[Chap0308]CHAPTER 3:08

HUMAN RIGHTS COMMISSION

ARRANGEMENT OF SECTIONS

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27 of 1998

An Act to make provision relating to the status and functioning of the Human Rights Commission established under Chapter XI of the Constitution and to provide for matters ancillary thereto or connected therewith

[11TH AUGUST 1998]

PART I

PRELIMINARY

[Ch0308s1]1. Short title

This Act may be cited as the Human Rights Commission Act.

[Ch0308s2]2. Interpretation

In this Act, unless the context otherwise requires—

"appointed members" means members of the Commission appointed under section 131 (1) (c) of the Constitution, being those other than the Law Commissioner and the Ombudsman;

"Commission" means the Human Rights Commission established under Chapter XI of the Constitution:

"Executive Secretary" means the officer of the Commission appointed under section 28;

"human rights" means human rights guaranteed by or under the Constitution or any other law in force in Malawi, including international law;

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

PART II

MEMBERSHIP OF THE COMMISSION

[Ch0308s3]3. Number of appointed members

The number of other members of the Commission appointed under section 131 (1) (c) of the Constitution (in this Act referred to as "appointed members") shall not exceed five at any one time unless the President, on the recommendation of the Commission, by Order published in the Gazette, prescribes a greater number of appointed members.

[Ch0308s4]4. Procedure for nominating appointed members

(1) The procedure for nominating appointed members shall involve first the issuing of a public advertisement, signed jointly by the Law Commissioner and the Ombudsman, directed to the organizations described in section 131 (1) (c) of the Constitution, being those which both the Law Commissioner and the Ombudsman, in their absolute discretion, consider to be reputable organizations representative of Malawian society and that are wholly or largely concerned with the promotion of rights and fundamental freedoms guaranteed by the Constitution.

(2) The advertisement under subsection (1) shall invite all appropriate organizations to nominate up to two persons who are independent, non-partisan and of high integrity and standing from within or outside the organization for appointment as member or members of the Commission, and to do so within thirty days of the date of the publication of the advertisement and in writing addressed to the Commission, giving the full name and address of any person so nominated and his curriculum vitae.

(3) The Law Commissioner and the Ombudsman shall—

(a) jointly assess the reputation of the nominating organizations and may, for that purpose, seek other or further information pertaining to any nominated person from the person himself or any other person or source before recommending who among the nominated persons shall be formally appointed by the President as members of the Commission;

(b) according to their assessment under paragraph (a), keep a list of reserved names of nominated persons to be appointed to fill any casual vacancy for the remainder of the term of a member who vacates office before the expiry of the term prescribed in section 5 (1).

(4) A list of the names of nominating organizations, the names of the persons nominated and the names of the persons formally appointed by the President and the resultant membership of the Commission shall be published in the Gazette.

[Ch0308s5]5. Tenure of appointed members

(1) Appointed members of the Commission shall hold office for a term of three years, and shall be eligible for re-appointment.

(2) when making recommendations for appointment after the expiry of the three-year term, the Law Commissioner and the Ombudsman shall have regard to the need to maintain a reasonable degree of continuity on the membership of the Commission, so that at least half of the appointed members shall be reappointed for the next term of office.

(3) A casual vacancy in the office of an appointed member shall occur if the member—

(a) is removed from office under section 131 (3) of the Constitution;

(b) dies; or

(c) resigns his office in accordance with subsection (4).

(4) An appointed member may at any time resign his office by giving one month notice addressed to the Law Commissioner and the Ombudsman who shall jointly transmit such notice to the President.

(5) A casual vacancy on the membership of the Commission shall be filled by the appointment of a person on the list of reserved names of nominated persons kept pursuant to section 4 (4).

(6) A person appointed to fill a casual vacancy shall serve for the remainder of the term of office but no person shall be so appointed where the remainder of the term of office is a period of less than six months.

[Ch0308s6]6. Chairman of the Commission

(1) There shall be a Chairman of the Commission who shall be elected by the Commission from among the appointed members at a meeting of the Commission attended by all members.

(2) Subject to subsection (3), the Chairman shall hold office as such until the expiry of his term of office as member of the Commission.

(3) The Chairman may be removed from office as such by the Commission for good cause and upon the unanimous decision of the rest of the members of the Commission.

[Ch0308s7]7. Remuneration

Members of the Commission shall be paid such honorarium for membership and such allowances when discharging their duties as the Commission shall reasonably determine, subject to the approval of the Public Appointments Committee of Parliament.

[Ch0308s8]8. Committees

(1) The Commission may establish such number of its own committees as it considers necessary for the performance of its functions and may assign to such committees any of its functions without prejudice to the power of the Commission itself to perform the function.

(2) The composition of every committee of the Commission shall include one or more members of the Commission and may include persons who are not members of the Commission but shall not include members of staff of the Commission.

(3) Subject to any general or special directions of the Commission, every committee shall have power to determine its own procedure.

[Ch0308s9]9. Co-opted persons

(1) The Commission may invite or engage any person or persons to assist with the conduct of any inquiry or investigation before the Commission.

(2) The Commission or a committee of the Commission may invite any person, on account of his special knowledge or expertize, for any duration of time to take part in its deliberations at any meeting but such person shall not be entitled to vote at such meetings.

PART III

COMPETENCE AND RESPONSIBILITIES OF THE COMMISSION

[Ch0308s10]10. Provisions in furtherance of the Constitution

The provisions of this Part are in furtherance of, and without prejudice to, the generality of the mandate, powers and functions of the Commission conferred by the Constitution.

[Ch0308s11]11. Commission, an independent national institution

All authorities (including all organs of the Government) bodies and persons shall recognize the status of the Commission as a national institution independent of the authority or direction of any other body or person.

[Ch0308s12]12. Competence and powers

The Commission shall be competent in every respect to protect and promote human rights in Malawi in the broadest sense possible and to investigate violations of human rights on its own motion or upon complaints received from any person, class of persons or body.

[Ch0308s13]13. Duties and functions

(1) The duties and functions of the Commission shall be—

(a) to act as a source of human rights information for the Government and the people of Malawi;

(b) to assist in educating the public on, and promoting awareness and respect for, human rights;

(c) to promote more particularly the human rights of vulnerable groups, such as children, illiterate persons, persons with disabilities and the elderly;

(d) to consider, deliberate upon, and make recommendations regarding any human rights issues, on its own volition or as may be referred to it by the Government;

(e) to study the status and effect of legislation, judicial decisions and administrative provisions for the protection and promotion of human rights and to prepare reports on such matters and submit the reports, with such recommendations or observations as the Commission considers appropriate, to the authorities concerned or to any other appropriate authorities;

(f) to perform any other function which the Government may assign to the Commission in connection with the duties of Malawi under those international agreements in the field of human rights to which Malawi is a party, without derogation from the fact that the Government shall remain primarily responsible for performing such functions.

(2) The Commission shall keep the President fully informed on matters concerning the general conduct of the affairs of the Commission.

[Ch0308s14]14. Responsibilities

The Commission shall have the following responsibilities—

(a) to submit to the President, Parliament or any other competent authority, on an advisory basis, either at the request of the President, Parliament or such other authority or on its own volition, its opinions, recommendations, proposals or reports on any matters concerning the protection and promotion of human rights;

(b) to examine any legislation, judicial decisions or administrative provisions in force as well as Bills and administrative proposals and make recommendations as it considers appropriate in order to ensure that such legislation, judicial decisions, administrative provisions, Bills and administrative proposals conform to the fundamental principles of human rights;

(c) where necessary, to recommend the adoption of new legislation or administrative provisions, or the repeal, replacement or amendment of legislation or administrative provisions in force and relating to human rights;

(d) to comment publicly or as it sees fit on any general or specific situation of violation of human rights and to recommend initiatives or measures to put an end to such situation;

(e) to promote ratification by Malawi 01 any international human rights instruments;

(f) to promote the harmonization of national legislation and practices with international human rights instruments to which Malawi is a party and to promote and monitor their effective implementation;

(g) to contribute to the reports which Malawi is required to submit pursuant to treaty obligations and, where necessary, express its opinions on the subject matter but always with due regard to its status as an independent national institution;

(h) to cooperate with agencies of the United Nations, the Organization of African Unity, the Commonwealth and other multilateral or regional institutions and national institutions of other countries which are competent in the area of protection and promotion of human rights;

(i) to assist in the formulation of programmes for the teaching of, and research in, human rights and, where appropriate, to take part in their execution in institutions and other bodies, including in schools, universities and professional circles; and

(j) to publicize human rights with the aim of increasing public awareness.

[Ch0308s15]15. Methods of operation

The Commission shall—

(a) freely and without any hinderance whatsoever consider any questions falling within its competence;

(b) hear any person and obtain any information or any other evidence necessary for assessing situations falling within its competence;

(c) subject to the provisions of Part IV, carry out investigations and conduct searches in connection with matters that are before it or generally in connection with its powers, duties and functions;

(d) exercise unhindered authority to visit prisons or any place of detention of persons including police cells, with or without notice;

(e) develop work relationships with non-governmental organizations devoted to protecting and promoting human rights, including those organizations which promote economic and social development or which protect and promote the interest of vulnerable groups such as children, illiterate persons, persons with disabilities and the elderly;

(f) maintain consultation with other independent national institutions or bodies, such as the Law Commission, the Ombudsman and the Inspectorate of Prisons, in order to foster common policies, practices and approaches and to promote cooperation in relation to the handling of matters in cases of overlapping jurisdiction;

(g) progressively operate at the national, regional, district and other levels so as to enhance its outreach in the Republic; and

(h) to do or perform such other acts or things as are reasonably required for the exercise of its powers and the performance of its duties and functions.

PART IV

HEARINGS, INVESTIGATIONS AND REMEDIES

[Ch0308s16]16. Hearings

(1) The Commission may hear and consider complaints and petitions within its competence brought before it by individuals or groups of individuals.

(2) Complaints may be brought before the Commission on behalf of individuals or groups of individuals by the individuals themselves, legal practitioners, their representatives, third parties, non-governmental organizations, professional associations or any other representative organizations having an appropriate interest in the matter.

[Ch0308s17]17. Procedure for hearings

The Commission shall have power to determine its own procedure for the conduct of hearings of matters brought before it but may otherwise be guided by such procedures as may be prescribed by regulations made under this Act

[Ch0308s18]18. Conduct of investigations

(1) For the purposes of conducting investigations necessary for the exercise of its powers and performance of its duties and functions, the Commission shall have powers—

(a) through a member of the Commission or any member of its staff designated in writing by a member of the Commission or by the Commission either generally or specially to require from any person such particulars and information as may be reasonably necessary in connection with any investigation;

(b) to require any person by notice in writing under the hand of a member of the Commission 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—

(i) such notice shall contain the reasons why the presence of such person is required and why any such article or document should be produced;

(ii) when appearing and being examined before the Commission, such person may be assisted by a legal practitioner and shall be entitled to peruse or examine the articles and documents to refresh his memory;

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

(2) A notice under subsection (1) shall not be effectively served unless it is delivered by—

(a) a member of the Commission;

(b) a member of the staff of the Commission;

(c) a police officer or any other person, authorized in that behalf by the Commission in relation to an investigation.

(3) Any person questioned under subsection (1) shall—

(a) be competent and compellable to answer all questions put to him regarding any fact or matter connected with the investigation;

(b) be competent and compellable to produce to the Commission any article or document in his possession or custody or under his control which may be necessary in connection with that investigation.

(4) The law regarding privilege as applicable to a witness summoned to give evidence in a criminal case in a court of law shall apply in relation to the questioning of a person under subsection (1).

(5) 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 aford 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 legal representative shall be entitled, through the Commission, to question other witnesses, determined by the Commission, who have appeared before the Commission pursuant to this section.

(6) The Commission may direct that any person or category of persons or all persons the presence of whom, in the opinion of the Commission, is not desirable shall not be present at the proceedings or any part thereof during, or in the course of, an investigation.

(7) The Commission may in its sole discretion conduct open or closed hearings during its investigation of any matter.

[Ch0308s19]19. Entry and search of premises and attachment or removal of articles

(1) Any—

(a) member of the Commission;

(b) member of the staff of the Commission;

(c) police officer or other person, authorized in that behalf by the Commission

may, subject to the provisions of this section, for the purposes of an investigation, enter any premises on or in which anything connected with that investigation is or is reasonably suspected to be.

(2) The entry and search of any premises under this section shall be conducted with strict regard to decency and order, which shall include regard to—

(a) a person's right to respect for and protection of his dignity;

(b) the right to freedom and security of the person; and

(c) the right to his personal privacy.

(3) A person authorized under subsection (1) may, subject to the provisions of this section—

(a) inspect and search the premises and there make such enquiries as he may deem necessary;

(b) examine any article or document found on or in the premises;

(c) request from the owner or person in control of the premises or from any person in whose possession or control an article or document is information regarding the article or document;

(d) make copies of or take extracts from any book or document found on or in the premises;

(e) request from any person who has, or whom he has reason to believe has, the necessary information, an explanation regarding that article or document;

(f) attach anything on or in the premises which in his opinion has a bearing on the investigation concerned;

(g) remove from the premises, against issue of a receipt, the article or document for further examination or for safe custody, but any article or document so removed, shall be returned as soon as possible after the purpose for such removal has been accomplished.

[Ch0308s20]20. Entry and search warrant

(1) Entry and search of any premises under this Act shall only be upon a warrant issued by a magistrate if it appears to the magistrate 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 on such premises.

(2) A warrant issued under this section may be issued on any day and shall be 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 occurs first.

(3) 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 person who is the owner or in control of the premises a copy of the warrant and identify himself, if such person is present or, if such person is not present, affix a copy of the warrant to the premises at a prominent visible place.

[Ch0308s21]21. Order of attachment and removal

If during the execution of a warrant under this Part a person claims that an article or document found 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 shall, if he 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 or an Assistant Registrar of the High Court to issue an order to attach and remove that article or document for safe custody until a court has made a ruling on the question whether the information concerned is privileged or not, but such an order shall lapse if after thirty days from the date of its issue no court has made such ruling.

[Ch0308s22]22. Remedies

Upon hearing complaints brought before it or based upon any investigations it has carried out or at any stage, the Commission—

(a) shall seek an amicable settlement through conciliation and, where appropriate, on the basis of confidentiality;

(b) shall inform the complainant and the respondent of their respective rights, remedies or obligations and the Commission shall promote a party's access to the remedies;

(c) may, as provided by sections 15 (2) and 46 (2) (b) of the Constitution, render such assistance or advice as the party that brought the complaint or petition may reasonably require;

(d) may transmit a complaint, petition or any other matter to any other competent authority as prescribed by the law or as otherwise the Commission thinks fit; or

(e) make recommendations to the competent authority, proposing amendments or reforms of the laws, regulations or administrative provisions or practices if the Commission has identified such laws, regulations or administrative provisions to have created the difficulties or hardships encountered by the persons who brought the complaints or petitions; and

(f) may recommend to the relevant authority the prosecution of any person found to have violated human rights or the taking of any other action and any such authority shall consider the recommendation and take such action as it deems appropriate.

PART V

MEETINGS

[Ch0308s23]23. Meetings

(1) The Commission shall meet as often as its business requires and in any event not less than once every two months.

(2) Meetings of the Commission shall be held at such places and times as the Commission shall determine:

Provided that the first meeting and any meeting at which the Chairman of the Commission is to be elected shall be convened by the Law Commissioner in consultation with the Ombudsman and shall be presided over by the Law Commissioner until the Chairman is elected.

(3) A meeting of the Commission shall be convened at the direction of the Chairman by written notice of not less than seven days, but such period of notice may be dispensed with if in the opinion of the Chairman the urgency of any business or matter to be brought before the meeting so requires.

(4) The quorum for any meeting of the Commission or a committee of the Commission shall be formed by the presence of more than half of the members of the Commission or committee.

(5) Save as otherwise provided in subsection (2), meetings of the Commission shall be presided over by the Chairman of the Commission and, in the absence of the Chairman, members present may elect one of their number from among appointed members to preside.

[Ch0308s24]24. Chairmen of committees

(1) The chairman of every committee of the Commission shall be such member of the committee who is also a member of the Commission as the Commission shall designate.

(2) The chairman of a committee of the Commission shall preside over meetings of the committee and in his absence the members present may elect one of their number to preside.

[Ch0308s25]25. Minutes

The Commission, and every committee of the Commission, shall cause minutes of its meetings to be recorded and kept.

[Ch0308s26]26. Decisions

Save as provided in section 6 (3) in relation to the removal from office of the Chairman of the Commission, the decision of the Commission or of a committee of the Commission at any meeting shall be that of the majority of the members present and voting and in the event of a tie the person presiding shall have a casting vote in addition to his deliberative vote.

PART VI

ADMINISTRATION

[Ch0308s27]27. Regular supervision

The Commission shall exercise regular supervision of the work of the Commission and over the members of staff of the Commission in the performance of their duties.

[Ch0308s28]28. Executive Secretary

(1) There shall be the office of Executive Secretary of the Commission which shall be a public office.

(2) The Executive Secretary shall be appointed by the Commission on such terms and conditions as the Commission shall determine.

(3) The office of the Executive Secretary shall be held by a person who has had experience and shown capacity in a profession or in activities devoted or relevant to the protection and promotion of human rights.

[Ch0308s29]29. Duties of the Executive Secretary

Subject to the general and special directions of the Commission, the Executive Secretary shall be responsible for the day to day management of the Commission and the administrative control of the other members of staff of the Commission and, in that regard, shall be answerable and accountable to the Commission.

[Ch0308s30]30. Other staff

(1) There shall be employed in the service of the Commission, subordinate to the Executive Secretary, such other management, professional, research, technical, administrative and other support staff as the Commission shall consider necessary for the exercise of its powers and the performance of its duties and functions and who shall be officers in the public service.

(2) The staff of the Commission under subsection (1) shall be appointed by the Commission on such terms and conditions as the Commission shall determine:

Provided that the Commission may by directions in writing delegate to the Executive Secretary the appointment of its staff in such junior ranks as it shall specify and the Executive Secretary shall report to the Commission every appointment he has made pursuant to this subsection.

[Ch0308s31]31. Attendance of meetings by staff

(1) The Executive Secretary, or any other officer of the Commission as the Executive Secretary shall designate with the approval of the Commission, shall attend meetings of the Commission or any committee of the Commission to record the minutes of the meetings and to take part in the deliberations thereof subject to the directions of the Commission or committee but shall not be entitled to vote.

(2) Where in any meeting the deliberations of the Commission or of a committee of the Commission concerns the Executive Secretary or any officer of the Commission designated to attend the meeting, the Commission or the committee, as the case may be, may exclude the Executive Secretary or such officer from the meeting.

PART VII

FINANCE

[Ch0308s32]32. Funding of the Commission

(1) The Government shall adequately fund the Commission to enable it to exercise its powers and perform its duties and functions and so as to ensure its independence and impartiality.

(2) The Commission may receive any donations of funds, materials and any other form of assistance for the purposes of its duties and functions:

Provided that no such donation shall jeopardize or compromise the independence and impartiality of the Commission.

[Ch0308s33]33. Accounting and audit

The Commission shall be liable to account to Parliament for its funds in the manner applicable to Government departments and the accounts of the Commission shall be liable to audit by the Auditor General.

PART VIII

MISCELLANEOUS

[Ch0308s34]34. Impartiality and independence

(1) Every member of the Commission, of a committee of the Commission or of the staff of the Commission shall serve independently and impartially and exercise his powers or perform his duties and functions in good faith and without fear or favour.

(2) No organ of the Government and no member or employee of an organ of the Government nor any other person or body of persons, shall interfere with, hinder or obstruct the Commission, any committee of the Commission, any member of the Commission or of such committee or of the staff of the Commission or any person duly authorized to act in the service of the Commission in the exercise of its or his or her powers or the performance of its or his duties and functions.

(3) Any person who contravenes subsection (2) shall be guilty of an offence and liable to a fine of K20,000 and to imprisonment for five years.

(4) All organs of the Government shall accord the Commission such assistance and cooperation as may be reasonably required for the exercise of its powers and performance of its duties and functions and for the protection of the independence, impartiality and the due dignity of the Commission.

[Ch0308s35]35. Disclosure of interest

No person shall conduct an investigation on behalf of the Commission or render assistance with regard to such investigation in respect of a matter in which he has any material or other interest which might preclude him from exercising his powers or performing his duties or functions in a fair, unbiased and proper manner; and where any person fails to disclose such interest or conducts an investigation or renders assistance with regard thereto in contravention of this section, the Commission may take such steps as it considers necessary to ensure a fair, unbiased and proper investigation.

[Ch0308s36]36. Oath of office

Every member of the Commission (including the Law Commissioner and the Ombudsman) shall, as such member, as soon as practicable—

(a) after the commencement of this Act, in the case of a member holding office at the commencement of this Act;

(b) after his appointment, in the case of a member holding office subsequent to the commencement of this Act,take an oath or make an affirmation for the due execution of his office before the President in the form set out in the Schedule to this Act:

Provided that in the case of an affirmation the form shall be modified so as to substitute the word “affirm” for the word “swear” and by omitting the last sentence in the form.

[Ch0308s37]37. Annual reports to Parliament

In addition to any specific report which the Commission may at any other time submit to any authority under this Act, the Commission shall within three months after the end of every

calendar year submit a report to Parliament on the activities it has carried out during that calendar year.

[Ch0308s38]38. Regulations

The Minister may, on the advice of the Commission, make regulations for the better carrying out of the provisions of this Act.

SCHEDULE s. 36

OATH OF OFFICE OF MEMBER OF THE COMMISSION

I ..... , being a member of the Human Rights Commission, do swear that I will well and truly perform the functions of that office according to the Constitution and the laws of the Republic of Malawi without fear, favour, affection or ill will. So help me God.