

THE PUBLIC PROTECTOR BILL, 2016

MEMORANDUM

The objects of this Bill are to—

- (a) provide for the functions, powers, operations and financial management of the Office of Public Protector;
- (b) provide for the initiation and investigation of complaints;
- (c) repeal and replace the Commission for Investigations Act, 1991; and
- (d) provide for matters connected with, or incidental to, the foregoing.

L. KALALUKA,
Attorney-General

THE PUBLIC PROTECTOR BILL, 2016

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GOVERNMENT OF ZAMBIA

A BILL

ENTITLED

An Act to provide for the functions, powers, operations and financial management of the Office of Public Protector; provide for the initiation and investigation of complaints; repeal and replace the Commission for Investigations Act, 1991; and provide for matters connected with, or incidental to, the foregoing.

ENACTED by the Parliament of Zambia.

Enactment

PART I

PRELIMINARY PROVISIONS

1. This Act may be cited as the Public Protector Act, 2016. Short title
- 5 2. In this Act, unless the context otherwise requires— Interpretation
- “administrative action” means an action relating to matters of administration, and includes—
- (a) a decision and an act;
- 10 (b) a failure to make a decision or do an act, including a failure to provide a written statement of reasons for a decision;
- (c) the formulation of a proposal or intention; and
- (d) the making of a recommendation;
- 15 “Chief Administrator” means the person appointed as such under section *nine*;

N.A.B. 7, 2016

- Cap. 1 “child” has the meaning assigned to it in the Constitution;
- Cap. 39 “Commission” means the Commission for Investigations established under section *four* of the repealed Act;
- “court” means a court of competent jurisdiction;
- “Deputy Public Protector” means the person appointed as 5 such under section *seven*;
- “document” means any device by means of which information is recorded or stored, and includes—
- (a) anything on which there is writing;
 - (b) anything in which there are marks, figures, symbols 10 or perforations having meaning for persons qualified to interpret them;
 - (c) anything from which sounds, images or writing can be produced, with or without the aid of anything else; or 15
 - (d) any of the things referred to in paragraphs (a) to (c) kept or maintained in electronic form;
- Cap. 1 “Emoluments Commission” means the Emoluments Commission established under the Constitution;
- “equivalent qualification” means a qualification that is equal 20 in function, value, significance or level or similar in effect or function;
- “maladministration” means an action taken or omitted to be taken, or a decision made or omitted to be made, by a State institution in the performance of an administrative 25 function, which is unfair, unreasonable, illegal or not compliant with the rules of natural justice;
- Cap. 1 “oath” has the meaning assigned to it in the Constitution;
- “Office of the Public Protector” means the Office of the Public Protector established under section *four*; 30
- “Parliamentary Service Commission” means the Parliamentary Service Commission established under Article 218 of the Constitution;
- Cap. 1 “practitioner” has the meaning assigned to it in the Legal Practitioners’ Act; 35
- Cap. 30 “Public Protector” means the person appointed as such under the Constitution;
- Cap. 1 “Registrar” means the person appointed as such under section *eight*;

- “repealed Act” means the Commission for Investigations Act; Cap. 39
- “rules of natural justice” means the principles and procedures underlying the making of a decision or taking of an action by a State institution, which are that an act or decision should be unbiased, transparent and made in good faith and that each party should have equal access to the person taking the action or making the decision and should be aware of the facts of the decision and the documents that are used or adduced by the person taking the action or making the decision;
- “Speaker” means the person elected as Speaker of the National Assembly under Article 82 of the Constitution; Cap. 1
- “specialised systemic investigation” means an investigation that goes beyond the issue raised by a given complaint and looks at the underlying causes; and
- “State institution” has the meaning assigned to it in the Constitution. Cap. 1
- 3.** The Office of the Public Protector shall, in fulfilling its mandate, act in accordance with the values and principles set out in the Constitution and shall be guided by the following principles: Guiding principles
- (a) independence;
- (b) integrity;
- (c) accessibility;
- (d) impartiality;
- (e) professionalism; and
- (f) transparency.

PART II

OFFICE OF PUBLIC PROTECTOR

- 4.** (1) There is established the office of the Public Protector which shall be headed by the Public Protector as provided under the Constitution. Office of Public Protector Cap. 1
- (2) The Office of the Public Protector consists of Deputy Public Protectors, the Registrar, Chief Administrator and other officers and staff appointed pursuant to sections *seven, eight, nine* and *ten*, respectively.
- (3) The Deputy Public Protectors, Registrar, Chief Administrator, officers and other staff of the Office of the Public Protector shall not in the performance of their functions under this Act, be subject to the direction or control of a person or authority other than the Public Protector.

Seal of
Office of
Public
Protector

5. (1) The seal of the Office of the Public Protector shall be such device as may be determined by the Public Protector and shall be kept by the Registrar.

(2) The affixing of the seal shall be authenticated by the Public Protector or a Deputy Public Protector and the Registrar or any 5 other person authorised in that behalf by the Public Protector.

(3) A contract or instrument which, if entered into or executed by a person not being a body corporate, would not be required to be under seal, may be entered into or executed without seal on behalf of the Public Protector by the Registrar or any other person 10 generally or specifically authorised by the Public Protector in that behalf.

(4) A document purporting to be under the seal of the Office of the Public Protector or issued on behalf of the Public Protector shall be received in evidence and shall be deemed to be so executed 15 or issued, as the case may be, without further proof, unless the contrary is proved.

Functions of
Public
Protector
Cap. 1

6. (1) The Public Protector shall perform such functions as are prescribed in the Constitution.

(2) Despite the generality of subsection (1), the functions of 20 the Public Protector are to—

(a) consider the administrative actions, practices and procedures of State institutions and make recommendations to the State institutions—

- (i) on appropriate ways of addressing the effects 25 of inappropriate administrative actions; and
- (ii) for the improvement of the practices and procedures;

(b) prevent and take necessary and effective measures for the prevention of maladministration in State institutions, 30 in particular measures for—

- (i) examining the practices and procedures of State institutions in order to facilitate the discovery of opportunities of maladministration and secure the revision of methods of work or procedures 35 which in the opinion of the Public Protector may be prone or conducive to maladministration;
- (ii) advising State institutions on ways and means of preventing maladministration, and on changes in methods of work or procedures of such State 40 institutions compatible with the effective

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- performance of their duties, which the Public Protector considers necessary to reduce the likelihood of occurrence of maladministration;
- 5 (iii) disseminating information on the evil and dangerous effects of maladministration on society; and
- (iv) enlisting and fostering public confidence and support against maladministration;
- 10 (c) initiate, receive and investigate complaints of alleged or suspected maladministration;
- (d) investigate any complaint of human rights arising from maladministration or any conduct which the Public Protector has reasonable grounds to believe may be connected with, or conducive to, maladministration;
- 15 (e) be the lead agency in matters of combating maladministration;
- (f) adopt and strengthen mechanisms for educating the public to respect the public good and public interest, and in particular—
- 20 (i) create awareness in the fight against maladministration and related offences;
- (ii) develop educational and other programmes for the sensitisation of the media;
- (iii) promote an environment for the respect of ethics; and
- 25 (iv) disseminate information and sensitise the public on the negative effects of maladministration;
- (g) provide information or assistance to State institutions for the improvement of administrative practices and procedures;
- 30 (h) monitor and evaluate administrative activities and standards in State institutions and issue reports on matters of public interest;
- (i) promote public awareness of policies and administrative procedures on matters relating to administrative justice;
- 35 (j) advise Government on good administrative practices; and
- (k) perform any other functions as necessary or incidental to the performance of its functions under this Act or as may be prescribed under any written law.

(3) The Public Protector shall, in the performance of the Public Protector's functions—

- (a) facilitate capacity building in the handling of complaints arising from maladministration;
- (b) coordinate or cooperate, as applicable, with other 5 institutions so as to implement an integrated approach to the prevention and eradication of maladministration; and
- (c) consult, cooperate and exchange information with appropriate bodies of other countries that are authorised 10 to conduct inquiries or investigations in relation to maladministration.

(4) The Public Protector may investigate an administrative action despite a provision in any written law to the effect that the action or decision complained of is final. 15

(5) In subsection (4), “final” in relation to an action or decision under this section means that the action or decision is not subject to appeal, challenge or review.

Deputy
Public
Protectors
Cap. 1

7. (1) The Parliamentary Service Commission shall, on the recommendation of the Public Protector, appoint two Deputy Public 20 Protectors to assist the Public Protector in the exercise of the Public Protector's functions under the Constitution and this Act.

(2) One Deputy Public Protector shall be responsible for the formulation of policy on specialised systemic investigations on maladministration, and the other Deputy Public Protector shall be 25 responsible for the formulation of policy on investigations on general maladministration.

(3) Despite subsection (2), the Deputy Public Protectors shall perform such functions as may be assigned to them by the Public Protector. 30

(4) A person qualifies for appointment as Deputy Public Protector if that person—

- (a) holds a degree, or an equivalent qualification, from a higher education institution established, registered or declared under the Higher Education Act, 2013; and 35
- (b) has at least ten year's experience in—
 - (i) finance;
 - (ii) public administration; or
 - (iii) law.

Act No. 4
of 2013

8. (1) There shall be a Registrar of the Office of the Public Protector who shall be appointed by the Parliamentary Service Commission on the recommendation of the Public Protector. Registrar
- (2) A person shall be appointed as Registrar if the person is a 5 practitioner with five years' legal experience.
- (3) The Registrar shall, subject to this Act—
- (a) issue summonses, search warrants, arrest warrants and orders made by the Public Protector;
- 10 (b) receive complaints from complainants against State institutions;
- (c) receive submissions from State institutions when requested for by the Public Protector;
- (d) communicate to the complainant and to a State institution the decisions and orders of the Public Protector;
- 15 (e) keep a record of the investigations and proceedings carried out by the Public Protector;
- (f) keep, or cause to be kept and maintained, a register of all orders, decisions and any other documents of the Public Protector;
- 20 (g) have the custody, and keep an account of all fees and other monies payable or paid to the Public Protector, and shall keep proper accounts thereof;
- (h) administer oaths to witnesses, complainants and State institutions that appear before the Public Protector; and
- 25 (i) perform such other functions and exercise such other powers as may be conferred by rules made under section *forty-three* or by any other written law.
9. (1) The Parliamentary Service Commission shall, on the recommendation of the Public Protector, appoint a Chief Administrator, officers and other staff to assist the Public Protector in the performance of the Public Protector's functions. Chief Administrator, officers and staff of Office of Public Protector
- (2) The Chief Administrator shall be—
- (a) the controlling officer of the office of the Public Protector; and
- 35 (b) responsible for the management and administration of the Office of the Public Protector.
- (3) An officer shall have such powers, functions and duties as provided for, or as delegated to the officer by the Public Protector under this Act.

(4) Despite subsection (1), the Public Protector may appoint such experts and assessors, not being officers referred to in subsection (1), as are necessary to assist the Public Protector to carry out the Public Protector's functions.

Provincial
directors and
district
investigations
officers
Cap. 1

10. (1) The Parliamentary Service Commission shall, on the recommendation of the Public Protector, appoint such number of provincial directors and district investigations officers as are necessary to perform the functions of the Public Protector under the Constitution and this Act.

(2) A provincial director shall, subject to the control and direction of the Public Protector, be responsible for supervising the operations of the Office of the Public Protector in a province.

(3) The district investigations officers shall, subject to the control and directive of the provincial director, be responsible for supervising the operations of the Office of the Public Protector in a district.

Oath on
appointment

11. The Public Protector, Deputy Public Protectors, Registrar, Chief Administrator, officers and members of staff of the Office of the Public Protector shall, on appointment, take an oath in accordance with the Official Oaths Act.

Cap. 5

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Immunity

12. An action or other proceeding shall not lie or be instituted against the Public Protector, the Deputy Public Protectors, Registrar, Chief Administrator, an officer or member of staff of the Office of the Public Protector for or in respect of an act or thing done or omitted to be done in good faith in the exercise or performance, or purported exercise or performance, of any of the powers, functions or duties conferred under this Act.

PART III

COMPLAINTS AND INVESTIGATIONS

Initiation of
investigation

13. (1) The Public Protector may investigate an allegation of maladministration—

(a) on the Public Protector's own initiative; or

(b) on receipt of a complaint made by

(i) a complainant acting in the complainant's own interest;

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(ii) an association acting in the interest of its members;

(iii) a person acting on behalf of a complainant;

(iv) a person acting on behalf, and in the interest, of a group or class of persons; or

(v) an anonymous person.

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(2) Despite subsection (1), the Public Protector may investigate an instance or matter where the Public Protector has reason to suspect—

5 (a) that any decision or recommendation taken or made or about to be taken or made is unreasonable, unjust, unfair, irregular, unlawful or discriminatory or is based on a practice which may be deemed to be as such;

10 (b) that the provisions of any law or any other matter is administered by or under the authority of a State institution, or that any practice is so followed, in a manner which is not in the public interest; or

15 (c) that the powers, duties or functions which vest in a State institution are exercised or performed in an incompetent, dishonest, or irregular manner or are not exercised or performed.

(3) A complaint under subsection (1) shall be made in the prescribed manner and form.

(4) Subsection (3) shall not apply to anonymous complaints.

20 **14.** (1) The Public Protector shall, on receipt of a complaint made in accordance with section *thirteen*, determine whether a complaint discloses a *prima facie* case of maladministration.

Consideration of complaint

25 (2) The Public Protector may, where a complaint discloses a *prima facie* case of maladministration, make such orders and give such directions as the Public Protector considers necessary for the purpose of an investigation.

15. (1) The Public Protector may refuse to investigate a complaint or, having commenced an investigation, discontinue the investigation if the Public Protector considers that the—

Refusal to investigate complaint

30 (a) complaint is trivial;

(b) complaint is frivolous, vexatious or not made in good faith;

(c) complainant does not have sufficient interest in the action complained of, except that this paragraph shall not apply to anonymous complaints;

35 (d) complainant has a right of appeal, review or remedy that has not been exhausted; or

(e) conduct or involvement to which the complaint relates is or has been the subject of an investigation or other action by any other appropriate authority under any other written law.

(2) The Public Protector shall not investigate a complaint unless the complaint is made within a period of one year from the date on which the complainant exhausts the complainant's rights under paragraph (d) of subsection (1).

(3) Despite paragraph (d) of subsection (1), the Public Protector may investigate a complaint where the Public Protector is satisfied that the complainant has been prevented from exercising the complainant's rights under that paragraph.

(4) Despite subsection (2), the Public Protector may, in exceptional circumstances, investigate complaints received outside the period referred to in subsection (2), except that the Public Protector shall not investigate a complaint made in contravention of the Law Reform (Limitation of Actions, Etc.) Act.

(5) A right or remedy mentioned in subsection (1) does not include the right to judicial review. 15

(6) The Public Protector shall, where the Public Protector decides not to conduct an investigation or discontinue an investigation, inform the complainant, in writing, within fourteen days of such decision and give reasons for the decision.

Investigation
by Public
Protector

16. (1) The Public Protector may, for purposes of an investigation— 20

(a) require the attendance of a person before the Public Protector or the production of a document or record relevant to the investigation;

(b) question a person in respect of any matter under investigation before the Public Protector; and 25

(c) require any person to disclose any information relevant to the investigation.

(2) The Public Protector may direct that a person or category of persons shall not be present at the proceedings or during an investigation, if it is in the interest of justice or if harm might be caused to any person. 30

Referral of
matter

17. The Public Protector may, at any stage of investigating or dealing with a matter under this Act, refer the matter to a relevant authority. 35

Collaboration
on
investigations

18. The Public Protector may, where the Public Protector commences an investigation or is investigating a matter and the matter is being dealt with by an institution referred to under section *seventeen*

(a) continue to investigate or decide on the matter and share its findings with the institution concerned; 40

(b) refer the matter to the institution concerned and request a report on the matter, once the matter has been finalised; or

5 (c) join the institution investigating the matter and produce a joint report.

19. (1) If, after conducting an investigation on a State institution, the Public Protector is of the opinion—

Proceedings after investigation

10 (a) that the action which was the subject matter of the investigation is contrary to any written law, based wholly or partly on a mistake of law or fact, unreasonably delayed or otherwise unjust or manifestly unreasonable;

(b) that—

(i) the matter should be given further consideration;

(ii) an omission should be rectified;

15 (iii) a decision should be cancelled, reversed or varied;

(iv) the practice on which the act, omission, decision or recommendation was based should be altered;

20 (v) the law on which the act, omission, decision or recommendation was based should be re-considered;

(vi) reasons should have been given for the decision; or

(vii) any other steps should be taken; or

25 (c) that a person who is the subject matter of the investigation has committed an offence;

the Public Protector shall provide to the State institution, the Public Protector's report of the investigation and may make such recommendations as the Public Protector considers appropriate and shall send a copy of the report and recommendations to the National Assembly.

35 (2) The Public Protector may request a State institution referred to in subsection (1) to notify the Public Protector, within thirty days, of the steps that it proposes to take to give effect to the recommendations.

(3) If, on the expiry of the period referred to under subsection (2), a State institution fails to notify the Public Protector of the steps that it proposes to take under that subsection, the Public Protector may make a decision to give 40 effect to the recommendation.

(4) Where a State institution fails, without reasonable excuse, to comply with a decision made under subsection (3), the Public Protector may compel the State institution to comply with the decision made under that subsection.

PART IV

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HEARINGS

Hearings	<p>20. (1) The Public Protector may hold hearings for the purpose of conducting an investigation.</p> <p>(2) The Public Protector may hold its hearings in public or in private, or partly in private as it considers appropriate.</p>	10
Proceedings at hearings	<p>21. (1) The Public Protector shall hold its hearings at such places and times as the Public Protector or, in the absence of the Public Protector, a Deputy Public Protector may determine.</p> <p>(2) The Public Protector shall preside over the hearings of the Public Protector and, in the absence of the Public Protector, any Deputy Public Protector chosen for the purposes of that hearing shall preside.</p> <p>(3) The determination of a matter before the Public Protector shall be according to the opinion of the majority of the members considering the matter, except that—</p> <p style="padding-left: 40px;">(a) in the event of an equality of votes, the person presiding at the hearing shall have a casting vote in addition to a deliberative vote; and</p> <p style="padding-left: 40px;">(b) where, in any matter before the Public Protector the issue to be resolved is on a point of law, the decision of the person presiding at the hearing shall prevail.</p> <p>(4) A person appearing before the Public Protector may appear in person or through a practitioner at the person’s own expense.</p>	15 20 25
Evidence and procedure	<p>22. (1) When conducting a hearing the Public Protector is not bound by the rules or practice of evidence.</p> <p>(2) The Public Protector shall conduct hearings with as little formality and technicality as is possible.</p> <p>(3) The Public Protector may conduct hearings with as little emphasis on an adversarial approach as is possible and wherever possible, written submissions may be presented.</p>	30 35
Hearings in relation to judicial proceedings	<p>23. Where the subject matter of a complaint or an investigation is the subject matter of judicial proceedings, the Public Protector shall not commence or continue an investigation pending the final outcome of those proceedings.</p>	

24. Where a person satisfies the Public Protector that the person has a substantial or direct interest in the subject matter of a hearing, the Public Protector may authorise the person to appear at the hearing or a specified part of the hearing.

Right of appearance of interested person

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PART V

POWERS OF PUBLIC PROTECTOR

25. (1) The Public Protector or an officer authorised by the Public Protector to undertake an investigation under this Act may, for purposes of the investigation—

Powers of investigation

- 10 (a) access any book, record, return, report and other document relating to the work or operations of a State institution;
- (b) enter and search, at any time during reasonable hours, the premises of a State institution or the premises or property of a private person where the Public Protector has reasonable grounds to believe that
- 15 documents relevant to an investigation have been placed, deposited or concealed;
- (c) where necessary, make inquiries from an officer or employee in a State institution as the Public Protector may consider necessary in connection with an
- 20 investigation;
- (d) where necessary, take and make copies of any document or extracts from a document in a State institution that the person executing the warrant believes on reasonable
- 25 grounds may be relevant to an investigation;
- (e) where necessary, remove a document or other thing from a State institution that may be relevant to an investigation; and
- (f) where necessary, require a person to reproduce, or to
- 30 assist in reproducing, in usable form, any information recorded or stored in any form.

(2) A person who accompanies or assists the Public Protector to enter into or upon the premises or property of a State institution shall, during the period of such accompaniment or assistance, enjoy

35 the same immunity as is granted under section *twelve*.

26. (1) The Public Protector or an officer authorised by the Public Protector may, at any reasonable time, enter and inspect the premises or property of a State institution which are being used, or which the Public Protector or the officer has reasonable cause

40 to believe are being used for maladministration.

Powers of inspection

(2) A person who—

- (a) delays or obstructs the Public Protector or officer in the exercise of their inspection powers;
- (b) refuses to give the Public Protector or officer such reasonable assistance as they may require for the purposes of exercising their inspection powers; and
- (c) gives the Public Protector or officer false or misleading information in answer to an inquiry made by the inspection;

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.

(3) An officer shall furnish the Public Protector with a written report and any other information relating to an inspection as the Public Protector may direct.

Search
without
warrant

27. (1) The Public Protector or an officer authorised by the Public Protector may, where the Public Protector or officer reasonably suspects that an offence is being, has been or is about to be committed under this Act, without a warrant, enter and search the premises or property of a State institution, for the purposes of attaching and removing, if necessary, any record, return, book, report, document or article if the occupier of the State institution or other person in control of the premises consents to the entry, search, seizure and removal of the record, return, book, document or article.

(2) The Public Protector or an officer exercising any power under this section shall, before entering and searching any premises, ensure that the occupier or person in control of the premises is present.

Notices

28. (1) The Public Protector shall, where the Public Protector intends to conduct an investigation on a State institution, give the State institution notice in the prescribed manner and form.

(2) The notice issued under subsection (1) shall—

- (a) inform the State institution of the Public Protector's intention to conduct an investigation;
- (b) identify, to the extent reasonable in the circumstances, the subject of a complaint; and
- (c) state, in general terms, the powers that the Public Protector may exercise under this Act.

Order by
Public
Protector

29. Where it appears to the Public Protector that an inquiry under this Act is likely to be frustrated or prejudiced by an action taken or about to be taken by a person to whom this Act applies,

the Public Protector may make such orders, issue such writs and give such directions as the Public Protector may consider appropriate for the purpose of conducting an investigation, and the order, writ or direction shall have the same force as an order, writ
5 or direction of a court.

30. (1) The Public Protector may summon witnesses and examine witnesses on oath.

Power to
summon
witnesses

(2) A summons for the attendance of a witness or the production of documents shall be in the prescribed form and shall
10 be served in the same manner as if it were a subpoena for the attendance of a witness at a civil trial in a court.

(3) The Public Protector may, by warrant, order the arrest of a person who, having reasonable notice of the time and place at which the person is required to attend before the Public Protector,
15 fails to do so without reasonable cause.

(4) The warrant referred to in subsection (3) shall be in the prescribed form and shall be served as if it were a warrant issued by a court.

PART VI

FINANCIAL PROVISIONS

20

31. (1) The funds of the Office of the Public Protector shall consist of such monies as may—

Funds of
Office of
Public
Protector

(a) be appropriated to the Office of the Public Protector by Parliament for the purposes of the Public Protector;

25 (b) be paid to the Office of the Public Protector by way of fees, loans, grants or donations; and

(c) vest in or accrue to the Office of the Public Protector.

(2) The Office of the Public Protector may, subject to the approval of the Minister—

30 (a) accept monies by way of grants or donations from any source within or outside Zambia; and

(b) raise by way of loans or otherwise, such monies as it may require for the discharge of its functions.

(3) There shall be paid from the funds of the Office of the Public
35 Protector—

(a) the emoluments of the members of staff of the Office of the Public Protector as determined by the Emoluments Commission;

40 (b) such travelling and other allowances for members of staff of the Office of the

Public Protector when engaged on the business of the Public Protector at such rates as the Emoluments Commission may determine; and

(c) any other expenses incurred by the Office of the Public Protector in the performance of the Public Protector's functions under this Act.

(4) The Office of the Public Protector may, with the approval of the Minister, invest in such manner as it considers appropriate such funds of the Office of the Public Protector as it does not immediately require for the discharge of its functions.

Financial
year

32. The financial year of the Office of the Public Protector shall be the period of twelve months ending on 31st December in each year. 15

Accounts and
audits

33. (1) The Office of the Public Protector shall cause to be kept proper books of account and other records relating to its accounts.

(2) The accounts of the Office of the Public Protector shall be audited annually or whenever necessary by the Auditor-General. 20

(3) The Auditor-General's fees shall be paid by the Office of the Public Protector.

Annual
report

34. (1) As soon as practicable, but not later than ninety days from the end of the financial year, the Office of the Public Protector shall submit to the Speaker a report concerning its activities during that financial year. 25

(2) The report referred to in subsection (1) shall include information on the financial affairs of the Office of the Public Protector and there shall be appended to the report—

(a) an audited balance sheet; 30

(b) an audited statement of income and expenditure; and

(c) such other information as the Speaker may require.

(3) The Clerk of the National Assembly shall, not later than seven days after the first sitting of the National Assembly next after receipt of the report referred to in subsection (1), lay the report before the National Assembly. 35

PART VII

GENERAL PROVISIONS

- 5 **35.** The Public Protector shall in the performance of the Public Protector's functions under this Act, provide added protection to vulnerable persons, including children, women and persons with disabilities, where a State institution engages in or is about to engage in a maladministration which is a significant and substantial infringement of their rights. Protection of vulnerable persons
- 10 **36.** The Office of the Public Protector shall endeavour to resolve any disputes, or rectify any act or omission through mediation, conciliation and negotiation. Alternative dispute resolution
- 15 **37.** (1) The Office of the Public Protector may disclose to any person the findings, observations, comments or recommendations of a matter investigated by the Public Protector where the disclosure is not prejudicial to Reports and findings
- (a) State security;
- (b) diplomatic relations;
- (c) the safety of life or property of a person;
- 20 (d) the privacy of an individual, other than the applicant or the person on whose behalf an application has, with proper authority, been made;
- (e) a State institution's position in any actual or contemplated legal proceedings; or
- (f) legal professional privilege.
- 25 (2) The Public Protector may, at any time, submit any other report to the National Assembly when required to do so.
- 38.** (1) The Public Protector may order that the expenses or a portion of the expenses incurred by a person in the course of, or in connection with, an investigation by the Public Protector, be paid from public funds. Expenses and witness fees
- 30 (2) A person appearing before the Public Protector shall be entitled to receive monies appropriated for witness fees in an amount equal to the amount which the person would have received as witness fees for the attendance as a witness in criminal proceedings.
- 35 **39.** (1) A person shall not, without the consent in writing given by or on behalf of the Public Protector, publish or disclose to an unauthorised person, otherwise than in the course of the duties of that person, the contents of a document, communication or information which relates to, or which has come to the knowledge of the person in the course of that person's duties under this Act. Prohibition of publication or disclosure of information to unauthorised persons
- 40

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

(3) A person who, having any information which to the 5 knowledge of that person has been published or disclosed in contravention of subsection (1), unlawfully publishes or communicates the information to any other person, 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 10 exceeding two years, or to both.

Protection of
witnesses
Act No. 4 of
2010

40. (1) The provisions of the Public Interest Disclosure (Protection of Whistleblowers) Act, 2010, shall apply in relation to the protection of whistleblowers and other related matters.

(2) Despite subsection (1), where it appears to the Public 15 Protector that as a result of assisting the Office of the Public Protector or the court, the safety of a witness, expert, victim or other person may be prejudiced or the witness, expert, victim or other person may be subject to threats, intimidation or harassment, the Public Protector shall make such arrangements as are necessary 20 to protect—

(a) the safety of such witness, expert or victim; or

(b) any other person from threats, intimidation or harassment.

(3) For the purposes of subsection (2), “assisting the Office 25 of the Public Protector or court” includes—

(a) appearance or impending appearance before the Office of the Public Protector or the court to give evidence or produce a document or other thing;

(b) production or proposed production of a document or other thing to the Office of the Public Protector or the court 30 under this Act; or

(c) assisting or having assisted the Office of the Public Protector or the court in some other manner in accordance with the provisions of this Act.

(4) The Public Protector may, in providing the arrangements 35 referred to in subsection (2), collaborate with other public agencies and authorities.

(5) The public agencies and authorities referred to in subsection (4) shall, as far as reasonably possible, assist the Office of the Public Protector in the provision of the arrangements for the 40 protection of the persons referred to in subsection (2).

(6) Subject to subsection (1), in any trial for an offence under this Act, a witness shall not be obliged to—

5 (a) disclose the identity or address of an informer or person assisting or who assisted the Office of the Public Protector in an investigation into an alleged or suspected offence under this Act; or

(b) state any matter which may disclose the identity or address of an informer or person referred to in paragraph (a).

10 (7) Where a document which is in evidence or liable to inspection in a civil or criminal proceeding under this Act contains an entry or passage in which an informer is named or described or which might lead to the person's discovery, the court before which the proceedings is held shall cause such entry or passage to be concealed from view or to be obliterated in such a manner as, in
15 the opinion of the court, shall not disclose the identity of the informer.

(8) An action or proceeding, including disciplinary action, shall not be instituted or maintained against a witness, expert, victim or other person in respect of—

20 (a) assistance given by the witness, expert, victim or other person to the Office of the Public Protector or the court; or

(b) a disclosure of information made by the witness, expert, victim or other person to the Office of the Public Protector or the court.

25 (9) A person who contravenes 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.

41. (1) A person shall not—

30 (a) knowingly make, or cause to be made, to the Public Protector an officer or a member of staff of the Office of the Public Protector, a false testimony or false report in any material particular on a matter under investigation;

35 (b) knowingly mislead the Public Protector, an officer or a member of staff of the Office of the Public Protector by giving any false information or statement or making a false allegation;

40 (c) obstruct, assault, insult, hinder, delay or impersonate the Public Protector, an officer or a member of staff of the Office of the Public Protector in the lawful exercise of

General
offences

the powers conferred on the Public Protector, an officer or a member of staff of the Office of the Public Protector under this Act;

- (d) refuse or fail, without reasonable cause, to give the Public Protector, an officer or a member of staff of the Office of the Public Protector on request, a document or information required for purposes of this Act;
- (e) fail to comply with a lawful summon, order or directive of the Public Protector, an officer, or member of staff of the Office of the Public Protector under this Act; or
- (f) destroy anything or prevent the seizure of any property or document or securing of the property or document.

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

Rules

42. (1) The Chief Justice may, by statutory instrument, make rules relating to—

- (a) the manner and form for lodging of complaints;
- (b) the manner and form of summoning persons by the Public Protector;
- (c) the form and manner of service of a summons requiring the attendance of a witness and the production of any book, record, document or thing;
- (d) the proceedings of the Public Protector;
- (e) the procedure to be followed and rules of evidence to be observed in proceedings before the Public Protector; and
- (f) the functions of experts and assessors.

(2) Rules made under this section may, in particular, provide —

- (a) that before any matters are referred to the Office of the Public Protector, they shall, in such manner as may be provided by the rules, have been brought before and investigated by the Public Protector in this respect;
- (b) for securing notices for the proceedings and specifying the time and manner of the proceedings;
- (c) for securing that a party to the proceedings shall, if that person requires, be entitled to be heard by the Public Protector; and
- (d) the manner and form of enforcement of decisions made by the Public Protector.

43. (1) The Minister may, by statutory instrument, make Regulations
regulations for the better carrying out of the provisions of this Act.
- (2) Despite the generality of subsection (1), regulations may
provide for the following matters:
- 5 (a) the prevention of maladministration generally;
- (b) protection of informers, witnesses, whistleblowers,
complainants and other persons for purposes of this
Act; and
- (c) antimaladministration strategies in State institutions.
- 10 44. (1) The Commission for Investigations Act, 1991, is Repeal of
repealed. Cap. 39
- (2) Despite subsection (1), the investigations, prosecutions and
other legal proceedings, instituted or commenced under the repealed
Act, and pending immediately before the commencement of this Act No. 20
of 1991
15 Act by or against the Commission, may be continued by or against
the Office of the Public Protector. Cap. 39
- (3) Despite subsection (1), all the property, assets, rights,
liabilities and obligations of the Commission existing immediately
before the commencement of this Act shall vest in, and subsist
20 against, the Office of the Public Protector, together with the rights,
liabilities and obligations arising out of any contract or otherwise,
as if this Act had not come into force.
- (4) Subject to the other provisions of this Act, a person who
immediately before the commencement of this Act held office as a
25 Commissioner shall cease to hold that office on the commencement
of this Act.
45. (1) A person who was an officer or member of staff of Staff of
the Commission before the commencement of this Act shall continue Commission
to be an officer or member of staff, as the case may be, as if
- 30 appointed or employed under this Act.
- (2) The service of persons referred to in subsection (1) shall
be treated as continuous service.
- (3) Nothing in this Act affects the rights and liabilities of any
person employed or appointed by the Commission before the
35 commencement of this Act.