

**THE NATIONAL PROSECUTION AUTHORITY BILL,
2010**

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**THE NATIONAL PROSECUTION AUTHORITY BILL,
2010**

MEMORANDUM

The objects of this Bill are to—

- (a) establish the National Prosecution Authority and provide for its powers and functions;
- (b) provide a framework for the effective administration of criminal justice;
- (c) establish the Witness Management Fund; and
- (d) provide for matters connected with, or incidental to, the foregoing.

A. J. SHONGA,
Attorney-General

N.A.B. 33, 2010
2nd July, 2010

A BILL

ENTITLED

An Act to establish the National Prosecution Authority and provide for its powers and functions; provide a framework for the effective administration of criminal justice; establish the Witness Management Fund; and provide for matters connected with, or incidental to, the foregoing.

ENACTED by the Parliament of Zambia.

Enactment

PART I

PRELIMINARY

1. This Act may be cited as the National Prosecution Authority Act, 2010, and shall come into operation on such date as the Minister may, by statutory instrument, appoint. Short title and commencement
2. In this Act, unless the context otherwise requires— Interpretation
- “ Authority ” means the National Prosecution Authority established under section *three*;
- 10 “ Board ” means the Board of the Authority constituted under section *seven*; Cap. 1
- “ Director of Public Prosecutions ” means the person appointed as such under the Constitution;
- 15 “ Fund ” means the Witness Management Fund established under section *fifteen*;
- “ member ” means a person appointed as a member of the Board under section *seven*;
- “ prosecutor ” means a person appointed as such under section *ten*; and
- 20 “ Secretary ” means the person appointed as the Director of Administration of the Authority under section *seven*.

PART II

THE NATIONAL PROSECUTION AUTHORITY

- Establishment of National Prosecution Authority 3. (1) There is hereby established the National Prosecution Authority which shall be a body corporate with perpetual succession and a common seal, capable of suing and being sued in its corporate name and with power, subject to this Act, to do all such things as a body corporate may, by law, do or perform. 5
- Cap. 71 (2) The provisions of the State Proceedings Act shall apply to civil proceedings by, or against, the Authority as if, for a reference to the State there were substituted a reference to the Authority. 10
- (3) The First Schedule applies to the Authority.
- Seal of Authority 4. (1) The seal of the Authority shall be such device as may be determined by the Board and shall be kept by the Secretary.
- (2) The affixing of the seal shall be authenticated by the Chairperson or the Vice Chairperson or any other person authorised in that behalf by a resolution of the Board. 15
- (3) Any 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 Authority by the Chairperson or any other person generally or specifically authorised by the Authority in that behalf. 20
- (4) Any document purporting to be a document under the seal of the Authority or issued on behalf of the Authority shall be received in evidence and shall be deemed to be so executed or issued, as the case may be, without further proof, unless the contrary is proved. 25
- Functions of Authority 5. The functions of the Authority are to—
- (a) appoint state advocates and prosecutors and promote appropriate standards of practice by state advocates and prosecutors in criminal prosecution; 30
- (b) develop, promote and enforce internationally comparable practice standards for prosecutors;
- (c) promote the integrity and enhance the status of state advocates and prosecutors so as to promote honourable and good practice and increase the confidence of the public in state advocates and prosecutors; 35
- (d) promote an understanding of professional ethics amongst the prosecutors and ensure that the rules and guidelines for professional ethics are responsive to the effective administration of criminal justice; 40

- (e) implement an effective prosecution mechanism so as to maintain the rule of law and contribute to fair and equitable criminal justice and the effective protection of citizens against crime;
- 5 (f) conduct research into the various disciplines of law so as to study the role that the prosecution mechanism should play in establishing effective rule of law and human rights and to bring the law in line with the developments and best practices of other countries;
- 10 (g) cooperate with the police, the courts, the legal profession and other Government agencies or institutions so as to ensure the fairness and effectiveness of prosecutions; and
- 15 (h) do all such other things as are necessary or incidental to the performance of its functions under this Act.

6. Except as otherwise provided in this Act, the Authority shall not, in the performance of its functions, be subject to the direction or control of any person or authority, other than the Director of Public Prosecutions.

Autonomy
of Authority

7. (1) There is hereby constituted a Board of the Authority which shall consist of the following members appointed by the Minister:

Board of
Authority

- (a) the Director of Public Prosecutions, who shall be the Chairperson;
- 25 (b) a representative of the Attorney-General, who shall be the Vice-Chairperson;
- (c) the Director of Administration of the Authority, who shall be the Secretary;
- 30 (d) a representative of the Public Service Management Division;
- (e) a representative of the Ministry responsible for labour; and
- (f) two other persons appointed by the Minister.

(2) A person shall not be appointed as a member of the Board if that person—

- (a) is not a citizen of Zambia;
- (b) is a declared insolvent or bankrupt;
- (c) is declared to be of unsound mind; or

(d) is convicted of an offence under this Act or any written law and has been sentenced therefor to imprisonment for a period not exceeding six months without the option of a fine.

(3) A member, other than a member referred to in paragraphs (a) and (c) of subsection (1), shall, subject to the other provisions of this section, hold office for a period of three years and may be appointed for one further period of three years.

(4) A member may resign upon giving one month's notice in writing to the Minister. 10

(5) The office of a member shall become vacant—

(a) if the member is absent, without reasonable excuse from three consecutive meetings of the Board of which the member has had notice;

(b) if the member is adjudged bankrupt; 15

(c) if the member is convicted of an offence under this Act or any other written law;

(d) if the member is declared to be of unsound mind; or

(e) upon the member's death.

(6) The provisions of the First Schedule apply to the Board. 20

Functions of
Director of
Public
Prosecutions
Cap. 1

8. (1) Subject to the Constitution, the Director of Public Prosecutions shall have authority over the exercising of all the powers and the performance of all the duties and functions conferred upon, imposed on or assigned to, prosecutors by this Act or under any other law. 25

(2) Notwithstanding the generality of subsection (1), the functions of the Director of Public Prosecutions are to—

(a) institute and undertake criminal proceedings against any person before any court, other than a court martial, in respect of any offence alleged to have been committed by that person; 30

(b) take over and continue any such criminal proceedings as may have been instituted or undertaken by any other person or authority; and

(c) discontinue, at any stage before judgment is delivered, any criminal proceedings instituted or undertaken by the Director of Public Prosecutions or any other person or authority; 35

- (d) set the qualification for the appointment of prosecutors;
- (e) advise prosecutors on all matters relating to criminal offences;
- 5 (f) review a decision to prosecute, or not to prosecute, any criminal offence;
- (g) advise the Minister on all matters relating to the administration of criminal justice;
- 10 (h) liaise with the Chief State Advocate, the Deputy Chief State Advocates, the prosecutors, the legal profession and legal institutions in order to foster common practices and to promote co-operation in the handling of complaints in respect of the Authority;
- (i) assist the Deputy Chief State Advocates and prosecutors in achieving the effective and fair administration of criminal justice;
- 15 (j) liaise with and assist the Attorney-General in matters of extradition and mutual legal assistance in criminal matters; and
- 20 (k) appoint such experts as are necessary to assist the Director of Public Prosecutions carry out any functions under this Act.

(3) Where, by any written law, the sanction, fiat or written consent of the Director of Public Prosecutions is necessary for the commencement or continuance of the prosecution of any offence,

25 the Director of Public Prosecutions may order, in writing, that all or any of the powers vested in the Director of Public Prosecutions to issue the sanction, fiat or written consent may be exercised by the Chief State Advocate or a Deputy Chief State Advocate, and the exercise of these powers by the Chief State Advocate or Deputy

30 Chief State Advocate—

(a) shall be limited only to such offences as the Director of Public Prosecutions may specify; and

(b) shall operate as if the powers had been exercised by the Director of Public Prosecutions.

35 (4) Where the Director of Public Prosecutions or the Chief State Advocate considers it in the interest of the administration of justice that an offence committed as a whole or partially within the area of jurisdiction of one Deputy Chief State Advocate be investigated and tried within the area of jurisdiction of another

40 Deputy Chief State Advocate, the Director of Public Prosecutions

or Chief State Advocate may, in writing, direct that the investigation and criminal proceedings in respect of such offence be conducted and commenced within the area of jurisdiction of such other Deputy Chief State Advocate.

(5) The Director of Public Prosecutions may direct the submission of and receive reports or interim reports from a Deputy Chief State Advocate in respect of a case, a matter, a prosecution or a prosecution process.

Chief State Advocate, Deputy Chief State Advocates, state advocates, prosecutors and other staff
Cap. 1

9. (1) The Board shall, on such terms and conditions as it may determine, appoint a Chief State Advocate, Deputy Chief State Advocates, state advocates, prosecutors and other staff of the Authority.

(2) A Deputy Chief State Advocate shall be responsible for supervising the operations of the Authority in a province.

(3) Subject to the provisions of the Constitution and this Act, a Deputy Chief State Advocate shall, subject to the control and direction of the Director of Public Prosecutions, exercise the functions referred to in section *five* in respect of —

(a) the area of jurisdiction for which the Deputy Chief State Advocate is appointed; and

(b) any offences which have not been expressly transferred from the Deputy Chief State Advocate's jurisdiction, either generally or in a specific case, by the Director of Public Prosecutions.

(4) The Chief State Advocate, Deputy Chief State Advocates, state advocates, prosecutors and other staff of the Authority shall, on appointment, take an oath or affirmation as the Minister may, by statutory instrument, prescribe.

Prosecutions on behalf of Authority
Cap. 88

10. (1) The Director of Public Prosecutions may, by *Gazette* notice, appoint a person as a prosecutor for purposes of this Act and the Criminal Procedure Code.

(2) A prosecutor appointed under subsection (1) shall be competent to exercise any of the functions referred to in section *five* to the extent that the prosecutor has been authorised thereto, in writing, by the Director of Public Prosecutions, or by a person designated by the Director of Public Prosecutions.

(3) A written authorisation referred to in subsection (2) shall set out—

(a) the area of jurisdiction;

(b) the offences; and

5 (c) the court;

in respect of which such powers may be exercised.

(4) The Director of Public Prosecutions may, at any stage of the criminal proceeding, give to the Chief State Advocate, a Deputy Chief State Advocate, a state advocate or a prosecutor such general
10 or specific directions with respect to the performance of their functions, as the Director of Public Prosecutions considers necessary and the Chief State Advocate, Deputy Chief State Advocate, state advocate and prosecutor shall give effect to such directions.

15 (5) A prosecutor who has been suspended from the prosecutor's office under this Act or any other law, shall not be competent to exercise any of the functions referred to in section *five* for the duration of such suspension.

(6) In the performance of a prosecutor's duties, a prosecutor
20 shall—

(a) carry out the prosecutor's functions impartially and avoid all political, social, religious, racial, cultural, sexual or any other kind of discrimination;

25 (b) protect the public interest, act with objectivity, take proper account of the position of the suspect and the victim, and pay attention to all relevant circumstances, irrespective of whether they are to the advantage or disadvantage of the suspect;

30 (c) keep matters in the possession of the prosecutor confidential, unless the performance of a duty or the needs of justice require otherwise; and

(d) consider the views and concerns of a victim where the victim's interests are affected and ensure that the victim is informed of the rights.

35 (7) A prosecutor shall, in order to ensure the fairness and effectiveness of prosecution, cooperate with the police, the courts, the legal profession, public defenders and other government agencies or institutions.

40 11. (1) If a member or any person is present at a meeting of the Authority or any committee of the Authority at which any matter is the subject of consideration and in which matter the member or

Disclosure
of interest

that person or the member's or that person's spouse is directly or indirectly interested, in a private capacity, the member or person shall, as soon as is practicable after the commencement of the meeting, declare such interest and shall not, unless the Authority or the committee otherwise directs, take part in any consideration or discussion of, or vote on, any question touching that matter. 5

(2) A declaration of interest made under this paragraph shall be recorded in the minutes of the meeting at which it is made.

(3) Any 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 period not exceeding two years, or to both. 10

Non-performance of other paid work

12. The Chief State Advocate, Deputy Chief State Advocates and other state advocates shall not while holding office of Chief State Advocate, Deputy Chief State Advocate and state advocate, hold or discharge the duties of any other office of emolument in the Republic. 15

Prohibition of disclosure of information to unauthorised persons

13. (1) A person shall not, without the consent in writing given by, or on behalf of, the Authority, publish or disclose to any person otherwise than in the course of duties, the contents of any document, communication or information which relates to, and which has come to that person's knowledge in the course of that person's duties under this Act. 20

(2) Any 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 period not exceeding two years, or to both. 25

(3) A person who, having any information which to the knowledge of that person has been published or disclosed in contravention of subsection (1), unlawfully publishes or communicates the information to 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 period not exceeding two years, or to both. 30

Code of conduct

14. (1) The Director of Public Prosecutions shall, in consultation with the Minister and after consultation with the Chief State Advocate and Deputy Chief State Advocates, adopt a code of conduct which shall bind the Chief State Advocate, Deputy Chief State Advocates, state advocates and the prosecutors. 35

(2) The code of conduct shall be published in the *Gazette* for general information. 40

PART III

THE WITNESS MANAGEMENT FUND

15. (1) There is hereby established the Witness Management Fund. Establishment of Fund
- 5 (2) The Fund shall consist of—
- (a) such moneys as Parliament may appropriate for the purpose of the Fund;
- (b) voluntary contributions to the Fund from any person or organisation;
- 10 (c) any grants mobilised from any source within or outside Zambia for the purpose of witness management; and
- (d) interest arising out of any investment of the Fund.
16. The Fund shall be vested in the Minister responsible for finance and shall be managed and administered by the Board. Administration and management of Fund
- 15 17. The Fund shall be used for—
- (a) the ferrying of witnesses to and from court;
- (b) the counselling of witnesses before testifying in any matter before court; and
- (c) any other matter relating to witness management. Application of Fund
- 20 18. The financial year of the Fund shall be the period of twelve months ending on 31st December in each year. Financial year
19. (1) The Authority shall cause to be prepared proper books of accounts and other records relating to the Fund. Statement of income and expenditure
- (2) The Minister responsible for finance shall cause to be prepared an annual statement of the income and expenditure of the Fund to be laid before the National Assembly.
- 25

PART IV

GENERAL PROVISIONS

20. A person who—
- 30 (a) delays or obstructs the Director of Public Prosecutions, a Chief State Advocate, a Deputy Chief State Advocate, a state advocate, a prosecutor or any other staff of the Authority in the performance of their functions under this Act; General offences

- (b) refuses to give the Director of Public Prosecutions, a Chief State Advocate, a Deputy Chief State Advocate, a state advocate, a prosecutor or any other staff of the Authority such reasonable assistance as the officer may require for the purpose of exercising their functions; or 5
- (c) knowingly gives the Director of Public Prosecutions, a Chief State Advocate, a Deputy Chief State Advocate, a state advocate, a prosecutor or any other staff of the Authority false or misleading information in answer to an inquiry made by the officer; 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. 10
- Regulations 21. (1) The Minister may, by statutory instrument, after consultation with the Authority, make regulations for giving effect to the purposes and provisions of this Act. 15
- (2) Without prejudice to the generality of subsection (1), the regulations made under that subsection may make provision for—
- (a) the procedures to be followed in respect of the prosecution of criminal cases; 20
- (b) a mechanism for monitoring and supervising prosecutors;
- (c) the steps to be taken to ensure compliance with the code of conduct;
- (d) the general management and maintenance of the Fund; and 25
- (e) any other matter which is relevant to give effect to the provisions of this Act.
- Savings and transitional provisions 22. The Second Schedule applies in relation to the savings and transitional provisions.
- FIRST SCHEDULE 30
(Section 3)
PART 1
ADMINISTRATION OF AUTHORITY
- Proceedings of Board 1. (1) Subject to the other provisions of this Act, the Board may regulate its own procedures. 35
- (2) The Board shall meet for the transaction of business at least once in every three months at such places and times as the Board may determine.

(3) A meeting of the Board may be called by the Chairperson upon giving notice of not less than fourteen days, and shall be called by the Chairperson if not less than one third of the members so request in writing:

5 Provided that if the urgency of any particular matter does not permit the giving of such notice, a special meeting may be called upon a shorter notice given by three members of the Board.

(4) The Chairperson and the Vice-Chairperson with two other
10 members shall constitute a quorum at any meeting of the Board.

(5) There shall preside at any meeting of the Board—

(a) the Chairperson;

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

15 (c) in the absence of both the Chairperson and the Vice-Chairperson, such other member as the members present may elect for the purpose of that meeting.

(6) A decision of the Board on any question shall be by a majority of the members present and voting at the meeting and in
20 the event of an equality of votes, the person presiding at the meeting shall have a casting vote, in addition to that person's deliberative vote.

(7) The Board may invite any person, whose presence is in its opinion desirable, to attend and to participate in the deliberations of
25 a meeting of the Board, but such person shall have no vote.

(8) The validity of any proceedings, acts or decisions of the Board shall not be affected by any vacancy in the membership of the Board or by any defect in the appointment of any member or by reason that any person not entitled to do so, took part in the
30 proceedings.

2. (1) The Board may, for the purpose of performing its functions under this Act, establish such committees as it considers necessary and delegate to any of those committees such of its functions as it considers fit.

Committees
of Board

35 (2) Subject to subparagraph (1), the Board may appoint as members of a committee persons who are, or are not, members of the Board, except that at least one member of a committee shall be a member of the Board.

(3) A person serving as a member of a committee shall hold
40 office for such period as the Board may determine.

(4) Subject to any specific or general direction of the Board, a committee may regulate its own procedure.

Allowances
of member

3. There shall be paid to a member of the Board or a member of a committee such allowances as the Board may determine with the approval of the Minister. 5

Disclosure
of interest

4. (1) If any person is present at a meeting of the Board or any committee at which any matter is the subject of consideration, and in which matter that person or that person's spouse is directly or indirectly interested in a private capacity, that person shall, as soon as is practicable after the commencement of the meeting, declare such interest and shall not, unless the Board or the committee otherwise directs, take part in any consideration or discussion of, or vote on, any question relating to that matter. 10

(2) A disclosure of interest made under subparagraph (1) shall be recorded in the minutes of the meeting at which it is made. 15

Prohibition
of
publication
of, or
disclosure
of,
information
to
unauthorised
persons

5. (1) A person shall not, without the consent in writing given by, or on behalf of, the Authority, publish or disclose to any unauthorised person, otherwise than in the course of duties of that person, the contents of any document, communication or information whatsoever, which relates to or which has come to the knowledge of that person in the course of that person's duties under this Act. 20

(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 period not exceeding two years, or to both. 25

(3) A person who, having any information which to the knowledge of that person has been published or disclosed in contravention of sub-paragraph (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 period not exceeding two years, or to both. 30

Immunity

6. An action or other proceeding shall not lie or be instituted against a member of the Board or a member of a committee of the Board for, or in respect of, any act or thing done or omitted to be done in good faith in the exercise of or performance, or purported exercise or performance of any of the powers, functions or duties conferred under this Act. 35

PART II
FINANCIAL PROVISIONS

7. (1) The funds of the Authority shall consist of such monies as may—
- 5 (a) be appropriated to the Authority by Parliament for the purposes of the Authority;
- (b) be paid to the Authority by way of grants or donations; and
- (c) otherwise vest in or accrue to the Authority.
- 10 (2) The Authority may, subject to the approval of the Minister—
- (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.
- 15 (3) There shall be paid from the funds of the Authority—
- (a) the salaries, allowances, pensions and loans of the members of staff of the Authority;
- (b) such reasonable travelling and other allowances for the members and the members of any committee when
- 20 engaged on the business of the Authority, at such rates as the Board may determine; and
- (c) any other expenses incurred by the Authority in the performance of its functions under this Act.
- (4) The Board may invest in such manner as it considers
- 25 appropriate such funds of the Authority which it does not immediately require for the performance of its functions.
8. The financial year of the Authority shall be a period of twelve months ending on 31st December in each year. Financial year
9. (1) The Authority shall cause to be kept proper books of
- 30 account and other records relating to its accounts. Accounts
- (2) The accounts of the Authority shall be audited annually by the Auditor-General or an auditor appointed by the Auditor-General.
- (3) The Auditor-General's fees shall be paid by the Authority.
10. (1) As soon as practicable, but not later than ninety days
- 35 after the end of the financial year, the Authority shall submit to the Minister a report concerning its activities during the financial year. Annual report

(2) the report referred to in subparagraph (1) shall include information on the financial affairs of the Authority and there shall be appended to the report—

(a) an audited balance sheet;

(b) an audited statement of income and expenditure; and 5

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

(3) The Minister shall, not later than seven days after the first sitting of the National Assembly next after receipt of the report referred to in subparagraph (1), lay the report before the National Assembly. 10

SECOND SCHEDULE

(Section 22)

SAVINGS AND TRANSITIONAL PROVISIONS

- | | | |
|--|---|----|
| Definition of
Department | 1. In this Schedule “ Department ” means the Directorate of Public Prosecutions. | 15 |
| Staff of
Department | 2. (1) For the avoidance of doubt, a person who, before the commencement of this Act, was an officer or employee of the Department, shall continue to be an officer or employee of the Authority, as the case may be, as if appointed or employed under this Act. | 20 |
| | (2) The service of the persons referred to in subparagraph (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 Department before the appointed date. | 25 |
| Public
prosecutor | 3. A person appointed as a public prosecutor before the commencement of this Act shall, after the commencement of this Act, continue to perform the functions of a public prosecutor, as if appointed under this Act: | |
| | Provided that the Board may, at any time, revoke the appointment of a public prosecutor. | 30 |
| Transfer of
assets and
liabilities | 4. (1) On or after the commencement of this Act, there shall be transferred to, vest in and subsist against the Authority by virtue of this Act and without further assurance— | |
| | (a) the affairs of the Department; and | 35 |
| | (b) subject to this Act, all property, rights and obligations which immediately before the appointed date were the property, rights and obligations of the Department. | |

(2) Except as provided in this Act, every deed, bond and agreement, other than an agreement for personnel service, to which the Government was a party immediately before the appointed date, whether or not of such a nature that rights, liabilities and obligations could be assigned, shall, unless its subject matter or terms make it impossible that it should have effect as modified, as provided under this paragraph, have effect as if —

(a) the Authority had been party to it;

10 (b) for any reference to the Government there was substituted, with respect to anything falling to be done on or after the commencement of this Act, a reference to the Authority; or

15 (c) for any reference to any officer of the Department, not being a party to it and beneficially interested, there were substituted, as respects anything falling to be done on or after the appointed date, a reference to such officer of the Authority as the Authority shall designate.

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

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

30 5. (1) Any legal proceedings or application of the Government pending immediately before the appointed date by or against the Government may be continued by or against the Authority.

Legal proceedings

35 (2) After the appointed date, proceedings in respect of any right, liability or obligation which was vested in, held, enjoyed, incurred or suffered by the Government, may be instituted by or against the Authority.