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THE ELECTORAL COMMISSION ACT, 1996

[Enactment]

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PART III - ADMINISTRATION

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- 5. Tenure of office and vacancy
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**GOVERNMENT OF ZAMBIA
ACT No. 24 of 1996**

Date of assent: 14th October, 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
ENACTED by the Parliament of Zambia.

THE ELECTORAL COMMISSION ACT, 1996 -- PART I PRELIMINARY

Section:

1. [Short title and commencement]

This Act may be cited as the Electoral Commission Act, 1996.

2. [Interpretation]

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 ten; and
- "member" means a person appointed as a member of the Commission under section four;

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THE ELECTORAL COMMISSION ACT, 1996 -- PART II

THE ELECTORAL COMMISSION

Section:

3. [Seal of Commission]

(1) The seal of the Commission shall be such device as may be determined by the Commission and shall be kept by the Director.

(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. [Functions and Composition of Commission]

(1) The Commission as established by Article 76 of the Constitution shall have the functions specified in that Article.

(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.

5. [Tenure of office and vacancy]

(1) A member referred to in subsection (1) of section four shall be appointed for a term not exceeding seven years, subject to renewals and ratification by the National Assembly.

(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.

6. [Filling of casual vacancy]

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 a member who vacates the office for the unexpired term of that office.

7. [Remuneration and allowances]

A member shall be paid such remuneration or allowances as the Commission may, with the approval of the President, determine.

8. [Proceedings of Commission]

- (1) Subject to the 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. [Committees]

- (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, persons who are, or are not, members, except that at least one member of 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. [Disclosure of interest]

- (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 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.
- (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. [Prohibition of disclosure of information]

- (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.

(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.

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- (a) a Chairperson; and
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(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.

5. [Tenure of office and vacancy]

(1) A member referred to in subsection (1) of section four shall be appointed for a term not exceeding seven years, subject to renewals and ratification by the National Assembly.

(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.

6. [Filling of casual vacancy]

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 a member who vacates the office for the unexpired term of that office.

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- (2) A disclosure of interest made under subsection (1) shall be recorded in the minutes of the meeting at which it is made.
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- (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. [Committees]

- (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, persons who are, or are not, members, except that at least one member of 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. [Disclosure of interest]

- (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 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.
- (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. [Prohibition of disclosure of information]

- (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.

(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.

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THE ELECTORAL COMMISSION ACT, 1996 -- PART II

THE ELECTORAL COMMISSION

Section:

3. [Seal of Commission]

- (1) The seal of the Commission shall be such device as may be determined by the Commission and shall be kept by the Director.
- (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. [Functions and Composition of Commission]

- (1) The Commission as established by Article 76 of the Constitution shall have the functions specified in that Article.
- (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.

5. [Tenure of office and vacancy]

- (1) A member referred to in subsection (1) of section four shall be appointed for a term not exceeding seven years, subject to renewals and ratification by the National Assembly.
- (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.

6. [Filling of casual vacancy]

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 a member who vacates the office for the unexpired term of that office.

7. [Remuneration and allowances]

A member shall be paid such remuneration or allowances as the Commission may, with the approval of the President, determine.

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- (1) Subject to the 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 --
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THE ELECTORAL COMMISSION ACT, 1996 -- PART III ADMINISTRATION

Section:

12. [Director and other staff]

- (1) The Commission shall appoint a Director.
 - (2) The Director shall be 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.
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THE ELECTORAL COMMISSION ACT, 1996 -- PART IV FINANCIAL AND OTHER PROVISIONS

Section:

13. [Funds of the Commission]

(1) The funds of the Commission shall consist of such money 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 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.

14. [Financial year]

The financial year of the Commission shall be the period of twelve months ending on 31st December of each year.

15. [Accounts]

(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. [Annual report]

(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.

(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. [Transitional provisions]

(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 the Government dealing with elections, shall vest in the Commission.

(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. [Transfer of staff]

(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.

(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. [Rules]

The Commission may, by statutory instrument, make rules for --

- (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;
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- (a) subject 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.

14. [Financial year]

The financial year of the Commission shall be the period of twelve months ending on 31st December of each year.

15. [Accounts]

(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. [Annual report]

(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.

(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. [Transitional provisions]

(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 the Government dealing with elections, shall vest in the Commission.

(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. [Transfer of staff]

(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.

(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. [Rules]

The Commission may, by statutory instrument, make rules for --

- (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 and powers.

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THE ELECTORAL COMMISSION ACT, 1996 -- PART IV FINANCIAL AND OTHER PROVISIONS

Section:

13. [Funds of the Commission]

(1) The funds of the Commission shall consist of such money 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 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
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(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.

14. [Financial year]

The financial year of the Commission shall be the period of twelve months ending on 31st December of each year.

15. [Accounts]

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16. [Annual report]

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