

ELECTORAL LAWS (ACTS)

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[CAP. 1

REPUBLIC OF ZAMBIA

THE CONSTITUTION OF ZAMBIA

CHAPTER 1 OF THE LAWS OF ZAMBIA

CHAPTER 1

THE CONSTITUTION OF ZAMBIA ACT

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CHAPTER 1

THE CONSTITUTION OF ZAMBIA ACT

Acts No.
1 of 1991
17 of 1996
18 of 1996

An Act to provide for the new Constitution of the Republic of Zambia; to provide for the savings and transitional provisions of existing offices, institutions and laws; to provide for the savings of succession to property and assets, rights and liabilities, obligations and legal proceedings; and to provide for matters connected with or incidental to the foregoing.

[28th May, 1996]

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|---|---|
| <p>1. This Act may be cited as the Constitution of Zambia Act.</p> | Short Title |
| <p>2. (1) In this Act, unless the context otherwise requires—</p> <p>“Constitution” means the Constitution set out in the Schedule to this Act;</p> <p>“existing law” means all law, whether a rule of law or a provision of an Act of Parliament or of any other enactment or instrument whatsoever (including any Act of Parliament of the United Kingdom or Order of Her Majesty in Council), having effect as part of the law of Zambia or part thereof immediately before the commencement of this Act, and includes any Act of Parliament or statutory instrument made before such commencement and coming into force on such commencement or thereafter.</p> <p>(2) Except where the context requires, words and expressions used in this Act have the same meaning as in the Constitution.</p> | <p>Interpretation</p> <p>Act No.
1 of 1991</p> |
| <p>3. Except as provided, under this Act, the Constitution of Zambia Act, 1991, and the Constitution in the Schedule thereto, are amended in so far as they form Part of the Laws of Zambia.</p> | Amendment of Constitution of Zambia Act, 1991 and Schedule hereto |
| <p>4. Subject to the other provisions of this Act, the Constitution as amended under Act No. 18 of 1996, shall come into operation on the commencement of this Act.*</p> | Commencement of the Constitution |
| <p>5. The Constitution may be printed and published by the Government Printer separately from this Act, and the production of a copy of the Constitution purporting to be so printed shall be prima facie in all courts and for all purposes whatsoever of the Constitution as its provisions.</p> | Printing and publication of the Constitution |

This Act (No. 18 of 1996) and the provisions amending the Constitution came into force on 28th May 1996—the day the President assented to the Bill.

Existing laws

6. (1) Subject to the other provisions of this Act, and so far as they are not inconsistent with the Constitution, the existing laws shall continue in force after the commencement of this Act as if they had been made in pursuance of the Constitution, but shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the Constitution.

(2) The President may, by statutory instrument at any time within two years of the commencement of this Act, make such amendment to any existing law as may appear to him to be necessary or expedient for bringing that law into conformity with the provisions of this Act or the Constitution as amended or otherwise for giving effect or enabling effect to be given to those provisions.

(3) Where any matter that falls to be prescribed or otherwise provided for under the Constitution by Parliament or by any other authority or person is prescribed or provided for by or under any existing law, including any amendment to any such law made under this section, or is otherwise prescribed or provided immediately before the commencement of this Act by or under the law amended by section *three*, that prescription or provision shall, as from the commencement of this Act, have effect as if it had been made under the Constitution by Parliament or, as the case may be, the other authority or person.

(4) This section shall be without prejudice to any powers conferred by this Act or the Constitution upon any person or authority to make provision for any matter, including the amendment or repeal of any existing law.

Preogatives and privileges of President

7. Where under the existing law any prerogatives or privileges are vested in the President those prerogatives or privileges shall, after the commencement of this Act, continue to vest in the President.

Continuation of office of President

8. The person holding the office of President immediately before the commencement of this Act shall, unless he ceases to hold office by virtue of the provisions of Article 34 or 35 of the Constitution or resigns, continue in office and shall exercise the executive powers of the President under the Constitution until the person elected at the first election to the office of President under the Constitution assumes office.

Existing offices

9. (1) Where any office has been established by or under the law in force before the commencement of this Act and the Constitution establishes a similar or an equivalent office, any person who immediately before the commencement of this Act holds or is acting in the former office shall, so far as is consistent with the Constitution, be deemed to have been appointed, elected or designated as from the commencement of this Act to hold or to act in the latter office in accordance with the Constitution and to

have taken the oath of allegiance and any other necessary oath under the Constitution:

Provided that any person who, under the law in force before the commencement of this Act or any other existing law, would have been required to vacate his office at the expiration of any period or on the attainment of any age shall vacate his office at the expiration of that period or upon the attainment of that age.

(2) Any person holding the office of Vice-President, Minister and Deputy Minister under the Constitution immediately before the commencement of this Act shall continue in office and shall exercise the powers conferred on him by the Constitution.

(3) Subject to the provision of the Constitution relating to persons in public employment, any person who is a public officer and who immediately before the commencement of this Act holds any public office shall continue to be a public officer of the Government after the commencement of this Act.

(4) The President may, at any time after the commencement of this Act, require any person who continues in office by virtue of this section to take an oath of allegiance and any oath for the due execution of his office that is prescribed by or under any Act of Parliament.

(5) This section shall be without prejudice to—

(a) the provisions of section *ten*; and

(b) any powers conferred by or under the Constitution upon any person or authority to make provision for the abolition of offices or the removal of any person holding or acting in any office.

10. (1) Subject to subsection (2), the National Assembly constituted under the law in force before the commencement of this Act (hereinafter referred to as “the existing National Assembly”) shall be the National Assembly during the period beginning on the commencement of this Act and ending on the date set for the holding of elections to the office of President and the National Assembly under the Constitution.

The National
Assembly

(2) The persons who immediately before the commencement of this Act are the elected or nominated members of the existing National Assembly shall continue to be the members of the National Assembly during the period beginning on the commencement of this Act and ending on the date set for the holding of elections to the office of President and the National Assembly under the Constitution, and, in the case of elected members, shall be deemed to have been elected to the National Assembly to represent the same constituencies as the constituencies for which they were respectively elected.

(3) The persons who immediately before the commencement of this Act are the Speaker and the Deputy Speaker of the existing National Assembly shall continue to be respectively the Speaker and the Deputy Speaker of the National Assembly during the period beginning on the commencement of this Act and ending on the date set for the holding of elections to the office of the National Assembly under the Constitution.

(4) All the functions and powers vested in Parliament by the Constitution shall be exercised, during the period beginning on the commencement of this Act and ending on the date set for the holding of elections to the office of President and National Assembly, by Parliament in accordance with the Constitution.

(5) The rules and orders of the existing National Assembly as in force immediately before the commencement of this Act, shall, until it is otherwise provided for under Article 86 of the Constitution be the rules of procedure of the National Assembly but shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the Constitution.

(6) Any person who under this section continued to be the Speaker, the Deputy Speaker or a member of the National Assembly after the commencement of this Act shall be deemed to have taken the necessary oath under the Constitution.

(7) All money granted, voted or appropriated by the existing National Assembly in respect of the services of the Republic for the current financial year shall be deemed to have been granted, voted or appropriated by the existing National Assembly and in accordance with the Constitution.

Succession to
property and
assets

11. (1) Subject to this Act and the Constitution, all property of every nature and kind whatsoever and all assets that immediately before the commencement of this Act were vested in, or held in trust for, the President or in any other person in right of or for the purposes of the Government of Zambia shall after the commencement of this Act continue to be so vested or held in trust, as the case may be

(2) Any property which, immediately before the commencement of this Act, was liable to escheat or to be forfeited to the President for the purposes of the Government of Zambia, after the commencement of this Act, shall continue to be liable to escheat or to be forfeited to the President on behalf of the Government of Zambia.

Rights,
liabilities and
obligations

12. All rights, liabilities and obligations of the President or any public officer on behalf of the Government of Zambia before the commencement of this Act shall, on and after the commencement of this Act, be rights, liabilities and obligations of

the President or such public officer, as the case may be, on behalf of the Government of Zambia.

13. (1) All proceedings that, immediately before the commencement of this Act, are pending before any court established by or under the law in force before the commencement of this Act may be continued and concluded before those courts established by or under the Constitution.

Legal proceedings

(2) Any proceedings that immediately before the commencement of this Act are pending before any Commissioner of the High Court appointed by or under the law in force before the commencement of this Act shall be continued and concluded before such Commissioner, notwithstanding the abolition of the office of Commissioner of the High Court.

14. (1) All rights and obligations under conventions, treaties or agreements which were exercisable by or binding upon the Government of Zambia immediately before the commencement of this Act shall continue to be so exercisable and binding.

Transitional provisions

(2) All functions which immediately before the commencement of this Act were vested in the President or in any other authority shall, as far as the same continue in existence and are capable of being exercised after the commencement of this Act, be vested in the President or the authority exercising similar functions under the Constitution, as the case may be, except such functions as are by this Act or any other law vested in some other authority.

15. (1) The following provisions of this section shall have effect for the purpose of enabling any officer to whom this section applies or his personal representatives to appeal against a decision to which this section applies, that is to say a decision within the following clauses:

Appeals in respect of certain decisions affecting pensions and like benefits

- (a) a decision of the Service Commission to give such concurrence as is required by Article 124 of the Constitution in relation to the refusal, withholding, reduction in amount or suspension of any benefits in respect of such an officer's service as a public officer;
- (b) a decision by any authority to remove such an officer from office if the consequence of the removal is that benefits cannot be granted in respect of the officer's service as a public officer; or
- (c) a decision by any authority to take some other disciplinary action in relation to such an officer if the consequence of the action is to reduce the amount of any benefits that may be granted in respect of the officer's service as a public officer.

(2) Where any decision such as is referred to in subsection (1) is taken by any authority, the authority shall cause to be delivered to the officer concerned, or his personal representatives, a written notice of that decision stating the time, not being less than twenty-eight days from the date on which the notice is delivered, within which he, or his personal representatives, may apply to the authority for the case to be referred to an Appeals Board.

(3) If application is duly made to an authority within the time stated in such a notice as is mentioned in subsection (2) for a case to be referred to an Appeals Board, the authority shall notify the President in writing of that application and the President shall appoint an Appeals Board for that purpose consisting of—

- (a) one member selected by the President;
- (b) one member selected by the association representative of public officers or a professional body, nominated in either case by the applicant; and
- (c) one member selected by the two other members jointly (or, in default of agreement between those members, by the Chief Justice) who shall be the Chairman of the Board.

(4) Such an Appeals Board shall inquire into the facts of the case that is referred to it, and for that purpose the Board—

- (a) shall, if the applicant so requests in writing, hear the applicant either in person or by legal representative of his choice, according to the terms of the request;
- (b) may hear any other person who, in the opinion of the Board, is able to give the Board information on the case; and
- (c) shall have access to, and shall consider, all documents that were available to the authority concerned and shall also consider any further document relating to the case that may be produced by or on behalf of the applicant or the authority.

(5) When such an Appeals Board has completed its consideration of the case, then—

- (a) if the decision that is the subject of the reference to the Board is a decision such as is mentioned in paragraph (a) of subsection (1), the Board shall advise the appropriate Commission whether the decision should be affirmed, reversed or modified and the Commission shall act in accordance with that advice;
- (b) if the decision that is the subject of the reference to the Board is a decision such as is mentioned in paragraph (b) or (c) of subsection (1), the Board shall not have power to advise the authority responsible for making

the decision to affirm, reverse or notify the decision but the Board may advise the authority responsible for granting the benefits in question—

- (i) where the officer has been removed from office, to grant all or part of the benefits for which the officer concerned would have been eligible under any law if he had retired voluntarily at the date of dismissal; or
- (ii) where some other disciplinary action has been taken in relation to the officer, that on the grant of any benefits under any law in respect of the officer's service such benefits shall be increased in such manner, as the board may specify in order to offset all or any part of the reduction in the amount of such benefits that, in the opinion of the Board, would or might otherwise be a consequence of the action;

and that authority shall act in accordance with that advice and the provisions of that law shall have effect accordingly.

(6) In this section—

“pension benefits” has the meaning assigned to it in clause (5) of Article 124 of the Constitution;

“Service Commission” has the meaning assigned to it in Clause (2) of Article 123 of the Constitution.

(7) This section applies to any officer who on the 24th October, 1964, was on pensionable conditions of service and—

- (a) was designated under the Overseas Service Aid Scheme; or
- (b) was immediately before the 24th October, 1964, a member of Her Majesty's Overseas Civil Service or Her Majesty's Overseas Judiciary; or
- (c) whose conditions of service included an entitlement to free overseas passages from Zambia for the purpose of leave of absence upon the completion of a tour of duty; or
- (d) was not a citizen of Zambia.

16. Notwithstanding anything to the contrary contained in this Act or the Constitution, the President may, with a view to securing the appointment of citizens of Zambia to public offices, direct retirement from public office of any person who is not a citizen of Zambia:

Compulsory
retirement of
non-citizen

Provided that a person shall not be retired under the provisions of this section unless notice in writing is given to him specifying the date of retirement which shall not be earlier than six months from the date on which such notice is received by him.

THE CONSTITUTION OF ZAMBIA

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CONSTITUTION OF THE REPUBLIC OF ZAMBIA

PREAMBLE

(As amended by Act No. 18 of 1996)

WE, THE PEOPLE OF ZAMBIA by our representatives, assembled in our Parliament, having solemnly resolved to maintain Zambia as a Sovereign Democratic Republic;

DETERMINED to uphold and exercise our inherent and inviolable right as a people to decide, appoint and proclaim the means and style to govern ourselves;

RECOGNISE the equal worth of men and women in their rights to participate, and freely determine and build a political, economic and social system of their own free choice;

PLEDGE to ourselves that we shall ensure that the State shall respect the rights and dignity of the human family, uphold the laws of the State and conduct the affairs of the State in such manner as to preserve, develop, and utilise its resources for this and future generations;

DECLARE the Republic a Christian nation while upholding the right of every person to enjoy that person's freedom of conscience or religion;

RESOLVE to uphold the values of democracy, transparency, accountability and good governance;

AND FURTHER RESOLVE that Zambia shall forever remain a unitary, indivisible, multi-party and democratic sovereign state;

DO HEREBY ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

PART I

(As amended by Act No. 18 of 1996)

NATIONAL SOVEREIGNTY AND THE STATE

1. (1) Zambia is a unitary, indivisible, multi-party and democratic sovereign State.

(2) All power resides in the people who shall exercise their sovereignty through the democratic institutions of the State in accordance with this Constitution.

(3) This Constitution is the supreme law of Zambia and if any other law is inconsistent with this Constitution that other law shall, to the extent of the inconsistency, be void.

Declaration of Republic, sovereignty of people, supreme law and official language

(4) This Constitution shall bind all persons in the Republic of Zambia and all Legislative, Executive and Judicial organs of the State at all levels.

(5) The official language of Zambia shall be English.

Public seal

2. The Public Seal of the Republic shall be such as may be prescribed by or under an Act of Parliament.

National Anthem, National Flag, National Emblem and National Motto

3. The National Anthem, the National Flag, the National Emblem and the National Motto shall be such as may be prescribed by or under an Act of Parliament.

PART II

(As amended by Act No. 18 of 1996)

CITIZENSHIP

Citizens of Zambia

4. (1) Every person who immediately before the commencement of this constitution was a citizen of Zambia shall continue to be a citizen of Zambia after the commencement of this Constitution.

(2) A person who was entitled to citizenship of Zambia before the commencement of this Constitution subject to the performance of any conditions following the happening of a future event, shall become a citizen upon the performance of such conditions.

Children of citizens of Zambia

5. A person born in or outside Zambia after the commencement of this Constitution shall become a citizen of Zambia at the date of his birth if on that date at least one of his parents is a citizen of Zambia.

Persons entitled to apply to be registered as citizens

6. (1) Any person who—

(a) has attained the age of twenty-one years; and

(b) has been ordinarily resident in Zambia for a continuous period of not less than ten years immediately preceding that person's application for registration;

shall be entitled to apply to the Citizenship Board, in such manner as may be prescribed by or under an Act of Parliament, to be registered as a citizen of Zambia.

(2) An application for registration as a citizen under this Article shall not be made by or on behalf of any person who, under any law in force in Zambia, is adjudged or otherwise declared to be of unsound mind.

(3) Parliament may provide that any period during which a person has the right to reside in Zambia by virtue of a permit issued under the authority of any law relating to immigration shall not be

taken into account in computing the period of ten years referred to in paragraph (b) of clause (1).

7. Parliament may make provision for—

- (a) the acquisition of citizenship of Zambia by persons who are not eligible to become citizens of Zambia under this Part;
- (b) depriving any person of that person’s citizenship of Zambia:

Powers of Parliament

Provided that a person shall not be deprived of his citizenship except on the grounds that—

- (i) that person is a citizen of a country other than Zambia; or
- (ii) that person obtained such citizenship by fraud.

8. Parliament may make provision for the establishment of a Citizenship Board to deal with any of the matters falling under the provisions of Articles 6 or 7.

Citizenship Board

9. (1) A person shall cease to be a citizen of Zambia if that person—

Cesser of citizenship

- (a) acquires the citizenship of a country other than Zambia by a voluntary act, other than marriage; and
- (b) does any act indicating that person’s intention to adopt or make use of any other citizenship.

(2) A person who—

- (a) becomes a citizen of Zambia by registration; and
- (b) immediately after becoming a citizen of Zambia, is also a citizen of some other country;

shall, subject to clause (4), cease to be a citizen of Zambia at the expiration of three months after such person becomes a citizen of Zambia unless such person has renounced the citizenship of that other country, taken oath of allegiance and made and registered such declaration of his intention concerning residence as may be prescribed by or under an Act of Parliament.

(3) For the purpose of this Article, where, under the law of a country other than Zambia, a person cannot renounce the citizenship of that other country that person need not make such renunciation but may instead be required to make such declaration concerning that citizenship as may be prescribed by or under an Act of Parliament.

(4) Provision may be made by or under an Act of Parliament for extending the period within which any person may make a renunciation of citizenship, take oath or make or register a declaration for the purpose of this Article, and if such provision is

made that person shall cease to be a citizen of Zambia only if at the expiration of the extended period that person has not then made the renunciation, taken the oath or made or registered the declaration, as the case may be.

Interpretation

10. (1) For the purpose of this Part, a person born aboard a registered ship or aircraft, or aboard an unregistered ship or aircraft of the Government of any country, shall be deemed to have been born in the place in which the ship or aircraft was registered or in that country, as the case may be.

(2) Any reference in this Part to the national status of the parent of a person at the time of the birth of that person shall, in relation to a person born after the death of his parent, be construed as a reference to the national status of the parent at the time of the parent's death.

(3) For the avoidance of doubt, it is hereby declared that a person born in Zambia before the 1st April, 1986, whose father was an established resident shall continue to enjoy the rights and privileges, under, and remain subject to, the law prevailing immediately before that date.

PART III

PROTECTION OF THE FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL

Fundamental rights and freedoms

11. It is recognised and declared that every person in Zambia has been and shall continue to be entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed, sex or marital status, but subject to the limitations contained in this Part, to each and all of the following, namely:

- (a) life, liberty, security of the person and the protection of the law;
- (b) freedom of conscience, expression, assembly, movement and association;
- (c) protection of young persons from exploitation;
- (d) protection for the privacy of his home and other property and from deprivation of property without compensation;

and the provisions of this Part shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations of that protection as are contained in this Part, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.

12. (1) A person shall not be deprived of his life intentionally except in execution of the sentence of a court in respect of a criminal offence under the law in force in Zambia of which he has been convicted.

Protection of
right to life

(2) A person shall not deprive an unborn child of life by termination of pregnancy except in accordance with the conditions laid down by an Act of Parliament for that purpose.

(3) Without prejudice to any liability for a contravention of any other law with respect to the use of force in such cases as are hereinafter mentioned, a person shall not be regarded as having been deprived of his life in contravention of this Article if he dies as a result of the use of force to such extent as is reasonably justifiable in the circumstances of the case—

- (a) for the defence of any person from violence or for the defence of property;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) for the purpose of suppressing a riot, insurrection, mutiny or if he dies as a result of a lawful act of war; or
- (d) in order to prevent the commission by that person of a criminal offence.

13. (1) A person shall not be deprived of his personal liberty except as may be authorised by law in any of the following cases:

Protection of
right to
personal
liberty

- (a) in execution of a sentence or order of a court, whether established for Zambia or some other country, in respect of a criminal offence of which he has been convicted;
- (b) in execution of an order of a court of record punishing him for contempt of that court or of a court inferior to it;
- (c) in execution of an order of a court made to secure the fulfillment of any obligation imposed on him by law;
- (d) for the purpose of bringing him before a court in execution of an order of a court;
- (e) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law in force in Zambia;
- (f) under an order of a court or with the consent of his parent or guardian, for his education or welfare during any period ending not later than the date when he attains the age of eighteen years;
- (g) for the purpose of preventing the spread of an infectious or contagious disease;
- (h) in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol or

a vagrant, for the purpose of his care or treatment or the protection of the community;

- (i) for the purpose of preventing the unlawful entry of that person into Zambia, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person while he is being conveyed through Zambia in the course of his extradition or removal as a convicted prisoner from one country to another; or
- (j) to such extent as may be necessary in the execution of a lawful order requiring that person to remain within a specified area within Zambia or prohibiting him from being within such area, or to such extent as may be reasonably justifiable for the taking of proceedings against that person relating to the making of any such order, or to such extent as may be reasonably justifiable for restraining that person during any visit that he is permitted to make to any part of Zambia in which, in consequence of any such order, his presence would otherwise be unlawful.

(2) Any person who is arrested or detained shall be informed as soon as reasonably practicable, in a language that he understands, of the reasons for his arrest or detention.

(3) Any person who is arrested or detained—

- (a) for the purpose of bringing him before a court in execution of an order of a court; or
- (b) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law in force in Zambia;

and who is not released, shall be brought without undue delay before a court; and if any person arrested or detained under paragraph (b) is not tried within a reasonable time, then, without prejudice to any further proceedings that may be brought against him, he shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.

(4) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefor from that other person.

Protection
from slavery
and forced
labour

14. (1) A person shall not be held in slavery or servitude.

(2) A person shall not be required to perform forced labour.

(3) For the purpose of this Article, the expression “forced labour” does not include—

- (a) any labour required in consequence of a sentence or order of a court;
- (b) labour required of any person while he is lawfully detained that, though not required in consequence of a sentence or order of a court, is reasonably necessary in the interests of hygiene or for the maintenance of the place at which he is detained;
- (c) any labour required of a member of a disciplined force in pursuance of his duties as such or, in the case of a person who has conscientious objections to service as a member of a naval, military or air force, any labour that that person is required by law to perform in place of such service;
- (d) any labour required during any period when the Republic is at war or a declaration under Article 30 or 31 is in force or in the event of any other emergency or calamity that threatens the life and well-being of the community, to the extent that the requiring of such labour is reasonably justifiable in the circumstances of any situation arising or existing during that period, or as a result of that other emergency or calamity, for the purpose of dealing with that situation; or
- (e) any labour reasonably required as part of reasonable and normal communal or other civic obligations.

15. A person shall not be subjected to torture, or to inhuman or degrading punishment or other like treatment.

Protection
from inhuman
treatment

16. (1) Except as provided in this Article, property of any description shall not be compulsorily taken possession of, and interest in or right over property of any description shall not be compulsorily acquired, unless by or under the authority of an Act of Parliament which provides for payment of adequate compensation for the property or interest or right to be taken possession of or acquired.

Protection
from
deprivation of
property

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of clause (1) to the extent that it is shown that such law provides for the taking possession or acquisition of any property or interest therein or right thereover—

- (a) in satisfaction of any tax, rate or due;
- (b) by way of penalty for breach of any law, whether under civil process or after conviction of an offence;
- (c) in execution of judgments or orders of courts;
- (d) upon the attempted removal of the property in question out of or into Zambia in contravention of any law;

- (e) as an incident of contract including a lease, tenancy, mortgage, charge, pledge or bill of sale or of a title deed to land;
- (f) for the purpose of its administration, care or custody on behalf of and for the benefit of the person entitled to the beneficial interest therein;
- (g) by way of the vesting of enemy property or for the purpose of the administration of such property;
- (h) for the purpose of—
 - (i) the administration of the property of a deceased person, a person of unsound mind or a person who has not attained the age of eighteen years, for the benefit of the persons entitled to the beneficial interest therein;
 - (ii) the administration of the property of a person adjudged bankrupt or a body corporate in liquidation, for the benefit of the creditors of such bankrupt or body corporate and, subject thereto, for the benefit of other persons entitled to the beneficial interest in the property;
 - (iii) the administration of the property of a person who has entered into a deed of arrangement for the benefit of his creditors; or
 - (iv) vesting any property subject to a trust in persons appointed as trustees under the instrument creating the trust or by a court or, by order of a court, for the purpose of giving effect to the trust;
- (i) in consequence of any law relating to the limitation of actions;
- (j) in terms of any law relating to abandoned, unoccupied unutilised or undeveloped land, as defined in such law;
- (k) in terms of any law relating to absent or non-resident owners, as defined in such law, of any property;
- (l) in terms of any law relating to trusts or settlements;
- (m) by reason of a dangerous state or prejudicial to the health or safety of human beings, animals or plants.
- (n) as a condition in connection with the granting of permission for the utilisation of that or other property in any particular manner;
- (o) for the purpose of or in connection with the prospecting for, or exploitation of, minerals belonging to the Republic on terms which provide for the respective interests of the persons affected;
- (p) in pursuance of a provision for the marketing of property

- of that description in the common interests of the various persons otherwise entitled to dispose of that property;
- (q) by way of the taking of a sample for the purposes of any law;
 - (r) by way of the acquisition of the shares, or a class of shares, in a body corporate on terms agreed to by the holders of not less than nine-tenths in value of those shares or that class of shares;
 - (s) where the property consists of an animal, upon its being found trespassing or straying;
 - (t) for so long as may be necessary for the purpose of any examination, investigation, trial or inquiry or, in the case of land, the carrying out thereon—
 - (i) of work for the purpose of the conservation of natural resources of any description; or
 - (ii) of agricultural development or improvement which the owner or occupier of the land has been required, and has without reasonable and lawful excuse refused or failed, to carry out;
 - (u) where the property consists of any licence or permit;
 - (v) where the property consists of wild animals existing in their natural habitat or the carcasses of wild animals;
 - (w) where the property, is held by a body corporate established by law for public purposes and in which no moneys have been invested other than moneys provided by Parliament;
 - (x) where the property is any mineral, mineral oil or natural gases or any rights accruing by virtue of any title or licence for the purpose of searching for or mining any mineral, mineral oil or natural gases—
 - (i) upon failure to comply with any provision of such law relating to the title or licence or to the exercise of the rights accruing or to the development or exploitation of any mineral, mineral oil or natural gases; or
 - (ii) terms of any law vesting any such property or rights in the President;
 - (y) for the purpose of the administration or disposition of such property or interest or right by the President in implementation of a comprehensive land policy or a policy designed to ensure that the statute law, the Common Law and the doctrines of equity relating to or affecting the interest in or rights over land, or any other interests or rights enjoyed by Chiefs and persons claiming through or under them, shall apply with substantial uniformity throughout Zambia;

- (z) in terms of any law providing for the conversion of titles to land from freehold to leasehold and the imposition of any restriction on subdivision, assignment or sub-letting;
- (aa) in terms of any law relating to—
 - (i) the forfeiture or confiscation of the property of a person who has left Zambia for the purpose or apparent purpose, of defeating the ends of justice;
 - (ii) the imposition of a fine on, and the forfeiture or confiscation of the property of, a person who admits a contravention of any law relating to the imposition or collection of any duty or tax or to the prohibition or control of dealing or transactions in gold, currencies or securities.

(3) An Act of Parliament such as is referred to in clause (1) shall provide that in default of agreement, the amount of compensation shall be determined by a court of competent jurisdiction.

Protection for
privacy of
home and
other property

17. (1) Except with his own consent, a person shall not be subjected to the search of his person or his property or the entry by others on his premises.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this Article to the extent that it is shown that the law in question makes provision—

- (a) that is reasonably required in the interests of defence, public safety, public order, public morality, public health, town and country planning, the development and utilisation of mineral resources, or in order to secure the development or utilisation of any property for a purpose beneficial to the community;
- (b) that is reasonably required for the purpose of protecting the rights or freedoms of other persons;
- (c) that authorises an officer or agent of the Government, a local government authority or a body corporate established by law for a public purpose to enter on the premises of any person in order to inspect those premises or anything thereon for the purpose of any tax, rate or due or in order to carry out work connected with any property that is lawfully on those premises and that belongs to the Government, authority or body corporate, as the case may be; or
- (d) that authorises, for the purpose of enforcing the judgment or order of a court in any civil proceedings, the search of any person or property by order of a court or entry upon any premises by such order;

and except so far as that provision or, as the case may be, anything

done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

18. (1) If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

Provisions to
secure
protection of
law

- (2) Every person who is charged with a criminal offence—
- (a) shall be presumed to be innocent until he is proved or has pleaded guilty;
 - (b) shall be informed as soon as reasonably practicable, in a language that he understands and in detail, of the nature of the offence charged;
 - (c) shall be given adequate time and facilities for the preparation of his defence;
 - (d) shall unless legal aid is granted to him in accordance with the law enacted by Parliament for such purpose be permitted to defend himself before the court in person, or at his own expense, by a legal representative of his own choice;
 - (e) shall be afforded facilities to examine in person or by his legal representative the witnesses called by the prosecution before the court, and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court on the same conditions as those applying to witnesses called by the prosecution; and
 - (f) shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the charge;

and except with his own consent the trial shall not take place in his absence unless he so conducts himself as to render the continuance of the proceedings in his presence impracticable and the court has ordered him to be removed and the trial to proceed in his absence.

(3) When a person is tried for any criminal offence, the accused person or any person authorised by him in that behalf shall, if he so requires and subject to payment of such reasonable fee as may be prescribed by law, be given within a reasonable time after judgement a copy for the use of the accused person of any record of the proceedings made by or on behalf of the court.

(4) A person shall not be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and a penalty shall not be imposed for any criminal offence that is severer in degree or description than the maximum penalty that might have been imposed for that offence at the time it was committed.

(5) A person who shows that he has been tried by a competent court for a criminal offence and either convicted or acquitted shall not again be tried for that offence or for any other criminal offence of which he could have been convicted at the trial for that offence, except upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal.

(6) A person shall not be tried for a criminal offence if he shows that he has been pardoned for that offence.

(7) A person who is tried for a criminal offence shall not be compelled to give evidence at the trial.

(8) A person shall not be convicted of a criminal offence unless that offence is defined and the penalty is prescribed in a written law:

Provided that nothing in this clause shall prevent a court of record from punishing any person for contempt of itself notwithstanding that the act or omission constituting the contempt is not defined in a written law and the penalty therefore is not so prescribed.

(9) Any court or other adjudicating authority prescribed by law for determination of the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such a court or other adjudicating authority, the case shall be given a fair hearing within a reasonable time.

(10) Except with the agreement of all the parties thereto, all proceedings of every court and proceedings for the determination of the existence or extent of any civil right or obligation before any other adjudicating authority, including the announcement of the decision of the court or other authority, shall be held in public.

(11) Nothing in clause (10) shall prevent the court or other adjudicating authority from excluding from the proceedings persons other than the parties thereto and their legal representatives to such extent as the court or other authority—

- (a) may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice or in interlocutory proceedings; or
- (b) may be empowered by law to do in the interest of defence, public safety, public order, public morality, the welfare of persons under the age of eighteen years or the protection of the private lives of persons concerned in the proceedings.

(12) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of—

- (a) paragraph (a) of clause (2) to the extent that it is shown

that the law in question imposes upon any person charged with a criminal offence the burden of proving particular facts;

- (b) paragraph (d) of clause (2) to the extent that it is shown that the law in question prohibits legal representation before a subordinate court in proceedings for an offence under Zambian customary law, being proceedings against any person who, under that law, is subject to that law;
- (c) paragraph (e) of clause (2) to the extent that it is shown that the law in question imposes reasonable conditions that must be satisfied if witnesses called to testify on behalf of an accused person are to be paid their expenses out of public funds;
- (d) clause (2) to the extent that it is shown that the law provides that—
 - (i) where the trial of any person for any offence prescribed by or under the law has been adjourned and the accused, having pleaded to the charge, fails to appear at the time fixed by the court for the resumption of his trial after the adjournment, the proceedings may continue notwithstanding the absence of the accused if the court, being satisfied that, having regard to all the circumstances of the case, it is just and reasonable so to do, so orders; and
 - (ii) the court shall set aside any conviction or sentence pronounced in the absence of the accused in respect of that offence if the accused satisfies the court without undue delay that the cause of his absence was reasonable and that he had a valid defence to the charge;
- (e) clause (2) to the extent that it is shown that the law provides that the trial of a body corporate may take place in the absence of any representative of the body corporate upon a charge in respect of which a plea of not guilty has been entered by the court;
- (f) clause (5) to the extent that it is shown that the law in question authorises a court to try a member of a disciplined force for a criminal offence notwithstanding any trial and conviction or acquittal of that member under the disciplinary law of that force, so, however, that any court so trying such a member and convicting him shall in sentencing him to any punishment take into account any punishment awarded him under that disciplinary law.

(13) In the case of any person who is held in lawful detention, clause (1), paragraphs (d) and (e) of clause (3) shall not apply in relation to his trial for a criminal offence under the law regulating the discipline of persons held in such detention.

(14) In its application to a body corporate clause (2) shall have effect as if words “in person or” were omitted from paragraph (d) and (e).

(15) In this Article “criminal offence” means a criminal offence under the law in force in Zambia.

Protection of
freedom of
conscience

19. (1) Except with his own consent, a person shall not be hindered in the enjoyment of his freedom of conscience, and for the purposes of this Article the said freedom includes freedom of thought and religion, freedom to change his religion or belief, and freedom, either alone or in community with others, and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance

(2) Except with his own consent, or, if he is a minor, the consent of his guardian, a person attending any place of education shall not be required to receive religious instruction or to take part in or attend any religious ceremony or observance if that instruction, ceremony or observance relates to a religion other than his own.

(3) A religious community or denomination shall not be prevented from providing religious instruction for persons of that community or denomination in the course of any education provided by that community or denomination or from establishing and maintaining institutions to provide social services for such persons.

(4) A person shall not be compelled to take any oath which is contrary to his religion or belief or to take any oath in a manner which is contrary to his religion or belief.

(5) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this Article to the extent that it is shown that the law in question makes provision which is reasonably required—

- (a) in the interests of defence, public safety, public order, public morality or public health; or
- (b) for the purpose of protecting the rights and freedoms of other persons, including the right to observe and practice any religion without the unsolicited intervention of members of any other religion;

and except so far as that provision or, the thing done under the authority thereof as the case may be, is shown not to be reasonably justifiable in a democratic society.

Protection of
freedom of
expression

20. (1) Except with his own consent, a person shall not be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to impart and communicate ideas and information without

interference, whether the communication be to the public generally or to any person or class of persons, and freedom from interference with his correspondence.

(2) Subject to the provisions of this Constitution, a law shall not make any provision that derogates from freedom of the press.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this Article to the extent that it is shown that the law in question makes provision—

- (a) that is reasonably required in the interests of defence, public safety, public order, public morality or public health; or
- (b) that is reasonably required for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, regulating educational institutions in the interests of persons receiving instruction therein, or the registration of, or regulating the technical administration or the technical operation of, newspapers and other publications, telephony, telegraphy, posts, wireless broadcasting or television; or
- (c) that imposes restrictions upon public officers;

and except so far as that provision or, the thing done under the authority thereof as the case may be, is shown not to be reasonably justifiable in a democratic society.

21. (1) Except with his own consent a person shall not be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to any political party, trade union or other association for the protection of his interests.

Protection of
freedom of
assembly and
association

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this Article to the extent that it is shown that the law in question makes provision—

- (a) that is reasonably required in the interests of defence, public safety, public order, public morality or public health;
- (b) that is reasonably required for the purpose of protecting the rights or freedoms of other persons;
- (c) that imposes restrictions upon public officers; or
- (d) for the registration of political parties or trade unions in a register established by or under a law and for

imposing reasonable conditions relating to the procedure for entry on such a register including conditions as to the minimum number of persons necessary to constitute a trade union qualified for registration;

and except so far as that provision or, the thing done under the authority thereof as the case may be, is shown not to be reasonably justifiable in a democratic society.

Protection of
freedom of
movement

22. (1) Subject to the other provisions of this Article and except in accordance with any written law, a citizen shall not be deprived of his freedom of movement, and for the purposes of this Article freedom of movement means—

- (a) the right to move freely throughout Zambia;
- (b) the right to reside in any part of Zambia; and
- (c) the right to leave Zambia and to return to Zambia.

(2) Any restrictions on a person's freedom of movement that relates to his lawful detention shall not be held to be inconsistent with or in contravention of this Article.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this Article to the extent that it is shown that the law in question makes provision—

- (a) for the imposition of restrictions that are reasonably required in the interests of defence, public safety, public order, public morality or public health or the imposition of restrictions on the acquisition or use by any person of land or other property in Zambia, and except so far as that provision or, the thing done under the authority thereof as the case may be, is shown not to be reasonably justifiable in a democratic society;
- (b) for the imposition of restrictions on the freedom of movement of any person who is not a citizen of Zambia;
- (b) for the imposition of restrictions on the freedom of movement of any person who is not a citizen of Zambia;
- (d) for the removal of a person from Zambia to be tried outside Zambia for a criminal offence or to undergo imprisonment in some other country in execution of the sentence of a court in respect of a criminal offence under the law in force in Zambia of which he has been convicted.

Protection
from
discrimina-
tion on the
ground of
race, etc.

23. (1) Subject to clauses (4), (5) and (7), a law shall not make any provision that is discriminatory either of itself or in its effect.

(2) Subject to clauses (6), (7) and (8), a person shall not be treated in a discriminatory manner by any person acting by virtue

of any written law or in the performance of the functions of any public office or any public authority.

(3) In this Article the expression “discriminatory” means affording different treatment to different persons attributable, wholly or mainly to their respective descriptions by race, tribe, sex, place of origin, marital status, political opinions, colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.

(4) Clause (1) shall not apply to any law so far as that law makes provision—

- (a) for the appropriation of the general revenues of the Republic;
- (b) with respect to persons who are not citizens of Zambia;
- (c) with respect to adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law;
- (d) for the application in the case of members of a particular race or tribe, of customary law with respect to any matter to the exclusion of any law with respect to that matter which is applicable in the case of other persons; or
- (e) whereby persons of any such description as is mentioned in clause (3) may be subjected to any disability or restriction or may be accorded any privilege or advantage which, having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description is reasonably justifiable in a democratic society.

(5) Nothing contained in any law shall be held to be inconsistent with or in contravention of clause (1) to the extent that it is shown that it makes reasonable provision with respect to qualifications for service as a public officer or as a member of a disciplined force or for the service of a local government authority or a body corporate established directly by any law.

(6) Clause (2) shall not apply to anything which is expressly or by necessary implication authorised to be done by any such provision or law as is referred to in clause (4) or (5).

(7) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this Article to the extent that it is shown that the law in question makes provision whereby persons of any such description as is mentioned in clause (3) may be subjected to any restriction on the rights and freedoms guaranteed by Articles 17, 19, 20, 21 and 22, being such a restriction as is authorised by clause (2) of Article 17, clause (5)

of Article 19, clause (2) of Article 20, clause (2) of Article 21 or clause (3) of Article 22, as the case may be.

(8) Nothing in clause (2) shall affect any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings in any court that is vested in any person by or under this Constitution or any other law.

Protection of
young persons
from
exploitation

24. (1) A young person shall not be employed and shall in no case be caused or permitted to engage in any occupation or employment which would prejudice his health or education or interfere with his physical, mental or moral development:

Provided that an Act of Parliament may provide for the employment of a young person for a wage under certain conditions.

(2) All young persons shall be protected against physical or mental ill-treatment, all forms of neglect, cruelty or exploitation.

(3) A young person shall not be the subject of traffic in any form.

(4) In this Article “young person” means any person under the age of fifteen years.

Derogation
from
fundamental
rights and
detention

25. Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of Articles 13, 16, 17, 19, 20, 21, 22, 23 or 24 to the extent that it is shown that the law in question authorises the taking, during any period when the Republic is at war or when a declaration under Article 30 is in force, of measures for the purpose of dealing with any situation existing or arising during that period; and nothing done by any person under the authority of any such law shall be held to be in contravention of any of the said provisions if it is shown that the measures taken were, having due regard to the circumstances prevailing at the time, reasonably required for the purpose of dealing with the situation in question.

Provisions
relating to
restriction and
detention

26. (1) Where a person’s freedom of movement is restricted, or he is detained, under the authority of any such law as is referred to in Article 22 or 25, as the case may be, the following provisions shall apply—

- (a) he shall, as soon as reasonably practicable and in any case not more than fourteen days after the commencement of his detention or restriction, be furnished with a statement in writing in a language that he understands specifying in detail the grounds upon which he is restricted or detained;
- (b) not more than fourteen days after the commencement of his restriction or detention a notification shall be published in the *Gazette* stating that he has been restricted or detained and giving particulars of the place

of detention and the provision of law under which his restriction or detention is authorised;

- (c) if he so requests at any time during the period of such restriction or detention not earlier than three months after the commencement thereof or after he last made such a request during that period, as the case may be, his case shall be reviewed by an independent and impartial tribunal established by law and presided over by a person, appointed by the Chief Justice who is or is qualified to be a judge of the High Court;
- (d) he shall be afforded reasonable facilities to consult a legal representative of his own choice who shall be permitted to make representations to the authority by which the restriction or detention was ordered or to any tribunal established for the review of his case; and
- (e) at the hearing of his case by such tribunal he shall be permitted to appear in person or by a legal representative of his own choice.

(2) On any review by a tribunal under this Article the tribunal shall advise the authority by which it was ordered on the necessity or expediency of continuing his restriction or detention and that authority shall be obliged to act in accordance with any such advice.

(3) The President may at any time refer to the tribunal the case of any person who has been or is being restricted or detained pursuant to any restriction or detention order.

(4) Nothing contained in paragraph (d) or (e) of clause (1) shall be construed as entitling a person to legal representation at the public expense.

(5) Parliament may make or provide for the making of rules to regulate the proceedings of any such tribunal including, but without derogating from the generality of the foregoing, rules as to evidence and the admissibility thereof, the receipt of evidence including written reports in the absence of the restricted or detained person and his legal representative, and the exclusion of the public from the whole or any portion of the proceedings.

(6) Clauses (11) and (12) of Article 18 shall be read and construed subject to the provisions of this Article.

27. (1) Whenever—

- (a) a request is made in accordance with clause (2) for a report on a bill or statutory instrument; or
- (b) the Chief Justice considers it necessary for the purpose of determining claims for legal aid in respect of proceedings under Article 30 or 31;

Reference of
certain
matters to
special tribunal

the Chief Justice shall appoint a tribunal which shall consist of two persons selected by him from amongst persons who hold or have held the office of a judge of the Supreme Court or the High Court.

(2) A request for a report on a bill or a statutory instrument may be made by not less than thirty members of the National Assembly by notice in writing delivered—

- (a) in the case of a bill, to the Speaker within three days after the final reading of the bill in the Assembly;
- (b) in the case of a statutory instrument, to the authority having power to make the instrument within fourteen days of the publication of the instrument in the *Gazette*.

(3) Where a tribunal is appointed under this Article for the purpose of reporting on a bill or a statutory instrument, the tribunal shall, within the prescribed period, submit a report to the President and to the Speaker of the National Assembly stating—

- (a) in the case of a bill, whether or not in the opinion of the tribunal any, and if so which, provisions of the bill are inconsistent with this Constitution;
- (b) in the case of a statutory instrument, whether or not in the opinion of the tribunal any, and if so which, provisions of the instrument are inconsistent with this Constitution;

and, if the tribunal reports that any provision would be or is inconsistent with this Constitution, the grounds upon which the tribunal has reached that conclusion:

Provided that if the tribunal considers that the request for a report on a bill or statutory instrument is merely frivolous or vexatious, it may so report to the President without entering further upon the question whether the bill or statutory instrument would be or is inconsistent with this Constitution.

(4) In determining any claim for legal aid as referred to in clause (2), the tribunal may grant to any person who satisfies it that—

- (a) he intends to bring or is an applicant in proceedings under clause (1) or (4) of Article 28;
- (b) he has reasonable grounds for bringing the application; and
- (c) he cannot afford to pay for the cost of the application;

a certificate that the application is a proper case to be determined at the public expense:

Provided that paragraph (c) shall not apply in any case where the application relates to the validity or a provision in respect of which the tribunal has reported that it would be or is inconsistent with this Constitution or where it appears to the tribunal that issues are or will be raised in the application which are of general public importance.

(5) Where a certificate is granted to any person by the tribunal in pursuance of clause (4), there shall be paid to that person out of the general revenues of the Republic such amount as the tribunal, when hearing the application, may assess as the costs incurred by that person in connection with the application; and the sums required for making such payment shall be a charge on the general revenues of the Republic.

(6) For the purposes of clause(5)—

- (a) the costs incurred in an application shall include the cost of obtaining the advice of a legal representative and, if necessary, the cost of representation by a legal representative in any court in steps preliminary or incidental to the application;
- (b) in assessing the costs reasonably incurred by a person in an application, regard shall be had to costs awarded against that person or recovered by him in those proceedings.

(7) In this Article, “prescribed period” means—

- (a) in relation to a bill, the period commencing from the appointment of the tribunal to report upon the bill and ending thirty days thereafter or if the Speaker, on the application of the tribunal considers that owing to the length or complexity of the bill thirty days is insufficient for consideration of the bill, ending on such later day as the Speaker may determine;
- (b) in relation to a statutory instrument, the period of forty days commencing with the day on which the instrument is published in the *Gazette*.

(8) Nothing in clause (1), (2) or (3) shall apply to a bill for the appropriation of the general revenues of the Republic or a bill containing only proposals for expressly altering this Constitution or the Constitution of Zambia Act.

28. (1) Subject to clause (5), if any person alleges that any of the provisions of Articles 11 to 26 inclusive has been, is being or is likely to be contravened in relation to him, then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply for redress to the High Court which shall—

- (a) hear and determine any such application;
- (b) determine any question arising in the case of any person which is referred to it in pursuance of clause(2);

and which may, make such order, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of, any of the provisions of Articles 11 to 26 inclusive.

Enforcement
of protective
provisions

(2) (a) If in any proceedings in any subordinate court any question arises as to the contravention of any of the provisions of Articles 11 to 26 inclusive, the person presiding in that court may, and shall if any party to the proceedings so requests, refer the question to the High Court unless, in his opinion the raising of the question is merely frivolous or vexatious.

(b) Any person aggrieved by any determination of the High Court under this Article may appeal therefrom to the Supreme Court:

Provided that an appeal shall not lie from a determination of the High Court dismissing an application on the ground that it is frivolous and vexatious.

(3) An application shall not be brought under clause (1) on the grounds that the provisions of Articles 11 to 26 (inclusive) are likely to be contravened by reason of proposals contained in any bill which, at the date of the application, has not become a law.

(4) Parliament may confer upon the Supreme Court or High Court such jurisdiction or powers in addition to those conferred by this Article as may appear to be necessary or desirable for the purpose of enabling that Court more effectively to exercise the jurisdiction conferred upon it by this Article or of enabling any application for redress to be more speedily determined.

Declaration of war

29. (1) The President may, in consultation with Cabinet, at any time, by Proclamation published in the *Gazette* declare war.

(2) A declaration made under clause (1) shall continue in force until the cessation of hostilities.

(3) An Act of Parliament shall provide for the conditions and circumstances under which a declaration may be made under clause (1).

Declaration of public emergency

30. (1) The President may, in consultation with Cabinet, at any time, by Proclamation published in the *Gazette* declare that a State of public emergency exists.

(2) A declaration made under clause (1) of this Article shall cease to have effect on the expiration of a period of seven days commencing with the day on which the declaration is made unless, before the expiration of such period, it has been approved by a resolution of the National Assembly supported by a majority of all the members thereof not counting the Speaker.

(2) A declaration made under clause (1) of this Article shall cease to have effect on the expiration of a period of seven days commencing with the day on which the declaration is made unless, before the expiration of such period, it has been approved by a resolution of the National Assembly supported by a majority of all the members thereof not counting the Speaker.

(3) In reckoning any period of seven days for the purposes of clause (2) account shall not be taken of any time during which Parliament is dissolved.

(4) A declaration made under clause (1) may, at any time before it has been approved by a resolution of the National Assembly, be revoked by the President by Proclamation published in the *Gazette*.

(5) Subject to clause (6) a resolution of the National Assembly under clause (2) will continue in force until the expiration of a period of three months commencing with the date of its being approved or until revoked at such earlier date of its being so approved or until such earlier date as may be specified in the resolution:

Provided that the National Assembly may, by majority of all the members thereof, not counting the Speaker extend the approval of the declaration for periods of not more than three months at a time.

(6) The National Assembly may, by resolution, at any time revoke a resolution made by it under this Article.

(7) Whenever an election to the office of President results in a change of the holder of that office, any declaration made under this Article and in force immediately before the day on which the President assumes office shall cease to have effect on the expiration of seven days commencing with that day.

(8) The expiration or revocation of any declaration or resolution made under this Article shall not affect the validity or anything previously done in reliance on such declaration.

31. (1) The President may at any time by Proclamation published in the *Gazette* declare that a situation exists which, if it is allowed to continue may lead to a state of public emergency

Declaration relating to threatened emergency

(2) A declaration made under clause (1) of this Article shall cease to have effect on the expiration of a period of seven days commencing with the day on which the declaration is made unless, before the expiration of such period, it has been approved by a resolution of the National Assembly supported by a majority of all the members thereof not counting the Speaker.

(3) In reckoning any period of seven days for the purposes of clause (2) account shall not be taken of any time during which Parliament is dissolved.

(4) A declaration made under clause (1) may, at any time before it has been approved by a resolution of the National Assembly, be revoked by the President by Proclamation published in the *Gazette*.

(5) Subject to clause (6) a resolution of the National Assembly under clause (2) will continue in force until the expiration of a period of three months commencing with the date of its being approved or until revoked on an earlier date of its being so approved or until such earlier date as may be specified in the resolution.

(6) The National Assembly may by resolution, at any time revoke a resolution made by it under this Article.

(7) Whenever an election to the office of President results in a change of the holder of that office, any declaration made under this Article and in force immediately before the day on which the President assumes office, shall cease to have effect on the expiration of seven days commencing with that day.

(8) The expiration or revocation of any declaration or resolution made under this Article shall not affect the validity or anything previously done in reliance on such declaration.

Interpretation

32. (1) In this Part, unless the context otherwise requires—

“contravention”, in relation to any requirement, includes a failure to comply with that requirement and cognate expressions shall be construed accordingly;

“court” means any court of law having jurisdiction in Zambia, other than a court established by a disciplinary law; and in Articles 12 and 14 includes a court established by a disciplinary law;

“disciplinary law” means a law regulating the disciplined force;

“disciplined force” means—

- (a) a naval, military or air force;
- (b) the Zambia Police Force; or
- (c) any other force established by or under an Act of Parliament;

“legal representative” means a person entitled to practice in Zambia as an advocate; and

“member”, in relation to a disciplined force, includes any person who, under the law regulating the discipline of that force is subject to that discipline

(2) In relation to any person who is a member of a disciplined force raised under the law of Zambia, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Part other than Articles 12, 14 and 15.

(3) In relation to any person who is a member of a disciplined force raised otherwise than as aforesaid and lawfully present in Zambia, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Part.

PART IV

As amended by Act No. 18 of 1996)

THE EXECUTIVE

33. (1) There shall be a President of the Republic of Zambia who shall be the Head of State and of the Government and the Commander-in-Chief of the Defence Force.

The office of
President

(2) The executive power of the Republic of Zambia shall vest in the President and, subject to the other provisions of this Constitution, shall be exercised by him either directly or through officers subordinate to him.

34. (1) The election of the President shall be direct by universal adult suffrage and by secret ballot and shall be conducted in accordance with this Article and as may be prescribed by or under an Act of Parliament.

Election of
President

(2) An election to the office of President shall be held whenever the National Assembly is dissolved and otherwise as provided by Article 38.

(3) A person shall be qualified to be a candidate for election as President if—

- (a) he is a Zambian citizen;
- (b) both his parents are Zambians by birth or descent;
- (c) he has attained the age of thirty-five years;
- (d) he is a member of, or is sponsored by, a political party;
- (e) he is qualified to be elected as a member of the National Assembly; and
- (f) has been domiciled in Zambia for a period of at least twenty years.

(4) A candidate for election as President (hereinafter referred to as a Presidential candidate) shall deliver his nomination papers to the Returning Officer in such manner, on such day, at such time and at such place as may be prescribed by or under an Act of Parliament.

(5) A Presidential candidate shall not be entitled to take part in an election unless—

- (a) he has paid such election fee as may be prescribed by or under an Act of Parliament on or before the date fixed by the Electoral Commission in that behalf;
- (b) he makes a statutory declaration, of his assets and liabilities, which shall be open to public inspection at

such time and at such place as may be prescribed by or under an Act of Parliament; and

(c) his nomination is supported by not less than 200 registered voters.

(6) At an election to the office of President—

(a) all persons registered in Zambia as voters for the purposes of elections to the National Assembly shall be entitled to vote in the election;

(b) the poll shall be taken by a secret ballot on such day, at such time, in such places and in such a manner as may be prescribed by or under an Act of Parliament; and

(c) after the expiration of the time fixed for polling, the votes cast shall be counted and the Returning Officer shall declare the result.

(7) Where there is only one qualified Presidential candidate nominated for election, that candidate shall be declared as elected without an election taking place.

(8) The Returning Officer shall declare the candidate who receives the highest number of the total votes cast to have been duly elected as President.

(9) A person elected as President under this Article shall be sworn in and assume office immediately but not later than twenty-four hours from the time of declaring the election.

(10) The person who has held office of President shall immediately hand over the office of President to the person elected as President and shall complete the procedural and administrative handing over process within fourteen days from the date the person elected as President is sworn in.

(11) The person who has held office as President shall not, within the period referred to in clause (10), perform any functions of the office of President under this Constitution or any other law.

35. (1) Subject to clauses (2) and (4) every President shall hold office for a period of five years.

(2) Notwithstanding anything to the contrary contained in this Constitution or any other law a person who has twice been elected as President shall not be eligible for re-election to that office.

(3) The President may, at any time by writing under his hand addressed to the Speaker of the National Assembly, resign his office.

(4) A person assuming the office of the President in accordance with this Constitution shall, unless—

Tenure of
office of
President

- (a) he resigns his office;
- (b) he ceases to hold office by virtue of Article 36 or 37; or
- (c) the National Assembly is dissolved;

continue in office until the person elected at the next election to the office of President assumes office.

36. (1) If it is resolved by a majority of all the members of the Cabinet that the question of the physical or mental capacity of the President to discharge the functions of his office ought to be investigated, and they so inform the Chief Justice, then the Chief Justice shall appoint a board consisting of not less than three persons selected by him from among persons who are qualified as medical practitioners under the law of Zambia or under the law of any other country in the Commonwealth, and the board shall inquire into the matter and report to the Chief Justice on whether or not the President is, by reason of any infirmity of body or mind, incapable of discharging the functions of his office.

Removal of
President on
grounds of
incapacity

(2) If the board reports that the President is incapable of discharging the functions of his office, the Chief Justice shall certify in writing accordingly and shall table such certificate, with the report of the board before the National Assembly who shall on a motion, passed by a two thirds majority-

- (a) ratify the decision of the board, and thereupon the President shall cease to hold office; or
- (b) reject the decision of the board and cause a further inquiry into whether or not the President is incapable of discharging the functions of his office and shall thereafter decide on such question by a two-thirds majority vote, which decision shall be final.

(3) Where the Cabinet resolves that the question of the physical and mental capacity of the President to discharge the functions of his office should be investigated, the President shall, until another person assumes the office of President or the board appointed under clause (1) reports that the President is not incapable of discharging the functions of his office, whichever is the earlier, cease to perform the functions of his office and those functions shall be performed by—

- (a) the Vice-President; or
- (b) in the absence of the Vice-President or if the Vice-President is unable, by reason of physical or mental infirmity, to discharge the functions of his office, by such member of the Cabinet as the Cabinet shall elect:

Provided that any person performing the functions of the office of President under this clause shall not dissolve the National Assembly nor, except on the advice of the Cabinet, revoke any appointment made by the President.

Impeachment
of President
for violation
of
constitution

(4) A motion for the purposes of clause (1) may be proposed at any meeting of the Cabinet.

37. (1) If notice in writing is given to the Speaker of the National Assembly signed by not less than one-third of all the members of the National Assembly of a motion alleging that the President has committed any violation of the Constitution or any gross misconduct and specifying the particulars of the allegations and proposing that a tribunal be established under this Article to investigate those allegations, the Speaker shall—

- (a) if Parliament is then sitting or has been summoned to meet within five days, cause the motion to be considered by the National Assembly within seven days of the notice;
- (b) if Parliament is not then sitting (and notwithstanding that it may be prorogued) summon the National Assembly to meet within twenty-one days of the notice and cause the motion to be considered at that meeting.

(2) Where a motion under this Article is proposed for consideration by the National Assembly, the National Assembly shall debate the motion and if the motion is supported by the votes of not less than two thirds of all the members of the National Assembly, the motion shall be passed.

(3) If the motion is declared to be passed under clause (2)—

- (a) the Chief Justice shall appoint a tribunal which shall consist of a Chairman and not less than two other members selected by the Chief Justice from among persons who hold or have held high judicial office;
- (b) the tribunal shall investigate the matter and shall report to the the National Assembly whether it finds the particulars of the allegations specified in the motion to have been substantiated; and
- (c) the President shall have the right to appear and be represented before the tribunal during its investigation of the allegations against him.

(4) If the tribunal reports to the National Assembly that the tribunal finds that the particulars of any allegation against the President specified in the motion have not been substantiated, further proceedings shall not be taken under this Article in respect of that allegation.

(5) If the tribunal reports to the National Assembly that the tribunal finds that the particulars of any allegation specified in a motion have been substantiated, the National Assembly may, on a motion supported by the votes of not less than three quarters of all members of the National Assembly, resolve that the President has been guilty of such violation of the Constitution or, as the case

may be, such gross misconduct as is incompatible with his continuance in office as President and, if the National Assembly so resolves, the President shall cease to hold office on the third day following the passage of the resolution.

(6) No proceedings shall be taken or continued under this Article at any time when Parliament is dissolved.

38. (1) If the office of the President becomes vacant by reason of his death or resignation or by reason of his ceasing to hold office by virtue of Article 36, 37 or 88, an election to the office of the President shall be held in accordance with Article 34 within ninety days from the date of the office becoming vacant.

Vacancy in office of the President

(2) Whenever the office of the President becomes vacant, the Vice-President or, in the absence of the Vice-President or if the Vice President is unable, by reason of physical or mental infirmity, to discharge the functions of his office, a member of the Cabinet elected by the Cabinet shall perform the functions of the office of the President until a person elected as President in accordance with Article 34 assumes office.

(3) The Vice-President or, the member of the Cabinet as the case may be, performing the functions of the office of President under clause (2) shall not dissolve the National Assembly nor, except on the advice of the Cabinet, revoke any appointment made by the President.

39. (1) Whenever the President is absent from Zambia or considers it desirable so to do by reason of illness or for any other cause, he may by direction in writing, authorise the Vice-President, or where the Vice-President is absent from Zambia or is incapable of discharging the functions of the office of President, any other person, to discharge such functions of the office of President as he may specify, and the Vice-President or such other person may discharge those functions until his authority is revoked by the President.

Discharge of functions of President during absence, illness etc.

(2) If the President is incapable by reason of physical or mental infirmity of discharging the functions of his office and the infirmity is of such a nature that the President is unable to authorise another person under this Article to perform those functions—

- (a) the Vice-President; or
- (b) during any period when the Vice-President is absent from Zambia or is himself, by reason of physical or mental infirmity, unable to perform the functions of his office, such member of the Cabinet as the Cabinet shall elect;

shall perform the functions of the office of the President:

Provided that any person performing the functions of the office of President under this clause shall not dissolve the National

Assembly nor, except on the advice of the Cabinet, revoke any appointment made by the President.

(30 Any person performing the functions of the office of President by virtue of clause (2) shall cease to perform those functions if he is notified by the Speaker that the President is about to resume those functions or if another person is elected as, and assumes the office of, President.

(4) For the purpose of clause (2), a certificate of the Chief Justice that—

- (a) the President is incapable by reason of physical or mental infirmity of discharging the functions of his office and that the infirmity is of such a nature that the President is unable to authorise another person under this Article to perform those functions; or
- (b) the Vice-President is by reason of physical or mental infirmity unable to discharge the functions of his office;

shall be of no effect until such certificate is ratified by the National Assembly:

Provided that any such certificate as is referred to in paragraph (a) shall cease to have effect if the Speaker notifies any person under clause (3) that the President is about to resume the functions of the office of the President or if another person is elected as, and assumes the office of, President.

Oaths of President

40. A person assuming the office of President shall, before entering the office, take and subscribe to such oaths as may be prescribed by or under an Act of Parliament.

Returning Officer; questions relating to elections

41. (1) The Chief Justice shall be the Returning Officer for the purpose of elections to the office of President.

(2) Any question which may arise as to whether—

- (a) any provision of this Constitution or any law relating to election of a President has been complied with; or
- (b) any person has been validly elected as President under Article 34; shall be referred to and determined by the full bench of the Supreme Court.

Salary and allowances of President

42. (1) The President shall receive such salary and allowances as may be prescribed by an Act of Parliament; and they shall be a charge on the general revenues of the Republic.

(2) The salary and allowances of the President shall not be altered to his disadvantage during his term of office.

(3) A person who has held the office of President shall receive such pension and such gratuity as may be prescribed by an Act of Parliament, and that pension and gratuity shall be a charge on the general revenues of the Republic.

43. (1) Civil proceedings shall not be instituted or continued against the person holding the office of President or performing the functions of that office in respect of which relief is claimed against him in respect of anything done or omitted to be done in his private capacity.

Protection of President in respect of legal proceedings

(2) A person holding the office of President or performing the functions of that office shall not be charged with any criminal offence or be amenable to the criminal jurisdiction of any court in respect of any act done or omitted to be done during his tenure of that office or, as the case may be, during his performance of the functions of that office.

(3) A person who has held, but no longer holds, the office of President shall not be charged with a criminal offence or be amenable to the criminal jurisdiction of any court, in respect of any act done or omitted to be done by him in his personal capacity while he held office of President, unless the National Assembly has, by resolution, determined that such proceedings would not be contrary to the interests of the State.

(4) Where provision is made by law limiting the time within which proceedings of any description may be brought against any person, the term of any person in the office of President shall not be taken into account in calculating any period of time prescribed by that law which determines whether any such proceedings as are mentioned in clause (1) and (3) may be brought against the person.

44. (1) As the Head of State, the President shall perform with dignity and leadership all acts necessary or expedient for, or reasonably incidental to, the discharge of the executive functions of Government subject to the overriding terms of this Constitution and the Laws of Zambia which he is constitutionally obliged to protect, administer and execute.

Functions of President

(2) Without prejudice to the generality of clause (1), the President may preside over meetings of the Cabinet and shall have the power, subject to this Constitution to—

- (a) dissolve the National Assembly as provided in Article 88;
- (b) accredit, receive and recognise ambassadors, and to appoint ambassadors, plenipotentiaries, diplomatic representatives and consuls;
- (c) pardon or reprieve offenders, either unconditionally or subject to such conditions as he may consider fit;

- (d) negotiate and sign international agreements and delegate the power to do so;
- (e) establish and dissolve such Government Ministries and departments subject to the approval of the National Assembly;
- (f) confer such honours as he considers appropriate on citizens, residents and friends of Zambia in consultation with interested and relevant persons and institutions; and
- (g) appoint such persons as are required by this Constitution or any other law to be appointed by him.

(3) Subject to the provisions of this Constitution dealing with assent to laws passed by Parliament and the promulgation and publication of such laws in the *Gazette*, the President shall have power to—

- (a) sign and promulgate any proclamation which by law he is entitled to proclaim as President; and
- (b) initiate, in so far as he considers it necessary and expedient, laws for submission and consideration by the National Assembly.

(4) When any appointment to an office to be made by the President is expressed by any provision of this Constitution to be subject to ratification by the National Assembly—

- (a) the National Assembly shall not unreasonably refuse or delay such ratification but the question whether the National Assembly has so acted unreasonably shall not be enquired into by any court;
- (b) if such ratification is refused the President may appoint another person to the office in question and shall submit the appointment for ratification; or
- (c) if such National Assembly refuses to ratify the second appointment it shall be invited to ratify an appointment for the third time but the third appointment shall take effect irrespective of whether such ratification is refused, or is delayed for a period of more than fourteen days.

(5) Subject to the other provisions of this Constitution and any other law, any person appointed by the President under this Constitution or that other law may be removed by the President.

(6) In the exercise of any functions conferred upon him under this Article, the President shall, unless he otherwise obliges, act in his own deliberate judgement and shall not be obliged to follow the advice tendered by any other person or authority.

(7) Nothing in this Article shall prevent Parliament from conferring functions on persons or authorities other than the President.

45. (1) There shall be an office of Vice-President of the Republic. Vice-President

(2) The Vice-President shall be appointed by the President from amongst the members of the National Assembly.

(3) Subject to the provisions of this Constitution the Vice-President shall vacate that office upon the assumption by any person of the office of President.

(4) In addition to the powers and functions of the Vice-President specified in this Constitution or under any other law, the Vice-President shall perform such functions as shall be assigned to him by the President.

(5) The salary and allowances of the Vice-President shall be such as may be prescribed by an Act of Parliament, and shall be a charge on the general revenues of the Republic.

46. (1) There shall be such Ministers as may be appointed by the President. Minister

(2) Appointment to the office of Minister shall be made from amongst members of the National Assembly.

(3) A Minister shall be responsible, under the directions of the President, for such business of the Government including the administration of any Ministry or Department of Government as the President may assign to such Minister.

(4) The salaries and allowances of a Minister shall be such as may be prescribed by an Act of Parliament, and shall be a charge on the general revenues of the Republic.

47. (1) The President may appoint such Deputy Ministers as he may consider necessary to assist Ministers in the performance of their functions and to exercise or perform on behalf of Ministers such of the Ministers' functions as the President may authorise in that behalf. Provincial Deputy Minister and Deputy Minister

(2) A Provincial Deputy Minister shall be responsible for the administration of any province as the President may assign to such Provincial Deputy Minister.

(3) Appointment to the office of Provincial Deputy Minister and Deputy Minister shall be made from amongst members of the National Assembly.

(4) The salaries and allowances of Provincial Deputy Minister and Deputy Ministers shall be such as may be prescribed by an Act of Parliament, and shall be a charge on the general revenues of the Republic.

Oaths of Vice-President, Minister and Deputy Minister

48. A Vice-President, Minister or Deputy Minister shall not enter upon the duties of his office unless he has taken and subscribed to the oath of allegiance and such other oath for the due execution of his office as may be prescribed by or under an Act of Parliament.

Cabinet

49. (1) There shall be a Cabinet which shall consist of the President, the Vice-President and the Ministers.

(2) There shall preside at meetings of the Cabinet—

(a) the President; or

(b) in the absence of the President, the Vice-President.

(3) The Cabinet may act notwithstanding any vacancy in its membership.

Functions of Cabinet

50. The Cabinet shall formulate the policy of the government and shall be responsible for advising the President with respect to the policy of the Government and with respect to such other matters as may be referred to it by the President.

Accountability of Cabinet and Deputy Ministers

51. The Cabinet and Deputy Ministers shall be accountable collectively to the National Assembly.

Code of conduct

52. All Ministers and Deputy Ministers shall conduct themselves, during their tenure of office, in accordance with a code of conduct promulgated by Parliament.

Secretary to the Cabinet

53. (1) There shall be a Secretary to the Cabinet whose office shall be a public office and who shall, subject to ratification by the National Assembly, be appointed by the President.

(2) The Secretary to the Cabinet shall—

(a) be the Head of the Public Service and shall be responsible to the President for securing the general efficiency of the Public Service

(b) have charge of Cabinet Office and be responsible, in accordance with the instructions given to him by the President, for arranging the business for, and keeping the minutes of the Cabinet and for conveying decisions made in Cabinet to the appropriate authorities; and

(c) have such other functions as may be prescribed by or under an Act of Parliament or as the President may direct.

Attorney-General

54. (1) There shall be an Attorney-General of the Republic who shall, subject to ratification by the National Assembly, be appointed by the President and shall be—

(a) an ex-officio member of the Cabinet; and

(b) the principal legal adviser to the Government.

(2) Without prejudice to the general functions under clause (1), the functions of the Attorney-General shall be to—

(a) cause the drafting of, and sign, all Government Bills to be presented to Parliament;

(b) draw and peruse agreements, contracts, treaties, conventions and documents, by whatever name called, to which the Government is a party or in respect of which the Government has an interest;

(c) represent the Government in courts or any other legal proceedings to which Government is a party; and

(d) perform such other functions as may be assigned to him by the President or by law.

(3) Subject to the other provisions of this Constitution, an agreement, contract, treaty, convention or document by whatever name called, to which Government is a party or in respect of which the Government has an interest, shall not be concluded without the legal advice of the Attorney-General, except in such cases and subject to such conditions as Parliament may by law prescribe.

(4) A person shall not be qualified to be appointed to the office of Attorney-General unless he is qualified for appointment as Judge of the High Court.

(5) The office of Attorney-General shall become vacant if the holder of the office is removed from office by the President.

(6) The person holding the office of Attorney-General may resign upon giving three months' notice to the President.

(7) In the exercise of the power to give directions to the Director of Public Prosecutions conferred by clause (7) of Article 56, the Attorney-General shall not be subject to the direction or control of any other person or authority.

55. (1) There shall be a Solicitor-General of the Republic whose office shall be a public office and who shall, subject, to ratification by the National Assembly, be appointed by the President.

Solicitor-
General

(2) A person shall not be qualified to be appointed to the office of Solicitor-General unless he is qualified for appointment as a Judge of the High Court.

(3) The office of Solicitor-General shall become vacant if the holder of the office is removed from office by the President.

(4) The person holding the office of Solicitor-General may resign upon giving three months notice to the President.

(5) Any power or duty imposed on the Attorney-General by

this Constitution or any other written law may be exercised or performed by the Solicitor-General—

- (a) whenever the Attorney-General is unable to act owing to illness or absence; and
- (b) in any case where the Attorney-General has authorised the Solicitor-General to do so.

Director of
Public
Prosecutions

56. (1) There shall be a Director of Public Prosecutions who shall, subject to ratification by the National Assembly, be appointed by the President.

(2) A person shall not be qualified to be appointed to the office of Director of Public Prosecutions unless he is qualified for appointment as Judge of the High Court with experience biased towards criminal law.

(3) The Director of Public Prosecutions shall have power in any case which he considers it desirable so to do—

- (a) to institute and undertake criminal proceedings against any person before any court, other than a court-martial, in respect of any offence alleged to have been committed by that person;
- (b) to take over and continue any such criminal proceedings as may have been instituted or undertaken by any other person or authority; and
- (c) to discontinue, at any stage before judgement is delivered, any such criminal proceedings instituted or undertaken by himself or any other person or authority.

(4) The powers of the Director of Public Prosecutions under clause (3) may be exercised by him in person or by such public officer or class of public officers as may be specified by him, acting, in accordance with his general or special instructions:

Provided that nothing in this clause shall preclude the representation of the Director of Public Prosecutions before any court by a legal practitioner.

(5) The powers conferred on the Director of Public Prosecutions by paragraphs (b) and (c) of clause (3) shall be vested in him to the exclusion of any other person or authority:

(6) For the purposes of this Article, any appeal from any judgement in any criminal proceedings before any court, or any case stated or question of law reserved for the purposes of any such proceedings, to any other court in Zambia shall be deemed to be part of those proceedings:

Provided that the power conferred on the Director of Public

Prosecutions by paragraph (c) of clause (3) shall not be exercised in relation to any appeal by a person convicted in any criminal proceedings or to any case stated or question of law reserved at the instance of such a person.

(7) In the exercise of the powers conferred on him by this Article, the Director of Public Prosecutions shall not be subject to the direction or control of any other person or authority:

Provided that when the exercise of any such power in any case may, in the judgement of the Director of Public Prosecutions involve general consideration of public policy, the Director of Public Prosecutions shall bring the case to the notice of the Attorney-General and shall in the exercise of his powers in relation to that case, act in accordance with any directions of the Attorney-General.

57. Whenever the Director of Public Prosecutions is absent from Zambia or the President considers it desirable so to do by reason of the illness of the Director of Public Prosecutions or for any other cause, he may on the advice of the Judicial Service Commission appoint any person to discharge the functions of the Director of Public Prosecutions until such appointment is revoked. Discharge of functions of Director of Public Prosecutions during absence, illness, etc.

Discharge of functions of Director of Public Prosecutions during absence, illness, etc.

58. (1) Subject to the provisions of this Article, a person holding the office of Director of Public Prosecutions shall vacate his office when he attains the age of sixty years. Tenure of office of Director of Public Prosecutions

Tenure of office of Director of Public Prosecutions

(2) A person holding the office of Director of Public Prosecutions may be removed from office only for incompetence or inability to perform the functions of his office whether arising from infirmity of body or mind or misbehaviour and shall not be so removed except in accordance with the provisions of this Article.

(3) If the President considers that the question of removing a person holding the office of Director of Public Prosecutions from office ought to be investigated, then—

- (a) he shall appoint a tribunal which shall consist of a Chairman and not less than two other members, who hold or have held high judicial office;
- (b) the tribunal shall inquire into the matter and report on the facts thereof to the President and advise the President whether the person holding the office of Director of Public Prosecutions ought to be removed from office under this Article for incompetence or inability or for misbehaviour.

(4) Where a tribunal appointed under clause (2) advises the President that a person holding the office of Director of Public Prosecutions ought to be removed from office for incompetence or inability or for misbehaviour, the President shall remove such person from office.

(5) If the question of removing a person holding the office of Director of Public Prosecutions from office has been referred to a tribunal under this Article, the President may suspend that person from performing the functions of his office, and any such suspension may at any time be revoked by the President and shall in any case cease to have effect if the tribunal advises the President that the person ought not to be removed from office.

(6) A person appointed Director of Public Prosecutions may resign upon giving three months' notice to the President.

Prerogative of mercy

59. The President may—

- (a) grant to any person convicted of any offence pardon, either free or subject to lawful conditions;
- (b) grant to any person a respite, either indefinite or for a specified period, of the execution of any punishment imposed on that person for any offence;
- (c) substitute a less severe form of punishment for any punishment imposed on any person for any offence; and
- (d) remit the whole or part of any punishment imposed on any person for any offence or any penalty or forfeiture or confiscation otherwise due to the Government on account of any offence.

Advisory committee

60. (1) There shall be an advisory committee on the prerogative of mercy which shall consist of such persons as may be appointed by the President.

(2) The President may appoint different persons to the advisory committee for the purposes of advising him in relation to persons convicted by courts-martial and for purposes of advising him in relation to persons convicted by other courts.

(3) A member of the advisory committee shall hold office at the pleasure of the President.

(4) Where any person has been sentenced to death for any offence the President shall cause the question of the exercise in relation to that person of the powers conferred by Article 59 to be considered at a meeting of the advisory committee.

(5) Subject to the provisions of clause (4), the President may refer to the advisory committee any questions as to the exercise of the powers conferred upon him by Article 59.

(6) The President, if present, shall preside at any meeting of the advisory committee.

(7) The President may determine the procedure of the advisory committee.

61. (1) Subject to the other provisions of this Constitution and any other law, the power to constitute offices for the Republic and the power to abolish any such offices shall vest in the President.

Offences for Republic

(2) Subject to the other provisions of this Constitution and any other law, the power to appoint persons to hold or act in offices constituted for the Republic of Zambia, to confirm appointments, to exercise disciplinary control over persons holding or acting in such offices and to remove any such person from office shall vest in the President.

PART V

(As amended by Act No. 18 of 1996, except for Article 79)

THE LEGISLATIVE

62. The legislative power of the Republic of Zambia shall vest in Parliament which shall consist of the President and the National Assembly.

Legislative power and membership of Parliament

63. (1) The National Assembly shall consist of—

- (a) one hundred and fifty elected members;
- (b) not more than eight nominated members; and
- (c) the Speaker of the National Assembly.

Composition of and election to National Assembly

(2) Subject to the other provisions of this Constitution, the election of members of the National Assembly shall be direct, by universal adult suffrage and by secret ballot and shall be conducted in accordance with the provisions of this Constitution and as may be prescribed by or under an Act of Parliament.

64. Subject to Article 65, a person shall be qualified to be elected as a member of the National Assembly if—

Qualifications for election to National Assembly

- (a) he is a citizen of Zambia;
- (b) he has attained the age of twenty-one years; and
- (c) he is literate and conversant with the official language of Zambia.

65. (1) A person shall not be qualified to be elected as a member of the National Assembly if—

Disqualifications for election to National Assembly

- (a) that person is under a declaration of allegiance to some country other than Zambia;
- (b) that person is under any law in force in Zambia, adjudged or otherwise declared to be of unsound mind;

- (c) that person is under a sentence of death imposed on him by a court in Zambia or a sentence of imprisonment, by whatever name called, imposed on him by such a court or substituted by a competent authority for some other sentence imposed on him by such a court;
- (d) that person is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any law in force in Zambia;
- (e) that person's freedom of movement is restricted, or that person is detained under the authority of the law; or
- (f) that person, within a period of five years before his nomination for election, has served a sentence of imprisonment for a criminal offence.

(2) A person who holds, or is a validly nominated candidate in an election for, the office of the President shall not be qualified for election as a member of the National Assembly.

(3) A Chief shall not be qualified for election as a member of the National Assembly.

(4) A Chief who intends to stand for elections to the National Assembly shall abdicate his chieftaincy before lodging his nomination.

(5) Parliament may provide that a person who holds or is acting in any office that is specified by Parliament and the functions of which involve responsibility for, or in connection with, the conduct of any election to the National Assembly or the compilation of any register of voters for the purposes of such an election shall not be qualified to be elected as a member of the National Assembly.

(6) Parliament may provide that a person who is convicted by any court of any offence that is prescribed by Parliament and that is connected with election of the members of the National Assembly or who is reported guilty of such an offence by the court trying an election petition shall not be qualified to be elected as a member of the National Assembly for such period, not exceeding five years following his conviction or the report of the court, as the case may be, as may be so prescribed.

(7) A person holding or acting in any post, office of appointment—

- (a) in the Zambia Defence Force as defined in the Defence Act, the Combined Cadet Force, the Zambia National Service, or any other force or service established for the preservation of security in Zambia;
- (b) in the Zambia Police Force, the Zambia Police Reserve, the Zambia Security Intelligence Service, the Anti-Corruption Commission, the Drug Enforcement

Commission, the Zambia Prison Service or in any other force or service established for the preservation of security in Zambia;

- (c) in the Public Service including an office to which Article 61 applies;
- (d) in the Teaching Service;
- (e) in any statutory body or any company or institution in which the Government has any interest; or
- (f) prescribed in that behalf or under an Act of Parliament;

shall not be qualified for election as a member of the National Assembly.

(8) In this Article, the reference to a sentence of imprisonment shall be construed as not including a sentence of imprisonment the execution of which is suspended or a sentence of imprisonment in default of payment of a fine.

66. (1) Nominations for election to the National Assembly shall be delivered to the Returning Officer appointed by the Electoral Commission on such day and at such time and at such place as may be prescribed by the Electoral Commission.

Nominatin for
election to
National
Assembly

(2) Any nomination for election to the National Assembly shall not be valid unless—

- (a) the candidate has paid the election fees prescribed by or under an Act of Parliament; and
- (b) the nomination is supported by not less than nine persons registered as voters in the constituency in which the candidate is standing for the purpose of elections to the National Assembly.

67. (1) When a vacancy occurs in the seat of a member of the National Assembly as a result of the death or resignation of the member or by virtue of Article 71, a by-election shall be held within ninety days after the occurrence of the vacancy.

By-election
for the
National
Assembly

(2) Parliament may by an Act of Parliament prescribe the manner in which a by-election shall be held.

68. (1) The President may, at any time after a general election to the National Assembly and before the National Assembly is next dissolved, appoint such number of persons as he considers necessary to enhance the representation in the National Assembly as regards special interests or skills, to be nominated members of the National Assembly, so, however, that there are not more than eight such members at any one time.

Nominated
members

(2) Subject to the provisions of this Article, a person may be appointed as a nominated member if he is qualified under Article

64 for election as an elected member and is not disqualified under Article 65 for election as an elected member.

(3) A person may not be appointed as a nominated member if he was candidate for election in the last preceding general election or in any subsequent by-election.

Speaker

69. (1) There shall be a Speaker of the National Assembly who shall be elected by the members of the Assembly from among persons who are qualified to be elected as members of the Assembly but are not members of the Assembly.

(2) The Speaker shall vacate his office—

- (a) if any circumstances arise that, if he were not Speaker, would disqualify him for election as such;
- (b) when the National Assembly first sits after any dissolution of the National Assembly; or
- (c) if the National Assembly resolves, upon a motion supported by the votes of not less than two-thirds of all the members thereof, that he shall be removed from office.

(3) No business shall be transacted in the National Assembly, other than an election to the office of Speaker, at any time when the office of Speaker is vacant.

Deputy
Speaker

70. (1) There shall be a Deputy Speaker of the National Assembly who shall be elected by the members of the Assembly from among the members of the Assembly.

(2) The members of the National Assembly shall elect a person to the office of Deputy Speaker when the Assembly first sits after any dissolution of the National Assembly and, if the office becomes vacant otherwise than by reason of the dissolution of the National Assembly, at the first sitting of the Assembly after the office becomes vacant.

(3) The Deputy Speaker shall vacate his office—

- (a) if he ceases to be a member of the National Assembly;
- (b) if he assumes the office of President or becomes the Vice-President, a Minister, a Deputy Minister or holds or acts in any office prescribed in that behalf by or under an Act of Parliament; or
- (c) if the National Assembly resolves that he should be removed from office.

Tenure of
office of
members of
the National
Assembly

71. (1) Every member of the National Assembly, with the exception of the Speaker, shall vacate his seat in the Assembly upon a dissolution of the National Assembly.

(2) A member of the National Assembly shall vacate his seat in the Assembly—

- (a) if he ceases to be a citizen of Zambia;
- (b) if he acts contrary to the code of conduct prescribed by an Act of Parliament;
- (c) in the case of an elected member, if he becomes a member of a political party other than the party of which he was an authorised candidate when he was elected to the National Assembly or, if having been an independent candidate, he joins a political party or having been a member of a political party, he becomes an independent;
- (d) if he assumes the office of President;
- (e) if he is sentenced by a court in Zambia to death or to imprisonment, by whatever name called, for a term exceeding six months;
- (f) if any circumstances arise that, if he were not a member of the Assembly, would cause him to be disqualified for election as such under Article 65;
- (g) if, under the authority of any such law as is referred to in Article 22 or 25—
 - (i) his freedom of movement has been restricted or he has been detained for a continuous period exceeding six months;
 - (ii) his freedom of movement has been restricted and he has immediately thereafter been detained and the total period of restriction and detention together exceeds six months; or
 - (iii) he has been detained and immediately thereafter his freedom of movement has been restricted and the total period of detention and restriction together exceeds six months.

(3) Notwithstanding anything contained in clause (2), where any member of the National Assembly has been sentenced to death or imprisonment, adjudged or declared to be of unsound mind, adjudged or declared bankrupt or convicted or reported guilty of any offence prescribed under clause (4) of Article 65 appeals against the decision or applied for a free pardon in accordance with any law, the decision shall not have any effect for the purpose of this Article until the final determination of such appeal or application:

Provided that—

- (i) such member shall not, pending such final determination, exercise his functions or receive any remuneration as a member of the National Assembly; and
- (ii) if, on the final determination the member's appeal or

application, his conviction is set aside, or he is granted a free pardon, or is declared not to be of unsound mind or bankrupt or guilty of an offence prescribed under clause (4) of Article 65, he shall be entitled to resume his functions as a member of the National Assembly unless he has previously resigned, and to receive remuneration as a member for the period during which he did not exercise his functions by reason of the provisions of paragraph (i) of this proviso.

Determination of questions as to membership of the National Assembly

72. (1) The High Court shall have power to hear and determine any question whether—

- (a) any person has been validly elected or nominated as a member of the National Assembly or the seat of any member has become vacant;
- (b) any person has been validly elected as Speaker or Deputy Speaker of the National Assembly or, having been so elected, has vacated the office of Speaker or Deputy Speaker.

(2) An appeal from the determination of the High Court under this Article shall lie to the Supreme Court:

Provided that an appeal shall lie to the Supreme Court from any determination of the High Court on any question of law including the interpretation of this Constitution.

Clerk and Staff of the National Assembly

73. There shall be a Clerk of the National Assembly and such other offices in the department of the Clerk of the National Assembly as may be prescribed by an Act of Parliament.

Removal of nominated member by President

74. The President may, at any time, terminate the appointment of any nominated member appointed under Article 68 and appoint any other person in that member's stead.

The franchise

75. (1) Every citizen of Zambia who has attained the age of eighteen years shall, unless he is disqualified by Parliament from registration as a voter for the purposes of elections to the National Assembly, be entitled to be registered as such a voter under a law in that behalf, and no other person may be so registered.

(2) Every person who is registered in any constituency as a voter for the purposes of elections to the National Assembly shall, unless he is disqualified by Parliament from voting in such elections on the grounds of his having been convicted of an offence in connection with elections or, on the grounds of his having been reported guilty of such an offence by the court trying an election petition or, on the grounds of his being in lawful custody at the date of the election, be entitled so to vote in that constituency in accordance with the provisions made by or under an Act of Parliament, and no other person may so vote.

76. (1) There is hereby established an autonomous Electoral Commission to supervise the registration of voters, to conduct Presidential and Parliamentary elections and to review the boundaries of the constituencies into which Zambia is divided for the purposes of elections to the National Assembly.

Electoral
Commission

(2) An Act of Parliament shall provide for the composition and operations of the Electoral Commission appointed by the President under this Article.

77. (1) Zambia shall be divided into constituencies, for purposes of elections to the National Assembly so that the number of such constituencies, the boundaries of which shall be such as the Electoral Commission prescribes, shall be equal to the number of seats of elected members in the National Assembly.

Constituencies
and elections

(2) In delimiting the constituencies, the Commission shall have regard to the availability of means of communication and the geographical features of the area to be divided into constituencies:

Provided that the constituencies shall be so delimited that there shall be at least ten constituencies in each administrative Province.

(3) Each constituency shall return one member only to the National Assembly.

(4) The boundaries of each constituency shall be such that the number of inhabitants thereof is as nearly equal to the population quota as is reasonably practicable:

Provided that the number of inhabitants of a constituency may be greater or less than the population quota in order to take account of means of communication, geographical features and the difference between urban and rural areas in respect of density of population and to take account of the proviso to clause (2).

(5) The Electoral Commission shall, where it is reviewing the boundaries of the constituencies, review the boundaries and may, in accordance with the provisions of this Article, alter the constituencies to such extent as it considers desirable:

Provided that the Commission shall, where a census of the population has been held and the Commission considers that the changes in the distribution of population reported in the census do not justify an alteration in the boundaries, it shall so report to the President without entering upon a review of the boundaries of the constituencies.

(6) any alteration of the constituencies shall come into effect upon the next dissolution of Parliament.

(7) In this Article, “the population quota” means the number

obtained by dividing the number of inhabitants of Zambia by the number of constituencies into which Zambia is to be divided under this Article

(8) For the purposes of this Article, the number of inhabitants of Zambia shall be ascertained by reference to the latest census of the population held in pursuance of any law.

(9) During any period when the Presidential and Parliamentary elections are being held, the Electoral Commission shall be responsible for the registration of voters and the conduct of elections in every constituency

Exercise of
legislative
power of
Parliament

78. (1) Subject to the provisions of this Constitution, the legislative power of Parliament shall be exercised by Bills passed by the National Assembly and assented to by the President.
Exercise of legislative power of Parliament

(2) A Bill (other than such a Bill as is mentioned in clause 8 of Article 27) shall not be presented to the President until after the expiration of three days from the third reading of the Bill by the National Assembly, and where a Bill is referred to a tribunal in accordance with Article 27, that Bill shall not be presented to the President for assent until the tribunal has reported on the Bill or the time for making a report has expired, whichever is the earlier.

(3) Where a Bill is presented to the President for assent, he shall either assent or withhold his assent.

(4) Subject to clause (5), where the President withholds his assent to a Bill, the President may return the Bill to the National Assembly with a message requesting that the National Assembly reconsiders the Bill or any specified provision thereof and, in particular, any such amendments as he may recommend in his message, and when a Bill is so returned, the National Assembly shall reconsider the Bill accordingly, and if the Bill is passed by the National Assembly on a vote of not less than two thirds of all the members of the National Assembly, with or without amendment, and presented to the President for assent, the President shall assent to the Bill within twenty-one days of its presentation, unless he sooner dissolves Parliament.

(5) Notwithstanding clause (4), where the President withholds his assent to a Bill, the Bill shall not again be presented for assent.

(6) Where a Bill that has been duly passed is assented to in accordance with the provisions of this Constitution it shall become law and the President shall thereupon cause it to be published in the *Gazette* as a law.

Alteration of
Constitution

79. (1) Subject to the provisions of this Article, Parliament may alter this Constitution or the Constitution of Zambia Act.

(2) Subject to clause (3) a bill for the alteration of this Constitution or the Constitution of Zambia Act shall not be passed unless—

- (a) not less than thirty days before the first reading of the bill in the National Assembly the text of the bill is published in the *Gazette*; and
- (b) the bill is supported on second and third readings by the votes of not less than two thirds of all members of the Assembly.

(3) A bill for the alteration of Part III of this Constitution or of this Article shall not be passed unless before the first reading of the bill in the National Assembly it has been put to a National referendum with or without amendment by not less than fifty per cent of persons entitled to be registered as voters for the purposes of Presidential and parliamentary elections.

(4) Any referendum conducted for the purposes of clause (3) shall be so conducted and supervised in such manner as may be prescribed by or under an Act of Parliament.

(5) In this Article—

- (a) references to this Constitution or the Constitution of Zambia Act, include reference to any law that amends or replaces any of the provisions of this Constitution or that Act; and
- (b) references to the alteration of this Constitution or the Constitution of Zambia Act or of any Part or Article include references to the amendment, modification or re-enactment with or without amendment or modification, of any provision for the time being contained in this Constitution, that Act, Part or Article, the suspension or repeal of any such provision and the making of different provision in lieu of such provision, and the addition of new provisions, to this Constitution, that Act, Part or Article.

(6) Nothing in this Article shall be so construed as to require the publication of any amendment to any such bill as is referred to in the clause (2) proposed to be moved in the National Assembly.

(7) A law made by Parliament shall not come into operation until it has been published in the *Gazette*, but Parliament may postpone the coming into operation of any such law and may make laws with retrospective effect.

(8) All laws made by Parliament shall be styled “Acts” and the words of enactment shall be “Enacted by the Parliament of Zambia.”

Statutory
Instruments

80. (1) Nothing in Article 62 shall prevent Parliament from conferring on any person or authority power to make statutory instruments.

(2) Every statutory instrument shall be published in the *Gazette* not later than twenty-eight days after it is made or, in the case of a statutory instrument which will not have the force of law unless it is approved by some person or authority other than the person or authority by which it was made, not later than twenty-eight days after it is so approved, and if it is not so published it shall be void from the date on which it was made.

(3) Where a tribunal appointed under Article 27 reports to the President that any provision of a statutory instrument is inconsistent with any provision of this Constitution, the President may, by order annul that statutory instrument and it shall thereupon be void from the date on which it was made.

Restrictions
with regard to
certain
financial
matters

81. Except upon the recommendation of the President signified by the Vice-President or a Minister, the National Assembly shall not—

- (a) proceed upon any Bill (including an amendment to a Bill) that, in the opinion of the person presiding, makes provision for any of the following purposes:
 - (i) for the imposition of taxation or the alteration of taxation otherwise than by reduction;
 - (ii) for the imposition of any charge upon the general revenues of the Republic or the alteration of any such charge otherwise than by reduction;
 - (iii) for the payment, issue or withdrawal from the general revenues of the Republic of any moneys not charged thereon or any increase in the amount of such payment, issue or withdrawal; or
 - (iv) for the composition or remission of any debt due to the Government; or
- (b) proceed upon any motion (including any amendment to a motion) the effect of which, in the opinion of the person presiding, would be to make provision for any of those purposes.

President may
address the
National
Assembly

82. (1) The President may, at any time, attend and address the National Assembly.
President may address National Assembly

(2) The President may send messages to the National Assembly and any such message shall be read, at the first convenient sitting of the National Assembly after it is received, by the Vice-President or by a Minister designated by the President.

- 83.** There shall preside at any sitting of the National Assembly—
- (a) the Speaker of the National Assembly;
 - (b) in the absence of the Speaker, the Deputy Speaker; or
 - (c) in the absence of the speaker and of the Deputy Speaker, such member of the Assembly as the Assembly may elect for that purpose.

President at National Assembly

84. (1) Except as otherwise provided in this Constitution, all questions at any sitting of the National Assembly shall be determined by a majority of votes of the members present and voting other than the Speaker or the person acting as Speaker as the case may be.

Voting and quorum

(2) The Speaker or the person acting as such shall not vote in the first instance, but shall have and exercise a casting vote if there is an equality of votes.

(3) The National Assembly shall have power to act notwithstanding any vacancy in the membership thereof, and any proceedings in the National Assembly shall be valid notwithstanding that it is discovered subsequently that some person who was not entitled to do so, voted or otherwise took part in the proceedings.

(4) The quorum for a meeting of the National Assembly shall be one third of the total number of members of the National Assembly and if at any time during a meeting of the National Assembly objection is taken by any member present that there is no quorum, it shall be the duty of the Speaker or the person acting as such, either to adjourn the National Assembly or, as he may think fit, to suspend the meeting until there is a quorum.

85. Any person who sits or votes in the National Assembly knowing or having reasonable grounds for knowing that he is not entitled to do so, shall be liable to a penalty not exceeding one thousand penalty units or such other sum as may be prescribed by Parliament for each day on which he so sits or votes, which penalty shall be recoverable by action in the High Court at the suit of the Attorney-General
Unqualified person, sitting or voting

Unqualified person, sitting or voting

86. (1) Subject to the provisions of this Constitution, the National Assembly may determine its own procedure.

Procedure in National Assembly

(2) The National Assembly may act notwithstanding any vacancy in its membership (including any vacancy not filled when the National Assembly first meets after any dissolution of Parliament) and the presence or participation of any person not entitled to be present or to participate in the proceedings of the National Assembly shall not invalidate those proceedings.

(3) In the selection of members of committees, the National Assembly shall seek to ensure that there shall be equitable

representation of the political parties or groups that are represented in the National Assembly as well as of the members not belonging to any such parties or groups.

Privileges and immunities of the National Assembly

87. (1) The National Assembly and its members shall have such privileges, powers and immunities as may be prescribed by an Act of Parliament.

(2) Notwithstanding subclause (1) the law and custom of the Parliament of England shall apply to the National Assembly with such modifications as may be prescribed by or under an Act of Parliament.

Dissolution of Parliament and related matters

88. (1) Subject to the provisions of clause (4) each session of Parliament shall be held at such place within Zambia and shall commence at such time as the President may appoint.

(2) There shall be a session of Parliament at least once every year so that a period of twelve months shall not intervene between the last sitting of the National Assembly in one session and the commencement of the next session.

(3) The President may at any time summon a meeting of the National Assembly.

(4) Subject to the provisions of clause (1) of Article 37, the sittings of the National Assembly in any session of Parliament after the commencement of that session shall be held at such times and on such days as the National Assembly shall appoint.

(5) The President may at any time prorogue Parliament.

(6) Subject to clause (9) the National Assembly—

(a) shall, unless sooner dissolved, continue for five years from the date of its first sitting after the commencement of this Constitution or after any dissolution and shall then stand dissolved;

(b) may, by a two thirds majority of the numbers thereof, dissolve itself; or

(c) may be dissolved by the President at any time.

(7) Whenever the National Assembly is dissolved under this Article, there shall be Presidential Elections and elections to the National Assembly and the first session of the new Parliament shall commence within three months from the date of the dissolution.

(8) At any time when the Republic of Zambia is at war, Parliament may from time to time extend the period of five years specified in clause (6) for not more than twelve months at a time:

Provided that the life of the National Assembly shall not be extended under this clause for more than five years.

(90) If, after a dissolution of Parliament and before the holding of the general elections, the President considers that, owing to the existence of a state of war or of a state of emergency in Zambia or any part thereof, it is necessary to recall Parliament, the President may summon the Parliament that has been dissolved to meet and that Parliament shall be deemed to be the Parliament for the time being, but the general election of members of the National Assembly shall proceed and the Parliament that has been recalled shall, if not sooner dissolved again, stand dissolved on the day appointed for the nomination of candidates in that general election.

89. The Speaker of the National Assembly, before assuming the duties of his office, and every member of the National Assembly before taking his seat therein, shall take and subscribe before the National Assembly to the oath of allegiance.

Oaths to be taken by Speaker and members

90. (1) There shall be an Investigator-General of the Republic who shall be appointed by the President in consultation with the Judicial Service Commission and shall be the Chairman of the Commission for Investigations.

The Investigator-General

(2) A person shall not be qualified for appointment as Investigator-General—

- (a) unless he is qualified to be appointed a judge of the High Court; or
- (b) if he holds the office of the President, Vice-President, Minister or Deputy Minister, is a member of the National Assembly or is a public officer.

(3) Subject to the provisions of this section, a person appointed Investigator-General shall vacate his office on attaining the age of sixty-five years:

Provided that the President may permit a person who has attained that age to continue in office for such period as may be necessary to complete and submit any report on, or do any other thing in relation to, any investigation that was commenced by him before he attained that age.

(4) A person appointed as Investigator-General shall forthwith vacate any office prescribed by an Act of Parliament.

(5) A person appointed as Investigator-General may be removed from office for incompetence or inability to perform the functions of his office (whether arising from infirmity of body or mind or from any other cause) or for misbehaviour, but shall not be so removed except in accordance with the provisions of this Article.

(6) If the National Assembly by resolution supported by votes of not less than two-thirds of all the members of that House, resolves that the question of removing the Investigator-General ought to be investigated, the Speaker of the National Assembly shall send a copy to the Chief Justice who shall appoint a tribunal consisting of a Chairman and two other persons to inquire into the matter.

(7) The Chairman and one other member of the tribunal shall be persons who hold or have held high judicial office.

(8) The tribunal shall inquire into the matter and report thereon to the President.

(9) Where such a tribunal advises the President that the Investigator-General ought to be removed from office for incompetence or inability or for misbehaviour, the President shall remove the Investigator-General from office.

(10) If the question of removing the Investigator-General from office has been referred to a tribunal under this Article, the President may suspend him from performing the functions of his office, and any such suspension may at any time be revoked by the President and shall in any case cease to have effect if the tribunal shall advise the President that the Investigator-General ought not to be removed.

(11) If there is a vacancy in the office of the Investigator-General, or if the Investigator-General is temporarily absent from Zambia or otherwise unable to exercise the functions of his office, the President may appoint a person qualified to be a Judge of the High Court to exercise the functions of the office of the Investigator-General under this Article.

(12) A person appointed to the office of Investigator-General may resign upon giving three months' notice to the President.

(13) The functions, powers and procedures of the Investigator-General shall be as provided by an Act of Parliament.

PART VI

(As amended by Act No. 18 of 1996)

THE JUDICATURE

Courts

91. (1) The Judicature of the Republic shall consist of:

- (a) the Supreme Court of Zambia;
- (b) the High Court for Zambia;
- (c) the Industrial Relations Court;
- (d) the Subordinate Courts;

- (e) the Local Courts; and
- (f) such lower Courts as may be prescribed by an Act of Parliament.

(2) The Judges, members, magistrates and justices, as the case may be, of the courts mentioned in clause (1) shall be independent, impartial and subject only to this Constitution and the law and shall conduct themselves in accordance with a code of conduct promulgated by Parliament.

(3) The Judicature shall be autonomous and shall be administered in accordance with the provisions of an Act of Parliament.

92. (1) There shall be a Supreme Court of Zambia which shall be the final court of appeal for the Republic and shall have such jurisdiction and powers as may be conferred on it by this Constitution or any other law.

Supreme Court

- (2) The judges of the Supreme Court shall be—
 - (a) the Chief Justice;
 - (b) the Deputy Chief Justice;
 - (c) seven Supreme Court judges or such greater number as may be prescribed by an Act of Parliament.

(3) The office of Chief Justice, Deputy Chief Justice or of Supreme Court Judge shall not be abolished while there is a substantive holder thereof.

(4) The Supreme Court shall be superior court of record, and, except as otherwise provided by Parliament, shall have all the powers of such a court.

(5) When the Supreme Court is determining any matter, other than an interlocutory matter, it shall be composed of an uneven number of judges not being less than three except as provided for under Article 41.

(6) The Chief Justice may make rules with respect to the practice and procedure of the Supreme court in relation to jurisdiction and powers of the Supreme Court.

93. (1) The Chief Justice and the Deputy Chief Justice shall, subject to ratification by the National Assembly, be appointed by the President.

Appointment of judges of Supreme Court

(2) The judges of the Supreme Court shall, subject to ratification by the National Assembly, be appointed by the President.

(3) If the office of Chief Justice is vacant or if the Chief Justice is on leave or is for any reason unable to perform the functions of

that office, then, until a person has been appointed to, and has assumed the functions of, that office, or until the person holding that office has resumed those functions, as the case may be, the President may appoint the Deputy Chief Justice or a Supreme Court judge to perform such functions.

(4) Without prejudice to the generality of clause (5), if the office of Deputy Chief Justice is vacant or the Deputy Chief Justice is on leave or is for any other reason unable to perform the functions of his office, the President may appoint a Judge of the Supreme Court to act as Deputy Chief Justice.

(5) If the office of a Supreme Court judge is vacant, or if any reason a Supreme Court judge is appointed to act as Chief Justice or Deputy Chief Justice, or if any Supreme Court judge is on leave or is for any reason unable to perform the functions of that office, the President may appoint a person qualified for appointment as a judge of the Supreme Court to act as a Supreme Court Judge.

(6) A person may act as Chief Justice, Deputy Chief Justice or Supreme Court judge notwithstanding that he has attained the age prescribed by Article 98.

(7) A puisne judge appointed to act as Deputy Chief Justice or Supreme Court judge, as the case may be, pursuant to clause (4) or (5), shall continue to be a judge of the High Court and may continue to perform the functions of the office of Puisne judge.

High Court

94. (1) There shall be a High Court for the Republic which shall have, except as to the proceedings in which the Industrial Relations Court has exclusive jurisdiction under the Industrial and Labour Relations Act, unlimited and original jurisdiction to hear and determine any civil or criminal proceedings under any law and such jurisdiction and powers as may be conferred on it by this Constitution or any other law.

(2) The High Court shall be divided into such divisions as may be determined by an Act of Parliament.

(3) The Chief Justice shall be an ex-officio judge of the High Court.

(4) The other judges of the High Court shall be such number of puisne judges as may be prescribed by an Act of Parliament.

(5) The office of a puisne judge shall not be abolished while there is a substantive holder thereof.

(6) The High Court shall be a superior court of record and, except as otherwise provided by Parliament, shall have the powers of such a court.

(7) The High Court shall have jurisdiction to supervise any civil or criminal proceedings before any subordinate court or any court-martial and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of ensuring that justice is duly administered by any such court.

(8) The Chief Justice may make rules with respect to the practice and procedure of the High Court in relation to the jurisdiction and power conferred on it by clause (7).

95. (1) The puisne judges shall, subject to ratification by the National Assembly, be appointed by the President on the advice of the Judicial Service Commission.

Appointment of Puisne Judges, Chairman and Deputy Chairman of the Industrial Relations Court

(2) The Chairman and the Deputy Chairman of the Industrial Relations Court shall be appointed by the President on the advice of the Judicial Service Commission.

(3) The provisions of Articles 98 and 99 shall with the necessary modifications apply to the Chairman and the Deputy Chairman of the Industrial Relations Court.

96. Any person appointed under Article 93 to act as a judge of the Supreme Court shall continue to act for the period of that person's appointment or, if no such period is specified, until such appointment is revoked by the President:

Acting Judge of Supreme Court or of High Court to act or hold office until appointment expires or is revoked

Provided that the President may permit a person whose appointment to act as a judge of the Supreme Court has expired or been revoked to continue to act for such period as may be necessary to enable that person to deliver judgement or to do any other thing in relation to proceedings that were commenced before such person.

97. (1) Subject to clause (2), a person shall not be qualified for appointment as a judge of the Supreme Court, a puisne judge or Chairman or Deputy Chairman of the Industrial Relations Court unless—

Qualifications for appointment as Supreme Court Judge, Puisne Judge, Chairman and Deputy Chairman of the Industrial Relations Court

- (a) he holds or has held high judicial office; or
- (b) he holds one of the specified qualifications and has held one or other of the following qualifications—
 - (i) in the case of a Supreme Court Judge, for a total period of not less than fifteen years; or
 - (ii) in the case of a puisne judge, the Chairman and Deputy Chairman of the Industrial Relations Court, for a total period of not less than ten years.

(2) Where the President or the Judicial Service Commission, as the case may be, is satisfied that, by reason of special circumstances, a person who holds one of the specified qualifications is worthy,

capable and suitable to be appointed as a judge of the Supreme Court, a puisne judge or Chairman or Deputy Chairman of the Industrial Relations Court, notwithstanding that he has not held one or other of those qualifications for a total period of not less than fifteen years or ten years, as the case may be, the President acting in the case of a judge of the Supreme Court, puisne judge or Chairman or Deputy Chairman of the Industrial Relations Court in accordance with the advice of the Judicial Service Commission, may dispense with the requirement that such person holds one or other of the specified qualifications for a total period of not less than the period specified in clause (1).

(3) In this Article, the specified qualifications “ means the professional qualifications specified in the Legal Practitioners Act, one of which must be held by any person before he may apply under that Act to be admitted as a practitioner in the Republic.

(4) For the purposes of this Article and of Articles 93 and 94, “a person qualified for appointment” means a judge of the Supreme Court, a puisne judge or Chairman or Deputy Chairman of the Industrial Relations Court and includes a person in respect of whom the President or Judicial Service Commission, as the case may be, is satisfied as provided for in clause (2).

Tenure of
office of
Judges of
Supreme
Court and
High Court

98. (1) Subject to the provisions of this Article, a person holding the office of a judge of the Supreme Court or the office of a judge of the High Court shall vacate that office on attaining the age of sixty-five years:

Provided that the President—

- (a) may permit a judge of the High Court in accordance with the advice of the Judicial Service Commission, or a judge of the Supreme Court, who has attained that age to continue in office for such period as may be necessary to enable him to deliver judgement or to do any other thing in relation to proceedings that were commenced before him before he attained that age;
- (b) may appoint a judge of the High Court in accordance with the advice of the Judicial Service Commission or a judge of the Supreme Court, who has attained the age of sixty-five years, for such further period, not exceeding seven years, as the President may determine.

(2) A Judge of the Supreme Court, High Court, Chairman or Deputy Chairman of the Industrial Relations Court may be removed from office only for inability to perform the functions of office, whether arising from infirmity of body or mind, incompetence or misbehavior and shall not be so removed except in accordance with the provision of this Article.

(3) If the President considers that the question of removing a judge of the Supreme Court or of the High Court under this Article ought to be investigated, then—

- (a) he shall appoint a tribunal which shall consist of a Chairman and not less than two other members, who hold or have held high judicial office;
- (b) the tribunal shall inquire into the matter and report on the facts thereof to the President and advise the President whether the judge ought to be removed from office under this Article for inability as aforesaid or for misbehaviour.

(4) Where a tribunal appointed under clause (3) advises the President that a judge of the Supreme Court or of the High Court ought to be removed from office for inability, or incompetence or for misbehaviour, the President shall remove such judge from office.

(5) If the question of removing a judge of the Supreme Court or of the High Court from office has been referred to a tribunal under clause (3), the President may suspend the judge from performing the functions of his office, and any such suspension may at any time be revoked by the President and shall in any case cease to have effect if the tribunal advises the President that the judge ought to be removed from office.

(6) The provisions of this Article shall be without prejudice to the provisions of Article 96.

99. A judge of the Supreme Court or of the High Court shall not enter upon the duties of his office unless he has taken and subscribed to the oath of allegiance and such oath for the due execution of his office as may be prescribed by or under an Act of Parliament:

Oaths to be taken by Judge

Provided that a person who has once taken and subscribed to the said oaths may enter upon the duties of any such office without again taking and subscribing such oaths.

PART VII

(As amended by Act No. 18 of 1996)

DEFENCE AND NATIONAL SECURITY

100. (1) There shall be an armed force to be known as the Zambia Defence Force.

The Zambia Defence Force

(2) The Zambia Defence Force shall be non-partisan, national in character, patriotic, professional, disciplined, productive and subordinate to the civilian authority as established under this Constitution.

(3) Members of the Zambia Defence Force shall be citizens of Zambia and of good character.

(4) A person shall not raise an armed force except in accordance with this Constitution.

Functions of
Defence Force

101. The functions of the Zambia Defence Force shall be to—

- (a) preserve and defend the sovereignty and territorial integrity of Zambia;
- (b) co-operate with the civilian authority in emergency situations and in cases of natural disasters;
- (c) foster harmony and understanding between the Zambia Defence Force and civilians; and
- (d) engage in productive activities for the development of Zambia.

Parliament to
regulate
Defence Force

102. Parliament shall make laws regulating the Zambia Defence Force, and in particular, providing for—

- (a) the organs and structures of the Zambia Defence Force;
- (b) the recruitment of persons into the Zambia Defence Force from every district of Zambia;
- (c) the terms and conditions of service of members of the Zambia Defence Force; and
- (d) the deployment of troops outside of Zambia.

The Zambia
Police Force

103. (1) There shall be a police force to be known as the Zambia Police Force and such other police forces as Parliament may by law prescribe.

(2) Subject to the other provisions of this Constitution, every police force in Zambia shall be organised and administered in such a manner and shall have such functions as Parliament may by law prescribe.

(3) The Zambia Police Force shall be nationalistic, patriotic, professional, disciplined, competent and productive; and its members shall be citizens of Zambia and of good character.

Functions of
Zambia Police
Force

104. The functions of the Zambia Police Force shall include the following:

- (a) to protect life and property;
- (b) to preserve law and order;
- (c) to detect and prevent crime;
- (d) to co-operate with the civilian authority and other security organs established under this Constitution and with the population generally.

Parliament to
regulate

105. Parliament shall make laws regulating the Zambia Police Force, and in particular, providing for—

- (a) the organs and structures of the Zambia Police Force;
- (b) the recruitment of persons into the Zambia Police Force from every district of Zambia;
- (c) terms and conditions of service of members of the Zambia Police Force; and
- (d) the regulation generally of the Zambia Police Force.

106. There shall be the Zambia Prison Service. Prison Service

107. Parliament shall make laws regulating the Zambia Prison Service, and in particular, providing for— Parliament to regulate Zambia Prison Service

- (a) the organs and structures of the Zambia Prison Service;
- (b) the recruitment of persons to the Zambia Prison Service from every district of Zambia;
- (c) the terms and conditions of service of members of the Zambia Prison Service; and
- (d) the regulation generally of the Zambia Prison Service.

108. (1) There shall be a Zambia Security Intelligence Service. Zambia Security Intelligence Service

(2) Parliament shall make laws regulating the Zambia Security Intelligence Service, and in particular, providing for—

- (a) the organs and structures of the Zambia Security Intelligence Service;
- (b) the recruitment of persons into the Zambia Security Intelligence Service from every district of Zambia;
- (c) the terms and conditions of service of members of the Zambia Security Intelligence Service; and
- (d) the regulation generally of the Zambia Security Intelligence Service.

PART VIII

(As amended by Act No. 18 of 1996)

LOCAL GOVERNMENT SYSTEM

109. (1) There shall be such system of local government in Zambia as may be prescribed by an Act of Parliament. Local Government System
Local Government System

(2) The system of local government shall be based on democratically elected councils on the basis of universal adult suffrage.

PART IX

*(As amended by Act No. 18 of 1996)*DIRECTIVE PRINCIPLES OF STATE POLICY AND THE DUTIES OF A
CITIZENApplication
of Directive
Principles of
State Policy

110. (1) The Directive Principles of State Policy set out in this Part shall guide the Executive, the Legislature and the Judiciary, as the case may be, in the—

- (a) development of national policies;
- (b) implementation of national policies;
- (c) making and enactment of laws; and
- (d) application of the Constitution and any other law.

(2) The application of the Directive Principles of State Policy may be observed only in so far as State resources are able to sustain their application, or if the general welfare of the public so unavoidably demands, as may be determined by Cabinet.

Directive not
to be
justiciable

111. The Directive Principles of State Policy set out in this Part shall not be justiciable and shall not thereby, by themselves, despite being referred to as rights in certain instances, be legally enforceable in any court, tribunal or administrative institution or entity.

Directive
Principles of
State Policy

112. The following Directives shall be the Principles of State Policy for the purposes of this Part:

- (a) the State shall be based on democratic principles;
- (b) the State shall endeavour to create an economic environment which shall encourage individual initiative and self reliance among the people and promote private investment;
- (c) the State shall endeavour to create conditions under which all citizens shall be able to secure adequate means of livelihood and opportunity to obtain employment;
- (d) the State shall endeavour to provide clean and safe water, adequate medical and health facilities and decent shelter for all persons, and take measures to constantly improve such facilities and amenities;
- (e) the State shall endeavour to provide equal and adequate educational opportunities in all fields and at all levels for all;
- (f) the State shall endeavour to provide to persons with disabilities, the aged and other disadvantaged persons such social benefits and amenities as are suitable to their needs and are just and equitable;
- (g) the State shall take measures to promote the practice,

enjoyment and development by any person of that person's culture, tradition, custom or language insofar as these are not inconsistent with this Constitution;

- (h) the State shall strive to provide a clean and healthy environment for all;
- (i) the State shall promote sustenance, development and public awareness of the need to manage the land, air and water resources in a balanced and sustainable manner for the present and future generation; and
- (j) the State shall recognise the right of every person to fair labour practices and safe and healthy working conditions.

113. It shall be the duty of every citizen to—

Duties of the Citizen

- (a) be patriotic and loyal to Zambia and to promote its well-being;
- (b) contribute to the well-being of the community where that citizen lives, including the observance of health controls;
- (c) foster national unity and live in harmony with others;
- (d) promote democracy and the rule of law;
- (e) vote in national and local government elections;
- (f) provide defence and military service when called upon;
- (g) carry out with discipline and honesty legal public functions;
- (h) pay all taxes and duties legally due and owing to the State; and
- (i) assist in the enforcement of the law at all times.

PART X

(As amended by Act No. 18 of 1996)

FINANCE

114. (1) Subject to the provisions of this Article, taxation shall not be imposed or altered except by or under an Act of Parliament.

Imposition of taxation

(2) Except as provided by clauses (3) and (4), Parliament shall not confer upon any other person or authority power to impose or to alter, otherwise than by reduction, any taxation.

(3) Parliament may make provision under which the President or the Vice-President or a Minister may by order provide that, on or after the publication of a Bill being a Bill approved by the President that it is proposed to introduce into the National Assembly and providing for the imposition or alteration of taxation, such

provisions of the Bill as may be specified in the order shall, have the force of law for such period and subject to such conditions as may be prescribed by Parliament:

Provided that any such order shall, unless sooner revoked, cease to have effect—

- (i) if the Bill to which it relates is not passed within such period from the date of its first reading in the National Assembly as may be prescribed by Parliament;
- (ii) if, after the introduction of the Bill to which it relates, Parliament is prorogued or the National Assembly is dissolved;
- (iii) if, after the passage of the Bill to which it relates, the President refuses his assent thereto; or
- (iv) at the expiration of a period of four months from the date on which it came into operation or such longer period from that date as may be specified in any resolution passed by the National Assembly after the Bill to which it relates has been introduced.

(4) Parliament may confer upon any authority established by law for the purposes of local government power to impose taxation within the area for which that authority is established and to alter taxation so imposed.

(5) Where the Appropriation Act in respect of a financial year has not come into force at the expiration of six months from the commencement of that financial year, the operation of any law relating to the collection or recovery of any tax upon any income or profits or any duty or customs or excise shall be suspended until that Act comes into force:

Provided that—

- (i) in any financial year in which the National Assembly stands dissolved at the commencement of that year, the period of six months shall begin from the day upon which the National Assembly first sits following that dissolution instead of from the commencement of the financial year.
- (ii) the provisions of this clause shall not apply in any financial year in which the National Assembly is dissolved after the laying of estimates in accordance with Article 115 and before the Appropriation Bill relating to those estimates is passed by Parliament.

Withdrawal of
moneys from
general
revenues

115. (1) Moneys shall not be expended from the general revenues of the Republic unless—

- (a) the expenditure is authorised by a warrant under the hand of the President;

- (b) the expenditure is charged by this Constitution or any other law on the general revenues of the Republic; or
- (c) the expenditure is of moneys received by a department of government and is made under the provisions of any law which authorises that department to retain and expend those moneys for defraying the expenses of the department.

(2) A warrant shall not be issued by the President authorising expenditure from the general revenues of the Republic unless—

- (a) the expenditure is authorised by an Appropriation Act;
- (b) the expenditure is necessary to carry on the services of the Government in respect of any period, not exceeding four months, beginning at the commencement of a financial year during which the Appropriation Act for that financial year is not in force;
- (c) the expenditure has been proposed in a supplementary estimate approved by the National Assembly;
- (d) provision does not exist for the expenditure and the President considers that there is such an urgent need to incur the expenditure that it would not be in the public interest to delay the authorisation of the expenditure until such time as a supplementary estimate can be laid before and approved by the National Assembly; or
- (e) the expenditure is incurred on capital projects continuing from the previous financial year and is so incurred before commencement of the Appropriation Act for the current financial year.

(3) The President shall, immediately after he signs any warrant authorising expenditure from the general revenues of the Republic, cause a copy of the warrant to be transmitted to the Auditor-General.

(4) The issue of warrants under paragraph (d) of clause (2), the investment of moneys forming part of the general revenues of the Republic and the making of advances from such revenues shall be subject to such limitations and conditions as Parliament may prescribe.

(5) For the purposes of this Article the investment of moneys forming part of the general revenues of the Republic or the making of recoverable advances therefrom shall not be regarded as expenditure, and the expression “investment of moneys” means investment in readily marketable securities and deposits with a financial institution approved by the Minister responsible for finance.

116. Where in any financial year any expenditure has been authorised by a warrant issued by the President under paragraph (d) of clause (2) Article 115, the Minister responsible for finance shall cause a supplementary estimate relating to that expenditure

Supplemen-
tary estimates
in respect of
expenditure

to be laid before the National Assembly for its approval before the expiration of a period of four months from the issue of the warrant or, if the National Assembly is not sitting at the expiration of that period, at the first sitting of the National Assembly thereafter.
Supplementary estimates in respect of expenditure authorised by warrant

Appropriation
Acts and
Supplemen-
tary
Appropriation
Acts

117. (1) The Minister responsible for finance shall, subject to clause (2), cause to be prepared and laid before the National Assembly, not later than the second Friday of October, before the commencement the next financial year, estimates of the Government for financial year.

(2) In any year where a general election takes place and the estimates of revenue and expenditure of the Government for the next financial year cannot be prepared and laid before the National Assembly as specified under clause (1), the Minister responsible for finance shall cause to be prepared and laid before the National Assembly, within ninety days of the swearing in of the President, estimates of revenues and expenditure of the Government for that financial year.

(3) The National assembly shall, subject to clause (2), approve the budget not later than the thirty first day of December; and

(As repealed and substituted by Act No. 20 of 2009)

(4) When the estimates of the expenditure have been approved by the National Assembly, the heads of the estimates together with the amount approved in respect of each shall be included in a Bill to be known as an Appropriation Bill which shall be introduced in the National Assembly to provide for the payment of those amounts for the purposes specified out of the general revenues of the Republic.

(5) Nothing in this Article shall be construed as requiring the approval of the National Assembly for that part of any estimates which relate to, or as requiring the inclusion in an Appropriation Bill of provisions authorising the expenditure of, sums which are charged on the general revenues of the Republic by this Constitution or any other law.

(6) Where any supplementary expenditure has been authorised in respect of any financial year for any purpose and-

- (a) an amount has not been appropriated for that purpose under any head of expenditure by the Appropriation Act for that financial year; or
- (b) the amount of the supplementary expenditure is such that the total amount expended for the purposes of the head of expenditure in which expenditure for that purpose was included is in excess of the amount so appropriated under that head, the Minister responsible for finance shall introduce in the National Assembly not later than fifteen months after the end of that

financial year or, if the National Assembly is not sitting at the expiration of that period, within one month of the first sitting of the National Assembly thereafter, a Bill, to be known as a Supplementary Appropriation Bill, confirming the approval of Parliament of such expenditure, or excess of expenditure, as the case may be.

(7) Where, in any financial year, expenditure has been incurred without the authorisation of Parliament, the Minister responsible for finance shall, on approval of such expenditure by the appropriate committee of the National Assembly, introduce in the National Assembly, not later than thirty months after the end of that financial year or, if the National Assembly is not sitting at the expiration of that period, within one month of the first sitting of the National Assembly thereafter, a Bill to be known as the Excess Expenditure Appropriation Bill, for the approval by Parliament of such expenditure.

(As amended by Act No. 20 of 2009)

118. (1) The Minister responsible for finance shall cause to be prepared and shall lay before the National Assembly not later than nine months after the end of each financial year, a financial report in respect of that year.

Financial report

(2) A financial report in respect of a financial year shall include accounts showing the revenue and other moneys received by the Government in that financial year, the expenditure of the Government in that financial year other than expenditure charged by this Constitution or any other law on the general revenues of the Republic, the payments made in the financial year otherwise than for the purposes of expenditure, a statement of the financial position of the Republic at the end of the financial year and such other information as Parliament may prescribe.

118A. Parliament shall enact budgeting and planning legislation which shall provide for matters that relate to the annual Budget and to medium and long-term development plans.

Planning and Budgeting Legislation

(As amended by Act No. 20 of 2009)

119. (1) There shall be paid to the holders of the offices to which this Article applies such salary and such allowances as may be prescribed by or under an Act of Parliament

Remunerations of certain officers

(2) The salaries and any allowances payable to the holders of offices to which this Article applies shall be a charge on the general revenues of the Republic.

(3) The salary payable to the holder of any office to which this Article applies and his terms of office shall not be altered to his disadvantage after his appointment.

(4) Where a person's salary or terms of office depend upon his option, the salary or terms for which he opts shall, for the purposes of clause (3), be deemed to be more advantageous to him than any others for which he might have opted.

(5) This Article applies to the offices of Chief Justice, Deputy Chief Justice, judge of the Supreme Court, Attorney-General, judge of the High Court, Investigator-General, Solicitor-General, Director of Public Prosecutions, Secretary to Cabinet and Auditor-General and to such other offices as may be prescribed by an Act of Parliament.

Public debt

120. (1) There shall be charged on the general revenues of the republic all debt charges for which the Government is liable.

(2) For the purposes of the Article, debt charges include interest, sinking fund charges, the repayment or amortisation of debt, and all expenditure in connection with the raising of the loans on the security of the revenues of the former Protectorate of Northern Rhodesia or the Republic and on the service and redemption of debt thereby created.

Auditor-General

121. (1) There shall be an Auditor-General for the Republic whose office shall be a public office and who shall, subject to ratification by the National Assembly, be appointed by the President.

(2) It shall be the duty of the Auditor-General—

- (a) to satisfy himself that the provisions of this Part are being complied with;
- (b) satisfy himself that the moneys expended have been applied to the purposes for which they were appropriated by the Appropriation Act or in accordance with the approved supplementary estimates, or in accordance with the Excess Expenditure Appropriation Act, as the case may be, and that the expenditure conforms to the authority that governs it;
- (c) to audit the accounts relating to the general revenues of the Republic and the expenditure of moneys appropriated by Parliament, the National Assembly, the Judicature, the accounts relating to the stocks and stores of the Government and the accounts of such other bodies as may be prescribed by or under any law;
- (d) to audit the accounts relating to any expenditure charged by this Constitution or any other law on the general revenues of the Republic and to submit a report thereon to the President not later than twelve months after the end of each financial year.

(3) The Auditor-General and any officer authorised by him shall have access to all books, records, reports and other documents relating to any of the accounts referred to in clause (2).

(4) The Auditor-General shall, not later than twelve months after the end of each financial year, submit a report on the accounts referred to in paragraph (c) of clause (2) in respect of that financial year to the President who shall, not later than seven days after the first sitting of the National Assembly next after the receipt of such report, cause it to be laid before the National Assembly; and

if the President makes default in laying the report before the National Assembly, the Auditor-General shall submit the report to the Speaker of the National Assembly, or if the office of the Speaker is vacant or if the Speaker is for any reason unable to perform the functions of his office, to the Deputy Speaker, who shall cause it to be laid before the National Assembly.

(5) The Auditor-General shall perform such other duties and exercise such other powers in relation to all accounts of the Government or the accounts of other public authorities or other bodies as may be prescribed by or under any law.

(6) In the exercise of his functions under clauses (2), (3) and (4), the Auditor-General shall not be subjected to the direction or control of any other person or authority.

122. (1) Subject to the provisions of this Article, a person holding the office of Auditor-General shall vacate his office when he attains the age of sixty years.

Tenure of
office of
Auditor-
General

(2) A person holding the office of Auditor-General may be removed from office only for inability to perform the functions of his office, whether arising from infirmity of body or mind, or for incompetence or for misbehaviour and shall not be so removed except in accordance with the provisions of this Article.

(3) If the National Assembly resolves that the question of removing a person holding the office of Auditor-General from office under this Article ought to be investigated then—

- (a) the National Assembly shall, by resolution appoint a tribunal which shall consist of a Chairman and not less than two other members, who hold or have held high judicial office;
- (b) the tribunal shall inquire into the matter and report on the facts thereof to the National Assembly; and
- (c) the National Assembly shall consider the report of the tribunal at the first convenient sitting of the National Assembly after it is received and may, upon such consideration, by resolution, remove the Auditor-General from office.

(4) If the question of removing a person holding the office of Auditor-General from office has been referred to a tribunal under this Article, the National Assembly may, by resolution, suspend that person from performing the functions of his office, and any such suspension may at any time be revoked by the National Assembly by resolution and shall in any case cease to have effect if, upon consideration of the report of the tribunal in accordance with the provisions of this Article, the National Assembly does not remove the Auditor-General from office.

(5) A person who holds or has held the office of Auditor-General shall not be appointed to hold or to act in any other public office.

(6) A person who holds the office of Auditor-General may resign upon giving three months' notice to the President.

PART XI

(As amended by Act No. 18 of 1996)

SERVICE COMMISSIONS

Commissions

123. (1) There shall be established for the Republic a Judicial Service Commission which shall have functions conferred on it by this Constitution and such other functions and powers, as may be prescribed by or under an Act of Parliament.

(2) Parliament may establish for the Republic other Commissions which, together with the Judicial Service Commission, are hereafter collectively referred to as Service Commissions, which shall have such functions and powers in relation to the public service, or in relation to persons in public employment other than constitutional office holders or public officers, as may be prescribed by or under an Act of Parliament.

(3) Commissions other than Service Commissions may be established for the Republic by or under an Act of Parliament and shall have such functions and powers as may be prescribed by or under such Act.

(4) Nothing in the foregoing precludes provision being made by or under an Act of Parliament to confer on a Service Commission functions and powers in relation to matters other than public employment.

Pension laws
and protection

124. (1) The law to be applied with respect to any pension benefits that were granted to any person before the commencement of this Constitution shall be the law that was in force at the date on which those benefits were granted or any law in force at a later date that is not less favourable to that person.
Pension laws and protection

(2) The law to be applied with respect to any pension benefits not being benefits to which clause (1) applies, shall—

- (a) in so far as those benefits are wholly in respect of a period of service as a public officer, as any officer in the department of the Clerk or the National Assembly, or as a member of the armed forces, that commenced before the commencement of this Constitution, be the law that was in force immediately before that date; and
- (b) in so far as those benefits are wholly or partly in respect of a period of service as a public officer, as any officer in the department of the Clerk of the National Assembly, or as a member of the armed forces, that commenced after the commencement of this Constitution, be the law in force on the date on which that period of service commenced;

or any law in force at a later date that is not less favourable to that person.

(3) Where a person is entitled to exercise an option as to which of two or more laws shall apply in his case, the law for which he opts shall, for the purposes of this Article, be deemed to be more favourable to him than the other law or laws.

(4) All pension benefits shall, except to the extent to which they are a charge on a fund established by or under any law and have been duly paid out of that fund to the person or authority to whom payment is due, be a charge on the general revenues of the Republic.

(5) In this Article “pension benefits” means any pensions, compensation, gratuities or other like allowances for persons in respect of their service as public officers, as officers in the department of the Clerk of the National Assembly or as members of the armed forces or for the widows, children, dependants or personal representatives of such persons in respect of such service.

(6) References in this Article to the law with respect to pension benefits include, without prejudice to their generality, references to the law regulating the circumstances in which such benefits may be granted or in which the grant of such benefits may be refused, the law regulating the circumstances in which any such benefits that have been granted may be withheld, reduced in amount or suspended, and the law regulating the amount of any such benefits:

Provided that, notwithstanding anything to the contrary contained in this Constitution or any other written law, such references shall not be so construed as to include the law regulating the age of compulsory retirement.

(7) In this Article—

- (a) references to service as a public officer includes references to service as a public officer under the Government of the territories which on the 24th October, 1964, became the sovereign Republic of Zambia and references to service as a member of the teaching service of the said Government;
- (b) references to service as an office in the department of the Clerk of the National Assembly includes reference to service as an officer in the department of the Clerk of the Legislative Assembly of the said territories; and
- (c) references to service as a member of the armed forces include references to service as a member of the armed forces of the said territories.

PART XII

(As amended by Act No. 18 of 1996)

HUMAN RIGHTS COMMISSION

Establishment
of Human
Rights
Commission
and its
independence

125. (1) There is hereby established a Human Rights Commission.

(2) The Human Rights Commission shall be autonomous.

Functions,
powers,
composition,
procedure,
etc. of Human
Rights
Commission

126. The functions, powers, composition, funding and administrative procedures, including the employment of staff, of the Human Rights Commission shall be prescribed by or under an Act of Parliament.

PART XIII

(As amended by Act No. 18 of 1996)

CHIEFS AND HOUSE OF CHIEFS

The
Institution of
Chief

127. (1) Subject to the provisions of this Constitution, the Institution of Chief shall exist in any area of Zambia in accordance with the culture, customs and traditions or wishes and aspirations of the people to whom it applies.

(2) In any community, where the issue of a Chief has not been resolved, the issue shall be resolved by the community concerned using a method prescribed by an Act of Parliament.

Concept and
principles
relating to the
Institution of
Chiefs

128. The following concepts and principles shall apply to Chiefs:

- (a) the Institution of Chief shall be a corporation sole with perpetual succession and with capacity to sue and be sued and to hold assets or properties in trust for itself and the people concerned;
- (b) nothing in paragraph (a) shall be taken to prohibit a Chief from holding any asset or property acquired in a personal capacity; and
- (c) a traditional leader or cultural leader shall enjoy such privileges and benefits as may be conferred by the Government and the local government or as that leader may be entitled to under culture, custom and tradition.

Chief not to
be partisan

129. A person shall not, while remaining a Chief, join or participate in partisan politics.

130. There shall be a House of Chiefs for the Republic which shall be an advisory body to the Government on traditional, customary and any other matters referred to it by the President.

House of
Chiefs

131. Notwithstanding Article 130, the House of Chiefs may—

Functions of
House of
Chiefs

- (a) consider and discuss any Bill dealing with, or touching on, custom or tradition before it is introduced into the National Assembly;
- (b) initiate, discuss and decide on matters that relate to customary law and practice;
- (c) consider and discuss any other matter referred to it for its consideration by the President or approved by the President for consideration by the House; and
- (d) submit resolutions on any Bill or other matter referred to it to the President, and the President shall cause such resolutions to be laid before the National Assembly.

132. (1) The House of Chiefs shall consist of twenty-seven Chiefs.

Composition
of House of
Chiefs

(2) The members referred to in clause (1) shall consist of three chiefs elected by the Chiefs from each of the nine Provinces of the Republic.

(3) The Chairman and the Vice-Chairman shall be elected from amongst the members.

133. (1) A member of the House of Chiefs—

Tenure of
office and
vacancy

- (a) shall hold office for a period of three years and may be re-elected for a further period of three years; or
- (b) may resign upon giving one month's notice in writing to the Chairman.

(2) The office of member shall become vacant—

- (a) upon his death;
- (b) if he ceases to be a Chief;
- (c) if any other circumstances arise that would cause him to be disqualified for election;
- (d) if he becomes a candidate to any election, or accepts an appointment, to any office in a political party;
- (e) if he is adjudged or becomes an undischarged bankrupt; or
- (f) if he is declared or becomes of unsound mind under any law in Zambia.

134. The Chairman and every member of the House of Chiefs shall take an oath of allegiance.

Oaths of
members of
House of
Chiefs

Staff of House
of Chiefs

135. There shall be a Clerk of the House of Chiefs and such other staff as may be necessary for carrying out the functions under this Part.

President may
make
regulations

136. Subject to the provisions of this Constitution, the President may by statutory instrument, make regulations for—

- (a) the appointment of the Clerk and other officers of the House of Chiefs;
- (b) provide for the remuneration of the Chairman, the Vice-Chairman and other members of the House;
- (c) the proceedings and conduct of the House of Chiefs;
- (d) the application of any of the privileges and immunities of the National Assembly and its members to the House of Chiefs and its members; and
- (e) such other matters as are necessary or conducive to the better carrying out of the purposes of this Part.

PART XIV

(As amended by Act No. 18 of 1996)

MISCELLANEOUS

Resignations

137. (1) Any person who is appointed or elected to any office established by this Constitution may resign from that office by writing under his hand addressed to the persons or authority by whom he was appointed or elected:

Provided that in the case of a person who holds office as Speaker or Deputy Speaker of the National Assembly his resignation from that office shall be addressed to the National Assembly, and in the case of an elected or nominated member of the National Assembly his resignation shall be addressed to the Speaker.

(2) The resignation of any person from any office established by this Constitution shall take effect when the writing signifying the resignation is received by the person or authority to whom it is addressed or by any person authorised by that person or authority to receive it.

Re-
appointment
and
concurrent
appointment

138. (1) Where any person has vacated any office established by this Constitution he may, if qualified, be appointed or elected again to hold that office in accordance with the provisions of this Constitution.

(2) Where a power is conferred by this Constitution upon any person to make any appointment to any office, a person may be appointed to that office notwithstanding that some other person may be holding that office, when that other person is on leave of

absence pending the relinquishment of the office; and where two or more persons are holding the same office by reason of an appointment made in pursuance of this clause, then for the purposes of any function conferred upon the holder of that office, the person last appointed shall be deemed to be the sole holder of the office.

139. (1) In this Constitution, unless the context otherwise requires—

Interpretation

“Act of Parliament” means a law enacted by Parliament; “Article” means an Article of this Constitution;

“Chief” means a person who is recognised by the President under the provisions of the Chiefs Act or any law amending or replacing that Act as the Litunga of Western Province, a Paramount Chief, Senior Chief, Chief or Sub-Chief or a person who is appointed as Deputy Chief;

“clause” means a clause of the Article in which the word occurs;

“the Commonwealth” includes any dependency of a country which is a member of the Commonwealth;

“financial year” means the period of twelve months ending on the 31st December in any year or on such other day as may be prescribed by or under an Act of Parliament:

Provided that by or under an Act of Parliament prescribing a day other than the 31st December as the terminal day of the financial year the said period of twelve months may be extended or reduced for any one financial year for the purposes of effecting such prescribed change;

“the *Gazette*” means the official Gazette of the Government of Zambia;

“High Court” means the High Court established by this Constitution;

“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 court having jurisdiction in appeals from such a court;

“House” means the National Assembly;

“meeting” means all sittings of the National Assembly held during a period beginning when the National Assembly first sits after being summoned at any time and terminating when the Assembly is adjourned *sine die* or at the conclusion of a session;

“oath” includes affirmation;

“the oath of allegiance” means such oath of allegiance as may be prescribed by law;

“paragraph” means a paragraph of the clause in which the word occurs;

“person” includes any company or association or body of persons, corporate or unincorporate;

“public office” means an office of emolument in the public office;

“public officer” means a person holding or acting in any public office;

“the public service” subject to clauses (2) and (3) shall have the meaning assigned to it by an Act of Parliament;

“session” means the sitting of the National Assembly beginning when it first sits after the coming into operation of this Constitution or after Parliament is prorogued or dissolved at any time and ending when Parliament is prorogued or is dissolved without having been prorogued;

“sitting” means a period during which the National Assembly is sitting without adjournment and includes any period during which it is in committee;

“statutory instrument” means any proclamation, regulation, order, rule, notice or other instrument, (not being an Act of Parliament) of a legislative as distinct from an executive character; and

“Supreme Court” means the Supreme Court of Zambia established by this Constitution.

(2) In this Constitution, references to offices in the public service shall not be construed as including references to the offices of judges of the Supreme Court and of the High Court, and to the offices of Chairman, Deputy Chairman, and members of the Industrial Relations Court.

(3) In this Constitution references to an office in the public service shall not be construed as including references to the office of Attorney-General, or a member of any Commission established by this Constitution or by an Act of Parliament or to the office of the Clerk of the National Assembly or any office in the department of the Clerk of the National Assembly.

(4) For the purposes of this Constitution, a person shall not be considered as holding a public office by reason only of the fact that he is in receipt of a pension or other like allowance in respect of service under the Government of Zambia or of its predecessor Government.

(5) A person shall not be regarded as disqualified for appointment to any office to which a public officer is not qualified to be appointed by reason only that he holds a public office if he is on leave of absence pending relinquishment of that office.

(6) In this Constitution, unless the context otherwise requires, a reference to the holder of an office by the term designating his office shall be construed as including a reference to any person for the time being lawfully acting in or performing the functions of that office:

Provided that nothing in this clause shall apply to references to the President or Vice-President in Articles 36, 37, 39 or 45.

(7) References in this Constitution to the power to remove a public officer from his office shall be construed as including references to any power conferred by any law to require or permit that officer to retire from public service:

Provided that nothing in this clause shall be construed as conferring on any person or authority power to require a judge of the Supreme Court or of the High Court, the Investigator-General, the Auditor-General or the Director of Public Prosecutions to retire from the public service.

(8) Any provision in this Constitution that vests in any person or authority power to remove any public officer from his office shall be without prejudice to the power of any person or authority to abolish any office or to any law providing for the compulsory retirement of public officers generally or any class of public officers on attaining an age specified therein.

(9) Where power is vested by this Constitution in any person or authority to appoint any person to act in or perform the functions of any office if the holder thereof is himself unable to perform those functions, no such appointment shall be called in question on the ground that the holder of the office was unable to perform those functions.

(10) Provisions of this Constitution that any person or authority shall not be subject to the direction or control of any other person or authority in the exercise of any functions under this Constitution shall not be construed as precluding a court of law from exercising jurisdiction in relation to any question whether that person or authority has performed those functions in accordance with this Constitution or any other law.

(11) When any power is conferred by this Constitution to make any proclamation, statutory instrument, order, regulation or rule, or to issue any direction or certificate or confer recognition, the power shall be construed as including the power, exercisable in like manner, to amend or revoke any such proclamation, statutory instrument, order, regulation, rule, direction or certificate or to withdraw any such recognition:

Provided that nothing in this clause shall apply to the power to issue a certificate conferred by clause (2) of Article 36.

(12) (a) Any reference in this Constitution to a law that amends or replaces any other law shall be construed as including a reference to a law that modifies, re-enacts with or without amendment or modification, or makes different provision in lieu of that other law.

(b) Where any Act passed after the commencement of this Constitution repeals and re-enacts, with or without modification, any provisions thereof, references in this Constitution to the provisions so repealed shall, unless the contrary intention appears, be construed as references to the provisions so re-enacted.

(c) Where any Act passed after the commencement of this Constitution repeals any provision thereof then, unless the contrary intention appears, the repeal shall not—

- (i) revive anything not in force or existing at the time at which the repeal takes effect; or
- (ii) affect the previous operation of any provision so repealed or anything duly done or suffered under any provision so repealed; or
- (iii) affect any right, privilege, obligation or liability acquired, accrued or incurred under any provision so repealed; or
- (iv) affect any penalty, forfeiture or confiscation or punishment incurred under provision so repealed; or
- (v) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or confiscation or punishment as aforesaid, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or confiscation or punishment may be imposed, as if the repealing Act had not been passed.

(13) In this Constitution, unless the context otherwise requires, words and expressions importing the masculine gender includes females.

(14) In this Constitution, unless the context otherwise requires, words and expressions in the singular include the plural and words and expressions in the plural include the singular.

(15) Where this Constitution confers any power or imposes any duty, the power may be exercised and the duty shall be performed from time to time as occasion requires.

(16) Where by any Act which repeals and re-enacts, with or without modification, any provision of this Constitution, and which is not to come into force immediately on the publication thereof, there is conferred—

- (a) a power to make or a power exercisable by making statutory instruments; or
- (b) a power to make appointments; or
- (c) a power to do any other thing for the purposes of the provision in question;

that power may be exercised at any time on or after the date of publication of the Act in the *Gazette*:

Provided that an instrument, appointment or thing made or done under that power shall not, unless it is necessary to bring the Act into force, have any effect until the commencement of the Act.

(17) In computing time for the purposes of any provision of this Constitution, unless a contrary intention is expressed—

- (a) a period of days from the happening of an event or the doing of any act or thing shall be deemed to be exclusive of the day on which the event happens or the act or thing is done;
 - (b) if the last day of the period is Sunday or a public holiday which days are in this clause referred to as “excluded days” the period shall include the next following day, not being an excluded day;
 - (c) where any act or proceeding is directed or allowed to be done or taken on a certain day, then, if that day happens to be an excluded day the act or proceeding shall be considered as done or taken in due time if it is done or taken the next day afterwards, not being an excluded day;
 - (d) where an act or proceeding is directed or allowed to be done or taken within any time not exceeding six days, excluded days shall not be reckoned in the computation of the time.
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[CAP. 13

REPUBLIC OF ZAMBIA

THE ELECTORAL ACT

CHAPTER 13 OF THE LAWS OF ZAMBIA

THE ELECTORAL ACT

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*Copies of this Act may be obtained from Kas Enterprises,
Cell: 0977-708844, Lusaka*

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GOVERNMENT OF ZAMBIA

ACT

No. 12 of 2006

Date of Assent: 12th May, 2006

An Act to provide for a comprehensive process for elections to the office of President and to the National Assembly; to empower the Electoral Commission of Zambia in matters relating to elections and enable the Commission to make regulations providing for the registration of voters and for the manner of conducting elections; to provide for offences and penalties in connection with elections; to provide for the appointment of conflict management officers; to provide for election petitions and the hearing and determination of applications relating to elections to Parliament; to repeal and replace the Electoral Act, 1991; and to provide for matters connected with or incidental to the foregoing.

[19th May, 2006]

ENACTED by the Parliament of Zambia.

Enactment

PART I

PRELIMINARY

1. This Act may be cited as the Electoral Act, 2006, and shall come into operation on such date as the President may, by statutory instrument, appoint.

Short title and commencement

2. (1) In this Act unless the context otherwise requires—

Interpretation

“ballot box” means a box prescribed by the Commission for the purpose of an election;

“ballot paper” means the document prescribed by the Commission in respect of an election;

“ballot paper account” means a document prescribed by the Commission for purposes of recording the ballot papers issued to a returning officer and completed by a presiding officer at the close of a poll;

“by-election” means an election held in accordance with section *one hundred and eight*;

“candidate” means any person nominated as a candidate for an election;

- “code” means a code issued by the Commission under section *one hundred and nine* and includes the Electoral Code of Conduct;
- Cap. 1 “Commission” means the Electoral Commission of Zambia established under the Constitution;
- “conflict management officer” means an officer appointed as such under section *one hundred and eleven*;
- “constituency” means any of the constituencies into which Zambia is divided under the Constitution;
- Cap. 1 “Constitution” means the Constitution set out in the Schedule to the Constitution of Zambia Act;
- “counting assistant” means a person appointed as a counting assistant by the Commission;
- “corrupt practice” means any offence against this Act which is declared under this Act to be a corrupt practice;
- “costs” includes charges and expenses;
- “direct elections” means an election to the office of President, or an election for a member of the National Assembly;
- “Director of Elections” means the person appointed Director of Elections by the Commission;
- “election” means a direct election and cognate expressions shall be construed accordingly;
- “election agent” means an agent of a candidate for the purpose of that election who has been specified by the candidate in that candidate’s nomination paper;
- “election officer” means a person appointed by the Commission to be—
- (a) a registration officer;
 - (b) an assistant registration officer;
 - (c) an electoral officer;
 - (d) a returning officer;
 - (e) a presiding officer;
 - (f) a polling assistant; or
 - (g) a counting assistant;
- and includes any person appointed to assist an election officer or the Director of Elections where functions are conferred on the Director of Elections under this Act, in respect of any election;

“election petition” means an election petition referred to in section *ninety-four*;

“election timetable” means a timetable for an election published by the Commission under section *twenty-six*;

“Electoral Code of Conduct” means the Electoral Code of Conduct prescribed by the Commission under section *one hundred and nine*;

“high judicial office” has the meaning assigned to it in the Constitution;

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“illegal practice” means any offence against this Act which is declared under this Act to be an illegal practice;

“member” means an elected member of the National Assembly;

“national registration card” means a national registration card issued under and in terms of the National Registration Act;

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“national registration number” means the serial number inserted on a national registration card issued under the National Registration Act;

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“nomination day” means the day appointed by the Commission as the day on which candidates file their nomination papers with the Commission;

“nomination office” means a place prescribed by the Commission as a nominating office;

“nomination paper” means a document prescribed by the Commission for the purpose of a candidate registering their intention to contest an election under this Act;

“officer” means an officer appointed by the Commission under section *three* and who has been issued with a certificate under that section;

“petitioner” means, in relation to an election petition, any person referred to in section *ninety-five* who signs and presents an election petition under section *ninety-six* and includes any person substituted for a petitioner under section *one hundred and one* or section *one hundred and two*;

“political party” means an organisation registered under the Societies Act the objects of which include any political activity or the sponsoring of candidates for election to the office of President or as a member of the National Assembly;

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“polling agent” means an agent appointed by a candidate in respect of each polling station;

“polling assistant” means a person appointed polling assistant by the Commission;

“polling day” means—

(a) in relation to a general election, a day appointed by the President for the taking of the poll in a general election;

(b) in relation to a by-election, a day appointed by the Commission for the taking of the poll in a by-election;

“polling district” means a polling district established by the Commission as a polling district under section *thirty-eight*;

“polling station” means a place established as a polling station by the Commission under section *forty*;

“prescribed” means prescribed by the Commission by statutory instrument;

“presiding officer” means a person appointed as presiding officer by the Commission;

“registered” means registered in a register of voters under this Act and “registration” shall be construed accordingly;

“register of voters” means a register of voters for any constituency, or part of a constituency, prepared and maintained under this Act;

“registered voter” means a person who has been registered as a voter under section *eight*;

“registration officer” means a person appointed registration officer by the Commission;

“Registrar” means the Registrar of the High Court and includes Deputy Registrar, District Registrar, and Assistant Registrar;

“respondent” has the meaning assigned to it in subsection (4) of section *ninety-six*;

“Returning Officer” in relation to the election of a President, means the Returning Officer specified in the Constitution;

“voter” means a person who is entitled to vote at the relevant election;

“voter’s card” means a voter’s registration card prescribed and issued by the Commission; and

“voters’ roll” means a register of voters.

(2) For the purposes of this Act, the expression “election expenses” means expenses incurred, whether before, during or after an election, on account of, or in respect of, the conduct or management of such election by, or on behalf of, a candidate:

Provided that the following expenses shall not be deemed to be election expenses—

(a) any moneys expended or expenses incurred by any association or group of persons or by any person in the general interests of a political party or organisation or its candidates generally, not being moneys expended or expenses incurred directly in the particular interests of any particular candidate or expenditure incurred by a political party with the consent of a candidate and apportioned to such candidate under this Act;

(b) any moneys expended or expenses incurred by any political party or organisation in the printing, publication or distribution of the official symbol of that political party or organisation; or

(c) any election fee.

(3) For the avoidance of doubt, every person interpreting this Act and any regulations made under it shall—

(a) do so in a manner that gives effect to the guarantees and responsibilities contained in the Constitution;

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(b) take into account any appropriate code.

3. (1) This Act shall be administered and enforced by the Commission;

Administration,
enforcement
and
prosecution

Provided that in the exercise of its functions under the Constitution and this Act, the Commission shall not be subject to the direction or control of any other person or authority.

(2) In order to ensure compliance with the provisions of this Act the Commission shall appoint such number of officers as it may consider necessary.

(3) Every officer shall be provided with a certificate of appointment which shall be *prima-facie* evidence of the officer's appointment as such.

(4) An officer shall, on demand by a person affected by the exercise of the powers of the officer under this Act, produce for inspection the certificate referred to in subsection (3).

(5) The Anti-Corruption Commission shall investigate and prosecute any corrupt practice committed under this Act in accordance with the Anti-Corruption Commission Act.

Act No. 42
of 1996

(6) The Zambia Police Force shall enforce law and order at polling station and undertake any criminal proceedings, subject to, subsection (2), in respect of any offence committed by any person in contravention of this Act or any regulations issued under this Act.

PART II

REGISTRATION OF VOTERS AND VOTERS ROLL

- Voter's roll
4. (1) The Commission shall compile and maintain a voters' roll in the manner and style prescribed by the Commission.
- (2) The Commission shall compile, maintain and update on a continuing basis, a register of voters, which shall include the names of all persons entitle to vote In any election under this Act, local government election under the Local Government Elections Act or referendum under the Referendum Act:
- Cap 14
Cap 282
- Provided that the register of voters shall not preclude any person from voting in a referendum under Article 79 (3) of the Constitution.
- (3) The Commission may suspend the registration of voters whenever an election is due.
- (4) Where the Commission prescribes the polling day for a by-election, the Commission shall immediately suspend the registration of voters in the district in which the by-election is to take place.
- Qualification for registration as voter
5. Subject to the provisions of section *seven*, every person shall be qualified for registration as a voter in direct elections who—
- (a) is a citizen of Zambia;
- (b) has attained the age of eighteen years; and
- (c) is in possession of a national registration card.
- Application for registration as voter
6. A person applying for registration as a voter—
- (a) shall do so in the manner prescribed by the Commission; and
- (b) may register in any constituency of the person's choice; Provided that the person shall not register in more than one constituency.
- Disqualification from registration as voter
7. (1) No person shall be qualified for registration as a voter, and no person shall be registered as a voter, who—
- (a) is under a declaration of allegiance to some country other than Zambia;
- (b) is not a citizen of Zambia;
- (c) has applied for registration fraudulently or otherwise than in the prescribed manner;
- (d) under any law in force in Zambia, is adjudged or otherwise declared to be of unsound mind, or is detained under the Criminal Procedure Code during the pleasure of the President;
- (e) is disqualified from voting under section *nineteen*;
- (f) is under sentence of death imposed by any court in Zambia, or a sentence of imprisonment imposed by such a court or substituted by any competent authority for some other sentence imposed by such a court; or
- (g) is not in possession of a national registration card.
- Cap. 88

(2) In this section, the reference to a sentence of imprisonment shall be construed as not including a sentence of imprisonment the execution of which is suspended or a sentence of imprisonment imposed in default of payment of a fine.

8. (1) A person qualified for registration under section *five* and not disqualified for registration under section *seven*, shall be registered as a voter in the register of voters for any constituency of the person's choice, as may be prescribed.

Registration
in voters
register for
constituency

(2) A person's name shall not be entered in the voters register for more than once in any constituency.

(3) A person's who has been registered in the register of voters shall be issued with a voter's card.

(4) A voter's card shall contain—

(a) the individual's—

- (i) full names;
- (ii) residential address;
- (iii) sex;
- (iv) date of birth;
- (v) portrait; and

(b) such other information as the Commission may prescribe.

9. (1) A registered voter or person who has applied for registration as a voter and whose name or ordinary place of residence has changed, shall apply, in the prescribed manner, to have that change recorded in the voters' roll or in that person's application, except that a person need not apply when a change of name is due to change in marital status.

Application to
change
registration
details

(2) If satisfied that a person's application complies with this Act, the election officer shall, subject to the provisions of subsection *four* record the change in the voters' roll.

10. (1) An election officer shall—

- (a) change the registration details of a voter if the election officer is satisfied that the details of that voter as reflected in the voters' roll are incorrect or have changed;
- (b) deregister a voter, if the election officer is satisfied that the voter does not qualify, or no longer qualifies, for registration;
- (c) add the name and other prescribed particulars of a voter resulting from a new registration; or
- (d) delete the name of any person who is deceased.

Amendments
to voters' roll

(2) The election officer shall record in the voters' roll or on a person's application any change in polling districts for which a person is registered as a voter or has applied for registration, if that person's place of ordinary residence after a change in the boundaries of the polling district falls in another polling district.

Notification
by election
officer

11. (1) An election officer shall notify, in the prescribed manner, a person—

- (a) whose application under section *six* for registration as a voter has been refused;
- (b) whose application under section *nine* to have a change of name or ordinary place of residence recorded, has been refused;
- (c) who has been de registered as a voter under section *ten*; or
- (d) whose registration details have been changed under section *ten*.

(2) The notification given under subsection (1), shall give reasons for the refusal or action taken.

Appeal
against
decision of
election
officer

12. (1) A person referred to in section *eleven* who feels aggrieved by a decision or action taken by an election officer under section *seven* or *ten* may appeal to the Commission against the decision or action taken, in the prescribed manner.

(2) The Commission, in the prescribed manner, shall consider and decide the appeal and notify the appellant and election officer of its decision.

General
registration of
voters

13. (1) The Commission shall, for the compilation of the voters' roll specified in section *four*, conduct a general registration of voters.

(2) The Commission may prescribe cut-off dates in respect of the general registration of voters and the compilation of the voters' roll, including the date by which—

- (a) any person who wants to be included in the voters' roll shall have applied for registration as a voter under section *six* or for the change of registration details under section *nine*;
- (b) an election officer shall notify a person under section *eleven*;
- (c) an appellant may appeal in terms of section *twelve*;
- (d) the Commission shall consider and decide the appeal and notify the appellant and the election officer of the decision;
- (e) the election officer shall give notice of the periods during which, and the venue where, a provisionally compiled voters' roll shall be available for inspection;

- (f) any objections under section *fourteen* in respect of a provisionally compiled voters' roll shall be made;
- (g) the Commission shall decide an objection made under section *fourteen* and notify the objector and the election officer and a person other than the objector whose name or registration details are involved; and
- (h) an election officer shall complete the compilation of the voters' roll and publish it.

14. (1) Any person may object to the Commission, in the prescribed manner, to any segment of the voters' roll or a provisionally compiled voters' roll to—

Objections to voters' roll

- (a) the exclusion of any person's name from that segment;
- (b) the inclusion of any person's name in that segment; or
- (c) the correctness of any person's registration details in that segment.

(2) A person who objects to the exclusion or inclusion of the name of another person, or to the correctness of that person's registration details, shall serve notice of the objection on that person.

(3) The Commission shall decide an objection, except for an objection in relation to a provisionally compiled voters' roll, not later than fourteen days after the objection was made and notify the following persons of the decision:

- (a) the person who made the objection;
- (b) the election officer; and
- (c) in the case of an objection against the exclusion or inclusion of the name, or the correctness of the registration details, of a person other than the objector, that other person.

(4) An election officer shall give effect to a decision of the Commission, under subsection (3), within three days.

15. (1) A copy of the voters' roll as it exists at any time shall be available for inspection during office hours at the Commission's head office; and the provincial and district segments of the voters' roll shall be available for inspection at the times and venues mentioned in a notice published by the Director of Elections in the *Gazette*.

Publication and copies of voters' roll

(2) An election officer shall provide a certified copy of, or extract from, a segment of the voters' roll as it exists at that time, to any person who has paid the prescribed fee.

PART III
QUALIFICATION TO VOTE AND ADDITIONAL
MATTERS RELATING TO ELECTIONS

- Qualifications for voting **16.** Subject to the provisions of sections *seventeen, eighteen, and nineteen*, every person who is registered in a register of voters for a constituency shall be entitled to vote at a direct election held in that constituency.
- Identification of voter **17.** Every person shall, whenever the person wishes to vote at a direct election, identify oneself to an election officer in such manner as may be prescribed.
- One vote and secrecy **18.** (1) No person shall be entitled to vote more than once in the same election in accordance with this Act and as may be prescribed.

(2) Every poll shall be taken by means of a secret ballot in accordance with this Act and as may be prescribed.
- Disqualifications from voting **19.** No person shall be entitled to vote at a direct election who—

(a) has been convicted of any corrupt practice or illegal practice within a period of five years preceding that election;

(b) has been reported guilty of any corrupt practice or illegal practice by the High Court upon the trial of any election petition under this Act within a period of five years preceding that election; or

(c) at the date of the election is in lawful custody or the person's freedom of movement is restricted under any law in force in Zambia.
- Election to office of President **20.** An election to the office of the President shall be held in every constituency in Zambia in accordance with this Act and as may be prescribed.
- Nomination of presidential candidate **21.** (1) A candidate for election as President shall, on such day, at such time and at such place, as may be determined by the Commission, deliver to the Returning Officer—

(a) the candidate's nomination paper;

(b) the prescribed election fee;

(c) the prescribed statutory declaration of the candidate's assets and liabilities; and

(d) an oath or affirmation, as set out in the Schedule, of the candidate's Zambian citizenship, and of that candidate's parents being Zambian citizens by birth or descent:

Provided that—

(i) subject to sub-paragraph (ii), the contents of the documents referred to in this section shall be accepted *prima facie*, by the Returning Officer, as complying with the law as to qualification for election as President;

(ii) notwithstanding sub-paragraph (i), if the Returning Officer is satisfied that clause (5)(a) or (c) of Article 34 or clause (2) of Article 35 of the Constitution has not been complied with, the Returning Officer shall immediately reject the nomination of the candidate.

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(2) The nomination paper shall be signed by not less than two hundred registered voters:

Provided that no registered voter shall, for the purposes of this subsection, support more than one presidential candidate.

(3) Any question, by any person, which may arise as to whether any provision of the Constitution or any law relating to nomination or election of President has been complied with shall be referred, by such person to the full bench of the Supreme Court within fourteen days of the person elected as President being sworn in, in accordance with clause 9 of Article 34 of the Constitution.

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(4) A person who swears or affirms falsely under this section shall be guilty of an offence and shall be liable upon conviction to imprisonment for a term of seven years without the option of a fine.

22. In addition to the persons disqualified by the Constitution—

(a) an election officer shall not be qualified for election as a member of the National Assembly; and

(b) any person who is convicted of any corrupt practice or illegal practice or who is reported guilty of any corrupt practice or illegal practice by the High Court upon the trial of an election petition under this Act shall not be qualified for election as a member of the National Assembly for a period of five years from the date of the conviction or of the report, as the case may be.

Additional
disqualification
for election to
National
Assembly
Cap. 1

23. The election fee for candidates for election to the National Assembly shall be such fee as may be prescribed.

Election fee

24. (1) The Commission shall allow a person to apply for a special vote if that person cannot vote at a polling station in the polling district in which the person is registered as a voter, due to that person's—

Special vote

- (a) physical infirmity or disability or pregnancy; or
- (b) absence from that polling district while serving as an officer or monitor in the election concerned, or while on duty as a member of the security services in connection with the election.

(2) The Commission may declare and prescribe circumstances in, and conditions under, which a person who is unavoidably and unforeseeably unable to vote in the polling district in which that person is registered as a voter may apply to vote elsewhere.

(3) The Commission shall prescribe—

- (a) the procedure for applying for special votes; and
- (b) the procedure, consistent in principle with Part VI, for the casting and counting of special votes.

PART IV

DISSOLUTION OF PARLIAMENT, ELECTION

ACTIVITIES AND MATERIALS

Proclamation
of dissolution
of Parliament
Cap. 1

25. (1) Subject to subsection (2), whenever the President proclaims the dissolution of Parliament in accordance with the Constitution, the President shall, by statutory instrument prescribe the date of the polling day for a general election.

(2) The President, when determining the polling day under subsection (1), shall not set a date later than ninety days from the date of the dissolution of Parliament.

Election
timetable

26. (1) The Commission shall, immediately after the polling day is prescribed under section *thirty-five*—

- (a) compile an election timetable for each election to provide for the following:
 - (i) the date and method for the submission of nominations;
 - (ii) the date and method for the acceptance of nominations;
 - (iii) the closing date of the registration of voters;

- (iv) the dates for verification of the provisional voters registers;
- (v) the opening and closing dates of the electoral campaign;
- (vi) the date of the election and voting hours for the election;
- (vii) any cut-off time for any act to be performed; and
- (viii) any other relevant information; and

(b) publish the election timetable in the *Gazette*.

(2) The Commission may amend the election timetable by notice in the *Gazette*—

- (a) if it considers it necessary for a free and fair election; or
- (b) if the polling day is postponed under section *twenty-nine*.

27. (1) Every public officer and public entity shall give and be seen to give equal treatment to all candidates to enable each candidate to conduct that candidate's campaign freely.

Electoral
Campaign

(2) Every candidate and political party shall have the right to have the substance of the candidate's or political party's campaign propaganda reported in all public media in a fair and balanced manner.

(3) The Commission shall prescribe a code of conduct to be complied with by every political party and candidate during an election campaign.

(4) A candidate or political party may, during an electoral campaign, publish campaign materials of such a nature and in such a manner as may be prescribed by the Commission.

(5) For the purposes of this section "campaign propaganda" means any activity, statement or any other form of expression aimed at promoting particular political ideas, policies and strategies for purposes of obtaining votes for any candidate or political party contesting an election.

28. The Commission may postpone the polling day for an election, provided the Commission is satisfied that—

General
postponement
of election

- (a) the postponement is necessary for ensuring a free and fair election; and
- (b) the polling day for the election shall still fall within the period as required by the Constitution.

Postponement
of voting at
polling station

29. (1) If it is not reasonably possible to conduct a free and fair election at a polling station on a prescribed polling day, the Commission may, at any time before voting at the polling station has commenced, postpone voting at that polling station.

(2) A postponement under subsection (1) shall be—

(a) effected in the prescribed manner;

(b) to a day that would still fall within the period referred to in paragraph (b) of section *twenty-eight*; and

(c) publicised in the media so as to ensure wide publicity of the postponement of the polling day at the polling station.

Re-voting at
polling station

30. (1) If ballot papers used in an election at a polling station are lost, destroyed or unlawfully removed before the votes cast at the polling station have been determined and announced, the Commission shall allow a re-vote at that polling station.

(2) A re-vote at a polling station shall be—

(a) conducted on a date that would still fall within the period referred to in paragraph (b) of section *twenty-eight*;

(b) publicised in the media so as to ensure wide publicity of the date determined for the re-vote; and

(c) conducted in accordance with a procedure prescribed by the Commission which is consistent with the principles provided for in Part VI.

Voters' roll for
election

31. (1) The voters' roll, or the segments of the voters' roll, that shall be used for an election shall be such as exist on the day the election is set.

(2) The Director of Elections, by not later than the relevant date stated in the election time-table, shall certify the voters' roll or the segments of the voters' roll to be used in that election and publish it by making it available for inspection at the following venues, not later than the relevant date;

(a) at the Commission's head office, being the segments for all district in which the election shall take place;

(b) in each Province, at the office of the Commission's provincial representative, being the segments for all voting districts in the Province in which the election shall take place; and

(c) at the office of each local authority, being the segments for all voting districts in that locality in which the election shall take place.

- 32.** The Commission shall prescribe the date, and time and place for submission and acceptance of nominations in an election and the manner and procedures for such nomination. Nomination date
- 33.** (1) Every person who desires to be candidate for election in any constituency shall lodge with the returning officer for that constituency that person's nomination paper in the manner and form prescribed. Nomination for election
- (2) A nomination submitted under subsection (1), may be withdrawn at any time, before the expiry of the period appointed for lodging nomination papers in respect of the constituency concerned, if the candidate delivers to the election officer a written notice to that effect.
- 34.** (1) In an election, a person shall only lodge nomination papers in one constituency. Nomination in one constituency
- (2) Where, upon the expiry of the period for lodging nomination papers in any constituency, a person is found to have lodged, and not withdrawn, nomination papers in more than one constituency, then every one of those nominations shall be invalid.
- 35.** (1) Every candidate contesting an election may appoint— Appointment of election agents and polling agents
- (a) two polling agents for each polling station; and
- (b) two election agents for each venue where the proceedings provided for in Part VI take place.
- (2) An election or polling agent—
- (a) shall be a Zambian citizen; and
- (b) shall not be a candidate in an election.
- (3) The appointment and revocation of appointment of a person as an election or polling agent shall be effected in the manner prescribed.
- 36.** (1) An election or polling agent may observe the proceedings during— Powers and duties of election or polling agents
- (a) voting;
- (b) the counting of votes; and
- (c) the determination and declaration of the result of an election.
- (2) The absence of an election or polling agent from a place where any electoral proceeding is being conducted shall not invalidate those proceedings.
- (3) Whilst present at any polling station, or venue where the proceedings provided under this section take place, an election or polling agent shall—

- (a) wear the prescribed identification indicating—
- (i) that the person is an election or polling agent; and
 - (ii) the candidate represented by that election or polling agent; and
- (b) comply with any order issued by—
- (i) an election officer; or
 - (ii) a police officer acting on the instructions of an election officer.
- 37.** (1) The Commission shall—
- Establishment of polling districts
- (a) establish polling districts for the whole of the territory of the Republic;
 - (b) determine the boundaries of each polling district in accordance with the criteria provided in section *thirty-eight*; and
 - (c) keep a map of each district.
- (2) The polling districts for an election shall be those polling districts which on the date on which an election is called are within the area in which the election is called.
- 38.** The Commission shall determine the boundaries of a polling district by taking into account any factor within the proposed polling districts that could affect the free, fair and orderly conduct of elections, including—
- Criteria for determining polling district boundaries
- (a) the availability of a suitable venue for a polling station;
 - (b) the number and distribution of eligible voters;
 - (c) the accessibility of a polling station to voters given—
 - (i) the radius of the proposed polling district;
 - (ii) the availability of transport;
 - (iii) telecommunications facilities; and
 - (iv) any geographical or physical feature that may impede access to the polling station; and
 - (d) district and provincial boundaries.
- 39.** (1) As soon as practicable after section *thirty-seven* has been complied with, the Director of Elections shall give notice that copies of the map of each polling district are available for inspection.
- Inspection and copies of maps of polling districts
- (2) The notice shall be—
- (a) published in the *Government Gazette*; and
 - (b) publicised in the media so as to ensure wide publicity of the maps.

(3) The notice shall state, and the Director of Elections shall ensure, that copies of—

- (a) the maps are available for inspection at the Commission's head office; and
- (b) the maps of the voting districts within a district are available for inspection at the office of the person administering the district.

(4) Any person may inspect a copy of a map provided for in subsection (1).

(5) The Director of Elections shall provide a certified copy of a map of a polling district to any person who has paid the prescribed fee.

40. (1) The Commission shall establish, for an election, a polling station in each polling district, as it may prescribe.

Establishment
of polling
stations

(2) When determining the location of a polling station, the Commission may take into account any factor that could affect the free, fair, and orderly conduct of elections, including—

- (a) the number and distribution of eligible voters in those polling districts;
- (b) the availability of suitable venues for polling stations;
- (c) the distance to be travelled to reach those venues;
- (d) access routes to those venues;
- (e) the availability of transport to those venues;
- (f) traffic density at or near those venues;
- (g) parking facilities at or near those venues;
- (h) telecommunications facilities at those venues;
- (i) general facilities at those venues;
- (j) the safety and convenience of voters;
- (k) any geographical or physical feature that may impede access to or at those venues; and
- (l) the ease with which those venues can be secured.

(3) Before determining the location of a polling station, the Commission may consult on the proposed location of that voting station with the local authority for the area within which that polling station shall fall.

(4) By not later than the relevant date stated in the election timetable, the Director of Elections shall give notice that copies of a list containing the address of each polling station shall be available for inspection.

- (5) Section *forty* shall apply, with the necessary modifications, to the inspection and taking of copies of the list specified under subsection (4).
- Relocation of polling station in emergencies **41.** (1) Notwithstanding section *forty*, the Commission may relocate a polling station if it is of the view that it is necessary to do so for the conduct of a free and fair election.
- (2) The election officer shall take all reasonable steps to publicise the relocation of a polling station among voters in the voting district concerned.
- Ballot paper **42.** Subject to the other provisions of this Act and section *forty-three*, the Commission shall prescribe the form and design of a ballot paper and the manner in which ballot papers issued shall be accounted for in a ballot paper account.
- Design of ballot paper **43.** (1) Notwithstanding section *fifty-two*, a ballot paper shall be designed in a way that shall prevent fraudulent voting.
- (2) The counterfoil of a ballot paper shall be marked with the voters' national registration card number or may be marked with the voter's card number.
- (3) A ballot paper shall include—
- (a) a portrait of the candidate nominated for elections to the office of President, as a Member of Parliament; and
- (b) the symbol of a political party registered with the Commission under which a candidate shall stand for elections and where the candidate is an independent candidate, the symbol the Commission shall allocate to the independent candidate.
- (4) A ballot paper shall be colour coded so as to differentiate the ballot paper for use in a Presidential or National Assembly election.
- Ballot boxes **44.** (1) The Commission shall use transparent ballot boxes in an election which shall be capable of being securely closed.
- (2) The Commission shall prescribe the manner in which ballot boxes shall be—
- (a) numbered and labelled; and
- (b) closed, secured, opened, sealed and unsealed.
- Voting compartments **45.** (1) Subject to subsection (2), the Commission shall prescribe the design and material of voting compartments to be used in an election.
- (2) A voting compartment shall, while screening a voter from observation by other persons when marking a ballot paper, be designed and placed in such a manner as to ensure that a clear view of the voters' back can be observed from the outside.

- 46.** (1) The Commission shall supply, before voting opens at a polling station, the presiding officer responsible for that polling station with all the voting materials necessary for the election at that station including—
- Voting materials
- (a) ballot papers;
 - (b) ballot boxes;
 - (c) voting compartments;
 - (d) a certified voters' roll for the polling district concerned; and
 - (e) a document to be signed by the presiding officer detailing the voting materials entrusted to that presiding officer.
- (2) A presiding officer shall be responsible for the safe-keeping of all the voting materials supplied to that officer.

PART V

ELECTION OFFICERS

- 47.** As soon as practicable, after prescribing a date for an election, the Commission shall appoint a presiding officer for each voting station at which that election is to be conducted.
- Appointment of presiding officer
- 48.** (1) A presiding officer shall co-ordinate and supervise the voting at a polling station so as to ensure that the election at the polling station is free and fair.
- Powers and duties of presiding officer
- (2) The presiding officer—
- (a) shall exercise the powers and perform the duties assigned to a presiding officer by or under this Act
 - (b) shall take all reasonable steps to ensure orderly conduct at a polling station; and
 - (c) may order a Police Officer to assist in ensuring orderly conduct at that polling station and that Officer shall comply with the order.
- (3) The presiding officer may exclude from the area within the boundary of a polling station any person other than—
- (a) a member, employee or officer of the Commission;
 - (b) an election or polling agent who is entitled under this Act to be present at a polling station;
 - (c) a candidate in that election;
 - (d) a person appointed as an accredited observer or monitor;
 - (e) a voter present for the purpose of casting a vote; and

(f) any person or category of persons authorised by the Commission to be present at the polling station.

(4) Notwithstanding subsection (3), the presiding officer may order any person, referred to in paragraphs (b) to (f) of subsection (3), to leave the area within the boundary of the polling station if that person's conduct is not conducive to a free and fair election at that polling station and shall give that person reasons for making the order.

(5) If a person refuses to comply with an order under subsection (4), the presiding officer may direct a police officer to forcibly remove that person, and that officer shall comply with that order.

Appointment
of polling
assistants

49. As soon as practicable after a date for an election has been prescribed, the Commission shall appoint for each polling station as many polling assistants as it considers necessary to conduct a free and fair election.

Powers and
duties of
polling
assistant

50. A polling assistant—

(a) shall assist the presiding officer in the exercise of the presiding officer's powers and the performance of the presiding officer's duties; and

(b) shall exercise the powers and perform the duties assigned to a polling assistant by or under this Act.

Appointment
of counting
assistant

51. (1) As soon as practicable, after prescribing a date of an election, the Commission shall appoint a counting assistant for each polling station or venue at which the counting of votes is to be conducted.

(2) Notwithstanding subsection (1), the Commission may appoint the presiding officer or a polling assistant, for a polling station, as the counting assistant for that polling station for that venue.

Powers and
duties of
counting
assistant

52. (1) A counting assistant for a polling station or venue for the counting of votes shall co-ordinate and supervise the counting of votes and determine the result of the election at the polling station or venue.

(2) The powers and duties of a counting assistant shall be as specified for a presiding officer under subsection (2) to (5) of section *forty-eight*, with the necessary modifications.

Appointment
of additional
persons

53. The Commission may appoint as many additional persons as election officers as may be necessary to enable the Commission to exercise its powers and perform its duties effectively during an election.

54. A person appointed by the Commission under section *fifty-three* shall exercise any power and perform any duty assigned to an election officer by or under this Act.

Powers and duties of additional persons

55. (1) A person may not be appointed as an election officer or remain in that office, if that person—

General provisions concerning appointment of election officer

(a) is a candidate contesting that election;

(b) is an election or polling agent in that election;

(c) holds political office in a registered party; or

(d) was convicted of an offence or reported guilty of any corrupt practice or illegal practice, under this Act, within a period of five years preceding that election.

(2) An election officer shall exercise the powers and perform the duties assigned to that officer subject the direction, control and discipline of the Commission.

(3) The Commission shall determine, in writing, the terms and conditions of appointment of an election officer including—

(a) any additional powers and duties assigned to that officer subject to this Act; and

(b) any remuneration payable to that officer.

(4) The assignment of a power of duty to an election officer shall not prevent the Director of Elections from exercising that power of performing that duty.

(5) A person may not be appointed as an election officer unless that person has signed a prescribed undertaking which shall include an undertaking to be bound by—

(a) the Electoral Code of Conduct; and

(b) a declaration of secrecy.

(6) An election officer shall be impartial and exercise the powers and perform the duties, stipulated by or under this Act, independently and without fear, favour or prejudice.

(7) An election officer may not, whether directly or indirectly, in any manner, give support to any of the issues in contention between parties or candidates.

(8) An election officer may not place in jeopardy that officer's independence or harm the credibility, impartiality, independence or integrity of the Commission, by any membership, association, statement or conduct.

(9) An election officer shall not be liable for any loss suffered by a person as a result of an act performed or omitted in good faith in the exercise of a power or the performance of a duty under this Act.

(10) An election officer may be dismissed by the Commission on account of—

- (a) misconduct, incompetence or incapacity;
- (b) absence from duty without leave of the Director of Elections;
- (c) bias;
- (d) a material contravention of this section;
- (e) a material contravention of the declaration of secrecy; or
- (f) any other consideration related to a free and fair election.

(11) No appeal may be brought against a decision by the Commission to appoint a person as an election officer or to dismiss an election officer.

PART VI

POLLING DAY ACTIVITIES

Election
officers at
polling
stations

56. On polling day each polling station shall be staffed by the—

- (a) presiding officer appointed for that polling station;
- (b) polling assistants appointed for that polling station; and
- (c) counting assistant appointed for that polling station.

Hours of
voting

57. (1) By not later than the relevant date stated in the election timetable, the Commission shall prescribe the voting hours for an election.

(2) If it is necessary to ensure a free and fair election, the Commission may prescribe different voting hours for different polling stations.

(3) The Commission shall publish the prescribed voting hours in the media so as to ensure wide publicity of those hours.

(4) A polling station shall—

- (a) open for voting at the prescribed time and;
- (b) subject to paragraph (b) of subsection (7), remain open for voting until the prescribed time, or such later time as the Commission may determine under paragraph (a) of subsection (7).

(5) No person may be admitted to a polling station for the purpose of voting after the polling station has closed for voting.

(6) Voting at a polling station shall continue until every voter has voted who—

- (a) is entitled to vote at that polling station; and

(b) had reported for voting at that polling station at the time prescribed for that polling station to close for voting.

(7) To ensure a free and fair election, the Commission—

(a) on the voting day, may extend voting hours at a polling station until as late as midnight on that voting day; or

(b) may temporarily close a polling station for part of a polling day if it is temporarily impossible to conduct a free and fair election at that voting station:

Provided that the time lost under paragraph (b) shall be compensated.

(8) The Government shall declare a polling day a national holiday during a general election.

58. The presiding officer shall, immediately before opening a voting station for voting—

Initial
procedures

(a) show all accredited observers, monitors, election and polling agents, present, that each ballot box to be used at that voting station is empty; and

(b) in the presence of the accredited observers, monitors, election and polling agents, close and secure the ballot boxes in the prescribed manner.

59. (1) Subject to section *twenty-four*, a voter may only vote at the polling station in the polling district for which that voter is registered.

Voting
procedure

(2) A voter is entitled to vote at a polling station—

(a) on production of that voter's national registration card and voter's card to the presiding officer or other election officer at the polling station; and

(b) if that voter's name is in the certified segment of the voter's roll for the polling district concerned.

(3) When a voter produces a national registration card to the presiding officer or other election officer as required by subsection (2), the presiding officer or election officer shall examine the identity document and determine whether—

(a) the voter is the person described in that national registration card;

(b) the voter's name is in the certified segment of the voter's roll for the polling district concerned; and

(c) the voter has not already voted in the election.

(4) For the purposes of paragraph (c) of subsection (3) the presiding officer or other election officer may require that the voter's fingerprints be taken.

(5) If the presiding officer or other election officer is satisfied in respect of all the matters referred to in subsection (3), that officer shall—

- (a) record that the voter is regarded to have voted in the election;
- (b) mark the hand of the voter in the prescribed manner;
- (c) mark the back of a ballot paper for that election; and
- (d) hand the ballot paper to the voter.

(6) Once the voter has received a ballot paper marked under paragraph (c) of subsection (5) the voter shall—

- (a) enter an empty voting compartment;
- (b) mark the ballot paper in a way that indicates the candidate the voter wishes to vote for;
- (c) fold the ballot paper to conceal the voter's vote;
- (d) take the ballot paper to a ballot box for the election and show it to the presiding officer or another election officer in a way that, that officer can see the mark made under paragraph (c) of subsection (5);
- (e) place the ballot paper in the ballot; and
- (f) without delay leave the voting station.

Assistance
to certain
voters

60. (1) The presiding officer or another election officer, at the request of a voter who is unable to read, shall assist that voter in voting in the presence of—

- (a) a person appointed by or as an accredited observer or monitor, if available; or
- (b) two election agents of different candidates, if available; or

(2) A person may assist a voter in voting if—

- (a) the voter requires assistance due to a physical disability;
- (b) the voter has requested to be assisted by that person; and
- (c) the presiding officer is satisfied that, that person has attained the age of 18 years.

(3) The secrecy of voting as stipulated in the Constitution shall be preserved in the application of this section.

(4) A presiding officer shall record in a copy of the voter's roll, by means of a mark placed next to the name of the voter concerned, that the presiding officer or another person has assisted the voter as provided under this section and give the reasons for doing so.

61. (1) If a voter accidentally marks a ballot paper in a way that does not indicate for whom the voter wishes to vote and the ballot has not yet been placed in the ballot box—

Issue of
New ballot
paper

- (a) the voter may return that ballot paper to the presiding officer or a polling assistant;
- (b) that election officer shall deal with the ballot paper in accordance with subsection (2), and shall give the voter a new ballot paper in accordance with this section; and
- (c) the voter may vote in accordance with subsection (6) of section *fifty-nine*.

(2) Upon receiving a ballot paper from a voter under subsection (1), the presiding officer or a polling assistant shall mark “cancelled” on the back of the ballot paper and file it separately to be dealt with in accordance with section *sixty-four*.

62. (1) At any time before a voter has been handed a ballot paper, an election agent may object to that voter being entitled to vote or to vote at the voting station concerned.

Objections
concerning
voting

(2) An election agent, or the voter concerned, may object if the voter is refused a ballot paper.

(3) An election agent, or a voter, may object to any other conduct, of an election officer, or any other person present at a voting station.

(4) An objection under subsection (1), (2) or (3) shall be made to the presiding officer in the prescribed manner.

(5) The presiding officer, in the prescribed manner, shall decide the objection and notify the objector and any other parties involved in the objection of the decision.

(6) An appeal against the decision of the presiding officer may be made to a Returning Officer in the prescribed manner.

(7) the presiding officer or Returning Officer shall keep a written record in the prescribed manner of each objection and decision made under this section.

63. (1) As soon as a ballot box is full, the presiding officer, in the presence of an accredited observer, monitor, or polling agent present, shall seal the ballot box in the prescribed manner and allow those agents to affix their seals to the ballot box.

Sealing of
full ballot
boxes

(2) Immediately after the last vote has been cast, every remaining used ballot box shall be similarly dealt with.

(3) A sealed ballot box shall remain—

(a) sealed until opened for the counting of votes under section *sixty-seven*; and

(b) in the polling station until the commencement of the counting of the votes there or, if the votes are not to be counted at that polling station, until removed for delivery under section *sixty-four*.

Completion of
ballot paper
account and
sealing of
voting
materials

64. (1) As soon as practicable after the close of a polling station for voting, the presiding officer, in the presence of any accredited observer, monitor election agents present, shall—

(a) complete a ballot paper account reflecting the number of—

(i) ballot boxes entrusted to that presiding officer;

(ii) used ballot boxes;

(iii) unused ballot boxes;

(iv) ballot papers entrusted to that presiding officer;

(v) issued ballot papers;

(vi) unissued ballot papers; and

(vii) cancelled ballot papers;

(b) seal each unused ballot box entrusted to that presiding officer;

(c) seal in separate containers—

(i) the certified segment of the voters' roll for that polling district;

(ii) the unused ballot papers entrusted to that presiding officer;

(iii) the cancelled ballot papers; and

(iv) the written record, as required by paragraph (7) of section *sixty-two* of any objections concerning voting; and

(d) allow those agents to affix their seals to the items mentioned in paragraphs (b) and (c).

(2) If the votes in an election are to be counted at the polling station at which those votes were cast and if the counting assistant for that polling station is a person other than the presiding officer for that polling station, the presiding officer shall deliver to the counting assistant for that polling station the items mentioned in, subsection (1).

(3) If the votes in an election are not to be counted at the polling station at which those votes were cast, the presiding officer shall deliver the following to the counting assistant of a counting venue determined by the Commission under section *sixty-six*:

- (a) the ballot paper account mentioned in subsection (1);
- (b) the sealed, used ballot boxes;
- (c) the sealed, unused ballot boxes; and
- (d) the sealed containers mentioned in subsection (1) (c).

65. If more than one election is held at a polling station on the same day, the Commission shall prescribe voting procedures—

More than one election on same day

- (a) substantially in accordance with section *fifty-six to sixty-four* for each of those elections;
- (b) in accordance with local Government Elections Act in the case of elections to elect a councillor

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66. (1) Votes shall be counted at the polling station at which those votes were cast, except when in the interest of ensuring a free and fair election, the Commission, after consultation with the contesting parties or their agents, determines that those votes be counted at another counting venue.

Place and time of counting of votes

(2) A counting assistant shall ensure that the procedures set out in this Part relating to the counting of votes commences as soon as practicable after the polling station is closed for voting and continue uninterrupted until they are completed.

(3) The procedures provided for in this Part relating to the counting of votes may be suspended only with the consent of the Commission and, if they are suspended, the counting assistant shall ensure the safe-keeping of all the voting materials entrusted to the counting assistant until the counting of votes has been completed.

67. (1) The counting assistant shall open all the sealed, used ballot boxes.

Counting of votes and determination of provisional results

(2) The counting assistant shall—

- (a) cause the ballot papers to be sorted on the basis of the ballot papers for each election if more than one election was held at a polling station on the same day;
- (b) cause the ballot papers for each election to be sorted and compare them with the number of ballot papers issued in the prescribed manner;
- (c) cause the votes cast in each election to be counted in the prescribed manner; and
- (d) determine the result of each count at that polling station.

(3) The counting assistant shall reject a ballot paper—

- (a) that indicates the identity of the voter;
- (b) on which a vote is cast for more than one candidate;
- (c) that is unmarked;
- (d) that is marked in such a way that it is not reasonably possible to determine the voter's choice;

(e) that does not bear the mark required in terms of paragraph (c) of subsection (5) of section *sixty-one*; or

(f) that is not an official ballot paper.

(4) The counting assistant shall mark “for rejection” on the back of each rejected ballot paper and file the rejected ballot paper separately.

(5) If a counting assistant’s acceptance or proposal to reject a ballot paper is disputed by an election agent, the counting assistant shall—

(a) mark “disputed” on the back of that ballot paper;

(b) file separately, but cause to be counted, the accepted ballot paper that is disputed; and

(c) file separately the rejected ballot paper that is disputed.

Objections concerning sorting of ballot papers

68. (1) An election or polling agent may object to any alleged irregularity in the sorting of the ballot papers under section *sixty-seven*.

(2) An objection under subsection (1) shall be made to a counting assistant, in the prescribed manner, at any stage before the counting assistant has completed the ballot paper account.

(3) Section *sixty-two*, with the necessary modifications, shall apply to an objection under this section.

Objections concerning counting of votes and determination of provisional result

69. (1) An election or polling agent may object to an alleged inaccuracy in the counting of the votes or the determination of a result under section *sixty-seven*.

(2) An objection under subsection (1) shall be made to a counting assistant, in the prescribed manner, at any stage before the counting assistant has completed the ballot paper account.

(3) A counting assistant shall decide the objection in the prescribed manner, and decide whether to order a recount.

(4) A counting assistant shall notify the objector and any other party involved in the objection, of the decision made under subsection (3).

(5) If a counting assistant orders a recount, the counting assistant shall determine afresh the result.

(6) An appeal against the decision of a counting assistant may be made to the returning officer, in the prescribed manner.

(7) A counting assistant shall keep a written record, in the prescribed manner, of each objection under subsection (1) and each decision under this section.

70. (1) After determining the result at a polling station, a counting assistant shall complete a form, as may be prescribed, reflecting—

Procedure concerning provisional results and voting materials

- (a) the number of ballot papers supplied to the polling station;
- (b) the result at the polling station;
- (c) the number of counted ballot papers that were not disputed;
- (d) the number of counted ballot papers that were disputed;
- (e) the number of rejected ballot papers that were not disputed;
- (f) the number of rejected ballot papers that were disputed;
- (g) the number of cancelled ballot papers; and
- (h) the number of unused ballot papers.

(2) When a counting assistant has complied with subsection (1), the presiding officer shall announce the result of the count at the voting station to members of the public, the accredited observers, monitors, election and polling agents present at the polling station.

(3) When the presiding officer has complied with subsection (2), the presiding officer shall inform the Commission of the result of that count at the polling station.

(4) When the presiding officer has complied with subsection (3), the presiding officer shall—

- (a) seal in separate containers each of the items mentioned in subsection (1) and the written record of any objections in terms of section *sixty-nine*; and
- (b) deliver the form, completed in terms of subsection (1), and the sealed containers to an officer designated by the Director of Elections.

71. (1) After receipt of the items mentioned in section *seventy*, a counting assistant shall examine whether the seals are intact on those items.

Verification procedure for votes counted elsewhere

(2) A counting assistant shall allow any accredited observer, monitor, election or polling agent present to examine whether the seals are intact.

(3) A counting assistant shall, after examining the seals, open all the sealed ballot boxes and containers and shall verify the ballot paper account completed by the presiding officer by comparing it with—

- (a) the number of used ballot boxes received;
- (b) the number of unused ballot boxes received;
- (c) the number of containers received; and

(d) the contents of those boxes and containers.

(4) A counting assistant shall deal with any irregularities and discrepancies in the prescribed manner.

(5) A counting assistant shall keep a written record, in the prescribed manner, of any irregularities and discrepancies and the manner in which those irregularities and discrepancies were dealt with.

Objections concerning verification procedure

72. (1) At any time before the counting of votes commences, an election or polling agent may object to any alleged irregularity or inaccuracy in the verification procedure performed by a counting assistant.

(2) An objection under subsection (1) shall be made to a counting assistant in the prescribed manner.

(3) Subsection (5) to (7) of *sixty-nine* with the necessary modifications, shall apply to an objection under this section.

Application of certain sections

73. Sections *sixty-seven* to *seventy*, with the necessary modifications, shall apply to the counting of votes and the determination of the result at a venue, other than a polling station, objections and procedures concerning results and voting materials.

Determination and declaration of final results of election

74. (1) The Commission shall determine and declare the result of an election by adding together the results received from all polling stations.

(2) The determination and declaration of the result of an election shall occur immediately after the close of polling.

(3) The Commission may determine and declare the result of an election without having received the results of all polling stations, if—

(a) to wait for the receipt of the result from every polling station would unduly and unreasonably delay the determination and declaration of the result of that election; and

(b) the outstanding results are not likely to materially influence the overall result of that election.

PART VII

OBSERVERS, MONITORS AND VOTER EDUCATION

Accreditation of observers and monitors

75. (1) Any juristic person may apply to the Commission, in the prescribed manner, for accreditation to observe or monitor an election.

(2) The Commission may require any information it may consider necessary in support of an application under subsection (1).

(3) The Commission may accredit an applicant, without the payment of any fee, to observe or monitor an election after considering the application, any other information provided by the applicant, and whether—

(a) the accreditation of the applicant shall promote conditions conducive to a free and fair election; and

(b) the persons appointed by the applicant shall—

(i) observe the election impartially and independently of any registered party or candidate contesting that election;

(ii) be competent and professional in observing the election; and

(iii) subscribe to a code governing observers and monitors issued by the Commission under this Act.

(4) If the Commission decides—

(a) to accredit the applicant, the Commission shall—

(i) enter the applicant's name in the register of persons accredited as observers and monitors;

(ii) issue a certificate of accreditation in the applicant's name stating the period and other conditions of accreditation; and

(iii) send the certificate to the applicant; or

(b) not to accredit the applicant, the Commission shall advise the unsuccessful applicant, in writing, of its decision.

(5) If a person accredited as an observer or monitor fails to comply, to a material extent, with the conditions of the accreditation, the Commission may cancel that accreditation and, in writing, notify the person concerned of the cancellation and state the reasons for such cancellation.

(6) Any person may inspect the register and copies of the certificates of persons accredited as observers and monitors.

(7) The register and copies of the certificate shall be kept at the Commission's head office.

(8) The Director of Elections shall provide a certified copy of, or extract from, that register or a certificate to any person who pays the prescribed fee.

(9) A person representing an accredited observer or monitor shall subscribe to a code of conduct as may be prescribed by the Commission and shall undertake to abide by the Electoral Code of Conduct.

(10) Any person, representing an accredited observer or monitor, who is found guilty of violating any election law shall be disqualified from observing or monitoring any election.

(11) A register of juristic persons and institutions accredited as observers or monitors and copies of the certificates of the observers and monitors shall be kept at the Commission's head office.

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(12) In this section "juristic person" includes an institution and organisation registered under the Societies Act.

Powers and duties of accredited observers and monitors

76. (1) An accredited observer or monitor may, in relation to an election for which that observer or monitor is accredited, observe the proceedings provided for in—

- (a) Part IV concerning voting and the counting of votes; and
- (b) Part VI concerning the determination and declaration of the election results.

(2) Whilst observing an election, a person appointed by an accredited observer or monitor shall wear the prescribed identification indicating that the person is representing an accredited observer or monitor.

(3) A person appointed by an accredited observer or monitor shall comply with any order issued by an election officer or a police officer acting on the instructions of an election officer.

Voter education

77. Notwithstanding section *seventy-eight*, the Commission shall provide voter education for an election.

Provision of voter education generally

78. (1) Any natural or juristic person may provide voter education for an election.

(2) Any natural or juristic person providing voter education shall do so in a manner—

- (a) that is impartial and independent of any registered party or candidate contesting an election; and
- (b) that shall promote conditions conducive to free and fair elections.

PART VIII

CORRUPTION AND ILLEGAL PRACTICES AND ELECTION OFFENCES

79. (1) Any person who corruptly either directly or indirectly, by oneself or any other person— Bribery

- (a) gives, lends, or procures, or offers, promises or agrees to give, lend or procure any money to or for any person to or for any person on behalf of any voter or to or for any other person in order to induce any voter to vote or refrain from voting or who corruptly does any such act as aforesaid on account of such voter having voted or refrained from voting at any election;
- (b) gives, lends or procures, or offers, promises or agrees to give, lend, or procure, any money to or for any voter or to or for any other person on behalf of any voter or to or for any other person for acting or joining in any procession or demonstration before, during or after any election;
- (c) makes any gift, loan, offer, promise, procurement or agreement to or for any person in order to induce the person to procure or to endeavour to procure the return of any candidate at any election or the vote of any voter at any election;
- (d) upon or in consequence of any gift, loan, offer, promise, procurement or agreement, procures or engages, promises or endeavours to procure, the return of any candidate at any election or the vote of any voter at any election;
- (e) advances or pays or causes to be advanced or paid any money to or for the use of any other person with the intent that such money or any part thereof shall be expended in bribery at any election, or who knowingly pays or causes to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any election;
- (f) before or during any election, receives or contracts for any money or loan for oneself or for any other person for voting or agreeing to vote or for refraining or agreeing to refrain from voting at any election;
- (g) after any election, receives any money on account of any person having voted or refrained from voting or having induced any other person to vote or refrain from voting at any election; or

- (h) conveys or transfers or is concerned with the conveyance or transfer of any property, or pays or is concerned with the payment of any money, to any person for the purpose of enabling that person to be registered as a voter, thereby to influence that person's vote at any future election, or pays to or is concerned with the payment of any money on account of any voter for the purpose of inducing that person to vote or refrain from voting;

shall be guilty of the offence of bribery.

(2) Nothing in this Act shall be construed as applying to any money paid or agreed to be paid for, or on account of, any expenditure *bonafide* and lawfully incurred in respect of the conduct or management of an election.

Impersonation

80. Any person who—

- (a) at any election, applies for a ballot paper in the name of some other person, living or dead, or of a fictitious person;
- (b) having voted once at any election, applies again at the same election for a ballot paper;
- (c) votes at any election knowing that the person is not entitled to vote at that election or induces or procures any person to vote at any election knowing that person is not entitled to vote at that election;
- (d) applies to be registered as a voter in the name of any other person, whether living, dead or fictitious; or
- (e) impersonates—
- (i) a representative of a registered party;
 - (ii) a candidate in an election;
 - (iii) a member, employee or officer of the Commission;
or
 - (iv) a person appointed by an accredited observer, or monitor;

shall be guilty of the offence of impersonation.

Treating

81. Any person who corruptly by oneself or by any person either before, during or after an election, directly or indirectly, gives or provides or pays, wholly or in part, the expenses of, any food, drink, entertainment, lodging or provisions to, or for, any person for the purpose of corruptly influencing that person or any other person to give or refrain from giving that person's vote at an election shall be guilty of the offence of treating.

82. (1) No person shall directly or indirectly, by oneself or by any other person— Undue
influence

- (a) make use of or threaten to make use of any force, violence or restraint upon any other person;
- (b) inflict or threaten to inflict by oneself or by any other person, or by any supernatural or non-natural means, or pretended supernatural or non-natural means, any physical, psychological, mental or spiritual injury, damage, harm or loss upon or against any person; and
- (c) do or threaten to do anything to the disadvantage of any person;

in order to induce or compel any person—

- (i) to register or not to register as a voter;
 - (ii) to vote or not to vote;
 - (iii) to vote or not to vote for any registered party or candidate;
 - (iv) to support or not to support any registered party or candidate; or
 - (v) to attend and participate in, or not to attend and participate in, any political meeting, march, demonstration or other political event;
- (d) interfere with the independence or impartiality of the Commission, any member, employee or officer of the Commission;
 - (e) prejudice any person because of any past, present or anticipated performance of a function under this Act;
 - (f) advantage, or promise to advantage, a person in exchange for that person not performing a function under this Act; or
 - (g) unlawfully prevent the holding of any political meeting, march, demonstration or other political event.

(2) Subject to the other provisions of this Act, no person shall prevent anyone from exercising a right conferred by this Act.

(3) No person, knowing that another person is not entitled to be registered as a voter, shall—

- (a) persuade that other person that that other person is entitled to be registered as a voter; or
- (b) represent to anyone else that that other person is entitled to be registered as a voter.

(4) No person, knowing that another person is not entitled to vote shall—

(a) assist, compel or persuade that other person to vote; or

(b) represent to anyone else that that other person is entitled to vote.

(5) Any person who contravenes any of the provisions of subsections (1) to (4) shall be guilty of the offence of undue influence.

(6) Any person who, by abduction, duress or any fraudulent device or contrivance, impedes or prevents the free exercise of the vote of any voter or thereby compels, induces or prevails upon any voter either to give or to refrain from giving the person's vote at any election, shall be guilty of the offence of undue influence.

Illegal
practice of
publishing
false
statements in
respect of
candidates

83. (1) Any person who, before or during an election, publishes a false statement of the illness, death or withdrawal from election of a candidate at that election for the purpose of promoting or procuring the election of another candidate, knowing that statement to be false or not believing it to be true, shall be guilty of an illegal practice.

(2) Any person who, before or during an election, publishes any false statement of fact in relation to the personal character or conduct of a candidate in that election, shall be guilty of an illegal practice, unless that person can show that that person had reasonable grounds for believing, and did believe, the statement to be true.

Illegal
practices in
respect of
nomination of
candidates

84. (1) Any person who forges or fraudulently destroys any written authority of a candidate or nomination paper, or delivers to a returning officer any written authority of a candidate or nomination paper knowing the same to be forged shall be guilty of an illegal practice.

(2) Any person who knowingly makes a false statement relating to that person's nomination in that person's nominating paper shall be guilty of an illegal practice.

Illegal
practice in
respect of
public
meetings

85. Any person who, at a lawful public meeting held in connection with the election of any person between the day of the publication of a notice appointing a nomination day and the day on which the result of the election is published, acts or incites others to act in a disorderly manner for the purpose of preventing the transaction of the business for which the meeting is called, shall be guilty of an illegal practice.

Illegal
practices
relating to the
poll

86. (1) Any person who—

(a) forges, counterfeits or fraudulently defaces or fraudulently destroys any ballot paper or the official mark on any ballot paper;

- (b) without authority supplies any ballot paper to any person;
- (c) without authority puts into any ballot box any ballot paper which that person is not authorised by law to put in;
- (d) sells or offers to sell any ballot paper or voter's card to any person or purchases or offers to purchase any ballot paper or voter's card from any person;
- (e) not being a person entitled under this Act to be in possession of a ballot paper or voter's card, has any such ballot paper or voter's card in that persons' possession;
- (f) without authority destroys, takes, opens or otherwise interferes with any ballot box or packet of ballot papers in use or intended to be used for the purpose of an election;
- (g) without authority prints or makes any ballot paper or what purports to be or is capable of being used as a ballot paper or any identity document at an election;
- (h) manufactures, constructs, has in that persons' possession, supplies, or uses for the purpose of an election, or causes to be manufactured constructed, supplied or used for the purposes of any election any appliance, device or mechanism by which a ballot paper may be extracted or manipulated after having been deposited in a ballot box in the course of polling at any polling station; or
- (i) at an election obstructs a voter either at the polling station or on that voter's way thereto or there from shall be guilty of an illegal practice.

(2) Any person who attempts to commit an illegal practice under subsection (1), shall be guilty of an illegal practice.

87. Any person who is found guilty of an illegal practice shall be liable on, conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding five years, or to both.

Penalty for
illegal
practices

88. (1) Any person who—

- (a) within a period prescribed for the receipt of nominations, under this Act, loiters in any public place within four hundred metres from the entrance to a nomination office;
- (b) having been required to leave a nomination office, fails to leave such nomination office or the precincts thereof;
- (c) puts into any ballot box anything other than the ballot paper which that person is authorised by law to put therein;

Election
offences

- (d) without due authority takes out of the polling station any ballot paper or is found in possession of any ballot paper outside a polling station;
- (e) on any polling day, at the entrance to or within a polling station, or in any public place or in any private place within four hundred metres from the entrance to such polling station—
 - (i) canvasses for votes;
 - (ii) solicits the vote of any person;
 - (iii) induces any person not to vote; or
 - (iv) induces any person not to vote for a particular candidate;
- (f) on any polling day loiters in any public place within four hundred metres from the entrance to any polling station;
- (g) on any polling day exhibits in any public or private place within one hundred metres from the entrance to any polling station any notice or sign, other than an official notice or sign authorised by an election officer under this Act, relating to the election;
- (h) not being a presiding officer, an election officer, candidate, an election agent or a polling agent in the course of their functions within a polling station, makes any record showing that any particular person has voted in an election;
- (i) without lawful authority, destroys, mutilates, defaces or removes any notice which is exhibited in accordance with this Act or under any regulations issued under this Act, or any document made available for inspection under this Act and any such regulations;
- (j) wilfully obstructs or interferes with a returning officer, presiding officer, or election officer in the execution of their duties;
- (k) makes a false answer to any question put to that person by a presiding officer or an election officer under this Act;
- (l) has any communication with a voter while such voter is in the precincts of a polling station for the purpose of voting;
- (m) fails to comply with any requirement or direction to leave a polling station or the precincts thereof; or
- (n) being a candidate uses a symbol in the course of an election other than the symbol registered with the Director of Elections in accordance with this Act and any regulations there under or, in the case of any other person, associate any candidate with, any symbol in the course of an election other than the candidates registered symbol;

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding ten thousand penalty units or to imprisonment for a period not exceeding two years, or to both.

(2) Any person who attempts to commit an offence against this section shall be liable to the punishment prescribed for that offence.

89. In a prosecution for an offence in relation to a nomination paper, ballot box or ballot paper, the property in such nomination paper, ballot box, as well as the property in the counterfoil of any ballot paper, shall be deemed to be vested in the returning officer at that election.

Property in
certain
election
material

90. (1) Every person in attendance at a polling station shall maintain, and aid in maintaining, the secrecy of the voting at such station and shall not communicate, except for some purpose authorised by law, to any person, any information as to the name or number on the register of voters of any voter who has or has not applied for a ballot paper or voted at such polling station, or as to the official mark or official seal at such polling station.

Secrecy and
penalty for
breach of
secrecy

(2) No person, except a presiding officer or polling assistant in exercise of their functions under this Act, shall obtain or attempt to obtain in a polling station information as to the candidate for whom any person in such polling station is about to vote for or has voted or communicate at any time to any person any information obtained in a polling station as to the candidate for whom any person in such polling station is about to vote for or has voted, or as to the number on the ballot paper issued to any person at such polling station.

(3) Every person in attendance at the counting of the votes shall maintain, and aid in maintaining, the secrecy of the voting and shall not ascertain at the counting the number on any ballot paper or communicate any information obtained at the counting as to the manner in which any vote is given by any particular ballot paper.

(4) Any person who contravenes any of the provisions of this section shall be guilty of an offence and shall be liable, on conviction, to a fine not exceeding ten thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

91. Any election officer who wilfully fails to perform the functions of that office under this Act shall be guilty of an offence and shall be liable, on conviction, to a fine not exceeding ten thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

Offences by
election
officers

Offences by
printers and
publishers

92. (1) Every Bill, placard, poster, pamphlet, circular or other printed matter having reference to an election shall bear upon the face thereof the name and address of the printer and of the publisher, and any person who prints, publishes or posts, or causes to be printed, published or posted any such matter which fails to bear upon the face thereof such names and address shall be guilty of an offence.

(2) The proprietor and publisher of every newspaper shall cause the word “advertisement” to be printed as a headline to each article or paragraph appearing in that person’s newspaper containing electoral matter, the insertion of which is or is to be paid for, and any proprietor or publisher who fails to comply with this provision shall be guilty of an offence.

(3) For the purposes of this section—

(a) any process for producing copies of a document, other than by copying it by hand, shall be deemed to be printing, and the expression “printed” shall be construed accordingly; and

(b) “electoral matter” shall be deemed to include all matters which, on the face of them, are intended or calculated to affect the result of an election.

(4) Any person who is guilty of an offence against this section shall be liable on conviction, to a fine not exceeding fifty thousand penalty units.

PART IX

ELECTION PETITIONS

Avoidance
of elections

93. (1) No election of a candidate as a member of the National Assembly shall be questioned except by an election petition presented under this Part.

(2) The election of a candidate as a member of the National Assembly shall be void on any of the following grounds which is proved to the satisfaction of the High Court upon the trial of an election petition, that is to say—

(a) that by reason of any corrupt practice or illegal practice committed in connection with the election or by reason of other misconduct, the majority of voters in a constituency were or may have been prevented from electing the candidate in that constituency whom they preferred;

- (b) subject to the provisions of subsection (4), that there has been a non-compliance with the provisions of this Act relating to the conduct of elections, and it appears to the High Court that the election was not conducted in accordance with the principles laid down in such provision and that such non-compliance affected the result of the election;
- (c) that any corrupt practice or illegal practice was committed in connection with the election by or with the knowledge and consent or approval of the candidate or of that candidate's election agent or polling agent; or
- (d) that the candidate was at the time of the election a person not qualified or a person disqualified for election.

(3) Notwithstanding the provisions of subsection (2), where, upon the trial of an election petition, the High Court finds that any corrupt practice or illegal practice has been committed by, or with the knowledge and consent or approval of, any agent of the candidate whose election is the subject of such election petition, and the High Court further finds that such candidate has proved that—

- (a) no corrupt practice or illegal practice was committed by the candidate personally or by that candidate's election agent, or with the knowledge and consent or approval of such candidate or that candidate's election agent;
- (b) such candidate and that candidate's election agent took all reasonable means to prevent the commission of a corrupt practice or illegal practice at the election; and
- (c) in all other respects the election was free from any corrupt practice or illegal practice on the part of the candidate or that candidate's election agent's;

the High Court shall not, by reason only of such corrupt practice or illegal practice, declare that election of the candidate void.

(4) No election shall be declared void by reason of any act or omission by an election officer in breach of that officer's official duty in connection with an election if it appears to the High Court that the election was so conducted as to be substantially in accordance with the provisions of this Act, and that such act or omission did not affect the result of that election.

94. An election petition may be presented to the High Court by one or more of the following persons—

- (a) a person who lawfully voted or had a right to vote at the election to which the election petition relates;

Presentation
of election
petition

(b) a person claiming to have had a right to be nominated as a candidate or elected at the election to which the election petition relates;

(c) a person claiming to have been a candidate at the election to which the election petition relates; and

(d) the Attorney-General.

Relief which may be claimed in election petition

95. (1) Any of the following reliefs may be claimed in an election petition:

(a) a declaration that the election was void; or

(b) a declaration that any candidate was duly elected.

(2) In addition to the foregoing reliefs, a petitioner may apply to the High Court upon the trial of an election petition for a scrutiny to be carried out by the High Court in such manner as the Court may determine.

(3) On a scrutiny at the trial of an election petition, the following votes only shall be held invalid:

(a) the vote of any person whose name was not on the register of voters assigned to the polling station at which the vote was cast or who was not authorised to vote at that polling station under this Act;

(b) the vote of any person whose vote was procured by any corrupt practice or illegal practice;

(c) the vote of any person who committed or procured the commission of impersonation at the election to which the election petition relates, contrary to the provisions of this Act;

(d) the vote of any person proved to have voted more than once at the election to which the election petition relates; or

(e) the vote of any person who was disqualified from voting at the election to which the election petition relates.

(4) In this section “scrutiny” means an enquiry as to the validity of the votes cast, and includes the determination of the number of valid votes cast for each candidate in the election in respect of which the application for a scrutiny is made.

Form and procedure for presentation of election petitions

96. (1) Every election petition shall be in such form contain such matters as may be prescribed by rules made by the Chief Justice.

(2) An election petition shall be presented to the High Court Principal Registry or District Registry by lodging it with the Registrar in accordance with this Act.

(3) Every election petition shall be signed by the petitioner or by all the petitioners if more than one, and shall be presented not later than thirty days after the date on which the result of the election to which it relates is duly declared.

(4) Notwithstanding the provisions of subsection (3), when the election of any person (hereinafter referred to as “the respondent” is questioned upon an allegation of a corrupt practice or an illegal practice, the election petition may be presented—

(a) at any time before the expiry of *twenty-one* days after the day on which the returning officer receives the return of the election expenses of the respondent; or

(b) if the election petition specifically alleges a payment of money or some other act to have been made or done since the day referred to in paragraph (a) by the respondent or the respondent’s election agent, or with the privity of the respondent or of the respondent’s election agent in pursuance or in furtherance of the corrupt practice or illegal practice alleged in the election, at any time within thirty days after the date of payment or other act.

(5) Where an election petition is presented under this section, the Registrar shall, in writing, inform the Speaker of the National Assembly and the Commission of such presentation.

97. (1) Subject to the provisions of subsection (2), the Registrar, shall make out a list of all election petitions presented under this Act, placing them on such list in the order in which they are presented, and the Registrar shall keep at the Registrar’s office a copy of the list which shall be open for inspection by any person making application for inspection thereof.

Duty of Registrar to make out list of election petitions

(2) Every election petition shall, unless the High court orders otherwise, be tried in the order in which it stands on the list made out by the Registrar under subsection (1), but where more election petitions than one are presented in respect of the same election, the election petitions shall be bracketed together and shall be dealt with as one petition, standing, unless the High Court orders otherwise, in the list in the place where the last of the election petitions would have stood if it had been the only election petition presented in respect of that election. .

98. (1) Subject to the other provisions of this Act, the Chief Justice may make rules regulating generally the practice and procedure of the High Court with respect to the presentation and trial of election petitions, including rules as to the time within which any requirement of the rules is to be complied with and as to the costs of and incidental

Rules of practice and procedure, security for costs etc

to the presentation and trial of the election petitions and as to the fees to be charged in respect of proceedings therein, and generally as regard to any other matter relating thereto as the Chief Justice may consider necessary or desirable.

(2) After the presentation of an election petition, every petitioner to it shall give such security for costs, not exceeding in amount the sum of eight hundred fee units, as the High Court may order, and such security shall be given within the time and in the manner and form as the Chief Justice may prescribe by rules under this section or, in the absence of the rules, as the High Court may order.

(3) Where, after the presentation of an election petition, no security for costs is given as required by or under this section, no further proceedings shall be heard on that election petition.

Withdrawal of
election
petition

99. (1) A petitioner shall not withdraw an election petition without the leave of the High Court.

(2) No application for leave to withdraw an election petition shall be made until notice of intention to withdraw the election petition has been given in such manner as the Chief Justice may prescribe.

(3) Where an election petition is presented by two or more petitioners, an application to withdraw the election petition shall not be made except with the consent of all the petitioners to it.

(4) The High Court may, upon an application for leave to withdraw an election petition, make such order as to costs as it may consider just.

Subsection of
new
petitioners

100. (1) Upon the hearing of an application under section *ninety-nine* for leave to withdraw an election petition, any person who might have been a petitioner in respect of the election to which that election petition relates may, notwithstanding the provisions of section *ninety-six*, apply to the High Court to be substituted for the petitioner so applying to withdraw, and the High Court may, if it grants leave to the petitioner to withdraw, order that person (hereinafter referred to as “the substituted petitioner” be substituted for the petitioner.

(2) Subject to the other provisions of this section, the substituted petitioner shall, as nearly as may be, stand in the same position, and be subject to the same liabilities, under this Act as the petitioner for whom a substitution was made (hereinafter referred to as “the original petitioner”).

(3) Where the High Court makes an order under subsection (1), it may direct that the security for costs given by the original petitioner shall remain as security for any costs caused thereafter by the substituted petitioner upon the trial of the election petition, and may direct that, to the extent of the amount of the security, the original petitioner shall be liable to pay the costs of the substituted petitioner.

(4) Unless the High Court gives directions as in subsection (3), subsections (1) and (2) of section *ninety-nine* shall apply to the substituted petitioner as they apply in relation to a petitioner presenting an election petition.

101. (1) If a sole petitioner or the survivor of several petitioners dies, then subject to the provisions of this section, no further proceedings shall be heard upon the election petition.

Abatement of
election
petitions

(2) The death of a petitioner shall not affect that petitioner's liability for the payment of costs previously incurred.

(3) On the abatement of an election petition under subsection (1), any person who might have been a petitioner in respect of the election to which that election petition relates may, notwithstanding section *ninety-seven* apply to the High Court to be substituted as a petitioner in place of the deceased petitioner and the High Court may, if it thinks fit, order that such person be substituted accordingly.

(4) Where the High Court makes an order under this section for the substitution of a person in place of a deceased petitioner such person shall, as nearly as may be, stand in the same position, and be subject to the same liabilities, under this Act as the deceased petitioner would have been but for the death, and subsection (1) and (2) of section *ninety-nine* shall apply to the person as they apply in relation to a petitioner presenting an election petition.

102. (1) An election petition shall be tried and determined by the High Court in open court, within one hundred and eighty days of the presentation of the election petition as provided under section *ninety-seven*:

Trial of
election
petitions

Provided that where an election petition is not tried and determined within the period specified in this subsection due to a failure by the petitioner to actively prosecute the petition, the High Court shall dismiss the petition for want of prosecution.

(2) The High Court may adjourn the trial of an election petition from time to time and from place to place.

(3) Subject to the provisions of this Act, the High Court may in respect of the trial of an election petition, exercise such powers within its civil jurisdiction as it may deem appropriate.

(4) On the trial of an election petition, a verbatim record of all evidence given orally in the trial shall be taken and transcripts of the record shall, at the conclusion of the proceedings, be delivered to the Commission by the Registrar.

Provisions as
to witnesses

103. (1) On the trial of an election petition, the High Court may —

- (a) order any person who appears to the High Court to have been concerned in the election to attend as a witness at the trial;
- (b) examine any witness or any person who is present at the trial although such witness or person is not called as a witness by any party to the proceedings:

Provided that after the examination by the High Court of a witness or person, the witness or person may be cross-examined by or on behalf of the petitioner or the respondent.

(2) A person who is called as a witness at the trial of an election petition shall not be excused from answering any questions relating to any offence connected with an election or the ground that the answer thereto may tend to incriminate that person, or on the ground of the privilege:

Provided that—

- (a) a witness who answers to the satisfaction of the High Court every question which is required to be answered under this section, and the answers to which may tend to incriminate that witness, shall not be liable to prosecution for any offence committed by that witness in connection with the election and in respect of which that witness is so examined and the witness shall be entitled to receive a certificate of indemnity under the hand of the Registrar stating that the witness is freed and discharged from liability to prosecution for that offence;
- (b) an answer by a witness to a question before the High Court under this section shall not, except in the case of any criminal proceedings for giving false evidence in respect of the evidence, be admissible in any proceedings, civil or criminal, in evidence against that witness.

(3) Where a person has received a certificate of indemnity under subsection (2), and any legal proceedings are at any time brought against that person for any offence to which the certificate relates, the court having conduct of the case shall, on proof of the certificate of indemnity, stay the proceedings and may award to that person such costs as the court may have been put to in the proceedings.

(4) All reasonable expenses incurred by any person in attending at or appearing before the High Court to give evidence as a witness at the trial of an election petition shall be allowed to that person according to the scale of allowances and expenses appropriate in civil proceedings before the High Court.

104. (1) At the conclusion of the trial of an election petition, the High Court shall determine whether the respondent, or any other, and which, person, was duly elected, or whether the election to which the election petition relates was void, and the Registrar shall as soon as may be, submit a copy of such determination to the Speaker of the National Assembly and to the Commission.

Conclusion of
trial of
election
petition

(2) Where the High Court determines under subsection (1), that the respondent was duly elected, the election shall be and remain valid.

(3) Where the High Court determines under subsection (1), that the respondent was not duly elected but that some other person was duly elected, that other person shall be deemed to have been elected accordingly.

(4) Where the High Court determines under subsection (1), that the respondent was not duly elected, and that no other person was duly elected, at the election concerned, the vacancy in the membership of the National Assembly in respect of which that election was held shall be deemed to continue until duly filled.

(5) Where a determination under subsection (1), alters the results of an election as previously declared, it shall be the duty of the Commission to publish the results as so altered in the Gazette.

(6) Where it appears to the High Court upon the trial of an election petition that any corrupt practice or illegal practice has been committed by any person in connection with the election to which the election petition relates, the High Court shall, at the conclusion of the proceedings, prepare a report stating—

- (a) the evidence given in the proceedings in respect of the corrupt practice or illegal practice;
- (b) the names and particulars of any person by whom the corrupt practice or illegal practice was, in the opinion of the Court, committed:

Provided that the Court shall not state the name of any person under this paragraph unless the person has been given an opportunity of appearing before the Court and of showing cause why that person's name should not be so stated.

(7) The Registrar shall deliver a copy of every report prepared by the High Court under subsection (6) to—

(a) the Commission; and

(b) the Director of Public Prosecutions.

(8) The Commission shall, as soon as it receives the report under subsection (7), instruct an officer to prosecute any person stated in the report.

Provisions as
to costs

105. (1) Subject to the provisions of this section, all costs, charges and expenses of, and incidental to, the presentation and trial of an election petition shall be borne in such manner and in such proportions as the High Court may order and in particular, any costs which in the opinion of the High Court have been caused by any vexatious conduct or by any frivolous or vexatious allegations or objections on the part of the petitioner or of the respondent, may be ordered to be paid by the party by whom such costs have been caused.

(2) Where, on the trial of an election petition, the High Court determines that the respondent was not duly elected and is of the opinion, having regard to the circumstances, that it would be just and reasonable to relieve any party to the election petition from all or a portion of the costs thereof, then—

(a) if the Court finds that the election of the respondent was due to a mistake or improper performance or failure or performance of any function *bonafide* made by any election officer, it may, after sufficient notice to the Attorney-General to show cause to the contrary, make such order as to the payment by the State of the costs of the proceedings or a portion thereof, as it may deem proper;

(b) if the Court finds that the election of the respondent was due to a mistake or improper performance, or failure of performance of any function *malafide* made by any election officer, it may, after sufficient notice to such officer to show cause to the contrary, make such order as to the payment by such election officer of the costs of the proceedings or a portion thereof, as it may consider proper.

(3) The High Court may, on application made by any person to whom any costs, charges or expenses are payable under this Act, order the same to be paid out of any deposit made to secure the same, or by any surety who gave a recognizance to secure the same:

Provided that notice of the application shall be given, in such manner as may be prescribed by rules of Court, to the party by or on whose behalf the deposit was made or for whom the surety gave a recognizance, requiring the party, or the surety and the party, as the case may be, to state, within the time and in the manner as may be so prescribed, whether that party resists the application.

(4) Where, on the trial of an election petition, any person appears to the High Court to have been guilty of any corrupt practice or illegal practice relating to the election which is the subject of the election petition, the Court may, after giving that person an opportunity of making a statement to show cause why the order should not be made, order the whole or a portion of the costs of, or incidental to, the trial of the election petition to be paid by that person to such person or persons as the Court may determine.

(5) Execution may be levied under any order for payment made by the High Court under this section in the same manner and to the same extent as execution may be levied under a judgement of the High Court for the payment of money.

(6) Money deposited as security shall, when no longer needed as security for costs, be returned to the person in whose name it is deposited or to any person entitled to receive the same by order of the High Court, which may be upon motion after notice and proof that all just claims have been satisfied or otherwise sufficiently provided for as the High Court may require.

PART X

OTHER QUESTIONS RELATING TO PARLIAMENT

106. (1) Any question which may arise as to whether—

- (a) any person has been validly appointed as a nominated member of the National Assembly;
- (b) the seat of an elected member or of a nominated member of the National Assembly, has become vacant, other than a question arising from the election of a candidate as a member of the National Assembly; or
- (c) any person has been validly elected as Speaker or Deputy Speaker of the National Assembly or, having been so elected, has vacated the office of Speaker or Deputy Speaker; may be heard and determined by the High Court upon application made by—
 - (i) any person to whom the question relates;
 - (ii) in the cases referred to in paragraph (a) (b) or (c), any member of the National Assembly; or
 - (iii) the Attorney-General.

Application
to members
and offices
of
Parliament

(2) Any person who makes an application to the High Court under subsection (1), shall have the right to appear and be represented before the High Court.

(3) Subject to any rules of Court, the powers, practice and procedure of the High Court in respect of the trial of an election petition under Part VIII shall apply, with the necessary modifications, to the hearing and determination of such applications.

Effect of
determination
Cap. 1

107. Every determination of the High Court under this Part shall have effect, subject to the provisions of Article 71 of the Constitution, in accordance with the terms thereof.

PART XI
ADDITIONAL POWERS OF COMMISSION AND
MISCELLANEOUS PROVISIONS

By-elections

108. (1) Subject to other provisions of this Act, a by-election to fill a casual vacancy in the National Assembly shall be held on such date as the Commission may, by statutory order, prescribe, being a date not later than ninety days after the date when notification of the Vacancy was communicated by the Speaker and received by the Commission:

Provided that a poll shall not be taken in any by-election in respect of which only one candidate is validly nominated for election.

(2) Unless the commission otherwise, by statutory order, directs, a by-election to fill a casual vacancy in the National Assembly shall not be held in any constituency in which an ordinary election of a member of the National Assembly is or may be required to be held Part III.

(3) A statutory order under this section shall specify the day or days on which, and the hours within which, returning officers may receive nominations of candidates for election in any constituency to which such order relates.

Electoral
Code of
Conduct and
other codes

109. (1) The Commission shall, in order to promote free, fair and orderly elections, issue by statutory instrument, an Electoral Code of Conduct and any other codes as it may consider necessary.

(2) The Electoral Code of Conduct shall be subscribed to—

(a) by every registered political party who intends to support any candidate for an election; and

(b) by every candidate before that candidate submits the nomination paper required under this Act.

(3) No person or registered party bound by a code shall contravene or fail to comply with a provision of that code.

110. (1) Whenever the Commission, the Director of Elections, an election officer or any person is required under this Act to decide an objection, dispute, complaint or an appeal, the Commission or that person may attempt to resolve the issue, that is the subject of the objection, dispute, complaint or appeal, through conciliation or mediation.

Powers to
decide
objections
and appeals

(2) The Commission shall prescribe the manner for handling any objection, dispute, complaint or appeal under this Act.

111. (1) The Commission shall, for purposes of resolving electoral disputes, constitute such number of conflict management committees as the Commission may determine.

Constitution
of conflict
management
committees

(2) A conflict management committee shall comprise, as members, such number of conflict management officers appointed by the Commission, as the Commission shall determine.

(3) The Chairperson of the Committee shall be appointed by the Commission and the Vice-Chairperson shall be elected by the members from amongst themselves.

(4) Subject to subsection (5) a member of a committee shall hold office for such period as the Commission shall determine.

(5) A member shall be paid such allowances as the Committee may, with the approval of the Commission, determine.

(6) The Committee shall meet for the transaction of business at such places and times as the Chairperson of the Committee may determine.

(7) The quorum at any meeting of the Committee shall be one-half of the members of the committee.

(8) There shall preside at any meeting of the Committee—

(a) the Chairperson;

(b) in the absence of the Chairperson, the Vice-Chairperson; or

(c) in the absence of both the Chairperson and the Vice-Chairperson, such member as the members present may elect from their number for the purposes of that meeting.

(9) The determination of any matter before the Committee shall be according to the votes of the majority of the members present and considering the matter.

(10) The Committee may invite any person whose presence in its opinion is desirable to attend and to participate in the deliberations of a meeting of the committee but such person shall have no vote.

(11) A committee shall cause minutes to be kept of the proceedings of every meeting of a committee.

(12) The Commission shall assign persons employed in the Commission to perform such secretarial and administrative functions in connection with a committee as may be necessary for the performance of its functions.

Assignment of powers and duties by Commission

112. (1) The Commission may—

- (a) delegate any of the Commission's powers under this Act, excluding the powers to make any regulations, to prescribe anything under this Act or to make an appointment under this Act or any other law, to a member, employee or officer of the Commission; or
- (b) instruct a member, employee or officer of the Commission to perform any of the Commission's duties under this Act or any other law.

(2) A delegation or instruction made under subsection (1)—

- (a) shall be subject to any limitations and conditions the Commission may impose; and
- (b) does not prevent the Commission from exercising or performing the assigned power or duty.

Assignment of powers and duties by Director of Elections

113. (1) The Director of Elections may—

- (a) delegate any of the Director of Election's powers under this Act or any other law, to an employee or officer of the Commission; or
- (b) instruct an employee or officer of the Commission to perform any of the Director of Elections duties under this Act or any other law.

(2) Subsection (2) of section *one hundred and twelve*, with the necessary modification, shall apply to a delegation or instruction of the Director of Elections under subsection (1).

Printing, manufacture, use, removal etc of election material

114. The Commission may authorise—

- (a) the printing, manufacture or supply of any voting or election material;
- (b) the use of the voters' roll or any voting or election material for a purpose other than an election purpose; or
- (c) the removal or destruction of any voting or election material.

- 115.** (1) The Commission shall own all voting and election materials used for, provided by it in, an election. Ownership of voting and election materials and disposal
- (2) Unless the High Court orders otherwise, the Commission may dispose of the voting and election materials used in a particular election six months after the date on which the final result of the election was declared, in the manner directed by the Commission.
- 116.** Any mistake in the certified segment of the voters' roll under this Act shall not invalidate that voter's roll. Effect of certain irregularities
- 117.** Where this Act requires that documents be publicised, or made available for inspection or copying, the Commission shall endeavour to also publicise or make available those documents by way of electronic technology. Inspection and copying of documents
- 118.** The Commission, a member, employee and officer of the Commission, election officer or a person with whom the Commission has contracted to work for the Commission shall not be liable for any loss suffered by any person as a result of any act performed or omitted to be done in good faith in the course of exercising a power or performing a duty assigned by or under this Act. Limitation of liability
- 119.** Whenever a person has become subject to any incapacity under this Act by reason of a conviction or by reason of any declaration or report of any court, and any witness who gave evidence against such person upon the proceeding for such conviction, declaration or report is convicted of perjury in respect of that evidence, such person may apply to the High Court which, if satisfied that the conviction, declaration or report, so far as it concerns that person, was based upon perjured evidence, may order that, that person's incapacity shall from that time cease, and the same shall cease accordingly. When incapacity may be removed
- 120.** No person who has voted at an election shall in any proceedings, whether brought under this Act or otherwise, be required, to state for whom the person voted for. No person required to state how person voted
- 121.** Upon any charge of a corrupt practice or an illegal practice, or any other offence against this Act, alleged to have been committed at or in connection with an election, the certificate of a returning officer that the election mentioned therein was being or had been held shall be sufficient evidence of the fact that such election was being or had been held. Evidence as to holding of election
- 122.** No misnomer or any inaccurate description of any person or place in any register, nomination paper, notice or other document required for the purposes of this Act shall affect the full operation of the document with respect to that person or place in any case where the description of the person or place is such as to be commonly understood. Validation of certain documents

Powers of
officer

123. (1) An officer may, during the campaign period and on polling day, enter any area, place and premises in which the officer reasonably believes there is being, or had been carried on, an activity that is an offence under this Act, except that an officer shall not enter into a private dwelling without the consent of the occupant or the authority of a court warrant.

(2) An officer may request any information from any person who appears to have custody or control of any material or thing which the officer reasonably believes is being used, or was intended to be used or is likely to be used, to commit an offence under this Act.

(3) An officer may seize or detain any material or thing where the officer has reasonable ground to believe that the material or thing is being used, was intended to be used or is likely to be used, to commit an offence under this Act.

Obstruction of
officer

124. (1) A person shall be guilty of an offence if that person—

(a) wilfully delays or obstructs an officer in the carrying out of that officer's duties and powers under this Act; or

(b) assaults an officer in the lawful exercise of that officers' duties and power under this Act.

(2) Any person guilty of an offence under subsection (1), shall be liable, upon conviction, to a fine not exceeding seven thousand penalty units or to imprisonment for a term not exceeding six months, or to both.

Power of
arrest

125. (1) A police officer may, without warrant, arrest any person and keep that person in custody where—

(a) the person is found committing an offence or is reasonably suspected of having committed an offence under this Act;
or

(b) upon being requested by the police officer, the person wilfully, fails or refuses to furnish that person's name, address or other relevant information to the satisfaction of police officer; and

(c) the police officer, considers it necessary for a free and fair election; and has reasonable grounds to believe that unless arrested, the person shall—

(i) escape or cause unreasonable delay to or trouble during or for, the election;

(ii) interfere with witnesses; or

(iii) tamper with or destroy relevant evidence or material.

(2) Any person arrested under subsection (1), shall be taken before a court within *forty-eight* hours, and shall not be detained for longer than is reasonably necessary for the purpose.

126. An officer shall not be liable in respect of any act done or omitted to be done in good faith, in the exercise of that officer's duties and powers under this Act or any other written law.

Immunity of officer

127. A person shall not be guilty of an offence under this Act, if that person proves to the satisfaction of the court that the act constituting the offence was done without that person's knowledge, consent or connivance or that the person tried to prevent the commission of the offence having regard to all the circumstances of the case.

General defence

128. Except where otherwise expressly provided in this Act, any person who is convicted of an offence under this Act shall be liable upon conviction—

General penalty

(a) for a first offence to a fine not exceeding twenty thousand penalty units or to a term of imprisonment not exceeding five years, or to both;

(b) for a second or subsequent offence to a fine not exceeding thirty thousand penalty units or to a term of imprisonment not exceeding seven years, or to both.

129. (1) Subject to the provisions of the Constitution and of this Act, the Commission may, by statutory instrument, make regulations providing for the registration of voters for the purposes of elections and for the procedure and manner of conducting elections; separate regulations may be made in respect of each category of elections.

Regulatory powers of Commission

(2) Without prejudice to the generality of subsection (1), the Commission may, by statutory instrument, make regulations providing for all or any of the following matters:

(a) the registration of voters;

(b) the preparation of, and the form of, registers to be used in the registration of voters;

(c) the manner of ascertaining whether persons applying for registration as voters are qualified for registrations or for their inclusion in a register for a particular constituency;

(d) the making and determination of appeals, claims and objections with respect to the registration of voters;

(e) the correction, amendment and certification of registers of voters;

(f) the manner in which the name of any person may be deleted from a register of voters, the transfer of the names of persons from the register of voters of one polling district to that of another polling district and the restoration of the name of a registered voter;

(g) the manner and form for nomination of candidates for any election that a candidate at a direct election for the National Assembly is the authorised candidate of a political party;

(h) the making and determination of appeals against the rejection of nominations by a returning officer;

- (i) the publication of the names of candidates whose nominations are accepted;
- (j) the payment of election fees by candidates, and the circumstances in which such fees are to be returned.
- (k) the use of symbols at an election;
- (l) the manner and procedure of voting at an election;
- (m) the manner of ascertaining the identity of persons wishing to vote at elections and whether such persons are qualified to vote;
- (n) the administering of oaths or affirmations by election officers in respect of such matters as may be prescribed;
- (o) the procedure to be followed at the conclusion of a poll in an election;
- (p) for the purpose of declaring any candidate duly elected, the procedure to be followed where there is an equality of votes between candidates in an election for members of the National Assembly;
- (q) the procedure to be followed where only one person is duly nominated for election to the office of President, or in a constituency for election to the National Assembly;
- (r) the declaration, notification and publication of the results of an election;
- (s) the custody and disposal of nomination papers, ballot papers, records, documents or other things relating to the registration of voters and the conduct of elections;
- (t) election expenses and the return of election expenses;
- (u) the notification and publication of any casual vacancy in the elected membership of the National Assembly and the fixing of a date of an election to fill such vacancy;
- (v) the forms and records to be used for any of the purposes of this Act; and
- (w) any matter to be prescribed by or under this Act.

(3) Before making any regulations which make any separate or distinct provision in respect of the functions of the Returning Officer for the election of a President, the Commission shall consult the Returning Officer.

(4) Regulations under this section may provide in respect of any contravention thereof that the offender shall be liable to a fine not exceeding five thousand penalty units or to a term of imprisonment not exceeding two years, or to both.

(5) No prosecution for an offence against this Act shall be commenced after the lapse of one year from the date on which the offence is alleged to have been committed.

130. The Electoral Act, 1991 is hereby repealed.

SCHEDULE

(Section 21)

OATH/AFFIRMATION OF ZAMBIAN CITIZENSHIP OF PRESIDENTIAL CANDIDATE AND PRESIDENTIAL CANDIDATE'S PARENTS

- 1. I, (full names)
of (residential address)
of (postal address)
and holder of National Registration Card No
being a candidate for election to the office of President of the Republic of Zambia,
 - 1. I was born on
Village/Township/Town
District Country
 - 2. That I have attained the age of thirty-five years;
 - 3. That I am a Zambian citizen;
 - 4. That both my parents are Zambian citizens by birth/descent;*
That my father (full names)
was born on
Village/Township/Town
District Country
 - and that my mother (full names)
was born on
Village/Township/Town
District Country
 - 5. That I am qualified to be elected as a member of the National Assembly;
 - 6. That I have been domiciled in Zambia for a period of at least twenty years; and
 - 7. That I have not twice been elected as President.
- The above information has come to my knowledge by
Date Signature

SWORN/AFFIRMED BY THE SAID:

At:

This day of20

BEFORE ME:

Notary Public

*Delete whichever is not applicable
(As amended by Act No. 23 of 1996)

[CAP. 282

REPUBLIC OF ZAMBIA

THE LOCAL GOVERNMENT ELECTIONS ACT

CHAPTER 282 THE LOCAL GOVERNMENT ELECTIONS ACT

CHAPTER 282

THE LOCAL GOVERNMENT ELECTIONS ACT

ARRANGEMENT OF SECTIONS

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CHAPTER 282

LOCAL GOVERNMENT ELECTIONS

Date of Assent: 28th August, 1991

An Act to provide for the conduct of local government elections; to establish the Local Government Electoral Commission and to specify the functions thereof; and to provide for matters incidental to or connected with the foregoing.

[6th September, 1991

Act No.
21 of 1991
Act No.
26 of 1992
Act No.
18 of 1992
Act No.
13 of 1994
Act No.
31 of 1993
Act No.
14 of 1994
17 of 1997
8 of 2004

PART I

PRELIMINARY

1. (1) This Act may be cited as the Local Government Elections Act.

Short title

(2) This Act shall be deemed to have come into operation on 1st December, 2001.

(3) Nothing in this section shall be construed as to prohibit the making of any statutory instrument under this Act during the interim period for the purpose of regulating the conduct of any election following the expiry of the interim period or providing for the division of the areas of councils into wards and prescribing the boundaries of such wards for the purpose of any election following the expiry of the interim period.

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

Interpretation

“area”, in relation to a council, has the meaning assigned to it by section *two* of the Local Government Act;

Cap. 281

“by-election” means an election held in accordance with section *twelve*;

“candidate” means any person nominated as a candidate for election as a councillor;

“casual vacancy” means a vacancy in the office of councillor occurring by virtue of section *nineteen* of the Local Government Act;

Cap. 281

“Commission” means the Electoral Commission established under Article 76 of the Constitution;

“corrupt practice” means any act punishable under section *forty-one*;

- “costs” include charges and expenses;
- Cap. 281 “council” means a city council, municipal council, township council or district council established or deemed to be established under the Local Government Act;
- “councillor” means a person elected under this Act to the office of councillor of a council;
- “Director of Elections” means the person for the time being holding or acting in the public office of Director of Elections;
- Cap. 281 “District Executive Secretary” in relation to a council, has the meaning assigned to it by section two of the Local Government Act;
- “election” means an election to the office of councillor of a council;
- “election officer” has the meaning assigned to it in section *six*;
- “election petition” means an election petition referred to in section eighteen;
- Cap. 281 “employee”, in relation to a council, has the meaning assigned to it by section two of the Local Government Act;
- “illegal practice” means any act which is an illegal practice under Part VI;
- “interim period” means the period commencing at the commencement of this Act and expiring on such date as the President may, by statutory order, prescribe;
- Cap. 281 “officer”, in relation to a council, has the meaning assigned to it by section *two* of the Local Government Act;
- “ordinary election” means an election held in accordance with section *ten*;
- “petitioner”, in relation to an election petition means any person referred to in section *nineteen* who signs and presents such election petition under section *twenty-one*, and includes any person substituted for the petitioner under section *twenty-five* or *twenty-six*;
- Cap. 13 “polling district” means a polling district declared to be such under section *seventeen* of the Electoral Act;
- “register of voters” means a register of voters prepared and in force under the Electoral Act;
- “registered” means registered in a register of voters and “registration” shall be construed accordingly;
- “Registrar” means the Registrar of the High Court;
- “respondent” has the meaning assigned to it under section *twenty-one*;

“returning officer” means a person appointed as such under this Act;

“voter” means a person entitled to vote at an election under section *fourteen*;

“ward” means any of the divisions into which a council area is divided under section *nine*;

(2) For the purpose of this Act, “election expenses” means expenses incurred, whether before, during or after an election, on account of, or in respect of, the conduct or management of such election by or on behalf of a candidate:

Provided that the following expenses shall not be deemed to be election expenses:

- (i) any moneys expended or expenses incurred by any association or group of persons or by any person in the general interests of a political party or organisation or its candidates generally, not being moneys expended or expenses incurred directly in the particular interest of any particular candidate or expenditure incurred by a political party with the consent of a candidate and apportioned to such candidate under this Act;
- (ii) any moneys expended or expenses incurred by any political party or organisation in the printing, publication or distribution of the official organ of that political party or organisation; or
- (iii) any moneys deposited by or on behalf of a candidate with an election officer under any provision of this Act relating to the nomination of candidates for election.

(As amended by Act No. 17 of 1997)

PART II

LOCAL GOVERNMENT ELECTIONS

3. Subject to the other provisions of this Act, the Commission shall supervise the conduct of Local Government Elections.

(As repealed and replaced by Act No. 17 of 1997)

Electoral
Commission
to supervise
local
Government
Elections

4. Repealed by Act No. 17 of 1997.

5. The Commission may, by regulation, confer powers or impose duties on any officer or authority of the Government or of a Council for the purpose of discharging its functions under this Act.

(As repealed and replaced by Act No. 17 of 1997)

Commission
to confer
powers on the
officers of
government or
council

Appointment
of election
officers

6. (1) The Commission may appoint such election officers as it may consider necessary for the purpose of any election and, subject to the other provisions of this section, any election officer may exercise such functions relating to an election as may be prescribed by the Commission.

(2) In respect of any election, an election officer may, if so empowered by the Commission under regulations made under section eight, appoint any fit person to be an election officer and may in any case, subject to the general or special directions of the Commission, appoint any fit person to assist him in the exercise of his functions under this Act;

Provided that an election officer may at any time, in such manner as may be prescribed, revoke an appointment made by him under this subsection.

(3) Every election officer shall, before exercising any of the functions of his office, take and subscribe such oath or make such affirmation in lieu of the Oath, as the Commission may prescribe.

(4) The Commission may at any time revoke the appointment of an election officer.

(5) Every election officer shall be paid such remuneration and allowances in respect of his duties as the Commission may determine.

(6) In this section, “election officer” means a person appointed under this Act to be—

- (a) a returning officer;
- (b) a presiding officer;
- (c) a polling assistant; or
- (d) a counting assistant;

and includes any person appointed by an election officer under subsection (2); and where functions are conferred on the Director of Elections under this Act in respect of an election, includes the Director of Elections.

Conduct and
expenses of
Local
Government
Elections

7. (1) The conduct of every election shall be subject to the direction and supervision of the Commission.

(2) The costs of, and incidental to, the conduct of any election in any ward of a council shall be paid out of moneys appropriated by Parliament for the purpose:

Provided that, notwithstanding any such appropriation, such council shall pay into the general revenues of the Republic the amount of such costs, or such lesser amount as the Minister may prescribe, by statutory order, in respect of such council.

(3) Where any question arises as to the amount of the costs referred to in subsection (2), a certificate under the hand of the Minister stating the amount of the costs shall be conclusive and shall not be questioned in any proceedings whatsoever.

8. (1) Subject to the other provisions of this Act, the Commission may, by statutory instrument, make regulations providing for the procedure and manner of conducting every election, and may, at any time, issue instructions to any election officer in connection with his functions under this Act and may require any election officer to furnish to the Commission such information and returns as it may consider necessary.

Powers of
Commission

(2) Without prejudice to the generality of subsection (1), the Commission may, by statutory instrument, make regulations providing for all or any of the following matters:

- (i) the division of the area of councils into wards;
- (ii) the establishment of polling stations in a ward;
- (iii) the nomination of candidates for any election; and the withdrawal of nominations duly made;
- (iv) the making and determination of appeals against the rejection of nominations by a returning officer;
- (v) the publication of names of candidates whose nominations are accepted;
- (vi) the payment of election fees by candidates;
- (vii) the use, and the allocation of, symbols at an election;
- (viii) the appointment, and the duties of, election agents and polling agents;
- (ix) the fixing of dates and times for the taking of polls;
- (x) the equipment and facilities to be provided at polling stations;
- (xi) the persons who may be admitted to polling stations;
- (xii) the manner and procedure of voting at an election;
- (xiii) the manner of ascertaining the identity of persons wishing to vote at elections and whether such persons are qualified to vote;
- (xiv) the manner in which persons who are blind, or otherwise incapacitated, may vote;

- (xv) voting by persons employed on election duties on the day of an election;
- (xvi) the maintenance of secrecy at elections;
- (xvii) the postponement of, the adjournment of, or an extension of, time for a poll in case of riot or open violence at an election;
- (xviii) the administering of oaths or affirmations by election officers in respect of such matters as may be prescribed;
- (xix) the procedure to be followed at the conclusion of a poll in an election;
- (xx) the procedure for counting votes in an election, and the circumstances in which votes in an election may be rejected by a returning officer as invalid;
- (xxi) for the purpose of declaring any candidate duly elected, the procedure to be followed where there is an equality of votes between candidates in an election;
- (xxii) the procedure to be followed where only one person or where no person is duly nominated for election in a ward;
- (xxiii) the declaration, notification and publication of the result of an election;
- (xxiv) the custody and disposal of nomination papers, ballot papers, records, documents and other things relating to the conduct of elections;
- (xxv) election expenses and returns relating to such expenses;
- (xxvi) the notification and publication of any casual vacancy in the elected membership of a council;
- (xxvii) the forms and records to be used for any of the purposes of this Act; and
- (xxviii) any matter to be prescribed under this Act.

(3) Regulations made under this section may provide in respect of any contravention of them that any such contravention shall be a corrupt practice or an illegal practice and that any offender shall be liable, on conviction, to a fine not exceeding eight hundred penalty units or to a term of imprisonment not exceeding two years, or to both.

(4) No prosecution for an offence against this Act shall be commenced after the lapse of one year from the date on which the offence is alleged to have been committed.

(5) Subject to the provisions of subsection (4), a police officer may arrest without warrant any person reasonably suspected by the police officer of having committed or attempted to commit an offence against this Act.

(As amended by Act No. 13 of 1994)

PART III

DELIMINATION OF WARDS

9. (1) Not later than six months after the appointment of the members of the Commission under section *three*, and whenever thereafter it is necessary to do so to give effect to the provisions of this section, the Commission shall, after consultation with every council, by statutory order, divide the area of each council into wards, defining the boundaries of the wards by reference to polling districts, and assigning names to the wards.

Division of
area of
councils into
wards

(2) The number of wards into which the area of a council is divided shall be equal to the number of elected councillors prescribed in respect of that council by the Minister under the Local Government Act.

(3) The Commission shall exercise its powers under this section that each ward comprises one or more complete polling districts.

(4) Whenever the Minister alters the area of a council or the number of councillors of a council, the Commission shall after consultation with such council, by statutory order, make such alterations to the boundaries of the wards of such council or to the division of the area of such council into wards as may be necessary to give effect to the provisions of this section.

(5) Whenever the Commission is satisfied that there has been a material alteration in the number of registered voters in the area of a council or of any of the wards into which such area is divided, the Commission may, after consultation with the council concerned, exercise in respect of the area of that council or any part of the council the powers conferred by this section.

PART IV

HOLDING OF ELECTIONS

10. (1) An ordinary election of councillors in every ward of every council throughout Zambia shall with effect from 2001 to be held every five years, on such date as the President shall, by statutory order, prescribe:

Ordinary
elections
1992

(As amended by Act No. 8 of 2004)

Provided that—

- (a) a poll shall not be taken in any ward in respect of which only one candidate is validly nominated for election; or
- (b) where for any reason no candidate is elected at an election in any ward further elections shall be held in the ward until a candidate is duly elected.

(2) Whenever—

- (a) a new council is established; or
- (b) an alteration is made in the division of the area of an existing council into wards or in the definition of the boundaries of any ward;

the President may, by statutory order, direct that any ordinary election of councillors in every ward or in any particular ward of that council shall be held on such date as may be appointed by the order.

(3) A statutory order under this section shall specify the day or days on which, and the hours within which returning officers may receive nominations of candidates for election in any ward to which such order relates.

(As amended by Act No. 26 of 1991 and No. 31 of 1993)

Nominations
of candidates

11. (1) Subject to subsection (2), every candidate for election in a ward of a council shall be nominated by means of a nomination paper in such form as may be prescribed, and such nomination paper shall be subscribed, in the presence of the returning officer for that council, by a proposer and a seconder and not less than seven other persons, each of whom shall be a voter registered in a polling district in such ward.

(2) Any person presenting himself to a returning officer for the purpose of subscribing a nomination paper under subsection (1) shall identify himself by producing his voter's registration card and his national registration card to the returning officer for inspection.

(3) In this section—

“national registration card” means a valid national registration card issued under the National Registration Act;

“Voter's registration card” means a valid voter's registration card issued under the Electoral Act.

Cap. 126

Cap. 13

By-elections

12. (1) Subject to the other provisions of this section, a by-election to fill a casual vacancy in the office of a councillor shall be held on such date as the Commission may, by statutory order, prescribe, being a date not later than ninety days after the date when notification of the vacancy was received by the Commission.

Provided that a poll shall not be taken in any by-election in respect of which only one candidate is validly nominated for election.

(2) Unless the Commission otherwise, by statutory order, directs, a by-election to fill a casual vacancy in the office of a councillor shall not be held in any ward in which an ordinary election of councillors is or may be required to be held under section *ten*.

(3) A statutory order this section shall specify the day or days on which, and the hours within which, returning officers may receive nominations of candidates for election in any ward to which such order relates.

13. There shall be one councillor elected for each ward into which the area of a council is divided and, without prejudice to the Local Government Act, every councillor of a council shall hold office for the duration of the period expiring immediately before the result of the next ordinary election held in respect of that council or in respect of the ward for which he is elected councillor, as the case may be, is duly declared:

Representa-
tion of wards
and tenure of
office
Cap. 285

Provided that every councillor of a council elected in the ordinary elections held in 2001 shall be deemed to have been elected to hold office for a period of five year commencing on the date of such election and shall continue in office up to the date of the announcement of the next ordinary election.

(As amended by Act No. 8 of 2004)

14. (1) Subject to the other provisions of this Act—

Qualification
for voting

(a) every person who, at the time when any election is held in any ward under this Act, is registered in a register of voters relating to any polling district in that ward; or

(b) is any established resident of Zambia, who is a rate payer and has resided in the area of that council for a minimum period of three years; and who has attained the age of eighteen years.

shall be entitled to vote at elections under this Act in the prescribed manner.

(2) Every person shall, whenever he wishes to vote at an election under this Act, identify himself to an election officer in such manner as may be prescribed and no person shall be entitled to vote more than once at any such election.

(As amended by Act No. 18 of 1992)

15. No person shall be entitled to vote at an election under this Act who—

Disqualifica-
tion from
voting

(a) has been convicted of any corrupt practice of illegal practice within a period of five years preceding that election;

(b) has been reported guilty of any corrupt practice or illegal practice by a court upon the trial of an election petition under this Act within a period of five years preceding that election; or

(c) is in lawful custody at the date of that election.

Qualification
of councillors

16. Subject to the provisions of section *seventeen*, a person shall be qualified for election as a councillor of any council if, and shall not be qualified to be so elected unless—

(a) he is a citizen of Zambia;

(b) he has attained the age of twenty-one years; and

(c) he is ordinarily resident in the area of that council

Disqualifica-
tion of
councillors

17. (1) A person shall not be qualified for election as a councillor if he—

(a) is, under any law in force in Zambia, adjudged or declared to be of unsound mind;

(b) is under sentence of death imposed on him by any court in Zambia or a sentence of imprisonment has been imposed on him by that court or is substituted by a competent authority for some other sentence imposed on him by that court;

(c) is an undischarged bankrupt, adjudged or declared bankrupt under any law in force in Zambia, or has made a composition or arrangement with his creditors and has not paid his debts in full;

(d) is an officer or an employee of a council;

(e) has on the day, for nomination or of election to the council, not paid the rate, charge or tax due to the council or to any other Local Authority and has been notified; or

(f) is an election officer.

(2) No person convicted of corrupt practices or illegal practices by a court of law after an election petition under this Act, shall be qualified to be nominated for election as a councillor for a period of five years from the date of that conviction.

(3) In this section, the reference to a sentence or imprisonment includes a sentence or imprisonment which is suspended or a sentence of imprisonment imposed in default of payment of a fine.

(As amended by Act No. 18 of 1992)

PART V

ELECTION PETITIONS

18. (1) No election of a candidate as a councillor shall be questioned except by an election petition presented under this Part.

Avoidance of elections

(2) The election of a candidate as a councillor shall be void on any of the following grounds if it is proved to the satisfaction of the court upon the trial of an election petition:

- (a) that by reason of any corrupt practice committed in connection with the election or by reason of other misconduct, the majority of voters in a ward were or may have been prevented from electing the candidate in that ward whom they preferred;
- (b) subject to subsection (4), that there has been a non-compliance with the provisions of this Act relating to the conduct of elections, and it appears to the court that the election was not conducted in accordance with the principles laid down in such provisions and that such non-compliance affected the result of the election;
- (c) that any corrupt practice or illegal practice was committed in connection with the election by, or with the knowledge and consent or approval of, the candidate or his election agent or his polling agents; or
- (d) that the candidate was at the time of his election a person not qualified or a person disqualified for election as a councillor.

(3) Notwithstanding subsection, (2) where upon the trial of an election petition, the court finds that any corrupt practice or illegal practice has been committed by, or with the knowledge and consent or approval of, any agent of the candidate whose election is the subject of the election petition, and the court further finds that such candidate has proved that—

- (a) no corrupt practice or illegal practice was committed by the candidate himself or by his election agent, or with the knowledge and consent or approval of the candidate or his election agent;
- (b) the candidate and his election agent took all reasonable means for preventing the commission of corrupt practice or illegal practice at such election; and

- (c) in all other respects the election was free from any corrupt practice or illegal practice on the part of the candidate or his election agent;

then, the court shall not, by reason only of such corrupt practice or illegal practice, declare that the election of such candidate was void.

(4) No election shall be declared void by reason only of any act or omission by an election officer in breach of his official duty in connection with an election if it appears to the court that the election was so conducted as to be substantially in accordance with the Act, and that such act or omission did not affect the result of that election.

Who may
present
election
petition

19. An election petition may be presented to the court by one or more of the following persons:

- (a) a person who lawfully voted or had a right to vote at the election to which the election petition relates;
- (b) a person claiming to have had a right to be nominated as a candidate or elected as councillor at the election to which the election petition relates; or
- (c) a person alleging himself to have been a candidate at the election to which the election petition relates; or
- (d) the Attorney-General.

Relief which
may be
claimed in
election

20. (1) Any of the following reliefs may be claimed in any petition:

- (a) a declaration that the election was void; or
- (b) a declaration that any candidate was duly elected.

(2) In addition to the reliefs, specified in subsection (1), a petitioner may apply to the court, upon the trial of an election petition, for a scrutiny to be carried out by the court in such manner as the court may determine.

(3) On a scrutiny at the trial of an election petition, the following votes only shall be held invalid:

- (a) the vote of any person whose name was not on the register of voters assigned to the polling station at which the vote was cast or who was not authorised to vote at such polling station under this Act;
- (b) the vote of any person whose vote was procured by any corrupt practice or illegal practice;
- (c) the vote of any person who committed or procured the commission of personation at the election to which the election petition relates, contrary to this Act;

- (d) the vote of any person proved to have voted more than once at the election to which the election petition relates; or
- (e) the vote of any person who was disqualified from voting at the election to which the election petition relates.

(4) In this section—

“scrutiny” means an inquiry as to the validity of the votes cast, including the determination of the number of valid votes cast, for each candidate in the election in respect of which the application for a scrutiny is made,

21. (1) Every election petition shall be in such form and shall contain such matters as may be prescribed by rules made by the Chief Justice.

Form and procedure for presentation of election petitions

(2) Presentation of an election petition to the court shall be made by lodging it with the Registrar in accordance with this Act.

(3) Every election petition shall be signed by the petitioner, or by all the petitioners if more than one, and shall be presented not later than thirty days after the date on which the result of the election to which it relates is duly declared.

(4) Notwithstanding subsection (3), when the election of a councillor (hereinafter referred to as “the respondent”) is questioned upon an allegation of a corrupt practice or an illegal practice, the election petition may be presented—

- (a) at any time before the expiry of twenty-one days after the day on which the returning officer receives the return of the election expenses of the respondent; or
- (b) if the election petition specifically alleges a payment of money or some other act to have been made or done since the day referred to in paragraph (a) by the respondent or his election agent, or with the privity of the respondent or of his election agent in pursuance or in furtherance of the corrupt practice or illegal practice alleged in the election petition, at any time within thirty days after the date of such Payment or other act.

(5) Where an election petition is presented under this section, the Registrar shall in writing so inform the Commission and the principal officer of the council to which the petition relates.

22. (1) Subject to subsection (2), the Registrar shall make out a list of all election petitions presented under this Act, placing them on such list in the order in which they are presented and he shall keep at his office a copy of such list which shall be open for inspection by any person making application for inspection of it.

Duty of Registrar to make out list of election petitions

(2) Every election petition shall, unless the court orders otherwise, be tried in the order in which it stands on the list made out by the Registrar under subsection (1), but where more election petitions than one are presented in respect of the same election, such election petitions shall be bracketed together and shall be dealt with as one petition, standing, unless the court orders otherwise, in such list in the place where the last of such election petitions would have stood if it had been the only election petition presented in respect of that election.

Rules of
practice and
procedure;
security for
costs

23. (1) Subject to this Act, the Chief Justice may make rules regulating generally the practice and procedure of the court with respect to the presentation and trial of election petitions, including rules as to the time within which any requirement of such rules is to be complied with, and as to the costs of and incidental to the presentation and trial of election petitions and as to the fees to be charged in respect of proceedings therein, and generally in regard to any other matter relating thereto as the Chief Justice may consider necessary or desirable.

(2) After the presentation of an election petition, every petitioner to the petition shall deposit in the court, as security for costs, such sum being not less than one thousand kwacha as the court may order, and such security shall be given within such time and in such manner and form as the Chief Justice may prescribe by rules under this section, or, in the absence of such rules, as the court may order.

(3) Where, after the presentation of an election petition, no security for costs is given as required by or under this section, such petition shall be dismissed by the court and shall be struck off the list made out under section *twenty-two*:

Provided that the court may, in respect of any election petition dismissed under this subsection, as aforesaid, make such order as to costs as it may consider just.

Withdrawal of
election
petitions

24. (1) A petitioner shall not withdraw an election petition without the leave of the court.

(2) No application for leave to withdraw an election petition shall be made until notice of intention to withdraw such election petition has been given in such manner as the Chief Justice may prescribe by rules under section *twenty-three*.

(3) Where an election petition is presented by two or more petitioners, an application to withdraw such election petition shall not be made except with the consent of all the petitioners to the petition.

(4) The court may, upon an application for leave to withdraw an election petition, make such order as to costs as it may think just.

25. (1) Upon the hearing of an application under subsection *twenty-four* for leave to withdraw an election petition, any person who might have been a petitioner in respect of the election to which that election petition relates may, notwithstanding section *twenty-one*, apply to the court to be substituted for the petitioner so applying to withdraw, and the court may, if it gives leave to such petitioner to withdraw, order that such person (hereinafter referred to as “the substituted petitioner”) be substituted for such petitioner.

Substitution
of new
petitioners

(2) Subject to the other provisions of this section, the substituted petitioner shall, as nearly as may be, stand in the same position and be subject to the same liabilities under this Act as the petitioner for who he is substituted (hereafter referred to as “the original petitioner”).

(3) Where the court makes an order under subsection (1) it may direct that the security for costs given by the original petitioner shall remain as security for any costs caused thereafter by the substituted petitioner upon the trial of the election petition, and may direct that, to the extent of the amount of such security, the original petitioner shall be liable to pay the costs of the substituted petitioner.

(4) Unless the court gives directions as provided in sub-section (3), subsections (2) and (3) of section *twenty-three* shall apply to the substituted petitioner as they apply in relation to a petitioner presenting an election petition.

26. (1) If a sole petitioner or the survivor of several petitioners dies, then, subject to the other provisions of this section, no further proceedings shall be had on the election petition.

Abatement of
election
petitions

(2) The death of a petitioner shall not affect his liability for the payment of costs previously incurred.

(3) On the abatement of an election petition under sub-section (1), any person who might have been a petitioner in respect of the election to which that election petition relates may, notwithstanding section *twenty-one* apply to the court to be substituted as a petitioner in place of the deceased petitioner and the court may, if it thinks fit, order that such person be substituted accordingly.

(4) Where the court makes an order under this section for the substitution of a person in place of a deceased petitioner such person shall, as nearly as may be, stand in the same position and be subject to the same liabilities under this Act as the deceased petitioner would have been but for his death, and subsections (2) and (3) of section *twenty-three* shall apply to such person as they apply in relation to a petitioner presenting an election petition.

27. (1) Subject to the other provisions of this Act, every election petition presented under this Act shall be tried and determined by the court.

Trial of
election
petitions

(2) An election petition shall be tried in open court.

(3) The court may adjourn the trial of an election petition from time to time and from place to place.

(4) Subject to the other provisions of this Act, the court may, in respect of the trial of an election petition, exercise such powers within its civil jurisdiction as it may deem appropriate.

(5) On the trial of an election petition, a record of all evidence given orally in such trial shall be taken, and this record shall, at the conclusion of the proceedings, be delivered to the Secretary of the Commission by the Registrar.

Provisions as
to witnesses

28. (1) On the trial of an election petition, the court may—

(a) order any person who appears to the court to have been concerned in the election to attend as a witness at such trial;

(b) examine any witness or any person who is present at such trial although such witness or person is not called as a witness by any party to the proceedings:

Provided that after such examination by the court of such witness or person, such witness or person may be cross-examined by or on behalf of the petitioner or the respondent.

(2) A person who is called as a witness at the trial of an election petition shall not be excused from answering any question relating to any offence connected with an election on the ground that the answer thereto may tend to incriminate him, or on the ground of privilege:

Provided that—

(i) a witness who answers to the satisfaction of the court every question which he is required to answer under this section, and which answers may tend to incriminate him, shall not be liable to prosecution for any offence committed by him in connection with that election and in respect of which he is so examined, and such witness shall be entitled to receive a certificate of indemnity under the hand of the Registrar stating that he is freed and discharged from liability to prosecution for that offence;

(ii) an answer by a witness to a question before the court under this section shall not, except in the case of any criminal proceedings for giving false evidence in respect of such evidence, be admissible in any proceedings, civil or criminal, in evidence against him.

(3) Where a person has received a certificate of indemnity under subsection (2), and any legal proceedings are at any time brought against him for any offence to which such certificate relates, the court having cognisance of the case shall, on proof of the certificate

of indemnity, stay such proceedings and may award to that person such costs as he may have been put to in such proceedings.

(4) All reasonable expenses incurred by any person in attending at or appearing before the court to give evidence as a witness at the trial of an election petition shall be allowed to such a person according to the scale of allowances and expenses appropriate in civil proceedings before the court.

29. (1) At the conclusion of the trial of an election petition, the court shall determine whether the respondent, any other and which person, was duly elected, or whether the election to which the election petition relates was void, and the Registrar shall, as soon as may be, submit a copy of such determination to the Commission and to the principal officer of the council to which the petition relates.

Conclusion of
trial of
election
petition

(2) Where the court determines under subsection (1) that the respondent was duly elected, such election shall be and remain valid.

(3) Where the court determines under subsection (1) that the respondent was not duly elected but that some other person was duly elected, such other person shall be deemed to have been elected accordingly.

(4) Where the court determines under subsection (1) that the respondent was not duly elected, and that no other person was duly elected at the election concerned, the vacancy in the membership of the council in respect of which that election was held shall be deemed to continue until duly filled.

(5) Where a determination under subsection (1) alters the result of an election as previously declared, it shall be the duty of the Commission to publish the result as so altered in the *Gazette*.

(6) Where it appears to the court upon the trial of an election petition that any corrupt practice or illegal practice has been committed by any person in connection with the election to which such election petition relates, the court shall, at the conclusion of the proceedings, prepare a report stating—

- (a) the evidence given in the proceedings in respect of such corrupt practice or illegal practice;
- (b) the names and particulars of any person by whom such corrupt practice or illegal practice was, in the opinion of the court, committed:

Provided that the court shall not state the name of any person under this paragraph unless such person has been given an opportunity of appearing before the court and of showing cause why his name should not be stated.

(7) The Registrar shall deliver a copy of every report prepared by the court under subsection (6) to—

- (a) the Commission; and
- (b) the Director of Public Prosecutions.

Provisions as
to costs

30. (1) Subject to the other provisions of this section, all costs, charges and expenses of and incidental to the presentation and trial of an election petition shall be borne in such manner and in such proportions as the court may order, and in particular, any costs which in the opinion of the court have been caused by any vexatious conduct or by any frivolous or vexatious allegations or objections on the part of the petitioner or of the respondent, may be ordered to be paid by the party by whom such costs have been caused.

(2) Where, on the trial of an election petition, the court determines that the respondent was not duly elected and is of the opinion, having regard to the circumstances, that it would be just and reasonable to relieve any party to the election petition from all or a portion of the costs thereof, then—

- (a) if the court finds that the election of the respondent was due to a mistake or improper performance or failure of performance of any function bona fide made by any election officer, it may, after sufficient notice to the Attorney-General to show cause to the contrary, make such order as to the payment by the State of the costs of the proceedings or a portion thereof, as it may consider proper;
- (b) if the court finds that the election of the respondent was due to a mistake or improper performance or failure of performance of any function mala fide made by an election officer, it may, after sufficient notice, to such officer to show cause to the contrary, make such order as to the payment by such election officer of the costs of the proceedings or a portion thereof, as it may consider proper.

(3) The court may, on application made by any person to whom any costs, charges or expenses are payable under this Act, order the costs, charges or expenses to be paid out of any deposit made to secure the costs, charges or expenses or by any surety who gave a recognisance to secure the costs, charges or expenses:

Provided that notice of such application shall be given, in such manner as may be prescribed by rules under section *twenty-three*, to the party by or on whose behalf such deposit was made or for whom such surety gave a recognisance, requiring such party, or such surety and such party, as the case may be, to state, within such time and in such manner as may be so prescribed, whether he resists the application.

(4) Where, on the trial of an election petition, any person appears to the court to have been guilty of any corrupt practice or

illegal practice relating to the election which is the subject of such election petition, the court may, after giving that person an opportunity of making a statement to show why the order should not be made, order the whole or a portion of the costs of or incidental to the trial of such election petition to be paid by the said person to such person or persons as the court may determine.

(5) Execution may be levied under any order for payment made by the court under this section in the same manner and to the same extent as execution may be levied under a judgement for the payment of money.

(6) Money deposited as security shall, when no longer needed as security for costs, be returned to the person in whose name it is deposited or to any person entitled to receive the money by order of the court, which may be made upon motion after notice and proof that all just claims have been satisfied or otherwise sufficiently provided for as the court may require.

PART VI

CORRUPT AND ILLEGAL PRACTICE AND ELECTION OFFENCES

31. Any person who, directly or indirectly, by himself or any other person—

Bribery

- (a) gives, lends, or procures, or agrees to give, lend or procure, or offers, promises, or promises to procure, any money to or for any person on behalf of any voter or to or for any other person in order to induce any voter to vote or refrain from voting, or who corruptly does any such act as aforesaid on account of such voter having voted or refrained from voting at any election;
- (b) gives, lends or agrees to give or lend, or offers, or promises to procure or to endeavour to procure, any money to or for any voter or to or for any other person on behalf of any voter or to or for any other person for acting or joining in any procession or demonstration before, during or after any election;
- (c) makes any gift, loan, offer, promise, procurement or agreement to or for any person in order to induce such person to procure or to endeavour to procure the return of any candidate at any election or the vote of any voter at any election;
- (d) upon or in consequence of any gift, loan, offer, promise, procurement or agreement, procures or engages, promises, or endeavours to procure, the return of any candidate at any election or the vote of any voter at any election;
- (e) advances or pays, or causes to be advanced or paid, any money to or for the use of any other person, with the

intent that such money or any part thereof shall be expended in bribery at any election or who knowingly pays, or causes to be paid, any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any elections;

(f) before or during any election receives or contracts for any money or loan for himself or for any other person for voting or agreeing to vote or for refraining agreeing to refrain from voting at any election; or

(g) after any election receives any money on account of any person having voted or refrained from voting or having induced any other person to vote or refrain from voting at such election; or

(h) conveys or transfers, or is concerned with the conveyance or transfer of, any property, or pays or is concerned with the payment of any money, to any person for the purpose of enabling him to be registered as a voter, thereby to influence his vote at any future election, or pays or is concerned with the payment of any money on behalf of any other voter for the purpose of inducing to vote or refrain from voting;

shall be guilty of the offence of bribery.

Personation

32. Any person who—

(a) at any election applies for a ballot paper in the name of some person, living or dead, or of a fictitious person;

(b) having voted once at any election, applies again at the same election for a ballot paper; or

(c) votes or induces or procures any person to vote at any election knowing that he or that person is not entitled to vote at that election;

shall be guilty of the offence of personation.

Treating

33. Any person who corruptly by himself or by any other person either before, during or after an election, directly or indirectly gives or provides or pays wholly or in part the expenses of or gives or provides any food, drink, entertainment, lodging or provisions to, or for, any person for the purpose of corruptly influencing that person or any other person to give or refrain from giving his vote at an election shall be guilty of the offence of treating.

Undue
influence

34. (1) Any person who directly or indirectly, by himself or by any other person—

(a) makes use of or threatens to make use of any force, violence or restraint upon any other person;

(b) inflicts or threatens to inflict by himself or by any other person, or by any supernatural or non-natural means,

any temporal or spiritual injury, damage, harm or loss upon or against any person; or

(c) does or threatens to do anything to the disadvantage of any person;

in order to induce or compel that person—

- (i) to sign or refrain from signing a nomination paper;
- (ii) to vote or refrain from voting; or
- (iii) to refrain from offering himself as a candidate for an election;

on account of that person having—

- A. signed or refrained from signing a nomination paper;
- B. voted or refrained from voting at any election; or
- C. refrained from offering himself as a candidate; shall be guilty of the offence of undue influence.

(2) Any person who, by abducting, duress or any fraudulent device or contrivance impedes or prevents the free exercise of his vote by any voter or thereby compels, induces or prevails upon any vote at any election shall be guilty of the offence of undue influence.

35. Any person who is guilty of the offence of bribery, personation, treating or undue influence shall be liable on conviction to a fine not exceeding eight hundred penalty units or to imprisonment for a period not exceeding two years, or to both.

Penalty

36. (1) Any person who, before or during an election, illegally publishes a false statement of the illness, death or withdrawal of a candidate at that election for the purpose of promoting or procuring the election of another candidate, knowing that statement to be false or not believing it to be true, shall be guilty of an illegal practice.

Illegal practice of publishing false statements in respect of candidates

(2) Any person who, before or during an election, publishes any false statement of fact in relation to the personal character or conduct of a candidate in the election, shall be guilty of an illegal practice, unless he can show that he had reasonable grounds for believing and did believe, the statement to be true.

37. Any person who forges or fraudulently destroys any nomination paper, or delivers to a returning officer any nomination paper knowing the same to be forged, shall be guilty of an illegal practice.

Illegal practice in respect of nomination of candidates

38. Any person who at an election obstructs a voter either at the polling station or on his way thereto or therefrom shall be guilty of an illegal practice.

Illegal practice in respect of voters

Illegal practice
in respect of
public
meetings

39. Any person who, at a lawful public meeting held in connection with the election of any person between the day of the publication of a notice appointing nomination day and the day on which the result of the election is published, acts or incites others to act in a disorderly manner for the purpose of preventing the transaction of the business which the meeting is called, shall be guilty of an illegal practice.

Illegal practice
in broadcasts

40. Any person who, with intent to influence persons to give or refrain from giving their votes at an election, uses or procures the use of any wireless transmitting station outside the Republic shall be guilty of an illegal practice.

Penalty for
illegal
practices

41. Any person who is guilty of an illegal practice shall be liable on conviction to a fine not exceeding eight hundred penalty units or to imprisonment for a period not exceeding two years, or to both.

(As amended by Act No. 13 of 1994)

Election
offences

- 42.** (1) Any person who—
- (a) forges or counterfeits or fraudulently destroys any ballot paper of any person;
 - (b) without due authority, supplies or causes to be supplied any ballot paper to any person;
 - (c) without due authority, puts into any ballot box any ballot paper which is not authorised by law to put in;
 - (d) sells or offers to sell any ballot paper to any person or purchases or offers to purchase any ballot paper from any person;
 - (e) not being a person entitled under this Act or the regulations made thereunder to be in possession of a ballot paper, official seal or official mark, has any such ballot paper or official seal or official mark in his possession;
 - (f) puts into any ballot box anything other than the ballot paper which he is authorised by law to put in;
 - (g) without due authority, takes out of the polling station any ballot paper or is found in possession of any ballot paper outside a polling station;
 - (h) without due authority, destroys, takes, opens or otherwise interferes with any ballot box or packet or ballot paper in use or intended to be used for the purpose of an election;
 - (i) without due authority, prints or makes any ballot paper or what purports to be or is capable of being used as a ballot paper at an election;
 - (j) manufactures, constructs, has in his possession, supplies or uses for the purpose of any election, or causes to be manufactured, constructed, supplied or used for the

purpose of any election, any appliance, device or mechanism by which a ballot paper may be extracted or manipulated after having been deposited in a ballot box in the course of polling at any polling station;

- (k) on any polling day, at the entrance of or within a polling station, or in any public or private place within four hundred metres from the entrance to such polling station—
 - (i) canvasses for votes;
 - (ii) solicits the vote of any person;
 - (iii) induces any person not to vote; or
 - (iv) induces any person not to vote for a particular candidate;
- (l) on a polling day loiters in any public place within four hundred metres from the entrance to any polling station;
- (m) on any polling day exhibits in any public or private place within one hundred metres from the entrance to any polling station any notice or sign, other than an official notice or sign authorised by an election officer, relating to the election;
- (n) not being a presiding officer, a polling assistant, a candidate or a polling agent in the course of his functions within a polling station, makes any record showing that any particular person has voted in an election;
- (o) without lawful authority, destroys, mutilates, defaces or removes any notice which is exhibited under the regulations made under this Act or any such regulations;
- (p) wilfully obstructs or interferes with an election officer in the execution of his duties;
- (q) makes a false answer to any question lawfully put to him by a presiding officer or polling assistant in connection with the conduct of an election;
- (r) having been lawfully required or directed by an election officer to leave a polling station or its precincts fails to comply with such requirement or direction;
- (s) associates himself or any candidate with or uses any symbol in the course of an election unless such symbol is authorised for such purpose or use by regulations made under this Act;
- (t) within the period appointed for the receipt of nominations under Part IV, loiters in any public place within four hundred metres from the entrance to a nomination office;

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding eight hundred penalty units or to imprisonment for a period not exceeding two years, or to both.

(2) In a prosecution for an offence in relation to nomination paper, ballot box or ballot paper, the property in such nomination paper, ballot box or ballot paper, as well as the property in the counterfoil of any ballot paper may be stated to be in the returning officer at that election.

(As amended by Act No. 13 of 1994)

Secrecy

43. (1) Every person in attendance at a polling station shall maintain, and aid in maintaining, the secrecy of the voting at such station and shall not communicate, except for some purpose authorised by law, to any person any information as to the name or number on the register of voters of any voter who has or who has not applied for a ballot paper or voted at such polling station, or as to the official mark or official seal at such polling station.

(2) No person, except a presiding officer acting under the provisions of this Act, shall obtain or attempt to obtain in a polling station information as to the candidate for whom any person in such polling station is about to vote or has voted, or communicate at any time to any person any information obtained in a polling station as to the candidate for whom any person in such polling station is about to vote or has voted, or as to the number on the ballot Paper issued to any person at such polling station.

(3) Every person in attendance at the counting of the votes shall maintain, and aid in maintaining, the secrecy of the voting and shall not ascertain or attempt to ascertain at such counting the number on any ballot paper or communicate any information obtained at such counting as to the candidate for whom any vote is given by any particular ballot paper.

(4) Any person who contravenes any of the provisions of this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding eight hundred penalty units or to imprisonment for a term not exceeding two years, or to both.

(As amended by Act No. 13 of 1994)

Offences by
election
officer

44. Any election officer who wilfully fails to perform the functions of his office under this Act or the regulations made thereunder shall be guilty of an offence and liable on conviction to a fine not exceeding eight hundred penalty units or to imprisonment for a term not exceeding two years, or to both.

(As amended by Act No. 13 of 1994)

Offences by
printers and
publishers

45. (1) Every bill, placard, poster, pamphlet, circular or other printed matter having references to an election shall bear upon the face thereof the name and address of the printer and the publisher thereof, and any person who prints, publishes, or posts, or causes to be printed, published or posted, any such matter which fails to bear upon the face thereof such names and addresses shall be guilty of an offence.

46. Any person who attempts to commit an offence which is a corrupt practice or illegal practice or an offence against section forty-eight shall be guilty of an offence and shall, on the conviction, be liable to the punishment prescribed for the offence commission of which is attempted.

Penalty for attempt to commit certain offences

PART VII

MISCELLANEOUS

47. Notwithstanding anything to the contrary contained in any law relating to stamp duty, no stamp duty shall be charged upon any affidavit, declaration or oath made for the purposes of this Act.

Exemption from stamp duty

(Repealed by Act No. 17 of 1994)

48. Whenever a person has become subject to any incapacity under this Act by reason of a conviction or by reason of any declaration or report of any court, and any witness who gave evidence against such person upon the proceeding for such conviction, declaration or report is convicted of perjury in respect of that evidence, such person may apply to the High Court which, if satisfied that the conviction, declaration or report, so far as it concerns that person, was based upon perjured evidence, may order that his incapacity shall from that time cease, and the same shall cease accordingly.

When incapacity may be removed

49. No person who has voted at an election shall in any proceedings, whether brought under this Act or otherwise, be required to state for whom he has voted.

No person required to state how he voted

50. Upon any charge of a corrupt practice or an illegal practice, or any other offence against this Act, alleged to have been committed at or in connection with an election, the certificate of a returning officer that the election mentioned therein was being or had been held shall be sufficient evidence of the fact that such election was being or had been held.

Evidence as to holding of election

51. No misnomer or any inaccurate description of any person or place in any register, list, nomination paper, notice or other document required for the purpose of this Act shall affect the full operation of the document in respect to that person or place in any case where the description of the person or place is such as to be commonly understood.

Validation of certain documents

52. Notwithstanding anything to the contrary in this Act, the following provisions shall have effect in relation of election to be held in 1991, under subsection (1) of section *two*:

Transitional provisions in respect of elections in 1991

(a) where the Minister makes an order under the Local Government Act altering the area of a council or declaring that any area shall cease to be a municipality or a township or a rural area, as the case may be or

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altering the number of elected councillors of any council, and order made prior thereto under subsection (1) of section *ten* shall cease to have effect in relation to any such area or council;

- (b) where the Minister makes an order referred to in paragraph (a) in respect of any area or council, any order made prior thereto under subsection (1) of section nine shall cease to have effect in relation to such area or council;
- (c) where the Minister makes an order referred to in paragraph (a) in respect of any area or council, the Commission shall, after such consultation with such other authority as it may consider necessary or desirable, exercise its powers under section *ten* in relation to such area or council in conformity with, and in such manner as may be necessary to give effect to the provisions of, the said order of the Minister;
- (d) where the Minister makes an order referred to in paragraph (a) in respect of any area or council, no order shall be made by the President under subsection (1) of section *ten* in respect of such area or council until the Commission has exercised its powers in relation to such area or council as provided in paragraph (c);
Transitional provisions in respect of elections in 1991
- (e) where the Minister makes an order referred to in paragraph (a) in respect of any area or council, the foregoing provisions shall have effect in relation to such area or council as from the date of publication of the order in the *Gazette* and, notwithstanding that such order is expressed to come into operation at a later date, any order made by the Commission under section *nine* as provided in paragraph (c) and any order made by the President under section *ten* as provided in paragraph (d) in relation to such area or council prior to such later date shall be considered to have effect as from the date of publication thereof in the *Gazette*;
- (f) where the Minister makes an order referred to in paragraph (a) altering the area of a council, any reference in this Act a council to all, for the purposes of this section and as from the date of publication of the order in the *Gazette*, be deemed to include a reference to a council as so altered;
- (g) where the Minister makes an order referred to in paragraph (a) declaring that any area shall cease to be a municipality or a township or a rural area, any reference in this Act to a council shall, for the purposes of this section and as from the date of publication of the order in the *Gazette*, be deemed not to be a reference to the council for such municipality or township or rural area, as the case may be.

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REPUBLIC OF ZAMBIA

THE REFERENDUM ACT

CHAPTER 14 OF THE LAWS OF ZAMBIA

CHAPTER 14**THE REFERENDUM ACT**

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CHAPTER 14

REFERENDUM

39 of 1967
5 of 1969
13 of 1994

An Act to provide for the manner in which a referendum shall be held and for matters connected with or incidental thereto.

[21st July, 1967]

PART I

PRELIMINARY

Short title

1. This Act may be cited as the Referendum Act.

Power to order a referendum

2. (1) The President may, if in his opinion it is necessary or desirable so to do, by *statutory order, direct that a referendum be held on any question or questions specified in the order.

(3) Any question submitted to a referendum shall be framed in such a manner as to require no answer other than the answer “yes” or the answer “no”.

(4) An order made under subsection (1) shall specify the day or days on which voting in the referendum shall take place or, where it is desirable that voting in different areas should take place on different dates, the day or days on which voting shall take place in each such area.

Method of taking the poll at a referendum

3. (1) All persons who at the time of a referendum are registered as voters and entitled to vote at elections to the National Assembly shall be entitled to vote in the referendum.

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(2) For the purpose of taking the poll at a referendum, the Republic shall be divided into the constituencies for the time being established by law for the purpose of electing members to the National Assembly, and the poll shall be taken separately in each such constituency.

(3) For the purpose of taking the poll at a referendum, each constituency shall be divided into the polling districts for the time being established by law for the purpose of electing members to the National Assembly.

(No. 5 of 1969)

*See the Referendum (Constitution Amendment) Order, 1969 (S.I. No. 246 of 1969), which refers to the first referendum held under the provisions of this Act.

PART II

(No. 5 of 1969)

ESTABLISHMENT AND PROCEDURE OF REFERENDUM COMMISSION

4. (1) There is hereby established a Referendum Commission (hereinafter in this Act referred to as “the Commission”) for the purpose of supervising the conduct of any referendum held pursuant to section *two*.

Establishment of Referendum Commission

(2) The Commission shall consist of a Chairman and two other members who shall be appointed by the President.

(3) A person shall not be qualified for appointment as Chairman of the Commission unless he holds or has held high judicial office.

(4) A person shall not be qualified for appointment as a member of the Commission if he is a member of the National Assembly.

(5) If the office of Chairman or any member of the Commission falls vacant or the holder of the office becomes unable for any reason to discharge his functions as a member of the Commission, the President may appoint another person qualified for appointment to be the Chairman or, as the case may be, a member of the Commission.

(6) In the exercise of its functions under this Act, the Commission shall not be subject to the direction or control of any other person or authority.

5. The president shall appoint a Secretary to the Commission who shall discharge such functions as the Commission may direct.

Secretary to Commission

6. (1) The Commission may, by regulation or otherwise, regulate its own procedure and confer powers or impose duties on any officer or authority of the Government for the purpose of discharging its functions.

Procedure of Commission

(2) Any decision of the Commission shall require the support of the Chairman and one member.

(3) Subject to the provisions of subsection (2), the Commission may act notwithstanding the absence of any member or any vacancy in the office of any member.

7. The conduct of every referendum shall be subject to the direction and supervision of the Commission.

Conduct of referendum

8. (1) The Commission shall have power to appoint such referendum officers as it may deem necessary for the purposes of any referendum and, subject to the provisions of this section, any

Appointment of referendum officers

referendum officer may exercise such functions relating to a referendum as may be prescribed by the Commission.

(2) In respect of any referendum, a referendum officer may, if so empowered by the Commission under regulations made under section ten, appoint any fit person to be a referendum officer and may in any case, subject to the general or special directions of the Commission, appoint any fit person to assist him in the exercise of his functions under this Act:

Provided that a referendum officer may at any time, in such manner as may be prescribed, revoke any appointment made by him in pursuance of this subsection.

(3) Every referendum officer shall, before exercising any of the functions of his office, take and subscribe such oath or make such affirmation in lieu thereof, as the Commission may prescribe.

(4) The Commission may at any time revoke the appointment of a referendum officer.

(5) Every referendum officer shall be paid such remuneration and allowances in respect of his duties as the Commission may determine.

(6) In this section—

“referendum officer” means a person appointed under this Act to be—

- (a) a district referendum officer;
- (b) a returning officer;
- (c) a presiding officer;
- (d) a polling assistant;
- (e) a counting assistant;

and includes any person appointed by a referendum officer under subsection (2); and, where functions are conferred on the Director of Elections under this Act in respect of a referendum, includes the Director of Elections.

9. The Commission may at any time—

- (a) require from any referendum officer such information and returns as it may consider necessary;
- (b) subject to the provisions of this Act, issue instructions to any referendum officer in connection with his functions under this Act.

Power of
Commission
to require
information
and to issue
instructions

10. (1) Subject to the provisions of this Act, the Commission may, by statutory instrument, make regulations providing for the procedure and manner of conducting any referendum.

Regulations

(2) Without prejudice to the generality of subsection (1), the Commission may, by statutory instrument, make regulations providing for all or any of the following matters:

- (a) the establishment of polling stations in polling districts;
- (b) the equipment and facilities to be provided at polling stations;
- (c) the persons who may be admitted to polling stations;
- (d) the manner and procedure of voting at a referendum;
- (e) the manner of ascertaining the identity of persons wishing to vote at a referendum, and whether such persons are qualified to vote;
- (f) the manner in which persons who are blind, or otherwise incapacitated, may vote;
- (g) voting by persons employed on referendum duties on the day of a referendum;
- (h) the maintenance of secrecy at a referendum;
- (i) the postponement of, adjournment of and extension of time for a poll in case of riot or open violence at a referendum;
- (j) the administering of oaths or affirmations by referendum officers in respect of such matters as may be prescribed;
- (k) the procedure to be followed at the conclusion of a poll in a referendum;
- (l) the procedure for counting votes in a referendum and the circumstances in which votes in a referendum may be rejected by a returning officer as invalid;
- (m) the declaration, notification and publication of the results of a referendum;
- (n) the custody and disposal of ballot papers, records, documents or other things relating to the conduct of a referendum;
- (o) the forms and records to be used for any of the purposes of this Act;
- (p) any matter to be prescribed under this Act.

(3) Regulations under this section may provide in respect of any contravention thereof that any such contravention shall be a corrupt practice and that any offender shall be liable to a fine not exceeding six thousand penalty units or to a term of imprisonment not exceeding two years, or to both.

(4) No prosecution for an offence against this Act shall be commenced after the lapse of one year from the date on which the offence is alleged to have been committed.

(5) Subject to the provisions of subsection (4), a police officer may arrest without warrant any person reasonably suspected by the police officer of having committed or attempted to commit an offence against this Act.

PART III

(No. 5 of 1969 and Act No. 13 of 1994)

REFERENDUM PETITIONS

Referendum
petitions

11. (1) The result of every referendum shall be declared by the Commission in such manner as may be prescribed, and such result (hereinafter referred to as “the declared result”) shall not be capable of being questioned in any manner save only by a referendum petition presented to the High Court under this Act.

(2) A referendum petition may be presented on any of the following grounds, that is to say:

(a) in respect of the result of the voting in any one constituency, on the ground that corrupt practice prevailed extensively at or in relation to the taking of the referendum in that constituency or on the ground of error or misconduct (whether by act or omission) on the part of any referendum officer; or

(b) in respect of the declared result of the referendum, on the ground of error on the part of the Commission.

Operation of
declared result
or of Act
submitted to
referendum

12. (1) Unless a referendum petition is presented to the High Court in respect of any referendum within the time limited by section fifteen, the declared result of such referendum shall—

(a) have effect as from the date on which such declared result is duly declared; and

(b) be final and incapable of being questioned in any court; and

(c) be conclusive evidence of the voting at the referendum and of the result thereof.

(2) Nothing in this Act shall be construed as preventing or delaying the coming into operation of any Act in respect of which a referendum is held pursuant to the provisions of the Constitution if—

(a) it is stated in the declared result of such referendum that the provisions of the said Act are supported by the votes of a majority of the persons entitled to vote in such referendum; and

(b) the question or questions raised by any referendum petition or, if more than one, by all referendum petitions presented to the High Court in respect of such referendum within the time limited by section *fifteen* would not, if decided in favour of the petitioner or petitioners, as the case may be, lead to a declaration by the Commission under section *twenty-three* showing that the votes of a majority of the persons entitled to vote in such referendum did not support the provisions of the said Act.

13. A referendum petition may be presented to the High Court by one or more of the following persons:

Persons who may present referendum petitions

(a) in the case of a petition in respect of the result of the voting in any one constituency, any person who lawfully voted or had a right to vote in that constituency at the referendum;

(b) in the case of a petition in respect of the declared result of the referendum, any person who voted at the referendum or had a right to vote at the referendum;

(c) in any case, the Attorney-General.

14. (1) Where a referendum petition is presented by a person other than the Attorney-General, the Attorney-General shall be named therein as the respondent thereto.

Respondent to a referendum petition

(2) Where a referendum petition is presented by the Attorney-General, no person shall be named therein as the respondent thereto but the High Court may, if it so thinks proper, assign a legal practitioner to present the case against the petition.

(3) Where, in a referendum petition or any particulars filed in relation thereto or at the hearing of a referendum petition, any particular person is alleged to have been guilty of a corrupt practice in relation to the referendum or where a copy of a referendum petition is served on a particular person by direction of the High Court, the High Court may, on the application of that person, add or name him as a respondent to such petition.

(4) Where, at the trial of a referendum petition presented by the Attorney-General, a question of law arises in relation to anything done or omitted by a referendum officer, the High Court may, on the application of the Attorney-General, name the referendum officer as respondent to such petition to argue the said question of law, but for no other purpose.

15. (1) Every referendum petition shall be in such form and shall contain such matters as may be prescribed by rules made by the Chief Justice.

Forum and procedure for presentation of referendum petitions

(2) Presentation of a referendum petition to the High Court shall be made by lodging it with the Registrar of the High Court

(hereinafter in this Act referred to as “the Registrar”) in accordance with the provisions of this Act.

(3) Every referendum petition shall be signed by the petitioner or by all the petitioners if more than one, and shall be presented not later than twenty-one days (which period shall not be extended or deemed to be capable of being extended by order of a court or otherwise) after the date on which the declared result of the referendum is duly declared.

(4) Whenever a referendum petition is presented under this section, the Registrar shall forthwith, in writing, inform the Commission of such presentation.

Duty of
Registrar to
Make out list
of referendum
petitions

16. (1) Subject to the provisions of subsection (2), the Registrar shall make out a list of all referendum petitions presented under this Act, placing them on such list in the order in which they are presented, and he shall keep at his office a copy of such list which shall be open for inspection by any person making application for inspection thereof.

(2) Every referendum petition shall, unless the High Court orders otherwise, be tried in the order in which it stands on the list made out by the Registrar under subsection (1), but where two or more referendum petitions are presented in respect of the same constituency or on the ground, only, of error on the part of the Commission, such referendum petitions shall be bracketed together and shall be dealt with as one petition, standing, unless the High Court orders otherwise, in such list in the place where the last of such referendum petitions would have stood if it had not been so bracketed.

Practice,
procedure
and security
for costs

17. (1) Subject to the provisions of this Act, the Chief Justice may, by statutory instrument, make rules regulating generally the practice and procedure of the High Court with respect to the presentation and trial of referendum petitions, including rules as to the time within which any requirement of such rules is to be complied with, and as to the costs of and incidental to the presentation and trial of referendum petitions and as to the fees to be charged in respect of proceedings therein, and generally in regard to any other matter relating thereto as the Chief Justice may deem necessary or desirable.

(2) After the presentation of a referendum petition, every petitioner thereto shall give security for costs in the sum of thirty thousand fee units and such security shall be given within such time and in such manner and form as the Chief Justice may prescribe by rules under this section or, in the absence of such rules, as the High Court may order.

(3) Where, after the presentation of a referendum petition, no security for costs is given as required by or under this section,

such petition shall be dismissed by the High Court and shall be struck off the list made out under section *sixteen*:

Provided that the High Court may, in respect of any referendum petition dismissed as aforesaid, make such order as to costs as it may deem just.

(As amended by Act No. 13 of 1994)

18. The following provisions shall apply and have effect in relation to every referendum petition presented by a person other than the Attorney-General, that is to say:

Death of or
delay by
petitioner

- (a) where there are two or more petitioners and one or more but not all of them dies or die at any time before the final order of the court on the trial of the petition, the surviving petitioner or petitioners shall be entitled to carry on the petition subject to such application or order as may be required by rules made under section seventeen;
- (b) where the only or the last surviving petitioner dies at any time before the final order of the court on the trial of the petition, the High Court shall, on the application of the Attorney-General, transfer the carriage of the petition to the Attorney-General and thereupon all subsequent proceedings on the petition shall be conducted as if the petition were a petition presented by the Attorney-General;
- (c) if the petitioner fails to proceed with reasonable speed with the proceedings on the petition, the High Court may, on the application of the Attorney-General, either forthwith make a final order confirming without alteration the declared result to which the petition relates or transfer the carriage of the petition to the Attorney-General and authorise him to proceed on the petition as if it had been presented by him;
- (d) nothing in this section shall operate to prevent the High Court ordering the costs or part of the costs of the Attorney-General to be paid out of or by means of the security for costs given by a deceased petitioner or by a petitioner who has failed to proceed with reasonable speed.

19. (1) Subject to the provisions of this Act, every referendum petition presented under this Act shall be tried and determined by the High Court.

Trial of
referendum
petitions

(2) A referendum petition shall be tried in open court.

(3) The High Court may adjourn the trial of a referendum petition from time to time and from place to place.

(4) Subject to the provisions of this Act, the High Court may, in respect of the trial of a referendum petition, exercise such powers within its civil jurisdiction as it may deem appropriate.

(5) At the trial of a referendum petition, a record of all evidence given orally in such trial shall be taken, and a transcript of such record shall, at the conclusion of the proceedings, be delivered to the Commission by the Registrar.

Provisions as
to witnesses

20. (1) At the trial of a referendum petition, the court trying the petition shall have power—

- (a) to order any person who appears to the court to be concerned in or affected by the referendum petition to attend as a witness at such trial;
- (b) to examine any witness or any person who is present at such trial although such witness or person is not called as a witness by any party to the proceedings:

Provided that after such examination by the court, such witness or person may be cross-examined by or on behalf of the petitioner or the respondent.

(2) Where any person is ordered to attend as a witness under subsection (1), the court may direct that a copy of the referendum petition be served on that person.

(3) A person who is called as a witness at the trial of a referendum petition shall not be excused from answering any question relating to any offence connected with the referendum on the ground that the answer thereto may tend to criminate him or on the ground of privilege:

Provided that—

- (i) a witness who answers to the satisfaction of the court every question which he is required to answer under this section, and the answers to which may tend to criminate him, shall not be liable to prosecution for any offence committed by him in connection with the referendum and in respect of which he is so examined, and such witness shall be entitled to receive a certificate of indemnity under the hand of the Registrar stating that he is freed and discharged from liability to prosecution for that offence;
- (ii) an answer by a witness to a question before the court under this section shall not, except in the case of any criminal proceedings for giving false evidence in respect of such evidence, be admissible in any proceedings, civil or criminal, in evidence against him.

(4) Where a person has received a certificate of indemnity under subsection (3), and any legal proceedings are at any time brought against him for any offence to which such certificate relates, the court having cognizance of the case shall, on proof of the certificate of indemnity, stay such proceedings and may award to that person such costs as he may have been put to in such proceedings.

(5) All reasonable expenses incurred by any person in attending at or appearing before the High Court to give evidence as a witness at the trial of a referendum petition shall be allowed to such person according to the scale of allowances and expenses appropriate in civil proceedings before the High Court.

21. (1) A petitioner may apply to the High Court upon the trial of a referendum petition for a scrutiny to be carried out by the High Court in such manner as the court may determine.

Scrutiny of
votes

(2) On a scrutiny at the trial of a referendum petition, the following votes only shall be held invalid:

- (a) the vote of any person whose name was not on the register of voters assigned to the polling station at which the vote was cast or who was not authorised to vote at such polling station;
- (b) the vote of any person whose vote was procured by any corrupt practice;
- (c) the vote of any person who committed or procured the commission of personation at the referendum;
- (d) the vote of any person proved to have voted more than once in respect of the same question;
- (e) the vote of any person who was disqualified from voting at the referendum.

(3) In this section, “scrutiny” means an inquiry as to the validity of the votes cast, and includes the determination of the number of valid votes cast, in a constituency at a referendum.

22. (1) At the trial of a referendum petition which questions the validity of the result of the voting in any one constituency, the court trying the petition may order that the referendum be taken again in that constituency and, when the court so orders, the following provisions shall have effect, that is to say:

Retaking a
referendum in
a constituency

- (a) the court shall, in the said order, appoint the day which shall be the polling day for the purpose of such retaking of the referendum;
- (b) the Registrar shall forthwith deliver a certified copy of the said order of the court to the Commission and to the Director of Elections;
- (c) the referendum shall be retaken in the said constituency and the provisions of this Act in relation to the taking of a referendum shall apply to such retaking, with the substitution of the polling day appointed by the said order of the court for the day appointed under section two in respect of that constituency;
- (d) the Commission shall report the result of the counting of the votes at such retaking to the court.

(2) An order under this section shall not be made in respect of any constituency merely on account of a non-compliance with any regulations made under this Act, or a mistake in the use of forms prescribed under this Act, where it appears to the court that the referendum was conducted in that constituency in accordance with the general principles laid down in this Act and that such non-compliance or mistake did not affect the result of the referendum in that constituency.

Conclusion
of trial of
referendum
petition

23. (1) At the conclusion of the trial of a referendum petition, the court shall either—

(a) confirm without alteration the declared result of the referendum; or

(b) direct that the declared result of the referendum shall be amended in accordance with the findings of the court, including the result of any retaking of the referendum.

(2) The Registrar shall forthwith deliver to the Commission a certified copy of any order made under subsection (1).

(3) Where only one referendum petition has been duly presented, the Commission shall declare and publish the result of the referendum as confirmed or amended, as the case may be, under subsection (1).

(4) Where two or more referendum petitions have been duly presented, the Registrar shall, at the conclusion of the proceedings in respect of all such referendum petitions, deliver to the Commission a certificate under his hand stating that the proceedings upon the trial of every referendum petition have been concluded, and the Commission shall, upon receipt of such certificate, declare and publish the result of the referendum in accordance with the findings of the High Court in respect of each such referendum petition, including the result of any retaking of the referendum.

(5) A declaration made by the Commission under subsection (3) or (4), as the case may be, shall be final and incapable of being further questioned in any court and shall be conclusive evidence of the voting at the referendum to which it relates and of the result of such referendum.

Provisions
as to costs
of trial of
referendum
petition

24. (1) Subject to the provisions of this section, all costs, charges and expenses of and incidental to the presentation and trial of a referendum petition shall be borne in such manner and in such proportions as the High Court may order, and in particular, any costs which in the opinion of the High Court have been caused by any vexatious conduct or by any frivolous or vexatious allegations or objections on the part of the petitioner or of the respondent, may be ordered to be paid by the party by whom such costs have been caused.

(2) The High Court may, on application made by any person to whom any costs, charges or expenses are payable under this Act,

order the same to be paid out of any deposit made to secure the same or by any surety who gave a recognizance, provided that notice of such application shall be given in such manner as may be prescribed by rules under section seventeen to the party by or on whose behalf such deposit was made or for whom such surety gave a recognizance, requiring such party, or such surety and such party, as the case may be, to state within such time and in such manner as may be so prescribed whether he resists the application.

(3) Where on the trial of a referendum petition, any person appears to the High Court to have been guilty of any corrupt practice relating to the referendum, the High Court may, after giving that person an opportunity of making a statement to show why the order should not be made, order the whole or a portion of the costs of or incidental to the trial of such referendum petition to be paid by the said person to such person or persons as the High Court may determine.

(4) Execution may be levied under any order for payment made by the High Court under this section in the same manner and to the same extent as execution may be levied under a judgment for the payment of money.

(5) Money deposited as security shall, when no longer needed as security for costs, be returned to the person in whose name it is deposited or to any person entitled to receive the same by order of the High Court, which may be made upon motion after notice and proof that all just claims have been satisfied or otherwise sufficiently provided for as the High Court may require.

PART IV

(No. 5 of 1969)

GENERAL

25. Notwithstanding anything to the contrary contained in any law relating to stamp duty, no stamp duty shall be charged upon any affidavit, declaration or oath made for the purposes of this Act.

Exemption from stamp duty

26. No person who has voted at a referendum shall in any proceedings, whether brought under this Act or otherwise, be required to state how he has voted.

No person required to state how he voted

27. In any prosecution for an offence against this Act alleged to have been committed at or in connection with a referendum in any constituency, the certificate of the returning officer for that constituency stating that the referendum mentioned therein was being or had been held shall be sufficient evidence of the fact that such referendum was being or had been held in that constituency.

Evidence as to holding of referendum

Validation of
certain
documents

28. No misnomer or any inaccurate description of any person or place in any register, notice or other document required for the purposes of this Act shall affect the full operation of the document with respect to that person or place in any case where the description of the person or place is such as to be commonly understood.

Meaning of
“corrupt
practice”

29. In this Act—

“corrupt practice” means any offence against this Act which is prescribed by the Commission as a corrupt practice.

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REPUBLIC OF ZAMBIA

THE ELECTORAL COMMISSION ACT

CHAPTER 17 OF THE LAWS OF ZAMBIA

CHAPTER 17

THE ELECTORAL COMMISSION ACT, 1996

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

Section

1. Short title
2. Interpretation

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THE ELECTORAL COMMISSION

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4. Functions and Composition of Commission
5. Tenure of office and vacancy
6. Filling of casual vacancy
7. Remuneration and allowances
8. Proceedings of Commission
9. Committees
10. Disclosure of interest
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ADMINISTRATION

12. Director and other staff

PART IV

FINANCIAL AND OTHER PROVISIONS

13. Funds of Commission
14. Financial Year
15. Accounts
16. Annual report
17. Transition provisions
18. Transfer of staff
19. Rules

CHAPTER 17

ELECTORAL COMMISSION

Act 24 of 1996

An Act to provide for the composition of the Electoral Commission; and to provide for matters connected with or incidental to the foregoing.

[16th October, 1996]

PART I
PRELIMINARY

1. This Act may be cited as the Electoral Commission Act.

Short title
Interpretation

2. In this Act, unless the context otherwise requires—
“Chairperson” means the person appointed as Chairperson under section *four*;

“Commission” means the Electoral Commission established under the Constitution; “Director” means the person appointed as Director under section *twelve*; and

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“member” means a person appointed as member of the Commission under section *four*.

PART II
THE ELECTORAL COMMISSION

3. (1) The seal of the Commission shall be such device as may be determined by the Commission and shall be kept by the Director.

Seal of
Commission

(2) The affixing of the seal shall be authenticated by the Chairperson or any other person authorised in that behalf by a resolution of the Commission.

(3) Any document purporting to be under the seal of the Commission or issued on behalf of the Commission shall be received in evidence and shall be deemed to be so executed or issued, as the case may be, without further proof, unless the contrary is proved.

4. (1) The Commission as established by Article 76 of the Constitution shall have the functions specified in that Article.

Functions and
Composition of
Commission

(2) The Commission shall consist of the following full-time members:

(a) a Chairperson; and

(b) not more than four other members.

(3) The members shall be appointed by the President, subject to ratification by the National Assembly.

(4) The Chairperson shall be a person who has held, or is qualified to hold, high judicial office or, any other suitably qualified person.

Tenure of
office and
vacancy

5. (1) A member referred to in subsection (2) of section *four* shall be appointed for a term not exceeding seven years, subject to renewals and ratification by the National Assembly:

Provided that the first members shall be appointed for periods ranging from two to five years in order to facilitate retirement by rotation.

(2) A member referred to in subsection (1) may resign upon giving one month's notice, in writing, to the President.

(3) The President may remove a member if—

(a) the member is insane or otherwise declared to be of unsound mind; or

(b) the member is declared bankrupt.

Filling of
casual
vacancy

6. Whenever the office of a member becomes vacant before the expiry of the term of office, the President may appoint another person to be a member in place of the member who vacates the office for the unexpired term of that office.

Remuneration
and
allowances

7. A member shall be paid such remuneration or allowances as the Commission may, with the approval of the President, determine.

Proceedings of
Commission

8. (1) Subject to the other provisions of this Act, the Commission may regulate its own procedure

(2) Three members shall form a quorum at any meeting of the Commission.

(3) There shall preside at any meeting of the Commission—

(a) the Chairperson; or

(b) in the absence of the Chairperson, such member as the members present may elect for the purposes of that meeting.

(4) A decision of the Commission on any question shall be by a majority of the members present and voting at the meeting and in the event of an equality of votes, the person presiding at the meeting shall have a casting vote in addition to his deliberative vote.

(5) The Commission may invite any person, whose presence is in its opinion desirable, to attend and to participate in the deliberations of the meeting of the Commission, but such person shall have no vote.

(6) The validity of any proceedings, acts or decisions of the Commission shall not be affected by any vacancy in the membership of the Commission or by any defect in the appointment of any member or by reason, that any person not entitled to do so took part in the proceedings.

9. (1) The Commission may, for the purpose of performing its functions under this Act, establish such committees as it considers necessary and delegate to any of those committees such of its functions as it considers fit.

Proceedings of
Commission

(2) The Commission may appoint as members of a committee, persons who are, or are not, members, except that at least one member of a committee shall be a member.

(3) A person serving as a member of a committee shall hold office for such period as the Commission may determine.

(4) Subject to any specific or general direction of the Commission, a committee may regulate its own procedure.

10. (1) If any person is present at a meeting of the Commission or any committee at which any matter is the subject of consideration and in which matter that person or that person's spouse is directly or indirectly interested in a private capacity, that person shall, as soon as is practicable after the commencement of the meeting, declare such interest and shall not, unless the Commission or the committee otherwise directs, take part in any consideration or discussion of, or vote on any question touching such matter.

Disclosure of
interest

(2) A disclosure of interest made under subsection (1) shall be recorded in the minutes of the meeting at which it is made.

(3) A person who contravenes subsection (1) shall be guilty of an offence and shall be liable, upon conviction, to a fine not exceeding ten thousand penalty units or to imprisonment for a term not exceeding three years or to both.

11. (1) A person shall not without the consent in writing given by, or on behalf of, the Commission, publish or disclose to any person otherwise than in the course of the person's duties, the contents of any document, communication, or information which relates to, and which has come to the person's knowledge in the course of the person's duties under this Act.

Prohibition of
disclosure of
information

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable, upon conviction to a fine not exceeding ten thousand penalty units or to imprisonment for a term not exceeding three years or to both.

(3) If any person having information which to that person's knowledge has been published or disclosed in contravention of subsection (1) unlawfully publishes or communicates any such information to any other person, that person shall be guilty of an offence and shall be liable, upon conviction, to a fine not exceeding ten thousand penalty units or to imprisonment for a term not exceeding three years or to both.

PART III
ADMINISTRATION

Director and
other staff

- 12.** (1) The Commission shall appoint a Director.
 (2) The Director shall be the Chief Executive Officer of the Commission and shall be responsible for the—
 (a) management and administration of the Commission; and
 (b) implementation of the decisions of the Commission.
 (3) The Director shall be assisted by such staff as the Commission may appoint, by statutory instrument, on such terms and conditions as the Commission may determine.

PART IV
FINANCIAL AND OTHER PROVISIONS

Funds of Com-
mission

- 13.** (1) The funds of the Commission shall consist of such moneys as may—
 (a) be appropriated by Parliament for the purposes of the Commission;
 (b) be paid to the Commission by way of grants or donations; and
 (c) vest in or accrue to the Commission.
 (2) The Commission may—
 (a) subject to the approval of the President, accept moneys by way of grants or donations from any source; and
 (b) subject to the approval of the President, raise by way of loans or otherwise, such moneys as it may require for the discharge of its functions.
 (3) There shall be paid from the funds of the Commission—
 (a) the salaries, allowances and loans of the staff of the Commission;
 (b) such reasonable travelling, transport and subsistence allowances for the members and members of any committee of the Commission when engaged in the business of the Commission, and at such rates as the Commission may determine; and
 (c) any other expenses incurred by the Commission in the performance of its functions.
 (4) The Commission may invest in such manner as it thinks fit such of its funds as it does not immediately require for the performance of its functions.

Financial year

14. The financial year of the Commission shall be the period of twelve months ending on 31st December in each year.

Accounts

15. (1) The Commission shall cause to be kept proper books of account and other records relating to its accounts.

(2) The accounts of the Commission shall be audited annually by independent auditors appointed by the Commission.

(3) The auditors' fees shall be paid by the Commission.

16. (1) As soon as is practicable, but not later than ninety days after the end of the financial year, the Commission shall submit to the President a report concerning its activities during the financial year.

Annual report

(2) The report referred to in subsection (1) shall include information on the financial affairs of the Commission and there shall be appended to the report—

(a) an audited balance sheet;

(b) an audited statement of income and expenditure; and

(c) such other information as the President may require.

(3) The President shall, not later than seven days after the first sitting of the National Assembly next after receipt of the report referred to in subsection (1), cause the report to be laid before the National Assembly.

17. (1) On the commencement of this Act, all property, assets, rights, liabilities and obligations of the Government attaching to or in the possession of the department of Government dealing with elections, shall vest in the Commission.

Transitional provisions

(2) Any proceedings or cause of action instituted or pending by or against the Government concerning or in relation to the department dealing with elections, immediately prior to the commencement of this Act, shall continue against the Commission as if instituted under this Act.

18. (1) The employees of the department of Government dealing with elections shall be deemed to be transferred to the Commission from the commencement of this Act and shall be engaged by the Commission on such terms and conditions as the Commission may determine.

Transfer of staff

(2) Notwithstanding subsection (1), the service of the employees referred to in subsection (1) shall be treated as continued service and the employees shall continue to contribute to the Public Service Pension Fund.

(3) Nothing in this Act affects the rights or liabilities of any person, referred to in subsection (1), acquired or incurred immediately before the commencement of this Act.

19. The Commission may, by statutory instrument, make rules for—

Rules

(a) the appointment, including the power to confirm appointments of persons, to any office in respect of which it is charged with responsibility under this Act;

(b) the disciplinary control of persons holding or acting in any office in respect of which it is charged with responsibility under this Act;

- (c) the termination of appointments and the removal of persons from any office, in respect of which it is charged with responsibility under this Act;
- (d) the practice and procedure of the Commission in the exercise of its functions under this Act; and
- (e) the delegation of its functions or powers.