

## **NOTICE OF AMENDMENTS**

### **Zimbabwe Independent Complaints Commission Bill, 2020 (H.B. 5, 2020)**

#### **PREAMBLE**

BY ...:

In line 13 on page 2 of the Bill, to delete “to provide for” and to substitute “must provide”.

#### **CLAUSE 1 (Short title)**

BY ...:

Between lines 24 and 25 on page 2 of the Bill, to insert the following subclause in clause 1, the existing clause becoming subclause (1):

“(2) This Act shall come into operation on a date to be fixed by the President by notice in the *Gazette*.”.

#### **CLAUSE 2 (Interpretation)**

BY THE MINISTER OF :

Between lines 32 and 33 on page 2 of the Bill, to insert the following definition:

““head of a security service”, in relation to—

- (a) any service of the Defence Forces, means the Commander of that service;
- (b) the Police Service, means the Commissioner-General of Police;
- (c) a national intelligence service, means the Director-General of Intelligence Services;
- (d) the Prisons and Correctional Service, means the Commissioner-General of Prisons and Correctional Service;”.

Between line 35 on page 2 of the Bill and line 8 on page 3, to delete the definition of “misconduct” and to substitute:

““misconduct” means any act or omission on the part of a member of a security service which—

- (a) contravenes any law, including a disciplinary law applicable to the member;  
and
- (b) causes or is likely to cause death, injury, harm or prejudice of any kind to any person, including the State or a State institution;”.

In line 9 on page 3 of the Bill, in the definition of “observer”, to delete “section 6(6)” and to substitute “section 10(1)”.

**CLAUSE 5 (Functions of Commission)**

By ... :

Between lines 42 and 43 on page 3 of the Bill, to insert the following paragraphs in clause 5(1)(b), the remaining paragraphs being renumbered accordingly:

- “(c) to monitor the activities of internal investigation units;
- (d) to advise appropriate Ministers and Parliament on matters relating to the good conduct and discipline of members of the security services with a view to preventing misconduct;”.

Between lines 3 and 4 on page 4 of the Bill, to insert the following paragraph after the existing paragraph (d):

- “(e) to exercise any other function conferred or imposed on the Commission by or under this Act or any other enactment.”.

Between lines 3 and 4 on page 4 of the Bill, to insert the following subclause after subclause (1), the existing subclauses being renumbered accordingly:

- “(2) For the proper exercise of its functions, the Commission shall have power, subject to this Act, to do all or any of the things set out in the First Schedule.”.

In line 4 on page 4 of the Bill, to delete “shall make” and to substitute “may make”.

**CLAUSE 6 (Composition of Commission) and CLAUSE 7  
(Disqualification for appointment and procedure)**

By ... :

Between lines 11 on page 4 of the Bill and 14 on page 5, to delete clauses 6 and 7 and to substitute the following clauses, the remaining clauses being renumbered accordingly:

**“6 Composition of Commission**

- (1) The Commission shall consist of the following members—
  - (a) a chairperson, who shall be a judge or former judge or a person eligible for appointment as a judge in Zimbabwe; and
  - (b) four other members chosen for their integrity and for their knowledge of and experience in law, human rights, medicine, psychology or criminal investigation.

(2) At least one member of the Commission shall be a person with experience in a security service.

**7 Appointment of members of Commission**

- (1) In this section—

“prescribed number” means—

- (a) two, where there is one vacancy on the Commission to be filled;

- (b) two more than the number of vacancies, where there are two or more vacancies on the Commission to be filled.

(2) Whenever it is necessary to appoint the chairperson of the Commission, the Judicial Service Commission shall—

- (a) advertise the position; and
- (b) invite the public to make nominations; and
- (c) conduct public interviews of prospective candidates; and
- (d) prepare a list of at least two qualified persons as nominees for the office; and
- (e) submit the list to the President;

whereupon, subject to subsection (4), the President shall appoint one of the nominees as chairperson of the Commission.

(3) Whenever it is necessary to appoint a member of the Commission other than the chairperson, the Committee on Standing Rules and Orders shall—

- (a) advertise the position; and
- (b) invite the public to make nominations; and
- (c) conduct public interviews of prospective candidates; and
- (d) prepare a list of at least the prescribed number of qualified persons as nominees for the office; and
- (e) submit the list to the President;

whereupon, subject to subparagraph (4), the President shall appoint one of the nominees as a member of the Commission.

(4) If the President considers that none of the persons on a list submitted to him or her in terms of subsection (2)(e) or (3)(e) are suitable for appointment, he or she shall require the Judicial Service Commission or the Committee on Standing Rules and Orders, as the case may be, to submit a further list of the prescribed number of qualified persons, whereupon the President shall appoint one of those nominees as chairperson or member of the Commission, as the case may be.

(5) A person shall not be nominated for or appointed as a member of the Commission if he or she is disqualified for appointment in terms of paragraph 1 of the Second Schedule.

(6) In appointing members the President shall ensure that, so far as practicable—

- (a) at least half the members of the Commission are women; and
- (b) there is fair representation of Zimbabwe's regions on the Commission.

(7) Before entering office, a member shall take before the President, or a person authorised by the President, the oaths of loyalty and office in the forms set out in the Third Schedule to the Constitution.

(8) The Minister shall cause notice to be published in the *Gazette* of the appointment of a member to the Commission.

**8 Terms and conditions of office of members of Commission**

(1) Subject to this Act, members of the Commission shall hold office for a period of five years from the date of their appointment and may be re-appointed for one further such term.

(2) Members of the Commission shall be entitled to such remuneration, allowances and other benefits as may be fixed by the President, which shall be a charge on the Consolidated Revenue Fund.

(3) The remuneration of members of the Commission shall not be reduced during their tenure of office.

**9 Removal from office of members of Commission**

Section 187 of the Constitution shall apply, with any necessary changes, to the removal from office of a member of the Commission.

**10 Observers**

(1) Each head of a security service shall be entitled to appoint a serving or retired member of that service of sufficient seniority to sit together with the members of the Commission whenever the Commission is considering misconduct on the part of a member or former member of that security service.

(2) The head of a security service—

- (a) shall appoint an observer for a term of at least twelve months; and
- (b) if for any reason an observer is unable to act as such during his or her term, shall appoint a replacement;

and shall notify the chairperson of the Commission in writing of the identity of the observer and any replacement.

(3) An observer shall be entitled to be present at any meeting of the Commission at which the Commission is considering an act of misconduct on the part of a member of the security service for which the observer has been appointed.

(4) The chairperson of the Commission may invite an observer—

- (a) to participate in the deliberations of the Commission during any investigation, hearing or inquiry:

Provided that 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.

**11 Members of Commission to be non-political**

(1) Members of the Commission shall not, in the exercise of their functions—

- (a) act in a partisan manner; or
- (b) further the interests of any political party or cause; or
- (c) prejudice the lawful interests of any political party or cause; or
- (d) violate the fundamental rights or freedoms of any person.

(2) Persons who are members of a political party or organisation on their appointment to the Commission shall relinquish that membership without delay and in any event within thirty days of their appointment.

(3) If a member of the Commission—

- (a) becomes a member of a political party or organisation; or
- (b) having been a member of a political party or organisation on his or her appointment to the Commission, fails to relinquish that membership within thirty days of the appointment;

he or she shall cease immediately to be a member of the Commission.

## 12 Procedure of Commission

The procedure to be followed by the Commission shall be as provided in the Second Schedule.”.

### NEW CLAUSE (between the existing clauses 10 and 11)

BY ... :

Between lines 36 and 37 on page 6 of the Bill, to insert the following new clause, the remaining clauses being renumbered accordingly:

#### “11 Offices of Commission

(1) The Commission shall open sufficient offices throughout Zimbabwe, and provide sufficient facilities, to allow persons to make complaints without undue delay or difficulty.

(2) For the purposes of subsection (1), the Commission may make arrangements with the Zimbabwe Human Rights Commission, the National Peace and Reconciliation Commission and any other suitable institution for complaints to be made at their offices for forwarding to the Commission.”.

### CLAUSE 11 (Commission to report to Parliament)

BY ... :

In line 42 on page 6 of the Bill, in clause 11(2), to delete “must submit” and to substitute “may submit”.

### NEW PART (To be inserted between Parts III and IV)

BY ... :

Between the bottom of page 6 and the top of page 7 of the Bill, to insert the following new Part, the remaining Parts and clauses being renumbered accordingly:

“PART III

INTERNAL INVESTIGATION UNITS

**12 Establishment of internal investigation units**

(1) Each head of a security service shall establish one or more internal investigation units for the purposes of—

- (a) monitoring the conduct of members of the security service; and
- (b) investigating misconduct; and
- (c) investigating complaints referred to it by the Commission or received by it from other persons; and
- (d) generally, assisting in the maintenance of discipline, order and good conduct within the security service.

(2) After establishing an internal investigation unit, the head of a security service shall notify the Commission, in writing, of the establishment of the unit and the personnel assigned to the unit, and shall provide the Commission with such other information regarding the unit as the Commission may from time to time reasonably require.

**13 Powers of internal investigation units**

(1) Every head of a security service shall ensure, through regulations, standing orders or other instructions and measures, that members of an internal investigation unit established for his or her service—

- (a) are provided with sufficient resources; and
- (b) have all the powers, jurisdiction and authority; and
- (c) are staffed by persons of appropriate rank;

to enable them to carry out their functions efficiently and expeditiously.

(2) If the Commission considers that an internal investigation unit is defective in any of the respects referred to in subsection (1)(a), (b) or (c), the Commission may request the head of the security service concerned to remedy the defect, and he or she shall forthwith comply with the request.

**14 Records to be kept by internal investigation units**

The person in charge of an internal investigation unit shall ensure that proper records are kept of all complaints received by the unit and all investigations conducted by it, and shall make the records available for inspection by the Commission whenever the Commission so requests.

**15 Internal investigation units to comply with directions from Commission**

In the exercise of their functions, members of an internal investigation unit shall comply with any directions the Commission may issue to them through the head of the security service concerned.

**16 Internal investigation units to provide Commission with information**

Where an internal investigation unit investigates—

- (a) a complaint referred to it by the Commission; or
- (b) alleged or suspected misconduct which does not arise out of a complaint referred to it by the Commission;

the person in charge of the unit shall provide the Commission with all such information as may be prescribed or as the Commission may reasonably require concerning the investigation and any action taken as a result of it.

**17 Commission may take over investigation from internal investigation unit**

If the Commission considers that an internal investigation unit has failed to conduct an investigation promptly or efficiently, the Commission may—

- (a) assist the unit in conducting the investigation; or
- (b) intervene and take over the investigation from the unit.”.

**CLAUSE 12 (Appointment and powers of investigators)**

BY ... :

In line 4 on page 7 of the Bill, to delete from clause 12(1) “The Executive Secretary, in consultation with the Commission, must” and the substitution of “The Commission may”.

Between lines 21 and 35 on page 7 of the Bill, to delete subclause (8) and to substitute:

“(8) Persons questioned by an investigator shall answer, truthfully and to the best of their ability, all the investigator’s questions, but—

- (a) they need not answer questions which they would not be obliged to answer if they were giving evidence as witnesses in a civil trial before a court; and
- (b) the investigator shall ensure that they are aware of their right to refuse to answer such questions.”.

**CLAUSES 13, 14 and 15 (Complaints, hearings and inquiries)**

BY ... :

Between line 34 on page 7 of the Bill and line 13 on page 10, to delete clause 13 (“Reporting of complaints”), clause 14 (“Response to complaints”) and clause 15 (“Conduct of hearings or inquiries”) and to substitute the following clauses, the remaining clauses of the Bill being renumbered accordingly:

**“13 Complaints**

(1) Subject to this section, a complaint may be made to the Commission by any person orally, in writing, telephonically or electronically, and shall be accompanied by such information as the Commission may reasonably require to enable the complaint to be investigated.

(2) The Commission shall take all reasonable steps to facilitate the making of complaints.

(3) A person receiving a complaint on behalf of the Commission shall—

- (a) obtain from the complainant as much information about the alleged misconduct and the person alleged to have committed it as is reasonably necessary to enable the complaint to be investigated; and
- (b) ascertain from the complainant whether a report or complaint about the alleged misconduct has been made to the police or any other authority and, if it has, details of that report or complaint; and
- (c) in the case of an oral complaint, promptly reduce it to writing.

(4) The Commission shall ensure that adequate records are kept of the date, time and place at which complaints are received and of the allegations made in the complaints.

(5) On receipt of a complaint the Commission shall consider it and, subject to subsection (6), shall within seven days after receiving it—

- (a) refer the complaint to the appropriate internal investigation unit for investigation; or
- (b) itself conduct an investigation into the complaint;

and shall notify the complainant, in writing, of the action it has taken and of the period within which the investigation is likely to be completed:

Provided that, if it appears that the life or liberty of a person needs to be protected, the Commission shall within forty-eight hours after receiving the complaint, take such action as is reasonably practical to address the complaint, including where necessary instituting proceedings in a court.

(6) If—

- (a) the misconduct alleged in a complaint is the subject of court proceedings or of an investigation by an independent Commission, the Commission shall decline to take action on the complaint until those court proceedings or that investigation are finalised;
- (b) the Commission considers that a complaint is frivolous or vexatious, or that no useful purpose will be served by investigating a complaint, whether because of inadequate evidence or information or because the complaint has already been remedied or for any other reason, the Commission may decline to action on the complaint;

and the Commission shall notify the complainant, in writing, of its decision and the reasons for it, and of the complainant's right to appeal against the Commission's decision in terms of section 19.”.

#### **14 Investigation in absence of complaint**

Where the Commission has reason to suspect misconduct, even if no complaint has been made in regard to it, the Commission may—



- (a) refer the matter to the appropriate internal investigation unit for investigation; or
- (b) itself conduct an investigation into the matter.

## 15 Conduct of investigations

(2) The Commission shall conduct its investigations in such manner as the Commission believes will best reveal whether or not misconduct has taken place and the extent and effects of any such misconduct.

(3) The Commission shall ensure that all investigations, whether conducted by itself or by an internal investigation unit, are conducted fairly and efficiently and are concluded as expeditiously as possible.

(4) The Commission shall ensure that complainants, and the observers of the security services concerned, are kept informed at reasonable intervals and in writing of the progress of investigations into their complaints.

## 16 Hearings

(1) For the purpose of an investigation, whether conducted by itself or by an internal investigation unit, the Commission may conduct a hearing in accordance with this section.

(2) A hearing shall be conducted before one or more persons who—

- (a) are members of the Commission; or
- (b) are or have been judges or magistrates in Zimbabwe;

as the Commission may appoint in each case.

(3) A person before whom a hearing is conducted shall have the same powers, rights and privileges as those conferred upon a commissioner by the Commissions 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 shall apply, with any necessary changes, in relation to a hearing under this Act and to a person summoned to give evidence or giving evidence at the hearing.

(4) A person before whom a hearing is held shall not be bound by the strict rules of evidence, and may ascertain relevant facts by any means which he or she thinks appropriate, subject to the rules of natural justice.

(5) At every hearing—

- (a) the person against whom an allegation of misconduct is made; and
- (b) the observer from the security service whose member is alleged to have been guilty of misconduct;

shall be afforded an adequate opportunity to respond to the allegation and shall be entitled to appear before the hearing represented by a legal practitioner or, in the case of a member of the security services, represented by another member of his or her security service.

(6) A complainant shall have the right to appear and be heard at a hearing, and may be represented by a legal practitioner.

(7) The Commission shall ensure that proper precautions are taken to protect the security of persons summoned to give evidence or giving evidence at a hearing, in particular to protect them against intimidation or reprisal.

(8) The person before whom a hearing is held shall ensure that a proper record is kept of the proceedings of the hearing.

(9) On request by the Commission, the Commissioner-General of Police shall provide police officers to assist in maintaining order at a hearing.

(10) Subject to the Courts and Adjudicating Authorities (Publicity Restriction) Act [*Chapter 7:04*], hearings shall be held in public.

(11) The law relating to the competence, compellability and privilege of persons called to give or giving evidence before a court shall apply in relation to a hearing.

(12) The expenses of a hearing, including any remuneration payable to persons before whom it is held, shall be met from the Commission's funds:

Provided that no remuneration, other than allowances to meet out-of-pocket expenses, shall be paid to a member of the Commission.

#### **17 Commission may state case for High Court**

(1) If a question arises as to whether any conduct constitutes misconduct, the Commission may state a special case on the question for the decision of the High Court.

(2) In a special case stated in terms of subsection (1) the Commission shall set out—

- (a) the facts which it has established; and
- (b) the view of the law which it proposes to adopt in relation to the facts.

(3) Any expenses incurred by the Commission in the determination of a question stated in terms of subsection (1) shall be met from the Commission's funds.”.

#### **CLAUSE 19 (Review of Commission's orders)**

BY ... :

Between line 40 on page 11 of the Bill and line 14 on page 12, to delete the clause and to substitute:

#### **“19 Appeals**

(1) Any person who is aggrieved at any order, recommendation, finding or decision of the Commission in terms of this Act may appeal to the Administrative Court within the time and in the manner prescribed in rules of court.

(2) In an appeal under subsection (1) the Administrative Court may confirm, vary or set aside the order, recommendation, finding or decision appealed against and give such other order, direction or decision in the matter, whether as to costs or otherwise, as the Court considers just:

Provided that the Administrative Court shall not set aside an order, recommendation, finding or decision on the ground of any informality in the Commission's proceedings if the informality did not prejudice the appellant.”.

**CLAUSE 29 (Regulations)**

BY ... :

In lines 45 and 46 on page 14 of the Bill, to delete “in consultation with” and to substitute “with the approval of”.

**NEW CLAUSE**

BY ... :

Between lines 26 and 27 on page 15 of the Bill, to insert the following new clause after clause 29:

**“30 Transitional provision**

Where immediately before the date of commencement of this Act there is within a security service a unit with substantially the same functions as an internal investigation unit, that unit shall be deemed to have been established in terms of section 12(1), and the head of the security service shall notify the Commission of its existence and of other particulars concerning the unit in accordance with section 12(2).”.

**NEW SCHEDULE**

BY ... :

Between lines 26 and 27 on page 15 of the Bill, to insert the following new Schedule, the existing Schedule becoming the Second Schedule:

**“FIRST SCHEDULE (Section 5(2))**

**ANCILLARY POWERS OF COMMISSION**

1. To acquire immovable property, by lease, purchase or otherwise, and to construct buildings and structures thereon.
2. To buy, take in exchange, hire or otherwise acquire movable property, including vehicles, necessary or convenient for the performance of its functions.
3. To maintain, alter and improve property acquired by it.
4. To mortgage or pledge any assets or part of any assets and to sell, exchange, let, dispose of, turn to account or otherwise deal with any assets or part of assets which are not required for the exercise of its functions for such consideration as the Commission, with the approval of the Minister, may determine.

5. To open accounts in the name of the Commission with one or more banks, building societies and other financial institutions, and to make transfers to and from those accounts.
6. To insure against losses, damages, risks and liabilities which it may incur.
7. To sell land, buildings and other facilities and structures owned by it, or under its control, and to grant leases, subleases or other interests or concessions in respect of such land, buildings, facilities and structures.
8. To enter into contracts and suretyships or give guarantees in connection with the exercise of its functions and to modify or rescind such contracts or rescind such suretyships or guarantees.
9. To raise loans or borrow money in such amounts and for such purposes and under conditions as may be approved by the Minister responsible for finance.
10. To establish and administer such funds and reserves as the Commission considers appropriate or necessary for the proper exercise of the Commission's functions.
11. To provide terminal benefits for members of its staff on their retirement, resignation, discharge or other termination of service or in the event of their sickness or injury."

**SCHEDULE (Now the Second Schedule)**

By ... :

Between lines 8 and 9 on page 16 of the Bill, to insert the following subparagraph after subparagraph 1(d) of the Schedule:

“or

- (e) he or she would be disqualified for appointment to a constitutional commission by virtue of section 320(3) of the Constitution.”.

In line 41 on page 16 of the Bill, to delete from paragraph 3(7) “four members” and to substitute “three members”.