

H.B. 5, 2020.]

ZIMBABWE INDEPENDENT COMPLAINTS COMMISSION BILL, 2020

MEMORANDUM

This Bill seeks to provide for an independent complaints mechanism for members of the public against members of the security services pursuant to section 210 of the Constitution. The complaints mechanism is to be intermediated by a body which is independent from each of the security services, namely the police, defence, prisons and correctional and intelligence services. For this purpose, the Bill establishes a Commission to carry out this function with a view to remedying any harm caused by any misconduct on the part of any member of the security services.

In more detail, the Bill provides as follows:

PART I: PRELIMINARY

This Part provides for preliminary matters: the title of the Bill which is the Zimbabwe Independent Complaints Commission Bill, 2020. *Clause 1* this Clause sets out the Bill's short title. *Clause 2* sets out the interpretation of some terms used in the Bill. *Clause 3* sets out the objects of the Bill which essentially are the provision of an effective and independent mechanism for receiving and investigating complaints from members of the public against misconduct by members of the security services. Also included in the objects is the making of recommendations for disciplinary action to be taken against offending members, securing the grant of appropriate remedies to injured parties and the co-operation of the security services, enhancing accountability and transparency by security services when discharging their functions.

PART II: ESTABLISHMENT AND FUNCTIONS OF COMMISSION

Under this Part, *Clause 4* provides for the establishment of a Commission to be known as the Zimbabwe Independent Complaints Commission. *Clause 5* this Clause provides for its function to investigate complaints by members of the public against members of the security services and ensure that offending members are brought to account through recommendations for disciplinary action to be taken against them and appropriate remedies be granted to complainants. The conduct that the Commission can investigate includes deaths or rape in custody or deaths by reason of any action of a member; rape by a member whether on or off duty; torture or assault. The Commission will investigate practices which are in contravention of section 206(2) and (3) of the Constitution which requires that national security be pursued with the utmost respect for the fundamental rights and freedoms of citizens as well as the rule of law. The Commission must also, through investigation, ensure compliance by members of the security services with section 208 of the Constitution which requires them to be non-partisan. The Commission must make orders for, or recommend, remedial actions regarding investigated matters.

PART III: APPOINTMENT AND COMPOSITION OF COMMISSION

In this part *Clause 6* provides for membership of the Commission, which will be made up of a, Chairperson, who is a person eligible for appointment as a High Court Judge, a sitting Judge or a former judge appointed by the President after consultation with the Judicial Service Commission and the Committee on Standing Rules and Orders of Parliament, one must be a legal practitioner, one must be a medical practitioner, one must be a psychologist, one must have experience in security services. The five members must have at least seven years' practical experience in their fields. The members will serve the Commission on a full-time basis. Section 320 of the Constitution and Parts III, VII and sections 34 and 37 of the Public Entities Corporate Governance Act [*Chapter 10:31*] apply with respect to the conditions of office of members of the Commission.

Clause 7 provides for the disqualification for appointment and procedure at meetings. *Clause 8* provides for the appointment of a deputy chairperson by the President after consulting the Committee on Standing Rules and Orders. The Deputy Chairperson must be of a different gender from the Chairperson. *Clause 9* provides for the appointment of an Executive Secretary of the Commission and other staff of the Commission who will be public servants but not part of the Civil Service. Their appointment will also be subject to the Public Entities Corporate Governance Act [*Chapter 10:31*] as may be appropriate. *Clause 10* provides for the delegation by the Commission of any of its functions to the Executive Secretary and staff of the Commission and a sub-delegation by the Executive Secretary to the staff of the Commission but without absolving the Commission from responsibility with respect to delegated matters. *Clause 11* provides for a requirement of the Commission to report to Parliament and to the Minister with respect to its operations and activities and any other particular matters which the Commission considers must be brought to the attention of Parliament and the Minister.

PART IV: INVESTIGATORS. INVESTIGATION OF COMPLAINTS AND ENFORCEMENT

Under this Part *Clause 12* provides for the appointment of investigators to carry out investigations for purposes of this Act. They must possess a tertiary qualification and knowledge and experience in criminal investigations. *Clause 13* provides for the submission of complaints to the Commission by members of the public. A complaint must be in the prescribed form although the Commission may not refuse to investigate a matter solely because of failure to comply with the prescribed requirements. A complaint must be submitted within three years of the date of the act complained of. *Clause 14* sets out the periods within which the Commission should respond to a complaint and the different actions to be taken having regard to the nature of the complaint. *Clause 15* provides for the conduct of hearings or inquiries by the Commission in respect of any complaint submitted to it if it considers it necessary to do so. For that purpose, some provisions of the Commissions of Inquiry Act [*Chapter 10:07*] will apply with respect to the conduct of any investigations, inquiries or hearings of the Commission. If the circumstances so require and subject to the rights of the persons concerned, hearings or inquiries may be held in camera. Information disclosed in camera may not be disclosed to the public without the authority of the Commission or be used for the benefit of any member or staff of the Commission. *Clause 16* provides for measures to be taken following investigations, hearings or inquiries. If the Commission determines that the act complained of constitutes an act of misconduct by a member of a security service and requires to be redressed, the Commission will make recommendations or orders which it considers appropriate in the circumstances. The recommendations or orders may include compensation, reference of the matter for prosecution by the National Prosecution Authority, requiring that internal disciplinary processes be undertaken against the member by the security service concerned or a reconsideration of any relevant law. *Clause 17* provides for the enforcement of orders of the Commission requires the member of the security service or the security service concerned to indicate the steps they propose to take to comply with the order or recommendation of the Commission failing which an order may be registered with the High Court for execution or the member concerned may be prosecuted under this Act for failure to comply with an order of the Commission. With respect to institutional matters referred to in clause 5(1)(a) (b) and (c), and (d), a report must be made to the relevant Ministers and to Parliament if the security service concerned has failed to indicated the steps it proposes to take. *Clause 18* provides for offences for failure to comply with orders of the Commission. *Clause 19* sets out that the Commission may itself institute court proceedings for the redress of any violations on behalf of complainants.

PART V: FINANCIAL PROVISIONS

In this Part *Clauses 20–22* provides for the source of funds of the Commission which is mainly the Fiscus and as such, public finance management principles and audit requirements are to be observed by the Commission.

PART VI: GENERAL PROVISIONS

Under this part *Clause 23* provides for the general application of the Public Entities Corporate Governance Act [*Chapter 10:31*] to the Commission in its capacity as a public entity. *Clause 24* requires the security services and their members to co-operate with the Commission in the discharge of its functions under this Act. *Clause 26* provides for the observance of confidentiality with respect to information which comes into the possession of the Commission and its staff. *Clause 27* protects the Commission and its staff from liability for loss or damage sustained by any person as a result of the bona fide exercise of functions under the Act. *Clause 28* sets out the offences and penalties. *Clause 29* provides for the making of regulations by the Minister in consultation with the Commission.

SCHEDULE

Provides for matters which are subject to provisions under the Public Entities Corporate Governance Act [*Chapter 10:31*].

ZIMBABWE INDEPENDENT COMPLAINTS COMMISSION BILL, 2020

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PRELIMINARY

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SCHEDULE: Provisions applicable to Commission.

BILL

TO provide for the establishment of an Zimbabwe Independent Complaints Commission for the investigation of complaints by members of the public against misconduct by members of the security services; to make
5 further provision for the functions and obligations of the Commission and to regulate its operations; and to provide for matters connected with or incidental to the foregoing.

WHEREAS section 207 of the Constitution provides the following—

The security services of Zimbabwe consist of—

- 10 (a) *the Defence Forces;*
(b) *the Police Service;*
(c) *the intelligence services;*
(d) *the Prisons and Correctional Service; and*
(e) *any other security service established by Act of Parliament.*
- 15 (2) *The security services are subject to the authority of this Constitution, the President and Cabinet and are subject to parliamentary oversight.*
(3) *Membership of the security services must reflect the diversity of the people of Zimbabwe.*

WHEREAS section 208 of the Constitution provides the following—

- 20 (1) *Members of the security services must act in accordance with this Constitution and the law.*

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- (2) Neither the security services nor any of their members may, in the exercise of their functions—
- (a) act in a partisan manner;
 - (b) further the interests of any political party or cause;
 - (c) prejudice the lawful interests of any political party or cause; or 5
 - (d) violate the fundamental rights or freedoms of any person.
- (3) Members of the security services must not be active members or office-bearers of any political party or organisation.
- (4) Serving members of the security services must not be employed or engaged in civilian institutions except in periods of public emergency. 10

WHEREAS section 210 of the Constitution provides as follows—

An Act of Parliament to provide for an effective and independent mechanism for receiving and investigating complaints from members of the public about misconduct on the part of members of the security services, and for remedying any harm caused by such conduct; 15

AND WHEREAS it is desirable, in accordance with the Constitution, to make provision for an independent complaints mechanism:

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

PART I 20

PRELIMINARY

1 Short title

This Act may be cited as the Zimbabwe Independent Complaints Commission Act, 2020.

2 Interpretation 25

(1) In this Act—

- “act” or “action” includes an omission of an act;
- “appropriate Minister” means the Minister responsible for defence, justice, the police or intelligence, as the case may be, having regard to the member or service under investigation; 30
- “Commission” means the Zimbabwe Independent Complaints Commission established in terms of section 4;
- “Minister” means the Minister to whom the President in terms of subsection (2) may from time to time assign the administration of this Act;
- “misconduct” in relation to a member of the security service, means any criminal or other act contrary to the proper exercise of their functions as specified in section 208(2) of the Constitution and includes but is not limited to— 35
 - (i) any death in the custody of any member of a security service;
 - (ii) any death as a result of actions of any member of a security service;
 - (iii) unjustified discharge of an official firearm by any member of a security service; 40
 - (iv) rape by a member of a security service, whether the member is on or off duty;

- (v) rape of any person while that person is in the custody of a security service;
- (vi) the torture of or assault against any member of a security service in the execution of the member's duties;
- 5 (vii) any other act or conduct, including violations of human rights, complained of by any person or on his or her behalf, being any act or conduct of any member of a security service in the discharge or purported discharge of the member's functions;

“observer” means an observer appointed under section 6(6);

10 “security service” means a security service referred to in section 207 of the Constitution.

(2) This Act shall be administered by the President unless or until the President assigns it to any Minister.

3 Objects of Act

15 The objects of this Act are—

- (a) to give effect to section 210 of the Constitution by providing for an independent and impartial mechanism for the investigation of misconduct committed by members of security services and to ensure independent oversight of the handling of complaints against them;
- 20 (b) to make disciplinary recommendations in respect of members of the security services resulting from investigations conducted in terms of this Act;
- (c) to ensure the grant of appropriate remedies in respect of any harm caused by any misconduct by members of the security services;
- 25 (d) to enhance accountability and transparency by the security services and their members in accordance with the principles of the Constitution.

PART II

ESTABLISHMENT AND FUNCTIONS OF COMMISSION

4 Establishment of Commission

30 (1) There is hereby established a Commission in terms of section 210 of the Constitution to be known as the Zimbabwe Independent Complaints Commission.

(2) The Commission shall be a body corporate capable of suing and being sued in its corporate name and, subject to this Act, of performing all acts that bodies corporate may by law perform.

35 5 Functions of Commission re complaints against members of security services

- (1) Subject to this Act, the functions of the Commission are—
- (a) to investigate any complaint made by any person or on his or her behalf against any misconduct on the part of a member of a security service in the discharge or purported discharge of the member's functions;
 - 40 (b) to investigate any contraventions of, or practices which do not comply with, sections 206(2) and (3) and 208 of the Constitution;
 - (c) to inspect any facilities under the control of any security service where persons are detained or incarcerated and make any recommendations or remedial orders it considers necessary;
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(d) to cause the presentation of any information it considers appropriate to an inquest conducted by any court or other investigation in terms of the Coroner's Office Act [*Chapter 7:21*] (No. 12 of 2019).

(2) The Commission shall make such recommendations or orders as it considers appropriate to the security service concerned or any other relevant authority, including recommendations or orders for prosecution, compensation or any other appropriate relief or internal disciplinary action. 5

(3) The Commission shall take all reasonable steps to facilitate access to its services by the public.

PART III 10

APPOINTMENT AND COMPOSITION OF COMMISSION

6 Composition of Zimbabwe Independent Complaints Commission

(1) The Zimbabwe Independent Complaints Commission shall consist of the following members—

- (a) a Chairperson, being a person who is eligible for appointment as a High Court Judge or is a sitting judge or former judge, appointed by the President after consultation with the Judicial Service Commission; and 15
- (b) four other members appointed by the President from a list of not fewer than seven nominees submitted by the Committee on Standing Rules and Orders of Parliament in terms of section 237(1) of the Constitution. 20

(2) Members referred to in subsection (1)(b) shall be identified as follows—

- (a) one must be a legal practitioner of not less than seven years' experience in the practice of law;
- (b) one must be a medical practitioner of not less than seven years' practical experience as such, registered in terms of the Health Professions Act [*Chapter 27:19*]; 25
- (c) one must be a psychologist of not less than seven years' practical experience registered as such in terms of the Health Professions Act [*Chapter 27:19*]; and
- (d) one must be a person with experience in any security services. 30

(2) Members of the Commission must be chosen for their integrity and competence.

(3) Section 320 of the Constitution and Parts III, VII and sections 34 and 37 of the Public Entities Corporate Governance Act [*Chapter 10:31*] apply with respect to the conditions of office of members of the Commission. 35

(4) Three members of the Commission shall constitute a quorum.

(5) In addition to the membership of the Commission, the Chairperson of the Commission shall invite the head of each security service (as defined in section 15(1)) to appoint a serving or retired member of that service of sufficient seniority to sit together with the membership of the Commission whenever the Commission is investigating or conducting an inquiry into any act of misconduct on the part of any member or former member of that security service. 40

(6) The head of a security service shall appoint an observer for a term of at least twelve months and shall notify the Chairperson of the Commission in writing of the identity of the observer and of any replacement of the observer during the term for which he or she has been appointed. 45

(7) The observer shall be present at any meeting of the Commission during which any act of misconduct concerning the security service which appointed him or her as an observer is being investigated, heard or inquired into in terms of this Act.

(8) In addition, the Chairperson of the Commission may invite the observer—

- 5
- (a) to participate in the deliberations of the Commission during any investigation, hearing or inquiry (but in that event the observer shall not have any vote on any question put to the Commission for a vote); and
 - (b) to put questions to any complainant or other person who is a party to any investigation, hearing or inquiry being conducted by the Commission.

10 **7 Disqualification for appointment and procedure at meetings**

(1) Section 236 of the Constitution applies to members of the Commission.

(2) Subject to sections 33, 34 and 36 of the Public Entities Corporate Governance Act [*Chapter 10:31*], the Schedule prescribes the procedure to be followed by the Commission at its meetings.

15 **8 Deputy Chairperson of Commission**

(1) The President must appoint one of the members of the Commission to be the Deputy Chairperson of the Commission.

(2) The Deputy Chairperson must be of a different gender to that of the Chairperson.

20 (3) If the office of the Chairperson is vacant or the Chairperson is for any reason unable to perform his or her function, the Deputy Chairperson shall act as Chairperson.

9 Executive Secretary and other staff of Commission

(1) Subject to Part IV of the Public Entities Corporate Governance Act [*Chapter 10:31*], the Commission must appoint—

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- (a) an Executive Secretary; and
 - (b) such other staff of the Commission, including investigators, as may be necessary for the proper exercise of its functions;

on such terms and conditions as the Commission may fix in terms of the said Act.

30 (2) The offices of the Executive Secretary and other members of staff are public offices but shall not form part of the Civil Service.

(3) Subject to the general control of the Commission, the Executive Secretary—

- 35
- (a) is responsible for carrying out the decisions of the Commission and the executive day-to-day administration and management of the affairs, staff and property of the Commission;
 - (b) is the custodian of the Commission's records;
 - (c) must attend all meetings of the Commission, but has no vote on any matter before the Commission; and
 - (d) must perform any other functions in connection with this Act as may be assigned to him or her by the Commission.

40 (4) The Commission must terminate the appointment of the Executive Secretary if he or she would be required in terms of paragraph 1 of the Schedule to vacate his or her office had that paragraph and paragraph 2 of the Schedule applied to him or her.

10 Delegation by Commission

- (1) For the better carrying out of the objects and purposes of this Act—
- (a) the Commission may delegate any of its functions to the Executive Secretary or to any other of its employees:
- Provided that the Commission shall not delegate any function that has been assigned to the Chairperson of the Commission; 5
- (b) the Commission may assign any function which by this Act is conferred on any of its employees to any other of its employees;
- (c) with the approval of the Commission, the Executive Secretary may delegate any of his or her functions, including a function delegated to him or her under paragraph (a), to any of the employees of the Commission. 10
- (2) A delegation or assignment under subsection (1)—
- (a) may be made generally or specially and subject to such reservations, restrictions and exceptions as the Commission or the Executive Secretary, as the case may be, may determine; and 15
- (b) may be revoked at any time by the Commission or the Executive Secretary, as the case may be; and
- (c) must be exercised subject to the direction or control of the Commission; and
- (d) does not preclude the Commission or the Executive Secretary, as the case may be, from exercising the function concerned. 20
- (3) Where a function has been delegated or assigned in terms of subsection (1), any reference in this Act to—
- (a) the Commission, in relation to the function, is to be construed as a reference to the Executive Secretary or other employee to whom the function has been delegated or assigned; 25
- (b) the Executive Secretary or other employee, in relation to the function, is to be construed as a reference to the employee to whom the function has been delegated or assigned.
- (4) This section must not be construed as— 30
- (a) limiting any other law which may permit the delegation or assignment of functions by the Commission, the Executive Secretary or any other employee of the Commission; or
- (b) absolving the Commission from responsibility for the manner in which the delegated or assigned function is exercised or for the conduct of the employee to whom the function has been delegated or assigned. 35

11 Commission to report annually to Parliament

- (1) The Commission must submit to Parliament, through the President or the Minister (as the case may be), an annual report describing fully its operations and activities, the report being submitted not later than the end of March in the year following the year to which the report relates. 40
- (2) The Commission must submit to Parliament through the President or the Minister (as the case may be), such further reports, in addition to the annual report specified in subsection (1), in such manner as may be prescribed on particular matters relating to its functions which, in the opinion of the Commission, should be brought to the attention of the President or the Minister and Parliament. 45

PART IV

INVESTIGATORS, INVESTIGATION OF COMPLAINTS AND ENFORCEMENT

12 Appointment and powers of investigators

5 (1) The Executive Secretary, in consultation with the Commission, must appoint fit and proper persons as investigators of the Commission.

(2) A person appointed as an investigator must have knowledge and relevant experience of criminal investigations.

10 (3) An investigator must be issued with a certificate of identity in the prescribed form, which shall serve as proof to certify that the investigator is duly authorised to exercise powers for the purposes of this Act.

(4) An investigator must produce the certificate of identity to any person affected by the performance of his or her function in the course of any investigation.

15 (5) An investigator may, subject to the control and direction of the Executive Director, exercise such powers and must perform such duties as are conferred or imposed upon the investigator by or in terms of this Act and must obey all lawful directions which the investigator may from time to time receive from a person having authority to give such directions in terms of this Act.

20 (6) For the purposes of conducting an investigation, an investigator may direct any person to submit an affidavit or to appear before the investigator to give evidence or to produce any document in that person's possession or under his or her control which has a bearing on the matter being investigated, and may question such person thereon.

(7) An investigator or any person duly authorised thereto by him or her may request an explanation from any person whom he or she reasonably suspects of having information which has a bearing on the matter being investigated.

25 (8) A person questioned by an investigator conducting an investigation must answer each question truthfully and to the best of that person's knowledge and ability, but—

- 30 (a) the person is not obliged to answer any question if the answer is self-incriminating; and
(b) the person asking the question must inform the person of the privilege referred to in paragraph (a).

(9) The Commission or on investigator may request the assistance of the police during an investigation.

13 Reporting of complaints

35 (1) Any person who is aggrieved by any act of misconduct by a member of a security service may make a written complaint to the Commission requesting it to investigate the act complained of.

(2) The Commission shall not investigate any complaint—

- 40 (a) unless the complaint is submitted to it within three years of the date the act complained of occurred; or
(b) where the action complained of is the subject of any court proceedings or of any investigation by any other independent Commission.

45 (3) The Commission shall prescribe the form in which complaints may be made, indicating the particulars to be provided and any supporting documents to accompany the form.

(4) The Commission shall not refuse to investigate a complaint solely on the grounds that the complaint is not in the prescribed form or in any way fails to comply with any of the prescribed requirements, and a complaint may be made by such other means as the Commission may allow with a view to making its services accessible to all persons. 5

(5) Members of staff of the Commission shall render any necessary assistance, free of charge, to enable any person to make a complaint in terms of this section.

(6) Where the person by whom a complaint might have been made has died or is for any reason unable to act for herself or himself, the complaint may be made by a personal representative or a member of family of the complainant or such other person as the Commission considers suitable to represent the complainant. 10

14 Response to complaints

(1) Subject to subsection (2), the Commission shall, as soon as is reasonably practicable and in any event within seven days of the date of the submission of a complaint initiate the necessary investigations. 15

(2) The Commission shall notify the complainant and the observer of the security service concerned in writing within twenty-one days of the date of the submission of the complaint of the progress made in the investigation.

(3) Where a complaint reasonably appears to require the protection of the life or liberty of any person, the Commission may, within forty-eight hours of the submission of the complaint, take such action as is necessary in the circumstances to address the complaint and notify the complainant and the observer of the security service concerned accordingly, specifying the period within which the complaint is likely to be redressed. 20

(4) For the purposes of subsection (3), the Commission shall take all necessary steps, including an urgent court application, for such order as it considers necessary in dealing with the matter. 25

(5) Subject to subsection (3), the Commission may extend the period to respond to a complaint in terms of subsection (1) only once for a period not exceeding sixty days if—

- (a) having assessed the matter, it appears to the Commission that more time is required to investigate the matter; or 30
- (b) consultations that cannot reasonably be completed within seven days are necessary in addressing the complaint.

(6) Where the period to respond is extended in terms of subsection (5), the Commission shall, within fourteen days of the date of the submission of the complaint, notify the complainant in writing of the extension stating— 35

- (a) the period of the extension; and
- (b) the reasons for the extension; and
- (c) that the applicant may seek a review by the High Court of the decision to extend. 40

15 Conduct of hearings or inquiries

(1) In this section the “head of the service” means Commander Defence Forces or Commissioner-General of Police or Director-General of Intelligence Services or Commissioner-General of Prisons and Correctional Service, as the case may be.

(2) The Commission may conduct a hearing or inquiry in respect of any complaint submitted to it: 45

Provided that any inquiry or hearing in terms of this section shall be concluded within such period, not exceeding sixty days from the date of the submission of the complaint, as may be prescribed.

5 (3) A member of a security service against whom a complaint is made is entitled to legal representation before the Commission.

(4) A member of a security service against whom a complaint has been made may, while being present at an investigation, hearing or inquiry, be represented at such investigation, hearing or inquiry by another member (of his or her choice) of that security service.

10 (5) For the purposes of any hearing or inquiry in terms of this Part, the powers, rights and privileges of the Commission are the same as those conferred upon a commissioner by the Commission of Inquiry Act [*Chapter 10:07*], other than the power to order a person to be detained in custody, and sections 9 to 18 of that Act apply, with necessary changes, in relation to any hearing or inquiry by the Commission under this
15 Act and to a person summoned to give evidence or giving evidence at the hearing or inquiry.

(6) The Commission may request the attendance, at any investigation, hearing or inquiry, of a police officer to keep order during the investigation, hearing or inquiry and to remove at the request of the Chairperson any person acting in a contemptuous
20 manner.

(7) In the conduct of any hearing or inquiry, the Commission shall not be bound by the strict rules of evidence, and may ascertain any relevant fact by any means it considers appropriate subject to the rules of natural justice.

25 (8) The Commission shall afford the person against whom a complaint has been made an adequate opportunity to respond to the allegations, whether in person or in writing or in such manner as may be prescribed.

(9) The Commission may, having regard to any special circumstances of the case based on the grounds of public interest, which grounds shall be recorded in writing, hold any inquiry or hearing *in camera* and any information disclosed *in camera* may
30 only be disclosed to any person making a report thereon—

- (a) without disclosing the identity of any person who gave the information *in camera* for the purposes of the hearing or inquiry; or
- (b) for the purposes of any proceedings for perjury alleged to have been committed in the course of an investigation, hearing or inquiry.

35 (10) The President or the Minister may, at any stage during a hearing of or inquiry into a complaint by the Commission, produce to the Commission a certificate in writing signed by the President or the Minister to the effect that the disclosure of any information specified in the certificate is, in his or her opinion and subject to section 86(1) and (2) of the Constitution, contrary to the public interest on the grounds that it
40 may prejudice the defence or internal security of the State, whereupon the Commission shall make arrangements for any such information to be given *in camera* and shall take such other action as may be necessary or expedient to prevent the disclosure of that information.

(11) Upon receipt of a certificate referred to in subsection (10)—

45 (a) the Commission or any member of staff of the Commission shall not communicate any such information to any other person for any purpose without the approval of the President or the Minister and subject to such conditions as the President or the Minister may fix; and

- (b) the complainant may, in accordance with the Administrative Justice Act [*Chapter 10:28*], appeal against a certificate of the President or the Minister and the court hearing the appeal shall treat any evidence or documentation subject to the certificate in the manner specified in section 8 of that Act. 5

(12) The law relating to the competence or compellability of any person on the grounds of privilege to give evidence, answer any questions or produce any record or document before the Commission, shall apply.

(13) Any member of staff of the Commission who, without the authority of the Commission, discloses any information, evidence or documentation referred to in subsection (9) or (10), or makes any use of such information for his or her own benefit, shall be guilty of an offence and liable to a fine not exceeding level 12 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment. 10

16 Measures following investigation, hearing or inquiry

(1) If, after conducting an investigation, hearing or inquiry, the Commission is of the opinion that— 15

- (a) the act complained of constitutes misconduct on the part of a member of a security service; or
- (b) the act relates to a decision or practice on the part of a security service which must be stopped, reversed or altered; or 20
- (c) the act should be redressed in such manner as the Commission may order; or
- (d) any law by virtue of which the act was done should be reconsidered; or
- (e) in the case of a complaint against any decision of the security service affecting the complainant, reasons should have been given for the decision complained against; or 25
- (f) any other steps should be taken in relation to the act complained against;

the Commission shall make such order or recommendation in the matter as it considers appropriate in the circumstances for the redress of the misconduct, and the order or recommendation shall be accompanied by reasons therefor and by a report of the findings of the Commission. 30

(2) If the report makes any recommendation in respect of the matters referred to in section 5(1)(a)(b), (c), and (d), a copy of the report shall be sent to the security service concerned, the appropriate Minister and the President or the Minister.

- (3) The Commission may, where it considers it necessary— 35
- (a) recommend the immediate release of any person from unlawful detention by a security service;
 - (b) recommend the payment of compensation to the complainant;
 - (c) recommend that the complainant seek redress through the courts;
 - (d) refer the matter to the National Prosecuting Authority for the prosecution of the member complained against; or 40
 - (e) order the appropriate security service concerned to institute appropriate internal disciplinary processes against the member complained against.

(4) The determination of the Commission following the conclusion of any investigation, hearing and inquiry shall be in writing and a copy shall be made available to the complainant, the security service and the member of the security service concerned, the appropriate Minister, the President or the Minister and any other person considered by the Commission to have an interest in the matter. 45

(5) Any report of the Commission resulting from any investigation, hearing or inquiry containing any findings of fact shall be admissible in any criminal or civil court or in any disciplinary proceedings as *prima facie* proof of such facts.

17 Enforcement of orders of Commission

5 (1) The Commission shall require a member or in relation to against whom, or the security service against or in relation to which, any order or recommendation has been made in terms of this Part to notify the Commission, within a specified period not exceeding fourteen days of the date of the order or recommendation, or such shorter period as the circumstances of the matter may reasonably require where time is of the
10 essence, of the steps, if any, that the member or the security service proposes to take to give effect to the order or recommendation.

(2) A security service to which an order or recommendation regarding disciplinary action has been made shall—

15 (a) within 30 days of receipt thereof, initiate disciplinary proceedings in terms of the recommendations made by the Commission and accordingly inform of the Commission, the President or the Minister and the appropriate Minister in writing of the initiation of such proceedings;

20 (b) if the proceedings are not completed within ninety days, submit quarterly, a written report to the Commission, the President or the Minister and the appropriate Minister on the progress made towards completing the disciplinary proceedings; and

(c) immediately on finalisation of any such disciplinary matter, inform the Commission, the President or the Minister and the appropriate Minister in writing of the outcome thereof.

25 (3) If no action has been taken within the period specified in subsection (1) or (2), the Commission may, if it thinks fit after considering the comments, if any, made by the security service in respect of the matters referred to in section 5(1)(a)(b), (c), and (d), cause a special report to be submitted to Parliament through the President or Minister and to the appropriate Minister concerning its findings and recommendations.

30 (4) If, after conducting an investigation under this Part, it appears to the Commission that injustice has been done to the person aggrieved and the injustice has not been, or will not in its opinion be remedied in an adequate or appropriate, the Commission may, if it thinks fit, lay before the President and Parliament a special report on the matter.

35 18 Offences in relation to orders of Commission

Subject to section 17, any person who, without lawful excuse, contravenes or fails to comply with any order made by the Commission in terms of this Act, shall be guilty of an offence and liable to a fine not exceeding level 14 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

40 19 Review of an order, recommendation, finding or decision of Commission by High Court

45 (1) Any person who is aggrieved at any order, recommendation, finding or decision in terms of this Part may request for a review of the order, recommendation finding or decision by the High Court within, fourteen days of the date of the order, recommendation, finding or decision concerned.

(2) The High court may upon such review—

(a) uphold the order, recommend findings or decision of the Commission; or

- (b) refer the decision to the Commission for reconsideration (whether with or without directions on how the decision is to be reconsidered, including direction to the Commission to investigate the matter further and make a further or alternative report and recommendations) on any one or more of the following grounds— 5
- (i) allowing extraneous or irrelevant consideration to affect the decision; or
 - (ii) failure to take into account relevant considerations in arriving at the decision; or
 - (iii) any material mistake of fact or law that tainted the decision; or 10
 - (iv) gross but unwilful irregularity in the proceedings or the decision; or
 - (v) lack of jurisdiction on the part of the Commission to make the order, recommendation, finding or decision. 15

PART V 15

FINANCIAL PROVISIONS

20 Funds of Commission

- (1) The funds of the Commission consist of—
- (a) such moneys as may be payable to the Commission from moneys appropriated for the purpose by an Act of Parliament. 20
 - (b) any donations, grants or bequests made by any person or organisation or any government of any country to the Commission:

Provided that the Commission may only accept such donations, grants or bequests after it has consulted the Minister;

and 25

- (c) any other moneys that may otherwise vest in or accrue to the Commission.

(2) The Commission must apply its funds to the fulfilment of its functions and must further observe public finance management principles established in terms of section 298 of the Constitution.

21 Accounts of Commission and appointment of internal auditor 30

(1) The Commission must ensure that proper accounts and other records relating to such accounts are kept in respect of all the activities, funds and property of the Commission, including such particular accounts and records as provided for by the Public Finance Management Act [*Chapter 22:19*].

(2) As soon as possible after the end of each financial year, the Commission 35 must prepare and submit to the President or the Minister a statement of accounts in respect of that financial year or in respect of such other period as provided for by the Public Finance Management Act [*Chapter 22:19*].

(3) Section 80 of the Public Finance Management Act [*Chapter 22:19*], applies with necessary changes, to the appointment of an internal auditor to the Commission 40 in all respects as if the Commission were a Ministry or a department of a Ministry.

22 Audit of accounts

(1) The accounts of the Commission must be audited by the Auditor-General who, for that purpose, has the powers and functions conferred on him or her by sections 7 and 8 of the Audit Office Act [*Chapter 22:18*]. 45

(2) Any person under the authority or supervision of the Commission who refuses to provide the Auditor-General with an explanation or information required by him or her for the purposes of an audit or knowingly provides the Auditor-General with a false explanation or information, or an explanation or information that the person has no grounds for believing to be true, is guilty of an offence and liable to a fine not exceeding level 8 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

(3) Notwithstanding anything to the contrary contained in subsection (1), the Auditor-General may appoint a suitably qualified person to audit the accounts of the Commission and if he or she does so—

- (a) subsections (1) and (2) applies in respect of the person so appointed as if he or she were the Auditor-General; and
- (b) any expenses incurred by the person so appointed in carrying out the audit must be met from the funds of the Commission.

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PART VI

GENERAL PROVISIONS

23 Application of Public Entities Corporate Governance Act

To the extent that it is not inconsistent with any provision of this Act, the Public Entities Corporate Governance Act [*Chapter 10:31*], applies in every respect to the Commission in its capacity as a public entity.

24 Cooperation with Commission

(1) Every security service, member of a security service, the appropriate Minister and civil servants in the Ministry for which the appropriate Minister is responsible, shall at the request of the Commission provide their full cooperation and assistance with respect to—

- (a) the arrangement of any required identification parade within forty-eight hours of the request made by the Commission;
- (b) making available any member of a service for the taking of evidence or producing any document in that member's possession or under his or her control which has a bearing on the matter being investigated; and
- (c) the provision of any other information or documentation;

for the effective discharge of its functions under this Act.

(2) Any person who contravenes this section shall be guilty of an offence and liable to a fine not exceeding level 12 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

25 Records of Commission

(1) In addition to the minutes it is required to keep in terms of this Act, the Commission must keep proper records of all complaints and its proceedings, findings, orders, recommendations made and actions taken pursuant the recommendations and orders made in terms of this Act.

(2) The records referred to in subsection (1) must be kept at the offices of the Commission and be open to inspection by interested parties during normal office hours.

(3) The Commission must, at the request of any member of the public and on payment of such fee as may be prescribed, furnish him or her with a certified copy of or an extract from any record.

26 Duty of confidentiality

Every member and staff of the Commission must treat as confidential any information obtained by them in the performance of the functions of the Commission and must not disclose any such information except for the purposes of this Act or if so required by law.

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27 Exemption from liability

No liability shall attach to the Commission or to any member of the Commission or staff of the Commission for any loss or damage sustained by any person as a result of the *bona fide* exercise or performance of any function which by or in terms of this Act is conferred or imposed upon the Commission:

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Provided that this section must not be construed so as to prevent any person from recovering compensation for any loss or damage sustained by him or her which was caused by negligence.

28 Offences and penalties

(1) Any person who interferes, hinders or obstructs the Commission or a Commissioner or a member or staff of the Commission or an investigator in the exercise or performance of their functions is guilty of an offence liable to a fine not exceeding level 12 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

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(2) Any member or staff of the Commission who wilfully discloses information in circumstances in which he or she knows, or could reasonably be expected to know, that such a disclosure will or may prejudicially affect the exercise or the performance by the Commission of its functions, is guilty of an offence and liable to a fine not exceeding level 12 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

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(3) Any person who impersonates an investigator is guilty of an offence and liable to a fine not exceeding level 12 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(4) A person who with intent to defeat any investigation in terms of this Act—

- (a) conceals, destroys, alters, falsifies, tampers with or otherwise disposes of any information, article, book, record, accounts, report or data, stored electronically or otherwise, or other document, which he or she has been summoned or required to produce or makes false information;
- (b) procures the false testimony of a witness or interferes with a witness on account of his or her testimony;
- (c) knowingly makes or causes to be made a false complaint to the Commission;

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is guilty of an offence and liable to a fine not exceeding level 14 or to imprisonment for a period not exceeding three years, or to both such fine and such imprisonment.

(5) Any person who contravenes any other provision of this Act with which it is his or her obligation to comply is guilty of an offence and liable to a fine not exceeding level 12 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

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29 Regulations

(1) The President or the Minister (as the case may be), in consultation with the Commission, may make regulations providing for all matters which by this Act are required or permitted to be prescribed or which, in his or her opinion, are necessary or convenient to be provided for in order to carry out or give effect to this Act.

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- (2) Regulations made in terms of subsection (1) may provide for—
- (a) access to and control of information and records pertaining to investigations;
 - (b) the procedure to be followed in—
 - (i) investigations;
 - (ii) reporting on matters dealt with by the Commission;
 - (iii) submitting, registering, processing and disposing of complaints;
 - (iv) investigating criminal matters;
 - (v) arranging and the holding of identification parades in terms of section 24(1)(a);
 - (vi) the submission of any information or documentation required for investigation purposes;
 - (c) subject to this Act, the periods within which any action must be undertaken with respect to any process in the investigation, consideration or determination of complaints;
 - (d) any forms to be prescribed for the purposes of the Act;
 - (e) the standards to be observed for securing the integrity of the staff and members of the Commission in the execution of their duties under this Act;
 - (f) matters to be included in the annual report to the Minister and to Parliament;
 - (g) the form of notices published in the *Gazette*;
 - (h) the form of disciplinary recommendations.
- (3) Regulations may provide for offences and penalties which may be imposed for contraventions of the regulations, not exceeding a level 6 fine or imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

SCHEDULE (Sections 7(2) and 9(5))

PROVISIONS APPLICABLE TO COMMISSION

Section

- 1. Disqualification for appointment to Commission.
- 2. Vacation of office by members of Commission.
- 3. Procedure of Commission.
- 4. Committees of Commission.
- 5. Minutes of proceedings.
- 6. Validity of decisions and acts of Commission.

Disqualification for appointment to Commission

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

- (a) he or she is not a citizen of Zimbabwe or ordinarily resident in Zimbabwe; or
- (b) in terms of the law in force in any country—
 - (i) he or she has been adjudged or otherwise declared insolvent or bankrupt and has not been rehabilitated or discharged; or

- (ii) he or she has made an assignment to or composition with his or her creditors which has not been rescinded or set aside; or
- (c) he or she is, or, within the period of five years immediately preceding his or her proposed appointment, he or she has been sentenced in any country to a term of imprisonment imposed with or without the option of a fine, whether or not any portion thereof has been suspended, and has not received a free pardon; or
- (d) he or she is convicted in any country of any offence involving dishonesty.

Vacation of office by members of Commission

2. (1) A member may resign from his or her office at any time by giving the Minister and the Commission at least one month's notice of his or her intention to resign such other period of notice as he or she and the Minister may agree. 10

(2) A member shall immediately cease to hold office and his or her office shall become vacant if he or she becomes disqualified in terms of paragraph 1.

Procedure of Commission 15

3. (1) Subject to subparagraph (2), the Commission shall meet at such dates, times and places as may be fixed by the chairperson:

Provided that the Commission shall meet at least once every three months.

(2) The chairperson—

- (a) may convene a special meeting of the Commission at any time; and 20
- (b) shall convene a special meeting of the Commission on the written request of at least two members, which meeting shall be convened for a date not sooner than seven days and not later than 30 days after the chairperson's receipt of the request.

(3) Written notice of a special meeting convened in terms of subparagraph (2) shall be sent to each member not later than 48 hours before the meeting and shall specify the business for which the meeting has been convened: 25

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

(4) No business shall be discussed at a special meeting convened in terms of subparagraph (2) other than— 30

- (a) such business as may be determined by the chairperson where he or she convened the meeting in terms of subparagraph (2)(a); or
- (b) the business specified in the request for the meeting, where the chairperson convened the meeting in terms of subparagraph (2)(b). 35

(5) In the absence of the chairperson the deputy chairperson shall preside over the meeting of the Commission as chairperson.

(6) In the absence of the chairperson or deputy chairperson, the members present shall, if they constitute a quorum, elect one of their number to preside over the meeting of the Commission as chairperson. 40

(7) At any meeting of the Commission, four members of the Commission shall form a quorum.

(8) Any decision of the Commission shall be decided by a majority vote of the members at that meeting.

(9) At all meetings of the Commission each member present shall have one vote on each question before the Commission:

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

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

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

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

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

Committees of Commission

4. (1) For the better exercise of its functions, the Commission may establish one or more committees in which it may vest such of its functions as it considers appropriate.

(2) The vesting of a function in a committee in terms of subparagraph (1)—

(a) may be made absolutely or subject to conditions and may be amended or withdrawn at any time; and

(b) shall not divest the Commission of that function;

and the Commission may amend or rescind any decision of the committee in the exercise of that function.

(3) On the establishment of a committee under subparagraph (1) the Commission—

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

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

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

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

(6) A majority of members of a committee shall form a quorum at any meeting of a committee.

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

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

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

Minutes of proceedings

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

(2) Any minutes which purport to be signed by the person presiding at the meeting to which the minutes relate or by the person presiding at the next following meeting of the Commission or committee, as the case may be, shall be accepted for all purposes as *prima facie* evidence of the proceedings and decisions taken at the meeting concerned. 5

(3) The Commission and any committee of the Commission shall cause copies of all minutes that have been signed to be sent to the Minister for his or her information. 10

Validity of decisions and acts of Commission

6. (1) No decision or act of the Commission or act done under the authority of the Commission shall be invalid solely because there were one or more vacancies on the Commission when the decision was taken or the act was done or authorised or a disqualified person partook in the act or decision. 15

(2) If any decision or other act of the Commission is rendered invalid through a procedural irregularity, the Commission may at a duly convened meeting ratify the decision or act, and any decision or act so ratified shall be valid in all respects with effect from the date of its ratification.