



REPUBLIC OF ZAMBIA

FIRST DRAFT CONSTITUTION

of the

REPUBLIC OF ZAMBIA

**The Secretariat
Technical Committee on Drafting the Zambian Constitution
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THE CONSTITUTION OF ZAMBIA
ARRANGEMENT OF ARTICLES

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SCHEDULE

**THE CONSTITUTION OF THE
REPUBLIC OF ZAMBIA**

PREAMBLE

**WE, THE PEOPLE OF ZAMBIA, IN EXERCISE OF
OUR CONSTITUENT POWER:**

ACKNOWLEDGE the supremacy of God Almighty;

DECLARE the Republic a Christian Nation, but uphold the right of every person to enjoy that person's freedom of conscience or religion;

UPHOLD the human rights and fundamental freedoms of every person and recognise the equal worth of different communities in our Nation;

COMMIT ourselves to upholding the values of democracy, transparency, accountability and good governance and resolve to exercise our inherent and inviolable right as a people to decide, appoint and proclaim the means and method to govern ourselves;

RESOLVE to ensure that all powers of the State are exercised for sustainable development and in our common interest;

CONFIRM the equal worth of women and men and their right to freely participate in, determine and build a sustainable political, economic and social order;

RECOGNISE AND UPHOLD the multi-ethnic and multi-cultural character of our Nation and the self actualisation of people living in different Provinces of Zambia and their right to manage their own local affairs and resources in a devolved system of governance within a unitary State;

RESOLVE that Zambia shall remain a free, unitary, indivisible, multi-ethnic, multi-cultural, multi-racial, multi – religious and multi-party democratic sovereign State;

AND DIRECT that all organs and institutions of the State abide by and respect our sovereign will;

DO HEREBY SOLEMNLY ADOPT AND GIVE TO OURSELVES THIS CONSTITUTION:

PART I
SUPREMACY AND DEFENCE OF
CONSTITUTION

Supremacy of
Constitution

1. (1) This Constitution is the supreme law of the Republic of Zambia and any other law or customary practice that is inconsistent with any of its provisions is void to the extent of the inconsistency.

(2) An act or omission that contravenes any provision of this Constitution is illegal.

(3) This Constitution shall bind all persons in Zambia and the Legislative, Executive and Judicial organs.

(4) The validity or legality of this Constitution is not subject to challenge by, or before, any court or other State organ.

(5) The Constitutional Court shall have jurisdiction in any matter arising under this Constitution.

Defence of
Constitution

2. Every person has the right and duty to –

(a) defend this Constitution;

(b) resist or prevent any person or group of persons from –

(i) overthrowing, suspending or abrogating this Constitution; or

(ii) unlawfully amending or reviewing this Constitution; and

(c) lawfully secure the continuous operation of this Constitution.

Continuous
effect of
Constitution

3. The operation of this Constitution shall not be affected by any unlawful act to overthrow, suspend or

abrogate its provisions and it shall, in such circumstances, continue to have effect.

PART II
REPUBLIC OF ZAMBIA AND
SOVEREIGN AUTHORITY OF THE PEOPLE

Republican
status of
Zambia

4. (1) Zambia is a sovereign Republic, consisting of the territory and territorial waters described and delineated in an Act of Parliament.

(2) The Republic of Zambia is a free, unitary, indivisible, multi-ethnic, multi-cultural, multi-racial, multi-religious and multi-party democratic State.

(3) The Republic of Zambia shall not be ceded, in whole or in part.

(4) For purposes of clause (3), the entering into a union or other form of inter-state organisation, by the Republic of Zambia, shall not be ceding of the Republic.

Exercise of
sovereign
authority

5. (1) All sovereign authority belongs to the people of the Republic of Zambia and that authority may be exercised either directly or through their democratically elected representatives or institutions established by or under this Constitution.

(2) The people of the Republic of Zambia reserve to themselves any power that is not conferred on any State organ, State institution, constitutional office holder or any other person by or under this Constitution.

(3) The people of the Republic of Zambia shall exercise their direct authority or reserved power through a referendum as prescribed by an Act of Parliament.

National symbols

6. (1) The national symbols of the Republic are the -
- (a) National Flag;
 - (b) National Anthem;
 - (c) Coat of Arms;
 - (d) Public Seal; and
 - (e) National Motto.
- (2) An Act of Parliament shall prescribe the form, words, description and use of the national symbols.

Laws of Zambia

7. The Laws of Zambia shall consist of -
- (a) this Constitution;
 - (b) laws made by or under the authority of this Constitution or Parliament;
 - (c) Zambian customary law which is consistent with this Constitution; and
 - (d) the laws and statutes which apply or extend to Zambia, as prescribed by an Act of Parliament.

PART III
NATIONAL VALUES, PRINCIPLES AND
BASIS OF STATE POLICY

Application of national values, principles and basis of State policy

8. The national values, principles and basis of State policy specified in this Part shall apply to the-
- (a) interpretation of this Constitution;
 - (b) enactment, or interpretation of any law; or

- (c) development or implementation of policy.

National values, principles and basis of State policy

9. Subject to this Constitution, the national values, principles and the basis of State policy include-

- (a) morality, Christian values and ethics;
- (b) patriotism and national unity;
- (c) democracy, the rule of law, human dignity, equity, social justice, equality, non-discrimination and protection of minority and marginalised groups;
- (d) good governance, integrity, transparency, accountability, devolution of power, inclusiveness and participation of the people; and
- (e) sustainable development.

Economic policies

10. (1) The State shall create an economic environment which encourages individual initiative and self-reliance among the people, so as to promote investment, employment and wealth.

(2) The State shall promote the economic empowerment of citizens in order for them to contribute to sustainable economic growth and social development.

(3) The State shall promote foreign investment and protect and guarantee such investment through agreements with the investors as may be prescribed by or under an Act of Parliament.

(4) The State shall not compulsorily acquire any investment, unless under international customary law and subject to Article 44, except that, where the investment was

made from the proceeds of crime or was corruptly acquired no compensation shall be paid by the State.

(5) The State shall, as far as is practicable, continue and execute projects and programmes, commenced by the previous Government, which contribute to sustainable economic growth and social development and are in the public interest.

President's report on application of values, principles and policies

11. The President shall, once in every year, report to the National Assembly on the progress made in the realisation, application and upholding of the values, principles and policies under this Part.

PART IV CITIZENSHIP

Existing citizenship

12. (1) A person who was a citizen of Zambia, immediately before the commencement of this Constitution, shall continue to be a citizen of Zambia and shall retain the same citizenship status as from that date.

(2) A person shall, who was entitled to citizenship of Zambia, before the commencement of this Constitution, subject to the performance of any condition or following the occurrence of a future event, become a citizen upon the performance of the condition or occurrence of the event.

(3) A person born in Zambia before 1st April, 1986, whose parent was an established resident shall continue to enjoy the rights and privileges of an established resident, which are consistent with this Constitution, and remain subject to the law relating to established residents prevailing immediately before that date.

Acquisition of citizenship

13. Citizenship may be acquired by birth, descent, registration or adoption in accordance with this Part.

Citizenship by birth

14. (1) A person born in Zambia is a citizen by birth if, at the date of that person's birth, at least one parent of that person is, or was, a citizen.

(2) A child found in Zambia and who is, or appears to be, of not more than eight years of age and whose nationality and parents are not known, shall be presumed to be a citizen of Zambia by birth.

(3) For the purposes of this Part, a person born aboard-

(a) a registered ship or aircraft, shall be deemed to have been born in the place in which the ship or aircraft is registered; or

(b) an unregistered ship or aircraft of any country, shall be deemed to have been born in that country.

Citizenship by descent

15. A person born outside Zambia is a citizen by descent if, at the date of that person's birth, at least one parent of that person is, or was, a citizen by birth.

Citizenship by registration

16. (1) Subject to clauses (2) and (4), a person shall be entitled to apply to the Citizenship Board of Zambia to be registered as a citizen if that person -

(a) was born in Zambia but neither of that person's parents is, or was, a citizen

and that person was ordinarily resident in Zambia for a period of three years;

(b) was born in or outside Zambia and has or had an ancestor who is, or was, a citizen and that person was ordinarily resident in Zambia for a period of three years; or

(c) was ordinarily resident in Zambia for a continuous period of not less than ten years immediately preceding that person's application for registration.

(2) A person applying to be registered as a citizen, under clause (1), shall have attained the age of eighteen years.

(3) Notwithstanding clause (1), a person who is, or was, married to a citizen for a period of not less than three years shall be entitled to apply to the Citizenship Board of Zambia, to be registered as a citizen, in such manner as may be prescribed by or under an Act of Parliament.

(4) A child of a diplomat accredited to Zambia or a person with refugee status in Zambia shall not be entitled to be registered as a citizen.

Citizenship
by adoption

17. A child who is not a citizen and who is adopted by a citizen shall be a citizen on the date of the adoption.

Dual
citizenship

18. (1) A citizen shall not lose citizenship by acquiring the citizenship of another country.

(2) A citizen who, before the commencement of this Constitution, acquired the citizenship of another

country and, as a result, ceased to be a citizen shall be entitled to apply to the Citizenship Board of Zambia to regain that citizenship.

Renunciation and deprivation of citizenship

19. A citizen-
- (a) may renounce citizenship; or
 - (b) shall be deprived of citizenship only if that person acquired citizenship by means of fraud, false representation or concealment of any material fact.

Citizenship Board of Zambia

20. (1) There is established the Citizenship Board of Zambia which shall implement this Part.

(2) Parliament shall enact legislation which provides for the composition of, appointment of members to, tenure of office of members of, and procedures to be followed by, the Citizenship Board of Zambia.

Entitlements of citizen

21. A citizen is entitled to-
- (a) the rights, privileges and benefits of citizenship as provided in this Constitution and under any other law; and
 - (b) any document of registration and identification issued by the State to citizens.

Responsibilities of citizen

22. (1) A citizen shall -
- (a) uphold and defend this Constitution and any other law;

- (b) contribute to the welfare and advancement of the nation by paying all taxes and duties lawfully due and owing to the State;
- (c) protect and conserve the environment and utilise natural resources in a sustainable manner;
- (d) maintain a clean and healthy living environment;
- (e) provide defence and military service when called upon; and
- (f) protect and safeguard public property from dissipation.

(2) A citizen shall endeavour to-

- (a) acquire basic understanding of this Constitution and promote its ideals and objectives;
- (b) register and vote, if eligible, in all national and local elections and referenda;
- (c) be patriotic and loyal to Zambia, promote its development and good image and render national service whenever required to do so;
- (d) develop one's abilities to the greatest possible extent through acquisition of knowledge, continuous learning and the development of skills;
- (e) contribute to the welfare and advancement of the community where that citizen lives;

- (f) strive to foster national unity and live in harmony with others;
- (g) promote democracy, good governance and the rule of law;
- (h) co-operate with law enforcement agencies for the maintenance of law and order and assist in the enforcement of the law; and
- (i) understand and enhance Zambia's place in the international community.

National status of parent and legislation on citizenship

23. (1) A reference in this Part to the national status of the parent of a person at the time of the birth of that person shall, in relation to a person born after the death of the person's parent, be construed as a reference to the national status of the parent at the time of the parent's death.

(2) Parliament shall enact legislation to give effect to this Part and to provide for immigration and migration matters.

PART V
BILL OF RIGHTS
Status, Application and Interpretation

Status of Bill of Rights

24. (1) The Bill of Rights provided for in this Part is fundamental to democracy and constitutionalism and shall form the basis of Zambia's social, political, economic and cultural policies.

(2) The purpose of the Bill of Rights is to preserve the dignity of individuals and communities by promoting social justice and realising the potential of all human beings.

(3) The rights and freedoms set out in the Bill of Rights –

- (a) are inherent in each individual;
- (b) are not granted by the State;
- (c) cannot be taken away by the State;
- (d) do not exclude rights and freedoms, consistent with this Constitution, not expressly provided for in the Bill of Rights; and
- (e) are subject only to the limitations contained or contemplated in the Bill of Rights.

Duty of State to promote rights and freedoms

25. (1) The State shall respect, protect, promote and fulfill the Bill of Rights.

(2) The State shall recognise the role that civil society plays in the promotion and protection of the Bill of Rights.

(3) The President shall, each year, when addressing the National Assembly, report on the measures taken by, and the achievements of, the State in the realisation of the Bill of Rights.

Application and interpretation of Bill of Rights

26. (1) A natural or juristic person enjoys the benefit of, and is bound by, the Bill of Rights, to the extent possible, given the nature of the right or freedom.

(2) A person shall exercise a right or freedom in a manner consistent with the Bill of Rights.

(3) When applying or interpreting the Bill of Rights, the Constitutional Court shall, if necessary, develop human rights jurisprudence where legislation does not give effect to a right or freedom as contemplated under the Bill of Rights.

(4) When applying the Bill of Rights, the Constitutional Court, a court, tribunal, the Human Rights Commission, any person or body shall interpret a right or freedom in a manner consistent with the spirit, purpose, objectives, limitations and derogations permitted under the Bill of Rights.

Civil and Political Rights

Protection from
discrimination

27. (1) A person has the right not to be discriminated against, directly or indirectly, on any grounds including birth, race, sex, origin, colour, age, disability, religion, conscience, belief, culture, language, pregnancy, health, marital, ethnic, tribal, social or economic status.

(2) Subject to clause (3), a law shall not make any provision that is discriminatory either of itself or in its effect.

(3) Any law or measure that provides affirmative action, in respect of any group of persons or sector of the society, in order to address discrimination based on birth, race, sex, origin, colour, age, disability, religion, conscience, belief, culture, language, pregnancy, health, marital, ethnic, tribal, social or economic status, shall not be construed as discrimination.

Right to life

28. (1) A person has, subject to clauses (2) and (3), the right to life, which begins at conception.

(2) A person shall not be deprived of life intentionally, except to the extent authorised by this Constitution or any other law.

(3) A person may be deprived of life if that person has been convicted of a capital offence and sentenced to death.

(4) A person who is sentenced to death has the right to seek a pardon or commutation of the sentence.

(5) A court shall not impose a sentence of death on a convict –

- (a) who is pregnant;
- (b) who is a child; or
- (c) where there are extenuating circumstances relating to the commission of the crime.

(6) A person shall not be regarded as having intentionally deprived another person of that person's life if the other person dies as a result of the application of force to such extent as is reasonably justifiable –

- (a) for the defence of property or any person from violence;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) for the purpose of suppressing a riot, insurrection, mutiny or as a result of war; or
- (d) in order to prevent the commission by that person of an offence.

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| Human dignity | 29. A person has inherent dignity and the right to have that dignity respected and protected. |
| Protection from inhuman treatment | 30. A person shall not be subjected to torture, cruel, inhuman or degrading punishment or other like treatment. |
| Freedom of person | 31. A person has the right to freedom of the person which includes the right not to be deprived of freedom arbitrarily or without just cause. |
| Security of person | <p>32. A person has the right to security of the person which includes the right-</p> <ul style="list-style-type: none"> (a) not to be subjected to human trafficking; and (b) to be free from all forms of violence. |
| Slavery, servitude and forced labour | <p>33. (1) A person shall not be held in slavery or servitude.</p> <p>(2) A person shall not be required to perform forced labour.</p> |
| Protection of privacy of person, home, property and communication | <p>34. (1) All persons have the right to privacy, which includes the right not to have -</p> <ul style="list-style-type: none"> (a) their person, home or property searched; (b) their possessions seized; (c) information relating to their family, health status or private affairs unlawfully required or revealed; or |

- (d) the privacy of their communications infringed.

35. (1) A person has the right to freedom of conscience, religion, thought, belief and opinion.

(2) A person has the right, either individually or in community with others, in public or in private, to manifest any religion or belief through worship, observance, practice or teaching.

(3) Clause (2) does not extend to-

- (a) anti-Christian teaching and practice;
- (b) propaganda to incite religious wars; and
- (c) any conduct that infringes the enjoyment of religious freedoms by others.

(4) A religious community shall be entitled, at its own expense, to establish, maintain and manage educational institutions, facilities and programmes for, and to provide religious instruction to, members of that community.

(5) Religious observance and instruction may be conducted at State or State-aided institutions as long as -

- (a) the facilities for that religious observance and instruction at that institution are made available on an equitable basis, having regard to the beliefs of the population served by that institution; and
- (b) attendance, observance or instruction is voluntary.

(6) A person shall not be deprived of access to any institution, employment or facility, or the enjoyment of any right or freedom because of that individual's religious beliefs.

(7) A person shall not be compelled –

- (a) to take an oath that is contrary to that individual's religion or belief or that involves expressing a belief that the individual does not hold;
- (b) to take an oath in a manner that is contrary to that individual's religion or belief;
- (c) to receive instruction in a religion that is not that individual's religion or to attend a ceremony or observance of that religion;
- (d) by a public body or public officer to disclose that individual's religious conviction or belief; or
- (e) to do any other act that is contrary to that individual's religion or belief.

Freedom of
expression

36. (1) A person has the right to freedom of expression which includes –

- (a) freedom to hold an opinion;
- (b) freedom to receive or impart information or ideas;
- (c) freedom of artistic creativity;
- (d) academic freedom; and
- (e) freedom of scientific research.

(2) Clause (1) does not extend to –

- (a) propaganda for war;

- (b) incitement to violence;
- (c) advocacy of hatred that -
 - (i) vilifies or disparages others or incites harm; or
 - (ii) is based on any prohibited ground of discrimination specified in this Constitution; or
- (d) any other unlawful purpose.

(3) In the exercise of the right to freedom of expression, a person shall respect the rights and reputations of others.

Access to information

37. (1) A citizen has the right of access to-
- (a) information held by the State; and
 - (b) information that is held by another person;

which is lawfully required for the exercise or protection of any right or freedom.

(2) A person has the right to demand the correction of untrue or misleading information recorded or published with respect to that person.

(3) The State has the obligation to publicise any information that is in the public interest or affects the welfare of the Nation.

Freedom of media

38. (1) Freedom and independence of electronic, print and other types of media is guaranteed.

- (2) The State shall not-
- (a) exercise control over, or interfere with, any person engaged in broadcasting, the production or circulation of any

publication or the dissemination of information by any medium; or

- (b) penalise any person for any opinion or the content of any broadcast, publication or dissemination.

(3) Broadcasting and other electronic media shall be subject to licensing procedures that are -

- (a) necessary to regulate signals and signal distribution; and
- (b) free from political or commercial interference.

(4) All State-owned media shall-

- (a) be free to determine independently the editorial content of their broadcasts or communications;
- (b) be independent and impartial; and
- (c) afford fair opportunity for the presentation of divergent views and dissenting opinions.

(5) Parliament shall enact legislation to give effect to clause (3).

Political rights

39. (1) Subject to this Constitution, a citizen has a right to participate in the political affairs of the nation and in the activities of a political party.

(2) Subject to this Constitution, a citizen has the right to be elected to any elective public body or office established by or under this Constitution.

(3) A citizen aged eighteen years and above and who is eligible to register as a voter has the right to vote in

elections or referenda, as provided by or under this Constitution.

Freedom of association

40. (1) A person has the right to freedom of association, which includes the right to form, join or participate in the activities of an association.

(2) A person shall not be compelled to join an association of any kind.

(3) Parliament shall enact legislation for the registration of associations.

Right to assemble, demonstrate, picket, lock out and petition

41. A person has the right, peacefully and unarmed, to assemble, demonstrate, picket or lock out and present petitions to public authorities.

Freedom of movement and residence

42. (1) A person has the right to freedom of movement.

(2) A person has the right to leave the Republic.

(3) A citizen has the right to enter into, remain and reside anywhere in the Republic.

(4) A citizen has a right to a passport.

(5) Parliament shall enact legislation for the imposition of restrictions on the entry, movement or residence of persons who are not citizens.

Refugees and asylum seekers

43. A person who has sought asylum or refuge in Zambia has a right not to be returned to the country of origin or a third country if that person has a well-founded fear of -

(a) persecution in the country of origin or a third country; or

- (b) other treatment in that country that would justify that person being regarded as a refugee.

Acquisition and protection of property

44. (1) A person has the right, either individually or in association with others, to acquire and own property-

- (a) of any description; and
- (b) in any part of Zambia.

(2) Parliament shall not enact a law that permits the State or any person to-

- (a) arbitrarily deprive a person of property of any description or of any interest in, or right over, any property of any description; or
- (b) limit, or in any way restrict, the enjoyment of any right under this Article on the basis of any of the grounds specified or contemplated in Article 27 (1) and (2).

(3) The State shall not compulsorily take possession of property of any description, or of any interest in, or right over, property of any description, unless the acquisition is for a public purpose or in the public interest and is done in accordance with this Constitution and any Act of Parliament that-

- (a) requires prompt, adequate and effective compensation to the person; and
- (b) allows any person who has an interest in, or right over, that property a right of access to a court.

(4) An Act of Parliament may provide for compensation to be paid to occupants who have acquired property in good faith and who may not hold title to the land.

(5) The rights under this Article do not extend to any property that was unlawfully acquired.

Equality before
law

45. All persons are equal before the law and have the right to equal protection and benefit of the law.

Fair
administration

46. (1) A person has the right to administrative action that is expeditious, lawful, just, reasonable and procedurally fair.

(2) A person whose rights have been adversely affected by administrative action has the right to be given written reasons for the action.

(3) Parliament shall enact legislation to -

(a) provide for the review of administrative action by a court or, where appropriate, an independent and impartial tribunal; and

(b) promote an efficient public service.

Access and right to
justice

47. (1) A person has the right to access justice.

(2) A person has the right to have any dispute resolved and decided timely and to have a fair hearing before a court or, where appropriate, any other independent and impartial tribunal.

(3) Where a person has any claim or judgment against the State -

- (a) the claim may be instituted by proceedings against the State; and
- (b) the judgment may be enforced by execution against the State, after one year of the delivery of the judgment.

(4) The State shall be liable in tort to the same extent as a private person of full age and capacity.

(5) A court shall not order any security for costs on matters of public interest litigation.

Rights of suspects and arrested persons

48. Subject to Article 68, a person who is a suspect, arrested or detained for allegedly committing an offence has the right –

- (a) to remain silent;
- (b) to be informed in a language which that person understands of the -
 - (i) right to remain silent; and
 - (ii) consequences of remaining silent;
- (c) to be informed, as soon as reasonably practicable, of the reasons for the arrest or detention -
 - (i) in a language which that person understands;
 - (ii) in the case of a visually impaired person, in Braille;
 - (iii) in the case of a deaf person, in sign language; or
 - (iv) in such other appropriate means of communication as may be prescribed by or under an Act of Parliament;

- (d) not to be compelled to make any confession or admission;
- (e) to be held separately from persons who are serving a sentence;
- (f) to be brought before a court -
 - (i) within forty-eight hours after being arrested or detained, or to be released on bond or bail;
 - (ii) not later than the end of the first court day after the expiry of the forty-eight hours, if the forty-eight hours expire outside ordinary court hours, or to be released on bond;
 - (iii) on a day that is not an ordinary court day, or to be released on bond;
 - (iv) as speedily as possible, if that person is arrested or detained far from a court, or to be released on bond or bail;
 - (v) to be tried within ninety days or where appropriate, to be released on bond or bail; or
 - (vi) which shall have the power to determine whether or not bail should be granted, either unconditionally or subject to reasonable conditions; and
- (g) to be released on bond or bail, pending trial, on reasonable conditions, unless

there are compelling reasons to the contrary, as determined by the court.

Rights of persons
detained or in
custody

49. (1) A person shall not be detained without being charged and tried, except during a war, public emergency or threatened state of public emergency.

(2) A person who is held in custody, whether sentenced or not, retains all that person's rights and freedoms under this Constitution, except to the extent that a right or freedom is incompatible with the fact of being in custody.

(3) A person who is detained or held in custody is entitled to petition for a writ of habeas corpus.

(4) Parliament shall enact legislation that-

- (a) provides for the humane treatment of persons detained, held in custody or imprisoned;
- (b) takes into account the relevant international human rights instruments on the rights of persons detained or in custody; and
- (c) provides for the regulation of the prison system, its operation and maintenance.

Fair trial

50. (1) An accused person has the right to a fair trial which includes the right –

- (a) to be presumed innocent until the contrary is proved;
- (b) to be informed, as soon as is reasonably practicable, of the charge

with sufficient details to answer the charge-

- (i) in a language which that person understands;
 - (ii) in the case of a visually impaired person, in Braille;
 - (iii) in the case of a deaf person, in sign language; or
 - (iv) in such other appropriate form of communication as may be prescribed by or under an Act of Parliament;
- (c) to have adequate time and facilities to prepare a defence;
 - (d) to be present when being tried, unless the conduct or presence of the accused person makes it impossible for the trial to proceed;
 - (e) to have the trial commenced and concluded and judgment given without unreasonable delay;
 - (f) to compensation for wrongful detention or imprisonment;
 - (g) to choose, and be represented by, a legal practitioner and to be informed of this right before taking plea;
 - (h) to have a legal practitioner assigned to the accused person by the State and at public expense, if substantial injustice would otherwise result, and to be informed of this right promptly;

- (i) to remain silent during the trial and not to testify during the proceedings;
- (j) to adduce and challenge evidence;
- (k) not to have illegally obtained evidence admissible in the trial;
- (l) not to be compelled to give self-incriminating evidence;
- (m) not to be compelled to make any confession or admission;
- (n) to have, without payment, the assistance of an interpreter if the accused person cannot understand the language used at the trial, and in the case of a deaf person, a sign language interpreter;
- (o) not to be charged, tried or convicted for an act or omission that was not, at the time it was committed or omitted, an offence under any other law;
- (p) not to be tried for an offence in respect of an act or omission for which that person had previously been acquitted or convicted;
- (q) to the benefit of the least severe of the prescribed punishments if the prescribed punishment for an offence has been changed between the time that offence was committed and the time of sentencing; and
- (r) of appeal to, or review by, a higher court.

(2) Where this Article requires information to be given to a person, that information shall be given-

- (a) in a language which that person understands;
- (b) in the case of a visually impaired person, in Braille;
- (c) in the case of a deaf person, in sign language; or
- (d) in such other appropriate form of communication as may be prescribed by or under an Act of Parliament.

(3) An accused person charged with an offence is entitled, on request, at any stage of the trial, to a copy of the record of the proceedings of the trial.

(4) A person who is convicted of a criminal offence is entitled, on request, to a copy of the record of the proceedings of the trial, within fourteen days after it has been transcribed.

(5) A person who is convicted of a criminal offence and whose appeal has been dismissed by the highest court to which that person is entitled to appeal, may petition the Supreme Court for a new trial if new and compelling evidence has become available.

(6) Where there is compelling evidence that a person, who has been convicted by a court, may be innocent of an offence, the State may petition the Supreme Court for it to examine such evidence and make a determination as to whether that person was guilty of the offence.

(7) The entry of a nolle prosequi is not an acquittal.

(8) Where a person in respect of whom a nolle prosequi has been entered is not charged on the same facts within twelve months of the entry of the nolle prosequi, the charge shall be void from the date on which that person was charged.

Equality of both
gender

51. (1) Women and men have the right to equal treatment, including the right to equal opportunities in cultural, political, economic and social activities.

(2) Women and men are entitled to be accorded the same dignity and respect of the person.

(3) Women and men have an equal right to inherit, have access to, own, use, administer and control land and other property.

(4) Women and men have equal rights in the marriage, during the marriage and at the dissolution of the marriage.

(5) Any law, culture, custom or tradition that undermines the dignity, welfare, interest or status of women or men is prohibited.

Further rights for
women

52. Without limiting any right or freedom guaranteed under the Bill of Rights, women have the right to-

- (a) reproductive health, including family planning and access to related information and education;
- (b) acquire, change or retain their nationality, including the right to change the nationality of their children

if this is in the best interest of the children;

- (c) choose residence and domicile;
- (d) guardianship and adoption of children;
- (e) choose a family name; and
- (f) non-custodial sentences if pregnant or are nursing mothers, except as a measure of last resort for those women who pose a danger to the community.

Older members of society

53. Older members of society are entitled to enjoy all the rights and freedoms set out in the Bill of Rights, including the right to –

- (a) participate fully in the affairs of society;
- (b) personal development;
- (c) independent living;
- (d) freedom from all forms of discrimination, exploitation or abuse;
- (e) respect for physical and mental integrity;
- (f) live in dignity and respect; and
- (g) social security and protection.

Family

54. (1) The State shall recognise and protect the family as the natural and fundamental unit of society and the necessary basis of the social order.

(2) A person who is eighteen years of age or older has the right to freely choose a spouse of the opposite sex and marry.

(3) The State shall, in recognition of the importance of children to the future of society, the maternal role of women and nurturing role of both parents -

- (a) ensure the right of women to adequate maternity leave;
- (b) ensure the availability of adequate paternity leave;
- (c) ensure the availability of adequate maternal health care and child health care; and
- (d) promote the availability of adequate child-care facilities.

Children

55. (1) It is the duty of parents and the State to nurture, protect and educate children.

(2) All children, whether born in or outside wedlock, are equal before the law and have equal rights.

(3) In all actions concerning a child, the best interests of the child shall be a primary consideration.

(4) A child's mother and father, whether married to each other or not, have an equal duty to protect and provide for the child.

(5) Every child has a right -

- (a) to a name and a nationality from birth and to have the birth registered;
- (b) to parental care, or to appropriate alternative care, where the child is separated from its parents;
- (c) to free basic education;
- (d) to be protected from discrimination, neglect, abuse and harmful cultural

rites and practices, including female genital mutilation and body mutilation, and to be protected from marriage before attaining the age of eighteen years;

- (e) to be protected from any work that is exploitative or likely to be hazardous or adverse to the child's welfare;
- (f) to adequate nutrition, shelter, basic health care services, social protection and social services;
- (g) not to be subjected to corporal punishment or any other form of violence, or cruel and inhuman treatment, in the home, school and any institution responsible for the care of children;
- (h) to be protected in times of armed conflict and not to be recruited and used in armed conflict;
- (i) not to take part in hostilities;
- (j) not to be incarcerated on account of the mother's incarceration;
- (k) to a standard of living adequate for the child's physical, mental, spiritual, moral and social development;
- (l) to protection from all forms of sexual exploitation or abuse;
- (m) not to be detained or imprisoned, except as a measure of last resort, in

which case that child has the right to be -

- (i) detained for a period of not more than forty-eight hours;
- (ii) kept separate from adults in custody;
- (iii) accorded legal assistance by the State;
- (iv) treated in a manner and be kept in conditions that take into account the child's gender and age; and
- (v) tried in a Juvenile Court;
- (n) to diversion programmes;
- (o) to know of decisions affecting that child, to express an opinion and have that opinion taken into account, having regard to the age and maturity of the child and the nature of the decision;
- (p) to protection of the child's identity from exposure by the media during criminal proceedings; and
- (q) to survival and development.

(6) Children with special needs, orphans, a child whose parent is in prison, children with disability, refugee children and homeless children or children living or who spend time, on the streets, are entitled to the special protection of the State and society.

Youth

56. The youth constitute an integral part of society and, taking into account their unique needs, are entitled to

enjoy all the rights and freedoms set out in the Bill of Rights, including –

- (a) access to quality and relevant education and training for personal development;
- (b) participation in governance;
- (c) access to gainful employment;
- (d) adequate opportunities in the social, economic and other spheres of national life;
- (e) freedom of association to further their legitimate interests;
- (f) protection from any culture, custom or tradition that undermines their dignity or quality of life; and
- (g) freedom from discrimination, exploitation or abuse.

Protection of
young persons

57. (1) Subject to clause (2), a young person shall not be caused or permitted to engage in an occupation or employment which would prejudice the health or education or interfere with the physical, mental or moral development of that young person.

(2) A young person may be employed for a wage under conditions specified in an Act of Parliament.

Persons with
disabilities

58. (1) Persons with disabilities are entitled to enjoy all the rights and freedoms set out in the Bill of Rights and shall have the right to–

- (a) education and facilities that are integrated into society as a whole to the

extent compatible with the interests of persons with disabilities;

- (b) access to physical environment, information and communications, public facilities and services, places and transportation;
- (c) access materials, facilities and devices to enable them overcome constraints due to disability;
- (d) use sign language, Braille or other appropriate means of communication;
- (e) be addressed and referred to, in any enactment, officially, publicly or privately, in a manner that is not demeaning, derogatory or discriminatory;
- (f) equal opportunities in cultural, political, public service, economic and social activities;
- (g) inherit, have access to, own and control property;
- (h) personal development and independent living; and
- (i) social security and protection.

(2) Any law, practice, custom or tradition that undermines the dignity, welfare, interest or status of persons with disabilities is prohibited.

Special measures for persons with disabilities

59. The State shall -
- (a) promote measures to educate communities and society on the causes

of disabilities and the need to respect the dignity and rights of persons with disabilities;

- (b) promote and ensure the use of sign language, Braille or any other appropriate means of communication for persons with disabilities; and
- (c) not tax any assistive device used by persons with disabilities.

Minority and marginalised groups

60. The State shall put in place affirmative action programmes designed to ensure that minority and marginalised groups-

- (a) participate and are represented in governance and other spheres of life;
- (b) are provided with equal opportunities in cultural, political, public service, economic and social activities;
- (c) are provided special opportunities for access to employment; and
- (d) develop their cultural values, languages and practices.

Economic, Social and Cultural Rights

Progressive realisation of economic, social and cultural rights

61. (1) Parliament shall enact legislation that provides measures, which are reasonable, to achieve the progressive realisation of the economic, social and cultural rights under the Bill of Rights.

(2) The State shall take measures, including the enactment of legislation that-

- (a) promotes equity, equality and freedom from discrimination and establishes or provides for standards relating to the achievement of those measures;
- (b) ensures that the State, State organs and institutions fulfill the State's obligations under the Bill of Rights; and
- (c) ensures that persons fulfill their obligations under the Bill of Rights;

and where there is a claim before the Constitutional Court or with respect to the matters specified under this clause, the Constitutional Court may make a pronouncement on the matter, subject to clause (3).

(3) Where a claim is made by the State that it does not have the resources to implement a particular economic, social and cultural right-

- (a) it is the responsibility of the State to show that the resources are not available; and
- (b) the Constitutional Court shall not interfere with a decision by the State concerning the allocation of available resources solely on the basis that the Constitutional Court would have reached a different conclusion.

Economic and social rights

62. (1) A person has the right to-
- (a) the highest attainable standard of health, which includes the right to

health care services and reproductive health care;

- (b) accessible and adequate housing;
- (c) be free from hunger, and to have access to adequate food of acceptable quality;
- (d) clean and safe water in adequate quantities and to reasonable standards of sanitation;
- (e) social security and protection; and
- (f) education.

(2) A person shall not be denied emergency medical treatment.

(3) The State shall provide appropriate social security and protection to persons who are unable to support themselves and their dependants.

Language and culture

63. (1) A person has the right to use the language and to participate in the cultural life of that person's choice.

(2) A person who belongs to a cultural or linguistic community has the right, with other members of that community to –

- (a) enjoy that person's culture and use that person's language; or
- (b) form, join and maintain cultural and linguistic associations.

(3) A person shall not be compelled to-

- (a) perform, observe, participate in, or be subjected to, any cultural practice or rite; or

- (b) form, join, contribute, maintain or pay allegiance to any cultural, traditional or linguistic association, organisation, institution or entity.
- (4) The State shall-
- (a) promote all forms of national and cultural expression through literature, the arts, traditional celebrations, science, communication, information, mass media, publications, libraries and other cultural heritage;
 - (b) recognise the role of science, technology and indigenous technology in the development of the Nation; and
 - (c) support, promote and protect the intellectual property rights of the owner, or the people of Zambia.
- (5) Parliament shall enact legislation to-
- (a) ensure that communities receive compensation or royalties for the use of their biological knowledge, medicinal plants and cultural heritage; and
 - (b) recognise and protect the ownership of indigenous seeds and plant varieties, their genetic and diverse characteristics.

Freedom to choose trade, occupation or profession

64. A person has the right to choose a trade, an occupation or a profession.

Labour relations

65. (1) A person has the right to employment and to fair labour practices.

(2) A worker has the right to-

- (a) fair remuneration;
- (b) reasonable working conditions;
- (c) a pension or gratuity commensurate with the worker's status, salary and length of service which shall be paid promptly, failure to which the worker shall be retained on the payroll until the pension or benefit is paid;
- (d) form, join or participate in the activities and programmes of a trade union; and
- (e) go on a lawful strike as may be prescribed.

(3) An employer has the right to-

- (a) form and join an employers' organisation; and
- (b) participate in the activities and programmes of an employers' organisation.

(4) A trade union and an employers' organisation has the right to-

- (a) determine its own administration, programmes and activities; and
- (b) form and join a federation.

Consumer rights

66. (1) Consumers have the right to-

- (a) goods and services of reasonable quality;

- (b) information necessary for them to gain full benefit from goods and services;
- (c) the protection of their health, safety and economic interests;
- (d) compensation for loss or injury arising from defects in goods or services; and
- (e) fair, honest and decent advertising.

(2) This Article applies to goods and services offered by public entities and private persons.

Environment

67. A person has the right to a clean and healthy living environment.

Limitations on Rights and Freedoms and Non-Derogable Rights

Limitations on rights and freedoms

68. (1) A right or freedom set out in the Bill of Rights-

- (a) is limited by any limitation or qualification expressly set out in the provision containing that right or freedom; and
- (b) may be otherwise limited only by a law of general application which does not negate the core or the essential content of the right or freedom and is reasonable and justifiable in an open and democratic society and takes into account all relevant factors, including -
 - (i) the nature of the right;

- (ii) the importance of the purpose of the limitation;
- (iii) the value and extent of the limitation;
- (iv) the relation between the limitation and its purpose; and
- (v) whether there are less restrictive means to achieve the purpose.

(2) A limitation made under clause (1) (b) shall be valid only to the extent that the limitation -

- (a) is reasonably required in the interest of the public, defence and security, public safety, public order, public morality, public health, national, provincial and local spatial planning, taxation and the development, management and utilisation of natural and mineral resources;
- (b) relates to the acquisition of property to secure the development, management or utilisation of the property for a purpose beneficial to the community or the public generally, upon the payment of due compensation;
- (c) forms or is an incident of a contract, including a lease, trust, settlement, deed, letter of administration, tenancy, mortgage, charge, pledge, bill of sale or title deed to land or other instruments provided under law;

- (d) relates to property which consists of a licence or permit;
- (e) is required to enforce a judgment or an order of a court or tribunal; or
- (f) imposes restrictions on defence and security officers and other public officers.

(5) The State or any person claiming that a particular limitation is permitted under this Article shall prove to the Constitutional Court that the requirements of this Article have been satisfied.

Non-derogable rights
and freedoms

69. Notwithstanding any other provision in this Constitution, a law shall not derogate from the following rights and freedoms:

- (a) a right to a fair trial;
- (b) freedom from torture, cruel, inhuman or degrading treatment or punishment;
- (c) the right not to perform forced labour as defined in an Act of Parliament;
- (d) the right not to be subjected to human trafficking;
- (e) the right to be free from all forms of violence;
- (f) freedom from slavery or servitude;
- (g) freedom of conscience and religion; and
- (h) the right to a writ of habeas corpus.

Derogation of rights
and freedoms during
emergency or national
disaster

70. A provision contained in, thing or an act done under, any law shall not be inconsistent with or in contravention of this Part if –

- (a) the law authorises the taking, when a declaration of war, state of public emergency, threatened state of public emergency, or a national disaster is in force, of measures for dealing with such situations;
- (b) the measures taken are reasonably justifiable for dealing with the war, state of public emergency, threatened state of public emergency or national disaster; and
- (c) the law provides for the detention of persons when it is necessary for purposes of dealing with the war or other state of public emergency.

Restriction and
detention during
emergency

71. (1) Where a person's freedom of movement is restricted or that person is detained, during a war, state of public emergency or threatened state of public emergency, the following shall apply:

- (a) that person shall, as soon as is reasonably practicable and in any case not more than fourteen days after the commencement of the detention or restriction, be furnished with a statement, in writing-
 - (i) in a language which that person understands;
 - (ii) in the case of a visually impaired person, in Braille;

- (iii) in the case of a deaf person, in sign language; or
 - (iv) in such other appropriate means of communication as may be prescribed by or under an Act of Parliament;specifying, in detail, the grounds of the restriction or detention;
- (b) not more than seven days after the commencement of the restriction or detention a notification shall be published in the Gazette –
 - (i) stating the restriction or detention;
 - (ii) giving particulars of the place of the restriction or detention; and
 - (iii) stating the provision of the law under which the restriction or detention is authorised;
- (c) if that person so requests, at any time during the period of the restriction or detention or not later than twenty-one days after the commencement of the restriction or detention and at intervals of not more than thirty days, the case shall be reviewed by the Constitutional Court;
- (d) that person shall be afforded reasonable facilities to consult a legal practitioner of that person's own choice who shall be permitted to make

representations to the authority by which the restriction or detention was ordered or to the Constitutional Court; and

- (e) at the hearing of the case by the Constitutional Court, that person may-
 - (i) appear in person or by a legal practitioner, assigned to that person by the State or of that person's own choice;
 - (ii) challenge the detention or restriction; or
 - (iii) challenge the validity of the declaration of the state of public emergency or threatened state of public emergency and the measures taken during that period.

(2) The Constitutional Court shall make a determination on a matter reviewed by it under this Article.

(3) The President may, at any time, refer to the Constitutional Court the case of a person who has been or is being restricted or detained under a restriction or detention order under any law.

Enforcement of Bill of Rights

Enforcement of
Bill of Rights

72. (1) Where a person alleges that any provision of the Bill of Rights has been, is being or is likely to be contravened in relation to the person, that person may apply for redress to the Constitutional Court.

(2) Any person or organisation may bring an action against the violation of another person's or a group's human rights and freedoms.

(3) Parliament shall enact legislation to give effect to this Part and for the enforcement of the Bill of Rights.

Human Rights Commission and Gender Equality Commission

Human Rights
Commission

73. (1) There is established a Human Rights Commission which shall have offices in all the Provinces and progressively in the districts.

(2) In the performance of its functions, the Human Rights Commission shall be subject only to this Constitution and any other law, and shall not be subject to the direction or control of any person or authority.

(3) The Human Rights Commission shall be responsible for ensuring that the Bill of Rights is upheld and protected and for such other functions as may be specified by or under an Act of Parliament.

(4) The Human Rights Commission shall, in the exercise of its functions, have power to -

- (a) investigate and to report on the observance of human rights;
- (b) take necessary steps to secure appropriate redress where human rights have been violated;
- (c) bring an action to the Constitutional Court in a case of a violation of the Bill of Rights;

- (d) carry out research; and
- (e) conduct civic education.

(5) The expenses of the Human Rights Commission, including emoluments payable to, or in respect of, persons serving with the Commission, shall be a charge on the Consolidated Fund.

(6) Parliament shall enact legislation to provide for the functions, composition, appointment of members, tenure of office of members, procedures, operations, administration, finances and financial management of the Human Rights Commission.

Gender Equality
Commission

74. (1) There is established the Gender Equality Commission.

(2) In the performance of its functions, the Gender Equality Commission shall be subject only to this Constitution and any other law, and shall not be subject to the direction or control of any person or authority.

(3) The Gender Equality Commission shall be responsible for ensuring that gender equality is attained and mainstreamed in public and private affairs and structures, and for such other functions as may be specified by or under an Act of Parliament.

(4) The Gender Equality Commission shall, in the exercise of its functions, have power to –

- (a) monitor, investigate, research, educate, lobby, advise and report on issues concerning gender equality; and
- (b) take steps to secure appropriate redress in complaints relating to gender equality.

(5) The expenses of the Gender Equality Commission, including emoluments payable to, or in respect of, persons serving with the Commission, shall be a charge on the Consolidated Fund.

(6) Parliament shall enact legislation to provide for the functions, composition, appointment of members, tenure of office of members, procedures, operations, administration, finances and financial management of the Gender Equality Commission.

PART VI
REPRESENTATION OF THE PEOPLE
Electoral Systems and Process

Electoral systems

75. (1) Elections to the office of President shall be conducted directly on the basis of a majoritarian system where the winning candidate must receive not less than fifty percent plus one vote of the valid votes cast and in accordance with Article 99.

(2) Elections to the National Assembly shall be conducted under a proportional representation system where a candidate is elected from a multi-member constituency in an Electoral District, in accordance with Article 135.

(3) Elections to district councils shall be conducted under a first-past-the-post system in accordance with Article 214.

Basis of electoral system

76. (1) The electoral system is based on universal adult suffrage and secret ballot.

(2) The electoral system provided under clause (1) ensures free and fair elections and achieves-

- (a) elections that are free from violence, intimidation, improper influence and corruption;
- (b) transparency in the electoral process;
- (c) impartial, neutral, efficient, accurate and accountable administration; and
- (d) equitable representation of various interest groups.

Franchise

77. A citizen who has attained the age of eighteen years is entitled to be registered as a voter and vote in any election by secret ballot.

Electoral process

78. Parliament shall enact legislation to regulate elections and provide for -

- (a) the registration of voters;
- (b) the manner and procedure for nomination of candidates;
- (c) the preparation, form, content and procedure for submission of party lists;
- (d) publication of party lists;
- (e) certification of party lists;
- (f) the time and place for submission of party lists;
- (g) the manner of voting at elections and referenda;
- (h) the supervision of elections and referenda;
- (i) election campaigns;
- (j) the collation and announcement of election results, including the counting

- and collation of votes using a parallel voting tabulation;
- (k) special arrangements to enable the following persons to vote:
 - (i) members of the Defence Force, the Police Service and the Prisons Service;
 - (ii) election officials;
 - (iii) persons with disabilities;
 - (iv) citizens living outside Zambia; and
 - (v) other special sectors of society;
 - (l) the declaration of candidates duly elected;
 - (m) appropriate structures and mechanisms to eliminate all forms of electoral malpractices,
 - (n) the keeping of election material;
 - (o) the monitoring and observation of elections;
 - (p) an electoral code of conduct;
 - (q) voter and civic education; and
 - (r) any matter dealing with the electoral process so as to ensure free and fair elections.

Access to media

79. (1) A political party, an independent candidate and a person contesting for councillorship shall have equitable access to public and private media generally and during election campaigns.

(2) Parliament shall enact legislation to give effect to this Article.

Independent and unopposed candidates

80. (1) A person shall be eligible to stand as an independent candidate for election as a Member of Parliament or councillor if the person meets the qualifications specified for election as a Member of Parliament or councillor, as the case may be.

(2) If, in an election for a President or councillor, only one candidate is validly nominated by the date and time set by the Electoral Commission for receiving nominations, that candidate shall be declared duly elected as President-elect or councillor, as the case may be.

(3) Nothing in clause (2) shall prevent an aggrieved person from challenging, within seven days of the nomination, the nomination or declaration made under clause (2).

(4) A person who challenges the nomination or declaration made under clause (2) shall state the grounds on which that person intends to rely.

(5) Parliament shall enact legislation to provide for the procedures for challenging any nomination or declaration made under clause (2).

(6) The provisions of Articles 88(a), (e), (g) and 137 shall apply to an independent candidate.

(7) An independent candidate may access financial support from the Political Parties' Fund to be established under Article 88.

Losing candidate not eligible for certain appointments

81. Any person who was a candidate for election as a councillor or who stood for election as an independent, and who lost the election is not eligible, during the term of

that district council or National Assembly, for appointment as-

- (a) Minister;
- (b) Provincial Minister; or
- (c) Parliamentary Secretary.

Election date for general elections

82. (1) Subject to clause (3) and the other provisions of this Constitution, a general election shall be held every five years on the last Thursday of September after the last general election.

(2) Elections to the office of President, National Assembly and district council may be held on separate days within ninety days of the period specified in Articles 103, 152 and 214, as the case may be.

(3) The day on which an election is held shall be a public holiday.

Electoral Commission of Zambia

Electoral Commission of Zambia

83. (1) There is established the Electoral Commission of Zambia which shall have offices in all Provinces and progressively in the districts.

(2) The Electoral Commission shall be autonomous and impartial and shall not, in the performance of its functions, be subject to the direction or control of any person or authority.

(3) The Electoral Commission shall be responsible for registration of voters, conducting elections and referenda, settlement of minor disputes, delimitating electoral boundaries and such other functions as specified under this Constitution and by or under an Act of Parliament.

(4) The Electoral Commission shall be national in character, non-partisan and be composed of –

- (a) persons who have held or qualify to hold the office of judge; and
- (b) representatives of civil society organisations as specified in an Act of Parliament.

(5) A Member of Parliament, a member of a provincial assembly and a councillor shall not be appointed as members of the Electoral Commission.

(6) The President shall appoint the members of the Electoral Commission, on the recommendation of a committee established under an Act of Parliament, subject to ratification by the National Assembly.

(7) The expenses of the Electoral Commission, including the emoluments payable to, or in respect of, persons serving with the Commission, shall be a charge on the Consolidated Fund.

(8) Parliament shall enact legislation to provide for the functions, composition, appointment of members, tenure of office of members, procedures, operations, administration, finances and financial management of the Electoral Commission.

Delimitation of
multi-member
constituencies and
wards

84. (1) The Electoral Commission shall determine the names and boundaries of Electoral Districts, multi-member constituencies and wards.

(2) In determining the electoral boundaries and the naming of Electoral Districts, multi-member constituencies and wards, the Electoral Commission shall–

- (a) ensure that Zambia is divided into multi-member constituencies and wards so that the number of multi-member constituencies and wards are equal to the number of seats of members elected under the proportional representation system or the first-past-the-post system, as the case may be;
- (b) seek to achieve an approximate equality of multi-member constituency or ward population, subject to the need to ensure adequate representation for urban and sparsely populated areas; and
- (c) ensure that the number of inhabitants in each multi-member constituency or ward is as nearly equal to the population quota as is reasonably practicable.

(3) The Electoral Commission shall, at intervals of not more than ten years, review and, where necessary, alter the names and boundaries of Electoral Districts, multi-member constituencies or wards.

(4) The names and details of the boundaries of Electoral Districts, multi-member constituencies and wards, determined under clause (1), shall be published in the Gazette and shall come into effect on the next dissolution of Parliament or district council, as the case may be.

(5) Any person may apply to the Constitutional Court for review of a decision of the Electoral Commission made under this Article.

(6) Parliament shall enact legislation to give effect to this Article.

Matters to be taken into account when delimitating Electoral Districts, multi-member constituencies and wards

85. In determining the boundaries of Electoral Districts, multi-member constituencies and wards, the Electoral Commission shall take into account the nature of the electoral system, and the history, diversity and cohesiveness of the multi-member constituency or ward having regard to -

- (a) population density, population trends and projections;
- (b) geographical features and urban centres;
- (c) means of communication; and
- (d) the need to ensure that multi-member constituencies or wards are wholly within a district.

Political Parties and other Candidates

Political parties

86. (1) In a multi-party democracy, political parties are essential in achieving effective representation of the people and their participation in political and national affairs and are instrumental in shaping the political will of the people.

(2) A political party has a right to -

- (a) disseminate information on political ideas, and social and economic

programmes of a national character;
and

- (b) sponsor candidates for election to any public office, other than to provincial assemblies or district councils;
 - (c) conduct primary elections for the selection of candidates to appear on the party list, for each multi-member constituency as prescribed, for elections to the National Assembly.
- (3) A political party shall –
- (a) promote the objectives and principles of this Constitution and the rule of law;
 - (b) have a national character as prescribed by or under an Act of Parliament;
 - (c) have a democratically elected governing body;
 - (d) promote and uphold national unity;
 - (e) abide by the democratic principles of good governance and promote and practice democracy through regular, fair and free elections within the party;
 - (f) respect the right of any person and the right of its members to participate in the affairs of the political party, including minority and marginalised groups;
 - (g) respect the right of a member to seek redress directly from a court or tribunal when aggrieved by a decision of the political party;

- (h) promote and respect human rights and gender equality and equity; and
 - (i) subscribe to and observe any code of conduct for political parties prescribed by or under an Act of Parliament.
- (4) A political party shall not –
- (a) be founded on a religious, linguistic, racial, ethnic, gender, sectoral or provincial basis or seek to engage in propaganda based on any of these factors;
 - (b) engage in or encourage violence or intimidation of its members, supporters, opponents or any other person;
 - (c) establish or maintain a paramilitary force, militia or similar organisation;
 - (d) engage in bribery or other forms of corrupt practices; or
 - (e) except as provided under an Act of Parliament, use public resources to promote its interest or its candidates in elections.

Representation of
gender, youth and
persons with
disabilities

87. (1) A political party shall ensure that in nominations for elections there is equitable representation of each gender, persons with disabilities and the youth.

(2) Parliament shall enact legislation to give effect to this Article.

88. Parliament shall enact legislation to provide for-
- (a) the roles and functions of political parties in a multi-party democracy;
 - (b) the registration and de-registration of political parties;
 - (c) the establishment and management of a Political Parties' Fund which shall provide financial support to political parties with seats in the National Assembly;
 - (d) the limit of money to be used for campaigns during elections;
 - (e) the accounts and audit of political parties which are funded under the Political Parties' Fund;
 - (f) the submission of audited accounts as may be prescribed by an Act of Parliament;
 - (g) the sources of funds for political parties;
 - (h) restrictions on the use of public resources to promote the interests of political parties and their candidates; and
 - (i) any other matter necessary for the management and regulation of political parties in a multi-party democracy.

PART VII
EXECUTIVE
Executive Power

Office of
President
and vesting
of executive
power

89. (1) There shall be a President of the Republic of Zambia who shall be the Head of State and Government and the Commander-in-Chief of the Defence Force.

(2) The executive power of the State vests in the President and, subject to this Constitution, shall be exercised directly by the President or through public officers or other persons appointed by the President.

(3) In exercise of the executive power of the State, the President shall-

- (a) respect, uphold and safeguard this Constitution;
- (b) safeguard the sovereignty of the Republic;
- (c) promote and enhance the unity of the Nation;
- (d) promote respect for the diversity of the people and communities of Zambia; and
- (e) ensure the protection of human rights and fundamental freedoms and uphold the rule of law.

Executive functions
of President

90. (1) The President shall perform, with dignity, leadership and integrity, the acts that are necessary, expedient for, or reasonably incidental to, the performance of the executive powers of the State, subject to the overriding terms and spirit of this Constitution and any other law,

which the President is obliged to protect, administer and execute.

(2) Without limiting clause (1) and the other provisions of this Constitution, the President shall-

- (a) preside over the meetings of Cabinet;
- (b) accredit and appoint ambassadors, high commissioners, plenipotentiaries, diplomatic representatives and consuls;
- (c) receive and recognise foreign ambassadors, high commissioners, plenipotentiaries, diplomatic representatives, consuls and heads of international organisations;
- (d) negotiate international agreements and treaties and, subject to the National Assembly approving the final draft of any international agreement or treaty, accede to or ratify such international agreement or treaty;
- (e) establish and dissolve Government ministries, subject to the approval of the National Assembly;
- (f) appoint such persons as are required by this Constitution or any other law to be appointed by the President;
- (g) appoint such persons as are required to perform special duties on behalf of the Executive;
- (h) confer honours on citizens, residents and friends of Zambia, after

consultation with relevant interested persons and institutions;

- (i) sign and promulgate any proclamation which by law the President is entitled to proclaim;
- (j) initiate Bills for submission to, and consideration by, the National Assembly; and
- (k) perform any other function specified by this Constitution or by or under any other law.

Approvals by
National
Assembly

91. (1) Where any exercise of executive function is expressed by this Constitution to be subject to approval by the National Assembly, the National Assembly shall not unreasonably refuse or delay the approval.

(2) Where the National Assembly unreasonably refuses or delays to approve any matter submitted for approval, as provided under clause (1), the President shall refer the matter to the Constitutional Court for determination and the decision of the Constitutional Court shall be final.

(3) Where the Constitutional Court determines that the refusal or delay by the National Assembly to approve any matter was justified, the President shall-

- (a) make a new appointment for submission to the National Assembly;
- (b) not establish or dissolve a ministry;
- (c) not increase or decrease the number of Ministers; or

(d) not perform or do anything that requires the approval of the National Assembly;

and the National Assembly shall proceed to consider the matters expeditiously in accordance with clause (1).

(4) Where the Constitutional Court determines that the refusal or delay by the National Assembly was unreasonable, the National Assembly shall proceed, as a formality, to approve the matter tabled by the President.

(5) Where the National Assembly refuses or delays an approval for the declaration of a war, state of public emergency or threatened state of public emergency for a period of more than seven days, the President shall proceed to make the declaration.

Ratifications by National Assembly

92. (1) Where any appointment to be made by the President is expressed by this Constitution to be subject to ratification by the National Assembly, the National Assembly shall not unreasonably refuse or delay the ratification.

(2) Where the National Assembly refuses or delays to ratify any appointment, the President shall appoint another person to that office and shall submit the appointment for ratification by the National Assembly.

(3) Where the National Assembly refuses or delays to ratify the second appointment, the President shall appoint another person to the office and submit the appointment for ratification by the National Assembly.

(4) Where the National Assembly refuses or delays to ratify the third appointment for a period of more than fourteen days, the appointment shall take effect.

Prerogative of mercy

93. The President may, on the advice of the Advisory Committee, pardon or reprove offenders and remit any fine, penalty or forfeiture.

Advisory Committee

94. (1) There shall be an Advisory Committee on the prerogative of mercy which shall consist of persons appointed by the President.

(2) The Advisory Committee shall give advice to the President on any action or decision to be taken in relation to persons convicted of an offence by any court or court-martial, for purposes of Article 93.

(3) A member of the Advisory Committee shall hold office at the pleasure of the President.

(4) The President may preside at any meeting of the Advisory Committee.

(5) The Advisory Committee may determine its own procedure for meetings.

Emoluments of President

95. (1) The President shall be paid such emoluments as determined by the Emoluments Commission and specified by an Act of Parliament.

(2) The President shall not hold any other office of profit or which pays emoluments.

(3) The emoluments of a person who holds or has held the office of President shall be a charge on the Consolidated Fund and shall not be altered to the disadvantage of that person.

(4) Subject to clause (6), a person who has held the office of President shall be paid, at the end of each term or part of the term of office, such emoluments as determined

by the Emoluments Commission, except that a person who served as President for part of a term shall be paid emoluments on a pro rata basis.

(5) Parliament shall enact legislation to provide for the emoluments of a person who holds or has held the office of President and when such emoluments shall be paid.

(6) If a President is impeached from office under this Constitution, that person shall not be entitled to any emoluments for the unexpired term of office.

Protection of President
from legal proceedings

96. (1) Civil proceedings shall not be instituted or continued against the President, or a person who is performing the executive functions, in respect of anything done, or omitted to be done.

(2) The President, or a person performing the executive functions, subject to clause (6), shall be immune from criminal proceedings.

(3) Where there is prima facie evidence that a person who held the office of President committed any offence whilst in office, the President shall submit a report, outlining the grounds relating to the offence allegedly committed, to the National Assembly requesting the National Assembly to remove the immunity from criminal proceedings of such person.

(4) Where the National Assembly receives a report under clause (3), the National Assembly shall constitute an ad hoc select committee to scrutinise the grounds submitted under clause (3) and determine whether or not there is a prima facie case that warrants the removal of the immunity from criminal proceedings, of the person who held the office

of President, based on the grounds submitted under clause (3), and recommend its decision to the National Assembly.

(5) The person who held the office of President shall have the right to appear and be represented before the ad hoc select committee constituted under clause (4).

(6) Where the ad hoc select committee, constituted under clause (4), recommends the removal of immunity from criminal proceedings of the person who held the office of President, the National Assembly may remove the immunity, in respect of that alleged offence, by a resolution supported by a vote of not less than two-thirds of all the Members of Parliament.

(7) Where the immunity is removed, in accordance with clause (6), the person who held the office of President shall only be charged with the offence for which the immunity from criminal proceedings was removed.

(8) For the avoidance of doubt, where a court acquits a person who held the office of President of an offence for which that person's immunity from criminal proceedings was removed, by the National Assembly, the immunity of that person with respect to that offence shall, for all purposes, be deemed not to have been removed, without further proceedings.

Election of President

Qualifications and disqualifications for nomination for election as President

97. (1) A person qualifies to be nominated as candidate for election as President if that person -
- (a) is a citizen by birth or descent;
 - (b) does not have dual citizenship;
 - (c) has been ordinarily resident in Zambia;

- (d) is not less than thirty-five years of age;
- (e) has obtained, as a minimum academic qualification, a grade twelve certificate or its equivalent;
- (f) is conversant with the official language;
- (g) does not have a mental disability that would make the person incapable of performing the executive functions;
- (h) is not an undischarged bankrupt;
- (i) is not serving a sentence of imprisonment;
- (j) has not, in the immediate preceding five years, served a term of imprisonment for at least three years;
- (k) has paid that person's taxes or has made arrangements, satisfactory to the appropriate tax authority, for the payment of the taxes; or
- (l) declares that person's assets and liabilities as provided by this Constitution and by or under an Act of Parliament.

(2) A person is disqualified from being nominated as a candidate for election as President if that person –

- (a) is a public officer, or is holding or acting in any State or other public office, including the following:
 - (i) the Defence Force and national security agencies;
 - (ii) the public service;
 - (iii) a commission;

(iv) a statutory body or company in which the Government has a controlling interest; or

(v) any other post or office specified by or under an Act of Parliament;

(b) is a judge or judicial officer; or

(c) was removed from public office on grounds of gross misconduct.

(3) A person may be nominated as a candidate for election as President, if that person qualifies or is not disqualified under clauses (1) and (2), respectively, and-

(a) has paid the election fee specified by or under an Act of Parliament on, or before, the date fixed for the delivery of nomination papers; and

(b) is supported by not less than one hundred registered voters from each Province.

Nomination papers
for election as
President

98. (1) A presidential candidate shall deliver nomination papers to the Returning Officer in the manner, on the day and at the time and place, prescribed by the Electoral Commission.

(2) The nomination papers of a presidential candidate, delivered under clause (1), shall be supported by an affidavit stating that the candidate is qualified for nomination as President.

(3) The information contained in a presidential candidate's nomination papers and affidavit shall be published, by the Electoral Commission, in the Gazette and

in at least one electronic and print medium circulating nationally.

Election of
President

99. (1) The President shall be elected directly by registered voters in accordance with this Article and as may be provided by or under an Act of Parliament.

(2) The Chairperson of the Electoral Commission shall be the Returning Officer in a presidential election.

(3) A presidential candidate shall be duly elected if the candidate receives not less than fifty percent plus one vote of the valid votes cast.

(4) The Returning Officer shall declare the presidential candidate who receives not less than fifty percent plus one vote of the valid votes cast as President-elect.

(5) If, at the initial ballot, a presidential candidate does not receive fifty percent plus one vote of the valid votes cast, a second ballot shall be held within thirty days, if there is no election petition filed under Article 101 (1), after the initial ballot, where the only candidates, as declared by the Returning Officer, shall be those who obtained -

(a) the highest and second highest number of valid votes cast in the initial ballot; or

(b) an equal number out of the valid votes cast, being the highest amongst the presidential candidates that stood for election.

(6) The presidential candidate who obtains the most votes of the valid votes cast in the second ballot shall be declared President-elect.

(7) If a presidential candidate who has qualified for a second ballot, dies or is disqualified for any reason under this Constitution or any other law from standing for election to the office of President before the taking of the second ballot, the next candidate with the highest number of valid votes cast in the initial ballot shall assume the place of that candidate.

(8) If at the second ballot there is a tie between or among the presidential candidates, the Speaker shall summon the National Assembly to elect, by secret ballot, the President from the candidates who took part in the second ballot, and the candidate who obtains the highest number of the valid votes cast by the Members of Parliament shall be declared President-elect.

(9) If there is a tie between or among the presidential candidates in the voting in the National Assembly, the Speaker shall cast a vote.

Transition period
before assuming office

100. (1) The President-elect shall not be sworn into office and assume office except in accordance with Article 102.

(2) Subject to clause (3) the Speaker shall, after the declaration of the presidential election results by the Returning Officer, perform the executive functions until the President-elect assumes office, except that the Speaker shall not dissolve Parliament or make any appointment under this Constitution or any other law.

(3) Notwithstanding clause (2), where the Returning Officer declares the incumbent President as President-elect, the incumbent President shall continue to perform the executive functions unless an election petition is filed in

accordance with Article 101 (2) whereby the Speaker shall perform the executive functions in accordance with clause (2).

(4) Subject to clause (3) and Article 102(2) and (3), the out-going President shall, on the assumption of office by the President-elect, begin and complete the procedural and administrative handing over of the executive functions to the President-elect within fifteen days from the day the President-elect assumes office.

Election petition

101. (1) A presidential candidate, who is aggrieved by the declaration of the Returning Officer, made under Article 99 (4), may, within fourteen days of the declaration, petition the Constitutional Court for a determination stating the grounds on which the petitioner is relying.

(2) Any person may file an election petition before the Constitutional Court to challenge the election of the President-elect on any question as to whether –

- (a) that person has been validly elected as President; or
- (b) any provision of this Constitution or any other law relating to presidential elections has been complied with.

(3) A petition, under clause (2), shall be filed within fourteen days after the date of the declaration of the presidential election results.

(4) The Constitutional Court shall hear and determine an election petition-

- (a) relating to the initial ballot, within fourteen days of the filing of the petition; or
 - (b) relating to the President-elect, within sixty days of the filing of the petition.
- (5) The Constitutional Court may, after hearing an election petition-
- (a) make a determination in relation to a petition filed with respect to the initial ballot and order that the second ballot be held, in accordance with its determination, within fourteen days of the determination;
 - (b) declare the election of the President-elect to be valid; or
 - (c) nullify the election of the President-elect.
- (6) A decision of the Constitutional Court under clause (5) shall be final.
- (7) Where the election of the President-elect is nullified by the Constitutional Court, a presidential election shall be held within sixty days from the date of the nullification.

Assumption of Office, Tenure of Office and Vacancy

Assumption of
office

102. (1) The President-elect shall assume office after being sworn in by the Chief Justice, or, in the absence of the Chief Justice, by the Deputy Chief Justice, as may be prescribed by an Act of Parliament.

(2) The President-elect shall be sworn into office on the Tuesday following –

(a) the fourteenth day after the date of the declaration of the election results, if no petition has been filed under Article 101(2) and in accordance with Article 101(3); or

(b) the seventh day following the date on which the court declares the election to be valid, if a petition has been filed under Article 101(2).

(3) Subject to clause (4), where the President-elect dies or is for any other reason unable to assume office under Article 102, the Vice-President-elect shall assume the office of President in accordance with clause (1) and the handover process under Article 100(3) shall apply.

(4) Where the inability of the President-elect to assume office is as a result of an event or circumstance beyond the control of the President-elect, which has the effect of preventing the President-elect from being sworn into office, the Vice-President-elect shall not be sworn into office, unless the Constitutional Court determines that the inability of the President-elect to assume office is permanent.

(5) The Vice-President elect who assumes office as President, as a consequence of clause (3), shall appoint any person as Vice-President, subject to the approval of the National Assembly signified by a vote of not less than two-thirds of the Members of Parliament.

(6) Where the Vice-President elect, who is supposed to assume the office of President as contemplated by clause (3), dies before assuming office -

(a) the Speaker shall assume the office of President; and

(b) a presidential election shall be held within ninety days of the vacancy occurring.

(7) Parliament shall enact legislation providing for the procedure and ceremony for the swearing-in of a President-elect or a person to whom clause (3) refers.

Tenure of office

103. (1) The term of office for a President shall be five years.

(2) Subject to clauses (3) and (4), a President shall hold office for one term, commencing from the date the President-elect is sworn into office and ending on the date the election results are announced, and shall be eligible to be elected as President for a second term.

(3) Notwithstanding anything in this Constitution or any other law, a person who has twice been elected as President shall not be eligible for election as President.

(4) The President may, in writing, signed personally and addressed to the Speaker of the National Assembly, resign from office.

Removal of President on grounds of incapacity

104. (1) The National Assembly may, by not less than one-third of the Members of Parliament, by notice in writing to the Speaker, petition the Speaker that the physical or mental capacity of the President to perform executive functions ought to be investigated.

(2) The petition under clause (1) shall specify the particulars of the allegation relating to the physical or mental capacity of the President.

(3) The Speaker shall, after receipt of the petition submitted under clause (1), if the National Assembly-

- (a) is sitting, cause a motion for the investigation of the President's incapacity to perform the executive functions, to be considered by the National Assembly within seven days of the petition; or
- (b) is adjourned or prorogued, summon the National Assembly to meet within fourteen days of the summons, and cause a motion for the investigation of the President's incapacity to perform the executive functions to be considered.

(4) The Members of Parliament may, after the consideration of the motion in clause (3), resolve by a vote supported by two-thirds of the members that the physical or mental capacity of the President to perform the executive functions ought to be investigated.

(5) Where a resolution is passed under clause (4), the Speaker of the National Assembly shall send a copy of the resolution to the Chief Justice, who shall inform the President of the resolution of the National Assembly, whereupon the President shall not perform the executive functions which shall be performed by the Vice-President, pending final resolution of the matter.

(6) The Chief Justice shall, on receipt of a copy of the resolution submitted under clause (5), in consultation with the body responsible for regulating health practitioners, appoint a medical board which shall inquire into the physical

or mental capacity of the President to perform the executive functions.

(7) A medical board shall consist of not less than three persons selected from among persons who are registered as health practitioners under an Act of Parliament.

(8) A medical board, appointed under clause (6), shall examine the President and report to the Chief Justice, within fourteen days of the appointment of the medical board, as to whether or not the President is capable of performing the executive functions.

(9) Where the medical board reports that the President is capable of performing the executive functions, the Chief Justice shall forward a copy of the medical report to the Speaker and the President shall resume the performance of the executive functions.

(10) Where the medical board reports that the President is not capable of performing the executive functions, the Chief Justice shall forward a copy of the medical report to the Speaker for a resolution of the National Assembly.

(11) The National Assembly shall, by a simple majority vote of the Members of Parliament, taken by secret ballot, resolve that the President should cease to hold office.

(12) Where the President ceases to hold office by virtue of clause (11), the Vice-President shall assume the office of President for the unexpired term of that office.

(13) Where the Vice-President assumes the office of President as a consequence of clause (12), the President shall appoint a Vice-President, subject to the approval of the National Assembly signified by a vote of not less than two-thirds of the Members of Parliament.

(14) Where the President who assumed office as a consequence of clause (12) dies during the term of office-

- (a) the Vice-President who assumed office as a consequence of clause (13) shall not assume the office of President;
- (b) the Speaker shall assume the office of President; and
- (c) a presidential election shall be held within ninety days of the vacancy occurring.

(15) The provisions of this Article relating to the procedure for removal of the President from office for incapacity to perform the executive functions shall apply to the Vice-President.

Impeachment of
President for
violation of
Constitution or gross
misconduct

105. (1) Not less than one-third of the Members of Parliament may, by notice, in writing, to the Speaker, petition the Speaker alleging that the President has committed-

- (a) a violation of a provision of this Constitution;
- (b) a crime under international law; or
- (c) gross misconduct.

(2) The notice under clause (1) shall specify the particulars of the allegation and propose that a tribunal be established under this Article to investigate the allegations.

(3) The Speaker shall, after receipt of the notice submitted under clause (1), if the National Assembly-

- (a) is sitting, cause a motion for the investigation of the allegations against the President to be considered by the

National Assembly within seven days of the notice; or

- (b) is adjourned or prorogued, summon the National Assembly to meet within fourteen days of being summoned, and cause a motion for the investigation of the allegations against the President to be considered by the National Assembly.

(4) The National Assembly shall debate the motion under clause (3), and if the motion is supported by a vote of not less than two-thirds of the Members of Parliament, taken by secret ballot, the motion shall be considered passed.

(5) Where a motion is passed under clause (4), the Speaker of the National Assembly shall, within seven days of the passing of the motion, inform the Chief Justice of the resolution of the National Assembly.

(6) The Chief Justice shall, within seven days of receipt of a copy of the resolution submitted under clause (5), appoint a tribunal which shall consist of a chairperson and not less than two other members selected by the Chief Justice from among persons who hold, or have held or qualify to hold, the office of judge.

(7) The tribunal appointed under clause (6) shall, within thirty days of its appointment -

- (a) investigate the matter, and the President shall have the right to appear and be represented before the tribunal during its investigation; and

(b) report to the Chief Justice as to whether or not it finds the particulars of the allegations specified in the motion to have been substantiated.

(8) The Chief Justice shall, on receipt of the report referred to in clause (7), immediately submit the report to the National Assembly.

(9) Where the tribunal, appointed under clause (6), reports that it finds that the particulars of any allegation against the President -

(a) are not substantiated, the National Assembly shall resolve that-

(i) the President did not commit the violations, crime under international law or gross misconduct specified under clause(1); and

(ii) further proceedings shall not be taken under this Article in respect of that allegation; or

(b) are substantiated, the National Assembly shall, on a motion supported by the votes of not less than two-thirds of the Members of Parliament, by secret ballot, resolve that the President has committed-

(i) a violation of a provision of this Constitution;

(ii) a crime under international law; or

(iii) gross misconduct;

and that the President should cease to hold office forthwith.

(10) The President shall, on the passing of the resolution under clause (9) (b), cease to hold office.

(11) Where the President ceases to hold office under this Article, the Vice-President shall assume the office of President for the unexpired term of office.

(12) Where the Vice-President assumes the office of President, as a consequence of clause (11), the President shall appoint a Vice-President, subject to the approval of the National Assembly signified by a vote of not less than two-thirds of the Members of Parliament.

(13) Where the President who assumed office as a consequence of clause (11) dies during the term of office-

- (a) the Vice-President who assumed office as a consequence of clause (12) shall not assume the office of President;
- (b) the Speaker shall assume the office of President; and
- (c) a presidential election shall be held within ninety days of the vacancy occurring.

(14) Where a notice is submitted to the Speaker under clause (1), the President shall not dissolve Parliament.

Performance of executive functions during absence of President

106. (1) If the President leaves Zambia or is absent from office for whatever reason other than the grounds contained in Article 104, the Vice-President shall perform the executive functions specified by the President in writing, until the President returns to office.

(2) Where the Vice-President is incapable of performing the executive functions, as provided under clause (1), the President shall appoint a member of the Cabinet to perform the functions of the Vice-President until such a time as the Vice-President is able to perform those functions or until the President returns to office.

(3) Where the Vice-President is unable to perform the executive functions, as provided in clause (1), and the President is unable to appoint a member of Cabinet to perform the executive functions, in accordance with clause (2), a member of Cabinet, elected by Cabinet, shall perform the executive functions until such a time as the President is able to perform those functions.

Vice-President

Vice-President,
election to office and
swearing in

107. (1) There shall be a Vice-President for the Republic who shall be elected as a running mate to a presidential candidate.

(2) The qualifications and the disqualifications applying to a presidential candidate shall apply to the person selected by the presidential candidate as a running mate.

(3) An election to the office of Vice-President shall be conducted at the same time as that of an election to the office of President so that a vote cast for a presidential candidate is a vote cast for the vice-presidential candidate, and if the presidential candidate is elected, the vice-presidential candidate is also elected.

(4) A Vice-President elect shall be sworn into office by the Chief Justice and shall assume office on the same day that the President-elect assumes office.

(5) Where a vacancy occurs in the office of Vice-President through death, resignation or removal from office on the same grounds and procedures as apply to the President, the President shall appoint another person to be Vice-President and the National Assembly shall, by a resolution supported by the votes of not less than two-thirds of the Members of Parliament, approve the appointment of the Vice-President who shall serve for the unexpired term of office.

(6) The Vice-President shall not hold any other office of profit or which pays emoluments.

(7) The emoluments of the Vice-President shall be as determined by the Emoluments Commission and specified in an Act of Parliament, except that a person who served as Vice-President for part of a term shall be paid emoluments on a pro rata basis.

(8) The emoluments of the Vice-President shall be a charge on the Consolidated Fund.

Functions of Vice-President

108. (1) Subject to the other provisions of this Constitution, in addition to the functions of the Vice-President specified in this Constitution or under any other law, the Vice-President shall -

- (a) perform the functions that are assigned to the Vice-President by the President;
- (b) perform the executive functions when the President is unable to carry out the executive functions as provided under this Constitution;
- (c) assume the office of President when the President dies or is unable to be sworn

into office as provided in this Constitution; or

- (d) perform the executive functions as President where the President is removed or impeached from office under Articles 104 and 105, respectively.

(2) The Vice-President shall only attend the sittings of the National Assembly where it is necessary for the performance of a particular function specified under this Constitution or any other law, or when required to do so by the Speaker, and the Vice-President shall, while in attendance in the National Assembly, take part in the proceedings of the National Assembly, but shall have no vote.

Removal from
office as Vice-
President

109. Articles 104 and 105 shall apply to the removal of the Vice-President from office.

**Declaration of War, State of Emergency,
Threatened State of Emergency and National
Disasters**

Declaration of war

110. (1) The President may, in consultation with Cabinet and subject to the prior approval of the National Assembly, signified by a resolution supported by not less than two-thirds of the Members of Parliament, declare war between Zambia and any other country.

(2) Where it is impracticable to seek the approval of the National Assembly before making the declaration under clause (1), the President may declare war without the prior approval of the National Assembly, but the President

shall seek the ratification of the National Assembly as soon as is reasonably practicable after the declaration.

(3) A declaration made under clause (1) shall be by proclamation in the Gazette and shall continue in force until the cessation of hostilities.

(4) An Act of Parliament shall provide for the circumstances under which a declaration may be made under clause (1).

Declaration of state
of public emergency

111. (1) When there is a state of war, an invasion, insurrection, disorder and other similar public emergency, the President may, in consultation with Cabinet, declare a state of public emergency.

(2) A declaration made under clause (1) shall -

(a) be by proclamation in the Gazette;

(b) continue in force until the cessation of hostilities or other public emergency; and

(c) cease to have effect-

(i) after a declaration by the President; or

(ii) when the National Assembly declares the end of the state of public emergency.

(3) An Act of Parliament shall provide for the circumstances under which a declaration may be made or continued under clause (1).

(4) Any law relating to public emergencies or power in force during a state of public emergency shall not be enforced after the cessation of hostilities or other public emergency.

General measures relating to public emergency

112. (1) The President may take such measures as are necessary to respond to a state of public emergency and shall, as soon as is reasonably practicable, after the declaration, seek the ratification of the National Assembly for the measures that have been undertaken.

(2) Any law relating to a state of public emergency and a law enacted or action taken in consequence of a declaration of a state of public emergency shall not indemnify the State or any person in respect of any unlawful act committed during the state of public emergency.

Declaration of threatened state of public emergency

113. (1) The President may, in consultation with Cabinet and subject to the prior approval of the National Assembly, signified by a resolution supported by not less than two-thirds of the Members of Parliament, declare that a threatened state of public emergency exists.

(2) A declaration made under this Article shall be by proclamation published in the Gazette.

(3) A declaration made under clause (1) and a law enacted or other action taken in consequence of that declaration shall be effective only -

(a) prospectively; and

(b) for not more than twenty-one days from the date of the declaration, unless the National Assembly resolves to extend the period of the threatened state of public emergency.

(4) An extension of a threatened state of public emergency shall be effective only if it is approved by the

National Assembly signified by the votes of at least two-thirds of the Members of Parliament.

(5) A law relating to a threatened state of public emergency, or any action taken in consequence of a declaration of a threatened state of public emergency shall not indemnify the State or any person in respect of any unlawful act committed during the state of threatened public emergency.

Declaration of national disasters

114. (1) The President may, in consultation with Cabinet, declare that a national disaster exists, which includes a natural or human-made disaster.

(2) The President may take such measures as are prescribed by an Act of Parliament to respond to a national disaster.

(3) A declaration made under this Article shall be by proclamation published in the Gazette.

(4) Parliament shall enact legislation to give effect to this Article.

Validity of emergency

115. The Constitutional Court shall, on application by any person, determine whether any of the measures taken during a state of public emergency or threatened state of public emergency were reasonable.

Cabinet Ministers and Parliamentary Secretaries

Cabinet

116. There shall be a Cabinet consisting of the -
(a) President;
(b) Vice-President;

- (c) Ministers; and
- (d) Provincial Ministers, as ex-officio members.

Functions of
Cabinet

117. (1) The functions of Cabinet are to-
- (a) approve and cause to be implemented Government policy;
 - (b) approve Government Bills for introduction to the National Assembly;
 - (c) approve and cause the national budget to be presented to the National Assembly;
 - (d) recommend the ratification of international agreements and treaties to the National Assembly;
 - (e) recommend for approval of the National Assembly any loans to be contracted by the State; and
 - (f) advise the President on any other matter relating to the executive functions.

(2) Cabinet shall take collective responsibility for all Cabinet decisions, including those originally initiated individually by any member of Cabinet.

Proceedings of
Cabinet
meetings

118. (1) Subject to this Constitution and any other law, Cabinet may regulate its own procedure.

(2) Cabinet shall meet as frequently as is required to perform its functions under Article 117.

(3) The Cabinet Secretary shall, in consultation with the President, call for meetings of Cabinet.

(4) The President shall preside at the meetings of Cabinet and in the absence of the President-

- (a) the Vice-President shall preside; and
- (b) in the absence of the Vice-President, such member of Cabinet as the President may appoint shall preside.

(5) The President may, in consultation with the Cabinet Secretary, invite any person whose presence is desirable to attend and participate in the deliberations of a meeting of Cabinet.

Cabinet Secretary

119. (1) The President shall appoint a Cabinet Secretary, under the office of President, whose principal function is to provide secretarial services to the Cabinet.

(2) Without limiting clause (1) and the other provisions of this Constitution, the Cabinet Secretary shall –

- (a) be responsible, in accordance with the instructions of the President, for arranging the business for, and keeping the minutes of, Cabinet and conveying decisions made by Cabinet to the appropriate authorities;
- (b) be the liaison officer between the President's office and the office of the Secretary for Government Services;
- (c) monitor the implementation of Government policies and Cabinet decisions; and
- (d) perform any other function prescribed by or under an Act of Parliament or as directed by the President.

(3) The office of Cabinet Secretary shall become vacant -

- (a) if the holder of the office is removed from office by the President;
- (b) if the holder of the office resigns or dies; or
- (c) upon assumption by any other person of the office of President.

(4) The emoluments of a Cabinet Secretary shall be as determined by the Emoluments Commission and specified by an Act of Parliament.

(5) The emoluments of the Cabinet Secretary shall be a charge on the Consolidated Fund.

Ministers and
appointments
from outside
National
Assembly

120. (1) The President shall appoint not more than twenty-one persons as Ministers who are qualified to be nominated as Members of Parliament.

(2) The President shall appoint Ministers from persons who are not Members of Parliament.

(3) A Minister shall be responsible, under the direction of the President, for the business of the Government, including the administration of a Ministry and other State institutions as assigned by the President.

- (4) The office of Minister shall become vacant -
- (a) if the holder of the office is removed from office by the President;
 - (b) if the holder of the office resigns or dies; or
 - (c) upon assumption by any other person of the office of President.

(5) The emoluments of a Minister shall be as determined by the Emoluments Commission and specified by an Act of Parliament.

(6) The emoluments of a Minister shall be a charge on the Consolidated Fund.

(7) A Minister shall only attend the sittings of the National Assembly where it is necessary for the performance of a particular function specified under this Constitution or any other law or when required to do so by the Speaker, and the Minister shall, while in attendance in the National Assembly, take part in the proceedings of the National Assembly but shall have no vote.

Provincial Ministers
and appointments
from outside National
Assembly

121. (1) The President shall appoint a Provincial Minister for each Province from persons who are qualified to be nominated as Members of Parliament.

(2) The President shall appoint a Provincial Minister from persons who are not Members of Parliament.

(3) The emoluments of a Provincial Minister shall be as determined by the Emoluments Commission and specified by an Act of Parliament.

(4) The emoluments of a Provincial Minister shall be a charge on the Consolidated Fund.

(5) The office of Provincial Minister shall become vacant –

- (a) if the holder of the office is removed from office by the President;
- (b) if the holder of the office resigns or dies; or
- (c) upon assumption by any other person of the office of President.

(6) The functions of a Provincial Minister shall be as specified under this Constitution and by or under an Act of Parliament.

(7) A Provincial Minister shall only attend the sittings of the National Assembly where it is necessary for the performance of a particular function specified under this Constitution or any other law or when required to do so by the Speaker and the Provincial Minister shall, while in attendance in the National Assembly, take part in the proceedings of the National Assembly but shall have no vote.

Parliamentary
Secretaries

122. (1) The President shall appoint not more than eleven persons, as Parliamentary Secretaries, from amongst the Members of Parliament who are members of the party in Government.

(2) A Parliamentary Secretary shall be responsible, under the direction of the Vice-President for -

- (i) the Government's parliamentary business in the National Assembly, Ministry or State institution;
- (ii) overseeing the implementation of Government's policies by a Ministry or other State institution; and
- (iii) such other functions as may be assigned by the Vice-President.

(3) The office of Parliamentary Secretary shall become vacant -

- (a) if the holder of the office is removed from office by the President;
- (b) if the holder of the office resigns or dies; or

(c) upon assumption by any other person of the office of President.

(4) The emoluments of a Parliamentary Secretary shall be as determined by the Emoluments Commission and specified by an Act of Parliament.

(5) The emoluments of a Parliamentary Secretary shall be a charge on the Consolidated Fund.

Oaths of office

123. A Minister, Provincial Minister, Cabinet Secretary and Parliamentary Secretary shall not carry out the duties of office unless that person takes the Oath of Office and the Oath of Secrecy, prescribed by an Act of Parliament.

Code of conduct

124. A Minister, Provincial Minister, Cabinet Secretary and Parliamentary Secretary shall act in accordance with a code of conduct prescribed by or under an Act of Parliament.

PART VIII
LEGISLATURE
Legislative Function

Establishment of Parliament and vesting of legislative function

125. (1) There is established a Parliament of Zambia which shall consist of the President and the National Assembly.

(2) The legislative function of the Republic is vested in Parliament.

126. (1) Parliament shall enact legislation through Bills passed by the National Assembly and assented to by the President.

(2) A Member of Parliament, Minister, a Provincial Minister or Parliamentary Secretary may introduce Bills in the National Assembly.

(3) The expenses of drafting and introducing a Bill under clause (2) shall be a charge on the Consolidated Fund, and a Member of Parliament shall not be required to pay for any expenses attaching to the drafting of the Bill, and introduction and passage of the Bill in the National Assembly.

(4) A Bill that confers a pecuniary benefit on the President, Vice-President, a Minister, a Member of Parliament, Provincial Minister, Parliamentary Secretary or other officers specified in this Constitution shall not be introduced in the National Assembly unless it has been recommended by the Emoluments Commission.

(5) A Bill introduced in the National Assembly shall be -

- (a) accompanied by an explanatory memorandum, signed by the proposer, if the Bill is a Private Member's Bill, or the Attorney-General, if the Bill has been initiated by the national Government, or a Provincial Minister, if the Bill is a local Bill, outlining –
 - (i) the objectives of the proposed legislation;

- (ii) limitations, derogations or any other constitutional implications on the Bill of Rights;
 - (iii) any relevant provision of Part III that has been taken into account;
 - (iv) any public consultation undertaken during the preparation of the Bill, except for urgent Bills and emergency Bills; and
 - (v) any other matter relevant to the Bill; and
- (b) published in the Gazette before the date of its introduction in the National Assembly.

(6) After a Bill is read for the first time in the National Assembly, it shall be referred to a standing committee of the National Assembly which shall examine the Bill in detail and make inquiries in relation to it, as the committee considers expedient or necessary.

(7) A Bill that has been deliberated upon by a standing committee shall be reported to the National Assembly which shall debate the Bill and procedurally pass the Bill, with or without amendments, or reject the Bill.

(8) A Bill that has been referred to a standing committee under clause (6) shall not be held at that committee for more than sixty days.

Retrospective
legislation

127. (1) Parliament shall not make laws that criminalise any act or omission that did not, at the time it took place, constitute an offence.

(2) Parliament may make laws with retrospective effect but does not have the power to enact any law which operates retrospectively to impose any limitations on, or to adversely affect the rights and freedoms of, any person or to impose a burden, liability or an obligation on any person.

128. (1) Without prejudice to the other provisions of this Constitution, the National Assembly shall scrutinise and oversee actions of the Executive.

- (2) The National Assembly is responsible for-
- (a) enacting legislation, as provided under this Constitution;
 - (b) ensuring equity in the distribution of national resources and opportunities among all Provinces, and communities, of Zambia;
 - (c) approving the sharing of revenue among the national Government, provincial administration and the local government;
 - (d) appropriating funds for expenditure by State organs, State institutions, provincial administration, local authorities and other bodies;
 - (e) scrutinising public expenditure, including defence, constitutional and special expenditure and the public debt;
 - (f) approving international agreements and treaties before these are acceded to or ratified and, where necessary,

incorporating these international instruments into national law;

- (g) summoning and dissolving the National Assembly; and
- (h) any other matter or function specified in this Constitution or by or under an Act of Parliament.

(4) A person or body, other than Parliament, shall not have power to enact legislation, except under the authority conferred by this Constitution.

Money Bills

129. (1) A Money Bill shall only be introduced by a Minister.

(2) In this Part, "Money Bill" includes a Bill that provides for –

- (a) the imposition, repeal, remission, alteration or regulation of taxes;
- (b) the imposition of charges on the Consolidated Fund or any other public fund, or the variation or repeal of any of those charges;
- (c) the appropriation, receipt, custody, investment, issue or audit of accounts of public moneys;
- (d) the grant of money to any person or authority or the variation or revocation of the grant of public money;
- (e) the raising or guaranteeing of any loan or the repayment of it; or
- (f) matters incidental to any of the matters specified under this clause.

130. (1) Where a Bill is presented to the President for assent, the President shall, within twenty-one days after receipt of the Bill –

- (a) assent to the Bill; or
- (b) refer the Bill back to the Speaker for re-consideration, by the National Assembly, indicating any reservation that the President has concerning the Bill.

(2) If the President refers the Bill back for re-consideration, by the National Assembly, the National Assembly may –

- (a) amend the Bill in the light of the President's reservation; or
- (b) pass the Bill a second time, without amendment, by a vote supported by at least two-thirds of the Members of Parliament.

(3) If the National Assembly passes the Bill with amendments, in the light of the President's reservation, the Speaker shall submit the Bill to the President for assent.

(4) If the National Assembly, after considering the President's reservation, passes the Bill a second time by a vote supported by two-thirds of the Members of Parliament, without amending the Bill –

- (a) the Speaker shall, within seven days, re-submit the Bill to the President; and
- (b) the President shall, within seven days, assent to the Bill;

unless the President's reservation is on a question of the constitutionality of the Bill, in which case, the President shall refer the Bill to the Constitutional Court, and the decision of the Constitutional Court shall be final.

(5) If the National Assembly fails to pass the Bill for a second time, as required under clause (2) (b), the Bill shall not again be presented for assent, or to the National Assembly, in that session.

(6) If the President refuses or fails to assent to a Bill, within the periods prescribed in clauses (1) and (4), without further action being taken in accordance with those clauses, the Bill shall be taken to have been assented to upon the expiration of those periods.

(7) Subject to Article 131, where thirty or more Members of Parliament or any person, with leave of the Constitutional Court, challenges a Bill on a question of the constitutionality of the Bill, the President shall not assent to the Bill until the Constitutional Court has determined the matter.

Challenge of Bill and
reference to
Constitutional Court

131. (1) Thirty or more Members of Parliament or any person, with leave of the Constitutional Court, may challenge a Bill, for its constitutionality, within three days after the final reading of the Bill in the National Assembly.

(2) Where the Constitutional Court considers that a challenge of a Bill, under this Article, is frivolous or vexatious, the Constitutional Court shall not decide further on the question as to whether the Bill is, or will be, inconsistent with this Constitution but shall dismiss the action.

(3) Where the Constitutional Court determines that any provision of a Bill is, or will be, inconsistent with any provision of this Constitution, the Constitutional Court shall declare the provision unconstitutional and inform the Speaker and the President.

(4) Clauses (1), (2) and (3) shall not apply to a Money Bill or a Bill containing only proposals for amending this Constitution or the Constitution of Zambia Act.

(5) The Standing Orders of the National Assembly shall provide for the procedure to be followed by Members of Parliament who intend to challenge a Bill.

Coming into force
of Act of
Parliament

132. A Bill passed by the National Assembly and assented to by the President shall—

- (a) be published in the Gazette within seven days of assent; and
- (b) come into force on the day of its publication in the Gazette, unless the Act otherwise provides.

Acts of Parliament,
enactment clause
and categorisation

133. (1) All laws enacted by Parliament shall be styled “Acts of Parliament” and the words of enactment shall be “Enacted by the Parliament of Zambia”.

(2) Parliament shall enact legislation for the categorisation of Acts of Parliament as Public Acts, Private Acts and such other categories as may be determined by the National Assembly.

Statutory
instruments

134. (1) Article 126 or 127 shall not prevent Parliament from conferring on any person or authority power to make statutory instruments.

(2) A statutory instrument shall be published in the Gazette –

- (a) not later than twenty-eight days after it is made; or
- (b) in the case of a statutory instrument which will not have the force of law unless it is approved by some person or authority, other than the person or authority by which it was made, not later than twenty-eight days after it is so approved;

and if the statutory instrument is not so published it is void from the date on which it was made.

(3) Thirty or more Members of Parliament or any person, with the leave of the Constitutional Court, may challenge a statutory instrument for its constitutionality, within fourteen days of the publication of the statutory instrument in the Gazette.

(4) Where the Constitutional Court considers that a challenge of a statutory instrument, under this Article, is frivolous or vexatious, the Court shall not decide further on the question as to whether the statutory instrument is, or will be, inconsistent with this Constitution, but shall dismiss the action.

(5) Where the Constitutional Court determines that any provision of a statutory instrument is, or will be, inconsistent with any provision of this Constitution, that statutory instrument is void from the date on which it was made.

(6) The Standing Orders of the National Assembly shall provide for the procedure to be followed by Members of Parliament who intend to challenge a statutory instrument.

(7) Parliament shall enact legislation to give effect to this Article.

Elections to National Assembly and Members of Parliament

Elections to
National
Assembly

135. (1) Elections to the National Assembly shall be conducted under an open list proportional representation system, where a vote for a candidate on a ballot paper is a vote for the party on whose list the candidate appears, which vote counts towards the total number of votes attained for the party for the purpose of allocating seats in the multi-member constituency, using the largest remainder formula as may be prescribed by or under this Constitution.

(2) The seats in a multi-member constituency shall be allocated to each political party in proportion to the total number of votes won by the political party's candidate in the multi-member constituency.

(3) Subject to Article 137(2), candidates shall be listed in alphabetical order on an open party list.

(4) A ballot paper for a multi-member constituency shall be developed from party lists for that multi-member constituency.

(5) The order of preference of candidates to represent the political party in the National Assembly shall be based on the highest number of votes attained in favour of each candidate appearing on the ballot paper which shall

be the final list for distribution of the seats in the National Assembly.

(6) Where the political party is allocated seats in the National Assembly based on the percentage of votes received in the multi-member constituency the persons appearing on the final list showing the candidate that received the highest votes shall have seats in the National Assembly.

- (7) The Electoral Commission shall prescribe-
- (a) the number of seats in a multi-member constituency depending on the size of the constituency;
 - (b) subject to Article 138, the manner and detail of presentation of candidates on a party list for each multi-member constituency;
 - (c) the form, instructions and details to be contained on a ballot paper; and
 - (d) the method of calculating a quota and division of the quota into the vote that each party receives so that the party wins one seat for each whole number produced.

(8) Parliament shall enact legislation on the electoral system as specified under clause (1) and the electoral process to give effect to, and implement, the system.

Composition of
National
Assembly

136. (1) The National Assembly shall consist of-
- (a) two hundred representatives, or as may be prescribed, holding seats from the multi-member constituencies;

- (b) the Speaker; and
- (c) the First and Second Deputy Speakers.

(2) A member of the National Assembly shall be referred to as a Member of Parliament.

Qualifications and
disqualifications of
Members of
Parliament

137. (1) Subject to clause (3), a person shall be eligible to be nominated and to be listed on a party's list for a multi-member constituency, if that person –

- (a) is a citizen;
- (b) is not less than twenty-one years;
- (c) is registered as a voter;
- (d) has obtained, as a minimum academic qualification, a grade twelve certificate of education or its equivalent;
- (e) is an independent candidate or a member of the political party submitting the party list and has consented, in writing, to appear on the party list; and
- (f) declares that person's assets and liabilities as provided under this Constitution and by or under an Act of Parliament.

(2) Notwithstanding Article 135(3), a person who is validly nominated as a candidate in an election to the office of President may be listed as candidate number one on the party's list for a multi-member constituency, but such person shall not take up a seat in the National Assembly if the person is elected as President.

(3) A person shall be disqualified from being nominated and listed on a party's list for a multi-member

constituency, to be the party's representative in the National Assembly, if that person –

- (a) is nominated as a candidate for election as a councillor;
- (b) is a public officer, or is holding or acting in any other public office including the following:
 - (i) the Defence Force and national security agencies;
 - (ii) the public service;
 - (iii) a commission;
 - (iv) a statutory body or a company in which the national Government or local government has a controlling interest; or
 - (v) any other post or office specified by or under an Act of Parliament;
- (c) is a judge or judicial officer;
- (d) has a mental disability that would make the person incapable of performing the legislative function;
- (e) is an undischarged bankrupt;
- (f) is serving a sentence of imprisonment for an offence under any law;
- (g) has, in the immediate preceding five years, served a term of imprisonment of at least three years; or
- (h) has been removed from public office on grounds of gross misconduct.

(4) In this Article, a reference to a sentence of imprisonment shall not include a sentence of imprisonment

the execution of which is suspended or a sentence of imprisonment in default of payment of a fine.

Nominations
under party list

138. (1) A political party shall submit to a returning officer a party list of nominated candidates for each multi-member constituency, as may be prescribed.

- (2) A party list referred to under clause (1) shall –
- (a) be submitted on a day, at a time and place prescribed by the Electoral Commission;
 - (b) contain the names and portraits of the nominated candidates appearing in alphabetical order;
 - (c) contain the name of the party and the party's symbol; and
 - (d) comply with the provisions of Article 87.

- (3) A party list shall be accompanied by -
- (a) a declaration by the authorised representative of the political party that -
 - (i) each person whose name appears on the party list has consented to be on the party list; and
 - (ii) that every candidate on the party list complies with the provisions of Article 137; and
 - (b) a certified copy of the registration certificate of the political party.

(4) A person whose name appears on more than one party list shall be deemed not to be nominated as a

candidate for any political party and shall be disqualified from participating in the election.

(5) A copy of all party lists received by the Electoral Commission shall be published and open for inspection by the public, at the offices of the Electoral Commission and in a multi-member constituency, at such places and for such period, as the Electoral Commission may determine.

(6) The Electoral Commission shall, where –

(a) any person, whose name appears on a party list, published under clause (5), dies or is subsequently found not to qualify as specified under Article 137; or

(b) the nomination of such a person is withdrawn by the political party which submitted the party list, or the candidate withdraws that candidate's name from the party list;

more than thirty days prior to the election date, amend the party list by the deletion from the list of the name of that person and the insertion of the name of the person submitted to the Electoral Commission by the political party concerned.

(7) The withdrawal of a nominated candidate from the party list shall be made more than thirty days prior to the election date and shall be submitted, as prescribed, to the Electoral Commission.

(8) Where a nominated candidate withdraws, is withdrawn or dies less than thirty days prior to the election date, as provided under clause (7), any vote attained in

favour of that candidate shall be counted as votes for the party.

Tenure of office and vacation of Member of Parliament other than independent candidate

139. (1) A Member of Parliament shall, except the Speaker and the First Deputy Speaker, vacate the seat in the National Assembly upon the dissolution of Parliament.

(2) The office of Member of Parliament becomes vacant if the member –

- (a) resigns, in writing, addressed to the Speaker;
- (b) becomes disqualified for election under Article 137;
- (c) acts contrary to a code of conduct provided by or under an Act of Parliament;
- (d) is no longer a member of the political party whose seat the member is holding in the National Assembly and the political party informs the Speaker accordingly; or
- (e) dies.

(3) Subject to clause (4), where the seat of a Member of Parliament, who is not an independent member, is vacated in terms of clause (2), the Electoral Commission shall submit to the Speaker the name of the next preferred candidate of the party that holds the seat in the National Assembly, from the ballot paper used in the previous election.

(4) Where a Member of Parliament, is expelled by that member's political party and the member has challenged the expulsion in court, the member shall hold the

member's seat pending the conclusion of the petition or matter, except that, where the member does not challenge the expulsion in court and the period allowed by or under an Act of Parliament for such challenge lapses, the member shall vacate the member's seat.

(5) If a political party ceases to exist for any reason, a Member of Parliament holding a seat on behalf of the political party shall cease to be a Member of Parliament for that multi-member constituency, which seat shall be re-allocated, by the Electoral Commission, to the political party that obtained the next highest vote in that multi-member constituency.

(6) The creation or dissolution of a coalition of parties which a member's political party forms part of, or a merger of two or more parties, does not amount to a member resigning from the party for the purpose of clause (2)(d).

Vacation of office
by independent
Members of
Parliament

140. (1) Where a vacancy occurs with respect to a Member of Parliament who is an independent, in a multi-member constituency, the Speaker shall, within seven days of the occurrence of the vacancy, inform the Electoral Commission, in writing, of the vacancy.

(2) Where the Electoral Commission receives information of a vacancy under clause (1), for that multi-member constituency, the Electoral Commission shall submit to the Speaker the name of the candidate who received the next highest votes in that multi-party constituency, from the ballot paper used in the previous election.

(3) Where the Speaker receives the name of the candidate, referred to under clause (2), the Speaker shall swear in that candidate as a Member of Parliament.

Emoluments of
Members of
Parliament

141. (1) A Member of Parliament shall be paid emoluments as determined by the Emoluments Commission and specified in an Act of Parliament.

(2) The emoluments paid to a Member of Parliament shall be a charge on the Consolidated Fund.

Leader of Government
Business in National
Assembly and Leader
of Opposition

142. (1) The President shall appoint a Parliamentary Secretary to be the Leader of Government Business in the National Assembly.

(2) The opposition political party with the largest number of seats in the National Assembly, or a coalition of opposition political parties in the National Assembly, shall elect, from amongst the opposition Members of Parliament, a Leader of the Opposition in the House, except that where an opposition political party has formed a coalition with the party in Government, a Member of Parliament of that political party shall not be eligible for election as the Leader of the Opposition in the House.

Code of conduct for
Members of
Parliament

143. Members of Parliament shall, during their tenure of office, conduct themselves in accordance with a code of conduct prescribed by or under an Act of Parliament.

Proceedings of National Assembly

Sittings of National
Assembly

144. (1) The Speaker shall, after an election, by notice in the Gazette, appoint a date, not more than thirty

days after the election, for the first sitting of the National Assembly.

(2) There shall be a session of Parliament at least once every year so that a period of twelve months shall not intervene between the last session of Parliament and the commencement of the next session.

(3) There shall be at least three sittings of the National Assembly in any session of Parliament which shall be held at such times and on such days as the Speaker shall appoint.

(4) The President may, in writing, request the Speaker to summon a special meeting of the National Assembly to consider extraordinary or urgent business and when so requested, the Speaker shall, within fourteen days, summon the National Assembly.

(5) Notwithstanding this Article, two-thirds of the Members of Parliament may request a meeting to discuss a matter and, on receipt of that request, the Speaker shall, within seven days, summon the National Assembly.

(6) Where the Speaker fails to summon the National Assembly when requested to do so under clause (5), two-thirds of the Members of Parliament may sit to consider the matter and shall for that purpose elect one member from amongst their number to preside over the proceedings and that member shall have all the powers of the Speaker for purposes of those proceedings.

(7) Any matter considered under clause (6) shall be passed by a vote supported by two-thirds of the Members of Parliament present and voting.

Powers, privileges
and immunities

145. (1) There shall be freedom of speech and debate in the National Assembly and that freedom shall not be impeached or questioned in any court or tribunal.

(2) The Members of Parliament shall have the powers, privileges and immunities specified by or under an Act of Parliament.

Procedure of
National Assembly

146. (1) The National Assembly may regulate its own procedure and shall make Standing Orders for the orderly conduct of its proceedings.

(2) The proceedings of the National Assembly shall not be invalid because of –

- (a) a vacancy in its membership; or
- (b) the presence or participation of any person not entitled to be present at, or to participate in, the proceedings of the National Assembly.

Presiding in
National Assembly

147. There shall preside at any sitting of the National Assembly –

- (a) the Speaker;
- (b) in the absence of the Speaker, the First Deputy Speaker;
- (c) in the absence of the First Deputy Speaker, the Second Deputy Speaker;
or
- (d) in the absence of the Speaker and both Deputy Speakers, any other Member of Parliament as the National Assembly may elect for that sitting.

Quorum

148. The quorum for a meeting of the National Assembly shall be one-third of the Members of Parliament.

Voting in
National
Assembly

149. (1) Except as otherwise provided in this Constitution, any question proposed for decision in the National Assembly shall be determined by a majority of the Members of Parliament present and voting.

(2) On a question proposed for decision in the National Assembly –

- (a) the Speaker shall have no vote; and
- (b) in the case of a tie, the question shall be lost.

Committees of
National
Assembly

150. (1) The National Assembly may establish standing committees and any other committee in the manner, and for the general or special purposes, that it considers necessary and shall regulate the procedure of any committee established under this Article.

(2) The standing committees of the National Assembly shall be established at the first sitting of the National Assembly after an election and after the election of the Speaker and the Deputy Speakers.

(3) In selecting members of a committee, the National Assembly shall ensure that there is equitable representation of the political parties holding seats in the National Assembly and independent Members of Parliament.

(4) The Standing Orders shall provide for the functions of standing committees which shall include the following, as the case may be:

- (a) examine and make recommendations on Bills that are referred to the committees;
- (b) assess and evaluate estimates of revenue and expenditure, including the management of revenue and expenditure, by the Government and other bodies which directly or indirectly receive services or resources from the Government;
- (c) carry out research and studies in their areas of competence; and
- (d) report to the National Assembly on their functions and activities.

Power to call evidence

151. (1) In the performance of its functions –
- (a) the National Assembly or any of its committees may call any Minister, Provincial Minister, Parliamentary Secretary or any person holding a public office or any private individual to submit memoranda or appear before it to give evidence;
 - (b) a committee of the National Assembly may co-opt any Member of Parliament who is not a member of that committee, or engage qualified persons, to assist it in the performance of its functions; and
 - (c) the National Assembly or any committee has the power to –

- (i) enforce the attendance of witnesses and examine them on oath, affirmation or otherwise;
- (ii) compel the production of documents; and
- (iii) issue a commission or request to examine witnesses outside Zambia.

(2) A person summoned to attend to give evidence or produce a document before the National Assembly or any of its committees is entitled, in respect of that evidence or the production of the document, to the same privileges and protections as those that a person is entitled to before a court.

(3) An answer by any person to a question put by the National Assembly or any of its committees is not admissible in evidence against that person in any civil or criminal proceedings, except for perjury.

Life and
prorogation of
Parliament

152. (1) The life of Parliament shall be five years commencing from the date that the Members of Parliament are sworn into office and ending on the date that Parliament is dissolved for purposes of holding elections to the National Assembly.

(2) Parliament shall stand prorogued ninety days before the holding of the next election to the National Assembly.

(3) At any time when the Republic is at war, the National Assembly may, by resolution supported by a simple majority vote of the Members of Parliament, extend the term of Parliament for not more than twelve months at a time.

(4) The President may dissolve Parliament if the Executive cannot effectively govern the Republic due to the failure of the National Assembly to objectively and reasonably carry out its legislative function.

(5) Where the President intends to dissolve Parliament under clause (4), the President shall so inform the public and shall refer the matter to the Constitutional Court for determination as to whether or not the situation in clause (4) exists.

(6) The Constitutional Court shall hear and determine a matter, referred to it under clause (5), within seven days of the receipt of the matter.

(7) The Constitutional Court shall, where it determines that the situation in clause (4) exists, so inform the President and the President shall dissolve Parliament.

(8) If Parliament is dissolved by virtue of clause (4), presidential and National Assembly elections shall be held within ninety days of the dissolution.

(9) The National Assembly may, by a two-thirds majority of the Members of Parliament, dissolve itself.

(10) The President may, due to a state of war, state of public emergency or threatened state of public emergency, after a dissolution of Parliament, and before the holding of elections, recall the National Assembly that was dissolved.

(11) The Speaker may, in consultation with the President, prorogue Parliament by proclamation.

Speaker, Deputy Speakers and Officers of National Assembly

Speaker and Deputy
Speakers of National
Assembly

153. (1) There shall be a Speaker of the National Assembly who shall be elected by the Members of Parliament.

(2) A person is qualified to be a candidate for election as Speaker of the National Assembly if that person -

- (a) is a citizen by birth or descent;
- (b) does not have dual citizenship;
- (c) has been ordinarily resident in Zambia;
- (d) is not less than thirty-five years of age;
- (e) has obtained, as a minimum academic qualification, a grade twelve certificate or its equivalent;
- (f) declares that person's assets and liabilities as provided under this Constitution and by or under an Act of Parliament;
- (g) has paid that person's taxes or made arrangements satisfactory to the appropriate tax authority for the payment of the taxes; and
- (h) is not a Member of Parliament.

(3) There shall be two Deputy Speakers of the National Assembly who are not members of the same political party and of the same gender and -

- (a) one of whom shall be elected by the Members of Parliament, from among persons who are qualified to be elected as Members of Parliament but are not

Members of Parliament, as First Deputy Speaker; and

- (b) the other shall be elected by the Members of Parliament, from among their number, as Second Deputy Speaker

(4) The Members of Parliament shall elect a person to the office of Speaker and Deputy Speakers-

- (a) when the National Assembly first sits after any dissolution of Parliament; and
- (b) if the office of Speaker or Deputy Speaker becomes vacant, as the case may be, otherwise than by reason of the dissolution of Parliament, at the first sitting of the National Assembly after the office becomes vacant.

(5) The office of Speaker or Deputy Speaker shall become vacant –

- (a) when the National Assembly first sits after an election;
- (b) if the Speaker or Deputy Speaker becomes disqualified under Article 137 (3);
- (c) if the Speaker or Deputy Speaker is removed from office after being heard by a select committee of the National Assembly hearing the matter, by a resolution supported by the votes of not less than two-thirds of the Members of Parliament, to remove the

Speaker or Deputy Speaker on any of the following grounds:

- (i) violation of any provision of this Constitution;
- (ii) incapacity to discharge the duties of the office of Speaker or Deputy Speaker due to mental or physical disability; or
- (iii) gross misconduct;
- (d) if the Speaker or Deputy Speaker dies; or
- (e) if the Speaker or Deputy Speaker resigns from office in a letter addressed to the President.

(6) The Speaker and the Deputy Speakers shall be elected by secret vote.

(7) When the offices of Speaker and Deputy Speakers become vacant, business shall not be transacted in the National Assembly, other than an election to the offices of Speaker and Deputy Speakers.

(8) The Speaker and the Deputy Speakers shall be entitled to emoluments determined by the Emoluments Commission and specified under an Act of Parliament.

(9) The emoluments of the Speaker and Deputy Speakers shall be a charge on the Consolidated Fund.

Clerk of National
Assembly

154. (1) There shall be a Clerk of the National Assembly who shall be appointed by the Parliamentary Service Commission, subject to ratification by the National Assembly.

(2) A person shall not be appointed Clerk of the National Assembly unless that person has the academic qualifications, experience and skills prescribed by an Act of Parliament.

(3) Subject to clause (4), the Clerk of the National Assembly shall retire on attaining the age of sixty-five years.

(4) The National Assembly may, by a resolution supported by the votes of not less than two-thirds of the Members of Parliament, remove the Clerk of the National Assembly on the same grounds that apply to the removal of a judge.

Officers of National
Assembly

155. (1) There shall be appointed such officers in the department of the Clerk of the National Assembly, as may be provided by an Act of Parliament.

(2) The office of Clerk and offices of members of staff are offices in the Parliamentary Service.

Parliamentary
Service Commission

156. (1) There is established a Parliamentary Service Commission which shall consist of the following part-time members:

- (a) the Speaker, as Chairperson;
- (b) the Leader of Government Business in the National Assembly;
- (c) the Leader of the Opposition;
- (d) the Minister responsible for finance;
- (e) five members appointed by the National Assembly from Members of Parliament as follows:
 - (i) three members nominated by the political party forming the

Government, at least one of whom shall be of the opposite gender; and

- (ii) two members of the opposite gender nominated by the other political parties holding seats in the National Assembly; and
- (f) two members of the opposite gender appointed by the Speaker, who are not Members of Parliament but are experienced in public affairs, to serve for a period of five years.

(2) A member of the Parliamentary Service Commission shall vacate office if that member is -

- (a) a Member of Parliament -
 - (i) upon the dissolution of Parliament; or
 - (ii) on that person ceasing to be a Member of Parliament; or
- (b) a member appointed under clause (1) (e), on the revocation of that person's appointment by the National Assembly.

(3) The Parliamentary Service Commission shall have the following functions:

- (a) the appointment of the Clerk of the National Assembly, in accordance with this Constitution;
- (b) providing necessary services and facilities to ensure efficient and effective functioning of the National Assembly;

- (c) constituting offices in the Parliamentary Service and appointing office holders;
- (d) preparing, the annual estimates of expenditure for the Parliamentary Service and for the National Assembly;
- (e) exercising budgetary control over the Parliamentary Service and the National Assembly;
- (f) undertaking, on its own or jointly with other relevant organisations, programmes to promote the ideals of parliamentary democracy; and
- (g) carrying out other functions –
 - (i) necessary for the well-being of the staff of the National Assembly; or
 - (ii) provided by or under an Act of Parliament.

(4) The office of Clerk shall be the secretariat to the Parliamentary Service Commission.

(5) The Parliamentary Service Commission shall, with the prior approval of the National Assembly, make regulations, by statutory instrument, prescribing the terms and conditions of service of the officers and other employees in the Parliamentary Service and generally for the effective and efficient administration of the Parliamentary Service.

(6) The Parliamentary Service Commission shall be a self-accounting institution which shall deal directly with the Ministry responsible for finance on matters relating to its finances.

(7) The Parliamentary Service Commission shall be adequately funded to enable it to effectively carry out its mandate.

(8) The expenses of the Parliamentary Service and the Parliamentary Service Commission shall be a charge on the Consolidated Fund.

General Parliamentary Matters

President may address
National Assembly

157. (1) The President may, at least bi-annually, attend and address the National Assembly.

(2) The President may send a message to the National Assembly and the message shall be read at the next sitting of the National Assembly, after it is received, by the Leader of Government Business or by a Minister designated by the President.

Vote of no
confidence

158. (1) The National Assembly may pass a vote of no confidence in a Minister, Provincial Minister or Parliamentary Secretary by resolution supported by two-thirds of the votes of the Members of Parliament, in accordance with this Article.

(2) Any proceedings to pass a vote of no confidence in a Minister, Provincial Minister or Parliamentary Secretary shall be by a petition to the President, through the Speaker, which has been signed by not less than one-third of the Members of Parliament giving notice that the Members of Parliament are dissatisfied with the conduct or performance of the Minister, Provincial Minister or Parliamentary Secretary, and intend to move a motion for a resolution to pass a vote of no confidence in a

Minister, Provincial Minister or Parliamentary Secretary and setting out the particulars of the grounds in support of the motion.

(3) The President shall, on receipt of the petition under clause (2), cause a copy of the petition to be given to the Minister, Provincial Minister or Parliamentary Secretary in question.

(4) The motion for the resolution to pass a vote of no confidence in a Minister, Provincial Minister or Parliamentary Secretary shall not be debated until after the expiry of thirty days from the date the petition was sent to the President.

(5) A Minister, Provincial Minister or Parliamentary Secretary who is the subject of a petition shall be entitled to be heard in the Minister's, Provincial Minister's or Parliamentary Secretary's defence during the debate of a motion under this Article.

(6) A Minister, Provincial Minister or Parliamentary Secretary in whom the National Assembly has passed a vote of no confidence shall be removed from office.

Oaths to be taken by
Speaker, Deputy
Speakers and
Members of
Parliament

159. (1) The Speaker and the Deputy Speakers, before carrying out the duties of office, shall take the Oath of Speaker or Deputy Speaker, as prescribed by or under an Act of Parliament.

(2) A Member of Parliament shall, before taking the member's seat in the National Assembly, take the Oath of a Member of Parliament, prescribed by or under an Act of Parliament, except that a Member of Parliament may take part in elections to the office of Speaker or Deputy Speaker before taking and subscribing the oath.

Right to petition and make comments

160. (1) A citizen has a right to petition Parliament to enact, amend or repeal any legislation.

(2) A citizen may make comments on any deliberation, statement and decision of the National Assembly.

(3) Parliament shall enact legislation to regulate the manner of petitioning and commenting referred to in this Article.

Public access and participation

161. (1) The National Assembly shall –
(a) facilitate public involvement in the legislative and other processes; and
(b) conduct its business in an open manner and hold its sittings and those of its committees in public.

(2) The National Assembly or any of its committees shall not exclude the public or any public or private media from any of its sittings unless, in exceptional circumstances, the Speaker determines that there are justifiable reasons for doing so.

PART IX JUDICIARY

Courts of Judiciary and establishment

162. (1) The Judiciary shall consist of the following courts:

- (a) Supreme Court;
- (b) Constitutional Court;
- (c) Court of Appeal;
- (d) High Court;

- (e) subordinate courts;
- (f) small claims courts;
- (g) local courts; and
- (h) any other court established by an Act of Parliament.

(2) There is established the Supreme Court, Constitutional Court, Court of Appeal, High Court, subordinate courts, small claims courts and local courts.

(3) The Supreme Court and Constitutional Court rank the same in the exercise of their judicial powers under their respective jurisdictions and shall be equal in precedence.

(4) The courts of the Judiciary shall be courts of record, except that local courts shall progressively become courts of record.

(5) Parliament shall enact legislation providing for the-

- (a) processes and procedures of the courts;
- (b) classification of the subordinate courts;
- (c) jurisdiction of subordinate courts, small claims courts, local courts and any other court established by or under this Constitution or any other law;
- (d) composition and grading of judicial officers and staff of subordinate courts, local courts and any other court established by or under this Constitution or any other law; and
- (e) composition of small claims courts.

(6) The courts, except the Supreme Court, shall be devolved to all Provinces and progressively to the districts.

(7) Superior courts shall sit as circuit courts in all districts in accordance with a circuit schedule issued by the Chief Justice.

Vesting and
exercise of judicial
power

163. (1) The judicial power of Zambia shall vest in the courts and shall be exercised by the courts in accordance with this Constitution and any other law.

(2) The courts shall, subject to this Constitution, have jurisdiction in-

- (a) civil and criminal matters;
- (b) matters relating to, and in respect of, this Constitution; and
- (c) any other matter specified by or under an Act of Parliament.

(3) In exercise of its jurisdiction, a court shall, when hearing any matter before it, have power to determine whether or not the production in court of an official document, under the control of the State, is prejudicial to the security of the State or injurious to the public interest.

(4) In exercising its jurisdiction, a court shall be guided by the following principles:

- (a) justice shall be done and seen to be done to all without discrimination;
- (b) justice shall not be delayed; and
- (c) adequate compensation shall be awarded, where payable.

(5) Except as otherwise provided in this Constitution or as may be ordered by a court in the interest of public morality, public security, public order or the

protection of children or other vulnerable persons, proceedings of a court, including the delivery of a decision by a court, shall be in public.

Independence of
Judiciary and
Code of Conduct

164. (1) Subject to clause (3), the Judiciary shall, in the exercise of its judicial and administrative functions and management of its financial affairs, be subject only to this Constitution and any other law and not be subject to the control or direction of any person or authority.

(2) Subject to clause (3), a person, a State institution or a member of the Executive or Legislature, shall not interfere with the exercise of the judicial power by a judge or judicial officer.

(3) A person, a State institution, the Executive and Legislature shall protect the independence, dignity and effectiveness of the Judiciary.

(4) The office of a judge or judicial officer shall not be abolished while there is a substantive holder of the office.

(5) A judge and a judicial officer shall –

(a) conduct themselves in accordance with a Code of Conduct prescribed by an Act of Parliament; and

(b) be accountable to the people, for the manner in which that judge or judicial officer performs the functions of office.

(6) A person may lodge a complaint with the Judicial Complaints Commission against a judge or judicial officer who-

(a) breaches the Code of Conduct to be prescribed under clause (5) (a); or

(b) performs the judge's or judicial officer's functions contrary to Article 166 (3) (a) or rules made by the Chief Justice with respect to the performance of the judicial functions.

(7) The Judicial Complaints Commission shall hear and determine any complaint under clause (6), as may be prescribed.

Financial
independence of
Judiciary

165. (1) The Judiciary shall be a self-accounting institution and shall deal directly with the Ministry responsible for finance in matters relating to its finances.

(2) The Judiciary shall annually prepare and submit its budget estimates to the Minister responsible for finance who shall allocate financial resources to the Judiciary.

(3) The Judiciary shall be adequately funded in any financial year to enable it effectively carry out its functions.

(4) The expenses of the Judiciary, including emoluments payable to, or in respect of, a judge or judicial officer, shall be a charge on the Consolidated Fund.

Chief Justice

166. (1) There shall be a Chief Justice who shall be the head of the Judiciary.

(2) The Chief Justice shall be responsible for the efficient administration of the Judiciary.

(3) The Chief Justice shall-

(a) ensure that a judge or judicial officer performs the functions of the office of

judge or judicial officer with dignity, propriety and integrity and avoids the appearance of indignity, impropriety and dishonesty;

- (b) establish procedures to ensure that a judge or judicial officer independently exercises judicial functions in accordance with the law, free of any extraneous influence, inducement, pressure, threat or interference;
- (c) ensure that a judge or judicial officer performs the functions of office without fear, favour or bias;
- (d) ensure that a judge or judicial officer gives precedence to the judicial function over any other activity; and
- (e) make such rules and give such directions as are necessary for the efficient and effective operation of the Judiciary.

Deputy Chief
Justice

167. (1) There shall be a Deputy Chief Justice who shall, unless otherwise provided in this Part –

- (a) perform the functions of the Chief Justice, when the Chief Justice is absent or there is a vacancy in the office;
- (b) assist the Chief Justice in the performance of the administrative functions of the Chief Justice; and

(c) perform any other function assigned by the Chief Justice.

(2) Where -

(a) the office of the Deputy Chief Justice is vacant;

(b) the Deputy Chief Justice is acting as Chief Justice; or

(c) the Deputy Chief Justice is for any reason unable to perform the functions of that office;

the President shall, in consultation with the Judicial Service Commission, designate a judge of the Supreme Court to perform the functions of the Deputy Chief Justice until the Deputy Chief Justice resumes duty or a substantive appointment is made to the office.

President of
Constitutional Court

168. (1) There shall be a President of the Constitutional Court, who shall be the head of the Constitutional Court.

(2) The President of the Constitutional Court shall be responsible for the efficient administration of the Constitutional Court.

(3) The President of the Constitutional Court shall, in respect of judges of the Constitutional Court, exercise the functions of the Chief Justice specified in Article 166(3).

Deputy President
of Constitutional
Court

169. (1) There shall be a Deputy President of the Constitutional Court who shall, unless otherwise provided in this Part-

- (a) perform the functions of the President of the Constitutional Court, when the President of the Constitutional Court is absent or there is a vacancy in the office;
- (b) assist the President of the Constitutional Court in the performance of the administrative functions of the President of the Constitutional Court; and
- (c) perform any other function assigned by the President of the Constitutional Court.

(2) Where -

- (a) the office of the Deputy President of the Constitutional Court is vacant;
- (b) the Deputy President of the Constitutional Court is acting as President of the Constitutional Court; or
- (c) the Deputy President of the Constitutional Court is for any reason unable to perform the functions of that office;

the President shall, in consultation with the Judicial Service Commission, designate a judge of the Constitutional Court to perform the functions of the Deputy President of the Constitutional Court until the Deputy President of the Constitutional Court resumes duty or a substantive appointment is made to the office.

Supreme Court

170. The Supreme Court shall consist of -
- (a) the Chief Justice;
 - (b) the Deputy Chief Justice; and
 - (c) not more than eleven other judges.

Composition for sittings of Supreme Court

171. (1) The Supreme Court shall, when hearing and determining a matter, other than an interlocutory matter, be duly constituted by an uneven number of not less than three judges.

(2) The Supreme Court shall be duly constituted as a full bench if not less than five judges sit to determine any matter.

(3) The Chief Justice shall preside over a sitting of the Supreme Court and in the absence of the Chief Justice, the Deputy Chief Justice shall preside, and in the absence of the Deputy Chief Justice, the most senior judge of the court, as constituted, shall preside.

(4) The Supreme Court shall not be bound by its previous decisions if it considers it necessary in the interest of justice and the development of the jurisprudence of the law.

Jurisdiction of Supreme Court

172. (1) Subject to Article 175, the Supreme Court is the final court of appeal.

- (2) The Supreme Court has -
- (a) appellate jurisdiction to hear and determine appeals from the Court of Appeal; and
 - (b) any other jurisdiction conferred on it by any other law.

(3) The decisions of the Constitutional Court are not appealable to the Supreme Court.

Composition of
Constitutional Court

173. (1) The Constitutional Court shall consist of-

(a) the President of the Constitutional Court;

(b) the Deputy President of the Constitutional Court; and

(c) such number of judges as shall be prescribed by an Act of Parliament.

(2) The Constitutional Court shall be presided over by the President of the Constitutional Court and in the absence of the President of the Constitutional Court, the Deputy-President of the Constitutional Court shall preside and in the absence of the Deputy-President of the Constitutional Court, the most senior judge of the Court, as constituted, shall preside.

Composition for
sittings of
Constitutional
Court

174. (1) The Constitutional Court shall, when hearing and determining a matter, other than an interlocutory matter, be duly constituted by an uneven number of not less than three judges.

(2) The Constitutional Court shall be duly constituted as a full bench if not less than five judges sit to determine any matter.

Jurisdiction of
Constitutional
Court

175. (1) The Constitutional Court has original and final jurisdiction -

(a) in all matters of interpretation of this Constitution;

- (b) to hear and determine a question of a violation of this Constitution;
- (c) to hear and determine any matter relating to the office of President, Vice-President or an election of a President or President-elect;
- (d) to hear and determine whether an Act of Parliament, a Bill or statutory instrument contravenes this Constitution; or
- (e) to determine whether or not a matter falls within the jurisdiction of the Court.

(2) If a question arises as to any matter relating to this Constitution, in any proceedings in any court, the person presiding in that court shall refer the question to the Constitutional Court.

(3) The Constitutional Court shall make a determination on any question, referred to it under clause (2), and the court, which referred the question to the Constitutional Court, shall dispose of the matter in accordance with the decision of the Constitutional Court.

(4) In the exercise of its jurisdiction, the Constitutional Court may make orders, declarations and give opinions and directions, to give effect to its decisions.

(5) A person who, or group of persons which, alleges that -

- (a) an Act of Parliament, a Bill, statutory instrument or anything done by, or under, or decision taken under, the authority of any law; or

(b) any act or omission or decision by any person, group of persons or authority; is inconsistent with, or in contravention of, this Constitution, may lodge a petition to the Constitutional Court for a declaration to that effect and for redress.

(6) The Constitutional Court shall not order security for costs on matters relating to public interest litigation.

(7) Parliament shall enact legislation to give effect to this Article.

Court of Appeal

176. (1) The Court of Appeal shall consist of -
(a) the President of the Court of Appeal;
(b) the Deputy President of the Court of Appeal; and
(c) such number of judges as shall be prescribed by an Act of Parliament.

(2) The Court of Appeal shall be presided over by the President of the Court of Appeal and in the absence of the President of the Court of Appeal, the Deputy-President of the Court of Appeal shall preside and in the absence of the Deputy-President of the Court of Appeal, the most senior judge of the Court, as constituted, shall preside.

Jurisdiction of
Court of Appeal

177. (1) The Court of Appeal, as an appellate court, shall have jurisdiction to determine, as provided under an Act of Parliament -
(a) appeals from the High Court; and
(b) appeals from other courts or quasi-judicial bodies, except -

- (i) the Local Government Elections Tribunal; and
- (ii) matters under the exclusive jurisdiction of the Constitutional Court.

(2) Subject to Article 175, an appeal may be made to the Supreme Court from a decision of the Court of Appeal, with leave of the Court of Appeal.

(3) If the Court of Appeal refuses to grant leave to appeal to the Supreme Court on any matter, a person may appeal to the Supreme Court.

(4) Parliament shall enact legislation to give effect to this Article.

Sittings of Court
of Appeal

178. The Court of Appeal shall, when determining an appeal, other than an appeal in an interlocutory matter, be -

- (a) constituted by an uneven number of not less than three judges; and
- (b) presided over by the President of the Court of Appeal and in the absence of the President of the Court of Appeal, the Deputy President of the Court of Appeal and in the absence of the Deputy President of the Court of Appeal, the most senior judge of the Court, as constituted, shall preside.

High Court

179. (1) The High Court shall consist of –
(a) the Chief Justice, as an ex-officio judge; and

(b) such number of judges as shall be prescribed by an Act of Parliament.

(2) The High Court shall be duly constituted by a single judge or such other number as the Chief Justice may determine in any particular matter.

Jurisdiction of High Court

180. The High Court shall have, subject to this Constitution -

(a) unlimited and original jurisdiction in any civil, or criminal matter; and

(b) appellate, supervisory and review jurisdiction as conferred on it under this Constitution or by or under an Act of Parliament.

Supervisory jurisdiction of High Court

181. (1) The High Court shall have supervisory jurisdiction over courts subordinate to the High Court and quasi-judicial bodies.

(2) The High Court may, in the exercise of its supervisory powers under clause (1), make orders and give directions to quasi-judicial bodies and courts subordinate to it, to ensure fair administration of justice.

Divisions of High Court

182. (1) There is established an Industrial Relations Court, Commercial Court, Family Court and Juvenile Court as divisions of the High Court.

(2) The Industrial Relations Court has exclusive jurisdiction in industrial and labour relations matters.

(3) Parliament shall enact legislation to provide for the composition, jurisdiction, powers, sittings and

procedures of the Industrial Relations Court, Commercial Court, Family Court and Juvenile Court.

(4) Parliament may enact legislation to create other courts as divisions of the High Court to sit and adjudicate -

- (a) in any part of the Republic; or
- (b) on specialised subjects;

within the jurisdiction of the High Court, and provide for the composition, jurisdiction, powers, sittings and procedures of such courts.

Appointment of judges

183. The President shall, on the recommendation of the Judicial Service Commission and subject to ratification by the National Assembly, appoint the –

- (a) Chief Justice;
- (b) President of the Constitutional Court;
- (c) Deputy Chief Justice;
- (d) Deputy President of the Constitutional Court;
- (e) President of the Court of Appeal;
- (f) Deputy President of the Court of Appeal; and
- (g) other judges.

Qualification for appointment as judge

184. (1) A person shall qualify for appointment as a judge if that person is of proven integrity and has been an advocate, in the case of the –

- (a) Supreme Court, for not less than fifteen years;
- (b) Constitutional Court, for not less than fifteen years and has specialist training

or experience in human rights or constitutional law;

(c) Court of Appeal, for not less than twelve years; or

(d) High Court, for not less than ten years.

(2) A person appointed as judge to a court dealing with specialised subjects as contemplated under Article 182 (5) (b) shall have the relevant expertise in those subjects, as may be prescribed by an Act of Parliament.

Tenure of office of judges

185. (1) A judge shall retire from office on attaining the age of seventy-five years and may retire with full benefits on attaining the age of sixty-five years.

(2) The Chief Justice and the President of the Constitutional Court shall hold office, as such, for a period of not more than ten years and may thereafter continue as a judge of the Supreme Court or Constitutional Court until retirement under clause (1).

(3) A person who has retired as a judge shall not be eligible for re-appointment as a judge.

(4) Parliament shall enact legislation for procedures to facilitate the delivery of judgments or the performance of any function related to court proceedings when a judge is to retire or retires under clause (1).

Remuneration of judges

186. (1) The Judicial Service Commission shall be responsible for reviewing the emoluments and other conditions of service of judges and shall submit its recommendations to the Emoluments Commission.

(2) The Emoluments Commission shall review the recommendations from the Judicial Service Commission,

made under clause (1), and determine the emoluments of judges, which shall be specified under an Act of Parliament.

(3) The emoluments of a judge shall not be reduced to the disadvantage of the judge during the judge's tenure of office.

(4) A judge shall not, while the judge continues in office, hold any other office of profit or which pays emoluments.

Removal of
judge from
office

187. A judge may be removed from office only on the following grounds:

- (a) a mental incapacity or physical disability that would make the judge incapable of performing judicial functions;
- (b) incompetence;
- (c) gross misconduct; or
- (d) bankruptcy.

Procedure for
removal of judge

188. (1) A person who has a complaint against a judge may, based on the grounds specified under Article 187, submit a petition, to the Judicial Complaints Commission, requesting the removal of the judge on the ground cited in the petition.

(2) Where the Judicial Complaints Commission determines that a petition submitted under clause (1) is not frivolous, vexatious or malicious, the Commission shall recommend, to the President, the suspension of the judge from office, and the President shall forthwith suspend the judge from office.

(3) The Judicial Complaints Commission shall, within forty-five days of receipt of a petition submitted under

clause (1), except for a petition citing as a ground the mental incapacity or physical disability of the judge, hear and determine the petition.

(4) The proceedings under clause (3) shall be held in camera and the judge being investigated shall be entitled to appear, be heard and be represented by a legal practitioner or other expert chosen by the judge.

(5) Where the Judicial Complaints Commission determines that there are grounds for the removal of the judge on the grounds specified under Article 187 (b), (c), and (d) the Commission shall, within fourteen days of the determination, recommend to the President, the removal of the judge, and the President shall remove the judge from office forthwith.

(6) Where a petition, submitted under clause (1), is based on a ground specified under Article 187 (a), the Judicial Complaints Commission shall engage relevant registered health practitioners to examine the judge and report to the Commission, within fourteen days of being engaged, the mental or physical state of the judge and whether, in that state, the judge is capable of performing the judicial function.

(7) The Judicial Complaints Commission shall, on receipt of a report under clause (6), decide whether or not a prima facie case has or has not been established against the judge based on the ground cited in the petition, as specified under Article 187 (a).

(8) Where the Judicial Complaints Commission decides that a prima facie case has been established against the judge, based on the ground cited in the petition, as

specified under Article 187 (a), the Commission shall submit a report to the National Assembly.

(9) The National Assembly shall, on receipt of a report under clause (8), constitute a medical board to re-examine the judge and report to the National Assembly, within forty-five days of being constituted, the mental or physical state of the judge and whether, in that state, the judge is capable of performing the judicial function.

(10) A medical board, constituted under clause (9), shall be composed of not less than three relevant registered health practitioners nominated by the body responsible for the registration of health practitioners.

(11) A judge who refuses to submit to an examination, pursuant to clauses (6) and (9), shall be removed from office by the President.

(12) Where a medical board constituted under clause (9) recommends to the National Assembly that the judge be removed from office on a ground specified in Article 187 (a), the National Assembly shall resolve that the judge be removed from office and the Speaker shall, in writing, inform the President of the resolution of the National Assembly.

(13) The President shall, when informed about the resolution of the National Assembly, under clause (12), remove the judge from office forthwith.

(14) Where a medical board, constituted under clause (9), recommends to the National Assembly that the judge should not be removed from office, as the judge is capable of performing the judicial function, the Speaker shall so inform the President, in writing, and the judge shall accordingly continue in office.

Oath of office of judge and judicial officer

189. A judge and a judicial officer shall, before assuming office, take the Judicial Oath, as prescribed by an Act of Parliament.

Appointment, retirement and removal of judicial officers

190. (1) The Judicial Service Commission shall appoint judicial officers, as may be provided under this Constitution and by an Act of Parliament.

(2) The Judicial Service Commission shall appoint judicial officers on such terms and conditions, including emoluments, as shall be approved by the Emoluments Commission.

(3) An Act of Parliament shall provide for the qualifications for appointment to a judicial office.

(4) A judicial officer, except a local court magistrate, shall retire on attaining the age of sixty five years.

(5) A local court magistrate shall retire at the age of seventy-five years.

Divisions of subordinate and local courts

191. (1) There is established a Family Court and Juvenile Court as divisions of the subordinate courts and local courts.

(2) The composition, jurisdiction, powers, sittings and procedures of the Family Court and Juvenile Court as divisions of the subordinate courts and local courts shall be prescribed by or under an Act of Parliament.

Judicial Complaints Commission

192. (1) There is established the Judicial Complaints Commission.

(2) The Judicial Complaints Commission shall consist of five members appointed by the President, on the recommendation of the Judicial Service Commission, subject to ratification by the National Assembly, as follows:

- (a) a person who held or qualifies to hold the office of judge, who shall be the Chairperson;
- (b) three legal practitioners of not less than twenty years; and
- (c) a person of proven integrity, who has at least ten years experience in the public service.

(3) In the performance of its functions, the Judicial Complaints Commission shall be subject only to this Constitution and the laws and shall not be subject to the direction or control of any person or authority.

(4) The Judicial Complaints Commission shall enforce the Code of Conduct for judges and shall ensure that judges and other judicial officers are accountable to the people for the performance of their functions as specified in this Constitution and by an Act of Parliament.

(5) The expenses of the Judicial Complaints Commission, including emoluments payable to, or in respect of, persons serving with the Commission, shall be a charge on the Consolidated Fund.

(6) Parliament shall enact legislation to provide for the functions, tenure of office of members, procedures, operations, administration, finances and financial management of the Judicial Complaints Commission.

Judicial Service

193. There is established the Judicial Service which shall consist of judicial officers and other persons employed by the Judicial Service Commission.

Judicial Service
Commission

194. (1) There is established the Judicial Service Commission.

(2) The Judicial Service Commission shall consist of -

- (a) a retired Chief Justice, Supreme Court judge or Constitutional Court judge appointed by the President, who shall be the Chairperson;
- (b) the Chief Justice;
- (c) the Attorney-General;
- (d) one person nominated by the Civil Service Commission;
- (e) the Permanent Secretary responsible for public service management;
- (f) the President of the Constitutional Court;
- (g) one judge of the Supreme Court nominated by the judges of the Supreme Court;
- (h) one member representing female judges elected by other female judges;
- (i) one member representing the Law Association of Zambia, with not less than fifteen years experience as an advocate, nominated by the Association;

- (j) a representative of a law school of a public or private university in Zambia, elected by a college of Deans of the Law Schools;
- (k) the Chairperson of the Human Rights Commission;
- (l) the Chairperson of the Gender Equality Commission;
- (m) a representative of the House of Chiefs;
- (n) one representative of magistrates nominated by magistrates; and
- (o) the person responsible for the administration of the local courts.

(3) A person who is not an ex-officio member shall hold office for a term of four years and shall be eligible for re-appointment for only one further term of four years.

(4) A member, referred to in clause (3), shall vacate office -

- (a) at the expiry of the term of office specified under that clause; or
- (b) if the member is elected or appointed to an office that is likely to compromise the independence of the Judicial Service Commission, as determined by the Commission.

(5) A member who represents a body or institution shall vacate office if that body or institution nominates another person to represent it.

(6) Parliament shall enact legislation to provide for the procedures of the Judicial Service Commission.

195. (1) The functions of the Judicial Service Commission shall be –

- (a) to supervise the operations of the Judicial Service;
- (b) to advise the Government on the administration of justice and matters that relate to the Judiciary;
- (c) to review and make recommendations on the emoluments and other terms and conditions of service of judges and judicial officers to the Emoluments Commission;
- (d) to make recommendations to the President on the appointment of judges;
- (e) subject to this Constitution, to appoint, discipline and remove judicial officers;
- (f) to prepare and implement programmes for the continuing education and training of judges and judicial officers;
- (g) to ensure that the judicial system enables access to justice; and
- (h) to perform any function conferred on it by or under this Constitution or by or under an Act of Parliament.

(2) The Judicial Service Commission shall be independent and shall not be subject to the direction or control of any person or authority in the performance of its functions under this Constitution or any other law.

(3) The expenses of the Judicial Service Commission, including the emoluments payable to, or in

respect of, persons serving with the Commission, shall be a charge on the Consolidated Fund.

Chief Administrator
of Judiciary

196. (1) There shall be a Chief Administrator for the Judiciary who shall be appointed by the Judicial Service Commission and whose functions shall be as prescribed by or under an Act of Parliament.

(2) The emoluments of the Chief Administrator shall be a charge on the Consolidated Fund.

PART X
GENERAL PRINCIPLES OF DEVOLVED GOVERNANCE
System of Devolved Governance

Devolved
governance
system

197. (1) The management and administration of the affairs of the State shall be devolved from the national level to the local level while retaining, at the national level, the Executive authority, as provided for under this Constitution.

(2) The concurrent and exclusive functions of the national and local levels of government, and those of the provincial administration, shall be as specified by an Act of Parliament and as listed in the Schedule.

(3) The basis for the devolution of State functions and responsibilities is to –

- (a) give powers of direct self-governance to the people living in the Provinces and districts of Zambia in order to enhance their participation in the governance of the State and the making of decisions that affect them;

- (b) recognise the rights of communities to self-actualisation by allowing them to manage their own affairs and further their development by planning, determining and prioritising social and economic activities for their areas;
- (c) preserve and foster peace, national unity and the indivisibility of Zambia;
- (d) decentralise State organs, State institutions and other public offices, their functions and services from the national to the local level in order to enhance separation of powers, administrative and procedural effectiveness and transparency; and
- (e) promote the accountability of State organs, State institutions and other public offices.

(4) The devolved system of government shall be based on co-operative and integrated governance in a unitary and indivisible State where –

- (a) the different levels of government conduct public affairs with mutual trust and good faith by -
 - (i) assisting and supporting one another;
 - (ii) informing one another of, and consulting one another on, matters of common interest;
 - (iii) adhering to agreed procedures for the management of the affairs of

- the State at various levels of government;
- (iv) avoiding legal proceedings against one another and where necessary, having harmonised and coordinated systems for settlement of disputes at the various levels of government between State organs, State institutions and other public offices; and
 - (v) having harmonised and coordinated policies, legislation and actions; and
- (b) the provincial administration and local authority -
- (i) incorporates traditional leadership in the management of public affairs;
 - (ii) involves communities in decisions relating to the management and exploitation of natural resources in their areas and promotion of a safe and healthy living environment; and
 - (iii) develops trained human resource to manage provincial and local authorities affairs.

(5) All levels of government shall observe and adhere to the following principles:

- (a) loyalty to Zambia and its people;
- (b) good governance, through democratic, effective, transparent, accountable and coherent governance systems and institutions;
- (c) respect for the constitutional status and relationships of the different levels of government and of State organs, State institutions and other public offices and their functions;
- (d) autonomy of the devolved levels of government and administrative units, whilst maintaining a unified homogeneous State; and
- (e) equitable distribution and application of national resources throughout the devolved levels of government and administrative units.

Administrative, legislative and judicial competence in devolved governance

198. (1) The administrative, legislative and judicial structures of the State shall be devolved to the provincial level and progressively to the district level as provided under this Constitution and by or under an Act of Parliament.

(2) The functions of the devolved structures of governance, as specified under clause (1), shall be exercised at the national, provincial and district levels in accordance with this Constitution or as prescribed by or under any other law.

Conflict between national and provincial legislation

199. (1) Where there is a conflict between national and provincial legislation in respect of matters

within the concurrent jurisdiction of both levels of government, national legislation prevails over provincial legislation if –

- (a) the national legislation applies uniformly throughout Zambia and any of the conditions prescribed in clause (2) is satisfied; or
- (b) the national legislation is aimed at preventing unreasonable action by provincial administration or local authority which –
 - (i) is prejudicial to the public interest, economic, health or security interest of Zambia or of another provincial administration or local authority; or
 - (ii) impedes the implementation of national economic policy.

(2) The conditions referred to under clause (1) (a) are as follows:

- (a) the national legislation provides for a matter that cannot be regulated effectively by independent provincial legislation;
- (b) the national legislation provides for a matter which, to be dealt with effectively, requires uniformity across Zambia, and the national legislation provides that uniformity; and
- (c) the national legislation is necessary for-

- (i) maintenance of national security;
- (ii) maintenance of economic unity;
- (iii) the protection of a common market with respect to the mobility of goods, services, capital and labour; or
- (iv) protection of the environment.

(3) Provincial legislation prevails over national legislation if the circumstances referred to in clause (1) do not apply.

(4) In considering an apparent conflict of legislation at different levels of governance, the Constitutional Court shall interpret the legislation in a manner that avoids conflict or inconsistency.

(5) A decision by the Constitutional Court that a provision of national legislation prevails over a provision of provincial legislation does not invalidate the provincial legislation but the provision is inoperative to the extent of the inconsistency.

Power of
Parliament to
repeal provincial
legislation

200. (1) Parliament may, where provincial legislation is void on the grounds specified under Article 199, repeal the provincial legislation to the extent of the inconsistency.

(2) A provincial assembly that is aggrieved by the repeal of the provincial legislation under clause (1) may, through the Speaker, appeal to the Constitutional Court, which may give such ruling in the matter as the Constitutional Court considers necessary.

PART XI
PROVINCES AND ADMINISTRATION

Provinces and
provincial
administration

201. (1) Subject to clauses (2) and (3), the Republic of Zambia shall be divided into Provinces as provided by or under an Act of Parliament.

- (2) The President may, by statutory order-
- (a) create Provinces;
 - (b) alter the boundaries of Provinces;
 - (c) provide for the merger of two or more Provinces; or
 - (d) divide a Province into two or more Provinces.

(3) Any new Province established by the creation of a Province, alteration or division of a Province or merging of another Province with one or more other Provinces, in accordance with clause (2), shall be ratified by the National Assembly.

(4) Without prejudice to clause (2), sixty percent or more of the registered voters in a Province concerned may petition the President to –

- (a) merge a Province with another Province; or
- (b) divide a Province into two or more Provinces.

(5) Where the President receives a petition under clause (4), the President shall, by statutory order, merge the Province with another Province or divide the Province, subject to ratification by the National Assembly.

(6) Where the National Assembly ratifies the establishment of a new Province under this Article, the

Electoral Commission shall, in consultation with the public officer appointed as Government surveyor under any other law, delimit the boundaries of the Province created as may be prescribed.

(7) A Province shall be constituted of such number of districts as may be specified by or under an Act of Parliament as provided under Article 212.

(8) There shall be established for each Province a provincial administration with such staff as may be prescribed by an Act of Parliament.

Provincial
Minister

202. (1) There shall be a Provincial Minister for each Province appointed by the President in accordance with this Constitution.

(2) The Provincial Minister shall –

- (a) be the head of the Province;
- (b) be a member of the provincial assembly
- (c) be generally responsible for the administration of the Province;
- (d) ensure that national policies are implemented in all districts in the Province; and
- (e) ensure that the concurrent and exclusive functions of the local government are performed in accordance with this Constitution and any other law.

Provincial
assemblies

203. (1) There shall be established, in each Province, a provincial assembly consisting of the following members:

- (a) the Provincial Minister;
- (b) the Members of Parliament from within the Province;
- (c) the mayors or council chairpersons of the district councils in the Province;
- (d) three chiefs representing all the chiefs in the Province;
- (e) three representatives of an organisation representing persons in commerce and industry operating in the Province;
- (f) three representatives of an organisation representing farmers operating in the Province;
- (g) three representatives of faith-based organisations operating in the Province; and
- (h) a representative each from organisations operating in the Province representing-
 - (i) women;
 - (ii) youth; and
 - (iii) persons with disabilities.

(2) The Electoral Commission shall facilitate the election to a provincial assembly of representatives referred to in clause (1) (d), (e), (f), (g) and (h).

(3) Parliament shall enact legislation for a system of elections of representatives specified under clause (1) (d), (e), (f), (g) and (h).

(4) A person referred to in clause (1) (e), (f), (g) and (h) is qualified to be a member of a provincial assembly if that person-

- (a) is a citizen by birth or descent;
- (b) has been ordinarily resident in Zambia;
- (c) is not less than twenty-one years of age;
- (d) has obtained, as a minimum academic qualification, a grade twelve certificate or its equivalent;
- (e) declares that person's assets and liabilities as provided under this Constitution and by or under an Act of Parliament; and
- (f) has paid that person's taxes or has made arrangements satisfactory to the appropriate tax authority for the payment of the taxes.

Functions of provincial assembly

204. (1) Subject to this Constitution, a provincial assembly is vested with the legislative and oversight powers of the Province.

- (2) The functions of a provincial assembly are to -
 - (a) initiate, debate and determine local Bills for the governance of the Province and approve local Bills initiated and recommended by district councils for the governance of the district, and submit these Bills to the National Assembly for enactment as Acts of Parliament;

- (b) ensure implementation of the national Government's policies in the Province;
- (c) ensure that the provincial administration consolidates spatial district plans and socio-economic district plans into provincial spatial development plans and provincial socio-economic development plans, respectively, and approve these plans for submission to the national Government;
- (d) monitor the utilisation of resources and the implementation of development programmes in the Province;
- (e) cause to be prepared provincial progress reports for the national Government on the implementation of development programmes and projects;
- (f) ensure the effective implementation of national development projects and programmes in the Province;
- (g) ensure that the auditing of local authorities in the Province is carried out and is within the expenditure limits and heads approved by the National Assembly;
- (h) ensure proper utilisation and maintenance of public buildings, equipment, plant, machinery and other infrastructure in the Province;

- (i) oversee the performance of functions of the district councils in the Province in areas of-
 - (i) financial accountability; and
 - (ii) developmental programmes;
- (j) approve the budget of the Province and submit it to the national Government; and
- (k) perform any other function provided by or under an Act of Parliament.

Retrospective legislation and Bills affecting rights and freedoms

205. (1) A provincial assembly or a district council shall not initiate Bills for introduction into the provincial assembly that criminalise any act or omission that did not, at the time it took place, constitute an offence.

(2) A provincial assembly or a district council may initiate Bills with retrospective effect, but does not have the power to initiate any Bill which operates retrospectively to impose any limitations on, or to adversely affect, the rights and freedoms of any person or to impose a burden, liability or an obligation on any person.

Legislation on procedure of provincial assemblies

206. Parliament shall enact legislation to provide for the procedure to be followed by a provincial assembly which legislation shall, in particular, provide for the-

- (a) initiation of local Bills by a provincial administration, district council or a member of a provincial assembly;
- (b) referral of a local Bill to the National Assembly for enactment;
- (c) issuing of by-laws by local authorities;

- (d) sittings of a provincial assembly;
- (e) powers, privileges and immunities of members of a provincial assembly;
- (f) issuing of standing orders for the orderly conduct of proceedings of a provincial assembly;
- (g) code of conduct of the members of a provincial assembly;
- (h) voting in a provincial assembly;
- (i) establishment of committees and their functions;
- (j) powers of a provincial assembly to call evidence;
- (k) prorogation of a provincial assembly;
- (l) staff of a provincial assembly;
- (m) procedure for passing of a vote of no confidence in a Provincial Minister;
- (n) procedure for petitions and comments to be made by persons in a Province to a provincial assembly; and
- (o) access and participation of persons in the Province in a provincial assembly.

Provincial speaker
and deputy
provincial speaker

207. (1) There shall be a provincial speaker and deputy provincial speaker for each provincial assembly both of whom shall be elected by the members of a provincial assembly from amongst themselves.

(2) A provincial speaker and deputy provincial speaker shall be elected by a secret vote.

(3) A person shall not be eligible for election as a provincial speaker and deputy provincial speaker if the

person is the holder of any other public office which pays emoluments.

(4) Where a provincial speaker or deputy provincial speaker is elected from persons referred to in paragraphs e, f, g or h of Article 203 (1), the relevant organisation shall nominate another person to be the representative of that organisation.

(4) The office of provincial speaker and deputy provincial speaker shall become vacant –

- (a) when a provincial assembly first sits after a general election;
- (b) if a provincial speaker and deputy provincial speaker, after being heard by a select committee of a provincial assembly, is removed by a provincial assembly from office on the recommendation of the select committee, by a resolution supported by the votes of not less than two-thirds of its members on any of the following grounds:
 - (i) violation of any provision of this Constitution;
 - (ii) incapacity to discharge the duties of the office of provincial speaker and deputy provincial speaker due to mental or physical disability; or
 - (iii) gross misconduct;
- (c) if a provincial speaker and deputy provincial speaker dies; or

(d) if a provincial speaker and deputy provincial speaker resigns from office in a letter addressed to the Provincial Minister.

(5) When the offices of a provincial speaker and deputy provincial speaker become vacant, business shall not be transacted in a provincial assembly, other than an election to the offices of provincial speaker and deputy provincial speaker.

(6) A provincial speaker and deputy provincial speaker shall be entitled to emoluments determined by the Emoluments Commission and prescribed by an Act of Parliament.

(7) The emoluments of a provincial speaker and deputy provincial speaker shall be a charge on the Consolidated Fund.

Staff of provincial assemblies

208. (1) There shall be a clerk of each provincial assembly and such other staff as may be necessary for carrying out the functions provided for under Article 204, appointed by the Local Government Service Commission on such terms and conditions as the Commission may determine.

(2) The emoluments of a clerk and other staff of each provincial assembly shall be a charge on the Consolidated Fund.

Reserved power over non-performing district councils

209. (1) A provincial assembly shall appoint an administrator to assume the functions of any district council in any of the following circumstances, where -

- (a) a district council requests and it is in the district council's interest to do so;
- (b) it has become extremely difficult or impossible for a district council to fulfill its functions and obligations;
- (c) a district council has failed to meet established minimum standards for rendering of services in the district;
- (d) it is prudent to prevent a district council from taking unnecessary action that is prejudicial to the interests of another district council or to the Province as a whole; or
- (e) it is necessary to maintain the economic or sovereign unity of the Republic.

(2) Where a provincial assembly intends to appoint an administrator to assume the functions of a district council under clause (1), it shall -

- (a) prior to assuming those functions notify the Minister responsible for local government; and
- (b) issue a directive to the district council giving reasons why the provincial assembly is intending to appoint an administrator to assume the functions of the district council and state what the district council is required to do in order to prevent the appointment of an administrator from assuming its functions.

(3) Where a district council fails to carry out remedial action as required under clause 2 (b), a provincial assembly shall appoint an administrator to assume the functions of a district council for a period not exceeding ninety days in which period fresh elections shall be held to elect other councillors for the unexpired term of that council.

(4) The assumption of the functions of a district council, by an administrator under this Article, shall be performed by the administrator directly and through persons or officers under directives provided by or under an Act of Parliament.

(5) Any person may challenge the assumption, by an administrator appointed by a provincial assembly, of the functions of a district council under this Article, in the Constitutional Court.

(6) Parliament shall enact legislation to provide for the governance and regulation of a district council during the period an administrator assumes the functions of the district council.

Legislation on provincial administration and provincial assemblies

210. Parliament shall enact legislation to provide for the -

- (a) further functions of the provincial administration;
- (b) relationship between the national administration and provincial administration; and
- (c) performance of any other function by the provincial administration and a provincial assembly.

PART XII
LOCAL GOVERNMENT
System of Local Government

System of local
government

211. (1) There is established a local government system where –
- (a) powers, functions, responsibilities and resources from the national Government and provincial administration are transferred to the district and local authorities in a co-ordinated manner;
 - (b) the people’s participation in democratic governance at the local level is promoted;
 - (c) co-operative governance with the national Government, provincial administration, provincial assembly, and local authority is promoted to support and enhance the developmental role of local government;
 - (d) the capacity of local authorities to initiate, plan, control, co-operate, manage and execute policies in respect of matters that affect the people within their respective districts is enhanced;
 - (e) social, financial and economic planning at the district level, is developed, prioritised and promoted;

- (f) a sound financial base is established for each district and local authority with reliable and predictable sources of revenue;
 - (g) the performance of persons employed by the national Government and provincial administration to provide services in the districts is overseen by local authorities;
 - (h) the provision of Government services is monitored and projects are implemented in the districts;
 - (i) accountability of local authorities is enhanced; and
 - (j) the right of local authorities to manage their affairs and to form partnerships, networks and associations to assist in the management of their respective districts and further their development is recognised.
- (2) The local government system shall-
- (a) be based on democratically elected councils elected under universal adult suffrage;
 - (b) be based on democratic principles and separation of functions;
 - (c) promote democratic and accountable exercise of power and foster national unity by recognising diversity;
 - (d) ensure the provision of services to the communities in a sustainable manner;

- (e) promote social and economic development;
- (f) promote a safe and healthy living environment; and
- (g) encourage the involvement of communities and community organisations in matters of local government.

(3) Parliament shall enact legislation dealing with matters relating to local government.

Districts, wards and district councils

212. (1) The Republic of Zambia shall be divided into districts as may be specified by or under an Act of Parliament.

(2) The district shall be the principal unit for the devolution of functions to the local level.

(3) There shall be such number of wards in each district as may be specified by or under an Act of Parliament.

(4) There shall be established for each district a district council.

(5) Parliament shall enact legislation applicable to districts, wards and local authorities in a local government system.

Functions of district councils

213. (1) A district council shall administer the district, implement programmes and projects in the district, issue by-laws and recommend local Bills for determination by the provincial assembly in the Province.

(2) The national Government, the provincial administration and the provincial assembly shall not unnecessarily interfere with, compromise or impede a district

council's ability or right to exercise its powers or perform its functions.

Election of
councillors and
composition of
district councils

214. (1) Subject to clause (5), elections to a district council shall be by direct universal adult suffrage through a secret ballot, conducted under the first-past-the-post system as prescribed by or under an Act of Parliament.

(2) A district council shall consist of the following councillors:

- (a) a mayor or council chairperson;
- (b) a deputy mayor or deputy council chairperson;
- (c) councillors elected in accordance with clause (1) by registered voters resident within the district;
- (d) Members of Parliament from the district; and
- (e) three chiefs representing all the chiefs in the district, elected by the chiefs in the district.

(3) A person shall qualify to be elected as a councillor, excluding councillors specified under clause (2) (d) and (e), if that person-

- (a) is not a Member of Parliament;
- (b) is not less than eighteen years of age;
- (c) has obtained, as a minimum academic qualification, a grade twelve certificate or its equivalent;
- (d) is resident in the district, and if that person is not a citizen that person is a holder of a resident permit; and

(e) has a certificate of clearance showing the payment of council rates, levies, charges, taxes, tariffs and fees, where applicable.

(4) A district council may invite any person, whose presence is in its opinion desirable, to attend and to participate in the deliberations of the district council but such person shall have no vote.

(5) The term of a district council shall be five years.

(6) A councillor shall be paid such allowances as may be determined by the Emoluments Commission.

Mayor, deputy mayor, council chairperson and deputy council chairperson

215. (1) There shall be a mayor or council chairperson and a deputy mayor or deputy council chairperson for every district council.

(2) A mayor or council chairperson and a deputy mayor or deputy council chairperson shall be -

(a) elected in accordance with Article 214 (1) by registered voters resident within the district, during elections for councillors;

(b) elected for a term of five years and may be elected for only one further term of five years which term shall run concurrently with that of a councillor; and

(c) subject to the same qualifications and disqualifications for an election as a councillor.

(3) The emoluments of a mayor or council chairperson and deputy mayor or deputy council chairperson shall be determined by the Emoluments Commission.

(4) A mayor or council chairperson and deputy mayor or deputy council chairperson shall, for purposes of any benefits determined by the Emoluments Commission under clause (3), be entitled to be paid, in respect of a period spent in office which is less than a full term, on a pro rata basis.

Conduct of
councillor

216. (1) A councillor shall act in accordance with the code of ethics for councillors provided by or under an Act of Parliament.

(2) A councillor shall not act in a way that is inconsistent with a councillor's civic duties and responsibilities, as may be prescribed.

Accountability of
councillors

217. Councillors shall be accountable, collectively and individually, to the residents in their districts, a provincial assembly and the national Government for the exercise of their powers and performance of their functions.

Tenure of office
and vacation of
office of councillor

218. (1) A councillor shall vacate the seat upon dissolution of a district council.

- (2) The office of councillor becomes vacant if –
- (a) the councillor ceases to be a resident;
 - (b) the councillor resigns upon giving one month's notice, in writing, to the mayor or council chairperson;

- (c) the councillor becomes disqualified for election under Article 214;
- (d) the result of an election for that councillor is nullified by a Local Government Elections Tribunal established under Article 220;
- (e) the councillor acts contrary to the code of ethics provided pursuant to Article 216(1); or
- (f) the councillor dies.

Vacancies and
by-elections for
district councils

219. (1) Where a vacancy occurs in the office of a councillor, a chief executive of a local authority shall, within seven days of the occurrence of the vacancy, inform, in writing, the Electoral Commission of the vacancy.

(2) Where a vacancy occurs in the office of councillor, a by-election shall be held within ninety days of the occurrence of the vacancy.

Petitions and Local
Government
Elections Tribunal

220. (1) A person may file a petition with a Local Government Elections Tribunal, established under clause (2), to challenge the election of a councillor.

(2) The Chief Justice shall establish such number of ad hoc Local Government Elections Tribunals as is necessary to hear and determine whether -

- (a) a person has been validly elected as a councillor; or
- (b) the seat of a councillor has become vacant.

(3) A Local Government Elections Tribunal shall be presided over by a magistrate of competent jurisdiction

sitting with two legal practitioners, appointed by the Chief Justice.

(4) A petition shall be determined within sixty days of the filing of the election petition.

(5) A decision of a Local Government Elections Tribunal shall be appealable to the Constitutional Court.

(6) A councillor whose election is petitioned shall hold the seat in the district council pending the determination of the petition.

(7) The expenses of a Local Government Elections Tribunal shall be a charge on the Consolidated Fund.

(8) The Chief justice shall make rules for the functions, composition, appointment of members, tenure of office of members, procedures and jurisdiction of the Local Government Elections Tribunals.

Local Government
Service Commission

221. (1) There is established a Local Government Service which shall consist of persons appointed by the Local Government Service Commission and engaged by local authorities.

(2) There is established the Local Government Service Commission.

(3) The Local Government Service Commission shall appoint and regulate persons serving in the Local Government Service.

(4) The expenses of the Local Government Service Commission, including emoluments payable to, or in respect of, persons serving with the Commission, shall be a charge on the Consolidated Fund.

(5) Parliament shall enact legislation to provide for the functions, composition, appointment of members,

tenure of office of members, procedures, operations, administration, finances and financial management of the Local Government Service Commission.

Sequestration of property

222. (1) Notwithstanding any other provision in this Constitution, the property of a local authority shall not be sequestered, attached or otherwise be liable to execution in satisfaction of a judgment or for any other cause.

(2) Where a person has any claim or judgment against a local authority, the judgment may be enforced by execution against the local authority, after one year of the delivery of the judgment.

Revenue of local authorities

223. Subject to this Constitution, local authorities shall be competent to levy, impose, recover and retain property rates, levies, charges, fees, taxes, tolls and tariffs as provided by or under an Act of Parliament.

Local Government Equalisation Fund and funds for district councils

224. (1) There shall be established a Local Government Equalisation Fund.

(2) Parliament shall, annually, appropriate a percentage of the total annual revenues of the Republic to the Local Government Equalisation Fund which shall be disbursed by the Ministry responsible for finance to local authorities, for the sustenance, development and administration of the communities in a district.

(3) Parliament shall, annually, appropriate a percentage of the total annual revenues of the Republic to a Constituency Development Fund in addition to the moneys paid into the Local Government Equalisation Fund.

(4) The revenue referred to under clauses (2) and (3) shall be in addition to revenues raised by a district council and retained by it.

(5) The Government may provide additional funds and grants beyond what is provided under clauses (2) and (3) to a district council, conditionally or unconditionally.

Legislation to further regulate districts and local authorities

225. Parliament shall enact legislation to provide for-

- (a) the regulation of local authorities;
- (b) districts, multi-member constituencies and wards, and their relationship;
- (c) the financial control and accountability measures needed to be put in place for compliance by local authorities;
- (d) matters that relate to the raising of loans, grants and other financial instruments by local authorities;
- (e) further provisions for the election of councillors;
- (f) the manner in which district councils shall initiate local Bills for determination by a provincial assembly; and
- (g) the effective implementation of this Part.

PART XIII
CHIEFTAINCY AND HOUSE OF CHIEFS

Institution of
chieftaincy

226. (1) The institution of chieftaincy together with its traditional councils as established by customary law and its usage is hereby guaranteed, subject to this Constitution.

(2) Parliament shall not enact legislation which -

- (a) confers on any person or authority the right to accord or withdraw recognition to, or from, a chief for any purpose; or
- (b) in any way derogates from the honour and dignity of the institution of chieftaincy.

(3) Subject to this Constitution, the institution of chieftaincy shall exist in any area of Zambia in accordance with the culture, customs and traditions or wishes and aspirations of the people to whom it applies.

(4) Where the issue of the appointment or election of a chief is not resolved in accordance with the culture, customs and traditions or wishes and aspirations of the people to whom it applies the issue shall be resolved as prescribed by an Act of Parliament.

(5) A person who is aggrieved with a resolution of a dispute relating to the appointment or election of a chief in accordance with clause (4) may appeal to a court.

(6) Parliament may enact legislation to provide for the recognition of a person as chief and installation of chiefs in accordance with customary law and its usage.

Concepts and principles relating to chieftaincy

227. The following concepts and principles shall apply in relation to the chieftaincy:

- (a) the institution of chieftaincy shall be a corporation sole with perpetual succession and capacity to sue and be sued and to hold assets or properties in trust for itself and the people under a chief's jurisdiction;
- (b) a chief may own assets or properties acquired in a personal capacity; and
- (c) a chief shall enjoy privileges and benefits –
 - (i) conferred by the Government;
 - (ii) conferred by a district council; and
 - (iii) bestowed by or under culture, custom and tradition.

Participation of chiefs in public affairs

228. (1) Subject to clause (2), a chief may seek and hold any public office.

(2) A chief shall not take part in active party politics and any chief wishing to do so shall abdicate the chief's throne.

(3) Parliament shall enact legislation to provide for the role of chiefs and other traditional leaders in the management, control and sharing of natural and other resources in their localities.

House of Chiefs

229. (1) There is established a House of Chiefs for the Republic which shall be an advisory body to the Government on traditional or customary matters referred to

it by the President or as may be provided by or under an Act of Parliament.

(2) The House of Chiefs shall consist of five chiefs from each Province elected by the chiefs in a Province.

(3) The Chairperson and Vice-Chairperson of the House of Chiefs shall be elected annually from amongst the members of the House of Chiefs.

(4) Notwithstanding clause (3), the assumption of office as Chairperson and Vice-Chairperson of the House of Chiefs shall rotate annually amongst the chiefs from each Province.

(5) The emoluments of the chiefs serving in the House of Chiefs shall be as determined by the Emoluments Commission and specified in an Act of Parliament.

(6) The expenses of the House of Chiefs shall be a charge on the Consolidated Fund.

Functions of
House of Chiefs

230. Notwithstanding Article 229 (1), the House of Chiefs may -

- (a) consider and discuss any Bill referred to it by the President, dealing with, or touching on, custom or tradition, before it is introduced into the National Assembly;
- (b) discuss matters relating to national development;
- (c) initiate, discuss and decide on matters that relate to customary law and practice; and
- (d) initiate, discuss and make recommendations to local authorities

regarding the welfare of a local community.

Tenure of office and
vacancy

231. (1) A chief -
- (a) shall hold office in the House of Chiefs for a term of five years and is eligible for election for a further term of five years; and
 - (b) may resign from the House of Chiefs upon giving one month's notice, in writing, to the Chairperson.

(2) The office of chief in the House of Chiefs shall become vacant if the chief -

- (a) dies;
- (b) ceases to be a chief;
- (c) resigns;
- (d) becomes a Member of Parliament or is appointed to any public office;
- (e) is an undischarged bankrupt; or
- (f) has a mental disability that would make the chief incapable of performing the functions of a member of the House of Chiefs.

Oaths of members
of House of Chiefs

232. A chief elected to the House of Chiefs shall take the oath of member of the House of Chiefs, as prescribed by an Act of Parliament.

Staff of House of
Chiefs

233. (1) There shall be a Clerk of the House of Chiefs and such other staff as may be necessary for carrying out the functions under this Part or any other law.

(2) The emoluments of the Clerk and other staff of the House of Chiefs shall be a charge on the Consolidated Fund.

Legislation on
House of Chiefs

234. Subject to this Constitution, Parliament shall enact legislation -

- (a) for the appointment of the Clerk and other staff of the House of Chiefs;
- (b) for the proceedings, sittings and conduct of the House of Chiefs;
- (c) for the application of any of the privileges and immunities of the National Assembly and its members to the House of Chiefs and its members; and
- (d) providing for such other matters as are necessary or conducive to the better carrying out of the purposes of this Part.

PART XIV
PUBLIC SERVICE AND COMMISSIONS
Values and Principles

Values and
principles of public
service

235. (1) The guiding values and principles of the public service include –

- (a) maintenance and promotion of the highest standards of professional ethics and integrity;
- (b) promotion of efficient, effective and economic use of resources;
- (c) effective, impartial, fair and equitable provision of services;
- (d) the encouragement of people to participate in the process of policy making;
- (e) prompt, efficient and timely response to people's needs;
- (f) commitment to the implementation of public policy and programmes;
- (g) accountability for administrative acts;
- (h) providing the public with timely, accessible and accurate information;
- (i) merit as the basis of appointment and promotion;
- (j) adequate and equal opportunities for appointments, training and advancement of members of both gender and members of all ethnic groups; and

(k) representation of diverse communities of Zambia and persons with disabilities in the composition of the public service at all levels.

(2) The values and principles stated under clause (1) apply to public service -

(a) at national, local government and provincial level; and

(b) in all State organs and State institutions.

(3) A public officer shall not be-

(a) victimised or discriminated against for having performed functions in good faith in accordance with this Constitution or any other law; or

(b) dismissed or removed from office or reduced in rank or otherwise punished without just cause and due process.

Code of Conduct and Ethics of Public Officers

Conflict of interest

236. A public officer shall not act in a manner, or be in a position, where the personal interest of that officer conflicts, or is likely to conflict, with the performance of the functions of office.

Declaration of assets

237. An Act of Parliament shall specify the categories of public officers, and other persons who shall make declarations of their assets and liabilities, the form

and manner of making the declaration and to whom the declaration shall be submitted.

Participation in politics

238. A public officer who seeks election to a political office shall resign from the public service, or take early retirement in the national interest if that officer has served for at least twenty years.

Code of ethics for professions and other vocations

239. Parliament shall enact legislation providing for a code of conduct and ethics for any profession or vocation that involves the provision of services to the public.

Constituting Public Offices

Constituting offices for Republic

240. (1) Subject to this Constitution, the power to constitute public offices for the Republic and to abolish any of those offices vests in the President.

(2) The expenses of any public office constituted under clause (1), including the emoluments of any public officer, shall be a charge on the Consolidated Fund.

Holding of public office

241. For the purposes of this Constitution, a person shall not be considered as holding a public office by reason only of the fact that the person is in receipt of emoluments in respect of service under, or for, the Government.

Constitutional Office Holders

Attorney-General

242. (1) There shall be an Attorney-General of the Republic whose office is a public office and who shall be

appointed by the President, subject to ratification by the National Assembly.

(2) The person appointed Attorney-General under clause (1) shall not be appointed as a Minister or hold any other public office which pays emoluments.

(3) The Attorney-General shall be –

- (a) an ex-officio member of the Cabinet;
and
- (b) a person qualified to be appointed as a judge.

(4) The office of the Attorney-General shall become vacant –

- (a) if the holder of the office is removed from office by the President;
- (b) upon assumption by any other person of the office of President;
- (c) upon the death of the holder of the office; or
- (d) if the holder of the office suffers a mental incapacity or physical disability that would make the Attorney-General incapable of performing the functions of the office.

(5) The Attorney-General may resign from office on giving three months' notice, in writing, to the President.

(6) The functions of the Attorney-General shall include –

- (a) being the principal legal adviser to the Government;
- (b) the signing of all Government Bills to be presented to the National Assembly;

- (c) representing the Government in the courts or any other legal proceedings to which Government is a party; and
- (d) any other function assigned to the Attorney-General by the President or by any other law.

(7) Subject to this Constitution, an agreement, treaty or convention to which Government intends to become a party or in respect of which the Government has an interest, shall not be concluded without the legal advice of the Attorney-General, except where the National Assembly otherwise directs, and subject to the conditions provided by an Act of Parliament.

(8) The Attorney-General shall not be subject to the direction or control of any other person or authority in the performance of the Attorney-General's functions under this Constitution.

Solicitor-General

243. (1) There shall be a Solicitor-General of the Republic whose office is a public office and who shall be appointed by the President, subject to ratification by the National Assembly.

(2) A person shall not qualify to be appointed to the office of Solicitor-General unless that person is qualified for appointment as a judge.

(3) The office of Solicitor-General shall become vacant –

- (a) if the holder of the office is removed from office by the President; or
- (b) upon assumption by any other person of the office of President;

- (c) upon the death of the holder of the office; or
- (d) if the holder of the office suffers a mental incapacity or physical disability that would make the Solicitor-General incapable of performing the functions of the office.

(4) The Solicitor-General may resign from office on giving three months' notice in writing to the President.

(5) A function conferred on the Attorney-General by this Constitution or any other law may be performed by the Solicitor-General –

- (a) when the Attorney-General is unable to act owing to illness or absence from office for any reason; and
- (b) in any case, where the Attorney-General has authorised the Solicitor-General to perform that function.

Director of Public
Prosecutions

244. (1) There shall be a Director of Public Prosecutions whose office is a public office and who shall be appointed by the President, subject to ratification by the National Assembly.

(2) A person shall not qualify to be appointed to the office of Director of Public Prosecutions unless that person –

- (a) has experience in criminal prosecutions; and
- (b) is qualified to be appointed as a judge.

(3) Except as otherwise provided in this Constitution or any other law, the Director of Public Prosecutions may –

- (a) institute and undertake criminal proceedings against a person before a court, other than a court-martial, in respect of an offence alleged to have been committed by that person;
- (b) take over and continue criminal proceedings instituted or undertaken by any other person or authority; and
- (c) discontinue, at any stage before judgment is delivered, criminal proceedings instituted or undertaken by the Director of Public Prosecutions or any other person or authority .

(4) The Director of Public Prosecutions shall not enter a nolle prosequi except with the leave of the court.

(5) The functions of the Director of Public Prosecutions under clause (3) may be exercised in person or by a public officer or class of public officers or legal practitioners specified by the Director of Public Prosecutions, acting under the general or special instructions of the Director of Public Prosecutions.

(6) For the purposes of clause (3) –

- (a) an appeal from a judgment in any criminal proceeding before a court or a case stated or question of law reserved for the purposes of proceedings to any other court, shall be part of the criminal proceedings; and

(b) the power conferred on the Director of Public Prosecutions by reason of paragraph (c) of that clause shall not be exercised in relation to an appeal by a person convicted in a criminal proceeding, to a case stated or to a question of law reserved at the instance of that person.

(7) The Director of Public Prosecutions shall not be subject to the direction or control of any person or authority in the performance of the functions of the Director of Public Prosecutions.

(8) In exercising the powers conferred by this Article, the Director of Public Prosecutions shall have regard to the public interest, the interests of the administration of justice, the integrity of the judicial system and the need to prevent and avoid abuse of the legal process.

Performance of functions of Director of Public Prosecutions during absence, illness or other cause

245. Where the Director of Public Prosecutions is absent from Zambia or is unable to perform the functions of office because of illness or for any other cause, the President shall appoint any person qualified to perform the functions of the Director of Public Prosecutions until that appointment is revoked or until the Director of Public Prosecutions returns to office.

Tenure of office of Director of Public Prosecutions

246. (1) Subject to this Article, a person holding the office of Director of Public Prosecutions shall retire from office on attaining the age of sixty years and may retire, with full benefits, on attaining the age of fifty-five years.

(2) The Director of Public Prosecutions may be removed from office on the same grounds and procedure as those that apply to a judge.

(3) The Director of Public Prosecutions may resign from office on giving three months' notice, in writing, to the President.

(4) Parliament shall enact legislation to provide for any other function of the Director of Public Prosecutions and for the decentralisation of the functions of that office to the Provinces.

Public Officers

Secretary for
Government Services

247. (1) There shall be a Secretary for Government Services whose office is a public office and who shall, subject to ratification by the National Assembly, be appointed by the President in consultation with the Civil Service Commission.

- (2) The Secretary for Government Services shall -
- (a) be chief advisor to the President on public service management;
 - (b) be the head of the public service and responsible to the President for securing the general efficiency of the public service;
 - (c) ensure that public services are delivered to the public efficiently; and
 - (d) perform any other function prescribed by or under an Act of Parliament or as directed by the President.

(3) A person qualifies to be appointed as Secretary for Government Services if that person has or has had at least ten years experience in the civil service.

(4) The term of office of the Secretary for Government Services shall be five years, subject to renewal for further terms, on such terms and conditions as may be specified by or under an Act of Parliament.

(5) The Secretary for Government Services shall only be removed from office on the same grounds and procedure as those that apply to a judge.

Permanent
Secretaries

248. (1) The President shall, on the advice of the Civil Service Commission, appoint a Permanent Secretary based on professional qualifications from within or outside the civil service, subject to ratification of the National Assembly.

(2) The office of Permanent Secretary shall be a public office.

(3) Subject to this Constitution, a ministry or department of the Government shall be under the supervision and administration of a Permanent Secretary.

(4) A Permanent Secretary shall -

(a) carry out or cause to be carried out the functions of the ministry or department;

(b) advise the Minister with respect to the activities, projects and programmes of the ministry or department;

(c) implement the policies of the Government and decisions of Cabinet;
and

- (d) be responsible and accountable for the proper financial management and expenditure of public moneys appropriated to the ministry or department, or raised from sources within or outside Zambia by the ministry or department.

Appointments to Public Office

Appointing power

249. (1) Subject to this Constitution, the power to appoint a person to hold, or act in, any public office, to confirm appointments, to exercise disciplinary control over persons holding or acting in those offices and to remove any of those persons from office vests in the President, acting in accordance with the advice of the Service Commission concerned.

(2) The President may, subject to such conditions as the President may determine, delegate the President's functions under clause (1) by directions, in writing, to the Service Commission concerned.

(3) A person shall not be regarded as disqualified for appointment to any office to which a public officer is qualified to be appointed by reason only that the office is held by a person who is on leave of absence pending relinquishment of that office.

Exercise of power

250. (1) Notwithstanding Article 249, the powers of the President to make appointments to a public office shall be exercised by the-

- (a) Civil Service Commission, with respect to any office in the Civil Service; and
- (b) Teaching Service Commission, with respect to any office in the Teaching Service;

acting in the name, and on behalf, of the President.

(2) A Service Commission may, by directions in writing and subject to such conditions as it may consider necessary, delegate any of its powers under clause (1) to any public officer in the Service in question.

Retirement, Pension, Gratuity and Retrenchment Benefits for Public Officers

Retirement of
public officers

251. (1) A public officer shall, unless otherwise provided in this Constitution, retire from the public service on attaining the age of sixty years and may retire, with full benefits, on attaining the age of fifty-five years.

(2) A public officer may, unless otherwise provided in this Constitution, retire from the public service at any time after a continuous period of service of twenty years, with the approval of the Government.

(3) A public officer who has retired from the public service shall not be re-engaged, except that an officer who has special professional qualifications may be re-engaged on contract.

(4) Subject to this Constitution, reference in this Constitution to the power to remove a public officer from office shall be construed as including references to any power conferred by any law to require or permit that officer to retire from public service.

Pension, gratuity and
retrenchment benefit for
public officers

252. (1) The right of a public officer to a pension, gratuity or retrenchment benefit is hereby guaranteed.

(2) Any benefit to which a public officer is entitled by or under an Act of Parliament, shall not be withheld or altered to that officer's disadvantage, except that such benefit may be altered by way of an upward adjustment to the extent provided by law.

(3) The law to be applied with respect to any pension benefits that were granted to any person before the commencement of this Constitution shall be the law in force that is most favourable to that person.

(4) The law to be applied with respect to pension benefits, other than as provided in clause (2), shall, where those benefits are wholly in respect of a period of service as a public officer, member of the Defence Force or of the national security agencies that commenced before or after the commencement of this Constitution, be the law in force that is most favourable to that person.

(5) Pension benefits, unless otherwise charged on a fund established by or under an Act of Parliament, shall be a charge on the Consolidated Fund.

(6) In this Article, "pension benefits" includes any pension, compensation and gratuity or similar allowance for persons in respect of their service as public officers, members of the Defence Force and national security agencies or for the widows, children, dependants or personal representatives of those persons in respect of the service.

Pension to be reviewed

253. (1) Pensions shall be reviewed upwards periodically to take into account changes in the value of money, or a review of salaries.

(2) Pension in respect of service in the public service is exempt from tax.

Pension and retrenchment benefits to be paid promptly

254. (1) The payment of pension or retrenchment benefits shall be paid on an employee's last working day, and any installments of pension benefits shall be paid regularly, and be easily accessible to pensioners.

(2) Where pension or retrenchment benefits due are not paid on an employee's last working day, the employee shall stop work but the retiree's or retrenchee's name shall be retained on the payroll until payment of the pension or retrenchment benefits.

(3) A retiree or retrenchee who does not receive the retiree's pension or retrenchee's benefits on the last working day shall be entitled to -

(a) any increment in salary given to public officers in the salary scale that the retiree or retrenchee was on at the date of retirement or retrenchment; and

(b) a pension or retrenchment benefit based on the last salary received by the retiree or retrenchee while on the payroll by virtue of this Article.

Commissions

Civil and Teaching Services and service commissions

255. (1) There is established in the public service the following Services:

- (a) the Civil Service; and
- (b) the Teaching Service.

(2) There is established the following commissions for the Services specified in clause (1)-

- (a) the Civil Service Commission; and
- (b) the Teaching Service Commission.

(3) A Service Commission established under clause (2) shall have such supervisory, regulatory and consultative functions as Parliament shall, by law prescribe, including, as the case may be the-

- (a) supervision and regulation of the Civil Service or Teaching Service;
- (b) carrying out of entry and promotion examinations in the Civil Service or Teaching Service;
- (c) recruitment of staff and appointments into, or promotions within, the Civil Service or Teaching Service;
- (d) establishment of standards and guidelines to be followed within the Civil Service or Teaching Service; and
- (e) establishment of the terms and conditions of employment in the Civil Service or Teaching Service.

(4) A Service Commission established under clause (2) may, by statutory order, provide for the effective and efficient performance of its functions under this Constitution or any other law.

(5) Parliament shall, subject to this Constitution, enact legislation to provide for-

- (a) the composition of the Civil Service Commission and Teaching Service Commission;
- (b) the functions and powers of the Civil Service Commission and Teaching Service Commission;
- (c) the operations, procedures and finances of the Civil Service Commission and Teaching Service Commission;
- (d) public officers who shall compose the Civil Service and Teaching Service; and
- (e) the structures and other provisions necessary for the proper and efficient administration and operation of the Civil Service, Teaching Service, Civil Service Commission and Teaching Service Commission.

Establishment of
investigative
commissions

256. (1) There is established the following investigative commissions:

- (a) the Anti-Corruption Commission;
- (b) the Anti-Drug Abuse Commission;
- (c) the Anti-Financial and Economic Crimes Commission; and
- (d) the Police and Public Complaints Commission.

(2) Parliament shall enact legislation to provide for the functions, composition, appointment of members, tenure of office of members, procedures, operations,

administration, finances and financial management of a commission established under this Article.

Additional
commissions

257. Parliament may enact legislation to -

- (a) establish other commissions that may be necessary for the efficient and effective functioning of the public service; and
- (b) provide for the functions, composition, appointment of members, tenure of office of members, procedures, operations, administration, finances and financial management of a commission established by or under this Article.

Independence,
integrity and
membership of
commissions

258. (1) In the performance of its functions under this Constitution or any other law, a commission established under this Part shall not be subject to the control or direction of any person or authority.

(2) A commission established under this Part shall exercise its functions -

- (a) with dignity, propriety and integrity and avoid the appearance of indignity, impropriety and dishonesty;
- (b) without favour or bias; and
- (c) free of any extraneous influence, inducement, pressure, threat or interference.

(3) A member of a commission shall only be removed from office on the same grounds and procedure as those that apply to a judge.

(4) Subject to this Constitution, Parliament shall, in enacting legislation in respect of a commission established under this Part, ensure that -

- (a) a commission is composed of not less than three members and not more than seven members, who are persons of proven integrity;
- (b) a person does not qualify to be appointed as a member of a commission unless that person is -
 - (i) a citizen;
 - (ii) permanently resident in Zambia;
 - (iii) not an office bearer or employee of any political party; and
 - (iv) a person who has not been convicted of theft, fraud, forgery, perjury or any other offence that involves dishonesty; and
- (c) the members of a commission are appointed by the President, subject to ratification by the National Assembly.

Financial
independence and
powers of
commissions

259. (1) A commission shall be a self-accounting institution and shall deal directly with the Ministry responsible for finance in matters relating to its finances.

(2) A commission established under this Part shall be provided with adequate funding to enable it to effectively carry out its mandate.

- (3) A commission established under this Part -
- (a) shall have the power to appoint its staff;
 - (b) may initiate its own investigations on information available to it;
 - (c) may refer matters within its powers to appropriate State organs or State institutions for action;
 - (d) may receive complaints from any person or group of persons on matters within its powers; and
 - (e) shall submit annual reports to the National Assembly on its activities and any other report as provided by or under an Act of Parliament.

Appointment of
chief executive of
investigative
commissions

260. An investigative commission established under this Part shall have a chief executive officer who shall be appointed by the respective commission.

PART XV OFFICE OF PUBLIC PROTECTOR

Establishment of
office of Public
Protector

261. (1) There is established the office of the Public Protector which shall have offices in all of the Provinces and progressively in the districts.

(2) The Public Protector shall be appointed by the Judicial Service Commission, subject to ratification by the National Assembly.

(3) Parliament shall enact legislation to provide for the procedures, staff, finances, financial management, administration and operations of the office of the Public Protector.

Qualification for
appointment and
conditions of service

262. (1) A person shall qualify to be appointed to the office of the Public Protector if that person –

(a) is qualified to be appointed as a judge;
and

(b) does not hold the office of President, Vice-President, Minister, Provincial Minister, Parliamentary Secretary, Member of Parliament, member of a provincial assembly or councillor.

(2) The terms and conditions of service of the Public Protector, including the grounds and procedure for removal from office, shall be as those that apply to a judge.

(3) The Public Protector shall not hold any other office of profit or which pays emoluments.

(4) Where the Public Protector dies, resigns, is removed from office, is absent from Zambia or is for any other reason unable to perform the functions of office, the National Assembly shall, on the recommendation of the Judicial Service Commission, appoint a person who is qualified to be appointed as Public Protector to act until the Public Protector resumes office or another Public Protector is appointed.

263. (1) The Public Protector may investigate an action or decision taken or omitted to be taken, as specified under clause (2), by, or on behalf of, any State institution in the performance of an administrative function.

(2) An action or decision taken or omitted to be taken under clause (1), is an action or decision which is –

- (a) unfair, unreasonable or unjust; or
- (b) not compliant with the rules of natural justice.

(3) For the purpose of clauses (1) and (2), the Public Protector may -

- (a) bring an action before a court and seek a remedy which is available from the court;
- (b) hear and determine an appeal by a public officer or an employee of any State institution relating to a decision, an act or omission taken in respect of that officer which contravenes this Article; and
- (c) make any decision after investigations, and where appropriate, on any disciplinary action to be taken against a public officer, which decision shall be implemented by the appropriate authority.

(4) The Public Protector may -

- (a) issue a statement of opinion on the administration of State institutions;
- (b) make recommendations on the review, harmonisation and development of the

law for the purpose of improving administrative justice in State institutions;

(c) issue regulations regarding the manner and procedure for bringing complaints before the Public Protector and the investigation of matters or complaints; and

(d) exercise any other power provided by or under an Act of Parliament.

(5) The Public Protector shall have the same powers as those of the High Court in -

(a) enforcing the attendance of witnesses and examining them on oath;

(b) examining witnesses outside Zambia;

(c) compelling the production of documents; and

(d) enforcing any decision issued by the Public Protector and may cite any person or authority for contempt for failure to carry out any decision and request the immediate discipline of the officer concerned.

(6) A person summoned to give evidence or to produce a document before the Public Protector shall be entitled, in respect of that evidence or the production of the document, to the same privileges and protections as those that a person would be entitled to before a court.

(7) An answer by a person to a question put by the Public Protector shall not be admissible in evidence

against that person in any civil or criminal proceedings, except for perjury.

Independence of Public Protector and funding

264. (1) In the performance of its functions, the office of the Public Protector shall be subject only to this Constitution and any other law and shall not be subject to the direction or control of any person or authority.

(2) The emoluments of the Public Protector shall be determined by the Emoluments Commission and specified under an Act of Parliament and shall be a charge on the Consolidated Fund.

(3) The expenses of the office of the Public Protector, including the emoluments of staff, shall be a charge on the Consolidated Fund.

Limitation of powers of Public Protector

265. The Public Protector shall not investigate a matter -

- (a) which is before a court or a quasi-judicial body;
- (b) involving the relations or dealings between the Government and any foreign government or international organisation;
- (c) relating to the exercise of the prerogative of mercy; or
- (d) that is criminal in nature.

Accountability of Public Protector

266. The Public Protector shall be accountable to the National Assembly.

PART XVI
DEFENCE AND NATIONAL SECURITY

Establishment of
Defence Force and
functions

267. (1) There shall be established the Defence Force of Zambia consisting of-
- (a) the Zambia Army;
 - (b) the Zambia Air Force;
 - (c) the Zambia National Service; and
 - (d) any other unit as may be prescribed by an Act of Parliament.
- (2) The Defence Force shall -
- (a) preserve and defend the sovereignty and territorial integrity of the Republic;
 - (b) foster harmony and understanding between the Zambia Army, Zambia Air Force and Zambia National Service and members of society;
 - (c) co-operate with civilian authorities in times of public emergencies and national disasters;
 - (d) engage in productive activities for the development of the country; and
 - (e) perform other functions provided by or under an Act of Parliament.

Establishment of
national security
agencies and
functions

268. (1) There shall be established national security agencies which shall consist of -
- (a) the Zambia Police Service;
 - (b) the Zambia Security Intelligence Service;
 - (c) the Zambia Prisons Service; and

(d) any other agency as may be prescribed by an Act of Parliament.

(2) The Zambia Police Service shall -

- (a) protect life and property;
- (b) preserve peace, law and order;
- (c) ensure the security of the people;
- (d) prevent and detect crime;
- (e) protect the rights and freedoms enshrined in this Constitution;
- (f) foster and promote a good relationship with members of society; and
- (g) perform other functions provided by or under an Act of Parliament.

(3) The Zambia Security Intelligence Service shall be responsible for -

- (a) security intelligence and counter intelligence aimed at ensuring national security;
- (b) defence of this Constitution against any act of sabotage or subversion; and
- (c) other functions as provided by or under an Act of Parliament.

(4) The Zambia Prisons Service shall be responsible for the management, control and security of prisoners and prisons and for other functions that relate to prisoners as provided by or under an Act of Parliament.

269. (1) There is established the Police and Prisons Service Commission.

(2) Parliament shall enact legislation to provide for the functions, composition, appointment of members,

tenure of office of members, procedures, staff, finances and financial management of the Police and Prisons Service Commission.

Objectives and expenses of Defence Force and national security agencies

270. (1) The primary objectives of the Defence Force and the national security agencies shall be to -

- (a) safeguard the well-being of the people of Zambia; and
- (b) secure and guard the sovereignty, peace, national unity and territorial integrity of the Republic in accordance with this Constitution and other laws.

(2) The Defence Force and national security agencies shall be nationalistic, patriotic, professional, disciplined, competent and productive and their members shall be citizens.

(3) The Defence Force and the national security agencies shall not -

- (a) be partisan;
- (b) further the interests or cause of any political party; or
- (c) act against a political interest or cause permitted under this Constitution or any other law.

(4) Clauses (2) and (3) apply to every member of the Defence Force and national security agencies, which clauses shall not prevent a member of the Defence Force and national security agencies from registering as a voter or voting in any national elections or referenda.

(5) The Defence Force and national security agencies shall be -

(a) subject to civilian authority as established under this Constitution; and

(b) adequately and properly equipped to enable them effectively attain their objectives and perform their functions.

(6) The expenses of the Defence Force and national security agencies shall be a charge on the Consolidated Fund.

Deployment
outside Republic

271. (1) Subject to any law relating to the procedure and rules for deployment of personnel of the Defence Force outside the Republic, the President may, where the President intends to deploy any personnel of the Defence Force, obtain the prior approval of the National Assembly.

(2) Parliament shall enact legislation to give effect to this Article.

Prohibition of certain
activities in relation to
defence and national
security

272. Except as provided for by this Constitution or an Act of Parliament, a person shall not -

(a) raise an armed force;

(b) establish -

(i) an air force;

(ii) a national service;

(iii) a police service;

(iv) a prisons service; or

(v) a security intelligence service; or

(c) be concerned in the raising of an armed force or the establishment of

any unit of the Defence Force or national security agencies.

Legislation to further regulate Defence Force and national security agencies

273. Subject to this Constitution, Parliament shall enact legislation to provide for -

- (a) the regulation of the Defence Force and national security agencies;
- (b) the organs and structures of the Defence Force and national security agencies;
- (c) the operations and administration of the Defence Force and national security agencies;
- (d) the recruitment of persons into the Defence Force and national security agencies;
- (e) the appointment, qualifications, placement, transfer, discipline and retirement of defence and security chiefs, and other personnel of the Defence Force and national security agencies;
- (f) the terms and conditions of service of personnel and members of the Defence Force and national security agencies; and
- (g) such other functions as may be necessary for the effective operation of the Defence Force and national security agencies.

PART XVII
PUBLIC FINANCE AND BUDGET

Imposition of
tax

274. (1) A tax shall not be imposed except by or under an Act of Parliament.

(2) Where legislation, enacted under clause (1), confers powers on any person or authority to waive or vary a tax imposed by that legislation, that person shall, after exercising those powers, make a report to the National Assembly.

Consolidated
Fund

275. (1) There is established the Consolidated Fund for the Republic.

(2) Subject to clause (3), all moneys raised or received for the purposes of, on behalf of, or in trust for, the Republic shall be paid into the Consolidated Fund.

(3) The moneys referred to in clause (2), do not include moneys-

(a) that are payable under this Constitution or an Act of Parliament into some other public fund established for a specific purpose; or

(b) that may be authorised for retention by this Constitution or an Act of Parliament, by a State organ or State institution that receives it for the purpose of defraying the expenses of the State organ or State institution.

Withdrawal from
Consolidated Fund

276. (1) Subject to Article 277, moneys shall not be withdrawn from the Consolidated Fund except –

- (a) to meet expenditure charged on the Consolidated Fund by this Constitution or by or under an Act of Parliament; or
- (b) where the issuance of those moneys has been authorised by an Appropriation Act or a Supplementary Appropriation Act.

(2) Moneys shall not be withdrawn from any other public fund of the Republic unless the withdrawal has been authorised by an Act of Parliament.

Supplementary expenditure in advance of appropriation

277. (1) Where, in any financial year, the President is satisfied that the reasons for supplementary expenditure, as specified under Article 281(2) are justified, the President may issue a warrant authorising the withdrawal of moneys from the Consolidated Fund to meet the expenditure until the coming into force of the Supplementary Appropriation Act.

(2) Moneys withdrawn in any financial year from the Consolidated Fund under clause (1) shall not exceed an amount prescribed by an Act of Parliament as a percentage of the budget for that public body approved by the National Assembly for that financial year.

Compensation Fund

278. (1) Parliament shall enact legislation to establish a Compensation Fund for purposes of paying claims against the State and to provide for the operation of the Compensation Fund.

(2) Moneys shall not be withdrawn from the Compensation Fund unless the withdrawal is authorised by or under an Act of Parliament.

Annual financial estimates

279. (1) The President shall, subject to clause (2), cause to be prepared and laid before the National Assembly in each financial year, not later than ninety days before the commencement of the financial year, estimates of revenues and expenditure of the Government for the next financial year.

(2) The Minister shall, when presenting the estimates of revenues and expenditure under clause (1), specify the maximum limits that the Government intends to borrow or lend in that financial year.

(3) In any year where a general election takes place, the President shall cause to be prepared and laid before the National Assembly, within ninety days of the swearing in of the President, estimates of revenues and expenditure of the Government for that financial year.

Budget legislation

280. Parliament shall enact legislation relating to the annual budget and estimates of expenditure including -

- (a) the method for the preparation of the budget;
- (b) the preparation of medium and long-term development plans indicating corresponding sources of financing;
- (c) the participation of the people at the district and provincial levels, ensuring representation from both gender, in the formulation of development plans and preparation of the annual budget;
- (d) the submission of anticipated revenues and expenditure for each financial year

by the Minister responsible for finance to the National Assembly;

- (e) the contents, subject to this Constitution, of the financial report of the Government provided for under Article 284; and
- (f) the release of appropriated funds in accordance with the Appropriation Act.

Appropriation Act
and Supplementary
Appropriation Act

281. (1) The estimates of expenditure shall be provided for in an Appropriation Act.

(2) Where in respect of a financial year the amount appropriated under an Appropriation Act is insufficient or a need arises for expenditure for a purpose for which an amount has not been appropriated, under that Act, a supplementary estimate showing the amount required shall be laid before the National Assembly for approval in the current financial year.

(3) When the supplementary estimates of expenditure have been approved by the National Assembly they shall be provided for in a Supplementary Appropriation Act.

Borrowing and
lending by
Government

282. (1) The Government may, subject to this Article, borrow money from any source.

(2) The Government shall not borrow, guarantee or raise a loan on behalf of itself or any State organ, State institution, authority or person except as authorised by or under an Act of Parliament.

(3) Notwithstanding clause (2), the Government shall –

- (a) lay before the National Assembly the terms and conditions of the loan which shall not come into operation unless approved by a simple majority vote of the National Assembly; and
- (b) pay any money received in respect of the loan paid into the Consolidated Fund or into some other public fund which exists or is created for the purpose of the loan.

(4) The terms and conditions required to be laid before the National Assembly under clause (3) shall include the following:

- (a) the source of the loan;
- (b) the extent of the total indebtedness by way of principal and accumulated interest;
- (c) the provision made for servicing or repayment of the loan; and
- (d) the utilisation and performance of the loan.

(5) The National Assembly may, by resolution, authorise the Government to enter into an agreement to give a loan or grant out of the Consolidated Fund or any other public fund or account.

(6) An agreement entered into under clause (5) shall be laid before the National Assembly and shall not come into force unless it has been approved by a vote of not less than two-thirds of the Members of Parliament.

Public debt

283. (1) The public debt of Zambia shall be a charge on the Consolidated Fund and any other public fund.

(2) For the purposes of this Article, “public debt” includes the interest on that debt, sinking fund payments in respect of that debt, and the costs, charges and expenses incidental to the management of that debt.

Financial report
of Government

284. (1) The Minister responsible for finance shall, within six months after the end of each financial year, prepare and submit to the Auditor-General the financial report of the Government in respect of the preceding financial year.

(2) The financial report, referred to under clause (1), shall include information on -

- (a) revenue received by the Government during that financial year;
- (b) the expenditure of the Government during that financial year, including expenditure charged by this Constitution or any other law on the Consolidated Fund or other public fund;
- (c) gifts, donations and aid-in-kind received on behalf of the Republic in that financial year and how they were disposed of;
- (d) the value of all the donations, gifts and aid-in-kind received in any financial year on behalf of the Republic, from any source within or outside the Republic;

- (e) debt repayments;
- (f) payment made in that financial year for purposes other than expenditure;
- (g) the financial position of the Republic at the end of that financial year; and
- (h) any other information as specified under any legislation relating to the annual budget.

(3) The Auditor-General shall examine the financial report submitted by the Minister responsible for finance under clause (1) and express an opinion on the report.

(4) The Minister responsible for finance shall, within nine months after the end of the financial year, lay the financial report of the Government, with the Auditor-General's opinion, before the National Assembly.

State Audit
Commission

285. (1) There is established a State Audit Commission.

(2) The State Audit Commission shall be responsible for providing policy direction to the office of the Auditor-General and for making recommendations to the President on the appointment of the Auditor-General.

(3) The State Audit Commission, established under clause (1), shall consist of five members who shall serve on a part-time basis.

(4) The members of the State Audit Commission shall be persons from the private sector with -

- (a) expertise and experience in state audit, internal or external audit or finance;
- (b) experience in public finance; or

(c) professional qualifications relevant to the work of the State Audit Commission.

(5) The expenses of the State Audit Commission, including emoluments payable to, or in respect of, persons serving with the Commission, shall be a charge on the Consolidated Fund.

(6) Parliament shall enact legislation to provide for the functions, appointment of members, tenure of office of members, procedures, operations, administration, finances and financial management of the State Audit Commission.

Auditor-General

286. (1) There is established the office of the Auditor-General the holder of which office is the Auditor-General.

(2) The office of Auditor-General is a public office.

(3) The Auditor-General shall be appointed by the President, on the recommendation of the State Audit Commission, subject to ratification by the National Assembly.

(4) The Auditor-General may only be removed from office on the same grounds and procedures that apply to a judge.

(5) The emoluments and other terms and conditions of service of the Auditor-General shall be as determined by the Emoluments Commission and specified under an Act of Parliament.

(6) The office of the Auditor-General shall be audited by external auditors appointed by the State Audit

Commission and the report of the external auditors shall be submitted to the President and the National Assembly.

(7) Parliament shall enact legislation to provide for -

- (a) the qualifications of the Auditor-General;
- (b) the operations and management of the office of the Auditor-General;
- (c) the recruitment, supervision, grading, promotion and discipline of the staff of the Auditor-General; and
- (d) the finances of the office of the Auditor-General.

Funding of
Auditor-General

287. (1) The office of Auditor-General shall be adequately funded to enable the office to effectively carry out its mandate.

(2) In the performance of the functions conferred on the Auditor-General under this Constitution or any other law, the Auditor-General and the staff of the office of the Auditor-General shall not be subject to the direction or control of any person or authority.

(3) The expenses of the office of the Auditor-General, including the emoluments of staff, shall be a charge on the Consolidated Fund.

Functions of
Auditor-General

288. The Auditor-General shall -

- (a) audit the accounts of -
 - (i) the Government, the Judiciary, the Legislature, provincial administration, provincial

- assemblies and local authorities;
and
- (ii) all offices financed wholly or partly from public funds including the universities, the Bank of Zambia, State organs and State institutions;
- (b) audit the accounts that relate to the stocks, shares and stores of the Government;
 - (c) conduct financial and value for money audits, including forensic audits and any other type of audit, in respect of any project that involves the use of public funds;
 - (d) ascertain that money appropriated by Parliament or raised by the Government and disbursed –
 - (i) has been applied for the purpose for which it was appropriated; and
 - (ii) was expended in conformity with the authority that governs it; and
 - (iii) was expended economically, efficiently and effectively;
 - (e) recommend to the Director of Public Prosecutions, or any law enforcement agency, any matter, within the competence of the Auditor-General, that may require to be prosecuted; and
 - (f) perform any other function specified by or under an Act of Parliament.

289. (1) There is established the National Fiscal and Emoluments Commission of which the membership, additional functions, operations, management, finances and structures shall be provided for by or under an Act of Parliament.

(2) Without limiting clause (1), the functions of the National Fiscal and Emoluments Commission shall include -

- (a) recommending an appropriate percentage of the total annual revenue for the Republic for payment into the Local Government Equalisation Fund and constituency development funds for the sustenance, development and administration of the communities in a district;
- (b) determining the emoluments of constitutional office holders and other public officers as provided under this Constitution and any other law; and
- (c) any other function specified by this Constitution or any other law.

PART XVIII CENTRAL BANK

290. (1) There is established the Bank of Zambia which shall be the central bank of Zambia.

(2) The Bank of Zambia shall be the only authority to issue the currency of Zambia.

(3) The authority of the Bank of Zambia shall vest in the Board of Directors of the Bank as constituted by an Act of Parliament.

(4) Except as otherwise provided in this Constitution, the power to appoint, promote and discipline, and determine the terms and conditions of service of staff and other employees of the Bank of Zambia vests in the Board of Directors.

(5) The Bank of Zambia shall, in the performance of its functions, be subject to this Constitution and any other law and shall not be subject to the direction or control of any person or authority with respect to monetary policy and banking and financial regulation.

Governor of Bank
of Zambia

291. (1) There shall be a Governor of the Bank of Zambia who shall be –

- (a) a citizen;
- (b) a person with extensive knowledge and experience in matters that relate to economics, finance, accounting, banking, law or other fields relevant to banking;
- (c) a person of proven integrity; and
- (d) appointed by the President, under prescribed terms and conditions, subject to ratification by the National Assembly.

(2) The Governor shall be the chairperson of the Board.

(3) The emoluments of the Governor shall be as determined by the Emoluments Commission and specified by or under an Act of Parliament.

(4) The Governor shall, before assuming office, take the Official Oath, as prescribed by or under an Act of Parliament.

Legislation on Bank
of Zambia

292. Parliament shall enact legislation to provide for –

- (a) the functions, operations and management of the Bank of Zambia ;
- (b) the appointment, qualifications, tenure of office and other terms and conditions of service of the Board of Directors;
- (c) the election of a Vice-Chairperson from amongst the members of the Board of Directors;
- (d) the grounds for removal of a director of the Board;
- (e) the appointment, qualifications, retirement, tenure of office and functions of the Deputy-Governor; and
- (f) other matters necessary for the effective performance of the functions of the Bank of Zambia.

PART XIX
LAND, PROPERTY, ENVIRONMENT AND
NATURAL RESOURCES
Land and Property

Principles of land
policy

293. (1) Land in Zambia shall be held, used and managed in a manner that is equitable, efficient, productive and sustainable, and in accordance with the following principles:

- (a) equitable access to land and associated resources;
- (b) security of land rights for land holders;
- (c) sustainable and productive management of land resources;
- (d) transparent and cost effective administration of land;
- (e) cost effective and efficient settlement of land disputes;
- (f) river frontages, islands and lakeshores maintained and used for conservation, preservation activities, public access and enjoyment, and not leased, fenced or sold; and
- (g) investments in land to also benefit local communities and their economy.

(2) Parliament shall enact legislation to give effect to this Article.

Vesting of land

294. (1) Land in Zambia is vested in the President and is held by the President in trust for, and on behalf of, the people of Zambia.

(2) All land in Zambia shall be administered and controlled for the use or common benefit, direct or indirect, of the people of Zambia.

(3) The President may, through the Lands Commission, chiefs or local authorities, alienate land to citizens or non-citizens, as provided by this Constitution and by or under an Act of Parliament.

Classification of land

295. All land in Zambia shall be classified as State land, customary land, and such other classification as may be provided by or under an Act of Parliament, and shall be delimited in accordance with an Act of Parliament.

State land

296. (1) State land is –
- (a) land held by any person under leasehold tenure;
 - (b) land which is unalienated and not classified as customary land under this Constitution;
 - (c) land held, used or occupied by any State institution or local authority;
 - (d) land on or under which minerals, gas and mineral oils are found;
 - (e) land in respect of which no heir can by ordinary legal process be identified;
 - (f) land occupied by, or through which, any natural resource passes including gazetted or declared national forests, game reserves, river basins and water catchment areas, rivers and other natural flowing water resources,

national parks, animal sanctuaries, natural and cultural heritage sites and specially protected areas;

(g) land that is designated as a multi-facility economic zone; and

(h) any other land declared as State land by an Act of Parliament.

(2) State land shall not be alienated or otherwise used except in terms of legislation specifying the nature and terms of that alienation or use.

Customary land

297. (1) Customary land is land delineated as such under an Act of Parliament, held by traditional communities identified on the basis of tribe and allocated by a chief.

(2) For the purposes of clause (1), customary land includes land traditionally held, managed or used by traditional communities as dwelling places, agricultural areas, communal forests, grazing areas, shrines or for other purposes.

(3) Customary land shall not be alienated, except as provided by or under an Act of Parliament.

Land tenure, use and alienation

298. (1) Land in Zambia shall be alienated and held on the basis of such tenure as provided by this Constitution or by or under an Act of Parliament.

(2) Parliament shall enact legislation to provide for land tenure, the use of land and the system of alienation of land.

Lands
Commission

299. (1) There is established a Lands Commission which shall have offices in all Provinces and progressively in the districts.

(2) In the performance of its functions, the Lands Commission shall be subject only to this Constitution and any other law.

(3) The expenses of the Lands Commission, including emoluments payable to, or in respect of, persons serving with the Commission, shall be a charge on the Consolidated Fund.

(4) Parliament shall enact legislation to give effect to this Article and provide for the functions, composition, appointment of members, tenure of office of members, staff, procedures, operations, administration, finances and financial management of the Lands Commission.

Functions of
Lands
Commission

300. The functions of the Lands Commission shall include the following:

- (a) administer, manage and alienate land on behalf of the President;
- (b) monitor and oversee land use planning throughout the country; and
- (c) any other function provided by or under an Act of Parliament.

Legislation on
land

301. Parliament shall enact legislation on land and property to give effect to this Part.

Environment and Natural Resources

Principles of
environmental
and natural
resources
management and
development

302. (1) The management and development of Zambia's environment and natural resources, shall be governed by the following principles:

- (a) natural resources have an economic and social value and this shall be reflected in their use;
- (b) if an action or a policy is likely to cause harm to the public or to the environment, in the absence of scientific consensus that the action or policy is harmful, the burden of proof that it is not harmful shall fall on the person taking the action;
- (c) the party responsible for polluting or degrading the environment is responsible for paying for the damage done to the environment;
- (d) the conservation and protection of ecologically sensitive areas shall be conducted in a sound manner;
- (e) the integrity of natural processes and ecological communities, including conservation of habitats and species shall be respected;
- (f) the State shall be the trustee of the Nation's environment and natural resources and the benefits accruing from the exploitation and utilisation of the environment and natural resources

shall be shared equitably amongst local communities;

- (g) there shall not be private ownership of any natural resource or authorisation of the use of a natural resource in perpetuity;
- (h) the saving of energy and the use of renewable energy sources shall be promoted;
- (i) adequate resources shall be allocated for the purposes of reclaiming and rehabilitating degraded areas and those prone to disasters in order to make them habitable and productive;
- (j) strategic research shall be undertaken in order to ensure the enhancement of natural resources;
- (k) unfair trade practices in the production, processing, distribution and marketing of natural resources shall be eliminated;
- (l) the origin, quality, methods of production, harvesting and processing of natural resources shall be regulated;
- (m) equitable access to environmental resources shall be promoted and the functional integrity of ecosystems shall be taken into account to ensure the sustainability of the ecosystems and to prevent adverse effects;

- (n) the people shall be involved and participate in the development of relevant policies, plans and programmes; and
- (o) the people shall have access to environmental information to enable them preserve, protect and conserve the environment.

(2) Parliament shall enact legislation to give effect to this Article.

Protection of environment and natural resources

303. A person has a duty to co-operate with State organs and State institutions and other persons to –

- (a) ensure ecologically sustainable development and use of natural resources;
- (b) respect, protect and safeguard the environment;
- (c) prevent or discontinue an act which is harmful to the environment; and
- (d) maintain a clean, safe and healthy living environment.

Utilisation of natural resources and management of environment

304. The State shall, in the utilisation of natural resources and management of the environment–

- (a) protect genetic resources and biological diversity;
- (b) implement mechanisms that minimise waste and encourage recycling;

- (c) establish systems of environmental impact assessment, environmental audit and environmental monitoring;
- (d) encourage public participation;
- (e) protect and enhance the intellectual property in, and indigenous knowledge of, biodiversity and genetic resources of the local communities;
- (f) ensure that the environmental standards enforced in the Republic are of essential benefit to all citizens; and
- (g) apply international best practices.

Legislation relating to environment and natural resources

305. Parliament shall enact legislation with regard to the environment and natural resources and to give effect to this Part.

PART XX
AMENDMENT OF CONSTITUTION

Amendment of Constitution

306. (1) Subject to this Constitution, a provision of this Constitution may be amended by an Act of Parliament in accordance with Articles 307 or 308.

(2) A Bill to amend a provision of this Constitution shall have the sole purpose of amending that provision and shall not provide for any other matter.

(3) A Bill to amend a provision of this Constitution which is on the objectives, functions, powers, principles or structures of local government, shall not be introduced in the National Assembly unless the Bill has been approved by a resolution supported by the votes of not

less than two-thirds of the members of each provincial assembly.

(4) For the purpose of this Part, “amend” means to alter, repeal, replace, vary, add to or cancel, whether in part or in whole, a provision of this Constitution but shall not include any amendment to the Bill of Rights, Article 1, Article 4, Article 5 and Article 306, except as provided under Article 308.

Amendment
without
referendum

307. (1) A Bill to amend a provision of this Constitution, other than a Bill specified in Article 308, shall be in accordance with this Article.

(2) A Bill referred to in clause (1) shall be -

(a) published in the Gazette; and

(b) laid before the National Assembly for first reading after thirty days of its publication in the Gazette.

(3) A Bill referred to in clause (1) shall be taken as passed by the National Assembly if the Bill is approved at the second and third readings by the votes of at least two-thirds of the Members of Parliament.

Amendment by
referendum

308. (1) A Bill to amend any provision of the Bill of Rights, Article 1, Article 4, Article 5, Article 306 or this Article shall be by a referendum and in accordance with this Article.

(2) A Bill to amend any provision of the Bill of Rights, Article 1, Article 4, Article 5, Article 306 or this Article shall be published in the Gazette and shall be laid before the National Assembly for first reading at the end of thirty days after its publication.

(3) The Speaker shall, after the first reading referred to in clause (2), refer the Bill to the Electoral Commission for a referendum to be held on the Bill.

(4) The Electoral Commission shall, within ninety days of receipt of the Bill in accordance with clause (3), hold a referendum on the Bill, as may be prescribed by an Act of Parliament.

(5) If, in a referendum, at least fifty percent of the registered voters vote, and two-thirds vote in favour of the amendment, the National Assembly shall proceed to pass the Bill referred to in clause (2).

PART XXI GENERAL PROVISIONS

Official
language and
use and status
of local
languages

309. (1) The official language of Zambia is the English language.

(2) Any language, other than the official language, may be used as a medium of instruction in educational institutions or for legislative, administrative or judicial purposes, as provided by or under an Act of Parliament.

(3) All local languages in Zambia are equal and the State shall respect, promote and protect the diversity of languages of the people of Zambia.

Appointments

310. (1) Where any person is empowered to make an appointment under this Constitution, that person shall-

(a) ensure that at least fifty percent of each gender is appointed;

- (b) ensure that equitable consideration is given to persons of both gender; and
- (c) consider the youth, persons with disabilities, minority and other marginalised groups.

(2) Parliament shall enact legislation to provide for appointments under this Constitution and the proportion of either gender for such purposes.

Definitions

311. In this Constitution, unless the context otherwise requires -

“adult” means an individual who has attained, or is above, the age of eighteen years;

“affirmative action” includes any measure designed to overcome or ameliorate an inequity or the systematic denial or infringement of a right or freedom;

“Bill” means a draft of a proposed law to be enacted by Parliament;

“Bill of Rights” means the rights and freedoms set out in Part V, and includes their status, application, interpretation, limitations and enforcement as specified under that Part;

“by-election” means an election to fill a vacancy in the office of councillor;

“capital offence” means an offence which attracts a penalty of death;

“chief” means a person recognised as chief and who derives allegiance from the fact of birth or descent, in accordance with the customs,

traditions, usage or consent of the people led by that chief;

“child” means a person who is below the age of eighteen years, and “children” shall be construed accordingly;

“circuit schedule” means a table showing dates, districts, time and place where a court is to sit, hear and determine matters in any period of twelve months;

“citizen” means a citizen of Zambia;

“civil society” means a group of individuals, who are not part of the Government, who associate for the purpose of advancing or protecting particular interests;

“commission” means a commission established by or under this Constitution and “Service Commission” shall be construed accordingly;

“Constitutional Court” means the Constitutional Court established under this Constitution;

“constitutional office holder” means a person appointed under Articles 242, 243 and 244, and includes the Public Protector, a Cabinet Secretary, Parliamentary Secretary, Minister, Provincial Minister and persons serving in the Judiciary, a member of a commission established by this Constitution or an Act of Parliament, any officer serving in the Parliamentary Service Commission and a Member of Parliament;

“council chairperson” means a chairperson of a town council;

“councillor” means a member of a district council and includes a mayor or council chairperson and deputy mayor or deputy council chairperson;

“court” means a court of competent jurisdiction established by or under this Constitution;

“Court of Appeal” means the Court of Appeal established under this Constitution;

“disability” means a permanent physical, mental, intellectual or sensory impairment that alone, or in a combination with social or environmental barriers, hinders the ability of a person to fully or effectively participate in society on an equal basis with others;

“district council” includes a city, town or municipal council;

“deputy provincial speaker” means a person elected under Article 207;

“Electoral Commission” means the Electoral Commission of Zambia established under this Constitution;

“Electoral District” means a geographical area constituted of multi-member constituencies, as delineated by the Electoral Commission for purposes of elections;

“emergency Bill” means a Bill dealing with matters relating to war, state of public emergency, threatened state of public emergency or a national disaster;

“emolument” includes salaries, allowances, benefits and rights that form an individual’s

remuneration for services rendered, including pension, gratuity or other benefits on retirement, as the case may be, determined by the Emoluments Commission;

“Emoluments Commission” means the National Fiscal and Emoluments Commission established under this Constitution;

“executive functions” means the functions of the President set out in this Constitution;

“ex-officio” means a person who is appointed as a member by virtue of their office;

“First Deputy Speaker” means the person elected as First Deputy Speaker under Article 153 (3) (a);

“function” includes powers and duties;

“gender” means female or male and the role individuals play in society as a result of their sex and status;

“general election” means Presidential, National Assembly and local government elections when these are held on the same day;

“gross misconduct” means -

- (a) moral ineptitude by a person that puts the integrity and reputation of Zambia into question;
- (b) any behaviour which brings a public office into disrepute, ridicule or contempt;
- (c) any behaviour that is prejudicial or inimical to the economy or the security of the State;
- (d) an act of corruption; or

(e) using or lending the prestige of an office to advance the private interests of that person, members of that person's family or another person;

“health practitioner” means a person registered under a law regulating health practitioners;

“individual” means a natural person;

“judgment” includes a decision, an order or decree of a court or any authority prescribed by an Act of Parliament;

“judicial officer” includes a magistrate, local court magistrate, registrar and such other officers as may be prescribed by an Act of Parliament;

“local authority” means a district council and a secretariat constituted of persons appointed by the Local Government Service Commission and engaged by a district council, including the office of mayor and council chairperson;

“local Bill” means a Private Bill that relates to matters of a local authority or promotes the interests of the community in that district;

“local government” means the level of government vested with prescribed, devolved governmental powers and sources of income to render specific local services in a district and to develop, control and regulate the geographic, social and economic environment of a defined district in accordance with this Constitution;

“Local Government Equalisation Fund” means a fund established under Article 224 for equalizing payments or revenues to various classes of

district councils as prescribed by an Act of Parliament;

“marginalised community” means-

- (a) a community that, because of its relatively small population, its relative geographical isolation or for any other reason, has been unable to fully participate in the integrated social and economic life of Zambia as a whole; or
- (b) a traditional community that, out of a need or desire to preserve its unique culture and identity from assimilation, has remained outside the integrated social and economic life of Zambia as a whole;

“mayor” means a person elected mayor of a city or a municipal council;

“Member of Parliament” means a person who is a member of the National Assembly, but does not include the President;

“Minister” means a Cabinet Minister;

“minority and marginalised group” means a group of people who, because of laws or practices before, on, or after the commencement of this Constitution, were or are disadvantaged by discrimination on one or more of the grounds in Article 60;

“multi-member constituency” means an area within an Electoral District, into which Zambia is divided for purposes of election to the National Assembly;

“oath” includes an affirmation;

“office holder” means a person who holds a constitutional office or an office of trust as-in the public sector;

“older member of society” means an individual who is above the age of sixty years;

“ordinarily resident” means residing in a place for a prescribed period of time;

“out-going President” means a person who was in office as President before the declaration of the presidential election results and who is to hand over to the President-elect;

“party list” means a list of candidates submitted by a political party in accordance with this Constitution and any other law relating to elections;

“person” means an individual, a company or an association of persons, whether corporate or unincorporated;

“person with disability” means a person with a permanent physical, mental, intellectual or sensory impairment which, in interaction with various barriers, may hinder that person to fully and effectively participate in society on an equal basis with others;

“political party” means an association or organisation whose objectives include the contesting of election in order to form government or influence the policy of the national or local government;

“power” includes privilege, authority and discretion;

“President-elect” means the person who has been declared by the Returning Officer as having won an election to the office of President;

“presidential candidate” means a person nominated to stand for election as President;

“presidential election” means an election to the office of President and includes the election of a Vice-President as a running mate to the President;

“Private Act” means a Private Bill that has been enacted and promotes or benefits the interests of some particular person, local authority, association or corporate body as distinguished from a measure intended for the general public benefit;

“Private Bill” means a Bill intended to promote or benefit the interests of some particular person, local authority, association or corporate body as distinguished from a measure intended for the general public benefit;

“Private Member’s Bill” means a public or private Bill which is introduced by a Member of Parliament;

“provincial legislation” means a Public Act which provides for the functions of the Province as a whole or individual district council within that Province, and promotes the interests of the community in that Province or individual district council within that province;

“Provincial Minister” means a Minister appointed by the President for a Province;

“provincial speaker” means a person elected as provincial speaker under Article 207;

“Public Act” means a Public or Private Bill that has been enacted, which relates to matters of public policy and applies to the public generally;

“Public Bill” means a Bill which relates to matters of public policy and is introduced directly by a Member of Parliament or Minister;

“public office” includes an office the emoluments of which is a charge on, or paid out of, the Consolidated Fund, other public fund or out of moneys appropriated by Parliament;

“public officer” means a person holding or acting in a public office but does not include a constitutional office holder;

“public service” includes service in a public office or State institution;

“Republic” means the Republic of Zambia;

“Second Deputy Speaker” means the person elected as Second Deputy Speaker under Article 153 (3) (b);

“session” means the sitting of the National Assembly beginning when it first sits after the coming into operation of this Constitution or after Parliament is prorogued or dissolved at any time and ending when Parliament is prorogued or is dissolved;

“sitting” means a period during which the National Assembly is sitting without adjournment and includes any period during which it is in committee;

“Speaker” means the person elected Speaker of the National Assembly under Article 153;

“State institution” includes a ministry or department of the Government, a public office, agency,

institution, statutory body or company in which the Government or local authority has a controlling interest or commission or body, other than a State organ, established under this Constitution or by or under an Act of Parliament;

“State organ” means the Executive, Legislature or Judiciary;

“statutory instrument” means a regulation, rule, by-law, order or other similar law made under a power conferred by an Act of Parliament;

“superior court” means the Supreme Court, Constitutional Court, Court of Appeal and High Court established under this Constitution;

“taxes” includes rates, levies, charges, tariffs, tolls and duties;

“traditional community” means the inhabitants or other persons that are subject to a system of customary law;

“urgent Bill” means a money Bill or a Bill that deals with matters which require to be passed quickly in the public interest, by the National Assembly;

“Vice-President-elect” means the person declared as having been duly elected as a Vice-President;

“ward” means any of the units into which a district council area is divided by or under an Act of Parliament;

“young person” means a person who is fifteen years of age but below the age of eighteen years; and

“youth” means a person who is eighteen years of age but below the age of thirty-five years.

312. (1) This Constitution shall be interpreted in a manner that -

- (a) promotes its purposes, values and principles;
- (b) advances the Bill of Rights and the rule of law;
- (c) permits the development of the law; and
- (d) contributes to good governance.

(2) If there is a conflict between different language versions of this Constitution, the English language version shall prevail.

(3) Every provision of this Constitution shall be construed according to the doctrine of interpretation that the law is always speaking and accordingly -

- (a) a power granted or duty imposed by this Constitution may be exercised or performed, as occasion requires, by the person holding the office to which the power is granted or the duty is assigned;
- (b) any reference in this Constitution to a person holding an office under this Constitution, includes a reference to the person lawfully performing the functions of that office at any particular time;
- (c) a reference in this Constitution to an office, State organ or State institution or locality named in this Constitution shall be read with any formal alteration

necessary to make it applicable in the circumstances;

- (d) a reference in a provision applying that provision to another provision shall be read with any formal modification necessary to make it applicable in the circumstances; and
- (e) a reference in this Constitution to an office, body or organisation is a reference to that office, body or organisation, or if the office, body or organisation has ceased to exist, to its successor or to the equivalent office, body or organisation.

(4) A provision of this Constitution to the effect that a person, an authority or institution is not subject to the direction or control of any other person or authority in the performance of any functions under this Constitution, does not preclude a court from exercising jurisdiction in relation to any question whether that person, authority or institution has performed those functions in accordance with this Constitution.

Provisions with respect to amendment to Constitution

313. Subject to this Constitution, where any Act to amend a provision of this Constitution amends any provision, unless the contrary intention appears, the amendment shall not -

- (a) revive anything not in force or existing at the time at which the amendment takes effect;

- (b) affect the previous operation of any provision so amended or anything duly done or suffered under any provision so amended;
- (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any provision so amended;
- (d) affect any penalty, forfeiture or confiscation or punishment imposed under the provision so amended; or
- (e) affect any investigation, legal proceeding or remedy in respect of any right, privilege, obligation, liability, penalty, forfeiture, confiscation or punishment, and any investigation, legal proceeding or remedy may be instituted, continued or enforced and any penalty, forfeiture, confiscation or punishment may be imposed, as if the amending Act had not been passed.

Person, number and grammatical variation

314. In this Constitution, unless the context otherwise requires -

- (a) persons include corporations;
- (b) words in the singular include the plural and words in the plural include the singular; and
- (c) where a word or expression is defined, any grammatical variation or cognate expression of that word shall be read

with the changes required by the context.

Computation of time

315. In computing time for the purposes of any provision of this Constitution, unless a contrary intention is expressed -

- (a) a period of days from the happening of an event or the doing of any act or thing shall be deemed to be exclusive of the day on which the event happens or the act or thing is done;
- (b) if the last day of the period is Sunday or a public holiday, which days are in this clause referred to as “excluded days”, the period shall include the next following day, not being an excluded day;
- (c) where any act or proceeding is directed or allowed to be done or taken on a certain day, then, if that day happens to be an excluded day, the act or proceeding shall be considered as done or taken in due time if it is done or taken the next day afterwards, not being an excluded day; and
- (d) where an act or proceeding is directed or allowed to be done or taken within any time not exceeding six days, excluded days shall not be reckoned in the computation of the time.

Power to appoint includes power to remove

316. Under this Constitution, power to appoint a person to hold or to act in an office in the public service includes the power to confirm appointments, to exercise disciplinary control over the person holding or acting in the office and to remove that person from office.

Implied power

317. Where in this Constitution, power is given to a person or an authority to do or enforce the doing of an act, the power includes the necessary and ancillary powers to enable that person or authority to do or enforce the doing of the act.

Power to make regulations, rules, etc., includes power to revoke or amend

318. Where in this Constitution, power is conferred on a person or an authority to make regulations, rules, orders or other statutory instrument, a resolution or direction, the power includes the power to be exercised in the same manner, to amend or revoke the regulations, rules, orders or other statutory instrument, resolution or direction.

Time for exercise of power

319. Where this Constitution confers any power or imposes any duty, the power may be exercised and the duty shall be performed from time to time as occasion requires.

Exercise of power between publication and commencement of Acts

320. Where by an Act which amends any provision of this Constitution and which is not to come into force immediately on the publication of the Act there is conferred -

- (a) a power exercisable by making statutory instrument;
- (b) a power to make appointments; or
- (c) a power to do any other thing for the purposes of the provision in question;

that power may be exercised at any time on or after the date of publication of the Act in the Gazette, except that an instrument, appointment or thing made or done under that power shall not, unless it is necessary to bring the Act into force, have any effect until the commencement of the Act.

SCHEDULE

(Article 197)

CONCURRENT AND EXCLUSIVE FUNCTIONS OF NATIONAL, PROVINCIAL AND LOCAL LEVELS OF DEVOLVED GOVERNANCE

A. Exclusive national functions

- Budget
- Taxation
- Airports, other than international and national airports
- Casinos, racing, gambling and wagering, excluding lotteries and sports pools
- Disaster management media services
- National parks, national botanical gardens and resources
- Police
- Property transfer fees
- Public enterprises
- Road traffic regulation
- Mines and natural resources
- Traditional leadership
- National archives
- National libraries
- National museums
- Accreditation and appointment of ambassadors, high commissioners, plenipotentiaries, diplomatic representatives

and consuls and heads of international organisations

- National and international shipping and matters related thereto
- Reception and recognition of foreign ambassadors, high commissioners, plenipotentiaries, diplomatic representatives and consuls and heads of international organisations
- Negotiation of international agreements and treaties and, subject to the National Assembly approving the final draft of any agreement or treaty, accession to or ratification of such international agreements or treaties
- Establishment and dissolution of Government ministries, subject to the approval of the National Assembly
- Appointment of persons required by this Constitution or any other law to be appointed by the Executive
- Conferring of honours on citizens, residents and friends of Zambia, after consultation with relevant interested persons and institutions
- Initiation of Bills for submission to, and consideration by, the National Assembly
- Tertiary education

B. Concurrent national and provincial functions

- Administration of forests
- Agriculture

- Animal control and diseases
- Consumer protection
- Cultural matters
- Education at all levels, excluding tertiary education
- Environmental management
- Health services
- Housing
- customary law
- Industrial promotion
- Language policy and the regulation of official languages
- Nature conservation
- Pollution control
- Population development
- Public transport
- Public works only in respect of the needs of provincial government departments in the discharge of their responsibilities to administer functions specifically assigned to them in terms of the Constitution or any other law
- Provincial spatial planning and development
- Soil conservation
- Tourism, trade and commerce
- Urban and rural development
- Welfare services

C. Local Government exclusive functions

- Pollution control

- Building regulations
- Child-care facilities
- Electricity
- Fire fighting services
- Local tourism
- Municipal airports
- Municipal planning
- Municipal health services
- Municipal public transport
- Municipal public works only in respect of the needs of municipalities in the discharge of their responsibilities to administer functions specifically assigned to them under this Constitution or any other law
- Pontoons, ferries, jetties, piers and harbours, excluding the regulation of international and national shipping and matters related thereto
- Storm water management systems in built-up areas
- Trading regulations
- Water and sanitation services limited to potable water supply systems and domestic waste-water and sewage disposal systems
- Veterinary services, excluding regulation of the profession
- Vehicle licensing
- Abattoirs
- Ambulance services
- Archives

- Libraries
- Liquor licencing
- Museums
- Local spatial planning
- Cultural matters
- Recreation and amenities
- Sport
- Roads and traffic automation and maintenance
- Amusement facilities
- Billboards and the display of advertisements in public places
- Cemeteries, funeral parlours and crematoria
- Local cleansing
- Control of public nuisances
- Control of undertakings that sell liquor to the public
- Facilities for the accommodation, care and burial of animals
- Fencing and fences
- Licensing of dogs
- Licensing and control of undertakings that sell food to the public
- Local amenities
- Local sport facilities
- Markets
- Local abattoirs
- Local parks and recreation
- Local roads
- Noise pollution

- Pounds
- Public places
- Refuse removal, refuse dumps and solid waste disposal
- Street trading
- Street lighting
- Traffic and parking
- Gardens and landscaping