



RULES OF PROCEDURE ON COMPLAINTS HANDLING

NATIONAL HUMAN RIGHTS COMMISSION OF THE GAMBIA



FOREWORD

The National Human Rights Commission of The Gambia is established by the National Human Rights Commission Act 2017 with a general mandate of protecting and promoting Human rights in The Gambia. One of its core functions is to receive and investigate complaints of human rights violations made by any person or a group of persons in The Gambia.

In the performance of its functions, the Commission has powers, rights and privileges vested in the High Court at trial, to issue summons or other orders requiring the attendance of any person before the Commission and the production of any document or records relevant to the complaint before the Commission; question any person in respect of any subject matter under investigation before the Commission. The Commission also has the power to require any person to disclose any information within his or her knowledge relevant to any complaint before by the Commission; and commit any persons for contempt of its orders.

As a newly established Commission, we are developing or adapting working tools for the effective carrying out of our mandate. The Rules of Procedure on Complaints Handling is one such document we have adapted to provide a guiding tool for receiving and hearing complaints lodged at the Commission.

I urge all Staff of the Commission to familiarise themselves with the contents of these rules.

Emmanuel D. Joof
Chairperson,
National Human Rights Commission - The Gambia



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Rules of Procedure on Complaints Handling

(made pursuant to section 25 of the National Human Rights Commission Act 2017)

1. Citation

- (a) These Rules may be cited as the Rules of Procedure on Complaints Handling.
- (b) In the absence of a provision in these Rules or in case of doubt as to their interpretation, the Commission shall decide.

2. Application

These Rules shall apply so far as practicable to all proceedings of the Commission under the Act.

3. Interpretation

- (1) In these Rules, unless where the context so requires:
 - (a) “**Act**” means the National Human Rights Commission Act 2017;
 - (b) “**Admissibility Criteria**” means an assessment to determine whether a complaint falls within the Commission’s jurisdiction.
 - (c) “**Commission**” means the National Human Rights Commission of The Gambia.
 - (d) “**Commission Counsel**” means a lawyer working in the Legal Department.
 - (e) “**Commission Offices**” means the headquarters of the Commission and includes any other office, wherever located that the Commission may designate as its office generally or for a purpose.
 - (f) “**Complainant**” means a person or groups of persons, an organization or an association, who alleges a human rights violation and reports to the Commission.
 - (g) “**Complaint handling procedure**” means the mechanism for handling an allegation of human rights violation or abuse at the Commission.
 - (h) “**Complaint**” means an allegation of a human right violation addressed to the Commission.
 - (i) “**Constitution**” means the Constitution of the Republic of The Gambia.
 - (j) “**Respondent**” means the individual or entity against whom a complaint of a violation of a human right has been lodged with the Commission
 - (k) “**Witness**” means a person or group of persons who testify about a human rights violation before the Commission.
- (2) Unless where the context so requires, terms and expressions used in these Rules and defined in the Act have the same meanings as assigned to them in the Act.

4. Filing of Complaints



- (1) Any person or organization claiming or alleging a violation of human rights may bring a complaint before the Commission for the purpose of exercising its functions under section 12 of the Act.
- (2) A complaint of a human rights violation may be lodged at the Commission's head office in Kotu or any other place as the Commission may determine.
- (3) As a general rule, every complaint of a human rights violation to the Commission shall be made in writing on the form prescribed by the Commission.
- (4) Notwithstanding Rule 4 (3), the Commission may receive, review and consider complaints that are submitted to it whether they are in the prescribed form or not.
- (5) A complaint or allegation of a human rights violation may also be made to the Commission via letters or emails properly addressed to any of the Commissioners, Executive Secretary or staff member of the Legal Department of the Commission.
- (6) Any complaint or allegation received in accordance with Rule 4 (5) shall be transmitted to the legal department for consideration.

5. Service of Notice of Complaint on the Respondent

- (1) Where a complaint has been properly filed with the Commission, notice of the substance of the complaint shall be served upon the respondent personally;
- (2) where it is not practicable or possible to effect personal service of a complaint under Rule 5 (1) service may be made by;
 - (a) leaving the duplicate with any adult person residing with the respondent, or some adult member of the family, or with respondent's employer or employee;
 - (b) affixing the duplicate to some conspicuous place in the house in which the person ordinarily resides, his or her office or work place, and to some conspicuous place in the Commission, then the notice or summons shall then be taken to have been duly served; or
 - (c) Publishing in a newspaper circulating in the relevant area or any other media, the particulars of the notice or summons.
- (3) Every notice or summons issued under these rules requiring service shall be served by an officer of the Commission or any other person authorized to do so by the Commission.
- (4) Notwithstanding the notice of the substance required under Rule 5 (1) the Commission, may limit the amount of information to be provided in the notice, if full disclosure may:
 - (a) jeopardize the safety or security of the complainants or witnesses or persons associated with them;
 - (b) lead to tampering of evidence;
 - (c) or in any other way negatively impact the complaint lodged.
- (5) The respondent served with a notice of complaint shall have the right to submit a written reply to the complaint within seven working days from the day of service, unless extension is sought and granted by the Commission.
- (6) Where the respondent does not submit any written response, without prejudice to the powers of the Commission to issue summon or subpoena, the complaint shall be heard.

6. Issue of Witness Summons

- (1) Prior to the date for hearing of a complaint, the Commission may issue summons requiring attendance at a date, time and place specified in the summons of such witnesses as may be required.
- (2) At any time before the hearing or after the Commission has issued summons, either party may, on application to the Commission, obtain summons for witnesses whose attendance to give evidence may be required.



7. Failure to Obey Summons

(1) Where without sufficient cause a witness or a party to a complaint does not appear in obedience to the summons, the Commission may, on proof that the proper service had been effected on the witness or party, issue a subpoena to compel the attendance of the witness or party or the production of a document or issue a warrant of arrest for the witness or party to be brought before the Commission at a date, time and place specified in the warrant.

(2) A witness or party arrested under a warrant and brought before the Commission may be committed in custody for a period not exceeding seven days for appearance at the required hearing.

(3) Service of summons or subpoena to appear before the Commission or produce documents shall follow the same procedure established under Rule 5.

8. Amendments and Consolidation of Complaints

(1) The Commission may at any time accept an application for amendment of a complaint, response or any other communication to the Commission by any of the parties to the complaint, having regard to the circumstances of the case.

(2) Whenever there are two or more complaints in which the same or similar allegations are raised against a respondent, the Commission may order a consolidation of such complaints.

9. Assessment of Complaints

(1) After a complaint has been lodged in terms of these rules and the Act, the Investigation Department shall make a preliminary assessment and submit its findings to the Legal Department for further assessment of the complaint.

(2) The Legal Department of the Commission shall within one week of receipt of the preliminary assessment, submit a legal opinion and recommendation (s) to the Commission regarding;

(a) Acceptance or rejection of the complaint as a human rights violation within the jurisdiction of the Commission, or

(b) Where appropriate, request for further information from the complainant or refer the complainant to the most appropriate Institution for consideration.

(c) The Commission shall review the recommendations of the Legal Department and decide on its admissibility in accordance with Rule 10 and section 24 of the Act.

10. Admissible Complaints

(1) Subject to the provisions of the Act, the Commission shall only admit complaints that disclose a human rights violation that occurred after the coming into force of the Act, unless it can be shown that such a violation has continued beyond 24th January 2018, and for the avoidance of doubt, a complaint shall not be admissible if;

(a) the complaint or matter is pending before a court of law or tribunal;

(b) the complaint or matter is criminal in nature and is being handled or could be handled by the relevant authority as may be determined by the Commission;

(c) the complaint or matter essentially involves the relations or dealings between the government of The Gambia and the government of a foreign state or international organization recognized as such under international law;

(d) the complaint or matter is in relation to the exercise of a prerogative of mercy by the President under the Constitution;



- (e) the complaint or matter is the subject of a right of appeal or other legal remedy unless, in the opinion of the Commission, it is not reasonable to expect that right of appeal or other legal remedy to be resorted to;
- (f) the complaint or matter is for the time being under investigation by any authority established by law; and
- (g) the complaint or matter in the opinion of the Commission is frivolous and vexatious.

11. Non-appearance of Complainant

- (1) If on the day fixed for the hearing of a complaint the respondent appears in answer to the summons but the complainant does not appear, the Commission shall, if satisfied that a notice of the time and place for the hearing has been duly served upon the complainant, ask the respondent whether he or she admits the claim; and—
 - (a) if the respondent admits the claim or any part of it, the Commission may make a decision against him or her for the claim or that part of it as he or she admits; or
 - (b) if the respondent does not admit the claim, the Commission may dismiss the complaint or proceed to hear the complaint or adjourn the hearing to another date; and when another date is fixed for the hearing, the Commission shall cause a notice to be served on the complainant and respondent requiring each to attend the Commission at the time and place specified in the notice.

12. Non-appearance of Respondent or both Parties

- (1) If on the date fixed for the hearing the respondent does not appear, the Commission may, if satisfied that a summons or notice notifying the respondent of the time and place for the hearing has been duly served upon the respondent, proceed to hear the evidence of the complainant, if any, and if satisfied that the complainant has established his or her claim in whole or in part shall make a decision for the complainant accordingly.
- (2) If on the day fixed for the hearing or any date to which the hearing of the complaint is adjourned neither party appears, the Commission may order that the complaint be dismissed.
- (3) Where a complaint is dismissed under this rule, the complainant may bring a new complaint upon satisfying the Commission as to the reasons why he or she did not appear at the previous sitting.

13. Setting Aside Decision Taken in the Absence of a Party

- (1) Subject to sub rule (2) of this rule, where a decision has been given against a party under Rule 12 (1) and Rule 5 (5) of these Rules the party against whom the decision was given may notify the Commission of the reasons which prevented his or her attendance at the place and time fixed for the hearing.
- (2) If the Commission is satisfied that there are good and sufficient reasons for the absence of the party, and that the matter as recorded merits consideration, it may, upon such terms and conditions as it thinks fit, set aside the decision and fix a new date for the hearing of the complaint and shall give due notice of the new date for the hearing to both parties.
- (3) No decision may be set aside under this rule where the Commission is satisfied that the party against whom the decision was taken was duly served with the hearing notice, unless the notification under sub Rule (1) of this rule is made within thirty days from the date on which the decision was given.

14. Procedure on Appearance of both Parties



On appearance of both parties before the Commission, the respondent shall be asked by the Commission whether he or she admits the claim of the complainant, and if—

- (a) the respondent admits the claim in its entirety, the decision shall be given confirming the violation of the human right or freedom as alleged by the complainant; and the Commission shall make the appropriate decision in the circumstances in favour of the complainant; or
- (b) the respondent does not admit the claim or admits it only in part, the Commission shall proceed to hear the evidence of the parties.

15. Hearing

(1) Unless the Commission otherwise orders, the evidence of the complainant shall be heard first, followed by that of his or her witnesses if any.

(2) At the close of the evidence of the complainant and that of his or her witnesses, the respondent or his or her representative shall be given the opportunity to cross examine the complainant or his or her witnesses.

(3) A cross examination under Rule 15 (2) shall only be carried out upon approval by the Commission pursuant to a written application by or on behalf of the respondent.

(4) Pursuant to Rule 15 (2) the respondent or his or her representative shall in advance submit to the Commission a list of the questions he or she intends to ask and the Commission shall determine which of those questions may be asked of the complainant or witness and may assign a Commissioner to ask the questions or in exceptional cases allow the respondent or his or her representative to ask the questions.

(5) At the close of the evidence of the complainant or that of his or her witnesses, the evidence of the respondent shall be heard, followed by that of his or her witnesses, and the complainant or his or her representative shall be given the opportunity to cross-examine the respondent and each of his or her witnesses.

(4) The Commission may, at any time, put questions to either party or to any witness and may, at its discretion, call such additional evidence as it considers necessary.

(5) The Commission may, for sufficient reason, at any time before or after beginning to hear the complaint, adjourn the hearing; and in every such case the Commission shall fix a day for further hearing of the complaint.

(6) The Commission's proceedings shall be open to the public unless otherwise directed by the Commission: and the reasons for the direction shall be recorded in writing.

16. Evidentiary Rules

(1) The Commission shall freely assess the evidence adduced before it and may admit statements of complainants, witnesses, hearsay evidence, non-original documents as well as documents or materials without full or proper chain-of-custody.

(2) The primary issue of consideration for admission of evidence by the Commission shall be the relevance of the evidence to the issues for determination.

(4) notwithstanding Rule 16 (2), the Commission shall not admit any evidence where the reliability of the evidence casts substantial doubt on the evidence or its admission would be seriously antithetical to or would seriously damage the integrity of the proceedings because it was obtained by means of a violation of internationally recognized standards of human rights law.

17. Evidence to be Recorded



The evidence of the parties and that of each witness shall be taken down in writing by the Commission or by any person authorized to do so by the Commission.

18. Decision

- (1) After concluding the hearing of the evidence and submissions where applicable, the Commission shall give a decision based on a balance of probabilities.
- (2) The decision shall be in writing and contain—
 - (a) the nature of the complaint;
 - (b) the nature of the evidence;
 - (c) a summary of the relevant evidence produced before the Commission and reasons for the Commission's accepting or rejecting the evidence;
 - (d) the remedy if any to which the complainant is entitled; and
 - (e) the legal action of the Commission necessary to enforce the remedy.
- (3) Where the decision is not given immediately after the hearing of all the evidence, the Commission shall notify the parties or their representative of the date on which the decision is to be given.
- (4) The decision may be given—
 - (a) In favour of one or more of the complainants as may be found to be entitled to relief;
 - (b) against one or more of the respondents as may be found to be liable according to their respective liabilities.
- (5) A party who is aggrieved by a decision of the Commission may request for a review of the said decision within 30 days from the date the decision was issued.
- (6) The quorum for sittings of the Commission shall be not less than three Commissioners including the Chairperson or Vice Chairperson.
- (7) The Chairperson shall preside over sittings of the Commission and in his or her absence, the Vice Chairperson or any other Commissioner so authorized by the Chairperson or Vice Chairperson.
- (8) All decisions of the Commission shall be taken on the basis of a majority vote and in the event of a tie, the Chairperson or other member presiding shall have a casting vote in addition to his or her deliberative vote.

19. Resolution of Complaints Through Mediation

- (1) The Commission may initiate other mechanisms for the resolution of complaints in deserving cases.
- (2) where a decision has been taken by the Commission to resolve a complaint by negotiation, conciliation or mediation-
 - (a) the appropriate staff, if so authorized by the Commission, shall forthwith assume the role of negotiator, conciliator or mediator, as the case may be, in an attempt to resolve the complaint by that process; or
 - (b) the Commission may appoint a Commissioner to act as negotiator, conciliator or mediator;
 - (c) any process of negotiation, conciliation or mediation carried out in terms of these rules shall be conducted in accordance with generally accepted practices for the process concerned and; in particular, the negotiator, conciliator or mediator shall observe the rules of natural justice.

20. Recording of Agreements Reached Through Negotiation, Conciliation or Mediation



(1) if a negotiator, conciliator or mediator succeeds in getting the parties to agree to a resolution of a complaint, he or she shall ensure that their agreement is recorded and signed by both parties.

(2) after an agreement has been signed in terms of Rule 12 (1) the negotiator, conciliator or mediator shall, together with any comments he or she may wish to make on it, refer the agreement to the Commission for adoption.

21. Procedure on Failure of Negotiation, Conciliation or Mediation

(1) if the negotiator, conciliator or mediator fails for any reason to resolve a complaint, or believes that he or she will be unable to resolve it for any reason, he or she shall-

(a) Report the facts to the Commission, providing the Commission with a written explanation of the reasons for the failure or anticipated failure; and

(b) Notify the complainant and the respondent of what he or she has done and the reasons for doing so;

(2) On receipt of a report in terms of Rule 21(1) (a), and after considering any representations submitted by the complainant and respondent the Commission may give direction as to alternative methods of resolving the complaint.

22. Information about Consequences of Giving a Statement

A person who gives a statement to the Commission shall be informed about the consequences of giving a statement and the possible future use of the statement, including as appropriate:

(a) citing the complainant's name in the final report of the Commission;

(b) citing a part or parts of the complainants' statement in the final report of the Commission;

(c) permitting future public access to the statement;

(d) forwarding the statement to any relevant institution deemed necessary by the Commission.

23. Statements Under Oath

Pursuant to section 14 of the Act, the Commission may require that, whenever desirable for any reason, statements be given under oath or affirmation.

24. Use of Pseudonyms

In order to preserve confidentiality, the Commission may, as appropriate, use pseudonyms or such other means that will conceal any identifying information relating to the maker of the statement.

25. Oath or Affirmation

(1) Any person testifying before the Commission shall first take the prescribed oath or affirmation prescribed by the Commission.

(2) Notwithstanding Rule 25 (1), children shall not be subjected to take an oath or affirmation and shall be allowed to testify upon promising to tell the truth.

(3) Interpreters and translators assisting in proceedings of the Commission upon taking up work with the Commission shall make an oath or affirmation suitable for interpreters.

26. Failure to Answer Questions

(1) A person who appears before the Commission shall be obliged to answer questions asked of him or her.



(2) A person who fails to answer a question asked of him or her before a hearing of the Commission without any legal justification may be cited to be in contempt of the proceedings of the Commission.

27. Right Against Self-Incrimination

A person appearing before the Commission shall have a right against self-incrimination.

28. Privileged Information

(1) The Commission shall, in general, afford broad recognition and legal protection and immunity from compulsory disclosure for legal privileges including:

- (a) communications between spouses,
- (b) communications between lawyer and client,
- (c) communications between medical professional and patient,
- (d) communications between religious leader and follower/ faithful,
- (e) communications between journalist and source, and

(2) notwithstanding Rule 28 (1) above, the legal privileges above are not absolute and information disclosed in breach of such privilege may be admissible by consent of the beneficiary of the protected privilege or where the person in question voluntarily discloses the information to a third party who then gives evidence of that disclosure.

29. Witness Protection and Preparation

(1) The Commission shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of complainants and witnesses who are to appear before the Commission as well as informants who have provided information to the Commission having regard to all relevant factors, including age, gender, health and nature of the human rights violation or abuse, in particular, but not limited to, where it involves sexual or gender-based violence or violence against children, or where there exists a credible threat against the safety of a complainant, witness or Informant.

(2) complainants and witnesses who appear before the Commission may during a pre-hearing meeting;

(a) be given preliminary Information about the process, their rights, duties and legal obligations or Implication of their testimonies;

(b) be prepared mentally for their public testimony by the Commission staff.

(3) during such pre-hearings meeting, the Commission staff may conduct a security risk assessment of the complainant or witness and provide psychosocial counselling or support where necessary.

30. Special Measures

(1) The Commission may adopt special measures for certain categories of complainants or witnesses such as children, persons with disabilities, victims of sexual violence, other traumatized victims or witnesses, and the elderly, to facilitate their testimony.

(2) Such measures may include the presence of a psychologist or a family member or other support person at the hearing during the testimony, or re-arranging the hearing room set-up, or conducting proceedings in an entirely different setting or special venue including testimony in private or closed sessions, video conferencing, voice and face distortion, testimony behind a screen where only limited participants see the face of the complainant or witness, use of



pseudonyms, expunging or redacting all identifying information from the record or sealing the record of the testimony.

31. Complaint File

- (1) Each complaint lodged leads to opening of a complaint file which will include —
- (a) the serial number of the complaint;
 - (b) the date of the complaint;
 - (c) the name and address of the complainant;
 - (d) the name and address of the respondent;
 - (e) the statement of the applicant;
 - (f) all evidence;
 - (g) the date of the hearing;
 - (h) the names of witnesses;
 - (i) the decision or order of the Commission and the date on which it was made;
 - (j) the date when the remedy was executed; and
 - (k) the particulars of execution of the decision or order.

(2) The Executive Secretary shall have custody of the records of the Commission.

32. Commission not to Charge Fees

There shall be no fees levied for filing a complaint.

33. Legal Representation

- (1) The hearing of the Commission is a quasi-judicial process and a person who appears before the Commission shall have a right to legal representation.
- (2) Pursuant to Rule 33 (1), such legal representation shall mainly be in written form, unless where the Commission permits him or her to make a limited statement on an issue of law.

34. Amendment

These rules of procedure may be amended by the Commission as and when necessary for the smooth operations of the functions of the Commission.

35. Forms

The forms set out in the Schedule to these Rules with such variations as the circumstances of each case may require may be used for the purposes mentioned in those forms.



These rules shall enter into force this 1st November 2019.

Done in Kotu this 31st Day of October 2019

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**Commissioner Emmanuel D. Joof
Chairperson**

Schedule 1



Republic of The Gambia

Form 1

Warrant of Arrest

The National Human Rights Commission. (Under rule 7 of the Rules of Procedure on Complaints Handling).

At _____ Complaint No.

_____ of 20 ____

_____ Complainant and

_____ Respondent

Warrant of Arrest of Witness.

To: _____

Whereas _____ has been duly

served with summons but has failed to attend (absconds and keeps out of the way for the purposes of avoiding service of summons).

You are by this warrant ordered to arrest and bring _____ before the commission.

You are further ordered to return this warrant on or before the _____ day of _____, 20 ____, with an endorsement certifying the day on and the manner in which it has been executed.

Given under my hand and the seal of this Commission on this _____ day of

_____, 20 ____.

_____ Chairperson/ Vice Chairperson.



Republic of The Gambia

Form 2

Summons and Hearing Notice

The National Human Rights Commission. (Under rule 6 of the Rules of Procedure on Complaints Handling).

At _____ Complaint No.
_____ of 20 ____

In the matter of _____ Complainant and
_____ Respondent

Summons and Hearing Notice.

To: _____

Whereas the above-named complainant has instituted a claim against the above-named respondent(s) for _____

You are required to appear in this commission on the _____ day of _____, 20____, at _____ o'clock in the forenoon/afternoon and to bring your witnesses with you.

If no appearance is made by you or by a person authorised by law to act for you the case may be heard and decided in your absence.

Dated this _____ day of _____, 20 ____

_____ Chairperson/ Vice Chairperson



Republic of The Gambia

Form 3

Release Order

The National Human Rights Commission. (Rule 7 of The Rules OF Procedure on Complaints Handling).

At _____ Complaint No.

_____ of 20 ____

In the matter of _____ Complainant and

_____ Respondent

Release Order.

To: _____

Whereas _____ has been in your custody,

since the _____ day of _____, 20 _____, and whereas the commission is satisfied

that he or she is being unlawfully detained and/or restricted, this is to direct you to cause the

immediate release of _____ from your custody for

failure of which you may be liable for contempt under section 13 (2) (f).

Dated this _____ day of _____, 20 _____

_____ Chairperson/Vice Chairperson.



Republic of The Gambia

Form 4

Warrant of Committal for Contempt

The National Human Rights Commission.

At _____ Complaint No.
_____ of 20 ____

In the matter of _____ Complainant
_____ Complainant and
_____ Respondent

Warrant of Committal for Contempt.

To: _____

The officer in charge of the prison at _____

Whereas _____ has been found guilty of the offence of
contempt by the Commission on this _____ day of _____, 20 ____, and has
been condemned to serve a prison term of _____

You are required to take and receive _____ into
prison and keep him or her imprisoned there for a period not exceeding
_____.

Dated this _____ day of _____, 20 ____

_____ Chairperson/Vice Chairperson.



Schedule 2

REPUBLIC OF THE GAMBIA

Form 5

Prescribed oath and affirmation

The National Human Rights Commission (under rule 25 of the Rules of Procedure on Complaints Handling)

Oath: I do swear that I will speak the truth, the whole truth and nothing but the truth so help me God.

Affirmation: I do affirm that I will speak the truth, the whole truth and nothing but the truth.