

THE ELECTORAL PROCESS (AMENDMENT) BILL, 2019

MEMORANDUM

The object of this Bill is to amend the Electoral Process Act, 2016, so as to—

- (a) reduce the campaign period from three months to sixty days;
- (b) revise the rules to be prescribed in relation to the registration of voters;
- (c) provide for the duty of the Commission to publish the election time table in a newspaper of nationwide circulation in addition to the publication in the *Gazette*;
- (d) prescribe the conduct of persons during the counting, tallying, tabulation of votes and transmission of results;
- (e) revise the manner of accreditation of observers and monitors;
- (f) provide for sanctions to be imposed by the Commission for breach of the Code;
- (g) provide for regulation of conduct of political party agents; and
- (h) provide for matters connected with, or incidental to, the foregoing.

L. KALALUKA,
Attorney-General

A BILL

ENTITLED

An Act to amend the Electoral Process Act, 2016.

ENACTED by the Parliament of Zambia

Enactment

1. This Act may be cited as the Electoral Process (Amendment) Act, 2019, and shall be read as one with the Electoral Process Act, 2016, in this Act referred to as the principal Act.

Short title
Act No. 35
of 2016

5 2. Section 2 of the principal Act is amended—

Amendment
of section 2

(a) in the definition of “campaign period” by the deletion of the words “three months” and the substitution therefor of the words “sixty days”; and

10 (b) by the insertion of the following definition in the appropriate place, in alphabetical order:

“legally disqualified” means a disqualification by a court or quasi-judicial body established by law.

3. The principal Act is amended by the repeal of section 7 and the substitution therefor of the following:

Repeal and
replacement
of section 7

15 7. (1) The Commission shall conduct a continuous registration of voters.

Continuous
voter
registration

(2) The Commission may register a citizen outside the Republic as prescribed.

20 4. The principal Act is amended by the repeal of section 9 and the substitution therefor of the following:

Repeal and
replacement
of section 9

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Disqualification from registration as voter	9. The Commission shall not register a person as a voter if that person — (a) is not a citizen; (b) is not in possession of a national registration card; and (c) is legally disqualified.	5
Amendment of section 28	5. Section 28 (1) (b) of the principal Act is amended by the insertion of the words Aand in a daily newspaper of general circulation in Zambia, after the word “ <i>Gazette</i> ”.	
Amendment of section 35	6. Section 35 (2) (a) of the principal Act is amended by the deletion of the words “or resident permit holder”.	10
Amendment of section 36	7. Section 36 (2) of the principal Act is amended by the insertion of the words “if the electoral proceeding is properly conducted,” immediately after the words “shall not”.	
Repeal of section 47	8. The principal Act is amended by the repeal of section 47.	15
Insertion of section 73A	9. The principal Act is amended by the insertion of the following new section immediately after section 73: 73B. The Commission shall, by statutory instrument, prescribe the manner and form of counting, tallying, tabulating and transmitting of election results by an election or polling agent.	20
Repeal and replacement of section 74	10. The principal Act is amended by the repeal of section 74 and the substitution therefor of the following: 74. The Commission may use electronic means to — (a) register voters; (b) transmit results from a polling station; and (c) facilitate voting of a citizen outside the Republic.	25
Repeal and replacement of section 77	11. The principal Act is amended by the repeal of section 77 and the substitution therefor of the following: 77. (1) An institution may apply to the Commission, in the prescribed manner, for accreditation to observe or monitor an election.	30

(2) The Commission may require any information it may consider necessary in support of an application under subsection (1).

5 (3) The Commission shall, where it decides 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

10 (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

15 (a) the accreditation of the applicant shall promote conditions conducive to a free and fair election; and

(b) the institution appointed by the applicant shall

20 (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

25 (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 decisions.

30 (6) Where an institution 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 that cancellation.

35 (7) A 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.

40 (9) The Chief Elections Officer shall provide a certified copy of, or extract from, the register or a certificate to any person on 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. 5

(12) A register of 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.

Amendment of section 78 **12.** Section 78 of the principal Act is amended by the deletion of subsections (1) and (2) and the substitution therefor of the following: 10

(1) An accredited observer shall, in relation to an election for which that observer is accredited, discharge the observer's functions as set out in the Code.

(2) An accredited monitor, may, in relation to an election for which that monitor is accredited, discharge the monitor's functions as set out in the Code. 15

Amendment of section 79 **13.** Section 79 (2) of the principal Act is amended—
(a) by the insertion of the words “on behalf of the Commission” after the word “education”; and 20
(b) in paragraph (b), by the deletion of the words “free and fair” and the substitution therefor of the words “free, fair and credible”.

Amendment of section 110 **14.** Section 110 is amended by the—
(a) deletion of subsection (2) and the substitution therefor of the following: 25

(2) The Commission may, where a political party or candidate contravenes the Code—
(a) suspend political campaigns during an election; 30

(b) impose a monetary penalty on a candidate or political party as prescribed; or

(c) disqualify a candidate or political party from an election under this Act.; 35

(b) insertion of the following subsection immediately after subsection (2):

(3) A person aggrieved by a decision of the Commission may appeal to the Constitutional Court within seven days of the decision of the Commission, and the Constitutional Court 40

shall hear and determine the appeal within a period of fourteen days of the date of lodging the appeal.

15. Paragraph 10 of the Schedule to the principal Act is amended by the—

Amendment
of Schedule

5 (a) deletion of subparagraphs (5) and (6) and the substitution therefor of the following:

(5) A monitor shall—

10 (a) be impartial in the conduct of the monitor's duties and shall, at no time, publicly indicate or express any bias or preference with reference to any political party or candidate;

(b) ensure that the monitor's presence is widely known and recognised by the electorate at a polling station;

15 (c) not interfere with the duties of the election officials in any way and shall immediately report any violation to the appropriate authority;

20 (d) report to the monitor's institution, the police, the Commission, conflict management committees and other relevant person or institution any material information or report which the monitor receives or any event, occurrence or statement which the monitor has been notified of or which indicates the commission of an offence or contravention of the Act or this Code;

25 (e) not by oneself or through the monitor's organisation, forecast, declare or disclose the result of an election before the declaration by the Commission;

30 (f) when so requested, immediately identify oneself to an election officer or a police officer and shall, during the conduct of the monitor's activities, at all times carry, wear or otherwise prominently display the identification issued to the monitor by the Commission;

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- (g) not display allegiance to a political party or candidate at any time and shall refrain from carrying, wearing and displaying electoral material or any article of clothing, colour, badge or other item denoting support for or 5 opposition to a political party or candidate or an issue in contention in the election; and
- (h) not carry or display arms or other weapons during the conduct of the monitor's activities or while wearing the identification issued by 10 the Commission.
- (6) An observer shall—
- (a) be impartial in the conduct of the observer's duties and shall, at no time, publicly indicate or express any bias or preference with 15 reference to any political party or candidate;
- (b) ensure that the observer's presence is widely known and recognised by the electorate at a polling station;
- (c) not interfere with the duties of the election 20 officials in any way and shall immediately report any violation to the appropriate authority;
- (d) report to the observer's institution, the police, the Commission, conflict management 25 committees and other relevant person or institution, any material information or report which the observer receives or any event, occurrence or statement which the observer has been notified of or which indicates the 30 commission of an offence or contravention of the Act or this Code;
- (e) not by oneself or through the observer's institution, forecast, declare or disclose the result of an election before the declaration 35 by the Commission;

- 5 (f) when so requested, immediately identify oneself to an election officer or a police officer and shall, during the conduct of the observer's activities, at all times carry, wear or otherwise prominently display the identification issued to the observer by the Commission;
- 10 (g) not display allegiance to a political party or candidate at any time and shall refrain from carrying, wearing and displaying electoral material or any article of clothing, colour, badge or other item denoting support for or opposition to a political party or candidate or an issue in contention in the elections; and
- 15 (h) not carry or display arms or other weapons during the conduct of the observer's activities or while wearing the identification issued by the Commission.
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