

Zimbabwe

Tripartite Negotiating Forum Act, 2019

Act 3 of 2019

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Tripartite Negotiating Forum Act, 2019 (Act 3 of 2019)

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Zimbabwe

Tripartite Negotiating Forum Act, 2019

Act 3 of 2019

Published on 4 June 2019

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To establish a Tripartite Negotiating Forum and to confer powers and functions on the Forum in relation to consultation, cooperation and negotiation on social and economic issues by Government, organised business and organised labour; and to provide for matters connected therewith or incidental thereto.

Part I – Preliminary

1. Short title and date of commencement

This Act may be cited as the Tripartite Negotiating Forum Act, 2019.

2. Interpretation

In this Act—

"**business member**" means a person appointed by the Minister in terms of [section 3\(5\)](#);

"**Chairperson**" means the Minister responsible for labour or any other Minister to whom the function may be delegated to by the President from time to time;

"**cluster**" means a sub-committee of the technical committee established in terms of [section 12](#);

"**co-Chairperson**" means a designated Principal representing organised business or organised labour;

"**economic cluster**" means a sub-committee which deals with economic and related matters under the purview of the TNF;

"**Forum**" or "Tripartite Negotiating Forum" or "TNF" means the platform for social dialogue and negotiations over socio-economic issues involving tripartite partners which is comprised of three structures namely the Main TNF, Technical Committee and Secretariat;

"**Government member**" means a Minister in charge of a portfolio outlined in the First Schedule;

"**Labour Market Cluster**" means a sub-committee which deals with labour issues under the purview of the TNF;

"**labour member**" means a person appointed by the Minister in terms of [section 3\(5\)](#);

"**Main TNF**" means the apex structure of the TNF;

"**Management Committee**" means the committee composed of all members of the Agenda Setting Committee to which the secretariat reports;

"**member**" means any person appointed to represent Government, Organised Business or Organised Labour;

"**Minister**" means the Minister responsible for Labour or any other Minister to whom the President may from time to time assign the administration of this Act;

"**observer**" means an interested stakeholder outside the tripartite arrangement who is invited to witness the proceedings of the TNF;

"organised business" means federation of employers' organisations that are founding parties of the TNF and any federation or association that is admitted thereafter;

"organised labour" means the federation of workers organisations that are the founding parties of the TNF and any federation association that is admitted thereafter;

"principals of the TNF" means the Chairperson and co-Chairpersons;

"recommendations" means a decision of the TNF referred to Cabinet;

"Secretariat" means the office established in terms of Part IV;

"social cluster" means a sub-committee which deals with social matters under the purview of the TNF;

"socio-economic policy" includes financial, fiscal and monetary policy, socioeconomic, trade and industrial policy and development policy;

"special sitting" means a meeting of the Main TNF in which other stakeholders participate upon invitation;

"Technical Committee" means the Committee of experts drawn from Government, organised Business and Organised Labour to support the work of the Main TNF;

"Tripartite Partners" means Government, organised Business and organised Labour;

Part II – Tripartite Negotiating Forum

3. Establishment and functions of Tripartite Negotiating Forum

- (1) There is hereby established a Forum to be known as the Tripartite Negotiating Forum, which shall be a body corporate capable of suing and being sued in its corporate name and subject to this Act, of performing all acts that a body corporate may by law perform.
- (2) The Forum referred to in subsection (1) shall have three structures defined in this Act, namely the Main TNF, Technical Committee and the Management Committee.
- (3) The functions of the forum shall be to—
 - (a) consult and negotiate over social and economic issues and submit recommendations to Cabinet; and
 - (b) negotiate a social contract as and when necessary; and
 - (c) foster cooperation of the tripartite constituents and consult other key stakeholders and contribute to the formulation and implementation of social and economic policies; and
 - (d) follow up and monitor the implementation of agreements; and
 - (e) generate and promote a shared national socio-economic vision.
 - (f) consult and negotiate Zimbabwe labour laws in line with the Constitution and other international best practices.
- (4) For the purposes of subsection (1) the Forum may, acting on its own initiative—
 - (a) gather public or expert opinion through public hearings, seminars, special sittings and broadcast debates among other means; or
 - (b) undertake researches, fact finding missions and investigations where necessary; or
 - (c) invite other persons to attend the proceedings of the Main TNF for specific input; or
 - (d) appoint the Main TNF members and observers.

(5) Pursuant to subsection (2) the Main TNF shall be constituted as follows—

- (a) Seven Government members appointed by the President representing portfolios outlined in the Third Schedule:

Provided that the portfolios listed in the Third Schedule may be amended from time to time and any such amendments published through a statutory instrument by the Minister; and

- (b) seven labour members nominated by organised labour and appointed by the Minister in line with the formula provided in the Fourth Schedule; and
- (c) seven business members nominated by organised business and appointed by the Minister in line with the formula provided in the Fourth Schedule; and
- (d) two observers drawn from the Consumer Council of Zimbabwe and the National Economic Consultative Forum shall be appointed to the Forum by the Minister:

Provided that from time to time, other observers may attend the Forum's meetings by invitation.

4. Qualifications of members

A person shall not be qualified for the appointment as a member unless he or she—

- (a) is a citizen of Zimbabwe or permanently resident in Zimbabwe; or
- (b) has not in terms of a law in force in any country been adjudged or otherwise declared insolvent or bankrupt and has not been rehabilitated or discharged; or
- (c) has not within the period of five years immediately preceding the date of his or her proposed appointment, been sentenced in any country to a term of imprisonment of or exceeding six months without the option of a fine and has not received a free pardon.

5. Removal of business and labour members

It shall be the preserve of each constituency to remove a member from the Main TNF provided that the removal shall not take effect before the expiry of fourteen days from the date of notification.

6. Filling of vacancies

Any positions that fall vacant shall be filled by the respective constituency not later than thirty days from the date of vacation.

7. Duties of Chairperson

(1) The Chairperson shall—

- (a) preside over all meetings; and
- (b) direct the debates; and
- (c) maintain order; and
- (d) ensure the observance of Standing Rules; and
- (e) accord or withdraw the right to address the meeting in accordance with the provisions of the Standing Rules; and
- (f) have the right to take part in the discussions.

(2) The Chairperson shall ensure the efficient functioning of the Forum through regular and joint consultation with the co-Chairpersons, in the collective capacity as principals.

- (3) The Chairperson and co-Chairpersons shall jointly organise press conferences from time to time.
- (4) In the absence of a Chairperson during a sitting or any part thereof, the co-Chairperson shall preside alternatively.
- (5) A co-Chairperson acting as Chairperson shall have the same rights and duties as the Chairperson.
- (6) The Chairperson shall present recommendations of the Main TNF to Cabinet.

8. The agenda setting for Main TNF meetings

The agenda of the Main TNF shall be set by the Management Committee composed of representatives from the Ministry responsible for labour, organised labour and organised business as nominated by the respective principals.

9. Convening of meetings

- (1) The Main TNF shall convene at least two meetings in a year.
- (2) A meeting to consider urgent business shall be called for, subject to the agreement between the Chairperson and the co-Chairpersons.
- (3) The quorum shall be satisfied by a majority of representation of all social partners.

10. Decision of Main TNF

- (1) Decisions of the Main TNF shall be reached by consensus.
- (2) The decisions of the Main TNF within the domain of socio-economic policy shall form recommendations to Cabinet.

11. Minutes of proceedings of Main TNF meeting

- (1) Minutes of the TNF shall be entered in books kept for the purpose.
- (2) Any minutes referred to in subsection (1) shall be signed by the Chairperson and co-Chairpersons and shall be accepted for all purposes as *prima facie* evidence of the proceedings of and decisions taken at the meeting concerned.

Part III – Establishment of TNF Technical Committee

12. Establishment of TNF Technical Committee

- (1) A TNF Technical Committee is hereby established to assist the Main TNF in its work.
- (2) The Technical committee shall be headed by a designated Deputy Chief Secretary to the President and Cabinet and shall be comprised of experts or officials drawn from—
 - (a) Government Ministries;
 - (b) business; and
 - (c) labour organisations represented in the Main TNF:

Provided that the total number of appointees for Government shall be seven and seven each for business and labour.

- (3) For better exercise of its function, the technical committee shall have three clusters namely—
 - (a) Economic Cluster; and

- (b) Labour Market Cluster; and
- (c) Social Cluster.
- (4) The Chairperson of the Technical Committee shall appoint senior officials from relevant Ministries to chair each of the clusters.
- (5) Pursuant to subsection (1) the Technical committee operating as a whole or in clusters and with the assistance of the secretariat shall *inter-alia*—
 - (a) prepare documents for discussions in the Main TNF; and
 - (b) carry out subject specific, researches and studies; and
 - (c) deal with any matter as directed by the Main TNF.
- (6) The Chairperson and Vice Chairperson shall be of the opposite gender.

13. Establishment of Management Committee

- (1) There is hereby established, a Management Committee composed of—
 - (a) two representatives from the Ministry of Labour and two representatives each from organised business and organised labour respectively as nominated by the respective constituents:

Provided that they are members of the TNF Technical Committee and are appointed by the Chairperson of the TNF;
 - (b) the Chairperson of the TNF Technical Committee;
 - (c) the Executive Director from the Secretariat who shall be an *ex-officio* member;
- (2) The Management committee shall be responsible for—
 - (a) setting the agenda for TNF meetings; and
 - (b) appointing the Executive Director; and
 - (c) overseeing the operations of the Secretariat; and
 - (d) to approve rules and regulations guiding the work of the Secretariat, including codes of conduct and conditions of employment.
- (3) The Chairperson and vice-Chairperson shall be of the opposite gender.

Part IV – Administration of Forum

14. Appointment and functions of Executive Director of Tripartite Negotiating Forum

- (1) There is hereby established a fulltime Secretariat to perform the administrative work of the forum headed by an Executive Director.
- (2) Subject to this section, the Management Committee shall appoint, in consultation with the Minister, on such terms and conditions as the Management Committee may fix, a person to be the Executive Director of the Secretariat to the TNF and, subject to any other law, may suspend or discharge such person.
- (3) No person shall be appointed as Executive Director and no person shall be qualified to hold office as Executive Director if he or she is not a citizen of Zimbabwe or ordinarily resident in Zimbabwe.

- (4) The appointment of the Executive Director shall terminate if he or she would be required in terms of paragraph 4 of the First Schedule to vacate his or her office had that paragraph applied to him or her.
- (5) The Executive Director shall, subject to the Management Committee's directions—
 - (a) supervise and manage the Secretariat's staff, activities, funds and property;
 - (b) and perform such other functions on behalf of the Management Committee as the Management Committee may assign to him or her.
- (6) Any assignment of functions in terms of subsection (4)—
 - (a) may be made generally or specially and subject to such conditions, restrictions, reservations and exceptions as the management Committee may determine;
 - (b) may be revoked by the Management Committee on justifiable grounds at any time;
 - (c) shall not preclude the Management Committee itself from exercising the functions.

15. Other staff of Secretariat

- (1) The Executive Director shall, in consultation with the Management Committee and subject to Treasury concurrence, appoint such other staff as may be convenient or necessary for the proper exercise of its functions and, subject to any other law, may suspend or discharge such persons.
- (2) Employees shall be appointed by the Executive Director under regulations approved by the Management Committee.
- (3) The Regulations referred to in subsection (1) shall provide the terms and conditions of employment, grievances and disciplinary procedures.
- (4) The Main TNF may, with the approval of the Minister make rules relating to staff development.

Part V – Financing mechanism

Financial provisions

16. Funds of Forum

- (1) The funds of the Forum shall consist of—
 - (a) such monies as may be payable to the Forum from monies appropriated for that purpose by Act of Parliament under the Minister responsible for the administration of this Act; and
 - (b) any funds donated to the Forum for the purposes of carrying out its functions; and
- (2) The Forum shall make use of its funds to the fulfilment of its functions.
- (3) Monies not immediately required by the Forum may be invested in such a manner as the Forum, with the approval of the Minister and the Minister responsible for finance, considers appropriate.

17. Accounts of Forum and appointment of internal auditor

- (1) The Forum shall ensure that proper accounts and other records relating to such accounts are kept in respect of all the Forum's activities, funds and property, including such particular accounts and records as the Minister may direct.
- (2) As soon as possible after the end of each financial year, the Forum 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 the Minister may direct.

- (3) Section 80 of the Public Finance Management Act [*Chapter 22:19*] shall apply, with such changes as may be necessary, to the appointment of an internal auditor to the Forum in all respects as if the Forum were a Ministry or a department of a Ministry.

18. Audit of accounts

- (1) The accounts of the Forum shall be audited by the Comptroller and 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*].
- (2) Any person under the authority or supervision of the Forum who refuses to provide the Comptroller and Auditor-General with an explanation or information required by him or her for the purposes of an audit or knowingly provides the Comptroller and 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 Comptroller and Auditor-General may appoint a suitably qualified person to audit the accounts of the Forum 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 Comptroller and 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 Forum.

Part VI – Offences

19. Confidentiality and use of information for private gain by members and employees

- (1) No member or employee shall, for his or her personal gain, make use of any information which has come to his or her knowledge in the exercise of his or her duties or the performance of his or her functions in terms of this Act.
- (2) Any member or employee on who contravenes subsection (1) shall be guilty of an offence and liable to—
- (a) a fine not exceeding level ten or double the amount of his or her gain, whichever is the greater; or
 - (b) imprisonment for a period not exceeding five years; or
 - (c) to both such fine and such imprisonment.

Part VII – Regulations

20. Regulations

The Minister in consultation with the TNF may make regulations prescribing—

- (a) any matter which this Act is required or permitted to be described; and
- (b) any matters which he or she considers necessary or expedient to prescribe in order to achieve the objects of this Act.

21. Standing rules of Forum

Subject to the provisions of this Act the standing rules of the Forum shall provide among others for—

- (a) objections to items on the agenda;
- (b) motions and resolutions;
- (c) procedures for amending documents under discussion;
- (d) right to address the meeting;
- (e) decorum;
- (f) circulation of agenda;
- (g) group autonomy;
- (h) caucus;
- (i) amendment of the standing rules.

First Schedule (Section 2)

Government members

1. Terms and conditions of office of members

- (1) A member shall hold office for a period not exceeding five years or for such period as the Ministry may fix at the time of his or her appointment.
- (2) On the expiry of the period for which a member has been appointed the member shall continue to hold office until he or she has been reappointed or the member's successor has been appointed:

Provided that a member shall not continue to hold office in terms of this subsection for more than six months.
- (3) A retiring member shall be eligible for reappointment as a member.
- (4) Members shall hold office on such terms and conditions as the Ministry may fix.

2. Meetings and procedure of TNF

- (1) Subject to this Act, the TNF shall meet for the dispatch of business and adjourn, close and otherwise regulate its meetings and procedures as it thinks fit.
- (2) The chairperson may himself or herself at any time and shall, at the request in writing of not fewer than two members, convene a special meeting of the TNF which meeting shall be convened for a date not sooner than seven days or later than thirty days after receipt of such request.
- (3) The chairperson or, in his or her absence, the vice-chairperson, shall preside at meetings for the TNF.
- (4) Subject to paragraph 9, at all meetings of the TNF each member present shall have one vote on each question before the TNF:

Provided that—

- (i) in the event of an equality of votes, the chairperson or person presiding shall have a casting vote in addition to his or her deliberative vote;

- (ii) no member shall take part in the consideration of, or vote on, any question before the TNF which relates to his or her relevant vacation of office as a member.
- (5) Any proposal circulated among all members of the TNF and agreed to by a majority of them shall have the same effect as a resolution passed at a duly constituted meeting of the TNF and shall be incorporated in the minutes of the next succeeding meeting of the TNF:

Provided that, if a member requires that any such proposal be placed before the TNF, this subsection shall not apply to the proposal.
- (6) With approval of the Minister, the TNF may co-opt any person to the TNF, but a co-opted person shall have no vote in any decision by the TNF.

3. Remuneration and allowances of members of the Management Committee

- (1) Members of the Management Committee shall be paid—
 - (a) such remuneration, if any; and
 - (b) such allowances to meet reasonable expenses incurred by them in connection with the business of TNF, as the Minister may fix.
- (2) Remuneration payable to a member of the TNF shall not be reduced during his or her tenure of office.

4. Minutes of proceedings of the TNF

- (1) The TNF shall cause minutes of all proceedings of and decisions taken at every meeting of the TNF and of every TNF to be entered in books kept for the purpose.
- (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 TNF or the TNF concerned, 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.

5. Validity of decisions and acts of the TNF

No decision or act of the TNF or act that is authorised by the TNF shall be invalid solely because there was a vacancy in the membership of the TNF or because a disqualified person purported to act as a member of the TNF, as the case may be, at the time the decision was taken or the act was done or authorised.

Second Schedule (Section 4(2))

Ancillary powers of Tripartite Negotiating Forum

- 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 Tripartite Negotiating Forum 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 Tripartite Negotiating Forum 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 Tripartite Negotiating Forum as it considers fit.
9. To provide pecuniary benefits for staff of the Tripartite Negotiating Forum 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 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 Tripartite Negotiating Forum.
11. To construct dwellings, outbuildings or improvements for use or occupation by members of the Tripartite Negotiating Forum.
12. To provide or guarantee loans made to members of the Tripartite Negotiating Forum 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 Tripartite Negotiating Forum from time to time.
13. To provide security in respect of loans by the deposit of securities, in which the Tripartite Negotiating Forum may invest such money as it may consider necessary for the purpose.
14. Subject to any conditions that may be imposed by the Tripartite Negotiating Forum from time to time, to provide loans to any members of the Tripartite Negotiating Forum—
 - (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 Tripartite Negotiating Forum thinks adequate.
15. To do anything for the purpose of improving the skill, knowledge or usefulness of members of the Tripartite Negotiating Forum, 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.
17. To do anything which by this Act or any other enactment is required or permitted to be done by the Tripartite Negotiating Forum.
18. Generally to do all such things that are conducive to the performance of the functions of the Tripartite Negotiating Forum in terms of this Act or any other enactment.

Third Schedule (Section 3(5)(a))

List of Government members

The seven Government members are drawn from the Ministries responsible for following portfolios—

- (1) Labour (Chairperson to the Main TNF);

- (2) Justice;
- (3) Finance and Economic Development;
- (4) Transport and Communication;
- (5) Industry and Commerce;
- (6) Economic Planning;
- (7) Information;
- (8) Energy;
- (9) Mines;
- (10) Public Service;
- (11) Environment;
- (12) Agriculture;
- (13) Tourism and Hospitality;
- (14) Health.

Other Government Ministries are invited to participate into the TNF whenever issues pertaining to their portfolios are under discussion.

[Explanatory Note:—Portfolios may be in different configurations as ministries from time to time but the most important aspect is to assemble seven Government members to sit in the Main TNF]

Fourth Schedule (Section 3(5)(b) and (c))

The members nominated by Business and Labour shall reflect the diverse representation in their respective constituents. These members shall be drawn consistent with a ratio of two Government members, one Business member and one Labour member. This is in line with the formula for the International Labour Conference.