

National Peace and Reconciliation Commission Regulations, 2018

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It is hereby notified that the Commission has, in terms of section 21 of the National Peace and Reconciliation Commission Act [Chapter 10:32] made the following regulations:—

PART I

PRELIMINARY

Title

1. These regulations may be cited as the National Peace and Reconciliation Commission Regulations, 2018.

Definitions

2. In these Regulations, unless the context otherwise requires—
 - “agreement” means agreement reached by the parties for purposes of mediation and conciliation in terms of these regulations;
 - “appropriate officer” means an officer appointed by the Commission to carry out a function in terms of these regulations;
 - “human rights violation” means any act or omission that arises out of any dispute and conflict and which causes harm or any form of injury to any person;
 - “mediation report” means a report prepared by a mediation panel on the conclusion of the mediation;
 - “mediator or conciliator” means a person appointed by the Commission to resolve a dispute or conflict;

“offence or crime” means any offence or crime arising out of any dispute and conflict as defined in these regulations;

“panel” means the panel of mediators created in terms of these regulations;

“witness” means a person who wishes to give evidence, gives evidence or gave evidence for the purposes set out in the Act or these regulations and includes any member of his or her family or household whose safety is being threatened by any person or group of persons, whether known to him or her or not, as a result thereof.

PART II

GENERAL

Values of Commission

3. The Commission, its members and staff shall act in accordance with and promote the following values and principles—

- (a) respect for the human dignity of all persons;
- (b) respect for the truth and the upholding thereof;
- (c) equality and the advancement of human rights and freedoms;
- (d) rejection of racism and sexism and the achievement of gender equity;
- (e) accountability, responsiveness, accessibility and openness;
- (f) rigorous and methodical inquiry together with procedural fairness;
- (g) integrity, resoluteness and the maintenance of the highest standard of professional ethics.

Establishment of committees and units

4. (1) In order to achieve the objects of the Commission and carry out the functions referred to in section 252 of the Constitution the Commission may establish external and internal committees as well as units.

(2) Committees shall oversee and direct the work of units and shall consist of commissioners and other suitably qualified and respected persons, who shall be appointed on a part-time basis to serve on a committee.

(3) Internal Committees and Units shall carry out the operational activities of the Commission, subject to the oversight and direction of the commissioners and shall be staffed by suitably qualified and experienced individuals employed by the Commission.

Commission to co-operate with other bodies

5. In the exercise of its functions, the Commission may liaise and co-operate with organisations and persons, in Zimbabwe and elsewhere that are concerned with post-conflict justice, healing and reconciliation.

Delegation of functions

6. (1) Without limiting section 15(4)(d) of the Act (in regard to the assignment of functions to the Executive Secretary) or paragraph 8(1) of the First Schedule to the Act (in regard to the vesting of functions in committees)—

- (a) the Commission may delegate any function to any member of its staff subject to the restrictions which may be imposed by the Commission;
- (b) the Executive Secretary, with the general or specific consent of the Commission, may delegate any function to any member of the Commission's staff;

(2) A delegation under subsection (1) may be general or conditional, and shall not preclude the Commission or the Executive Secretary, as the case may be, from exercising the function concerned.

Duties to be carried out promptly

7. Anything that is required to be done under these regulations shall be done without undue delay.

Costs

8. (1) The Commission shall not charge a fee for dealing with complaints or providing any other service under the Act and these regulations.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

(3) A staff member of the Commission found responsible for contravening this section shall be liable to misconduct.

Code of Conduct

9. (1) The commissioners, committees, staff members of the Commission and all persons carrying out work for the Commission shall—

- (a) be impartial and act fairly and without bias in the performance of their functions;
- (b) act with integrity and not conduct themselves in any way that is inconsistent with their office, or expose themselves to any situation involving the risk of a conflict between their official responsibilities and private or other interests;
- (c) be diligent, effective and efficient in the carrying out of their functions;
- (d) not divulge any information obtained during the course and scope of their employment with the Commission to any other person except in the course of the performance of their functions with the Commission;
- (e) not use their position or any information entrusted to them, to enrich themselves or improperly benefit any other person.

(2) Any personnel seconded from any state organ or other entity to the Commission shall be accountable solely to the Commission.

(3) If at any stage during the course of proceedings at any meeting of the Commission, committee or body of the Commission, it appears that a commissioner, committee or staff member has or may have a financial or personal interest which may cause a substantial conflict of interests in the performance of his or her functions, such a commissioner or staff member shall forthwith and fully, disclose the nature of his or her interest and absent himself or herself from

that meeting so as to enable the remaining commissioners, committee or staff members to decide whether the person concerned must be precluded from participating in the meeting by reason of that interest.

(4) Such a disclosure and the decision taken by the remaining commissioners, and, or committee or staff members shall be entered on the record of the proceedings.

(5) If a commissioner, committee or staff member fails to disclose any conflict of interest as required in these regulations and is present at a meeting of the Commission, committee or other body of the Commission or in any manner participates in the proceedings, such proceedings in relation to the relevant matter shall, as soon as such non-disclosure is discovered, be reviewed and be varied or set aside by the Commission, committee or body without the participation of the person concerned.

Handling of victims

10. The handling of victims shall be conducted in accordance with the following principles—

- (a) respect for dignity;
- (b) non-discrimination;
- (c) procedures for dealing with victims shall be expeditious, fair, inexpensive and accessible;
- (d) victims shall be informed through the press and any other medium of their rights in seeking redress through the Commission, including information of—
 - (i) the role of the Commission and the scope of its activities;
 - (ii) the right of victims to have their views and submissions presented and considered at appropriate stages of the Commission's operations;
- (e) protection of privacy;
- (f) respect for diversity of languages for victims;
- (g) need to respect informal mechanisms for the resolution of disputes, including mediation, reconciliation and arbitration;

Communication and outreach

11. (1) The Commission may create a Unit to engage in communication and outreach with victims, partners and stakeholders and public.

(2) The Commission shall embark on a public outreach campaign to educate and inform the general population on the mandate, objects and functions, policies and procedures of the Commission as well as its ongoing operations.

(3) The Commission may employ a variety of communication platforms including social media, websites, print media, radio and television.

(4) The purpose of such communication platforms may be to communicate amongst others—

- (a) information on how members of the public can contact the Commission and make complaints;
- (b) details of the Commission's mandate and programmes;
- (c) the provisions of the Act and regulations made under the Act;
- (d) the Commission's policies, procedures and guidelines;
- (e) forms for making complaints and requesting mediation and the operating procedures applicable to the submission of such forms;
- (f) reports prepared by the Commission in terms of section 16 of the Act.

Reporting

12. The Commission shall submit reports on the results of investigations and mediations conducted by the Commission subject to the provisions of section 253 of the Constitution and section 16 of the Act, while withholding information in accordance with its policy on confidentiality.

Staff establishment and recruitment

13. (1) Subject to Part IV of the Act, the Commission shall establish an organisational structure and create posts to carry out the functions of the Commission.

(2) The Commission staff shall be bound by a confidentiality agreement.

(3) Personnel shall be recruited by way of a competency-based assessment method as defined by the policies of the Commission.

(4) All Commission staff shall be appointed on fixed term employment contracts, with options of extensions at the discretion of the Commission.

(5) The deliberate inclusion of false information in a curriculum vitae, or the falsifying of employment or academic history, or the deliberate withholding of material information that would have influenced a recruitment decision, shall be a ground for summary dismissal.

(6) The Commission may engage persons to perform specialised or technical services and the terms and conditions of service of such contracts shall be as fixed by the Commission in each case.

(7) Staff members from organisations or government departments may be seconded to the Commission on terms and conditions agreeable to the Commission, and such seconded staff shall solely report to the Commission while on secondment.

(8) All personnel must undergo an Induction Training Program on the following—

- (a) the Constitution, the Act, regulations and related legislation;
- (b) administrative procedures and the organisational structure of the Commission;
- (c) Human Resources Policy and Procedures Manual;
- (d) other policies, procedures and guidelines of the Commission;

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- (e) consequences of a breach of policy and procedures;
- (f) women's rights;
- (g) confidentiality and information security;
- (h) peace and reconciliation studies and transitional justice concepts;
- (i) respecting and supporting victims;
- (j) witness protection;
- (k) code of conduct;
- (l) the oath and disciplinary procedures;
- (m) basic investigation and research skills;
- (n) any other relevant area.

Vetting

14. (1) The Commission shall take steps to ensure that recruited staff are trustworthy, reliable and persons of integrity, which shall include a rigorous vetting procedure that must be reflected in the Commission's Human Resources Policy Manual.

(2) The Commission shall establish an Integrity Management Unit which must conduct integrity assessments and vetting of all Commission staff and personnel including seconded personnel.

(3) The Integrity Management Unit may contract specialist services of other agencies without compromising the autonomy and independence of the Commission.

Security policies

15. The Commission shall establish security policies to protect its information, data and records as well as its personnel, equipment and buildings, which shall include—

- (a) identification and evaluation of assets to be protected;
- (b) regular external and internal threat and risk assessments;
- (c) a disaster recovery management system;
- (d) a procedure for ensuring compliance and consequences for non-compliance.

Confidentiality of information

16. (1) Members of the Commission, staff members and contracted service providers shall not disclose information they receive or gain access to in the course of their work for the Commission, unless—

- (a) they are obliged to disclose under the Act or these regulations or any other law;
- (b) the Commission has authorised them to disclose it;
- (c) disclosure is necessary for the proper exercise of their functions.

(2) Commission members and staff shall, subject to any other provision in the Act and these regulations, respect the privacy of all individuals and shall take all reasonable and necessary steps to protect identities and safeguard against the disclosure of sensitive information where respondents have not consented to the disclosure of such information.

(3) The Commission's staff shall take an oath of confidentiality when first employed by the Commission.

PART III

LODGING AND ASSESSMENT OF COMPLAINTS

Complaints management

17. (1) The Commission shall receive, assess and, where feasible, resolve complaints from individuals and groups who have suffered human rights violations, as defined in these regulations.

(2) The Commission shall establish a Complaints Management Unit for the purposes of receiving, assessing and determining what action the Commission shall undertake in relation to every complaint registered.

(3) The Unit shall consist of a commissioner and appropriate officers as determined by the Commission.

Lodging complaints

18. (1) A complaint may be lodged with the Commission by—

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- (a) any person who has directly or indirectly been affected or suffered from a human rights violation;
- (b) any group of people which has suffered human rights violations arising from a shared or common dispute or conflict.

(2) Where a person or group is unable or incapable of lodging a complaint any person acting on their behalf may lodge the complaint.

(3) A complaint in relation to a human rights violation may be lodged by any person or group acting in the public interest.

(4) A complaint may be lodged at any Commission office, regardless of where the human rights violation occurred.

(5) If a complaint is lodged at an office in a location other than where the human rights violation occurred, the Commission may, where appropriate, transfer it to the relevant office, and the complaint shall be dealt with at that office as if it had been lodged at that office.

(6) A complaint shall be regarded as lodged if—

- (a) it is reduced into writing and handed in at a Commission office; or
- (b) it is made orally to a Commission officer or by telephone to an office; or
- (c) it is sent to the officer by post, tele-facsimile or e-mail; or
- (d) the complainant completes a complaint form online via the Commission's website and transmits it electronically to the Commission.

(7) Where a complaint is presented in any other form other than the prescribed form, as set out below, the appropriate officer shall cause such a complaint to be reduced into writing by transferring the details into the prescribed form and whenever possible, the complainant shall sign the prescribed form, confirming the recorded details.

(8) A register of complaints, to be called the Complaints Register, shall be kept by the Commission and the particulars of every complaint filed shall be entered in the register and all such complaints shall be sequentially numbered in each year according to the order in which they are received and recorded.

Form of complaint

19. (1) A complaint shall be made in writing, in a form supplied by the Commission.

(2) If for any reason the complainant is unable to make a written complaint or to complete the form, the appropriate officer to whom the complaint is made shall complete the form on the basis of information received from the complainant, and it shall be recorded that the form was completed by the officer, who shall sign confirmation thereof on the form and keep a full written record of what he or she has done.

(3) A complaint shall not be rejected solely on the ground that it has not been made in the proper form.

(4) The following personal information concerning the complainant or any other representative shall be recorded—

- (a) his or her full names and national registration number; and
- (b) his or her physical and postal address, email address, telephone or cell-phone number; and
- (c) where the person is an organisation, its nature and the business or activities it carries on;
- (d) if the complainant is acting on another person's behalf, the reason why that other person is not lodging the complaint; and
- (e) where the victim is a minor, a person of unsound mind or a person with disability, a statement to that effect.

(5) The following information regarding the dispute or conflict that is the subject of the complaint shall be recorded—

- (a) the nature of the dispute or conflict; and
- (b) when and where the dispute or conflict arose; and
- (c) who, if known, is or was responsible for the dispute or conflict; and
- (d) particulars of any person who may provide information relevant to the complaint; and

- (e) information regarding any steps the complainant has taken to try to resolve the issues arising from the dispute or conflict that is the subject of the complaint; and
- (f) if the dispute or conflict has been or is the subject of any court proceedings together with the results of any court process; and
- (g) the grounds on which the complaint is based;
- (h) a concise statement of the facts constituting the complaint;
- (i) nature and extent of any injury or suffering;
- (j) a declaration by the complainant that the representations on the complaint form are true;
- (k) the remedy or redress, if any, which the complainant seeks through lodging of the complaint;
- (l) any other particulars that the Commission may determine.

(6) The appropriate officer or the Commission may require a complainant to furnish such additional information and documents as may reasonably be required to accurately assess or resolve issues raised in the complaint and the Commission shall take steps to recover important documentation when such documentation is held by the State or other parties and a complainant is unable to access same.

(7) Where there are multiple violations contained within one complaint, the appropriate officer shall document all violations identified.

(8) The appropriate officer with whom a complaint has been lodged shall provide the complainant with all reasonable assistance in completing the complaint form and in securing any additional information that may be required.

Acknowledgement of receipt of complaint

20. Within seven days of lodging a complaint with the Commission, the appropriate officer shall provide the complainant with a written acknowledgement of the complaint's receipt, specifying the reference number assigned to the complaint.

Assessment of complaint

21. (1) All complaints received by the Commission shall be assessed to determine, within such time as the Commission may from time to time determine, whether the merits of the case warrant—

- (a) a preliminary investigation or inquiries only;
- (b) a full investigation;
- (c) no investigation;
- (d) referral to another body;
- (e) referral to mediation;
- (f) other steps to be taken.

(2) Where it is apparent from the nature of the complaint that it does not fall within the mandate of the Commission, the appropriate officer receiving a complaint may recommend that the complainant lodge the complaint with another body or state organ that has the mandate to deal with the matter.

(3) If the appropriate officer considers that additional information would facilitate the assessment of a complaint, he or she shall attempt to obtain the information from the complainant, and if the complainant fails or refuses to provide the information the appropriate officer shall refer the matter to the Director of the Complaints Management Unit who shall endeavour to recover the information from the relevant sources and thereafter assess the complaint on the available information but, if that is impossible, he or she may reject the complaint.

(4) If a complaint does not fall within the mandate of the Commission, the appropriate officer shall advise the complainant in writing that the matter shall not be accepted by the Commission.

(5) If a complaint is a matter that is before a civil or criminal court, the Commission shall—

- (a) confirm with the registrar or clerk of the relevant court whether the matter has been allotted a case number and is the subject of ongoing proceedings;
- (b) request such registrar to keep the Commission apprised of progress or lack thereof and to advise the Commission once the proceedings have been finalised;
- (c) following such confirmation referred to paragraph (a), hold such complaint in abeyance until such proceedings have been finalised, withdrawn or lapsed and then consider whether any action is warranted; and

- (d) inform the complainant in writing why his or her complaint is being held in abeyance and request the complainant to keep the Commission apprised of developments in the court proceedings.

(6) The Commission may decide not to accept a complaint for any of the following reasons—

- (a) the complaint does not disclose that a dispute or conflict has occurred or is likely to occur;
- (b) the complaint does not disclose that any person or group suffered a human rights violation;
- (c) the subject matter of the complaint has already been satisfactorily settled or adequately dealt with by another Commission or body or by a competent court;
- (d) the subject matter of the complaint would be more appropriately dealt with by another Commission or body or by a court or through a statutory or contractual dispute resolution mechanism readily available to the complainant.

(7) Where the Complaints Management Unit decides a complaint is appropriate for referral, the appropriate officer may refer the matter to—

- (a) the Commission's Dispute Resolution Unit for mediation or conciliation;
- (b) any other body or unit within the Commission;
- (c) another commission, government department or private body which, in the appropriate officer's opinion, can more appropriately deal with the subject matter of the complaint.

(8) If the appropriate officer decides a complaint shall not be accepted by the Commission, the appropriate officer shall forward such recommendation to the Director of the Complaints Management Unit for a final decision and if such recommendation is confirmed, the officer shall notify the complainant in writing of that fact, giving reasons and advise the complainant of his or her right to appeal against the decision.

(9) If, on assessing a complaint, the appropriate officer is unable to decide whether to accept it or reject it, he or she shall refer it to the Director of the Complaints Management Unit for a decision who shall consider it in conjunction with any comments from the officer and shall accept or reject the complaint in accordance with this section.

(10) If the appropriate officer, or in the case of referral to the Director of the Complaints Management Unit, believe the complainant may be able to supply information that would assist the Commission in deciding whether to accept or reject the complaint, the complainant must be requested to supply that information before it reaches a decision on the complaint.

(11) All complaints registered with the Commission, whether accepted or not, must be recorded by the Commission.

Appeal against rejection of complaint

22. (1) A complainant who is aggrieved by the Complaints Management Unit's decision not to accept his or her complaint may appeal against the decision to the Commission.

(2) An appeal shall be made in writing within 30 days after the complainant received written notification of the decision and shall specify the grounds upon which the appeal is based.

(3) The Commission shall without delay consider every appeal submitted and may confirm or set aside the original decision and give any direction it considers appropriate to ensure the proper resolution of the matter, and shall notify the Complaints Management Unit of the outcome of the appeal.

Powers of Commission upon acceptance of complaint

23. Upon acceptance of a complaint, the Complaints Management Unit may—

- (a) Appoint an appropriate officer to enquire into the complaint or refer the matter to the Investigation Unit for further investigation, with directions on what must be investigated;
- (b) Conduct a formal hearing into the complaint in accordance with section 10 of the Act.

Disclosure of complainants' information

24. (1) The personal information, including contact details, of a complainant shall not be disclosed to persons outside the Commission without the consent of the complainant and where a complainant requests that other details be kept confidential then the Commission, shall, subject to these regulations, take all reasonable steps to comply with that request.

(2) The Commission's complaint form, including other forms for recording of information, shall include a section in which the complainant or information source may authorise the Commission to disclose all or some information or withhold all or some information from disclosure.

(3) Where the complainant is a child, a person with a mental disability or a victim of gender based violence, the Commission, and all members of the Commission's staff shall, subject to this section, take all reasonable steps to keep the complainant's identity and personal information confidential and to prevent the disclosure of this information to any person outside the Commission's offices.

(4) The Commission may disclose identities and personal information of victims of gender based violence only when the victim is an adult and has, after counselling, consented to his or her identity and information being disclosed.

(5) If a complainant has requested confidentiality as provided in these regulations but the Commission considers that disclosure of his or her personal or other information is necessary in order to resolve the complaint, or achieve the objects of the Commission, the appropriate officer shall, in writing—

- (a) inform the complainant which information the Commission considers must be disclosed and why it must be disclosed; and
- (b) request the complainant's written consent to disclose the information.

(6) If the Commission considers that disclosure of the personal information of a complainant who is a child is necessary in order to resolve the complaint, the appropriate officer shall, in writing—

- (a) inform the complainant's parents or guardian which personal information the Commission considers must be disclosed and why it must be disclosed; and
- (b) request the complainant's guardian to give written consent for the disclosure of the information—
 - (i) if a person refuses to consent to the disclosure of personal or other information, having been requested to do so, the Commission may decline to deal with the complaint;
 - (ii) if the Commission declines to deal with a complaint, it shall inform the complainant, in writing and within seven days of its decision and the reason for the refusal.

PART IV

INVESTIGATIONS

Commission investigations

25. (1) The Commission shall establish an Internal Investigations Committee for the purposes of conducting these investigations.

(2) The Investigations Committee shall be chaired by a Member of the Commission and members of the committee shall be other Members of the Commission, Director of Investigations and appropriate officers as determined by the Commission.

(3) In addition, other experts may be appointed to support the investigations unit as required.

(4) The Commission may initiate an investigation into any dispute or conflict, even if no complaint has been lodged in respect thereof, and these regulations shall apply to such an investigation.

(5) Apart from investigating cases and incidents, the Commission may identify themes, issues and practices relevant to its mandate to be examined through research, investigation and hearings.

Investigations by appropriate officer

26. (1) An investigation undertaken on the Commission's initiative or an investigation resulting from a complaint may be subject to a preliminary investigation or a full investigation.

(2) Upon being appointed to investigate a complaint, the appropriate officer shall inform the complainant of his or her appointment and, where necessary, request the complainant to furnish any further information or documents to facilitate the investigation.

(3) The appropriate officer shall conduct the investigation in accordance with all applicable laws, relevant Commission's policies, protocols and procedures and the rules of natural justice.

Preliminary investigation

27. (1) In cases deemed appropriate for a preliminary investigation, the investigation shall be conducted and concluded within a reasonable period of time.

(2) The appropriate officer may contact the complainant, victim or any witness and record their account of the incident or practice under investigation.

(3) The appropriate officer may collect and assess documentation or physical evidence that is relevant to the investigation.

(4) Upon concluding a preliminary investigation, the appropriate officer may either recommend that the complaint file be closed or that a full investigation is required.

(5) A full investigation need not be carried out if—

- (a) the complaint does not fall within the mandate of the Commission;
- (b) the complaint is of a vexatious or frivolous nature;
- (c) the complainant fails to supply the required information making it impossible to investigate;
- (d) the Investigation Unit after diligent efforts has been unable to obtain information necessary to further processing or substantiating the complaint;
- (e) the complaint has already been heard and finalised by the Commission.

Full investigation

28. (1) A full investigation must be authorised by the head of Investigations.

(2) A full investigation is required if the complaint falls within the mandate of the Commission and it meets the threshold for an independent and robust investigation in that the human rights violation in question is serious and it is in the public interest that it be investigated thoroughly.

(3) Prior to the launch of a full investigation the appropriate officer shall prepare an investigation plan which must be approved by the Director of Investigations before a full investigation may commence.

(4) The Investigations Unit must set out in a protocol or policy the required contents of each investigation plan.

(5) The full investigation shall be concluded as soon as practically possible but in any case, within the timelines set by the head of the Investigations Unit or the Commission.

(6) For purposes of the investigations, the Commission may exercise all the powers as provided for in the Act, and may gather any information it considers necessary by such lawful means as it may deem appropriate.

(7) During Commission investigations, an appropriate officer may, at any time, request the assistance of the Zimbabwe Republic Police which shall be obliged to assist the Commission with any lawful request.

(8) Whenever possible, the appropriate officer shall interview the complainant, the person complained against, other victims and witnesses, and where appropriate record such interviews and take statements.

(9) Upon approval by the Commission, an appropriate officer may subpoena any person for purposes of an interview or collecting supporting documents or physical evidence.

(10) Where the victim, witness or a person complained against is a child, consent to interview a child shall be sought from the parent or guardian:

Provided that—

- (i) such consent shall not be unreasonably withheld;
- (ii) the interview shall take place in the presence of the parent or guardian, and where appropriate a social worker or counsellor may be present.

Confidentiality of investigations

29. (1) No person other than a commissioner, a member of staff, other approved person or any person required to produce any article or give evidence shall be entitled or be permitted to attend any investigation conducted in terms of this regulation, and the Commission may, having due regard to the principles of openness and transparency, declare that any article produced or information furnished at such investigation shall not be made public until the Commission determines otherwise or, in the absence of such a determination, until the article is produced or the information is furnished at a hearing in terms of the Act, or at any proceedings in any court of law.

(2) All information available and collected by appropriate officers shall be regarded as sensitive and shall be treated with the utmost confidence and secured at all times and shall not be disclosed unless disclosure is required under law or the Commission authorises disclosure.

Engagement with complainants and victims

30. An appropriate officer shall take reasonable steps to keep the complainant or victim informed about the progress of an investigation.

Record keeping

31. Officers involved in investigations shall—

- (a) keep a proper record of all investigative actions throughout the course of any investigation; and
- (b) maintain investigative records in accordance with the Commission's record keeping policies.

Closure of investigation

32. (1) Upon concluding an investigation, the appropriate officer shall submit the completed investigation to the Director of Investigations, together with a detailed report containing—

- (a) all the steps taken during the investigation;
- (b) any relevant documents or other material collected in the course of the investigation;
- (c) the outcome and findings of the investigation;
- (d) recommendations arising from the investigation including recommendations or remedial action to be taken to resolve the matter.

(2) Upon receiving and approving the completed investigation, the Director of Investigations shall forward the completed investigation and recommendations to the appropriate committee or senior commission staff member appointed by the Commission.

(3) The appropriate committee or designated senior staff member shall review the completed investigation for quality and completeness and ensure that the balance of probability standard has been satisfied.

(4) The appropriate committee or designated senior staff member, following the aforesaid review, may—

- (a) adopt, with or without modification, the appropriate officer's findings regarding the matter investigated, including any recommendations as to remedial action; or
- (b) reject the complaint if they consider the investigation discloses that the complaint is without merit; or
- (c) direct that the complaint be referred to conciliation or mediation or the holding of a formal hearing; or
- (d) refer the complaint to another commission or body which, in their opinion, can more appropriately deal with the subject matter of the complaint; or

(5) In determining how to resolve a complaint, the appropriate committee or designated senior staff member shall adopt the method which, in his or her or their opinion is best suited to achieve a result that is satisfactory to the complainant and fair to any individual or group implicated in the violation, dispute or conflict, taking due account of—

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- (a) the nature and seriousness of the dispute or conflict;
- (b) the degree of co-operation shown by the parties during the investigation;
- (c) the likelihood of the parties participating in a meaningfully resolution process;
- (d) the public interest; and
- (e) any other relevant consideration.

(6) The Commission shall inform the complainant or victim of its finding and recommendation and provide the complainant or victim a reasonable opportunity to make representations before rejecting his or her complaint or referring it to another Commission or body.

Subpoenas

33. (1) The Commission may subpoena any natural person or the representative of a legal person to appear—

- (a) before an appropriate officer conducting a Commission investigation for the purposes of interview and to produce any documents or other things in his or her custody or control that are relevant and necessary to the subject of the inquiry;
- (b) at a hearing to testify under oath and to produce any documents or other things in his or her custody or control that are relevant and necessary to the subject of the inquiry.

(2) Subpoenas may be issued sparingly and only as a last resort when a person does not volunteer testimony or evidence that is relevant and necessary to meet the objectives of the Commission.

(3) The Commission may, subject to subsection (4), issue a subpoena at a meeting with a quorum as provided for in paragraph 7(6) of the First Schedule of the Act.

(4) The Commission chairperson may issue a subpoena when it is not possible to timeously convene a Commission meeting and only when there are urgent and exceptional circumstances justifying the exercise of such power.

(5) A subpoena shall be signed by a commissioner and be personally served by a member of the staff of the Commission or by a sheriff, police officer or an authorised individual by delivering or tendering to him or her one of the duplicates of the subpoena, failing which it may be served—

- (a) directly at an individual's residence or business place;
- (b) by leaving one of the duplicates with an adult member of his or her family or with his or her employer and the person with whom the subpoena is so left shall sign receipt on the back of the other duplicate;
- (c) by affixing one of the duplicates of the subpoena to some conspicuous part of the house or homestead in which the person summoned ordinarily resides;
- (d) by mail to the individual's most recent known address, or to his or her designated legal representative;
- (e) through print and electronic media.

(6) A subpoena shall—

- (a) contain the time and place where testimony shall be taken;
- (b) indicate the relevant subject matter of the testimony;
- (c) provide reasonable notice to attend and testify;
- (d) inform the recipient of the broad nature of any adverse allegations about which he or she may expect to be questioned.

(7) A subpoena for documentary and material evidence shall—

- (a) not be vague or unduly burdensome;
- (b) identify or describe the nature of the documents or objects sought;
- (c) provide a reasonable time and location for delivery of the evidence.

(8) Every person on whom a subpoena is personally served shall sign a receipt on the back of the other duplicate.

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(9) A subpoena shall explain the possible consequences of non-compliance, as well as the procedure to be followed if the person is unable or unwilling to comply.

(10) Every witness testifying before the Commission shall be entitled to the reimbursement of costs incurred which shall be in accordance with the prescribed tariff.

(11) Objects and documents obtained through a subpoena shall be returned to the subpoena recipient within a reasonable time:

Provided that where objects and documents disclose evidence of criminal activity, a prosecutor shall be given an opportunity to apply to a court for the retention of the evidence subject to the Act.

(12) If the Commission is of the opinion that the production of any article may adversely affect any intended or pending judicial proceedings or the conduct of any investigation carried out with a view to the institution of judicial proceedings, the Commission shall take steps aimed at the prevention of any undue delay in or the disruption of such investigation or proceeding.

Preservation of evidence

34. (1) The Commission shall take steps to preserve documents, materials or evidence relevant to the subject matter of its inquiry.

(2) The Commission may apply to a Magistrates court, on an *ex parte* basis, for a warrant of search and seizure, applicable to both natural and legal persons, where there are reasonable grounds to believe that—

- (a) there are, in any building or place, documents or things relevant to the subject matter of the inquiry and important for purposes of achieving the commission's mandate;
- (b) any person in control of the building or place has refused to cooperate with the Commission,
- (c) records or objects shall be destroyed, damaged, altered or concealed if not recovered and preserved.

(3) In making a decision to apply to the Magistrate court for a warrant of search and seizure the Commission shall adopt the same decision making process as that for the issuing of a subpoena.

(4) In applying for a search warrant, the Commission's application shall specify—

- (a) the duration of the warrant, which shall be limited to the time that is minimally necessary to achieve the stated purpose;
- (b) The Sheriff of the Court or the uniformed police shall execute the warrant at the premises in question;
- (c) the period of removal and retention of documents and objects, which shall not be for an unreasonable period of time;
- (d) the need to inspect and examine documents and objects, the making of copies of all or part of any articles found, and the asking of pertinent questions of every person in control of the premises;
- (e) that the subject of the search are entitled to accompany those conducting the search, or to designate another person to serve as a witness during the search;
- (f) that where there are reasonable grounds to believe that any article or thing found in such premises are mentioned in the warrant, such items shall be seized after having issued a receipt in respect thereof;
- (g) that the officer conducting the search shall make a detailed written record of the search and of any seized objects, and that this record shall be signed by the officer concerned as well as by the subject of the search and a witness proposed by the subject;
- (h) that where the subject refuses to permit the removal of property on the basis that it contains privileged information, the matter shall be referred to a court and the property sealed and temporarily placed in the custody of the court clerk or registrar.

(5) Where a search is conducted in an arbitrary or unreasonable manner, the Commission shall be precluded from using or relying on evidence that has been obtained in a manner that violates any provision of Chapter 4 of the Constitution.

Hearings

35. (1) The Commission may issue protocols for the conduct of the different types of hearings, including the issuing of rules of procedure and practice directions, to the extent that such matters are not dealt with in these regulations, dealing with but not limited to—

- (a) appearances;
- (b) legal representation;
- (c) presentation of evidence;
- (d) calling of witnesses;
- (e) tender and inspection of documents;
- (f) examination, cross examination and re-examination of witnesses;
- (g) time limits;
- (h) notification of adverse allegations;
- (i) publication of witness lists and hearing hours;
- (j) non-publication orders and closed hearings;
- (k) exclusion of prospective witness;
- (l) warning notices of rights and obligations;
- (m) written submissions;
- (n) oath and affirmation.

(2) Subject to the Act and the provisions of this section, the hearings of the Commission shall be open to the public.

Closed hearings

36. (1) Hearings may be held in camera if the Commission is satisfied that—

- (a) it is in the interest of justice;
- (b) there is a likelihood that harm may ensue to any person as a result of the proceedings being open.

(2) Hearings shall be held in camera when victim or witness is—

- (a) child;

(b) victim of sexual violence.

(3) The Commission may on application by an interested party, or on its own volition, direct that hearing proceedings be held *in camera* and that the public or any category thereof shall not be present at such proceedings or any part thereof:

Provided that the Commission shall permit any victim who has an interest in the proceedings concerned, to be present and may:

- (a) direct that no information relating to the proceedings, or any part thereof held behind closed doors, shall be made public in any manner;
- (b) direct that no person may, in any manner, make public any information which may reveal the identity of any witness in the proceedings;
- (c) give such directions in respect of the record of proceedings as may be necessary to protect the identity of any witness.

(4) The Commission may at any time reverse its decision to hold proceedings *in camera* when there are good grounds to do so.

Evidence and procedure

37. (1) Where an original document is required to be used in evidence it must be submitted, but the Commission has a discretion to permit a copy of document to be submitted in evidence as proof of a fact.

(2) The Commission may, at any stage, call on any person to make discovery on oath within a timeframe directed by the Commission or the hearing panel.

(3) The hearing panel may call upon any person on behalf of the interested person to make discovery of any document or item that is relevant to the inquiry.

(4) The request made by the hearing panel must state—

- (a) the reasons the interested person believes that the holder of the document possesses the document; and

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- (b) the reasons the interested person believes the document is relevant to a matter before the Commission.

(5) The Commission shall decide what witnesses may be called to appear at hearings:

Provided that—

- (a) a request for a witness to be called shall not be unreasonably refused;
- (b) the submission of witness affidavits shall be permitted.

(6) In making a determination whether to call a witness the hearing panel shall consider whether—

- (a) the person played or may have played, a direct and significant role in relation to the matters to which the hearing relates;
- (b) the person has significant interest in an important aspect of the matters to which the hearing relates; or
- (c) the person has been implicated in the evidence submitted to it may be the subject of an adverse finding in a report of the Commission.

(7) Where a witness gives oral evidence, the Commission's Evidence Leader shall present information relevant to the hearing to the witness and the Commissioners may put questions to the witness.

(8) Where a witness has been questioned orally the chairperson of the hearing may allow his or her legal representative to put questions to him or her to clarify certain aspects.

(9) Where a witness has been questioned by the Evidence Leader, or by the Commissioners, and that witness's evidence directly relates to the evidence of another witness or implicates another person, the legal representative of the witness to whom the evidence relates, or person implicated, may apply to the hearing panel for permission to question the witness giving oral evidence and when making such an application, the legal representative must state—

- (a) the issue in respect of which the witness is to be questioned; and

(b) whether questioning may raise new issues and if not, why the questioning must be permitted.

(10) The hearing panel may allow any question to be put to any witness called to give evidence.

(11) The Commission may establish criteria for the selection of victims testifying at public victim hearings and shall reflect the objectives set out in the Act.

(12) All persons who appear at public hearings shall be provided with a prior briefing by the Commission during which the hearing procedure and corresponding rights and duties shall be explained.

(13) Communications between spouses, lawyer and client, medical or health professional and patient, parent and child, journalist and source and between religious clergy and penitent, shall be regarded as privileged and immune from disclosure:

Provided that such communications shall be admissible at a public hearing by consent of the person concerned, or where the person concerned voluntarily reveals the content of the communication to a third party who subsequently gives evidence of that disclosure.

Victim support at hearings

38. (1) Victims who testify at public hearings of the Commission shall, where appropriate, receive medical, psychological or emotional support services to help them testify effectively and the Commission shall follow up with victims after their public testimony to assess whether their well-being was compromised as a result of testifying, and if so, to provide necessary counselling.

(2) The Commission may allow or refer victims to alternative forms of assistance, such as religious or spiritual support by clerics and elders, self-help support groups and special community or family support arrangements.

Notification of adverse allegations

39. (1) Prior to a hearing, or at the appropriate stage of an investigation, an appropriate officer must notify any individual alleged to have been responsible for any human rights violation, dispute or conflict or in any way adversely mentioned, in writing—

(a) that the Commission is investigating a complaint against him or her together with a summary of the allegations;

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- (b) informing the individual of the nature and circumstances of the dispute or conflict that is the subject of the complaint, in sufficient detail to enable the individual to respond adequately to the allegations.

(2) Information about the source of the allegations may be withheld where the Commission considers it necessary or prudent to do so and the notice shall set out the location, date, and time of the planned hearing or interview, and the modalities and restrictions for exercising a right of reply.

(3) The Commission retains a discretion to withhold prior notice when circumstances demand it, and shall keep a record of such decision, and provide notice when it is appropriate to do so.

(4) Where a person is adversely implicated for the first time at a public hearing the Commission shall take reasonable steps to notify the person implicated and afford him or her an opportunity to respond at a subsequent hearing or by way of written representations.

(5) Notification in terms of these regulations shall be in writing and be delivered by registered mail to the last known address of the implicated individual, or to the individual's legal representative:

Provided that—

- (a) where the postal service is unreliable, delivery may be made by courier service or personal service;
- (b) where the implicated individual cannot be located the Commission may make general public announcements in appropriate places, as well as publications in newspapers and via the internet.

(6) The right of reply for the implicated person may be in the form of a written response setting out his or her version of the facts before or after the hearing or interview takes place, or at a separate public or private hearing or interview, subject to available resources and the dictates of fairness in each case.

(7) If cross-examination is permitted, the Commission may impose restrictions on the extent, nature, and line of questioning so as to avoid any harassment or intimidation of victims or witnesses,

paying particular attention to attacks on children and victims of sexual crimes who testify:

Provided that alternatively, the Commission may require the implicated individual to submit a list of questions that the Commission may, at its reasonable discretion, put to the victim before, during, or after the hearing.

PART V

WITNESS AND VICTIM PROTECTION

Limited witness protection programme

40. (1) The Commission may establish a limited witness protection programme in order to provide, within its available means, for the protection of vulnerable victims and witnesses when there is a demonstrable threat to their safety.

(2) The Commission may appoint a suitably qualified private person, by way of secondment, a suitably qualified official or employee of any department of State to act as the Witness Protector, who shall report to the Commission's Committee on Victim and Witness Support.

Protective measures

41. (1) The Commission shall, having regard to its available resources, arrange measures to protect the physical safety of anyone who testifies publicly, or who cooperates with the Commission, and who faces significant and demonstrable security threats to his or her safety on account of testimony or evidence provided.

(2) Applications for protection may be made to the Commission and such applications shall be considered in private by the Commission.

(3) The Commission shall have the discretion to provide or deny protective measures in accordance with established and published criteria.

(4) Protective measures may include but shall not be limited to—

- (a) physical protection;
- (b) relocation;
- (c) not disclosing identities and personal details;
- (d) expunging name and other identifying information from the public records of the Commission;
- (e) use of pseudonyms;
- (f) employing witness voice and picture alteration devices;
- (g) using video conferencing technology and close-circuit television;
- (h) limiting who may attend a hearing; and
- (i) restricting how a hearing may be publicly reported.

Vulnerable and sensitive witness

42. (1) Whenever a staff member has reason to believe that a complainant, witness or victim is at risk he or she must notify the Commission's Committee on Victim and Witness Support and provide all available information.

(2) A complainant, witness or victim shall be deemed in need of protection when there is a known threat or evidence of intimidation or other evidence to indicate that he or she is at risk of physical harm.

Threat and risk assessments

43. (1) The Committee on Victim and Witness Support shall complete a threat and risk assessment in every case where there is any indication a complainant, witness or victim may be at risk and decide, whether any protection is required, and if so what protection may be offered.

(2) When there are grounds to believe that a risk against a person is life threatening the Committee on Victim and Witness Support shall advise the Commission at the earliest opportunity and appropriate interim arrangements shall be made to protect the individual.

(3) A threat and risk assessment undertaken by the Committee on Victim and Witness Support must be completed expeditiously and shall consider the following—

- (a) the seriousness of the violation, dispute or conflict the complainant, witness or victim has lodged with the Commission;
- (b) the extent of evidence of the threat or risk;
- (c) the nature and seriousness of the perceived danger to the complainant, witness or victim;
- (d) the willingness of the complainant, witness or victim to participate in the process;
- (e) the individual or group identified as posing the threat.

(4) Following the threat and risk assessment, the Committee on Victim and Witness Support shall provide the Commission with a detailed report and recommendations.

(5) The Committee on Victim and Witness Support or any staff member of the Commission shall not give complainants, witnesses or victims any assurance of protection until a decision is rendered by the Commission.

Referrals

44. In a case involving a serious threat or significant risk the Commission may refer the matter to an appropriate state agency or civil society organisation or international partner which with the Commission has an agreement or arrangement to provide protection services.

Memoranda of Understanding

45. The Commission may, enter into a Memorandum of Understanding with any civil society organisation, state agency or international partner that the Commission believes can provide protection or support beyond that which the Commission itself can provide.

Training

46. All Commission staff who interact with complainants, victims and witnesses shall receive relevant training in relation to identifying and recognising risks and vulnerabilities.

PART VI

STATEMENT TAKING

General

47. (1) Any person with an interest in the subject matter of the Commission's mandate may make a written statement to the Commission.

(2) The Commission shall establish a protocol or guidelines for the recording of statements.

(3) Nationals living abroad are also entitled to make statements to the Commission and shall be notified about the commission statement taking process so that they may participate and the Commission shall take reasonable steps, subject to its available resources, to facilitate the recording of statements from them.

(4) In its public outreach work, the Commission shall inform every interested persons of the possible material consequences, if any, of not providing a statement, in particular whether eligibility to benefit in a future reparation or compensation programme may be affected.

Accessibility

48. (1) Every witness shall be entitled to make statements in their native language.

(2) The Commissions shall provide special measures to facilitate statement taking for elderly persons and persons with disabilities.

Information on possible consequences of giving a statement

49. (1) The Commission shall inform a deponent of all possible subsequent uses of his or her statement for purposes that are consistent with its mandate, including but not limited to—

- (a) listing the deponent's name in the final report;
- (b) citing part of the deponent's statement in the final report;
- (c) forwarding the statement to investigators, prosecutors or the courts subject to the provisions of the Act; and

(d) permitting public access to review the statement after the commission's dissolution.

(2) Where appropriate, the Commission shall obtain a deponent's prior consent for any legally significant subsequent uses of his or her statement, and such signed consent must be reflected on the statement form.

Procedures for taking and recording statements

50. (1) Statements shall be taken following a predetermined format, and questions shall be confined to matters that fall within the Commission's mandate.

(2) The Commission shall ensure that statements are recorded consistently, accurately and completely for future use, and in a manner that respects the dignity of the deponent.

(3) Deponents shall be allowed to make statements orally or in writing.

(4) Subject to availability of resources and security conditions, statements shall be recorded on audiotape or videotape with the consent of the deponent.

(5) Deponents shall be required to give a solemn undertaking about the truthfulness and completeness of their statements.

(6) Statements shall be signed by the deponent and by the statement taker, noting the date, time and place, and every person present during the interview:

Provided that where a statement is not signed, the reasons shall be noted.

(7) Statements shall be taken in private, however where appropriate, the Commission may permit—

(a) deponents to be accompanied by friends, family, or counsel;

(b) statements to be taken in a group setting depending on the specific cultural setting.

(8) Statements that are not taken in privacy shall be marked accordingly by the statement taker, together with a record of the procedure adopted and an explanation thereof.

(9) The Commission shall ensure specialised hiring and training of staff of the Commission to facilitate the effective interviewing of children, persons with disabilities, illiterate persons and victims of sexual violence or abuse.

Receipt and preservation of confidential and anonymous statements

51. (1) In appropriate circumstances, the Commission shall accept confidential or anonymous statements.

(2) The Commission shall establish the criteria for the making of statements which may include—

- (a) the degree of physical risk to the deponent;
- (b) the commission's relative need for the information, having regard to the information that is already in the public domain and what information the Commission has already secured from other deponents on a non-confidential basis regarding a particular event or set of facts;
- (c) the relevance and probative value of the information; and
- (d) the capacity of the commission to prevent direct or indirect disclosure of the deponent's identity.

(3) Deponents wishing to make confidential statements must formally seek permission from the Commission to do so.

(4) Prior to taking any confidential statement, the statement taker shall explain the scope of the obligations of the Commission and the degree of its capacity to preserve confidentiality.

(5) In order to preserve confidentiality, the Commission may use pseudonyms or expunge the deponent's name and all other identifying information from the public records of the commission.

(6) Anonymous statements shall be treated in the same manner as normal or confidential statements, but they shall be permitted at the discretion of the Commission:

Provided that sole reliance shall not be placed on them for purposes of attributing individual responsibility in published reports.

(7) The commission shall maintain well-organised files in secure locations, which is digitally backed-up, with a system to ensure the upholding of confidentiality obligations it has undertaken for specific deponents.

Support and referrals

52. (1) To the extent resources permit, the Commission shall have staff or approved professionals on site, to provide medical, psychological or emotional support and assistance for deponents when they give statements.

(2) Commission staff shall be trained in order to advise deponents regarding available public and private services for special medical, psychological, emotional, and economic support.

PART VII

MEDIATION AND CONCILIATION OF DISPUTES

Mediation and conciliation

53. (1) The Commission may facilitate mediation or conciliation of any dispute or conflict falling within its legal mandate.

(2) Mediation or conciliation, for purposes of these regulations, is a consensual and informal process in which parties to a dispute use the services of a skilled and independent mediator or conciliator to assist them to—

- (a) define the issues in dispute;
- (b) develop and explore settlement options;
- (c) assess the implications of settlement options; and
- (d) negotiate a mutually acceptable settlement of that dispute which meets their interests and needs.

Dispute Resolution Unit

54. (1) The Commission shall create a Dispute Resolution Unit within the Healing and Reconciliation Committee to manage and administer the mediation and conciliation of disputes and conflicts and provide support and guidance to the parties and mediators.

(2) In pursuit of those objectives, the Dispute Resolution Unit shall—

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- (a) provide the administrative functions necessary for the professional and competent delivery of mediation services;
- (b) maintain a comprehensive, informative and effective website;
- (c) maintain a panel of qualified and respected mediators.

Initiation of process of conciliation and mediation

55. (1) Any person, group or entity may request the Commission to resolve a dispute or conflict by completing an online application form or delivering such application to an office of the Commission.

(2) The Dispute Resolution Unit shall maintain a register or panel of mediators and the details of each mediator shall be published on the Commission's website.

(3) The parties to a dispute shall sign a form in which they commit themselves to negotiate toward settling the dispute or conflict in good faith.

(4) Where the Commission decides to resolve a dispute or conflict it may appoint a suitably qualified independent and impartial mediator, from within or outside the panel of mediators, to resolve such dispute or conflict by way of conciliation and mediation.

(5) Parties to a dispute may express a preference for a specific mediator when seeking mediation and may suggest up to 3 names on the panel

(6) The details of the proposed mediator shall be supplied to the parties who may lodge an objection within 7 days of notification and the Commission may appoint a new mediator.

Mediator

56. (1) A mediator may not accept an appointment if any circumstance, past or present, exist that is likely to—

- (a) give rise to justifiable doubts as to his or her impartiality or independence in the eyes of any of the parties; or
- (b) prejudice or impair his or her performance of the duties in the conduct of the mediation.

(2) The duty of a mediator to disclose any potential conflict of interest is an ongoing duty that persists throughout the mediation and where a disclosure of such conflict of interest is made during the course of a mediation, the parties must confer and unless the parties agree to continue the mediation with the mediator, he or she must withdraw and advise the Dispute Resolution Unit immediately.

Mediation procedure

57. (1) The mediator may employ any method of conflict resolution that is in accordance with generally accepted practices and which is in harmony with the Constitution and cultural norms and practice.

(2) The mediator shall define and manage the conduct of the mediation process and may—

- (a) conduct a mediation in such manner as he or she deems fit, having regard to the nature and circumstances of the participants and the nature of the dispute;
- (b) in consultation with the parties, establish basic rules and guidelines for procedure and such rules may include the—
 - (i) order of presentation;
 - (ii) right of each party to speak freely and without interruption;
 - (iii) obligation of the parties to treat each other with courtesy;
 - (iv) right of any party to obtain legal or expert advice;
 - (v) right of any party to talk to its advisers or representatives in privacy during the mediation;
 - (vi) right of any party to terminate the mediation after consultation with the mediator.

(3) The mediator may assist the parties to—

- (a) define and isolate the issues for resolution;
- (b) generate, explore, develop and evaluate options for resolution of the issues;

- (c) endeavour to reach an agreement which accommodates their mutual needs and interests.

(4) A mediator may not coerce the parties into agreement or make decisions for the parties.

(5) Where agreement has been reached to settle a dispute, in whole or in part, a mediator must discuss with the parties the process for recording and implementing the agreement.

(6) Where a partial agreement has been reached, the mediator must discuss with the parties a process for resolving the remaining issues.

(7) If a mediator considers that an agreement, or terms of an agreement, may be illegal or impossible to uphold, the mediator may recommend to the parties that independent legal advice be sought.

(8) A mediator may suspend mediation at any time if he or she feels unable to assist the parties to achieve resolution of the dispute and if so, the mediator must advise the Dispute Resolution Unit immediately, which in turn must seek direction from the Commission.

(9) The mediation may be terminated at any time by a party after consultation with the mediator and the Dispute Resolution Unit.

(10) On conclusion or termination of the mediation, the mediator shall, without exception convey all documents and records provided by the parties for the purpose of the mediation to the Dispute Resolution Unit, which shall preserve such records, and may not immediately become available to the public but shall at a certain determined point become part of the public record.

Role of party

58. (1) A party must sign an agreement to mediate in order to initiate the process.

(2) A party must accept the appointment of a mediator where the parties are unable to agree on any person to act as mediator, and the Dispute Resolution Unit shall be requested to appoint a Mediator by the parties.

(3) A party must prepare a brief analysis of the dispute identifying the legal and technical issues, which must be provided

to the Dispute Resolution Unit and the other parties no less than 14 working days prior to the mediation:

Provided that the commission shall ensure the assistance to prepare brief analysis is provided for those not in a position to do so.

(4) A party must provide the Dispute Resolution Unit with a list of every witness accompanying that party at the mediation no later than seven working days prior to the mediation.

(5) A party must attend the mediation and present an opening statement about the facts of the case, the issues in dispute, the relief sought or through questioning by the Commission supply the required facts and other relevant factors and participate in the mediation process in good faith with the intention of seeking settlement.

(6) A party must cooperate with the Mediator and be courteous to the Mediator and all other participants.

(7) A party must comply with reasonable requests and directions made by the mediator to promote the fair, prompt and effective resolution of the dispute.

(8) If a party is not a natural person it must be represented at the mediation conference by a person who is able to make final and conclusive decisions and who has full authority to settle the dispute.

(9) During a mediation a party must maintain confidentiality of the mediation save only where publication, disclosure, or communication is agreed to or is necessarily required.

Approval of agreement

59. (1) An agreement reached by the parties shall include—

- (a) the full details of the parties;
- (b) the nature of the dispute between the parties;
- (c) the terms of the agreement, which may include remedial action to be carried out by one or other party or all parties;
- (d) an undertaking to comply with the terms of the agreement;
- (e) signatures of the parties and mediator, including the date and place of signing of the agreement;

(f) signatures of two witnesses who have no association with the dispute.

(2) If agreement is reached between the parties the mediator shall—

(a) cause the terms of agreement to be recorded in writing and signed;

(b) submit such agreement to the Commission, together with his or her report of the mediation, which shall include his or her recommendations for remedial action where the agreement is silent on such remedy.

(3) Any agreement reached may not be in violation of any law or be inconsistent with the Constitution.

(4) The terms of agreement between the parties shall be submitted to the Commission for approval and the Commission shall, within 21 days of receipt of such agreement, approve or decline such agreement.

(5) The Commission may only decline to approve an agreement where such agreement violates a law or is inconsistent with the Constitution.

(6) A refusal by the Commission to approve an agreement must be accompanied by reasons and directions on how to remedy the identified shortcomings and the parties may endeavour to reach a fresh agreement.

(7) If the Commission does not communicate a decision to the mediator within 21 days of receipt of the agreement it shall be deemed to have been approved, and the Executive Secretary shall mark the agreement as approved and transmit same to the mediator.

Procedure on failure of mediation

60. (1) Where after mediation, the parties fail to reach agreement, the mediator shall—

(a) report such failure to the Commission, which shall include an explanation of the reasons for the failure; and

Transparency and sharing the truth with the nation

68. (1) An individual to whom the Commission intends to attribute responsibility in a final report shall be afforded a prior and reasonable opportunity to reply to the adverse evidence and allegations.

(2) The implicated person shall be entitled to provide the Commission with a written statement, together with any contradictory or exculpatory evidence that he or she can adduce:

Provided that the implicated party shall not be entitled to a private meeting with the Commission except at its reasonable discretion.

(3) The implicated individual's reply shall be voluntary:

Provided that the Commission may not draw any adverse inference from a failure to reply.

Investigation of replies

69. (1) The Commission shall seriously consider the responses of implicated persons.

(2) The Commission shall investigate any new and credible contradictory or exculpatory evidence received from an implicated individual prior to attributing responsibility to him or her in a published report.

Naming in published report

70. (1) The precise nature of the evidence against any named individual for any particular offense or transgression shall be made explicit in a published report.

(2) The precise nature of a person's alleged participation in the offense or transgression must be included.

(3) When making findings of individual responsibility in a published report, the Commission shall explain that such conclusions constitute findings of fact, not law, and that they do not constitute court findings.

(2) An observer may observe the whole, or part of a mediation, but an observer has no powers or rights whatsoever in relation to the conduct of a mediation.

(3) The sole function of an observer is to report to the Dispute Resolution Unit for the purpose of measuring and monitoring the professional development and performance of its mediators.

PART VIII

PUBLICATION OF FINDINGS OF INDIVIDUAL RESPONSIBILITY

Types of evidence

65. (1) The Commission shall examine and make use of as many different sources of evidence as possible before publishing findings of individual or personal responsibility in a published report.

(2) Every piece of evidence, whether generated internally or externally shall attain a minimum threshold in terms of its relevance, probative value and reliability in order to justify reliance on it for the purpose of attributing individual responsibility.

Standard of proof

66. (1) While it is preferable to rely on more than one direct and credible source of evidence before attributing individual responsibility in a published report, it may be acceptable to rely on a single direct and reliable source in appropriate circumstances.

(2) The Commission shall employ the balance of probabilities standard for the purpose of making a finding of individual responsibility.

Notification of intent to name in report

67. (1) Before publishing findings of individual responsibility in a published report, the Commission shall take reasonable steps to provide notice to all those it intends to name.

(2) The Commission shall not attribute individual responsibility in the absence of a reasonable effort to provide notice.

PART IX

PARDON AND JUSTICE RECOMMENDATIONS

Making of pardon and justice recommendations

71. (1) The Commission may make specific recommendations that are aimed at promoting justice and reconciliation.

(2) The Commission may for the purpose set out in subsection (1) make recommendations in order to identify the most appropriate cases arising from the conflicts and disputes of the past for further investigation and potential prosecution and may in particular recommend to the—

- (a) Prosecutor-General, cases that are appropriate for prosecution;
- (b) President, cases that are appropriate for the exercise of his or her power of mercy in terms of section 112 of the Constitution.

(3) Application or submissions may be made to the Commission for a recommendation for one or more of the recommendations listed in subsection (2).

(4) An application or submission for a recommendation that a case is not appropriate for prosecution shall be referred to as an application for leniency.

(5) The Commission may make a recommendation in terms of subsection (2)(b) when it is satisfied that—

- (a) a person found by the Commission to have been responsible for a human rights violation has acknowledged his or her role, the implications thereof and made full disclosure of all the relevant facts, including facts of other human rights violations of which he or she has direct knowledge;
- (b) the purpose or motivation for the committal of the act or omission was for a social or political objective and not committed for personal gain or out of malice;
- (c) there was a sufficiently close relationship between the act or omission and the social or political objective

pursued and that the act or omission in question was not disproportional to the social or political objective pursued;

- (d) the act or omission in question does not constitute a crime against humanity or any other serious international crime that Zimbabwe is obliged to prosecute in terms of its international law obligations;
- (e) the legal and factual nature of the act or omission including the gravity of the act or omission does not make a recommendation in terms of subsection(2) inappropriate;
- (f) the person responsible for the act or omission is cooperating or has undertaken to co-operate, where feasible, with the relevant law enforcement authorities in further investigations and possible prosecutions;
- (g) the person responsible for the act or omission has, where feasible, engaged or consulted with the victims of his or her act or omission and compensated such victims;
- (h) where the person responsible for the act or omission has benefited materially from such act or omission that such person has, where feasible, made restitution of his or her ill-gotten gains.

(6) The Commission shall not make a recommendation in terms of this section until it has provided a reasonable opportunity to victims and other interested parties to make representations, which the Commission shall seriously consider before making such recommendations.

(7) Where the Prosecutor-General declines to implement the recommendations made by the Commission in terms of subsection (2)(a) he or she shall, within 90 days of the publication of the recommendation in the report of the Commission provide reasons for his or her refusal to the Commission and to Parliament and he or she shall make such decisions, together with the reasons therefor, public.

(8) Where the President declines to implement the recommendations made by the Commission in terms of subsection (2)(b) he or she shall, within 90 days of the publication of the recommendation

in the report of the Commission provide reasons for his or her refusal to the Commission and to Parliament and he or she shall make such decisions, together with the reasons therefor, public.

Social or political objective

72. In determining whether an act or omission is associated with a social or political objective the Commission shall have regard to the following criteria—

- (a) the motive of the person who committed the offence;
- (b) the context in which the offence took place, and in particular whether the act, omission or offence was committed in the course of, or as part of a social or political uprising, disturbance or event, or in reaction thereto;
- (c) the object of the offence, and in particular whether it was primarily directed at a social or political opponent or State property or personnel or against private property or individuals;
- (d) whether the offence was committed in the execution of an order of, or on behalf of, or with the approval of, an organisation, institution or body of which the person who committed the act was a member, an agent or supporter; and
- (e) the relationship between the offence and the social or political objective pursued, and in particular the directness and proximity of the relationship of the offence to the objective pursued (the proportionality principle).

Proportionality principle

73. (1) In making recommendations in terms of these regulations the Commission shall apply the proportionality principle which involves ascertaining whether the means employed justified the ends and applying the ordinary person's sense of fairness.

(2) The Commission shall consider whether—

- (a) the crime for which pardon or leniency is sought was in fact connected to the claimed social or political

objective and if so, whether the act was proportionate to such objective;

- (b) when considered in the light of the social or political objective, the conduct has a sense of shock;
- (c) the crime breached the bounds of what society may tolerate in light of all the circumstances, which includes a consideration of—
 - (i) the nature of the offence and its impact;
 - (ii) whether there were other lawful and viable means to achieve the social or political objective available to the perpetrator.

Full disclosure

74. (1) An applicant for a pardon recommendation has a duty to make a full disclosure of all the relevant facts and the Commission must satisfy itself, with reference to the information and evidence before it, whether a full disclosure had been made.

(2) Failure to make a full disclosure in respect of any relevant fact disqualifies an applicant from being recommended for a pardon.

(3) The purpose of full disclosure is to allow the Commission to make informed and correct recommendations and to assist in—

- (a) promoting national reconciliation;
- (b) establishing causes, nature and extent of human rights violations;
- (c) truth telling and developing a collective memory;
- (d) bringing closure, understanding and to help Zimbabweans find solace.

Pardons Committee

75. (1) The Commission shall establish a Pardons Committee to make decisions on applications for pardons and justice recommendations.

(2) The Pardons Committee shall not be a full time Committee and shall only be convened as and when decided by the Commission.

(3) The Committee shall consist of at least 7 members and may include commissioners and suitably qualified persons who may be appointed by the Commission on a part time basis to serve on the Committee

(4) A quorum for a decision making on pardon applications shall be a minimum of 3 panel members:

Provided that each panel must always have one legally experienced member.

Administrative checking

76. Administrative staff shall check each application form for pardons or justice recommendation to ascertain whether they are properly completed, signed and attested to and if not, the Commissioner responsible for pardon must return to the applicants to be rectified.

Notifying public

77. (1) The Commission shall take all reasonable steps to bring the contents of pardon and justice applications to the notice of victims and other interested parties, including—

- (a) communicating with known victims and interested parties;
- (b) publishing the full applications on the Commission's website, excluding personal contact details and any disclosures that identify children or victims of sexual violations.

(2) Members of the public shall have 30 days from the date of publication of the applications on the Commission's website, or any longer period as determined by the Committee, to make written representations to the Committee.

(3) Administrative staff shall submit the applications, together with any representations, as well as their administrative reports to the legal staff conducting the preliminary analysis.

(4) The administrative report shall include what steps were taken to reach out to known victims and interested parties.

(5) No privacy or confidentiality may attach to the contents of an applications for pardon or leniency, subject to the exclusions specified in these regulations.

Preliminary analysis

78. (1) Legal staff shall conduct a preliminary analysis to determine, if it appears from the face of the application, read together with any representations, whether the following criteria and factors have been satisfied—

- (a) the offence was associated with a social or political objective or not;
- (b) the offence was committed in the execution of an order, or on behalf of, or with the approval of, an organisation, institution, movement or body of which applicant was a member, an agent or supporter;
- (c) taking into account motive and context whether the offence—
 - (i) concerns an act or omission which was committed for personal gain or because of malice, ill will or spite towards the victim;
 - (ii) was proportional or not to the claimed social or political objective.
- (d) the applicant has made full disclosure of the relevant facts, including—
 - (i) the context in which the crime took place;
 - (ii) names (or descriptions when names are not known) of accomplices or co-conspirators who committed the offence in question;
 - (iii) details of any instructions, commands, direction or guidance provided;
 - (iv) names (or descriptions when names are not known) of those who instructed, orchestrated or masterminded the offence;
 - (v) what transpired after the offence, including any steps taken to cover up the crime;

(2) The preliminary report of the legal staff shall include a consideration of the following—

- (a) whether reasonable steps were taken to reach out to associated victims and interested parties;
- (b) a summary of the facts per case;
- (c) whether the relevant criteria were met or not;
- (d) reasons why the criteria were satisfied or not;
- (e) whether any follow-up is required, and if so, the nature thereof.

(3) On completion of the preliminary analysis the legal staff must submit the following documents to the Committee for their consideration—

- (a) administrative report;
- (b) pardon or leniency application;
- (c) representations made in respect of each application;
- (d) preliminary report of the legal staff.

Determination on papers

79. (1) If the Committee determines, following an examination of the papers, that the offence was not associated with a social or political objective, or if it was committed maliciously or for personal gain, then the Committee shall refuse the application and inform him or her of such decision, together with reasons for the decision.

(2) In appropriate cases the Committee may grant a pardon applicant an opportunity to make a further submission where the applicant is able to demonstrate that a material factor was overlooked by the Committee.

(3) Where it is not possible for the Committee to make a decision without further investigation the application shall be referred to the Investigation Unit for investigation, with directions on what must be investigated.

(4) If it appears, *prima facie*, that the application relates to an act that was associated with a social or political objective the Committee may refer the matter to a public hearing, subject to any further investigation.

Investigation

80. (1) Investigations may include obtaining—

- (a) further information from an applicant;
- (b) statements about the incident from victims, implicated persons and/or witnesses.
- (c) corroboration or refutation of the versions of the applicant, victims and other witnesses;
- (d) police docket;
- (e) relevant court records (indictments and judgments);
- (f) reports from the prosecutor-general;
- (g) prison records;
- (h) confirmation from a social or political party or organisation about whether an applicant was a member, agent or supporter;

(2) The Evidence Leader or Committee may refer incomplete investigations back to the Investigation Unit with further instructions.

(3) On completion of the investigations the file, together with the investigation report, shall be submitted to the Director of Investigations for quality control before submission to the Committee.

Public hearings

81. (1) Where in the view of the Committee, applications for pardons recommendation warrant the testing of evidence, or where the cases in question are viewed as contentious, the Committee may refer cases to a public hearing.

(2) The Committee may, for purposes of subsection (1), constitute a hearing panel amongst its members.

(3) A hearing panel must consist of a minimum of 3 members who constitute a quorum, although in relation to complex matters, panels of five members may be established.

(4) At least one member of a 3 person panel, and 2 members of a 5 person panel, shall have a minimum of seven years legal experience.

(5) Subject to the any law relating to hearings, all hearings dealing with applications for pardon or leniency shall be open to the public and the media.

(6) Each panel may rule on any relevant point of law or fact during the course of a hearing and allow—

- (a) affidavits to be submitted from persons not present or available;
- (b) documents to be submitted as evidence;
- (c) hearsay evidence to be heard following an assessment of its evidentiary value.

(6) Any interested person who contests an allegation made in the proceedings or contained in any affidavits may file written representations through the submission of an affidavit within 7 days after the conclusion of a hearing or such other reasonable period of time as may be determined by the panel.

Making of decisions

82. (1) In making decisions to recommend a pardon the Committee sitting (or a properly constituted panel) must be satisfied that an applicant has met the requirements for the awarding of a recommendation for pardon or leniency as set out in these regulations.

(2) Following a consideration of the report of the legal staff, together with the other documents referred to in these regulations, the Committee shall be required to—

- (a) conclude whether reasonable steps were taken to contact victims and interested parties.
- (b) direct any remedial action in specific cases in respect of outreach;
- (c) order the administrative or legal staff to obtain—
 - (i) any further information or record that is required for purposes of making a determination;
 - (ii) any additional affidavits or submissions or representations it deems are necessary.

(3) The Committee shall make its decision after a careful weighing of all the relevant facts and circumstances as tested against

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the requirements laid down in these regulations in order to reach a just and fair recommendation.

(4) Where the Committee finds that an application meets the requirements it must make a recommendation that the application for pardon or leniency be granted and where it finds that the requirements have not been met it shall make a recommendation that an application for pardon or leniency be declined.

(5) Each recommendation must be made in writing and set out—

- (a) summary of the facts;
- (b) the Committee's determination as to whether an application meets the requirements of the Regulations;
- (c) the grounds and detailed reasons as to why the requirements were satisfied or not.

(6) if any member of the Committee dissents from the majority determination of the Committee, his or her separate written dissenting view and reasons shall be included in the recommendation.

(7) Dissenting views by individual Committee members may relate to—

- (a) the overall outcome of the application or only to a particular issue; or
- (b) only to one of a number of incidents forming the subject matter of the application; or
- (c) only to one or more of the applicants, if there were several applicants connected to the crime for which pardon is sought.

(8) The recommendations must be transmitted directly to the Commission as soon as each recommendation is finalised.

(9) The Commission shall transmit each recommendation to the President within 15 days of receiving it from the Committee:

Provided that the Commission may not overturn a recommendation of the Committee, but it may provide the President with its views and comments in writing.

(10) Aggrieved parties are entitled to take decisions of the Committee on review to the High Court.

Transparency and sharing truth with nation .

83. (1) Each recommendation of the Committee, together with reasons, as well as any written comments provided by the Commission shall be published on the Commission's website within 30 days of the date that a pardon recommendation is submitted to the President.

(2) The Commission's website shall include a page devoted to the pardons process which shall provide the following information—

- (a) background to the pardons process;
- (b) how the pardons process operates, including details on—
 - (i) the Committee and its composition;
 - (ii) the regulations dealing with pardons;
 - (iii) how to apply for a pardon or leniency recommendation;
 - (iv) the procedure that shall be followed;
 - (v) the criteria that may be applied in the making of recommendations;

(3) Applications for pardon and leniency shall be published on the website but shall exclude—

- (a) all contact details including home and work addresses and contact details;
- (b) any identifying details of children or victims of sexual violence;
- (c) the written determinations of the Committee, including the reasons for the making of recommendations;
- (d) the ultimate decisions of the President and the Prosecutor-General and any reasons provided.

