaint is received by the Commission if –
  - (a) for the purposes of ensuring that ends of justice are met, it is otherwise worth to deal with the complaint than rejecting it; or
  - (b) a complaint is of a constitutional importance; or
  - (c) considering the nature of the complaint and circumstances surrounding the complainant, the Commission is satisfied that it should deal with such complaint.

### **23. Representation**

- 1) A complainant, an interested party and any other person whose conduct or act is likely to be the subject of adverse comment by the Commission

may be represented by an advocate or by any other person suitable to represent him.

- 2) Where a person by whom a complaint might have been made under this Act has died or is, for any sufficient reason, unable to act for himself, the complaint may be made by his personal representative or by a member of his family or other person suitable to represent him.

#### **24. Notice of complaint and opportunity to be heard**

After a complaint has been received by the Commission, the Commission shall notify the person against whom the complaint is made and, at the discretion of the Commission, any other interested party and shall give sufficient opportunity to all parties to whom notice has been given to appear, in person or through a representative, at the inquiry and to present evidence and make representations.

#### **25. Special powers of investigation**

The Commission shall for the purposes of performing its functions under the Act, have power –

- (a) to issue summons or other orders requiring the attendance of any person before it and the production of any document, record or anything relevant to an investigation or inquiry which may be in the possession or control of that person;
- (b) to examine, on oath or affirmation, any person in respect of any matter under investigation;
- (c) to require any person to provide any information within his knowledge relevant to an investigation or enquiry;
- (d) to make interim orders to preserve, pending determination of the matters at issue the existing state of affairs between the parties to the proceedings or the rights of the parties;
- (e) subject to any other law, to enter upon, and inspect, any premises relevant to an investigation and to seize any relevant document, record or anything; and
- (f) to cause, any person contemptuous of its proceedings or orders to be prosecuted before a competent court.

#### **26. Procedure in respect of investigation**

- 1) Where the Commission decides to conduct an investigation under this Act, it shall give the authority or person concerned and to any other person who is alleged in the complaint to have taken or authorised the act or omission complained of, an opportunity to comment on any allegations contained in the complaint and the representative of the authority or person concerned shall submit his comments within such time as the Commission may specify.

- 2) Without prejudice to the generality of the provisions of this section, the Commission may obtain information from such persons and in such manner, and make such inquiries as it considers necessary.

## **27. Evidence at investigations**

- 1) Subject to this section, the Commission may require any person who, in its opinion, is able to give any information relating to a matter being investigated by the Commission –
  - (a) to furnish the information to it;
  - (b) to produce any document, paper or thing that in its opinion relates to the matter being investigated and which may be in the possession or control of that person.
- 2) The Commission may summon before it and examine on oath or affirmation –
  - (a) a person required to give information or produce anything under subsection (1) of this section;
  - (b) a complainant;
  - (c) any other person who the Commission considers will be able to give information required under subsection (1) of this section.
- 3) Any person summoned by and appearing before the Commission as a witness is entitled to be paid by way of reimbursement of his or her expenses, such allowances as are payable to a witness appearing before the High Court in criminal proceedings.
- 4) Any person invited by the Commission to attend any meeting of the Commission may be paid such allowances as the Commission may consider reasonable.

## **28. Procedure after investigations**

- 1) Where after making an investigation under this Act, the Commission is of the view that the decision, recommendation, act or omission that was the subject matter of the investigation –
  - (a) amounts to a breach of any of the fundamental rights and freedoms provided in the Constitution or in any international instrument to which the United Republic is a party;
  - (b) appears to have been contrary to law; or
  - (c) was unreasonable, unjust, oppressive, discriminatory or was in accordance with a rule of law or a provision of any Act or a practice that is unreasonable, unjust, oppressive, or discriminatory; or
  - (d) was based wholly or partly on a mistake of law or fact; or
  - (e) was based on irrelevant grounds or made for an improper purpose; or
  - (f) was made in the exercise of discretionary power and reasons should have been given for the decision the Commission shall report its decision, recommendation and the reasons for it to the appropriate authority concerned.

- 2) The appropriate authority shall, within such time not exceeding three months from the date of recommendation as the Commission prescribes, make a report to the Commission with details of any action taken by such authority to redress the impugned fundamental rights or acts of maladministration.
- 3) If within the prescribed time after the report is made no action is taken which seems to the Commission to be adequate and appropriate, the Commission, may after considering the comments, if any, made by or on behalf of the department, authority or person against whom the complaint was made either, bring an action before any court or recommend to any competent authority to bring an action and seek such remedy as may be appropriate for the enforcement of the recommendations of the Commission.
- 4) The provisions of this section shall not be construed as precluding the Commission from resolving any complaint or rectifying any act or omission emanating from a violation of any fundamental right or acts of maladministration in any other manner including mediation, conciliation or negotiation.

## **PART V: FINANCES, AUDIT AND REPORTS (ss 29-35)**

### **29. Resources of the Commission**

The funds of the Commission shall consist of moneys –

- (a) appropriated by Parliament for the purposes of the Commission;
- (b) accruing to the Commission from any other source; or
- (c) which are donations or grants from sources within or outside the United Republic.

### **30. Accountability**

- 1) The Commission shall be responsible to the National Assembly in accounting for all its revenue and expenditure.
- 2) The Commission shall –
  - (a) keep full and proper records of all its revenue and expenditure and of all the assets, liabilities and financial transactions;
  - (b) satisfy itself that all reasonable management measures have been taken to ensure that resources which are necessary for achieving its objectives are as far as possible, obtained, safeguarded and utilised in the most economic, efficient and effective manner;
  - (c) prepare appropriation accounts in accordance with the Public Finance Act; and
  - (d) prepare annual accounts in accordance with generally accepted accounting practice, covering all its transactions.

**31. Estimates of revenue and expenditure**

- 1) The Commission shall, in respect of its first financial year under this Act and for each subsequent financial year, prepare and submit to the Minister estimates of its revenue and expenditure and the Minister shall examine those estimates and table them before the National Assembly.
- 2) In preparing its estimates under subsection (1), the Commission shall have regard to the advice of the Minister and the Minister responsible for Finance.

**32. Audit**

- 1) The accounts of the Commission shall be audited, once in every financial year, by the Controller and Auditor-General.
- 2) Upon the completion of his examination of the accounts, the Controller and Auditor-General shall certify those accounts and submit his report to the Commission.

**33. Annual reports**

- 1) The Commission shall, within six months after the end of each financial year, prepare and submit to the National Assembly through the responsible Minister an annual report in respect of that year containing –
  - (a) a copy of the audited accounts of the Commission together with the auditor's report on those accounts;
  - (b) a report on the operations of the Commission during that financial year; and
  - (c) such other information as the Minister may require,

and the Minister shall cause the report to be laid before the National Assembly.

- 2) The Commission shall also submit a copy of the annual report to the President and to the President of Zanzibar.

**34. Special reports**

The Commission may at any time, if it appears to the Commission to be desirable, submit to the Minister a special report, on any matter incidental to the performance of its functions.

**35. Other reports**

The Commission may, in the public interest or in the interest of any person or authority make and submit reports relating –

- (a) generally to the exercise of its functions;

- (b) to any matter to which the attention of the President, the President of Zanzibar, the Minister, the National Assembly or any other person or authority should be drawn; or
- (c) to any particular case investigated by the Commission, whether or not the matters in the report have been the subject of a report to the National Assembly.

## **PART VI: MISCELLANEOUS PROVISIONS (ss 36-40)**

### **36. Procedure, etc., of the Commission**

Subject to this Act and any subsidiary legislation made thereunder, the Commission may regulate its own practice, procedure and the matters relating to its meetings, inquiries and investigations.

### **37. Offences and penalties**

- 1) A person commits an offence and is liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding one year or both if that person, in connection with the exercise of any function by the Commission under this Act—
  - (a) hinders, obstructs, molests, interferes with or exerts undue influence on, a member of the Commission, an employee of the Commission or a person performing any functions of the Commission;
  - (b) without lawful excuse or justification, refuses or fails to attend before the Commission upon being summoned or to take an oath or to make an affirmation at the request of the Commission, or refuses to answer any questions after he has been ordered to appear before the Commission;
  - (c) gives false or misleading information or evidence to the Commission on any matter, knowing such information or evidence to be false or not knowing or believing it to be true; or
  - (d) intimidate or victimises a person who gives information, evidence or assistance to the Commission;
  - (e) without lawful excuse or authority refuses or neglects to comply with any recommendation made under subsection (3) of section 28 of this Act.
- 2) For the purposes of subsection (1) (e) where an offence is committed by—
  - (a) a body corporate, every director, chief executive or other officer of the body who is responsible for implementation of the recommendation shall be guilty of the offence;
  - (b) a partnership, every partner responsible for implementation of the recommendation 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.

**38. Regulations**

The Minister may make regulations for the better carrying into effect of the provisions of this Act.

**39. Repeal of Act No 25 of 1966**

[Repeals the Permanent Commission of Enquiry Act.]

**40. Transitional**

Notwithstanding the repeal of the Permanent Commission of Enquiry Act, 1966, any complaint, investigation or inquiry pending before that Commission immediately before the commencement of this Act shall be proceeded with under the provisions of this Act.

**SCHEDULE**

**OATH OF MEMBER**

**(Section 12 (1) and (2))**

I,....., having been appointed a Commissioner/Assistant Commissioner/Executive Secretary in the Commission for Human Rights and Good Governance, do swear/affirm that I will freely and without fear or favour, affection or ill-will, discharge the functions of a Commissioner/Assistant Commissioner/Executive Secretary and that I will not directly or indirectly reveal any matters relating to such functions to any unauthorised person or otherwise than in the course of duty.

SO HELP ME GOD

Sworn/Declared before me this.....day of.....20.....  
.....

President

**OATH OF OFFICER OF THE COMMISSION**

I,....., being called upon to exercise the functions of an officer of the Commission for Human Rights and Good Governance, 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 of any documents, communication or information whatsoever which may come to my knowledge in the course of my duties as an officer of the Commission or under the provisions of the Commission for Human Rights and Good Governance Act.

SO HELP ME GOD

Sworn/Declared before me this.....day of.....20.....

.....

Commissioner

JEDWALI

**(Fungu la 12(1) na (2))**

**KIAPO CHA MJUMBE**

Mimi.....naapa/nathibitisha kwamba nitatekeleza majukumu ya Mjumbe wa Tume ya Haki za Binadamu na Utawala Bora kwa uhuru bila woga, upendeleo, huba au hila, na kwamba sitatoa siri zozote nitakazozifahamu wakati nikitekeleza majukumu yangu bila kibali cha Tume isipokuwa katika kutekeleza majukumu ya Tume.

MUNGU NISAIDIE

Kiapo/tamko limetolewa mbele yangu leo tarehe.....mwezi.....20.....

.....

Rais

**KIAPO CHA WATUMISHI WA TUME**

Mimi.....naapa/nathibitisha kwamba sitatoa siri zozote moja kwa moja au kwa namna nyingine kwa mtu yeyote ambaye haruhusiwi isipokuwa katika utekelezaji wa majukumu yangu nyaraka, mawasiliano au taarifa zozote nitakazozifahamu wakati nikitekeleza majukumu yangu kama mtumishi wa Tume au kwa mujibu wa masharti ya Sheria ya Haki za Binadamu na Utawala Bora.

MUNGU NISAIDIE

Kiapo/tamko limetolewa mbele yangu leo tarehe.....mwezi.....20.....

.....

Kamishna

**B.2.2.2 THE COMMISSION FOR HUMAN RIGHTS AND GOOD GOVERNANCE (APPOINTMENTS PROCEDURE FOR COMMISSIONERS) REGULATIONS, 2001**

Made under Section 7(4)

G.N. No. 89 of 2001

## 1. Citation

These Regulations may be cited as the Commission for Human Rights and Good Governance (Appointments Procedure for Commissioners) Regulations.

## 2. Commencement

These Regulations shall come into operation on the date of publication.

## 3. Interpretation

In these Regulations –

“**Act**” means the Commission for Human Rights and Good Governance Act;

“**Appointments Committee**” means the Committee established by Article 129(4) of the Constitution;

“**appointment procedure**” means the procedure to be followed by the Appointments Committee for the appointment of the Commissioners;

“**Chairman**” and “**Vice-Chairman**” means the Chairman and Vice-Chairman of the Commission;

“**Commissioner**” and “**Assistant Commissioner**” means a Commissioner or Assistant Commissioner appointed in pursuance of article 129 of the Constitution and section 7(1)(a) and (b) of the Act.

## 4. Appointment procedure

- 1) There shall be public advertisement of the posts of Chairman, Vice-Chairman, Commissioners or Assistant Commissioners.
- 2) The advertisement shall be published in Mainland Tanzania and Tanzania Zanzibar for three consecutive days in three leading English and Kiswahili newspapers that have wide circulation and shall be immediately followed by three successive advertisements on national and private television stations.
- 3) The advertisement shall stipulate the requisite nationality, qualifications and experience necessary for the posts and shall include a requirement that the applicants have:
  - (a) Knowledge, experience and a considerable degree of involvement in matters relating to law, government, politics, or social affairs;
  - (b) the highest reputation known for their high morality, integrity, impartiality, and competence in matters of human rights and good governance;
  - (c) strong commitment to human rights norms and values;
  - (d) excellent writing and communication skills in both English and Kiswahili;

- (e) ability to balance rights and to make fair and sound decisions expeditiously, and to articulate them in writing or orally;
  - (f) capacity to handle emotionally difficult and challenging situations with tact and diplomacy;
  - (g) capacity to handle delicate social and political situations and complaints with confidentiality, where necessary;
  - (h) strong conflict resolution skills; and
  - (i) ability to work effectively as a team member, as well as alone.
- 4) In the case of the Chairman, the applicant shall, in addition to the requirements of subregulation (3), be a person who qualifies for appointment as a judge of the High Court or Court of Appeal.

## **5. Applications**

- 1) All applications, including three letters of recommendation, shall be forwarded by registered post, fax or e-mail or submitted in person to the Office of the Secretary, Appointments Committee.
- 2) Subject to subregulation (1), the civil society may also nominate any person to be considered for appointment for the post of Chairman, Vice-Chairman, Commissioner or Assistant Commissioner, provided the person so nominated gives his or her consent.
- 3) The deadline for submission of applications shall be twenty-one days from the date of first publication of the advertisement.

## **6. Short-listing of candidates**

- 1) There shall be a screening process of applications submitted for the purpose of drawing up a short list of candidates.
- 2) The screening process shall be conducted by:
  - (a) Two independent professional human resource personnel from the private sector with experience in executive job search and recruitment processes, who shall be appointed by the Appointments Committee;
  - (b) two members of the Secretariat on the Commission for Human Rights and Good Governance;
  - (c) a representative from the Tanzania Women Lawyers Association;
  - (d) a representative from the Faculty of Law, University of Dar es Salaam;
  - (e) a representative from the Tanganyika Law Society;
  - (f) a representative from the Legal and Human Rights Centre, Zanzibar;
  - (g) a representative from the United Nations Association of Tanzania;
  - (h) a representative from the Legal and Human Rights Centre, Dar es Salaam.
- 3) The screening team shall meet two days after the deadline for submission of applications and it shall submit the short-list of candidates to the

Appointments Committee within five working days from the date it sits to consider the applications.

- 4) The Appointments Committee shall inform by writing the short-listed applicants only and shall publish their names in the newspapers and television stations which carried the advertisement referred to in subregulation 2 of regulation 4.

## **7. Publication of short-listed candidates**

- 1) The publication listing the names of the short-listed applicants shall include an invitation to members of the public to submit to the Secretary of the Appointments Committee, within a specified time, comments they consider relevant to the suitability of any of the short-listed candidates.
- 2) The Appointments Committee may consider comments received from members of the public and take whatever action it considers appropriate.

## **8. Interviews**

- 1) The short-listed candidates shall be invited for interviews, which shall be conducted by the Appointments Committee.
- 2) The Appointments Committee may co-opt any person it considers appropriate to assist it in conducting the interviews.
- 3) The interviews shall seek to elicit appropriate details on, and clarification of, key contents in the candidates' *curriculum vitae*, comments received from members of the public, and to reconcile written and oral information the candidates have supplied.
- 4) The object of the interviews shall be to determine the suitability of the candidates for the job as measured by:
  - (a) Appreciation of, and commitment to human rights norms and values, and good governance;
  - (b) educational and professional background;
  - (c) scope and depth of relevant experience;
  - (d) vision for the Commission for Human Rights and Good Governance, maturity and judgment;
  - (e) fairness, impartiality and ability to maintain confidentiality;
  - (f) demonstrated capacity for, or skills in, conflict resolution; and
  - (g) reasoning skills and powers of articulation.

## **9. Final selection process**

The Appointments Committee shall submit to the President the names of:

- (a) Not less than three candidates they recommend to be appointed as Chairman;
- (b) not less than three candidates they recommend to be appointed as Vice-Chairman;

- (c) at least five more than the number of candidates to be appointed as Commissioners;
- (d) at least five more than the number of candidates to be appointed as Assistant Commissioners.

## **10. Remuneration for Appointments Committee members**

The Minister responsible for human rights may make provisions for the remuneration of the members of the Appointments Committee and any other person involved in the appointment process.

H. BAKARI MWAPACHU,  
Minister for Justice and Constitutional Affairs

### **B.2.2.3 THE COMMISSION FOR HUMAN RIGHTS AND GOOD GOVERNANCE (COMPLAINTS HANDLING PROCEDURE) REGULATIONS, 2003**

Made under section 38

1. These Regulations may be cited as the Commission for Human Rights and Good Governance (Complaints Procedure) Regulations, 2003.
2. These Regulations shall come into operation on the date of publication.
3. In these Regulations, unless the context requires otherwise –
  - “Act” means the Commission for Human Rights and Good Governance Act, 2001;
  - “Chairman” means the Chairman of the Commission or, where appropriate, a Commissioner performing the functions of the Chairman;
  - “Commission” means the Commission for Human Rights and Good Governance established by Article 129(1) of the Constitution;
  - “complainant” means a person, group or class of person organisation or association who alleges that a violation of his, her or its human right or an act of administrative injustice has occurred;
  - “complaint” means a communication addressed to the Commission that alleges a human right violation or an act of administrative injustice;
  - “conciliation” means a process through which the parties in dispute use the services of a third person to assist in bringing the parties together in an effort to ascertain the facts of a complaint and to effect a mutually acceptable solution;
  - “hearing” means an enquiry contemplated under sections 6(1)(c) and 20(2) of the Act;
  - “enquiry” means conduct of hearings contemplated under sections 6(1)(c) and 20(2) of the Act;
  - “investigation” means an investigation conducted by the Commission in terms of sections 6(1)(f) and 6(1)(g) of the Act;

“mediation” means a process through which the parties in dispute uses the services of a third person who controls the process without having any influence on the content, to help themselves or attempt to reach an agreement;

“negotiation” mean a process through which the parties in dispute attempt to resolve their dispute themselves or attempt to reach an agreement;

“person” means an individual, a juristic person or group or class of persons;

“respondent” means a person, group or class of persons, body, organisation or association against whom a complaint is made.

4(1) The following persons may lodge complaints with the Commission.

- (a) any individual acting in his or her own interest;
- (b) any one acting behalf of another person who cannot act in his or her own name;
- (c) any one acting as a member of, or in the interest of, a group or a class of persons;
- (d) a body of persons whether corporate or unincorporated;
- (e) any one acting in the public interest.

(2) A person who lodges a complaint on behalf of another shall state in writing the capacity in which he or she does so and the reason for so doing.

(3) All persons claiming any right to a relief in respect of a violation of any human right or freedom or an act of administrative injustice may apply to the Commission for redress whether jointly severally or in the alternative and may be joined in one complaint, provided that if those persons brought separate claims, each will disclose the violation of a common right.

5(1) A complaint under the Act may be made in writing, orally, by fax or e-mail.

(2) Where the complaint is in writing, it shall be addressed to any office of the Commission or to the Chairman and shall be signed or thumbprinted by the complainant or his or her agent.

(3) Where the complaint is made orally, or the complainant cannot read or write, the complaint shall be reduced into writing by a designated officer of the Commission to whom the complaint is made or by any other person chosen by the complainant.

(4) A person who reduces into writing the oral complaint of any person shall –

- (a) read over and explain the contents to the complainant;
- (b) declare on the document that the appointment has fully understood or appeared to understand and appreciate the contents;
- (c) cause the complainant to append his/her signature or thumbprint to the bottom of each page of the document.

6(1) A complaint lodged with the Commission shall contain –

- (a) the full name, house or other contact address, telephone, fax or e-mail of the complainant(s);
- (b) the full name, house or other contact address, telephone, fax or e-mail of the respondent(s);
- (c) particulars of the nature of the complaint together with copies of any document in support of the complaint;
- (d) the nature of the human rights violation, injustice or harm that the complainant has suffered as a result of the action, inaction or omission of the body, organisation or person against whom the complaint is made; and

(2) Notwithstanding the provisions of sub-regulation (1), the Commission may entertain a complaint even though it does not contain all the stipulated particulars.

7(1) A complaint, response or any other communication made to the Commission by any of the parties may be amended at any state of investigation at the request of either the complainant or respondent, as the case may be, by serving notice of the intended amendment on the opposing party and the Commission.

(2) The Commission may accept or reject the application for amendment, having regard to the circumstances of the case.

8(1) A complaint shall be lodged with the Commission within 24 months from the date when the complainant had knowledge of the decision, recommendation, act or omission complained of.

(2) The Commission may still accept a complaint which is not lodged with the Commission within the time stipulated in sub-regulation (1) if –

- (a) for purposes of ensuring that the ends of justice are met, it is otherwise desirable to deal with the complaint than rejecting it; or
- (b) the complaint is of constitutional importance; or considering the nature of the complaint and circumstances surrounding the complaint, the Commission is satisfied that it should deal with such complaint.

9(1) Where a complainant fails or neglects to respond to communication from the Commission within three months from the date of such communication, the Commission may consider the complaint to have lapsed.

(2) Where a complainant has lapsed under sub-regulation (1), the Commission upon good cause shown shall restore the complaint.

10(1) Where the Commission decides not to investigate or to cease to investigate a complaint, it shall within 30 days of the decision, inform the complainant in writing of its decision and the reasons thereof.

(2) A complainant whose complaint has been rejected may appeal in writing to the Chairman of the Commission within 30 days from the date he or she obtains knowledge of the Commission's decision.

(3) Where the Commission decides not to investigate a complaint on the ground that the complaint can be handled more appropriately by another forum, it shall refer the complainant to such forum.

11(1) Where the Commission considers that a complaint lodged with the Commission is a matter within the function of the Commission, it shall cause a copy of the complaint or appropriate notification to be transmitted to the head of the body or organisation and or the person against whom the complaint is made with a request for comments.

(2) The head of the body or organisation or person against whom the complaint is made shall within fourteen days from the date of the receipt of the complaint or such further period as the Commission may specify, submit comments to the Commission.

12(1) The Chairman or his or her representative may assign an investigator or officer of the Commission to make a preliminary investigation into any complaint lodged with the Commission.

(2) The Commission may, for the purposes of performing its functions under the Act, require the services of a member of the Police Force or any public institution with expert knowledge relevant for redressing any particular complaint.

13(1) A complaint, response or any other communication made to the Commission by any of the parties to the Commission may be amended at the request of either the complainant or respondent, as the case may be, by serving notice of the intended amendment on the opposing party and the Commission.

(2) The Commission may accept or reject the application for amendment, having regard to the circumstances of the case.

14(1) Upon receipt of the comments of the respondent the Commission may, when it considers that in view of the comments, the complaint could be settled, invite the parties concerned and attempt a mediation, conciliation or negotiation of the complaint between the parties.

(2) Where the Commission considers that the comments require a reaction from the complainant, it shall forward the comments to the complainant for his or her reaction.

(3) The provisions of these Regulations shall not preclude the Commission on receipt of a complaint from inviting the parties concerned and attempting a settlement of the issue or issues between the parties.

15. Where the commission decides not to institute a full investigation it shall give the parties an opportunity to make oral or written submission after which the Commission shall fix a reasonable date for its decision.

16(1) Any of the parties may, before or during an investigation, apply to the Commission to have a summons issued to any person whose evidence may be relevant to the investigation of the complaint.

(2) The Commission may, on its own initiative, issue a summons to any person who, in the opinion of the Commission, can give evidence relevant to the matter being investigated.

17(1) Every complaint, response, summons or any other written notice requiring personal service shall, as far as practicable, be served personally on the person named therein by delivering or tendering to him or her a duplicate of the document and at the same time producing the original of so required.

(2) A document required to be served may be served by registered mail addressed to the person's latest known place of abode or usual address or at his or her place of business.

(3) Every person upon whom a complaint, response, summons or any other document is personally served shall sign or put his or her mark in recognition of the receipt of the document, upon the back of the original of the document; and if he or she refuses to do so, the person who has effected service of the document shall record in writing the refusal.

(4) Where an advocate has appeared for any party either in writing or orally before the Commission, any document shall be served either on advocate alone or on both the party and advocate.

(5) Service of any document or papers, other than a summons to appear and testify or to produce a document, on such advocate shall be deemed to be service on the party he or she represents.

18. Every complaint, response, summons or any other document issued under these Regulations and requiring service shall be served by an officer of the Commission or any other person authorised to do so by the Commission.

19(1) Where the time for doing any act or taking any proceedings expires on a Sunday or any other day on which the offices of the Commission are closed, and by reason thereof such act or proceedings cannot be done or taken on that day, such act or proceedings shall, so far as regards the time for doing or taking the same be held to be duly done or taken the day on which the offices shall next be open.

(2) In any case in which any particular number of days is prescribed by these Regulations, the same shall be reckoned exclusively of the first day and inclusively of the last day.

20. Person appearing before the Commission may be represented by an advocate or by any other person suitable to represent them.

21. In respect of any matter relating to the proceedings at an enquiry where these Regulations have not expressly or by necessary implication made provision, the rules of court applicable to the High Court shall apply with such modifications as the Commission may consider appropriate.

22. The provisions of these Regulations shall apply, as far as practicable to the allegations investigated by the Commission on its own initiative.

23. Non compliance with any of these Regulations shall not render void any step taken unless the Commission shall so direct.

HARITH B. MWAPACHU,  
Minister for Justice and Constitutional Affairs  
Dar es Salaam, 9<sup>th</sup> May, 2003

### **B.2.3 THE COMMISSION FOR HUMAN RIGHTS AND GOOD GOVERNANCE (ENQUIRIES PROCEDURE) REGULATIONS, 2003**

Made under section 38

1. The Regulation may be cited as the Commission for Human Rights and Good Governance (Enquiries Procedure) Regulations, 2003.
2. These Regulations shall come into operation on the date of publication.
3. In these Regulations, unless the context requires otherwise:-
  - “Act” means the Commission for Human Rights and Good Governance Act, 2001;
  - “Commission” means the Commission for Human Rights and Good Governance established by Article 129(1) of the Constitution.
  - “complainant” means a person, group or class of persons, organisation or association who alleges that a violation of his, her or its human right or an act or administrative injustice has occurred;
  - “complaint” means a communication addressed to the Commission that alleges a human rights violation or an act of administrative injustice;
  - “Enquiry” means conduct of hearings contemplated under sections 6(1)(c) and 20(2) of the Act;
  - “joinder” means the joining of a party to a complaint;
  - “misjoinder” means the improper joining together of parties to a complaint;
  - “next friend” means a parent, brother, sister or guardian of a minor;
  - “nonjoinder” means the omission to join some person as party to a complaint;
  - “person” means an individual, a juristic person, group or class of persons;
  - “respondent” means a person, group or class of persons, body, organisation or association against whom a complaint is made;
  - “response” means an answer to a complaint;
  - “summons” means a formal issued by the Commission commanding a person named therein to appear at a certain time and place to testify or to produce any document;
4. Where it appears to the Commission any joinder of complainants may embarrass or delay the hearing or cause a miscarriage of justice, the

Commission may order separate hearings or make such other order as may be expedient.

5. All persons against whom there is a claim or any right to relief in respect of a violation of a human right, freedom or an act of administrative injustice, whether jointly or severally or in the alternative, may be joined in one complaint where, if separate complaint were brought against them, there would arise for determination the violation of a common human right or act of administrative injustice.

6. Where a complaint is in doubt as to the person from whom he or she is entitled to obtain redress, he or she may claim from two or more respondents in order that the question as to which of the respondents is liable and to what extent, may be determined between all parties.

7(1) Where several persons have the same right or claim, any one or more of those persons may, on written authority signed by each of the interested persons, lodge a complaint with the Commission on behalf of all of them.

(2) Any person on whose behalf a claim to a right or claim is lodged, may apply to the Commission to be joined as party to the complaint.

8(1) The Commission may order that the name of any person whose presence is necessary in order to enable it to settle effectively a claim to any violation of a human right, freedom or act of administrative injustice, be joined.

(2) Where a person is joined or substituted, an amended copy of the complaint and response indicating the new parties shall be served on the person joined and all other parties.

9. No claim to a right or claim may be defeated by the reason of misjoinder or non-joinder of parties; and the Commission may, in any claim deal with the rights and interests of the parties actually before it.

10(1) Where a complaint has been lodged in the name of the wrong person as complainant, or where it is doubtful whether it has been lodged in the name of the complainant, the Commission may, at any stage of the enquiry, if satisfied that the claim has been filed through a mistake made in good faith, and that it is necessary for the determination of the real claim to a right in question, order that other person to be substituted or joined as complainant upon such terms as the Commission thinks fit.

(2) No person may be joined as a complainant or next friend of a complainant under any disability without the consent of that person.

11(1) The Commission may, at any stage of the investigation, either of its own motion or on application made for the purpose by any person and on such terms as may appear to the Commission to be just, order that the name of any party improperly joined to be struck out.

(2) Where a complainant or respondent is struck out before the enquiry, a notice to that effect shall be served upon him or her before the date fixed for hearing.

12(1) Every complaint, response, summons or any other written notice requiring personal service shall, as far as practicable, be served personally on the person named therein by delivering or tendering to him or her a duplicate of the document and at the same time producing the original if so required.

(2) A document required to be served may be served by registered mail addressed to the person's latest known place of abode or usual address or at his or her place of business.

(3) Every person upon whom a complaint, response, summons or any other document is personally served shall sign or put his or her mark in recognition of the receipt of the document, upon the back of the original of the document; and if he or she refuses to do so, the person who has effected service of the document shall record in writing the refusal.

(4) Where an advocate has appeared for a party either in writing or orally before the Commission, any document shall be served either on the advocate alone or both the party and the advocate.

(5) Service of any document or papers, other than a summons to appear and testify or to produce a document, on such an advocate shall be deemed to be service on the party he or she represents.

13. An advocate who appears for a party at any stage shall be deemed to remain that party's advocate throughout the investigation until:

- (a) the party represented files with the Commission a written revocation of the advocate's authority;
- (b) the advocate files with the Commission a written statement of his or her withdrawal from the case;
- (c) the advocate states on the record that he or she is withdrawing from the case;
- (d) the party represented states on the record that he or she is revoking advocate's authority; or
- (e) the Commission receives notice of advocate's death or disqualification.

14.(1) Where the Commission decides to institute a full investigation into a complaint, it shall in writing invite to attend and interviewed:

- (a) the complainant;
- (b) a representative of the body, organisation or person against whom the complaint is made;
- (c) any interested party;
- (d) any other person whose conduct is likely to be the subject of adverse comment by the Commission.

(2) The notice inviting the parties shall state the date, time and place of attendance.

(3) The date for attendance shall not be less than seven days from the date of the notice.

(4) A person appearing before the Commission in answer to a complaint shall:-

- (a) be informed again of the particulars of the complaint and relief sought;
- (b) be afforded full opportunity to answer the complaint and to question any witness.

15. A notice served upon the parties shall declare that if the complainant or respondent does not appear before the Commission on the date, time and place specified in the notice fixed, it may proceed to dismiss the complaint, enquire into the matter, or make any appropriate order.

16(1) Any person who appears before the Commission in any investigation shall be given a fair hearing.

(2) In conducting an inquiry, the Commission shall observe the rules of natural justice but shall not be bound by any legal or technical rules of evidence applicable to proceedings before courts; and all proceedings shall be conducted informally and expeditiously.

17(1) Any of the parties may, before or during an enquiry, apply to the Commission to have a summons issued to any person whose evidence may be relevant to the investigation of the complaint.

(2) The Commission may, on its own initiative, issue a summons to any person who, in the opinion of the Commission, can give evidence relevant to the matter being investigated.

18. Every complaint, response, summons or any other document issued under these Regulations and enquiring service shall be served by and officer of the Commission or any other person authorised to do so by the Commission.

19(1) If on the day fixed for the hearing of a complaint, the respondent appears but the complainant does not appear, the Commission shall, if satisfied that a notice of the date, time and place for inquiry has been duly served upon the complainant, ask the respondent whether he or she admits the claim and:-

- (a) if the respondent admits the claim or any part of it, the Commission may make a decision against him or her for the claim or that part of it as he or she admits; or
- (b) if the respondent does not admit the claim, the Commission may dismiss the complaint or proceed to hear the complaint or adjourn the enquiry to another date, and when another date is fixed for enquiry, the Commission shall cause a notice to be served on the complainant and the respondent requiring each to attend the Commission at the time and place specified in the notice.

(2) Where a complaint is dismissed under this regulation, the complainant may bring a new complaint or ask that the original complaint be reinstated

upon satisfying the Commission as to the reasons why he or she did not appear at the previous sitting.

20 If on the date fixed for the enquiry, the respondent does not appear, the Commission may, if satisfied that the notice to the respondent indicating the date, time and place for the hearing has been duly served upon him or her, proceed to hear the evidence of the complainant and his or her witness, if any, and decide the matter on the basis of the evidence before it.

21(1) Where a decision has been given against a respondent under regulation 20, the respondent may apply for the decision to be set aside on satisfying the Commission of the reasons which prevent his or her attendance at the place and time fixed for the hearing.

(2) No decision made may be set aside unless the application to set aside is made within thirty days from the date on which the decision was given.

22(1) If on the day fixed for the conduct of the enquiry or any date to which the hearing of the complaint is adjourned, neither party appears, the Commission may order that the complaint be dismissed.

(2) Where a complaint is dismissed, the complainant may bring a new complaint or ask that the original complaint be reinstated upon satisfying the Commission as to the reasons why he or she did not appear at the previous sitting.

(3) No decision made pursuant to sub-regulation (1) may be set aside unless the application to set aside is made within thirty days from the date on which the decision was given.

23 On appearance of both parties before the Commission, the respondent shall be asked by the Commission whether or not he or she admits the claim of the complainant and if:-

- (a) the respondent admits the claim in its entirety, the decision shall be given confirming the complainant's claim; and the Commission shall make the appropriate orders in the circumstances in favour of the complainant;
- (b) the respondent does not admit the claim or admits it only in part, the Commission shall proceed to hear the evidence of the parties.

24(1) Unless the Commission otherwise orders, the evidence of the complainant shall be heard first, followed by that of his or her witnesses, if any, and the respondent or his or her counsel shall be given the opportunity to cross-examine the complainant and each of his or her witnesses.

(2) At the close of the evidence of the complainant or that of his or her witness, the evidence of the respondent shall be heard, followed by that of his or her witnesses, if any, and the complainant or his or her counsel shall be given the opportunity to cross-examine the respondent and each of his or her witnesses.

(3) The Commission may, at any time, put questions to either party or to any witness and may, at its discretion, call such additional evidence as it considers necessary.

(4) The Commission may, for sufficient reason, at any time before or after the beginning of the enquiry, adjourn the proceedings; and in every such case the Commission shall fix a date for further hearing of the enquiry.

25. The Commission shall observe the rules of natural justice but shall not be bound by any legal or technical rules or evidence applicable to proceedings before the courts; and all proceedings shall be conducted informally and expeditiously.

26. The Commission shall permit the parties or their advocate to submit oral or written arguments within such time limits as the Commission may determine.

27(1) After conclusion of the enquiry, the parties or their advocate may make oral or written submissions, After which the Commission shall fix a reasonable date for its decision.

(2) All rulings and decisions of the Commission shall be by majority vote.

28. The proceedings of the enquiry shall be open to the public unless otherwise directed by the Commission; and the reasons for the direction shall be recorded in writing.

29. Any function which is conferred by these Regulations upon the Commission may, unless it is otherwise provided expressly or by necessary implication, be performed by the Commission in any premises in which the Commission ordinarily sits or elsewhere.

30(1) Where the time for doing any act or taking any proceedings expires on a Sunday or any other day on which the offices of the Commission are closed, and by reason thereof such act or proceedings cannot be done or taken on that day, such act or proceedings shall, so far as regards the time for doing or taking the same be held to be dully done or taken on the day on which the offices shall next be open.

(2) In any case in which any particular number of days is prescribed by these Regulations, the same shall be reckoned exclusively of the first day and inclusively of the last.

31. Non-compliance with any of these Regulations shall not render any proceedings at an enquiry void unless the Commission shall so direct.

32. In respect of any matter relating to the proceedings at an enquiry where these Regulations have not expressly or by necessary implication made provision, the rules of court applicable to the High Court shall apply with such modifications as the Commission may consider appropriate.

HARITH B. MWAPACHU,  
Minister for Justice and Constitutional Affairs  
Dar es Salaam, 9<sup>th</sup> May, 2003

**B.2.4 THE COMMISSION FOR HUMAN RIGHTS AND GOOD GOVERNANCE(EXTENSION) ACT No 12 2003**

**ARRANGEMENT OF SECTIONS**

**SECTION**

- 1) Short title and commencement.
- 2) Interpretation.
- 3) Extension.
- 4) Amendment to the principal Act.
- 5) Regulations.

ACT No 12 OF 2003

I ASSENT

{AMANI ABEID KARUME}

PRESIDENT OF ZANZIBAR

AND

CHAIRMAN OF THE REVOLUTIONARY COUNCIL

..... [25<sup>th</sup> April], 2007

AN ACT TO PROVIDE FOR THE EXTENSION OF JURISDICTION, FUNCTIONS AND POWERS OF THE COMMISSION FOR HUMAN RIGHTS AND GOOD GOVERNANCE TO ZANZIBAR AND MATTERS RELATED THERETO

**ENACTED** by the House of Representatives of Zanzibar.

1. This Act may be cited as the Commission for Human Rights and Good Governance (Extension) Act, 2003 and shall come into operation on such a date as the Minister may, by notice published in the Gazette, appoint.

2. In this Act unless the context other wise requires –

“The principal Act” means the Commission for Human Rights and Good Governance Act, No. 7 of 2001 enacted by the Parliament of the United Republic of Tanzania;

“Commission” means the Commission for Human Rights and Good Governance established by the principal Act;

“House” means the House of Representatives, Zanzibar;

“President” means the President of Zanzibar and the Chairman of the Revolutionary Council.

“Responsible Minister” means the Minister responsible for human rights in Zanzibar.

3(1) The principal Act, with its necessary amendments, is hereby extended and adopted to apply to Zanzibar as if enacted by the House on the following terms and conditions that:-

- (a) the responsible Minister should be clearly stated and recognised in the principal Act;
  - (b) the Commissions annual report on Zanzibar matters should be submitted to the responsible Minister who shall submit the same to the House for deliberation;
  - (c) the Minister responsible for human rights of the United Republic of Tanzania when making regulations under the principal Act shall consult and agree thereto with the responsible Minister in Zanzibar.
- (2) For avoidance of doubt but subject to the provisions of subsection (1) of this section it is hereby expressly provided that the Commission shall exercise jurisdiction, functions and powers over and on respect of all public institutions of the Revolutionary Government of Zanzibar and other private institutions and individuals operating or residing in Zanzibar in the manner and to the extent provided under the principal Act.
4. Any amendment made to the principal Act and its regulations thereto shall not apply to Zanzibar until and unless specifically approved by the House by way of resolution.
- 5(1) The responsible Minister may make regulations for better enforcement of the provisions of this Act, and where circumstances require specific regulations for the operation of the Commission on any matter in Zanzibar.
- (2) Save in the circumstances provided under subsection (1) of this section regulations made under the principal Act shall also apply to Zanzibar.
- Passed in the House of Representatives on the 5<sup>th</sup> day of August, 2003.