

SEYCHELLES HUMAN RIGHTS COMMISSION BILL, 2016

(Bill No. of 2016)

ARRANGEMENT OF SECTIONS

PART I – PRELIMINARY

Sections

1. Short title and commencement
2. Interpretation

PART II – SEYCHELLES HUMAN RIGHTS COMMISSION

3. Establishment of the Commission
4. Powers and functions of Chairperson, Deputy Chairperson and Commissioners
5. Appointment of Chairperson, Deputy Chairperson and Commissioners
6. Eligibility of Deputy Chairperson and Commissioners of Commission
7. Resignation and vacancy in the office of Chairperson
8. Termination of Appointment
9. Independence and impartiality
10. Vacancies in Commission
11. Remuneration and allowances of Commissioners
12. Meetings of Commission
13. Committees of Commission
14. Conferment of powers and assignment of functions
15. Powers and functions of Commission
16. Mediation, conciliation or negotiation by Commission
17. Investigations by Commission
18. Entering and search of premises and attachment and removal of articles
19. Compensation for expenses
20. Reports by Commission

PART III – FINANCE, ACCOUNTS AND REPORTS

21. Funds of Commission
22. Accounts and Audit

23. Annual Report

PART IV – OFFENCES AND PENALTIES

24. Offences and penalties

PART V– ADMINISTRATION AND MISCELLANEOUS PROVISIONS

25. Staff of Commission
26. Application of provisions of Penal Code
27. Protection of action taken in good faith
28. Regulations
29. Repeal and savings
30. Transitional provisions

SEYCHELLES HUMAN RIGHTS COMMISSION BILL, 2016

(Bill No. of 2016)



A BILL

OF

AN ACT to establish the Seychelles Human Rights Commission; to provide for its composition, powers, functions and to create a means by which it can engage in mediation, conciliation and negotiation; to enable it to investigate, detect and make recommendations to the government and to provide for matters connected therewith or incidental thereto.

ENACTED by the President and the National Assembly.

PART I – PRELIMINARY

1. This Act may be cited as the Seychelles Human Rights Commission Act, 2016 and shall come into operation on such date as the Minister may, by Notice published in the Gazette, appoint.

Short title and commencement

2. In this Act, unless the context otherwise requires—

Interpretation

“Chairperson” means the chairperson of the Commission appointed under section 5(1);

“Chief Executive Officer” means the Chief Executive Officer appointed under in section 24(1);

“Commission” means the Seychelles Human Rights Commission established under sections 3(1) under the Act;

“Commissioner” means a Commissioner appointed under section 5(1) and includes Chairperson and Deputy Chairperson;

“committee” means a committee established under section 13(1);

“Constitution” means the Constitution of the Republic of Seychelles;

“Deputy Chairperson” means the deputy chairperson of the Commission appointed under section 5(1);

“human rights” means the human rights contained in Chapter III of the Constitution;

“investigation” means an investigation contemplated in section 17;

“member of staff” means the Chief Executive Officer and any person appointed under section 25(1);

“Minister” means the Minister responsible for Foreign Affairs;

“premises” includes land, any building or structure, or any vehicle, conveyance, ship, boat, vessel, aircraft or container;

“private dwelling” means any part of any building or structure which is occupied as a residence or any part of any building or structure or outdoor living area which is accessory to, and used wholly or principally for, the purposes of residence;

“public authority” means —

- (a) a Ministry or Government department;
- (b) a division or agency of the Government or a statutory corporation or a limited liability company which is directly or ultimately under the control of Government or any other body which is carrying out a governmental function or services; or
- (c) a person or body specified as a public authority by an Act; and

“warrant” means a search warrant or an entry and search warrant, as the case may be, issued under section 18(5).

PART II – THE SEYCHELLES HUMAN RIGHTS COMMISSION

3.(1) There is hereby established a Commission to be known as the Seychelles Human Rights Commission which shall be a body corporate with perpetual succession and common seal capable of suing and being sued in its own name.

Establishment of the Commission

(2) The Commission shall be a self-governing, neutral and independent body and shall not be subject to the direction or control of any person or authority.

4.(1) The Chairperson is vested with all the powers and functions conferred on or assigned to him or her by this Act or any other written law.

Powers and functions of Chairperson, Deputy Chairperson and other Commissioners

(2) The Deputy Chairperson and any other Commissioner are vested with all the powers and functions conferred on or assigned to him or her by the Commission or delegated to him or her by the Chairperson.

(3) The Chairperson is, for the purposes of exercising the powers and performing the functions conferred on or assigned to him or her by this Act or any other law, accountable to the Commission.

(4) The Deputy Chairperson and any other Commissioner are, for the purposes of exercising the powers and performing the functions —

- (a) conferred on or assigned to him or her by the Commission, accountable to the Commission; or
- (b) delegated to him or her by the Chairperson, accountable to the Chairperson.

Appointment
of Chairperson,
Deputy
Chairperson
and
Commissioners

5.(1) The President shall in consultation with the Speaker of the National Assembly and the Chief Justice appoint to the Commission a Chairperson, Deputy Chairperson and three Commissioners and such appointments shall be published in the *Gazette*.

(2) A person who has held or is qualified to hold the post of a Judge of Supreme Court or Justice of Appeal shall be qualified for appointment as Chairperson.

(3) A person who has been a Judge or is an Attorney for more than 5 years standing shall be qualified for appointment as a Deputy Chairperson.

(4) A person who has wide experience and knowledge in any one or more of the following fields or services shall be qualified to be appointed as a Commissioner—

- (a) human rights activities;
- (b) civil rights or social service;
- (c) philanthropy, philosophy or religion; and
- (d) law enforcement or investigation.

(5) The Chairperson, Deputy Chairperson and the Commissioners shall hold office for a term of 5 years, and is eligible for reappointment.

(6) Whenever the Chairperson is absent or for any reason unable to exercise or perform the powers and functions vested in the office of the Chairperson, or whenever the office of Chairperson is vacant, the Deputy

Chairperson shall exercise all the powers and shall perform all the functions of the Chairperson.

(7) Whenever both the Chairperson and the Deputy Chairperson are absent or for any reason unable to exercise or perform the powers and functions vested in the office of Chairperson, or whenever both offices are vacant, the remaining Commissioners shall from among themselves elect an acting Chairperson.

(8) Any Commissioner acting as Chairperson of the Commission by virtue of the provisions of subsection (7) may, while so acting, exercise all the powers and shall, while so acting, perform all the functions of the Chairperson.

(9) Where a vacancy occurs in the office of the Chairperson by reason of death, resignation, or for any other reason stipulated in section 7, the President may authorise the Deputy Chairperson or in his absence or vacancy in the office of the Deputy Chairperson, a Commissioner to act as Chairperson until the vacancy is filled in accordance with this Act.

(10) Where a vacancy occurs in the office of the Deputy Chairperson by reason of death, resignation or for any other reason stipulated in section 7, the President may authorise a Commissioner to act as the Deputy Chairperson.

(11) A person authorised under subsections (9) or (10) may hold the office for the unexpired term of the vacancy to which that person is authorised or till a person is appointed to the vacancy, whichever earlier, as the case may be.

(12) Subsection (11) shall *mutatis mutandis* apply to a vacancy caused in the office of a Commissioner also.

(13) The Chairperson, Deputy Chairperson and the Commissioner shall not enter upon the duties of their offices unless they have taken and subscribed before the President the Oath of Allegiance and the Judicial Oath.

Eligibility of
Deputy
Chairperson
and
Commissioners
of Commission

6.(1) A person having the qualifications specified under section 5 is eligible to be appointed as the Deputy Chairperson or a Commissioner, as the case may be, if that person —

- (a) is a citizen of, and resides permanently in, the Republic;
 - (b) is of proven integrity; and
 - (c) is not an undischarged insolvent or bankrupt.
- (2) A person shall not be appointed as the Deputy Chairperson or a Commissioner if that person —
- (a) holds office in, or an employee of, a political party;
 - (b) is member of the National Assembly or District Council; and
 - (c) has been convicted and served a sentence of imprisonment for term of six months or more for an offence involving fraud, dishonesty or moral turpitude, or any other offence under any other written law.

Resignation
and vacancy
in the office
of the
Chairperson

7. (1) The Chairperson may resign upon giving at least 3 month's written notice, to the President.

- (2) The office of the Chairperson shall become vacant —
- (a) on the expiration of the term of office of Chairperson;
 - (b) if the Chairperson is absent from three consecutive meetings of the Commission, without reasonable excuse;
 - (c) if the Chairperson is adjudged bankrupt;
 - (d) if the Chairperson is convicted of an offence under any written law and sentenced therefor to imprisonment for a term of six months or more, without the option of fine;

- (e) if the Chairperson is declared to be of unsound mind or body;
- (f) upon Chairperson's death; or
- (g) as and when the Chairperson is removed from office in accordance with section 8.

(3) Subsection (1) and (2) shall *mutatis mutandis* apply to the Deputy Chairperson and Commissioners.

8.(1) Subject to the provisions of subsections (2), (3) and (4) the President may remove from office the Chairperson, Deputy Chairperson or a Commissioner on grounds of gross misbehavior.

Termination
of
Appointment

(2) Where a complaint, allegation or report of misbehaviour against the Chairperson, Deputy Chairperson or a Commissioner is received and the President is *prima facie* satisfied that it shall be enquired into, the President shall refer the matter to the Chief Justice of Supreme Court for enquiry and report.

(3) Where a question of removing the Chairperson, Deputy Chairperson or a Commissioner is referred to the Chief Justice, the President may suspend the Chairperson, Deputy Chairperson or the Commissioner, as the case may be, from performing the functions of the Commission but the suspension shall cease to have effect if the Chief Justice recommends to the President that the Chairperson, Deputy Chairperson or the Commissioner, as the case may be, ought not be removed from office.

(4) The Chief Justice shall on a reference made under subsection (2) hold an enquiry and recommend to the President whether the Chairperson, Deputy Chairperson or the Commissioner ought to be removed on such ground or grounds and the President shall act accordingly.

9.(1) A Commissioner or a member of staff —

Independence
and impartiality

- (a) shall serve impartially and independently and exercise or perform his or her powers and functions in good faith and without fear, favour, bias or prejudice and

subject to the Constitution, this Act or any other written law;

- (b) may not use the position or privileges of a Commissioner or a member of staff for private gain or to benefit another person improperly; and
- (c) may not act in any manner that compromises the credibility, impartiality, independence or integrity of the Commission.

(2) Every public authority, organisation or institution shall afford the Commission such assistance as may be reasonably required for the protection of the independence, impartiality and dignity of the Commission in pursuit of its objects.

(3) A public authority, organisation or institution shall not interfere with, hinder or obstruct the Commission, any Commissioner, a member of staff or a person appointed under section 13(1) or authorised under section 18(1) in the exercise or performance of its or his or her powers and functions.

(4) A Commissioner or member of staff shall not 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 powers and functions in a fair, unbiased and proper manner.

(5) If any Commissioner or member of staff 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.

(6) In the interest of transparency and accountability, a Commissioner shall, in the manner determined by the Commission, annually disclose his or her financial interests and any other interests determined by the Commission, which information shall be accessible to the public.

(7) A Commissioner or a member of staff who contravenes or fails to comply with subsections (1)(b) or (4) is guilty of misconduct.

10.(1) A vacancy in the Commission occurs —

Vacancies in
Commission

- (a) when a Commissioner's term of office expires;
- (b) when a Commissioner dies;
- (c) when a Commissioner is removed from office in accordance with section 8; or
- (d) when a Commissioner's resignation submitted in accordance with section 7(1) or the termination as contemplated in section 7(2)(g), takes effect.

(2) A vacancy in the Commission does not affect the validity of the proceedings or decisions of the Commission.

(3) The Commission shall, as soon as a vacancy occurs, in writing inform the President of such vacancy.

(4) A vacancy in the Commission shall, as soon as practicable after the President becomes aware thereof, be filled in accordance with the provisions of this Act.

11.(1) The salary and allowances of the Chairperson, Deputy Chairperson and the Commissioners shall be such as may be prescribed.

Remuneration
and allowances
of
Commissioners

(2) The remuneration of the Commissioners shall not be reduced, nor may the allowances and other conditions of office and service benefits be adversely altered, during their continuation in office.

12.(1) The meetings of the Commission shall be held at the time and place determined by the Commission.

Meetings of
Commission

(2) If the Chairperson is absent from a meeting of the Commission, the Deputy Chairperson acts as chairperson, and if both the Chairperson and Deputy Chairperson are absent from a meeting of the Commission, the Commissioners present shall elect one among themselves to preside at that meeting.

(3) The quorum for any meeting of the Commission is a majority of the total number of Commissioners.

(4) The decision of the Commission shall be based on the majority of the Commissioners present at a meeting and in the event of an equality of votes concerning any matter, the Commissioner presiding has a casting vote in addition to his or her deliberative vote.

(5) The Commission shall —

- (a) determine its own procedure but due regard shall be given to the principles of transparency, openness and public participation; and
- (b) cause the minutes of its proceedings to be kept.

(6) The Commission may from time to time by notice in the *Gazette* make known the particulars of the procedure which it has determined in terms of subsection (5)(a).

Committees of
Commission

13.(1) The Commission may form one or more committees consisting of one or more Commissioners designated by the Commission and one or more other persons, if any, whom the Commission may appoint for that purpose and for the period determined by it for the purposes of advising the Commission, or making recommendations to it, in respect of the matter for which the committee has been formed.

(2) The Commission may extend the period of an appointment made by it under subsection (1) or withdraw such appointment during the period referred to in that subsection.

(3) The Commission shall designate a chairperson, who shall be a Commissioner, for every committee and, if it deems it necessary, a deputy chairperson, who shall also be a Commissioner.

(4) Subject to the directions of the Commission, a committee —

- (a) may exercise such powers of the Commission as the Commission may confer on it; and

- (b) shall perform such functions of the Commission as the Commission may assign to it,

and shall follow such procedure during such exercise of powers and performance of functions as the Commission may direct.

(5) On completion of the functions assigned to it in terms of subsection (4), a committee shall submit a written report thereon, including recommendations, if any, for consideration by the Commission.

- (6) The Commission may at any time dissolve any committee.

14.(1) The Commission may, in writing, confer the exercise of any of its powers or assign the performance of any of its functions to —

Conferment of powers and assignment of function

- (a) a Commissioner;
- (b) a member of staff; or
- (c) a committee of the Commission.

(2) A conferment or assignment under subsection (1) —

- (a) is subject to such conditions and directions as the Commission may impose; and
- (b) does not divest the Commission of responsibility for the exercise of the power or the performance of the function.

(3) The Commission may confirm, vary or revoke any decision taken in consequence of a conferment or assignment under this section, but no variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.

15.(1) In addition to any other powers and functions conferred on or assigned to it by this Act or any other written law and in order to achieve its objects —

Powers and functions of Commission

- (a) the Commission is competent and is obliged to —

- (i) make recommendations to the ministries at all levels of government where it considers such action advisable for the adoption of progressive measures for the promotion of human rights within the framework of the Constitution and this Act, as well as appropriate measures for the further observance of such rights;
- (ii) undertake such studies for reporting on or relating to human rights as it considers advisable in the performance of its functions or to further the objects of the Commission; and
- (iii) request any head of the organisation or institution or the principal secretary of any ministry or department to supply it with information on any legislative or executive measures adopted by it relating to human rights; and

(b) the Commission —

- (i) shall develop, conduct or manage information programmes and education programmes to foster public understanding and awareness of Chapter III of the Constitution, this Act and the role and activities of the Commission;
- (ii) shall as far as is practicable maintain close liaison with institutions, bodies or authorities with similar objectives to the Commission in order to foster common policies and practices and to promote co-operation in relation to the handling of complaints in cases of overlapping jurisdiction or other appropriate instances;
- (iii) shall liaise and interact with any organisation which actively promotes respect for human rights and other sectors of civil society to further the objects of the Commission;

- (iv) shall consider such recommendations, suggestions and requests concerning the promotion of respect for human rights as it may receive from any source;
- (v) shall review government policies relating to human rights and may make recommendations;
- (vi) shall monitor the implementation of, and compliance with, international and regional conventions and treaties, international and regional covenants and international and regional charters relating to the objects of the Commission;
- (vii) shall prepare and submit reports to the National Assembly pertaining to any such convention, treaty, covenant or charter relating to the objects of the Commission; and
- (viii) shall carry out or cause to be carried out such studies concerning human rights as may be referred to it by the President, and the Commission shall include in a report referred to in section 20(1) a report setting out the results of each study together with such recommendations in relation thereto as it considers appropriate.

(2) The Commission may recommend to the President for adoption of new legislation which will promote respect for human rights and a culture of human rights.

(3) If the Commission is of the opinion that any proposed legislation might be contrary to Chapter III of the Constitution or to norms of international human rights law which form part of the laws of the Republic or to other relevant norms of international law, it shall immediately report that fact to the President.

(4) The Commission is competent —

- (a) to investigate on its own initiative or on receipt of a complaint, any alleged violation of human rights, and if, after due investigation, the Commission is of the opinion that there is substance in any complaint made to it, it shall, in so far as it is able to do so, assist the complainant and other persons adversely affected thereby, to secure redress, and where it is necessary for that purpose to do so, it may arrange for or provide financial assistance to enable proceedings to be taken to a competent court for the necessary relief or may direct a complainant to an appropriate forum; and
- (b) to bring proceedings in a competent court or tribunal in its own name, or on behalf of a person or a group or class of persons.

(5) Every head of the organisation or institution or principal secretary of any ministry or department shall afford the Commission such assistance as may be reasonably required for the effective exercising of its powers and performance of its functions.

Mediation,
conciliation or
negotiation by
Commission

16. The Commission may, by mediation, conciliation or negotiation endeavour —

- (a) to resolve any dispute; or
- (b) to rectify any act or omission,

emanating from or constituting a violation of or threat to any human right.

Investigations
by
Commission

17.(1) Pursuant to the provisions of section 14(1) the Commission may, in order to enable it to exercise its powers and perform its functions —

- (a) conduct or cause to be conducted any investigation that is necessary for that purpose;
- (b) through a Commissioner, or any member of staff duly authorised by a Commissioner, require from any person such particulars and information as may be

reasonably necessary in connection with any investigation;

- (c) require any person by notice in writing under the hand of a Commissioner, addressed and delivered by a member of staff or a police officer in relation to an investigation, to appear before it at a time and place specified in such notice and to produce to it all articles or documents in the possession or custody or under the control of any such person and which may be necessary in connection with that investigation:

Provided that such notice shall contain the reasons why such person's presence is needed and why any such article or document should be produced; and

- (d) through a Commissioner, administer an oath to or take an affirmation from any person referred to in paragraph (c), or any person present at the place referred to in that paragraph, irrespective of whether or not such person has been required under the said paragraph to appear before it, and question him or her under oath or affirmation in connection with any matter which may be necessary in connection with that investigation.

(2) Any person questioned under subsection (1) shall, subject to the provisions subsections (3), (4) and (5) —

- (i) be competent and compelled to answer all questions put to him or her regarding any fact or matter connected with the investigation of the Commission notwithstanding that the answer may incriminate him or her; and
- (ii) be compelled to produce to the Commission any article or document in his or her possession or custody or under his or her control which may be necessary in connection with that investigation.

(3) A person referred to in subsection (2) is only competent and compelled to answer a question or compelled to produce any article or document contemplated in that subsection if —

- (a) the Commission is satisfied that to require such information from such person is reasonable, necessary and justifiable in an open and democratic society based on freedom and equality; and
- (b) in the Commission's judgement, such person has refused or is likely to refuse to answer a question or to produce any article or document on the basis of his or her privilege against self-incrimination.

(4) Any incriminating answer or information obtained or incriminating evidence directly or indirectly derived from a questioning under terms of subsection (1) is not admissible as evidence against the person concerned in criminal proceedings in a court of law or before anybody or institution established by or under any written law, except in criminal proceedings where the person stands trial on a charge of perjury or a charge contemplated in section 24(b) of this Act.

(5) Subject to the provisions of subsection (2)(i), the law regarding privilege as applicable to a witness summoned to give evidence in a criminal case in a court of law applies in relation to the questioning of a person under subsection (1).

(6) Any person appearing before the Commission by virtue of the provisions of subsection (1)(c) and (d) may be assisted at such examination by a legal representative and is entitled to peruse such of the documents referred to in subsection (1)(c) or any other relevant documents.

(7) If it appears to the Commission during the course of an investigation that any person is being implicated in the matter being investigated, the Commission shall afford such person an opportunity to be heard in connection therewith by way of the giving of evidence or the making of submissions and such person or his or her legal representative is entitled, through the Commission, to question other witnesses, determined by the Commission, who have appeared before the Commission under this section.

(8) Subject to the provisions of this Act, the procedure to be followed in conducting an investigation shall be determined by the Commission with due regard to the circumstances of each case.

(9) The Commission shall make known publicly the particulars of the procedure which it has determined under of subsection (8).

(10) If it is in the interests of justice or if harm to any person might otherwise ensue, the Commission or a Commissioner may direct that any person or category of persons or all persons the presence of whom is not desirable may not be present at the proceedings during the investigation or any part thereof.

(11) Notwithstanding anything to the contrary contained in any written law, no person may disclose to any other person the contents of any document in the possession of a Commissioner or a member of staff or the record of evidence given before the Commission during an investigation, unless the Commission determines otherwise.

Entering
and search
of premises
and
attachment
and removal
of articles

18.(1) Any Commissioner, or any member of staff or a police officer authorised thereto by the Commission, may, subject to the provisions of this section, for the purposes of exercising the powers and performing the functions mentioned in section 14 or conducting an investigation, search any person or enter and search any premises on or in which anything connected with an investigation is or is suspected to be present.

(2) The entry and search of any person or premises under this section shall be conducted with strict regard to decency and order, including the protection of a person's right to —

- (a) respect for and protection of his or her dignity;
- (b) freedom and security; and
- (c) his or her personal privacy.

(3) A Commissioner or member of staff or police officer contemplated in subsection (1) may, subject to the provisions of this section —

- (a) inspect and search the person or premises referred to in that subsection, and make such enquiries as he or she may deem necessary;
- (b) examine any article or document found on the person or on or in the premises;
- (c) request information regarding such article or document from the owner or person in control of the premises or from any person in whose possession or control that article or document is, or who may reasonably be expected to have the necessary information;
- (d) make copies of or take extracts from any book or document found on the person or on or in the premises;
- (e) request from any person whom he or she suspects of having the necessary information, an explanation regarding that article or document;
- (f) attach anything on the person or on or in the premises which in his or her opinion has a bearing on the investigation concerned; and
- (g) if he or she wishes to retain anything contemplated in paragraph (f) for further examination or for safe custody, against the issue of a receipt, remove it from the person or premises:

Provided that any article that has been so removed, shall be returned as soon as possible after the purpose for such removal has been accomplished:

Provided further that if there is no person present to receive the receipt when it is issued, it shall be affixed to a prominent place on the premises.

(4) Any person from whom information is required under subsection (3)(a), (c) and (e) may be assisted at such enquiry by a legal representative, and shall at the commencement of such enquiry be so informed.

(5) The person referred to in subsection (1) may be searched or the premises referred to in that subsection may be entered and searched, only by virtue of a search warrant or an entry and search warrant issued by a magistrate, or judge of a Supreme Court, if it appears to such magistrate or judge from information on oath that there are reasonable grounds for believing that any article or document, which has a bearing on the investigation concerned, is in the possession or under the control of any person or on or in any premises and cannot reasonably be obtained in any other manner.

(6) The functions referred to in subsection (3) may only be performed by virtue of a warrant issued by a magistrate, or judge of a Supreme Court, if it appears to such magistrate or judge from information on oath that there are reasonable grounds for believing that an article or document referred to in subsection (5) is in the possession or under the control of any person or on or in any premises.

(7) A warrant shall authorise any Commissioner or any member of staff or a police officer to perform the functions referred to in subsection (3) and shall to that end authorise such person to search any person or to enter and search any premises identified in the warrant.

(8) A warrant shall be executed by day, unless the person issuing the warrant in writing authorises the execution thereof by night at times which are reasonable in the circumstances.

(9) A warrant may be issued on any day and is of force until —

- (a) it is executed; or
- (b) it is cancelled by the person who issued it or, if such person is not available, by any person with like authority; or
- (c) the expiry of one month from the day of its issue; or
- (d) the purpose for the issuing of the warrant has lapsed,

whichever may occur first.

(10) A person executing a warrant under this section shall, at the commencement of such execution, hand the person referred to in the warrant or the owner or the person in control of the premises, if such a person is present, a copy of the warrant:

Provided that if such person is not present, he or she shall affix a copy of the warrant to the premises at a prominent and visible place.

(11) A person executing a warrant under this section or an entry or search under subsection (12) shall, at the commencement of such execution, identify himself or herself and if that person requires authorisation to execute a warrant under this section, the particulars of such authorisation shall also be furnished.

(12) Subject to the provisions of subsections (3), (4), (11), (13) and (14), any Commissioner, or any member of staff or a police officer upon request by a Commissioner, may, without a warrant, enter and search any premises, other than a private dwelling, for the purposes of attaching and removing, if necessary, any article or document —

- (a) if the person or persons who may consent to the entering and search for an attachment and removal of an article or document consents or consent to such entering, search, attachment and removal of the article or document concerned; or
- (b) if he or she, on reasonable grounds, believes —
 - (i) that a warrant will be issued to him or her if he or she applies for such warrant; and
 - (ii) that the delay in obtaining such a warrant would defeat the object of the entry and search.

(13) An entry and search in terms of subsection (12) shall be executed by day unless the execution thereof by night is justifiable and necessary.

(14) A person who may lawfully under this section enter and search any premises may use such force as may be reasonably necessary to overcome any resistance against such entry and search of the premises, including the breaking of any door or window of such premises:

Provided that such person shall first audibly demand admission to the premises and notify the purpose for which he or she seeks to enter and search such premises.

(15) If during the execution of a warrant under of subsections (5) to (11) or a search in terms of subsection (12), a person claims that an article or document found on the person or on or in the premises concerned contains privileged information and refuses the inspection or removal of such article or document, the person executing the warrant or search shall, if he or she is of the opinion that the article or document contains information that has a bearing on the investigation and that such information is necessary for the investigation, request the registrar of the Supreme Court which has jurisdiction or his or her delegate, to attach and remove that article or document for safe custody until a court of law has made a ruling on the question whether the information concerned is privileged or not.

19. Any person appearing before the Commission pursuant of section 17(1)(c) who is not in the public service, is entitled to receive from monies appropriated by law for such purpose, as witness fees, an amount equal to the amount which he or she would have received as witness fees had he or she been summoned to attend criminal proceedings in the Supreme Court held at the place mentioned in the written notice in question.

Compensation
for expenses

20.(1) The Commission shall submit a report to the President at least once every year on its activities, the performance of its functions and the achievement of its objectives.

Reports by
Commission

(2) In addition to the report contemplated in subsection (1), the Commission shall, as soon as possible, submit to the President reports on the findings in respect of functions and investigations of a serious nature which were performed or conducted by it.

(3) The Commission may, subject to the provisions of subsection (5), in the manner it deems fit, in writing, make known to the public authority, organisation or institution any finding, point of view or recommendation in respect of a matter investigated by it.

(4) If the Commission makes any finding or recommendation in respect of a matter investigated by it known to the public authority, organisation or institution concerned shall within 60 days after becoming

aware of such finding or recommendation respond in writing to the Commission, indicating whether the public authority, organisation, institution, intends to take any steps to give effect to such finding or recommendation, if any such steps are required.

(5) The findings of an investigation by the Commission may be made available to the complainant and any person implicated thereby, if the Commission consider it necessary so to do, as early as practicable.

PART III - FINANCE, ACCOUNTS AND REPORTS

Funds of the
Commission

- 21.** The funds of the Commission shall consist of —
- (a) such moneys as may be appropriated by the National Assembly pursuant to an Appropriation Act for the purposes of the Commission;
 - (b) any monies received by the Commission by way of donations, gifts or grants from any legal sources whether domestic or foreign; and
 - (c) any proceeds from sale, lease or transfer of movable or immovable property of the Commission.

Accounts
and audit

- 22.**(1) The financial year of the Commission shall be the calendar year.
- (2) The Commission shall maintain proper accounts and other relevant records and prepare a statement of accounts in the form and manner approved by the Auditor-General.
- (3) The account of the Commission shall be audited by the Auditor General in accordance with Article 158 of the Constitution.
- (4) Where the accounts and the statement of accounts of the Commission in respect of a financial year have been audited, the Commission shall furnish, not later than 3 months after the end of the financial year, to the Minister and the Minister responsible for finance, a copy of the statement together with a copy of any report by the Auditor-General on the statement of accounts or on the accounts of the Commission.

23. The Commission shall, as soon as possible after the expiration of each financial year and in any event not later than the 31st day of March in any year, submit to the Minister, and the Minister responsible for finance, an annual report dealing generally with the administration and its activities during the preceding financial year and the Minister shall cause the report to be laid before the National Assembly.

Annual
report

PART IV – OFFENCES AND PENALTIES

24. A person who —

Offences and
penalties

- (a) without just cause refuses or fails to comply with a notice under section 17(1)(c) or refuses to take the oath or to make an affirmation at the request of the Commission in terms of section 17(1)(d) or refuses to answer any question put to him or her under section 17(1)(d) or refuses or fails to furnish particulars or information required from him or her under that section;
- (b) after having been sworn or having made an affirmation contemplated in section 17(1)(d) gives false evidence before the Commission on any matter, knowing such evidence to be false or not knowing or believing it to be true;
- (c) wilfully interrupts the proceedings at an investigation or misbehaves himself or herself in any manner in the place where such investigation is being held;
- (d) in connection with any investigation does anything which, if such investigation were proceedings in a court of law, would have constituted contempt of court;
- (e) anticipates any findings of the Commission regarding an investigation in a manner calculated to influence its proceedings or such findings;
- (f) does anything calculated improperly to influence the Commission in respect of any matter being or to be

considered by the Commission in connection with an investigation;

- (g) contravenes any provision of section 9(3) or 17(11);
- (h) fails to afford the Commission the necessary assistance referred to in section 9(2) or 15(5); or
- (i) acts contrary to the authority of a warrant or, without being authorised thereto under section 18, enters or searches any premises or attaches any article or document or performs any act contemplated in section 18(3),

is guilty of an offence and liable on conviction to a fine not exceeding SCR..... or to imprisonment for a period not exceeding six months.

PART IV – ADMINISTRATIVE AND MISCELLANEOUS PROVISIONS

Staff of
Commission

25.(1) The Commission shall appoint a suitably qualified and experienced person as Chief Executive Officer of the Commission for the purpose of assisting the Commission in the performance of its financial, administrative and clerical functions.

- (2) The Chief Executive Officer —
 - (a) is appointed on such terms and conditions and receives such remuneration, allowances and other employment benefits as the Commission may determine; and
 - (b) shall enter into a performance agreement with the Commission on acceptance of the appointment.
- (3) The Chief Executive Officer —
 - (a) shall, subject to the approval of the Commission and the provisions of subsection (4), appoint such staff as may be reasonably necessary to assist him or her with

the work incidental to the performance by the Commission of its functions;

- (b) shall be the head of the administration of the Commission;
- (c) shall be the accounting officer of the Commission;
- (d) shall be responsible for —
 - (i) the management of the affairs and operations of the Commission;
 - (ii) the formation and development of an efficient administration;
 - (iii) organisation and management of, and administrative control over, all the members of staff appointed in terms of paragraph (a) and all the persons contemplated in subsection (5);
 - (iv) the maintenance of discipline in respect of the members of staff;
 - (v) the carrying out of the decisions of the Commission, and for those purposes accountable to the Commission and shall report thereon to the Commission as often as may be required by the Commission; and
 - (vi) the up-keep of accounts and other records of the Commission; and
- (e) shall exercise the powers and shall perform the functions which the Commission may from time to time confer upon or assign to him or her in order to carry out the provisions of the Act, and is for those purposes accountable to the Commission.

(4) The other members of staff contemplated in subsection (3)(a) are appointed on such terms and conditions and receive such remuneration, allowances and other employment benefits as the Chief Executive Officer may, subject to the approval of the Commission and Minister, determine.

(5) The Commission may in the exercise of its powers or the performance of its functions by or under this Act or any other written law, for specific projects, enter into contracts for the services of persons having technical or specialised knowledge of any matter relating to the work of the Commission, and determine the remuneration, including reimbursement for travelling, subsistence and other expenses, of such persons.

(6) A member of staff shall exercise his or her powers and perform his or her functions—

- (a) conferred upon him or her by or under this Act or any other written law; and
- (b) conferred upon or assigned to him or her by the Commission or the Chief Executive Officer, as the case may be,

subject to the general or special directions and instructions that the Commission may, from time to time, issue to him or her.

26. The Chief Executive Officer and other members of the staff of the Commission or any other person acting under the direction of the Commission shall be deemed to be employed in the public service for the purpose of sections 91 to 96 of the Penal Code.

Application of provisions of the Penal Code

27. A suit or other legal proceedings shall not lie against the Commissioners, Chief Executive Officer or other employees of the Commission for any action taken or intended to have been taken in pursuance of the provisions of this Act.

Protection of action taken in good faith

28.(1) The Minister may, make regulations for carrying into effect the provisions of this Act.

Regulations

(2) Without prejudice to the generality of subsection (1), the regulations may provide for —

- (a) salary and allowances of the Commissioners including the Chairperson and Deputy Chairperson;
- (b) salary and allowances of the Chief Executive Officer; and
- (c) any other matter required to be prescribed under this Act.

(3) The Commission may make rules for the following matters in relation to the members of staff —

- (a) the requirements for discharge and disciplinary steps;
- (b) the procedure and manner of and criteria for evaluation, and the conditions or requirements for the purposes of promotion;
- (c) the powers, duties, conduct and discipline;
- (d) the creation of posts on the establishment of the Commission;
- (e) the training of members of staff, including financial assistance for such training;
- (f) a code of conduct to be complied with by members of staff;
- (g) subject to section 27, the legal liability of any member of staff in respect of any act done in terms of this Act;
- (h) the circumstances under which and the conditions and manner in which a member of staff may be found to be guilty of misconduct, or to be suffering from continued ill-health, or of incapacity to carry out his or her duties of office efficiently;

- (i) the procedure for dealing with complaints and grievances of members of staff and the manner in which and time when or period wherein and person to whom documents in connection with requests and communications of such members of staff must be submitted; or
- (j) any other matter which is necessary or required to be prescribed by rules under this Act.

Repeal
and
savings

29.(1) The Protection of Human Rights Commission Act, 2009 (Cap 301), is hereby repealed.

(2) Any person who, immediately before the commencement of this Act, has been appointed to a post under the repealed Act shall be deemed to have been so appointed under the corresponding provisions of this Act.

(3) Anything done, including any regulation made or instruction issued or other administrative measure taken or any contract entered into or any obligation incurred under the repealed Act which could be done under this Act and which was in force immediately before the commencement of this Act, is deemed to have been so done, issued, taken, entered into or incurred, as the case may be, under this Act until amended, withdrawn or repealed under this Act.

(4) Any reference in any written law to the Protection of Human Rights Act (Cap 301) shall, unless the context otherwise indicates or if clearly inappropriate, be construed as a reference to this Act, or to the corresponding provision thereof, as the case may be.

Transitional
provisions

30. The National Human Rights Commission established under the repealed Act shall continue to be in force and function till the Commission under section 3 of this Act is established.