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ASSISTANT DIRECTOR OF ELECTIONS

Electoral

[No. 2 of 1991] 89

[No. 2 of 1991]

THE ELECTORAL ACT, 1991

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

Section

1. Short title and application
2. Interpretation

PART II

REGISTRATION AND VOTING IN DIRECT ELECTIONS

3. Qualifications for registration of voters
4. Disqualification from registration of voters
5. Registration in a constituency
6. Qualification for voting
7. Disqualification from voting

PART III

PRESIDENTIAL ELECTIONS

8. Elections to office of President
9. Nomination of Presidential candidate

PART IV

NATIONAL ASSEMBLY ELECTIONS

10. Additional disqualifications for election to National Assembly
11. Election fee

PART V

ELECTORAL COMMISSION AND REGULATION OF ELECTIONS

12. Electoral Commission
13. Independence of electoral commission
14. Supervision by commission
15. Appointment, remuneration and functions of election officers
16. Power of commission to require information and issue instructions
17. Regulatory power of commission

PART VI

ELECTION PETITIONS IN RESPECT OF PARLIAMENTARY ELECTIONS

18. Avoiding of elections
19. Who may present election Petitions

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THE ELECTORAL ACT, 1991.**ARRANGEMENT OF SECTIONS.****PART I****PRELIMINARY***Section*

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PART VI**ELECTION PETITIONS IN RESPECT OF PARLIAMENTARY ELECTIONS**

18. Avoiding of elections
19. Who may present election Petitions

Section

20. Relief which may be claimed in election petition
21. Form and procedure for presentation of election petitions
22. Duty of registrar to make out list of election petitions
23. Rules of practice and procedure, security for costs
24. Withdrawal of election petitions
25. Substitution of new petitioners
26. Abatement of election petitions
27. Trial of election petitions
28. Provisions as to witnesses
29. Conclusion of trial election petition
30. Provisions as to costs

PART VII

OTHER QUESTIONS RELATING TO PARLIAMENT

31. Applications re-members and officers of Parliament
32. Effect of determination

PART VIII

MISCELLANEOUS AND REPEALS AND TRANSITIONAL

33. Exemption from stamp duty
34. When incapacity may be removed
35. No person required to state how he voted
36. Evidence as to holding of election
37. Validation of certain documents
38. Repeals and saving
39. Transitional Electoral commission
40. Transitional registers of voters

GOVERNMENT OF ZAMBIA

ACT

No. 2 of 1991

Date of Assent: 24th August, 1991

An Act to make provision relating to elections to the office of President; to elections to the National Assembly empower the Electoral 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 make provision with respect to election petitions and the hearing and determination of applications relating to Parliament; to repeal the Electoral Act, 1973 and to provide for matters incidental to or connected with the foregoing.

[30th August, 1991]

ENACTED by the Parliament of Zambia.

Enactment

PART I

PRELIMINARY

1. This Act may be cited as the Electoral Act, 1991.
2. (1) In this Act, unless the context otherwise requires—
 - “(candidate” means any person nominated as a candidate for election;
 - “Commission” means an Electoral Commission established under article *seventy-six* of the Constitution;
 - “constituency” means any of the constituencies into which Zambia is divided under article *seventy-seven* of the Constitution;
 - “the Constitution” means the Constitution set out in the Schedule to the Constitution of Zambia Act, 1991.

Short title

Interpretation

"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 election" means an election to the office of President, or an election for a member of the National Assembly;

"Director of Elections" means the person for the time being holding or acting in the public office of Director of Elections;

"election" means, a direct election and cognate expressions shall be construed accordingly;

"election officer" has the meaning assigned thereto in subsection (6) of section *fifteen*;

"election petition" means an election petition referred to in section *eighteen*;

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

"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;

"petitioner" means, in relation to an election petition, any person referred to in section *nineteen* who signs and presents such election petition under section *twenty*, and includes any person substituted for a petitioner under section *twenty-five* or section *twenty-six*;

"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;

"register of voters" means a register of voters for any constituency, or part of a constituency, prepared and maintained, or deemed to be prepared and maintained under this Act;

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

"Registrar" means the Registrar of the High Court;

"respondent" has the meaning assigned thereto in subsection (4) of section *twenty-one*;

"returning officer" in relation to the election of a President, means the returning officer specified in article *forty-one* of the Constitution;

"voter" means a person who is entitled to vote at the relevant election.

(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; or
- (b) 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
- (c) any election fee.

PART II

REGISTRATION AND VOTING IN DIRECT ELECTIONS

3. Subject to the provision of section four, every person shall be qualified for registration as a voter in direct elections who—

Qualifica-
tion for
registration
of voters

- (a) is a citizen of Zambia; and
- (b) has attained the age of eighteen years.

4. (1) No person shall be qualified for registration as a voter in direct elections, and no person shall be registered as such a voter, who—

Disqualifica-
tions from
registration
of voters

- (a) is under a declaration of allegiance to some country other than Zambia;
- (b) 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;

Cap. 160

- (c) is under sentence of death imposed on him by any court in Zambia, or a sentence of imprisonment (by whatever name called) imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court; or
- (d) is not in possession of a national registration card issued to him under the National Registration Act.

Cap. 434

(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.

Registration
in a
Constituency

5. A person qualified for registration as a voter shall, on application in accordance with regulations made by the Commission, be registered as a voter in the register of voters for a constituency in which he is ordinarily resident.

Qualifica-
tions for
voting

6. (1) Subject to the provisions of this section and of section seven, 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.

(2) Every person shall, whenever he wishes to vote at a direct election, identify himself to an election officer in such manner as may be prescribed, and no person shall be entitled to vote more than once in the same such election.

(3) For the avoidance of doubt it is hereby declared that where an election to which this Act applies is held at the same time and place as any other such election, and whether or not the same ballot paper is authorised by the Commission for use in more than one such election, each such election remains a separate election.

disqualifica-
tions from
voting

7. 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 an 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 if his freedom of movement is restricted under any law in force in Zambia.

PART III**PRESIDENTIAL ELECTIONS**

8. The election to the office of President shall be held in every constituency in Zambia.

Election to
office of
President

9. (1) A candidate for election as President shall deliver his nomination paper together with the prescribed election fee and the statutory declaration referred to in article thirty-two of the Constitution to the returning officer for such election on such day, at such time and at such place as may be determined by the Commission.

Nomina tion
of Prese-
ntial
candidates

(2) The nomination paper shall be signed by not less than two hundred registered voters.

PART IV**NATIONAL ASSEMBLY ELECTIONS**

10. In addition to the persons disqualified by article sixty-three of the Constitution—

Additional
disqualifica-
tions for
election to
National
Assembly

- (a) an election officer shall not be qualified for election as a member of the National Assembly;
- (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 such conviction or of such report, as the case may be.

11. The election fee for candidates for election to the National Assembly shall be such fee as may be prescribed under this Act.

Election fee

PART V**ELECTORAL COMMISSION AND REGULATION OF ELECTIONS**

12. (1) An Electoral Commission established under article eight of the Constitution shall consist of a Chairman and two other members, who shall be appointed by the President.

Electoral
Commission

Provided that, where an Electoral Commission is established solely for the purpose of a by-election for a member of the National Assembly, the Electoral Commission may consist of a single Commissioner who may exercise all the powers of the Electoral Commission relating to the direction and supervision of that election other than the power to make or alter regulations.

(2) A person shall not be qualified for appointment as Chairman of a Commission or as a Commissioner—

- (a) unless he holds or has held high judicial office;
- (b) if he is a member of, or nominated as a candidate for election to, either House of Parliament.

(3) If, after the appointment of a Commission and before the Commission stands dissolved, 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 a member of the Commission, as the case may be.

(4) A Commission established for the purposes of article eighty-one of the Constitution shall stand dissolved upon such date as the President may determine, and a Commission established for any other purpose shall stand dissolved on such date (not being earlier, in the case of a Commission established upon a dissolution of Parliament, then the date upon which Parliament first sits after that dissolution) as the President may determine.

Independence of Electoral Commission

13. In the exercise of its functions under the Constitution, a Commission shall not be subject to the direction or control of any other person or authority.

Supervision by Commission

14. The registration of voters and the conduct of every election shall be subject to the direction and supervision of the Commission.

Appointment, remuneration and functions of election officers

15. (1) In respect of any election, the Commission shall have power to appoint for any constituency or province such election officers as it may deem necessary for the purposes of such election, and any election officer may exercise his functions in respect of the whole or part of a constituency or province or in respect of more than one constituency as prescribed by the Commission.

(2) In respect of any election, an election officer may, 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, and may, at any time, revoke such appointment.

(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 thereof, 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 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;
- (g) a counting assistant;

and includes any person appointed to assist an election officer under subsection (2); and, where functions are conferred on the Director of Elections under this Act in respect of any election, includes the Director of Elections.

16. The Commission may—

- (a) require from any election officer such information and returns as it may consider necessary;
- (b) subject to the provisions of this Act, issue instructions to any election officer in connection with his functions under this Act;
- (c) issue instructions to any candidate in an election in respect of the use of motor vehicles by or on behalf of such candidate during the day on which such election is to be held.

Power of
Commission
to require
information
and issue
instructions

17. (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 or 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 division of constituencies into polling districts;
- (b) the establishment of polling stations in polling districts;
- (c) the registration of voters;
- (d) the preparation of, and the form of, registers to be used in the registration of voters;
- (e) the manner of ascertaining whether persons applying for registration as voters are qualified for registration or for their inclusion in a register for a particular constituency;

- (f) the making and determination of appeals, claims and objections with respect to the registration of voters;
- (g) the correction, amendment and certification of registers of voters;
- (h) the circumstances 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 or one polling district to that of another polling district and the restoration of names of registers of voters;
- (i) the nomination of candidates for any election and the manner of establishing and recording that a candidate at a direct election for the National Assembly is the authorised candidate of a political party;
- (j) the making and determination of appeals against the rejection of nominations by a returning officer;
- (k) the publication of the names of candidates whose nominations are accepted;
- (l) the payment of election fees by candidates, and the circumstances in which such fees are to be returned;
- (m) the use of symbols at an election;
- (n) the appointment of, and the duties of, election agents and polling agents;
- (o) the equipment and facilities to be provided at polling stations;
- (p) the persons who may be admitted to polling stations;
- (q) the manner and procedure of voting at an election;
- (r) the manner of ascertaining the identity of persons wishing to vote at elections and whether such persons are qualified to vote;
- (s) the manner in which persons who are blind, or otherwise incapacitated, may vote;
- (t) voting by persons employed on election duties on the day of an election;
- (u) the maintenance of secrecy at elections;
- (v) the postponement of, and the adjournment and extension of, time for a poll in case of riot or open violence at an election;
- (w) the administering of oaths or affirmations by election officers in respect of such matters as may be prescribed;
- (x) the procedure to be followed at the conclusion of a poll in an election;
- (y) 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;
- (z) 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.
- (aa) 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;
 - (bb) the declaration, notification and publication of the results of an election;
 - (cc) 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;
 - (dd) election expenses and the return of election expenses;
 - (ee) the notification and publication of any causal vacancy in the elected membership of the National Assembly and the fixing of a date for an election to fill such vacancy;
 - (ff) the fixing of a date for an election of a President or an election following a dissolution of the National Assembly;
 - (gg) the forms and records to be used for any of the purposes of this Act;
 - (hh) 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 Electoral Commission shall consult the returning officer.

(4) Regulations under this section shall not be affected by the dissolution of the Commission by which they are made but shall remain valid and in force, subject to any amendment or revocation by a subsequent Commission.

(5) Regulations under this section may provide in respect of any contravention thereof that the offender shall be liable to a fine not exceeding twenty thousand kwacha or to a term of imprisonment not exceeding two years or to both.

(6) 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.

PART VI

ELECTION PETITIONS IN RESPECT OF PARLIAMENTARY ELECTIONS

18. (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.

Avoidance
of elections

(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; or
- (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 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 of his election agent or of his polling agents;
- (d) that the candidate was at the time of his 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 himself or by his election agent, or with the knowledge and consent or approval of such candidate or his election agent; and
- (b) such candidate and his election agent took all reasonable means to prevent 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 such candidate or his election agent:

then the High Court shall not, by reason only of such corrupt practice or illegal practice, declare that election of such candidate was void.

(4) No election shall be declared void by reason 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 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.

19. An election petition may be presented to the High Court by one or more of the following persons—

Who may
present
election
petitions

- (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 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;
- (d) the Attorney-General.

20. (1) Any of the following reliefs may be claimed in an election petition—

Relief which
may be
claimed in
election
petition

- (a) a declaration that the election was void;
- (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 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 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;
- (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 pre-
sentation of
election
petitions:

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.

(2) Presentation of an election petition to the High Court shall be made by lodging it with the Registrar in accordance with the provisions of 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 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, 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.

Duty of
Registrar
to make
out list of
election
petitions

22. (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 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 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, such election 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 election petitions would have stood if it had been the only election petition presented in respect of that election.

23. (1) Subject to the 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 fine 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 deem necessary or desirable.

Rules of
practice and
procedure
security
for costs

(2) After the presentation of an election petition, every petitioner thereto shall give such security for costs, not exceeding in amount the sum of ten thousand kwacha, as the High 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 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 had on that election petition.

24. (1) A petitioner shall not withdraw an election petition without the leave of the High Court.

Withdrawal
of election
petitions

(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.

(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 thereto.

(4) The High 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 section *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 the provisions of section *twenty* 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 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 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 he is substituted (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 such 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 *twenty-three* shall apply to the substituted petitioner as they apply in relation to a petitioner presenting an election petition.

Abatement
of election
petitions

26. (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 had upon the election petition.

(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 subsection (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 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 this death, and subsections (1) and (2) of section *twenty-three* shall apply to such person as they apply in relation to a petitioner presenting an election petition.

Trial of
election
petitions

27. (1) An election petition shall be tried by the High Court in open court.

(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 such trial shall be taken, and transcript of such record shall, at the conclusion of the proceedings, be delivered to the Commission by the Registrar.

28. (1) On the trial of an election petition, the High Court may—

Provisions
as
to witnesses

- (a) order any person who appears to the High 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 High 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 criminate him, or on the ground of privilege:

Provided that—

- (a) a witness who answers to the satisfaction of the High Court every question which he is required to answer under this section, and the answers to which 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;
- (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 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 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.

(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 such person according to the scale of allowances and expenses appropriate in civil proceedings before the High Court.

Conclusion
of trial
election
petition

29. (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.

(2) Where the High Court determines under subsection (1) that the respondent was duly elected, such 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, such 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 such 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 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 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 so stated.

(7) The Registrar shall deliver a copy of every report prepared by the Constitutional Court under subsection (6) to—

- (a) the Commission; and
- (b) the Director of Public Prosecutions.

Provisions
as to costs

30. (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 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 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 *mala fide* 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 deem 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 such application shall be given, in such manner as may be prescribed by rules of court 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.

(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 such 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 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 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 VII

OTHER QUESTIONS RELATING TO PARLIAMENT

Applica-
tions re
members
and officers
of
Parliament

31. (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; or
- (ii) in the cases referred to in paragraph (a) (b) or (c), any member of the National Assembly; or
- (iii) the Attorney-General.

(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 courts, the powers, practice and procedure of the High Court in respect of the trial of election petitions under Part VII shall apply *mutatis mutandis* to the hearing and determination of such applications.

Effect of
determina-
tion

32. Every determination of the High Court under this Part shall have effect, subject to the provisions of Article *seventy-one* of the Constitution, in accordance with the terms thereof.

PART VIII

MISCELLANEOUS AND REPEALS AND TRANSITIONAL

33. 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

34. 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

35. 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

36. 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

37. No misnomer or any inaccurate description of any person or place in any register, list, 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

38. The Electoral Act, 1973, is hereby repealed:

Repeals and
saving

Provided that, notwithstanding the repeal of the Electoral Act, 1973, a statutory instrument made thereunder by an Electoral Commission established under the Constitution of Zambia 1973, which is in force immediately before the commencement of this Act shall, so far as it is not inconsistent with the Constitution and this Act, shall continue in force after the commencement of this Act as if it had been made by a Commission under this Act;

and any such statutory instrument shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the Constitution and this Act, and such statutory instrument or rules of practice may be amended or revoked by the Commission in exercise of powers conferred under this Act.

Transitional
Electoral
Commission

39. Notwithstanding the repeal of the Constitution set out in the Schedule to the Constitution of Zambia Act, 1973, the members of an Electoral Commission established under Article *seventy-three* of that Constitution who hold office immediately before the coming into operation of this Act shall continue to hold office as members of an Electoral Commission hereby deemed to have been established under Article *Seventy-six* of the Constitution set out in the Schedule to the Constitution of Zambia Act, 1991, and they shall hold such office on the same terms and conditions as apply to the holders of offices referred to in section *nine* of the Constitution of Zambia Act, 1991.

Transitional
registers
of voters

40. On the coming into operation of this Act, the Commission shall make such arrangements as are necessary and appropriate for allocating among the constituencies into which Zambia is divided for the purposes of elections to the National Assembly under Article *Seventy-seven* of the Constitution the polling districts declared under regulation 3 of the Electoral (Registration of Voters) Regulations and in force immediately before the coming into operation of this Act; and the registers of voters certified for such polling districts which are in force as aforesaid under those Regulations shall be deemed to have been prepared and maintained under this Act for the constituencies to which those polling districts are allocated, and shall be used as the registers of voters for the purposes of the first elections to be held after the coming into operation of this Act for an election to the office of President and of members of the National Assembly.
