

Zambia

Commission for Investigations Act, 1991 Chapter 39

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Zambia

Commission for Investigations Act, 1991

Chapter 39

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[20 of 1991; 11 of 1995]

An Act to establish a Commission for Investigations, to provide for its powers, privileges and immunities and to provide for matters connected with or incidental to the forgoing.

Part I – Preliminary

1. Short title

This Act may be cited as the Commission for Investigations Act.

2. Interpretation

In this Act, unless the context otherwise requires—

"**chairman**" in relation to the Commission means the Investigator-General; or any Commissioner elected as such at any meeting of the Commission;

"**Commission**" means the Commission for Investigations established by this Act;

"**Commissioner**" means a member of the Commission other than the Investigator-General;

"**the Court**" means the High Court;

"**high judicial office**" means the office of a judge of a court of unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or in the Republic of Ireland or the office of a judge of a court having jurisdiction in appeals from such a court;

"**Investigator-General**" means the Investigator-General appointed under the Constitution.

"**local authority**" means a council established under the Local Government Act and any other authority declared by Act of Parliament to be a local authority;

[Cap. 281]

"**Member**" in relation to the Commission means a Commissioner or the Investigator-General;

"**Secretary**" means the person appointed under section six to be the secretary of the Commission;

3. Application

(1) This Act shall apply to—

- (a) any person in the service of the Republic;
- (b) the members and persons in the service of local authority;

- (c) the members and persons in the service of any institution or organisation, whether established by or under an Act of Parliament or otherwise, in which the Government holds a majority of shares or exercises financial or administrative control;
- (d) the members and persons in the service of any Commission established by or under the Constitution or any Act of Parliament;

but shall not apply to the President.

- (2) Notwithstanding subsection (1), the Commission shall have no power to question or receive any decision of any court or of any judicial officer in the exercise of his judicial functions, or any decision of a tribunal established by law for the performance of judicial functions in the exercise of such functions, or any matter relating to the exercise of the prerogation of mercy.

Part II – Establishment of Commission and appointments

4. The Commission

- (1) There is hereby established a Commission for Investigations which shall consist of an Investigator-General and three Commissioners who shall be appointed by the President.
- (2) The Commission may act notwithstanding any vacancy or the absence of any member.

Provided that, unless the National Assembly by resolution confirms the appointment in the sitting of the National Assembly next succeeding his appointment, the appointment of a Commissioner shall be terminated at the end of that sitting.

[As amended by Act [No. 11 of 1995](#)]

5. Commissioners

- (1) A person shall not be qualified for appointment as a Commissioner if he holds the office of President, Vice President, Minister or Deputy Minister or if he is a member of the National Assembly (or a public officer).
- (2) A person who, whether before or after the commencement of this subsection, has been appointed a Commissioner shall vacate office at the expiration of three years from the date of his appointment, and shall thereafter be eligible to be once re-appointed for a further term of three years:

Provided that, unless the National Assembly by resolution confirms any such re-appointment in the sitting of the National Assembly next succeeding the re-appointment, the re-appointment shall be terminated at the end of that sitting, and the person concerned shall not be eligible for appointment for any further term as a Commissioner within three years after the end of his first term.

- (3) A person appointed a Commissioner may be removed from office by the President for inability to discharge the functions of his office (whether arising from infirmity of mind or body or for any other reason) or for misbehavior.

[As amended by Act [No. 11 of 1995](#)]

6. Secretary staff

The Commission shall employ a secretary and such other members of the staff of the Commission as the Commission may determine who shall be public officers.

7. Oaths on appointment

- (1) Every Member shall, on appointment, take an oath in the form set out in Part I of the First Schedule.
- (2) The Secretary and such other members of the staff of the Commission as the Chairman may require so to do shall, on appointment, take an oath in the form set out in Part II of the First Schedule.
- (3) Where any person is required to take an oath under the provisions of this section and—
 - (a) he has no religious belief; or
 - (b) the taking of an oath is contrary to his religious belief;he may take a solemn affirmation in the form of an oath on appointment substituting the words "solemnly and sincerely declare and affirm" for word "swear" and omitting the words "So Help Me God".
- (4) Every oath or affirmation taken by a Member shall be administered by the President and every oath or affirmation taken by the secretary or any other member of the staff of the Commission shall be administered by a Judge.

Part III – Power and procedure

8. Jurisdiction

The Commission shall have jurisdiction to inquire into the conduct of any person to whom this Act applies in the exercise of his office or authority, or in abuse thereof—

- (a) whenever so directed by the President; and
- (b) unless the President otherwise directs, in any case in which it considers that an allegation of maladministration or abuse of office or authority by any such person ought to be investigated.

9. Provisions relating to complaints and allegations

- (1) A complaint or allegation under this Act may be made by any individual, or by any body of persons whether incorporate or not.
- (2) Any such complaint or allegations may be made orally or in writing and shall be addressed to the secretary who shall, in the case of an oral complaint or allegation, reduce the same to writing.
- (3) Every complaint or allegation shall be signed or thumb printed by the person making it.
- (4) No complaint or allegation shall be received by the Commission unless it is made within a period of two years from the date on which the facts giving rise to any such complaint or allegation became known to the person making the complaint or allegation:

Provided that the Commission may in its absolute discretion receive complaints or allegations not made within the said period.

10. No inquiry in certain cases

- (1) No investigations under this Act shall be conducted concerning any allegation or grievances where the complainant or the person aggrieved has, or has had at any material time, the right or opportunity of obtaining relief or seeking redress by means of:
 - (a) an application or representation to any executive authority; or
 - (b) an application, appeal, reference or review to or before a tribunal established by or under any law; or

- (c) proceedings in a court of law.

Provided that the Commission may conduct an investigation where it is satisfied that, in the particular circumstances of the case, it would be unreasonable to expect the complainant or the person aggrieved to resort or to have resorted to any of the foregoing means without fear, or undue hardships, expense or delay.

- (2) The Commission may refuse to conduct, or may decide to discontinue, an investigation where it is satisfied that—
 - (a) the complaint is trivial, frivolous, vexatious or not made in good faith; or
 - (b) the inquiry would be unnecessary, improper or fruitless.
- (3) The Commission shall, in any case in which it decides not to conduct an investigation, or decides to discontinue an investigation, inform the complainant in writing accordingly but shall not be bound to give any reasons therefor.

11. Commission to act notwithstanding finality, etc.

Subject to the provisions of this Act, the Jurisdiction and powers conferred on the Commission may be exercised notwithstanding any provision in any written law to the effect that an act or omission shall be final, or that no appeal shall lie in respect thereof, or that no proceeding or decision shall be challenged, reviewed, quashed or called in question.

12. Orders by Commission

Where it appears to the Commission that any inquiry under this Act is likely to be frustrated or prejudiced by an action taken or about to be taken by any person to whom the Act applies, the Commission may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of conducting any investigation, and any such order, writ or direction shall have the same force as an order, writ or direction of the Court.

13. Power to summon witnesses

- (1) The Commission shall have the power to summon witnesses and to examine witnesses under oath and for such purposes all the Members are hereby authorised to administer oaths.
- (2) A summons for the attendance of a witness or the production of documents shall be in 1-G Form 3 set out in the Second Schedule and shall be served in the same manner as if it were a subpoena for the attendance of a witness at a civil trial in the Court.
- (3) The Commission may by warrant order the arrest of any person who, having reasonable notice of the time and place at which he is required to attend before the Commission, fails to do so and any such warrant shall be in 1-G Form 4 set out in the Second Schedule and shall be served as if it were a warrant issued by the Court.

14. Productions of documents and furnishing information

Subject as hereinafter provided, the Commission may, for the purposes of an inquiry under this Act, require any person who in its opinion is able to furnish information or produce documents relevant to the investigation to furnish any such information or produce any such document, and no obligation to maintain secrecy or other restriction upon the disclosure of information, whether imposed by law or otherwise, shall apply to the disclosure of information for the purposes of an investigation under this Act;

and the Republic shall not be entitled in relation to any such investigation to any such privilege in respect of the production of documents or the giving of evidence as is allowed by law in legal proceedings:

Provided that where the President certified that the giving of any information, or the production of any document—

- (i) might prejudice the security, defence or international relations of the Republic or the investigation or detection of offences; or
- (ii) might involve the disclosure of the deliberations of the Cabinet or any sub-committee of the Cabinet relating to matters of a secret or confidential nature and would be injurious to the public interest;

the Commission shall not require the information to be given or, as the case may be, the document to be produced.

15. Power to enter premises

For the purposes of this Act, the Commission may by warrant in 1-G Form 7 set out in the Second Schedule enter upon any premises and thereon carry out any inspection for the purposes of an investigation:

Provided that where the President certifies that entry upon or inspection of any premises—

- (i) might prejudice the security, defence or international relations of the Republic, or the investigation or detection of offences; or
- (ii) might involve the disclosure of the deliberations of the Cabinet or any sub-committee of the Cabinet relating to matters of a secret or confidential nature, and would be injurious to the public interest;

the Commission shall not enter upon or inspect any such premises.

16. Investigations to be *in camera*

Every investigation shall be conducted *in camera*.

17. Evidence and procedure

- (1) The procedure for conducting an investigation shall be such as the Investigator-General considers appropriate in the circumstances of the case, and without prejudice to the generality of the foregoing provisions—

- (a) the Investigator-General may authorise any member of the Commission to exercise any of the powers of the Commission for the purposes of an investigation, and
- (b) the Commission may obtain information from such persons in such manner, and make such investigations, as it thinks fit.

- (2) No person shall as of right be entitled to be represented by a legal practitioner or to be heard:

Provided that where the Commission proposes to conduct an investigation pursuant to a complaint or allegation under this Act, it shall afford to the principal Officer of any department or authority concerned, and to any other person who is alleged to have taken or authorised the action complained of, an opportunity to comment on any allegations made to the Commission, and no comment that is adverse to any person, department or authority shall be contained in a report to the President unless such person, department or authority has been afforded the opportunity aforesaid.

18. Witness allowance

A person summoned as a witness under this Act may, on the order of the Commission, be paid from moneys appropriated by Parliament for the purpose of such allowances as may be prescribed by the Commission.

19. Offences relating to witnesses, etc.

- (1) If any person—
 - (a) being a witness before the Commission without lawful excuse refuses to be sworn or affirmed, or having been sworn or affirmed refuses to answer fully and satisfactorily any question lawfully put to him; or
 - (b) having been sworn or affirmed knowingly gives false testimony touching any matter which is material to any question under investigation;
 - (c) wilfully insults, interrupts or otherwise obstructs any member or any member of the staff of the Commission in the performance of his functions under this Act;
 - (d) wilfully disobeys any order made under section thirteen;he shall be guilty of an offence and the Commission may certify such offence to the Court and may by warrant in I-G Form 10 set out in the Second Schedule order the arrest of any such person.
- (2) Where any person is arrested pursuant to an order of the Commission or an offence is certified under this section, the Court may inquire into the matter and deal with the person charged in any manner in which the Court could deal with him if he had committed the like offence in relation to the Court

Part IV – Reports and enforcement

Submission of reports to the President

20. Submission of reports to President and National Assembly

The Commission shall submit to the President a report of every investigation it has conducted which shall contain—

- (a) a summary of the evidence taken together with the conclusions and recommendations of the Commission;
- (b) a statement of any action that has been taken by any person whose conduct is under investigation or by the department or authority of which such person is a member or in which he is employed, to correct or ameliorate any conduct, procedure, act or omission that is adversely commented on in the report;
- (c) where any person has suffered loss or injury as a result of any alleged misconduct, maladministration or abuse of office or authority by any person whose conduct is under investigation, and the Commission has found allegations to be true, the Commission may in its recommendations state that compensation should be paid to the person who has suffered such loss of injury or to any dependent of such person, and shall determine the sum which it recommends as compensation.

21. Enforcement and notification of result

- (1) The President may, on receipt of the report of the Commission on any investigation conducted by it, or during the continuance of any such investigation, take such decision in respect of the matter investigated or being investigated into by the Commission as he thinks fit.
- (2) When the commission receives such decision, it shall, as soon as may be –
 - (a) notify the complainant in I-G Form 8 set out in the Second Schedule of the result of the investigation into his complaint or allegation;
 - (b) inform in I-G Form 9 set out in the Second Schedule the person against whom the complaint or allegation was made of the effect of the President's decision, in so far as the same may be known to the Commission.
- (3) A report required to be submitted to the National Assembly shall not disclose the identity or contain any statement which may point to the identity of any person into whose conduct an investigation has been or is about to be made.
- (4) Failure on the part of any person, body or authority to comply with any order given by the Commission under subsection (2) may be investigated by the Commission and reported to the President, as if it were an investigation conducted under the provisions of this Act.
- (5) Any sum of money directed by the President to be paid as compensation following a recommendation made in accordance with paragraph (c) of section twenty shall be a charge on the general revenues of the Republic.

22. Report to Parliament

- (1) The Commission shall, as soon as may be after the 31st December in each year submit a report on its operations to the National Assembly.
- (2) A report under this section shall not disclose the identity or contain any statement which may point to the identity of any person into whose conduct an investigation has been or is about to be made.

Part V – Immunities of the Commission

23. Finality of Commissions acts

No investigation, proceeding, process or report of the Commission shall be held bad for any error or irregularity of form or be challenged, reviewed, quashed or called in question in any court save on the ground of lack of jurisdiction.

24. Immunity of members and staff of Commission and other persons

- (1) No proceedings, civil, or criminal, shall lie against any member or member of the staff of the Commission, for anything done in good faith in the course of the exercise of his functions under this Act.
- (2) Subject to the provisions of this Act, no member or any such person as aforesaid shall be called to give evidence before any court or tribunal in respect of anything coming to his knowledge in the exercise of his functions under this Act.

Part VI – Rules

25. Rules

The Commission may, by statutory instrument, make rules prescribing anything which under this Act may be prescribed.

26. ***

[Obsolete]

First Schedule

Oaths on appointment

Part I

I-G Form 1 Oath of member of Commission (Section (7)(1))

I, _____ having been appointed as Investigator-General/Commissioner of the Commission for Investigations, do swear that I will, without fear or favour, affection or ill-will, discharge the functions of the office of Investigator-General/Commissioner of the Commission for Investigations, and that I will not, directly or indirectly, reveal any matters relating to such functions to any unauthorised persons or otherwise than in the course of duty.

SO HELP ME GOD

Sworn/Declared before me this day of ____ 19 _____.

President

Part II

I-G Form 2 Oath of secretary or staff of Commission (Section (7)(2))

I, having _____ been appointed to exercise the functions of secretary of the Commission/ a member of the staff of the Commission, do swear that I will not, directly or indirectly, reveal to any unauthorised person or otherwise than in the course of duty the contents or any part of the contents of any document, communication or information whatsoever which may come to my knowledge in the course of my duties as such.

SO HELP ME GOD

Sworn/Declared before me this day of ____ 19 ____

Judge

Second Schedule

Prescribed forms

Republic of Zambia

Commission for Investigations

Commission for Investigations Act

I-G Form 3 Summons to witness (Section (13) and (14))

Inquiry No. ____ 19 ____

To _____ (full name)

of _____

_____ (full address)

You are commanded in the President's name to attend before this Commission at _____ (place) on the ____ of day ____, 19 ____, at _____ hours and so from day to day until your attendance is dispensed with, to give evidence in the said inquiry; and also to bring with you and to produce at the said time and place the following documents:

Dated the _____ day of _____, 19 ____

Chairman/Member

Republic of Zambia

Commission for Investigations

Commission for Investigations Act

I-G Form 4 Warrants of arrest (Section 13))

Inquiry No. ____ 19 ____

To _____ (Police Officer and other Officers)

Whereas Mr/Mrs/Miss _____ (full name of _____ (address was commanded to appear before the Commission at _____ (place) on the ____ day of ____, 19 ____ and subsequent days to testify what he/she

knew and/or to produce specified documents in relation to the above stated inquiry and the said Mr/Mrs/Miss _____ has not appeared according to the summons issued in that regard and has not excused his/her failure;

NOW THEREFORE, you are hereby commanded in the name of the President to apprehend, bring and have the said _____ before this Commission at _____ (place) on the ____ day of __ 19 _____

Issued at _____ the ____ day of ____ 19 _____.

Chairman/Member

Republic of Zambia

Commission for Investigations

Commission for Investigations Act

I-G Form 7 Warrant of entry and inspection (Section (15))

Inquiry No. _____ 19 _____

To _____

(Member(s) of the Commission or member(s) of the staff of the Commission)

WHEREAS a complaint has been lodged with the Commission for Investigations;

AND WHEREAS the Commission has decided to conduct an investigation into the alleged complaint;

NOW THEREFORE, you are hereby authorised and commanded in the name of the President with proper assistance, to enter the premises of _____ (name of place or person)

(in the day time), and there diligently carry out any inspection and collect any oral and documentary evidence concerning the said inquiry from the said premises and bring it before the Commission for Investigations to be used for the purpose of the said investigation.

Issued at the _____ day of ____ 19 _____.

Chairman/Member

Republic of Zambia

Commission for Investigations

Commission for Investigations Act

I-G Form 8 Result of complaint (Section (21))

In the Matter of:

In the matter of section 21 of the Commission for Investigations Act.

WHEREAS a complaint/allegation in terms of the aforesaid matter was made on the ____ day of ____, 19 ____,

AND WHEREAS at the conclusion of the investigation a report on the proceedings thereof was submitted to His Excellency the President in accordance with section 20 of the Act:

AND WHEREAS his Excellency the President did on the day of _____, 19 _____, make known to the Commission his decision in the matter aforesaid:

NOW THEREFORE, in accordance with section 21 of the Commission for Investigations Act, you are hereby notified that the following is the result of the aforesaid investigation:

Chairman

Member

Member

Signed at Lusaka this day of 19 _____

Republic of Zambia

Commission for Investigations

Commission for Investigations Act

I-G Form 9 Decision by the President (Section (21))

In the matter of:

In the matter of section 21 of the Commission for Investigation Act:

WHEREAS an investigation was conducted by the Commission into the aforesaid matter and concluded on the _____ day of _____, 19 _____:

AND WHEREAS at the conclusion of the investigation a report on the proceedings thereof was submitted to His Excellency the President in accordance with section 21 of the Act.

AND WHEREAS His Excellency the President did on the day of _____, 19 _____, make known to the Commission his decision in the matter aforesaid:

NOW THEREFORE, in accordance with section 21 of the Commission for Investigations Act, you are hereby informed that His Excellency the President's decision in the aforesaid matter is as follows:

Chairman

Member

Member

Member

Signed at Lusaka this day of 19 _____

Republic of Zambia

Commission for Investigations

Commission for Investigations Act, 1991

I-G Form 10 Warrant of arrest (Section (19)(1))

Inquiry No. _____ 19 _____

To _____ (police officer or other officers)

WHEREAS _____ (full name) of _____ (address) is accused of _____
(state the offence with time and place) _____

NOW THEREFORE, you are hereby commanded in the name of the President forthwith to apprehend the said _____ and produce him before the Commission for Investigations at _____ (place) on the _____ day of ____ 19 ____.

Issued at the _____ day of _____ 19 _____.

Chairman/Member