

**THE ELECTORAL COMMISSION OF ZAMBIA BILL,
2016**

MEMORANDUM

The objects of this Bill are to—

- (a) provide for the membership, functions, operations and financial management of the Electoral Commission of Zambia;
- (b) repeal and replace the Electoral Commission Act, 1996; and
- (c) provide for matters connected with, or incidental to, the foregoing.

L. KALALUKA,
Attorney-General

N.A.B. 20, 2016
22nd April, 2016

**THE ELECTORAL COMMISSION OF ZAMBIA BILL,
2016**

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A BILL

ENTITLED

An Act to provide for the membership, functions, operations and financial management of the Electoral Commission of Zambia; repeal and replace the Electoral Commission Act, 1996; and provide for matters connected with, or incidental to, the foregoing

ENACTED by the Parliament of Zambia

Enactment

PART I

PRELIMINARY PROVISIONS

1. This Act may be cited as the Electoral Commission of Zambia Act, 2016. Short title
2. In this Act, unless the context otherwise requires— Interpretation
- “associate” has the meaning assigned to it in the Anti-Corruption Act, 2012;
- 10 “Chairperson” means the person appointed Chairperson of the Commission under section *five*; Act No. 3 of 2012
- “Chief Electoral Officer” means the person appointed Chief Electoral Officer of the Commission under section *nine*;
- “Commission” means the Electoral Commission of Zambia established under Article 229 of the Constitution;
- 15 “Electoral Commission” means the Electoral Commission provided for under the repealed Act; Cap. 1
Cap. 17

N.A.B. 20, 2016

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Cap. 1	“emoluments” has the meaning assigned to it in the Constitution;	
Cap. 1	“Emoluments Commission” means the Emoluments Commission established under Article 232 of the Constitution;	5
Cap. 1	“function” has the meaning assigned to it in the Constitution;	
Cap. 1	“member” means a person appointed as a member of the Commission under section <i>five</i> ;	
Cap. 1	“oath” has the meaning assigned to it in the Constitution;	
	“relative” means—	10
	(a) a person’s son, daughter, brother, sister, nephew, niece, parent, uncle, aunt, grandparent or cousin; and	
	(b) a person’s spouse or the spouse of any of the persons mentioned in paragraph (a);	15
Cap. 17	“repealed Act” means the Electoral Commission Act, 1996;	
Cap. 1	“State organ” has the meaning assigned to it in the Constitution;	
Cap. 1	“superior court” has the meaning assigned to it in the Constitution; and	
	“Vice-Chairperson” means the person appointed Vice-Chairperson of the Commission under section <i>five</i> .	20

PART II

THE ELECTORAL COMMISSION OF ZAMBIA

Seal of Commission	<p>3. (1) The seal of the Commission shall be such device as may be determined by the Commission and shall be kept by the Chief Electoral Officer.</p> <p>(2) The affixing of the seal shall be authenticated by the Chairperson or the Vice-Chairperson and the Chief Electoral Officer or any other person authorised in that behalf by a resolution of the Commission.</p> <p>(3) A contract or instrument which, if entered into or executed by a person not being a body corporate, would not be required to be under seal may be entered into or executed without seal on behalf of the Commission by the Chief Electoral Officer or any other person generally or specifically authorised by the Commission in that behalf.</p> <p>(4) A 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.</p>	25 30 35 40
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4. (1) Subject to the Constitution, the Commission shall direct, supervise and control elections in a fair and impartial manner.

Functions of
Commission
Cap. 1

(2) Without prejudice to the generality of subsection (1), the functions of the Commission are to—

- 5 (a) ensure that elections are free and fair;
- (b) promote conditions conducive to free and fair elections;
- (c) promote democratic electoral processes;
- (d) supervise and control the registration of voters for the purposes of an election;
- 10 (e) supervise the preparation, publication and maintenance of a national voters' register and local authority voters' register;
- (f) adjudicate disputes that may arise from the organisation, administration or conducting of elections, which are of an administrative nature;
- 15 (g) conduct education and information programmes to promote public awareness of electoral and parliamentary matters;
- (h) provide information and advice on electoral matters to State organs;
- 20 (i) conduct and promote research into electoral matters and other matters that relate to its functions;
- (j) establish and maintain liaison and cooperation with political parties; and
- 25 (k) do all such other things as are necessary or incidental to the performance of its functions under this Act.

(3) The Commission may, in furtherance of its functions—

- 30 (a) collect any information that it considers necessary for the performance of its functions under the Constitution and this Act;
- (b) undertake consultations, public hearings and inquiries for purposes of performing its functions under the Constitution and this Act; and
- 35 (c) receive written or oral statements from any person or organisation for purposes of its functions under this Act.

Cap. 1

Cap. 1

5. (1) The Commission consists of the following fulltime members appointed by the President, subject to ratification by the National Assembly:

Composition
of
Commission

- (a) the Chairperson;
- (b) the Vice-Chairperson; and
- (c) four other members;

(2) A person qualifies for appointment as the Chairperson if that person has held, or is qualified to hold, the office of judge of a superior court.

(4) A member of the Commission shall hold office for a term of seven years and may be re-appointed for a further term of seven years.

(5) A member may resign upon giving one month's notice, in writing, to the President.

(6) The office of a member becomes vacant if the member—

- (a) dies;
- (b) resigns;
- (c) is absent, without reasonable excuse, from three consecutive meetings of the Commission of which the member has had notice without the approval of the Commission;
- (d) is adjudged bankrupt;
- (e) is convicted of an offence under this Act or any other written law and sentenced to imprisonment for a period exceeding six months without the option of a fine;
- (f) is removed by the President; or
- (g) is mentally or physically incapable of performing the duties of a member.

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(7) A member shall, on the expiration of the period for which the member is appointed, continue to hold office until a successor is appointed, but in no case shall the further period exceed four months.

(8) 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.

Proceedings
of
Commission

6. (1) Subject to the other provisions of this Act, the Commission may regulate its own procedure.

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(2) The Commission shall meet for the transaction of business at least once in every three months at such places and times as the Commission may determine.

(3) A meeting of the Commission may be called by the Chairperson upon giving notice of not less than fourteen days and shall be called by the Chairperson if one-third or more of the members so request in writing, except that if the urgency of any particular matter does not permit the giving of such notice, a special meeting may be called upon giving a shorter notice.

(4) Five members shall form a quorum at a meeting of the Commission.

(5) There shall preside at a meeting of the Commission—

- 10 (a) the Chairperson;
- (b) in the absence of the Chairperson, the Vice-Chairperson; and
- (c) in the absence of the Chairperson and the Vice-Chairperson, such other member as the members present may elect for the purposes of that meeting.
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(6) 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 that person's deliberative vote.

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(7) Where a member is for any reason unable to attend any meeting of the Commission, the member may, in writing, nominate another person from the same organisation to attend such meeting in that member's stead and such person shall be deemed to be a member for the purpose of that meeting.

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(8) The Commission may invite a person, whose presence is in its opinion desirable, to attend and to participate in the deliberations of the meeting of the Commission, but that person shall have no vote.

30 (9) 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.

35 (10) The Commission shall cause minutes to be kept of the proceedings of every meeting of the Commission and every meeting of any committee of the Commission.

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- Committees 7. (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.
- (2) The Commission may appoint as members of a committee, 5 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 10 Commission, a committee may regulate its own procedure.
- Emoluments 8. A member of the Commission or any committee of the Commission shall be paid such emoluments as the Emoluments Commission may determine.
- Chief Electoral Officer and other staff 9. (1) There shall be a Chief Electoral Officer of the 15 Commission who shall be appointed by the Commission.
- (2) The Chief Electoral Officer shall be the chief executive officer of the Commission, and subject to the general and specific directions of the Commission shall—
- (a) be responsible for the day-to-day administration and 20 management of the Commission;
- (b) be an *ex-officio* member of the Commission; and
- (c) exercise the functions conferred upon the Chief Electoral Officer by, or under, this Act.
- (2) The Commission shall, on such terms and conditions as it 25 may determine, appoint such other staff and officers of the Commission as are necessary for purposes of this Act
- Disclosure of interest 10. (1) A person who is present at a meeting of the Commission or any committee of the Commission at which any matter is the subject of consideration, and in which matter that 30 person or that persons relative or associate is directly or indirectly interested in a private capacity 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 35 question relating to that matter.
- (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) commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

5 **11.** (1) A person shall not, without the consent, in writing, given by or on behalf of the Commission, publish or disclose to an unauthorised person, otherwise than in the course of duties of that person, the contents of a document, communication or information whatsoever, which relates to or which has come to the knowledge
10 of that person in the course of that person's duties under this Act.

Prohibition of publication or disclosure of information to unauthorised persons

(2) A person who contravenes subsection (1) commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

15 (3) A person who, having any information which to the knowledge of that person has been published or disclosed in contravention of subsection (1), unlawfully publishes or communicates the information to another person, commits an offence and is liable, upon conviction, to a fine not exceeding two
20 hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

12. (1) A member of the Commission shall, on appointment, take an oath in accordance with the Official Oaths Act.

Oath on appointment
Cap. 5

(2) The Chief Electoral Officer and the officers and staff of
25 the Commission shall, on appointment, take an oath in accordance with the Official Oaths Act.

Cap. 5

13. An action or other proceeding shall not lie or be instituted against a member of the Commission, a member of a committee of the Commission or a member of staff of the Commission for, or in
30 respect of, an act or thing done or omitted to be done in good faith in the exercise or performance, or purported exercise or performance, of any of the functions conferred under this Act.

Immunity

PART IV
FINANCIAL PROVISIONS

- Funds of Commission
- 14.** (1) The funds of the Commission shall consist of such monies as may—
- (a) be appropriated to the Commission by Parliament; 5
 - (b) be paid to the Commission by way of grants or donations; or
 - (c) otherwise vest in or accrue to the Commission.
- (2) The Commission may, subject to the approval of the President— 10
- (a) accept monies by way of grants or donations from any source within or outside Zambia; and
 - (b) raise by way of loans or otherwise, such monies as it may require for the discharge of its functions.
- (3) There shall be paid from the funds of the Commission 15
- (a) the emoluments of the members and staff of the Commission;
 - (b) such travelling and other allowances for the members and the members of any committee when engaged on the business of the Commission, at such rates as the Emoluments Commission may approve; and 20
 - (c) any other expenses incurred by the Commission in the performance of its functions under this Act.
- (4) The Commission may, with the approval of the President, 25 invest in such manner as it considers appropriate such funds of the Commission that it does not immediately require for the discharge of its functions.
- Financial year
- 15.** The financial year of the Commission shall be a period of twelve months ending on 31st December in each year.
- Accounts and audit
- 16.** (1) The Commission shall cause to be kept proper books 30 of accounts and other records relating to its accounts.
- (2) The accounts of the Commission shall be audited annually by the Auditor-General or an auditor appointed by the Auditor-General.
- (3) The Auditor-General's fees shall be paid by the 35 Commission.
- Annual report
- 17.** (1) As soon as 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.

(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 statement of financial position;
- 5 (b) an audited statement of comprehensive income; and
- (c) such other information as the President may require.

(3) The Minister responsible for finance shall cause to be prepared an annual statement of the income and expenditure of the Commission to be laid before the National Assembly.

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PART VI
GENERAL PROVISIONS

18. A report, statement or other communication or record of a meeting, hearing, inquiry or proceeding of the Commission relating to the performance of its functions or a report, statement or other
15 communication or record made by a member for the purposes of the Commission in the course of duty, and an application form, report or other communication dispatched to the Commission in connection with the performance of its functions, and in the possession of the Commission, is privileged and shall not be produced
20 or compelled in any legal proceeding unless the Chairperson so directs, in writing, or a court so orders.

Privileged reports

19. (1) A person shall not—

- 25 (a) knowingly make, or cause to be made, to the Commission, a false testimony or false report in any material particular on a matter under investigation;
- (b) knowingly mislead the Commission, a member, an officer or staff of the Commission by giving any false information or statement or making a false allegation;
- 30 (c) obstruct, assault, insult, hinder, delay or impersonate an officer or staff of the Commission in the lawful exercise of the powers conferred on the officer or staff of the Commission under this Act;
- (c) refuse or fail, without reasonable cause, to give the Commission on request, a document or information required for purposes of this Act;
- 35 (d) unlawfully influence a decision of the Commission or coerce the Commission to make a decision in favour of that person;
- 40 (e) fail to comply with a lawful summon, order or directive of the Commission or an officer of the Commission under this Act; or

General offences

(f) destroy anything or prevent the seizure of any property or document or securing of the property or document.

(2) A person who contravenes subsection (1) commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or imprisonment for a term not exceeding two years, or to both. 5

Regulations

20. (1) The Commission may, by statutory instrument, make regulations for the better carrying out of the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the Commission may make regulations for— 10

(a) the appointment, including the power to confirm appointments, of persons to an office in respect of which it is charged with responsibility under this Act;

(b) the disciplinary control of persons holding or acting in an office in respect of which it is charged with responsibility under this Act; 15

(c) the termination of appointments and the removal of persons from an 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 20

(e) the delegation of its functions.

Repeal of
Cap. 17 Act
No. 24 of
1996

21. The Electoral Commission Act, 1996, is repealed.

Transitional
provisions

22. (1) On or after the commencement of this Act, there shall be transferred to, vest in and subsist against the Commission by virtue of this Act and without further assurance, all assets, rights, liabilities and obligations which immediately before that date were the assets, rights, liabilities and obligations of the Electoral Commission. 25

(2) Subject to subsection (1), every deed, bond and agreement, other than an agreement for personal service, to which the Electoral Commission was a party immediately before the commencement of this Act whether or not of such a nature that rights, liabilities and obligations could be assigned shall, unless its subject matter or terms make it impossible that it should have effect as modified, as provided under this subsection, have effect as if— 30 35

(a) the Commission had been party to it;

(b) for any reference to the Electoral Commission there was submitted, with respect to anything falling to be done or after the commencement of this Act, a reference to the Commission; or 40

5 (c) for any reference to an officer of the Electoral Commission, not being a party to it and beneficially interested, there were substituted, as respects anything falling to be done on or after the commencement of this Act a reference to such officer of the Commission as it shall designate.

10 (3) Where under this Act, any assets, rights, liabilities and obligations of the Electoral Commission are deemed to be transferred to the Commission in respect of which a written law provides for registration, the Commission shall make an application, in writing, to the appropriate registration authority for registration of the transfer.

15 (4) The registration authority, referred to in subsection (3), shall make such entries in the appropriate register as shall give effect to the transfer and, where applicable, issue to the transferer concerned a certificate of title in respect of the property or make necessary amendments to the register and shall endorse the deeds relating to the title, right or obligation concerned and no registration fees or other duties shall be payable in respect of the transaction.

20 **23.** (1) Any legal proceedings or application of the Electoral Commission pending immediately before the commencement of this Act by or against the Electoral Commission may be continued by or against the Commission.

Legal proceedings

25 (2) After the commencement of this Act, proceedings in respect of any right, liability or obligation which was vested in, held, enjoyed, incurred or suffered by the Electoral Commission may be instituted by or against the Commission.

30 **24.** (1) A person who, before the commencement of this Act, was an employee of the Electoral Commission shall be transferred to the service of the Commission as an employee of the Commission as if employed under this Act.

Staff of Electoral Commission

(2) The service of the persons referred to in subsection (1) shall be treated as continuous service.

35 (3) Nothing in this Act affects the rights and liabilities of any person employed or appointed by the Electoral Commission before the commencement of this Act.