

THE REFERENDUM ACT
CHAPTER 14 OF THE LAWS OF ZAMBIA
 [CAP. 14] Referendum
CHAPTER 14

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THE REFERENDUM ACT ARRANGEMENT OF SECTIONS

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PART I: PRELIMINARY

1. This Act may be cited as the Referendum Act.

Short title

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
- (2) 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".
- (3) 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.

Power to order 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.

Method of taking the poll at a referendum

- (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. !969 {5.1. No.246 of !969), which refers to the first referendum held under the provisions of this Act

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PART II: ESTABLISHMENT AND PROCEDURE OF REFERENDUM COMMISSION.

4. (2) 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.
- (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

Establishment of Referendum Commission

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.

(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.

Procedure of Commission

7. The conduct of every referendum shall be subject to the direction and supervision of the Commission.

Conduct of referendum

(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 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.

Appointment of referendum officers

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.

(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

PART III: 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 anyone 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.

Referendum petitions

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.

Operation of declared result or of Act submitted to referendum

(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.

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13. A referendum petition may be presented to the High Court by one or more of the following persons:

- a. in the case of a petition in respect of the result of the voting in anyone 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.

Persons who may present referendum petitions

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.

(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.

Respondent to referendum petition

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.

(2) Presentation of a referendum petition to the High Court shall be made by lodging it with the Registrar of the High Court (here - inafter 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.

Form and procedure for presentation 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.

Duty of Registrar to make out list of referendum petitions

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)

Practice, procedure and security for costs

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:

- 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.

Death of or delay by petitioner

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.

(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.

Trial of referendum petitions

20. (1) At the trial of a referendum petition, the court trying the petition shall have power-

- 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;
- 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 sub-section (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.

Provisions as to witnesses

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.

(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;

(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.

- (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.

Scrutiny of votes

22. (1) At the trial of a referendum petition which questions the validity of the result of the voting in anyone 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:

- 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.

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.

Conclusion 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.

Provisions as to costs of trial of referendum petition

PART IV: 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

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.

Validation of certain documents

29. In this Act- "corrupt practice" means any offence against this Act which is prescribed by the Commission as a corrupt practice.

Meaning of "Corrupt practice"