

THE ANTI-CORRUPTION COMMISSION ACT, 1996

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GOVERNMENT OF ZAMBIA

ACT
No. 42 of 1996

Date of Assent: 20th November, 1996

An Act to provide for the establishment of the Anti-Corruption Commission as an autonomous body, its powers and functions; provide for the composition of the Commission; the powers and functions of the Director-General; repeal and replacement of the Corrupt Practices Act, 1980, and to provide for matters connected with or incidental to the foregoing.

[12th December, 1996

ENACTED by the Parliament of Zambia.

PART I

PRELIMINARY

1. This Act may be cited as the Anti-Corruption Commission Act 1996, and shall come into operation on such date as the President may, by statutory instrument, appoint.

2. All offences under this Act shall be enquired into, tried, and otherwise dealt with in accordance with the Criminal Procedure Code and Part I of the Penal Code.

3. In this Act, unless the context otherwise requires-

"agent" means a trustee, an executor, an administrator, or any person not employed by a public or private body who acts for or on behalf, or in the name, of a public body or a private body or any other person;

"appointed date" means such date as the President may appoint under section one;

"appropriate authority" means any person or institution to whom a recommendation has been made;

"casual gift" means any conventional hospitality on a modest scale or unsolicited gift of modest value offered to a person in recognition or appreciation of that person's services, or as a gesture of goodwill towards that person and includes any inexpensive seasonal gift offered to staff or associates by public and private bodies or private individuals on festive or other special occasions, which is not in any way connected with the performance of a person's official duty so as to constitute an offence under Part IV;

"Chairperson" means the person appointed as Chairperson under section seven;

"Commission" means the Anti-Corruption Commission established under section four;

"Commissioner" means a person appointed as Commissioner under section, seven;

"corrupt" means the soliciting, accepting, obtaining, giving, promising or offering of a gratification by way of a bribe or other personal temptation or inducement, or the misuse or abuse of a public office for private advantage or benefit, and "corruptly" shall be construed accordingly;

"Deputy Director-General" means a person appointed as Deputy Director-General under section eighteen;

"Director-General" means the person appointed under section sixteen;

"former Commission" means the Anti-Corruption Commission established under the repealed Act; Act No. 14 of 1980;

"Government" includes any ministry, department, service or undertaking of the Government;

"gratification" means any corrupt payment, whether in cash or in kind, any rebate, bonus, deduction or material gain, benefit, amenity, facility, concession or favour of any description and any loan, fee, reward, advantage or gift, or any other thing obtained as a result of the corrupt misuse or abuse of public funds or property, other than a casual gift;

"Investigation officer" means the person appointed under section nineteen;

"local authority" shall have the meaning assigned to it in the Local Government Act. 1991;

"parastatal" means any company, association, statutory corporation, body or board or any institution of learning, in which the State has a financial interest;

"principal" includes an employer, beneficiary under a trust, and a trust estate as though it were a person, and any person beneficiary interested in the estate of a deceased person as though the estate were a person, and, in relation to a public officer, a public body;

"private body" means any person or organisation not being a public body, a voluntary organisation, charitable institution, company, partnership or a club;

"public body" means the Government, any ministry or department of the Government, a local authority, parastatal board, council, authority, commission or other body appointed by the Government, or established by or under any written law;

"public officer" means any person who is a member of, or holds office in, or is employed in the service of, a public body, whether such membership, office or employment is

permanent or temporary, whole or part-time, paid or unpaid, and "public office" shall be construed accordingly;

"repealed Act" means the Corrupt Practices Act, 1980;

"Secretary" means the person appointed Secretary under section *nineteen*;

"staff" means the staff of the Commission appointed under section *nineteen*;

"senior police officer" means any police officer of or above the rank of Assistant Superintendent; and

"Vice-Chairperson" means the person appointed as Vice-Chairperson under section *seven*.

PART II

THE ANTI-CORRUPTION COMMISSION

4. (1) There is hereby established the Anti-Corruption Commission 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 the provisions of this Act, to do all such things as a body corporate may, by law do or perform.

(2) The First Schedule shall apply to the Commission.

5. The Commission shall not, in the performance of its duties, be subject to the direction or control of any person or authority.

6. (1) The seal of the Commission shall be such device as may be determined by the Commission 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 Commission.

(3) Any document purporting to be under the seal of the Commission or issued on behalf of the Commission 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.

7. (1) The Commission shall consist of the following Commissioners:

- (a) the Chairperson and
- (b) four other persons.

- (2) The Commissioners referred to in paragraph (a) and (c) shall be appointed by the President, subject to ratification by the National Assembly.
- (3) The Chairperson shall be a person who has held or is qualified to hold high judicial office.
- 8.** (1) A Commissioner referred to in subsection (1) of section 7 shall be appointed for a term not exceeding three years, subject to renewal:
- (2) A Commissioner may resign upon giving one month's notice in writing to the President.
- (3) The Office of a Commissioner shall become vacant-
- (a) if the Commissioner is absent without reasonable excuse from three consecutive meetings of the Commission of which the Commissioner has had notice;
- (b) if the Commissioner becomes bankrupt;
- (c) if the Commissioner becomes insane or is declared to be of unsound mind; and
- (d) upon the Commissioner's death.
- 9.** (1) The functions of the Commission shall be to-
- (a) prevent and take necessary and effective measures for the prevention of corruption in public and private bodies, including, in particular, measures for-
- (i) examining the practices and procedures of public and private bodies in order to facilitate the discovery of corrupt practices and secure the revision of methods of work or procedures which in the opinion of the Commission, may be prone or conducive to corrupt practices;
- (ii) advising public bodies and private bodies on ways and means of preventing corrupt practices, and on changes in methods of work or procedures of such public bodies and private bodies compatible with the effective performance of their duties, which the Commission considers necessary to reduce the likelihood of the occurrence of corrupt practices:

(iii) disseminating information on the evil and dangerous effects of corrupt practices on society; and

(iv) enlisting and fostering public support: against corrupt practices.

(b) receive and investigate complaints of alleged or suspected corrupt practices, and, subject to the directions of the Director of Public Prosecutions, prosecute-

(i) offences under this Act; and

(ii) such other offence under any other written law as may have come to the notice of the Commission during the investigation of an offence under this Act:

Provided that nothing in this paragraph shall be considered as precluding any public prosecutor from prosecuting, subject to the directions of the Director of Public Prosecutions, any offence under this Act which has come to the notice of the police during investigation of an offence under any written law;

(c) investigate any conduct of any public officer which, in the opinion of the Commission may be connected with or conducive to corrupt practices; and

(d) do all such things as are incidental or conducive to the attainment of the functions.

(2) The Commission may refuse to conduct, or may decide to discontinue an investigation where it is satisfied that the complaint or allegation is malicious, trivial, frivolous, vexatious or the particulars accompanying it are insufficient to allow a proper investigation to be conducted and shall indicate accordingly in the report.

(3) The Commission shall, in any case in which it decides not to conduct an investigation, or decides to discontinue an investigation inform the complainant in writing accordingly, and give reasons therefor.

(4) The Commission may in any inquiry make such orders and give such directions as it may consider necessary for the purpose of conducting any investigation.

10. (1) The Commission may depending on the findings made, make such recommendation as it considers necessary to the appropriate authority.

- (2) The appropriate authority shall, within thirty days from the date of such recommendation make a report to the Commission, on any action taken by such authority.
11. (1) Subject to the other provisions of this Act, the Commission may regulate its own procedure.
- (2) The Commission shall meet for the transaction of business at least once every three months at such places and times as the Chairperson may determine.
- (3) The Chairperson may at any time call a meeting of the Commission and shall call a special meeting to be held within fourteen days of receipt of a written request addressed to the Chairperson by at least two other Commissioners.
- (4) If the urgency of any particular matter does not permit the giving of such notice as is required under subsection (3), a special meeting may be called by the Chairperson, upon giving a shorter notice.
- (5) The Chairperson with two other Commissioners shall constitute a quorum at any meeting of the Commission.
- (6) There shall preside at any meeting of the Commission-
- (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 other Commissioner as the Commissioners present may elect for the purposes of that meeting.
- (7) A decision of the Commissioner on any question shall be by a majority of the Commissioners present and voting at the meeting and in the event of an equality of votes, the person presiding at the meeting shall have a casting vote, in addition to such person's deliberative vote.
- (8) The Commission may invite any person, whose presence is in its opinion desirable, to attend and to participate in the deliberations of the meeting of the Commission, but such person shall have no vote.
- (9) The validity of any proceedings, acts or decisions of the Commission shall not be affected by any vacancy in the membership of the Commission or by any defect in the appointment of any Commissioner or by reason that any person not entitled to do so, took part in the proceedings.

12. (1) The Commission 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.

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

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

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

13. (1) If any person is present at a meeting of the Commission 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 practicable after the commencement of the meeting, declare such interest and shall not, unless the Commission or the committee otherwise directs, take part in any consideration or discussion of, or vote on, any question touching such matter.

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

(3) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and shall be liable, upon conviction, to a fine not exceeding five thousand penalty units.

14. (1) A person shall not, without the consent in writing given by, or on behalf of, the Commission, publish or disclose to any person otherwise than in the course of such person's duties, the contents of any documents, communication, or information which relates to, and which has come to such person's knowledge in the course of such person's duties under this Act. Prohibition of disclosure of information to unauthorised persons

(2) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and shall be liable, upon conviction, to a fine not exceeding ten thousand penalty units or to imprisonment, for a term not exceeding three years, or to both.

(3) If any person having information which to such person's knowledge has been published or disclosed in contravention of subsection (1), unlawfully publishes or communicates any such information to any other person, such person shall be guilty of an offence and shall be liable upon conviction, to a fine not exceeding ten thousand penalty units or to imprisonment for a term not exceeding three years, or to both.

15. (1) No proceedings, civil, or criminal, shall lie against any Commissioner of the Commission, for anything done in the exercise of such person's functions under this Act.

(2) Subject to the provisions of this Act, a Commissioner shall not be called to give evidence before any court or tribunal in respect of anything coming to such person's knowledge in the exercise of such person's functions under this Act.

(3) For the avoidance of any doubts, nothing in this section shall protect any Commissioner, for anything done outside the functions of the person's office.

PART III

THE DIRECTORATE OF THE COMMISSION

16. (1) There shall be a Director-General who shall be appointed by the President subject to ratification by the National Assembly.

(2) The Director-General shall be-

(a) responsible for the management and administration of the Commission;

(b) a full-time officer; and

(c) responsible for the implementation of any matters referred to such Director-General by the Commission.

(3) The Director-General shall attend meetings of the Commission and may address such meetings, but shall have no vote.

(4) A person shall not be qualified to be appointed Director-General unless the person is qualified to be appointed judge of the High Court.

(5) The Director-General shall not, while he holds the office of Director-General, discharge the duties of any other office of emolument in the Republic.

(6) The Director-General may, subject to any specific or general direction of the Commission, make standing orders providing for-

(a) the control, direction and administration of the Commission;

(b) the discipline, training, classification and promotion of officers of the Commission;

- (c) the duties of officers of the Commission; or
- (d) such other matters as he may consider necessary or expedient for preventing the abuse of power or neglect of duty by officers or other staff.

17. (1) Subject to subsection (2), a person appointed Director-General shall vacate that office on attaining the age of sixty-five years;

Provided that the Commission may permit a person who has attained that age to continue in office for such period as may be necessary to enable him do anything in relation to proceedings that were commenced before he attained that age.

(2) A person appointed Director-General may be removed from office for inability to perform the function of his office, whether arising from infirmity of body or mind or from any other cause, or for misbehaviour, and shall not be removed except by or in accordance with a resolution passed by the National Assembly pursuant to subsection (2) calling for an investigation into the question of the removal of the Director-General.

(3) If the National Assembly, by resolution supported by the votes of not less than two-thirds of all the members of the National Assembly, resolves that the question of removing the Director-General ought to be investigated, the Speaker of the National Assembly shall send a copy of such resolution to the Chief Justice who shall appoint a tribunal consisting of a chairman and two other persons to inquire into the matter.

(4) The Chairperson and one other member of the tribunal shall be persons who hold or have held high judicial office.

(5) The tribunal shall inquire into the matter and send a report on the facts of that matter to the President and a copy to the National Assembly.

(6) Where a tribunal appointed under subsection (2) advises the President that the Director-General ought to be removed from office for inability as aforesaid or for misbehaviour, the President shall remove the Director-General from office.

(7) If the question of removing the Director-General from office has been referred to a tribunal under subsection (2), the President may suspend him from performing the functions of his office, and any such suspension may at any time be revoked by the President and shall in any case cease to have effect if the tribunal advises the President that the Director-General ought to be removed from office.

18. (1) The Commission may appoint a Deputy Director-General on such terms and conditions as it thinks fit:

Provided that no person shall qualify for appointment as a Deputy Director-General unless he is qualified to be appointed a Judge of the High Court.

(2) If the office of the Director General is vacant or the Director-General is absent from duty or unable for any other reason to perform the functions of his office, the Deputy Director-General shall, save where the Commission otherwise directs, act as Director-General.

(3) If both the Director-General and the Deputy Director-General are absent from duty or unable for any other reason to perform the functions of their office, the Commission shall appoint another person to act as Director-General.

19. (1) The Commission may appoint investigating officers, the Secretary and such other officers of the Commission on such terms and conditions as the Commission may consider necessary to assist the Director-General in the performance of his functions under this Act. Investigating officers, Secretary and other staff of Commission

(2) The Director-General may, if he is satisfied that it is in the best interest of the Commission, terminate the appointment of any officer of the Commission and shall assign the reasons therefor, subject to any directions by the Commission.

(3) The Commission may engage the services of such advisors and experts as it thinks necessary.

(4) The Secretary, advisors, experts and other members of staff shall on appointment, take an oath or affirmation as set out in the Second Schedule.

20. (1) For the performance of the Commission's functions under this Act, the Director-General may-

(a) authorise in writing any officer of the Commission to conduct an inquiry or investigation into alleged or suspected offences under this Act;

(b) require any person in charge of any department, office or establishment of the Government, or the head, chairperson, manager or chief executive officer of any public body, to produce or furnish within such time as may be specified by the Director-General, any document or a certified true copy of any document which is in his possession or under his control and which the Director-General considers necessary for the conduct of investigation into alleged or suspected offences under this Act:

Provided that the document is not classified or does not fall under the State Security Act.

(2) In the performance of his duties under this Act, the Director-General, the Deputy Director-General or an officer, may apply to a judge or a magistrate for a warrant and the judge or the magistrate shall immediately make a decision.

(3) A warrant issued under subsection (2) shall confer on the Director-General, the Deputy Director-General or an officer powers of-

(a) access to all books, records, returns, reports and other documents relating to the work of any Government department, public body or private body;

(b) access at any time to the premises of any Government department, public body or private body, or to any vessel, boat, aircraft or other vehicle whatsoever, and may search such premises or such vessel, boat, aircraft, or other vehicle if he has reason to suspect that any property corruptly acquired has been placed, deposited or concealed therein.

(4) In the exercise of his power to access and search under paragraph (b) of subsection (2), the Director-General, the Deputy Director-General or other officer of the Commission, may use such reasonable force as is necessary and justifiable in the circumstances, and may be accompanied or assisted by such other persons as he considers necessary to assist him to enter into or upon any premises, or upon any vessel, boat, aircraft or other vehicle, as the case may be.

(5) Any person who accompanies or assists the Director-General, the Deputy Director-General or other officer of the Commission to enter into or upon any premises, or upon any vessel, boat, aircraft or other vehicle, as the case may be, shall, during the period of such accompaniment or assistance, enjoy the same immunity as is conferred under section twenty-six upon the Director-General, the Deputy Director-General or other officer of the Commission.

21. (1) The Director-General or any officer of the Commission shall after obtaining a court order have powers to investigate any bank account, share account, purchase account, expense account or any other account, or any safe deposit box in any bank.

(2) An order made under section (1) shall be sufficient for the disclosure or production by any person of all or any information, accounts, documents or articles as may be required by the officer of the Commission so authorised.

22. (1) The Director-General, the Deputy Director-General or any officer of the Commission authorised in that behalf by the Director-General may arrest a person without warrant if he reasonably suspects that such person has committed or is about to commit an offence under this Act.

(2) Where a person has been arrested without warrant under subsection (1) such person may, at any time before appearing, in court, while he is in custody be admitted to bail upon providing surety or sureties sufficient in the opinion of the Director-General, Deputy Director-General or an officer authorised in that behalf by the Director-General to secure his appearance before court or such person may be released upon his own recognisance on such conditions as the officer thinks fit.

(3) A bail bond issued under this section shall be dealt with in accordance with the provisions of the Criminal Procedure Code.

23. The Director-General may issue to an officer of the Commission an identity card which shall be prima facie evidence of the officer's appointment as such.

24. (1) The Director-General may, by written notice to a person who is the subject of an investigation in respect of an offence alleged or suspected to have been committed under this Act, or against whom a prosecution for such offence has been instituted, direct that such person shall not dispose of or otherwise deal with any property specified in such notice without the consent of the Director-General.

(2) A notice issued under subsection (1) may be served by delivering it personally to the person to whom it is addressed or may, where the Director-General is satisfied that such person cannot be found, or is not in the Republic, be served on or brought to the knowledge of, such person in such other manner as the Director-General may direct.

(3) A notice issued under subsection (1) shall have effect from the time of service and shall continue in force for a period of twelve months or until cancelled by the Director-General, whichever is earlier.

(4) Any person who, having been served with, or having knowledge of a notice issued under subsection (1), disposes of or otherwise deals with any property specified in the notice other than in accordance with the consent of the Director-General shall be guilty of an offence, and liable, upon conviction, to imprisonment for a term not exceeding ten years or to a fine not exceeding ten thousand penalty units or to both.

(5) Any person aggrieved by a directive contained in a notice issued under subsection (1) may, at any time, apply to the High Court for an order to reverse or vary such directive.

(6) An application under subsection (5) shall give to the Director-General such notice of the day appointed for the hearing of the application as a Judge of the High Court may order.

(7) On the hearing of an application under subsection (5), the High Court may-

- (a) confirm the directive;
- (b) reverse the directive and consent to the disposal of or other dealing with any property specified in the notice, subject to such terms and conditions as it thinks fit; or
- (c) vary the directive as it thinks fit.

25. Section fourteen shall apply with necessary modifications to the staff of the Commission.

26. Section *fifteen* shall apply with necessary modifications to the Director-General, Deputy Director-General and other staff of the Commission.

27. Any person who-

(a) gives or causes to be made false testimony or a false report in any material particular to any matter under investigation;

(b) makes or causes to be made to the Commission a false report of the Commission of any offence under this Act;

(c) misleads the Director-General, the Deputy Director-General or other officers of the Commission by giving any false information, statement or accusation;

(d) insults, interrupts, assaults or otherwise obstructs, resists, hinders or delays the Director-General, any Commissioner or any member of staff in the performance of such person's functions under this Act or in effecting entry into any premises, boat, aircraft or vehicle; or

(e) disobeys any order made under this Act;

shall be guilty of an offence and shall be liable, upon conviction, to a fine not exceeding ten thousand penalty units, or to imprisonment for a term not exceeding ten years or to both.

28. Any person who pretends that- Impersonation and procurement of Commission's officer

(a) he is an officer of the Commission or has any of the powers of such officer under this Act, or under any authorisation or warrant issued under this Act; or

(b) he is able to procure an officer of the Commission to do or refrain from doing anything in connection with the duties of such officer;

shall be guilty of an offence and shall be liable, upon conviction, to imprisonment for a term not exceeding seven years, or to a fine not exceeding seven thousand penalty units or to both.

PART IV

OFFENCES, PENALTIES AND RECOVERY OF GRATIFICATION

29. (1) Any public officer who, by himself, or by or in conjunction with any other person, corruptly solicits, accepts or obtains, or agrees to accept or attempts to receive or obtain, from any person for himself or for any other person, any gratification as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, anything in relation to any matter or transaction, actual or proposed, with which any public body is or may be concerned, shall be guilty of an offence.

(2) Any person who by himself, or by or in conjunction with any other person, corruptly gives, promises or offers any gratification to any public officer, whether for the benefit of that public officer or of any other public officer, as an inducement or reward for doing or forbearing to do, anything in relation to any matter or transaction, actual or proposed, with which any public body is or may be concerned, shall be guilty of an offence.

30. (1) Any public officer who, being concerned with any matter or transaction falling within, or connected with, his jurisdiction, powers, duties or functions, corruptly solicits, accepts or obtains, or agrees to accept or attempts to receive or obtain for himself or for any other person any gratification in relation to such matter or transaction, shall be guilty of an offence. Corrupt use of official powers and procuring corrupt use of official powers

(2) Any person who, being concerned with any matter or transaction falling within the scope of authority, or connected with the jurisdiction, powers, duties or functions of any public officer, by himself, or by or in conjunction with any other person, corruptly gives, promises or offers any gratification, whether directly or indirectly, to such public officer either for himself or for any other person, shall be guilty of an offence.

31. (1) Any person who, by himself, or by or in conjunction with any other person, corruptly solicits, accepts or obtains, or agrees to accept or attempts to receive or obtain, from any person for himself or for any other person, any gratification as an inducement or reward for doing or forbearing to do, or for and having done or forborne to do, any thing in relation to any matter or transaction actual or proposed, with which any private body is or may be concerned, shall be guilty of an offence. Corrupt transactions by or with private bodies

(2) Any person who, by himself, or by or in conjunction with any other person, corruptly gives, promises or offers any gratification to any person, whether for the benefit of that person or of any other person, as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, anything in relation to any matter or

transaction, actual or proposed, with which any private body is or may be concerned. shall be guilty of an offence.

32. (1) Any agent who corruptly solicits, accepts or obtains, or agrees to accept or attempts to receive or obtain, from any person for himself or for any other person, any gratification as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, anything in relation to his principal's affairs or business, or for showing or having shown favour or disfavour to any person in relation to his principal's affairs or business, shall be guilty of an offence.

(2) Any person who corruptly gives, promises or offers any gratification to any agent as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, anything in relation to his principal's affairs or business, or for showing or having shown favour or disfavour to any person in relation to his principal's affairs or business, shall be guilty of an offence.

(3) Any person who gives to an agent, or any agent who, with intent to deceive his principal, uses any receipt, account or other document in respect of which the principal is interested or which relates to his principal's affairs or business and which contains any statement which is false or erroneous or defective in any material particular, and which to his knowledge or belief is intended to mislead the principal, shall be guilty of an offence.

(4) For the purposes of subsections (1) and (2), the permission of a principal to the soliciting, accepting or obtaining of any gratification by his agent shall constitute a valid defence.

33. (1) Any person who being a member of any public body by himself, or by or in conjunction with any other person, corruptly solicits, accepts or obtains, or agrees to accept or attempts to receive or obtain, from any person for himself or for any other person, any gratification as an inducement or reward for-

(a) his voting or abstaining from voting at any meeting of such public body in favour of or against any measure, matter, resolution or question submitted to such public body; or

(b) his performing or abstaining from performing, or for his aid in procuring, expediting, delaying, hindering or preventing the performance of, any official act by such public body; or

(c) his aid in procuring or preventing the passing of any vote or the granting of any contract or advantage in favour of any person;

shall be guilty of an offence.

(2) Any person who, by himself or by or in conjunction with any other person, corruptly gives, promises or offers any gratification to a member of any public body in any such circumstances as are referred to in subsection (1), shall be guilty of an offence.

34. (1) Any public officer who directly or indirectly by himself, or by or in conjunction with any other person, corruptly solicits, accepts or obtains, or agrees to accept or attempts to receive or obtain, from any person for himself or for any other person, any gratification as an inducement or reward for or otherwise on account of his giving assistance or using influence in, or having given assistance or used influence in-

(a) the promotion, execution or procurement of-

(i) any contract with a public body or private body for the performance of any work, the provisions of any service, the doing of anything or the supplying of any article, material or substance; or

(ii) any sub-contract to perform any work, provide any service, do anything or supply any article, material or substance required to be performed, provided, done or supplied under any contract with a public body or private body; or

(b) the payment of the price, consideration or other moneys stipulated or otherwise provided for in any such contract or sub-contract as aforesaid;

shall be guilty of an offence.

(2) Any person who corruptly gives, promises or offers any gratification to any public officer as an inducement or reward for or otherwise on account of such public officer giving assistance or using influence in, or having given assistance or used influence in-

(i) the promotion, execution or procurement of; or

(ii) the payment of the price, consideration or other moneys stipulated or otherwise provided for in;

any such contract or sub-contract as is referred to in subsection (1), shall be guilty of an offence.

35. (1) Any person who directly or indirectly by himself, or by or in conjunction with any other person, corruptly solicits, accepts or obtains, or agrees to accept or attempts to receive or obtain from any person for himself or for any other person, any gratification as an inducement or reward for or otherwise on account of the withdrawal of a tender, or the refraining from the making of a tender, for any contract with a public body or private

body for the performance of any work, the provision of any service, the doing of anything or the supplying of any article, material or substance, shall be guilty of an offence.

(2) Any person who corruptly gives, promises or offers any gratification to any other person as an inducement or reward for or otherwise on account of the withdrawal of a tender, or the refraining from making of a tender, for such a contract as is referred to in subsection (1), shall be guilty of an offence.

36. (1) Any person who directly or indirectly by himself, or by or in conjunction with any other person, corruptly solicits, accepts or obtains, or agrees to accept or attempts to receive or obtain, from any person for himself or for any other person, any gratification as an inducement or reward for or otherwise on account of his refraining or having refrained from bidding at any sale by auction conducted by or on behalf of any public body or private body, shall be guilty of an offence.

(2) Any person who corruptly gives, promises or offers any gratification to any other person as an inducement or reward for or otherwise on account of that other person's refraining or having refrained from bidding at any auction as is referred to in subsection (1), shall be guilty of an offence.

37. (1) The Director-General, the Deputy Director-General or any officer of the Commission authorised in writing by the Director-General may investigate any public officer where there are reasonable grounds to believe that such public officer-

(a) has abused or misused his office position or authority to obtain property, wealth, advantage or profit directly or indirectly for himself or any other person;

(b) maintains a standard of living above that which is commensurate with his present or past official emoluments;

(c) is in control or possession of pecuniary resources or property disproportionate to his present or past official emoluments; or

(d) is in receipt of the benefit of any services which he may reasonably be suspected of having received corruptly or in circumstances which amount to an offence under this Act.

(2) Any public officer who, after due investigation carried out under subsection (1), is found to-

(a) have misused or abused his office, position, or authority to obtain advantage, wealth, property or profit directly or indirectly;

(b) maintain a standard of living above which is commensurate with his present or past official emoluments;

(c) be in control or possession of pecuniary resources or property disproportionate to his present or past official emoluments; or

(d) be in receipt of the benefit of any services which he may reasonably be suspected of having received corruptly or in circumstances which amount to an offence under this Act;

shall, unless he gives a reasonable explanation, be charged with having, or having had under his control or in his possession of pecuniary resources or property reasonably suspected of having been corruptly acquired, or having misused or abused his office, as the case may be, and shall, unless he gives a satisfactory explanation to the court as to how he was able to maintain such a standard of living or how such pecuniary resources or property came under his control or into his possession or, as the case may be, how he came to enjoy the benefit of such services, be guilty of an offence.

(3) Where a court is satisfied in proceedings for an offence under subsection (2) that, having regard to the closeness of his relationship to the accused and to other relevant circumstances, there is reason to believe that any person was holding pecuniary resources or property in trust for or otherwise on behalf of the accused, or acquired such pecuniary resources or property as a gift, or loan without adequate consideration, from the accused, such pecuniary resources or property shall, in the absence of a satisfactory explanation by or on behalf of the accused be deemed to have been under the control or in the possession of the accused.

(4) In this section, "official emoluments" include a pension, gratuity or other terminal benefits.

38. (1) If, in any proceedings for an offence under any section of this Part, it is proved that the accused accepted any gratification believing or suspecting or having reasonable grounds to believe or suspect that the gratification was given as an inducement or reward for or otherwise on account of his doing or forbearing to do, or having done or forborne to do, any act referred to in that section, it shall be no defence that-

(a) he did not actually have the power, right or opportunity so to do or forbear;

(b) he accepted the gratification without intending so to do or forbear; or

(c) he did not in fact so do or forbear.

(2) If, in any proceedings for an offence under any section of this Part it is proved that the accused offered any gratification to any other person as an inducement or reward for or otherwise on account of that other person's doing or forbearing to do, or having done or forborne to do, any act referred to in that section, believing or suspecting or having reasonable grounds to believe or suspect that such other person had the power,

right or opportunity so to do or forbear, it shall be no defence that such other person had no such power, right or opportunity.

39. Any person who attempts to commit, or who aids, abets or counsels, or conspires with, any person to commit an offence under this Part, shall be guilty of committing that offence and shall be punished accordingly.

40. (1) A public officer to whom any gratification is corruptly given, promised or offered shall make a full report of the circumstances of the case to a police officer or an officer of the Commission within twenty-four hours of the occurrence of the event, and if he fails to do so without reasonable cause, he shall be guilty of an offence and shall be liable, upon conviction, to imprisonment for a term not exceeding one year or to a fine not exceeding one thousand penalty units or to both. Public officer's powers of report, etc.

(2) Any police officer or officer of the Commission may arrest without warrant any person in respect of whom a report is made under subsection (1).

(3) Any police officer or officer of the Commission may search any person arrested for an offence under this Part and take possession of all articles found upon him which the police officer or officer of the Commission believes upon reasonable grounds to constitute evidence of the commission of an offence by him under this Part:

Provided that a female person shall not be searched except by a female police officer, or female officer of the Commission, or by any female authorised in that behalf by a police officer or officer of the Commission.

41. Any person who is guilty of an offence under this Part shall be liable-

- (a) upon conviction to imprisonment for a term not exceeding twelve years;
- (b) upon a second or subsequent conviction, to imprisonment for a term of not less than five years but not exceeding twelve years; and
- (c) in addition to any other penalty imposed under this Act, to forfeit to the State of any pecuniary resource, property, advantage, profit or gratification received in the commission of an offence under this Act.

42. Where any person is convicted of any offence under this Part, the court shall, in addition to the sentence that it may impose under section forty-one, order the convicted person to pay to the rightful owner the amount or value, as determined by the court, of any gratification actually received by him, and such order shall be deemed to form part of the sentence:

Provided that where, after reasonable inquiry, the rightful owner cannot be ascertained or traced, or where the rightful owner is himself implicated in the giving of the gratification,

the court shall order that the amount or value thereof shall be paid into the general revenues of the Republic.

43. Any fine imposed under the provisions of this Part and the amount or value of any gratification ordered to be paid under section forty-two may be recovered in accordance with the provisions of sections three hundred and eight and three hundred and nine of the Criminal Procedure Code by distress and sale of the movable and immovable property of the person sentenced.

44. (1) Where any gratification has been given by any person to or for or on account of an agent in contravention of any provision of this Act, the principal may recover, as a civil debt, the amount or value of such gratification from the agent, and the acquittal of the agent or such person in respect of an offence under this Part shall not operate as a bar to any proceedings for such recovery.

(2) Nothing in subsection (1) shall be deemed to prejudice or affect any right which any principal may have under any written law or rule to recover from his agent any money or property.

45. In any proceedings under this Act, a certificate by a Government Valuation Officer or other specialist valuer with respect to the value of any gratification or of any movable or immovable property shall be sufficient proof of such value, unless the contrary is proved.

PART V

POWERS OF THE DIRECTOR OF PUBLIC PROSECUTIONS

46. (1) No prosecution for an offence under Part IV shall be instituted except by or with the written consent of the Director of Public Prosecutions.

(2) Notwithstanding the provisions of subsection (1), a person may be charged with an offence under Part IV and may be arrested therefor or a warrant for his arrest may be issued and executed, and any such person may be remanded by the Court in custody or on bail notwithstanding that the written consent of the Director of Public Prosecutions to the institution of a prosecution for the offence with which he is charged has not been obtained, but no such person shall be remanded in custody or on bail for a period longer than fourteen days on such charge unless in the meantime the written consent of the Director of Public Prosecutions aforesaid has been obtained.

(3) When a person is brought before a court before the written consent of the Director of Public Prosecutions to the institution of a prosecution against him is obtained, the charge shall be explained to the person accused but he shall not be called upon to plead.

47. If, in the course of any investigation into or proceeding relating to any offence under Part IV, the Director of Public Prosecutions has reasonable grounds to believe that it would assist or expedite such investigation or proceeding, he may, by notice require the Commissioner of Taxes to furnish all information in his possession relating to the affairs of any suspected person and to produce or furnish any document or a certified true copy of any document relating to such suspected person which is in the possession or under the control of the Commissioner of Taxes.

48. (1) If any person, against whom investigations or proceedings for an offence under Part IV are pending, is preparing or about to leave Zambia, whether temporarily or permanently, the Director of Public Prosecutions or any officer authorised by him in that behalf, may apply to any court for an order requiring such person to furnish bail in any sum, or, if he has already been admitted to bail, in such greater sum and on such additional conditions, as the case may be, with or without sureties, and in any such application the court may make such order as it deems fit. Bail where suspect or accused person about to leave Zambia

(2) Every order made under this section whether originally or on review shall be reviewed within thirty days by the court which made the order.

(3) A right of appeal against an order made under this section shall lie to a higher court.

PART VI

EVIDENCE, PRESUMPTIONS AND OTHER MATTERS

49. (1) Where, in any proceeding under this Act, it is proved that any gratification has been received by any person with the knowledge and acquiescence or consent of the accused person, and the court is satisfied, having regard to his relationship to the accused person or to any other circumstances that such person has received the gratification for or on behalf of the accused person, or otherwise on account of or in connection with the office or duties of the accused person, the gratification in the absence of a satisfactory explanation, shall be presumed to have been received by the accused person.

(2) Where, in any proceedings for an offence under Part IV, it is proved that any person solicited, accepted or obtained or agreed to accept or attempted to receive or obtain any payment in any of the circumstances set out in the relevant section under which he is charged, then such payment shall in the absence of a satisfactory explanation be presumed to have been solicited, accepted or obtained or agreed to be accepted, received or obtained corruptly.

(3) For the purposes of subsection (2) "payment" means any corrupt payment, whether in cash or in kind.

50. (1) In any proceedings in respect of an offence under Part IV, the fact that an accused person is in possession, for which he cannot satisfactorily account of pecuniary resources or property disproportionate to his known sources of income or that he had at or about the time of the alleged offence, obtained an accretion to his pecuniary resources or property for which he cannot satisfactorily account, may be proved and may be taken into consideration by the court as corroborating the testimony of any witness in such proceedings that the accused person accepted or obtained or agreed to accept or attempted to obtain the gratification and as showing that such gratification was accepted or obtained or agreed to be accepted or attempted to be obtained corruptly as an inducement or reward.

(2) For the purposes of subsection (1), an accused person shall be deemed to be in possession of pecuniary resources or property, or to have obtained an accretion thereto, notwithstanding that such pecuniary resources or property is held, or such accretion thereto is obtained, by any other person as to whom there is reason to believe, having regard to his relationship to the accused person or to any other circumstances, that he is holding such pecuniary resources or property or has obtained such accretion thereto in trust for, or for or on behalf of, the accused person, or as a gift from him unless the contrary is proved.

51. For the purpose of any proceedings in respect of an offence under Part IV, the court may at any stage of the proceedings direct that any specified fact may be proved at the trial by affidavit with or without the attendance of the deponent for cross examination.

52. (1) In any proceedings for an offence under Part IV, it shall be no defence that any gratification solicited, accepted or obtained or agreed to be accepted, given, offered or promised, is customary in any profession, business, trade, vocation or calling.

(2) Notwithstanding the provisions of subsection (1), no entertainment or casual gift offered or accepted under such conditions as may be prescribed in regulations made under this Act shall constitute an offence under Part IV.

53. Where any public officer has corruptly solicited, accepted, obtained, or agreed to accept or attempted to receive or obtain any gratification, it shall not be a defence in any trial in respect of an offence under Part IV that-

(a) the appointment, nomination or election of such person or any other person as a public officer was invalid or void; or

(b) such public officer or any other public servant did not have the power, authority or opportunity of doing or of forbearing from doing the act, favour or disfavour to which the gratification related; or

(c) he did not actually do any act, favour or disfavour to induce the gratification, or never had the intention of doing so.

54. (1) The Director of Public Prosecutions may, at any time, with a view to obtaining at a trial the evidence of any person directly or indirectly concerned with or privy to an offence under Part IV, tender, or by writing under his hand, authorise any court named by him to tender, a pardon to such person on condition that he makes a full and true disclosure of all facts or circumstances within his knowledge relating to the offence and to every other person involved in the commission thereof, whether as principal or in any other capacity, together with the delivery up of any document or thing constituting evidence or corroboration of the Commission of the offence by the person to be charged or the accused person, as the case may be.

(2) The court shall record in the manner prescribed by the Criminal Procedure Code the evidence on oath of every person accepting a pardon under subsection (1) and shall transmit the record of such evidence to the Attorney-General. Cap. 88

(3) Every person accepting a tender of pardon under this section shall be examined as a witness at the trial.

(4) Where a person who has accepted a tender of pardon under this section has, either by wilfully concealing anything material to the case, or by giving false evidence, not complied with the condition on which the tender of pardon was made, he may be prosecuted for the offence in respect of which the pardon was tendered or for any other offence of which he appears to have been guilty in connection with the same matter.

(5) A person to whom a tender of pardon has been made under subsection (1), who in the opinion of the court, has made a true and full disclosure of all things as to which he is lawfully examined, shall be entitled to receive a certificate of indemnity under the hand of the Director of Public Prosecutions stating that he has made a true and full disclosure of all things as to which he was examined, and such certificate shall be a bar to all legal proceedings against him in respect of all such things as aforesaid.

55. Where any commission established by or under the Constitution, or appointed under the Inquiries Act, in the course, or upon conclusion, of any proceedings before it, is of the opinion that the conduct of any person appears to constitute an offence under this Act and ought to be inquired into for the purposes of this Act, the commission concerned shall, subject to any prohibition, restriction or restraint imposed upon it by or under the Constitution or any other written law, communicate its opinion to the Director of Public Prosecutions, together with the particulars of the person concerned and such other facts of the case as the Commission may deem necessary.

56. (1) Where, at the conclusion of the trial of a person charged with an offence under Part IV, the court is of the opinion that any person has wilfully, and with intent to harm or injure the accused person in any manner made a false, frivolous or groundless

complaint or allegation against him, the court shall certify that opinion in writing and shall transmit it together with a certified copy of the record of the proceedings to the Director of Public Prosecutions.

(2) Any person who, in the opinion of the court certified under subsection (1) has made a false, frivolous or groundless complaint or allegation to the effect that any person has committed or attempted to commit, or aided, abetted or counselled the commission of, or conspired with any other person to commit, any offence under Part IV, shall be guilty of an offence and shall be liable, upon conviction, to imprisonment for a term not exceeding ten years or to a fine not exceeding ten thousand penalty units, or to both.

57. (1) If, on the trial of any offence under Part IV, it is not proved that the accused is guilty of the offence charged but it is proved that the accused is guilty of some other offence under Part IV, the accused may, notwithstanding the absence of the written consent of the Director of Public Prosecutions in respect of such other offence, be convicted of such other offence, and be liable to be dealt with accordingly.

(2) If, on the trial of any person for any offence under Part IV, there is any material variance between the particulars of the offence charged and the evidence adduced in support thereof, such variance shall not, of itself, entitle the accused to an acquittal of the offence charged if, in the opinion of the court, there is prima facie evidence of the commission of that offence, and in such a case the court may, notwithstanding the absence of the written consent of the Director of Public Prosecutions in respect of the particulars supported by the evidence adduced, make the necessary amendment to the particulars, and shall thereupon read and explain the same to the accused and the parties shall thereupon be allowed to recall and examine on matters relevant to such amendment any witness who may have been examined and, subject to the provisions of subsection (3), to call any further witness.

(3) If an amendment is made under the provisions of subsection (2) after the prosecution's case is closed, no further witness may be called by the prosecution other than a witness on such matters only as it would, apart from the provisions of this subsection, be permissible to call and put in evidence in rebuttal.

58. In any proceeding for an offence under this Act it shall be a valid defence that the gratification offered or accepted is an entertainment or a casual gift.

59. (1) In relation to a public officer or a citizen of Zambia, or a person ordinarily resident in Zambia, this Act shall have effect within as well as outside Zambia, and notwithstanding where any offence is committed by such person, he may be dealt with in respect of such offence as if it has been committed within Zambia.

(2) Any proceedings against any person under this section which would be a bar to subsequent proceedings against such person for the same offence, if such offence had been committed in Zambia, shall be a bar to further proceedings against him, under any

written law for the time being in force relating to the extradition of persons, in respect of the same offence outside Zambia.

PART VII

MISCELLANEOUS

60. (1) Subject to the other provisions of this Act, a person who immediately before the appointed date held office as Commissioner of the former Commission established under the repealed Act, shall continue to hold such office as Commissioner for a period of three months.

(2) After the period referred to in subsection (1), the Commissioner of the former Commission shall perform the functions and powers of the Director-General of the Commission established under this Act.

(3) Nothing in this Act affects the rights of any person employed by the former Commission immediately before the appointed date.

(4) Notwithstanding section sixty-six, all the property, assets, rights, liabilities and obligations of the former Commission existing immediately before the appointed date, shall vest and continue to vest in, or subsist against the Commission, together with the rights, liabilities and obligations arising out of any contract or otherwise as if this Act had not come into force.

(5) Any proceedings or cause of action instituted or pending by or against the former Commission immediately prior to the appointed date, shall continue by or against the Commission as if instituted under this Act.

61. (1) The investigating officers and other employees of the former Commission shall be deemed to be transferred to the Commission from the commencement of this Act.

(2) The service of the persons referred to in subsection (1) shall be treated as continuous service.

62. The Commission may, by statutory instrument, make rules for the-

(a) appointment, including the power to confirm appointments of persons, to any office in respect of which he is charged with the responsibility under this Act;

(b) disciplinary control of persons holding or acting in such offices;

(c) termination of appointments and the removal of such persons from office;

(d) practice and procedure of the Commission in the exercise of its functions under this Act; and

(e) delegation of its functions or powers.

63. The President may, by statutory instrument and on the recommendation of the Commission make regulations for the better carrying out of the purposes of this Act.

64. The Corrupt Practices Act, 1980, is hereby repealed.

FIRST SCHEDULE *(Section 4)*

FINANCIAL AND OTHER PROVISIONS

1. (1) The funds of the Commission shall consist of such moneys as may-
 - (a) be appropriated by the Parliament for the purposes of this Act;
 - (b) be paid to the Commission by way of grants or donations; and
 - (c) vest in or accrue to the Commission.
 - (2) The Commission may-
 - (a) subject to the approval of the President, accept money by way of grants or donations from any source; and
 - (b) subject to the approval of the President, raise by way of loans or otherwise, such money as it may require for the discharge of its functions.
 - (3) There shall be paid from the funds of the Commission-
 - (a) the salaries, allowances, pensions and loans of the staff;
 - (b) such reasonable travelling, transport and subsistence allowances for the Commissioners and members of any committee of the Commission, when engaged in the business of the Commission; and
 - (c) any other expenses incurred by the Commission in the performance of its functions.
- 2.** The financial year of the Commission shall be the period of twelve months ending on 31st December in each year.

3. (1) The Commission shall cause to be kept proper books of account and other records relating to its accounts.

(2) The accounts of the Commission shall be audited annually by the Auditor-General.

(3) The Auditor-General's fees shall be paid by the Commission. Accounts

4. (1) As soon as practicable, but not later than ninety days after the end of the financial year, the Commission shall submit to the President a report concerning its activities during the financial year.

(2) The report referred to in subsection (1) shall include information on the financial affairs of the Commission and there shall be appended to the report-

(a) an audited balance sheet;

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

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

(3) The President 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.

**SECOND SCHEDULE
(Section 19)**

OATH OF SECRETARY OR STAFF OF COMMISSION

I,..... having been appointed to exercise the functions of Secretary of the Commission/a member of the staff of the Commission, do swear/ affirm that I will not, directly or indirectly, reveal to any unauthorised person or otherwise than in the course or duty the contents or any part of the contents of any document, communication or information whatsoever which may come to my knowledge in the course of my duties as such.

SO HELP ME GOD

Sworn/Declared before me this..... day of..... ,
19.....

.....
Puisne Judge
