



**REPUBLIC OF ZAMBIA**

**NATIONAL CONSTITUTIONAL CONFERENCE**

**INITIAL REPORT OF THE NATIONAL  
CONSTITUTIONAL CONFERENCE**

**The Secretariat  
National Constitutional Conference (NCC)  
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The NCC proceedings took long but this was necessary to ensure that the country draws for itself a Constitution that will not only stand the test of time but will be the basis for sustainable peace, unity and development.

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4. Southern Africa Development Community Declaration on Gender and Development, 1997 (DGD).
5. Beijing Declaration and Platform for Action, 1995 (BPFA).

## LIST OF STATUTES

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## **LIST OF CONSTITUTIONS**

### **Constitutions of Zambia**

1. The Federation of Rhodesia and Nyasaland (Constitution) Order in Council, 1953
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## **PART I: GENERAL INTRODUCTION**

### **1.0 INTRODUCTION**

- 1.1. The National Constitutional Conference (hereinafter referred to as “the NCC” or “the Conference”) was established under the National Constitutional Conference Act No. 19 of 2007 as a forum for the examination, debate and adoption of proposals to alter the Constitution as contained in the Draft Constitution submitted by the Mung’omba Constitution Review Commission (hereinafter referred to as “the Commission”). The main functions of the Conference were to consider and deliberate on the provisions of the Report and the Draft Constitution of the Commission, adopt the Draft Constitution or part thereof and submit the adopted draft Constitution to the Minister of Justice for presentation to Parliament or for submission to a referendum.
- 1.2. The Act stipulated the composition, functions, powers and procedure of the Conference.
- 1.3. The enactment of the NCC Act followed the recommendations of the people to the Commission that “the Constitution should be adopted by a Constituent Assembly, Constitutional Conference or any other popular body that would represent the views of the people”. In that regard, the Conference comprised five hundred and forty-two (542) members who were drawn from a cross section of society including the church, professional organisations, district councils, universities and media organisations.

### **1.4 Appointment and Composition of the NCC**

- 1.4.1 The NCC consisted of five hundred and forty-two (542) members from a cross section of the Zambian society, who were appointed by the Secretary to the Cabinet in accordance with section 4 of the National Constitutional Conference Act No. 19 of 2007. Section 4 of the Act states that the Conference should consist of the following members:

- (a) all members of the National Assembly;
- (b) six representatives from each political party and the forum of other Parties which is a member of the Zambia Centre for Inter-Party Dialogue;
- (c) three representatives each of –
  - (i) the Zambia Episcopal Conference;



- (ii) the Council of Churches in Zambia;
  - (iii) the Evangelical Fellowship of Zambia; and
  - (iv) any other Church Mother body which is registered under the Societies Act and has been in existence for at least five years;
- (d) two representatives each of the following professional bodies:
  - (i) the Law Association of Zambia;
  - (ii) the Economics Association of Zambia;
  - (iii) the Zambia Association of Chambers of Commerce and Industry;
  - (iv) the Engineering Institution of Zambia;
  - (v) the Local Government Association of Zambia;
  - (vi) the Zambia Institute of Certified Accountants;
  - (vii) the Medical Association of Zambia; and
  - (viii) the General Nursing Council.
- (e) two representatives of traditional healers;
- (f) eighteen traditional leaders representing the House of Chiefs;
- (g) two representatives each of -
  - (i) private media organisations;
  - (ii) public media organisations;
  - (iii) the Non-Governmental Organisation Coordinating Council;
  - (iv) the Anti-Corruption Commission;
  - (v) the Electoral Commission;
  - (vi) the Drug Enforcement Commission; and
  - (vii) the Human Rights Commission;
- (h) seven representatives of the Zambia Congress of Trade Unions;
- (i) three representatives each of the Federation of Free Trade Unions of Zambia;
- (j) three representatives each of the Zambia Federation of Employers;
- (k) three representatives of trade unions affiliated to the Zambia Congress of Trade Unions nominated by the Zambia Congress of Trade Unions;
- (l) three representatives of trade unions affiliated to the Federation of Free Trade Unions of Zambia;
- (m) two representatives each from -
  - (i) the University of Zambia;
  - (ii) the Copperbelt University; and
  - (iii) each private university which is registered

under the University Act, 1999, at the commencement of this Act;

- (n) two representatives each from the University of Zambia Students' Union, the Copperbelt University Students' Union and the National Students' Union;
- (o) five representatives from colleges and other institutions of higher learning registered under the Technical Education, Vocational and Entrepreneurship Training Act, 1998;
- (p) two representatives each from the Judicial Service Commission, the Public Service Commission, the Police and Prison Service Commission and the Teaching Service Commission;
- (q) two representatives each from the Zambia Army, the Zambia Air Force, the Zambia National Service, Zambia Police Force, the Zambia Prisons Service and the Zambia Security Intelligence Service;
- (r) three representatives each from the following:
  - (i) the Judiciary;
  - (ii) the department of the Clerk of the National Assembly;
  - (iii) the association of differently abled persons registered with the Zambia Agency for Persons with Disabilities under the Persons with Disabilities Act;
  - (iv) the National Arts Council of Zambia;
  - (v) the Zambia Chambers of Commerce and Industry; and
  - (vi) the Zambia Agency for Persons with Disabilities established under the Persons with Disabilities Act.
- (s) one eminent Zambian, from each province, who has distinguished oneself in any business field or profession;
- (t) one senior citizen, from each province, who has held public office and is at least fifty-five years old;
- (u) ten senior civil servants;
- (v) three representatives of women's organisations which are not members of the Non-Governmental Organisations Coordinating Council;
- (w) two representatives of youth organisations registered under the National Youth Development Council Act;
- (x) two representatives each of the Islamic Association and the Hindu Association;

- (y) three representatives each of the Zambia National Farmers' Union and the Peasant and Small Scale Farmers Association;
- (z) ten representatives of non-governmental organisations registered under the Societies Act or any other written law;
- (aa) one freedom fighter from each province, who participated in the struggle for independence and is at least sixty-five years old; and
- (bb) one councillor each from every council established under the Local Government Act, nominated by the council concerned.

1.4.2. Where an institution was required to nominate two representatives, it was mandatory for one of the nominees to be a woman; and where an institution was required to nominate three or more representatives, it was mandatory for thirty per centum of the nominees to be women.

1.4.3. The list of members of the NCC is appended to this Report at Annex...

1.4.4. It must be noted that fifty-four (54) members have not taken up their positions and these are:

- (a) three (3) from the Zambia Episcopal Conference (ZEC);
- (b) three (3) from the Council of Churches in Zambia (CCZ);
- (c) three (3) from the Evangelical Fellowship of Zambia (EFZ);
- (d) two (2) from the Non-Governmental Organisation Coordinating Council (NGOCC);
- (e) six (6) from the Patriotic Front (PF) as a member of the Zambia Centre for Inter-Party Dialogue;
- (f) twenty-three (23) Members of Parliament belonging to the PF;
- (g) six (6) from the Federation of Free Trade Unions and their affiliates;
- (h) two (2) from DMI-St Eugene University;
- (i) two (2) from Justo Mwale Theological College;
- (j) two (2) from Trans Africa Theological College;
- (k) two (2) from St Bonaventure College; and
- (l) two (2) from Management College of Southern Africa.

## **1.5. Functions**

1.5.1. In accordance with section 13 of the National Constitutional Conference Act No. 19 of 2007, the functions of the Conference were to:

- (i) consider and deliberate the provisions of the report and draft Constitution of the Mung'omba Constitution Review Commission;
- (ii) adopt a draft Constitution or part thereof; and
- (iii) submit the adopted draft Constitution or part thereof to the Minister of Justice for presentation to Parliament or for submission to a referendum, if any provision of the draft Constitution purported to amend Part III or Article 79 of the Constitution or contained any provisions in respect of which there was no agreement.

1.5.2. The Minister of Justice is obliged to submit the entire draft Constitution to a referendum if a decision to do so is made by the Conference.

## **1.6 Scope of Functions**

The Conference found the terms of reference sufficiently broad to accommodate all shades of opinion aimed at reaching national consensus and allowing the people of Zambia to draft a constitution that will secure true individual liberties and stand the test of time. Key among the functions is the liberty given to the Conference to consider and adopt the Constitution, and to resolve on the process to be followed after the adoption of the new Constitution.

## **1.7 Methodology**

1.7.1 Following the enactment of the National Constitutional Conference Act No. 19 of 2007, the Conference held its inaugural session from 19<sup>th</sup> to 21<sup>st</sup> December, 2007, which was officially opened by the President of Zambia, His Excellency, the late Dr. Levy Patrick Mwanawasa, SC.

1.7.2 The main purpose of the session was to elect the Chairperson, the three (3) Vice-Chairpersons and the Spokesperson of the Conference who are the Executive members of the Conference. In that regard, elections were conducted by the Electoral Commission

of Zambia (ECZ) and Hon. Chifumu K. Banda, SC, MP was elected Chairperson of the Conference. Mr. Leonard Hikaumba, Hon. Regina Musokotwane, MP and Hon Faustina B. Sinyangwe, MP were elected Vice-Chairpersons of the NCC while Mrs. Mwangala Zaloumis was elected Spokesperson of the Conference.

1.7.3 During the same meeting, the Conference established a 15-member Interim Committee to formulate the rules and regulations that would govern the proceedings of the NCC.

1.7.4 The second session of the NCC was held from 8<sup>th</sup> to 10<sup>th</sup> January, 2008. During that session, the Conference adopted the rules and regulations that would govern the Conference in its work. The rules and regulations were subsequently published as statutory instruments in the Government Gazette on 22<sup>nd</sup> February, 2008 by the Minister of Justice, Hon. George Kunda, SC, MP. These were:

- (a) the National Constitutional Conference (Committees) Regulations, Statutory Instrument No. 24 of 2008;
- (b) the National Constitutional Conference (Procedure) Rules, Statutory Instrument No. 25 of 2008; and
- (c) the National Constitutional Conference (Disciplinary Committee Proceedings) Rules, Statutory Instrument No. 26 of 2008.

1.7.5 The third session of the Conference was held from 22<sup>nd</sup> April to 9<sup>th</sup> May, 2008. During that session, elections for the eight (8) members of the Standing Committee to consider and determine disciplinary matters relating to members of the Conference and the staff of the Secretariat were conducted.

1.7.6 Further, the Conference constituted itself into eleven (11) thematic committees to focus on specific chapters of the draft Constitution. The following committees were constituted:

- (a) The General Constitutional Principles Committee;
- (b) Citizenship Committee;
- (c) Human Rights Committee;
- (d) Democratic Governance Committee;
- (e) Executive Committee;
- (f) Legislative Committee;
- (g) Judicial Committee;
- (h) Local Government Committee;

- (i) Public Finance Committee;
- (j) Land and Environment Committee; and
- (k) Public Service Committee.

1.7.7 In addition, elections of chairpersons and vice-chairpersons of the Committees were conducted. The chairpersons and vice-chairpersons and the Executive members of the Conference constitute the General Purposes Committee (GPC) which inter alia approves the programmes of work of the Conference. The list of the GPC is attached to the Report at Annex .....

1.7.8 During the session, a general orientation of the members on the constitution-making process was conducted. In addition, an orientation workshop was held for members of the GPC on chairing of meetings.

1.7.9 The Committees began sittings in May 2008 and the last Committee concluded in April, 2009. Between them, the Committees held more than two hundred and eighty (280) meetings.

1.7.10 On 19<sup>th</sup> August, 2008, the then President of the Republic of Zambia, Dr. Levy Patrick Mwanawasa, SC passed away. Consequently, the programme of the Conference was disrupted between August 2008 and October 2008 by the period of national mourning and the subsequent campaign and elections to fill the vacancy in the office of President. In addition, the Conference could not sit in November 2008 because Parliament was sitting.

1.7.11 The fourth session of the Conference commenced on 5<sup>th</sup> May, 2009 and ended on 26<sup>th</sup> June, 2009. The Conference debated and adopted the Reports of the Public Finance Committee, Public Service Committee, the Citizenship Committee and the Judicial Committee.

1.7.12 The fifth session of the Conference was held from 1<sup>st</sup> September, 2009 to 17<sup>th</sup> September, 2009. The Conference debated and adopted the Reports of the Land and Environment Committee and the Legislative Committee.

1.7.13 The sixth session of the Conference was held from 12<sup>th</sup> January, 2010 to 19<sup>th</sup> February, 2010. The Conference debated and adopted the Reports of the Democratic

Governance Committee, Executive Committee and Local Government Committee.

- 1.7.14 The seventh session of the Conference was held from 7<sup>th</sup> April, to 29<sup>th</sup> April, 2010. The Conference debated and adopted the Reports of the Human Rights Committee and the General Constitutional Principles Committee. The Conference, during the session, concluded the consideration and adoption of all the committee reports.
- 1.7.15 In accordance with section 17 of the National Constitutional Conference Act No. 19 of 2007, all questions before the Conference were determined by consensus, but in the absence of consensus, decisions were determined by a two-thirds majority vote of the members of the Conference. In the event that the Conference failed to garner the required two-thirds majority vote on any question, the matter was referred to a referendum.

## **1.8 Activities yet to be undertaken**

After the publication of the initial Report and Draft Constitution Bill, the following are the remaining activities of the Conference:

- (a) to facilitate public debates on the Draft Constitution and receive memoranda on the same;
- (b) to adopt the final Report and Constitution Bill by the Conference;
- (c) to resolve on the process to be followed to enact the new Constitution after its adoption by either:
  - (i) submitting the entire Constitution to a referendum; or
  - (ii) submitting to Parliament for immediate enactment those parts which do not require a referendum and submit to a referendum alterations to the Bill of Rights, Article 79 and any Article on which the Conference will not have reached agreement.

## **2.0 BACKGROUND**

### **2.1 Socio-Economic Background**

#### **2.1.1 Geography**

Zambia is a landlocked Sub-Saharan country sharing boundaries with eight countries namely: Malawi, Mozambique, Zimbabwe, Botswana, Namibia, Angola, Democratic Republic of Congo and Tanzania. It has a total surface area of 752,614 square kms. It lies between 8 and 18 south latitudes and longitudes 22 and 34 east.

#### **2.1.2 Administration**

2.1.2.1 Zambia gained independence from Britain on 24<sup>th</sup> October 1964. The Country has experienced three major phases of governance, the multiparty system from 1964 to 1972, one party system from 1972 to 1991 and reverted to multiparty system since 1991.

2.1.2.2 Administratively, the country is divided into nine provinces, namely: Central, Copperbelt, Eastern, Luapula, Lusaka, Northern, North-Western, Southern and Western Provinces. These Provinces are further subdivided into a total of seventy-three (73) districts. Lusaka is the capital city of Zambia and seat of government. The government comprises the Central and Local Government.

#### **2.1.3 Natural Resources**

2.1.3.1 Zambia is situated on the great plateau of Central Africa. Its vegetation is mainly made up of savannah woodlands and grassland. The country has a tropical climate with three distinct seasons; the cool and dry season, the hot and dry season and the hot and wet season.

2.1.3.2 The country has abundant natural resources in form of land, water, game and wildlife, minerals and precious stones and natural vegetation. It has five main rivers, namely Zambezi, Kafue, Luangwa, Luapula and Chambeshi. In addition to these rivers, the country has major lakes such as Tanganyika,



Mweru, Mweru Wa Ntipa, Bangweulu and the man-made lake Kariba. Other interesting features include the Victoria Falls, which is one of the Seven Wonders of the World.

- 2.1.3.3 Zambia has some of nature's best wildlife and game reserves affording the country abundant tourism potential for earning foreign exchange. The magnificent Luangwa and Kafue National Parks have one of the most prolific animal population in Africa. Zambia is also endowed with various minerals and precious stones such as copper, emeralds, zinc, lead and cobalt.

## **2.1.4 Population**

- 2.1.4.1 The population of Zambia has continued to grow. The 1980, 1990 and 2000 census estimated the population of Zambia to be at 5.7, 7.8 and 9.8 million, respectively. Current preliminary projections by Central Statistical Office (CSO) puts Zambia's population at 13.2 million. There are slightly more men than women (50.3 and 49.7 percent, respectively). The annual average population growth rate has shown a decline from 3.1 percent between 1969 and 1980, to 2.7 percent between 1980 and 1990, 2.4 percent between 1990 and 2000. The annual population growth rate in 2010 is estimated at 2.8 percent.
- 2.1.4.2 Population by province ranges from 2.1 million in the Copperbelt Province to 0.81 million in North-Western Province. High inter-censal population growth rates have been recorded for provinces such as Lusaka (3.4 percent), Luapula (3.2 percent) and Northern (3.1 percent).
- 2.1.4.3 Zambia is one of the most urbanized countries in Sub-Sahara Africa with about 34 percent of the population living in urban areas. However, this is a decline from 39 percent in 1990. The percentage of urban population by province ranges from 80 percent for Lusaka and Copperbelt Provinces, to 8 percent for Eastern Province.
- 2.1.4.4 The average population density for the country has increased from 5.4 in 1969, 7.5 in 1980, and 10.3 in 1990 to 13.1 persons per square kilometre in 2000. Average density by Province ranged from 64 persons per square kilometre in

Lusaka Province to five persons per square kilometre in North-Western Province.

- 2.1.4.5 With fifty percent of the total population under 15 years of age, Zambia has a relatively youthful population. Only 3 percent of the total population is 65 years or older.

## **2.1.5 Language**

English is Zambia's official language. The main vernacular languages are Bemba, Nyanja, Tonga, Lozi, Kaonde, Luvale and Lunda.

## **2.1.6 Economy**

- 2.1.6.1 In the 1980s, Zambia began the process of liberalising its economy in order to encourage an open and private sector-led economy with minimal government control. Zambia's economy is based largely on copper and cobalt mining. Due to unfavourable world copper prices between 1975 and 2000 coupled with low investments in the mining sector, export earnings declined. This decline was partly responsible for the poor performance of the real sectors of the economy that mainly relied on imported raw materials and capital items.
- 2.1.6.2 In the 1990s and in the recent past, the performance of the agricultural sector was negatively affected by unfavourable weather conditions such as recurring droughts and floods. During the drought years, food imports continued to be high mainly due to the drop in domestic agricultural output. This negatively affected the balance of payments.
- 2.1.6.3 In an attempt to address the economic problems the country experienced, government adopted the Structural Adjustment Programme (SAP) in the 1980s, with the intention of creating macro-economic stability and accelerating growth. Measures taken included liberalisation of trade, prices, interest and foreign exchange rates, removal of subsidies, privatisation of State owned enterprises, reduction in public expenditure, public sector reforms and liberalisation of the marketing and pricing of agricultural produce.

- 2.1.6.4 The SAP failed to substantially alter the economy and led to increased levels of poverty for the majority of Zambians. In an effort to halt the economic decline, the Government launched an Economic Recovery Programme in 1992 at the end of which Government drew up the Poverty Reduction Strategy Paper (PRSP 2002-2004) and the Transitional National Development Plan (TNDP 2004-2005). To finance these programmes, a Medium Term Expenditure Framework (MTEF 2005) and the Public Expenditure Management and Financial Account (PEMFA 2005) were put in place. These were meant to ensure transparent and accountable management of public funds. In addition, the Fifth National Development Plan (FNDP 2006-2010) was drawn up by Government to guide the country's socio-economic development efforts. As part of Government development strategy, five year development plans (beginning with the FNDP) are part of the vision 2030 which is the country's long-term national plan whose chief goal is to make the country a middle income country by 2030.
- 2.1.6.5 Between 1994 and 2002, real GDP growth showed an increase from 2.2 percent in 1999 to 3.6 percent in 2000 and 4.9 percent in 2001, before declining to 3.0 percent in 2002. (Source: Zambia Poverty Reduction Strategy Paper, 2002 – 2004).
- 2.1.6.6 During the period 2006–2008, real GDP growth rate averaged 6.1 percent which was below the FNDP target of 7 percent per annum. However, real GDP growth rate improved from 5.2 percent in 2005 to 6.2 percent in 2007 before declining to 5.7 percent in 2008.
- 2.1.6.8 Generally, Zambia's economy has experienced strong growth in recent years, with real GDP averaging 5.7 percent in the period 2004-2008. This has been largely due to the strong growth in construction; transport and communications; community, social and personal services; restaurants, bars and hotels and the resurgence in the mining and quarrying industry.

### **2.1.7 Mining**

Zambia continues to rely on copper as its main export earner, accounting for about 70 percent of the total value of exports of goods and services. Following the privatization of the copper mines which started in the late 1990's, there has recently been massive capital re-investment in the mining industry. The surge in copper prices beginning from 2004 rekindled international interest in Zambia's copper sector, resulting in increased investments. As a result, copper output has increased steadily since 2004 due to the higher copper prices (which reached a record high of US\$895 per tonne in July 2008) and increased foreign investment. In 2008, copper production reached 575, 037 metric tonnes from 422,181 metric tonnes in 2004. Apart from copper, there has also been a steady increase in investments in the mining of other metals notably nickel and gold.

### **2.1.8 Agriculture**

2.1.8.1 The real growth rate in the agricultural sector has fluctuated significantly mainly due to the sector's high dependence on seasonal rainfall, reduction in investments and the failure to strategically position the sector according to its comparative advantage. Growth in the agricultural sector (agriculture, forestry and fishing) declined from 2.2 percent in 2006 to 0.4 percent in 2007 and dwindled further to 0.1 percent in 2008. However, the sector recorded significant growth in 2009 with a preliminary growth rate at 7.1 percent (Source: FNDP Mid-Term Report and CSO figures). The sector's contribution to GDP averaged 18 percent over the past decade. Non-traditional, mainly agriculture-based export earnings increased from US \$46.5 million in 1995, US \$133.9 million in 1999, US \$354.7 million in 2005 and US \$398.9 million in 2009, thus demonstrating the enormous potential the sector possesses. Some 75 percent of Zambia's population is engaged in agriculture, largely subsistence and small-scale farming, which remains vulnerable to weather fluctuations. Over the years, the agricultural sector has been faced with low productivity and production, low levels of technology, high incidences of crop and livestock diseases and depleted fish stocks. (Source: Zambia Poverty Reduction Strategy Paper, 2002 – 2004).

- 2.1.8.2 The development of the agricultural sector remains one of the key priorities for poverty reduction in Zambia. Government has thus instituted measures to address the challenges faced in the sector as well as to stimulate its growth. These include increasing funding to the sector; building and rehabilitating agricultural infrastructure; stimulating investment, improving the provision of agricultural services (research and extension), promoting conservative farming and promoting livestock and fisheries development.
- 2.1.8.3 In addition to the agricultural sector, Zambia's current development agenda has identified infrastructure development, private sector development, tourism and manufacturing as the other main drivers of economic growth.

## **2.1.9 Employment**

- 2.1.9.1 According to CSO, the number of employed persons, that is, those in the formal and informal sectors was estimated at 4,131,531 and 5,264,712 in 2005 and 2008 respectively (CSO 2005 and 2008 Labour Force Survey Reports).
- 2.1.9.2 Overall unemployment rates have marginally declined from 16 percent in 1995 to 15 percent in 2008. However, unemployment has increased in urban areas from 28 percent in 2005 to 33 percent in 2008 compared to the rural areas where it has dropped from 10 percent in 2005 to 6 percent in 2008. Overall unemployment rates are higher for males compared to females.
- 2.1.9.3 Youth unemployment rate referred to as the percentage of the youths (i.e. persons aged 15 to 24 years) who were unemployed compared to the total youth labour force (i.e. all youths aged 15 to 24 years) has increased. From 2005 to 2008, total youth unemployment has almost doubled from 14 percent to 26 percent, Youth unemployment rate for females is generally higher than that of males. This is also true with rural youth unemployment rate compared to urban youth unemployment rate.

- 2.1.9.4 In terms of employment, the agricultural sector was the most dominant accounting for 72 percent of the Zambian workers in 2008. Although the total numbers of employed persons have generally grown by 27% between 2005 and 2008, the number of employed persons in some industries has declined. These include electricity, gas and water and business services.

## **2.1.10 Education**

- 2.1.10.1. Zambia has a three-tier education system consisting of seven-year primary education, followed by five-year secondary education. Post secondary schooling is the last stage.
- 2.1.10.2 The vision of the education sector as articulated in the FNDP is that innovative and productive life-long education and training is accessible to all by 2030. Emphasis is on improvement of quality of education in addition to increasing access through reforms in curriculum development, syllabus design, professional teacher enhancement, making the learner environment more productive and creating a conducive environment for learners.
- 2.1.10.3 Over the recent years, the country has registered significant increases in school enrolment which can largely be attributed to the rise in school places through the construction of new and additional school infrastructure. In terms of quality, there has been an improvement in the pupil-teacher ratios at all levels arising from the recruitment and deployment of more teachers.
- 2.1.10.4 Pupil enrolment at basic education level (Grade 1-9) increased by 5.4 percent between 2007 and 2008. Further, total high school (Grade 10-12) enrolment also rose by 7.9 percent during the same period (Ministry of Finance and National Planning: 2008 Economic Report).

## **2.1.11 Health**

- 2.1.11.1 The Government's commitment to the objective of improving the quality of life for Zambians is demonstrated

through its efforts to improve health care delivery by reforming the health sector. In 1991, it articulated radical health care reforms characterized by a move from a strongly centralized health system in which the central structures provided support and national guidance to the lower structures. Most recently, Government repealed the National Health Services Act of 1995 which led to the dissolution of the Central Board of Health. The implementation of the health reforms has been through a series of national health strategic plans of which the fourth and current one covers the period 2006 – 2010. An important component of the health policy reform is the restructured Primary Health Care.

- 2.1.11.2. Following the implementation of health reforms, improvements in the general health indicators in Zambia have been recorded. For instance, Life expectancy at birth improved from 47 years in 1990 to 51.2 years in 2009.
- 2.1.11.3 During the period 2006-2009, the health sector registered remarkable progress in achieving maternal health and safe motherhood as demonstrated by the drop in the Maternal Mortality Ratio to 499 deaths per 100,000 live births in 2007 from 729 per 100,000 in 2002.
- 2.1.11.4 The under-five mortality rate reduced from 168 per 1,000 live births in 2002 to 119 per 1,000 live births in 2007. Infant mortality rate also dropped from 95 per 1,000 live births to 70 per 1,000 births in the same period. Levels of performance in malaria prevention, water and sanitation and food and nutrition programmes were significant in influencing child mortality levels.
- 2.1.11.5 The number of health institutions in the country stands at 1,285. These include three Central hospitals, four specialised hospitals, eighteen General Hospitals, forty-two District Hospitals, one military hospital and eight Industrial hospitals. There are also 899 Rural Health Centres, 187 Urban Health Centres, 20 Industrial rural Health centres and 75 Industrial Urban Health centres. The number of health centres is nine, while the number of mission hospitals stands at nineteen. (Source: Ministry of Health, 2002)

### **2.1.12 HIV/AIDS Situation in Zambia**

The first HIV/AIDS case in Zambia was reported in 1985. Initially, the epidemic of HIV/AIDS cases was in the urban areas, but it soon became clear that all parts of the country were affected. According to various Zambia Demographic and Health Survey (ZDHS) Reports, HIV/AIDS prevalence has reduced from 16% in 2001/02 to 14% for adults aged between 15-49 years in 2007. The Health Sector FNDP mid-term review indicates that HIV infections rate was higher among woman at 18% than men at 13%. The place of residence is also closely associated with HIV levels and the rate was twice as high in urban areas as in rural areas 23% and 11% respectively. Provinces with prevalence levels above the national average include Lusaka (22 percent), Copperbelt (20 percent), and Southern (18 percent). The lowest prevalence levels are found in Northern Province (8 percent) and North-Western Province (9 percent). In terms of gender, the prevalence rates are higher in women than in men in all provinces except North-Western.

### **2.1.13 Poverty**

2.1.13.1 Despite the strong economic gains over the last 5 years, poverty continues to be a significant problem in Zambia. A series of national surveys conducted by the Central Statistical Office (CSO) - the "Social Dimensions of Adjustment Priority Surveys" of 1991 and 1993 and the "Living Conditions Monitoring Surveys of 1996, 1998, 2004 and 2006" provide trends in the various dimensions of poverty in Zambia.

2.1.13.2 Poverty levels in Zambia have generally remained high at 64% of the total population (CSO, 2006). This has mostly been due to the increase in the incidence of poverty in rural population where levels rose from 78% in 2004 to 80% in 2006.

### **2.1.14 Gender**

2.1.14.1 Gender is concerned with promoting equality between the sexes and improving the status of both women and men in society. Gender issues are also cardinal in achieving sustainable economic growth, job creation, ensuring better food security and reducing poverty. The framework for



achieving gender equality in Zambia is in the National Gender Policy adopted in 2000.

- 2.1.14.2 Analysis of poverty indicators show that there are still huge disparities between males and females with regard to socio-economic well-being, equality of opportunities in education, employment, governance and access to productive assets.
- 2.1.14.3 The situation has aggravated inequalities between males and females.
- 2.1.14.4 In the 1990 and 2000 censuses, no significant differences were observed in terms of occupation between males and females. However, slightly more females (79 percent) than males (65 percent) are engaged in agriculture.
- 2.1.14.5 It is further observed that though the proportion of the female population increased during the reference period (53 percent), there has been no significant improvement in the quality of their life. A large proportion of females compared to males are employed as unpaid family workers, 62 percent (1990) and 25 percent (2000), respectively.
- 2.1.14.6 The 2000 census also recorded a slight increase in the proportion of female-headed households from 17 percent in 1990 to 19 percent in 2000. This means that more females are increasingly becoming the main economic supporters for households. However, persons in female-headed households are more likely to be extremely poor than those in male-headed household. The 1998, 2004 and 2006 Living Conditions Monitoring Survey shows that poverty associated with food insecurity was more prevalent among female-headed households (61 percent) compared to male-headed households (52 percent).
- 2.1.14.7 Over the past few years, a number of sectors have attempted to include gender in their development programmes and budgets. To this effect, several interventions have been undertaken towards gender mainstreaming. These include capacity building for gender mainstreaming, review of legal framework, women economic empowerment and monitoring and evaluation.

## **2.2 The Zambian Legal System**

### **2.2.1 Sources of Law**

- 2.2.1.1 The sources of law in Zambia are the Constitution, statutes and delegated legislation; English statutes extended to Zambia by the English Law (Extent of Application) Act, Cap 11 of the Laws of Zambia; English common law and doctrines of equity by virtue of the British Acts Extensions Act, Cap 10 of the Laws of Zambia; Zambian customary law; and public international law that has been incorporated into domestic law.
- 2.2.1.2 The Constitution is the supreme law of the land to which all the other sources of the law are subordinate. Zambian statutes are passed by Parliament and known as Acts of Parliament. Delegated legislation is made by the Executive or local authorities by virtue of powers conferred upon them by the Constitution of an enabling statute.
- 2.2.1.3 English common law comprises judicial decisions and principles that evolve out of proceedings of the courts of law based originally on the common unwritten customs of that country. Equity is a body of rules administered by a specialised English Court to supplement common law. Equity is primarily concerned with fairness and is founded on principles of natural justice.
- 2.2.1.4 Zambian customary law is founded on the widespread use of customs and practices of a community which, over time, gain acceptability and the force of law. The customary law of Zambia is complex and it varies among ethnic groups and tribes.
- 2.2.1.5 Public international law applicable to Zambia is the law of the international community or the body of customary or treaty rules accepted as legally binding by the country in its relations with other States. Public international law cannot be enforced in Zambia unless Parliament enacts relevant enabling legislation.

## **2.2.2 The Court System**

### **2.2.2.1 The Judicature**

The Judicature is established by Article 91 of the Republican Constitution. It comprises the Supreme Court, High Court, the Industrial Relations Court, Subordinate Courts, the Local Courts and any such Courts as may be established by an Act of Parliament, such as the Small Claims Court.

### **2.2.2.2 Supreme Court**

The Supreme Court is the final Court of appeal in all civil and criminal matters. It is a superior court of record.

### **2.2.2.3 High Court**

The High Court has unlimited and original jurisdiction to hear and determine any civil or criminal proceedings under any law, except for proceedings in which the Industrial Relations Court has exclusive jurisdiction.

### **2.2.2.4 Industrial Relations Court**

The Industrial Relations Court is mandated to adjudicate over all industrial and labour relations matters. The Industrial Relations Court is a quasi-judicial tribunal and does not follow strict rules of evidence.

### **2.2.2.5 Subordinate Courts**

The Subordinate Courts have jurisdiction to hear and determine matters referred to the courts under any law.

### **2.2.2.6 Local Courts**

Local Courts are authorised to apply and enforce customary law mainly in matrimonial and inheritance

cases. However, Local Courts can hear and determine criminal matters involving simple thefts and common assaults. Lawyers have no right of audience in Local Courts.

#### **2.2.2.7 Small Claims Court**

The Small Claims Court is established by Chapter 47 of the Laws of Zambia. The Court is established to handle civil cases from any member of the public except incorporated entities.

### **2.3 Constitutional Development in Zambia**

In order to effectively analyse the current constitution-making process, it is necessary to examine history in relation to the constitutional development. This part, therefore, examines and analyses the constitutional development process in Zambia, from the pre-colonial era to the present time.

#### **2.3.1 The Pre-Colonial Era**

2.3.1.1 While pre-colonial Africa, including Zambia, did not have written constitutions, that did not mean that constitutionalism did not exist. Pre-colonial African societies operated under certain principles devised to achieve the main aim of constitutionalism, that is, limitation of power of the leaders.

2.3.1.2 The leader's decisions concerning the community were not normally made arbitrarily, but were subject to discussion and consensus. For instance, in Zambia, the king of the Barotse did not make any decisions without the advice of the Council Kuta. Thus decisions in pre-colonial Zambia were not made to suit the whims of the rulers but to satisfy the aspirations of the people. It was through this method that the foundation of the ruler's legitimacy as a government actually lay.

#### **2.3.2 The Constitutional Framework During Colonialism**

2.3.2.1 The first significant constitutional development in Zambia was the Royal Charter of Incorporation of the British South

Africa Company of 1889, of which Cecil Rhodes was the leader. Through this Charter, the Company was given power to obtain territories by treaties from the native chiefs, to administer the areas so obtained, and to engage in all forms of economic activity. Through treaties and concessions obtained from African Chiefs, the Company extended its influence over most of what is now Zambia, but was then known as Northern Rhodesia.

- 2.3.2.2 Due to the vastness of the territory, it became difficult to administer it as one. The territory was in 1893, therefore, divided into two administrative units, namely, North-Western Rhodesia and North-Eastern Rhodesia, which were also declared British Protectorates.
- 2.3.2.3 By 1900, British rule had been formulated by two orders, the North-Western Rhodesia Order-in-Council of 1899 and the North-Eastern Order-in-Council of 1900. The territories were joined in 1911 as Northern Rhodesia. British South African Company rule lasted until 1<sup>st</sup> February, 1924 when control of the territory was ceded to the British Crown.
- 2.3.2.4 The Constitution of Northern Rhodesia constituted of the Northern Rhodesia Order in Council, 1924; the Northern Rhodesia (Legislative Council) Order in Council, 1924; and the instructions passed under the Royal Sign Manual and signed to the Governor of Northern Rhodesia. Attention was not directed at explicitly establishing a constitutional framework but an administrative structure.
- 2.3.2.5 Under those arrangements, executive power was vested in the Governor, legislative power and judicial power was vested in the Privy Council, High Court, Magistrates Courts and Native Commissioner's Courts.
- 2.3.2.6 Constitutional development between 1953 and 1962 was marked by the establishment of the Federation of Rhodesia and Nyasaland through the Order in Council of 1953. The Order specified the prerogatives of the federal and territorial governments. The Order in Council was followed in 1962 by a constitution which was designed by the British Colonial Administration for the purpose of accommodating the white settlers and some native Africans in the Council.

### **2.3.3 The Independence Constitution**

- 2.3.3.1 Following the dissolution of the federation in 1963, a new constitution based on the Westminster model was designed at independence in 1964 as a product of negotiations between the departing colonial power and African elites. These negotiations were held in May 1964 at Lancaster House in the United Kingdom.
- 2.3.3.2. At that time, the interests of the African leadership were limited to acquisition of political power through political independence. The leaders were inspired by events in other African countries like Ghana, Tanzania and Kenya who had secured political independence.
- 2.3.3.3 The Constitution that resulted from the negotiations at Lancaster House had an entrenched bill of rights which provided that every person in Zambia, regardless of race, place of origin, political opinion, colour, creed, or sex was entitled to fundamental rights and freedoms. Those included the right to life, liberty, security, and the freedom of property, conscience, expression and assembly. The judiciary was independent from the executive. The Constitution also provided for the procedure to amend or alter the Constitution. In order to amend the Constitution, the amendment bill had to be supported by not less than two-thirds of all the members of the National Assembly. Where the amendment bill concerned any of the fundamental rights and freedoms, the bill had to be submitted to a national referendum for approval.
- 2.3.3.4 At Independence and up to 1972, Zambia had a multi-party system which was dominated by the ruling Party, United National Independence Party (UNIP).

### **2.3.4 The One-Party Constitution**

- 2.3.4.1 UNIP institutionalised the One Party State in 1973. The move to a one party state was viewed as a way to prevent ethnic rivalries and to promote national unity. It was argued

that the elimination of political pluralism would lead to unity and foster socio-economic development.

2.3.4.2 Another argument for the move to a one party state was that Zambia being adjacent to minority white ruled countries, Rhodesia, South West Africa, Angola and Mozambique was always at the risk of military invasion from the volatile white settler regimes. The argument was bolstered by evidence of actual invasions into Zambia by these foreign forces, resulting in loss of lives and property.

2.3.4.3 A further argument was that the independence Constitution was always viewed as a colonial vestige. It was, therefore, essential that a home grown autonomous Constitution be developed to truly convey the aspirations of the Zambian people.

2.3.4.4 In 1968, a referendum was held which gave power to the legislature to amend the constitution, with a two-thirds majority.

## **2.3.5 The Chona Constitutional Review Commission**

2.3.5.1 President Kenneth Kaunda appointed the Chona Constitution Review Commission under the Inquiries Act on 30<sup>th</sup> March, 1972. The Inquiries Act allowed the President to appoint a commission of inquiry to investigate any matter, which in the opinion of the President was in public interest.

2.3.5.2 The terms of reference of the Commission were to consider and examine changes in the Republican and UNIP Constitutions; and practices and procedures of government, which were necessary to create a one-party system in Zambia.

2.3.5.3 After touring the country, and receiving submissions from the people, the Commission prepared and presented its report to Government in October, 1972. The Commission made a number of recommendations that had the effect of curtailing presidential powers. In particular, the Commission recommended that the President's powers of detention should be limited, that a president should only serve for two consecutive five-year terms, and that UNIP

should place three presidential candidates before the electorate. Government analysed the various recommendations and presented a white paper indicating which submissions the government accepted, and those that it rejected. While the basic concept of the one-party system was accepted, the government, however, rejected all the recommendations pertaining to the limitation of presidential powers.

- 2.3.5.4 The draft Constitution (Amendment) Bill establishing the one party rule was submitted to the National Assembly and duly enacted on 13 December, 1972. The amendment read as follows: **“There shall be one political party in Zambia, namely, UNIP.”** The party, UNIP, therefore took precedence over all institutions in the country, Government inclusive.

## 2.3.6 The Multi-party Constitution

- 2.3.6.1 The years of one-party system in Zambia, like elsewhere in Africa, were very difficult. The economic and social development expected under one party rule failed to materialise. For example, there was widespread shortages of essential commodities and the social infrastructure such as universities, schools, and hospitals were not maintained. Inevitably, this among other reasons, led to riots and demonstrations.
- 2.3.6.2 Multi-lateral organisations notably, the World Bank and the International Monetary Fund which initially insisted on economic liberalisation as one of the conditions for further financial assistance to countries like Zambia, later came to a conclusion that economic liberalisation alone was not enough. Countries were expected to reform their political institutions as well. That meant putting in place constitutions that guaranteed free competition for political power and certain fundamental rights and freedoms.
- 2.3.6.3 Unable to resist the “winds of change” that were blowing across the continent with the collapse of communism in Eastern Europe and the Soviet Union and the end of the cold war in the early 1990s, government accepted the need for reform.



- 2.3.6.4 The most significant pressure for democratic reform came from civil society, church groups, human rights activists, students and the legal profession.
- 2.3.6.5 Prior to the multi-party elections in 1991, the UNIP Government amended the 1973 Constitution by deleting Article 4 to allow for the formation of opposition political parties. It also announced its intention to make comprehensive amendments to the Constitution, and, consequently, appointed the Mvunga Constitution Review Commission to receive submissions from the public.

### **2.3.7 The Mvunga Constitution Review Commission**

The Commission toured the country extensively and obtained the views of a broad range of people on the future constitution of Zambia. Having obtained the views of the people, the Commission presented its report, containing recommendations, to the Government. The Government rejected some of the recommendations and prepared a Constitution for adoption by Parliament. Parliament being overwhelmingly controlled by UNIP, adopted and enacted the Constitution on 2<sup>nd</sup> August, 1991. The Constitution was perceived as a transitional one to meet the immediate pressures of the time.

### **2.3.8 The 1996 Constitution**

- 2.3.8.1 Prior to the MMD coming into office, it undertook, once elected, to change the 1991 Constitution and replace it with one that would be above partisan considerations and reflect high goals of national interest. Thus, on 22<sup>nd</sup> December, 1993, two years after the MMD acquired power, Government appointed a Commission called the Mwanakatwe Constitution Review Commission.
- 2.3.8.2 Its terms of reference included recommending a system that would ensure that Zambia was governed in a manner that would promote the democratic principles of regular and fair elections, transparency and accountability, and that would guard against the re-emergence of a dictatorial form of government. The Commission was also mandated to

recommend appropriate arrangements for the entrenchment and protection of human rights, the rule of law, good governance, and the competence, impartiality and independence of the judiciary. In addition, the Commission was mandated to recommend whether the Constitution should have been adopted by the National Assembly, a constituent assembly, a national referendum or other method. The Commission was also mandated to propose a suitable method of amending the Constitution.

2.3.8.3 The Commission toured the country extensively, and collected a large volume of views of the populace. The Commission made many recommendations, amongst others, that a presidential candidate must receive 50 percent plus one of the valid votes cast for him/her to be declared winner; that to achieve maximum consensus, the Constitution should be adopted through a constituent assembly attended by representatives of all political parties, and by those drawn from many segments of Zambian society, such as trade unions, women's groups, churches and many others; and that a referendum be required for subsequent amendments.

2.3.8.4 The Government in a White Paper rejected some of the recommendations of the Mwanakatwe report.

## **2.3.9 The Mung'omba Constitutional Review Commission**

2.3.9.1 On 17<sup>th</sup> April, 2003, President Levy Mwanawasa announced the appointment of a fourth constitution review commission chaired by Mr. Willa Mung'omba. The Commission toured the country extensively, and obtained the views of the people. It then proceeded to prepare, and publish its report and a draft Constitution and submitted it to government in December, 2005.

2.3.9.2 Significantly, the Mung'omba Constitution Review Commission, while acknowledging the supremacy of the legislative powers of Parliament, recommended that a Constituent Assembly be established for the purpose of adopting proposals for the alteration of the Constitution and that the outcome of the Constituent Assembly be final and legally binding subject to the outcome of a referendum and implemented by the resolution of the Constituent

Assembly. In particular, the Report of the Mung'omba Constitution Review Commission on page 799 states as follows:

*"An overwhelming number of petitioners submitted that the Constitution should be adopted by a Constituent Assembly, a Constitutional Conference or any popular body that would represent the views of the people. The reasons advanced for a Constituent Assembly or other popular body included:*

- that Parliament was not representative enough of all the various interests in the country;*
- that the formulation of a new Constitution should be more inclusive, broad-based, gender representative; and*
- that the participation of citizens should be encouraged in order to give the Constitution-making process legitimacy.*

*Many petitioners observed that adoption of the Constitution through a commission established under the Inquiries Act or the Current National Assembly could easily be manipulated by the Executive."*

*"Further, petitioners argued that the need to have the Constitution, which is the supreme law of the land, adopted through a broad-based representative body overrides concerns about the costs involved."*

2.3.9.3 In response to the above recommendation, the Government:

- (a) observed that the Constitution of Zambia vested the legislative powers of the Republic solely in Parliament. Therefore, the recommendations of the Commission that a Constituent Assembly be established for the purpose of adopting proposals for the alteration of the Constitution and that the outcome of the Constituent Assembly be final and legally binding subject to the outcome of a referendum and implemented by the resolution of the Constituent Assembly amounted to:

- (i) usurping the legislative powers of Parliament as provided for in Article 62 of the current Constitution by allowing another

- body – the Constituent Assembly, to enact legislation by making its resolution “final and legally binding, subject only to the outcome of a referendum”;
  - (ii) contravening clause (1) of Article 79 which provides for alteration of the current Constitution without holding a referendum as provided for in clause (3).
- (b) on the basis of the above rejected the recommendation as it was going to be expensive to hold two referenda:
- (i) to amend Article 79 to enable the Constituent Assembly or any other body other than Parliament to enact legislation;
  - (ii) to amend the Bill of Rights after adoption of the new Bill of Rights.

#### **2.3.10 The Establishment of the National Constitutional Conference**

As a result of the impasse that arose between the Government and the Non Governmental Organisations (NGOs) on the role that Parliament would play in the enactment of a new Constitution, the Board of the Zambia Centre for Inter-Party Dialogue (ZCID) in 2007 proposed a roadmap to the Summit of Party Presidents held on 23<sup>rd</sup> June in order to break the impasse. In particular, the Board proposed that the National Constitutional Conference be established to adopt a new Constitution and in so doing Articles 62 and 79 of the current Constitution should be adhered to. The Board proposed and the summit of the Presidents concurred that members of the NCC should be nominated by the different interest groups instead of being elected. Further, the Summit of Presidents requested the Minister of Justice to draft a Bill to give legal effect to the proposal. In that respect, the National Constitutional Conference Act No. 19 of 2007 was enacted on 31<sup>st</sup> August, 2007.

## **CHAPTER 1**

### **3.1 Objectives of the Constitution of Zambia Bill**

- 3.1.1 The Commission drafted the Constitution of Zambia Bill whose purpose is to provide for the commencement of the new Constitution of Zambia; to provide for the printing and publication of the Constitution; to provide for the savings and transitional provisions of existing State organs, State institutions, administrations, offices, institutions and laws; to provide for succession to assets, rights, liabilities, obligations and legal proceedings; to provide for the repeal of the Constitution of Zambia Act, 1991, and the Constitution in the Schedule to that Act; and to provide for matters connected with, on incidental to, the foregoing.
- 3.1.2 The Commission Report did not make any recommendations on the transitional arrangements but provided for them in the Constitution Bill as outlined in this Report.

### **3.2 Long Title : Entitled**

#### **3.2.1 Provision of the Constitution of Zambia Bill on the Long Title**

The long title of the Constitution Bill states that:

**“An Act to provide for the commencement of the new Constitution of the Republic of Zambia; to provide for the printing and publication of the Constitution; to provide for the savings and transitional provisions of existing State organs, State institutions, administrations, offices, institutions and laws; to provide for succession to assets, rights, liabilities, obligations and legal proceedings; to provide for the repeal of the Constitution of Zambia Act, 1991 and the Constitution in the Schedule to that Act, and to provide for matters connected with or incidental to the foregoing.”**

#### **3.2.2 Deliberations of the Conference**

The Conference debated and adopted the long title of the Constitution of Zambia Bill without amendments.

#### **3.2.3 Resolutions of the Conference**

The Conference adopted the long title of the Constitution of Zambia Bill without amendments as follows:

**“An Act to provide for the commencement of the new Constitution of the Republic of Zambia; to provide for the printing and publication of the Constitution; to provide for the savings and transitional provisions of existing State organs, State institutions, administrations, offices, institutions and laws; to provide for succession to assets, rights, liabilities, obligations and legal proceedings; to provide for the repeal of the Constitution of Zambia Act, 1991 and the Constitution in the Schedule to that Act, and to provide for matters connected with or incidental to the foregoing.”**

### **3.3 Enactment**

#### **3.3.1 Provision of the Constitution of Zambia Bill on Enactment**

The Constitution Bill provides for its enactment as follows:

**“ENACTED by the Parliament of Zambia.”**

#### **3.3.2 Deliberations of the Conference on Enactment**

The Conference debated and adopted the provision on enactment of the Constitution of Zambia Bill without amendments.

#### **3.3.3 Resolutions of the Conference**

The Conference adopted the provision on enactment of the Constitution of Zambia Bill without amendments as follows:

**“ENACTED by the Parliament of Zambia.”**

### **3.4 Section 1 : Short Title**

#### **3.4.1 Provision of the Constitution of Zambia Bill on Short Title**

Section 1 provides for the short title as follows:

**“1. This Act may be cited as the Constitution of Zambia Act, 2005.”**

#### **3.4.2 Deliberations of the Conference on Section 1**

The Conference adopted section 1 of the Constitution of Zambia Bill subject to the substitution of “2005” with “2010”.

### **3.4.3 Resolutions of the Conference**

The Conference adopted section 1 of the Constitution of Zambia Bill with amendments as follows:

**"1. This Act may be cited as the Constitution of Zambia Act, 2010."**

### **3.5 Section 2: Interpretation**

#### **3.5.1 Provision of the Constitution of Zambia Bill on Interpretation**

Section 2 provides as follows:

**"2. (1) In this Act, unless the context otherwise requires -  
"Constitution" means the Constitution set out in the  
Schedule to this Act;  
"effective date" means the date of the commencement of this Act  
and the Constitution as provided under section four;  
"existing Constitution" means the Constitution of Zambia, 1991 in  
force immediately before the effective date; and  
"existing laws" means the laws of Zambia as they existed  
immediately before the effective date, including any statutory  
instrument issued or made before that date which is to come into  
force on or after the effective date.  
(2) Except where the context otherwise requires, words and  
expressions used in this Act have the same meaning as in the  
Constitution."**

#### **3.5.2 Deliberations of the Conference on Section 2**

The Conference adopted section 2 of the Constitution of Zambia Bill without amendments.

#### **3.5.3 Resolutions of the Conference**

The Conference adopted section 2 of the Constitution of Zambia Bill without amendments as follows:

**"2. (1) In this Act, unless the context otherwise requires -  
"Constitution" means the Constitution set out in the Schedule  
to this Act;  
"effective date" means the date of the commencement of this  
Act and the Constitution as provided under section four;**

**"existing Constitution" means the Constitution of Zambia, 1991 in force immediately before the effective date; and "existing laws" means the laws of Zambia as they existed immediately before the effective date, including any statutory instrument issued or made before that date which is to come into force on or after the effective date.**  
**(2) Except where the context otherwise requires, words and expressions used in this Act have the same meaning as in the Constitution."**

### **3.6 Section 3 : Repeal of the Constitution of Zambia Act, 1991 and the Existing Constitution Cap 1**

#### **3.6.1 Provision of the Constitution of Zambia Bill on Repeal of the Constitution of Zambia Act, 1991 and the Existing Constitution Cap. 1.**

Section 3 provides as follows:

**"3. The Constitution of Zambia Act, 1991 and the existing Constitution in the Schedule to that Act are hereby repealed."**

#### **3.6.2 Deliberations of the Conference on Section 3**

The Conference adopted section 3 of the Constitution of Zambia Bill without amendments.

#### **3.6.3 Resolutions of the Conference**

The Conference adopted section 3 of the Constitution of Zambia Bill without amendments as follows:

**"3. The Constitution of Zambia Act, 1991, and the existing Constitution in the Schedule to that Act are hereby repealed."**

### **3.7 Section 4 : Commencement of Constitution**

#### **3.7.1 Provision in the Constitution of Zambia Bill on Commencement of Constitution**

Section 4 provides as follows:



**"4. Subject to this Act, the Constitution shall come into operation on the date of assent of this Act."**

### **3.7.2 Deliberations of the Conference on Section 4**

The Conference adopted section 4 of the Constitution of Zambia Bill without amendments.

### **3.7.3 Resolutions of the Conference**

The Conference adopted section 4 of the Constitution of Zambia Bill without amendments as follows:

**"4. Subject to this Act, the Constitution shall come into operation on the date of assent of this Act."**

## **3.8 Section 5: Printing and Publication of Constitution**

### **3.8.1 Provision in the Constitution of Zambia Bill on Printing and Publication of Constitution**

Section 5 provides as follows:

**"5. The Constitution may be printed and published by the Government Printer separately from this Act and the production of a copy of the Constitution as printed shall be prima facie evidence in all courts and for all purposes in connection with the Constitution."**

### **3.8.2 Deliberations of the Conference on Section 5**

The Conference adopted section 5 of the Constitution of Zambia Bill without amendments.

### **3.8.3 Resolutions of the Conference**

The Conference adopted section 5 of the Constitution of Zambia Bill without amendments as follows:

**"5. The Constitution may be printed and published by the Government Printer separately from this Act and the production of a copy of the Constitution as printed shall be prima facie evidence in all courts and for all purposes in connection with the Constitution."**

### **3.9 Section 6 : Existing Laws**

#### **3.9.1 Provision in the Constitution of Zambia Bill on Existing Laws**

Section 6 provides as follows:

**"6. (1) All existing laws shall continue in force and be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the Constitution.**

**(2) The National Assembly shall, within two years of the effective date, make amendments to any existing law to bring that law into conformity with, or to give effect to, this Act or the Constitution."**

#### **3.9.2 Deliberations of the Conference on Section 6**

3.9.2.1 The Conference approved sub-section (1) of section 6 of the Constitution of Zambia Bill without amendments.

3.9.2.2. In debating sub-section (2) of section 6, some members proposed that sub-section (2) be amended by deleting the time-frame within which the National Assembly was expected to amend any existing law to bring that law into conformity with the Constitution. The members were of the view that the duration during which Parliament was expected to amend the laws was arbitrary and too short.

3.9.2.3 During the debate of sub-section (2), a number of positions emerged as follows:

- (a) members who supported the substitution of the term "National Assembly" with the term "Parliament" without stating the time-frame within which the amendments should be made;
- (b) members who supported the substitution of the term "National Assembly" with the term "Parliament" and stating the time-frame within which the amendments should be made;

- (c) members who proposed that the term “Government” should replace the term “National Assembly” and retain the time-frame;
- (d) members who supported the recommendation in the Constitution of Zambia Bill; and
- (e) members who preferred to delete the reference to the time-frame or period.

3.9.2.4 Members who supported the substitution of the term “National Assembly” with the term “Parliament” without prescribing the time-frame argued as follows:

- (a) that specification of time-frame was not necessary given the volume of work that was required to be done;
- (b) that Government had the interest of the people and there was no way that it would deliberately delay amendments;
- (c) that there was a shortage of draftspersons in the Ministry of Justice and amendments to laws were bound to take longer than provided in the sub-section;
- (d) that it was not possible to determine, before hand, how much time was required to amend laws as law-making involved many imponderables;
- (e) that Government would ensure that laws were amended on time to avoid them being un constitutional or *ultra vires*; and
- (f) that failure by Parliament to comply with the unrealistic time-frame would lead to violation of the Constitution.

3.9.2.5 Members who supported the specification of the time-frame had the following arguments:

- (a) that Parliament need not be given a “blank cheque” and that if two (2) years was deemed to be too short, a longer period of three (3) years could be specified;
- (b) that the effectiveness of the new Constitution would be affected by the lack of a time-frame in which to amend existing laws;
- (c) that the time-frame was required so that the exercise to amend laws was done in accordance with the Constitution;
- (d) that history showed that those in Government were always resistant to deal with laws that were deemed to be disadvantageous to them;

- (e) that not all statutes would be dealt with at the same time but rather progressively; and
- (f) that social and behavioural science showed that without specifying the time-frame, Government would delay the process of amending laws.

3.9.2.6 Members who supported the substitution of the term “National Assembly” with the term “Parliament” observed that “Parliament” was the appropriate term because the President and the National Assembly were both involved in the enactment of legislation.

3.9.2.7 Members who proposed the substitution of the term “Parliament” or the term “National Assembly” with the term “Government” argued that it was the Executive that was responsible for submitting bills to Parliament for enactment. The members further argued that without Government submitting amendments to Parliament for enactment, the Legislature would not be able to do anything.

3.9.2.8 Members who supported the removal of any reference to a time-frame argued that the provision would still oblige Parliament to make amendments to existing laws without tying the exercise to a time-frame.

3.9.2.9 The Conference decided to delete the time-frame stipulated in subsection (2) of Article 6 and to substitute the term “National Assembly” with the term “Parliament”.

#### 3.9.4 Resolutions of the Conference

The Conference adopted section 6 of the Constitution of Zambia Bill with amendments as follows:

**“6. (1) All existing laws shall continue in force and be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the Constitution.**

**(2) Parliament shall, within such period as it shall determine, make amendments to any existing law to bring that law into conformity with, or to give effect to, this Act or the Constitution.”**

### **3.10 Section 7 : Executive**

#### **3.10.1 Provision in the Constitution of Zambia Bill on Executive**

Section 7 provides as follows:

**“7. (1) The President shall continue to serve as President for the unexpired term of that office as specified by the existing Constitution in accordance with the Constitution.**

**(2) A person holding the post of Vice-President, Minister or Deputy Minister shall continue to hold that position under the Constitution until that appointment is terminated by the President in accordance with the Constitution.”**

#### **3.10.2 Deliberations of the Conference on Section 7**

The Conference adopted Section 7 of the Constitution of Zambia Bill without amendments.

#### **3.10.3 Resolutions of the Conference**

The Conference adopted section 7 of the Constitution of Zambia Bill without amendments as follows:

**“7. (1) The President shall continue to serve as President for the unexpired term of that office as specified by the existing Constitution in accordance with the Constitution.**

**(2) A person holding the post of Vice-President, Minister or Deputy Minister shall continue to hold that position under the Constitution until that appointment is terminated by the President in accordance with the Constitution.”**

### **3.11 Section 8 : Prerogative of Mercy**

#### **3.11.1 Provision in the Constitution of Zambia Bill on Prerogative of Mercy**

Section 8 provides as follows:

**“8. The prerogative of mercy bestowed on the President under this Constitution may be exercised in respect of any criminal offence committed before the effective date.”**

#### **3.11.2 Deliberations of the Conference on Section 8**

The Conference adopted Section 8 of the Constitution of Zambia Bill without amendments.

### **3.11.3 Resolutions of the Conference**

The Conference adopted section 8 of the Constitution of Zambia Bill without amendments as follows:

**“8. The prerogative of mercy bestowed on the President under this Constitution may be exercised in respect of any criminal offence committed before the effective date.”**

## **3.12 Section 9 : Rights, Duties and Obligations of Government**

### **3.12.1 Provision in the Constitution of Zambia Bill on Rights, Duties and Obligations of Government**

Section 9 provides as follows:

**“9. Subject to the Constitution, all rights, duties and obligations of the Government subsisting immediately before the effective date shall continue as rights, duties and obligations of the Government under the Constitution.”**

### **3.12.2 Deliberations of the Conference on Section 9**

The Conference adopted Section 9 of the Constitution of Zambia Bill without amendments.

### **3.12.3 Resolutions of the Conference**

The Conference adopted section 9 of the Constitution of Zambia Bill without amendments as follows:

**“9. Subject to the Constitution, all rights, duties and obligations of the Government subsisting immediately before the effective date shall continue as rights, duties and obligations of the Government under the Constitution.”**

**3.13           Section 10 : Succession of Institutions, Offices, Assets and Liabilities**

**3.13.1        Provision in the Constitution of Zambia Bill on Succession of Institutions, Offices, Assets and Liabilities**

Section 10 provides as follows:

**“10. (1) If any provision of the Constitution has altered the name of an office or institution existing immediately before the effective date the office or institution as known by the new name shall be the legal successor of the first named office or institution.**

**(2) All liabilities, property and other assets that were incurred or vested in the President, the State, Government or the Republic immediately before the effective date shall continue to be so incurred or vested after the effective date.**

**(3) Any property that was liable to escheat or to be forfeited to the State, Government or the Republic immediately before the effective date shall be liable to escheat or to be so forfeited after the effective date.”**

**3.13.2.       Deliberations of the Conference on Section 10**

The Conference adopted Section 10 of the Constitution of Zambia Bill without amendments.

**3.13.3        Resolutions of the Conference**

The Conference adopted section 10 of the Constitution of Zambia Bill without amendments as follows:

**“10. (1) If any provision of the Constitution has altered the name of an office or institution existing immediately before the effective date, the office or institution as known by the new name shall be the legal successor of the first named office or institution.**

**(2) All liabilities, property and other assets that were incurred or vested in the President, the State, Government or the Republic immediately before the effective date shall continue to be so incurred or vested after the effective date.**

**(3) Any property that was liable to escheat or to be forfeited to the State, Government or the Republic immediately before the effective date shall be liable to escheat or to be so forfeited after the effective date.”**

### **3.14 Section 11 : Existing Offices**

#### **3.14.1 Provision in the Constitution of Zambia Bill on Existing Offices**

Section 11 provides as follows:

**“11. (1) A person who is holding or acting in an office established by the existing Constitution immediately before the effective date shall continue to hold or act in that office as if appointed to that office under the Constitution and shall be considered as having taken any necessary oath required to be taken under the Constitution, unless the President requires that person to take any oath specified by the Constitution or any other law.**

**(2) A public officer shall continue to hold or act in that office as if appointed to that position under the Constitution and shall be considered as having taken any necessary oath required to be taken under the Constitution, unless the President requires any public officer to take any oath specified by the Constitution or any other law.**

**(3) This section shall not -**

**(a) affect the powers conferred on any person or authority under the Constitution to abolish offices or remove persons from those offices;**

**(b) apply to any person who, under the existing law or existing Constitution would have been required to vacate an office at the expiry of any period or on the attainment of any age.**

**(4) The process of appointing any persons to fill vacancies arising after the effective date shall begin on the effective date and in accordance with the Constitution.”**

#### **3.14.2 Deliberations of the Conference on Section 11**

The Conference adopted Section 11 of the Constitution of Zambia Bill without amendments.

#### **3.14.3 Resolutions of the Conference**

The Conference adopted Section 11 of the Constitution of Zambia Bill without amendments as follows:



**“11. (1) A person who is holding or acting in an office established by the existing Constitution immediately before the effective date shall continue to hold or act in that office as if appointed to that office under the Constitution and shall be considered as having taken any necessary oath required to be taken under the Constitution, unless the President requires that person to take any oath specified by the Constitution or any other law.**

**(2) A public officer shall continue to hold or act in that office as if appointed to that position under the Constitution and shall be considered as having taken any necessary oath required to be taken under the Constitution, unless the President requires any public officer to take any oath specified by the Constitution or any other law.**

**(3) This section shall not –**

**(a) affect the powers conferred on any person or authority under the Constitution to abolish offices or remove persons from those offices; or**

**(b) apply to any person who, under the existing law or existing Constitution would have been required to vacate an office at the expiry of any period or on the attainment of any age.**

**(4) The process of appointing any persons to fill vacancies arising after the effective date shall begin on the effective date and in accordance with the Constitution.”**

### **3.15 Section 12 : Pensions, Gratuities and Other Benefits**

#### **3.15.1 Provision in the Constitution of Zambia Bill on Pensions, Gratuities and Other Benefits**

Section 12 provides as follows:

**“12. The law applicable to pensions, gratuities or emoluments in respect of public officers 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 not less favourable.”**

#### **3.15.2 Deliberations of the Conference on Section 12**

The Conference adopted section 12 of the Constitution of Zambia Bill without amendments.

### 3.15.3 Resolutions of the Conference

The Conference adopted Section 12 of the Constitution of Zambia Bill without amendments as follows:

**“12. The law applicable to pensions, gratuities or emoluments in respect of public officers 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 not less favourable.”**

### 3.16 Section 13 : Legislature

#### 3.16.1 Provision in the Constitution of Zambia Bill on Legislature

Section 13 provides as follows:

**“13. (1) The National Assembly existing immediately before the effective date shall continue as the National Assembly for the purposes of the Constitution and the members of the National Assembly shall continue as members until the expiry of their term of office as specified by the existing Constitution.**

**(2) The persons holding the offices of Speaker and Deputy Speaker of the National Assembly immediately before the effective date shall continue as Speaker and Deputy Speaker until another Speaker and Deputy Speaker are elected under the Constitution and shall be considered as having taken any oath specified by the Constitution.**

**(3) The functions and powers vested in Parliament by the existing Constitution shall be exercised after the effective date by that Parliament for the unexpired term of that Parliament in accordance with the Constitution.**

**(4) The rules and orders of the National Assembly existing on the effective date shall be the rules and orders of the National Assembly after the effective date but shall be construed with such modifications, adaptations, qualifications and exceptions as are necessary to bring them into conformity with the Constitution.**

**(5) The National Assembly shall, within six months of the effective date, revise the Standing Orders of the National Assembly in accordance with the Constitution.**

**(6) All moneys granted, voted or appropriated by the Parliament existing immediately before the effective date, for the current financial year, shall be deemed to have been granted, voted or appropriated in accordance with the Constitution.**

**(7) The boundaries of a constituency existing immediately before the effective date shall be the boundaries of the constituency until the next delimitation is done in accordance with the Constitution."**

**3.16.2 Deliberations of the Conference on Section 13**

3.16.2.1 The Conference approved sub-sections (1), (2), (3), (4), (6) and (7) of section 13 of the Constitution of Zambia Bill without amendments.

3.16.2.2 In discussing sub-section (5) of section 13, some members were of the view that the principle that the National Assembly should revise its Standing Orders in accordance with the Constitution should be maintained but the time-frame stipulated in the provision should be deleted. It was argued that the process of reviewing Standing Orders was tedious and, therefore, the exercise could not be achieved within the stipulated six (6) months.

3.16.2.3 Other members argued that the National Assembly should be given a time-frame within which to amend the Standing Orders.

3.16.2.4 The Conference decided that the time-frame of six (6) months should be deleted.

**3.16.3 Resolutions of the Conference**

The Conference adopted section 13 of the Constitution of Zambia Bill with amendments as follows:

**"13.(1) The National Assembly existing immediately before the effective date shall continue as the National Assembly for the purposes of the Constitution and the members of the National Assembly shall continue as members until the expiry of their term of office as specified by the existing Constitution.**

**(2) The persons holding the offices of Speaker and Deputy Speaker of the National Assembly immediately before the effective date shall continue as Speaker and Deputy Speaker until another Speaker and Deputy Speaker are elected under the Constitution and shall be considered as having taken any oath specified by the Constitution.**

(3) The functions and powers vested in Parliament by the existing Constitution shall be exercised after the effective date by that Parliament for the unexpired term of that Parliament in accordance with the Constitution.

(4) The rules and orders of the National Assembly existing on the effective date shall be the rules and orders of the National Assembly after the effective date but shall be construed with such modifications, adaptations, qualifications and exceptions as are necessary to bring them into conformity with the Constitution.

(5) The National Assembly shall, within such period as it shall determine, revise the Standing Orders of the National Assembly in accordance with the Constitution.

(6) All moneys granted, voted or appropriated by the Parliament existing immediately before the effective date, for the current financial year, shall be deemed to have been granted, voted or appropriated in accordance with the Constitution.

(7) The boundaries of a constituency existing immediately before the effective date shall be the boundaries of the constituency until the next delimitation is done in accordance with the Constitution."

### **3.17 Section 14 : By-Elections**

#### **3.17.1 Provision in the Constitution of Zambia Bill on By-Elections**

Section 14 provides as follows:

**"14. A by-election held after the effective date shall be held in accordance with the Constitution."**

#### **3.17.2 Deliberations of the Conference on Section 14**

The Conference adopted section 14 of the Constitution of Zambia Bill without amendments.

#### **3.17.3 Resolutions of the Conference**

The Conference adopted section 14 of the Constitution of Zambia Bill without amendments as follows:

**"14. A by-election held after the effective date shall be held in accordance with the Constitution."**

### **3.18 Section 15 : Judiciary**

#### **3.18.1 Provision in the Constitution of Zambia Bill on Judiciary**

Section 15 provides as follows:

**“15. (1) Subject to this section, a Judge or judicial officer who held office immediately before the effective date shall continue to hold office as if appointed to that office under the Constitution but may opt to retire in accordance with subsection (2), within twelve months of the effective date.**

**(2) A Judge who has attained the age of sixty-five years immediately before or on the effective date may retire and shall be entitled on retirement to the benefits that person would have been entitled to at the date of retirement as specified in the existing Constitution.**

**(3) The process of appointing the Judges of the Supreme and Constitutional Court and Court of Appeal shall commence and be finalized within twelve months of the effective date.**

**(4) Parliament shall, within twelve months of the effective date, enact legislation to provide for the procedures, rules and administration of the Supreme and Constitutional Court and Court of Appeal.”**

#### **3.18.2 Deliberations of the Conference on Section 15**

3.18.2.1 The Conference approved sub-sections (1) and (2) of section 15 of the Constitution of Zambia Bill without amendments.

3.18.2.2 In debating sub-section (3) of section 15, some members stated that in respect of the appointment of judges of the Supreme and Constitutional Court, the requirement that the process of appointing judges should be commenced and finalised within twelve months would be of no consequence since the Supreme Court was merely being renamed. That was because there were already judges in place.

3.18.2.3 They stated, however, that since the Court of Appeal was being established for the first time, the requirement that the process of appointing judges should be undertaken within twelve months would pose a challenge. It was observed that with the establishment of the new court, the process of identifying candidates with the relevant qualifications, maturity and experience and the establishment of new structures and systems

was a laborious exercise. The Conference noted that the process of appointing judges was continuous.

3.18.2.4 The Conference decided that the time-frame stipulated for the appointment of judges of the Supreme and Constitutional Court and Court of Appeal should be deleted. Having determined that the provision would be of no consequence following the deletion of the time-frame, the Conference decided to delete the whole provision.

3.18.2.5 In the debate of sub-section (4), the Conference noted that the provision was not appropriate because Parliament was not charged with the responsibility of formulating the rules and procedures of courts. It was noted that, that responsibility lay with the Chief Justice. In that regard, the Conference decided to delete the provision.

### 3.18.3 **Resolutions of the Conference**

The Conference adopted section 15 of the Constitution of Zambia Bill with amendments as follows:

**“15. (1) Subject to this section, a Judge or judicial officer who held office immediately before the effective date shall continue to hold office as if appointed to that office under the Constitution but may opt to retire in accordance with subsection (2), within twelve months of the effective date.  
(2) A Judge who has attained the age of sixty-five years immediately before or on the effective date may retire and shall be entitled on retirement to the benefits that person would have been entitled to at the date of retirement as specified in the existing Constitution.”**

### 3.19 **Section 16 :- Judicial and Tribunal Proceedings and Pending Matters**

#### 3.19.1 **Provision in the Constitution of Zambia Bill on Judicial and Tribunal Proceedings and Pending Matters**

Section 16 provides as follows:

**“16. (1) Unless otherwise provided under the Constitution, all proceedings pending before any court or tribunal shall**

continue to be heard and determined by the same court or tribunal or may be transferred to a corresponding court or tribunal established under the Constitution.

(2) Unless otherwise provided under the Constitution, any matter or proceeding that, immediately before the effective date, is pending before an existing commission, office or authority shall continue before the same commission, office or authority or corresponding commission, office or authority established under the Constitution."

### **3.19.2 Deliberations of the Conference on Section 16**

The Conference adopted section 16 of the Constitution of Zambia Bill without amendments.

### **3.19.3 Resolutions of the Conference**

The Conference adopted section 16 of the Constitution of Zambia Bill without amendments as follows:

**"16. (1) Unless otherwise provided under the Constitution, all proceedings pending before any court or tribunal shall continue to be heard and determined by the same court or tribunal or may be transferred to a corresponding court or tribunal established under the Constitution;**

**(2) Unless otherwise provided under the Constitution, any matter or proceeding that, immediately before the effective date, is pending before an existing commission, office or authority shall continue before the same commission, office or authority or corresponding commission, office or authority established under the Constitution."**

## **3.20 Section 17 : Local Government**

### **3.20.1 Provision in the Constitution of Zambia Bill on Local Government**

Section 17 provides as follows:

**"17. (1) All local authorities shall continue to exist after the effective date until the implementation of the new structure under the Constitution and as provided by an Act of Parliament.**

**(2) Parliament shall enact legislation for the local government system as provided by the Constitution within two years of the effective date.**

**(3) All councillors of district councils shall continue as councillors after the effective date until general elections are held in accordance with the Constitution.**

**(4) The boundaries of a province, district or ward existing immediately before the effective date shall be the boundaries of that province, district or ward until the next delimitation is done in accordance with the Constitution."**

**3.20.2 Deliberations of the Conference on Section 17**

3.20.2.1 The Conference approved sub-section (1) of section 17 of the Constitution of Zambia Bill without amendments.

3.20.2.2 In the debate of sub-section (2) of section 17, there were two positions that emerged. Some members supported the retention of the provision as provided while others supported the retention of the provision subject to the deletion of the time-frame stipulated.

3.20.2.3 The members who supported the retention of the provision argued that there was need for a time-frame to be stipulated in the enactment of legislation on the local government system in order to compel Parliament to enact such legislation within a specified period. They further argued that if that was not done, Government could take its time in tabling such legislation before Parliament and could decide not to table such legislation altogether. In addition, it was argued that prescribing a time-frame to the enactment of legislation would reduce the "backlog" of legislation that was required to be enacted from continuing to build.

3.20.2.4 Some members proposed that the enactment of legislation on the local government system should be tied to the life- span of a sitting Parliament. Other members, however, argued that the provision should be amended by providing a possibility of extending the time-frame.

3.20.2.5 The members who supported the retention of sub-section (2) of section 17 subject to the deletion of the prescribed time-frame argued as follows:



- (a) that the time-frame should be deleted as it was not realistic in view of the “backlog” of legislation that was required to be enacted and the new systems that were required to be put in place in order to operationalise the new local government system;
- (b) that even though the current Constitution did not prescribe time-frames within which Parliament should enact legislation on various matters, Government was obliged to enact such legislation; and
- (c) that it was unrealistic to prescribe a time-frame to the enactment of legislation as that was “demand-driven”.

3.20.2.6 The Conference decided to delete the time-frame prescribed in sub-section (2) of section 17.

3.20.2.7 The Conference approved sub-sections (3) and (4) without amendments.

### **3.20.3 Resolutions of the Conference**

The Conference adopted section 17 of the Constitution of Zambia Bill with amendments as follows:

**“17. (1) All local authorities shall continue to exist after the effective date until the implementation of the new structure under the Constitution and as provided by an Act of Parliament.**

**(2) Parliament shall enact legislation for the local government system as provided by the Constitution.**

**(3) All councillors of district councils shall continue as councillors after the effective date until general elections are held in accordance with the Constitution.**

**(4) The boundaries of a province, district or ward existing immediately before the effective date shall be the boundaries of that province, district or ward until the next delimitation is done in accordance with the Constitution.”**

## **3.21 Section 18 : Political Parties**

### **3.21.1 Provision in the Constitution of Zambia Bill on Political Parties**

Section 18 provides as follows:

**"18. (1) A political party in existence immediately before the effective date shall, within twelve months of the effective date, comply with the Constitution and any legislation enacted by Parliament in accordance with Part VIII of the Constitution.**

**(2) If on the expiry of the period of twelve months, a political party has not complied with the Constitution and any legislation enacted under subsection (1), the political party shall forthwith cease to exist as a political party; and**

**(3) Parliament shall within six months of the effective date enact legislation for the regulation and supervision of political parties."**

### **3.21.2 Deliberations of the Conference on Section 18**

3.21.2.1 The Conference approved sub-sections (1) and (2) of section 18 of the Constitution of Zambia Bill without amendments.

3.21.2.2 In debating sub-section (3) of section 18 of the Constitution of Zambia Bill, the Conference reiterated its earlier decision not to prescribe time-frames to provisions of the Constitution and accordingly decided to delete the provision.

### **3.21.3 Resolutions of the Conference**

The Conference adopted section 18 of the Constitution of Zambia Bill with amendments as follows:

**"18. (1) A political party in existence immediately before the effective date shall, within twelve months of the effective date, comply with the Constitution and any legislation enacted by Parliament in accordance with Part VIII of the Constitution.**

**(2) If on the expiry of the period of twelve months, a political party has not complied with the Constitution and any legislation enacted under subsection (1), the political party shall forthwith cease to exist as a political party."**

## **3.22 Section 19 : Commissions**

### **3.22.1 Provision in the Constitution of Zambia Bill on Commissions**

Section 19 provides as follows:

**“19. (1) Within twelve months of the effective date the following commissions and committees shall be established or re-established-**

- (a) the Civil Service Commission;**
- (b) the Teaching Service Commission;**
- (c) the Judicial Service Commission;**
- (d) the Police and Prisons Service Commission;**
- (e) the Anti-Corruption Commission;**
- (f) the Anti-Drug Abuse Commission;**
- (g) the Parliamentary Service Commission;**
- (h) the Human Rights Commission;**
- (i) the Gender Equality Commission;**
- (j) the Electoral Commission of Zambia;**
- (k) the National Fiscal and Emoluments Commission;**
- (l) the State Audit Commission;**
- (m) the Lands Commission;**
- (n) the Police and Public Complaints Commission; and**
- (o) the Judicial Complaints Commission.”**

### **3.22.2 Deliberations of the Conference on Section 19**

In discussing section 19, the Conference noted that the Constitution of Zambia Bill provided for transitional provisions, and therefore it should be amended to enable commissions that were already in existence to continue to exist. It was agreed that the provision should not include commissions that were yet to be established.

### **3.22.3 Resolutions of the Conference**

The Conference, accordingly, adopted section 19 of the Constitution of Zambia Bill with amendments as follows:

**“19. The Commissions existing immediately before the effective date shall continue to exist as if established under the Constitution.”**

## **3.23 Section 20 : Currency**

### **3.23.1 Provision in the Constitution of Zambia Bill on Currency**

Section 20 provides as follows:

**“20. Nothing in the Constitution affects the validity of notes and coins issued immediately before the effective date.”**

**3.23.2 Deliberations of the Conference on Section 20**

The Conference adopted section 20 of the Constitution of Zambia Bill without amendments.

**3.23.3 Resolutions of the Conference**

The Conference adopted section 20 of the Constitution of Zambia Bill without amendments as follows:

**“20. Nothing in the Constitution affects the validity of notes and coins issued immediately before the effective date.”**

**3.24 Section 21 : Budget**

**3.24.1 Provision in the Constitution of Zambia Bill on Budget**

Section 21 provides as follows:

**“21. Parliament shall within twelve months of the effective date enact a Budget Act.”**

**3.24.2 Deliberations of the Conference on Section 21**

3.24.2.1 The Conference observed that following its adoption of clause (1) of Article 309 of the Draft Constitution which obliged the Minister of Finance and National Planning to prepare and present the estimates of revenue and expenditure of the Government to the National Assembly, ninety days before the commencement of the next financial year; and the subsequent amendment of Article 118 (1) of the current Constitution in 2009 to that effect, section 21 had become redundant.

3.24.2.2 The Conference, therefore, deleted section 21 of the Constitution of Zambia Bill.

### 3.24.3 **Resolutions of the Conference**

The Conference resolved to delete section 21 of the Constitution of Zambia Bill.

# THE CONSTITUTION OF THE REPUBLIC OF ZAMBIA

## PREAMBLE

### 4.1 Introduction

- 4.1.1 The Commission in considering the subject of the preamble to the Constitution, first and foremost examined the purpose of a preamble in a constitution. The Commission observed that in a preamble, the people as the makers of a constitution introduced it, setting out its objectives in broad terms and outlined the principles and values which the nation espoused. The Commission further, observed that a preamble was not part of the operative part of a Constitution, but its content helped to give context to the Constitution as some constitutions do not have a preamble, while others had a very brief preamble. The Commission noted that from 1973, the Constitution of Zambia, like many other constitutions, had a preamble.

### 4.2 Recommendation of the Commission

The Commission recommended that the Preamble to the Constitution should:

- (a) reflect the multi-ethnic and multi-cultural character of Zambia;
- (b) reflect the equal worth of different communities and different faiths;
- (c) reflect that Zambia shall remain a unitary and indivisible multi-party, multi-ethnic, multi-cultural, multi-racial, multi-religious and democratic sovereign State;
- (d) reflect that the people should adopt and give to themselves the Constitution; and
- (d) retain the declaration of Zambia as a Christian nation as contained in the current Constitution of Zambia

through the Constituent Assembly and national referendum.

#### 4.3 Provisions in the Draft Constitution on Preamble

The Preamble provides as follows:

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

**ACKNOWLEDGE** the supremacy of God Almighty;

**DECLARE** the Republic a Christian nation while upholding 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 and faiths in our Nation;

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

**DETERMINED** to ensure that all powers of the State are exercised for the sustainable development and in our common interest as the people of Zambia;

**RECOGNISE** the multi-ethnic and multi-cultural character of our Nation;

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

**RESOLVE** that Zambia shall remain a free, unitary, indivisible, multi-ethnic, multi-cultural, multi-racial, multi-religious and multi-party and 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”**

**4.4 Deliberations of the Conference on Preamble**

4.4.1 The Conference debated the first paragraph of the Preamble of the Draft Constitution which states as follows:

**“WE, THE PEOPLE OF ZAMBIA IN EXERCISE OF OUR  
CONSTITUENT POWER;”**

4.4.1.1 In discussing the first paragraph, some members proposed that it be amended to acknowledge the role that Parliament would play in enacting the Draft Constitution by adding the words **“by our representatives assembled in our Parliament.”**

4.4.1.2 During the debate, two positions emerged. Some members supported the proposal while others supported the recommendation in the Draft Constitution.

4.4.1.3 The members who supported the amended provision argued as follows:

- (a) that Parliament was the representative body of all the people of Zambia, hence, its explicit inclusion in the provision was very important;
- (b) that the declaration was similar to what was provided for in the current Constitution which had worked well and, therefore, there was no need to change;
- (c) that the declaration was in line with the National Constitutional Conference Act No. 19 of 2007 which provided that:

**“The Conference shall acknowledge the legislative powers vested in Parliament as provided for in Article 62 of the current Constitution”**

- (d) that the declaration was well thought out as it affirmed the role of the people in enacting the draft Constitution by stating that: **“We the people of Zambia”**; and



- (e) that the recommendation in the Mung'omba Draft Constitution was limiting as it focused on the process of constitution-making which ended with a Constituent Assembly.

4.4.1.4 The members who supported the recommendation of the Draft Constitution argued as follows:

- (a) that the recommendation was all encompassing as it acknowledged that there were several stakeholders involved in the constitution-making process other than Parliament only;
- (b) that the proposal was dangerous as it gave Parliament excessive power; and
- (c) that the role of the people in enacting a constitution was paramount, as they decided when to change the Constitution and instruct their members of Parliament, accordingly.

4.4.1.5 The Conference approved the first paragraph of the Preamble with an amendment by introducing the words **"by our representatives, assembled in our Parliament."**

4.4.2 The Conference debated and approved the second paragraph of the Preamble of the Draft Constitution without amendments as follows:

**"ACKNOWLEDGE** the supremacy of God Almighty;"

4.4.3 The Conference debated the third paragraph of the Preamble of the Draft Constitution which states as follows:

**"DECLARE** the Republic a Christian nation while upholding the right of every person to enjoy that person's freedom of conscience or religion;"

4.4.3.1 Two positions emerged from the discussion on the declaration. Firstly, some members argued that the declaration should be retained in the Draft Constitution for the following reasons:

- (a) that the majority of the petitioners that submitted before the Mung'omba Constitution Review Commission proposed that it be retained in the Draft Constitution and that democratic principles dictated that the majority view should prevail;
- (b) that the declaration reflected the will and aspirations of the people of Zambia;
- (c) that the Christian values were inherent in Zambia's current Constitution and its subsidiary laws; and
- (d) that the said declaration was already in the current Constitution and it had worked well for Zambia.

4.4.3.2 Secondly, some members were of the view that the declaration of Zambia as a Christian nation should be deleted from the Draft Constitution for the following reasons:

- (a) that a constitution should not be made with a view to who the people were in society;
- (b) that the majority of Zambians might be Christians at the moment but that may not be the case in the future and if the nation wanted a Constitution which would stand the test of time the provision should not be retained;
- (c) that a Constitution must be blind to faith, gender and status;
- (d) that the said declaration was discriminatory against persons who were not Christians;
- (e) that the declaration of Zambia as a Christian Nation in 1991 did not improve people's moral values, for example, more bars in our communities had been built as opposed to churches; and
- (f) that matters relating to religion must be approached with caution because history had shown that many wars had been fought for religious reasons.

- 4.4.3.3 In response to the above, members argued that it was important that the Constitution should reflect the values and aspirations of the people of Zambia otherwise it (the Constitution) would lack character. The members further argued that whether Zambia had become a better Nation or not, in terms of moral values, was immaterial. They also stated that what was of importance was that Zambians should strive to achieve the standards they had set for themselves.
- 4.4.3.4 The Conference resolved to retain the declaration in its current form.
- 4.4.4 The Conference acknowledged the role played by freedom fighters in founding the nation and resolved to include that in the preamble. Therefore a new paragraph was adopted to recognise and acknowledge the role the freedom fighters played in the liberation struggle as follows:
- “HONOUR and respect freedom fighters who fought for our independence and emancipation from colonialism, thereby enabling us to exercise our rights to self determination.”**
- 4.4.5 The Conference debated the fourth paragraph of the Preamble of the Draft Constitution which provides as follows:
- “UPHOLD the human rights and fundamental freedoms of every person and recognise the equal worth of different communities and faiths in our Nation;”**
- 4.4.5.1 Some members proposed that the words **“and recognise the equal worth of the different communities”** should be deleted because the matter was adequately addressed by the paragraph stating **“DECLARE the Republic of Zambia as a Christian Nation while upholding the right of every person to enjoy that persons’ freedom of conscience or religion.”**
- 4.4.5.2 Other members suggested that the reference to the communities was important but only the words **“and faiths”** should be deleted.
- 4.4.5.3 The Conference adopted the fourth paragraph of the preamble with an amendment by deleting the words **“and faiths”** to read:

**“UPHOLD the human rights and fundamental freedoms of every person and recognise the equal worth of different communities in our Nation.”**

- 4.4.6 The Conference debated and approved the fifth paragraph of the preamble of the Draft Constitution, without amendments which provides as follows:

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

- 4.4.7 The Conference considered a proposal to include the following in the Preamble:

**“FURTHER COMMITTED to promoting African unity and solidarity, world peace and international co-operation and understanding and the strengthening of mutual respect and friendship among peoples and other States.”**

- 4.4.7.1 Some members observed that the Preamble should reaffirm Zambia’s stance on its relations with the international community.

- 4.4.7.2 The Conference adopted the provision subject to the deletion of the word “other” in the last line.

- 4.4.8 The Conference debated and approved the sixth paragraph of the Preamble of the Draft Constitution which provides as follows:

**“DETERMINED to ensure that all powers of the State are exercised for the sustainable development and in our common interest as the people of Zambia.”**

- 4.4.9 The Conference debated and approved the seventh paragraph of the Preamble of the Draft Constitution which provides as follows:

**“RECOGNISE the multi-ethnic and multi-cultural character of our Nation.”**

- 4.4.10 The Conference debated and approved the eighth paragraph of the Preamble of the Draft Constitution which provides as follows:

**“CONFIRM the equal worth of women and men and their right to freely participate, determine and build a sustainable political, economic and social order.”**

- 4.4.11 The Conference debated the ninth paragraph of the Preamble of the Draft Constitution which provides as follows:

**“RESOLVE that Zambia shall remain a free, unitary, indivisible, multi-ethnic, multi-cultural, multi-racial, multi-religious and multi-party democratic sovereign State.”**

- 4.4.11.1 In debating the paragraph, the Conference deleted the terms *multi-ethnic, multi-cultural, multi-racial, and multi-religious* because they had been provided for by other provisions.

- 4.4.11.2 The ninth paragraph approved by the Conference and repositioned as the eleventh paragraph of the preamble of the Draft Constitution provides as follows:

**“RESOLVE that Zambia shall remain a free, unitary, indivisible, and multi-party democratic sovereign State.”**

- 4.4.12 The Conference debated and approved the tenth paragraph of the Preamble of the Draft Constitution which provides as follows:

**“AND DIRECT that all organs and institutions of the State abide by and respect our sovereign will.”**

- 4.4.13 The Conference debated the eleventh paragraph of the Preamble of the Draft Constitution which provides as follows:

**“DO HEREBY SOLEMNLY ADOPT AND GIVE TO OURSELVES THIS CONSTITUTION.”**

- 4.4.13.1 It was proposed that the provision be amended in order to acknowledge the enactment of the Constitution by Parliament. The Conference approved the proposal and amended the provision to read as follows:

**“DO HEREBY ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.”**

#### 4.5 Resolutions of the Conference

The Conference adopted the Preamble of the Draft Constitution with amendments as follows:

**“WE, THE PEOPLE OF ZAMBIA BY OUR REPRESENTATIVES ASSEMBLED IN OUR PARLIAMENT;**

**ACKNOWLEDGE** the supremacy of God Almighty;

**DECLARE** the Republic a Christian nation while upholding the right of every person to enjoy that person’s freedom of conscience or religion;

**HONOUR** and respect freedom fighters who fought for our independence and emancipation from colonialism, thereby enabling us to exercise our right to self-determination;

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

**COMMITTED** to upholding the values of democracy, transparency, accountability and good governance and resolved to exercise our inherent and inviolable right as a people to decide, appoint and proclaim the means and methods to govern ourselves;

**FURTHER COMMITTED** to promoting African unity and solidarity, world peace and international co-operation and understanding and the strengthening of mutual respect and friendship among peoples and States;

**DETERMINED** to ensure that all powers of the State are exercised for the sustainable development and in our common interest as the people of Zambia;

**RECOGNISE** the multi-ethnic and multi-cultural character of our Nation;

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

**RESOLVE** that Zambia shall remain a free, unitary, indivisible and multiparty democratic sovereign State;

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

**DO HEREBY ENACT AND GIVE TO OURSELVES THIS CONSTITUTION."**

**PART I**  
**SUPREMACY AND DEFENCE OF**  
**CONSTITUTION**

**5.1 Introduction**

- 5.1.1 The Commission noted that the Constitution was the supreme law of the land to which all the other sources of the law were subordinate. The Commission further noted that the Constitution vested legislative power in Parliament and that Zambian Statutes were passed by Parliament and were known as Acts of Parliament. The Commission also noted that delegated legislation was made by the Executive or Local Authorities by virtue of powers conferred upon them by the Constitution or an enabling statute.
- 5.1.2 Further, the Commission stated that all organs of the State should derive their powers from the Constitution and that any action by any organ of the State that was not in conformity with the Constitution was void.
- 5.1.3 With regard to the defence of the Constitution, the Commission stated that constitutionalism entailed that the Constitution was not forcefully or unlawfully overthrown. The Commission observed that such an act would constitute an attack on the sovereign will of the people from whom the Constitution derived its authority. The Commission proposed that the Constitution should, therefore, prohibit the overthrow or abrogation of the Constitution by unlawful means. The Commission, further, observed that none of Zambia's Constitutions had made provision for the defence of the Constitution, just like the previous Constitution Review Commissions had not addressed the issue.
- 5.1.4 The Commission noted that the desire of the people was for the Constitution to protect the people's sovereign authority from the undue foreign influence and thus it should be treated as a matter of vital national interest. While the concern of the petitioners was addressed by Article 1(2) of the Constitution, the Commission added that the sovereign will of the people in relation to State power or authority was fundamental and that the Constitution ought to reflect it in more profound terms than was currently the case.



- 5.1.5 The Commission further noted the importance of defining the boundary and surface area of Zambia in the Constitution and that was essential for ascertaining the extent of the country's territory and resolution of any territorial dispute that might arise with the neighbouring countries.

## **5.2 Article 1 : Supremacy of Constitution**

### **5.2.1 Provisions in the Draft Constitution on Supremacy of Constitution**

Article 1 provides as follows:

**"1. (1) This Constitution is the supreme law of Zambia and any other law 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) A person or a group of persons may bring an action in the Constitutional Court for a declaration that a law is inconsistent with or is in contravention of a provision of this Constitution.  
(4) The Constitutional Court may, for the purposes of clause (1), make any declaration that it considers appropriate and issue any order for the implementation of the declaration.  
(5) Any person who fails to obey or carry out an order issued under clause (4) commits an offence against this Constitution.  
(6) Any person convicted by a court of an offence under clause (5) shall, in addition to any penalty imposed under an Act of Parliament, not be eligible for election or appointment to a public office for ten years beginning with the date that person was convicted."**

### **5.2.2 Deliberations of the Conference on Article 1**

- 5.2.2.1 The Conference approved clauses (1) and (2) as recommended in the Draft Constitution without amendments.
- 5.2.2.2 With regard to clause (3), the Conference observed that it had adopted clause (3) of Article 209 which entitled a person or group of persons who alleged that a law was inconsistent with a provision

of the Constitution to petition the High Court as opposed to the Constitutional Court for a declaration to that effect for redress.

- 5.2.2.3 The Conference, therefore, approved clause (3) subject to the substitution of the term “Constitutional Court” with “High Court”.
- 5.2.2.4 The Conference deleted clause (5) because it made reference to offences and penalties, which matters were the preserve of the Penal Code and other subsidiary legislation.
- 5.2.2.5 Clause (6) was deleted as a consequence of its reference to clause (5).

### **5.2.3 Resolutions of the Conference**

The Conference adopted Article 1 of the Draft Constitution with amendments as follows:

- “1. (1) This Constitution is the supreme law of Zambia and any other law 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) A person or a group of persons may bring an action in the High Court for a declaration that a law is inconsistent with or is in contravention of a provision of this Constitution.**
- (4) The High Court may, for the purposes of clause (1), make any declaration that it considers appropriate and issue any order for the implementation of the declaration.”**

## **5.3 Article 2 : Defence of the Constitution**

### **5.3.1 Recommendation of the Commission**

The Commission recommended that the Constitution should have the following provisions:

- (a) that the Constitution should not be suspended or overthrown or amended by force or other unlawful means and that any attempts or acts to unlawfully

suspend, overthrow or amend the Constitution should be a treasonable offence;

- (b) that the Constitution should not lose its force and effect even where its observance is interrupted by force or other unlawful means;
- (c) that all citizens should have the right and duty, at all times, to defend the Constitution and, in particular, to resist any attempts or acts to unlawfully suspend or overthrow or amend the Constitution.
- (d) that any punishment imposed on a citizen for any act in defence of the Constitution should be void from the time of its imposition; and
- (e) that any person who suffers punishment or loss arising from defence of the Constitution should be entitled to compensation from the State.

### 5.3.2 Provisions in the Draft Constitution on Defence of the Constitution

Article 2 provides as follows:

**"2. (1) Every person has the right and duty to -**

- (a) defend this Constitution;**
- (b) resist or prevent any person or group of persons from overthrowing, suspending, abrogating or unlawfully amending or reviewing this Constitution; and**
- (c) to do all in that person's power to secure the continuous operation of this Constitution.**

**(2) A punishment imposed on a citizen for any action in defence of this Constitution is void from the date of its imposition.**

**(3) A person who suffers a punishment or loss arising from the defence of this Constitution is entitled to compensation, from the Government, which shall be determined by the Constitutional Court.**

**(4) An act of any person to establish any form of government, otherwise than as provided in this Constitution, is treason."**

**5.3.3 Deliberations of the Conference on Article 2**

5.3.3.1 In debating clause (1) of Article 2, three positions emerged. Those who supported the recommendation, those who proposed an amendment to the provision to read: "Every person has the right and duty to defend this Constitution" and those who were against the recommendation and proposed that the provision be deleted.

5.3.3.2 Members who supported the recommendation argued as follows:

- (a) that the clause was important, as it aimed at protecting the Constitution which was the supreme law of the land;
- (b) that the clause prevented any form of illegality such as that of overthrowing a legitimate government of the country;
- (c) that it was the obligation of every citizen to defend the Constitution;
- (d) that the clause was necessary, and Zambians had been defending the Constitution by giving information to the authorities of attempted coups d'état.
- (e) that the clause was necessary because the provisions protected those in Government from victimisation as well as individuals from leaders who chose not to uphold the provision of the Constitution.

5.3.3.3 Members who did not support the recommendation and proposed that it be deleted argued as follows:

- (a) that the clause lacked information on how it would be interpreted and implemented;
- (b) that the clause was a "double-edged sword" which on the one hand sought to protect those in Government from military take-over while, on the other hand, it sought to empower individuals or

groups of people to rise against the Government. Therefore, the clause was a recipe for anarchy;

- (c) that the clause was not necessary because what it intended to cure was already adequately provided for by other provisions;
- (d) that the clause was appropriate for countries with a record of coups d'état which was not the case in Zambia; and
- (e) that although it was undoubtedly and undeniably known that it was the duty of every citizen to defend the Constitution, enshrining the clause in the Constitution was dangerous as the extent to which individuals should defend the Constitution had not been defined.

5.3.3.4 Some members argued that although the clause was important, it was longwinded, and therefore, allowed misinterpretation which could be used by certain forces to destabilise the nation. They proposed that the clause be recast to read:

“Every person has the right and duty to defend and protect this Constitution.”

5.3.3.5 The Conference accepted the proposal.

5.3.3.6 In the discussion of clause (2) of Article 2, some members supported the retention of the provision while others wanted to have it to be deleted.

5.3.3.7 The members who wanted it to be retained argued that it would guarantee the protection of persons who would defend the Constitution.

5.3.3.8 The members who proposed the deletion of clause (2) argued that it was the mandate of the courts to pass judgment to punish an individual who committed an offence. They argued that the clause on the other hand sought to question legality of the courts to make such determination.

5.3.3.9 The Conference decided to delete clause (2) of Article 2.

5.3.3.10 In the debate of clause (3) of Article 2, it was proposed that the provision should be revised to limit the award of compensation

for the defence of the Constitution in a case, for instance, where there was an attempted coup d'état.

5.3.3.11 Some members argued that the provision should be deleted since clause (1) had been amended. Other members supported the retention of the provision because it addressed the specific question of those entitled to compensation.

5.3.3.12 The Conference approved clause (3) of Article 2 because it supported clause (1) by entitling a person who suffered a punishment or loss arising from the defence of the Constitution to compensation if the Constitutional Court so decided.

5.3.3.13 The Conference decided that clause (4) of Article 2 be deleted because it provided for an offence, which was the preserve of subsidiary legislation.

#### 5.3.4 **Resolutions of the Conference**

The Conference adopted Article 2 of the Mung'omba Draft Constitution with amendments as follows:

**"2. (1) Every person has the right and duty to defend and protect this Constitution.**

**(2) A person who suffers a punishment or loss arising from the defence of this Constitution as provided for under clause (1) is entitled to compensation, from the Government, which shall be determined by the Constitutional Court."**

#### 5.4 **Article 3 : Continuous Force and Effect of Constitution**

##### 5.4.1 **Recommendation of the Commission**

The Commission recommended that the Constitution should not lose its force and effect even where its observance was interrupted by force or other unlawful means.

##### 5.4.2 **Provisions in the Draft Constitution on Continuous Force and Effect of Constitution**

Article 3 provides as follows:

**"3. Where the operation of this Constitution is at any time interrupted by force or other unlawful act its provisions shall, despite the interruption, continue to have force and effect."**

**5.4.3 Deliberations of the Conference on Article 3**

The Conference adopted Article 3 as recommended in the Draft Constitution without amendments.

**5.4.4 Resolutions of the Conference**

The Conference adopted Article 3 of the Mung'omba Draft Constitution as follows:

**"(3). Where the operation of this Constitution is at any time interrupted by force or other unlawful act its provisions shall, despite the interruption, continue to have force and effect."**

**PART II**  
**THE REPUBLIC OF ZAMBIA AND**  
**ITS SOVEREIGNTY**

**6.1 Article 4 : Republican Status of Zambia**

**6.1.1 Recommendation of the Commission**

The Commission recommended the following:

- (a) Zambia's international boundary should be defined and described in the Constitution;
- (b) an official map should be provided in the Constitution clearly outlining and showing the territorial surface area and parts of the country upon which the State was sovereign; and
- (c) the Constitution should provide that no part of Zambia should be ceded to another country.

**6.1.2 Provisions in the Draft Constitution on Republican Status of Zambia**

Article 4 provides as follows:

- "4. (1) Zambia is a sovereign Republic the territorial boundaries of which are described and delineated in the map set out in the First Schedule.**  
**(2) The Republic of Zambia is a unitary, multi-party, multi-ethnic and multi-cultural democratic State.**  
**(3) The Republic of Zambia shall not be ceded, in whole or in part, to another country."**

**6.1.3 Deliberations of the Conference on Article 4**

6.1.3.1 The Conference adopted clauses (1), (2) and (3) of the Draft Constitution without amendments.

6.1.3.2 For the avoidance of doubt, the Conference introduced a new provision stating that the act of joining regional unions such as the African Union would not amount to Zambia ceding its sovereignty.



- 6.1.3.3 In addition, another provision was introduced to prohibit the establishment of a new State within the territory of Zambia.

#### 6.1.4 Resolutions of the Conference

The Conference adopted Article 4 of the Draft Constitution as follows:

- "4. (1) Zambia is a sovereign Republic, the territorial boundaries of which are described and delineated in the map set out in the Schedule.**  
**(2) The Republic of Zambia is a unitary, multi-party, multi-ethnic and multi-cultural democratic State.**  
**(3) The Republic of Zambia shall not be ceded, in whole or in part, to another country.**  
**(4) For purposes of clause (3), the joining of a union or other form of inter-State organisation by the Republic of Zambia shall not be treated as ceding of the Republic.**  
**(5) The establishment of a new State within the territory of the Republic of Zambia is prohibited."**

#### 6.2 Article 5 : Sovereignty of Zambia

##### 6.2.1 Recommendations of the Commission

- 6.2.1.1 The Commission observed that the sovereignty of the people in relation to State power or authority was so fundamental that the Constitution ought to reflect it in more profound terms than was currently the case.

- 6.2.1.2 The Commission, therefore, recommended that the Constitution should:

- (a) have enhanced provisions relating to the sovereign will of the people and state that the people should be governed through their will and consent which should be expressed in regular free and fair elections or through national referenda;
- (b) provide that all power and authority of the State and its organs resides and derives from the people who consent to be governed in accordance with the Constitution;

- (c) state that provisions on the sovereignty of the people and statehood should not be amended without the consent of the people through a national referendum; and
- (d) provide that the people should have the right to reserve to themselves all the power and authority that they do not expressly delegate to the State, its organs and institutions.

## 6.2.2 Provisions in the Draft Constitution on Sovereignty of Zambia

Article 5 provides as follows:

**"5. (1) The sovereign authority of Zambia belongs to the people of Zambia which shall be exercised in accordance with this Constitution and the Laws.**

**(2) The people of Zambia reserve to themselves any power or authority that is not conferred on any State organ or State institution by this Constitution.**

**(3) The people of Zambia shall be governed through their will and consent which shall be expressed or exercised through regular, free and fair public elections or referenda.**

**(4) The Government shall pursue and ensure the participation of the people in the governance of the State in accordance with this Constitution."**

## 6.2.3 Deliberations of the Conference on Article 5

6.2.3.1 The Conference approved clause (1) of Article 5 without amendments.

6.2.3.2 In debating clause (2) of Article 5, the Conference observed that the provision implied that the people of Zambia could exercise power that was not conferred on any State organ or State Institution. The Conference also observed that the provision, if retained, could promote anarchy as power could be exercised indiscriminately by some people. It was, therefore, proposed that the provision be replaced by clause (2) of Article 1 of the current Constitution which stated that **"All power resides in the people who shall exercise their sovereignty through the democratic institutions of the State in accordance with this Constitution."** It was argued that the latter formulation was more appropriate because it provided for the orderly exercise of power.

6.2.3.3 The Conference approved clause (3) with an amendment with the deletion of the word “public” and approved clause (4) of the Draft Constitution without amendments.

#### 6.2.4 **Resolutions of the Conference**

The Conference adopted Article 5 of the Draft Constitution as follows:

**“5. (1) The sovereign authority of Zambia belongs to the people of Zambia which shall be exercised in accordance with this Constitution and the laws.**

**(2) All power resides in the people who shall exercise it through the democratic institutions of the State in accordance with this Constitution.**

**(3) The people of Zambia shall be governed through their will and consent which shall be expressed or exercised through regular, free and fair elections or referenda.**

**(4) The Government shall pursue and ensure the participation of the people in the governance of the State in accordance with this Constitution.”**

### 6.3 **Article 6 : National Symbols**

#### 6.3.1 **Recommendations of the Commission**

The Commission recommended that:

- (a) there should be no changes to the text and content of the National Anthem;
- (b) the image of an eagle on the National Flag and the National Emblem should be maintained;
- (c) the motto “One Zambia, One Nation” should be enshrined in the Constitution as the National Motto; and
- (d) Zambia should not have a National Prayer provided for in the Constitution.

## 6.3.2 Provisions in the Draft Constitution on National Symbols

Article 6 provides as follows:

**“6. The National symbols of the Republic set out in the Second Schedule are -**

- (a) the National Flag;**
- (b) the National Anthem;**
- (c) the Coat of Arms;**
- (d) the Public Seal; and**
- (e) the National Motto.”**

## 6.3.3 Deliberations of the Conference on Article 6

6.3.3.1 In debating paragraph (b) of Article 6, the Conference observed that at some functions, only the shortened version of the National Anthem was sung. This had resulted in many young people not being familiar with all the stanzas of the National Anthem. The Conference also observed that some people displayed party symbols when singing the National Anthem when it was a requirement that they should stand at attention with hands straight down.

6.3.3.2 Some members were of the view that the National Anthem needed to be changed to make it gender neutral. It was suggested that words such as “Free men we stand” could be amended to make them more gender neutral. In response to the latter suggestion, some members felt that there was no need for such an amendment because the word “men” covered both men and women.

6.3.3.3 Other members proposed that the National Anthem should not be revised because history could not be changed. Revising the National Anthem was likened to changing the Bible. Members were challenged to state whether modernity necessitated the revision of history.

6.3.3.4 It was revealed that the Commission, as stated at pages 85 and 86 of its Report, was against any changes to the National Anthem because it was argued that the National Anthem contained historical lyrics that reflected the country’s heritage.

6.3.3.5 In debating paragraph (c) of Article 6, the Conference noted that there were some aspects missing from the Coat of Arms such as

symbols representing Zambia's commerce and industry. The Conference, further, noted that the dressing of the man in the Coat of Arms was a colonial depiction of an African male.

6.3.3.6 The Conference also observed that the national motto "One Zambia One Nation," needed to be instilled into the Zambian people.

6.3.3.7 Some members stated that Article 2 and 3 of the current Constitution were more preferable to the recommendation of the Draft Constitution as they provided for the prescription of the National Symbols by or under an Act of Parliament. They stated that if the National symbols were provided for in an Act of Parliament, it would be easier to change them if need arose. The Conference accepted the proposal.

#### 6.3.4 **Resolutions of the Conference**

The Conference adopted Article 6 of the Draft Constitution with amendments as follows:

**"6. The National Flag, the National Anthem, the Coat of Arms, the Public Seal and the National Motto shall be such as may be prescribed by or under an Act of Parliament."**

### 6.4 **Article 7 : Languages**

#### 6.4.1 **Recommendations of Commission**

The Commission recommended the following:

- (a) that English should remain the official language;
- (b) that the continued use of French, particularly its inclusion in school curricula, should be encouraged;
- (c) that the use of sign language and Braille should be enhanced;
- (d) that the Constitution should re-affirm the equality of all local languages; and

- (e) that the Constitution should provide that any language other than the official language may be used as a medium of instruction in schools or other educational institutions or for legislative, administrative or judicial purposes as may be prescribed by law.

#### 6.4.2 Provisions in the Draft Constitution on Languages

Article 7 provides as follows:

**"7. (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."**

#### 6.4.3 Deliberations of the Conference on Article 7

6.4.3.1 In debating Article 7, the Conference was of the view that because of the diverse languages spoken in Zambia, it was important that English be maintained as the official language. The Conference observed that English was widely used around the world.

6.4.3.2 In debating clauses (2) and (3) of Article 7, the Conference included sign language as one of the languages to be used, given that it was now a widely accepted medium of communication.

#### 6.4.4 Resolutions of the Conference

The Conference adopted Article 7 of the Draft Constitution with amendments as follows:

**"7. (1) The official language of Zambia is the English language.  
(2) Any language, including sign 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, including sign language."

## **PART III**

### **NATIONAL VALUES, PRINCIPLES, OBJECTIVES AND DIRECTIVE PRINCIPLES OF STATE POLICY**

#### **7.1 Introduction**

7.1.1 The Commission observed that the current Constitution included a chapter on Directive Principles of State Policy relating to economic, social and cultural rights. Those principles were not justiciable but were supposed to guide the Executive in the development and implementation of national policies, the Legislature in the enactment of laws and the Judiciary in the application of the Constitution and other laws.

7.1.2 Article 111 of the current Constitution provides that these principles are not justiciable and therefore are not, by themselves, legally enforceable in courts of law and administrative tribunals. The Directive Principles of State Policy are provided for in Article 112 and include a number of principles on which many petitioners made submissions. Under this provision, the State undertakes, amongst other things, to provide clean water, adequate medical and health facilities, decent shelter, equal and adequate educational opportunities and social benefits to persons with disabilities, the aged and other disadvantaged persons.

#### **7.2 Article 8 : Application of National Values, Principles, Objectives and Directive Principles of State Policy**

##### **7.2.1 Recommendations of the Commission**

The Commission recommended the following:

- (a) that the Chapter on Directive Principles of State Policy should include non-justiciable policy objectives that promote political, economic, social and cultural development for the benefit of all citizens, equitable distribution of national wealth to all parts of the country, eradication of corruption and similar vices, sustainable environment, foreign relations in the national interest and observance of gender equality; and



- (b) that the Executive should be obligated to report to Parliament periodically on steps that it had taken to ensure the realisation of the policy objectives.

## 7.2.2 **Provisions in the Draft Constitution on Application of National Values, Principles, Objectives and Directive Principles of State Policy**

Article 8 provides as follows:

**“(8). (1) The national values, principles, objectives and directive principles of State policy contained in this Part apply to all State organs, State institutions, public officers, citizens, political parties and private bodies whenever any of them –**

- (a) applies or interprets this Constitution or any other law; or**
- (b) applies, makes or implements policy decisions.**

**(2) The President shall, once in every year, report to the National Assembly on the progress made in the realisation of the objectives and principles under this Part.”**

## 7.2.3 **Deliberations of the Conference on Article 8**

The Conference approved clause (1) of Article 8 without amendments.

7.2.3.1 In the discussion of clause (2) of Article 8, members noted that the provision was important because it held the President accountable to the realisation of the values, objectives and principles set out in the draft Constitution.

7.2.3.2 It was suggested that the word “values” be included in the provision because Article 8 dealt with, among other things, values that should apply to all State organs, institutions, public officers, citizens, political parties and private bodies. The Conference accepted the suggestion.

#### 7.2.4 Resolutions of the Conference

The Conference adopted Article 8 of the Draft Constitution with amendments as follows:

**“(8). (1) The national values, principles, objectives and directive principles of State policy contained in this Part apply to all State organs, State institutions, public officers, citizens, political parties and private bodies whenever any of them –**

**(a) applies or interprets this Constitution or any other law; or**

**(b) applies, makes or implements policy decisions.**

**(2) The President shall, once in every year, report to the National Assembly on the progress made in the realisation of the values, objectives and principles under this Part.”**

### 7.3 New Article : Directive Principles not to be Justiciable

#### 7.3.1 Recommendations of the Commission

The Commission recommended that the scope of the directive principles of State policy and duties of the citizens should include non-justiciable policy objectives of the State and duties of a citizen.

#### 7.3.2 Deliberations of the Conference on New Article

In the debate of Part III of the draft Constitution, the Conference observed that the principles, values and objectives contained therein would be used by the courts to interpret the meaning of other parts of the draft Constitution where disputes arose. In that regard, the Conference agreed that the wording in Article 111 of the current Constitution be imported to Part III of the Draft Constitution to clarify the fact that the said principles, values and objectives were not justiciable. Article 111 of the current Constitution reads as follows:

**“The Directive Principles of State Policy set out in this Part shall not be justiciable and shall not thereby, by themselves, despite being referred to as rights in certain instances, be legally enforceable in any court, tribunal or administrative institution or entity.”**

#### 7.3.3 Resolutions of the Conference

The Conference approved the proposal as follows:

**“9. The Directive Principles of State Policy set out in this Part shall not be justiciable and shall not thereby, by themselves, despite being referred to as rights in certain instances, be legally enforceable in any court, tribunal or administrative institution or entity.”**

## **7.4 Article 9 : Political Values, Principles and Objectives**

### **7.4.1 Recommendations of the Commission**

The Commission recommended that the political values, principles and objectives in the Constitution should include the following:

- (a) the motto of Zambia shall be “One Zambia, One Nation”;
- (b) the State and citizens of Zambia should at all times defend the independence, sovereignty and territorial integrity of Zambia;
- (c) the State should provide a peaceful, secure and stable political environment which was necessary for economic development;
- (d) the State should be based on democratic principles which empowered and encouraged the active participation of all citizens at all levels in their own governance; and
- (e) all political and civic associations aspiring to manage and direct public affairs should retain their autonomy in pursuit of their declared objectives and conform to principles of democracy, transparency and accountability in their internal organisations and practice.

### **7.4.2 Provisions in the Draft Constitution on Political Values, Principles and Objectives**

Article 9 provides as follows:

**“(9). The following are the political values, principles and objectives of the Nation on which all policies and laws shall be based -**

- (a) the State and citizens shall at all times defend the independence, sovereignty and territorial integrity of the Republic;
- (b) the State and citizens shall promote national unity and develop a commitment, in accordance with the National Motto, to the spirit of nationhood and patriotism;
- (c) the State shall provide a peaceful, secure and stable political environment which is necessary for economic development;
- (d) all State organs, State institutions and citizens shall work towards the promotion of peace and stability;
- (e) the State shall be based on democratic principles which empower and encourage the active participation of all citizens at all levels in their own governance;
- (f) the State shall be guided by the principle of decentralisation of governmental powers, functions and resources to the people at appropriate levels where they can best manage and direct their own affairs;
- (g) all political and civic associations aspiring to manage and direct public affairs shall retain their autonomy in pursuit of their declared objectives and conform to principles of democracy, transparency and accountability in their internal organization and practice;
- (h) all State organs, State institutions and citizens shall endeavour to build a strong democratic political order and avoid undue influence from other countries and foreign institutions;
- (i) the Government shall ensure gender balance and equitable representation of disadvantaged groups, including the youth and persons with disability, when making appointments to any Constitutional office and other State institution;
- (j) the Government shall ensure full participation of women, the youth, persons with disability and all other citizens in the political, social, cultural and economic life of the country;

- (k) the Government shall implement the principle of gender equality and ensure that each gender is not less than thirty per cent of the members of elective or appointive bodies;
- (l) the Government shall recognise the role of civil society in governance and facilitate its role in ensuring the accountability of government; and
- (m) the Government shall take all necessary measures to support the distribution of functions, as well as the checks and balances provided for in this Constitution, among various State organs and State institutions, including the provision of adequate resources to ensure their effective functioning at all levels."

#### 7.4.3 Deliberations of the Conference on Article 9

7.4.3.1 The Conference approved paragraph (a) of Article 9.

7.4.3.2 The Conference approved paragraph (b) of Article 9 for the following reasons:

- (a) that matters of national unity had not been clearly observed or respected by some citizens and the provision was an attempt to ensure harmony through democracy and national unity;
- (b) that paragraph (c) of Article 113 of the current Constitution had provided for unity and harmony but was not implemented although it was the duty of citizens to foster national unity and harmony;
- (c) that it was misconceived that because the national motto was **"ONE ZAMBIA, ONE NATION"**, Zambia was already one nation when it was not; and
- (d) that reference to the nation was just an aspiration because Zambia was constituted by many nations which may be called tribes. The provision would, therefore, remind us of the need to build the nation.

- 7.4.3.3 The Conference approved paragraph (c) of Article 9 with amendments to reflect that the responsibility of providing a peaceful, secure and stable political environment for economic development was not for the State only but for citizens as well.
- 7.4.3.4 The Conference approved paragraph (d) of Article 9 of the Draft Constitution without amendments.
- 7.4.3.5 The Conference decided to delete paragraph (e) of Article 9 of the Draft Constitution as the matters it was providing for were covered in Article 10 of the Draft Constitution and re-numbered Article 13 in this Report.
- 7.4.3.6 The Conference approved paragraph (f) of Article 9 subject to the deletion of the words "... where they can best manage and direct their own affairs". The provision was, however, placed in paragraph (b) of Article 12 which part dealt with the principles and objectives of accountability and transparency.
- 7.4.3.7 In the discussion of paragraph (g) of Article 9, the Conference considered a proposal that the provision should be redrafted as follows:
- "(g) all political parties aspiring to manage and direct public affairs, and all religious bodies and civic associations aspiring to participate in public affairs, shall retain their autonomy in pursuit of their declared objectives and conform to principles of democracy, transparency and accountability in their internal organisation and practices."**
- 7.4.3.8 It was proposed that paragraph (g) should be amended for the following reasons:
- (a) that civic associations did not aspire to manage and direct public affairs but aspired to participate in public affairs; and
  - (b) that political associations should be obliged to comply with provisions of the draft Constitution and to hold regular elections at all levels of governance within their associations.

- 7.4.3.9 In the debate, some members supported the retention of the provision while others wanted it amended.
- 7.4.3.10 The members who supported the retention of the provision argued that democracy should exist in churches and civil society organisations, and that since they had a say in the governance of the country, it was important that they adhered to the principles and objectives of accountability and transparency.
- 7.4.3.11 Members who supported the deletion of the provision argued that religious bodies observed certain theocratic principles and, therefore, could not be completely democratic.
- 7.4.3.12 The members who wanted the provision amended argued as follows:
- (a) that the provision should stand with the mention of the State which was the institution that would ensure that the provisions in the clause were enforced; and
  - (b) that the provision was in the right part since it was dealing with national values, principles, objectives and directive principles of State policy which applied to all State organs, institutions, public officers, citizens, political parties and private bodies.
- 7.4.3.13 The Conference approved the proposal to amend paragraph (g) of Article 9. The provision was, however, placed in paragraph (g) of Article 12, which Article dealt with the principles and objectives of accountability and transparency.
- 7.4.3.14 The Conference approved paragraph (h) of Article 9 but redrafted it to read as follows:
- “9. The State shall pursue a foreign policy based on the following principles and objectives: (g) the avoidance by state organs, state institutions and citizens of undue influence from other countries and foreign institutions.”**
- 7.4.3.15 The Conference, however, decided to place paragraph (h) in Article 14 as paragraph (g), which Article dealt with foreign policy, principles and objectives.

7.4.3.16. The Conference, when debating paragraphs (i), (j) and (k) decided that matters relating to gender, youths and persons with disabilities were significant and, therefore, needed to be provided for separately. The provisions were provided for as follows:

**“17. The State shall direct the policies and laws towards securing and promoting gender equality.**

**18. (1) The Government shall ensure full participation, gender balance and equitable representation of disadvantaged groups, including the youths and persons with disability in elective and appointive bodies and in the political, social, cultural and economic development of the country.**

**(2) All political parties, religious bodies and civic associations shall ensure full participation, gender balance and equitable representation of disadvantaged groups, the youth and persons with disability in their organisations and practices.”**

7.4.3.17 In debating paragraph (l) of Article 9, the Conference approved the provision but decided that it be amended to reflect that civil society should ensure the accountability of both public and private institutions as opposed to government only.

7.4.3.18 The Conference, however, decided to place paragraph (l) in paragraph (f) of Article 12 which Article dealt with principles and objectives of accountability and transparency.

7.4.3.19 The Conference approved paragraph, (m) of Article 9 but amended it to read as follows:

**“the Government shall endeavour to provide adequate resources to state organs and state institutions to ensure their effective functioning at all levels.”**

7.4.3.20 The Conference, however, decided to place paragraph (m) in paragraph (e) of Article 12, which Article dealt with principles and objectives of accountability and transparency.



#### **7.4.4 Resolutions of the Conference**

The Conference approved Article 9 of the Draft Constitution with amendments and re-numbered it as Article 10 as follows:

**“10. The following are the political values, principles and objectives of the Nation on which all policies and laws shall be based:**

- (a) the State and citizens shall at all times defend the independence, sovereignty and territorial integrity of the Republic;**
- (b) the State and citizens shall promote national unity and develop a commitment, in accordance with the National Motto, to the spirit of nationhood and patriotism;**
- (c) the State shall provide a peaceful, secure and stable political environment which is necessary for economic development; and**
- (d) all State organs, State institutions and citizens shall work towards the promotion of peace and stability.”**

#### **7.5 Article 10 : Socio-Economic Values, Principles and Objectives**

##### **7.5.1 Recommendations of the Commission**

The Commission recommended that the socio-economic values, principles and objectives in the Constitution should include the following:

- (a) the State should endeavour to fulfill the fundamental rights of all Zambians to social justice and economic development;**
- (b) the State should pursue policies that stimulate agricultural, industrial, technological and scientific development by adopting appropriate policies and the enactment of enabling legislation;**
- (c) the State should endeavour to create an environment which should encourage individual initiative and self-reliance among the people and promote private investment;**
- (d) the State should be guided by the principle of devolution of governmental powers, functions and resources to the people at appropriate levels where they can best manage and direct their own affairs; and**

- (e) the State should endeavour to create conditions under which all citizens shall be able to secure adequate means of livelihood and opportunity to obtain employment.

#### **7.5.2 Provisions in the Draft Constitution on Socio-Economic Values, Principles and Objectives**

Article 10 provides as follows:

**“10. The following are the socio-economic values, principles and objectives of the Nation on which all policies and laws shall be based:**

- (a) the State and citizens shall endeavour to build a strong socio-economic order and avoid undue dependence on other countries and foreign institutions;**
- (b) as far as possible, moneys for the annual budget shall be derived from the resources of Zambia;**
- (c) the State shall endeavour to create an economic environment which encourages individual initiative and self-reliance among the people and promotes private investment;**
- (d) the Government shall take all necessary steps to involve the people in the formulation and implementation of development plans and programmes which affect them;**
- (e) the Government shall pursue policies that stimulate agricultural, industrial, technological and scientific development and ensure that legislation is enacted to support these policies;**
- (f) the State shall protect and promote human rights and fundamental freedoms and enhance the dignity of individuals and communities;**
- (g) the Government shall ensure access of the people to independent, impartial, competent and affordable institutions of justice;**
- (h) the Government shall ensure and endeavour to maintain national security and peace;**
- (i) the State shall endeavour to fulfill the Bill of Rights to achieve social justice and economic development;**
- (j) the State shall recognise the significant role that women play in the socio-economic development of society;**

- (k) the Government shall guarantee and respect institutions which are charged by the State with responsibility for protecting and promoting human rights and freedoms by providing them with adequate resources to function effectively;
- (l) the State shall give the highest priority to the enactment of legislation establishing measures that protect and enhance the right of the people to equal opportunities in development;
- (m) the Government shall make reasonable provision for the welfare and maintenance of the older members of society;
- (n) the State shall recognise the right of persons with disability to respect and human dignity;
- (o) the State shall promote recreation and sports for the citizens;
- (p) the Government shall strive to eradicate poverty and illiteracy
- (q) the Government shall promote free and compulsory basic education;
- (r) the Government shall take appropriate measures to afford every citizen equal opportunity to attain the highest educational standard possible;
- (s) the State shall protect the family as it is the natural and basic unit of society;
- (t) the Government shall institute adequate measures for disaster preparedness and management;
- (u) the Government shall take necessary measures to bring about balanced development of the different areas of the Republic especially between the rural and urban areas;
- (v) the State shall devise land policies which recognize ultimate ownership of land by the people;
- (w) the Government shall strive to create conditions under which all citizens are able to secure adequate means of livelihood and opportunity to obtain employment;
- (x) the Government shall recognise the right of every person to fair labour practices and to safe and healthy working conditions;
- (y) the State shall pursue policies that encourage food security;
- (z) the State shall take measures to preserve, protect and conserve the environment;

- (aa) the Government shall strive to provide clean and safe water, adequate medical and health facilities and shelter for all persons and take measures to consistently improve such facilities and amenities; and
- (bb) the State shall promote sustainable development and the utilisation of national resources of Zambia in such a way as to safe- guard -
  - (i) the bio-diversity of the country and to meet the developmental and environmental needs of present and future generations; and
  - (ii) the ecological balance and protect national resources, including land, water, wetlands, minerals, oil, fauna and flora."

### 7.5.3 Deliberations of the Conference on Article 10

7.5.3.1 The Conference approved paragraph (a) of Article 10 of the Draft Constitution without amendments.

7.5.3.2 The Conference deleted paragraph (b) of Article 10 of the Draft Constitution because a similar provision had been adopted when the Conference considered matters related to public finance and budget as provided for in Part VII of the Draft Constitution.

7.5.3.3 In the debate of paragraph (c) of Article 10, some members proposed that it be amended by replacing the words "encourages individual initiative and self-reliance among the people" with **"supports citizen empowerment"** and insert the word **"local"** between "promotes" and "private". That was to ensure that the State endeavoured to create an economic environment which supported citizen empowerment and promoted local private investment.

7.5.3.4 During the debate three positions emerged as follows:

- (a) those who supported the amendment to the provision;
- (b) those who proposed the harmonisation of the proposed amended provision and recommendation in the Draft Constitution; and

- (c) those who supported the recommendation from the Draft Constitution.
- 7.5.3.5 Members who supported the amendment to the provision argued as follows:
- (a) that the paragraph placed emphasis on privatisation which was also the direction the global trend was taking;
  - (b) that the paragraph provided a framework for supporting investors which would result into strengthening local entrepreneurship;
  - (c) that the paragraph emphasised support to local private investment which currently was lacking;
  - (d) that the paragraph provided for incentives to local industries that would result into creation of more sustainable jobs for Zambians;
  - (e) that the paragraph would address the historical imbalance that existed between local and foreign investors; and
  - (f) that the paragraph placed emphasis on individuals, families and communities which was an appropriate encouragement as it recognises the power that lay in an individual.
- 7.5.3.6 Members who supported the harmonisation of the recommendation from the Draft Constitution with the proposed amended provision argued that both provisions had positive principles.
- 7.5.3.7 Other members, who supported the recommendation in the Draft Constitution argued as follows:
- (a) that the provision was all encompassing and did not prevent Parliament from enacting laws that would support citizens' empowerment;

(b) that the provision was similar to clause 112 of the current Constitution which had worked well; and

(c) that there was no need to provide for citizens empowerment as there was already a Citizens Economic Empowerment Act which was working very well.

7.5.3.8 In debating paragraph (e) of Article 10, the Conference decided to amend the provision to ensure that the elements of human resource development and research which were considered to be important for national development, were reflected. The amended provision reads as follows:

**“the Government shall pursue policies that stimulate agricultural, industrial, technological, scientific and human resource development and research to ensure that legislation is enacted to support more policies.”**

7.5.3.9 Paragraph (f) of Article 10 was deleted because there was a whole part in the Draft Constitution dealing with the protection of human rights and fundamental freedoms.

7.5.3.10 With regard to paragraph (g) of Article 10, the Conference approved the provision, subject to the deletion of the word “affordable” because members were of the view that it would be difficult to determine what an affordable institution of justice was.

7.5.3.11 Paragraph (g) of Article 10 was considered very important, therefore, the Conference decided that it be provided for separately. That was done in Article 11 of the draft Constitution.

7.5.3.12 Paragraph (h) of Article 10 was deleted as the matters were provided for adequately in Article 14 which dealt with the foreign policy, principles and objectives.

7.5.3.13 Paragraphs (i), (j), (k), (l) and (n) of Article 10 were deleted as there were other provisions in the draft Constitution dealing with the protection of human rights and fundamental freedoms.

- 7.5.3.14 The Conference approved paragraph (m) of Article 10 without amendments as a guiding principle to the Government in providing assistance to older members of society.
- 7.5.3.15 Paragraph (o) of Article 10 was approved by the Conference but decided that it be provided for separately as matters of recreation and sports were considered significant. That was done in Article 19 of the draft Constitution.
- 7.5.3.16 In the debate of paragraph (p) of Article 10, the Conference was in favour of the provision but was of the view that issues of poverty and illiteracy were two different concepts which needed to be provided for separately. The concept of illiteracy was, therefore, addressed in the provision dealing with the right to education. While the concept of poverty was provided for under the Article dealing with socio-economic principles and objectives.
- 7.5.3.17 Paragraphs (q), (r) and (s) of Article 10 were deleted as they were adequately addressed in the Bill of Rights.
- 7.5.3.18 Paragraph (t) of Article 10 was approved without amendments.
- 7.5.3.19 The Conference decided to delete paragraph (u) of Article 10 because it was provided for in other provisions under the Directive Principles of State Policy and Part XVII – Public Finance and Budget of the Draft Constitution.
- 7.5.3.20 The Conference amended paragraph (v) of Article 10 by replacing the word “State” with “Government” because members stated that the responsibility of formulating land policies lay with the Government.
- 7.5.3.21 The Conference amended paragraph (w) of Article 10 by inserting the words “create or” between “to” and “obtain”. The amendment was made to ensure that Government strives to create opportunities under which all citizens were able to create employment for themselves and others.
- 7.5.3.22 Paragraph (x) and (y) of Article 10 were approved without amendments.

7.5.3.23 Paragraphs (z) and (bb) of Article 10 were deleted because the matters provided therein, were provided for under Articles 339 to 343, inclusive in the Draft Constitution which dealt with land and environment issues and were re-numbered in this Report as Articles 298 to 302 inclusive.

7.5.3.24 The Conference approved paragraph (aa) of Article 10 of the Draft Constitution without amendments.

#### **7.5.4 Resolutions of the Conference**

The Conference adopted Article 10 of the Draft Constitution with amendments and re-numbered it as Article 13 as follows:

**“13. The following are the socio-economic values, principles and objectives of the Nation on which all policies and laws shall be based:**

- (a) the State and citizens shall endeavour to build a strong socio-economic order and avoid undue dependence on other countries and foreign institutions;**
- (b) the State shall promote the economic empowerment of citizens, equal opportunities in development and the effective participation of citizens in the economy in order to contribute to sustainable economic growth;**
- (c) the State shall pursue policies that encourage food security;**
- (d) the Government shall strive to create conditions under which all citizens are able to secure adequate means of livelihood and opportunity to obtain or create employment;**
- (e) the Government shall recognise the right of every person to fair labour practices and to safe and healthy working conditions;**
- (f) the Government shall involve the people in the formulation and implementation of development plans and programmes which affect them;**
- (g) the Government shall pursue policies and laws that stimulate agricultural, industrial, technological, scientific and human resource development and shall ensure that legislation is enacted to support these policies;**
- (h) the Government shall make reasonable provision for the welfare and maintenance of the older members of society;**
- (i) the Government shall strive to eradicate poverty;**



- (j) the Government shall institute adequate measures for disaster preparedness and management;
- (k) the Government shall devise land policies which recognize ultimate ownership of land by the citizens; and
- (l) the State shall strive to provide clean and safe water, adequate medical and health facilities and shelter for all persons and take measures to consistently improve such facilities and amenities."

## **7.6 Article 11 : Cultural Values, Principles and Objectives**

### **7.6.1 Recommendations of the Commission**

The Commission recommended that the Constitution should include the following cultural values, principles and objectives:

- (a) the State should promote different cultures of the country, consistent with the Constitution, in particular fundamental rights and freedoms, human dignity and democracy;
- (b) the State should take such measures as may be practically possible to promote the use, development and preservation of all local languages and should take appropriate measures to promote the development of sign language for the deaf and Braille for the blind;
- (c) the State and citizens should endeavour to preserve, protect, and generally, promote the culture of preservation of public property and Zambia's heritage; and
- (d) the State should devise cultural policies that promote Zambian art and music."

### **7.6.2 Provisions in the Draft Constitution on Cultural Values, Principles and Objectives**

Article 11 provides as follows:

- "11. The following are the cultural values, principles and objectives of the Nation on which all policies shall be based:
  - (a) the State shall recognise the diversity of the people and promote the different cultures of the country consistent

with this Constitution and, in particular, with the Bill of Rights;

- (b) the Government shall take measures that are practically possible to promote the use, development and preservation of local languages and promote the development of sign language and braille;
- (c) the State and citizens shall endeavour to preserve, protect and generally promote the culture of maintenance and preservation of public property and Zambia's heritage;
- (d) the State shall devise policies that promote Zambian art and music; and
- (e) the citizens shall promote a culture of cooperation, understanding, appreciation, tolerance and respect for each other's customs, traditions and beliefs."

### 7.6.3 Deliberations of the Conference on Article 11

7.6.3.1 The Conference approved paragraph (a) of Article 11 without amendments.

7.6.3.2 Paragraph (b) of Article 11 was deleted because the matters provided for were adequately addressed in Article 7 of the draft Constitution.

7.6.3.3 The Conference noted that paragraph (c) of Article 11 provided two separate concepts: Firstly, the protection and promotion of Zambia's heritage which entailed the protection and promotion of Zambia's moveable, immovable and intellectual heritage and secondly, the protection and promotion of the culture of maintenance and preservation of public property, which entailed the promotion and protection of a type of attitude. It was proposed, therefore, that the provision be amended by the separation of the two concepts. The Conference approved the proposal.

7.6.3.4 In debating paragraph (d) of Article 11, some members suggested that the word "music" be replaced by the words "cultural industries". Other members suggested that the word "music" needed to be specifically mentioned so that the State devised policies that promoted Zambian music. It was stated that Zambian musicians were particularly concerned with that issue. In response to the concern, it was stated that music was an art and, therefore, that the subject was addressed by the inclusion of the word "art".

Further, members were of the view that the word “art” comprised literal arts and performing arts, which encompassed singing, dancing and so on. In that regard, it was suggested that the word “art” be replaced by the word “arts”, which word would cover music. The suggestion was approved by the Conference.

- 7.6.3.5 The Conference, further, agreed to include wording from the Eritrean Constitution which made reference to the promotion of individual creativity and innovation in the development of arts and culture. Clause (3) of Article 9 of the Eritrean Constitution provides as follows:

**“3. The State shall promote the development of the arts, science, technology and sports and shall create an enabling environment for individuals to work in an atmosphere of freedom and to manifest their creativity and innovation.”**

- 7.6.3.6 Paragraph (e) of Article 11 was approved without amendments.

#### **7.6.4 Resolutions of the Conference**

The Conference adopted Article 11 of the Draft Constitution with amendments and re-numbered it as Article 15 as follows:

- “15. The following are the cultural values, principles and objectives of the Nation on which all policies shall be based:**
- (a) the State shall recognise the diversity of the people and promote the different cultures of the country consistent with this Constitution and, in particular, with the Bill of Rights;**
  - (b) the State and citizens shall preserve, protect and promote the conservation of ancient, cultural and natural heritage, relics and other objects of aesthetic, historical, prehistorical, archaeological or scientific interest;**
  - (c) the State and citizens shall preserve, protect and promote a culture of maintenance and preservation of public property;**
  - (d) the State shall devise policies that promote Zambian arts, individual creativity and innovation in the development of art and the cultural industry;**

- (e) the citizens shall promote a culture of cooperation, understanding, appreciation, tolerance and respect for each other's customs, traditions and beliefs; and
- (f) traditional leaders shall preserve, protect and promote customs, traditions and cultural practices that encourage the values of community solidarity and protect and respect the dignity, welfare and interest of the family."

## **7.7 Article 12 : Foreign Policy, Principles and Objectives**

### **7.7.1 Recommendations of the Commission**

The Commission recommended that the State should pursue a foreign policy based on the principles of national interest, respect for international law and treaty obligations, regional integration, settlement of international disputes by peaceful means, promotion of a just world economic order and opposition to all forms of domination, racism and other forms of oppression and exploitation.

### **7.7.2 Provisions in the Draft Constitution on Foreign Policy, Principles and Objectives**

Article 12 provides as follows:

**"12. The State shall pursue a foreign policy based on the following principles and objectives:**

- "(a) the promotion of national interest;**
- "(b) respect for international law and treaty obligations;**
- "(c) the promotion of regional integration and African unity;**
- "(d) the settlement of international disputes by peaceful means;**
- "(e) the promotion of a just world economic order; and**
- "(f) opposition to all forms of domination, racism and other forms of oppression and exploitation."**

### **7.7.3 Deliberations of the Conference on Article 12**

In debating Article 12, some members proposed that the provision be amended by adding a new paragraph that would discourage the undue influence of other countries and foreign institutions on the values of Zambians. The Conference accepted the proposal and adopted the following paragraph:

**“the avoidance by State organs, State institutions and citizens of undue influence from other countries and foreign institutions.”**

### **7.7.4 Resolutions of the Conference**

The Conference adopted Article 12 of the Draft Constitution with amendments and re-numbered it as Article 14 as follows:

**“14. The State shall pursue a foreign policy based on the following principles and objectives:**

- (a) the promotion of national interest;**
- (b) respect for international law and treaty obligations;**
- (c) the promotion of regional integration and African unity;**
- (d) the settlement of international disputes by peaceful means;**
- (e) the promotion of a just world economic order;**
- (f) opposition to all forms of domination, discrimination, racism and other forms of oppression and exploitation; and**
- (g) the avoidance by State organs, State institutions and citizens of undue influence from other countries and foreign institutions.”**

## **7.8 Article 13 : Principles and Objectives of Accountability and Transparency**

### **7.8.1 Recommendations of the Commission**

The Commission recommended that the Constitution should provide the following principles and objectives of accountability and transparency:

- (a) the State should pursue policies that promote transparency and accountability in the management of the affairs of the nation;
- (b) all persons in public office should be accountable to the people; and
- (c) the State should take all necessary measures to expose and eradicate corruption and abuse of power by persons holding public office.

## **7.8.2 Provisions in the Draft Constitution Principles and Objectives of Accountability and Transparency**

Article 13 provides as follows:

**“13. The State shall be governed democratically based on the following principles and objectives:**

- (a) the State shall ensure open and transparent government and accountability of public officers, State organs and State institutions;**
- (b) all State organs, State institutions and public officers are accountable to the people; and**
- (c) the Government shall put in place effective measures to expose and eradicate corruption both in the public and private sectors.”**

## **7.8.3 Deliberations of the Conference on Article 13**

- 7.8.3.1 The Conference approved paragraph (a) of Article 13 without amendments.
- 7.8.3.2 The Conference observed that the provision of paragraph (b) was covered in paragraph (a) of Article 13 and therefore, decided to delete it.
- 7.8.3.3 The Conference approved paragraph (c) of the Draft Constitution subject to the replacement of the word “Government” with “State”. That was done to ensure that other bodies apart from Government are involved in putting in place effective measures to expose and eradicate corruption both in the public and private sectors.

- 7.8.3.4 The Conference introduced, debated and adopted a new paragraph to promote ethics and fair play in the conduct of public life as follows:

**“(d) the State shall promote ethics and fair play in the conduct of public life.”**

- 7.8.3.5 The Conference introduced paragraphs (e) to (h) which were already discussed in the debate of Article 9.

#### **7.8.4 Resolutions of the Conference**

The Conference adopted Article 13 of the Draft Constitution with amendments and re-numbered it as Article 12 as follows:

**“12. The State shall be governed democratically based on the following principles and objectives:**

**(a) the State shall ensure open and transparent government and accountability of public officers, State organs and State institutions;**

**(b) the State shall be guided by the principle of decentralization of governmental powers, functions and resources to the people at appropriate levels;**

**(c) the State shall put in place effective measures to expose and eradicate corruption both in the public and private sectors;**

**(d) the State shall promote ethics and fair play in the conduct of public life;**

**(e) the Government shall endeavour to provide adequate resources to State organs and State institutions to ensure their effective functioning at all levels;**

**(f) the Government shall recognise the role of civil society in governance and facilitate its role in ensuring the accountability of public and private institutions; and**

**(g) the State shall ensure that all political parties aspiring to manage and direct public affairs, and all religious bodies and civic associations aspiring to participate in public affairs, shall retain their autonomy in pursuit of their declared objectives and conform to principles of democracy, transparency and accountability in their internal organisation and practices.”**

#### **7.9 New Article : Christian and Other Religious Values and Principles**

- 7.9.1 The Conference considered a proposal that the following provision be introduced in the operative part of the draft Constitution:

**“16. The State shall direct the policies and laws towards securing and promoting Christian and other religious values, beliefs, ethics and morals consistent with this Constitution and shall prohibit any religious practices that de-humanise or are injurious to the physical and mental well-being of a human being.”**

## **7.9.2 Deliberations of the Conference on Article 16**

7.9.2.1 The members who proposed the provision argued that it was important for the Constitution to include such a provision in order to emphasise the religion on which Zambia was based. Further, it was observed that countries such as Norway, Mexico and Greece, had explicitly spelt out in their Constitutions the religions they followed and that Zambia should do the same.

7.9.2.2 In the discussion of the proposal, some members were in support of the provision while other members wanted the provision deleted.

7.9.2.3 Members who were in support of the provision argued as follows:

- (a) that including the Article meant that the declaration of Zambia as a Christian nation was supported by other provisions;
- (b) that since Zambia was aspiring to be a Christian nation, “other religions” should be removed because there were enough values and beliefs, ethics and morals within the Christian faith;
- (c) that other religions should follow Christian values, beliefs, ethics and morals; and
- (d) that other religions would be tolerated without upholding their values.

7.9.2.4 Further, other members argued that the provision as proposed, encouraged a rejection of intolerance but deleting “**other religious**” would encourage Christian fundamentalism which could be dangerous.



7.9.2.5 Other members did not support the deletion of the words **“other religious”**. The members cautioned the Conference that the words **“other religious”** should not be deleted because they also had values and ethics. The members who came from the Buddhist and Islamic faiths argued that even though Zambia was a Christian nation, not all Zambians were Christians.

7.9.2.6 The Conference adopted the proposal subject to the deletion of the words **“other religious.”**

### 7.9.3 **Resolutions of the Conference**

The Conference adopted Article 16 with an amendment as follows:

**“16. The State shall direct the policies and laws towards securing and promoting Christian values, beliefs, ethics and morals consistent with this Constitution and shall prohibit any religious practices that de-humanise or are injurious to the physical and mental well-being of a human being.”**

**PART IV**  
**LAWS OF ZAMBIA**

**8.1 Article 14 : Laws of Zambia**

**8.1.1 Recommendations of the Commission**

Article 14 provides as follows:

**“14. The Laws of Zambia consist of –**

- (a) this Constitution;**
- (b) laws made by or under the authority of Parliament;**
- (c) any orders, rules, regulations and other statutory instruments made by any person or authority under a power conferred by this Constitution or any other law;**
- (d) the British laws and statutes which apply or extend to Zambia as prescribed by an Act of Parliament;**
- (e) Zambian customary law which is consistent with this Constitution;**
- (f) the common law of England which is consistent with this Constitution;**
- (g) the rules of law generally known as the doctrines of equity; and**
- (h) the law as determined by the superior courts.”**

**8.1.2 Deliberations of the Conference on Article 14**

The Conference adopted Article 14 of the Draft Constitution without amendments.

**8.1.3 Resolutions of the Conference**

The Conference adopted Article 14 of the Draft Constitution and re-numbered it as Article 20 as follows:

**“20. The laws of Zambia consist of –**

- (a) this Constitution;**
- (b) laws made by or under the authority of Parliament;**
- (c) any orders, rules, regulations and other statutory instruments made by any person or authority under a power conferred by this Constitution or any other law;**
- (d) the British laws and statutes which apply or extend to Zambia as prescribed by an Act of Parliament;**

- (e) **Zambian customary law which is consistent with this Constitution;**
- (f) **the common law of England which is consistent with this Constitution;**
- (g) **the rules of law generally known as the doctrines of equity; and**
- (h) **the law as determined by the superior courts.”**

## **PART V**

### **CITIZENSHIP**

#### **9.1 Introduction**

##### **9.1.1 Observations of the Commission on Citizenship**

- 9.1.1.1 The Commission observed that citizenship was a very important status that conferred certain rights or obligations. The law on citizenship should therefore:
- (a) be explicit and as exhaustive as human foresight could allow as any inadvertent omission in the law might render certain persons in a country stateless;
  - (b) not allow arbitrary denial of citizenship to a person, and, therefore, the right to citizenship should be enshrined in the Constitution; and
  - (c) clearly address the issue of deprivation of citizenship acquired other than by birth or descent and the renunciation of the same.

- 9.1.1.2 The Commission provided for four (4) modes of acquiring the citizenship, and the conditions under which it could be taken away. The Commission also provided for continuation of existing citizenship and permitted dual citizenship.

##### **9.1.2 Recommendations of the Commission on Citizenship-**

###### **9.1.2.1 Acquisition of citizenship of Zambia-**

In accordance with its observations, the Commission recommended the enshrining in the Constitution of the following categories of citizenship:

- (a) Continuation of Existing Citizenship-  
A person who was a citizen of Zambia at the time of commencement of this Constitution should continue to be a citizen;

- (b)      Citizenship by Birth-  
This type of citizenship should be acquired automatically at birth by a person by virtue of being born in Zambia and at least one of the person's parents being a citizen of Zambia;
- (c)      Citizenship by Descent-  
This type of citizenship should be acquired automatically at birth by a person who is born outside Zambia by virtue of at least one of the parents being a citizen of Zambia;
- (d)      Citizenship by Adoption-  
This type of citizenship should be acquired automatically at birth by a child adopted by a citizen of Zambia by birth or descent, subject to renunciation of citizenship of any other country on attaining the age of 21 years and any further restrictions that Parliament may impose by legislation;
- (e)      Citizenship by Registration-  
This type of citizenship should be acquired, subject to application and renunciation of citizenship of any other country, by a person born in Zambia of non-Zambian parents and is 21 years old or older and has been ordinarily resident in the country for a continuous period of not less than 12 years, and who is not born of a diplomat accredited to Zambia or a person of refugee status. In addition, a person born in Zambia or outside Zambia at least one of whose grandparents was at the time of birth a Zambian was similarly eligible to be registered as a citizen.

- (f) Dual Citizenship-  
The Commission also recommended that the Constitution should permit dual citizenship only in respect of Zambian citizenship acquired by birth or descent.

#### **9.1.2.2 Citizenship of children of non-Zambian parents and citizenship by marriage-**

The Commission recommended that citizenship by marriage should not be provided for in the Constitution, but a person married to a Zambian may apply to be registered as a Zambian in accordance with the provisions of the law relating to citizenship by registration. In addition, non-Zambians married to Zambians should be granted residence status upon application, in accordance with the provisions of the law.

#### **9.1.2.3 Loss of Citizenship-**

The Commission also recommended that citizenship should be lost only on the following grounds:

- (a) in the case of citizenship acquired by birth or descent, it should not be lost other than by renunciation, or where the citizenship was acquired by fraud, misrepresentation or deceit; and
- (b) in the case of other categories of citizenship, it should only be lost where a person renounces citizenship or acquires citizenship of another country other than by marriage, or a citizen fails to renounce the citizenship of another country as prescribed by the Constitution or where citizenship was acquired by fraud, misrepresentation, deceit or other illegal means.

#### **9.1.2.4 Right to a Passport-**

The Commission also recommended that the right to a passport should be enshrined in the Bill of Rights to supplement the freedom of movement, in particular the right to leave and return to Zambia.

### **9.2. Provisions on Citizenship in the Draft Constitution**

Matters of Citizenship in the Draft Constitution are presented under Part V of the Draft Constitution and contain twelve (12) Articles starting with Article 15 to 26 inclusive.

### **9.3 Article 15 : Existing Citizenship**

#### **9.3.1 Recommendations of the Commission**

9.3.1.1 In recognising the importance of citizenship, the Commission was of the view that a person should not be denied citizenship arbitrarily. The Commission, however, considered it inappropriate for citizenship to be granted as a matter of right in respect of all categories of citizenship. Therefore, the right to citizenship should be accorded to persons who, at the commencement of any Constitution of Zambia, were citizens.

9.3.1.2 It was in that regard that the Commission recommended that a person who was a citizen of Zambia at the time of commencement of the new Constitution of Zambia would continue to be a citizen. The recommendation was necessary in order to prevent loss of citizenship on coming into force of a new Constitution.

#### **9.3.2 Provisions in the Draft Constitution on Existing Citizenship**

Article 15 provides as follows:

**“15. Every 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.”**

### 9.3.3 Deliberations of the Conference on Article 15

- 9.3.3.1 The Conference debated and adopted clause (1) of Article 15 as recommended in the Draft Constitution.
- 9.3.3.2 The Conference, however, expanded Article 15 to provide for the granting of full citizenship to persons whose application for citizenship might have been approved dependant on the occurrence of a future event. To do so the Conference adopted the provision of clause (2) of Article 4 of the current Constitution and incorporated it as clause (2) of Article 15.
- 9.3.3.3 The decision of the Conference was contrary to the recommendation of the Commission which had omitted granting of citizenship on such grounds. The Commission had argued in its report that it was undesirable to provide for granting of citizenship on such grounds because it would open up categories of citizenship which were justifiably removed.
- 9.3.3.4 Clause (2) of Article 4 of the current Constitution adopted and incorporated by the Conference provides as follows:
- “(2) A person who was entitled to citizenship of Zambia before the commencement of this Constitution subject to the performance of any conditions following the happening of a future event, shall become a citizen upon the performance of such conditions.”**
- 9.3..5 In discussing the additional clause and particularly the meaning of the phrase “performance of any conditions following the happening of a future event”, the Conference observed that the clause had been in existence since independence and that it took care of persons who were foreigners and who might have applied for citizenship but the Citizenship Board had granted citizenship provisionally, pending the occurrence of a future event.



#### **9.3.4 Resolution of the Conference**

The Conference adopted Article 15 of the Draft Constitution with amendments and re-numbered it as Article 21 as follows:

**“21. (1) Every 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 who was entitled to citizenship of Zambia before the commencement of this Constitution subject to the performance of any conditions following the happening of a future event, shall become a citizen upon the performance of such conditions.”**

### **9.4 Article 16 : Acquisition of Citizenship**

#### **9.4.1 Recommendations of the Commission**

9.4.1.1 The Commission examined the provisions of the current Constitution and the Citizenship Act in relation to the entitlement, eligibility and acquisition of Zambian citizenship and recommended the following modes of acquiring citizenship of Zambia:

- (i) by birth;
- (ii) by descent;
- (iii) by adoption; and
- (iv) by registration.

9.4.1.2 The Commission also observed that all constitutions after independence maintained one particular saving which had nothing to do with eligibility to citizenship but preservation of citizenship already acquired under previous constitutions. The Commission found it necessary to maintain existing citizenship in order to prevent loss of citizenship upon coming into force of a new Constitution.

#### **9.4.2 Provisions in the Draft Constitution on Acquisition of citizenship**

Article 16 provides as follows:-

**“16. Citizenship may be acquired by birth, descent, registration or adoption in accordance with this Part.”**

#### **9.4.3 Deliberations of the Conference on Article 16**

The Conference adopted Article 16 as recommended by the Commission.

#### **9.4.4 Resolutions of the Conference**

The Conference adopted Article 16 as provided by the Draft Constitution and re-numbered it as Article 22 as follows:

**“22. Citizenship may be acquired by birth, descent, registration or adoption in accordance with this Part.”**

### **9.5 Article 17 : Citizenship by Birth**

#### **9.5.1 Recommendation of the Commission**

9.5.1.1 The Commission recommended that a person born in Zambia, with the exception of children of Diplomats accredited to Zambia and children of persons with refugee status, should automatically acquire Zambian citizenship if one of the parents was a citizen of Zambia.

9.5.1.2 The Commission also observed that the mode of acquiring citizenship by birth had been enshrined in all the previous constitutions of Zambia.

9.5.1.3 Although the Commission had observed that there was need to provide for citizenship status for children of unknown parents found in Zambia, however, no provision was made in the Draft Constitution.

#### **9.5.2 Provisions of in the Draft Constitution on Citizenship by birth**

Article 17 provides as follows:

**“17. Every 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 a citizen.”**

### **9.5.3 Deliberations of the Conference on Article 17**

- 9.5.3.1 Some members of the Conference expressed concern over acquisition of citizenship by birth in view of the high number of refugees in the country who may get married to Zambians with a prime motive of bearing children in order to claim Zambian citizenship. Most members, however, observed that the scale of abuse would be negligible to warrant such concerns.
- 9.5.3.2 Other members proposed the inclusion of an amendment which would ensure that children whose parents had acquired citizenship before death would be taken care of. The Conference accepted the proposed amendment.
- 9.5.3.3 The Conference also approved the insertion of a provision to grant citizenship by birth to children of unknown parents found in Zambia who were not more than five (5) years old.

### **9.5.4 Resolutions of the Conference**

- 9.5.4.1 The Conference adopted Article 17 with amendments and re-numbered it as Article 23 as follows:

**"23. (1) Every person born in Zambia is a citizen by birth if, at the date of the person's birth, at least one parent of that person is or was a citizen.**  
**(2) A child of not more than five years of age found in Zambia, whose parents are not known, shall be presumed to be a citizen of Zambia by birth."**

## **9.6 Article 18 : Citizenship by Descent**

### **9.6.1 Recommendations of the Commission**

The Commission recommended the acquisition of citizenship by descent at birth for every person born outside Zambia if, at the date of that person's birth at least one parent of that person is a citizen by birth.

## **9.6.2 Provisions in the Draft Constitution on Citizenship by Descent**

Article 18 provides as follows:

**“18. Every 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 a citizen by birth.”**

## **9.6.3 Deliberations of the Conference on Article 18**

9.6.3.1 In the debate, the Conference adopted Article 18 with amendments by deleting the words **“by birth”** to make the provision applicable to all children of citizens, regardless of the mode by which the parents acquired the citizenship.

9.6.3.2 The Conference also inserted the words **“or was”** between the words **“is”** and **“a”** to provide for a child one of whose parents was a citizen but who died before the birth of the child.

## **9.6.4 Resolutions of the Conference**

The Conference adopted Article 18 recommended by the Commission with amendments and re-numbered it as Article 24 as follows:

**“24. Every person born outside Zambia is a citizen by descent if, at the date of the person’s birth, at least one parent of that person is *or was* a citizen.”**

## **9.7 Article 19 : Citizenship by Registration**

### **9.7.1 Recommendation of the Commission**

9.7.1.1 The Commission noted that in the previous Constitutions of Zambia, Citizenship by Registration provided for acquisition of citizenship by different categories of applicants namely:

- (a) persons born in Zambia, having reached the age of 21 years and ordinarily resident in

- Zambia but neither of whose parents was a citizen; and
- (b) persons born in or outside Zambia and one grandparent is or was a citizen.

9.7.1.2 The Commission recommended that citizenship by registration should:

- (a) be accorded to a non-Zambian who was 21 years and above and had been resident in the country for a continuous period of not less than 12 years, subject to renunciation of citizenship of any other country;
- (b) be accorded to a person born inside or outside Zambia, at least one of whose grandparents was at the time of birth a citizen; and
- (c) should be a person born in Zambia of non-Zambian parents, with the exception of children born of diplomats accredited to Zambia and persons who have refugee status in the country, subject to renunciation of citizenship of any other country.
- (d) not to be accorded on the basis of marriage because according to the country's historical experience, that mode of acquiring citizenship was often abused, and therefore, should be discontinued. A person married to a citizen should apply to be registered as a citizen in accordance with the provisions of the law relating to citizenship by registration like any other non-Zambian to whom that provision applied; and

9.7.1.3 The Commission further recommended that non-Zambians married to Zambians should be granted residence status upon application, in accordance with the provisions of the law.

## **9.7.2 Provisions in the Draft Constitution on citizenship by Registration**

Article 19 provides as follows:

**"19. (1) Subject to clauses (4) and (5), a person shall be entitled to apply to the Citizenship Board to be registered as a citizen if that person was born in Zambia but neither of whose parents is a citizen.**

**(2) Subject to clause (4), a person shall be entitled to apply to the Citizenship Board to be registered as a citizen if that person was born in or outside Zambia and had a grandparent who is or was a citizen.**

**(3) Subject to clauses (4) and (5), a person shall be entitled to apply to be registered as a citizen if that person has -**

- (a) attained the age of twenty-one years; and**
- (b) been ordinarily resident in the Republic for a continuous period of not less than twelve years immediately preceding that person's application for registration.**

**(4) A person who applies to be registered as a citizen under this Article and whose application is successful shall -**

- (a) in the case of clause (1), renounce the citizenship of any other country on attaining the age of twenty-one years; or**
- (b) in the case of clauses (2) and (3), renounce the citizenship of any other country within a period of not more than three months from the date the application was successful;**

**and, upon such renunciation, the Citizenship Board shall register that person as a citizen by registration.**

**(5) 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."**

### **9.7.3 Deliberations of the Conference on Article 19**

#### **9.7.3.1 Article 19 (1)**

The Conference debated and approved clause (1) of Article 19 as provided in the Draft Constitution but substituted the term "*Citizenship Board*" with the term "*Citizenship Board of Zambia*".

#### **9.7.3.2 Article 19 (2)**

The Conference debated and approved clause (2) of Article 19 as recommended in the Draft Constitution except for the substitution of the word “shall” with the word “may”, and “Citizenship Board” with “Citizenship Board of Zambia”.

#### **9.7.3.3 Article 19 (3) (a) and (3) (b)**

The Conference debated and approved paragraphs (a) and (b) of clause (3) of Article 19 as recommended in the Draft Constitution. The Conference, however, increased the number of years during which a person would have been ordinarily resident in Zambia from “not less than 12 years” to a period of “not less than 15 years” immediately preceding the person’s application for registration. The purpose was to make it more stringent for persons to acquire citizenship by registration.

#### **9.7.3.4 Article 19 (4) (a) and (4) (b)**

The Conference debated and adopted the recommendation in paragraphs (a) and (b) of clause (4) of Article 19 in the Draft Constitution with amendments by including the words “*approval of the application*” in paragraph (b) of clause (4).

#### **9.7.3.5 Article 19 (5)**

9.7.3.5.1 The Conference debated clause (5) of Article 19 as recommended in the Draft Constitution. Some members wondered why Zambia, being an ardent Pan Africanist could not allow refugees to apply for citizenship while it allowed expatriates to do that. Other members wondered what would happen to children born of diplomats who married Zambians.

9.7.3.5.2 However, it was observed that it was a world-wide practice for persons with refugee status not to apply for citizenship. Regarding a child born from a marriage between a Zambian and a

foreign diplomat, it was explained that such a child qualified to be a citizen by birth because one of the parents was a citizen.

9.7.3.5.3 The Conference approved Article 19 (5) as recommended in the Draft Constitution with amendment by including the words “**shall not be registered as a citizen**”.

9.7.3.5.4 The Conference inserted a new clause (3) to provide for the expeditious entry into and residence in Zambia of persons born in or outside Zambia and has a grandparent who is or was a citizen.

#### **9.7.3.5 Citizenship by Marriage-**

9.7.3.6.1 The Commission recommended that citizenship by marriage should be discontinued as experience had shown that it was one of the modes of acquiring citizenship which was prone to abuse. Therefore, a person married to a citizen should apply to be registered as a citizen in accordance with the provisions of the law relating to citizenship by registration like any other non-Zambian to whom that provision applied.

9.7.3.6.2 However, the Conference resolved that special consideration for citizenship should be allowed to non-Zambians married to citizens as marriage was a very important institution. In addition, citizenship acquired on the basis of marriage should be secured even in the event of the marriage on which it was acquired was annulled.

9.7.3.6.3 The Conference, therefore, adopted the following provision and re-numbered it as Article 26 as follows:

**“26. (1) A woman married to a man who is a citizen, or a man married to a woman who is a**



citizen, may, upon making an application in the manner prescribed by an Act of Parliament, be registered as a citizen.

(2) Clause (1) shall apply only if the applicant has been ordinarily resident in the Republic for a continuous period of not less than fifteen years immediately preceding that person's application.

(3) Clause (1) applies to a person who was married to a person who, but for that person's death, would have continued to be a citizen under clause (1) of Article 21.

(4) Where the marriage of a person is annulled after the person has been registered as a citizen of Zambia under clause (1), that person shall, unless the person renounces that citizenship, continue to be a citizen.

(5) Where on an application for registration under clause (1), the Citizenship Board of Zambia has reasonable grounds to believe that a marriage has been entered into primarily with a view to obtaining the registration, the Citizenship Board of Zambia shall not effect the registration."

#### **9.7.4 Resolutions of the Conference**

9.7.4.1 The Conference adopted Article 19 of the Draft Constitution with amendments and re-numbered it as Article 25. In addition, the Conference adopted a new Article 26 to provide for matters related to citizenship by marriage.

9.7.4.2 Article 25 adopted by the Conference provides as follows:

**"25. (1) Subject to clauses (4) and (5), a person may apply to the Citizenship Board of Zambia to be registered as a citizen if that person was born in Zambia but neither of the person's parents is or was a citizen.**

**(2) Subject to clause (5), a person may apply to the Citizenship Board of Zambia to be registered as a**

citizen if that person was born in or outside Zambia and had a grandparent who is or was a citizen.

(3) Parliament shall enact legislation for the expeditious entry into and residence in Zambia of persons to whom clause (2) applies.

(4) Subject to clause (5), a person shall be entitled to apply to be registered as a citizen if that person has -

(a) attained the age of twenty-one years; and

(b) been ordinarily resident in the Republic for a continuous period of not less than fifteen years immediately preceding the person's application for registration.

(5) A person who applies to be registered as a citizen under this Article and whose application is successful shall -

(a) in the case of clause (1), renounce the citizenship of any other country on attaining the age of twenty-one years; or

(b) in the case of clauses (2) and (4), renounce the citizenship of any other country within a period of not more than three months from the date of approval of the application;

and, upon such renunciation, the Citizenship Board of Zambia shall register that person as a citizen by registration.

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

#### 9.7.4.3

Article 26 adopted by the Conference on citizenship by marriage provides that:

"26. (1) A woman married to a man who is a citizen, or a man married to a woman who is a citizen, may, upon making an application in the manner prescribed by an Act of Parliament, be registered as a citizen.

(2) Clause (1) shall apply only if the applicant has been ordinarily resident in the Republic for a continuous period of not less than fifteen years immediately preceding that person's application.

(3) Clause (1) applies to a person who was married to a person who, but for that person's death, would have continued to be a citizen under clause (1) of Article 21.

(4) Where the marriage of a person is annulled or dissolved after the person has been registered as a citizen of Zambia under clause (1), that person shall, unless the person renounces that citizenship, continue to be a citizen.

(5) Where on an application for registration under clause (1), the Citizenship Board of Zambia has reasonable grounds to believe that a marriage has been entered into primarily with a view to obtaining the registration, the Citizenship Board of Zambia shall not effect the registration."

## **9.8 Article 20 : Citizen by Adoption**

### **9.8.1 Recommendations of the Commission**

The Commission recommended that acquisition of citizenship by adoption should be restricted only to a child adopted, under the laws of Zambia, by a Zambian citizen by birth and descent, subject to renunciation of citizenship of any other country on attaining the age of 21 years and subject to any further restrictions that Parliament may impose by legislation.

### **9.8.2 Provisions in the Draft Constitution on Citizenship by Adoption**

Article 20 provides as follows:

**"20. (1) A child who is not a citizen and who is adopted by -**

**(a) a citizen by birth or descent shall be a citizen on the date of the adoption but that child shall renounce the citizenship of any other country on attaining the age of twenty-one years failure to which that child shall cease to be a citizen; and**

**(b) a citizen by registration, shall not acquire citizenship by adoption.**

**(2) An Act of Parliament shall provide for further restrictions on the adoption by a citizen of a child who is not a citizen."**

### 9.8.3 Deliberations of the Conference on Article 20

- 9.8.3.1 In debating Article 20, the Conference noted that there would be possible dangers of abuse by some citizens, who, by birth have natural connections to countries that could be sources of immigration. However, the Conference noted that there were enough restrictions in the current law on adoption which made it almost impossible for a foreigner to adopt a Zambian child or a Zambian to adopt a foreign child in order to guard against possible abuse.
- 9.8.3.2 The Conference adopted the recommendation for acquisition of citizenship by adoption as provided in Article 20 with amendments by removing the discriminatory provision which provided that a child adopted by a citizen by registration could not acquire citizenship by deleting the words “by birth or descent” from paragraph (a). The Conference also deleted paragraph (b) of clause (1) of the Draft Constitution.
- 9.8.3.3 The Conference further noted that once adopted, a child would acquire citizenship but would later have to renounce the citizenship of any other country if that child chose to remain a citizen.

### 9.8.4 Resolutions of the Conference

The Conference adopted Article 20 of the Draft Constitution with amendments and re-numbered it as Article 27 as follows:

**“27. (1) A child who is not a citizen and who is adopted by a citizen, shall be a citizen on the date of the adoption but the child shall, on attaining the age of twenty-one years, renounce the citizenship of any other country failure to which the child shall cease to be a citizen.**  
**(2) An Act of Parliament shall provide for further restrictions on the adoption, by a citizen, of a child who is not a citizen.”**

## **9.9 Article 21 : Dual Citizenship**

### **9.9.1 Recommendation of the Commission**

The Commission recommended that dual citizenship should be allowed but only in respect of persons who were citizens by birth or descent.

### **9.9.2 Provisions in the Draft Constitution on Dual citizenship**

Article 21 provides as follows:

**"21. (1) A citizen, by birth or descent, shall not lose that citizenship by acquiring the citizenship of another country.  
(2) A citizen, by birth or descent, and who, before commencement of this Constitution, acquired the citizenship of another country and as a result ceased to be a Zambian citizen shall be entitled to apply to the Citizenship Board to regain that citizenship."**

### **9.9.3 Deliberations of the Conference on Article 21**

9.9.3.1 In debating Article 21, two positions emerged, namely, the position held by members who supported the prohibition of dual citizenship and those who advocated for the adoption of Article 21 as provided in the Draft Constitution.

9.9.3.2 The members who opposed dual citizenship advanced the following arguments:

- (a) that an individual who obtained another citizenship signified lack of patriotism;
- (b) that people with dual citizenship were a security risk as they could betray their loyalty to the country by aligning with a foreign country;
- (c) that Zambians in the diaspora were still remitting money to Zambia despite not holding dual citizenship thereby nullifying the economic argument; and

- (d) that those championing dual citizenship were a negligible group with families abroad which had no relevance to the majority of Zambians.

9.9.3.3 Those who supported dual citizenship argued that:

- (a) dual citizenship would serve as a building block for regional integration;
- (b) globalization necessitated dual citizenship;
- (c) for economic and moral reasons, it was necessary for the government of Zambia to allow Zambians who had acquired foreign citizenship to maintain links with their inheritance;
- (d) dual citizenship would enable Zambians get better paying jobs abroad and raise remittances to Zambia;
- (e) dual citizenship which would only be available to Zambians by birth and descent would ensure emotional attachment to the country; and
- (f) dual citizenship would ease entry into Zambia of former citizens.

9.9.3.4 The deliberation on the issue of dual citizenship was so heated that those who were against its introduction as provided for under the Draft Constitution demanded for a division. However, since only 97 members stood up, it meant that the decision to adopt Article 21 of the Draft Constitution was sustained.

#### 9.9.4 Resolutions of the Conference

The Conference adopted Article 21 and re-numbered it as Article 29 as follows:

**"29. (1) A citizen, by birth or descent, shall not lose that citizenship by acquiring the citizenship of another country.  
(2) A citizen, by birth or descent, and who, before commencement of this Constitution, acquired the citizenship of another country and as a result ceased to be a Zambian citizen may be entitled to apply to the Citizenship Board to regain that citizenship."**

## **9.10 Article 22 : Renunciation and Deprivation of Citizenship**

### **9.10.1 Recommendation of the Commission**

The Commission recommended that:

- (a) where citizenship was by birth or descent, it would not be lost other than by renunciation or where the citizenship was acquired by fraud, misrepresentation or deceit; and
- (b) in case of other categories of citizenship, it should only be lost where a person renounces Zambian citizenship or acquires citizenship of another country other than by marriage or where citizenship was acquired by fraud, misrepresentation, deceit or other illegal means.

### **9.10.2 Provisions in the Draft Commission on Renunciation and deprivation of citizenship**

Article 22 provides as follows:

**“22. (1) Subject to clause (2), citizen may renounce Zambian citizenship or shall be deprived of that citizenship only if that person acquired citizenship by means of fraud, false representation or concealment of any material fact.**

**(2) A citizen by registration or adoption may be deprived of that citizenship if that person acquires citizenship of any other country other than by marriage.”**

### **9.10.3 Deliberations of the Conference on Article 22**

#### **9.10.3.1 Article 22 (1)**

- 9.10.3.1.1 In debating clause (1) of Article 22, some members of the Conference pointed out that a citizen could also renounce citizenship on account of acquiring citizenship of another country which might not recognise dual citizenship.

- 9.10.3.1.2 The members further proposed that clause (1) be redrafted to make the provision clear in relation to citizens who willingly wished to renounce their citizenship. In that regard, the Conference agreed that clause (1) be split into two clauses so that the new clause (1) could relate to renunciation of citizenship while clause (2) could relate to deprivation of citizenship and the existing clause (2) be renumbered clause (3).

#### **9.10.4 Resolutions of the Conference**

- 9.10.4.1 The Conference adopted Article 22 with amendments by:
- (a) splitting clause (1) into two (2) separate clauses with clause (1) providing for renunciation of citizenship and clause (2) providing for deprivation of citizenship and renumber the Article as Article 30; and
  - (b) re-numbering clause (2) as clause (3) as follows:

**"30. (1) A citizen may renounce citizenship.  
(2) Subject to clause (3), a person shall be deprived of that person's citizenship only if the person acquired that citizenship by means of fraud, false representation or concealment of any material fact  
(3) A citizen by registration or adoption may be deprived of that citizenship if that person acquires citizenship of any other country other than by marriage."**

#### **9.11 Article 23 : Citizenship Board**

##### **9.11.1 Recommendations of the Commission**

The Commission did not make any specific recommendations in respect of the Citizenship Board but provided for it in the Draft Constitution.



#### **9.11.2 Provisions in the Draft Constitution on Citizenship Board**

Article 23 provides as follows:

**"23. (1) There shall be established the Citizenship Board which shall implement this Part.**

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

#### **9.11.3 Deliberations of the Conference on Article 23**

The Conference adopted Article 23 as recommended in the Draft Constitution with amendments by replacing the term "Citizenship Board" with the term *"Citizenship Board of Zambia"*.

#### **9.11.4 Resolutions of the Conference**

The Conference adopted Article 23 recommended in the Draft Constitution with amendments and re-numbered it as Article 31 as follows:

**"31. (1) There shall be established the Citizenship Board of Zambia which shall implement this Part.**

**(2) Parliament shall enact legislation to provide for the powers, functions, composition of, appointment of members to, tenure of office and procedures to be followed by, the Citizenship Board of Zambia."**

### **9.12 Article 24 : Entitlements of Citizen**

#### **9.12.1 Recommendations of Commission**

The Commission recommended that the entitlements of a citizen to a passport be provided for in the Bill of Rights.

#### **9.12.2 Provisions in the Draft Constitution on Entitlements of Citizen**

Article 24 provides as follows:

**"24. A citizen is entitled to -**

- (a) the rights, privileges and benefits of citizenship, subject to the limitations set out in this Constitution; and
- (b) to any document of registration and identification issued by the State to citizens."

#### **9.12.3 Deliberations of the Conference on Article 24**

The Conference debated and adopted Article 24 recommended in the Draft Constitution without amendments.

#### **9.12.4 Resolutions of the Conference**

The Conference adopted Article 24 and re-numbered it as Article 32 without amendments as follows:

**"32. A citizen is entitled to -**

- (a) the rights, privileges and benefits of citizenship, subject to the limitations set out in this Constitution; and
- (b) any document of registration and identification issued by the State to citizens."

### **9.13 Article 25 : Responsibilities of Citizen**

#### **9.13.1 Recommendations of Commission**

The Commission did not make any specific recommendations on the responsibilities of citizens but provided for them in Article 25 of the Draft Constitution.

#### **9.13.2 Provisions in the Draft Constitution on Responsibilities of citizen**

Article 25 provides as follows:

**"25. A citizen shall -**

- (a) acquire basic understanding of this Constitution and promote its ideals and objectives;
- (b) uphold and defend this Constitution and the Laws;
- (c) register and vote, if eligible, in all National and local elections and referenda;

- (d) be patriotic and loyal to Zambia, promote its development and good image and render national service whenever required to do so;
- (e) develop one's abilities to the greatest possible extent through acquisition of knowledge, continuous learning and the development of skills;
- (f) contribute to the welfare and advancement of the community where that citizen lives;
- (g) contribute to the welfare and advancement of the nation by paying all taxes and duties lawfully due and owing to the State;
- (h) strive to foster national unity and live in harmony with others;
- (i) promote democracy, good governance and the rule of law;
- (j) protect and safeguard public property from being damaged, wasted or misused;
- (k) protect and conserve the environment and utilise natural resources in a sustainable manner and maintain a clean and healthy environment;
- (l) co-operate with the law enforcement agencies for the maintenance of law and order and assist in the enforcement of the law at all times;
- (m) provide defence and military service when called upon;
- (n) desist from acts of corruption, anti-social and criminal activities; and
- (o) understand and enhance the Republic's place in the international community."

### 9.13.3 Deliberations of the Conference on Article 25

9.13.3.1 In debating Article 25, the Conference observed that Article 113 of the current Constitution provided similar provisions on the duties of the citizens. The Conference therefore resolved to harmonise the two Articles so that some of the duties of a citizen which were not provided for in Article 25 of the Draft Constitution could be incorporated.

9.13.3.2 Article 113 of the current Constitution provides as follows:

**"113. It shall be the duty of every citizen to -**  
**(a) be patriotic and loyal to Zambia and to promote its well-being;**

- (b) contribute to the well-being of the community where that citizen lives, including the observance of health controls;
- (c) foster national unity and live in harmony with others;
- (d) promote democracy and the rule of law;
- (e) vote in national and local government elections;
- (f) provide defence and military service when called upon;
- (g) carry out with discipline and honesty legal public functions;
- (h) pay all taxes and duties legally due and owing to the State; and
- (i) assist in the enforcement of the law at all times."

#### **9.13.4 Resolutions of the Conference**

The Conference adopted Article 25 of the Draft Constitution on responsibilities of a citizen by harmonizing its provision with Article 113 of the current Constitution and re-numbered it as Article 33 as follows:

- "33. A citizen shall-**
- (a) be patriotic and loyal to Zambia and promote its well-being;
  - (b) acquire basic understanding of this Constitution and promote its ideals and objectives;
  - (c) contribute to the well-being of the community where that citizen lives, including the observance of health controls;
  - (d) foster national unity and live in harmony with others;
  - (e) be entitled to register and vote, if eligible, in all national and local elections and referenda;
  - (f) promote democracy and the rule of law;
  - (g) provide defence and military service when called upon;
  - (h) carry out with discipline and honesty legal public functions;
  - (i) pay all taxes and duties legally due and owing to the State;
  - (j) assist in the enforcement of the law at all times;

- (k) develop one's abilities to the greatest possible extent through acquisition of knowledge, continuous learning and the development of skills;
- (l) protect and safeguard public property from being damaged, wasted or misused;
- (m) protect and conserve the environment, utilise natural resources in a sustainable manner and maintain a clean and healthy environment;
- (n) desist from acts of corruption, anti-social and criminal activities; and
- (o) understand and enhance the Republic's place in the international community."

#### **9.14 Article 26 : Legislation on Citizenship**

##### **9.14.1 Recommendations of Commission**

The Commission did not make any recommendations on legislation on citizenship but provided for it in Article 26 of the Draft Constitution.

##### **9.14.2 Provisions in the Draft Constitution on Legislation on Citizenship**

Article 26 provides as follows:

**"26. Parliament shall enact legislation -**

- (a) providing for the powers of the Citizenship Board to enable the Board give effect to this Part.
- (b) for the acquisition and deprivation of citizenship of Zambia by persons who are not eligible to become citizens under this Part."

##### **9.14.3 Deliberations of the Conference on Article 26**

In the debate, the Conference adopted Article 26 with amendments as follows:

- (i) deleted the words *"to enable the Board give effect to this part"* because leaving them in the clause would make the whole of Part V dealing with citizenship in-operational until subordinate legislation providing for the

- powers of the Citizenship Board of Zambia was enacted by Parliament;
- (ii) deleted the words *“by persons who are not eligible to become citizens under this part”* because retaining them would make eligible those persons who were not eligible to acquire citizenship; and

#### **9.14.4 Resolutions of the Conference**

The Conference adopted Article 26 with amendments and re-numbered it as Article 35 which provides as follows:

- “35. Parliament shall enact legislation -**
- (a) for the acquisition and deprivation of citizenship of Zambia; and**
  - (b) for the expeditious entry into and residence in Zambia of persons who, before or after the commencement of this Constitution, have lost their citizenship of Zambia as a result of the acquisition or possession of the citizenship of another country.”**

#### **9.15 New Article : Person Born on Ship, Aircraftetc**

##### **9.15.1 Provisions of Article 27 adopted by the Conference**

9.15.2.1 Although the Commission made no provisions for the place of birth of a person born on a ship or aircraft and on the interpretation of the national status of a person born after the death of the person’s parent, the Conference resolved to make such a provision to provide:

- (a) for the national status, when acquiring citizenship, in case of a person born aboard a ship or aircraft; and
- (b) for the national status of a person born after the death of the person’s parent.

9.15.2.2 To provide for those special circumstances, the Conference adopted clauses (1) and (2) of Article 10 of the current Constitution which provide as follows:

**"10. (1) For the purpose of this Part, a person born aboard a registered ship or aircraft, or aboard an unregistered ship or aircraft of the Government of any country, shall be deemed to have been born in the place in which the ship or aircraft was registered or in that country, as the case may be.**

**(2) Any 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 his parent, be construed as a reference to the national status of the parent at the time of the parent's death."**

### **9.15.3 Resolutions of the Conference**

The Conference adopted clauses (1) and (2) of Article 10 of the current Constitution and re-numbered them as Article 34 as follows:

**"34. (1) For the purpose of this Part, a person born aboard a registered ship or aircraft, or aboard an unregistered ship or aircraft of the Government of any country, shall be deemed to have been born in the place in which the ship or aircraft was registered or in that country, as the case may be.**

**(2) Any 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 his parent, be construed as a reference to the national status of the parent at the time of the parent's death."**

## PART VI

### BILL OF RIGHTS

#### 10.1 Introduction

- 10.1.1 The Human rights is understood to mean all those conditions of life that men and women have a right to expect by virtue of being human. The concept involves claims, rights and privileges which every individual can expect, irrespective of colour, race, sex, religion, status in life, or origin.
- 10.1.2 Internationally, these rights have been grouped into three, namely,  
(a) civil and political rights (first generation rights);  
(b) economic, social and cultural rights (second generation rights); and  
(c) group or solidarity rights (third generation rights).
- 10.1.3 Civil and political (first generation) rights are normally phrased in such a manner as to require the State to refrain from interfering with the enjoyment of these rights by the individual. Examples of these rights are freedom of expression, freedom of conscience, freedom of assembly and association, freedom of movement, and the right to personal liberty.
- 10.1.4 By contrast, economic, social and cultural rights are demands that the State should take positive action in support of the individual by adopting measures which positively support the individual to secure certain standards of life in areas such as education, health and social security.
- 10.1.5 While first generation rights are widely enshrined in the Constitutions of many countries, second generation rights are considered by many to still be aspirational, especially for developing countries which may not be able to realise them until such a time that their economies are able to support their realisation.
- 10.1.6 Similarly, though as important to the community as to the individual, group or solidarity rights have been recognised



more recently and include the right to a clean, healthy and sustainable environment; the right to peace; the right to nurturing one's culture and to development. These rights are yet to be enshrined in the Constitutions of many countries.

10.1.7 In Zambia, civil and political rights are currently protected in the Constitution under the Bill of Rights, which forms Part III of the Constitution and are to be enjoyed by all individuals subject to limitations which are intended to protect the rights and freedoms of others as well as considerations of public interest. In contrast, are both economic, social and cultural and group rights currently provided in Part IX providing for directive principles of State policy and not justiciable.

10.1.8 The Commission summarised the major limitations of the current Bill of Rights as follows:

- (a) the number of rights protected is limited and does not, for example, adequately address the rights of children, women and other vulnerable groups;
- (b) the enjoyment of these rights is made subject to a number of derogation clauses. Most of the rights are restricted on the grounds of defence, public safety, public order, public morality and public health;
- (c) the anti-discrimination clause, [Article 23 (4) (c)], which sanctions discrimination in matters of personal law such as related to adoption, marriage, divorce, burial, devolution of property on death or other such matters;
- (d) only a person whose right or freedom is infringed or threatened can seek redress;
- (e) although the current Constitution tacitly recognises second generation rights, these are in the Directive Principles of State Policy and are therefore not enforceable; and
- (f) in respect of third generation rights, namely group or solidarity rights, these are completely ignored except for the directive principles of State policy relating to a clean and healthy environment.

10.1.9 All human rights are to be enjoyed by all individuals in Zambia, subject to limitations which are intended to protect

the rights and freedoms of others as well as consideration of public interest.

## **10.2 Provision on the Bill of Rights in the Draft Constitution**

The Bill of Rights is presented under Part VI of the Draft Constitution as follows:

- (a) with the exception of Article 50, Articles 27 to 66 inclusive, provide for civil and political rights; and
- (b) Articles 67 to 75 inclusive, provide for both economic, social and cultural rights and group rights.

## **10.3 Article 27 : Fundamental Rights and Freedoms**

### **10.3.1 Recommendations of the Commission**

On the status, application and interpretation of the Bill of Rights the Commission recommended that the Constitution should not provide that the Bill of Rights is superior to other provisions of the Constitution.

### **10.3.2 Provisions in the Draft Constitution on Fundamental rights and freedoms**

Article 27 provides as follows:

**"27. (1) The Bill of Rights is fundamental to Zambia's democratic State and shall be the framework for the adoption of social, political, economic and cultural policies.**

**(2) The purpose of the Bill of Rights is to fulfill the National goals, values and principles by preserving the dignity of individuals and communities, promoting social justice and realising the potential of all human beings.**

- (3) The rights and freedoms set out in this Part -**
- (a) are inherent in each individual and -**
    - (i) are not granted by the State; and**
    - (ii) cannot be taken away by the State;**
  - (b) do not exclude other rights that are not expressly mentioned in this Part; and**

(c) are subject only to the limitations contained or contemplated in this Constitution."

### **10.3.3 Deliberations of the Conference on Article 27**

10.3.3.1 In debating Article 27 (3) (b), the Conference observed that paragraph (b) of clause (3) referred to other rights that are not expressly mentioned in this Part. The view of the Conference was that the provision might cause more problems than solutions because the Bill of Rights should state expressly the rights and freedoms it protects. The Conference decided that clause (3) (b) should be deleted because of lack of clarity.

10.3.3.2 The Conference further observed that there was a conflict between paragraphs (a) and (c) of clause (3) of Article 27. Sub-paragraphs (i) and (ii) of paragraph (a) provide that the "State" cannot grant or take away the rights and freedoms of an individual and yet paragraph (c) provides for limitations "contemplated" in the Constitution. The Conference further observed that the reference in paragraph (c) to "limitations contemplated" in this Constitution was ambiguous and a potential source of litigation as it was subject to different interpretations. The Conference, therefore, deleted the words "*or contemplated*."

### **10.3.4 Resolutions of the Conference**

10.3.4.1 The Conference adopted Article 27 with amendments and renumbered it as Article 36 as follows:

**"36. (1) The Bill of Rights is fundamental to Zambia's democratic State and shall be the framework for the adoption of social, political, economic and cultural policies.**

**(2) The purpose of the Bill of Rights is to fulfil the national goals, values and principles by preserving the dignity of individuals and**

communities, promoting social justice and realising the potential of all human beings.

(3) The rights and freedoms set out in this Part are-

- (a) inherent in each individual and -
  - (i) are not granted by the State; and
  - (ii) cannot be taken away by the State; and
- (b) subject only to the limitations contained in this Constitution."

#### **10.4 Article 28 : Duty of State to Promote Rights and Freedoms**

##### **10.4.1 Recommendations of the Commission**

The Commission did not make any specific recommendations on the duty of the State to promote rights and freedoms but provided for it in Article 28.

##### **10.4.2 Provisions in the Draft Constitution on Duty of State to promote rights and freedoms**

Article 28 provides as follows:

- "28. (1) It is a fundamental duty of every State organ and State institution to respect, protect, promote and fulfill the Bill of Rights.
- (2) The State shall allow civil society to play its role in the promotion and protection of the Bill of Rights.
- (3) Relevant State institutions, including the Human Rights Commission, shall equip themselves to meet the needs of different sectors of the society with respect to the Bill of Rights.
- (4) The President shall, when addressing the National Assembly each year, report on the measures taken and the achievements of the State in giving effect to, and the progress achieved by the Nation in the realisation of the Bill of Rights."

### 10.4.3 Deliberations of the Conference on Article 28

10.4.3.1 In debating Article 28, the Conference observed that the primary responsibility of the State was to equip State organs and institutions to ensure that, within resources available, they provided for the needs of different sectors of the society with respect to the Bill of Rights.

10.4.3.2 The Conference decided that:

- (a) clause (1), be amended to substitute the phrase *"every State organ and State institution"* with the term *"State"*;
- (b) clause (3), be amended to substitute the phrase *"relevant State institutions including the Human Rights Commission, shall equip themselves"* with the phrase *"Subject to this Constitution, the State shall equip relevant State organs and State institutions"*.

10.4.3.3 The Conference approved clauses (2) and (4) without amendments but resolved that the term **"civil society"** in clause (2) be defined.

### 10.4.4 Resolutions of the Conference

10.4.4.1 The Conference, accordingly, adopted Article 28 with amendments and re-numbered it as Article 37 as follows:

**"37. (1) It is a fundamental duty of the State to respect, protect, promote and fulfil the Bill of Rights.**

**(2) The State shall allow civil society to play its role in the promotion and protection of the Bill of Rights.**

**(3) Subject to this Constitution, the State shall equip relevant State institutions and State organs, to meet the needs of different sectors of the society with respect to the Bill of Rights.**

**(4) The President shall, when addressing the National Assembly each year, report on the measures taken and the achievements of the State in**

giving effect to, and the progress achieved by the Nation in the realization of the Bill of Rights.”

## **10.5 Article 29 : Application of Bill of Rights**

### **10.5.1 Recommendations of the Commission**

The Commission did make any specific recommendations on the application of the Bill of Rights but provided for it in Article 29.

### **10.5.2 Provisions in the Draft Constitution on the Application of the Bill of Rights**

Article 29 provides as follows:

**“29. (1) This Part applies to the interpretation and application of the Laws and binds all State organs, State institutions and all persons.**

**(2) A natural or juristic person enjoys the benefit of any right or freedom in this Part, to the extent possible, given the nature of the right or freedom and of the person.**

**(3) This Part binds a natural or juristic person, to the extent possible, given the nature of the right or freedom and the nature of any duty imposed by that right or freedom.**

**(4) A person shall exercise a right or freedom in a manner consistent with this Bill of Rights.**

**(5) When applying this Bill of Rights a court –  
(a) shall apply and, if necessary, develop the Law to the extent where legislation does not give effect to a right or freedom; and**

**(b) may develop rules of the Law to interpret a right or freedom in a manner consistent with the limitations and derogations permitted under this Bill of Rights.”**

### **10.5.3 Deliberations of the Conference on Article 29**

The Conference debated and adopted Article 29 without amendments.

#### **10.5.4 Resolutions of the Conference**

The Conference adopted Article 29 without amendments and re-numbered it as Article 38 as follows:

**“38. (1) This Part applies to the interpretation and application of the laws and binds all State organs, State institutions and all persons.**

**(2) A natural or juristic person enjoys the benefit of any right or freedom in this Part, to the extent possible, given the nature of the right or freedom and of the person.**

**(3) This Part binds a natural or juristic person, to the extent possible, given the nature of the right or freedom and the nature of any duty imposed by that right or freedom.**

**(4) A person shall exercise a right or freedom in a manner consistent with this Bill of Rights.**

**(5) When applying this Bill of Rights a court-**

**(a) shall apply and, if necessary, develop the law to the extent where legislation does not give effect to a right or freedom; and**

**(b) may develop rules of the law to interpret a right or freedom in a manner consistent with the limitations and derogations permitted under this Bill of Rights.”**

#### **10.6 Article 30 : Interpretation of Bill of Rights**

##### **10.6.1 Recommendations of the Commission**

The Commission did not make any specific recommendations on interpretation of the Bill of Rights but provided for it in Article 30.

##### **10.6.2 Provisions in the Draft Constitution on Interpretation of Bill of Rights**

Article 30 provides as follows:

**“30. (1) When interpreting and applying a provision of this Bill of Rights, a court, tribunal, the Human Rights Commission or any other body shall promote the values**

that underlie an open and democratic society based on human dignity, equality and freedom.

(2) When interpreting any legislation and when developing the Law, every court, tribunal, the Human Rights Commission or other body shall promote the spirit, purpose and objectives of the Bill of Rights."

#### **10.6.3 Deliberations of the Conference on Article 30**

The Conference debated and adopted Article 30 without amendments.

#### **10.6.4 Resolutions of the Conference**

The Conference adopted Article 30 without amendments and re-numbered it as Article 39 as follows:

**"39. (1) When interpreting and applying a provision of this Bill of Rights, a court, tribunal, the Human Rights Commission or any other body shall promote the values that underlie an open and democratic society based on human dignity, equality and freedom.**

**(2) When interpreting any legislation and when developing the law, every court, tribunal, the Human Rights Commission or other body shall promote the spirit, purpose and objectives of the Bill of Rights."**

### **10.7 Article 31 : Right to Life**

#### **10.7.1 Recommendations of the Commission**

The Commission recommended that:

- (a) for the time being, the death penalty be retained; and
- (b) further public debate and a national referendum should be conducted on the subject.



## **10.7.2 Provisions in the Draft Constitution on Right to life**

Article 31 provides as follows:

**“31. (1) Every person has, subject to clause (2), the right to life, which begins at conception.**

**(2) A person shall not be deprived of life intentionally, except in the execution of a sentence of a court in respect of a criminal offence under the law in force of which that person has been convicted.**

**(3) Without limiting any liability for a contravention of any other law with respect to the use of force, a person shall not be regarded as having been deprived of that person’s life in contravention of this Article if that person dies as a result of the use of force to such extent as is reasonably justifiable in the circumstances of the case -**

- (a) in the defence of a person’s property;**
- (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 due to a lawful act of war; or**
- (d) in order to prevent the commission by that person of a criminal offence.”**

## **10.7.3 Deliberations of the Conference on Article 31**

10.7.3.1 In debating Article 31, the Conference observed that important provisions on the loss of life relating to the termination of pregnancy in deserving cases and for the defence of a person from violence had been omitted. The Conference consequently adopted clauses (2) and (3) (a) of Article 12 of the current Constitution.

10.7.3.2 Clauses (2) and (3) (a) of Article 12 of the current Constitution provide, respectively as follows:

**“12. (2) A person shall not deprive an unborn child of life by termination of pregnancy except in accordance with the conditions laid down by an Act of Parliament for that purpose”; and**

**“(3) (a) for the defence of any person from violence or for the defence of property.”**

10.7.3.3 With regard to clause (2), the Conference adopted it without amendments after extensive debate. The Conference was divided between those who supported the retention of death penalty in the Constitution and those who supported its abolition.

10.7.3.4 Members who supported the abolition of the death penalty argued that:

- (a) the life of a person should not be taken away under any circumstances. Therefore, a person who committed a serious crime, should be put in prison for life without an option of parole;
- (b) there were no compelling reasons that justified the death sentence;
- (c) to take the life of any person as a punishment did not benefit anyone because the executed person had no chance to repent. In addition, they stated that it was untrue that execution was a deterrent;
- (d) having adopted the clause which stated that “every person had a right to life”, it was contradictory to provide a clause that promoted the taking away of life;
- (e) that the intention of evolution was to make human beings better and the death penalty was a departure from that trend;
- (f) there was a call on everyone to forgive seventy times multiplied by seventy;
- (g) that God said “revenge is mine” and Jesus Christ discouraged revenge based on “an eye for an eye” ; and
- (h) that “two wrongs did not make a right”.

10.7.3.6 Members who supported the retention of the death penalty queried as to why those who murdered

people should be accorded human rights and yet the victims they killed were denied their right to life and argued that:

- (a) that the Bible supported capital punishment by giving power to the State to execute capital punishment and cited an example of persons such as David who were allowed to take life;
- (b) that there were crimes of treason, and terrorism which required those guilty not to be protected as they were likely to kill again;
- (c) that crime in some countries had escalated beyond control because those countries had removed the deterrent to crime by abolishing the death penalty;
- (d) that it would be traumatic for the families of the victims to live with the fact that the person who had killed their loved ones was still alive and that they continued to pay taxes for the welfare of the criminal;
- (e) that the lives of law enforcement agents would be endangered because they would be killed by criminals who would not have to fear for their own lives;
- (f) that convicted persons were given ample time to repent before they were executed;
- (g) that it was unfair for life to be taken away, but when one took away a life they too must be killed;
- (h) that criminals suspended their right to life when they killed another person; and
- (i) the death penalty was supported even in the Bible as evidence by different passages such as "whoever kills any man shall be put to death", "do unto others as you would have them do unto you", "let every soul be subject to the governing authority, "one who takes life

of another should be prepared to lose their life", "those who sin will be judged and condemned to death", "the wages of sin is death", "the soul that sinneth shall surely die", "if a man commits a sin that leads to death, he must not be prayed for", and "he that lives by the sword shall die by the sword".

#### **10.7.4 Resolutions of the Conference**

The Conference adopted Article 31 with amendments and re-numbered it as Article 40 as follows:

**"40. (1) Every 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 in the execution of a sentence of a court in respect of a criminal offence under the law in force of which that person has been convicted.**

**(3) A person shall not deprive an unborn child of life by termination of pregnancy except in accordance with the conditions laid down by an Act of Parliament for that purpose.**

**(4) Without limiting any liability for a contravention of any other law with respect to the use of force, a person shall not be regarded as having been deprived of that person's life in contravention of this Article if that person dies as a result of the use of force to such extent as is reasonably justifiable in the circumstances of the case -**

- (a) for the defence of any person from violence or for the defence of a person's property;**
- (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 due to a lawful act of war; or**
- (d) in order to prevent the commission by that person of a criminal offence."**

## 10.8 Article 32 : Human Dignity

### 10.8.1 Recommendations of the Commission

The Commission recommended that:

- (a) the provision in the current Constitution that guaranteed protection from cruel, inhuman and degrading treatment should be maintained; and
- (b) the appropriate law should provide for stiffer penalties for anyone violating this right.

### 10.8.2 Provisions in the Draft Constitution on Human dignity

Article 32 provides as follows:

**“32. (1) Every person has an inherent dignity and the right to have that dignity respected and protected.  
(2) Every person has the right not to have their reputation disparaged.”**

### 10.8.3 Deliberations of the Conference on Article 32

10.8.3.1 The Conference adopted clause (1) without amendments. The Conference further resolved to reinforce the Article by adopting Article 15 of the current Constitution.

10.8.3.2 Article 15 of the current Constitution provides as follows:

**“15. A person shall not be subjected to torture or to inhuman or degrading punishment or other like treatment;”**

10.8.3.3 The Conference decided to delete clause (2).

10.8.3.4 The Conference also observed that the provision of Article 32 was non-derogable as was provided for in Article 77 of the Draft Constitution. However, arising from its decision to provide for limitations, derogations and non-derogation in appropriate individual Articles as opposed to providing for those

matters in separate general limitations, derogation or non-derogation Articles, the Conference adopted a new clause (3) of Article 32 to provide for non-derogation.

- 10.8.3.5 The Conference also amended the marginal note to read "Protection from inhuman treatment."

#### **10.8.4 Resolutions of the Conference**

The Conference accordingly, adopted Article 32 with amendments and re-numbered it as Article 41 as follows:

**"41. (1) Every person has an inherent dignity and the right to have that dignity respected and protected.**

**(2) A person shall not be subjected to torture, or inhuman or degrading punishment or other like treatment.**

**(3) Notwithstanding any other provision in this Constitution, the protection from inhuman or degrading punishment or other like treatment shall not be derogated from."**

### **10.9 Article 33 : Equality Before Law**

#### **10.9.1 Recommendations of the Commission**

The Commission recommended that the Constitution should:

- (a) not specify limitations to or derogations from the right to non-discrimination;
- (b) specify, but not limit the grounds on which discrimination is prohibited; and
- (c) that these should be extended to include different treatment on the basis of gender, religion, health status, economic and social status, disability and age.

#### **10.9.2 Provisions in the Draft Constitution on Equality before law**

Article 33 provides as follows:

**“33. (1) Every person is equal before the law and has the right to equal protection and benefit of the law.**

**(2) Equality includes the full and equal enjoyment of all rights and freedoms.”**

#### **10.9.3 Deliberations of the Conference on Article 33**

The Conference debated and adopted Article 33 of the Draft Constitution without amendments and observed that the Article adequately provided broadly for every person by not limiting its application by itemising the possible grounds of protection.

#### **10.9.4 Resolutions of the Conference**

The Conference accordingly, adopted Article 33 of the Draft Constitution without amendments and re-numbered it as Article 42 as follows:

**“42. (1) Every person is equal before the law and has the right to equal protection and benefit of the law.**

**(2) Equality includes the full and equal enjoyment of all rights and freedoms.”**

### **10.10 Article 34 : Fair Administration**

#### **10.10.1 Recommendations of the Commission**

The Commission did not make any specific recommendations on fair administration but provided for in Article 34.

#### **10.10.2 Provisions in the Draft Constitution on Fair Administration**

Article 34 provides as follows:

**“34. (1) Every person has the right to administrative action that is expeditious, lawful, reasonable and procedurally fair.**

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

(3) Parliament shall enact legislation to -

- (a) give effect to clauses (1) and (2);
- (b) provide for the review of administrative action by a court or, where appropriate, an independent and impartial tribunal; and
- (c) promote an efficient public administration."

### **10.10.3 Deliberations of the Conference on Article 34**

10.10.3.1 In debating Article 34, the Conference adopted clause (1) and deleted clauses (2) and (3).

10.10.3.2 In debating clause (2) of Article 34, the Conference decided that it was inappropriate to provide in the Constitution for a right of a person to written reasons for any administrative action taken against that person in all cases and therefore, deleted it.

10.10.3.3 Some members in debating clause (3) of Article 34, argued that:

- (a) paragraph (a), would make Article 34 inoperative as long as Parliament did not pass an enabling legislation;
- (b) paragraph (b), provided for possibility of creating another body or tribunal when institutions already existed to deal with matters of administrative impropriety; and
- (c) paragraph (c), would apply only to the public sector when protection and promotion of human rights ought to be extended to private persons, institutions and entities as well.

10.10.3.4 The Conference, therefore, decided to replace clause (3) with the provision of Article 18 of the Constitution of Namibia which provides that:



**"18. Administrative bodies and administrative officials shall act fairly and reasonably and comply with the requirements imposed upon such bodies and officials by common law and any relevant legislation, and persons aggrieved by the exercise of such action and decisions shall have the right to seek redress before a competent Court or Tribunal."**

#### **10.10.4 Resolutions of the Conference**

The Conference adopted Article 34 with amendments and re-numbered it as Article 43 as follows:

**"43. (1) Every person has the right to administrative action that is expeditious, lawful, reasonable and procedurally fair.**

**(2) Administrative bodies and administrative officials shall act fairly and reasonably and comply with requirements imposed upon such bodies and officials by common law and any relevant legislation, and persons aggrieved by the exercise of such acts and decisions shall have the right to seek redress before a competent Court or Tribunal."**

### **10.11 Article 35 : Right to Refuse Unlawful Instructions**

#### **10.11.1 Recommendations of the Commission**

The Commission did not make specific recommendations on the right to refuse unlawful instructions but provided for it in Article 35.

#### **10.11.2 Provisions in the Draft Constitution on Right to refuse unlawful instructions**

Article 35 provides as follows:

**"35. (1) Every person has a right to refuse to obey any unlawful instruction.**

**(2) A person who instigates or induces another to carry out an unlawful instruction or who, being able to prevent the carrying out of an unlawful instruction, fails to do so, shall be an accomplice and shall be liable to prosecution and to pay damages to any injured party.**

**(3) A person shall not be convicted or punished under any law for disobeying an unlawful instruction."**

**10.11.3 Deliberations of the Conference on Article 35**

10.11.3.1 In debating Article 35, most members argued that clause (1) was ambiguous because it was difficult to establish what a lawful instruction was and who would give an interpretation.

10.11.3.2 Some members who supported the provision argued that the clause was about rightful orders. It was argued that the clause would help to prevent corruption.

10.11.3.3 The Conference decided to delete clause (1) and as a consequence also deleted clauses (2) and (3).

**10.11.4 Resolutions of the Conference**

The Conference resolved to delete Article 35 of the Draft Constitution.

**10.12 Article 36 : Right To Justice**

**10.12.1 Recommendations of the Commission**

10.12.1.1 The Commission recommended that:

- (a) the right of access to justice should be enshrined in the Constitution under the Bill of Rights;
- (b) legislation should be enacted to give the Chief Justice enough administrative powers to supervise, monitor and keep a record of timely delivery of judgments;
- (c) the Judicial Service Commission should be given supervisory powers by the Constitution;
- (d) Article 18 of the Constitution should be maintained, but should include a provision specifying that an accused

person must be brought before a court within reasonable time, but in any case not later than 48 hours after arrest;

- (e) the right to legal representation should be enshrined in the Constitution;
- (f) the right to administrative justice as well as the right to judicial review of administrative actions should be enshrined in the Constitution;
- (g) appropriate legislation should be enacted to provide for the procedural and substantive details of these rights;
- (h) the ground for removal of Judges for incompetence in the Constitution should include failure to deliver judgment within a reasonable time and without undue delays;
- (i) the Legal Aid Department should be restructured, strengthened and decentralised to all provinces and districts;
- (j) that Small Claims Court established under the Small Claims Court Act should be re-established and strengthened;
- (k) individual accountability should be made a provision under the Constitution in order to enhance observance of the Bill of Rights, but this should be in addition to the existing provisions of the law on accountability; and
- (l) the Constitution should provide that no security for costs shall be ordered by Courts in matters of public interest litigation and that existing provisions on vexatious and frivolous litigation should be retained.

10.12.1.2 The Commission further recommended that in order to redress the abuse of immunity and deprivation of the right to justice:

- (a) the Constitution should explicitly provide relief to aggrieved parties against the State in enforcing judgments and that this relief should be extended to local authorities and other public institutions; and
- (b) the State Proceedings Act should be amended so that judgement can be executed after a period of six months.

#### **10.12.2 Provisions in the Draft Constitution on Right to Justice**

Article 36 provides as follows:

**“36. (1) Every person has the right to have any dispute resolved and decided timely and to have a fair public hearing before a court or, where appropriate, another independent and impartial tribunal.**

**(2) Where a person has any claim or judgement 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, a local authority or other public institution after six months of the delivery of the judgement.**

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

**(4) The courts shall not order any security for costs on matters of public interest litigation.**

**(5) All offences are bailable but a court shall have the power to determine whether or not bail should be granted in any particular case either unconditionally or subject to reasonable conditions.**

**(6) Illegally obtained evidence shall not be admissible in a trial against an accused person, unless excluding that evidence would be detrimental to the administration of justice.”**

### **10.12.3 Deliberations of the Conference on Article 36**

10.12.3.1 In debating paragraphs (a) and (b) of clause (2), the Conference acknowledged that the State should meet its obligations in time in order to resolve problems which beneficiaries encountered when seeking payments.

10.12.3.2 The members who supported the retention of the provision argued that:

- (a) it would be inhuman not to compel the Government to settle outstanding debts and let people die for lack of money for treatment;
- (b) Government would always budget for such funds under the Compensation Fund whose establishment was approved by the Conference when it adopted Article 308 of the Draft Constitution which has been re-numbered as Article 269;
- (c) although the period of six months was too long, the provision would assist to resolve a number of problems that workers had experienced both in Local Government Service and the Civil Service where some of them had died without receiving any compensation; and
- (d) some laws had been enacted which allowed individuals to take Government to court. Therefore, it would be a mockery of justice, if when individuals secured judgement against the State, nothing could compel the Government to pay them.

10.12.3.3 Members who opposed the provision argued that:

- (a) the budgeting cycle would make it difficult for the Government to settle the debts in the period proposed especially that some judgements would be passed

after the budget had already been approved by Parliament or the amount of awards could be higher than the budgetary provision for a particular year;

- (b) such a law was dangerous to the wellbeing of the country as all debts needed to be paid within six months; and
- (c) laws must be put in place for the common good of all Zambians and not only for a few that were owed money by the State. National interest should override personal interests even in cases where the State had to compensate individuals.

10.12.3.4 However, the Conference was mindful of possible budget constraints that the State might face. To take that into account, the Conference deleted paragraph (b), which specified the period of six months during which the State could pay the beneficiary after the delivery of a judgement.

10.12.3.5 In further debate, the Conference decided to delete clauses (3), (4), (5) and (6) of Article 36. In deleting the clauses, the Conference observed the following:

- (a) that clause (3) provided for liability of Government which was comprehensively provided for in the State Proceedings Act. Therefore, there was no need to provide for the same matters in the Constitution;
- (b) that Courts did not normally award costs in cases of “public interest litigation” and, therefore, clause (4) should be deleted so that the discretion to awards costs in such matters continued to reside with the Courts.
- (c) that although some cases took long to conclude, and the suspects remained in detention for that period, the

- Conference resolved to retain the status quo where all cases are bailable, except those involving aggravated robbery, murder and treason and, therefore, clause (5) was deleted; and
- (d) that clause (6) was self-contradictory, in that it provided for inadmissibility of illegally obtained evidence against a person but at the same time provided for conditions under which such evidence could be admitted. However, since currently, illegally obtained evidence was admissible as long as it was relevant to the case at hand, the status quo should continue and clause (6) should be deleted.

#### **10.12.4 Resolutions of the Conference**

The Conference adopted Article 36 with amendments and re-numbered it as Article 44 as follows:

**“44. (1) Every person has the right to have any dispute resolved and decided timely and to have a fair public hearing before a court or, where appropriate, another independent and impartial tribunal.**

**(2) Where a person has any claim or judgement against the State the claim may be instituted by proceedings against the State.”**

### **10.13 Article 37 : Rights of Suspects and Arrested Persons**

#### **10.13.1 Recommendations of the Commission**

- 10.13.1.1 The Commission made extensive recommendations on the rights of suspects and persons held in custody. It recommended that the Constitution should provide that anyone who is a suspect or is arrested or is an accused person or remanded in custody for allegedly committing an offence should have the right:

- (a) to a fair hearing within a reasonable time by an independent and impartial court established by law;
- (b) to be informed promptly of the right to remain silent and the consequences of not remaining silent;
- (c) to be informed as soon as reasonably practicable, in a language that he or she understands in detail, of the nature of the offence charged;
- (d) to be given adequate time and facilities for the preparation of his defence;
- (e) to defend herself or himself before the court in person or at his own expense, by a legal representative of her or his own choice unless legal aid is granted in accordance with the law;
- (f) to be afforded facilities to examine, in person, or by her or his legal representative the witnesses called by the prosecution before the court and to obtain the attendance and carry out the examination of witnesses to testify on her or his behalf before the court on the same conditions as those applying to witnesses called by the prosecution;
- (g) to have, without payment, the assistance of an interpreter if he or she cannot understand the language used at the trial;
- (h) not to be compelled to make any confession or admission that could be used in evidence against her or him and that illegally obtained evidence should not be admissible, except where such evidence is relevant and excluding it would be detrimental to the administration of justice;
- (i) not to be compelled to give self-incriminating evidence;
- (j) to be brought before a court as soon as reasonably possible, but not later than 48 hours after arrest;



- (k) to be released on bail if it is in the interest of justice;
- (l) to compensation for wrongful detention;
- (m) to conditions of detention that are consistent with human dignity, including at least physical exercise and the provision, at State expense, of adequate accommodation, nutrition, reading material and medical treatment; and
- (n) of access to legal representation before, during and after arrest.

10.13.1.2 The Commission also recommended that persons detained under the Preservation of Public Security Regulations should be furnished with reasons for their detention within fourteen days.

10.13.1.3 The Commission further recommended that the Constitution should provide that every prisoner should have a right to:

- (a) be treated with the respect due to their inherent dignity and value as human beings; and
- (b) send and receive letters and visits, subject to such restrictions as may be necessary for the maintenance of discipline and order in prison and the prevention of crime.

10.13.1.4 The Commission also recommended that the Constitution should provide that:

- (a) while the power of the entry of *nolle prosequi* can be retained, the exercise of the same should be conditioned on the Director of Public Prosecutions being required to obtain leave of the court for entry of *nolle prosequi* and the court having power to inquire into the grounds thereof;

- (b) the entry of a *nolle prosequi* should not, automatically, result in an acquittal; and
- (c) where a *nolle prosequi* has been entered, an accused person should only be charged afresh on the same facts within a reasonable time (not being later than 12 months), after which period the person shall be deemed to have been acquitted.

10.13.1.5 With regard to bail, the Commission, recommended that the Constitution should explicitly provide that:

- (a) all offences are bailable;
- (b) the question of whether or not bail should be granted should be left to the discretion of courts; and
- (c) in the event of bail being denied, the accused person must be tried within 90 days or thereafter be released on bail unconditionally or upon reasonable conditions.

## 10.13.2 Provisions in the Draft Constitution on the Rights of Suspects and Arrested Persons

Article 37 provides as follows:

**“37. Subject to Article 79, 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) not to be compelled to make any confession or admission that could be used in evidence against that person and, if a person freely chooses to make a confession, to do so before a court;
- (d) to be held separately from persons who are serving a sentence;

- (e) to be brought before a court -
  - (i) within forty-eight hours after being arrested or detained;
  - (ii) not later than the end of the first court day after the expiry of the forty-eight hours, if the forty-eight hours expires outside ordinary court hours or on a day that is not an ordinary court day;
  - (iii) as speedily as possible, if that person is arrested or detained far from a court; or
  - (iv) to be tried within ninety days or be released on bail;
- (f) to be arraigned before a court after being arrested or detained or to be released; and
- (g) to be released on bond or bail, pending a charge or trial, on reasonable conditions, unless there are compelling reasons to the contrary."

### 10.13.3 Deliberations of the Conference on Article 37

#### 10.13.3.1 In debating Article 37, the Conference:

- (a) observed that the word "*not*" had been omitted in sub-paragraph (ii) of paragraph (b), between the words "*of*" and "*remaining*" and therefore, resolved to insert it;
- (b) observed that there was no provision for deaf persons and those who were visually impaired to be informed of the reasons for arrest or detention in a language they understood. Therefore, a new paragraph was inserted;
- (c) deleted the original paragraph (c) which provided for confession or admission of guilty as its provision was well covered in paragraph (b) which provided for both the right of an accused person to remain silent and the consequences of not remaining silent; and
- (d) deleted paragraph (f) as it was unnecessary because sub-paragraph (i) of paragraph (e) approved by the Conference also provided that

a suspect had to be brought before a court within forty-eight hours after being arrested or detained. Therefore, paragraph (f) had to be deleted because it was superfluous.

#### **10.13.4 Resolutions of the Conference**

The Conference adopted Article 37 with amendments and re-numbered it as Article 45 as follows:

**“45. Subject to Article 62, 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 not remaining silent;**

**and**

**(c) to be informed as soon as reasonably practicable, in a language that the person understands, of the reasons for the arrest or detention, and in the case of a visually impaired person, in Braille, and a deaf person, in sign language;**

**(d) to be held separately from persons who are serving a sentence;**

- (e) to be brought before a court -**
  - (i) within forty-eight hours after being arrested or detained;**
  - (ii) not later than the end of the first court day after the expiry of the forty-eight hours, if the forty-eight hours expires outside ordinary court hours or on a day that is not an ordinary court day;**
  - (iii) as speedily as possible, if that person is arrested or detained far from a court; or**
  - (iv) to be tried within ninety days or be released on bail; and**

**(f) to be released on bond or bail, pending a charge or trial, on reasonable conditions, unless there are compelling reasons to the contrary.”**

## **10.14            Article 38 : Rights of Persons Detained or In Custody**

### **10.14.1           Recommendations of the Commission**

Recommendations of the Commission on the rights of persons detained or in custody are the same as those made under Article 37 providing for right of suspects and arrested persons.

### **10.14.2           Provisions in the Draft Constitution on Rights of Persons Detained or in Custody**

Article 38 provides as follows:

**"38. (1)    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.**

**(2)    A person who is held in custody has the right**

**-**

- (a)    to be treated in a manner that respects that person's inherent human dignity and not to be subjected to discrimination;**
- (b)    if detained under any law relating to the preservation of public security, to be furnished with the reasons for that person's detention within fourteen days of being taken into custody;**
- (c)    not to be exploited or abused by the staff of the prison service or fellow prisoners;**
- (d)    to accommodation and facilities that satisfy the standards of decent clothing, housing, food, health and sanitation guaranteed in this Bill of Rights;**
- (e)    to reasonable health care at public expense and to pay for their own health care by their own doctors if they so choose;**
- (f)    to exercise and to work in return for reasonable remuneration;**
- (g)    to communicate with their legal practitioners, other persons whose assistance they consider necessary, religious advisers and close family;**

- (h) to send and receive letters and to visits of reasonable frequency and duration to the extent compatible with the preservation of law, order and prison discipline;
  - (i) to be separated, women from men and children from adults;
  - (j) to be informed of the rules and decisions that affect them;
  - (k) to fair consideration for parole or remission of sentence and for other rehabilitative measures;
  - (l) to compensation for wrongful detention; and
  - (m) to complain to the prison authorities, the Human Rights Commission or any similar institution.
- (3) The State shall ensure that prisons and the prison system are maintained and operated within minimum international standards."

#### **10.14.3 Deliberations of the Conference on Article 38**

- 10.14.3.1 In debating the Article, the Conference observed that the provision was progressive as it raised the threshold of human dignity by entitling a person in custody to all rights and freedom except those which were incompatible with being in custody such as right to liberty and freedom of movement.
- 10.14.3.2 In considering clause (2) (b), some members observed that since the provision dealt with a special case of a person detained under laws governing the preservation of public security, a matter that was provided for under Article 79 of the Draft Constitution, the period of furnishing the detained person with reasons for detention should be reduced from fourteen (14) days to seven (7) days. However, most members proposed fourteen days in order to provide the State with sufficient time to carry out investigations and therefore, approved paragraph (b) of clause (2) without amendments.

10.14.3.3

In debating clause (2), the Conference:

- (a) observed that the list of the rights specified for persons was not exhaustive and therefore amended clause (2) by substituting the words “a person who is held in custody has the right-” with the words “**Without limiting clause (1), a person who is held in custody has the right-**”;
- (b) decided to delete paragraph (f) to avoid turning prisons into attractive sources of employment for some persons and that the right to exercise was currently available to all prisoners under the Prisons Act;
- (c) decided to delete paragraph (g) because the right to communicate with legal practitioners and other persons was adequately provided for under the Prisons Act;
- (d) observed that reference to sending and receiving letters in paragraph (h) was restrictive and did not take into account advances in information and communication technologies. Therefore, the Conference decided to amend paragraph (h) by substituting the words “*to send and receive letters*” with the words “**to communications**”;
- (e) decided to amplify the paragraph by inserting the words “*in conflict with the law*” after the word “*children*”;
- (f) observed that the provision of paragraph (j) was not adequate as it did not cater for persons with disabilities. Therefore, it was amended to cater for persons with disabilities;
- (g) recognised the need to provide for and strengthen the mechanism for prisoners and detained persons to complain against any violations of their rights in paragraph (m). Therefore, the provision was amended by

including “**visiting Judges, Magistrates and the Court** as these were in a position to immediately order that the wrong be redressed; and

- (h) decided to delete paragraph (d) of clause (2) as a Conference of the resolution to delete Articles 73 and 74 providing for shelter and housing and food, water and sanitation respectively.

10.14.3.4 In considering clause (3), the Conference decided that the clause should be deleted and be provided for in subsidiary legislation.

#### **10.14.4 Resolutions of the Conference**

The Conference adopted Article 38 in the Draft Constitution with amendments and re-numbered it as Article 46 as follows:

**"46. (1) 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.**

**(2) Without limiting clause (1), a person who is held in custody has the right -**

- (a) to be treated in a manner that respects that person's inherent human dignity and not to be subjected to discrimination;**
- (b) if detained under any law relating to the preservation of public security, to be furnished with the reasons for that person's detention within *fourteen* days of being taken into custody;**
- (c) not to be exploited or abused by the staff of the prison service or fellow prisoners;**
- (d) to reasonable health care at public expense and to pay for that person's health care by the person's doctors if the person so chooses;**
- (e) to communications, visits of reasonable frequency and duration to the extent**



- compatible with the preservation of law, order and prison discipline;
- (f) to be separated, women from men and children in conflict with the law from adults;
  - (g) to be informed of the rules and decisions that affect that person in a language that the person understands, and in the case of a visually impaired person, in Braille, and deaf person, in Sign Language;
  - (h) to fair consideration for parole or remission of sentence and for other rehabilitative measures;
  - (i) to compensation for wrongful detention; and
  - (j) to complain to the prison authorities, visiting Judges and Magistrates, the Court, the Human Rights Commission or any similar institution."

#### **10.14 Article 39 : Fair Trial**

##### **10.15.1 Recommendations of the Commission**

The recommendations are as given in Article 37.

##### **10.15.2 Provisions in the Draft Constitution on Fair Trial**

Article 39 provides as follows:

**"39. (1) Every 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 and in a language that person understands of the charge with sufficient detail to answer it;**
- (c) to have adequate time and facilities to prepare a defence;**
- (d) to a public trial before an independent and impartial court or tribunal;**
- (e) to have the trial commenced and concluded and judgement 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 promptly;
- (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 and not to testify during the proceedings;
- (j) to adduce and challenge evidence;
- (k) not to be compelled to give self-incriminating evidence;
- (l) not to be compelled to make any confession or admission that could be used in evidence against that person;
- (m) to have, without payment, the assistance of an interpreter if the accused person cannot understand the language used at the trial;
- (n) not to be convicted for an act or omission that was not, at the time it was committed or omitted, an offence under the written Laws;
- (o) not to be tried for an offence in respect of an act or omission for which that person has previously been either acquitted or convicted;
- (p) 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
- (q) 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 in a language which that person understands.

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

(4) An accused person has the right to a copy of the record of proceedings of the trial within fourteen days after they are transcribed in return for a reasonable fee if prescribed by law.

(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) The entry of a *nolle prosequi* is not an acquittal and shall be valid for twelve months.

(7) 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*, that person shall be deemed to have been acquitted."

### 10.15.3 Deliberations of the Conference on Article 39

#### 10.15.3.1 In the debate on the Article, the Conference:

- (a) observed that paragraph (m) of clause (1) was inadequate as it did not cater for persons with disabilities. Therefore, it was amended by adding the words "*and in the case of a deaf person, a Sign Language interpreter*".
- (b) observed that paragraph (o) of clause (1) was inadequate. Therefore, to make it comprehensive, the words "*or for any other offence of which the person could have been convicted at the trial for that offence, except upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal*" were taken from clause (5) of Article 18 of the current Constitution.
- (c) observed that clause (2) was inadequate as it did not provide for persons with disabilities and, therefore, approved it with amendments by adding the words "*and in the case of a visually impaired person, in Braille, and a deaf person, in Sign Language*" at the end of the provision; and
- (d) observed that whilst the Director of Public Prosecutions had the right to enter a *nolle*

*prosequi*, an accused person did not have the right to a *nolle prosequi* as the clause seemed to imply. Therefore, while some members expressed concern with the abuse of the *nolle prosequi* and supported the need to prescribe the time-frame during which it should subsist, the Conference decided to delete clauses (6) and (7) of the Article.

10.15.3.2 The Conference debated and adopted Article 39 of the Draft Constitution with amendments in paragraphs (m), (n), and (o) of clause (1) and in clause (2).

#### 10.15.4 Resolutions of the Conference

The Conference accordingly, approved Article 39, with amendments and re-numbered it as Article 47 as follows:

**“47. (1) Every 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, and in a language that the person understands, of the charge with sufficient detail to answer it;**
- (c) to have adequate time and facilities to prepare a defence;**
- (d) to a public trial before an independent and impartial court or tribunal;**
- (e) to have the trial commenced and concluded and judgement given without unreasonable delay;**
- (f) to choose, and be represented by, a legal practitioner and to be informed of this right promptly;**
- (g) 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;**
- (h) to remain silent and not to testify during the proceedings;**
- (i) to adduce and challenge evidence;**

- (j) not to be compelled to give self-incriminating evidence;
- (k) not to be compelled to make any confession or admission that could be used in evidence against that person;
- (l) 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.
- (m) not to be convicted for an act or omission that was not, at the time it was committed or omitted, an offence under any laws;
- (n) not to be tried for an offence in respect of an act or omission for which that person has previously been either acquitted or convicted, or for any other offence of which the person could have been convicted at the trial for that offence, except upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal;
- (o) 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;
- (p) of appeal to, or review by, a higher court; and
- (q) to compensation for wrongful detention or imprisonment.

(2) Where this Article requires information to be given to a person, that information shall be given in a language which that person understands, and in the case of a visually impaired person, in Braille, and a deaf person, in sign language.

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

(4) An accused person has the right to a copy of the record of proceedings of the trial within fourteen days after they are transcribed in return for a reasonable fee, if prescribed by law.

(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.”

**10.16 Article 40 : Protection from Discrimination**

**10.16.1 Recommendations of the Commission**

The recommendations for this provision are as described in Article 33 on “Equality before Law”.

**10.16.2 Provisions in the Draft Constitution on Protection from Discrimination**

Article 40 provides as follows:

**“40. Every person has the right not to be discriminated against, directly or indirectly, on any grounds including race, sex, pregnancy, health, marital, ethnic, tribal, social or economic status, origin, colour, age, disability, religion, conscience, belief, culture, language or birth.”**

**10.16.3 Deliberations of the Conference on Article 40**

10.16.3.1 In debating the Article, the Conference observed that the use of the words *“on any grounds including”* made the provision too open to various interpretations including those which could indirectly allow for gay marriages, or right to sexual orientation of one’s choice, in defence of the right not be discriminated against on the basis of marital status. Therefore, the Conference resolved to redraft Article 40 in order to:

- (a) specifically state the grounds on what basis a person could not be discriminated against;
- (b) provide for grounds under which a person could be discriminated (positive discrimination) and define the term “discrimination” by adopting clauses (4) and (3), respectively, of Article 23 of the current Constitution of Zambia; and

- (c) permit discrimination for qualification for service as public officer, member of a disciplined force or service of a district council or body corporate established by any law.

10.16.3.2 Consequently, Article 40 as provided in the Draft Constitution was amended by:

- (a) substituting the words "*on any grounds including*" with the words "*on the grounds of*";
- (b) by inserting the term "*pregnancy*". The Conference observed that although pregnancy was an important natural process that ensured procreation, it was looked down upon, and in some cases, discrimination based on pregnancy had contributed to existing inequalities and lack of parity between men and women at the work place. For that reason, discrimination based on pregnancy should also be outlawed by inserting the term "*pregnancy*" in the provision. Accordingly, the term "*pregnancy*" was inserted in the Article; and
- (c) substituting the word "*opinion*" with the words "*political opinion*" on the grounds that the "*opinion*" that usually leads to discrimination when held or expressed is "*political opinion*".

10.16.3.3 The Conference noted that the grounds on the basis of which discrimination was allowed, was not provided for in the Draft Constitution. The Conference therefore decided to adopt Article 23 (4) of the current Constitution.

10.16.3.4 Further, the Conference also adopted Article 23 (3) of the current Constitution to define the word "discrimination".

The Conference adopted Article 40 with amendments and re-numbered it as Article 48 as follows:

**"48. (1) Every person has the right not to be discriminated against, directly or indirectly, on the grounds of race, tribe, sex, pregnancy, origin, colour, age, disability, religion, conscience, belief, political opinion, culture, language, birth or health, marital, ethnic, social or economic status.**

**(2) Clause (1) shall not apply to any law so far as that law makes provision -**

- (a) for the appropriation of the general revenues of the Republic;**
- (b) for qualifications for service as a public officer or as a member of a disciplined force or for the service of a district council or body corporate established directly by any law;**
- (c) with respect to persons who are not citizens of Zambia;**
- (d) with respect to adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law;**
- (e) for the application in the case of members of a particular race or tribe, of customary law with respect to any matter to the exclusion of any law with respect to that matter which is applicable in the case of other persons; or**
- (f) whereby persons of any such description as is mentioned in clause (3), may be subjected to any disadvantage or restriction or may be accorded any privilege or advantage which, having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description, is reasonably justified in a democratic society.**

**(3) For the purposes of this Article, "discrimination" means affording different treatment to different persons attributable wholly or mainly to their respective descriptions, race, tribe, sex, origin, political opinion, colour, pregnancy, culture, conscience, age, disability, religion, belief, birth or health, marital, ethnic, social or economic status whereby persons of one such**



description are subjected to disadvantages or restrictions to which persons of another such description are not made subject, or are accorded privileges or advantages which are not accorded to persons of another such description.”

## **10.17 Article 41 : Equality of both Gender**

### **10.17.1 Recommendations of the Commission**

10.17.1.1 The Commission made the following recommendations:

- (a) that the principle of gender equality should be enshrined in the Bill of Rights;
- (b) that the rights of women should be specifically stated in the Bill of Rights;
- (c) that the rights of women with disabilities should be specifically stated in the Bill of Rights;
- (d) that provisions of international and regional instruments on gender equality and women’s rights, to which Zambia is a State Party or signatory, including the Convention on Elimination of Discrimination Against Women, Southern Africa Development Community Declaration on Gender and Development and Beijing Declaration and Plan of Action, should be incorporated into the Constitution, as appropriate;
- (e) that the principle of affirmative action should be enshrined in the Bill of Rights; and
- (f) that the Article which guarantees non-discrimination should not be limited by exceptions or derogation clauses.

10.17.1.2 The Commission further recommended that pursuant to the above recommendations, the Bill of Rights should include the following provisions:

- (a) women should be accorded full and equal dignity of the person with men and should be guaranteed the exercise and enjoyment of fundamental rights and freedoms on a basis of equality with men;
- (b) women should have the right to equal treatment with men and that right should include equal opportunities in political, economic and social activities;
- (c) the State should protect women and their rights, taking into account their unique status and natural maternal functions in society, their right to reproductive health, including family planning and access to related information and education;
- (d) women should have equal rights with men with respect to marriage;
- (e) women should have equal rights with men regarding ownership, use, transfer, administration and control of land and enjoy the same rights with men with respect to inheritance;
- (f) women should be protected against all forms of violence, physical or mental ill-treatment, cruelty, deprivation or exploitation;
- (g) custodial sentences should not be imposed on pregnant women and nursing mothers or mothers of young children except as a last resort for those women convicted of the most serious

offences and who pose a danger to the community;

- (h) there should be developed and implemented educational programmes for criminal justice personnel on the subject of mothers and young children consistent with provisions of the Bill of Rights;
- (i) without prejudice to the foregoing provisions, women should have the right to affirmative action for the purpose of redressing the imbalances created by history, tradition or custom;
- (j) laws, cultures, customs or traditions which are against the dignity, rights, welfare or interest of women or which undermine their status should be prohibited by the Constitution; and
- (k) Parliament should make laws for giving effect to these provisions, including the establishment or designation of institutions for the protection of women against discrimination and promotion of their enjoyment of human rights and fundamental freedoms on a basis of equality with men.

#### **10.17.2 Provisions in the Draft Constitution on Equality of Both Gender**

Article 41 provides as follows:

**“41. (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 shall have equal rights with respect to marriage.

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

(6) The Government shall provide reasonable facilities and opportunities to enhance the welfare of women and men to enable them to realise their full potential and advancement.

(7) The Government shall take special measures aimed at achieving equality between both gender which measures shall not be construed as discrimination in so far as the measures are not maintained beyond what is required to achieve equality between both gender.

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

### **10.17.3 Deliberations of the Conference on Article 41**

10.17.3.1 In debating the provision, the Conference observed that it was based on Article 1 of the Universal Declaration of Human Rights which provided that all human beings were born free and equal in dignity and rights.

10.17.3.2 In further debate on the Article, the Conference:

- (a) observed that clause (2) was the same as clause (1) of Article 32 which had earlier been approved. Therefore clause (2) was deleted;
- (b) adopted clause (3) of Article 41 with amendments and re-numbered it as paragraph (a) of the new clause (2).
- (c) deleted clause (6) due to lack of clarity;
- (d) deleted clause (7) as its provision had been catered for in paragraph (f) of clause (2) of Article 48; and

- (e) deleted clause (8) because all the rights and freedoms declared in the Bill of Rights should become enforceable on the day the new Constitution comes into force.

#### **10.17.4 Resolutions of the Conference**

The Conference adopted Article 41 of the Draft Constitution with amendments and re-numbered as Article 49 as follows:

**“49. (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 have equal right-**

- (a) to inherit, have access to, own, use, administer and control land and other property;**
- (b) to choose residence and domicile;**
- (c) to choose a family name;**
- (d) acquire, change or retain the nationality of their children; and**
- (e) to guardianship and adoption of children.**

**(3) Women and men have equal rights with respect to marriage.**

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

### **10.18 Article 42 : Further Rights for Women**

#### **10.18.1 Recommendations of the Commission**

The recommendations of the Commission on further rights of women are provided under Article 41.

#### **10.18.2 Provisions in the Draft Constitution on Further rights for women**

Article 42 provides as follows:

**“42. (1) The State shall ensure that women are not discriminated against as guaranteed in this Constitution.**

(2) All laws, customary or regulatory, that permit or have the effect of discriminating against women are hereby declared void.

(3) Without limiting any right or freedom guaranteed under this Bill of Rights, women shall have and be accorded the right -

- (a) to reproductive health, including family planning and access to related information and education;
- (b) to acquire, change or retain their nationality including the nationality of their children;
- (c) to choose residence and domicile;
- (d) to guardianship and adoption of children;
- (e) to choose a family name; and
- (f) to non-custodial sentences if pregnant or are nursing mothers, except as a measure of last resort for serious offences and for those women who pose a danger to the community.

(4) Parliament shall enact legislation to provide for the protection of women against all forms of violence.

(5) For the purposes of this Article -

(a) "discrimination against women" means a distinction or exclusion made on the basis of sex which has the effect of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of marital status, of human rights and fundamental freedoms in all areas of human endeavour to which persons of another description are not made subject or are accorded privileges or advantages which are not accorded to persons of another description.

(b) "violence" includes -

- (i) physical, sexual and psychological violence that occur in the family;
- (ii) violence related to female genital mutilation or any traditional or religious practice that is harmful to women;
- (iii) non-spousal violence or exploitation or physical, sexual or psychological violence that occurs within the general community;

- (iv) rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere;
  - (v) trafficking in women and forced prostitution; and
  - (vi) economic and social deprivation.
- (6) Parliament shall enact legislation to regulate matrimonial causes and court proceedings dealing with sexual offences so as to ensure anonymity and protection of the lives and dignity of the parties but without prejudice to the due process of the law."

### 10.18.3 Deliberations of the Conference on Article 42

10.18.3.1 In debating Article 42, the Conference:

- (a) observed that the provision of clause (1) was covered in clause (1) of Article 40 re-numbered as Article 48 as it applies to every person, including women. Therefore, clause (1) was deleted;
- (b) observed that it was not the Constitution which declared any law void but the Courts of Law. However, any law which was inconsistent with the Constitution was void, to the extent of the inconsistency. The Conference further noted that clause (2) was provided for in clause (4) of Article 41 re-numbered as Article 49;
- (c) observed that clauses (3)(a) and (3)(f) should be provided for under the Directive Principles of State Policy;
- (d) noted that there was a Bill pending presentation to Parliament to prohibit all forms of violence against women. Therefore, clause (4), was deleted; and
- (e) noted that clause (5) was unnecessary since clause (1) on which it was based had been deleted, and that a Bill to prohibit all forms of

violence against women was to be presented to Parliament and would cover what it provided for. Therefore, the clause was also deleted.

#### **10.18.4 Resolutions of the Conference**

The Conference resolved to delete Article 42 of the Draft Constitution.

### **10.19 Article 43 : Older Members of Society**

#### **10.19.1 Recommendations of the Commission**

The Commission did not make any specific recommendations on older members of society but provided for it in Article 43.

#### **10.19.2 Provisions in the Draft Constitution on Older Members of Society**

Article 43 provides as follows:

**"43. (1) Older members of society are entitled to enjoy all the rights and freedoms set out in this Bill of Rights, including the right to -**

- (a) participate fully in the affairs of society;**
- (b) pursue their personal development and retain their autonomy;**
- (c) freedom from all forms of discrimination, exploitation or abuse;**
- (d) live in dignity and respect; and**
- (e) receive care and assistance from the family and the Government.**

**(2) Parliament shall enact legislation to provide for a sustainable social security system for the older members of society."**

#### **10.19.3 Deliberations of the Conference on Article 43**

10.19.3.1 In debating Article 43, three positions emerged.

10.19.3.2 Members who supported the retention of the Article in the Constitution argued as follows:



- (a) that it was the duty of the Government to provide for those who were unable to look after themselves;
- (b) that schemes such as the Poverty Alleviation Programme and social insurance for those who worked in the Public Service and the National Pension Scheme should be improved, in order to provide for the future welfare of the elderly;
- (c) that older members of society had played a role in contributing to the well-being of society and some still supported orphans, therefore, they needed to be provided for; and
- (d) that the population of old people was small and the standard of living was not as high as that in developed countries and so it could be managed;

10.19.3.3 Members who did not support the Article and proposed that it be deleted from the Constitution argued as follows:

- (a) that not all problems could be resolved through the constitution and that the standard practice was to include only matters of principle in the Constitution;
- (b) that the extended family system was well organised and worked well, therefore, Zambia should not emulate the Western culture;
- (c) that there were already provisions on the social security system; and
- (d) that the provision would promote laziness and many old people might

scramble to be registered thereby burdening the Government.

10.19.3.4 Members who supported the Article but proposed that it be deleted from the Constitution and be provided for in an Act of Parliament argued as follows:

- (a) that the elderly were part of the larger society and did not need to be provided for separately, therefore, their rights should be provided for in an Act of Parliament;
- (b) that there were all kinds of rights enshrined in statutes already in existence;
- (c) that international human rights bodies were continually generating new conventions which could not all be provided for in the Constitution;
- (d) that Zambia should, like some countries enact a Human Rights Act because not all rights needed to be in the Constitution; and
- (e) that the extended family system was well structured and could be supported through statutes.

#### **10.19.4 Resolutions of the Conference**

The Conference resolved to delete the Article from the Constitution but to relegate it to a subordinate Act of Parliament.

**10.20            Article 44 : Children**

**10.20.1           Recommendations of the Commission**

10.20.1.1        The Commission recommended that the following children's rights should be enshrined in the Bill of Rights:

- (a)    the right to life, including the right of an unborn child subject to exceptions permitted by law;
- (b)    the right to a name and a nationality;
- (c)    the right to parental care, family care or appropriate or alternative care when removed from the family environment;
- (d)    the right to survival and development;
- (e)    the right to social security, including social insurance;
- (f)    the right to basic nutrition and shelter;
- (g)    the right to a standard of living adequate for the child's physical, mental, spiritual, moral and social development;
- (h)    the right to protection from all forms of exploitation, maltreatment, neglect, abuse or degradation prejudicial to any aspect of the child's development and welfare;
- (i)    the right to protection from all forms of sexual exploitation and sexual abuse;
- (j)    the right to protection from exploitative labour practices and wars;

- (k) the right to basic education, which shall be the responsibility of the State and parents of the child;
- (l) the right to health care;
- (m) the right of the disabled child to special care;
- (n) the right to special protection for orphans and other vulnerable children;
- (o) the right not to be detained except as a measure of last resort and, in such a case, the child should have a right to be kept separately from adult detainees;
- (p) the right to legal representation at State expense in both civil and criminal proceedings affecting the child;
- (q) the right to be tried in Juveniles courts;
- (r) the right to identity protection against media exposure in criminal cases; and
- (s) the right not to be used directly in armed conflict and to be protected in times of armed conflict.

10.20.1.2 The Commission further recommended that the Constitution should:

- (a) provide that a child's best interests are of paramount importance in every matter concerning the child; and
- (b) define the term "child" as a person below eighteen years of age, including an unborn child as defined by law. However, an unborn child shall only be entitled to such rights as may be deemed appropriate by law.

Article 44 provides as follows:

**“44. (1) It is the duty of parents, wider family, society and the State to nurture, protect and educate children for the benefit of society as a whole.**

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

**(3) A child’s best interests are of paramount importance in every matter concerning the child.**

**(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 circumcision, tattooing and early marriage before attaining the age of eighteen years;**

**(e) to be protected from all forms of exploitation and any work that is likely to be hazardous or adverse to the child’s welfare;**

**(f) to adequate nutrition, shelter, basic health care services, social security and social services;**

**(g) not to be subjected to corporal punishment or any other form of violence or cruel and inhumane treatment in schools and other institutions 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 development and an individual development plan, where appropriate;
- (m) to protection from all forms of sexual exploitation or abuse;
- (n) not to be arrested or detained, except as a measure of last resort, in which case that child has the right to be -
  - (i) detained only for the shortest appropriate period of time;
  - (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 account of the child's gender and age; and
  - (v) tried in a juveniles court;
- (o) to know of decisions affecting the 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 and not be exposed by the media during criminal proceedings; and
- (q) generally to survival and development.

(6) Children with special needs, especially girls, orphans, a child whose parent is in prison, children with disability, refugee children and homeless children, are entitled to the special protection of the State and society.

(7) In this Article "child" means a person who is below the age of eighteen years.

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

### **10.20.3 Deliberations of the Conference on Article 44**

10.20.3.1 The members who supported the Article and wanted it retained in the Constitution argued as follows:

- (a) some petitioners to the Commission wanted the rights of children known as

the second generation rights to be enshrined in the Bill of Rights so that they could be justiciable;

- (b) many other countries like Zambia had appended their signatures to the Convention on Children's Rights of 1991, but had not yet domesticated it; and
- (c) it would provide commitment by the Government to ensure youths were provided for to avoid "street adults".

10.20.3.2 Members who opposed the Article and wanted it to be deleted from the Constitution and be provided for under a subordinate Act of Parliament argued that:

- (a) although it was an important clause, it should be relegated to subordinate law because allowing children to sue the family was not practical;
- (b) relegating it to an Act of Parliament did not mean that the law would not be enforced and that a family which neglected a child could be sued; and
- (c) most of the issues were already being addressed by various pieces of subsidiary legislation.

10.20.3.3 In debating clause (3), some members who supported the provision argued that it was not contentious and that it should, therefore, be in the Constitution.

10.20.3.4 Members who proposed that clause (3) should be relegated to an Act of Parliament argued as follows:

- (a) that it was already accepted that all children were equal and, therefore, continuing to discuss the rights of children was becoming

monotonous. It was argued that “monotony” should not be allowed in the Constitution; and

- (b) that not all provisions of International Conventions were intended for inclusion in constitutions. It was stated that domestication was the answer to such treaties and conventions.

10.20.3.5 In debating clause (5) (c), the Conference observed that education was paramount and was the "driver" of the social and economic development of a nation; that the provision was progressive and was in line with the Millennium Development Goal of “Education for All”. The Conference therefore:

- (a) approved the provision with amendments by inserting the words *“and compulsory”* before the words *“basic education”*; and
- (b) decided that the amended paragraph should be moved to Article 72 of the Draft Constitution which provided for the right to education.

10.20.3.6 In debating clause (5) (d), the Conference resolved to delete it and observed that the aspect dealing with early marriages could be moved to some other part of the Constitution.

10.20.3.7 The Conference approved clause (5) (e) with amendments by incorporating aspects of clause (1) of Article 32 of the United Nations Convention on the Rights of a Child (UNCRC) and the proviso to clause (1) of Article 24 of the current Constitution.

10.20.3.8 Clause (1) of Article 32 of the United Nations Convention on the Rights of a Child (UNCRC) provides as follows:

**“32. (1) States Parties recognise the right of the child to be protected from economic exploitation and from performing any work**



**that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development."**

10.20.3.9 Clause (1) of Article 24 of the current Constitution provides as follows:

**"24. (1) A young person shall not be employed and shall in no case be caused or permitted to engage in any occupation or employment which would prejudice his health or education or interfere with his physical, mental or moral development:**

**Provided that an Act of Parliament may provide for the employment of a young person for a wage under certain conditions."**

10.20.3.10 The Conference approved clause (5) (f) with amendments by deleting the words "*social security and social services*" and substituting them with the words "*and social protection services*".

10.20.3.11 The Conference deleted clause (5) (g), (h), (i),(j), (k), (l), (n),(o), (p) and (q) and clauses (6), (7) and (8).

#### **10.20.4 Resolutions of the Conference**

The Conference adopted Article 44 with amendments and re-numbered it as Article 50 as follows:

**"50. (1) All children, whether born in or outside wedlock, are equal before the law and have equal rights under this Constitution.**

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

**(3) 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 be protected from all forms of exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development:  
Provided that an Act of Parliament may provide for the employment of children for a wage under certain conditions;
- (d) to adequate nutrition, shelter, basic health care services and social services;
- (e) to protection from all forms of sexual exploitation or abuse.
- (4) Parliament shall enact legislation to provide for:
  - (a) the promotion and protection of the rights of children; and
  - (b) the regulation of child health care services and child care facilities."

## **10.21 Article 45 : Youth**

### **10.21.1 Recommendations of the Commission**

The Commission recommended that the Constitution should guarantee the rights of the youth.

### **10.21.2 Provisions in the Draft Constitution on the Youth**

Article 45 provides as follows:

**"45. (1) 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 this Bill of Rights, including -**

- (a) access to quality and relevant education and training in order to achieve personal development and serve the community;
- (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.
- (2) In this Article “youth” means a person who is eighteen years of age but below the age of thirty-five years.
- (3) Parliament shall enact legislation to give effect to this Article.”

### **10.21.3 Deliberations of the Conference on Article 45**

10.21.3.1 In debating the Article, the members who supported the provision argued as follows:

- (a) that the inclusion of the provision in the Constitution was progressive as it addressed the special needs of this vulnerable group which was often abused in political circles and would compel Government to address the problems of the youths; and
- (b) that the population of Zambia was mostly youthful and needed specific rights.

10.21.3.2 In contrast most members were opposed to the adoption of the Article and inter alia, argued as follows:

- (a) that the rights provided under clause (1) of Article 45 were not unique to the youths because they were common to all citizens and, therefore, should not be stated separately;
- (b) that the right of access to education was already provided for in Article 72 of the Draft Constitution which has been re-numbered as Article 69 and therefore, there was no need for the duplication;

- (c) that splitting categories of people who could enjoy certain rights would create problems rather than provide solutions and exclude some people from enjoying certain rights; and
- (d) that there was need to define the term “youth”.

#### **10.21.4 Resolutions of the Conference**

The Conference resolved to delete Article 45.

### **10.22 Article 46 : Protection of Young Persons**

#### **10.22.1 Recommendations of the Commission**

The Commission recommended that the Constitution should guarantee the rights of the youth.

#### **10.22.2 Provisions in the Draft Constitution on Protection of Young Persons**

Article 46 provides as follows:

- “46. (1) A young person shall not be -**
- (a) employed;**
  - (b) 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;**
- except that an Act of Parliament may provide for the employment of a young person for a wage under certain conditions specified in that Act.**
- (2) In this Article, “young person” means a person under the age of fifteen years.”**

#### **10.22.3 Deliberations of the Conference on Article 46**

- 10.22.3.1 The Conference considered Article 46 and resolved to import Article 24 of the current Constitution. This

decision was intended to provide for legislation to encourage the State to ensure that young people were not exploited.

10.22.3.2 The members who supported the adoption of Article 24 of the current Constitution argued as follows:

- (a) that the provision would cure the present “scourge” of child labour such as that of children selling merchandise on the roads instead of being in school and of children under the age of 15 years being employed in jobs that interfered with their physical, health, moral or mental development;
- (b) that the concerns had been provided for in the current Constitution; and
- (c) that a State which allowed occupation and employment of the youth without protection was irresponsible.

10.22.3.3 The members who did not support the provision, as amended, argued that enforcement would be a problem, therefore, the provision would be better placed in subsidiary legislation.

#### **10.22.4 Resolutions of the Conference**

The Conference adopted Article 46, with amendments including amending its marginal note to read “Protection of Young Persons from Exploitation” and re-numbered it as Article 51 as follows:

**“51. (1) A young person shall not be employed and shall in no case be caused or permitted to engage in any occupation or employment, which would prejudice the young person’s health or education or interfere with the young person’s physical, mental or moral development, except that an Act of Parliament may provide for the employment of a young person for a wage under certain conditions.**

(2) All young persons shall be protected against physical or mental ill-treatment, all forms of neglect, cruelty or exploitation.

(3) A young person shall not be the subject of traffic in any form.

(4) In this Article, "young person" means a person under the age of fifteen years."

## **10.23 Article 47 : Family**

### **10.23.1 Recommendations of the Commission**

The Commission recommended that the Constitution should:

(a) provide that eighteen years be the minimum age for marriage; and

(b) define marriage as a union between man and woman freely contracted by both parties.

### **10.23.2 Provisions in the Draft Constitution on the Family**

Article 47 provides as follows:

"47. (1) The Republic recognizes the family as the natural fundamental unit of society and as the necessary basis of the social order.

(2) The family is entitled to the respect and protection of the State.

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

(4) Parties to a marriage are entitled to equal rights in the marriage, during the marriage and at the dissolution of the marriage.

(5) Recognising the importance of children to the future of society, the maternal role of women and the nurturing role of both parents, the Government shall -

(a) ensure the right of women to adequate maternity leave;

(b) ensure the availability of adequate paternal leave;

- (c) ensure the availability of adequate maternal and reproductive health care and child health care; and
- (d) promote the availability of adequate childcare facilities."

### 10.23.3 Deliberations of the Conference on Article 47

10.23.3.1 The Conference debated and adopted Article 47 of the Draft Constitution with amendments. In amending the Article, the Conference:

- (a) replaced the term "*Republic*" with the term "*State*" in clause (1) in order to provide for consistency with other provisions;
- (b) recognised the importance of both maternal and paternal roles of women and men in bringing up children, and therefore, approved clause (5) with amendments by replacing the phrase "*the maternal role of women*" with the phrase "*the maternal and paternal role of women and men*" and re-numbered it as clause (7);
- (c) introduced two (2) new clauses to make Article 47 applicable to both customary and statutory marriages and to expressly prohibit same sex marriages and numbered them as clauses (4) and (5), respectively, and re-numbered clause (4) as clause (6). The provisions of the new clauses (4) and (5) state that;

*"(4) Clause (3) shall apply to statutory and customary law marriages.*

*(5) Marriage between persons of the same sex is prohibited";*

- (d) introduce a new paragraph (a) in clause (8) to enable Parliament to enact legislation to specify what constituted a family;

#### **10.23.4 Resolutions of the Conference**

The Conference approved Article 47, re-numbered as Article 52 as follows:

**"52. (1) The State recognises the family as the natural and fundamental unit of society and as the necessary basis of the social order.**

**(2) The family is entitled to the respect and protection of the State.**

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

**(4) Clause (3) shall apply to statutory and customary law marriages.**

**(5) Marriage between persons of the same sex is prohibited.**

**(6) Parties to a marriage are entitled to equal rights in the marriage, during the marriage and at the dissolution of the marriage.**

**(7) Recognising the importance of children to the future of society, the maternal and paternal role of women and men and the nurturing role of both parents, the Government shall -**

**(a) ensure the right of women to adequate maternity leave;**

**(b) ensure the availability of adequate paternal leave;**

**(c) ensure the availability of adequate maternal and reproductive health care and child health care; and**

**(d) promote the availability of adequate childcare facilities.**

**(8) Parliament shall enact legislation to:**

**(a) specify what constitutes a family;**

**(b) regulate customary law and statutory marriages;**

**(c) provide for the rights of parties during and at the dissolution of a marriage; and**



- (d) regulate matrimonial causes and court proceedings dealing with sexual offences so as to ensure anonymity and protection of the lives and dignity of the parties but without prejudice to the due process of the law."

## **10.24 Article 48 : Persons with Disabilities**

### **10.24.1 Recommendations of the Commission**

10.24.1.1 The Commission recommended that the Constitution should make provision in the Bill of Rights for:

- (a) the protection of persons with disabilities;
- (b) the right of persons with disabilities to use sign language, braille or other appropriate means of communication as well as have access to other special facilities, devices and materials to enable them overcome constraints due to disability; and
- (c) parliament to enact laws to enable persons with disabilities realise their full potential.

10.24.1.2 The Commission further recommended that:

- (a) the State should establish social security schemes for persons who are totally impaired;
- (b) persons with disabilities should be given a much higher tax exemption on their income than is currently the case; and
- (c) all tax on devices used by persons with disabilities should be removed.

## 10.24.2 Provisions in the Draft Constitution on Persons with Disabilities

Article 48 provides as follows:

**"48. (1) Persons with disability are entitled to enjoy all the rights and freedoms set out in this Bill of Rights and shall have the right –**

- (a) to education and facilities that are integrated into society as a whole to the extent compatible with the interests of persons with disability;**
- (b) to effective access to places and public transport;**
- (c) to use sign language, braille or other appropriate means of communication;**
- (d) to be addressed and referred to, in official or private contexts, in a manner that is not demeaning, derogatory or discriminatory;**
- (e) to access materials, facilities and devices to enable them overcome constraints due to disability;**
- (f) to equal treatment, including the right to equal opportunities in cultural, political, economic and social activities; and**
- (g) to inherit, have access to, own and control property.**

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

**(3) Parliament shall enact legislation to give affect to this Article."**

## 10.24.3 Deliberations of the Conference on Article 48

10.24.3.1 In debating Article 48, the Conference:

- (a) replaced the phrase "*Persons with disability*" with the phrase "***Persons with disabilities***" and by adding the words "***on an equal basis with others***" after the term "Bill of Rights" in the

opening sentence of clause (1), in accordance with the terminologies used in the United Nations Convention on Rights of Persons with Disabilities (UNCRPD);

- (b) observed that the rights enumerated in paragraphs (a) to (g) of clause (1), inclusive, were exhaustive and, therefore, there was a possibility of omitting some of such rights which may even be critical to the protection of persons with disabilities. For that reason, clause (2) of Article 49 was transferred to Article 48 as clause (4) while paragraphs (a) to (g) of clause (1) of Article 48 were deleted and replaced by the new paragraphs (a) to (f) of the new clause (4) which were drafted on the basis of the UNCRPD and provides as follows:

- “(a) the promotion and protection of the rights of persons with disabilities;**
- (b) effective access by persons with disabilities to the physical environment, facilities and services open or provided to the public;**
- (c) the education and health needs of persons with disabilities, including early identification and intervention;**
- (d) the use of Sign Language, Braille or other appropriate means of communication;**
- (e) access to assistive devices and technologies, support services and facilities to enable persons with disabilities live independently and participate fully in all aspects of life; and**

- (f) **the establishment of a social security scheme for persons who are totally impaired."**
- (c) in clause (2), inserted the word "*law*" after the word "*Any*" and replaced the words "*hereby declared void*" with the word "*prohibited*";
- (d) inserted a new clause (3) to provide for the recognition, protection and promotion by the State of the rights, dignity, welfare and interests of persons with disabilities.
- (e) approved the insertion of the definition of the term "persons with disabilities" and its insertion in the Article providing for definitions. The definition adopted provides that:  
*"persons with disabilities" includes persons who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder the persons' full and effective participation in society on an equal basis with others";*  
 and
- (f) deleted clause (3) as the Article should become enforceable when the new Constitution comes into force.

#### **10.24.4 Resolutions of the Conference**

The Conference:

- (a) adopted Article 48 with amendments and re-numbered it as Article 53 as follows:

**"53. (1) Persons with disabilities are entitled to enjoy all the rights and freedoms set out in this Bill of Rights on an equal basis with others.**

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

(3) The State shall recognise, protect and promote the rights, dignity, welfare and interests of persons with disabilities.

(4) Parliament shall enact legislation to provide for-

(a) the promotion and protection of the rights of persons with disabilities;

(b) effective access by persons with disabilities to the physical environment, facilities and services open or provided to the public;

(c) the education and health needs of persons with disabilities, including early identification and intervention;

(d) the use of Sign Language, Braille or other appropriate means of communication;

(e) access to assistive devices and technologies, support services and facilities to enable persons with disabilities live independently and participate fully in all aspects of life; and

(f) the establishment of a social security scheme for persons who are totally impaired."

(b) adopted the definition of "persons with disabilities" as:

*"persons with disabilities" includes persons who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder the persons' full and effective participation in society on an equal basis with others".*

## 10.25 Article 49 : Special Measures for Persons with Disabilities

### 10.25.1 Recommendations of the Commission

The recommendations of the Commission on special measures for persons with disabilities are the same as those on Article 48.

## **10.25.2 Provisions in the Draft Constitution on Special Measures for Persons with Disabilities**

Article 49 provides as follows:

- “49. (1) The State shall -**
- (a) promote measures to educate communities and the society on the causes of disability and the need to respect the dignity and rights of all persons;**
  - (b) promote and ensure the use of sign language, braille or any other appropriate means of communication for the disabled; and**
  - (c) not tax any device used by persons with disability.**
- (2) Parliament shall enact legislation to provide for the promotion of the rights of persons with disability and in particular establish a social security scheme for persons who are totally impaired.”**

## **10.25.3 Deliberations of the Conference on Article 49**

The Conference debated and deleted Article 49 as a consequence of the decision taken earlier when considering Article 48. In considering Article 48, the Conference had resolved to delete paragraphs (a) to (g) of clause (1) of Article 48 and replaced them with new paragraphs (a) to (f) inclusive which included the provision of clause (2) of Article 49 and numbered the new provision as clause (4) of Article 48. Therefore, Article 49 had become redundant and was deleted.

## **10.25.4 Resolutions of the Conference**

The Conference deleted Article 49.

## 10.26 Article 50 : Language and Culture

### 10.26.1 Recommendations of the Commission

The Commission did not make any specific recommendations on the right to language and culture but provided for it in Article 50.

### 10.26.2 Provisions in the Draft Constitution on Language and Culture

Article 50 provides as follows:

**"50. (1) Every 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 shall not be denied the right, with other members of that community -**

**(a) to enjoy that person's culture and use that person's language; or**

**(b) to form, join and maintain cultural and linguistic associations.**

**(3) A person shall not be compelled -**

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

**(b) to form, join, contribute, maintain or pay allegiance to any cultural, traditional or linguistic association, organisation, institution or entity."**

### 10.26.3 Deliberations of the Conference on Article 50

In debating the Article, the Conference:

**(a) deleted clause (1) as it was considered to be ambiguous as it did not define the circumstances under which it would apply and was not curing any mischief; and**

**(b) moved the Article from "Civil and Political Rights" to "Economic, Social and Cultural Rights" and re-numbered the Article as Article 70.**

#### **10.26.4 Resolutions of the Conference**

The Conference adopted Article 50 with amendments and re-numbered it as Article 70, as follows:

**“70. (1) A person who belongs to a cultural or linguistic community shall not be denied the right, with other members of that community -**

**(a) to enjoy that person's culture and use that person's language; or**

**(b) to form, join and maintain cultural and linguistic associations.**

**(2) A person shall not be compelled -**

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

**(b) to form, join, contribute, maintain or pay allegiance to any cultural, traditional or linguistic association, organisation, institution or entity.”**

#### **10.27 Article 51 : Freedom and Security of Persons**

##### **10.27.1 Recommendations of the Commission**

The Commission recommended that the right to the relief of an order of *Habeas Corpus* should be explicitly provided for and entrenched in the Bill of Rights.

##### **10.27.2 Provisions in the Draft Constitution on Freedom and Security of Persons**

Article 51 provides as follows:

**“51. Every person has the right to freedom and security of the person which includes the right -**

**(a) not to be deprived of freedom arbitrarily or without just cause;**

**(b) not to be the subject of human trafficking;**

**(c) not to be detained without trial, except during a state of war, public emergency or state of threatened public emergency;**



- (d) to be free from all forms of violence;
- (e) not to be tortured in any manner, whether physically or psychologically; and
- (f) not to be subjected to corporal punishment or to be treated or punished in a cruel, inhuman or degrading manner."

### **10.27.3 Deliberations of the Conference on Article 51**

10.27.3.1 In debating Article 51, the Conference observed that its provision was inadequate in that it did not provide for instances when a person's liberty could be taken away for that person's good. For that reason its provision was deleted and replaced with that of Article 13 of the current Constitution which provides as follows:

**"13. (1) A person shall not be deprived of his personal liberty except as may be authorised by law in any of the following cases:**

- (a) in execution of a sentence or order of a court, whether established for Zambia or some other country, in respect of a criminal offence of which he has been convicted;
- (b) in execution of an order of a court of record punishing him for contempt of that court or of a court inferior to it;
- (c) in execution of an order of a court made to secure the fulfillment of any obligation imposed on him by law;
- (d) for the purpose of bringing him before a court in execution of an order of a court;
- (e) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law in force in Zambia;
- (f) under an order of a court or with the consent of his parent or guardian, for his education or

welfare during any period ending not later than the date when he attains the age of eighteen years;

- (g) for the purpose of preventing the spread of an infectious or contagious disease;
- (h) in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol or a vagrant, for the purpose of his care or treatment or the protection of the community;
- (i) for the purpose of preventing the unlawful entry of that person into Zambia, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person while he is being conveyed through Zambia in the course of his extradition or removal as a convicted prisoner from one country to another; or
- (j) to such extent as may be necessary in the execution of a lawful order requiring that person to remain within a specified area within Zambia or prohibiting him from being within such area, or to such extent as may be reasonably justifiable for the taking of proceedings against that person relating to the making of any such order, or to such extent as may be reasonably justifiable for restraining that person during any visit that he is permitted to make to any part of Zambia in which, in consequence of any such order, his presence would otherwise be unlawful."

10.27.3.2 In addition, the marginal note was also amended to read "Protection of right to personal liberty" and the Article was re-numbered as Article 54.

#### **10.27.4 Resolutions of the Conference**

The Conference deleted Article 51 and, in its place, adopted Article 13 of the current Constitution, with amendments and re-numbered it as Article 54 as follows:

**"54. A person shall not be deprived of that person's personal liberty except as may be authorised by law in any of the following cases:**

- (a) in execution of a sentence or order of a court, whether established for Zambia or some other country, in respect of a criminal offence of which that person has been convicted;
- (b) in execution of an order of a court of record punishing that person for contempt of that court or of a court inferior to it;
- (c) in execution of an order of a court made to secure the fulfilment of any obligation imposed on that person by law;
- (d) for the purpose of bringing that person before a court in execution of an order of a court;
- (e) upon reasonable suspicion of that person having committed, or being about to commit, a criminal offence under the law in force in Zambia;
- (f) under an order of a court or with the consent of that person's parent or guardian, for that person's education or welfare during any period ending not later than the date when that person attains the age of eighteen years;
- (g) for the purpose of preventing the spread of an infectious or contagious disease;
- (h) in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol or a vagrant, for the purpose of that person's care or treatment or the protection of the community;
- (i) for the purpose of preventing the unlawful entry of that person into Zambia, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person while that person is being conveyed through Zambia in the course of that person's extradition or removal as a convicted

- prisoner from one country to another;  
or
- (j) to such extent as may be necessary in the execution of a lawful order requiring that person to remain within a specified area within Zambia or prohibiting that person from being within such area, or to such extent as may be reasonably justifiable for the taking of proceedings against that person relating to the making of any such order, or to such extent as may be reasonably justifiable for restraining that person during any visit that the person is permitted to make to any part of Zambia in which, in consequence of any such order, that person's presence would otherwise be unlawful."

## **10.28 Article 52 : Slavery, Servitude and Forced Labour**

### **10.28.1 Recommendations of the Commission**

The Commission recommended that the current provisions of the Constitution relating to protection from slavery and forced labour should be maintained, but that appropriate legislation should spell out what constituted "forced labour".

### **10.28.2 Provisions in the Draft Constitution on Slavery, Servitude and Forced Labour**

Article 52 provides as follows:

"52. (1) A person shall not be held in slavery or servitude.

(2) A person shall not be required to perform forced labour.

(3) Parliament shall enact legislation specifying what constitutes "forced labour."

### 10.28.3 Deliberations of the Conference on Article 52

In debating the Article, the Conference:

- (a) introduced two new clauses (2) and (3), as a result of an earlier decision to provide for limitations, derogations and non-derogations in appropriate individual Articles instead of providing for them separately in a general limitation or derogation or non-derogation Article, while the other, was a result of the decision to provide for the necessary exceptions to “forced labour”;
- (b) amended the marginal note to read “Protection from slavery, servitude and forced labour”; and
- (c) re-numbered clause (2) as clause(3) and Article 52 as Article 55.

### 10.28.4 Resolutions of the Conference

The Conference adopted Article 52 with amendments and re-numbered it as Article 55, as follows:

- “55. (1) A person shall not be held in slavery or servitude.**
- (2) Notwithstanding any other provision in this Constitution, the protection from slavery or servitude shall not be derogated from.**
- (3) A person shall not be required to perform forced labour.**
- (4) For purposes of this Article, “forced labour” does not include-**
- (a) any labour required in consequence of a sentence or order of a court;**
  - (b) labour required of any person while that person is lawfully detained that, though not required in consequence of a sentence or order of a court, is reasonably necessary in the interest of hygiene or for the maintenance of the place at which the person is detained;**
  - (c) any labour required of a member of a disciplined force in pursuance of that**

- person's duties as such or, in the case of a person who objects, on religious grounds, to service as a member of a naval, military or air force, any labour that that person is required by law to perform in place of such service;
- (d) any labour required during any period when the Republic is at war, under a state of public emergency, a threatened state of public emergency, a national disaster or in the event of any other emergency or calamity that threatens the life and well-being of the community, to the extent that the requiring of such labour is reasonably justifiable in the circumstances of any situation arising or existing during that period, or as a result of the emergency or calamity; or
  - (e) any labour required as part of reasonable and normal communal or other civic obligations."

## **10.29 Article 53 : Privacy**

### **10.29.1 Recommendations of the Commission**

The Commission did not make specific recommendations on the right to privacy but provided for it in Article 53.

### **10.29.2 Provisions in the Draft Constitution on Privacy**

Article 53 provides as follows:

**"53. All persons have the right to privacy, which includes the right not to have -**

- (a) their person, home or property searched;
- (b) their possessions seized;
- (c) information relating to their family, health status or private affairs unnecessarily required or revealed; or
- (d) the privacy of their communications infringed."

### **10.29.3 Deliberations of the Conference on Article 53**

In debating the Article, the Conference:

- (a) observed that there was need to provide for exceptions when the provision in Article 53 could not apply to protect the greater public interest and adopted clause (2) of Article 17 of the current Constitution and numbered it as clause (2) of new Article 47;
- (b) deleted the word “unnecessarily” from paragraph (c) of clause (2) in order to ensure the protection of the privacy of a family and personal information; and
- (c) amended the marginal note to read *“Protection of privacy of person , home and property”*.

#### **10.29.4 Resolutions of the Conference**

The Conference adopted Article 53 with amendments and re-numbered it as Article 56 as follows:

**“56. (1) A person has the right to privacy, which includes the right not to have -**

- (a) their person, home or property searched;**
- (b) their possessions seized;**
- (c) information relating to their family, health status or private affairs required or revealed; or**
- (d) the privacy of their communications infringed.**

**(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this Article to the extent that it is shown that the law in question makes provision-**

- (a) that is reasonably required in the interest of defence, public safety, public order, public morality, public health, town and country planning, the development and utilisation of mineral resources, or in order to secure the development or utilisation of any property for a purpose beneficial to the community;**
- (b) that is reasonably required for the purpose of protecting the rights or freedoms of other persons;**
- (c) that authorises an officer or agent of the Government, a district council or a body**

- corporate established by law for a public purpose to enter on the premises of any person in order to inspect those premises or anything thereon for the purpose of any tax or rate due, or in order to carry out work connected with any property that is lawfully on those premises and that belongs to the Government, district council or body corporate, as the case may be; or
- (d) that authorises, for the purpose of enforcing the judgment or order of a court in any civil proceedings, the search of any person or property by order of a court or entry upon any premises by such order."

## **10.30 Article 54 : Freedom of Worship and Conscience**

### **10.30.1 Recommendations of the Commission**

The Commission recommended that:

- (a) the current constitutional provisions on freedom of worship and conscience should be maintained;
- (b) churches and other religious organisations should continue to be registered and monitored under relevant legislation, but that this legislation should be reviewed to provide criteria for registration, compatible with the freedom of worship; and
- (c) churches and other religious organisations engaged in profit making ventures should continue paying tax, as required by law.

### **10.30.2 Provisions in the Draft Constitution on Freedom of Worship and Conscience**

Article 54 provides as follows:

- "54. (1) Every person has the right to freedom of conscience, religion, thought, belief and opinion.
- (2) Every person has a 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) Every 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.

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

(a) the facilities of that institution are made available or the observance and instruction are conducted on an equitable basis, having regard to the beliefs of the population served by that institution; and

(b) attendance at the observance or instruction is free and voluntary.

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

(6) 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 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."

### **10.30.3 Deliberations of the Conference on Article 54**

10.30.3.1 In debating the Article, the Conference observed that it did not include the right to change one's religion and did not provide for exception to the rights. Therefore, the Conference resolved to delete its

provision and replace it with that of Article 19 of the current Constitution which provided for freedom of conscience and also provided for one to change their religion or belief without any hindrance and numbered the Article as Article 57. Such a provision would protect those whose religions did not allow their followers the freedom to change religion to an extent that they did even execute or kill those that attempted to do so.

10.30.3.2 In addition, Article 19 provided for limitation of freedom of worship within its provision. Insertion of limitation in Article 57 was in accordance with the resolution of the Conference to place limitations within the individual Articles.

10.30.3.3 The Conference also amended the marginal note to read **“Protection of freedom of conscience”**.

#### **10.30.4 Resolutions of the Conference**

The Conference adopted amendments to Article 54 and re-numbered it as Article 57 as follows:

**“57. (1) A person shall not, except with that person’s own consent, be hindered in the enjoyment of that person’s freedom of conscience.**

**(2) For the purposes of this Article, “freedom of conscience” includes freedom of thought and religion, freedom to change the person’s religion or belief, and freedom, either alone or in community with others, and both in public and in private, to manifest and propagate the person’s religion or belief in worship, teaching, practice and observance.**

**(3) Except with the person’s own consent, or, if the person is a minor, the consent of that person’s guardian, a person attending any place of education shall not be required to receive religious instruction or to take part in or attend any religious ceremony or observance if that instruction, ceremony or observance relates to a religion other than the person’s own.**

**(4) A religious community or denomination shall not be prevented from providing religious instruction for persons of that community or denomination in the course of any education provided by that community or**

denomination or from establishing and maintaining instructions to provide social services for such persons.

(5) A person shall not be compelled to take any oath which is contrary to that person's religion or belief or to take any oath in a manner which is contrary to that person's religion or belief.

(6) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this Article to the extent that it is shown that the law in question makes provision which is reasonably required-

- (a) in the interests of defence, public safety, public order, public morality or public health; or
- (b) for the purposes of protecting the rights and freedoms of other persons, including the right to observe and practice any religion without the interference of members of any other religion;

and except so far as that provision or, the thing done under the authority thereof as the case may be, is shown not to be reasonably justifiable in a democratic society."

## **10.31 Article 55 : Freedom of Expression**

### **10.31.1 Recommendations of the Commission**

The Commission recommended that:

- (a) the current constitutional provision should be maintained and the term "freedom of expression" should be defined by the Constitution and should include:
  - (i) freedom of the Press and other media;
  - (ii) freedom to receive and impart information or ideas;
  - (iii) freedom of artistic creativity; and
  - (iv) academic freedom and freedom of scientific research.

- (b) Laws on civil libel and defamation should be maintained, as every right entails a corresponding duty in relations between people.

#### **10.31.2 Provisions in the Draft Constitution on Freedom of Expression**

Article 55 provides as follows:

**“55. (1) Every 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; and**
- (d) academic freedom, including freedom of scientific research.**

**(2) Clause (1) does not extend to -**

- (a) propaganda for war;**
- (b) incitement to violence; or**
- (c) advocacy of hatred that -**
  - (i) vilifies and disparages others or incites harm; or**
  - (ii) is based on any prohibited ground of discrimination specified in this Constitution.”**

#### **10.31.3 Deliberations of the Conference on Article 55**

In debating the Article, the Conference:

- (a) observed that the provisions in paragraphs (c) and (d) of clause (1) could be a licence for pornography in the name of creativity and for research that was not legally and morally acceptable. Therefore, they were deleted; and
- (b) incorporated and adopted clause (3) of Article 20 of the current Constitution to provide for limitations.

The Conference approved Article 55 with amendments and re-numbered it as Article 58 as follows:

**"58. (1) Every person has the right to freedom of expression which includes -**

- (a) freedom to hold an opinion; and**
- (b) freedom to receive or impart information or ideas.**

**(2) Clause (1) does not extend to -**

- (a) propaganda for war;**
- (b) incitement to violence; or**
- (c) advocacy of hatred that -**
  - (i) vilifies and disparages others or incites harm; or**
  - (ii) is based on any prohibited ground of discrimination specified in this Constitution.**

**(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with, or in contravention of, this Article to the extent that it is shown that the law in question makes provision that is reasonably required for the purpose of -**

- (a) the interests of defence, public safety, public order, public morality or public health;**
- (b) protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings;**
- (c) preventing the disclosure of information received in confidence;**
- (d) maintaining the authority and independence of the courts;**
- (e) regulating educational institutions in the interests of persons receiving instruction therein; or**
- (f) the registration of, or regulating the technical administration or the technical operation of, newspapers and other publications, telephony, telegraphy, posts, wireless broadcasting or television;**

**and except so far as that provision or, the thing done under the authority thereof, as the case may be, is shown not to be reasonably justifiable in a democratic society."**

## 10.32            Article 56 : Access to Information

### 10.32.1           Recommendations of the Commission

The Commission recommended that the Constitution provide in the Bill of Rights that:

- (a) every person should have the right of access to public information, but that it should be subject to national security considerations;
- (b) Parliament should enact a law that would facilitate the realisation of this right;
- (c) no person should be hindered in the enjoyment of academic and intellectual freedom; and
- (d) political parties, individuals and organisations should be free to establish their own newspapers, publications and other media, subject to provisions of the law.

### 10.32.2           Provisions in the Draft Constitution on Access to Information

Article 56 provides as follows:

- "56. (1) Every citizen has the right of access to -**
- (a) information held by the State; and**
  - (b) any information that is held by another person which is required for the exercise or protection of any right or freedom.**
- (2) The President shall within six months of the submission of a report of any commission of inquiry, appointed by the President in the exercise of the President's executive functions, publish the report.**
- (3) Every person has the right to demand the correction or deletion of untrue or misleading information affecting that person.**
- (4) The State has the obligation to publicise any important information affecting the welfare of the Nation.**
- (5) Parliament shall enact legislation to provide for access to public information."**

### 10.32.3 Deliberations of the Conference on Article 56

10.32.3.1 In debating the Article, some members supported paragraph (a) and argued as follows:

- (a) that freedom of information was a co-principle of good governance; and respect for fundamental human rights;
- (b) that access to information was essential for citizens to make informed decisions; and
- (c) that Article 56 would have “buttressed” the Freedom of Information Bill which was hoped to be presented to Parliament by Government in due course.

10.32.3.2 However, most members did not support paragraph (a) of clauses (1) and argued as follows:

- (a) that it was not desirable for everyone to probe into every information held by the State as some of it was “classified”, and that even developed nations did not avail all classified information to the public;
- (b) that under current practice, information deposited with the National Archives could only be accessed for research after a period of twenty years;
- (c) that allowing the provision would compel the DPP to disclose reasons for entering the *nolle prosequi*, which was undesirable and not supported by law; and
- (d) that the Freedom of Information Bill which is pending before Parliament is

the best legislation for dealing with provision in clause (1).

10.32.3.3 Similarly, most members did not support paragraph (b) of clause (1) and argued as follows:

(a) that the provision would allow for interference into other people's private lives; and

(b) that since information had a price, it would be tempting for those who held custody of such information to sell State secrets for financial gains.

10.32.3.4 With regard to clause (2), the Conference noted that there were various reasons why commissions of inquiry were set up. Prescribing a time-frame in the Constitution was, therefore, not only inappropriate, but it was also undesirable as some information may not be published. Therefore, clause (2) was deleted.

10.32.3.5 Clause (5) was approved by the Conference with an amendment by deleting the word "*public*" from the provision.

#### 10.32.4 Resolutions of the Conference

The Conference adopted Article 56 with amendments and re-numbered it as Article 59, as follows:

**"59. (1) Every person has the right to demand the correction or deletion of untrue or misleading information affecting that person.**

**(2) The State has the obligation to publicise any important information affecting the welfare of the nation.**

**(3) Parliament shall enact legislation to provide for access to information."**



## **10.33            Article 57 : Freedom of Media**

### **10.33.1           Recommendations of the Commission**

10.33.1.1        The Commission recommended that:

- (a)    press freedom be specifically provided for under the Bill of Rights;
- (b)    the current constitutional provision that prohibits derogations from this right should be maintained, except that this right should also acknowledge the importance of the law of libel which seeks to protect public interest and the interests of others in circumstances where there is disregard of these interests;

10.33.1.2        The Commission further recommended that the Constitution should provide that:

- (a)    every person should have the right to freedom of the Press, media and artistic creativity;
- (b)    press material or other communications should not be subjected to any form of censorship;
- (c)    public-owned media should be managed in a manner that ensures impartiality of a diversity of opinions;
- (d)    the courts should have the discretion of determining whether or not a journalist should be compelled to divulge their sources of information;
- (e)    the registration or licensing of any media shall not be unreasonably withheld, withdrawn or refused; and
- (f)    parliament should not enact any law abrogating freedom of the Press.

10.33.1.3 Further, the Commission recommended that the offences of criminal libel and defamation of the President should be repealed.

## **10.33.2 Provisions in the Draft Constitution on Freedom of Media**

Article 57 provides as follows:

**“57. (1) There shall be freedom of the press and other media.**

**(2) Subject to this Constitution, a law shall not make any provision that derogates from freedom or independence of the press and other media.**

**(3) Broadcasting and other electronic media are subject only to fair licensing procedures that are -**

**(a) administered by a body that is independent of control by the Government, political interests or commercial interests; and**

**(b) designed to ensure -**

**(i) the reasonable allocation of broadcast frequencies; and**

**(ii) adherence to codes of good practice.**

**(4) The registration or licensing of any media shall not unreasonably be withheld, withdrawn or refused.**

**(5) A person, State organ or State institution shall not -**

**(a) require prior licensing for any form of publication, broadcast or dissemination of information, comment or opinion;**

**(b) impose censorship on any form of publication, broadcast or dissemination of information, comment or opinion;**

**(c) otherwise interfere with the freedom of expression of any writer, editor, publisher or broadcaster; or**

**(d) harass or penalise a person for any opinion or view or the content of any publication, broadcast or dissemination.**

**(6) Parliament shall enact legislation that regulates freedom to broadcast in order to ensure fair election campaigning.”**

### 10.33.3 Deliberations of the Conference on Article 57

#### 10.33.3.1 In debating Article 57, the Conference:

- (a) while supporting the provisions observed that there was need to insert limitations in the Article as an uncontrolled press could either create, build or destroy individuals or threaten the security of a country. For this reason, clause (3) of Article 20 of the current Constitution was adopted to provide for limitations and re-numbered as clause (3) of the new Article 60;
- (b) recognised that the right not to disclose the source was the bedrock of journalism and, therefore, adopted clause (1) of Article 58 of the Draft Constitution and re-numbered it as clause (2) of Article 60;
- (c) deleted clause (2) because it was unnecessary as the provision of Article 57 of the Draft Constitution was subject to limitations as it was not one of those protected under non-derogable rights. Ninety-seven (97) members tried to call for a division over the decision of the Conference to delete clause (2) but the decision was sustained as they were fewer than 100 members required to call for a vote;
- (d) deleted clause (5) because the use of words such as "...shall not require prior licensing for any form of publication or dissemination", and "...shall not harass or penalise a person for any opinion or view or content of any publication, broadcast or dissemination" could lead to publication and dissemination of undesirable content such as pornography; and
- (e) amended clause (6) by directing Parliament to enact legislation providing for an independent broadcasting authority, appropriate limitations and specifying the role of Government in

securing and protecting public interest in broadcasting by adapting Article 192 of the Constitution of South Africa.

#### **10.33.4 Resolutions of the Conference**

The Conference adopted Article 57 with amendments and re-numbered it as Article 60 as follows:

**“60. (1) There shall be freedom of the press and other media.**

**(2) A journalist shall not be compelled to disclose a source of information, except as may be determined by a court.**

**(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this Article to the extent that it is shown that the law in question makes provision that is reasonably required for the purpose of -**

- (a) in the interests of defence, public safety, public order, public morality or public health;**
- (b) protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings;**
- (c) preventing the disclosure of information received in confidence;**
- (d) maintaining the authority and independence of the courts;**
- (e) regulating educational institutions in the interests of persons receiving instruction therein; or**
- (f) the registration of, or regulating the technical administration or the technical operation of, newspapers and other publications, telephony, telegraphy, posts, wireless broadcasting or television;**

**and except so far as that provision or, the thing done under the authority thereof; as the case may be, is shown not to be reasonably justifiable in a democratic society.**

**(4) Broadcasting and other electronic media are subject only to fair licensing procedures that are -**

- (a) administered by a body that is independent of control by the Government, political interests or commercial interests; and
- (b) designed to ensure -
  - (i) the reasonable allocation of broadcast frequencies; and
  - (ii) adherence to codes of good practice.
- (5) The registration or licensing of any media shall not unreasonably be withheld, withdrawn or refused.
- (6) Parliament shall enact legislation to -
  - (a) establish an independent authority to regulate broadcasting in the public interest;
  - (b) ensure fairness and diversity of views broadly representing Zambian society; and
  - (c) specify the role of the Government in securing and protecting the public interest in broadcasting."

#### **10.34 Article 58 : Freedom not to Disclose Source**

##### **10.34.1 Recommendations of the Commission**

The recommendations to this provision are as given under Article 57.

##### **10.34.2 Provisions in the Draft Constitution on Freedom not to disclose source**

Article 58 provides as follows:

**"58. (1) A journalist shall not be compelled to disclose a source of information, except as may be determined by a court.**

**(2) An agent of the media is free, at all times, to uphold the principle, provisions and objectives of this Constitution and the responsibility and accountability of the Government to the people of Zambia."**

##### **10.34.3 Deliberations of the Conference on Article 58**

- 10.34.3.1 In debating Article 58, the Conference accepted and placed its clause (1) in clause (2) of Article 57 which was re-numbered as Article 60.

10.34.3.2      However, the Conference considered clause (2) to be misplaced as the Government was neither accountable to the media directly nor accountable to the people through the media but was accountable to the people either directly or through their elected representatives. For this reason, clause (2) of Article 58 was deleted.

#### **10.34.4      Resolutions of the Conference**

The Conference, by adopting and transferring clause (1) to Article 60 as clause (2) and resolving to delete clause (2), consequently deleted Article 58.

### **10.35      Article 59 : Independence of Public Media**

#### **10.35.1      Recommendations of the Commission**

The Commission did not make recommendations on the independence of public media but provided for it in Article 59.

#### **10.35.2      Provisions in the Draft Constitution on Independence of Public Media**

Article 59 provides as follows:

- "59. (1) All public media shall -**
- (a) be independent and impartial; and**
  - (b) afford fair opportunities and facilities to all persons for the presentation of divergent views and dissenting opinions.**
- (2) Parliament shall enact legislation to -**
- (a) promote the independence and impartiality of the public media; and**
  - (b) provide for reasonable allocation of air time and space by the public media to political parties, either generally or during election campaigns, on the**

**recommendation of the Electoral  
Commission."**

**10.35.3 Deliberations of the Conference on Article 59**

In debating the Article, the Conference observed that the provisions adopted on the freedom of the media coupled with the ethics of journalism were sufficient to compel the media to be impartial. In addition, the need to be impartial should not be restricted to public media as the private media also affected the public. Consequently, Article 59 was deleted.

**10.35.4 Resolutions of the Conference**

The Conference resolved to delete Article 59.

**10.36 Article 60 : Freedom of Association**

**10.36.1 Recommendations of the Commission**

10.36.1.1 The Commission recommended that the right to the freedoms of association, peaceful assembly, demonstration and petition should be reflected in the Constitution and each freedom should stand on its own.

10.36.1.2. The Commission also recommended that the Public Order Act should be reviewed and amended to:

- (a) provide that where it is shown that there is need for an urgent demonstration or gathering, the requirement of seven days notice should be waived or abridged to a shorter period;
- (b) exempt indoor meetings from the requirement of notification;
- (c) make the Act more flexible and permissive, taking into account factors such as the duty of the Police to provide security and surveillance at public meetings and the need for an

independent appeals tribunal and to localise appeals; and

- (d) ensure that Police training programmes are appropriately structured so as to equip them with skills in administering the Act.

10.36.1.3 The Commission also recommended that the right to the freedoms of association, peaceful assembly, demonstration and petition should be reflected in the Constitution and each freedom should stand on its own.

## **10.36.2 Provisions in the Draft Constitution on Freedom of Association**

Article 60 provides as follows:

**“60. (1) Every person has the right to freedom of association.**

**(2) Freedom of association shall apply to the formation, operation and continued existence of any association.**

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

## **10.36.3 Deliberations of the Conference on Article 60**

10.36.3.1 In debating the Article, the Conference took cognisance of the danger of proliferation of associations promoting undesirable activities such as gay rights if provisions such those in clause (2) of Article 60 of the Draft Constitution were adopted.

10.36.3.2 Consequently, the Conference:

- (a) deleted the provision of Article 60 and replaced it with that of Article 21 of the current Constitution; and
- (b) amended the marginal note to read “Protection of the freedom of assembly and association” and re-numbered it as Article 61.



#### 10.36.4 Resolutions of the Conference

The Conference resolved to delete Article 60 of the Draft Constitution and replace it with Article 21 of the current Constitution, and re-numbered it as Article 61, as follows:

**“61. (1) A person shall not, except with the person’s own consent, be hindered in the enjoyment of that person’s freedom of assembly and association, that is to say, the person’s right to assemble freely and associate with other persons and in particular to form or belong to any political party, trade union or other association for the protection of that person’s interests.**

**(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with, or in contravention of, this Article to the extent that it is shown that the law in question makes provision-**

- (a) that is reasonably required in the interests of defence, public safety, public order, public morality or public health;**
- (b) that is reasonably required for the purpose of protecting the rights or freedoms of other persons;**
- (c) that imposes restrictions upon public officers; or**
- (d) for the registration of political parties or trade unions in a register established by or under a law and for imposing reasonable conditions relating to the procedure for entry on such a register including conditions as to the minimum number of persons necessary to constitute a trade union qualified for registration;**

**and except so far as that provision or, the thing done under the authority thereof, as the case may be, is shown not to be reasonably justifiable in a democratic society.”**

**10.37            Article 61 : Assembly, Demonstration, Picketing, Lock Out and Petition**

**10.37.1           Recommendations of the Commission**

The recommendations to this provision are as presented in Article 60.

**10.37.2           Provisions in the Draft Constitution on Assembly, Demonstration, Picketing, Lock out and Petition**

Article 61 provides as follows:

**“61.    Every person has the right, peacefully and unarmed, to assemble, demonstrate, picket or lock out and present petitions to public authorities.”**

**10.37.3           Deliberations of the Conference on Article 61**

10.37.3.1        In debating Article 61, some members were of the view that the provision should be retained with amendment by deleting reference to the right to assemble which had been covered by the provision adopted in Article 21 of the current Constitution. They argued that the right to demonstrate, picket or lock-out and present a petition to public authorities should be retained in the Constitution.

10.37.3.2        However, most members supported the deletion of Article 61 because its provision was covered in subsidiary legislation such as the Public Order Act and the Industrial and Labour Relations Act.

10.37.3.3        Consequently the Conference deleted Article 61 of the Draft Constitution after observing that it had become redundant as a consequence of the resolution of the Conference to delete Article 60 and replace it with Article 21 of the current Constitution which also provided for the right of assembly.

#### **10.37.4 Resolutions of the Conference**

The Conference resolved to delete Article 61.

### **10.38 Article 62 : Right to Participate in Politics**

#### **10.38.1 Recommendations of the Commission**

The Commission did not make recommendations on the right to participate in politics but provided for it in Article 62.

#### **10.38.2 Provisions in the Draft Constitution on Right to Participate in Politics**

Article 62 provides as follows:

**“62. (1) Subject to this Constitution, every citizen has a right to make political choices which includes the right -**

- (a) to form or participate in forming a political party;**
- (b) to participate in the activities of, or recruit members for, a political party; and**
- (c) to campaign for a political party or cause.**

**(2) Subject to this Constitution, every citizen has the right to be elected -**

- (a) to any elective public body or office established by or under this Constitution; and**
- (b) to an office of a political party of which the citizen is a member.**

**(3) Every citizen aged eighteen years and above has the right to be registered as a voter and to vote by secret ballot in elections or referenda, as provided by or under this Constitution.**

**(4) The State shall put in place measures to ensure that eligible citizens exercise their right to register as voters and to vote.”**

#### **10.38.3 Deliberations of the Conference on Article 62**

10.38.3.1 In debating Article 62 of the Draft Constitution, the Conference reiterated its earlier decision to adopt

Article 21 of the current Constitution, which also provided for the right to form or belong to a political party, to replace Article 60 and deleted clauses (1) and (2).

10.38.3.2 In addition, clauses (3) and (4) were deleted because their provisions were provided for in clauses (1) and (2) of Articles 86 and clause (1) of Article 96 adopted by the Conference.

#### **10.38.4 Resolutions of the Conference**

The Conference resolved to delete Article 62 of the Draft Constitution.

### **10.39 Article 63 : Freedom of Movement and Residence**

#### **10.39.1 Recommendations of the Commission**

The Commission did not make recommendations on the freedom of movement and residence but provided for it in Article 63.

#### **10.39.2 Provisions in the Draft Constitution on Freedom of Movement and Residence**

Article 63 provides as follows:

**“63. (1) Every person has the right to freedom of movement.**

**(2) Every person has the right to leave the Republic.**

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

**(4) Every 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.”**

#### **10.39.3 Deliberations of the Conference on Article 63**

10.39.3.1 In debating the Article, some members supported the retention of the provision and argued that:

- (a) citizenship implied the right to a passport and that it was not the mandate of the National Constitutional Conference to predict criminal intent; and
- (b) the right to a passport facilitated the freedom of movement and residence.

10.39.3.2 However, most members opposed clause (4) which provided for a right to a Passport and argued that:

- (a) the right to a passport could not be granted as a “blanket right” like a National Registration Card because of serious considerations such as the right of the State to withdraw a passport in cases where an accused may escape from justice;
- (b) a clause which compelled the State to give a passport to every citizen without limitation was dangerous; and that most countries in the world including the United Kingdom and the United States of America treated the passport as a restricted document;
- (c) freedom of movement should not be mixed up with the right to a passport which was a different matter altogether; and
- (d) the issue of the passport and National Registration Card ought to be left to subordinate legislation.

10.39.3.3 The Conference therefore deleted Article 63 and replaced it with Article 22 of the current Constitution and re-numbered it as Article 62.

#### **10.39.4 Resolutions of the Conference**

The Conference resolved to delete Article 63 of the Draft Constitution and replace it with Article 22 of the current Constitution, and re-numbered it as Article 62 as follows:

**"62. (1) Subject to the other provisions of this Article and except in accordance with any written law, a citizen shall not be deprived of the citizen's freedom of movement.**

**(2) For the purposes of this Article, "freedom of movement" means-**

- (a) the right to move freely throughout Zambia;**
- (b) the right to reside in any part of Zambia; and**
- (c) the right to leave Zambia and to return to Zambia.**

**(3) Any restrictions on a person's freedom of movement that relates to his lawful detention shall not be held to be inconsistent with or in contravention of this Article.**

**(4) Nothing contained in or done under the authority of any law shall be held to be inconsistent with, or in contravention of, this Article to the extent that it is shown that the law in question makes provision-**

- (a) for the imposition of restrictions that are reasonably required in the interests of defence, public safety, public order, public morality or public health or the imposition of restrictions on the acquisition or use by any person of land or other property in Zambia, and except so far as that provision or, the thing done under the authority thereof as the case may be, is shown not to be reasonably justifiable in a democratic society;**
- (b) for the imposition of restrictions on the freedom of movement of any person who is not a citizen of Zambia;**
- (c) for the imposition of restrictions upon the movement or residence within Zambia of public officers; or**
- (d) for the removal of a person from Zambia to be tried outside Zambia for a criminal offence or to undergo imprisonment in some other country in execution of the sentence of a court in respect of a criminal offence under the law in force in Zambia of which he has been convicted."**

## **10.40            Article 64 : Refugees and Asylum**

### **10.40.1           Recommendations of the Commission**

The Commission recommended that rights of refugees should be enshrined in the Constitution. However, details pertaining to grant of refugee status or asylum and other related issues should be in ordinary legislation.

### **10.40.2           Provisions in the Draft Constitution on Refugees and Asylum**

Article 64 provides as follows:

**“64. (1)    An individual who has sought asylum or refuge in Zambia has a right not to be returned to the country of origin if that person has a well-founded fear of -**  
                  **(a)    persecution in the country of origin; or**  
                  **(b)    other treatment in that country that would justify that person being regarded as a refugee.**  
                  **(2)    Parliament shall enact legislation governing persons who seek refuge or asylum in Zambia.”**

### **10.40.3           Deliberations of the Conference on Article 64**

The Conference debated and resolved to delete Article 64 of the Draft Constitution for the reason that matters dealing with refugees were subject to frequent changes and therefore, should best be provided for in a subordinate Act of Parliament.

### **10.40.4           Resolutions of the Conference**

The Conference resolved to delete Article 64 of the Draft Constitution.

## **10.41            Article 65 : Land And Other Property**

### **10.41.1           Recommendations of the Commission**

The Commission recommended that the right of the individual to property be included in the Constitution as a justiciable right.

### **10.41.2           Provisions in the Draft Constitution on Land and other Property**

Article 65 provides as follows:

**“65. (1)    Every person has a right to access, acquire and own land and other property either individually or in association with others.**

**(2)    The State shall not deprive a person of property of any description or of any interest in or right over property, except under an Act of Parliament.**

**(3)    Legislation shall not authorise deprivation of any interest in or right over property of any description, except -**

**(a)    where deprivation of any interest in or right over property is justifiable balancing -**

**(i)    the public benefit; and**

**(ii)   hardship that may result to any person who has an interest in or right over the property;**

**(b)    where the legislation specifies the consequence for non-compliance with the law;**

**(c)    where a property consists of a licence or permit; and**

**(d)    to the extent permitted under this Constitution.**

**(4)    Subject to this Constitution, prompt payment of full and fair compensation shall be made prior to acquiring, assuming occupation or possession of any property, as provided under an Act of Parliament.**

**(5)    Every owner of -**

**(a)    a leasehold interest in land has the right to be issued a certificate of title setting out that**



- interest and, at the expiry of the lease, to a renewal of the lease; and
- (b) any other right or interest in land has the right to register that right or interest.

(6) The rights recognised and protected under this Article do not apply to any property that has been unlawfully acquired."

### 10.41.3 Deliberations of the Conference on Article 65

#### 10.41.3.1 In debating Article 65, the Conference:

- (a) resolved to provide for the right to access, acquire and own land in clause (1) and the right to access, acquire and own other property in clause (2) and prefixed both clauses with the phrase "*subject to this Constitution*" in recognition of the fact that there were other provisions in the Constitution dealing with property including ownership of property by foreigners;
- (b) adopted Article 16 of the current Constitution to prohibit compulsory acquisition of property except under an Act of Parliament, provide for circumstances under which property could be compulsorily acquired, and the determination of compensation in default of agreement; and numbered its clauses (1), (2) and (3) as clauses (3), (4) and (5) of Article 63.

#### 10.41.3.2 Accordingly, the Conference adopted Article 65 with amendments by restricting the right to access, acquire and own land to citizens while leaving the right to access, acquire and own other property to any person and re-numbered it as Article 63.

The Conference adopted Article 65 with amendments by incorporating Article 16 of the current Constitution, and re-numbering it as Article 63 as follows:

**“63. (1) Subject to this Constitution, every citizen has a right to access, acquire or own land either individually or in association with other citizens.**

**(2) Subject to this Constitution, a person has a right to access, acquire and own other property, either individually or in association with others.**

**(3) Except as provided in this Article, property of any description shall not be compulsorily taken possession of, and interest in or right over property of any description shall not be compulsorily acquired, unless by or under the authority of an Act of Parliament which provides for payment of adequate compensation for the property or interest or right to be taken possession of or acquired.**

**(4) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of clause (3) to the extent that it is shown that such law provides for the taking possession or acquisition of any property or interest therein or right thereover-**

- (a) in satisfaction of any tax, rate or due;**
- (b) by way of penalty for breach of any law, whether under civil process or after conviction of an offence;**
- (c) in execution of judgments or orders of courts;**
- (d) upon the attempted removal of the property in question out of or into Zambia in contravention of any law;**
- (e) as an incident of contract including a lease, tenancy, mortgage, charge, pledge or bill of sale or of a title deed to land;**

- (f) for the purpose of its administration, care or custody on behalf of, and for the benefit of, the person entitled to the beneficial interest therein;
- (g) by way of the vesting of enemy property or for the purpose of the administration of such property;
- (h) for the purpose of-
  - (i) the administration of the property of a deceased person, a person of unsound mind or a person who has not attained the age of eighteen years, for the benefit of the persons entitled to the beneficial interest therein;
  - (ii) the administration of the property of a person adjudged bankrupt or a body corporate in liquidation, for the benefit of the creditors of such bankrupt or body corporate and, subject thereto, for the benefit of other persons entitled to the beneficial interest in the property;
  - (iii) the administration of the property of a person who has entered into a deed of arrangement for the benefit of that person's creditors; or
  - (iv) vesting any property subject to a trust in persons appointed as trustees under the instrument creating the trust or by a court or, by order of a court, for the purpose of giving effect to the trust;
- (i) in consequence of any law relating to the limitation of actions;
- (j) in terms of any law relating to abandoned, unoccupied unutilised or undeveloped land, as defined in such law;

- (k) in terms of any law relating to absent or non-resident owners, as defined in such law, of any property;
- (l) in terms of any law relating to trusts or settlements;
- (m) by reason of a dangerous state or prejudicial to the health or safety of human beings, animals or plants;
- (n) as a condition in connection with the granting of permission for the utilisation of that or other property in any particular manner;
- (o) for the purpose of, or in connection with, the prospecting for, or exploitation of, minerals belonging to the Republic on terms which provide for the respective interests of the persons affected;
- (p) in pursuance of a provision for the marketing of property of that description in the common interests of the various persons otherwise entitled to dispose of that property;
- (q) by way of the taking of a sample for the purposes of any law;
- (r) by way of the acquisition of the shares, or a class of shares, in a body corporate on terms agreed to by the holders of not less than nine-tenths in value of those shares or that class of shares;
- (s) where the property consists of an animal, upon its being found trespassing or straying;
- (t) for so long as may be necessary for the purpose of any examination, investigation, trial or inquiry or, in the case of land, the carrying out thereon-
  - (i) of work for the purpose of the conservation of natural resources of any description; or
  - (ii) of agricultural development or improvement which the owner

or occupier of the land has been required, and has without reasonable and lawful excuse refused or failed, to carry out;

- (u) where the property consists of any licence or permit;
- (v) where the property consists of wild animals existing in their natural habitat or the carcasses of wild animals;
- (w) where the property, is held by a body corporate established by law for public purposes and in which no moneys have been invested other than moneys provided by Parliament;
- (x) where the property is any mineral, mineral oil or natural gases or any rights accruing by virtue of any title or licence for the purpose of searching for or mining any mineral, mineral oil or natural gases-
  - (i) upon failure to comply with any provision of such law relating to the title or licence or to the exercise of the rights accruing or to the development or exploitation of any mineral, mineral oil or natural gases; or
  - (ii) terms of any law vesting any such property or rights in the President;
- (y) for the purpose of the administration or disposition of such property or interest or right by the President in implementation of a comprehensive land policy or a policy designed to ensure that the statute law, the common law and the doctrines of equity relating to or affecting the interest in or rights over land, or any other interests or rights enjoyed by chiefs and persons claiming through or under them, shall apply with

- substantial uniformity throughout Zambia;
- (z) in terms of any law providing for the conversion of titles to land from freehold to leasehold and the imposition of any restriction on subdivision, assignment or sub-letting;
- (aa) in terms of any law relating to-
  - (i) the forfeiture or confiscation of the property of a person who has left Zambia for the purpose or apparent purpose, of defeating the ends of justice; or
  - (ii) the imposition of a fine on, and the forfeiture or confiscation of the property of, a person who admits a contravention of any law relating to the imposition or collection of any duty or tax or to the prohibition or control of dealing or transactions in gold, currencies or securities.

(5) An Act of Parliament such as referred to in clause (3) shall provide that in default of agreement, the amount of compensation shall be determined by a court of competent jurisdiction."

## **10.42 Article 66 : Consumer Rights**

### **10.42.1 Recommendations of the Commission**

The Commission did not make recommendations on consumer rights but provides for them in Article 66.

### **10.42.2 Provisions in the Draft Constitution on Consumer Rights**

Article 66 provides as follows:

- "66. (1) Consumers have the right to -
- (a) goods and services of appropriate quality, quantity and use;
  - (b) information necessary for them to gain full benefit from the goods and services;

(c) protection of their health, safety and economic interests; and

(d) adequate compensation for defects that cause them loss or injury.

(2) This Article applies to goods and services offered by any person, State organ or State institution, whether in return for consideration, taxes or other form of revenue or free of any charge.

(3) Parliament shall enact legislation to provide for consumer protection and for fair, honest and decent advertising."

#### **10.42.3 Deliberations of the Conference on Article 66**

In debating Article 66, the Conference took cognisance of the following:

(a) that while consumer rights were important, they were best provided for in subsidiary legislation; and

(b) that a law was in the process of being formulated and would soon be submitted at the next sitting of Parliament on the protection of consumer rights. Therefore, there was no need to enshrine consumer rights in the Constitution and Article 66 should be deleted.

#### **10.42.4 Resolutions of the Conference**

The Conference resolved to delete Article 66.

### **ECONOMIC AND SOCIAL RIGHTS**

#### **10.43 Article 67 : Progressive Realisation of Economic and Social Rights**

##### **10.43.1 Recommendations of the Commission**

The Commission recommended that:

(i) economic, social and cultural rights should be enshrined in the Bill of Rights and should be justiciable.

- (ii) the Constitution should provide that the State must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights.
- (iii) Parliament should enact or amend appropriate legislation relating to the minimum wage, the poverty datum line, the employment of casual workers, the right to strike, the right of workers to adequate compensation and reasonable working hours as well as the right to maternity or paternity leave, with a view to ensuring that they are in line with the provisions of the Constitution.

**10.43.2 Provisions in the Draft Constitution on Progressive Realisation of Economic and Social Rights**

Article 67 provides as follows:

**“67. (1) Parliament shall enact legislation which provides measures which are reasonable in order to achieve the progressive realization of the economic and social rights under this Bill of Rights.**

**(2) The Government shall take measures, including -**

**(a) affirmative action programmes designed to benefit disadvantaged persons or groups;**

**(b) legislation -**

**(i) that promotes equity, equality and freedom from discrimination and establishes or provides for standards relating to the achievement of those measures;**

**(ii) that ensures that State organs and State institutions fulfill the obligations of the State under this Bill of Rights; and**

**(iii) that ensures that persons fulfill their obligations under this Bill of Rights.**



(3) Where a claim is made, by the State, that the State does not have the resources to implement a particular right or freedom –

- (a) it is the responsibility of the State to show that the resources are not available; and
- (b) a court, tribunal or the Human Rights Commission shall not interfere with a decision by a State organ or State institution concerning the allocation of available resources solely on the basis that the court, tribunal or Human Rights Commission would have reached a different conclusion.”

### **10.43.3 Deliberations of the Conference on Article 67**

10.43.3.1 The Conference debated the Article and two positions emerged. Some members supported the provision while other members opposed it and proposed that it should be deleted.

10.43.3.2 The members who supported the retention of the Article argued that:

- (a) the provision was actually meant to protect the State against litigations considering that resources may always be a constraint to provide for economic, social and cultural rights in their entirety and within a short period;
- (b) deleting clause (1) of Article 67 would mean that rights that were provided for under Articles 68 to 75, inclusive, would have to be fulfilled on demand and yet the State did not have sufficient resources to meet such instant demands and would put it at the risk of being flooded with litigation from citizens who were aggrieved by lack of realisation of these rights.

- 10.43.3.3 However, members who opposed the Article and wanted it deleted argued that:
- (a) the State might not be in a position to fulfil economic, social and cultural rights in view of resource constraints;
  - (b) the Article could lead to citizens suing the State if such a provision was made;
  - (c) the State has always the best intentions to provide for socio-economic development and there was no need to have such a provision in the Constitution; and
  - (d) the Article was vague and, therefore, should not be included in the Constitution.
- 10.43.3.4 The Conference debated the provision at length but could not reach a consensus and a vote was held after 162 members had stood in their places to call for a division to oppose the deletion of the provision. The vote was also inconclusive as neither side obtained the two-thirds majority vote required for a decision to be sustained.
- 10.43.3.5 Since consensus could not be reached and the vote held could not break the deadlock, the matter was referred to a national referendum in accordance with paragraph (b) of subsection (1) of section 25 of the National Constitutional Conference Act, No. 19 of 2007 as amended.
- 10.43.3.6 In referring Article 67 to a referendum, the Conference amended clause (1) of Article 67 of the Draft Constitution by replacing the term "*economic and social rights*" with the term "*economic social and cultural rights*" in accordance with international classification of human rights but adopted clauses (2) and (3) of Article 67 of the Draft Constitution without amendment.

#### 10.43.4 Resolutions of the Conference

The Conference resolved to refer clause (1) of Article 67 to the referendum and approved clauses (2) and (3), and re-numbered the Article as Article 64, as follows:

**“64. (1) Parliament shall enact legislation which provides measures which are reasonable in order to achieve the progressive realization of the economic, social *and cultural* rights under this Bill of Rights.**

**(2) The Government shall take measures, including -**

**(a) affirmative action programmes designed to benefit disadvantaged persons or groups;**

**(b) legislation -**

**(i) that promotes equity, equality and freedom from discrimination and establishes or provides for standards relating to the achievement of those measures;**

**(ii) that ensures that State organs and State institutions fulfill the obligations of the State under this Bill of Rights; and**

**(iii) that ensures that persons fulfil their obligations under this Bill of Rights.**

**(3) Where a claim is made, by the State, that the State does not have the resources to implement a particular right or freedom -**

**(a) it is the responsibility of the State to show that the resources are not available; and**

**(b) a court, tribunal or the Human Rights Commission shall not interfere with a decision by a State organ or State institution concerning the allocation of available resources solely on the basis that the court, tribunal or Human**

**Rights Commission would have reached a different conclusion."**

**10.44 Article 68 : Freedom to Choose Trade, Occupation and Profession**

**10.44.1 Recommendations of the Commission**

The Commission did not make recommendations on the freedom to choose trade, occupation and profession but provided for it in Article 68.

**10.44.2 Provisions in the Draft Constitution on Freedom to Choose Trade, Occupation and Profession**

Article 68 provides as follows:

**"68. Every person has the right to choose a trade, occupation or profession."**

**10.44.3 Deliberations of the Conference on Article 68**

The Conference debated and resolved to delete Article 68 of the Draft Constitution as it was not adding any value to the Constitution and its provision was already catered for in subordinate legislation providing for employment and labour and industrial relations.

**10.44.4 Resolutions of the Conference**

The Conference resolved to delete Article 68 of the Draft Constitution.

**10.45 Article 69 : Labour Relations and Pension**

**10.45.1 Recommendations of the Commission**

10.45.1.1 The Commission recommended that the Constitution should provide for the right to:

- (a) enjoyment of just and favourable conditions of work which ensure fair wages, equal work for

equal pay, safe and healthy working conditions, equal opportunity for promotion, rest, leisure and reasonable limitation of working hours and periodic holidays with pay as well as remunerations for public holidays;

- (b) form or join a trade union of one's choice;
- (c) free collective bargaining;
- (d) withdraw labour in accordance with the law; and
- (e) a pension; and payment of reasonable pension and/or gratuity as is commensurate with a person's rank, salary and length of service.

10.45.1.2 The Commission further recommended that:

- (a) pensions and gratuity should be exempted from tax by relevant legislation; and
- (b) Parliament should, by legislation, provide for regulation of pensions and pension schemes and in particular:
  - (i) make provisions for persons over sixty years of age to receive welfare support;
  - (ii) provide that all workers subscribe to pension schemes;
  - (iii) provide for equitable representation of both employees and employers on pension boards or similar supervisory bodies of pension schemes; and
  - (iv) provide for the prudent investment of pension funds.

## **10.45.2 Provisions in the Draft Constitution on Labour Relations and Pension**

Article 69 provides as follows:

**“69. (1) A person has the right to employment and to just and fair labour practices.**

- (2) A worker has the right to -
  - (a) fair remuneration and equal pay for equal work;
  - (b) work under satisfactory, safe and healthy conditions;
  - (c) equal opportunity for promotion;
  - (d) rest, leisure and reasonable limitation of working hours;
  - (e) periodic holidays with pay and remuneration for public holidays;
  - (f) form, join or participate in the activities and programmes of a trade union, including the right to strike;
  - (g) withdraw labour in accordance with the law; and
  - (h) a reasonable pension or gratuity commensurate with that worker's status, salary and length of service.
- (3) Where pension or retrenchment benefit is not paid promptly the retiree's or retrenchee's name shall be retained on the payroll until the pension or benefit is paid.
- (4) Every employer has the right to -
  - (a) form and join an employers' organisation;
  - (b) participate in the activities and programmes of an employers' organisation; and
  - (c) lock out.
- (5) Every trade union and every employers' organisation has the right to -
  - (a) determine its own administration, programmes and activities;
  - (b) organise; and
  - (c) form and join a federation.
- (6) A trade union, an employer's organisation and an employer have the right to engage in collective bargaining.
- (7) Parliament shall enact legislation to regulate pensions and pension schemes and in particular to make provision for -
  - (a) persons over sixty-five years of age to receive welfare support;
  - (b) all workers to subscribe to pension schemes;

- (c) **equitable representation of both employees and employers on any supervisory or policy board established for a pension scheme; and**
- (d) **the prudent investment of pension funds."**

### **10.45.3 Deliberations of the Conference on Article 69**

10.45.3.1 In debating the Article, the Conference decided to split the provision into two (2) Articles re-numbered as Articles 65 and 66. Article 65 provides for the "right to pension, gratuity and retrenchment benefits" while Article 66 provides for "labour relations"

10.45.3.2 In addition, the Conference:

- (a) moved clauses (1) and (2) to Article 57 with amendments by replacing the word "*employment*" with the word "*work*" in clause (1) because a person was entitled to "*work*" and not to a "*job*" as such. In addition, clause (2) was amended by replacing its provision with one stating that:  
*"(2) Parliament shall enact legislation to provide for a worker's rights"*. This was in recognition of the fact that the list of worker's rights in clause (2) was not exhaustive and there was a risk of omitting some of them. Therefore, such provisions should be provided for in subordinate legislation;
- (b) moved clauses (3) and paragraphs (b),(c) and (d) of clause (7) to Article 56 as paragraphs (a), (b), (c), and (d) of clause (4). In addition, introduced and adopted clauses (1), (2) and (3) in Article 56 to provide for a right to pension, gratuity and retrenchment benefits; protecting and exempting them from tax;
- (c) moved paragraph (a) of clause (7) to Article 58 providing for social protection including social welfare; and

- (d) deleted clauses (4), (5) and (6) as they were details which should be provided for in subordinate legislation.

#### **10.45.4 Resolutions of the Conference**

The Conference adopted Article 69 with amendments by splitting its provision into two (2) Articles which were re-numbered as the new Article 65 providing for pension, gratuity and retrenchment benefits and Article 66 providing for labour relations as follows:

**“65. (1) Every worker has the right to a pension, gratuity or retrenchment benefits.**

**(2) Any benefit to which a person is entitled under this Article shall not be withheld or altered to that person’s disadvantage, except to an upward adjustment to the extent provided by law.**

**(3) Pension, gratuity and retrenchment benefits in respect of service is exempt from tax.**

**(4) Parliament shall enact legislation to regulate pensions and pension schemes and in particular to make provision for -**

- (a) all workers to subscribe to pension schemes;**
- (b) equitable representation of both employees and employers on any supervisory or policy board established for a pension scheme;**
- (c) the prudent investment of pension funds; and**
- (d) the prompt payment of pension or retrenchment benefits to a worker who retires or is retrenched or, where a worker who retires or is retrenched is not paid promptly, the retention on the pay roll of that worker, until payment of the pension or retrenchment benefits.**

**66. (1) A person has the right to work and to just and fair labour practices.**

**(2) Parliament shall enact legislation to provide for a worker’s rights.”**



## **10.46 Article 70 : Social Security**

### **10.46.1 Recommendations of the Commission**

The Commission recommended that the Constitution should provide for the right to social security.

### **10.46.2 Provisions in the Draft Constitution on Social Security**

Article 70 provides as follows:

**“70. Every person has the right to social security, including, where appropriate, social welfare for that person and dependants of that person.”**

### **10.46.3 Deliberations of the Conference on Article 70**

10.46.3.1 In debating the Article, the Conference:

- (a) inserted the word **“access”** between the words **“to”** and **“social”** and restricting accessibility only to the vulnerable by replacing the phrase **“where appropriate”** with the phrase **“if the person is unable to support themselves and their dependants”**. This was to cover all vulnerable persons including the aged, persons with disabilities, children and orphans who are unable to fend for themselves;
- (b) inserted clause (2) to provide for Parliament to enact legislation to regulate social protection;
- (c) adopted the Article with amendments and re-numbered it as Article 67 and also amended the marginal note to read **“Social Protection”**. The term **“Social Protection”** was preferred as it encompassed social assistance and was in conformity with the National Social Safety Net Policy of the country.

### **10.46.4 Resolutions of the Conference**

The Conference approved Article 70 as amended and re-numbered it as Article 67 as follows:

**"67. (1) Every person has the right to access social protection, including, if the person is unable to support themselves and their dependants, social assistance for that person and dependants of that person.**

**(2) Parliament shall enact legislation to regulate the provision of social protection."**

**10.47 Article 71 : Health**

**10.47.1 Recommendations of the Commission**

The Commission recommended that the Constitution should provide for the right to health care services.

**10.47.2 Provisions in the Draft Constitution on Health**

Article 71 provides as follows:

**"71. (1) Every person has the right to health which includes the right to health care services and reproductive health care.**

**(2) A person shall not be refused emergency medical treatment."**

**10.47.3 Deliberations of the Conference on Article 71**

In debating Article 71, the Conference amended the provision by inserting the word *"access"* between the words *"to"* and *"health"* and re-numbered it as Article 68.

**10.47.4 Resolutions of the Conference**

The Conference adopted Article 71 with amendments and re-numbered it as Article 68 as follows:

**"68. (1) Every person has the right to health which includes the right to *access* health care services and reproductive health care.**

**(2) A person shall not be refused emergency medical treatment."**

## **10.48 Article 72 : Education**

### **10.48.1 Recommendations of the Commission**

The Commission recommended that the Constitution should provide for the right to education.

### **10.48.2 Provisions in the Draft Constitution on Education**

Article 72 provides as follows:

- "72. (1) Every person has the right to education.**  
**(2) The State shall -**  
**(a) ensure the right of every child to free and compulsory basic education; and**  
**(b) make secondary, post-secondary, technical and vocational education progressively available and accessible.**  
**(3) Every person has the right to establish and maintain, at that person's own expense, independent educational institutions that meet standards provided by or under an Act of Parliament."**

### **10.48.3 Deliberations of the Conference on Article 72**

In debating the provision, the Conference amended clause (2) by inserting a new paragraph (b) to provide for the right of an adult to free adult basic education. Consequently, the old paragraph (b) was also amended by including "*adult education*" and re-numbered it as paragraph (c).

### **10.48.4 Resolutions of the Conference**

The Conference adopted Article 72 with amendments and re-numbered it as Article 69 as follows:

- "69. (1) Every person has the right to education.**  
**(2) The State shall -**  
**(a) ensure the right of every child to free and compulsory basic education;**

- (b) ensure the right of an adult to free adult basic education; and
  - (c) make secondary, post-secondary, *adult education*, technical and vocational education progressively available and accessible.
- (3) Every person has the right to establish and maintain, at that person's own expense, independent educational institutions that meet standards provided by or under an Act of Parliament."

## 10.49 Article 73 : Shelter and Housing

### 10.49.1 Recommendations of the Commission

The Commission recommended that the Constitution should provide for the right to shelter and housing.

### 10.49.2 Provisions in the Draft Constitution on Shelter and Housing

Article 73 provides as follows:

- "73. (1) Every person has the right to have access to adequate shelter and housing.
- (2) Parliament shall not enact any legislation that permits or authorises arbitrary eviction."

### 10.49.3 Deliberations of the Conference on Article 73

In debating the Article, some members supported the provision and argued that it was a progressive right. However, most members did not support it and argued as follows:

- (a) that the right to housing was not sustainable;
- (b) that it would be difficult to ascertain what would be termed as adequate housing;
- (c) that the country would need to raise taxes to be able to meet some of the demands for housing; and
- (d) that there were different life styles such as those of some indigenous people which would

make it difficult to decide whether houses built out of reeds and mud in which such people lived could be considered adequate and decent.

#### **10.49.4 Resolutions of the Conference**

The Conference resolved to delete Article 73.

### **10.50 Article 74 : Food, Water and Sanitation**

#### **10.50.1 Recommendations of the Commission**

The Commission recommended that the Constitution should provide for the right to sufficient food, safe and clean water and sanitation.

#### **10.50.2 Provisions in the Draft Constitution on Food, Water and Sanitation**

Article 74 provides as follows:

**"74. (1) Every person has the right to be free from hunger and to have access to food in adequate quantities, of adequate quality and cultural acceptability.**

**(2) Every person has the right to water in adequate quantities and of satisfactory quality.**

**(3) Every person has the right to a reasonable standard of sanitation."**

#### **10.50.3 Deliberations of the Conference on Article 74**

10.50.3.1 In debating the Article, members who supported clause (1) argued that the right to food and water was important especially for vulnerable persons like orphans.

10.50.3.2 However, most members did not support the provision and argued that it would be difficult to define what would constitute "adequate food" and suggested that the provision should either be moved

to the Directive Principles of State Policy or be deleted.

10.50.3.3 With regard to clause (3), members who supported the provision argued that in some places, landlords did not care about sanitation and inclusion of the provision in the Constitution would compel authorities to ensure that high standards of sanitation were maintained.

10.50.3.4 However, most members did not support the provision because it would not be possible to measure reasonable sanitation.

#### **10.50.4 Resolutions of the Conference**

The Conference resolved to delete Article 74.

### **10.51 Article 75 : Environment**

#### **10.51.1 Recommendations of the Commission**

The Commission recommended that the Constitution should provide for the right to a clean and healthy environment.

#### **10.51.2 Provisions in the Draft Constitution on Environment**

Article 75 provides as follows:

**“75. Every person has the right to -**  
**(a) an environment that is safe for life and health;**  
**(b) free access to information about the environment;**  
**(c) the protection of the environment for present and future generations; and**  
**(d) compensation for damage arising from the violation of the rights recognised under this Article.”**

#### **10.51.3 Deliberations of the Conference on Article 75**

In debating the Article, the Conference noted that a similar provision had been included under the Directive Principles

of State Policy and therefore, Article 75 had become redundant.

#### **10.51.4 Resolutions of the Conference**

The Conference resolved to delete Article 75.

### **10.52 Article 76 – Limitations on Rights and Freedoms Article 77 – Non-Derogable Rights and Freedoms and Article 78 – Derogation of Rights and Freedoms During Emergency or National Disaster**

#### **10.52.1 Recommendations of the Commission**

The Commission recommended that there should be one clause of general application permitting derogations from and limitations to fundamental rights and freedoms by law which does not negate the essential content of the right or freedom in question and makes provision which is reasonable and justifiable in an open and democratic society based on freedom and equality:

- (i) for securing other persons enjoyment of the same rights and freedoms; or
- (ii) for imposing restrictions that are necessary in the interest of defence, public safety, public order, public morality or public health; and
- (iii) taking into account all relevant factors, including:
  - (a) the nature of the right;
  - (b) the importance of the purpose of the limitation;
  - (c) the nature and extent of the limitation;
  - (d) the relation between the limitation and its purpose; and
  - (e) less restrictive means to achieve the purpose.

#### **10.52.2 Provisions in the Draft Constitution on Limitations on Rights and Freedoms, Non-Derogable Rights and Freedoms and Derogation of Rights and Freedoms during Emergency or National Disaster**

Articles 76, 77 and 78 provides as follows:

- "76. (1) A right or freedom set out in this 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 is subject to clauses (2), (3) and (4).**
- (2) A law that has the effect of limiting a right or freedom is inconsistent with this Constitution unless -**
- (a) that enactment specifically expresses the intention to limit that specific right or freedom; and**
  - (b) the limitation satisfies the requirements of clause (3).**
- (3) A limitation made under clause (1) (b) or (2) shall be invalid if it negates the core or the essential content of the right or freedom and is not reasonable and justifiable in an open and democratic society -**
- (a) based on human dignity, equality and freedom;**
  - (b) taking 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.**
- (4) A limitation made under clause (1) (b) or (2) shall be valid only to the extent that the limitation -**
- (a) is reasonably required in the interest of defence and security, public safety, public order, public morality, public health, town and country planning, taxation, the development, management and utilization of natural and mineral resources;**
  - (b) relates to the acquisition of property to secure the development, management or utilization of the property for a purpose beneficial to the community or the public;**



- (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 judgement 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 a court, tribunal, the Human Rights Commission or any other appropriate body that the requirements of this Article have been satisfied.

77. Notwithstanding any other provision in this Constitution, the following rights and freedoms shall not be derogated from :

- (a) freedom from torture, cruel, inhuman or degrading treatment or punishment;
- (b) freedom from slavery or servitude;
- (c) the right to a fair hearing; and
- (d) the right to an order of habeas corpus.

78. (1) A provision contained in, or an act or a thing done under, an Act of Parliament shall not be inconsistent with or in contravention of this Part if -

- (a) the law in question authorizes the taking, when a declaration of war, state of public emergency or threatened state of public emergency or a National disaster is in force, of measures for dealing with such situations; and
- (b) the measures taken are reasonably justifiable for dealing with the war, state of public emergency, threatened state of public emergency or National disaster.

**(2) Legislation enacted under clause (1) may provide for the detention of persons when it is necessary for purposes of dealing with the war or other state of public emergency.”**

### **10.52.3 Deliberations of the Conference on Articles 76, 77 and 78**

10.52.3.1 The Conference observed that Article 76 was too technical, convoluted, long winded and had too many references and that such a formulation of an Article defeated the concept of a people’s Constitution that should be understood by ordinary people who had no legal training. The Conference resolved that the Articles providing for limitations, derogations and non-derogation should be couched in simple language as was the case in the Constitution of South Africa.

10.52.3.2 In addition, the Conference resolved to provide limitations and non- derogations within the individual Articles to which they applied while derogations from certain rights during a war, state of emergency or threatened state of emergency were provided for in the new Article 62 from the provision of Article 71 of the current Constitution.

10.52.3.3 As a consequence of the above decision, Articles 76, 77 and 78 of the Draft Constitution were deleted by the Conference.

### **10.52.4 Resolutions of the Conference**

The Conference transferred some provisions of Articles 76, 77 and 78 to individual Articles within the Bill of Rights in order to achieve simplicity and easy understanding of derogations to certain rights and approved a new Article based on Article 25 of the current Constitution, to provide for derogation during war, state of emergency and threatened state of emergency and re-numbered it as Article 71, as follows:

**“71. Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of Articles 48, 51, 54, 56, 57, 58, 61, 62, or 63**

to the extent that it is shown that the law in question authorises the taking, during any period when the Republic is at war or when a declaration under Article 123 is in force, of measures for the purpose of dealing with any situation existing or arising during that period, and nothing done by any person under the authority of any such law shall be held to be in contravention of any of the said provisions if it is shown that the measures taken were, having due regard to the circumstances prevailing at the time, reasonably required for the purpose of dealing with the situation in question."

**10.53            Article 79 : Restriction and Detention During Emergency**

**10.53.1           Recommendations of the Commission**

The Commission recommended that the Constitution should provide that:

- (a) the President may, in consultation with the Cabinet, declare war subject to prior approval by the National Assembly by not less than two-thirds of all the members;
- (b) the President may take such measures as are necessary in response to external aggression, subject to ratification by the National Assembly within a period of seven days;
- (c) a declaration of a state of emergency or threatened state of emergency should require approval of the National Assembly within seven days by a resolution supported by not less than two-thirds of all the members;
- (d) any extension of a State of Emergency should require approval by the National Assembly by a resolution supported by not less than two-thirds of all the members; and
- (e) the Constitutional Court should have jurisdiction to decide the validity of a declaration of a state of emergency or threatened state of emergency,

including the reasonableness thereof; and any extension of a declaration of state of emergency and any legislation enacted or other measures taken in consequence of such declaration.

#### **10.53.2 Provisions in the Draft Constitution on Restriction and Detention during Emergency**

Article 79 provides as follows:

**“79. (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 in a language which that person understands specifying in detail the grounds of the restriction or detention;**
- (b) not more than fourteen days after the commencement of the restriction or detention, a notification shall be published in the *Gazette* stating the restriction or detention and giving particulars of the place of the restriction or detention and 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 shall be**

permitted to appear in person or by a legal practitioner of that person's own choice and may, in addition to any grounds challenging that person's detention or restriction, challenge the validity or genuineness of the declaration of the state of public emergency or threatened state of public emergency and the measures taken during that period.

(2) On a review by the Constitutional Court under this Article, the Court shall advise the authority, by which the detention or restriction of the person was ordered, on the necessity or expediency of continuing the restriction or detention and that authority shall act in accordance with that advice.

(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.

(4) Clause (1) (d) or (e) shall not be construed as entitling a person to legal representation at public expense."

### **10.53.3 Deliberations of the Conference on Article 79**

In debating Article 79, the Conference:

- (a) amended paragraph (a) of clause (1) by inserting a proviso to provide for the statement of grounds of restriction in Braille if the person is visually impaired;
- (b) inserted and approved a new paragraph (b) to provide for the information of the next of kin of a detained person within forty-eight hours of the commencement of the detention;
- (c) amended paragraph (b) by including the publication of the particulars of the location of detention in a newspapers of general circulation in Zambia and re-numbered it as paragraph (c);

- (d) deleted paragraph (c) as the Conference considered clause (1) of the new Article 73 to be more advantageous to the detainees in that the review of the detention is mandatory and is at the instance of the High Court;
- (e) amended paragraph (d) by including the words *"facilities and opportunity"* between the words *"reasonable"* and *"to"*; and
- (f) moved clause (2) to the new Article 73 providing for the review by the High Court, and renumbered clauses (3) and (4) as clauses (2) and (3).

#### **10.53.4 Resolutions of the Conference**

The Conference adopted Article 79 with amendments, and re-numbered it as Article 72, as follows:

**"72. (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, in a language which that person understands specifying in detail the grounds of the restriction or detention:  

Provided that if the person is visually impaired, the statement shall be in Braille;
- (b) the spouse or next of kin of, or other person named by, the person restricted or detained, shall be informed of the restriction or detention and allowed access to the person within forty-eight hours after the commencement of the restriction or detention;
- (c) not more than fourteen days after the commencement of the restriction or detention, a notification shall be published in

the Gazette and in a daily newspaper of general circulation in Zambia, stating that the person has been restricted or detained and giving particulars of the place of the restriction or detention and the provision of the law under which the restriction or detention is authorised;

- (d) that person shall be afforded reasonable facilities and opportunity 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 High Court; and
- (e) at the hearing of the case, by the High Court, that person shall be permitted to appear in person or by a legal practitioner of that person's own choice and may, in addition to any grounds challenging that person's detention or restriction, challenge the validity or genuineness of the declaration of the state of public emergency or threatened state of public emergency and the measures taken during that period.

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

(3) Clause (1) (d) shall not be construed as entitling a person to legal representation at public expense, except that a person may be granted legal aid if substantial injustice would otherwise result."

## **10.54            New Article : Review by High Court**

### **10.54.1            Deliberations of the Conference on new Article 73**

- 10.54.1.1        The Conference introduced a new Article to compel the High Court to review cases of a detained or restricted person within fourteen (14) days from the commencement of the detention or restriction and to separately provide for specific functions and

responsibilities of the High Court in matters related to detained or restricted persons as follows:

**“(1) The High Court shall review the case of a person who is Restricted or detained and to whom Article 72 applies, not later than fourteen days after the commencement of the restriction or detention, and after that, at intervals of not more than thirty days.”**

10.54.1.2 In doing so, the Conference moved clause (2) of Article 79 and amended it and re-numbered it as clause (2). In addition a new clause (1) of the new Article 73 was inserted and approved to set the time-frame within which the High Court should review any detention. Clause (2) of Article 79 provides as follows:

**“(2) On a review by the Constitutional Court under this Article, the Court shall advise the authority, by which the detention or restriction of the person was ordered, on the necessity or expediency of continuing the restriction or detention and that authority shall act in accordance with that advice.”**

## **10.54.2 Resolutions of the Conference**

The Conference adopted new Article 73 as follows:

**“73. (1) The High Court shall review the case of a person who is Restricted or detained and to whom Article 72 applies, not later than fourteen days after the commencement of the restriction or detention, and after that, at intervals of not more than thirty days.**

**(2) On a review by the High Court, the Court may order the authority by which the detention or restriction of the person was ordered-**

- (a) on the necessity or expediency of continuing the restriction or detention;**
- (b) to release the detained or restricted person;**  
**or**
- (c) to take such other action as the Court may consider necessary;**



and the authority shall act in accordance with that order.”

**10.55            Article 80 : Enforcement of Bill of Rights**

**10.55.1           Recommendations of the Commission**

The Commission made the same recommendations on the enforcement of Bill of Rights as those it did in the context of the Human Rights Commission.

**10.55.2           Provisions in the Draft Constitution on Enforcement of Bill of Rights**

Article 80 provides as follows:

**“80. (1)    Where a person alleges that any provision of this Bill of Rights has been, is being or is likely to be contravened in relation to that person, without prejudice to any other action with respect to the same matter which is lawfully available, 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 for the enforcement of the Bill of Rights.”**

**10.55.3    Deliberations of the Conference on Article 80**

10.55.3.1    In debating clause (1), the Conference reiterated that it had earlier approved that matters concerning violation of the Bill of Rights were for original jurisdiction in the High Court and that the Constitutional Court would have appellate jurisdiction in the following:

- (a)    in all matters of interpretation of this Constitution;
- (b)    to determine whether an Act of Parliament or statutory instrument contravenes this Constitution; and

- (c) to determine a question of violation of any provision of the Bill of Rights.

10.55.3.2 Accordingly, the Conference resolved that reference to the Constitutional Court in clause (1) of Article 80 of the Draft Constitution should be amended to refer to the “High Court”.

10.55.3.3 On clause (2), the Conference resolved to restrict the *locus standi* for suing on behalf of others whose rights have been violated to persons and organisations with “*a sufficient interest*” in the matter. Therefore, clause (2) was amended by inserting the phrase “**with a sufficient interest**” between the words “*organisation*” and “*may*”. In addition, the Conference specified who should have such an interest in the proviso to clause (2) as follows:

**“Provided that the person or organisation that may bring an action under this clause is-**

- (a) a person acting on behalf of another person who cannot bring an action in their own name;
- (b) a person acting as a member of, or in the interest of, a group or class of persons; and
- (c) any association in the interest of its members.”

10.55.3.4 The Conference debated and deleted clause (3) of Article 80 as the Bill of Rights should have its own enforcement mechanism and that all rights declared in the Bill of Rights should become enforceable on the day the new Constitution comes into effect.

#### 10.55.4 Resolutions of the Conference

The Conference approved Article 80 with amendments, and re-numbered it as Article 74, as follows:

**“74. (1) Where a person alleges that any provision of this Bill of Rights has been, is being or is likely to be contravened in relation to that person, without prejudice to any other action with respect to the same matter which is**

lawfully available, that person may apply for redress to the High Court.

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

Provided that the person or organisation that may bring an action under this clause is-

- (a) a person acting on behalf of another person who cannot bring an action in their own name;
- (b) a person acting as a member of, or in the interest of, a group or class of persons; and
- (c) any association in the interest of its members."

**10.56        Article 81 - Establishment and Composition of Human Rights Commission;**  
**Article 82 - Functions of Human Rights Commission**  
**Article 83 - Independence Of Human Rights Commission**  
**Article 84 - Tenure of Office of Members of Human Rights Commission**  
**Article 85 - Funds of Human Rights Commission**  
**Article 86 - Expenses of The Human Rights Commission; And**  
**Article 87 - Legislation on Powers of Human Rights Commission**

**10.56.1        Recommendations of the Commission**

10.56.1.1        The Commission recommended that the Human Rights Commission (HRC) should continue to be established by the Constitution and that its core functions should also be spelt out in the Constitution.

10.56.1.2        The Commission further recommended that these functions should include to:

- (a) investigate, at its own initiative or upon a complaint being made by any person or group of persons alleging any violation of any human right;
- (b) establish a continuing programme of research, education, information dissemination and rehabilitation of victims of human rights abuse,

to enhance the respect for and protection of human rights;

- (c) recommend to Parliament effective measures to promote human rights, including provision of compensation to victims of violations of human rights or their families;
- (d) promote community education and public awareness of the provisions of the Constitution as the fundamental law of the land and formulate and implement programmes intended to inculcate in the citizens awareness of their civic responsibilities and an appreciation of their rights;
- (e) monitor the Government's compliance with international treaty and convention obligations on human rights; and
- (f) visit jails, prisons and places of detention or related facilities with a view to assessing and inspecting conditions of the inmates and make recommendations.

10.56.1.3 On the question of jurisdiction, the Commission recommended that the Constitution vests the HRC with powers to prosecute cases of human rights violations, subject to the Director of Public Prosecutions' authority.

10.56.1.4 The Commission recommended that provisions for the appointment of Commissioners to the HRC should be enshrined in the Constitution as follows:

- (a) the Chairperson and Vice-Chairperson should be appointed by the President on the recommendation of the Judicial Service Commission, subject to ratification by the National Assembly;
- (b) there should be three other Commissioners to be appointed by the President and ratified by the National Assembly upon nomination by human rights organisations identified by the President;

- (c) the Chairperson and Vice-Chairperson must be persons who are qualified to be appointed High Court Judge; and
- (d) the rest of the Commissioners should have qualifications and proven experience in human rights.

10.56.1.5 The Commission recommended that the Constitution should provide that:

- (a) all Commissioners on the HRC should be full-time and serve a term of four years, subject to reappointment for one more term; and
- (b) a Commissioner should be removed only on grounds of inability to discharge duties, whether arising from infirmity of body or mind, incompetence or misbehaviour.

10.56.1.6 The Commission further recommended that administrative measures should be undertaken to decentralise activities of the HRC to provinces and, ultimately, to districts.

10.56.1.7 The Commission recommended that in order to enhance the effectiveness and financial autonomy of the HRC, the Constitution should provide that:

- (a) the HRC should be self-accounting and its funds under the national budget should be adequate and allocated directly;
- (b) once approved, its budget should be a charge on the Consolidated Fund of the Republic; and
- (c) the HRC may receive donations and grants from sources other than the Government, subject only to public interest.

10.56.1.8 The Commission recommended that:

- (a) there is no need for the establishment of a separate human rights court; and

- (b) the Constitutional Court, recommended in this Report, should have jurisdiction over cases of human rights violations.

**10.56.2 Provisions in the Draft Constitution on Establishment and Composition of Human Rights Commission, Functions of Human Rights Commission, Independence of Human Rights Commission, Tenure of Office of Members of Human Rights Commission, Funds of Human Rights Commission and Legislation on Powers of Human Rights**

Articles 81, 82, 83, 84, 85, 86 and 87 provides as follows:

**“81. (1) There is hereby established a Human Rights Commission which shall have offices in all of the provinces and progressively in the districts.**

**(2) The Commission shall consist of the following members:**

- (a) a person qualified to be appointed a Judge of the High Court, nominated by the Judicial Service Commission, as the chairperson;**
- (b) a person qualified to be appointed a Judge of the High Court, nominated by the Judicial Service Commission, as the vice-chairperson; and**
- (c) three persons, who have qualifications and proven experience in human rights issues, nominated by human rights civil society organisations.**

**(3) A member of the Commission shall be appointed by the President, subject to ratification by the National Assembly.**

**82. (1) The functions of the Human Rights Commission shall be to -**

- (a) investigate, at its own initiative or on a complaint made by a person or group of persons, an allegation of a violation of any human right or freedom;**
- (b) investigate complaints in State institutions relating to allegations of abuse of human rights or freedoms;**
- (c) establish a continuing programme of research, education, information,**

dissemination and rehabilitation of victims of human rights abuses in order to enhance awareness and the protection of human rights and freedoms;

- (d) recommend to the National Assembly measures to promote human rights and freedoms, including the provision of compensation to victims of violations of human rights and their families;
- (e) promote civic education and public awareness of the Bill of Rights;
- (f) monitor the Government's compliance with international treaties and conventions on human rights and freedoms;
- (g) formulate and implement programmes intended to inculcate, in the citizen, an awareness of civic responsibilities and an appreciation of the rights, freedoms and obligations under this Constitution;
- (h) visit prisons and places of restriction or detention or related facilities in order to assess and inspect conditions of the inmates and make recommendations to appropriate authorities;
- (i) investigate complaints against practices and actions, by persons, private enterprises and any other institution on alleged violations of the Bill of Rights;
- (j) take appropriate action to call for remedying, correction and reversal of instances of breach of the Bill of Rights;
- (k) prosecute cases of human rights violations, subject to the approval of the Director of Public Prosecutions; and
- (l) report regularly to the National Assembly on the performance of its functions.

(2) Clause (1) shall not prevent any person, on behalf of any other person unable to act, from bringing an action to the Constitutional Court in a case of a violation of the Bill of Rights.

(3) The Commission shall not investigate a matter -

- (a) which is pending before a court or quasi-judicial tribunal;
- (b) that involves the relations or dealings between the Government and any foreign government or an international organisation;
- or
- (c) that relates to the exercise of the prerogative of mercy.

83. In the performance of its functions, the Human Rights 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.

84. (1) A member of the Human Rights Commission shall hold office on full-time basis for a term of four years and shall be eligible for re-appointment for only one further term.

(2) A member of the Commission may in writing resign from office and may be removed from office on the same grounds and procedure as applies to a Judge of a superior court.

(3) A member of the Commission shall not hold any other office of profit or emolument while serving as a member of the Commission.

85. (1) The funds of the Human Rights Commission shall include -

- (a) moneys appropriated by Parliament for the purposes of the Commission; and
- (b) any other moneys received by the Commission for the performance of its functions.

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

(3) The Commission shall, in any financial year, be adequately funded in order to enable it to effectively carry out its mandate.

86. 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.



**87. Parliament may enact legislation to give effect to this Part, including the power of the Human Rights Commission to -**

- (a) issue subpoenas requiring the attendance of a person before the Commission;**
- (b) require the production of documents or records relevant to an investigation by the Commission;**
- (c) cause a person contemptuous of the Commission to be prosecuted before a court;**
- (d) question a person in respect of a subject matter under investigation by the Commission;**
- (e) require a person to disclose any information, within that person's knowledge, relevant to an investigation by the Commission;**
- (f) make regulations providing for the manner and procedure for bringing complaints before it and for the investigation of complaints; and**
- (g) appoint the employees of the Commission and determine their terms and conditions of service."**

**10.56.3 Deliberations of the Conference on Articles 81, 82, 83, 84, 85, 86, and 87**

10.56.3.1 In debating the Articles, some members observed that:

- (a) Articles 81 to 87 contained unnecessary details most of which were already contained in the current Human Rights Commission Act;
- (b) the number of Commissioners and functions of the Human Rights Commission should be provided for in subsidiary legislation because the Bill of Rights could not be easily changed; and
- (c) procedural and administrative issues such as of establishing Commissions should not be entrenched in the Bill of Rights.

10.56.3.2 However, other members who supported the inclusion of the number of Commissioners in the Constitution argued that:

- (a) putting the number in the Constitution for such positions was consistent with what the Conference had done before for similar positions;
- (b) including the number of Commissioners in the Constitution was necessary because expansion of offices to the Provinces and Districts would not call for additional numbers of Commissioners; and
- (c) including numbers in the Constitution would make it difficult for appointment of any additional and unnecessary commissioners.

10.56.3.3 The Conference resolved to delete Articles 81 to 87 of the Draft Constitution and replace them with the new Article 243 whose provisions are from Articles 125 and 126 of the current Constitution. It was also resolved that the new provisions on the Human Rights Commission be moved from the Bill of Rights to Part XIV of the Constitution providing for Commissions.

10.56.3.4 However, some members who supported the inclusion of the number of Commissioners in the Constitution argued that:

#### **10.56.4 Resolutions of the Conference**

10.56.4.1 The Conference adopted the new Article 243 which was derived from the provisions of Articles 125 and 126 of the current Constitution in place of Articles 81 to 87 of the Draft Constitution. Article 86 was also moved from the Bill of Rights to Part XIV of the Constitution providing for Commissions. The approved Article provided as follows:

**“243. (1) There is hereby established a Human Rights Commission.**

**(2) The Human Rights Commission shall be autonomous.**

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

**10.57            Article 88 : Establishment of Gender Equality Commission**

**10.57.1           Recommendations of the Commission**

The Commission recommended that the Constitution should establish a Commission for Gender Equality, whose objectives would be the protection, development and attainment of gender equality, and that the powers, functions and composition of the said Commission should be defined in an appropriate legislation.

**10.57.2           Provisions in the Draft Constitution on Establishment of Gender Equality Commission**

Article 88 provides as follows:

**"88. (1)    There is hereby established the Gender Equality Commission.**

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

**10.57.3           Deliberations of the Conference on Article 88**

10.57.3.1        The Conference debated and adopted Article 88 of the Draft Constitution with amendments and its transfer from the Bill of Rights to Part XIV of the Constitution providing for Commissions. The Article was also re-numbered as Article 244.

10.57.3.2        Article 88 was amended by specifying in clause (1) the core functions of the Gender Equality Commission as those of promoting respect for gender equality, and

the protection, development and attainment of gender equality.

**10.57.4 Resolutions of the Conference**

The Conference adopted Article 88 of the Draft Constitution with amendments, re-numbered it as Article 244, subject to moving the provision from the Bill of Rights to Part XIV of the Constitution providing for Commissions as follows:

**“244. (1) There is hereby established the Gender Equality Commission which shall promote respect for gender equality and the protection, development and attainment of gender equality.**

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

## **PART VII**

### **CODE OF ETHICS AND CONDUCT OF PUBLIC OFFICERS**

#### **11.1 Introduction**

11.1.1 The Mung’omba Constitution Review Commission observed that holders of public office were entrusted with enormous decision-making and discretionary powers which, if unchecked, could erode principles of transparency and accountability which were cardinal to good governance. The Commission noted that some of the actions of public officers amounted, among others, to abuse of office, impropriety, diversion and misapplication of financial resources and that many countries had promulgated codes of ethics and conduct meant to set professional, ethical and moral standards expected of office holders.

11.1.2 The Commission further noted that, in the context of the Zambian situation, a code of conduct was necessary to curb corruption and promote fair, efficient and good governance in public affairs. It was agreed that the code should apply to all public officers.

#### **11.2 Article 89 : Conflict Of Interest**

##### **11.2.1 Recommendations of the Commission**

There was no specific recommendation on this Article. However, the Commission observed that a code of conduct was necessary to curb corruption and promote fair, efficient and good governance in public affairs and that such a code should apply to all public officers.

##### **11.2.2 Provisions in the Mung’omba Draft Constitution on Conflict of Interest**

Article 89 provides as follows:

**“89. A public officer shall not act in a manner or be in a position where the personal interest of the officer conflicts or is likely to conflict with the performance of the functions of office.”**

##### **11.2.3 Deliberations of the Conference on Article 89**

In discussing the Article, members observed that the Article would promote professionalism and integrity in the Public Service.

#### **11.2.4 Resolution of the Conference**

Accordingly, the Conference adopted Article 89 without amendments and renumbered it as Article 75 as follows:

**“75. A public officer shall not act in a manner or be in a position where the personal interest of the officer conflicts or is likely to conflict with the performance of the functions of office.”**

#### **11.3 Article 90: Declaration of Assets**

##### **11.3.1 Recommendations of the Commission**

The Commission was of the view that declaration of assets and liabilities should be made before election or upon appointment and annually thereafter, and at the end of the term of office or upon vacating office. The Commission also observed that appropriate legislation should provide for a body to administer the declaration of assets and liabilities instead of the Chief Justice as was the case currently.

##### **11.3.2 Provisions in the Mung’omba Draft Constitution on Declaration of Assets**

Article 90 provides as follows:

**“90. (1) An Act of Parliament shall specify the categories of public officers 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 to.**

**(2) A public officer specified in an Act of Parliament shall, in accordance with that Act, make a written declaration of the assets or liabilities of that public officer, whether owned or owed directly or indirectly-**

- (a) within three months after the commencement of this Constitution or before taking office;**
- (b) annually; and**
- (c) at the end of the term of office.**

**(3) A public officer who fails to make and submit a declaration as required by clauses (1) and (2) or knowingly makes a false declaration commits an offence and shall be liable to any penalty imposed by an Act of Parliament.**

**(4) A declaration made and submitted under clauses (1) and (2) shall, on demand, be produced in evidence before-**

- (a) a court or tribunal;**
- (b) the Anti-Corruption Commission; or**
- (c) any other investigative body established by or under an Act of Parliament."**

### **11.3.3 Deliberations of the Conference on Article 90**

11.3.3.1 In debating Article 90, the Conference decided to define the following terminologies used in Article 90 (1):

- (a) that the term "public officer" referred to "a person holding or acting in a public office";
- (b) that the term "public office" referred to "an office, the emoluments of which were a charge on or paid out of the National Treasury Account, other public fund or paid out of moneys appropriated by Parliament.";
- (c) that "a bankrupt person" was a person whose liabilities exceeded assets and the court must make a final declaration of insolvency. Legislation would provide whether a person adjudged bankrupt could be appointed to such an office;
- (d) that the meaning of "indirect ownership" referred to a situation where one owned property which was not registered in their own name such as, owning shares in a company but held through a nominee shareholder or through a trust or debenture.

11.3.3.2 In adopting clause (1) of Article 90, the Conference, observed that officers who were paid out of moneys appropriated by Parliament, whether employed by local authorities or otherwise, could be included in the definition of public officer.

11.3.3.3 With regard to clause (2) of Article 90, the Conference was in agreement that public officers should declare assets and liabilities. However, regarding the timing and frequency, it was argued that providing for annual declaration of assets would be too frequent. A counter-view was advanced that although annual declaration of assets and liabilities appeared too frequent, the clause would take

care of situations where assets were acquired or disposed of during the course of a year. The provision was also useful for the purpose of filing annual tax returns.

11.3.3.4 On clause 2 (c), relating to the declaration at the end of the term of office, it was observed that officers who were dismissed from employment before the end of their term of office might not be willing to declare their assets and liabilities.

11.3.3.5 On the issue of indirect ownership, the Conference observed that the question of some people who acquired property illegally, hiding the trail, so that the property could not be traced to them, was real. Therefore, the intention of the clause was to try and cover such cases.

11.3.3.6 In further debate on clause (2), the following additional views and suggestions were made:

- (a) that Chief Executives of Non-Governmental Organisations (NGOs) should also be subjected to the declaration of assets and liabilities as they handled money intended for the public to whom they were expected to be accountable;
- (b) that the clause would ensure accountability at every level of society;
- (c) that the clause should be all-inclusive to cover churches and political parties;
- (d) that the focus should be on the Public Service as the suggestion to include churches and NGOs could lead to the inclusion of chiefs and ultimately to a totalitarian society;
- (e) that Chief Executive Officers of NGOs did not handle tax payers' money and their source of income was not from public funds and that they could not therefore, declare their assets and liabilities; and
- (f) that other categories, such as political parties did not have assets to declare.

11.3.3.7 The Conference approved clause (3) as recommended in the Draft Constitution.

11.3.3.8 In debating clause (4), the following views were expressed:

- (a) some members were for retention of clause (4);



- (b) other members argued for the deletion of clause 4(b) as it was covered in clause 4(c);
- (c) members who were for deletion of clauses 4(a) and (b), argued that a tribunal provided for in clause 4(a) would not serve any purpose unless it had powers to determine cases conclusively; and
- (d) some members, in supporting the deletion of clause 4 (b) argued that it was not necessary to specify the Anti-Corruption Commission in the Constitution as titles were subject to change over time.

11.3.3.9 The Conference decided that clause (4) be provided for in an Act of Parliament.

#### **11.3.4 Resolutions of the Conference-**

Accordingly, the Conference adopted Article 90 with amendments and renumbered it as Article 76 as follows:

**"76. (1) An Act of Parliament shall specify the categories of public officers 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.**

**(2) A public officer specified in an Act of Parliament shall, in accordance with that Act, make a written declaration of the assets and liabilities of that public officer -**

- (a) within three months after the commencement of this Constitution or upon taking office;**
- (b) annually; and**
- (c) at the end of the term of office.**

**(3) A public officer who fails to make and submit a declaration as required by clauses (1) and (2) or knowingly makes a false declaration commits an offence and shall be liable to a penalty imposed by an Act of Parliament."**

#### **11.4 Article 91 : Spouse of Public Officer**

##### **11.4.1 Recommendation of the Commission**

The Commission recommended that the code of conduct and declaration of assets should include spouses.

##### **11.4.2 Provisions in the Mung'omba Draft Constitution on Spouse of Public Officer**

Article 91 provides as follows:

**“91. A spouse of a public officer shall declare that spouse’s assets and liabilities, as provided under an Act of Parliament.”**

### **11.4.3 Deliberations of the Conference on Article 91**

11.4.3.1 In debating the Article, some members questioned what would happen in a situation where a public officer, who, being aware that the spouse would not be required to declare property, decided to acquire property in the spouse’s name. Other members argued that spouses should be required to declare their assets because past experience had shown that some spouses illegally acquired property in the names of their spouses as a cover-up from detection or as a means of avoiding tax.

11.4.3.2 Most members were, however, of the view that Article 91 should be deleted because it was tantamount to unfair treatment. They further argued that spouses, in some cases, acquired and owned property in their own right. Therefore, such property and liabilities should have no bearing on the partners who held public office.

### **11.4.4 Resolution of the Conference**

Accordingly, the Conference decided to delete Article 91.

## **11.5 Article 92 : Appointment to Public Body**

### **11.5.1 Recommendations of the Commission**

The Commission made no recommendation on this Article. The Commission observed, however, that a number of petitioners submitted that the public service should be protected from political interference in order to promote professionalism and efficiency. As such, the petitioners wanted holders of constitutional offices in the public service, for example Secretary to the Cabinet, not to be appointed by the President.

### **11.5.2 Provisions in the Mung’omba Draft Constitution on Public Body**

Article 92 provides as follows:

**"92. Parliament shall enact legislation prohibiting -**

- (a) a member of the governing body of a statutory body or company in which the Government has a controlling interest from holding any other office in the service of that body or company, except for the Governor of the Central Bank and the Commissioner of Lands; and**
- (b) a member of the National Assembly from being appointed to or hold office in a statutory body or company in which the Government has a controlling interest."**

### **11.5.3 Deliberations of the Conference on Article 92**

11.5.3.1 In debating Article 92, some members observed that there was no justification for its inclusion in the Constitution as the Constitution should not be used to resolve administrative problems. On the exception given to the Governor of the Bank of Zambia and the Commissioner of Lands in clause (a), members argued that such an exception would result in conflict of interest. A question was raised as to what would happen if one had a complaint against the Commissioner of Lands and the matter was taken before the Lands tribunal on which the Commissioner of Lands was a member.

11.5.3.2 The Conference noted that under the Chapter on Public Finance, it had been decided that the details of the Board of the Bank of Zambia be provided for in an Act of Parliament.

### **11.5.4 Resolution of the Conference**

Accordingly, the Conference resolved to delete Article 92.

## **11.6 Article 93: Codes of Ethics for Professions and Other Vocations**

### **11.6.1 Recommendations of the Commission**

The Commission observed that some of the actions of public officers amounted, among others, to abuse of office, impropriety, diversion and misapplication of financial resources. The

Commission noted that many countries had promulgated codes of ethics and conduct meant to set professional, ethical and moral standards expected of office holders.

#### **11.6.2 Provisions in the Mung’omba Draft Constitution on Codes of Ethics for Professions and other Vocations**

Article 93 provides as follows:

**“93. Parliament shall enact legislation providing for the compiling and publication of a code of conduct and ethics for any profession or vocation that involves the provision of services to the public.”**

#### **11.6.3 Deliberations of the Conference on Article 93**

In debating the Article, most of the members argued that the provisions under Article 93 were details which were not suitable for inclusion in the Constitution and proposed that the same be provided for in an Act of Parliament. The members noted that an Act of Parliament had as much force of law as the Constitution.

#### **11.6.4 Resolution of the Conference**

Accordingly, the Conference decided that a provision be made in the Constitution directing Parliament to provide for codes of ethics in an Act of Parliament and renumbered it as Article 77 as follows:

**“77. Parliament shall enact legislation to provide for the compiling and publication of a code of conduct and ethics for any profession or vocation that involves the provision of services to the public.”**

**PART VIII**  
**REPRESENTATION OF THE PEOPLE ELECTORAL SYSTEMS AND**  
**PRINCIPLES**

**DEMOCRATIC GOVERNANCE**

**12.1 Introduction**

12.1.1 The Commission noted that the concept of constitutionalism underpins governance as it relates to the political, social and legal order and that governments should respect and operate in accordance with the rule of law. The Commission observed that governance was cardinal in upholding democracy because it entailed empowerment of people, transparency, accountability, observance of human rights, respect for the rule of law, separation of powers and the independence of the Judiciary. The Electoral process was the cornerstone of democratic governance and that free and fair elections at periodic intervals were important in legitimizing public accountability.

12.1.2 The Commission also provided for administration of political parties, funding of political parties and the introduction of the mixed electoral system.

**12.2 Article 94: Basis of Electoral System**

**12.2.1 Recommendations of the Commission**

The Commission noted that for an election to be democratic, free and fair it had to satisfy the following:

- (a) the entire adult population should have the right to vote for candidates of their choice;
- (b) elections should take place regularly and within prescribed time limits;
- (c) no one should be denied the opportunity to form a party and to field up candidates of their choice;
- (d) votes should be cast freely, counted secretly and reported honestly and those who won should be declared winners for their full terms; and
- (e) campaigns should be conducted with fairness in compliance with the provisions of the Electoral Act.

## **12.2.2 Provisions in the Mung’omba Draft Constitution on Basis of Electoral System**

Article 94 provides as follows:

**“94. (1) The electoral system is based on the right of all citizens, who are eligible under this Constitution and any other law, to vote in any direct election or stand for any office in a direct election, as provided under this Constitution.**

**(2) Subject to this Constitution, voting in any direct election shall be by universal adult suffrage and secret ballot.**

**(3) The electoral system and process shall be such as will ensure a free and fair election.**

**(4) The electoral system shall ensure that –**

**(a) the representation of each gender is not less than thirty per cent of the total number of seats in the National Assembly, district council or other public elective body; and**

**(b) there shall be equitable representation of persons with disabilities and the youth at all levels of governance.**

**(5) An Act of Parliament shall provide a formula for achieving the purposes under clause (4).”**

## **12.2.3 Deliberations of the Conference on Article 94**

**12.2.3.1** In debating Article 94 (4) (a) on gender equality, some members of the Conference observed that Zambia had made minimal progress in creating an enabling environment to attain gender equality. Members observed that women faced many obstacles in their participation in politics and proposed that the threshold should be raised from thirty percent (30%) to fifty percent (50%) of each gender. The Conference was informed that the Southern African Development Community (SADC) and the United Nations (UN) had resolved to raise representation to fifty percent (50%) for each gender. Further, members argued that the clause was neutral as it allowed each gender to exceed thirty percent (30%). Some members, however, argued that it was not a question of quotas but rather the prerogative of the electorate to decide who they wanted to represent them.

**12.2.3.2** Accordingly, the Conference approved Article 94 recommended in the Mung’omba Draft Constitution without amendments.

#### **12.2.4 Resolutions of the Conference**

The Conference adopted Article 94 without amendments and renumbered it as Article 78 as follows:

**“78. (1) The electoral system is based on the right of all citizens, who are eligible under this Constitution and any other law, to vote in any direct election or stand for any office in a direct election, as provided under this Constitution.**

**(2) Subject to this Constitution, voting in any direct election shall be by universal adult suffrage and secret ballot.**

**(3) The electoral system and process shall ensure a free and fair election.**

**(4) The electoral system shall ensure that –**

**(a) the representation of each gender is not less than thirty per cent of the total number of seats in the National Assembly, district council or other public elective body; and**

**(b) there shall be equitable representation of persons with disabilities and the youth at all levels of governance.**

**(5) Parliament shall enact legislation –**

**(a) to ensure the conduct of free and fair elections;**

**(b) to provide a formula for achieving the purposes under clause (4).”**

#### **12.3 Article 95 : Electoral Systems for Presidential, National Assembly and Local Government Elections**

##### **12.3.1 Recommendations of the Commission**

The Commission recommended that:

**(a) the Mixed Member Representation electoral system should be adopted for parliamentary and local government elections as a step towards graduating to the Proportional Representation system with a provision for varying this by Parliament upon a two-thirds majority, and that this should be provided for in the Constitution and electoral laws;**

- (b) forty percent (40%) of the total number of seats with voting rights should be allocated to the PR System. However, the modalities of catering for interest and disadvantaged groups should be left to the political party list system; and
- (c) to enhance the efficacy of this party list system, appropriate legislation should be enacted to provide guidance and criteria on the compilation of the party list.

### **12.3.2 Provisions in the Mung’omba Draft Constitution on Electoral System for Presidential, National Assembly and Local Government Elections**

Article 95 provides as follows:

**“95. (1) Elections to the office of President shall be conducted on the basis of a majoritarian system where the winning candidate must receive not less than fifty per cent plus one vote of the valid votes cast and in accordance with Article 125.**

**(2) Elections to the National Assembly and a district council shall be conducted under a mixed member representation system and as provided under Articles 159 and 235 (b) and (c), respectively.**

**(3) Subject to clause (4), Parliament may enact legislation prescribing a different electoral system for election of members of the National Assembly or a district council.**

**(4) Any Bill providing for a different electoral system, for purposes of clause (3), shall not be passed by the National Assembly unless the Bill is supported on second and third reading by the votes of not less than two-thirds of all the members of the Assembly.”**

### **12.3.3 Deliberations of the Conference on Article 95**

- 12.3.3.1 The Conference noted that the provision that the election to the office of President should be conducted on the basis of majoritarian system was not new to Zambia as it was only changed in 1996.



12.3.3.2 In the discussion of the matter, two positions emerged. The first one was that clause (1) of Article 95 should be retained. The other position was that it should be deleted.

12.3.3.3 The members of the Conference who supported the provision argued as follows:

- (a) that it would promote unity among Zambians, especially in view of what was taking place in the country where politics were becoming more regional and tribal;
- (b) that it would instil confidence in the electoral system;
- (c) that in the recent past there had been debates on the legitimacy of a President elected under the First-Past-The-Post system;
- (d) that the previous Constitution Review Commissions and the Electoral Reforms Technical Committee had consulted widely on the matter and recommended its reintroduction based on the submissions received;
- (e) that the system could not be easily manipulated;
- (f) that the system would help political parties to cooperate with one another;
- (g) that the system was being used successfully in some neighbouring countries;
- (h) that the people of Zambia would be united because the popularly elected President would be the choice of the majority of the people and would not be a tribal or minority President;
- (i) that a re-run would not be expensive to administer since election materials would have already been distributed to the polling stations during the initial election; and
- (j) that the system would prevent the country from being ruled by a President from one region with the highest population.

12.3.3.4 The members of the Conference who were against the provision argued as follows:

- (a) that the election of the President under the majoritarian system would not guarantee good governance or performance as presidents who had been elected under the First-Past-The-Post system had performed well;
- (b) that there was likely to be tension when there was a run-off after elections;
- (c) that the argument that the system would unify

- Zambians was a fallacy;
- (d) that the system would promote tribalism as parties would unite on tribal lines to form government;
  - (e) that the system being proposed was no longer fashionable and developed countries no longer used it;
  - (f) that the re-run would be too costly;
  - (g) that there would be no majority to talk about since in the event of a tie after a run off, Parliament or the Speaker would vote to choose the President to break the tie;
  - (h) that there would be a mathematical problem where there would be one candidate with the highest votes and two others in second place;
  - (i) that not everyone who was eligible to vote, was registered and not everyone who registered, voted and in that regard, the person elected might not be a majority President;
  - (j) that there was no need to change the current system just for the sake of change because the current system had worked well so far;
  - (k) that Zambia had been a haven of peace and was admired because of the system that it had adopted to elect a President; and
  - (l) that the majoritarian system of fifty percent plus one vote had created chaos in other countries and was a recipe for anarchy.

12.3.3.5 Whether or not elections to the Office of the President should be conducted on the basis of a majoritarian system where the winning candidate would have to obtain not less than fifty percent plus one vote of the valid votes cast.

12.3.3.6 As neither those in support nor those against obtained the required majority, the Conference referred the matter to the referendum.

12.3.3.7 The Conference considered Article 95 (2) (3) and (4) and approved the provisions that elections to the National Assembly and a District council shall be conducted under a mixed member representation system.

#### 12.3.4 **Resolutions of the Conference**

Accordingly, the Conference referred Article 95 (1) to the referendum. Article 95 (1) provides as follows:

**“95. (1) Elections to the office of President shall be conducted on the basis of a majoritarian system where the winning candidate must receive not less than fifty per cent plus one vote of the valid votes cast and in accordance with Article 125.”**

The Conference adopted Article 95 (2) (3) and (4) without amendments and renumbered it as Article 79 as follows:

**“79. (2) Elections to the National Assembly and a district council shall be conducted under a mixed member representation system and as provided under Articles 159 and 235 (b) and (c), respectively.**

**(3) Subject to clause (4), Parliament may enact legislation prescribing a different electoral system for election of members of the National Assembly or a district council.**

**(4) Any Bill providing for a different electoral system, for purposes of clause (3), shall not be passed by the National Assembly unless the Bill is supported on second and third reading by the votes of not less than two-thirds of all the members of the Assembly.”**

## **12.4 Article 96 : Losing Candidate not Eligible for Certain Appointments**

### **12.4.1 Recommendations of the Commission**

The Commission did not make any recommendations on the subject of a losing candidate not being eligible for certain appointments.

### **12.4.2 Provisions in the Mung’omba Draft Constitution on Losing Candidates not being eligible for certain appointments**

Article 96 provides as follows:

**“96. (1) Any person who was a candidate for election as President, member of the National Assembly or district council and who lost the direct election is not eligible for appointment as Vice-President, Minister, Provincial Minister or Deputy Minister during the term of that National Assembly.**

**(2) Parliament may enact legislation to provide for other offices to which a person who has lost a direct election is not eligible for appointment.”**

#### **12.4.3 Deliberations of the Conference on Article 96**

The Conference supported the recommendation that candidates who had lost elections for the office of President, member of the National Assembly or district council should not be nominated or appointed to elective positions. However, the Conference did not support the recommendation that Parliament should enact legislation to prohibit losing candidates from occupying other offices. It was argued that losing an election was not a crime and while a person could be prevented from being appointed to an elective position it was not necessary for Parliament to enact legislation to prohibit losing candidates from occupying other offices.

#### **12.4.4 Resolution of the Conference**

The Conference adopted Article 96 with amendments and renumbered it as Article 80 as follows:

**“80. Any person who was a candidate for election as President, member of the National Assembly or district council and who lost the direct election is not eligible for nomination as a member of the National assembly or appointment as Vice-President, Minister, Provincial Minister or Deputy Minister during the term of that National Assembly.”**

#### **12.5 Article 97 : Independent Candidates**

##### **12.5.1 Recommendations of the Commission**

The Commission did not make any recommendations on the subject of independent candidates for elections as members of the National Assembly or district council.

##### **12.5.2 Provisions in the Mung’omba Draft Constitution on Independent Candidates**

Article 97 provides as follows:

**"97. Subject to the qualifications and disqualifications specified for election as a member of the National Assembly or a district council, a person shall be eligible to stand as an independent candidate for election as a member of the National Assembly for a constituency-based seat or councillor for a ward-based seat."**

### **12.5.3 Deliberations of the Conference on Article 97**

Some members of the Conference were in support of the provision that independent candidates should be allowed to contest elections as members of the National Assembly or district councils. Other members did not support the provision and argued that each candidate should be accountable to a political party.

### **12.5.4 Resolutions of the Conference**

Accordingly, the Conference adopted Article 97 without amendments and renumbered it as Article 81 as follows:

**"81. Subject to the qualifications and disqualifications specified for election as a member of the National Assembly or a district council, a person shall be eligible to stand as an independent candidate for election as a member of the National Assembly for a constituency-based seat or councillor for a ward-based seat."**

## **12.6 Article 98 : Unopposed Candidates**

### **12.6.1 Recommendations of the Commission**

The Commission did not make any recommendations on Unopposed Candidates.

### **12.6.2 Provisions in the Draft Mung'omba Constitution on Unopposed Candidates.**

Article 98 provides as follows:

**"98. (1) If in any direct election only one candidate is nominated by the date and time set by the Electoral Commission for receiving nominations that candidate shall be declared duly elected.**

**(2) Nothing in clause (1) shall prevent an aggrieved person from challenging the nomination and declaration made under clause (1)."**

### **12.6.3 Deliberations of the Conference on Article 98**

Members of the Conference supported the provision and adopted it without amendments.

### **12.6.4 Resolutions of the Conference**

Accordingly, the Conference adopted Article 98 without amendments and renumbered it as Article 82 as follows:

**"82. (1) If in any direct election only one candidate is nominated by the date and time set by the Electoral Commission for receiving nominations that candidate shall be declared duly elected.**

**(2) Nothing in clause (1) shall prevent an aggrieved person from challenging the nomination and declaration made under clause (1)."**

## **12.7 Article 99: Election Date for General Elections**

### **12.7.1 Recommendations of the Commission**

12.7.1.1 The Commission noted the overwhelming number of submissions calling for the date of general elections to be enshrined in the Constitution and agreed with the submissions. The Commission was of the view that enshrining the date in the Constitution would ensure proper and adequate planning by all stakeholders.

12.7.1.2 The Commission, therefore, recommended that the Constitution should provide;

- (a) that Presidential, Parliamentary and Local Government elections shall be held on the last Wednesday of September after every five years;
- (a) that the Electoral Commission should have power to vary the dates of elections by not more than 14 days when prevailing circumstances justify this;
- (b) that in the case of by-elections, the Electoral

- Commission of Zambia should determine the date of elections, but this should be within 90 days of the seat falling vacant; and
- (c) that the date for general elections should be declared a public holiday.

## **12.7.2 Provisions in the Mung’omba Draft Constitution on the Election Date for General Elections**

Article 99 provides as follows:

**“99. (1) Subject to clause (2) and the other provisions of this Constitution, a general election shall be held every five years on the last Wednesday of September after the last general election.**

**(2) The Electoral Commission may vary the dates for a general election by not more than fourteen days, of the day specified by clause (1), when prevailing circumstances justify a variation of the date.**

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

## **12.7.3 Deliberations of the Conference on Article 99**

12.7.3.1 In considering clause (1) of Article 99, the Conference observed that it had earlier adopted clause (1) of Article 309 of the Mung’omba Draft Constitution which obliged the Minister of Finance and National Planning to prepare and present the estimates of revenue and expenditure of the Government to the National Assembly, ninety days before the commencement of the next financial year. The Conference, further, noted that Parliament had enacted the Constitution of Zambia (Amendment) Act. No. 20 of 2009 to provide for the budget to be presented to Parliament ninety days before the next financial year.

12.7.3.2 The Conference agreed with the recommendation that general elections should be held every five years on the last Wednesday of September after the last general elections.

#### **12.7.4 Resolutions of the Conference**

Accordingly the Conference adopted Article 99 without amendments and renumbered it as Article 83 as follows:

**“83. (1) Subject to clause (2) and the other provisions of this Constitution, a general election shall be held every five years on the last Wednesday of September after the last general election.**

**(2) The Electoral Commission may vary the dates for a general election by not more than fourteen days, of the day specified by clause (1), when prevailing circumstances justify a variation of the date.**

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

#### **12.8 Article 100 : By-Elections**

##### **12.8.1 Recommendations of the Commission**

The Commission observed that the dates for by-elections should be determined by the Electoral Commission which had to be held within ninety (90) days of the vacancy occurring as was in the current Constitution. The Commission was of the view that the Electoral Commission should have the mandate to announce by-election dates as a matter of routine in the management of elections.

##### **12.8.2 Provisions in the Mung’omba Draft Constitution on By-Elections**

Article 100 provides as follows:

**“100. (1) Where a vacancy occurs in a constituency – based seat or ward-based seat a by-election shall be held within ninety days of the occurrence of that vacancy.**

**(2) A by-election shall not be held within the hundred and eighty days period that precedes a general election.**

**(3) The Electoral Commission shall prescribe the date and time when a by-election shall be held.”**



### **12.8.3 Deliberations of the Conference on Article 100**

The Conference agreed with the Article as provided in the Mung’omba Draft Constitution without amendments.

### **12.8.4 Resolutions of the Conference**

Accordingly, the Conference adopted Article 100 without amendments and renumbered it as Article 84 as follows:

**“84. (1) Where a vacancy occurs in a constituency – based seat or ward-based seat a by-election shall be held within ninety days of the occurrence of that vacancy.**

**(2) A by-election shall not be held within the hundred and eighty days period that precedes a general election.**

**(3) The Electoral Commission shall prescribe the date and time when a by-election shall be held.”**

## **12.9 Article 101 : Franchise**

### **12.9.1 Recommendations of the Commission**

The Commission recommended that:

- (a) the minimum age of eighteen years should be maintained as a qualifying age for voting;
- (b) voting should not be compulsory, although the Constitution should guarantee and protect the right of every eligible citizen to vote and remove all impediments to voting;
- (c) the duty of every citizen to register as a voter and to vote should be reflected in the Constitution in the Chapter on Directive Principles of State Policy and Duties of a Citizen; and
- (d) electoral laws should provide that to the extent possible, adequate voting facilities should be made available for persons with disabilities.

### **12.9.2 Provisions in the Mung’omba Draft Constitution on Franchise**

Article 101 provides as follows:

**"101. (1) A citizen shall be registered as a voter for direct elections or referenda if at the date of the application for registration as a voter that citizen has attained the age of eighteen years and qualifies for registration as a voter as prescribed by an Act of Parliament.**

**(2) A citizen who is registered as a voter in accordance with clause (1) shall, unless disqualified from voting under an Act of Parliament, be entitled to vote in any direct election in accordance with an Act of Parliament."**

### **12.9.3 Deliberations of the Conference on Article 101**

In debating the Article the Conference approved the provisions of Article 101 as recommended.

### **12.9.4 Resolutions of the Conference**

Accordingly, the Conference adopted Article 101 without amendments and renumbered it as Article 85 as follows:

**"85. (1) A citizen shall be registered as a voter for direct elections or referenda if at the date of the application for registration as a voter that citizen has attained the age of eighteen years and qualifies for registration as a voter as prescribed by an Act of Parliament.**

**(2) A citizen who is registered as a voter in accordance with clause (1) shall, unless disqualified from voting under an Act of Parliament, be entitled to vote in any direct election in accordance with an Act of Parliament."**

## **12.10 Article 102 : Electoral Process**

### **12.10.1 Recommendations of the Commission**

The Commission recommended that legislation be enacted to regulate every direct election.

### **12.10.2 Provisions in the Mung'omba Draft Constitution on Electoral Process**

Article 102 provides as follows:

**"102. Parliament shall enact legislation regulating every direct election and providing for -**

- (a) the continuous registration of voters;
- (b) a voting procedure that is simple;
- (c) transparent ballot boxes that are serially marked;
- (d) ballot papers written in braille for the use of blind persons who can read braille;
- (e) votes to be counted, tabulated and the results announced promptly at polling stations;
- (f) the accurate collation and prompt announcement of election results;
- (g) special arrangements for members of the Defence Forces, the Police Service, the Prisons Service, election officials and other special sectors of society to vote;
- (h) facilities to enable citizens living abroad to vote;
- (i) appropriate structures and mechanisms to eliminate all forms of electoral malpractices including the safe keeping of all election material; and
- (j) any matter dealing with the electoral process so as to ensure free and fair elections."

#### **12.10.3 Deliberations of the Conference on Article 102**

The Conference decided that the matters specified under Article 102 (a) to (j) were administrative and should be provided for under an Act of Parliament.

#### **12.10.4 Resolutions of the Conference**

Accordingly, the Conference adopted Article 102 of the Draft Constitution with amendments and renumbered it as Article 86 as follows:

**"86. Parliament shall enact legislation regulating every direct Election."**

#### **12.11 Article 103: Establishment and Composition of Electoral Commission of Zambia**

##### **12.11.1 Recommendations of the Commission**

The Commission recommended that the Constitution should:

- (a) establish an independent and autonomous electoral commission.
- (b) state that the chairperson and the vice chairperson

- of the independent electoral commission should be Zambian citizens qualified to be judges of the High Court; and
- (c) provide that the offices of the electoral commission should be decentralised to all provinces and districts.

**12.11.2 Provisions in the Mung’omba Draft Constitution on the Establishment and Composition of the Electoral Commission of Zambia**

Article 103 provides as follows:

**“103. (1) There is hereby established the Electoral Commission of Zambia which shall have offices in all provinces.**

**(2) The Electoral Commission shall consist of the following members who shall serve on a full-time basis:**

- (a) a Chairperson and Vice-Chairperson who shall be persons qualified to be appointed as Judges of a superior court; and**
- (b) five other members.”**

**12.11.3 Deliberations of the Conference on Article 103**

12.11.3.1 In debating clause (1) of Article 103, some members proposed that the name “Electoral Commission of Zambia” should be changed to “Independent Electoral Commission of Zambia”. They argued that the addition of the word “Independent” would enhance the Commission’s independence and autonomy and it would help to market the country to the international community. They further stated that other countries in the sub-region used the term for the same purpose and to underscore their commitment to upholding the independence of their respective electoral bodies.

12.11.3.2 Most of the members, however, argued that the addition of the word “independent” in the clause would not add value. The members stated that what was important was to establish adequate systems and structures which would enhance the capacity of the Commission to effectively conduct elections.

12.11.3.3 The Conference decided that the word “Independent” should not be added to the “Electoral Commission of Zambia.

- 12.11.3.4 Further, the Conference decided that reference to the Commission having offices in all provinces should be deleted as it was a detail which would adequately be dealt with by subordinate legislation.
- 12.11.3.5 In respect of clause (2) of Article 103, some members argued that it was not necessary for the Chairperson and Vice-Chairperson to be persons qualified to be appointed as judges of the superior courts and that persons with qualifications in other disciplines would be competent to head the Commission. They argued that only one member of the Electoral Commission of Zambia should be qualified to be appointed as a judge of the superior courts so that he or she would provide guidance on legal issues.
- 12.11.3.6 Other members were, however, of the view that both the Chairperson and the Vice-Chairperson should be persons qualified to be appointed as judges of the superior courts to enable them deal with the various legal questions and disputes that may arise.
- 12.11.3.7 The Conference decided that both the Chairperson and the Vice-Chairperson should be persons qualified to be judges of the superior courts as recommended.

#### **12.11.4 Resolutions of the Conference**

Accordingly, Conference adopted Article 103 with amendments and renumbered it as Article 87 as follows:

**“87. (1) There is hereby established the Electoral Commission of Zambia.**

**(2) The Electoral Commission shall consist of the following members who shall serve on a full-time basis:**

**(a) a Chairperson and Vice-Chairperson who shall be persons qualified to be appointed as Judges of a superior court; and**

**(b) five other members.”**

**12.12 Article 104 : Selection of members of Electoral Commission**

**12.12.1 Recommendations of the Commission**

The Commission recommended that the Constitution should provide for the process for the recruitment and appointment of the Electoral Commissioners and their selection by a panel of independent experts. They recommended that the panel of independent experts should consist of one member of the Supreme and Constitutional Court appointed by the Chief Justice, a member of the Civil Service Commission, a member of the Judicial Service Commission, a representative from Churches and Ombudsman.

**12.12.2 Provisions in the Mung'omba Draft Constitution on Selection of Members of Electoral Commission**

Article 104 provides as follows:

**"104. (1) The President shall constitute an ad hoc selection committee, as provided under clause (2), for purposes of recruiting and selecting persons for appointment as members of the Electoral Commission.**

**(2) The selection committee, constituted under clause (1), shall consist of the following members who shall be appointed by the President, subject to ratification by the National Assembly:**

- (a) one member of the Supreme and Constitutional Court, nominated by the Chief Justice;**
- (b) a member of the Civil Service Commission, nominated by the Chairperson of the Commission;**
- (c) a member of the Judicial Service Commission, nominated by the Chairperson of the Commission;**
- (d) a representative from the Church bodies; and**
- (e) the Ombudsman.**

**(3) The selection committee, constituted under clause (1), shall**

**-**

- (a) advertise the names of all short listed candidates for public scrutiny; and**
- (b) forward the names of the short listed candidates for appointment by the President.**

**(4) Parliament shall enact legislation prescribing the rules and procedures for advertising the names of short listed candidates and selecting members for appointment to the Electoral Commission."**

### **12.12.3 Deliberations of the Conference on Article 104**

- 12.12.3.1 In debating clause (1) of Article 104, some members proposed that the Secretary to the Cabinet should constitute the ad-hoc Selection Committee instead of the President, to remove the perception that the President could manipulate the appointment and ratification process of the members of the Electoral Commission. They further argued that the proposal is accepted as it would enhance democracy and protect the Presidency from suspicion.
- 12.12.3.2 Other members, however, supported the view that the President should appoint members of the Selection Committee. Those members argued that:
- (a) the office of President was the most respected and as such should appoint members of the Selection Committee; and
  - (b) the Secretary to the Cabinet was an appointee of the President and could, therefore, not be more credible than the appointing authority.
- 12.12.3.3 The Conference approved clause (1) of Article 104 of the Mung’omba Draft Constitution without amendments.
- 12.12.3.4 In debating clause (2) of Article 104 the Conference agreed that:
- (a) the words “Civil Service Commission” in paragraph (b) should be replaced with “Public Service Commission” in line with an earlier decision of the Conference; and
  - (b) the term “Ombudsman” in paragraph (e) be replaced with “Investigator-General” also in line with an earlier decision of the Conference
- 12.12.3.5 In debating clause (3) of Article 104 the Conference decided that the procedure for appointment of members of the Selection Committee, be provided for in an Act of Parliament.
- 12.12.3.6 The Conference approved (4) of Article 104 as recommended in the Mung’omba Draft Constitution without amendments.

#### **12.12.4 Resolutions of the Conference**

Accordingly, the Conference adopted Article 104 with amendments and renumbered it as Article 88 as follows:

**"88. (1) The President shall constitute an ad hoc selection committee as provided under clause (2), for purposes of recruiting and selecting persons for appointment as members of the Electoral Commission.**

**(2) The selection committee, constituted under clause (1), shall consist of the following members who shall be appointed by the President, subject to ratification by the National Assembly:**

- (a) one person who has experience in the electoral process nominated by the civil society organisations dealing with election matters;**
- (b) a member of the Public Service Commission, nominated by the Chairperson of the Commission;**
- (c) a member of the Judicial Service Commission, nominated by the Chairperson of the Commission;**
- (d) a representative from the Church bodies nominated by the church mother bodies; and**
- (e) the Investigator-General.**

**(3) Parliament shall enact legislation prescribing the rules and procedures for advertising the names of short listed candidates and selecting members for appointment to the Electoral Commission."**

#### **12.13 Article 105 : Appointment of Members of Electoral Commission**

##### **12.13.1 Recommendations of the Commission**

The Commission recommended that the Constitution should prescribe the mode of appointment of the members of the Electoral Commission.

##### **12.13.2 Provisions in the Mung'omba Draft Constitution on Appointment of Members of Electoral Commission**

Article 105 provides as follows:

**"105. The President shall appoint members of the Electoral Commission from the names submitted by the Selection Committee under Article 104, subject to ratification by the National Assembly."**



### **12.13.3 Deliberations of the Conference on Article 105**

The Conference adopted Article 105 as recommended in the Mung'omba Draft Constitution without amendments.

### **12.13.4 Resolutions of the Conference**

Accordingly, the Conference adopted Article 105 without amendments and renumbered it as Article 89 as follows:

**“89. The President shall appoint a Chairperson, Vice Chairperson and members of the Electoral Commission from the names submitted by the Selection Committee under Clause (2) of Article 88, subject to ratification by the National Assembly.”**

## **12.14 Article 106: Tenure of Office**

### **12.14.1 Recommendations of the Commission**

The Commission made the following recommendation:

- (a) that the members of the Electoral Commission of Zambia should have security of tenure to enable them perform their duties professionally and impartially;
- (b) that the members should serve for a term of five years on a full time basis and that the term of office should be renewed only once for a like period;
- (c) that a member should be removed from office only on grounds of inability to discharge their duties due to infirmity of body or mind or for incompetence or misbehaviour.

### **12.14.2 Provisions in the Mung'omba Draft Constitution on Tenure of Office**

Article 106 provides as follows:

**“106. (1) A member of the Electoral Commission shall hold office for a term of five years and shall be eligible for re-appointment for only one further term.**

(2) A member of the Electoral Commission may be removed from office on the same grounds and same procedure as applies to a Judge of a superior court."

**12.14.3 Deliberations of the Conference on Article 106**

The Conference adopted Article 106 as recommended in the Mung'omba Draft Constitution without amendments

**12.14.4 Resolutions of the Conference**

Accordingly, the Conference adopted Article 106 without amendments and renumbered it as Article 90 as follows:

"90. (1) A member of the Electoral Commission shall hold office for a term of five years and shall be eligible for re-appointment for only one further term.

(2) A member of the Electoral Commission may be removed from office on the same grounds and same procedure as applies to a Judge of a superior court."

**12.15 Article 107 : Independence and Functions of Electoral Commission**

**12.15.1 Recommendations of the Commission**

The Mung'omba Constitution Review Commission recommended that the Electoral Commission should be independent and autonomous and that the Constitution should provide for the core functions of the Electoral Commission while the rest should be provided for in an Act of Parliament.

**12.15.2 Provisions in the Mung'omba Draft Constitution on Independence and Functions of Electoral Commission**

Article 107 provides as follows:

"107. (1) 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.

(2) The Electoral Commission shall be responsible for -

- (a) the registration of voters;
- (b) the delimitation of constituencies and wards for National Assembly and local government elections;
- (c) the efficient conduct and supervision of elections and referenda;
- (d) the review of electoral laws and the making of recommendations for their amendment;
- (e) the registration and supervision of political parties;
- (f) the promotion of co-operational harmony between and among political parties;
- (g) the settlement of minor electoral disputes;
- (h) dealing with any malpractices before or during an election;
- (i) the promotion of voter education and a culture of democracy;
- (j) facilitating of the observance, monitoring and evaluation of elections and referenda;
- (k) the recommendation, to the President, of administrative boundaries, including the fixing, reviewing and variation of boundaries of provinces, districts and wards; and
- (l) any other function provided by or under an Act of Parliament.

(3) The Electoral Commission shall determine all electoral disputes and issues of malpractices occurring before or during an election within twenty-four hours of receiving a complaint.

- (4) The Electoral Commission shall have powers to -
- (a) prohibit a person or political party from doing any act proscribed by or under an Act of Parliament;
  - (b) exclude a person or agent of any person, candidate or political party from entering a polling station;
  - (c) reduce or increase the number of votes cast in favour of a candidate after a recount;
  - (d) disqualify the candidature of any person;
  - (e) determine that the votes cast at a polling station did not tally in whole or in part;
  - (f) provide for the filing of a complaint or objection;
  - (g) submit a report on an election to a court or tribunal handling any electoral petition; or
  - (h) cancel an election or election result and call a fresh election where the electoral malpractice is of a nature that would affect the final electoral results.

**(5) A decision of the Electoral Commission on any matter, referred to in clause (4), shall be final only for purposes of proceeding with an election and is subject to judicial review where appropriate.**

**(6) Any complaint connected with a direct election raised after the election shall be dealt with under an election petition as provided by and under this Constitution."**

**12.15.3 Deliberations of the Conference on Article 107**

12.15.3.1 The Conference adopted clause (1) of Article 107 recommended in the Mung'omba Draft Constitution.

12.15.3.2 In debating clause (2) of Article 107, the Conference, while agreeing that it was necessary for the Constitution to specify the core functions of the Electoral Commission deleted paragraphs (e) (f) and (k) of clause (2) on the grounds that:

- (a) the Electoral Commission did not have the capacity to undertake supervision of political parties as provided under paragraph (e) and decided that another body should be established to register and supervise political parties;
- (b) the functions specified in paragraph (f), should be a function of the body that would be established to regulate and supervise political parties; and
- (c) that the delimitation of boundaries was adequately dealt with by Article 109 of the Mung'omba Draft Constitution.

12.15.3.3 In debating clause (3) the Conference decided that the Electoral Commission should have power to determine which disputes to adjudicate.

12.15.3.4 In debating clause (4), the Conference decided as follows:

- (a) that paragraphs (a), (b) and (d) of clause (4) should be deleted because those provisions should be in an Act of Parliament; and
- (b) that paragraph (c) should be recast to empower the Electoral Commission of Zambia to correct errors after a recount.

12.15.3.5 The Conference approved clause (5) of Article 107 but resolved that it should be amended to reflect that applications for judicial review

should be heard only after elections to allow the election to be conducted without interruptions.

- 12.15.3.6 The Conference further approved clause (6) of Article 107 without amendments.

#### **12.15.4 Resolutions of the Conference**

Accordingly, the Conference adopted Article 107 with amendments and renumbered it as Article 91 as follows:

**“91. (1) 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.**

**(2) The Electoral Commission shall be responsible for -**

- (a) the registration of voters;**
- (b) the delimitation of constituencies and wards for National Assembly and Local Government elections;**
- (c) the efficient conduct and supervision of elections and referenda;**
- (d) the review of electoral laws and the making of recommendations for their amendment;**
- (e) the settlement of minor electoral disputes;**
- (f) dealing with any malpractices before or during an election;**
- (g) the promotion of voter education and a culture of democracy;**
- (h) facilitating of the observance, monitoring and evaluation of elections and referenda; and**
- (i) any other function provided by or under an Act of Parliament.**

**(3) The Electoral Commission shall determine electoral disputes and issues of malpractices occurring before or during an election within twenty-four hours of receiving a complaint.**

**(4) The Electoral Commission shall have powers to -**

- (a) correct errors made by electoral officers in an election;**
- (b) determine that the votes cast at a polling station did not tally in whole or in part;**
- (c) provide for the filing of a complaint or objection;**

- (d) submit a report on an election to a court or tribunal handling any electoral petition; or
- (e) cancel an election or election result and call a fresh election where the electoral malpractice is of a nature that would affect the final electoral results.

(5) A decision of the Electoral Commission on any matter, referred to in clause (4), shall be final only for purposes of proceeding with an election and is only subject to judicial review after the election.

(6) Any complaint connected with a direct election raised after the election shall be dealt with under an election petition as provided by and under this Constitution."

**12.16                    Article 108 : Funds of Electoral Commission**  
**12.16.1                Recommendations of the Commission**

The Commission recommended that, in order to enhance the independence and autonomy of the Electoral Commission, the Commission should be funded adequately and directly and that the funds should be a charge on the Consolidated Fund.

**12.16.2                Provisions in the Mung'omba Draft Constitution on Funds of Electoral Commission**

Article 108 provides as follows:

**"108. (1)    The funds of the Electoral Commission shall include -**

- (a)    moneys appropriated by Parliament for the purposes of the Commission; and**
- (b)    any other moneys received by the Commission for the performance of its functions.**

**(2)    The Electoral Commission shall be a self-accounting institution and shall deal directly with the Ministry responsible for finance on matters relating to its finances.**

**(3)    The Electoral Commission shall be adequately funded, in any financial year, in order for it to effectively carry out its mandate.**

**(4) 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."**

**12.16.3 Deliberations of the Conference on Article 108**

The Conference observed that adequate funding of the Electoral Commission of Zambia was the cornerstone of its independence; therefore, members supported the recommendation in the Mung'omba Draft Constitution without amendments.

**12.16.4 Resolutions of the Conference**

Accordingly, the Conference adopted Article 108 without amendments and renumbered it as Article 92 as follows:

**"92. (1) The funds of the Electoral Commission shall include -**

**(a) moneys appropriated by Parliament for the purposes of the Commission; and**

**(b) any other moneys received by the Commission for the performance of its functions.**

**(2) The Electoral Commission shall be a self-accounting institution and shall deal directly with the Ministry responsible for finance on matters relating to its finances.**

**(3) The Electoral Commission shall be adequately funded, in any financial year, in order for it to effectively carry out its mandate.**

**(4) 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 National Treasury Account."**

**12.17 Article 109 : Delimitation of Constituencies or Wards**

**12.17.1 Recommendations of the Commission**

The Commission recommended that the Constitution should provide for some of the core functions of the Independent Electoral Commission which should include delimitation of constituency boundaries.

12.17.2 **Provisions in the Mung’omba Draft Constitution on Delimitation of Constituencies or Wards**

Article 109 provides as follows:

**“109. (1) The Electoral Commission shall determine the names and boundaries of the constituencies and wards for National Assembly and local government elections.**

**(2) In determining the boundaries and the naming of constituencies or wards, the Electoral Commission shall–**

- (a) ensure that Zambia is divided into constituencies or wards so that the number of constituencies or wards are equal to the number of seats of members elected under the first-past-the-post segment of the mixed member representation system;**
- (b) seek to achieve an approximate equality of 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 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 constituencies or wards.**

**(4) The names and details of the boundaries of constituencies or wards, determined under clause (1), shall be published in the *Gazette* and shall come into effect on the next dissolution of Parliament or district councils.**

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



### **12.17.3 Deliberations of the Conference on Article 109**

The Conference adopted Article 109 as recommended in the Mung'omba Draft Constitution without any amendments.

### **12.17.4 Resolutions of the Conference**

Accordingly, the Conference adopted Article 109 without amendments and renumbered it as Article 93 as follows:

**"93. (1) The Electoral Commission shall determine the names and boundaries of the constituencies and wards for National Assembly and local government elections.**

**(2) In determining the boundaries and the naming of constituencies or wards, the Electoral Commission shall-**

- (a) ensure that Zambia is divided into constituencies or wards so that the number of constituencies or wards are equal to the number of seats of members elected under the first-past-the-post segment of the mixed member representation system;**
- (b) seek to achieve an approximate equality of 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 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 constituencies or wards.**
- (4) The names and details of the boundaries of constituencies or wards, determined under clause (1), shall be published in the *Gazette* and shall come into effect on the next dissolution of Parliament or district councils.**

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

**12.18 Article 110 : Matters to be taken into account when Delimitating Constituencies and Wards**

**12.18.1 Recommendations of the Commission**

The Commission made no specific recommendations on the subject of matters to be taken into account when delimitating constituencies and wards.

**12.18.2 Provisions of the Mung'omba Draft Constitution on Matters to be taken into account when Delimitating Constituencies and Wards.**

Article 110 provides as follows:

**"110. In determining the boundaries of constituencies and wards the Electoral Commission shall take into account the history, diversity and cohesiveness of the constituency or ward having regard to -**

- (a) population density, population trends and projections;**
- (b) geographical features and urban centres;**
- (c) community interest, historical, economic and cultural ties;**
- (d) means of communication; and**
- (e) the need to ensure that constituencies or wards are wholly within districts."**

**12.18.3 Deliberations of the Conference on Article 110**

The Conference adopted the recommendation in the Mung'omba Draft Constitution with the addition of a proviso that there should be at least twenty (20) constituencies in each administrative province to ensure equitable representation of all the people of Zambia.

**12.18.4 Resolutions of the Conference**

Accordingly, the Conference adopted Article 110 with amendments and renumbered it as Article 94 as follows:

**"94. In determining the boundaries of constituencies and wards the Electoral Commission shall take into account the history, diversity and cohesiveness of the constituency or ward having regard to -**

- (a) population density, population trends and projections;**
- (b) geographical features and urban centres;**
- (c) community interest, historical, economic and cultural ties;**
- (d) means of communication; and**
- (e) the need to ensure that constituencies or wards are wholly within districts:**

**Provided that the constituencies shall be so delimited that there shall be at least twenty constituencies in each administrative province."**

**12.19 Article 111 : Legislation on Elections**  
**12.19.1 Recommendations of the Commission**

The Commission recommended that in order to enhance the conduct and supervision of elections, appropriate legislation should clearly spell out the system of enforcement, including the powers and functions of the Electoral Commission.

**12.19.2 Provisions in the Mung'omba Draft Constitution on legislation on elections**

Article 111 provides as follows:

**"111. (1) Parliament shall enact legislation for the conduct of direct and general elections and referenda including the -**

- (a) nomination of candidates;**
- (b) registration of citizens as voters;**
- (c) manner of voting at elections and referenda;**
- (d) efficient supervision of elections and referenda;**
- (e) election campaigns; and**
- (f) voter and civic education.**

**(2) Legislation enacted under clause (1) shall provide for the -**

- (a) appointment of electoral officers;
- (b) functions of electoral officers; and
- (c) terms and conditions of employment of electoral officers."

### 12.19.3 **Deliberations of the Conference on Article 111**

In debating Article 111, members argued that it should be retained to ensure that Parliament enacts legislation to provide for the matters contained therein. Therefore, Article 111 was adopted without amendments.

### 12.19.4 **Resolutions of the Conference**

Accordingly, the Conference adopted Article 111 without amendments and renumbered it as Article 95 as follows:

**"95. (1) Parliament shall enact legislation for the conduct of direct and general elections and referenda including the -**

- (a) nomination of candidates;
- (b) registration of citizens as voters;
- (c) manner of voting at elections and referenda;
- (d) efficient supervision of elections and referenda;
- (e) election campaigns; and
- (f) voter and civic education.

**(2) Legislation enacted under clause (1) shall provide for the -**

- (a) appointment of electoral officers;
- (b) functions of electoral officers; and
- (c) terms and conditions of employment of electoral officers."

## 12.20 **Article 112 : Political Parties**

### 12.20.1 **Recommendations of the Commission**

The Commission recommended that:

- (a) a political party should be defined in appropriate legislation as "an association or organisation of Zambian nationals which is national in character and has one or more of its objects or purposes contesting elections in order to form government or influence national or local government";

- (b) there should be a Constitutional provision on political parties setting out clear criteria for forming and registering political parties and a code of conduct to effectively regulate them, the details of which should be provided for under an Act of Parliament and should include the following:
  - (i) observance of basic tenets of democracy, which should also be reflected in their constitutions;
  - (ii) holding regular free and fair elections;
  - (iii) adopting a disciplinary code that embraces rules of natural justice;
  - (iv) assurance of freedom of expression and the right to hold dissenting views;
  - (v) the right to vote and to be voted for; and
  - (vi) observance of criteria in compiling party lists.
- (c) the Constitution should provide that political parties should be freely established and requested, but should conform to criteria and code of conduct to be prescribed by appropriate legislation; and
- (d) there should be no restriction on the lifespan of a political party.

#### 12.20.2 **Provisions in the Mung'omba Draft Constitution on Political Parties**

Article 112 provides as follows:

- "112. (1) A political party shall -**
- (a) have a national character;**
  - (b) have a democratically elected governing body;**
  - (c) promote and uphold national unity;**
  - (d) abide by the democratic principles of good governance and promote and practice democracy through regular, fair and free elections within the party;**
  - (e) respect the right of others to participate in the political process, including women and persons with disabilities;**
  - (f) promote and respect human rights and gender equality and equity;**
  - (g) promote the objectives and principles of this Constitution and the rule of law; and**
  - (h) subscribe to and observe any code of conduct for political parties prescribed by or under an Act of Parliament.**

- (2) A political party shall not –
- (a) be founded on a religious, linguistic, racial, ethnic, gender or provincial basis or seek to engage in propaganda based on any of those matters;
  - (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 organization; or
  - (d) engage in bribery or other forms of corrupt practices.”

12.20.3      **Deliberations of the Conference on Article 112**

The Conference supported the recommendations in the Draft Constitution subject to political parties respecting the right of the youth to participate in the political process and accordingly amended clause (1) (e).

12.20.4      **Resolutions of the Conference**

Accordingly, the Conference adopted Article 112 with amendment and renumbered it as Article 96 as follows:

- “96. (1)      A political party shall –
- (a) have a national character;
  - (b) have a democratically elected governing body;
  - (c) promote and uphold national unity;
  - (d) abide by the democratic principles of good governance promote and practice democracy through regular, fair and free elections within the party;
  - (e) respect the right of others to participate in the political process, including women, youth and persons with disabilities;
  - (f) promote and respect human rights and gender equality and equity;
  - (g) promote the objectives and principles of this Constitution and the rule of law; and
  - (h) subscribe to and observe any code of conduct for political parties prescribed by or under an Act of Parliament.

- (2) A political party shall not –
  - (a) be founded on a religious, linguistic, racial, ethnic, gender or provincial basis or seek to engage in propaganda based on any of those matters;
  - (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 organization; or
  - (d) engage in bribery or other forms of corrupt practices.”

## **12.21 Article 113 : Regulation of Political Parties**

### **12.21.1 Recommendations of the Commission**

The Commission recommended:

- (a) that the Electoral Commission of Zambia should register, de-register and regulate the conduct of political parties;
- (b) that the registration and conduct of political parties should be regulated according to prescribed criteria and a code of conduct, which should include the basic tenets of democracy; and
- (c) that the criteria for registration and the code of conduct should also require that constitutions of political parties have clear objectives and that the parties themselves should be national in character and outlook.

### **12.21.2 Provisions in the Mung’omba Draft Constitution on regulation of political parties**

Article 113 provides as follows:

- “113. (1) The Electoral Commission shall be responsible for the registration, deregistration and regulation of political parties.**
- (2) A person or group of persons shall not operate as a political party unless that party conforms to the principles laid down in this Constitution and is registered by the Electoral Commission in accordance with an Act of Parliament.**
- (3) Any person or group of persons who desires to form a political party shall furnish the Electoral Commission with a copy of its constitution and the names and addresses of its officers and satisfy the Commission that –**

- (a) the party will, upon registration or soon thereafter, have branches in at least one half of the number of provinces of Zambia; and
  - (b) the party name, emblem, colour, motto or any other symbol has no ethnic, provincial or other sectional connotations or gives the appearance that its activities are confined only to a part of Zambia.
- (4) A political party is entitled to present its programmes to the public and the State shall ensure equal access to the public media.
- (5) A political party and every candidate for election to the office of President, the National Assembly or any district council has the right to conduct their campaign freely and in accordance with the law.
- (6) Political parties may form a coalition.
- (7) A political party shall, as may be provided by an Act of Parliament, submit to the Electoral Commission evidence of its revenues and other assets and their source.
- (8) A political party shall be entitled to financial support from the State through the Political Parties' Fund established under this Part.
- (9) Parliament shall enact legislation for the regulation and registration of political parties."

### 12.21.3 **Deliberations of the Conference on Article 113**

12.21.3.1 In debating clause (1) of Article 113, two positions emerged. The first one comprised members who supported the establishment of a Political Parties Commission to regulate political parties. Those members argued that the Registrar of Societies and the Electoral Commission did not have the capacity to effectively regulate political parties. They stated that the Registrar of Societies had too many other organisations to regulate. They further argued that if the Electoral Commission of Zambia was given the mandate to regulate political parties, there would be a conflict of interest with the Commission's mandate to conduct elections.

12.21.3.2 The second position comprised members who opposed the establishment of the Political Parties Commission to regulate political parties. The members argued that, instead of creating the office of the Registrar of Societies a parallel structure should be strengthened to enable it effectively regulate political parties. They further argued that if members of the Commissioner were



appointed by the President, they would take a partisan approach to regulating political parties.

12.21.3.3 The Conference decided that a Political Parties Commission be established to regulate political parties. In addition, it was decided that:

- (a) the Commission should consist of five (5) part-time members;
- (b) the day-to-day affairs of the Commission should be administered by an executive secretary or a registrar of political parties who would report to the Commission;
- (c) the Commission should fall under the office of the President;
- (d) the Commission should be established by the Constitution;
- (e) an Act of Parliament should provide for the functions, composition, tenure of office, procedures, operations, administration, finances and financial management of the Commission; and
- (f) the core functions of the Political Parties Commission should be provided for in the Constitution.

12.21.3.4 In addition, the Conference decided that Parliament should enact legislation to provide for the functions, composition, procedures and other related matters in the draft Constitution.

#### 12.21.4 **Resolutions of the Conference**

12.21.4.1 Accordingly, the Conference adopted a new Article to establish a Political Parties Commission and numbered it as Article 97 as follows:

**“97. (1) There is hereby established the Political Parties’ Commission which shall consist of five part-time members who shall be appointed by the President subject to ratification by the National Assembly.**

- (2) The Political Parties’ Commission shall be responsible for -**
- (a) the registration and regulation of political parties;**
  - (b) monitoring the general conduct of political parties;**
  - (c) the promotion of co-operational harmony between and among political parties;**

- (d) the arbitration of disputes between members of a political party, and between and among political parties; and
- (e) any other function provided by or under an Act of Parliament.

**(3) Parliament shall enact legislation to provide for the functions, composition, tenure of office, procedures, operations, administration, finances and financial management of the Political Parties' Commission."**

12.21.4.2 Some members of the Conference proposed to provide for the regulation of political parties as specified in clauses (2) to (9) of Article 113 in a separate Article.

12.21.4.3 **Deliberations of the Conference on clauses (2) to (9) of Article 113**

12.21.4.3.1 In the discussion of clauses (1) and (6) of the proposed Article, the Conference decided to replace the term "Electoral Commission of Zambia" with "Political Parties Commission" in line with the earlier decision that the Political Parties Commission should regulate political parties.

12.21.4.3.2 In debating clause (2), some members who supported the recommendation argued that the provision would reduce the number of political parties.

12.21.4.3.3 In addition, they proposed that the reference to "branch" be replaced with the reference to "party structures" because political parties defined branches differently. They agreed that it was possible to register a party within twelve months because, before a decision to form a party was made, the initiators of the party would have already formulated the party manifesto.

12.21.4.3.4 Members who were opposed to the provision argued that the period of twelve months in which a political party was expected to have "branches" in at least two thirds of the provinces was too short. Members were of the view that it took longer for a new organisation to be founded and to grow. Members argued that the provision would discourage the formation of new political parties and promote those already in existence.

12.21.4.3.5 The Conference approved clause (2) subject to the replacement of the term “branches” with “political structures”.

12.21.4.3.6 The Conference also approved clauses (3) to (8) without amendments.

#### 12.21.4.4 **Resolutions of the Conference**

Accordingly, the Conference adopted a new Article on Regulation of Political Parties and renumbered it as Article 98 as follows:

**“98. (1) A person or group of persons shall not operate as a political party unless that party conforms to the principles laid down in this Constitution and is registered by the Political Parties’ Commission in accordance with an Act of Parliament.**

**(2) Any person or group of persons who desires to form a political party shall satisfy the Political Parties’ Commission that**  
-

**(a) the party shall, within a period of twelve months from the date of its registration, have party structures in at least two-thirds of the number of provinces of Zambia; and**

**(b) the party name, objectives or motto has no ethnic, provincial or other sectional connotations or gives the appearance that its activities are confined only to a part of Zambia.**

**(3) A political party is entitled to present its programmes to the public and the State shall ensure equal access to the public media.**

**(4) A political party and every candidate for election to the office of President, the National Assembly or any district council has the right to conduct their campaign freely and in accordance with the law.**

**(5) Political parties may form a coalition.**

**(6) A political party shall, as may be provided by an Act of Parliament, submit to the Political Parties’ Commission, evidence of its revenues and other assets and their source.**

(7) A political party shall be entitled to financial support from the State through the Political Parties' Fund established under this Part.

(8) The Political Parties' Commission shall prescribe the maximum amount of money that may be spent by, or on behalf of a candidate in respect of any direct or general election.

(9) Parliament shall enact legislation for the regulation and registration of political parties."

## **12.22 Article 114 : Political Parties Fund**

### **12.22.1 Recommendations of the Commission**

The Commission recommended that the Constitution should provide that:

- (a) registered political parties with seats in Parliament or local authorities, as the case may be, should be funded by the Government proportionately to their respective number of seats to ensure adequate and equitable participation in elections;
- (b) public funds and resources for political parties should be regulated to guard against abuse and misuse; and
- (c) public institutions should not make financial material or other contributions to political parties.

### **12.22.2 Provisions in the Mung'omba Draft Constitution on Political Parties Fund**

Article 114 provides as follows:

**"114. (1) There is hereby established a Political Parties' Fund.**

**(2) The Fund shall be administered by the Electoral Commission.**

**(3) The sources of the Fund shall be –**

- (a) moneys appropriated annually by Parliament, as determined by the Emoluments Commission; and**
- (b) contributions and donations made to the Fund from any other source.**

**(4) The moneys in the Fund, not immediately required for payment to political parties, shall be invested in such manner as may be approved by the Ministry responsible for finance."**

**12.22.3 Deliberations of the Conference on Article 114**

The Conference adopted Article 114 of the Mung'omba Draft Constitution with amendments.

**12.22.4 Resolutions of the Conference**

Accordingly, the Conference adopted Article 114 with amendments and renumbered it as Article 99 as follows:

- "99. (1) There is hereby established a Political Parties' Fund.**  
**(2) The Fund shall be administered by the Political Parties Commission.**  
**(3) The sources of the Fund shall be –**  
**(a) moneys appropriated annually by Parliament;**  
**and**  
**(b) contributions and donations made to the Fund from any other source.**  
**(4) The moneys in the Fund, not immediately required for payment to political parties, may be invested in such manner shall be approved by the Minister responsible for finance."**

**12.23 Article 115 : Purpose of Fund**

**12.23.1 Recommendation of the Commission**

The Commission noted that funding from the State would enhance multi-party democracy and level the political playing field.

**12.23.2 Provisions in the Mung'omba Draft Constitution on Purpose of Fund**

Article 115 provides as follows:

- "115. (1) The purpose of the Political Parties' Fund shall be to provide financial support to registered political parties with seats in the National Assembly.**  
**(2) Notwithstanding Article 120, moneys allocated to a political party from the Fund shall be used –**

- (a) to assist political parties disseminate their policies;
  - (b) for conducting civic and voter education;
  - (c) subject to clause (3), generally for the administrative expenses of the party which expenditure shall not exceed ten per cent of the money allocated; and
  - (d) for any other legitimate purpose approved by the Electoral Commission.
- (3) Moneys allocated to a political party shall not be used for –
- (a) paying, directly or indirectly, remuneration, emoluments, fees, rewards or any other benefit to a member, officer or supporter of the party; or
  - (b) any other purpose incompatible with the promotion of a multi-party democracy.
- (4) Parliament shall enact legislation to provide for the formula to give effect to this Article.”

#### 12.23.3 **Deliberations of the Conference on Article 115**

After debating, the Conference adopted Article 115 of the Mung’omba Draft Constitution without amendments.

#### 12.23.4 **Resolutions of the Conference**

Accordingly, the Conference adopted Article 115 without amendments and renumbered it as Article 100 as follows:

- “100. (1) The purpose of the Political Parties’ Fund shall be to provide financial support to registered political parties with seats in the National Assembly.**
- (2) Notwithstanding Article 120, moneys allocated to a political party from the Fund shall be used –**
- (a) to assist political parties disseminate their policies;**
  - (b) for conducting civic and voter education;**
  - (c) subject to clause (3), generally for the administrative expenses of the party which expenditure shall not exceed ten per cent of the money allocated; and**
  - (d) for any other legitimate purpose approved by the Political Parties’ Commission.**
- (3) Moneys allocated to a political party shall not be used for –**
- (a) paying, directly or indirectly, remuneration, emoluments, fees, rewards or any other benefit to a member, officer or supporter of the party; or**
  - (b) any other purpose incompatible with the promotion of a multi-party democracy.**

**(4) Parliament shall enact legislation to provide for the formula to give effect to this Article."**

**12.24 Article 116 : Other Sources of Funds and Maximum Donations**

**12.24.1 Recommendations of the Commission**

The Commission recommended that appropriate legislation should be enacted to:

- (a) compel political parties and election candidates to be transparent regarding sources of funds, including election campaign funds, and limit the amount of election campaign funds that can be raised and used by a political party or candidate, and require disclosure of sources of campaign funds where those exceed the prescribed limit;
- (b) provide that political parties should submit annual statements on their receipts of funds and expenditure; and
- (c) provide that disclosure of amounts and sources of funds and annual statements on finances of political parties should be made to the Electoral Commission of Zambia, which should ensure compliance by political parties with the requirements of the law within its function of regulating and monitoring the conduct of political parties.

**12.24.2 Provisions in the Mung'omba Draft Constitution on Other Sources of Funds and Maximum Donations**

Article 116 provides as follows:

**"116. (1) A political party may receive subscriptions, donations and contributions from the members and supporters of the party.**

**(2) An Act of Parliament shall specify -**

- (a) the sources from which political parties shall not receive subscriptions, donations or contributions; and**
- (b) the maximum donation that an individual, institution or body can make to a political party".**

### **12.24.3 Deliberations of the Conference on Article 116**

In debating clause (2) (b) of Article 116, some members were of the view that the amount of donations that an individual, institution or body could make to a political party should not be restricted. However, most members were of the view that restricting the amount of donations made was necessary to prevent, for instance, persons that made large donations from controlling a political party. Further, it was argued that restricting the amount of donations was meant to level the playing field.

### **12.24.4 Resolutions of the Conference**

Accordingly, the Conference adopted Article 116 without amendments and renumbered it as Article 101 as follows:

**“101. (1) A political party may receive subscriptions, donations and contributions from the members and supporters of the party.**

**(2) An Act of Parliament shall specify –**

- (a) the sources from which political parties shall not receive subscriptions, donations or contributions; and**
- (b) the maximum donation that an individual, institution or body can make to a political party.”**

## **12.25 Article 117 : Audit of Accounts**

### **12.25.1 Recommendations of the Commission**

The Commission recommended that political parties which received funds from Government should be required to account for expenditure of those funds through annual statements which should be submitted to the Electoral Commission of Zambia.

### **12.25.2 Provisions in the Mung’omba Draft Constitution on Audit of Accounts**

Article 117 provides as follows:

**“117. (1) A political party shall keep proper books and records of account.**



(2) Within three months after the end of the Government's financial year a political party, that is funded under this Part, shall submit its books and records of account to the Auditor-General for audit.

(3) The Auditor-General shall, within three months of the submission of the accounts under clause (2), audit the accounts and submit the report on the audit to the National Assembly and to the political party concerned.

(4) Within one month after receipt of the audited accounts and the Auditor-General's report, a political party shall-

- (a) publish the accounts and the report in the *Gazette* and in at least one newspaper circulating nationally; and
- (b) submit the accounts and report to the Electoral Commission."

#### 12.25.3 Deliberations of the Conference on Article 117

The Conference adopted Article 117 and amended clause (4) (b) to replace the term "Electoral Commission of Zambia" with "Political Parties Commission" in line with the decision of the Conference.

#### 12.25.4 Resolutions of the Conference

Accordingly, the Conference adopted Article 117 with amendments and renumbered it as Article 102 as follows:

"102. (1) A political party shall keep proper books and records of account.

(2) Within three months after the end of the Government's financial year a political party, that is funded under this Part, shall submit its books and records of account to the Auditor-General for audit.

(3) The Auditor-General shall, within three months of the submission of the accounts under clause (2), audit the accounts and submit the report on the audit to the National Assembly and to the political party concerned.

(4) Within one month after receipt of the audited accounts and the Auditor-General's report, a political party shall-

- (a) publish the accounts and the report in the Gazette and in at least one newspaper circulating nationally; and
- (b) submit the accounts and report to the Political Parties' Commission."

## **12.26 Article 118 : Party Supervision**

### **12.26.1 Recommendations of the Commission**

The Commission recommended that the Constitution should provide the criteria for forming and regulating political parties and that an Act of Parliament should provide for a code of conduct to regulate political parties.

### **12.26.2 Provisions in the Mung'omba Draft Constitution on Party Supervision**

Article 118 provides as follows:

**"118. (1) The Electoral Commission shall supervise the general conduct of political parties;**

**(2) A political party shall, within seven months after the end of the Government's financial year, submit to the Electoral Commission an annual report of its activities, as provided by an Act of Parliament.**

**(3) The annual report of a political party may be inspected by any person, during normal office hours, at any branch of the party and at the offices of the Electoral Commission.**

**(4) The Electoral Commission shall prescribe the maximum amount of money that may be spent by, or on behalf of, a candidate in respect of any direct or general election".**

### **12.26.3 Deliberations of the Conference on Article 118**

After debating, the Conference decided as follows:

- (a) to delete clause (1) in line with an earlier decision of the Conference to establish the Political Parties' Commission to regulate political parties;
- (b) to adopt clauses (2) and (3) subject to substitution of the term "Electoral Commission" with "Political Parties Commission" as earlier decided;
- (c) to delete clause (4); and
- (d) to change the marginal note from "Party supervision" to "Annual Report".

#### **12.26.4 Resolutions of the Conference**

Accordingly, the Conference adopted Article 118 with amendments and changed the marginal note from “Party Supervision” to “Annual Report” and renumbered it as Article 103 as follows:

**“103. (1) A political party shall, within seven months after the end of the Government’s financial year, submit to the Political Parties’ Commission an annual report of its activities, as provided by an Act of Parliament.**

**(2) The annual report of a political party may be inspected by any person, during normal office hours, at any branch of the party and at the offices of the Political Parties’ Commission.”**

#### **12.27 Article 119 : Party Discipline**

##### **12.27.1 Recommendations of the Commission**

The Commission recommended that there should be a constitutional provision on political parties to:

- (a) observe basic tenets of democracy and reflect them in their constituencies;
- (b) adopt a disciplinary code that complies with the rules of natural justice; and
- (c) uphold the freedom of expression and the right to hold dissenting views.

##### **12.27.2 Provisions in the Mung’omba Draft Constitution on Party Discipline**

Article 119 provides as follows:

**“119. (1) A political party shall ensure internal party discipline is enforced in accordance with the rules of natural justice and democratic principles.**

**(2) A political party shall not take disciplinary action against a member of the party for anything done or said by that member in the National Assembly or district council.”**

**12.27.3        Deliberations of the Conference on Article 119**

After debating the Article, the Conference adopted Article 119 without amendments.

**12.27.4        Resolutions of the Conference**

Accordingly, the Conference adopted Article 119 without amendments and renumbered it as Article 104 as follows:

**“104. (1)        A political party shall ensure that internal party discipline is enforced in accordance with the rules of natural justice and democratic principles.**

**(2)        A political party shall not take disciplinary action against a member of the party for anything done or said by that member in the National Assembly or district council.”**

**12.28        Article 120 : Prohibition on use of Public Resources to promote Party Interests**

**12.28.1        Recommendations of the Commission**

The Commission recommended that appropriate legislation should be enacted to require that the ruling party and the Government operate separately and that the ruling party be prohibited from accessing State resources.

**12.28.2        Provision in the Mung’omba Draft Constitution on Prohibition on use of Public Resources to promote Party Interests**

Article 120 provides as follows:

**“120. (1)        Except as provided for under this Constitution, a person shall not use any public resource or institution to promote the interests of a political party.**

**(2)        Parliament shall enact legislation to give effect to clause (1).”**

**12.28.3        Deliberations of the Conference on Article 120**

In debating the Article, the Conference approved the recommendation without amendments. The Conference, further, decided that persons be prohibited from using institutions in addition to public funds to promote party interests.

#### **12.28.4 Resolutions of the Conference**

Accordingly, the Conference adopted Article 120 without amendments and renumbered it as Article 105 as follows:

**“105. (1) Except as provided for under this Constitution, a person shall not use any public resource or institution to promote the interests of a political party.**

**(2) Parliament shall enact legislation to give effect to clause (1).”**

#### **12.29 Article 121: Prohibition on use of Public Resources during Election Period**

##### **12.29.1 Recommendations of the Commission**

The Commission recommended that the Constitution should provide that:

- (a) the use of public resources for election campaign purposes should be prohibited except as provided for in the Constitution in relation to funding of political parties by the State;
- (b) the President and Vice President may participate in election campaigns and that they were entitled to such public resources as are reasonably necessary for their transportation, security and sustenance; and
- (c) “official period of campaign” shall mean the period from nomination of candidates to and inclusive of the day before elections.

##### **12.29.2 Provisions in the Mung’omba Draft Constitution on Prohibition on use of Public Resources during Election Period**

Article 121 provides as follows:

**“121. (1) Subject to clause (2), a person shall not use or permit any person to use any public resources, during an election period, for any purpose relating to the elections.**

**(2) Notwithstanding clause (1), the President and the Vice-President shall be entitled to use any public resource, during an election period, for their security, transportation and sustenance.**

**(3) In this Article “election period” means the period which begins on the day nominations are filed and ends on the day of the announcement of election results.**

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

#### **12.29.3 Deliberations of the Conference on Article 121**

The Conference noted that research had shown that Presidents and Vice-Presidents in the United States of America and South Africa and other countries, were permitted under their respective laws to use public resources during election periods. The Conference adopted Article 121 of the Mung’omba Draft Constitution without amendments.

#### **12.29.4 Resolutions of the Conference**

Accordingly, the Conference adopted Article 121 with amendments and renumbered it as Article 106 as follows:

**“106. (1) Subject to clause (2), a person shall not use or permit any person to use any public resources, during an election period, for any purpose relating to the elections.**

**(2) Notwithstanding clause (1), the President and the Vice-President shall be entitled to use any public resource or institution, during an election period, for their security, transportation and sustenance.**

**(3) Parliament shall enact legislation to give effect to this Article.”**

## **PART IX**

### **EXECUTIVE**

#### **13.1 Introduction**

13.1.1 The Mung'omba Constitution Review Commission was tasked to recommend a system of Government that would promote democratic principles and practices, ensure smooth transfer of power and to examine and recommend whether or not Cabinet should be appointed from outside the National Assembly.

13.1.1 The Commission noted that the Executive was an important organ of the executive function of governing through the enforcement of laws and implementation of policies. Public policies are mainly initiated and enforced by the Executive which is responsible for the management of national affairs such as defence and security, foreign policy, taxation and other critical tasks essential for the smooth running of the country.

13.1.2 The Commission also noted that there were two (2) main types of executive systems; namely presidential and parliamentary.

13.1.3 In the presidential system, the President is both Head of State and Head of Government. The Cabinet is appointed from outside Parliament and served at the pleasure of the President.

13.1.4 In the Parliamentary system, the Prime Minister is Head of Government, while a Constitutional monarch or elected figure serves as a ceremonial or titular Head of State. The Head of Government and the Cabinet are constituted from the Legislature and were accountable to the Legislature. The Commission observed that there are variations and mixtures of the two executive systems.

13.1.5 Among many issues on the subject of the executive, the Commission observed that there were eight thousand, six hundred and sixty-six (8,666) submissions on the subject of the Executive. Those for the Executive President were forty-one (41), those for a minimum academic qualification were four hundred and eighty-eight (488), those for the 50% +1 vote were seven hundred and thirteen (713) and those who wished the Vice-President to be elected separately and directly by universal suffrage were six hundred and fifty-three (653).

13.1.6 The Commission recommended for an Executive President, for the 50% +1 vote for the election of the President and for the Vice-President as a running mate to the Presidential candidate.

## **13.2 Article 122 : Office of President**

### **13.2.1 Recommendations of the Commission**

The Commission recommended the following:

- (a) retention of the executive system of presidency;
- (b) the President should, in appropriate cases, retain the power to make appointments subject to Parliamentary ratification;
- (c) where necessary, the President should be required to make such appointments, on the advice of or in consultation with service Commissions or similar institutions, as appropriate;
- (d) to the extent desirable, those offices should be guaranteed security of tenure;
- (e) the holders of these offices should have sufficient experience and be of minimum age of 45 years;
- (f) prior approval of the National Assembly be a two-thirds majority; and
- (g) the President should have power to take any necessary measures in defence of the country in circumstances not amounting to a declaration of war, and these measures should be subject to ratification by the National Assembly within seven days.

### **13.2.2 Provisions in the Mung'omba Draft Constitution on office of President**

Article 122 provides as follows:

**"122. (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 Forces.**

**(2) The executive power of the Republic vests in the President and, subject to this Constitution, shall be exercised directly by the President or through officers subordinate to the President."**



### **13.2.3 Deliberations of the Conference on Article 122**

13.2.3.1 In the discussion on this Article the Conference amended the term “Defence Forces” to read “Defence Force”.

13.2.3.2 The members observed that Zambia had always had an Executive President whose power was drawn from the Constitution. Some members observed that the country had enjoyed peace under the current hybrid system, and argued that the system should be retained as proposed in the Mung’omba Draft Constitution. They further argued that it was justified that Zambia needed a strong President who would inspire confidence and a sense of security whenever problems beset the nation.

13.2.3.3 The members who did not support an executive Presidency argued that the President had too much power. They advocated for the reduction of presidential powers. They suggested that the Presidential system be defined on the basis of the Ghanaian and South African Constitutions.

### **13.2.4 Resolutions of the Conference**

The Conference adopted Article 122 as recommended by Mung’omba Draft Constitution with an amendment and renumbered it as Article 107 as follows:

**“107. (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 Republic vests in the President and, subject to this Constitution, shall be exercised directly by the President or through officers subordinate to the President”**

### **13.3 Article 123 : Qualifications of a Presidential Candidate**

#### **13.3.1 Recommendations of the Commission**

13.3.1.1 The Commission recommended that the Constitution should provide that a presidential candidate should be a Zambian citizen by birth or descent and that it should provide that a presidential candidate should:

(a) be at least 35 years of age;

- (b) have a minimum education attainment of Grade 12 or its equivalent (to be clearly defined) and be conversant with the official language of the country;
- (c) be a member of or be sponsored by a political party, or be an independent candidate;
- (d) have been ordinarily resident in Zambia for a continuous period of 10 years; and
- (e) be supported by at least one thousand (1,000) registered voters.

13.3.1.2 The Commission further recommended that a person shall not be eligible to contest presidential elections if he or she had dual citizenship.

### **13.3.2 Provisions in the Mung'omba Draft Constitution on Qualifications of a Presidential Candidate**

Article 123 provides as follows:

**“123. (1) A person shall be qualified to be a 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 for a continuous period of ten years immediately preceding the election;**
- (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; and**
- (g) declares that person's assets and liabilities as provided by this Constitution and by or under an Act of Parliament.**

**(2) A person shall be disqualified from being elected as President if that person -**

- (a) holds or is acting in any office that is specified by an Act of Parliament the functions of which involve or are connected with the conduct of elections;**
- (b) is of unsound mind;**
- (c) is an undischarged bankrupt or insolvent;**

- (d) is serving a sentence of imprisonment or is under a sentence of death;
  - (e) has, at any time in the immediate preceding five years, served a term of imprisonment for the commission of an offence the sentence for which was a period of at least three years;
  - (f) has been removed from public office on grounds of gross misconduct; or
  - (g) has been found guilty of corruption by any court or tribunal.
- (3) A person holding or acting in any of the following posts or office of appointment shall not qualify for election as a President:
- (a) the Defence Forces and national security agencies;
  - (b) the public service;
  - (c) a commission;
  - (d) a statutory body or company in which the Government has a controlling interest ; or
- any other post or office specified by or under an Act of Parliament.
- (4) A person shall not be eligible to be elected as President unless that person -
- (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) has been nominated and supported by not less than one thousand registered voters."

### **13.3.3 Deliberations of the Conference on Article 123**

- 13.3.3.1 In the discussion on Article 123 some members proposed that Article 123 (1) (a) be revised by deleting the word "descent" so that only "true" Zambians would aspire for the presidency. Others further suggested that only "black" Zambians should qualify for the office of President. Some members were, however, of the view that both parents of the aspirant must be Zambians. The members were concerned that there was a possibility of people whose parents were from outside Zambia ascending to the position of President. They argued that such people would have divided

allegiance and would abandon the country in the event of a crisis or serious problems.

- 13.3.3.2 Other members argued that a Constitution should be inclusive and non-discriminatory. They argued that excluding people on account of colour or having been born outside Zambia would be discriminatory. They argued that omission of the word “descent” in clause (1) would disqualify even children born of parents who were genuinely serving the country outside Zambia such as diplomats. The children of Zambians who migrated to other countries in search of economic opportunities and those studying abroad would also be disqualified.
- 13.3.3.3 Some members further argued that removing the provision on descent would be discriminatory, especially that the world was becoming a global village where people were being brought together by economic and other imperatives.
- 13.3.3.4 Some members were concerned about the phrase “ordinarily resident in Zambia for a continuous period of ten years”.
- 13.3.3.5 Those members argued that:
- (a) there were persons who might not be resident in Zambia and who might have assumed responsibilities in international agencies where Zambia was a member. They argued that those people could serve in such positions for periods longer than five or ten years;
  - (b) that the world was now a global village and the clause might discriminate against those citizens who worked and resided outside the country but who were actually major contributors to the national income;
  - (c) that the clause was discriminatory;
  - (d) that in some neighbouring countries they had Presidents elected who had lived for a very long time outside their countries and those had led their countries well. Two cases were cited of Presidents Akufor of Ghana and Bingu

Wa Mutharika of Malawi who had lived in America and Zambia respectively, but ascended to the Office of President in their respective countries;

- (e) that some of the persons who lived outside the country might be better qualified to be President of the country; and
- (f) that a period of ordinary residence of five years was more reasonable.

13.3.3.6 Other members argued that:

- (a) a period of ten years for a person aspiring to the presidency of the Republic of Zambia was necessary because the kind of service commitments a person might assume and might have rendered to the International Community could prevent him or her from being the kind of leader the country required as he or she would fail to appreciate the social, economic and political dynamics of the country; and
- (b) some persons might come into Zambia with foreign influences which could affect their way of thinking and that, in fact, a person with twenty years of domicile would be better.

13.3.3.7 On the question of minimum academic qualification, some members supported the proposal of minimum academic qualification of a university degree or its equivalent. They argued as follows:

- (a) that the Constitution being made was for the future and for posterity;
- (b) that at the time of independence there were not many educated people to aspire to the position of President, but now that there were many educated people it would be retrogressive to elect a President with very low educational qualifications;
- (c) that there were twelve (12) universities in the country, and there was no real excuse for one not to acquire a degree;
- (d) that politics of the 21<sup>st</sup> century required knowledge and technology;

- (e) that tertiary education had become a necessity as complex issues needed comprehensive evaluation, synthesis and critical thinking to resolve them;
- (f) a higher level qualification ought to be a benchmark for a President who would inspire the general populace for development;
- (g) that wisdom was the application of knowledge and if a person had no knowledge he or she would have no wisdom. Contemporary global issues were complex and needed a person with adequate education to be able to articulate them; and
- (h) that a provision had been approved requiring the Speaker of the National Assembly and the Deputy Speakers to have a degree and yet those were lower offices.

13.3.3.8 The members who did not support the recommendation argued as follows:

- (a) that the clause was discriminatory, because leadership of any kind was God given;
- (b) that wisdom was not restricted to education, therefore, basic education of a minimum Grade 12 would suffice;
- (c) that a President of a country had many advisors so he or she need not have a first degree;
- (d) that Africa had several examples of Presidents that were educated and had failed to run their countries;
- (e) that the provision would have been relevant in the period from 1964 to the early 1980s when access to education was free of charge, but now the education system had broken down and many people could not access education easily;
- (f) that it was not academic qualifications but leadership which was required; and
- (g) that the proposal is better left to the court of public opinion.

13.3.3.9 The Conference adopted Article 123 with an amendment and that in paragraph (e) of clause (1) “Grade twelve certificate” should be deleted and replaced by the term “first university degree”.

#### 13.3.4 **Resolutions of the Conference**

The Conference adopted Article 123 with amendments and renumbered it as Article 108 as follows:

**“108. (1) A person shall be qualified to be a 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 for a continuous period of ten years immediately preceding the election;**
- (d) is not less than thirty-five years of age;**
- (e) has obtained, as a minimum academic qualification, a first degree or its equivalent from a recognised university or institution;**
- (f) is conversant with the official language; and**
- (g) declares that person's assets and liabilities as provided by this Constitution and by, or under, an Act of Parliament.**

**(2) A person shall be disqualified from being elected as President if that person -**

- (a) holds or is acting in any office that is specified by an Act of Parliament the functions of which involve or are connected with the conduct of elections;**
- (b) is of unsound mind;**
- (c) is an undischarged bankrupt or insolvent;**
- (d) is serving a sentence of imprisonment or is under a sentence of death;**
- (e) has, at any time in the immediate preceding five years, served a term of imprisonment for the commission of an offence the sentence for which was a period of at least three years;**
- (f) has been removed from public office on grounds of gross misconduct; or**
- (g) has been found guilty of corruption by any court or tribunal.**

**(3) A person holding or acting in any of the following posts shall not qualify for election as a President:**

- (a) the Defence Force and national security agencies;**
- (b) the public service;**
- (c) a commission;**
- (d) a statutory body or company in which the Government has a controlling interest; or**

- (e) any other post or office specified by or under an Act of Parliament.
- (4) A person shall not be eligible to be elected as President unless that person -
  - (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) has been nominated and supported by not less than one thousand registered voters."

#### **13.4 Article 124 : Nomination for Election as President**

##### **13.4.1 Recommendations of the Commission**

The Commission did not make any recommendation on the procedure of nomination for election as President.

##### **13.4.2 Provisions in the Mung'omba Draft Constitution on Nomination for Election as President**

Article 124 provides as follows:

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

**(2) A presidential candidate's nomination papers, delivered under clause (1), shall be supported by an affidavit certifying that the candidate is qualified for election as President.**

**(3) The information contained in a presidential candidate's nomination papers shall be published in the *Gazette* and in at least one electronic media and print media that are circulated nationally."**

##### **13.4.3 Deliberations of the Conference on Article 124**

13.4.3.1 The Conference approved Article 124 as provided.

13.4.3.2 On clause (2) which provides that "a presidential candidate's nomination papers, shall be supported by an affidavit certifying



that the candidate is qualified for election as President”, some members argued that the clause should be enhanced by adding a provision requiring a presidential candidate to tender a certificate endorsed by the sponsoring political party. The members were of the view that this would be necessary in order to avoid the possible confusion where a number of members would claim to be sponsored candidates from one political party.

- 13.4.3.3 The Conference approved the recommendation as provided in order to avoid disadvantaging independent candidates.

#### 13.4.4 **Resolutions of the Conference**

The Conference adopted Article 124 without amendment and renumbered it as Article 109 as follows:

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

**(2) A presidential candidate's nomination papers, delivered under clause (1), shall be supported by an affidavit certifying that the candidate is qualified for election as President.**

**(3) The Electoral Commission shall publish the information contained in a presidential candidate's nomination papers in the Gazette and in at least one electronic medium that is broadcast, and one print medium that is circulated, nationally.”**

### 13.5 **Article 125 : Election of President**

#### 13.5.1.□ **Recommendations of the Commission**

- 13.5.1.1 The Commission recommended that in order to avoid problems associated with a minority President whose legitimacy and mandate would be in doubt and as a cost saving measure, the Constitution should provide that:

- (a) a winning presidential candidate should receive at least 50% plus one of the valid votes cast and that failure by any of the candidates to attain this threshold should lead to a re-run, within 30 days between the candidates who receive the two highest numbers of the valid votes cast;

- (b) if in the re-run election none of the candidates receives more than 50% plus one of the valid votes cast, the Speaker should summon Parliament to elect the President between the candidates with the two highest numbers of the valid votes cast, and the candidate who received the highest number of valid votes cast by the members shall be declared President; and
- (c) that in the event of a tie between candidates with the highest number of Parliamentary votes, the Speaker or Presiding Officer shall have a casting vote.

13.5.1.2 The Commission further recommended that the Constitution should provide that the Chairperson of the Electoral Commission will be the Returning Officer.

## 13.5.2 Provisions in the Mung'omba Draft Constitution on Election of President

Article 125 provides as follows:

**"125. (1) The President shall be elected directly in accordance with this Article, Article 95 and as may be provided by or under an Act of Parliament.**

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

**(3) If at the initial ballot a presidential candidate does not receive fifty per cent plus one vote of the valid votes cast -**

- (a) a second ballot shall be held, within thirty days, where the only candidates shall be those who obtained -**
  - (i) the highest and second highest number of valid votes cast in the initial ballot; or**
  - (ii) an equal number of valid votes cast having been the highest of the valid votes cast in the initial ballot; and**
- (b) the candidate who obtains fifty per cent plus one vote of the valid votes cast in the second ballot shall be declared President-elect.**

(4) 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 and the candidate who obtains the highest number of the valid votes cast by the members of the Assembly shall be declared President-elect.

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

(6) A petition to challenge a presidential election may only be instituted after the election of the President-elect.

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

### **13.5.3 Deliberations of the Conference on Article 125**

13.5.3.1 In debating clause (3) of Article 125 two positions emerged in opposition and in support. Members who were for the 50% plus one threshold argued as follows:

- 13 that until 1996 Zambia had in the electoral system the 50% plus one vote provision and did not experience any problems;
- 14 that the "majoritarian system" would give legitimacy to the Presidency;
- 15 that the Mvunga and Mwanakatwe Constitution Review Commissions recommended this system. Members also noted that most petitioners who submitted to the Mung'omba Constitutional Review Commission advocated for the "majoritarian system" of electing a President;
- 16 that the 50 per cent plus one vote electoral system would help reunite the nation which had drifted into regionalism and tribalism after the change to the current simple majority system as evidenced by the voting pattern in the last presidential by election where tribal and regional considerations were clearly evident; and
- 17 that the 50 per cent plus one vote electoral system would compel political parties to ensure their presence in all the provinces as no political party or individual could win the presidency with support from only one province.

- 13.5.3.2 Members who supported the retention of the simple majority system argued as follows:
- (a) the country had remained peaceful under the simple majority system;
  - (b) the 50 per cent plus one vote electoral system was too costly and, therefore, undesirable given that Zambia was a poor country with meager resources;
  - (c) a President with minority representation in Parliament could emerge winner under the 50 per cent plus one vote electoral system and such a President would be vulnerable to impeachment. The members cited the experience in elections held in Kenya and Zimbabwe where lessons about the negative consequences of the 50 per cent plus one vote electoral system could be learnt; and
  - (d) Zambian democracy was not yet mature enough to manage the 50 per cent plus one vote electoral system, given the absence of the spirit of give-and-take amongst politicians.

#### **13.5.4 Resolution of the Conference**

13.5.4.1 The Conference made an attempt to reach consensus over whether to defer the Article or make a decision on the issue of fifty per cent plus one vote.

13.5.4.2 The Conference decided to defer Article 125 on the question of electing the President to a referendum.

13.5.4.3 Article 125 renumbered as Article 110 and referred to a referendum provides as follows:

*“125. (1) The President shall be elected directly in accordance with this Article, Article 95 and as may be provided by or under an Act of Parliament.*

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

*(3) If at the initial ballot a presidential candidate does not receive fifty per cent plus one vote of the valid votes cast -*

*(a) a second ballot shall be held, within thirty days, where the only candidates shall be those who obtained -*

- (i) *the highest and second highest number of valid votes cast in the initial ballot; or*
  - (ii) *an equal number of valid votes cast having been the highest of the valid votes cast in the initial ballot; and*
  - (b) *the candidate who obtains fifty per cent plus one vote of the valid votes cast in the second ballot shall be declared President-elect.*
- (4) *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 and the candidate who obtains the highest number of the valid votes cast by the members of the Assembly shall be declared President-elect.*
- (5) *If there is a tie between or among the presidential candidates in the voting in the National Assembly the Speaker shall cast a vote.*
- (6) *A petition to challenge a presidential election may only be instituted after the election of the President-elect.*
- (7) *The Chairperson of the Electoral Commission shall be the Returning Officer in a presidential election."*

## **13.6 Article 126 : Swearing-in and Handing over**

### **13.6.1 Recommendations of the Commission**

13.6.1.1 The Commission recommended that the Constitution should:

- (a) provide for a period of handover of the presidency from the outgoing President to the President-elect and that this should be 90 days; and
- (b) maintain the current provision and practice of the incumbent President continuing in office until the President-elect takes over.

13.6.1.2 The Commission further recommended that the outgoing President and President-elect should be obligated to comply with hand-over requirements and that in order to give effect to this provision, those arrangements should be made formal:

- (a) a President elect should be sworn in on the last day of the handover period;
- (b) in the event of an election petition the President-elect should not be sworn in until the petition had been disposed of and if the petition was determined in favour of the President-elect, the handover period shall, thereupon, commence retrospectively from the date of election;
- (c) a presidential election petition should be concluded within 90 days of the declaration of election results;
- (d) in the event of an election petition where the incumbent President was either the petitioner or was petitioned, the Speaker of the National Assembly should assume office of President as interim President. If the Speaker was unable to do so, the Chief Justice should be the Interim President; and
- (e) the Chief Justice should swear in the President elect.

### **13.6.2 Provisions in the Mung'omba Draft Constitution on Swearing-in and Hand-over**

Article 126 provides as follows:

**"126. (1) The President-elect shall be sworn in by the Chief Justice and shall assume office ninety days after the declaration of the presidential election results.**

**(2) The incumbent President shall from the date the presidential election results are declared -**

- (a) perform any of the executive functions, except the power to -
  - (i) make an appointment; or
  - (ii) dissolve the National Assembly;
- (b) prepare handing over notes which shall include a statement on the state of the Nation for the President-elect; and
- (c) complete the procedural and administrative handing over process within sixty days.

**(3) If the President-elect dies or is for any other reason unable to be sworn in and assume the office of President, under this**

**Article, the Vice-President-elect shall become the President-elect and clauses (1) and (2) shall apply.**

**(4) The President, who assumed office as a result of clause (3), shall appoint a Vice-President subject to the approval of the National Assembly signified by a vote of not less than two-thirds of all the members of the Assembly."**

### **13.6.3 Deliberations of the Conference on Article 126**

13.6.3.1 Members of the Conference who did not support the recommendation of the Mung'omba Constitution Review Commission in clauses (1), (2) and (3) argued that:

- (a) the ninety days provided for was far too long. They expressed concern that there was a possibility of the outgoing President making it difficult for the incoming President by, among others, covering up misdeeds committed during his or her term of office;
- (b) there was nothing wrong with the current system where the President was sworn-in and the handover took place within twenty-four (24) hours of the declaration of the result; and
- (c) other members considered the twenty-four hours transition period inadequate and proposed seven days or thirty days in order to accord dignity to the process since handing over and swearing in were an administrative process and event respectively.

13.6.3.2 The members observed that Zambia, unlike developed countries, lacked the necessary maturity to successfully and peacefully manage a long transition period. The members were concerned that if the swearing-in and handing-over were prolonged, the outgoing President could, out of frustration, misuse the instruments of power.

13.6.3.3 The members noted that if the losing candidate was the incumbent, he or she might resist vacating the office if the President-elect was not sworn-in immediately. Most members agreed that it was critical to accord an in-coming President the opportunity to be introduced to various instruments of power and appreciate the challenges to be faced in the governance of the country.

- 13.6.3.4 The Conference decided that the winning candidate would be sworn-in within 24 (twenty-four) hours of the announcement of election results as provided for under Article 34 (9), (10) and (22) of the current constitution with a modification of Article 34 (10) to provide for a period of 21 days instead of 14 days for the hand-over process to be undertaken.
- 13.6.3.5 The Conference considered the use of the term “President-elect” in view of the 24 hours of being elected.
- 13.6.3.6 Some members were of the view that the term “President-elect” be rejected on that account. Other members observed that there would be a President-elect even within a minute before swearing-in. They argued that in the event that a President-elect should die just before being sworn in, the Vice-President would not yet have been sworn in which would raise the question of who would take over.
- 13.6.3.7 Some members argued that if the Vice-President was a running mate of the President, then he or she would take over the instruments of power in the event of sudden death of the President since he or she would have been legitimately elected together with the President. Other members argued that in the event of the President-elect who dies not being the sitting President, the incumbent would still be available and, therefore, should continue as President. However, if the President-elect was the incumbent, the Vice-President would take over.

#### **13.6.4 Resolutions of the Conference**

The Conference adopted clauses (1), (2) and (3) of Article 126 after amending clause (1) to provide “ ... immediately but not later than twenty-four hours from the time ...” and clause (2) (c) to provide “... within twenty-one days ...”.

Accordingly, the Conference adopted Article 126 with amendments and renumbered it as Article 111 as follows:

**“111. (1) The President-elect shall be sworn in by the Chief Justice and shall assume office immediately but not later than twenty-four hours from the time of declaration of the presidential election results.**



(2) The incumbent President shall immediately hand over the office of President to the President-elect and shall complete the procedural and administrative handing over process within twenty-one days from the date the President-elect is sworn in.

(3) The incumbent President shall not, within the period referred to in clause (2), perform any functions of the office of President under this Constitution or any other law.”

## **13.7 Article 127 : Election Petition**

### **13.7.1 Recommendations of the Commission**

The Commission recommended as follows:

- (a) a President elect should be sworn in on the last day of the hand-over period;
- (b) in the event of an election petition, the President elect should not be sworn-in until the petition has been disposed of and if the petition is determined in favour of the President elect, the hand-over period shall, thereupon commence retrospectively from the date of elections;
- (c) A presidential election petition should be concluded within 90 days of declaration of election results;
- (d) In the event of an election petition and a nullification where the incumbent president is either the petitioner or is petitioned, the Speaker of the National Assembly should discharge the functions of the office of the President as Interim President. If the Speaker is unable to do so, the Chief Justice should be the Interim President;
- (e) The Constitution should extensively provide for nullification of a presidential election by the court determining the validity of such election;
- (f) The Chief Justice should swear-in the President-elect; and
- (g) The Constitution should provide that in the event of nullification of a Presidential election, election shall be conducted within 90 days to fill the vacancy.

### **13.7.2 Provisions in the Mung’omba Draft Constitution on Election Petition**

Article 127 provides as follows:

**“127. (1) Any person may file an election petition before the Constitutional Court, which shall be presided over by the Chief Justice, 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.**

**(2) A petition under this Article shall be filed within seven days after the date of the declaration of the presidential election results.**

**(3) Where any person files an election petition under clause (1) and the incumbent President is the President-elect, the Speaker shall discharge the executive functions and if the Speaker is, for any reason, not able to discharge the executive functions the First Deputy Speaker shall discharge those functions.**

**(4) The Constitutional Court shall, within ninety days of the filing of an election petition, determine the petition.**

**(5) A decision of the Constitutional Court to nullify or not to nullify the election of the President-elect shall be final.**

**(6) Where the election of the President-elect is nullified by the Constitutional Court –**

- (a) the Speaker shall perform the executive functions; or**
- (b) if the Speaker is for any reason unable to discharge the executive functions, the First Deputy Speaker shall perform those functions; and**
- (c) a presidential election shall be held within ninety days from the date of the nullification.”**

### **13.7.3 Deliberations of the Conference on Article 127**

**13.7.3.1** In the discussion on Article 127 members observed that having decided that the swearing-in of a President-elect should be done within twenty-four hours from the time of declaring the election, an

election petition, if any, would no longer be against a President-elect but the sworn-in President. Consequently the Conference decided that reference to “President-elect” should read “President”.

13.7.3.2 Members expressed concern that the words “any person” in the preamble could imply that even persons who did not have a direct interest in the matter had the right to challenge the Presidential election in Court. The Conference amended the clause to only allow petitioners who had “locus standi”.

13.7.3.3 Some members argued that:

- (a) it would be very difficult to petition a sitting President as he or she could abuse authority and manipulate the process;
- (b) petitioning a President-elect would be easier, safer and cheaper; therefore, it would be ideal if, in the event of a petition, the swearing-in was postponed until the petition was determined; and
- (c) the seven days provided for in the Draft Constitution for filing a petition were practically too short, a period of not less than fourteen days was suggested instead.

13.7.3.4 On the question of the continued validity of appointments made by a President whose election was nullified, members were concerned that if the appointments were invalidated, a vacuum would be created. Some members argued that a Vice President who was appointed by a President whose election had been nullified should not be affected because the appointing President would have been sworn-in and, therefore, all his or her appointments would have been legitimate.

1. Some members wondered whether the Vice-President could become the acting President in the event of the appointing President’s election being nullified.
2. The Conference observed that clause (9) of Article 139 of the current Constitution provided that appointments by a President whose election was nullified, remained valid.
3. The Conference observed that a Supreme Court judgement had ruled that when a presidential election had been nullified, the President would remain in

office until the next President was elected and the appointments that the President had made would be valid.

#### **13.7.4 Resolution of the Conference**

13.7.4.1 The Conference adopted Article 127 with amendments as follows:

- (a) that a petition should be filed within seven days of the date of the declaration of the presidential election results;
- (b) that within ninety days of the filing of an election petition, the petition be determined by the Constitutional Court whose decision would be final;
- (c) that a person who should challenge the election of a President should have a “locus standi”;
- (d) that where the election of the President was nullified by the Constitutional Court , the Vice-President shall perform the executive functions. If the Vice-President was for any reason unable to discharge the executive functions then such member of the Cabinet as the Cabinet shall elect, shall perform the executive functions; and
- (e) that a presidential election shall be held within ninety days from the date of the nullification of the election.

13.7.4.2 Accordingly, the Conference adopted Article 127 with amendments and renumbered it Article 112 as follows:

**“112. (1) An election petition to challenge the election of a President 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;**  
**may be filed before the Constitutional Court by one or more of the following persons:**
  - (i) a person who lawfully voted or had a right to vote at the election to which the election petition relates;**
  - (ii) a person claiming to have had a right to be nominated as a candidate for election as President at the election to which the election petition relates; or**

- (iii) a candidate for election as President at the election to which the election petition relates.
- (2) A petition under this Article shall be filed within seven days after the date of the declaration of the presidential election results.
- (3) The Constitutional Court shall -
  - (a) when sitting to determine a petition under this Article be presided over by the Chief Justice; and
  - (b) within ninety days of the filing of an election petition, determine the petition.
- (4) A decision of the Constitutional Court to nullify or not to nullify the election of the President shall be final.
- (5) Where the election of the President is nullified by the Constitutional Court -
  - (a) the Vice-President shall perform the executive functions; or
  - (b) if the Vice-President is for any reason unable to discharge the executive functions, such member of the Cabinet as the Cabinet shall elect shall perform the executive functions; and
  - (c) a presidential election shall be held within ninety days from the date of the nullification."

## **13.8 Article 128 : Tenure of Office of President**

### **13.8.1 Recommendations of the Commission**

The Commission recommended retention of the current Constitutional provision, which limits the Presidential term of office to two five year terms only.

### **13.8.2 Provisions in the Mung'omba Draft Constitution on Tenure of Office of President**

Article 128 provides as follows:

**"128. (1) Subject to clauses (2) and (4), a President shall hold office for five years and shall not hold any other office of profit or emolument.**

(2) 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 for a third or any other subsequent term.

(3) The President may, at any time in writing, signed personally, addressed to the Speaker of the National Assembly, resign from office.

(4) Subject to this Constitution, the President shall continue in office until the President-elect assumes office."

### **13.8.3 Deliberations of the Conference on Article 128**

13.8.3.1 Some members noted that the President was a member of the Parliament and as such should address his or her letter of resignation to the Speaker. However, others argued that the President was sworn-in by the Chief Justice, who was also the Returning Officer for the Presidential election and, therefore, the letter of resignation should be addressed to the Chief Justice instead of the Speaker.

13.8.3.2 Some members were of the view that Article 35 in the current Constitution was much clearer because it stated that the President continued in office until another person was elected.

1. The Conference decided as follows:

- (a) that a President shall hold office for five years and should not hold any other office of profit or emolument;
- (b) that a person who had twice been elected as President shall not be eligible for election as President for any other subsequent terms; and
- (c) that the President could at any time resign by writing to the Chief Justice, but subject to the constitution a President would continue in office until the person elected at the next election to the office of President assumed office unless the President resigned or ceased to hold office by virtue of Article 129 and 130.

### **13.8.4 Resolutions of the Conference**

The Conference adopted Article 128 with amendments and renumbered it as Article 113 as follows:

**“113. (1) Subject to clauses (2) and (4), a President shall hold office for five years and shall not hold any other office of profit or emolument.**

**(2) 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 for a third or any other subsequent term.**

**(3) The President may, at any time in writing, signed personally, addressed to the Chief Justice, resign from office.**

**(4) Subject to this Constitution, the President shall continue in office until the person elected at the next election to the office of President assumes office, unless -**

**(a) the President resigns; or**

**(b) the President ceases to hold office by virtue of Article 127, 129 or 130.”**

### **13.9 Article 129 : Removal of President on grounds of incapacity**

#### **13.9.1 Recommendations of the Commission**

The Commission recommended that provision of the current Constitution should be varied so as to provide for the following:

- a. that the Cabinet may, by a resolution of at least two-thirds of the members, decide that the question of physical or mental capacity of the President should be investigated; and
- b. that the resolution of the National Assembly should be by simple majority. Further, there should be no provision in the Constitution for the National Assembly to reject the medical report and cause further enquiry.

#### **13.9.2 Provisions in the Mung’omba Draft Constitution on Removal of President on grounds of incapacity**

Article 129 provides as follows:

**“129. (1) The members of the Cabinet may 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.**

**(2) Where a resolution is passed under clause (1) the Secretary to the Cabinet shall send a copy of the resolution to the Chief Justice.**

(3) The Chief Justice shall, on receipt of a copy of the resolution submitted under clause (1), appoint a medical board which shall inquire into the matter specified under clause (1).

(4) A medical board shall consist of not less than three persons selected from among persons who are registered as medical practitioners under the Laws.

(5) The President shall, within seven days of a summons from the medical board appointed under clause (3), submit to examination by the board and failure to do so constitutes a ground for removal from office.

(6) A medical board, appointed under clause (3), 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 discharging the executive functions.

(7) Where the medical board reports that the President is capable of performing the executive functions, the Chief Justice shall inform the National Assembly and the President shall accordingly continue to perform the executive functions.

(8) 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 the approval of the National Assembly.

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

(10) Where the President ceases to hold office by virtue of clause (9) the Vice-President shall assume the office of President for the un-expired term of that office.

(11) Where the Vice-President assumes the office of President under clause (10), 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 all the members of the Assembly."

### **13.9.3 Deliberations of the Conference on Article 129**

13.9.3.1 In the debate on this article, some members were of the view that not less than one third of the members of the National Assembly may petition the Speaker that the physical or mental capacity of the



President to perform executive functions ought to be investigated. The members argued as follows:

- (a) that the only organ representative of the whole nation was Parliament and, therefore, the process should start from there;
- (b) that members of the Cabinet could not be expected to point out the President's incapacity because of their close relationship; whereas Parliament had its own identity it was better placed to move a motion to investigate the health status of the President; and
- (c) that the Mung'omba Draft Constitution provision was premised on the assumption that Cabinet would be appointed from outside Parliament.

13.7.3.5 The Conference observed that since Parliament would initiate the investigation process, members of Parliament could not fail to support a report rendered by a competent team of medical practitioners to be appointed under Article 129 (3).

13.7.3.6 Those members who were against the proposal of the National Assembly in initiating the petition argued as follows:

- (a) that members of Cabinet worked very closely with the President and had the advantage of being in his or her presence; therefore, they were better placed to know the mental and physical state of the President;
- (b) that existing provisions in the current Constitution had worked well, and therefore, should not change; and
- (c) that Members of Parliament would only base their opinion on rumours.

13.7.3.7 In the discussion on the procedure and debate of the motion for the investigation of the President's capacity, some members argued as follows:

- (a) that the procedure should not start with Parliament but rather with a recommendation from a medical Board. Therefore, Parliament should not sit before receiving professional advice on the infirmity or otherwise of the President;

- (b) the procedure was too long as it required Parliament to be convened twice; and
- (c) the Constitutions of other countries could be used as a guide to adopt a shorter process.

13.9.3.5 Some members proposed shortening the procedure as follows:

- (a) that Parliament initiates the process so that the responsibility does not lie with the Cabinet, but that the Speaker could ask the Chief Justice to constitute a board of medical practitioners who would determine whether the President was incapacitated in any way. In that regard Parliament would determine the matter on the basis of professional advice;
- (b) that Parliament having received information from the Medical Board, would debate the President's state of health rather than initiate debate not supported with facts. The shorter version was contained in the current Constitution and would dignify the President's exit from office; and
- (c) that the process of moving from Cabinet to the Chief Justice then to a Medical Board and then to Parliament would save Parliament from convening to debate unsubstantiated information.

13.9.3.6 Those members who supported the proposal argued that:

- (a) the most suitable place for the process to start was Parliament which was comprised of people's representatives as the removal of the President was a serious matter which anyone within the Executive or civil service could not initiate without jeopardising his or her job;
- (b) if representatives of the people in the National Assembly started the process based on a rumour, it would still be within the political arena;
- (c) decisions regarding the removal of a President which was the highest office in the land required an elaborate process to ensure that it was not subject to rumour mongering and ill-intentions but was well grounded in facts; and
- (d) the country should be guided by the experience gained from events leading to the demise of the country's late President Dr. Levy Patrick Mwanawasa SC.

13.12.1.1 The Conference approved the proposal by some members as follows:

- (a) that if a motion was supported by a vote of not less than two-thirds of all members of the National Assembly, that the President was incapable of performing executive functions;
- (b) that where a motion was passed under clause (4), the Speaker of the National Assembly would send a copy within seven days to the Chief justice, who would then within fourteen days of receipt of a copy of the resolution in consultation with the relevant professional body regulating medical practitioners, appoint a Medical Board which shall consist of not less than three persons who are medical practitioners to inquire into the matter specified in the motion.

13.8.3.3 The Medical Board so appointed shall within fourteen days of its appointment examine the President and report to the Chief Justice as to whether or not the President is capable of discharging the executive functions.

13.9.3.9 The Chief Justice shall submit the report referred to under clause (1) to the National Assembly within seven days of receiving the report.

13.9.3.10 Where the Medical Board appointed under clause (6) reports to the National Assembly that:

- (a) the alleged physical or mental incapacity of the President to perform the executive functions has not been substantiated, the National Assembly shall resolve that:
  - (i) the President is capable of performing executive functions; and
  - (ii) no further proceedings shall be taken under this article in respect of that allegation; or
- (b) the alleged physical or mental incapacity of the President to perform the executive functions has been substantiated, the National Assembly shall, on a motion supported by the votes of not less than two thirds of all the members of the National Assembly, by secret ballot, resolve that the President should cease to hold office.

13.9.3.11 Where a notice is submitted to the Speaker under this Article, the President shall not dissolve Parliament.

- 13.9.3.12 On the question of the Vice-President the members argued that there was need to determine whether the Vice-President would take over the Office of President when the President ceased to hold office and whether or not the Vice-President would be a running mate to the presidential candidate.
- 13.9.3.13 Some members supported the proposal of a running-mate for the President, and argued that the President and Members of the Cabinet constituted the Executive and, therefore, in the event of the demise of the President, the Vice-President should continue until the end of the term.
- 13.9.3.14 Other members observed that it was not tenable that the Vice-President who was not voted for by the entire nation but was just nominated or appointed by the President should take over the Office of President until expiry of the term.

#### **13.9.4 Resolutions of the Conference**

- 13.9.4.1 The Conference adopted clauses (1) to (9) of Article 129.
- 13.9.4.2 In accordance with the decision on Article 144 on the election of the Vice-President the Conference decided as follows:
- (a) that clause (10) be deleted; and
  - (b) that on clause (11) the new President should appoint a Vice-President without reference to the National Assembly and that if there were less than twelve months remaining before the end of the Presidential term then there would be no Presidential by-election.
- 13.9.4.3 Accordingly the Conference adopted Article 129 with amendments and renumbered it as Article 114 as follows:

**"114. (1) Not less than one-third of all the members of the National Assembly may, 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 notice under clause (1) shall specify the particulars of the allegation.**

**(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 President's incapacity to perform the executive functions 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 the summons, and cause a motion for the investigation of the President's incapacity to perform the executive functions to be considered immediately.

(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 all the members of the National Assembly, taken by secret ballot, the motion shall be passed.

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

(6) The Chief Justice shall, within fourteen days of receipt of a copy of the resolution submitted under clause (5), in consultation with the relevant professional body regulating medical practitioners, appoint a medical board which shall consist of not less than three persons who are medical practitioners, registered with the relevant professional body, to inquire into the matter specified under clause (1).

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

(8) The Chief Justice shall submit the report referred to under clause (7) to the National Assembly within seven days of receiving the report.

(9) Where the medical board appointed under clause (6) reports to the National Assembly that-

- (a) the alleged physical or mental incapacity of the President to perform the executive functions has not been substantiated, the National Assembly shall resolve that-
  - (i) the President is capable of performing executive functions; and

- (ii) further proceedings shall not be taken under this Article in respect of that allegation; or
  - (b) the alleged physical or mental incapacity of the President to perform the executive functions has been substantiated, the National Assembly shall, on a motion supported by the votes of not less than two-thirds of all the members of the National Assembly, by secret ballot, resolve that the President should cease to hold office.
- (10) Where a notice is submitted to the Speaker under this Article, the President shall not dissolve Parliament.
- (11) Where the National Assembly resolves that the question of the physical or mental capacity of the President to discharge the functions of the office should be investigated, the President shall, until another person assumes the office of President or the medical board appointed under clause (6) reports that the President is not incapable of discharging the functions of the office, whichever is the earlier, cease to perform the functions of the office and those functions shall be performed by-
- (a) the Vice-President; or
  - (b) in the absence of the Vice-President or if the Vice-President is unable, by reason of physical or mental infirmity, to discharge the functions of the office, by such member of the Cabinet as the Cabinet shall elect:
- Provided that any person performing the functions of the office of President under this clause shall not dissolve the National Assembly or, except on the advice of the Cabinet, revoke any appointment made by the President."

**13.10            Article 130 : Impeachment of President for Violation of Constitution or Gross Misconduct**

**13.9.3           Recommendations of the Commission**

The Commission made the following recommendations:

- (a) Powers to impeach a President should continue to be vested in the National Assembly; and
- (b) The grounds for impeachment must be ascertained.

**13.10.2 Provisions in the Mung'omba Draft Constitution on Impeachment of President for Violation of Constitution or Gross Misconduct**

Article 130 provides as follows:

**"130. (1) A notice in writing to the Speaker, signed by not less than one-third of all the members of the National Assembly, may allege that the President has committed a violation of this Constitution or gross misconduct.**

**(2) An act or omission which constitutes gross misconduct includes -**

- (a) conduct which brings the office of President into hatred, ridicule or contempt;
- (b) an act or omission that involves dishonesty or moral blame;
- (c) an act or omission which is prejudicial or inimical to the economy or security of Zambia;
- (d) flagrant failure to perform an executive function;
- (e) gross negligence;
- (f) gross mismanagement of the public resources resulting in a substantial loss to the Republic; or
- (g) failure to obey an order of the Constitutional Court.

**(3) A notice under clause (1) shall specify the particulars of the allegations and propose that a tribunal be established to investigate the allegations."**

**13.10.3 Deliberations of the Conference on Article 130**

- 13.10.3.1** In debating Article 130, some members observed that it would be difficult to determine the point at which Parliament would decide that the conduct of the President had brought the office of President "into hatred, ridicule and contempt".

13.9.3.8 The members wondered at what point the Government or Parliament would decide that the President was totally to blame.

13.10.3.3 The following questions were raised by some members:

- (a) what was the meaning of the words “moral blame” used in clause (2) (b)?
- (b) how would a conflict be resolved between paragraph (g) on failure to obey an order of the Constitutional Court and clause (3) which required at least one third of the members of the National Assembly alleging violation of the Constitution or gross misconduct?

13.10.3.4 Members further argued as follows:

- (a) that most provisions were vague and they wondered how the same could be retained in the constitution and they proposed that such paragraphs be deleted;
- (b) that most of the items which formed the basis for impeaching the President were a source of concern;
- (c) that there was no point of listing what was considered a misconduct as it might cause confusion. There was, therefore, a proposal to replace Article 130 with Article 37 of the current Constitution on impeachment of the President for violation of the Constitution which was more precise;
- (d) that the procedure for impeachment reflected the gravity of the offence committed by the President; and
- (e) that there was no offence in terms of gravity that was greater than the violation of the Constitution.

13.10.1.1 Some members proposed that the Conference adopts Article 37 of the current Constitution.

13.10.1.2 Article 37 of the current Constitution provides as follows:

**“37. (1) If notice in writing is given to the Speaker of the National Assembly signed by not less than one-third of all the members of the National Assembly of a motion alleging that the President has committed any violation of the Constitution or any gross misconduct and specifying the particulars of the allegations and proposing that a tribunal be established under this Article to investigate those allegations, the Speaker shall –**



- (a) if Parliament is then sitting or has been summoned to meet within five days, cause the motion to be considered by the National Assembly within seven days of the notice;
- (b) if Parliament is not then sitting (and notwithstanding that it may be prorogued) summon the National Assembly to meet within twenty-one days of the notice and cause the motion to be considered at that meeting.

(2) Where a motion under this Article is proposed for consideration by the National Assembly, the National assembly shall debate the motion and if the motion is supported by the votes of not less than two thirds of all the members of the National Assembly, the motion shall be passed.

(3) If the motion is declared to be passed under clause (2) -

- (a) the Chief Justice shall appoint a tribunal which shall consist of a Chairman and not less than two other members selected by the Chief Justice from among persons who hold or have held high judicial office;
- (b) the tribunal shall investigate the matter and shall report to the National Assembly whether it finds the particulars of the allegations specified in the motion to have been substantiated; and
- (c) the President shall have the right to appear and be represented before the tribunal during its investigation of the allegations against him.

(4) If the tribunal reports to the National Assembly that the tribunal finds that the particulars of any allegation against the President specified in the motion have not been substantiated further proceedings shall not be taken under this Article in respect of that allegation.

(5) If the tribunal reports to the National Assembly that the tribunal finds that the particulars of any allegation specified in a motion have been substantiated, the

National Assembly may, on a motion supported by the votes of not less than three quarters of all members of the National Assembly, resolve that the President has been guilty of such violation of the Constitution or, as the case may be, such gross misconduct as is incompatible with his continuance in office as President and, if the National Assembly so resolves, the President shall cease to hold office on the third day following the passage of the resolution.

(6) No proceedings shall be taken or continue under this Article at any time when Parliament is dissolved."

#### **13.10.4 Resolutions of the Conference**

The Conference rejected Article 130 as recommended in the Mung'omba Draft Constitution and adopted Article 37 of the current Constitution and renumbered it as Article 115 as follows:

**"115. (1) If notice in writing is given to the Speaker of the National Assembly signed by not less than one-third of all the members of the National Assembly of a motion alleging that the President has committed any violation of the Constitution or any gross misconduct and specifying the particulars of the allegations and proposing that a tribunal be established under this Article to investigate those allegations, the Speaker shall -**

- (a) if Parliament is then sitting or has been summoned to meet within five days, cause the motion to be considered by the National Assembly within seven days of the notice;**
- (b) if Parliament is not then sitting (and notwithstanding that it may be prorogued) summon the National Assembly to meet within twenty-one days of the notice and cause the motion to be considered at that meeting.**

**(2) Where a motion under this Article is proposed for consideration by the National Assembly, the National assembly shall debate the motion and if the motion is supported by the votes of not less than two thirds of all the members of the National Assembly, the motion shall be passed.**

(3) If the motion is declared to be passed under clause (2) –

- (a) the Chief Justice shall 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 high judicial office;
- (b) the tribunal shall investigate the matter and shall report to the National Assembly whether it finds the particulars of the allegations specified in the motion to have been substantiated; and
- (c) the President shall have the right to appear and be represented before the tribunal during its investigation of the allegations against him.

(4) If the tribunal reports to the National Assembly that the tribunal finds that the particulars of any allegation against the President specified in the motion have not been substantiated further proceedings shall not be taken under this Article in respect of that allegation.

(5) If the tribunal reports to the National Assembly that the tribunal finds that the particulars of any allegation specified in a motion have been substantiated, the National Assembly may, on a motion supported by the votes of not less than three quarters of all members of the National Assembly, resolve that the President has been guilty of such violation of the Constitution or, as the case may be, such gross misconduct as is incompatible with the President's continuance in office and, if the National Assembly so resolves, the President shall cease to hold office on the third day following the passage of the resolution.

(6) No proceedings shall be taken or continue under this Article at any time when Parliament is dissolved."

## **13.11 Article 131 : Procedure for Impeachment**

### **13.11.1 Recommendations of the Commission**

The Commission recommended that:

- (a) impeachment should not be substituted with a recall election;
- (b) procedures for impeachment of a President as

- contained in the current Constitution should be retained, with the exception that the requirement that an impeachment motion must be passed by a three-quarters majority of all Members of Parliament should be replaced with a two-thirds majority of all MPs as is the standard practice in many countries; and
- (c) the power to impeach a President should continue to be vested in the National Assembly which is the repository of popular sovereignty.

#### **13.11.2 Provisions in the Mung'omba Draft Constitution on Procedure for Impeachment**

Article 131 provides as follows:

- "131. (1) The Speaker shall, after receipt of the notice submitted under Article 130, if the National Assembly -**
- (a) is sitting, cause a motion for the impeachment of the President to be considered by the Assembly within seven days of the notice; or**
  - (b) is adjourned or prorogued, summon the Assembly to meet within five days of the summons and cause a motion to impeach the President to be considered forthwith.**
- (2) The National Assembly shall debate a motion under clause (1) and if the motion is supported, by a secret ballot of not less than two-thirds of all the members of the National Assembly, the motion is passed.**
- (3) Where a motion is passed under clause (2) the Chief Justice shall appoint a tribunal -**
- (a) consisting of a chairperson and not less than two other members selected by the Chief Justice from among persons who hold or have held office as Judges of a superior court; and**
  - (b) to investigate the matter and report to the National Assembly whether it finds the particulars of the allegations specified in the motion to have been substantiated.**

(4) The President shall have the right to appear and be represented before the tribunal during the investigation of the allegations.

(5) Where the tribunal, appointed under clause (3), reports to the National Assembly that an allegation against the President specified in the motion has -

- (a) not been substantiated, the National Assembly shall resolve that -
  - (i) the President was not guilty of the allegations; and
  - (ii) further proceedings shall not be taken under this Article in respect of that allegation; or
- (b) been substantiated, the National Assembly shall, on a motion supported by the votes of not less than two-thirds of all the members of the Assembly, by a secret vote, resolve that -
  - (i) the President has been guilty of the allegation; and
  - (ii) the conduct of the President is incompatible with the continuance in office of the President.

(6) On the passing of the resolution under clause (5) (b) the President shall cease to hold office on the third day following the passing of the resolution."

### **13.11.3 Deliberations of the Conference on Article 131**

13.11.3.1 Some members proposed that the period within which the impeachment of the President should be considered be increased from seven days to fourteen days, or ten days. The members took into account the involvement of a Select Committee of Parliament that would be required to scrutinize the motion.

13.10.3.2 It was also proposed that there should be a specific period during which the Chief Justice should appoint a tribunal.

13.10.3.3 The members debated the issue regarding the number of

judges that the Chief Justice should appoint to decide on the motion to impeach the President. Some members argued that a small number of judges could easily be compromised and proposed that five judges, one of whom would be appointed Chairperson. Other members preferred a tribunal of three persons on account of cost implications.

13.11.3.4 Some members expressed concern that the President could dissolve Parliament if he or she expected the impeachment proceedings to be successful. The members proposed that a provision should be included to ensure that once the impeachment process began, the President should have no powers to suspend Parliament.

13.11.3.5 Some members were of the view that the impeached President needed time to hand over, hence the need to support the provision for three days as provided in the Draft Constitution. Other members, however, argued that the President needed to vacate the office immediately to avoid the possibility of abuse of office as was observed earlier when the swearing-in and hand-over provisions were discussed.

#### **13.11.4 Resolution of the Conference**

The Conference decided that in view of the fact that Article 130 was deleted, Article 131 be deleted as it was premised on the provisions of Article 130. The provisions of both Articles 130 and 131 have been subsumed in Article 37 of the current Constitution which has been adopted as Article 115.

#### **13.12 Article 132 : Vacancy in Office of President**

##### **13.10.3 Recommendations of the Commission**

The Commission recommended that:

- (a) in the event of a vacancy in the Office of the President, arising out of resignation, death or impeachment, the Vice-President, who should be popularly elected as running-mate to the Presidential candidate, should assume the Office of President for the remainder of the term;
- (b) in the absence of the President, the Vice-President should act as President;
- (c) if the President was incapable of discharging the

- functions of the office, the Vice-President should act as President;
- (d) if both offices are vacant, the Speaker of the National Assembly should act as President until elections are conducted to fill the vacancies within 90 days. Where the Speaker is unable to discharge the functions of the presidency, the first Deputy Speaker should do so;
  - (e) at no time should both the President and Vice-President be out of the country; and
  - (f) reference to vacancies in the offices of the President and Vice-President includes vacancies that might arise due to the death, incapacities or inability of the President-elect or Vice-President-elect to assume office.

### **13.12.2 Provisions in the Mung'omba Draft Constitution on Vacancy in the Office of President**

Article 132 provides as follows:

- “132. (1) Subject to this Constitution, where the office of President becomes vacant for any reason -**
- (a) the Vice-President shall assume the office of President for the unexpired term; or**
  - (b) if the Vice-President is unable for any reason or cause to assume the office of President, the Speaker or in the absence of the Speaker, the First Deputy Speaker shall perform the executive functions and a presidential election shall be held within ninety days from the date of the vacancy.**
- (2) A person performing the executive functions under clause (1) (b) shall not dissolve the National Assembly and shall not, except on the advice of Cabinet, revoke an appointment that had been made by the President.**
- (3) The President and the Vice-President shall not at any one time both be out of the country.**
- (4) Where the Vice-President assumes office under clause (1) (a), 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 all the members of the Assembly.”**

### 13.12.3 Deliberations of the Conference on Article 132

13.12.3.1 In discussing Article 132, some members who did not support the assumption of office by the Vice-President in the event of the vacancy in the office of the President observed that the office of the President was the highest office in the land and that it was elective. In view of this the members argued it would be improper for a nominated or appointed person to take over the presidency because such a person would not have a mandate derived from the people. This would have been acceptable if the Vice-President had been a presidential running mate.

13.12.3.2 On the other hand some members argued that the Vice-President should assume the office of President for the unexpired term, irrespective of whether he or she came into office as a presidential running mate or through appointment some members proposed that clause (b) be recast to read:

**“(b) if the Vice President is unable for any reason or cause to assume the office of President, Cabinet shall appoint one among themselves to perform the executive functions for the unexpired term.”**

13.12.3.3 Members who did not support the revised clause argued that giving Cabinet power to appoint a person to take over the presidency would be against the law which designated the office of President as an elective office. An appointed person would lack legitimacy. Therefore, if Cabinet appointed a replacement from among themselves, such appointee should be subjected to an election within ninety days.

13.12.3.4 The members who supported the revised clause, however, argued that legitimacy was a point of law and not a derivative of an election.

13.12.3.5 They further argued that having accepted the legitimacy the Government formed by a political party that won the election then whatever was done by that Government thereafter must be considered legitimate. In that regard it was suggested that it would be illogical to subject a President nominated by a legitimate Cabinet to an election. It was further argued that such a requirement would render futile the purpose of giving power to Cabinet. Members



were also of the view that by-elections should as much as possible be avoided.

- 13.12.3.6 On the question of the qualifications of the person who would assume office in the event of a vacancy in the office of the President, some members stated that the qualifications applicable to the President should also apply but since the question was on succession rather than election, not every qualification should apply.
- 13.12.3.7 Some members observed that it would not be financially prudent to subject the Vice-President to an election as the unexpired term of the President might only be a few months.
- 13.12.3.8 In further discussion, some members recalled that the Conference had decided under Article 129 (ii) of the Mung'omba Draft Constitution that if there was less than twelve months remaining before the end of term, no by-election should be held and then the Vice-President would assume office of President for the remainder of the term. The Conference confirmed that position.
- 13.12.3.9 The Conference decided to delete clause (3) and amended clause (4) by removing the need for the approval of the National Assembly.

#### **13.12.4 Resolutions of the Conference**

- 13.12.4.1 The Conference resolved as follows:
- (a) that clause (1) (a) and (b) be harmonised to reflect that if there was less than twelve months remaining before the end of term no by-election should be held and then the Vice-President would assume office of President for the remainder of the term;
  - (b) that clause (2) be adopted with amendments;
  - (c) that clause (3) be deleted; and
  - (d) that clause (4) be adopted with amendments.
- 13.12.4.2 Accordingly, the Conference adopted Article 132 with amendments and renumbered it as Article 116 as follows:

**“116. (1) If the office of President becomes vacant by reason of the death, or the resignation from office, of the President, or by reason of the President ceasing to hold office by virtue of Article 127, 129 or 130 -**

- (a) an election to the office of President shall be held in accordance with Article 125 within ninety days from the date of the office becoming vacant; and
- (b) the Vice-President or, in the absence of the Vice-President or if the Vice-President is unable, by reason of physical or mental infirmity, to perform the functions of the office, a member of the Cabinet elected by the Cabinet, shall perform the executive functions of the office of President until a person elected as President in accordance with Article 125 assumes office:

Provided that if a vacancy in the office of President occurs at a time when less than twelve months are remaining before the expiry of the term of office of the President, the Vice-President shall assume the office of President for the unexpired term and no election to the office of President shall be held.

(2) If the Vice-President is unable, for any reason or cause, to assume the office of President under the proviso to clause (1), such member of Cabinet, as Cabinet shall elect, shall perform the executive functions and a presidential election shall be held within ninety days from the date of the vacancy.

(3) The Vice-President or, the member of the Cabinet as the case may be, performing the executive functions of the office of President under this Article shall not dissolve the National Assembly or, except on the advice of the Cabinet, revoke any appointment made by the President.

(4) Where a person assumes office as President under the proviso to clause (1), the President shall appoint another person as Vice-President."

**13.13            Article 133 : Performance of Executive Functions during absence or illness of the President**

**13.13.1        Recommendations of the Commission**

The Commission recommended that the Constitution should provide that:

- (a) qualifications for election to the office of Vice-President should be the same as those applicable to the office of President;
- (b) the Vice-President should be elected by universal adult suffrage as running mate of a presidential candidate;
- (c) the duties of the Vice-President should include:
  - (i) acting as President in the absence of the incumbent President and in the event that the office of President becomes vacant;
  - (ii) that of being ex-officio member of the National Assembly for purposes of Government business in the House and Leader of Government Business in the House; and
  - (iii) such other functions as may be assigned to the office by the President.
- (d) the Constitution should make provision for the removal from office of a Vice-President in circumstances similar to those prescribed for removal of a President;
- (e) in the event of a vacancy arising in the office of Vice-President, the President should nominate a Vice-President who shall assume office upon approval by two-thirds majority of all Members of Parliament for the remainder of the term of office; and
- (f) in the absence of the Vice-President if Vice-President is for some reason unable

to discharge the functions of the office, the President should appoint, subject to approval by the National Assembly, a member of the Cabinet to discharge the functions of the office.

### **13.13.2 Provisions in the Mung'omba Draft Constitution on Performance of Executive Functions during absence or illness of the President**

Article 133 provides as follows:

**“133. (1) If the President leaves Zambia or is ill, the President shall, by direction in writing, authorize the Vice-President to perform the executive functions, as specified by the President, until that authority is revoked.**

**(2) Where the Vice-President is incapable of performing the executive functions, as provided under clause (1), the President shall appoint, subject to the ratification of the National Assembly, 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.”**

### **13.13.3 Deliberations of the Conference on Article 133**

13.13.3.1 In discussing this Article, some members observed that it was not clear whether or not the Vice-President would exercise full Presidential powers in the absence of the President. The members wanted provisions that would stop the Vice-President from overstepping his or her mandate as acting President.

13.13.3.2 Other members expressed concern as to what would happen in the event of the President being incapacitated to the extent where he or she was unable to give directions in writing.

13.13.3.3 It was explained that in such an event, the Vice-President would still take over the instruments of authority and that by convention, whenever the President travelled outside Zambia he or she was required to assign the instruments of power irrespective of the duration of the period of absence. Some members were still concerned that there was a possibility of the President deciding not to give written instructions.

- 13.13.3.4 Members observed that clause (2) of Article 133 was drafted on the premise that the Cabinet would be appointed from outside Parliament and that the Vice-President would be a running-mate. The question that was to be decided upon was whether or not it was necessary to subject the Vice-President to ratification by Parliament.
- 13.13.3.5 Some members advocated for ratification and argued that it was a necessary safeguard against nepotism and regionalism. Most members were of the view that there was no need for ratification and emphasized the importance of developing trust in the established systems and institutions.
- 13.13.3.6 The members argued that it was ironical that the Vice-President who was not subject to ratification at the time of appointment or nomination, should be required to undergo the ratification process at a later stage.
- 13.11.3.2 Some members further argued that there could be circumstances when time might not be available for the ratification process to take place, such as the occasion necessitating the Vice-President to perform the executive functions which might not coincide with the timing of parliamentary sessions. They further argued that the ratification process could deliberately be frustrated. It was also argued that the matter in question fell under the ambit of the Executive and, therefore, Parliament should not be involved.

#### **13.13.4 Resolutions of the Conference**

The Conference, therefore, adopted Article 133 with amendments and renumbered it as Article 117 as follows:

**“117. (1) If the President leaves Zambia or is ill, the President shall, by direction in writing, authorise the Vice-President to perform the executive functions, as specified by the President, until that authority is revoked.**

**(2) If the President is incapable by reason of physical or mental infirmity of discharging the executive functions, and the infirmity is of such a nature that the President is unable to authorise another person under this Article to perform those functions -**

**(a) the Vice President; or**

- (b) if the Vice President is absent from Zambia or is for any reason unable to discharge the executive functions, such member of the Cabinet as Cabinet shall elect shall perform the executive functions:

Provided that any person performing the executive functions under this clause shall not dissolve Parliament or, except on the advice of the Cabinet, revoke any appointment made by the President.

(3) Any person performing the functions of the office of President by virtue of clause (2) shall cease to perform those functions if the person is notified by the Speaker that the President is about to resume those functions or if another person is elected as, and assumes the office of, President.

(4) For the purpose of clause (2), a certificate of the Chief Justice that -

- (a) the President is incapable by reason of physical or mental infirmity of performing the functions of the President's office and that the infirmity is of such a nature that the President is unable to authorise another person under this Article to perform those functions; or
- (b) the Vice-President is by reason of physical or mental infirmity unable to discharge the functions of office;

shall be of no effect until such certificate is ratified by the National Assembly:

Provided that any such certificate as is referred to in paragraph (a) shall cease to have effect if the Speaker notifies any person under clause (3) that the President is about to resume the functions of the office of the President or if another person is

elected as, and assumes the office of, President.”

**13.13 Article 134 : Oath of President**

**13.14.1 Recommendation of the Commission**

The Commission recommended that the Constitution should provide for the Oath of President.

**13.14.2 Provisions in the Mung’omba Draft Constitution on Oath of President**

Article 134 provides as follows:

**“134. A person who assumes the office of President shall, before that person performs any executive function, take the Presidential Oath, as set out in the Third Schedule.”**

**13.14.3 Deliberations of the Conference on Article 134**

The Conference decided that the Oath should be in an Act of Parliament which would be easy to amend. Accordingly the Conference decided that the Oath of President should not be in a schedule to the Constitution.

**13.14.4 Resolution of the Conference**

Accordingly, the Conference adopted Article 134 with amendments and renumbered it as Article 118 as follows:

**“118. A person assuming the office of President shall, before entering the office, take and subscribe to such oath as may be prescribed by or under an Act of Parliament.”**

**13.15 Article 135: Emoluments of President**

**13.15.1 Recommendations of the Commission**

13.15.1.1 The Commission recommended that there should be no prohibition against upward adjustment of remuneration of the President and other constitutional office holders during their term of office but instead the Constitution should provide that remuneration of these

office holders shall be determined by the National Assembly on the recommendation of the National Fiscal and Emoluments Commission, to be established as recommended by the Constitution Review Commission.

- 13.15.1.2 The Commission further recommended that the Constitution should provide that a former President shall be entitled to:
- (a) gratuity at the end of each term of office in accordance with the normal practice in employment on fixed contracts;
  - (b) receive a living allowance during his or her lifetime and any other benefits as may be prescribed by an Act of Parliament, with an exception that a former President who has been impeached or removed from office in accordance with the provisions of the Constitution or who has been convicted of an offence for anything done or omitted to be done during tenure of the office of President should not be entitled to a living allowance; and
  - (c) all the benefits except for a living allowance, irrespective of participation in active politics.

## **13.15.2 Provisions in the Mung'omba Draft Constitution on Emoluments of President**

Article 135 provides as follows:

**"135. (1) The emoluments of the President shall be emoluments as recommended by the Emoluments Commission and specified in an Act of Parliament.**

**(2) The emoluments of the President shall be a charge on the Consolidated Fund and shall not be altered to the disadvantage of the President during the term of office.**

**(3) Subject to Article 136, a person who has held the office of President shall be paid, at the end of each term of office, such emoluments recommended by the Emoluments Commission, and specified by an Act of Parliament.**

**(4) The emoluments of a person who 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.**

**(5) In addition to the emoluments specified in clause (3), a person who has held the office of President**



shall be paid a living allowance, recommended by the Emoluments Commission and specified in an Act of Parliament, if that person -

- (a) has completed a term of office as President;
- (b) does not participate in active party political activities as prescribed by an Act of Parliament; or
- (c) has not been convicted of a criminal offence as a result of the National Assembly removing that person's immunity under Article 136.

(6) Subject to clause (7), a person referred to under clause (5) shall, for purposes of clause (5) (a), be deemed to have completed a term of office if that person served for at least three years as President.

(7) If a President is removed from office under Article 131 that person shall not be entitled -

- (a) to the living allowance specified under clause (5); and
- (b) to the portion of any gratuity or other benefits remaining to be accrued to that person for the unexpired term of office."

### **13.15.3 Deliberations of the Conference on Article 135**

13.15.3.1 In the discussion on Article 135 (1), most members were opposed to the establishment of the National Fiscal and Emoluments Commission to determine salary and other emoluments of the President. Members were concerned that the establishment of an Emoluments Commission would be an added cost to Government. The members also argued that providing for the Commission would duplicate the functions of the Ministry responsible for Finance. They added that the proposed Emoluments Commission was not necessary because apart from there being too many established Commissions, the Commission would be subjected to accusations of according allegiance to the appointing authority.

13.15.3.2 The members who did not support the provisions of Article 135 further submitted that Members of Parliament did not sit to determine their own salaries. It was stated that all along, emoluments of the President and other Constitutional Office holders were proposed by a Parliamentary Select Committee which took into account what was applied to the Public Service unions.

Thereafter, the proposals were submitted to Cabinet for consideration.

13.15.3.3 The members who supported the establishment of the Commission argued that its establishment would solve the problem of leaders who were being accused of hiking their own salaries. They observed that the issue of emoluments had always generated controversy and was a source of public ridicule targeted towards Members of Parliament. It was pointed out that most of the time, the public questioned why Parliament should decide its own salaries. In addition, those who supported the creation of the Commission argued that it would be more neutral and most suited to debate emoluments of leaders such as the President.

13.15.3.4 In the course of the debate, members decided to reject the formation of the Emoluments Commission. They opted for retention of the status quo by adopting Article 42 (1) of the current Constitution which provides as follows:

**“The President shall receive such salary and allowances as may be prescribed by an Act of Parliament; and they shall be a charge on the general revenues of the Republic.”**

13.15.3.5 With regard to Article 135 (2). The Conference adopted clause (2) but amended the term “*Consolidated Fund*” to read “*National Treasury Account*” as earlier decided.

13.15.3.6 Regarding Article 135 (3) some members supported the adoption of the Article but decided to make a consequential deletion of “National Fiscal and Emoluments Commission”. In further discussion, members referred to Article 42 (3) in the current Constitution and found it more suitable. The Conference, therefore, decided to replace Article 135 (3) with Article 42 (3) of the current Constitution and that “general revenues” in Article 42 (3) be replaced with “National Treasury Account”.

13.15.3.7 The Conference approved Article 135 (4) with the substitution of “Consolidated Fund” with “National Treasury Account”.

13.15.3.8 With regard to Article 135 (5), some members proposed that clause (5) be adopted because it provided for a living allowance for the President. Other members argued that the clause was not necessary

because it was covered under Article 135 (3) and (4). The members further explained that the drafters of the Draft Constitution included a living allowance because there was no provision for pension and gratuity. The members agreed that Article 135 (5) be dropped but that clauses 5 (a) and (b) be accepted and applied to emoluments paid to the President.

- 13.15.3.9 Regarding Article 135 (5) (c), those members who supported the clause argued that the provision would provide a good lesson to aspirants for the presidency and that it would protect the integrity of the presidency.
- 13.15.3.10 While supporting payment of a pension, some members questioned the merit behind giving gratuity to a criminal in view of the fact that gratuity was one way of thanking a person for the good work done. The members who advocated for the dropping of this clause argued that adopting it would amount to providing for double punishment. They submitted that it was traumatic enough for a President who had already served a sentence to have the immunity removed. The members also argued that it would be inappropriate to take away accrued benefits for whatever reason. In addition it was submitted that the objective of punishment was to enable the guilty to reform and not to aggravate their situation or condition. In view of this, the Conference decided that Article 135 (5) (c) be dropped.
- 13.15.3.11 In discussing Article 135(6), some members argued that a President whose election was nullified and a President who was impeached should not get full benefits or gratuity. The members also expressed the view that the period of three years should not be specified but that the benefits under Article 135 (6) should be calculated on *pro-rata* basis for any period served. The Conference, adopted Article 135 (6) with a proviso that payment of benefits be on *pro-rata* basis.
- 13.15.3.12 In discussing Article 135 (7), some members observed that under labour laws, a person who was summarily dismissed forfeited all his or her benefits. Other members, however, argued that a person should not be made to suffer twice. Some members submitted that the Article was redundant because it addressed the same issues covered under Article 135 (6). The Conference, therefore, agreed to delete Article 135 (7).

- 13.15.3.13 In discussing the term of office served, some members wondered whether:
- (a) a person who had served 4 years of a 5 year term would have been considered to have completed his or her term; and
  - (b) it was specified in the 2008 elections that the term of office of whoever won the presidential race would expire in September, 2011.
- 13.15.3.14 In debating the provision of paragraph (b) of clause (5), some members observed that there was a need for a definition or clarification of what constituted active politics.
- 13.15.3.15 It was clarified that the provision did not delve into the details of what connoted “active politics” because it would be difficult to do so in the Constitution, but was better provided for under an Act of Parliament.
- 13.15.3.16 On the question of participation in active politics, some members observed that to provide that Parliament would determine what constituted active political party politics would be shifting a constitutional responsibility to Parliament when the validity of Parliament determining what was active must derive authority from the Constitution. The members argued that there should be no *lacuna* which would allow Parliament to exceed its prescription.
- 13.15.3.17 Some members proposed that paragraph (c) of clause (5) of Article 135 be deleted because it would:
- (a) provide for double punishment;
  - (b) it was enough humiliation for a President who had already served a sentence to have their immunity removed;
  - (c) be inappropriate to take away accrued benefits in any event; and
  - (d) the objective of punishment was to enable the offender reform and not to perpetuate the punishment.
- 13.15.3.18 Some members observed that deleting the clause was a serious omission and proposed that it should be retained. The members who supported the re-instatement of the clause argued that:

- (a) although accrued rights could not be taken away, there were certain rights which a person who was dismissed should forfeit by reason of that dismissal;
- (b) it would be morally wrong for a convicted person to still be entitled to emoluments;
- (c) the President enjoyed immunity during the tenure of office, so conviction was only possible after removal of immunity. The emoluments were a reward from the nation indicating that the person had served the people with honour; and
- (d) in employment practice and law, long-serving employees forfeited their terminal benefits if they were dismissed for gross misconduct. Therefore, a duly convicted President should not be rewarded with lofty payment and a retirement package.

13.15.3.19 Other members argued that the objective of the punishment was to enable the guilty person to reform and not to aggravate their situation or condition.

13.15.3.20 The members who supported the deletion of the clause argued that:

- (a) accrued rights could not be taken away;
- (b) a President who had completed a term of office deserved to be paid his or her emoluments; and
- (c) the accrual of rights arose from the tenure of office, and could not be taken away if a President was guilty of misappropriation. He or she could be punished in civil courts.

13.15.3.21 The Conference approved clause (6) which provided that a President who was impeached or whose election was nullified by the Constitutional Court should not receive benefits.

13.15.3.22 As regards clause (7) of Article 135, the Conference decided to delete the clause.

#### **13.15.4 Resolutions of the Conference**

13.15.4.1 The Conference adopted clauses (1) to (6) and deleted clause (7) of Article 135.

13.15.4.2 Accordingly, the Conference adopted Article 135 with amendments and renumbered it as Article 119 as follows:

**"119. (1) The President shall receive such emoluments as may be prescribed by or under an Act of Parliament.**

**(2) The emoluments of the President shall be a charge on the National Treasury Account and shall not be altered to the disadvantage of the President during the term of office.**

**(3) Subject to clause (5), a person who has held the office of President shall receive such emoluments as may be prescribed by or under an Act of Parliament.**

**(4) The emoluments of a person who has held the office of President shall be a charge on the National Treasury Account and shall not be altered to the disadvantage of that person.**

**(5) A person who has held the office of President shall be entitled to receive the emoluments provided for under clause (3) if that person -**

**(a) has completed a term of office as President; or**

**(b) does not participate in active politics as prescribed by an Act of Parliament.**

**(6) A person referred to in clause (5) shall, for purposes of clause (5) (a), be deemed to have completed a term of office if that person serves for such period as may be prescribed by an Act of Parliament, and any payment for the period served which is less than the prescribed period, shall be made on a pro rata basis."**

**13.16 Article 136 : Protection of President from Legal Proceedings**  
**13.16.1 Recommendations of the Commission**

The Commission recommended that the Constitution should provide the following:

- (a) that a former President should enjoy absolute immunity from legal proceedings only in respect of civil and criminal proceedings for acts committed or omissions made in the course of duty;
- (b) that a former President shall enjoy immunity from civil and criminal proceedings for acts committed or omissions made in their private capacity, but this immunity may be removed by the National Assembly on a resolution supported by at least two-thirds of all Members of Parliament;
- (c) that the allegation in respect of which it is proposed to remove a former President's immunity should be

- heard by a Select Committee which should table a report before the House;
- (d) the former President should be given an opportunity to be heard by the Committee;
  - (e) the lifting of immunity should be restricted to the grounds on which the immunity is lifted and the immunity should be restored if the former President is acquitted of the charges or is not prosecuted within 90 days; and
  - (f) the power to remove a former President's immunity continues to be reposed in the National Assembly which represents popular sovereignty.

### **13.16.2 Provisions in the Mun'gomba Draft Constitution on Protection of President from Legal Proceedings**

Article 136 provides as follows:

**"136. (1) Civil proceedings shall not be instituted or continued against the President or a person performing the executive functions in respect of anything done or omitted to be done in the performance of an executive function.**

**(2) The President or a person performing the executive functions shall, subject to clauses (3) and (6), be immune from criminal proceedings in respect of the performance of those executive functions.**

**(3) Where there is prima facie evidence that a person who held the office of President committed any criminal offence when performing the executive functions, the President shall submit a report of such evidence to the National Assembly.**

**(4) Where the National Assembly receives a report under clause (3), the Assembly shall constitute an ad hoc select committee to look into the matter and determine whether or not the immunity of the person who held the office of President should be removed 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) The National Assembly may, on the recommendation of the select committee constituted under**

**clause (4), remove the immunity from legal proceedings granted under this Article, from any person who has held office as President by a resolution supported by a vote of not less than two-thirds of all the members of the Assembly.”**

### **13.16.3 Deliberations of the Conference on Article 136**

- 13.16.3.1 In discussing the Article, some members observed that clause (1) of Article 136 did not bring relief of claim and that it was not clear whether that clause included some civil proceedings which did not call for relief. It was suggested that the clause be made clearer to ensure that the President was not subjected to civil claims that could preoccupy his or her time at the expense of performing executive functions.
- 13.16.3.2 The members made reference to Article 43 clause (1) and (2) in the current Constitution and observed that the Article was clearer and more satisfactory compared to clauses (1) and (2) of Article 136 of the Mung’omba Draft Constitution.
- 13.16.3.3 Some members argued that clause (3) of Article 136 was redundant. However, other members observed that clause (3) of Article 136 did not provide steps on the procedure to be followed in handling the matter and proposed that a mechanism be put in place.
- 13.16.3.4 Some members expressed concern with regard to clause (3) of Article 136 where the incumbent might have had differences with his or her predecessors, the process could be manipulated against the accused who might be denied the opportunity to defend him or herself before Parliament. It was stated that the mechanism should exclude the mover of charges from also being the judge.
- 13.16.3.5 The members, however, recognised that the sitting President would have privileged information on the matter and as such was best suited to submit evidence to the National Assembly.
- 13.16.3.6 In the continued discussion, members took note that clauses (3), (4), (5) and (6) of Article 136 described the procedure for handling alleged crimes purported to have been committed by a person who held the office of President. Some members raised objections against allowing a sitting President to be the one who should



submit evidence to the National Assembly on the allegations levelled against his or her predecessor.

- 13.16.3.7 Some members observed that clause (4) was worth adopting because it did not provide for the involvement of the person who would have placed the charge (s). However, other members expressed discomfort that the proposed Ad-hoc Select Committee could be compromised against a former Head of State whose immunity was to be removed.
- 13.16.3.8 In further discussion, other members found difficulties with Article 136 (4) in that the report received by the National Assembly would be based on the evidence brought determined by the sitting President as reflected under clause (3). The members proposed that the evidence should be established by an Ad-hoc Select Committee of Parliament.
- 13.16.3.9 Some members proposed that the word “prima facie” in clause (3) be replaced with the word “allegation”.
- 13.16.3.10 In further discussion, some members opposed the suggestion to replace “prima facie” with “allegation”. The members argued that:
- (a) many allegations could be raised against the President without any proof whereas when a prima facie case would be established, there would be adequate evidence to take the case forward;
  - (b) the National Assembly would be saddled with the responsibility to investigate the veracity of allegations; and
  - (c) it would allow frivolous and vexatious reports.
- 13.16.3.11 The members who supported the proposal to replace the term “prima facie” with the term “allegation”, argued that there were laid down procedures which would establish the truth and throw out the invalid claims at some stage.
- 13.16.3.12 Further, some members proposed that individual citizens should also be allowed to submit evidence to the National Assembly. The members observed that, if the sitting President was close to the former President, he or she could decide not to submit such evidence on criminal offences committed by the former President. It was also suggested that a proviso be included to penalise individuals who submitted evidence based on malice.

- 13.16.3.13 The members who supported the procedure stipulated under Article 136 re-iterated the proposal that only the sitting President should be empowered to submit evidence to Parliament on alleged crimes committed by his or her predecessor.
- 13.16.3.14 Some members expressed concern over a proposal to allow individuals to bring allegations to Parliament. They were of the view that such a right would be abused. It was stated that the Executive would, in the course of time, make decisions that would not please every citizen. It was proposed that a provision be made for such citizens to have freedom to consult with the new Executive who would examine the allegations and include those with merit in the particulars against a former President. Some members expressed concern that, making it easy for the Executive to be abused would undermine their ability to execute the executive functions. The members stressed that a former President would have a lot of important vital information and must be protected lest he or she be open to abuse. It was, therefore, suggested that there should only be one channel for removal of immunity of the President to be followed. It was also observed that there were adequate arms of Government through which aggrieved individuals could forward their allegations.
- 13.16.3.15 With regard to the process, it was agreed that the procedure specified in the Draft Constitution where an ad-hoc select committee would have the responsibility to handle the matter and determine whether or not the immunity of the person who held the office of the President should be removed.
- 13.16.3.16 Concerning Article 136 (5), members found the clause clear and straightforward and, therefore, adopted it.
- 13.16.3.17 On Article 136 (6) some members sought clarification whether after removal of immunity, a former President could be prosecuted on other matters not included in the evidence submitted to Parliament. Members were of the view that it was justified to give evidence on matters connected to the charges specified in the evidence given to Parliament. Some members, however, argued that it would be unfair to bring in new charges. The members argued that allowing evidence not raised in Parliament would expose a former President to an endless inflow of frivolous and malicious claims.

- 13.16.3.18 In conclusion, the Committee adopted Article 136 (6) as provided in the Draft Constitution.
- 13.16.3.19 On Article 136 (7), the Conference considered clause (7) harmonised as follows:  
**“(7) 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 (6).”**
- 13.16.3.20 In considering the provision, clarification was sought on the expression “being represented”. It was clarified that under the law, representation could be by a legal practitioner, or any person that person elected.
- 13.16.3.21 The Conference approved the harmonised clause.
- 13.16.3.22 On Article 136 (8), the Conference debated clause (8) harmonized as follows:  
**“(8) The National Assembly may, on the recommendation of the select committee constituted under clause (6), remove the immunity from legal proceedings granted under this Article, from any person who has held office as President by a resolution supported by a vote of not less than two-thirds of all the members of the National Assembly.”**
- 13.16.3.23 In debating the provision, members sought clarification on procedure of re-instating immunity in the event of the accused person being proved innocent. It was clarified that where the immunity of a person was lifted, a court would only find a person guilty on the basis of the allegations that were brought against him or her. It was therefore stated that the removal of immunity was specific to the charges that were specified in the notice.
- 13.16.3.24 The Conference approved the harmonised clause (8).
- 13.16.3.25 On Article 136 (9), the Conference considered and approved clause (9) harmonized as follows:  
**“(9) Where the immunity from legal proceedings is removed from a person who held the office of President under clause (8), a court shall try the person only on the charges for which the immunity is removed by the National Assembly.”**

13.16.3.26 In approving clause (9), the Conference adopted a proposal to expressly provide for restoration of immunity where a person was acquitted by a court of the allegations brought against him or her.

13.16.3.27 The Conference added clauses (10), (11) and (12) to Article 136 in order to provide for restoration of immunity of the President.

#### **13.16.4 Resolutions of the Conference**

The Conference adopted Article 136 with amendments and renumbered it as Article 120 as follows:

**“120. (1) Civil proceedings shall not be instituted or continued against a person holding the office of President or performing the functions of that office in respect of which relief is claimed against that person in respect of anything done or omitted to be done in that person’s private capacity.**

**(2) A person holding the office of President or performing the functions of that office shall not be charged with any criminal offence or be amenable to the criminal jurisdiction of any court in respect of any act done or omitted to be done during that person’s tenure of office or, as the case may be, during that person’s performance of the functions of that office.**

**(3) Subject to the other provisions of this Article, a person who has held, but no longer holds, the office of President shall not be charged with a criminal offence or be amenable to the criminal jurisdiction of any court, in respect of any act done or omitted to be done by that person in that person’s personal capacity while the person held office of President, unless the National Assembly has, by resolution under clause (9), determined that such proceedings would not be contrary to the interests of the State.**

**(4) A notice in writing to the Speaker, signed by not less than one-third of all the members of the National Assembly, may allege that a person who held the office of President committed a criminal offence in that person’s personal capacity during that person’s tenure of office.**

**(5) A notice under clause (4) shall specify the particulars of the allegations.**

(6) The Speaker shall, after receipt of the notice submitted under clause (4), within seven days of the notice

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- (a) cause a copy of the notice to be served on the person who held the office of President; and
- (b) if the National Assembly is sitting, submit such notice to the National Assembly:

Provided that if at the time the notice under clause (4) is received by the Speaker, the National Assembly is adjourned or prorogued, the Speaker shall submit the notice to the National Assembly within seven days after the National Assembly is convened.

(7) Where the National Assembly receives a notice under clause (6) (b), the National Assembly shall constitute an ad hoc select committee to look into the matter and determine whether or not the immunity of the person who held the office of President should be removed and recommend its decision to the National Assembly.

(8) 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 (7).

(9) The National Assembly may, on the recommendation of the select committee constituted under clause (7), remove the immunity from legal proceedings granted under this Article, from any person who has held office as President by a resolution supported by a vote of not less than two-thirds of all the members of the National Assembly.

(10) Where the immunity from legal proceedings is removed from a person who held the office of President under clause (9), a court shall try the person only on the criminal charges for which the immunity is removed by the National Assembly.

(11) For the avoidance of doubt, where a Court acquits a person who held the office of President of the criminal charges for which the immunity from legal proceedings was removed by the National Assembly, the immunity of that person shall, without further proceedings, immediately be restored.

(12) Where provision is made by law limiting the time within which proceedings of any description may be brought against any person, the term of any person in the office of President shall not be taken into account in

calculating any period of time prescribed by that law which determines whether any proceedings referred to in clause (1) and (3) may be brought against the person.”

**13.17 Article 137 : Functions of the President**

**13.17.1 Recommendations of the Commission**

The Commission recommended that:

- (a) the President should, in appropriate cases, retain the power to make appointments subject to Parliamentary ratification;
- (b) where necessary, the President should be required to make such appointments on the advice of or in consultation with service Commissions or similar instructions, as appropriate; and
- (c) where the Executive has exclusive jurisdiction over an office, the President should have power to override a decision of the National Assembly but where the Executive does not have such exclusive jurisdiction, the decision of the National Assembly should prevail.

**13.17.2 Provisions in the Mun’gomba Draft Constitution on Functions of the President**

Article 137 provides as follows:

**“137. (1) The President shall perform with dignity and integrity the acts that are necessary or expedient for, or reasonably incidental to, the performance of the executive functions of the State, subject to the overriding terms and spirit of this Constitution and the Laws which the President is obliged to protect, administer and execute.**

**(2) Without limiting clause (1), the President may preside over the meetings of the Cabinet and may, subject to this Constitution -**

- (a) accredit and appoint Ambassadors, High Commissioners, plenipotentiaries, diplomatic representatives and consuls;**
- (b) receive and recognise foreign ambassadors and heads of international organisations;**

- (c) **pardon or reprieve offenders, unconditionally or subject to any condition;**
- (d) **negotiate international agreements and treaties and, subject to the National Assembly approving the final draft of the agreements or treaties, ratify or accede to such international agreements and treaties;**
- (e) **establish and dissolve Government ministries and departments, subject to the approval of the National Assembly;**
- (f) **confer honours on citizens, residents and friends of Zambia, after consultation with relevant interested persons and institutions;**
- (g) **initiate Bills for submission to, and consideration by, the National Assembly; and**
- (h) **perform any other function specified by this Constitution or by or under any other law."**

### **13.17.3 Deliberations of the Conference on Article 137**

13.17.3.1 In discussing Article 137 (1), some members sought clarification on the inclusion of the phrase "spirit of this Constitution" in the paragraph when that was not the case in the current Constitution. An explanation was given that the terms were meant to endorse the strength and character of the Constitution. Other members argued that the provision in the Draft Constitution was inadequate and did not give much power to the President. The members observed that Article 44 in the current Constitution was more comprehensive as it conferred more functions to the President.

13.17.3.2 On the contrary, some members were of the view that Article 137 in the Draft Constitution had more meaning than Article 44 in the current Constitution. The members observed that the use of the phrase "the discharge of the executive function of Government" in Article 44 of the current Constitution limited the horizon of the functions of the President. They stated that the Draft Constitution provided for the executive function of the State which gave the President a wider spectrum of operations as opposed to the provision in the current Constitution which refers to the discharge of the executive function of Government. Further, some members argued that the use of the phrase "perform with dignity and

integrity” as opposed to the use of “perform with dignity and leadership” enriched the provision in the Draft Constitution. The Conference, therefore, adopted Article 137 (1).

### **13.13.3 Resolutions of the Conference**

13.13.3.7 The Conference adopted Article 137 as follows:

- (a) that Article 137(1) in the Draft Constitution be adopted;
- (b) that the opening paragraph of Article 44 (2) from the current Constitution replaces the opening paragraph of Article 137 (2) of the Draft Constitution;
- (c) that Article 137(2) (a), (b), (c), (d), (e), (f), (g) and (h) be adopted; and
- (d) that Article 137 (2) and Article 44 of current Constitution be harmonised, if need be.

13.17.4.2 Accordingly, the Conference adopted Article 137 with amendments and renumbered it as Article 121 as follows:

**“121. (1) The President shall perform with dignity and integrity the acts that are necessary or expedient for, or reasonably incidental to, the performance of the executive functions of the State, subject to the overriding terms and spirit of this Constitution and the laws which the President is obliged to protect, administer and execute.**

**(2) Without prejudice to the generality of clause (1), the President may preside over meetings of the Cabinet and shall have the power, subject to this Constitution to-**

- (a) dissolve the National Assembly as provided in Article 185;**
- (b) accredit and appoint Ambassadors, High Commissioners, plenipotentiaries, diplomatic representatives and consuls;**
- (c) receive and recognise foreign ambassadors and heads of international organisations;**
- (d) pardon or relieve offenders, unconditionally or subject to any condition;**
- (e) negotiate international agreements and treaties and, subject to the National Assembly approving the final draft of**



- the agreements or treaties, ratify or accede to such international agreements and treaties;
- (f) establish and dissolve Government ministries and departments, subject to the approval of the National Assembly;
- (g) confer honours on citizens, residents and friends of Zambia, after consultation with relevant interested persons and institutions;
- (h) initiate Bills for submission to, and consideration by, the National Assembly; and
- (i) perform any other function specified by this Constitution or by or under any other law."

## **13.18 Article 138 : Declaration of War**

### **13.18.1 Recommendations of the Commission**

The Commission recommended:

- (a) that approval of the National Assembly by a two-thirds majority should be obtained in matters of declaration of war and rendering of military service and peace keeping missions to other countries; and
- (b) that the President should have power to take any necessary measures in defence of the country in circumstances not amounting to a declaration of war, and these measures should be subjected to ratification by the National Assembly within seven days.

### **13.18.2 Provisions in the Mun'gomba Draft Constitution on Declaration of War**

Article 138 provides as follows:

**"138. (1) The President may, in consultation National Assembly, signified by a resolution supported by not less than two-thirds of all the members of the Assembly, declare war between Zambia and any other country.**

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

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

(4) 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 ratification of the Assembly as soon as is reasonably practicable after the declaration."

### 13.18.3 Deliberations of the Conference on Article 138

13.18.3.1 In discussing Article 138 (1), most of the members did not accept the provision requiring the President to consult Cabinet and getting prior approval of the National Assembly. These members argued that, while this might have been relevant to wars of the 1960s or to guerrilla warfare, it was not true of modern warfare which needed swift action. It was further observed that intelligence information could be leaked to enemies and the country attacked while making consultations. In view of this possibility, it was preferred that the President should be in a position to make urgent decisions and act without consulting National Assembly. The members observed that Article 29 in the current Constitution was more thorough than Article 138 in the Draft Constitution. Article 29 provides as follows:

**"29. (1) The President may, in consultation with Cabinet, at any time, by proclamation published in the *Gazette* declare war.**

**(2) A declaration made under clause (1) shall continue in force until the cessation of hostilities.**

**(3) An Act of Parliament shall provide for the conditions and circumstances under which a declaration may be made under clause (1) ."**

13.18.3.2 Some members, however, argued that since National Assembly was the representative of the people, it was important that it should be consulted when making important decisions, such as declaration of war, because such decisions affected people and approval by the National Assembly was, therefore, necessary. These members further argued that it was imperative that the National Assembly

should be consulted because of the far reaching cost implications of war. However, those in support of facilitating effective decision making and swift military response argued that consultations should be made later.

13.18.3.3 In the debate, most members were in favour of the proposal to amend clause (1) and argued as follows:

- (a) that war should not be declared publicly as it was about life and death. In that respect the President should be left to discuss with a small Committee the issues related to the declaration of war;
- (b) that some political parties that were against the party in Government could leak out sensitive information discussed in Parliament on the war to the enemies;
- (c) that the Draft Constitution provision was extremely dangerous because if there was a country "itching" to go to war with Zambia, debating the matter in Parliament would not be safe; and
- (d) that there should be no notice on matters of war as it was a dangerous endeavour. It was, therefore, argued that the President could not consult Parliament.

13.18.3.4 Other members who were in support of the Mung'omba Draft Constitution provision stated that:

- (a) declaration of war was a grave matter which required broad consultation; and
- (b) that clause (1) of the Mung'omba Draft Constitution had a number of inbuilt safeguards which would ensure that the decision to proceed to war within a country should be sufficiently supported by consensus of the people's representatives.

13.18.3.5 After the debate, the Conference resolved to amend Article 138.

#### **13.18.4 Resolutions of the Conference**

The Conference adopted Article 138 with amendments and renumbered it as Article 122 as follows:

**"122. (1) The President may, in consultation with Cabinet, at any time, by Proclamation published in the Gazette, declare war.**

**(2) A declaration made under clause (1) shall continue in force until the cessation of hostilities.**

**(3) An Act of Parliament shall provide for the conditions and circumstances under which a declaration may be made under clause (1)."**

**13.19 Article 139 : Declaration of State of Public Emergency**

**13.19.1 Recommendation of the Commission**

The Commission recommended that the President should have power to take any necessary measures in defence of the country in circumstances not amounting to a declaration of war, and these measures should be subjected to ratification by the National Assembly within seven days.

**13.19.2 Provisions in the Mun'gomba Draft Constitution on Declaration of State of Public Emergency**

Article 139 provides as follows:

**"139. (1) When there is a state of war, an invasion, general 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 after such cessation and the President or the National Assembly shall declare 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 emergency laws or powers in force during a state of public emergency shall cease to have**

effect after the cessation of hostilities or other public emergency.

(5) 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.

(6) Any legislation that concerns a state of public emergency or any legislation enacted or any action taken in consequence of a declaration of a state of public emergency shall not permit or authorize indemnifying the State or any person in respect of an unlawful act.”

### **13.19.3 Deliberations of the Conference on Article 139**

13.19.3.1 In the discussion, some members found the provisions of Article 139 necessary but not adequate. Members wondered why in Article 139 (2) (c) in the Draft Constitution, the National Assembly should be involved when its role was not provided for in the initial declaration of the state of emergency provided under Article 139 (1). Other members submitted that unlike Article 30 (2) of the current Constitution, the Draft Constitution did not specify the time-frame within which the declaration of state of emergency would cease to have effect. They also observed that whereas Article 30 (2) in the current Constitution specified the requirement with regard to the passing of the resolution by Parliament, the Draft Constitution was silent.

13.19.3.2 With regard to the provisions omitted in the Draft Constitution, it was explained that Article 139 was drafted on the premise that details, including circumstances under which a declaration would be made, would be provided for under an Act of Parliament. This was the purpose of Article 139 (3).

13.19.3.3 Members contrasted Article 139 with Article 30 in the current Constitution and found the latter to be more comprehensive. The members, therefore, proposed that the entire Article 139 be replaced with Article 30 of the current Constitution.

13.19.3.4 Article 30 of the current Constitution provides as follows:

**"30. (1) The President may, in consultation with Cabinet, at any time, by Proclamation published in the *Gazette* declare that a State of public emergency exists.**

**(2) A declaration made under clause (1) of this Article shall cease to have effect on the expiration of a period of seven days commencing with the day on which the declaration is made unless, before the expiration of such period, it has been approved by a resolution of the National Assembly supported by a majority of all the members thereof not counting the Speaker.**

**(3) In reckoning any period of seven days for the purposes of clause (2) account shall not be taken of any time during which Parliament is dissolved.**

**(4) A declaration made under clause (1) may, at any time before it has been approved by a resolution of the National Assembly, be revoked by the President by Proclamation published in the *Gazette*.**

**(5) Subject to clause (6) a resolution of the National Assembly under clause (2) will continue in force until the expiration of a period of three months commencing with the date of its being approved or until revoked at such earlier date of its being so approved or until such earlier date as may be specified in the resolution:**

**Provided that the National Assembly may, by majority of all the members thereof, not counting the Speaker extend the approval of the declaration for periods of not more than three months at a time.**

**(6) The National Assembly may, by resolution, at any time revoke a resolution made by it under this Article.**

**(7) Whenever an election to the office of President results in a change of the holder of that office, any declaration made under this Article and in force immediately before the day on which the President assumes office shall cease to have effect on the expiration of seven days commencing with that day.**

**(8) The expiration or revocation of any declaration or resolution made under this Article shall not affect the validity or anything previously done in reliance on such declaration."**

#### 13.19.4 Resolutions of the Conference

The Conference resolved to replace Article 139 of the Mung'omba Draft Constitution with Article 30 of the current Constitution and renumbered it as Article 123 as follows:

**"123. (1) The President may, in consultation with Cabinet, at any time, by Proclamation published in the Gazette declare that a State of public emergency exists.**

**(2) A declaration made under clause (1) of this Article shall cease to have effect on the expiration of a period of seven days commencing with the day on which the declaration is made unless, before the expiration of such period, it has been approved by a resolution of the National Assembly supported by a majority of all the members thereof not counting the Speaker.**

**(3) In reckoning any period of seven days for the purposes of clause (2) account shall not be taken of any time during which Parliament is dissolved.**

**(4) A declaration made under clause (1) may, at any time before it has been approved by a resolution of the National Assembly, be revoked by the President by Proclamation published in the Gazette.**

**(5) Subject to clause (6) a resolution of the National Assembly under clause (2) will continue in force until the expiration of a period of three months commencing with the date of its being approved or until revoked at such earlier date of its being so approved or until such earlier date as may be specified in the resolution:**

**Provided that the National Assembly may, by majority of all the members thereof, not counting the Speaker extend the approval of the declaration for periods of not more than three months at a time.**

**(6) The National Assembly may, by resolution, at any time revoke a resolution made by it under this Article.**

**(7) Whenever an election to the office of President results in a change of the holder of that office, any declaration made under this Article and in force immediately before the day on which the President assumes office shall cease to have effect on the expiration of seven days commencing with that day.**

**(8) The expiration or revocation of any declaration or resolution made under this Article shall not affect the**

validity or anything previously done in reliance on such declaration."

**13.20            Article 140 : Declaration of Threatened State of Public Emergency**

**13.20.1           Recommendation of the Commission**

The Commission recommended that the President should have power to take any necessary measures in defence of the country in circumstances not amounting to a declaration of war, and these measures should be subject to ratification by the National Assembly within seven days.

**13.20.2           Provisions in the Mun'gomba Draft Constitution on Declaration of Threatened State of Public Emergency**

Article 140 provides as follows:

**"140. (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 all the members of the Assembly, 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 any legislation enacted or any 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)    Any 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 all the members of the Assembly.**



(5) Any legislation that concerns a threatened state of public emergency or any legislation enacted or any action taken in consequence of a declaration of a threatened state of public emergency shall not permit or authorize indemnifying the State or any person in respect of an unlawful act."

**13.20.3 Deliberations of the Conference on Article 140**

13.20.3.1 In discussing Article 140 (1), some members questioned the need for the President to seek prior approval of the National Assembly before declaring the existence of a threatened state of emergency. They expressed concern that the use of the word "prior" in the second line of clause (1) placed a restriction even under circumstances when urgent action would be a necessity.

13.20.3.2 The members made reference to the current Constitution and recommended the replacement of Article 140 (1) with Article 31(1) of the current Constitution which reads:

**"31 (1) The President may at any time by the Proclamation published in the *Gazette* declare that a situation exists which, if is allowed to continue may lead to a state of public emergency."**

13.20.3.3 Some members observed that Article 140 (1) dealt with threatened emergency which implied that the situation had not yet reached the stage requiring a declaration to be made. However, other members pointed out that it was easier to stop such a situation in its infancy. They submitted that the authority of the President to effectively carry out the executive functions should not be curtailed by National Assembly as that would impede the performance of executive functions. They added that what was needed was to ensure checks and balances.

13.20.3.4 Other members submitted that since the declaration of threatened state of emergency limited peoples' rights, it was essential to provide for the involvement of the National Assembly and that, for the same reason, the resolution to declare a threatened state of emergency should be supported by not less than two-thirds of all Members of the National Assembly. It was argued, in support of this requirement, that the need for two-thirds majority vote applied to all weighty Constitutional matters, which included declaration of a threatened state of emergency. Members took note of the

explanation that the provision on the two-thirds majority did not apply to every issue. The Conference was referred to Article 84 (1) in the current Constitution where it is provided that:

**“Except as otherwise provided in this Constitution, all questions at any sitting of the National Assembly shall be determined by a majority of votes of the members present and voting other than the Speaker or the person acting as Speaker as the case may be.”**

- 13.20.3.5 The Conference decided to replace Article 140 (1) with Article 31(1) in the current Constitution.
- 13.20.3.6 Members observed that Article 140 (2) should be deleted as a consequence of the replacement of Article 140 (1) with Article 31 (1) in the current Constitution. The Conference, therefore, decided to delete clause (2) of Article 140.
- 13.20.3.7 The members examined Article 140 (3) and decided to replace it with Article 31 (2) in the current Constitution. It was further observed that Article 140 (4) was covered under Article 31(2) in the current Constitution and was therefore, dropped.
- 13.20.3.8 In discussing Article 140 (5), some members were of the view that the clause should be maintained because it provided for the right to challenge ultra-vires actions of the Government. The members were of the view that Article 140 (5) would protect the public from abuse or arbitrary actions. Other members proposed that Article 140 (5) be replaced with Article 31 (5) and (6) of the current Constitution but this was not upheld. Article 140 (5) was approved by the Conference.
- 13.20.3.9 Members observed that there were acceptable provisions in both the Draft and current Constitutions. It was therefore, decided that the Drafting Committee should harmonise the provisions in the clauses under Article 140 of the Draft Constitution and Article 31 of the current Constitution.
- 13.20.3.10 The Conference decided that the following clauses be harmonised as follows:
- (a) Article 140 (1) be replaced with Article 31 (1) of the current Constitution;
  - (b) Article 140 (2) be deleted;

- (c) Article 140 (3) be replaced with Article 31(2) of the current Constitution;
- (d) Article 140 (4) be deleted because it was covered under Article 31(2);
- (e) Article 140 (5) be retained; and
- (f) Article 140 of the Draft Constitution as revised be harmonised with Article 31 of the current Constitution.

### 13.9.3

### Resolutions of the Conference

The Conference adopted Article 140 with amendments and renumbered it as Article 124 as follows:

**"124. (1) The President may, at any time by Proclamation published in the Gazette , declare that a situation exists which, if allowed to continue, may lead to a state of public emergency.**

**(2) A declaration made under clause (1) of this Article shall cease to have effect on the expiration of a period of seven days commencing with the day on which the declaration is made unless, before the expiration of such period, it has been approved by a resolution of the National Assembly supported by a majority of all the members thereof, not counting the Speaker.**

**(3) In reckoning any period of seven days for the purposes of clause (2), account shall not be taken of any time during which Parliament is dissolved.**

**(4) A declaration made under clause (1) may, at any time before it has been approved by a resolution of the National Assembly, be revoked by the President by Proclamation published in the Gazette .**

**(5) Subject to clause (6) a resolution of the National Assembly under clause (2) shall continue in force until the expiration of a period of three months commencing with the date of its being approved or, until revoked on an earlier date of its being so approved or until such earlier date as may be specified in the resolution.**

**(6) The National Assembly may by resolution, at any time revoke a resolution made by it under this Article.**

**(7) Whenever an election to the office of President results in a change of the holder of that office, any declaration made under this Article and in force immediately before the day on which the President**

assumes office, shall cease to have effect on the expiration of seven days commencing with that day.

(8) The expiration or revocation of any declaration or resolution made under this Article shall not affect the validity of anything previously done in reliance on such declaration.

(9) Any legislation that concerns a threatened state of public emergency or any legislation enacted or any action taken in consequence of a declaration of a threatened state of public emergency shall not permit or authorise indemnifying the state or any person in respect of an unlawful act."

## **13.21 Article 141 : Declaration of National Disasters**

### **13.21.1 Recommendations of the Commission**

The Commission recommended that the President should have power to take any necessary measures in defence of the country in circumstances not amounting to a declaration of war, and these measures should be subject to ratification by the National Assembly within seven days.

### **13.21.2 Provisions in the Mun'gomba Draft Constitution on Declaration of National Disasters**

Article 141 provides as follows:

"141. (1) The President may, in consultation with Cabinet, declare that a National disaster exists, which includes a natural or man-made disaster.

(2) The President may take such measures as are necessary 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."

### **13.21.3 Deliberations of the Conference on Article 141**

The Conference approved clauses (1), (2) and (3) of Article 141 and introduced an amendment in clause (4).

#### **13.21.4 Resolution of the Conference**

Accordingly, the Conference adopted Article 141 with amendment and renumbered it as Article 125 as follows:

**“125. (1) The President may, in consultation with Cabinet, declare that a National disaster exists, which includes a natural or man-made disaster.**

**(2) The President may take such measures as are necessary to respond to a National disaster.**

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

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

#### **13.22 Article 142 : Validity of Emergency**

##### **13.22.1 Recommendations of the Commission**

The Commission recommended that the Constitutional Court shall have jurisdiction to decide the validity of a declaration of a state of emergency or threatened state of emergency, including the reasonableness thereof; and any extension of a declaration of the state of emergency and any legislation enacted or other measures taken in consequence of such declaration.

##### **13.22.2 Provisions in the Mun’gomba Draft Constitution on Validity of Emergency**

Article 142 provides as follows:

**“142. The Constitutional Court shall have jurisdiction to decide on the validity of a declaration of a state of public emergency or threatened state of public emergency, including the determination of whether any measures taken as a result of the declaration are reasonable.”**

##### **13.22.3 Deliberations of the Conference on Article 142**

After the debate the Conference resolved to adopt Article 142.

#### **13.22.4 Resolution of the Conference**

The Conference adopted Article 142 without amendments and renumbered it as Article 126 as follows:

**“126. The Constitutional Court shall have jurisdiction to decide on the validity of a declaration of a state of public emergency or threatened state of public emergency, including the determination of whether any measures taken as a result of the declaration are reasonable.”**

#### **13.23 Article 143: Ratification of Appointments by National Assembly**

##### **13.23.1 Recommendations of the Commission**

The Commission recommended that:

- (a) the President should, in appropriate cases, retain the power to make constitutional appointments;
- (b) where necessary the President should be required to make such appointments, on the advice of, or in consultation with, service commissions or similar institutions, as appropriate;
- (c) where the Executive has exclusive jurisdiction over an office, the President should have power to override a decision of the National Assembly but where the Executive does not have such exclusive jurisdiction the decision of the National Assembly should prevail;
- (d) to the extent desirable, these offices should be guaranteed security of tenure; and
- (e) the holders of these offices should have sufficient experience and be of minimum age of 45 years.

##### **13.23.2 Provisions in the Mun’gomba Draft Constitution on Ratification of Appointments by National Assembly**

Article 143 provides as follows:

**“143. (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 ratification is refused, 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 to ratify the second appointment, the President shall invite the National Assembly to approve another appointment for the third time but if the Assembly does not ratify the third appointment, the appointment -**

- (a) shall take effect from the date of the submission of the name to the Assembly, if the office to which the appointment relates is under this Part; or**
- (b) shall not take effect if the office to which the appointment relates is not under this Part and the President shall -**
  - (i) appoint another person to that office and submit the appointment for ratification; and**
  - (ii) continue to submit an appointment for ratification until the National Assembly ratifies the appointment."**

### **13.23.3 Deliberations of the Conference on Article 143**

In the debate on Article 143 the Conference decided to enhance Article 143, by including clauses (4), (5) and (7) of Article 44 of the current Constitution.

### **13.23.4 Resolutions of the Conference**

The Conference adopted Article 143 with amendments and renumbered it as Article 127 as follows:

**"127. (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 ratification is refused, 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 to ratify the second appointment, the President shall invite the National Assembly to ratify another appointment for the third time, but the third appointment shall take effect irrespective of whether the National Assembly refuses the ratification, or delays it for a period of more than fourteen days.

(4) Subject to the other provisions of this Constitution and any other law, any person appointed by the President under this Constitution or that other law may be removed by the President.

(5) Nothing in this Article shall prevent Parliament from conferring functions on persons or authorities other than the President."

**13.24            Article 144 : Vice-President, Election to Office and Swearing in**

**13.24.1           Recommendations of the Commission**

The Commission recommended that:

- (a) qualifications for election to the office of the Vice-President should be the same as those applicable to the office of President; and
- (b) the Vice-President should be elected by universal suffrage as running mate of a presidential candidate.

**13.24.2           Provisions in the Mung'omba Draft Constitution on Vice-Presidents, Election to Office and Swearing in**

Article 144 provides as follows:

**"144. (1)    There shall be an office of Vice-President of the Republic.**

**(2)    The Vice-President shall be elected as a running mate to a presidential candidate.**



(3) The qualifications and disqualifications which apply for election to the office of President shall apply to the person who is a running mate to the presidential candidate.

(4) 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.

(5) A person elected as Vice-President under this Article shall be sworn into office by the Chief Justice and shall assume office on the same day that the President assumes office.

(6) Where a vacancy occurs in the office of Vice-President through death, resignation or removal from office due to incapacity or gross misconduct, the President shall appoint a person to be Vice-President and the National Assembly shall, by a resolution supported by the votes of not less than two-thirds of all the members of the Assembly, ratify the appointment of the Vice-President who shall serve for the unexpired term of office.

(7) In the absence of the Vice-President or if the Vice-President is unable to perform the functions of office for any reason, the President shall appoint, subject to the ratification of the National Assembly, 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.

(8) The emoluments of the Vice-President shall be as recommended by the Emoluments Commission and prescribed in an Act of Parliament.

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

### **13.24.3 Deliberations of the Conference on Article 144**

13.24.3.1 The Conference approved clause (1) of Article 144 while clause (2) attracted a lot of debate.

13.24.3.2 The members who supported the adoption of the clause (2) argued as follows:

- (a) that costly by-elections would be avoided if the Constitution provided for a Presidential running-mate;
- (b) that the provision would ensure continuity in the event of the sitting President dying, being incapacitated or impeached;
- (c) that the provision would ensure stability;
- (d) that the provision would provide job security to the holder, thereby enabling him or her to make decisions without fear of being removed from office;
- (e) that the provision would reduce instances of appointments based on loyalty rather than capacity of the appointee to perform the functions of Vice-President; and
- (f) that the choice of a Presidential running-mate would give the electorate the opportunity to assess the credibility of the Presidential candidate on account of the attributes of his or her choice of running-mate.

13.24.3.3 In addition, members who advocated for the adoption of the clause made reference to the 2008 experience when the President died and an election had to be held. The members submitted that the election could have been avoided if the Constitution had provided for a Presidential running-mate. They added that the adoption of Article 144 (2) would ensure continuity in the event of the President dying, being incapacitated or impeached. With regard to the concern that a Presidential running-mate would undermine the President, it was submitted that provisions on the removal of the Vice-President were provided for under Articles 129, 130 and 131 of the Draft Constitution and, if not adequate, could be enhanced.

13.24.3.4 Those members further submitted that Article 144 (2) was intended to ensure stability. The members pointed out that a Vice-President who got to power as a running-mate would have job security.

13.24.3.5 In the continued debate on Article 144 (2), some members reiterated that the clause should be adopted because a good number of petitioners to both the Mung'omba and Mwanakatwe Constitution Review Commissions had made submissions in support of a Presidential running-mate. The members argued that the adoption of the provision would enhance development in the country.

13.24.3.6 Regarding the concern expressed that the running-mate would undermine the President, it was explained that that would not be the case because the Presidential candidate would choose an amenable person as running-mate.

13.24.3.7 On the other hand, members who advocated the deletion of the clause argued as follows:

- (a) the provision would be a recipe for instability in the country and that Zambia was not yet ready for a system that provided for a Presidential running-mate;
- (b) that some African countries had experienced problems with the system of presidential running-mate;
- (c) that the provision would lead to crisis of loyalty in the political parties and Cabinet and, therefore, impede development;
- (d) that a running-mate who had presidential ambitions would, in the course of the Presidential term, work to undermine the President;
- (e) the other reason advanced against Article 144 (2) was that Zambia had successfully used the current system for forty-six (46) years and the system had worked well
- (f) that if the Vice-President chose to advance his or her own agenda and vision, the President would not have the option of dismissing such a Vice-President; and
- (g) that where there was conflict between the President and the Vice-President, the running of the country would be adversely affected.

13.24.3.8 In addition, members who did not support the adoption of the clause argued that Zambia was not yet ready for a system that provided for a Presidential running-mate as was practised in the United States of America (USA). It was argued that unlike the USA whose independence and democracy dated back to the 18<sup>th</sup> Century, Zambia was only forty-six (46) years old and was not only politically young but still in the early stage of economic development. It was explained that under the American system there were clearly defined roles for the President and the Vice-President and this made it difficult for the Vice-President to undermine the President.

- 13.24.3.9 The members further cited situations in some countries where a presidential running-mate was provided for but that the arrangement had led to conflicts between the President and the Vice-president. It was further stated that the provision would create divisions in the political parties and in Cabinet. Other members noted that a running-mate who was vying for the presidency would work to undermine the President or even devise means, including “witchcraft”, to eliminate him or her. Some members pointed out that since the Vice-President would not be a Member of Parliament, he or she would not be respected by elected Members of Parliament in his or her role as leader of Government business in the House.
- 13.24.3.10 In the continued debate, some members argued that clause (2) would not achieve the intended objective given that political parties were still in the process of democratising themselves. In view of this situation, some members were of the opinion that it would be helpful to make funds available to the various political parties to enable them accelerate the democratisation process. Other members who did not support Article 144 (2) submitted that under the current political culture in Zambia, the leadership was monopolised by those who held power, some of whom maintained their positions of leadership by avoiding political party conventions. It was further pointed out that the change proposed under Article 144 (2) was a recipe for instability as Zambia was not yet ready for such an arrangement.
- 13.24.3.11 Regarding Article 144 (3), (4), (5) and (6), members observed that provisions under these clauses were linked to the question of whether or not the Vice-President would be a Presidential running-mate.
- 13.24.3.12 With regard to Article 144 (7), the members proposed to adopt the clause on the premise that it would be applicable to the Vice-president whether elected or appointed. However, the Conference rejected the need for ratification by the National Assembly.
- 13.24.3.13 The Conference finally decided to delete clause (2) of Article 144 after the failure of a call for a division. Accordingly clause (2) was deleted.

- 13.24.3.14 In view of the rejection of the proposal to provide for the Vice-President as a running-mate of the President, the Conference decided to consider clause (2) of Article 45 of the current Constitution which provides for the appointment of the Vice-President.
- 13.24.3.15 Although in support of the proposition, some members argued that in adopting Article 45 (2) the clause should be amended to provide that the appointment should be made from amongst the elected members of Parliament and not from those that were nominated. They argued that even if a Vice-President was to serve at the President's pleasure, he or she must be an elected Member of Parliament with his or her own mandate. If the President died, the Vice-President would be President for the remainder of the term and his or her legitimacy would not be in question.
- 13.24.3.16 Some members, however, proposed the adoption of Article 45 (2) of the current Constitution which provides as follows: **"the Vice-President shall be appointed by the President from amongst members of the National Assembly."** In support of the proposal, members argued that the President should be free to appoint any person that he or she would be comfortable to work with, without the appointment being confined to elected Members of Parliament.
- 13.24.3.17 The Conference approved the adoption of Article 45 (2) of the current Constitution without amendment.
- 13.24.3.18 In view of the deletion of clause (2) of the draft Constitution, the Conference decided that clauses (3), (4), (5) and (6) of Article 144 which related to the presidential running-mate should consequentially be deleted.
- 13.24.3.19 Regarding Article 144 (8) and (9) a proposal was made that these clauses be combined and that the provisions of Article 45 (5) in the current Constitution be included. Article 45 (5) of the current Constitution provides as follows:
- "(5) The salary and allowances of the Vice-President shall be such as may be prescribed by an Act of Parliament, and shall be a charge on the general revenues of the Republic."**
- 13.24.3.20 The Conference approved clauses (8) and (9) amended as follows:

**“(5) The emoluments of the Vice-President shall be prescribed by or under an Act of Parliament, and shall be a charge on the National Treasury Account.”**

#### **13.24.4 Resolutions of the Conference**

##### **13.24.4.1 The Conference:**

- (a) approved clause (1) of Article 144;
- (b) approved clause (7) of Article 144 with amendment;
- (c) deleted clauses (2), (3), (4), (5) and (6) of Article 144;
- (d) combined clauses (8) and (9) of Article 144 and harmonized them with clause (5) of Article 45 of the current Constitution; and
- (e) adopted clause (2) of Article 45 in the current Constitution.

##### **13.24.4.2 The Conference adopted Article 144 with amendments and renumbered as Article 128 as follows:**

**“128. (1) There shall be an office of Vice-President of the Republic.**

**(2) The Vice-President shall be appointed by the President from amongst the Members of the National Assembly.**

**(3) In the absence of the Vice-President or if the Vice-President is unable to perform the functions of office for any reason, 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.**

**(4) The emoluments of the Vice-President shall be prescribed by or under an Act of Parliament and shall be a charge on the National Treasury Account.”**

#### **13.25 Article 145 : Functions of Vice-President**

##### **13.25.1 Recommendations of the Commission**

The Commission recommended that duties of the Vice-President should include:

- (a) acting as President in the absence of incumbent President and in the event that the office of President becomes vacant;

- (b) that of being ex-officio member of the National Assembly for purposes of Government business in the House and Leader of Government Business in the House;
- (c) such other functions as may be assigned to the office by the President;
- (d) in the event of a vacancy arising in the office of the Vice-President, the President should nominate a Vice-President who shall assume office upon approval by two-thirds majority of all MPs for the remainder of the term of office; and
- (e) in the absence of the Vice-President or if the Vice President is for some reason unable to discharge the functions of the office, the President should appoint, subject to approval by the National Assembly, a member of the Cabinet to discharge the functions of the Office.

### **13.25.2 Provisions in the Mung'omba Draft Constitution on Functions of Vice-President**

Article 145 provides as follows:

**“145. 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) act as President when the President is unable to carry out the executive functions as provided under this Constitution; and**
- (c) be the leader of Government business in the National Assembly.”**

### **13.25.3 Deliberations of the Conference on Article 145**

13.25.3.1 In debating Article 145 (b), some members were of the view that the Article implied that as a running-mate, the Vice-President would act as President in the absence of the incumbent with full powers. The members who opposed the notion of running-mate expressed concern that that would be dangerous because the Vice-President might make far-reaching decisions which might endanger the nation. Article 145 (b) was, however, approved.

- 13.25.3.2 Regarding Article 145 (c), some members were of the view that a Vice-President who was a running-mate of the President would not be Leader of Government Business in the House. They argued that having been elected on the President's ticket, the Vice-President would not be a Member of Parliament. The Conference, however, observed that whether the Vice-President was a running-mate or was merely appointed, he or she would be a Member of Parliament. The Conference adopted Article 145 (c) of the Draft Constitution.

#### **13.25.4 Resolution of the Conference**

The Conference adopted Article 145 without amendments and renumbered it as Article 129 as follows:

**"129. 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) act as President when the President is unable to carry out the executive functions as provided under this Constitution; and**
- (c) be the leader of Government business in the National Assembly."**

#### **13.26 Article 146 : Removal from office of Vice-President**

##### **13.26.1 Recommendation of the Commission**

The Commission recommended that the Constitution should make provision for removal from office of a Vice-President in circumstances similar to those prescribed for removal of a President.

##### **13.26.2 Provisions in the Mung'omba Draft Constitution on Removal from office of Vice-President**

Article 146 provides as follows:



**“146. Articles 129, 130 and 131 shall apply to the removal from office of the Vice-President.”**

**13.26.3 Deliberations of the Conference on Article 146**

In discussing the Article the Conference observed that it was linked to the issue of a running-mate which was rejected and should consequentially be deleted.

**13.26.4 Resolution of the Conference**

The Conference deleted Article 144 recommended in the Mung’omba Draft Constitution because of the earlier decision of the Conference not to provide for a running-mate.

**13.27 Article 147: Ministers**

**13.27.1 Recommendations of the Commission**

The Commission recommended that:

- (a) the current constitutional provision requiring that the President establishes or dissolves Government Ministries and Departments subject to the approval of the National Assembly, should be retained; and
- (b) there should be no limit on the term of office of Ministers.

**13.27.2 Provisions in the Mung’omba Draft Constitution on Ministers**

Article 147 provides as follows:

**“147. (1) The President shall appoint not more than twenty-one persons as Ministers or such number of Ministers as the National Assembly may approve, who are qualified to be elected as members of the National Assembly but are not members of the Assembly.**

**(2) 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.**

**(3) The emoluments of a Minister shall be as recommended by the Emoluments Commission and specified in an Act of Parliament and shall be a charge on the Consolidated Fund.**

**(4) 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 Assembly, take part in the proceedings of the Assembly but shall have no vote."**

**13.27.3 Deliberations of the Conference on Article 147**

13.27.3.1 In discussing the Article the Conference observed that Article 147 (1) implied that Ministers would be appointed from outside the National Assembly. The members who supported the provision argued that it was in line with the principle of separation of powers. The members were of the view that the provision presented an opportunity for the President to take into account professionalism and make appointments from among qualified people. The members also argued that appointing Ministers from outside Parliament would enable Members of Parliament to devote more time to serving their constituencies.

13.27.3.2 Members in support of this provision argued that the appointment of Ministers from within Parliament had weakened the National Assembly. Ministers, who were also Members of Parliament, simply endorsed decisions which had already been agreed upon in Cabinet in line with the principle of collective responsibility. In addition, the members observed that Cabinet Ministers and the ordinary MPs from the ruling party found it easy to form a quorum in the National Assembly and could, therefore, readily pass laws without the support of MPs from the opposition political parties. That situation was seen as defeating the principles of separation of powers and checks and balances.

13.27.3.3 In addition, the members who supported the Article expressed satisfaction that the provision under Article 147 (1) specified the number of Ministers that the President would appoint. Such a situation would ensure that the ruling party did not have an in-built majority in Parliament.

- 13.27.3.4 The members who opposed the provision observed that the specification of the number of Ministers to be appointed was unnecessary as it would restrict the President from making necessary appointments whenever need arose.
- 13.27.3.5 Other members argued that the specification was not a limiting factor because the provision provided for the maximum number as a control measure and that the President was at liberty to go to the National Assembly to increase the number of Ministers. The members maintained that specification of the maximum number, which was twenty-one (21) under Article 147 (1), would ensure checks and balances.
- 13.27.3.6 Some of the members further argued that:
- (a) the environment in Zambia was not yet conducive for Ministers to be appointed from outside the National Assembly;
  - (b) Ministers who were also Members of Parliament were best suited for the job because they were accountable to the people who elected them;
  - (c) Ministers appointed from outside Parliament would owe allegiance to the appointing authority and not the electorate;
  - (d) Ministers who were also members of the ruling party would promote national unity in Parliament due to collective responsibility which would not be the case where Ministers were appointed from outside Parliament; and
  - (e) if the President was allowed to appoint Ministers who were not elected by the people, he or she would be tempted to practise nepotism and regionalism.
- 13.27.3.7 The members re-iterated the argument that since Zambia had embraced a hybrid executive system, which was common in Commonwealth countries, the country needed to continue with the practice of appointing Ministers from amongst Members of Parliament especially that the system had worked well for the country.
- 13.27.3.8 Some members argued that there was nothing wrong with the current system and if there were weaknesses in it, the best solution would be to correct those weaknesses rather than changing to a new system. The members added that if the objective was to instil professionalism, then the current system was best suited to achieve

that because the President could nominate professionals to Parliament and then appoint them to Cabinet.

- 13.27.3.9 The Conference adopted Article 147 (2). Article 147 (3) was adopted but the term “Emoluments Commission” was deleted, in line with the earlier decision of the Conference and the term “Consolidated Fund” was replaced with the term “National Treasury Account.”

#### **13.17.4 Resolution of the Conference**

The Conference adopted Article 147 with amendments and renumbered it as Article 130 as follows:

**“130. (1) The President shall appoint not more than twenty-one persons as Ministers, or such number of Ministers as the National Assembly may approve, from amongst members of the National Assembly.**

**(2) 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.**

**(3) The emoluments of a Minister shall be prescribed by or under an Act of Parliament and shall be a charge on the National Treasury Account.”**

#### **13.28 Article 148 : Provincial Ministers**

##### **13.28.1 Recommendation of the Commission**

The Commission recommended that Provincial Ministers be appointed for each province from persons qualified to be elected as members of the National Assembly but are not members of the Assembly.

##### **13.28.2 Provisions in the Mung’omba Draft Constitution on Provincial Ministers**

Article 148 provides as follows:

**“148. (1) The President shall appoint a Provincial Minister for each province from persons who are qualified to be elected as members of the National Assembly but are not members of the Assembly.**

**(2) The emoluments of a Provincial Minister shall be as recommended by the Emoluments Commission and specified in an Act of Parliament and shall be a charge on the Consolidated Fund."**

**13.28.3 Deliberations of the Conference on Article 148**

13.28.3.1 In discussing Article 148 (1), it was proposed that the Article be amended in line with the decision made under Article 147 (1) to appoint Ministers from among Members of the National Assembly.

13.28.3.2 Some members proposed that the Constitution should specify the functions of a Provincial Minister. However, other members were of the view that the President would specify the functions through the Secretary to the Cabinet. The Conference decided that a provision be included, similar to Article 147 (2), to specify the functions of a Provincial Minister.

13.28.3.3 The members proposed that the provision should be relegated to subsidiary legislation because Provincial and District administration were areas which required continuous and innovative ways of administration. Some members argued that if the provision was included in the Constitution, it would be difficult to accommodate changes easily.

13.28.3.4 Some members, however, argued that Provincial Ministers were Ministers just like Cabinet Ministers and Deputy Ministers; therefore, it was necessary for the provision to be included in the Constitution as was the case under Article 47 of the current Constitution.

13.28.3.5 The Conference decided to amend clause (1) of Article 148 to be in line with the decision made to appoint Ministers from amongst Members of the National Assembly.

13.28.3.6 The Conference also included a new clause (2) as follows:

**"(2) A Provincial Minister shall be responsible, under the direction of the President, for the business of the Government, including the administration of a province and other State institutions, as assigned by the President."**

13.28.3.7 The Conference adopted Article 148 (2) but deleted the term

“Emoluments Commission” and replaced the term “Consolidated Fund” with the term “National Treasury Account.”

#### **13.28.4 Resolutions of the Conference**

The Conference adopted Article 148 with amendments and renumbered it as Article 131 as follows:

**“131. (1) The President shall appoint a Provincial Minister for each province from persons who are members of the National Assembly.**

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

**(3) The emoluments of a Provincial Minister shall be prescribed by or under an Act of Parliament and shall be a charge on the National Treasury Account.”**

#### **13.29 Article 149 : Deputy Ministers**

##### **13.29.1 Recommendations of the Commission**

The Commission recommended that:

- (a) Deputy Ministers should be appointed from outside the National Assembly;
- (b) the Office of Deputy Minister should be retained but that there should not be more than one Deputy Minister in any Ministry and that the current arrangements of deputizing be retained; and
- (c) the post of Provincial Deputy Minister should be elevated to that of Cabinet Minister.

##### **13.29.2 Provisions in the Mung’omba Draft Constitution on Deputy Ministers**

Article 149 provides as follows:

**“149. (1) Subject to this Constitution, the President shall appoint not more than twenty-one Deputy Ministers**

or such number of Deputy Ministers as the National Assembly may approve.

(2) Article 147 (1), (2), (3) and (4) shall apply to Deputy Ministers.

(3) A Deputy Minister shall perform any function assigned to the Deputy Minister by the President or the Minister.”

### **13.29.3 Deliberations of the Conference on Article 149**

13.29.3.1 In discussing Article 149 (1), a member observed that it would be inappropriate to limit the number of Deputy Ministers. The member argued that some ministries, such as the Ministry of Sport, Youth and Child Development, were so large that they required up to three Deputy Ministers. It was, however, explained that the clause provided for an increase in the number of Deputy Ministers, except that the additional number should be approved by the National Assembly.

13.29.3.2 Some members observed that the way the clause was drafted could imply that the appointments of Deputy Ministers would be made from outside Parliament. The Conference decided that the clause should be revised to provide that Deputy Ministers would be appointed from amongst the Members of Parliament.

13.29.3.3 The Conference adopted Article 149 (2) subject to amendments made to Article 147 (1) to allow appointments of Deputy Ministers to be from within the National Assembly and Article 147 (3) to reflect the term “National Treasury Account”. Consequent upon the decision to delete Article 147 (4), reference to this Article under Article 149 (2) was also deleted. The Conference adopted Article 149 (3).

### **13.20.4 Resolutions of the Conference**

13.29.4.1 The Conference resolved that:

- (a) Article 149 (1), (2) and (3) be adopted; and
- (b) Article 149 (1) should specify that Deputy Ministers shall be appointed from amongst the Members of Parliament.

13.29.4.2 The Conference adopted Article 149 with amendments and renumbered it as Article 132 as follows:

**"132. (1) Subject to this Constitution, the President shall appoint not more than twenty-one Deputy Ministers or such number of Deputy Ministers, as the National Assembly may approve, from amongst members of the National Assembly.**

**(2) A Deputy Minister shall perform any function assigned to the Deputy Minister by the President or the Minister.**

**(3) The emoluments of a Deputy Minister shall be prescribed by or under an Act of Parliament and shall be a charge on the National Treasury Account."**

### **13.30 Article 150 : Cabinet**

#### **13.30.1 Recommendations of the Commission**

The Commission recommended as follows:

- (a) that the Constitution should provide that Cabinet Ministers should be appointed from outside the National Assembly;
- (b) that when necessary or whenever required to do so attend proceedings of the National Assembly;
- (c) that a losing presidential or parliamentary or local government election candidate should not be eligible for appointment to the Cabinet;
- (d) that the National Assembly should not have power to pass a vote of no confidence in the Cabinet Ministers;
- (e) that the National Assembly should play its oversight role of evaluating the performance of Government Ministries and Institutions through Parliamentary Committees;
- (f) that the current constitutional provision requiring that the President establishes or dissolves Government Ministries and Departments, subject to the approval of the National Assembly, should be retained and that this should be extended to any increase above or reduction below 21 in number of Cabinet Ministers or Deputy ministers; and
- (g) that the Constitution should stipulate that neither gender should constitute less than 30% of the Cabinet.



### **13.30.2 Provisions in the Mung’omba Draft Constitution on Cabinet**

Article 150 provides as follows:

**“150. There shall be a Cabinet consisting of the -**

- (a) President and the Vice-President;**
- (b) Ministers; and**
- (c) Provincial Ministers.”**

### **13.30.3 Deliberations of the Conference on Article 150**

13.30.3.1 In adopting Article 150 (c) which provides for Provincial Ministers to be part of Cabinet, members recognised that Provincial Ministers, who were at the level of Deputy Minister, shouldered heavy responsibilities because all developmental activities took place in the Provinces. It was also observed that Provincial Ministers had oversight responsibilities for all the ministries operating in their respective provinces. Further, it was justified that Provincial Ministers would be in a better position to articulate the aspirations and priorities of the provinces leading to the passing of relevant policies by Cabinet.

13.30.3.2 Whilst accepting the adoption of Article 150 (c), some members expressed concern that Provincial Ministers might not manage to regularly attend Cabinet meetings on account of cost. However, other members explained that the post of Provincial Minister existed in the past and that the Provincial Ministers were Cabinet Ministers.

13.30.3.3 The Conference observed that Provincial Ministers should be members of Cabinet so that they could inform Cabinet directly on what was happening in provinces.

### **13.30.4 Resolution of the Conference**

The Conference adopted Article 150 without amendments and renumbered it as Article 133 as follows:

**“133. There shall be a Cabinet consisting of the -**

- (a) President and the Vice-President;**
- (b) Ministers; and**
- (c) Provincial Ministers.”**

**13.31 Article 151 : Functions of Cabinet**

**13.31.1 Recommendation of the Commission**

The Commission recommended that the function of Cabinet be to perform executive functions of the State.

**13.31.2 Provisions in the Mung'omba Draft Constitution on Functions of Cabinet**

Article 151 provides as follows:

**"151. (1) The President shall preside at the meetings of Cabinet and in the absence of the President the Vice-President shall preside.**

**(2) The Cabinet may perform its functions although there is a vacancy in its membership.**

**(3) The Cabinet shall formulate Government policy and shall be responsible for advising the President with respect to the policy of the Government and any other matter."**

**13.31.3 Deliberations of the Conference on Article 151**

13.31.3.1 In the discussion on Article 151 (1), a member sought clarification as to who would preside over meetings of Cabinet in the absence of the President and Vice-President. In the course of the debate members observed that a decision was made under Article 132 that if the Vice-President was unable for any reason or cause to assume the office of President, Cabinet would appoint one among themselves to perform the executive functions.

13.31.3.2 The Conference made reference to Article 49 (3) of the current Constitution where it is provided that:

**"The Cabinet may act notwithstanding any vacancy in its membership."**

This was understood to mean that the cabinet was not inhibited from performing its executive functions even if there was a vacancy in its membership.

- 13.31.3.3 Some members observed that Article 151 did not oblige Members of Cabinet to collective responsibility, and therefore, suggested that Article 51 of the current Constitution be added to Article 151 in the Draft Constitution. In supporting the proposal, members took note that Article 151 of the Mung’omba Draft Constitution was drafted on the premise that Cabinet would be appointed from outside Parliament. The Conference approved Article 151 (3).
- 13.31.3.4 The Conference considered and approved clause (2) of Article 151 with amendments to use the term “notwithstanding” in place of the term “although”.
- 13.31.3.5 The Conference considered and approved clause (3) of Article 151.

#### **13.31.4 Resolutions of the Conference**

The Conference adopted Article 151 with amendments and renumbered it as Article 134 as follows:

**“134. (1) The President shall preside at the meetings of Cabinet and in the absence of the President the Vice-President shall preside.**

**(2) The Cabinet may perform its functions notwithstanding a vacancy in its membership.**

**(3) The Cabinet shall formulate Government policy and shall be responsible for advising the President with respect to the policy of the Government and any other matter.”**

#### **13.32 New Article : Accountability of Cabinet and Deputy Ministers**

Members of the Conference proposed a new Article as follows:

**“The Cabinet and Deputy Ministers shall be accountable collectively to the National Assembly.”**

#### **13.32.2 Deliberations on the New Article on Accountability of Cabinet and Deputy Ministers**

It was argued that the provision was necessary in order to ensure adherence to collective responsibility which was cardinal for smooth performance of executive functions. Members stated that the new Article was non-contentious.

### **13.32.3 Resolution of the Conference**

The Conference adopted the new Article and numbered it as Article 135 as follows:

**“135. The Cabinet and Deputy Ministers shall be accountable collectively to the National Assembly.”**

### **13.33 Article 152 : Oaths of Office**

#### **13.33.1 Recommendation of the Commission**

The Commission recommended that the Constitution should provide for the Oath of Office to be taken prior to carrying out duties.

#### **13.33.2 Provisions in the Mung’omba Draft Constitution on Oaths of Office**

Article 152 provides as follows:

**“152. A Minister, Provincial Minister and Deputy Minister shall not carry out the duties of office unless that person takes the Oath of Minister, Provincial Minister or Deputy Minister and the Oath of Secrecy, as set out in the Third Schedule.”**

#### **13.33.3 Deliberations of the Conference on Article 152**

In discussing Article 152 the Conference recalled its earlier decision that the schedule for the “Presidential Oath” be provided for under subsidiary legislation. Consequently, it was decided that “Oaths of Office” should be provided for under subsidiary legislation.

#### **13.33.4 Resolution of the Conference**

The Conference resolved to adopt Article 152 with amendments and renumbered it as Article 136 as follows:

**“136. A Minister, Provincial Minister and Deputy Minister shall not carry out the duties of office unless that person takes the Oath of Minister, Provincial Minister or**

**Deputy Minister and the Oath of Secrecy, as may be prescribed by or under an Act of Parliament.”**

**13.34 Article 153 : Code of Conduct**

**13.34.1 Recommendation of the Commission**

The Commission recommended that the Constitution should provide a code of conduct for Ministers, Provincial Ministers and Deputy Ministers.

**13.34.2 Provisions in the Mung’omba Draft Constitution on Code of Conduct**

Article 153 provides as follows:

**“153. A Minister, Provincial Minister and Deputy Minister shall act in accordance with a code of conduct prescribed by this Constitution or any other law.”**

**13.34.3 Deliberations of the Conference on Article 153**

In supporting Article 153, members observed that Cap 16 of the Laws of Zambia prescribed for the Code of conduct covering Ministers, Provincial Ministers and Deputy Ministers.

**13.34.4 Resolution of the Conference**

The Conference adopted Article 153 with amendments and renumbered it as Article 137 as follows:

**“137. A Minister, Provincial Minister and Deputy Minister shall act in accordance with a code of conduct prescribed by or under an Act of Parliament.”**

**13.35 Article 154 : Secretary to Cabinet**

**13.35.1 Recommendations of the Commission**

The Commission recommended that:

- (a) the President should retain power to make the appointment subject to Parliamentary ratification;
- (b) the President should be required to make such appointment,

- on the advice of, or in consultation, with service commissions or similar institutions as appropriate;
- (c) to the extent desirable the office should be guaranteed security of tenure; and
- (d) the holders of these offices should have sufficient experience and be of minimum age of 45 years.

### **13.35.2 Provisions in the Mung'omba Draft Constitution on Secretary to Cabinet**

Article 154 provides as follows:

**"154. (1) There shall be a Secretary to the Cabinet 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 to the Cabinet 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) have charge of the Cabinet Office;**
- (d) be responsible, in accordance with the instructions of the President, for arranging the business for, and keeping the minutes of, the Cabinet and conveying decisions made by Cabinet to the appropriate authorities; and**
- (e) perform any other function prescribed by or under an Act of Parliament or as directed by the President.**

**(3) The Secretary to the Cabinet shall not be less than forty-five years of age.**

**(4) The term of office of the Secretary to the Cabinet shall be three 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 to the Cabinet shall be removed from office by the President only for misconduct or inability to perform the functions of office or for infirmity of mind or body."**

### **13.35.3 Deliberations of the Conference on Article 154**

- 13.35.3.1 In discussing Article 154 (1), members raised two concerns. Firstly, some members expressed dissatisfaction with the manner the Article was drafted. Secondly, some members expressed concerns over the provision that “in appointing the Secretary to the Cabinet, the President would have to consult the Civil Service Commission.”
- 13.35.3.2 The members who did not support the clause in its current form, argued that Article 154 (1) implied that ratification would not take place without prior consultations with the Civil Service Commission. Other members proposed that Article 154 (1) be recast to provide that the appointment be made first to be followed by ratification.
- 13.35.3.3 While supporting the recast version of Article 154 (1), some members were of the view that it was unnecessary for the President to consult the Civil Service Commission. They stressed that the President should be able to appoint the Secretary to the Cabinet without consulting the Civil Service Commission.
- 13.35.3.4 Those who supported the provision for consultations argued that it was appropriate for the President to consult the Civil Service Commission because that was the institution that the Secretary to the Cabinet would work with. These members made reference to Article 213 in the Draft Constitution on the appointment of Judges under which there is a provision for consultation with the Judicial Service Commission.
- 13.35.3.5 The Conference ultimately decided that instead of specifying the Civil Service Commission, the clause should be recast to refer to “relevant institutions”. It was also agreed that ratification by the National Assembly should be after consultations.
- 13.35.3.6 The Conference approved clause (2) of Article 154.
- 13.35.3.7 With regard to Article 154 (3), some members observed that specifying the age of Secretary to the Cabinet at forty-five was discriminatory. They stated that efficiency and ability were not directly correlated with age. The members questioned why the age of the Secretary to the Cabinet should be pegged at forty-five years when that of President, which was a superior office, was put at

thirty-five years. The members submitted that the President should be allowed to appoint any capable person without being limited by age consideration. Some members expressed the view that the age limit should relate to an upper limit instead of providing for the minimum age.

13.35.3.8 The members who supported Article 154 (3) argued that there was direct correlation between age, experience and maturity. They argued that persons who were forty-five years and above would be expected to have a wealth of experience and would be more stable. It was further stated that the position of Secretary to Cabinet was a professional position that demanded appropriate qualifications and experience, especially as the Secretary to the Cabinet was the head of the public service whose role included being chief advisor to the President on Public service matters. The appointment, therefore, called for a senior and mature person.

13.35.3.9 The Conference resolved that a minimum age limit of thirty-five years be adopted.

13.35.3.10 With regard to Article 154 (4), some members submitted that limiting the term of office of the Secretary to the Cabinet to three years, as provided in the Article, would not be ideal because the President needed to be given the opportunity to work with the Secretary to the Cabinet concurrently for the five year Presidential term of Office. The members, therefore, proposed that the tenure of office of the Secretary to the Cabinet should be five years.

13.35.3.11 The members who were in support of the Article argued that the provision gave the President power to replace the Secretary to the Cabinet as the need arose.

13.35.3.12 The Conference resolved to adopt clause (4) of Article 154 with the amendment to increase the term of office to five years.

#### **13.35.4 Resolutions of the Conference**

The Conference adopted Article 154 with amendments and renumbered it as Article 138 as follows:

**“138. (1) There shall be a Secretary to the Cabinet 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 relevant State institutions

(2) The Secretary to the Cabinet 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) have charge of the Cabinet Office;
- (d) be responsible, in accordance with the instructions of the President, for arranging the business for, and keeping the minutes of the Cabinet and conveying decisions made by Cabinet to the appropriate authorities; and
- (e) perform any other function prescribed by or under an Act of Parliament or as directed by the President.

(3) The Secretary to the Cabinet shall not be less than thirty-five years of age.

(4) The term of office of the Secretary to the Cabinet 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 to the Cabinet shall be removed from office by the President for misconduct or inability to perform the functions of office or for infirmity of body or mind."

**13.36 Article 155 : Prerogative of Mercy**  
**13.36.1 Recommendation of the Commission**

The Commission recommended that the power of prerogative of mercy should continue to be vested in the President unconditionally.

**13.36.2 Provisions in the Mung'omba Draft Constitution on Prerogative of Mercy**

Article 155 provides as follows:

**“155. The President may -**

- (a) grant a pardon to a person convicted of an offence, with or without conditions;**
- (b) grant to a person a respite, indefinitely or for a specified period, of the execution of a punishment imposed on that person for an offence;**
- (c) substitute a less severe form of punishment for a punishment imposed on a person for an offence committed by that person;**
- (d) remit the whole or part of a punishment imposed on a person for an offence committed by that person; and**
- (e) remit the whole or part of a penalty, forfeiture or confiscation imposed on a person for an offence committed by that person.”**

#### **13.36.3 Deliberations of the Conference on Article 155**

In the discussion, some members sought clarification on the difference between Article 155 (a) in the Draft Constitution and Article 59 (a) of the current Constitution where reference is made to “lawful conditions.” Some members were of the view that the omission of the words “lawful conditions” in Article 155 (a) in the Draft Constitution weakened the provision. The Conference agreed that Article 155 (a) be replaced with Article 59 (a) in the current Constitution.

#### **13.36.4 Resolutions of the Conference**

The Conference resolved to adopt Article 155 with amendments and renumbered it as Article 139 as follows:

**“139. The President may -**

- (a) grant to any person convicted of any offence pardon, either free or subject to lawful conditions;**
- (b) grant to a person a respite, indefinitely or for a specified period, of the execution of a punishment imposed on that person for an offence;**
- (c) substitute a less severe form of punishment for a punishment imposed on a person for an offence committed by that person;**

- (d) remit the whole or part of a punishment imposed on a person for an offence committed by that person; and
- (e) remit the whole or part of a penalty, forfeiture or confiscation imposed on a person for an offence committed by that person."

### **13.37 Article 156 : Advisory Committee**

#### **13.37.1 Recommendation of the Commission**

There were no specific recommendations from the Mung'omba Constitution Review Commission on the subject of the Advisory Committee on the prerogative of mercy.

#### **13.37.2 Provisions in the Mung'omba Draft Constitution on Advisory Committee**

Article 156 provides as follows:

**"156. (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 persons convicted of an offence by any court or court-martial, for purposes of Article 155.**

**(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."**

#### **13.37.3 Deliberations of the Conference on Article 156**

After debate, the Conference adopted Article 156.

#### **13.37.4 Resolutions of the Conference**

The Conference adopted Article 156 without amendments and renumbered it as Article 140 as follows:

**"140. (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 persons convicted of an offence by any court or court-martial, for purposes of Article 139.**

**(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."**

## PART X

### LEGISLATURE

#### 14.1 Introduction

- 14.1.1 The CRC was tasked to recommend a system of Government that would ensure Zambia is governed in a manner that will promote the democratic principles of regular and fair elections, transparency and accountability and that will guard against the emergence of dictatorial forms of government.
- 14.1.2 The Commission noted that the legislature as one of the three arms of Government plays a key role in providing checks and balances on the organs of the State. The Commission stated that the legislature plays its role through four main functions namely:
- (a) representing the people in Parliament;
  - (b) legislating;
  - (c) vetting and approving the budget; and
  - (d) overseeing public policy and Government conduct.
- 14.1.3 A key recommendation from the CRC which is also one of the resolutions of the Conference is the retention of the unicameral legislature consisting of the National Assembly and the President as per current Constitution.
- 14.1.4 Both the CRC and the Conference decided that the legislative power of the Republic be vested in Parliament.
- 14.1.5 The Commission recorded eight thousand six hundred and fifty-two (8,652) submissions on the subject of the legislature. Most of the petitioners made submissions largely within the context of the existing constitutional framework.
- 14.1.6 The Conference extensively and intensively deliberated on the Articles on the Legislature and adopted some of the Mung'omba Constitution Review Commission recommendations while in other cases amended or deleted Articles, clauses or sub-clauses or introduced new Articles or clauses. The details concerning the

CRC observations, recommendations and the deliberations and resolutions of the NCC are presented in the paragraphs that follow.

## **14.2 Article 157 : Establishment of Parliament**

### **14.2.1 Recommendations of the Commission**

The Commission recommended that:

- (a) the unicameral Legislature should be retained;  
and
- (b) there should, however, be a provision in the Constitution to provide for the creation of another Chamber of Parliament if circumstances justified it. They stated that such a decision should require a resolution of the National Assembly by two-thirds majority and be subjected to a national referendum which should determine the powers, functions and composition.

### **14.2.2 Provisions in the Mung'omba Draft Constitution on Establishment of Parliament**

Article 157 provides as follows:

- "157. (1) There is hereby established a Parliament of Zambia which shall consist of the National Assembly and the President.**
- (2) The National Assembly may, by a resolution supported by the votes of two-thirds of all the members of the Assembly, refer to a referendum a question on the need to establish a House of Representatives as a component of Parliament.**
- (3) If a referendum approves the establishment of a House of Representatives, Parliament shall enact legislation to provide for the establishment, composition, functions and procedures of the House.**
- (4) The expenses of the House of Representatives established under clause (3), including the emoluments payable to, or in respect of, members of the House, shall be a charge on the Consolidated Fund."**

### **14.2.3 Deliberations of the Conference on Article 157**

14.2.3.1 In the debate on the provisions of Article 157 some members of the Conference were of the view that there should be the possibility of establishing a second chamber. Other members supported the retention of the unicameral legislature consisting of the National Assembly and the President. The members who supported the possibility of establishing a second chamber argued that:

- (a) the upper chamber had a moderating effect as the lower chamber was dominated by political considerations;
- (b) that in countries where the upper chamber existed such as India, United States, United Kingdom, Zimbabwe, it worked to strengthen the legislature and the upper chamber drew on the wisdom of people who had been Parliamentarians, civil servants, industry and traditional leaders; and
- (c) that the upper chamber would contribute to good governance.

14.2.3.2 The members who supported the retention of unicameral legislature consisting of the National Assembly and the President and proposed the deletion of clauses (2), (3) and (4) argued as follows:

- (a) that introduction of the upper chamber would be an unnecessary cost to the country especially when one considers that 70 percent of the people are poor;
- (b) that good governance did not depend on having two chambers; and
- (c) that the unicameral Parliament was presently performing very well and, therefore, there was no need for the upper chamber.

14.2.3.3 The Conference decided to adopt Article 157 with amendments by deleting clauses (2), (3) and (4).

### **14.2.3.4 Resolution of the Conference**

The Conference accordingly adopted Article 157 with amendments and renumbered it as Article 141 as follows:

**“142. There is hereby established a Parliament of Zambia which shall consist of the National Assembly and the President.”**

**14.3 Article 158 : Legislative Power and Other Functions of National Assembly**

**14.3.1 Recommendations of the Commission**

The Commission recommended that the core functions of the National Assembly should be as follows:

- (a) to amend the Constitution (other than the entrenched provisions, which were subject to referendum);
- (b) to pass Bills which shall become law;
- (c) to summon the National Assembly;
- (d) to scrutinize Government policies, performance and conduct;
- (e) to scrutinize estimates of revenue and expenditure of Government and management thereof;
- (f) to approve and monitor public debt;
- (g) to impeach the President;
- (h) to elect the Speaker and Deputy Speaker;
- (i) to ratify appointments of Ministers and Deputy Ministers;
- (j) to ratify or approve appointments to and removal from public offices as may be required by the Constitution and other laws;
- (k) to approve the creation and dissolution of Government ministries and departments;
- (l) to approve increases in the existing number of Cabinet Ministers and Deputy Ministers;
- (m) to approve emoluments of the President, Vice-President, Speaker, Chief Justice, Judges, Ministers and Deputy Ministers, Attorney-General, Director of Public Prosecutions and holders of constitutional offices, on the recommendations of the National Fiscal and Emoluments Commission;
- (n) to approve international treaties and agreements before ratification accession or adhesion by the Executive; approve, ratify, extend and revoke,



as applicable, a declaration of war, state of emergency, threatened state of emergency, military assistance and peacekeeping missions to other countries; and

- (o) to dissolve the National Assembly.

#### 14.3.2 **Provisions in the Mung'omba Draft Constitution on Legislative Power and other Functions of National Assembly**

Article 158 provides as follows:

**"158. (1) The legislative power of the Republic is vested in Parliament.**

- (2) The National Assembly shall be responsible for-**
  - (a) enacting legislation as provided under this Constitution;**
  - (b) deliberating and resolving issues of concern to the people;**
  - (c) considering and passing amendments to this Constitution, subject to this Constitution;**
  - (d) approving the sharing of revenue between the Central Government and the Local Government and appropriating funds for expenditure by the departments of the Government, other organs, State institutions and other bodies;**
  - (e) ensuring equity in the distribution of national resources and opportunities among all parts and communities of Zambia;**
  - (f) scrutinising public expenditure, including defence and security, constitutional and special expenditure and public debt;**
  - (g) scrutinising and overseeing actions of the executive organ of the State;**
  - (h) ratifying any appointment as required by the Constitution or by or under an Act of Parliament;**
  - (i) approving an increase or decrease in the number of Ministers and Deputy Ministers as provided under this Constitution on the request of the President;**
  - (j) approving international treaties and international agreements before these are ratified or acceded to and where necessary incorporating these international instruments into national laws;**

- (k) approving the emoluments of the President and other officers specified under this Constitution;
  - (l) summoning and dissolving the National Assembly;
  - (m) impeaching the President as provided for in this Constitution;
  - (n) approving or ratifying declarations of war, state of public emergency or threatened state of public emergency and measures undertaken during these periods; and
  - (o) any other functions prescribed by this Constitution or by or under an Act of Parliament.
- (3) A person or body, other than Parliament, shall not have power to enact legislation, except under the authority conferred by this Constitution or by or under an Act of Parliament."

### 14.3.3 Deliberations of the Conference on Article 158

14.3.3.1 In their deliberations, members were in agreement that Article 158 (1) and (2) (a) to (h) should be in the core functions of the National Assembly and accordingly adopted them.

14.3.3.2 With regard to the provisions of clause (2) (i), some members were in support while other members were of the view that it should be deleted.

14.3.3.3 Members who were in favour of the adoption of paragraph (i) advanced, among others, the following arguments:

- (a) that the provision was a 'safety valve' that would protect the Presidency from un-substantiated accusations;
- (b) that it would enhance transparency and accountability on the part of the Presidency;
- (c) that an increase in the number of Ministers or Deputy Ministers, would have financial implications and therefore approval by National Assembly would be needed. This would be in conformity with the earlier decision of the Conference where it was resolved that no financial obligation should be incurred without the approval of the National Assembly; and
- (d) that there might be situations where such

positions could be created to provide jobs for “cadres” and hence the need for approval by the National Assembly.

14.3.3.4 Members who were against the adoption of paragraph (i) of clause (2) advanced, among others, the following arguments:

- (a) that the provision was a negation of the Principle of separation of powers as the creation of Ministries and appointment of Ministers and Deputy Ministers fell under the ambit of the executive arm of Government and not the Legislature and that Article 61 was at variance with Article 158 (2) (i);
- (b) that requiring the President to seek approval of National Assembly when performing a function which was her or his prerogative was ‘tantamount to undermining the Presidency’; and
- (c) that since the President served in a position of trust, the provision would only serve to weaken the Presidency.

14.3.3.5 A vote was conducted in order to determine the decision of the Conference on the provision.

14.3.3.6 The Conference failed to reach a decision either by consensus or by conducting a vote. As a result the Conference referred paragraph (i) to a referendum.

14.3.3.7 Whilst debating paragraph (i), the Conference introduced an additional paragraph to provide for establishment and dissolution of government ministries.

14.3.3.8 In debating clause (2) (j), some members proposed that appointments of Ambassadors and High Commissioners be provided for in the paragraph so that they could also be ratified by the National Assembly. Other members argued that ratification was not necessary because these positions were below that of the Permanent Secretary, a position which did not require ratification by the National Assembly.

14.3.3.9 The Conference approved clause (2) (j).

- 14.3.3.10 On Article 158 (2) (l) some members were of the view that the Executive might decide not to summon Parliament and cited circumstances such as where the President faced possible impeachment.
- 14.3.3.11 Other members supported the provision and argued as follows:
- (a) that it was necessary under certain circumstances for the National Assembly to summon and dissolve itself such as when the President was unable for some reason to perform the function;
  - (b) that since clause (2) dealt with the functions of the National Assembly, paragraph (l) should be retained;
  - (c) that the provision in paragraph (l) had been in previous Constitutions and was in the interest of the nation; and
  - (d) that there was no mischief being created by retaining paragraph (l).
- 14.3.3.12 In supporting the provision, members proposed that paragraph (l) should be amended to include reference of summoning and dissolving the National Assembly as is provided for in the Constitution.
- 14.3.3.13 The proposal was to allay fears that a "monster" was being created which might lead to the removal of the President through dissolution of Parliament. It was further stated that since the provision in paragraph (l) was already in existence, the amendment would accord the National Assembly enough autonomy to operate.
- 14.3.3.14 Members who supported the deletion of paragraph (l) argued as follows:
- (a) that it did not make sense for the National Assembly to dissolve itself as the function of summoning Parliament was vested in the President as head of the Executive. They argued, therefore, that one arm of Government should not be allowed to trespass on another arm;
  - (b) that paragraph (l) was only needed in the special circumstances of an impeachment and not under normal circumstances;

- (c) that there was no justification for departing from the prevailing provision in the current Constitution; and
- (d) that there was no need to introduce a new provision as the provision in Article 88 (6) (b) in the current Constitution was adequate. It was suggested that paragraph (l) be replaced with Article 88 (6) (b) which provides that:  
**"(6) Subject to clause (9), the National Assembly-  
 (b) may, by a two thirds majority of the numbers thereof, dissolve itself."**

14.3.3.15 Following the debate, the Conference reached consensus and approved clause (2) (l) as amended.

14.3.3.16 In debating Article 158 (2) (m) members who opposed the inclusion of impeachment among the functions of National Assembly stated that:

- (a) apart from impeachment, there were other related functions of Parliament which were not included in Article 158 such as those relating to removal of immunity and removal from office due to incapacity resulting from infirmity or illness. There was therefore no need to highlight impeachment;
- (b) there was no assurance that all substantive functions were provided for elsewhere in the Constitution;

14.3.3.17 However, those who supported the inclusion of impeachment among the functions of the National Assembly argued that:

- (a) the provision for impeachment was a cardinal function of the National Assembly which was necessary because a President was human and therefore, bound to make mistakes;
- (b) impeachment of a president was a very serious matter which originated from within the National Assembly as opposed to other functions such as removal of a president on account of illness which originated from Cabinet; and
- (c) it was not possible to include all the functions under Article 158 and hence the proviso at the end of the Article for "any other functions"

- 14.3.3.18 After lengthy deliberation, the Conference decided to retain Article 158 (2) (m).
- 14.3.3.19 In debating paragraph (n), some members who did not support the adoption of the provision argued as follows:
- (a) that the act of declaration of war was an executive function and that the provision, if adopted, would hinder the President from effectively discharging his or her role as Commander-in -Chief of the armed forces;
  - (b) that in the event of an invasion there would be no chance to convene Parliament to secure the approval of the National Assembly;
  - (c) that it was more practical to confine the role of Parliament to ratification at a later time;
  - (d) that the provision requiring approval of Parliament be removed as this would imply empowering Parliament with the authority to allow or not to sanction declaration of war; and
  - (e) that Article 158 (2) (n) be split into two clauses so that one clause provides for the declaration of war in a situation requiring later ratification by National Assembly while the other provides for approval where there was no attack.
- 14.3.3.20 Other members who did not support the adoption of the provision were of the view that Article 158 (2) (n) be replaced with Article 29 of the current Constitution. Article 29 provides that:
- “Declaration of war-**  
**29. (1) The President may, in consultation with Cabinet, at any time, by Proclamation published in the Gazette declare war.**  
**(2) A declaration made under clause (1) shall continue in force until the cessation of hostilities.**  
**(3) An Act of Parliament shall provide for the conditions and circumstances under which a declaration may be made under clause (1).”**
- 14.3.3.21 The Conference decided to defer Article 158 (2) (n) for further consideration and harmonisation after considering relevant provisions in the Chapter on the Executive.

14.3.3.22 In the debate on Article 138, Declaration of War under Part IX, Executive, the Conference removed the requirement to obtain the approval of the National Assembly for the declaration of war. Clause (2) (n) of Article 158 was therefore amended.

14.3.3.23 The Conference considered and approved Article 158 (3).

#### **14.3.4 Resolutions of the Conference**

The Conference made two resolutions on Article 158 as follows:

- (i) adopted Article 158 with amendments and renamed it as “Legislative Power of Parliament and Other Functions of National Assembly” and renumbered it as Article 142 as follows:

**“142. (1) The legislative power of the Republic is vested in Parliament.**

- (2) The National Assembly shall be responsible for -**
  - (a) enacting legislation, as provided under this Constitution;**
  - (b) deliberating and resolving issues of concern to the people;**
  - (c) considering and passing amendments to this Constitution, subject to this Constitution;**
  - (d) approving the sharing of revenue between the Central government and the local government and appropriating funds for expenditure by the departments of the Government, other State organs, State institutions and other bodies;**
  - (e) ensuring equity in the distribution of national resources and opportunities among all parts and communities of Zambia;**
  - (f) scrutinising public expenditure, including defence and security, constitutional and special expenditure and public debt;**
  - (g) scrutinizing and overseeing actions of the executive organ of the State;**
  - (h) ratifying any appointment as required by this Constitution or by or under an Act of Parliament;**
  - (i) *approving an increase or decrease in the number of Ministers and Deputy Ministers as provided under this Constitution on the request of the President;***

- (j) approving the establishment or dissolution of government ministries as provided under this Constitution;
  - (k) approving international treaties and international agreements before these are ratified or acceded to and where necessary incorporating these international instruments into national laws;
  - (l) approving the emoluments of the President and other officers specified under this Constitution;
  - (m) summoning and dissolving the National Assembly as provided for in this Constitution;
  - (n) impeaching the President as provided for in this Constitution;
  - (o) approving or ratifying, as the case may be, in accordance with this Constitution, state of public emergency or threatened state of public emergency and measures undertaken during these periods; and
  - (p) any other function prescribed by this Constitution or by or under an Act of Parliament; and
- (3) A person or body, other than Parliament, shall not have power to enact legislation, except under the authority conferred by this Constitution or by or under an Act of Parliament.”;
- (ii) referred Article 158 (2) (i) to a referendum.  
Article 158 (2) (i) read as follows:  
“(2) The National Assembly shall be responsible for -  
(i) *approving an increase or decrease in the number of Ministers and Deputy Ministers as provided under this Constitution on the request of the President.*”;

#### **14.4 Article 159 : Composition of National Assembly**

##### **14.4.1 Recommendations of the Commission**

The Commission recommended as follows:

- (a) that the principle of delimitating constituency boundaries and prescribing provincial and national limits on the number of constituencies in the Constitution should be upheld;



- (b) that the total number of elective seats under the First Past The Post should not be less than 150 and not more than 200; and that
- (c) that 40% of the total number of seats be allocated to the Proportional Representation System.

#### **14.4.2 Provisions in the Mung'omba Draft Constitution on the Composition of National Assembly**

Article 159 provides as follows:

- "159. (1) The National Assembly shall consist of -**
- (a) two hundred members directly elected on the basis of a simple majority under the first-past-the-post segment of the mixed member representation system provided for by this Constitution and as may be provided by or under an Act of Parliament;**
  - (b) forty per cent of the total number of constituency-based seats on the basis of the proportional representation segment of the mixed member representation system from a list of candidates submitted to the Electoral Commission by each political party contesting the elections, as provided by this Constitution and by or under an Act of Parliament;**
  - (c) the Speaker;**
  - (d) the First Deputy Speaker; and**
  - (e) the Vice-President.**
- (2) Clause (1) (a) and (b) shall be subject to Article 95 (3)."**

#### **14.4.3 Deliberations of the Conference on Article 159**

**14.4.3.1** In debating Article 159 (1) (a), most of the members of the Conference supported increasing the number of Constituency-based Parliamentary seats from the current 150 to 200 or more. Some members suggested that the number be increased to three hundred (300). The members argued that most of the Parliamentary constituencies were too vast, therefore, making effective performance of oversight roles and representation by Members of Parliament very difficult. It was further observed that the population of Zambia had increased greatly.

**14.4.3.2** Some members however, expressed the view that the numbers of Members of Parliament should not be reflected in the Constitution

but be provided for in an Act of Parliament. This, it was observed, would allow for flexibility in the event of changes becoming necessary in future. Members who supported the adoption of the Article, argued that the recommended number of two hundred was realistic, taking into account cost implications and the physical infrastructure requirements.

14.4.3.3 Many members of the Conference expressed the following views:

- (a) that the National Assembly should consist of two hundred and forty (240) members directly elected on the basis of simple majority under first-past-the-post segment of mixed member representation;
- (b) that the National Assembly should consist of thirty (30) seats on the basis of the proportional representation segment of mixed member representation system from a list of candidates submitted by political parties to the Electoral Commission of Zambia. Those seats would cater for the groups of persons that were marginalised such as women, youths and persons with disabilities;
- (c) that the President should be allowed to nominate ten (10) Members of Parliament to fill positions requiring specialised skills; and
- (d) that total number of seats would be two hundred and eighty (280) seats.

14.4.3.4 The two hundred and forty (240) seats was arrived at because of the geographical vastness of constituencies, and concentration of populations. The two hundred and forty (240) constituency based seats would mean twenty six (26) constituencies on average for each of the nine (9) provinces which would provide for adequate representation.

14.4.3.5 Those who supported an increase to 200 seats argued that:

- (a) the number was supported by the findings of the Electoral Reform Technical Committee (ERTC) which was assumed to have undertaken a cost benefit analysis in order to come up with the proposed number;
- (b) historically, the number of MPs had been

increasing as the population increased. It was, therefore, argued that since the population had increased, especially in the rural areas where constituencies were very vast, it was necessary to increase the number of members to make it easier for them to cover their constituencies adequately; and

- (c) it would make it possible for particularly large areas such as Mwinilunga, Katombora, Siavonga and Kasempa to have more constituencies.

14.4.3.6 The Conference decided that the number of Constituency-based seats be two hundred and forty (240).

14.4.3.7 In the debate on Article 159 (1) (b), two positions emerged as follows:

14.4.3.8 Some members supported the Proportional Representation (PR) system and argued as follows:

- (a) that it would facilitate representation of special interests such as those of gender and socially disadvantaged groups;
- (b) that it would enable small parties with progressive ideas to be represented in Parliament;
- (c) that dependency on bribery and money to get into Parliament would be minimised;
- (d) that rigging of elections and promotion of regional politics would be prevented;
- (e) that it would allow the legislature to have inclusive and equitable representation and that the party lists would give the Party President chance to refine his or her Party's political team;
- (f) that it could facilitate entry into Parliament by deserving leaders of opposition parties;
- (g) that it would enable appreciation and acknowledgement of the contribution women had made to the social, economic and political development of the country; and
- (h) that the Proportional Representation system would lead the country closer to the goal of enhancing women representation in line with the various Protocols which have set the goal at 50 per cent representation for both gender.

- 14.4.3.9 Other members, however, did not support PR. They were of the view that people should go to Parliament on merit and not because they were women or disadvantaged. Some members proposed that Zambia should consider what other countries had done by enshrining in the Constitution a provision for women to contest a reserved seat in each district.
- 14.4.3.10 However, other members were not satisfied that the provision provided under the chapter on Legislature would guarantee that vulnerable groups would be placed on the party lists under the PR system.
- 14.4.3.11 Some members argued that the exact numbers to be allotted to women, youth and persons with disabilities should be specified in the Constitution so that the targeted groups benefited. Furthermore, it was proposed that:
- (a) consideration be made to carry out a cost-benefit analysis in view of the fact that the current chamber did not have the capacity to accommodate the proposed increase in the number of Members of Parliament; and
  - (b) the provision should be relegated to an Act of Parliament as the situation regarding the imbalances could, in future, change and thereby necessitating review of the provision.
- 14.4.3.12 The Conference decided that 30 members be elected through Proportional Representation.
- 14.4.3.13 In further debate, the Conference decided to provide for the President to nominate not more than ten (10) Members of Parliament.
- 14.4.3.14 The members who supported the clause emphasized that it was important for the Head of State and opportunity to enhance representation balance the composition of Parliament in order to also accommodate disadvantaged groups. It was further explained that there was evidence that in the past some nominations to Parliament were made from amongst members of opposition political parties.

- 14.4.3.15 In the debate on Article 159 (1) (c) the Conference decided that the Speaker be an additional member of the National Assembly.
- 14.4.3.16 The Conference decided to delete paragraph (d) in order for both the First and Second Deputy Speaker to be elected from among members of the National Assembly.
- 14.4.3.17 Further, the Conference also decided to delete Article 159 (1) (e) so that the Vice-President would be chosen from within the National Assembly.
- 14.4.3.18 In debating Article 159 (2), the Conference observed that the clause sought to make the method of electing members of the National Assembly in clause (1) (a) and (b) subject to Article 95 (3) which provides as follows:

**“(3) Subject to clause (4), Parliament may enact legislation prescribing a different electoral system for election of members of the National Assembly or a District Council.”**

- 14.4.3.19 The Conference approved clause (2) of Article 159.

#### **14.4.4 Resolution of the Conference**

The Conference adopted Article 159 with amendments and renumbered it as Article 143 as follows:

**“143. (1) The National Assembly shall consist of-**

- (a) two hundred and forty members directly elected on the basis of a simple majority under the first-past-the-post segment of the mixed member representation system provided for by this Constitution and as may be provided by or under an Act of Parliament;**
- (b) thirty seats on the basis of the proportional representation segment of the mixed member representation system from a list of candidates submitted to the Electoral Commission by each political party contesting the elections, as provided by this Constitution and by or under an Act of Parliament;**
- (c) not more than ten members nominated by the President under Article 146; and**
- (d) the Speaker;**

(2) Clause (1) (a) and (b) shall be subject to clause (3) of Article 79."

**14.5 Article 160 : Qualifications and Disqualifications of Members of National Assembly**

**14.5.1 Recommendations of the Commission**

The Commission recommended, taking into account Mixed Member Representation system, the retention of current constitutional provisions with modifications by addition of new qualifications as follows:

- (a) a minimum education certificate of Grade 12 or its equivalent; and
- (b) a minimum of three years residence in the constituency or district.

**14.5.2 Provisions in the Mung'omba Draft Constitution on Qualifications and Disqualifications of Members of National Assembly**

Article 160 provides as follows:

**"160. (1) Unless disqualified under clauses (2) and (3), a person shall be eligible to be elected as a member of the National Assembly 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) has been ordinarily resident in the constituency or district for at least three years; and**
  - (f) declares that person's assets and liabilities as provided under this Constitution and by or under an Act of Parliament.**
- (2) A person shall be disqualified from being elected as a member of the National Assembly if that person-**
- (a) holds, or is validly nominated as a candidate in an election for, the office of President;**

- (b) holds or is acting in any office that is specified by an Act of Parliament the functions of which involve or are connected with the conduct of elections;
  - (c) is of unsound mind;
  - (d) is undischarged bankrupt or insolvent;
  - (e) is serving a sentence of imprisonment or is under a sentence of death;
  - (f) has, at any time in the immediate preceding five years, served a term of imprisonment for the commission of an offence the sentence for which was a period of at least three years;
  - (g) has been removed from public office on grounds of gross misconduct; or
  - (h) has been found guilty of corruption by any court or tribunal.
- (3) A person holding or acting in any of the following posts or office of appointment shall not qualify for election as a member of the National Assembly:
- (a) the Defence Forces and National security agencies;
  - (b) the public service;
  - (c) a commission;
  - (d) a statutory body or company in which the Government has a controlling interest; or
  - (e) any other post or office specified by or under an Act of Parliament.
- (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.
- (5) A person shall not be disqualified under clause (2) (g) and (h) unless all possibility of appeal or review of the sentence or decision has been exhausted."

### **14.5.3 Deliberations of the Conference on Article 160**

- 14.5.3.1 In debating Article 160 (1), some members proposed that the provision of paragraph (a) should read "is a citizen of Zambia", rather than just "is a citizen".
- 14.5.3.2 The Conference approved paragraph (a) as amended and also approved paragraph (b) and (c) without amendments.

- 14.5.3.3 In debating Article 160 (1) (d) the Conference decided to insert the word “school” before the word “certificate”.
- 14.5.3.4 In further debate on Article 160 (1) (d), some members were of the view that clause (1) (d), should be retained while other members advocated for its deletion.
- 14.5.3.5 In the debate, two positions emerged.
- 14.5.3.6 The members who supported retention of clause (1) (d) argued as follows:
- (a) that a Member of Parliament performed a number of functions which required him or her to be sufficiently educated and knowledgeable;
  - (b) that it was necessary for a Member of Parliament to have at least a Grade Twelve qualification in order to be able to understand and express oneself in English, which was the official language used in Parliament;
  - (c) that Members of Parliament, as role models to the younger generations, should not only possess knowledge but also verifiable academic attainment; and
  - (d) that representation in the Commonwealth Parliament Association, the African Union, the World Trade Organisation, the Southern African Development Community (SADC) Parliamentary Forum, the Pan African Parliament, the Great Lakes Region and observing elections in other countries required a high level of education.
- 14.5.3.7 Members who supported deletion of clause (1) (d) argued as follows:
- (a) that the clause was discriminatory;
  - (b) that many people in Zambia failed to obtain academic qualifications, not because of their fault but due to Government failure to provide free education for all; and
  - (c) that possession of a certificate did not necessarily



guarantee wisdom or one's capacity to perform effectively.

14.5.3.8 The Conference reached consensus and approved Article 160 (1) (d) as amended.

14.5.3.9 In debating clause (1) (e) of Article 160 some members were of the view that it should be deleted while other members advocated for its retention.

14.5.3.10 In the debate that followed, members who supported the retention of the provision argued that:

- (a) Members of Parliament should identify themselves with the people by living in the same area with the electorate;
- (b) there were examples of Members of Parliament who never visited their constituencies from the time they were elected until they returned to seek a new mandate; and
- (c) "absentee" Members of Parliament were, in most cases, not adequately conversant with the aspirations and priority needs of the electorate, especially in rural-based constituencies.

14.5.3.11 The members who were of the view that it should be deleted argued that:

- (a) the provision created an unnecessary restriction and was discriminatory;
- (b) if adopted, the clause would lead to the lowering of the quality of candidates aspiring in Parliamentary elections especially in the rural-areas;
- (c) Members of Parliament re-located from their constituencies for various reasons such as;
  - (i) to undertake other commitments of the Office of Member of Parliament;
  - (ii) marriage; and
  - (iii) pursuance of academic qualifications.
- (d) there were many examples of Members of Parliament who were not ordinarily resident in their constituencies but who represented their constituents

- better than those who physically lived with the electorate;
- (e) having a house or property in one's constituency would not guarantee effectiveness of a Member of Parliament in the performance of his or her representative roles;
  - (f) paragraph (e) implied that if MPs in rural constituencies were appointed as Ministers, they would not be able to contest elections in subsequent elections because they would not have lived there;
  - (g) it would be difficult to follow up on issues with, for example, Government Ministries for developmental purposes if members lived in their constituencies;
  - (h) what was required was not residence in the Constituency but effective MPs who would bring development to their constituencies irrespective of whether they were residents in their constituencies or not;
  - (i) an MP who was appointed a Minister would not be able to reside in or visit his or her constituency at will because a Ministerial appointment required residence in Lusaka;
  - (j) it was unreasonable to expect a lawyer or medical doctor aspiring to be an MP to live in his or her rural constituency because their services were required elsewhere;
  - (k) it would be very difficult to certify whether or not one was ordinarily resident in a constituency for at least three (3) years; and
  - (l) it would disqualify many married women from contesting elections because many did not live in their rural areas of origin, but followed their husbands.

14.5.3.12 After a lengthy debate, the Conference decided to delete paragraph (e) of Article 160 (1).

14.5.3.13 In debating Article 160 (1) (f), the Conference observed that it was important to provide for declaration of assets and liabilities to avoid suspicions against Members of Parliament who genuinely acquired wealth. Accordingly, the Conference approved Article 160 (1) (f) without amendment.

- 14.5.3.14 The Conference debated and approved Article 160 (2) (a), (b), (c), (d), (e), (f) and (g) without amendments.
- 14.5.3.15 In debating Article 160 (2) (h) three positions emerged. Some members were of the view that the provision should be deleted. Other members while supporting the provision argued that, the sanction should not be for life but should be for a period of 10 years, 5 years or 2 years.
- 14.5.3.16 The members who supported the provision argued that corruption, particularly in the electoral process, was a serious crime which required severe punishment.
- 14.5.3.17 The Conference approved the Mung’omba Draft Constitution provision of Article 160 (2) (h) with the amendment that a person convicted of corruption would be barred from standing for elections for 5 years.
- 14.5.3.18 In debating Article 160 (3), the Conference decided to insert the words “subject to clause (4)” before the words “a person holding” and approved the clause as amended.
- 14.5.3.19 In debating Article 160 (3) on disqualifications, the Conference introduced a new clause to provide for the procedure to be followed by public officers who wish to contest elections to the National Assembly. The provision requires that a public officer should retire 12 months before the date of the election.
- 14.5.3.20 In debating the provision, two positions emerged.
- 14.5.3.21 Members who supported the new clause argued that:
- (a) it was essential for public service officers to retire for that period of time before elections; Whether or not they would be elected should not be a consideration;
  - (b) when a person made a decision to join active politics, they should not return to work in the civil service even if their party did not adopt them, and that they should retire in national interest;
  - (c) public officers must carry out programmes of

the government of the day, and should be prevented from using public resources for their campaigns for political office;

- (d) those who intended to join politics might frustrate the Government's work in order to further their political agenda. They, therefore, needed to retire before vying for election; and
- (e) the Conference had adopted clause (3) of Article 160 as proposed by the Mung'omba Draft Constitution which disqualified public officers from standing for election to the National Assembly; whereas clause (a) provided a chance for all those who had been precluded by clause (3) to take part in elections by allowing a period of time to elapse before they could participate.

14.5.3.22

Those who did not support the provision argued as follows:

- (a) that the requirement for an individual to retire twelve (12) months before elections was retrogressive. Members cited an example where many nurses, doctors and teachers would decide to run for elections and would be compelled to resign twelve (12) months, before the elections were held. The members argued that such a situation would create a vacuum in the delivery of services to the public; and
- (b) that the clause would discourage professionals from aspiring for office. The members argued that if those officers had to resign before elections, it would mean that in the event that they were not adopted to stand by their parties or they lost elections, they would not be allowed to go back to their jobs.

14.5.3.23

Those members who disagreed with the length of time argued that:

- (a) civil servants had a right to belong to a party of their choice and to vie for office;
- (a) the provision took away the right of civil servants to participate in elections; and
- (b) the clause be deleted to avoid depriving the

country of leadership by excluding a large segment of the population from standing for election to the National Assembly.

- 14.5.3.24 Some members supported the recommendation but proposed that the clause be amended to abridge the time to the ninety days which the Speaker of the National Assembly would need to announce the vacancy of a seat when there was a by-election.
- 14.5.3.25 Further, other members argued that the provision was discriminatory because there were many civil servants who were on contract and that even a government minister was a public officer by the definition in the Draft Constitution.
- 14.5.3.26 Consequently, the Conference approved paragraphs (a) and (b) of the new clause as proposed.
- 14.5.3.27 In further debate on Article 160, the Conference introduced a new clause disqualifying chiefs from contesting elections to the National Assembly.
- 14.5.3.28 Members who supported the recommended provision argued that:
- (a) it would be very embarrassing for a chief to be defeated at an election by an ordinary person and that the defeat would be viewed as a rejection by the subjects;
  - (b) chiefs should not choose to go to Parliament for monetary gain, but that Government should instead increase their entitlements or emoluments;
  - (c) Zambians had a duty and obligation to preserve the dignity and honour of the chiefs. In Africa, chiefdoms were a citadel of tradition and culture and should, therefore, be preserved;
  - (d) participation in active politics by chiefs had been discussed in various Constitution Review Commissions. In the Mvunga Commission it was considered a fundamental right but that individual Chiefs were to make their own decisions. In the Mwanakatwe Commission, participation by Chiefs was opposed. In submissions to the Mung'omba

Constitution Review Commission 590 people were against the participation of chiefs in politics for various reasons;

- (e) that a chief who wished to contest elections should abdicate the chieftaincy before running for elections;
- (f) that it might be difficult for the subjects to visit palaces of chiefs who belonged to different political parties;
- (g) that if chiefs were Members of Parliament, there would be no one to preside over traditional courts and councils;
- (h) that the subjects might not take kindly to a losing candidate if he or she petitioned the chief and that such a petition could divide the chieftaincy; and
- (i) that in a multiparty system, chiefs should not be subjected to elections where candidates "called each other names."

#### 14.5.3.29

Members who were opposed to the provision argued that:

- (a) the provision itself was demeaning and patronising to dignity and honour of Chiefs. They wondered whether the protection applied during campaigns or during debate in Parliament. They argued further that chiefs were not dignified because they were outside Parliament, but because they were custodians of traditions and customs, and that the culture of insults in politics might not be forever and, therefore, could not be a convincing reason to preclude chiefs from being elected Members of Parliament;
- (b) the chiefs were currently not part of the governance system in the country because the traditional authorities had been marginalised and would continue to be marginalised if the provision was adopted;
- (c) it was a fundamental right of the chiefs as citizens to participate in the governance of the country and that right should not be denied to them by the Constitution;
- (d) in the Second Republic era some chiefs were

appointed to political positions and they did not turn down those appointments. Therefore, chiefs should be free to decide whether or not to join politics; and

- (e) being a Member of Parliament was an honourable calling which gave the mandate to legislate, appropriate the National budget, make laws that provided for everyone and Chiefs should be given the opportunity to participate.

14.5.3.30 Consequently, the Conference approved the new clause of Article 160 as proposed.

14.5.3.31 The Conference considered and approved clause 4 of Article 160 of the Draft Constitution.

14.5.3.32 In debating clause (5), two positions emerged.

14.5.3.33 Some members were of the view that the clause should be retained while others argued that it should be deleted.

14.5.3.34 Members who supported clause (5) argued as follows:

- (a) that a person should not be penalised while the process of appeal had not been exhausted;
- (b) that there were many cases which had been won on appeal. It was argued that the law clearly stated that one was innocent until proven guilty;
- (c) that it might prevent individuals who wished to make political contribution from running for office because they were accused of offences simply to prevent them from taking part in elections; and
- (d) that if the “cure” was not to delay elections, then provision should be made that an appeal would not stop the election to proceed even as the court determined the case.

14.5.3.35 Members who supported the deletion of clause (5) as recommended argued as follows:

- (a) that clause (5) would only favour persons with money who could afford an appeal;
- (b) that it would cost the Government a lot of public funds through by-elections if one was allowed to contest and won elections but was found guilty after

an appeal; that according to Article 65 (1) (c) of the current Constitution, a person under a sentence of imprisonment would not be allowed to contest elections because the person remained convicted even before an appeal; and

- (c) that according to Article 71 (3) of the current Constitution, if one was already a Member of Parliament when convicted and appealed, that person would still remain a Member of Parliament but would not exercise his or her functions and would not receive any remunerations.

14.5.3.36 After deliberation, the Conference decided to approve clause (5) with amendments.

#### 14.5.4 Resolutions of the Conference

The Conference accordingly adopted Article 160 with amendments and renumbered it as Article 144 as follows:

**"144. (1) Unless disqualified under clauses (2) and (3), a person shall be eligible to be elected as a member of the National Assembly if that person -**

- (a) is a citizen of Zambia;
- (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 school certificate of education or its equivalent; and
- (e) declares that person's assets and liabilities as provided under this Constitution and by or under an Act of Parliament.

**(2) A person shall be disqualified from being elected as a member of the National Assembly if that person -**

- (a) holds, or is validly nominated as a candidate in an election for, the office of President;
- (b) holds or is acting in any office that is specified by an Act of Parliament the functions of which involve or are connected with the conduct of elections;
- (c) is of unsound mind;
- (d) is an undischarged bankrupt or insolvent;



- (e) is serving a sentence of imprisonment or is under a sentence of death;
- (f) has, at any time in the immediate preceding five years, served a term of imprisonment for the commission of an offence the sentence for which was a period of at least three years;
- (g) has been removed from public office on grounds of gross misconduct; or
- (h) has at any time in the immediate preceding five years been found guilty of corruption by any court or tribunal.

(3) Subject to clause (4), a person holding or acting in any of the following posts or offices shall not qualify for election as a member of the National Assembly:

- (a) the Defence Force and national security agencies;
- (b) the public service;
- (c) a commission;
- (d) a statutory body or company in which the Government has a controlling interest ; or
- (e) any other post or office specified by or under an Act of Parliament.

(4) A public officer shall qualify for election as a member of the National Assembly-

- (a) in the case of an Officer who has served for at least twenty years, if the officer retires from the post or office not less than twelve months before the date of the election; or
- (b) in the case of an officer who has served for less than twenty years, if the officer resigns from the post or office not less than twelve months before the date of the election.

(5) A Chief is not qualified for election as a member of the National Assembly.

(6) 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."

## **14.6 Article 161 : Nomination for Election to National Assembly**

### **14.6.1 Recommendation of the Commission**

On the proposal by petitioners that a Parliamentary candidate should be supported by at least five hundred (500) to one thousand (1,000) registered voters during nomination, the Commission observed that such a requirement would amount to conducting a primary election which was not necessary and accordingly recommended retention of the current system.

### **14.6.2 Provisions in the Mung'omba Draft Constitution on Nomination for Election to National Assembly**

Article 161 provides as follows:

**"161. (1) Nominations for election to the National Assembly shall be delivered to a returning officer on a day, at a time and place specified by the Electoral Commission under an Act of Parliament.**

**(2) A nomination for election to the National Assembly shall not be valid unless-**

**(a) the candidate has paid the election fee specified by or under an Act of Parliament; and**

**(b) in the case of a candidate for a constituency-based seat the nomination is supported by not less than nine persons registered as voters in the constituency in which the candidate is standing for election."**

### **14.6.3 Deliberations of the Conference on Article 161**

14.6.3.1 The Conference approved clause (1) of Article 161.

14.6.3.2 In the debate on Article 161 (2) (a) and (b), two positions emerged. Some members argued that there was no need to itemize, what was required on a nomination day in the Constitution. They proposed that the provision should be relegated to an Act of Parliament.

14.6.3.3 Some members, however, were of the view that such a provision could not be relegated to subsidiary legislation as it might "open the door" to "overzealous" Members of Parliament to enact legislation which might bar a lot of potential candidates from contesting.

14.6.3.4 The Conference approved clause (2) of Article 161.

#### **14.6.4 Resolutions of the Conference**

The Conference accordingly adopted Article 161 without amendments and renumbered it as Article 145 as follows:

**"145. (1) Nominations for election to the National Assembly shall be delivered to a returning officer on a day and at a time and place specified by the Electoral Commission under an Act of Parliament.**

**(2) A nomination for election to the National Assembly shall not be valid unless –**

**(a) the candidate has paid the election fee specified by or under an Act of Parliament; and**

**(b) in the case of a candidate for a constituency-based seat, the nomination is supported by not less than nine persons registered as voters in the constituency in which the candidate is standing for election."**

#### **14.7 New Article : Nominated Members of Parliament**

##### **14.7.1 Recommendation of the Commission**

The Commission recommended that the constitutional provision for nominating Members of Parliament should be repealed.

##### **14.7.2 Provisions of the New Article introduced by the Conference on Nominated Members of Parliament**

The new Article provides as follows:

**"(1) The President may, at any time after a general election to the National Assembly and before the National Assembly is next dissolved, appoint not more than ten persons as nominated Members of the National Assembly to enhance the representation in the National Assembly as regards special interests or skills.**

**(2) Subject to this Article, a person may be appointed as a nominated Member if the person is qualified under clause (1) of Article 162 and is not disqualified under clauses (2) and (3) of that Article, for election as an elected member.**

**(3) The President shall not appoint a person as a nominated member if the person was a candidate for election in the last preceding general election or in any subsequent by-election."**

**14.7.3 Deliberations of the Conference**

14.7.3.1 The Conference noted that the Mung'omba Draft Constitution had not provided for nominated Members of Parliament in line with the CRC's recommendation on page 395 of the Report not to have such Members in the National Assembly.

14.7.3.2 On clause (3), some members, proposed that the provision should be made clearer on a losing Presidential candidate being nominated as a Member of Parliament.

14.7.3.3 The Conference approved the new Article on Nominated Members of Parliament.

**14.7.4 Resolution of the Conference**

The Conference accordingly adopted the new Article and numbered it as Article 146 as follows:

**"146. (1) The President may, at any time after a general election to the National Assembly and before the National Assembly is next dissolved, appoint not more than ten persons as nominated Members of the National Assembly to enhance the representation in the National Assembly as regards special interests or skills.**

**(2) Subject to this Article, a person may be appointed as a nominated Member if the person is qualified under clause (1) of Article 144 and is not disqualified under clauses (2) and (3) of that Article, for election as a member of the National Assembly.**

**(3) The President shall not appoint a person as a nominated member if the person was a candidate for election in the last preceding general election or in any subsequent by-election."**

**14.8 Article 162 : Tenure of Office and Vacation of Office of Member of National Assembly**

**14.8.1 Recommendations of the Commission**

The Mung'omba Commission recommended as follows:

- (a) that with regard to the term of office the status quo of not limiting the term of office of MPs should be retained;
- (b) that the proposed electoral system, which should be prescribed in the electoral laws, should be designed in such a way that:
  - (i) where a vacancy arises due to nullification of an election, death, incapacitation of an MP or where a vacant seat was held by an independent MP, a by-election should be held;
  - (ii) an MP who resigned from a party or joined another party should lose the seat and not be eligible to contest the by-election for the duration of that Parliament;
  - (iii) an MP of a dissolved party should retain the seat as an independent where such MP holds the seat on the basis of the First-Past-The-Post electoral system;
  - (iv) the seat of an MP whose party is dissolved should be reallocated on the basis of Proportional Representation if that seat was held on the basis of that system; and
  - (v) any vacancy arising otherwise should be filled by the party holding the seat. In the case of an expelled MP who contested the expulsion, he or she should continue until the matter had been determined and, if found to have been wrongly expelled, such an MP should retain the seat as an independent MP, and that should be determined within 90 days.

**14.8.2 Provisions in the Mung'omba Draft Constitution on the Tenure of Office and Vacation of Office of Member of National Assembly**

Article 162 provides as follows:

**“162. (1) Every member of the National Assembly, except the Speaker and the First Deputy Speaker, shall vacate the seat in the National Assembly upon a dissolution of Parliament.**

**(2) The office of member of the National Assembly becomes vacant if-**

- (a) the member ceases to be a citizen;**
- (b) the member resigns in writing addressed to the Speaker;**
- (c) the member becomes disqualified for election under Article 160 (3);**
- (d) the result of election for that member is nullified by the Parliamentary Election Tribunal constituted under Article 165;**
- (e) the member acts contrary to a code of conduct provided by this Constitution or by or under an Act of Parliament;**
- (f) the member resigns from the political party for which the member stood as a candidate for election to the National Assembly or resigns from a coalition of parties to which that member belongs;**
- (g) having been elected to the National Assembly as an independent candidate, the member joins a political party;**
- (h) the member is recalled in accordance with Article 189; and**
- (i) the member dies.**

**(3) A constituency-based member of the National Assembly who causes a vacancy in the Assembly due to the reasons specified under clause (2) (b), (c), (e), (f), (g) and (h) shall not be eligible to contest any direct election for the duration of the term of that Parliament.**

**(4) Where a member of the National Assembly who holds a proportional representation seat causes a vacancy, in the National Assembly, due to death or resignation, that vacancy shall be filled by the next candidate on the political party's list as provided by an Act of Parliament.**

**(5) Where a member of the National Assembly, who occupies a proportional representation seat, is expelled from the political party that has been allocated that seat,**

the seat shall be filled by the next candidate on the political party's list as provided by an Act of Parliament.

(6) Where a member of the National Assembly, who occupies a constituency-based seat, is expelled by the political party which sponsored that member for election, the member shall not lose the seat unless the expulsion is confirmed by court.

(7) Where a court confirms the expulsion of a member who occupies a constituency-based seat, a by-election shall be held to fill the vacancy.

(8) If a political party is dissolved-

(a) a member holding a constituency-based seat shall retain the seat as an independent member; and

(b) a member holding a proportional representation-seat shall cease to be a member and the party shall lose the seat which seat shall be re-allocated to another political party based on the next highest national aggregate vote obtained by that party in relation to the other parties who contested the election.

(9) The creation or dissolution of a coalition of parties of 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 purposes of clause (2) (f)."

### 14.8.3 Deliberations of the Conference on Article 162

14.8.3.1 In the debate, the Conference approved clause (1). The Conference also approved clause (2) (a) with an amendment to use the term "citizen of Zambia" instead of just "citizen". The Conference also approved clause (2) (b) and (c) of Article 162.

14.8.3.2 The Conference rejected the proposal to introduce Parliamentary Election Tribunals and therefore paragraph (d) was amended to read "election for that member is nullified by the High Court".

14.8.3.3 The Conference approved paragraph (e) of Article 162 (2).

14.8.3.4 In debating paragraph (f) of Article 162 (2) some members expressed the view that it was not necessary to provide for coalition of political parties for the following reasons:

- (a) that there was no provision in the Draft Constitution on coalition of political parties;
- (b) there was no need to provide for coalition of political parties because such a coalition would eventually register as a political party;
- (c) that coalitions were 'loose alliances' formed to meet particular objectives and thereafter, disappeared;
- (d) providing for coalition of political parties might be misconstrued that the Conference targeted a particular political party which had formed a pact; and
- (e) that to avoid costly by-elections, Members of Parliament should be allowed to cross the floor.

14.8.3.5 Other members proposed that even though the concept of coalition of political parties was new, it should be provided for as it appeared elsewhere in the Constitution.

14.8.3.6 The Conference approved clause (2) (f) subject to the deletion of the reference to the term "coalition of parties".

14.8.3.7 In debating Article 163 (2) paragraphs (g), (h) and (i), the Conference considered clause (2) (h) against the specific provisions of Article 189 dealing with the recall of a Member of the National Assembly.

14.8.3.8 In the debate that ensued, most of the members argued that Article 189 on the recall of a Member of Parliament was a recipe for chaos and confusion for a country like Zambia where the expectations of the people went far beyond the job description of a Member of Parliament.

14.8.3.9 In that regard, the Conference deleted paragraph (h).

14.8.3.10 The Conference in debating clause (3) took note that paragraph (h) of clause (2) on the recall of a Member of Parliament was deleted. The Conference approved clause (3) of Article 162 with an amendment deleting reference to clause (2) (h).

14.8.3.11 In debating Article 162 (4) and (5), some members of the Conference noted that a Member of the National Assembly elected on proportional representation owed his or her seat to the political



party which sponsored him or her and that the political party ought to exercise the right to replace such a member in the House.

14.8.3.12 Other members, however, stated that there ought to be a measure of protection to members elected through Proportional Representation, as the Proportional Representation seats would be reserved for women and other interest groups.

14.8.3.13 The Conference approved clauses (4) and (5) of Article 162.

14.8.3.14 In debating Article 162 (6) some members proposed an amendment to provide for a Member of Parliament expelled by his or her political party to retain the seat in the Assembly as an independent Member of Parliament.

14.8.3.15 In considering the amendment, three positions emerged. Members who supported the amendment argued as follows:

- (a) that although candidates might belong to political parties, voters elected them on the basis of their capabilities as individuals;
- (b) that some members of Parliament could be victimised by their own political parties by supporting positions which were for public benefit but not supported by their sponsoring political parties; and
- (c) that there were two fundamental interests in conflict, namely the interest of the party and the interest of the member and that the two interests should be balanced in a manner that promoted democratic governance.

14.8.3.16 Members who opposed the amendment argued as follows:

- (a) that the only fundamental question was whether the member was expelled in a manner that followed the due process of the law and in particular whether principles of natural justice were observed, or whether the expulsion was motivated by jealousy. Accordingly, safeguards were required so that an expelled member was not expelled maliciously;
- (b) that a political party could not function normally if members were disruptive in their behaviour. In such

a case the party should be entitled to act and restore discipline;

- (c) that the Mung'omba Draft Constitution struck a balance by providing that if a member was legitimately expelled from the party, that member could not be an independent Member of Parliament, but that a by-election be held;
- (d) that the provision in Article 162 (6) of the Mung'omba Draft Constitution was better because if a member was legitimately aggrieved, the member would be protected by courts of law;
- (e) that political parties were bound by rules and when one joined a political party, they were bound to obey the rules of that political party. Members observed that the provision of the Committee laid emphasis on the persons rather than the rules of the party; and
- (f) that when a member stood on a party ticket, they were bound to deliver on the promises made by their political party.

14.8.3.17 The members who were in support of the clause as provided in the Mung'omba Draft Constitution argued that the clause should be adopted because it gave protection to Members of Parliament who would, otherwise, be victimised for supporting legislation or policies that might be in the best interest of the country but not supported by their own political parties.

14.8.3.18 After deliberations, the Conference approved Article 162 (6) as provided in the Mung'omba Draft Constitution.

14.8.3.19 The Conference approved clause (7) of Article 162.

14.8.3.20 In the debate on Article 162 (8) (a), two positions emerged. One position was in favour of paragraph (a) as provided while the other position was against the retention of paragraph (a).

14.8.3.21 Members who were in favour of the retention of paragraph (a) argued as follows:

- (a) that Members of Parliament (MPs) were representing the electorate in constituencies and should, therefore, continue as MPs after the dissolution of their parties;

- (b) that certain political parties did not support their candidates in the campaign and therefore, when such political parties were dissolved, the MPs should continue as independent Members;
- (c) that if, hypothetically, a political party which had one hundred (100) MPs or more was dissolved, it would be very costly to hold by-elections;
- (d) that though an MP was sponsored by his or her political party it did not imply that only members of his or her party elected him or her but that some of the electorate in the Constituency were from other parties or non-members and, therefore, deserved to continue as independent members; and
- (e) that the electorate did not vote for the candidate because of the party but took into account the integrity of the candidate. That, in that regard, the electorate and the MP should not suffer because leaders decided to dissolve the party.

14.8.3.22 Members who were against the retention of paragraph (a) argued as follows:

- (a) that if a political party was dissolved, it would be irregular for MPs to remain as independent MPs since they were part of the party and were elected to Parliament on the ticket of those parties;
- (b) that in a party which followed rules, members resolved to dissolve the party by consensus and, therefore, every member was party to that resolution. In that regard, members argued that MPs should cease to be in Parliament;
- (c) that it would not be practical, for example, for hundred (100) MPs of a large party to continue as independent MPs if such a party was dissolved; and
- (d) that political parties played an important role in ensuring adherence to democratic principles of governance and that it was a requirement of political parties to submit a party constitution when registering their party which every member of the party subscribed to. Therefore, that it was wrong for MPs to remain as independent Members when their party was dissolved.

- 14.8.3.23 The Conference failed to reach a decision either by consensus or a vote
- 14.8.3.24 Following a division and a vote, the Conference referred clause 8 (a) to a referendum.
- 14.8.3.25 In debating clause (8) (b), some members supported the provision and suggested that details on the allocation of seats should be left to an Act of Parliament after an extensive study of the Proportional Representation system.
- 14.8.3.26 The Conference, accordingly approved paragraph (b) of Article 163 (8) but decided that details on the allocation of seats should be in subsidiary legislation.
- 14.8.3.27 The Conference considered clause (9) of Article 162.
- 14.8.3.28 In its debate, the Conference observed that it had approved Article 116 (5) of the Mung’omba Draft Constitution dealing with the regulation of political parties which provided as follows:
- “116. (5) Political parties may form a coalition.”**
- 14.8.3.29 The Conference also noted that according to the decisions already made in clauses (7) and (8) of Article 162 meant that:
- (a) under proportional representation – when a merger was formed, the parties dissolved themselves to become a new party. In that case (Proportional Representation) Members of Parliament would lose their seats and the seats would be reallocated; and
  - (b) for the Constituency based seats, the Members of Parliament whose parties had merged but who chose not to join the merger would remain in Parliament as Independent members (depending on the decision of the Referendum).
- 14.8.3.30 The Conference decided that the Constitution should not make reference to a merger in clause (9) as there were already adequate provisions in the Constitution to deal with that possibility.

#### 14.8.4 Resolutions of the Conference

The Conference made two resolutions:

(i) adopted Article 162 with amendments and renumbered it as Article 147 as follows:

**“147. (1) Every member of the National Assembly, except the Speaker, shall vacate the seat in the National Assembly upon a dissolution of Parliament.**

**(2) The office of member of the National Assembly becomes vacant if-**

- (a) the member ceases to be a citizen of Zambia;**
- (b) the member resigns in writing addressed to the Speaker;**
- (c) the member becomes disqualified for election under clause (3) of Article 144;**
- (d) the result of an election for that member is nullified by the High Court under Article 152;**
- (e) the member acts contrary to a code of conduct provided by or under an Act of Parliament;**
- (f) the member resigns from the political party which sponsored the member for election to the National Assembly;**
- (g) having been elected to the National Assembly as an independent candidate, the member joins a political party; or**
- (h) the member dies.**

**(3) A constituency-based member of the National Assembly who causes a vacancy in the Assembly due to the reasons specified under clause (2) (b), (c), (e), (f) and (g) shall not be eligible, for the duration of the term of that Parliament -**

- (a) to contest any election; or**
- (b) for nomination, by the President, as a member of the National Assembly.**

**(4) Where a member of the National Assembly who holds a proportional representation seat causes a vacancy in the National Assembly, due to death or resignation, that vacancy shall be filled by the next candidate on the political party's list as provided by an Act of Parliament.**

**(5) Where a member of the National Assembly, who occupies a proportional representation seat, is expelled from the political party that has been allocated that seat,**

the seat shall be filled by the next candidate on the political party's list as provided by an Act of Parliament.

(6) Where a member of the National Assembly, who occupies a constituency-based seat, is expelled by the political party which sponsored that member for election, the member shall not lose the seat unless the expulsion is confirmed by a court.

(7) Where a court confirms the expulsion of a member who occupies a constituency-based seat, a by-election shall be held to fill the vacancy.

(8) If a political party is dissolved-

(a) *a member holding a constituency-based seat shall retain the seat as an independent member; and*

(b) *a member holding a proportional representation-seat shall cease to be a member and the party shall lose the seat which seat shall be re-allocated to another political party as provided by or under an Act of Parliament.*

(9) The creation or dissolution of a coalition of parties of which a member's political party forms part of does not amount to a member resigning from the party for the purposes of paragraph (f) of clause (2)."

(ii) referred clause (8) (a) to a referendum. Clause (8) (a) provides as follows:

"(8) If a political party is dissolved-

(a) *a member holding a constituency-based seat shall retain the seat as an independent member."*

## **14.9 New Article : Removal of Nominated Member**

### **14.9.1 Recommendations of the Commission**

The Commission did not make any recommendation on the subject of removal of nominated Member of Parliament.

### **14.9.2 Provisions of the New Article introduced by the Conference on Removal of Nominated Member of Parliament**

The new Article provides as follows:

**"The President may at any time, terminate the appointment of any nominated member appointed under Article 146 and appoint another person in that member's stead."**

### **14.9.3 Deliberations of the Conference on the new Article**

In the debate, the Conference identified the purpose of the Article as that of preventing a lacuna regarding the tenure of office of a nominated Member of Parliament. The Conference noted that a similar provision was included in the current Constitution under Article 74.

### **14.9.4 Resolution of the Conference**

The Conference accordingly adopted the new Article as proposed and numbered it as Article 148 as follows:

**“148. The President may, at any time, terminate the appointment of any nominated member appointed under Article 146 and appoint another person in that member’s stead.”**

## **14.10 Article 163 : Vacancies and By-Elections for National Assembly**

### **14.10.1 Recommendations of the Commission**

The Commission recommended that in the light of the grave misgivings expressed by petitioners and the arguments in support of these submissions the Commission proposed that the electoral system which should be prescribed in the electoral laws should be designed in such a way that only where a vacancy arises due to nullification of an election, death, incapacitation of a Member of Parliament or where a vacant seat was held by an independent Member of Parliament, a by-election shall be held. The reasons were to cut down on costs and to discourage what was called “political prostitution” in the form of defections by Members of Parliament which undermined democracy.

### **14.10.2 Provisions in the Mung’omba Draft Constitution on Vacancies and By-Elections for National Assembly**

Article 163 provides as follows:

**“163. (1) Where a vacancy occurs in the office of a member of the National Assembly, as specified under Article 162 (2) and (3), the Speaker shall, within seven days of the**

occurrence of the vacancy, inform, in writing, the Electoral Commission of Zambia of the vacancy.

(2) Where a vacancy occurs for a constituency-based seat as specified under Article 162 and subject to Article 100 (3), a by-election shall be held within ninety days of the occurrence of the vacancy."

**14.10.3 Deliberations of the Conference on Article 163**

The Conference approved clauses (1) and (2) of Article 163.

**14.10.4 Resolution of the Conference**

The Conference adopted Article 163 without amendments and renumbered it as Article 149 as follows:

**"149. (1) Where a vacancy occurs in the office of a member of the National Assembly as specified under clauses (2) and (3) of Article 147, the speaker shall, within seven days of the occurrence of the vacancy inform in writing, the Electoral Commission of the vacancy.**

**(2) Where a vacancy occurs for a constituent-based seat as specified under Article 147 and subject to clause (2) of Article 84, a by-election shall be held within ninety days of the occurrence of the vacancy."**

**14.11 Article 164 : Emoluments of Members**

**14.11.1 Recommendations of the Commission**

The Commission recommended under the chapter on Public Finance that the Constitution should:

- (a) establish a National Fiscal and Emoluments Commission;
- (b) provide for functions of the Commission to include evaluating and recommending for the approval of the National Assembly, emoluments of the President, Vice-President, Ministers, Speaker, Chief Justice, MPs, Judges and other constitutional office holders as well as senior civil servants.



#### **14.11.2 Provisions in the Mung’omba Draft Constitution on Emoluments of Members**

Article 164 provides as follows:

**“164. (1) A member of the National Assembly shall be paid emoluments and provided with facilities as recommended by the Emoluments Commission and specified in or by an Act of Parliament.**

**(2) The emoluments paid to, and the funds provided for facilities for, a member of the National Assembly shall be a charge on the Consolidated Fund”.**

#### **14.11.3 Deliberations of the Conference on Article 164**

In debating Article 164 (1), the Conference introduced an amendment by replacing the words “Emoluments Commission” with “Parliamentary Service Commission”. The argument for the decision was that since the National Assembly was an autonomous institution, the emoluments of and facilities provided to members of Parliament should be determined by the Parliamentary Service Commission proposed under Article 192 of the Mung’omba Draft Constitution. The Conference made a consequential amendment by replacing the term “Consolidated Fund” with the term “National Treasury Account”.

#### **14.11.4 Resolution of the Conference**

The Conference adopted Article 166 with amendments and renumbered it as Article 150 as follows:

**“150. (1) A member of the National Assembly shall be paid emoluments and provided with facilities as determined by the Parliamentary Service Commission and specified by or under an Act of Parliament.**

**(2) The emoluments paid to, and the funds provided for facilities for, a member of the National Assembly, shall be a charge on the National Treasury Account.”**

## **14.12 Article 165 : Parliamentary Election Tribunal**

### **14.12.1 Recommendations of the Commission**

The Commission recommended that:

- (a) an MP-elect whose election has been petitioned should take up the seat in the National Assembly pending the outcome of the petition;
- (b) the time within which parliamentary election petitions should be determined should be limited to 90 days; and
- (c) nullification of election should result in by-elections.

### **14.12.2 Provisions in the Mung'omba Draft Constitution on Parliamentary Election Tribunal**

Article 165 provides as follows:

- "165. (1) A person may file an election petition to challenge the Election of a candidate as a member of the National Assembly.**
- (2) The Chief Justice shall, for purposes of hearing and determining any question whether -**
    - (a) any person was validly elected as a member of the National Assembly; or**
    - (b) the seat of any member has become vacant;**
    - (c) constitute an ad hoc Parliamentary Election Tribunal.**
  - (3) A Parliamentary Election Tribunal shall consist of -**
    - (a) a Judge of the High Court as Chairperson; and**
    - (b) four other persons who have held the office of, or are qualified to be appointed as, Judges of the High Court.**
  - (4) A Parliamentary Election Tribunal shall, within ninety days of the lodging of an election petition, hear and determine the petition.**
  - (5) A decision of the Parliamentary Election Tribunal shall be final and the Tribunal shall stand dissolved on the determination of the election petition.**
  - (6) The expenses of a Parliamentary Election Tribunal shall be a charge on the Consolidated Fund.**

### **14.12.3 Deliberations of the Conference on Article 165**

14.12.3.1 In the debate that followed, members were of the view that the current practice should continue as provided under Article 72 of the current Constitution.

14.12.3.2 Members were however, of the view that there was need to provide a time frame within which an appeal could be considered. Other members supported the observation that petitions took a long time to be disposed of because the court system was heavily congested and as a compromise members suggested that to “cure” the problem of delays in dealing with election petitions, the Conference should adopt Article 72 of the current Constitution with the inclusion of a provision of a time limit of ninety (90) days.

14.12.3.3 Article 72 of the current Constitution provides as follows:

**“72. (1) The High Court shall have power to hear and determine any question whether-**

- (a) any person has been validly elected or nominated as a member of the National Assembly or the seat of any member has become vacant;**
- (b) any person has been validly elected as Speaker or Deputy Speaker of the National Assembly or, having been so elected, has vacated the office of Speaker or Deputy Speaker.**

**(2) An appeal from the determination of the High Court under this Article shall lie to the Supreme Court:**

**Provided that an appeal shall lie to the Supreme Court from any determination of the High Court on any question of law including the interpretation of this Constitution.”**

### **14.12.4 Resolution of the Conference**

The Conference accordingly adopted Article 72 of the current Constitution with amendments and retitled it as “Determination of Questions as to membership of National Assembly” and renumbered it as Article 151 as follows:

**“151. (1) The High Court shall have power to hear and determine any question whether -**

- (a) any person has been validly elected or nominated as a member of the National Assembly or the seat of any member has become vacant; or
  - (b) any person has been validly elected as Speaker or Deputy Speaker of the National Assembly or, having been so elected, has vacated the office of Speaker or Deputy Speaker.
- (2) An appeal from the determination of the High Court under this Article shall lie to the Supreme Court:  
 Provided that an appeal shall lie to the Supreme Court from any determination of the High Court on any question of law including the interpretation of this Constitution.
- (3) The High Court shall, within ninety days of the lodging of an election petition, hear and determine the petition."

**14.13 Article 166 : Speaker and Deputy Speakers of the National Assembly**

**14.13.1 Recommendations of the Commission**

14.13.1.1 The Commission recommended that the Speaker:

- (a) be elected from outside the National Assembly
- (b) be a citizen by birth or descent
- (c) be at least 45 years old
- (d) be ordinarily resident in Zambia for 10 years

14.13.1.2 The Commission further recommended that:

- (a) there be an office of First Deputy Speaker and of Second Deputy Speaker.
- (b) the First Deputy Speaker to be elected from outside Parliament.
- (c) the Second Deputy Speaker be elected from within the National Assembly.
- (d) in the event of dissolution of the National Assembly both the Speaker and First Deputy Speaker were not to vacate office.

**14.13.2 Provisions in the Mung’omba Draft Constitution on Speaker and Deputy Speakers of the National Assembly**

Article 166 provides as follows:

- “166. (1) There shall be a Speaker of the National Assembly who shall be elected by the members of the National Assembly.**
- (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 for a continuous period of ten years immediately preceding the election;**
  - (d) is not less than forty-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 by this Constitution and by or under an Act of Parliament; and**
  - (g) is not a member of the National Assembly.**
- (3) There shall be two Deputy Speakers of the National Assembly -**
- (a) one of whom shall be elected by the members of the Assembly, from among persons who are qualified to be elected as members of the Assembly but are not members of the Assembly, as First Deputy Speaker;**
  - (b) one of whom shall be elected by the members of the National Assembly, from among their number, as Second Deputy Speaker; and**
  - (c) both of whom are not members of the same political party and of the same gender.**
- (4) The members of the National Assembly shall elect a person to the office of Speaker and First and Second Deputy Speakers -**
- (a) when the Assembly first sits after any dissolution of Parliament; and**
  - (b) if any of those offices become vacant, otherwise than by reason of the dissolution of**

- Parliament, at the first sitting of the Assembly after the office becomes vacant.
- (5) The office of Speaker and First Deputy Speaker shall become vacant -
- (a) when a new National Assembly first sits after a general election;
  - (b) if the office holder becomes disqualified under Article 160 (2);
  - (c) if the National Assembly resolves, by a resolution supported by the votes of not less than two-thirds of its members, to remove the Speaker or First Deputy Speaker on any of the following grounds:
    - (i) violation of this Constitution;
    - (ii) incapacity to discharge the duties of the office of Speaker or First Deputy Speaker due to infirmity of body or mind; or
    - (iii) misconduct;
  - (d) if the office holder dies; or
  - (e) if the office holder resigns from office in a letter addressed to the President.
- (6) The Speaker and the First and Second Deputy Speakers shall be elected by a secret vote.
- (7) The Speaker and the First Deputy Speaker shall retire at the age of seventy-five years.
- (8) 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.
- (9) The Speaker and the Deputy Speakers shall be entitled to emoluments recommended by the Emoluments Commission and specified in an Act of Parliament.
- (10) The emoluments of the Speaker and Deputy Speakers shall be a charge on the Consolidated Fund."

### **14.13.3 Deliberations of the Conference on Article 166**

- 14.13.3.1 The Conference approved clause (1) of Article 166.
- 14.13.3.2 The Conference considered and approved clause (2) paragraphs (a), (b) and (c) of clause (2) of Article 166 with amendments to provide for citizenship of Zambia and to provide for five years of ordinary residence.
- 14.13.3.3 In debating clause (2) (d), some members observed that it was discriminatory to set the age requirement for the Speaker at 45 when the current Constitution provided an age limit of only thirty five (35) years.
- 14.13.3.4 Most members of the Conference, however, argued that the Speaker needed to be a person of maturity and distinction. The Conference approved Article 166 (2) (d).
- 14.13.3.5 In the discussions on clause (2) (e) some members were of the view that a University degree did not mean that a person would perform better than one who had been in leadership for many years but did not have a degree. They argued that there were good leaders who did not possess University degrees but were capable of assuming leadership positions such as that of Speaker.
- 14.13.3.6 Many members however explained that the office of Speaker was not just an elective position but a professional one which required a qualification of not less than a first University degree. They also noted that Speakers in most countries were persons of great distinction.
- 14.13.3.7 The Conference approved Article 166 (2) (e).
- 14.13.3.8 The Conference approved clause (3) with an amendment in clause (3) (a) and (b) to provide for both Deputy Speakers to be elected from amongst Members of the National Assembly.
- 14.13.3.9 In debating clause (7) of Article 166, some members were of the view that one of the persons elected to the position of Speaker or Deputy Speaker must have had some Parliamentary experience because if all were new entrants to the National Assembly, there could be some difficulties with procedures in the House.

- 14.13.3.10 Accordingly, some members proposed that the two Deputy Speakers and the Speaker should all have some experience in Parliamentary procedures.
- 14.13.3.11 The Conference approved an amendment to reflect that the Speaker and the two Deputy Speakers would have some Parliamentary experience.
- 14.13.3.12 In the debate on Article 166 (5) (b), members proposed that reference to Article 160 (2) be changed to the term "Article 166 (3)" in order to provide for disqualification for election as Speaker of the National Assembly.
- 14.13.3.13 The Conference approved paragraph (b) of clause (5) of Article 166 with an amendment.
- 14.13.3.14 The Conference approved paragraph (c) of clause (5) of Article 166.
- 14.13.3.15 The Conference approved paragraphs (d) and (e) of clause (5) of Article 166.
- 14.13.3.16 The Conference considered and approved clauses (6) of Article 166.
- 14.13.3.17 The Conference deleted clause (7) of Article 166. The Conference was of the view that the office of Speaker was an elective office and that paragraph (f) would be unsuitable.
- 14.13.3.18 The Conference considered and approved clause (8) of Article 166.
- 14.13.3.19 The Conference considered and amended clause (9) of Article 166.
- 14.13.3.20 The term "Parliamentary Service Commission" was inserted as a consequential amendment to replace "the National Fiscal and Emoluments Commission" which the Conference had earlier rejected.
- 14.13.3.21 The Conference approved clause (10) of Article 166 subject to the replacement of the term "Consolidated Fund" with the term "National Treasury Account".
- 14.13.3.22 Some members of the Conference proposed a new clause in Article 166 as follows:



**“In this Article, a reference to a sentence of imprisonment does not include a sentence of imprisonment the execution of which is suspended or a sentence in default of payment of a fine.”**

14.13.3.23 In the discussion that ensued, some members suggested that the clause appeared restrictive and was better placed in an interpretation Article such as Article 139 in the current Constitution.

14.13.3.24 Other members however argued that as there was specific reference made to a sentence of imprisonment in Article 160 (2), it was justified to leave it as it appeared so that there would be no doubt as to the meaning.

14.13.3.25 The Conference approved the new clause of Article 166.

#### **14.13.4 Resolutions of the Conference**

The Conference adopted Article 166 with amendments and renumbered it as Article 152 as follows;

**“152. (1) There shall be a Speaker of the National Assembly who shall be elected by the members of the National Assembly.**

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

- (a) is a citizen of Zambia by birth or descent;**
- (b) does not have dual citizenship;**
- (c) has been ordinarily resident in Zambia for a continuous period of five years immediately preceding the election;**
- (d) is not less than forty-five years of age;**
- (e) has obtained, as a minimum qualification, a bachelor’s degree or its equivalent from a recognized university or institution;**
- (f) declares that person’s assets and liabilities as provided by this Constitution and by or under an Act of Parliament; and**
- (g) is not a member of the National Assembly.**

**(3) A person does not qualify for election as Speaker of the National Assembly if that person-**

- (a) holds, or is validly nominated as a candidate in an election for, the office of President;
  - (b) holds or is acting in any office that is specified by an Act of Parliament the functions of which involve or are connected with the conduct of elections;
  - (c) is of unsound mind;
  - (d) is an undischarged bankrupt or insolvent;
  - (e) is serving a sentence of imprisonment or is under a sentence of death;
  - (f) has, at any time in the immediate preceding five years, served a term of imprisonment for the commission of an offence the sentence for which was a period of at least three years;
  - (g) has been removed from public office on grounds of gross misconduct; or
  - (h) has been found guilty of corruption by any court or tribunal.
- (4) There shall be two Deputy Speakers of the National Assembly, both of whom shall be elected by the members of the National Assembly from among their number, as First and Second Deputy Speaker, respectively.
- (5) The two Deputy Speakers of the National Assembly-
  - (a) shall be persons of opposite gender; and
  - (b) shall not, where the Deputy Speakers are elected from among the political parties or coalition of political parties represented in the National Assembly, both belong to the same political party or coalition of political parties.
- (6) Subject to clause (7), the members of the National Assembly shall elect a person to the office of Speaker and First and Second Deputy Speakers -
  - (a) when the National Assembly first sits after any dissolution of Parliament; and
  - (b) if any of those offices become vacant, otherwise than by reason of the dissolution of Parliament, at the first sitting of the National Assembly after the office becomes vacant.

- (7) A person elected as Speaker and First and Second Deputy Speakers shall be conversant with the practices and procedures of Parliament.
- (8) The office of Speaker shall become vacant –
- (a) when a new National Assembly first sits after a general election;
  - (b) if the office holder becomes disqualified under Clause (3);
  - (c) if the National Assembly resolves, by a resolution supported by the votes of not less than two-thirds of all its members, to remove the Speaker on any of the following grounds:
    - (i) violation of this Constitution;
    - (ii) incapacity to discharge the duties of the office of Speaker due to infirmity of body or mind; or
    - (iii) misconduct;
  - (d) if the office holder dies;
  - (e) if the office holder resigns from office in a letter addressed to the President; or
  - (f) if the office holder retires from office.
- (9) The office of the First Deputy Speaker and the Second Deputy Speaker shall become vacant –
- (a) if the office holder becomes disqualified under paragraphs (c) to (h) of clause (2) of Article 144;
  - (b) if the office holder ceases to be a member of the National Assembly;
  - (c) if the office holder assumes the office of President or becomes the Vice-President, a Minister, a Deputy Minister or holds or acts in any office prescribed in that behalf by or under an Act of Parliament;
  - (d) if the National Assembly resolves that the office holder should be removed from office;
  - (e) if the office holder dies; or
  - (f) if the office holder resigns from office in a letter addressed to the President.
- (10) The Speaker and the First and Second Deputy Speakers shall be elected by a secret vote.

- (11) 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.
- (12) The Speaker and the Deputy Speakers shall be entitled to emoluments recommended by the Parliamentary Service Commission and specified in an Act of Parliament.
- (13) The emoluments of the Speaker and Deputy Speakers shall be a charge on the National Treasury Account.
- (14) In this Article, a reference to a sentence of imprisonment does not include a sentence of imprisonment the execution of which is suspended or a sentence in default of payment of a fine."

#### **14.14 Article 167 : Presiding in National Assembly**

##### **14.14.1 Recommendations of the Commission**

The Commission recommended that:

- (a) there shall be one office of First Deputy Speaker and another of Second Deputy Speaker;
- (b) the First Deputy Speaker should act in the Office of Speaker in the event of a vacancy, or absence of the substantive office holder, or inability to perform the functions of the Office; and
- (c) in the event of the Speaker and First Deputy Speaker being absent or being unable to perform the functions of the Office of Speaker, the Second Deputy Speaker should preside over proceedings of the National Assembly.

##### **14.14.2 Provisions in the Mung'omba Draft Constitution on Presiding in National Assembly**

Article 167 provides as follows:

**"167. 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 the National Assembly as the Assembly may elect for that sitting."

#### 14.14.3 **Deliberations of the Conference on Article 167**

In its deliberations, the Conference concurred with the Commission's recommendations and therefore approved paragraph (a), (b), (c) and (d) of Article 167.

#### 14.14.4 **Resolution of the Conference**

The Conference adopted Article 167 without amendments and renumbered it as Article 153 as follows:

**"153. 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 the National Assembly as the National Assembly may elect for that sitting."

#### 14.15 **Article 168 : Leader of Opposition**

##### 14.15.1 **Recommendation of the Commission**

The Commission recommended that the constitution should provide that the Party having the highest number of seats in Parliament should provide a Leader of the opposition, provided that where the party is unable to constitute the quorum of the House, two or more opposition parties shall combine to form the quorum and provide the Leader.

## 14.15.2 Provisions in the Mung'omba Draft Constitution on Leader of Opposition

Article 168 provides as follows:

**"168 (1) The opposition political party with the largest number of seats in the National Assembly or a coalition of opposition political parties in the Assembly shall elect, from amongst the members of the Assembly, the leader of the opposition, except that where an opposition political party has formed a coalition with the party in Government a member of the National Assembly of that political party shall not be eligible for election as the leader of the opposition.**

**(2) The Standing Orders of the National Assembly shall provide for the effective participation in the Assembly of the leader of the opposition."**

## 14.15.3 Deliberations of the Conference on Article 168

14.15.3.1 The Conference considered and approved clause (1) of Article 168.

14.15.3.2 In the debate on clause (2), an amendment was proposed to introduce a new clause as follows:

**"Clause (1) does not apply where the opposition political party or coalition of opposition political parties in the National Assembly holds less than one-third of the total number of seats in the National Assembly."**

14.15.3.3 In the debate that followed, two positions emerged where some members supported the proposed amendment while others were of the view that the provision by Mung'omba Draft Constitution should be adopted without amendments.

14.15.3.4 Members who supported the proposed amendment argued that:

- (a) there should be a credible threshold in the House. They argued that it would not make sense for the largest opposition to elect a leader of the opposition if, for example, the largest opposition had only five (5) Members of Parliament; and

- (b) the House operated on a quorum and therefore, an opposition that was less than a quorum would not be able to operate business in the House.

- 14.15.3.5 Members who did not support the amendment argued that:
- (a) our Constitution should provide for an effective opposition in Parliament by having a visible head of the opposition. In that regard, it was argued that the opposition party with the highest number of MPs should be allowed to select the leader of the opposition; and
  - (b) the provision in the Mung'omba Draft Constitution should be adopted because it did not require a limit.

14.15.3.6 The Conference approved the new clause of Article 168 proposed by the members.

14.15.3.7 The Conference considered and approved clause (3) of Article 168.

#### 14.15.4 Resolutions of the Conference:

The Conference adopted Article 168 with amendments and renumbered it as Article 154 as follows:

**"154. (1) Subject to clause (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 members of the National Assembly, the leader of the opposition, except that where an opposition political party has formed a coalition with the party in Government a member of the National Assembly of that political party shall not be eligible for election as the leader of the opposition.**

**(2) Clause (1) does not apply where the opposition political party or coalition of opposition political parties in the National Assembly holds less than one-third of the total number of seats in the National Assembly.**

**(3)The Standing Orders of the National Assembly shall provide for the effective participation in the National Assembly of the leader of the opposition."**

## **14.16 Article 169 : Clerk of National Assembly**

### **14.16.1 Recommendations of the Commission**

After considering the submissions from petitioners on the office of the Clerk of National Assembly, the Commission recommended as follows:

- (a) the Clerk of the National Assembly shall be appointed by the Parliamentary Service Commission, establishment of which is recommended in this Report under the Chapter dealing with the Public Services (Chapter 19);
- (b) appointment of the Clerk of the National Assembly shall be subject to ratification by the National Assembly;
- (c) qualifications for appointment to the Office of Clerk of the National Assembly shall include being a citizen of Zambia; aged at least 45 years and; having such academic qualifications, experience and skills in such relevant fields as may be prescribed by the National Assembly; and
- (d) a Clerk of the National Assembly may be removed from office only on similar grounds as those stipulated in the Constitution for the position of the Auditor-General and in accordance with the procedures in Article 122.

### **14.16.2 Provisions in the Mung'omba Draft Constitution on Clerk of National Assembly**

Article 169 provides as follows:

- "169. (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 is at least forty-five years of age and has the academic qualifications, experience and skills specified 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 all the members of the Assembly, remove the Clerk of the National Assembly on the same grounds that apply to the removal of a Judge of a superior court".

#### 14.16.3 **Deliberations of the Conference on Article 169**

The Conference considered and approved clauses (1), (2), (3) and (4) of Article 169 with an amendment in clause (4) to provide for the procedure for the removal of the Clerk of National Assembly from office.

On clause (4), the Conference was of the view that the functions of the Clerk of the National Assembly were very different from those of a Judge. It was therefore decided that the procedure for removal of the Clerk be left to an Act of Parliament.

#### 14.16.4 **Resolutions of the Conference**

The Conference adopted Article 169 with amendments and renumbered it as Article 155 as follows:

- "155. (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 attained the stipulated age and has the academic qualifications, experience and skills, as specified 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 all the members of the National Assembly, remove the Clerk of the National Assembly in accordance with the procedures laid down in an Act of Parliament."

**14.17 Article 170 : Exercise of Legislative Power**

**14.17.1 Recommendations of the Commission**

The Commission recommended as follows:

- (a) the President shall continue to be part of Parliament for purposes of assenting to Bills, summoning and dissolving Parliament as prescribed by the Constitution. Parliament shall consist of the National Assembly and the President;
- (b) Parliament shall be the highest legislative body and should enact legislation submitted to it as well as initiate its own legislation at public expense to avoid the burden of privately initiated Bills being financed privately;
- (c) legislative power shall be vested in Parliament;

**14.17.2 Provisions in the Mung'omba Draft Constitution on Exercise of Legislative Power**

Article 170 provides as follows:

- "170. (1) Parliament shall enact legislation through Bills passed by the National Assembly and assented to by the President.**
- (2) Any member of the National Assembly or a member of the Cabinet 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 the National Assembly 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 would confer a pecuniary benefit on members of the National Assembly, the President, Vice-President, a Minister, Provincial Minister or Deputy Minister 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 or the Attorney-General, if the Bill has been initiated by the Government, outlining -
    - (i) the objectives of the proposed legislation;
    - (ii) any Bill of Rights limitation, derogation or any other constitutional implication;
    - (iii) any relevant provisions of Part III that have been taken into account;
    - (iv) any public consultation undertaken during the preparation of the Bill;
    - (v) any further public consultation that is recommended before the Bill is enacted; and
    - (vi) any other matter relevant to the Bill; and
  - (b) published in the *Gazette* at least fourteen days before the date of its introduction in the Assembly, unless due to the urgency of the matter, the Speaker otherwise determines.
- (6) After a Bill is read the first time in the National Assembly it shall be referred to a standing committee of the 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 (5) shall not be held at that committee for more than sixty days."

### 14.17.3 Deliberations of the Conference on Article 170

14.17.3.1 The Conference considered clauses (1), (2), (3) and (4) of Article 170 and in the discussion that ensued, some members introduced an

amendment to Article 170 to provide that only Government Bills and Private Members' Bills would be exempt from payment of expenses attaching to such Bills.

14.17.3.2 In the debate, two positions emerged namely those who supported the Commission and those who supported the amendment. Those who concurred with the Commission argued that:

- (a) any enactments of Bills including Private Bills should be paid from the National Treasury Account; and
- (b) it would be difficult to decide on whether a Bill affected only a few people or the public in general in order to determine who would pay for the enactment of such Bills.

14.17.3.3 Those who supported the amendment argued that any Bills which were sponsored by sections of society should be paid for by the sponsors.

14.17.3.4 The Conference adopted clauses (1) and (2) without amendment. The Conference also adopted clause (4) of Article 170 with an amendment to replace the Emoluments Commission with the Parliamentary Service Commission. The Conference approved clause (3) with amendments.

14.17.3.5 In the debate on Article 170, the Conference introduced a new clause as follows:

**"For the purposes of this Article, unless the context otherwise requires-**

**"Government Bill" means a bill introduced to the National Assembly by a Government Minister and which affects the public as a whole;**

**"Private Bill" means a Bill introduced to the National Assembly by a member of the back bench of the National Assembly and which affects limited sections of the public; and**

**"Private Member's Bill" means a Bill introduced to the National Assembly by a member who is not a government minister and which affects the public as a whole."**

14.17.3.6 In the debate on the new clause, the Conference deleted reference to the term "Private Bill".

14.17.3.7 The Conference decided to delete clauses (5), (6), (7) and (8) of Article 170. The clauses were considered to be of a procedural nature and were accordingly relegated to an Act of Parliament.

#### 14.17.4 **Resolutions of the Conference**

The Conference adopted Article 170 with amendments and renumbered it as Article 156 as follows:

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

**(2) Any member of the National Assembly or a member of the Cabinet may introduce Bills in the National Assembly.**

**(3) The expenses of enacting Government Bill or a Private Member's Bill shall be a charge on the National Treasury Account and a member of the National Assembly shall not be required to pay for any expenses attaching to the introduction and passage of the Bill in the National Assembly.**

**(4) A Bill that would confer a pecuniary benefit on members of the National Assembly, the President, Vice-President, a Minister, Provincial Minister or Deputy Minister shall not be introduced in the National Assembly unless it has been recommended by the Parliamentary Service Commission.**

**(5) For the purposes of this Article, unless the context otherwise requires -**

**"Government Bill" means a bill introduced to the National Assembly by a Government Minister and which affects the public as a whole; and**

**"Private Member's Bill" means a bill introduced to the National Assembly by a member who is not a government minister and which affects the public as a whole."**

## **14.18 Article 171 : Retrospective Legislation**

### **14.18.1 Recommendations of the Commission**

The Constitution Review Commission recommended that Parliament may make laws with retrospective effect only if such laws would not operate retrospectively to impose any limitations on, or to adversely affect the personal rights and freedoms of any person or impose a burden, liability or an obligation on any person.

### **14.18.2 Provisions in the Mung'omba Draft Constitution on Retrospective Legislation**

Article 171 provides as follows:

**"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 personal rights and freedoms of, any person or to impose a burden, liability or an obligation on any person".**

### **14.18.3 Deliberations of the Conference on Article 171**

In debating Article 171, the Conference was of the view that the Article adhered to the established principle in respect of retrospective legislation. The Conference, however, introduced some amendments to the Article to make it clearer.

### **14.18.4 Resolution of the Conference**

The Conference approved Article 171 with amendments and renumbered it as Article 157 as follows:

**"157. Parliament may make laws with retrospective effect for the purpose of conferring a benefit or advantage but does not have the power to enact any law which operates retrospectively to impose any limitations on, or to adversely affect the personal rights and freedoms of, any person or to impose a burden, liability or an obligation on any person."**

## **14.19 Article 172 : Money Bills**

### **14.19.1 Recommendations of the Commission**

The Commission did not make any recommendations on the subject of Money Bills.

### **14.19.2 Provisions in the Mung'omba Draft Constitution on Money Bills**

Article 172 provides as follows:

**"172. (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 moneys to any person or authority or the variation or revocation of the grant of public moneys;**
- (e) the raising or guaranteeing of any loan or the repayment of it; or**
- (f) subordinate matters incidental to any of the matters specified under this clause."**

### **14.19.3 Deliberations of the Conference on Article 172**

The Conference considered clauses (1) and (2) of Article 172 and approved them with one amendment by substituting the term "Consolidated Fund" with the term "National Treasury Account".

### **14.19.4 Resolutions of the Conference**

The Conference adopted Article 172 with amendments and renumbered it as Article 158 as follows:

**"158. (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 National Treasury Account 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 moneys to any person or authority or the variation or revocation of the grant of public moneys;**
- (e) the raising or guaranteeing of any loan or the repayment of it; or**
- (f) subordinate matters incidental to any of the matters specified under this clause."**

## **14.20 Article 173 : Presidential Assent and Referral**

### **14.20.1 Recommendations of the Commission**

The Commission recommended that the Constitution ought to provide as follows:

- (a) "the President shall continue to be part of Parliament for purposes of assenting to Bills, summoning and dissolving Parliament as prescribed by the Constitution. Parliament shall consist of the National Assembly and the President;**
- (b) Parliament shall be the highest legislative body and should enact legislation submitted to it as well as initiate its own legislation at public expense to avoid the burden of privately initiated Bills being financed privately;**
- (c) legislative power shall be vested in Parliament;**
- (d) when a Bill is presented to the President for assent, he or she shall assent to it within 21 days, unless he or she sooner refers it back to the National Assembly for reconsideration; and**



- (e) when a Bill referred back to the National Assembly for further consideration has been passed by a two-thirds majority of all MPs, the President should be obliged to give his assent to it unless the President's reservation is on a question of constitutionality, in which case, he or she shall refer it to the Constitutional Court, whose decision shall be final and binding.

#### 14.20.2 Provisions in the Mung'omba Draft Constitution on Presidential Assent and Referral

Article 173 provides as follows:

**"173. (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 Assembly may -**

- (a) amend the Bill in the light of the President's reservations; or**
- (b) pass the Bill a second time, without amendment, by a vote supported by at least two-thirds of all of the members of the National Assembly.**

**(3) If the National Assembly amends the Bill, 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 all of the members of the National Assembly, without amending the Bill -**

- (a) the Speaker shall within seven days re-submit it 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 whose decision on the matter shall be final.

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

(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 174, where thirty or more members of the National Assembly 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."

**14.20.3 Deliberations of the Conference on Article 173**

14.20.3.1 The Conference considered and approved paragraph (a) and (b) of clause (1) of Article 173.

14.20.3.2 In debating clause (2), the Conference observed that a Bill which had been passed in Parliament earlier by a simple majority if, referred back by the President, was required to be passed for the second time with or without amendments by a two-thirds majority.

14.20.3.3 Members of the Conference argued that two-thirds majority was not necessary if Parliament agreed with the President's suggestions. However, a majority of two-thirds would be required if Parliament was overriding the President's opposition to the Bill. The Conference amended clause (2) to make it clearer.

14.20.3.4 The Conference accordingly approved clause (2) as amended and approved clauses (3) and (4) of Article 173 without amendment.

14.20.3.5 In debating clause (5), the Conference observed that reference in clause (5) to paragraph (b) of clause (2) had to be deleted because there was no longer paragraph (b) in clause (2).

14.20.3.6 Clause (5) provided for the situation where the National Assembly decides to end the impasse by failing to pass the Bill a second time. An amendment was inserted to provide that the Bill would not be

presented again during that session of Parliament. Clause (5) was approved as amended.

14.20.3.7 On clause (6), the Conference observed that “automatic assent” after lapse of the time limit provided an acceptable way out of the impasse without “killing Parliament” or “killing the President” by dissolving the National Assembly. The Conference approved clause (6).

14.20.3.8 The Conference approved clause (7) of Article 173.

14.20.3.9 The Conference introduced a new clause in Article 173 to provide for the declaration of the decision of the Constitutional Court on the constitutionality of a Bill. The Conference approved the new clause.

#### 14.20.4 **Resolutions of the Conference**

The Conference adopted Article 173 with amendments and renumbered it as Article 159 as follows:

**“159. (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 reconsideration by the National Assembly, indicating any reservation that the President has concerning the Bill.**

**(2) If the President refers the Bill back for reconsideration by the National Assembly, the Assembly may pass the Bill a second time, with or without amendment, by a vote supported by at least two-thirds of all of the members of the National Assembly.**

**(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 all of the members of the National Assembly, without amending the Bill -**

**(a) the Speaker shall within seven days re-submit it to the President; and**

(b) the President shall within fourteen 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 whose decision on the matter shall be final.

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

(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 160, where thirty or more members of the National Assembly 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.

(8) If the Constitutional Court determines that a Bill is constitutional, the President shall assent to the Bill within seven days of the decision of the Court."

**14.21 Article 174 : Challenge of a Bill and Reference to Constitutional Court**

**14.21.1 Recommendations of the Commission**

14.21.1.1 The Commission did not directly address the question of challenge of Bills by Members of the House and the public in general. But it recommended that "in general, the subject of control of Parliamentary powers should be addressed in the allocation of functions to the three organs of the State under the Constitution.

14.21.1.2 In that case the challenge of a Bill by Members of the National Assembly or the general public on the basis of the constitutionality of the Bill would constitute a check on the powers of Parliament by itself and by those who might be adversely affected by the Bill if it were enacted.

**14.21.2 Provisions in the Mung'omba Draft Constitution on Challenge of a Bill and Reference to Constitutional Court**

Article 174 provides as follows:

**"174. (1) Thirty or more members of the National Assembly 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 Assembly.**

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

**(3) Where the Constitutional Court determines that any provision of a Bill would be or is inconsistent with any provision of this Constitution the Court shall so inform the Speaker and the President.**

**(4) Nothing in clauses (1), (2) and (3) shall 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 who intend to challenge a Bill."**

**14.21.3 Deliberations of the Conference on Article 174**

14.21.3.1 The Conference considered and approved clause (1) of Article 174.

14.21.3.2 The Conference considered and approved clause (2) of Article 174 (2).

14.21.3.3 The Conference considered and approved clauses (3), (4) and (5) of Article 174 with an amendment in clause (3) to provide for a specific declaration by the Constitutional Court that a provision was unconstitutional.

**14.21.4 Resolution of the Conference**

The Conference adopted Article 174 with amendments and renumbered it as Article 160 as follows:

**"160. (1) Thirty or more members of the National Assembly 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 Court shall not decide further on the question as to whether the Bill would be or is inconsistent with this Constitution and shall dismiss the action.

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

(4) Nothing in clauses (1), (2) and (3) shall 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 who intend to challenge a Bill."

## **14.22 Article 175 : Coming into Force of Laws**

### **14.22.1 Recommendations of the Commission**

The Commission did not make any recommendation on the subject of coming into force of Laws.

### **14.22.2 Provisions in the Mung'omba Draft Constitution on Coming into Force of Laws**

Article 175 provides as follows:

**"175. A Bill passed by the National Assembly and assented to by the President -**

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

### **14.22.3 Deliberations of the Conference on Article 175**

The Conference considered and approved Article 175.

#### **14.22.4 Resolution of the Conference**

The Conference adopted Article 175 with amendments and renumbered it as Article 161 as follows:

**“161. A Bill passed by the National Assembly and assented to by the President –**

**(a) shall be published in the Gazette within seven days of the assent; and**

**(b) shall come into force on the fourteenth day after its publication in the Gazette unless the Act otherwise provides.”**

#### **14.23 Article 176 : Acts of Parliament and Enactment Clause**

##### **14.23.1 Recommendations of the Commission**

The Commission did not make any recommendations on the subject of Acts of Parliament and enactment clause.

##### **14.23.2 Provisions in the Mung’omba Draft Constitution on Acts of Parliament and Enactment Clause**

Article 176 provides as follows:

**“176. All laws enacted by Parliament shall be styled “Acts” and the words of enactment shall be “Enacted by the Parliament of Zambia.”**

##### **14.23.3 Deliberations of the Conference on Article 176**

The Conference considered and approved Article 176.

##### **14.23.4 Resolution of the Conference**

The Conference adopted Article 176 without amendments and renumbered it as Article 162 as follows:

**“162. All laws enacted by Parliament shall be styled “Acts” and the words of enactment shall be “Enacted by the Parliament of Zambia.”**

## **14.24 Article 177 : Right to Petition and Make Comments**

### **14.24.1 Recommendations of the Commission**

The Commission recommended as follows:

- (a) the right of the citizens to comment on deliberations of the National Assembly should be guaranteed by the Constitution; and
- (b) the National Assembly (Powers and Privileges) Act should be amended so that the power of citizens to comment, generally and fairly, on any subject debated in the National Assembly, including the Right of Reply, is not subject to contempt powers of the National Assembly.

### **14.24.2 Provisions in the Mung’omba Draft Constitution on Right to Petition and Make Comments**

Article 177 provides as follows:

- “177. (1) Every person has a right to petition Parliament to enact, amend or repeal any legislation.**
- (2) Every citizen may make any comment on the deliberations, statements and decisions of the National Assembly.”**

### **14.24.3 Deliberations of the Conference on Article 177**

14.24.3.1 In debating clause (1), members proposed the adoption of the clause with an amendment to replace “every person” by “every citizen”.

14.24.3.2 After debate the amendment was accepted and clause (1) was approved.

### **14.24.4 Resolution of the Conference**

The Conference adopted Article 177 with amendments and renumbered it as Article 163 as follows:



**“163. (1) Every citizen of Zambia has a right to petition Parliament to enact, amend or repeal any legislation.**

**(2) Every citizen may comment on the deliberations, statements and decisions of the National Assembly.”**

**14.25 Article 178 : Quorum**

**14.25.1 Recommendations of the Commission**

The Commission observed that currently Article 184 (4) of the Constitution provides that the quorum for a meeting of the National Assembly shall be one-third of all MPs. The Commission therefore recommended retention of the provision that one third of all members of the National Assembly shall constitute a quorum.

**14.25.2 Provision in the Mung’omba Draft Constitution on Quorum**

Article 178 provides as follows:

**“178. The quorum for a meeting of the National Assembly shall be one-third of all the members of the Assembly.”**

**14.25.3 Deliberations of the Conference on Article 178**

The Conference concurred with the Commission on the adoption of the standard practice of having a quorum of one-third of the membership of the National Assembly.

**14.25.4 Resolution of the Conference**

The Conference adopted Article 178 without amendment and renumbered it as Article 164 as follows:

**“164. The quorum for a meeting of the National Assembly shall be one-third of all the members of the National Assembly.”**

**14.26 Article 179 : Voting in the National Assembly**

**14.26.1 Recommendations of the Commission**

The Mung’omba Constitution Review Commission Report observed that though it would be ideal that decisions of the National Assembly are seen to be taken by a majority of Members, a strict requirement for an absolute majority could impede the

functioning of the National Assembly. The Commission did not make a direct observation on the Speaker's casting vote.

#### **14.26.2 Provisions in the Mung'omba Draft Constitution on Voting in the National Assembly**

Article 179 provides as follows:

**"(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 present and voting.**

**(2) Except as provided under Article 125 (5), 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."**

#### **14.26.3 Deliberations of the Conference on Article 179**

14.26.3.1 The Conference considered and approved clause (1) of Article 179.

14.26.3.2 In debating clause (2), some members of the Conference proposed to amend the clause to provide for the Speaker to be allowed a casting vote in the case of a tie on a question proposed for a decision in the National Assembly. It was argued that currently, the Speaker had a casting vote as provided under Article 84 (2) of the current Constitution.

14.26.3.3 It was further argued that the simple majority vote provided a possibility that the Speaker might have to cast a vote when there was a tie.

14.26.3.4 The Conference approved clause (2) of Article 179 with amendments to provide for the Speaker to cast a vote when there was a tie.

#### **14.26.4 Resolution of the Conference**

The Conference adopted Article 179 with amendments and renumbered it as Article 165 as follows:

**"165. (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 present and voting.**

**(2) Except as provided under Article 110 (5), on a question proposed for decision in the National Assembly the Speaker shall have no vote in the first instance, but in the case of a tie the Speaker shall have the casting vote.”**

**14.27 Article 180 : Procedure and Committees of National Assembly**

**14.27.1 Recommendations of the Commission**

The Commission recommended the following:

- (a) the National Assembly shall appoint standing committees and other committees necessary for the efficient discharge of its functions;
- (b) the members of Standing Committees shall be elected from among Members of Parliament during the First Session of Parliament;
- (c) the rules of procedure of the National Assembly shall prescribe the manner in which the members and chairpersons of committees are to be elected;
- (d) the functions of Standing Committees shall, among others, include discussing and making recommendations on all Bills laid before the National Assembly; initiating any Bill within their respective areas of competence; assessing and evaluating estimates of revenue and expenditure, including the management thereof by the Government and other activities of the Government as well as other public institutions; carrying out relevant research in their respective fields; and reporting to the National Assembly on their functions;
- (e) the Constitution should provide that decisions of the National Assembly shall be enforced and that Parliament shall enact a law to this effect, providing penalties for failure to comply; and
- (f) as recommended under Chapter 18 on the subject of Parliamentary Ombudsman, an Office of Parliamentary Ombudsman should be established under the Constitution and be vested with powers to investigate public institutions for actions or omissions in contravention of the law, and that decisions of the Office shall be coercive.

**14.27.2 Provisions in the Mung’omba Draft Constitution on Procedure and Committees of National Assembly**

Article 180 provides as follows:

- “180. (1) The National Assembly may -**
- (a) regulate its own procedure and shall make Standing Orders for the orderly conduct of its proceedings; and**
  - (b) 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 a general election and after the election of the Speaker and the Deputy Speakers.**
- (3) In electing members of a committee the National Assembly shall ensure that there is equitable representation of the political parties or groups that are represented in the National Assembly as well as of the members not belonging to any political party or group.**
- (4) 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.**
- (5) Parliament shall enact legislation providing for the functions of a standing committee which shall include the following:**
- (a) investigate or inquire into the administration of Government ministries and departments;**
  - (b) examine and make recommendations on Bills that are referred to the committee;**
  - (c) initiate any Bill within its area of competence;**
  - (d) assess and evaluate estimates of revenue and expenditure, including the management of revenue and expenditure, by the Government and other bodies who directly or indirectly**

- receive services or resources from the Government;
- (e) carry out research and studies in its area of competence; and
- (f) report to the National Assembly on its functions and activities."

#### 14.27.3 Deliberations of the Conference on Article 180

- 14.27.3.1 The Conference approved clause (1) without amendment.
- 14.27.3.2 In debating clause (2) and clause (3), members expressed the opinion that the two clauses provided for matters of procedure and detail which could be addressed outside the Constitution. The Conference decided to delete clauses (2) and (3).
- 14.27.3.3 The Conference considered and approved clause (4) of Article 180.
- 14.27.3.4 On clause (5), the Conference observed that the oversight functions of Parliament were already provided for in Article 158 and that the functions listed under clause (5) of Article 180 would add little if anything to the powers. Clause (5) was therefore amended to only provide for an Act of Parliament.

#### 14.27.4 Resolutions of the Conference

The Conference adopted Article 180 with amendments and renumbered it as Article 166 as follows:

- "166. (1) The National Assembly may -
  - (a) regulate its own procedure and shall make Standing Orders for the orderly conduct of its proceedings; and
  - (b) 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 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.

**(3) Parliament shall enact legislation providing for the functions of a standing committee."**

**14.28 Article 181 : Power to Call Evidence**

**14.28.1 Recommendations of the Commission**

The Commission recommended that in the exercise of its functions under this Article, a Committee of Parliament:

- (a) may call any Minister or any person holding public office and private individuals to submit memoranda or appear before it to give evidence;
- (b) may co-opt any Member of Parliament or employ qualified persons to assist it in the discharge of its functions;
- (c) shall have the powers of the High Court in enforcing the attendance of witnesses and examining them on oath, affirmation or otherwise; and
- (d) shall have power to compel the production of documents and to issue a commission or request to examine witnesses abroad.

**14.28.2 Provisions in the Mung'omba Draft Constitution on Power to Call Evidence**

Article 181 provides as follows:

**"181. (1) In the performance of its functions -**

- (a) the National Assembly or any of its committees may call any Minister, 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 the National Assembly or engage qualified persons to assist it in the performance of its functions; and**
- (c) the National Assembly or any of its committees has the powers of -**
  - (i) enforcing the attendance of witnesses and examining them on oath, affirmation or otherwise;**
  - (ii) compelling the production of documents; and**

(iii) issuing a commission or request to examine witnesses abroad.

(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 would be 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 in any court, except for perjury under criminal law."

#### **14.28.3 Deliberations of the Conference on Article 181**

14.28.3.1 In debating clauses (1), (2) and (3) of Article 181, the Conference was of the view that the words "co-opting other members" and "engaging" outside experts were too open. The Conference therefore resolved to delete clause (1) (b) from the Article.

14.28.3.2 Further, the Conference considered that clause (1) (c) and clauses (2) and (3) could more appropriately be catered for in an Act of Parliament and therefore those clauses were deleted.

14.28.3.3 The Conference accordingly decided to adopt Article 181 with amendments.

#### **14.28.4 Resolution of the Conference**

The Conference adopted Article 181 with amendments and renumbered it as Article 167 as follows:

**"167. In the performance of its functions, the National Assembly or any of its committees may call any Minister, any person holding a public office or any private individual to submit memoranda or appear before it to give evidence."**

**14.29 Article 182 : Public Access and Participation**

**14.29.1 Recommendations of the Commission**

The Commission recommended as follows:

- (a) as a general principle, Parliamentary proceedings shall be open to the public, exception to be made only on narrowly defined security considerations;
- (b) there should be two weeks notification for Bills other than Constitutional Bills, though both the Gazette and other easily accessible media;
- (c) that the language of all Bills and Legislation should be plain and easy to understand; and
- (d) that Parliament should take appropriate measures to facilitate utmost accessibility by the people to Parliamentary proceedings.

**14.29.2 Provisions in the Mung'omba Draft Constitution on Public Access and Participation**

Article 182 provides as follows:

- "182 (1) The National Assembly shall –**
- (a) facilitate public involvement in the legislative process; 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."**

**14.29.3 Deliberations of the Conference on Article 182**

14.29.3.1 In debating Article 182, some members expressed concern over the power granted to the Speaker by clause (2) to exclude the public in exceptional circumstances.

14.29.3.2 Other members however, explained that the Speaker as an office would consult other offices of the National Assembly with regard to the concern raised by some members on what would constitute "exceptional circumstances".



#### 14.29.4 **Resolutions of the Conference**

The Conference adopted Article 182 without amendment and renumbered it as Article 168 as follows:

- "168. (1) The National Assembly shall -**
- (a) facilitate public involvement in the legislative process; 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."**

#### 14.30 **Article 183 : Powers, Privileges and Immunities**

##### 14.30.1 **Recommendation of the Commission**

The Commission observed that it was essential for MPs to be guaranteed the liberty to debate and vote on any issue in the National Assembly without fear. On the other hand, the Commission appreciated that in order for the Executive as a whole to be accountable to the National Assembly, Ministers needed to speak collectively. The Commission therefore recommended that the liberty of MPs to speak and vote freely should be explicitly enshrined in the Constitution.

##### 14.30.2 **Provisions in the Mung'omba Draft Constitution on Powers, Privileges and Immunities**

Article 183 provides as follows:

- "183. (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 National Assembly shall, for the purpose of the orderly and effective discharge of the business of the National Assembly, have the powers, privileges and immunities specified by an Act of Parliament."**

**14.30.3        Deliberations of the Conference on Article 183**

14.30.3.1        In the debate on clause (1), some members argued that despite having a provision on censure of a Minister, Parliament did not adequately play its oversight role because some “powerful” leaders exerted their weight on Parliament. The members wondered whether Parliament could not be given more power in the Constitution to enable it effectively play its oversight role such as dealing with officers found to have misappropriated funds by the Public Accounts Committee.

14.30.3.2        The Conference however, approved Article 183 (1) without amendments.

14.30.3.3        The Conference considered and approved clause (2) of Article 183.

**14.30.4        Resolutions of the Conference**

The Conference adopted Article 183 without amendments and renumbered it as Article 169 as follows:

**“169. (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 National Assembly shall, for the purpose of the orderly and effective discharge of the business of the National Assembly, have the powers, privileges and immunities specified by an Act of Parliament.”**

**14.31        Article 184 : Sitzings of the National Assembly**

**14.31.1        Recommendations of the Commission**

The Commission recommended that:

- (a)    “the President shall summon the National Assembly for the first sitting of each Parliament following dissolution of the National Assembly and that the President may summon a dissolved National Assembly in situations of war or a state of emergency;
- (b) the President may request the Speaker, in writing,

to summon the National Assembly for a special sitting to conduct extraordinary or urgent business, and when so requested the Speaker shall summon the National Assembly within a period not exceeding 14 days;

- (c) the Speaker shall summon the National Assembly for its ordinary sessions;
- (d) the Speaker shall, in other circumstances specified by the Constitution, have power to summon the National Assembly;
- (e) in any other instances, the National Assembly shall, on a two-thirds majority, have the power to summon itself; and
- (f) where the Speaker fails to summon the National Assembly in circumstances where the Constitution requires her or him to do so, the National Assembly may proceed on its own motion and elect one among its members to preside over the motion of summoning.

#### 14.31.2 **Provisions in the Mung'omba Draft Constitution on Sitzings of the National Assembly**

Article 184 provides as follows:

**"184. (1) After members of the National Assembly are elected in a general election the Speaker shall, by notice in the *Gazette*, appoint a date, not more than thirty days after the general 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 sitting of the National Assembly in one session and the commencement of the next session.**

**(3) The sittings of the National Assembly in any session of Parliament after the commencement of that session 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 summon the National Assembly within fourteen days.

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

(6) Where the Speaker fails to summon the National Assembly when requested to do so under this Article, two-thirds of the members of the Assembly may sit to consider the motion to summon the National Assembly 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 that motion.

(7) A motion to summon the National Assembly, under clause (6), shall be passed by a vote supported by two-thirds of the members present and voting."

**14.31.3 Deliberations of the Conference on Article 184**

14.31.3.1 In debating Article 184, some members proposed that the President-elect instead of the Speaker should be the one to summon the first ceremonial sitting of Parliament after an election.

14.31.3.2 The members argued that since there would be General Elections, the Speaker would also have to be elected at the first sitting of Parliament, hence the need for the President to summon Parliament.

14.31.3.3 The Conference approved clause (1) with an amendment to provide for the President to summon the first ceremonial sitting of the National Assembly.

14.31.3.4 The Conference considered and approved clauses (2), (3) and (4) of Article 184. The Conference introduced an amendment in clause (3) to provide for three sittings of Parliament per year to ensure regular sittings of the House.

14.31.3.5 In the debate on clauses (5), (6) and (7), the Conference decided to delete clauses (6) and (7) of Article 184 as it was likely to be "a recipe for anarchy if, when the Speaker failed to summon the National Assembly when requested to do so under this Article, two-thirds of the members of the Assembly might sit to consider

the motion to summon the National Assembly.” The Conference was satisfied that the introduction of three mandatory sittings in a session was sufficient to prevent a situation where the Speaker or President refused to summon the National Assembly for prolonged periods.

14.31.3.6 The Conference approved clause (5) of Article 184.

#### 14.31.4 **Resolutions of the Conference**

The Conference adopted Article 184 with amendments and renumbered it as Article 170 as follows:

**“170. (1) After members of the National Assembly are elected in a general election, the President shall, by notice in the Gazette, appoint a date, not more than thirty days after the general 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 sitting of the National Assembly in one session 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 summon the National Assembly within fourteen days.**

**(5) Notwithstanding this Article, two-thirds of all the members of the National Assembly may request a meeting and on receipt of that request the Speaker shall summon the National Assembly within seven days.”**

#### 14.32 **Article 185 : Life and Prorogation of Parliament**

##### 14.32.1 **Recommendations of the Commission**

The Commission recommended that:

- (a) the President shall summon the National Assembly

- for the first sitting of each Parliament following dissolution of the National Assembly and that the President may summon a dissolved National Assembly in situations of war or a state of emergency;
- (b) the President may request the Speaker, in writing, to summon the National Assembly for a special sitting to conduct extraordinary or urgent business, and when so requested the Speaker shall summon the National Assembly within a period not exceeding 14 days;
  - (c) the Speaker shall summon the National Assembly for its ordinary sessions;
  - (e) the Speaker shall, in other circumstances specified by the Constitution, have power to summon the National Assembly;
  - (f) in any other instances, the National Assembly shall, on a two-thirds majority, have the power to summon itself; and
  - (g) where the Speaker fails to summon the National Assembly in circumstances where the Constitution requires her or him to do so, the National Assembly may proceed on its own motion and elect one among its members to preside over the motion of summoning.

#### 14.32.2 **Provisions in the Mung'omba Draft Constitution on Life and Prorogation of Parliament**

Article 185 provides as follows:

**“185. (1) The life of Parliament shall be five years from the date of the declaration of the results of a general election and Parliament shall stand prorogued ninety days before the holding of the next general election.**

**(2) 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 the Assembly, extend the term of Parliament for not more than twelve months at a time.**

**(3) The President shall dissolve Parliament –**  
**(a) if the situation is such that the Executive cannot effectively govern the Republic with the current National Assembly; and**

- (b) the Constitutional Court determines that the situation specified under paragraph (a) exists.
- (4) If Parliament is dissolved by virtue of clause (3), presidential and National Assembly elections shall be held within ninety days of the dissolution.
- (5) After a dissolution of Parliament and before the holding of general elections the President may, due to a state of war or state of public emergency or threatened state of public emergency, recall the National Assembly that was dissolved to meet.
- (6) The Speaker may, in consultation with the President, prorogue Parliament by proclamation."

### 14.32.3 **Deliberations of the Conference on Article 185**

14.32.3.1 The Conference considered clauses (1), (2), (3), (4), and (5) of Article 185. In the debate on clauses (1) and (5), members observed that, though the National Assembly would be prorogued, ninety (90) days before the election, Members of Parliament could be recalled if there was an urgent need for the House to meet. The Conference approved clause (1) and amended clause (5) to make the provision clearer.

14.32.3.2 On clause (2), members argued that when a country was at war, it could be difficult to raise enough Members of Parliament to reach two-thirds of the full House. Members approved the proposal for simple majority of the House to support the motion to extend the life of Parliament for twelve (12) months in times of war. The Conference approved clause (2) with an amendment to provide for a simple majority.

14.32.3.3 The Conference considered and approved clauses (3) and (4) of Article 185 with amendments.

14.32.3.4 The Conference introduced and considered a new clause of Article 185 as follows:

**"Where the President intends to dissolve Parliament pursuant to clause (5), the President shall so inform the public and shall refer the matter to the Constitutional Court for determination that the situation exists."**

- 14.32.3.5 In debating the new clause, some members wished to know whether the Constitutional Court was to determine the question of whether conflict existed or the fact that effective governance of the country was not possible. They also expressed concern that the clause may give leeway to the President to dissolve Parliament when he was facing an impeachment motion.
- 14.32.3.6 Other members argued that if the President dissolved Parliament then he or she too would be affected. Members observed that ultimately, the Court would determine the question, whether or not the Executive could effectively govern with the current National Assembly.
- 14.32.3.7 The Conference approved the new clause of Article 185.
- 14.32.3.8 The Conference introduced two new clauses to complement the new clause above which provides for reference to the Constitutional Court as follows:
- “The Constitutional Court shall determine a matter referred to it under clause (6) within seven days of the receipt of the matter.”**
- “The Constitutional Court shall, where it determines that the situation in clause (6) exists, so inform the President and the President shall dissolve Parliament.”**
- 14.32.3.9 The new clauses were consequential provisions and were accordingly approved by the Conference.
- 14.32.3.10 The Conference considered and approved clause (9) of Article 185 subject to an amendment to replace the term “clause (3)” by “clause (5)”.
- 14.32.4 **Resolutions of the Conference**

The Conference adopted Article 185 with amendments and renumbered it as Article 171 as follows:

- “171. (1) The life of Parliament shall be five years from the date of the declaration of the results of a general election and Parliament shall stand dissolved.**
- (2) The President may, in consultation with the Speaker, prorogue Parliament by proclamation.**



(3) Parliament shall stand dissolved ninety days before the holding of the next general election.

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

(5) Subject to clauses (6) and (7), the President may dissolve Parliament where the President has reasonable grounds to believe that the Executive cannot effectively govern the Republic with the current National Assembly.

(6) Where the President intends to dissolve Parliament pursuant to clause (5), the President shall so inform the public and shall refer the matter to the Constitutional Court for determination that the situation exists.

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

(8) The Constitutional Court shall, where it determines that the situation in clause (6) exists, so inform the President and the President shall dissolve Parliament.

(9) If Parliament is dissolved by virtue of clause (8), Presidential and Parliamentary elections shall be held within ninety days of the dissolution.

(10) Notwithstanding a dissolution of Parliament, the President, may, due to a state of war or state of public emergency or threatened state of public emergency, recall the Parliament that has been dissolved to meet and that Parliament shall be deemed to be the Parliament for the time being."

**14.33 Article 186 : President May Address National Assembly**

**14.33.1 Recommendations of the Commission**

The Commission recommended as follows:

- (a) the National Assembly should not have power to summon the President or pass a vote of no confidence in the President;

- (b) there should be no provision requiring the President to attend the National Assembly, but that he or she should do so at her or his pleasure;
- (c) the National Assembly should have no power to pass a vote of no confidence in Cabinet Ministers;
- (d) the Constitution should provide that the National Assembly shall have power to censure a Minister, but no more; and
- (e) the National Assembly should not have power to control the Judiciary, but only to provide checks and balances.

#### 14.33.2 **Provisions in the Mung'omba Draft Constitution on President may Address National Assembly**

Article 186 provides as follows:

**'186. (1) The President may at any time attend and address the National Assembly.**

**(2) The President may send messages to the National Assembly and the message shall be read at the first convenient sitting of the National Assembly, after it is received, by the Vice-President or by a Minister designated by the President."**

#### 14.33.3 **Deliberations of the Conference on Article 186**

The Conference considered and resolved to adopt Article 186 without amendments.

#### 14.33.4 **Resolutions of the Conference**

The Conference adopted Article 186 without amendments and renumbered it as Article 172 as follows:

**"172. (1) The President may at any time attend and address the National Assembly.**

**(2) The President may send messages to the National Assembly and the message shall be read at the first convenient sitting of the National Assembly, after it is received, by the Vice-President or by a Minister designated by the President."**

## **14.34 Article 187 : Statutory Instruments**

### **14.34.1 Recommendations of the Commission**

Although the Mung’omba Constitution Review Commission did not make specific recommendations on the issue of Statutory Instruments under the chapter on the legislature the Commission however recognized delegated legislation as one of the sources of law, when they noted under “sources of law” that delegated legislation was made by the Executive or local authorities by virtue of powers conferred upon them by an enabling statute enacted by Parliament.

### **14.34.2 Provisions in the Mung’omba Draft Constitution on Statutory Instruments**

Article 187 provides as follows:

**“187. (1) Nothing in Article 158 or 170 shall prevent Parliament from conferring on any person or authority power to make statutory instruments.**

**(2) Every statutory instrument shall be published in the *Gazette* not later than twenty-eight days after it is made or, 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 it is not so published it is void from the date on which it was made.**

**(3) Thirty or more members of the National Assembly 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 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 would be or is inconsistent with this Constitution and shall dismiss the action.**

**(5) Where the Constitutional Court determines that any provision of a statutory instrument would be or is inconsistent with any provision of this Constitution that**

**statutory instrument shall be 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 who intend to challenge a statutory instrument."**

**14.34.3 Deliberations of the Conference on Article 187**

**14.34.3.1** The Conference considered and approved clauses (1) and (2) of Article 187 without amendments.

**14.34.3.2** In the debate on clause (3), some members argued that a clause providing for thirty or more members to petition Parliament with the leave of the Constitutional Court had been earlier considered but that unlike that case there was no collective responsibility by Members of Parliament in the formulation process of Statutory Instruments.

**14.34.3.3** Other members however argued that Parliament had a Committee on Delegated Legislation whose function was to scrutinize Statutory Instruments

**14.34.3.4** The Conference approved Article 187 (3).

**14.34.3.5** The Conference considered and approved clause (4) of Article 187.

**14.34.3.6** In considering clause (5), some members contended that there were situations where the Constitutional Court had ruled that a Statutory Instrument was null and void, but Government had continued to use that Statutory Instrument.

**14.34.3.7** Other members however argued that the Standing Orders of Parliament guided where Parliament found that a Statutory Instrument was inconsistent with the enabling Act. The Committee on delegated legislation by seeking clarification through an Action Taken Report, could challenge the constitutionality of the Statutory Instrument.

**14.34.3.8** The Conference approved Article 187 clause (5).

**14.34.3.9** The Conference considered and approved clause (6) of Article 187.

#### 14.34.4 Resolutions of the Conference

The Conference adopted Article 187 with amendments and renumbered it as Article 173 as follows:

**"173. (1) Nothing in Article 142 or 156 shall prevent Parliament from conferring on any person or authority power to make statutory instruments.**

**(2) Every statutory instrument shall be published in the Gazette not later than twenty-eight days after it is made or, 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 it is not so published it is void from the date on which it was made.**

**(3) Thirty or more members of the National Assembly 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 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 would be or is inconsistent with this Constitution and shall dismiss the action.**

**(5) Where the Constitutional Court determines that any provision of a statutory instrument would be or is inconsistent with any provision of this Constitution that provision shall be void to the extent of the inconsistency, 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 who intend to challenge a statutory instrument."**

#### 14.35 Article 188 : Censure of Minister

##### 14.35.1 Recommendations of the Commission

The Commission recommended that:

- (a) the National Assembly should have no power to pass a vote of no confidence in Cabinet Ministers; and
- (b) the Constitution should provide that the National Assembly shall have power to censure a Minister.

14.35.2      **Provisions in the Mung’omba Draft Constitution on Censure of Minister**

Article 188 provides as follows:

**“188. (1)      The National Assembly may censure a Minister by resolution supported by two-thirds of the votes of all the members of the National Assembly in accordance with this Article.**

**(2)      Any proceedings for the censure of a Minister shall be by a petition to the President, through the Speaker, which has been signed by not less than one-third of all the members of the National Assembly giving notice that the members are dissatisfied with the conduct or performance of the Minister and intend to move a motion for a resolution to censure the Minister 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 in question.**

**(4)      The motion for the resolution to censure a Minister shall not be debated until after the expiry of thirty days from the date the petition was sent to the President.**

**(5)      A Minister who is the subject of a petition shall be entitled to be heard in the Ministers’ defence during the debate of a motion under this Article.**

**(6)      If a vote of censure is passed, in accordance with clause (1), against a Minister, the President shall, unless the Minister resigns, take appropriate action in the matter.”**

14.35.3      **Deliberations of the Conference on Article 188**

14.35.3.1      In debating Article 188, the Conference observed that Cabinet worked by collective responsibility and as such an act done by a Minister was done on behalf of the Government.

14.35.3.2      In the debate that ensued, some members were of the view that the provisions of Article 188 should be approved while other members supported the proposal to delete Article 188.

14.35.3.3 Members who advocated for the retention of Article 188 of the Mung'omba Draft Constitution argued that:

- (a) it was time to give Parliament powers to hold the Executive accountable for their mistakes or else Members of Parliament would continue to be “toothless chatterboxes”; and
- (b) it would compel the Executive to implement advice given to them rather than having the option of ignoring it.

14.35.3.4 Members who supported the deletion of the Article argued that:

- (a) opponents would take advantage of the provision and cause anarchy and that there were already adequate procedures to address erring Ministers;
- (b) Parliament had means of dealing with members of the Executive who made mistakes such as the Ministerial Code of Conduct; and
- (c) It was not right for the Legislature to censure a Minister appointed by the Executive branch of Government.

14.35.3.5 The consensus of the Conference was to delete Article 188.

#### 14.35.4 **Resolution of the Conference**

The Conference resolved to delete Article 188 from the Constitution.

### 14.36 **Article 189 : Recall of Member of National Assembly**

#### 14.36.1 **Recommendations of the Commission**

The Commission recommended as follows:-

- (a) the electorate shall have power to recall an MP who is elected on the basis of the First-Past-The-Post electoral system on grounds of failure to perform;
- (b) a recall shall be initiated by a petition in writing setting out the grounds relied on and signed by at least half of the registered voters in the constituency who voted in the last election in the constituency;
- (c) the petition shall be presented to the Chairman of the Electoral Commission who shall appoint a tribunal to inquire into the matter;

- (d) the Chairman of the Electoral Commission shall act in accordance with the findings of the tribunal whether to declare the seat vacant or the petition as unjustified;
- (e) an MP who has been petitioned shall have the right of hearing and to be present during the conduct of the inquiry, either by himself in person or through a lawyer representing her or him or both;
- (f) the composition of a tribunal appointed for this purpose and other procedural details shall be prescribed by an Act of Parliament;
- (h) the functions and duties of an MP should be prescribed in an appropriate piece of legislation and be made accessible to the people so that they understand the role of an MP; and
- (i) that the Constitution should specifically stipulate the grounds on which an MP may be removed and state that Parliament may by an Act of Parliament provide further grounds on which an MP may be recalled.

#### 14.36.2 **Provisions in the Mung’omba Draft Constitution on Recall of Member of National Assembly**

Article 189 provides as follows:

**“189. (1) A member of the National Assembly who holds a constituency-based seat may be recalled by the electorate in that constituency as follows:**

- (a) a recall shall only be initiated where the member of the National Assembly has persistently neglected to perform the member’s responsibilities in the constituency as required of the member by law;
  - (b) a recall shall be initiated by petition signed by at least fifty per cent of the registered voters in the constituency; 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 member of the National Assembly 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 recommendation, submitted under clause (1), act in accordance with the recommendations of the tribunal.

(4) An Act of Parliament shall provide for -

- (a) the functions and duties of a member of the National Assembly in relation to the constituency the member represents;
- (b) grounds on which a member of the National Assembly may be recalled; and
- (c) the composition, powers, sittings and procedures of a tribunal constituted under this Article."

#### 14.36.3 Deliberations of the Conference on Article 189

14.36.3.1 In the debate on Article 189, members expressed various views for and against the Article.

14.36.3.2 Members who advocated for the retention of Article 189 of the Mung'omba Draft Constitution argued that:

- (a) the electorate had the right to recall MPs who did not perform since they were responsible for electing them. They did not believe that an MP who did not perform should continue to be in Parliament;
- (b) MPs who failed to deliver should be removed to prevent the electorates in their constituencies from continued suffering. If MPs could impeach the President then even a Minister could be censured; and
- (c) the practice of recall was common in democratic societies.

14.36.3.3 Members who advocated for the deletion of the Article argued as follows:

- (a) that it was extremely dangerous to assume that the electorate could elect mediocre Members of Parliament;
- (b) that the legitimacy of an MP was based on the vote;

- (c) that the Article was retrogressive to development because there were some jealous people whose aim was to deliberately bring down an MP by retarding progress, so that the MP would be recalled;
- (d) that a losing candidate would start organizing a recall from the start to distract the performance of the incumbent;
- (e) that recalls would lead to too many by-elections;
- (f) that some constituencies were too large for MPs to cover easily.
- (g) that recalling an MP by people in the constituency was not justified because he or she could be removed after five years if he or she did not perform according to the satisfaction of the electorate; and
- (h) that Article 189 would be abused by using it to de-campaign MPs.

#### **14.36.4 Resolution of the Conference**

The Conference resolved to delete Article 189.

#### **14.37 Article 190 : Oaths to be taken by Speaker, Deputy Speakers and Members**

##### **14.37.1 Recommendations of the Commission**

The Commission recommended that:

- (a) the content of Oaths for various public offices, was already recommended in the Report, should also apply to the Speaker and Deputy Speaker (s); and
- (b) the Speaker and Deputy Speaker(s) should be sworn in by the President as is the current practice, but that this should be specified in an Act of Parliament.

**13.27.4 Provision in the Mung’omba Draft Constitution on Oaths to be taken by Speaker, Deputy Speakers and Members**

Article 190 provides as follows:

**“190. (1) The Speaker and the Deputy Speakers, before carrying out the duties of office, shall take the Oath of Speaker or Deputy Speaker, as set out in the Third Schedule.  
(2) A member of the National Assembly, before taking the member’s seat in the Assembly, shall take the Oath of a member of the National Assembly, as set out in the Third Schedule.”**

**14.37.3 Deliberations of the Conference on Article 190**

14.37.3.1 The Conference concurred with the Commission to provide for Oaths of Office of the Speaker, Deputy Speakers and Members of Parliament.

14.37.3.2 Members of the Conference, however, decided that the Oath should no be in a schedule to the Constitution but prescribed under an Act of Parliament which could be amended from time to time without affecting the Constitution.

**14.37.4 Resolutions of the Conference**

The Conference made two resolutions:

(i) adopted Article 190 with amendments and renumbered it as Article 174 as follows:

**"174. (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 the National Assembly, before taking the member's seat in the National Assembly, shall take the Oath of a member of the National Assembly, as may be prescribed by or under an Act of Parliament."**

(ii) approved the oaths of office as follows:

## **THE OATH OF SPEAKER/ DEPUTY SPEAKER\***

I, ....., do (in the name of the Almighty God swear) (solemnly affirm)\* that I will bear true faith and allegiance to the people of Zambia; that I will uphold the sovereignty and integrity of the Republic of Zambia; that I will faithfully and conscientiously discharge my duties as Speaker /Deputy Speaker\* of the National Assembly; and that I will uphold, preserve, protect and defend the Constitution of the Republic of Zambia; and that I will do right to all manner of persons; and that I will uphold and apply the laws and conventions of the National Assembly without fear, favour, affection or ill-will.

### **SO HELP ME GOD**

*To be sworn before the Chief Justice.*

## **THE OATH OF A MEMBER OF THE NATIONAL ASSEMBLY**

I, ....., having been elected a member of the National Assembly do (in the name of the Almighty God swear) (solemnly affirm)\* that I will bear true faith and allegiance to the people of Zambia; that I will uphold, preserve, protect and defend the Constitution of the Republic of Zambia; and that I will faithfully and conscientiously discharge the duties of a member of the National Assembly.

### **SO HELP ME GOD**

*To be sworn before the Speaker*

#### **14.38 Article 191 : Officers of National Assembly**

##### **14.38.1 Recommendations of the Commission**

The Commission recommended that the Constitution establish specialized public services and commissions with their membership, powers and functions, over the various sectors of Government, such as the Parliamentary Service, the Judicial

Service, the Civil Service, the Teaching Service, the Police and Prison Service.

**14.38.2 Provisions in the Mung’omba Draft Constitution on Officers of National Assembly**

Article 191 provides as follows:

**“191. (1) There shall be appointed 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”.**

**14.38.3 Deliberations of the Conference on Article 191**

The Conference considered and approved clauses (1) and (2) of Article 191.

**14.38.4 Resolutions of the Conference**

The Conference adopted Article 191 without amendments and renumbered it as Article 175 as follows:

**“175. (1) There shall be appointed 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.”**

**14.39 Article 192 : Parliamentary Service Commission**

**14.39.1 Recommendations of the Commission**

**14.39.1.1** The Commission recommended that the Constitution establish a specialized public services and commissions with their own membership, powers and functions over the various sectors of Government, such as the Parliamentary Service, the Judicial Service, the Civil Service, the Teaching Service, the Police and Prisons Service.

**14.39.1.2** The Commission further recommended that:

- (a) service commissions should continue to operate in areas of their specialisation and should not be merged;
- (b) appointments should, first and foremost, be on merit, but take into account special interest groups such as women and persons with disabilities; and
- (c) steps should be taken to ensure that all service commissions are decentralised to provincial level.

**14.39.2 Provisions in the Mung'omba Draft Constitution on Parliamentary Service Commission**

Article 192 provides as follows:

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

- (a) the Speaker, as Chairperson;**
- (b) five members appointed by the National Assembly from amongst its members of whom -**
  - (i) three shall be nominated by the political party forming the Government; and**
  - (ii) two other persons of opposite gender who shall be nominated by the other political parties in the National Assembly which do not form the Government; and**
- (c) two members of the opposite gender appointed by the National Assembly from among persons who are not members of the National Assembly 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 the National Assembly-**
    - (i) upon the dissolution of Parliament; or**
    - (ii) on that person ceasing to be a member of the Assembly; or**
  - (b) a member appointed under clause (1) (c), 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, jointly with the Government, 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 for the Parliamentary Service Commission.
- (5) The Parliamentary Service Commission shall, with the prior approval of the National Assembly, make regulations, by statutory instrument, providing for 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."

#### 14.39.3 **Deliberations of the Conference on Article 192**

The Conference considered Article 192 and introduced the following amendments:

- (a) to include the Minister responsible for Finance as a member of the Commission;
- (b) to provide for gender balance;
- (c) to provide for two members of the Commission to be appointed from outside the National Assembly; and
- (d) to provide for conditions of service for the Speaker, Deputy Speakers, Members of Parliament and staff.

#### 14.39.4 **Resolutions of the Conference**

The Conference adopted Article 192 with amendments and renumbered it as Article 176 as follows:

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

- (a) the Speaker, as Chairperson;**
- (b) the Minister responsible for finance;**
- (c) five members appointed by the National Assembly from amongst its members as follows:**

- (i) two persons of opposite gender nominated by the political party or parties forming the Government; and**
- (ii) two persons of opposite gender and who are not members of the same political party nominated by the other political parties in the National Assembly which do not form the Government; and**
- (iii) an independent member of the National Assembly nominated by other independent members; and**
- (d) two members of opposite gender appointed by the Speaker, subject to ratification by the National Assembly, from among persons who are not members of the National Assembly 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 the National Assembly-
    - (i) upon the dissolution of Parliament; or
    - (ii) on that person ceasing to be a member of the National Assembly; or
  - (b) a member appointed under paragraph (d) of clause (1), on the revocation of that person's appointment by the Speaker.
- (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) undertaking, on its own or jointly with other relevant organisations, programmes to promote the ideals of parliamentary democracy; and
  - (e) carrying out other functions -
    - (i) necessary for the well-being of the Speaker, Deputy Speakers, Members of Parliament, officers and 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 for the Parliamentary Service Commission.
- (5) The Parliamentary Service Commission shall, with the prior approval of the National Assembly, make regulations, by statutory instrument, providing for the terms and conditions of service of the Speaker, Deputy Speakers, Members of Parliament, officers and staff in the Parliamentary Service and generally for the effective and efficient administration of the Parliamentary Service."

## **14.40 New Article : Financial Independence of National Assembly**

### **14.40.1 Recommendations of the Commission**

The Commission recommended that in order to guarantee the financial and administrative autonomy of the National Assembly, the Constitution should provide that the National Assembly shall prepare its own budget estimates which should be subjected to negotiations with the Executive. This process shall take into account the principles of accountability, transparency and equitable sharing of resources, and that estimates, once approved, should be released quarterly in advance.

### **14.40.2 Provisions of the New Article on Financial Independence of National Assembly**

The new Article provides as follows:

**“(1) The Parliamentary Service Commission shall annually prepare and submit its budget estimates to the Minister responsible for finance who, taking into consideration equitable sharing of national resources, shall determine the budget for the National Assembly.**

**(2) The Parliamentary Service Commission shall be adequately funded in any financial year to enable it to effectively carry out its mandate.**

**(3) The Parliamentary Service Commission shall exercise budgetary control over the Parliamentary Service and the National Assembly.**

**(4) The Parliamentary Service Commission shall be a self-accounting institution and shall deal directly with the Ministry responsible for finance in matters relating to its finances.**

**(5) The expenses of the Parliamentary Service Commission, including emoluments payable to or in respect of the Speaker, Deputy Speakers, Members of the National Assembly, officers and staff of the National Assembly, shall be a charge on the Consolidated Fund.”**

### **14.40.3 Deliberations of the Conference on the new Article**

The Conference debated and approved clauses (1), (2), (3), (4) and (5) of the new Article.

#### 14.40.4 Resolution of the Conference

The Conference adopted the new Article and numbered it as Article 177 as follows:

**"177. (1) The Parliamentary Service Commission shall annually prepare and submit its budget estimates to the Minister responsible for finance who, taking into consideration equitable sharing of national resources, shall determine the budget for the National Assembly.**

**(2) The Parliamentary Service Commission shall be adequately funded in any financial year to enable it to effectively carry out its mandate.**

**(3) The Parliamentary Service Commission shall exercise budgetary control over the Parliamentary Service and the National Assembly.**

**(4) The Parliamentary Service Commission shall be a self-accounting institution and shall deal directly with the Ministry responsible for finance in matters relating to its finances.**

**(5) The expenses of the Parliamentary Service Commission, including emoluments payable to or in respect of the Speaker, Deputy Speakers, Members of the National Assembly, officers and staff of the National Assembly, shall be a charge on the National Treasury Account."**

## **CHAPTER XI**

### **JUDICIARY**

#### **15.1 Article 193 : Establishment of Courts of Judiciary**

##### **15.1.1 Recommendations of the Commission**

The Commission recommended that:

- (a) the Constitutional Court should be established as a division of the Supreme Court;
- (b) a Court of Appeal should be established in the Constitution;
- (c) the Industrial Relations Court should be established in the Constitution as a specialised division of the High Court; and
- (d) the High Court, subordinate courts and local courts should be established in the Constitution.

##### **15.1.2 Provisions of the Mung'omba Draft Constitution on Establishment of Courts of Judiciary**

Article 193 provides as follows:

**" 193. (1) There is hereby established -**

**(a) the superior courts of the Judiciary comprising -**

- (i) the Supreme and Constitutional Court;**
- (ii) the Court of Appeal; and**
- (iii) the High Court**
- (b) the subordinate courts;**
- (c) the local courts; and**
- (d) any other court established by an Act of Parliament.**

**(2) The superior courts and subordinate courts shall be courts of record.**

**(3) 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, including the delivery of a decision by a court, shall be in public.”**

### **15.1.3 Deliberations of the Conference on Article 193**

15.1.3.1 On the establishment of the Constitutional Court, arguments were advanced for and against its establishment. The following arguments were submitted in favour of the establishment of the Court:

- (a) that the Constitutional Court was desirable in view of the election petitions that arose from general elections;
- (b) that election petitions would be handled expeditiously;
- (c) that the Constitutional Court was meant to interpret the Constitution contrary to arguments that it would promote vices such as homosexuality, abortion and pornography; and
- (d) that if the workload for the Constitutional Court was low, the judges could be deployed to handle Supreme Court cases.

15.1.3.2 The members who were against the establishment of the Constitutional Court argued as follows:

- (a) that in countries where Constitutional Courts were established, they facilitated the enactment of obnoxious legislation, including the removal of parental roles, authorisation of pornography and homosexuality;
- (b) that since the Chief Justice would be the Chairperson for both the Constitutional Court and Supreme Court, his or her position would be

compromised, and would be more powerful than that of the President;

- (c) that it would be too costly to set up a new court structure and to provide other requisites for the Constitutional Court;
- (d) that the Constitutional Court could rule in favour of laws that would infringe on the rights of people;
- (e) that the Constitutional Court would encourage election petitions. It was argued that people should learn to tolerate one another and not engage in political conflicts because in an election there was always a winner and a loser and that winners should be respected;
- (f) that the Constitutional Court might be moribund as it would only depend on constitutional cases that were brought for adjudication. When there were no cases, the court would be underutilised; therefore, it would be better to establish it as a division of the Supreme Court; and
- (g) that a “stand-alone” Constitutional Court would create a problem of hierarchy between the Chief Justice and the Head of the Constitutional Court.

15.1.3.3 The Conference approved the establishment of the Constitutional Court as a division of the Supreme and Constitutional Court.

15.1.3.4. The members supported the recommendation to establish the Court of Appeal. They stated that the Court of Appeal would bring finality to appeals by decongesting the Supreme Court. Further, they stated that the appeals procedure would provide checks on the Judiciary, thereby reducing the opportunity of compromise. Other members, however, argued that the establishment of the Court of Appeal would lengthen the process of appeal.

15.1.3.5 The Conference approved the establishment of the Court of Appeal.

- 15.1.3.5 The Conference unanimously approved the establishment of the High Court.
- 15.1.3.6 There were divergent views on the establishment of the Industrial Relations Court (IRC). Some members favoured its establishment as an independent court from the High Court while others favoured its establishment as a division of the High Court.
- 15.1.3.7 Members in favour of establishing the IRC as an independent court from the High Court argued that the IRC was easily accessible because it did not have rules and procedures that necessitated legal representation and that the cost of proceedings were lower. The members also stated that if the IRC was established as an independent court, judges of the IRC would have better opportunities of appointment as Supreme Court Judges without the precondition of having to serve as judges of the High Court. It was observed that the court was already in existence with an established infrastructure and staff.
- 15.1.3.8 Members who were in support of establishing the IRC as a division of the High Court reinforced the argument raised by the Commission that establishing the IRC as a division of the High Court would be preferable in order to give it exclusive jurisdiction in all industrial and labour relations matters, which was not the case currently.
- 15.1.3.9 The Conference approved the establishment of the IRC as an independent Court from the High Court.
- 15.1.3.10 The Conference approved the establishment of subordinate and local courts.
- 15.1.3.11 Some members supported the establishment of traditional courts. They argued that traditional courts were guardians of tradition and culture and that during the pre-colonial era the roles played by traditional chiefs and indunas in the administration of justice were well recognised. They further argued that traditional courts should be viewed as progressive and suggested that they be established.
- 15.1.3.12 Other members, while supporting the establishment of traditional and local courts in the Constitution, observed that both institutions

had displayed inadequacies in the dispensation of justice and, therefore, suggested that administrative measures be instituted to enhance their capacities.

- 15.1.3.13 Members who did not support the establishment of traditional courts under the Constitution argued that if the traditional courts were incorporated into the Judiciary, there would be no separation of powers as they were part of the Executive. In addition, providing for the traditional courts in the Constitution would be inappropriate because it might result in the need to legislate on the administration of tradition and culture and with the passage of time, some cultural and traditional practices would be phased out.
- 15.1.3.14 Most members of the Conference supported the establishment of traditional courts through an Act of Parliament on the recommendation of the House of Chiefs as envisaged under Article 193 (1) (d), especially as the establishment of the court had implications which required to be examined before they could be established by legislation.
- 15.1.3.15 The Conference did not approve the incorporation of traditional courts into the Judiciary.

#### **15.1.4 Resolutions of the Conference**

The Conference adopted Article 193 with amendments and re-numbered it as follows:

- "178. (1) There is hereby established -**
- (a) the superior courts of the Judiciary comprising -**
    - (i) the Supreme and Constitutional Court;**
    - (ii) the Court of Appeal;**
    - (iii) the High Court; and**
    - (iv) the *Industrial Relations Court*;**
  - (b) the subordinate courts;**
  - (c) the local courts; and**
  - (d) any other court established by an Act of Parliament.**
- (2) The superior courts and subordinate courts shall be courts of record.**



(3) 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, including the delivery of a decision by a court, shall be in public."

**15.2 Article 194: Vesting of Judicial Powers**

**15.2.1 Recommendations of the Commission**

The Commission emphasised the importance of specifically vesting judicial power in the courts.

**15.2.2 Provisions of the Mung'omba Draft Constitution on Vesting of Judicial Powers**

Article 194 provides as follows:

**"194. (1) The judicial power of Zambia shall vest in the courts and shall be exercised by the courts in accordance with this Constitution and the Laws.**

**(2) The Judiciary shall have jurisdiction, subject to this Constitution, 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 exercising its jurisdiction, the courts shall be guided by the following principles:**

- (a) justice shall be done to all, irrespective of social status;**
- (b) justice shall not be delayed;**
- (c) adequate compensation shall be awarded to victims of wrong; and**
- (d) reconciliation, mediation or arbitration between parties, where appropriate, shall be promoted.**

**(4) In the exercise of the judicial power, a court may, in any matter within its jurisdiction, issue orders to ensure the enforcement of a judgement or other decision of the court."**

### **15.2.3 Deliberations of the Conference on Article 194**

15.2.3.1 The Conference noted that the Constitution was conferring on the judiciary the jurisdiction to determine and resolve matters pertaining to criminal and civil matters.

15.2.3.2 The Conference approved Article 194 subject to the deletion of clause (3) on the grounds that it was a superfluous clause, as the Judiciary was already applying the principles contained therein.

### **15.2.4 Resolutions of the Conference**

The Conference adopted Article 194 with amendments and re-numbered it as follows:

**“179. (1) The judicial power of Zambia shall vest in the courts and shall be exercised by the courts in accordance with this Constitution and the law.**

**(2) The Judiciary shall have jurisdiction, subject to this Constitution, 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) A court may, in exercise of this judicial power, in any matter within its jurisdiction, issue orders to ensure the enforcement of the judgment or other decision of the court.”**

## **15.3 Article 195: Independence of Judiciary**

### **15.3.1 Recommendations of the Commission**

The Commission recommended that the Constitution should guarantee the independence of the Judiciary especially from the Executive; and that the judicial power of the Republic should vest in courts which should be independent and subject only to the Constitution and the law. The Commission also recommended that no member of the Executive or Legislature or any other person should interfere with judges or judicial officers in the exercise of

their functions and that all organs of the State should accord such assistance as courts may require.

### **15.3.2 Provisions of the Mung'omba Draft Constitution on Independence of the Judiciary**

Article 195 provides as follows:

**"195. (1) The Judiciary, in exercise of its judicial and administrative functions and management of its financial affairs, shall be subject only to this Constitution and the Laws and shall not be subject to the control or direction of any person or authority.**

**(2) A member of the Executive, Legislature, State institution or any other person shall not interfere with the Judges or judicial officers in the exercise of their judicial powers.**

**(3) The Executive, Legislature and all State institutions shall accord to the Judiciary the assistance required by the Judiciary to protect the independence, dignity and effectiveness of the Judiciary.**

**(4) A person exercising judicial power shall not be liable for any act or omission done or omitted to be done in the exercise of any judicial power.**

**(5) The office of a Judge of any of the superior courts shall not be abolished while there is a substantive holder of the office."**

### **15.3.3 Deliberations of the Conference on Article 195**

15.3.3.1 The Conference supported the recommendations of the Commission on the independence of the Judiciary; however, the Conference agreed that the independence and autonomy of the Judiciary be expressly provided for in Article 195.

15.3.3.2 Clause (3) of Article 195 was deleted because members argued that a constitutional provision should provide the principle and not a request for assistance.

### **15.3.4 Resolutions of the Conference**

The Conference adopted Article 195 with amendments and re-numbered it as follows:

**"180. (1) The Judiciary is autonomous and shall be administered in accordance with the provisions of an Act of Parliament.**

**(2) A member of the Executive, Legislature, a State institution or any other person shall not interfere with the judges or judicial officers in the exercise of their judicial powers.**

**(3) A person exercising judicial power shall not be liable for any act or omission done or omitted to be done in the exercise of any judicial power.**

**(4) The office of a judge of any of the superior courts shall not be abolished while there is a substantive holder of the office."**

#### **15.4 Article 196 : Code of Conduct**

##### **15.4.1 Deliberations of the Conference on Article 196**

The Conference noted that past experience had shown that some judges and judicial officers conducted themselves in unacceptable ways and, therefore, a code of conduct was essential to regulate their behaviour. Members observed that judges were human beings who were bound to err and were not beyond reproach. In that regard, the Conference decided to include, with slight modifications, Article 91 (2) of the current Constitution which provided for a code of conduct for judges and judicial officers.

##### **15.4.2 Resolutions of the Conference**

The Conference adopted Article 91 (2) of the current Constitution with amendments as follows:

**"181. The judges and judicial officers of the courts referred to in clause (1) of Article 179 shall be independent, impartial and subject only to this Constitution and the law and shall conduct themselves in accordance with a code of conduct promulgated by Parliament."**

## **15.5 Article 196 : Financial Independence of Judiciary**

### **15.5.1 Recommendations of the Commission**

The Commission recommended that the Judiciary should prepare its own budget estimates, whose determination should be subject to negotiations with the Ministry responsible for finance, and that the process should take into account the principles of accountability, transparency and equitable sharing of resources. That was to ensure and enhance the independence, impartiality, dignity and efficiency of the Judiciary.

### **15.5.2 Provisions of the Mung'omba Draft Constitution on the Financial Independence of the Judiciary**

Article 196 provides as follows:

**“196 (1) The Judiciary shall annually prepare and submit its budget estimates to the Minister responsible for finance who, taking into consideration equitable sharing of national resources, shall determine the budget for the Judiciary.**

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

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

**(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.”**

### **15.5.3 Deliberations of the Conference on Article 196**

**15.5.3.1** In respect of clause (1) of Article 196, the Conference was of the view that it should have been the preface to clause (1) of Article 195, which dealt with the independence of the Judiciary, to serve as a guarantee for the performance of administrative functions and management of financial affairs. The Conference noted that the nation had only one “resource envelope” from which competing needs from various institutions expected a share of funding. It was suggested that clause (1) of Article 196 should be harmonised with clause (1) of Article 195 to reflect the independence of the Judiciary

in terms of finance. The Conference decided to harmonise the two provisions, taking into account those concerns.

15.5.3.2 With respect to clause (2) of Article 196, the Conference observed that the word “adequate” in that clause was vague and questioned who would be responsible for determining whether the Judiciary was “adequately funded” or not. They further observed that there was no time when an institution was adequately funded. The Conference decided that clause (2) be deleted.

15.5.3.3 Clause (3) and (4) of Article 196 were approved subject to the substitution in clause (4) of the term “Consolidated Fund” with the term “National Treasury Account” in line with an earlier decision of the Conference.

#### 15.5.4 **Resolutions of the Conference**

The Conference adopted Article 196 with amendments and re-numbered it as follows:

**“182. (1) The Judiciary shall annually prepare and submit its budget estimates to the Minister responsible for finance who, taking into consideration the equitable sharing of national resources, shall determine the budget for the Judiciary.**

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

**(3) The expenses of the Judiciary, including emoluments payable to or in respect of a judge or judicial officer, shall be a charge on the National Treasury Account.”**

#### 15.6 **Article 197 : Supreme and Constitutional Court**

##### 15.6.1 **Recommendations of the Commission**

15.6.1.1 The Commission received submissions from petitioners supporting the establishment of the Constitutional Court to deal with, among others, constitutional matters, violation of human rights and election petitions.

- 15.6.1.2 The Commission accepted the idea of the establishment of a Constitutional Court and, in considering its placement, was mindful that it should not create any conflict within the existing judicial structure. The Commission, therefore, proposed that the Constitutional Court should be a division of the Supreme Court, to be presided over by the Chief Justice and that sufficient number of judges with experience and expertise in constitutional and human rights law should be appointed to the Court

**15.6.2 Provisions of the Mung’omba Draft Constitution on the Supreme and Constitutional Court**

Article 197 provides as follows:

**“197. The Supreme and Constitutional Court shall consist of -**  
**(a) the Chief Justice;**  
**(b) the Deputy Chief Justice; and**  
**(c) not more than nine Judges, at least three of whom are persons with -**  
**(i) a law degree;**  
**(ii) specialist training or experience in constitutional and human rights law; and**  
**(iii) not less than ten years experience in the field of constitutional law.”**

**15.6.3 Deliberations of the Conference on Article 197**

- 15.6.3.1 The Conference, in considering Article 197, grappled with the question on whether matters relating to the number and qualifications of judges should be provided for in the Constitution or in an Act of Parliament. In the discussion, two positions emerged. Some members were of the view that matters relating to the number, qualifications and appointment of judges were administrative and should be relegated to an Act of Parliament. Others were of the view that paragraph (c) should be amended to read as follows: “either seven or nine judges or such greater number as may be prescribed by an Act of Parliament.”

- 15.6.3.2 Members who supported the position that matters relating to the numbers and qualifications of judges should be provided for in an

Act of Parliament argued that specifying the number of judges in the Constitution would create a difficulty in the event that there was a need to adjust such numbers. It was noted that it was easier to amend an Act of Parliament than the Constitution. It was further argued that with a growing population and the need to decentralise the Supreme and Constitutional Court to all parts of the country, it was better to relegate such matters to an Act of Parliament.

15.6.3.3 Those who supported the view that paragraph (c) should be amended to read “either 7 or 9 judges or such greater number as may be prescribed by an Act of Parliament” argued that the highest court should stipulate the minimum number of judges to eliminate chances of manipulation by the Executive.

15.6.3.4 The Conference approved Article 197 with amendments as follows:  
(a) by relegating the qualifications for appointment as judges to the Supreme and Constitutional Court to an Act of Parliament; and  
(b) by amending paragraph (c) to read:  
“nine judges of Supreme and Constitutional Court or such greater number of judges as shall be determined by or under an Act of Parliament”.

#### **15.6.4 Resolutions of the Conference**

The Conference adopted Article 197 with amendments and re-numbered it as follows:

**“184. The Supreme and Constitutional court shall consist of-**  
**(b) the Chief Justice**  
**(c) the Deputy Chief Justice; and**  
**(d) nine judges of the Supreme and Constitutional Court or such greater number of judges as shall be determined by or under an Act of Parliament”.**

#### **15.7 Article 198 : Composition for Sittings of Supreme Court**

##### **15.7.1 Recommendations of the Commission**

The Commission did not receive submissions on the jurisdiction of the Supreme Court but made recommendations on the subject as follows:



**“198. (1) The Supreme and Constitutional Court, when sitting as a Supreme Court and determining a matter, other than an interlocutory matter, shall be duly constituted by an uneven number of not less than three Judges of the Supreme and Constitutional Court.**

**(2) 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 law.”**

#### **15.7.2 Deliberations of the Conference on Article 198**

The Conference approved Article 198 of the draft Constitution subject to the deletion of clause (2) because it contradicted the common law principle that a last court of instance should be bound by its previous decisions unless it has justifiable reasons not to do so.

#### **15.7.3 Resolutions of the Conference**

The Conference adopted Article 198 with amendments and re-numbered it as follows:

**“185. The Supreme and Constitutional Court, when sitting as a Supreme Court and determining a matter, other than an interlocutory matter, shall be duly constituted by an uneven number of not less than three judges of the Supreme and Constitutional Court”.**

#### **15.8 Article 199 : Jurisdiction of Supreme Court**

##### **15.8.1 Recommendations of the Commission**

The Commission did not receive submissions on the jurisdiction of the Supreme Court but made recommendations on the subject as follows:

**“199. (1) The Supreme Court is the final court of appeal of Zambia, except in constitutional matters.**

**(2) The Supreme Court shall have -**

**(a) appellate jurisdiction to hear and determine appeals from -**

**(i) the Court of Appeal; and**

**(ii) any other court or tribunal, except the Parliamentary Election Tribunal**

**and the Local Government Election Tribunal whose decisions are final, prescribed by an Act of Parliament; and**

**(b) any other jurisdiction conferred on it by this Constitution or any other law.**

**(3) Subject to Article 206 (3), an appeal shall lie to the Supreme Court from a decision of the Court of Appeal with leave of the Court of Appeal."**

## **15.8.2 Deliberations of the Conference on Article 199**

15.8.2.1 Clause (1) of Article 199 was approved without amendments.

15.8.2.2 In discussing clause (2) of Article 199, some members argued that adopting the above provision would imply that the Supreme Court would determine appeals from other courts other than the Court of Appeal. They, therefore, concluded that an anomaly would be created, given the hierarchy of the judiciary. In addition, members stated that the current practice where appeals from decisions of the IRC and a Court Martial lay directly to the Supreme Court could no longer be applicable with the establishment of the Court of Appeal. In agreeing with that observation, some members added that there was need to adhere to the judicial hierarchy. They, therefore, argued that appeals from subordinate courts should lie to the High Court first then to the Court of Appeal and finally to the Supreme Court. The Conference, therefore, decided that clause (2) (a) (ii) should be deleted, or else the Court of Appeal would be irrelevant.

15.8.2.3 In debating clause (3) of Article 199, the Conference observed that the requirement to obtain leave of the Court of Appeal before appealing to the Supreme Court was intended to ensure that only meritorious appeals proceeded to the Supreme Court. Members observed that seeking leave to appeal was procedural and necessary.

15.8.2.4 The Conference approved clause (3) of Article 199 as recommended in the Mung'omba draft Constitution.

### **15.8.3 Resolutions of the Conference**

The Conference adopted Article 199 with amendments and re-numbered it as follows:

**“186. (1) The Supreme Court is the final court of appeal of Zambia, except in constitutional matters.**

**(2) The Supreme Court shall have -**

- (a) appellate jurisdiction to hear and determine appeals from the Court of Appeal; and**
- (b) any other jurisdiction conferred on it by this Constitution or any other law;**
- (3) Subject to Article 192 (3), an appeal shall lie to the Supreme Court from a decision of the Court of Appeal with leave of the Court of Appeal.”**

### **15.9 Article 200 : Composition for Sittings of Constitutional Court**

#### **15.9.1 Recommendations of the Commission**

The Commission recommended that when the Court was sitting to determine any matter other than an interlocutory matter, it should be composed of an odd number of judges which should not be less than three, but when sitting to hear a constitutional matter, the Court should consist of a bench of at least three and not more than five judges of that Court, including at least one specialised in constitutional and human rights law.

#### **15.9.2 Provisions of the Mung’omba Draft Constitution on Composition for Sittings of Constitutional Court**

Article 200 provides as follows:

**“200 (1) The Supreme and Constitutional Court, when sitting as the Constitutional Court, shall be duly constituted by an uneven number of not less than three and not more than nine of the judges of the Supreme and Constitutional Court, which number shall include at least one judge with specialisation in constitutional and human rights law.**

**(2) The Constitutional Court shall be constituted by the full bench when reviewing a decision made by it.”**

**15.9.3           Deliberations of the Conference on Article 200**

The Conference, in considering the composition for sittings of the Court, decided that the wording of Article 198 stating: “an uneven number of not less than three judges” should be incorporated in clause (1) of Article 200. Further, the Conference decided that clauses (1) and (2) of Article 200 should be harmonised taking into account that clause (2) would apply when the Constitutional Court was reviewing its own decisions and determining a presidential election petition.

**15.9.4           Resolutions of the Conference**

The Conference adopted Article 200 with amendments and re-numbered it as follows:

**“187. (1) The Supreme and Constitutional Court, when sitting as the Constitutional Court, and determining a matter, other than an interlocutory matter, shall be duly constituted by an uneven number of not less than three judges of the Supreme and Constitutional Court.**

**(2) The Constitutional Court shall, when determining an election petition or reviewing a decision made by it, be constituted by the full bench as shall be determined by an Act of Parliament.”**

**15.10           Article 201 : Jurisdiction of Constitutional Court**

**15.10.1       Recommendations of the Commission**

15.10.1.1   The Commission recommended that the Constitutional Court should have exclusive and final jurisdiction in the following matters:

- (a)   in all constitutional and human rights matters and issues, subject to other provisions in the Constitution;
- (b)   any question as to the interpretation of the Constitution;
- (c)   violation of fundamental rights or freedoms;

- (d) the constitutionality of any law, including an Act of Parliament, irrespective of whether such law was passed or made before or after commencement of the new Constitution;
- (e) the constitutionality of any Bill before the National Assembly;
- (f) whether or not a matter falls within the jurisdiction of the Court;
- (g) in any dispute or conflicts of a constitutional nature between organs of the State; and
- (h) where a person alleged that an Act of Parliament or any other law or anything done under the authority of any law; or any act or omission by any person or authority, was inconsistent with or was in contravention of a provision of the Constitution, including fundamental rights and freedoms.

15.10.1.2 The Commission also recommended the following:

- (a) the National Assembly might, by a resolution supported by at least thirty members of Parliament refer a Bill to the Constitutional Court for determination of its constitutionality. The President might refer a Bill requiring assent to the Constitutional Court for determination of its constitutionality. Individuals or groups of persons, however, may only refer a Bill for such determination by the Constitutional Court with leave of the Court;
- (b) where, upon determination of the petition referred to above, the Court considered that there was need for redress in addition to the declaration sought, the Court might grant an order of redress or refer the matter to the High Court to investigate and determine the appropriate redress;
- (c) where any question as to the interpretation of the Constitution arose in any proceedings in a court of law other than a Court Martial, such court may, if it was of the opinion that the question involved a

substantial question of the law refer the question to the Court for a decision;

- (d) where any question was referred to the Constitutional Court in accordance with the foregoing provisions, the Court should give its decision on the question and the court in which the question arose should dispose of the case in accordance with that decision;
- (e) upon a petition being made or a question being referred to it on a constitutional matter, the Court should proceed to hear and determine the petition as soon as possible and may, for that purpose, suspend any other matter pending before it.

#### **15.10.2 Provisions of the Mung’omba Draft Constitution on Jurisdiction of Constitutional Court**

Article 201 provides as follows:

**“201 (1) Subject to clause (2), the Constitutional Court shall have original and final jurisdiction -**

- (a) in all matters of interpretation of this Constitution;**
- (b) to determine an election petition challenging the election of a President-elect;**
- (c) to determine whether any provision of this Constitution or any law relating to election of a President has been complied with;**
- (d) to determine a question of violation of any provision of the Bill of Rights;**
- (e) to determine whether an Act of Parliament, a Bill or statutory instrument contravenes this Constitution;**
- (f) to determine disputes between State organs or State institutions at National or local government level concerning their constitutional status, powers or functions;**
- (g) to determine whether or not a matter falls within the jurisdiction of the Court; and**
- (h) in any constitutional matter provided for by this Constitution or an Act of Parliament.**

**(2) The Constitutional Court shall not have original or final jurisdiction over any matter that is within the jurisdiction of the Parliamentary Elections Tribunal and**

the Local Government Election Tribunal, as provided by this Constitution.

(3) The Constitutional Court may review a decision made by it.

(4) A person or group of persons who alleges that -

(a) an Act of Parliament, a Bill or any other law or anything done under the authority of any law; or

(b) any act of or omission by any person or group of persons or authority; is inconsistent with or in contravention of this Constitution, may petition the Constitutional Court for a declaration to that effect and for redress.

(5) Where upon the determination of a petition under clause (4), the Constitutional Court considers that there is need for redress, in addition to the declaration sought, the Court may -

(a) make an order for redress; or

(b) refer the matter to the High Court to determine the appropriate redress.

(6) Where in any proceedings in any court a question arises as to an interpretation of any provision of this Constitution the court shall refer the question to the Constitutional Court for determination.

(7) Where a question is referred to the Constitutional Court under clause (6), the Court shall give its decision on the question and the court in which the question arose shall dispose of the case in accordance with that decision.

(8) Where a petition is submitted under clause (4) or a question is referred under clause (6), the Constitutional Court shall proceed to hear and determine the petition or question as soon as possible and may, for that purpose, suspend any other matter pending before it.

(9) The Constitutional Court shall not order security for costs on matters relating to public interest litigation."

### **15.10.3 Deliberations of the Conference on Article 201**

15.10.3.1 In debating the provision, some members were of the view that the matters contained in clause (1), should provide for original and final jurisdiction, while other members supported the view that the matters contained in clause (1) should provide for appellate jurisdiction only.

15.10.3.2 Members who were in favour of the Constitutional Court having original and final jurisdiction in the matters contained in clause (1) argued as follows:

- (a) that since issues of human rights were cardinal, the Constitutional Court should have original and final jurisdiction in such matters so that cases of gross violation of human rights could directly go to the Constitutional Court;
- (b) that since the Constitutional Court was being established to handle constitutional matters, it should have original and final jurisdiction in such matters;
- (c) that the Constitutional Court was being established to decongest the High Court. Therefore, giving the Constitutional Court appellate jurisdiction only in constitutional matters would defeat the intended purpose of expediting the determination of such matters;
- (d) that the concept was a well-established and not a novel idea, and that the demand for a Constitutional Court to have original and final jurisdiction dated as far back as 1990. Members reiterated that the Mvunga, Mwanakatwe and the Mung'omba Constitution Review Commissions had received submissions for the establishment of a constitutional court. They observed that the Constitutional Courts of Uganda, South Africa and India had original and final jurisdictions in the matters under review; and
- (e) that to limit the jurisdiction of the Constitutional Court to the hearing of appeals would not justify its establishment.

15.10.3.3 Members who were in favour of the Constitutional Court having appellate jurisdiction in the matters contained in clause (1) argued as follows:

- (a) that the Court would be congested if original jurisdiction was conferred on it. They argued that, that original jurisdiction in such matters should be conferred on a lower court;
- (b) that it would prevent matters involving vices



such as pornography from going directly to the Constitutional Court; and

- (c) that if the Constitutional Court was given original jurisdiction, the litigants would have nowhere to appeal to if they were not satisfied with the ruling since the decision of the court would be final.

15.10.3.4 The Conference decided that:

- (a) the Constitutional Court should have original and final jurisdiction in the following matters:
  - (i) to determine a Presidential election petition challenging the election of a President-elect;
  - (ii) to determine disputes between State organs or State institutions;
  - (iii) to determine whether or not a matter falls within the jurisdiction of the court; and
  - (iv) in any constitutional matter provided for by this Constitution or an Act of Parliament.
- (b) the Constitutional Court should have appellate jurisdiction in the following matters:
  - (i) all matters of interpretation of this Constitution;
  - (ii) to determine whether an Act of Parliament or statutory instrument contravened this Constitution; and
  - (iii) to determine a question of violation of any provision of the Bill of Rights.

15.10.3.5. The Conference decided to relegate the matters in clauses (4) to (9) to an Act of Parliament as they were procedural.

#### **15.10.4 Resolutions of the Conference**

The Conference adopted Article 201 with amendments and re-numbered it as follows:

**“188. (1) The Constitutional Court shall have original and final jurisdiction –**

**(a) to determine a presidential election petition challenging the election of the President elect;**

**(b) to determine disputes between State organs or State institutions;**

**(c) to determine whether or not a matter falls within the jurisdiction of the Court; and**

**(d) in any Constitutional matter provided for by this Constitution or an Act of Parliament.**

**(2) The Constitutional Court shall have appellate jurisdiction –**

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

**(b) to determine whether an Act of Parliament or Statutory Instrument contravenes this Constitution; and**

**(c) to determine a question of violation of any provision of the Bill of Rights.**

**(3) The Constitutional Court may review a decision made by it.**

**(4) Parliament shall enact legislation to provide for the powers, sittings and procedures of the Constitutional Court.”**

## **15.11 Article 202 : Production of Official Documents**

### **15.11.1 Recommendations of the Commission**

The Commission recommended that the Constitution should provide that if, in proceedings in a court, other than the Supreme Court, a question arose on production of an official document and the person or authority having custody of it refused to produce it on the ground that the disclosure of such document would be prejudicial to the security of the State or be injurious to the public interest, then the question should be referred to the Supreme Court for determination.

### **15.11.2 Provisions of the Mung’omba Draft Constitution on Production of Official Documents**

Article 202 provides as follows:

**"202. (1) When in proceedings in a court, other than the Supreme Court, a question arises as to the production of an official document and the person or authority that has custody, legal or otherwise of the document, refuses on request, to produce that document on the ground-**

**(a) that the document belongs to a class of documents which is prejudicial to the security of the State or injurious to the public interest; or**

**(b) that the disclosure of the contents will be prejudicial to the security of the State or injurious to the public interest;**

**the court shall stay the proceedings and refer the question to the Supreme Court for determination.**

**(2) The Supreme Court may -**

**(a) order the person who or the authority that has custody of the document to produce it for inspection by the Supreme Court; and**

**(b) determine whether or not the document shall be produced in the court, from which the reference was made, after hearing the parties or their legal representatives or after having given them the opportunity of being heard.**

**(3) Where the Supreme Court considers that the document shall be produced, it shall make an order for that person or authority to produce the document or so much of the contents of it as is essential for the proceedings.**

**(4) Where the question of the discovery of an official document arises in any proceedings in the Supreme Court, in the circumstances mentioned in clause (1), the Supreme Court shall be governed by clauses (2) and (3) for the determination of the question that has arisen."**

### **15.11.3 Deliberations of the Conference on Article 202**

In considering the provision, the Conference noted that no petitioner made submissions on the matter to the Commission. In addition, members observed that the matter was administrative and was adequately covered in the State Proceedings Act, the State Security Act and in the Rules of Evidence. Therefore, the Conference decided to delete the provision.

#### **15.11.4 Resolutions of the Conference**

The Conference deleted Article 202 on the Production of Documents.

#### **15.12 Article 203 : Chief Justice**

##### **15.12.1 Recommendations of the Commission**

The Commission recommended:

- (a) that the President, after consulting the Judicial Service Commission and with the approval of the National Assembly, should appoint the Chief Justice; and
- (b) that the Deputy Chief Justice should assume the office of Chief Justice when the office falls vacant and that the Deputy Chief Justice should act in the position of Chief Justice in the absence of the Chief Justice.

##### **15.12.2 Provisions of the Mung'omba Draft Constitution on the Chief Justice**

Article 203 provides as follows:

- "203. (1) There shall be a Chief Justice who shall be -**
  - (a) the head of the Judiciary; and**
  - (b) the president of the Constitutional Court.**
- (2) The Chief Justice may issue orders and give directives considered necessary by the Chief Justice for the efficient administration of the Judiciary.**
- (3) In the absence of the Chief Justice or in the event of a vacancy in the office, the Deputy Chief Justice shall perform the functions of the Chief Justice until the Chief Justice resumes office or an appointment is made to the office of Chief Justice."**

##### **15.12.3 Deliberations of the Conference on Article 203**

The Conference supported Article 203 but was of the view that the Chief Justice should not be referred to as "President" of the

Constitutional Court as envisaged in paragraph (b) of clause (1). Members believed that referring to the Chief Justice as such would have been appropriate if the Court was a “stand-alone” court. It was agreed that the Chief Justice should be referred to as the head of the Judiciary.

#### **15.12.4 Resolutions of the Conference**

The Conference adopted Article 203 with amendments and re-numbered it as follows:

**“189. (1) There shall be a Chief Justice who shall be the head of the Judiciary;**

**(2) The Chief Justice may issue orders and give directives considered necessary by the Chief Justice for the efficient administration of the Judiciary.**

**(3) In the absence of the Chief Justice or in the event of a vacancy in the office, the Deputy Chief Justice shall perform the functions of the Chief Justice until the Chief Justice resumes office or an appointment is made to the office of Chief Justice.”**

#### **15.13 Article 204 : Deputy Chief Justice**

##### **15.13.1 Recommendations of the Commission**

15.13.1.1 The Commission received a submission that the office of the Deputy Chief Justice should be abolished to avoid a division in the bench in the event that there was a vacancy in the office of the Chief Justice and the Deputy Chief Justice was not appointed as successor. The Commission was of the view that the appointing authority would have a larger pool of the Supreme Court judges from which to appoint the Chief Justice if his or her hands were not tied to appointing the Deputy Chief Justice. The Commission also received submissions that the Deputy Chief Justice should assume the office of Chief Justice should the office fall vacant.

15.13.1.2 The Commission considered that the Chief Justice needed a Deputy to act in the event of absence of the Chief Justice and it was important to note that the office of Deputy Chief Justice could not be abolished while there was a substantive holder.

### **15.13.2 Provisions of the Mung’omba Draft Constitution on the Deputy Chief Justice**

Article 204 provides as follows:

**“204 (1) There shall be a Deputy Chief Justice who shall, unless otherwise provided in this Part-**

**(a) perform the functions of the Chief Justice as stated under Article 203;**

**(b) be the president of the Court of Appeal;**

**(c) assist the Chief Justice in the performance of the administrative functions of the Chief Justice; and**

**(d) 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.”**

### **15.13.3 Deliberations of the Conference on Article 204**

The Conference adopted Article 204 of the draft Constitution with amendments by referring to the Deputy Chief Justice as “head of the Court of Appeal” as opposed to “President of the Court of Appeal”.

### **15.13.4 Resolutions of the Conference**

The Conference adopted Article 204 with amendments and re-numbered it as follows:

**“190. (1) There shall be a Deputy Chief Justice who shall, unless otherwise provided in this Part-**

- (a) perform the functions of the Chief Justice as stated under Article 203;
  - (b) be the head of the Court of Appeal;
  - (c) assist the Chief Justice in the performance of the administrative functions of the Chief Justice; and
  - (d) 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."

#### **15.14 Article 205: Court of Appeal**

##### **15.14.1 Recommendations of the Commission**

The Commission did not receive submissions on the composition of the Court of Appeal but made recommendations on the subject as follows:

**"205. The Court of Appeal shall consist of-**  
**(a) the Deputy Chief Justice; and**  
**(b) not more than six Judges."**

##### **15.14.2 Deliberations of the Conference on Court of Appeal**

15.14.2.1 With regard to paragraph (a) of Article 205, members expressed the view that it would be improper for the Deputy Chief Justice, who was a member of the Supreme Court, to also be a member of the Court of Appeal. The members were concerned with what would happen in the event that the Deputy Chief Justice presided over a case in the Court of Appeal, which matter would proceed to the Supreme Court on further appeal. The members proposed that the

Court of Appeal should have an independent and separate head, who would either be appointed or elected from amongst members of the Court of Appeal. They observed that where a matter presided over by the Deputy Chief Justice was taken to the Supreme Court on further appeal, the Deputy Chief Justice would not be part of the Supreme Court judges presiding over such a matter.

15.14.2.2 The Conference approved paragraph (a) of Article 205 without amendments.

15.14.2.3 With regard to paragraph (b) of Article 205, some members advocated its adoption because they were of the view that members of the Conference were not in a position to objectively determine an ideal number of judges that should constitute the Court. The members, therefore, proposed that the determination of the number of judges should be left to Parliament which had the capacity to study the matter and undertake consultations to facilitate an informed decision. Further, they observed that providing for the number of judges in the Constitution would make it difficult to make variations if it became necessary to do so in future as the nation developed.

15.14.2.4 Other members were of the view that the provision should specify the number of judges as was decided by the Conference when discussing the Supreme and Constitutional Court. The members argued that if a minimum number of judges was specified in the Constitution, it would deter anybody who might, in future, decide to do away with the Court or arbitrarily decide on the number of judges.

15.14.2.5 It was further argued that providing for a minimum number in the Constitution would be an assurance that at any particular time there would be judges to preside over cases.

15.14.2.6 The Conference decided that the number of judges of the Court of Appeal should not be specified in the Constitution.

### **15.14.3 Resolutions of the Conference**

The Conference adopted Article 205 with amendments and re-numbered it as follows:



**“191. The Court of Appeal shall consist of –  
(a) the Deputy Chief Justice; and  
(b) such number of judges as shall be  
determined by an Act of Parliament.”**

**15.15 Article 206 : Jurisdiction of Court of Appeal**

**15.15.1 Recommendations of the Commission**

The Commission recommended that an appeal should lie to the Court of Appeal from such decisions of the High Court as may be prescribed by an Act of Parliament and the Court should have appellate jurisdiction in all such appeals and final jurisdiction in all cases where the Court refused to grant leave to appeal to the Supreme Court.

**15.15.2 Provisions of the Mung’omba Draft Constitution on Jurisdiction of Court of Appeal**

Article 206 provides as follows:

**“ 206. (1) The Court of Appeal, as 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 tribunals, except the Parliamentary Election Tribunal and the Local Government Election Tribunal whose decisions are final.**

**(2) Subject to Article 199 (3) an appeal shall lie 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, that decision shall be final and binding.”**

**15.15.3 Deliberations of the Conference on Article 206**

**15.15.3.1** In considering clause (1) of Article 206, some members stated that it would be inappropriate to extend the jurisdiction of the Court of Appeal to determine appeals from tribunals.

**15.15.3.2** Other members referred to Article 210 (1) of the Mung’omba Draft Constitution which gave the High Court jurisdiction over tribunals.

Members argued that quasi-judicial power, in general terms, included tribunals and, therefore, that retaining the Article as provided would be tantamount to vesting concurrent jurisdiction in both the Court of Appeal and the High Court *vis a' vis* the tribunals. The members proposed that the jurisdiction be limited to the High Court and IRC.

- 15.15.3.3 Other members stated that, as it was, clause (1) of Article 206 implied that even constitutional matters would have to go through the Court of Appeal thereby lengthening, instead of expediting the process. Others noted that the Court of Appeal and the High Court were at different levels and, therefore, it would lead to conflict if concurrent jurisdiction was vested in both courts.
- 15.15.3.4 The Conference approved clause (1) of Article 206 subject to the deletion of the reference to the Parliamentary Election Tribunal and the Local Government Election Tribunal which the Conference decided should not be established.
- 15.15.3.5 In considering clause (2) of Article 206, the Conference observed that since the Conference had approved Article 193 (3) of the Mung'omba Draft Constitution which stated: "**Subject to Article 206 (3), an appeal shall lie to the Supreme Court from a decision of the Court of Appeal with leave of the Court of Appeal.**", that decision meant that the Conference had, consequently, approved clause (2) of Article 206 (2) of the Mung'omba Draft Constitution.
- 15.15.3.6 In considering clause (3) of Article 206, some members argued that it should be deleted. Other members, however, argued that it should be retained. The members who supported the deletion of the clause advanced the following arguments:
- (a) that the right to appeal against any decision of a court or tribunal was a human and constitutional right. It was, therefore, argued that the right of citizens should not be taken away, even by a Court of Appeal;
  - (b) that since the Court of Appeal was being established to screen cases that would go to the Supreme Court so that the Supreme Court was not congested;

- (c) some cases would end up at the Court of Appeal, therefore, denying people the chance to have their cases heard in the Supreme Court; and
- (d) that the clause would be a hindrance to judicial progress.

15.15.3.7 The members who advocated for the retention of the clause argued as follows:

- (a) that the Court of Appeal would handle cases which would otherwise go to the Supreme Court;
- (b) that the purpose for the establishment of the Court of Appeal was to, among others, save on time and check the appeals which would proceed to the Supreme Court;
- (c) that the right to appeal was not absolute and if the grounds for appeal were not sufficient, the case should not be allowed to proceed to the Supreme Court;
- (d) that everybody should have “their day in court” and should appeal if the decision of the court was not satisfactory. They, however, argued that there were cases where it could be a waste of time proceeding to the Supreme Court if the appeal had no likelihood of succeeding; and
- (e) that since the Conference had approved clause (2), retention of clause (3) was inevitable.

15.15.3.8 The Conference decided to delete clause (3) of Article 206.

#### 15.15.4 Resolutions of the Conference

The Conference adopted Article 206 with amendments and re-numbered it as follows:

**“192. (1) The Court of Appeal, as appellate court, has jurisdiction to determine, as provided under an Act of Parliament, appeals from the High Court, the Industrial Relations Court and tribunals.**

**(2) Subject to Article 199 (3), an appeal shall lie to the Supreme Court from a decision of the Court of Appeal with leave of the Court of Appeal.”**

**15.16 Article 207 : Sittings of Court of Appeal**

**15.16.1 Recommendations of the Commission**

The Commission recommended that legislative or other measures be taken to establish the Court of Appeal in Lusaka and for the court to conduct circuit court sessions in all the provinces. The Commission further recommended that the Government should take the initiative of creating a Regional Court of Appeal for the full Southern African Development Community with jurisdiction to hear both criminal and civil appeals.

**15.16.2 Provisions of the Mung'omba Draft Constitution on Sittings of Court of Appeal**

Article 207 provides as follows:

**"207. The Court of Appeal when determining an appeal, other than an interlocutory appeal, shall be -**

- (a) constituted by an uneven number of not less than three judges of the Court; and**
- (b) presided over by the Deputy Chief Justice and in the absence of the Deputy Chief Justice the most senior Judge of the Court as constituted shall preside."**

**15.16.3 Deliberations of the Conference on Article 207**

The Conference adopted Article 207 with minor amendments.

**15.16.4 Resolutions of the Conference**

The Conference adopted Article 207 with amendments and re-numbered it as follows:

**"193. The Court of Appeal when determining an appeal, other than an interlocutory appeal, shall be -**

- (a) constituted by an uneven number of not less than three judges of the Court of Appeal; and**
- (b) presided over by the Deputy Chief Justice, and in the absence of the Deputy Chief**

**Justice, the most senior judge of the Court of Appeal."**

**15.17 Article 208: High Court**

**15.17.1 Recommendations of the Commission**

The Commission did not receive submissions on the composition of the High Court but made recommendations on the subject as follows:

- "208. (1) The High Court shall consist of-**  
    **(a) the Chief Justice, as an ex-officio member; and**  
    **(b) such number of Judges as shall be specified by an Act of Parliament**  
    **(2) The High Court shall be duly constituted by a single Judge of the Court."**

**15.17.2 Deliberations of the Conference on Article 208**

The Conference decided to substitute the word "single" with "one" in clause (2).

**15.17.3 Resolutions of the Conference**

The Conference adopted Article 208 with amendments and re-numbered it as follows:

- "194. (1) The High Court shall consist of -**  
    **(a) the Chief Justice, as an ex-officio member; and**  
    **(b) such number of judges as shall be determined by an Act of Parliament.**  
    **(2) The High Court shall be duly constituted by one judge of the Court."**

**15.18 Article 209: Jurisdiction of High Court**

**15.18.1 Recommendations of the Commission**

The Commission did not receive submissions on the jurisdiction of the High Court but made recommendations on the subject as follows:

**“209. The High Court shall have, subject to this Constitution-**

- (a) unlimited and original jurisdiction in any civil or criminal matter; and**
- (b) appellate and review jurisdiction as conferred on it by or under an Act of Parliament. ”**

**15.18.2 Deliberations of the Conference on Article 209**

15.18.2.1 The Conference observed that there was need to qualify the jurisdiction of the High Court as was done in Article 94 of the current Constitution which excluded proceedings in which the IRC had exclusive jurisdiction from the jurisdiction of the High Court. Further, that since the Constitutional Court was the court of first instance on constitutional matters, the High Court should not have unlimited original jurisdiction. The Conference proposed that the formulation in Article 94 of the current Constitution would be more appropriate.

15.18.2.2 The Conference decided that Article 209 of the draft Constitution should be harmonised taking into account the decisions of the Conference on the jurisdiction of the Constitutional Court, IRC and Article 94 of the current Constitution.

**15.18.3 Resolutions of the Conference**

The Conference adopted Article 209 with amendments and re-numbered it as follows:

**“195. (1) Subject to this Constitution, the High Court shall have:**

- (a) unlimited and original jurisdiction -  
in any civil or criminal matter;**
- Provided that the High Court shall not  
have jurisdiction with respect to -**

- (i) proceedings in which the Industrial Relations Court has exclusive jurisdiction as provided by an Act of Parliament; or
    - (ii) in any matter in which the Constitutional Court has original and final jurisdiction;
  - (b) in all matters of interpretation of this Constitution;
  - (c) to determine whether an Act of Parliament or Statutory Instrument, contravenes this Constitution; and
  - (d) to determine a question of violation of any provision of the Bill of Rights.
- (2) The High Court shall have appellate and review jurisdiction as conferred on it by or under an Act of Parliament.
- (3) A person or group of persons who alleges that -
- (a) an Act of Parliament or any thing done under the authority or any law; or
  - (b) any act of or omission by any person or group of persons or authority;
- is inconsistent with, or in contravention of, this Constitution, may petition the High Court for a declaration to that effect and for redress.
- (4) Where upon the determination of the petition under clause (3), the High Court considers that there is need for redress, in addition to the declaration sought, the court may make an order for redress and determine the appropriate redress.
- (5) Where in any proceedings in any court a question arises as to the interpretation of any provision of this Constitution, the court shall refer the question to the High Court for determination.
- (6) Where a question is referred to the High Court under clause (5), the court shall give its decision on the question and the court in which the question arose shall dispose of the case in accordance with that decision.
- (7) Where a petition is submitted under clause (3) or a question is referred under clause (5) the High Court shall proceed to hear and determine the petition and question as soon as possible and may, for that purpose, suspend any other matter pending before it.

**(8) The High Court shall not order security for costs on matters relating to the public interest litigation.”**

**15.19 Article 210: Supervisory Jurisdiction of High Court**

**15.19.1 Recommendations of the Commission**

The Commission did not receive submissions on the supervisory jurisdiction of the High Court but made recommendations on the subject as follows:

**“210. (1) The High Court shall have supervisory jurisdiction over courts subordinate to the High Court and over any body or authority that exercises a judicial or quasi – judicial power.**

**(2) The High Court, in the exercise of its supervisory power under clause (1), may make orders and give directions to the courts subordinate to it to ensure the fair administration of justice.”**

**15.19.2 Deliberations of the Conference on Article 210**

The Conference adopted Article 210 on the supervisory jurisdiction of High Court with minor amendments.

**15.19.3 Resolutions of the Conference**

The Conference adopted Article 210 with amendments and re-numbered it as follows:

**“196. (1) The High Court has supervisory jurisdiction over courts subordinate to it and over any body or authority that exercises a judicial or quasi-judicial power.**

**(2) The High Court, in the exercise of its supervisory power under clause (1), may make orders and give directions to the courts subordinate to it to ensure the fair administration of justice.”**

**15.20 Article 211: Divisions of High Court**

**15.20.1 Recommendations of the Commission**

**15.20.1.1 The Commission recommended as follows:**



- (a) that the IRC Court should be established as a specialised division of the High Court and that the Court should have exclusive jurisdiction in all industrial and labour relations matters;
- (b) that the Chairman and Deputy Chairman, who should be known as judges, should be appointed by the President upon the recommendation of the Judicial Service Commission, subject to ratification by the National Assembly;
- (c) that lay members and assessors of the IRC should be appointed by the JSC on recommendation of the Minister responsible for labour; and
- (d) that the Industrial and Labour Relations Act be appropriately amended;

15.20.1.2 The Commission observed that the Commercial Court had been established as a specialised division of the High Court under ordinary legislation.

## 15.20.2 Provisions of the Mung'omba Draft Constitution on Divisions of High Court

Article 211 provides as follows:

**"211. (1) The Industrial Relations Court and Commercial Court shall be established as divisions of the High Court.**

**(2) The Industrial Relations Court shall have exclusive jurisdiction in industrial and labour relations matters, as provided by an Act of Parliament.**

**(3) Parliament may enact legislation to provide for the composition, powers, sittings and procedures of the Industrial Relations Court and Commercial Court.**

**(4) Parliament may enact legislation to create other courts as divisions of the High Court-**

**(a) to sit and adjudicate in any part of the country; and**

**(b) to adjudicate over specified subject areas, within the jurisdiction of the High Court, and provide for the composition, powers, sittings and procedures of those courts."**

### **15.20.3 Deliberations of the Conference on Article 211**

- 15.20.3.1 There were divergent views on the establishment of the IRC as a division of the High Court. Some members supported its establishment as an independent court from the High Court while others supported its establishment as a division of the High Court.
- 15.20.3.2 Members in support of establishing the IRC as an independent court from the High Court argued that the IRC was easily accessible because it did not have rules and procedures that necessitated legal representation thus making the cost of proceedings lower. It was also argued that as an independent court, judges would have better opportunities of advancing as Supreme Court Judges without the precondition of having to serve as judges of the High Court. It was observed that the Court was already in existence with an established infrastructure and staff.
- 15.20.3.3 Members who were in support of establishing the IRC as a division of the High Court reiterated the argument raised by the Commission that establishing the IRC as a division of the High Court would be preferable in order to give it exclusive jurisdiction in all industrial and labour relations, which was not the case currently.
- 15.20.3.4 The Conference approved the establishment of the IRC separately from the High Court.
- 15.20.3.5 In addition, the Conference agreed that:
- (a) the IRC should retain its own rules and procedure which were flexible in order to encourage accessibility to the court;
  - (b) the Chairperson and Vice-Chairperson of the IRC should be at par with Judges of the High Court; and
  - (c) members of the IRC should be appointed by the JSC.
- 15.20.3.6 Regarding the provision to establish the Commercial Court as a division of the High Court, the Conference decided that its establishment was a matter which could be adequately dealt with by an Act of Parliament. Therefore, any reference to the

establishment of the Commercial Court as a division of the High Court should be deleted from the provision.

#### **15.20.4 Resolutions of the Conference**

The Conference adopted Article 211 with amendments and re-numbered it as follows:

**“197. Parliament may enact legislation to create other courts as divisions of the High Court –**

- (a) to sit and adjudicate in any part of Zambia; and**
- (b) to adjudicate over specified subject areas, within the jurisdiction of the High court, and provide for the composition, powers, sittings and procedures of those courts.”**

#### **15.21 Article 212: Accessibility to Courts**

##### **15.21.1 Recommendations of the Commission**

The Commission received submissions that there was need for more courts to be established in order to improve accessibility to courts. The Commission, though noting that that could be achieved administratively, recommended in the draft Constitution as follows:-

**“212. Parliament shall enact legislation to provide for accessibility to the courts, including the lowest levels of administration as far as is necessary and practicable.”**

##### **15.21.2 Deliberations of the Conference on Article 212**

15.21.2.1 In debating the provisions, two positions emerged. One position was that Article 212 should be retained. The other position was that Article 212 should be deleted.

15.21.2.2 Those who supported the retention of Article 212 argued that it provided for accessibility to courts by many people, especially persons with disabilities. In addition, members stated that the Article should be retained because accessibility to justice was a human rights issue and courts needed to be accessible to all people, especially the poor.

- 15.21.2.3 Most members, however, were of the view that the Article was vague because it did not clarify the meaning of the term “accessibility”. Members stated that it was not clear whether accessibility to courts meant access to justice, having courts all over the country, or the physical entry into courts for people with disabilities. On that basis, the Conference decided to delete Article 212.

### **15.21.3 Resolutions of the Conference**

The Conference decided to delete Article 212 of the draft Constitution.

### **15.22 New Article: Industrial Relations Court**

The Conference considered the introduction of a new Article 212 as a consequence of having established the IRC as a “stand-alone” court in Article 193. The proposed provision read as follows:

**“212. (1) The Industrial Relations Court has exclusive jurisdiction in industrial and labour relations matters as provided by an Act of Parliament.**

**(2) The members of the Industrial Relations Court shall be appointed by the Judicial Service Commission.**

**(3) Parliament may enact legislation to provide for the composition, powers, sittings and procedures of the Industrial Relations Court.”**

### **15.22.2 Deliberations of the Conference on Article 212**

- 15.22.2.1 Regarding Article 212 (1), the Conference approved the clause subject to the substitution of the word “has” with “shall have”.

- 15.22.2.2 In respect of clause (2), some members opposed the provision while others supported its retention.

- 15.22.2.3 Those who opposed the recommendation argued as follows:

- (a) that while the Chairperson and Vice-Chairperson of the IRC would be appointed by the JSC and would be qualified as judges of the High Court, the other members should be appointed by the Minister responsible for labour

and social security. The members further stated that since the Court would deal with labour matters, there would be no need to have a court composed only of judges. There was need for experts in other fields such as industrial relations and human resource management who should continue being appointed by the Minister responsible for labour and social security;

- (b) that the IRC was a court where workers could be free to present their cases. The members proposed the need to restore the repealed provision under the Industrial Relations Act where members of the court were appointed by the Minister responsible for labour and social security; and
- (c) that the IRC was a court of “substantial justice” which meant that people were not compelled to conform to procedural rules but relied more on issues and content when presenting their cases. The members were concerned that if members of that court were appointed by the JSC, the court might turn out to be “another High Court”.

15.22.2.4 The members who supported the retention of clause (2) argued as follows:

- (a) that in Article 193 of the Mung’omba Draft Constitution, the Conference adopted the proposal that the IRC should be under the Judiciary. It, therefore, followed that members of the court should be appointed by the JSC and not the Minister responsible for labour and social security;
- (b) that the members of the IRC fell under the JSC and, therefore, it would not be appropriate for a member of the Executive to appoint them;
- (c) that the JSC would take into account the relevant qualifications of potential members as would be determined by the Minister responsible for labour and social security would;
- (d) that currently members of the IRC were being appointed by the JSC and that any member appointed was bound by the Industrial and Labour Relations Act which stipulated how proceedings should be conducted;

- (e) that the decision of the Conference that the Chairperson and Deputy Chairperson of the IRC Court should be at par with judges of the High Court, necessitated their appointment by the President subject to ratification by the National Assembly; and
- (f) that if the Minister responsible for labour and social security was given authority to appoint the members of the IRC, workers who might appear before the Court might not be treated fairly by those members appointed by the Minister responsible for labour and social security.

15.22.2.5 In further discussion, members proposed a compromise by suggesting that the Tripartite Consultative Labour Council should recommend to the JSC persons with wide experience in labour and industrial relations matters for appointment to the IRC.

15.22.2.6 After lengthy debate, the Conference approved clause (2) without amendments.

15.22.2.7 On clause (3), the Conference decided that “may” should be substituted by the word “shall” to make it mandatory and affirmative.

### **15.22.3 Resolutions of the Conference**

The Conference adopted the new Article 212 with amendments and re-numbered it as follows:

**“198. (1) The Industrial Relations court has exclusive jurisdiction in industrial and labour relations matters as provided by an Act of Parliament.**

**(2) The members of the Industrial Relations Court shall be appointed by the Judicial Service Commission.**

**(3) Parliament shall enact legislation to provide for the composition, powers, sittings and procedures of the Industrial Relations Court.”**

**15.23 Article 213: Appointment of Judges of superior courts**

**15.23.1 Recommendations of the Commission**

The Commission made the following recommendations:

- (a) that the President, after consulting the JSC and with the approval of the National Assembly, should appoint the Chief Justice, Deputy Chief Justice and judges of the Supreme and Constitutional Court and the Court of Appeal; and
- (b) that judges of the High Court should be appointed by the President on the recommendation of the JSC and with the approval of the National Assembly.

**15.23.2 Provisions of the Mung'omba Draft Constitution on Appointment of Judges of Superior Courts**

Article 213 provides as follows:

**"213 (1) The President, after consultation with the Judicial Service Commission and subject to ratification by the National Assembly, shall appoint the -**

- (a) Chief Justice;**
- (b) Deputy Chief Justice;**
- (c) other judges of the Supreme and Constitutional Court;**
- (d) Judges of the Court of Appeal; and**
- (e) Judges of the High Court."**

**15.23.3 Deliberations of the Conference on Article 213**

- 15.23.3.1** Some members expressed the view that the President should not appoint judges. They observed that the public perception was that judges, in discharging their work, were inclined to favour the appointing authority. The Conference, however, noted that in appointing judges, the JSC recommended, to the President, persons to be appointed. The persons recommended for appointment were scrutinised by the security wings of Government. Their names were then submitted to the National Assembly for ratification. It

was further noted that in some cases, the National Assembly did not ratify the proposed appointees.

- 15.23.3.2 The Conference, therefore, recast the relevant part of Article 213 to read as follows:

**“213. The President shall, on recommendation by the Judicial Service Commission and subject to the ratification by the National Assembly appoint-“**

- 15.23.3.3 Further, the Conference included paragraph (f) in clause (1) as a consequence of the decision by the Conference that the Chairperson and Deputy Chairpersons of the IRC should be at par with judges of the High Court. In addition, clause (2) was introduced to indicate that all provisions that related to judges of superior courts also applied to the Chairperson and Deputy Chairpersons of the IRC.

#### **15.23.4 Resolutions of the Conference**

The Conference adopted Article 213 and re-numbered it as follows:

**“199. (1) The President shall, on the recommendation of the Judicial Service Commission, and subject to ratification by the National Assembly, appoint -**

- (a) the Chief Justice;**
- (b) the Deputy Chief Justice;**
- (c) the judges of the Supreme and Constitutional Court;**
- (d) the judges of the Court of Appeal;**
- (e) the judges of the High Court; and**
- (f) the Chairperson and Deputy Chairperson of the Industrial Relations Court.**

**(2) Article 214 to 220 apply to the Chairperson and the Deputy Chairpersons of the Industrial Relations Court.”**

#### **15.24 Article 214: Acting Appointments**

##### **15.24.1 Recommendations of the Commission**

The Commission recommended that acting appointments of serving judges to higher offices should be made by the President in consultation with the JSC.



#### **15.24.2 Provisions of the Mung’omba Draft Constitution on Acting Appointments**

Article 214 provides as follows:

**“214. Except with respect to the Chief Justice and the Deputy Chief Justice, where –**

- (a) the office of a Judge of the superior court becomes vacant; or**
  - (b) the Chief Justice informs the President that there is a need to make an acting appointment;**
- the President, in consultation with the Judicial Service Commission, shall appoint a person qualified to act in the respective court until the appointment is revoked by the President acting in accordance with the advice of the Judicial Service Commission”**

#### **15.24.3 Deliberations of the Conference on Article 214**

The Conference decided to recast the last paragraph of Article 214 to empower the President to make acting appointments of serving judges to higher offices on the recommendation of the JSC, in order to remove negative public perception that appointees tended to favour the appointing authority in the discharge of their duties.

#### **15.24.4 Resolutions of the Conference**

The Conference adopted Article 214 with amendments and re-numbered it as follows:

**“200. Except with respect to the Chief Justice and the Deputy Chief Justice, where –**

- (a) the office of a judge of a superior court becomes vacant; or**
- (b) the Chief Justice informs the President that there is a need to make an acting appointment;**

**the President shall, on the recommendation of the Judicial Service Commission, appoint a person qualified to act in the respective court until the appointment is revoked by the President acting in accordance with the advice of the Judicial Service Commission.”**

**15.25 Article 215: Qualification for Appointment of Judges of Superior Courts**

**15.25.1 Recommendations of the Commission**

The Commission recommended as follows:

- (a) that the constitutional provision permitting the dispensing with the minimum period for which a person should have held the prescribed qualifications, namely, fifteen (15) years or ten (10) years in the case of appointment as a Supreme Court Judge or High Court Judge, respectively, should be repealed;
- (b) that the Constitution should provide that judges appointed to specialised courts should have expertise in the respective areas in which those courts were specialised; and
- (c) there should be a minimum age qualification of forty-five years stipulated in the Constitution.

**15.25.2 Provisions of the Mung'omba Draft Constitution on Qualification for Appointment of Judges of Superior Courts**

Article 215 provides as follows:

**"215. (1) A person shall not qualify for appointment as a Judge of the superior courts unless that person has attained the age of forty-five years, is of proven integrity and –**

- (a) holds or has held high judicial office; or**
- (b) has been an advocate, in the case of –**
  - (i) the Supreme and Constitutional Court, for not less than fifteen years;**
  - (ii) the Court of Appeal, for not less than twelve years; or**
  - (iii) the High Court, for not less than ten years.**
- (c) in the case of a Judge of the Constitutional Court, has the qualifications specified by Article 197 (c).**
- (2) A person appointed as Judge to a specialized court**

**shall have the relevant expertise in the area of jurisdiction of that court, as provided by an Act of Parliament.”**

**15.25.3 Deliberations of the Conference on Article 215**

15.25.3.1 In considering clause (1) of Article 215, the Conference decided that it was not necessary to include the minimum age requirement for appointment as a judge of Superior Courts. It was argued that life expectancy in Zambia had declined and career adjudicators who joined immediately after qualifying as lawyers would not qualify if the minimum age requirement was included. The minimum age requirement was, accordingly, deleted. The Conference approved clause (2) of Article 215 without amendments.

15.25.3.2 In further debate, the Conference considered clause (2) of Article 97 of the current Constitution which allowed the President, under special circumstances, to appoint a person to be judge even though that person did not hold a particular qualification for the required period.

15.25.3.3 In the discussion, some members who did not support the proposal argued that giving the President such discretion could open him/her to criticism. They stated that there were many persons, qualified to meet the required conditions. They, therefore, stated that a Constitution should not provide for matters which allowed discretion in appointments.

15.25.3.4 Other members, however, argued that they supported the clause because it was taken from the current Constitution and had worked well. Some members, in disagreeing with that argument, stated that the Conference was constituted to correct inadequacies in the current Constitution. They argued that retaining provisions just because they were in the current Constitution negated the objective of writing a new Constitution for Zambia.

15.25.3.5 The Conference, therefore, decided not to include clause (2) of 97 of the current Constitution in the draft Constitution.

**15.25.4. Resolutions of the Conference**

The Conference adopted Article 215 with amendments and re-numbered it as follows:

**"201. (1) Subject to clause (2), a person shall not qualify for appointment as a judge of a superior court unless that person is of proven integrity and -**

- (a) holds or has held high judicial office ; or**
- (b) has been an advocate, in the case of -**
  - (i) the Supreme and Constitutional Court, for not less than fifteen years;**
  - (ii) the Court of Appeal, for not less than twelve years; or**
  - (iii) the High Court, for not less than ten years.**

**(2) A person appointed as Judge to a specialised court shall have the relevant expertise in the area of jurisdiction of that court, as provided by an Act of Parliament."**

**15.26 Article 216: Tenure of office of Judge of Superior Court**

**15.26.1 Recommendations of the Commission**

The Commission, recommended that the retirement age of judges, including the Chief Justice and Deputy Chief Justice should be raised to seventy-five (75) years, subject to an option to retire at the age of sixty-five (65) years. That was to enable the country derive optimum benefit from their experience, knowledge and wisdom.

**15.26.2 Provisions in the Mung'omba Draft Constitution on Term of office of Judge of Superior Court.**

Article 216 provides as follows:

**"216. (1) Subject to clause (3), the Chief Justice and the Deputy Chief Justice shall hold office until they attain the age of seventy-five years and shall then retire.**

**(2) A judge of a superior court shall retire from office on attaining the age of seventy-five years.**

**(3) A judge of a superior court may retire at any time after attaining the age of sixty-five years.**

**(4) A person who has retired as Judge shall not be eligible for appointment as a judge.**

**(5) Where a judge of a superior court has attained the prescribed retirement age specified under this Article**

and there are proceedings that were commenced before the judge attained the age of retirement, the judge may continue in office for a period not exceeding six months, to deliver judgement or to perform any other function in relation to those proceedings.”

### **15.26.3 Deliberations of the Conference on Article 216**

15.26.3.1 On the retirement age for judges, some members suggested that the retirement age should be reduced to sixty-five (65) years to give opportunity to others to be appointed to the position. Others, however, observed that retiring judges early, at sixty-five (65) years was a loss to the country because, thereafter, they would be employed outside the country.

15.26.3.2 Other members proposed a retirement age of seventy (70) years. Members argued that judges would not be able to conduct their work diligently beyond that age. In addition, it was argued that retirement at seventy (70) years would add to the judges’ security of tenure especially that they could not be employed after retirement. Further, it was argued that judges became wiser with advancing age. The judges would, after seventy (70) years, retire to pursue their hobbies and would not have any ambition to continue working.

15.26.3.3 The Conference decided that judges of superior courts including the Chief Justice and Deputy Chief Justice should retire at the age of seventy (70) years.

### **15.26.4 Resolutions of the Conference**

The Conference adopted Article 216 with amendments and re-numbered it as follows:

“202. (1) Subject to clause (3), the Chief Justice and the Deputy Chief Justice shall hold office until they attain the age of seventy years and shall then retire.

(2) A judge of a superior court shall retire from office on attaining the age of seventy years.

(3) A judge of a superior court may retire upon attaining the age of sixty-five years.

(4) A person who retires as Judge shall not be eligible for appointment as a judge.

(5) Where a judge of a superior court has attained the prescribed retirement age specified under this Article and there are proceedings that were commenced before the judge attained the age of retirement, the judge may continue in office for a period not exceeding six months, to deliver judgement or to perform any other function in relation to those proceedings."

**15.27 Article 217: Removal of Judges from Office**

**15.27.1 Recommendations of the Commission**

The Commission recommended that the removal from office of a Chief Justice, Deputy Chief Justice or judge should be on the following grounds:

- (a) inability to perform the functions of the office, whether arising from infirmity of body or mind, incompetence, misbehaviour or misconduct, bankruptcy or insolvency; or
- (b) corruption or undue and unreasonable delays in the delivery of judgements.

**15.27.2 Provisions of the Mung'omba Draft Constitution on Removal of Judge from Office**

Article 217 provides as follows:

**"217. A Judge of a superior court may be removed from office only on the following grounds:**

- (a) inability to perform the functions of office arising from infirmity of body or mind;
- (b) breach of any code of conduct provided for in this Constitution or by an Act of Parliament;
- (c) corruption;
- (d) incompetence;
- (e) bankruptcy or insolvency;
- (f) stated misbehaviour or misconduct; or
- (g) undue or unreasonable delay in the delivery of a judgement."

### **15.27.3 Deliberations of the Conference on Article 217**

In discussing the Article, members proposed that the Conference should find an all-encompassing provision that would cover all forms of crime. The Conference observed that the grounds for the removal of judges were clearly outlined in the Judicial Code of Conduct. Therefore, the Conference amended Article 217 to take into account the provisions of the Judicial Code of Conduct.

### **15.27.4 Resolutions of the Conference**

The Conference adopted Article 217 with amendments and re-numbered it as follows:

**“203. A judge of a superior court may be removed from office only on the following grounds:**

- (a) inability to perform the functions of office arising from infirmity of body or mind; or**
- (b) breach of the code of conduct provided for by an Act of Parliament.”**

## **15.28 Article 218: Procedure for Removal of Judge**

### **15.28.1 Recommendations of the Commission**

The Commission recommended that the Judicial Complaints Commission should initiate the process of removing a judge by referring the matter to the President, where the Commission found that the complaint had merit. The President should then refer the matter to the National Assembly, which should appoint a tribunal, receive the report of the tribunal and determine the matter.

### **15.28.2 Provisions of the Mung’omba Draft Constitution on Procedure for Removal of Judge**

Article 218 provides as follows:

**“218. (1) A person who has a complaint against a Judge of a superior court, based on the grounds specified under Article 217, may submit a petition to the Judicial Complaints Commission established under this Constitution.**

(2) The Judicial Complaints Commission shall, on receipt of a petition, determine whether the petition is not frivolous, vexatious or malicious and thereafter submit the petition and a report on the matter to the President within twenty-one days.

(3) The President shall, within fourteen days of receipt of the petition and the report submitted under clause (2), refer the petition and the report to the National Assembly.

(4) On the receipt of the petition and the report by the National Assembly, the Speaker shall constitute a committee of the Assembly to examine whether -

- (a) the petition is not frivolous, vexatious or malicious; and
- (b) the grounds do or do not relate to the physical or mental incapacity of the judge; and submit a report to the Speaker.

(5) Where the report of the Committee, constituted under clause (4) states that the petition is not frivolous, vexatious or malicious and the grounds do not relate to the physical or mental incapacity of the Judge -

- (a) the Speaker shall constitute a tribunal, as provided under clause (6), to investigate the complaint against the judge; and
- (b) the National Assembly may recommend to the President the suspension of the judge from office.

(6) A tribunal to investigate a complaint against a Judge, as provided under clause (5), shall be composed of -

- (a) a retired Judge of the Supreme Court or the Supreme and Constitutional Court who shall be the Chairperson;
- (b) a legal practitioner who qualifies to be appointed a Judge of the Court of Appeal; and
- (c) one other person with experience in public service matters.



(7) Where a complaint relating to the removal of a Judge is based on the physical or mental incapacity of the Judge, the Speaker shall constitute a medical board composed of not less than three medical practitioners, nominated by the body responsible for the registration of medical practitioners, registered under the Laws, to examine the Judge.

(8) A tribunal or medical board, constituted under this Article, shall conduct an investigation of the complaint or medically examine the Judge, as the case may be, and submit its recommendations, in writing, to the National Assembly, within thirty days of being constituted.

(9) Proceedings under this Article shall be held in camera and the Judge being investigated or examined shall be entitled to appear and be heard and to be represented by a legal practitioner or other expert.

(10) Where a tribunal or medical board, constituted under this Article, recommends to the National Assembly that the Judge –

- (a) should be removed from office on the grounds specified in the recommendation; or
- (b) should not be removed from office for the reasons specified in the recommendation;

the Assembly shall endorse the recommendation and the Speaker shall inform the President about the recommendation made by the tribunal or medical board.

(11) Where a medical board or a tribunal constituted under this Article recommends that a Judge be removed from office the President shall remove the Judge from office."

### **15.28.3 Deliberations of the Conference on Article 218**

15.28.3.1 The Conference observed that the provision was elaborate in order to ensure the security of tenure of judges.

15.28.3.2 In order to strengthen the provision, the Conference agreed that, in the removal of judges, the following should be incorporated:

- (a) some of the provisions in Article 98 (2), (3), (4) and (5)

- of the current Constitution and Article 218 (1) and (2) of the draft Constitution;
- (b) a recommendation by the National Assembly;
  - (c) a role for the President to initiate the removal process; and
  - (d) a role for an individual to initiate a complaint against a judge and the procedure of where to direct such a complaint.

#### **15.28.4 Resolutions of the Conference**

The Conference adopted Article 218 with amendments and re-numbered it as follows:

**“204. (1) The President shall where the President has reasonable grounds to believe that the question of removing a judge of a superior court ought to be investigated, appoint a tribunal in accordance with this Article.**

**(2) A person who has a complaint against a Judge of a superior court, based on the grounds specified under Article 203, may submit a petition to the Judicial Complaints Authority established under an Act of Parliament.**

**(3) The Judicial Complaints Authority shall, on receipt of a petition, determine whether the petition is not frivolous, vexatious or malicious and thereafter submit the petition and a report on the matter to the President within twenty-one days.**

**(4) The President shall within fourteen days of receipt of a petition and the report submitted under clause (3), if the report states that the petition is not frivolous, vexatious or malicious, and if the President considers that the question of removing the Judge under this Article ought to be investigated, then –**

- (a) the President shall appoint a tribunal which shall consist of a Chairperson and not less than two other members, who hold or have held high judicial office; and**

- (b) the tribunal shall inquire into the matter and report on the facts thereof to the President and advise the President whether the Judge ought to be removed from office under this Article.

(5) Where a tribunal appointed under clause (4) advises the President that a Judge of a Superior Court ought to be removed from office, the President shall remove such judge from office, subject to ratification by the National Assembly.

(6) If the question of removing a judge of superior court from office has been referred to a tribunal under clause (4), the President may suspend the judge from performing the functions of office, and any such suspension may at any time be revoked by the President and shall in any case cease to have effect if the tribunal advises the President that the judge ought to be removed from office."

## **15.29 Article 219: Remuneration of Judges**

### **15.29.1 Recommendations of the Commission**

The Commission recommended that the Constitution should provide that:

- (a) the emoluments, pensions and other conditions of service of Judges should be reviewed and recommended in the first instance by the JSC Commission, and submitted to an independent National Fiscal and Emoluments Commission, which should make its recommendations to the National Assembly for approval. Upon approval, these should be prescribed by an Act of Parliament;
- (b) the emoluments of judges should not be reduced without their consent during their tenure of office; and
- (c) the emoluments, gratuity, pensions and other dues under the terms and conditions of service should be a charge on the Consolidated Fund of the Republic.

**15.29.2 Provisions of the Mung’omba Draft Constitution on Remuneration of Judges**

Article 219 provides as follows:

**“219. (1) The Judicial Service Commission shall review and submit recommendations for emoluments and other conditions of service of Judges to the Emoluments Commission;**

**(2) The Emoluments Commission shall review recommendations from the Judicial Service Commission and make appropriate recommendations for the emoluments of Judges for ratification by the National Assembly.**

**(3) The National Assembly shall enact legislation providing for the emoluments and other terms and conditions of service of Judges, taking into consideration the recommendations of the Emoluments Commission.**

**(4) The emoluments of a Judge shall not be reduced to the disadvantage of the Judge during the Judge’s tenure of office.**

**(5) A Judge shall not, while the Judge continues in office, hold any other office of profit or emoluments”.**

**15.29.3 Deliberations of the Conference on Article 219**

15.29.3.1 In the debate on clause (1) of Article 219, some members recalled that the Conference had, when considering the Report of the Public Finance Committee, decided against the establishment of an Emoluments Commission. In view of that decision, the Conference had to make a decision as to which body or office the JSC would make its recommendations in relation to the emoluments and other conditions of service for judges.

15.29.3.2 Some members suggested that the JSC should be empowered to determine salaries and conditions of service for Judges. They argued that such a provision would enhance integrity and ensure the independence of the Judiciary. Other members proposed that clauses (1) and (2) of Article 219, be retained but harmonised with provisions of Article 119 of the current Constitution.

15.29.3.3 The other views expressed by the members included the following:

- (a) that provisions of Article 219 should include judicial officers of subordinate courts;
- (b) that salary structures in the three arms of Government should be harmonised;
- (c) that the Conference should reverse its earlier decision on the establishment of the Fiscal and Emoluments Commission established under Article 322 of the Mung'omba Draft Constitution and re-instate it in Article 219;
- (d) that in order to strike a balance amongst all the arms of Government, the JSC should make its recommendations to the President who should, after considering the proposals, pass the recommendation to the National Assembly for ratification; and
- (e) that a board under which institutions such as Salaries Commission would operate, be established.

15.29.3.4 In the course of the debate, the Conference was informed that currently, salaries and conditions of service for judges of the superior courts were recommended by the JSC while those of lower courts were catered for under the general negotiations for salaries and conditions of service for Public Service employees. It was further explained that there was in existence, a Judges Conditions of Service Act under which the President, by statutory instrument, issued salaries and conditions of service for judges.

15.29.3.5 Further, the Conference debated which body would be the most ideal replacement for the Emoluments Commission whose establishment had been rejected by the Conference. A proposal was made that the JSC could forward its recommendations to the Minister responsible for finance and that such a provision could be taken care of in an Act of Parliament.

15.29.3.6 After debate, the Conference approved clause (1) of Article 219 with amendments to read **“(1) The Judicial Service Commission shall review and submit recommendations for the emoluments and other conditions of service of judges to the Minister responsible for finance.”**

- 15.29.3.7 As a consequence of amending clause (1) by replacing the term “Emoluments Commission” with the term “Minister responsible for finance”, clauses (2) and (3), were amended accordingly.

Clauses (4) and (5) were approved without amendments.

#### **15.29.4 Resolutions of the Conference**

The Conference adopted Article 219 with amendments and re-numbered it as follows:

**“205 (1) The Judicial Service Commission shall review and submit recommendations for the emoluments and other conditions of service of judges to the Minister responsible for finance.**

**(2) The Minister responsible for finance shall review recommendations from the Judicial Service Commission and make appropriate recommendations for the emoluments of judges for ratification by the National Assembly.**

**(3) Parliament shall enact legislation to provide for the emoluments and the other terms and conditions of service of judges, taking into consideration the recommendations of the Minister responsible for finance.**

**(4) The emoluments of a judge shall not be reduced to the disadvantage of the judge during the Judge’s tenure of office.**

**(5) A judge shall not, while the judge continues in office, hold any other office of profit or emoluments.”**

#### **15.30 Article 220: Oath of Office of Judges**

##### **15.30.1 Recommendations of the Commission**

The Commission did not receive submissions on the oath of office of Judges but made recommendations on the subject as follows:

**“220. A Judge shall, before assuming office, take the Judicial Oath, as set out in the Third Schedule.”**

### **15.30.2        Deliberations of the Conference on Article 220**

The Conference adopted Article 220 of the Draft Constitution with amendments by providing that the oath of office of judges should be in an Act of Parliament.

### **15.30.3        Resolutions of the Conference**

The Conference adopted Article 220 with amendments and re-numbered it as follows:

**“206. A Judge shall, before assuming office, take the Judicial Oath, as may be prescribed by or under an Act of Parliament.”**

## **15.31        Article 221: Appointment, Retirement and Removal of Judicial Officers**

### **15.31.1        Recommendations of the Commission**

15.31.1.1        The Commission recommended that the Constitution should provide that:

- (a)    the JSC should appoint, exercise disciplinary control over and remove judicial officers other than those whose appointment is otherwise prescribed by the Constitution; and
- (b)    the JSC should review and recommend to such independent Emoluments Commission as may be established by an Act of Parliament, the terms and conditions of service of non-constitutional judicial officers.

15.31.1.2        Further, the Commission recommended that appropriate legislation should provide that:

- (a)    qualifications for appointment to the various positions of magistrates should include that the person should be a qualified legal practitioner with a minimum period of five years' experience in the case of a Principal Resident or a Senior Resident Magistrate; three years in case of a Magistrate Class II, and one year in the case of a Magistrate Class III;

- (b) with the exception of local court justices, other judicial officers should retire at sixty years (60) of age unless earlier appointed as Judges;
- (c) qualifications for appointment as local court justice should include expertise in the traditions and customs of the specific area and that, in rural areas, such persons should be recruited from the local community, with approval of the area chief;
- (d) qualifications for appointment as a local court justice in an urban community, should include expertise in most of the customary laws applicable to the people in that community in order to be appointed local court justice; and
- (e) in order to be appointed local court justice, a person should be at least forty-five (45) years of age and shall be required to retire at seventy five (75) years of age.

15.31.1.3 The Commission also recommended that the conditions of service for magistrates and local court justices should be improved to make those positions attractive.

#### **15.31.2 Provisions of the Mung'omba Draft Constitution on Appointment, Retirement and Removal of Judicial Officers**

Article 221 provides as follows:

**"221.(1) The Judicial Service Commission shall appoint such number of judicial officers as the Judicial Service Commission considers necessary for the proper functioning of the Judiciary;**

**(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 justice, shall retire on attaining the age of sixty years;**

**(5) A local court justice shall retire at the age of seventy-five years."**



### **15.31.3 Deliberations of the Conference on Article 221**

- 15.31.3.1 The Conference approved clause (1) and (3) of Article 221 without amendments.
- 15.31.3.2 The Conference in considering clause (2) of Article 221, decided to replace “Emoluments Commission” with “Minister responsible for finance”, in line with an earlier decision of the Conference.
- 15.31.3.3 The Conference decided, in considering clause (4) of Article 221, to amend the clause to give judicial officers, except local court magistrates the option to retire upon attaining the age of fifty-five (55) years. That was because the Conference was of the view that local court justices were a special category of officers who required experience in a particular area such as chieftaincy and sufficient knowledge in customary law. Further, that they were employed on a three-year contract which was renewable.
- 15.31.3.4 In the discussion of clause (5) of Article 221, the Conference decided to reduce the retirement age from seventy-five (75) years to seventy years (70) in line with an earlier decision of the Conference.
- 15.31.3.5 The Conference decided to change the nomenclature of “Local Court Justice” to “local court magistrate” in line with an amendment to the Local Courts Act.

### **15.31.4 Resolutions of the Conference**

The Conference adopted Article 221 with amendments and re-numbered it as follows:

**“207. (1) The Judicial Service Commission shall appoint, such number of Judicial officers as the Judicial Service Commission considers necessary for the proper functioning of the Judiciary.**

**(2) The Judicial Service Commission shall appoint judicial officers on such terms and conditions including emoluments, as shall be approved by the Minister responsible for finance.**

- (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 years and may retire with full benefits on the attainment of fifty-five years.
- (5) A local court magistrate shall retire at the age of seventy years."

**15.32 Article 222: Jurisdiction of Lower Courts**

**15.32.1 Recommendations of the Commission**

The Commission recommended as follows:

- (a) that appropriate legislation should establish family courts at the subordinate court and local court levels;
- (b) that a juvenile court should be established as a special division at the Subordinate Court level;
- (c) that the Juvenile Court should have jurisdiction to deal with all matters involving juveniles, whether as offenders, complainants or petitioners;
- (d) that the Juvenile Court should hold its proceedings in a child-friendly environment and its procedures should reflect that;
- (e) that access to and publication of proceedings of the Juvenile Court should be strictly regulated by legislation along the lines of Article 18 (11) of the Constitution, as an exception to the rule under Article 18 (10) of the Constitution requiring court proceedings to be conducted in public; and
- (f) that the establishment of the Juvenile Court, its jurisdiction, powers, procedures and other relevant details on the subject should be provided for in an Act of Parliament, unless otherwise required to be prescribed under the Constitution.

## **15.32.2 Provisions of the Mung’omba Draft Constitution on Jurisdiction and Divisions of Lower Courts**

Article 222 provides as follows:

**“222. (1) Parliament shall enact legislation to provide for the jurisdiction, powers and procedures of the subordinate courts, the local courts and other lower courts.**

**(2) There shall be established a Family Court and Juvenile Court as divisions of the subordinate courts and local courts.**

**(3) 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 as provided by or under an Act of Parliament.”**

## **15.32.3 Deliberations of the Conference on Article 222**

15.32.3.1 With regard to the establishment of a family court, some members proposed that a family court should be established as a division of the High Court. Those who supported that proposal argued that the establishment of the Court would enable it deal with family matters expeditiously.

15.21.3.2 Others felt that the establishment of a family court should be left to the discretion of Parliament as envisaged under Article 211 (4) of the Mung’omba Draft Constitution. Those who supported that position argued that the establishment of courts was an administrative matter, which would be adequately dealt with under the domain of the Chief Justice or by an Act of Parliament.

15.32.3.3 Other members supported the establishment of a family court under Article 193 (1) (a) of the Mung’omba Draft Constitution and suggested that Parliament should be obliged under the draft Constitution to enact legislation defining the court’s powers, functions, composition and other related matters.

15.32.3.4 After protracted debate on the matter, the Conference decided that the establishment of the Family Court should be left to the discretion of the Chief Justice or Parliament.

- 15.32.3.5 With regard to the establishment of the Juvenile Court, members observed that it should not be a division of the local court as local court magistrates were not adequately trained to deal with matters relating to juveniles. The Conference supported the proposal that the Juvenile Court should be a division of the subordinate court as some magistrates were adequately trained to deal with matters relating to juveniles. The Conference, therefore, decided that the Juvenile Court should be a division of the subordinate courts as opposed to the local court.

#### **15.32.4 Resolutions of the Conference**

The Conference adopted Article 222 with amendments and re-numbered it as follows:

**“208. (1) Parliament shall enact legislation to provide for the jurisdiction, powers and procedures of the subordinate courts, the local courts and other lower courts.**

**(2) There shall be established a Juvenile Court as a division of the subordinate court.**

**(3) The composition, jurisdiction, powers, sittings and procedures of the Juvenile Court shall be provided by or under an Act of Parliament.”**

#### **15.33 Article 223: Judicial Service**

##### **15.33.1 Recommendations of the Commission**

The Commission did not receive submissions on the Judicial Service but made recommendations on the subject as follows:

**“223. The Office of Judge and Judicial Officer are offices in the Judicial Service”.**

##### **15.33.2 Deliberations of the Conference on Article 223**

The Conference decided that Article 223 should be deleted because it was superfluous.

### **15.33.3 Resolutions of the Conference**

The Conference deleted Article 223 of the Mung'omba Draft Constitution.

### **15.34 Article 224: Judicial Service Commission**

#### **15.34.1 Recommendations of the Commission**

15.34.1.1 The Commission recommended that the composition of the JSC should be reviewed and enshrined in the Constitution to ensure that it was broad-based, impartial and independent. Accordingly, the Commission recommended that the establishment of the JSC should be retained and that its composition and the tenure of office of its members should be specified by the Constitution.

15.34.1.2 The Commission further recommended that appropriate legislation should make provision that:

- (a) except for a person whose membership was by virtue of holding a prescribed office, a member of the JSC should hold office for a term of four years, after which he or she should be eligible for re-appointment for one more term; and
- (b) a member of the JSC should vacate office at the expiry of the term of office or if he or she is elected or appointed to any office determined by an Act of Parliament, to avoid compromising the independence of the JSC.

#### **15.34.2 Provisions of the Mung'omba Draft Constitution on Judicial Service Commission**

Article 224 provides as follows:

**"224. (1) There is hereby established the Judicial Service Commission;**

**(2) The Judicial Service Commission shall consist of:**

- (a) the Chief Justice who shall be the Chairperson;**
- (b) the Attorney-General;**
- (c) one person nominated by the Civil Service Commission;**

- (d) the Permanent Secretary responsible for public service management;
  - (e) one judge of the Supreme and Constitutional Court nominated by the Chief Justice;
  - (f) one judge of the Court of Appeal nominated by the Chief Justice;
  - (g) one member of the Law Association of Zambia, with not less than fifteen years practice as a lawyer, nominated by the Association;
  - (h) the Dean of the Law School of any public university in Zambia;
  - (i) one member of the Human Rights Commission;
  - (j) one representative of magistrates nominated by a body representing magistrates; and
  - (k) the person responsible for the administration of the local courts.
- (3) The members of the Judicial Service Commission shall be appointed by the President.
- (4) A person nominated under clause (2) (c) and (g), shall not qualify to be appointed a member of the Judicial Service Commission unless that person is of proven integrity.
- (5) A person nominated under clause (2) (c), (g), (i) or (j) shall hold office for a term of four years and shall be eligible for re-appointment for only one further term of four years.
- (6) A member referred to in clause (6) 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 Chief Justice.
- (7) A member who represents a body or institution shall vacate office if that body or institution nominates another person to represent it."

### **15.34.3 Deliberations of the Conference on Article 224**

The Conference, while agreeing that the JSC should be established by the Constitution, decided that its composition should be provided for in an Act of Parliament in order to allow for ease of amendments if need arose. Therefore, the Conference decided to delete clauses (2), (4), (5), (6) and (7) of Article 224.

### **15.34.4 Resolutions of the Conference**

The Conference adopted Article 224 with amendments and re-numbered it as follows:

**“209 (1) There is hereby established the Judicial Service Commission.**

**(2) The members of the Judicial Service Commission shall be appointed by the President.**

**(3) Parliament shall enact legislation to provide for the functions, powers, independence, composition, tenure of office, staff, procedures, operations, finances and financial management of the Commission.”**

## **15.35 Article 225: Functions of the Judicial Service Commission**

### **15.35.1 Recommendations of the Commission**

The Commission recommended that the powers and functions of the JSC should be provided for in the Constitution to include:

- (a) supervision of the operations of the Judiciary;
- (b) advising the Government on the administration of justice;
- (c) advising the President in the exercise of the President’s power to appoint persons to hold or act in any office specified in this Constitution or other law, which includes power to confirm appointments, to exercise disciplinary control over such persons, and to remove them from office;

- (d) reviewing and making recommendations on the terms and conditions of service of judges and other judicial officers subject to the provisions of the Constitution; and
- (e) performing any other functions prescribed by the Constitution or by an Act of Parliament.

**15.35.2 Provisions of the Mung'omba Draft Constitution on Functions of the Judicial Service Commission**

Article 225 provides as follows:

**"225. (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) subject to this Constitution, to appoint, discipline and remove judicial officers and other employees of the Judicial Service;
- (e) to prepare and implement programmes for the continuing education and training of Judges, judicial officers and other employees of the Judicial Service;
- (f) to advise the Government on access to justice and legal aid; and
- (g) 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."**



### **15.35.3 Deliberations of the Conference on Article 225**

The Conference, while agreeing that the JSC should be established by the Constitution, decided that its functions and powers should be provided for by an Act of Parliament. Consequently, the Conference decided to delete Article 225.

### **15.35.4 Resolutions of the Conference**

The Conference decided to delete Article 225 and provided for the functions of the JSC in clause (3) of the re-numbered Article 209 as follows:

**“209. (1) There is hereby established the Judicial Service Commission.**

**(2) The members of the Judicial Service Commission shall be appointed by the President.**

**(3) Parliament shall enact legislation to provide for the functions, powers, independence, composition, tenure of office, staff, procedures, operations, finances and financial management of the Commission.”**

## **15.36 Article 226: Chief Administrator, Appointment and Functions**

### **15.36.1 Recommendations of the Commission**

The Commission did not receive submissions on the Chief Administrator but made recommendations on the subject as follows:

**“226. (1) There shall be a Chief Administrator for the Judicial Service who shall be appointed by the President on the recommendation of the Judicial Service Commission.**

**(2) The Chief Administrator -  
(a) shall be responsible for the day-to-day administration of the Judicial Service and for the implementation of the decisions of the Judicial Service Commission;**

- (b) shall be the controlling officer for the Judicial Service; and
- (c) shall perform any other functions as provided by or under an Act of Parliament.”

#### **15.36.2 Deliberations of the Conference on Article 226**

The Conference adopted Article 226 with amendments by relegating the functions of Chief Administrator to an Act of Parliament. The Conference, therefore, deleted clause (2) of Article 226.

#### **15.36.3 Resolutions of the Conference**

The Conference adopted Article 226 with amendments and re-numbered it as follows:

**“210. (1) There shall be a Chief Administrator of the Judiciary who shall be appointed by the President on the recommendation of the Judicial Service Commission.**

**(2) Parliament shall enact legislation to provide for the qualifications and functions of the Chief Administrator.”**

#### **15.37 Article 227: Secretary to the Judicial Service Commission**

##### **15.37.1 Recommendations of the Commission**

The Commission recommended that the Chief Administrator of the Judiciary should be the Secretary to the JSC.

##### **15.37.2 Provisions of the Mung’omba Draft Constitution on Secretary to the Judicial Service Commission**

Article 227 provides as follows:

**“227. The Chief Administrator shall be the Secretary to the Judicial Service Commission.”**

##### **15.37.3 Deliberations of the Conference on Article 227**

The Conference did not support the provision that the Chief Administrator should be Secretary to the JSC. The Conference was

of the view that the Registrar of the High Court, who was a lawyer, should be the Secretary, as was the case currently. The Conference, therefore, deleted Article 227.

**15.37.4 Resolutions of the Conference**

The Conference deleted Article 227 of the draft Constitution.

**15.38 Article 228: Judicial Oath**

**15.38.1 Recommendations of the Commission**

The Commission recommended that judicial officers should, before assuming office, take the Judicial Oath.

**15.38.2 Provisions of the Mung’omba Draft Constitution on Judicial Oath**

Article 228 provides as follows:

**“228. A Judicial Officer shall, before assuming office, take the Judicial Oath, as set out in the Third Schedule.”**

**15.38.3 Deliberations of the Conference on Article 228**

The Conference adopted Article 228 of the Mung’omba Draft Constitution with amendments by providing for the oath of office to be prescribed by an Act of Parliament.

**15.38.4 Resolutions of the Conference**

The Conference adopted Article 228 with amendments and renumbered it as follows:

**“211. A judicial officer shall, before assuming office, take the Judicial Oath, as prescribed by or under an Act of Parliament.”**

**15.39 Article 229: Rules of Court**

**15.39.1 Recommendations of the Commission**

The Commission did not receive submissions on the rules of court but made recommendations on the subject as follows:

**“229. (1) Parliament shall enact legislation to empower the Chief Justice to prescribe rules and procedures for the courts and tribunals established under this Constitution or any other law.**

**(2) Rules made under clause (1) shall provide for expeditious determination of cases before courts and tribunals.”**

**15.39.2 Deliberations of the Conference on Article 229**

15.39.2.1 The Conference decided to retain the wording of Article 94 (8) with appropriate modifications as follows:

**“229 (1) The Chief Justice may make rules with respect to the practice and procedure of the High Court, Industrial Relations Court and Court of Appeal in relation to the jurisdiction and power conferred on them.”**

15.39.2.2 Consequently, the Conference deleted Article 229.

**15.39.3 Resolutions of the Conference**

The Conference deleted Article 229 of the draft Constitution and substituted it with new Article 212 as follows:

**“212. The Chief Justice may prescribe rules of practice and procedure for the courts and tribunals established under this Constitution or any other law.”**

## **PART XII**

### **LOCAL GOVERNMENT**

#### **16.1 Article 230: Establishment and Objectives of Local Government**

##### **16.1.1 Recommendations of the Commission**

The Commission, recommended that the Constitution should make provision for a decentralised system of local government that would outline the goals, objectives, structures, functions and financing.

##### **16.1.2 Provisions of the Mung'omba Draft Constitution on Establishment and Objectives of Local Government**

Article provides as follows:

**"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;**
- (c) promote cooperative governance with the National Government in order to support and enhance the developmental role of local government;**
- (d) 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;**
- (e) promote social and economic development at the district level;**
- (f) establish for each district council a sound financial base with reliable and predictable sources of revenue;**
- (g) 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;
- (h) ensure accountability of district and sub-district authorities; and
- (i) 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.”

### **16.1.3 Deliberations of the Conference on Article 230**

16.1.3.1 The Conference observed that the petitioners to the Mung’omba Constitutional Review Commission had overwhelmingly demanded for decentralisation as the desired system of local government. The Conference, therefore, decided that the opening sentence to Article 230 be split into two clauses in order to provide for the Decentralisation Policy embarked upon by Government.

16.1.3.2 In the debate of paragraph (a) of Article 230, two positions emerged, namely, that the provision in the Mung’omba Draft Constitution be retained and that the provision in the Mung’omba Draft Constitution be deleted.

16.1.3.3 Members who supported the provision in the Mung’omba Draft Constitution argued as follows:

- (a) that paragraph (a) of the Mung’omba Draft Constitution was the cornerstone of decentralisation; and
- (b) that the objectives of paragraph (a) of the Mung’omba Draft Constitution captured the essence of decentralisation as it would ensure that the central Government would have adequate powers to carry out its mandate even though it would surrender some of its powers to the districts.

16.1.3.4 Members who did not support the Mung’omba Draft Constitution argued as follows:

- (a) that the Draft Constitution had only ended at providing for the establishment of the Local Government system without

indicating that the system would be based on decentralisation;

- (b) that the objectives of paragraph (a) of the Draft Constitution were addressed in Article 231 and in clause (2) of Article 130. They argued that those issues had been placed in order of priority;
- (c) that the provisions should, ideally, only define the desired system of governance which was “decentralisation” and provide the details in an Act of Parliament; and
- (d) that paragraph (a) of the Mung'omba Draft Constitution was creating a de-facto federal government. They argued that the seventy-three (73) districts did not have the same resources, therefore, paragraph (a) would “cripple” some of them.

16.1.3.5 In addition, the Conference decided that paragraphs (a), (c), and (g) of Article 230 be deleted. That was because the provision in sub-clause (a) could be interpreted to mean that the Central Government would surrender all the powers, functions and responsibilities to the Local Authorities. The provisions in (g) were part of the current responsibilities of Cabinet Office, and the provisions in (a) of the Mung'omba Draft Constitution would create a de-facto federal government.

16.1.3.6 The Conference decided that paragraph (a) should be deleted because it could be interpreted to mean that the central Government would surrender all its powers, functions and responsibilities to the Local Authorities.

16.1.3.7 The Conference approved paragraphs (b), (d), (e), (f) and (h) of Article 230 without amendments.

16.1.3.8 Paragraphs (c) and (i) were deleted because the Conference was of the view that they were vague.

16.1.3.9 Paragraph (g) was deleted because its provisions were part of the current responsibilities of Cabinet Office.

#### **16.1.4 Resolutions of the Conference**

The Conference adopted Article 230 of the Mung'omba Draft Constitution with amendments and re-numbered it as follows:

**"213. (1) There is hereby established a system of local government that shall be based on decentralisation.**

**(2) The objectives of local government are to -**

- (a) promote the people's participation in democratic governance at the local level;**
- (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) promote a safe and healthy environment;**
- (e) establish for each district council a sound financial base with reliable and predictable sources of revenue; and**
- (f) ensure accountability of district Councils."**

**16.2 Article 231: Co-operation between National Government and Local Government and between Local Authorities**

**16.2.1 Recommendations of the Commission**

16.2.1.1 The Commission recommended that the exercise of authority by central Government should be in the context of co-operative governance and intra-governmental relations.

16.2.1.2 The Commission further recommended that the system of local government in Zambia should be based on the district council as a unit which should integrate Government and local authority departments into one and under which there should be such lower local government structures and administrative units as may be provided by an Act of Parliament.

**16.2.2 Provisions of the Mung'omba Draft Constitution on Co-operation between National Government and Local Government and between Local Authorities**

Article 231 provides as follows:

**"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."

### **16.2.3 Deliberations of the Conference on Article 231**

16.2.3.1 In debating the Article, most of the members supported the deletion of the Article. Among the arguments in support of the deletion were that introducing the federal system of governance of councils would create a lot of functional problems. Further, they argued that Article 231 was ambiguous.

16.2.3.2 The Conference decided that the functional relationship between the central Government and local authorities be provided for under an Act of Parliament as it was amenable to change over time. Consequently, the Conference decided to delete Article 231.

### **16.2.4 Resolutions of the Conference**

The Conference deleted Article 231 of the Mung'omba Draft Constitution.

**16.3            Article 232:     Structures and Principles of Decentralised Government**

**16.3.1           Recommendations of the Commission**

The Commission recommended that the Constitution should make provision for a decentralised system of local government that would outline the goal, objectives, structures, functions and financing including that local government structures as may be necessary, be established to respond to people's needs at provincial, district and su-district level.

**16.3.2           Provisions of the Mung'omba Draft Constitution on Structures and Principles of Decentralised Government**

Article 232 provides as follows:

**"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."**

**16.3.3           Deliberations of the Conference on Article 232**

**16.3.3.1        In discussing Article 232, members who did not support the Article expressed the view that the Article was proposed by the Commission on the assumption that Zambia would be divided into provinces and governed under a federal system.**

16.3.3.2 On the other hand members who advocated for the adoption of the Article argued that the objective of the Article was not to provide for a federal system but rather to provide for a system of decentralisation by devolution.

16.3.3.3 The Conference approved clauses (1) and (2) with amendments and resolved to delete clauses (3) and (4) of Article 232.

#### **16.3.4 Resolutions of the Conference**

The Conference adopted Article 232 of the Mung'omba Draft Constitution with amendments and re-numbered it as follows:

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

**(2) The Government shall ensure the decentralisation of functions, powers, responsibilities and resources to the province, the district and local authorities as may be provided by or under an Act of Parliament."**

#### **16.4 Article 233: Districts and District Councils**

##### **16.4.1 Recommendations of the Commission**

16.4.1.2 The Commission recommended that the system of local government in Zambia should be based on the district council as a unit which should integrate Government and local authority departments into one and under which there should be such lower local government structures and administrative units as may be provided by an Act of Parliament.

16.4.1.3 The Commission was of the view that under that system, therefore, there should be only one unit of governance, namely, the district council.

##### **16.4.2 Provisions of the Mung'omba Draft Constitution on Districts and District Councils**

Article 233 provides as follows:

**"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."**

#### **16.4.3 Deliberations of the Conference on Article 233**

The Conference decided to adopt Article 233 without amendments.

#### **16.4.4 Resolutions of the Conference**

The Conference adopted Article 233 of the Mung'omba Draft Constitution without amendments and re-numbered it as follows:

**"215. (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."**

**16.5 Article 234: Functions of District Councils**

**16.5.1 Recommendations of the Commission**

The Commission recommended that the district council should be the highest service organ and political authority within its area of jurisdiction and should have legislative and executive powers to be exercised in accordance with the Constitution.

**16.5.2 Provisions of the Mung'omba Draft Constitution on Functions of District Councils**

Article 234 provides as follows:

**"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;**

- (h) developing and maintaining infrastructure;
- (i) the supply of water and the provision of sanitation;
- (j) disaster management;
- (k) the management of the decentralised structures relating to health and education;
- (l) the regulation of trade and business;
- (m) the provision of agricultural extension services;
- (n) provision of community policing and prison facilities;
- (o) preparation of progress reports for the district; and
- (p) any other function provided by or under an Act of Parliament."

### **16.5.3 Deliberations of the Conference on Article 234**

16.5.3.1 In considering Article 234, members who supported the provisions argued that -

- (a) it was necessary to include functions of district councils in the new Constitution in order to "constitutionalise" local government issues; and
- (b) it was important for critical functions to be in the Constitution to highlight comprehensive development plans, mobilisation of resources, making of by-laws and co-ordination of local government functions at various levels.

16.5.3.2 Members who did not support the provisions argued that the functions of district councils should be in an Act of Parliament and not in the Constitution. They argued that the Constitution was only supposed to contain fundamental principles.

16.5.3.3 The Conference decided that Article 234 of the Mung'omba Draft Constitution be harmonised with Articles 235, 236, 238 and 239 which dealt with election of councillors and composition of district councils; tenure of office and vacation of office of councillor; expulsion of councillor; and qualifications and disqualifications for election to district councils; respectively. The Conference also decided that a provision should be included to deal with allowances and honorium for councillors.

#### **16.5.4 Resolutions of the Conference**

The Conference adopted Article 234 of the Mung'omba Draft Constitution with amendments and re-numbered it as follows:

**"216. 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 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 the development of the district;**
- (c) the issuance of by-laws, within its jurisdiction;**
- (d) co-ordinating the functions of wards and other authorities within the district; and**
- (e) disaster prevention and management; and**
- (f) any other function provided by or under an Act of Parliament."**

#### **16.6 Article 235: Election of Councillors and Composition of District Councils**

##### **16.6.1 Recommendations of the Commission**

The Commission recommended that -

- (a) in relation to physical wards, seats should be contested on the basis of the first-past-the-post electoral system, whilst other seats should be held on the basis of the proportional representation electoral system, in accordance with the mixed member representation system;**
- (b) the composition of a council should reflect gender representation on each side of not less than thirty (30) percent of the total number of seats;**
- (c) youths, persons with disabilities and any other special group as may be prescribed by an Act of Parliament should be allocated special seats which should be filled through an elective process conducted by electoral colleges of the groups affected; and**

- (d) chiefs and Members of Parliament be ex-officio members of councils.

#### **16.6.2 Provisions of the Mung'omba Draft Constitution on Election of Councillors and Composition of District Councils**

Article 235 provides as follows:

**"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."**



### **16.6.3 Deliberations of the Conference on Article 235**

- 16.6.3.1 In considering clause (1), the Conference observed that the clause was linked to clauses (2) and (3) of Article 95 in the Mung'omba Draft Constitution which provide that local government elections should be conducted under the mixed member proportional representation system.
- 16.6.3.2 Members recalled that when considering the Chapter on Democratic Governance, the Conference had adopted the mixed member representation system for the National Assembly and the district councils. In view of that earlier decision, it was therefore, decided that Article 235 (1) of the Mung'omba Draft Constitution be adopted.
- 16.6.3.3 Members who did not support paragraph (e) of clause (2) of Article 235 argued that it would be demeaning and inappropriate to subject Chiefs to debates in the Council Chambers.
- 16.6.3.4 The Conference noted that, although the Conference had earlier decided against the participation of Chiefs in active politics, their involvement under clause (e) was a necessary civic responsibility and would be non-partisan and therefore, approved clause (2) (e) of Article 235.
- 16.10.3.5 The members who supported the proposal argued that the clause was progressive and further suggested that it should be left to individual Chiefs to decide whether or not to participate directly or through their personal representatives.
- 16.6.3.6 In discussing clause (2) (f) of Article 235, some members proposed that the clause be deleted due to financial implications. The members suggested that the clause should be deleted because it would lead to the politicisation of the Defence Force and security agencies which were expected to be non-political and under the command of civilian authorities.
- 16.6.3.7 Other members, however, were in support of the provision on condition that the officials did not receive any allowances.
- 16.6.3.8 The Conference approved clause (2) (f) of Article 235.

- 16.6.3.9 In debating clause (4) of Article 235, members stated that councillors provided an important service to the public. In view of that, it was suggested that the allowances to be paid to councillors should include honoraria. Some members, however, argued that as “body corporates” councils should be able to generate their own funds. The members observed that the matter was a drafting issue which called for scrutiny. The Conference introduced a new provision and numbered it “clause 6”.
- 16.6.3.10 The Conference approved clauses (1), and (2) of Article 235 as provided for in the Mung'omba Draft Constitution.
- 16.6.3.11 The Conference approved clause (3) but amended it to read as follows:
- “The term of a district council shall be five years and shall run concurrently with the term of the National Assembly”
- 16.6.3.12 Clause (4) was amended by providing that a councillor could be entitled to a further allowance at the expiry of the councillor’s term of office, in addition to any other allowance he or she was entitled to.
- 16.6.3.13 The Conference further decided to introduce a new provision on functions and duties of a councillor as reflected in the new clause (3).

#### **16.6.4 Resolutions of the Conference**

The Conference adopted Article 235 of the Mung'omba Draft Constitution with amendments and re-numbered it as follows:

**“217. (1) Subject to clause (5), elections to a district council shall be conducted under the mixed member representation system specified under Article 80 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 percent 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 Force and national security agencies operating in the district; and
  - (g) one representative of the business community in the district.
- (3) The functions and duties of a councillor shall be provided for by or under an Act of Parliament.
- (4) The term of a district council shall be five years and shall run concurrently with the term of the National Assembly.
- (5) The mayor, deputy mayor, chairperson or vice-chairperson of a council shall be elected by the councillors referred to in clause (2) from among the elected councillors referred to in paragraph (b) of clause (2) and as provided by or under an Act of Parliament.
- (6) A councillor shall be paid –
- (a) such allowances as may be prescribed by or under an Act of Parliament; and
  - (b) a further allowance, at the expiry of that councillor's tenure of office, as recommended by the Minister responsible for finance and prescribed by or under an Act of Parliament, in addition to any allowances payable under paragraph (a)."

**16.7 Article 236: Tenure of office and vacation of office of councillor**

**16.7.1 Recommendations of the Commission**

The Commission recommended that -

- (a) the Constitution should provide that the term of office of councillors be five years and that councillors should continue to be eligible for re-election;
- (b) when a seat held by a councillor sponsored by a party falls vacant, the party affected should nominate a person to fill the vacancy;
- (c) where a councillor's political party was dissolved, that councillor should retain the seat as an independent where the seat was held on the basis of the first-past-the-post electoral system;
- (d) where the seat of a councillor whose party had been dissolved was held on the basis of the proportional representation system, it should be re-located in accordance with that system; and
- (e) when the seat held on account of a special allocation to an interest group falls vacant, the interest group affected should nominate a person to fill the vacancy.

**16.7.2 Provisions of the Mung'omba Draft Constitution on tenure of office and vacation of office of councillor**

Article 236 provides as follows:

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

**16.7.3 Deliberations of the Conference on Article 236**

16.7.3.1 In debating clause (1) of Article 236, members proposed that the provisions relating to councillors and members of Parliament should be harmonised as they were both elective offices held for a term of five years. The members further, argued the qualifications for both offices were similar. Members also noted that the disqualifications and vacation from office should be the same.

16.7.3.2 Some members were of the view that, although the Conference had adopted Article 162 (2) which referred to the National Assembly and members of Parliament, the Conference had power to decide

on whether the vacation of the office of a councillor should be the same as that of a member of Parliament.

- 16.7.3.3 The Conference decided to harmonise Article 236 with those in Article 162 of the Mung'omba Draft Constitution and also aligned the provisions with the office of councillor. The title of Article 236 was amended by the Conference because "tenure of office" was covered under revised Article 234 (4) above which provides that:

**"(4) The term of a district council shall be five years and shall run concurrently with the term of the National Assembly."**

#### **16.7.4 Resolutions of the Conference**

The Conference adopted Article 236 of the Mung'omba Draft Constitution with amendments and re-numbered it as follows:

**"218. (1) Subject to clause (2), a councillor shall vacate office upon the dissolution of the council.**

**(2) The office of a councillor shall become vacant if -**

- (a) the councillor ceases to be a citizen of Zambia;**
- (b) the councillor resigns in writing addressed to the Mayor;**
- (c) the election of that councillor is nullified by the Local Government Election Tribunal;**
- (d) the councillor acts contrary to a code of conduct as provided by or under an Act of Parliament;**
- (e) the Councillor resigns from the political party which sponsored the councillor for election to the council;**
- (f) if circumstances arise that, if the holder of the office were not a councillor would disqualify the councillor, for election as such; or**
- (g) the councillor dies.**

**(3) A councillor who causes a vacancy in a district council due to the reasons specified under paragraphs (b), (c), (d) and (e) of clause (2) is not eligible to contest in a council election for the duration of the term of that district council.**

(4) Where a councillor who holds a proportional representation seat, causes a vacancy in the council due to death or resignation, the vacancy shall be filled by the next candidate on the political party's list as provided by or under an Act of Parliament.

(5) Where a councillor, who occupies a proportional representation seat, is expelled from the political party that has been allocated that seat, the seat shall be filled by the next candidate on the political party's list as provided by an Act of Parliament.

(6) Where a councillor, who occupies a ward - based seat, is expelled by the political party which sponsored that councillor for election, the councillor shall not lose the seat unless the expulsion is confirmed by a court.

(7) Where a court confirms the expulsion of a councillor who occupies a ward-based seat, a by-election shall be held to fill the vacancy:

Provided that no by-election to fill the vacancy created by the expulsion of a councillor who occupies a ward-based seat shall be held where the period remaining before the expiry of the term of office of that councillor is less than twelve months.

(8) If a political party is dissolved -

(a) a councillor holding a ward-based seat shall retain the seat in the council; and

(b) a councillor holding a proportional representation-seat shall cease to be a councillor and the party shall lose the seat which seat shall be re-allocated to another political party as provided by or under an Act of Parliament.

(9) The creation or dissolution of a coalition of parties of which a councillor's political party forms part of does not amount to a councillor resigning from the party for the purposes of paragraph (e) of clause (2)."

## **16.8 Article 237: By-election for District Council**

### **16.8.1 Recommendations of the Commission**

The Commission recommended that the Constitution should provide that:

- (a) there should be no by-elections except where a seat fell vacant as a result of nullification, incapacitation, death, or where the seat was held by an independent councillor;
- (b) when a seat held by a councillor sponsored by a party fell vacant, the party affected should nominate a person to fill the vacancy;
- (c) where a councillor's political party was dissolved, that councillor should retain the seat as an independent councillor where the seat was held on the basis of the first-past-the-post electoral system;
- (d) where the seat of a councillor whose party had been dissolved was held on the basis of the proportional representation system, it should be re-located in accordance with that system; and
- (e) when the seat held on account of a special allocation to an interest group fell vacant, the interest group affected should nominate a person to fill the vacancy.

## **16.8.2 Provisions of the Mung'omba Draft Constitution on By-election for district council**

Article 237 provides as follows:

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

## **16.8.3 Deliberations of the Conference on Article 237**

16.8.3.1 In debating clause (1) of Article 237, some members observed that clause (1) of Article 100 of the Mung'omba Draft Constitution which stated: "where a vacancy occurs in a constituency-based seat, or ward-based seat, a by-election shall be held within ninety days of the occurrence of that vacancy", had been approved. The Conference also observed that the provisions in Article 163 of the Mung'omba Draft Constitution related to by-elections for the National Assembly and not district councils. The members, therefore, proposed that Article 163 be harmonised with Article 237 in order to relate them to the district council. The Conference approved the proposal.

16.8.3.2 The Conference, further, changed the title of the provision to "Vacancies and by-elections for district council." That was in order

to relate the by-elections to the occurrence of a vacancy in the office of councillor and the district council.

#### **16.8.4 Resolutions of the Conference**

The Conference adopted Article 237 of the Mung'omba Draft Constitution with amendments and re-numbered it as follows:

**"219. (1) Where a vacancy occurs in the office of a councillor as specified under clause (2) of Article 218, the mayor, shall within seven days of the occurrence of the vacancy, inform in writing, the Electoral Commission of the vacancy.**

**(2) Subject to clauses (2) and (3) of Article 85, where a vacancy occurs in the district council, a by-election shall be held within ninety days of the occurrence of the vacancy: Provided that no by-election to fill the vacancy which occurs in a district council for a ward based-seat shall be held where the period remaining before the expiry of the term of office of the councillors of that district council is less than twelve months."**

#### **16.9 Article 238: Expulsion of Councillor**

##### **16.9.1 Recommendations of the Commission**

The Commission recommended that the Constitution should provide that the electorate should have power to recall a councillor on grounds of failure to perform.

##### **16.9.2 Provisions of the Mung'omba Draft Constitution on Expulsion of Councillor**

Article 238 provides as follows:

**"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."**



### **16.9.3 Deliberations of the Conference on Article 238**

16.9.3.1 In debating the Article, some members argued that since the Conference had provided for the expulsion of a member of Parliament, it followed that the same procedure should apply to councillors.

16.9.3.2 Other members observed that Parliament was different from a council and argued that councils were corporate bodies specifically established to deliver services to the community, while the role of Parliament was to make laws. They argued further that -

- (a) councillors were drawn from different sectors of society other than from political parties and therefore, providing for expulsion from a political party as provided for by the Mung'omba Draft Constitution would be inappropriate;
- (b) expulsion of councillors would be manipulated by political parties and in particular, members of Parliament who failed to perform effectively but would use councillors as "scape goats"; and
- (c) if a member of Parliament could not be recalled, then a councillor should equally not be recalled.

16.9.3.3 The Conference adopted clause (1) of Article 238 in the Mung'omba Draft Constitution.

16.9.3.4 In doing so, the members observed that it was necessary to provide for parity of governance between the offices of member of Parliament and councillor in relation to the procedure that applied for expulsion of office bearers. That was in view of a similar provision which the Conference had earlier adopted on the expulsion of a member of Parliament.

16.9.3.5 The Conference decided to delete clause (2) of Article 238.

### **16.9.4 Resolutions of the Conference**

The Conference adopted Article 238 of the Mung'omba Draft Constitution with amendments and re-numbered it as follows:

**"220. 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.”

**16.10 Article 239: Qualifications and disqualifications for election to district council**

**16.10.1 Recommendations of the Commission**

The Commission recommended that the Constitution should make provisions that a candidate should:

- (a) have a minimum education of Grade 9 Certificate or its equivalent;
- (b) be of the age of 18 years or above;
- (c) be a resident of the ward for at least five years immediately preceding the election or own fixed assets in the district;
- (d) have a clearance certificate in respect of property rates and rentals; and
- (e) have a certificate of mental and physical fitness.

**16.10.2 Provisions of the Mung’omba Draft Constitution on Qualifications and disqualifications for election to district council**

Article 239 provides as follows:

**“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."

### **16.10.3 Deliberations of the Conference on Article 239**

16.10.3.1 In considering Article 239, some members argued that qualifications and disqualifications were not that important to include in the Constitution. In that regard, the members proposed that the qualifications and disqualifications be relegated to an Act of Parliament.

16.10.3.2 Other members disagreed with the suggestion and argued that qualifications and disqualifications relating to the President, Vice-President, and members of Parliament were constitutional matters, therefore, qualifications and disqualifications of councillors should also be included in the Constitution.

16.10.3.3 In further debate, members had various views with regard to paragraph (c) on the minimum academic qualification for election as councillor. Most members supported the view that the minimum academic qualification should be raised to Grade 12 School Certificate while other members supported provision for a minimum academic qualification of Grade 9 Certificate.

16.10.3.4 Members who were of the view that the minimum academic qualification for election as councillor should be Grade 12 School Certificate argued that:

- (a) there was no excuse for not raising the level of education for councillors because there were many secondary schools in the rural areas;
- (b) development in future would be centred on districts and sub-districts, therefore, it was argued that councillors should have the capacity to plan and budget effectively and efficiently for their districts;

- (c) as managers of district councils, councillors should be able to provide policy direction;
- (d) it was time to raise the minimum academic qualification for councillors. It was argued that councillors were very brilliant but could not express their progressive ideas because of low education; and
- (e) there were secondary or high schools in each district, and that it would not be difficult to find persons with Grade 12 School Certificates to be elected as councillors.

16.10.3.5 On the other hand, members who were of the view that the minimum academic qualification of Grade 9 should be maintained argued that in some areas, it would be very difficult to find candidates with Grade 12 School Certificates to run for office of councillor.

16.10.3.6 In further debate, some members, in reference to paragraph (d) of clause (1), were concerned with the requirement that a person aspiring to be a councillor should have lived in the ward for a period of five years. They argued that as a Zambian, one should be allowed to run for office of councillor anywhere since what was important was the service that one would provide. Other members argued that the period should be reduced to two years.

16.10.3.7 Some members who supported the provision, argued that councillors were closest to the people, therefore, they should reside in the area and that they would perform well because of the need to develop their own area.

16.10.3.8 After lengthy debate, the Conference:

- (a) adopted paragraphs(a), (b), and (e) of clause (1) of Article 239 of the Mung'omba Draft Constitution and amended paragraph (d) by substituting "five years" with "two years";
- (b) substituted the words "grade 9 certificate" with the words "Grade 12 School Certificate" in paragraph (c) of clause (1); and
- (c) deleted clause (2) of Article 239 of the Mung'omba Draft Constitution and substituted it with a new clause (2) as reflected in the following resolutions; and
- (d) harmonised clause (2) with the provisions in Article 65 of the current Constitution.

#### 16.10.4

#### Resolutions of the Conference

The Conference adopted Article 239 of the Mung'omba Draft Constitution with amendments and re-numbered it as follows:

**"221. (1) A person shall qualify to be elected as a councillor of a district council, excluding councillors specified under Article 217 (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 twelve school certificate of education or its equivalent;**
- (d) is resident in the district or has been resident in the ward for which the election is sought for a period of *two* years immediately preceding the election; and**
- (e) has a certificate of clearance showing the payment of council rates and rentals, where applicable.**

**(2) A person shall be disqualified from being elected as Councillor if that person -**

- (a) holds, or is validly nominated as a candidate in an election for, membership of the National Assembly;**
- (b) holds or is acting in any office that is specified by an Act of Parliament the functions of which involve or are connected with the conduct of elections;**
- (c) is of unsound mind;**
- (d) is an undischarged bankrupt or insolvent;**
- (e) is serving a sentence of imprisonment or is under a sentence of death;**
- (f) within a period of five years before that person's nomination for election, has been convicted of an offence under any law and been sentenced therefore for a period exceeding six months;**
- (g) has been removed from public office on grounds of gross misconduct;**

- (h) has been found guilty of corruption by any court or tribunal;
- (i) holds the office of mayor;
- (j) is a Chief; or
- (k) is a member of the Defence Force and security agencies operating in the district.

(3) In this Article, the reference to a sentence of imprisonment shall be construed as not including a sentence of imprisonment the execution of which is suspended or a sentence of imprisonment in default of payment of a fine.”

## **16.11 Article 240: Petitions and Local Government Election Tribunal**

### **16.11.1 Recommendations of the Commission**

16.11.1.1 The Commission noted that petitioners, though few, wanted a councillor-elect whose election has been petitioned not assume office until the petition had been settled.

16.11.1.2 The Commission, therefore, recommended that the electoral laws should provide that if a councillor’s election had been petitioned, the councillor should assume office pending the outcome of the petition.

16.11.1.3 The Commission also recommended that local government election petitions should be heard and determined by an *ad hoc* election tribunal which shall be presided over by an magistrate of the First Class appointed by the Chief Justice sitting with two other members. Other members of the tribunal should be appointed by the Chief Justice from among retired professional magistrates of the First Class or lawyers.

### **16.11.2 Provisions of the Mung’omba Draft Constitution on Petitions and Local Government Election Tribunal**

Article 240 provides follows:

“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."

### **16.11.3 Deliberations of the Conference on Article 240**

16.11.3.1 In debating clause (2) of Article 240, some members did not support the inclusion of the provision in the Constitution and wanted it to be relegated to an Act of Parliament.

16.11.3.2 Other members who supported the provision argued that:

(a) the Local Government Election Tribunal was suggested because its establishment would take justice closer to people in the provincial centres and therefore, reduce on costs;

(b) the councillors were not on salary and were paid low sitting allowances and could not be compared to Members of Parliament who were paid for session committees and other allowances. By taking the Local Government Tribunals to the provincial centres, it

would make it cheaper for litigants to file their papers and attend court;

- (c) the Local Government Election Tribunals would be faster in the disposal of cases than the courts which were usually congested;
- (d) they suggested that apart from the Magistrate of the First Class, consideration should be given to include magistrates of higher classes to preside over the Tribunal; and
- (e) the addition of two legal practitioners to the Tribunal would enhance the quality of adjudication in the election petition and achieve finality.

16.11.3.3 The Conference resolved to harmonise the provisions in the Mung'omba Draft Constitution with the provisions in the current Constitution in order to, among other things, clearly outline the procedure to be followed when filing election petitions.

16.11.3.4 In clause (7) the term "Consolidated Fund" was substituted with the term "National Treasury Account" in line with an earlier decision.

#### **16.11.4 Resolutions of the Conference**

The Conference adopted Article 240 of the Mung'omba Draft Constitution with amendments and re-numbered it as follows:

**"222. (1) A petition to challenge the election of a councillor to a ward-based seat of a district council may be lodged with the Chairperson of the Electoral Commission by one or more of the following persons:**

- (a) a person who lawfully voted or had a right to vote at the election to which the election petition relates;**
- (b) a person claiming to have had a right to be nominated as a candidate for election as councillor at the election to which the election petition relates; or**
- (c) a candidate for election as councillor at the election to which the election petition relates.**



- (2) A petition under this Article shall be filed within seven days after the date of the declaration of the election results.
- (3) The Chairperson of the Electoral Commission shall, within seven days of the receipt of the petition under clause (1), submit it to the Chief Justice.
- (4) The Chief Justice shall, upon receipt of a petition from the Chairperson of the Electoral Commission under clause (3), 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) any provision of this Constitution or any other law relating to elections of councillors has been complied with.
- (5) A Local Government Election Tribunal shall be presided over by a magistrate of the Subordinate Court of the First Class sitting with two other members, appointed by the Chief Justice from amongst legal practitioners or retired magistrates of the Subordinate Court of the First Class.
- (6) A petition shall be determined within ninety days of the filing of the election petition.
- (7) Any party aggrieved with a decision of the Local Government Election Tribunal may appeal to the High Court.
- (8) A councillor whose election is petitioned shall hold the seat in the district council pending the determination of the petition.
- (9) The expenses of the Local Government Election Tribunal shall be a charge on the National Treasury Account."

## 16.12 Article 241: Recall of Councillor

### 16.12.1 Recommendations of the Commission

The Commission recommended that the Constitution should make similar provisions as those recommended in respect of a recall of a member of Parliament, that is:

- (a) the electorate should have power to recall a councillor on grounds of failure to perform;

- (b) a recall should be initiated by a petition in writing setting out the grounds relied on and signed by at least half of the registered voters in the ward;
- (c) the petition should be presented to the Electoral Commission of Zambia who should appoint a tribunal to inquire in the matter;
- (d) the Electoral Commission of Zambia should act in accordance with the findings of the tribunal;
- (e) a councillor who had been petitioned should have the right of hearing and be present during the conduct of the inquiry either in person or through a lawyer;
- (f) the composition of a tribunal appointed for that purpose and other procedural details should be presented by an appropriate electoral law; and
- (g) the functions and duties of a councillor should be prescribed in an appropriate instrument and be made accessible to the people so that they understand the role of a councillor.

#### **16.12.2 Provisions of the Mung'omba Draft Constitution**

Article 241 provides as follows:

**“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."

### **16.12.3 Deliberations of the Conference on Article 241**

16.12.3.1 While the Conference was aware of the argument that the provision might provide protection and safeguards against abuse of the mandate of the office of councillor, it was noted that the provisions in Article 241 of the Mung'omba Draft Constitution would promote witch-hunting by some losing candidates and lead to more frequent and costly by-elections as recalls might be initiated on flimsy grounds.

16.12.3.2 The Conference, therefore, decided to delete the provisions in Article 241 except for the provisions in clause (4) which were fused into Articles 234 and 237 on election of councillors and composition of district councils and expulsion of councillors, respectively.

### **16.12.4 Resolutions of the Conference**

The Conference deleted Article 241 of the Mung'omba Draft Constitution on recall of councillor.

**16.13 Article 242: Mayor**

**16.13.1 Recommendations of the Commission on Mayor**

The Commission recommended that the Constitution should provide that:

- (a) the Mayor/Council Chairperson should be elected by universal adult suffrage and the office should have executive powers;
- (b) the term of office of a Mayor/Council Chairperson should be five years;
- (c) a vacancy in the office of Mayor/Council Chairperson should be filled through a by-election;
- (d) qualifications and disqualifications for candidate to contest elections to the office of Mayor/Council Chairperson should be the same as those relating to the office of Councillor with the exception that the minimum educational qualification should be a Grade 12 School Certificate or its equivalent; and
- (e) the Constitution should provide that emoluments of a Mayor/Council Chairperson should be determined by the Emoluments Commission upon the recommendation of the Council.

**16.13.2 Provisions of the Mung'omba Draft Constitution on Mayor**

Article 242 provides as follows:

- "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."

### **16.13.3 Deliberations of the Conference on Article 242**

16.13.3.1 In debating Article 242, members who did not support the provision argued that the issue of resource constraint deserved serious consideration, given that funds would be needed to conduct tripartite elections, to which the election of executive mayors would be added. Further, that the conduct of a referendum and registration of voters would require additional financial resources.

16.13.3.2 Members who were in support of the retention of Article 242 as recommended in the Mung'omba Draft Constitution argued that:

- (a) the provision for an executive mayor would enhance the status of the district council;
- (b) it would allow the electorate to elect qualified people with no political inclinations but committed to duty as opposed to the current system where operations of the office of councillor were highly politicised;
- (c) a mayor elected under universal adult suffrage would command more respect from councillors and council officials. Members stated that a mayor elected by fellow councillors did not carry sufficient influence to effectively manage the affairs of the council; and
- (d) the office of executive mayor would be full-time and, as such, the office holder would have more time to devote to the performance of the functions of the office.

16.13.3.3 The Conference decided to delete Article 242 of the Mung'omba Draft Constitution.

#### **16.13.4 Resolutions of the Conference**

The Conference deleted Article 242 of the Mung'omba Draft Constitution on Mayor.

#### **16.14 Article 243: Functions of Mayor**

##### **16.14.1 Recommendations of the Commission**

The Commission did not receive submissions on the functions of mayor but made recommendations on the subject as follows:

- "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."**

##### **16.14.2 Deliberations of the Conference on Article 243**

The Conference decided to delete Article 243 on functions of the mayor as a consequence of its earlier decision to delete Article 242 on the establishment of an executive mayor.

#### **16.14.3 Resolutions of the Conference**

The Conference deleted Article 243 of the Mung'omba Draft Constitution on the functions of mayor.

#### **16.15 Article 244: Conduct of Councillors**

##### **16.15.1 Recommendations of the Commission**

The Commission did not receive submissions on the conduct of councillors but made recommendations on the subject as follows:

**"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."**

**16.15.2 Deliberations of the Conference on Article 244**

The Conference decided to delete Article 244 in the Mung'omba Draft Constitution because members were of the view that issues relating to ethics were details that should be relegated to an Act of Parliament.

**16.15.3 Resolutions of the Conference**

The Conference deleted Article 244 of the Mung'omba Draft Constitution on conduct of councillors.

**16.16 Article 245: Accountability of Councillors**

**16.16.1 Recommendations of the Commission**

The Commission took note of the concerns of the petitioners that local authorities should build capacity in order to effectively deliver services to the people and that councillors should be held accountable to the electorate. Further, the Commission acknowledged that those attributes were essential for decentralisation to succeed.

**16.16.2 Provisions of the Mung'omba Draft Constitution on Accountability of Councillors**

Article 245 provides as follows:

**"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."**

**16.16.3 Deliberations of the Conference on Article 245**

The Conference decided that Article 245 be relegated to an Act of Parliament.

#### **16.16.4 Resolutions of the Conference**

The Conference deleted Article 245 of the Mung'omba Draft Constitution on accountability of councillors.

#### **16.17 Article 246: District Executive Committee**

##### **16.17.1 Recommendations of the Commission**

The Conference did not receive submissions on the constitution of district executive committee but made recommendations on the subject as follows:

- "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."**

##### **16.17.2 Deliberations of the Conference on Article 246**

The Conference decided to delete in Article 246 of the Mung'omba Draft Constitution. That was because the provisions would have been applicable where an executive mayor was to be elected by universal adult suffrage.

#### **16.17.3 Resolutions of the Conference**

The Conference deleted Article 246 of the Mung'omba Draft Constitution on District Executive Committee.

#### **16.18 Article 247: Functions of District Executive Committee**

##### **16.18.1 Recommendations of the Commission**

The Commission did not receive submissions on functions of district executive committees but made recommendations on the subject as follows:



**"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."**

#### **16.18.2 Deliberations of the Conference on Article 247**

The Conference deleted Article 247 as a consequence of having deleted Article 246 on the constitution of district executive committees.

#### **16.18.3 Resolutions of the Conference**

The Conference decided to delete Article 247 of the Mung'omba Draft Constitution on functions of district executive committees.

#### **16.19 Article 248: Principal Administrative Officer and Functions**

##### **16.19.1 Recommendations of the Commission**

The Commission did not receive submissions on the appointment of the principal administrative officer and functions but made recommendations on the subject as follows:

**"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."

#### **16.19.2 Deliberations of the Conference on Article 248**

The Conference observed that the provisions in Article 248 called for detailed description and were amenable to change over time, therefore, not suitable for inclusion in the Constitution. The Conference, hence, decided that the provisions be relegated to an Act of Parliament.

#### **16.19.3 Resolutions of the Conference**

The Conference deleted Article 248 of the Mung'omba Draft Constitution on principal administrative officer and functions and relegated its provisions to an Act of Parliament..

#### **16.20 Article 249: Other Committees of District Council**

##### **16.20.1 Recommendations of the Commission**

The Commission did not receive submissions on other committees of district councils but made recommendations on the subject as follows:

**"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."**

#### **1620.2 Deliberations of the Conference on Article 249**

The Conference decided that the provisions of Article 249 of

the Mung'omba Draft Constitution be provided for in an Act of Parliament as they were amenable to change over time.

**16.20.3 Resolutions of the Conference**

The Conference deleted Article 249 of the Mung'omba Draft Constitution on other committees of district councils.

**16.21 Article 250: Funds for District Council**

**16.21.1 Recommendations of the Commission**

The Commission recommended:

- (a) that adequate arrangements for sharing of resources between central Government, provinces and local authorities and direct mobilisation of finances by local authorities, through local taxes, be made within the framework of the decentralisation of power to local government and those should be enshrined in the Constitution;
- (b) that Government provides unconditional and conditional grants to local government to run decentralised services;
- (c) that conditional grants should consist of monies to local government to finance programmes that should be agreed upon between central Government and local governments;
- (d) that for equalisation grants given to the least developed districts, should be based on planning indices (i.e. the degree to which a particular district may lag behind in terms of development);
- (e) that the proposed grants should be included in the annual estimates of revenue and expenditure of the Government which should state the sum of monies that would be paid to each local government; and
- (f) the grants should form part of the Appropriation Act.

**16.21.2 Provisions of the Mung'omba Draft Constitution on Funds for District Council**

Article 250 provides as follows:

**"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."**

### **16.21.3 Deliberations of the Conference on Article 250**

16.21.3.1. In considering clause (1) some members supported the clause whilst others did not. Members who supported the provisions in clause (1) of Article 250 argued that:

- (a) it would make decentralisation sensible. They argued that decentralisation without decentralising resources to the districts was meaningless because there would be no development in the districts;
- (b) it was the only way to link the National Treasury directly to the districts to ensure that services were delivered to the people;
- (c) it was only the establishment of a Local Government Equalisation Fund which should be included in the Constitution while the details should be provided for under an Act of Parliament;
- (d) certain districts contributed huge amounts of revenue to the National Treasury but did not benefit anything in return;

- (e) funds were allocated to both local authorities and central Government during the colonial era, therefore, there was no reason for the funding not to continue;
- (f) although it was more practical for mobilisation of public resources to be the responsibility of the central Government, it did not give the central Government monopoly over those resources; and
- (g) the clause would eliminate the tendency by the Central Government to monopolise resources.

16.21.3.2 Members who were against the provision argued that:

- (a) the provision should not be in the Constitution but be provided for in an Act of Parliament;
- (b) although it was important that funds should be made available to councils, they argued that there was no guarantee that the funds would achieve the intended objectives;
- (c) although the concept was good, there would be a multiplicity in the types of resources going to the districts. They argued that unless the local authorities were clear about what their objects were, the resources might not address the needs of the people; and
- (d) some districts were weak in terms of professional competency and might, therefore, misuse the funds.

16.21.3.3 The Conference approved clause (1) of Article 250 as recommended in the Mung'omba Draft Constitution.

16.21.3.4 In debating clause (2) of Article 250, members who supported the provision argued that:

- (a) decentralisation in Zambia had failed in the past due to lack of funding; and
- (b) development in local areas had failed on account of inadequate funding by the central Government.

Therefore, providing for the appropriation of a percentage for the sustenance, development and administration of communities would ensure accelerated development at the local level.

16.21.3.5 Other members, whilst supporting the clause, were of the view that:

- (a) the provisions should be provided for under an Act of Parliament to allow for adjustments and alignment of resource allocation to the local authorities; and
- (b) the ability of some local authorities to manage large amounts of funds given the low academic and professional qualifications of some council administrators was questionable.

16.21.3.6 The issue of capacity was, however, not accepted by some members who argued that it was not a constraint because members of Parliament, members of the Defence Force and Chiefs would be members in various councils.

16.21.3.7 The Conference approved clause (2) as provided in Mung'omba Draft Constitution.

16.21.3.8 The Conference approved clauses (3) and (4) of Article 250 of Mung'omba Draft Constitution as recommended.

16.21.3.9 Members who supported the adoption of clause (5) of Article 250 argued that:

- (a) currently, councils were assigned responsibilities without corresponding resources and facilities;
- (b) clause (5) would not only empower the councils but would also give them some degree of autonomy;
- (c) the clause was necessary because it highlighted specific sources of revenue; and
- (d) local authorities were the appropriate institutions to impose and collect the levies stipulated in that clause because they were within areas of their geographical jurisdiction.

- 16.21.3.10 On the other hand, some members observed that the clause was unnecessary because it was sufficiently catered for under clauses (1), (2) and (3) of Article 240 of Mung’omba Draft Constitution. Those members proposed, therefore, that clause (5) be deleted. The Conference approved that proposal.

#### **16.21.4 Resolutions of the Conference**

The Conference adopted Article 250 of the Mung’omba Draft Constitution with amendments and re-numbered it as follows:

**“223. (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 Minister responsible for finance, 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.”**

#### **16.22 Article 251: Staff of Local Government**

##### **16.22.1 Recommendations of the Commission**

The Commission observed that the proposal by the petitioners that the staff of local authorities be employed by and placed on the central Government payroll would not be compatible with the principle of devolution of power. The Commission, therefore, recommended that the exercise of authority by central Government should be in the context of co-operative governance and intra-governmental relations.

##### **16.22.2 Provisions of the Mung’omba Draft Constitution on Staff of Local Government**

Article 251 provides as follows:

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

**16.22.3 Deliberations of the Conference on Article 251**

The Conference decided that the responsibility to employ officers for councils be provided for under an Act of Parliament. Consequently, Article 251 was deleted.

**16.22.4 Resolutions of the Conference**

The Conference decided to delete Article 251 of the Mung’omba Draft Constitution and provide for it in an Act of Parliament.

**16.23 Article 252: Provinces**

**16.23.1 Recommendations of the Commission**

The Commission recommended that:

- (a) the Constitution should provide for regulation in the system of change of provincial and district boundaries, including changes in the number of provinces and districts; and
- (b) the regulation should be prescribed by an Act of Parliament and done by an appropriate Commission.

**16.23.2 Provisions of the Mung’omba Draft Constitution on Provinces**

Article 252 provides as follows:

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

**16.23.3 Deliberations of the Conference on Article 252**

The Conference adopted Article 252 as provided for in the Mung’omba Draft Constitution because it was acceptable.



#### **16.23.4 Resolutions of the Conference**

The Conference adopted Article 252 of the Mung'omba Draft Constitution and re-numbered it as follows:

**"224. The Republic of Zambia shall be divided into Provinces as shall be provided by or under an Act of Parliament."**

#### **16.24 Article 253: Provincial Administration**

##### **16.24.1 Recommendations of the Commission**

The Commission recommended that:

- (a) the office of Provincial Deputy Minister should be at the same level with that of Cabinet Minister and that the title should be Provincial Minister under a devolved system of local government;
- (b) Provincial Ministers should be members of the Cabinet; and
- (c) the President should appoint the office holders.

##### **16.24.2 Provisions of the Mung'omba Draft Constitution on Provincial administration**

Article 253 provides as follows:

**"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."**

##### **16.24.3 Deliberations of the Conference on Article 253**

16.24.3.1 In debating the Article, the Conference agreed that clause (4) should be enhanced and harmonised with Articles 46 (3) and (47) (2) of the current Constitution which read as follows:

**"46. (3) A Minister shall be responsible, under the directions of the President, for such business of the**

**Government including the administration of any Ministry or Department of Government as the President may assign to such Minister."**

**"47. (2) A Provincial Deputy Minister shall be responsible for the administration of any province as the President may assign to such Provincial Deputy Minister."**

- 16.24.3.2      The Conference:
- (a)      adopted clause (1) as provided in the Mung'omba Draft Constitution;
  - (b)      revised clause (2) to provide that the functions of the Provincial Administration should be prescribed in an Act of Parliament since these functions were amenable to change; and
  - (c)      substituted clauses (3) and (4) with the provisions in clause (3) of Article 46 of the current Constitution.

#### **16.24.4      Resolutions of the Conference**

The Conference adopted Article 253 of the Mung'omba Draft Constitution with amendments and re-numbered it as follows:

**"225. (1) There shall be established for each province a provincial administration.**  
**(2) The functions of the Provincial Administration shall be prescribed by or under an Act of Parliament.**  
**(3) A Provincial Deputy Minister shall be responsible for the administration of any province as the President may assign to such Provincial Deputy Minister."**

#### **16.25      Article 254: Provincial Council** **16.25.1      Recommendations of the Commission**

The Commission's recommendation on this subject was the same as that under Article 252 on "Provinces" above.

#### **16.25.2      Provisions of the Mung'omba Draft Constitution on Provincial Council**

Article 254 provides as follows:

**“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.”**

### **16.25.3 Deliberations of the Conference on Article 254**

16.25.3.1 The Conference, while acknowledging the validity of having a provincial body, observed that:

- (a) a provincial council would not be the ideal institution to administer the province but that the Provincial Administration established under Article 253 would adequately perform the desired role;
- (b) providing for a provincial council negated the intentions and vision of decentralisation, whose primary focus was on the district and lower organs;
- (c) providing for a provincial council would be tantamount to advocating for a federal system; and
- (d) provincial councils would aggravate red tape and stifle the operations of district councils.

16.25.3.2 The Conference, therefore, resolved to delete Article 254 on the Provincial Council.

### **16.25.4 Resolutions of the Conference**

The Conference deleted Article 254 of the Mung’omba Draft Constitution on Provincial Councils.

### **16.26 Article 255: Functions of Provincial Council**

#### **16.26.1 Recommendations of the Commission**

The Commission did not receive submissions on the functions of the Provincial Council but made recommendations on the subject as follows:

**"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)."**

#### **16.26.2 Deliberations of the Conference on Article 255**

The Conference observed that, having deleted Article 254 of the Mung'omba Draft Constitution, which established the provincial council, Article 255 should, consequently, be deleted. The Conference further observed that the functions outlined under

Article 255 (1) were currently the functions of the Provincial Administration.

**16.26.3 Resolutions of the Conference**

The Conference deleted Article 255 of the Mung'omba Draft Constitution of the Mung'omba Draft Constitution.

**16.27 Article 256: Reserved Power over non-performing District Councils**

**16.27.1 Recommendations of the Commission**

The Commission did not receive submissions on reserved power over non-performing district councils but made recommendations on the subject as follows:

**“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."

## **16.27.2 Deliberations of the Conference on Article 256**

### **16.27.2.1 The Conference observed that:**

- (a) the principle of having a supervisory institution and the provisions at Article 256 of the Mung'omba Draft Constitution were important but that those should be provided for in an Act of Parliament;
- (b) details relating to Article 256 were adequately covered under Article 253;
- (c) the role of the Provincial Administration be restricted to co-ordination of policy implementation and advisory functions; and
- (d) powers under Article 256 were too extensive. The primary focus of decentralisation was on the district and lower organs. Failure to empower the district councils would result in continued inability to provide quality services.

### **16.27.2.2 The Conference, therefore, decided to delete Article 256 of the Mung'omba Draft Constitution.**

### **16.27.3 Resolutions of the Conference**

The Conference deleted Article 256 of the Mung'omba Draft Constitution on reserved power over non-performing District Councils.

## **16.28 Article 257: Legislation to Further Regulate Local Government**

### **16.28.1 Recommendations of the Commission**

The Commission recommended as follows:

- (a) that the Constitution should provide for regulation in the system of change of provincial and district boundaries, including changes in the number of provinces and districts;
- (b) that the regulation should be prescribed by an Act of Parliament and done by an appropriate Commission; and
- (c) that the Constitution should legally empower local government to collect all appropriate taxes as well as borrow monies, and, with the approval of the Government, to accept any grants or assistance for the carrying out of its functions and services.

### **16.28.2 Provisions of the Mung'omba Draft Constitution on Legislation to further regulate Local Government**

Article 257 provides as follows:

**"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."

### **16.28.3 Deliberations of the Conference on Article 257**

#### **16.28.3.1 The Conference observed that:**

- (a) Article 257 of the Mung'omba Draft Constitution was interrelated with Articles 232 (3) and 233 of the draft Constitution;
- (b) both Articles 232 (1) and 257 provided that *Parliament shall enact legislation* related to the same institutions;
- (c) since enactment of legislation was a primary mandate of Parliament, it would be superfluous to restate it;
- (d) Articles 232 (3) and 234 (2) (e), like Article 257 (e), provided for a forum through which district councils would initiate local bills;
- (e) allowing local authorities to initiate bills to Parliament would be inappropriate and inconsistent with the existing policy formulation process; and
- (f) as regards Article 257 (c), district councils were corporate bodies which could sue or be sued and had the inherent legal right to raise finances.

#### **16.28.3.2 With those observations, the Conference resolved to delete Article 257 of the Mung'omba Draft Constitution.**

### **16.28.4 Resolutions of the Conference**

The Conference deleted Article 257 of the Mung'omba Draft Constitution on legislation to further regulate local government.



## **PART XIII: CHIEFTAINCY AND HOUSE OF CHIEFS**

### **17.1 Article 258: Institution of Chieftaincy**

#### **17.1.1 Recommendations of the Commission**

The Commission recommended that the Chiefs Act should be more explicit in order to address the relationship between traditional leadership and elected local government at local level, the structures and roles of traditional authorities, and the principles relating to remuneration of chiefs. The Commission further recommended that the Chiefs Act should ensure that the installation of chiefs was done within the traditions and customs of the people and that the Government played no role in the process.

#### **17.1.2 Provisions of the Mung'omba Draft Constitution on Institution of Chieftaincy**

Article 258 provides as follows:

**"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."

### **17.1.3 Deliberations of the Conference on Article 258**

17.1.3.1 The Conference approved clauses (1), (3), (4), (5) and (6) without amendments.

17.1.3.2 The Conference decided to delete clause (2) of Article 258 in the Mung'omba Draft Constitution because enactment of legislation was the primary mandate of Parliament. It, therefore, would be superfluous to re-state it.

17.1.3.3 The words "a court" were substituted with the words "the High Court" in the last line of clause (7) of the same Article. That was in order to be specific as to the level of courts to which the appeals should be made.

### **17.1.3.4 Resolutions of the Conference**

The Conference adopted Article 258 of the Mung'omba Draft Constitution with amendments and re-numbered it as follows:

**"225. (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) 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.

(3) 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.

(4) 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.

(5) If any person is aggrieved with a resolution of the House of Chiefs that person may appeal to the High Court.

(6) Parliament may enact legislation to provide for the succession and installation of Chiefs in accordance with customary law and its usage.”

## **17.2 Article 259: Concepts and Principles relating to Chieftaincy**

### **17.2.1 Recommendations of the Commission**

The Commission recommended that the principle of resource sharing at local level, within the framework of devolution of power and cooperative governance, should include chiefs and local communities as beneficiaries, but that should be addressed through an Act of Parliament.

### **17.2.2 Provisions of the Mung’omba Draft Constitution on Concepts and Principles relating to Chieftaincy**

Article 259 provides as follows:

**“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."

### **17.2.3 Deliberations of the Conference on Article 259**

17.2.3.1 The Conference observed that clauses (b) and (c) of Article 259 were not explicit and, therefore, decided to amend their provisions.

17.2.3.2 With those observations, the Conference decided to adopt Article 259 of the Mung'omba Draft Constitution with amendments.

### **17.2.4 Resolutions of the Conference**

The Conference adopted Article 259 of the Mung'omba Draft Constitution with amendments and re-numbered it as follows:

**"226. 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 with 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) nothing in paragraph (a) shall be taken to prohibit a chief from holding any asset or property acquired in a personal capacity; and
- (c) a chief shall enjoy such privileges and benefits as may be conferred by the Government and the local government or as that chief may be entitled to under culture, custom and tradition."

### **17.3 Article 260: Participation of Chiefs in Public Affairs**

#### **17.3.1 Recommendations of the Commission**

The Commission recommended that the constitutional provisions prohibiting chiefs from participating in active politics and seeking elective office unless they vacated their chieftaincy should be repealed.

#### **17.3.2 Provisions of the Mung'omba Draft Constitution on Participation of Chiefs in Public Affairs**

Article 260 provides as follows:

**"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."**

#### **17.3.3 Deliberations of the Conference on Article 260**

**17.3.3.1** The Conference made the following observations on paragraphs (a) and (b) of clause (1) of Article 260 of the Mung'omba Draft Constitution:

- (a) that chiefs had the right as citizens, to take part in active politics;
- (b) that the Constitution should not be discriminatory; and
- (c) that a decision to take part in politics would be determined by the respective tribes. However, chiefs who chose to take part in active politics should abdicate their positions as chiefs.

**17.3.3.2** With these observations, it was decided that the paragraphs be deleted and substituted with a new text as reflected in clause (1) of Article 228 in the resolutions below.

#### **17.3.4 Resolutions of the Conference**

17.3.4.1 The Conference adopted Article 260 of the Mung’omba Draft Constitution with amendments and re-numbered it as follows:

**“227. (1) A person shall not, while remaining a Chief, join or participate in partisan politics.**

**(2) Parliament may enact legislation to provide for the role of Chiefs and the local authority in the management, control and sharing of natural and other resources in their localities.”**

#### **17.4 Article 261: House of Chiefs**

##### **17.4.1 Recommendations of the Commission**

The Commission made the following recommendations:

- (a) that the House of Chiefs should be retained, subject to the provisions of the Constitution;
- (b) that there should be provision for increased representation in the House of Chiefs by providing for five (5) representatives for each province;
- (c) that the Constitution, in stating the role and functions of the House of Chiefs, should include matters relating to national development and hearing and determining chieftaincy succession disputes;
- (d) that the Chairperson and Vice-Chairperson of the House of Chiefs should be elected annually on rotational basis while other members should be eligible for re-election;
- (e) that the term of office of the House of Chiefs should be five years; and
- (f) that an MP should not be eligible for election to the House of Chiefs and vice-versa.

##### **17.4.2 Provisions of the Mung’omba Draft Constitution on House of Chiefs**

Article 261 provides as follows:

**“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."

#### **17.4.3 Deliberations of the Conference on Article 261**

17.4.3.1 The Conference approved clauses (1) to (4) of Article 261 of the Mung'omba Draft Constitution because they were necessary.

17.4.3.2 The Conference, however, amended clause (5) by substituting "Emoluments Commission" with "Minister responsible for finance" because the introduction of an Emoluments Commission was rejected by the Conference earlier on.

17.4.3.3 Similarly, in clause (6) the term "Consolidated Fund" was substituted with the term "National Treasury Account".

#### **17.4.4 Resolutions of the Conference**

The Conference adopted Article 261 of the Mung'omba Draft Constitution with amendments and re-numbered it as follows:

**"228. (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 Minister responsible for finance and prescribed in an Act of Parliament.

(6) The expenses of the House of Chiefs shall be a charge on the National Treasury Account."

## **17.5 Article 262: Functions of House of Chiefs**

### **17.5.1 Recommendations of the Commission**

The Commission recommended that the Constitution, in stating the role and functions of the House of Chiefs, should include:

- (a) matters relating to national development;
- (b) hearing and determining chieftaincy succession disputes;
- (c) hearing all other matters related to tradition and customs where the affected community had failed to resolve those; and
- (d) that the clarity of its roles should be enhanced in an Act of Parliament.

### **17.5.2 Provisions of the Mung'omba Draft Constitution on Functions of House of Chiefs**

Article 262 provides as follows:

**"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."

### **17.5.3 Deliberations of the Conference on Article 262**

The Conference adopted Article 262 without amendments because it was considered necessary.

### **17.5.4 Resolutions of the Conference**

The Conference adopted Article 262 of the Mung'omba Draft Constitution without amendments and re-numbered it as follows:

**"229. Without limiting 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;
- (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."

## **17.6 Article 263: Tenure of Office and Vacancy**

### **17.6.1 Recommendations of the Commission**

17.6.1.1 The Commission recommended that the term of office of the House of Chiefs should be five (5) years.

17.6.1.2 The Commission did not make specific recommendations on vacancy.

### **17.6.2 Provisions of the Mung'omba Draft Constitution on Tenure of Office and Vacancy**

Article 263 provides as follows:

- "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."

### **17.6.3 Deliberations of the Conference on Article 263**

The Conference adopted Article 263 with amendments by deleting paragraph (d) of clause (2). That was because the Conference was of the view that a chief who held a public office or became a member of the National Assembly would not have enough time to devote to the management of the chiefdom.

### **17.6.4 Resolutions of the Conference**

The Conference adopted Article 263 of the Mung'omba Draft Constitution with amendments and re-numbered it as follows:

- "230. (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) is adjudged or becomes an un-discharged bankrupt; or**
  - (e) is declared to be or becomes of unsound mind under any law."**

## **17.7 Article 264: Oaths of Members of House of Chiefs**

### **17.7.1 Recommendations of the Commission**

The Commission did not receive submissions on oaths of members of House of Chiefs but made recommendations on the subject as follows:

**"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."**

### **17.7.2 Deliberations of the Conference on Article 264**

The Conference adopted Article 264 with amendments by substituting the words “as set out in the schedule” with the words “as prescribed by or under an Act of Parliament.”

### **17.7.3 Resolutions of the Conference**

The Conference adopted Article 264 of the Mung’omba Draft Constitution with amendments and re-numbered it as follows:

**“231. Every Chief elected to the House of Chiefs shall take the Oath of member of the House of Chiefs, as may be prescribed by or under an Act of Parliament.”**

### **17.8 Article 265: Staff of House of Chiefs**

#### **17.8.1 Recommendations of the Commission**

17.8.1.1 The Commission did not receive submissions on staff of House of Chiefs but made recommendations on the subject as follows:

**“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.”**

### **17.8.2 Deliberations of the Conference on Article 265**

The Conference adopted the provisions of Article 265 with amendments by substituting the term “Consolidated Fund” with the term “National Treasury Account”.

### **17.8.3 Resolutions of the Conference**

The Conference adopted Article 265 of the Mung’omba Draft Constitution with amendments and re-numbered it as follows:

**"232. (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 National Treasury Account."**

**17.9 Article 266: Regulations for House of Chiefs**

**17.9.1 Recommendations of the Commission**

The Commission recommended that the clarity of the role of House of Chiefs should be enhanced in an Act of Parliament.

**17.9.2 Provisions of the Mung'omba Draft Constitution on Regulations for House of Chiefs**

Article 266 provides as follows:

**"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."**

**17.9.3 Deliberations of the Conference on Article 266**

The Conference adopted Article 266 without amendments because it was considered necessary.

#### **17.9.4 Resolutions of the Conference**

The Conference adopted Article 266 of the Mung'omba Draft Constitution without amendments and re-numbered it as follows:

**"233. 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."**

## **PART XIV**

### **PUBLIC SERVICE AND COMMISSIONS**

#### **18.1 Article 267: Values And Principles Of Public Service**

##### **18.1.1 Recommendations of the Commission**

The Commission observed that in cognisance of the important and impartial role that the public service plays in governance, some countries identified the need to provide principles by which the public service should be guided in order to meet the needs and aspirations of the people. The Commission noted that the South African Constitution, for instance, provided for democratic values and principles to govern public administration.

##### **18.1.2 Provisions of the Mung'omba Draft Constitution on Values and Principles of Public Service-**

Article 267 provides as follows:

**'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."

### **18.1.3 Deliberations of the Conference on Article 267**

The Conference observed that the principles and values, though important, should not be itemised in the Constitution. The Conference, therefore, agreed that those be provided for in an Act of Parliament.

### **18.1.4 Resolutions of the Conference**

The Conference adopted Article 267 of the Mung'omba Draft Constitution with amendments and re-numbered it as follows:

- "234. (1) Parliament shall enact legislation to provide for the guiding values and principles of public service.**
- (2) The values and principles referred to under clause (1) shall apply to the public service-**
- (a) at national and local government level; and**
  - (b) in all State organs and State institutions."**

## **18.2 Article 268: Offices For Republic**

### **18.2.1 Recommendations of the Commission**

The Commission did not receive submissions on the officers for the Republic but made recommendations on the subject as follows:

- "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.”

## **18.2.2 Deliberations of the Conference on Article 268**

18.2.2.1 The Conference noted that the rationale for empowering the President to constitute or abolish public offices and appoint persons to hold those offices was that, it was his/her prerogative to do so as head of the Executive, under which the public offices fell.

18.2.2.2 In the debate, three positions emerged, namely, that:

- (a) Article 268 was inadequate and should, therefore, be substituted with Article 61 (1) and (2) of the current Constitution which read as follows:

“61. (1) Subject to the other provisions of this Constitution and any other law the power to constitute offices for the Republic and the power to abolish any such offices shall vest in the President;  
 (2) Subject to the other provisions of this Constitution and any other law, the power to appoint persons to hold or act in offices constituted for the Republic of Zambia, to confirm appointments, to exercise disciplinary control over

**persons holding or acting in such offices and to remove any such person from office shall vest in the President.”;**

- (b) Article 268 be substituted with Article 44 (2) (e) of the current Constitution which reads:

**“(2) Without prejudice to the generality of clause (1), the President may preside over meetings of the Cabinet and shall have the power, subject to this Constitution to -**

**(e) establish and dissolve such Government Ministries and departments subject to the approval of the National Assembly”; and**

- (c) Article 268 be substituted with Article 61 (1) and (2) of the current Constitution but that the provision be amended to provide for the ratification of the creation of offices and appointment of holders of such offices by Parliament.

18.2.2.3 In discussing Article 268 (1), some members supported its adoption as it was provided while other members did so with reservations. Members who supported the Article as provided argued that the provision was necessary to enable the President to make unfettered decisions and to appoint professionals who shared his/her vision and would work with the President in harmony. They further argued that there was no need for ratification because, all along, public offices had been created without the ratification of Parliament. They also observed that in practice, the President did not make the appointments but that it was the Public Service Commission which appointed public officers on behalf of the President.

18.2.2.4 On the other hand, other members expressed concern on the powers granted to the President to abolish and create public offices. They observed that the clause did not provide for checks and balances.

18.2.2.5 Regarding the suggestion to substitute Article 268 with Article 61 (1) and (2) of the current Constitution on condition that it was amended to provide for ratification by Parliament, members

observed that, the provisions under Article 268 (a) and (b) were identical to those under Article 61 (1) and (2) of the current Constitution.

- 18.2.2.6 The Conference approved clause (2) with the substitution of the term “Consolidated Fund” with the term “National Treasury Account” in line with an earlier decision of the Conference.

### **18.2.3 Resolutions of the Conference**

The Conference adopted Article 268 of the Mung’omba Draft Constitution with amendments and re-numbered it as follows:

**“235. (1) Subject to the other provisions of 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 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 National Treasury Account.**

**(3) In this Part “public officer” does not include a judge, a judicial officer, 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 or a councillor.”**

### **18.3 Article 269: Attorney-General**

#### **18.3.1 Recommendations of the Commission**

The Commission made the following recommendations:

- (a) the Attorney-General should be a professional and the office should be independent and should not be appointed to a Cabinet position;
- (b) the Attorney-General should be appointed by the President on the recommendation of the Judicial Service Commission, subject to ratification by the National Assembly;
- (c) there should be added to the existing qualifications for appointment as Attorney-General a minimum age requirement of forty-five (45) years;
- (d) the Attorney-General should not vacate office upon change in the office of the President;
- (e) the Attorney-General should be an *ex-officio* member of the Cabinet;
- (f) the office of Attorney-General should be accorded security of tenure similar to that of Judges of a superior court; and
- (g) the Attorney-General should retire at seventy (70) years or may opt to retire at sixty-five 65 years.

#### **18.3.2 Provisions of the Mung'omba Draft Constitution on the Attorney-General**

Article 269 provides as follows:

**"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."**

**18.3.3 Deliberations of the Conference on Article 269**

18.3.3.1 The Conference approved clause (1) without amendments.

18.3.3.2 In debating clause (2), two positions emerged namely that the clause be retained and that the clause be deleted.

18.3.3.3 Members who supported the clause argued that Article 269 was adopted on the understanding that:

- (a) the clause would enhance transparency and accountability;
- (b) allowing for the Attorney-General to be appointed Minister would create conflict of interest; and
- (c) the Attorney-General should be a non-partisan professional who should serve whatever government was in power because if the office of Attorney-General was politicised, then the Attorney-General would have to vacate office once the appointing authority left office or a new government came into power.

18.3.3.4 Members who opposed the clause argued that:

- (a) the Attorney-General should be eligible for appointment as Minister while holding the office of Attorney-General;
- (b) the Attorney-General was a political appointee who served as principal advisor to the President and was an *ex-officio* member of Cabinet and it would be naïve to imagine that the Attorney-General would always be non-partisan by the mere fact that the Constitution did not make the office holder eligible for appointment as Minister; and
- (c) the Attorney-General was a "lawyer" to the President and as such, the President should be at liberty to choose his/her own lawyer.

- 18.3.3.5 The Conference approved clause (2) as recommended.
- 18.3.3.6 In debating clause (3), the members noted that the Attorney General was an important and senior position in Government. As such, the position demanded for a mature and experienced person especially that the holder of the office would be the chief legal advisor to the President and an *ex-officio* member of Cabinet. They further noted that the Attorney-General should be at least forty-five (45) years old. The Conference also noted that the term “superior court” included the High Court.
- The Conference approved clause (3) as recommended.
- 18.3.3.7 In debating clause (4) of Article 269, some members proposed that clauses (4) and (5) be considered together as they dealt with security of tenure of the office of the Attorney-General. They argued that the Attorney-General should not be given the security of tenure of office as he or she was a member of the Executive and was not discharging prosecutorial duties which were the preserve of the Director of Public Prosecutions.
- 18.3.3.8 The Conference, consequently, decided to delete clauses (4) and (5) of Article 269 and substituted them with Article 54 (5) of the current Constitution which provides as follows:
- “The office of Attorney-General shall become vacant if the holder of the office is removed from office by the President.”**
- 18.3.3.9 With regard to Article 269 (6) and (7), the Conference observed that the functions of the Attorney-General were normally provided for in the Constitution and, therefore, approved the clauses without amendments.
- 18.3.3.10 On clause (8) of Article 269 some members suggested that the word “contract” be added to the clause so that it reflected what was obtaining in the current Constitution. Other members were of the view that Article 54 (3) of the current Constitution was a more appropriate substitution.
- 18.3.3.11 The Conference decided to substitute clause (8) with Article

54 (3) of the current Constitution because it was more comprehensive than clause (8). Clause (3) of Article 54 of the current Constitution provides as follows:

**“Subject to the other provisions of this Constitution, an agreement, contract, treaty, convention or document by whatever name called, to which Government is 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 in such cases and subject to such conditions as Parliament may by law prescribe.”**

- 18.3.3.12 In debating clause (9) of Article 269, some members observed that the Attorney-General received instructions from the President who was his/her client. They added that his advice to Government should not be binding and that the Attorney-General was not meant to stifle Government and usurp the powers of the appointing authority. Other members proposed that clause (9) be deleted and substituted with Article 54 clause (7) of the current Constitution. Some members, however, disagreed arguing that it would give indirect prosecutorial powers to the Attorney-General.
- 18.3.3.13 Some members observed that the functions of the Attorney-General were stipulated in clause (7) and the performance of those functions were precluded from direction by any authority.
- 18.3.3.14 Some members argued that direction of the Attorney-General by Parliament as was the case in clause (8) created a conflict. They noted that the Attorney-General was also the legal advisor to the Government, and therefore, subject to the direction of the Government. The Conference, therefore, decided to amend clause (9) in order to accommodate the practical reality of the Attorney-General’s position as counsel to the Government and the President.

#### **18.3.4 Resolutions of the Conference**

The Conference adopted Article 269 with amendments and re-numbered it as follows:

**“236. (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.

(3) The Attorney-General shall be:-

- (a) an ex-officio member of 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) The office of Attorney-General shall become vacant if the holder of the office is removed from office by the President.

(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) causing the drafting of and signing, all Government Bills to be presented to Parliament;
- (c) drawing and perusing agreements, contracts, treaties, conventions and documents, by whatever name called, to which the Government is a party or in respect of which the Government has an interest;
- (d) representing the Government in the courts or any other legal proceedings to which Government is a party; and
- (e) any other functions assigned to the Attorney-General by the President or by any other law.

(7) Subject to the other provisions of this Constitution, an agreement, contract, treaty, convention or document by whatever name called, to which Government is 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 in such cases and subject to such conditions as Parliament may by law prescribe.

(8) In the exercise of the power to give directions to the Director of Public Prosecutions conferred by clause (6) of Article 239, the Attorney-General shall not be subject to the direction or control of any other person or authority."

**18.4 Article 270: Solicitor-General**

**18.4.1 Recommendations of the Commission**

The Commission recommended that the principles recommended in respect of the Attorney-General should extend to the Solicitor-General except that the Solicitor General should not be an *ex-officio* member of the Cabinet.

**18.4.2 Provisions of the Mung'omba Draft Constitution on Solicitor-General**

Article 270 provides as follows:

**"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.”**

#### **18.4.3 Deliberations of the Conference on Article 270**

The Conference approved clauses (1), (2), (3), (5) and (6) of Article 270 as provided in the Mung’omba Draft Constitution. The Conference deleted clause (4) because it had been substituted with clause (3) of Article 55 of the current Constitution which states “The office of Solicitor-General shall become vacant if the holder of the office is removed from office by the President.”

#### **18.4.4 Resolutions of the Conference**

The Conference adopted Article 270 with amendments and re-numbered it as follows:

**“237. (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 of a superior court.**

**(3) The office of Solicitor-General shall become vacant if the holder of the office is removed from office by the President.**

**(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."**

**18.5 Article 271: Director of Public Prosecutions**

**18.5.1 Recommendations of the Commission**

**18.5.1.1 The Commission recommended that:**

- (a) the Director of Public Prosecutions (DPP) should be appointed by the President on recommendation of the JSC, subject to ratification by the National Assembly;**
- (b) the office of DPP should be accorded security of tenure similar to that of a Judge of the High Court, as currently provided for in the Constitution, save that removal from office should fall entirely under the National Assembly instead of the President;**
- (c) funding of the office of the DPP should be adequate and timely;**
- (d) the qualifications for appointment to the Office of the DPP should include qualifications and experience in criminal prosecution and a minimum age of forty-five (45) years; and**
- (e) the appointment and supervision of public prosecutors should be the preserve of the DPP.**

**18.5.2 Provisions of the Mung'omba Draft Constitution on Public Prosecutions**

Article 271 provides as follows:

**"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."**

**18.5.3 Deliberations of the Conference on Article 271**

18.5.3.1 The Conference approved clause (1) of Article 271 as provided in the Mung'omba Draft Constitution.

18.5.3.2 In debating clause (2) (a), some members advocated for the retention of the clause as provided in the Mung'omba Draft Constitution. Most members, however, were of the view that it was not necessary to provide for a minimum age requirement. The Conference, therefore, rejected clause (2) (a) of Article 271.

18.5.3.3 With regard to clause (2) (b), members argued that providing for experience in criminal prosecutions would be biased against many professional lawyers, especially those in private practice, who did not have the opportunity to deal with criminal cases most of the time. The Conference approved clause (2) (b) with amendments as follows:

**"A person shall not qualify to be appointed to the office of Director of Public Prosecutions unless that person-  
(b) has experience biased towards criminal law."**

18.5.3.4 The Conference approved clause (2) (c) without amendments.

18.5.3.5 The Conference approved clause (3) without amendments.

18.5.3.6 In debating clause (4), three positions emerged as follows:

- (a) that the clause be deleted;
- (b) that the clause be retained; and
- (c) that the clause be retained with amendments.

18.5.3.7 Members who supported the deleting of the clause argued that:

- (a) the DPP should be allowed to enter a *nolle prosequi* without seeking the leave of court because such a requirement would require the DPP to disclose the reasons and the disclosure of reasons could be used by lawyers to re-open the case;
- (b) the *nolle prosequi* was necessary for the protection of public interests, especially on matters such as those bordering on security and that the State had the responsibility to preserve security; and
- (c) in the event where the court was compromised, it would be difficult for the DPP to seek leave from the same court.

18.5.3.8 Members who supported the retention of clause (4) as contained in the Mung'omba Draft Constitution, argued that:

- (a) in the past, the provision had been abused to the detriment of the accused persons and therefore, the need for the DPP to seek the leave of court to enter the *nolle prosequi*;
- (b) the *nolle prosequi* was used to allow the prosecution time to search for new evidence; and
- (c) where the *nolle prosequi* was abused the accused persons were traumatised especially in non-bailable cases.

18.5.3.9 While accepting the authority of the DPP to enter a *nolle prosequi*, other members proposed that clause (4) be amended to limit the number of times that a *nolle prosequi* could be entered on a particular case.

The Conference adopted clauses (1), (2), (3), (5), (6), (7) and (8) but decided to refer clause (4) to a referendum for a decision because the Conference could not attain consensus on the matter.

#### **18.5.4 Resolutions of the Conference**

The Conference adopted Article 271 of the Mung'omba Draft Constitution with amendments and renumbered it as follows:

**"238. (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 is qualified to be appointed as a Judge of a superior court with experience biased towards criminal law.**

**(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 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.**

**(5) 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.
- (6) 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:

Provided that when the exercise of any power in any case may, in the judgement of the Director of Public Prosecutions involve general consideration of public policy, the Director of Public Prosecutions shall bring the case to the notice of the Attorney-General and shall in the exercise of powers in relation to that case, act in accordance with any directions of the Attorney-General.

- (7) 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.

- (8) Parliament shall enact legislation to-
  - (a) establish a National Prosecution Authority which shall be headed by the Director of Public Prosecutions;
  - (b) provide for the functions, powers, independence, operations, administration, finances and financial management of the National Prosecution Authority;
  - (c) provide for the composition, tenure of office and procedures of the Board of the National Prosecution Authority,

- whose Chairperson shall be the Director of Public Prosecutions;
- (d) provide for the decentralisation of the offices of the National Prosecution Authority to the provinces and progressively to the districts; and
- (e) provide for any other function of the Director of Public Prosecutions."

**18.6 Article 272: Performance of Functions of Director of Public Prosecutions During Absence, Illness or Other Cause**

**18.6.1 Recommendations of the Commission**

The Commission recommended that the President should, on the recommendation of the JSC, appoint any other person to perform the functions of the DPP until that appointment was revoked.

**18.6.2 Provisions of the Mung'omba Draft Constitution on the Performance of Functions of Director of Public Prosecutions during Absence, Illness or Other Cause**

Article 272 provides as follows:

**"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."**

**18.6.3 Deliberations of the Conference on Article 272**

In debating Article 272, some members observed that the Article dealt with the appointment of an acting DPP in the absence of a substantive holder. They further observed that the acting appointment did not require ratification by the National Assembly but only a recommendation by the Judicial Service Commission.

The Conference adopted Article 272 without amendments.

**18.6.4 Resolutions of the Conference**

18.6.4.1 The Conference adopted Article 272 without amendments and re-numbered it as follows:

**“239. 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.”**

**18.7 Article 273 : Tenure of Office of Director of Public Prosecutions**

**18.7.1 Recommendations of the Commission**

The Commission recommended that the office of the DPP should be accorded security of tenure similar to that of a Judge of the High Court as was provided in the current Constitution save that removal from office should fall entirely under the National Assembly instead of the President.

**18.7.2 Provisions of Article 273 on Tenure of office of Director of Public Prosecutions**

Article 273 provides as follows:

**“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."**

### **18.7.3 Deliberations of the Conference on Article 273**

18.7.3.1 In debating Article 273, the Conference approved clauses (1), (2) and (3) without amendments.

18.7.3.2 Regarding clause (4), some members proposed the establishment of a Prosecutions Authority and therefore, proposed that clause (4) be expanded to provide for the eventual establishment of the Authority. They suggested that the additional proposal should include operations of the office of the Director of the National Prosecutions Authority and decentralisation of operations. However, the Conference noted that Government would be able to establish a Prosecutions Authority without an additional provision to clause (4) of Article 273.

18.7.3.3 On the other hand, some members were of the view that there was no need to provide for a Prosecutions Authority before a policy decision was made to establish such an institution. Other members, however, argued that there were enough provisions in the Constitution that would enable Government to establish the Authority without a specific provision for its establishment. The members cited the provision under Article 268 (1) (a) as recommended in the Mung'omba Draft Constitution and approved by the Conference as being among the enabling provisions.

18.7.3.4 The Conference deleted clause (4) and provided that the National Prosecutions Authority be established under an Act of Parliament under Article 239 (8).

### **18.7.4 Resolutions of the Conference**

The Conference adopted Article 273 of the Mung'omba Draft Constitution with amendments and re-numbered it as follows:

**"240. (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 same 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 in writing to the President."**

**18.8 Article 274: Permanent Secretaries**

**18.8.1 Recommendations of the Commission**

The Commission recommended that Permanent Secretaries should be appointed by the President acting in accordance with the advice of the Civil Service Commission, subject to parliamentary ratification and on the basis of professional merit.

**18.8.2 Provisions of the Mung'omba Draft Constitution on Permanent Secretaries**

Article 274 provides as follows:

**"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."**

### **18.8.3 Deliberations of the Conference on Article 274**

- 18.8.3.1 In debating Article 274, some members supported the appointment of Permanent Secretaries by the President on the advice of the Public Service Commission. They, however, did not support the ratification of the appointments by the National Assembly. Other members argued that the President should appoint Permanent Secretaries even from outside the civil service to cater for persons with special qualifications.
- 18.8.3.2 The Conference approved clause (1) of Article 274 but decided to include the term "province" in the clause in order to provide for the office of Permanent Secretary at provincial level.
- 18.8.3.3 In considering clause (2), the Conference amended the clause. The term "civil service" was substituted with the term "public service" which was more encompassing.
- 18.8.3.4 With regard to clause (3) of Article 274, most members argued that it was not necessary to list the functions of the Permanent Secretary in the Constitution and proposed that they be relegated to an Act of Parliament. While supporting the need to transfer the functions of the Permanent Secretary to an Act of Parliament, other members were of the view that qualifications should also be included so that the President did not appoint unqualified persons. The Conference decided to relegate the functions of Permanent Secretary to an Act of Parliament.

### **18.8.4 Resolutions of the Conference**

The Conference adopted Article 274 with amendments and re-numbered it as follows:

**"241. (1) Subject to this Constitution, a province, 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 appointed by the President in accordance with the recommendation of the Public Service Commission.**

**(3) Parliament shall enact legislation to provide for the functions and qualifications of a Permanent Secretary."**

**18.9 Article 275: Protection of Public Officers**

**18.9.1 Recommendations of the Commission**

The Commission recommended that the Constitution should provide protection to public officers from victimisation or discrimination for performing functions in good faith and in accordance with the Constitution or any other law. The Commission further recommended that public officers should not be dismissed or removed from office without just cause.

**8.9.2 Provisions of the Mung'omba Draft Constitution on Protection of Public Officers**

Article 275 provides as follows:

**"275. 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."**

**18.9.3 Deliberations of the Conference on Article 275**

In debating Article 275, some members supported the retention of the Article, while others argued that the provisions of the Article should be relegated to an Act of Parliament. Those who argued for deletion of the Article submitted as follows:

- (a) that matters of human resources should not be in the Constitution;
- (b) that public officers were already protected through various Acts of Parliament; and
- (c) that providing for protection of public officers in the Constitution did not mean protection of public officers because the best protection was good performance.

18.9.3.1            Consequently, the Conference decided to delete Article 275.

#### **18.9.4            Resolutions of the Conference**

The Conference deleted Article 275 of the Mung’omba Draft Constitution.

### **18.10            Article 276: Services and Service Commissions**

#### **18.10.1           Recommendations of the Commission**

The Commission recommended that the Constitution should:

- (a) establish specialised public services and commissions with their membership, powers and functions, over the various sectors of Government, such as the Parliamentary Service, Judicial Service, Civil Service, Teaching Service, Police and Prisons Service; and
- (b) state that the exercise of the powers and discharge of the functions of service commissions should not be subject to the direction and control of any person or authority.

#### **18.10.2           Provisions of the Mung’omba Draft Constitution on Services and Service Commissions**

Article 276 provides as follows:

**“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."

### **18.10.3 Deliberations of the Conference on Article 276**

18.10.3.1 In debating Article 276, three positions emerged. The first position was for retention of Article 123 (1) and (2) of the current Constitution which provide as follows:

**"123 (1) there shall be established for the Republic a Judicial Service Commission which shall have functions conferred on it by this Constitution and such other functions and powers, as may be prescribed by or under an Act of Parliament.**

**(2) Parliament may establish for the Republic other Commissions which, together with the Judicial Service Commission, are hereafter collectively referred to as Service Commissions, which shall have such functions and powers in relation to the public service, or in relation to persons in public employment other than constitutional office holders or public officers, as may be prescribed by or under an Act of Parliament."**

18.10.3.2 The second position was for those members who argued that Article 276 as recommended by the Commission should be retained because the establishment of commissions through the Constitution would give them a stronger mandate.

18.10.3.3 The third position favoured harmonisation of Articles 276 and 278 in the recommendation of the Commission with the provisions of Article 123 of the current Constitution.

18.10.3.4 The Conference accepted the third position to harmonise Articles 276 and 278 with Article 123 of the current Constitution.

### **18.10.4 Resolutions of the Conference**

The Conference adopted Article 276 of the Mung'omba Draft Constitution with amendments and re-numbered it as follows:

**"242. (1) There is hereby established the Public Service Commission.**

**(2) The Public Service Commission shall consist of a Chairperson and not less than four or more than six other members:**

**Provided that at least one member shall be a person with a disability.**

**(3) The Chairperson and members of the Public Service Commission shall be appointed by the President.**

**(4) A person shall not qualify to be appointed as a Chairperson or member of the Public Service Commission unless that person is -**

- (a) a person of proven integrity; and**
- (b) not a member of the National Assembly or a public officer.**

**(5) Subject to clauses (6) and (7), the Chairperson and members of the Public Service Commission shall hold office for a term of four years and shall be eligible for re-appointment for only one further term of four years.**

**(6) The office of Chairperson or member of the Public Service Commission shall become vacant if the holder of the office is removed from office by the President.**

**(7) Subject to the other provisions of this Article, a Chairperson or member of the Public Service Commission shall vacate office -**

- (a) at the expiry of the term of office specified under clause (5);**
- (b) if any circumstances arise that, if the person were not a member of the Commission, would cause the person to be disqualified for appointment as such; or**
- (c) in the case of a member who represents a body or institution, if that body or institution nominates another person to represent it.**

**(8) The President may give to the Public Service Commission or to any person, to whom the functions or powers of the Commission are delegated by or under an Act of Parliament, such general directions with respect to the exercise of the functions or powers of the Commission, as the**

President may consider necessary and the Commission or that person shall comply with those directions.

(9) Except as otherwise provided by clause (8), the Public Service Commission shall not be subject to the direction or control of any other person or authority in the exercise of its functions under this Constitution.

(10) Parliament shall enact legislation to provide for the functions, powers, procedures, operations, administration, finances and financial management of the Public Service Commission.

(11) 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, powers, independence, composition, tenure of office, procedures, operations, administration, finances and financial management of a commission established by or under this clause."

## **18.11 Article 277: Establishment of Investigative Commissions**

### **18.11.1 Recommendations of the Commission**

The Commission recommended that the Anti-Corruption Commission, the Drug Enforcement Commission and other key investigative commissions should be established by the Constitution and be guaranteed independence and autonomy. Further, the Commission recommended that:

- (a) the Constitution should provide that investigative commissions should have a mandate to manage their finances;
- (b) members and heads of investigative commissions should be appointed by the President on recommendations of the respective commissions and subject to ratification by the National Assembly;
- (c) the members should serve a term of five years and be eligible for re-appointment for one further term only; and
- (d) both members and heads of investigative commissions should enjoy security of tenure of office.

## **18.11.2 Provisions of the Mung'omba Draft Constitution on Establishment of Investigative Commissions**

Article 277 provides as follows:

**"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."**

## **18.11.3 Deliberations of the Conference on Article 277**

- 18.11.3.1** In debating Article 277, members proposed the retention of the Article but that the provisions in clause (3) of Article 123 of the current Constitution should be adopted because the Article provided for the establishment of other commissions. Article 123 (3) of the current Constitution states that:

**"Commissions other than Service Commissions may be established for the Republic by or under an Act of Parliament and shall have such functions and powers as may be prescribed by or under such an Act."**

- 18.11.3.2** The Conference decided that Article 277 be harmonised with Articles 276 and 278 and that Article 123 (3) of the current Constitution be adopted.

## **18.11.4 Resolutions of the Conference**

The Conference adopted Article 277 of the Mung'omba Draft Constitution with amendments and renumbered it as follows:

**"245. (1) There shall be established for the Republic investigative commissions.**

**(2) Parliament shall enact legislation to provide for the functions, powers, independence, composition, tenure of office, procedures, operations, administration, finances and financial management of an investigative Commission established under clause (1).**

**(3) Commissions, other than investigative commissions, may be established for the Republic by or under an Act of Parliament and shall have functions and powers as may be prescribed by or under an Act of Parliament."**

**18.12 Article 278: Other Additional Commissions**

**18.12.1 Recommendations of the Commission**

The Commission did not receive submissions on other additional commissions but made recommendations on the subject as follows:

**"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".**

**18.12.2 Deliberations of the Conference on Article 278**

**18.12.2.1** In debating Article 278, members observed that the provisions focussed on details which should be provided for in an Act of Parliament as was the case with provisions under Articles 276 and 277. The Conference, therefore, decided to harmonise Articles 276, 277 and 278 and to provide for the establishment of other commissions in future.

### **18.12.3 Resolutions of the Conference**

**18.12.3.1** The Conference deleted Article 278 of the Mung’omba Draft Constitution and provided for the establishment of additional Commissions in clause (3) of the re-numbered Article 246 as follows:

**“(3) Commissions, other than investigative commissions, may be established for the Republic by or under an Act of Parliament and shall have functions and powers as may be prescribed by or under an Act of Parliament.”**

**18.12.3.2** The Conference decided that some provisions of Article 279 be harmonised with Article 278 and that the rest be relegated to an Act of Parliament.

### **18.13 Article 279: Membership of Commissions**

#### **18.13.1 Recommendations of the Commission**

The Commission recommended that appointments should, first and foremost, be on merit, but take into account special interest groups such as women and persons with disabilities.

#### **18.13.2 Provisions of the Mung’omba Draft Constitution on Membership of Commissions**

Article 279 provides as follows:

**“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."

### **18.13.3 Deliberations of the Conference on Article 279**

- 18.13.3.1** In debating Article 279 (a), the Conference noted that Act No. 259 of the Laws of Zambia provided that only two persons could take a decision on behalf of the Public Service Commission.
- 18.13.3.2** On Article 279 (b), some members argued for the retention of the provision because it provided for persons with disabilities who, in their view, were in the minority and were, in most cases, academically ill-qualified while others added that the clause should take into account gender-balance. Members who did not support the retention of clause (b) argued that it was not necessary because if a person with a disability qualified under clause (c), he/she would be appointed like any other person.
- 18.13.3.3** On clause (c) (iii), some members argued that the clause was discriminatory and an affront to human rights and that it could be interpreted as an effort to bar some people from participating in politics.
- 18.13.3.4** On Article 279 (d), members noted that having decided earlier against the recommendation on ratification of Permanent Secretaries by the National Assembly, the clause should be deleted.
- 18.13.3.5** Members who were in support of relegating Article 279 to an Act of Parliament pointed out that issues under the Article were similar to those in Article 278 (b) and that provisions in Article 279 were adequately catered for under Article 123 of the current Constitution.

#### **18.13.4 Resolutions of the Conference**

The Conference deleted Article 279 of the Mung'omba Draft Constitution and provided for membership of commissions in clause (2) of Article 246 as follows:

**(2) Parliament shall enact legislation to provide for the functions, powers, independence, composition, tenure of office, procedures, operations, administration, finances and financial management of an investigative Commission established under clause (1).**

The Conference decided that some provisions of Article 279 be harmonised with Article 278 and that the rest be relegated to an Act of Parliament.

#### **18.14 Article 280: Independence and Powers of Commissions**

##### **18.14.1 Recommendations of the Commission**

The Commission recommended that the exercise of powers and discharge of functions of service commissions should not be subject to the direction or control of any person or authority and that the commissions should continue to operate in their areas of specialisation and should not be merged. Further, it was recommended that chairpersons and commissioners of all service commissions should be appointed by the President, subject to parliamentary ratification.

##### **18.14.2 Provisions of the Mung'omba Draft Constitution on Independence and Powers of Commission**

Article 280 provides as follows:

**"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."

### **18.14.3 Deliberations of the Conference on Article 280**

18.14.3.1 In debating Article 280, some members argued that members of a commission acted on behalf of the President, and that the clause was superfluous as it had been provided for under Article 278. They further argued that the Article contained details which should be relegated to an Act of Parliament.

18.14.3.2 Members who supported the retention of the clause argued that the Article sought to provide for the autonomy and integrity of a commission. They stated that currently, commissions had the independence to operate without interference but were answerable to the President, and that what was of essence was to have a commission that would make independent and professional decisions. Consequently, the Conference deleted Article 280 and decided that the provision be provided for under an Act of Parliament.

### **18.14.4 Resolutions of the Conference**

18.14.4.1 The Conference deleted Article 280 of the Mung'omba Draft Constitution and provided for the independence and powers of commissions in clause (2) of Article 246 as follows:

**"246. (2) Parliament shall enact legislation to provide for the functions, powers, independence, composition, tenure of office, procedures,**

**operations, administration, finances and financial management of an investigative Commission established under clause (1)."**

**18.15 Article 281: Appointment of Chief Executive of Commissions**

**18.15.1 Recommendations of the Commission**

The Commission recommended that the President should appoint Commissioners on the recommendation of the respective service commissions, subject to ratification by the National Assembly.

**18.15.2 Provisions of the Mung'omba Draft Constitution on Appointment of Chief Executive of Commissions**

Article 281 provides as follows:

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

**18.15.3 Deliberations of the Conference on Article 281**

The Conference agreed with the recommendation of the Commission that appointment of chief executives of commissions should be on the recommendation of the respective commissions in order to enhance transparency. However, the Conference observed that there were no serious problems experienced against the current mode of appointment of chief executives of commissions. The Conference decided that Article 281 be deleted and relegated to an Act of Parliament.

**18.15.4 Resolutions of the Conference**

**18.15.4.1 The Conference deleted Article 281 of the Mung'omba Draft Constitution and provided for appointment of chief executives of commissions in clause (2) of Article 246 as follows:**

**"2) Parliament shall enact legislation to provide for the functions, powers, independence, composition, tenure of office, procedures, operations, administration, finances and financial**

management of an investigative Commission established under clause (1).”

**18.16 Article 282: Participation in Politics**

**18.16.1 Recommendations of the Commission on Participation in Politics**

The Commission recommended that the Constitution should state that public officers should not be allowed to participate in active politics. However, an officer who had served for twenty years and wished to participate in politics should be retired in the national interest while an officer who had served for less than twenty years should retire early. However, the Commission observed that public officers should be allowed the right to vote.

**18.16.2 Provisions of the Mung’omba Draft Constitution on Participation in Politics**

Article 282 provides as follows:

**“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 resigns from the public service.”**

**18.16.3 Deliberations of the Conference on Article 282**

18.16.3.1 The debate on the Article centred on whether a public servant should hold a political party position while serving as a civil servant. Members argued that public officers should be prevented from becoming office bearers in political parties because that would interfere with the efficient performance of their duties. Some members observed that human beings were all political persons and that public officers had the right to belong to political parties of their choice. However, others argued that because it was difficult to be non-partisan, the degree of active participation in politics should be defined.

18.16.3.2 In determining what constituted ‘active’ participation in politics, it was stated that active partisan politics included:

- (a) holding a position in a political party at any level;

- (b) being fully engaged in political mobilisation and attending political party functions; and
- (c) joining a political party, holding a membership card, participating in programmes, attending party meetings and acknowledging their party leaders.

18.16.3.3 Members who did not support active participation of public officers in politics made the following arguments:

- (a) whilst public service employees could be allowed to belong to political parties of their choice, they should not actively participate in politics.
- (b) if public officers were to participate in partisan politics, it would be very easy to derail government programmes if they were not supportive of the government of the day;
- (c) if a person decided to be a civil servant, he/she must accept to carry out instructions of the government of the day;
- (d) allowing public officers to join political parties, would be tantamount to allowing them to be partisan; and
- (e) there was need for impartial, neutral and professional institutions. Therefore, public servants must not be seen to be partisan in executing their professional functions.

18.16.3.4 Members who did not support the inclusion of a proposal for an additional clause that “a public officer shall not, while remaining a public officer, join or participate in partisan politics” argued that such a clause was unnecessary because it would not be possible to differentiate between the partisan and the non-partisan public service employees.

18.16.3.5 The Conference agreed that every Zambian had a right to associate with any other person, group of persons or organisation and adopted Article 282 of the Mung’omba Draft Constitution.

#### **18.16.4 Resolutions of the Conference**

The Conference adopted Article 282 of the Mung’omba Draft Constitution with amendments and re-numbered it as follows:

**"246. (1) A public officer shall not, while remaining a public officer, join or participate in partisan politics.**

**(2) 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 resigns from public service."**

**18.17 Article 283: Retirement of Public Officers**

**18.17.1 Recommendations of the Commission**

The Commission recommended that retirement age be sixty (60) years with the option for early retirement with full benefits at the age of fifty-five (55) years. In addition, the Commission suggested an option for early retirement based on length of service after twenty-five (25) years of continuous service, subject to agreement with the employer.

**18.17.2 Provisions of the Mung'omba Draft Constitution on Retirement of Public Officers**

Article 283 provides as follows:

**"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 or has acquired special skills may be engaged on contract."**

### **18.17.3 Deliberations of the Conference on Article 283**

18.17.3.1 In debating Article 283, the Conference observed that clause (1) provided options for those officers who wished to retire early to pursue other careers. The Conference also observed and that extending the retirement age from fifty-five (55) years to sixty (60) years was justifiable because in some professions such as teaching and medical practice, performance became more enhanced with increase in the number of years of experience. The Conference approved clause (1) without amendments.

18.17.3.2 With regard to clause (2) of Article 283, members who supported the adoption of the clause advanced the following arguments:

- (a) that some people aged faster while others might fall sick, necessitating their option to retire early if they had served for twenty years;
- (b) that the words “with government approval “ be substituted with “the approval of relevant commissions,” which were empowered to allow officers to retire;
- (c) that placing restrictions or conditionalities on public officers who wished to retire after twenty years was not desirable;
- (d) that officers who opted to retire after twenty years of service be allowed to retire with full benefits. Furthermore, payment of full benefits needed to be provided for in the new Constitution because of the past experience where such retirees had not been paid their benefits for many years;
- (e) that if there were restrictions on civil servants to retire, such civil servants should be forced to remain in senior positions or accept to be relegated to lower positions;
- (f) that while they supported the provision in general, they did not support payment of full benefits, but instead recommended payment of accrued benefits;
- (g) that the clause was aimed at addressing unforeseen circumstances; and
- (h) that since independence, retirement ages had varied between fifty (50) and sixty (60) years.

18.17.3.3 Those who were against adoption of the provision argued as follows:

- (a) that the nation ran the risk of losing essential workers, especially health personnel who would be given the option to leave their jobs too early without giving the nation a chance to replace such workers;
- (b) that the provision would lead to increased cost of running government in that government would have to provide greater contingent liability for all those who had served twenty years;
- (c) that retirement after serving for twenty years would mean that those who might start work at the age of eighteen (18) years would be able to retire at the age of thirty-eight (38) years;
- (d) that since there was provision in Article 283 (3) that officers who retired could be re-engaged on contract, this would lead to abuse by some public officers who would opt to retire early and be re-engaged on contract;
- (e) that there was no need for clause (2) because it was already taken care of by other clauses in the Constitution; and
- (f) that such a provision would create a very unstable civil service in that workers would “migrate” from the civil service in search of better opportunities. The exodus of workers would result in a huge cost to government due to payment of terminal benefits.

18.17.3.4 The Conference unanimously approved the retention of clause (2) without amendments.

18.17.3.5 Most members supported retention of clause (3). However, in supporting the clause, some members proposed that, in addition to re-engaging the retired public officers who had special professional qualifications, the provision should be extended to include retired public officers who had acquired special skills while in employment. The proposal was accepted by the Conference.

#### **18.17.4 Resolutions of the Conference**

The Conference adopted Article 283 of the Mung'omba Draft Constitution with amendments and re-numbered it as follows:

**"247. (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 who has retired from the public service shall not be re-engaged, except that an officer who has special professional qualifications or has acquired special skills may be re-engaged on contract."**

#### **18.18 Article 284: Pension, Gratuity and Retrenchment Benefits for Public Officers**

##### **18.18.1 Recommendations of the Commission**

The Commission recommended that the right to pension should be enshrined in the Constitution as a justiciable right.

##### **18.18.2 Provisions of the Mung'omba Draft Constitution on Pension, Gratuity and Retrenchment Benefits for Public Officers**

Article 284 provides as follows:

**"284.(1) The right of a public officer to a pension, gratuity or retrenchment benefits 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

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(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."

### **18.18.3 Deliberations of the Conference on Article 284**

18.18.3.1 After deliberating on the Article, the Conference amended clause (1) to read as follows:

**"(1) The right of a public officer to a pension, gratuity or retrenchment benefit to which a public officer is entitled, in accordance with that public officer's terms and conditions of service, is hereby guaranteed."**

- 18.18.3.2 With regard to clause (2), some members, argued that it be relegated to an Act of Parliament. Others argued that if the clause was relegated to an Act of Parliament, it would take a long time for the Government to present to Parliament for enactment, the enabling legislation needed to implement what was provided for in clause (2) of Article 284. In addition, some members observed that the provisions in clause (2) of Article 284 were similar to those of Article 124 of the current Constitution and proposed that the two provisions be harmonised.
- 18.18.3.3 Some members argued that changing pension laws could have financial implications that could lead to the collapse of the Public Service Pensions Fund. They further argued that in order to avoid the collapse of the Pensions Fund, clauses (2) to (6) of Article 284 should be redrafted and harmonised with the provisions of Article 124 of the current Constitution. Other members supported the clause but proposed that it be amended to make it specific by replacing the words "any benefits" in the clause with the words "pensions, gratuity and retrenchment benefits for public officers."
- 18.18.3.4 The Conference decided to harmonise clause (2) of Article 284 with Article 124 of the current Constitution.
- 18.18.3.5 The Conference unanimously approved clause (3). In debating clauses (4) (a) and (b) of Article 284, members noted that a person to whom the pension benefits were due would have a choice between getting his/her benefits under the law that was in effect before the Constitution came into effect or a law enacted after the Constitution came into effect, provided the person opted for a law that was not less favourable to himself/herself. The option was intended to safeguard the pension benefits of those who received them at a later stage after the Constitution came into effect.
- 18.18.3.6 Further, members observed that the two paragraphs preserved the accrued rights to pensions and also the application of laws on pensions that were favourable to the individual claiming the pension. It was noted that Article 124 (2) of the current Constitution, which was similar to clause (4) (a) and (b), had

excluded certain offices including officers in the office of the Clerk of the National Assembly. The members were of the view that no officer should be excluded from that provision.

The Conference approved clause (4) of the Mung'omba Draft Constitution without amendments.

18.18.3.7 The Conference took note that Article 192 (5) in the Mung'omba Draft Constitution proposed the establishment of a parliamentary service commission which would specify the terms and conditions of service for the office of the Clerk of the National Assembly. The Conference approved clause (5) of Article 284 with an amendment to substitute the term "Consolidated Fund" with "National Treasury Account" in line with an earlier decision of the Conference.

18.18.3.8 Regarding clause (6), some members proposed the inclusion of the term "surviving spouses" to cater for both customary and statutory marriage. It was explained that Zambia recognised the existence of customary and statutory marriages. For that reason, the clause provided for both types of marriages by using the term "surviving spouses."

The Conference approved clause (6) with the inclusion of the term "surviving spouses."

#### 18.18.4 Resolutions of the Conference

The Conference adopted Article 284 of the Mung'omba Draft Constitution with amendments and re-numbered it as follows:

**"248. (1) The right of a public officer to a pension, gratuity or retrenchment benefits, to which the public officer is entitled under the terms and conditions of service or by or under an Act of Parliament, is hereby guaranteed.**  
**(2) Any pension, gratuity or retrenchment benefits which a public officer is entitled to under the terms and conditions of service or 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, as an officer in the department of the Clerk of the National Assembly, member of the Defence Force 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 Force 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, or retrenchment benefits, unless otherwise charged on a fund established by or under an Act of Parliament, shall be a charge on the National Treasury Account.

(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, officers in the department of the Clerk of the National Assembly, members of the Defence Force and national security agencies or for the surviving spouses, children, dependants or personal representatives of those persons in respect of the service."

**18.19 Article 285: Pension to Be Reviewed**

**18.19.1 Recommendations of the Commission**

The Commission recommended that pension should be reviewed periodically to take into account prevailing economic conditions.

**18.19.2 Provisions of the Mung'omba Draft Constitution on Pension to be Reviewed.**

Article 285 provides as follows:

**"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."**

**18.19.3 Deliberations of the Conference on Article 285**

18.19.3.1 The Conference approved clause (1) without amendments.

18.19.3.2 With regard to clause (2), some members observed that the provision was ideal because pension was the last income available to a retiree, who had throughout his/her working life, been paying income tax. The members, therefore, perceived taxation of pension benefits as double taxation. Other members proposed that in order to encourage employees to stay longer in employment, the provision should only apply to those who did not opt for early retirement.

18.19.3.3 Most members argued that the provision should be deleted

because it would impact negatively on the capacity of Government to provide adequate public services. They further argued that Government had no other means of raising revenues apart from taxes and that such a provision would promote inequality in the tax regime. The members went on to argue that public service retirees continued, after retirement, to access public services provided by Government through revenue generated from taxes. Some members proposed that the clause should be provided for in an Act of Parliament.

- 18.19.3.4 After a lengthy debate, the Conference resolved to delete Article 285 (2).

#### **18.19.4 Resolutions of the Conference**

The Conference adopted Article 285 of the Mung'omba Draft Constitution with amendments and re-numbered it as follows:

**"249. Pensions shall be reviewed upwards periodically to take into account changes in the value of money or a review of salaries."**

#### **18.20 Article 286: Pension and Retrenchment Benefits to be Paid in Specified Period**

##### **18.20.1 Recommendations of the Commission**

The Commission recommended that pensions and retrenchment benefits must be paid promptly.

##### **18.20.2 Provisions of the Mung'omba Draft Constitution on Pension and Retrenchment Benefits to be Paid in Specified Period**

Article 286 provides as follows:

**"286. (1) The payment of pension or retrenchment benefits shall be paid on the last working day and any instalments 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 retrenchment; 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."

### **18.20.3 Deliberations of the Conference on Article 286**

18.20.3.1 In debating clause (1) of Article 286, some members advocated for the retention of the clause and argued that Government kept records of employees and had information indicating when every employee was due for retirement. Therefore, Government and other employers, should be able to plan for the timely payment of retirement benefits. The members further argued that there were a number of civil service retirees and retrenchees who had fallen into destitution due to either delayed or non-payment of their pension benefits.

The Conference approved clause (1) without amendments.

18.20.3.2 With regard to clauses (2) and (3), some members expressed reservations that the provisions would lead to a bloated public service payroll because it would, in effect, mean maintaining and paying two persons for the same post. The members suggested that Government should instead be encouraged to ensure expeditious payment of benefits. It was noted that in order to compel Government to pay retirement benefits timely, a penalty be included in the Constitution. However, members who supported the clauses argued as follows:

- (a) that the clauses would save workers from destitution by providing social security;
- (b) that the plight of retirees and retrenchees was grave as some of them had died before receiving their dues;
- (c) that since retirement benefits would be taxed, it was justifiable that retirees should be assured of receiving their benefits upon retirement;
- (d) that the employer had an obligation to pay retirees at the time of retirement and paragraph (b) of clause (3) would ensure that if the employers failed to comply

with paragraph (a) the retirees would remain on the payroll;

- (e) that it would not be humane to abandon people who had served the Government for a long period;
- (f) that similar provisions were provided for in the constitutions of many other African countries;
- (g) that the clauses were meant to “inject” discipline in those who managed pension contributions on behalf of retirees; and
- (h) that the Public Service Pensions Fund would be in a position to meet its obligations to the retirees but could not manage because it was owed large amounts by Government.

18.20.3.3 Members who opposed the retention of the clauses argued as follows:

- (a) attitudes needed to be changed so that those charged with the responsibility for preparing retirement benefits did so and that if they failed they should face disciplinary action;
- (b) that the clauses would encourage proliferation of “ghost workers”;
- (c) that most of the time the companies which retrenched workers were those that were extremely weak and on the verge of bankruptcy. Adoption of the clauses would, therefore, result in failure to save some jobs which could have been saved by retrenching only a few workers;
- (d) that the clauses would encourage casualisation in the labour market;
- (e) that the clauses assumed that the institution that was expected to pay the pension was the same as the employer, which was not necessarily the case; and
- (f) that retirement benefits were a cost and had to be properly budgeted for.

18.20.3.4 In further debate, the Conference took note that the term “retiree” in clause (2) referred to an employee who stopped work on account of having reached the statutory retirement requirements, such as age limit. On the other hand, the term “retrenchee” referred to an employee whose services were terminated before the attainment of



the prescribed retirement age. With regard to the type of benefits that would attract the retention of a retiree or retrenchee on the employer's payroll, it was explained that benefits due to a public service employee upon retirement or retrenchment were:

- (a) terminal benefits, which included gratuity, leave days and repatriation allowance;
- (b) pension which was paid to retirees in two parts namely, a lump-sum payment (two-thirds paid on exit from service) and a monthly pension; and
- (c) severance package paid by the employer to retrenchees.

18.20.3.5 In the debate that ensued, the major concern was on the part of the provision which states that the employee should stop work but the retiree's or retrenchee's name should be retained on the payroll until payment of the pension or retrenchment benefit. The members who did not support the retention of clause (2) argued that it would not be appropriate for an employer who made his/her pension remittances to a pensions fund to continue shouldering the responsibility of paying a retired or retrenched employee, if the pensions fund failed to meet its obligations. Other members proposed that clause (2) be deleted because it was catered for under clause (1) (a) and (b) of Article 286, which had been earlier approved by the Conference. However, some members observed that clause (1) (a) and (b) of Article 286 did not provide for an employee to stop work if he/she was not paid on the last working day.

18.20.3.6 Other members argued that there was a contradiction between the provisions under clauses (1) (a) and (b) and (2) of Article 286. They observed that while clause (1) provided for a time-frame of six months within which benefits should be paid, clause (2) provided that pension and retrenchment benefits should be paid on the last day of an employee's working day.

18.20.3.7 Members who advocated for the retention of clause (2) argued that the clause was clear, non-contentious and that it did not contradict the provisions under clause (1) (a) and (b). The members stressed that the clause was intended to protect the employee and to put pressure on the employer to ensure compliance with his/her obligations to the retiree or retrenchee.

- 18.20.3.8 Other members proposed that, given that the Public Service Pensions Fund was an agent of Government, clause (2) should be adopted and details provided in an Act of Parliament.
- 18.20.3.9 In further debate, it was determined that there were similarities in clauses (1) (a) and (b); (2); (3) (a), (b) and (c) and (4) of Article 286.
- 18.20.3.10 The Conference, therefore, decided that clauses (1) (a) and (b); (2); (3) (a), (b) and (c); and (4) of Article 286 be harmonised while ensuring that the intention of each clause was maintained.

#### **18.20.4 Resolutions of the Conference**

The Conference adopted Article 286 of the Mung'omba Draft Constitution with amendments and re-numbered it as follows:-

- "250. (1) Parliament shall enact legislation to-**
- (a) provide for pensions, gratuities and retrenchment benefits for service in the Public Service and for an efficient and effective system for the administration of pensions;**
  - (b) specify the period, which period shall not exceed six months from the date of retirement or retrenchment, within which pension or retrenchment benefits shall be paid to a retired or retrenched public officer;**
  - (c) provide for the retention on the payroll, until payment of the pension or retrenchment benefits, of a public officer who is retired or retrenched but is not paid pension or retrenchment benefits; and**
  - (d) specify what constitutes pension or retrenchment benefits for purposes of retaining a retired or retrenched public officer on the pay roll by virtue of this Article.**
- 2) A public officer referred to under paragraph (c) of clause (1) shall stop work on their last working day but shall be entitled to -**
- (a) A salary and to any increment in salary given to public officers in the salary scale that the**

public officer was on at the date of retirement or retrenchment; and

(b) A pension or retrenchment benefits based on the last salary received by the retired or retrenched public officer while on the payroll by virtue of this Article.

(3) Any salary which is paid to a retired or retrenched public officer while on the payroll by virtue of this Article shall not be deducted from that retired or retrenched public officer's pension or retrenchment benefits."

## **18.21 Article 287. Legislation on Pensions and Gratuities**

### **18.21.1 Recommendations of the Commission**

The Commission recommended that appropriate legislation be enacted to provide that retirement age be sixty (60) years with an option for early retirement with full benefits at the age of fifty-five (55) years; and that there be another option for early retirement.

### **18.21.2 Provisions of the Mung'omba Draft Constitution on Legislation on Pensions and Gratuities-**

Article 287 provides as follows:

**"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."**

### **18.21.3 Deliberations of the Conference on Article 287**

In discussing Article 287, members observed that the Article was necessary but decided that it be harmonised with Article 286 above because the provisions of both Articles were inter-related.

### **18.21.4 Resolutions of the Conference**

The Conference adopted Article 287 of the Mung'omba Draft Constitution with amendments and re-numbered it as follows:

**"251. (1) Parliament shall enact legislation to -**

- (a) provide for pensions, gratuities and retrenchment benefits for service in the Public Service and for an efficient and effective system for the administration of pensions;
  - (b) specify the period, which period shall not exceed six months from the date of retirement, within which pension or retrenchment benefits shall be paid to a retired or retrenched public officer;
  - (c) provide for the retention on the pay- roll, until payment of pension or retrenchment benefits, of a public officer who is retired or retrenched but is not paid pension or retrenchment benefits; and
  - (d) specify what constitutes pension or retrenchment benefits for purposes of retaining a retired or retrenched public officer on the pay roll by virtue of this Article.
- (2) A public officer referred to under paragraph (c) of clause (1) shall stop work on their last working day but shall be entitled to-
- (a) a salary and to any increment in salary given to public officers in the salary scale that the public officer was on at the date of retirement ore retrenchment; and
  - (b) a pension or retrenchment benefits based on the last salary received by the retired or retrenched public officer while on the payroll by virtue of this Article.
- (3) Any salary which is paid to a retired or retrenched public officer while on the payroll by virtue of this Article shall not be deducted from that retired or retrenched public officer's pension or retrenchment benefits."

## **PART XV**

### **PARLIAMENTARY OMBUDSMAN**

19.0 In considering this Part, the Conference had the following Terms of Reference -

- (a) Article 288 - Establishment of Office of Parliamentary Ombudsman;
- (b) Article 289 - Qualification for Appointment and Conditions of Service;
- (c) Article 290 - Functions of Ombudsman;
- (d) Article 291 - Independence of Ombudsman and Funding;
- (e) Article 292 - Limitation of Powers of Ombudsman;
- (f) Article 293 - Accountability;
- (g) Article 294 - Accounts Audit; and
- (h) Article 295 - Annual Report.

#### **19.1 Article 288 : Establishment of Office of Parliamentary Ombudsman**

##### **19.1.1 Recommendations of the Commission**

The Commission recommended the establishment of the Office of Parliamentary Ombudsman who should be appointed by the National Assembly on recommendation by the Parliamentary Service Commission and that the office shall be independent and autonomous in the discharge of its functions.

##### **19.1.2 Provisions of Article 288 of the Mung'omba Draft Constitution**

Article 288 of the Mung'omba Draft Constitution provides as follows:

**“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.”**

**19.1.3 Deliberations of the Conference on Article 288**

19.1.3.1 In debating Article 288 of the Mung'omba Draft Constitution, it was proposed that the title be changed from Parliamentary Ombudsman to Investigator-General because it was easier to pronounce, user-friendly and could be understood by the ordinary person.

19.1.3.2 Some members did not support the proposal to change the title from Parliamentary Ombudsman to Investigator-General. They argued that the title “Parliamentary Ombudsman” was more suitable because it carried the correct meaning. Further, members argued that if the Parliamentary Ombudsman was attached to Parliament, there would be assurance that the Action-Taken Reports would be acted upon by the Government and that the institution would be more effective in protecting the rights of workers.

19.1.3.3 The Conference approved clause (1) of Article 288, with amendment of the title from Parliamentary Ombudsman to Investigator -General.

19.1.3.4 On clause (2), some members did not support the involvement of the President in the appointment of the Investigator-General as it contradicted the principle of the independence of institutions such as the Investigator-General’s office.

19.1.3.5 The Conference approved clause (2) with the replacement of Parliamentary Ombudsman with Investigator-General. Similarly, the Conference approved clause (3) with amendments and renumbered it as Article 251.

**19.1.4 Resolutions of the Conference**

The Conference adopted Article 288 of the Mung'omba Draft Constitution with amendments and renumbered it as Article 251 as follows:

**"251. (1) There is hereby established the office of the *Investigator-General* which shall have offices in all the provinces and progressively in the districts.**

**(2) The *Investigator-General* shall be appointed by the President on the advice of the Judicial Service Commission, subject to ratification by the National Assembly.**

**(3) Parliament shall enact legislation to provide for the functions, powers, procedures, staff, financial resources, financial management and operations of the office of the *Investigator-General*."**

**19.2 Article 289 : Qualification for Appointment and Conditions of Service**

**19.2.1 Recommendations of the Commission**

The Commission did not receive specific submissions from petitioners on this subject.

**19.2.2 Provisions of Article 289 of the Mung'omba Draft Constitution**

Article 289 of the Mung'omba Draft Constitution provides as follows:

**"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."

### **19.2.3 Deliberations of the Conference on Article 289**

19.2.3.1 The Conference approved the proposed qualifications and conditions and amended clauses (1), (2), (3) and (4) in line with the Conference's earlier decision under adopted Article 251.

19.2.3.2 The Conference agreed that the President and not the National Assembly shall appoint a person to act as Investigator-General in the absence of the office holder. This was due to the Conference's earlier decision under clause (2) of Article 251 that the Investigator-General shall be appointed by the President and not the National Assembly, on the recommendation of the Judicial Service Commission. Therefore, the Conference substituted "National Assembly" with the "President" and "Parliamentary Service Commission" with "Judicial Service Commission" in clause (4).

### **19.2.4 Resolution of the Conference**

The Conference adopted Article 289 of the Mung'omba Draft Constitution with amendments and re-numbered it as Article 252 as follows:

**"252. (1) A person shall qualify to be appointed to the office of the Investigator-General 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 Investigator-General including the grounds and procedure for removal from office, shall be the same as apply to a Judge of a superior court.

(3) The Investigator-General shall not hold any other office of profit or emolument.

(4) Where the Investigator-General dies, resigns, is removed from office, is absent from Zambia or is for any other reason unable to perform the functions of office, the *President* shall, on the recommendation of the *Judicial Service Commission*, appoint a person who is qualified to be appointed as Investigator-General to act until the Investigator-General resumes office or another Investigator-General is appointed."

### 19.3 Article 290: Functions of Ombudsman

#### 19.3.1 Recommendations of the Commission

19.3.1.1 The Commission recommended that the office of the Parliamentary Ombudsman should be independent and autonomous and that the discharge of the functions of the office-holder would not be subject to the control of any person or authority. Further, the Ombudsman's functions would include making statements of opinion on matters of administration of public institutions or offices.

#### 19.3.2 Provisions of Article 290 of the Mung'omba Draft Constitution

Article 290 of the Mung'omba Draft Constitution provides as follows:

"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."

### **19.3.3 Deliberations of the Conference on Article 290**

19.3.3.1 The Conference generally supported clause (1) of Article 290. Some members, however, observed that the office of the Investigator-General was established under the current Constitution and that the functions were provided in clause (13) of Article 90 of the current Constitution, which states that:

**"(13) The functions, powers and procedures of the Investigator-General shall be as provided by an Act of Parliament."**

19.3.3.2 The members argued that in order to come up with more detailed functions, Zambia would benefit from the experiences of other countries by comparing the functions of the Investigator-General with those of other countries. They explained that this could further avoid functions of the Investigator-General conflicting with those of other investigative wings such as the Anti-Corruption Commission.

19.3.3.3 In view of that observation, it was proposed that the provisions of clause (13) of Article 90 of the current Constitution be adopted. Following the proposal to adopt clause (13) of Article 90, the Conference further decided that the functions be provided for under an Act of Parliament.

### **19.3.4 Resolution of the Conference**

The Conference resolved that functions of the Investigator-General be provided for under an Act of Parliament.

## **19.4 Article 291: Independence of Ombudsman and**

### **19.4.1 Recommendations of the Commission**

The Commission was of the view that in order to enhance the independence of the Ombudsman, the office should be autonomous and that in the exercise of the powers, functions and duties of the Ombudsman, the office holder should be completely free from interference or direction of any other person or authority.

### **19.4.2 Provisions of Article 291 of the Mung'omba Draft Constitution**

Article 291 of the Mung'omba Draft Constitution provides as follows:

**"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."**

### **19.4.3 Deliberations of the Conference on Article 291**

**19.4.3.1** In debating clause (1), two arguments emerged. Some members argued that there would be a contradiction if the clause was

approved since the Conference had approved the relegation of functions to an Act of Parliament. Other members who did not agree pointed out that there was no contradiction since the term "or any other law" provided in the clause referred to an Act of Parliament. Some members, in supporting the clause, emphasised the need to categorically allow for the independence of the Investigator-General in the performance of his or her functions. The Conference approved clause (1) of Article 291 amended by the substitution of the term *Ombudsman* with *Investigator-General*.

- 19.4.3.2 In debating clause (2), some members argued that the appointment of staff of the office of the Investigator-General by the Public Service Commission (PSC) might compromise the independence of the staff. Other members observed that the appointment of staff had been dealt with earlier in clause (3) of Article 288 which was considered and adopted by the Conference. Therefore, it was suggested that the provision should be deleted as the appointment of staff would be covered in an Act of Parliament. The Conference decided that clause (2) be provided for under an Act of Parliament.
- 19.4.3.3 In debating clause (3), some members supported the provision and suggested that it should be expanded by importing the word "staff" from clause (6). However, other members suggested that clause (3) of Article 288 approved by the Conference earlier, would adequately cover the emoluments for the Investigator-General and should be provided for by an Act of Parliament. The Conference decided that clause (3) be deleted.
- 19.4.3.4 In debating clause (4), some members observed that the clause was misplaced and would be better placed under functions of the Investigator-General. The Conference decided to delete the clause.
- 19.4.3.5 In debating clause (5) the Conference took note that the rationale for the provision, was that the present arrangement for funding the office of the Investigator-General had proved inadequate. Therefore, there was need to include its funding in the Constitution to enable it carry out its functions efficiently. Members, however, observed that clause (3) of Article 288 which was earlier approved by the Conference adequately covered the clause. Consequently, the Conference decided that clause (5) be deleted.
- 19.4.3.6 In debating clause (6), most members were of the view that since the Conference had deleted clause (5), clause (6) also be deleted as

it was redundant and that the clause was already adequately covered under clause (3) of Article 288. Some members, however, did not support the deletion of clause (6). They argued that any office which was established in the Constitution should have a provision made for its funding. The Conference took note that it had approved a similar clause when considering the Auditor-General's office. However, after further debate, the Conference decided to delete clause (6).

#### **19.4.4 Resolution of the Conference**

The Conference, adopted Article 291 of the Mung'omba Draft Constitution with amendments and re-numbered it as Article 253 as follows:

**"253. In the performance of the functions of the Investigator-General, the Investigator-General and the staff of the office of the Investigator-General 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."**

#### **19.5 Article 292: Limitation of Powers of Ombudsman**

##### **19.5.1 Recommendations of the Commission**

19.5.1.1 The Commission was of the view that the office of Parliamentary Ombudsman should be vested with powers to investigate and prosecute cases of abuse of public office and maladministration in public offices. It was the Commission's view that the office would play a leading role in the promotion of the rule of law in the administration of public offices and in the elimination of abuse.

19.5.1.2 The Commission added that in the exercise of the functions of the office, the Parliamentary Ombudsman should have power to summon any person holding public office or private individual to appear before her or him to give evidence or to require such person to disclose any information and should have powers of the High Court in compelling the production of the documents. In addition, that the decisions of the Ombudsman should be acted upon by respective institutions or authorities.

## **19.5.2 Provisions of Article 292 of the Mung'omba Draft Constitution**

Article 292 of the Mung'omba Draft Constitution provides as follows:

- “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 organisation; or**
  - (c) relating to the exercise of the prerogative of mercy.”**

## **19.5.3 Deliberations of the Conference on Article 292**

- 19.5.3.1** In debating this Article, some members proposed that it be deleted from the Constitution and be provided for under an Act of Parliament. However, other members argued that the office of the Investigator-General would be reduced to nothing when it was meant to provide checks and balances. They argued that relegating the powers of the Investigator-General to an Act of Parliament would make the Office ineffective.

## **19.5.4 Resolution of the Conference**

The Conference resolved that Article 292 of the Mung'omba Draft Constitution be deleted from the Constitution and the powers of Investigator- General be provided for under an Act of Parliament.

## **19.6 Article 293: Accountability**

### **19.6.1 Recommendations of the Commission**

The Commission recommended that the Office of the Ombudsman should be answerable to Parliament and submit annual reports to the National Assembly. The Commission also proposed that annual reports should include a record of all complaints lodged and remedies offered to the aggrieved persons, and any special report of cases where a public institution failed to take remedial action.

## **19.6.2 Provisions of Article 293 of the Mung'omba Draft Constitution**

Article 293 of the Mung'omba Draft Constitution provides as follows:

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

## **19.6.3 Deliberations of the Conference on Article 293**

19.6.3.1 Members who supported that position argued that the provisions provided the Investigator-General with authority but without responsibilities. They further argued that since the Article provided for the Investigator-General to report to National Assembly, he or she should be accountable to it.

19.6.3.2 Members who did not support the provisions of this Article argued that:

- (a) since the Investigator-General had replaced Parliamentary Ombudsman, the provision should merely state that "the Investigator-General would be accountable to the President." Under such arrangement, the Investigator-General would submit reports to National Assembly but be accountable to the President;
- (b) there was need to provide for accountability of the Investigator-General to the President because that was the appointing authority;
- (c) the President was the head of the Executive who would invite action to be taken upon receiving a report from the Investigator-General, whereas Parliament had no such power; and
- (d) the President was accountable to all the people of Zambia and as such, it was right for the report of the Investigator-General to be made to the President.

19.6.3.3 Members who supported with variations argued that both the National Assembly and the President had a role to play in the functions performed by the Investigator-General. Therefore, they



were of the view that the reports of the Investigator-General on cases of maladministration should go to the Executive as well as to the National Assembly.

19.6.3.4 Some members argued that the clause be deleted from the Constitution and the functions of the Investigator-General be provided for under an Act of Parliament.

19.6.3.5 Accordingly, the Conference adopted Article 293 with amendments to provide for the Investigator-General to report to the National Assembly and be accountable to the President.

#### **19.6.4 Resolutions of the Conference**

The Conference adopted Article 293 of the Mung'omba Draft Constitution with amendments and renumbered it as Article 254 as follows:

*"254. The Investigator-General shall report to the National Assembly and shall be accountable to the President."*

#### **19.7 Article 294 : Accounts and Audit**

##### **19.7.1 Recommendations of the Commission**

The Commission did not receive specific submissions on this subject.

##### **19.7.2 Provisions of Article 294 of the Mung'omba Draft Constitution**

**"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."**

### **19.7.3 Deliberations of the Conference on Article 294**

The Conference unanimously agreed that provisions under Article 294 were details that should be provided for under an Act of Parliament.

### **19.7.4 Resolution of the Conference**

The Conference resolved that provisions of Article 294 of the Mung'omba Draft Constitution be provided for an Act of Parliament.

## **19.8 Article 295 : Annual Report**

### **19.8.1 Recommendations of the Commission**

The Commission recommended that:

- (a) the office of Parliamentary Ombudsman shall publish an Annual Report of its operational and financial activities and shall submit the same to the National Assembly as well as the President; and
- (b) the Annual reports shall include a record of all complaints and claims lodged and the remedies accorded to the aggrieved persons, as well as any special reports of cases where a public institution had failed to take necessary action to remedy an injustice.

### **19.8.2 Provisions of Article 295 of the Mung'omba Draft Constitution**

Article 295 of the Mung'omba Draft Constitution provides as follows:

**"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."

#### **19.8.3 Deliberations of the Conference on Article 295**

In debating Article 295, the Conference decided that the Article should be deleted from the Constitution and that the Annual Report be provided for under an Act of Parliament.

#### **19.8.4 Resolution of the Conference**

The Conference resolved that Article 295 of the Mung'omba Draft Constitution should be deleted from the Constitution and should be provided for under an Act of Parliament.

## **PART XVI**

### **DEFENCE AND NATIONAL SECURITY**

20.0 In considering this Part, the Conference had the following terms of Reference

- (a) Article 296 Establishment of Defence Processes and Functions;
- (b) Article 297 Establishment of National Security Agencies and Functions;
- (c) Article 298 Establishment of Police and Prisons Commission;
- (d) Article 299 Objectives and Expenses of Defence Forces and National Security Agencies;
- (e) Article 300 on Peace-Keeping Missions;
- (f) Article 301 on Deployment outside Public;
- (g) Article 302 on Prohibition of Certain Activities; and
- (h) Article 303 on Legislation to further regulate Defence Forces and National Security Agencies.

#### **20.1 Article 296 : Establishment of Defence Forces and Functions**

##### **20.1.1 Recommendations of the Commission**

20.1.1.1 The Commission recommended that:

- (a) the Constitution establishes the Defence Forces and National Security Agencies under separate Articles;
- (b) the definition of Defence Forces should include the Zambia National Service; and
- (c) the functions of both the defence forces and national security agencies should be stated separately.

20.1.1.2 The Commission further recommended that the Constitution should establish the Defence Council, the National Intelligence Council and the Police and Prison Service Commission and that their composition, functions and other related matters should be in relevant Acts of Parliament.

## **20.1.2 Provisions of Article 296 of the Mung'omba Draft Constitution**

Article 296 of the Mung'omba Draft Constitution provides as follows:

**“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.”**

## **20.1.3 Deliberations of the Conference on Article 296**

20.1.3.1 In debating Article 296, the Conference observed that Zambia had a singular Defence force and that the spirit of oneness should be maintained. Consequently, the Conference decided to delete reference to Zambia Defence Forces and substituted it with Zambia Defence Force.

20.1.3.2 In further debate some members proposed that the Conference should delete the Articles in the Mung'omba Draft Constitution dealing with Defence Forces and substitute them with the

provisions in the Articles in the current Constitution dealing with Defence Force.

- 20.1.3.3 The Conference further decided that the Articles to be adopted from the current Constitution establishing the Zambia Defence Force should include Articles 100 to 108 on defence and national security and that the Articles in the Mung'omba Draft Constitution which provided for both the Defence Force and National Security Agencies should be revised in order to separate the respective provisions.

#### **20.1.4 Resolution of the Conference**

The Conference deleted Articles 296, 298, 300 and 301 of the Mung'omba Draft Constitution and substituted them with Articles 100 to 108 of the current Constitution with amendments and renumbered them as Articles 255, 256, 257, 258, 259, 260, 261, 262, and 263 as follows:

##### *The Zambia Defence Force*

**255 (1) There shall be an armed force to be known as the Zambia Defence Force.**

**(2) The Zambia Defence Force shall be non-partisan, national in character, patriotic, professional, disciplined, productive and subordinate to the civilian authorities as established under this Constitution.**

**(3) Members of the Zambia Defence Force shall be citizens of Zambia who do not have dual citizenship and are of good character.**

**(4) A person shall not raise an armed force except in accordance with this Constitution.**

##### *Functions of Defence Force*

**256 The functions of the Zambia Defence Force shall be to-**

- (a) preserve and defend the sovereignty and territorial integrity of Zambia;**
- (b) co-operate with the civilian authorities in emergency situations and in case of natural disasters;**

- (c) foster harmony and understanding between the Zambia Defence Force and civilians; and
- (d) engage in productive activities for the development of Zambia.

*Legislation on Defence Force*

257. Parliament shall enact legislation to regulate the Zambia Defence Force and to provide for:

- (a) the organs and structures of the Zambia Defence Force;
- (b) the recruitment of persons into the Zambia Defence Force from every district of Zambia;
- (c) the terms and conditions of service of members of the Zambia Defence Force; and
- (d) the deployment of troops outside of Zambia.

*Zambia Police Service*

258. (1) There shall be a police service to be known as the Zambia Police Service and such other police services as Parliament may by law prescribe.

(2) Subject to the other provisions of this Constitution, every police service in Zambia shall be organized and administered in such a manner and shall have such functions as Parliament may, by law, prescribe.

(3) The Zambia Police Service shall be nationalistic, patriotic, non-citizen, professional, disciplined, competent and productive, and its members shall be citizens of Zambia who do not have dual citizenship and are of good character.

*Functions of Zambia Police Service*

259. The Functions of the Zambia Police Service shall include the following:

- (a) to protect life and property;
- (b) to preserve law and order;
- (c) to detect and prevent crime;
- (d) to co-operate with the civilian authorities and other security organs established under this Constitution and with the population generally.

*Legislation on Zambia Police Service*

**260. Parliament shall enact legislation to regulate the Zambia Police Service and to provide for –**

- (a) the organs and structures of the Zambia Police Service;
- (b) the recruitment of persons into the Zambia Police Service from every district of Zambia;
- (c) the terms and conditions of service of members of the Zambia Police Service; and
- (d) the regulation generally of the Zambia Police Service.

*Prisons Service*

**261. (1) There shall be the Zambia Prisons Service.**

**(2) Members of the Zambia Prisons Service shall be citizens of Zambia who do not have dual citizenship and are of good character.**

*Legislation on Zambia Prisons Service*

**262. Parliament shall enact legislation to regulate the Zambia Prisons Service and to provide for –**

- (a) the functions, organs and structures of the Zambia Prisons Service;
- (b) the recruitment of persons to the Zambia Prisons Service from every district of Zambia;
- (c) the terms and conditions of service of members of the Zambia Prisons Service; and
- (d) the regulation generally of the Zambia Prisons Service.

**20.2 Article 297 : Establishment of National Security Agencies and Functions**

**20.2.1 Recommendations of the Commission**

The Commission's recommendations were as presented in Article 296 above.

**20.3.2 Provisions of Article 297 of the Mung'omba Draft Constitution**



Article 297 of the Mung'omba Draft Constitution provides as follows:

**"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.**

### **20.2.3 Deliberations of the Conference on Article 297**

In debating Article 297, the Conference decided that the Article be deleted and be substituted with Article 108 of the current Constitution which provides as follows:

#### ***Zambia Security Intelligence Service***

**"108. (1) There shall be a Zambia Security Intelligence Service.**

(2) Parliament shall make laws regulating the Zambia Security Intelligence Service, and in particular, providing for-

- (a) the organs and structures of the Zambia Security Intelligence Service;
- (b) the recruitment of persons into the Zambia Security Intelligence Service from every district of Zambia;
- (c) the terms and conditions of service of members of the Zambia Security Intelligence Service; and
- (d) the regulation generally of the Zambia Security Intelligence Service."

#### **20.2.4 Resolution of the Conference**

The Conference deleted Article 297 of the Mung'omba Draft Constitution and substituted it with Article 108 of the current Constitution with amendments and renumbered it as 264 as follows:

**"264. (1) There shall be a Zambia Security Intelligence Service.**

**(2) Members of the Zambia Intelligence Service shall be citizens of Zambia who do not have dual citizenship and are of good character.**

**(3) Parliament shall enact legislation to regulate the Zambia Security Intelligence Service and to provide for -**

- (a) the functions, organs and structures of the Zambia Security Intelligence Service;**
- (b) the recruitment of persons into the Zambia Security Intelligence Service from every district of Zambia;**
- (c) the terms and conditions of service of members of the Zambia Security Intelligence Service; and**
- (d) the regulation generally of the Zambia Security Intelligence Service."**

**20.3 Article 298 : Establishment of Police and Prisons Service Commission**

**20.3.1 Recommendations of the Commission**

The Commission was of the view that the Police and Prisons Commission should be empowered to recruit and appoint staff and also to review terms and conditions of service of the personnel in the Police and Prisons Service. The Commission's recommendations were as contained in Article 296 above.

**20.3.2 Provisions of Article 298 of the Mung'omba Draft Constitution.**

Article 298 of the Mung'omba Draft Constitution provides as follows -

**"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."**

**20.3.3 Deliberations of the Conference on Article 298**

In considering Article 298, the Conference decided to delete the Article and substituted it with Article 107 of the current Constitution. Article 107 provides as follows:

**"107. Parliament shall make laws regulating the Zambia Prison Service, and in particular, providing for-**

- (a) the organs and structures of the Zambia Prison Service;**
- (b) the recruitment of persons to the Zambia Prison Service from every district of Zambia;**

- (c) the terms and conditions of service of members of the Zambia Prison Service; and
- (d) the regulation generally of the Zambia Prison Service."

#### **20.3.4 Resolutions of the Conference**

The Conference deleted Article 298 of the Mung'omba Draft Constitution and substituted it with Article 107 of the current Constitution with amendments and renumbered it as Article 263 as follows -

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

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

#### **20.4 Article 299 : Objectives and Expenses of Defence Forces and National Security Agencies-**

##### **20.4.1 Recommendations of the Commission**

The Commission recommended that the constitution should provide that the National Assembly shall debate and scrutinise the defence budget and expenditure, but will do so in camera.

##### **20.4.2 Provisions of Article 299 of the Mung'omba Draft Constitution**

Article 299 of the Mung'omba Draft Constitution provides as follows:

**"299. (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 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
- (b) 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.

#### **20.4.3 Deliberations of the Conference on Article 299**

In debating Article 299 of the Mung'omba Draft Constitution the Conference decided to delete this Article in view of the decision taken when debating Article 297 that the Defence Force and National Security Agencies should be provided for as they were in the current Constitution under Articles 100 to 108.

#### **20.4.4 Resolution of the Conference**

The Conference decided to delete Article 299 of the Mung'omba Draft Constitution and provided for objectives and expenses of the

defence force and national security agencies under Articles 256 to 263

## **20.5 Article 300 : Peace Keeping Missions**

### **20.5.1 Recommendations of the Commission**

20.5.1.1 The Commission observed that the President had power under Section 6 of the Defence Act, to deploy the whole or any part of the Defence force out of the country. Although Zambia had an international obligation to participate in peace keeping missions, the Commission was of the view that decision to deploy troops outside the country should take into account the needs and capacity of the country. The Commission acknowledged the proposal for Parliamentary approval prior to deployment of troops outside the country and noted the submission for participation by Zambia National Service in peace keeping missions. However, the Commission was of the view that the latter should be dealt with by the Defence Command.

### **20.5.2 Provisions of Article 300 of the Mung'omba Draft Constitution**

Article 300 of the Mung'omba Draft Constitution provides as follows:

**"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."**

### **20.5.3 Deliberations of the Conference on Article 300**

In debating Article 300 of the Mung'omba Draft Constitution, the Conference decided that it should be deleted and that peace keeping missions be provided for under Article 257 dealing with legislation on Defence Force.

### **20.5.4 Resolution of the Conference**

The Conference decided to delete Article 300 of the Mung'omba Draft Constitution on peace keeping mission and that it be

provided for under Article 257 dealing with legislation on Defence Force.

## **20.6 Article 301 : Deployment Outside Republic**

### **20.6.1 Recommendations of the Commission**

20.6.1.1 The Commission observed that the President had power, under Section 6 of the Defence Act, to deploy the whole or any part of the Defence Force out of the country. Whilst acknowledging that Zambia had an international obligation to participate in peace keeping missions, the Commission was of the view that any decision to deploy troops should take into account the needs and capacity of the country. Further, the Commission was of the view that prior approval of the National Assembly should be sought before deployment of troops on peace keeping missions.

### **20.6.2 Provisions of Article 301 of the Mung'omba Draft Constitution**

Article 301 of the Mung'omba Draft Constitution provides as follows:

**“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.”**

### **20.6.3 Deliberations of the Conference on Article 301**

In debating Article 301 of the Mung'omba Draft Constitution, the Conference decided that deployment outside the Republic be provided for under Article 257.

### **20.6.4 Resolution of the Conference**

The Conference decided to delete Article 301 of the Mung'omba Draft Constitution and provided for the deployment of troops outside the Republic under Article 257.

## **20.7 Article 302 : Prohibition of Certain Activities**

### **20.7.1 Recommendations of the Commission**

There was no submission received by the Commission on raising or establishing an armed force by individuals.

### **20.7.2 Provisions of Article 302 of the Mung'omba Draft Constitution**

Article 302 provides as follows:

- "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."**



### **20.7.3 Deliberations of the Conference on Article 302**

The Conference decided to delete Article 302 and substituted it with clause (4) of Article 100 of the current Constitution which was re-numbered as Article 255.

### **20.7.4 Resolution of the Conference**

The Conference decided to delete Article 302 of the Mung'omba Draft Constitution and provided for Prohibition to raise an Armed force under clause (4) of Article 255, as reflected above.

## **20.8 Article 303 : Legislation to Further Regulate Defence Forces and National Security Agencies**

### **20.8.1 Recommendations of the Commission**

20.8.1.1 In providing for legislation for the effective operation of the Defence Force and national security agencies, the Commission was cognisant that the current Constitution provides for defence and security under Part VII (Articles 100 to 108) and that the following statutes regulated the defence and security wings:

- (a) the Defence Act, Cap.106;
- (b) the Zambia Police Act, Cap. 107;
- (c) the Zambia Security Intelligence Services Act, Cap. 109; and
- (d) the Prisons Act, Cap. 97.

### **20.8.2 Provisions of Article 303 of the Mung'omba Draft Constitution**

Article 303 of the Mung'omba Draft Constitution provides as follows:

**“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;
- (g) such other functions as may be necessary for the effective operation of the Defence Forces and national security agencies;
- (h) other Defence Forces and national security agencies; and
- (i) the regulation of private security organisations."

### **20.8.3 Deliberations of the Conference on Article 303**

In debating Article 303 of the Mung'omba Draft Constitution, the Conference decided to delete the Article and provided for legislation on defence and national security agencies under Articles 257 and 264.

### **20.8.4 Resolution of the Conference**

The Conference decided to delete Article 303 of the Mung'omba Draft Constitution of the Mung'omba Draft Constitution and provided for it under Articles 257 and 264.

## **PART XVII**

### **PROVISIONS ON PUBLIC FINANCE AND BUDGET IN THE MUNG'OMBA DRAFT CONSTITUTION**

21.0 In considering this part, the Conference had the following Terms of Reference-

- (a) Article 304 - Imposition of tax;
- (b) Article 305 - Consolidated Fund;
- (c) Article 306 - Withdrawal from Consolidated Fund;
- (d) Article 307 - Expenditure in advance of appropriation;
- (e) Article 308 - Compensation Fund;
- (f) Article 309 - Annual financial estimates;
- (g) Article 310 - Budget Act;
- (h) Article 311- Appropriation Bill and Supplementary Appropriation Bill;
- (i) Article 312 - Borrowing by Government;
- (j) Article 313 - Public debt;
- (k) Article 314 - Financial report of Government;
- (l) Article 315 - Disposal of State assets;
- (m) Article 316 - State Audit Commission;
- (n) Article 317 - Auditor-General;
- (o) Article 318 - Independence of Auditor-General;
- (p) Article 319 - Funding of Auditor-General;
- (q) Article 320 - Functions of Auditor-General;
- (r) Article 321 - Reference by Auditor-General;
- (s) Article 322 - National Fiscal and Emoluments Commission;
- (t) Article 323 - Central Bank;
- (u) Article 324 - Independence of Central Bank;
- (v) Article 325 - Governor of Central Bank; and
- (w) Article 326 - Legislation on Central Bank.

## **21.1 Article 304: Imposition of Tax**

### **21.1.1 Recommendations of the Commission**

On the imposition of tax, the Commission recommended that:

- (a) the Government should broaden the tax base by levying all eligible adults and all viable income-generating projects in the country;
- (b) the Government should put in place a policy and legislation for sub-contracting institutions for the purpose of collection of tax;
- (c) the Government should embark on tax education; and
- (d) the various forms of taxes should be rationalized and explained to the citizens.

### **21.1.2 Provisions of Article 304 of the Mung'omba Draft Constitution**

Article 304 of the Mung'omba Draft Constitution provides as follows:

**“304. (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 or authority shall make a report to the National Assembly on the exercise of those powers as provided by or under an Act of Parliament.”**

### **21.1.3 Deliberations of the Conference on Article 304**

21.1.3.1 In debating Article 304 of the Mung'omba Draft Constitution, some members supported strong Parliamentary oversight which would not allow discretion in waiving or varying any tax imposed by Parliament which clause (2) provided for.

21.1.3.2 Other members advocated for the exercise of discretion in cases that required administrative flexibility.

21.1.3.3 Most members, however, observed that the role of the President in matters of taxation was important but that Article 304 did not provide for it. They, therefore, proposed that the entire Article 304 in the Draft Constitution should be replaced with Article 114 of the current Constitution which provides as follows:

**“114. (1) Subject to the provisions of this Article, taxation shall not be imposed or altered except by or under an Act of Parliament.**

**(2) Except as provided by clauses (3) and (4), Parliament shall not confer upon any other person or authority power to impose or to alter, otherwise than by reduction, any taxation.**

**(3) Parliament may make provision under which the President or the Vice-President or a Minister may by order provide that, on or after the publication of a Bill being a Bill approved by the President that it is proposed to introduce into the National Assembly and providing for the imposition or alteration of taxation, such provisions of the Bill as may be specified in the order shall, have the force of law for such period and subject to such conditions as may be prescribed by Parliament:**

**Provided that any such order shall, unless sooner revoked, cease to have effect-**

- (i) if the Bill to which it relates is not passed within such period from the date of its first reading in the National Assembly as may be prescribed by Parliament;**
- (ii) if, after the introduction of the Bill to which it relates, Parliament is prorogued or the National Assembly is dissolved;**
- (iii) if, after the passage of the Bill to which it relates, the President refuses his assent thereto; or**
- (iv) at the expiration of a period of four months from the date on which it came into operation or such longer period from that date as may be specified in any resolution passed by the National Assembly after the Bill to which it relates has been introduced.**

(4) Parliament may confer upon any authority established by law for the purposes of local government power to impose taxation within the area for which that authority is established and to alter taxation so imposed.

(5) Where the Appropriation Act in respect of a financial year has not come into force at the expiration of six months from the commencement of that financial year, the operation of any law relating to the collection or recovery of any tax upon any income or profits or any duty or customs or excise shall be suspended until that Act comes into force:

Provided that-

- (i) in any financial year in which the National Assembly stands dissolved at the commencement of that year, the period of six months shall begin from the day upon which the National Assembly first sits following that dissolution instead of from the commencement of the financial year; and
- (ii) the provisions of this clause shall not apply in any financial year in which the National Assembly is dissolved after the laying of estimates in accordance with Article 115 and before the Appropriation by Parliament."

21.1.3.4 In the debate that followed, two positions emerged. Some members supported the provision in the Draft Constitution while others supported the adoption of Article 114 of the current Constitution.

21.1.3.5 Members who supported the adoption of Article 114 of the current Constitution argued that:

- (a) the provision in Article 304 of the Draft Constitution was incorporated in Article 114 of the current Constitution. In addition, Article 114 of the current Constitution provided for some fundamental issues such as the imposition of tax

before the enactment of the tax bill, taxation during the period when Parliament was dissolved, the limitation of powers of the Minister responsible for finance in matters of taxation and the definition of powers of the National Assembly in such matters;

- (b) provisions of the current Constitution which had worked well should not be discarded but should be retained;
- (c) the proposal in clause (2) of Article 304 of the Draft Constitution conferred powers on anybody and as such gave room to any group of people to collude to evade the imposition of tax;
- (d) Article 114 of the current Constitution gave power to the people while the provisions in the Draft Constitution took that power away;
- (e) the provisions under Article 114 of the current Constitution were in conformity with the concept of decentralisation which aimed at empowering the people through their respective local authorities and institutions; they further argued that the benefits of tax had not adequately trickled down to the people since independence and therefore, there was need to redress that problem;
- (f) there was need for the Constitution especially on matters relating to tax issues to provide adequate detail and underscore clarity; and
- (g) the provisions in Article 304 of the Draft Constitution were too brief and did not provide for the protection of the people whose interests might not be taken care of by legislators when enacting legislation. They argued that this concern was heightened by the fact that in Zambia, it was not only difficult to initiate a successful private member's motion or Bill in the National Assembly, but that it was actually prohibited under the Constitution for a private Member of Parliament to raise a money bill or motion as provided for in both Article 81 of the current Constitution and Article 72 of the Draft Constitution.

21.1.3.6 Members who supported the adoption of Article 304 as provided for in the Draft Constitution argued that:

- (a) the two clauses in Article 304 of the Draft Constitution should be retained as they were a summarised form of the provisions in Article 114 of the current Constitution. While they were acceptable, the details in Article 114 of the current Constitution were best provided for under an Act of Parliament, as they were amenable to frequent changes over time. Therefore, only major principles of taxation should be retained in the Constitution;
- (b) the recommendation in the Draft Constitution could work against the interests of the people but provided room for flexibility to take into account and provide for unforeseeable future contingencies. The provisions also gave power to the people's elected representatives to initiate changes to legislation when necessary; and
- (c) the argument that Article 304 of the Mung'omba Draft Constitution gave all powers to Parliament at the expense of the people could not be sustained because that role of Parliament was similarly provided for under Article 114 of the current Constitution.

#### **21.1.4 Resolutions of the Conference**

21.1.4.1 The Conference resolved to delete Article 304 of the Mung'omba Draft Constitution and adopt Article 114 of the current Constitution in its place.

21.1.4.2 The new Article 304 adopted by the Conference and renumbered as Article 265 provides as follows:

**"265 (1) Subject to the provisions of this Article, taxation shall not be imposed or altered except by or under an Act of Parliament.**

**(2) Except as provided by clauses (3) and (4), Parliament shall not confer upon any other person or authority power to impose or to alter, otherwise than by reduction, any taxation.**



(3) Parliament may make provision under which the President or the Vice-President or a Minister may by order provide that, on or after the publication of a Bill being a Bill approved by the President that it is proposed to introduce into the National Assembly and providing for the imposition or alteration of taxation, such provisions of the Bill as may be specified in the order shall, have the force of law for such period and subject to such conditions as may be prescribed by Parliament:

Provided that any such order shall, unless sooner revoked, cease to have effect -

- (a) if the Bill to which it relates is not passed within such period from the date of its first reading in the National Assembly as may be prescribed by Parliament;
- (b) if, after the introduction of the Bill to which it relates, Parliament is prorogued or the National Assembly is dissolved;
- (c) if, after the passage of the Bill to which it relates, the President refuses to assent to it; or
- (d) at the expiration of a period of three months from the date on which it came into operation or such longer period from that date as may be specified in any resolution passed by the National Assembly after the Bill to which it relates has been introduced.

(4) Parliament may confer upon any authority established by law for the purposes of local government power to impose taxation within the area for which that authority is established and to alter taxation so imposed.

(5) Where the Appropriation Act in respect of a financial year has not come into force at the expiration of six months from the commencement of that financial year, the operation of any law relating to the collection or recovery of any tax upon any income or profits or any duty or customs or excise shall be suspended until that Act comes into force:

Provided that -

- (a) in any financial year in which the National Assembly stands dissolved at the commencement of that year, the period of six months shall begin from the day upon which the National Assembly first sits following that dissolution instead of from the commencement of the financial year; and
- (b) the provisions of this clause shall not apply in any financial year in which the National Assembly is dissolved after the laying of estimates in accordance with Article 269 and before the Appropriation by Parliament."

## **21.2 Article 305: Consolidated Fund**

### **21.2.1 Recommendations of the Commission**

The Commission recommended as follows:

- (a) the functions of the Ministry responsible for finance should be restricted to managing the National Treasury and the functions of National Planning should be the responsibility of another Government ministry or institution;
- (b) the Constitution should establish for the Republic a Consolidated Fund, out of which all public finances, including loans, should be deposited and disbursed in accordance with the law; and
- (c) public institutions should incorporate in their strategic plans ways and means of identifying and tackling problems related to economic sabotage, theft of public resources and abuse of office.

### **21.2.2 Provisions of Article 305 of the Mung'omba Draft Constitution**

Article 305 of the Mung'omba Draft Constitution provides as follows:

**"305 (1) There shall be established a fund to be known as the Consolidated Fund of 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, under this Constitution or an Act of Parliament, be retained by the State organ or State institution that receives it for the purpose of defraying the expenses of that State organ or State institution”.

### **21.2.3 Deliberations of the Conference on Article 305**

21.2.3.1 Some members proposed that the account be renamed as the National Treasury Account to remove the word "fund" which could easily be misconstrued by the public because there were many institutions which were called “fund”. The Conference accepted the proposal.

21.2.3.2 Members observed that while all moneys raised or received for the Republic could easily be deposited in the National Treasury Account, it was not possible to deposit receipts such as Aid-in-kind. It was, however, necessary to account for such receipts and to appropriate all gifts-in-kind received by the Central Government, its institutions and local authorities. Therefore, the Constitution should provide for accounting for donations, gifts and aid-in-kind.

21.2.3.3 Accordingly, the Conference resolved to introduce and adopt a new Article in Part XVII to provide for memoranda and mechanism for accounting for and appropriating gifts and all Aid-in-kind. Article 272 adopted by the Conference for the purpose provides as follows:

**“272 The Minister responsible for finance shall cause to be valued all donations, gifts and aid-in-kind received in any financial year on behalf of the Republic, from any source within or outside the Republic, and shall include that value in the financial report prepared and laid before the**

**National Assembly for that financial year under Article 277."**

21.2.3.3 Some members wished to know the criteria that would be used to distinguish between personal and gifts to the State. It was explained that the Article sought to distinguish gifts given to the Republic from those given to the President in a personal capacity. It was observed that gifts given to the State were required to be accounted for by the Executive.

21.2.3.4 Some members proposed that the gifts be defined by placing value on them. Most members were satisfied with the provision as the gifts were often clearly indicated to be for the Republic of Zambia or the President as a person.

21.2.3.4 The Conference adopted Article 311 as proposed.

**21.2.4 Resolutions of the Conference**

21.2.4.1 The Conference resolved to:

- (a) adopt Article 305 of the Mung'omba Draft Constitution with amendments by substitution of the words "*Consolidated Fund*" with the words "*National Treasury Account and re-numbered it as Article 266*"; and
- (b) introduce and adopt a new Article 273 to provide for accounting for grants, gifts, aid-in-kind and donations to the Republic.

21.2.4.2 The Conference adopted the Article 305 with amendments and renumbered it as Article 266 as follows:

**"266 (1) There shall be a *National Treasury Account* for the Republic which shall be held at the Central Bank.**

**(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 *National Treasury Account*.**

**(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 account operated for a specific purpose; or
- (b) that may, under this Constitution or an Act of Parliament, be retained by the State organ or State institution that receives it for the purpose of defraying the expenses of that State organ or State institution."

21.2.4.3 The new Article 272 adopted by the Conference accounts for donations, gifts and aid-in-kind. Article 272 provides as follows:

**"272 The Minister responsible for finance shall cause to be valued all donations, gifts and aid-in-kind received in any financial year on behalf of the Republic, from any source within or outside the Republic, and shall include that value in the financial report prepared and laid before the National Assembly for that financial year under Article 276."**

## **21.3 Article 306: Withdrawal from the Consolidated Fund**

### **21.3.1 Recommendations of the Commission**

21.3.1.1 In an attempt to re-assert the authority of the National Assembly over expenditure by government, the Commission recommended that the Constitution should provide that:

- (a) Parliament should give prior approval to any expenditure that might exceed the budget;
- (b) decisions made by the National Assembly on public expenditure should be enforced by relevant authorities; and
- (c) where estimates related to a year succeeding an election year, the President could authorise expenditure before the coming into effect of the applicable Appropriation Act for up to 90 days after the commencement of the financial year, subject to ratification by the National Assembly.

### **21.3.2 Provisions of Article 306 of the Mung'omba Draft Constitution**

Article 306 the Mung'omba Draft Constitution provides as follows:

**“306. (1) Subject to Article 307, moneys shall not be withdrawn from the Consolidated Fund except –**

**(a) to meet expenditure charged on the Consolidated Fund by this Constitution or by an Act of Parliament; or**

**(b) where the issuance of those moneys have been authorized by an Appropriation Act or a Supplementary Appropriation Act.**

**(2) Moneys shall not be withdrawn from any other public fund of the Republic unless withdrawal has been authorized by an Act of Parliament.**

**(3) Moneys shall not be withdrawn from the Consolidated Fund unless the withdrawal has been approved in the manner provided by an Act of Parliament.”**

### **21.3.3 Deliberations of the Conference on Article 306**

21.3.3.1 The members acknowledged and appreciated the role of the President in authorising, by warrant, all appropriations after approval by the National Assembly. It was observed that that had been overlooked. The members observed that Article 306 was too abridged and failed to provide for the apportionment of responsibilities between the President and the National Assembly and to provide for the different circumstances in which these responsibilities could be exercised.

21.3.3.2 The Conference, therefore, resolved to delete Article 306 of the Draft Constitution and adopt, with amendments, Article 115 of the current Constitution and clause 2 of Article 307 of the Draft Constitution.

21.3.3.3 Article 115 of the current Constitution provides for the withdrawal of moneys from the general revenues as follows:

**“115 (1) Moneys shall not be expended from the general revenues of the Republic unless-**

**(a) the expenditure is authorised by a warrant under the hand of the President;**

- (b) the expenditure is charged by this Constitution or any other law on the general revenues of the Republic; or
- (c) the expenditure is of moneys received by a department of government and is made under the provisions of any law which authorises that department to retain and expend those moneys for defraying the expenses of the department.

(2) A warrant shall not be issued by the President authorising expenditure from the general revenues of the Republic unless-

- (a) the expenditure is authorised by an Appropriation Act;
- (b) the expenditure is necessary to carry on the services of the Government in respect of any period, not exceeding four months, beginning at the commencement of a financial year during which the Appropriation Act for that financial year is not in force;
- (c) the expenditure has been proposed in a supplementary estimate approved by the National Assembly;
- (d) provision does not exist for the expenditure and the President considers that there is such an urgent need to incur the expenditure that it would not be in the public interest to delay the authorisation of the expenditure until such time as a supplementary estimate can be laid before and approved by the National Assembly; or
- (e) the expenditure is incurred on capital projects continuing from the previous financial year and is so incurred before commencement of the Appropriation Act for the current financial year.

(3) The President shall, immediately after he signs any warrant authorising expenditure from the

general revenues of the Republic, cause a copy of the warrant to be transmitted to the Auditor-General.

(4) The issue of warrants under paragraph (d) of clause (2), the investment of moneys forming part of the general revenues of the Republic and the making of advances from such revenues shall be subject to such limitations and conditions as Parliament may prescribe.

(5) For the purposes of this Article the investment of moneys forming part of the general revenues of the Republic or the making of recoverable advances therefrom shall not be regarded as expenditure, and the expression "investment of moneys" means investment in readily marketable securities and deposits with a financial institution approved by the Minister responsible for finance."

21.3.3.4 Clause (2) of Article 307 of the Draft Constitution provides as follows:

**"(2) Moneys withdrawn in any financial year from the Consolidated Fund under clause (1) in respect of any service for the Republic -**

**(a) shall not exceed the amount shown as required in respect of that service in the vote approved by the National Assembly for that financial year; and**

**(b) shall be set off against the amount provided in respect of that service in the Appropriation Act for that financial year when that Act comes into force."**

21.3.3.4 In debating paragraph (d) of clause (2) of Article 115 of the current Constitution, which provides for expenditure of money on urgent needs by way of a Presidential warrant, some members who did not support the provision argued that-



- (a) the provision gave a lee-way to the President to incur some unauthorised expenditure which, if there was a truant President, would facilitate abuse of government resources by such a President; and
- (b) it would be preferable to provide the President with a contingency vote which could be utilized in such a situation rather than making a provision such as Article 115 (2) (d).

21.3.3.5 Most members, however, were in support of the provision and submitted that-

- (a) there were situations where funds were needed urgently for national programmes. In such instances the President could not be expected to await Parliamentary approval;
- (b) the clause was non-contentious and that expenditure would be subjected to checks and balances;
- (c) most countries had such a provision and the focus should be on the office rather than on the individual. In order to prevent abuse, election of credible leaders was paramount; and
- (d) the President would only authorise expenditure on emergencies and would not be involved in the actual incurring of expenditure.

21.3.3.6 In debating clause 4 of Article 115 of the current Constitution, some members expressed concern that a copy of the Presidential warrant was not simultaneously sent to the Auditor-General and the Parliamentary committee on estimates.

21.3.3.7 In debating paragraph (a) of clause (2) of Article 307 of the Mung'omba Draft Constitution, it was resolved that during the three months period when the National Budget was being considered for approval by Parliament, twenty-five per cent (25%) of the budget allocation would be authorised to be spent, and only the remaining seventy-five per cent (75%) of the total allocation approved by Parliament was to be spent after appropriation. Therefore, the provision was accordingly amended and renumbered as clause (3) of Article 306.

21.3.3.8 The Conference adopted clauses (4) and (5) of Article 115 of the current Constitution without amendments.

## **21.3.8 Resolutions of the Conference**

21.3.8.1 The Conference resolved to-

- (a) delete Article 306 of the Draft Constitution and adopted in its place, Article 115 of the current Constitution and clause (2) of Article 307 of the Draft Constitution;
- (b) renumber Article 306 as Article 267 and clause (2) of Article 307 as clause (3) of the new Article 267; and
- (c) substitute the words “Consolidated Fund” with the words “National Treasury Account”.

21.3.8.2 Accordingly, the Conference adopted Article 267 as follows:

*“267 (1) Moneys shall not be expended from the general revenues in the National Treasury Account of the Republic unless -*

- (a) the expenditure is authorised by a warrant under the hand of the President;*
- (b) the expenditure is charged by this Constitution or any other law on the general revenues of the Republic; or*
- (c) the expenditure is of moneys received by a department of Government and is made under the provisions of any law which authorises that department to retain and expend those moneys for defraying the expenses of the department.*

*(2) A warrant shall not be issued by the President authorising expenditure from the general revenues of the Republic unless-*

- (a) the expenditure is authorised by an Appropriation Act or a Supplementary Appropriation Act;*
- (b) the expenditure is necessary to carry on the services of the Government in respect of any period, not exceeding three months, beginning at the commencement of a financial year during which the Appropriation Act for that financial year is not in force;*
- (c) the expenditure has been proposed in a supplementary estimate approved by the*

*National Assembly and is authorized in a Supplementary Appropriation Act;*

- (d) provision does not exist for the expenditure and the President considers that there is such an urgent need to incur the expenditure that it would not be in the public interest to delay the authorisation of the expenditure until such time as a supplementary estimate can be laid before and approved by the National Assembly; or*
- (e) the expenditure is incurred on capital projects continuing from the previous financial year and is so incurred before the commencement of the Appropriation Act for the current financial year.*

*(3) Moneys withdrawn in any financial year from the National Treasury Account under paragraph (b) of clause (2) in respect of any service of the Republic:*

- (a) shall not exceed twenty-five per centum of the amount shown as required in respect of that service in the budget estimates for that financial year; and*
- (b) shall be set off against the amount provided in respect of that service in the Appropriation Act for that financial year when that Act comes into force.*

*(4) The President shall, immediately after signing any warrant authorising expenditure from the general revenues of the Republic, cause a copy of the warrant to be transmitted to the Auditor-General.*

*(5) The issue of warrants under paragraph (d) of clause (2), the investment of moneys forming part of the general revenues of the Republic and the making of advances from such revenues shall be subject to such limitations and conditions as Parliament may prescribe.*

*(6) For purposes of this Article, the investment of moneys forming part of the general revenues of the Republic or the making of recoverable advances there from shall not be regarded as expenditure, and the expression "investment of moneys" means investment in readily marketable*

*securities and deposits with a financial institution approved by the Minister responsible for finance."*

**21.4 Article 307 : Expenditure In Advance Of Appropriation**

**21.4.1 Recommendations of the Commission**

21.4.1.1 On public expenditure control, the Commission recommended that the Constitution should provide that:

- (a) the release of approved budgetary allocations by the Treasury be timely;
- (b) expenditure in excess of or outside the annual budget be prohibited and the Constitution should provide that Parliament must give prior approval to any expenditure that might exceed the budget. Where the estimates related to a year succeeding an election year, the President could authorise expenditure before the coming into effect of the applicable Appropriation Act for up to 90 days after the commencement of the financial year, subject to ratification by the National Assembly at its first sitting thereafter; and
- (c) decision made by the National Assembly on public expenditure should be enforced by relevant authorities.

**21.4.2 Provisions of Article 307 of the Mung'omba Draft Constitution**

Article 307 of the Mung'omba Draft Constitution provides as follows:

**"307. (1) Where, in any financial year, the President is satisfied that the Appropriation Act in respect of that financial year will not come into operation by the beginning of that year, the President may authorize the withdrawal of moneys from the Consolidated Fund to meet expenditure necessary to carry on the services of the Government until the expiry of four months from the beginning of that financial year or the coming into force of the Appropriation Act, whichever is the earlier.**

**(2) Moneys withdrawn in any financial year from the Consolidated Fund under clause (1) in respect of any service of the Republic -**

- (a) shall not exceed the amount shown as required in respect of that service in the vote approved by the National Assembly for that financial year; and
- (b) shall be set off against the amount provided in respect of that service in the Appropriation Act for that financial year when that Act comes into force."

### **21.4.3 Deliberations of the Conference on Article 307**

- 21.4.3.1 Members observed that the provision of clause (1) was substantially provided for in the new Article 266 adopted by the Conference, and, therefore, it should be deleted.
- 21.4.3.2 On the question of limiting the expenditure that could be incurred in advance of appropriation as provided for in clause (2), members held divergent views. Some members supported greater flexibility for the Executive and did not wish to impose any ceiling whereas those who favoured stronger Parliamentary oversight sought to impose an explicit ceiling.
- 21.4.3.3 The members who supported the imposition of a specific ceiling proposed that the expenditure in advance of appropriation for a period of not more than four months should be set at a maximum of twenty-five per cent (25%) of the budget estimates for that financial year.
- 21.4.3.4 The Conference decided that -
  - (a) expenditure in advance of appropriation should not be more than twenty-five per cent (25%) of the budget estimates for that financial year;
  - (b) clause (2) of Article 307 of the Mung'omba Draft Constitution should be fused into the new Article 266 with amendments by substituting the words "clause (1)" with the words "Article 266"; and
  - (c) renumbered clause (2) of Article 307 as clause (3) of Article 266.

#### **21.4.4 Resolutions of the Conference**

The Conference resolved to delete Article 307. In deleting Article 307, the Conference moved its clause (2) with amendments to the new Article 266 and renumbered it as clause (3). The new Article 266 provides as follows:

**“266 (1) There shall be a *National Treasury Account* for the Republic which shall be held at the Central Bank.**

**(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 *National Treasury Account*.**

**(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 account operated for a specific purpose; or**

**(b) that may, under this Constitution or an Act of Parliament, be retained by the State organ or State institution that receives it for the purpose of defraying the expenses of that State organ or State institution.”**

#### **21.5 Article 308 : Compensation Fund**

##### **21.5.1 Recommendation of the Commission**

The Commission recommended that the Constitution should establish a compensation fund out of which claims against the State by judgment creditors would be paid and that the details of the operations of the fund should be in an Act of Parliament.

##### **21.5.2 Provisions of Article 308 of the Mung'omba Draft Constitution**

Article 308 of the Mung'omba Draft Constitution provides as follows:

Article 308 of Draft Constitution provides for the establishment of the Compensation Fund as follows:

**“308. (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 under an Act of Parliament.”**

### **21.5.3 Deliberations of the Conference on Article 308**

21.5.3.1 In debating Article 308, the members who supported the establishment of the Compensation Fund in the Constitution argued that it was imperative to do so because of the difficulties encountered by successful litigants against the State in securing payments from the Government. They further argued that-

- (a) the claimants had been complaining about compensation because the discretion used by the Ministry of Finance and National Planning was biased, therefore Parliament should regulate the compensation;
- (b) issues of compensation had for a long time vexed both the individuals who sought compensation from the Government and their respective representative organisations such as the Zambia Congress of Trade Unions and its affiliates;
- (c) existing administrative arrangements dealing with issues of compensation had proved to be weak and ineffective as they failed to resolve many claims relating to compensation;
- (d) although compensation was a right, there were many people whose claims were determined in their favour by the courts of law but could not be paid. The problem was compounded by the fact that it was practically impossible for the claimants to secure enforcement because of the State Proceedings Act;

- (e) the Compensation Fund should also be seen from the economic point of view in that, claimants who were owed by the Government once compensated, would invest the funds received in income generating ventures and create employment;
- (f) Article 308 would ensure that funds appropriated by Parliament for the purpose of compensation were not diverted to other uses;
- (g) the adoption of Article 308 would be a recognition of the plight of the claimants who could not be paid even where the courts of law had ruled in their favour; and
- (h) the Government, should demonstrate its resolve to redress the wrongs committed against its citizens by providing for the establishment of the Compensation Fund.

21.5.3.2 The members who opposed the Article argued that it should be deleted because –

- (a) there was no need for a compensation fund to be established as there was already an administrative mechanism for awarding compensation;
- (b) each year money for compensation was provided for in the budget although it was not adequate to pay all the claims; and
- (c) the establishment of the compensation fund would not guarantee the resolution of all the problems relating to payments of compensation to claimants as the fund would depend on disbursements from the Treasury which was already overwhelmed by competing demands.



#### **21.5.4. Resolution of the Conference**

The Conference adopted Article 308 of the Mung'omba Draft Constitution with amendments and renumbered it as Article 268 as follows:

**"268 (1) There is hereby established the Compensation Fund for purposes of paying claims against the State.**

**(2) Moneys shall not be withdrawn from the Compensation Fund unless the withdrawal is authorised under an Act of Parliament.**

**(3) Parliament shall enact legislation to provide for-**

- (a) the operation of the Compensation Fund;**
- (b) the control and management of the Compensation Fund; and**
- (c) any other matter necessary for the efficient and effective operation of the Compensation Fund."**

#### **21.6 Article 309 : Annual Financial Estimates**

##### **21.6.1 Recommendations of the Commission**

The Commission recommended that-

- (a) the Minister responsible for finance shall cause to be prepared and laid before the National Assembly, estimates of revenues and expenditure of the government for the financial year. The estimates should be submitted in October and approved by the end of December before the commencement of the financial year to which the estimates related. However, estimates related to a year succeeding an election year should be laid before and approved by the National Assembly not later than 90 days after the commencement of the financial year to which the estimates related;
- (b) the Minister should table before the National Assembly medium-term and long-term development plans whose

funding should be allocated through the annual budgets tabled in October;

- (c) the estimates of revenue and expenditure should reflect clearly the fiscal and monetary programmes and plans for economic and social development;
- (d) at anytime before the National Assembly considers the estimates of revenues and expenditure laid before it by or on behalf of the President, an appropriate Committee of Parliament might discuss and review the estimates and make appropriate recommendations to Parliament;
- (e) Parliament may enact laws giving effect to these provisions;
- (f) the estimates of revenue and expenditure should be based on the country's own resources, with support from donors and cooperating partners being supplementary;
- (g) the National Assembly should have power to approve the National Budget and to amend the same, but not vary the total estimates of revenue and expenditure;
- (h) Parliament should enact a Budget Act to make provision for the budgeting process, including the submission of financial and economic information and indicative estimates of revenues and expenditure for the following year to the National Assembly, well before the presentation of the estimates. These should be discussed by the relevant Parliamentary Committee and recommendations thereon should be sent to the Executive for its consideration in the preparation of the substantive estimates;
- (i) the institutional and human resource capacity of the National Assembly should be strengthened and should include the establishment of a Budget analysis Division and provision of skills to Members of Parliament;
- (j) the financial report of the government shall be detailed and include payments relating to public debt;
- (k) the financial report of the government should be presented to the office of the Auditor-General by the Ministry responsible

for finance within six months after the end of the financial year; and

- (l) the financial report should be submitted to the National Assembly by the Minister of Finance and National Planning together with the opinion of the Auditor-General, within nine months after the end of each financial year.

#### **21.6.2 Provisions of Article 309 of the Mung'omba Draft Constitution**

Article 309 of the Mung'omba Draft Constitution provides as follows:

**"309. (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) In any year where a general election takes place and an election petition has been filed challenging the election of a President-elect, 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 revenue and expenditure of the Government for that financial year.**

**(3) Not later than six months before the end of each financial year, the heads of each State organ and State institution, shall submit estimates of revenues and expenditure for the following financial year to the Minister responsible for finance.**

**(4) In the preparation of estimates and expenditure under clause (2), the input of the people in the wards, districts and provinces shall be sought.**

**(5) The estimates prepared under clause (2) shall be laid before the National Assembly by the Minister responsible for finance, on behalf of the President.**

**(6) Notwithstanding clause (1), the President may cause to be prepared and laid before the National Assembly-**

(a) fiscal and monetary programmes and plans for economic and social development covering periods exceeding one year; and

(b) estimates of revenue and expenditure covering periods exceeding one year.

(7) Before the National Assembly considers the estimates of revenues and expenditure, laid before it by the Minister responsible for finance, the appropriate committee of the National Assembly shall discuss and review the estimates and make appropriate recommendations to the National Assembly.

(8) The committee referred to under clause (7) shall, in considering the estimates of the revenues and expenditure, seek public opinion from the districts and provinces on the estimates and expenditure and shall take these into consideration in its recommendations to the National Assembly.

(9) The National Assembly may, subject to clause (2), amend but shall not vary the total estimates of revenues and expenditure and shall in any case approve the budget not later than the thirty-first day of December."

### **21.6.3 Deliberations of the Conference on Article 309**

21.6.3.1 The Conference observed with satisfaction the speedy implementation by the Government, of the provisions to have annual financial estimates approved by the National Assembly as provided for in clause (1) of Article 309 of the Mung'omba Draft Constitution. The observation followed the amendment of the current Constitution immediately after the Public Finance Committee of the National Constitutional Conference approved and recommended to the Conference, the adoption of clause (1) of Article 309 of the Draft Constitution.

21.6.3.2 The Conference approved clause (4) with amendments to-

(a) insert the word "Constituencies" between the words "wards" and "districts"; and

(b) substitute the phrase "in the preparation of estimates and expenditure under clause (2)" with the phrase "in the

preparation of estimates of revenue and expenditure under clause (1) or (2)".

21.6.3.3 The Conference adopted clause (5) with amendments to vest the responsibility for the preparation of the estimates of revenue and expenditure in the President.

21.6.3.4 The Conference adopted clause (8) with amendments by including constituencies among the organs whose opinion the Estimates Committee of the National Assembly should seek in considering the estimates of revenue and expenditure laid before the National Assembly by the Minister responsible for finance.

21.6.3.5 The Conference adopted clause (9) without amendments. In considering the provision, most members supported restricting the National Assembly to altering individual items only but without changing the overall total while some members favoured allowing the National Assembly to alter both the individual items and the overall total.

#### **21.6.4 Resolutions of the Conference**

21.6.4.1 The Conference adopted Article 309 of the Mung'omba Draft Constitution with amendments and renumbered it as Article 269 as follows:

**"269 (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 revenue and expenditure of the Government for the next financial year.**

**(2) In any year where a general election takes place and an election petition has been filed challenging the election of a President-elect, 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 revenue and expenditure of the Government for that financial year.**

**(3) Not later than six months before the end of each financial year, the heads of each State organ and State institution, shall submit estimates of revenue and**

expenditure for the following financial year to the Minister responsible for finance.

(4) In the preparation of estimates of *revenue* and expenditure under clause (1) or (2), the input of the people in the wards, *constituencies* or districts and provinces shall be sought.

(5) The estimates of *revenue and expenditure* prepared under clause (1) or (2) shall be laid before the National Assembly by the Minister responsible for finance, on behalf of the President.

(6) Notwithstanding clause (1), the President *shall* cause to be prepared and laid before the National Assembly -

(a) fiscal and monetary programmes and plans for economic and social development covering periods exceeding one year; and

(b) estimates of revenue and expenditure covering periods exceeding one year.

(7) Before the National Assembly considers the estimates of revenue and expenditure, laid before it by the Minister responsible for finance, the appropriate committee of the National Assembly shall discuss and review the estimates and make appropriate recommendations to the National Assembly.

(8) The committee referred to under clause (7) shall, in considering the estimates of the revenue and expenditure, seek public opinion on the estimates and expenditure and shall take these into consideration in its recommendations to the National Assembly.

(9) The National Assembly may amend, but shall not vary, the total estimates of revenue and expenditure and shall, in any case, subject to clause (2), approve the budget not later than the thirty-first day of December."

**21.7 Article 310 : Budget Act**

**21.7.1 Recommendations of the Commission on the Participation of the People in the Budgetary Process**

21.7.1.1 The Commission recommended that Parliament should enact a Budget Act which should provide for *inter alia*-

- (a) a participatory budget and development plans formulation process to include people at grassroots level at ward, constituency, district and province in conformity with devolution of power as envisaged in the recommendation on decentralisation;
- (b) Parliament to be vested with power to amend the estimates of revenue and expenditure to be approved before expenditure is incurred;
- (c) supplementary estimates of revenue and expenditure to be approved before expenditure is incurred;
- (d) public debt contraction to be considered and determined by the National Assembly before commitments are made;
- (e) strict auditing of public expenditure including performance and value for money audits;
- (f) decisions of the National Assembly on public finance to have legal force;
- (g) restriction on disposal of major public assets;
- (h) no expenditure before approval of budget;
- (i) the Minister responsible for finance shall cause to be prepared and laid before the National Assembly estimates of revenue and expenditure of the Government for the financial year. The estimates should be submitted in October and approved by the end of December before the commencement of the financial year to which the estimates relate. However, estimates related to a year following an election year should be laid before and approved by the National Assembly not later than ninety (90) days after the

commencement of the financial year to which the estimates related;

- (j) the Minister should table before the National Assembly medium-term and long-term development plans whose funding shall be allocated through the annual budget tabled in October;
- (k) the estimates of revenue and expenditure should reflect clearly the fiscal and monetary programmes and plans for economic and social development;
- (l) at any time before the National Assembly considers the estimates of revenue and expenditure laid before it by or on the authority of the President, an appropriate Committee of Parliament may discuss and review the estimates and make appropriate recommendations to Parliament;
- (m) Parliament may make laws for giving effect to these provisions;
- (n) the estimates of revenue and expenditure should be based on the country's own resources, with support from donors and cooperating partners being supplementary and to this end there should be an objective in the Directive Principles of State Policy;
- (o) the National Assembly should have power to approve the National Budget and to amend the same, but not vary the total estimates of revenue and expenditure;
- (p) Parliament should enact a Budget Act to make provision for the budgeting process including the submission of financial and economic information and indicative estimates of revenue and expenditure for the following year to the National Assembly, well before the presentation of the estimates. These should be discussed by the relevant Parliamentary Committee and recommendations thereon should be sent to the Executive for its consideration in the preparation of the substantive estimates;
- (q) the institutional and human resource capacity of the National Assembly should be strengthened and should



include the establishment of a Budget Analysis Division and provision of a skills training to Members of Parliament; and

- (r) the budget estimates, the financial report and other related information laid before the National Assembly on the budget should be gender responsive in terms of showing how benefits are to be derived from development programmes and projects included in the Budget Act.

#### **21.7.2 Provisions of Article 310 of the Mung'omba Draft Constitution**

Article 310 of the Mung'omba Draft Constitution provides as follows:

**“310. Parliament shall enact a Budget Act which shall provide for matters that relate to the annual budget and shall include -**

- (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 ward, 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 appropriate committee of the National Assembly for prior consideration before the preparation and submission of the actual estimates for the financial year; and**
- (e) the contents, subject to this Constitution, of the financial report of the Government provided for under Article 314.”**

### **21.7.3 Deliberations of the Conference on Article 310**

21.7.3.1 The Conference observed that although Article 310 provided for the formulation of development plans and preparation of annual budgets, its opening sentence, only made reference to matters related to the annual budget to be included in the proposed Budget Act, thereby omitting reference to matters related to development planning. In addition, clause (c) omitted the “ward” and “constituency” out of the levels at which people should be consulted in formulating development plans and annual budgets. It also omitted the participation of State organs and institutions.

21.7.3.2 Accordingly, the Conference-

- (a) amended the opening sentence of the Article to read “Parliament shall enact a *Planning and Budget Act* which shall provide for matters that relate to *planning and* the annual budget and shall include;” and
- (b) amended clause (c) by including the participation of State organs and State institutions and that of people at “wards” and “constituencies” in formulating development plans and annual budgets.

### **21.7.4 Resolution of the Conference**

21.7.4.1 The Conference adopted Article 310 with amendments re-titled as “*Legislation on Budgeting and Planning*” and re-numbered it as Article 270 as follows:

**“270. Parliament shall enact legislation which shall provide for matters that relate to the annual budget and to medium and long term development plans and shall include-**

- (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 in the formulation of medium and long-term development plans and the preparation of the annual budget of-*
  - (i) *State organs and State Institutions; and*
  - (ii) *the people at the ward, constituency, district and provincial levels ensuring representation of both gender; and*
- (d) **the submission of anticipated revenue and expenditure for each financial year by the Minister responsible for finance to the appropriate committee of the National Assembly for prior consideration before the preparation and submission of the actual estimates for the financial year.**

**21.8            Article 311 : Appropriation Bill and Supplementary Appropriation Bill**

**21.8.1           Recommendations of the Commission**

21.8.1.1        The Commission recommended that the Constitution should-

- (a)    provide for timely release of approved budgetary allocation by the Treasury;
- (b)    prohibit expenditure in excess of the annual budget and that Parliament must give prior approval to any expenditure that might exceed the budget; provided that where estimates relate to a year following an election year, the President may authorise expenditure for up to 90 days before the coming into effect of the Appropriation Act for that year, subject to ratification by the National Assembly at its first sitting thereafter; and
- (c)    provide that decisions made by the National Assembly on public expenditure should be enforced by relevant authorisation.

## **21.8.2 Provisions of Article 311 of the Mung'omba Draft Constitution**

Article 311 of the Mung'omba Draft Constitution provides as follows:

**“311 (1) When the estimates of expenditure have been approved by the National Assembly they shall be appropriated in an Appropriation Bill for issue from the Consolidated Fund.**

**(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.**

**(3) Where a supplementary estimate is approved under clause (2) a Supplementary Appropriation Bill showing the estimates approved shall be laid before the National Assembly in the next financial year.**

**(4) Subject to this Constitution, the Minister responsible for finance shall release adequate appropriated funds, on quarterly basis and on time, to the institutions and bodies entitled to the appropriations.”**

## **21.8.3 Deliberations of the Conference on Article 311**

21.8.3.1 In discussing the Article, the Conference, while acknowledging the need to provide for supplementary expenditure to be incurred in case of emergency, observed that in the past public funds had been abused, resulting in the Executive requesting for supplementary funding. The members were of the view that spending outside budget allocations compromised the efficient use of public resources.

21.8.3.2 Members who supported the provision argued that there was a tendency by the Executive to spend in excess of the approved budgetary allocations, and the provision would control the mischief and restore financial discipline.

21.8.3.3 The Members who did not support clause (2) argued that each time the Government needed extra funding, it would have to seek the

approval of the National Assembly thereby making it difficult for the Government to effectively implement projects and to respond to emergencies in a timely manner. They, therefore, proposed that a clause be included in the Constitution to allow the Government to spend up to a certain percentage of the budget on supplementary expenditure on emergencies without seeking the approval of the National Assembly and that only amounts above that threshold should be subject to approval by the National Assembly.

21.8.3.4 In further debate on that Article, the Conference resolved that Supplementary Appropriation Bill should be laid before the National Assembly in the financial year to which it was related and that no supplementary expenditure should be incurred before the approval of the supplementary estimates by the National Assembly.

21.8.3.5 In debating clause (4), the Conference noted that the Treasury did not disburse funds to the institutions and bodies entitled to the appropriation in a timely manner and observed that the proposal in clause (4) for the Treasury to release funds on a quarterly basis would perpetuate the problem. The Conference resolved that appropriations should be released in a timely manner.

#### **21.8.4 Resolutions of the Conference**

The Conference adopted Article 311 of the Mung'omba Draft Constitution with amendments and renumbered it as Article 271 as follows:

***“271 (1) When the estimates of the expenditure have been approved by the National Assembly, the heads of the estimates together with the amount approved in respect of each head shall be included in an Appropriation Bill which shall be introduced in the National Assembly to provide for the payment of those amounts for the purposes specified, out of the general revenues of the Republic.***

**(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 *and the sources of the revenue to***

*cover the amount shall be laid before the National Assembly for approval by the Minister responsible for finance:*

*Provided that subject to paragraph (d) of clause (2) of Article 268, no supplementary expenditure shall be incurred before the approval of the supplementary estimate by the National Assembly.*

*(3) Where in a financial year expenditure has been authorised by a warrant issued by the President under paragraph (d) of clause (2) of Article 267, the Minister responsible for finance shall cause supplementary estimates relating to that expenditure to be laid before the National Assembly for its approval before the expiration of a period of four months from the issue of the warrant or, if the National Assembly is not sitting at the expiration of that period, at the first sitting of the National Assembly thereafter.*

*(4) Where a supplementary estimate is approved under clause (2), a Supplementary Appropriation Bill showing the estimates approved shall immediately be laid before the National Assembly for approval.*

**(5) Subject to this Constitution, the Minister responsible for finance shall release the appropriated funds on a quarterly basis and on time, to the institutions and bodies entitled to the appropriations."**

## **21.9 Article 312 : Borrowing by Government**

### **21.9.1 Recommendations of the Commission**

21.9.1.1 The Commission observed that there was need for the National Assembly to exercise oversight in all matters of borrowing by the Government and recommended that the Constitution should provide-

- (a) that direct international and domestic debt and loan guarantees should be approved by the National Assembly;
- (b) that the Minister responsible for finance shall present to the National Assembly information on any loan and the total indebtedness of the Republic; and
- (c) that debt repayment be specifically reflected in the annual financial report of the Government.

## **21.9.2 Provisions of Article 312 of the Mung'omba Draft Constitution**

Article 312 of the Mung'omba Draft Constitution provides as follows:

**“312 (1) The Government may, subject to this Article, borrow from any source.**

**(2) 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) Legislation enacted under clause (2) shall provide –**

**(a) that the terms and conditions of the loan shall be laid before the National Assembly and shall not come into operation unless they have been approved by a resolution of the National Assembly; and**

**(b) that any money received in respect of that loan shall be paid into the Consolidated Fund or into some other public fund which exists or is created for the purpose of the loan.**

**(4) The President shall, at such times as the National Assembly may determine, cause to be presented to the National Assembly information concerning any loan including –**

**(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, authorize the Government to enter into an agreement for the giving of 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 resolution supported by the vote of not less than two-thirds of all the members of the National Assembly.

(7) For the purposes of this Article, "loan" includes any moneys lent or given to or by the Government on condition of return or repayment and any other form of borrowing or lending in respect of which moneys from the Consolidated Fund or any other public fund or account may be used for payment or repayment."

### **21.9.3 Deliberations of the Conference on Article 312**

21.9.3.1 In debating Article 312 of the Mung'omba Draft Constitution, the Conference decided that in view of the country's history of high indebtedness, the Constitution needed to impose a restriction as to which Minister could contract loans on behalf of Government (whether monetary or commodity) and to impose a limit on the amounts to be borrowed. The Conference, therefore, adopted Article 312 with amendments by-

- (a) substituting the words "Government" and "President" with the words "*Minister responsible for finance*" in clauses (1), (2), (4), (5) and (7);
- (b) amending clause (1) to specify conditions and procedures to be followed by the Minister responsible for finance when borrowing on behalf of the Republic;
- (c) substituting the words "Consolidated Fund" with the words "National Treasury Account";
- (d) deleting the words "supported by the vote of not less than two-thirds of all members"; and
- (e) substituting the words "Borrowing by Government" in the marginal note with the words "Borrowing and lending by Government" in view of the provision in clause (5) which allowed the Minister responsible for finance to grant loans out of the National Treasury Account.



- 21.9.3.2 In debating paragraph (a) of clause (3), two positions emerged. Some members favoured the adoption of the provision while others favoured its deletion.
- 21.9.3.3 Members who supported the provision that the terms and conditions of a loan should be laid before the National Assembly before they could come into operation, argued that this was necessary as it would ensure that loan conditionalities were properly scrutinised. They further argued that-
- (a) it was imperative to have the clause in the Constitution rather than in an Act of Parliament because in the past provisions in Acts of Parliament had not been complied with. They cited examples of non-compliance with the continuous registration of voters under the Electoral Act No 12 of 2006 and the failure to adhere to limits of borrowing under the Loans and Guarantees (Authorisation) Act, CAP 366 of the Laws of Zambia;
  - (b) the provision sought to make the contraction of loans transparent and was intended to protect both the people and the Executive as it would be a pillar in ensuring accountability in public debt contraction and expenditure management;
  - (c) while the concept of separation of powers was cardinal, it was necessary to ensure checks and balances. They were concerned that if the provisions were not in the Constitution, there was no guarantee that the Executive would take such a bill to Parliament;
  - (d) the provision would serve as a Constitutional guarantee for greater financial oversight by the National Assembly and, therefore, it should not be misconstrued as interference in the functions of the Executive by the Legislature; and
  - (e) Government should involve representatives of the people in procuring loans as the Executive contracted loans on behalf of the people.

#### 21.9.3.4

Members who opposed the provision argued that-

- (a) laying the terms and conditions of loans before the National Assembly for approval before they came into operation would make loan contraction impracticable as the National Assembly would have the power to amend the terms and conditions of the loan, and this would inevitably lead to a new cycle of negotiations;
- (b) the provision would stifle the efficient performance of government functions and derail progress. Therefore, while obeying the essence of accountability and transparency, the Executive should be given enough latitude to effectively negotiate loans. They pointed out that Zambia would fail to secure international loans from financial institutions if prior approval of the National Assembly had to be obtained before the Government could conclude negotiations especially in situations when Parliament was on recess at the time of negotiations. Such a process would result in the loss of potential loan facilities which would be injurious to the economic development of the country;
- (c) it might not be feasible in the event of a crisis for a President to convene Parliament. Therefore, the current position on procurement and guaranteeing of loans which mandated the Minister responsible for finance to borrow money in accordance with the law should be retained; and
- (d) information relating to loans was provided in the budget because it was Parliament which appropriated money for the payment of the loans and information was available in the financial reports prepared by the Auditor-General and submitted to the National Assembly and that, therefore, there was no need to include such provisions in the Constitution.

#### 21.9.3.5

The Conference did not reach consensus on paragraph (a) of clause (3) and, therefore, proceeded to vote. After the vote, the two-thirds majority threshold required under paragraph (b) of sub-section (1) of section 25 of the National Constitutional Conference Act No 19 of 2007, was not achieved. Therefore, the Conference referred the matter to a referendum in accordance with paragraph (b) of section 25 of the National Constitutional Conference Act.

- 21.9.3.6 In further debate of Article 312, the Conference approved paragraph (b) of clause (3), and clauses (4), (5), (6), (7) and (8) with amendments.

#### **21.9.4 Resolutions of the Conference**

- 21.9.4.1 The Conference adopted Article 312 of the Mung'lomba Draft Constitution with amendments, and re-titled it as Borrowing and Lending by Government and renumbered it as Article 273 as follows:

**"273 (1) Subject to this Article, the Minister responsible for finance may borrow from any source, on behalf of the Republic:**

**Provided that the Minister responsible for finance shall not, in any financial year, borrow beyond the aggregate debt stock, including interest and fees on the debt, approved by the National Assembly for that year.**

**(2) *The Minister responsible for finance shall not borrow, guarantee or raise a loan on behalf of any State organ, State institution, authority or person except as authorised by or under an Act of Parliament.***

**(3) Legislation enacted under clause (2) shall provide-**

**(a) that the terms and the conditions of the loan shall be laid before the National Assembly and shall not come into operation unless they have been approved by a resolution of the National Assembly (referred to the Referendum); and**

**(b) that any money received in respect of that loan shall be paid into the National Treasury Account or into some other public fund which exists or is created for the purpose of the loan.**

**(4) *The Minister responsible for finance shall, at such times as the National Assembly may determine, present to the National Assembly information concerning any loan including -***

- (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 *Minister responsible for finance* to enter into an agreement for the giving of a loan or grant out of the *National Treasury Account* or any other public fund or account.

(6) An agreement entered into under clause (5) shall be laid before the National Assembly *by the Minister responsible for finance* and shall not come into force unless it has been approved by a resolution of a simple majority of all the members of the National Assembly.

(7) For the purposes of this Article, "loan" includes any moneys lent or given to or by the *Minister responsible for finance* on condition of return or repayment and any other form of borrowing or lending in respect of which moneys from the *National Treasury Account* or any other public fund or account may be used for payment or repayment."

## 21.10 Article 313 : Public Debt

### 21.10.1 Recommendations of the Commission

21.10.1.1 The Commission expressed concern about the level of Zambia's indebtedness to both international financial institutions and local creditors and the un-coordinated manner in which debt was being contracted. To address that concern the Commission recommended that the Constitution should provide that-

- (a) direct international and domestic public debt and loan guarantees should be approved by the National Assembly before taking effect;
- (b) the Minister responsible for finance should, at such times as the National Assembly may determine, cause to be

presented to the National Assembly such information concerning any loan as was necessary including the extent of the total indebtedness of the Republic, measures taken or to be taken for servicing or repayment of the loan, and utilisation and performance of the loan; and

- (c) debt repayment should be specifically reflected in the financial report.

#### **21.10.2 Provisions of Article 313 of the Mung'omba Draft Constitution**

Article 313 of the Mung'omba Draft Constitution provides as follows:

**“313. (1) The public debt of Zambia shall be a charge on the Consolidated Fund and any other public fund.**

**(2) The National Assembly shall approve all direct borrowing by the Government, before these take effect, for the purposes of incurring public debt or loan guarantees.**

**(3) For the purposes of this Article, the public debt includes the interest on that debt, sinking fund payments in respect of that debt, the costs, charges and expenses incidental to the management of that debt.”**

#### **21.10.3 Deliberations of the Conference on Article 313**

21.10.3.1 In debating the Article, the Conference made the following decisions:

- (a) that clause (1) should be amended to substitute the words “Consolidated Fund” with the words “*National Treasury Account*”;
- (b) that clause (2) should be deleted because it provided for the management of public debt, which was already provided for and adopted under Article 274;
- (c) that three new clauses be introduced to-
  - (i) provide for the mandatory requirement for the Minister responsible for finance to report annually to

- the National Assembly on all borrowing by state organs and state institutions or authorities;
- (ii) vest power in the Minister responsible for finance to manage the debt of Zambia; and
- (iii) provide for Parliament to enact legislation for the management of public debt.

#### **21.10.4 Resolutions of the Conference**

The Conference adopted Article 313 of the Mung'omba Draft Constitution with amendments, re-titled as "Management of Public Debt" and renumbered it as Article 274 as follows:

**"274 (1) The public debt of Zambia shall be a charge on the National Treasury Account and any other public fund.**

**(2) The Minister responsible for finance shall report all borrowing, by any State institutions or authority in value, annually, to the National Assembly.**

**(3) The Minister responsible for finance shall manage the public debt of Zambia.**

**(4) Parliament shall enact legislation to provide for the management of public debt".**

**(5) For the purpose of this Article, the public debt includes the interest on that debt, sinking fund payments in respect of that debt, the costs, charges and expenses incidental to the management of that debt."**

#### **21.11 Article 314 : Financial Report of Government**

##### **21.11.1 Recommendations of the Commission**

21.11.1.1 The Commission recommended that the Constitution should provide that -

- (a) the financial report of the Government should be detailed and include payments relating to public debt;
- (b) details to be contained in the financial report shall be prescribed by appropriate legislation;
- (c) the financial report should be presented to the Auditor-General by the Ministry responsible for finance within six months after the end of the financial year; and

- (d) the financial report should be submitted to the National Assembly by the Minister of Finance and National Planning together with the opinion of the Auditor-General within nine months after the end of each financial year.

#### **21.11.2 Provisions of Article 314 of the Mung'omba Draft Constitution**

Article 314 of the Mung'omba Draft Constitution provides as follows:

**“314 (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 and other moneys 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) debt repayments;**
- (d) payment made in that financial year for purposes other than expenditure;**
- (e) the financial position of the Republic at the end of that financial year; and**
- (f) any other information as specified under the Budget Act.**

**(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.”**

### **21.11.3 Deliberations of the Conference on Article 314**

- 21.11.3.1 In debating Article 314 of the Mung'omba Draft Constitution, the Conference observed that the period of nine months within which the financial report should be submitted by the Minister responsible for finance to the Auditor-General after the end of each financial year was too long, and therefore, decided to reduce it to six months.
- 21.11.3.2 In addition, the Conference observed that, currently, grants and loans given by the Government of Zambia and the gifts, donations and aid-in-kind received on behalf of the Government, as well as information on their disposal, were not included in the annual financial report. Further, there was no clear distinction between gifts given to the President in a personal capacity and gifts given to the President on behalf of the Republic. Therefore, the Conference decided to provide for those matters in paragraphs (f) and (e) of clause (2) respectively.
- 21.11.3.3 The Conference also amended paragraph (f) of clause (2) by inserting the words "Planning and" before the words "Budget Act" and renumbered it as paragraph (h).

### **21.11.4 Resolutions of the Conference**

The Conference adopted Article 314 with amendments and renumbered it as Article 276 as follows:

**"276 (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 and other moneys 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 *National Treasury Account* or other public fund;

- (c) the payments made in the financial year otherwise than for the purposes of expenditure;
- (d) debt repayments;
- (e) *gifts, donations and aid-in-kind received on behalf of the Republic in that financial year and how they were disposed of;*
- (f) *loans and grants given out by the Government under Article 273;*
- (g) the financial position of the Republic at the end of that financial year; and
- (h) any other information as specified under the *Planning and Budget Act*.

(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 in accordance with international auditing standards.

(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".

## **21.12 Article 315 : Disposal of State Assets**

### **21.12.1 Recommendation of the Commission**

The Commission recommended that the Constitution should provide that any measure to sell, transfer or dispose of major public assets such as parastatal companies should be approved by the National Assembly through a resolution supported by not less than two-thirds of all the Members of the National Assembly.

### **21.12.2 Provisions of Article 315 of the Mung'omba Draft Constitution**

Article 315 of the Mung'omba Draft Constitution provides as follows:

**“315. Any major State asset, such as a parastatal company or a commercial enterprise of the State, shall not be sold, transferred or disposed of, except with the prior resolution of the National Assembly supported by a vote of not less than two-thirds of all the members of the National Assembly”.**

**21.12.3 Deliberations of the Conference on Article 315**

21.12.3.1 In debating the Article, some members proposed that the provision be deleted while others argued that it should be retained.

21.12.3.2 The members who supported the retention of the Article argued that -

- (a) the Article was a consequence of past experience where parastatals and other national assets, such as mines, were sometimes disposed of against public opinion and in certain instances at below market price;
- (b) the National Assembly should be mandated to safeguard national assets;
- (c) the article would enhance transparency and restrain the Executive from disposing of public property arbitrarily; and
- (d) the provision on the disposal of assets should be in the Constitution as providing for it in an Act of Parliament would place the matter at the mercy of the Executive who might not submit the relevant legislation to Parliament.

21.12.3.3 The members who did not support the retention of the Article argued as follows:

- (a) that if provided for in the Constitution, Article 315 would inhibit the effective and efficient performance of executive functions;
- (b) that the two-thirds majority provided for under the clause would be impossible to attain in the National Assembly; and
- (c) that it would suffice for the Constitution to empower Parliament to enact legislation to provide for the disposal of major assets and this would not take away the oversight role of the National Assembly. Therefore, Article 315 should provide -

- (i) that Parliament shall enact legislation to regulate the manner in which State assets shall be sold, transferred or disposed of or otherwise dealt with;
- (ii) for the role of Parliament in the process referred to in (i) above; and
- (iii) for the effective management of State assets.

21.12.3.4 The Conference deleted Article 315 of the Mung'omba Draft Constitution and substituted it with and substituted it with a new Article 277 providing for, inter alia, the role of Parliament.

#### **21.12.4 Resolutions of the Conference**

The Conference deleted Article 315 of the Mung'omba Draft Constitution and adopted a new Article on the disposal of assets and numbered it as Article 277 as follows:

*"277 Parliament shall enact legislation to –*

- (a) regulate the manner in which State assets shall be sold, disposed of or otherwise dealt with;*
- (b) provide for the role of Parliament in the processes referred to under paragraph (a); and*
- (c) provide for the effective management of State assets."*

#### **21.13 Article 316 : State Audit Commission**

##### **21.13.1 Recommendations of the Commission**

21.13.1.1 The Commission observed that there was need to strengthen the office of the Auditor-General through -

- (a) the establishment of the supervising board;
- (b) granting it independent authority to recruit, remunerate, grade, promote and discipline staff; and
- (c) providing policy direction.

21.13.1.2 On the basis of its observations, the Commission recommended that the Constitution should provide that -

- (a) there should be established a State Audit Commission;

- (b) there should be five members of the State Audit Commission who shall be nominated by their respective private, professional and financial institutions with competence in public finance management and who shall be appointed by the President, subject to ratification by the National Assembly;
- (c) members of the State Audit Commission should serve a term of three years and be eligible to serve for one further term;
- (d) a member of the State Audit Commission may only be removed from office for inability to perform the duties of the office due to infirmity of body or mind or for incompetence, misconduct or bankruptcy;
- (e) the powers and functions of the State Audit Commission should include –
  - (i) recommending the appointment of the Auditor-General;
  - (ii) providing policy guidance to the operations of the Office of the Auditor-General; and
  - (iii) advising and making recommendations to the Auditor-General on the discharge of the mandate of the Office as provided by or under the Constitution or other laws;
- (f) the details concerning the establishment of the State Audit Commission should be in an Act of Parliament; and
- (g) the Act of Parliament should also provide that the Office of the Auditor-General should have authority to recruit, grade, remunerate, promote and discipline staff and that this authority should be exercised by the Office under the supervision of the State Audit Commission.

#### **21.13.2 Provisions of Article 316 of the Mung'omba Draft Constitution**

Article 316 of the Mung'omba Draft Constitution provides as follows:

**“316. (1) There is hereby established a State Audit Commission, which shall be the policy body for the Auditor-General’s Office.**

**(2) The State Audit Commission, established under clause (1), shall consist of five members who shall serve on a part-time basis.**

**(3) 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) considerable experience in public finance; or**
- (c) professional qualifications of relevance to the work of the State Audit Commission.**

**(4) The members of the State Audit Commission shall be nominated by the relevant professional civil society organisations with similar objectives as is relevant to the work of the State Audit Commission and appointed by the President, subject to ratification by the National Assembly.**

**(5) A member of the State Audit Commission shall serve for a term of three years and shall be eligible to serve for only one further term of three years.**

**(6) The functions of the State Audit Commission shall include -**

- (a) making recommendations to the President on the appointment of the Auditor-General;**
- (b) providing policy direction to the office of the Auditor-General; and**
- (c) performing such other functions as provided by this Constitution and by or under an Act of Parliament.**

**(7) The Auditor-General’s Office shall be the secretariat for the State Audit Commission.**

**(8) The expenses of the State Audit Commission shall be a charge on the Consolidated Fund.”**

### **21.13.3 Deliberations of the Conference on Article 316**

21.13.3.1 In the debate on this Article, two positions emerged. The first position supported the establishment of the State Audit Commission while the second position was against its establishment.

21.13.3.2 Members who supported the establishment of a State Audit Commission argued that -

(a) in order for the Auditor-General's office to be strengthened, it was necessary to have a body superior to it and the establishment of such a body would not compromise the independence of the office of the Auditor-General;

(b) the Commission would not incur inordinate costs because the members would serve on a part-time basis; and

(b) the Commission would strengthen the office of the Auditor-General since the staff would be detached from the Civil Service and the office would attract professional staff.

21.13.3.3 The members who were against the establishment of the State Audit Commission argued that -

(a) the establishment would just add to the many commissions which were a drain on the scarce national resources;

(b) the office of the Auditor-General was already doing a commendable job and that what was required was for the Executive to implement the recommendations in the report of the Auditor-General;

(c) the problems faced by the Auditor-General could be resolved by increased funding and the employment of adequate staff;

(d) the establishment of the State Audit Commission where the Auditor-General was both the Chief Executive Officer and Chairperson would compromise transparency and accountability; and

- (e) what was required was to strengthen the existing laws in respect of the functional independence of the Office of the Auditor-General instead of establishing the State Audit Commission.

#### **21.13.4 Resolution of the Conference**

The Conference deleted Article 316 of the Mung'omba Draft Constitution.

#### **21.14 Article 317 : Auditor-General**

##### **21.14.1 Recommendations of the Commission**

21.14.1.1 The Commission recommended that the Constitution should provide that -

- (a) the Auditor-General's Office should be autonomous and independent in its operations;
- (b) the Auditor-General should be appointed by the President following nomination by the State Audit Commission and approved by the National Assembly;
- (c) the office holder should continue to enjoy security of tenure, as currently provided for by the constitution and retire upon attaining the age of seventy (70) years;
- (d) the Auditor-General's Report should be presented to both the National Assembly and the President not later than nine months after the end of each financial year and the Speaker should cause the Report to be tabled before the National Assembly not later than seven days after the first sitting of the National Assembly next after the receipt of such Report; and
- (e) the President, National Assembly or any public officer may request the Auditor-General to carry out an audit in accordance with the provisions of the Constitution or any other law.

## **21.14.2 Provisions of Article 317 of the Mung'omba Draft Constitution**

Article 317 of the Mung'omba Draft Constitution provides as follows:

**"317. (1) There is hereby established the office of the Auditor-General the holder of which 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 procedure that apply to a Judge of a superior court.**

**(5) The Auditor-General shall retire from office on the attainment of seventy years of age.**

**(6) The emoluments and other terms and conditions of service of the Auditor-General shall be as recommended by the Emoluments Commission and approved by the National Assembly.**

**(7) Parliament shall enact legislation to provide for -**

- (a) the qualification and retirement from office 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."**

## **21.14.3 Deliberations of the Conference on Article 317**

**21.14.3.1** The Conference observed that the provisions on the Auditor-General in the Draft Constitution were essentially the same as those



provided for in the current Constitution but were split into clauses. For instance, clauses (1), (2) and (3) of Article 317 of the Draft Constitution were a split of the provision in clause (1) of Article 121 of the current Constitution. Similarly Article 320 of the Draft Constitution was adopted from clause (2) of Article 121 of the current Constitution of Zambia which provides for the functions of the Auditor-General.

21.14.3.2 The Conference, therefore, resolved to delete Articles 317 and 320 of the Draft Constitution and substituted them with Articles 121 and 122 of the current Constitution.

21.14.3.3 Article 121 of the current Constitution provides as follows:

**“121. (1) There shall be an Auditor-General for the Republic whose office shall be a public office and who shall, subject to ratification by the National Assembly, be appointed by the President.**

**(2) It shall be the duty of the Auditor-General-**

- (a) to satisfy himself that the provisions of this Part are being complied with;**
- (b) satisfy himself that the moneys expended have been applied to the purposes for which they were appropriated by the Appropriation Act or in accordance with the approved supplementary estimates, or in accordance with the Excess Expenditure Appropriation Act, as the case may be, and that the expenditure conforms to the authority that governs it;**
- (c) to audit the accounts relating to the general revenues of the Republic and the expenditure of moneys appropriated by Parliament, the National Assembly, the Judicature, the accounts relating to the stocks and stores of the Government and the accounts of such other bodies as may be prescribed by or under any law;**
- (d) to audit the accounts relating to any expenditure charged by this Constitution or any other law on the general revenues of the**

Republic and to submit a report thereon to the President not later than twelve months after the end of each financial year.

(3) The Auditor-General and any officer authorised by him shall have access to all books, records, reports and other documents relating to any of the accounts referred to in clause (2).

(4) The Auditor-General shall, not later than twelve months after the end of each financial year, submit a report on the accounts referred to in paragraph (c) of clause (2) in respect of that financial year to the President who shall, not later than seven days after the first sitting of the National Assembly next after the receipt of such report, cause it to be laid before the National Assembly; and if the President makes default in laying the report before the National Assembly, the Auditor-General shall submit the report to the Speaker of the National Assembly, or if the office of the Speaker is vacant or if the Speaker is for any reason unable to perform the functions of his office, to the Deputy Speaker, who shall cause it to be laid before the National Assembly.

(5) The Auditor-General shall perform such other duties and exercise such other powers in relation to all accounts of the Government or the accounts of other public authorities or other bodies as may be prescribed by or under any law.

(6) In the exercise of his functions under clauses (2), (3) and (4), the Auditor-General shall not be subjected to the direction or control of any other person or authority."

21.14.3.4 Article 122 of the current Constitution provides as follows:

"122. (1) Subject to the provisions of this Article, a person holding the office of Auditor-General shall vacate his office when he attains the age of sixty years.

(2) A person holding the office of Auditor-General may be removed from office only for inability to perform the functions of his office, whether arising from infirmity of body or mind, or for incompetence or for

misbehaviour and shall not be so removed except in accordance with the provisions of this Article.

(3) If the National Assembly resolves that the question of removing a person holding the office of Auditor-General from office under this Article ought to be investigated then -

- (a) the National Assembly shall, by resolution appoint a tribunal which shall consist of a Chairman and not less than two other members, who hold or have held high judicial office;
- (b) the tribunal shall inquire into the matter and report on the facts thereof to the National Assembly; and
- (c) the National Assembly shall consider the report of the tribunal at the first convenient sitting of the National Assembly after it is received and may, upon such consideration, by resolution, remove the Auditor-General from office.

(4) If the question of removing a person holding the office of Auditor-General from office has been referred to a tribunal under this Article, the National Assembly may, by resolution, suspend that person from performing the functions of his office, and any such suspension may at any time be revoked by the National Assembly by resolution and shall in any case cease to have effect if, upon consideration of the report of the tribunal in accordance with the provisions of this Article, the National Assembly does not remove the Auditor-General from office.

(5) A person who holds or has held the office of Auditor-General shall not be appointed to hold or to act in any other public office.

(6) A person who holds the office of Auditor-General may resign upon giving three months' notice to the President."

21.14.3.5 Article 320 of the Mung'omba Draft Constitution provides as follows:

**"320. (1) The Auditor-General shall -**

**(a) audit the accounts of -**

**(i) the National Government and local authorities; and**

**(ii) all offices financed wholly or partly from public funds including the universities, the Central Bank, 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 environmental audits, 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;**

**(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 other law enforcement agency any matter, within the competence and functions of the Auditor-General, that may require to be prosecuted; and**

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

**(2) For the purposes of clause (1), the Auditor-General or a person authorised or appointed by the Auditor-General shall have access to all documents that relate to or are relevant to an audit.**

**(3) Accounts which are subject to auditing by the Auditor-General shall be kept in the form approved by the Auditor-General.**

**(4) The Auditor-General shall, not later than nine months after the end of each financial year, submit a report of the accounts audited under clause (1) in respect of the immediately preceding financial year to -**

**(a) the President; and**

**(b) the National Assembly.**

**(5) The National Assembly shall, within three months after the submission of the report referred to in clause (4), consider the report and take appropriate action.**

**(6) The Auditor-General may conduct audits of public accounts at intervals and with the regularity that the Auditor-General considers necessary.**

**(7) The President, the National Assembly or any public officer may, at any time, in the public interest, request the Auditor-General to audit the accounts of a State organ, State institution or body that is subject to audit under this Part.**

**(8) The office of the Auditor-General shall be audited and the report shall be submitted to the National Assembly and the President by external auditors appointed by the State Audit Commission."**

21.14.3.6 The new Article 279 adopted by the Conference provides for the appointment and tenure of office of the Auditor-General by combining clause (1) of Article 121 and clauses (1), (2), (3), (4), (5) and (6) of Article 122 of the current Constitution while the new Article 280 provides for the functions of the Auditor-General by combining clauses (2), (3), (4) and (5) of Article 121 and clauses (1), (2), (4), (5), (6), (7) and (8) of Article 320 of the Draft Constitution.

21.14.3.7 The Conference made other amendments by deleting paragraph (e) of clause (1) and clause (3) of Article 320. Paragraph (e) of clause (1) is sufficiently covered under Article 283 dealing with reference by the Auditor-General while clause (3) was considered to be an unnecessary detail.

- 21.14.3.8 In debating clause (5) adopted by the Conference from Article 320 of the Draft Constitution, members observed that it was necessary to empower the National Assembly to take appropriate action after it had considered the report of the Auditor-General rather than merely recommend to the Executive to take action.
- 21.14.3.9 In adopting clause (7) of Article 320 of the Mung'omba Draft Constitution, the Conference observed that confining the right to request the Auditor-General to audit accounts of a State organ or Institution to the President, the National Assembly and public officers was too restrictive. The Conference decided to extend that right to citizens by substituting the words "public officer" with the word "*citizen*".
- 21.14.3.10 In debating clause (8) of Article 320, the Conference adopted the provision with amendments by substituting the word "State Audit Commission" with the word "*Minister responsible for finance*" as a consequence of the decision to delete Article 316 which had provided for the establishment of the State Audit Commission.

#### **21.14.4 Resolution of the Conference**

- 21.14.4.1 The Conference deleted some provisions of Articles 317 and 320 of the Mung'omba Draft Constitution and substituted them with provisions from Articles 121 and 122 of the current Constitution.

- 21.14.4.2 The new Article 317 adopted by the Conference and renumbered as Article 278 states as follows:

*"278 (1) There shall be an Auditor-General for the Republic whose office shall be a public office and who shall be appointed by the President, subject to ratification by the National Assembly.*

*(2) Subject to the provisions of this Article the Auditor-General shall retire from office on the attainment of sixty years of age.*

*(3) A person holding the office of Auditor-General may be removed from office only for inability to perform the functions of the office, whether arising from infirmity of body or mind, or for incompetence or for misbehavior and shall not be so removed except in accordance with the provisions of this Article.*

*(4) If the National Assembly resolves that the question of removing the person holding the office of Auditor-General from office under this Article ought to be investigated, then-*

- (a) the National Assembly shall, by resolution, appoint a tribunal which shall consist of a Chairperson and not less than two other members, who hold or have held high judicial office;*
- (b) the tribunal shall inquire into the matter and report on the facts thereof to the National Assembly; and*
- (c) the National Assembly shall consider the report of the tribunal at the first convenient sitting of the National Assembly after it is received and may, upon such consideration, by resolution, remove the Auditor-General from office.*

*(5) If the question of removing a person holding the office of Auditor-General from office has been referred to a tribunal under this Article, the National Assembly may, by resolution, suspend that person from performing the functions of the office, and any such suspension may at any time be revoked by the National Assembly by resolution and shall in any case cease to have effect if, upon consideration of the report of the tribunal in accordance with the provisions of this Article, the National Assembly does not remove the Auditor-General from office.*

*(6) A person who holds or has held the office of the Auditor-General shall not be appointed to hold or to act in any other public office.*

*(7) A person who holds the office of Auditor-General may resign upon giving three months' notice to the President."*

21.14.4.3 The new Article 318 adopted by the Conference and re-numbered as Article 279 provides as follows:

**"279 (1) The Auditor-General shall -**

- (a) ensure that the provisions of this Part are being complied with;**
- (b) ensure that the moneys expended have been applied to the purposes for which they were**

appropriated by the Appropriation Act or by the Supplementary Appropriation Act, in accordance with the approved estimates or supplementary estimates, as the case may be, and that the expenditure conforms to the authority that governs it;

- (c) audit the accounts relating to the Moneys from the general revenues of the republic appropriated by Parliament to the National Assembly and the Judiciary and the expenditure of such moneys by those institutions;
- (d) audit the accounts relating to the stocks and stores of the Government and the accounts of such other bodies as may be prescribed by or under any law; and
- (e) audit the accounts relating to any expenditure charged by this Constitution or any other law on the general revenues of the Republic and submit a report thereon to the President not later than nine months after the end of each financial year.

(2) The Auditor-General and any officer authorised by the Auditor-General shall have access to all books, records, reports and other documents relating to any of the accounts referred to in clause (1) and which are relevant to an audit.

(3) The Auditor-General shall, not later than nine months after the end of each financial year, submit a report on the accounts referred to in paragraph (c) of clause (1) in respect of that financial year to the President who shall, not later than seven days after the first sitting of the National Assembly next after the receipt of such report, cause it to be laid before the National Assembly.

(4) If the President defaults in laying the report before the National Assembly, the Auditor-General shall submit the report to the Speaker of the National Assembly or, if the office of the Speaker is vacant or if the Speaker is for any reason unable to perform the functions of the office, to the Deputy Speaker, who shall cause it to be laid before the National Assembly.



(5) The National Assembly shall, within three months after the submission of the report referred to in clause (4), consider the report and take appropriate action including referring any cases of malpractice or financial impropriety to any public institution which is competent in the matter for necessary action.

(6) The Auditor-General shall perform such other duties and exercise such other powers in relation to all accounts of the Government or the accounts of other public authorities or other bodies as may be prescribed by or under an Act of Parliament.

(7) The President, the National Assembly or any citizen may, at any time, in the public interest, request the Auditor-General to audit the accounts of a State organ, State institution or body that is subject to audit under this Part.

(8) The office of the Auditor-General shall be audited and the report shall be submitted to the National Assembly and the President by external auditors appointed by the Minister responsible for finance."

## **21.15 Article 318 : Independence of Auditor-General**

### **21.15.1 Recommendations of the Commission**

The Commission recommended that the Constitution should provide that the Auditor-General's office shall be autonomous and independent in its operations.

### **21.15.2 Provisions of Article 318 of the Mung'omba Draft Constitution**

Article 318 of the Mung'omba Draft Constitution provides as follows:

**"318. 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."**

### **21.15. 3        Resolutions of the Conference**

The Conference considered and adopted Article 318 of the Mung'omba Draft Constitution without amendments and renumbered it as Article 280 as follows:

**“280. 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.”**

### **21.16        Article 319 : Funding of Auditor-General**

#### **21.16.1        Recommendations of the Commission**

21.16.1.1        The Commission recommended that-

- (a)     funding to the office should be regular, timely and adequate;
- (b)     the office of the Auditor-General shall prepare the budget of the office in consultation with the Ministry responsible for finance taking into account the principle of equitable sharing of resources; and
- (c)     the office of the Auditor-General shall receive funds directly from the National Assembly and that once approved, its budget should be a charge on the Consolidated Fund of the republic.

#### **21.16.2        Provisions of Article 319 of the Mung'omba Draft    Constitution**

Article 319 of the Mung'omba Draft Constitution provides as follows:

**“319 (1) The office of Auditor-General shall be adequately funded to enable the office to effectively carry out its mandate.**

**(2)    The expenses of the office of the Auditor-General, including the emoluments of staff, shall be a charge on the Consolidated Fund.”**

### **21.16.3 Deliberations of the Conference on Article 319**

The Conference considered Article 319 of the Draft Constitution and, in accordance with its earlier resolution to substitute the words "Consolidated Fund" with the term "*National Treasury Account*", amended clause (2) accordingly.

### **21.16.4 Resolutions of the Conference**

The Conference adopted Article 319 of the Mung'omba Draft Constitution with amendments and renumbered it as Article 281 as follows:

**"281 (1) The office of the Auditor-General shall be funded to enable the office to effectively carry out its mandate.**

**(2) The expenses of the office of the Auditor-General shall be a charge on the *National Treasury Account*."**

## **21.17 Article 320 : Functions of Auditor-General**

### **21.17.1 Recommendations of the Commission**

#### **21.17.1.1 The Commission recommended that-**

- (a) the Constitution should stipulate the mandate of the Auditor-General as provided in the current Constitution; but expand this to include other types of audits such as value for money, performance, benefit, impact, evaluation, environment, forensic and any other audits;
- (b) a Constitutional provision should be made so that the Office of the Auditor-General has power to recommend cases for prosecution to the Director of Public Prosecutions, the Parliamentary Ombudsman, the Anti Corruption Commission or any other law enforcement agency;
- (c) the Constitution should provide that the Auditor-General shall perform such other duties and exercise such other powers and functions as may be prescribed by or under any law;

- (d) the office of the Auditor-General should continue to have constitutional powers to audit any office in the Government or quasi-government institutions; and
- (e) these recommendations should be effected through an appropriate Act of Parliament.

#### **21.17.2 Provisions of Article 320 of the Mung'omba Draft Constitution**

Article 320 of the Mung'omba Draft Constitution provides as follows:

**“320. (1) The Auditor-General shall -**

**(a) audit the accounts of -**

- (i) the National Government and Local Authorities;**
- (ii) all offices financed wholly or partly from public funds including the universities, the Central Bank, 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 environmental audits, 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;**

**(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 other law enforcement agency any matter, within the competence and**

functions of the Auditor-General, that may require to be prosecuted; and

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

(2) For the purposes of clause (1), the Auditor-General or a person authorised or appointed by the Auditor-General shall have access to all documents that relate to or are relevant to an audit.

(3) Accounts which are subject to auditing by the Auditor-General shall be kept in the form approved by the Auditor-General.

(4) The Auditor-General shall, not later than nine months after the end of each financial year, submit a report of the accounts audited under clause (1) in respect of the immediately preceding financial year to -

- (a) the President; and
- (b) the National Assembly.

(5) The National Assembly shall, within three months after the submission of the report referred to in clause (4), consider the report and take appropriate action.

(6) The Auditor-General may conduct audits of public accounts at intervals and with the regularity that the Auditor-General considers necessary.

(7) The President, the National Assembly or any public officer may, at any time, in the public interest, request the Auditor-General to audit the accounts of a State organ, State institution or body that is subject to audit under this Part.

(8) The office of the Auditor-General shall be audited and the report shall be submitted to the National Assembly and the President by external auditors appointed by the State Audit Commission."

### **21.17.3 Deliberations of the Conference on Article 320**

The Conference reiterated its earlier observations that the provisions of Article 320 of the Mung'omba Draft Constitution were drawn from Articles 121 and 122 of the current Constitution

and that for that reason, its provisions should be incorporated into the new Articles 278 and 279 and, therefore, it should be deleted.

**21.17.4 Resolution of the Conference**

The Conference deleted Article 320 of the Mung'omba Draft Constitution in accordance with its earlier decision.

**21.18 Article 321 : Reference by Auditor-General**

**21.18.1 Recommendations of the Commission**

The Commission recommended that the Constitution should provide for reference by the Auditor-General of cases of malpractice or financial impropriety to a competent public institution for action.

**21.18.2 Provisions of Article 321 of the Mung'omba Draft Constitution**

Article 321 of the Mung'omba Draft Constitution provides as follows:

**"321 The Auditor-General may refer any case of malpractice or financial impropriety to any public institution which is competent in the matter for action."**

**21.18.3 Deliberations of the Conference on Article 321**

The Conference considered Article 321 of the Mung'omba Draft Constitution and resolved to make it mandatory for the Auditor-General to report cases of malpractice or financial impropriety to any competent public institution for action. To do so, the Conference amended the Article by substituting the word "may" with the word "*shall*".

**21.19.4 Resolutions of the Conference**

The Conference adopted Article 321 of the Mung'omba Draft Constitution with amendments and re-numbered it as Article 282 as follows:

**"282 The Auditor-General *shall* refer any case of malpractice or financial impropriety to any public institution which is competent in the matter for action."**

**21.19 Article 322 : National Fiscal and Emoluments Commission**

**21.19.1 Recommendations of the Commission**

21.19.1.1 The Commission recommended that the Constitution should -

- (a) establish a National Fiscal and Emoluments Commission; and
- (b) provide for functions of the Commission to include the following:
  - (i) assessing financial and fiscal policies and making recommendations on equitable financial and fiscal allocations for national revenues to the central Government, provinces and local authorities, as well as on levying of taxes and raising of loans by provinces and local authorities; and
  - (ii) evaluating and recommending for the approval of the National Assembly, emoluments of the President, Vice President, Ministers, Speaker, Chief Justice, Members of Parliament, Judges and other Constitutional office holders as well as senior civil servants.

21.19.1.2 The Commission further recommended that appropriate legislation should be enacted to establish the National Fiscal and Emoluments Commission.

**21.19.2 Provisions of Article 322 of the Mung'omba Draft Constitution**

Article 322 of the Mung'omba Draft Constitution provides as follows:

**"322. (1) There is hereby established the National Fiscal and Emoluments Commission of which the membership, additional functions, operations,**

management, finances and structures shall be provided for by an Act of Parliament.

(2) Without limiting clause (1), the functions of the National Fiscal and Emoluments Commission shall include -

- (a) assessing the financial and fiscal policies of the Government and recommending to the Government equitable financial and fiscal allocations to be appropriated to the National Government, the provinces and local authorities;
- (b) recommending for the approval of the National Assembly the emoluments of public officers specified by this Constitution and other public officers, as may be provided by or under an Act of Parliament; and
- (c) any other function specified by this Constitution or any other law."

### **21.19.3 Deliberations of the Conference on Article 322**

21.19.3.1 The Conference observed that the National Fiscal and Emoluments Commission if established under Article 322 of the Mung'omba Draft Constitution would simply duplicate the work of the Ministry responsible for finance and national planning and the National Assembly.

21.19.3.2 The Conference resolved to delete Article 322 of the Mung'omba Draft Constitution in order to avoid duplication of roles and substituted it with Article 119 of the current Constitution in order to provide for the emoluments of certain offices.

21.19.3.3 Article 119 of the current Constitution provides as follows:

**"119. (1) There shall be paid to the holders of the offices to which this Article applies such salary and such allowances as may be prescribed by or under an Act of Parliament.**

**(2) The salaries and any allowances payable to the holders of offices to which this Article applies shall be a charge on the general revenues of the Republic.**



**(3) The salary payable to the holder of any office to which this Article applies and his terms of office shall not be altered to his disadvantage after his appointment.**

**(4) Where a person's salary or terms of office depend upon his option, the salary or terms for which he opts shall, for the purposes of clause (3), be deemed to be more advantageous to him than any others for which he might have opted.**

**(5) This Article applies to the offices of Chief Justice, Deputy Chief Justice, judge of the Supreme Court, Attorney-General, judge of the High Court, Investigator-General, Solicitor-General, Director of Public Prosecutions, Secretary to Cabinet and Auditor-General and to such other offices as may be prescribed by an Act of Parliament."**

21.19.3.4 In debating Article 119 of the current Constitution, the Conference resolved to amend clause (5) to make it applicable to any office established by or under the Constitution and any other law by deleting reference only to offices established under the Constitution.

#### **21.19.4 Resolution of the Conference**

The Conference adopted Article 322 of the Mung'omba Draft Constitution with amendments and re-titled it as "Remuneration of certain officers and expenses of office" and renumbered it as Article 275 as follows:

**"275 (1) There shall be paid to the holders of the offices to which this Article applies such salary and such allowances as may be prescribed by or under an Act of Parliament.**

**(2) The salary payable to the holder of any office to which this Article applies and the terms of office shall not be altered to the person's disadvantage after the person's appointment.**

(3) Where a person's salary or terms of office depend upon the person's option, the salary or terms for which the person opts shall, for the purposes of clause (2), be deemed to be more advantageous to the person than any others for which the person might have opted.

(4) This Article applies to the offices established by this Constitution and to such other offices as may be prescribed by or under an Act of Parliament.

(5) The expenses, including emoluments, of any public office constituted under this Constitution or by or under an Act of Parliament shall be a charge on the National Treasury Account."

**PART XVIII**  
**CENTRAL BANK**

**22.1 Article 323: Central Bank**

**22.1.1 Recommendations of the Commission**

The Commission recommended that the Constitution should establish the Central Bank of Zambia.

**22.1.2 Provisions of Article 323 of Mung'omba Draft Constitution**

Article 323 of the Mung'omba Draft Constitution provides as follows:

**“323. (1) There is hereby established the Central Bank of Zambia.**

**(2) The Bank of Zambia shall be the Central Bank of Zambia and the only authority to issue the currency of Zambia.**

**(3) The authority of the Central Bank 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, discipline and determine the terms and conditions of service of staff and other employees of the Central Bank vests in the Board of Directors.”**

**22.1.3 Deliberations of the Conference on Article 323**

22.1.3.1 The Conference considered Article 323 and observed that there was need to redraft clause (2) to make it clear that the Central Bank of Zambia established under clause (1) would be called the *“Bank of Zambia”* .

22.1.3.2 Accordingly, the Conference adopted Article 323 with amendment by deleting the words “the Bank of Zambia shall be the Central Bank of Zambia...” and substituting them with the words *“the Central Bank of Zambia shall be called the Bank of Zambia ...”*

#### **22.1.4 Resolutions of the Conference**

The Conference adopted Article 323 of the Mung'omba Draft Constitution with amendments and re-numbered it as Article 283 as follows:

**"283 (1) There is hereby established the Central Bank of Zambia.**

**(2) *The Central Bank of Zambia shall be called the Bank of Zambia and shall be the only authority to issue the currency of Zambia.***

**(3) The authority of the Central Bank shall vest in the Board of Directors of the Bank as constituted by an Act of Parliament."**

#### **22.2 Article 324 : Independence of Central Bank**

##### **22.2.1 Recommendations of the Commission**

The Commission recommended that the Constitution should provide for and guarantee the operational independence of the Bank.

##### **22.2.2 Provisions of Article 324 of the Mung'omba Draft Constitution**

Article 324 of the Mung'omba Draft Constitution provides as follows:

**"324. In the performance of the functions of the Central Bank, the Governor, Deputy Governor, directors and staff of the Bank shall be subject to this Constitution and any other law and shall not be subject to the direction or control of any person or authority."**

##### **22.2.3 Deliberations of the Conference on Article 324**

22.2.3.1 Some members observed that the absolute independence granted to the Central Bank by Article 324 was inappropriate for Zambia as there was need for the Minister responsible for finance to provide policy direction to the Central Bank.

22.2.3.2 Other members did not support the involvement of the Minister responsible for finance as they feared that the Minister would exert undue influence over the Governor of the Bank of Zambia.

- 22.2.3.3 Most members, however, argued that the Minister responsible for finance should give policy direction to the Governor of the Bank of Zambia because the formulation of fiscal and monetary policies was ultimately the responsibility of the Government.

#### **22.2.4 Resolutions of the Conference**

The Conference adopted Article 324 of the Mung'omba Draft Constitution with amendments and re-numbered it as Article 284 as follows:

**“284 (1) Subject to clause (2), in the performance of the functions of the Central Bank, the Governor, the Board of Directors and staff of the Bank shall be subject to this Constitution and any other law and shall not be subject to the direction or control of any person or authority.**

**(2) The Minister responsible for finance may give policy direction to the Central Bank on any matter.”**

#### **22.3 Article 325: Governor of Central Bank**

##### **22.3.1 Recommendations of the Commission**

- 22.3.1.1 The Commission recommended that the Constitution should provide that -

- (a) the Governor be appointed by the President on a renewable fixed term contract, subject to ratification by the National Assembly;
- (b) the terms of the Contract shall be prescribed in an Act of Parliament;
- (c) there should be a minimum age, qualification of 45 years for the appointment to the Office of the Governor of the Central Bank;
- (d) qualification for appointment to the Office of Governor of the Bank should be extensive knowledge of and experience in banking, finance, law or any other field relevant to Central Banking;
- (e) the Act of Parliament governing the operations of the Bank of Zambia should make provision with respect to the appointment of Deputy Governors; and

- (f) as a matter of policy, appointments of Governor and Deputy Governor of the Bank should be gender sensitive.

### **22.3.2 Provisions of Article 325 of the Mung'omba Draft Constitution**

Article 325 of the Mung'omba Draft Constitution provides as follows:

**“325. (1) There shall be a Governor of the Central Bank who shall be –**

- (a) a citizen by birth or descent;**
- (b) not less than forty-five years old;**
- (c) a person with extensive knowledge and experience in matters that relate to economics, finance or accounting, banking, law or other fields relevant to banking;**
- (d) a person of proven integrity;**
- (e) appointed by the President, subject to ratification by the National Assembly, for a fixed term of office as provided by or under an Act of Parliament;**
- (f) the chairperson of the Board of Directors; and**
- (g) removed from office only on the same grounds and procedure that apply to a judge of a superior court.**

**(2) The emoluments of the Governor shall be as recommended by the Emoluments Commission and approved by the National Assembly.**

**(3) The Governor shall before assuming office take the Official Oath, as set out in the Third Schedule.”**

### **22.3.3 Deliberations of the Conference on Article 325**

**22.3.3.1** In debating the Article, most members observed that the office of the Governor of the Central Bank had, unlike other Constitutional Offices, been provided for in the Constitution with detail which should be provided for in an Act of Parliament.

**22.3.3.2** The Conference, therefore, approved paragraphs (a), (d) and (e), and deleted paragraphs (b), (c), (f) and (g) of clause (1) and

recommended that they should be provided for in an Act of Parliament. To do so, the Conference introduced and adopted a new paragraph to provide for Parliament to enact legislation to provide for other qualifications of the Governor of the Central Bank.

- 22.3.3.3 In further debate, the Conference considered clauses (2) and (3) of Article 325 and resolved to delete them as their provisions would best be provided for under an Act of Parliament.

#### **22.3.4 Resolutions of the Conference**

The Conference adopted Article 325 of the Mung'omba Draft Constitution with amendments and renumbered it as Article 285 as follows:

**"285 There shall be a Governor of the Central Bank who shall -**

- (a) *be a citizen by birth or descent;***
- (b) *be a person of proven integrity;***
- (c) *be appointed by the President, subject to ratification by the National Assembly, for a fixed term of office as provided by or under an Act of Parliament; and***
- (d) *hold such other qualifications as may be specified by or under an Act of Parliament."***

#### **22.4 Article 326 : Legislation on Central Bank**

##### **22.4.1 Recommendations of the Commission**

The Commission recommended that -

- (a) the Board of Directors of the Bank of Zambia should reflect representation of key financial, industrial and economic institutions of Zambia and that they should be appointed by the Minister responsible for finance, in consultation with relevant institutions;
- (b) the Board representation should only comprise Zambian nationals with proven and appropriate qualifications and experience, and should reflect gender balance;

- (c) the Directors, including the Bank Governor, should serve a maximum of two four-year terms, provided that some Directors may, when necessary, vacate office earlier by lots in order to ensure continuity;
- (d) the Bank Governor should retain the Chairmanship of the Board while the Vice-Chairperson should be elected by the Board from among themselves; and
- (e) the Deputy Governor should not be a member of the Board but may be in attendance at Board meetings as part of the management team.

#### **22.4.2 Provisions of Article 326 of the Mung'omba Draft Constitution**

Article 326 of the Mung'omba Draft Constitution provides as follows:

- “326. Parliament shall enact legislation to provide for –**
- (a) the functions of the Bank, its operations and management;**
  - (b) the appointment, qualifications, tenure of office and other terms and conditions of service of the Board of Directors, other than the Governor;**
  - (c) election of a vice-chairperson from amongst the members of the Board of Directors;**
  - (d) the grounds for removal of director of the Board, other than the Governor;**
  - (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.”**

#### **22.4.3 Deliberations of the Conference on Article 326**

- 22.4.3.1** In debating Article 326, some members were of the view that issues relating to functions, removal from office, appointment, qualifications, tenure of office and other terms and conditions of service of the Board of Directors should not be included in the Constitution but should be provided for under an Act of Parliament.



22.4.3.2 The Conference adopted Article 326 of the Mung'omba Draft Constitution with amendments by deleting paragraphs (c) and (e).

#### **22.4.4 Resolutions of the Conference**

The Conference adopted Article 326 of the Mung'omba Draft Constitution with amendments and renumbered it as Article 286 as follows:

**“286 Parliament shall enact legislation to provide for -**

- (a) the functions of the Bank, its operations and management;**
- (b) *the removal from office of the Governor;***
- (c) the appointment, qualifications, tenure of office and other terms and conditions of service of the Board of Directors, other than the Governor; and**
- (d) other matters necessary for the effective performance of the functions of the Bank.”**

## **PART XIX**

### **PROVISIONS ON LAND AND PROPERTY IN THE MUNG'OMBA DRAFT CONSTITUTION**

23.0 In considering this Part, the Conference had the following Terms of Reference-

- (a) Article 327 - Basis of Land Policy;
- (b) Article 328 - Classification of land;
- (c) Article 329 - State land;
- (d) Article 330 - Customary land;
- (e) Article 331 - Vesting of land;
- (f) Article 332 - Land tenure;
- (g) Article 333 - Regulation on land use and development of property;
- (h) Article 334 -Commissioner of Lands;
- (i) Article 335 - Lands Commission;
- (j) Article 336 - Tenure of office;
- (k) Article 337 - Functions of Lands Commission; and
- (l) Article 338 - Legislation on land.

#### **23.1 Article 327 - Basis of Land Policy**

##### **23.1.1 Recommendations of the Commission**

The Commission recommended the following:

##### **(a) Vesting of Title**

- (i) all land in Zambia belonged to the citizens of Zambia and shall be vested in the President on behalf of the citizens for purposes of administration and regulation for the use of common benefit, direct or indirect of the citizens of Zambia; and
- (ii) in the regulation and administration of land, local authorities and Chiefs should have a part to play within the context of devolution of power;

##### **(b) Access, Acquisition and Ownership - Hectarage**

- (i) citizens shall have the right of access to and right to acquire land without any impediment, all conditions

- of acquisition having been met and, at the expiry of a lease, the lease shall be renewed as a matter of right;
- (ii) women shall have the right of access to and the right to own and acquire property including land;
  - (iii) the Constitution shall guarantee to all Zambians the right to communal use and access to islands, river frontages and lakeshores and these shall not be sold, leased or fenced off for private use;
  - (iv) individual title to land, whether in State land or customary tenure, should be made available through appropriate legislation. In customary tenure, there should be included in the legislation that the Local Authority and Chief can withhold consent for a good cause;
  - (v) the amount of land to be alienated in individual cases should be left to the appropriate legislation and the existing regulation under the leasehold system;
  - (vi) non-Zambians acquiring land in Zambia shall be entitled as follows:
    - (A) an investor within the meaning of investment laws of the country;
    - (B) a company incorporated in Zambia by non-Zambians of which seventy-five per cent (75%) or more of its shares are owned by Zambians;
    - (C) a non-Zambian statutory corporation created under an Act of Parliament;
    - (D) a non-Zambian registered co-operative society with less than twenty-five per cent (25%) of its membership being non-Zambian;
    - (E) a non-Zambian body registered under the Land (Perpetual Succession) Act which is non-profit making, charitable, religious, educational or philanthropic, and approved by the Minister responsible for lands;
    - (F) where the interest or right is being inherited or being transferred through survivorship or operation of law to a non-Zambian;
    - (G) a non-Zambian commercial bank registered under the Laws of Zambia; or
    - (H) a non-Zambian granted a concession or right under the Zambia Wildlife Act, No. 12 of 1998;

- (vii) the Lands Act should make provision that-
  - (A) land held under leasehold tenure, which was previously held under customary tenure, shall revert to customary tenure on re-entry, voluntary surrender or compulsory acquisition;
  - (B) if land held under leasehold tenure is not developed, it shall be repossessed by and revert to the State and if the leasehold was originally customary tenure, it should revert to customary tenure; and
  - (C) if land is used for any purpose other than that for which it was originally granted, it shall be immediately repossessed by and revert to the State, except for rezoned land;
- (viii) institutional reforms among institutions dealing in land should be introduced, while a body to coordinate the operations of these institutions should be established;
- (ix) there should be a comprehensive review, harmonisation and up-dating of the various land related laws in order to provide a clear regulatory framework for policy implementation; and
- (x) appropriate legislation should be put in place to regulate against assignment and subdivision of undeveloped land;

**(c) Delineation and Duration of Tenure**

- (i) both existing tenure systems should be allowed to evolve and develop into a system that would provide better security and access to land for the majority of Zambians; and
- (ii) leasehold of land should remain 99 years in order to allow Zambians optimum utilisation of their land, but repossession and re-entry of undeveloped land should be left to the appropriate legislation and the existing regulations under the leasehold system;

**(d) Commissioner of Lands**

The Constitution should –

- (i) establish a Lands Commission;
- (ii) provide that functions of the Lands Commission should include to hold, alienate and manage any land in Zambia in accordance with the provisions of the Constitution and other laws, including regular review of the status of all land leased to Zambians and non-Zambians, and to carry out such other functions as may be prescribed by an Act of Parliament;
- (iii) state that the Lands Commission shall comprise the Commissioner of Lands and five members to be selected from various institutions, including the Government;
- (iv) provide that members of the Commission shall be appointed by the President, subject to ratification by the National Assembly, for a non-renewable term of three years;
- (v) provide that members of the Lands Commission may only be removed from Office for inability to perform the functions of the Office arising from infirmity of body or mind, or for incompetence or misconduct;
- (vi) establish the Office of Commissioner of Lands and provide that the Commissioner shall be appointed by the President and ratified by Parliament; and
- (vii) the Office of the Commissioner of Lands shall carry out the functions of the Office under the supervision of the Lands Commission; and

**(e) Lands Tribunal – Composition and Jurisdiction**

The Constitution should provide that-

- (i) the jurisdiction of the Lands Tribunal should be widened to cover all land disputes under the Lands Act and those arising under the Housing (Statutory and Improvement Areas) Act; and
- (ii) the Lands Tribunal should be decentralised.

### **23.1.2 Provisions of Article 327 of the Mung'omba Draft Constitution**

Article 327 of the Mung'omba Draft Constitution provides as follows:

**“327. The land policy of Zambia shall ensure-**

- (a) equitable access to land and associated resources;**
- (b) equitable access and ownership of land by women;**
- (c) security of land rights for land holders;**
- (d) sustainable and productive management of land resources;**
- (e) transparent and cost effective administration of land;**
- (f) sound conservation and protection of ecologically sensitive areas;**
- (g) cost effective and efficient settlement of land disputes; and**
- (h) that river frontages, islands and lakeshores are not leased, fenced or sold.”**

### **23.1.3 Deliberations of the Conference on Article 327**

23.1.3.1 The Conference approved all paragraphs of Article 327 recommended by the Mung'omba Draft Constitution without amendments, except for paragraphs (b) and (c).

23.1.3.2 In debating paragraph (b), some members supported the reference to “women” in the provision as necessary to address the current perceived discrimination against the youth, women and persons with disabilities in matters of land alienation. The members argued that this would be positive discrimination that would enable achievement of equity in society. Some members who supported this position argued that there was, however, need to explicitly mention youths and persons with disabilities in the provision.

23.1.3.3 Other members argued that paragraph (b) of Article 327 recommended by the Mung'omba Draft Constitution was discriminating against men and that the purpose of the new Constitution was to remove discrimination of any kind. The members, therefore, proposed the deletion of the words “by women”.

- 23.1.3.4 The Conference, accordingly, approved paragraph (b) with amendments by deleting the words “by women”.
- 23.1.3.5 In debating paragraph (c), some members proposed that the provision be amended by inserting the words, “recognition of indigenous cultural rights” between the words “rights” and “for”. The rationale for this amendment was that it was important for culture and cultural heritage to be taken into account when formulating policy. The members argued that this was necessary because-
- (a) in some areas there were heritage sites such as land for ceremonies and graveyards that needed protection;
  - (b) when alienating land, cultural rights of indigenous people, which included the right to fishing and grazing grounds, should be respected; and
  - (c) there was need to extend security of land rights to customary land as most of the land currently being alienated was customary land.
- 23.1.3.6 The Conference resolved to approve the amendment to paragraph (c) as proposed by inserting the words, “recognition of indigenous cultural rights” between the words “rights” and “for”.
- 23.1.3.7 In debating paragraph (h) of Article 327, some members proposed the addition of the words “except where the lease, fencing or sale is in the public interest” at the end of the paragraph. They argued that the proposed amendment would -
- (a) create an enabling environment for investment, enhance economic development and prevent foreign investors from relocating to other countries; and
  - (b) address the current problem where river frontages, islands and lakeshores were either leased or sold and fenced, thereby denying the local people the opportunity to access rivers and lakes for fishing and watering livestock.
- 23.1.3.8 In support of the proposal, the members cited areas where the indigenous people had been disadvantaged such as along the Zambezi river in Livingstone and Kazungula, where hotels and lodges were built and fenced by title holders and other areas in Luapula, Southern and Western Provinces.

- 23.1.3.9 Other members who did not support the amendment, argued that the proposal would perpetuate the problem as investments would be undertaken under the pretext of serving public interest. The members, therefore, proposed that the provision in the Mung'omba Draft Constitution, should be retained.
- 23.1.3.10 The Conference, therefore, approved paragraph (h) without amendments.
- 23.1.3.11 The Conference Article 327 of the Mung'omba Draft Constitution with amendments.

#### **23.1.4 Resolutions of the Conference**

The Conference adopted Article 327 of the Mung'omba Draft Constitution with amendments and renumbered it as Article 287 as follows:

**“287. The land policy of Zambia shall ensure-**

- (a) equitable access to land and associated resources;**
- (b) equitable access to and ownership of land;**
- (c) security of land rights *and recognition of indigenous cultural rights*;**
- (d) sustainable and productive management of land resources;**
- (e) transparent and cost effective administration of land;**
- (f) sound conservation and protection of ecologically sensitive areas;**
- (g) cost effective and efficient settlement of land disputes; and**
- (h) that river frontages, islands and lakeshores are not leased, fenced or sold.”**

#### **23.2 Article 328 : Classification of Land**

##### **23.2.1 Recommendations of the Commission**

The Commission recommended that the Lands Act should make provision that-



- (a) land held under leasehold tenure, which was previously held under customary tenure, should revert to customary tenure on re-entry, voluntary surrender or compulsory acquisition;
- (b) if land held under leasehold tenure was not developed, it should be repossessed by and revert to the State and if the leasehold was originally customary tenure, it should revert to customary tenure; and
- (c) if land was used for any purpose other than that for which it was originally granted, it should be immediately repossessed by and revert to the State, except for rezoned land.

### **23.2.2 Provisions of Article 328 of the Mung'omba Draft Constitution**

Article 328 of the Mung'omba Draft Constitution provides as follows:

**"328. All land in Zambia shall be classified as customary land, state land or 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."**

### **23.2.3 Deliberations of the Conference on Article 328**

The Conference considered and approved Article 328 of the Mung'omba Draft Constitution with an amendment to substitute the word "delimited" with the word "delimited" on account that the latter was the standard word used in Zambian legislation.

### **23.2.4 Resolutions of the Conference**

The Conference approved Article 328 of the Mung'omba Draft Constitution with amendments and renumbered it as Article 288 as follows:

**"288. All land in Zambia shall be classified as customary land, State land or 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."**

### **23.3 Article 329 : State Land**

#### **23.3.1 Recommendations of the Commission**

The Commission recommended that individual title to land, whether in State land or customary tenure should be made available through appropriate legislation and that the Lands Act should make provision that-

- (a) if land held under leasehold tenure was not developed, it should be repossessed by and revert to the State and if the leasehold was originally customary tenure, it should revert to customary tenure; and
- (b) if land was used for any purpose other than that for which it was originally granted, it should be immediately repossessed by and revert to the State, except for rezoned land.

#### **23.3.2 Provisions of Article 329 of the Mung'omba Draft Constitution**

Article 329 of the Mung'omba Draft Constitution provides as follows:

**“329. (1) State land is -**

- (a) land held by any person under leasehold tenure;**
- (b) land which at the commencement of this Constitution was unalienated state land as defined by an Act of Parliament;**
- (c) land lawfully held, used or occupied by any government Ministry, department, agency or local authority;**
- (d) land on or under which minerals are found as specified under law;**
- (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 and water catchment areas, rivers and other natural flowing water resources, national**

- parks, animal sanctuaries and specially protected areas;
- (g) any land not classified as customary land under this Constitution; 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."

### **23.3.3 Deliberations of the Conference on Article 329**

23.3.3.1 In debating Article 329, the Conference approved paragraphs (a), (b), (c), (e), (g) and (h) of clause (1) without amendments.

23.3.3.2 In debating paragraph (d) of clause (1), the Conference deleted the provision on account that the issue of minerals was covered under Article 333 which specifically dealt with minerals and petroleum.

23.3.3.3 In debating paragraph (f), some members observed that the provision would be difficult to implement, citing the case of a river that passes through customary land, yet the provision classified such a river as State land and protected it as such. The members further argued as follows:

- (a) the provision would mean that customary land would cease to exist because it had a very wide interpretation and an Act of Parliament should decide on which areas to take under State control;
- (b) that water was a cardinal element for any livelihood and paragraph (f) suggested that indigenous Zambians would not be allowed to access such a vital resource;
- (c) that the provision would be difficult to interpret in Western Province and Chilubi Island, for instance, where most of the land area was covered by water and the people living there would be declared squatters; and
- (d) that most watersheds and river sources were in customary land so people would be displaced.

23.3.3.4 Members who supported retention of paragraph (f) argued that-

- (a) fears raised that people in rural areas or indigenous people would be evicted or exploited were incorrect since a provision to protect indigenous cultural rights was approved;
- (b) Article 330 protected tenure of customary land; and
- (c) Zambia was a unitary state and resources were for all Zambians with no restrictions on access based on tribal groupings as that was the current standard practice in the world.

23.3.3.5 The Conference adopted clause (2) of Article 329 of the Mung'omba Draft Constitution without amendments.

#### **23.3.4 Resolutions of the Conference**

The Conference adopted Article 329 of the Mung'omba Draft Constitution with amendments and re-numbered it as Article 289 as follows:

- "289. (1) State land is -**
- (a) land held by any person under leasehold tenure;**
  - (b) land which, at the commencement of this Constitution, was unalienated state land as defined by an Act of Parliament;**
  - (c) land lawfully held, used or occupied by any government Ministry, department, agency or local authority;**
  - (d) land in respect of which no heir can, by ordinary legal process, be identified;**
  - (e) any land not classified as customary land under this Constitution; and**
  - (f) 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."**

## **23.4 Article 330 : Customary Land**

### **23.4.1 Recommendations of the Commission**

The Commission recommended that individual title to land, whether in State land or customary tenure, should be made available through appropriate legislation. In customary tenure, there should be included in the legislation that “the Local Authority and Chief can withhold consent for a good cause”. The Commission also recommended that the Lands Act should make provision that-

- (a) if land held under leasehold tenure is not developed, it should be repossessed by and revert to the State and if the leasehold was originally customary tenure, it should revert to customary tenure; and
- (b) if land is used for any purpose other than that for which it was originally granted, it should be immediately repossessed by and revert to the State, except for rezoned land.

### **23.4.2 Provisions of Article 330 of the Mung’omba Draft Constitution**

Article 330 of the Mung'omba Draft Constitution provides as follows:

**“330. (1) Customary land is land held by communities identified on the basis of tribe, residence or community of interest.**

**(2) For the purposes of clause (1), customary land includes-**

- (a) land customarily held, managed or used by specific communities as community forests, grazing areas or shrines;**
- (b) land lawfully alienated to a specific community by any process of law;**
- (c) ancestral lands traditionally occupied by an ethnic community; and**
- (d) any other land declared to be customary land by an Act of Parliament.**

(3) Customary land shall not be alienated or otherwise used until the approval of the chief and local authority in whose area the land is situated has first been obtained and as may be provided by or under an Act of Parliament.

(4) An approval under clause (3), shall not be unreasonably withheld."

### **23.4.3 Deliberations of the Conference on Article 330**

23.4.3.1 The Conference approved Article 330 of the Mung'omba Draft Constitution with an amendment in paragraph (c) of clause (1) by substituting the word "ethnic" with the word "tribal".

23.4.3.2 In debating clause (1), attention was drawn to the word "tribe". Some members who supported its deletion argued as follows:

- (a) that the term was no longer relevant in Zambia due to intermarriages which resulted in tribes slowly phasing out and traditional leaders becoming leaders of communities as opposed to tribes; and
- (b) that including the term in the clause would provide a recipe for discrimination and negate the principle of "One Zambia One Nation".

23.4.3.3 Some members who supported the retention of the provision as provided for in the Mung'omba Draft Constitution argued that the term "tribe" was important because customary land was intended for tribes. The members argued that the term was part of heritage and that it was an important mechanism for checking possible infiltration by people who were not Zambians.

23.4.3.4 The Conference, after due consideration, approved the retention of the word "tribal" in clause (1). The word "ethnic" in paragraph (c) of clause (2) was also substituted with "tribe" as a way of harmonising the provision with clause (1).

22.4.3.5 In approving clause (3) of Article 330, the Conference noted that most of the powers of the chiefs were vested in the customary land, therefore, removing their right towards alienation of land would reduce their existing powers.

- 23.4.3.5 The Conference adopted Article 330 of the Mung'omba Draft Constitution with an amendment in paragraph (c) of clause (1) by substitution of the word "ethnic" with the word "tribal".

#### **23.4.4 Resolutions of the Conference**

The Conference adopted Article 330 of the Mung'omba Draft Constitution, with an amendment and re-numbered it as Article 290 as follows:

**"290. (1) Customary land is land held by communities identified on the basis of tribe, residence or community of interest.**

**(2) For the purposes of clause (1), customary land includes –**

- (a) land customarily held, managed or used by specific communities as community forests, grazing areas or shrines;**
- (b) land lawfully alienated to a specific community by any process of law;**
- (c) ancestral lands traditionally occupied by a *tribal* community; and**
- (d) any other land declared to be customary land by an Act of Parliament.**

**(3) Customary land shall not be alienated or otherwise used until the approval of the chief and local authority in whose area the land is situated has first been obtained and as may be provided by or under an Act of Parliament.**

**(4) An approval under clause (3), shall not be unreasonably withheld."**

#### **23.5 Article 331 : Vesting of Land**

##### **23.5.1 Recommendations of the Commission**

##### **23.5.1.1 The Commission recommended that-**

- (a) all land in Zambia belonged to the citizens of Zambia and shall be vested in the President on behalf of the citizens for**

- purposes of administration and regulation for the use of common benefit, direct or indirect of the citizens of Zambia; and
- (b) in the regulation and administration of land, local authorities and Chiefs should have a part to play within the context of devolution of power.

### **23.5.2 Provisions of Article 331 of the Mung'omba Draft Constitution**

Article 331 of the Mung'omba Draft Constitution provides as follows:

**“331. (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) Subject to clause (3), the President may, through the Lands Commission, chiefs or local authorities, alienate land to citizens or to non-citizens, as provided by this Constitution and by or under an Act of Parliament.**

**(4) Subject to Article 330 (3), land situated in a district shall be administered by the local authority in that district.”**

### **23.5.3 Deliberations of the Conference on Article 331**

23.5.3.1 In debating Article 331 of the Mung'omba Draft Constitution, the Conference approved clauses 1) and (2) without amendments.

23.5.3.2 In debating clause (3), the Conference decided to insert the words “subject to Article 330” after the words “clause (3)”, in order to be specific about the Article to which clause (3) belonged. The Conference also decided to delete the words “or to non-citizen” so that the provision could only provide for alienation of land to citizens of Zambia. However, before arriving at this decision, the Conference heard arguments from members who supported the retention of reference to non-citizens owning land as follows:



- (a) that prohibiting non-citizens from acquiring land in Zambia was retrogressive because Zambia had vast tracts of land that could be alienated for different purposes particularly for developmental purposes;
- (b) that the current Land Act allowed the President to alienate land to non-citizens in special circumstances, therefore, the proposed amendment was removing these powers of the President;
- (c) that the proposed restriction on foreigners buying property in Zambia could be reciprocated by other countries where Zambians were currently allowed to buy property; and
- (d) that, although land issues were emotive anywhere in the world, it was important to take cognisance of the need for development and that institutions such as embassies and corporate bodies would need to own land.

23.5.3.3 Members who supported the amendment argued as follows:

- (a) that issues of land were emotive and should be left to Zambians only, especially future generations because it was a fixed asset which did not expand;
- (b) that non-citizens being allowed to own land was a negation of the very reason for the freedom struggle which was for Zambians to own land;
- (c) that non-Zambians were likely to misuse land as exemplified by the way some foreigners who obtained licences for timber had cut trees indiscriminately; and
- (d) that it was misplaced to think that Zambia could only develop if foreigners were allowed to own land. Consequently, if foreigners were allowed to own land, the local people would be displaced by new foreign land owners.

23.5.3.4 In further debate on clause (3) on the Lands Commission, some members who were for the substitution of the “Lands Commission” with the “Commissioner of Lands” argued that that would reduce bureaucracy in land allocation. It was also argued that the powers of the President to alienate land, which were currently vested in the Commissioner of Lands, should not be changed.

- 23.5.3.4 The Conference amended the provision by substituting the “Lands Commission” with the “Commissioner of Lands” and deleted the reference to non-citizens in clause (3) of Article 331.
- 23.5.3.5 In debating clause (4), some members proposed that the clause be amended to include “in consultation with the chief” in that District. The members argued that that was because chiefs were the custodians of customary land and were, therefore, involved in the alienation and administration of land in the districts. It was further observed that the authority of chiefs as far as alienation of customary land was concerned was necessary and that consulting chiefs would serve to enhance democracy.
- 23.5.3.6 Some members were not in support of the proposed amendment and argued as follows:
- (a) that the consent of the chief was required when the land was alienated, therefore, consulting the chief again was duplication;
  - (b) that the provision related to State land in districts, therefore, there was no need to consult chiefs on land which was not under customary jurisdiction;
  - (c) that District Councils were agents of the Ministry of Lands, therefore, chiefs could not be included in the alienation of State land;
  - (d) that some traditional establishments had abused the right to alienate land to the detriment of their subjects. There was, therefore, need for a clearly defined administrative procedure relating to customary land which could provide checks and balances;
  - (e) that there were already representatives of chiefs in local authorities and, therefore, further consultation of chiefs was unnecessary; and
  - (f) that some districts had many chiefs, and this could make the process of consultations expensive for local authorities.
- 23.5.3.7 The Conference, therefore, retained the provision of clause (4) without the proposed amendments.

#### **23.5.4 Resolutions of the Conference**

The Conference adopted Article 331 of the Mung'omba Draft Constitution with amendments and re-numbered it as Article 291 as follows:

**“291. (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) Subject to clause (3) of Article 290, the President may, through the Commissioner of Lands, chiefs or local authorities, alienate land to citizens or non-citizens as provided by this Constitution and by or under an Act of Parliament.**

**(4) Subject to clause (3) of Article 290, land situated in a district shall be administered by the local authority in that district.”**

#### **23.6 Article 332 : Land Tenure**

##### **23.6.1 Recommendations of the Commission**

##### **23.6.1.1 The Commission recommended that -**

- (a) citizens shall have the right of access to and right to acquire land without any impediment, all conditions of acquisition having been met and, at the expiry of a lease, the lease shall be renewed as a matter of right;
- (b) women shall have the right of access to and the right to own and acquire property including land;
- (c) the Constitution shall guarantee to all Zambians the right to communal use and access to islands, river frontages and lakeshores and these shall not be sold, leased or fenced off for private use;
- (d) individual title to land, whether in State land or customary tenure, should be made available through appropriate legislation. In customary tenure, there

should be included in the legislation that “the Local Authority and Chief can withhold consent for a good cause”;

- (e) the amount of land to be alienated in individual cases should be left to the appropriate legislation and the existing regulation under the leasehold system;
- (f) non-Zambians acquiring land in Zambia shall be entitled as follows:
  - (i) an investor within the meaning of investment laws of the country;
  - (ii) a company incorporated in Zambia by non-Zambians of which seventy-five per cent (75%) or more of its shares are owned by Zambians;
  - (iii) a non-Zambian statutory corporation created under an Act of Parliament;
  - (iv) a non-Zambian registered co-operative society with less than twenty-five per cent (25%) of its membership being non-Zambian;
  - (v) a non-Zambian body registered under the Land (Perpetual Succession) Act which is non-profit making, charitable, religious, educational or philanthropic, and approved by the Minister responsible for lands;
  - (vi) where the interest or right is being inherited or being transferred through survivorship or operation of law to a non-Zambian;
  - (vii) a non-Zambian commercial bank registered under the Laws of Zambia; or
  - (viii) a non-Zambian granted a concession or right under the Zambia Wildlife Act, No. 12 of 1998;
- (g) the Lands Act should make provision that -
  - (i) land held under leasehold tenure, which was previously held under customary tenure, should revert to customary tenure on re-entry, voluntary surrender or compulsory acquisition;
  - (ii) if land held under leasehold tenure was not developed, it should be repossessed by and revert to the State and if the leasehold was originally customary tenure, it should revert to customary tenure; and
  - (iii) if land was used for any purpose other than that for which it was originally granted, it

- should be immediately repossessed by and revert to the State, other than rezoned land;
- (h) institutional reforms among institutions dealing in land should be introduced, while a body to coordinate the operations of these institutions
- (i) there should be a comprehensive review, harmonisation and up-dating of the various land related laws in order to provide a clear regulatory framework for policy implementation;
- (j) appropriate legislation should be enacted to regulate against assignment and subdivision of undeveloped land;
- (k) institutional reforms among institutions dealing in land should be introduced, while a body to coordinate the operations of these institutions should be established; and
- (l) there should be a comprehensive review, harmonisation and up-dating of the various land related laws in order to provide a clear regulatory framework for policy implementation.

## **23.6.2 Provisions of Article 332 of the Mung'omba Draft Constitution**

Article 332 of the Mung'omba Draft Constitution provides as follows:

**“332. (1) Land in Zambia shall be alienated and held on the basis of customary, leasehold or other tenure, as provided by this Constitution or by or under an Act of Parliament.**

**(2) Subject to clause (1), State land may be held on a lease of ninety-nine years or such lesser years as may be provided by legislation for different categories of State land.**

**(3) A person who is not a citizen shall only be entitled to lease land for a restricted period of time, as provided by an Act of Parliament.**

**(4) Parliament shall enact legislation to provide for the categories of non-citizens that may hold land and the conditions under which they may do so.”**

### **23.6.3 Deliberations of the Conference on Article 332**

23.6.3.1 In debating the Article 332, the Conference approved clauses (1) and (2) without amendments.

23.6.3.2 In further debate on the Article, some members proposed a new clause (3) to replace clauses (3) and (4) of Article 332, which would have provided for alienation of land to non-citizens, only through corporate bodies. Corporate bodies would be required to go into partnership with Zambians for developmental purposes and that the period of tenure would be restricted. The members suggested that the decision would not affect Embassies, High Commissions and United Nations Organisations because they had freehold tenure provided in international conventions.

23.6.3.3 Other members rejected the proposal to delete the clauses and the insertion of a new clause (3). The members argued as follows:

- (a) that replacing the clauses with the new one was “narrow and dangerous” because it would drive away foreign investment;
- (b) that it would be against the Zambia Development Agency Act which promoted business and investment in Zambia;
- (c) that there was a lot of merit in retaining the clauses because they would give latitude for the non-citizens to lease from landlords and would also give latitude to the National Assembly to prescribe leases which were less than the 99 years leasehold term; and
- (d) that the proposed amendments would be contrary to the provision on dual citizenship which had earlier been adopted by the Conference.

23.6.3.3 The Conference adopted clauses (1), (2), (3) and (4) of Article 332 of the Mung’omba Draft Constitution without amendments.

### **23.6.4 Resolutions of the Conference**

The Conference adopted Article 332 of the Mung’omba Draft Constitution without amendments and re-numbered it as Article 292 as follows:

**“292. (1) Land in Zambia shall be alienated and held on the basis of customary, leasehold or other tenure, as provided by this Constitution or by or under an Act of Parliament.**

**(2) Subject to clause (1), State land may be held on a lease of ninety-nine years or such lesser years as may be provided by legislation for different categories of State land.**

**(3) A person who is not a citizen shall only be entitled to lease land for a restricted period of time, as provided by an Act of Parliament.**

**(4) Parliament shall enact legislation to provide for the categories of non-citizens that may hold land and the conditions under which they may do so.”**

## **23.7 New Article : Minerals and Petroleum**

### **23.7.1 Deliberations of the Conference on the New Article**

**23.7.1.1** The Conference decided to create new provisions under Article 333 which specifically addressed matters relating to minerals and petroleum. The Article provides as follows:

**“333. (1) All rights of ownership in, searching for, mining and disposing of, minerals and petroleum, wheresoever located in Zambia, are hereby vested in the President in trust for, and on behalf of, the people of Zambia.**

**(2) The provisions of this Article have effect notwithstanding any right, title or interest which any person may possess in any water body or over the soil in, on or under, which minerals and petroleum are found.**

**(3) A person holding land which is the subject of a mining right shall take equity in the mining which is the subject of the right in lieu of compensation.**

**(4) Subject to this Article, Parliament shall enact legislation regulating -**

**(a) the exploitation of minerals and petroleum;**

- (b) the equitable sharing of royalties arising from mineral and petroleum exploitation;
  - (c) the conditions for payment of indemnities arising out of exploitation of minerals and petroleum; and
  - (d) the conditions regarding the restoration of derelict lands.
- (5) Minerals, mineral ores and petroleum shall be exploited taking into account the interest of the individual landowners, local communities and the Government."

23.7.1.2 In considering the new Article 333, the Conference approved clauses (1), (2), (4) and (5) without amendments.

23.7.1.3 In debating clause (3) of the new Article, some members proposed that the provision should not be in the Constitution but should be in an Act of Parliament. Other members, however, supported its inclusion and argued that the inclusion of the word "shall" in the provision would help bring prosperity to local people.

## 23.7.2 Resolutions of the Conference

The Conference adopted the new Article 333 and re-numbered it as Article 293 as follows:

**"293. (1) All rights of ownership in, searching for, mining and disposing of, minerals and petroleum, wheresoever located in Zambia, are hereby vested in the President in trust for, and on behalf of, the people of Zambia.**

**(2) The provisions of this Article have effect notwithstanding any right, title or interest which any person may possess in any water body or over the soil in, on or under, which minerals and petroleum are found.**

**(3) A person holding land which is the subject of a mining right shall take equity in the mining which is the subject of the right in lieu of compensation.**

**(4) Subject to this Article, Parliament shall enact legislation regulating -**

- (a) the exploitation of minerals and petroleum;**



- (b) the equitable sharing of royalties arising from mineral and petroleum exploitation;
- (c) the conditions for payment of indemnities arising out of exploitation of minerals and petroleum; and
- (d) the conditions regarding the restoration of derelict lands.

(5) Minerals, mineral ores and petroleum shall be exploited taking into account the interest of the individual landowners, local communities and the Government."

## **23.8 Article 333 : Regulation of Land Use and Development of Property**

### **23.8.1 Recommendations of the Commission**

#### **23.8.1.1 The Commission recommended that-**

- (a) the Lands Act should make provision that-
  - (i) land held under leasehold tenure, which was previously held under customary tenure, should revert to customary tenure on re-entry, voluntary surrender or compulsory acquisition;
  - (ii) if land held under leasehold tenure was not developed, it should be repossessed by and revert to the State and if the leasehold was originally customary tenure, it should revert to customary tenure; and
  - (iii) if land was used for any purpose other than that for which it was originally granted, it should be immediately repossessed by and revert to the State, except for rezoned land;
- (b) institutional reforms among institutions dealing in land should be introduced, while a body to coordinate the operations of these institutions should be established;
- (c) there should be a comprehensive review, harmonisation and up-dating of the various land related laws in order to provide a clear regulatory framework for policy implementation;
- (d) appropriate legislation should be put in place to regulate against assignment and subdivision of undeveloped land;

- (e) institutional reforms among institutions dealing in land should be introduced, while a body to coordinate the operations of these institutions should be established; and
- (f) there should be a comprehensive review, harmonisation and up-dating of the various land related laws in order to provide a clear regulatory framework for policy implementation.

## **23.8.2 Provisions of Article 333 of the Mung'omba Draft Constitution**

Article 333 of the Mung'omba Draft Constitution provides as follows:

**“333. (1) The State is empowered to regulate the use of any land, interest or right in land in the interest of defence, public safety, public order, public morality, public health, land use planning or the development or utilisation of property.**

**(2) The State shall encourage and provide a conducive social, economic, political and legal environment for the creation, development and management of property.**

**(3) Parliament shall enact legislation ensuring that major investments in land benefit local communities and their economy.”**

## **23.8.3 Deliberations of the Conference on Article 333 of the Mung'omba Draft Constitution**

**23.8.3.1** In debating clause (1) of Article 333 of the Mung'omba Draft Constitution, the Conference inserted the words “Subject to Article 65” at the beginning of the clause in order to provide for safeguard measures to protect the citizens. The Conference, however, approved clause (2) without amendments.

**22.8.3.2** In debating clause (3), some members suggested the inclusion of the word “chiefs” in the clause to specifically provide for the chiefs as beneficiaries from investments located on the land that they presided over. The proposal was justified as it meant to legalise any benefits that the chiefs might wish to draw and hence avoid litigation against them on land-related issues.

23.8.3.3 The members who supported the inclusion of “chiefs” argued -

- (a) that it was necessary in order to protect chiefs interests in view of their responsibilities carried out by chiefs in the chiefdoms;
- (b) that it was justifiable to specifically provide for chiefs since chiefdoms falling under Game Management Areas benefited directly from revenues generated from those areas;
- (b) that a specific provision for chiefs would serve as insurance cover; and
- (c) that failure to make a specific provision for chiefs as proposed by some members would be tantamount to trivialising the institution of chieftaincy.

23.8.3.4 Other members who did not support the insertion of the word “chiefs” in the provision argued as follows:

- (a) that as custodians of land for their people, chiefs should not be seen to be direct beneficiaries;
- (b) that clause (3) as provided in the Draft Constitution catered for chiefs as they were part of the local communities;
- (c) that given the apparent economic gap between chiefs and their people, the situation would be aggravated if chiefs were specifically provided for; and
- (d) that chiefs were, in practice, being involved in matters affecting societies in their respective chiefdoms.

#### 23.8.4 Resolutions of the Conference

The Conference adopted Article 333 of the Mung’omba Draft Constitution with an amendment in clause (1) and re-numbered it as Article 294, as follows:

**“294. (1) Subject to Article 63, the State is empowered to regulate the use of any land, interest or right in land in the interest of defence, public safety, public order, public morality, public health, land use planning or the development or utilisation of property.**

(2) The State shall encourage and provide a conducive social, economic, political and legal environment for the creation, development and management of property.

(3) Parliament shall enact legislation ensuring that major investments in land benefits local communities and their economy.”

**23.9 Article 334 : Commissioner of Lands**

**23.9.1 Recommendations of the Commission**

23.9.1.1 The Commission recommended that the Constitution should –

- (a) establish a Lands Commission;
- (b) provide that functions of the Lands Commission should include to hold, alienate and manage any land in Zambia in accordance with the provisions of the Constitution and other laws, including regular review of the status of all land leased to Zambians and non-Zambians, and to carry out such other functions as may be prescribed by an Act of Parliament;
- (c) state that the Lands Commission shall comprise the Commissioner of Lands and five members to be selected from various institutions, including the Government;
- (d) provide that members of the Commission shall be appointed by the President, subject to ratification by the National Assembly, for a non-renewable term of three years;
- (e) provide that members of the Lands Commission may only be removed from Office for inability to perform the functions of the Office arising from infirmity of body or mind, or for incompetence or misconduct;
- (f) establish the Office of Commissioner of Lands and provide that the Commissioner shall be appointed by the President and ratified by Parliament; and
- (g) the Office of the Commissioner of Lands shall carry out the functions of the Office under the supervision of the Lands Commission.

## **23.9.2 Provisions of Article 334 of the Mung'omba Draft Constitution**

Article 334 of the Mung'omba Draft Constitution provides as follows:

**"334. (1) The office of Commissioner of Lands is a public office and the Commissioner of Lands shall be appointed by the President, subject to ratification by the National Assembly.**

**(2) The Commissioner of Lands shall be the chief administrator of the lands commission and shall perform the functions of office under the supervision of the Lands Commission.**

**(3) The term of office of the Commissioner of Lands shall be five years, subject to renewal or until the person attains retirement age as specified by an Act of Parliament."**

## **23.9.3 Deliberations of the Conference on Article 334**

23.9.3.1 In debating clause (1), the Conference introduced amendments to the provision as follows:

***"334. (1) There shall be a Commissioner of Lands whose office is a public office and who shall be appointed by the President, subject to ratification by the National Assembly."***

23.9.3.2 In debating clause (2), the Conference decided to separate the functions of the Commissioner of Lands as follows:

- (a) to administer, manage and alienate land on behalf of the President; and
- (b) to perform any other function provided by or under an Act of Parliament.

23.9.3.3 In further debate, some members who were not satisfied with the administration on land matters, proposed strengthening of the Office through the introduction of a Supervisory Committee. The other members proposed creating the position of Deputy Commissioner of Lands.

23.9.3.4 However, members who did not support the proposals argued that -

- (a) the poor performance of the office of the Commissioner of Lands was partly due to lack of specific directives and functions;
- (b) the Commissioner of Lands was an agent of the President and was appointed by the President; and
- (c) it was not necessary to create the position of Deputy Commissioner of Lands because in the absence of the Commissioner of Lands a suitable officer would be appointed to act for administrative convenience.

23.9.3.5 The Conference, accordingly, approved clauses (1), (2) and (3) with amendments.

#### **23.9.4 Resolution of the Conference**

The Conference approved Article 334 of the Mung'omba Draft Constitution with amendments and re-numbered it as Article 295 as follows:

*"295. (1) There shall be a Commissioner of Lands whose office is a public office and who shall be appointed by the President, subject to ratification by the National Assembly.*

- (2) *The Commissioner of Lands shall -*
  - (a) *administer, manage and alienate land on behalf of the President; and*
  - (b) *perform any other function provided by or under an Act of Parliament.*

*(3) The term of office of the Commissioner of Lands shall be as specified by an Act of Parliament."*

#### **23.10 Article 335 : Lands Commission**

##### **23.10.1 Recommendations of the Commission**

23.10.1.1 The Commission recommended that the Constitution should -

- (a) establish a Lands Commission;

- (b) provide that functions of the Lands Commission should include to hold, alienate and manage any land in Zambia in accordance with the provisions of the Constitution and other laws, including regular review of the status of all land leased to Zambians and non-Zambians, and to carry out such other functions as may be prescribed by an Act of Parliament;
- (c) state that the Lands Commission shall comprise the Commissioner of Lands and five members to be selected from various institutions, including the Government;
- (d) provide that members of the Commission shall be appointed by the President, subject to ratification by the National Assembly, for a non-renewable term of three years;
- (e) provide that members of the Lands Commission may only be removed from Office for inability to perform the functions of the Office arising from infirmity of body or mind, or for incompetence or misconduct;
- (f) establish the Office of Commissioner of Lands and provide that the Commissioner shall be appointed by the President and ratified by Parliament; and
- (g) the Office of the Commissioner of Lands shall carry out the functions of the Office under the supervision of the Lands Commission.

#### **23.10.2 Provisions of Article 335 of the Mung'omba Draft Constitution**

Article 335 of the Mung'omba Draft Constitution provides as follows:

**“335. (1) There is hereby established a Lands Commission which shall consist of the Commissioner of Lands and four other part-time members appointed by the President, subject to ratification by the National Assembly.**

**(2) Parliament shall enact legislation to provide for the Lands Commission, its financial resources and financial management, procedures, administration, appointments, qualifications, promotions, transfer, retirement and discipline of staff, including the Commissioner of Lands, and generally for the functioning of the Commission.**

(3) The Lands Commission shall establish offices in every province.

(4) The expenses of the Lands Commission, including the emoluments of the staff of the Commission, shall be a charge on the Consolidated Fund."

### **23.10.3 Deliberations of the Conference on Article 335**

23.10.3.1 In debating the Article some members proposed that it should be deleted for the following reasons -

- (a) the Mung'omba Constitution Review Commission did not spell out the existing problems or mischief that the establishment of the Lands Commission was going to address;
- (b) the Commission would create duplicity in management of land issues with the Ministry of Lands, particularly the Commissioner of Lands;
- (c) the creation of the Lands Commission would cause delays in land alienation as the proposed Commission would only sit at quarterly intervals;
- (d) creation of another body whose functions were not clear would not only be costly but would water down the current powers of the Commissioner of Lands; and
- (e) the Conference had done away with the Lands Commission when earlier considering clause (3) of Article 331.

23.10.3.2 Other members who did not support the creation of a Lands Commission, opted for a "Lands Board" and argued that that would be a less costly institution as compared to the "Lands Commission". They further argued that there was need to put in place checks and balances.

### **23.10.4 Resolution of the Conference**

The Conference deleted Article 335 of the Mung'omba Draft Constitution.



## **23.11 Article 336 : Tenure of Office**

### **23.11.1 Recommendations of the Commission**

The Commission recommended that the Constitution should –

- (a) establish a Lands Commission;
- (b) provide that functions of the Lands Commission should include to hold, alienate and manage any land in Zambia in accordance with the provisions of the Constitution and other laws, including regular review of the status of all land leased to Zambians and non-Zambians, and to carry out such other functions as may be prescribed by an Act of Parliament;
- (c) state that the Lands Commission shall comprise the Commissioner of Lands and five members to be selected from various institutions, including the Government;
- (d) provide that members of the Commission shall be appointed by the President, subject to ratification by the National Assembly, for a non-renewable term of three years;
- (e) provide that members of the Lands Commission may only be removed from Office for inability to perform the functions of the Office arising from infirmity of body or mind, or for incompetence or misconduct;
- (f) establish the Office of Commissioner of Lands and provide that the Commissioner shall be appointed by the President and ratified by Parliament; and
- (g) the Office of the Commissioner of Lands shall carry out the functions of the Office under the supervision of the Lands Commission.

### **23.11.2 Provisions of Article 336 of the Mung'omba Draft Constitution**

Article 336 of the Mung'omba Draft Constitution provides as follows:

**“336. (1) A member of the Lands Commission, except the Commissioner of Lands, shall hold office for a term of three years, subject to renewal for only one further term of three years.**

**(2) Parliament shall enact Legislation providing for the removal from office of a member of the Lands Commission.”**

### **23.11.3 Deliberations of the Conference on Article 336**

The Conference decided to delete Article 336 of the Mung'omba Draft Constitution as a consequence of the earlier decision to delete Article 335 which established the Lands Commission.

### **23.11.4 Resolution of the Conference**

The Conference deleted Article 336 of the Mung'omba Draft Constitution.

## **23.12 Article 337 : Functions of Lands Commission**

### **23.12.1 Recommendations of the Commission**

The Commission recommended that the Constitution should-

- (a) establish a Lands Commission;
- (b) provide that functions of the Lands Commission should include to hold, alienate and manage any land in Zambia in accordance with the provisions of the Constitution and other laws, including regular review of the status of all land leased to Zambians and non-Zambians, and to carry out such other functions as may be prescribed by an Act of Parliament;
- (c) state that the Lands Commission shall comprise the Commissioner of Lands and five members to be selected from various institutions, including the Government;
- (d) provide that members of the Commission shall be appointed by the President, subject to ratification by the National Assembly, for a non-renewable term of three years;
- (e) provide that members of the Lands Commission may only be removed from Office for inability to perform the functions of the Office arising from infirmity of body or mind, or for incompetence or misconduct;
- (f) establish the Office of Commissioner of Lands and provide that the Commissioner shall be appointed by the President and ratified by Parliament; and
- (g) the Office of the Commissioner of Lands shall carry out the functions of the Office under the supervision of the Lands Commission.

### **23.12.2 Provisions of Article 337 the Mung'omba Draft Constitution**

Article 337 of the Mung'omba Draft Constitution provides as follows:

**“337. The functions of the Lands Commission shall include the following:**

- (a) administer, manage and alienate land on behalf of the President;**
- (b) formulate and recommend to the Government a national lands policy;**
- (c) advise the Government and local authorities on a policy framework for the development of selected areas of Zambia and to ensure that the development of customary land is in accordance with the development plan for the area;**
- (d) advise the Government on, and assist in the execution of, a comprehensive programme for the registration of leasehold title in land throughout Zambia;**
- (e) conduct research related to land and natural resource use and make recommendations to appropriate authorities;**
- (f) facilitate the participation of communities in the formulation of land policies;**
- (g) monitor and have oversight responsibilities over land use planning throughout the country; and**
- (h) any other function provided by or under an Act of Parliament.”**

### **23.12.3 Deliberations of the Conference on Article 337**

The Conference considered and decided to delete Article 337 of the Mung'omba Draft Constitution as a consequence of the earlier decision to delete Article 335 which established the Lands Commission.

#### **23.12.4 Resolution of the Conference**

The Conference deleted Article 337 of the Mung'omba Draft Constitution.

#### **23.13 Article 338 : Legislation on Land**

##### **23.13.1 Recommendations of the Commission**

The Commission recommended that –

- (a) the Lands Act should make provision that -
  - (i) land held under leasehold tenure, which was previously held under customary tenure, should revert to customary tenure on re-entry, voluntary surrender or compulsory acquisition;
  - (ii) if land held under leasehold tenure was not developed, it should be repossessed by and revert to the State and if the leasehold was originally customary tenure, it should revert to customary tenure; and
  - (iii) if land was used for any purpose other than that for which it was originally granted, it should be immediately repossessed by and revert to the State, except for rezoned land;
- (b) institutional reforms among institutions dealing in land should be introduced, while a body to coordinate the operations of these institutions should be established;
- (c) there should be a comprehensive review, harmonisation and up-dating of the various land related laws in order to provide a clear regulatory framework for policy implementation; and
- (d) appropriate legislation should be put in place to regulate against assignment and subdivision of undeveloped land.

### **23.13.2 Provisions of Article 338 the Mung'omba Draft Constitution**

Article 338 of the Mung'omba Draft Constitution provides as follows:

**“338. Parliament shall enact legislation to -**

- (a) revise, consolidate and rationalise existing laws relating to land;**
- (b) prohibit speculation in land;**
- (c) revise sectoral land use law in accordance with National Land Policy;**
- (d) regulate the manner in which any land may be converted from one classification or category to another;**
- (e) protect, conserve and provide equitable access to all state land;**
- (f) enable the settlement of landless people including the rehabilitation of spontaneous settlements of rural and urban communities; and**
- (g) prescribe minimum and maximum land holding acreage in arable areas.”**

### **23.13.3 Deliberations of the Conference on Article 338**

23.13.3.1 In debating Article 338, the Conference approved paragraphs (a) to (f) without amendments.

23.13.3.2 In debating paragraph (g), some members observed that what was important was a limitation on the size of land rather than the classification of land into arable or non-arable because what was presently arable land may not be so in the future.

22.13.3.3 In further debate of the Article, some members observed that there was need to -

- (a) address the current challenges where some of the citizens were holding large tracts of land, which they did not utilise in full, at the expense of many Zambians who were landless;
- (b) provide for the Government to make informed decisions on matters of land alienation in relation to available land; and

- (c) provide for –
  - (i) security of tenure for customary land where people were being evicted by reigning chiefs even if tenure was authorised by their predecessors; and
  - (ii) where a number of indigenous communities were being displaced from their customary land in order to pave way for development projects.

23.13.3.4 The Conference also introduced paragraphs (h), (i) and (j) to address the concerns raised above.

#### **23.13.4 Resolution of the Conference**

The Conference approved Article 338 of the Mung'omba Draft Constitution as amended and re-numbered it as Article 296 as follows:

**"296. Parliament shall enact legislation to –**

- (a) revise, consolidate and rationalise existing laws relating to land;
- (b) prohibit speculation in land;
- (c) revise sectoral land use law in accordance with national land policy;
- (d) regulate the manner in which any land may be converted from one classification or category to another;
- (e) protect, conserve and provide equitable access to all State land;
- (f) enable the settlement of landless people including the rehabilitation of spontaneous settlements of rural and urban communities;
- (g) prescribe minimum and maximum extent of land holding;
- (h) address imbalances in the alienation of land;
- (i) provide for a periodic audit of land holding and tenure; and
- (j) provide for security of tenure for customary land, which shall be issued by a chief."

## PART XX

### PROVISIONS ON ENVIRONMENT AND NATURAL RESOURCES

24.1 In considering this Part, the Conference had the following Terms of Reference:

- (a) Article 339 - Basis of environment policy;
- (b) Article 340 - Protection of environment;
- (c) Article 341 - Conservation of environment;
- (d) Article 342 - Utilisation and development of natural resources;  
and
- (e) Article 343 - Agreements relating to natural resources.

#### 24.2 **Article 339 : Basis of Environment Policy**

##### 24.2.1 **Recommendations of the Commission**

24.2.1.1 The Commission recommended that -

- (a) on *Natural Resources Conservation and Utilisation*, the Constitution should provide in the Bill of Rights that everyone has a right to -
  - (i) an environment that is not harmful to their health or well-being; and
  - (ii) have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that -
    - (A) prevent pollution and ecological degradation;
    - (B) promote conservation; and
    - (C) Secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development;

(b) on *Wildlife Conservation and Human Settlements*-

- (i) the Zambia Wildlife Authority Act should be reviewed to provide for compensation for injury, death or damage to

- crops occasioned by wild animals in exceptional circumstances;
  - (ii) the Government should prioritise and initiate investment in infrastructural development in national parks;
  - (iii) the animal population policy relating to the control of animal population should be strengthened;
  - (iv) natural resources management should emphasise the concept of community-based natural resources management and that this should be implemented in consultation with the communities concerned;
  - (v) benefits accruing from wildlife conservation and products should be re-invested in the communities; and
  - (vi) Zambia Wildlife Authority (ZAWA) should be funded adequately and on time;
- (c) on *Benefits from Exploitation of Natural Resources* -
  - (i) exploitation of natural resources should be effectively monitored and supervised to prevent over-exploitation;
  - (ii) a percentage of royalties and other fees levied for the exploitation of natural resources should be retained by local authorities and communities;
  - (iii) the royalties and other fees charged for exploitation of natural resources should adequately reflect the value of these resources;
  - (iv) small-scale mining and timber licences should be issued to Zambians only and, where necessary, Zambians should partner with non-Zambians; and
  - (v) the Government should devise a policy that will promote employment of local people in rural mining undertakings;
- (d) on *Compensation for Environmental Degradation*, appropriate legislation should make provisions for -
  - (i) mining and minerals exploitation to comply with and take into account the environmental concerns and interests of the people and the Government, including local authorities; and



- (ii) local and foreign investors to be compelled to compensate for any damage to the environment or for death or injury of persons or damage to property arising from exploitation of natural resources and also take part in preventive measures to avoid damage to the environment;
- (e) the Constitution should impose a civic duty on citizens to protect the environment from harmful use and ensure the well-being of the people, and that this duty be weighed against the right of the citizen in determining the justifiability of the same; and
- (f) the various Acts relating to the environment should be harmonised and that the administration of these Acts should be co-ordinated.

#### **24.2.2 Provisions of Article 339 of the Mung'omba Draft Constitution**

Article 339 of the Mung'omba Draft Constitution provides as follows:

- "339. The management and development of Zambia's natural resources shall-**
- (a) respect the integrity of natural processes and ecological communities, including conservation of habitats and species;**
  - (b) ensure sustainable exploitation, utilisation, management and conservation of the environment and natural resources for the present and future generations;**
  - (c) ensure equitable sharing of benefits, amongst the local communities, accruing from exploitation and utilisation of the environment and natural resources;**
  - (d) ensure equitable access to all natural resources;**
  - (e) recognise that natural resources have an economic and social value and this should be reflected in their use;**
  - (f) not bestow private ownership of any natural resource or authorise its use in perpetuity;**
  - (g) ensure gender mainstreaming by promoting equity between the opposite gender and involve women in decision making processes relating to the use of**

- natural resources and ensure efforts to reduce poverty are undertaken;
- (h) ensure that social and cultural values and methods traditionally applied by local communities for the sustainable management of the environment and natural resources are observed;
  - (i) ensure that planning and utilisation of the environment takes account of disadvantaged areas and their inhabitants;
  - (j) promote energy saving and the use of solar energy and other renewable energy sources;
  - (k) prevent pollution and ecological degradation; and
  - (l) allocate adequate resources to reclaim and rehabilitate degraded areas and those prone to disasters to make them habitable and productive."

### 24.2.3 Deliberations of the Conference on Article 339

24.2.3.1 In debating Article 339 of the Mung'omba Draft Constitution, the Conference decided to adopt the marginal note with amendments to read as "basis of environment and natural resources policy" and the provision to read as follows:

*"339. The environment and natural resources policy of Zambia shall provide that the management and development of Zambia's environment and natural resources shall ensure sustainable exploitation, utilization, management and conservation of the environment and natural resources for the present and future generations."*

24.2.3.2 In debating Article 339, some members argued that there was no need to overload the Constitution with so much detail as contained in the provision in the Mung'omba Draft Constitution. Members were of the view that such details could be provided for under an Act of Parliament as was the case with the Constitutions of Uganda and South Africa. Furthermore, it was observed that matters of policy and particularly those of the environment changed often. Members argued that if such issues were included under the Constitution, the situation might necessitate unnecessary changes to the Constitution later.

24.2.3.3 Accordingly, the Conference decided to amend the marginal note by the insertion of the words "and natural resources" after the word

"environment" so that it reads "basis of environment and natural resources policy."

#### **24.2.4 Resolutions of the Conference**

The Conference decided to delete Article 339 of the Mung'omba Draft Constitution and substituted it with a shorter provision. The Conference also decided to adopt the marginal note with the insertion of the words "and natural resources" so that the marginal note reads "basis of environment and natural resources policy". The adopted Article was renumbered as Article 297 as follows:

**"297. The environment and natural resources policy of Zambia shall provide that the management and development of Zambia's environment and natural resources shall ensure sustainable exploitation, utilisation, management and conservation of the environment and natural resources for the present and future generations."**

#### **24.3 Article 340 : Protection of Environment**

##### **24.3.1 Recommendations of the Commission**

The Commission recommended that -

- (a) the Constitution should provide in the Bill of Rights that everyone has a right to -
  - (i) an environment that is not harmful to their health or well-being; and
  - (ii) have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that -
    - (A) prevent pollution and ecological degradation;
    - (B) promote conservation; and
    - (C) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development;

- (b) the Constitution should impose a civic duty on citizens to protect the environment from harmful use and ensure the well-being of the people, and that this duty should be weighed against the right of the citizen in determining the justifiability of the same;
- (c) appropriate legislation should make provisions for –
  - (i) mining and minerals exploitation to comply with and take into account the environmental concerns and interests of the people and the Government, including local authorities; and
  - (ii) local and foreign investors to be compelled to compensate for any damage to the environment or for death or injury of persons or damage to property arising from exploitation of natural resources and also take part in preventive measures to avoid damage to the environment; and
- (d) the various Acts relating to the environment should be harmonised and that the administration of these Acts should be co-ordinated.

#### **24.3.2 Provisions of Article 340 of the Mung'omba Draft Constitution**

Article 340 of the Mung'omba Draft Constitution provides as follows:

**"340. Every person has a duty to co-operate with State organs and State institutions and other persons –**

- (a) to ensure ecologically sustainable development and use of natural resources;**
- (b) to respect, protect and safeguard the environment;**
- (c) to prevent or discontinue an act which is harmful to the environment;**
- (d) to direct the appropriate authority to take measures to prevent or discontinue an act or**

- omission which is harmful to the environment; and
- (a) to maintain a clean, safe and healthy environment."

### **24.3.3 Deliberations of the Conference on Article 340**

24.3.3.1 In supporting the Article, some members argued that protection of the environment as provided for, had a lot to do with protecting human beings, nature and natural resources. The members stressed that in an era of global warming and given the kind of investments that the country was receiving, particularly in the mining sector, there was need to provide for the protection of the environment in the Constitution.

24.3.3.2 Some members, however, did not support that the provision should be in the Constitution and proposed that it should be provided for under an Act of Parliament.

### **24.3.4 Resolutions of the Conference**

The Conference adopted Article 340 of the Mung'omba Draft Constitution without amendments and renumbered it as Article 298 as follows:

**"298. Every person has a duty to co-operate with State organs and State institutions and other persons -**

- (a) to ensure ecologically sustainable development and use of natural resources;
- (b) to respect, protect and safeguard the environment;
- (c) to prevent or discontinue an act which is harmful to the environment;
- (d) to direct the appropriate authority to take measures to prevent or discontinue an act or omission which is harmful to the environment; and
- (e) to maintain a clean, safe and healthy environment."

## **24.4 Article 341 : Conservation Of Environment**

### **24.4.1 Recommendations of the Commission**

The Commission recommended that –

- (a) the Constitution should provide in the Bill of Rights that everyone has a right to-
  - (i) an environment that is not harmful to their health or well-being; and
  - (ii) have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that -
    - (A) prevent pollution and ecological degradation;
    - (B) promote conservation; and
    - (C) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development;
- (b) the Constitution should impose a civic duty on citizens to protect the environment from harmful use and ensure the well-being of the people, and that this duty should be weighed against the right of the citizen in determining the justifiability of the same;
- (c) appropriate legislation should make provisions for –
  - (i) mining and minerals exploitation to comply with and take into account the environmental concerns and interests of the people and the Government, including local authorities; and
  - (ii) local and foreign investors to be compelled to compensate for any damage to the environment or for death or injury of persons or damage to property arising from exploitation of natural resources and also take part in preventive measures to avoid damage to the environment; and
- (d) the various Acts relating to the environment should be harmonised and that the administration of these Acts should be co-ordinated.

#### **24.4.2 Provisions of Article 341 of the Mung'omba Draft Constitution**

Article 341 of the Mung'omba Draft Constitution provides as follows:

**“341. In the utilisation and management of the environment the State shall -**

- (a) protect genetic resources and biological diversity;**
- (b) discourage waste and encourage recycling;**
- (c) establish systems of environmental impact assessment, environmental audit and for monitoring of the environment;**
- (d) encourage public participation;**
- (e) protect and enhance the intellectual property in, and indigenous knowledge of, biodiversity and genetic resources of the local communities; and**
- (f) ensure that the environmental standards enforced in the Republic are of essential benefit to all citizens.”**

#### **24.4.3 Deliberations of the Conference on Article 341**

24.4.3.1 In debating Article 341, members who supported the retention of the Article argued as follows:

- (a) that Article 339 was giving policy direction, Article 340 was imposing a duty on the person to protect the environment and Article 341 was imposing a duty on the state to conserve and protect the environment, and, therefore, the three Articles provided for different issues;
- (b) that conservation of the environment was critical in sustaining human development and for that reason, the principles which were aimed at sustaining the conservation of the environment should be enshrined in the Constitution in order to compel the State to ensure that investors complied with these provisions;
- (c) that an Act of Parliament would not have the authority to compel foreign companies to buy carbon units within the country; and

- (d) that lives had been lost from disasters such as floods due to climate change as a result of greenhouse gas emissions, hence the need to enshrine the protection of the environment in the Constitution for the sake of future generations.

24.4.3.2 Some members who proposed that the Article be deleted argued that the Constitution should confine itself to general principles to conserve the environment while details such as carbon trading or global warming, which were new issues and might evolve over time, should be provided for in an Act of Parliament. The members also argued that conservation was the same as protection of the environment which was provided for in the previous Article approved by the Conference.

24.4.3.3 The Conference adopted Article 341 of the Mung'omba Draft Constitution with an amendment in paragraph (b) by inserting the words "and carbon trading" at the end of the provision.

24.4.3.4 The amendment of paragraph (b) was seen as necessary by the Conference in order to provide for carbon trading, which was an innovative way of managing the environment in the era of climate change.

#### **24.4.4 Resolutions of the Conference**

The Conference adopted Article 341 of the Mung'omba Draft Constitution with amendments and re-numbered it as Article 299, as follows:

**"299. In the utilisation and management of the environment the State shall -**

- (a) protect genetic resources and biological diversity;**
- (b) discourage waste and encourage recycling and *carbon trading*;**
- (c) establish systems of environmental impact assessment, environmental audit and for monitoring of the environment;**
- (d) encourage public participation;**
- (e) protect and enhance the intellectual property in, and indigenous knowledge of,**



- biodiversity and genetic resources of the local communities; and
- (f) ensure that the environmental standards enforced in the Republic are of essential benefit to all citizens."

## **24.5 Article 342 : Utilisation and Development of Natural Resources**

### **24.5.1 Recommendations of the Commission**

The Commission recommended that -

(a) on *Wildlife Conservation and Human Settlements* -

- (i) the Zambia Wildlife Act should be reviewed to provide for compensation for injury, death or damage to crops occasioned by wild animals in exceptional circumstances;
- (ii) the Government should prioritise and initiate investment in infrastructural development in national parks;
- (iii) the animal population policy relating to the control of animal population should be strengthened;
- (iv) natural resources management should emphasise the concept of community-based natural resources management and that that should be implemented in consultation with the communities concerned;
- (v) benefits accruing from wildlife conservation and products should be re-invested in the communities; and
- (vi) the Zambia Wildlife Authority (ZAWA) should be funded adequately and on time; and

(b) on *Benefits from Exploitation of Natural Resources*-

- (i) exploitation of natural resources should be effectively monitored and supervised to prevent over-exploitation;
- (ii) a percentage of royalties and other fees levied for the exploitation of natural resources should be retained by local authorities and communities;
- (iii) the royalties and other fees charged for exploitation of natural resources should adequately reflect the value of these resources;

- (iv) small-scale mining and timber licences should be issued to Zambians only and, where necessary, Zambians should partner with non-Zambians; and
- (v) the Government should devise a policy that would promote the employment of local people in rural mining undertakings.

#### **24.5.2 Provisions of Article 342 the Mung'omba Draft Constitution**

Article 342 of the Mung'omba Draft Constitution provides as follows:

**“342. (1) The State shall ensure the protection, management, promotion and sustainable development of natural resources in accordance with the basic policy under this Part and shall –**

- (a) ensure an increase in output and profits;**
- (b) undertake strategic research to ensure their enhancement;**
- (c) eliminate unfair trade practices in their production, processing, distribution and marketing;**
- (d) regulate their exportation and importation;**
- (e) regulate their origin, quality, methods of production, harvesting and processing;**
- (f) eliminate processes and activities that are likely to endanger or curtail their existence; and**
- (g) utilise them for the benefit of all the people of Zambia.**

**(2) Parliament may enact legislation to provide for the utilisation and management of a natural resource by a local authority where the resource is located and shall enact legislation to –**

- (a) regulate sustainable exploitation, utilisation, management of national resources and equitable sharing of benefits accruing from natural resources; and**
- (b) protect the intellectual property rights and indigenous knowledge of local communities in biodiversity and access to genetic resources.”**

### 24.5.3 Deliberations of the Conference on Article 342

24.5.3.1 In debating Article 342 of the Mung'omba Draft Constitution, the Conference noted that the issues in clause (1) had been addressed in Article 339 of the Mung'omba Draft Constitution, which was amended and approved by the Conference as Article 297. These issues were to do with the environment and natural resources policy. The Conference, therefore, deleted clause (1).

24.5.3.2 As a consequence of the deletion of clause (1), the Conference adopted the following amendments to clause (2)-

- (a) the change of the marginal note from "Utilisation and development of natural resources" to "Legislation on environment and natural resources";
- (b) substitution of "may" with "shall" in the opening paragraph of clause (2) in order to compel Parliament to enact the legislation;
- (c) insertion of new paragraph (a) of clause (2) to provide for the utilisation and management of natural resources by local authorities;
- (d) correction of the word "national" in paragraph (a) of clause (2) to read "natural";
- (e) insertion of a new clause (c) to provide for the regulation of the origin, quality and methods of production, harvesting and processing of natural resources; and
- (f) re-numbered clause (2) as the opening paragraph of the Article.

### 24.5.4 Resolution of the Conference

The Conference adopted Article 342 of the Mung'omba Draft Constitution with amendments in clause (2) and re-numbered it as Article 300 as follows:

**"300. Parliament shall enact legislation to -**

- (a) *provide for the utilisation and management of a natural resource by a local authority in the area where the natural resource is located;*
- (b) **regulate sustainable exploitation, utilisation, management of natural**

- resources and equitable sharing of benefits accruing from natural resources;
- (c) *regulate the origin, quality, methods of production, harvesting and processing of natural resources; and*
- (d) **protect the intellectual property rights and indigenous knowledge of local communities in biodiversity and access to genetic resources."**

## **24.6 Article 343 : Agreements Relating to Natural Resources**

### **24.6.1 Recommendations of the Commission**

The Commission recommended that –

- (a) the exploitation of natural resources should be effectively monitored and supervised to prevent over-exploitation;
- (b) a percentage of royalties and other fees levied for the exploitation of natural resources should be retained by local authorities and communities;
- (c) the royalties and other fees charged for exploitation of natural resources should adequately reflect the value of these resources;
- (d) small-scale mining and timber licences should be issued to Zambians only and, where necessary, Zambians should partner with non-Zambians; and
- (e) the Government should devise a policy that would promote employment of local people in rural mining undertakings.

### **24.6.2 Provisions of Article 343 of the Mung'omba Draft Constitution**

Article 343 of the Mung'omba Draft Constitution provides as follows:

**"343. A transaction involving the grant of a right or concession by or on behalf of any person, including the Government, to another person, for the exploitation of any natural resource of Zambia shall be in accordance with this Constitution and royalties shall be paid in respect of the exploitation of the natural resource."**

### **24.6.3 Deliberations of the Conference on Article 343**

The Conference considered and adopted Article 343 of the Mung'omba Draft Constitution with amendments to oblige concession holders to replenish renewable natural resources and to provide for equitable sharing of royalties paid.

### **24.6.4 Resolution of the Conference**

The Conference adopted Article 343 of the Mung'omba Draft Constitution with amendments and re-numbered it as Article 301 as follows:

**"301. A transaction involving the grant of a right or concession by or on behalf of any person, including the Government, to another person, for the exploitation of any natural resource of Zambia shall be in accordance with this Constitution and royalties shall be paid in respect of the exploitation of the natural resource:**

**Provided that –**

- (a) where the right or concession is in respect of a renewable natural resource, the holder of the right or concession shall replenish the natural resource that is exploited; and**
- (b) there is equitable sharing of the royalties paid in respect of the exploitation of the natural resource."**

## **PART XXI**

### **REVIEW, ADOPTION AND AMENDMENT OF CONSTITUTION**

- 25.1 In considering this Part, the Conference had the following Terms of Reference –
- (a) Article 344 - Review, Adoption and Amendment of Constitution;
  - (b) Article 345 – Amendment by Referendum;
  - (c) Article 346 – Amendment without Referendum; and
  - (d) Article 347 – Certificate of Compliance.

#### **25.2 Article 344 : Review, Adoption and Amendment of Constitution**

##### **25.2.1 Recommendations of the Mung’omba Constitution Review Commission**

The Commission recommended as follows:

- (a) that the Constitution review process should not be initiated and conducted under the Inquiries Act;
- (b) that a review, repeal or replacement of the Constitution should be done through a Constituent Assembly, which should be an ad hoc body to be established under an Act of Parliament, which should also lay down the functions, composition, the mode of appointment of the members, procedures, funding and other related matters;
- (c) that after adoption of the Constitution by the Constituent Assembly, the review process should be subjected to a national referendum in which at least fifty percent (50%) of the voters participating in voting in favour of the Constitution;
- (d) that amendments to specific provisions of the Constitution should be made by an Act of Parliament; and
- (e) that any amendment to any provision relating to objectives, principles and structures of local government should not be effected except with prior approval by simple majority resolution of not less than two-thirds of all the Councils in

the country and a National Assembly resolution supported by not less than two-thirds of all Members of Parliament.

## **25.2.2 Provisions of Article 344 in the Mung'omba Draft Constitution**

Article 344 of the Mung'omba Draft Constitution provides as follows:

**"344. (1) A complete review or replacement of this Constitution shall be done by the people of Zambia exercising their constituent power in accordance with an Act of Parliament which provides for the conditions, the process and method of review.**

**(2) Nothing in this Constitution or any other law shall be construed as preventing the people of Zambia from adopting a Constitution in exercise of their constituent power through any means, including the use of a Constituent Assembly or referendum.**

**(3) Subject to this Constitution, a provision of this Constitution may be amended by an Act of Parliament.**

**(4) An amendment of a provision of this Constitution shall be in accordance with the procedure laid down in this Part.**

**(5) 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.**

**(6) A Bill to amend a provision of this Constitution which is on the objectives, 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 all councillors of the district councils.**

**(7) 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."**

## **25.2.3 Deliberations of the Conference on Article 344**

**25.2.3.1** In debating clause (1) of Article 344, some members were of the view that the provision should clearly state all the processes that were to be followed in the review, adoption and amendment of the

Constitution. In that regard, it was further proposed that the provision should include the functions of the Constitution Review Commission and the National Constitutional Conference. Some members further argued that what was required was for Parliament to be guided in the enactment of legislation for the review, adoption and amendment of the Constitution. They further argued proposed that the functions of the Constitution Review Commission and the National Constitutional Conference should be stated in the Constitution in order to prevent manipulation of the constitution making-process by the Executive.

25.2.3.2 Other members supported the retention of clause (1) of Article 344 as recommended in the Mung’omba Draft Constitution which stated that an Act of Parliament should provide for the conditions, the process and method of review of the Constitution. The members argued that the method was preferable as the values and needs of a nation were dynamic. Members further, argued that it was not advisable, to prescribe a methodology for adopting a Constitution in the event that there was need for the nation to formulate its own roadmap in the future. In that regard, the Conference adopted clause (1) of the Mung’omba Draft Constitution without amendments.

25.2.3.3 In debating clause (2) of Article 344, the Conference decided to substitute the words “through any means, including the use of a Constituent Assembly or referendum” with the words “in accordance with an Act of Parliament” to avoid any prescription of future amendments to the constitution by a specific body.

25.2.3.4 The Conference adopted clauses (3) and (4) of Article 344 without amendments.

25.2.3.5 The Conference decided to delete clauses (5) and (6) of Article 344 also to avoid any prescription of future amendments to the constitution by a specific body.

#### **25.2.4 Resolutions of the Conference**

The Conference adopted Article 344 of the Mung’omba Draft Constitution with amendments and renumbered it as Article 302.

**“302. (1) A complete review or replacement of this Constitution shall be done by the people of Zambia**



exercising their constituent power in accordance with an Act of Parliament which provides for the conditions, the process and method of review.

(2) Nothing in this Constitution or any other law shall be construed as preventing the people of Zambia from adopting a Constitution in exercise of their constituent power *in accordance with an Act of Parliament*.

(3) Subject to this Constitution, a provision of this Constitution may be amended by an Act of Parliament.

(4) An amendment of a provision of this Constitution shall be in accordance with the procedure laid down in this Part.

(5) 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.”

## **25.3 Article 345 : Amendment by Referendum**

### **25.3.1 Recommendations of the Commission**

25.3.1.1 The Commission recommended, *inter alia*, that the Constitution should provide that in order to be amended, entrenched provisions of the Constitution should require the support of not less than two-thirds of all Members of Parliament and a national Referendum in which at least fifty percent (50%) of the voters participating vote in favour.

25.3.1.2 The Commission, further, recommended that the Constitution should provide for the following entrenched provisions:

- (a) the Bill of Rights;
- (b) the procedure for amending the Constitution; and
- (c) provisions on sovereignty of the State and defence of the Constitution; citizenship; key provisions on representation of the people; election to the Office of the President, Vice-President and Members of Parliament and their terms of office; powers of the President; immunity of the President and former

President from legal proceedings; impeachment and removal from Office of the President and Vice-President; prohibition of retrospective legislation; appointment of Ministers; and protection of the independence of the Judiciary and Institution of Chieftaincy.

### 25.3.2 Provisions of Article 345 of the Mung'omba Draft Constitution

Article 345 of the Mung'omba Draft Constitution provides as follows:

**“345. (1) A Bill to amend this Constitution in respect of any of the following areas shall be by a referendum and in accordance with this Article:**

- (a) the supremacy and defence of this Constitution and the Republic of Zambia and its sovereignty, Parts I and II;**
- (b) citizenship, Part V;**
- (c) the Bill of Rights, Part VI;**
- (d) Representation of the People, Articles 93 to 109;**
- (e) the Executive, Articles 121, 122, 123, 124, 129, 130, 131, 132, 133, 135, 136, 137, 138, 139;**
- (f) the Legislature, Articles 158 and 170;**
- (c) the Judiciary, Articles 193, 194 and 216;**
- (d) Review, adoption and amendment of Constitution, Part XXII;**
- (e) Local Government, Part XII; and**
- (f) Chieftaincy and House of Chiefs, Part XIII.**

**(2) A Bill to amend any provision of this Constitution, in the areas specified under clause (1), shall be published in the Gazette and shall be laid before the National Assembly for first reading at the end of one month after the publication.**

**(3) After the first reading, the Speaker shall suspend further action on the Bill, referred to under clause (2), and refer the Bill to the Electoral Commission for a referendum to be held on the Bill within ninety days of receipt of the Bill.**

**(4) If in a referendum at least fifty percent of the registered voters vote and seventy percent vote in favour of the amendment the National Assembly shall proceed to pass the Bill referred to under clause (2).**

### **25.3.3 Deliberations of the Conference on Article 345**

25.3.3.1 In debating paragraph (a) of clause (1) of Article 345, the Conference decided that only Article 4 on the Republican Status of Zambia and Article 5 on Sovereignty of Zambia should be entrenched because Zambia's sovereignty and territorial integrity were inviolable. It was further observed that entrenching Articles 4 and 5 would prevent the ceding of Zambia's territory to other territories without the consent of the people.

25.3.3.2 In debating paragraph (b) of clause (1) of Article 345, the Conference observed that matters of citizenship were very fluid and, therefore, it was not advisable to define and limit those matters by entrenching them in the draft Constitution. The observation was made taking into account the global village that Zambia was part of. It was argued that if matters relating to citizenship were entrenched then debate would be curtailed.

25.3.3.3 The Conference decided that the provision should not be entrenched in the Draft Constitution.

25.3.3.4 In debating paragraph (c) of clause (1) of Article 345, the Conference observed the following:

- (a) that the Bill of Rights in the Mung'omba Draft Constitution contained economic, social and cultural rights also referred to as Second Generation Rights;
- (b) that the Mung'omba Draft Constitution sought to make economic, social and cultural rights justiciable;
- (c) that the current Constitution provided economic, social and cultural rights in the form of Directive Principles of State Policy, which were not justiciable;
- (d) that Directive Principles of State Policy were meant to guide the three arms of Government in the development and implementation of policies, the

making and enactment of laws and the application of the Constitution;

- (e) that economic, social and cultural rights were meant to be realised progressively depending on the resources available; and
- (f) that Zambia needed time to experiment on the implementation of those rights.

25.3.3.5 Subsequent to the above observations, two positions were advanced on the provision. The two positions were advanced as follows:

- (a) firstly, that both civil and political rights and economic, social and cultural rights should be entrenched in the Draft Constitution. However, in order to be cautious with regard to their implementation, it was suggested that a proviso regarding the progressive realisation of economic, social and cultural rights be placed in the Draft Constitution. It was argued that if Zambia desired to be part of the progressive movement, this suggestion should be adopted; and
- (b) secondly, that civil and political rights should be entrenched while economic, social and cultural rights should not be entrenched. Those who supported the proposal argued that Zambia needed time to experiment on the implementation of economic, social and cultural rights before they were entrenched because if problems arose in their implementation, then the country would have to go through a referendum, which was costly and no meaningful debate could take place.

25.3.3.6 The Conference decided that the provision should be amended by entrenching civil and political rights while economic, social and cultural rights should not be entrenched.

25.3.3.7 The Conference considered a proposal to entrench Article 128 of the Mung'omba Draft Constitution. Article 128 provides that:

**“128. (1) Subject to clauses (2) and (4), a President shall hold office for five years and shall not hold any other office of profit or emolument.**

**(2) 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 for a third or any other subsequent term.**

**(3) The President may, at any time in writing, signed personally, addressed to the Speaker of the National Assembly, resign from office.**

**(4) Subject to this Constitution, the President shall continue in office until the President-elect assumes office.**

- 25.3.3.8 In the debate, some members opposed the entrenchment of Article 128, while others supported its entrenchment.
- 25.3.3.9 The members who opposed the entrenchment of the provision of Article 128 which included the tenure of office of the President argued that, a referendum was easier to “manipulate” than the two-thirds majority in Parliament.
- 25.3.3.10 The members who supported the provision, argued that entrenching the term of office of a President in the Constitution would protect the country against future leaders who would seek to extend their stay in office.
- 25.3.3.11 The Conference decided that only clauses (1) and (2) of Article 128 should be entrenched.
- 25.3.3.12 In debating paragraphs (d) and (e) of clause (1) of Article 345, the Conference decided that those provisions should not be entrenched in the Constitution.
- 25.3.3.13 In debating paragraph (f) of clause (1) of Article 345, the Conference observed that the provision, if entrenched in the draft Constitution, would constrain leaders in their creativity.
- 25.3.3.14 The Conference, therefore, decided that the provision should not be entrenched in the Draft Constitution.
- 25.3.3.15 In debating paragraph (g) of clause (1) of Article 345, the Conference observed that matters relating to the Judiciary did not

require to be entrenched. Therefore, the Conference decided that paragraph (g) should be deleted.

- 25.3.3.16 In debating paragraph (h) of clause (1) of Article 345, the Conference observed that the provision was similar to Article 79 of the current Constitution and that entrenching the provision meant entrenching the procedure to amend or alter the Constitution.
- 25.3.3.17 Members, in that regard, proposed that the procedure for amending the Constitution be entrenched to prevent the Executive from manipulating the Constitution to protect its interests. The Conference decided that the procedure for amending the Constitution be entrenched.
- 25.3.3.18 In debating paragraph (i) of clause (1) of Article 345, the Conference decided that matters relating to local Government did not need to be entrenched in the Constitution. Therefore, the Conference decided that paragraph (i) of clause (1) should be deleted.
- 25.3.3.19 In debating of paragraph (j) of clause (1) of Article 345, some members proposed that Articles 258 (1) and (2) be entrenched in the Constitution to prevent the institution of Chieftaincy from being abolished as was the case in some African countries. It was observed that Chiefs were the custodians of Zambia's culture, customs and traditions.
- 25.3.3.20 Therefore, if the institution of Chieftaincy was not entrenched, Zambia's culture, customs and traditions would be forgotten.
- 25.3.3.21 Other members were of the view that the institution of Chieftaincy should not be entrenched because there were currently discussions between stakeholders on the creation of new Paramount Chiefs and the re-instatement of certain Chiefdoms. They argued that if the institution of Chieftaincy was entrenched then the discussions mentioned above would be curtailed.
- 25.3.3.22 The Conference agreed that Articles 258 (1) and (2) be entrenched in Article 345 (1) (j).
- 25.3.3.23 The Conference approved clause (2) of Article 345 recommended in the Mung'omba Draft Constitution without amendments.

- 25.3.3.24 The Conference approved clause (3) of Article 345 with an amendment by deleting the words “suspend further action on the Bill referred to under clause (2), and...” as those words were superfluous:
- 25.3.3.25 In the debate of clause (4) of Article 345, members argued that the Constitution Bill should be passed once a majority of registered voters voted in favour of the amendment. In that regard, members were of the view that the provision was not acceptable because the threshold of “at least fifty percent” was not adequate as it did not connote a majority vote.
- 25.3.3.26 Members emphasized that the threshold should be in the majority of registered voters as opposed to persons entitled to vote as the latter was almost impossible to attain. They stated that this was due to the voter apathy that characterised most elections held in Zambia.
- 25.3.3.27 In view of the above, the Conference decided that the wording of Article 72 (2) of the 1964 Constitution should be adopted. Article 72 (2) provides as follows:

**“(2) A Bill for an Act of Parliament under this section shall not be passed unless -**

- (a) not less than thirty days before the first reading of the bill in the National Assembly the text of the bill is published in the Gazette; and**
- (b) the bill is supported on second and third readings by the votes of not less than two-thirds of all the members of the Assembly.**

**(3) In so far as it alters-**

- (a) this section;**
- (b) Chapter III or Chapter VII of this Constitution; or**

**(3) Section 71 (2) or 73 of this Constitution;  
an Act of Parliament under this section shall not come into operation unless the provisions contained in the Act effecting that alteration have, in accordance with any law in that behalf, been submitted to a referendum in which**

all persons who are registered as voters for the purposes of elections to the National Assembly shall be entitled to vote and unless those provisions have been supported by the votes of a majority of all the persons entitled to vote in the referendum.”

#### **25.3.4 Resolutions of the Conference**

The Conference adopted Article 345 of the Mung’omba Draft Constitution with amendments and re-numbered it as Article 303 as follows:

**“303. (1) A Bill to amend this Constitution in respect of any of the following areas shall be by a referendum and in accordance with this Article:**

- (a) Articles 4 and 5;**
- (b) the Bill of Rights, Part VI, except Articles 64 to 70 inclusive;**
- (c) Article 113 (1) and (2) on the tenure of the President of Zambia;**
- (d) the Institution of Chieftaincy, Article 225 (1); and**
- (e) the review, adoption and amendment of Constitution, Part XX1;**

**(2) A Bill to amend any provision of this Constitution, in the areas specified under clause (1), shall be published in the Gazette and shall be laid before the National Assembly for first reading at the end of one month after the publication.**

**(3) After the first reading, the Speaker shall refer the Bill to the Electoral Commission for a referendum to be held on the Bill within ninety days of receipt of the Bill.**

**(4) If, in a referendum, the majority of all the persons registered as voters vote in favour of the Bill, the National Assembly shall proceed to pass the Bill.**



## **25.4 Article 346 : Amendment Without Referendum**

### **25.4.1 Recommendations of the Commission**

The Commission recommended the following -

- (a) that amendments to specific provisions of the Constitution should be made by an Act of Parliament; and
- (b) the amendments to any other provision of the Constitution should require the support of not less than two-thirds.

### **25.4.2 Provisions of Article 346 of the Mung'omba Draft Constitution**

Article 346 of the Mung'omba Draft Constitution provides as follows:

**"346. (1) A Bill referred, to amend a provision of the Constitution, other than a Bill specified in Article 345, shall be in accordance with this Article.**

**(2) A Bill referred to, under clause (1), shall be published in the *Gazette*.**

**(3) A Bill referred to, under clause (1), shall be laid before the National Assembly one month after the date of its publication.**

**(4) A Bill referred to, under clause (1), shall not be taken as passed by the National Assembly unless the Bill is approved at the second and third readings by the votes of at least two-thirds of all the members of the National Assembly, by a secret vote."**

### **25.4.3 Deliberations of the Conference on Article 346**

25.4.3.1 The Conference adopted clause (1) of Article 346 recommended in the Mung'omba Draft Constitution without amendments.

25.4.3.2 The Conference decided that clauses (2) and (3) of Article 346 be merged as follows:

**“(2) A Bill referred to, under clause (1), shall be published in the Gazette and shall be laid before the National Assembly one month after the date of its publication”.**

25.4.3.3 In debating clause (4) of Article 346, the Conference decided that the words “at least two-thirds” should be substituted with the words “not less than two-thirds” in line with the wording in Article 79 of the current Constitution.

25.4.3.4 Some members proposed that the words “by secret vote” be deleted. It was argued that members of Parliament (MPs) were accountable to their constituents who wanted to know how they had voted on all bills including the important Constitution Bills. It was observed that MPs in Parliaments of Commonwealth Countries did not vote in secret for the reasons mentioned above.

25.4.3.5 The Conference observed that Members of Parliament (MPs) were advised by the political parties they belonged to, to vote along party lines. However, MPs were encouraged by the National Assembly to be free to vote for or against party policy. In order to ensure that MPs voted freely, it was proposed that the words “by secret vote” be retained.

25.4.3.6 The Conference approved the provisions but decided to delete the words “by secret vote”.

#### 25.4.4 **Resolutions of the Conference**

The Conference adopted Article 346 of the Mung’omba Draft Constitution with amendments and re-numbered it 304 as follows -

**“304. (1) A Bill to amend a provision of the Constitution, other than a Bill specified in Article 303, shall be in accordance with this Article.”**

**(2) A Bill referred to in clause (1), shall be published in the Gazette and shall be laid before the National Assembly one month after the date of its publication.**

**(3) A Bill referred to in clause (1), shall not be taken as passed by the National Assembly**

unless the Bill is approved at the second and third readings by the votes of not less than two-thirds of all the members of the National Assembly”.

**25.5 Article 347 : Certificate of Compliance**

**25.5.1 Recommendations of the Commission**

The Commission recommended as follows:

**“347. A Bill for the amendment of a provision of this Constitution which has been passed in accordance with this Part shall be assented to by the President only if -**

- (a) it is accompanied by a certificate from the Speaker that this Part has been complied with in relation to it; and**
- (b) in the case of a Bill to amend a provision that requires a referendum, it is accompanied by a certificate from the Electoral Commission, signed by the Chairperson of the Commission and bearing the seal of the Commission, signifying that the Bill was approved at a referendum in accordance with this Part.”**

**25.5.2 Deliberations of the Conference on Article 347**

The Conference adopted Article 347 of the Mung’omba Draft Constitution without amendments.

**25.5.3 Resolutions of the Conference**

The Conference adopted Article 347 of the Mung’omba Draft Constitution and renumbered it as Article 305 as follows.

**“305. A Bill for the amendment of a provision of this Constitution which has been passed in accordance with this Part shall be assented to by the President only if -**

- (a) it is accompanied by a certificate from the Speaker that this Part has been complied with in relation to it; and**
- (b) in the case of a Bill to amend a provision that requires a referendum, it is accompanied by a**

certificate from the Electoral Commission, signed by the Chairperson of the Commission and bearing the seal of the Commission, signifying that the Bill was approved at a referendum in accordance with this Part."

## PART XXII

### MISCELLANEOUS PROVISIONS IN THE MUNG'OMBA DRAFT CONSTITUTION

26.1 In considering this Part, the Conference had the following Terms of Reference:

- (a) Article 248- Legal Aid;
- (b) Article 349- Interpretation of Constitution; and
- (c) Article 350- Definitions.

#### 26.2 Article 348 : Legal Aid

##### 26.2.1 Recommendations of the Commission

The Commission recommended that the right to legal representation should be enshrined in the Constitution and that the Legal Aid Department should be restructured, strengthened and decentralised to all provinces and districts.

##### 26.2.2 Provisions of Article 348 of the Mung'omba Draft Constitution

Article 348 of the Mung'omba Draft Constitution provides as follows:

**"348. (1) For the purposes of enforcing any provision of this Constitution, a person is entitled to legal aid in connection with any proceedings relating to this Constitution and any other matter if that person has reasonable grounds for taking, defending, prosecuting or being a party to the proceedings.**

**(2) Parliament shall enact legislation to regulate the grant of legal aid."**

##### 26.2.3 Deliberations of the Conference on Article 348

26.2.3.1 The Conference observed that the provision in its current form entitled all persons to legal aid and would, therefore, invite a proliferation of litigation at the expense of the State. The Conference also observed that legal aid was meant for persons who

could not afford to engage lawyers of their choice. The Conference decided in that regard that Article 348 (1) should be restricted to such persons.

- 26.2.3.2 The Conference observed that there was a Legal Aid Board in place as well as a Legal Aid Act, which governed the provision of legal aid in Zambia. The Conference further observed that poor people had access to legal aid under that Act.

#### **26.2.4 Resolutions of the Conference**

The Conference adopted Article 348 of the Mung'omba Draft Constitution with amendments and re-numbered it as Article 306 as follows:

**“306. (1) For the purposes of enforcing any provision of this Constitution, a person may be granted legal aid in accordance with an Act of Parliament, in connection with any proceedings relating to this Constitution and any other matter if that person has reasonable grounds for taking, defending, prosecuting or being a party to the proceedings.**

**(2) Parliament shall enact legislation to regulate the grant of legal aid.”**

#### **26.3 Article 349 : Interpretation of Constitution**

##### **26.3.1 Recommendations of the Commission:**

The Commission recommended the following:

**“349. (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 or any other law to a person holding an office under this Constitution or under any other law, includes a reference to the person lawfully performing the functions of that office at any particular time;
- (c) a reference in this Constitution or any other law 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) For the purposes of this Constitution and any other law, 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.

(5) Under this Constitution or any other law, 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.

(6) A provision of this Constitution or of any other law, 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 or that law, 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 or the law.

(7) Where in this Constitution or any other law, 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.

(8) Where in this Constitution or any other law, power is conferred on a person or an authority to issue orders, make rules, regulations, other statutory instrument, a resolution or direction, the power includes the power to be exercised in the same manner, to amend or revoke the orders, rules, regulations other statutory instrument, resolution or direction.

(9) 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.

(10) A person shall not be regarded as disqualified for appointment to any office to which a public officer is not qualified to be appointed by reason only that that person holds a public office if that person is on leave of absence pending relinquishment of that office.

(11) 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.

(12) Any reference in this Constitution to a law that amends or replaces any other law shall be construed as including a reference to a law that modifies, re-acts, with or without amendment or modification, or makes different provision in lieu of that other law.

(13) Subject to this Constitution, where any Act to amend a provision of this Constitution, amends any provision then, 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 incurred under the provision so amended; or
- (e) affect any investigation, legal proceeding or remedy in respect of any right, privilege, obligation, liability, penalty, forfeiture or confiscation or punishment and any investigation, legal proceeding or remedy may be instituted, continued or enforced and any penalty, forfeiture or confiscation or punishment may be imposed, as if the amending Act had not been passed.

(14) 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.

(15) Where by an Act which amends and re-enacts, with or without modification, 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 to make or a power exercisable by making statutory instruments;
- (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.

(16) 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;
- (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.

(17) Where any person is empowered to make appointments under this Constitution that person shall

**ensure that either gender is not less than thirty percent of the total appointments made.**

**(18) Where any person is empowered to make an appointment under this Constitution that person shall ensure that equitable consideration is given to persons of both gender.**

**26.3.2 Deliberations of the Conference on Article 349**

- 26.3.2.1 In debating Article 349, the Conference observed that the provisions were in standard form and were also found in the Interpretation and General Provisions Act, Chapter 2 of the Laws of Zambia. The Conference further observed that the rules of interpretation in the Interpretation and General Provisions Act were used to interpret provisions of the Constitution and other laws.
- 26.3.2.2 In debating clause (1), the Conference decided that the provision should be deleted to avoid monotony because the rules of interpretation outlined therein were the same as those developed by the courts of law and or common law.
- 26.3.2.3 The Conference adopted clause (2) without amendments.
- 26.3.2.4 In debating clause (3), the Conference decided that the reference to the doctrine of interpretation that the law is always speaking should be deleted as the courts of law always applied the doctrine.
- 26.3.2.5 The Conference approved clauses (4) to (11) without amendments.
- 26.3.2.6 The Conference adopted clause (12) but substituted the word “re-acts” with “re-enacts”.
- 26.3.2.7 The Conference adopted clause (13) with amendments by substituting the words “amend”, “amends”, “amended” and “amending” with “repeal”, “repeals”, “repealed” and “repealing”, respectively.
- 26.3.2.8 In debating clause (14), the Conference decided that the words “from time to time” should be deleted.

26.3.2.9 In debating clause (15) the Conference substituted the word “amends” with “repeal”.

26.3.2.10 In debating clause (16), the Conference observed that the provisions of the Article were provided for in both the Interpretation and General Provisions Act and the current Constitution. The Conference decided that the clause should only provide for the computation of time and that the details should be in an Act of Parliament. The Conference observed that doing so would facilitate amendments.

### **26.3.3 Resolutions of the Conference**

The Conference adopted Article 349 of the Mung’omba Draft Constitution with amendments and re-numbered it as Article 307:

**307. (1) If there is a conflict between different language versions of this Constitution the English language version shall prevail**

**(2) In this Constitution -**

- (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 to a person holding an office under this Constitution or under any other law, includes a reference to the person lawfully performing the functions of that office at any particular time;**
- (c) a reference 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 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.

(3) For the purpose of this Constitution and any other law, 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.

(4) Under this Constitution or any other law, 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.

(5) A provision of this Constitution or of any other law, 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 or that law, 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 or the law.

(6) Where in this Constitution or any other law, 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.

(7) Where in this Constitution or any other law, power is conferred on a person or an authority to issue orders, make rules, regulations, other statutory instrument, a resolution or direction, the power includes the power to be exercised in the same manner, to amend or revoke the orders, rules, regulations, other statutory instrument, resolution or direction.

(8) 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.

(9) A person shall not be regarded as disqualified for appointment to any office to which a public officer is not qualified to be appointed by reason only that that person holds a public office, if that person is on leave of absence pending relinquishment of that office.

(10) 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.

(11) Any reference in this Constitution to a law that amends or replaces any other law shall be construed as including a reference to a law that modifies, re-enacts, with or without amendment or modification, or makes different provision in lieu of that other law.

(12) Where any Act passed after the commencement of this Constitution, repeals any provision thereof then, unless the contrary intention appears, the repeal shall not –

- (a) revive anything not in force or existing at the time at which the repeal takes effect;
- (b) affect the previous operation of any provision so repealed or anything duly done or suffered under any provision so repealed;
- (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any provision so repealed;
- (d) affect any penalty, forfeiture or confiscation or punishment incurred under the provision so repealed; or
- (e) affect any investigation, legal proceeding or remedy in respect of any right, privilege, obligation, liability, penalty, forfeiture or confiscation, or punishment and any investigation, legal proceeding or remedy may be instituted, continued or enforced and any penalty, forfeiture or confiscation or

punishment may be imposed, as if the repealing Act had not been passed.

(13) Where this Constitution confers any power or imposes any duty, the power may be exercised and the duty shall be performed as occasion requires.

(14) Where by an Act which amends, repeals or re-enacts, with or without modification, 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 to make or a power exercisable by making statutory instruments;
- (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.

(15) Parliament shall enact legislation to provide for the computation of time for purposes of this Constitution.

(16) Where any person is empowered to make an appointment under this Constitution that person shall ensure that equitable consideration is given to persons of both gender.

## 26.4 Article 352 : Definitions

### 26.4.1 Recommendations of the Commission

The Commission recommended as follows:

“In this Constitution, unless the context otherwise requires –

“adult” means an individual who has attained 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;**

**“Bill of Rights” means the rights and freedoms set out in Part VI and includes their status, application, interpretation, derogations, and enforcement as specified under that Part;**

**“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;**

**“citizen” means a citizen of Zambia;**

**“Commission” means a Commission established by or under this Constitution;**

**“constituency” means any of the constituencies into which Zambia is divided as provided by this Constitution;**

**“constituency-based seat” means a National Assembly seat which has been contested for or won through the first-past-the-post segment of the mixed member representation system;**

**“Constitutional Court” means the Supreme and Constitutional Court when it is sitting as a Constitutional Court;**

**“councillor” means a member of a city, municipal or district council;**

**“court” means a court of competent jurisdiction established by or under the authority of this Constitution;**

**“direct election” means an election –**

- (a) to the office of President;**
- (b) for a member of the National Assembly; or**
- (c) for a councillor of a district council;**

**“district council” includes a city or municipal council;**

**“disability” means any restriction resulting from an impairment or inability to perform any activity in the manner or within the range considered normal for a human being;**

**“election tribunal” means an ad hoc Presidential Election Tribunal, Parliamentary Election Tribunal or Local Government Election Tribunal constituted by this Constitution;**

**“Electoral Commission” means the Electoral Commission of Zambia established under this Constitution;**



**“emolument”** includes salaries, allowances, benefits and rights that form an individual’s remuneration for services rendered, including pension, gratuity and other benefits on retirement;

**“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;

**“First Deputy Speaker”** means the person elected First Deputy Speaker under Article 166 (3) (a);

**“functions”** 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;

**“individual”** means a natural person;

**“incumbent President”** means a person who is currently in office as President and who is to hand over to the President-elect;

**“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 justice and a senior employee of the Judicial Service;

**“Laws”** means the Laws of Zambia;

**“mayor”** includes a chairperson of a municipal or district council;

**“Minister”** means a Cabinet Minister;

**“mixed member representation system”** means the electoral system specified by this Constitution for –

- (a) electing a person as a member of the National Assembly or as a councillor; and
- (b) nominating a person on a part list to represent a political party that is contesting a proportional representation seat in a National Assembly election or district council election;

**“oath”** includes an affirmation;

**“office holder”** means a person who holds an office of trust as a public leader or in the public sector;

**“older member of society”** means an individual who is above the age of sixty-five years;

**“Ombudsman”** means the Parliamentary Ombudsman whose office is established under this Constitution;  
**“party list”** means a list of candidates submitted by a political party in accordance with a law relating to elections;  
**“person”** includes an individual, a company, an association of persons whether corporate or unincorporated;  
**“political party”** means an association or organisation whose members are citizens and 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;  
**“public office”** includes an office the emoluments of which are 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;  
**“public service”** includes service in a public office or State institution;  
**“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;  
**“proportional representation seat”** means a National Assembly or district council seat contested for or won through the proportional representation segment of the mixed member representation system;  
**“Provincial Minister”** means a Minister appointed by the President for a province;  
**“Republic”** means the Republic of Zambia;  
**“Second Deputy Speaker”** means the person elected Second Deputy Speaker under Article 166 (3) (b);  
**“State organ”** means the Executive, Legislature or Judiciary;  
**“Speaker”** means the person elected Speaker of the National Assembly under Article 166;

**“State institution” includes a ministry or department of the Government, a public office, agency or institution, statutory body or company in which the Government 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;**

**“statutory instrument” means a rule, regulation, by-law, order or other similar law made under a power conferred by an Act of Parliament;**

**“superior court” means the Supreme and Constitutional Court, the Court of Appeal and the High Court;**

**“Supreme Court” means the Supreme and Constitutional Court when it is sitting as a Supreme Court;**

**“taxes” includes rates, levies, charges, tariffs, tolls and duties;**

**“treason” includes -**

- (a) instituting a war against the Republic or assisting any state or person or inciting or conspiring with any state or person to institute war against the Republic;**
- (b) effecting or attempting to effect by force of arms or other violent means the overthrow of a State organ or State institution;**
- (c) effecting or attempting or being concerned in any act to overthrow, abrogate or suspend the operation of this Constitution;**

**“ward” means any of the units into which a district council area is divided under or by an Act of Parliament; and**

**“ward-based seat” means a district council seat contested for or won through the first-past-the-post segment of the mixed member representation system”.**

#### **26.4.2 Resolutions of the Conference**

The Conference adopted Article 352 of the Mung’omba Draft Constitution with amendments and re-numbered it as Article 308 as follows:

**308. In this Constitution, unless the context otherwise requires -  
“Act of Parliament” means a law enacted by Parliament;**

**"adult"** means an individual who has attained 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;

**"Article"** means an Article of this Constitution;

**"Bill"** means a draft of a proposed law;

**"Bill of Rights"** means the rights and freedoms set out in Part VI and includes their status, application, interpretation, derogations and enforcement as specified under that Part;

**"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;

**"citizen"** means a citizen of Zambia;

**"commission"** means a commission established by or under this Constitution;

**"constituency"** means any of the constituencies into which Zambia is divided as provided by this Constitution;

**"constituency-based seat"** means a National Assembly seat which has been contested for or won through the first-past-the-post segment of the mixed member representation system;

**"Constitutional Court"** means the Supreme and Constitutional Court when it is sitting as a Constitutional Court;

**"councillor"** means a member of a city, municipal or district council;

**"court"** means a court of competent jurisdiction established by or under the authority of this Constitution;

**"direct election"** means an election -

(a) to the office of President;

(b) for a member of the National Assembly; or

(c) for a councillor of a district council;

**"district council"** includes a city or municipal council;

**"disability"** means a permanent physical, mental, intellectual or sensory impairment which in interaction with various barriers may hinder the person's full and effective participation in society on an equal basis with others;

**"election period"** means the period which begins on the day nominations are filed and ends on the day of announcement of election results;

**"Electoral Commission"** means the Electoral Commission of Zambia established under this Constitution;

**"emolument"** includes salaries, allowances, benefits and rights that form an individual's

remuneration for services rendered, including pension, gratuity and other benefits on retirement;

**"executive functions"** means the functions of the resident set out in this Constitution;

**"financial year"** means the period of twelve months ending on the 31<sup>st</sup> December in any year or on such other day as may be prescribed by or under an Act of Parliament:

Provided that by an Act of Parliament prescribing a day other than the 31<sup>st</sup> December as the terminal day of the financial year,

the period of twelve months may be

extended or reduced for any one financial year for the purposes of effecting such prescribed change;

**"First Deputy Speaker"** means the person elected First Deputy Speaker under Article 152(4);

**"functions"** 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;

**"individual"** means a natural person;

**"incumbent President"** means a person who is currently in office as President and who is to hand over to the President-elect;

**"Investigator-General"** means the Investigator-General whose office is established under this Constitution;

**"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 and a senior employee of the Judicial Service;

**"laws"** means the Laws of Zambia;

**"Local Government Election Tribunal"** means an ad hoc Local Government Election Tribunal constituted by this Constitution;

**"mayor"** includes a chairperson of a municipal or district council;

**"Minister"** means a Cabinet Minister;

**"mixed member representation system"** means the electoral system specified by this Constitution for -

(a) electing a person as a member of the National Assembly or as a councillor; and

(b) nominating a person on a party list to represent a political party that is contesting a proportional representation seat in a National Assembly election or district council election;

**"oath"** includes an affirmation;

**"office holder"** means a person who holds an office of trust as a public leader or in the public sector; **"older member of society"** means an individual who is above the age of sixty-five years; **"party list"** means a list of candidates submitted by a political party in accordance with a law relating to elections; **"person"** includes an individual, a company, an association of persons, whether corporate or unincorporate; **"person with disabilities"** means a person who has a permanent physical, mental, intellectual or sensory impairment which in interaction with various barriers may hinder that person's full and effective participation in society on an equal basis with others; **"political party"** means an association or organisation whose members are citizens and whose objectives include the contesting of elections in order to form government or influence the policy of the National or local government; **"power"** includes privilege, authority and discretion; **"public fund"** includes moneys donated to non-governmental organisations; **"public office"** includes an office the emoluments of which are a charge on, or paid out of, the National Treasury Account, other public fund or out of moneys appropriated by Parliament; **"public officer"** means a person holding or acting in a public office, commission or a statutory body in which the government has a controlling interest; **"public service"** includes service in a public office or State institution; **"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; **"proportional representation seat"** means a National Assembly or district council seat contested for or won through the proportional representation segment of the mixed member representation system; **"Provincial Minister"** means a Minister appointed by the President for a province; **"Republic"** means the Republic of Zambia; **"Second Deputy Speaker"** means the person elected Second Deputy Speaker under Article 152 (4) (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 without having been prorogued;*
- "sitting" means a period during which the National Assembly is sitting without adjournment and includes any period during which it is in committee;*
- "State organ" means the Executive, Legislature or Judiciary;*
- "Speaker and Deputy Speakers of National Assembly" means the persons elected Speaker and Deputy Speakers of the National Assembly under Article 152 (1) and (4), respectively;*
- "State institution" includes a ministry or department of the Government, a public office, agency or institution, statutory body or company in which the Government 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;*
- "statutory instrument" means a rule, regulation, by-law, order or other similar law made under a power conferred by an Act of Parliament;*
- "superior court" means the Supreme and Constitutional Court, the Court of Appeal, the High Court and the Industrial Relations Court;*
- "Supreme Court" means the Supreme and Constitutional Court when it is sitting as a Supreme Court;*
- "taxes" includes rates, levies, charges, tariffs, tolls and duties;*
- "treason" includes -*
- (a) instituting a war against the Republic or assisting any state or person or inciting or conspiring with any state or person to institute war against the Republic;*
  - (b) effecting or attempting to effect by force of arms or other violent means the overthrow of a State organ or State institution;*
  - (c) effecting or attempting or being concerned in any act to overthrow, abrogate or suspend the operation of this Constitution;*
- "ward" means any of the units into which a district council area is divided under or by an Act of Parliament; and*
- "ward-based seat" means a district council seat contested for or won through the first-past-the-post segment of the mixed member representation system.*