

ACT 456

COMMISSION ON HUMAN RIGHTS AND
ADMINISTRATIVE JUSTICE ACT, 1993

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ACT 456

**COMMISSION ON HUMAN RIGHTS AND
ADMINISTRATIVE JUSTICE ACT, 1993¹**

AN ACT relating to the Commission on Human Rights and Administrative Justice to investigate complaints of violations of fundamental human rights and freedoms, injustice and corruption, abuse of power and unfair treatment of persons by public officers and to provide for related matters.

*Establishment of the Commission***1. Establishment of the Commission**

There is established in accordance with article 216 of the Constitution the Commission on Human Rights and Administrative Justice.

2. Composition of the Commission

(1) In accordance with article 216 of the Constitution the Commission consists of

- (a) the Commissioner for Human Rights and Administrative Justice, and
- (b) two Deputy Commissioners for Human Rights and Administrative Justice.

(2) The President shall, acting in accordance with article 217 of the Constitution, appoint the Commissioner and the Deputy Commissioners.

3. Qualification of the Commissioners

(1) A person is not qualified for appointment as a Commissioner or a Deputy Commissioner unless that person is,

- (a) in the case of the Commissioner, qualified for appointment as a Justice of the Court of Appeal, and
- (b) in the case of a Deputy Commissioner, qualified for appointment as a Justice of the High Court.

(2) The Commissioner and the Deputy Commissioners shall not while holding office as Commissioners hold any other public office.

4. Terms and conditions of service

(1) The Commissioner and the Deputy Commissioners shall, respectively, enjoy the terms and conditions of service of a Justice of the Court of Appeal and of the High Court.

(2) The Commissioner and the Deputy Commissioners shall cease to hold office on attaining, respectively, the ages of seventy and sixty-five years.

(3) Where the Commissioner or a Deputy Commissioner dies, resigns or is removed from office or is for any other reason unable to perform the functions of office, the President shall, acting in accordance with article 217 of the Constitution, appoint a person qualified to be appointed Commissioner or Deputy Commissioner to perform those functions until the appointment of a new Commissioner or Deputy Commissioner.

1. The Act was assented to on 6th July, 1993.

5. Removal of the Commissioners

The removal of the Commissioner and of a Deputy Commissioner shall be in accordance with article 146 of the Constitution regarding the removal of a Justice of the Court of Appeal and a Justice of the High Court.

6. Independence of the Commission

Except as provided by the Constitution or by any other law not inconsistent with the Constitution, the Commission and the Commissioners are, in the performance of its, or their functions, not subject to the direction or control of any person or authority.

Functions of the Commission

7. Functions of the Commission

(1) In accordance with article 218 of the Constitution, the functions of the Commission are,

- (a) to investigate complaints of violations of fundamental rights and freedoms, injustice, corruption, abuse of power and unfair treatment of a person by a public officer in the exercise of official duties;
- (b) to investigate complaints concerning the functioning of the Public Services Commission, the administrative organs of the State, the offices of the Regional Co-ordinating Council and the District Assembly, the Armed Forces, the Police Service and the Prisons Service in so far as the complaints relate to the failure to achieve a balanced structuring of those services or equal access by all to the recruitment of those services or fair administration in relation to those services;
- (c) to investigate complaints concerning practices and actions by persons, private enterprises and other institutions where those complaints allege violations of fundamental rights and freedoms under the Constitution;
- (d) to take appropriate action to call for the remedying, correction and reversal of instances specified in paragraphs (a), (b) and (c) of this subsection through means that are fair, proper and effective, including,
 - (i) negotiation and compromise between the parties concerned;
 - (ii) causing the complaint and its finding on it to be reported to the superior of an offending person;
 - (iii) bringing proceedings in a competent court for a remedy to secure the termination of the offending action or conduct, or the abandonment or alteration of the offending procedures; and
 - (iv) bringing proceedings to restrain the enforcement of the legislation or regulation by challenging its validity if the offending action or conduct is sought to be justified by subordinate legislation or regulation which is unreasonable or is otherwise *ultra vires*;
- (e) to investigate allegations that a public officer has contravened or has not complied with a provision of Chapter Twenty-four (Code of Conduct for Public Officers) of the Constitution;

- (f) to investigate instances of alleged or suspected corruption, and the misappropriation of public moneys by an official and to take appropriate steps, including reports to the Attorney-General and the Auditor-General, resulting from that investigation;
- (g) to educate the public as to human rights and freedoms by the means that the Commissioner may decide, including publications, lectures and symposia; and
- (h) to report annually to Parliament on the performance of its functions.

(2) The costs and expenses related to investigations conducted by the Commission into a complaint shall be borne by the Commission.

8. Special powers of investigation

(1) By virtue of article 219 of the Constitution, the Commission may, for the purposes of performing its functions under this Act,

- (a) issue subpoenas requiring the attendance of a person before the Commission and the production of a document or record relevant to an investigation by the Commission;
- (b) cause a person contemptuous of a subpoena issued by the Commission to be prosecuted before a Court;
- (c) question a person in respect of a subject matter under investigation before the Commission;
- (d) require a person to disclose truthfully and frankly an information within the knowledge of that person relevant to an investigation by the Commission.

(2) The Commissioner shall not investigate

- (a) a matter which is pending before a Court or judicial tribunal, or
- (b) a matter involving the relations or dealings between the Government and any other government or an international organisation, or
- (c) a matter relating to the exercise of the prerogative of mercy.

9. Initiation of legal proceedings

For the purposes of the performance of functions under the Constitution, this Act and any other law, the Commissioner may bring an action before a Court in the Republic and may seek a remedy which is available from that Court.

10. Regional and district branches

(1) There shall be established in each Region and district regional and district branches of the Commission.

(2) There shall be appointed by the Commission an officer who shall be the head of a regional or district branch of the Commission.

(3) The Commission may create any other lower structures as would facilitate its operations.

11. Functions of regional and district representatives

A representative of the Commission in a regional or district office of the Commission shall

- (a) receive complaints from the public in the Region or district,
- (b) make an on-the-spot investigation that may be necessary, and
- (c) discharge any other duties relating to the functions of the Commission that may be assigned by the Commissioner.

*Complaints***12. Complaints**

(1) A complaint to the Commission shall be made in writing or orally to the national offices of the Commission or to a representative of the Commission in the regional or district branch.

(2) Where a complaint is made in writing it shall be signed by the complainant or the agent of the complainant.

(3) Where a complaint is made orally, the person to whom the complaint is made shall reduce the complaint into writing and that person shall sign or thumbprint the complaint.

(4) Despite a law to the contrary, where a letter written by

- (a) a person in custody, or
- (b) a patient in a hospital,

is addressed to the Commission, it shall be immediately forwarded, unopened and unaltered to the Commission by the person in charge of the place or institution where the writer of the letter is detained or of which the writer is a patient.

(5) A complaint under this Act may be made by an individual or a body of persons whether corporate or unincorporated.

(6) Where a person by whom a complaint might have been made under this Act has died or is for a sufficient reason unable to act personally, the complaint may be made by the personal representative or by a member of the family or any other individual suitable to represent that person.

13. Refusal to investigate

(1) The Commission may refuse to investigate a matter where in the course of the investigation of a complaint it appears to the Commission

- (a) that under the law or existing administrative practice there is adequate remedy for the complaint, whether or not the complainant has taken advantage of that law or practice, or
- (b) that having regard to the circumstances of the case, a further investigation is not necessary.

- (2) The Commission may refuse to investigate or cease to investigate a complainant
- (a) if the complaint relates to a decision, recommendation, an act or omission of which the complainant has had knowledge for more than twelve months before the complaint is received by the Commission, or
 - (b) if the Commission considers that
 - (i) the subject matter of the complaint is trivial,
 - (ii) the complaint is frivolous or vexatious or is not made in good faith, or
 - (iii) the complainant does not have sufficient personal interest in the subject matter of the complaint.

(3) Despite subsection (2), if within six months after the Commission's refusal or ceasing to investigate a complaint under this section, fresh evidence in favour of the complainant becomes available, the Commission shall, at the request of the complainant, re-open the case.

(4) Where the Commission decides not to investigate or to cease to investigate a complaint, it shall within thirty days of the decision inform the complainant of its decision and the reasons for so refusing.

14. Procedure in respect of investigations

(1) Where the Commission decides to conduct an investigation under this Act, it shall give the authority or person concerned and to any other person who is alleged in the complaint to have taken or authorised the act or omission complained of, an opportunity to comment on the allegations contained in the complaint.

(2) The representative of the authority or person concerned shall submit the comments of the authority or that person within the time specified by the Commission.

(3) The public may be excluded from an investigation conducted by the Commission.

(4) Without prejudice to the generality of this section, the Commission may obtain information from any other person and in the manner, and make the inquiries, that it considers necessary.

(5) The Commission may pay to a person by whom a complaint is made and to any other person who attends and furnishes information for the purposes of an investigation under this Act

- (a) sums of money in respect of expenses properly incurred by them, and
- (b) allowances by way of compensation for the loss of their time, in accordance with the scales and subject to the conditions determined by the Commission having regard to the rates applicable to the High Court.

15. Evidence at investigations

(1) Subject to this section the Commission may require a person who is able to give an information relating to a matter being investigated by the Commission

- (a) to furnish the information to it, or

- (b) to produce a document, paper or thing that relates to the matter being investigated and which may be in the possession or control of that person.
- (2) The Commission may summon before it and examine on oath or affirmation
- (a) a person required to give information or produce anything under subsection (1),
 - (b) a complainant, or
 - (c) any other person who the Commission considers will be able to give information required under subsection (1).
- (3) Subject to subsection (4), a person who is bound by law to maintain secrecy in relation to, or not to disclose, a matter may not
- (a) supply information to or answer a question put by the Commission in relation to that matter, or
 - (b) produce to the Commission a document, paper or thing relating to it,
- if compliance with that requirement would be in breach of the obligation of secrecy or non-disclosure.
- (4) A person to whom subsection (3) applies may be required by the Commission to supply information or answer a question or produce a document, paper or thing that relates to a matter under investigation; and subject to section 16, that person shall comply with the requirement.
- (5) A witness before the Commission is entitled to the privileges to which that witness would have been entitled if that witness were a witness before the High Court.
- (6) A person is not liable to prosecution for an offence under an enactment by reason of a compliance by that person with a requirement of the Commission under this section.

16. Production of official documents

Article 135 of the Constitution (which relates to production of official documents in a Court) shall apply to proceedings before the Commission as it applies to proceedings before a Court.

17. Maintenance of secrecy

- (1) The Commissioner or a Deputy Commissioner and every person holding an office or appointment under the Commission shall maintain secrecy in respect of the matters that come to their knowledge in the performance of their functions.
- (2) A person holding office or appointment under the Commission who is likely to have access to confidential information of the Commission shall, before proceeding to carry out any functions under this Act, take and subscribe to the Oath of Secrecy set out in the Second Schedule to the Constitution.
- (3) The Commission shall determine the category of persons to whom subsection (2) of this section shall apply.

*Procedure after Investigation***18. Procedure after investigation**

(1) Where after making an investigation under this Act, the Commission is of the view that the decision, recommendation, act or omission that was the subject matter of the investigation

- (a) amounts to a breach of any of the fundamental rights and freedoms provided in the Constitution, or
- (b) appears to have been contrary to law, or
- (c) was unreasonable, unjust, oppressive, discriminatory or was in accordance with a rule of law or a provision of an Act or a practice that is unreasonable, unjust, oppressive, or discriminatory, or
- (d) was based wholly or partly on a mistake of law or fact, or
- (e) was based on irrelevant grounds or made for an improper purpose, or
- (f) was made in the exercise of a discretionary power and reasons should have been given for the decisions,

the Commission shall report its decision and the reasons for it to the appropriate person, Minister, department or authority concerned and shall make the recommendation that it thinks fit.

(2) The Commission shall submit a copy of its report and recommendations to the complainant.

(3) If within three months after the report is made an action which seems to the Commission to be adequate and appropriate is not taken, the Commission may, after considering the comments made by or on behalf of the department, authority or person against whom the complaint was made, bring an action before a Court and seek an appropriate remedy for the enforcement of the recommendation of the Commission.

19. Reports of Commissioner

(1) The Commissioner shall submit annually a report to Parliament which shall include a summary of the matters investigated, and the action taken on them by the Commission during the preceding year.

(2) Parliament may debate the report of the Commission and may pass a resolution that it considers fit.

(3) A resolution of Parliament shall not alter a decision made by a Court on a matter instituted before the Court by the Commissioner.

(4) The Commissioner may, in the public interest or in the interest of a person or department or any other authority, publish reports relating

- (a) generally to the performance of the functions of the Commission under this Act, or
- (b) to a particular case investigated by the Commission whether or not the matters in the report have been the subject of a report to Parliament.

Miscellaneous

20. Appointment of staff

In accordance with article 226 of the Constitution, the appointment of officers and other employees of the Commission shall be made by the Commission acting in consultation with the Public Services Commission.

21. Expenses of the Commission charged on Consolidated Fund

The administrative expenses of the Commission including the salaries, allowances and pensions payable to or in respect of, persons serving with the Commission are charged on the Consolidated Fund.

22. Proceedings privileged

(1) Subject to the supervisory jurisdiction of the Supreme Court, proceedings shall not lie against the Commission or against a person holding an office or appointment under the Commission for anything done, reported or said by that person in the course of the performance or intended performance of functions under this Act, unless it is shown that that person acted in bad faith.

(2) Anything said, information supplied, or a document, paper or thing produced by a person in the course of an inquiry by or proceedings before the Commission pursuant to the Constitution or under this Act is privileged as if the inquiry or proceedings were proceedings in a Court.

(3) For the purposes of the rules of law relating to defamation, a report made by the Commission under this Act is privileged, and a fair and accurate report on it in a newspaper or a broadcast is also privileged.

23. Entry of premises

For the purposes of this Act, the Commissioner or a public officer authorised by the Commissioner, may at any time enter any premises occupied by a department, an authority or a person to whose act or omission this Act applies and inspect the premises and, subject to sections 16 and 17 carry out on the premises an investigation that is within the jurisdiction of the Commission.

24. Offences and penalties

A person who

- (a) without lawful justification or excuse, wilfully obstructs, hinders or resists a member of the Commission or an officer authorised by the Commissioner in the exercise of a power under this Act, or
- (b) without lawful justification or excuse, refuses or wilfully fails to comply with a lawful request of the Commissioner or a Deputy Commissioner or any other person under this Act, or
- (c) wilfully makes a false statement to, or misleads or attempts to mislead, the Commissioner or any other person in the performance of a function under this Act,

commits an offence and is liable on summary conviction to a fine not exceeding two hundred penalty units and in default of payment to a term of imprisonment not exceeding six months or to both the fine and the imprisonment.

25. Act an addition to any other law

(1) This Act is in addition to any other Act or a rule of law under which

- (a) a remedy or right of appeal or an objection is provided for a person, or
- (b) a procedure is provided for the inquiry into or investigation of a matter.

(2) This Act does not limit or affect a remedy or right of appeal or objection or procedure under any other enactment or a rule of law.

26. Regulations

(1) Subject to the Constitution and to an Act of Parliament made under the Constitution, the Commission shall make, by constitutional instrument, Regulations regarding the manner and procedure for bringing complaints before it and the investigation of those complaints.

(2) The Regulations may be signed personally by the Commissioner or in the absence of the Commissioner by a Deputy Commissioner.

27. Interpretation

(1) In this Act, unless the context otherwise requires,

“**Commission**” means the Commission on Human Rights and Administrative Justice referred to in section 1;

“**Court**” means a court of competent jurisdiction;

“**Deputy Commissioner**” means any one of the two Deputy Commissioners referred to in section 2.

(2) A reference to a member of a complainant’s family,

- (a) in the case of a person belonging to a family based on the paternal system, includes mother, father, wife, son, daughter, brother, sister, father’s brother, father’s father, father’s brother’s son, and brother’s son;
- (b) in the case of a person belonging to a family based on the maternal system, includes mother, father, wife, son, daughter, brother, sister, mother’s mother, mother’s brother, mother’s sister, sister’s son, sister’s daughter, mother’s sister’s son and mother’s sister’s daughter.

28. Repeal and saving

*Spent.*²

2. The section reads,

“(1) The Ombudsman Act, 1980 (Act 400) is repealed.

(2) Notwithstanding the repeal of the Ombudsman Act, 1980 (Act 400)—

- (a) any regulation made under it and in force on the coming into force of this Act shall until altered, amended or revoked, continue in force and shall be applied with such modifications as may be necessary for giving effect to the provisions of this Act; and
- (b) any complaint pending before the Ombudsman immediately before the coming into force of this Act may be proceeded with under, and shall be subject to the provisions of, this Act.”