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## THE ZAMBIAN HUMAN RIGHTS COMMISSION

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### PART A. INTRODUCTORY COMMENTARY

#### 1 Introduction

Zambia's Human Rights Commission (HRC) was established in 1997 and thus has been operating for more than two decades. It has its headquarters in the capital city, Lusaka, and is composed of seven commissioners, among whom are its chairperson and deputy chairperson. The day-to-day activities are carried out by a directorate headed by a director-general, who also acts as the secretary to the commissioners.

At the regional level, the HRC is a member of the Network of African National Human Rights Institutions (NANHRI), which provides a platform for collective action as well as capacity-building of member national human rights institutions (NHRIs). At the international level, the HRC for the most part of its existence has been recognised by the United Nations Office of the High Commissioner for Human Rights (OHCHR) as an "A" status NHRI, having adhered to the provisions of the Principles Relating to the Status of National Institutions (The Paris Principles).<sup>1</sup> From 2000-2011 the HRC enjoyed "A" status; from 2011-2015, however, the HRC had no commissioners and as a result could not maintain this

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1 The Paris Principles are a set of internationally recognised standards governing the role, status, mandate, composition and functions of NHRIs. They are the basis on which the independence, effectiveness and status of an NHRI is assessed. The Principles were adopted by the United Nations General Assembly (UNGA) on 20 December 1993 under Resolution 48/134 regarding National Institutions for the Protection of Human Rights.

status, albeit that there was no formal communication that this status had been revoked.<sup>2</sup>

The vision of the HRC is “to be an effective, respected, responsive and independent guardian of human rights for all times”. Its mission in furtherance of this vision is:

[t]o promote and protect human rights for all Zambians through investigations of human rights violations, rehabilitation of victims of human rights abuses, education of communities and advocacy for policy and legal changes influenced by evidence based research.<sup>3</sup>

In spite of its progressive vision and mission statement, the HRC has not been able to live up to its aspirations. It remains largely unknown to people in Zambia and is thus underutilised.

This chapter discusses some of the factors that are responsible for the ineffectiveness of the HRC. The argument is that the HRC retains weaknesses it had from the time it was first established, and operates in an unfavourable legal and political environment. Nevertheless, it has the potential to make a difference in the human rights situation in Zambia even in the face of these weaknesses. To do so, the HRC must take capitalise on its potential and use its strategic influence to improve the human rights situation in the country.

## **2 The evolution and establishment of the HRC**

The establishment of an NHRI was recommended by the Bruce Munyama Human Rights Commission of Inquiry (hereafter Munyama Commission). The commission was an ad hoc body appointed in 1992 to investigate and report on the human rights violations that took place in Zambia during the so-called Second Republic, that this, the era when it was a one-party state.

In 1991, after the fall of the iron curtain in Europe in 1989, Zambia returned to a system of multi-party democracy after 18 years of one-party rule under the leadership of President Kenneth Kaunda and the United

2 Zambia’s status review has been deferred three times, the most recent such occasion having been in August 2018. It is not known what status Zambia will receive, given the progressive amendments to the Constitution and the outdated Human Rights Commission Act. Zambia, does not appear on the list of countries with “A” status NHRIs published in March 2019 by the Global Alliance of National Human Rights Institutions (GANHRI).

3 See the HRC’s official website at <http://www.hrc.org.zm> (accessed 10 December 2018).

National Independence Party (UNIP).<sup>4</sup> The one-party state was characterised by human rights violations such as extrajudicial killings, torture, the disappearance of political opponents, and the suppression of fundamental freedoms including freedom of expression, assembly and association.<sup>5</sup> The Movement for Multiparty Democracy (MMD), which came to power after the 1991 elections under the leadership of President Fredrick Chiluba, sought to investigate violations that occurred during the Second Republic. To this end, President Chiluba appointed the Munyama Commission to carry out an investigation and report on its findings.

In 1993, the commission began work, travelling around the country to collect submissions from citizens. The overwhelming number it received confirmed that there were massive human rights violations during this era. For instance, the commission found evidence of secret detention centres throughout the country where human rights had been violated.<sup>6</sup> In 1995, it handed in its report to the President with the recommendation that a permanent Human Rights Commission be established to prevent future human rights violations.<sup>7</sup>

It would thus be true to say that, at the start of the Third Republic in Zambia, the country had high expectations of this institution and its effectiveness. (Whether these expectations have been met will be the subject of discussion in this chapter's conclusion.) As Alfred Chanda, a prominent activist and scholar based at the University of Zambia, suggested at the time in his study of the human rights situation under the Second Republic, "given the rampant human rights abuses that have occurred in Zambia since independence and the failure of the majority of victims of such violations to obtain redress for various reasons, a permanent human rights commission should be created".<sup>8</sup>

4 At independence in 1964, Zambia was a multi-party democratic state. However, in 1973, like most African states at the time, the government, under the leadership of Dr Kenneth David Kaunda, amended the Constitution by establishing what they called a one-party participatory democracy. This was done through the first-ever Constitutional Review Commission, called the Chona Commission and headed by the then Minister of Justice, Mainza Chona. A philosophy of humanism was propounded and close relations with eastern powers were nurtured. For a detailed constitutional history, see J Mwanakatwe, *End of an Era*, Lusaka, Multimedia (1994).

5 Munyama Human Rights Commission of Inquiry Report (1995).

6 *Ibid.* Most of these detention centres were located in inaccessible rural parts of the country.

7 *Ibid.*

8 A Chanda, *Zambia: A Case Study of Human Rights in Commonwealth Africa* (unpublished PhD thesis) (1992), p 410.

The Munyama Commission's recommendation of a permanent human rights commission was reiterated by the Mwanakatwe Constitutional Review Commission (hereafter Mwanakatwe Commission). In 1991, following the return to multi-party politics, the MMD government embarked on a process of constitutional reform, appointing the Mwanakatwe Commission at the same time as the Munyama Commission. The purpose of the Mwanakatwe Commission was to travel throughout the country to ascertain the views of the people of Zambia on how a new constitution should be developed and what content it should have.

One of the issues to arise was the protection of human rights. Like the Munyama Commission, the Mwanakatwe Commission found that citizens were concerned about the violations that occurred during the Second Republic.<sup>9</sup> To that end, among the recommendations that were made was that a referendum be held to amend the Bill of Rights<sup>10</sup> and that a permanent human rights commission should be established.

Following these recommendations, a constitutional amendment in 1996 established the HRC in Article 125, while Article 126 provided that its functions powers, composition, funding and administrative procedures, including the employment of staff, would be prescribed in an Act of Parliament. To actualise these provisions, the Human Rights Commission Act 39 of 1996 (the HRC Act) was enacted. In 1997 the Commission came into operation under its first chairperson, the then High Court judge Madam Justice Lombe Chibesakunda.

From the time of its establishment, the HRC has consistently drawn criticism of its autonomy, effectiveness and structure. Many have said it is based on a weak legal framework, describing the Commission as a dog that barks but lacks the teeth to bite anything. In response to these criticisms, Article 230 of a 2016 constitutional amendment re-established the HRC and spelt out its functions and powers with a view to enhancing its effectiveness.

9 See note 5.

10 The Bill of Rights is found in Part 3 of the Constitution, where it has remained unchanged since independence. The recommendation that a referendum be held to amend it was never accepted. In 2016 an attempt was made to amend the Bill of Rights through a referendum but, unfortunately, it failed. According to Article 79 of the Constitution, the Bill of Rights can be amended only through a national referendum where not less than 50 per cent of registered voters participate and vote in favour of the amendment.

The 2016 amendment to the Constitution was, arguably, a symbolic rebirth of the HRC, given that for more than five years from 2010- 2016 it had been non-functional in many respects as it had no commissioners. New Commissioners were appointed in 2016 and sworn in by Present Edgar Lungu following the amendment. Moreover, to ensure that the HRC functions in line with the constitutional amendment, a bill has been drafted to amend the 1996 HRC Act. The bill is not available to the public, however, and so it remains to be seen whether the changes that are to be introduced will indeed make the HRC more effective. The bill did not go through wide stakeholder consultation, which raises concerns about its contents. Nonetheless, when it goes through the parliamentary-committee stage, stakeholders will have an opportunity to make their comments on it.

### 3 The nature of the HRC

#### 3.1 Model

NRHIs take different forms and have different natures.<sup>11</sup> Zambia has chosen the model of a human rights commission, the most common form of NHRI in the Commonwealth tradition. Commissioners are appointed by the presidents and work on a part-time basis.

Zambia also has a special commission on gender equality, along with a public protector, an office which replaced that of the administrator-general in 2016. However, this chapter deals with the country's general NHRI, the HRC.

#### 3.2 Legal framework

As noted, the HRC was created by the 1996 amendment to the Constitution. Whilst Article 125 merely provided for its establishment of the Commission, Article 126 left all matters pertaining to its functions to be determined through ordinary legislation. The Human Rights Commission Act 36 of 1996 was enacted to provide for its functions and other matters, as required by Article 126 of the Constitution.

However, due to numerous calls for a more effective human rights commission, Articles 125 and 126 were repealed by the 2016 amendment to the Constitution. As it stands, the existence of the HRC is now based on part 18, Article 230 of the Constitution as amended in 2016. The provision

11 Office of the United Nations High Commissioner for Human Rights, *National Human Rights Institutions: History, Principles, Roles and Responsibilities*, New York/Geneva, United Nations (2010), p 22.

states: “There is established the Human Rights Commission which shall have offices in the provinces and progressively in the districts”.

Part 18 creates other commissions and institutions in Zambia. Article 238 provides that a commission shall be a self-accounting institution that in matters of finance deals directly with the ministry responsible for finance. It thus goes without saying that the HRC receives funding from the central government through the Ministry of Finance.<sup>12</sup> By way of illustration, because the latter has not yet made the appropriate financial provision, the HRC does not offices in all provinces and districts of the country.

Article 240 provides for the appointment of members of commissions and the general qualifications a person should have to be eligible for appointment. In essence, the article requires that commissioners should be Zambian citizens, of good financial standing, have paid all their taxes, and not have criminal records. This provision should be read together with the detail furnished in the HRC Act.

In turn, this Act can be said to derive its authority from Article 242 of the Constitution, which provides that “[t]he functions, composition, appointment of members, tenure of office of members, processes and procedures, operations, administration, structures finances and financial management of a Commission shall be prescribed”. The loose wording of Article 242 casts serious doubt on the independence of the HRC because would depend entirely on the goodwill of politicians.

### **3.3 Composition of the HRC**

The composition of the HRC is provided for in the HRC Act. Section 5 prescribes that the Commission shall consist of a chairperson, a vice chairperson and not more than five other commissioners.<sup>13</sup> The commissioners serve for a term of three years, renewable for another three years.

12 This is so because, in practice, the Ministry of Finance has the power to decide how much to allocate to a particular commission or department, irrespective of the fact that the ZHRC submit its budget indicating how much it needs for its operations. The Ministry of Finance usually reduces the budget in the name of “many other competing and equally important matters of national interest and priorities”.

13 Currently the Commission is filled to the maximum constitutional capacity. The chairperson, vice chairperson and five commissioners were appointed from across cultures and professions.

With regard to qualifications, the chairperson and vice chairperson should be persons who are qualified at the very least to be High Court judges.<sup>14</sup> The Act is silent on the qualifications of other commissioners. However, Article 240 of the Constitution provides guidance, as it sets out the general qualifications for members of all commissions. It states that a person qualifies to be a member of a commission if that person is a Zambian citizen, has not served a term of more than three years' imprisonment immediately before appointment, has declared his or her assets and liabilities, paid his or her taxes, and does not have a mental or physical disability that would make him or her unable to perform the functions required by a Commissioner.

The most controversial issue to do with the HRC's composition relates to the appointment of commissioners. All of them are appointed by the President under section 5(2) of the HRC Act, which raises serious doubts about their independence. For instance, at his or her discretion, the President can decide to pack the Commission with government sympathisers. The fact that Members of Parliament vote along party political lines means that the process of parliamentary ratification does not offer any real safeguard to prevent the President from doing so.

The situation is compounded by the fact that section 7(1) of the Act gives the President sweeping powers to remove a Commissioner on obscure grounds, such as inability to perform, incompetence or misbehaviour. The Act does not define what amounts to incompetence or misbehaviour, and as such gives the President wide-ranging discretionary powers to remove any commissioner on any of these grounds.

The day-to-day activities of the HRC are run by the secretariat, which is headed by a director and deputy Director. The director of the HRC also acts as the secretary to the commissioners. The director and all other members of staff are appointed by the commissioners. The members of staff of the Commission are regarded as public officers by virtue of the fact that Article 266 of the HRC Act states that every person who is paid from public funds is a public officer.

### **3.4 Functions and powers of the Commission**

The HRC's functions are set out in Article 230 of the Constitution. Article 230(2) states that the general function of the HRC is to "ensure that the Bill

14 The qualification for a judge of the High Court Judge is that a person should be a lawyer with at least ten years standing at the bar. See Article 141(1) of the Constitution.

of Rights is upheld and protected".<sup>15</sup> Article 230(3) prescribes that its specific functions are to:

- investigate and report on the observance of rights and freedoms;
- take necessary steps to secure appropriate redress where rights and freedoms are violated;
- endeavour to resolve a dispute through negotiation, mediation and conciliation;
- carry out research on rights and freedoms and related matters;
- conduct civic education on rights and freedoms; and
- perform such other functions as prescribed.

These functions stated in the Constitution are supplemented by section 9 of the HRC Act, which provides that the Commissions are to:

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

To enable it to carry out its functions, the HRC Act gives powers to the HRC to investigate violations on its own initiative or on receipt of a complaint. In this regard, the HRC can summon any person or authority to appear before it and answer questions. The HRC also has powers to summon the production or disclosure of any information relevant for the investigation.<sup>16</sup> These powers are provided for under section 10 of the Act. Lastly, the HRC has powers to make recommendations appropriate to its findings.<sup>17</sup>

15 Broadly interpreted, the function of the ZHRC can be said to extend to international human rights law in the sense that the Commission can monitor the implementation of regional and international instruments that Zambia has ratified. Narrowly interpreted, the mandate of the Commission seems to be limited to only the Bill of Rights.

16 Section 10 of the HRC Act.

17 It has been argued that the Commission should be given the power to make binding decisions instead of recommendations as these are usually ignored. A solution might be to make the Commission a quasi-judicial body as this would give it power to make binding decisions.



Given the limited nature of Zambia's Bill of Rights its claw-back clauses, and bearing in mind the Paris Principles, it can be argued that the functions and powers of the HRC are very narrow. The Bill of Rights provides only for civil and political rights, and with a claw-back clause in the case of each right. It does not help that the Bill of Rights was adopted from the colonial constitution. The upshot of this is, then, that the scope of rights the HRC is mandated to protect is extremely limited.

Moreover, the fact that the HRC does not have offices in all the provinces and districts means that the geographical reach of its services is also limited. Of the ten provinces, the HRC has offices in only five of them, and these are not staffed by the qualified personnel. In practical terms, the HRC reaches about only 40 per cent of the national territory.

Another limiting factor is that the Commission has no power to be a party in a matter that is in court.<sup>18</sup> In fact, the Commission has no separate or independent legal personality, and as such it cannot join matters as an *amicus curiae* or intervenor. This has rendered it largely impotent on important human rights issues that have become the subject of court proceedings in Zambia.

The Constitution and HRC do not give the HRC the express power to monitor compliance with international and regional human rights treaties. However, if the functions and powers of the HRC are broadly, and creatively, interpreted, they could be considered, arguably, to include the monitoring of international and regional human rights treaties and hence conform to some of the standards in the Paris principles.<sup>19</sup> This would require commissioners and the secretariat staff to be knowledgeable about human rights and have the ability to act independently without being subjected to political or other undue influence.

As a further limitation, the thematic areas in which the HRC works was limited by the creation of the Gender Equality and Equity Commission (GEEC) in 2016. The GEEC is established under Article 231 of the Constitution and has the mandate to deal with human rights issues related to sex and gender. The functions and powers of the GEEC are

18 Section 10 of the HRC Act. Acting as *amicus curiae* in human cases is one of the most important strategic interventions an NHRI can do. For details of how an NHRI can do so, see Asia Pacific Forum, "Fact Sheet 8, Responsibilities and Functions of an NHRI: Intervening in Court Proceedings", available at <https://www.asiapacificforum.net/support> (accessed 10 March 2019).

19 See note 18.

provided under section 9 of the Gender Equity and Equality Act of 2015.<sup>20</sup> The functions are, basically, to ensure gender mainstreaming in public institutions and promote gender equality through sensitisation programmes.

Notably, the two commissions have different functions and therefore do not overlap in their work. The Constitution, the Gender Equity and Equality Act and the HRC Act do not create any specific relationship between the two commissions, albeit that at a practical level it is envisaged that they will collaborate with each other. However, section 9(1)(d) of the Gender Equity and Equality Act gives power to the GEEC to liaise with other institutions in the performance of its function. In terms of this section, a framework for interfunctionality and collaboration can be created between the two commissions. Given that, at the time of writing, the GEEC has been in existence for a little more than a year, it is too early to comment on whether the two commissions have any effective working collaboration.<sup>21</sup>

Another institution with the potential to collaborate with the HRC is the Office of the Public Protector, or Ombudsman. In some jurisdictions, the NHRI takes the form of an ombudsperson with a wide mandate that includes aspects of human rights. In Zambia, this office is established under Article 243 of the Constitution, read together with the Public Protector Act 15 of 2016 and its focus on ensuring that there is no maladministration in public institutions. The Office of the Public Protector, previously known as the Office of the Administrator-General, is one of the new institutions introduced in the 2016 amendment to the Constitution, although at the time of writing it was not yet fully functional as it had not received funding for its operations. There are no overlaps in the functions of the HRC and the Ombudsman; however, the potential for collaboration does exist, especially in cases where human rights violations are alleged with respect to public officers carrying out the functions of their offices.

20 Section 10 of the Gender Equity and Equality Act 22 of 2015. The Act was passed before the constitutional amendment of 2016, so its contents reflect the aspirations people had for a new constitution. For example, under Part 5, the Act provides for economic, social and cultural rights relating to, inter alia, employment, education and health. The hope at the time was that the Bill of Rights would be amended by referendum and see the introduction of economic, social and cultural rights.

21 During the parliamentary debate on the establishment of the GEEC, one of the arguments against the GEEC was that the ZHRC had sufficient mandate and powers to deal with the issues that the GEEC was proposed to be set up for. In this regard it was argued that the GEEC was an unnecessary institution, creating a duplicate expense for the state, given the existence of the ZHRC.

### **3.5 Public accountability**

The HRC has an inconsistent record of public accountability. While it has produced human rights annual reports for most of the years of its existence, in many instances they come out late and amount to replicas of previous reports. At the time of writing, the most recent such report that is publicly available is the 2015 report.

As regards performance, section 25 places a responsibility on the HRC to submit an annual report to the President on its activities, finances and expenditure and such other information as the President may require. It can be argued that reporting to the President undermines the autonomy of the HRC and makes it vulnerable to executive control. In this regard, what would be preferable is to have a date set aside every year on which the HRC makes its report to Parliament and can answer questions. In this way, the report would be made directly to the representatives of the people. Of course, the challenge with this is that Parliament is divided along political lines, with the party in power having control of the executive and thus the decisions of the house.

## **4 Factors affecting the HRC's effectiveness**

### **4.1 A weak human rights system**

The primary function of the HRC is to ensure that “the Bill of Rights is upheld and protected”. As noted, the scope of the rights recognised and protected by the Constitution is limited to civil and political rights. Moreover, thanks to the Constitution’s extensive use of claw-back clauses, the nature and scope of the human rights the Commission is supposed to uphold is vague and uncertain. As far back as 1996, the HRC observed that Zambia’s domestic human rights system made it vulnerable to dictatorship. In 2016, an attempt was made to amend the Bill of Rights by referendum, but this failed because the threshold for approving the amendment was not met. The failed referendum has meant that economic, social and cultural rights remain as directive principles of state policy and are therefore not justiciable.

It is difficult, then, for the HRC to be effective in the context of a weak legal framework. Although the establishment of the HRC ought to have enhanced this framework, its functions and powers are very limited, leaving it unable to have a strong, positive effect on the country’s human rights situation.

## 4.2 Limited functions and powers

As just noted, the functions and powers of the HRC are limited. For a start, it cannot use Zambia's international and regional human rights obligations to monitor the state. This is so despite the fact that Zambia has ratified all the major regional and international human rights treaties. Zambia is a dualist state and thus international and regional human rights standards have to be domesticated to be enforceable.<sup>22</sup> Owing to its limited mandate, the HRC cannot receive complaints or investigate violation of rights such as the right to health, social security education and other economic, social and cultural rights.

Another limitation on the powers of the HRC is that it cannot make binding decisions. The Constitution grants power to the HRC to conduct investigations and make decisions appropriate to its findings. However, the decisions are merely recommendatory and not binding on any institution or body, be it public or private.

## 4.3 Lack of independence

Under the Paris Principles, independence is the defining characteristic and key indicator of an "A-level" NHRI.<sup>23</sup> Independence is not defined in the Principles, but it can be understood as the ability of an NHRI to carry out its mandate without fear or favour and free of interference from external forces such as the state, the private sector or individuals. The main requirements for independence are that the NRHI must be answerable to Parliament and not the executive, its members must be appointed by a body which is not controlled by the executive (a special parliamentary committee would be ideal), they must have security of tenure, and the NHRI must appoint its own secretariat staff.<sup>24</sup>

22 On the other hand, in many cases the Courts have been progressive and decided some cases on the basis of Zambia's international obligations. For example, in *Sara Longwe v Intercontinental Hotel 1992/HP/10* the court decided the case on the basis of the Convention on the Elimination of All Forms of Discrimination Against Women. However, in most cases the Supreme Court has cautioned against the use of international law, indicating that it has only persuasive authority. The most prominent judgment is that by former Chief Justice Mathew Ngulube in *Sata v Post Newspaper* (1995).

23 The accreditation process is done by the Global Alliance of National Human Rights Institutions (GAHNRI) through its sub-committee on accreditation (SCA). The SCA will only consider an NHRI as independent if it is independent both in law and practice. For detail, see <https://bit.ly/2XvgiTa>.

24 International Council of Human Rights and the Office of the United Nations High Commissioner for Human Rights, *Assessing the Effectiveness of National Human Rights Institutions*, Switzerland (2005), p 12.

The HRC fails to meet most of these conditions. For instance, the fact that commissioners are appointed and removed by the President undermines both the institutional independence of the HRC and the individual independence of the commissioners. Related to this is the fact that commissioners and members of the HRC's staff are considered as public officers in terms of Article 266 of the Constitution.<sup>25</sup> Furthermore, Article 185 of the Constitution gives the President the power to terminate the services or employment of any public officer, in addition to which it does not outline any reasons that the President has to cite in doing so.

The lack of independence of the HRC is also evident in the fact that it has to report annually to the President about everything from its activities to the way it spends the money allocated to it. The practical implications of this are likely to defeat the provisions of Article 216 of the Constitution, which prescribe as follows:

A commission shall –

- Be subject to this Constitution and the law;
- Be independent and not subject to the control of a person or an authority in the performance of its functions;
- Act within dignity, professionalism, propriety and integrity;
- Be non-partisan; and
- Be impartial in the exercise of its authority.

It is difficult to reconcile section 25 of the HRC Act with Article 216 of the Constitution. However, it must be appreciated that Article 216 came into being in 2016, whereas section 25 has been in existence since 1996. This disharmony between some provisions of the Constitution and those in the Act speak to the urgent need to amend the HRC Act so as to align it with the 2016 constitutional amendments. The slow pace of legislative harmonisation is in itself a major stumbling block to the effective operation of the Commission, given that some of the challenges it faces could be removed easily by amending the HRC Act.

#### **4.4 Lack of financial autonomy**

Financial autonomy is key to the independence and operational effectiveness of any NHRI. It entails that there should be a mechanism whereby public funding is provided to an NHRI in a way that does not subject it to the control of the state.

25 Article 266 is the definitions part of the Constitution. A public officer is defined as person who receives his or her salary or any allowance from public funds.

From this perspective, the HRC does not have financial autonomy. It is heavily dependent on the government for its funding and operations, in addition to which the government often does not provide it with adequate funds. This combination of lack of financial autonomy, on the one hand, and inadequate funding, on the other, are at the core of the problems the HRC faces.

First, it is the case that the HRC falls under the Office of the Vice President at cabinet level. The Office of the Vice President, through the Ministry of Finance, oversees its budget process. The HRC has the power to determine its own budget according to what it deems are priority areas under its mandate. However, this budget can be adjusted by the Office of the Vice President through the Ministry of Finance. The budget is then presented as either a Ministry of Justice or Office of the Vice President line item. For this reason, Parliament does not have the opportunity to deliberate on the HRC's work and the importance of funding its activities.

However, a system of autonomous funding, one in which the HRC presents its stand-alone budget to Parliament and Parliament votes on the budget, would be a more desirable situation as it allows for some level of autonomy. In this way, it could be said, theoretically at least, that through their elected representatives the people have a say over the institution mandated to ensure the protection of their rights.

The extent of the lack of financial autonomy is seen in section 22(2) of the HRC Act. The provision prohibits the HRC from sourcing or accepting funding such as grants, donations or loans from a source other than the government without the approval of the President. The reason for this provision is the preservation of national security.<sup>26</sup> In this regard, the HRC is subject to presidential, or rather executive, control over the funding it receives from the state and that it can receive from other sources. Although the HRC has indeed received donor funding with the President's approval, the very existence of this provision in law undermines the principle of financial autonomy.

Lack of autonomy feeds the problem of inadequate funding, and this impacts on the effective operation of the HRC. The fact that the HRC is not adequately funded cannot be overstated. In the 2012 Universal Periodic Review, one of the most important recommendations the Human

26 The intelligence and security wing of Zambia falls under the office of the President. Section 22(2) of the HRC Act was drafted with the idea that presidential approval for external funding of the ZHRC is given after the security wing has done background checks to ensure that such funding poses no threat to national security.

Rights Council made with regard to Zambia was that the government should start funding the HRC adequately and ensure its financial autonomy. Although this was accepted, it has not been implemented and hence the situation has not improved. The HRC itself observes this situation and states the following in its strategic plan:

Additionally, in the last 5 years there has not been a significant increase in the funding provided to the HRC by the government. The fact that at no point in time has funding to the HRC been adequate means that over time the gains made are slowly being lost in promotion and protection of human rights. The organisational capacity quagmire has rendered the institution unable to effectively and efficiently execute its mandate.<sup>27</sup>

Arguably, the poor funding of the NHRI is indicative of the government's lack of commitment to human rights' promotion and protection.

#### **4.5 The Commission's inaccessibility**

The Constitution requires that the HRC have offices in every district of every province in Zambia. To put this in perspective, Zambia has a total area of 752,612 km<sup>2</sup>, a population of 13,092,666,<sup>28</sup> and ten provinces, with 117 districts. In principle, this would mean that a total of ten provincial offices, 117 district offices and one national office, all of them fully staffed and adequately funded, have to be established. Given the present financial incapacity, the constitutional mandate can best be described as aspirational.

The HRC's lack of accessibility has rendered it very ineffective. Two factors are responsible for this situation. First, the majority of Zambia's inhabitants are unaware both of their rights and of the HRC's existence as an institution that can provide redress for violations; as such, and simply put, members of the public do not turn to the HRC. This in part explains the low volume of cases that the HRC's complaints unit receives. Secondly, the HRC does not have the material and financial capacity to be mobile and reach the country's vast population in all the districts.

To mitigate this problem of inaccessibility, the HRC plans, as a temporary measure, to work with the constituency offices of Members of Parliament found across the country and located in all of its districts.<sup>29</sup> The

27 Zambia Human Rights Commission Strategic Plan (2014-2016). This is the most current plan. Due to financial constraints, the strategic plan for later years is yet to be finalised and approved.

28 Zambia National Census Report 2010.

29 See note 27.

successful execution of the plan would require, however, that the HRC is adequately funded.

## **4.6 Organisational incapacity**

The HRC's organisational incapacity contributes significantly to its ineffectiveness. The issues in this regard include poor staffing, lack of adequate office space, limited logistical support, and inadequate collaboration with stakeholders.

### **4.6.1 *Inadequate staffing***

Currently, the HRC has an establishment of about 131 members of staff, excluding the commissioners. However, it has never operated at this full staffing level of 131.<sup>30</sup> It has been operating instead with less than 50 per cent of the required staff<sup>31</sup> – for instance, the present staff level is 55.<sup>32</sup> With provincial and district offices yet to be funded, it can hardly be said that this staffing problem is likely to improve in the near future. In the early days of its operations, the HRC functioned with a skeleton staff, with some departments having only one member and others none at all. It was only in 2005 that the staffing level began to improve, but staff shortages nevertheless remain a critical issue to this day.<sup>33</sup>

A positive note is that existing members of staff are drawn from diverse groups and there is a balance in gender representation. Half of the HRC's commissioners as well as members of staff are women, in addition to which most of the senior positions, such as director and deputy director, are likewise held by woman. This is in keeping with the Paris Principles' requirement that NHRIs evince pluralism in their representation of a country's societal diversity.

### **4.6.2 *Lack of office space***

The HRC has its headquarters in Lusaka. A visit to them reveals that the premises are too small and cramped to provide a conducive working environment for members of staff. Problems of office space and working premises are compounded by the fact that the districts and provinces do

30 See the Commission's official website at <http://www.hrc.orgf.zm> (accessed 10 December 2018).

31 *Ibid.*

32 *Ibid.*

33 *Ibid.*



not have any offices at all. This situation is not likely to improve as there are no plans in the offing for upgrading the HRC's infrastructure.

The plan to use the constituency offices of Members of Parliament is an innovative idea but is not a long-term solution to the problem. If the HRC is to be effective, there is no substitute for its having its own physical infrastructure within the provinces and districts.

#### **4.6.3 *Challenges of transportation and logistics***

In order to carry out its activities nationwide, the HRC needs efficient and properly functioning vehicles, but here too it faces severe challenges. As the HRC notes in one of its reports:

[a]part from two vehicles purchased in 2013, the HRC vehicle fleet is aging, with most of the vehicles having been in operation between 5 and 10 years, thus increasing the cost of maintenance due to a high downtime of these assets. Some relief is provided with projects that are run with cooperating partners. However, this is not a sustainable form of operating as the commission needs its own fleet of vehicles to effectively operate.<sup>34</sup>

#### **4.6.4 *Uncoordinated relations with stakeholders***

The HRC has made many efforts to collaborate with stakeholders in the human rights space. Indeed, it can be said to be very open to collaboration. Such collaboration is not, however, at its optimal level. Many institutions still ignore overtures by the HRC, with civil society organisations (CSOs) saying they do so because they perceive it as a government department unable to participate independently in programmes. Some go so far to as to say they fear the HRC will undermine their activities, and as such they prefer to exclude it from their affairs and decline its overtures to them.<sup>35</sup>

The perception of the HRC as government-controlled goes back to its early days, with the belief being that it fails to put pressure on the state to meet its human rights obligations and rarely issues statements on violations by the government. This situation impedes fruitful relations between the HRC, civil society and other stakeholders. As a result, efforts towards human rights promotion in Zambia remain fragmented. The HRC has sought to address this challenge in its strategic plan:

34 See note 27.

35 For instance, during the process leading to the 2016 amendment, a CSO coalition excluded the HRC from its advocacy out of fear that it was compromised on the issue of the Bill of Rights.

Currently, the monitoring of human rights is fragmented and uncoordinated. There are several stakeholders who are involved in this important endeavour but mostly limited to their areas of interest. Moreover, the data that they collect rarely feeds into the human rights reporting framework which should be informing the local stakeholders and backing the country's fulfilment of its international obligations to continuously report on the state of human rights in Zambia. The lack of a coordinated national human rights monitoring mechanism has also resulted in the Human Rights Commission [having] to shoulder this enormous responsibility single-handedly, [notwithstanding] its own institutional and financial limitations. The need to put in place a soundly coordinated monitoring mechanism that embraces the involvement of all national stakeholders is therefore of great significance.<sup>36</sup>

It goes without saying that if the HRC were to have strong relationships with all stakeholders, its operational capability would improve, leading to more effective performance.

## **5 Conclusion**

The HRC remains a significant institution in the protection and promotion of human rights in Zambia, but in this analysis of its nature and the challenges it faces, one important issue stands out: the need to amend the HRC Act so as to bring it into alignment with the constitutional amendment of 2016. The Constitution is progressive in its provisions for the HRC save for a few that do not seem to speak to each other. Thus, amending the Act by removing some of its problematic provisions would enhance the effectiveness of the HRC.

In particular, the amendment should address the issue of financial autonomy, as the lack thereof is a major constraint to the HRC's operations. The amendments should also give the HRC wider powers and functions and enhance its mandate, in keeping line with the Paris Principles.<sup>37</sup> For instance, the HRC should be given the powers to make binding decisions and not merely recommendations, as these are seldom respected. The question of its independence also be addressed, this by ensuring that appointments are not politically motivated.

In this regard, an important issue the HRC can address at the moment is its public relations. Its image is a negative one, as it is perceived as a state-controlled entity. The HRC would do well to develop an effective public communication strategy that addresses this negative perception.

36 See note 27.

37 See note 8, p 297.

Furthermore, it can capitalise on some of the successes it has garnered by showcasing them to inspire confidence among the general public.

A crucial matter the amendment should deal with is the legal personality of the HRC. The Act should give legal capacity and personality to the HRC so that it can be able to join court matters as an *amicus curiae* or intervenor. Here, the HRC would be able to take advantage of section 58 of the Constitutional Court Act which permits any institution interested in a matter to be *amicus curiae* and file an *amicus* brief. This would be an important way in which the HRC can carry out the “protection” aspect of its mandate.

In terms of structure, it is a good idea for there to be 12 commissioners. One of them would serve as chairperson, another as deputy, and the ten other ordinary commissioners each would be responsible for overseeing one of the ten provinces in Zambia. In this way, the HRC would be better placed to exercise more effective oversight of what is happening in the provinces and districts. This would also help give focus to the work of the commissioners and compensate to some extent for the shortage of staff in the provinces. The reporting structure of the HRC should be improved too as part of this recommended change in structure.

At a practical level, the HRC’s strategic action plan needs to emphasise collaboration with other institutions such as the GEEC and Public Protector, which currently work in isolation of it. Although their mandates differ, it is possible for these institutions to complement one another. The onus to initiate such collaboration is on the HRC, as it is the one with the wider mandate and has been in existence the longest.

It is clear that building a strong human rights institution is a daunting task. This task cannot be left to the Commission alone, nor to the goodwill of the government. All other stakeholders, ranging from CSOs, activists, scholars and lawyers to the general public, should play a role. As the benefits of a strong NHRI are felt by all, so the task of building a strong HRC is a common responsibility of all.

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

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

The Zambian Constitution, much to a limited extent, like the Kenyan, South African and Zimbabwean Constitution has a constitutionally entrenched Human Rights Commission which is included amongst other commissions such as the Gender Equity and Equality Commission and the Public Protector. These are all provided for in part XVIII of the Constitution. The relevant provisions are as follows:  
Constitution of Zambia (Amendment) No 2 of 2016

#### **PART XVIII: SERVICES, COMMISSIONS AND OTHER INDEPENDENT OFFICES**

216. A commission shall –

- (a) be subject only to this Constitution and the law;
- (b) be independent and not be subject to the control of a person or an authority in the performance of its functions;
- (c) act with dignity, professionalism, propriety and integrity;
- (d) be non-partisan; and
- (e) be impartial in the exercise of its authority.

#### **Human Rights Commission**

230(1) There is established the Human Rights Commission which shall have offices in the Provinces and progressively in districts.

2) The Human Rights Commission shall ensure that the Bill of Rights is upheld and protected.

The Human Rights Commission shall –

- (a) investigate and report on the observance of rights and freedoms;
- (b) take necessary steps to secure appropriate redress where rights and freedoms are violated;
- (c) endeavour to resolve a dispute through negotiation, mediation or conciliation;
- (d) carry out research on rights and freedoms and related matters;
- (e) conduct civic education on rights and freedoms; and
- (f) perform such other functions as prescribed.

## **Gender Equity and Equality Commission**

231(1) There is established the Gender Equity and Equality Commission which shall have offices in the Provinces and progressively in districts.

2) The Gender Equity and Equality Commission shall promote the attainment and mainstreaming of gender equality.

3) The Gender Equity and Equality Commission shall –

- (a) monitor, investigate, research, educate, advise and report on issues concerning gender equality;
- (b) ensure institutions comply with legal requirements and other standards relating to gender equality;
- (c) take steps to secure appropriate redress to complaints relating to gender inequality, as prescribed; and
- (d) perform such other functions as prescribed.

## **General Provisions Relating to Commissions**

238(1) A commission shall be a self-accounting institution which deals directly with the Ministry responsible for finance in matters relating to its finances.

(2) A commission shall be adequately funded in a financial year to enable it to effectively perform its functions.

239. The expenses of a commission, including emoluments payable to, or in respect of, persons serving with that commission, shall be a charge on the Consolidated Fund.

240. A person qualifies to be appointed as a member of a commission if that person –

- (a) is a citizen;
- (b) is permanently resident in Zambia;
- (c) has not, in the immediate preceding five years, served a term of imprisonment of at least three years;
- (d) declares that person's assets and liabilities, as prescribed;
- (e) has paid that person's taxes or has made arrangements satisfactory to the appropriate tax authority for the payment of the taxes;
- (f) does not have a mental or physical disability that would make the person incapable of performing the functions of office;
- (g) is not serving a sentence of imprisonment for an offence under a law; and
- (h) has other qualifications, as prescribed.

241. A commission –

- (a) shall appoint its staff;

- (b) may refer matters within its mandate to appropriate State organs or State institutions for action;
- (c) may initiate its own investigations and receive complaints from a person on matters within its mandate;
- (d) shall take measures to ensure that State institutions and other persons comply with its decisions; and
- (e) shall submit annual reports to the National Assembly on its accounts and activities as prescribed.

242. The functions, composition, appointment of members, tenure of office of members, processes and procedures, operations, administration, structures, finances and financial management of a commission shall be prescribed.

### **Other Independent Offices Public Protector**

243(1) There shall be a Public Protector who shall be appointed by the President, on the recommendation of the Judicial Service Commission, subject to ratification by the National Assembly.

- (2) A person qualifies for appointment as Public Protector if that person –
  - (a) is qualified to be appointed as a judge; and
  - (b) does not hold a State office or Constitutional office.
- (3) The office of Public Protector shall be decentralised to the Provinces and progressively to districts, as prescribed.
- (4) The procedures, staff, finances, financial management, administration and operations of the office of the Public Protector shall be prescribed.

244(1) The Public Protector may investigate an action or decision taken or omitted to be taken by a State institution in the performance of an administrative function.

- (2) For purposes of clause (1), an action or decision taken or omitted to be taken is an action or decision which is –
  - (a) unfair, unreasonable or illegal; or
  - (b) not compliant with the rules of natural justice.
- (3) For purposes of clauses (1) and (2), the Public Protector may –
  - (a) bring an action before a court;
  - (b) hear an appeal by a person relating to an action or decision taken or omitted to be taken in respect of that person; and
  - (c) make a decision on an action to be taken against a public officer or Constitutional office holder, which decision shall be implemented by an appropriate authority.
- (4) The Public Protector shall not be subject to the direction or control of a person or an authority in the performance of the functions of office.

- (5) The Public Protector has the same powers as those of the High Court in –
- (a) enforcing the attendance of witnesses and examining them on oath;
  - (b) examining witnesses outside Zambia;
  - (c) compelling the production of documents;
  - (d) enforcing decisions issued by the Public Protector; and
  - (e) citing a person or an authority for contempt for failure to carry out a decision.
- (6) A person summoned to give evidence or to produce a document before the Public Protector is entitled, in respect of that evidence or the production of the document, to the same privileges and protection as those that a person would be entitled to before a court.
- (7) An answer by a person to a question put by the Public Protector is not admissible in evidence against that person in civil or criminal proceedings, except for perjury.

245. The Public Protector shall not investigate a matter which –

- (a) is before a court, court martial or a quasi-judicial body;
- (b) relates to an officer in the Parliamentary Service or Judicial Service;
- (c) involves the relations or dealings between the Government and foreign government or an international organization;
- (d) relates to the exercise of the prerogative of mercy; or
- (e) is criminal in nature.

246. Where the Public Protector is absent from Zambia or is unable to perform the functions of office due to illness or other cause, the President shall appoint a person qualified to perform the functions of the Public Protector until that appointment is revoked or until the Public Protector returns to office.

247(1) Subject to this Article, the Public Protector shall retire from office on attaining the age of sixty years.

- (2) The Public Protector may retire, with full benefits, on attaining the age of fifty-five years.
- (3) The Public Protector may be removed from office on the same grounds and procedure as apply to a judge.
- (4) The Public Protector may resign from office by three months' notice, in writing, to the President.

248. The office of the Public Protector shall report to the National Assembly on matters concerning its affairs.



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

### **THE HUMAN RIGHTS COMMISSION ACT**

#### **CHAPTER 48 OF THE LAWS OF ZAMBIA CHAPTER 48 THE HUMAN RIGHTS COMMISSION ACT**

### **THE HUMAN RIGHTS COMMISSION ACT**

#### **ARRANGEMENT OF SECTIONS**

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

##### **Section**

- 1) Short title
- 2) Interpretation

#### **PART II: THE HUMAN RIGHTS COMMISSION**

- 3) Extent of Commission's autonomy
- 4) Seal of Commission
- 5) Composition of Commission
- 6) Oath on appointment
- 7) Tenure of office and vacancy
- 8) Filling of casual vacancy
- 9) Functions of Commission
- 10) Powers of Commission
- 11) Complaints
- 12) Sittings of the Commission to be public
- 13) Recommendation by Commission
- 14) Proceedings of Commission
- 15) Committees
- 16) Disclosure of interest
- 17) Prohibition of disclosure of information to unauthorised persons

#### **PART III: DIRECTORATE OF THE COMMISSION**

- 18) Director, Deputy Director and other staff
- 19) Prohibition of disclosure of information by staff to unauthorised persons
- 20) Immunity of Commissioners and staff

- 21) Offences

## **PART IV: FINANCIAL AND OTHER PROVISIONS**

### **Section**

- 22) Funds of Commission
- 23) Financial year
- 24) Accounts
- 25) Annual report
- 26) Rules
- 27) Regulations

## **SCHEDULE**

FORM 1-OATH OF HUMAN RIGHTS COMMISSION

FORM 2-OATH OF SECRETARY OR STAFF OF COMMISSION

## **CHAPTER 48**

### **HUMAN RIGHTS COMMISSION**

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

[12th December, 1996]

### **PART I: PRELIMINARY**

1. This Act may be cited as the Human Rights Commission Act.
2. In this Act unless the context otherwise requires –
  - “appropriate authority” means the authority to whom a recommendation is made by the Commission under section *thirteen*;
  - “appointed date” means such date as the President may appoint under section *one*;
  - “Chairperson” means the person appointed as Chairperson under section *five*;
  - “Commission” means the Human Rights Commission established under the Constitution;
  - “Commissioner” means a person appointed Commissioner under section *five*;
  - “Deputy Director” means a person appointed as Deputy Director under section *eighteen*;

“Director” means the person appointed as Director under section *eighteen*;  
“Secretary” means the Secretary to the Commission referred to in section *eighteen*;

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

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

## **PART II: THE HUMAN RIGHTS COMMISSION**

3. The Commission shall not, in the performance of its duties, be subject to the direction or control of any person or authority.

4(1) The seal of the Commission shall be such device as may be determined by the Commission and shall be kept by the Secretary.

(2) The affixing of the seal shall be authenticated by the Chairperson or the Vice-Chairperson and any other person authorised in that behalf by a resolution of the Commission.

5. Any document purporting to be under the seal of the Commission or issued on behalf of the Commission shall be received in evidence and shall be deemed to be so executed or issued, as the case may be, without further proof, unless the contrary is proved.

5(1)The Commission shall consist of the following Commissioners:

- (a) the Chairperson;
- (b) the Vice-Chairperson; and
- (c) not more than five other Commissioners.

(2) The Commissioners shall be appointed by the President, subject to ratification by the National Assembly.

(3) The Chairperson and Vice-Chairperson shall be persons who have held, or are qualified to hold, high judicial office.

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

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

7(1)A Commissioner referred to in subsection (1) of section *five* shall be appointed

- for a term not exceeding three years, subject to renewal:

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

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

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

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

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

8. If the office of a Commissioner becomes vacant before the expiry of the term of

- office, the President, may, subject to ratification by the National Assembly, appoint
- another person to be a Commissioner, for the unexpired term, in place of the
- Commissioner who vacates the office.

9. The functions of the Commission shall be to –

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

10(1) The Commission shall have powers to investigate any human rights abuses –

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

(2) The Commission shall have powers to –

- (a) issue summons or orders requiring the attendance of any authority before the Commission and the production of any document or record relevant to any investigation by the Commission;

- (b) question any person in respect of any subject matter under investigation before the Commission;
  - (c) require any person to disclose any information within such person's knowledge relevant to any investigation by the Commission; and
  - (d) recommend the punishment of any officer found by the Commission to have perpetrated an abuse of human rights.
- (3) A witness summoned under subsection (2), shall be examined under oath and such oath shall be administered by the Chairperson.
- (4) Subject to subsection 5, the Commission may where it considers it necessary recommend –
- (a) the release of a person from detention;
  - (b) the payment of compensation to a victim of human rights abuse, or to such victim's family;
  - (c) that an aggrieved person seek redress in a court of law; or
  - (d) such other action as it considers necessary to remedy the infringement of a right.
- (5) Notwithstanding subsection 4, the Commission shall not have powers where a matter is pending before a court.
- 11(1) A complaint or allegation referred to in paragraph (b) of subsection (1) of
- section *ten* may be made orally or in writing and shall be addressed to the Secretary
  - who shall, in the case of an oral complaint or allegation, reduce the same to writing.
- (2) Every complaint or allegation shall-
- (a) be signed or thumb-printed by the person making it; and
  - (b) bear the complainant's name and address.
- (3) A complaint or allegation shall not be received by the Commission unless it is made within a period of two years from the date on which the facts giving rise to any such complaint or allegation become known to the person making the complaint or the allegation.
- (4) The Commission may refuse to conduct, or may decide to discontinue an investigation where it is satisfied that the complaint or allegation is malicious, frivolous, vexatious or the particulars accompanying it are insufficient to allow a proper investigation to be conducted, and shall indicate accordingly in the report.
- (5) The Commission shall, in any case in which it decides not to conduct an investigation, or decides to discontinue an investigation inform the complainant in writing accordingly, and give reasons therefor.
- (6) The Commission may in any inquiry make such orders and give such directions as it may consider necessary for the purpose of conducting any investigation.

12. The Commission shall –

- (a) conduct all its sittings in public:

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

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

13(1) The Commission shall –

- (a) send written reports of its findings to the parties concerned; and
- (b) dependant on the findings made, make such recommendation as it considers necessary to the appropriate authority.

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

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

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

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

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

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

6(1) Subject to the other provisions of this Act, the Commission may regulate its own procedure. The Commission shall meet for the transaction of business at least once every three months at such places and times as the Chairperson may determine.

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

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

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

(5) There shall preside any meeting of the Commission –

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

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

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

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

14(1) The Commission may, for the purpose of performing its functions under this Act, establish such committees as it considers necessary, and delegate to any of those committees such of its functions as it considers fit.

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

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

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

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

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

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

(1) A person shall not without the consent in writing given by, or on behalf of the Commission, publish or disclose to any person otherwise than in the

course of such person's duties, the contents of any documents, communication, or information which relates to, and which has come to such person's knowledge in the course of such person's duties under this Act.

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

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

### **PART III: THE DIRECTORATE OF THE COMMISSION**

16(1) The Commission shall appoint a Director and a Deputy Director of the Commission. The Director shall be –

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

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

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

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

(5) Section *seventeen* shall apply, with the necessary modifications, to the staff.

(6) No proceedings, civil, or criminal, shall lie against any Commissioner or the staff, for anything done in the exercise of such person's functions under this Act. Subject to the provisions of this Act, a Commissioner or a staff member shall not be called to give evidence before any court or tribunal in respect of anything coming to such person's knowledge in the exercise of such person's functions under this Act.



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

17(1) A person who –

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

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

#### **PART IV: FINANCIAL AND OTHER PROVISIONS**

18(1) The funds of the Commission shall consist of such moneys as may –

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

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

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

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

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

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

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

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

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

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

(4) As soon as is practicable, but not later than ninety days after the end of the financial year, the Commission shall submit to the President a report concerning its activities during the financial year. The report referred to in subsection (1) shall include information on the financial affairs of the Commission and there shall be appended to the report –

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

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

20. The Commission may, by statutory instrument, make rules for the –

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

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

## **SCHEDULE**

### **Form 1**

### **PART I**

#### **(Section (6)(1))**

#### **OATH OF HUMAN RIGHTS COMMISSION**

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

SO HELP ME GOD

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

President

**Form 2**

**PART II**

**(Section (6)(2))**

OATH OF SECRETARY OR STAFF OF COMMISSION

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

SO HELP ME GOD

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

Commissioner for Oaths