



REPUBLIC OF ZAMBIA

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NATIONAL CONSTITUTIONAL CONFERENCE

PUBLIC SERVICE COMMITTEE

(COMMITTEE NO.9)

DETAILED TERMS OF REFERENCE

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

National Constitutional Conference
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PART XIV
PUBLIC SERVICE AND COMMISSIONS

Values and Principles

Values and principles of public service

- 267.** (1) The guiding values and principles of the public service shall 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) 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 of omission and commission;
 - (h) transparency fostered by providing the public with timely, accessible and accurate information;
 - (i) subject to paragraph (k), 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 Zambia’s diverse communities and persons with disability 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 and local government; and
 - (b) in all State organs and State institutions.

Public Offices

Offices for Republic

- 268.** (1) Subject to this Constitution and any other law –
- (a) the power to constitute public offices for the Republic and the power to abolish any of those offices vests in the President; and
 - (b) the power to appoint persons to hold or act in offices constituted for the Republic, 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.
- (2) The expenses, including emoluments, of any public office constituted under this Part shall be a charge on the Consolidated Fund.
- (3) In this Part “public officer” does not include persons serving in the Judiciary, a member of any Commission established by this Constitution or an Act of Parliament, any officer serving in the Parliamentary Service Commission, a member of Parliament, a councillor or any person serving under a district council.

Attorney-General

- 269.** (1) There shall be an Attorney-General of the Republic whose office is a public office and who shall be appointed by the President on the recommendation of the Judicial Service Commission, 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.
- (3) The Attorney-General shall be -
- (a) an ex-officio member of the Cabinet;
 - (b) not less than forty-five years of age; and
 - (c) a person qualified to be appointed as a Judge of a superior court.
- (4) Subject to this Article, a person holding the office of Attorney-General shall retire from office on attaining the age of sixty years and may retire on attaining the age of fifty-five years.

- (5) The Attorney-General shall only be removed from office on the same grounds and same procedure as those that apply to a Judge of a superior court.
- (6) The Attorney-General may resign from office on giving three months notice in writing to the President.
- (7) 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.
- (8) Subject to this Constitution, an agreement, treaty or convention 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.
- (9) 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

- 270.** (1) There shall be a Solicitor-General of the Republic whose office is a public office and who shall be appointed by the President on the recommendation of the Judicial Service Commission, 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 of a superior court.
 - (3) Subject to this Article, a person holding the office of Solicitor-General shall retire from office on attaining the age of sixty years and may retire on attaining the age of fifty-five years.
 - (4) The Solicitor-General shall only be removed from office on the same grounds and same procedure as those that apply to a Judge of a superior court.
 - (5) The Solicitor-General may resign from office on giving three months notice in writing to the President.

(6) 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

271. (1) There shall be a Director of Public Prosecutions whose office is a public office and who shall be appointed by the President on the recommendation of the Judicial Service Commission, 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) is not less than forty-five years of age;

(b) has experience in criminal prosecutions; and

(c) is qualified to be appointed as a Judge of a superior court.

(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.

(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 practitioner, 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 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 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 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

272. 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, on the recommendation of the Judicial Service Commission, appoint any other person to perform the functions of the Director of Public Prosecutions until that appointment is revoked.

Tenure of office of director of Public Prosecutions

273. (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 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 of a superior court.

(3) The Director of Public Prosecutions may resign from office on giving three months notice 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 that office to the provinces.

Permanent Secretaries

274. (1) Subject to this Constitution, a ministry or department of the Government shall be under the supervision and administration of a Permanent Secretary whose office is a public office.

(2) A Permanent Secretary shall be a career civil servant appointed by the President in accordance with the advice of the Civil Service Commission, subject to ratification by the National Assembly.

(3) The functions of a Permanent Secretary shall include -

- (a) the organisation and administration of a department or ministry;
- (b) tendering advice to the responsible Minister in respect of the business and function of the department or ministry;
- (c) implementation of the policies of the Government; and
- (d) responsibility for the proper financial management and expenditure of public funds by or in connection with the department or ministry.

Protection of public officers

275. A public officer shall not be -

- (a) victimized 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.

Commissions

Services and service commissions

276. (1) There shall be established the following Services:

- (a) the Civil Service; and
- (b) the Teaching Service.

(2) Parliament shall, subject to this Constitution, enact legislation to provide for each Service established under clause (1), for the establishment of a service commission for each Service and in particular to provide for -

- (a) the composition of each service commission;
- (b) the functions and powers of each service commission;
- (c) the operations, procedures and finances of each service commission;
- (d) the functions of each service;
- (e) the membership of each service; and
- (f) the structures and other provisions necessary for the proper and efficient administration and operation of each Service and service commission.

**Establishment of
investigative
commissions**

277. (1) There is hereby established the following investigative commissions -

- (a) the Anti-Corruption Commission;
- (b) the Anti-Drug Abuse Commission;
- (c) the Judicial Complaints Commission; and
- (d) the Police and Public Complaints Commission.

(2) Parliament shall enact legislation to provide for the functions, composition, tenure of office, procedures, operations, administration, finances and financial management of a Commission established under this Article.

**Other additional
commissions**

278. 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, tenure of office, procedures, operations, administration, finances and financial management of a commission established by or under this Article.

**Membership of
commissions**

279. Subject to this Constitution, Parliament shall in enacting legislation in respect of a commission established under this Part ensure that -

- (a) a commission shall be composed of not less than three persons and not more than seven persons;
- (b) at least one member is a person with disability;
- (c) a person does not qualify to be appointed to 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;
 - (iv) a person who has not been convicted of theft, fraud, forgery, perjury or any other offence that involves dishonesty; and
 - (v) a person of high moral standing and proven integrity; and
- (d) the members of a commission shall be appointed by the President, subject to ratification by the National Assembly.

Independence and powers of commissions

- 280.** (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 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.

281. A commission established under this Part shall have a chief executive who shall be appointed by the respective commission.

**Participation
in politics**

282. A public officer who seeks election to a political office shall take early retirement in the national interest if that officer has served for at least twenty years or resign from the public service.

**Retirement of
public officers**

283. (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 the attainment 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 service of twenty years, with the approval of the Government.

(3) A public officer that has retired from the public service shall not be engaged, except that an officer that has special professional qualifications may be engaged on contract.

**Pension,
gratuity and
retrenchment
benefit for
public officers**

284. (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 to by or under an Act of Parliament shall not be withheld or altered to that officer's disadvantage, except to 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 that was in force at the date on which those benefits were granted or any law in force at a later date that is favourable to that person.

(4) The law to be applied with respect to pension benefits, other than as provided in clause (2), shall -

- (a) where those benefits are wholly in respect of a period of service as a public officer, member of the Defence Forces or of the national

security agencies that commenced before the commencement of this Constitution, be the law in force immediately before that date; or

- (b) where those benefits are wholly or partly in respect of a period of service as a public officer, member of the Defence Forces or national security agencies that commenced after the commencement of this Constitution, be the law in force on the date on which that period of service commenced;

or any law in force at a later date that is not less favourable to that person.

(5) All 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 Forces 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

285. (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

286. (1) The payment of pension or retrenchment benefit shall be paid on the last working day and any installments of pension benefits shall be paid regularly and shall be easily accessible to pensioners.

(2) Where pension or retrenchment benefit due is not paid on the last day of an employee’s 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 benefit.

(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) be retained on the payroll;

- (b) a salary and to 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 retrenchement; and
- (c) 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.

Legislation on pensions and gratuities

287. Parliament shall enact legislation to provide for pensions and gratuities for service in the public service and for an efficient and effective system for the administration of pensions.

PART XV

PARLIAMENTARY OMBUDSMAN

Establishment of office of Parliamentary Ombudsman

288. (1) There is hereby established the Office of the Parliamentary Ombudsman which shall have offices in all of the provinces and progressively in the districts.

(2) The Ombudsman shall be appointed by the Parliamentary Service Commission, subject to ratification by the National Assembly.

(3) Parliament shall enact legislation to provide for the procedures, staff, financial resources, financial management and operations of the office of the Parliamentary Ombudsman.

Qualification for appointment and conditions of service

289. (1) A person shall qualify to be appointed to the office of the Ombudsman if that person –

- (a) is qualified to be appointed as a Judge of a superior court; and
- (b) does not hold the office of President, Vice-President, Minister, Provincial Minister, Deputy Minister, member of the National Assembly or councillor.

(2) The terms and conditions of service of the Ombudsman, including the grounds and procedure for removal from office, shall be the same as apply to a Judge of a superior court.

(3) The Ombudsman shall not hold any other office of profit or emolument.

(4) Where the Ombudsman 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 Parliamentary Service Commission, appoint a person who is qualified to be appointed as Ombudsman to act until the Ombudsman resumes office or another Ombudsman is appointed.

Functions of Ombudsman

290. (1) The Ombudsman may investigate an action 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 taken or omitted to be taken under clause (1), is an action which is -

- (a) an abuse of office;
- (b) an unfair or unjust decision or action; or
- (c) an action not complying with the rules of natural justice.

(3) For the purpose of clauses (1) and (2), the Ombudsman 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 serving in the public service or an employee of any State institution relating to an act or omission taken in respect of that officer which contravenes this Article;
- (c) make any decision after investigations, and where appropriate, on any disciplinary action to be taken against a public officer serving in the public service which decision shall be implemented by the appropriate authority; and

- (d) issue regulations regarding the manner and procedure for bringing complaints before the Ombudsman and the investigation of matters or complaints.
- (4) The Ombudsman 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; and
 - (c) perform any other function provided by an Act of Parliament.
- (5) The Ombudsman shall have the powers of the High Court in -
 - (a) enforcing the attendance of witnesses and examining them on oath;
 - (b) compelling the production of documents; and
 - (c) issuing a commission or request to examine witnesses abroad.
- (6) A person summoned to attend to give evidence or to produce a document before the Ombudsman 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 Ombudsman shall not be admissible in evidence against that person in any civil or criminal proceedings in any court, except for perjury under criminal law.

**Independence
of Ombudsman
and funding**

- 291.** (1) In the performance of functions conferred on the Ombudsman under this Constitution or any other law, the Ombudsman and the staff of the office of the Ombudsman shall be subject only to this Constitution and shall not be subject to the direction or control of any person or authority.
- (2) The appointment of staff of the office of Ombudsman shall be made by the Ombudsman.

(3) The emoluments of the Ombudsman shall be determined by the Emoluments Commission and provided for in an Act of Parliament and shall be a charge on the Consolidated Fund.

(4) The Ombudsman shall take measures to educate the people on the functions of the Ombudsman.

(5) The office of the Ombudsman shall be adequately funded to enable the office to effectively carry out its mandate.

(6) The expenses of the office of the Ombudsman, including the emoluments of staff, shall be a charge on the Consolidated Fund.

Limitation of powers of Ombudsman

292. The Ombudsman shall not investigate a matter -

- (a) which is before a court or a quasi-judicial tribunal;
- (b) involving the relations or dealings between the Government and any foreign government or international organization; or
- (c) relating to the exercise of the prerogative of mercy.

Accountability

293. The Ombudsman shall be accountable to the National Assembly.

Accounts and audit

294. (1) The Ombudsman shall keep books of account and proper records in relation to the accounts in the form approved by the Auditor-General.

(2) The Ombudsman shall, within three months after the end of the financial year, submit its accounts to the Auditor-General for audit.

(3) The Auditor-General shall, within three months of the submission under clause (2), make a report on the audit to the Ombudsman with a copy of the report to the President and to the National Assembly.

Annual report

295. The Ombudsman shall, within six months after the end of each financial year, submit an annual report on the activities of the office of Ombudsman, for the previous year, to the National Assembly with a copy to the President.

- (2) The annual report shall contain -
- (a) a review of all the complaints lodged with the Ombudsman;
 - (b) a summary of the matters dealt with and the actions taken on them;
 - (c) a summary of the remedies awarded to aggrieved persons; and
 - (d) a statement on the areas where the Ombudsman failed to take action to remedy an injustice and the reasons for the failure.

PART XVI
DEFENCE AND NATIONAL SECURITY

**Establishment of
Defence Forces
and functions**

296 (1) There shall be established the Defence Forces of Zambia consisting of the -

- (a) Zambia Army;
- (b) Zambia Air Force; and
- (c) Zambia National Service.

(2) The Defence Forces 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 the members of the 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 for each force by or under an Act of Parliament.

**Establishment
of national
security
agencies and
functions**

297. (1) There shall be established national security agencies which shall consist of the -

- (a) Zambia Police Service;
- (b) Zambia Security Intelligence Service; and

- (c) Zambia Prisons Service.
- (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 good relationship with members of the society; and
 - (g) perform other functions provided by or under an Act of Parliament.
- (3) The 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 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 an Act of Parliament.

**Establishment
of Police and
Prisons Service
Commission**

298. (1) There is hereby established the Police and Prisons Service Commission.

(2) Parliament shall enact legislation to provide for the functions, composition, tenure or office, procedures, finances and financial management of the Police and Prisons Service Commission.

(3) The provisions of Part XIV relating to the membership, independence, powers and appointment of the Chief Executive of a commission shall apply to the Police and Prisons Service Commission.

objectives and
expenses of
Defence Forces
and national
security agencies

300. (1) The primary objectives of the Defence Forces 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 the Constitution and other laws.

(2) The Defence Forces and national security agencies shall be nationalistic, patriotic, professional, disciplined, competent and productive and their members shall be citizens who do not have dual citizenship.

(3) The Defence Forces and the national security agencies shall not -

(a) act in a partisan manner;
(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) Clause (2) shall apply to every member of the Defence Forces and national security agencies but nothing in this Constitution shall prevent a member of those forces and agencies from registering as a voter or voting in any National elections or referenda.

(5) The Defence Forces and national security agencies-

(a) shall be subject to civilian authority; and
(a) shall be adequately and properly equipped to enable them effectively attain their objectives and perform their functions.

(6) The expenses of the Defence Forces and national security agencies shall be a charge on the Consolidated Fund.

Peace keeping
missions

300. Except where a mission or service is approved by the President, with the prior approval of the National Assembly signified by the votes of not less than two-thirds of all the members of the National Assembly, personnel of the Defence Forces shall not be deployed outside the Republic on a peace-keeping mission or other similar service.

**Deployment
outside
Republic**

301. (1) Subject to any law relating to the procedure and rules for deployment of personnel of the Defence Forces outside the Republic, the President may –

- (a) at any time order that the whole or any part of the Forces shall be deployed out of or beyond Zambia;
- (b) order any officer of the Forces to proceed to any place outside Zambia to undergo instruction, training or duty; or
- (c) where the consent of the officer or soldier of the Defence Forces is first obtained, place the officer or soldier at the disposal of the military authorities of any other country or territory to be attached to the armed or air forces of that country or territory.

(2) Where the President intends to exercise any power under clause (1) (a), the President shall obtain the prior approval of the National Assembly signified by not less than two-thirds of the votes of all the members of the Assembly.

**Prohibition
of certain
activities**

302. Except as provided for under this Constitution or by 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 of the Defence Forces and national security agencies.

legislation to
further regulate
Defence Forces
and national
security agencies

303. Subject to this Constitution, Parliament shall enact legislation to provide generally for the effective operation of the Defence Forces and national security agencies and shall provide for -

- (a) the regulation of the Defence Forces and national security agencies;
- (b) their organs and structures;
- (c) their operations and administration;
- (d) the recruitment of persons from every district of the country into the Defence Forces and national security agencies;
- (e) the appointment, qualifications, retirement, placement, transfer and discipline of defence and security chiefs and other personnel of the Defence Forces and national security agencies;
- (f) the terms and conditions of service of personnel and members;
- (a) such other functions as may be necessary for the effective operation of the Defence Forces and national security agencies;
- (b) other Defence Forces and national security agencies; and
- (i) the regulation of private security organisations.