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ZIMBABWE MEDIA COMMISSION BILL, 2019

MEMORANDUM

This Bill makes additional provisions with regard to the Zimbabwe Media Commission which is established by section 248 of the Constitution and whose functions are detailed in section 249 of the Constitution with the objective to protect the rights to the freedom of expression and the freedom of the media granted under section 61 of the Constitution. The Bill will also extensively amend the Access to Information and Protection of Privacy Act [*Chapter 10:27*] by repealing all provisions relating to the regulation and control of the media. The Bill must be read with and subject to various provisions of the Constitution such as Part 1 of Chapter 12 relating to the nature of independent commissions supporting democracy of which the Zimbabwe Media Commission is one; Part 1 of Chapter 18 with respect to general and supplementary provisions relating to all constitutional commissions (covering the juristic status of Commissions, terms of office of members, funding of Commissions, etc); section 17 relating to gender balance. These aspects have not been restated in this Bill.

Essentially, the Bill elaborates on the functioning of the Media Commission. For ease of reference, the relevant provisions of Chapter 12 of the Constitution relating to the establishment and functions of the Commission are set out in *extenso* as a preamble to the Bill. So too is 61 which sets out the right to freedom of expression and freedom of the media.

In more detail, the Bill provides as follows:

Part 1: Preliminary

This Part deals with preliminary matters.

Clause 1 sets out the short title of the Bill as the Zimbabwean Media Commission Bill, 2019.

Clause 2 defines some of the terms used in the Bill. Of significance is the definition of “person” which points to the fact that government and governmental institutions are bound by this Bill.

Part II: Zimbabwe Media Commission and Staff

Clause 3 provides that only the chairperson shall be a fulltime member of the Commission. *Clause 4* provides additional functions of the Commission and these relate to ensuring compliance with any laws governing media practitioners and media services and any international instruments to which Zimbabwe is a party. The Commission is also enjoined to work together with other independent constitutional Commissions in supporting human rights and democracy. Other ancillary powers of the Commission are set out in the *First Schedule* to the Bill (*clause 4(2)*).

Clause 5 provides for additional matters relating to qualifications, vacation of office and the procedure at meetings of the Commission and these are detailed in the *Second Schedule* to the Bill.

Clause 6 provides for the appointment of the Deputy Chairperson of the Commission who must be of a different gender from the Chairperson.

Clause 7 provides for the appointment by the Commission of an executive Secretary and other staff of the Commission to run the affairs of the Commission but appointments must be made with the approval of the Minister, and the Minister responsible for finance.

The staff of the Commission are not members of the Civil Service but their offices are public offices. The functions of the Secretary are set out in *clause 7(3)*. Under *clause 7(4)*, experts may be appointed to provide such services with respect to the functions of the Commission as the Commission may require.

Part III: Investigations and hearings

Clause 8 of the Bill provides for the investigation by the Commission of any violation which falls to be investigated under this act. The investigation may follow a complaint made to the Commission or may be instigated by the Commission itself if it thinks that a violation has or is likely to occur. A complaint must be submitted to the Commission within 3 years of the occurrence of the action complained of. The Bill shall however not apply to actions which took place prior to its promulgation. Investigations will not extend to matters which may be before the courts or before any other independent Commission.

Clause 9 provides for the procedure for the submission of complaints and the obligations of the Commission where it declines to investigate or continue with the matter.

Clause 10 provides for the conduct of investigations or hearings and for that purpose, some provisions of the Commissions of Inquiry Act [*Chapter 10:07*] will apply with respect to the conduct of any investigations, inquiries or hearings of the Commission. If the circumstances so require and subject to the rights of the persons concerned, hearings or inquiries may be held in camera. Information disclosed in camera may not be disclosed to the public without the authority of the Commission or be used for the benefit of any member or staff of the Commission.

Under *clause 11*, the Commission may grant any person who has an interest in a matter before it an opportunity to make representations at the proceedings or to have access to or to comment on any representations made at any of its proceedings. The Commission is required to conclude any matter in the shortest possible time especially where time is of the essence in any such matter. Where time is of the essence, matters should be concluded within 60 days.

Under *clause 12*, the Commission, following the investigations, must produce its report, accompanied by its order or recommendations for the redress of the violation complained of.

Clause 13 provides for the enforcement of orders of the Commission by way of registration of such orders with the High Court. If an order is registered, it is enforceable as any judgment of the High Court.

Clause 14 requires that any member of the Commission who may have a conflict of interest with respect to any matter before the Commission not to participate in any proceedings relating to that matter and it is an offence on the part of any member who contravenes this clause. Any decision in which a member with a conflict of interest took part in may be voided.

Clause 15 authorises the Commission in its name, to pursue violations through the courts of its own motion or following any complaint made to it.

Clause 16 provides for appeals against the decisions of the Commission to the High Court.

Part IV: Financial provisions

Clause 17 of the Bill provides for the source of funds of the Commission which

is mainly the fiscus and as such, public finance management principles and audit requirements are to be observed by the Commission (*clauses 17-19*).

Part V: General provisions

Clause 20 requires the Commission to maintain proper records and the records can be accessed by the public on payment of a fee.

Clause 21 provides for the making of regulations by the Commission with the approval of the Minister.

The First and Second Schedules provide for matters which govern the Commission and for ancillary powers of the Commission. Matters which are the subject of provisions under the Constitution have not been repeated.

ARRANGEMENT OF SECTIONS

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4. Additional functions of Commission.
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8. Power to investigate.
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11. Rights of interested persons.
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FIRST SCHEDULE: Ancillary powers of Commission.

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BILL

TO make further provision with regard to functions of the Zimbabwe Media Commission; to provide for the manner in which the Commission exercises its functions; to provide for the investigation and hearing
5 procedure by the Commission of complaints received; to provide for the secretariat of the Commission; to bring the Commission into operation and to provide for matters connected with or incidental to the foregoing.

WHEREAS section 61 of the Constitution provides as follows—

“61 Freedom of expression and freedom of the media

- 10 (1) *Every person has the right to freedom of expression, which includes—*
 (a) *freedom to seek, receive and communicate ideas and other information;*
 (b) *freedom of artistic expression and scientific research and creativity; and*
 (c) *academic freedom.*
- 15 (2) *Every person is entitled to freedom of the media, which freedom includes protection of the confidentiality of journalists’ sources of information.*
- (3) *Broadcasting and other electronic media of communication have freedom of establishment, subject only to State licensing procedures that—*
 (a) *are necessary to regulate the airwaves and other forms of signal distribution; and*
20 (b) *are independent of control by government or by political or commercial interests.*
- (4) *All State-owned media of communication must—*

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- (a) *be free to determine independently the editorial content of their broadcasts or other communications;*
 - (b) *be impartial; and*
 - (c) *afford fair opportunity for the presentation of divergent views and dissenting opinions.* 5
- (5) *Freedom of expression and freedom of the media exclude—*
- (a) *incitement to violence;*
 - (b) *advocacy of hatred or hate speech;*
 - (c) *malicious injury to a person’s reputation or dignity; or*
 - (d) *malicious or unwarranted breach of a person’s right to privacy.* 10

AND WHEREAS section 248 to 250 of the Constitution provides as follows—

“248 Establishment and composition of Zimbabwe Media Commission

- (1) *There is a commission to be known as the Zimbabwe Media Commission consisting of—*
- (a) *a chairperson appointed by the President after consultation with the Committee on Standing Rules and Orders; and* 15
 - (b) *eight other members appointed by the President from a list of not fewer than twelve nominees submitted by the Committee on Standing Rules and Orders.*
- (2) *Members of the Zimbabwe Media Commission must be chosen for their integrity and their competence in administration and their knowledge and understanding of human rights issues and the best practices in media matters.* 20

249 Functions of Zimbabwe Media Commission

- (1) *The Zimbabwe Media Commission has the following functions—*
- (a) *to uphold, promote and develop freedom of the media;* 25
 - (b) *to promote and enforce good practices and ethics in the media;*
 - (c) *to monitor broadcasting in the public interest and, in particular, to ensure fairness and diversity of views broadly representing Zimbabwean society;*
 - (d) *to encourage the formulation of codes of conduct for persons employed in the media and, where no such code exists, to formulate and enforce one;* 30
 - (e) *to receive and consider complaints from the public and, where appropriate, to take action against journalists and other persons employed in the media or broadcasting who are found to have breached any law or any code of conduct applicable to them;* 35
 - (f) *to ensure that the people of Zimbabwe have fair and wide access to information;*
 - (g) *to encourage the use and development of all the officially recognised languages of Zimbabwe;*
 - (h) *to encourage the adoption of new technology in the media and in the dissemination of information;* 40
 - (i) *to promote fair competition and diversity in the media; and*
 - (j) *to conduct research into issues relating to freedom of the press and of expression, and in that regard to promote reforms in the law.*
- (2) *An Act of Parliament may confer power on the Zimbabwe Media Commission to—* 45

- (a) *conduct investigations and inquiries into—*
 (i) *any conduct or circumstance that appears to threaten the freedom of the media;*
 and
 (ii) *the conduct of the media;*
 and
 (b) *take or recommend disciplinary action against media practitioners who are found to have breached any law or any code of conduct applicable to them.*
- (3) *An Act of Parliament may provide for the regulation of the media.”;*

AND WHEREAS it is desirable, as provided by the Constitution, to make further provision with regard to the Zimbabwe Media Commission;

NOW, THEREFORE, be it enacted by the Parliament and the President of Zimbabwe as follows—

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PART I

PRELIMINARY

1 Short title

This Act may be cited as the Zimbabwe Media Commission Act, 2019.

2 Interpretation

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In this Act—

“act” or “action” includes an omission to act;

“appropriate Minister” in relation to section 12(2), means the Minister responsible for the relevant matter under consideration;

“Commission” means the Zimbabwe Media Commission;

25

“Committee on Standing Rules and Orders” means the committee referred to in section 151(2) of the Constitution;

“complaint” means a complaint made to the Commission in terms of this Act and “complainant” shall be construed accordingly;

30

“Deputy Chairperson” means the Deputy Chairperson of the Commission appointed in terms of section 6;

“legal representative” means the representative recognised by law of any person who has died, or is a minor, or of unsound mind, or is otherwise under a legal disability;

35

“media” means the various forms by which information is disseminated by any media service to the general public including the following forms—

(a) the print media; or

(b) broadcasting, whether by way of radio or television; or

(c) cable television; or

(d) the internet or any other electronic means; or

40

(e) any other form of dissemination of information which may be prescribed by the Minister;

“media practitioner” means a person engaged in the writing, editing or transmitting of news and information to the public, and includes a broadcaster, a journalist and an editor;

- “media service” means any public or private service for the provision of information to the general public through the media;
- “member”, unless the context otherwise indicates, means a member of the Commission and includes the Chairperson and Deputy Chairperson;
- “Minister” means the Minister of Information, Publicity and Broadcasting Services or any other Minister to whom the President may, from time to time, assign the administration of this Act; 5
- “order” includes recommendation;
- “principal officer,” in relation to any entity, means the head of the Ministry or department in question, or the chairperson of the governing body or chief executive officer of any entity, by whatever title such person may be called; 10
- “Secretary” means the Secretary of the Commission appointed in terms of section 7.

PART II 15

ZIMBABWE MEDIA COMMISSION AND STAFF

3 Discharge of functions by Commission

Members of the Commission other than the chairperson, shall not be fulltime employees of the Commission.

4 Additional functions of Commission 20

(1) In addition to the functions set out in section 249 of the Constitution, the Commission shall have the following functions—

- (a) to monitor and secure compliance with any—
 - (i) law which regulates media practitioners and media services including broadcasting, print and electronic media, in order to ensure respect for the rights protected by section 61 of the Constitution; 25
 - (ii) international treaty to which Zimbabwe is a party with respect to the protection, promotion or advancing of people’s rights in relation to the media in Zimbabwe;
- (b) to collaborate and co-operate with other independent constitutional Commissions in supporting and entrenching human rights and democracy. 30

(2) For the Commission to better discharge its functions, it shall have the powers specified in the First Schedule.

5 Disqualification for appointment and procedure at meetings

The Second Schedule shall apply with respect to— 35

- (a) additional disqualifications for appointment as a member of the Commission; and
- (b) the procedure to be followed by the Commission at its meetings.

6 Deputy chairperson of Commission

The members of the Commission shall elect one of their number to be the Deputy Chairperson of the Commission, who must be of a different gender from its Chairperson. 40

7 Secretary and other staff of Commission and experts

(1) The Commission shall, after consultation with the Minister and the Minister responsible for finance, appoint—

- (a) a Secretary; and
- 5 (b) such other staff of the Commission as may be necessary for the proper exercise of its functions.

(2) The offices of the Secretary and other members of staff of the Commission shall be public offices but shall not form part of the Civil Service.

(3) The Secretary shall, subject to the general control of the Commission—

- 10 (a) be responsible for carrying out the decisions of the Commission and the execution of the day-to-day administration and management of the affairs, staff and property of the Commission;
- (b) be the custodian of the Commission's records;
- (c) attend all meetings of the Commission, but shall have no vote on any matter before the Commission; and
- 15 (d) perform any other functions in connection with this Act as may be assigned to him or her by the Commission:

(4) The Commission—

- 20 (a) may appoint, on fixed term contracts, such experts, including experts from other countries, where no such expertise is available in Zimbabwe, as it may consider necessary to assist it in the exercise and performance of its functions in terms of the Constitution and this Act; and
- (b) shall fix the terms, conditions, remuneration and allowances payable to any expert and the work to be performed or service to be rendered by virtue of such appointment in a written agreement entered into between
- 25 the Commission and the expert concerned.

(5) The Commission shall require the expert to submit a report in regard to the work performed to the Commission for its consideration and, on receipt of the report, may refer the matter back to the expert—

- 30 (a) for such further attention as may be determined by the Commission; or
- (b) to perform such further work as the Commission may deem necessary or desirable.

PART III

INVESTIGATIONS AND HEARINGS

8 Power to investigate

(1) The Commission may on its own motion, investigate or inquire into any action on the part of any person that constitutes, or is likely to result in, a violation of any of the rights protected under section 61 of the Constitution.

40 (2) Any person who is aggrieved by any act in violation of any right protected under section 61 of the Constitution may make a written complaint to the Commission requesting it to investigate the act complained of.

(3) A complaint in terms of this section may be brought by a legal representative, a family member or any other person who the Commission considers suitable so to do, acting on behalf of another person who for any reason is unable to do so in his or her own behalf.

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- (4) The Commission shall not investigate, hear or inquire into any complaint—
 (a) unless the complaint is submitted to it within three years of the date the action complained of occurred:

Provided that such investigation, hearing or inquiry shall not relate to any action that occurred before the date of commencement of this Act;
 or

- (b) where the action complained of is the subject of any court proceedings or of any investigation, hearing or inquiry by any other independent Commission.

9 Submission of complaints

(1) The Commission shall, in regulations made in terms of this Act, prescribe the form in which complaints shall be made, indicating the particulars to be provided in the prescribed form and any supporting documents to accompany the form.

(2) The Commission shall not refuse to investigate, hear or inquire into a complaint solely on the grounds that the complaint is not in the prescribed form or in any way fails to comply with any of the prescribed requirements.

(3) If the Commission for any lawful reason refuses to investigate or discontinues any investigation, hearing or inquiry, it shall in writing—

- (a) inform the complainant and the person against whom the complaint is made of its decision, stating the reasons for its decision; and
 (b) where appropriate, advise the complainant of any other remedy that appears to it to be available to him or her.

10 Conduct of investigations

(1) Subject to subsection (7), the Commission may in its discretion conduct an investigation, hearing or inquiry in the form of public or closed proceedings.

(2) The principal officer of any entity shall represent the entity in any dealings with the Commission.

(3) For the purposes of any investigation, hearing or inquiry in terms of this Act, the powers, rights and privileges of members of the Commission shall be the same as those conferred upon a commissioner by the Commissions of Inquiry Act [Chapter 10:07], other than the power to order a person to be detained in custody, and sections 9 to 18 of that Act shall apply, *mutatis mutandis*, in relation to an inquiry by the Commission under this Act and to a person summoned to give evidence or giving evidence at the inquiry.

(4) The Commission may request the assistance of the police during an investigation, hearing or inquiry.

(5) In the conduct of any investigation, hearing or inquiry, the Commission shall not be bound by the strict rules of evidence, and may ascertain any relevant fact by any means which it thinks fit subject to the rules of natural justice.

(6) The Commission shall afford the person against whom a complaint has been made an adequate opportunity to respond to such allegations.

(7) Subject to section 86 (1) and (2) of the Constitution, the Commission may, having regard to any special circumstances of the case based on the grounds of public interest, which grounds shall be recorded in writing, hold any inquiry or hearing *in camera* and any information disclosed *in camera* may only be disclosed to any person—

(a) without disclosing the identity of any person who gave the information *in camera* for the purposes of the investigation, hearing or inquiry and for any report to be made thereon; or

5 (b) for the purposes of any proceedings for perjury alleged to have been committed in the course of an investigation, hearing or inquiry.

(8) The Minister may, at any stage during the investigation or hearing of or inquiry into a complaint by the Commission, produce to the Commission a certificate in writing signed by him or her to the effect that the disclosure of any information specified in the certificate is, in his or her opinion and subject to section 86(1) and (2) of the Constitution, contrary to the public interest on the grounds that it may prejudice the defence, external relations, internal security or economic interests of the state, whereupon the Commission shall make arrangements for any such information to be given *in camera* and shall take such other action as may be necessary or expedient to prevent the disclosure of that information.

15 (9) The complainant may, in accordance with the Administrative Justice Act [Chapter 10:28], appeal against a certificate issued in terms of subsection 8, and the court hearing the appeal shall treat any evidence or documentation subject to the certificate in the manner specified in section 8 of that Act.

20 (10) The law relating to the competence or compellability of any person on the grounds of privilege to give evidence answer any questions or produce any record or document before the Commission shall apply.

25 (11) Any member of the Commission or member of staff of the Commission who, without the authority of the Commission, discloses any information, evidence or documentation referred to in subsection (7) or (8), or makes any use of such information for his or her own benefit, shall be guilty of an offence and liable to a fine not exceeding level 12 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

11 Rights of interested persons

30 (1) The Commission shall give every person who has an interest in a matter an opportunity to make representations during any investigation, hearing or inquiry.

(2) The Commission may determine whether—

(a) representations are to be made orally or in writing; and

35 (b) any other person is entitled to be present during any proceedings or to have access to or to comment on representations made to the Commission by another person.

(3) Every person appearing before the Commission at any investigation, hearing or inquiry may be represented at the proceedings by a legal practitioner.

(4) Any investigation, hearing or inquiry into any matter shall be completed—

40 (a) where time is of the essence, within the shortest possible time in order to afford the complainant an appropriate remedy in such circumstances;

(b) in any other case, within a period not exceeding 60 days from the date of the complaint.

12 Measures following investigation

45 (1) If, after conducting an investigation, hearing or inquiry, the Commission is of the opinion that the act complained of constitutes a violation in terms of this Act and that—

- (a) the act relates to a decision or practice on the part of any person which must be stopped, reversed or altered; or
- (b) the act should be redressed in such manner as the Commission may order; or
- (c) any law on which the act or omission was based should be reconsidered; 5
or
- (d) reasons should have been given for the decision complained against; or
- (e) any other steps should be taken in relation to the act complained against;

the Commission shall make such order or recommendations in the matter as it considers appropriate in the circumstances for the redress of the violation and the order or recommendations shall be accompanied by reasons therefor and by a report of the findings of the Commission. 10

(2) If the report makes any recommendation in terms of subsection (1)(c), a copy of the report shall be sent to the Minister or any other appropriate Minister having regard to the administration of the law concerned. 15

(3) The Commission may, where it considers it necessary, recommend—

- (a) the payment of compensation to the complainant; or
- (b) that the complainant seek redress through the courts.

(4) The determination of the Commission following the conclusion of any investigation, hearing or inquiry shall be in writing and a copy shall be made available to the parties and any other party considered by the Commission to have an interest in the matter. 20

13 Enforcement of orders of Commission

(1) The Commission shall require the person against whom or which it made any order or recommendation to notify it, within a specified period not exceeding 14 days or such shorter period as the circumstances of the matter may reasonably require where time is of the essence, of the steps, if any, that it proposes to take to give effect to its order or recommendation. 25

(2) If no action has been taken within the time specified in subsection (1), the Commission may, if it thinks fit after considering the comments, if any, made by the parties concerned— 30

- (a) notwithstanding subsection (3), apply to the High Court for an appropriate redress of the matter; and
- (b) cause a special report to be submitted, through the Minister or appropriate Minister, to Parliament on the matter. 35

(3) Subject to this section, the Commission or a complainant may apply to the High Court within three years of the date of an order, and in such form and manner prescribed in rules of the court, for the registration of any order made by the Commission in terms of section 12 and, upon registration, the order may be enforced in the same way as a judgment of the High Court. 40

14 Conflicts of interest

(1) A member of the Commission shall not in any way participate in, nor be present at, any proceedings before the Commission in which the member is aware that he or she has a direct or indirect interest that may be in conflict with his or her functions as a member of the Commission. 45

(2) If at any stage during the course of any proceedings before the Commission it appears that any member has or may have an interest which may cause such a conflict of interests to arise on his or her part—

- 5 (a) the member shall forthwith and fully disclose the nature of his or her interest and leave the proceedings so as to enable the remaining members to discuss the matter and determine whether the member is precluded from participating in such meeting by reason of a conflict of interests; and
- 10 (b) such disclosure and the decision taken by the remaining members regarding such determination, shall be recorded in the minutes of the proceedings in question.

(3) If any member of the Commission wilfully partakes in the proceedings of the Commission concerning any matter in respect of which he or she knows that he or she has a direct or indirect interest that conflicts with his or her functions as a member—

- 15 (a) he or she shall be guilty of gross misconduct and dealt with in accordance with section 237(3) of the Constitution;
- (b) the decision of the Commission concerning such matter shall be void if the deliberations or vote of the member was decisive in bringing the decision about.

15 Commission may institute actions for redress of violations

20 (1) The Commission may, if it thinks fit, where it has completed an investigation, hearing or inquiry in respect of any violation in terms of this Act, of its own motion or on the basis of a complaint made to it, in its own name or on behalf of any complainant or class of complainants, pursue any action in any court of competent jurisdiction for the redress of any violation and, where it acts on the basis of a complaint, be cited as
25 a joint party with the complainant or class of complainants in question.

(2) Where the Commission institutes any action against the State, the provisions of the State Liabilities Act [*Chapter 8:14*] shall apply to such action.

16 Appeals from decisions of Commission

30 (1) Any person who is aggrieved at any order or finding of the Commission in terms of this Act may appeal to the High Court within 30 days of the date of the order, recommendation or finding concerned.

(2) The High Court shall not set aside any order or finding by reason only of any informality in the proceedings of the Commission which did not in any way prejudice the appellant in any proceedings before the Commission.

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PART IV

FINANCIAL PROVISIONS

17 Funds of Commission

- (1) The funds of the Commission shall consist of—
- 40 (a) such moneys as may be payable to the Commission from moneys appropriated for the purpose by an Act of Parliament.
- (b) any donations, grants or bequests made by any person or organisation or any government of any country to the Commission:

Provided that the Commission shall accept such donations, grants or bequests after it has consulted the Minister;

- 45 (c) fees, levies and charges for services rendered by the commission to its clients:

(d) and any other moneys that vest in or accrue to the Commission, whether in terms of this Act or otherwise.

(2) The Commission shall ensure that fees, levies and charges referred to in subsection 1(c)—

- (a) are prescribed by regulations with the approval of the Minister; 5
- (b) uphold, promote and develop freedom of the media.

(3) The Commission shall apply its funds to the fulfilment of its functions and shall further observe public finance management principles established in terms of section 298 of the Constitution.

18 Accounts of Commission and appointment of internal auditor 10

(1) The Commission shall ensure that proper accounts and other records relating to such accounts are kept in respect of all the activities, funds and property of the Commission, including such particular accounts and records as provided for by the Public Finance Management Act [*Chapter 22:19*].

(2) As soon as possible after the end of each financial year, the Commission shall prepare and submit to the Minister a statement of accounts in respect of that financial year or in respect of such other period as provided for by the Public Finance Management Act [*Chapter 22:19*]. 15

(3) Upon receiving the report in terms of subsection 2, The Minister shall within 28 seating days of the Parliament, lay such report before Parliament. 20

19 Audit of accounts

(1) The accounts of the Commission shall be audited by the Auditor-General who, for that purpose, shall have the powers and functions conferred on him or her by sections 7 and 8 of the Audit Office Act [*Chapter 22:18*].

(2) Any person under the authority or supervision of the Commission who refuses to provide the Auditor-General with an explanation or information required by him or her for the purposes of an audit or knowingly provides the Auditor-General with a false explanation or information, or an explanation or information that the person has no grounds for believing to be true, shall be guilty of an offence and liable to a fine not exceeding level 8 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment. 25 30

(3) Notwithstanding anything to the contrary contained in subsection (1), the Auditor-General may appoint a suitably qualified person to audit the accounts of the Commission and if he or she does so—

- (a) subsections (1) and (2) shall apply in respect of the person so appointed as if he or she were the Auditor-General; and 35
- (b) any expenses incurred by the person so appointed in carrying out the audit shall be met from the funds of the Commission.

PART V

GENERAL PROVISIONS 40

20 Records of Commission

(1) In addition to the minutes it is required to keep in terms of this Act, the Commission shall keep proper records of all its proceedings, findings, orders and recommendations made in terms of this Act.

(2) The records referred to in subsection (1) shall be kept at the offices of the Commission and be open to inspection by interested parties during normal office hours.

(3) The Commission shall, at the request of any member of the public and on payment of such fee as may be prescribed, furnish him or her with a certified copy of or an extract from any record.

21 Regulations

(1) The Commission, with the approval of the Minister, may make regulations providing for all matters which by this Act are required or permitted to be prescribed or which, in its opinion, are necessary or convenient to be provided for in order to carry out or give effect to this Act.

(2) Regulations may provide for the terms and conditions of service of the Secretary and staff of the Commission.

(3) Regulations may provide for offences and penalties which may be imposed for contraventions of the regulations, not exceeding a fine of level 6 or imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

FIRST SCHEDULE (Section 4(2))

ANCILLARY POWERS OF COMMISSION

1. To acquire premises necessary or convenient for the exercise of its functions and for that purpose to buy, take on lease or in exchange, hire or otherwise acquire immovable property and any interest therein and any rights concessions, grants, powers and privileges in respect thereof.
2. To buy, take in exchange, hire or otherwise acquire movable property necessary or convenient for the exercise of its functions.
3. To maintain, alter or improve property acquired by it.
4. To mortgage any assets, or part of any assets and, with the approval of the Minister, to sell, exchange, lease, dispose of turn to account or otherwise deal with any assets or part of any assets which are not required for the exercise of its functions for such consideration as it may determine.
5. To open bank accounts in the name of the Commission and to draw, make, accept, endorse, discount, execute and issue for the purposes of its functions promissory notes, bills of exchange, securities and other negotiable or transferable instruments.
6. To insure against losses, damages, risks and liabilities which it may incur.
7. With the approval of Minister, to establish and administer such funds and reserves not specifically provided for in this Act as the Commission considers appropriate or necessary for the proper exercise of its functions.
8. To pay such remuneration and allowances and grant such leave of absence and to make such gifts, bonuses and the like to staff of the Commission as it considers fit.
9. To provide pecuniary benefits for staff of the Commission on their retirement, resignation, discharge or other termination of service or in the event of their sickness or injury and for their dependents, and for that purpose to effect policies of insurance, provident funds or make such other provision as may be necessary to secure for its staff and their dependents any or all of the pecuniary benefits to which the provisions of this paragraph relate.
10. To purchase, take on lease or in exchange or otherwise acquire land for residential purposes or dwellings-houses for use or occupation by staff of the Commission.

11. To construct dwellings, outbuildings or improvements for use or occupation by members of the Commission.
12. To provide or guarantee loans made to members of the Commission for the purchase of dwelling-houses or land for residential purposes, the construction of dwelling-houses and the improvement of dwelling houses or land which are the property of its members, subject to any conditions that may be imposed by the Commission from time to time. 5
13. To provide security in respect of loans by the deposit of securities, in which the Commission may invest such money as it may consider necessary for the purpose.
14. Subject to any conditions that may be imposed by the Commission from time to time, to provide loans to any members of the Commission— 10
 - (a) for the purpose of purchasing vehicles or other equipment to be used by the members in carrying out their duties; or
 - (b) not exceeding six months' salary or wages payable to the members concerned, for any purpose on such security as the Commission thinks adequate. 15
15. To do anything for the purpose of improving the skill, knowledge or usefulness of members of the Commission, and in that connection to provide or assist other persons in providing facilities for training, education and research, including the awarding of scholarships for such training.
16. To engage in any activity, either alone or in conjunction with civil society organisations and other organisations or international agencies, to promote better understanding of gender issues. 20
17. To do anything which by this Act or any other enactment is required or permitted to be done by the Commission.
18. Generally to do all such things that are conducive to the performance of the functions of the Commission in terms of this Act or any other enactment. 25

SECOND SCHEDULE (*Section 5*)

PROVISIONS APPLICABLE TO COMMISSION

Section

1. Disqualification for appointment to Commission. 30
2. Vacation of office by members of Commission.
3. Procedure of Commission.
4. Committees of Commission.
5. Minutes of proceedings.
6. Validity of decisions and acts of Commission. 35

Disqualification for appointment to Commission

1. In addition to sections 236 and 320(3) of the Constitution, a person shall not be qualified for appointment as a member of the Commission, nor shall he or she hold office as a member, if—
 - (a) he or she is not a citizen of Zimbabwe or ordinarily resident in Zimbabwe; or 40
 - (b) in terms of the law in force in any country—
 - (i) he or she has been adjudged or otherwise declared insolvent or bankrupt and has not been rehabilitated or discharged; or

- (ii) he or she has made an assignment to or composition with his or her creditors which has not been rescinded or set aside; or
- (c) he or she is, or, within the period of five years immediately preceding his or her proposed appointment, he or she has been sentenced in any country to a term of imprisonment imposed with or without the option of a fine, whether or not any portion thereof has been suspended, and has not received a free pardon; or
- (d) he or she is convicted in any country of any offence involving dishonesty.

Vacation of office by members of Commission

2. (1) A member may resign from his or her office at any time by giving the Minister and the Commission at least one month's notice of his or her intention to resign such other period of notice as he or she and the Minister may agree.

(2) In addition to section 236 of the Constitution, a member shall immediately cease to hold office and his or her office shall become vacant if he or she becomes disqualified in terms of paragraph 1.

Procedure of Commission

3. (1) Subject to subparagraph (2), the Commission shall meet at such dates, times and places as may be fixed by the chairperson:

Provided that the Commission shall meet at least once every 3 months.

(2) The chairperson—

- (a) may convene a special meeting of the Commission at any time; and
- (b) shall convene a special meeting of the Commission on the written request of at least 2 members, which meeting shall be convened for a date not sooner than seven days and not later than 30 days after the chairperson's receipt of the request.

(3) Written notice of a special meeting convened in terms of subparagraph (2) shall be sent to each member not later than 48 hours before the meeting and shall specify the business for which the meeting has been convened:

Provided that a failure by a member to receive such a notice, or an inadvertent failure to send a notice to a member, shall not invalidate the meeting.

(4) No business shall be discussed at a special meeting convened in terms of subparagraph (2) other than—

- (a) such business as may be determined by the chairperson where he or she convened the meeting in terms of subparagraph (2)(a); or
- (b) the business specified in the request for the meeting, where the chairperson convened the meeting in terms of subparagraph (2)(b).

(5) In the absence of the chairperson the deputy chairperson shall preside over the meeting of the Commission as chairperson.

(6) In the absence of the chairperson or deputy chairperson, the members present shall, if they constitute a quorum, elect one of their number to preside over the meeting of the Commission as chairperson.

(7) At any meeting of the Commission, five members of the Commission shall form a quorum.

(8) Any decision of the Commission shall be decided by a majority vote of the members at that meeting.

(9) At all meetings of the Commission each member present shall have 1 vote on each question before the Commission:

(10) With the approval of the Commission, the chairperson may invite any person to attend a meeting of the Commission where the chairperson considers that the person has special knowledge or experience in any matter to be considered at the meeting. 5

(11) A person invited to attend a meeting of the Commission under subparagraph (9) may take part in the meeting as if he or she were a member of the Commission, but shall not have a vote on any question before the meeting.

(12) Any proposal circulated among all members of the Commission and agreed to in writing by a majority of them shall have the same effect as a resolution passed at a duly constituted meeting of the members and shall be incorporated into the minutes of the next meeting of the Commission: 10

Provided that, if a member requires that such a proposal be placed before a meeting of the Commission, this subparagraph shall not apply to the proposal. 15

(13) Except as otherwise provided in this paragraph, the procedure for the convening and conduct of meetings of the Commission shall be as fixed from time to time by the Commission.

Committees of Commission

4. (1) For the better exercise of its functions, the Commission may establish one or more committees in which it may vest such of its functions as it considers appropriate. 20

(2) The vesting of a function in a committee in terms of subparagraph (1)—

(a) may be made absolutely or subject to conditions and may be amended or withdrawn at any time; and

(b) shall not divest the Commission of that function; 25

and the Commission may amend or rescind any decision of the committee in the exercise of that function.

(3) On the establishment of a committee under subparagraph (1) the Commission—

(a) shall appoint at least one of its members as a member of the committee, and that member or one of those members designated by the Commission, as the case may be, shall be chairperson of the committee; and 30

(b) may appoint as members of the committee persons who are not members of the Commission and fix the terms and conditions of their appointment.

(4) Meetings of a committee may be convened at any time and at any place by the chairperson of the committee. 35

(5) If the chairperson of the committee is absent from a meeting of the committee, the members present may elect one of their members to preside at that meeting as chairperson.

(6) A majority of members of a committee shall form a quorum at any meeting of a committee. 40

(7) Anything authorised or required to be done by a committee may be decided by a majority vote at a meeting of the committee at which a quorum is present.

(8) At all meetings of a committee each member present shall have one vote on each question before the committee:

(9) Subject to this paragraph, the procedure to be followed at any meeting of a committee shall be fixed by the Commission.

Minutes of proceedings

5 5. (1) The Commission shall cause minutes to be taken at its meetings and at meetings of its committees and enter them in books kept for the purpose.

10 (2) Any minutes which purport to be signed by the person presiding at the meeting to which the minutes relate or by the person presiding at the next following meeting of the Commission or committee, as the case may be, shall be accepted for all purposes as *prima facie* evidence of the proceedings and decisions taken at the meeting concerned.

(3) The Commission and any committee of the Commission shall cause copies of all minutes that have been signed to be sent to the Minister for his or her information.

Validity of decisions and acts of Commission

15 6. (1) No decision or act of the Commission or act done under the authority of the Commission shall be invalid solely because there were 1 or more vacancies on the Commission when the decision was taken or the act was done or authorised or a disqualified person partook in the act or decision.

20 (2) If any decision or other act of the Commission is rendered invalid through a procedural irregularity, the Commission may at a duly convened meeting ratify the decision or act, and any decision or act so ratified shall be valid in all respects with effect from the date of its ratification.

