REPUBLIC OF ZAMBIA
HIGH COURT OF ZAMBIA
09 SEP 2026
PRINCIPAL REGISTRY S
P.O. BOX 50067, LUSAKA

**IN THE HIGH COURT FOR ZAMBIA** **2026/HP/EP032**
**AT THE PRINCIPAL REGISTRY**
**HOLDEN AT LUSAKA**
*(Civil Jurisdiction)*

**IN THE MATTER OF:** **ARTICLE 73 (1) OF THE CONSTITUTION, CHAPTER 1 OF THE LAWS OF ZAMBIA**

**AND**

**IN THE MATTER OF:** **SECTIONS 97 (2) (b) AND 100 (2) (a) AND (3) OF THE ELECTORAL PROCESS ACT NO. 35 OF 2016**

**AND**

**IN THE MATTER OF:** **SECTION 9 (1) OF THE HIGH COURT (ELECTION PETITION) RULES, 2026 STATUTORY INSTRUMENT NO. 31 OF 2026**

**AND**

**IN THE MATTER OF:** **PARLIAMENTARY ELECTIONS FOR LUSAKA CENTRAL HELD ON THE 13TH DAY OF AUGUST, 2026 AND RESULTS DECLARED ON 17TH AUGUST, 2026.**

**BETWEEN:**

**CHARITY CHANDA LUMPA** **PETITIONER**

**AND**

**MSAIWALE MLEWA** **1ST RESPONDENT**

**ELECTORAL COMMISSION OF ZAMBIA** **2ND RESPONDENT**

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## 2ND RESPONDENT'S ANSWER

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The 2nd Respondent's Answer showeth that:

1. The 2nd Respondent is a statutory body established under Article 229 of the Constitution of Zambia (Amendment) Act No. 2 of 2016, and mandated to conduct elections and voter registration, among others.
2. The 2nd Respondent confirms that the Parliamentary elections for Lusaka Central Constituency were held on 13th August, 2026 as part of the General Elections held countrywide on the same day.
3. The said election was contested by among others, the Petitioner, Charity Chanda Lumpa who polled 9, 758 votes and the 1st Respondent Msaiwale Mlewa, who scooped 14,747 votes.
4. Contrary to the Petitioners' allegations in paragraph 3 of the Petition, the 2nd Respondent conducted the said elections in the constituency in substantial

conformity with the electoral principles laid out in the Electoral Process Act No. 35 of 2016 and the Constitution of Zambia (Amendment) Act No. 2 of 2016.

5. The Petitioner's agents and polling agents who were duly accredited by the 2nd Respondent witnessed the opening and close of the polling stations, the voting, counting, and announcement of election results in the polling stations and constituency. The temporary suspension in all polling stations similarly affected all the candidates and did not favor one or disadvantage the other.
6. Contrary to the allegations in paragraph 3(a) of the Petition, the 2nd Respondent never at all evicted the Petitioner's agents from NIPA Library and Post Office polling stations or any other polling station whatsoever. The results from all polling stations were correctly recorded and available to all stakeholders.
7. The 2nd Respondent avers that Gen20 is a public document availed to accredited agents and not restricted as alleged by the Petitioner.
8. Contrary to the Petitioner's allegations in paragraph 3(c ) and (d) all the results were announced by Presiding Officers in all the streams and shared with accredited agents, monitors and observers. Similarly, the Returning Officer announced and declared the election results for Lusaka Central constituency, after verification with respective Presiding Officers at the totaling center, which was conducted in the presence of monitors, observers and agents.
9. The Petitioner is not entitled to any of the reliefs sought or at all.
10. Save insofar as the same consists of admissions the 2nd Respondent denies each and every allegation contained in the Petitioner's Petition as if the same where set out and traversed specifically.

Dated at Lusaka the.....day of.....2026.

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**TO:** **Hon Msaiwale Mlewa**
**1st RESPONDENT**

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## 2ND RESPONDENT'S LIST OF AUTHORITIES AND SKELETON ARGUMENTS

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**MAY IT PLEASE THIS HONOURABLE COURT**: These are the 2nd Respondent's Arguments.

1. **LIST OF AUTHORITIES**

**Statutes**

1. **The Constitution of Zambia(Amendment) Act No. 2 of 2016**
2. **Electoral Process Act No. 35 of 2016**

**Cases**

1. **Daniel Nyirenda V University of Zambia Council Appeal No. 56/2012**
2. **Akashambatwa Mbikusita Lewanika and Others V Frederick Jacob Titus Chiluba SCZ Judgment No. 14 of 1998**

## 2. SUMMARY OF FACTS

2.1. On 13th August, 2026, General Elections were held in which the 2nd Respondent declared the 1st Respondent as the duly elected Member of Parliament for Lusaka Central Constituency. Dissatisfied with the results of the elections, the Petitioner filed an Election Petition in the High Court challenging the election of the 1st Respondent on the premise that the elections were not conducted according to the principles of the electoral system provided for in the Electoral Process Act No. 35 of 2016.

2.2. The 2nd Respondent opposes the Petitioner's Petition as argued herein.

## 3. THE ELECTORAL COMMISSION OF ZAMBIA

3.1. My Lord/Lady, Article 229 of the Constitution of Zambia (Amendment) Act No. 2 of 2016 establishes the Electoral Commission of Zambia and confers upon it the authority to administer the electoral process in Zambia.

3.2. Additionally, the 2nd Respondent functions independently in discharging its mandate of administering elections; it is not subject to the direction or control of any person. Instructive of this is section 4 (1) of the Electoral Process Act No. 5 of 2016, which enacts as follows:

> ***"This Act shall be administered and enforced by the Commission and the Commission shall not be subject to the direction or control of any person or authority in exercise of its functions under the Constitution."***

3.3. My Lord/Lady, the 2nd Respondent conducted the elections in accordance with the applicable law and in a free and fair manner. Accordingly, the 1st Respondent was declared the duly elected Member of Parliament for Lusaka Central Constituency having polled 14, 747 votes which were the majority of the valid votes cast.

## 4. BURDEN OF PROOF

4.1. My Lady/Lord, "he who alleges must prove"; this is principle of law espoused in a plethora of cases among which include the case of ***Daniel Nyirenda V University of Zambia Council Appeal No. 56/2012*** in which the Supreme Court stated:

> ***"...it is trite law that "he who alleges must prove". The rationale behind this is that, whenever an allegation is made, the onus is on the maker of the allegation to prove the allegation..."*** (Emphasis ours)

4.2. My Lady/ Lord, the burden of proof in election petitions rests on the petitioner and the standard of proof is higher than a mere balance of probabilities; the issues raised must be established at a fairly higher degree than that in an ordinary civil matter. Instructive of this is the case of ***Akashambatwa Mbikusita Lewanika and Others V Frederick Jacob Titus Chiluba SCZ Judgment No. 14 of 1998*** where the Supreme Court stated as follows:

> ***"Parliamentary election petitions have generally required to be proved to a standard higher than a mere balance of probability. The issues raised are required to be established to a fairly high degree of convincing clarity."*** *(Emphasis ours)*

4.3. My Lady/Lord, in keeping with the principle that "he who alleges must prove", Section 97 (2)(b) of the Electoral Process Act No. 35 of 2016 requires that allegations capable of rendering the election of a candidate void must be proved to the satisfaction of the High Court. it enacts as follows:

> ***" The election of a candidate as a member of Parliament, Mayor, Council chairperson or Councillor shall be void if, on the trial of an election petition, it is proved to the satisfaction of the High Court or tribunal,*** *as the case may be, that –*

*(a)* ...

***(b) Subject to the provisions of subsection (4), <u>there has been non-compliance with the provisions of this Act relating to the conduct of elections, and it appears to the High Court or tribunal that the election was not conducted in accordance with the principles laid down in such provision and that such non-compliance affected the result of the election</u>...***

*(Emphasis ours)*

4.4. My Lady/Lord, in the *case in casu,* the Petitioner is duty-bound to prove, to a fairly high degree of convincing clarity, the allegations raised against the 2nd Respondent in the Petition. More specifically, the Petitioner must prove that:

(i) there was non-compliance with the provisions of the Electoral Process Act No. 35 of 2016; and

(ii) such non-compliance affected the result of the election.

4.5. My Lady/Lord, the Petitioner's allegations are devoid of proof and should not be entertained by the Honourable Court. A perusal of the Affidavit Verifying Facts sworn by the Petitioner reveals that most of the depositions therein are statements not substantiated by proof.

4.6 The Petitioner argues that the manner in which the counting and announcement proceeded from the point of suspension was not transparent and breached the principles of the electoral process. The Petitioner then made several allegations, some of which included that the 2nd Respondent did not secure ballot papers when the Commission suspended the counting and announcement of votes. Additionally, that the same were handled by soldiers and security personnel who took charge of the polling stations following the suspension. Further, the Petitioner alleges that her agents were evicted from polling stations, leaving the

ballots and election material in the care of soldiers and that the 2nd Respondent did not announce most of the results at the Polling Stations.

4.7. **My Lady/Lord,** the Petitioner's arguments are not tenable. The suspension of counting of votes and the announcement of results was nationwide due to cases of violence and theft of marked ballot papers; it affected all the candidates in Lusaka Central Constituency. In addition, the Petitioner has not proven that the same affected to a large extent the outcome of the election. Our argument is fortified by the guidance and holding of the Supreme Court in the case of **Akashambatwa Mbikusita Lewanika and others V Frederick Jacob Titus Chiluba** cited above:

> ***"On the perusal of the whole of the evidence reviewed under this part, we have not found any evidence that the respondent personally or by lawful electoral agents was privy to the irregularities and malpractices described. In the event and having regard to the type of constituency concerned, which is nation-wide, it was not established to our satisfaction that the proven irregularities were such that nationally, the majority of the voters were or have been prevented from electing the candidate whom they preferred or that the extent, frequency and nature of the irregularities was such that they must have affected to any significant extent the national result of the election. It is already not possible to hold that by reason of the irregularities, the result of the election nation wide was not substantially the true reflection of the free will and choice of the voters who went and cast their vote.*** *(Emphasis ours)*

4.8. The Supreme Court added:

> " ***The flaws identified need to be addressed by the authorities. However, flaws by their very nature go to the general integrity of***

***the system and do not necessarily suggest that the electoral system has been comprehensively massaged or predisposed to grant an unfair or any disadvantage to anyone in advance.***

4.9. My Lady/Lord, the Petitioner has failed to discharge the burden of proof to the required standard in election petitions. The incidences complained of are not only unsubstantiated but did not affect the outcome of the elections, neither did they grant any one-candidate advantage over other candidates. The 2nd Respondent discharged its mandate in administering the electoral process in conformity with the Constitution of Zambia as amended, the Electoral Process Act and attendant regulations. WE reiterate that the Petitioner has failed to discharge the burden of proof, it follows therefore that the Election Petition must fail.

**5. CONCLUSION**

5.1. My Lady/ Lord, the election of candidates must only be nullified in exceptional circumstances where the Petitioner has discharged the burden of proof by a higher degree of convincing clarity. The Petitioner herein went on a fishing expedition, unleashing serious allegations devoid of proof that the election was not conducted in according with the law and that the same affected the outcome of the election. The Election Petition lacks merit and we respectfully implore the Honourable Court to dismiss it with costs.

Dated at Lusaka the.....day of.....2026.

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## 2ND RESPONDENT'S COPIES OF AUTHORITIES

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i. **Constitution of Zambia (Amendment) Act No. 2 of 2016.**

ii. **Electoral Process Act No. 35 of 2016**

iii. **Daniel Nyirenda V University of Zambia Council Appeal No. 56/2012**

iv. **Akashambatwa Mbikusita Lewanika and Others V Frederick Jacob Titus Chiluba SCZ Judgment No. 14 of 1998**

GOVERNMENT OF ZAMBIA

# ACT

**No. 2 of 2016**

Date of Assent: 5th January, 2016

**An Act to amend the Constitution of Zambia.**

[5th January, 2016

ENACTED by the Parliament of Zambia. Enactment

**1.** This Act may be cited as the Constitution of Zambia (Amendment) Act, 2016, and shall be read as one with the Constitution of Zambia, in this Act referred to as the Constitution. Short title

Cap. 1

**2.** The Constitution is amended by the repeal of the Preamble and the substitution therefor of the following: Repeal and replacement of Preamble

PREAMBLE

WE, THE PEOPLE OF ZAMBIA:

ACKNOWLEDGE the supremacy of God Almighty;

DECLARE the Republic a Christian Nation while upholding a person's right to freedom of conscience, belief or religion;

UPHOLD the human rights and fundamental freedoms of every person;

COMMIT ourselves to upholding the principles of democracy and good governance;

RESOLVE to ensure that our values relating to family, morality, patriotism and justice are maintained and all functions of the State are performed in our common interest;

CONFIRM the equal worth of women and men and their right to freely participate in, determine and build a sustainable political, legal, economic and social order;

*Single copies of this Act may be obtained from the Government Printer P.O. Box 30136, 10101 Lusaka. Price K220.00*

RECOGNISE AND UPHOLD the multi-ethnic, multi-racial, multi-religious and multi-cultural character of our Nation and our right to manage our affairs and resources sustainably in a devolved system of governance;

RESOLVE that Zambia shall remain a unitary, multi-party and democratic sovereign State;

RECOGNISE AND HONOUR the freedom fighters who fought for the independence of our Nation in order to achieve liberty, justice and unity for the people of Zambia;

AND DIRECT that all State organs and State institutions abide by and respect our sovereign will;

DO HEREBY SOLEMNLY ADOPT AND GIVE TO OURSELVES THIS CONSTITUTION:

Repeal and replacement of Parts I and II

**3.** The Constitution is amended by the repeal of Parts I and II and the substitution therefor of the following Parts:

## PART I

### SUPREMACY OF CONSTITUTION

Supremacy of Constitution

**1.** (1) This Constitution is the supreme law of the Republic of Zambia and any other written law, customary law and customary practice that is inconsistent with its provisions is void to the extent of the inconsistency.

(2) An act or omission that contravenes this Constitution is illegal.

(3) This Constitution shall bind all persons in Zambia, State organs and State institutions.

(4) The validity or legality of this Constitution is not subject to challenge by or before a State organ or other forum.

(5) A matter relating to this Constitution shall be heard by the Constitutional Court.

Defence of Constitution

**2.** Every person has the right and duty to—

*(a)* defend this Constitution; and

*(b)* resist or prevent a person from overthrowing, suspending or illegally abrogating this Constitution.

Continuous effect of Constitution

**3.** The operation of this Constitution shall not be affected by an unlawful act to overthrow, suspend or illegally abrogate its provisions.

Republic of Zambia

**4.** (1) Zambia is a sovereign Republic under a constitutional form of governance.

(2) The Republic consists of the territory defined in an Act of Parliament.

(3) The Republic is a unitary, indivisible, multi-ethnic, multi-racial, multi-religious, multi-cultural and multi-party democratic State.

(4) The Republic shall not be ceded in whole or in part.

(5) The Republic may enter into a union or other form of inter-state organisation, which action shall not be construed as ceding the Republic.

Sovereign authority

**5.** (1) Sovereign authority vests in the people of Zambia, which may be exercised directly or through elected or appointed representatives or institutions.

(2) Power that is not conferred by or under this Constitution on any State organ, State institution, State officer, Constitutional office holder or other institution or person is reserved for the people.

(3) The people of Zambia shall exercise their reserved power through a referendum, as prescribed.

National symbols

**6.** (1) The national symbols of the Republic are the—

*(a)* National Flag;

*(b)* National Anthem;

*(c)* Coat of Arms;

*(d)* Public Seal; and

*(e)* National Motto.

(2) The form, words, description and use of the national symbols shall be as prescribed.

Laws of Zambia

**7.** The Laws of Zambia consist of—

*(a)* this Constitution;

*(b)* laws enacted by Parliament;

*(c)* statutory instruments;

*(d)* Zambian customary law which is consistent with this Constitution; and

*(e)* the laws and statutes which apply or extend to Zambia, as prescribed.

PART II

NATIONAL VALUES, PRINCIPLES AND ECONOMIC POLICIES

National values and principles

**8.** The national values and principles are—

*(a)* morality and ethics;

*(b)* patriotism and national unity;

*(c)* democracy and constitutionalism;

*(d)* human dignity, equity, social justice, equality and non-discrimination;

*(e)* good governance and integrity; and

*(f)* sustainable development.

Application of national values and principles

**9.** (1) The national values and principles shall apply to the —

*(a)* interpretation of this Constitution;

*(b)* enactment and interpretation of the law; and

*(c)* development and implementation of State policy.

(2) The President shall, once in every year, report to the National Assembly the progress made in the application of the values and principles specified under this Part.

Basis of economic policies

**10.** (1) The Government shall create an economic environment which encourages individual initiative and self-reliance among the people, so as to promote investment, employment and wealth.

(2) The Government shall promote the economic empowerment of citizens so that they contribute to sustainable economic growth and social development.

(3) The Government shall promote local and foreign investment and protect and guarantee such investment through agreements with investors and other countries.

(4) The Government shall not compulsorily acquire an investment, except under customary international law and subject to Article 16 (1).

(5) Where the investment compulsorily acquired under clause (4) was made from the proceeds of crime no compensation shall be paid by the Government.

Repeal and replacement of Part IV

**4.** The Constitution is amended by the repeal of Part IV and the substitution therefor of the following Part:

## PART IV

### CITIZENSHIP

Existing citizenship

**33.** A person who was a citizen of Zambia, immediately before the commencement of this Constitution, shall continue to be a citizen of Zambia and shall retain the same citizenship category from the date the citizenship was acquired.

Categories of citizenship

**34.** Citizenship may be acquired by birth, descent, registration or adoption in accordance with this Part.

Citizenship by birth

**35.** (1) A person born in Zambia is a citizen by birth if, at the date of that person's birth, at least one parent of that person is or was a citizen.

(2) A child found in Zambia who is, or appears to be, of not more than eight years of age and whose nationality and parents are not known, shall be presumed to be a citizen by birth.

(3) For the purposes of this Part, a person born aboard—

*(a)* a registered ship or aircraft of a country, shall be deemed to have been born in the country of registration of the ship or aircraft; or

*(b)* an unregistered ship or aircraft of a country, shall be deemed to have been born in that country.

Citizenship by descent

**36.** A person born outside Zambia is a citizen by descent if, at the date of that person's birth, at least one parent of that person is or was a citizen by birth or descent.

Citizenship by registration

**37.** (1) Subject to clause (2), a person is entitled to apply to the Citizenship Board of Zambia to be registered as a citizen if that person has attained the age of eighteen years and—

*(a)* was born in Zambia and has been ordinarily resident in Zambia for a period of at least five years;

*(b)* was born outside Zambia, has or had an ancestor who is, or was, a citizen and has been ordinarily resident in Zambia for a period of at least five years; or

*(c)* has been ordinarily resident in Zambia for a continuous period of at least ten years;

immediately preceding that person's application for registration, as prescribed.

(2) Notwithstanding clause (1), a person who is, or was married to a citizen, for a period of at least five years, is entitled to apply to the Citizenship Board of Zambia, to be registered as a citizen, as prescribed.

Citizenship by adoption

**38.** A child who is not a citizen and who is adopted by a citizen shall be a citizen on the date of the adoption.

Dual citizenship

**39.** (1) A citizen shall not lose citizenship by acquiring the citizenship of another country.

(2) A citizen who ceased to be a citizen, before the commencement of this Constitution as a result of acquiring the citizenship of another country, shall be entitled to apply, as prescribed, to the Citizenship Board of Zambia, for citizenship and the Citizenship Board of Zambia shall bestow citizenship on that person.

Renunciation and deprivation of citizenship

**40.** (1) A citizen—

*(a)* may renounce citizenship as prescribed; or

*(b)* shall be deprived of citizenship if that citizenship was acquired by means of fraud, false representation or concealment of a material fact.

(2) The process and procedures to be followed by the Citizenship Board of Zambia when granting or depriving a person of citizenship shall be prescribed.

Citizenship Board of Zambia

**41.** (1) There is established the Citizenship Board of Zambia.

(2) The composition, appointment and tenure of office of members of, and procedures to be followed by, the Citizenship Board of Zambia shall be prescribed.

Entitlements of citizen

**42.** A citizen is entitled to—

*(a)* the rights, privileges and benefits of citizenship as provided in this Constitution or as prescribed; and

*(b)* a document of identification issued by the State to citizens.

Responsibilities of citizen

**43.** (1) A citizen shall —

*(a)* be patriotic to Zambia and promote its development and good image;

*(b)* pay taxes and duties lawfully due and owing to the State;

*(c)* protect and conserve the environment and utilise natural resources in a sustainable manner;

*(d)* maintain a clean and healthy environment;

*(e)* provide national, defence and military service when called upon by the State; and

*(f)* co-operate with law enforcement agencies for the maintenance and enforcement of law and order.

(2) A citizen shall endeavour to—

*(a)* acquire basic understanding of this Constitution and promote its ideals and objectives;

*(b)* register and vote, if eligible, in national and local government elections and referenda;

*(c)* develop one's abilities to the greatest possible extent through acquisition of knowledge, continuous learning and the development of skills;

*(d)* foster national unity and live in harmony with others; and

*(e)* understand and enhance Zambia's place in the international community.

Reference to citizenship of parent

**44.** A reference in this Part to the citizenship of the parent of a person at the time of the birth of that person shall, in relation to a person born after the death of that person's parent, be construed as a reference to the citizenship of the parent at the time of the parent's death.

## PART V

## REPRESENTATION OF THE PEOPLE

### Electoral Systems and Process

Principles of electoral systems and process

**45.** (1) The electoral systems provided for in Article 47 for the election of President, Member of Parliament or councillor shall ensure—

*(a)* that citizens are free to exercise their political rights;

*(b)* universal adult suffrage based on the equality of a vote;

*(c)* fair representation of the various interest groups in society; and

*(d)* gender equity in the National Assembly or council.

(2) The electoral process and system of administering elections shall ensure—

*(a)* that elections are free and fair;

*(b)* that elections are free from violence, intimidation and corruption;

*(c)* independence, accountability, efficiency and transparency of the electoral process;

*(d)* a simple and practical system of voting and tabulating votes; and

*(e)* timely resolution of electoral disputes.

Franchise

**46.** A citizen who has attained the age of eighteen years is entitled to be registered as a voter and vote in an election by secret ballot.

Electoral systems

**47.** (1) Elections to the office of President shall be conducted directly, under a majoritarian electoral system, where the winning candidate must receive more than fifty percent of the valid votes cast, and in accordance with Article 101.

(2) Elections to the National Assembly shall be conducted under a first-past-the-post electoral system in accordance with Article 68.

(3) Elections to councils shall be conducted under a first-past-the-post electoral system, and in accordance with Articles 153 and 154.

(4) A constituency and a ward shall return only one member to the National Assembly and council, respectively.

Electoral process

**48.** The electoral process for electing a President, Member of Parliament or councillor shall be prescribed.

System for administering elections

**49.** The system of administering elections shall be prescribed.

Access to media

**50.** A political party and a candidate contesting an election shall have access to the media, especially during election campaigns.

Independent candidates

**51.** A person is eligible for election as an independent candidate for a National Assembly seat if the person—

*(a)* is not a member of a political party and has not been a member of a political party for at least two months immediately before the date of the election; and

*(b)* meets the qualifications specified in Article 70 for election as a Member of Parliament.

Nominations

**52.** (1) A candidate shall file that candidate's nomination paper to a returning officer, supported by an affidavit stating that the candidate is qualified for nomination as President, Member of Parliament or councillor, in the manner, on the day, and at the time and place set by the Electoral Commission by regulation.

(2) A returning officer shall, immediately on the filing of a nomination paper, in accordance with clause (1), duly reject the nomination paper if the candidate does not meet the qualifications or procedural requirements specified for election to that office.

(3) The information contained in a nomination paper and affidavit shall be published by the Electoral Commission, as prescribed.

(4) A person may challenge, before a court or tribunal, as prescribed, the nomination of a candidate within seven days of the close of nomination and the court shall hear the case within twenty-one days of its lodgement.

(5) The processes specified in clauses (1) to (4) shall be completed at least thirty days before a general election.

(6) Where a candidate dies, resigns or becomes disqualified in accordance with Article 70, 100 or 153 or a court disqualifies a candidate for corruption or malpractice, after the close of nominations and before the election date, the Electoral Commission shall cancel the election and require the filing of fresh nominations by eligible candidates and elections shall be held within thirty days of the filing of the fresh nominations.

Unopposed candidates

**53.** (1) Where only one candidate is nominated for election as President, Member of Parliament or councillor, by the date and time set by the Electoral Commission for receiving nominations and at the close of the nomination period, that candidate shall be declared duly elected.

(2) A person may, within seven days of a declaration made in accordance with clause (1), challenge the declaration, as prescribed.

(3) The processes specified in clauses (1) and (2) shall be completed at least thirty days before a general election.

Electoral code of conduct

**54.** A candidate and a political party shall comply with a prescribed electoral code of conduct.

Losing candidate not eligible for certain appointments

**55.** A candidate who loses an election as a President, Vice-President, Member of Parliament or councillor is not eligible, during the term of that National Assembly or council, for appointment as—

*(a)* Minister; or

*(b)* Provincial Minister.

Election date for general elections

**56.** (1) A general election shall be held, every five years after the last general election, on the second Thursday of August.

(2) The day on which a general election is held shall be a public holiday.

By-elections

**57.** (1) Where a vacancy occurs in the office of Member of Parliament, mayor, council chairperson or councillor, a by-election shall be held within ninety days of the occurrence of the vacancy.

(2) A by-election shall not be held within the one hundred-and-eighty day period that precedes a general election.

(3) The Electoral Commission shall, by regulation, set the place where, and the date and time when, a by-election is to be held.

**Constituencies, Wards and Delimitation**

Constituencies, wards and delimitation

**58.** (1) Zambia shall be divided into constituencies and wards for purposes of elections to the National Assembly and councils, respectively.

(2) The number of constituencies shall be equal to the number of seats of elected members in the National Assembly.

(3) The number of wards in a district shall be prescribed.

(4) The Electoral Commission shall determine the names and boundaries of constituencies and wards.

(5) The Electoral Commission shall, at intervals of not more than ten years, review the names and boundaries of constituencies and wards.

(6) The names and details of the boundaries of constituencies and wards shall be published in the *Gazette* and shall come into effect on the next dissolution of Parliament or councils.

(7) A person may apply to the Constitutional Court for review of a decision of the Electoral Commission made under this Article.

Matters to take into account when delimiting constituencies and wards

**59.** The Electoral Commission shall, in delimiting the boundaries of constituencies and wards—

*(a)* take into account the history, diversity and cohesiveness of the constituency or ward;

*(b)* have regard to population density, trends and projections;

*(c)* ensure that the number of inhabitants in each constituency or ward is reasonable, taking into account the means of communication and geographical features;

*(d)* ensure that constituencies and wards are wholly within districts; and

*(e)* seek to achieve an approximate equality of constituency and ward population, subject to the need to ensure adequate representation for urban and sparsely populated areas.

**Political Parties**

Political parties

**60.** (1) A political party has the right to—

*(a)* disseminate information on social and economic programmes of a national character and of its political ideology;

*(b)* sponsor candidates for election or nomination to a State office in respect of which elections are required to be held; and

*(c)* conduct primary elections for the selection of candidates.

(2) A political party shall—

*(a)* promote the values and principles specified in this Constitution;

*(b)* have a national character;

*(c)* promote and uphold national unity;

*(d)* promote and practice democracy through regular, free and fair elections within the party;

*(e)* respect the right of its members to participate in the affairs of the political party;

*(f)* respect the right of its members to seek redress from a court or tribunal when aggrieved by a decision of the political party; and

*(g)* subscribe to and observe the code of conduct for political parties, as prescribed.

(3)A political party shall not—

*(a)* be founded on a religious, linguistic, racial, ethnic, tribal, gender, sectoral or provincial basis or engage in propaganda based on any of these factors;

*(b)* engage in or encourage violence or intimidate its members, supporters, opponents or other persons;

*(c)* engage in corrupt practices; and

*(d)* except as prescribed, use public resources to promote its interest or that of its members.

(4) The following shall be prescribed with regard to political parties:

*(a)* the establishment and management of a Political Parties' Fund to provide financial support to political parties with seats in the National Assembly;

*(b)* the accounts of political parties which are funded under the Political Parties' Fund and the submission of audited accounts by political parties;

*(c)* the sources of funds for political parties;

*(d)* the maximum amount of money to be used for campaigns during elections; and

*(e)* matters incidental to matters specified in this clause.

Renumbering and renaming of Part V

**5.** The Constitution is amended by the renumbering of Part V as Part VI, and the deletion of the heading to that Part and the substitution therefor of the following heading and sub-heading:

LEGISLATURE

**Legislative Authority**

Repeal and replacement of Articles 62 to 78

**6.** The Constitution is amended by the repeal of Articles 62 to 78 inclusive and the substitution therefor of the following:

Principles of legislative authority

**61.** The legislative authority of the Republic derives from the people of Zambia and shall be exercised in a manner that protects this Constitution and promotes the democratic governance of the Republic.

Parliament, vesting of legislative authority and Members of Parliament

**62.** (1) There is established the Parliament of Zambia which consists of the President and the National Assembly.

(2) The legislative authority of the Republic is vested in and exercised by Parliament.

(3) A person or body, other than Parliament, shall not have power to enact legislation, except as conferred by this Constitution.

(4) A member of the National Assembly shall be referred to as a Member of Parliament.

Functions of Parliament and National Assembly

**63.** (1) Parliament shall enact legislation through Bills passed by the National Assembly and assented to by the President.

(2) The National Assembly shall oversee the performance of executive functions by—

*(a)* ensuring equity in the distribution of national resources amongst the people of Zambia;

*(b)* appropriating funds for expenditure by State organs, State institutions, provincial administration, local authorities and other bodies;

*(c)* scrutinising public expenditure, including defence, constitutional and special expenditure;

*(d)* approving public debt before it is contracted; and

*(e)* approving international agreements and treaties before these are acceded to or ratified.

Introduction of Bills in National Assembly

**64.** (1) A Member of Parliament or Minister may introduce a Bill in the National Assembly.

(2) The expenses of drafting and introducing a Bill in the National Assembly shall be a charge on the Consolidated Fund.

Money Bills

**65.** (1) A Money Bill shall be introduced by a Minister.

(2) A Money Bill means a Bill that provides for, among other matters—

*(a)* the imposition, repeal, remission, alteration or regulation of taxes;

*(b)* the imposition of charges on the Consolidated Fund or any other public fund, or the variation or repeal of any of those charges;

*(c)* the appropriation, receipt, custody, investment, issue or audit of accounts of public monies;

*(d)* the grant of public money to a person or authority or the variation or revocation of such grant;

*(e)* the raising or guaranteeing of a loan or the repayment of it; or

*(f)* matters incidental to matters specified in this clause.

(3) A Bill that confers emoluments on State officers or Constitutional office holders shall only be introduced in the National Assembly if the emoluments are recommended by the Emoluments Commission.

Presidential assent and referral

**66.** (1) Where a Bill is presented to the President for assent, the President shall, within twenty-one days after receipt of the Bill—

*(a)* assent to the Bill; or

*(b)* refer the Bill to the National Assembly for reconsideration, indicating any reservation that the President has concerning the Bill.

(2) Where the President refers the Bill to the National Assembly for reconsideration, in accordance with clause (1) *(b)*, the National Assembly may—

*(a)* amend the Bill taking into account the President's reservation; or

*(b)* pass the Bill, without amendment, by a vote supported by at least two-thirds of the Members of Parliament.

(3) Where the National Assembly passes the Bill with amendments, in accordance with clause (2) *(a)*, the Speaker shall submit the Bill to the President for assent.

(4) Where the National Assembly passes the Bill, in accordance with clause (2) *(b)*—

*(a)* the Speaker shall, within seven days of passing the Bill, resubmit the Bill to the President; and

*(b)* the President shall, within seven days of receipt of the Bill, assent to the Bill.

(5) Where the National Assembly fails to pass the Bill, in accordance with clause (2) *(b)*, the Bill shall not be presented to the National Assembly in that session.

(6) Where the President does not assent to a Bill within the periods prescribed in clauses (1) and (4), the Bill shall be considered assented to upon the expiry of those periods.

Statutory instruments

**67.** (1) Article 62 or 63 shall not prevent Parliament from conferring on a person or authority power to make statutory instruments.

(2) A statutory instrument shall be published in the *Gazette*—

*(a)* not later than twenty-eight days after it is made; or

*(b)* in the case of a statutory instrument which will not have the force of law unless it is approved by a person or an authority, other than a person or an authority by which it was made, not later than twenty-eight days after it is so approved;

and if the statutory instrument is not so published, it is void from the date on which it was made.

(3) A person may challenge a statutory instrument, for its constitutionality, within fourteen days of the publication of the statutory instrument in the *Gazette*.

(4) Where the Constitutional Court considers that a challenge of a statutory instrument is frivolous or vexatious, the Constitutional Court shall dismiss the action.

(5) Where the Constitutional Court decides that a provision of a statutory instrument is inconsistent with a provision of this Constitution, that statutory instrument is void from the date on which it was made.

(6) A Member of Parliament who intends to challenge a statutory instrument, on its constitutionality, shall follow the procedure laid down in the Standing Orders of the National Assembly.

*Elections to National Assembly and Members of Parliament*

Election and composition of National Assembly

**68.** (1) A Member of Parliament shall be elected in accordance with Article 47 (2) and this Article.

(2) The National Assembly shall consist of—

*(a)* one hundred and fifty-six members directly elected on the basis of a simple majority vote under the first-past-the-post system;

*(b)* not more than eight nominated members;

*(c)* the Vice-President;

*(d)* the Speaker; and

*(e)* the First and Second Deputy Speakers.

Nominated Members of Parliament

**69.** (1) The President may nominate a person referred to in Article 68 (2) *(b)* where the President considers it necessary to enhance the representation of special interests, skills or gender in the National Assembly.

(2) A person may be nominated as a Member of Parliament if the person qualifies to be elected as such under Article 70.

(3) A person who was a candidate for eleetinn in the last preceding general election or a subsequent by-election is not eligible to be nominated as a Member of Parliament

Qualifications and disqualifications of Members of Parliament

**70.** (1) Subject to clause (2), a person is eligible to be elected as a Member of Parliament, if that person—

*(a)* is a citizen;

*(b)* is at least twenty-one years old;

*(c)* is a registered voter;

*(d)* has obtained, as a minimum academic qualification, a grade twelve certificate or its equivalent; and

*(e)* declares that person's assets and liabilities, as prescribed.

(2) A person is disqualified from being elected as a Member of Parliament if that person—

*(a)* is validly nominated as a candidate in a presidential election;

*(b)* is a public officer or Constitutional office holder;

*(c)* is a judge or judicial officer;

*(d)* has a mental or physical disability that would make the person incapable of performing the legislative function;

*(e)* is an undischarged bankrupt;

*(f)* is serving a sentence of imprisonment for an offence under a written law;

*(g)* has, in the immediate preceding five years, served a term of imprisonment of at least three years;

*(h)* has, in the immediate preceding five years, been removed from public office on grounds of gross misconduct; or

*(i)* holds or is acting in an office, as prescribed, the functions of which involve or are connected with the conduct of elections.

Nominations for election to National Assembly

**71.** A nomination for election to the National Assembly is valid if the candidate—

*(a)* has paid a prescribed election fee to the Electoral Commission; and

*(b)* is supported by at least fifteen persons registered as voters in the constituency in which the candidate is standing for election.

Vacation of office as Member of Parliament and dissolution of political party

**72.** (1) A Member of Parliament shall, except the Speaker and the First Deputy Speaker, vacate the seat in the National Assembly upon a dissolution of Parliament.

(2) The office of Member of Parliament becomes vacant if the member—

*(a)* resigns by notice, in writing, to the Speaker;

*(b)* becomes disqualified for election in accordance with Article 70;

*(c)* acts contrary to a prescribed code of conduct;

*(d)* resigns from the political party which sponsored the member for election to the National Assembly;

*(e)* is expelled from the political party which sponsored the member for election to the National Assembly;

*(f)* ceases to be a citizen;

*(g)* having been elected to the National Assembly, as an independent candidate, joins a political party;

*(h)* is disqualified as a result of a decision of the Constitutional Court; or

*(i)* dies.

(3) The office of a nominated Member of Parliament becomes vacant if the member—

*(a)* resigns by notice, in writing, to the speaker;

*(b)* is disqualified under Article 70;

*(c)* acts contrary to a prescribed code of conduct;

*(d)* ceases to be a citizen;

*(e)* dies; or

*(f)* has the member's nomination revoked by the President.

(4) A person who causes a vacancy in the National Assembly due to the reasons specified under clause (2) *(a), (b), (c), (d), (g)* and *(h)* shall not, during the term of that Parliament—

*(a)* be eligible to contest an election; or

*(b)* hold public office.

(5) Where a Member of Parliament is expelled as provided in clause (2) *(e)*, the member shall not lose the seat until the expulsion is confirmed by a court, except that where the member does not challenge the expulsion in court and the period prescribed for challenge lapses, the member shall vacate the seat in the National Assembly.

(6) Where a court determines that an expulsion of a member, as provided in clause (2) *(e)*, was not justified, there shall be no by-election for that seat and the member shall opt to—

*(a)* remain a member of the political party and retain the seat; or

*(b)* resign from the political party and retain the seat as an independent member.

(7) Where a court determines that an expulsion of a member, as provided in clause (2) *(e)*, was justified, the member shall vacate the seat in the National Assembly.

(8) Where a vacancy occurs in the National Assembly, the Speaker shall, within seven days of the occurrence of the vacancy, inform the Electoral Commission of the vacancy, in writing, and a by-election shall be held in accordance with Article 57.

(9) If a political party is dissolved, a Member of Parliament shall retain the member's seat as an independent member.

Petition of election of Member of Parliament

**73.** (1) A person may file an election petition with the High Court to challenge the election of a Member of Parliament.

(2) An election petition shall be heard within ninety days of the filing of the petition.

(3) A person may appeal against the decision of the High Court to the Constitutional Court.

(4) A Member of Parliament whose election is petitioned shall hold the seat in the National Assembly pending the determination of the election petition.

Leader of Government Business and Leader of Opposition

**74.** (1) The President shall appoint the Vice-President to be the Leader of Government Business in the National Assembly.

(2) The opposition political party with the largest number of seats in the National Assembly shall elect a Leader of the Opposition from amongst the Members of Parliament who are from the opposition.

**Proceedings of National Assembly**

Sittings of National Assembly

**75.** (1) The Speaker shall, within thirty days after a general election, by notice in the *Gazette*, appoint a date for the first sitting of the National Assembly for that term.

(2) There shall be at least three sittings of the National Assembly in a session of Parliament which shall be held at such times and on such days as the Speaker appoints.

(3) Notwithstanding clause (2), the President, or two-thirds of the Members of Parliament, may, in writing, request the Speaker to summon a sitting of the National Assembly, as prescribed.

Freedom of speech, powers, privileges and immunities

**76.** (1) A Member of Parliament has freedom of speech and debate in the National Assembly and that freedom shall not be ousted or questioned in a court or tribunal.

(2) A Member of Parliament shall have the powers, privileges and immunities, as prescribed.

Procedure of National Assembly

**77.** (1) Subject to this Article and Article 78, the National Assembly shall regulate its own procedure and make Standing Orders for the conduct of its business.

(2) The proceedings of the National Assembly shall not be invalid due to—

*(a)* a vacancy in its membership; or

*(b)* the presence or participation of a person not entitled to be present at, or to participate in, the proceedings of the National Assembly.

(3) There shall preside at a sitting of the National Assembly—

*(a)* the Speaker;

*(b)* in the absence of the Speaker, the First Deputy Speaker;

*(c)* in the absence of the First Deputy Speaker, the Second Deputy Speaker; or

*(d)* in the absence of the Second Deputy Speaker, another Member of Parliament as the members may elect for that sitting.

(4) The quorum for a meeting of the National Assembly shall be one-third of the Members of Parliament.

Voting in National Assembly

**78.** (1) Except as otherwise provided in this Constitution, a question proposed for decision in the National Assembly shall be determined by a majority of the Members of Parliament present and voting.

(2) On a question proposed for decision in the National Assembly —

*(a)* the Speaker shall have no vote; and

*(b)* in the case of a tie, the question shall be lost.

Repeal and replacement of Articles 80 to 90

**7.** The Constitution is amended by the repeal of Articles 80 to 90 inclusive and the substitution therefor of the following:

Committees of National Assembly

**80.** (1) The National Assembly may establish parliamentary committees.

(2) Parliamentary committees shall be established at the first sitting of the National Assembly after a general election and after the election of the Speaker and the Deputy Speakers.

(3) The National Assembly shall, in selecting members of a parliamentary committee, ensure that there is equitable representation of the political parties holding seats in the National Assembly and independent Members of Parliament.

(4) The Standing Orders shall provide for the categories, functions and procedures of parliamentary committees.

Term and prorogation of Parliament

**81.** (1) The term of Parliament shall be five years commencing from the date that the Members of Parliament are sworn into office after a general election and ending on the date that Parliament is dissolved.

(2) The National Assembly may, when the Republic is at war, by resolution supported by a simple majority vote of the Members of Parliament, extend the term of Parliament for not more than twelve months at a time.

(3) Parliament shall stand dissolved ninety days before the holding of the next general election.

(4) Subject to clauses (5), (6) and (7), the President may dissolve Parliament if the Executive cannot effectively govern the Republic due to the failure of the National Assembly to objectively and reasonably carry out its legislative function.

(5) Where the President intends to dissolve Parliament in accordance with clause (4), the President shall inform the public and refer the matter, within seven days, to the Constitutional Court.

(6) The Constitutional Court shall hear the matter, referred to it in accordance with clause (5), within seven days of receipt of the matter.

(7) The Constitutional Court shall, where it decides that the situation in clause (4) exists, inform the President and the President shall dissolve Parliament.

(8) Where Parliament is dissolved under clauses (3) and (4), the President shall, until the President-elect assumes office, continue to perform the executive functions, in accordance with Article 104.

(9) Where Parliament is dissolved under clauses (3) and (4), general elections shall be held within ninety days of the dissolution.

(10) The President may, due to a state of war, state of public emergency or threatened state of public emergency, after the dissolution of Parliament and before the holding of general elections, recall the National Assembly that was dissolved.

(11) The President may, in consultation with the Speaker, prorogue Parliament by proclamation.

**Speaker, Deputy Speakers and Officers of National Assembly**

Speaker and Deputy Speakers of National Assembly

**82.** (1) The Members of Parliament shall elect, by secret ballot, a Speaker of the National Assembly from a list of names of persons, who are qualified to be elected as Members of Parliament, but are not Members of Parliament, submitted to the National Assembly by—

*(a)* the President; and

*(b)* political parties holding seats in the National Assembly.

(2) A person is qualified to be elected as Speaker of the National Assembly if that person—

*(a)* is a citizen by birth or descent;

*(b)* does not have dual citizenship;

*(c)* has been ordinarily resident in Zambia;

*(d)* is at least thirty-five years old;

*(e)* has obtained, as a minimum academic qualification, a grade twelve certificate or its equivalent;

*(f)* declares that person's assets and liabilities, as prescribed;

*(g)* has paid that person's taxes or made arrangements satisfactory to the appropriate tax authority for the payment of the taxes; and

*(h)* is not a Member of Parliament.

(3) There shall be two Deputy Speakers of the National Assembly who are not members of the same political party and of the same gender.

(4) The Members of Parliament shall elect, by secret ballot, the First Deputy Speaker from a list of three names, selected by the political parties represented in the National Assembly, from among persons who are qualified to be elected as Members of Parliament but are not Members of Parliament.

(5) The Members of Parliament shall elect, by secret ballot, the Second Deputy Speaker from among their number.

(6) The Members of Parliament shall elect a Speaker and the Deputy Speakers—

*(a)* when the National Assembly first sits after a general election; and

*(b)* if the office of Speaker or Deputy Speaker becomes vacant.

(7) The office of Speaker or Deputy Speaker shall become vacant if the Speaker or Deputy Speaker—

*(a)* becomes disqualified under Article 70 (2);

*(b)* resigns by notice, in writing, to the President;

*(c)* is removed from office in accordance with Article 83; or

*(d)* dies.

(8) When the office of Speaker or Deputy Speaker becomes vacant, business shall not be transacted in the National Assembly, other than an election to the office of Speaker or Deputy Speaker.

Removal of Speaker on specified grounds

**83.** (1) A Member of Parliament, supported by at least one-third of the Members of Parliament, may move a motion for the removal of the Speaker or a Deputy Speaker, alleging that the Speaker or Deputy Speaker has—

*(a)* violated this Constitution;

*(b)* a mental or physical disability that makes the Speaker or Deputy Speaker incapable of performing the functions of the office of Speaker or Deputy Speaker; or

*(c)* committed gross misconduct.

(2) The motion shall specify the particulars of the allegation.

(3) Where a motion is supported by a resolution of two-thirds of the Members of Parliament, the Speaker or Deputy Speaker shall be suspended from office and the National Assembly shall refer the matter to a parliamentary committee.

(4) The parliamentary committee, to which the matter has been referred in accordance with clause (3), shall, within seven days of the reference—

*(a)* investigate the matter, and the Speaker or Deputy Speaker has the right to appear, be heard and be represented before the parliamentary committee; and

*(b)* report to the National Assembly whether or not the particulars of the allegations specified in the motion have been substantiated.

(5) Where the parliamentary committee reports that the particulars of the allegation against the Speaker or Deputy Speaker—

*(a)* are not substantiated, the National Assembly shall, on a motion supported by the votes of not less than two-thirds of the Members of Parliament, taken by secret ballot, resolve that the Speaker or Deputy Speaker—

(i) did not commit the violations specified in the motion; and

(ii) be reinstated; or

*(b)* are substantiated, the National Assembly shall, on a motion supported by the votes of not less than two-thirds of the Members of Parliament, taken by secret ballot, resolve that the Speaker or Deputy Speaker has committed the violations specified in the motion and that the Speaker or Deputy Speaker cease to hold office forthwith.

(6) Where a resolution is made, in accordance with clause (5) *(b)*, an election of Speaker or Deputy Speaker shall be conducted within seven days of the resolution, in accordance with Artiele 82.

Clerk of National Assembly

**84.** (1) There shall be a Clerk of the National Assembly who shall be appointed by the Parliamentary Service Commission, subject to ratification by the National Assembly.

(2) A person shall not be appointed Clerk of the National Assembly unless that person has the academic qualifications, experience and skills prescribed.

(3) Subject to clause (5), the Clerk of the National Assembly shall retire on attaining the age of sixty-five years.

(4) The Clerk of the National Assembly may retire, with full benefits, on attaining the age of sixty years.

(5) The National Assembly may, by a resolution supported by the votes of not less than two-thirds of the Members of Parliament, remove the Clerk of the National Assembly on the same grounds and procedure that apply to the removal of a judge.

(6) The Clerk of the National Assembly may resign from office by three months' notice, in writing, to the Speaker.

Officers of National Assembly

**85.** There shall be appointed such officers in the department of the Clerk of the National Assembly, as prescribed.

**General Parliamentary Matters**

Presidential address to National Assembly and presidential messages

**86.** (1) The President shall, at least twice in every year, attend and address the National Assembly.

(2) The President may, at any time during the term of Parliament, send a message to the National Assembly which shall be read by the Leader of Government Business or by a Minister designated by the President.

Vote of censure

**87.** (1) The National Assembly may censure a Minister or Provincial Minister where the Members of Parliament are dissatisfied with the conduct or performance of the Minister or Provincial Minister.

(2) The proceedings to censure a Minister or Provincial Minister shall be commenced by a notice of motion, submitted to the Speaker, signed by at least one-third of the Members of Parliament, stating the grounds in support of the motion.

(3) The Speaker shall, on receipt of the notice of motion submitted in accordance with clause (2), cause a copy of the notice of motion to be given to the Minister or Provincial Minister.

(4) The notice of motion to censure a Minister or Provincial Minister shall not be debated until after the expiry of seven days from the date the notice of motion is submitted to the Speaker.

(5) The National Assembly may pass a vote of censure on a Minister or Provincial Minister by resolution supported by two-thirds of the votes of the Members of Parliament.

Right to petition and make comments

**88.** (1) A citizen may petition the National Assembly to initiate the enactment, amendment or repeal of legislation.

(2) A citizen may comment on a deliberation, statement or decision of the National Assembly.

(3) The manner of petitioning and commenting referred to in this Article shall be prescribed.

Public access and participation

**89.** (1) The National Assembly shall facilitate public involvement in the legislative process.

(2) The National Assembly or a parliamentary committee shall not exclude the public or media from its sittings, unless there are justifiable reasons for the exclusion and the Speaker informs the public or media of the reasons.

Repeal and replacement of Parts VI to XIV

**8.** The Constitution is amended by the repeal of Parts VI to XIV inclusive and the substitution therefor of the following:

## PART VII
## EXECUTIVE

### Executive Authority

Principles of executive authority

**90.** The Executive authority derives from the people of Zambia and shall be exercised in a manner compatible with the principles of social justice and for the people's well-being and benefit.

Presidency and vesting of executive authority

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

(2) The executive authority of the State vests in the President and, subject to this Constitution, shall be exercised directly by the President or through public officers or other persons appointed by the President.

(3) The President shall, in exercise of the executive authority of the State—

*(a)* respect, uphold and safeguard this Constitution;

*(b)* safeguard the sovereignty of the Republic;

*(c)* promote democracy and enhance the unity of the Nation;

*(d)* respect the diversity of the different communities of Zambia;

*(e)* promote and protect the rights and freedoms of a person; and

*(f)* uphold the rule of law.

Executive functions of President

**92.** (1) The President shall perform, with dignity, leadership and integrity, the acts that are necessary and expedient for, or reasonably incidental to, the exercise of the executive authority.

(2) Without limiting the other provisions of this Constitution, the President shall—

*(a)* appoint ambassadors, high commissioners, plenipotentiaries, diplomatic representatives and consuls;

*(b)* receive and accredit foreign ambassadors, high commissioners, plenipotentiaries, diplomatic representatives, consuls and heads of international organisations;

*(c)* negotiate and sign international agreements and treaties and, subject to the approval of the National Assembly, ratify or accede to international agreements and treaties;

*(d)* establish, merge and dissolve Government ministries, subject to the approval of the National Assembly;

*(e)* appoint persons as are required by this Constitution or any other law to be appointed by the President;

*(f)* appoint persons as are required to perform special duties for the Executive;

*(g)* confer honours;

*(h)* sign and promulgate proclamations as specified in this Constitution or as prescribed;

*(i)* initiate Bills for submission to, and consideration by, the National Assembly; and

*(j)* perform other functions specified by this Constitution or as prescribed.

Confirmation of presidential decisions and instructions

**93.** (1) A decision or instruction of the President shall be in writing under the President's signature.

(2) The signature of the President on an instrument shall be under Public Seal.

Approval of appointments and measures by National Assembly

**94.** (1) Where the performance of an executive function is expressed by this Constitution to be subject to approval by the National Assembly, the National Assembly shall, in the sitting next after receipt of the request for approval, give the approval within twenty-one days of the commencement of the sitting.

(2) Where an approval is not given within the period specified in clause (1) or the National Assembly unreasonably refuses to give an approval as requested, the President shall refer the matter to the Constitutional Court for hearing and the decision of the Constitutional Court is final.

(3) Where the Constitutional Court decides that the refusal or delay by the National Assembly was justified, the President shall comply with the order of the Court.

(4) Where the Constitutional Court decides that the refusal or delay by the National Assembly was unreasonable, the National Assembly shall proceed to approve the matter.

Ratification of appointments and measures by National Assembly

**95.** (1) Where in this Constitution an appointment to an office or the taking of a measure by the President is subject to ratification by the National Assembly, the National Assembly shall, in the sitting next after receipt of the request for ratification, give its ratification within twenty-one days of the commencement of the sitting.

(2) Where ratification is not given within the period specified in clause (1), the President shall propose another measure or appoint another person to that office and submit that measure or appointment for ratification by the National Assembly.

(3) Where the National Assembly refuses or delays the ratification for the second time, the President shall propose another measure or appoint another person to that office and shall submit that measure or appointment for ratification by the National Assembly.

(4) Where the National Assembly refuses or delays the ratification of the measure or appointment for the third time, that measure or appointment shall take effect.

Advisory Committee on prerogative of mercy

**96.** (1) There shall be an Advisory Committee on the prerogative of mercy which shall consist of persons appointed by the President.

(2) The Advisory Committee shall advise the President on an action or a decision to be taken in relation to a person convicted of an offence by a court or court-martial.

(3) A member of the Advisory Committee shall hold office at the pleasure of the President.

(4) The President may preside at a meeting of the Advisory Committee.

(5) The Advisory Committee shall determine its own procedure for meetings.

Prerogative of mercy

**97.** (1) The President may, on the advice of the Advisory Committee—

*(a)* conditionally or unconditionally, pardon a person convicted of an offence;

*(b)* substitute a less severe form of punishment imposed on a person by a court; or

*(c)* remit the whole or part of a fine, penalty or forfeiture.

(2) A person who is sentenced to death may request the President, either directly or through a representative, for a pardon or commutation of the sentence.

Protection of President from legal proceedings

**98.** (1) A person shall not institute or continue civil proceedings against the President or a person performing executive functions, as provided in Article 109, in respect of anything done or omitted to be done by the President or that person in their private capacity during the tenure of office as President.

(2) The President shall not, in the President's private capacity during the tenure of office as President, institute or continue civil proceedings against a person.

(3) For purposes of clauses (1) and (2), where a law limits the time within which proceedings may be brought against a person, the term of office shall not be taken into account in calculating the period of time.

(4) Subject to clause (9), the President or a person performing executive functions, as provided in Article 109, is immune from criminal proceedings which immunity continues after that person ceases to hold or perform the functions of that office.

(5) Where there is *prima facie* evidence that a person who held the office of President or who performed executive functions committed an offence whilst in office or during the period that person performed executive functions, the President shall submit a report, outlining the grounds relating to the offence allegedly committed, to the National Assembly, requesting the National Assembly to remove the immunity from criminal proceedings of that person.

(6) Where the National Assembly receives a report, submitted in accordance with clause (5), the National Assembly shall constitute a select committee to scrutinise the grounds submitted and determine whether or not there is a *prima facie* case, based on the grounds submitted, that warrants the removal of the immunity from criminal proceedings, and recommend its decision to the National Assembly.

(7) The person who held the office of President or who performed executive functions has the right to appear, be represented and be heard before the select committee constituted under clause (6).

(8) Where the select committee, constituted under clause (6), recommends the removal of immunity from criminal proceedings from the person who held the office of President or who performed executive functions, the National Assembly may remove the immunity in respect of the alleged offence, by a resolution supported by a vote of not less than two-thirds of the Members of Parliament.

(9) Where immunity is removed, in accordance with clause (8), the person who held the office of President or who performed executive functions, shall be charged with the offence for which the immunity from criminal proceedings was removed.

(10) Where a court acquits the person who held the office of President or who performed executive functions, of an offence for which that person's immunity from criminal proceedings was removed, the immunity of that person shall, for all purposes, be deemed not to have been removed, without further proceedings.

(11) The process for the removal of immunity, provided for under this Article, shall not apply to an impeachable offence under Article108.

**Election of President**

Returning officer for presidential elections

**99.** The Chairperson of the Electoral Commission shall be the Returning Officer in an election to the office of President.

Qualifications and disqualifications for nomination as presidential candidate

**100.** (1) A person qualifies to be nominated as a candidate for election as President if that person—

*(a)* is a citizen by birth or descent;

*(b)* has been ordinarily resident in Zambia;

*(c)* is at least thirty-five years old;

*(d)* is a registered voter;

*(e)* has obtained, as a minimum academic qualification, a grade twelve certificate or its equivalent;

*(f)* is fluent in the official language;

*(g)* has paid that person's taxes or has made arrangements, satisfactory to the appropriate tax authority, for the payment of the taxes;

*(h)* declares that person's assets and liabilities, as prescribed;

*(i)* pays the prescribed election fee on, or before, the date fixed for the delivery of nomination papers; and

*(j)* is supported by at least one hundred registered voters from each Province.

(2) A person is disqualified from being nominated as a candidate for election as President if that person—

*(a)* is a public officer;

*(b)* has dual citizenship;

*(c)* is holding or acting in a Constitutional office or other public office;

*(d)* is a judge or judicial officer;

*(e)* was removed from public office on grounds of gross misconduct in the immediate preceding five years;

*(f)* has a mental or physical disability that would make the person incapable of performing the executive functions;

*(g)* is an undischarged bankrupt;

*(h)* is serving a sentence of imprisonment; or

*(i)* has, in the immediate preceding five years, served a term of imprisonment of at least three years.

Election of President

**101.** (1) A President shall be elected by registered voters in accordance with Article 47 (1) and this Article.

(2) The Returning Officer shall declare the presidential candidate who receives more than fifty percent of the valid votes cast during the election as President-elect.

(3) If at the initial ballot a presidential candidate does not receive more than fifty percent of the valid votes cast, a second ballot shall be held within thirty-seven days of the initial ballot, where the only candidates shall be the presidential candidates who obtained—

*(a)* the highest and second highest number of valid votes cast in the initial ballot; or

*(b)* an equal number of the valid votes cast in the initial ballot, being the highest votes amongst the presidential candidates that stood for election to the office of President.

(4) A person may within seven days of the declaration made under clause (2), petition the Constitutional Court to nullify the election of a presidential candidate who took part in the initial ballot on the ground that—

*(a)* the person was not validly elected; or

*(b)* a provision of this Constitution or other law relating to presidential elections was not complied with.

(5) The Constitutional Court shall hear an election petition filed in accordance with clause (4) within fourteen days of the filing of the petition.

(6) The Constitutional Court may, after hearing an election petition—

*(a)* declare the election of the presidential candidate valid;

*(b)* nullify the election of the presidential candidate; or

*(c)* disqualify the presidential candidate from being a candidate in the second ballot.

(7) A decision of the Constitutional Court made in accordance with clause (6) is final.

(8) The presidential candidate who obtains the majority of the valid votes cast in the second ballot shall be declared President-elect.

Disqualification for run-off

**102.** (1) If a presidential candidate—

*(a)* resigns for a reason other than health;

*(b)* becomes disqualified as specified in Article 100; or

*(c)* is disqualified by a decision of the Constitutional Court in accordance with Article 101;

the presidential candidate shall not take part in the second ballot and the candidate who scored the third highest number of valid votes cast in the initial ballot shall be a presidential candidate in the second ballot, together with the remaining presidential candidate that had initially qualified for the second ballot.

(2) If a presidential candidate—

*(a)* dies; or

*(b)* resigns due to ill-health;

before the taking of a second ballot, the running mate to that presidential candidate in the initial ballot shall assume the place of that presidential candidate.

(3) The presidential candidate who assumed the place of the previous presidential candidate in accordance with clause (2) shall appoint a running mate.

(4) Where both presidential candidates—

*(a)* resign;

*(b)* become disqualified under Article 100;

*(c)* become disqualified by a decision of the Constitutional Court under Article 101; or

*(d)* die;

before the taking of the second ballot, fresh nominations shall be filed with the Electoral Commission, as prescribed.

Election petition

**103.** (1) A person may, within seven days of the declaration of a President-elect, petition the Constitutional Court to nullify the election of the President-elect on the ground that—

*(a)* the person was not validly elected; or

*(b)* a provision of this Constitution or other law relating to presidential elections was not complied with.

(2) The Constitutional Court shall hear an election petition relating to the President-elect within fourteen days of the filing of the petition.

(3) The Constitutional Court may, after hearing an election petition—

*(a)* declare the election of the President-elect valid; or

*(b)* nullify the election of the President-elect and Vice-President-elect.

(4) A decision of the Constitutional Court under clause (3) is final.

(5) Where the election of the President-elect and Vice-President-elect is nullified by the Constitutional Court, a presidential election shall be held within thirty days from the date of the nullification.

Transition period before assuming office

**104.** (1) The President-elect shall be sworn into office and assume office in accordance with Article 105.

(2) Subject to clauses (3) and (4), where the Returning Officer declares a presidential candidate as President-elect, the incumbent shall continue to perform the executive functions until the President-elect assumes office, except the power to—

*(a)* make an appointment; or

*(b)* dissolve the National Assembly.

(3) Where an election petition is filed against the incumbent, under Article 103 (1), or an election is nullified, under Article 103(3) *(b)*, the Speaker shall perform the executive functions, except the power to—

*(a)* make an appointment; or

*(b)* dissolve the National Assembly.

(4) Subject to Article 105 and except where the incumbent is the President-elect, the incumbent President shall, on the assumption of office by the President-elect, begin and complete the procedural and administrative handing over of the executive functions, to the President-elect, within fourteen days from the day the President-elect assumes office.

**Assumption of Office, Tenure of Office and Vacancy**

Assumption of office

**105.** (1) The President-elect shall assume office after being sworn in by the Chief Justice or, in the absence of the Chief Justice, the Deputy Chief Justice.

(2) The President-elect shall be sworn into office on the Tuesday following—

*(a)* the seventh day after the date of the declaration of the presidential election results, if no petition has been filed in accordance with Article 103; or

*(b)* the seventh day after the date on which the Constitutional Court declares the election to be valid.

(3) Subject to clause (4), where the President-elect dies, resigns or is for a reason unable to assume office, the Vice-President-elect shall be sworn into, and assume the office of President, in accordance with clause (1).

(4) Subject to clause (5), where the inability of the President-elect to assume office is as a result of an event or circumstance beyond the control of the President-elect, the Vice-President-elect shall not be sworn into office.

(5) A political party whose presidential candidate was declared President-elect or another person shall, within three days from the date on which the President-elect should have been sworn into office, petition the Constitutional Court to determine whether or not the inability of the President-elect to assume office is permanent.

(6) Where the Constitutional Court decides that the inability of the President-elect to assume office is permanent, the Vice-President-elect shall be sworn into office as President and assume office in accordance with clause (1).

(7) The Vice-President-elect who assumes office as President, in accordance with clause (3) or (6), shall appoint a person as Vice-President, subject to approval by the National Assembly, signified by a vote of not less than two-thirds of the Members of Parliament.

(8) Where the Vice-President elect who is supposed to assume the office of President as specified in clause (3) or (6) dies, resigns or is for another reason unable to assume the office of President—

*(a)* the Speaker shall perform the executive functions; and

*(b)* a presidential election shall be held within sixty days of the occurrence of the vacancy.

(9) The Speaker shall, perform the executive functions assumed in accordance with clause (8) except the power to make an appointment or dissolve the National Assembly.

(10) The Speaker shall, when the President-elect assumes office, complete the procedural and administrative handing over process within thirty days.

Tenure of office of President and vacancy

**106.** (1) The term of office for a President is five years which shall run concurrently with the term of Parliament, except that the term of office of President shall expire when the President-elect assumes office in accordance with Article 105.

(2) A President shall hold office from the date the President-elect is sworn into office and ending on the date the next President-elect is sworn into office.

(3) A person who has twice held office as President is not eligible for election as President.

(4) The office of President becomes vacant if the President—

*(a)* dies;

*(b)* resigns by notice in writing to the Speaker of the National Assembly; or

*(c)* otherwise ceases to hold office under Article 81,107 or 108.

(5) When a vacancy occurs in the office of President, except under Article 81—

*(a)* the Vice-President shall immediately assume the office of President; or

*(b)* if the Vice-President is unable for a reason to assume the office of President, the Speaker shall perform the executive functions, except the power to—

(i) make an appointment; or

(ii) dissolve the National Assembly;

and a presidential election shall be held within sixty days after the occurrence of the vacancy.

(6) If the Vice-President assumes the office of President, in accordance with clause (5)*(a)*, or a person is elected to the office of President as a result of an election held in accordance with clause 5*(b)*, the Vice-President or the President-elect shall serve for the unexpired term of office and be deemed, for the purposes of clause (3)—

*(a)* to have served a full term as President if, at the date on which the President assumed office, at least three years remain before the date of the next general election; or

*(b)* not to have served a term of office as President if, at the date on which the President assumed office, less than three years remain before the date of the next general election.

Removal of President on grounds of incapacity

**107.** (1) A Member of Parliament, supported by at least one-third of the Members of Parliament, may move a motion for the investigation of the physical or mental capacity of the President to perform executive functions.

(2) The motion moved in accordance with clause (1) shall specify the particulars of the allegation.

(3) Where the motion is supported in the National Assembly by a resolution of two-thirds of the Members of Parliament—

*(a)* the Speaker shall, within forty-eight hours of the adoption of the resolution, inform the Chief Justice of the resolution; and

*(b)* the Chief Justice shall immediately inform the President of the resolution, whereupon the President shall cease to perform the executive functions and the Vice-President shall perform the executive functions, except the power to—

(i) make an appointment; or

(ii) dissolve the National Assembly.

(4) The Chief Justice shall, within seven days of being informed of the resolution of the National Assembly, constitute a medical board, in consultation with the body responsible for regulating health practitioners, to inquire into the physical or mental capacity of the President.

(5) A medical board shall consist of not less than three persons selected from among persons who are registered as health practitioners.

(6) A medical board, constituted under clause (5), shall examine the President and report to the Chief Justice, within fourteen days of the constitution of the medical board, whether or not the President is capable of performing the executive functions.

(7) Where the medical board reports that the President is capable of performing the executive functions, the Chief Justice shall, within forty-eight hours of the receipt of the medical report, cause a copy of the report to be presented to the National Assembly which shall resolve that the President should resume performing the executive functions.

(8) Where the medical board reports that the President is not capable of performing the executive functions, the Chief Justice shall, within forty-eight hours of the receipt of the medical report, cause a copy of the report to be presented to the National Assembly which shall resolve that the President should cease to hold office and the Vice-President shall assume the office of President in accordance with Article 106 (5).

(9) This Article applies to the Vice-President.

Impeachment of President

**108.** (1) A Member of Parliament, supported by at least one-third of the Members of Parliament, may move a motion for the impeachment of the President alleging that the President has committed—

*(a)* a violation of a provision of this Constitution or other law;

*(b)* a crime under international law; or

*(c)* gross misconduct.

(2) The motion, moved in accordance with clause (1), shall specify the particulars of the allegation.

(3) Where a motion, moved in accordance with clause (1), is supported, in the National Assembly, by a resolution of two-thirds of the Members of Parliament—

*(a)* the Speaker shall, within forty-eight hours of the adoption of the resolution, inform the Chief Justice of the resolution; and

*(b)* the Chief Justice shall immediately inform the President of the resolution, whereupon the President shall cease to perform the executive functions and the Vice-President shall perform the executive functions, except the power to—

(i) make an appointment; or

(ii) dissolve the National Assembly.

(4) The Chief Justice shall, within seven days of being informed of the resolution of the National Assembly, appoint a tribunal, in consultation with the Judicial Service Commission, which shall consist of a chairperson and not less than two other members from among persons who hold, have held or qualify to hold, the office of judge.

(5) The tribunal appointed under clause (4) shall, within thirty days of its appointment—

*(a)* investigate the matter relating to the impeachment of the President; and

*(b)* report to the Chief Justice as to whether or not the particulars of the allegations specified in the motion have been substantiated.

(6) The President has the right to appear and be represented before the tribunal during its investigation.

(7) The Chief Justice shall, on receipt of the report referred to in clause (5) *(b)*, immediately submit the report to the National Assembly.

(8) Where the tribunal reports that the particulars of an allegation against the President—

*(a)* is not substantiated, the National Assembly shall, on a motion supported by the votes of not less than two-thirds of the Members of Parliament, taken by secret ballot, resolve that—

(i) the President did not commit the violations specified in the motion; and

(ii) further proceedings shall not be taken with respect to the allegation; or

*(b)* is substantiated, the National Assembly shall, on a motion supported by the votes of not less than two-thirds of the Members of Parliament, taken by secret ballot, resolve that the President has committed the violations specified in the motion and that the President should cease to hold office forthwith.

(9) The President shall, on the passing of a resolution in accordance with—

*(a)* clause (7) *(a)*, resume to perform the executive functions; or

*(b)* clause (7) *(b)*, cease to hold office and be amenable to prosecution without the need to lift the immunity under Article 98.

(10) Where a motion is moved in accordance with clause (1), the President shall not dissolve Parliament.

(11) This Article applies to the Vice-President.

Performance of executive functions during absence of President

**109.** (1) If the President leaves Zambia or is absent from office, the Vice-President shall perform the executive functions specified, in writing, by the President until the President returns to office or revokes the authority.

(2) Where the Vice-President is incapable of performing the executive functions, as specified under clause (1), the President shall appoint a member of the Cabinet to perform the executive functions until the—

*(a)* Vice-President is able to perform those functions;

*(b)* President returns to office; or

*(c)* President revokes the authority.

(3) Where the President is unable to appoint a member of Cabinet to perform the executive functions, in accordance with clause (2), Cabinet may elect one of its members to perform the executive functions until the—

*(a)* Vice-President is able to perform those functions;

*(b)* President returns to office; or

*(c)* President revokes the authority.

**Vice-President**

Vice-President, election to office and swearing in

**110.** (1) There shall be a Vice-President for the Republic who shall be the running mate to a presidential candidate in a presidential election.

(2) The qualifications and disqualifications applying to a presidential candidate apply to the person selected by the presidential candidate to be the running mate.

(3) An election to the office of Vice-President shall be conducted at the same time as that of an election to the office of President so that a vote cast for a presidential candidate is a vote cast for the running mate, and if the presidential candidate is elected, the running mate shall be considered to have been elected.

(4) A Vice-President-elect shall be sworn into office by the Chief Justice or, in the absence of the Chief Justice, the Deputy Chief Justice.

(5) The Vice-President shall assume office on the same day that the President assumes office.

Tenure of office of Vice-President and vacancy

**111.** (1) The term of office for a Vice-President is five years.

(2) A Vice-President shall hold office from the date the Vice-President-elect is sworn into office and ending on the date the next President-elect is sworn into office.

(3) A person who has twice held the office of Vice-President shall not be selected as a running mate.

(4) The office of Vice-President becomes vacant if the Vice-President—

*(a)* dies;

*(b)* resigns by notice in writing to the President;

*(c)* otherwise ceases to hold office under Article 81,107 or 108; or

*(d)* assumes the office of President.

(5) Where a vacancy occurs in the office of Vice-President, except as provided under Article 81, the President shall appoint another person to be Vice-President and the National Assembly shall, by a resolution supported by the votes of not less than two-thirds of the Members of Parliament, approve the appointment of that person as Vice-President.

(6) The person who assumes office as Vice-President, in accordance with clause (5), shall serve for the unexpired term of office and be deemed for the purposes of clause (3)—

*(a)* to have served a full term as Vice-President if, at the date on which the Vice-President assumed office, more than three years remain before the date of the next general election; or

*(b)* not to have served a term of office as Vice-President if, at the date on which the Vice-President assumed office, less than three years remain before the date of the next general elections.

Functions of Vice-President

**112.** (1) The Vice-President shall be answerable to the President in the performance of the functions of Vice-President.

(2) The Vice-President shall—

*(a)* perform the functions that are assigned to the Vice-President by the President;

*(b)* perform the executive functions during the periods specified in this Constitution; and

*(c)* assume the office of President as specified in Article 106 (5).

**Cabinet Ministers**

Cabinet

**113.** There shall be a Cabinet consisting of the—

*(a)* President;

*(b)* Vice-President;

*(c)* Ministers; and

*(d)* Attorney-General, as *ex-officio* member.

Functions of Cabinet

**114.** (1) The functions of Cabinet are as follows:

*(a)* approve and cause to be implemented Government policy;

*(b)* approve Government Bills for introduction to the National Assembly;

*(c)* approve and cause the national budget to be presented to the National Assembly;

*(d)* recommend the accession and ratification of international agreements and treaties to the National Assembly;

*(e)* recommend, for approval of the National Assembly—

(i) loans to be contracted by the State; and

(ii) guarantees on loans contracted by State institutions or other institutions; and

*(f)* advise the President on matters relating to the performance of executive functions.

(2) Cabinet shall take collective responsibility for Cabinet decisions.

Proceedings of Cabinet meetings

**115.** (1) Subject to this Article, Cabinet shall regulate its own procedure.

(2) Cabinet shall meet at least once in every month to perform its functions as specified in Article 114.

(3) The Secretary to the Cabinet shall, in consultation with the President, call for meetings of Cabinet.

(4) There shall preside at meetings of Cabinet—

*(a)* the President;

*(b)* in the absence of the President, the Vice-President; or

*(c)* in the absence of the Vice-President, a member of Cabinet appointed by the President.

(5) Where the President is unable to appoint a member of Cabinet to preside at a meeting of Cabinet, the members of Cabinet present at the meeting may elect one of the members to preside.

(6) The President may, in consultation with the Secretary to the Cabinet, invite a person whose presence is desirable to attend and participate in the deliberations of a meeting of Cabinet but that person shall have no vote.

Ministers

**116.** (1) The President shall appoint a prescribed number of Members of Parliament as Ministers.

(2) A Minister shall be responsible, under the direction of the President, for the policy and strategic direction of a Ministry, department or other State institution, as assigned by the President.

(3) The office of Minister becomes vacant if—

*(a)* the Minister is removed from office by the President;

*(b)* the Minister resigns, by notice in writing to the President;

*(c)* in the case of a nominated Member of Parliament, the nomination is revoked;

*(d)* the Minister dies;

*(e)* another person assumes the office of President; or

*(f)* the Minister has a mental or physical disability that makes the Minister incapable of performing the functions of that office.

Provincial Minister

**117.** (1) The President shall appoint a Provincial Minister for each Province from among Members of Parliament.

(2) The office of Provincial Minister becomes vacant if—

*(a)* the Provincial Minister is removed from office by the President;

*(b)* the Provincial Minister resigns, by notice in writing to the President;

*(c)* the Provincial Minister dies;

*(d)* another person assumes the office of President;

*(e)* the Provincial Minister has a mental or physical disability that makes the Provincial Minister incapable of performing the functions of that office; or

*(f)* in the case of a nominated Member of Parliament, the nomination is revoked.

(3) A Provincial Minister shall—

*(a)* be the head of Government in the Province;

*(b)* ensure that national policies are implemented in all districts in the Province; and

*(c)* ensure that the concurrent functions of the Province and the exclusive functions of the local authorities are performed in accordance with this Constitution and other laws.

PART VIII

JUDICIARY

**Judicial Authority, System of Courts and Independence**

Principles of judicial authority

**118.** (1) The judicial authority of the Republic derives from the people of Zambia and shall be exercised in a just manner and such exercise shall promote accountability.

(2) In exercising judicial authority, the courts shall be guided by the following principles:

*(a)* justice shall be done to all, without discrimination;

*(b)* justice shall not be delayed;

*(c)* adequate compensation shall be awarded, where payable;

*(d)* alternative forms of dispute resolution, including traditional dispute resolution mechanisms, shall be promoted, subject to clause (3);

*(e)* justice shall be administered without undue regard to procedural technicalities; and

*(f)* the values and principles of this Constitution shall be protected and promoted.

(3) Traditional dispute resolution mechanisms shall not—

*(a)* contravene the Bill of Rights;

*(b)* be inconsistent with other provisions of this Constitution or other written law; or

*(c)* be repugnant to justice and morality.

Vesting of judicial authority and performance of judicial function

**119.** (1) Judicial authority vests in the courts and shall be exercised by the courts in accordance with this Constitution and other laws.

(2) The courts shall perform the following judicial functions:

*(a)* hear civil and criminal matters; and

*(b)* hear matters relating to, and in respect of, this Constitution.

(3) Except as otherwise provided in this Constitution, other law or as ordered by a court, the proceedings of a court shall be in public.

System of court

**120.** (1) The Judiciary shall consist of the superior courts and the following courts:

*(a)* subordinate courts;

*(b)* small claims courts;

*(c)* local courts; and

*(d)* courts, as prescribed.

(2) The courts shall be courts of record, except that local courts shall progressively become courts of record.

(3) The following matters shall be prescribed:

*(a)* processes and procedures of the courts;

*(b)* jurisdiction, powers and sittings, of the Industrial Relations Court, Commercial Court, Family Court, Children's Court and other specialised courts;

*(c)* classification and divisions of the subordinate courts;

*(d)* classification and divisions of the local courts;

*(e)* jurisdiction and composition of subordinate courts, small claims courts, local courts and other prescribed courts; and

*(f)* grading of judicial officers and staff of subordinate courts, local courts and other prescribed courts.

(4) The courts, except the Supreme Court and the Constitutional Court, shall be devolved to the Province and progressively to districts.

(5) Superior courts shall sit as circuit courts in districts, in accordance with a circuit schedule issued by the Chief Justice.

Ranking of Supreme and Constitutional Courts

**121.** The Supreme Court and Constitutional Court rank equivalently.

Functional independence of Judiciary

**122.** (1) In the exercise of the judicial authority, the Judiciary shall be subject only to this Constitution and the law and not be subject to the control or direction of a person or an authority.

(2) A person and a person holding a public office shall not interfere with the performance of a judicial function by a judge or judicial officer.

(3) The Judiciary shall not, in the performance of its administrative functions and management of its financial affairs, be subject to the control or direction of a person or an authority.

(4) A person and a person holding a public office shall protect the independence, dignity and effectiveness of the Judiciary.

(5) The office of a judge or judicial officer shall not be abolished while there is a substantive holder of the office.

Financial independence of Judiciary

**123.** (1) The Judiciary shall be a self-accounting institution and shall deal directly with the Ministry responsible for finance in matters relating to its finances.

(2) The Judiciary shall be adequately funded in a financial year to enable it effectively carry out its functions.

**Establishment, Jurisdiction and sittings of Superior Courts**

Establishment and composition of Supreme Court

**124.** There is established the Supreme Court which consists of—

*(a)* the Chief Justice;

*(b)* the Deputy Chief Justice; and

*(c)* eleven other judges or a higher number of judges, as prescribed.

Jurisdiction of Supreme Court

**125.** (1) Subject to Article 128, the Supreme Court is the final court of appeal.

(2) The Supreme Court has—

*(a)* appellate jurisdiction to hear appeals from the Court of Appeal; and

*(b)* jurisdiction conferred on it by other laws.

(3) The Supreme Court is bound by its decisions, except in the interest of justice and development of jurisprudence.

Sittings of Supreme Court

**126.** (1) The Supreme Court shall be constituted by an uneven number of not less than three judges, except when hearing an interlocutory matter.

(2) The Supreme Court shall be constituted by one judge when hearing an interlocutory matter.

(3) The full bench of the Supreme Court shall be constituted by an uneven number of not less than five judges.

(4) The Supreme Court shall be presided over by—

*(a)* the Chief Justice;

*(b)* in the absence of the Chief Justice, the Deputy Chief Justice; and

*(c)* in the absence of the Deputy Chief Justice, the most senior judge of the Supreme Court, as constituted.

Establishment and composition of Constitutional Court

**127.** There is established the Constitutional Court which consists of—

*(a)* the President of the Constitutional Court;

*(b)* the Deputy President of the Constitutional Court; and

*(c)* eleven other judges or a higher number of judges, as prescribed.

Jurisdiction of Constitutional Court

**128.** (1) Subject to Article 28, the Constitutional Court has original and final jurisdiction to hear—

*(a)* a matter relating to the interpretation of this Constitution;

*(b)* a matter relating to a violation or contravention of this Constitution;

*(c)* a matter relating to the President, Vice-President or an election of a President;

*(d)* appeals relating to election of Members of Parliament and councillors; and

*(e)* whether or not a matter falls within the jurisdiction of the Constitutional Court.

(2) Subject to Article 28 (2), where a question relating to this Constitution arises in a court, the person presiding in that court shall refer the question to the Constitutional Court.

(3) Subject to Artiele 28, a person who alleges that—

*(a)* an Act of Parliament or statutory instrument;

*(b)* an action, measure or decision taken under law; or

*(c)* an act, omission, measure or decision by a person or an authority;

contravenes this Constitution, may petition the Constitutional Court for redress.

(4) A decision of the Constitutional Court is not appealable to the Supreme Court.

Sittings of Constitutional Court

**129.** (1) The Constitutional Court shall be constituted by an uneven number of not less than three judges, except when hearing an interlocutory matter.

(2) The Constitutional Court shall be constituted by one judge when hearing an interlocutory matter.

(3) The full bench of the Constitutional Court shall be constituted by an uneven number of not less than five judges.

(4) The Constitutional Court shall be presided over by—

*(a)* the President of the Constitutional Court;

*(b)* in the absence of the President of the Constitutional Court, the Deputy-President of the Constitutional Court; and

*(c)* in the absence of the Deputy-President of the Constitutional Court, the most senior judge of the Constitutional Court, as constituted.

Establishment and composition of Court of Appeal

**130.** There is established the Court of Appeal which consists of such number of judges as prescribed.

Jurisdiction of Court of Appeal

**131.** (1) The Court of Appeal has jurisdiction to hear appeals from—

*(a)* the High Court;

*(b)* other courts, except for matters under the exclusive jurisdiction of the Constitutional Court; and

*(c)* quasi-judicial bodies, except a local government elections tribunal.

(2) An appeal from a decision of the Court of Appeal shall be made to the Supreme Court with leave of the Court of Appeal.

Sittings of Court of Appeal

**132.** (1) The Court of Appeal shall be constituted by an uneven number of not less than three judges, except when hearing an appeal in an interlocutory matter.

(2) The Court of Appeal shall be constituted by one judge when hearing an interlocutory matter.

Establishment and composition of High Court

**133.** (1) There is established the High Court which consists of—

*(a)* the Chief Justice, as an *ex-officio* judge; and

*(b)* such number of judges as prescribed.

(2) There are established, as divisions of the High Court, the Industrial Relations Court, Commercial Court, Family Court and Children's Court.

(3) The Chief Justice may constitute, by statutory instrument, specialised courts of the High Court to hear specific matters.

(4) The composition of courts specified in clauses (2) and (3) shall be prescribed.

Jurisdiction of High Court

**134.** The High Court has, subject to Article 128—

*(a)* unlimited and original jurisdiction in civil and criminal matters;

*(b)* appellate and supervisory jurisdiction, as prescribed; and

*(c)* jurisdiction to review decisions, as prescribed.

Sittings of High Court

**135.** The High Court shall be constituted by one judge or such other number of judges as the Chief Justice may determine.

**Chief Justice and other Judges**

Chief Justice

**136.** (1) There shall be a Chief Justice who is the head of the Judiciary.

(2) The Chief Justice shall—

*(a)* be responsible for the administration of the Judiciary;

*(b)* ensure that a judge and judicial officer perform the judicial function with dignity, propriety and integrity;

*(c)* establish procedures to ensure that a judge and judicial officer independently exercise judicial authority in accordance with the law;

*(d)* ensure that a judge and judicial officer perform the judicial function without fear, favour or bias; and

*(e)* make rules and give directions necessary for the efficient and effective administration of the Judiciary.

Deputy Chief Justice

**137.** (1) There shall be a Deputy Chief Justice who shall—

*(a)* perform the functions of the Chief Justice, when the Chief Justice is absent or there is a vacancy in the office of Chief Justice;

*(b)* assist the Chief Justice in the administration of the Judiciary; and

*(c)* perform the functions assigned by the Chief Justice.

(2) The President shall, in consultation with the Judicial Service Commission, designate a judge of the Supreme Court to perform the functions of the Deputy Chief Justice where—

*(a)* the office of the Deputy Chief Justice is vacant;

*(b)* the Deputy Chief Justice is acting as Chief Justice; or

*(c)* the Deputy Chief Justice is for a reason unable to perform the functions of that office.

President of Constitutional Court

**138.** (1) There shall be a President of the Constitutional Court who is the head of the Constitutional Court.

(2) The President of the Constitutional Court shall be responsible for the administration of the Constitutional Court under the direction of the Chief Justice.

Deputy President of Constitutional Court

**139.** (1) There shall be a Deputy President of the Constitutional Court who shall—

*(a)* perform the functions of the President of the Constitutional Court, when the President of the Constitutional Court is absent or there is a vacancy in the office of President of the Constitutional Court;

*(b)* assist the President of the Constitutional Court in the administration of the Constitutional Court; and

*(c)* perform the functions assigned by the President of the Constitutional Court.

(2) The President shall, in consultation with the Judicial Service Commission, designate a judge of the Constitutional Court to perform the functions of the Deputy President of the Constitutional Court where—

*(a)* the office of the Deputy President of the Constitutional Court is vacant;

*(b)* the Deputy President of the Constitutional Court is acting as President of the Constitutional Court; or

*(c)* the Deputy President of the Constitutional Court is for a reason unable to perform the functions of that office.

Appointment of judges

**140.** The President shall, on the recommendation of the Judicial Service Commission and subject to ratification by the National Assembly, appoint the—

*(a)* Chief Justice;

*(b)* Deputy Chief Justice;

*(c)* President of the Constitutional Court;

*(d)* Deputy President of the Constitutional Court; and

*(e)* other judges.

Qualification for appointment as judge

**141.** (1) A person qualifies for appointment as a judge if that person is of proven integrity and has been a legal practitioner, in the case of the—

*(a)* Supreme Court, for at least fifteen years;

*(b)* Constitutional Court, for at least fifteen years and has specialised training or experience in human rights or constitutional law;

*(c)* Court of Appeal, for at least twelve years; or

*(d)* High Court, for at least ten years.

(2) A person appointed as judge to a specialised court shall have the relevant expertise, as prescribed.

Tenure of office of judge

**142.** (1) A judge shall retire from office on attaining the age of seventy years.

(2) A judge may retire, with full benefits, on attaining the age of sixty-five years.

(3) The Chief Justice and President of the Constitutional Court shall hold office for not more than ten years and may, thereafter, continue as a judge of the Supreme Court or Constitutional Court, subject to clause (1).

(4) A judge who has retired is not eligible for appointment as a judge.

(5) A judge may resign from the office of judge by notice, in writing, to the President.

(6) Where a judge is appointed or assigned to an office, which is not an office in the judiciary and that judge wishes to take up the appointment, the judge shall resign from the office of judge.

Removal of judge from office

**143.** A judge shall be removed from office on the following grounds:

*(a)* a mental or physical disability that makes the judge incapable of performing judicial functions;

*(b)* incompetence;

*(c)* gross misconduct; or

*(d)* bankruptcy.

Procedure for removal of judge

**144.** (1) The removal of a judge may be initiated by the Judicial Complaints Commission or by a complaint made to the Judicial Complaints Commission, based on the grounds specified in Article 143.

(2) The Judicial Complaints Commission shall, where it decides that a *prima facie* case has been established against a judge, submit a report to the President.

(3) The President shall, within seven days from the date of receiving the report, submitted in accordance with clause (2), suspend the judge from office and inform the Judicial Complaints Commission of the suspension.

(4) The Judicial Complaints Commission shall, within thirty days of the judge being suspended from office, in accordance with clause (3)—

*(a)* hear the matter against the judge on the grounds specified in Article 143 *(b)*, *(c)* and *(d)*; or

*(b)* constitute a medical board, in consultation with the body responsible for regulating health practitioners, to inquire into the matter against the judge based on the ground specified in Article 143*(a)*.

(5) Where the Judicial Complaints Commission decides that an allegation based on a ground specified in Article 143*(b), (c)* and *(d)* is—

*(a)* not substantiated, the Judicial Complaints Commission shall recommend, to the President, the revocation of the judge's suspension and the President shall immediately revoke the suspension; or

*(b)* substantiated, the Judicial Complaints Commission shall recommend, to the President, the removal of the judge from office and the President shall immediately remove the judge from office.

(6) The proceedings under clause (4) *(a)* shall be held in camera and the judge is entitled to appear, be heard and be represented by a legal practitioner or other person chosen by the judge.

(7) The medical board, constituted in accordance with clause (4) *(b)*, shall consist of not less than three registered health practitioners.

(8) The medical board shall, within thirty days of being constituted, examine the judge and report to the Judicial Complaints Commission on the judge's capacity to perform the judicial functions.

(9) Where the medical board recommends to the Judicial Complaints Commission that the judge is—

*(a)* physically or mentally capable of performing the judicial functions, the Judicial Complaints Commission shall recommend to the President the revocation of the judge's suspension and the President shall immediately revoke the suspension; or

*(b)* not physically or mentally capable of performing the judicial functions, the Judicial Complaints Commission shall recommend to the President the removal of the judge from office and the President shall immediately remove the judge from office.

(10) A judge who refuses to submit to an examination, in accordance with clause (8), shall immediately be removed from office by the President.

### Judicial Officers and Chief Administrator

Appointment and retirement of judicial officers

**145.** (1) The Judicial Service Commission shall appoint judicial officers, as prescribed.

(2) The qualification for appointment as judicial officer shall be prescribed.

(3) A judicial officer shall retire on attaining the age of sixty-five years.

(4) A judicial officer may retire, with full benefits, on attaining the age of fifty-five years.

Chief Administrator of Judiciary

**146.** (1) There shall be a Chief Administrator for the Judiciary who shall be appointed by the Judicial Service Commission.

(2) The functions and qualifications of the Chief Administrator for the Judiciary shall be prescribed.

## PART IX

## General Principles of Devolved Governance

### System of Devolved Governance

System of devolved governance

**147.** (1) The management and administration of the political, social, legal and economic affairs of the State shall be devolved from the national government level to the local government level.

(2) The concurrent and exclusive functions of the national, provincial and local government levels are as listed in the Annex and as prescribed.

(3) The different levels of government shall observe and adhere to the following principles:

*(a)* good governance, through democratic, effective and coherent governance systems and institutions;

*(b)* respect for the constitutional jurisdiction of each level of government;

*(c)* autonomy of the sub-structures; and

*(d)* equitable distribution and application of national resources to the sub-structures.

Sub-structures of local government

**148.** (1) Local governance shall be undertaken through sub-structures.

(2) The Government shall provide adequate resources for the performance of the functions of the sub-structures.

PART X

PROVINCES, DISTRICTS, WARDS AND PROVINCIAL ADMINISTRATION

**Provinces, Districts and Wards**

Provinces, districts and wards

**149.** (1) The President may, subject to the approval of the National Assembly, create or divide a Province or merge two or more Provinces, as prescribed.

(2) A Province shall consist of such number of districts, as prescribed.

(3) A district shall consist of such number of wards, as prescribed.

(4) A Province, district and ward shall be delimited, as prescribed.

(5) Without prejudice to clause (1), sixty percent or more of the registered voters in a Province may petition the President to—

*(a)* merge a Province with another Province; or

*(b)* divide a Province into two or more Provinces.

(6) Where the President receives a petition under clause (5), and after due inquiry, the President may, by statutory order, declare the merger of the Province with another Province or the division of the Province into two or more Provinces, subject to ratification by the National Assembly.

(7) Where the National Assembly ratifies the establishment of a new Province under this Article, the Electoral Commission shall delineate the boundaries of the Province created.

**Provincial Administration**

Provincial administration

**150.** (1) There shall be established for each Province an administrative secretariat, which shall consist of—

*(a)* a Provincial Minister;

*(b)* a provincial Permanent Secretary; and

*(c)* other staff, as prescribed.

(2) The provincial secretariat shall have overall responsibility of the Province and perform other functions as prescribed.

PART XI

LOCAL GOVERNMENT

**System of Local Government**

System of local government

**151.** (1) There is established a local government system where—

*(a)* functions, responsibilities and resources from the national Government and provincial administration are transferred to the local authorities in a co-ordinated manner;

*(b)* the people's participation in democratic governance is promoted;

*(c)* co-operative governance with the national Government, provincial administration and local authorities is promoted to support and enhance the developmental role of local government;

*(d)* the capacity of local authorities to initiate, plan, manage and execute policies in respect of matters that affect the people within their respective districts is enhanced;

*(e)* social, spatial, financial and economic planning, at the district level, is developed, prioritised and promoted;

*(f)* a sound financial base is established for each local authority with reliable and predictable sources of revenue;

*(g)* the performance of persons employed by the national Government and provincial administration to provide services in the sub-structures is overseen by local authorities;

*(h)* the provision of Government services is monitored and projects are implemented in sub-structures;

*(i)* accountability of local authorities is ensured; and

*(j)* the right of local authorities to manage their affairs and to form partnerships, networks and associations to assist in the management of their respective districts and further their development is recognised.

(2) The local government system shall—

*(a)* be based on democratically elected councils;

*(b)* promote democratic and accountable exercise of power;

*(c)* foster national unity;

*(d)* ensure that services are provided to sub-structures in an equitable and sustainable manner;

*(e)* promote social and economic development;

*(f)* promote a clean, safe and healthy environment; and

*(g)* encourage the involvement of communities and community organisations in matters of local government.

Local authorities

**152.** (1) A local authority shall—

*(a)* administer the district;

*(b)* oversee programmes and projects in the district;

*(c)* make by-laws; and

*(d)* perform other prescribed functions.

(2) The national Government and the provincial administration shall not interfere with or compromise a local authority's ability or right to perform its functions.

(3) There shall be a council for each local authority.

(4) There shall be a Town Clerk or Council Secretary for each local authority and other staff of the local authority, as prescribed.

Election of councillors, composition of councils and tenure

**153.** (1) A councillor shall be elected in accordance with Article 47(3) by registered voters resident within the district.

(2) A council shall consist of the following councillors—

*(a)* persons elected in accordance with clause (1);

*(b)* a mayor or council chairperson elected in accordance with Article 154; and

*(c)* not more than three chiefs representing chiefs in the district, elected by the chiefs in the district.

(3) The system of electing chiefs specified in clause (2) (b) shall be prescribed.

(4) A person qualifies to be elected as a councillor, excluding councillors specified under clause (2) *(b)*, if that person—

*(a)* is not a Member of Parliament;

*(b)* is not less than nineteen years of age;

*(c)* has obtained, as a minimum academic qualification, a grade twelve certificate or its equivalent;

*(d)* is a citizen or a holder of a resident permit, resident in the district; and

*(e)* has a certificate of clearance showing the payment of council taxes, where applicable.

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

(6) The term of a council shall be five years commencing from the date the councillors are sworn into office after a general election and ending on the date Parliament is dissolved.

Mayor, deputy mayor, council chairperson and deputy council chairperson

**154.** (1) There shall be a mayor and deputy mayor or council chairperson and deputy council chairperson for every council, as prescribed.

(2) A mayor and council chairperson shall be elected—

*(a)* directly, in accordance with Article 47 (3) during elections for councillors, as prescribed; and

*(b)* for a term of five years and may be re-elected for one further term of five years.

(3)A deputy mayor and a deputy council chairperson shall be elected by the councillors from amongst themselves.

Conduct of councillor

**155.** A councillor shall act in a manner that is consistent with a councillor's civic duties and responsibilities, as prescribed.

Accountability of councillors

**156.** Councillors shall be collectively and individually accountable to the national Government and residents in their wards and districts, for the performance of their functions.

Vacation of office of councillor and vacancies

**157.** (1) A councillor shall vacate office on dissolution of a council.

(2) The office of councillor becomes vacant if—

*(a)* the councillor ceases to be a resident of the district;

*(b)* the councillor resigns by one month's notice, in writing, to the mayor or council chairperson;

*(c)* the councillor becomes disqualified for election under Article 153;

*(d)* the result of an election for that councillor is nullified by a local government elections tribunal established in accordance with Article 159;

*(e)* the councillor acts contrary to the code of ethics provided for in Article 155;

*(f)* the councillor has a mental or physical disability that makes the councillor incapable of performing the functions of councillor; or

*(g)* the councillor dies.

(3) Where a councillor resigns in accordance with clause (2) *(b), (c), (d)* and *(e)* the councillor shall not be eligible for re-election as councillor for the duration of the term of that council.

By-election for council

**158.** (1) Where a vacancy occurs in the office of mayor, council chairperson or councillor—

*(a)* the Town Clerk or Council Secretary of the local authority shall, within seven days of the occurrence of the vacancy, inform the Electoral Commission, in writing, of the vacancy; and

*(b)* a by-election shall be held in accordance with Article 57.

(2) If a person is elected to the office of mayor, council chairperson or councillor in a by-election, that mayor, council chairperson or councillor shall serve for the unexpired term of the council and be deemed—

*(a)* to have served a full term as mayor, council chairperson or councillor if, at the date on which the councillor assumed office, at least three years remain before the date of the next general election; or

*(b)* not to have served a term of office as mayor, council chairperson or councillor, if, at the date on which the councillor assumed office, less than three years remain before the date of the next general election.

Local government elections tribunals and petitions

**159.** (1) The Chief Justice shall establish such number of *ad hoc* local government elections tribunals as are necessary to hear whether—

*(a)* a person has been validly elected as a councillor; or

*(b)* the office of a councillor has become vacant.

(2) A local government elections tribunal shall be presided over by a magistrate of competent jurisdiction sitting with two legal practitioners appointed by the Chief Justice.

(3) A person may file an election petition with a local government elections tribunal to challenge the election of a councillor.

(4) An election petition shall be heard within thirty days of the filing of the petition.

(5) A person may appeal a decision of a local government elections tribunal to the Constitutional Court.

(6) A councillor whose election is petitioned shall hold the seat in the council pending the determination of the election petition.

(7) The Chief Justice shall make rules for the functions, composition, appointment of members, tenure of office of members, procedures and jurisdiction of a local government elections tribunal.

Enforcement of judgment against local authority

**160.** A person who obtains a judgment against a local authority may enforce the judgment against the local authority after one year from the date of the delivery of the judgment.

Revenue of local authorities

**161.** A local authority is competent to levy, impose, recover and retain local taxes, as prescribed.

Constituency Development Fund

**162.** (1) There is established the Constituency Development Fund.

(2) The appropriation of monies to the Constituency Development Fund and the management, disbursement, utilisation and accountability of the Constituency Development Fund shall be prescribed.

Local Government Equalisation Fund and funds for local authorities

**163.** (1) There is established the Local Government Equalisation Fund.

(2) Parliament shall annually appropriate monies to the Local Government Equalisation Fund which shall be disbursed by the Ministry responsible for finance to local authorities.

(3) The Government may provide additional funds and grants to a local authority, as prescribed.

Legislation on local authorities

**164.** The following shall be prescribed:

*(a)* regulation of local authorities;

*(b)* sub-structures and their relationships;

*(c)* financial control and accountability of a local authority;

*(d)* raising of loans, grants and other financial instruments by local authorities;

*(e)* election of councillors; and

*(f)* the effective implementation of this Part.

## PART XII

## CHIEFTAINCY AND HOUSE OF CHIEFS

Institution of chieftaincy and traditional institutions

**165.** (1) The institution of chieftaincy and traditional institutions are guaranteed and shall exist in accordance with the culture, customs and traditions of the people to whom they apply.

(2) Parliament shall not enact legislation which—

*(a)* confers on a person or authority the right to recognise or withdraw the recognition of a chief; or

*(b)* derogates from the honour and dignity of the institution of chieftaincy.

Status of institution of chieftaincy

**166.** The institution of chieftaincy—

*(a)* is a corporation sole with perpetual succession and capacity to sue and be sued; and

*(b)* has capacity to hold property in trust for its subjects.

Rights and privileges of chiefs

**167.** A chief—

*(a)* may own property in a personal capacity; and

*(b)* shall enjoy privileges and benefits—

(i) bestowed on the office of chief by or under culture, custom and tradition; and

(ii) attached to the office of chief, as prescribed.

Participation of chiefs in public affairs

**168.** (1) Subject to clause (2), a chief may seek and hold a public office.

(2) A chief who seeks to hold office in a political party or election or appointment to a State office, except that of councillor, shall abdicate the chief's throne.

(3) The role of a chief in the management, control and sharing of natural and other resources in the Chiefdom shall be prescribed.

House of Chiefs and function

**169.** (1) There is established a House of Chiefs.

(2) The House of Chiefs shall consist of five chiefs from each province, elected by the chiefs in a Province, as prescribed.

(3) The members of the House of Chiefs shall annually elect a Chairperson and Vice-Chairperson of the House of Chiefs, from amongst themselves.

(4) Notwithstanding clause (3), the assumption of office as Chairperson and Vice-Chairperson of the House of Chiefs shall rotate annually amongst the chiefs from each province.

(5) The functions of the House of Chiefs are to —

*(a)* consider and discuss a Bill relating to custom or tradition referred to it by the President, before the Bill is introduced into the National Assembly;

*(b)* initiate, discuss and make recommendations to the National Assembly regarding socio-economic development in the Province;

*(c)* initiate, discuss and decide on matters relating to customary law and practice;

*(d)* initiate, discuss and make recommendations to a local authority regarding the welfare of communities in a local authority;

*(e)* make proposals on areas in customary law that require codification;

*(f)* advise the Government on traditional and customary matters; and

*(g)* perform other functions as prescribed.

Tenure of office and vacancy

**170.** (1) A Member of the House of Chiefs—

*(a)* shall hold office for a term of five years and is eligible for election for a further term of five years; and

*(b)* may resign by one month's notice, in writing, to the Chairperson.

(2) The office of a member of the House of Chiefs becomes vacant if the Chief—

*(a)* dies;

*(b)* ceases to be a chief;

*(c)* resigns;

*(d)* is convicted of an offence;

*(e)* is an undischarged bankrupt; or

*(f)* has a mental or physical disability that makes the chief incapable of performing the functions of a member of the House of Chiefs.

Staff of House of Chiefs

**171.** (1) There shall be a Clerk of the House of Chiefs and other staff, as prescribed.

(2) The office of the Clerk of the House of Chiefs and other staff of the House of Chiefs are offices in the public service.

Legislation on House of Chiefs

**172.** The following matters shall be prescribed—

*(a)* the procedures and processes of the House of Chiefs;

*(b)* the emoluments of the Clerk and other staff of the House of Chiefs;

*(c)* the application of the privileges and immunities of a Member of Parliament to a member of the House of Chiefs; and

*(d)* other matters necessary for the better carrying out of the purposes of this Part.

## PART XIII
## PUBLIC SERVICE

### Values and Principles

Values and principles of public service

**173.** (1) The guiding values and principles of the public service include the following—

*(a)* maintenance and promotion of the highest standards of professional ethics and integrity;

*(b)* promotion of efficient, effective and economic use of national resources;

*(c)* effective, impartial, fair and equitable provision of public services;

*(d)* encouragement of people to participate in the process of policy making;

*(e)* prompt, efficient and timely response to people's needs;

*(f)* commitment to the implementation of public policy and programmes;

*(g)* accountability for administrative acts;

*(h)* proactively providing the public with timely, accessible and accurate information;

*(i)* merit as the basis of appointment and promotion;

*(j)* adequate and equal opportunities for appointments, training and advancement of members of both gender and members of all ethnic groups; and

*(k)* representation of persons with disabilities in the composition of the public service at all levels.

(2) The values and principles specified in clause (1) apply to service—

*(a)* at national, provincial and local government levels; and

*(b)* to all State organs and State institutions.

(3) A public officer shall not be—

*(a)* victimised or discriminated against for having performed functions in good faith in accordance with this Constitution or other law; or

*(b)* removed from office, reduced in rank or otherwise punished without just cause and due process.

**Constituting Offices for Public Service**

Constituting offices for public service

**174.** (1) Subject to the recommendations of the relevant Service Commission, the power to constitute offices for the public service and to abolish those offices vests in the President.

(2) The President shall not abolish an office in the public service while there is a substantive holder of the office.

(3) The President may, by statutory instrument, declare that an office constituted by the President shall not be an office in the public service.

(4) Appointment to an office declared by the President not to be an office in the public service shall be made by the President.

Holding of office in public service

**175.** For the purposes of this Constitution, a person shall not be considered as holding an office in the public service by reason only that the person is in receipt of emoluments in respect of service under or for the Government.

**Constitutional Office Holders**

Secretary to Cabinet

**176.** (1) There shall be a Secretary to the Cabinet who shall be appointed by the President, in consultation with the Civil Service Commission, subject to ratification by the National Assembly.

(2) The Secretary to the Cabinet shall—

*(a)* be chief advisor to the President on the management of the public service;

*(b)* be the head of the public service and responsible to the President for securing the general efficiency and effectiveness of the public service;

*(c)* ensure that public services are delivered to the public efficiently;

*(d)* in accordance with instructions of the President—

(i) arrange the affairs of Cabinet;

(ii) attend meetings of Cabinet;

(iii) cause to be written and kept minutes of meetings of Cabinet; and

(iv) convey decisions made by Cabinet to appropriate authorities;

*(e)* monitor the implementation of Government policies and Cabinet decisions; and

*(f)* perform other functions as prescribed.

(3) A person qualifies to be appointed as Secretary to the Cabinet if that person has or had at least ten years experience as a permanent secretary or equivalent rank.

(4) The term of office of the Secretary to the Cabinet shall be five years, subject to renewal for further terms.

(5) The Secretary to the Cabinet may resign from office by giving three months' notice, in writing, to the President.

Attorney-General

**177.** (1) There shall be an Attorney-General, who shall be appointed by the President, subject to ratification by the National Assembly.

(2) The Attorney-General shall not hold another public office.

(3) The Attorney-General shall be a person qualified to be appointed as a judge.

(4) The Attorney-General shall not be subject to the direction or control of a person or an authority in the performance of the Attorney-General's functions.

(5) The Attorney-General is the chief legal adviser to the Government and shall—

*(a)* be head of the Attorney-General's Chambers;

*(b)* sign Government Bills to be presented to the National Assembly;

*(c)* represent the Government in civil proceedings to which Government is a party;

*(d)* give advice on an agreement, treaty or convention to which Government intends to become a party or in respect of which the Government has an interest before they are concluded, except where the National Assembly otherwise directs, and subject to conditions as prescribed; and

*(e)* perform other functions, as prescribed.

(6) The Attorney-General's Chambers shall be devolved to the Provinces and progressively to districts.

Vacancy in office of Attorney-General

**178.** (1) The office of the Attorney-General becomes vacant if—

*(a)* the Attorney-General is removed from office by the President;

*(b)* another person assumes the office of President;

*(c)* the Attorney-General dies; or

*(d)* the Attorney-General has a mental or physical disability that makes the Attorney-General incapable of performing the functions of that office.

(2) The Attorney-General may resign from office by giving three months' notice, in writing, to the President.

Solicitor-General

**179.** (1) There shall be a Solicitor-General who shall be appointed by the President, subject to ratification by the National Assembly.

(2) A person qualifies for appointment as Solicitor-General if that person is qualified for appointment as a judge.

(3) The Solicitor-General shall not hold another public office.

(4) The office of Solicitor-General becomes vacant if—

*(a)* the Solicitor-General is removed from office by the President;

*(b)* another person assumes the office of President;

*(c)* the Solicitor-General dies; or

*(d)* the Solicitor-General has a mental or physical disability that makes the Solicitor-General incapable of performing the functions of that office.

(5) The Solicitor-General shall assist the Attorney-General in the performance of the Attorney- General's functions.

(6) A function conferred on the Attorney-General by this Constitution or other law shall be performed by the Solicitor-General when the Attorney-General is unable to act owing to illness or absence from office for a reason.

(7) The Solicitor-General may resign from office by giving three months' notice, in writing, to the President.

Director of Public Prosecutions

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

(2) A person qualifies for appointment as Director of Public Prosecutions if that person—

*(a)* has experience in undertaking criminal trials; and

*(b)* is qualified to be appointed as a judge.

(3) The Director of Public Prosecutions is the chief prosecutor for the Government and head of the National Prosecutions Authority.

(4)The Director of Public Prosecutions may—

*(a)* institute and undertake criminal proceedings against a person before a court, other than a court-martial, for an offence alleged to have been committed by that person;

*(b)* take over and continue criminal proceedings instituted or undertaken by another person or authority; and

*(c)* discontinue, at any stage before judgment is delivered, criminal proceedings instituted or undertaken by the Director of Public Prosecutions or another person or authority.

(5) For the purposes of clause (4), an appeal from a judgment, a case stated or to a question of law reserved shall be part of the criminal proceedings.

(6) The power conferred on the Director of Public Prosecutions under clause (4)*(c)* shall not be exercised in relation to an appeal by a convicted person, a case stated or a question of law reserved at the instance of that person.

(7) The Director of Public Prosecutions shall not be subject to the direction or control of a person or an authority in the performance of the functions of that office, except that the Director of Public Prosecutions shall have regard to the public interest, administration of justice, the integrity of the judicial system and the need to prevent and avoid abuse of the legal process.

(8)The functions of the Director of Public Prosecutions may be exercised in person or by a public officer or legal practitioner, authorised by the Director of Public Prosecutions, acting under the general or special instructions of the Director of Public Prosecutions.

(9) The National Prosecutions Authority shall be established as prescribed and shall devolve to the provinces and progressively to the districts.

Performance of functions of Director of Public Prosecutions during absence, illness or other cause

**181.** Where the Director of Public Prosecutions is absent from Zambia or is unable to perform the functions of office due to illness or other cause, the President shall appoint a person qualified to perform the functions of Director of Public Prosecutions to perform those functions until that appointment is revoked or until the Director of Public Prosecutions returns to office.

Tenure of office of Director of Public Prosecutions

**182.** (1) Subject to this Article, the Director of Public Prosecutions shall retire from office on attaining the age of sixty years.

(2) The Director of Public Prosecutions may retire, with full benefits, on attaining the age of fifty-five years.

(3) The Director of Public Prosecutions may be removed from office on the same grounds and procedure as apply to a judge.

(4) The Director of Public Prosecutions may resign from office by three months' notice, in writing, to the President.

Secretary to Treasury

**183.** (1) There shall be a Secretary to the Treasury who shall be appointed by the President, in consultation with the Civil Service Commission, subject to ratification by the National Assembly.

(2) The Secretary to the Treasury shall be the chief controlling officer of the Government.

(3) The Secretary to the Treasury shall—

*(a)* be responsible and accountable for—

(i) the proper financial management and expenditure of public monies appropriated to a State organ, Province, local authority, State institution or other prescribed body; and

(ii) monies raised from sources within or outside Zambia by a Province, local authority, State institution or other prescribed body;

*(b)* oversee the formulation and implementation of the macro-economic frameworks and socio-economic plans of the Republic;

*(c)* provide a regulatory framework for sound financial management;

*(d)* cause to be prepared annual estimates of revenue and expenditure, supplementary estimates of expenditure and the budget; and

*(e)* carry out other prescribed functions.

(4) A person qualifies to be appointed as Secretary to the Treasury if that person qualifies for appointment as Governor of the Bank of Zambia.

(5) The term of office of the Secretary to the Treasury shall be five years, subject to renewal for further terms.

(6) The Secretary to the Treasury may resign from office by three months' notice, in writing, to the President.

Permanent Secretaries

**184.** (1) The President shall, on the advice of the Civil Service Commission, appoint a Permanent Secretary for a Province, ministry or department.

(2) A Permanent Secretary shall—

*(a)* carry out or cause to be carried out the portfolio functions of the provincial administration, ministry or department;

*(b)* advise the Minister or provincial Minister with respect to the activities, projects and programmes of the Province, ministry or department;

*(c)* cause to be implemented the policies of the Government and decisions of Cabinet;

*(d)* be responsible and accountable for the proper financial management and expenditure of public monies appropriated to the Province, ministry or department; and

*(e)* be responsible and accountable for the management of human resources in the provincial secretariat, ministry or department.

**Public Officers**

Appointment of public officers

**185.** (1) The President has, in accordance with and subject to the other provisions of this Constitution, the power to—

*(a)* appoint and confirm public officers;

*(b)* exercise disciplinary control over public officers; and

*(c)* terminate the employment of a public officer.

(2) The President's functions, as specified in clause (1), shall be exercised by the relevant Service Commission as specified in this Constitution and as prescribed.

(3) A person shall not be regarded as disqualified for appointment to an office to which a public officer is qualified to be appointed by reason only that the office is held by a person who is on leave of absence pending relinquishment of that office.

(4) A function of a service commission may be delegated to a public officer, as prescribed.

Participation in politics

**186.** (1) A public officer who seeks election, or is appointed, to a State office shall resign.

(2) Clause (1) applies to a Constitutional office holder.

PART XIV

PENSION BENEFIT

Pension benefit

**187.** (1) An employee, including a public officer and Constitutional office holder, has a right to a pension benefit.

(2) A pension benefit shall not be withheld or altered to that employee's disadvantage.

(3) The law to be applied with respect to a pension benefit–

*(a)* before the commencement of this Constitution, shall be the law that was in force immediately before the date on which the pension benefit was granted or the law in force at a later date that is not less favourable to that employee; and

*(b)* after the commencement of this Constitution, shall be the law in force on the date on which the pension benefit was granted or the law in force at a later date that is not less favourable to that employee.

Review of pension benefit and tax exemption

**188.** (1) A pension benefit shall be reviewed periodically to take into account actuarial assessments.

(2) A pension benefit shall be exempt from tax.

Payment of pension benefits

**189.** (1) A pension benefit shall be paid promptly and regularly.

(2) Where a pension benefit is not paid on a person's last working day, that person shall stop work but the person's name shall be retained on the payroll, until payment of the pension benefit based on the last salary received by that person while on the payroll.

## PART XV
## DEFENCE AND NATIONAL SECURITY

Principles relating to Defence Force and national security services

**190.** (1) The Defence Force and national security services shall—

*(a)* be nationalistic, patriotic, professional, disciplined and competent;

*(b)* be non-partisan;

*(c)* not further the interests or cause of a particular organisation; and

*(d)* not act against a political interest or cause permitted in this Constitution or as prescribed.

(2) Clause (1) shall not prevent a member of the Defence Force and national security services from registering as a voter or voting in an election or a referendum.

Status of Defence Force and national security services

**191.** The Defence Force and national security services shall be—

*(a)* subordinate to civilian authority, as vested in the State organs; and

*(b)* adequately and properly equipped to enable them effectively perform their functions.

Establishment of Defence Force and functions

**192.** (1) There is established the Defence Force of Zambia consisting of—

*(a)* the Zambia Army;

*(b)* the Zambia Air Force;

*(c)* the Zambia National Service, as an auxiliary unit; and

*(d)* other units, as prescribed.

(2) The Defence Force shall—

*(a)* preserve and defend the sovereignty and territorial integrity of the Republic;

*(b)* foster harmony and understanding between the Zambia Army, Zambia Air Force, an auxiliary unit and members of society; and

*(c)* co-operate with State organs and State institutions in times of public emergencies and national disasters.

Establishment of national security services and functions

**193.** (1) There are established the following national security services—

*(a)* the Zambia Police Service;

*(b)* the Zambia Security Intelligence Service;

*(c)* the Zambia Correctional Service; and

*(d)* any other national security service, as prescribed.

(2) The Zambia Poliee Service shall—

*(a)* protect life and property;

*(b)* preserve peace and maintain law and order;

*(c)* ensure the security of the people;

*(d)* detect and prevent crime;

*(e)* uphold the Bill of Rights;

*(f)* foster and promote good relationships with the Defence Force, other national security services and members of society; and

*(g)* perform other functions as prescribed.

(3) The Zambia Security Intelligence Service shall—

*(a)* ensure national security by undertaking security intelligence and counter intelligence;

*(b)* prevent a person from suspending, overthrowing or illegally abrogating this Constitution; and

*(c)* perform other functions as prescribed.

(4) The Zambia Correctional Service shall—

*(a)* manage, regulate and ensure the security of prisons and correctional centres; and

*(b)* perform other functions as prescribed.

Qualification to serve in Defence Force and national security service

**194.** A person is qualified to serve as a member of the Defence Force and national security services if the person is—

*(a)* a citizen who does not hold dual citizenship; and

*(b)* qualified as prescribed.

Deployment outside Republic

**195.** (1) The President may deploy personnel of the Defence Force outside the Republic.

(2) Where the President deploys personnel of the Defence Force outside the Republic, the President shall, as soon as is reasonably practicable, inform the National Assembly of the deployment.

Prohibition of activities relating to defence and national security

**196.** Except as provided in this Constitution, a person shall not—

*(a)* raise or participate in the raising of an armed force;

*(b)* establish or participate in the establishment of a defence force or national security service; or

*(c)* establish or participate in the establishment of a unit of the Defence Force or national security service.

Legislation on Defence Force and national security services

**197.** The following shall be prescribed:

*(a)* the regulation of the Defence Force and national security services;

*(b)* the organs and structures of the Defence Force and national security services;

*(c)* the operations and administration of the Defence Force and national security services;

*(d)* the recruitment of persons into the Defence Force and national security services, which shall reflect the regional diversity of the people of Zambia;

*(e)* the appointment, qualifications, placement, transfer, discipline and retirement of defence and security chiefs and other personnel of the Defence Force and national security services;

*(f)* the emoluments of personnel and members of the Defence Force and national security services;

*(g)* the procedures and processes for deployment of the personnel of the Defence Force; and

*(h)* other functions as prescribed.

## PART XVI
## PUBLIC FINANCE AND BUDGET

Principles relating to public finance

**198.** The guiding principles of public finance include the following:

*(a)* transparency and accountability in the development or formulation of macro-economic frameworks, socio-economic plans and the budget;

*(b)* promotion of a public finance system that ensures that—

(i) the burden of taxation is shared fairly;

(ii) revenue raised nationally is shared equitably among the different levels of government; and

(iii) expenditure promotes the equitable development of the country;

*(c)* sustainable public borrowing to ensure inter-generational equity; and

*(d)* prudent and responsible use of public resources.

Imposition of tax

**199.** (1) A tax shall not be imposed, except as prescribed.

(2) Where legislation confers power on a person or an authority to waive or vary a prescribed tax the power shall be exercised through a statutory instrument.

(3) A report explaining the waiver or variation of a tax shall be submitted to the National Assembly within twenty-one days of the publication of the statutory instrument.

Consolidated Fund

**200.** (1) There is established a Consolidated Fund to which shall be credited the revenues and other monies accruing to the Treasury.

(2) Clause (1) does not apply to monies—

*(a)* prescribed for a public fund established for a specific purpose; or

*(b)* that a State organ or State institution may retain for the purpose of defraying the expenses of the State organ or State institution, as prescribed.

Withdrawal from Consolidated Fund

**201.** (1) Monies shall not be withdrawn from the Consolidated Fund except—

*(a)* to meet expenditure charged on the Consolidated Fund by this Constitution or as prescribed; or

*(b)* where the issuance of those monies has been authorised by a warrant signed by the President, an Appropriation Act or a Supplementary Appropriation Act in accordance with Article 203.

(2) The investment or lending of monies forming part of the Consolidated Fund, in accordance with Articles 206 and 207, respectively, shall not be considered a withdrawal from the Consolidated Fund.

Annual financial estimates of revenue and expenditure

**202.** (1) The Minister responsible for finance shall prepare and lay before the National Assembly in each financial year, not later than ninety days before the commencement of the next financial year, estimates of revenue and expenditure for the Republic.

(2) The Minister responsible for finance shall, when presenting the estimates of revenue and expenditure, in accordance with clause (1), specify the maximum limits that the Government intends to borrow or lend in that financial year.

(3) In a year where a general election is held, the Minister responsible for finance shall cause to be prepared and laid before the National Assembly, within ninety days of the swearing in of the President, estimates of revenue and expenditure for the Republic for the next financial year.

(4) The National Assembly may vary estimates of revenue and expenditure but shall not amend the total amount of estimates of revenue and expenditure.

(5) The National Assembly shall, by a resolution of the Members of Parliament, approve the financial estimates of revenue and expenditure for the next financial year.

Appropriation Act, Supplementary Appropriation Act and Excess Expenditure Appropriation Act

**203.** (1) Where estimates of revenue and expenditure have been approved by the National Assembly in accordance with Article 202, the Minister responsible for finance shall lay, before the National Assembly for enactment, an Appropriation Bill in respect of the approved estimates of expenditure.

(2) The Minister responsible for finance shall, where the amount appropriated in an Appropriation Act for a financial year is insufficient to meet expenditure in that financial year, lay before the National Assembly for approval, in accordance with Article 202 (5), a supplementary estimate of expenditure.

(3) Where a supplementary estimate of expenditure has been approved by the National Assembly, the Minister responsible for finance shall lay, before the National Assembly for enactment, a Supplementary Appropriation Bill in respect of the approved supplementary estimate of expenditure.

(4) Where there is an urgent need to incur expenditure for a purpose that has not been appropriated under the Appropriation Act for that financial year and it would not be in the public interest to delay the appropriation of the expenditure until a supplementary estimate is approved by the National Assembly, in accordance with clauses (2) and (3), the President may, subject to Article 204, issue a warrant authorising the expenditure and withdrawal from the Consolidated Fund.

(5) The Minister responsible for finance shall present the warrant referred to in clause (4) to the relevant parliamentary committee for approval.

(6) The parliamentary committee shall consider the warrant within forty-eight hours of its presentation by the Minister responsible for finance.

(7) Where expenditure is incurred in accordance with clause (4), the Minister responsible for finance shall, in that financial year, lay an Excess Expenditure Appropriation Bill before the National Assembly for enactment.

(8) Where it is not practicable to lay an Excess Expenditure Appropriation Bill before the National Assembly, in accordance with clause (7), the Minister responsible for finance shall lay the Excess Expenditure Appropriation Bill before the National Assembly during the first sitting of the National Assembly after the end of the preceding financial year.

Limitation and conditions of warrant

**204.** (1) The issuance of a warrant, in accordance with Article 203 (4), shall be subject to limitations and conditions, as prescribed.

(2) The President shall, immediately after signing a warrant in accordance with Article 203 (4), cause a copy of the warrant to be transmitted to the Auditor-General and Parliament.

Budget and planning legislation

**205.** The following shall be prescribed:

*(a)* the financial management and regulation of public funds;

*(b)* the preparation of medium and long-term financing frameworks and development plans;

*(c)* the budget preparation process;

*(d)* public participation, at all levels of government, in the formulation of financing frameworks, development plans and preparation of annnal budgets;

*(e)* the content of the financial report of the Republic provided for in Article 211; and

*(f)* the control and disbursement of appropriated funds.

Investment of public funds

**206.** (1) Monies forming part of the Consolidated Fund may be invested into readily marketable securities and deposits or other secure investments, with a financial institution approved by the Minister responsible for finance.

(2) The investment of monies made in accordance with clause (1) shall be prescribed.

Borrowing and lending by Government

**207.** (1) The Government may, as prescribed—

*(a)* raise a loan or grant on behalf of itself, a State organ, State institution or other institution;

*(b)* guarantee a loan on behalf of a State organ, State institution or other institution; or

*(c)* enter into an agreement to give a loan or grant out of the Consolidated Fund, other public fund or public account.

(2) Legislation enacted under clause (1) shall provide—

*(a)* for the category, nature and other terms and conditions of a loan, grant or guarantee, that will require the approval by the National Assembly before the loan, grant or guarantee is executed; and

*(b)* that any monies received in respect of a loan or grant approved by the National Assembly shall be paid into the Consolidated Fund, or other public fund or public account.

Public debt

**208.** (1) A public debt shall be a charge on the Consolidated Fund or other public fund.

(2) For the purposes of this Article, "public debt" includes the interest on that debt, sinking fund payments in respect of that debt and the costs, charges and expenses incidental to the management of that debt.

Compensation Fund

**209.** (1) There is established a Compensation Fund for the purpose of settling claims against the State.

(2) The management of the Compensation Fund shall be prescribed.

Public procurement and disposal of State assets

**210.** (1) A State organ, State institution and other public office shall procure goods or services, in accordance with a system that is fair, equitable, transparent, competitive and cost-effective, as prescribed.

(2) A major State asset shall be sold, transferred or otherwise disposed of, as prescribed, subject to the approval of the National Assembly signified by a vote of at least two-thirds of the Members of Parliament.

(3) For the purposes of this Article, "major State asset" includes a parastatal and equity held by the Government, as prescribed.

Financial report of Republic

**211.** (1) The Minister responsible for finance shall, within three months after the end of each financial year, prepare and submit to the Auditor-General the financial report of the Republic in respect of the preceding financial year.

(2) The Auditor-General shall, within two months of receipt of the financial report, examine the financial report and express an opinion on the report.

(3) The Minister responsible for finance shall, within one month after the receipt of the Auditor-General's opinion, lay the financial report, with the Auditor-General's opinion, before the National Assembly.

(4) The financial report shall include information on—

*(a)* revenue received by the Republic during that financial year;

*(b)* the expenditure of the Republic during that financial year;

*(c)* gifts, donations and aid-in-kind received on behalf of the Republic in that financial year, their value and how they were disposed of;

*(d)* debt repayments;

*(e)* payments made in that financial year for purposes other than expenditure;

*(f)* the financial position of the Republic at the end of that financial year; and

*(g)* other information as prescribed.

Auditor-General's report

**212.** The Auditor-General shall, not later than nine months after the end of a financial year, submit an audit report to the President and the National Assembly, on the accounts of the Republic audited in respect of the preceding financial year.

## PART XVII
## CENTRAL BANK

Bank of Zambia

**213.** (1) There is established the Bank of Zambia which shall be the central bank of the Republic.

(2) The functions of the Bank of Zambia are to—

*(a)* issue the currency of the Republic;

*(b)* determine monetary policy; and

*(c)* regulate banking and financial services, banks, financial and non-banking institutions, as prescribed.

(3) There is constituted a Board of Directors for the Bank of Zambia whose composition shall be prescribed.

(4) The functions of the Bank of Zambia vest in the Board of Directors and shall be performed as prescribed.

(5) The Bank of Zambia shall not be subject to the direction or control of a person or an authority in the performance of its functions.

Governor of Bank of Zambia

**214.** (1) There shall be a Governor of the Bank of Zambia who shall be appointed by the President, subject to ratification by the National Assembly, and who shall be—

*(a)* a citizen;

*(b)* a person who has specialised training and experience in economics, finance, accounting, banking, law or other field relevant to banking, as prescribed; and

*(c)* a person of proven integrity.

(2) The Governor shall be the Chairperson of the Board of Directors.

Legislation on Bank of Zambia

**215.** The following shall be prescribed:

*(a)* additional functions, operations and management of the Bank of Zambia;

*(b)* appointment, qualifications and tenure of office of the Board of Directors;

*(c)* election of a Vice-Chairperson of the Board of Directors;

*(d)* tenure of office and emoluments of the Governor;

*(e)* appointment, qualifications, tenure of office, functions and emoluments of the Deputy-Governor;

*(f)* recruitment, and emoluments of members of staff of the Bank of Zambia; and

*(g)* other matters necessary for the performance of the functions of the Bank of Zambia.

## PART XVIII

## SERVICES, COMMISSIONS AND OTHER INDEPENDENT OFFICES

Principles relating to commissions

**216.** A commission shall—

*(a)* be subject only to this Constitution and the law;

*(b)* be independent and not be subject to the control of a person or an authority in the performance of its functions;

*(c)* act with dignity, professionalism, propriety and integrity;

*(d)* be non-partisan; and

*(e)* be impartial in the exercise of its authority.

### Parliamentary Service Commission

Parliamentary Service

**217.** (1) There is established the Parliamentary Service.

(2) The office of the Clerk of the National Assembly, members of staff of the Parliamentary Service Commission and members of staff of the office of the Clerk, as prescribed, are offices in the Parliamentary Service.

Parliamentary Service Commission

**218.** (1) There is established the Parliamentary Service Commission.

(2) The Parliamentary Service Commission shall—

*(a)* appoint the Clerk of the National Assembly;

*(b)* constitute offices in the Parliamentary Service;

*(c)* appoint, confirm, promote and hear appeals from officers of the Parliamentary Service;

*(d)* ensure efficient and effective functioning of the National Assembly;

*(e)* have financial oversight of the Parliamentary Service and the National Assembly; and

*(f)* perform such other functions as prescribed.

**Judicial Service Commission**

Judicial Service

**219.** (1) There is established the Judicial Service.

(2) The office of judge, judicial officer, the members of staff of the Judicial Service Commission and such other officers as prescribed, are offices in the Judicial Service.

Judicial Service Commission

**220.** (1) There is established the Judicial Service Commission.

(2) The Judicial Service Commission shall—

*(a)* constitute offices in the Judicial Service;

*(b)* make recommendations to the President on the appointment of judges;

*(c)* appoint, confirm, promote and hear appeals from judicial officers; and

*(d)* carry out a function provided for in this Constitution, or as prescribed.

**Civil Service Commission**

Civil Service

**221.** (1) There is established the Civil Service.

(2) The office of the Secretary to the Cabinet, Secretary to the Treasury, Deputy Secretary to the Cabinet, civil servants, the members of staff of the Civil Service Commission and other public officers as prescribed, are offices in the Civil Service.

Civil Service Commission

**222.** (1) There is established the Civil Service Commission.

(2) The Civil Service Commission shall—

*(a)* constitute offices in the Civil Service;

*(b)* appoint, confirm, promote and hear appeals from officers in the Civil Service, excluding a Constitutional office holder; and

*(c)* perform such other functions as prescribed.

**Teaching Service Commission**

Teaching Service

**223.** (1) There is established the Teaching Service.

(2) The teachers serving as public officers excluding civil servants, the members of staff of the Teaching Service Commission and other public officers, as prescribed, are offices in the Teaching Service.

Teaching Service Commission

**224.** (1) There is established the Teaching Service Commission.

(2) The Teaching Service Commission shall—

*(a)* constitute offices in the Teaching Service;

*(b)* appoint, confirm, promote and hear appeals from officers of the Teaching Service; and

*(c)* perform such other functions as prescribed.

**Zambia Correctional Service Commission**

Zambia Correctional Service Commission

**225.** (1) There is established the Zambia Correctional Service Commission for the Zambia Correctional Service established in Article 193.

(2) The office of Commissioner-General of Correctional Service, Deputy Commissioners-General of Correctional Service, Commissioners of Correctional Service, Assistant Commissioners of Correctional Service, Correctional officers and wardens, members of staff of the Zambia Correctional Service Commission and such other public officers as prescribed, are offices in the Zambia Correctional Service.

(3) The Zambia Correctional Service Commission shall—

*(a)* constitute offices in the Zambia Correctional Service;

*(b)* appoint, confirm, promote and hear appeals from officers of the Zambia Correctional Service; and

*(c)* perform such other functions as prescribed.

**Zambia Police Service Commission**

Zambia Police Service Commission

**226.** (1) There is established the Zambia Police Service Commission for the Zambia Police Service established in Article 193.

(2) The office of the Inspector-General of Police, the Deputy Inspector-General of Police, police officers, the members of staff of the Zambia Police Service Commission and other public officers as prescribed, are offices in the Zambia Police Service.

(3) The Zambia Police Service Commission shall—

*(a)* constitute offices in the Zambia Police Service;

*(b)* appoint, confirm, promote and hear appeals from officers of the Zambia Police Service; and

*(c)* perform such other functions as prescribed.

**Local Government Service Commission**

Local Government Service

**227.** (1) There is established the Local Government Service.

(2) The office of the Town Clerk, Council Secretary, members of staff of the Local Government Service Commission, the members of staff of local authorities and other local government staff, as prescribed, are offices in the Local Government Service.

Local Government Service Commission

**228.** (1) There is established the Local Government Service Commission.

(2) The Local Government Service Commission shall—

*(a)* appoint the Town Clerk and Council Secretary of a local authority;

*(b)* constitute offices in the Local Government Service;

*(c)* appoint, confirm, promote and hear appeals from officers of the Local Government Service;

*(d)* ensure efficient and effective functioning of local authorities; and

*(e)* perform such other functions as prescribed.

**Electoral Commission of Zambia**

Electoral Commission of Zambia

**229.** (1) There is established the Electoral Commission of Zambia which shall have offices in Provinces and progressively in districts.

(2) The Electoral Commission shall—

*(a)* implement the electoral process;

*(b)* conduct elections and referenda;

*(c)* register voters;

*(d)* settle minor electoral disputes, as prescribed;

*(e)* regulate the conduct of voters and candidates;

*(f)* accredit observers and election agents, as prescribed;

*(g)* delimit electoral boundaries; and

*(h)* perform such other functions as prescribed.

### Human Rights Commission

Human Rights Commission

**230.** (1) There is established the Human Rights Commission which shall have offices in the Provinces and progressively in districts.

(2) The Human Rights Commission shall ensure that the Bill of Rights is upheld and protected.

(3) The Human Rights Commission shall—

*(a)* investigate and report on the observance of rights and freedoms;

*(b)* take necessary steps to secure appropriate redress where rights and freedoms are violated;

*(c)* endeavour to resolve a dispute through negotiation, mediation or conciliation;

*(d)* carry out research on rights and freedoms and related matters;

*(e)* conduct civic education on rights and freedoms; and

*(f)* perform such other functions as prescribed.

### Gender Equity and Equality Commission

Gender Equity Equality Commission

**231.** (1) There is established the Gender Equity and Equality Commission which shall have offices in the Provinces and progressively in districts.

(2) The Gender Equity and Equality Commission shall promote the attainment and mainstreaming of gender equality.

(3) The Gender Equity and Equality Commission shall—

*(a)* monitor, investigate, research, educate, advise and report on issues concerning gender equality;

*(b)* ensure institutions comply with legal requirements and other standards relating to gender equality;

*(c)* take steps to secure appropriate redress to complaints relating to gender inequality, as prescribed; and

*(d)* perform such other functions as prescribed.

**Emoluments Commission**

Emoluments Commission

**232.** (1) There is established the Emoluments Commission.

(2) The Emoluments Commission shall determine, on the recommendation of the relevant authority or commission, the emoluments of public officers, chiefs and members of the House of Chiefs, as provided in this Constitution or as prescribed.

**Lands Commission**

Lands Commission

**233.** (1) There is established the Lands Commission which shall have offices in all Provinces and progressively in districts.

(2) The Lands Commission shall administer, manage and alienate land, on behalf of the President, as prescribed.

**State Audit Commission**

State Audit Commission

**234.** (1) There is established the State Audit Commission.

(2) The State Audit Commission shall—

*(a)* subject to Article 249 (2) oversee the operations of the office of the Auditor-General, as prescribed;

*(b)* make recommendations to the President on the appointment of the Auditor-General; and

*(c)* perform such other functions as prescribed.

**Investigative Commissions**

Investigative Commissions

**235.** There is established the following investigative commissions:

*(a)* the Anti-Corruption Commission;

*(b)* the Drug Enforcement Commission; and

*(c)* the Anti-Financial and Economic Crimes Commission.

**Judicial Complaints Commission**

Judicial Complaints Commission

**236.** (1) There is established the Judicial Complaints Commission.

(2) The Judicial Complaints Commission shall—

*(a)* enforce the Code of Conduct for judges and judicial officers;

*(b)* ensure that judges and judicial officers are accountable to the people for the performance of their functions;

*(c)* receive complaints lodged against a judge or judicial officer, as prescribed;

*(d)* hear a complaint against a judge or judicial officer, as prescribed;

*(e)* make recommendations to the appropriate institution or authority for action; and

*(f)* perform such other functions as prescribed.

**Police Public Complaints Commission**

Police Public Complaints Commission

**237.** (1) There is established the Police Public Complaints Commission.

(2) The Police Public Complaints Commission shall—

*(a)* receive and investigate complaints against police actions;

*(b)* investigate complaints against police actions which result in serious injury or death of a person;

*(c)* make recommendations to the appropriate institution or authority for action; and

*(d)* perform such other functions as prescribed.

**General Provisions Relating to Commissions**

Financial independence of commissions

**238.** (1) A commission shall be a self-accounting institution which deals directly with the Ministry responsible for finance in matters relating to its finances.

(2) A commission shall be adequately funded in a financial year to enable it to effectively perform its functions.

Expenses of commissions

**239.** The expenses of a commission, including emoluments payable to, or in respect of, persons serving with that commission, shall be a charge on the Consolidated Fund.

Qualifications of members of commissions

**240.** A person qualifies to be appointed as a member of a commission if that person—

*(a)* is a citizen;

*(b)* is permanently resident in Zambia;

*(c)* has not, in the immediate preceding five years, served a term of imprisonment of at least three years;

*(d)* declares that person's assets and liabilities, as prescribed;

*(e)* has paid that person's taxes or has made arrangements satisfactory to the appropriate tax authority for the payment of the taxes;

*(f)* does not have a mental or physical disability that would make the person incapable of performing the functions of office;

*(g)* is not serving a sentence of imprisonment for an offence under a law; and

*(h)* has other qualifications, as prescribed.

General powers of commissions

**241.** A commission—

*(a)* shall appoint its staff;

*(b)* may refer matters within its mandate to appropriate State organs or State institutions for action;

*(c)* may initiate its own investigations and receive complaints from a person on matters within its mandate;

*(d)* shall take measures to ensure that State institutions and other persons comply with its decisions; and

*(e)* shall submit annual reports to the National Assembly on its accounts and activities as prescribed.

Legislation on commissions

**242.** The functions, composition, appointment of members, tenure of office of members, processes and procedures, operations, administration, structures, finances and financial management of a commission shall be prescribed.

## Other Independent Offices
## Public Protector

Public Protector

**243.** (1) There shall be a Public Protector who shall be appointed by the President, on the recommendation of the Judicial Service Commission, subject to ratification by the National Assembly.

(2) A person qualifies for appointment as Public Protector if that person—

*(a)* is qualified to be appointed as a judge; and

*(b)* does not hold a State office or Constitutional office.

(3) The office of Public Protector shall be decentralised to the Provinces and progressively to districts, as prescribed.

(4) The procedures, staff, finances, financial management, administration and operations of the office of the Public Protector shall be prescribed.

Functions of Public Protector

**244.** (1) The Public Protector may investigate an action or decision taken or omitted to be taken by a State institution in the performance of an administrative function.

(2) For purposes of clause (1), an action or decision taken or omitted to be taken is an action or decision which is—

*(a)* unfair, unreasonable or illegal; or

*(b)* not compliant with the rules of natural justice.

(3) For purposes of clauses (1) and (2), the Public Protector may—

*(a)* bring an action before a court;

*(b)* hear an appeal by a person relating to an action or decision taken or omitted to be taken in respect of that person; and

*(c)* make a decision on an action to be taken against a public officer or Constitutional office holder, which decision shall be implemented by an appropriate authority.

(4) The Public Protector shall not be subject to the direction or control of a person or an authority in the performance of the functions of office.

(5) The Public Protector has the same powers as those of the High Court in—

*(a)* enforcing the attendance of witnesses and examining them on oath;

*(b)* examining witnesses outside Zambia;

*(c)* compelling the production of documents;

*(d)* enforcing decisions issued by the Public Protector; and

(e) citing a person or an authority for contempt for failure to carry out a decision.

(6) A person summoned to give evidence or to produce a document before the Public Protector is entitled, in respect of that evidence or the production of the document, to the same privileges and protection as those that a person would be entitled to before a court.

(7) An answer by a person to a question put by the Public Protector is not admissible in evidence against that person in civil or criminal proceedings, except for perjury.

Limitation of powers of Public Protector

**245.** The Public Protector shall not investigate a matter which—

*(a)* is before a court, court martial or a quasi-judicial body;

*(b)* relates to an officer in the Parliamentary Service or Judicial Service;

*(c)* involves the relations or dealings between the Government and foreign government or an international organisation;

*(d)* relates to the exercise of the prerogative of mercy; or

*(e)* is criminal in nature.

Performance of functions of Public Protector during absence, illness or other cause

**246.** Where the Public Protector is absent from Zambia or is unable to perform the functions of office due to illness or other cause, the President shall appoint a person qualified to perform the functions of the Public Protector until that appointment is revoked or until the Public Protector returns to office.

Tenure of office of Public Protector

**247.** (1) Subject to this Article, the Public Protector shall retire from office on attaining the age of sixty years.

(2) The Public Protector may retire, with full benefits, on attaining the age of fifty-five years.

(3) The Public Protector may be removed from office on the same grounds and procedure as apply to a judge.

(4) The Public Protector may resign from office by three months' notice, in writing, to the President.

Report to National Assembly

**248.** The office of the Public Protector shall report to the National Assembly on matters concerning its affairs.

**Auditor-General**

Auditor-General

**249.** (1) There shall be an Auditor-General who shall be appointed by the President, on the recommendation of the State Audit Commission, subject to ratification by the National Assembly.

(2) The office of Auditor-General shall be decentralised to the Provinces and progressively to districts, as prescribed.

(3) The following shall be prescribed:

*(a)* the qualifications of the Auditor-General;

*(b)* the operations and management of the office of the Auditor-General;

*(c)* the recruitment, supervision, grading, promotion and discipline of the staff of the Auditor-General; and

*(d)* the finances of the office of the Auditor-General.

Functions of Auditor-General

**250.** (1) The Auditor-General shall—

*(a)* audit the accounts of—

(i) State organs, State institutions, provincial administration and local authorities; and

(ii) institutions financed from public funds;

*(b)* audit the accounts that relate to the stocks, shares and stores of the Government;

*(c)* conduct financial and value for money audits, including forensic audits and any other type of audit, in respect of a project that involves the use of public funds;

*(d)* ascertain that money appropriated by Parliament or raised by the Government and disbursed—

(i) has been applied for the purpose for which it was appropriated or raised;

(ii) was expended in conformity with the authority that governs it; and

(iii) was expended economically, efficiently and effectively; and

*(e)* recommend to the Director of Public Prosecutions or a law enforcement agency any matter within the competence of the Auditor-General, that may require to be prosecuted.

(2) The Auditor-General shall not be subject to the direction or control of a person or an authority in the performance of the functions of office.

Performance of functions of Auditor-General during absence, illness or other cause

**251.** Where the Auditor-General is absent from Zambia or is unable to perform the functions of office due to illness or other cause, the President shall appoint a person qualified to perform the functions of the Auditor-General until that appointment is revoked or until the Auditor-General returns to office.

Tenure of office of Auditor-General

**252.** (1) Subject to this Article, the Auditor-General shall retire from office on attaining the age of sixty years.

(2) The Auditor-General may retire, with full benefits, on attaining the age of fifty-five years.

(3) The Auditor-General may be removed from office on the same grounds and procedure as apply to a judge.

(4) The Auditor-General may resign from office by three months' notice, in writing, to the President.

## PART XIX

## LAND, ENVIRONMENT AND NATURAL RESOURCES

### Land

Principles of land policy

**253.** (1) Land shall be held, used and managed in accordance with the following principles:

*(a)* equitable access to land and associated resources;

*(b)* security of tenure for lawful land holders;

*(c)* recognition of indigenous cultural rites;

*(d)* sustainable use of land;

*(e)* transparent, effective and efficient administration of land;

*(f)* effective and efficient settlement of land disputes;

*(g)* river frontages, islands, lakeshores and ecologically and culturally sensitive areas—

(i) to be accessible to the public;

(ii) not to be leased, fenced or sold; and

(iii) to be maintained and used for conservation and preservation activities;

*(h)* investments in land to also benefit local communities and their economy; and

*(i)* plans for land use to be done in a consultative and participatory manner.

Classification and alienation of land and land tenure

**254.** (1) Land shall be delimited and classified as State land, customary land and such other classification, as prescribed.

(2) The President may, through the Lands Commission, alienate land to citizens and non-citizens, as prescribed.

(3) Land shall be held for a prescribed tenure.

**Environment and Natural Resources**

Principles of environmental and natural resources management and development

**255.** The management and development of Zambia's environment and natural resources shall be governed by the following principles:

*(a)* natural resources have an environmental, economic, social and cultural value and this shall be reflected in their use;

*(b)* the person responsible for polluting or degrading the environment is responsible for paying for the damage done to the environment;

*(c)* where there are threats of serious or irreversible damage to the environment, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation;

*(d)* the conservation and protection of ecologically sensitive areas, habitats, species and other environment shall be done in a sustainable manner;

*(e)* respect for the integrity of natural processes and ecological communities;

*(f)* benefits accruing from the exploitation and utilisation of the environment and natural resources shall be shared equitably amongst the people of Zambia;

*(g)* saving of energy and the sustainable use of renewable energy sources shall be promoted;

*(h)* reclaiming and rehabilitation of degraded areas and those prone to disasters shall be promoted;

*(i)* unfair trade practices in the production, processing, distribution and marketing of natural resources shall be eliminated;

*(j)* origin, quality, methods of production, harvesting and processing of natural resources shall be regulated;

*(k)* equitable access to environmental resources shall be promoted;

*(l)* effective participation of people in the development of relevant policies, plans and programmes; and

*(m)* access to environmental information to enable people preserve, protect and conserve the environment.

Protection of environment and natural resources

**256.** A person has a duty to co-operate with State organs, State institutions and other persons to—

*(a)* maintain a clean, safe and healthy environment;

*(b)* ensure ecologically sustainable development and use of natural resources;

*(c)* respect, protect and safeguard the environment; and

*(d)* prevent or discontinue an act which is harmful to the environment.

Utilisation of natural resources and management of environment

**257.** The State shall, in the utilisation of natural resources and management of the environment—

*(a)* protect genetic resources and biological diversity;

*(b)* implement mechanisms that minimise waste;

*(c)* promote appropriate environment management systems and tools;

*(d)* encourage public participation;

*(e)* protect and enhance the intellectual property in, and indigenous knowledge of, biodiversity and genetic resources of local communities;

*(f)* ensure that the environmental standards enforced in Zambia are of essential benefit to citizens; and

*(g)* establish and implement mechanisms that address climate change.

## PART XX
## GENERAL PROVISIONS

Official language and use and status of local languages

**258.** (1) The official language of Zambia is English.

(2) A language, other than English, may be used as a medium of instruction in educational institutions or for legislative, administrative or judicial purposes, as prescribed.

(3) The State shall respect, promote and protect the diversity of the languages of the people of Zambia.

Nominations and appointments

**259.** (1) Where a person is empowered to make a nomination or an appointment to a public office, that person shall ensure—

*(a)* that the person being nominated or appointed has the requisite qualification to discharge the functions of the office, as prescribed or specified in public office circulars or establishment registers;

*(b)* that fifty percent of each gender is nominated or appointed from the total available positions, unless it is not practicable to do so; and

*(c)* equitable representation of the youth and persons with disabilities, where these qualify for nomination or appointment.

(2) A person empowered to make a nomination or appointment to a public office shall, where possible, ensure that the nomination or appointment reflects the regional diversity of the people of Zambia.

Oath of office and prescribed oaths

**260.** A person assuming a public office, member of the House of Chiefs, and presidential appointee, shall take an Oath of Office and such other oath, as prescribed, before carrying out the duties of office.

Code of conduct and ethics

**261.** A person holding a public office shall act in accordance with a code of conduct and ethics, as prescribed for that office.

Conflict of interest

**262.** A person holding a public office shall not act in a manner, or be in a position, where the personal interest of that person conflicts, or is likely to conflict, with the performance of the functions of office.

Declaration of assets

**263.** A person holding a public office shall, before assuming office or leaving office, make a declaration of their assets and liabilities, as prescribed.

Emoluments payable under Constitution

**264.** (1) A public officer, chief and member of the House of Chiefs, shall be paid such emoluments as recommended by the relevant authority or commission and determined by the Emoluments Commission.

(2) The emoluments of a State officer, councillor, Constitutional office holder and a judge shall be determined by the Emoluments Commission, as prescribed.

(3) The emoluments of a person holding a public office, chief and member of the House of Chiefs shall not be altered to the disadvantage of that person during that person's tenure of office.

(4) A person holding a public office shall not, while in office, hold another office which pays emoluments.

Funding, expenses and emoluments charge on Consolidated Fund

**265.** (1) A public office shall be adequately funded to enable it to effectively perform its functions.

(2) The expenses of a State organ, State institution and public office shall be a charge on the Consolidated Fund.

(3) The emoluments payable under this Constitution or as prescribed, shall be a charge on the Consolidated Fund.

Definitions

**266.** In this Constitution, unless the context otherwise requires—

" adult " means a person who has attained, or is above, the age of nineteen years;

" Bill " means a draft of a proposed law to be enacted by Parliament;

" Bill of Rights " means the human rights and fundamental freedoms set out in Part III, and includes their status, application, interpretation, limitations, derogations, non-derogations and enforcement;

" by-election " means an election to fill a vacancy in the office of a Member of Parliament or councillor;

" candidate " means a person contesting a presidential, parliamentary or local government election;

" chief " means a person bestowed as chief and who derives allegiance from the fact of birth or descent, in accordance with the customs, traditions, usage or consent of the people in a chiefdom;

" child " means a person who has attained, or is below, the age of eighteen years;

" circuit schedule " means a table showing dates, districts, time and place where a court is to sit and hear matters in any period of twelve months;

" citizen " means a citizen of Zambia;

" civil servant " means a public officer appointed by the Civil Service Commission;

" civil society " means a group of persons, who are not part of the Government, who associate for the purpose of advancing or protecting particular interests;

" commission " means a commission established under Part XVIII of this Constitution;

" constituency " means an area into which Zambia is divided for purposes of elections to the National Assembly;

" Constitutional Court " means the Constitutional Court established in this Constitution;

" Constitutional office " means the office of the Attorney-General, Solicitor-General, Director of Public Prosecutions, Public Protector, Auditor-General, Secretary to the Cabinet, Secretary to the Treasury and Permanent Secretary;

" Constitutional office holder " means a person holding or acting in a Constitutional office;

" council " includes a city, municipal or town council;

" council chairperson " means a person elected chairperson of a town council in accordance with Article 154;

" councillor " means a member of a council elected in accordance with Article 153;

" court " means a court of competent jurisdiction established by or under this Constitution;

" Court of Appeal " means the Court of Appeal established in this Constitution;

" devolution " means a form of decentralisation where there is a transfer of rights, functions and powers or an office from the central government or State institution to a sub-national authority or the bringing of a service that is provided at central government level to, or opening of a branch of a public office or institution at, a sub- national level, and the word "devolved" shall be construed accordingly;

" disability " means a permanent physical, mental, intellectual or sensory impairment that alone, or in combination with social or environmental barriers, hinders the ability of a person to fully or effectively participate in an activity or perform a function as specified in this Constitution or as prescribed;

" discrimination " means directly or indirectly treating a person differently on the basis of that person's birth, race, sex, origin, colour, age, disability, religion, conscience, belief, culture, language, tribe, pregnancy, health, or marital, ethnic, social or economic status;

" district " means an administrative unit of a Province as provided in Article 149;

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

" Electoral Commission " means the Electoral Commission of Zambia established in this Constitution;

" emoluments " include salaries, allowances, benefits and rights that form an individual's remuneration for services rendered, including pension benefits or other benefits on retirement;

" Emoluments Commission " means the Emoluments Commission established in this Constitution;

" executive authority " means the power and the right to execute executive functions;

" executive functions " means the functions of the President set out in this Constitution;

" *ex-officio* " means a person who is appointed as a member by virtue of office;

" First Deputy Speaker " means the person elected as First Deputy Speaker in accordance with Article 82 (4);

" freedom fighter " means a person who fought for the independence of the former protectorate of Northern Rhodesia to become the Republic of Zambia;

" function " includes powers and duties;

" gender " means female or male and the role individuals play in society as a result of their sex and status;

" general election " means Presidential, National Assembly and local government elections when held on the same day;

" gross misconduct " means—

*(a)* behaviour which brings a public office into disrepute, ridicule or contempt;

*(b)* behaviour that is prejudicial or inimical to the economy or the security of the State;

*(c)* an act of corruption; or

*(d)* using or lending the prestige of an office to advance the private interests of that person, members of that person's family or another person;

" health practitioner " means a person registered as a health practitioner as prescribed;

" High Court " means the High Court established in this Constitution;

" individual " means a natural person;

" judge " means a person appointed as a judge of a superior court;

" judgment " includes a decision, an order or decree of a court or an authority, as prescribed;

" judicial authority " means the power and right to perform judicial functions;

" judicial function " means the functions of the Judiciary set out in this Constitution;

" judicial officer " includes a magistrate, local court magistrate, registrar and such officers as prescribed;

" legislative authority " means the power and right to perform legislative functions;

" legislative functions " means the functions of the legislature set out in this Constitution;

" local authority " means a council and it's secretariat consisting of persons appointed by the Local Government Service Commission;

" local government " means governance at the local level;

" local government elections tribunal " means a tribunal established in accordance with Article 159;

" Local Government Equalisation Fund " means a fund established in accordance with Article 163;

" mayor " means a person elected mayor of a city or municipal council in accordance with Article 154;

" Member of Parliament " means a person who is member of the National Assembly;

" Minister " means a Cabinet Minister;

" oath " includes an affirmation;

" older member of society " means a person who has attained, or is above, the age of sixty years;

" opposition " means a political party which is not the political party in government;

" ordinarily resident " means residing in a place for a prescribed period of time;

" Parliament " means the President and the National Assembly;

" parliamentary committee " means a committee established in accordance with Article 80;

" pension benefit " includes a pension, compensation, gratuity or similar allowance in respect of a person's service;

" person " means an individual, a company or an association of persons, whether corporate or unincorporate;

" person with disability " means a person with a permanent physical, mental, intellectual or sensory impairment;

" political party " means an association whose objectives include the contesting of elections in order to form government or influence the policy of the national or local government;

" power " includes privilege, authority and discretion;

" prescribed " means provided for in an Act of Parliament;

" President-elect " means the presidential candidate who has been declared by the Returning Officer as having won the presidential election;

" presidential candidate " means a person nominated to stand for election as President in accordance with Article 52 (1);

" presidential election " means an election to the office of President, and includes the election of a Vice-President as a running mate to the President;

" property " includes a vested or contingent right to, or interest in, or arising from—

*(a)* land, permanent fixtures on, or improvements to, land;

*(b)* goods or personal property;

*(c)* intellectual property; or

*(d)* money, choses in action or negotiable instruments;

" provincial administration " means the administrative secretariat established in accordance with Article 150;

" Provincial Minister " means a person appointed Provincial Minister by the President;

" public media " means media owned, operated or controlled by the Government;

" public office " means an office whose emoluments and expenses are a charge on the Consolidated Fund or other prescribed public fund and includes a State office, Constitutional office and an office in the public service, including that of a member of a commission;

" public officer " means a person holding or acting in a public office, but does not include a State officer, councillor, a Constitutional office holder, a judge and a judicial officer;

" public service " means service in the Civil Service, the Teaching Service, Defence Force and National Security Service, the Zambia Correctional Service, the Zambia Police Service, Emoluments Commission, State Audit Commission, Lands Commission, Electoral Commission, Human Rights Commission, Gender Equity and Equality Commission, the Anti-Corruption Commission, Drug Enforcement Commission, the Anti-Financial and Economic Crimes Commission, the Police and Public Complaints Commission, and service as a constitutional office holder, service in other offices, as prescribed;

" rights and freedoms " means the human rights and fundamental freedoms provided for in the Bill of Rights;

" Republic " means the Republic of Zambia;

" returning officer " means a person who is a returning officer for a parliamentary or local authority election and "Returning Officer" means the Chairperson of the Electoral Commission in a presidential election;

" running mate " means a person who is selected by a presidential candidate to stand with the presidential candidate in a presidential election so that the person becomes the Vice-President if that presidential candidate is elected as President;

" Second Deputy Speaker " means the person elected as Second Deputy Speaker in accordance with Article 82 (5);

" Service Commission " means a commission established under Articles 218, 220, 222, 224, 225, 226, and 228;

" session " means a period not exceeding twelve months, within the term of the National Assembly, of sittings of the National Assembly, which commence on the first day of sitting after a general election or prorogation of Parliament and ends with a prorogation or dissolution of Parliament;

" sitting " means a meeting of the National Assembly, within a session, which concludes with an adjournment, and includes a parliamentary committee meeting;

" Speaker " means the person elected Speaker of the National Assembly in accordance with Article 82 (1);

" State institution " includes a ministry or department of the Government, a public office, agency, institution, statutory body, commission or company in which the Government or local authority has a controlling interest, other than a State organ;

" State office " includes the office of President, Vice-President, Speaker, Deputy Speaker, Member of Parliament, Minister and Provincial Minister;

" State officer " means a person holding or acting in a State office;

" State organ " means the Executive, Legislature or Judiciary;

" statutory instrument " means a proclamation, regulation, rule, by-law, order or other similar legal instrument made under a power conferred by this Constitution or an Act of Parliament;

" subordinate court " means a court subordinate to the High Court;

" sub-national " means an administrative division of government at provincial or district level;

" sub-structure " includes a district, ward and village;

" superior court " means the Supreme Court, Constitutional Court, Court of Appeal and High Court established in accordance with this Constitution;

" Supreme Court " means the Supreme Court established in this Constitution;

" tax " includes rates, levies, charges, tariffs, fees, tolls and duties;

" term " means a period of five years commencing when the National Assembly first sits, after a general election, and ending when Parliament is dissolved;

" Treasury " means the office, in the Ministry responsible for finance, which receives, keeps, receipts, manages and disburses public funds;

" Vice-President-elect " means the person declared as having been duly elected as a Vice-President after a presidential election;

" ward " means a unit into which a district is divided for purposes of electing councillors;

" young person " means a person who has attained the age of fifteen years, but is below the age of nineteen years; and

" youth " means a person who has attained the age of nineteen years, but is below the age of thirty-five years.

Interpretation of Constitution

**267.** (1) This Constitution shall be interpreted in accordance with the Bill of Rights and in a manner that—

*(a)* promotes its purposes, values and principles;

*(b)* permits the development of the law; and

*(c)* contributes to good governance.

(2) If there is a conflict between the English version of this Constitution and a different language version, the English version shall prevail.

(3) A provision of this Constitution shall be construed according to the doctrine that the law is continuously in force and accordingly—

*(a)* a function may be performed, as occasion requires, by the person holding the office to which the function is assigned;

*(b)* a reference to a person holding an office includes a reference to the person lawfully performing the functions of that office at a particular time;

*(c)* a reference to an office, State organ, State institution or locality shall be read with any modification necessary to make it applicable in the circumstances;

*(d)* a reference in a provision applying that provision to another provision shall be read with any modification necessary to make it applicable in the circumstances and any reference to the modified provision shall apply as modified; and

*(e)* a reference to an office, body or organisation, where that office, body or organisation has ceased to exist, is a reference to its successor or to the equivalent office, body or organisation performing the functions.

(4) A provision of this Constitution to the effect that a person, an authority or institution is not subject to the direction or control of a person or an authority in the performance of a function, does not preclude a court from exercising jurisdiction in relation to a question as to whether that person, authority or institution has performed the function in accordance with this Constitution or other laws.

Grammatical variation

**268.** In this Constitution, unless the context otherwise requires—

*(a)* a word in the singular includes the plural and a word in the plural includes the singular; and

*(b)* a word or expression defined, shall be read with any grammatical variation or similar expression of that word or expression.

Computation of time

**269.** For the purposes of this Constitution, in computing time, unless a contrary intention is expressed—

*(a)* a period of days from the happening of an event or the doing of an act shall be considered to be exclusive of the day on which the event happens or the act is done;

*(b)* if the last day of the period is a Saturday, Sunday or public holiday ("excluded day"), the period shall include the next day;

*(c)* where an act or a proceeding is directed or allowed to be done or taken on a specified day and that day is an excluded day, the act or proceeding shall be considered as done or taken in due time if it is done or taken the next day; and

*(d)* where an act or a proceeding is directed or allowed to be done or taken within a time not exceeding six days, an excluded day shall not be counted in the computation of the time.

Power to appoint includes power to remove

**270.** In this Constitution, unless a contrary intention is expressed, power to appoint a person to hold or act in an office includes the power to confirm appointments, to exercise disciplinary control over the person holding or acting in the office and to remove that person from office.

Implied power

**271.** In this Constitution, a power given to a person or an authority to do or enforce the doing of an act, includes the necessary and ancillary powers to enable that person or authority to do or enforce the doing of the act.

Legislation to give effect to Constitution

**272.** Parliament may enact legislation to give effect to an Article or a provision in this Constitution which—

*(a)* confers a function or jurisdiction on a person, office, institution, council or commission;

*(b)* provides for a process or procedure to be taken, followed or prescribed;

*(c)* requires an action, a measure or decision to be taken or provided;

*(d)* requires a remedy or compensation to be given;

*(e)* prohibits an action or measure;

*(f)* deals with a specific subject-matter or general matter that would require to be legislated on in order to give effect to the Constitution; or

*(g)* generally requires something to be prescribed.

Power to make statutory instrument, resolution or direction

**273.** In this Constitution, a power conferred on a person or an authority to make a statutory instrument, a resolution or direction, includes the power to amend or revoke the statutory instrument, resolution or direction.

Time for performance of function

**274.** A function conferred in this Constitution may be performed as occasion requires.

Exercise of power between publication and commencement of Acts

**275.** Where an Article provides for a power exercisable by making a statutory instrument to—

*(a)* make an appointment; or

*(b)* do any other thing for the purposes of the Article;

the power may be exercised at any time on or after the date of publication of the statutory instrument in the *Gazette*.

ANNEX

(*Article* 147 (2))

FUNCTIONS OF NATIONAL, PROVINCIAL AND LOCAL LEVELS OF DEVOLVED GOVERNMENT

**A. Exclusive national functions**

- Elections
- Foreign and international affairs
- Budget
- Taxation including customs and excise
- Airports, other than district airports
- Casinos, racing, gambling and wagering, excluding lotteries and sports pools
- Disaster management and public emergency
- National parks, national botanical gardens and resources
- National forests
- passports and National Registration
- Prisons
- Refugees
- Registration of Births and Deaths
- Wildlife
- Water resources management
- Energy and hydro electricity
- Petroleum and lubricants
- Public roads
- Defence, security, maintenance of law and order
- Citizenship and immigration
- Public enterprises
- Regulation of commerce and manufacturing
- Road traffic regulation
- Land, mines, minerals and natural resources
- Census and statistics
- Traditional leadership
- National archives
- National libraries
- National museums
- Tertiary Education

**B. Concurrent national and provincial functions**

- administration of justice
- legal affairs
- Administration of forests
- Agriculture
- Animal control and diseases
- Consumer protection
- Cultural matters
- Customary law
- Education at all levels, excluding tertiary education
- Environmental management
- Health services
- Housing
- Industrial promotion
- Language policy and the regulation of official languages
- Nature conservation
- Parliamentary Business
- legislative procedures and processess
- Pollution control
- Population development
- Property transfer tax
- Public procurement
- Public transport
- Public works only in respect of the needs of provincial administration
- Provincial spatial planning and development
- Soil conservation
- Tourism, trade and commerce
- Urban and rural development
- Welfare services
- Industrial and labour relations
- Resettlement
- Investment
- Telecommunication

**C. Local Authorities exclusive functions**

- Pollution control
- Building regulations
- Child-care facilities
- Electricity
- Fire fighting services
- Local tourism
- District airports, Aerodromes and Airships
- District planning
- District health services
- District public transport
- District public works only in respect of the needs of Districts in the discharge of councils responsibilities to administer functions specifically assigned to them under this Constitution or other law
- Levies, tariffs and tolls
- Pontoons, ferries, jetties, piers and harbours, excluding the regulation of international and national shipping and matters related thereto
- Storm water management systems in built-up areas
- Trading
- Water and sanitation services limited to potable water supply systems and domestic waste-water and sewage disposal systems
- Veterinary services, excluding regulation of the veterinary profession
- Vehicle licensing
- Abattoirs
- Ambulance services
- Archives
- Libraries
- Liquor licencing
- Museums

- Local spatial planning
- Cultural matters
- Recreation and amenities
- Sport
- Roads and traffic automation and maintenance
- Amusement facilities
- Billboards and the display of advertisements in public places
- Cemeteries, funeral parlours and crematoria
- Local cleansing
- Control of public nuisances
- Control of undertakings that sell liquor to the public
- Facilities for the accommodation, care and burial of animals
- Fencing and fences
- Licensing of dogs
- Licensing and control of undertakings that sell food to the public
- Local amenities
- Local sport facilities
- Markets
- Local parks and recreation
- Local roads
- Noise pollution
- Pounds
- Public places
- Refuse removal, refuse dumps and solid waste disposal
- Street trading
- Street lighting
- Traffic and parking
- Gardens and landscaping

GOVERNMENT OF ZAMBIA

# ACT

**No. 35 of 2016**

Date of Assent: 6th June, 2016

**An Act to provide for a comprehensive process for a general election; provide for the conduct of elections by the Electoral Commission of Zambia and empower the Commission to make regulations in matters relating to elections; provide for the registration of voters and the keeping of voters registers; prescribe the procedures for nominations for elections; provide for the role of presiding officers, election officers and conflict management officers; prescribe the procedure for voting during an election; provide for the accreditation and roles of observers and monitors; criminalise corrupt practices and other illegal practices related to elections and provide for penalties in connection with an election; provide for election petitions and the hearing and determination of applications relating to a general election; provide for voter education; prescribe the electoral code of conduct; repeal and replace the Electoral Act, 2006; and provide for matters connected with, or incidental to, the foregoing.**

[7th June, 2016

ENACTED by the Parliament of Zambia. Enactment

## PART I

### PRELIMINARY PROVISIONS

1. This Act may be cited as the Electoral Process Act, 2016. Short title

2. In this Act, unless the context otherwise requires— Interpretation

"area" has the meaning assigned to it in section *two* of the Local Government Act; Cap. 281

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

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

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

Cap. 1 "by-election" has the meaning assigned to it in the Constitution;

"campaign material" means party or candidate manifestos, advertisements, billboards, posters, tshirts, cloth or other material depicting colours regarding symbols, and other designs of a party or pictural images of a candidate;

"campaign period" means a period of three months before the holding of an election;

"candidate" means a person contesting a presidential, parliamentary or local government election;

"caricature" means the exaggerated imitation of a cartoon, effigy, picture, drawing or sketch of a person or literary style for comic or satirical effect;

Cap. 281 "casual vacancy" means a vacancy in the office of councillor as specified in the Local Government Act;

Act No. 25 of 2016 "Chief Electoral Officer" has the meaning assigned to it in the Electoral Commission of Zambia Act, 2016;

"Code" means the Electoral Code of Conduct set out in the Schedule;

Cap. 1 "Commission" means the Electoral Commission of Zambia established by the Constitution;

"conflict management officer" means an officer appointed as a conflict management officer in accordance with section *one hundred* and *thirteen;*

Cap. 1 "constituency" has the meaning assigned to it in the Constitution;

Cap. 1 "Constitutional Court" has the meaning assigned to it in the Constitution;

"corrupt practice" means any conduct which is declared to be a corrupt practice in accordance with section *eighty-one;*

"costs"includes charges and expenses;

Cap. 1 "council"has the meaning assigned to it in the Constitution;

"council chairperson" has the meaning assigned to it in the Constitution; Cap. 1

"councillor" has the meaning assigned to it in the Constitution; Cap. 1

"designated person" means a person or officer appointed by the Chief Justice for the purpose of receiving election petitions filed before a tribunal and attending to such other matters regarding petitions before a tribunal as are assigned to the Registrar under this Act;

"election" has the meaning assigned to it in the Constitution; Cap. 1

"election agent" means a person appointed as an agent of a candidate for the purpose of an election and who is specified in the candidate's nomination paper;

"election officer" means a person appointed by the Commission as—

*(a)* a registration officer;

*(b)* an assistant registration officer;

*(c)* a district electoral officer;

*(d)* a returning officer;

*(e)* a presiding officer;

*(f)* an assistant presiding officer; or

*(g)* a polling assistant;

and includes a person appointed to assist the Chief Electoral Officer in the performance of the functions of the Chief Electoral Officer as specified in this Act;

"election petition" means an election petition related to a presidential, parliamentary or local government election as specified in the Constitution; Cap. 1

"election timetable" means a timetable for an election published by the Commission in accordance with section *twenty-eight;*

"employee" has the meaning assigned to it in section *two* of the Local Government Act; Cap. 281

"general election" has the meaning assigned to it in the Constitution; Cap. 1

"illegal practice" means an offence which is declared under this Act to be an illegal practice;

"interim period" means the period commencing at the commencement of this Act and expiring on such date as the President may prescribe by statutory order;

"media" includes publicly or privately operated print and electronic media;

"Member of Parliament" has the meaning assigned to it in the Constitution; Cap. 1

"monitor"means a person accredited as such by the Commission;

"national registration card" means a national registration card issued under and in terms of the National Registration Act; Cap. 126

"national registration number"means the serial number inserted on a national registration card issued in accordance with the National Registration Act; Cap. 126

"nomination day" means the day appointed by the Commission as the day on which a candidate files that candidate's nomination paper with the Commission;

"nomination centre" means a place prescribed by the Commission as a nominating office;

"nomination paper" means a document prescribed by the Commission for the purpose of a candidate registering that candidate's intention to contest an election under this Act;

"observer" means a person accredited as such by the Commission;

"petitioner" in relation to an election petition, means a person who signs and presents an election petition under section *ninety-eight*, and includes a person substituted for a petitioner;

"political party" has the meaning assigned to it in the Constitution; Cap. 1

"polling agent" means an agent appointed by a candidate in respect of a polling station;

"polling assistant" means a person appointed as polling assistant by the Commission;

"polling day" means—

*(a)* in relation to a general election, the day specified in accordance with the Constitution for the taking of the poll in a general election; and Cap. 1

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

"polling district" means a district established by the Commission as a polling district under section *twenty-one;*

"polling station" means a place established as a polling station by the Commission under section *twenty-four;*

"public officer" has the meaning assigned to it in the Constitution; Cap. 1

"presidential election" has the meaning assigned to it in the Constitution; Cap. 1

"presiding officer" means a person appointed as a presiding officer by the Commission under section *thirty-seven;*

"Register of Voters" means the Register of Voters prepared and certified by the Commission under section *fourteen;*

"registration officer" means a person appointed as a registration officer by the Commission;

"Registrar" means the Chief Registrar of the High Court, and includes the Deputy Registrar, District Registrar and Assistant Registrar;

"respondent" means a person against whom an election petition is filed in accordance with section *ninety-eight;*

"Returning Officer" has the meaning assigned to it in the Constitution; Cap. 1

"returning officer" has the meaning assigned to it in the Constitution; Cap. 1

"traditional leader" means a paramount chief, senior chief, chief or village headman;

"tribunal" means a local government elections tribunal established in accordance with Article 159 of the Constitution; Cap. 1

"voter" means a person who is registered as a voter and whose name appears in the Register of Voters;

"voter's card" means a voter's card prescribed and issued by the Commission; and

"ward" means any of the divisions into which a council area is divided under section *twenty-five.*

Principles of electoral system and process

**3.** Subject to the Constitution, the principles applied in the electoral system and process shall ensure the following:

*(a)* equal and universal suffrage;

*(b)* no discrimination based on gender or disability when providing electoral services;

*(c)* transparent and credible electoral process;

*(d)* no special privileges accorded to a political party or social group, except for persons with special needs;

*(e)* no impediments to lawful inclusion in the electoral register;

*(f)* impartial voter-education programmes;

*(g)* access to polling stations for representatives of political parties, accredited local or international election monitors, observers and the media;

*(h)* secrecy of the vote;

*(i)* design of the ballot paper that promotes easy use;

*(j)* transparent and secure ballot boxes;

*(k)* impartial assistance to voters at the polling station;

*(l)* transparent, accurate and reliable vote counting procedure;

*(m)* proper management of invalid ballot papers;

*(n)* precautionary measures for transporting of election materials;

*(o)* impartial protection of polling stations;

*(p)* established procedures for lodging and dealing with complaints;

*(q)* impartial handling of election complaints;

*(r)* impartial delimitation of electoral boundaries; and

*(s)* timely resolution of electoral disputes.

Administration, enforcement and prosecution

Cap. 1

**4.** (1) This Act shall be administered and enforced by the Commission and the Commission shall not be subject to the direction or control of any person or authority in the exercise of its functions under the Constitution and this Act.

(2) The Commission shall, in order to ensure compliance with the provisions of this Act, appoint such number of officers as it may consider necessary for purposes of this Act.

(3) An officer appointed pursuant to subsection (2) shall be provided with a letter of appointment which shall be *prima facie* evidence of that person's appointment.

(4) An officer shall, on demand by a person affected by the exercise of the powers of that officer under this Act, produce for inspection the letter referred to in subsection (3).

(5) The Anti-Corruption Commission shall investigate and prosecute any corrupt practice committed under this Act in accordance with the Anti-Corruption Act, 2012.

Act No. 3 of 2012

(6) The Zambia Police Service shall enforce law and order at polling stations and undertake any criminal proceedings, subject to subsection (2), in respect of an offence committed by any person in contravention of this Act.

Delegation of powers and duties by Commission

**5.** (1) The Commission may—

*(a)* delegate any of its powers under this Act to a member, employee or officer of the Commission excluding the power to prescribe anything under this Act or make an appointment under this Act or any other written law; and

*(b)* instruct a member, employee or officer of the Commission to perform any of its duties under this Act or any other written law.

(2) A delegation or instruction made under subsection (1)—

*(a)* shall be subject to any limitations and conditions that the Commission may impose; and

*(b)* does not prevent the Commission from exercising or performing the assigned power or duty.

(3) The Commission may, by statutory order, confer powers or impose duties on an officer or authority of the Government or council for the purpose of discharging its functions under this Act.

Delegation of powers and duties by Chief Electoral Officer

**6.** (1) The Chief Electoral Officer may—

*(a)* delegate any of the powers of the Chief Electoral Officer under this Act or any other law to an employee or officer of the Commission; or

*(b)* instruct an employee or officer of the Commission to perform any of the duties of the Chief Electoral Officer under this Act or any other written law.

(2) Subsection (2) of section *five* with the necessary modification, shall apply to a delegation or instruction of the Chief Electoral Officer under subsection (1).

## PART II

### Registration of Voters and Registers

Continuous voter registration

**7.** The Commission shall conduct a continuous registration of voters.

Qualification for registration as voter

**8.** (1) A person qualifies for registration as a voter if that person—

*(a)* is a citizen of Zambia;

*(b)* has attained the age of eighteen years; and

*(c)* is in possession of a national registration card.

(2) The Commission shall register a person as a voter as prescribed.

(3) A person who has been registered in the Register of Voters shall be issued with a voter's card.

(4) A person shall not register as a voter in more than one constituency.

Disqualification from registration as voter

**9.** (1) The Commission shall not register a person as a voter if that person

*(a)* is not a citizen of Zambia;

*(b)* is not in possession of a national registration card;

*(c)* suffers from a mental disability which makes the person unable to exercise their right to vote;

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*(d)* is detained under the Criminal Procedure Code during the pleasure of the President;

*(e)* is disqualified from voting under section *forty-seven*;

*(f)* is under a sentence of death imposed by a competent court, or a sentence of imprisonment imposed by a court or substituted by a competent authority for some other sentence imposed by that court; or

*(g)* does not qualify to be registered as a voter as may be prescribed;

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

De-registration of voter

**10.** A registration officer shall de-register a voter if the registration officer is satisfied that the voter—

*(a)* does not qualify to be registered as a voter;

*(b)* no longer meets the qualifications for registration as specified in section *eight*;

*(c)* has been fraudulently registered; or

*(d)* obtained the registration through submission of false information or making of a misleading statement.

Notification by registration officer

**11.** (1) A registration officer shall notify a person—

*(a)* whose registration as a voter has been refused;

*(b)* whose application to have a change of name or ordinary place of residence recorded has been refused;

*(c)* who has been disqualified from registration as a voter under section *ten*; or

*(d)* whose registration details have been changed.

(2) A notification given under subsection (1) shall give reasons for the refusal or action taken.

Suspension of registration of voters

**12.** (1) The Commission may suspend the registration of voters whenever an election is due for the purposes of the conduct of the election.

(2) The Commission shall, where it prescribes the polling day for a byelection, immediately suspend the registration of voters in the district in which the byelection is to take place until the byelection is concluded.

Provisional Register of Voters

**13.** (1) The Commission shall establish a Provisional Register of Voters as prescribed.

(2) The Provisional Register of Voters shall include the details of persons entitled to vote in an election or referendum under this Act or the Referendum Act. Cap. 14

Register of Voters

**14.** (1) The Commission shall compile and maintain the Register of Voters as prescribed.

(2) The Register of Voters shall include the details of persons entitled to vote in an election or referendum under this Act or the Referendum Act. Cap. 14

(3) The Register of Voters shall not preclude any person from voting in a referendum in accordance with the Constitution. Cap. 1

Application to change registration details

**15.** A voter whose name or ordinary place of residence has changed may apply, in the prescribed manner, to have that change recorded in the Register of Voters, except that a person shall not apply when a change of name is due to change in marital status.

Amendments to Register of Voters

**16.** (1) A registration officer shall—

*(a)* change the registration details of a voter if the registration officer is satisfied that the details of a voter as reflected in the Register of Voters are incorrect or have changed;

*(b)* add the name and other particulars of a voter resulting from a new registration, as prescribed; or

*(c)* delete the name of a voter who is deceased.

(2) A registration officer shall record, in the Register of Voters, a change in a polling district for which a person is registered as a voter if that person's place of ordinary residence after a change in the boundaries of the polling district falls in another polling district.

Objections concerning details in Provisional Register of Voters

**17.** (1) A person whose name appears in the Provisional Register of Voters may object to an error or omission regarding the person's details, in the prescribed manner, within ninety days' of the publication of the Provisional Register of Voters.

(2) A person may object to an error or omission to the exclusion or regarding the registration details of another person.

(3) A person who objects to another person's registration details shall serve notice of the objection on that person.

(4) The Commission shall consider an objection to the Provisional Register of Voters within fourteen days from the date the objection was made and shall notify the person who made the objection and the registration officer.

(5) A registration officer shall give effect to a decision of the Commission, made under this section, within three days of the decision.

Publication of Register of Voters

**18.** (1) A copy of the Register of Voters, as it exists at any time, shall be available for inspection during office hours at the Commission's head office.

(2) A person who requires a copy or extract of the Register of Voters may, upon payment of a prescribed fee, obtain the copy or extract which shall be certified by the Chief Electoral Officer.

(3) A document purporting to be a copy or extract of the Register of Voters, which is duly certified by the Chief Electoral Officer, shall be received in evidence in any legal proceedings as to the matters stated in the Register of Voters.

Inspection of Register of Voters before election

**19.** (1) The Register of Voters or the segments of the Register of Voters that shall be used for an election shall be the register certified for the purposes of that election.

(2) The Chief Electoral Officer shall certify the Register of Voters, or segments of the Register of Voters, and publish the Register of Voters or the segments of the Register of Voters and make the Register of Voters or the segments of the Register of Voters available for inspection at the following venues:

*(a)* at the Commission's head office;

*(b)* at the polling station in each polling district; and

*(c)* at the office of each council.

Cut-off dates for registration of voters and Register of Voters

**20.** (1) The Commission may prescribe cut-off dates with respect to the registration of voters and the compilation of the Register of Voters, including the date by which—

*(a)* a person may apply to be registered as a voter or change the person's registration details;

*(b)* a registration officer shall give notice of the venue and dates on which the Provisional Register of Voters may be inspected;

*(c)* the Commission shall consider an objection made under section *seventeen* and notify the objector and the registration officer and a person other than the objector whose name or registration details are involved; and

*(d)* a registration officer shall complete the compilation of the Register of Voters and publish it.

## PART III

### Polling Districts and Boundaries

Establishment of polling districts

**21.** (1) The Commission shall—

*(a)* establish polling districts for the whole of the territory of the Republic;

*(b)* determine the boundaries of each polling district in accordance with the criteria provided in section *twenty-two*; and

*(c)* keep a map of each district.

(2) The polling districts for an election shall be those polling districts which, on the date on which an election is called, are within the area in which the election is called.

Criteria for determining polling district boundaries

**22.** The Commission shall determine the boundaries of a polling district by taking into account any factor within the proposed polling districts that could affect the free, fair and orderly conduct of elections, including—

*(a)* the availability of a suitable venue for a polling station;

*(b)* the number and distribution of eligible voters;

*(c)* the accessibility of a polling station to voters given—

(i) the radius of the proposed polling district;

(ii) the availability of transport;

(iii) telecommunications facilities; and

(iv) any geographical or physical feature that may impede access to the polling station;

*(d)* district and provincial boundaries; and

*(e)* cultural diversity.

Inspection and copies of maps of polling district

**23.** (1) As soon as practicable after the polling districts have been established, the Chief Electoral Officer shall give notice that copies of the map of each polling district are available for inspection.

(2) The notice referred to in subsection (1) shall be published in the *Gazette* and publicised in the media so as to ensure wide publicity of the maps.

(3) The notice shall state, and the Chief Electoral Officer shall ensure, that copies of—

*(a)* the maps are available for inspection at the Commission's head office; and

*(b)* the maps of the polling districts are available for inspection at the office of the person administering the district.

(4) A person may inspect a copy of a map provided for in subsection (1).

(5) The Chief Electoral Officer shall provide a certified copy of a map of a polling district to any person who pays the prescribed fee for that purpose.

Establishment of polling station

**24.** (1) The Commission shall establish a polling station for an election, in each polling district, as the Commission may prescribe.

(2) The Commission shall, when determining the location of a polling station, take into account any factor that could affect the free, fair and orderly conduct of elections, including—

*(a)* the number and distribution of eligible voters in the polling districts;

*(b)* the availability of suitable venues for polling stations;

*(c)* the distance to be travelled to reach the polling station;

*(d)* access routes to the polling station;

(e) the availability of transport to the polling station;

*(f)* traffic density at or near the polling station;

*(g)* telecommunications facilities at the polling station;

*(h)* general facilities at the polling station;

*(i)* the safety and convenience of voters;

*(j)* any geographical or physical feature that may impede access to or at the polling station; and

*(k)* the accessibility of the polling station.

(3) The Commission may, before determining the location of a polling station, consult on the proposed location of that polling station with the council for the area in which that polling station shall fall.

(4) The Chief Electoral Officer shall, not later than the date stated in the election timetable, publicise a list containing the addresses of the established polling stations available for inspection.

(5) Section *twenty-three* shall apply, with the necessary modifications, to the inspection and obtaining of copies of the established polling stations.

Division of area of councils into wards

**25.** (1) The Commission shall, after consultation with every council, by statutory order, divide the area of each council into wards, defining the boundaries of the wards by reference to polling districts, and assigning names to the wards and polling districts.

(2) The number of wards into which the area of a council is divided shall be equal to the number of elected councillors prescribed in respect of that council by the Minister under the Local Government Act.

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(3) The Commission shall exercise its powers under this section so that each ward comprises one or more complete polling districts.

(4) Whenever the Minister alters the area of a council or the number of councillors of a council, the Commission shall, after consultation with such council, by statutory order, make such alterations to the boundaries of the wards of such council or to the division of the area of such council into wards as may be necessary to give effect to the provisions of this section.

(5) Whenever the Commission is satisfied that there has been a material alteration in the number of registered voters in the area of a council or of any of the wards into which such area is divided, the Commission may, after consultation with the council concerned, exercise in respect of the area of that council or any part of the council the powers conferred by this section.

Election in newly created Council

**26.** (1) The Commission may, by statutory order, whenever—

*(a)* a new council is established; or

*(b)* an alteration is made in the division of the area of an existing council into wards or in the definition of the boundaries of any ward;

direct that an ordinary election of councillors in every ward or in any particular ward of that council shall be held on such date as may be appointed by the statutory order.

(2) A statutory order made under this section shall specify the day or days on which, and the hours within which, returning officers may receive nominations of candidates for election in any ward to which such order relates.

Relocation of polling station in emergencies

**27.** (1) Despite section *twenty*, the Commission may relocate a polling station if it is necessary to do so for the conduct of a free and fair election.

(2) The Chief Electoral Officer shall publicise the relocation of a polling station among voters in the polling district concerned.

## PART IV

### Nominations for Elections

Election timetable

**28.** (1) Subject to the Constitution, the Commission shall, before the polling day—

*(a)* compile an election timetable for each election to provide for the following:

(i) the closing date of the registration of voters;

(ii) the dates for inspection of the Provisional Register of Voters;

(iii) the date and method for the submission of nominations;

(iv) the date and method for the acceptance of nominations;

(v) the opening and closing dates of the campaign period;

(vi) the date of the election and voting hours for the election;

(vii) any cut-off time for any act to be performed; and

(viii) any other relevant information; and

*(b)* publish the election timetable in the *Gazette*.

(2) The Commission may amend the election timetable by notice in the *Gazette* if—

*(a)* it considers it necessary for a free and fair election; or

*(b)* the polling day is postponed under section *fifty-six*.

(3) The campaign period shall commence and close on such date as the Commission may determine.

Electoral campaign

**29.** (1) A public officer and public entity shall give equal treatment to candidates.

(2) A candidate and political party has the right to have the content of the candidate's or political party's campaign message reported in public media in a fair and balanced manner.

(3) A candidate or political party may, during an electoral campaign, publish or distribute campaign materials of such a nature and in such a manner as may be prescribed by the Commission.

(4) For the purposes of this section "campaign messages" means an activity, statement or any other form of expression aimed at promoting particular political ideas, policies and strategies for purposes of obtaining votes for a candidate or political party contesting an election.

Nomination of Presidential and Vice-Presidential candidates

**30.** (1) A candidate for election as President or Vice-President shall deliver to the Returning Officer—

*(a)* the candidate's nomination paper;

*(b)* the prescribed election fee, except that a candidate for election as a Vice-President shall not pay the prescribed fee;

*(c)* the prescribed statutory declaration of the candidate's assets and liabilities; and

*(d)* an affidavit attesting that the person is qualified for election as President or Vice-President, as the case may be.

(2) A person who swears or affirms falsely under this section commits an offence and is liable, upon conviction, to imprisonment for a term of seven years without the option of a fine.

(3) A candidate delivering a nomination paper, referred to in subsection (1), to the Returning Officer shall be supported by one hundred supporters from each Province who are registered voters in that Province.

Nomination for election in constituency

**31.** (1) A person who applies to be a candidate for election in any, constituency shall lodge with the returning officer for that constituency that person's nomination paper and an affidavit in the prescribed manner and form.

(2) A nomination submitted under subsection (1) may be withdrawn at any time, before the expiry of the period appointed for lodging nomination papers in respect of the constituency concerned, if the candidate delivers to the returning officer a written notice to that effect.

Conduct of local government elections

**32.** Subject to the other provisions of this Act, the Commission shall conduct local government elections.

Nomination of candidates in district or ward

**33.** (1) Subject to subsection (2), a candidate for election in a district or ward of a council shall be nominated by means of a nomination paper in such form as may be prescribed and such nomination paper shall be subscribed, in the presence of the returning officer for that council, by a proposer and a seconder and not less than seven other persons, each of whom shall be a voter registered in a polling district in such ward.

(2) A person appearing before a returning officer for the purpose of subscribing a nomination paper under subsection (1) shall produce a voter's card and a national registration card to the returning officer for inspection as proof of identity.

(3) A person qualifies to be a mayor or council chairperson if that person—

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*(a)* possesses the same qualifications as those specified for a Member of Parliament in Article 70 of the Constitution;

*(b)* is not a Member of Parliament; and

*(c)* has a certificate of clearance showing the payment of council taxes, where applicable.

Restriction on nomination papers

**34.** (1) In an election, a person shall lodge nomination papers in only one constituency, district or ward.

(2) Where, upon the expiry of the period for lodging nomination papers in any constituency, district or ward a person is found to have lodged, and not withdrawn, nomination papers in more than one constituency, district or ward then every one of those nominations shall be invalid.

Appointment of election agents and polling agents

**35.** (1) A candidate may appoint—

*(a)* two polling agents for each polling station; and

*(b)* two election agents for each venue where counting of the votes will take place.

(2) An election or polling agent—

*(a)* shall be a Zambian citizen or resident permit holder; and

*(b)* shall not be a candidate in an election.

(3) The appointment and revocation of appointment of a person as an election or polling agent shall be effected in the prescribed manner.

Powers and duties of election or polling agents

**36.** (1) An election or polling agent may observe the proceedings during—

*(a)* voting;

*(b)* the counting of votes; and

*(c)* the announcement and declaration of the result of an election.

(2) The absence of an election or polling agent from a gazetted or prescribed place where an electoral proceeding is being conducted shall not invalidate those proceedings.

(3) An election or polling agent shall, while at a polling station or venue where the proceedings are taking place—

*(a)* wear the prescribed identification indicating—

(i) that the person is an election or polling agent; and

(ii) the candidate represented by that election or polling agent; and

*(b)* comply with any lawful order issued by—

(i) an election officer; or

(ii) a police officer acting on the instructions of an election officer.

## PART V
## Election Officers

Appointment of presiding officer

**37.** The Commission shall, after prescribing a date for an election, appoint a presiding officer for each polling station at which the election is conducted.

Powers and duties of presiding officer

**38.** (I) A presiding officer shall coordinate and supervise the voting at a polling station so as to ensure that the election at the polling station is free and fair.

(2) A presiding officer—

*(a)* shall exercise the powers and perform the duties assigned to a presiding officer by or under this Act;

*(b)* shall ensure orderly conduct at a polling station; and

*(c)* may order a police officer to assist in ensuring orderly conduct at that polling station and the police officer shall comply with the order.

(3) A presiding officer for a polling station or venue for the counting of votes shall coordinate and supervise the counting of votes and announcement of the result of the election at the polling station or venue.

(4) A presiding officer shall exclude from the area within the boundary of a polling station any person other than—

*(a)* a member, employee or officer of the Commission;

*(b)* an election or polling agent who is entitled under this Act to be present at a polling station;

*(c)* a candidate in that election;

*(d)* an accredited observer or monitor;

(e) a voter present for the purpose of casting a vote; and

*(f)* a person or category of persons authorised by the Commission to be present at the polling station.

(5) Despite subsection (4), a presiding officer may order a person referred to in paragraphs *(b)* to *(f)* of subsection (4), to leave the area within the boundary of the polling station if that person's conduct is not conducive to a free and fair election at that polling station and shall give that person the reasons for making the order.

(6) If a person refuses to comply with an order under subsection (5), a presiding officer may direct a police officer to forcibly remove that person, and the police officer shall comply with that order.

Appointment of polling assistant

**39.** The Commission shall appoint for each polling station as many polling assistants as it considers necessary to conduct an election.

Powers and duties of polling assistant

**40.** A polling assistant shall—

*(a)* assist the presiding officer in the exercise of the presiding officer's powers and the performance of the presiding officer's duties; and

*(b)* exercise the powers and perform the duties assigned to a polling assistant by or under this Act.

Appointment of additional persons as election officers

**41.** (1) The Commission may appoint as many additional persons as election officers as may be necessary to enable the Commission to exercise its powers and perform its duties effectively during an election.

(2) A person appointed by the Commission under this section shall exercise any power and perform any duty assigned to an election officer by or under this Act.

(3) An appeal shall not be brought against a decision by the Commission to appoint a person as an election officer or to dismiss an election officer.

(4) Despite subsection (3), a person may object to the appointment of an election officer under this section if the person appointed is disqualified under section 42 (3).

General provisions concerning appointment of election officer

**42.** (1) The Commission shall determine, in writing, the terms and conditions of appointment of an election officer.

(2) The assignment of a power or duty to an election officer shall not prevent the Chief Electoral Officer from exercising that power or performing that duty.

(3) A person shall not be appointed as an election officer or remain in that office if that person—

*(a)* is a candidate contesting an election;

*(b)* is an election or polling agent in an election;

*(c)* holds political office in a registered party or is affiliated to a political party; or

*(d)* was convicted of an offence or reported of any corrupt practice or illegal practice, under this Act, within a period of five years preceding an election.

(4) A person shall not be appointed as an election officer unless that person signs a prescribed undertaking which shall include an undertaking to be bound by—

*(a)* the Code; and

*(b)* a declaration of secrecy.

(5) An election officer shall exercise the powers and perform the duties assigned to that election officer subject to the direction, control and discipline of the Commission.

(6) An election officer shall not place in jeopardy that officer's independence or harm the credibility, impartiality, independence or integrity of the Commission by any membership, association, statement or conduct.

(7) An appointment as an election officer does not constitute an employment relationship.

(8) The Commission may dismiss an election officer for—

*(a)* misconduct, incompetence or incapacity;

*(b)* absence from duty without leave of the Chief Electoral Officer;

*(c)* a material contravention of this section;

*(e)* a material contravention of the declaration of secrecy; or

*(f)* any other consideration related to a free and fair election.

Immunity of election officer

**43.** An election officer shall not be liable for any loss suffered by a person as a result of an act performed or omitted in good faith in the exercise of a power or the performance of a duty under this Act.

## PART VI
### VOTING

Qualifications for voting

**44.** A voter is entitled to vote at an election held in a district, constituency or ward.

Identification of voter

**45.** A voter shall produce identification documents to a presiding officer as may be prescribed.

One vote and secrecy

**46.** (1) A voter shall not be entitled to vote more than once in the same election.

(2) A poll shall be taken by means of a secret ballot in accordance with the Constitution, this Act and as may be prescribed.

Dis-qualification from voting

**47.** A person shall not be entitled to vote at an election if, at the date of the election, that person is in lawful custody or the person's freedom of movement is restricted under any written law.

Special vote

**48.** (1) The Commission may allow a person to apply for a special vote if that person cannot vote at a polling station in the polling district in which the person is registered as a voter due to that person's—

*(a)* physical infirmity or disability;

*(b)* pregnancy;

*(c)* absence from that polling district while serving as an election officer in the election concerned; or

*(d)* while on duty as a member of the security services in connection with the election.

(2) The Commission shall prescribe the procedure and conditions under which a voter who is unable to vote in the polling district in which that voter is registered may apply for a special vote.

Election officers at polling stations

**49.** On polling day each polling station shall be staffed by the—

*(a)* presiding officer appointed for that polling station;

*(b)* polling assistants appointed for that polling station; and

*(c)* other officers appointed by the Commission.

Hours of voting

**50.** (1) The Commission shall prescribe the voting hours for an election.

(2) The Commission may, where it is necessary to do so, prescribe different voting hours for different polling stations.

(3) The Commission shall publish the prescribed voting hours in the media.

(4) A polling station shall—

*(a)* open for voting at the prescribed time; and

*(b)* subject to subsection (7)*(b)*, remain open for voting until the prescribed time or such later time as the Commission may determine under subsection (7)*(a)*.

(5) A person shall not be admitted to a polling station for the purpose of voting after the polling station has closed for voting.

(6) Voting at a polling station shall continue until every voter who had reported at a polling station to vote at the time prescribed for voting hours has voted.

(7) The Commission—

*(a)* may extend voting hours at a polling station after the voting day or prescribed time; and

*(b)* may temporarily close a polling station for part of a polling day if it is temporarily impossible to conduct an election at that voting station.

Ballot paper

**51.** Subject to the other provisions of this Act and section *fifty-two*, the Commission shall prescribe the form and design of a ballot paper and the manner in which ballot papers issued shall be accounted for.

Design of ballot paper

**52.** (1) Despite section *fifty-one*, a ballot paper shall be designed in a way that prevents fraudulent voting.

(2) A ballot paper shall include—

*(a)* a portrait of the candidate nominated for elections to the office of President, Member of Parliament, mayor, council chairperson and councillor; and

*(b)* the symbol of a political party registered with the Commission under which a candidate shall stand for elections and where the candidate is an independent candidate, the symbol the Commission shall allocate to the independent candidate.

(3) A ballot paper shall be colour coded so as to differentiate the ballot paper for use in a presidential, parliamentary or local government elections.

Ballot boxes

**53.** (1) The Commission shall use in an election transparent ballot boxes capable of being securely closed.

(2) The Commission shall prescribe the manner in which ballot boxes shall be—

*(a)* numbered and labelled; and

*(b)* closed, secured, opened, sealed and unsealed.

Voting compartments

**54.** (1) Subject to subsection (2), the Commission shall prescribe the design and material of voting compartments to be used in an election.

(2) A voting compartment shall, while screening a voter from observation by other persons when marking a ballot paper, be designed and placed in such a manner as to ensure that a clear view of the voters' back can be observed from the outside.

Conduct of general election Cap. 1

**55.** A general election shall be held in accordance with the Constitution, this Act and as may be prescribed.

Postponement of voting at polling station

**56.** (1) If it is not possible to conduct a free and fair election at a polling station on a prescribed polling day, the Commission may, at any time before voting at the polling station has commenced, postpone voting at that polling station.

(2) A postponement under subsection (1) shall be—

*(a)* effected in the prescribed manner;

*(b)* to a day that would fall within the period referred to in section *twenty-eight;* and

*(c)* publicised in the media so as to ensure wide publicity of the postponement of the polling day at the polling station.

Postponement of by-election

**57.** The Commission may postpone the polling day of a by-election if it is satisfied that—

*(a)* the postponement is necessary for ensuring a free and fair election; and

*(b)* the polling day for the election shall fall within the period required by the Constitution.

Cap. 1

Voting materials

**58.** (1) The Commission shall supply, before voting opens at a polling station, the voting materials necessary for the election at that station including—

*(a)* ballot papers;

*(b)* ballot boxes;

*(c)* voting compartments;

*(d)* a certified register of voters for the polling district concerned; and

*(e)* a document to be signed by the presiding officer detailing the voting materials entrusted to that presiding officer.

(2) A presiding officer shall be responsible for the safe-keeping of all the voting materials supplied to that presiding officer.

Initial procedures

**59.** A presiding officer shall, immediately before opening a polling station for voting—

*(a)* show all accredited observers, monitors, election and polling agents present, that each ballot box to be used at that polling station is empty; and

*(b)* in the presence of the accredited observers, monitors, election and polling agents, close, seal and secure the ballot boxes in the prescribed manner.

Voting procedure

**60.** (1) Subject to section *forty-eight*, a voter shall only vote at the polling station in the polling district for which that voter is registered.

(2) A voter is entitled to vote at a polling station—

*(a)* on production of that voter's national registration card and voter's card to the presiding officer or election officer at the polling station; and

*(b)* if that voter's details are in the certified segment of the Register of Voters for the polling district concerned.

(3) When a voter produces a national registration card to the presiding officer or election officer as required by subsection (2), the presiding officer or election officer shall examine the identity document and determine whether—

*(a)* the voter is the person described in that national registration card;

*(b)* the voter's details are in the certified segment of the Register of Voters for the polling district concerned; and

*(c)* the voter has not already voted in the election.

(4) For the purposes of subsection (3) (c), the presiding officer or election officer shall examine the voter's hands to ensure that the voter does not possess the mark indicating that the voter has already voted.

(5) If the presiding officer or election officer is satisfied in respect of all the matters referred to in subsection (3), the presiding officer shall—

*(a)* record that the voter is treated as having voted in the election;

*(b)* mark the hand of the voter in the prescribed manner;

*(c)* mark the back of a ballot paper for that election; and

*(d)* hand the ballot paper to the voter.

(6) A voter shall, once the voter has received a ballot paper marked under subsection (5)(c) —

*(a)* enter an empty voting compartment;

*(b)* mark the ballot paper in a way that indicates the candidate the voter wishes to vote for;

*(c)* fold the ballot paper to conceal the voter's vote;

*(d)* cast the ballot paper in the ballot box; and

*(f)* without delay leave the voting station.

Assistance to voters with disabilities

**61.** (1) A person may assist a voter to vote where—

*(a)* the voter requires assistance due to a physical disability;

*(b)* the voter has requested to be assisted by that person; and

*(c)* the presiding officer is satisfied that the person assisting the voter has attained the age of eighteen years.

(2) In the absence of a person referred to in subsection (1), the presiding officer or another election officer, at the request of a voter who is unable to read, shall assist that voter to vote.

(3) Subject to subsection (2), the presiding officer or election officer shall assist voters in the presence of—

*(a)* a person appointed by the presiding officer or an accredited observer or monitor, if available; or

*(b)* two election agents of different candidates, if available.

(4) A presiding officer shall record in a copy of the Register of Voters, by means of a mark placed next to the name of the voter concerned, that the presiding officer or another person has assisted the voter as provided under this section and give the reasons for doing so.

(5) A person assisting another person under subsection (2) shall maintain the secrecy of the vote cast by the person being assisted.

Issuance of new ballot paper

**62.** (1) If a voter accidentally marks a ballot paper in a way that does not indicate for whom the voter wishes to vote and the ballot has not yet been placed in the ballot box—

*(a)* the voter may return that ballot paper to the presiding officer or a polling assistant;

*(b)* the presiding officer or polling assistant shall deal with the ballot paper in accordance with subsection (2), and shall give the voter a new ballot paper in accordance with this section; and

*(c)* the voter may vote in accordance with section *sixty*.

(2) Upon receiving a ballot paper from a voter under subsection (1), the presiding officer or a polling assistant shall mark "cancelled" on the back of the ballot paper and file it separately to be dealt with in accordance with section *sixty-three.*

Spoilt ballot papers

**63.** Where a voter inadvertently deals with a ballot paper in such manner that it cannot be used as a valid ballot paper, the voter shall deliver that ballot paper to the presiding officer and, if the presiding officer is satisfied that the ballot paper has been spoilt inadvertently, the presiding officer shall issue another ballot paper to the voter, and shall cancel the spoilt ballot paper and the counterfoil to which it relates.

Objections concerning voting

**64.** (1) A person may, at any time before a voter is handed a ballot paper, object to that voter being entitled to vote or to vote at the polling station concerned.

(2) A person may object to a voter's vote where the voter—

*(a)* has already voted;

*(b)* is not the owner of the voter's card;

*(c)* is not registered at the polling station;

*(d)* is not a citizen; or

*(e)* is disqualified from voting.

(3) An election agent or a voter may object to any conduct of an election officer or any other person present at a polling station.

(4) An objection under this section shall be made to the presiding officer in the prescribed manner.

(5) A presiding officer shall make a decision on the objection and notify the objector and any other parties involved in the objection of the presiding officer's decision in the prescribed manner.

(6) An appeal against the decision of a presiding officer may be made to a returning officer in the prescribed manner.

(7) A presiding officer or returning officer shall keep a written record of each objection and decision made under this section in the prescribed manner .

Sealing of full ballot boxes

**65.** (1) As soon as a ballot box is full, a presiding officer, in the presence of an accredited observer, monitor or polling agent, shall seal the ballot box and allow the agents to affix their seals to the ballot box.

(2) Immediately after the last vote has been cast, every remaining used ballot box shall be similarly dealt with.

(3) A sealed ballot box shall remain—

*(a)* sealed until opened for the counting of votes; and

*(b)* in the polling station until the commencement of the counting of the votes.

Completion of ballot paper account form and sealing of voting materials

**66.** (1) A presiding officer shall, at the close of a polling station, in the presence of an accredited observer, monitor or election agent

*(a)* complete a ballot paper account form reflecting the number of—

(i) ballot boxes entrusted to that presiding officer;

(ii) used ballot boxes;

(iii) unused ballot boxes;

(iv) ballot papers entrusted to that presiding officer;

(v) issued ballot papers;

(vi) unissued ballot papers; and

(vii) cancelled ballot papers;

*(b)* seal each unused ballot box entrusted to that presiding officer; and

*(c)* seal in separate ballot boxes

(i) the certified segment of the Register of Voters for that polling district;

(ii) the unused ballot papers entrusted to that presiding officer;

(iii) the spoilt ballot papers; and

(iv) the written record of any objections concerning voting.

Place and time of counting of votes

**67.** (1) Votes shall be counted at the polling station at which those votes were cast.

(2) A presiding officer shall ensure that the procedures set out in this Part relating to the counting of votes commences immediately after the polling station is closed for voting and continue the counting of votes until completion.

(3) The procedures provided for in this Part relating to the counting of votes may be suspended only with the approval of the Commission and, if they are suspended, the presiding officer shall ensure the safekeeping of all the voting materials entrusted to the presiding officer until the counting of votes has been completed.

Counting of votes and announcement of provisional results

**68.** (1) A presiding officer shall open the ballot boxes and—

*(a)* cause the ballot papers to be sorted on the basis of the ballot papers for each election, if more than one election was held at a polling station on the same day;

*(b)* cause the ballot papers for each election to be sorted and compare them with the number of ballot papers issued in the prescribed manner;

*(c)* cause the votes cast in each election to be counted in the prescribed manner; and

*(d)* announce and publish the result of each count at that polling station in both figures and words in the prescribed manner.

(2) A presiding officer shall reject a ballot paper—

*(a)* that indicates the identity of the voter;

*(b)* on which a vote is cast for more than one candidate;

*(c)* that is unmarked;

*(d)* that is marked in such a way that it is not reasonably possible to determine the voter's choice;

*(e)* that does not bear the official mark required in terms of section *sixty* (5) (c); or

*(f)* that is not an official ballot paper.

(3) The presiding officer shall mark A for rejection on the back of each rejected ballot paper and file the rejected ballot paper separately.

Objections concerning sorting of ballot papers

**69.** (1) An election or polling agent may object to any alleged irregularity in the sorting of the ballot papers.

(2) An objection under subsection (1) shall be made to a presiding officer, in the prescribed form, at any stage before the presiding officer has commenced the count.

(3) Section *sixty-four*, with the necessary modifications, applies to an objection under this section.

Objections concerning counting of votes and announcement of provisional result

**70.** (1) An election or polling agent may object to an alleged inaccuracy in the counting of the votes or the announcement of a result under section *seventy-one*.

(2) An objection under subsection (1) shall be made to a presiding officer, in the prescribed form, at any stage before the presiding officer has announced the result.

(3) A presiding officer shall determine the objection and decide whether to order a recount.

(4) A presiding officer shall notify the objector and any other party involved in the objection, of the decision made under subsection (3).

(5) If a presiding officer orders a recount, the presiding officer shall announce the result afresh.

(6) An appeal against the decision of a presiding officer may be made to the returning officer in the prescribed form.

(7) A presiding officer shall keep a written record, in the prescribed form, of each objection under subsection (1) and each decision under this section.

Procedure concerning provisional results and voting materials

**71.** (1) After announcing the result at a polling station, a presiding officer shall complete a form, as may be prescribed, reflecting—

*(a)* the number of ballot papers supplied to the polling station;

*(b)* the result at the polling station;

*(c)* the number of rejected ballot papers;

*(d)* the number of spoilt ballot papers; and

*(e)* the number of unused ballot papers.

(2) When a presiding officer has complied with subsection (1), the presiding officer shall publicly announce the result of the count at the polling station to members of the public, the accredited observers, monitors, election and polling agents present at the polling station.

(3) When the presiding officer has complied with subsection (2), the presiding officer shall inform the returning officer of the result of that count at the polling station.

(4) When the presiding officer has complied with subsection (3), the presiding officer shall—

*(a)* seal in separate ballot boxes each of the items mentioned in subsection (1) and the written record of any objections; and

*(b)* deliver the form, completed in terms of subsection (1), and the sealed ballot boxes to the returning officer.

Announcement and declaration of results by returning officer

**72.** (1) Upon receipt of the items mentioned in section *seventy-one*, a returning officer shall tally the results of the votes received from the polling station in the constituency, district and ward and shall—

*(a)* announce the results of the votes for the presidential and mayoral or council chairperson elections; and

*(b)* declare the results for the National Assembly and Ward election.

(2) The returning officer shall submit the results referred to in subsection (1) (a) and (b) to the Commission.

Announcement and declaration of results in Presidential election

**73.** (1) The Returning Officer shall tally, announce and declare the result of a presidential election as soon as they are received.

(2) The Returning Officer shall announce and declare the result of a presidential election without having received the results of all polling stations if—

*(a)* to wait for the receipt of the result from every polling station would unduly and unreasonably delay the determination and declaration of the result of that election; and

*(b)* the outstanding results are not likely to materially influence the overall result of that election.

Electronic transmission of results

**74.** The Commission may use electronic means to transmit results from polling stations.

Revoting at polling station

**75.** (1) If ballot papers used in an election at a polling station are lost, destroyed or unlawfully removed before the votes cast at the polling station have been counted and announced, the Commission shall allow a revote at that polling station.

(2) A revote at a polling station shall be—

*(a)* conducted on a date that would fall within the period referred to in section *twenty-eight;*

*(b)* publicised in the media so as to ensure wide publicity of the date determined for the revote; and

*(c)* conducted in accordance with a procedure prescribed by the Commission.

Correction of mistakes

**76.** The Commission may correct a mistake committed by an electoral officer in the tabulation of results within seven days after the declaration of the results.

## PART VII

### OBSERVERS, MONITORS AND VOTER EDUCATION

Accreditation of observers and monitors

**77.** (1) A juristic person may apply to the Commission, in the prescribed manner, for accreditation to observe or monitor an election.

(2) The Commission may require any information it may consider necessary in support of an application under subsection (1).

(3) The Commission shall, where it decides to to accredit an applicant—

*(a)* issue the applicant with a certificate of accreditation in the applicant's name, stating the period and other conditions of accreditation; and

*(b)* enter the applicant's name in the register of persons accredited as observers and monitors.

(4) The Commission may accredit an applicant, without the payment of a fee, to observe or monitor an election after considering the application and any other information provided by the applicant, and whether—

*(a)* the accreditation of the applicant shall promote conditions conducive to a free and fair election; and

*(b)* the persons appointed by the applicant shall—

(i) observe the election impartially and independently of any registered party or candidate contesting that election;

(ii) be competent and professional in observing the election; and

(iii) subscribe to a code governing observers and monitors issued by the Commission under this Act.

(5) The Commission shall, where it decides not to accredit the applicant, inform the applicant accordingly, in writing, and give the reasons for its decision.

(6) If a person accredited as an observer or monitor fails to comply, to a material extent, with the conditions of the accreditation, the Commission may cancel that accreditation and, in writing, notify the person concerned of the cancellation and state the reasons for such cancellation.

(7) Any person may inspect the register and copies of the certificates of persons accredited as observers and monitors.

(8) The register and copies of the certificate shall be kept at the Commission's head office.

(9) The Chief Elections Officer shall provide a certified copy of, or extract from, the register or a certificate to any person upon payment of the prescribed fee.

(10) A person representing an accredited observer or monitor shall abide by the Code.

(11) A person representing an accredited observer or monitor who is found guilty of violating any election law shall be disqualified from observing or monitoring an election.

(12) A register of juristic persons and institutions accredited as observers or monitors and copies of the certificates of the observers and monitors shall be kept at the Commission's head office.

(13) In this section "juristic person" includes an institution and organisation registered under the Non-Governmental Organisations Act, 2009.

Act No. 16 of 2009

Powers and duties of accredited observers and monitors

**78.** (1) An accredited observer or monitor may, in relation to an election for which that observer or monitor is accredited, observe the proceedings concerning voting, the counting of votes and the announcement and declaration of the election results.

(2) Whilst observing an election, a person appointed by an accredited observer or monitor shall wear the prescribed identification indicating that the person is representing an accredited observer or monitor.

(3) A person appointed by an accredited observer or monitor shall comply with any order issued by an election officer or a police officer acting on the instructions of an election officer.

Provision of voter education generally

**79.** (1) Any natural or juristic person may provide voter education for an election.

(2) Any natural or juristic person providing voter education shall do so in a manner that—

*(a)* is impartial and independent of any registered party or candidate contesting an election; and

*(b)* shall promote conditions conducive to free and fair elections.

Voter education

**80.** Despite section *eight*, the Commission shall provide voter education for an election.

## PART VIII
### Elections Offences

Bribery

**81.** (1) A person shall not, either directly or indirectly, by oneself or with any other person corruptly—

*(a)* give, lend, procure, offer, promise or agree to give, lend, procure or offer, any money to a voter or to any other person on behalf of a voter or for the benefit of a voter in order to induce that voter to vote or refrain from voting or corruptly do any such act as aforesaid on account of such voter having voted or refrained from voting at any election;

*(b)* give, lend or procure, offer, promise or agree to give, lend, procure, offer or promise, any money to a voter or for the benefit of a voter or to any other person or on behalf of that person on behalf of any voter or to or for any other person for acting or joining in any procession or demonstration before, during or after any election;

*(c)* make any gift, loan, offer, promise, procurement or agreement to or for the benefit of any person in order to induce the person to procure or to endeavour to procure the return of any candidate at any election or the vote of any voter at any eleection;

*(d)* upon or in consequence of any gift, loan, offer, promise, procurement or agreement, procure or engage, promise or endeavour to procure, the return of any candidate at any election or the vote of any voter at any election;

*(e)* advance or pay or cause to be advanced or paid any money to or for the use of any other person with the intent that such money or any part thereof shall be expended in bribery at any election, or knowingly pay or cause to be paid any money to any person in discharge or repayment of any money wholly or partially expended in bribery at any election;

*(f)* before or during any election, receive or contract for any money or loan for oneself or for any other person for voting or agreeing to vote or for refraining or agreeing to refrain from voting at any election;

*(g)* after any election, receive any money on account of any person having voted or refrained from voting or having induced any other person to vote or refrain from voting at any election; or

*(h)* convey or transfer or be concerned with the conveyance or transfer of any property, or pay or be concerned with the payment of any money, to any person for the purpose of enabling that person to be registered as a voter, thereby to influence that person's vote at any future election, or pay to or be concerned with the payment of any money on account of any voter for the purpose of inducing that person to vote or refrain from voting.

(2) A person who contravenes any provision of subsection (1) commits an offence.

(3) Nothing in this Act shall be construed as applying to any money paid or agreed to be paid for, or on account of, any expenditure *bona fide* and lawfully incurred in respect of the conduct or management of an election.

Impersonation

**82.** (1) A person shall not—

*(a)* at any election, apply for a ballot paper in the name of some other person, living or dead, or of a fictitious person;

*(b)* having voted once at any election, apply again at the same election for a ballot paper;

*(c)* vote at any election knowing that the person is not entitled to vote at that election or induce or procure any person to vote at any election knowing that person is not entitled to vote at that election;

*(d)* apply to be registered as a voter in the name of any other person, whether living, dead or fictitious; or

*(e)* impersonate—

(i) a representative of a registered political party;

(ii) a candidate in an election;

(iii) a member, employee or officer of the Commission; or

(iv) a person appointed by an accredited observer, or monitor.

(2) A person who contravenes any provision of subsection (1) commits an offence.

Undue influence

**83.** (1) A person shall not directly or indirectly, by oneself or through any other person—

*(a)* make use of or threaten to make use of any force, violence or restraint upon any other person;

*(b)* inflict or threaten to inflict by oneself or by any other person, or by any supernatural or non-natural means,or pretended supernatural or non-natural means, any physical, psychological, mental or spiritual injury, damage, harm or loss upon or against any person;

*(c)* do or threaten to do anything to the disadvantage of any person in order to induce or compel any person—

(i) to register or not to register as a voter;

(ii) to vote or not to vote;

(iii) to vote or not to vote for any registered political party or candidate;

(iv) to support or not to support any political registered party or candidate; or

(v) to attend and participate in, or not to attend and participate in, any political meeting, march, demonstration or other political event;

*(d)* interfere with the independence or impartiality of the Commission, any member, employee or officer of the Commission;

*(e)* prejudice any person because of any past, present or anticipated performance of a function under this Act;

*(f)* advantage, or promise to advantage, a person in exchange for that person not performing a function under this Act; or

*(g)* unlawfully prevent the holding of any political meeting, march, demonstration or other political event.

(2) Subject to the other provisions of this Act, a person shall not prevent another person from exercising a right conferred by this Act.

(3) A person, knowing that another person is not entitled to be registered as a voter, shall not—

*(a)* persuade that other person that, that other person is entitled to be registered as a voter; or

*(b)* represent to anyone else that the person is entitled to be registered as a voter.

(4) A person, knowing that another person is not entitled to vote shall not—

*(a)* assist, compel or persuade that other person to vote; or

*(b)* represent to anyone else that the other person is entitled to vote.

(5) A person who contravenes any of the provisions of subsections (1) to (4) commits an offence.

(6) A person who, by abduction, duress or any fraudulent device or contrivance, impedes or prevents the free exercise of the vote of any voter or thereby compels, induces or prevails upon any voter either to give or to refrain from giving the person's vote at any election, commits an offence.

Illegal practice of publishing false statements in respect of candidates

**84.** (1) A person shall not, before or during an election, publish a false statement of the illness, death or withdrawal from election of a candidate at that election for the purpose of promoting or procuring the election of another candidate, knowing that statement to be false or not believing it to be true.

(2) A person who, contravenes subsection (1) commits an illegal practice, unless that person had reasonable grounds for believing, and did believe, the statement to be true.

Illegal practice in respect of nomination of candidates

**85.** (1) A person shall not—

*(a)* forge or fraudulently destroy any written authority of a candidate or nomination paper; or

*(b)* deliver to a returning officer any written authority of a candidate or nomination paper or affidavit knowing the same to be forged.

(2) A person who knowingly makes a false statement relating to that person's nomination in that person's nomination paper or affidavit commits an offence.

Illegal practices in respect of public meetings

**86.** A person shall not, at a lawful public meeting held in connection with the election of any person between the day of the publication of a notice appointing a nomination day and the day on which the result of the election is published, act or incite others to act in a disorderly manner for the purpose of preventing the transaction of the business for which the meeting is called.

Illegal practices relating to the poll

**87.** (1) A person shall not—

*(a)* forge, counterfeit or fraudulently deface or fraudulently destroy any ballot paper or the official mark on any ballot paper;

*(b)* without authority supply any ballot paper to any person;

*(c)* without authority put into any ballot box any ballot paper which that person is not authorised by law to put in;

*(d)* sell or offer to sell any ballot paper or voter's card to any person or purchase or offer to purchase any ballot paper or voter's card from any person;

*(e)* not being a person entitled under this Act to be in possession of a ballot paper or voter's card, have any such ballot paper or voter's card in that person's possession;

*(f)* without authority destroy, take, open or otherwise interfere with any ballot box or packet of ballot papers in use or intended to be used for the purpose of an election;

*(g)* without authority print or make any ballot paper or what purports to be or is capable of being used as a ballot paper or any identity document at an election;

*(h)* manufacture, construct, have in that person's possession, supply, or use for the purpose of an election, or cause to be manufactured constructed, supplied or used for the purposes of any election any appliance, device or mechanism by which a ballot paper may be extracted or manipulated after having been deposited in a ballot box in the course of polling at any polling station; or

*(i)* at an election obstruct a voter either at the polling station or on that voter's way thereto or therefrom.

Penalty for illegal practices

**88.** A person who engages in an illegal practice commits an offence and is liable, upon conviction, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a period not exceeding five years, or to both.

Other election offences

**89.** (1) A person shall not—

*(a)* within a period prescribed for the receipt of nominations, under this Act, loiter in any public place within four hundred metres from the entrance to a nomination centre;

*(b)* having been required to leave a nomination office, fail to leave such nomination office or the precincts thereof;

*(c)* put into any ballot box anything other than the ballot paper which that person is authorised by law to put therein;

*(d)* without due authority take out of the polling station any ballot paper or be found in possession of any ballot paper outside a polling station;

*(e)* on any polling day, at the entrance to or within a polling station, or in any public place or in any private place within four hundred metres from the entrance to such polling station

(i) canvass for votes;

(ii) solicit the vote of any person;

(iii) induce any person not to vote; or

(iv) induce any person not to vote for a particular candidate;

*(f)* on any polling day loiter in any public place within four hundred metres from the entrance to any polling station;

*(g)* on any polling day exhibit in any public or private place within one hundred metres from the entrance to any polling station any notice or sign, other than an official notice or sign authorised by an election officer under this Act, relating to the election;

*(h)* not being a presiding officer, an election officer, candidate, an election agent or a polling agent in the course of their functions within a polling station, make any record showing that any particular person has voted in an election;

*(i)* without lawful authority, destroy, mutilate, deface or remove any notice which is exhibited in accordance with this Act or under any regulations issued under this Act, or any document made available for inspection under this Act and any such regulations;

*(j)* wilfully obstruct or interfere with a returning officer, presiding officer, or election officer in the execution of their duties;

*(k)* make a false answer to any question put to that person by a presiding officer or an election officer under this Act;

*(l)* have any communication with a voter while such voter is in the precincts of a polling station for the purpose of voting;

*(m)* fail to comply with any requirement or direction to leave a polling station or the precincts thereof; or

*(n)* being a candidate use a symbol in the course of an election other than the symbol registered with the Chief Electoral Officer in accordance with this Act and any regulations thereunder or, in the case of any other person, associate any candidate with, any symbol in the course of an election other than the candidate's registered symbol.

(2) A person who contravenes any of the provisions of 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 period not exceeding two years, or to both.

Property in certain election material

**90.** In a prosecution for an offence in relation to a nomination paper, ballot box or ballot paper, the property in such nomination paper, ballot box, as well as the property in the counterfoil of any ballot paper, shall be vested in the Commission at that election.

Secrecy and penalty for breach of secrecy

**91.** (1) A person in attendance at a polling station shall maintain, and aid in maintaining, the secrecy of the voting at such station and shall not communicate, except for some purpose authorised by law, to any person, any information as to the name or number on the Register of Voters of any voter who has or has not applied for a ballot paper or voted at such polling station, or as to the official mark or official seal at such polling station.

(2) A person other than a presiding officer or polling assistant in exercise of the presiding officer or polling assistants' functions under this Act shall not, obtain or attempt to obtain in a polling station information as to the candidate for whom any person in such polling station is about to vote or has voted or communicate at any time, to any person, any information obtained in a polling station as to the candidate for whom any person in such polling station is about to vote or has voted, or as to the number on the ballot paper issued to any person at such polling station.

(3) A person in attendance at the counting of the votes shall maintain, and aid in maintaining, the secrecy of the voting and shall not ascertain at the counting the number on any ballot paper or communicate any information obtained at the counting as to the manner in which any vote is given by any particular ballot paper.

(4) A person who contravenes any of the provisions of this section 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.

Offences by election officers

**92.** An election officer who wilfully fails to perform the functions of that office under this Act 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.

Offences by printers and publishers

**93.** (1) A bill, placard, poster, pamphlet, circular or other printed matter having reference to an election shall bear upon the face thereof the name and address of the printer and of the publisher.

(2) A person who prints, publishes or posts, or causes to be printed, published or posted any matter referred to in subsection (1), which does not bear upon the face thereof such name and address of the printer or publisher commits an offence.

(3) The proprietor and publisher of every newspaper shall cause the word advertisement to be printed as a headline to each article or paragraph appearing in that person's newspaper containing electoral matter, the insertion of which is or is to be paid for, and any proprietor or publisher who fails to comply with this provision commits an offence.

(4) For the purposes of this section—

*(a)* any process for producing copies of a document, other than by copying it by hand, shall be deemed to be printing, and the expression "printed" shall be construed accordingly; and

*(b)* "electoral matter" shall be deemed to include all matters which, on the face of them, are intended or calculated to affect the result of an election.

Obstruction of officer

**94.** (1) A person shall not—

*(a)* wilfully delay or obstruct an officer in the carrying out of that officer's duties and powers under this Act; or

*(b)* assault an officer in the lawful exercise of that officers duties and power under this Act.

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

Attempts to commit offence

**95.** A person who attempts to commit an offence under this Part commits an offence and is liable upon conviction to the penalty specified for that offence.

## PART IX
## Election Petitions

Application to members and officers of Parliament

**96.** (1) A question which may arise as to whether—

*(a)* a person has been validly appointed or nominated as a Member of Parliament;

*(b)* the seat of an elected or nominated Member of Parliament, mayor, council chairperson or councillor, has become vacant, other than a question arising from the election of a candidate as a Member of the Parliament; or

*(c)* a petition may be heard and determined by the High Court or tribunal upon application made by—

(i) any person to whom the question relates; or

(ii) the AttorneyGeneral;

may be determined by the High Court or a tribunal, as the case may be.

(2) A person who makes an application to the High Court or a tribunal under subsection (1), has the right to appear and be represented before the High Court or tribunal.

(3) Subject to any rules of court or tribunal, the powers, practice and procedure of the High Court or a tribunal in respect of the trial of an election petition under this Part shall apply, with the necessary modifications, to the hearing and determination of such applications.

Avoidance of elections

**97.** (1) An election of a candidate as a Member of Parliament, mayor, council chairperson or councillor shall not be questioned except by an election petition presented under this Part.

(2) The election of a candidate as a Member of Parliament, mayor, council chairperson or councillor shall be void if, on the trial of an election petition, it is proved to the satisfaction of the High Court or a tribunal, as the case may be, that—

*(a)* a corrupt practice, illegal practice or other misconduct has been committed in connection with the election—

(i) by a candidate; or

(ii) with the knowledge and consent or approval of a candidate or of that candidate's election agent or polling agent; and

the majority of voters in a constituency, district or ward were or may have been prevented from electing the candidate in that constituency, district or ward whom they preferred;

*(b)* subject to the provisions of subsection (4), there has been non-compliance with the provisions of this Act relating to the conduct of elections, and it appears to the High Court or tribunal that the election was not conducted in accordance with the principles laid down in such provision and that such non-compliance affected the result of the election; or

*(c)* the candidate was at the time of the election a person not qualified or a person disqualified for election.

(3) Despite the provisions of subsection (2), where, upon the trial of an election petition, the High Court or a tribunal finds that a 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 or a tribunal further finds that such candidate has proved that—

*(a)* a corrupt practice or illegal practice was not committed by the candidate personally or by that candidate's election agent, or with the knowledge and consent or approval of such candidate or that candidate's election agent;

*(b)* such candidate and that candidate's election agent took all reasonable means to prevent the commission of a corrupt practice or illegal practice at the election; and

*(c)* in all other respects the election was free from any corrupt practice or illegal practice on the part of the candidate or that candidate's election agent;

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

(4) An election shall not be declared void by reason of any act or omission by an election officer in breach of that officer's official duty in connection with an election if it appears to the High Court or a tribunal 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.

Presentation of election petition

**98.** An election petition may be presented to the High Court or a tribunal by one or more of the following persons:

*(a)* a person who lawfully voted or had a right to vote at the election to which the election petition relates;

*(b)* a person claiming to have had a right to be nominated as a candidate or elected at the election to which the election petition relates;

*(c)* a person claiming to have been a candidate at the election to which the election petition relates; and

*(d)* the AttorneyGeneral.

Relief which may be claimed in election petition

**99.** Any of the following reliefs may be claimed in an election petition:

*(a)* a declaration that the election was void; or

*(b)* a declaration that any candidate was duly elected.

Form and procedure for presentation of election petition

**100.** (1) An election petition shall be in such form as the Chief Justice may by rules prescribe.

(2) An election petition shall be presented—

*(a)* in the case of an election of a candidate as a Member of Parliament, to the Principal Registry or District Registry of the High Court by lodging it with the Registrar in accordance with this Act; or

*(b)* in the case of an election of a candidate as a mayor, council chairperson or councillor, to the appropriate tribunal by lodging it with the designated person.

(3) An election petition shall be signed by the petitioner or by all the petitioners, if more than one, and shall be presented not later than fourteen days after the date on which the result of the election to which it relates is duly declared.

(4) Where an election petition is presented under this section—

*(a)* in the case of an election petition presented in respect of an election of a candidate as a Member of Parliament, the Registrar shall, in writing, inform the Speaker of the National Assembly and the Commission of such presentation; and

*(b)* in the case of an election petition presented in respect of the election of a candidate as a mayor, council chairperson or councillor, the designated person shall, in writing, inform the Commission of the presentation.

Duty of Registrar and designated person to make out list of election petition

**101.** (1) Subject to the provisions of subsection (2), the Registrar and the designated person shall make out a list of all election petitions presented under this Act, placing them on such list in the order in which they are presented, and the Registrar or the designated person, as the case may be, shall keep at the Registrars office or the designated person's office a copy of the list which shall be open for inspection by any person making application for inspection thereof.

(2) An election petition shall, unless the High Court or a tribunal orders otherwise, be tried in the order in which it stands on the list made out by the Registrar or designated person under subsection (1), but where more election petitions than one are presented in respect of the same election, the election petitions shall be bracketed together and shall be dealt with as one petition, standing, unless the

High Court or a tribunal orders otherwise, in the list in the place where the last of the election petitions would have stood if it had been the only election petition presented in respect of that election.

Rules of practice and procedure, security for costs etc

**102.** (1) Subject to the other provisions of this Act, the Chief Justice may make rules regulating generally the practice and procedure of the High Court and tribunals with respect to the presentation and trial of election petitions, including rules as to the time within which any requirement of the rules is to be complied with and as to the costs of and incidental to the presentation and trial of the election petitions and as to the fees to be charged in respect of proceedings therein, and generally as regard to any other matter relating thereto as the Chief Justice may consider necessary or desirable.

(2) After the presentation of an election petition, a petitioner to it shall give such security for costs, not exceeding in amount the sum of eight thousand fee units, as the High Court or a tribunal may order, and such security shall be given within the time and in the manner and form as the Chief Justice may prescribe by rules under this section or, in the absence of the rules, as the High Court or a tribunal may order.

(3) Where, after the presentation of an election petition, no security for costs is given as required by or under this section, no further proceedings shall be heard on that election petition.

Withdrawal of election petition

**103.** (1) A petitioner shall not withdraw an election petition without the leave of the High Court or a tribunal.

(2) An application for leave to withdraw an election petition shall not be made until notice of intention to withdraw the election petition has been given in such manner as the Chief Justice may prescribe.

(3) Where an election petition is presented by two or more petitioners, an application to withdraw the election petition shall not be made except with the consent of all the petitioners to it.

(4) The High Court or a tribunal may, upon an application for leave to withdraw an election petition, make such order as to costs as it may consider just.

Substitution of new petitioners

**104.** (1) Upon the hearing of an application under section *one hundred and three* 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, despite the provisions of

section *one hundred*, apply to the High Court or tribunal to be substituted for the petitioner applying to withdraw, and the High Court or a tribunal may, if it grants leave to the petitioner to withdraw, order that person (hereinafter referred to as "the substituted petitioner") to be substituted for the petitioner.

(2) Subject to the other provisions of this section, the substituted petitioner shall, as nearly as may be, stand in the same position, and be subject to the same liabilities, under this Act as the petitioner for whom a substitution was made (hereinafter referred to as "the original petitioner").

(3) Where the High Court or a tribunal makes an order under subsection (1), it may direct that the security for costs given by the original petitioner shall remain as security for any costs caused thereafter by the substituted petitioner upon the trial of the election petition, and may direct that, to the extent of the amount of the security, the original petitioner shall be liable to pay the costs of the substituted petitioner.

(4) Unless the High Court or tribunal gives directions as in subsection (3), section *one hundred and three* (1) and (2) shall apply to the substituted petitioner as they apply in relation to a petitioner presenting an election petition.

Abatement of election petitions

**105.** (1) If a sole petitioner or the survivor of several petitioners dies, then subject to the provisions of this section, no further proceedings shall be heard upon the eleetion petition.

(2) The death of a petitioner shall not affect that petitioner's liability for the payment of costs previously incurred.

(3) On the abatement of an election petition under subsection (1), any person who might have been a petitioner in respect of the election to which that election petition relates may, despite section *one hundred and one* apply to the High Court or tribunal to be substituted as a petitioner in place of the deceased petitioner and the High Court or a tribunal may, if it thinks fit, order that such person be substituted accordingly.

(4) Where the High Court or a tribunal makes an order under this section for the substitution of a person in place of a deceased petitioner such person shall, as nearly as may be, stand in the same position, and be subject to the same liabilities, under this Act as the

deceased petitioner would have been but for the death, and section *one hundred and three* (1) and (2) shall apply to the person as they apply in relation to a petitioner presenting an election petition.

Trial of election petitions

**106.** (1) An election petition shall be tried and determined by the High Court or a tribunal in open court—

*(a)* in the case of the election of a candidate as a Mayor, council chairperson or Councillor, within thirty days from the date of filing an election petition; and

*(b)* in the case of the election of a candidate as a Member of Parliament, within ninety days from the date of filing an election petition.

(2) Where an election petition is not tried and determined within the period specified in subsection (1) due to a failure by the petitioner to actively prosecute the petition, the High Court or a tribunal shall dismiss the petition for want of prosecution.

(3) The High Court or a tribunal may adjourn the trial of an election petition from time to time and from place to place.

(4) Subject to the provisions of this Act, the High Court may in respect of the trial of an election petition, exercise such powers within its civil jurisdiction as it may deem appropriate.

(5) On the trial of an election petition, a verbatim record of all evidence given orally in the trial shall be taken and transcripts of the record shall, at the conclusion of the proceedings, be delivered to the Commission by the Registrar or designated person, as the case may be.

Witnesses

**107.** (1) On the trial of an election petition, the High Court or a tribunal may—

*(a)* order a person who appears to the High Court or a tribunal to have been concerned in the election to attend as a witness at the trial; and

*(b)* examine any witness or any person who is present at the trial although such witness or person is not called as a witness by any party to the proceedings, except that after the examination by the High Court or a tribunal of a witness or person, the witness or person may be cross examined by or on behalf of the petitioner or the respondent.

(2) A person who is called as a witness at the trial of an election petition shall not be excused from answering any question relating to any offence connected with an election on the ground that the answer thereto may tend to incriminate that person, or on the ground of privilege.

(3) Despite subsection (2), a witness who answers to the satisfaction of the High Court or a tribunal every question which is required to be answered under subsection (2), and the answers to which may tend to incriminate that witness, shall not be liable to prosecution for any offence committed by that witness in connection with the election and in respect of which that witness is examined and the witness shall be entitled to receive a certificate of indemnity under the hand of the Registrar or designated person as the case may be, stating that the witness is freed and discharged from liability to prosecution for that offence.

(4) Despite subsection (2), an answer by a witness to a question before the High Court or tribunal under subsection (2) shall not, except in the case of any criminal proceedings for giving false evidence in respect of the evidence, be admissible in any proceedings, civil or criminal, in evidence against that witness.

(5) Where a person has received a certificate of indemnity under subsection (3), and any legal proceedings are at any time brought against that person for any offence to which the certificate relates, the court having conduct of the case shall, on proof of the certificate of indemnity, stay the proceedings and may award to that person such costs as that person may have been put to in the proceedings.

(6) All reasonable expenses incurred by any person in attending at or appearing before the High Court or a tribunal to give evidence as a witness at the trial of an election petition shall be allowed to that person according to the scale of allowances and expenses appropriate in civil proceedings before the High Court.

Conclusion of trial of election petition

**108.** (1) At the conclusion of the trial of an election petition, the High Court or a tribunal 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 or designated person shall, as soon as is practicable, submit a copy of such determination to—

*(a)* in the case of an election petition in the High Court, the Speaker of the National Assembly and the Commission; and

*(b)* in the case of an election petition in a tribunal, the Commission.

(2) Where the High Court or a tribunal determines that the respondent was duly elected, the election shall be and remain valid.

(3) Where the High Court or a tribunal determines that the respondent was not duly elected but that some other person was duly elected, that other person shall be deemed to have been elected accordingly.

(4) Where the High Court or a tribunal determines 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 or a Council in respect of which that election was held shall be deemed to continue until duly filled.

(5) Where a determination under subsection (1) alters the results of an election as previously declared, the Commission shall publish the results as so altered in the *Gazette*.

(6) Where it appears to the High Court or a tribunal upon the trial of an election petition that any corrupt practice or illegal practice has been committed by any person in connection with the election to which the election petition relates, the High Court or tribunal shall, at the conclusion of the proceedings, prepare a report stating

*(a)* the evidence given in the proceedings in respect of the corrupt practice or illegal practice;

*(b)* the names and particulars of any person by whom the corrupt practice or illegal practice was, in the opinion of the High Court or a tribunal, committed;

*(c)* in the event that there is an appeal, the Constitutional Court shall prepare the report, except that the Court shall not state the name of any person under this paragraph unless the person has been given an opportunity of appearing before the Court and of showing cause why that person's name should not be so stated.

(7) The Registrar or designated person shall deliver a copy of every report prepared by the High Court or a tribunal under subsection (6) to—

*(a)* the Commission; and

*(b)* the Director of Public Prosecutions.

(8) The Commission shall, as soon as it receives the report under subsection (7), recommend the prosecution of the person stated in the report by the Director of Public Prosecutions.

Costs

**109.** (1) Subject to the provisions of this section, 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 or a tribunal may order and in particular, any costs which in the opinion of the High Court or a tribunal 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 or a tribunal 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 High Court or a tribunal finds that the election of the respondent was due to a mistake or improper performance or failure or 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 High Court or a tribunal 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 portioo thereof, as it may consider proper.

(3) The High Court or a tribunal 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.

(4) The notice of an application made pursuant to subsection (3) shall be given, in such manner as may be prescribed by rules of the High Court or a tribunal, to the party by or on whose behalf the deposit was made or for whom the surety gave a recognizance, requiring the party, or the surety and the party, as the case may be, to state, within the time and in the manner as prescribed, whether that party resists the application.

(5) Where, on the trial of an election petition, any person appears to the High Court or a tribunal to have been guilty of any corrupt practice or illegal practice relating to the election which is the subject of the election petition, the High Court or a tribunal may, after giving that person an opportunity of making a statement to show cause why the order should not be made, order the whole or a portion of the costs of, or incidental to, the trial of the election petition to be paid by that person to such person or persons as the High Court or a tribunal may determine.

(6) Execution may be levied under any order for payment made by the High Court or a tribunal under this section in the same manner and to the same extent as execution may be levied under a judgement of the High Court or tribunal for the payment of money.

(7) 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 received the same by order of the High Court or a tribunal which may be upon motion after notiee and proof that all just claims have been satisfied or otherwise sufficiently provided for as the High Court or a local government elections tribunal may require.

## PART X

### General Provisions

Code of Conduct

**110.** (1) The Commission shall enforce the Code of Conduct specified in the Schedule.

(2) The Commission may disqualify a political party or candidate in breach of the Code.

Appeal against decision of registration officer

**111.** (1) A person aggrieved by a decision or action taken by a registration officer may appeal to the Commission in the prescribed manner.

(2) The Commission shall notify the appellant of its decision within thirty days from the date of receipt of the appeal.

Powers to decide objections and appeals

**112.** (1) Whenever the Commission, is required under this Act to decide an objection, dispute, complaint or an appeal, the Commission may resolve the issue, that is the subject of the objection, dispute, complaint or appeal, through conciliation or mediation where applicable.

(2) The Commission shall prescribe the manner for handling any objection, dispute, complaint or appeal under this Act.

Constitution of conflict management committees

**113.** (1) The Commission shall, for purposes of resolving electoral disputes, constitute such number of conflict management committees as the Commission may determine.

(2) A conflict management committee shall comprise, as members, such number of conflict management officers appointed by the Commission, as the Commission shall determine.

(3) The Chairperson of the committee shall be appointed by the Commission and the Vice-Chairperson shall be elected by the members from amongst themselves.

(4) Subject to subsection (5), a member of a committee shall hold office for such period as the Commission shall determine.

(5) A member shall be paid such allowances as the Emoluments Commission may, on the recommendation of the Commission, determine.

(6) A committee shall meet for the transaction of business at such places and times as the Chairperson of the Committee may determine.

(7) The quorum at any meeting of a committee shall be one half of the members of the committee.

(8) There shall preside at any meeting of a committee—

*(a)* the Chairperson;

*(b)* in the absence of the Chairperson, the Vice-Chairperson; or

*(c)* in the absence of both the Chairperson and the Vice-Chairperson, such member as the members present may elect from their number for the purposes of that meeting.

(9) The determination of any matter before a committee shall be according to the votes of the majority of the members present and considering the matter.

(10) A committee may invite any person whose presence in its opinion is desirable to attend and to participate in the deliberations of a meeting of the committee but such person shall have no vote.

(11) A committee shall cause minutes to be kept of the proceedings of every meeting of a committee.

(12) The Commission shall assign persons employed in the Commission to perform such secretarial and administrative functions in connection with a committee as may be necessary for the performance of its functions.

Printing, manufacture, use, removal etc., of election materials

**114.** The Commission may authorise—

*(a)* the printing, manufacture or supply of any voting or election material;

*(b)* the use of the register of voters or any voting or election material for a purpose other than an election purpose; or

*(c)* the removal or destruction of any voting or election material.

Ownership of voting and election material and disposal

**115.** (1) The Commission shall own all voting and election materials used for, or provided by it in, an election.

(2) Unless the Constitutional Court, the High Court or a tribunal orders otherwise, the Commission may dispose of the voting and election materials used in a particular election six months after the date on which the final result of the election was declared, in the manner directed by the Commission.

Effect of certain irregularities

**116.** A mistake in the certified segment of the register of voters under this Act shall not invalidate that register of voters.

Inspection and copying of documents

**117.** Where this Act requires that documents be publicised, or made available for inspection or copying, the Commission shall endeavour to also publicise or make available those documents in electronic form.

When incapacity may be removed

**118.** 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 evidenee, such person may apply to the High Court or a tribunal which, if satisfied that the conviction, declaration or report, so far as it concerns that person, was based upon perjured evidence, may order that, that person's incapacity shall from that time cease, and the same shall cease accordingly.

Person not required to state how person voted

**119.** A person who has voted at an election shall not in any proceedings, whether brought under this Act or otherwise, be required, to state for whom the person voted.

Evidence as to holding of election

**120.** 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.

Validation of certain documents

**121.** A misnomer or inaccurate description of a person or place in a register, nomination paper, notice or other document required for the purposes of this Act shall not 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.

Powers of officer

**122.** (1) An officer may, during the campaign period and on polling day, enter any area, place and premises in which the officer reasonably believes there is being, or had been carried on, an activity that is an offence under this Act, except that an officer shall not enter into a private dwelling without the consent of the occupant or the authority of a court warrant.

(2) An officer may request any information from any person who appears to have custody or control of any material or thing which the officer reasonably believes is being used, or was intended to be used or is likely to be used, to commit an offence under this Act.

(3) An officer may seize or detain any material or thing where the officer has reasonable ground to believe that the material or thing is being used, was intended to be used or is likely to be used, to commit an offence under this Act.

Power of arrest

**123.** (1) A police officer may, without warrant, arrest a person and keep that person in custody where—

*(a)* the person is found committing an offence or is reasonably suspected of having committed an offence under this Act; or

*(b)* upon being requested by the police officer, the person wilfully, fails or refuses to furnish that person's name, address or other relevant information to the satisfaction of the police officer; and

*(c)* the police officer has reasonable grounds to believe that unless arrested, the person shall—

(i) escape or cause unreasonable delay to or trouble during or for, the election;

(ii) interfere with witnesses; or

(iii) tamper with or destroy relevant evidence or material.

(2) Any person arrested under subsection (1), shall be taken before a court within fortyeight hours, and shall not be detained for longer than is reasonably necessary for the purpose.

General penalty

**124.** A person who is convicted of an offence under this Act for which a penalty is not prescribed is liable, upon conviction—

*(a)* for a first offence, to a fine not exceeding five hundred thousand penalty units or to a term of imprisonment not exceeding five years, or to both;

*(b)* for a second or subsequent offence, to a fine not exceeding seven hundred thousand penalty units or to a term of imprisonment not exceeding seven years, or to both.

Regulations

Cap. 1

**125.** (1) Subject to the provisions of the Constitution and 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.

(2) Without prejudice to the generality of subsection (1), the Commission may, by statutory instrument, make regulations providing for all or any of the following matters:

*(a)* the registration of voters;

*(b)* the preparation of, and the form of, registers to be used in the registration of voters;

*(c)* the manner of ascertaining whether persons applying for registration as voters are qualified for registrations or for their inclusion in a register for a particular constituency;

*(d)* the making and determination of appeals, claims and objections with respect to the registration of voters;

*(e)* voter education;

*(f)* the correction, amendment and certification of registers of voters;

*(g)* the manner in which the name of any person may be deleted from a register of voters, the transfer of the names of persons from the register of voters of one polling district to that of another polling district and the restoration of the name of a registered voter;

*(h)* the manner and form for nomination of candidates for any election that a candidate at a direct election for the National Assembly is the authorised candidate of a political party;

*(i)* the publication of the names of candidates whose nominations are accepted;

*(j)* the payment of election fees by candidates, and the circumstances in which such fees are to be returned.

*(k)* the use of symbols at an election;

*(l)* the manner and procedure of voting at an election;

*(m)* the manner of ascertaining the identity of persons wishing to vote at elections and whether such persons are qualified to vote;

*(n)* the administering of oaths by election officers in respect of such matters as may be prescribed;

*(o)* the procedure to be followed at the conclusion of a poll in an election;

*(p)* for the purpose of declaring any candidate duly elected, the procedure to be followed where there is an equality of votes between candidates in an election for members of the National Assembly or Council;

*(q)* the procedure to be followed where only one person is duly nominated for election to the office of President, in a constituency for election to the National Assembly or in an election to a Council;

*(r)* the declaration, notification and publication of the results of an election;

*(s)* the custody and disposal of nomination papers, ballot papers, records, documents or other things relating to the registration of voters and the conduct of elections;

*(t)* election expenses and the return of election expenses;

*(u)* the notification and publication of any casual vacancy in the elected membership of the National Assembly or a Council and the fixing of a date of an election to fill such vacancy;

*(v)* the forms and records to be used for any of the purposes of this Act;

*(w)* the delimitation of provinces, constituencies, wards and polling districts; and

*(x)* any matter to be prescribed by or under this Act.

(3) Separate regulations may be made in respect of each category of elections.

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

(5) A prosecution for an offence against this Act shall not be commenced after the lapse of one year from the date on which the offence is alleged to have been committed.

**126.** The Electoral Act, 2006, is repealed.

Repeal of Act No.12 of 2006

SCHEDULE
*(Section 107)*

CODE OF CONDUCT

Enforcement of Code

**1.** (1) A person has, subject to paragraph (2), the right to—

*(a)* express political opinions;

*(b)* debate the policies and programmes of political parties;

*(c)* canvas freely for membership and support from voters;

*(d)* distribute election literature and campaign materials;

*(e)* publish and distribute notices and advertisements;

*(f)* erect banners, placards and posters;

*(g)* campaign freely;

*(h)* participate freely in partisan political activities; and

*(i)* seek the protection of the law from harm as a result of that person's political opinion or affiliation.

(2) A public officer shall not engage in any active partisan political activity referred to in subparagraph (1) whilst in the public service.

Promotion of free and fair elections

**2.** A person shall, during an election campaign or election, promote conditions conducive to the conduct of free and fair elections and be bound by this Code.

Duty of Commission

**3.** (1) The Commission shall, where reasonable and practicable to do so—

*(a)* meet political party representatives on a regular basis to discuss matters of concern related to on election campaign and election itself;

*(b)* ensure that political parties do not use State resources to campaign for the benefit of any political party or candidate;

*(c)* avail political parties with the election timetable and election notices in accordance with the Act;

*(d)* censure acts done by leaders of political parties, candidates, supporters, and Government and its organs, which are aimed at jeopardising elections or done in contravention of this Code;

*(e)* declare election results expeditiously from the close of the election day;

*(f)* ensure that a campaign rally or meeting which is legally organised by a political party is not disrupted or arbitrarily prohibited;

*(g)* ensure that an election officer, police officer, monitor, observer or media person is not victimised in the course of their election duties;

*(h)* ensure that police officers act professionally and impartially during the electoral process;

*(i)* ensure that traditional leaders do not exert undue influence on their subjects to support a particular political party or candidate;

*(j)* ensure that equal opportunity is given to all stakeholders, particularly political parties and independent candidates to participate in and conduct their political activities in accordance with the law; and

*(k)* condemn acts of media organisations and personnel aimed at victimisation, punishment or intimidation of media practitioners implementing any of the provisions of this Code.

(2) A member of the Commission may attend political rallies to monitor compliance with this Code.

Obligation of Political Party and candidate during election

**4.** (1) A political party and candidate shall—

*(a)* establish and maintain effective lines of communication with the Commission and with other registered political parties and candidates, at national, political and local level, including the provision of names and the contact details and addresses of or a candidate's party election agents and of other relevant office bearers and representatives;

*(b)* accept and respect decisions of the Commission in respect of election results announced by returning officers and the Commission in accordance with the law;

*(c)* issue directives to their members and supporters to observe this Code and take any necessary steps to ensure compliance;

*(d)* hold public meetings in compliance with the law;

*(e)* adhere to the election timetable issued by the Commission in conducting election campaigns in accordance with this Act;

*(f)* take appropriate measures to ensure environmental protection and cleanliness in the course of posting or distributing electoral campaign material;

*(g)* remove campaign materials within fourteen days of the declaration of election results;

*(h)* take necessary measures to ensure public safety in the course of posting or distributing electoral campaign material; and

*(i)* carry out campaign meetings and rallies peacefully.

(2) A member or supporter of a political party or a candidate shall not—

*(a)* use language which incites hatred or violence in any form against any person;

*(b)* issue any pamphlet, newsletter, poster or other propaganda which contains materials that incite people to violence or rebellion;

*(c)* deface, remove or destroy campaign materials of another political party or publications of the Commission;

*(d)* disrupt another political party's rally, meeting, march or demonstration or seek to obstruct another person from attending a political rally of another political party;

*(e)* continuously remain at a polling station during the campaign period or elections; and

*(f)* wear any campaign materials within four hundred metres of the polling station on the polling day.

(3) Without prejudice to any other written law, any person who contravenes subparagraph (2) commits an offence and shall be liable upon conviction to a fine not exceeding one hundred thousand penalty units or to imprisonment not exceeding one year, or to both.

Duty of election agent or polling agent during election

**5.** (1) An election agent or polling agent shall, subject to this Code, have the following duties during an election:

*(a)* observe the opening and closing of a polling station assigned to them on polling day;

*(b)* witness the voting process;

*(c)* witness the count of ballot papers for candidates;

*(d)* witness the announcement of results; and

*(e)* witness the declaration of results, where applicable.

(2) An election agent or polling agent shall counter sign the election results duly announced or declared by a presiding officer or returning officer, as the case may be, except that failure to countersign the election results by such election agent or polling agent shall not render the results invalid.

Duties of Zambia Police

**6.** The Zambia Police Service shall—

*(a)* enforce law and order at campaign meetings and processions in order to maintain peace and order;

*(b)* ensure that police officers do not abuse their authority or Government resources to campaign for the benefit of any political party or candidate;

*(c)* refrain from disrupting any campaign, rally or meeting which is legally convened by any political party; and

*(d)* ensure that police officers do not use their office to oppress any political party, candidate or supporter.

Duties of media

**7.** (1) Print and electronic media shall—

*(a)* provide fair and balanced reporting of the campaigns, policies, meetings, rallies and press conferences of all registered political parties and candidates during the campaign period;

*(b)* provide news of the electoral process up to the declaration of results;

*(c)* abide by regional codes of conduct in the coverage of elections provided that such guidelines are not in conflict with this Code;

*(d)* be bound by the provisions of this Code during elections; and

*(e)* in liaison with the Commission, recognise a representative media body authorised to receive complaints and provide advice regarding fair coverage of elections.

(2) A media organisation shall endeavour to—

*(a)* undertake capacity building of media personnel in their respective organisations;

*(b)* report election news in an accurate manner and not make any abusive editorial comment, incite violence or advocate hatred based on race, ethnicity, tribe, gender, sex, political or religious conviction; and

*(c)* identify any editorial comment it intends to make and separate it from the factual reporting of the news.

(3) The heads, senior management and staff of public and private media organisations shall not intimidate media practitioners and shall allow them to exercise professional judgment without undue influence.

(4) Public and private media personnel shall—

*(a)* conduct interviews with candidates with fairness both in the style of the interview and in the amount of the time given;

*(b)* refrain from broadcasting their own political opinions, commentary or assessment, and where they do so, clearly identify the opinion, commentary or assessment as their own and carefully balance it in order to avoid bias; and

*(c)* be duly accredited by the Commission to enter a nomination centre, polling centre or totalling centre.

Allocation of air time

**8.** (1) A public television, radio and electronic media shall allocate public air time equally to all political parties and candidates for their political broadcasts.

(2) The Commission shall prescribe the amount of air time in any given language on public television or radio to be allocated to a political party or candidate.

(3) On polling day, media shall not broadcast any campaign interviews for political parties or independent candidates or predict election results.

(4) Broadcasters shall inform the public on the source of any public opinion poll and shall indicate the margin of error.

Election results programme

**9.** (1) Media shall disclose accurate election results and provide updates on the progress of the vote counting process and shall not speculate election results but shall broadcast confirmed election results as they are announced and published by presiding officers.

(2) Television and radio stations shall—

*(a)* maintain full records of all radio and television news bulletins and recordings of all other programmes related to the election, including party political broadcasts and shall institute a close and meticulous monitoring system to ensure balance throughout the campaign and up to the close of poll; and

*(b)* provide the Commission, at any reasonable time, with such records, information and recordings as the Commission may require to fulfill its monitoring role.

(3) The Commission shall require newspapers to make available archived copies of newspapers for inspection in the event of a complaint.

(4) A candidate or political party who alleges that the candidate or political party has been unfairly treated or covered by any media organisation in the course of the election campaign, may lodge a complaint against the media organisation, in writing, to the Commission.

(5) Where a complaint made under subparagraph (4) requires any media organisation to rectify an error, the candidate or political party making the complaint shall send the complaint to that media organisation and a copy of the complaint to the Commission and the media organisation shall respond to the complaint.

(6) Where a right of reply, a retraction or the correction of a matter of significance is necessary, it shall be made in a like manner and with equal prominence as the original report or publication.

Monitors and observers

**10.** (1) A person shall not act as a monitor or observer, during an election campaign or election unless the person is duly accredited by the Commission.

(2) A monitor shall be nominated by the organisation to which the monitor belongs and shall undergo training and assessment by that organisation.

(3) A monitor or observer shall be provided with necessary identification by the Commission and the monitor's or observer's organisations.

(4) A monitor or observer shall discharge monitors or observer's functions in accordance with this Code and any other written law or such lawful directives as may be given by the Commission or any person acting on its behalf.

(5) A monitor or observer shall—

*(a)* bring to the attention of the presiding officer or returning officer or member of the Commission any observed electoral malpractice;

*(b)* be impartial in the conduct of the monitor's or observer's duty and shall, at no time, publicly indicate or express any bias or preference with reference to any political party or candidate;

*(c)* be in a sufficient number at each polling station and shall ensure that their presence is widely known and recognised by the electorate;

*(d)* not interfere with the duties of the election officials in any way and shall immediately report any violation to the proper authority;

*(e)* ensure that any material information or report which the monitor or observer receives or any event, occurrence or statement of which the monitor or observer has been notified or which indicates the commission of an offence or contravention of the Act or this Code are brought to the attention of the monitor's or observer's organisations, the police, the Commission, conflict management committees and other parties concerned;

*(f)* not by themselves or through the monitor's or observer's organisation, forecast, declare or disclose the result of any election before the declaration by the Commission;

*(g)* when so requested, immediately identify themselves to any election officer or police officer and shall, during the conduct of the monitor's or observer's activities, at all times carry, wear or otherwise prominently display the identification issued by the Commission;

*(h)* not display allegiance to any political party at any time and shall refrain from carrying, wearing and displaying electoral material or any article of clothing, colours, badges or other items denoting support for or opposition to any political party or candidates or any of the issues in contention in the elections;

*(i)* not be involved in corrupt practices or accept any favours, so as to make statements in favour of or against any candidate or political party; and

*(j)* not carry or display arms or other dangerous weapons during the conduct of the monitor's or observer's activities or while wearing the identification issued by the Commission.

(6) Monitors and observers and their sponsoring organisations shall, whenever requested by the Commission, attend such briefings, training workshops and other meetings convened in order to co ordinate their activities.

(7) After the declaration of results of the elections, monitors and observers shall hand over to the Commission any identification received from it.

(8) The Commission may revoke the accreditation of any monitor or observer who contravenes the provisions of this Code.

Powers of Commission

**11.** (1) The Commission may—

*(a)* reprimand a political party, candidate or stakeholder for any conduct in violation of this Code;

*(b)* report a breach of this Code to the Zambia Police Service, Anti-Corruption Commission and Drug Enforcement Commission or any other relevant law enforcement agency;

*(c)* revoke the accreditation of election agents, polling agents, monitors observers or the media where it is necessary in the interest of public safety and security to do so; and

*(d)* impose any administrative measures on any person, candidate or political party for persistent breach of this code.

(2) The Commission may where practicable to do so, summon any person contravening this Code and any voter, candidate or political party alleging a breach to appear before it.

Complaints

**12.** (1) The following persons may lodge a complaint to the Commission in relation to an election:

*(a)* a voter or candidate in a constituency where a breach of this Code has been committed; or

*(b)* from a political party participating in an election.

(2) Complaints arising during election campaigns and elections may be made to an election officer or to a conflict management committee at the place where the conduct complained against occurred.

(3) The Commission may refer and report any violation of the Code to the Zambia Police Service, AntiCorruption Commission or any other appropriate law enforcement agency for investigation and prosecution where appropriate.

Conflict management committee

**13.** (1) Conflict management committees established by the Commission pursuant to section *one hundred and eight* may resolve electoral disputes.

(2) The conflict management committees shall take into account the provisions of this Code in resolving electoral disputes.

(3) Conflict management committees shall mediate in electoral disputes and shall encourage amicable settlement of electoral disputes within twentyfour hours of receipt of a formal complaint.

Prohibition on coercion and intimidation

**14.** A person or a member of a law enforcement agency, civil society, a Church, faith-based organisation, traditional leader, political party or media shall not, by means of threats, violence or sanction, coerce or intimidate another person during campaigns, public debates or elections.

General offence

**15.** (1) A person shall not—

*(a)* cause violence or use any language or engage in any conduct which leads or is likely to lead to violence or intimidation during an election campaign or election;

*(b)* carry or display arms or weapons, traditional or otherwise, of any kind at a political meeting or in the course of any march, demonstration or other public gathering of a political nature;

*(c)* make false, defamatory or inflammatory allegations concerning any person or political party in connection with an election;

*(d)* arrange a public meeting, demonstration, rally or march at the same time and venue as another similar political event organised by another political party or candidate;

*(e)* prevent the reasonable access to voters of any candidate or political party in any manner for the purposes of conducting voter education, fund raising, canvassing membership or soliciting support;

*(f)* plagiarise the symbols, colours or acronyms of candidates or other political parties;

*(g)* deface, remove or destroy any political campaign materials of any person or political party or publications of the Commission;

*(h)* offer any inducement, reward or bribe to any person in consideration of such person—

(i) joining or not joining any political party;

(ii) attending or not attending any political event;

(iii) voting or not voting;

(iv) accepting, refusing or withdrawing that person's domination as a candidate in an election;

(v) surrendering that person's voter's card, or national registration card or both; or

(vi) offering to surrender a voter's card or national registration card, or both;

*(i)* abuse or attempt to abuse a position of power, privilege or influence, including parental, patriarchal or traditional authority for political purposes including any offer of a reward or for the issuance of a threat;

*(j)* propagate any opinion or action which is prejudicial to—

(i) the sovereignty, integrity or security of the country;

(ii) the maintenance of public order; or

(iii) the independence of any institution;

*(k)* use Government or parastatal transportation or facilities for campaign purposes, except that this paragraph shall not apply to the President and the Vice President in connection with their respective offices;

*(l)* use Government transportation or resources or facilities to transport voters to polling stations;

*(m)* discriminate against any person on grounds of race, ethnicity, class, disability, gender, sex, religion or in any other manner in connection with an election or political activity;

*(n)* carry any statue, caricature or anything which tends to ridicule, revile or scandalise any political party or its leader, a candidate or the Government, at any public political gathering, meeting or procession; and

*(o)* be in possession of a voter's card or national registration card belonging to another person during the campaign period.

(2) A person who contravenes subparagraph (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.

General Penalty

**16.** A person who contravenes any provision of this Code for which no specific penalty is provided commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both.

Revocation of SI No. 90 of 2006

**17.** The Electoral (Code of Conduct) Regulations, 2006, are revoked.

**IN THE SUPREME COURT OF ZAMBIA**
**HOLDEN AT NDOLA**

**Appeal No. 56/ 2012**

(Civil Jurisdiction)

**BETWEEN:**

SUPREME COURT OF ZAMBIA
JUDICIARY
18 AUG 2014
SUPREME COURT REGISTRY
P.O. BOX 50067, LUSAKA

**DANIEL NYIRENDA** **Appellant**

**AND**

**UNIVERSITY OF ZAMBIA COUNCIL** **Respondent**

**Coram:** Wanki, JS, Lisimba, A/JS and Hamaundu, A/JS
On the 4th December, 2012 and 8th August, 2014

**For the Appellant:** In person

**For the Respondent:** Ms. Anne Changa, Legal Counsel, University of Zambia

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## JUDGMENT

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**Lisimba, A/ JS, - delivered the Judgment of the Court.**

*Cases referred to:*

1. **Ridge Vs Baldwin (1961) 2 ALL ER 523.**
2. **Kenmuir Vs Hatting (1974) Z.R. 162?**
3. **Khalid Mohamed Vs The Attorney-General (1982) Z.R. 49.**

4. **Zambia Electricity Supply Corporation Limited Vs David Lubasi Muyambango (2006) Z.R. 22.**

5. **Wilson Masauso Zulu Vs Avondale Housing Project Ltd (1982) Z.R. 172.**

*Legislation referred to:*

1. **The University Act No. 11 of 1999.**

This is an appeal against the Judgment of the High Court sitting at Ndola, dated the 6th of April, 2011, in which the Court dismissed the Appellant's claim, challenging his expulsion from the University of Zambia, and the subsequent nullification of some of his examination results, by the Respondent. The Appellant, who was the plaintiff in the Court below, filed a Writ of Summons and Statement of Claim, in the High Court, on the 22nd of March 2010, claiming the following reliefs:

> **"(i) A declaration that the *decisions* of the Defendant communicated to the Plaintiff dated 23rd February 2007 and 6th July 2009 are null and void;**
>
> **(ii) An Order to compel the Defendant to release the Plaintiff's second semester results and award the degree;**
>
> **(iii) Damages for economic loss of use of degree;**
>
> **(iv) Damages for loss of career prospects and economic anguish;**

**(v) Costs and interest incidental to this action;**

**(vi) Any other remedy the Court may deem just."**

The brief facts of the case are that the Appellant was a 4th year student at the University of Zambia, in the School of Natural Sciences. On the 27th of October, 2006, the Dean of Students charged the Appellant with obtaining money by false pretenses and aiding students to fraudulently alter their sponsorship status, from self to GRZ sponsorship, contrary to Regulation 22 of the (Revised November 2005) General Rules and Regulations for students. The charge was contained in an internal memorandum (memo), which read as follows:

***"THE UNIVERSITY OF ZAMBIA***
***OFFICE OF THE DEAN OF STUDENTS***
***Internal Memorandum***

==========

***TO*** : ***Daniel Nyirenda (99208407) C/O Agriculture, TP-16***

***FROM*** : ***Dean of Students***

***DATE*** : ***27th October 2006***

***SUBJECT:*** ***MISCONDUCT***

==========

***It has been brought to my attention that you obtained money by false pretences and aided students to fraudulently alter their sponsorship status from self to GRZ sponsorship thereby defrauding the University in revenue from tuition fees. This is a criminal activity which is contrary to Regulation 22 (Revised November 2005) of the General Rules and Regulations for students. Consequently, you are charged with breach of this Regulation.***

***By copy of this memo, the student Board of Discipline is requested to hear your case without delay.***

***H. Chiboola***
***DEAN OF STUDENTS***

***cc: Registrar***
***Dean, School of Agricultural Science***
***Deputy Registrar, Academic Affairs***
***Secretary, Student Board of Discipline."***

Regulation 22, under which the Appellant was charged, reads as follows:

> **"22. Thieving of any kind, misappropriation of funds, fraud and any criminal activity is prohibited on campus".**

Later, the Appellant sat for his end of semester examinations, which were five (5) in total. Subsequently, when

the Appellant went to the University to check for his examination results, he was informed, by the Dean of the School he was studying under, that she had received a copy of a memo from the Dean of Students, dated the 23rd of February, 2007, and addressed to the Appellant, informing him that he was expelled from the University, following the determination of his disciplinary case by the Students Board of Discipline. The memo read as follows:

***"THE UNIVERSITY OF ZAMBIA***
***OFFICE OF THE DEAN OF STUDENTS***
***Internal Memorandum***

==========

***TO*** : ***Daniel Nyirenda (99208407) C/O Agriculture, TP-16***

***FROM*** : ***Dean of Students***

***DATE*** : ***23rd February, 2007***

***SUBJECT:*** ***EXPULSION***

==========

***With reference to a charge of misconduct and subsequent determination by the Student Board of discipline during its recent sitting on 20th February 2007, please note that the Board found you guilty of obtaining money by false pretences and aiding students to fraudulently alter sponsorship status contrary to Regulation 22 (Revised***

*November 2005) of the Rules for students registered in the University. Consequently, be informed that you are:*

**Expelled from the University of Zambia indefinitely and that you are not permitted to register or utilize academic facilities henceforth.**

*In view of natural justice, you are free to appeal against this sentence to the Vice-Chancellor within fourteen days from the date of this memo.*

*By copy of this memo, the Dean of School of Agricultural Sciences and the Academic Office are requested to ensure that the subject is prevented from writing the end of semester examinations immediately and also to nullify any results of any course taken hitherto.*

*H. Chiboola*
*DEAN OF STUDENTS*

*cc: Ag Vice Chancellor*
*Registrar*
*Dean, School of Agricultural Science*
*Deputy Registrar, Academic Affairs*
*Secretary, Students Board of Discipline.*
*Assistant Dean of Students, Residences"*

Under the penalties section of the Students' Rules and Regulations in question, at page 89 of the record of appeal, the penalty for violating Regulation 22 is stated as follows:

> **"22. For regulation 22, the student shall be expelled from the University and further action may be taken by the complainant or the police, or as the Student Board of Discipline may decide".**

The Appellant appealed against his expulsion to the Vice Chancellor, and later to the Council of the University, but was unsuccessful. The Respondent later released, to the Appellant, his examination results for only three examination papers, which he had written prior to the 23rd of February, 2007.

On the evidence before him, the trial Judge found the following facts: that the Appellant's expulsion from the University of Zambia, by the Respondent, was in accordance with the law; that, from the date of his expulsion, on the 23rd of February 2007, the Appellant ceased to be a bona fide student of the University of Zambia and, anything done by him in connection with his student status, after the date of expulsion, lacked legitimacy as all the privileges, rights and entitlements accruing to a student of the University of Zambia came to an end; and that any

examinations that the Appellant wrote, after his expulsion, were null and void.

Based on the above findings, the learned trial Judge dismissed the Appellant's claim and ordered each party to bear their own costs of the action.

The Appellant has advanced five (5) grounds of appeal as follows:

1. **The learned trial Judge erred in law and in fact when he found that the Students Disciplinary Committee at the University of Zambia could determine a matter against me "on the basis of information it had" (mere allegations) and without witnesses or even hearing me contrary to the rules of natural justice;**

2. **The learned trial Judge erred in law in his interpretation of the provision of Sections 37 (2) and 49 of the University Act No. 11 of 1999 and instead put an opinion that the Act did not intend to vest in the Minister powers to make (or prescribe) rules and regulations governing the internal discipline of students which are better left to .... the Dean of Students;**

3. **The learned trial Judge erred in fact when he decided that I had failed to show that any damages were occasioned to me as a result of the University of Zambia withholding my final year results and also when he found that the hearing date had been**

**communicated to me in 2006 during a counseling session when this was not so and the Defendants never even alluded to that fact;**

4. **The learned trial Judge erred in fact and in law when he substituted his own assumption of dates as the dates he assumed I had written examinations and not the dates on the examination time-table;**

5. **The learned trial Judge erred in law and in fact by overlooking the fact that Senate was waiting to decide whether or not to nullify the results after being availed with legal advice, hence the Senate never made the final decision whether to nullify the results or not as at the time of the hearing of the matter in Court, and the Registrar acted ultra-vires his legal authority.**

Both the Appellant and the Respondent filed written heads of argument into Court. Under ground one, the Appellant argued that the trial Judge should not have endorsed the decision of the Students Disciplinary Committee, as the same was based on allegations, without any evidence adduced, and the Disciplinary Committee acted contrary to its own terms of reference and procedure. The Appellant also cited the case of **Ridge Vs Baldwin**[1], and argued that an allegation must be investigated and there must be evidence to prove it; that in the present case, there is no indication, in the minutes of the record of the disciplinary

proceedings, that the Disciplinary Committee deliberated on the allegations against the Appellant.

Under ground two, the Appellant argued that the learned trial Judge erred in his interpretation of the provisions of **Sections 37 (2) and 49 of the University Act No. 11 of 1999** under which the power to make or prescribe disciplinary or other rules and regulations, for a Public University, is vested in the Minister and not the Dean of Students; that the regulations, which were used to expel him from the University, were null and void, for lack of legal competence, as they were supposed to have been made by the Minister before being implemented by the Dean of Students; and that their usage against him was therefore, unlawful.

Under ground three, the Appellant argued that, by reason of his results being withheld, he has suffered and continues to suffer damage, as he cannot get a job based on any University qualification; that the finding by the trial Judge that the Appellant was given notice of hearing of his disciplinary case during the counseling session, was not supported by any facts as

neither the Appellant nor the Respondent gave such evidence in the Court below.

The Appellant argued, under ground four, that there was no evidence to support the findings, by the trial Judge, that there was a minimum of two clear days allowed between the courses he wrote; and the assumption, by the trial Judge, that the Appellant wrote his last three examination papers after his expulsion was wrong.

In ground five, the Appellant argued that the nullification of his examination results by the Respondent was unlawful. Citing **Sections 22 and 23 of the University Act**, the Appellant argued that the results at the University of Zambia may only be nullified by the Senate of the University, which is the University's supreme academic authority, and only on grounds of fraud on the part of the affected candidate; that in the Appellant's case however, no evidence was presented, in the Court below, to show that a decision to nullify the results was ever made by the Senate; that the University Act does not provide for the cancellation of examination results where a candidate had lawfully written examinations but "expelled" before processing of results.

In response, the Respondent argued, under ground one, that the trial Judge was on solid ground when he found that the Respondent's Student Board of Discipline had authority to determine the Appellant's case in his absence, based on the information available to it, under regulation 27 as the Appellant refused or neglected to present himself for the hearing without reasonable excuse.

Under ground two, the Respondent supported the interpretation, by the trial Judge, of **Sections 37(2) and 49 of the University Act** and his finding that the said provisions were not intended to vest powers to make student regulations in the Minister but rather in the Dean of Students. The Appellant also argued that **Section 37(2)** does not restrict the powers of the Dean of Students as given by **Section 37(1) of the Act** and that Section 49, on the other hand, confers upon the Minister, the power to fill in the gaps, if any, where the powers under **Section 37** have not been fully executed, to act only if no authority is named to exercise a particular power.

Under ground three, the Respondent argued that, in the Court below, the Appellant failed to discharge the onus, which lay

on him, to show that damage had been occasioned to him by the Respondent's refusal to release his final year results. The case of **Kenmuir Vs Hatting**[2] was cited to support the argument that the Supreme Court will be reluctant to disturb findings of fact by the trial Court which had the opportunity to see and hear the witnesses speak. It was also argued that the Appellant decided not to appear for the hearing before the Student Board of Discipline and could not claim not to have known about the disciplinary hearing.

Under ground four, the Respondent argued that the onus was upon the Appellant to show that he wrote all his examination papers before his expulsion on the 27th of February 2007.That, according to the Appellant's own evidence, in the Court below, out of the five courses he was permitted to sit for, he wrote examinations only in three courses prior to the 23rd of February, 2007.

Under ground five, the Respondent argued that this ground was misconceived as there was evidence that the Senate made a final decision that the Appellant was entitled to the results for the three examination papers he wrote before the 23rd of February

2007, and nullified the results for those he wrote after that date. It was also argued that the Appellant was duly expelled by a legitimate body and, as such, anything done by him after the 23rd of February 2007, purporting to be a student, was null and void as he did not enjoy any such status after the said date.

We have considered the grounds of appeal filed in this case, the evidence in the Court below, the arguments by both parties and the authorities cited. In ground one, the Appellant has raised two issues. Firstly, that the finding of the Students Board of Discipline, that the Appellant was guilty of the offence with which he was charged, was not supported by any evidence and was arrived at contrary to the Board's own terms of reference. Secondly, that the Board's decision was made without hearing the Appellant.

Regarding the first issue, it is trite law that "he who alleges must prove". The rationale behind this is that, whenever an allegation is made, the onus is on the maker of the allegation to prove the allegation. This is the position even where the defence of the party, against whom the allegation is made, has completely failed. In this regard, we want to reiterate our decisi+on in **Khalid**

**Mohamed Vs The Attorney-General**[3] where we held that a plaintiff cannot automatically succeed whenever a defence has failed; he must prove his case.

According to the evidence in this case, the Appellant was charged with contravening regulation 22, of the general rules and regulations for students, by the Dean of Students of the University of Zambia. The evidence also shows that the Student Board of Discipline heard and determined the Appellant's case, in his absence, and recommended that he be expelled. Items 9.0 to 9.2 of the excerpt of the minutes of the disciplinary proceedings, dated the 20th of February 2007, at page 50 of the record of appeal, read as follows:

> ***"9.0 Case No. 3***
>
> | | |
> |---|---|
> | ***Name:*** | ***Nyirenda Daniel- Absent*** |
> | ***Comp. No:*** | ***99208407*** |
> | ***School:*** | ***Agricultural Sciences*** |
> | ***Year of Study:*** | ***4th year*** |
>
> ***9.1 The student was given one month's notice on 18th January 2007 through the Dean of his school, but he did not respond at the expiry of the notice on 18th February 2007. The notice is herewith attached. A messenger Mr. Kasokota attempted to***

***serve him with a notice of hearing on 19th February 2007 but he refused to either sign it or receive it as seen from the attached unsigned notice. The accused was spoken to by the secretariat urging him to appear before the Board but he ignored the advice.***

***9.2 THE BOARD'S DETERMINATION***

***The Board noted that the student had no proper reasons for him to fail to appear before the Board and found him guilty of violating regulation 22 and 27 and therefore, recommended expulsion from the university and to bar him from writing his examinations".***

Regulation 27 referred to in the determination of the Students Board of Discipline, quoted above, reads as follows:

**"27. Students who fail to attend a meeting of the Student Board of Discipline without proper reason shall commit an offence".**

In his Judgment, the learned trial Judge, in the Court below, stated that:

**"... After considering the minutes referred to, I form the view that they are but a summary of the proceedings of the meeting rather than a full account of the deliberations thereof. That**

**notwithstanding, I am unable to agree with the Plaintiff's argument because, I believe that the Board had received information regarding the allegations against him upon which, taking all circumstances into consideration, it was able to make the decision that it did... In this case, the Student Board of Discipline considered the Plaintiff's case on the basis of the information it had and came to the conclusion that the Plaintiff had committed the offence as alleged and in addition, the offence under regulation 27 under penalties, for which they needed no witness ".**

We do not agree with this observation by the trial Judge. The record of the disciplinary proceedings, which was part of the Respondent's evidence, in the Court below, is the only evidence on record, and a reflection of what transpired during the determination of the Appellant's case by the Student's Board of discipline. In addition, under the penalties section of the students' rules and regulations in question, whereas the penalty for contravening regulation 22, which we quoted earlier in this judgment, is expulsion from the University, the penalty for violating regulation 27 is expressed, at page 89 of the record of appeal, in the following terms:

**" 27. For regulation 27, the case shall be held in absentia and a appropriate decision may be made by the Student Board of Discipline and communicated accordingly "**

In our view, the Students Board of Discipline is empowered, under the above quoted provision, to proceed to determine a disciplinary case, in the absence of the affected student, and make a suitable decision, in the circumstances of the case. We want to indicate here, as we have stated before in several of our decisions, including **Zambia Electricity Supply Corporation Limited Vs David Lubasi Muyambango**[4], where we held that it is not the function of the Court to interpose itself as an appellate tribunal within the domestic disciplinary procedures to review what others have done. The duty of the Court is to examine if there was the necessary disciplinary power and if it was exercised properly.

It is our view that, the Respondent, acting through the Dean of Students, having charged the Appellant with an offence under regulation 22, essentially made an allegation against him and had an obligation to present evidence before the Students Board of Discipline to prove the said allegations. Looking at the evidence on record, we find that the Respondent has the power to expel any student from the University, who is guilty of contravening regulation 22 of the students' rules and regulations in question. We also find that the Students Board of Discipline is empowered,

under the penalties section of the rules, to proceed to determine a disciplinary case, in the absence of a student who has notice of the disciplinary hearing but who, for no good cause, does not attend at the hearing. We have noted from the record of the disciplinary proceedings which we have quoted in this judgment, that the Appellant refused to accept service of the notice of hearing of his case from Mr. Kasokota, a messenger. We hold the view therefore, that the Respondent gave the Appellant the chance to be heard.

The Respondent however, failed to discharge the evidential burden of proving the disciplinary charge which it raised against the Appellant as no evidence was presented to support the charges namely that the Appellant obtained money by false pretences and aided students to fraudulently alter their sponsorship status from self to GRZ sponsorship.

From the excerpt of the minutes of the disciplinary proceedings, which we referred to earlier, the findings of the Students' Board of Students that the Appellant was guilty of the offence with which he was charged appears to have been based simply on the Appellant's failure to attend at the disciplinary

hearing. This is highly irregular because the power which is conferred on the Students Board of Discipline by its Terms of Reference, to proceed to determine a disciplinary case in the absence of a student facing a disciplinary charge, does not waive the onus which is, by law, placed on the Respondent to exercise its disciplinary powers justifiably and for a good cause.

Item No. 2.0 of the excerpt of minutes of the disciplinary proceedings of the Students Board of Discipline, at page 47 of the record of appeal, specifies the terms of reference as follows:

> **"2.0 TERMS OF REFERENCE**
>
> **2.1 To investigate the truthfulness or falsity of the alleged offences**
>
> **2.2 To afford the accused students an opportunity to be heard**
>
> **2.3 To call witnesses to testify where necessary**
>
> **2.4 To make recommendations to the dean of students affairs in line with the provisions of the rules and regulations for living on campus"**

In our view, the above stated terms of reference are intended to serve two purposes. Firstly, to enable the Students Board of Discipline gather facts or evidence to establish whether or not the

offences which the affected students are alleged to have committed were actually committed. This should be done by taking evidence and hearing witnesses, with information relevant to each case, as well as each student charged with a disciplinary offence; and Secondly, to recommend, to the Respondent, through the Dean of Students, appropriate disciplinary action to be taken in every disciplinary case, based on the findings of facts of each case. In the case of **Ridge Vs Baldwin**[1], which was cited by the Appellant, Streatfeild J, observed that an authority exercising power in its quasi-judicial capacity must exercise the power fairly and bona fide and observe the principles of natural justice. We find it unnecessary to recount the rules of natural justice here. Suffice to state that in the present case, the Students Board of Discipline determined the Appellant's case under the provisions of regulation 27 of the students' rules and regulations in question.

However, its decision was not supported by any evidence to prove the charge against the Appellant. Therefore, we agree with the Appellant's argument that, in determining the Appellant's case, the Students Board of Discipline acted in disregard of its own terms of reference and procedure, as captured under terms of reference No. No. 2.1, 2.3 and 2.4, which require the

investigation of the truthfulness of the allegations, the calling of witnesses and the recommendation of appropriate disciplinary action on the facts of each case.

In terms of our decision in the **Muyambango Case**[4] and the principle in the **Ridge Vs Baldwin case**[1] therefore, we find that, although the Students Board of Discipline followed the procedure under regulation 27 of the students' rules and regulations in issue, its finding of guilt and the resultant recommendation of expulsion, against the Appellant, was not supported by evidence of the allegations against him. For this reason, we find that the decision by the Respondent to expel the Appellant from the University was unjustified and therefore, unlawful. Ground one therefore succeeds.

Under ground two the Appellant challenges the validity of the regulations under which he was expelled from the University by the Respondent on grounds that they are null and void as they were not made by the Minister, as provided under **Sections 37 and 49 of the University Act. Section 37** provides as follows:

**"37. (1) The Deans, Directors, the Librarian and the Dean of Students shall exercise disciplinary control over students in public universities, in schools, institutions, bureaux, departments, the library and similar bodies and halls of residence respectively...**

**Provided that in the case of exclusion from study or use of any facility of the university, rustication or expulsion of a student, a student may appeal to the Vice-Chancellor.**

**(2) Subject to any disciplinary procedures prescribed in any regulations made under this Act, any appeal against any penalty imposed under subsection (1) shall be lodged, in writing with the Vice-Chancellor within fourteen days of the imposition of the penalty, but the penalty shall remain effective while the appeal is pending.**

**(3) Where a student is aggrieved with any decision of the Vice- Chancellor the student may appeal to the Council.**

As for **Section 49 of the Act**, it reads as follows:

**"The Minister may, by statutory instrument, prescribe anything which may be prescribed under this Act and in respect of which no other prescribing authority is specified, and may in like manner make regulations for the better carrying out of the provisions of this Act.**

From our reading of the provisions quoted above, we hold the view that, **Section 37(2)** gives effect to the powers vested in the Dean of Students, under **Section 37(1)**, to exercise disciplinary control over students in public Universities. Such powers shall be subject to any disciplinary procedures prescribed in any regulations made under the Act.

In terms of **Section 49**, the Minister is empowered to make or prescribe regulations, in respect of anything where no other authority is specifically empowered to prescribe any regulations, which may be required to be made, under the provisions of the Act. Although the powers of the Minister under **Section 49** appear to be supplementary in nature and are intended to fill in the gaps to cover situations where no other authority is specifically mandated to make regulations under the Act, we find that there is no specific provision empowering any other authority to prescribe any regulations; neither is any "other prescribing authority" specified in the Act. The Dean of Students and other officers stated in **Section 37(1)** have not clearly been conferred with the power to prescribe any regulations. On the other hand, **Section 49** clearly shows that the power to make regulations are vested in the Minister who

**"may in like manner make regulations for the better carrying out of the provisions of this Act .. .."**

For the foregoing reasons, we do not agree with the trial Judge's conclusion that under the Act the Dean of Students has the power to prescribe any regulations. By the same token we do not agree with the trial Court's suggestion that the rules and procedures governing internal discipline of students are supposed to be made by the Dean of Students because such rules and procedures must be prescribed in the regulations made by the Minister pursuant to **Section 49** as read with **Section 37(1) of the Act**. The role of the Dean of Students is merely to enforce the rules and procedures as prescribed in the regulations. We find merit in ground two.

Both grounds three and four are against findings of fact by the learned trial Judge. Under ground three, the Appellant raises two issues. Firstly, he challenges the findings of fact by the trial Judge, that he failed to demonstrate that damage was occasioned to him by reason of the Respondent withholding his results; and Secondly, that he was given notice of hearing of his case during a prior counseling session which he attended. Ground four, on the

other hand, is against the findings of fact, by the trial Judge, regarding the dates on which the Appellant wrote his last two examination papers.

Before we address the issues raised under these two grounds, we want to echo what we said, about our reluctance to interfere with findings of fact made by the trial Court, in the case of **Wilson Masauso Zulu Vs Avondale Housing Project Ltd**[5], where we held that:

> **"Before this Court can reverse findings of fact made by the trial Judge, we would have to be satisfied that the findings in question were either perverse or made in the absence of any relevant evidence or upon a misapprehension of the facts or that they were findings which, on a proper view of the evidence, no trial Court acting correctly could reasonably make".**

Regarding the first issue raised under ground three, it is trite law that a party who makes a claim must prove that he is entitled to it. In this case, the Appellant claimed, among other things, damages for economic loss of use of degree; and damages for loss of career prospects and economic anguish. However, as the trial Judge rightly observed, the Appellant led no evidence, in

the Court below, to support his claims and to prove that he had actually suffered damage as claimed.

The second issue, under ground three, centers on the question whether or not the Appellant had notice of hearing, of his disciplinary case, by the Students Board of Discipline. The evidence on record is that one Kasokota, a messenger, took a notice of hearing to the Appellant but he refused to accept and sign for it. We are, therefore, satisfied that the Appellant was presumed to have received the notice. We find that ground three has no merit.

Coming to ground four, we want to state from the onset that, according to the evidence on record, no specific dates were given by either the Appellant or the Respondent as to which exact dates the Appellant wrote his last two examinations. The trial Judge observed in his Judgment, in this regard, at page 20 of the record of appeal, that:

> **"I note that the letter of expulsion is addressed to the Plaintiff and dated 23rd February 2007. Unfortunately, neither side could state when the plaintiff wrote his last examination".**

The trial Judge further observed, in his Judgment, at page 21 of the record of appeal, that:

> **"The closest indicator of how the Plaintiff wrote his examinations is the memo from the assistant Dean (UG) in the School of Agricultural Sciences addressed to the Acting Deputy Registrar Academic Affairs. This memo lists the three courses whose results were subsequently released to the Plaintiff indicating the dates on which the same were written. I have looked at the intervals between the dates of the courses and deduce that a minimum of two clear days was allowed between the courses. That would mean that having written a course on the 21st of February 2007, it is unlikely that he would have written the last two courses the following day on the 22nd of February 2007, to beat the date of expulsion, 23rd February 2007. I would therefore, conclude that the Plaintiff wrote the last two courses on or after the date of expulsion."**

We want to mention here that in this jurisdiction, the Judge plays the role of an unbiased adjudicator who listens to both parties present their case and then comes to a conclusion within the bounds of the law. The Judge does so by listening to the parties involved in order to find the facts of the case, applying the relevant law to the facts and then giving a reasoned Judgment. In the present case, both parties gave no oral evidence as to which specific dates the Appellant wrote his examinations. The only

piece of evidence, which was before the trial Judge, relating to the examination dates, was the memo which the Judge referred to in the portion of his Judgment which we have quoted above. The Appellant's evidence, under cross examination in the Court below, at pages 102 and 103 of the record of appeal, is that he did not recall the exact date on which he wrote his last examination although it was before his expulsion. He also stated that, prior to the 23rd of February, 2007, he had written examinations in three courses.

In our view, if the Appellant wrote examinations in five courses, out of which three were written before the 23rd of February, 2007, we find that the trial Judge came to the right conclusion when he found that the Appellant wrote his last two examinations after the 27th of February, 2007. We have found no perversion or misapprehension of facts on the part of the learned trial Judge; neither is there absence of relevant evidence to support his findings in this regard. We find no merit in ground four.

Under ground five, the Appellant challenges the nullification of his examination results, by the Respondent, on grounds that it

was not done by the Senate of the University and not on grounds of fraud on his part, as provided by **Sections 22 and 23 of the University Act. Section 22(1)** which establishes the Senate provides as follows:

> **"(1) There shall be a Senate for a public university which shall be the supreme academic authority of the university.**

**Section 23** spells out the powers of the Senate. In particular, and of relevance to this appeal, **Section 23(3)** provides that:

> **"The Senate may deprive any person of any degree, diploma, certificate or other award of the university which has been conferred upon such person if, after due enquiry, the person is shown to have been guilty of fraudulent or dishonourable conduct in obtaining that award.**

In our view, the issue relating to the nullification of the Appellant's examination results, in the Court below, was whether or not the Appellant was a bona fide student of the University of Zambia, at the time he wrote the examinations whose results were nullified, and not whether or not there was fraud on his part, in sitting for the said examinations. In his Judgment, at page 19 of the record of appeal, the trial Judge stated that:

**"So having found that the Plaintiff's expulsion was in accordance with the law, it follows that he ceased to be a bonafide student of the University of Zambia effective the date of his expulsion. ... anything done by the Plaintiff in connection with student status after the expulsion lacked legitimacy as all the privileges, rights and entitlements accruing to a student of the University of Zambia came to an end. Subsequently, any examinations that he wrote after his expulsion are null and void."**

As the trial Judge rightly observed, a student who has been expelled by the University loses all his rights, entitlements and privileges, which he would ordinarily be entitled to claim, by virtue of his student status. This includes, among other things, the right to sit for and write examinations set by the University for its students. In the case of the Appellant, his expulsion from the University was effected on the 23rd of February, 2007, although the letter which communicated the same only reached the intended recipients, including the Appellant, much later after the Appellant had even written all his examination papers.

In addition, according to the undisputed evidence of DW1 on record, as well as item 12.2 of the minutes of the meeting of the Senate of the 3rd of July, 2009, at page 69 of the record of appeal, a decision was made, by the Senate Examinations Committee, to

nullify the Appellant's examination results, based on the letter from the Dean of Students.

Further, it was DW1's undisputed evidence in chief, that the Appellant was informed, by letter from the Respondent dated the 27th of July, 2009, about the decision of the Senate to uphold the nullification of his results, and when the Appellant appealed for the release of his results, the Respondent, upon advice of its in-house Legal Counsel, released the results for the three courses which the Appellant wrote prior to the 23rd of February, 2007. We are, therefore, satisfied that, on the evidence on record the Senate did make a decision to nullify the results.

However, because of the view we have taken, under ground one, that the Appellant's expulsion was unlawful, we hold consequently, that the decision to nullify his results by the Senate, for the two courses which he wrote after the 23rd of February, 2007, on the basis of his expulsion, was also unlawful. We find ground five has merit.

All in all, grounds three and four have failed while grounds one, two and five have succeeded. Therefore, we allow this appeal and the determination of the Court below, that the Appellant's

expulsion was in accordance with the law and that the examinations he wrote, after the date of his expulsion, are null and void, is set aside. We enter judgment for the Appellant and order the Respondent to release to the Appellant, with immediate effect, all his examination results. Further, we order the Appellant to confer upon the Appellant the appropriate award, provided his results meet the requisite criteria for the said award. We award costs to the Appellant both in this Court and the Court below.

M. E. WANKI
SUPREME COURT JUDGE

M. LISIMBA
AG. SUPREME COURT JUDGE

E. M. HAMAUNDU
AG. SUPREME COURT JUDGE

**AKASHAMBATWA MBIKUSITA LEWANIKA, HICUUNGA EVARISTO KAMBAILA, DEAN NAMULYA MUNGOMBA, SEBASTIAN SAIZI ZULU, JENNIFER MWABA v FREDERICK JACOB TITUS CHILUBA (Constitutional Jurisdiction)**

IN THE MATTER of an Application under Article 41(2) of the Constitution of Zambia and IN THE MATTER of the eligibility of a candidate in respect of Article 34(3) of the Constitution of Zambia and IN THE MATTER of regulation 1 5 made pursuant to the Electoral Act, 1991 and IN THE MATTER of the Presidential Election held in Zambia 'on the 18th day of November, 1996, S.C.Z. 8/EP/3/96, S.C.Z./SIEP/3196, S.C.Z./8/EP/4/96, S.C.Z./8/EP/4196 (1998) Z.R.49 (S.C.)

SUPREME COURT
NGULUBE,C.J., BWEUPE, D.C.J., SAKALA, CHIRWA AND LEWANIKA, JJ.S.10TH FEBRUARY, 1997 AND 7TH JANUARY,1998 AND ONTO 10TH NOVEMBER,1998. (S.C.Z. JUDGMENT NO. 14 OF 1998)

Flynote

**(1) Constitutional law – Presidential election – Candidate – Qualifications – Citizenship – Constitutional requirements that presidential candidate and parents be Zambian citizens – Successful candidate taking office as president – Petition challenging election alleging disqualification – Citizenship of president challenged – Whether president satisfying citizenship requirements – Proof of parentage – standard of proof – Northern Rhodesia (Constitution) Order in council 1963, AI 1963/2088 – Zambia Independence Act 1964, s 2(1), Sch 2, ss 3, 16(3) – British Protectorates, Protected States and Protected Persons Order in Council 1949, s 9 – Constitution of Zambia Act 1991 (as amended), Sch, art 34(1), (3), (4).**

**(2) Constitutional Law – Presidential election – Election petition – Jurisdiction – Constitution vesting jurisdiction in 'full bench of the Supreme Court' – Meaning of full bench – Constitution of Zambia Act 1991, Sch, art 41 (2).**

**(3) Legal profession – Counsel – Right to appear – Requirements of professional independence – Conflict of interest – Cabinet minister holding practising certificate – Whether entitled to appear as counsel on behalf of individual litigant.**

**(4) Constitutional law – Presidential election – Election petition – Petition impacting on governance of nation and deployment of constitutional power and authority – Standard of proof required.**

**(5) Constitutional law – Presidential election – Allegations of electoral impropriety involving bribery and corruption, irregularities and flaws in the electoral system – whether public philanthropic activity at election time amounting to bribery – Whether election null and void – Electoral Act, s (18).**

**Headnote**

The five petitioners challenged the election on 18 November 1996 of the respondent as President of Zambia on the ground that he was not qualified to be a candidate for election as president and be elected because neither he nor his parents were citizens of Zambia by birth or by decent as required by art 34(3) of Sch 2 to the Constitution of Zambia Act 1991 as amended in 1996. They pleaded that his identity and that of his parents had never been ascertained, contended that he was the illegitimate son of one of the witnesses born from an illicit liaison with the mother while she was married to a Mozambican and that he was born in the then Belgium Congo (Zaire) in 1944 when his father, the witness was an alien. They also gave evidence touching upon the respondent's citizenship qualifications and of the possible nationalities of his father. There was no dispute that the respondent's mother 'belonged' to the British protectorate of Northern Rhodesia, within the meaning of s 16(3) of the 1963 Constitution, before it became the Independent state of Zambia on 24 October 1964, and would therefore, but for her prior death, have become a citizen of Zambia at independence by virtue of the 1964 Order and the 1963 Constitution. The petitioners also alleged electoral flaws in the electoral system, and asked for the avoidance of the election on the ground that it was rigged and not free and fair. Certain preliminary points arose, namely (i) what would be 'full bench of the Supreme Court' to hear the case as required by art 41 of the Constitution; (ii) the propriety of Cabinet ministers who were lawyers holding practising certificates appearing as counsel for the respondent, and (iii) the standard of proof required.

**Held:** Petition dismissed

(1) The respondent was already a Zambian citizen and was not disqualified from election as president. Whichever of the several biographies proposed to the court was adopted, before independence the respondent had been a British protected person 'belonging' to Northern Rhodesia, in terms of the Constitution of Northern Rhodesia 1963, having been born in Northern Rhodesia or whose parents were ordinarily resident there. In requiring a presidential candidate to be, inter alia, a Zambian Citizen aged 35 years or more, both of whose parents were citizens by birth or decent, art 34(3) of the Constitution of Zambia (as amended) had to be construed as referring to those who became Zambian citizens at independence or would, but for their prior deaths, have then become Zambian citizens. When Zambian citizenship was created at independence on 24 October 1964, the Zambian Independence Order 1964 s 3, had conferred such citizenships on every British protected person who had been born in the former Protectorate of Northern Rhodesia or, if born outside the protectorate, whose father became, or would but for his prior death, have become, a citizen by birth in the protectorate. It was unnecessary to determine where the respondents had been born, although the preponderance of evidence from official records indicated that he had been in Northern Rhodesia. There was no dispute that his mother had belonged to the to Northern Rhodesia and would have become a citizen at independence but her prior death. Since the various accounts presented to the court of his paternal parentage were irreconcilable, the petitioners had failed to establish to the necessary degree of convincing clarity that the respondent's father was an alien; there was no basis for foisting a father upon the respondent nor for finding against the one he had officially declared. In any event, even the finding most favourable to the petitioners, the father proposed for the respondent was a former British protected person belonging to Northern Rhodesia who had become a citizen of Zambia at independence (see pp 163–165, 170-171, post). *Motala v. A-G* [1993] 1 LRC 183 considered.

Per curiam. The parentage qualification for election as president introduced into the Constitution of Zambia 1991 by the amendment in 1996 pose a number of difficulties apparently without solution, eg whether the reference is to legitimate or biological parentage

and whether adoptive parentage is included (see p 169, post).

(2) The requirement of a 'full bench of the Supreme Court', which by art 41(2) of the Constitution of Zambia 1991 was given jurisdiction to determine whether any provisions of the Constitution or any law relating to the election of the President had been complied with, was satisfied when the maximum available odd number of judges of the court were empanelled to hear the case (see p 144, post).

(3) Although it was undesirable for Cabinet Ministers to be in active practice at the bar it was not contrary to law for them to exercise the right of audience and to represent a litigant. Any advocate should decline to accept instructions when there were circumstances which would render it difficult for him or her to maintain the requisite professional independence or which would in some way impair or undermine his ability to promote the best interests of the administration of justice. Ideally an advocate should not appear as such in his own cause as in any other situation of possible want of independence or conflict of interest or embarrassment generally. There was no conflict of interest in the present case. If anything, there might have been a case of common vested interests on both sides, having regard to the number of advocates, even on the petitioners' side, who were themselves senior members or leaders of some of the political parties on whose behalf the petition was brought (see p 144, post). *Re Lord Kinross* [1905] AC 468 comsidered.

(4) Parliamentary election petitions were required to be proved to a standard higher than on a mere balance of probability and therefore in this, where the petition had been brought under constitutional provisions and would impact upon the governance of the nation and deployment of constitutional power, no less a standard of proof was required. Furthermore the issues raised were required to be established to a fairly high degree of convincing clarity (see p 145, post).

(5) (i) As to the allegations of bribery and corruption: the government's established programme of selling council houses, which was taken advantage of by giving discounts in election year, did not amount to the corrupt practice of bribery under reg 51 of the Electoral (General) Regulations so as to be caught by the spirit of s 18 of the Electoral Act and, in any event, it was doubtful whether the house sales could have significantly affected the election result in a nationwide constituency; although treating was established, it had not been shown that it prevented the majority of voters from electing the candidate of their choice; the donation by the respondent and various ministers of public funds to public causes before, during and since the elections was not prohibited by the regulations (see p 173, post).

(ii) As to the allegations of irregularities, although there was some evidence of irregularities and malpractices there was no evidence that the respondent personally or his lawful election agent was privy to them. In any event, since the constituency was nationwide it was not established that the proven irregularities were such that nationally the majority of the voters ere or might have been prevented from electing the candidate of their choice or that such irregularities affected the election result to any significant extent (see p 182, post)

(iii) Although the flaws in relation to the electoral system, including the duplication of national registration cards, the fact that some people had two or more voters' cards, complaints about the registers, the polling districts, the sitting of the polling stations and the results, did not reflect well on those managing the electoral process; they did not by their very nature go to the general integrity of the system and did not necessarily suggest that the electoral system had been comprehensively massaged or predisposed in advance to grant an unfair or any advantage or disadvantage to any candidate. It followed that although the elections were not

perfect and some aspect of them were quite flawed they had been conducted substantially in conformity with the law and practice governing elections (see p 191, post).

Per curiam. (i) During election period there should be a closed season for any activity suggestive of vote-buying, including any public and official charitable activity involving public funds and not related to emergencies or any life-saving or life-threatening situations (see p. 175, post).

(ii) Elections are the sole lawful constitutional and legitimate method for the peaceful and legal acquisition of political power and the culmination of the exercise of some of the most basic fundamental rights. The various flaws in the electoral process which had been established should be addressed by the authorities (see p 191, post).

[Editors' notes: Articles 34(3) and 41 of the Constitution of Zambia Act 1991 (as amended) are set out at pp 145-146, respectively, post.
Section 16(3) of the 1963 Constitution, so far as material, is set out at pp 157-158, post.

Section 2(1) of the Zambia Independence Act 1964 is set out at p 158, post.
Section 18 of the Electoral Act 1991 is set out at pp 171-172, post.

***Cases referred to in judgment***

A-G v Clarkson [1990] 1 QB 156, UK CA
Akar v A-G of Sierra Leone [1969] 3 ALL ER 384, [1970] AC 853, [1969] 3 WLR 970, SL PC

Cape Brandy Syndicate v IRC [1921] 2 KB 403, UK CA
Capper v Baldwin [1965] 1 ALL ER 787, [1965] 2 QB 53, [1965] 2 WLR 610, UK DC
Kinross, Re Lord [1905] AC 468, UK HL (C of P)
Miyanda v Handahu [1994] SCZ Judgment No. 6, unreported
Motala v A-G [1993] 1 LRC 183, [1991] 4 ALL ER 683, [1992] 1 AC 281, UK HL; rvsg [1991] 2 ALL ER 312, UK CA
Ormond Investment Co. Ltd v Betts [1928] AC 143, [1928] ALL ER Rep 709, UK HL
Shamwana v People [1985]] LRC (Crim) 120, (1985) SR 41, Zam SC

*Legislation referred to:*

(1) Halsbury's Laws of England, 4th Ed. Vol.3, Paragraph 1143
(2) Constitution of Zambia, Article 34 (3) (a), (b) and (e)
(3) Electoral Act (1991) as amended by Act No.23 of 1996
(4) Northern Rhodesia Order-In-Council, 1911
(5) The Barotziland-North-Western Rhodesia Orders-In-Council of 1899, 1902 and 1909
(6) The North Eastern Rhodesia Orders-In-Council, 1900, 1907 & 1909 and Northern Rhodesia Gazettes of the period (e.g. 1923 and 1924)
(7) British South Africa Company's Northern Rhodesia Government Gazette number 209 of Friday 21st March, 1924
(8) Government Notices No. 153 of 1924; No. 89 of 1926, No. 107 of 1927 and No. 149 of 1928)
(9) Halsbury's Laws of England, 3rd Edition, Volume 5 from paragraph 1273
(10) Government Gazette 213 of 1962
(11) Government Notice No. 25 of 1964
(12) Zambia Independence Order, 1964, Section 6(1) and (2)
(13) The Constitution of Zambia (1964) Sections 3, 4, 5 and 6

(14) British Nationality Act,(1948), Section 32
(15) Halsbury's Laws of England 3rd Edition, Volume 1, in Note (i) at page 528
(16) Government Notice number 91 of 1934, Government Notices of Northern Rhodesia at page 109
(17) Affiliation and Maintenance of Children Act Cap 64 of the Laws of Zambia (1995) Edition
(18) Citizenship of Zambia Ordinance number 61 of 1964, Section 3 (Now section 11 of Cap 124 of the Laws of Zambia (1995) Edition
(19) Electoral Act, Cap 13 of the 1995 Laws of Zambia, Section 18
Electoral (General) Regulations

For the Petitioners: Mr. M Chona SC. of Mahachi Chambers,
Mr. E.J.Shamwana SC. of Shamwana and Co,
Mr. D. M. Lisulo SC. of Lisulo and Co,
Prof. Mvunga of Mvunga and Associates,
Mrs. N. Mutti of Lukona Chambers,
Mr. S. Sikota of Central Chambers
Mr. Lungu of Andrea Masiye and Co,
Mrs. M. Zaloumis of Dove Chambers, and
Mr. S. Sitwala of Light House Chambers.

For the respondent: Mr V. Malambo and Mr E. Silwamba of Malambo and Co.

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Judgment

**NGULUBE,C.J.:** delivered the judgment of the court.

Delay in rendering this judgment is regretted but was occasioned in part by the length and complexity of the case and by the heavy work load and schedule of other cases which the members of the court had to contend with. There were over a hundred witnesses; the transcript of the record runs into well over three thousand pages; there was a vast quantity of documentary exhibits and it was necessary to analyze all this evidence. The court was mindful also of the constitutional importance of a case of this kind and magnitude and the need which is self-evident for thorough reflection and consideration of the law and the facts. The hearing of the case occupied the greater part of the period between 10th Feburary and 7th January ,1998. During the course of such hearing, we were called upon to render and did deliver several rulings on a variety of issues. We also received detailed submissions for which we are indebted to counsel on both sides. It should also be noted, as a novel point, that this was the first time ever when this court which is essentially an appellate court had to sit as a trial court of first and last instance under the very special jurisdiction given by the constitution for the trial of presidential election petitions. Quite early in the proceedings, we had to construe what would be the "full bench of the Supreme Court" to hear the case as required by Article 41 of the Constitution when it became apparent that there were practical difficulties and the distinct possibility of the trial never taking off. The requirement was found to be fulfilled by construing it to mean the maximum available odd number of the judges of the court that could be mustered to hear the case. Both sides agreed and the trial commenced.

One of the preliminary points raised on which we said we would give our reasons in the judgment concerned the propriety of the Cabinet Ministers who are lawyers holding practising certificates appearing as counsel for the respondent. Objection was taken that it was morally, ethically, professionally and otherwise improper for the Cabinet Ministers to appear as counsel for the respondent, among other reasons, the because in the process they had to neglect their full time ministerial responsibilities. The gravamen of the submission was that members of the

bar who are members of the executive and also of the legislative branches should not appear on behalf of an individual though they can appear for the State. One reason for this was the possibility of a conflict of interest and another was the need to enhance the separation of powers. Commenting on certain precedents and instances in this country where Ministers who were practising advocates actually appeared at the bar in their character quo advocates - (such as was the case in Shamwana and Others v The People (1985 Z.R. 41 where the Minister of Legal Affairs was a member of the prosecution team in his character as Attorney-General) - counsel for the petitioners .submitted that it was now time to initiate a correct and more acceptable legal culture which would disallow this sort of thing. The case of In re: LORD KINROSS (1905)A.C. 468 was cited in support. This was a case in which the House of Lords (Committee for Privileges) held that a barrister who is also a peer may argue as counsel on an appeal at the bar of the House of Lords, but may not appear as counsel to argue before committees of the house, or before the house when sitting under the presidency of the Lord High Steward on a criminal case. In our considered opinion, this case is infact authority to support the general proposition alluded to in our brief ruling at the time that any advocate whatsoever must decline to accept instructions when there are circumstances which would render it difficult for him/her to maintain the requisite professional independence or which would in some way impair or undermine the advocate's ability to promote the best interests of the administration of justice. Ideally, an advocate should not appear as such in his own cause as in any other situation of possible want of independence or conflict of interests or embarrassment generally: See Halsbury's Laws of England, 4th Ed., Vol. 3 paragraph 1143 et seq. We did not see any conflict of interest in this matter. If anything, there may have been a case of vested common interests on both sides, judging from the number-of advocates even on the petitioners' side who are themselves senior members or leaders of some of the political parties on whose behalf the petition was brought. It is not contrary to law for practitioners with current practising certificates who also happen to be Ministers to have audience and to represent a litigant. It is certainly undesirable for Ministers to be in active private practice at the bar but the matter can not be put higher than that.

By their petitions which were consolidated, the petitioners advanced a number of prayers arising from the several allegations and averments in the petition. The prayers were in the following terms:

"1. That it may be determined and declared that the provisions of Article 34 (3) (a), (b) and (e) in respect of the Respondent have not been satisfied and accordingly that the Respondent did not qualify to contest the election and to be elected President of the Republic of Zambia and that his election way void.

2. That it may be determined and declared that the Respondent has falsely sworn as to the citizenship of his parents and is in contravention of Section 9 of the Electoral Act 1991 as amended by Act No. 23 of 1996.

3. That it may be determined and declared that the Electoral Commission neglected its statutory duty to superintend the election process thereby allowing a fraudalent exercise favouring the Respondent.

4. That it may be determined and declared that the election process was not free and fair and that the election was rigged and therefore nulland void.

5. That the Petitioners may have such further or other (relief) as may be just."

The petitioners challenge the election of the respondent as President of Zambia. By their prayers, the petitioners have raised issues concerning the respondent's qualifications under

the Constitution in respect of his own citizenship and that of his parents. They have questioned the electoral process and the way it was handled by the Electoral Commission and they have asked for the avoidance of the election for the reason that it was rigged and not free and fair. The prayers arose out of a number of allegations pleaded in the petition and with which we will be dealing.

As part of the preliminary remarks which we make in this matter, we wish to assert that it can not be seriously disputed that parlimentary elections petition have generally long required to be proved to a standard higher than on a mere balance of probability. It follows, therefore,. that in this case where the petition has been brought under constitutional provisions and would impact upon the governance of the nation and the deployment of the constitutional power and authority, no less a standard of proof is required. It follows also the issues raise are required to be established to a fairly high degree of convincing clarity. In a moment we will be examining the evidence and making our finds with this yard stick in mind. The preliminary observations would not be complete if we did not set out, at the very outset, the relevant provisions of the constitution with which we are here concerned. The constitutional provisions in the question include the controversial parentage amendments of 1996 so that article 34(1), (3) and (4) read:

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

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

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

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

Article 41(2) reads:

"41.(2) Any question which may arise as to whether:

(a) any provision of this Constitution or any law relating to election of a President has been complied with;

(b) any person has been validly elected as President under Article 34; shall be referred to and determined by the full bench of the.Supreme Court "

The other law referred to in these Articles is the Electoral Act and we will be alluding to it from time to time.

## THE RESPONDENT'S QUALIFICATIONS

We now turn to that part of the case which concerned the respondent's qualifications.

The issues which arose included who the respondent was; where he was born; who are or were his parents; what is his citizenship and what is or was the citizenship of his parents? We heard evidence from basically three categories of witness, namely the petitioners themselves, the category of relatives or alleged relatives and acquaintances, and the others who included officials and writers. It was the petitioners position by their pleading that the identity of the respondent and the identity of his parents has been and still is a subject of contradictory public records, public controversy and public concern and has never been ascertained. Since the petitioners had to establish an affirmative case and not simply to confirm the controversy, their final submission was that we should find that the respondent was the illegitimate son of the witness PW3 Luka Chabala Kafupi who it was claimed had an illicit liaison with the mother while she was married allegedly to a Mozambican Jim Zharare Nkhonde; that we should find that the respondent was born at Chibambo Mission Hospital in the then Belgian Congo; and that the biological father alleged was at the time an alien as he himself claimed. The petitioners proceeded on the premise that PW3 is a Zairean (now Congolese) but who also claims to be a Zambian. They also proceeded on the footing that the parents of a presidential candidate referred to in the constitution are the biological and not necessarily the legal parents. It will thus be necessary to deal with all these aspects.

The petitioners gave evidence touching upon the citizenship qualifications of the respondent and the possible nationalities of his parents as PWs I(Zulu), 2(Lewanika),8 (Kambaila), 6(Mrs Phiri) and 16(Mungomba). To this list can be added the petitioner PW35(Dr. Chongwe) though not a petitioner of record. The petitioners simply made the allegation of want of qualification and obviously had no personal knowledge or direct evidence to give. They depended on the other witnesses of fact. Without a doubt, the petitioners were genuinely and truly aggrieved by the amendments of 1996 which introduced a requirement that even the parents of a candidate must be Zambian citizens by birth or by descent, pointing out that the amendments had managed to knock out in advance of impending elections the former president of the country and proposed candidate for a major opposition party which could not even field its deputy leader because another amendment barred traditional chiefs from active politics.

The next group of witnesses was that of relatives or alleged relatives and acquaintances.

These were PWs 3(Kafupi), 4(Ngosa), 5(Musangu), 7 (Chilekwa), 13 (Kasuba),14(William Banda), 28(Kakonde), 29(Musonda) 32(Anna Chilekwa), 33 (Lengwe), 34(Musendeka), 5I(Chikonde), 59(Kenani), 80(Chaziya), 83(Sikazwe) and 102(Mumba). For reasons of economy and practicality since their evidence is on record, we give only a digest containing the essentials of their evidence as follows:- PW3, Mr Kafupi, said that the respondent under the name of Titus Mpundu is his illegitimate son conceived of an adulterous affair between him and the mother in 1943. He said the respondent was born in 1944 at Chibambo in Zaire by caesarean section and all this he was told by the mother. He saw the baby at five months old and next saw him at thirty-six years in 1980 in the house of one mother-of -Kapaya (a maternal relative of the respondent) at Musangu village in the presence of one the late Bismark Chonaula who queried why the young ones should "promote" him - i.e. acknowledge and recognise him - when the elders had not. The respondent is alleged to have said in Swahili a remark to the effect that a lion when stranded could even eat grass, a reference to PW3's attempt to be accepted so late in the day.

PW3 was seventy-eight years old when he testified, which meant he was born in about 1919. He said his own parents had settled in Zambia although he did not specify whether .this was during the last or at the turn of this century. He said he was both a Zambian and a Zairean because, although his parents had settled in Zambia and he had been conceived in Zambia at Musangu villlage, he was born at a place in Zaire where his then pregnant mother was visiting a sick relation. He has a green national registration card which is reserved for Zambian nationals.

As will be seen later in this judgment, PW3 was born at a time when the former British protectorate of Northern Rhodesia (as Zambia was called before independence) was divided into North Western Rhodesia and North Eastern Rhodesia. Together with Barotseland, the territory was then being governed by an Administrator of Northern Rhodesia from the British South Africa Company on behalf of a High Commissioner based at Cape Town. This was before that company handed over the administration of Northern Rhodesia to the British Crown on 1st April,1924, under the Northern Rhodesia Order in Council, 1924.

The next witness in this line was PW4, Mr Thomas Ngosa who gave his evidence with much undisguised bitterness against the respondent whom he claimed to be some sort of second cousin. He deposed that he knew the respondent as Titus Mpundu Chabala; that the respondent's mother lived in Luanshya with mama Kapoma Bangwa; that the respondent's mother was married in Luanshya to a Tukuyu man and that she was put in a family way by PW3 when she visited the village. He said as a result her husband then chased her. The witness said he was eight years old at the time of the events to which he was deposing. He said at age nine years, he visited the respondent's mother in Chibambo Hospital in Zaire where the respondent (the survivor of twins, a girl and a boy) was born by operation at the hands of one Dr. Dixon.

This witness fared rather badly under cross-examination, even claiming he could not know fellow children and relatives living in the same village allegedly because he was from a poor family. We found his explanations to be as incredible as his other claim that at eight years old he attended a meeting at which PW3 was warned not to claim the pregnancy as his. This was a witness who was untruthful when he said he was visiting a relation of the respondent's known as the mother-of Blaston up to 1984 when she had died in the fifties. This was the witness who failed to identify two gentlemen by the names of Bunkum and Blaston whom he had earlier claimed were his relations and were also relations of the respondent when they were paraded in court. It was highly improbable that PW4 could have been personally privy as a young lad to the kind of facts he sought to speak to. In any event, he withered under cross-examination.

Next, there was PW5, Mr. Gilbert Musangu Chipulu. His evidence was that he knew the respondent as Titus Mpundu while they were schoolmates in the villages and they played together after the respondent had been expelled from Kawambwa Secondary School. He also knew PW34, Champo Thom Musendeka. Later, he learnt that the respondent who was then in the Zambia Congress of Trade Unions was now going by the name of Frederick Chiluba.

The next witness in this category was PW7, Mr. Mark Chilekwa who was called to establish another possible father different from PW3. He said he knew the respondent to be Titus Mpundu Jim Zharare Nkhonde whose father was Mr. Jim Zharare Nkhonde, a miner and part-time herbalist of House number D.4/190 Wusakile Mine Township, Kitwe. He said he ate and played together with jim and Titus, the sons of Mr Nkhonde, during school holidays when they would come from schools in Luapula. According to PW7 Mr. Nkhonde who was a widower was a close friend of their family and used to say he came from Lourenco Marques, Tete

Province, Zumbo District, in Mozambique. He disputed the details of the father given by the respondent at nomination. He said he had associated with the respondent from 1955 to 1959, and next saw him in 1977 (according to the evidence in chief) or in 1976 (under cross examination). He was surpirsed to hear that the names had changed to Frederick Chiluba. He said he had resigned from employment with Zambia National Tourist Board voluntarily but accepted when pressed that he was in fact imprisoned for an offence involving dishonesty.

We can interpose two small observations here. One is that there can be no doubt whatsoever that the respondent started life under the names Titus Mpundu and later changed them to his current names. During the course of the hearing, a question arose whether persons could change their names informally, more or less. The short answer seems to be that name – changes before the coming into force of the National Registration Act could apparently take place quite informally so that any formalities and official practices since introduced can not be resorted to in a discussion of name – changes that occurred prior to registration under that Act. The second observation is a passing comment arising from the evidence of PW7 viewed against the evidence of PW4 who said that the father chased the mother when he discovered that she was pregnant by another man: One wonders then how come the father kept the child who was the result of the illegal pregnancy.

The next witness in this line was PW13, Mr. David Kasuba, President of a very minor political party. He did his early primary schooling in Mambilima in Zambia and did the rest in Zaire where he even held political posts, as well as the post of Chief Executive Secretary in that country's Ministry of Health. He oversaw the Africanisation programme at Chibambo Mission. He produced the certificate of registration - the "Chitupa" - of his grandfather one Moses Kabambale a Northern Rhodesian working at Chibambo Mission Hospital under Dr. Dixon whom he knew personally. Subsequently he was told that the respondent was his relative and that one of his parents was not a Zambian, while the respondent himself may have been born outside Zambia. Being aggrieved by the citizenship and domicile provisions in the 1996 amendments to the constitution, he resolved to investigate by conducting an opinion poll in the villages as to who the villagers considered to be the respondent's father. All this multiple hearsay was ruled inadmissible. Mr. Kasuba's evidence was of doubtful value even on the question of whether PW3 was the father or not.

Next was PW14, Mr. William K. A. Banda who was sixty-one years old when he testified. He said he came to know the respondent as Titus Mpundu in 1960 in Mufulira: where the respondent was then staying with an elder sister in Kankoyo township. The witness testified that the respondent was then a street vendor of vegetables. Towards the end of 1962 to mid 1963, he kept the respondent at his house together with one John Kapapi Mwansa, who was another relative of the respondent. He found a job for the respondent with Central African Road Services (CARS). In mid 1963, the respondent was transferred to Kitwe. Mr. Banda said the respondent used to say his father was "Kafupi" who was somewhere in Zaire. He said the respondent spoke Lingala - a Zairean language - and not Swahili to the Zairean lady vendors. Subsequently, he heard that CARS had sent the respondent to open a branch in Tanzania. Later, he met the respondent in Ndola in 1976 when he was now called Chiluba.

There were some witnesses called by the petitioners whose evidence was to be classified with that of the witnesses testifying to the respondent's personal history and background but whose evidence was so utterly useless that we will not waste time reviewing it. An example of this was the testimony of PWI Mr Chalo Wisdom Muwowo whose evidence flew in the teeth of many other perfectly acceptable accounts when he tried to show that the respondent never went to Kawambwa Secondary School. The witness infact went to that school long after the respondent had been expelled. Of the same flavour was evidence called to show that the respondent never

lived in Kitwe.

The next witness of some substance in this line was PW28, Mr. Elijah, Mwape Kakonde who was bom in 1943. He was called upon to recall events when he was seven or so years old. He hails from Musangu Village and knew the respondent there as Titus Mpundu. He said in the early 1950s he lived with the respondent in a mutual relative's home, namely in the house of one Mr. Chonaula. As far as he had heard, PW3 Mr. Kafupi was the "real" father of the respondent. In reference to PW4 ( Mr Ngosa), the witness said in one breath that he lived in town and in the next that he lived in the village. The witness got confused with the names of the people he intended to refer to. He was able to tell the court that Mr. Ngosa's relatives included Bunkum Mwenya who was Headman Kaombe, the mother-of-Kapaya, and Zharare the elder brother of Titus Mpundu.

The witness lost his temper and fumbled very badly under cross-examination. He got thoroughly confused in his references to Ngosa and also in reference to when he started schooling allegedly in 1950. According to him, the respondent had started school earlier than him. Other evidence which was more acceptable showed that the respondent started school in 1952. PW28 fared rather badly in the witness box, particularly under cross-examination. We found him not be a witness of credit.

The next witness in this group was PW29 Mr. Jonathan Musonda who was 39 years old and could only depose to what he had been told and what he heard, which was all hearsay. He had heard that the respondent was Titus Mpundu and that PW3 was his father. He was able to say that the respondent's relatives included Bunkum, Blaston, the witness Ngosa (PW4) and the respondent's brother Jim Nkonde.

PW32 was Anna Mwansa Chilekwa, the sister of PW7 Mark Chilekwa. She testified that as an eleven-year-old in 1955, she came to know Jim Zharare Nkhonde and his younger brother Titus Mpundu Jim Zharare Nkhonde who is now known as Frederick Chiluba. She said that they lived with their father a Mozambican called Jim Zharare Nkhonde who was a widower and underground miner but who was also a herbalist and helped their mother conceive and have the youngest sister Zuze now living in Zimbabwe. The youngest sister was named Zuze by Mr. Nkhonde. The witness said that the parents became close friends; PW7 slept at Mr. Nkhonde's house and when, his two sons came for holidays (between 1955 and 1959) they played and ate together. She testified that she has since visited the respondent at State House and has been given some money. She said that after the public debate had started over the respondent's identity, government functionaries drove her to Luanshya with a view to seeing her mother whom they did not find. They threatened her if she talked about knowing the respondent as a result of which she sought an appointment with the respondent. When she saw him, he disclaimed the threateners and gave her a gift of money.

The next was PW33, Mr. Jonathan Mulundu Lengwe. He testified that a Mr. Maxwell Kalesha Chisoko, his mother's true brother, lied on a television programme to say the respondent was his (Kalesha's) nephcw from his sister when the respondent is not a relative of theirs at all.

PW34 was Ruben Champo Thom Musendeka. He told the court that he knew the respondent as Titus Mpundu in 1956 when they were in the same class in standard three at Lubunda Primary School. They continued to be classmates until they completed standard six in 1960 at Johnston Falls. In August 1960, they went together for Form 1 at Kawambwa Secondary school. From what he heard, the respondent's father was PW3. The witness said that in 1961 in the last term of Form 1, the respondent, the witness and twenty others were expelled from school for a protest demonstration and refusing to cart firewood on the head when the Headrnaster had a

vanette which he refused to be used for the purpose. He said he and the respondent were the ringleaders and had been emboldened because they had smoked dagga. He told the court that the Headmaster delivered all the expellees to their villages in the vanette. He continued to visit the respondent until one evening the respondent and two companions of his arrived at his home on foot, carrying their suitcases, en route to Mufulira. He next saw the respondent in Mufulira in 1965 when, still as Titus Mpundu, he was working for CARS as a bus conductor. The witness next saw the respondent at an MMD rally in 1991 and marvelled that Titus Mpundu was now called Frederick Jacob Chiluba.

He tried to see him without success and finally decided in 1995 to go to the Post Newspaper to reveal what he knew of the respondent's identity.

PW51 was Mrs. Evelyn Chikonde. When she was nine or ten years old, she knew the respondent as Titus Mpundu at Kawambwa where he was a friend of her brother. She said he got expelled for smoking dagga. The witness - who was the UNIP Women District Chairperson for Ndola - told the court that the respondent said his father was Kafupi Chabala and that her own father assisted Titus with transport money after the expulsion from school. This was in contrast with PW34 who said the school principal delivered the expellees to their parents' homes. PW51 said that during the run up to the 1991 general elections, the respondent had vowed to deal with her for not supporting his campaign and she believes that most probably it was the respondent who engineered her dismissal from her job at the Ndola Central Hospital. PW51 came through as a most unimpressive witness.

PW59 was Mr. J.P. Chibwe Kenani, the UNIP District Chairman for Chingola. He said he went to the Post Newspaper to refute media claims by his long-standing friend, one Maxwell Kalesha Chisoko that he was the respondent's uncle. He said that in 1990 during a discussion about certain problems in the Mine Workers Union of Zambia where Chisoko was a branch chairman, the respondent was allegedly heard to remark that he did not know this Maxwell Kalesha Chisoko.

Next in this line of witnesses was PW80 Mr. John Jamale Chaziya who was 69 years old and who migrated from Mozambique, as the former Portugues East Africa is known. He told this court that he was related to one Zhuwao Sixpence Tembo and his cousin one Jim Zherari who left Mozambique and went to Salisbury (now Harare) to seek work in the 1920's. In 1943, the witness trekked to Salisbury in the then Southern Rhodesia where he learnt carpentry. From there, he moved to Ndola in the then Nothern Rhodesia in April 1950. In 1954, he met a fellow Mozambican called Kamuchacha who told him about Sixpence being in Mufulira. He cycled to Mufulira and found Sixpence who called Jim Zherari from his own house in the Mufulira mine township. Sixpence introduced the witness to Zherari who came with his son aged about twelve years old who was introduced as Titus Zherari and who was said to be the survivor of twins who were both males. From the various accounts before the court the respondent would have been about ten or eleven years old in 1954. However, to continue with the summary, the witness said he next saw the respondent then known as Frederick Chiluba at Atlas Copco in Ndola in 1976 and the respondent started visiting the witness, sometimes in company of his father-in-law a Mr. Ndhlovu, said to be the father of the first lady.

The witness said that in 1979, when the respondent felt harassed by other trade unionists, he (the respondent) reported that he had met and talked to Honourable Joachim Chissano (President of Mozambique but at the time its foreign Minister) who said the respondent could go home to Mozambique any time. PW80 hotly disputed any claims to the respondent by Zaireans or alleged Zaireans.

Next was PW83 Mr. Rodwell Kasonteka Sikazwe who, apart from alleging that the respondent had manipulated the constitution of a certain trade union, testified that his brother-in-law Maxwell Chisoko Kalesha can not possibly be the respondent's uncle, as he had falsely claimed on television.

Finally in this group of witnesses, there was PW102, Mr. Harry John Mumba who said that he came from the same area as the respondent who was known as Titus Mpundu. He said they went to the same primary schools and that he had heard that PW3 was the respondent's father.

Then there was the category of witnesses whom we have referred to as the others whose evidence in some way touched upon the issue of the respondent's qualifications. These included PWs 9,10,11,12,23,25,38, 48,52,61, 62,87,88,94,95,96,103,104,105,106, and 107. PW9 was Mr. Basil Kabwe whose evidence on the issue was of no value. He grew up and attended school in Wusakile, Kitwe, and said that during that time he did not know the respondent. The evidence of PWIO, Mr. Sketchley Sachika along the same lines was equally of little assistance. He also said that he knew the respondent in Kitwe in the 60's as Titus Mpundu but that later in Ndola in 1967 or 68 he learnt that he was now Frederick Titus Chiluba. PW11 was Mr. Charles Simpute from the Registrar General's office. He produced the official records of the respondent as Fredrick Jacob Chiluba, NRC No. 168118/67/1. He also talked about the procedures for change names under the National Registration Act, CAP. 126, and the Regulations. The Act came into force in July 1964 and regulations in 1965. A perusal of this law shows that only a registered person was required to follow the procedure for a change of name, especially the surname. It follows therefore - as we have previously observed - that the statutory procedures are irrelevant to changes made prior to the date of the Act and prior to registration. It follows also that the Act was irrelevant to persons who died before any registrations started. PWI2 was Mr. Thilasi, the Chief Passport and Citizenship Officer. He produced the official file on Frederick Jacob Chiluba, which showed that the father was given as Jacob Titus Chiluba of Musangu Village, Chief Lubunda, Mwense District. There was no record on file to show that the father was also known as Jacob Titus Chiluba Nkonde of Lengwe Village, Kawambwa District, as set out in the respondent's oath at nominations.

The next witness under this category was PW23 Jumbe Ngoma who said that his company - Multimedia - printed the book by the respondent called "Democracy – The Challenge of Change" which was produced as an exhibit. It has a brief auto-biographical note about the respondent. PW25 was the learned Mr. John Mwanakatwe, S.C. who wrote the book "End of Kaunda Era" which the petitioners produced in evidence to show the conflicting biographical details of the respondent. The witness wrote in that book that the respondent was born in Musangu Village as Frederick Jacob Titus Mpundu; that the father was a miner while the mother died when the respondent was very young; and that the respondent started primary school in Wusakile, Kitwe. While PW25, alleged in his book that the respondent was born in Musangu started in Wusakile, all other books and articles, including books, affidavits and official forms attributable to the respondent talked about birth in Wusakile, Kitwe. The only other publication produced in evidence which suggested birth in Luapula Province was the book (which was Exhibit P.7) by the National Democratic Institute of the United States of America who were involved in monitoring the landmark elections of October 1991. As far as schooling goes, all other evidence was that the respondent went to schools in Luapula province only. In fairness to PW25, he was not adamant and graciously acknowledged that a mistake may have been made.

PW38 was Mr. Hamusankwa of the Chronicle Newspaper who said he had read the

contradictory biographical materials in Mr. Mwanakatwe's book and in the respondent's book. He sent a questionnaire to Mr. Mwanakatwe and published his reply and an article calling upon those concerned to come forward and clear the air. They did not come forward.

PW48 was Mr. Justine Mwiinga of the Zambia Daily Mail newspaper. He informed their Lordships that he wrote about the President's origins, nationality and place of birth. He was in a delegation co-sponsored by the government which travelled to Zaire and found no documentary evidence that the respondent was born at Chibambo Mission Hospital. He wrote an article about it which was produced in evidence and which was pro-the respondent and highly critical of other earlier reports by other newspapers as to the respondent's alleged place of birth. He also wrote that contrary to other reports there was no Zambia Electricity Supply Corporation powerline from Musangu Village to Chibambo Mssion Hospital. The witness wrote that Chibambo Hospital did not exist at the time of the respondent's birth. This assertion is to be contrasted with other evidence that it did exist as far back as 1930 or oven earlier.

PW52 was Mrs. Pauline Banda of the Zambia Daily Mail who did not make any useful contribution to the case. She was called to produce an article which she had written about a protest staged against the then MMD Publicity Secretary Mwangilwa who was reported in the Post Newspaper to have confirmed that the respondent was born in Zaire. PW61 was Dr. Mwacalimba, the UNZA Librarian whose evidence added nothing useful. He was called ostensibly to produce the respondent's Master of Philosophy Dissertation where there is an autobiography that he was born in Kitwe at Wusakile to Titus Jacob Chiluba Nkonde and Daina Kaimba. Another unhelpful contribution was made by PW62 Mr. Jabani of Zambia Information Services (ZIS who was called to produce a pamphlet since unauthenticated on the respondent, giving his background and academic qualifications. The pamphlet was rendered even more useless when PW87, Mr. Muyunda Sibeso from the Government Printer, was called to say that the government Printer did not in fact print the exhibited pamphlet for ZIS on the respondent so that the legend on it to that effect was false.

PW88 was Mr. Phiri an artist whose contribution was not usable. He sought to show that a picture of the respondent can be "aged" to look like PW3 and the latter's picture can be "rejuvenated" to look like the respondent. He did the same for Dr. Kaunda and his son Panji. If anything reliance even to a very tiny degree can be placed on mere resemblance of persons, the court's own ocular observation would be more trustworthy than the liberties taken by a fertile artistic imagination. If entertained, Mr Phiri would have us believe that sons and fathers can be transmuted at different ages into virtually identical likeness almost of the identical twins kind. We have discounted Mr. Phiri's evidence.

PW94 was Mr Kaira from the Times of Zambia Newspaper whose evidence was not useful to the issue being discussed. He reported on the death of one Edward Chiluba described as the respondent's brother without verification.

PW95 was Mrs. Mutiti of the National Archives. She produced the file on Chibambo *Mission* Hospital in Congo-Belgium which had been heavily tampered with by a person or persons unknown. She said the file went missing for some days only to re-appear mysterously on her desk. Someone went to a great deal of trouble to "doctor" the file so that there should be no documents showing the hospital existed even before the respondent's birth. The documents showed it was a Christian Missions in Many Lands (CMML) Church Mission Hospital which was grant-aided by the Northern Rhodesian government because of its service to the local inhabitants of the border area.

PW96 was Masautso Phiri of the Post Newspaper who was an active collaborator with the

petitioners. His evidence dealt with issues of the respondent's qualifications as electoral issues. We digest here the evidence as he touched upon the question of qualifications. The witness told this court that he had seen documents generated by various persons or authorities which gave conflicting bio-data on the respondent, for instance, the official MMD bio-data of 1991 said he was born somewhere in Luapula. He said an anonymous circular suggested PW3 as the respondent's father. In March 1995 out of curiosity while on a trip to Luapula, he decided to call on PW3 at Musangu Village and interviewed him. He re interviewed him on a subsequent occasion and wrote PW3's story in the Post Newspaper. He also photocopied the entire Chibambo Mission Hospital file at the National Archives when it was still intact and which was later nobled. The photocopy file was admitted in evidence. He also produced books on the Hospital. He said the Post investigated and published stories about Chibambo which were duly countered in the government media for instance, by the "In search of truth" project and press conferences by Minister Ben Mwila. Cross examination revealed that the witness has sent two persons called Bondo Lusato and Simusokwe to cook up documents from Chibambo recording the alleged birth of the respondent and that both his parents (in this context Daina and Kafupi) were Zaireans. To his credit, it should be stated that the witness did not attempt to produce the alleged birth certificate.

PW103 was Mr. Vicent Tembo, Deputy Chief Inspector of Schools. His evidence was not useful and was to the effect that he failed to find any record at any school in the names Titus Mpundu or Titus Mpundu Chabala or Frederick Jacob Chiluba or Frederick Chiluba as records were not kept by the various schools. PW104 was Mr. Joseph Phiri, the Archivist for Zambia Consolidated Copper Mines (ZCCM) whose evidence was equally not useful. He said he had checked the personnel records from 1929 and found none in the names Jacob Titus Chiluba Nkonde, or Jacob Chiluba, or Jacob Nkonde, or Titus Chiluba, or any combinations of these names. He did not check for house occupancy records. When counsel for the respondent showed him a record for a Jacob Chiluba he said another team of researchers must have pulled it out. It seemed possible that the records had all been nobled. PW105 was Mr. Msimuko of ZCCM whose evidence was equally unhelpful. He produced records cards for employees with the names Jacob Chiluba or Titus but none under Nkonde or Nkhonde. Equally unhelpful was the evidence of PWs 106 and 107, Dr. Siatwinda of ZCCM Luanshya and Dr. Simukonde of ZCCM Kitwe respectively. They did not find any records of birth that might have been for the respondent.

In a nutshell, the foregoing was the evidence concerning the issues of qualification which was placed before us. The issues to be addressed included where the respondent was born; who are or were his parents; what is his own citizenship and what is or was the citizenship of the parents. In paragraph 9 of the petition, the petitioners averred that the identity of the respondent and the identity of his parents has been and was a subject of contradictory public records, public controversy and public concern and has never been ascertained. It is a fact that there was public debate and controversy in the media regarding the respondent's place of birth and parentage especially in respect of his father. However, controversy alone does not take the matter very far. It is also a fact and we so find that Chibambo Mission Hospital contended for by some existed and operated long before the respondent's birth; but so did Wusakile, Kitwe and Musangu Village the other places mentioned. Indeed, so did Luanshya mentioned by PW4 Mr. Thomas Ngosa. It follows that purely as a matter of possibility and technically, he could have been born in any one of these places. From the petitioner's point of view, the most desirable finding would be that the respondent was born at Chibambo. If, for the sake of argument that were the case, would birth at a nearby hospital in another country render a person a non-Zambian citizen? The current and latest position under the Constitution (In fact since 1973 – see Act 27/73) is that a person born in or outside Zambia becomes a citizen at birth if at least one of his parents is a citizen, thus ensuring citizenship by birth and descent. However, the position is that we have to consider the citizenship of

persons who become Zambians on 24th October, 1964, a matter which is governed by the Zambia Independence Order and the Constitution which was scheduled to it.

We had to research into the Constitutional and other legal instruments applicable from the beginnings of any kind of nationhood or statehood for this country. We took note of African migrations and the partition of Africa as recorded by historians. Zambia was formerly the protectorate of Northern Rhodesia in which the British Crown acquired jurisdiction under concessions and undertakings of protection at various times between 1891 and 1900. The King of the Lozi's gave what was North-Western Rhodesia to the British, while four or so other chiefs signed away what was North-Eastern Rhodesia. The protectorate was first administered under Charters and Orders in Council by the British South Africa Company. An administrator of Northern Rhodesia governed the territory on behalf of a High Commissioner who was based at Cape Town. An all-white Advisory Council acted as some kind or non-binding legislature: see generally The Northern Rhodesia Order in Council, 1911 and the previous orders which it revoked, namely The Barotseland-North-Western Rhodesia Orders in Council, 1899, 1902 and 1909 and the North-Eastern Rhodesia Orders in Council, 1900, 1907 and 1909. As a nascent but coherent political entity, this country started off as a white man's country and it was viewed as suitable for European settlement. A perusal of the Northern Rhodesia Gazettes of the period (e.g. for 1923 and 1924) shows that some whites were even applying for letters of naturalization under the Northern Rhodesia Naturalization Order in Council, 1914. The minutes of the Advisory Council meetings with the Administrator gazetted in 1923 and 1924 show that even as the British South Africa Company prepared to hand over the administration and governance of Northern Rhodesia to His Majesty's direct jurisdiction, European settlement was uppermost in their minds. This was to be reflected in the formal "Constitutional" instrument promulgated, which was the Northern Rhodesia Order in Council, 1924 published in the British South Africa Company's Northern Rhodesia Government Gazette No. 209 of Friday, 21st March, 1924. This order in Council (a) constituted the office of Governor and defined his powers; (b) constituted an advisory Executive Council; (c) provided for a Legislative Council; (d) provided for the courts; and (e) provided for native affairs. There were also detailed royal instructions given to the Governor (see page 27 of the Gazette) clause 23 of which enjoined the Governor to ensure the welfare and interests of the native inhabitants, especially their religion and education. The natives were not directly or indirectly involved in the legislature which was outlined in a separate order in Council.

On Tuesday, 1st April,1924, Herbert James Stanely, former Imperial Secretary *under the High* Commissioner for South Africa became the first Governor of Northern Rhodesia. Between 1924 and 1928 (see for example Government Notice No. 153 of 1924; Government Notice No. 89 of 1926; and Government Notice No. 107 of 1927) Commissions of Inquiry were set up to recommend the establishment of Native Reserves for the benefit of natives along the line of rail and in other districts who would be affected in their occupancy of land by actual or probable European Settlement along or near the railway line or by actual or probable mineral development or near the same. Elsewhere in the territory, it was found necessary to set aside land for the exclusive use of the natives and which would not be available for expansion of white settlement. The exercise was crowned by the Crown Lands and Native Reserves Order in council, 1928 and the Regulations (see page 69 for the Order in Council and Government Notice No. 149 of 1928 for the Regulations).

As far back as 1927, the European settlers discussed plans to merge Northern Rhodesia with other East African dependencies or with Southern Rhodesia or even to split it up and add the parts to other adjacent territories – see the Governor's speech to the Legislative Council at page 247 et seq of the Gazette. The reason advanced for this was the alleged sparse

population which made it necessary – according to the Governor – for the native labour to circulate freely to and from Nyasaland, Portuguese East Africa, Katanga, Southern Rhodesia and Tanganyika. the natives were viewed as a source of cheap labour and were to be encouraged free movement In all the surrounding countries and within the territory –see the governor's speech to the Legislative council on 16th April 1928 (page 56 et seq). And so it was that for the purposes of native tax, the colonial administration taxed two categories of native, that is to say, natives with a village and domiciled in the territory and natives domiciled in some other country but resident in the territory. And so it was too that under the Native Registration Ordinance, CAP 59 of the Laws of Northern Rhodesia 1930, indigenous natives of working age had had to register while alien natives of working age had to register under the Alien Natives Registration Ordinance, CAP 60 of the Laws of Northern Rhodesia, 1930. Under the latter statute, alien natives who had shown an intention to settle in the territory could be treated as natives of the territory.

Meanwhile, the European settlers brought in the ill-fated Federation of Rhodesia and Nyasaland. Northern Rhodesia continued to be a protectorate. As from 1948 when two Africans got into the Legislative Council, the so-called natives steadily began to make in-roads into the political organs of Government. A useful summary of this can be read in Halsbury's Laws of England, 3rd Edition, vol. 5 from paragraph 1273. We are taking some time to outline the constitutional progression to statehood for a good reason which will soon become apparent.

The next "Constitutional" milestone was the passing of The Northern Rhodesia (Constitution) Order in Council, 1962 –see Gazette 213 of 1962. This Order (a) revoked the previous "Constitutional" Orders in Council; (b) made provision for the governor, the Executive Council, the Legislative Council, the High Court and the House of Chiefs; (c) provided for a power-sharing arrangement between the Europeans and the Africans; and also the Coloureds and Asians; (d) it divided the voters into higher franchise and lower franchise voters; (e) such voters had to be, inter alia, a citizen of the United Kingdom and Colonies or of the Federation of or a British protected person by virtue of his connexion with Northern Rhodesia. Under this arrangemesnt the right to vote was given to any British protected person by virtue of his connexion with the Territory; or any British subject or a British protected person who had been resident for an aggregate of at least four years out of the preceding seven years; or a resident registered under a chief's area; or any person who had been continuously resident for seven years during the preceding ten years; or the wives of any of the foregoing.

The Order of 1962 was revoked by that of 1963 – see Government Notice No. 25 of 1964 vol. 1 of Government Notices from page 228. The 1963 Constitution introduced a bill of rights which included a non-discrimination clause excepting, inter alia, "with respect to persons who do not belong to Northern Rhodesia". It also introduced a Constitutional Council. Up to this point in time the British nationality law both statutory and common laws applied and there was in none of what may be termed the "Constitutional instruments" thus far any talk of "Citizenship" of Northern Rhodesia. Instead, chapter 1 of the 1963 Constitution talked of persons belonging or not belonging to Northern Rhodesia. Section 16(3) of the 1963 Constitution provided as follows:-

> *"16 (3). For the purposes of this chapter a person shall be deemed to belong to Northern Rhodesia if he is a British subject or a British protected person and:*
>
> > *(a) was born in Northern Rhodesia or of parents who at the time of his birth were ordinarily resident in Northern Rhodesia;*

*(b) has been ordinarily resident in Northern Rhodesia continuously for a period of seven years or more and since the completion of such period of residence has not been ordinarily resident continuously for a period of seven years or more in any other part of the common wealth;*

*(c) is a citizen of the United Kingdom and colonies by virtue of registration in Northern Rhodesia, or the grant of naturalisation in Northern Rhodesia, under the British Nationality Act, 1948;*

*(d) is the wife of a person to whom any of the foregoing paragraphs applies not living apart from such person under a deed of separation; or*

*(e) is the child, stepchild, or child adopted in a manner recognised by law under the age of eighteen years of a person to whom any other foregoing paragraphs applies."*

A little later, we will be citing the House of Lords' decision in Motala And Others v Attorney -General (1991)4 ALL E.R. 682 among other things in connection with the automatic though there unwelcome acquisition of Zambian Citizenship by operation of law by the children of parents who had migrated to Northern Rhodesia from India. For the moment, we rely on it too as very persuasive authority for considering the question of citizenship against the backdrop of the pre-existing or previously existing state of the law and official practice. We would figuratively speaking underline the constitutional provision which in 1963 said a person "belonged" to Northern Rhodesia if born there or even if only born"....of parents who at the time of his birth were ordinarily resident..." There were thus no persons known as citizens of Zambia prior to 24th October ,1964.

Zambia Citizenship came with the grant of independence and it is the legal instruments of that time which made provision for the very first time for citizenship of Zambia. In this connection we wish to refer to some salient provisions in the Zambia Independence Act 1964; The Zambia Independence Order, 1964, and the Independence Constitution which it ushered in.

We wish to quote Sections 2(1) and 3(2) and (3) of the Zambia Independence Act 1964 which read:

"2. *Operation of existing law----(1) Subject to the following provisions of this Act, on and after the appointed day all law which,whether being a rule of law or a provision of an Act of Parliament or of any other enactment or instrument whatsoever, is in force on that day or has been passed or made before that day and comes into force thereafter, shall, unless and until provision to the contrary is made by Parliament or some other authority having power in that behalf, have the same operation in relation to Zambia, and persons and things belonging to or connected with Zambia, as it would have apart from this subsection if on the appointed day Northern Rhodesia had been renamed Zambia but there had been no change in its status."*

3. *(2) A person who, immediately before the appointed day, is for the purposes of those Acts and of the said Order in Council of 1949 a British protected person by virtue of his connection with Northern Rhodesia shall not cease to be such a British protected person for any of those purposes by reason of anything contained in the proceeding provisions of this Act, but shall so cease upon his becoming a citizen of Zambia.*

*(3) Except as provided by section 4 of this Act, any person who immediately before the appointed day is a citizen of the United Kingdom and colonies shall on that day cease to be such a citizen if he becomes on that day a citizen of Zambia."*

Thus, it is seen that those who granted this country its nationhood made provision that, until replaced, the existing law, that is to say the law existing before independence day, should continue to operate in relation to the country as well as to "persons and things belonging to or connected with Zambia" as if Northern Rhodesia had simply changed its name without change in status. We should also draw attention to the fact that the terms of the citizenship provisions at independence which we are about to set out made no suggestion that being native or indegenous or of any particular race would be part of the definition of criteria. Section 6(1) and (2) of the Zambia Independence Order, 1964 read as follows:

"6. *(1) Any person who, at the commencement of this Order, is entitled to be registered as a citizen of Zambia under section 4 or 8 of the constitution shall, until he becomes a citizen of Zambia or until 24th October, 1966, (whichever is the earlier) and subject to the provisions of subsection (3) of this section, have the status of a citizen of Zambia.*

*(2) Any person who has the status of a citizen of Zambia by virtue of the provisions of this section shall be regarded as such a citizen for the purposes of the provisions of the Constitution (other than Chapter II or section 66 (1) and the provisions of any other law for the time being in force in Zambia (other than a law made or having effect as if made in pursuance of section 11 of the Constitution)."*

The Constitution which was a schedule to the Zambia Independence Order dealt with citizenship in chapter II. Sections 3, 4, 5 and 6 of that Constitution were in the following terms:--

"3. *(1) Every person who, having been born in the former Protectorate of Northern Rhodesia, is on 23rd October,1964, a British protected person shall become a citizen of Zambia on 24th October,1964.*

*(2) Every person who, having been born outside the former Protectorate of Northern Rhodesia, is on 23rd October,1964, a British protected person shall, if his father becomes, or would but for his death have become, a citizen of Zambia in accordance with the provisions of subsection (1) of this section, become a citizen of Zambia on 24thOctober, 1964."*

"4. *(1) Subject to the provisions of this section, any woman who, on 23rd October, 1964, is or has been married to a person--*

*(a) who become a citizen of Zambia by virtue of section 3 of this Constitution; or*

*(b) who, having died before 24th October, 1964, would but for his death, have become a citizen of Zambia by virtue of that section,*

*shall be entitled, upon making application in such manner as may be prescribed by or under an Act of Parliament, to be registered as a citizen of Zambia.*

*(2) Subject to the provisions of this section, any person who, on 23rd October,1964, is a citizen of the Untied Kingdom and Colonies, having become such a citizen by virtue of his having been naturalisedor registered in the former Protectorate of Northern Rhodesia under the British Nationality Act 1948, shall be entitled, upon making application before such date and in such manner as may be prescribed by or under an Act of Parliament, to be registered as a citizen as a citizen of Zambia:*

*Provided that any person who is under the age of twenty-one years (other than a woman who is or has been married) shall not be competent to make an application for registration under this subsection, but an application may be made on behalf of that person by his parent or guardian.*

*(3) Subject to the provisions of this section, any woman who-*

*(a) is on 23rd October, 1964, married to a man who after that date becomes a citizen of Zambia; or*

*(b) is on 23rd October, 1964, married to a man who becomes entitled to be registered as a citizen of Zambia under subsection (2) of this section but whose marriage is terminated after that date by death or dissolution and before that person exercises his right to be so registered,*

*shall be entitled, upon making application before such date and in such manner as may be prescribed by or under an Act of Parliament, to be registered as a citizen of Zambia.*

*(4) Subject to the provisions of this section, any woman who on 23rd October 1964 has been married to a person who becomes or would, but for his death, have become entitled to be registered as a citizen of Zambia under subsection (2) of this section, but whose marriage has been terminated by death or dissolution before 24th October 1964, shall be entitled, upon making application before such date and in such manner as may be prescribed by or under an Act of Parliament, to be registered as a citizen of Zambia.*

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

*"5. Every person born in Zambia after 23rd October 1964 shall become a citizen of Zambia at the date of his birth;*

*Provided that a person shall not become a citizen of Zambia by virtue of this section if at the time of his birth--*

*(a) neither of his parents is a citizen of Zambia and his father possesses such immunity from suit and legal process as is accorded to the envoy of a foreign soverign power accredited to Zambia; or*

*(b) his father is a citizen of a country with which Zambia is at war and the birth occurs in a place then under occupation by that country."*

*"6. A person born outside Zambia after 23rd October 1964 shall become a citizen of Zambia at the date of his birth if at the date of his birth his father is a citizen of Zambia otherwise than by virtue of this section or Section 3(2) of this Consitition."*

The scheme of the Constitution at independence was such that some became citizens automatically; some became entitled to that status and could register as of right; while others who were potential citizens could apply to naturalize. Even the law enacted to facilitate registration and naturalisation introduced another element of automatic acquisition of citizenship by adoption: See, the Citizenship of Zambia Ordinance, 1964 (61 of 1964) and subsequent legislation. The Constitutional provisions at independence defined a "British protected person" by reference to the British Nationality Act, 1948, Section 32 of which provided that a British protected person meant a person who was a member of a class of persons declared by order in Council to be protected persons by virtue of their connection with the relevant protectorate, state or territory. The British Protectorates, Protected States and Protected Persons Order in Council, 1949, gave various instances of such protected persons including, under Section 9, those born in a protectorate or a trust territory and those born elsewhere but whose fathers were born in a protectorate or a trust territory. As will be seen shortly when we refer to the MOTALA Case, the state of affairs brought about by the British Nationality Act, 1948 as read with the citizenship provisions in the instruments which ushered in our independence must be viewed in light of the pre-existing state of the law on the subject. Viewed in this way, it is seen that the Legislation of the Untied Kingdom dealing with nationality and elaborated subsequently begins with the British Nationality and Status of Aliens Act, 1914. Under that law, there was a common British nationality for all subjects of the Crown throughout the Commonwealth and Empire which had grown out of the common law doctrine of allegiance to the King. As the learned authors of Halsbury's Laws of England, 3rd ED: vol. 1 point out in Note (i) at page 528---

> *"Before 1st January 1949, the terms "British national" and "British nationality" were generally used to indicate a British subject and the status of a British subject. In fact, there existed at that time another group of British nationals, i.e. British protected persons, but in strict law they were treated as aliens, although they were deemed not to be aliens for the purposes of any provision having effected by virtue of the Aliens Order, 1920....."*

The Act of 1948 radically changed the whole of the citizenship law of the United Kingdom. We have already mentioned the Order in Council dealing with protected persons which was made under this Act. However, as early as 1934, there was promulgated the British Protected Persons Order, 1934: See Government Notice No. 91 of 1934 in the 1934 Government Notices of Northern Rhodesia, at page 109. The object of that Order in Council was to define which persons were to "regarded as belonging" to the affected territories and therefore British protected persons. The persons to be regarded as belonging included those born in the territory and those whose fathers belonged by their own birth in the territory. We have previously quoted Section 16(3) of the 1963 Constitution in which an extended and more expansive definition of the persons who belonged to Northern Rhodesia was given. This was long after 1934 and 1948. This was an expanded list of the persons – to use the language of the recitals in the 1934 Order in Council – regarded as belonging to the territory and who were afforded Her Majesty's protection and were known as British protected persons.

The Zambian citizenship provisions at independence were considered in the Court of Appeal as well as in the House of Lords in the MOTALA case reported respectively in (1991) 2 ALL E.R. 312 (CA) and 1991) 4 ALL E.R. 682 (HL). The claimants Safiya and Farug Motala were born in British Protectorate of Northern Rhodesia. Their parents were Indian citizens born in Gujerat who married at Fort Jameson (now Chipata) in Northern Rhodesia in July, 1950 and brought up a family of eleven children there. Their father had gone to live in Chipata in 1946 and had carried on a successful business as a trader until he went to live in Manchester, England, shortly before he died in 1984. The father applied to become a citizen of the Untied

Kingdom and Colonies by registration. It was granted to him on 13th February, 1953, at Lusaka by a certificate signed by the Chief Secretary of the Government of Northern Rhodesia. Subsequently, Mrs. Motala also registered as a citizen of the United Kingdom and Colonies. The two claimants were citizens of the United Kingdom and Colonies by descent at birth under Section 5(1) of the British Nationality Act 1948 because their father, who had been born in India, had already become a citizen of the United Kingdom and Colonies by registration in Northern Rhodesia. In 1979, the claimants were refused United Kingdom passports on the ground that they were not citizens of the United Kingdom and Colonies and were in any case illegitimate because their parents' marriage was not valid. In 1983, they applied successfully for a declaration that they were legitimate and that they were citizens of the United Kingdom and colonies. The Attorney General appealled, contending that although the claimants had been entitled to citizenship of the United Kingdom and Colonies by descent they had also been British protected persons as defined by the 1948 Act and therefore by virtue of Section 3(3) of the Zambia Independence Act 1964 and Section 3(1) of the Constitution of Zambia which was scheduled to the Zambian Independence Order, 1964 they had lost their status as citizens of the United Kingdom and Colonies by descent on 23rd October 1964, the day before Zambia became independent, and had become citizens of Zambia on Independence Day, 24 October 1964. The Court of Appeal reject the Attorney General's contention, holding that under the 1948 Act the status of a British Protected person and that of a citizen of the United Kingdom and Colonies were inconsistent and mutually exclusive so that a person could not be both at the same time. Accordingly, the claimants were not British protected persons immediately before Zambia's independence and, in the absence of express provision in the 1964 Act, they did not become Zambian Citizens on Independence Day but retained their status as citizens of the United Kingdom and Colonies. The Court of Appeal simply considered the language of section 3(3) of the Zambia Independence Act 1964 and section 3(1) of our Independence Constitution and proceeded to construe it in light of the 1948 Act and the British Protectorates, Protected States and Protected Persons Order in Council 1949. They looked at the law against the background of the common law which traditionally considered protected persons to be aliens and held that it was not necessary for the draftsman to state in the 1948 Act that a citizen of the United Kingdom and Colonies was not and could not at the same time be a British protected person. This was considered to be implicit in the law. The Court of appeal upheld the trial judge's finding that the claimants had become British Overseas Citizens. The Attorney General took the matter to the House of Lords and was rewarded with success. Their Lordships held that although the status of a British protected person was different from that of a citizen of the United Kingdom and Colonies, the one status was not inconsistent with the other and therefore a British protected person did not cease to be such on becoming a British subject. The claimants were from their birth in Northern Rhodesia until Zambia became independent both citizens of the United Kingdom and colonies by descent under Section 5(1) of the 1948 Act and British protected persons by virtue of Section 32(1) of that Act, read with Section 9(1) of the British Protectorates, Protected States and Protected Persons Order in council 1949, and therefore by virtue of section 3(3) of the 1964 Act they ceased to be citizens of the United Kingdom and Colonies and became citizens of Zambia on 24th October 1964 under Section 3(1) of the Constitution of Zambia.

The question in the MOTALA case was whether the claimants were British protected persons who became Zambian citizens under section 3(1) of the Constitution or if, inspite of the wording of section 3(3) of the Zambia Independence Act 1964 they continued to be citizens of the United Kingdom and Colonies by descent. The question was also whether the status of a protected person and an overseas citizen were mutually exclusive. The House of Lords considered the common law and the pre-existing law in order to construe the 1948 and 1949 legislation in the proper context and to demonstrate that the Court of Appeal had misapprehended the common law position which preceded the 1948 Act precisely because it

did not attempt to look at the pre-existing law. We can do no better than to quote from the leading opinion of Lord Bridge from page 685 where he said:

> *"Hence the critical question is whether from birth until 23rd October,1964, they each had the dual status of citizen of the United Kingdom and Colonies and British protected persons or whether, under the 1948 Act, that was an impossibility.*
>
> *Before addressing that question I must say at once that the courts below were denied the advantage which your Lordships have enjoyed of being referred to J Mervyn Jones British Nationality Law and Practice (1st edn. 1947), which is a valuable source of information with respect to the status of British protected persons at common law, or to the British Protected Persons Order 1934, SR & 01934/499, which shows how the status was treated in previous legislation.*
>
> *As an inevitable consequence the Court of Appeal approached the issue which arose on the construction of the 1948 Act and the British Protectorates, Protected States and Protected Persons Order in council 1949, SI 1949/140, made under the 1948 Act, without reference to their proper context.*
>
> *As will appear, when construed in the context of the pre-existing law, the 1948 and 1949 legislation wears a very different aspect.*
>
> *Mr. Mervyn Jones' book is a most useful starting point. It appears to have been the first comprehensive textbook on the subject matter of its title. It carries a foreword by Mr W E Becket, who was then the legal adviser to the Foreign Office Apart from giving the work his laudatory imprimatur, Mr Beckett points out that;*
>
> *'in the field of British Nationality law very few cases have ever gone to the courts at all, whereas a very large number of problems have confronted the two Departments of State, the Home Office and the Foreign Office, and have been dealt with administratively.Mr Mervyn Jones has been able to see the papers of these two departments where cases of interpretation have arisen. Not being an official, he has been entirely free to form his own judgement upon them, and in fully exercising this freedom, he has shown his own qualities as a scholar and as a lawyer.*
>
> *This inspires confidence that the ensuing text accurately reflects both contemporary practice and accepted contemporary opinion in matters of nationality and status."*

*The most significant passage from the text, for present purposes, appears where the author states (p279):*

> *"It may often happen that a person may be, at one and the same time, both a British subject and a British protected person. for instance, a number of British subjects also possess Palestinian citizenship. There are a large number of people from India who are, at one and the same time, British subjects by virtue of their connection with British India, and British protected persons by virtue of connection with some Indian state. It is a sort of domestic double nationality.*
>
> *In many territories under British protection, eg the Indian native states, the several states in what is now Malaysia and the protected states on the shores of the Persian Gulf, the question who was entitled to be regarded as a British protected person was*

*determined by the local law in the sense that whoever was recognised as a subject of a protected state was also recognised as a British protected person."*

*But, as Mr Mervyn Jones points out (at p 294) in the British protectorates, being:*

> *"territories mainly in Africa where there is no native ruler..... the rules defining who can claim the status of a British protected person, by virtue of their connection with protectorates, have to be laid down by the British Crown."*

*It was for this reason that the British Protected Persons Order 1934 was enacted. The territories to which the order applies are the British protectorates, including Northern Rhodesia, and mandated areas set out in the schedule. The order recites:*

> *".....And whereas certain persons who are regarded as belonging to those territories are afforded His Majesty's protection, and are known as British protected persons: and whereas it is expedient to define in relation to those territories the persons who are so regarded as belonging thereto....."*

Again, after dealing with various aspects of the decision in the Court of Appeal, Lord Bridge continued, at pages 688 to 689:

> *"The 1948 Act came into force on 1 January 1949. The British Protectorates, Protected States and Protected Persons Order in Council 1949 and the order in council revoking the British Protected persons Order 1934 were made on the same day, 28 January 1949. The draftsmen of the new legislation must have been perfectly familiar with the pre-existing law and, if it had been intended that henceforth British protected persons could not at the same time be citizens of the United kingdom and Colonies and vice versa, it is inconceivable that this would not have been made clear in express terms, in the same way as it was made clear in express terms that henceforth British protected persons would no longer be aliens."*

*Even if there was an ambiguity in the 1948 Act, there is available one further aid to its construction which was not brought to the attention of the Court of Appeal. Your Lordships are indebted to Mr Collins, whose industrious research unearthed a relevant provision in the Solomon Islands Act 1978; which he very properly brought to the attention of Mr Holman, Q.C., who naturally relies on it. It is s4(1),*
*which provides:*

> *"A person who immediately before Independence Day is a British protected person by virtue of his connection with the Solomon Islands protectorate;*
>
> *(a) shall cease to be a British protected person on that day if he then becomes a citizen of Solomon Islands or is then a citizen of the United Kingdom and Colonies...."*

*This provision clearly assumes that prior to Independence Day there may be some Solomon Islanders who are both British protected persons and citizens of the United Kingdom and Colonies. In the words of Lord Sterndale, MR, in Cape Brandy Syndicate v IRC (1921) 2 K.B. 403 at 414, approved by your Lordships' House in Ormond Investment Co Ltd v Betts (1928) A.C. 143 at 156 (1928) ALL E.R. Rep 709 at 715-716:*

> *"I think it is clearly established in Attorney-General v.Clarkson (1900) 1 Q.B. 156) that*

*subsequent legislation on the same subject may be looked to in order to see what is the proper construction to be put upon an earlier Act where that earlier act is ambiguous. I quite agree that subsequent legislation, if it proceed upon an erroneous construction of previous legislation, cannot alter that previous legislation; but if there be any ambiguity in the earlier legislation then the subsequent legislation may fix the proper interpretation which is to be put upon the earlier. Hence, if the 1948 act were ambiguous on the point in question, s.4(1) of the Solomon Islands Act 1978 would resolve the ambiguity."*

We consider the House of Lords' decision as ample persuasive authority for having taken the expedition into the history of the instruments of the constitutional developments in this country. In context, therefore, the people said by the 1963 Constitution to "belong" to Northern Rhodesia were all British protected persons by virtue of their different kinds of connection with Northern Rhodesia. The legislation of 1963 being subsequent to 1948 and 1949 threw considerable light on the question of British protected persons by virtue of their connection with Northern Rhodesia and hence who became citizens. Using the House of Lords' approach, we are quite satisfied that belonging to Northern Rhodesia on any ground listed in the 1963 Constitution constituted the necessary connection for one to be a British protected person to that the non-repetition or specific mention of each and every category of the 1963 British protected persons in the 1964 legislation did not result in any lacunae so as to deprive the affected of their right to claim citizenship of Zambia or of the United Kingdom and Colonies as the case may be.

In light of the law discussed, the respondent "belonged" to Northern Rhodesia and was clearly a British protected person whichever biography out of the several proposed is or were to be adopted. In light of the law, therefore, the respondent's own citizenship cannot be in any doubt. He is a Zambian citizen. It must be stressed and sight should not be lost of the real issue here which is the citizenship of the respondent himself which cannot be affected by being born at Chibambo, if that is where he was born. As already shown, it was not solely one's own birth within Northern Rhodesia which resulted in "belonging" and being a British protected person. The contention in the petition was that if he was born at Chibambo he would be a foreigner: The law says otherwise, as already discussed. In the event, we are of the considered view that it would be idle, otiose and pointless to make a positive finding as to where the respondent was born although we note that the preponderance of the evidence of the available official records favours Kitwe.

The next question is who are or were his parents? a number of other questions arise such as whether the Constitution is concerned with legal or biological parents and whether in the event of a person being legally fatherless or illegitimate such a person is not entitled to become the President. Other questions arising include whether parents born before independence can be regarded as citizens of Zambia by birth or descent or if the provision should be construed as including only the parents who are or were literally Zambians by birth or descent (none of whom would be older than our independence so as to have any child of not less than 35 years old as required for presidential candidates).

We begin with the evidence. From the evidence given, there was no dispute who the mother of the respondent was, namely the late Daina Kaimba Mulaye of Musangu Village. The evidence has shown that the she belonged to that village and to Northern Rhodesia and she would, but for her prior death, have become a citizen of Zambia at independence. Three fathers have been proposed for the respondent in the evidence before the court and the question is: was it (a) PW3; (b) Jim Zharare Nkhonde or (c) Jacob Titus Chiluba Nkonde? In favour of PW3 Luka Chabala also known as Kafupi – "the short one" – was

firstly PW3 himself. He laid his claim with much conviction and gusto. Then there was PW4 Mr. Ngosa a relative of the respondent who harboured undisguised bitterness and who fared very badly in the witness box. He was discredited and we found his evidence to be unreliable. It can not be resorted to in order to afford support to PW3. Then there was PW13 Mr Kasuba whose evidence on the point was all multiple hearsay and inadmissible. Next was PW14 Mr. Banda who claimed that the respondent himself told him in 1962 in Mufulira that his father was a Zairean called Kafupi who had other children in Zaire and that his home was in Zaire. He said the respondent spoke Lingala, a typical Zairean language, thereby suggesting that the respondent associated with or was brought up by or among Lingala-speaking folk. Mr Banda's evidence was in sharp contrast with that surrounding the respondent's educaion and that of PW3 himself who was either working on the Copperbelt or living in the villages in Luapula province and had all his children in Zambia. While it is quite possible that PW14 knew the respondent and even kept him and procured the employment he had as a bus conductor with C.A.R.S., we gained the distinct impression that he was overly keen to embellish and colour his evidence, especially on the issue of the respondent's paternity.

The other witness to support PW3 was PW28 Mr. Kakonde. However, his evidence on the point was patently hearsay and, as already observed, he was in any case thoroughly discredited and not credible. Again as already noted when we recited a digest of the evidence, there was the inadmissible hearsay evidence of PW29, Mr Musonda. PW34 Champ Thom Musendeka the schoolmate, said he had heard that PW3 was the real father. This was obviously hearsay. There followed the evidence of PW51 Mrs. Chikonde who was not a credible witness and was contradicted by PW34. It was she who alleged that the respondent (then known as Titus Mpundu) had himself said his father was Kafupi Chabala when the respondent and her brother were expelled from school. Her allegation that her father gave the respondent transport money after the expulsion conflicted sharply with the account given by PW34 who said that the Headmaster delivered them to their homes in his vanette. Again, we have already commented upon the evidence of PW102, Mr Mumba, which was all hearsay. The position therefore is that PW3 largely stands alone with any kind of direct evidence, with no or very little support mainly of the hearsay type from the relatives and acquaintances. We now turn to the evidence in favour of Zharare Nkhonde, of Mozambican origin. The evidence given by PW7, Mr Mark Chilekwa and his sister PW32 Mama Anna Chilekwa was agreed that they lived in Wusakile and came to know the respondent and his father. The auto biography of the respondent agrees that he lived in Wusakile. These witnesses put the period at 1955 to 1959. We have also noted the similarity between the name Nkhonde (with an "h given by PWs7 and 32 and the name Nkonde (without an "h") given by the respondent himself at his nomination as a presidential candidate. In a general way, PW80 Mr. Chaziya was in support of the father being of Mozambican origin and known as Jim Zharare, without any other surname. It was PW80 who described how Sixpence and Zharare had worked at Bwanamkubwa and then transferred to Mufulira; thence to Chambeshi for two years until the mine collapsed thence back to Mufulira Mine where he found them in 1954. It was a notorious fact that Mufulira Mine – and Luanshya Mine suggested by PW4 – used to belong to Roan copper Mines Limited while Nkana – Kitwe used to belong to what was then Nchanga Consolidated Copper Mines Limited, before the companies merged in the seventies to form the Zambia Consolidated Copper Mines Limited. We were troubled by some aspects of the accounts relating to Mufulira and Kitwe which we found difficult to reconcile. Quite apart from the unlikelihood of transfers of miners between different companies those days, there was the timing of the events in Mufulira and Kitwe; the surnames used; and the claim by PW80 that Titus Zherera was the survivor of twins who were both male. The evidence relating to Kitwe was in agreement and tallied with other evidence that the respondent lived in Luapula where he was attending school, coming to Kitwe only during the school holidays. In contrast, PW80 suggested that the respondent and his father were living in Mufulira.

The evidence in favour of the respondent's father being Jacob Titus Chiluba Nkonde came from the published biographies and also from the documents which were produced by the witnesses, such as PW11 Mr. Simpute and PW12 Mr. Tilasi. There was also support from the documents in the bundles of documents at the trial. The rest of the evidence of the others, as already discussed when we summarised their evidence is peripheral.

From the evidence discussed, all the accounts as to which one might have been the father are quite plausible; but they are irreconcilable. PW3's evidence was otherwise quite believable; but so was the version supported by the Chilekwas and Mr. Chaziya regarding Mr Zharare which was otherwise also quite believable. Although there was no viva voce evidence to support the third father named in the official documents, that story too was plausible and was not positively discredited. In the absence of an affirmative case in support of a specific father, the petitioners finally urged that PW3 be found to be the father and proposed - without any evidence to support the linkage - that it be taken that the respondent was the illegitimate son of PW3, the product of an illicit affair while the respondent's mother was married to a Mozambican who brought him up. Assuming PW3 to have been the biological father but without making any finding to that effect, what would be the position? Would the respondent have been unqualified to stand on account of the citizenship of the presumed father? In other words, is PW3 a Zairean (or now Congolose)? PW3 testified that his parents settled in Northern Rhodesia and he was born in the Congo as it were by accident of circumstance when his mother visited a sick relative. The birth in that country would have the same flavour as the mothers in the border areas of this country who had to resort to Chibambo Mission Hospital which was grant-aided by the Northern Rhodesian Government. Their children did not cease to belong to Northern Rhodesia where they themselves belonged. The case proceeded on the assumption that PW3 who is otherwise a Zambian with a Zambian National Registration Card had a village where his own parents become a foreigner by birth in the then Belgian Congo. We have already dealt at great length with what will be the consequence had the respondent infact being born in Chitambo in the Congo. The reasoning and the law which we set out in relation to the respondent's position applies with equal force PW. By law, he belonged to Northern Rhodesia and was British protected person born of parents - to lift an expression directly out of the 1963 Constitution - "who at the time of his birth were ordinarily resident in Northern Rhodesia." One of the counsel for the petitioners submitted that PW3 became a Zambian by registration - if we understood correctly - under the National Registration Act. This Act is concerned with the registration of all persons in Zambia who are over 16 years of age and whether they are Zambians, commonwealth citizens or aliens. It is not the Act for obtaining citizenship by registration for which a separate Act exists. The fallacy of assigning citizenship by registration for which a separate Act exists. The fallacy of assigning citizenship by registration to PW3 is self-evident. But in fact, by operation of law as already demostrated he became a citizen at independence so that if the law in the constituion were concerned with natural or biological parents, and if he were the father as he claims, the respondent would not have been disqualified.

We did pose the question whether the Constitution had in contemplation biological parents or legal parents. The citizenship law at independence traced its roots to the British legislation on the subject and if such legislation is resorted to, one finds that the law is concerned with legitimate. Thus, for example, Section 32(2) of the British Nationality Act 1948, provides as follows:

"32(2). Subject to the provisions of section twenty-three of this Act, (which considered the position of children legitimated by the subsequent marriage of their parents) any reference in this Act to a child shall be construed as a reference to a legitimate child;

and the expressions "father ", "ancestor" and "descended" shall be construed accordingly."

The words in brackets are ours. Again, if the respondent were a non-marital child or filus nullius - to use an obsolete latin expression - the legal position appears to have always been that such a child has derived domicile and personal status through the mother. On the facts of the case at hand, that is, if the case were that the respondent was the illegitimate son of PW3 but brought up by the legal parents, he would undoubtedly have been considered to be a marital child - see for instance, the Affilliation and Maintenance of Children Act, CAP 64 of the 1995 edition of the Laws of Zambia. The parentage qualifications indeed raise a number of questions. For instance, it was suggested in the submissions that the reference to parents who are or were Zambians by birth or descent was intended by the legislature to disqualify those who are not indigenous. As we have pointed out in a number of cases in the past - for example in Samuel Miyanda v Raymond Handahu S.C.Z. Judgment No. 6 of 1994 - the fundamental rule of interpretation of all enactments to which all other rules are subordinate is that they should be construed according to the intent of the parliament which passed the law. Such intent is that which has been expressed and when the language used is plain and there is nothing to suggest that any words are used in a technical sense or that the context requires a departure from the fundamental rule, there would be no occasion to depart from the ordinary and literal meaning and it would be inadmissible to read into the terms anything else on grounds such as of policy, expediency, political exigency, motive of the framers and the like; see also Capper v Baldwin (1965)2 Q.B.53 by Lord Parker, C.J., at page 61. Accordingly, it is not possible to read the provisions as requiring or permitting only the indegenous sons and daughters who belong to one of the tribes native to Zambia and who have a village and chief in Zambia. Applying the fundamental rule, the provision would not disqualify for example a person born in Northern Rhodesia or in present day Zambia 35 years ago of Chinese parents (say who died) who has since been adopted by Zambian parents who are Zambian by birth or by decent; See for instance the automatic acquisation of citizenship by adoption introduced by section 3 of Ordinance 61 of 1964, that is the citizenship of Zambia Ordinance which read:

"3. A child adopted, on or after the commencement under the provisions of any law relating to the adoption of children shall, if he was not a citizen at the date of such adoption, become a citizen by adoption on the date of that adoption if the adopter, or, in the case of a joint adoption, the male adopter, was at the date of the adoption a citizen."

(Now see s. 11 CAP 124 of the 1995 Edition of the Laws)

In the not too distant future, there will be second and third generation Zambians descended from ancestors who originated from a variety of continents and countries all over the world which ancestors are now "disqualified" Zambians. We have also pointed out a number of other questions which arise, including whether or not "biological" parents were intended and whether or not persons who were or are non-marital children are thereby excluded. We consider that the point has to be made that the parentage qualifications introduced into the constitution in 1996 pose a number of apparently solutionless problems and difficulties. In giving the example of the adopted Zambian of Chinese origins, we mean no disrespect to that great race but illusrate some of the difficulties. We doubt if the framers of the amendments had these problems in mind. If the aim was to provide for indigenous presidents only as suggested by counsel, then quite clearly the language of the amendments actually employed did not and could not achieve this. Had explicit language to that effect been employed, such language might conceivably have run the risk of infringing the non- discrimination provisions in the part of the constitution which is entrenched. This was not an issue here and we make no finding.

However, we should mention the case of Akar v Attorney -General Of Sierra Leone (1969) 3 ALL E.R. 384 which we considered during our research. In that case, the appellant was born in 1927 in the former British protectorate of Sierra Leone of an Indigenous mother and a Lebanese father who was born and bred in Senegal but who had lived in Sierra Leone for the last 56 years, and never been to Lebanon. On the attainment of independence by Sierra Leone on 27th April 1961 the appellant by virtue of Section 1(1) of the Constitution became a citizen of Sierra Leone. Act No. 12 of 1962, by Section 2, purported to amend the Constitution retrospectively to limit citizenship to persons of negro African descent. This, by the definition of the term (defined as meaning "a person whose father and his father's father are or were negroes of African Origin")- excluded the appellant. By Section 23 of the Constitution, laws discriminating, inter alia, on the ground of race, were prohibited except, inter alia, in cases where a disability imposed having regard to its nature and to special circumstances pertaining to persons on whom it was imposed, was reasonably justifiable in a democratic society. By a majority of four to one, the House of Lords affirmed the Chief Justice of Sierra Leone and reversed their Court of Appeal by holding that Act No. 12 of 1962 was unconstitutional; it was discriminatory within the meaning of Section 23 of the Constitution since different treatment was accorded to different people and the differentiation was attributable to wholly or mainly to respective descriptions by race. while their Lordships expressly stated with the wisdom or desirability or fairness of passing such a measure, nonetheless they commented as follows, at page 393:....

> "In view of the conclusions which their Lordships have expressed they need not refer further to the problems which have been raised. The circumstances that they are posed... is commentary enough of the difficulties which have been created by the scheme of legislation which it was thought appropriate to attempt to adopt."

The comment was rather apt. Another point already dealt with but worth noting again was the assertion by the petitioner Mrs. Phiri and other witnesses that there were no Zambian citizens as such prior to independence and that Zambian citizenship and nationality only commenced on 24th October 1964. This assertion which we accept as technically and legally correct means that the constitutional provision regarding parents or anyone born prior to independence who are or were Zambian by birth or by descent can meaningfully only be construed as a reference to those who became Zambians on 24th October 1964 or who would, but for their prior death, have become Zambians on that day.

To conclude on the question of the respondent's qualifications, we find that the various accounts as to the paternal parentage were irreconcilable in consequence of which an affirmative case has not been proved to the necessary degree of convicing clarity. In the circumstances, there is no basis for foisting a father upon the respondent nor for finding against the one he has officially declared. Above all we have already explained how even the most favourable finding from the petitioners' point of view would not have resulted in the respondent becoming unqualified.

## ELECTORAL FLAWS

We now turn to the aspect of the petition which related to the election, including the whole of the electoral process. The issues raised under this part according to prayers of the petition were that the election process had been neglected by the Electoral Commission, thereby facilitating fraud and that the election was rigged and not free and fair, therefore null and void. The detailed particulars in the petition and the evidence raised issues of (i) bribery and

corruption; (ii) irregularities and (iii) flaws in the electoral system. Since a presidential election is conducted under the practices and procedures set out by or under the Electoral Act, cap.13 of the Laws of Zambia (1995 Edition), this court had determined quite early in the proceedings that guidance would be sought from that Act on many of the issues that arose, for example, the grant of indemnities to witnesses. In the same vein, we had to look to the Act and the Regulations when considering the issues of bribery and corruption; irregularities; and the flaws. We also had to borrow from the principles set out in Section 18 of cap.13 which reads:

"18. (1) No election of a candidate as a member of the National Assembly shall be question except by an election petition presented under this Part.

(2) The election of a candidate as a member of the National Assembly shall be void on any of the following grounds which is proved to the satisfaction of the High Court upon the trial of an election petion, 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."

The evidence on these issues came from a fairly large number of witnesses.

(i) **Bribery and Corruption**

Thus, under bribery and corruption can be listed firstly the witnesses whose evidence touched upon the Sale of Council houses. These were PWs 53, 55, 56, 57 and 27. Then there was evidence touching upon what the Regulations terms as "treating" in the form of for example the distribution of meat and grinding mills in the Western Province and salt and cement in Mbala. The witnesses included PWs 24, 30, 49, 67 and 68. Then there was evidence of cash gifts given mostly by the witnesses from Chongwe and by some of the peititioners who complained of Ministers donating money to various causes. the witnesses under this head included PWs 26, 84, 85, 90 and 91. For the sake of economy, we summarise the gist only of the evidence of these witnesses as follows:

PW53 was Mr. Muyakwa of Mongu district Council. He told their Lordships that, acting on a circular from the Ministry of Local Government, Council houses were sold at valuation less discounts ranging from 100% for pre-1959 houses to 20%. In September 1996, the respondent visited and fixed a maximum of K750,000. Under cross-examination, the court learnt that the respondent and the MMD candidates came off worst in all the Mongu constituencies during the elections. PW55 was Mr Chibbonta, Town Clerk of Livingstone. His evidence was that the Council had already decided to sell the houses and got permission to sell some and that the circular from the government was welcome and had better prices. He said the residents made representations to Lusaka and the houses had to be sold at the prices determined by the Council which were lower, less discounts. He informed us that the respondent had visited Livingstone before the government circular came out. PW56 was Mr. Mumbi, the Solwezi Town Clerk. He informed us that his council already had a programme to sell houses in 1995 and sought permission to sell. He said the government circular of May 1996 resulted in 229 houses being offered for sale, 44 of them "free" at 100% rebate. Under cross-examination, he informed the court that the respondent and the MMD infact fared very badly in Solwezi. PW57 was Mr Ali Simwinga, the Kitwe Town Clerk. He said that the Council decided to sell its houses as far back as 1993 as the minutes would show. The Council applied for permission to sell 5% of its 13,500 units and the Minister gave approval in February 1994. He said that the Council hoped to expand and develop the City more by selling so that the government circular was welcomed. by then, 530 units had already been sold. He said the respondent did not fix the prices; the circular set out the procedure and rebates. He informed their Lordships that Kitwe City council persuaded the government to reduce the prices even further below the circular's prices. PW27 was Mr. Munga of Zambia National Broadcasting Corporation who produced and showed us some video tapes. The first tape showed the respondent opening the MMD Southern Province Conference and it was not relevant to the issues. The second dated 18 April 1996 showed the respondent touring Council houses in Livingstone when the respondent was clearly compaigning against UNIP and for himself and his Party as he indicated there would be discounts. The third date 20 April 1996 showed the respondent on tour of Council houses in Ndola where he even handed over some Certificates of Title. The fourth tape recorded his tour of Western, North-Western and Luapula provinces and where he directed

reductions on Council houses and generally held campaign rallies. The firth was an irrelevant film of 7 March 1991 titled "personalities in politics". The sixth and last film was his interview in Kabwe on 6 January 1996 when he made donations to public causes like the waterworks and also urged people to register as voters.

On the evidence we are satisfied and it is our finding that programmes for the sale of Council houses were long already in place and were otherwise unexceptionable but for the timing of the discounts in an election year. The exercise was clearly used to assist the campaign. The question we had to consider was whether the government exercise which was taken advantage of could amount to the corrupt practice of bribery under Regulation 51 of the electoral (General) Regulations so as to be caught by the spirit of Section 18 of the Electoral Act, CAP 13. The Regulation has eight paragraphs and we have read them most carefully but cannot find that the activity complained of falls within any of those paragraphs. We note also that had that been the case, it would have been extremely doubtful that the house sales could have significantly affected the result of the election in a nation-wide constituency. the results in Mongu and Solwezi where the respondent fared very badly are quite telling.

With regard to treating . PW24 Mr. Sikazwe, a polling agent for ZADECO, said that the MMD parliamentary candidate in Mbala was dishing out cement, salt and cash to the headmen and the villagers and gave some salt to the witness, urging them all to vote for the MMD candidates. PW30 Mr. Chituse was the ZADECO parliamentary candidate for the Luampa Constituency in Kaoma. He testified that the MMD parliamentary candidate Mr. Manjata was campaigning using a Government vehicle; that he tried to disrupt a public meeting called by ZADECO. He also said the MMD candidate used the installation of a public grinding mill to campaign for his party and to threaten those who would not vote for MMD. He said about six days before the elections day he found that at one place the people were feasting on the meat of three head of cattle slaughtered for the occasion by Mr. Manjata. PW49 was Mrs. Ruth Emelio, the ZADECO candidate for Sinjembela who testified on this point that the MMD parliamentary candidate donated a boat to the people on nomination day. He also bought beers and food and killed an animal to feed the people as they shouted "Vote for the hand that feeds you!" PW67 was Mr. Muteba, the ZADECO candidate in Lukulu who testified on the point that the MMD Parliamentary candidate dished out free meat to the people who began to query what ZADECO could do for them. PW68 was Mr. Wayoya, an election agent for ZADECO. He told us on this point that during the campaigns in Lukulu, only MMD supporters were allowed to use a grinding mill at Kakulanda Women's Club. He also told us that a few days before the voting, MMD killed cattle and dished out free meat, urging the people to vote for MMD candidates.

From the foregoing evidence, we accept and find that there was treating. The instances given were proved. We are also mindful of the provisos in the Electoral Act so that a candidate is only answerable for those things which he has done or which are done by his election agent or with his consent. In this regard, we note that not everyone in one's political party is one's election agent since, under Regulation 67 of the electoral (General) Regulations, an election agent has to be specifically so appointed. We have borne in mind that the constituency for the presidential candidates is national and were not satisfied that the treating established may have prevented the majority of voters in the country from electing the candidate whom they preferred.

There was evidence of cash gifts being given to some voters, which would amount to bribery, a corrupt practice. PW26 Mr. Rex Sinkonde was a ZADECO polling agent at one of the polling stations in Mbala. He informed us that he caught the MMD Chairlady in the area giving money – amounting to one pin (one thousand kwacha) – to a voter just outside the polling station and

telling her to vote for the MMD. Then there were allegations of money being given to some voters by the MMD Councillor a Mr. Kasongo in the Chongwe area to persuade them to use his pre-marked ballot papers and surrender their own which they would be given in the polling station. The witnesses were PW84 Mr. Kabanje, PW90 Mr. Nkalamu and PW91 Mr. Nyeleti. It transpired that PW90 was a discreditable character and an outright liar who had posed as Mr. Martin Nkalamu but it turned out that the fellow's actual names were Boniface Mwansomeka. The evidence of these witnesses from the Chongwe area was characterised by improbability, placing Kasongo in several far distant places at the same time. The most notable was the pair of PWs 98 and 99 (Mr. Kanyembe and Mr. Lubansa) who said that Councillor Kasongo drove them and twelve others that morning from Chongwe to Ngwerere to ghost-vote in fictitious names at a non-existent polling station. It was highly improbable, in fact clearly impossible, that Kasongo could have been that ubiquitous. The evidence from this group of witnesses both as to allegedly voting with Kasongo's pre-marked ballot papers and with regard to obtaining national registration cards and ghost-voting in fictitious names was not credible. PW99 whose performance collapsed under cross examination had clearly never entered a polling station in his life. Above all the evidence of PWs98 and 99 rendered it impossible that Kasongo could have been in Chongwe at distantly located polling stations waylaying the voters and paying them to use his pre-marked ballot papers while he was also far away in Ngwerere. The allegations from these witnesses have not been established satisfactorily or at all. The single instance testified to by PW26 was insufficient to affect the national election.

There was evidence from some of the petitioners who complained that various Ministers and the respondent donated public funds to public causes, which donations were widely reported in the media. The donations have taken place before the elections, during and since. They continue to date. We have anxiously examined the Regulations in which various kinds of conduct or misconduct is prohibited or made an offence. We have tried to see where the allegation in the petition and in the evidence of various political leaders donating to community projects might fit in, without success. The timing of such public philanthropic activity must have had some influence on the affected voters yet the Regulations are silent on such matters and on any possibly improper donations when not directed at individual benefit. As at the present moment, public philanthropic activity is not prohibited by the Regulations and we can do no more than to urge the authorities concerned to address this lacuna so that there can be a closed – season at election time for an activity suggestive of vote buying; including any public and official charitable activity involving public funds and related to emergencies or any life-saving or life threatening situations.

(ii) **IRREGULARITIES**

The irregularities which were canvassed consisted of nine distinct subcategories which we have identified and which consisted of the following:

(a) The suggestion that unregistered persons could vote;
(b) Election materials were thrown away or destroyed obviously to cover up malpractices;
(c) That some voted twice; others even had two identities;
(d) That some election officials at polling stations were partisan and even allowed wrongful campaigning at polling stations;
(e) That voting procedures were not properly followed;
(f) That results were altered without proper justification or explanation;
(g) That some people were wrongfully prevented from voting;
(h) That voting certificates were wrongly used and wrongly

issued; and

(i) That pre-marked ballot papers were in use.

As to (a), there was firstly the evidence of PW17 Mr. Meleba who is also Headman Joshua. He produced a note from the local school headmaster Muloya who had written urging that those who did not register as voters could still go and vote if they had national registration cards and were 18 years or more. The witness did not see any unregistered person actually vote, which would have been illegal. Then there was the evidence of PW44 Mr. Collins Chimgukuma. He testified that he was one of those who campaigned for the MMD parliamentary candidate in the Bwacha Constituency of Kabwe. He said the Kabwe Mayor produced twenty (20) blank voters' cards which he used to fill in the names of the witness and nine other MMD cadres who were each given two voters cards. The witness said because he was promised some money for doing so he voted twice at two polling stations despite not being registered. He said he voted only in the parliamentary election; not in the presidential election. To put it mildly, Mr. Chimbukuma withered under cross-examination when it was shown that his name allegedly unregistered friends who allegedly voted twice with him using fake voters' cards were in fact duly registered and voted in their proper polling stations. PW44 was thoroughly discredited. He was effectively and completely contradicted by the evidence of two of his friends who testified as RWs 1 and 2. RWI was Mr. Edward Phiri who was actually a registered voter and who said PW44 was simply a member of an MMD choir during the election campaigns. RW2 was Mr. Masumba who testified that, contrary to what Mr. Chimbukuma said, he was duly registered and voted regularly. The evidence in rebuttal of PW44 was fully corroborated by the evidence of CWI Mr. Kalale of the Elections Office who produced documents to show that the persons said by PW44 to have been unregistered were actually duly registered as voters. In the event Mr. Chimbukuma's story was not believable and we have rejected it. Finally under this part, there was the evidence of PWs 98 and 99. PW98 was Mr. Kanyembe of Chongwe who said that in expectation to be paid K300,000 he and fourteen others who had neither national registration cards nor voters' cards agreed to be given national registration cards and voters' cards in the names of fictitious persons. He said that on polling day, they were driven by MMD Councillor Kasongo from Chongwe to Ngwerere and there voted in the fictitious names. PW99 was Mr. Lubansa of Chongwe who testified to the same effect and also said they were taken to Ngwerere early in the morning. Cross-examination destroyed him utterly. We have already made reference to the evidence of PWs 98 and 99 when we were considering the allegations of cash gifts made by PWs 84, 90 and 91 and when we noted that the two accounts nullified each other and rendered it highly improbable that Kasongo was way laying voters at various polling stations in Chongwe and paying them to use his pre-marked ballot papers while he was also so far away in Ngwerere. The evidence of these witnesses was discredited and it can not be believable, In the result, there was no credible evidence to support the suggestion that unregistered persons could vote and did vote. We find the irregularity alleged not established.

As to (b), there was firstly the evidence of PW18, Mr. Chita, the parliamentary candidate for ZADECO in Muchinga Constituency. Acting on reports received he went to check where a much-delayed truck carrying election material had parked in the bush. He found a parcel under a Musuku tree in the bush which contained election materials, including the official marks and the ballot paper counterfoils for both parliamentary and presidential elections. These were produced in evidence and estalished beyond any doubt that in the affected constituency – where most of the election materials have to date not been delivered to the Elections Office as required by law – someone threw away these materials in the bush in order to cover up some wrongdoing and a fiddle of some kind. Secondly under this part, there was the evidence from the Bwacha Constituency in Kabwe and which came from PWs 40, 41, 42, 54, 63 and 82. PW40 was Mrs. Febby Ngosa a supporter of Mrs. Nyirongo (PW82) in the

Bwacha Constituency. She told the court that on Monday 2nd December 1996 she happened to go to the Recreation Club hall and found the returning officer for Bwacha a Mr. Chintu and two other persons had an open ballot box on which was written the work "parliamentary". They were holding some ballot papers. The witness informed her husband (PW41) about what she had seen and he informed Mrs. Nyirongo. PW41 was Mr Ngosa, a polling agent for Mrs. Nyirongo and he relayed to her what his wife had reported. His other evidence was that there were election monitors from FODEP and ZIMT at the polling station where he was on duty on election day. The presiding officer stopped the FODEP monitor from crossing out the names being called out from his copy of the register. Other than that some MMD cadres wore T-shirts with campaign material on them within the prohibited radius of the polling station, he saw nothing wrong with the voting or the counting at his polling station. However, at the place for the tallying of all the votes, the returning officer, was making alterations to all the results brought to him. Another odd circumstance which he observed was that the parliamentary box from one polling station strangely took five hours to arrive at the counting hall. PW42 was Mr. Chisha, another polling agent for Mrs. Nyirongo. At the polling station where he was, the presiding officer refused to allow the polling agents to sit close to the table where the count took place with the result that they did not properly witness the count by the presiding officer who was miscounting Mrs. Nyirongo's votes. This evidence did not touch upon the election of the respondent as such. PW54 was Pastor Jim Nyirongo, the husband of PW82. He testified that the returning officer Mr. Chintu was altering all the results when he received them from the polling stations, as the MMD cadres were openly boasting of having played their cards well. Subsequently, the returning officer was caught opening ballot boxes and burning some ballot papers. A report was made to the police. PW63 was Mrs. Edith Banda who said she was a pre-school teacher. She told the court that the returning officer for Bwacha and other officials opened the ballot boxes, sorted out the ballot papers and asked her on 25 November 1996 to burn some ballot papers which were in a carton box and which were for both parliamentary and presidential elections. PW82 was the woman of God Pastor Gladys Nyirongo.

The upshot of her evidence was that she was an independent candidate in the parliamentary elections for the Bwacha constituency. She said that the election officials in that constituency altered the results from the polling stations allegedly in order to balance but they were later caught destroying some ballot papers for both the presidential and the parliamentary elections and this was after she had already lodged an election petition. When she confronted the returning officer, he pleaded for mercy and forgiveness. She reported these happenings to the police.

Related to the foregoing was the evidence of two witnesses called on behalf of the respondent. RW4 was Mrs. Chikoti of Kabwe Municipal Council who produced a file on PW63 showing that she was a general cleaner and not a preschool teacher at the Council's nursery school as she had claimed. RW5 was Mr. Mwale also from the Kabwe Municipal Council who was mentioned as one of the persons who were with the returning officer when destroying some papers. He was an Assistant Returning Officer for Bwacha under Mr. Chintu. He denied ordering PW63, a general worker and others to burn any ballot papers saying that he had only asked them to clean up the hall which was littered with scrap paper and to burn the litter. These were papers used to compute the results and torn posters. He told the court that a verification of ballot paper accounts was duly done from 12 to 30 December 1996 during which the papers were physically recounted to see if there was any overcounting or undercounting from the polling stations. He denied the allegations by PWs 40, 63 and 82 that ballot papers were being sorted out and burnt. He conceded that the official results which were published and reflected in the official documents which were exhibits before the court and which showed that there were no rejected ballot papers in Bwacha were false.

We have considered the evidence from Bwacha Constituency. The records of the verification of ballot paper accounts referred to by RW5 were nowhere to be found. It should also be noted that he described a rather strange way of conducting the verification when there is Regulation 47 in the Electoral (General) Regulations which sets out what ought to be done. In our assessment of the evidence, we find that we are persuaded by the combined weight of the petitioner's witnesses' evidence the substance of which had a distinct ring of truth to it. Mr. Chintu did destroy some papers obviously in an effort to cover up a fiddle. No wonder the results in the official documents were described by RWS as false. We will consider the consequence of this finding after we have discussed the other irregularities.

As to (c), that is regarding some voting twice or even having two identities, we heard evidence from PWs 19,22, 44, 75, 78, 79 and 81. PWI9 informed the court-and there is no reason to disbelieve her - that she was properly in possession of a national registration card in the names of Theresa Kalo but that in 1995 she got a second national registration card while posing as a much, younger person by the name of Evelyn Mutale. She registered as a voter twice using the two national registration cards and actually voted twice using the two sets of documents. She said that she had registered twice at the request of the MMD constituency Chairman for Mandevu and that she had decided to come forward and testify because the rewards promised by the MMD official did not materialise. PW22 was Mr. Musonda from the Elections Office. He confirmed the assertion made by PWI and others about a Mr. Zgyambo: The official documents showed that Zgyambo registered three times in three different places and was in three registers. He actually voted twice. PW22 explained that the Electoral Commission had authorised the issue of voters' cards to two or three people having identical national registration card numbers provided some other detail was different, such as name or date of birth or an address. Zgyambo exploited this and it is a matter to which we will return later when we come to consider some of the flaws in the system. Next, there was PW44 Mr. Chimbukuma whose evidence we have already discussed and discounted. PW75 was Mr Munamwela of the Lima Party. He testified that four MMD officials were caught having been allowed to vote twice each by the presiding officer at one of the Bweengwa polling stations. He was supported by PW78 Mr. Miyanda who was the election agent for the Lima Party candidate in Monze. He said at that polling station three people were apprehended who had voted twice. The presiding officer even apologized. The matter was reported to the police. PW79 Mr. Moonga was the polling agent for the ZDC candidate at the same polling station. His evidence was the same as that given by PWs 75 and 78 saying that some MMD chaps were caught having voted twice each; at first using their voters' cards and later using voting certificates. PW81 Mr. Hampondo also testified to the same event. He said that at Bweengwa three people were caught voting twice: in the daytime with a vote's card and at night with a voting certificate.

The instances of double voting were well proved. In the case of PW19, it is understandable that the dishonest could device this method of cheating by posing as two different persons. In the case of Zgyambo, a decision of the Electoral Commission facilitated the fraudulent multiple registration and double voting. In the Bweengwa incident, the electoral process was deliberately massaged by the dishonest voters with full collaboration of a dishonest and partisan presiding officer. We will consider the consequence of this finding on the nationwide election later.

As to (d), that is, that some election officials at polling stations were partisan and allowed wrongdoing, we considered the evidence of PWs 20, 24, 45, 46, 49, 58 68 and the witnesses from Bweengwa whom we have just talked about. PW20 was Mr. Sinyangwe, the ZDC candidate for Mpulungu Constituency who said that polling assistant issuing ballot papers would in the course of explaining to the illiterates keep overstressing on the MMD symbol and

telling the voters they could vote on the clock if they wished without similar stress or suggestion for the other parties. He also said that the MMD were allowed to sing and dance and to campaign freely within the prohibited radius at some polling stations. PW24 of ZDC in Mbala also testified similarly both in relation to the MMD being allowed to campaign within the prohibited radius and to the polling assistant issuing the ballot papers explaining who the candidates were but stressing the desirability of voting for the respondent's side. PW45 was Mr. Mwila of Kabwe, a supporter of the candidate Mrs. Nyirongo. He saw a woman police reservist and an MMD official using their wrist watches to campaign for the MMD at and within a polling station. Upon his complaint, the offenders were expelled from the polling stations by the presiding officer. PW46 Mr. Kandeke voted at a polling station in Kabwe which was established at a beer tavern belonging to the local MMD Chairman who sat within the prohibited radius wearing an MMD campaign T-shirt. He said that the police officers on duty at that polling station confisticated wrist watches. PW49 was the ZDC candidate in Sinjembela. She testified that the MMD campaigned too near the polling station where she voted and at other stations. She said that at several polling stations some election officers were openly campaigning for the MMD and describing other political parties in derogatory terms. PW58 Mr. Nyemba was a polling agent for ZADECO at Mufuchani polling station in Kitwe. He said that prior to election day, the MMD candidate Mr. Newstead Zimba used his official government vehicles on his campaign tours and in his attempts to disrupt ZADECO meetings. On polling day, one polling assistant kept on stressing the desirability of voting for the MMD candidates while an MMD official campaigned on the voters' queue and was not stopped. PW68 Mr. Wayoya who was an election agent for the ZDC candidate in Lukulu spoke of some polling assistants who consorted openly with MMD officials at campaigns and elsewhere. He told the court that on election day, one polling assistant did not stamp the official mark on the ballot papers of all those he knew to be ZDC members and this affected ten (10) voters out of the over 250 voters at that polling station. Upon consideration and careful evaluation of the evidence, we are satisfied that some election officials at polling stations were indeed partisan in an overt fashion and unfit for election duties. The evidence itself, however, disclosed that such officials were largely countered by the vigilance of the polling agents and any other election monitors there may have been. Above all, we take judicial notice that the Zambian voters are extremely intelligent and enlightened; only an insignificant proportion can be so fickle as to allow any official at a polling station to subvert their freedom of choice. However, with regard to the consequence of the finding on the presidential election, this we will discuss after we have dealt with all the irregularities.

As to (e), which is that voting procedures were not followed properly, we considered the evidence of PWs 46, 58 and 97. PW46 who voted at a polling station in Kabwe established at a tavern belonging to the local MMD Chairman complained that his voter's card was not perforated. PW58 who was at Mufuchani polling station in Kitwe informed the court that of the nine voting certificates which were issued, some were issued to officials on election duties who are registered in a different constituency. This was, of course, quite wrong and contrary to the relevant Regulations. PW97 was Mr. Sumaili of Petauke who was on duty at a polling station. He told their Lordships of one registered voter, a lady, who was allowed to vote without her voter's card. We considered this type of irregularity to have been insignificant. The instances deposed to by PWs 46, 58 and 97 were not shown to have been so widespread that the elections could no longer be considered as having been conducted in substantial conformity with the lawful procedures.

As to (f), that is, that the results were altered without proper justification or explanation there was the evidence of PWs 49, the Bwacha group (including PW54), PW93 and PW96. PW49 Mrs. Ruth Emelio informed us that her returning officer had altered her results from one of the polling stations from 80 to 30 and only corrected the records after protests on her behalf. We have already dealt with the Bwacha group of witnesses who talked of the returning officer Mr.

Chintu routinely altering almost all the results as he received them from the polling stations. We propose to set out the evidence of PWs93 and 96 when we come to deal with the flaws in the system but for the moment mention only that in their analyses, they had identified the alterations which were made to the results in various places. This related to the variances between the initial results released by the Electoral Commission and subsequent results released by the same authority. We are satisfied that the irregularity contended for was established.

As to (g), which is that some people were wrongfully prevented from voting, there was the evidence of PWs 50, 67, 75 and 92. There was a category of voters who could not vote because of various flaws in the system which we propose to come to when we consider such flaws. However, under the present subheading, PW50 Mr. James Mulenga Chasaya of Ndola informed us that despite being duly registered as a voter to vote at Chintu polling station in Ndola, the officials refused to allow him to vote because the particulars on his voter's card had faded off. PW67 Mr. Muteba of ZDC in Lukulu spoke of a polling station where the voting opened late in the afternoon but closed early, leaving many voters stranded outside. PW75 Mr. Munamwela of the Lima Party in Bweengwa said that he had seen a 53 years old voter and a 45 years old voter turned away as being underaged, despite being on the register. In the course of the hearing, we had asked an official from the Elections Office who confused that the officials were not allowed to use their common sense to allow such voters to vote on the basis that they were registered and their national registration cards showed that they were not toddlers, as shown on the register. They were needlessly prevented from voting when the mistake was that of the persons who compiled the register. We are satisfied that this type of irregularity was established. For completeness, we should also mention that there were some voters who were wrongly prevented from voting by some of the petitioners, especially from the parties that had decided to boycott the elections and had gone further to collect the voters cards. Thus, PW92 Mr. Lukonde, Deputy Commissioner of Police, produced 28,000 unused voter' cards which the police had retrieved from a house in the Chilenje township of Lusaka.

As to (h), which is that voting certificates were wrongly used or wrongly issued, there was firstly the general allegation voiced by PW35 Dr. Chongwe that voter certificates "flew like flies" at the polling stations. Then there was the evidence of PW58 Mr. Nyemba to which we have already made reference. His complaint was genuine to the extent that the wrong kind of certificate of authority to vote was given to the officers on duty, and in some cases for the wrong constituency. There were only nine certificates issued at Mufuchani. We have also already dealt with the Bweengwa group of witnesses (i.e. PWs 75, 78, 79 and 81) whose evidence established that three or four MMD officials who had already voted during the day time using their voters' cards were again issued with voters' certificates in the evening to enable them each to cast a second vote. Again there was the evidence of PW76 Mr. Joseph Tembo, a polling agent for Dr. Guy Scott, the Lima candidate in Chongwe. His testimony which was fully corroborated by the registers and the documents in court established that three people were wrongly allowed to vote at his polling station using certificates of authority to vote when they were not on official duties there; and in the case of one of them, when the person was a voter in Rufunsa which was a different constituency altogether. Then there was the evidence of PW31 Mr. Kabinda, the election agent for Mr. Pikiti the Lima Party parliamentary candidate in the Munali Constituency of Lusaka. Mr. Kabinda complained that there was misuse of the certificate of authority to vote at a polling station and the voting certificate. He said that some voters were even filling in their own certificate and they were allowed to use the certificate to vote obtained on the very voting day instead of at least four days before election day as required by the regulations. On the latter point other evidence received in the case from the officers of the Elections Office showed that the Electroral Commission had authorised the issue of certificates even on the polling day in order to counter the boycott and the burning of boters' cards by the United National Independence Party.

PW31 said that his candidate was trounced so badly that he the witness wept. CW1 Mr. Kalale of the Elections Office was called to open the marked registers for Munali when it transpired that there were relatively only a few voting certificates. They were not as rampant as PW31 had alleged. In fact, it turned out that some people who got them were bona fide registered voters who were otherwise entitled to vote while others were officials on elections duties. The Court learnt from CW1 that the Electoral Commission allowed certificates to be issued up to 10% of the total registered voters which was in the case of Munali up to 4,300 although only 135 certificates were actually used in the constituency. This we consider was an insignificant number. In the case of the Munali Constituency, a verification exercise ordered by this court and carried out by the Registrar of the High court in the presence of the advocates for the parties established that only 135 voters' certificates were completed and used. The marked registers for two of the Munali polling stations were not available at the verification, otherwise for the remainder it was established that the total number of names cancelled in the marked registers was 23,377 while the total number of ballot papers actually used for the constituency was found to be 25,388. We are satisfied that in the examples given and most probably countrywide as well, certificartes did not fly like flies; they were used in moderation and in all instances well within the range of quantities acceptable to the Electoral Commission. There was thus no rampant misuse of the voting certificates and therefore it can not be said that the respondent was in anyway unduly assisted to win through the use of voting certificates.

As to (I), which is that premarked ballot papers were in use, there was firstly the evidence of the Chongwe group of witnesses who alleged that MMD Councillor Kasongo waylaid them and gave them pre-marked bsallot papers. We have already dealt with their evidence which we have discounted as unbelievable. This is the group which included PW90 Mr. Nkalamu who was actually Mr. Mwansomeka testfying under a fictitious name. Then there was the evidence of PW60 Mr. Katunasa, ZDC parliamentary candidate in the Chembe Constitutency. He told the court that acting on a report he had received and with the help of a police officer who was on duty at one of the polling stations, he chased and caught an MMD gentleman who had a bag containing 350 pre-marked presidential ballot papers. The police took those papers. At another polling station, he found that his younger brother who was his agent had been in a fight with some MMD gentlemen from whom he had confiscated eight premarked presidential ballot papers. He said the eight ballot papers were kept by his younger brother. The younger brother was not called to testify and this court has not been shown either the eight or the three hundred and fifty premarked papers as none were produced in evidence. The non-production of at the very least the eight ballot papers said to have been in the custody of PW60's young brother detracted quite considerably from his credit, rendering his story to be unbelievable.

Some of the irregularities which we have found to have been established by the evidence were quite serious, though not widespread. They revealed that there were those who were prepared by dishonest means to massage the elections, oblivious of the risk that the elections might thereby be nullified to the disadvantage of the candidates who might themselves have been quite innocent and free of any personal wrongdoing. On a perusal of the whole of the evidence reviewed under this part, we have not found any evidence that the respondent personally or by lawful electoral agent was privy to the irregularities and malpractices described. In the event and having regard to the type of constituency concerned, which is nation-wide , it was not established to our satisfaction that the proven irregularities were such that nationally the majority of the voters were or may have been prevented from electing the candidate whom they preferred or that the extent, frequency and nature of the irregularities was such that they must have affected to any significant extent the national result of the election. It is clearly not possible to hold that by reason of the irregularities the result of the election nationwide was not substantially the true reflection of the free will and choice of the voters who went and cast their votes.

(iii) **FLAWS**

This brings us to the flaws in the system. From the evidence, we identified that there were raised or alleged some flaws associated with (a) national registration cards (b) voters cards (c) the registers (d) the polling districts (e) the siting of the polling stations and (f) the results.

(a) **NATIONAL REGISTRATION CARDS**

As to (a), that is national registration cards, we considered the evidence of RW3, PW22, CW1 and also PWs93 and 96 who analysed the registers. Apart from RW3, the other witnesses covered other aspects apart from the question of national registration cards and it is perhaps more convenient to set out the precis of all their other evidence at this point in time. RW3 was Mr. Mwiinga from the National Registration Department. We learnt from him that the problem of the same national registration card number being held by two persons surfaced in 1988 when registration forms were printed which bore old or repeat numbers which were pre-printed on the forms. There were shown to the court examples of sets of forms printed by the Government Printer which contained numbers which had already earlier been issued to other citizens. Apparently, the department even ignored the district codes when issuing a repeat booklet. Mr. Mwiinga told us - and we have absolutely no reason to doubt his word - that the situation country-wide is very bad and that there could be more than 500,000 duplications since 1987. The witness told us that, upon a query from the Electoral commission in 1996, the department deleted the last applicant's name from the list supplied but as other evidence showed, the Commission itself decided to keep both sets of persons on the registers.

PW22 was Mr. Musonda from the Elections Office. His evidence which touched upon the question of national registration cards also dealt with the other flaws which we will be considering and it is now convenient to summarise all his evidence at once. In his testimony, Mr. Musonda described the voters registration process conducted by the Electoral Commission, including the attempts to correct the mistakes made. He explained that the Electoral Commission authorised NIKUV who were doing the data processing to issue voters' cards to two or three people having identical national registration card numbers provided some other detail was different, such as names or date of birth. He also explained that some registration officers made mistakes in the coding of the polling districts which necessitated the making of corrections and the issuance of replacement voters' cards. It was in evidence that because of such replacements some voters ended up with two voters' cards where the first card was not physically withdrawn. Mr. Musonda explained that where corrections were made, the voters could not use the earlier card and could not vote twice, but only once and in the corrected register. The witness admitted that massive misplacement of voters occurred due to wrong coding but that attempts were made to effect corrections. He also readily admitted that the voters, especially those in the rural areas, may not have heard about the corrections and they certainly did not read the Gazette notices which described the polling districts. Mr. Musonda conceded that in the process of correcting the registers, some voters were put in polling districtsd where they did not register. In part because of such confusion, some voters never collected their voters cards. The witness also asserted, and we agree with him that registration officers and not NIKUV made the errors and that the inclusion of duplicated national registration cards was a decision of the Electoral Commission, not NIKUV. We accept Mr. Musonda's evidence.

CWI Mr. Daniel Kalale of the Elections Office also explained that the duplicate national registration card cases had been allowed by the Electoral Commission to remain on the

registers, He said there were on the registers 52,703 duplicate national registration cards cases with different names and 9,540 duplicate national registration cards with the same names but different dates of birth. We also learnt from this witness that they were 33,444 double registrations by a person where the decision made by the Electoral Commission was to leave him or her where he or she registered first. He further informed us that there were 3,545 duplicates of the same person but with different serial numbers, a mistake by the assistant registration officers: The Commission removed one and left one, We accept the evidence of this witness. CWI also informed us that some Polling districts returned a nil registration.

From the evidence of Messrs Mwiinga, Musonda and Kalale, it seems to as that there is a much more serious problem with the national registration cards than with duplicate voter registrations. We will comment further on this matter a little later but for the moment we do have to observe that even the statistics show that we should be really worried about the national registration cards which was supposed to be but apparently no longer is the most distinctive and the most reliable means of identifying each other for all manner of purposes, including elections.

PW93 talked about the national registration cards problem and also covered all the other flaws to be discussed. It is appropriate to set out the summary of the whole of his testimony at this stage. PW93 was Dr. Steven Moyo. He had carried out, on behalf of the petitioners (especially UNIP) a detailed faulty – finding analysis of the electoral process and found flaws in three areas, namely the polling districts, the registers and the results. With regard to the POLLING DISTRICTS, he queried the discrepancies in the official documents as to numbers of polling districts in 1996 when compared to the position in 1991. He said that the gazette notices did not reflect all the polling districts and in any case queried why the Electoral Commission had chosen to increase the number of polling districts. He informed the court that his research uncovered the fact that there were nineteen (19) polling districts which were not reflected in the official electoral documents but which were in the gazettes while there were sixteen (16) polling districts which were reflected in the official electoral documents but which were ungazetted. The witness further informed the court that some polling districts had been shifted from one constituency to another without the sanction of a delimitation Commission. He gave the example of ten (10) polling districts in Ndola which had been shifted farm Chifubu to Kabushi without a delimitation Commission. With regard to the shifting or non-gazetting or listing of some polling districts, the witness gave other examples from Nakonde and Isoka and also from Kabwe and Petauke. His research had even uncovered two unnamed polling districts in the Southern Province; one in Mapatizya and the other in Itezhitezbi. Dr. Moyo also complained that some polling districts though accounted for were not numbered in logical serial sequence. He queried the logic of creating so many new polling districts in some areas of very low voter population.

With regard to the REGISTERS, Dr. Moyo analysed twenty-four (24) constituencies which were randomly selected. He set out to make a comparison between the provisional registers and the final registers. He told us that he carried out a statistical analysis between the provisional and the final registers and this showed that they tallied. He said he detected a number of faults and drew our attention to examples in the documents. These related to omissions of voters' names where for instance only one name would be given; duplication of voters' national registration cards and multiple listing of some voters which to him indicated the possibility of double-voting. The other faults related to misplacement of voters in certain polling districts and, incomplete particulars against certain voters. The witness agreed that in some cases, the final registers showed that corrections had been made though some faults persisted into the final registers.

With regard to the RESULTS, the witness referred the court to a document containing provisional results and another containing what he termed- the final results. He drew attention to the altered results as well as to the initial results which had reflected identical scores for the candidates in various constituencies. The witness informed us that there were variances between the provisional and the final results so that the Copperbelt had a variance of 4,857 votes; the Eastern Province 1,185 votes ; Luapula nil; Lusaka Province 1,741 votes; Northern Province 279 votes; North- Western Province 64 votes; Southern Province 1,679 votes; and Western Province 1,302 votes. The witness found that the variances totalled country wide 16,788 for the rejected ballot papers and 52,857 for the total votes cast. Dr. Moyo had truly gone to great lengths to find faults. Thus, he gave examples of altered results between the provisional and the final results and he gave the national variance total of 62,037. The witness then drew attention to the identical results which were initially given. These were the pair of Chipata and Luangeni Constituencies where the first results were identical but corrected to different figures in the final results. Then there were the pairs of Lukashya and Malole; Liuwa and Lukulu West; Kankoyo and Kafulafuta; and Shiwang'andu with Isoka East. In all cases, the final results reflected that corrections had been made and the results were now different. The witness also drew attention to Mansa and said that the votes cast exceeded the maximum number of registered voters by 2,000. He also gave examples of what he considered to be an odd coincidence of the presidential candidates getting the same number of votes in various places.

All the foregoing was during his examination in chief. PW93, and to lesser extent PW96, can be credited with provoking and inspiring much of the distruct of the registers and the electoral processes during the last general elections. However, when Dr. Moyo was cross-examined he wilted completely in many respects and had to concede - very graciously we must say - that many of the major faults he had highlighted were as a result of his having formed a view on insufficient evidence or inadequate research or that he had taken a view of the facts which can infact not reasonably be entertained. Thus , for example, in relation to the polling districts in Ndola which were allegedly wrongfully shifted from one constituency to another, Dr. Moyo had to concede when shown the gazettes and the maps that the polling districts in question were infact PHYISICALLY LOCATED in one place though inadvertently listed under another in some 1991 Elections Office documents. The witness very propery admitted that he had seen the gazettes and the maps and he would not have made the allegation as he had done. The witness was also shown some gazettes which established that the allededly ungazetted polling districts were infact gazetted in various government gazettes containing corrigendar, which Dr. Moyo had not previously seen. This obliged him to withdraw his earlier assertions. Again, it was shown to the witness that the allegedly unlisted polling districts were in fact reflected in various documents, including the gazettes and that the Electoral Commission bad simply made a few mistakes in listing some polling districts for one place under another. When it came to the results, the witness was shown the voter registration figures for Chembe and Mansa and it was demonstrated that the results were transposed by error so that there were infact no 2,000 extra votes beyond the maximum number of registered voters. In the typical fashion of the gentleman that he proved himself to be, Dr. Moyo graciously conceded this; just as he readily admitted that there were no pairs of identical results in the results acknowledged as authentic by the Elections Office. It was also shown to the witness that there were indeed duplicate national registration cards entries on the registers due to a decision of the Electoral Commission as well as due to the mistakes of the Department of National Registration so that different people shared the same national registration card and registered as voters in different places. We should mention in fairness that the witness was on firm ground on some points, such as the fact that in the final registers there were still a few uncorrected errors of polling districts which had been shifted to the wrong place, for instance in Mumbezhi..

PW96 was Mr. Phiri of the Post Newspapers who had actively collaborated with some of the petitioners.His evidence disclosed in effect that he and his newspaper wrote a number of stories whipping up suspicion about the whole electoral process including, "Ghost voters" on the electoral rolls (which was a reference to duplicate national registration cards). They wrote that the Electoral Commission was partisan and that there were pre-marked ballot papers which would be used. Like PW93, he too analysed the results from an initial document availed him by an officer from the Elections Office when compared with the final results released later. He noted the discrepancies and the odd coincidence of having idential pairs of results affecting ten constituencies and the odd coincidence of having identical pairs of results affecting ten constituencies, that is five pairs. He also drew attention to the instances in more than forty constituencies where the results were later varied or altered. The witness also attempted – without much succcess – to show that there was a predetermined set pattern in the number of votes received by (or perhaps "allotted" to) each of the presidential candidates.

As previously indicated we have digested and made some comments upon the whole of the evidence of PWs93 and 96 only for convenience at this stage since the specific item being discussed pertains to the problems associated with national registration cards. On the evidence of the witnesses reviewed, we consider that the situation and the state of affairs revealed amounts to a near national disaster. It is unacceptable and improper, indeed it is contrary to the plain intention of the legislature which enacted the National Registration Act, that there should be any, let alone hundreds of thousands of, national registration card with identical numbers shared by two or three Zambians. The franchise and the electoral system's integrity has relied quite heavily on the national registration cards as a means of identifying and vouching for the Zambian voter. We take judicial notice that the national registration card plays a major role in identifying a person in connection with many other things, such as employment and social security. It seems to us that, as long as the concerned Department and the authorities do not correct this anomaly, the electoral system will continue to be seriously undermined and questioned. The statistic for duplicate national registration cards reflected in the voters' registers given by Mr. Kalale pale into insignificance in camparison with the far worse problem of national registration cards revealed by Mr. Mwiinga. At the end of the day, however, it can not be said that the flaws associated with the national registration card – which are harmful to the system as a whole – benefitted or disadvantaged any one of the presidential candidates any more or less than the others.

(b) **VOTERS CARDS**

As to (b), that is voters cards, we considered three areas of concern raised by the witnesses. firstly there was the problem of fading which PW2, PW50 and others spoke about. We saw such cards and we accept that it is a weakness of the new card that it fades and can even be rubbed clean. We note that the problem of fading cards could be mitigated by the facility of the voting certificate – when not misused – and replacement during a revision exercise. However, the mischief which was not acceptable and which could have been avoided had the officials used some common sense was the unwarranted refusal to allow voters like PW50 the chance to exercise their right to vote on account of the fading of the card. The second problem concerning the voters' cards was that some people ended up with two voters' cards each, leading to the suspicion on the part of the petitioners that they could vote twice. We saw such cards which were produced by the witnesses. However, it was also explained to us by the witnesses from the Elections Office (notably PW22 Mr. Musonda) that there had been a lot of misplacement of voters in the wrong provisional registers on account of errors of the coding of polling districts which were committed by the officials at the time of completing the

registration forms. This necessitated corrections which entailed the issue of replacement cards and the transfer of voters' names to the correct final registers. In the process, some voters ended up having tow voters' cards because the earlier one was not always physically withdrawn. This confusion also resulted in many affected voters not collecting their replacement cards and not voting. In some cases, the corrections were still not made in final register. We accept the evidence of PW22 and find that where a second voters' card was issued in replacement of an earlier one affected by misplacement in the registers on account of the wrong coding, the result was simply that the whole process become rather untidy. However, we accept that the concerned voters could not vote twice; they could not use the first card. The mischief of double voting which was apprehended can safely be ruled out.

The third problem regarding voters' cards concerns the category of crooked and dishonest persons like Zgyambo and Ms Kalo who had more than one voter's cards and successfully voted two or more times. This category are illustrated not a flaw in the system but a fraud on the system. The sad part is that Zgyambo's tricks were facilitated by an official decision to accept the same national registration cards and treat it as representing different persons even when obviously not.

(c) THE REGISTERS

As to (c), that is the registers, the evidence much of which we have already outlined pointed to four main complaints. We should first make the observation, which is trite, that the exercise of the right to vote in periodic, genuine, free and fair elections is predicated upon the availability of a decent and acceptable register of voters in which all the eligible Zambians who took the trouble to register should be reflected. It is a fact also that while a provisional register can have mistakes which are expected to be corrected through the process of the publication of such registers, the final registers should generally reflect a high degree of accuracy so that no registered voter is disenfranchised. We should also make the observation that in this trial, there was no single witness who was a potential voter who came to say that he was refused registration. The only examples of unjustified disenfranchisement we heard were of the two voters in Bweengwa who were reflected as toddlers and the many who were the victims of uncorrected misplacements due to wrong coding. Otherwise the frontal attack on the integrity of the registers came mostly from PW93 as we have already seen. He spent a lot of time on the provisional registers but his criticisms were valid only in respect of any mistakes which were not corrected.

Of the four areas of complaint, the first related to the unpopular decision of the Electoral Commission to authorise identical national registration cards to remain on the registers. This was confirmed by PW22 and CWI as well as the provisional and final registers exhibited in the case. This resulted in 52,703 duplicate national registration card cases with different names representing different individuals. We also accept that there were 9,540 other duplicate national registration cards with the same names but different dates of birth and which could conceivably mean that some people appeared twice and had potentially two votes. We also accepted the evidence of CWI who told us that there were 33,444 double registrations by the same individuals where a correction was made in the final register by leaving them where they registered first. In the last case, although leaving a person where he/she registered last would be more logical, we accept that the necessary correction had been made to prevent double voting. In relation to the whole complaint of duplicates remaining on the registers, we note that all of them put together do not exceed or even reach 100,000 which, when looked at proportionately and in the context of a nation-wide election which a presidential election is, speaks for itself. We have already made reference to the fact that the decision to allow duplicates also facilitated multiple registration by crooks like Zgyambo who must have been

assisted by partisan officials. PW93 also gave instances of multiple listing of a voter, a phenomenon which was so isolated and so rare that it required the keen-eyed vigilance and virtually microscopic scrutiny of this witness to spot it.

The second area of complaint related to the use by some election officials of provisional or final registers indiscriminately at the polling stations. The complaint was voiced by PW93 and the phenomenon was confirmed by PWs 21 and 22. Apart from showing carelessness and untidiness in the performance of the election officials' duties, no specific mischief or baneful consequence was shown to have resulted.

The third area of complaint related to the misplacement of voters in the registers which was not corrected in the final registers. PW93 spoke about this and was on firm ground on Mumbezhi. There was other evidence suggesting that some voters were affected by this in the Isoka, Mbala and Mporokoso areas. There was also the evidence of PW39 Mr Andrew Bwezani Banda, one of the ZADECO Vice Presidents and a candidate in the Chipata Central Parliamentary Constituency. His evidence touched on a number of aspects, including the flaws resulting from the misplacement of voters. Mr. Banda complained about the MMD's use of government motor vehicles in their campaigns when they were also distributing medicines in the rural clinics in the Lumezi Constituency in neighbouring Lundazi. He talked about how the leaders dished out money to schools and other public projects and also how the respondent visited Chipata and announced sale of council houses at give-away prices, urging the voters to vote for him. We have already dealt with these aspects of the case. However, Mr. Banda also informed the court that a lot of polling stations (which he named) were wrongly listed or misplaced. We learnt that there was much confusion due to the misplacement of polling districts and polling stations belonging to Chipata Central into Luangeni which resulted in some voters not voting. Some of the voters ended up having two voters' cards while the gazetting of any corrections made was not brought to everyone's attention. The confusion was, needless to say, attributable to the elections administrators and there was no suggestion that this flaw in the system benefitted any particular candidate or disadvantaged one any more than the other.

Finally, PW93 complained of instances of incomplete personal particulars such as a missing first name or an incomplete residential address of a voter.

Having examined the flaws on the registers, we can confirm - and it is our finding - that there were indeed flaws or faults which did not contribute to building confidence in the system and which could and should have been avoided. Flaws which facilitated the possibility of more than one vote per person conduced to illegality since the democratic system we have embraced which is underpinned by the Constitution and the Electoral Act envisages and confers only one vote in each election. However, having reviewed and analysed all the evidence, it is our finding that there is nothing to support the suspicion which was voiced of a built-in majority for the MMD or anyone.

(d) **POLLING DISTRICTS**

As to (d), that is the polling districts, we considered the complaints and the flaws, if any, in the light of the evidence given by PWs 93, 96 and 39. Having carefully considered the evidence, it is our finding that the evidence of the increase in the number of polling districts was not evidence of any flaw in the system. There was nothing in the evidence to warrant the raising of suspicion by PWs 93 and 96 nor was the increase itself evidence of some sinister development to do with rigging or something of the sort. The other flaw testified to by PW93 was the allegation that some polling districts were not gazetted. As we have already seen, this was shown not to be true and the witness had to concede under cross-examination. Similarly, the

suggestion that there were or there may have been sinister and subterranean adjustments to the constituencies was not borne out. Thus, the allegation of ten polling districts in Ndola being shifted from Chifubu to Kabushi when some 1991 documents had listed them under Chifubu had to be abandoned and PW93 conceded he would not have raised the complaint had he seen the maps, the gazettes and the other documents. However, it is to be noted that PW39 at least was on firm ground when he complained about the polling districts and polling stations which were wrongly listed or misplaced in Chipata. It was true to say that the corrections in the gazette, if any, would not have been seen by many. Some of the misplacements persisted up until the polling day, thereby preventing the electorate from voting. The evidence of PW39 Mr. Andrew Banda on this point was not rebutted and the point was well-taken. The misplacements ought to be rectified so that none is disenfranchised and dissatisfaction and unwarranted suspicion avoided.

(e) **POLLING STATIONS**

As to (e), that is flaws associated with the siting of polling stations we heard three types of complaint. The first was that in this day and age when the values of multiparty democracy ought to be evident both in practice and in perception there actually were some polling stations established at premises belonging to party officials. This was obviously wrong and conducive to malpractice, Examples were given by PWs 69, 77 and 46. PW69 was Mrs. Prisca Nkhoma, a polling agent for the Lima Party in Chongwe. We heard from her that her polling station was a tent erected at the local MMD Chairman's house. The Chairman kept telling the people to vote on the clock; his wife offered free traditional beer and drew a clock on the voters' palms before they went in to vote. The witness saw at least one voter who collected her voter's card from the Chairman who was keeping a batch of them. The evidence of PW77 Mr. Machina, a polling agent for Dr. Guy Scott was to the same effect as that of PW69. Apart from the foregoing, we have already alluded to the example given by PW46 Mr. Kandeke who voted in Kabwe at a polling station established at a beer-hall or tavern belonging to the local MMD Chairman. The second type of complaint concerned the misplacement of polling districts which resulted in the loss of polling stations or their own misplacement so that some people could not even vote. This came out of the evidence of PW39. The last kind of complaint under this part was that by PW49 Mrs. Emelio who complained of the vast distances many voters were expected to walk to the polling stations in Sinjembela as a result of which people did not vote. This was a valid complaint of general interest and occurrence and which should be considered by the authorities concerned, notwithstanding that some people - like PW93 - would probably still not favour the creation of any more polling districts.

(f) **RESULTS**

As to (f), that is flaws in the results, the main evidence was that given by PWs 93 and 96 a precis of which we have already given. One complaint related to the initial results announced which had five identical pairs of results farm ten constituencies, provoking the suspicion or allegation that the results were predetermined and cooked up or plucked from the blue. We accept that corrections were made but nonetheless such identical sets were there at first. Whether this was as a result of gross negligence or carelessness or not (in the prevailing climate of political distrust, hatred and mutual dislike), it led to a lot of suspicion on the part of the petitioners. The second complaint related to non-identical results but which were nonetheless altered. We accept that all this weakened confidence and belief in the system and did not redound to the credit of those managing the electoral process. The third complaint we consider not to have been well-taken and this was that candidates got a similar number of votes in a variety of constituencies; suggesting that there was an allocation of predetermined figures which had been conjured up. We examined the evidence very closely and did not

discern odd coincidences of the kind to arouse this type of suspicion in an objective observer. The trouble is that there was very little objectivity and too much distrust.

The flaws of all types which we have said were established, of course, did not reflect well on those managing the electoral process. Many of them can and should be addressed in order to enhance our democratic profile and in order to engender greater confidence in the electoral process. Elections, it goes without saying, are the sole lawful, constitutional, and legitimate method for the peaceful and legal acquisition of political power. They are the culmination of the exercise of some of the most basic fundamental rights such as the rights of free association, free assembly and free speech the maintenance of which is vital in order to sustain free political discussion and free political choices. Those in power should govern with the consent and by the will of the governed expressed in periodic genuine open, free and fair elections where the result reflects the exercise of free choice. If it be the will of the people, through the electorate, that there be changes, elections guarantee that the changes desired shall be obtained by peaceful means. We repeat: The flaws identified need to be addressed by the authorities. However, flaws by their very nature go to the general integrity of the system and do not necessarily suggest that the electoral system has been comprehensively massaged or predisposed to grant an unfair or any advantage or disadvantage to any one, in advance.

## CONCLUSION

Having reviewed the evidence, it is necessary to conclude. Admittedly, there are some witnesses whose evidence we have not specifically alluded to and which we considered to be unhelpful to the issues before us. Persons like PW70 Mr. Jerade Sekeleti, PW71 Mr. Kayanda and PW72 Mr. Jackson Sekeleti who complained that the MMD candidate Mr. Nkausu visited their polling stations and greeted some people did not make any useful contribution to this case. Neither did PW43 Mr. Tiyaonse Kabwe who - having read the evidence of PWI2 in the Post newspaper - wished to comment on it and to dispute his assertions. There were a number of witnesses from the media who produced various newspaper articles which did not advance the case in any useful fashion. There were other witnesses not specifically mentioned - such as PW37 a polling agent for PW82 - because the point they covered has been adequately dealt with by reference to the evidence of other witnesses.

We should also mention that, from the evidence of the petitioners PWI, Mr Zulu, PW2 Mr. Lewanika, PW8 Mr. Kambaila and PWI6 Mr. Mung'omba, the petitioners had a number of grievances which are largely if not purely of a political nature. The resolution of such political issues would have more naturally sounded in another forum than in a courtroom where the parties have vented their feelings in default of meaningful dialogue among our politicians. Thus, they complained of the manipulation of the constitution by the amendments of 1996 which appeared to them to have been selectively and advisedly targeted. One of the them, Mr. Kambaila, even went so far as to call upon their Lordships to declare the 1996 amendments requiring the parents of a candidate to be citizens as null and void. Such call, of course, went beyond the ambit of an election petition which was not constituted for such a purpose. Some of the petitioners raised concerns about the need for a mutually agreed independent Electoral Commission to manage the elections; concerns about the use of the public media and the limited access to it by the opposition; and concerns about the Public Order Act. There were complaints concerning the use - or perhaps more accurately the misuse - of public or government resources, concerns some of which the Electoral Commission endeavoured to address when it set out a code of conduct (by Statutory Instrument 179 of 1996) apparently more honoured in breach than in observance. It seems to us that resolution of political issues in the political arena is to be preferred to litigation. For example, some measures which may

be considered offensive, provocative, unjust or unfair in the political arena so as not to be universally acceptable may yet strictly speaking be "legal" as a matter of strict law. It seems to us that in such event where the court may be unable to pronounce upon their validity based on their possible illegality or unconstitutionality, the politicians owe it to the citizens - (who are undoubtedly entitled to peace and the quiet enjoyment of life) - to resolve the political issues and to underight the political well-being of the nation. This we find to be the challenge facing our politicians on some of the grievances brought to our attention by the petitioners. It is certainly not part of the remit of any court (to borrow from the language in the Akar case) to start debating the wisdom or desirability.or fairness of some of the measures if a legal or constitutional challenge is unavailable.

We are also aware that there were allegations made in the petition which have either not been supported by any evidence or not been proven. Examples of this include the allegation 'that at the poll, the polling stations and rooms where people cast their votes had intimidating presence of heavily armed soldiers and policemen there through bullying voters into voting for the respondent and his party in government as the particulars of the voters were also endorsed on their ballot papers thereby ensuring that the vote was not secret, and a voter's choice could be traced." There was not an iota of evidence tendered; not a single witness, of the many who testified 'to events at a polling station, said there were the alleged "heavily armed solders" at all or any police officers bullying any one. Not one person said particulars were written on the ballot papers unless the reference was to the voter's serial number which is written on the ballot counterfoil; a practice which has always been there in Zambia. There was also an allegation that double-voting was facilitated by the provision of substandard ink that could be washed off and by the failure "to put measures in place to detect and stop the use of invisible rubber hand gloves" which allegedly allowed many people with more than one voter's cards to vote as many times as they had cards. While there was some evidence of double voting by the dishonest like Zgyambo and Miss Kalo who washed off the ink, no one came to talk about invisible rubber gloves. We have already dealt with the case of the voter who had two voters' cards because of coding errors and we have already found as a fact that such voters could not vote twice, even if they tried to do so, because their names only appeared once in the final registers in respect of the corrected polling district.

There was yet another allegation that the Electoral Commission created new polling stations which were secretly used. No evidence was led to support this claim. There was an allegation that persons who had died prior to the election somehow voted in the election using MMD cadres who were supplied with the requisite documents. This allegation may have been intended to be proved by the witnesses from Chongwe who claimed to have been given false identities and to have been driven to Ngwerere to vote in those other names. We have already discussed this evidence which was not believable, as already found.

When all is said and done, we accept that there was on the whole reasonable cause for complaint and for bringing this petition which it was in the public interest to ventilate in court. Some of the grievances and issues taken up were certainly well- taken while obviously some could not have been pursued had the complainants been possessed of the full facts or explanations which emerged during the trial. For reasons we have given, we decline to determine and declare that the provisions of Article 34(3) (a), (b) and (e) of the constitution have not been satisfied in respect of the respondent. We find that he was qualified to contest the election. It follows also that we do not find that he falsely swore as to the citizenship of his parents. We were asked to declare that the election process was not free and fair and that the election was rigged and therefore null and void; The election process had flaws and irregularities, as we have already pointed out. The bottom line, however, was whether, given the national character of the exercise where all the voters in the country formed a single

electoral college, it can be said that die proven defects were such that the majority of the voters were prevented from electing the candidate whom they preferred; or that the election was so flawed that the defects seriously affected the result which could no longer reasonably be said to represent the true free choice and free will of the majority of the voters. We are satisfied, on the evidence before us, that the elections while not perfect and in the aspects discussed quite flawed were substantially in conformity with the law and practice which governs such elections; the few examples of isolated attempts at "rigging" only served to confirm that there were only a few superficial and desultory efforts rather than any large scale, comprehensive and deep rooted "rigging" as suggested by the witnesses who spoke of aborted democracy.

The petition is unsuccessful and it is dismissed. However, it is clearly in the interests of the proper functioning of our democracy that challenges, to the election of a president which are permitted by the constitution and which are not frivolous should not be inhibited by unwarranted condemnation in costs. In the event, it is only fair that each of the parties should bear their own costs.

Petition Dismissed

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