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## THE ZIMBABWE HUMAN RIGHTS COMMISSION

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### PART A. INTRODUCTORY COMMENTARY

#### 1 Introduction

The Zimbabwe Human Rights Commission (ZHRC) is an independent constitutional commission that was created in 2007 as a result of political and constitutional developments in Zimbabwe. In its current form, it has a broad mandate to promote and protect human rights and, additionally, to protect the public against abuse of power and maladministration.<sup>1</sup> Nevertheless, the ZHRC was formed and exists in an unfavourable environment.<sup>2</sup> In spite of some constitutional provisions guaranteeing its independence,<sup>3</sup> this is compromised by political interference and the nature of its appointment procedure. The ZHRC also lacks visibility and accessibility and, as shown below, is hamstrung by inadequate funding.

The formal constitutional and legislative provisions creating and operationalising the ZHRC give the impression that there is compliance with the Principles Relating to the Status of National Institutions (The Paris Principles). In reality, the political climate poses challenges that hinder the work of the ZHRC and erode its conformity with the Paris

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1 Section 243 of the Constitution.

2 D Matysak and T Reeler, "Articles of Good Faith: Assessing Zimbabwe's GPA as a Mechanism for Change – a Legal Perspective", *Research and Advocacy Unit* (2011), pp 55-57.

3 Section 235 of the Constitution.

Principles, thus diminishing its effectiveness in promoting and protecting human rights in Zimbabwe.

Despite these challenges, the ZHRC is indeed contributing to the promotion and protection of human rights. It monitors human rights situations and receives and deals with complaints of human rights violations. Its constitutional framework aside, the ZHRC also has an opportunity to ensure compliance with international standards in human rights law due to its affiliation with the African Commission on Human and Peoples' Rights (hereafter African Commission),<sup>4</sup> stakeholders such as the Global Alliance of National Human Rights Institutions (GANHRI),<sup>5</sup> and various civil society organisations (CSOs).<sup>6</sup>

This chapter is organised into six sections. The next section discusses the establishment and evolution of the ZHRC. Section 3 focuses on the nature of the ZHRC and explores its legal framework, independence, appointment procedure, financial autonomy, professional skills and knowledge, relations with civil society, and accessibility. Section 4 deals with its mandate, and section 5, with its public accountability. The last section offers recommendations on how the ZHRC may be made more effective.

## 2 Establishment and evolution of the ZHRC

### 2.1 The model of the ZHRC

The ZHRC is made up of nine members.<sup>7</sup> It is a hybrid human rights commission whose duty is to promote and protect human rights and, additionally, to protect the public against abuse of power and maladministration.<sup>8</sup> The ZHRC is a “body corporate capable of suing and being sued in its corporate name”.<sup>9</sup> To assist the ZHRC in the discharge of

4 Telephone communication with Dr Makanatsa Makonese, executive secretary, Zimbabwe Human Rights Commission, on 6 February 2019.

5 See GANHRI, *Chart of the Status of Institutions Accredited by the Global Alliance of National Human Rights Institutions*, available at <https://bit.ly/2LudOCh> (accessed 22 February 2019).

6 MOUs' signing ceremony with civil society report (14 March 2016), available at <https://bit.ly/2XwySu5> (accessed 11 January 2019).

7 Section 242(1) of the Constitution.

8 See note 1.

9 Section 3(1) of the ZHRC Act.

its mandate, it has the power to appoint and regulate the conditions of service of an executive secretary, other staff members, and consultants.<sup>10</sup>

## **2.2 Relationship with other constitutional commissions**

The ZHRC is established under section 242 of the Constitution and set up under Chapter 12, which deals with independent commissions supporting democracy.<sup>11</sup> The other commissions include the Zimbabwe Electoral Commission (ZEC), Zimbabwe Gender Commission (ZGC), Zimbabwe Media Commission (ZMC) and National Peace and Reconciliation Commission (NPRC).<sup>12</sup>

There is some risk of mandate overlaps with other commissions, for example where violations of gender-related rights are concerned. The Zimbabwe Human Rights Commission Act 2 of 2012 (hereafter ZHRC Act) provides for a working group on gender equality and women's rights.<sup>13</sup> This may lead to an unnecessary duplication of effort. The ZHRC should therefore ordinarily be limited in scope when it comes to investigating possible violations of such rights that are in the specialised domain of the ZGC.<sup>14</sup>

As part of its broad human rights mandate, the ZHRC may also observe elections in terms of the Electoral Act "in order to ensure respect for the human rights and freedoms guaranteed by the Constitution".<sup>15</sup> It has to seek accreditation from ZEC, and in this regard the Electoral Act envisages a working relationship between the two independent commissions.<sup>16</sup> However, such a relationship encroaches on the independence of ZHRC, as the Electoral Act further provides as follows:

Before issuing any report on an election or electoral process it has observed in terms of this section, the Zimbabwe Human Rights Commission shall provide

10 Section 234 of the Constitution empowers the ZHRC to employ staff and regulate their conditions of service. Section 6 of the ZHRC Act provides for the appointment of the executive secretary and other staff of the ZHRC, along with consultants, for the proper exercise of its functions.

11 Chapter 12 of the Constitution.

12 Section 232 of the Constitution.

13 First Schedule, paragraph 3(b) of the ZHRC Act.

14 In terms of section 246 of the Constitution of Zimbabwe, investigating possible violations of rights relating to gender is the mandate of the Zimbabwe Gender Commission.

15 Section 40K(1) of the Electoral Act.

16 Section 40K(2) of the Electoral Act.

the Commission with a draft of the report and shall pay due regard to any comments the Commission may make on the draft.<sup>17</sup>

There is no compelling reason why the ZHRC is obliged to pay due regard to comments by the ZEC. While admittedly the ZHRC has to work closely with other independent commissions, its independence must not be compromised, especially given that the ZEC has its own reporting obligations under the Electoral Act.<sup>18</sup>

During the electoral period, the ZHRC also has a role to play in responding to electoral violence by reporting cases of intimidation through a special police liaison officer appointed for that purpose.<sup>19</sup> In the 2018 election report, the ZHRC reported that the manner in which elections were conducted pointed to “challenges in fulfilling the right to vote as provided for in the Constitution”.<sup>20</sup> The inclusion of the ZHRC in the electoral process is commendable and within the ambit of its broad mandate; however, as noted, some of the legal provisions may undermine the ZHRC’s independence.

### 2.3 The evolution of the ZHRC

The evolution of the ZHRC has been influenced by political and constitutional developments in Zimbabwe. The country’s first national human rights institution (NHRI), taking the form of an ombudsperson, was established in 1982.<sup>21</sup> The formation of the Office of the Ombudsman was part of the proliferation of such offices in Commonwealth countries and worldwide in the early 1980s.<sup>22</sup> The Ombudsman Act set out its legal framework and the office started operating in 1983.<sup>23</sup> Given that Zimbabwe was a country then emerging from a litany of human rights violations under white minority rule, this system of accountability was new and greeted with some degree of enthusiasm by the government.<sup>24</sup>

17 Section 40K(4) of the Electoral Act.

18 Section 13 of the Electoral Act.

19 Section 133(1)(h) of the Electoral Act.

20 ZHRC, Final Report on Zimbabwe 2018 Harmonised Elections, available at <https://bit.ly/2L3JQFW> (accessed 22 February 2019).

21 LC Reif, “Building Democratic Institutions: The Role of National Human Rights Institutions in Good Governance and Human Rights Protection”, 13 *Harvard Human Rights Journal* (2000), pp 7-9.

22 See note 21.

23 J Hatchard, “The Institution of the Ombudsman in Africa with Special Reference to Zimbabwe”, 35 *The International and Comparative Law Quarterly* (1986), pp 260-261.

24 *Ibid*, p 261.

With the passage of time, that enthusiasm fizzled out. Authoritarianism, human rights abuses and corruption were on the rise under the leadership of Zimbabwe's ruling party, the Zimbabwe African National Union (Patriotic Front) (ZANU-PF), and led to a crisis of governance.<sup>25</sup> Although the Ombudsman Act was amended to widen its mandate to include investigating human rights violations,<sup>26</sup> the Office of the Ombudsman was understaffed and ineffective. At one point, it only had two legal officers out of the required ten.<sup>27</sup> The African Commission, in a report of a fact-finding mission it made to Zimbabwe, painted a grim picture of a highly compromised institution that fell short of the Paris Principles.<sup>28</sup>

The Ombudsman Act was replaced by the Public Protector Act pursuant to a 2007 constitutional amendment. The mandate of the Public Protector was limited to protecting the public against abuse of power and maladministration.<sup>29</sup> The same constitutional amendment created the ZHRC and tasked it with the promotion and protection of human rights. The constitutional amendment was the result of political negotiations, a process that involved the Southern African Development Community (SADC) and sought to bring about a conducive political and legal environment for free and fair elections in 2008.<sup>30</sup>

However, the 2008 elections were characterised by high levels of violence and human rights violations. SADC had to intervene again. As part of the reforms, the Constitution was amended in 2009, establishing a Government of National Unity (GNU) made up of three main political parties.<sup>31</sup> The GNU ran from 2009-2013.<sup>32</sup> Under the 2009 constitutional amendment, both the Public Protector and ZHRC were retained.<sup>33</sup>

25 J Chikuhwa, *A Crisis of Governance: Zimbabwe* (2004), p 49.

26 Ombudsman Amendment Act 1996. The human rights mandate was, however, limited in scope.

27 "Ombudsman Office in Shambles", *Zimbabwe Independent* (21 April 2006), available at <https://bit.ly/2S1AWt9> (accessed 14 January 2019).

28 African Commission on Human and Peoples' Rights, *Zimbabwe: Report of the Fact-Finding Mission* (June 2002), available at <https://bit.ly/2XQnc58> (accessed 14 January 2019), p 30.

29 Constitutional Amendment 18 Act 11 of 2007.

30 "The Constitutional History and the 2013 Referendum of Zimbabwe" *Nordem Special Report*, available <https://bit.ly/2xE6knX> (accessed 14 January 2019), p 13. See note 2, p 55.

31 See note 2.

32 See note 30.

33 See note 2. Under the 2009 Constitutional Amendment No 19, the provision establishing the ZHRC became section 100R of the Constitution.

The old Lancaster House Constitution creating the ZHRC provided for a law that would confer it the power to carry out its functions.<sup>34</sup> After the constitutional amendment of 2009, Parliament did not pass any law to enable the ZHRC to function, and indeed the ZHRC Act came into effect only in October 2012. During that time, the Office of the Public Protector was in place, having taken over the Office of the Ombudsman. However, its mandate now excluded human rights, as the Constitution gave the ZHRC the power to take over investigations that related to them.<sup>35</sup> Between 2007 and 2013, the Public Protector and the ZHRC existed concurrently.

In addition to the fact that there was a delay in enacting legislation to operationalise the ZHRC, the appointment of the first members of the ZHRC in 2010 was not in accordance with the old Lancaster House Constitution. Whereas the Constitution provided that at least four out of eight commissioners had to be women,<sup>36</sup> the President appointed only three women.<sup>37</sup> The ZHRC, without any law giving it powers and without a secretariat, existed in name only. For example, no money was allocated to it in the 2010 budget, and it did not have any offices or infrastructure to carry out its activities.<sup>38</sup> The ZHRC thus started on a bad note. Besides this, the appointed commissioners – save for the inaugural chairperson and at least one commissioner – were criticised for lacking the background in social justice and human rights that was required of them under the Constitution.<sup>39</sup>

A new constitution was inevitable under the GNU.<sup>40</sup> A draft constitution was finally accepted in a referendum held on 16 March 2013. This 2013 Constitution abolished the Office of the Public Protector, but retained the initial ZHRC, albeit in a modified form – it is modelled as a hybrid human rights commission with the mandate of promoting and protecting human rights and also protecting the public against maladministration and the abuse of power.

At its formation, the ZHRC lacked stable leadership. Its first chairperson, Professor Reginald Austin, resigned in frustration at the way the government treated it,<sup>41</sup> bemoaning, among other things, the

34 Section 100R(8) of the old Constitution.

35 Section 100R(7)(a) of the old Constitution.

36 Section 100R(1)(b) of the old Constitution.

37 See note 2, pp 55-56.

38 *Ibid.*

39 Section 100R(3) of the old Constitution.

40 See note 2, pp 28-31.

41 *Ibid.*, p 54.

government's "unreadiness, delay, lack of commitment and serious focus" as well as executive influence over the work of the commission.<sup>42</sup> Jacob Mudenda, who succeeded Austin as chairperson in March 2013, did not stay long, and went on to become the Speaker of the National Assembly in September 2013, having been nominated by ZANU-PF.<sup>43</sup> In February 2014, Mudenda was replaced by Elasto Hilarious Mugwadi, the current chairperson.<sup>44</sup> The ZHRC had, in other words, changed leadership thrice before even becoming fully operational.

### 3 The nature of the ZHRC

#### 3.1 Legal framework

The Constitution provides for the establishment of independent commissions, among them the ZHRC.<sup>45</sup> The general objectives of independent commissions include supporting and entrenching human rights and democracy.<sup>46</sup>

The establishment and composition of the ZHRC,<sup>47</sup> including its mandate,<sup>48</sup> are set out in the Constitution. Giving the ZHRC constitutional status is "conducive to institutional stability".<sup>49</sup> The constitutional framework satisfies the Paris Principles, which provide that an NHRI "shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence".

While the constitutional provisions providing for the establishment and functions of the ZHRC are indeed clearly set forth, the ZHRC Act, which came into effect in 2012, precedes the 2013 Constitution. There is hence a need to align the ZHRC Act with the new Constitution through an

42 "Human Rights Commission in Limbo", *Zimbabwe Independent* (5 April 2013), available at <https://bit.ly/2RYxQ94> (accessed 28 January 2019).

43 "Mudenda Brings Honour to Matabeleland", *The Chronicle* (5 September 2013), available at <https://bit.ly/3295I8d> (accessed 28 January 2019). Section 126 of the Constitution provides for the election of the Speaker, a wholly political process in practice.

44 "Commissioners Sworn in", *The Herald* (3 February 2014), available at <https://bit.ly/2L66YDI> (accessed 28 January 2019).

45 Section 232(b) of the Constitution.

46 *Ibid.*, section 233(a).

47 *Ibid.*, section 242.

48 *Ibid.*, section 243.

49 T Pegrām, "National Human Rights Institutions in Latin America: Politics and Institutionalization", in R Goodman and T Pegrām (eds) *Human Rights, State Compliance, and Social Change: Assessing National Human Rights Institutions*, Cambridge, Cambridge University Press (2012), p 212.

extensive amendment of the ZHRC Act to reflect the changed structure, form and mandate of the ZHRC.

The ZHRC Act empowers the ZHRC to have regulations prescribing the manner in which complaints may be made.<sup>50</sup> It further provides that the ZHRC shall make regulations to enable it to carry out its mandate.<sup>51</sup> The regulations may also prescribe the conditions of the employees of the ZHRC, including those of the executive secretary.<sup>52</sup> The current regulations came into effect in 2016,<sup>53</sup> and lay down provisions for the complaints procedure of the ZHRC and other issues relating to its functions.

### 3.2 The independence of the ZHRC

According to Mertus, “[the] hallmark of NHRIs is their independence from both the state and civil society”.<sup>54</sup> While a formal guarantee of independence is an important factor in an NHRI’s effectiveness, it does not necessarily have a bearing on its “performance on the ground”,<sup>55</sup> especially in a country that, like Zimbabwe, has a long history of human rights violations, weak institutions and a “culture of impunity”.<sup>56</sup>

The ZHRC is one of the commissions whose independence is entrenched and guaranteed in the Constitution.<sup>57</sup> Members of the ZHRC must also be politically non-partisan.<sup>58</sup> Yet although the constitutional framework guarantees the independence of the ZHRC, the ZHRC Act gives the Minister of Justice, Legal and Parliamentary Affairs wide powers over the ZHRC. For example, the Minister is empowered to issue a certificate to have the evidence before the ZHRC heard *in camera* if, in his

50 Section 10 of the ZHRC Act.

51 *Ibid*, section 23(1)(a).

52 *Ibid*, section 23(1)(b).

53 Zimbabwe Human Rights Commission (General) Regulations, Statutory Instrument 77 of 2016.

54 J Mertus, “Evaluating NHRIs: Considering Structure, Mandate and Impact”, in R Goodman and T Pogram (eds) *Human Rights, State Compliance, and Social Change: Assessing National Human Rights Institutions*, Cambridge, Cambridge University Press (2012), p 79.

55 OC Okafor, “National Human Rights Institutions in Anglophone Africa: Legalism, Popular Agency, and the Voices of Suffering”, in R Goodman and T Pogram (eds) *Human Rights, State Compliance, and Social Change: Assessing National Human Rights Institutions*, Cambridge, Cambridge University Press (2012), p 149.

56 ZHRC Strategic Plan Report 2015-2025, available at <http://www.zhrc.org.zw/download/zhrc-strategic-plan-report-2015/> (accessed 28 January 2019), p 25.

57 Section 235 of the Constitution.

58 *Ibid*, section 236.

or her opinion, such evidence is prejudicial to the “the defence, external relations, internal security or economic interests of the State”.<sup>59</sup> Arguably, however, if the ZHRC is to be seen as independent, it must have sole discretion to regulate its own procedures without undue interference by the executive.

The legal framework guaranteeing the ZHRC’s independence is also threatened by the backlash from the government when it seeks to evade accountability. The ZHRC has been subjected to subtle threats in this regard. For example, after the Commission detailed human rights violations in a monitoring report in January 2019,<sup>60</sup> the government gratuitously accused it of bias.<sup>61</sup> The Minister of Justice, Legal and Parliamentary Affairs, Ziyambi, whose position makes him responsible for the administration of the ZHRC Act,<sup>62</sup> said the ZHRC’s report was not based on a thorough investigation.<sup>63</sup> Such an action by the government jeopardises the independence of the ZHRC, bearing in mind that the Minister has wide powers in administering the ZHRC Act, which includes submitting ZHRC reports to Parliament.<sup>64</sup>

### 3.3 Appointment procedure

The ZHRC consists of nine members, including the chairperson. The procedure for their appointment is provided for by the Constitution.<sup>65</sup> Women must constitute at least half of the membership of the ZHRC.<sup>66</sup>

There is notable executive influence in the appointment procedure. The appointments are made by the President, with the input from the legislature’s Committee of Standing Rules and Orders (CSRO) and the Judicial Services Commission (JSC).<sup>67</sup> The public participates in the appointment of the eight ordinary members of the ZHRC, but the procedure for appointing the chairperson excludes public participation. These procedures are discussed separately below.

59 Section 12(6) and 12(7) of the ZHRC Act.

60 HRC, ZHRC Monitoring Report in the Aftermath of the 14 January to 16 January 2019, available at <https://bit.ly/2XR1UsL> (accessed 28 January 2019).

61 “Be Impartial, Govt Tells Rights Body”, *The Herald* (26 January 2019), available at <https://bit.ly/2YwvfG1> (accessed 28 January 2019).

62 Section 2 of the ZHRC Act.

63 See note 61.

64 Sections 244 and 323 of the Constitution.

65 *Ibid*, section 242(1).

66 *Ibid*, section 17(1)(b)(ii).

67 *Ibid*, section 242(1). The Committee of Standing Rules and Orders is established under section 151 of the Constitution. The Judicial Services Commission is established under section 189 of the Constitution and consists mostly of presidential appointees.

### 3.3.1 *Appointment of the ZHRC's chairperson*

The chairperson is appointed by the President after consulting the JSC and CSRO.<sup>68</sup> There is, however, no clearly laid down procedure regarding what that consultation entails and what the extent of the JSC and CSRO's involvement in it is. The appointment in 2010 of the first chairperson, made under a constitutional framework largely similar to the current one,<sup>69</sup> was the result of political manoeuvring during the GNU.<sup>70</sup> The details remain obscure, but there is little doubt that the names of the heads of constitutional commissions were negotiated by political parties in the GNU.<sup>71</sup> After the resignation of the first chairperson, his successor, Jacob Mudenda, was appointed in almost the same fashion, with political considerations appearing to prevail over consultation with the JSC and CSRO.<sup>72</sup> Indeed, Mudenda's appointment was criticised in view of his political history.<sup>73</sup> The current chairperson, Elasto Hilarious Mugwadi, was appointed after the GNU.

### 3.3.2 *Other members of the ZHRC*

The eight other members of the ZHRC are appointed by the President from a list of not fewer than 12 nominees submitted to him or her by the CSRO.<sup>74</sup> First, the CSRO advertises the positions and invites the public to make nominations. Secondly, public interviews for prospective candidates are conducted by the CSRO. Thirdly, the shortlisted names are submitted to the President, who appoints from that list.<sup>75</sup> The deputy chairperson is appointed by the President from the eight members after consulting the CSRO.<sup>76</sup> The appointment of the ZHRC's eight ordinary members enables the public to play a minimal role in its composition.

Members of the ZHRC are appointed for a term of five years that is renewable once.<sup>77</sup> They are guaranteed immunity in the exercise of their

68 Section 242(1)(a) of the Constitution.

69 Section 100R(1)(a) of the old Constitution.

70 See note 2, pp 53-57.

71 *Ibid.*

72 "Mugabe, Tsvangirai 'Misfire'" *Newsday* (20 February 2013), available at <https://bit.ly/2L3ev67> (accessed 28 January 2019).

73 See note 70, p 56.

74 Section 242(1)(b) of the Constitution.

75 See note 86.

76 Section 5(1) of the ZHRC Act.

77 Section 320(1) of the Constitution.

duties.<sup>78</sup> Such immunity provides a safeguard against retaliation by “disgruntled parties”.<sup>79</sup>

The Constitution provides, too, for the procedure for removing ZHRC members from office.<sup>80</sup> They may be removed from office by the President when they have become ineligible for appointment or on the grounds of gross incompetence, gross misconduct, or inability to perform their functions.<sup>81</sup> To ensure security of tenure, the procedure for the removal of a member of the ZHRC is onerous and the same as that for removing a judge from office.<sup>82</sup> To date, though, no member of the ZHRC has been removed from office.

When it comes to making constitutional appointments that require independence of the appointees, it is difficult to find a satisfactory formula, but there should be at least some basic standards in this regard. The Paris Principles, for example, have been criticised for being vague and offering little guidance on how a state can achieve “[the] guarantees of independence and pluralism” which they call for.<sup>83</sup> What is apparent from the ZHRC’s appointment procedure is that it does not afford “all necessary guarantees to ensure the pluralist representation of the social forces” that are involved in the promotion and protection of human rights in Zimbabwe.<sup>84</sup>

### 3.4 Financial autonomy

It is the obligation of the state to ensure that the ZHRC is provided with resources and facilities adequate for it to perform its functions effectively.<sup>85</sup> The Constitution requires that the ZHRC must be given a reasonable opportunity to make representations to a parliamentary committee regarding the funds allocated to it each year.<sup>86</sup>

78 Section 21 of the ZHRC Act.

79 Office of the United Nations High Commissioner for Human Rights, *National Human Rights Institutions: History, Principles, Roles and Responsibilities*, UN Doc HR/P/PT/4/Rev.1 (2010).

80 Section 237(2) of the Constitution.

81 *Ibid.*

82 *Ibid.*, section 237(3).

83 See note 54, p 79.

84 Paris Principles.

85 Sections 9(2) and 325 of the Constitution.

86 *Ibid.*, section 325(2).

Like other African NHRIs, the ZHRC also receives donor funding.<sup>87</sup> The ZHRC Act provides for funding of the ZHRC through donations, grants, bequests or loans made by any person, organisation or any government of any country, with the approval of the Minister of Justice, Legal and Parliamentary Affairs.<sup>88</sup> In this regard, the financial autonomy of the ZHRC is not absolute when it comes to external funds. Donor funding is, in practice, acquired through the proposals the ZHRC makes in regard to specific projects.<sup>89</sup>

The ZHRC labours under dire funding constraints. Its budget allocations are paltry: in the 2019 budget, it was allocated only USD 3.3 million of the USD 7.1 million that was required.<sup>90</sup> Indeed, in 2010, when its first commissioners were appointed, it was not allocated any funds at all.<sup>91</sup> The ZHRC thus could not afford personnel and offices, which, needless to say, significantly hindered its ability to carry out its functions.<sup>92</sup> Without sufficient government funding, the ZHRC will, among other things, continue to be geographically centralised and thus inaccessible to most of the populace.

### 3.5 Professional skills and knowledge

The Constitution sets out various requirements that have to be met in the appointment of members of the ZHRC. First, it requires that they must be chosen for their “integrity and their knowledge and understanding of, and experience in, the promotion of human rights”.<sup>93</sup> Secondly, the chairperson must be “a person who has been qualified for at least seven years to practice as a legal practitioner in Zimbabwe”.<sup>94</sup> The profiles of the ZHRC’s members are briefly discussed below.

87 F Viljoen, *International human Rights Law in Africa*, 2<sup>nd</sup> edition, Oxford, Oxford University Press (2012), p 388.

88 Section 17(1)(c) of the ZHRC Act. See also second Schedule, paragraph 7, providing for the ancillary powers of the ZHRC.

89 See note 4.

90 “Constitutional Commissions Underfunded”, *Newsday* (14 December 2018). See also 2019 Budget, available at <http://www.zimtreasury.gov.zw/index.php/resources/2019-budget> (accessed 22 February 2019).

91 See note 2, p 55.

92 “Zimbabwe Human Rights Commission Pleads for Funding”, *The Zimbabwean* (May 2013), available at <https://bit.ly/2JqXShv> (accessed 28 January 2019).

93 Section 242(4) of the Constitution.

94 *Ibid*, section 242(2).

Currently, the Commission has eight out of its required nine members,<sup>95</sup> three of whom are lawyers, including the chairperson.<sup>96</sup> Prior to joining the ZHRC, the chairperson had no demonstrable experience in human rights. In fact, during his tenure as Chief Immigration Officer, he defied a High Court order interdicting the deportation of a journalist, thereby taking part in the violation of human rights.<sup>97</sup> The other two lawyers, however, have notable experience in human rights.<sup>98</sup>

The majority of the members are non-lawyers and have various academic backgrounds.<sup>99</sup> They also have differing career backgrounds, with their experience in human rights ranging from fair to minimal.<sup>100</sup> Thus, while there is diversity in the composition of the ZHRC, such diversity is not accompanied by relevant expertise in human rights. Also, what is conspicuous is the lack of representation of persons with a background in civil society human rights organisations.

In sum, the profile of the ZHRC's membership points to the need in future to appoint office-holders with demonstrable experience in human rights, as required by the Constitution, and correlatively to avoid appointing those with a history of undermining these rights, a practice which diminishes public confidence in the ZHRC.

### 3.6 Relations with civil society

While the constitutional provisions do not clearly set out the parameters of the relationship between the ZHRC and civil society, it is apparent that to

95 One of the members of the ZHRC, Dr Carroll Temba Khombe, left it in 2018 and joined the Public Service Commission. See <http://www.zbc.co.zw/pres-mnangagwa-appoints-civil-service-commissioners/> (accessed 22 February 2019).

96 The profiles of the members of the ZHRC are on the ZHRC website at <http://www.zhrc.org.zw/commissioners/> (accessed 22 February 2019).

97 See note 2, p 56. See also "Meldrum Meets Immigration Boss", *Zimbabwe Independent* (22 July 2005), available at <https://bit.ly/32eZV0y> (accessed 19 February 2019); *Zimbabwe Lawyers for Human Rights and IHRDA (on behalf of Andrew Barclay Meldrum) v Zimbabwe*, available at <https://bit.ly/2JhKb5G> (accessed 22 February 2019).

98 Dr Ellen Sithole is a senior academic; Sethulo Ncube is a human rights lawyer. Both have strong academic credentials in human rights.

99 See note 96. These are Japhet Ndabeni Ncube, a former executive mayor with a background in economics, and Sheila Hilary Matindike, with a background in social work. There is also Joseph Kurebwa, with a background in political science, and Kwanele Jirira, with a background in social work and political science. Lastly, there is Petunia Chiriseri, a religious leader with academic credentials ranging from botany and zoology to a doctorate in business leadership.

100 "Scepticism Greets Human Rights Commission", *The Standard* (8 April 2010), available at <https://bit.ly/2JrVlnh> (accessed 22 February 2019).

enable it to carry out its work in general, relations with civil society are essential. In this regard, the ZHRC Act mentions, as part of the Commission's ancillary powers, engaging "in any activity, either alone or in conjunction with other organisations or international agencies, to promote better understanding of human rights violation issues".<sup>101</sup>

Similarly, the ZHRC regulations provide for a committee or committees to assist the executive secretary of the ZHRC with the observance of human rights and freedoms and implementation of the Commission's recommendations. The committee or committees must include "representatives of organisations, bodies and persons concerned with the promotion and protection of human rights and freedoms".<sup>102</sup>

The ZHRC therefore engages with civil society as directed by its broad mandate. It has entered into memoranda of understanding with certain civil society organisations (CSOs) with the intention of raising public awareness of its mandate and human rights.<sup>103</sup>

CSOs should be involved proactively in the programmes of the ZHRC; likewise, the ZHRC must acknowledge the role played by civil society in the promotion and protection of human rights, given the large number of human rights CSOs that pre-date its establishment.<sup>104</sup> Through such a process of mutual recognition and support, civil society can help to amplify the ZHRC's voice on issues of common concern.

### 3.7 Accessibility

The ZHRC is generally inaccessible. Its operations are divided into two regions, the northern and southern region.<sup>105</sup> Dividing the country in two in this way for the purposes of receiving complaints was perhaps an ill-considered idea, given that Zimbabwe has always struggled to decentralise its delivery of basic services.

Although the ZHRC has undertaken to "progressively set up offices in every district for ease of access by the public", this has not been done.<sup>106</sup> It

101 Second schedule, paragraph 7 of the ZHRC Act.

102 Section 29(2)(d) of the ZHRC Regulations.

103 See note 6.

104 See note 25, pp 51-52.

105 Section 3 of the ZHRC Regulations, 2016. The northern region comprises the provinces of Harare, Manicaland, Mashonaland Central, Mashonaland East and Mashonaland West. The southern region comprises the provinces of Bulawayo, Masvingo, Matabeleland North, Matabeleland South and Midlands.

106 *Ibid.*

has only two offices, one in Harare and the other in Bulawayo.<sup>107</sup> The ZHRC must endeavour to set up offices in every province.

## 4 The mandate of the ZHRC

Section 243 of the Constitution defines the mandate of the ZHRC. This mandate is focused on the promotion and protection of human rights, and additionally, the protection of the public against abuse of power and maladministration. In keeping with the Paris Principles, the mandate is a broad one.<sup>108</sup>

### 4.1 Commenting on existing and draft laws

There is no express provision giving the ZHRC the mandate to comment on existing and draft laws. However, commenting on existing and draft laws is within the ambit of its broad mandate.

As a result, the ZHRC became a committee member of a task force responsible for aligning laws with the 2013 Constitution.<sup>109</sup> It has also participated in the development of bills. For example, in 2016 it was involved in the development of the Zimbabwe Prisons and Correctional Services Bill to ensure that it took cognisance of human rights in the operations of prisons and was thus aligned with the Constitution and international standards.<sup>110</sup> Similarly, the ZHRC has contributed to the Coroner's Bill.<sup>111</sup> It is ironic, however, that the ZHRC Act itself has not been aligned yet with the Constitution.

The Constitution gives the ZHRC a mandate to visit places of detention in order to ascertain conditions of detention and make recommendations to the minister responsible for the law relating to such places.<sup>112</sup> Under such circumstances, the ZHRC may make observations and go so far as making proposals on current and draft legislation.

A need that is clearly apparent is for the ZHRC Act to be amended so as to grant the ZHRC the express mandate to comment on existing and draft laws.

107 See note 4.

108 Section 243(1)(b) of the Constitution.

109 ZHRC Annual Report 2016.

110 *Ibid.*

111 *Ibid.*

112 Section 243(1)(k) of the Constitution.

## 4.2 Monitoring domestic human rights situations

The ZHRC has a mandate to “monitor, assess and ensure observance of human rights and freedoms”.<sup>113</sup> The ZHRC regulations provide that the executive secretary of the ZHRC shall monitor the observance of human rights and implementation of recommendations made by the ZHRC in its reports.<sup>114</sup>

The ZHRC has monitored human rights situations ranging from the plight of internally displaced persons (IDPs) after floods<sup>115</sup> to instances where stage agents used excessive force against demonstrators.<sup>116</sup> In so doing it has encountered obstacles that diminish its effectiveness in executing its mandate to monitor such situations. In one case, for example, police officers denied its members of staff relevant information and access to holding cells.<sup>117</sup>

There is hence a need to engage with stakeholders, especially the police, to make them aware of the mandate and privileges of the ZHRC. As noted, there have been instances where the government expresses opposition to ZHRC reports in ways threatening to its independence.<sup>118</sup>

The Constitution also grants the ZHRC the mandate to visit and inspect prisons and places of detention.<sup>119</sup> The ZHRC has been conducting such inspections and making recommendations to ensure that the rights of detained people are not violated. In particular, it has noted that prisons and other place of detention are understaffed, recommending that they be adequately resourced.<sup>120</sup>

The Constitution grants the ZHRC the power to require that any person, organisation or organ of government report to it the measures it has taken to give effect to the recommendations;<sup>121</sup> the Constitution

113 *Ibid*, section 243(1)(c).

114 Section 29 of the ZHRC Regulations

115 ZHRC, Report on the Mission Visit to Chingwizi Conducted from 19-22 August 2014, available at <http://www.zhrc.org.zw/download/chingwizi-report-19-august-2014/> (accessed 22 February 2019).

116 For example, see note 60.

117 See note 60.

118 See note 61.

119 See note 112.

120 ZHRC, Annual Report 2015, available at <http://www.zhrc.org.zw/download/2015-annual-report/> (accessed 22 February 2019). See also ZHRC, Annual Report 2016, available at <http://www.zhrc.org.zw/download/2016-annual-report/> (accessed 22 February 2019).

121 Section 29(3) of the ZHRC Regulations.

requires too that if any organisation fails to implement the recommendations, the ZHRC report such failure to Parliament.<sup>122</sup>

### 4.3 Monitoring and advising on compliance with international standards

The mandate to monitor and give advice on compliance with international standards is provided by the Constitution. The ZHRC may solicit information it needs “to prepare any report required to be submitted to any regional or international body under any human rights convention, treaty or agreement to which Zimbabwe is a party”.<sup>123</sup> The ZHRC thus plays an advisory role with regard to Zimbabwe’s state-reporting obligations.<sup>124</sup>

So far, it has participated in the reporting procedures of the Universal Periodic Review (UPR) mechanism,<sup>125</sup> and has advised the state on compliance with the UPR recommendations.<sup>126</sup> The ZHRC has an affiliate status with the African Commission.<sup>127</sup> This affiliation imposes an obligation on the ZHRC to encourage the state to ratify human rights treaties.<sup>128</sup>

Under its broad mandate to protect and promote human rights, the ZHRC has a duty to monitor and advise on the state’s compliance with the decisions of judicial and quasi-judicial bodies established by the treaties to which Zimbabwe is a party. There may be some challenges in executing this facet of its mandate, though, given that Zimbabwe has ignored recommendations by the African Commission.<sup>129</sup> In a joint effort with a local partner, the ZHRC has a programme aimed at ensuring compliance with the decisions of the African Commission.<sup>130</sup> The impact of the programme is yet to be seen.

122 See sections 29(4) of the regulations as read with section 244(2) of the Constitution.

123 Section 244(1)(b) of the Constitution.

124 See note 4.

125 *Ibid.*

126 *Ibid.*

127 *Ibid.*

128 National Human Rights Institutions; see <http://www.achpr.org/network/nhri/> (accessed 22 February 2019).

129 See <https://bit.ly/2ZZm6WJ> (accessed 28 January 2019).

130 See note 4.

#### 4.4 Educating and informing

The ZHRC is tasked with promoting awareness of human rights and freedoms at all levels of society.<sup>131</sup> To this end, it conducts a programme aimed at educating and informing the public.<sup>132</sup> It is difficult, however, for the ZHRC to deliver on its mandate if it has only two offices, a limited number of officers, and few in Zimbabwe know of its existence. What is needed is a far-reaching, proactive human rights sensitisation programme. A good start would be to employ outreach officers in each district who are tasked with educating people about their rights.

#### 4.5 Receiving and dealing with complaints and petitions

The ZHRC has the mandate to “receive and consider complaints from the public and take such action in regard to the complaints as it considers appropriate”.<sup>133</sup> It is also mandated to investigate human rights violations by any person or authority.<sup>134</sup> The ZHRC therefore has the jurisdiction to undertake investigations on receipt of a complaint.<sup>135</sup> Furthermore, it has the power to investigate, on its own initiative, any conduct that constitutes a human rights violation by any person or authority.<sup>136</sup>

The ZHRC Act defines human rights as rights that are provided in the Constitution or any international human rights instrument that Zimbabwe is a party to.<sup>137</sup> The prescribed period for making a complaint is, however, limited to three years from the date on which the violation of human rights occurred; in addition, the violation may not have happened before 13 February 2009.<sup>138</sup> The ZHRC does not have jurisdiction in civil cases pending before the courts,<sup>139</sup> nor does it have jurisdiction where a human rights violation relates to the prerogative of mercy.<sup>140</sup> Similarly, its jurisdiction is limited where the violation involves relations between the government of Zimbabwe and that of a foreign power.<sup>141</sup> In such cases, the

131 Section 243(1)(a) of the Constitution.

132 See note 4.

133 Section 243(1)(d) of the Constitution.

134 *Ibid*, section 234(1)(f).

135 Section 9(1) of the ZHRC Act.

136 *Ibid*, section 9(2).

137 *Ibid*, section 2.

138 *Ibid*, section 9(4)(b).

139 *Ibid*, section 9(4)(c).

140 *Ibid*, section 9(4)(b).

141 *Ibid*, section 9(4)(e).

ZHRC assumes jurisdiction where “there has been an allegation of a human rights violation by a citizen or resident of Zimbabwe”.<sup>142</sup>

The ZHRC Act provides that the manner of making complaints should be flexible and unencumbered by procedural rigidity.<sup>143</sup> In this regard, the ZHRC has regulations prescribing a detailed complaint-handling procedure.<sup>144</sup> There are two ways of lodging a complaint before the ZHRC. First, a complaint may be lodged by any person affected by the human rights violation.<sup>145</sup> Secondly, where a person affected by a human rights violation is “unable or unwilling” to lodge a complaint, it may be lodged by any person on his or her behalf, or any person acting in the public interest.<sup>146</sup> Any association may also lodge a complaint in the interests of its members.<sup>147</sup> The ZHRC therefore complies with the tenet of the Paris Principles that “cases may be brought before it by individuals, their representatives, third parties, non-governmental organisations, associations of trade unions or any other representative organizations”.<sup>148</sup>

A complaint must be lodged at the regional office in the region in which the violation took place, and if received at a different regional office, steps shall be taken to send it to the correct office.<sup>149</sup> As mentioned, the ZHRC has only two regional offices, in Harare and Bulawayo. This is mitigated by the fact that complaints may be lodged telephonically, by post, by telefacsimile, or electronically.<sup>150</sup> Such basic services are, nevertheless, still out of reach for the indigent, making the ZHRC generally inaccessible.

The ZHRC, through its officers, must acknowledge receipt of the complaint within seven days, together with a reference number.<sup>151</sup> Complainant may require the ZHRC to keep their details confidential.<sup>152</sup> In cases where a complainant is a child or a person with a mental disability, the ZHRC shall, on its own initiative, take measures to keep their particulars confidential.<sup>153</sup>

142 *Ibid.*

143 *Ibid.*, section 10(3).

144 ZHRC Regulations, Statutory Instrument 77 of 2016.

145 Section 5(a) of the ZHRC Regulations.

146 *Ibid.*, section 5(b).

147 *Ibid.*

148 Paris Principles.

149 Section 7(1) of the ZHRC Regulations.

150 *Ibid.*, section 7(2).

151 *Ibid.*, section 8.

152 *Ibid.*, section 9(1).

153 *Ibid.*, section 9(2).

After a complaint is received, it is assessed.<sup>154</sup> This entails, inter alia, requiring further information from the complainant.<sup>155</sup> The complaint may either be rejected or accepted. If the complaint is accepted, the next stage is investigation by an officer of the ZHRC. The first stage of investigation is the notification of the respondent and requesting a response.<sup>156</sup> After this stage, details relevant to the case are noted, places relevant to it are visited, and witnesses and other sources of information are interviewed.<sup>157</sup> After investigation, the officer refers the matter to the commissioners, together with the record and documents collected in the course of the investigation and the recommendations of the officer.<sup>158</sup>

The commissioners may reject the complaint on grounds set out in the ZHRC regulations.<sup>159</sup> They may also refer the complainant to any other body appropriate to hearing the complaint.<sup>160</sup> For example, a matter may be referred to another Chapter 12 commission, such as the ZGC. They may also attempt to resolve the complaint by negotiation, conciliation and mediation,<sup>161</sup> in compliance with the Paris Principles. Alternatively, a formal hearing may be held.<sup>162</sup>

In determining a complaint, the ZHRC may either reject the complaint or find that it has been resolved satisfactorily.<sup>163</sup> A complaint may be considered concluded when it is withdrawn.<sup>164</sup> If the complainant is successful, the ZHRC recommends suitable action or redress,<sup>165</sup> by issuing a final order or a final direction.<sup>166</sup> The ZHRC may also institute proceedings in a court of law for resolution of the complaint.<sup>167</sup> Where there is criminal conduct in the human rights violation, the ZHRC has the power to direct the Commissioner General of Police to investigate.<sup>168</sup> The power to receive and deal with complaints is derived from the

154 *Ibid*, section 10(1) of the ZHRC Regulations.

155 *Ibid*, section 10(2) of the ZHRC Regulations.

156 *Ibid*, section 12(2)(b) of the ZHRC Regulations.

157 *Ibid*, sections 12(3) and 12(4) of the ZHRC Regulations.

158 *Ibid*, section 10(1) of the ZHRC Regulations.

159 *Ibid*, sections 10(3)(a) and 10(3)(b) of the ZHRC Regulations.

160 *Ibid*, section 13(2)(b) of the ZHRC Regulations.

161 *Ibid*, section 13(2)(c) of the ZHRC Regulations.

162 *Ibid*.

163 *Ibid*, section 25 of the Regulations.

164 *Ibid*.

165 Section 14 of the ZHRC Act.

166 Section 25(f) of the ZHRC Regulations.

167 Section 15 of the ZHRC Act.

168 Section 243(1)(h) of the Constitution.

Constitution. As such, the ZHRC's recommendations in conclusion of the complaints are binding.<sup>169</sup>

The ZHRC reports generally do not contain much information on how complaints have been handled. As a hybrid human rights commission, it classifies the cases received under the headings of "general", "human rights" and "maladministration".<sup>170</sup> In its 2015 and 2016 annual reports, there are no details one could use to analyse the nature of the human rights complaints received and how they were resolved. According to the 2015 report, 162 human rights cases were received out of a total of 482 cases.<sup>171</sup> Then, according to the 2016 report, there was a marked increase in human rights cases: of the 666 cases received, 245 were human rights cases. Missing is a summary account of what compliance there was with the Commission's decisions.

#### 4.6 Monitoring government compliance

In general, it would seem that the recommendations of the ZHRC are complied with,<sup>172</sup> but as pointed out, there is insufficient information to enable one to make an accurate assessment of the state of compliance. Be that as it may be, in cases of non-compliance, the ZHRC regulations provide that the executive secretary shall monitor "implementation of recommendations made by the Commission in its reports" and regularly report such observance and implementation to the ZHRC.<sup>173</sup> As noted, the ZHRC can be assisted by a committee or committees in monitoring the implementation of its recommendations.<sup>174</sup> In this way, it is able to ensure compliance with its recommendations.

169 *Ibid*, section 2.

170 See note 120.

171 *Ibid*.

172 See note 4.

173 Section 29(1)(b) of the ZHRC Regulations.

174 See note 102. These committee or committees are meant to consist of members of the civil service and the security services, representatives of the commercial, industrial, agricultural and mining sectors, representatives of employers and employees and representatives of organisations, bodies and persons concerned with the promotion and protection of human rights and freedom.

## 5 Public accountability

### 5.1 Reporting by the ZHRC

The legal framework of the ZHRC affords some measures to ensure its public accountability. The Constitution provides that, through the Minister of Justice Legal and Parliamentary Affairs, it submits reports to Parliament and that these are of two kinds. First, the ZHRC may submit any report to Parliament on particular matters relating to human rights that, in its view, should be brought to Parliament's attention.<sup>175</sup> Secondly, the ZHRC is obliged to submit annual reports to Parliament.<sup>176</sup> This creates an avenue not only to account to the public but to inform stakeholders, including civil society, about the activities of the ZHRC. So far, only the 2015 and the 2016 reports are available on the ZHRC's website. To account effectively to the public and strengthen its independence, the ZHRC should publish its annual reports timeously.

### 5.2 Regular consultations with stakeholders

In terms of its broad mandate under the Constitution and specific powers under the ZHRC Act, the ZHRC may "engage in any activity, either alone or in conjunction with other organisations or international agencies, to promote better understanding of human rights violation issues".<sup>177</sup> This includes consultation with stakeholders such as state representatives and civil society.

Accordingly, as part of its strategic planning process, the ZHRC has engaged with "various arms of the State and law enforcement agencies, as well as members of Civil Society".<sup>178</sup> Consulting stakeholders in its planning process has been a positive move. However, on closer examination, the ZHRC's relationship with the government is, as discussed above, a cause for concern.<sup>179</sup> The government's public statements to the effect that the ZHRC is biased weakens the latter's position in promoting and protecting human rights.

175 Section 244(2) of the Constitution.

176 *Ibid*, section 323.

177 ZHRC Act, Second schedule, paragraph 17.

178 See note 8, pp 12-13.

179 See note 61.

The ZHRC has also developed significant international relations, which, by contrast, can serve to strengthen its position in this regard. As noted, it has affiliate status with the African Commission,<sup>180</sup> in addition to which it is a member of the Network of African National Human Rights Institutions (NANHRI).<sup>181</sup> The ZHRC is accredited with an “A” status by the Global Alliance of National Human Rights Institutions (GANHRI).<sup>182</sup> This certifies its formal compliance with the Paris Principles and provides avenues to strengthen its effectiveness in promoting and protecting human rights in Zimbabwe.

## **6 Conclusion**

The creation of the ZHRC was a significant development in Zimbabwe in that it presented new opportunities for the advancement of a culture of human rights. On paper, the ZHRC complies with the Paris Principles to a good degree: among other things, it has a broad mandate to protect and promote human rights protection and in theory is meant to be independent.

Its evolution shows, however, that the prevailing political climate limits its effectiveness. It was not allocated resources when it began, and only became fully operational about four years after its inaugural members were sworn in. It has also suffered leadership challenges, while the backlash it has faced from the government threatens its independence. The budget allocated to the ZHRC is inadequate, as a result of which it sometimes relies on external funding that it is available and allocated only for specific projects it undertakes. The ZHRC currently operates a mere two offices, and these are not easily accessible to the majority of the population, especially those in rural areas. In regard to professional skills and knowledge, a politicised appointment process prevents the ZHRC from being pluralist in composition and having members with a demonstrable human rights background.

The ZHRC has monitored human rights situations in Zimbabwe, and it also receives and deals with human rights complaints. However, its reports need to indicate the extent to which its recommendations are complied with. Despite the problems of limited accessibility, the legal framework provides for public accountability. The ZHRC has a good relationship with civil society and stakeholders at both the domestic and

180 See note 128.

181 See member profiles at <https://www.nanhri.org/members/member-profiles/> (accessed 22 February 2019).

182 See note 5.

international levels. This offers it an avenue through which to improve its capacity to monitor and advise on compliance with international human rights law.

Legislative reforms are necessary if the ZHRC is to be an effective NHRI. The most urgent reform is the alignment of the ZHRC Act with the 2013 Constitution. The ZHRC's reports should also be prepared timeously and posted on its website to improve accountability to the public. This would go some way to inspiring public confidence. Finally, the ZHRC needs to enhance its visibility and increase its number of offices so as to strengthen its capacity to promote and protect human rights in Zimbabwe.

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

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

The Zimbabwe Human Rights Commission is constitutionally entrenched in Chapter 12, sections 232-244 of the Constitution. It provides as follows:

#### **CHAPTER 12: INDEPENDENT COMMISSIONS SUPPORTING DEMOCRACY**

##### **PART 1: GENERAL**

###### 232. Independent Commissions

The following are the independent Commissions –

- (a) the Zimbabwe Electoral Commission;
- (b) the Zimbabwe Human Rights Commission;
- (c) the Zimbabwe Gender Commission;
- (d) the Zimbabwe Media Commission; and
- (e) the National Peace and Reconciliation Commission.

###### 233. Objectives of independent Commissions

The independent Commissions have the following general objectives in addition to those given to them individually –

- (a) to support and entrench human rights and democracy;
- (b) to protect the sovereignty and interests of the people;
- (c) to promote constitutionalism;
- (d) to promote transparency and accountability in public institutions;
- (e) to secure the observance of democratic values and principles by the State and all institutions and agencies of government, and government controlled entities; and
- (f) to ensure that injustices are remedied.

###### 234 Staff of independent Commissions

The independent Commissions have power to employ staff and, subject to the law, to regulate their conditions of service.

###### 235 Independence of Commissions

- 1) The independent Commissions –

- (a) are independent and are not subject to the direction or control of anyone;
  - (b) must act in accordance with this Constitution; and
  - (c) must exercise their functions without fear, favour or prejudice; although they are accountable to Parliament for the efficient performance of their functions.
- 2) The State and all institutions and agencies of government at every level, through legislative and other measures, must assist the independent Commissions and must protect their independence, impartiality, integrity and effectiveness.
- 3) No person may interfere with the functioning of the independent Commissions.

236 Members of independent Commissions to be non-political

- 1) Members of the independent Commissions must not, in the exercise of their functions –
- (a) act in a partisan manner;
  - (b) further the interests of any political party or cause;
  - (c) prejudice the lawful interests of any political party or cause; or
  - (d) violate the fundamental rights or freedoms of any person.
- 2) Persons who are members of a political party or organisation on their appointment to an independent Commission must relinquish that membership without delay and in any event within thirty days of their appointment.
- 3) If a member of an independent Commission –
- (a) becomes a member of a political party or organisation; or
  - (b) having been a member of a political party or organisation on his or her appointment to the commission, fails to relinquish that membership within thirty days of the appointment; he or she ceases immediately to be a member of the Commission concerned.

237 Appointment and removal from office of members of independent Commissions

- 1) For the purpose of nominating persons for appointment to any independent Commission, the Committee on Standing Rules and Orders must –
- (a) advertise the position;
  - (b) invite the public to make nominations;
  - (c) conduct public interviews of prospective candidates;
  - (d) prepare a list of the appropriate number of nominees for appointment; and
  - (e) submit the list to the President.

- 2) A member of an independent Commission may be removed from office only on the ground that the member concerned –
  - (a) is unable to perform the functions of his or her office because of physical or mental incapacity;
  - (b) has been grossly incompetent;
  - (c) has been guilty of gross misconduct; or
  - (d) has become ineligible for appointment to the Commission concerned.
- 3) The procedure for the removal of judges from office applies to the removal from office of a member of an independent Commission.

### **PART 3: ZIMBABWE HUMAN RIGHTS COMMISSION**

#### 242 Establishment and composition of Zimbabwe Human Rights Commission

- 1) There is a commission to be known as the Zimbabwe Human Rights Commission consisting of –
  - (a) a chairperson appointed by the President after consultation with the Judicial Service Commission and the Committee on Standing Rules and Orders; and
  - (b) eight other members appointed by the President from a list of not fewer than twelve nominees submitted by the Committee on Standing Rules and Orders.
- 2) The chairperson of the Zimbabwe Human Rights Commission must be a person who has been qualified for at least seven years to practise as a legal practitioner in Zimbabwe.
- 3) If the appointment of a chairperson to the Zimbabwe Human Rights Commission is not consistent with a recommendation of the Judicial Service Commission, the President must cause the Committee on Standing Rules and Orders to be informed as soon as practicable.
- 4) Members of the Zimbabwe Human Rights Commission must be chosen for their integrity and their knowledge and understanding of, and experience in, the promotion of human rights.

#### 243 Functions of Zimbabwe Human Rights Commission

- 1) The Zimbabwe Human Rights Commission has the following functions –
  - (a) to promote awareness of and respect for human rights and freedoms at all levels of society;
  - (b) to promote the protection, development and attainment of human rights and freedoms;
  - (c) to monitor, assess and ensure observance of human rights and freedoms;
  - (d) to receive and consider complaints from the public and to take such action in regard to the complaints as it considers appropriate;

- (e) to protect the public against abuse of power and maladministration by State and public institutions and by officers of those institutions;
  - (f) to investigate the conduct of any authority or person, where it is alleged that any of the human rights and freedoms set out in the Declaration of Rights has been violated by that authority or person;
  - (g) to secure appropriate redress, including recommending the prosecution of offenders, where human rights or freedoms have been violated;
  - (h) to direct the Commissioner-General of Police to investigate cases of suspected criminal violations of human rights or freedoms and to report to the Commission on the results of any such investigation;
  - (i) to recommend to Parliament effective measures to promote human rights and freedoms;
  - (j) to conduct research into issues relating to human rights and freedoms and social justice; and
  - (k) to visit and inspect –
    - (i) prisons, places of detention, refugee camps and related facilities; and
    - (ii) places where mentally disordered or intellectually handicapped persons are detained; in order to ascertain the conditions under which persons are kept there, and to make recommendations regarding those conditions to the Minister responsible for administering the law relating to those places.
- 2) The Commissioner-General of Police must comply with any directive given to him or her by the Zimbabwe Human Rights Commission under subsection (1)(h).

#### 244 Reports to and by Zimbabwe Human Rights Commission

- 1) The Zimbabwe Human Rights Commission may require any person, institution or agency, whether belonging to or employed by the State or otherwise –
- (a) to inform the Commission of measures they have taken to give effect to the human rights and freedoms set out in the Declaration of Rights; and
  - (b) to provide the Commission with information it needs to prepare any report required to be submitted to any regional or international body under any human rights convention, treaty or agreement to which Zimbabwe is a party.
- 2) In addition to the report it is required to submit in terms of section 323, the Zimbabwe Human Rights Commission may, through the appropriate Minister, submit reports to Parliament on particular matters relating to human rights and freedoms which, in the Commission's opinion, should be brought to the attention of Parliament.

## **SIXTH SCHEDULE (Sections 329 and 332)**

### **COMMENCEMENT OF THIS CONSTITUTION, TRANSITIONAL PROVISIONS AND SAVINGS**

#### **PART 4: SAVINGS AND TRANSITIONAL PROVISIONS**

##### **Public Protector**

16(1) The Public Protector Act [*Chapter 10:18*] is repealed.

(2) Any matter that was being dealt with by the Public Protector immediately before the effective date must be transferred to the Zimbabwe Human Rights Commission for finalisation.

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

Two main pieces of legislation regulate the ZHRC.

### **B.2.1 ZIMBABWE HUMAN RIGHTS COMMISSION ACT [CHAPTER 10:30]**

**Act 2/2012**

#### **ARRANGEMENT OF SECTIONS**

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

###### **Section**

- 1) Short title.
- 2) Interpretation.

##### **PART II: ZIMBABWE HUMAN RIGHTS COMMISSION AND STAFF**

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

### **PART III:PROCEDURE AND MANNER OF INVESTIGATIONS BY COMMISSION**

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

### **PART IV: FINANCIAL PROVISIONS**

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

### **PART V: MISCELLANEOUS PROVISIONS**

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

FIRST SCHEDULE: Provisions Applicable to Commissioners and Working Groups. SECOND SCHEDULE: Ancillary Powers of Commission

THIRD SCHEDULE: Oath of Secrecy

### **ACT**

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

WHEREAS section 100R of the Constitution provides as follows:

100R Zimbabwe Human Rights Commission

- 1) There is a commission to be known as the Zimbabwe Human Rights Commission which shall consist of –
  - (a) a chairman who has been qualified for at least five years to practise as a legal practitioner and who is appointed by the President after

consultation with the Judicial Service Commission and the Committee on Standing Rules and Orders; and

- (b) eight other Commissioners, at least four of whom shall be women, appointed by the President from a list of sixteen nominees submitted by the Committee on Standing Rules and Orders.
- (2) If the appointment of a chairman of the Zimbabwe Human Rights Commission is not consistent with any recommendation of the Judicial Service Commission in terms of subsection (1)(a), the President shall cause the Senate to be informed as soon as practicable.
- (3) Persons appointed to the Zimbabwe Human Rights Commission shall be chosen for their knowledge of and experience in the promotion of social justice or the protection of human rights and freedoms.
- (4) A Commissioner of the Zimbabwe Human Rights Commission shall, before entering upon his or her office, take and subscribe before the President or some person authorised by the President in that behalf the oath of office in the forms set out in Schedule 1.
- (5) The Zimbabwe Human Rights Commission shall have the following functions –
  - (a) to promote awareness of and respect for human rights and freedoms at all levels of society;
  - (b) to promote the development of human rights and freedoms;
  - (c) to monitor and assess the observance of human rights in Zimbabwe;
  - (d) to recommend to Parliament effective measures to promote human rights and freedoms;
  - (e) to investigate the conduct of any authority or person, where it is alleged that any of the rights in the Declaration of Rights has been violated by that authority or person; and
  - (f) to assist the Minister responsible for the Act of Parliament referred to in subsection (8) to prepare any report required to be submitted to any regional or international body constituted or appointed for the purpose of receiving such reports under any human rights convention, treaty or agreement to which Zimbabwe is a party.
- (6) The Zimbabwe Human Rights Commission may require any person, body, organ, agency or institution whether belonging to or employed by the State, a local authority or otherwise, to provide the Commission annually with such information as it may need for the purpose of preparing and submitting any report required to be submitted to any regional or international body constituted or appointed for the purpose of receiving such reports under any human rights convention, treaty or agreement to which Zimbabwe is a party.
- (7) The Zimbabwe Human Rights Commission shall have power –
  - (a) to take over and continue any investigation that has been instituted by the Public Protector in terms of section 108(1), where it determines that the dominant question in issue involves a matter pertinent to its function referred to in subsection (5)(e); or

- (b) refer to the Public Protector for investigation in terms of section 108(1) any matter in respect of which it determines that the dominant question in issue involves a matter pertinent to the functions of the Public Protector.
- (8) An Act of Parliament may confer power on the Zimbabwe Human Rights Commission –
  - (a) to conduct investigations on its own initiative or on receipt of complaints;
  - (b) to visit and inspect prisons, places of detention, refugee camps and related facilities in order to ascertain the conditions under which inmates are kept there, and to make recommendations regarding those conditions to the Minister responsible for administering the law relating to those places or facilities;
  - (c) to visit and inspect places where mentally disordered or intellectually handicapped persons are detained under any law in order to ascertain the conditions under which those persons are kept there, and to make recommendations regarding those conditions to the Minister responsible for administering the law relating to those places; and
  - (d) to secure and provide appropriate redress for violations of human rights and for injustice.

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

## **PART I: PRELIMINARY**

### **1. Short title**

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

### **2. Interpretation**

In this Act –

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

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

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

“Commissioner” means a member of the Commission, and includes the Chairperson; “complaint” means a complaint of a human rights violation

made to the Commission in terms of this Act and “complainant” shall be construed accordingly;

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

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

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

“human rights violation” means a violation of –

- (a) the Declaration of Rights in the Constitution; or
- (b) any international human rights instrument that Zimbabwe is a party to; “international human rights instrument” means any international treaty, convention, protocol or other agreement to which Zimbabwe is a party and –
- (c) is required in terms of the Constitution to be approved by Parliament; and
- (d) provides for any human right that is included in or additional to the Declaration of Rights in the Constitution;

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

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

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

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

## **PART II: ZIMBABWE HUMAN RIGHTS COMMISSION AND STAFF**

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

- 1) The Zimbabwe Human Rights Commission shall be a body corporate capable of suing and being sued in its corporate name and, subject to this Act, of performing all acts that bodies corporate may by law perform.
- 2) The First Schedule applies to the tenure of office and conditions of service of the Commissioners as well as to the procedure to be followed by the Commission at its meetings.
- 3) The Second Schedule sets out the ancillary powers of the Commission.

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

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

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

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

- 1) After consulting the Committee on Standing Rules and Orders, the President shall appoint a Deputy Chairperson from among the Commissioners.
- 2) If the office of the Chairperson is vacant or the Chairperson is absent from duty, the Deputy-Chairperson shall act as Chairperson.

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

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

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

- 2) In order for a person to be appointed as Executive Secretary of the Commission, he or she must –
  - (a) be qualified to be appointed as a judge of the High Court or the Supreme Court; or
  - (b) have a graduate or postgraduate qualification in human rights law or humanitarian law or a related discipline.

- 3) The offices of the Executive Secretary and other members of staff shall be public offices but not form part of the Public Service.
- 4) The Executive Secretary shall, subject to the general control of the Commission –
  - (a) be responsible for carrying out the decisions of the Commission and the day-to-day administration and management of the affairs, staff and property of the Commission; and
  - (b) be the custodian of the Commission's records; and
  - (c) attend all meetings of the Commission, but shall have no vote on any matter before the Commission; and
  - (d) perform such other functions as may be assigned by the Commission.
- (5) The Executive Secretary shall swear and subscribe to the oath of secrecy set out in Third Schedule, which shall be administered by the Chairperson.

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

- 1) A Commissioner or a member of staff of the Commission shall serve impartially and independently and exercise or perform his or her functions in good faith and without fear, favour, bias or prejudice and subject only to the Constitution and the law.
- 2) Neither the State or any person, body, organ, agency or institution belonging to or employed by the State, a local authority or otherwise shall interfere with, hinder or obstruct the Commission, its Commissioners or any member of staff of the Commission, in the exercise or performance of its, his or her functions.
- 3) The State and any person, body, organ, agency or institution, belonging to or employed by the State, shall afford the Commission such assistance as may be reasonably required for the protection of the independence, impartiality and dignity of the Commission.
- 4) No person shall conduct an investigation or render assistance with regard thereto in respect of a matter in which he or she has any pecuniary or any other interest which might preclude him or her from exercising or performing his or her functions in a fair, unbiased and proper manner.
- 5) If any person fails to disclose an interest contemplated in subsection (4) and conducts or renders assistance with regard to an investigation, while having an interest so contemplated in the matter being investigated the Commission may take such steps as it deems necessary to ensure a fair, unbiased and proper investigation.

## **8. Reports of Commission**

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

- (a) shall submit to the Minister any other report, and provide him or her with any other information, that he or she may require in regard to the operations and activities of the Commission; and
- (b) may submit to the Minister any other report that it considers desirable.
- 3) The Minister shall table before Parliament any report submitted to him or her by the Commission under subsections (1) and (2), no later than the thirtieth sitting day of whichever House of Parliament sits first after he or she has received such report.

### **PART III: PROCEDURE AND MANNER OF INVESTIGATIONS BY COMMISSION**

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

- 1) The Commission may on its own initiative investigate any action or omission on the part of any authority or person that constitutes or may constitute a human rights violation.
- 2) Any person affected by any actual or perceived human rights violation arising out of any action or omission on the part of any authority or person may make a written complaint to the Commission requesting it to investigate such action or omission.
- 3) When a person by whom a complaint might have been made under this section has died or is for any reason unable to act for himself or herself, the complaint may be made by his or her legal representative or a member of his or her family or such other person as the Commission considers suitable to represent him or her.
- 4) The Commission shall not investigate a complaint –
  - (a) unless the complaint is made within three years from the date on which the action or omission occurred;
  - (b) Provided that such investigation shall not relate to an action or omission that occurred earlier than the 13th February 2009; or
  - (c) where the action or omission complained of is the subject-matter of civil proceedings before any court of competent jurisdiction; or
  - (d) where the action complained of relates to the exercise of the prerogative of mercy; or
  - (e) where the action or omission complained of involves relations or dealings between the Government and a foreign Government, unless there has been an allegation of a human rights violation by a citizen or resident of Zimbabwe.

#### **10. Manner of making complaints**

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

- 2) The Commission may require a complaint to be supported by such evidence and documentation as it may prescribe or in any particular case.
- 3) The Commission shall not refuse to investigate a complaint solely on the grounds that the complaint is not in proper form or not in compliance with the prescribed requirements or that it is not accompanied by the required documentation.

#### **11. Refusal to investigate**

- 1) The Commission shall refuse to investigate any complaint if it is satisfied that it is not authorised in terms of the Constitution and this Act to carry out an investigation.
- 2) The Commission shall discontinue any investigation if it is satisfied by the evidence received that it is not authorised in terms of the Constitution and this Act to continue the investigation.
- 3) If the Commission refuses to investigate a complaint or discontinues an investigation it shall, in writing –
  - (a) inform the complainant and any party complained against of its decision, stating its reasons for the decision; and
  - (b) if appropriate, advise the complainant of any other remedy that appears to it to be available to him or her.

#### **12. Manner of conducting investigations**

- 1) Subject to subsection (6) (concerning non-disclosure of certain evidence) the Commission may in its discretion conduct an investigation in the form of a public or closed hearing, for which purpose the Commission shall have the following powers –
  - (a) to issue summons to any authority or person or the principal officer thereof to attend before the Commission and to produce any document or record relevant to any investigation by the Commission; and
  - (b) to put any questions to any authority or person or the principal officer which the Commission considers will assist its investigation of the complaint in question; and
  - (c) to require any person questioned by it to answer such questions and to disclose any information within such person's knowledge which the Commission considers relevant to any investigation by it; and
  - (d) to request the assistance of the police during an investigation.
- (2) In conducting a hearing the Commission shall not be bound by the strict rules of evidence, and it may ascertain any relevant fact by any means which it thinks fit and which is not unfair or unjust to any party.
- 3) The Commission shall afford the authority or person or the principal officer thereof, who is alleged to be responsible for the human rights violation, an adequate opportunity to respond to such allegations.
- 4) Any person appearing before the Commission may be represented by a legal practitioner.

- 5) Information obtained by the Commission or any member of its staff at a closed hearing shall not be disclosed to any person except –
  - (a) without disclosing the identity of any person who gave the information in confidence, for the purposes of the investigation and for any report to be made thereon; or
  - (b) for the purposes of any proceedings for perjury alleged to have been committed in the course of an investigation.
- 6) The Minister may, at any stage during the investigation of a complaint by the Commission, produce to the Commission a certificate in writing signed by him or her to the effect that the disclosure of any evidence or documentation or class of evidence or documentation specified in the certificate is, in his or her opinion, contrary to the public interest on the grounds that it may prejudice the defence, external relations, internal security or economic interests of the State, whereupon the Commission shall make arrangements for evidence relating to that matter to be heard in camera at a closed hearing and shall take such other action as may be necessary or expedient to prevent the disclosure of that matter.
- 7) Upon receipt of a certificate in terms of subsection (6) –
  - (a) the Commission or any member of the staff of the Commission shall not communicate any such evidence or documentation to any other person for any purpose, unless the Minister allows the Commission to do so, subject to such conditions as he or she may fix; and
  - (b) an aggrieved person may, in accordance with the Administrative Justice Act [Chapter 10:28] (No 24 of 2004), appeal against such certificate, and the court hearing the appeal shall treat any evidence or documentation subject to the certificate in the manner specified in section 8 (“ Discretion to refuse or to restrict supply of reasons”) of the Administrative Justice Act [Chapter 10:28] (No 24 of 2004).
- 8) Any person who –
  - (a) has been summoned by the Commission to give evidence or to produce any documentation for the purposes of an investigation and who fails to attend or to remain in attendance until excused by the Commission from further attendance, or refuses without sufficient cause, the onus of proof whereof lies upon him or her , to be sworn as a witness or to answer fully and satisfactorily a question lawfully put to him or her, or to produce the evidence or documentation requested; or
  - (b) gives false evidence to the Commissioners, knowing such evidence to be false or not knowing or believing it to be true;
  - (c) shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.
- 9) For the avoidance of doubt it is declared that the law relating to the competence or compatibility of any person on the grounds of privilege to give evidence, answer any questions or produce any book or document before the Commission, shall apply.

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

### **13. Conflict of interest**

- 1) No Commissioner shall participate in a hearing of a human rights violation or have a vote on any question before the Commission, whether or not involving any human rights violation, in which the Commissioner is aware that he or she has direct or indirect interest that may conflict with his or her functions as a Commissioner.
- 2) A Commissioner who contravenes subsection (2) shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

### **14. Proceedings after investigation**

- 1) If, after conducting an investigation, the Commission is of the opinion that the action or omission which was the subject-matter of the investigation constitutes a human rights violation and that –
  - (a) the action or omission relates to any decision or practice on the part of any person or authority which needs to be abolished, cancelled, reversed, varied or altered; or
  - (b) the issue giving rise to the complaint should be given further consideration by the person or authority against whom or which the complaint was made; or
  - (c) the action or omission should be rectified; or
  - (d) any law on which the act or omission was based should be reconsidered; or
  - (e) reasons should have been given for any decision complained against; or
  - (f) any other steps should be taken in relation to the action or omission complained against; the Commission shall report its opinion, together with its reasons, to the authority or person against whom the complaint was made and may make such recommendations as it thinks fit and shall also send a copy of its report and recommendations to the Minister.
- 2) In particular, the Commission may, where it considers it necessary, recommend –
  - (a) the release of a person from prison; or
  - (b) the payment of compensation to a victim of a human rights violation, or to such victim's family; or
  - (c) that the complainant seek redress in a court of law.

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

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

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

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

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

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

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

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

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

2) In any case so stated the Commission shall state – (a) the facts which it has established; and

(a) the view of the law which it proposes to adopt in relation to the facts.

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

## **PART IV: FINANCIAL PROVISIONS**

### **17. Funds of Commission**

1) The funds of the Commission shall consist of –

- (a) moneys appropriated by Act of Parliament for the salaries and allowances payable to and in respect of members of the Commission and the recurrent administrative expenses of the Commission; and
  - (b) any other moneys that may be payable to the Commission from moneys appropriated for the purpose by Act of Parliament; and
  - (c) any donations, grants, bequests or loans made by any person or organisation or any government of any country to the Commission with the approval of the Minister; and
  - (d) any other moneys that may vest in or accrue to the Commission, whether in terms of this Act or otherwise.
- 2) The Commission shall apply its funds to the fulfilment of its functions.
  - 3) Moneys not immediately required by the Commission may be invested in such a manner as the Commission, with the approval of the Minister and the Minister responsible for finance, considers appropriate.

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

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

## **19. Audit of Accounts**

- 1) The accounts of the Commission shall be audited by the Comptroller and Auditor- General, who for that purpose shall have the functions conferred on him or her by sections 7 and 8 of the Audit Office Act [Chapter 22:18].
- 2) Any person under the authority or supervision of the Commission who refuses to provide the Comptroller and Auditor-General with an explanation or information required by him or her for the purposes of an audit or knowingly provides the Comptroller and Auditor- General with a false explanation or information, or an explanation or information that the person has no grounds for believing to be true, shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

- 3) Notwithstanding anything contained in subsection (1), the Comptroller and Auditor- General may appoint a suitably qualified person to audit the accounts of the Commission and if he or she does so –
  - (a) subsections (1) and (2) shall apply in respect of the person so appointed as if he or she were the Comptroller and Auditor-General; and
  - (b) any expenses incurred by the person so appointed in carrying out his or her audit shall be met from the funds of the Commission.

## **PART V: MISCELLANEOUS PROVISIONS**

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

- 1) A Commissioner may be removed from office for inability to discharge the functions of his or her office, whether arising from infirmity of body or mind or any other cause, or for misbehaviour and shall not be so removed except in accordance with this Act.
- 2) A Commissioner shall be removed from office by the President if the question of his or her removal from office has been referred to a tribunal appointed under subsection (4) and that tribunal has advised the President that he or she ought to be removed from office for inability to discharge the functions of his or her office or for misbehaviour.
- 3) If the question of removing a Commissioner has been referred to a tribunal appointed under subsection (4), the President may suspend that person from performing the functions of his or her office and any such suspension –
  - (a) may at any time be revoked by the President; and
  - (b) shall cease to have effect if the tribunal advises the President that the person should not be removed.
- 4) The tribunal referred to in this section shall consist of a chairperson and two other members appointed by the President, and –
  - (a) the chairperson shall be a person who is or has been a judge of the Supreme Court or the High Court;
  - (b) at least one of the other members shall be a person who is and has been for not less than seven years, whether continuously or not, qualified to practise as a legal practitioner in Zimbabwe.
- 5) In computing, for the purposes of subsection (4)(b), the period during which any person has been qualified to practise as a legal practitioner, any period during which he or she was qualified to practise as an advocate or attorney in Zimbabwe shall be included.

### **21. Immunity**

No legal proceedings shall lie against the Commission or any Commissioner or the Executive Secretary or any person acting under the

direction of the Commission in respect of anything which is done in good faith and without gross negligence in pursuance of this Act.

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

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

## **23. Regulations**

- 1) The Commission may make regulations –
  - (a) prescribing anything which by this Act and its Constitutional mandate is required or permitted to be prescribed or which, in its opinion, is necessary or convenient to be prescribed for the carrying out or giving effect to this Act; and
  - (b) providing for the conditions of service of the Executive Secretary and the staff of the Commission.
- 2) The regulations of the Commission shall not have effect until they have been approved by the Minister and published in the *Gazette*.

## **FIRST SCHEDULE (Section 3(2))**

### **PROVISIONS RELATING TO COMMISSIONERS AND WORKING GROUPS**

#### **Paragraph**

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

#### **1. Interpretation in First Schedule**

- 1) In this Schedule –

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

## 2. Disqualifications for appointment to Commission

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

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

2) For the purposes of subparagraph (1)(b) –

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

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

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

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

## 4. Vacation of office by Commissioners

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

- (a) the death of the Commissioner; or
- (b) the resignation from office in writing under the Commissioner’s hand addressed to the President; or

- (c) the Commissioner is convicted of an offence and sentenced to a term of imprisonment without the option of a fine; or
  - (d) the Commissioner is absent without good cause from three consecutive meetings of the Commission of which he or she has received due notice; or
  - (e) the Commissioner is declared insolvent by a court of competent jurisdiction; or
  - (f) the Commissioner takes up, whilst in office, an appointment to a position which will render him or her incapable of qualifying for appointment as Commissioner; or
  - (g) the Commissioner is removed from office by a tribunal pursuant to section 22.
- 2) For the purposes of subparagraph (1) a Commissioner shall be deemed to have resigned his or her office and his or her office shall become vacant –
- (a) if he or she becomes disqualified for appointment to the Commission in terms of paragraph 2(1)(a),(b), (c), (d) or (e); or
  - (b) on the date he or she begins to serve a sentence of imprisonment, whether or not any portion was suspended, imposed without the option of a fine –
    - (i) in Zimbabwe, in respect of an offence; or
    - (ii) outside Zimbabwe, in respect of conduct which, if committed in Zimbabwe, would have constituted an offence.
- 3) The President shall notify the termination of the appointment of any Commissioner under this Act in the *Gazette*.

## **5. Filling of vacancies**

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

## **6. Procedure at meetings of Commission**

- 6(1) Subject to subparagraph (2), the Commission shall meet –
- (a) at such dates, times and places as may be fixed by the Chairperson:  
Provided that the Commission shall meet at least once in every three months; and
  - (b) written notice shall be sent to each Commissioner not later than seven days before the meeting and shall specify the business for which the meeting has been convened.
- 2) The Chairperson –
- (a) may convene a special meeting of the Commission at any time; and
  - (b) shall convene a special meeting of the Commission on the written request of not fewer than two Commissioners, which meeting shall be convened for a

date not sooner than seven days and not later than thirty days after the Chairperson's receipt of the request.

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

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

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

(a) such business as may be determined by the Chairperson, where he or she convened the meeting in terms of subparagraph (2)(a); or

(b) the business specified in the request for the meeting, where the Chairperson convened the meeting in terms of paragraph (2)(b).

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

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

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

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

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

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

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

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

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

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

## **7. Working Groups of Commission**

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

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

2) On the establishment of a Working Group, the Commission –

(a) shall appoint at least one member of the Commission as a member of the Working Group, and that member or one of those members, as the case may be, shall be chairperson of the Working Group; and

(b) may appoint as members of the Working Group persons who are not members of the Commission and may fix terms and conditions of their appointment.

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

(a) Children's Rights;

(b) Gender Equality and Women's Rights; (c) Civil and Political Rights;

(d) Economic Social and Cultural Rights; and

(e) any other thematic area which the Commission may consider necessary.

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

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

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

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

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

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

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

## **8. Minutes of proceedings**

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

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

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

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

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

(a) the Commission or Working Group consisted of less than the number of persons for which provision is made in paragraphs 6 and 7; or

(b) a disqualified person acted as a Commissioner or member of a Working Group at the time the decision was taken or the act was done or authorised;

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

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

## **SECOND SCHEDULE (Section 3(3))**

### **ANCILLARY POWERS OF COMMISSION**

1. To acquire premises necessary or convenient for the exercise of its functions and for that purpose to buy, take on lease or in exchange, hire or otherwise acquire immovable property and any interest therein and any rights concessions, grants, powers and privileges in respect thereof.

2. To buy, take in exchange, hire or otherwise acquire movable property necessary or convenient for the exercise of its functions.

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

15. To do anything for the purpose of improving the skill, knowledge or usefulness of members of the Commission, and in that connection to provide or assist other persons in providing facilities for training, education and research, including the awarding of scholarships for such training.

16. To provide such services as the Commission considers appropriate and to charge for such services such fees as the Commission, may from time to time determine.

17. To engage in any activity, either alone or in conjunction with other organisations or international agencies, to promote better understanding of human rights violation issues.

18. To provide advice or assistance, including training facilities, to the other human rights organisations from other countries.

19. To do anything which by this Act or any other enactment is required or permitted to be done by the Commission.

20. Generally to do all such things that are conducive to the performance of the functions of the Commission in terms of this Act or any other enactment.

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

#### **OATH OF SECRECY**

Oath of Secrecy of Executive Secretary

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

So help me God.

#### **B.2.2 Zimbabwe Human Rights Commission (General) Regulations, 2016 Statutory Instrument 77 of 2016 (CAP.10:30)**

#### **ARRANGEMENT OF SECTIONS**

##### **PART 1: PRELIMINARY**

###### **Section**

- 1) Title.
- 2) Interpretation.

## **PART II: ADMINISTRATION**

- 3) Regions.
- 4) Regional offices of Commission.

## **PART III: LODGING AND INVESTIGATION OF COMPLAINTS**

- 5) Persons who may lodge complaint.
- 6) Form of complaint
- 7) Lodging of complaint
- 8) Acknowledgement of receipt of complaint.
- 9) Confidentiality
- 10) Assessment of complaint.
- 11) Appeal against rejection of complaint.
- 12) Investigation on complaint.
- 13) Procedure at close investigation by appropriate officer.

## **PART IV: RESOLUTION OF COMPLAINTS THROUGH NEGOTIATION, CONCILIATION OR MEDIATION**

- 14) Initiation of process of negotiation, conciliation and mediation.
- 15) Recording of argument of negotiation, conciliation and mediation.
- 16) Procedure on failure of negotiation, conciliation or mediation.

## **PART V: HEARINGS**

- 17) Informal hearing
- 18) Convening of formal hearing.
- 19) Persons presiding over formal hearing.
- 20) Procedure at formal hearing.
- 21) Announcement of findings following formal hearing.
- 22) Notification to parties and other persons of findings of formal hearing.
- 23) Submission of record of formal hearing to Commission.
- 24) Report following formal hearing.

## **PART VI: CONCLUSION OF COMPLAINTS**

- 25) When complaint is concluded.
- 26) Reports by Commission on agreements following negotiation, conciliation or mediation.

## **PART VII: GENERAL**

- 27) Violation of human rights or freedoms
- 28) Investigation may be instituted by Commission.
- 29) Monitoring of observance of human rights or freedoms.
- 30) Service of documents.
- 31) Duties to be carried out promptly.
- 32) Costs.
- 33) Publicity.

### **SCHEDULE: Form of summons**

IT is hereby notified that the Minister of Justice, Legal and Parliamentary Affairs has, in terms of section 23 of the Zimbabwe Human Rights Commission Act [Chapter 10:30], approved the following regulations made by the Zimbabwe Human Rights Commission-

## **PART 1: PRELIMINARY**

### **Title**

1. These regulations may be cited as the Zimbabwe Human Rights Commission (General) Regulations, 2016.

### **Interpretation**

2(1) In these regulations-

“appropriate officer”, in relation to a particular function, means the member of the Commission’s staff assigned by the Commission to perform that function;

“assessment”, means the process by in which the Commission screens a complaint in order to decide whether it has jurisdictions to deal with it, and to make initial finding on its merits;

“business day”, means any day other than Saturday, a Sunday or a public holiday;

“complaint”, means an oral, written, telephonic or electronic communication to the Commission alleging an act or omission which-

(a) violates or threatens to violate human rights or freedom; or

(b) amounts of maladministration or abuse of power;

“complainant” means a person who lodges a complaint;

“finding” means a conclusion reached by the Commission after an assessment or investigation regarding any-

(a) violation of human rights or freedom; or

- (b) maladministration or abuse of power;
- “formal hearing” means a formal hearing conducted in terms of section 12 of the Act;
- “informal hearing” means a hearing, other than a formal hearing, conducted in terms of section 18;
- “investigation” means an investigation referred in section 9 of the Act;
- “organ of government” means-
- (a) a Ministry or department of the State; or
  - (b) a provincial or metropolitan council or local authority; or
  - (c) a statutory body; or
  - (d) a body corporate whose operations or activities are substantially controlled by the State or by a person on behalf of the State, whether through ownership of majority of shares in the body corporate or otherwise;
- “organisation” includes any association of persons, whether corporate or unincorporated;
- “region” means a region described in section 3
- “respondent” means any person who is responsible, or is alleged to be or suspected of being responsible, for-
- (a) a violation of human rights or freedom; or
  - (b) maladministration or abuse of power.

## **PART II: ADMINISTRATION**

### **Regions**

3. For the purpose of receiving and dealing with complaints, the Commission shall divide Zimbabwe into two regions namely-

- (a) the Northern Region, comprising the provinces of Harare, Manicaland, Mashonaland Central, Mashonaland East and Mashonaland West and
- (b) the Southern region comprising the regions of Bulawayo, Masvingo, Matabeleland North, Matabeleland South and Midlands.

Provided that the Commission shall progressively set up offices in every district for ease of access by the public.

### **Regional offices of Commission**

4. The Commission shall establish one or more offices in each region for the purpose of receiving and dealing with complaints arising from that region and shall make all necessary arrangements to make sure that the public is kept aware of their locations and is able –

- (a) to attend them during ordinary business hours on all business days; and

- (b) to contact them at all reasonable times by post, telephone or electronic means.

## **PART III: LODGING AND INVESTIGATION OF COMPLAINTS**

### **Persons who may lodge a complaint**

- 5. A complaint may be lodged with the Commission by-
  - (a) any person affected by a violation of human rights or freedom or by maladministration or abuse of power; or
  - (b) when the person referred to in paragraph (a) is for any reason unable or unwilling to lodge a complaint, by
    - (i) any person acting on that person's behalf ; or
    - (ii) any person acting in the public interest; or
    - (iii) any association in the interest of its members.

### **Form of complaint**

- 6(1) A complaint shall be made in writing, in a prescribed manner;
- (2) If for any reason the complainant is unable or unwilling to make a written complaint or to complete the form, the appropriate officer to whom the complaint is made shall complete the form on the basis of whatever information the complainant has given him or her, and the complaint shall be processed as if the complainant had completed the form.
- (3) A complaint shall not be rejected solely on the ground that it has not been made in the prescribed manner.
- (4) In filing the complaint, the complainant shall provide such of the following information as is applicable and as he or she can be reasonably expected to provide-
  - (a) whether the complainant is personally affected by the violation, maladministration or abuse complained of, or is acting on another person's behalf or in the public interest and
  - (b) the following personal information concerning the complainant and, if he or she is acting on another person's behalf, that of the person he or she is acting on behalf of-
    - (i) his or her full names and national registration number; and
    - (ii) his or her physical and postal address and telephone or cellphone number; and
    - (iii) where the person is an organisation, its nature and the business or activities it carries on;

Provided that, if the complainant fears any form of reprisal for making the complaint, he or she may omit any or all of such information, and the complaint shall be processed notwithstanding the omission; and

- (c) if the complainant is acting on another person's behalf, the reason why that other person is not lodging the complaint; and
  - (d) the following information regarding the violation, maladministration or abuse complained of;
    - (i) the nature of the violation, maladministration or abuse; and
    - (ii) the date on which and place at which the violation, maladministration or abuse occurred or arose; and
    - (iii) particulars of the person responsible for the violation, maladministration or abuse; and
  - (e) particulars of any person who may provide information relevant to the complaint, and
  - (f) information regarding any steps the complainant has taken to try to resolve the issues arising from the violation, maladministration or abuse complained of; and
  - (g) the remedy or redress, if any, which the complaint seeks through lodging the complaint.
- (5) An appropriate officer may require a complainant to furnish such additional information and documents as may reasonably be required to make an assessment or to resolve the complaint.
- (6) An appropriate officer with whom a complainant has been lodged shall provide the complainant with all reasonable assistance in completing the complaint form and in providing any additional information and documents that may be required.
- (7) When an appropriate officer completes the complaint form on behalf of complainant or assists a complainant in completing it, he or she shall keep a full written record of what he or she has done.

### **Lodging of complaint**

7(1) A complaint shall be lodged at a regional office of the Commission in the region in which the violation, maladministration or abuse of office complained of occurred.

Provided that, if a complaint is lodged at a different regional office, the appropriate officer who receives it shall take all reasonable steps to transfer it to the correct office, and the complaint shall be dealt with at that office as if had been lodged there.

(2) A complaint shall be regarded as lodged at an office for the purpose of subsection (1) if –

- (a) it is made orally at the office or by telephone to the office; or
- (b) it is reduced to writing and handed in to the office; or
- (c) it is sent to the office by post, telefacsimile or any electronic means; or
- (d) the complainant completes a complaint form online via the Commission's website and transmits it electronically to the Commission.

### **Acknowledgement of receipt of complaint**

8. Within seven days after a complaint has been lodged in terms of section 7, an appropriate officer shall send the complainant a written acknowledgement of the complaint specifying the reference number assigned to the complaint.

### **Confidentiality**

9(1) If a complaint, when lodging a complaint or at any stage thereafter, request in writing his or personal particulars be kept confidential, the Commission and all members of the Commission staff shall, subject to this section, take all reasonable steps to comply with that request.

(2) Where a complainant is a child or person with mental disability, the Commission and all members of the Commission staff shall, subject to this section take all reasonable steps to keep the complainant's personal particulars confidential.

(3) Subject to subsection (1), where the Commission considers that the disclosure of the complainant's personal particulars is necessary in order to resolve the complaint, an appropriate officer shall, in writing-

- (a) inform the complainant which particulars the Commission considers must be disclosed and the reason for such disclosure; and
- (b) request the complainant's written consent to disclose the said particulars.

(4) Subject to subsection (2), where the Commission considers that disclosure of personal particulars of a complainant who is a child necessary in order to resolve the complaint, an appropriate officer shall in writing-

- (a) inform the complainant's guardian which particulars the Commission consider must be disclosed and the reason for such disclosure; and
- (b) request the complainant's guardian to written consent for the disclosure of the said particulars;

(5) If a person refuses to consent to the disclosure of particulars, having been requested to do so in terms of subsection (3) or (4), the Commission may decline to deal with the complaint.

(6) If the Commission declines to deal with a complaint in terms of subsection (5), it shall inform the complainant in writing with seven days of its decision and state the reason for such decision.

### **Assessment of complaint**

10(1) After a complaint has been lodged in terms of section 7, the officer who received it shall submit it to an appropriate officer for assessment.

(2) If the appropriate officer considers that additional information would facilitate the assessment of the complaint, he or she shall forthwith attempt to obtain the information from the complainant, and if the complainant fails or refuses to provide the information the appropriate officer shall endeavor to assess the complaint on the available information but, if that is impossible may reject the complaint.

(3) After assessing a complaint, the appropriate officer –

- (a) shall reject the complaint if the Commission, in terms of section 9 of the Act has no jurisdiction to investigate it.
- (b) may reject the complaint on any of the following grounds-
  - (i) that the complaint does not *prima facie* show that a violation of a human right or freedom or maladministration or abuse of power has occurred or is likely to occur;
  - (ii) that the subject matter of the complaint has been settled between the complainant and the respondent, whether by agreement, arbitration or a judgment of a competent court;
  - (iii) that the subject matter of the complaint would be more appropriately be dealt with by –
    - (A) another Commission or body; or
    - (B) a statutory or contractual dispute-resolution mechanism readily available to the complainant
- (c) may, without rejecting the complaint, refer it to another Commission or body which, in the appropriate officer's opinion, can more appropriately deal with the subject matter of the complaint;

And in all other cases the appropriate officer, subject to this section, shall accept the complaint on behalf of the Commission:

Provided that, if the appropriate officer is in doubt as to whether or not to accept the complaint, he or she shall refer it to the Commission for decision.

(4) If, after assessing a complaint, an appropriate officer-

- (a) rejects the complaint, the appropriate shall notify the complainant in writing of the fact, giving reasons for the rejection and advising the complainant of his or her right to appeal to the complaint but considers that –
  - (i) some other body can deal with the subject matter of the complaint; or
  - (ii) some other form of redress, such as instituting legal proceedings or utilizing some other dispute-resolution mechanism, is open to the complainant;
- (b) the appropriate officer shall, in addition to notifying and advising the complainant as provided in paragraph (a), inform the complainant of the existence and availability of that other body or form of redress.
- (c) refers the complaint to another body which he or she considers can more appropriately deal with the subject matter of the complaint, the appropriate officer shall inform the complainant of what he or she has done.

(5) If, on assessing a complaint, the appropriate officer is unable to decide whether to accept it or reject it, he or she shall refer it to the Commission for a decision.

(6) Upon a complaint being referred to it according to subsection (5), the Commission shall consider in conjunction with any comments from the appropriate officer and shall accept or reject the complaint in accordance with this section:

(7) In deciding whether to accept or reject the complaint in terms of subsection (6), the Commission may direct the appropriate officer to request the complainant to supply the Commission with additional information it may require before it reaches a decision on the complaint.

(8) If the Commission decides to reject a complaint, the appropriate officer shall notify the complainant of his or her complaint in writing and state the reasons for such rejection.

### **Appeal against rejection of complaint**

11(1) Any person who is aggrieved by the rejection of a complaint by an appropriate officer, may appeal against the rejection in Commission.

(2) An appeal in terms of subsection (1) shall be made in writing within three months after the complainant was notified of the rejection of the complaint and shall specify the grounds on which he or she considers the complaint should have been accepted.

(3) In an appeal in terms of subsection (1), the Commission may confirm or set aside the rejection appealed against or make such order or give such direction as it considers appropriate to ensure the proper resolution of the matter and shall notify –

- (a) the appropriate officer against whose decision the appeal was made of the outcome of the appeal and the directions given, if any; and
- (b) the appropriate officer shall, within seven days of the decision on the appeal, notify the complainant of the outcome of the appeal in writing.

Provided that, before reaching a decision in appeal, the Commission may do all or any of the following-

- (a) invite representations from the aggrieved party; or
- (b) refer the matter back to the appropriate officer for further consideration; or
- (c) itself make such further consideration in the matter as it deems fit.

### **Investigation of complaint**

12(1) Upon acceptance of complaint, the Commission shall appoint an appropriate officer to investigate it.

(2) Upon being appointed to investigate a complaint, the appropriate officer shall –

- (a) inform the complainant of his or her appointment and, where necessary, request the complainant to furnish more information or documents to facilitate the investigation; and
- (b) notify the respondent in writing that the Commission is investigating a complaint against him or her, informing the respondent of –
  - (i) The complainant's identity, unless it is to be kept confidential in terms of section 9; and
  - (ii) the nature and circumstances of the violation, maladministration or abuse of office complained of, in sufficient detail to enable the respondent to respond adequately to the allegations made against him or her in the complaint;

and shall request the respondent to respond, in writing, to the allegations within a reasonable period specified by the appropriate officer.

(3) After complying with subsection (2), the appropriate officer shall conduct such investigation into the complaint as may be necessary, in the light of any further information and documents provided by the complainant and any response received from a respondent.

(4) For the purpose of an investigation referred to in subsection (3), the appropriate officer may, with the consent of the affected person or on his or her own initiative-

- (a) interview any person; and
- (b) visit and inspect any place; and
- (c) receive or make a copy of any document; and
- (d) receive any article;

and shall duly record the information received and or observations made and take measures to ensure that the safe custody of any document or article received.

(5) Any person who appears before an appropriate officer in an investigation referred to in subsection (3) shall be entitled to be represented by a legal practitioner at his or her own expense, and the appropriate officer shall ensure that the person is aware of that right.

(6) An appropriate officer shall take reasonable steps to keep the complainant informed about the progress of an investigation referred to in subsection (3).

(7) An appropriate officer who is conducting an investigation referred to in subsection (3) shall keep a proper record of whatever he or she does in the course of the investigation.

### **Procedure at close investigation by appropriate officer**

13(1) After conducting an investigation in terms of section 12, the appropriate officer shall refer the record of the complaint to the Commission together with –

- (a) the record of the investigation; and
- (b) any additional documents collected in the course of the investigation; and
- (c) his or her recommendations regarding the complaint;

for a decision how to proceed:

Provided that, if so authorized by the Commission, the appropriate officer may attempt to resolve the complaint by negotiation, conciliation or mediation.

(2) On receipt of the record in terms of subsection (1), the Commission may

- (a) reject the complaint on any of the grounds set out in section 10(3) (a) or (b), if the committee considers that the investigation has shown that the complaint should be rejected; or
- (b) refer the complaint to another Commission or body which, in the Commission' opinion, can be more appropriately deal with the subject-matter of the complaint; or
- (c) attempt to resolve the complaint by negotiation, conciliation, mediation or the holding of a formal hearing.

(3) If the Commission rejects a complaint or refers it to another Commission or body, the Commission shall notify the complainant in writing of the fact, giving reasons for the rejection and advising the complainant of his or her right to appeal against the rejection in terms of section 11.

(4) In resolving a complaint, an appropriate officer or the Commission shall adopt the method, which, in the opinion of the officer or the Commission, as the case may be, is best suited to achieve a result that is fair and satisfactory, taking due account of –

- (a) the degree of co-operation shown by the parties during the investigation; and
- (b) the likelihood of the parties participating meaningfully in the resolution process; and
- (c) the public interest; and
- (d) any other relevant consideration.

(5) The Commission shall keep records of any action it takes in terms of this section.

## **PART IV: RESOLUTION OF COMPLAINTS THROUGH NEGOTIATION, CONCILIATION OR MEDIATION**

### **Initial process of negotiation, conciliation or mediation**

14(1) Where a decision has been made to resolve a complaint by negotiation, conciliation or mediation –

- (a) the appropriate office, is so authorized by the Commission, shall forthwith assume the role of negotiator, conciliator or mediator, as the case may be, in attempt to resolve the complaint by that process; or
- (b) The Commission may appoint a Commissioner to act as the negotiator, conciliator or mediator.

(2) Any process of negotiation, conciliation or mediation carried out in terms of these regulations shall be conducted in accordance with generally accepted practices for the process concerned and, in particular, the negotiator, conciliator or mediator shall observe the rules of the natural justice.

### **Recording of agreement reached through negotiation, conciliation or mediation**

15(1) If the negotiator, conciliator, or mediator succeeds in getting the parties to agree to a resolution of a complaint, he or she shall ensure that their agreement is recorded and is signed by both parties.

(2) After an agreement has been signed in terms of subsection (1) the negotiator, conciliator or mediator shall, together with any comments he or she may wish to make on it, refer the agreement to the Commission for adoption.

### **Procedure on failure of negotiation, conciliation or mediation**

16(1) If the negotiator, conciliator or mediator fails for any reason to resolve a complaint, or believes that he or she will be unable to resolve it for any reason he or she shall-

- (a) report the fact to the Commission, providing the Commission with a written explanation for the reason of failure or anticipated failure; and
- (b) notify the complainant or respondent of what he or she has done and the reasons for doing so, and inform them that they may submit written representations in the matter to the Commission within a period specified by him or her.

(2) On receipt of a report in terms of subsection (1), and after considering any representation signed by the complainant and respondent in terms of that subsection the Commission may –

- (a) give directions to the negotiator, conciliator or mediator as to alternative methods of resolving the complaint, and the negotiator, conciliator or mediator shall act accordingly; or
- (b) if the complainant obstructed the process of negotiation, conciliation or mediation or was otherwise responsible for the failure or anticipated the failure of the process, discontinue the process altogether; or
- (c) direct that the issues arising from the complaint should be subject of a formal hearing in terms of section (12) of the Act; or
- (d) direct that the Commission should institute proceedings in a competent court for the resolution of all or any of the issues arising from the complaint.

and shall cause the complainant and the respondent to be notified of its decision in writing within 7 days of the date of such decision.

## **PART V: HEARINGS**

### **Informal hearings**

17(1) At any stage during an investigation, an appropriate officer or a Commissioner appointed by the Commission may hold an informal hearing –

- (a) to obtain any information for the purpose of investigation; or
- (b) to try to resolve the complaint that is being investigated.

(2) An informal hearing shall be convened by the appropriate officer or the appointed Commissioner informing the parties, and any other person who is being interviewed or questioned at the hearing, of the date on which and the time and place at which the hearing is to be held.

(3) An informal hearing shall be conducted by the appropriate officer or the appointed Commissioner who convened it or by a Commissioner or an officer appointed by the Commission.

(4) Members of the public shall not be permitted to attend an informal hearing unless the person conducting the hearing, with the consent of the complainant and the respondent, permits them to attend.

(5) The procedure at an informal hearing shall be as informal as possible, but –

- (a) the rules of natural justice shall be observed; and
- (b) the complainant and the respondent and anyone else appearing before the hearing must be permitted, at their own expense, to be represented by a legal practitioner or by any other suitable person of their own choice.

(6) Persons who are interviewed or questioned at an informal hearing shall not be required to give their evidence or answer on oath.

(7) The person conducting an informal hearing shall keep, or cause to be kept, a proper record of the proceedings.

### **Convening of formal hearing**

18(1) Where the Commission has resolved to hold a formal hearing into a complaint or any issues arising from a complaint, it shall cause the complainant and the respondent to be given at least 7 days' written notice of the date on which, the time and place at which the hearing will be held.

(2) In the notice referred to in subsection (1), the Commission shall invite the complainant and the respondent to bring to the hearing any person whom they consider can give evidence regarding the complaint that is being investigated.

(3) For the purpose of securing the attendance of any person at a formal hearing, the Commission may issue a summons in the form set out in the Schedule, and may require a police officer or an appropriate officer to serve it on that person.

(4) The provisions of the Criminal Procedure and Evidence Act [Chapter 9:07] relating to the service of subpoenas shall apply, with any necessary changes to the service of a summons in terms of subsection (3).

### **Persons presiding over formal hearing**

19(1) The Commission, or a panel of three or more Commissioners selected by the Commission or by the Chairperson of the Commission, shall preside over a formal hearing.

Provided that no person who has been involved in the assessment or processing of a complaint shall preside over a formal hearing into that complaint.

(2) Where a panel of three or more Commissioners is selected to preside over a formal hearing, the Commission or the Chairperson of the Commission, as the case may be, shall assign to one of the selected Commissioners the role of chairing the formal hearing.

### **Procedure at formal hearing**

20(1) In this section –

“Chairperson” means the Commissioner assigned to chair a formal hearing in terms of the section 19(2).

(2) Subject to section 12 of the Act, a formal hearing shall be conducted in accordance with procedures fixed by the Commission or by the Chairperson:

Provided that –

- (i) the proceedings shall be inquisitorial in nature, and the persons presiding over the hearing shall be entitled to question anyone appearing before the hearing
- (ii) the proceedings shall be conducted in English, unless the Chairperson directs otherwise;
- (iii) if the complainant or respondent, or anyone who is giving evidence or information to the hearing, has difficulty in understanding the language in which the proceedings are being conducted, he or she shall be provided with an interpreter.
- (iv) the complainant and the respondent shall be entitled, through the Chairperson or directly if the Chairperson so permits, to put questions to anyone appearing before the hearing.
- (v) the rules of natural justice shall be observed, and in particular the complainant and the respondent shall be given a reasonable opportunity to respond to allegations made against them;
- (vi) the complainant and the respondent and anyone else appearing before the hearing shall be entitled to be represented, at their own expenses, by a legal practitioner or by any other suitable person of their own choice, who shall be given reasonable access to all documents held or received by the Commission in relation to the issues to be decided at the hearing.

(3) Unless the persons presiding over a formal hearing decide otherwise in terms of section 12 of the Act, members of the public shall be permitted to attend the hearing and the proceedings of the hearing may be published without restrictions.

(4) A direction prohibiting or limiting public attendance at a formal hearing or the publication of its proceedings shall not be made unless the person presiding over the hearing consider it necessary or appropriate to do so –

- (a) in light of the factors set out in section 3(2) of the Courts and Adjudicating Authorities (Publicity Restriction) Act [Chapter7:04]; or
- (b) to ensure the successful conduct of the hearing; or
- (c) to facilitate the functioning of the Commission.

(5) At the commencement of the formal hearing, the Chairperson shall explain the purpose of the hearing and the procedure to be followed, and shall outline the complaint and the issues to be decided at the hearing.

(6) The Chairperson may require persons appearing before a formal hearing to give their evidence on oath, and for that purpose may administer the oath to them.

(7) The Chairperson of a formal hearing may adjourn the hearing for the purpose of considering the evidence received at the hearing.

(8) The Chairperson shall keep, or cause to be kept, a proper record of the proceedings at the formal hearing.

(9) Before a formal hearing is closed after all the evidence have been received, the complainant and the respondent shall be given a reasonable opportunity to address the person presiding over the hearing.

### **Announcement of findings following formal hearing**

21. After evidence has been received at a formal hearing and the parties have been given an opportunity to deliver the closing addresses, the persons presiding over the hearing shall consider the evidence and the, either orally or in writing-

- (a) summarise the evidence and information; and
- (b) state the findings on the complaint, giving full reasons for the findings; and
- (c) specify any remedial action proposed;

Provided that the Chairperson shall ensure that where the summary and statement are made orally, they are reduced to writing.

### **Notification to parties and other persons of findings of formal hearing**

22. After the findings of a formal hearing have been stated in terms of section 21, an appropriate officer shall-

- (a) send a copy of the statement to the complainant and respondent and to any other person interested in the matter; and
- (b) invite the complainant and respondent, and every other person who is sent a copy, to submit a written response to the Commission within such reasonable time as the appropriate officer may specify.

### **Submission of record of formal hearing to the Commission**

23(1) Upon the expiry of the time of submitting responses in term of section 22 (b), the Chairperson of the formal hearing shall lay before the Commission the record of the hearing and any responses that may have been received, together with any comments he or she and the other persons presiding over the hearing may wish to make in regard to the responses.

(2) The Commission shall consider the documents laid before it in terms of subsection (1) and –

- (a) issue a report in terms of section 24; or
- (b) if the Commission considers it needs further information before issuing a report, direct –
  - (i) that the formal hearing be convened in order to obtain the information; or
  - (ii) that an appropriate officer should obtain the information.

(3) Where the Commission makes a direction in terms of subsection (2)(b), it shall within 7 days thereof, inform the complainant and the respondent of the direction and of any further steps that are to be taken as a result of it.

### **Report following formal hearing**

24(1) A report issued by the Commission following a formal hearing shall

- (a) summarise the evidence; and
- (b) state the Commission's findings on the complaint; and
- (c) specify any remedial action ordered by the Commission;

Provided that instead of restating the summary and findings of the persons who presided at the hearing, the Commission may refer to them by reference.

(2) Having issued a report in terms of subsection (1), the Commission shall –

- (a) within 7 days thereof, send copy of it to the complainant and the respondent and to any other person who is interested in the report; and
- (b) ensure that it is the field of recording purposes.

## **PART VI: CONCLUSION OF COMPLAINTS**

### **When complaint is concluded**

25. A complainant shall be regarded as concluded for the purposes of these regulations –

- (a) if the complaint is rejected following an assessment or investigation; or
- (b) if, following an investigation, the Commission finds that –
  - (i) there was no substance in the complaint.
  - (ii) the violation, maladministration or abuse of power complained of has been remedied satisfactory; or
- (c) if the complainant withdraws the complaint and the Commission is satisfied that he or she has done so voluntarily and that there is no need for further investigation or action by the Commission; or
- (d) upon the complaint being referred to another Commission or body; or
- (e) if the complaint is resolved through negotiation, conciliation or mediation; or
- (f) when the Commission issues a final order or give a final direction in regard to the complaint; or
- (g) if the Commission institutes proceedings in a court of law of the resolution of the complaint, when the court issues a final order in regard to the complaint.

**Report by Commission on agreements following negotiation, conciliation or mediation**

26(1) When an agreement reached after negotiation, conciliation or mediation has been referred to the Commission in terms of section 15(2), the Commission may issue a report on it outlining its provisions and, if the Commission thinks it appropriate to do so, adding its own comments on it.

(2) The Commission shall ensure that a copy of any report issued in terms of subsection (1) is sent to the complainant, the respondent and every person interested in the report.

**PART VII: GENERAL**

**Violation of human rights or freedom**

27(1) Any reference in these regulations to a violation of human right or freedom or to maladministration or abuse of power shall be construed as including an alleged, suspected or threatened such violation, maladministration or abuse.

(2) A person shall be regarded as affected by –

- (a) a violation of human rights or freedom; or
- (b) maladministration or abuse of power;

If he or she

- (i) has been, is being or is likely to be prejudiced or potentially prejudiced by the violation, maladministration or abuse of power; or
- (ii) has reasonable grounds to believe that he or she has been, is being or is likely to be prejudiced or potentially prejudiced by the violation, maladministration or abuse of power.

(3) Without limiting the ordinary meaning of the expression, a person shall be regarded as interested in a report for the purposes of these regulations if –

- (a) the person's conduct is criticised in the report; or
- (b) the report recommends or directs a change in the procedure or manner in which the person does anything; or
- (c) the report recommends or directs the person to take any measures or do anything.

**Investigation may be instituted by the Commission**

28. The Commission may initiate an investigation into any –

- (a) violation of human right or freedom; or

- (b) maladministration or abuse of power;

even if no complaint has been lodged in respect of the violation, maladministration or abuse and these regulations shall apply, with any necessary changes, in relation to such an investigation.

### **Monitoring of observance of human rights and freedom**

29(1) The Executive Secretary shall monitor –

- (a) observance of human rights and freedom in Zimbabwe; and
- (b) implementation of recommendations made by the Commission in its reports;

and shall report regularly to the Commission on such observance and implementation.

(2) To assist the Executive Secretary in his or her function under subsection (1), the Commission may establish one or more committees consisting of –

- (a) members of the Civil Service and the security services; and
- (b) representatives of the commercial, industrial, agricultural and mining sectors; and
- (c) representatives of employers and employees; and
- (d) representatives of organizations, bodies and persons concerned with the promotion and protection of human rights and freedoms;

and shall fix the terms and conditions of service of the members of such committees.

(3) On the recommendation of the Executive Secretary or a committee established in terms of subsection (2), the Commission may require any person or organization, including an organ of government, to report to the Commission on measures they have taken to give effect to human rights and freedoms or any recommendation of the Commission.

(4) If any organization fails or refuses to comply with a requirement under subsection (3), the Commission shall report the failure or refusal to Parliament.

### **Service of documents**

30(1) Any document that is required to be served under these regulations may be served by an appropriate officer or police officer whom the Commission calls upon to do so.

(2) Where a document referred to in subsection (1) requires any person to do anything, the document shall be served on the person in reasonable time to enable him or her to do the thing.

(3) Section 382 and 383 of the Criminal Procedure and Evidence Act [Chapter 9:07] relating to the service of documents shall apply, with any necessary changes, to the services of the documents referred to in subsection (1).

### **Duties to be carried out promptly**

31. Anything that is required to be done under these regulations shall be done without delay.

### **Costs**

32. The Commission shall not charge a fee for dealing with complaints under these regulations.

### **Publicity**

The Commission shall ensure that –

- (a) the form in which the complaints are to be made is published as widely as possible and in manner that will bring it to the attention of all sections of the public; and
- (b) complaint forms are available for the public to use at all the Commission's offices.

(2) Where the Commission issues or ratifies a report, it shall ensure that the report is published so as to bring it to the attention of as wide a section of the public as possible, in order to acquaint the public with the Commission's work and inform them about the human rights and freedoms to which they are entitled.

## **SCHEDULE (Section 18)**

### **FORM OF SUMMONS**

### **ZIMBABWE HUMAN RIGHTS COMMISSION**

[Telephone and cell numbers] [Postal and physical address]

**SUMMONS**

To: .....

*[Name of person summoned]*

Of:

.....

*[Address of person summoned]*

You are hereby summoned to appear before the hearing of the Zimbabwe Human Rights Commission to be held at.....

*[Place]*

on the.....*[date]* at.....*[time]*.

The hearing has been convened to investigate.....

*[State the subject matter of complaint or other matter that is being investigated]*

You are required to bring with you: .....

*[If the person summoned is required to bring any document or article, describe it]*

Signed at:.....*[place]* on the.....*[date]*

.....

For the Zimbabwe Human Rights Commission

[Reverse of form]

**Return of Service**

To be filled in by the appropriate officer or police officer who served this summons on the person named therein:

On the.....*[date]* and at.....*[place]*

I served this summons on the person named therein, by:

.....

*[State how the summons was served]*

Signed:

.....

*Authorised officer/ Police officer*

.....

Name and designation rank

**B.3 INTERNAL RULES AND REGULATIONS**

A sample copy of a collaboration and partnership memorandum of understanding (MOU) between the ZHRC and a partner.



**MEMORANDUM OF UNDERSTANDING**

Between:  
The Zimbabwe Human Rights Commission Of  
Number 144 Samora Machel Avenue  
Harare  
Zimbabwe  
(Hereinafter “ZHRC” and Represented by Represented by Chairperson of  
the Zimbabwe Human Rights Commission)  
AND

.....  
Harare  
Zimbabwe  
(Hereinafter “.....” and Represented by ....., being duly  
authorised)

**PREAMBLE**

**WHEREAS** the Zimbabwe Human Rights Commission (ZHRC) is desirous of forging alliance with other stakeholders for the purpose of mutually nurturing the protection and enforcement of human rights in Zimbabwe;  
**AND WHEREAS** the Commission is aware of threats posed by both human rights violations and abuses to the stability and security of our communities and the nation at large, such threats further undermining the institutions and values of democracy, ethical values, justice and public trust, and jeopardizing sustainable development, social and economic prosperity, and the rule of law;  
**RECOGNISING** the devastating and negative effects human rights violations pose on the realization of the Zimbabwe Agenda for Sustainable Social Economic Transformation (ZIMASSET) and any other national development agenda;

**BEING AWARE** of the significance of the African Development Agenda 2063, predicated on sustainable development underpinned by human rights observance as prescribed by the African Charter on Human and Peoples' Rights and other African treaties and conventions drawing therefrom;

**RECALLING** the numerous international conventions and mechanisms on human rights, especially the Universal Declaration of Human Rights as well as other relevant international and regional instruments that Zimbabwe is party to;

**PROMOTING** the respect for human rights and the rule of law in Zimbabwe and Africa as a whole;

**COGNISANT** of the fact that protecting and promoting human rights demands intersectional approaches and can be significantly enhanced by multi-organizational co-operation through sharing knowledge and expertise and referral of clients to organizations best suited to deal with the challenges at hand;

**DETERMINED** to create a strong partnership that will generate synergies and enhance the sharing of human rights, democracy, good governance knowledge and expertise between the ZHRC and other stakeholders;

**ACKNOWLEDGING** the importance of human rights education, training, networking and cooperation as well as academic research in the promotion and protection of human rights;

**NOW THEREFORE**, the Parties hereto bind themselves to work in collaboration within the scope of this agreement:

## **ARTICLE 1: INTERPRETATION**

In this Agreement, Clause headings are for convenience only and shall not be used in its interpretation unless the context clearly indicates a contrary intention;

1.1 a word or an expression which denotes –

1.1.1 any gender includes the neutral and other genders;

1.1.2 a natural person includes the plural and vice versa;

1.2 the following words and expressions shall bear the meanings assigned to them below and cognate words and expressions bear corresponding meanings;

1.2.1 "**this Agreement**" – this document together with its annexures, as amended from time to time;

1.2.2 "**confidential information**"- the fact and details of the investigations and negotiations between the Parties concerning the subject matter of this Agreement, as well as the information which any Party discloses, furnishes or makes available to another Party in connection with the subject matter of this Agreement whether prior to, in contemplation of, during or after negotiations and irrespective of whether such information is marked "confidential" or "proprietary" or otherwise. The confidential information

accordingly includes, without limitation, all communications (whether written, oral or in any other form), all reports, statements, schedules and other data concerning any financial, technical, labour, marketing, administrative, accounting and other matters;

- 1.2.3 “**Collaboration**” – working together by referring cases and sharing knowledge and expertise on human rights in order to achieve the goal of promoting, protecting and enforcing human rights;

## **ARTICLE 2: AREAS OF COOPERATION AND MUTUAL OBLIGATION**

2.1 The purpose of this MOU is to establish a mutual relationship between the Parties by ensuring smooth referral of cases from one organization to another in order to enhance the protection and promotion of human rights; and to exploit and develop the synergies and complementarities between the Parties.

2.2 The Parties agree to co-operate on the basis of mutual respect and as set out herein in this Memorandum of Understanding;

2.3 This Memorandum of Understanding creates a framework of co-operation between the Parties and sets out their intended roles and participation;

2.4 Each Party shall implement this Memorandum within the scope of its mandate and in accordance with its own policy framework, legislation, rules and procedures. There is no intention under this Memorandum to modify, or create any obligations contrary to the institutional and policy framework of either Party or the scope of either Party’s respective mandate. In the event of an inconsistency between this Memorandum and the relevant framework, the latter shall prevail.

2.5. The collaboration of the Parties shall aim to achieve the main goal of protecting and enforcing human rights primarily through:

## **ARTICLE 3: DISCLOSURE**

3.1 This MOU is open to the public domain. Any sharing of confidential information between the Parties shall be subject to their respective policies and procedures relating to the disclosure of confidential information.

3.2 Each Party shall take appropriate measures to protect confidential and/or classified information of the other Party.

## **ARTICLE 4: STATUS OF THE MOU**

4.1 Nothing in this MOU shall be construed as creating a joint venture, an agency relationship or a legal partnership between the Parties.

4.2 No provision of this MOU shall be construed so as to in any way interfere with the respective decision-making processes of the Parties with regard to their own respective work and operations.

4.3 Each Party shall bear its own costs incurred in the implementation of this MOU. This MOU does not represent a commitment of funds on the part of either Party.

#### **ARTICLE 5: INSTITUTIONAL FRAMEWORK**

5.1 After the signature of this MOU, each Party shall appoint a representative who shall act as a focal point for the implementation of this MOU.

5.2 Each focal point shall promote the implementation of the cooperation and facilitate exchange of information between the Parties on matters of common interest.

#### **ARTICLE 6: DISPUTE RESOLUTION AND APPLICABLE LAW**

6.1 Any dispute between the parties arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, shall be resolved through mutual negotiation.

6.2 This Agreement shall be governed by, and shall be construed and enforced in accordance with the laws of Zimbabwe.

#### **ARTICLE 7: ENTIRE AGREEMENT**

7.1 This document records the entire Agreement between the parties and any amendment or variation thereof shall not be binding or of any force of effect unless reduced to writing and signed by or on behalf of all parties hereto.

#### **ARTICLE 8: DURATION**

8.1 This MOU shall come into force upon signature by both Parties and shall last for a period of three (3) years. It may be renewed by mutual written agreement between the Parties.

#### **ARTICLE 9: DOMICILIUM CITANDI ET EXECUTANDI**

9.1 The addresses of the Parties to this Agreement for the purpose of correspondence and for the service of any notice of process shall be as set out above, which addresses the Parties choose as their *domicilium citandi et executandi*. Provided that a party may, by written notice to the other, change its address to another.

**ARTICLE 10: TERMINATION**

10.1 This MOU may be terminated by either Party by providing two (2) weeks prior written notice of such intention to the other Party.

Done and signed at Harare on this the ..... day of ..... 2018

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ZIMBABWE HUMAN RIGHTS COMMISSION Represented by  
Commissioner XXX

Done and signed at Harare on this the ..... day of ..... 2018

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Represented by Mr/s. XXXXX

Witnessed at Harare on this the ..... day of ..... 201.....

Witness: .....

Witness: .....