

Lesotho

## Human Rights Commission Act, 2016

### Act 2 of 2016

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## Lesotho

# Human Rights Commission Act, 2016

## Act 2 of 2016

Published in Government Gazette 31 on 3 June 2016

**Commenced on 3 June 2016**

*[This is the version of this document from 3 June 2016.]*

**An Act to provide for the administration and regulation of the Human Rights Commission of Lesotho as established by the Constitution<sup>1</sup> and for related matters.**

Enacted by the Parliament of Lesotho.

### Part I – Preliminary

#### 1. Short title and commencement

This Act may be cited as the Human Rights Commission Act, 2016 and shall come into operation on the date of its publication in the *Gazette*.

#### 2. Interpretation

In this Act, unless the context otherwise requires—

"**Commission**" means the Human Rights Commission established under section 133A of the Constitution;

"**human rights**" includes all rights guaranteed in the Constitution, and in the international and regional human rights instruments to which Lesotho is a State Party;

"**Chairperson**" means the Chairperson of the Commission appointed under section 133B of the Constitution;

"**Deputy Chairperson**" means the Deputy Chairperson of the Commission appointed under section 133B of the Constitution;

"**member**" means a member of the Commission appointed under section 133B of the Constitution;

"**Minister**" means the minister responsible for human rights;

"**prescribed**" means prescribed by regulations made under section 38(1).

### Part II – The Human Rights Commission

#### 3. Objectives of the Commission

The main objectives of the Commission are to promote, protect, monitor and sustain human rights in Lesotho in accordance with—

- (a) the Constitution and other laws of Lesotho; and
- (b) regional and international human rights instruments to which Lesotho is a State Party.

<sup>1</sup>

Constitution of Lesotho as amended by Act No. 13 of 2011

#### 4. Status of the Commission

- (1) The Commission—
  - (a) subject to the Constitution and this Act, shall be independent, and impartial in the performance of its functions and exercise of its powers;
  - (b) shall be a body corporate with perpetual succession and a common seal;
  - (c) may sue or be sued in its own name;
  - (d) may, subject to and for the purposes of this Act—
    - (i) enter into contracts, acquire, purchase, take hold of and own movable or immovable property of every description;
    - (ii) convey, assign, surrender, yield, charge, mortgage, demise, re-assign, transfer or otherwise dispose of, or deal with any movable or immovable property or any interest in the property vested in the Commission upon such terms as it considers necessary; and
    - (iii) make any other undertakings it considers necessary.
- (2) The common seal of the Commission shall be kept in such custody as the Commission shall direct and shall not be used except on the order of the Commission.

#### 5. The headquarters of the Commission

- (1) The offices of the Commission shall be situated at Maseru, the capital city of Lesotho, which shall be its headquarters.
- (2) The Commission shall, in the exercise of its mandate, make its services accessible to the entire population and may open district offices as and when such a need arises.

#### 6. Composition of the Commission

Subject to section 133B of the Constitution, the Commission shall consist of the following members whose appointment shall be gender sensitive—

- (a) Chairperson;
- (b) Deputy Chairperson who shall act in the absence of the Chairperson; and
- (c) Commissioner,

and shall, in accordance with the Constitution, be appointed by the King acting on the advice of the Prime Minister.

#### 7. Functions of the Commission

The Commission shall perform the following functions—

- (a) monitor the state of human rights throughout Lesotho;
- (b) monitor the human rights situation of detainees;
- (c) investigate violations of human rights and, if necessary, be responsible for instituting proceedings against such violations in the courts of law;
- (d) sensitise the public on its work, the nature and meaning of human rights;
- (e) develop and deliver education and training programmes as necessary to the general public;

- (f) submit opinions, recommendations, propositions and reports to public institutions on human rights issues, using the media and other means;
- (g) advocate for ratification, and recommend the domestication, of international and regional human rights instruments;
- (h) promote and monitor the harmonisation of national laws and practices with international and regional human rights instruments to which Lesotho is a State party;
- (i) develop and maintain working relations with organizations and representatives of civil society in Lesotho;
- (j) work in cooperation with the United Nations, regional mechanisms, national human rights institutions of other countries in the areas of the promotion and protection of human rights; and
- (k) undertake any other activities or responsibilities that are consistent with the spirit of the promotion and protection of human rights.

## 8. Qualification for appointment

A person shall not be qualified to be appointed as a member of the Commission if he is a public officer, and the Prime Minister shall not advise the King to appoint a person as a member unless the Prime Minister is satisfied that the person—

- (a) has extensive experience in human rights and related disciplines;
- (b) is of high moral character and integrity and possesses such qualities of mind as to enable him to discharge his duties impartially, fairly and free from bias or prejudice; and
- (c) does not take an active part in party politics or has since retired from active party politics.

## 9. Tenure of office

Subject to the provisions of this section, the office of a member of the Commission shall become vacant—

- (a) at the expiration of seven years, in the case of the chairman and five years in the case of other commissioners from the date of his appointment; or
- (b) if he becomes a public officer or resigns from office; or
- (c) if he becomes a member of either House of Parliament, a local authority, a candidate for election to Parliament or a local authority, or an officer of a political party;
- (d) if any circumstances arise that, if he were not a member of the Commission, would cause him to be disqualified to be appointed as such under [section 8](#).

## 10. Removal from office

- (1) A member of the Commission may be removed from office only for inability to exercise the functions of his office, whether arising from infirmity of body or mind or any other cause, incompetence in the performance of the functions of his office or misbehavior, including failure to discharge his duties in a fair manner free from prejudice, and shall not be removed except in accordance with this section.
- (2) A member of the Commission shall be removed from office by the King if the question of his removal from office has been referred to a tribunal appointed under subsection (3) and the tribunal has recommended to the King that he ought to be removed from office for inability, incompetence or misbehavior.
- (3) If the Judicial Service Commission represents to the King that the question of removing a member of the Commission under this section ought to be investigated, the King shall appoint a tribunal which shall consist of a chairman and not less than two other members, selected by the Prime

Minister from among persons who hold or have held high judicial office, and the tribunal shall enquire into the matter and report on the facts of the enquiry to the King and recommend to him whether or not the member ought to be removed under this section.

- (4) If the question of removing a member of the Commission has been referred to a tribunal under this section, the King, acting in accordance with the advice of the Prime Minister, may suspend that member from the exercise of the functions of his office and any such suspension may, at any time, be revoked by the King, acting in accordance with the advice of the Prime Minister, and shall in any case cease to have effect if the tribunal recommends to the King that the member should not be removed from office.

## **11. Meetings of the Commission**

- (1) The Commission shall meet, at least, every month or when it is necessary and shall keep minutes of all its meetings.
- (2) The meetings of the Commission shall be attended by all commissioners and any senior staff that the Commission may instruct to attend.
- (3) The quorum for the meetings shall be two Commissioners.
- (4) The meetings of the Commission shall be chaired by the Chair person or Deputy Chairperson in the absence of the Chairperson.
- (5) The Commission shall regulate its own rules of procedure.

## **12. Remuneration and allowances of members of the Commission**

A member of the Commission may be paid such a salary and allowances as may be prescribed under the Statutory Salaries Act, 1972<sup>2</sup>.

## **13. Oath of office**

- (1) A member shall, before assuming the duties of his office, take and subscribe to an oath of office before the Chief Justice as set out in the Schedule.
- (2) A member of staff of the Commission shall maintain secrecy as stipulated in the terms and conditions of service in respect of matters that come to their knowledge in the exercise of their functions.

## **14. Assistance to and cooperation with the Commission**

- (1) The Government shall accord such assistance as the Commission may require to enable it to protect its independence, dignity and effectiveness, subject to the Constitution, this Act and any other law.
- (2) State organs, civil societies and private entities shall, when so requested by the Commission, assist and cooperate fully with the Commission in its investigations.

## **15. Duty to disclose**

- (1) A member shall not, in any way, directly or indirectly, be involved in a matter which he has financial or any other personal interest.
- (2) Where a member has an interest, the member shall declare the nature and extent of the interest to other Commissioners in accordance with subsection (3).



- (3) The declaration shall be made—
  - (a) in a meeting of the Commissioners; or
  - (b) by notice, in writing, to the Chairperson.

### **Part III – Investigations**

#### **16. Jurisdiction of the Commission**

- (1) The Commission shall have jurisdiction on all citizens of Lesotho, including those living outside Lesotho, and non-citizens of Lesotho living in Lesotho who use services offered by an embassy or a consular of Lesotho.
- (2) The Commission shall have jurisdiction over any act or omission in violation of a human right.

#### **17. Procedures for filing a complaint**

The procedure and form for filing a complaint in a violation of human rights shall be as prescribed.

#### **18. Complaints process**

- (1) The Commission shall upon receipt of a complaint filed under [section 17](#) and subject to its jurisdiction, determine the admissibility of the complaint.
- (2) In all cases in which the Commission decides not to intervene or end an intervention, the Commission shall, within 30 days of making the decision, notify a complainant of its decision and advise the complainant of other potential remedies available and of how they may be accessed.
- (3) Where in its judgment the Commission finds it necessary, appropriate and potentially beneficial, it may decide to use mediation or conciliation to seek amicable solutions between the parties to a complaint or potential complaint.

#### **19. Enquiries by the Commission**

- (1) The Commission may, on its own motion or on a complaint to it by an aggrieved person or group of persons or a person acting on behalf of an aggrieved person or a group of persons, inquire into an allegation of the infringement of the human rights of a person or group of persons.
- (2) The Commission shall not inquire into any complaint relating to any allegation of the infringement of human rights which—
  - (a) is the subject matter of any proceedings pending in any court, including any appeals;
  - (b) has been finally determined by any court; or
  - (c) is a matter involving the relations or dealings between the Government of Lesotho and any other Government or an international organisation or an organisation granted immunity under any law.
- (3) If the Commission inquires into an allegation under subsection (1) and during the pendency of the allegation becomes the subject matter of any proceedings in any court, the Commission shall immediately cease to do the inquiry.
- (4) The Commission may refuse to commence or discontinue an enquiry which has commenced if, in the opinion of the Commission—
  - (a) the matter is trivial or vexatious or the alleged violation of human rights is manifestly unfounded;

(b) the person making the request has insufficient interest in the matter, and that matter may be more appropriately dealt with by a tribunal or other person vested with powers to award redress or grant relief in respect of the matter.

(5) The Commission shall prescribe the procedures for conducting an enquiry under this section.

## 20. Duty to investigate

- (1) The Commission shall investigate complaints against any person, group of persons, public or private authority or agent of that agency determined admissible under [section 19\(1\)](#) and filed with the Commission, if the alleged violation occurred after the coming into operation of this Act.
- (2) Without limiting the generality of subsection (1), the Commission shall not handle a complaint that has been decided upon by or is being considered in a court of law.

## 21. Entering and searching of premises and attachment and removal of articles

- (1) Any member of the Commission or any member of the staff of the Commission or a law enforcement officer authorised to do so by the Commission in consultation with the Commissioner of Police, shall, subject to the provisions of subsection (2) and the Criminal Procedure and Evidence Act 1981<sup>3</sup> for the purpose of an investigation, enter any premises on or in which anything connected with that investigation, is or is suspected to be.
- (2) The entry and search of any premises under this section shall be conducted with strict regard to decency and order, which shall include regard to—
  - (a) a person's right to respect for and protection of his dignity;
  - (b) the right to freedom and security of the person; and
  - (c) the right to his personal privacy.

## 22. Decisions of the Commission

- (1) The Commission shall make binding decisions.
- (2) The Commission may, based on the facts and evidence presented before it, make decisions to a relevant public authority and the authority shall—
  - (a) within 30 days of receiving the decision and in writing, inform the Commission of the steps taken to effect the decision; and
  - (b) thereafter keep the Commission so informed quarterly until the decision is fully effected.

## 23. Protection against obstruction

- (1) A person who, by his act, omission or any other means hinders or obstructs or attempts to obstruct the Commission in the performance of its duties and functions or exercise of its powers, in particular, its investigation responsibilities, commits an offence and shall, upon conviction, be liable to a fine not exceeding M10,000 or 1 year imprisonment or both.
- (2) The following acts of an administrative authority or agent of public administration constitutes obstruction—
  - (a) to knowingly not provide, within a fixed time period, a document, information, a register or any other specific evidence requested by the Commission;

- (b) to refuse to cooperate in an investigation;
- (c) to provide testimony in bad faith;
- (d) to refuse to provide articles, objects or documents requested by the Commission;
- (e) to make a false or deliberately misleading declaration to the Commission.

#### **24. Mediation, conciliation and negotiation**

The Commission may, when it considers it necessary, endeavor to—

- (a) resolve a complaint amicably through mediation, conciliation or negotiation in a manner established by regulations;
- (b) rectify any act or omission, emanating from or constituting a violation of or threat to any fundamental right.

#### **25. Institution of legal proceedings by Commission**

- (1) The Commission may institute proceedings in the High Court for the purpose of obtaining a relief in respect of—
  - (a) any matter concerning the human rights of a person or class of persons;
  - (b) enforcement of its decisions.
- (2) The relief the Commission may seek to obtain in such proceedings may include a relief by way of a declaration that a statute or a provision of the statute is invalid having regard to the provisions of the Constitution.

#### **26. Communication of decision or finding**

Without limiting possible actions, the following actions, insofar as they relate to improvements in the human rights situation or the prevention of violations, may be included in a recommendation by the Commission—

- (a) an improvement judged useful for the better functioning of the Public Service or private enterprises implicated in the violation;
- (b) an amendment to a law, regulation, policy or procedure;
- (c) an action that should be taken to prevent further abuse of human rights;
- (d) a disciplinary procedure against a manager who directed or ignored violations or who refused to take corrective action once he became aware of or should have known that an abuse had occurred;
- (e) criminal proceedings against a perpetrator if necessary given the nature and severity of the violation;
- (f) monetary or other reparations against the damages suffered by a victim;
- (g) any other action that the Commission considers necessary and appropriate in the circumstances.

#### **27. Human Rights Court**

The High Court shall sit as a Human Rights Court and shall handle matters of violations of human rights as may be referred to it by the Commission.

## Part IV – Special powers for inspecting places of detention

### 28. Inspection of places of detention

In discharging its responsibility of monitoring human rights situation of detainees and investigating violations of human rights under [section 7\(1\)\(a\)](#) and (c) by inspecting places of detention, the Commission shall have the powers to—

- (a) enter a place of detention freely and without advance notice;
- (b) examine all documents necessary to establish the actual situation in the place of detention, including prison registries;
- (c) see all detainees freely, if necessary in private;
- (d) require that a detainee be produced.

## Part V – Administrative provisions

### 29. The Director General

- (1) There shall be a Director General of the Commission who shall be appointed by the Commission in consultation with the minister, and who—
  - (a) shall be the chief accounting officer responsible for the general management of and administrative control over the staff, the monies received or paid out of the account of the Commission and business of the Commission;
  - (b) shall be responsible for the implementation of the determinations of the Commission;
  - (c) shall cause the necessary accounting and other records to be properly kept;
  - (d) shall be answerable to the Commission in the performance of his functions and the implementation of the policies of the Commission, and may exercise the powers and shall perform such functions and duties as may be conferred upon or assigned to him by the Commission in order to achieve the objects of the Commission;
  - (e) shall provide to the Commission such information in relation to the performance of his functions, including information on the performance of those functions insofar as they relate to the financial affairs of the Commission, as the Commission may require;
  - (f) may, from time to time, with the consent of the Commission, authorise one or more of the staff of the Commission to perform a specified function of the Director General and such a member who is or members who are so authorised may perform that function accordingly.
- (2) The Director General shall be the secretary to the Commission.
- (3) The functions of the Director General may be performed, during his absence or when the position of the Director General is vacant, by a member of the staff of the Commission as may, from time to time, be designated for that purpose by the Commission.

### 30. Tenure of office

The Director General shall hold office for a period of 3 years.

### 31. Qualification for appointment of Director General

A person shall be qualified to be appointed for the position of Director General if the person—

- (a) is a citizen of Lesotho;
- (b) holds a recognized degree in law;
- (c) has at least 5 years experience at managerial level;
- (d) is of proven integrity and leadership.

### 32. Removal of Director General

The Director General may be removed from office by the Commission, in accordance with the terms and conditions of service, for—

- (a) inability to perform the functions of the office arising out of physical or mental incapacity;
- (b) gross misconduct or misbehavior;
- (c) incompetence or negligence of duty;
- (d) any other ground that would justify removal from office under the terms and conditions of service.

### 33. Appointment of staff of the Commission

- (1) The Commission shall, in consultation with the Minister, appoint an appointments committee the appointment of which shall be gender sensitive—
  - (a) the Director General who shall be the chairperson;
  - (b) a person with recognised qualifications in law;
  - (c) a person with recognised qualifications in finance or economics;
  - (d) a person with recognised qualifications in human resource management, wage and salary administration.
- (2) The appointments committee shall be responsible for the appointment of such other members of staff of the Commission as are necessary for the proper and effective performance of the functions of the Commission.
- (3) A member of the committee may be paid such an allowance as may be determined by the Director General in consultation with the Commission.
- (4) The terms and conditions of service remuneration, allowances and other service benefits to be paid by the Commission and received by a member of staff of the Commission including a grade at which a member of staff serves shall be determined by the Commission with the consent of the Minister in consultation with the Minister responsible for public service.
- (5) The Commission, in determining the remuneration or allowances for expenses to be paid to members of its staff or the other terms or conditions subject to which such members hold or are to hold their employment, shall have regard to Government or nationally agreed guidelines which are for the time being extant and to Government policy concerning remuneration and conditions or employment which is so extant and, in addition to the foregoing, the Commission shall comply with any directives with regard to such remuneration, allowances, terms or conditions which the Minister may give to the Commission with the consent of the Minister responsible for finance.

**34. Secondment of staff**

- (1) In addition to the staff appointed by the Commission, the Government may upon the request by the Commission, second to the Commission such number of public officers as may be necessary for the purpose of functions of the Commission, or direct public officers to give assistance to the Commission.
- (2) A public officer seconded to the Commission shall, during the period of secondment, be deemed to be an officer of the Commission and shall be subject only to the directions of the Commission.
- (3) The Commission may engage the services of advisers or consultants.

**Part VI – Financial provisions****35. Funds and gifts received by the Commission**

- (1) The Government shall provide the Commission with adequate funds annually to enable it to discharge its functions under this Act.
- (2) The Commission may receive funds or gifts, movable or immovable property without any conditions from any lawful source only for the purpose of promoting awareness of and providing education in relation to human rights and any other institutional operations as may be approved by the Commission.
- (3) The Director General shall not, in the performance of his duties under this section, question or express an opinion on the merits of any policy of the Government or a Minister of the Government or on the merits of the objectives of such a policy.

**36. Accounts, funds and audit**

- (1) The financial year of the Commission shall be a period of 12 months from the 1st day of April to the 31st day of March.
- (2) The Director General shall keep proper books of accounts and other records relating to accounts of the Commission which shall be annually audited by the Auditor General and submitted to Parliament in accordance with the Audit Act 1973<sup>4</sup> or any subsequent Audit Act.
- (3) The Commission shall be responsible for the preparation and submission of its annual budget to the Minister for presentation in Parliament and shall also be responsible for the transparent and effective management of its finances.
- (4) Any expenses incurred by the Commission in any action or proceeding, civil or criminal, brought by or against the Commission before any court shall be paid out of the funds of the Commission.
- (5) Any expenses incurred by any member, officer or servant of the Commission, in any civil action or proceedings, brought against him in any court in respect of anything which is done or purported to be done by him under this Act or on direction of the Commission shall be paid out of funds of the Commission, unless such expenses are recovered by him in such civil action or proceeding.

## Part VII – General provisions

### 37. Annual report

- (1) The Commission shall, subject to subsection (2), prepare and produce an annual report of its activities which provides accurate and transparent information on—
  - (a) financial affairs of the Commission including audited balance sheets and statements of income and expenditure;
  - (b) complaints filed with the Commission;
  - (c) the findings and interventions taken by the Commission in support of individuals or entities;
  - (d) the findings and recommendations made by the Commission to any authority to whom the findings and recommendations are made;
  - (e) the feed-back obtained from the authority to whom the recommendations were made;
  - (f) the obstacles encountered in investigation or in the implementation of recommendation proposed;
  - (g) the situations where the Commission was obliged to go before the courts in pursuance of a resolution to a complaint, and the reasons why it considered that such an intervention was necessary;
  - (h) the financial cost for carrying out the responsibilities referred to in the report;
  - (i) the promotional activities undertaken during the year;
  - (j) observations, findings and recommendations on the general situation and nature of human rights in the country;
  - (k) observations and recommendations on the general situation of detainees in the country;
  - (l) any other matter relating to human rights that the Commission thinks warrants a discussion, and that would be of interest to Parliament and the public.
- (2) Subject to section 133H of the Constitution, the annual report of the Commission shall be submitted to Parliament within three months of the end of the financial year under review, and shall be made public at the time that it is tabled in Parliament, or within 15 days of its transmittal, whichever occurs first.
- (3) The Commission may, if it considers necessary, submit a special report to Parliament at any time, which shall be treated by Parliament in the same manner as an annual report.
- (4) The Parliament may request the Commission to give relevant report at any time.

### 38. Regulations

- (1) The Minister may, by notice published in the *Gazette*, make regulations for the efficient implementation of the provisions of this Act.
- (2) Without prejudice to the generality of subsection (1), the regulations may provide for the following—
  - (a) rules of procedure for the conduct of an enquiry;
  - (b) administrative and financial structures of the Commission;
  - (c) management modalities and the exercise of responsibilities;
  - (d) schedules of meetings;

- (e) rules and procedures for, and the conditions under which, specialised sub-committees of the Commission may be appointed;
- (f) modalities and procedures for the selection, promotion, discipline and suspension of employees and conditions of service.

### **Schedule (Section 13)**

#### **Oath**

This Oath shall be administered to a Commissioner by the Chief Justice.

"I \_\_\_\_\_ swear to fulfill my obligations as Commissioner as set out in the Constitution and the Human Rights Commission of Lesotho Act, and to carry out duties assigned me by the Commission to the best of my ability, to do so in complete independence and impartiality, and to respect the confidentiality accorded information and deliberations of the Commission".