

**NATIONAL HUMAN RIGHTS COMMISSION ACT, 2017**

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**SCHEDULE**

**NATIONAL HUMAN RIGHTS COMMISSION ACT, 2017**

**AN ACT** to establish a Commission for the promotion and protection of human rights in The Gambia, and for connected matters.

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**ENACTED** by The President and the National Assembly.

**PART I – PRELIMINARY**

**1. Short title and commencement**

This Act may be cited as the National Human Rights Commission Act, 2017 and shall come into force on such date as the Minister shall, by Order published in the Gazette, determine.

**2. Interpretation**

In this Act, unless the content otherwise requires –

“Chairperson” means the Chairperson of the National Human Rights Commission established under section 3;

**Deleted:** Commission; “Commission” means the

“complainant” includes a victim of a human rights violation, a victim’s family member and a legal representative of a victim;

“Constitution” means the 1997 Constitution of the Republic of The Gambia;

“Executive Secretary” means the Executive Secretary of the Commission appointed under section 26;

“Government” means the Government of The Gambia;

“human rights” include the fundamental rights and freedoms enshrined in the laws of The Gambia and in the international treaties and other agreements to which The Gambia is a party;

“informant” means a person who discloses a human rights violation to the Commission;

“member” means a member of the Commission and includes the Chairperson and the Vice-Chairperson of the Commission;

“Minister” means the Attorney General and Minister of Justice;

“President” means the President of the Republic of The Gambia; and

“witness” means a person who testifies about a human rights violation before the Commission.

## **PART II – ESTABLISHMENT AND COMPOSITION OF THE NATIONAL HUMAN RIGHTS COMMISSION**

### **3. Establishment of the National Human Rights Commission**

(1) There is established by this Act, the National Human Rights Commission.

(2) The Commission shall be a body corporate with perpetual succession and a common seal and may –

- (a) sue and be sued in its corporate name;
- (b) enter into contracts and acquire, hold and dispose of property; and
- (c) do such other things or acts necessary for the proper performance of its functions..

(3) The application of the common seal of the Commission shall be authenticated by the signature of the Executive Secretary, the Chairperson, the Vice-Chairperson, or any other member authorised by the Commission in writing to sign on behalf of the Commission.

(4) A document bearing the imprint of the common seal of the Commission is deemed to be properly sealed, unless the contrary is proved.

### **4. Composition of the Commission**

The Commission shall consist of –

- (a) a Chairperson, who shall be a legal practitioner of not less than ten years post-call experience and who has in addition acquired at least five years of experience in the promotion

or protection of human rights in any capacity;

- (b) a Vice-Chairperson, who has acquired not less than five years expertise in his or her field; and
- (c) three other members.

#### **5. Appointment of members**

(1) The President shall, after consultation with the Public Service Commission, appoint the members of the Commission, in accordance with the procedure specified in the Schedule to this Act.

(2) The President shall appoint the members of the Commission, who shall include at least two women, from amongst persons –

- (a) of high morals and proven integrity who have so distinguished themselves in their respective fields as to command the respect of the public; and
- (b) well versed in and of proven record of respect for human rights.

(3) A member of the Commission shall, upon his or her appointment –

- (a) relinquish any other office, post or appointment that he or she holds in the public service or in any other employment; and
- (b) serve the Commission in his or her individual capacity and not on behalf of any organisation or interest group.

#### **6. Tenure of office of members**

A member of the Commission shall hold office for three years and is eligible for re-appointment for one further term.

#### **7. Remuneration of members**

(1) A member of the Commission shall work full-time for the Commission and shall be paid such salary, allowances and retirement benefits as shall be determined by the Public Service Commission.

(2) The Public Service Commission shall not vary the salary, allowances and retirement benefits of a member to the member's disadvantage during his or her tenure of office.

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## 8. Resignation of members

A member of the Commission may resign from his or her office by notice in writing under his or her hand addressed to the President, and a resignation shall take effect when the notice is received by the President.

## 9. Removal of members

(1) The President may only remove a member of the Commission from office on the following grounds –

- (a) inability to perform the functions of his or her office arising from infirmity of mind or body or from any other cause;
- (b) misconduct, including failing or refusing to –
  - (i) participate in the work of the Commission without due cause, and
  - (ii) disclose an interest in a complaint made to the Commission as provided under section 18;
- (c) incompetence;
- (d) bankruptcy;
- (e) conviction of a felony or of any offence involving dishonesty; or
- (f) known involvement in a political party.

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(2) The President may remove a member of the Commission from office under paragraph (a) of sub-section (1) following a report submitted by a properly constituted Medical Board.

(3) The President may remove a member of the Commission from office under paragraph (b) and (c) of sub-section (1) following a report submitted by a Committee appointed by the National Assembly under section 109 (2) (b) of the Constitution.

## 10. Immunity of members

A member of the Commission shall not be subject to civil or criminal proceedings or be personally liable for any act done or omitted to be done in the performance of his or her functions.

#### 11. Filling of membership vacancies

(1) A vacancy occurs in the membership of the Commission if –

- (a) a member's initial term or final term expires;
- (b) a member resigns from his or her office by notice in writing under his or her hand addressed to the President under section 8;
- (c) a member dies; or
- (d) a member is removed from office by the President under section 9.

(2) The President may appoint a person from among the shortlisted persons considered by the Selection Panel referred to in the Schedule to this Act, to fill a vacancy that occurs in the membership of the Commission.

### **PART III – FUNCTIONS, POWERS, MEETINGS OF THE COMMISSION ETC**

#### 12. Functions of the Commission

The Commission shall –

- (a) promote and protect human rights in The Gambia;
- (b) monitor, receive, investigate and consider complaints of human rights violations in The Gambia, including violations by private persons and entities;
- (c) communicate its decisions in the form of written reports to the Government and all relevant institutions to take necessary corrective action;
- (d) recommend appropriate remedial action to the Government and seek appropriate redress on behalf of complainants;

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- (e) promote awareness of, and respect for human rights through –
  - (i) conducting public awareness and education programmes to promote a culture of human rights in The Gambia,
  - (ii) undertaking studies on all matters concerning human rights,
  - (iii) assisting the Government in formulating appropriate policies to guarantee human rights,
  - (iv) publishing in the Gazette, an annual report on the state of human rights protection in The Gambia,
  - (v) publishing guidelines, manuals and other materials to explain the obligations of public officials in the protection of human rights, and
  - (vi) effective cooperation with non-governmental organisations and other public interest bodies engaged in the field of human rights, discrimination, economic and social development, protection of vulnerable groups, universities, faith based groups, youth advocacy groups and other civil society organisations;
- (f) organise local and international seminars, workshops and conferences on human rights issues to enlighten the public;
- (g) liaise and cooperate with local and international human rights organisations to advance the promotion and protection of human rights;
- (h) participate in international activities concerning the promotion and protection of human rights;
- (i) review existing human rights legislation and make recommendations to the Government concerning the compliance of the existing legislation with the international treaty obligations of The Gambia;
- (j) encourage the Government to –
  - (i) review draft legislation which may affect human rights,
  - (ii) ratify or accede to international human rights



instruments,

- (iii) effectively implement international human rights instruments and other agreements to which The Gambia is a party including through independent commentary of periodic reports to be submitted by The Gambia;
- (k) maintain a library, collect data and disseminate information and materials on human rights generally; and
- (l) perform such other functions as are necessary or expedient under this Act or any other enactment of the National Assembly.

### **13. Powers of the Commission**

(1) The Commission may establish such units or other organisational structures as the Commission may consider necessary for the more efficient performance of its functions.

(2) The Commission has the powers, rights and privileges vested in the High Court at a trial to –

- (a) hear any complainant;
- (b) summon witnesses to testify at hearings;
- (c) examine witnesses on oath, affirmation or otherwise;
- (d) compel the production of documents;
- (e) issue an order or request to examine witnesses abroad; and
- (f) enforce its decisions, including measures to protect the life and safety of an individual.

### **14. Administration of oaths, etc.**

The Chairperson, any other member of the Commission, or staff of the Commission authorised by the Chairperson, shall administer an oath taken or an affirmation made by a witness.

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### 15. Review of decisions

(1) A party who is aggrieved by a decision of the Commission under section 12 (1) (c) may request for a review of the Commission's decision within thirty days of the communication of that decision.

(2) The Commission may set up a special committee to review decisions of the Commission.

### 16. Independence of the Commission

In the performance of its functions, the Commission shall not be subject to the direction or control of any person or authority.

### 17. Meetings of the Commission

(1) The Commission shall meet at such times and places as the Chairperson shall determine.

(2) The Chairperson shall, at the request in writing of at least three other members, convene a special meeting of the Commission at any time.

(3) The Chairperson shall preside over meetings of the Commission and the Vice-Chairperson shall preside over a meeting in the absence of the Chairperson.

(4) The quorum for a meeting of the Commission shall be three members, including the Chairperson or the Vice-Chairperson.

(5) All decisions of the Commission shall be taken on the basis of a majority vote and the Chairperson or other member presiding shall have a casting vote as well as a deliberative vote.

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(6) The Commission may at any time co-opt any person to advise or otherwise assist the Commission at any of its meetings but the person co-opted shall not vote on any matter for decision by the Commission.

(7) The Commission shall regulate its own procedure.

### 18. Disclosure of interest

(1) A member who has an interest, direct or indirect, in any complaint made to the Commission, shall -

- (a) disclose to the Commission the fact of such interest and the nature of it; and
- (b) not take part in any hearing or decision of the Commission relating to the complaint.

(2) A disclosure of interest by a member shall be recorded in the minutes of the Commission.

(3) A member who contravenes sub-section (1) may be removed from the Commission.

#### **19. Establishment of thematic committees**

(1) The Commission may establish such thematic committees as the Commission may consider necessary or expedient for the efficient performance of its functions.

(2) Thematic committees established by the Commission may include a Committee on the Human Rights of Women, a Committee on the Human Rights of Children, a Committee on the Human Rights of People with Disabilities and a Committee on the Human Rights of Refugees, Internally Displaced Persons and Migrants.

(3) A committee shall consist of persons with the relevant knowledge and experience in the subject matter assigned to that committee and shall be headed by a Chairperson selected by the Commission.

(4) A committee may invite to its meetings, specialists in various human rights fields as resource persons or in such other capacity as the committee shall determine

(5) A decision of a committee shall not have any effect until the Commission approves it.

(6) A report issued by a committee is deemed, after approval by the Commission, to be an official report of the Commission.

(7) The Commission shall regulate the procedure of its committees.

#### **20. Right of access to government offices, information, etc.**

(1) A member of the Commission or a person authorised by the Commission in writing to investigate a human rights violation shall have access to all government offices, government facilities and places of detention and all non-classified information in government documents.

(2) The Commission shall, where any government official notifies the Commission in writing that the public disclosure of any information or the answering of any question or the production of any document or thing in public, might prejudice –

- (a) the security or defence of The Gambia;
- (b) the prevention, investigation or detection of offences; and
- (c) the proceedings of Cabinet concerning matters of a secret or confidential nature,

summon that government official to appear before the Commission to explain why the public disclosure of the information, the answering of the question or the production of the document or the thing in public, might be prejudicial.

### **21. Duty of impartiality**

(1) The Commission shall –

- (a) be impartial and fair in the conduct of an investigation;
- (b) report in writing to the Government and the complainant, the result of an investigation; and
- (c) furnish in the report, the reasons for the conclusions it has reached or reported.

(2) In publishing the report of an investigation, the Commission shall have due regard to the rights of those affected, including their right to privacy.

### **22. Redress for complainants**

The Commission may, in its report on an investigation, recommend the appropriate redress for a complainant.

### **23. Government's obligation to respond to remedial actions**

The Government shall respond within thirty days to the specific case and to the more general finding, conclusion, recommendation or other decision made by the Commission as the remedy for a human rights violation.

#### **24. Exclusion of jurisdiction**

The Commission's power of investigation under this Act shall not include the investigation of any matter which involves a human rights violation that occurred before the coming into force of this Act, unless that violation is a continuing violation.

#### **25. Rules of procedure**

The Commission may make rules of procedure, consistent with the rules of natural justice, for –

- (a) the filing of complaints;
- (b) the admissibility of complaints;
- (c) the conduct of investigations;
- (d) the proof of facts;
- (e) the examination of witnesses;
- (f) representation by legal practitioners, and related matters; and
- (g) recommending the appropriate redress under section 22.

### **PART IV - ADMINISTRATIVE PROVISIONS**

#### **26. The Executive Secretary of the Commission and Deputy**

- (1) The Commission shall be headed by an Executive Secretary.
- (2) The Commission shall, after consultation with the Public Service Commission, appoint the Executive Secretary of the Commission.
- (3) The Executive Secretary shall hold office for five years on such terms and conditions as shall be determined by the Commission and he or she is eligible for reappointment for one further term.
- (4) The Commission shall not appoint a person as the Executive Secretary unless he or she –
  - (a) holds formal qualifications in any profession relevant or

appropriate to the functions of the Commission; and

- (b) has such proven ability in public administration and management as the Commission may determine.

(5) The Executive Secretary may only be removed from office for –

- (a) inability to perform the functions of his or her office arising out of physical or mental incapacity; or
- (b) gross misconduct or incompetence.

(6) Before the Executive Secretary is removed from office, he or she shall be informed of the case against him or her and be given adequate opportunity to defend himself or herself against any allegations made against him or her.

(7) The Commission shall appoint a Deputy Executive Secretary on such terms and conditions as shall be determined by the Commission.

(8) The Deputy Executive Secretary shall assist the Executive Secretary in the performance of the Executive Secretary's functions.

### **27. Functions of the Executive Secretary**

(1) The Executive Secretary shall –

- (a) be responsible for the day to day administration of the Commission;
- (b) supervise and discipline the other staff of the Commission;
- (c) arrange the business of the Commission;
- (d) take the minutes of the meetings of the Commission and keep them as a public record;
- (e) initiate and maintain high level contacts or relations with local interest groups and international human rights bodies or institutions; and
- (f) perform such other functions as the Commission may assign to him or her.

(2) The Executive Secretary shall attend all meetings of the

Commission but he or she shall not be entitled to vote.

### **28. Other staff of the Commission**

(1) The Commission may appoint, through a transparent recruitment process, such other staff as the Commission may require for the efficient performance of its functions.

(2) The Commission shall, from time to time, determine the terms and conditions of service (including terms and conditions as to competitive remuneration, allowances, pensions, gratuities and other benefits) of the persons employed by the Commission.

(3) The Commission may delegate to the Executive Secretary, the power to appoint such grades or categories of staff as the Commission may determine.

(4) The Commission may engage such consultants and advisers as the Commission may require for the efficient performance of its functions.

### **29. Immunity of the Executive Secretary and other staff**

The Executive Secretary and any other staff of the Commission shall not be subject to civil or criminal proceedings or be personally liable for any act done or omitted to be done in the performance of his or her functions.

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### **30. Staff regulations**

(1) The Commission shall make staff regulations generally for the conditions of service of the employees of the Commission.

(2) Regulations made may provide for –

- (a) the appointment, promotion and discipline (including dismissal) of employees of the Commission;
- (b) appeals by employees against dismissals or other disciplinary measures; and
- (c) such other matters as may lawfully be provided for under this Act.

## **PART V – FINANCIAL PROVISIONS**

### 31. Funds of the Commission

(1) The funds of the Commission shall consist of –

- (a) moneys appropriated to it by the National Assembly;
- (b) fees, charges and other moneys or properties which may become payable to or vest in the Commission in respect of the performance of its functions; and
- (c) publicly declared donations or gifts of land, money or other property from any lawful source, if the conditions attached by the individual or organisation donating or making the gift are not inconsistent with the functions of the Commission under this Act or any other enactment of the National Assembly.

(2) The Commission shall have control over the use of its funds.

### 32. Annual estimates, accounts and audit

(1) The Commission shall, not later than three months before the end of each financial year, prepare and submit to the Minister responsible for Finance for examination, estimates of the income and expenditure of the Commission for the ensuing year.

(2) The Commission shall keep proper records and books of accounts of its income, expenditure and transfers.

(3) The Commission shall prepare, in respect of each financial year, a statement of accounts.

(4) The Commission shall, within three months after the end of each financial year, submit its statement of accounts to the Auditor General for audit.

(5) The audited accounts of the Commission and the Auditor General's report on those accounts shall form part of the Auditor General's overall annual report to the National Assembly.

### 33. Annual report

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(1) The Commission shall, within three months after the end of each financial year, submit a report to the National Assembly on its business and operations during the preceding year.

(2) The report shall evaluate –

- (a) the ways in which human rights in The Gambia have been observed;
- (b) the steps taken by the Commission to promote and protect human rights including the findings of individual complaints investigated and interventions and recommendations made by the Commission or by any of its committees concerning matters brought before them; and
- (c) such other information concerning the activities of the Commission as the National Assembly may request.

(3) The Commission shall publish its report in the Gazette and ensure that the report is disseminated as widely as possible.

## **PART VI – MISCELLANEOUS**

### **34. Duty of confidentiality**

(1) Every member of the Commission, the Executive Secretary and every other staff of the Commission shall maintain confidentiality and secrecy of any complaint, document, report and other information relating to the implementation of this Act that becomes known to him or her or comes into his or her possession or his or her control.

(2) Subject to the Constitution, a member of the Commission, the Executive Secretary or any other staff of the Commission shall not divulge -

- (a) any information contained in the discharge of a duty, the performance of a function or the exercise of a power under this Act; and
- (b) the source of such information or the identity of any informer or the maker, writer or issuer of a report given to the Commission.

(3) A person appointed as a member of the Commission and the Executive Secretary shall, before assuming office, take the Oath for the

Due Execution of Office and the Oath of Secrecy.

**35. Protection of informants**

(1) An informant shall not be subject to civil or criminal proceedings or be personally liable for disclosing a human rights violation.

(2) The Commission shall, if it determines that there is likelihood that the life or the property of the informant is endangered or is likely to be endangered, issue appropriate directions to the institutions that are capable of rendering protection to provide physical and other protection to the informant or his or her property.

**36. Protection of witnesses**

(1) A witness shall not be subject to civil or criminal proceedings or be personally liable for testifying before the Commission about an allegation of a human rights violation.

(2) The Commission shall, if it determines that there is likelihood that the life or the property of the witness is endangered or is likely to be endangered, issue appropriate directions to the institutions that are capable of rendering protection to provide physical and other protection to the witness or his or her property.

**37. Regulations**

The Commission may make regulations generally for the effective implementation of this Act and for any other matter which is consistent with the purposes of this Act.

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**SCHEDULE**

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**PROCEDURE FOR THE APPOINTMENT OF MEMBERS OF THE COMMISSION**

The following procedure shall govern the appointment of members of the Commission and the announcement of their appointment –

The President shall, through the Minister, advertise in a transparent manner and invite suitably qualified persons to apply for the position of member of the Commission.

The list of applicants shall be considered by a selection panel which shall consist of –

- (a) a representative of each of the following umbrella organisations –
  - (i) the Association of Non-Governmental Organisations;
  - (ii) Gambia Bar Association;
  - (iii) Gambia Federation of the Disabled;
  - (iv) National Youth Council;
  - (v) Female Lawyers' Association [of The Gambia](#);
  - (vi) Gambia Press Union; and
- (b) a representative of the Government, who shall be co-opted into the panel and be given all the rights and privileges of a member of the panel except that he or she is not entitled to vote on any question before the panel.

The selection panel shall include at least two women.

A member of the selection panel is disqualified from applying for the position of member of the Commission.

The selection panel shall initially shortlist nine candidates who satisfy the criteria prescribed under section 5 (2) of this Act, viz. –

- (a) demonstrated high morals;

- (b) proven integrity;
- (c) such distinguished service in a field of endeavour that commands the respect of the public; and
- (d) familiarity with and proven record of respect for human rights,

taking cognisance of the principles of pluralism and equitable gender representation.

The Minister shall, after the selection panel has shortlisted nine candidates for membership of the Commission, cause the shortlist of nine candidates to be published in the Gazette for fourteen days.

Any person who, within this period, has an objection to any of the shortlisted candidates may do so with reasons in writing to the Minister, who shall place the objection before the selection panel to consider and reach a conclusion on.

The selection panel shall decide whether or not to disqualify the candidate or remove the candidate's name from the list of shortlisted candidates.

The selection panel shall then present the shortlist of nine candidates to the National Assembly for approval of five of the candidates as members of the Commission.

After approval, the National Assembly shall forward the names of the five candidates to the President for formal appointment as members of the Commission.

The Minister shall publish in the Gazette, the names of the five persons appointed by the President as members of the Commission.

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[Section 26 (a) and (b) of Cap. 4:01]

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