



REPUBLIC OF ZAMBIA

(This Document is the Property of the Government of the Republic of Zambia)

NATIONAL CONSTITUTIONAL CONFERENCE

LOCAL GOVERNMENT COMMITTEE

(COMMITTEE NO.8)

DETAILED TERMS OF REFERENCE

Approved by the National Constitutional Conference during the 8th January to 10th January 2008 Sitting

National Constitutional Conference
Mulungushi International Conference Centre
LUSAKA

August, 2008

PART XII
LOCAL GOVERNMENT
System of Local Government

Establishment and objectives of local government

230. There is hereby established a local government system the objectives of which are to –

- (a) ensure that powers, functions, responsibilities and resources from the National Government are transferred to the district council and sub-district authorities in a co-ordinated manner;
- (b) promote the people’s participation in democratic governance at the local level;
- (a) promote cooperative governance with the national Government in order to support and enhance the developmental role of local government;
- (b) enhance the capacity of district councils to plan, control, co-operate, manage and execute policies in respect of matters that affect the people within their respective localities;
- (c) promote social and economic development at the district level;
- (d) establish for each district council a sound financial base with reliable and predictable sources of revenue;
- (e) oversee the performance of persons employed by the National Government to provide services in the districts and to monitor the provision of Government services or the implementation of projects in the districts;
- (f) ensure accountability of district and sub-district authorities; and
- (g) recognize the right of the districts to manage their local affairs and to form partnerships, networks and associations to assist in management and to further their development.

Co-operation between National Government and local government and between local authorities

231. (1) The National Government and the local government shall –

- (a) exercise their powers and perform their functions in a manner that does not encroach on the geographical, functional or institutional integrity of either government and shall respect the constitutional status, institutions and rights of the other; and
- (b) maintain liaison with each other for the purpose of exchange of information, co-ordination of policies, administration and enhancement of capacity.

(2) District councils shall assist, support and consult with each other and shall, as appropriate, implement the laws being issued by the other.

(3) District councils shall, to the extent necessary in any particular circumstance, co-operate in the performance of their functions and, for that purpose, may set up joint committees and joint authorities.

(4) District councils involved in an inter-district dispute shall make every reasonable effort to settle the dispute by means of procedures provided by or under an Act of Parliament for that purpose and shall exhaust all other remedies before they approach a court to resolve the dispute.

**structures and
principles of
decentralised
government**

232. (1) Parliament shall enact legislation applicable to provinces, districts and local authorities.

(2) The National Government shall ensure the decentralisation of functions, powers and responsibilities to the province, the district and such sub-districts as may be provided by or under an Act of Parliament.

(3) The principal role of a provincial council is to co-ordinate the implementation, within the districts forming the province, of programmes and projects that extend to two or more districts of the province and to provide a forum through which the local authorities recommend policy and legislation concerning the province for enactment by Parliament.

(4) The principal role of a district council is to administer the district, implement programmes and projects in the districts, issue by-laws and

recommend local Bills for enactment by Parliament.

Districts and District Councils

**Districts and
District Councils**

233. (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 decentralisation 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) Every district council shall be a body corporate with perpetual succession and a common seal and may sue and be sued in its corporate name.
- (6) Parliament shall enact legislation to determine the different types of district councils and their corporate names.

**Functions of
District Councils**

234. (1) Subject to this Constitution, a district council shall be the highest executive and legislative authority of the district.

(2) Parliament shall enact legislation to prescribe the functions of district councils which shall include -

- (a) the preparation of comprehensive development plans for the district for submission to the National Government for integration into the National development plan;
- (b) the formulation and execution of plans, programmes and strategies for the effective mobilisation of resources for development of the district;
- (c) the issuance of by-laws, within its jurisdiction, and recommending or initiating local Bills for enactment by Parliament;

(d) co-ordinating the functions of wards and other sub-district authorities within the district;

- (e) providing organised fora through which the people in the district can participate in the formulation of proposals for local Bills, budget submissions, development programmes and district council by-laws;
- (f) levying and collection of prescribed taxes, rates, levies, tolls duties and fees;
- (g) developing measures for the protection of natural resources and the environment;
- (a) developing and maintaining infrastructure;
- (b) the supply of water and the provision of sanitation;
- (c) disaster management;
- (d) the management of the decentralised structures relating to health and education;
- (e) the regulation of trade and business;
- (f) the provision of agricultural extension services;
- (g) provision of community policing and prison facilities;
- (h) preparation of progress reports for the district; and
- (i) any other function provided by or under an Act of Parliament.

**Election of
councillors and
composition of
district councils**

235. (1) Subject to clause (5), elections to a district council shall be conducted under the mixed member representation system specified under Article 95 and as provided under this Article.

(2) A district council shall consist of the following councillors:

- (a) a mayor;
- (b) other councillors elected directly for each of the number of wards in the district on the basis of the first past-the-post segment of the mixed member representation system, as prescribed by or under an Act of Parliament;
- (c) forty per cent of the total number of councillors elected on the basis of the proportional representation segment of the mixed member representation system from a party list submitted to the Electoral

Commission by each political party contesting the elections, as prescribed by or under an Act of Parliament;

- (d) members of the National Assembly from the district;
- (e) three chiefs elected from the chiefs in the district by the chiefs to represent all the chiefs in that district;
- (f) one representative from the Defence Forces and national security agencies operating in the district; and
- (g) one representative of the business community in the district.

(3) The term of a district council shall be five years.

(4) A councillor shall be paid such allowances as may be determined by the Minister responsible for local government, subject to the ability of the district council to pay the allowances.

**Termination of office and
vacation of office of
councillor**

236. Article 162 shall apply to the office of councillor.

**By-election
for district
council**

237. Article 163 shall apply to the office of councillor.

**Expulsion of
councillor**

238. (1) A councillor who has been expelled by that councillors' political party and who has challenged the expulsion in court shall hold the seat in the district council pending the conclusion of the petition or matter.

(2) If a matter referred to under clause (1) is decided in favour of a councillor that councillor shall retain the seat in the district council as an independent.

**Qualifications
and
disqualifications
for election to
district council**

239. (1) A person shall qualify to be elected as a councillor of a district council, excluding councillors specified under Article 235 (2) (a), (d), (e), (f) and (g), if that person –

- (a) is not a member of the National Assembly but qualifies to be elected as a member of the National Assembly, subject to this Article;
 - (b) is not less than eighteen years of age;
 - (c) has obtained, as a minimum academic qualification, a grade nine certificate of education or its equivalent;
 - (d) has been resident in the ward for which the election is sought for a period of five years immediately preceding the election or is resident in the district and is in possession of a certificate of title showing ownership of property in the district; and
 - (e) has a certificate of clearance showing the payment of council rates and rentals, where applicable.
- (2) The disqualifications that apply to the election of a member of the National Assembly shall apply to an election of a councillor to a district council.

**Petitions and
Local
Government
Election
Tribunal**

- 240.** (1) A person may file a petition with a Local Government Election Tribunal, established under clause (2), to challenge the election of a mayor or a councillor elected for a ward-based seat.
- (2) The Chief Justice shall establish an ad hoc Local Government Election Tribunal 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 Election Tribunal shall be presided over by a magistrate of the First Class sitting with two other members, appointed by the Chief Justice from amongst legal practitioners or retired magistrates of the First Class.
- (4) A petition shall be determined within ninety days of the filing of the election petition.
- (5) A decision of the Local Government Election Tribunal shall be final and the Tribunal shall stand dissolved on the determination of the election petition.
- (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 the Local Government Election Tribunal shall be a charge on the Consolidated Fund.

**Recall of
councillor**

241. (1) A councillor who holds a ward-based seat may be recalled by the electorate in that ward as follows :

(a) a recall shall only be initiated where a councillor has persistently neglected to perform the councillor's responsibilities in the ward as may be required of the councillor by law;

(b) a recall shall be initiated by a petition signed by at least fifty per cent of the registered voters in the ward; and

(c) the petition shall be presented to the Chairperson of the Electoral Commission who shall constitute a tribunal to inquire into the matter and report back within thirty days with its recommendation.

(2) A councillor who is the subject of an inquiry under clause (1) shall have the right to be heard, be present and have representation before the tribunal constituted under clause (1).

(3) The Chairperson of the Electoral Commission shall, within fourteen days of the receipt of the tribunals' recommendations, act in accordance with the recommendations of the tribunal.

(4) An Act of Parliament shall provide for -

(a) the functions and duties of a councillor in relation to the ward a councillor represents;

(b) the grounds on which a councillor may be recalled; and

(c) the composition, powers, sittings and procedures of a tribunal constituted under this Article.

Mayor

242. (1) There shall be a mayor for every district council.

(2) A mayor shall be -

(a) elected directly by universal adult suffrage through a secret ballot by registered voters resident within the district;

(b) elected for a term of five years and may be elected for only one further term of five years; and

(c) subject to the same qualifications and disqualifications that apply to an election of a member to the National Assembly.

(3) The emoluments of a mayor shall be determined by the Emoluments Commission upon recommendations of the district council.

(4) A mayor shall, for purposes of any benefits determined by the Emoluments Commission under clause (3), be deemed to have completed a term of office if the mayor served for at least three years.

Functions of mayor

243. (1) A mayor shall exercise executive functions of a district, subject to this Constitution and any other law.

(2) Without limiting clause (1), a mayor shall -

(a) preside at the meetings of the district council and the district executive committee;

(b) oversee and monitor generally the functions of the district council and give directions on matters of policy as determined by the district council; and

(c) perform any other function specified by or under an Act of Parliament.

Conduct of councillors

244. (1) A councillor shall act in accordance with the code of ethics provided in this Constitution and 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.

Accountability of councillors

245. Councillors shall be accountable, collectively and individually, to the residents in their districts and to the National Government for the exercise of their powers and performance of their functions.

District executive committee

246. (1) There shall be constituted for every district council an executive committee.

(2) An executive committee shall consist of -

- (a) the mayor;
- (b) the principal administrative officer of the district council; and
- (c) such other officers that shall be appointed by the mayor with the approval of the district council;

Functions of district executive committee

247. Subject to this Constitution, an executive committee of a district council shall perform the executive functions of the district council and shall -

- (a) ensure the implementation of Acts of Parliament and district by-laws within the district; and
- (b) perform any other function provided by or under an Act of Parliament.

Principal administrative officer and functions

248. (1) There shall be appointed for every district council a principal administrative officer who shall be the administrative head of the district and shall be responsible for the day-to-day administration of the district.

- (2) The principal administrative officer shall -
 - (a) implement Acts of Parliament and district by-laws within the district;
 - (b) co-ordinate and supervise the activities of the district council and other sub-district authorities in the district;
 - (c) co-ordinate and monitor Government functions between or among districts and between districts and the Government; and
 - (d) perform any other function provided by or under an Act of Parliament.
- (3) In the performance of the functions under clause (2), the principal administrative officer shall be subject to the decisions and directions of the district council and shall be answerable to the council.

Other committees of district council

249. A district council -

- (a) shall appoint standing committees and assign to them such functions as the council may consider necessary for the effective and efficient administration of the district; and
- (b) may appoint ad hoc committees consisting of councillors or non-councillors or both, to advise on any matter referred to them by the council.

Funds for district council

- 250.** (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, as may be determined by the Emoluments Commission, to the Local Government Equalisation Fund for the sustenance, development and administration of the communities in a district.
- (3) The revenue referred to under clause (2) shall be in addition to revenues raised by a district council and retained by it.
- (4) The Government may provide additional funds and grants beyond what is provided under clause (2) to a district council, conditionally or unconditionally.
- (5) Subject to this Constitution, a district council shall be competent to levy, impose, recover and retain property rates, levies, charges, fees, taxes, tolls and tariffs as may be necessary to perform its functions.

Staff of local government

251. A district council shall appoint such staff and employees as are necessary for the effective implementation of the functions of the district council.

Provinces and Provincial Administration

Provinces

252. The Republic of Zambia shall be divided into provinces as shall be provided by or under an Act of Parliament.

Provincial administration

253. (1) There shall be established for each province a provincial administration.

(2) A Provincial Minister shall be the political head of the province and the representative of the President in the province.

(3) A provincial Permanent Secretary shall be the administrative head of the province.

**Provincial
council**

254. There shall be established a provincial council consisting of -

- (a) the Provincial Minister;
- (b) the provincial Permanent Secretary;
- (c) the mayors of the district councils in the province;
- (d) three chiefs, representing all the chiefs in the province, who shall be elected by the chiefs in the province; and
- (e) such other officers as may be specified by or under an Act of Parliament.

**Functions of
provincial
council**

255. (1) The functions of a provincial council shall be to -

- (a) co-ordinate and consolidate district plans into provincial development plans for submission to the National Government;
- (b) monitor the utilisation of resources and implement development programmes in the province;
- (c) coordinate and ensure the auditing of local government institutions in the province;
- (d) prepare provincial progress reports for the National Government on the implementation of development programmes and projects;
- (e) ensure implementation of the National Government's policies in the province;
- (f) implement national development projects and programmes;
- (g) ensure proper utilisation and maintenance of Government buildings, equipment, plant, machinery and other infrastructure in the province;
- (h) retain oversight responsibility over functions of the district councils in the province in areas of -

- (i) financial accountability; and
- (ii) developmental programmes; and
- (i) perform any other function provided by or under an Act of Parliament.

(2) A provincial Permanent Secretary shall be responsible for ensuring the implementation of the functions specified under clause (1).

Reserved power over non-performing district councils

256. (1) A provincial council shall assume the functions of any district council in any of the following circumstances, where:

- (a) a district council requests and it is in a district council's interest to do so;
- (b) it has become extremely difficult or impossible for a district council to full-fill 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; and
- (e) it is necessary to maintain the economic and sovereign unity of the Republic.

(2) Where a provincial council intends to assume the functions of a district council under clause (1) it shall -

- (a) prior to assuming those functions obtain the written permission of the Minister responsible for local government; and
- (b) issue a directive to the district council giving reasons why the provincial council is assuming the functions of the district council and stating what the district council is required to do in order to resume its operations.

(3) Where a district council fails to carry out remedial action as required under clause 2 (b), a provincial council shall perform the functions of a district council for a period not exceeding ninety days after which fresh elections shall be held to elect other councillors.

(4) The performance of the functions of a district council, by a provincial council under this Article, shall be exercised through persons or officers and under directives provided by or under an Act of Parliament.

(5) Any person may challenge the assumption by a provincial council 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 a provincial council is performing the functions of a district council.

**Legislation to
further
regulate local
government**

257. Parliament shall enact legislation to provide for -

- (a) wards and other sub-district authorities of the district councils;
- (b) the financial control and accountability measures needed to be put in place for compliance by district councils;
- (c) matters that relate to the raising of loans, grants and other financial instruments by district councils;
- (d) the election of councillors and mayors of district councils;
- (e) the manner in which district councils shall initiate local bills for enactment by the National Assembly; and
- (f) the effective implementation of this Part.

PART XIII

CHIEFTAINCY AND HOUSE OF CHIEFS

**Institution of
Chieftaincy**

258. (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) Nothing in this Article or any other provision in this Constitution shall be construed so as to prevent Parliament from enacting legislation for -
- (a) the determination by a traditional council, in accordance with the appropriate customary law and its usage, of the validity of the nomination, election, selection, installation or deposition of a person as a chief; or
 - (b) the registration of chiefs and the public notification in the Gazette or otherwise of the recognition of a person as chief.
- (4) Subject to this Constitution, the institution of chief 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.
- (5) In a community where the issue of the installation of a chief has not been resolved, by the community concerned, the issue shall be referred to the House of Chiefs for resolution.
- (6) If any person is aggrieved with a resolution of the House of Chiefs that person may appeal to a court.
- (7) Parliament may enact legislation to provide for the succession and installation of chiefs in accordance with customary law and its usage.

Concepts and principles relating to chieftaincy

259. The following concepts and principles shall apply in relation to the chieftaincy :

- (a) the institution of chief 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; or
 - (ii) a district council; and
 - (iii) bestowed by or under culture, custom and tradition.

Participation of chiefs in public affairs

- 260.** (1) A chief may -
- (a) seek and hold any public office; or
 - (b) participate in political activities and stand for any elective public office.
- (2) Parliament may enact legislation to provide for the role of chiefs, other traditional leaders and the local government in the management, control and sharing of natural and other resources in their localities.

House of Chiefs

- 261.** (1) There shall be established a House of Chiefs for the Republic which shall be an advisory body to the Government on traditional, customary and any other 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 not more than five chiefs elected by the chiefs from each 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) The Chairperson and the Vice-Chairperson of the House of Chiefs shall rotate annually amongst the provinces.
- (5) The Emoluments of the chiefs serving in the House of Chiefs shall be as recommended by the Emoluments Commission and prescribed in an Act of Parliament.
- (6) The expenses of the House of Chiefs shall be a charge on the Consolidated Fund.

- 262.** Without limiting Article 261 (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;
 - (d) initiate, discuss and make recommendations regarding the local community's welfare;
 - (e) consider and discuss any matter referred to it by the President or approved by the President for reference to the House;
 - (f) submit resolutions on any Bill or matter referred to it by the President and the President shall cause the resolutions of the House of Chiefs to be laid before the National Assembly; and
 - (g) recommend to the President persons to be bestowed with honours.

tenure of office
and vacancy

- 263.** (1) A chief -
- (a) shall hold office in the House of Chiefs for a period of five years and is eligible for election after that term; 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 the National Assembly or is appointed to any public office;
 - (e) is adjudged or becomes an undischarged bankrupt; or
 - (f) is declared to be or becomes of unsound mind under any law.

Oaths of members of House of Chiefs

264. Every chief elected to the House of Chiefs shall take the Oath of member of the House of Chiefs, as set out in the Third Schedule.

Staff of House of Chiefs

265. (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.

Regulations for House of Chiefs

266. Subject to this Constitution, the President may make regulations -

- (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.