

NATIONAL PEACE AND RECONCILIATION COMMISSION BILL, 2017

Memorandum

The individual clauses of the Bill are explained below:

Clause 1

Provides for the short title of the Bill.

Clause 2

Provides for definitions of words in the Bill. To this end, words like Commission, seal, Executive Secretary, Minister are defined for ease of reference.

Clause 3

Provides for additional functions of the Commission as original functions are established in terms of the Constitution. This Clause also seeks to provide for procedures to be followed by Members of the Commission when conducting the meetings. It also provides for the manner in which vacancies may be filled. The same Clause confers ancillary powers upon the Commission which may help the Commission better discharge its functions.

Clause 4

Reinforces the independence of the Commission established in terms of section 235 of the Constitution.

Clause 5

Empowers the President to, by proclamation, set the seal for the Commission. The seal must be in the custody of the Executive Secretary.

Clause 6

Gives the Commission powers to establish offices throughout the country. The Commission has to establish such offices in consultation with the Minister and the Minister responsible for Finance. The offices established must be accessible to all people. Where necessary, the Commission may request the co-operation of certain entities for the Commission to better perform its functions.

Clause 7

Reiterates the procedures for the Members of the Commission as set up in the Constitution.

Clause 8

Confers investigative functions upon the Commission. The Commission has got powers to make investigations. The Commission must not investigate any matter which is pending before any competent court.

Clause 9

Sets out the investigation procedures for the Commission. In its hearing procedures, the Commission must not be bound by strict rules of evidence. Any person who is called to appear before the Commission to defend the allegations raised against him or her must be afforded fourteen working days to respond in writing. Any person appearing

before the Commission is entitled to be represented by the Legal Practitioner of his or her choice at his or her own expense. This Clause obliges Members of the Commission and their staff not to disclose information obtained except in special circumstances. The Minister responsible for National Security may issue a certificate to the effect that certain evidence or documentation must only be disclosed in camera in the best interest of defence, national security, external relations and the like. Any person who is dissatisfied by the decision of the Minister may appeal to the Commission while any appeal against the decision of the Commission lies with the Administrative Court.

Clause 10

Provides for inadmissibility of incriminating evidence. Only the person who may be compelled by the Commission to testify before the Commission will enjoy this privilege.

Clause 11

Compels persons who appear before the Commission to make an affirmation before they testify.

Clause 12

Establishes various offences for violating the provisions of this Bill. Such offences are to empower the Commission to better discharge its functions without any form of disturbance.

Clause 13

Confers upon the Commission power to make an establishment of its staff.

Clause 14

Gives power to the Commission to appoint the Executive Secretary who must assist the Commission in the discharge of its functions.

Clause 15

Provides for the manner in which various reports may be submitted to Parliament by the Commission through the Minister.

Clause 16

Provides for various sources of the Commission's funds.

Clause 17

Compels the Commission to keep proper books of account. The Commission is allowed to appoint an Internal Auditor in terms of this Clause.

Clause 18

Of the Bill provides for procedures for auditing of the Commission's books of accounts. In terms of this Clause, the Auditor General is empowered to audit the accounts of the Commission. Any person who fails to co-operate with the Auditor General shall be guilty of an offence.

Clause 19

Confers upon the Commission power to make regulations which shall be of no force unless they have been approved by Parliament.

NATIONAL PEACE AND RECONCILIATION COMMISSION BILL, 2017

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Presented by the Minister of finance and Economic development

BILL

To put the National Peace and Reconciliation Commission into operation;
to confer additional jurisdiction on the Commission, including the
5 investigative powers, to provide for the terms of office, conditions
of service, qualifications and vacation of office of Members of the
National Peace and Reconciliation Commission and the appointment
of the Executive Secretary; and to provide for matters connected with
or incidental to the foregoing.

10 WHEREAS sections 251 to 253 of the Constitution provide as follows:

“251 ***Establishment and composition of National Peace and
Reconciliation Commission***

(1) *For a period of ten years after the effective date, there is a commission
to be known as the National Peace and Reconciliation Commission consisting of—*

- 15 (a) *a chairperson appointed by the President after consultation with the
Judicial Service Commission and the Committee on Standing Rules
and Orders; and*
- (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.*
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(2) *The chairperson of the National Peace and Reconciliation Commission
must be a person who has been qualified for at least seven years to practise as a
legal practitioner in Zimbabwe.*

H.B. 2, 2017.]

(3) *If the appointment of a chairperson to the National Peace and Reconciliation Commission is not consistent with a recommendation of the Judicial Service Commission, the President must cause the Committee on Standing Rules and Orders to be informed as soon as practicable.*

(4) *Members of the National Peace and Reconciliation Commission must be chosen for their integrity and their knowledge and understanding of, and experience in, mediation, conciliation, conflict prevention and management, post-conflict reconciliation or peace building.*

252 Functions of National Peace and Reconciliation Commission

The National Peace and Reconciliation Commission has the following functions—

- (a) *to ensure post-conflict justice, healing and reconciliation;*
- (b) *to develop and implement programmes to promote national healing, unity and cohesion in Zimbabwe and the peaceful resolution of disputes;*
- (c) *to bring about national reconciliation by encouraging people to tell the truth about the past and facilitating the making of amends and the provision of justice;*
- (d) *to develop procedures and institutions at a national level to facilitate dialogue among political parties, communities, organisations and other groups, in order to prevent conflicts and disputes arising in the future;*
- (e) *to develop programmes to ensure that persons subjected to persecution, torture and other forms of abuse receive rehabilitative treatment and support;*
- (f) *to receive and consider complaints from the public and to take such action in regard to the complaints as it considers appropriate;*
- (g) *to develop mechanisms for early detection of areas of potential conflicts and disputes, and to take appropriate preventive measures;*
- (h) *to do anything incidental to the prevention of conflict and the promotion of peace;*
- (i) *to conciliate and mediate disputes among communities, organisations, groups and individuals; and*
- (j) *to recommend legislation to ensure that assistance, including documentation, is rendered to persons affected by conflicts, pandemics or other circumstances.*

253 Reports of National Peace and Reconciliation Commission

In addition to the report it is required to submit in terms of section 323, the National Peace and Reconciliation Commission may, through the appropriate Minister, submit reports to Parliament on particular matters relating to national peace and reconciliation which, in the Commission's opinion, should be brought to the attention of Parliament.

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

PART I

Preliminary

1 Short title

This Act may be cited as the National Peace and Reconciliation Commission Act, 2017, [Chapter 10:32].

2 Interpretation

In this Act—

“annual report” means the annual report of the Commission referred to in section 15(1);

5 “Commission” means the National Peace and Reconciliation Commission established in terms of section 251 of the Constitution;

“Constitution” means the Constitution of Zimbabwe Amendment (No. 20) Act 2013;

10 “dispute” or “conflict” means any dispute or conflict of a kind falling within the scope of the Commission’s constitutional mandate;

“Executive Secretary” means the Executive Secretary of the Commission appointed in terms of section 14 as read with section 13(2);

15 “Member” means a Member of the National Peace and Reconciliation Commission or a Member of any other Commission as the context may suggest and “Members” shall be construed accordingly;

“Minister” means Minister of National Healing, Peace and Reconciliation or any other Minister to whom the President may, from time to time, assign the administration of this Act;

20 “pardon” means forgiveness, exemption or discharge from criminal prosecution, civil processes or any other form of punishment by the State for acts or omissions for which pardon may be recommended under this Act;

“President” means the President for the Republic of Zimbabwe;

“seal” means seal of the Commission provided for in terms of section 5.

PART II

25 national Peace and Reconciliation Commission

3 Procedure, powers and functions of Commission

(1) The First Schedule shall apply in relation to—

- (a) qualifications of Members;
- (b) terms and conditions of office of Members;
- 30 (c) vacation of office and removal from office of Members;
- (d) the procedure to be followed by the Commission at its meetings;
- (e) the manner in which Members are expected to disclose certain interests;
- (f) other matters which are crucial for the proper functioning of the Commission.

35 (2) Subject to the functions set out in section 252 of the Constitution and this Act, for the better exercise of its functions the Commission shall, in addition, have power:

- (a) to conduct investigations into any dispute or conflict within the mandate of the Commission as set out in section 252 of the Constitution or as provided by any other law; and
- 40 (b) to conduct research on the—
 - (i) nature, scope, extent and causes of disputes and conflict subject to the constitutional mandate of the Commission; or
 - (ii) intervening strategies of disputes and conflict referred to in
 - 45 subparagraph (i);

- (c) to perform any other function that the Commission may be required or permitted to do by or under this Act or any other enactment; and
- (d) subject to the provisions of section 342 of the Constitution, to do or cause to be done, either by itself or through its agents, all or any of the things specified in the Second Schedule, either absolutely or conditionally and either solely or jointly with others. 5

4 Independence of Commission

The Commission shall enjoy the independence provided for in terms of section 235 of the Constitution and shall only be subject to the direction of the law.

5 Seal of Commission 10

(1) The Commission shall have for use as occasion may require, a seal of such design as may be prescribed by the President by proclamation in the *Gazette*.

(2) The seal of the Commission shall be kept in the custody of the Executive Secretary.

6 Offices and operations of Commission 15

(1) The head office and any other offices of the Commission shall be situated at places to be determined by the Commission in consultation with the Minister and the Minister responsible for Finance.

(2) All the offices established by the Commission must be accessible to members of the public including people who use public transport as well as people with disabilities. 20

(3) Subject to its mandate and for the purpose of carrying out its functions the Commission shall—

- (a) operate throughout the country; and
- (b) during discharge of its mandate, request support from existing institutions including any Independent Commission, local government, civil society organisations, media, faith-based institutions and other institutions that the Commission may deem necessary for the execution of its mandate, that will not compromise its independence. 25

(4) Where the Commission requires any act to be carried out and the Commission has not been empowered by law to carry out such act, the Commission shall call upon any institution of Government which is empowered by law to carry out such act and such institution shall be obliged to exercise its power at the request of the Commission. 30

(5) The Commission may make a report to the Parliament of any Government institution which refuses to co-operate with the Commission and the Parliament may, through the Chairperson of the relevant portfolio committee, require such institution to appear before the Parliament and explain why such institution has refused to co-operate with the Commission. 35

7 Removal of Members from Office

A Member may be removed from office only in terms of section 237(2) and (3) as read with section 187 of the Constitution. 40

PART III

Investigative Function of National Peace and Reconciliation
Commission

8 Investigative function of Commission

5 (1) Any person affected by any dispute or conflict arising out of any action or omission on the part of an authority or person, may, in any one of the officially recognised languages, make an oral or written complaint to the Commission requesting it to investigate such action or omission.

10 (2) When a person by whom a complaint might have been made under this section has died or is for any reason unable to act for himself or herself, the complaint may be made by his or her legal representative or a member of his or her family or such other person as the Commission considers suitable to represent him or her.

(3) The Commission shall not investigate a complaint where the action or omission complained of is the subject matter of civil proceedings before any court of competent jurisdiction.

15 **9 Manner of conducting investigations**

(1) Subject to this section, (concerning non-disclosure of certain evidence), the Commission may in its discretion conduct an investigation in the form of a public or closed hearing, for which purpose the Commission shall have the following powers—

- 20 (a) to issue a *subpoena* to any person to attend before the Commission and to produce any document or record as relevant evidence to any investigation by the Commission; and
- (b) to put such questions to any person as the Commission considers will assist its investigation of the matter in question; and
- 25 (c) to require any person questioned by it to answer such questions and to disclose any information within such person's knowledge which the Commission considers relevant to any investigation by it; and
- (d) during an investigation, to request the assistance of the Zimbabwe Republic Police Officer-In-Charge of a Police Station for the relevant area and such Officer-In-Charge shall be obliged to assist upon such request being made.

30 (2) In conducting a hearing, the Commission shall not be bound by the strict rules of evidence, and it may ascertain any relevant fact by any means which it thinks fit and which is not unfair or unjust to any party.

35 (3) The Commission shall afford any person who is alleged to be directly or indirectly responsible for perpetrating, implementing, perpetuating or permitting the continuance of any violence, dispute or conflict fourteen working days from the date when he or she is notified of the allegations in writing by the Commission to respond to such allegations in writing.

(4) Any person appearing before the Commission may be represented by a legal practitioner at his or her own expense.

40 (5) Information obtained by the Commission or any member of its staff at a closed hearing shall not be disclosed to any person except—

- (a) without disclosing the identity of any person who gave the information in confidence, for the purposes of the investigation and for any report to be made thereon; or
- 45 (b) for the purposes of any proceedings for perjury alleged to have been committed in the course of an investigation.

(6) Pursuant to the provisions of section 86 of the Constitution, the Minister responsible for National Security may, at any stage during an investigation by the Commission, issue and lodge with the Commission a certificate to the effect that the disclosure of any evidence or documentation or class of evidence or documentation is, in his or her opinion, 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 evidence relating to that matter to be heard in camera at a closed hearing and shall take such other action as may be necessary or expedient to prevent the disclosure of that matter: 5

Provided that the Commission shall forthwith inform and explain to anyone who may be aggrieved by the issuance of such certificate of his or her right to appeal to the Commission against the issuance of such certificate. 10

(7) Any person who is dissatisfied by the issuance of the certificate referred to in subsection (6) may, within fourteen days, appeal to the Commission.

(8) Upon hearing the appeal noted in terms of subsection (7), the Commission may confirm, vary or set aside the certificate issued by the Minister. 15

(9) Any person who is dissatisfied by the decision of the Commission may, within fourteen days, appeal to the Administrative Court.

(10) Upon hearing an appeal in terms of subsection (9), the Administrative Court may— 20

- (a) confirm, vary or set aside the decision of the Commission;
- (b) make such order as to the costs of the appeal as it thinks fit.

(11) Any person who—

- (a) has been *subpoenaed* by the Commission to give evidence or to produce any documentation, for the purposes of an investigation and who fails to attend or to remain in attendance until excused by the Commission from further attendance, or refuses without sufficient cause, the onus of proof whereof lies upon him or her, to be sworn as a witness or to answer fully and satisfactorily a question lawfully put to him or her, or to produce the evidence or documentation requested; or 25
- (b) gives false evidence to the Commission, knowing such evidence to be false or not knowing or believing it to be true; 30

shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

(12) The Commission shall guarantee the safety and protection of any witness before, during and after the hearing of any matter before it and before other committees appointed by the Commission. 35

(13) Any person who—

- (a) threatens; or
- (b) victimises; or
- (c) without lawful cause, discourages; or dissuades; 40

any person from testifying before the Commission or before other committees appointed by the Commission shall be guilty of an offence and liable to a fine not exceeding level twelve or to imprisonment for a period not exceeding ten years or to both such fine and such imprisonment.

(14) Sections 196 and 197 of the Criminal Procedure and Evidence Act [Chapter 9:07] shall apply with necessary changes to all proceedings conducted in terms of this Act. 45

10 Compellability of witnesses and inadmissibility of incriminating evidence given before Commission

5 (1) Any person who is questioned by the Commission in the exercise of its powers in terms of this Act and the Constitution or who has been *subpoenaed* to give evidence or to produce any article at the hearing of the Commission shall, subject to the provisions of subsections (2), (3) and (5) be compelled to produce an article or to answer any question put to him or her with regard to the subject matter of the hearing notwithstanding the fact that the article or his or her answer may incriminate him or her.

10 (2) A person referred to in subsection (1) shall only be compelled to answer a question or to produce an article which may incriminate him or her if the Commission has issued an order to that effect, after the Commission—

- (a) has consulted the Prosecutor-General; and
- (b) has satisfied itself that to require such information from such a person is reasonably necessary and justifiable in an open and democratic society based on freedom and equality; and
- 15 (c) has satisfied itself that such a person has refused or is likely to refuse to answer a question or produce an article on the grounds that such an answer or article might incriminate him or her.

20 (3) Any incriminating answer or information obtained or incriminating evidence directly or indirectly derived from a questioning in terms of subsection (1) shall not be admissible as evidence against the person concerned in criminal proceedings in a court of law or before any body or institution established by or under any law:

Provided that incriminating evidence arising from such questioning shall be admissible in criminal proceedings where the person is arraigned on a charge of perjury as defined in terms of section 183 of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*].

25 (4) Subject to the provisions of this section, the law regarding privilege as applicable to a witness *subpoenaed* to give evidence in a criminal case in a court of law shall apply in relation to the questioning of a person in terms of subsection (1).

30 (5) Any person appearing before the Commission by virtue of the provisions of subsection (1) shall be entitled to peruse any article referred to in that subsection, which was produced by him or her, as may be reasonably necessary to refresh his or her memory.

11 Appearance before Commission

35 (1) The Commission shall require any person who appears before it in terms of this section to take the oath or to make an affirmation.

(2) Any person who is questioned by the Commission in the exercise of its powers in terms of this Act, or who has been *subpoenaed* to give evidence or to produce any article at a hearing of the Commission shall, subject to the provisions of this Act, be compelled to produce any article or to answer any question put to him or her with regard to the subject-matter of the hearing notwithstanding the fact that the article or his or her answer may incriminate someone.

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(3) Any person who appears before the Commission shall be entitled to give evidence in any one of the officially recognised languages.

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12 Other offences

Any person who—

- (a) anticipates any finding of the Commission regarding an investigation or does anything or acts in a manner calculated to influence its proceedings, such findings or cause alarm and despondency to the parties involved; or 5
- (b) does anything calculated improperly to influence the Commission in respect of any matter being or to be considered by the Commission in connection with an investigation; or
- (c) does anything in relation to the Commission which, if done in relation to a court of law, would constitute contempt of court; or
- (d) hinders the Commission, any Member of the Commission or member of staff of the Commission in the exercise, performance or carrying out of powers, functions or duties under this Act; or 10
- (e) wilfully furnishes the Commission or any such Member with any information which is false or misleading; or
- (f) discloses any confidential information in contravention of any provision of this Act; or 15
- (g) willfully and knowingly, destroys any article relating to or in anticipation of any investigation or proceedings in terms of this Act; or
- (h) threatens, victimizes, assaults or does anything whatever calculated to harm or to prejudice the rights or interests of any person by reason of that other person having testified or appeared before the Commission or any of the Commission’s committees; 20

shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment. 20

PART IV

Administration of National Peace and Reconciliation Commission

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13 Staff of Commission

(1) The Commission shall, in consultation with the Minister and the Minister responsible for Finance, create the Commission’s staff establishment.

(2) Subject to section 234 of the Constitution, the Commission shall appoint the Executive Secretary and staff of the Commission.

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14 Appointment and functions of Executive Secretary of Commission

(1) The Commission shall appoint, on such terms and conditions, subject to section 13(1), as the Commission may fix, a person to be the Executive Secretary of the Commission and, subject to any other law, may suspend or discharge such person.

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(2) No person shall be appointed as Executive Secretary and no person shall be qualified to hold office as Executive Secretary if he or she is not a citizen of Zimbabwe and ordinarily resident in Zimbabwe.

(3) The appointment of the Executive Secretary shall terminate if he or she would be required in terms of paragraph 3 or 4 of the First Schedule to vacate his or her office had that paragraph applied to him or her:

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Provided that his or her appointment shall not terminate on the grounds that he or she has ceased to be a citizen of Zimbabwe or ordinarily resident in Zimbabwe.

(4) The Executive Secretary shall, subject to the Commission's directions—

- (a) supervise and manage the Commission's staff, activities, funds and property; and
- (b) be a non-voting participant in the meetings and deliberations of the Commission; and
- (c) cause a proper record of the minutes of all the Commission's meetings to be kept; and
- (d) perform such other functions on behalf of the Commission as the Commission may assign to him or her.

(5) Any assignment of functions in terms of subsection (4)—

- (a) may be made generally or specifically and subject to such conditions, restrictions, reservations and exceptions as the Commission may determine;
- (b) may be revoked by the Commission at any time;
- (c) shall not preclude the Commission itself from exercising such assigned functions.

15 Reports of Commission

(1) The Commission shall, subject to section 323 of the Constitution, submit an annual report to Parliament.

(2) The annual report submitted in terms of subsection (1) shall subject to section 323(2) of the Constitution include a copy of—

- (a) a balance sheet; and
- (b) the income and expenditure account; and
- (c) the annual report of the Auditors appointed in terms of section 17; and
- (d) a statement of capital expenditure reported upon by the Auditors showing the general heads of such expenditure as compared with the figures provided for in the capital budget or supplementary capital budget approved for that financial year.

(3) The Parliament may through the relevant Parliamentary Portfolio Committee Chairperson cause the Commission in regard to its operations, undertakings and property to submit such other reports as the Parliament may require.

(4) In addition to the reports referred to in subsections (1) and (3), the Commission may submit reports to Parliament in terms of section 253 of the Constitution.

(5) The reports submitted in terms of subsection (1), (3) and (4) shall be laid before Parliament by the Minister within ten days on which Parliament sits next after the Minister has received the reports.

(6) The reports submitted in terms of subsection (3) or (4) may provide for—

- (a) the nature and extent of the Commission's investigation and its principal findings arising therefrom; or
- (b) the nature, extent and consequences of the conflict found by the Commission to be in existence; or
- (c) appropriate recommendations for the peace building measures; or
- (d) a comprehensive strategy for incorporating a gender perspective in conflict prevention, management and resolution and peace building measures; or
- (e) a summary of all its recommendations to prevent, manage or resolve the conflict; or

- (f) appropriate steps for the maintenance and promotion of peace; whether the conflict in question is specifically attributable to any identifiable practice, custom, law or other impediment prejudicial to the peace building exercise, or to the absence of any law or to any deficiency in the law; or
- (g) what legislative administrative or other practical reforms if any, should be taken to prevent, manage or resolve the conflict in question; or 5
- (h) any other work that the Commission has undertaken during the period under review; or
- (i) any other matter or consideration it deems fit to bring to the attention of Parliament.

(7) The Commission shall publish every report laid before Parliament thirty days after the Minister is expected to have laid such report in terms of subsection (5). 10

(8) Subject to section 9(6), the Commission shall ensure that the rest of the information pertaining to the Commission’s business becomes accessible to the public eighteen months after the year to which the information relates.

PART V 15

financial Provisions

16 Funds of Commission

- (1) The funds of the Commission shall consist of— 20
 - (a) such moneys guaranteed and appropriated by an Act of Parliament for the—
 - (i) programmes of the Commission; and
 - (ii) salaries and allowances payable to and in respect of Members of the Commission; and
 - (iii) salaries and allowances payable to and in respect of members of the Commission’s staff; and 25
 - (iv) recurrent administrative expenses of the Commission; and
 - (b) any other moneys that may be payable to the Commission from moneys appropriated for the purpose by an Act of Parliament; and
 - (c) any donations, grants or bequests made by any person or organisation or any government of any country to the Commission: 30

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

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

(2) 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. 35

17 Accounts of Commission and appointment of Internal Auditor

(1) The Commission shall ensure that proper accounts and other records relating to such accounts are kept in respect of all the Commission’s activities, funds and property, including such particular accounts and records as provided for by the Public Finance Management Act [*Chapter 22:19*] (No. 11 of 2009). 40

(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*] (No 11 of 2009).

5 (3) Section 80 of the Public Finance Management Act [*Chapter 22:19*] (No 11 of 2009), shall apply, with such changes as may be necessary, to the appointment of an Internal Auditor to the Commission in all respects as if the Commission were a Ministry or a department of a Ministry.

18 Audit of Accounts

(1) The accounts of the Commission shall be audited by the Auditor-General, who for that purpose shall have the functions conferred on him or her by sections 7 and 8 of the Audit Office Act [*Chapter 22:18*] (No. 12 of 2009).

(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 six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

(3) Notwithstanding anything 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
- (b) any expenses incurred by the person so appointed in carrying out his or her audit shall be met from the funds of the Commission.

PART VI

Miscellaneous Provisions

19 Regulations

(1) The Commission may make regulations providing for all matters which by this Act are required or permitted to be prescribed or which, in the Commission's 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—

- (a) the terms and conditions of service of the Executive Secretary and the Commission's staff;
- (b) the manner in which the committees of the Commission may be constituted;
- (c) offences and penalties which may be imposed for contraventions of the regulations, which penalties shall not exceed a fine of level six or imprisonment for a period not exceeding one year or both;
- (d) mechanisms to deal with its functions as provided for in section 252 of the Constitution;
- (e) the procedure and conditions for the granting of pardon.

(3) The Commission shall publish the regulations made in terms of subsection (1) and they shall not come into effect unless the Commission has complied with the provisions of subsection (4).

(4) The Commission shall, through the Minister, on the next sitting day of Parliament after the making of the regulations in terms of subsection (1), lay them before Parliament and the regulations shall come into effect on the thirtieth day after the date on which they were laid before it unless Parliament earlier resolves to annul the regulations.

FIRST SCHEDULE (Section 3(1))

5

1. Appointment of Members of Commission

In the appointment of Members of the Commission in terms of section 251(1)(b) of the Constitution the President shall in as far as is practically possible observe the provisions of section 17, 18 and 236 of the Constitution.

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2. Terms of office and conditions of service of Members

(1) Subject to section 320 of the Constitution, a Member shall hold office for a term of five years which may be renewable for one additional term only.

(2) Subject to paragraph 9, a Member shall hold office on such terms and conditions as the President may fix.

(3) A Member shall vacate his or her office on expiry of the period for which the Member has been appointed.

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(4) The term of office of the Members may be renewable subject to section 340 of the Constitution.

(5) Unless otherwise provided elsewhere, every Member shall be appointed on a full time basis, and no Member nor full time employee of the Commission shall—

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- (a) hold any other employment or seek appointment, election or nomination to any elective or political office; or
- (b) except in the exercise of his or her function as a Member or as an employee of the Commission, perform any work for any organisation:

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Provided that where a Member of the Commission having been a member of any organisation on his or her appointment to the Commission shall within seven days terminate his or her membership with the organisation failure of which he or she ceases to be a Member of the Commission.

3. Additional disqualification grounds for appointment as Member

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Subject to section 320(3) of the Constitution, no person shall be appointed as a Member and no person shall be qualified to hold office as a Member who—

- (a) is not a citizen of Zimbabwe or ordinarily resident in Zimbabwe; or
- (b) has financial interest in any business connected with the provision of services to the Commission, or is engaged in any activity connected with any such service, or is married or connected to or associated with a person who has such an interest or is engaged in such an activity, unless the President is satisfied that the interest or activity will not interfere with the person's impartial discharge of his or her duties as a Member; or
- (c) has, in terms of a law in force in any country—
 - (i) been adjudged or otherwise declared insolvent or bankrupt and has not been rehabilitated or discharged; or
 - (ii) made an assignment to, or arrangement or composition with, his or her creditors which has not been rescinded or set aside;

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or

- (d) has, within the period of five years immediately preceding the date of his or her proposed appointment, been convicted—
- (i) in Zimbabwe, of an offence; or
 - (ii) outside Zimbabwe, in respect of conduct which, if committed in Zimbabwe, would constitute an offence; and sentenced to a term of imprisonment exceeding six months imposed without the option of a fine, whether or not any portion has been suspended, and has not received a free pardon.

4. *Vacation of office by Member*

A Member shall vacate his or her office and his or her office shall become vacant—

- (a) three months after the date upon which he or she gives notice in writing to the President of his or her intention to resign, or on the expiry of such other period of notice as he or she and the President may agree; or
- (b) if he or she is removed from office in terms of section 237(2)-(3) as read with section 187 of the Constitution; or
- (c) if he or she becomes disqualified in terms of paragraph 3 to hold office as a Member.

5. *Filling of vacancies of Commission*

Subject to section 251 of the Constitution, on the death of, or vacation of office by a Member, the President shall appoint a qualified person to fill the vacancy:

Provided that if as a result of the vacancy, the number of Members falls below the minimum number specified in paragraph 7, the President shall fill the vacancy as soon as is practically possible.

6. *Chairperson and Vice-Chairperson of Commission*

(1) Subject to section 251(1) (a) of the Constitution, the President shall appoint a Chairperson of the Commission.

(2) The President shall designate one of the Members as Vice-Chairperson of the Commission:

Provided that the Vice-Chairperson shall be of different sex from the Chairperson.

(3) The Vice-Chairperson of the Commission shall perform the Chairperson's functions whenever the Chairperson is, for any reason, unable to perform them.

(4) The Chairperson or Vice-Chairperson of the Commission may at any time resign his or her office as such by one month's notice in writing to the President.

(5) Whenever the office of Chairperson of the Commission falls vacant, the President shall fill the vacancy within three months.

(6) Whenever the office of Vice-Chairperson of the Commission falls vacant, the President shall fill the vacancy within three weeks.

7. *Meetings and procedure of Commission*

(1) The Commission shall hold its first meeting on such date and at such place as the Minister may fix, being not more than three months after the fixed date, and thereafter the Commission shall meet for the dispatch of business as often as is necessary or expedient and, subject to this paragraph, may adjourn, close and otherwise regulate its meetings and procedure as it thinks fit.

(2) The Chairperson of the Commission may at any time convene a special meeting of the Commission.

(3) The Chairperson shall send written notice of any special meeting convened in terms of subparagraph (2) to each Member not later than seven days before the meeting and shall specify the business for which the meeting has been convened: 5

Provided that if, in the opinion of the Chairperson, as the case may be, the urgency of the business for which the meeting is to be convened so requires, notice of not less than forty-eight hours may be given.

(4) No business shall be discussed at a special meeting convened in terms of subparagraph (2) other than— 10

- (a) such business as may be determined by the Chairperson of the Commission, where the Chairperson of the Commission has convened the meeting in terms of subparagraph (2); or
- (b) the business specified in the request for the meeting, where the Chairperson of the Commission has convened the meeting in terms of subparagraph (3). 15

(5) The Chairperson or, in his or her absence, the Vice-Chairperson shall preside at all meetings of the Commission:

Provided that, if the Chairperson and the Vice-Chairperson are both absent from a meeting of the Commission, the Members present may elect one of their number to preside at that meeting as Chairperson. 20

(6) For any meeting of the Commission, five Members shall form a quorum.

(7) All acts, matters or things authorised or required to be done by the Commission may be decided by a majority vote at a meeting of the Commission at which a quorum is present. 25

(8) Subject to subparagraph (9), at all meetings of the Commission each Member present shall have one vote on each question before the Commission and, in the event of an equality of votes, the Chairperson shall have a casting vote in addition to a deliberative vote.

(9) Any proposal circulated among all Members and agreed to in writing by a majority of all Members shall have the same effect as a resolution passed at a duly constituted meeting of the Commission and shall be incorporated in the minutes of the next succeeding meeting of the Commission: 30

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

(10) With the Commission's approval, the Chairperson of the Commission may invite any person to attend a meeting of the Commission or a committee, where the Chairperson considers that the person has special knowledge or experience in any matter to be considered by the Commission or the committee, as the case may be, at that meeting. 35

(11) A person invited to attend a meeting of the Commission or of a committee in terms of subparagraph (10) may take part in the proceedings of the Commission or the committee as if he or she were a member thereof, but he or she shall not have a vote on any question before the Commission or committee, as the case may be. 40

8. Committees of Commission

(1) For the better exercise of its functions, the Commission may establish one or more committees in which it may vest any of its functions as it considers appropriate: 45

Provided that the vesting of a function in a committee shall not prevent the Commission from itself exercising that function, and the Commission may amend or rescind any decision of the committee in the exercise of that function.

(2) The Commission may appoint to a committee persons other than Members.

5 (3) The Chairperson of the Commission or of a committee may at any reasonable time and place convene a meeting of that committee.

(4) The procedure of each committee shall be as fixed from time to time by the Commission.

10 (5) Subject to this paragraph, paragraph 7(2), (3), (4), (5), (7), (8) and (9) shall apply, with any necessary changes, to committees and their members as they apply to the Commission and its Members.

(6) The quorum for any committee of the Commission shall be at least half the members of that committee.

15 *9. Remuneration and expenses of Members*

(1) Members shall be paid—

(a) such remuneration, if any, as the President, may from time to time fix; and

20 (b) such allowances, if any, as the Minister responsible for Finance, may from time to time fix to meet any reasonable expenses incurred by Members in connection with the business of the Commission.

(2) The salary, allowances and other benefits payable to a Member shall not be reduced during his or her tenure of office.

10. Members to disclose certain connections and interests

25 (1) In this paragraph—

“relative”, in relation to a Member, means the Member’s spouse, child, parent, brother or sister.

(2) Subject to subparagraph (3)—

30 (a) if a Member—

(i) knowingly acquires or holds a direct or indirect pecuniary interest in any matter that is under consideration by the Commission; or

(ii) owns any property or has a right in property or a direct or indirect pecuniary interest in a company or association of persons which results in the Member’s private interests coming or appearing to come into conflict with his or her functions as a Member; or

35 (iii) knows or has reason to believe that a relative of his or hers—

A. has acquired or holds a direct or indirect pecuniary interest in any matter that is under consideration by the Commission; or

B. owns any property or has a right in property or a direct or indirect pecuniary interest in a company or association of persons which results in the Member’s private interests coming or appearing to come into conflict with his functions as a Member;

40 or

(b) if for any reason the private interests of a Member come into conflict with his or her functions as a Member;

the Member shall forthwith disclose the fact to the Commission.

(3) A Member referred to in subparagraph (2) shall take no part in the consideration or discussion of, or vote on, any question before the Commission which relates to any contract, right, immovable property or interest referred to in that subparagraph.

(4) Any Member who knowingly and without lawful cause contravenes subparagraph (2) or (3) shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment. 5

11. Validity of decisions and acts of Commission

No decision or act of the Commission or act done under the authority of the Commission shall be invalid on the grounds that— 10

- (a) the Commission consisted of fewer than the minimum number of persons prescribed in paragraph 7(6); or
- (b) a disqualified person acted as a Member at the time the decision was taken or act was done or authorised: 15

Provided that the Commission shall ratify any such decision or action as soon as possible after it becomes aware that the decision or action was taken in the circumstances described in subparagraph (a) or (b).

12. Minutes of proceedings of Commission

(1) The Commission shall cause minutes of all proceedings of and decisions taken at every meeting of the Commission to be entered in books kept for the purpose. 20

(2) Any minutes referred to in subparagraph (1) 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 the committee concerned, as the case may be, shall be accepted for all purposes as *prima facie* evidence of the proceedings of and decisions taken at the meeting concerned. 25

13. Execution of contracts and instruments by Commission

Any agreement, contract or instrument approved by the Commission may be entered into or executed on behalf of the Commission by any persons generally or specially authorised by the Commission for that purpose. 30

SECOND SCHEDULE (Section 3(2(e)))

**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. 35
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. 40
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. 45

6. To insure against losses, damages, risks and liabilities which it may incur.
7. In consultation with the 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.
- 5 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 dependants, 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 dependants any or all of the pecuniary benefits to
10 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
15 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.
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.
- 20 14. Subject to any conditions that may be imposed by the Commission from time to time, to provide loans to—
 - (a) Members of the Commission for the purpose of purchasing vehicles or other equipment to be used by the Members in carrying out their duties; or
 - (b) Members of staff for the procuring of their vehicles which may be resold to
25 such members after five years:
Provided that—
 - (i) the Commission may fix further terms and conditions for this vehicle scheme;
 - (ii) the loan shall not exceed twelve months' salary or wages payable to the Members of the Commission and members of staff concerned, for
30 any purpose on such security as the Commission thinks adequate.
- 30 15. To register, in the Commission's name, any property, whether movable or immovable, purchased for any Member of the Commission or member of staff through loan or loan guarantee until the loan or loan guarantee has been discharged.
16. To do anything for the purpose of improving the skill, knowledge or usefulness of
35 Members of the Commission, members of staff, 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:
Provided that the duration of such training shall not exceed two years.
17. To engage in any activity, either alone or in conjunction with civil society
40 organizations and other organizations or international agencies, to promote better understanding of peace building strategies and conflict prevention, management, resolution and transformation.
18. To do anything which by this Act or any other enactment is required or permitted to be done by the Commission.

19. 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