

THE HUMAN RIGHTS COMMISSION ACT, 1996

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ACT No. 39 of 1996

Date of Assent: 20th November, 1996

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

Enactment

ENACTED by the Parliament of Zambia

PART I

PRELIMINARY

Short Title and Commencement Interpretation

1. This Act may be cited as the Human Rights Commission Act, 1996, and shall come into operation on such date as the President may, by statutory instrument, appoint.
2. In this Act unless the context otherwise requires -
 - “appropriate authority” means the authority to whom a recommendation is made by the Commission under section thirteen;
 - “appointed date” means such date as the President may appoint under section one;
 - “Chairperson” means the person appointed as Chairperson under section five;
 - “Commission” means the Human Rights Commission established under the Constitution;
 - “Commissioner” means a person appointed Commissioner under section five;
 - “Deputy Director” means a person appointed as Deputy Director under section eighteen;
 - “Director” means the person appointed as Director under section eighteen;
 - “Secretary” means the Secretary to the Commission referred to in section eighteen;
 - “staff” means the staff of the Commission appointed under section eighteen; and
 - “Vice-Chairperson” means the person appointed as Vice-Chairperson under section five

PART II

THE HUMAN RIGHTS COMMISSION

Extent of Commission’s Autonomy

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

Seal of Commission

4. (1) The seal of the Commission shall be such device as may be determined by the Commission and shall be kept by the Secretary.
- (2) The affixing of the seal shall be authenticated by the Chairperson or the Vice-Chairperson and any other person authorised in that behalf by a resolution of the Commission.
- (3) Any document purporting to be under the seal of the Commission or issued on behalf of the Commission shall be received in evidence and shall be deemed to be so executed or issued, as the case may be, without further proof, unless the contrary is proved.

Composition of Commission

5. (1) The Commission shall consist of the following Commissioners:
 - (a) the Chairperson
 - (b) the Vice-Chairperson; and
 - (c) not more than five other Commissioners
- (2) The Commissioners shall be appointed by the President, subject to ratification by the National Assembly
- (3) The Chairperson and Vice-Chairperson shall be persons who have held, or are qualified to hold, high judicial office.

Oath on Appointment

6. (1) Every Commissioner shall, on appointment affirm or take an oath in Form 1 as set out in Part I of the Schedule, and such oath shall be administered by the President.
- (2) The Secretary and other members of staff shall on appointment, affirm or take an oath in Form 2 as set out in Part II of the Schedule and such oath shall be administered by a Commissioner for Oaths.

Tenure of Office and Vacancy

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

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

- (2) A Commissioner may be removed from office for inability to perform the functions of the Commissioner's office, whether arising from infirmity of body or mind, incompetence or for misbehaviour.
- (3) A Commissioner may resign upon giving one month's notice in writing to the President.
- (4) The office of a Commissioner shall become vacant –
 - (a) if the Commissioner is absent without reasonable excuse from three consecutive meetings of the Commission of which the Commissioner has had notice;
 - (b) if the Commissioner is a declared bankrupt; or
 - (c) upon the Commissioner's death.

Filling of Casual Vacancy

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

Functions of Commission

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

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

Powers of Commission

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

- (a) on its own initiative; or
 - (b) on receipt of a complaint or allegation under this Act by –
 - (i) an aggrieved person acting in such person's own interest;
 - (ii) an association acting in the interest of its members;
 - (iii) a person acting on behalf of an aggrieved person; or
 - (iv) a person acting on behalf of and in the interest of a group or class of persons
- (2) The Commission shall have powers to-
- (a) issue summons or orders requiring the attendance of any authority before the Commission and the production of any document or record relevant to any investigation by the Commission;
 - (b) question any person in respect of any subject matter under investigation before the Commission
 - (c) require any person to disclose any information within such person's knowledge relevant to any investigation by the Commission; and
 - (d) recommend the punishment of any officer found by the Commission to have perpetrated an abuse of human rights.
- (3) A witness summoned under subsection (2), shall be examined under oath and such oath shall be administered by the Chairperson
- (4) Subject to subsection 5, the Commission may where it considers it necessary recommend –
- (a) the release of a person from detention;
 - (b) the payment of compensation to a victim of human rights abuse, or to such victim's family;
 - (c) that an aggrieved person seek redress in a court of law; or
 - (d) such other action as it considers necessary to remedy the infringement of a right
- (5) Notwithstanding subsection 4, the Commission shall not have powers where a matter is pending before a court.

Complaints

11. (1) A complaint or allegation referred to in paragraph (b) of subsection (1) of section ten may be made orally or

in writing and shall be addressed to the Secretary who shall, in the case of an oral complaint or allegation, reduce the same to writing.

- (2) Every complaint or allegation shall-
 - (a) be signed or thumb-printed by the person making it; and
 - (b) bear the complainant's name and address
- (3) A complaint or allegation shall not be received by the Commission unless it is made within a period of two years from the date on which the facts giving rise to any such complaint or allegation become known to the person making the complaint or the allegation.
- (4) The Commission may refuse to conduct, or may decide to discontinue an investigation where it is satisfied that the complaint or allegation is malicious, frivolous, vexatious or the particulars accompanying it are insufficient to allow a proper investigation to be conducted, and shall indicate accordingly in the report.
- (5) The Commission shall, in any case in which it decides not to conduct an investigation, or decides to discontinue an investigation inform the complainant in writing accordingly, and give reasons therefore.
- (6) The Commission may in any inquiry make such orders and give such directions as it may consider necessary for the purpose of conducting any investigation.

Sittings of the Commission

12. The Commission shall -
 - (a) conduct all its sittings in public:

Provided that the Commission may hold its sittings in camera when the Commission considers it necessary;
and
 - (b) make all its reports in respect of such sittings public

Recommendation by Commission

13. (1) The Commission shall –
 - (a) send written reports of its findings to the parties concerned;
and
 - (b) dependant on the findings made, make such recommendations as it considers necessary to the appropriate authority.
- (2) The appropriate authority shall, within thirty days from the date of such recommendation make a report to The Commission, on any action taken by such authority to redress any human rights violation.
- (3) Any person who contravenes the provisions of subsection (2) shall be guilty of an offence, and shall be liable, upon conviction, to a fine not exceeding ten thousand penalty units, or to imprisonment for a term not exceeding three years, or to both.
- (4) For the purposes of subsection (3), where an offence is committed by -
 - (a) a body corporate, every director or similar officer of the body shall be guilty of the offence;
 - (b) a partnership, every partner shall be guilty of the offence;
and

- (c) a public authority, the officer or officers charged with the responsibility of acting on a recommendation and making a report on such recommendation shall be guilty of the offence

(5) satisfaction the

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

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

Proceedings of Commission

14. (1) Subject to the other provisions of this Act, the Commission may regulate its own procedure.
- (2) The Commission shall meet for the transaction of business at least once every three months at such places and times as the Chairperson may determine.
- (3) The Chairperson may at any time call a meeting of the Commission and shall call a special meeting to be held within fourteen days of receipt of a written request addressed to the Chairperson by at least four other Commissioners.
- (4) If the urgency of any particular matter does not permit the giving of such notice as is required under subsection (3), a special meeting may be called by the Chairperson, upon giving a shorter notice.
- (5) The Chairperson or Vice-Chairperson with four other Commissioners shall constitute a quorum at any meeting of the Commission.
- (6) There shall preside at any meeting of the Commission -
- (a) the Chairperson;
 - (b) in the absence of the Chairperson the Vice-Chairperson; or
 - (c) in the absence of both the Chairperson and the Vice-Chairperson, such other Commissioner as the Commissioners present may elect for the purpose of that meeting
- (7) A decision of the Commission on any question shall be by a majority of the Commissioners present and voting at the meeting and, in the event of any equality of votes, the Chairperson presiding at the meeting shall have a casting vote, in addition to such Chairperson's deliberative vote.
- (8) The Commission may invite any person, whose presence is in its opinion desirable, to attend and to Participate in the deliberations of the meeting of the Commission, but such person shall have no vote.
- (9) The validity of any proceedings, acts or decisions of the Commission shall not be affected by any vacancy in the membership of the Commission or by any defect in the appointment of any Commissioner by reason that any person not entitled to do so, took part in the proceedings.

Committees

15. (1) The Commission may, for the purpose of performing its functions under

this Act, establish such committees as it considers necessary, and delegate to any of those committees such of its functions as it considers fit.

- (2) Subject to subsection (1), the Commission may appoint as members of a committee, persons who are, or are not, Commissioners except that at least one member of a Committee shall be a Commissioner.
- (3) A person serving as a member of a committee shall hold office for such period as the Commission may determine.
- (4) Subject to any specific or general direction of the Commission, a committee may regulate its own procedure.

Disclosure of Interest

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

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

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

Prohibition of Disclosure of Information to Unauthorised Persons

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

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

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

PART III

THE DIRECTORATE OF THE COMMISSION

Director, Deputy Director and Other Staff

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

(2) The Director shall be -

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

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

- (4) The Public Service Regulations shall apply to the staff appointed by the Commission.
- (5) The Commission may engage the services of such advisors and experts as it thinks necessary.

Prohibition of Disclosure of Information by Staff to Unauthorised Persons

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

Immunity of Commissioners and Staff

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

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

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

Offences

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

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

PART IV

FINANCIAL AND OTHER PROVISIONS

Funds of Commission

22. (1) The funds of the Commission shall consist of such moneys as may –
- (a) be appropriated by Parliament for the purposes of this Act;
 - (b) be paid to the Commission by way of grants or donations; and
 - (c) vest in or accrue to the Commission.
- (2) The Commission may subject to the approval of the President -
- (a) accept money by way of grants or donations from any source; and
 - (b) raise by way of loans or otherwise, such moneys as it may require for the discharge of its functions.

- (3) There shall be paid from the funds of the Commission-
 - (a) the salaries, allowances, pensions and loans of the Commissioners and staff;
 - (b) such reasonable travelling, transport and subsistence allowances for the Commissioners and members of any committee of the Commission, when engaged in the business of the Commission; and
 - (c) any other expenses incurred by the Commission in the performance of its functions.
- (4) A person summoned as a witness under this Act, may on the order of the Commission be paid such allowances as may be prescribed by the Commission.

Financial Year

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

Accounts

24. (1) The Commission shall cause to be kept proper books of account and other records relating to its accounts.
- (2) The accounts of the Commission shall be audited annually by independent auditors appointed by the Commission.
- (3) The auditors' fees shall be paid by the Commission.

Annual Report

25. (1) As soon as is practicable, but not later than ninety days after the end of the financial year, the Commission shall submit to the President a report concerning its activities during the financial year.
- (2) The report referred to in subsection (1) shall include information on the financial affairs of the Commission and there shall be appended to the report –
 - (a) an audited balance sheet;
 - (b) an audited statement of income and expenditure; and
 - (c) such other information as the President may require.
- (3) The President shall not later than seven days after the first sitting of the National Assembly next after receipt of the report referred to in subsection (1), lay the report before the National Assembly.

Rules

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

- (e) delegation of its functions or powers.

Regulations

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

C.

STATUTORY INSTRUMENT NUMBER 22 OF 2001

HUMAN RIGHTS COMMISSION (PRACTICE AND PROCEDURE) REGULATIONS

GOVERNMENT OF ZAMBIA

Statutory Instrument No. 22 of 2002

The Human Rights Commission Act
(Act No. 39 of 1996)

The Human Rights Commission (Practice and Procedure)

Regulations, 2002

IN EXERCISE of the powers contained in Section Twenty-six of the Human Rights Commission Act, the following Regulations are hereby made:

Title

1. These Regulations may be cited as the Human Rights Commission (Practice and Procedure) Regulations, 2002.

Interpretation

2. In these Regulations unless the context otherwise requires -

“assessment” means a Preliminary finding made by the Complaints Committee determine whether a complaint submitted to the Commission falls within the jurisdiction of the Commission;

“Complaint” means a communication addressed to the Commission that alleges a human rights violation or threat of such right violation;

“Complainant” means a person, group or class of persons, organisation or association alleging that a human right has been violated or threatened:

“Complaints Committee” means the Committee, established by the Commission to consider complaints and to determine the Commission’s jurisdiction over the complaint and, to assess the merits of complaints, violated or threatened; and

“respondent” means a person against whom the complaint or allegation has been made.

PART II

COMPLAINTS PROCEDURE

Form of Receiving Complaints

3. (1) Every complaint shall be made in Form 1 set out in the Schedule to these Regulations and shall be signed or thumb printed by the person making it.
- (2) Subject to section eleven –
- (a) the Secretary shall keep a register of complaints;
 - (b) the Secretary shall forward all complaints received to the Complaints Committee for consideration;
 - (c) the Complaints Committee shall within fourteen days make an assessment of the complaint to determine, whether the complaint constitutes a case of a human rights violation or a threat to a human right;
 - (d) the Commission shall have power to request information from a party and conduct investigations to enable the Commission to make an assessment; and
 - (e) if in the opinion of the Commission, the complaint does not fall within the jurisdiction of the Commission, or such complaint could be dealt with effectively by another organisation, such complaint shall be referred to the appropriate body.

Secretary to Acknowledge receipt of complaint

5. (1) The Secretary shall acknowledge receipt of the complaint, in writing within seven days of receipt of the complaint.
- (2) If the complaint is lodged after the expiry of the time limit prescribed in subsection (3) of section eleven or the complaint does not lie within the jurisdiction of the Commission, the Secretary shall advise the complainant, within twenty-one days of receipt of the complaint.

Person to Respond to Complaints

6. (1) The Secretary shall within fourteen days of receipt of the complaint advise the person against whom the complaint or allegation has been made.
- (2) The Secretary shall acknowledge receipt of the response from the person against whom the complaint has been made within seven days of receipt of the response.

Response to Complaint

7. The person against whom the complaint has been made under the Act shall within thirty days of receipt of the complaint under regulation 6 submit to the Commission a written statement of the case responding to the facts and circumstances which gave rise to the complaint or allegation.

Certification of Complaints

8. The Commission may at any time direct that the response and all the documents concerning the complaint be clarified in such terms as it considers necessary.

Withdrawals of Complaints

9. (1) A complainant may –
- (a) withdraw a complaint;
 - (b) request the Commission to discontinue further action;
Provided that the Commission accepts the withdrawal before or during the hearing.
- (2) The withdrawal under this regulation shall be in writing
- (3) The Secretary shall send a copy of the withdrawal to the other Party seven days after the Commission's acceptance of the withdrawal.

(4) Notwithstanding the withdrawal of a complaint under sub-regulation (1), the Commission may investigate the complaint if the Commission considers that the investigation is in the public interest.

(5) The Secretary shall within seven days of the Commission's decision to investigate the matter under subregulation (4) inform the Respondent of the Commission's decision.

Investigation at Commission's Instance

10. (1) In accordance with section ten the Commission may initiate an investigation into an alleged human rights abuse.

(2) Where an investigation is instituted under subregulation (1) the Commission shall state –

- (a) the reason for the investigation;
- (b) the name of the respondent;
- (c) the source of the information giving rise to the investigation; and
- (d) the name of the Commissioner or member of staff responsible for the investigation

(3) The Commissioner or member of staff referred to in paragraph (d) of sub regulation (2) shall without delay register the case with the Secretary

(4) The Secretary shall keep a register of investigations initiated by the Commission under this regulation

(5) the Secretary shall within seven days of the commencement of the investigation inform the respondent of the decision to investigate the allegation.

(6) The respondent shall within thirty days of receiving the complaint under sub regulation (5) submit to the Commission a statement in response to the case.

PART III

PUBLIC HEARING

Hearing

11. (1) The Secretary shall advise all parties to a complaint in writing, of the time and place of hearing, and shall give the parties not less than fourteen days notice.

(2) A complainant or a respondent may appear in person at a hearing or may be represented by any other person who the complainant or respondent might appoint.

(3) Where a party to a complaint and the party's representative fails to appear for a hearing the Commission shall indicate accordingly in the report.

(4) The rules of natural justice shall apply at the hearing and the Commission shall not be bound by rules of evidence.

Public Hearing

12. (1) The Complaints Committee may determine which class of complaints

shall be considered together at a public hearing.

- (2) The Complaints Committee may determine which complaints or matters of public interest may be considered together at a public hearing.

Evidence before Commission

13. A person who gives evidence before the Commission shall in respect of that evidence, be entitled to all privileges to which a witness giving evidence before a court of law is entitled.

**SCHEDULE
(Regulation 3)**

Form 1

**THE HUMAN RIGHTS COMMISSION ACT
(Act No. 39 of 1996)**

COMPLAINT FORM

Human Rights Commission
P.O. Box 33812, Independence Avenue LUSAKA
Tel: 01-251327 or 251357 Fax 01-251342

PARTICULARS OF COMPLAINT

Name of complainant

First names (underline the name used)	Surname
Organisation name	

Age and Sex

Date of birth
Sex
M F

Address

Street	Postal code
City	Country (if other than Zambia)
Telephone	Cellular phone

Employment

Employer (name)	Profession/Position
Address	Unemployed Retired Other

Citizenship etc.

Information required only if relevant to your complaint, for instance if you believe that you have been discriminated against due to your ethnic or genealogical background

Citizenship	Nationality
Ethnicity/Genealogical background (tribe)	

Complainants representative

name	
------	--

PARTICULARS OF RESPONDENT

ent	n)
wn)	ng respondent
n to identify respondent	

COMPLAINT

Describe alleged facts and date alleged incident(s) and state the relief you wish to be given

Please do not forget the date of the alleged facts

(if more space needed, please continue on separate paper)

[Alleged facts and date of alleged incidents and arguments]

Please do not forget the date of the alleged facts

Previous Complaints to the Commission

Have you complained to the Commission previously?	When?
	FOR OFFICIAL USE; Cross reference:

Place and date

Signature or thumbprint of complaint or representative

Signature of Commission Official assisting with this complaint

NOTES

- Please fill this form as accurately as possible
- Your complaint will be assessed and you will be informed of the outcome even if the Commission finds that it cannot investigate your case
- Lack of necessary information may result in the rejection of your complaint
- Note that information (next page) regarding citizenship, ethnicity etc. is required only if relevant due to allegations of racial discrimination or similar allegation
- You are kindly requested to inform the Commission of any changes of address or telephone number or circumstances relevant to an investigation of your complaint

JUDGE L. CHIBESAKUNDA,
Chairman

L. CHANGUFU,
Commissioner

L. MULIMBA,
Commissioner

REV. F. SAKALA,
Commissioner

F. NSOKOLO,
Commissioner

J. SAKULANDA,
Commissioner

LUSAKA
20th March, 2002
[HRC. 101/10]

