

CHAPTER 1

THE CONSTITUTION OF ZAMBIA ACT

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SCHEDULE - The Constitution of Zambia

CHAPTER 1 THE CONSTITUTION OF ZAMBIA ACT

An Act to provide for the new Constitution of the Republic of Zambia; to provide for the savings and transitional provisions of existing offices, institutions and laws; to provide for the savings of succession to property and assets, rights and liabilities, obligations and legal proceedings; and to provide for matters connected with or incidental to the foregoing.

Acts No.
1 of 1991
17 of 1996
18 of 1996

[28th May, 1996]

1. This Act may be cited as the Constitution of Zambia Act.

Short Title

2. (1) In this Act, unless the context otherwise requires-
"Constitution" means the Constitution set out in the Schedule to this Act;

Interpretation
Act No.
1 of 1991

"existing law" means all law, whether a rule of law or a provision of an Act of Parliament or of any other enactment or instrument whatsoever (including any Act of Parliament of the United Kingdom or Order of Her Majesty in Council), having effect as part of the law of Zambia or part thereof immediately before the commencement of this Act, and includes any Act of Parliament or statutory instrument made before such commencement and coming into force on such commencement or thereafter.

(2) Except where the context requires, words and expressions used in this Act have the same meaning as in the Constitution.

3. Has had its effect.

4. Has had its effect.

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 purporting to be so printed shall be prima facie in all courts and for all purposes whatsoever of the Constitution as its provisions.

Printing and publication of the Constitution

6. (1) Subject to the other provisions of this Act, and so far as they are not inconsistent with the Constitution, the existing laws shall continue in force after the commencement of this Act as if they had been made in pursuance of the Constitution, but shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the Constitution.

Existing laws

(2) The President may, by statutory instrument at any time within two years of the commencement of this Act, make such amendment to any existing law as may appear to him to be necessary or expedient for bringing that law into conformity with the provisions of this Act or the Constitution as amended or otherwise for giving effect or enabling effect to be given to those provisions.

(3) Where any matter that falls to be prescribed or otherwise provided for under the Constitution by Parliament or by any other authority or person is prescribed or provided for by or under any existing law, including any amendment to any such law made under this section, or is

otherwise prescribed or provided immediately before the commencement of this Act by or under the law amended by section *three*, that prescription or provision shall, as from the commencement of this Act, have effect as if it had been made under the Constitution by Parliament or, as the case may be, the other authority or person.

(4) This section shall be without prejudice to any powers conferred by this Act or the Constitution upon any person or authority to make provision for any matter, including the amendment or repeal of any existing law.

7. Where under the existing law any prerogatives or privileges are vested in the President those prerogatives or privileges shall, after the commencement of this Act, continue to vest in the President.

Prerogatives and privileges of President

8. The person holding the office of President immediately before the commencement of this Act shall, unless he ceases to hold office by virtue of the provisions of Article 34 or 35 of the Constitution or resigns, continue in office and shall exercise the executive powers of the President under the Constitution until the person elected at the first election to the office of President under the Constitution assumes office.

Continuation of office of President

9. (1) Where any office has been established by or under the law in force before the commencement of this Act and the Constitution establishes a similar or an equivalent office, any person who immediately before the commencement of this Act holds or is acting in the former office shall, so far as is consistent with the Constitution, be deemed to have been appointed, elected or designated as from the commencement of this Act to hold or to act in the latter office in accordance with the Constitution and to have taken the oath of allegiance and any other necessary oath under the Constitution:

Existing offices

Provided that any person who, under the law in force before the commencement of this Act or any other existing law, would have been required to vacate his office at the expiration of any period or on the attainment of any age shall vacate his office at the expiration of that period or upon the attainment of that age.

(2) Any person holding the office of Vice-President, Minister and Deputy Minister under the Constitution immediately before the

commencement of this Act shall continue in office and shall exercise the powers conferred on him by the Constitution.

(3) Subject to the provision of the Constitution relating to persons in public employment, any person who is a public officer and who immediately before the commencement of this Act holds any public office shall continue to be a public officer of the Government after the commencement of this Act.

(4) The President may, at any time after the commencement of this Act, require any person who continues in office by virtue of this section to take an oath of allegiance and any oath for the due execution of his office that is prescribed by or under any Act of Parliament.

(5) This section shall be without prejudice to-

(a) the provisions of section *ten*; and

(b) any powers conferred by or under the Constitution upon any person or authority to make provision for the abolition of offices or the removal of any person holding or acting in any office.

10. (1) Subject to subsection (2), the National Assembly constituted under the law in force before the commencement of this Act (hereinafter referred to as "the existing National Assembly") shall be the National Assembly during the period beginning on the commencement of this Act and ending on the date set for the holding of elections to the office of President and the National Assembly under the Constitution.

The National
Assembly

(2) The persons who immediately before the commencement of this Act are the elected or nominated members of the existing National Assembly shall continue to be the members of the National Assembly during the period beginning on the commencement of this Act and ending on the date set for the holding of elections to the office of President and the National Assembly under the Constitution, and, in the case of elected members, shall be deemed to have been elected to the National Assembly to represent the same constituencies as the constituencies for which they were respectively elected.

(3) The persons who immediately before the commencement of this Act

are the Speaker and the Deputy Speaker of the existing National Assembly shall continue to be respectively the Speaker and the Deputy Speaker of the National Assembly during the period beginning on the commencement of this Act and ending on the date set for the holding of elections to the office of the National Assembly under the Constitution.

(4) All the functions and powers vested in Parliament by the Constitution shall be exercised, during the period beginning on the commencement of this Act and ending on the date set for the holding of elections to the office of President and National Assembly, by Parliament in accordance with the Constitution.

(5) The rules and orders of the existing National Assembly as in force immediately before the commencement of this Act, shall, until it is otherwise provided for under Article 86 of the Constitution be the rules of procedure of the National Assembly but shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the Constitution.

(6) Any person who under this section continued to be the Speaker, the Deputy Speaker or a member of the National Assembly after the commencement of this Act shall be deemed to have taken the necessary oath under the Constitution.

(7) All money granted, voted or appropriated by the existing National Assembly in respect of the services of the Republic for the current financial year shall be deemed to have been granted, voted or appropriated by the existing National Assembly and in accordance with the Constitution.

11. (1) Subject to this Act and the Constitution, all property of every nature and kind whatsoever and all assets that immediately before the commencement of this Act were vested in, or held in trust for, the President or in any other person in right of or for the purposes of the Government of Zambia shall after the commencement of this Act continue to be so vested or held in trust, as the case may be.

Succession to
property and assets

(2) Any property which, immediately before the commencement of this Act, was liable to escheat or to be forfeited to the President for the purposes of the Government of Zambia, after the commencement of this Act, shall continue to be liable to escheat or to be forfeited to the President on behalf of the Government of Zambia.

12. All rights, liabilities and obligations of the President or any public officer on behalf of the Government of Zambia before the commencement of this Act shall, on and after the commencement of this Act, be rights, liabilities and obligations of the President or such public officer, as the case may be, on behalf of the Government of Zambia.

Rights, liabilities and obligations

13. (1) All proceedings that, immediately before the commencement of this Act, are pending before any court established by or under the law in force before the commencement of this Act may be continued and concluded before those courts established by or under the Constitution.

Legal proceedings

(2) Any proceedings that immediately before the commencement of this Act are pending before any Commissioner of the High Court appointed by or under the law in force before the commencement of this Act shall be continued and concluded before such Commissioner, notwithstanding the abolition of the office of Commissioner of the High Court.

14. (1) All rights and obligations under conventions, treaties or agreements which were exercisable by or binding upon the Government of Zambia immediately before the commencement of this Act shall continue to be so exercisable and binding.

Transitional provisions

(2) All functions which immediately before the commencement of this Act were vested in the President or in any other authority shall, as far as the same continue in existence and are capable of being exercised after the commencement of this Act, be vested in the President or the authority exercising similar functions under the Constitution, as the case may be, except such functions as are by this Act or any other law vested in some other authority.

15. (1) The following provisions of this section shall have effect for the purpose of enabling any officer to whom this section applies or his personal representatives to appeal against a decision to which this section applies, that is to say a decision within the following clauses:

Appeals in respect of certain decisions affecting pensions and like benefits

(a) a decision of the Service Commission to give such concurrence as is required by Article 124 of the Constitution in relation to the refusal, withholding, reduction in amount or suspension of any benefits in respect of such an officer's service as a public officer;

- (b) a decision by any authority to remove such an officer from office if the consequence of the removal is that benefits cannot be granted in respect of the officer's service as a public officer; or
- (c) a decision by any authority to take some other disciplinary action in relation to such an officer if the consequence of the action is to reduce the amount of any benefits that may be granted in respect of the officer's service as a public officer.

(2) Where any decision such as is referred to in subsection (1) is taken by any authority, the authority shall cause to be delivered to the officer concerned, or his personal representatives, a written notice of that decision stating the time, not being less than twenty-eight days from the date on which the notice is delivered, within which he, or his personal representatives, may apply to the authority for the case to be referred to an Appeals Board.

(3) If application is duly made to an authority within the time stated in such a notice as is mentioned in subsection (2) for a case to be referred to an Appeals Board, the authority shall notify the President in writing of that application and the President shall appoint an Appeals Board for that purpose consisting of-

- (a) one member selected by the President;
- (b) one member selected by the association representative of public officers or a professional body, nominated in either case by the applicant; and
- (c) one member selected by the two other members jointly (or, in default of agreement between those members, by the Chief Justice) who shall be the Chairman of the Board.

(4) Such an Appeals Board shall inquire into the facts of the case that is referred to it, and for that purpose the Board-

- (a) shall, if the applicant so requests in writing, hear the applicant either in person or by legal representative of his choice, according to the terms of the request;

- (b) may hear any other person who, in the opinion of the Board, is able to give the Board information on the case; and
- (c) shall have access to, and shall consider, all documents that were available to the authority concerned and shall also consider any further document relating to the case that may be produced by or on behalf of the applicant or the authority.

(5) When such an Appeals Board has completed its consideration of the case, then-

- (a) if the decision that is the subject of the reference to the Board is a decision such as is mentioned in paragraph (a) of subsection (1), the Board shall advise the appropriate Commission whether the decision should be affirmed, reversed or modified and the Commission shall act in accordance with that advice;
- (b) if the decision that is the subject of the reference to the Board is a decision such as is mentioned in paragraph (b) or (c) of subsection (1), the Board shall not have power to advise the authority responsible for making the decision to affirm, reverse or notify the decision but the Board may advise the authority responsible for granting the benefits in question-
 - (i) where the officer has been removed from office, to grant all or part of the benefits for which the officer concerned would have been eligible under any law if he had retired voluntarily at the date of dismissal; or
 - (ii) where some other disciplinary action has been taken in relation to the officer, that on the grant of any benefits under any law in respect of the officer's service such benefits shall be increased in such manner, as the board may specify in order to offset all or any part of the reduction in the amount of such benefits that, in the opinion of the Board, would or might otherwise be a consequence of the action;and that authority shall act in accordance with that advice and the provisions of that law shall have effect accordingly.

(6) In this section-

"pension benefits" has the meaning assigned to it in clause (5) of Article 124 of the Constitution;

"Service Commission" has the meaning assigned to it in Clause (2) of

Article 123 of the Constitution.

(7) This section applies to any officer who on the 24th October, 1964, was on pensionable conditions of service and-

- (a) was designated under the Overseas Service Aid Scheme; or
- (b) was immediately before the 24th October, 1964, a member of Her Majesty's Overseas Civil Service or Her Majesty's Overseas Judiciary; or
- (c) whose conditions of service included an entitlement to free overseas passages from Zambia for the purpose of leave of absence upon the completion of a tour of duty; or
- (d) was not a citizen of Zambia.

16. Notwithstanding anything to the contrary contained in this Act or the Constitution, the President may, with a view to securing the appointment of citizens of Zambia to public offices, direct retirement from public office of any person who is not a citizen of Zambia:

Compulsory
retirement of
non-citizens

Provided that a person shall not be retired under the provisions of this section unless notice in writing is given to him specifying the date of retirement which shall not be earlier than six months from the date on which such notice is received by him.

SCHEDULE

(Section 2)

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CONSTITUTION OF THE REPUBLIC OF ZAMBIA

PREAMBLE

(As amended by Act No. 18 of 1996)

WE, THE PEOPLE OF ZAMBIA by our representatives, assembled in our Parliament, having solemnly resolved to maintain Zambia as a Sovereign Democratic Republic;

DETERMINED to uphold and exercise our inherent and inviolable right as a people to decide, appoint and proclaim the means and style to govern ourselves;

RECOGNISE the equal worth of men and women in their rights to participate, and freely determine and build a political, economic and social system of their own free choice;

PLEDGE to ourselves that we shall ensure that the State shall respect the rights and dignity of the human family, uphold the laws of the State and conduct the affairs of the State in such manner as to preserve, develop, and utilise its resources for this and future generations;

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

RESOLVE to uphold the values of democracy, transparency, accountability and good governance;

AND FURTHER RESOLVE that Zambia shall forever remain a unitary, indivisible, multi-party and democratic sovereign state;

DO HEREBY ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

PART I

NATIONAL SOVEREIGNTY AND THE STATE

(As amended by Act No. 18 of 1996)

1. (1) Zambia is a unitary, indivisible, multi-party and democratic sovereign State.

Declaration of Republic, sovereignty of people, supreme law and official language

(2) All power resides in the people who shall exercise their sovereignty

Public seal

through the democratic institutions of the State in accordance with this Constitution.

(3) This Constitution is the supreme law of Zambia and if any other law is inconsistent with this Constitution that other law shall, to the extent of the inconsistency, be void.

National Anthem,
National Flag,
National Emblem
and National Motto

(4) This Constitution shall bind all persons in the Republic of Zambia and all Legislative, Executive and Judicial organs of the State at all levels.

(5) The official language of Zambia shall be English.

2. The Public Seal of the Republic shall be such as may be prescribed by or under an Act of Parliament.

3. The National Anthem, the National Flag, the National Emblem and the National Motto shall be such as may be prescribed by or under an Act of Parliament.

PART II

CITIZENSHIP

(As amended by Act No. 18 of 1996)

4. (1) Every person who immediately before the commencement of this constitution was a citizen of Zambia shall continue to be a citizen of Zambia after the commencement of this Constitution.

Citizens of Zambia

(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.

5. A person born in or outside Zambia after the commencement of this Constitution shall become a citizen of Zambia at the date of his birth if on that date at least one of his parents is a citizen of Zambia.

Children of
citizens of Zambia

6. (1) Any person who-

Persons entitled to
apply to be
registered as
citizens

(a) has attained the age of twenty-one years; and

(b) has been ordinarily resident in Zambia for a continuous period of not less than ten years immediately preceding that person's application for registration;

shall be entitled to apply to the Citizenship Board, in such manner as may be prescribed by or under an Act of Parliament, to be registered as a citizen of Zambia.

(2) An application for registration as a citizen under this Article shall not be made by or on behalf of any person who, under any law in force in Zambia, is adjudged or otherwise declared to be of unsound mind.

(3) Parliament may provide that any period during which a person has the right to reside in Zambia by virtue of a permit issued under the authority of any law relating to immigration shall not be taken into account in computing the period of ten years referred to in paragraph (b) of clause (1).

7. Parliament may make provision for-

Powers of
Parliament

(a) the acquisition of citizenship of Zambia by persons who are not eligible to become citizens of Zambia under this Part;

(b) depriving any person of that person's citizenship of Zambia:

Provided that a person shall not be deprived of his citizenship except on the grounds that-

(i) that person is a citizen of a country other than Zambia; or

(ii) that person obtained such citizenship by fraud.

8. Parliament may make provision for the establishment of a Citizenship Board to deal with any of the matters falling under the provisions of Articles 6 or 7.

Citizenship Board

9. (1) A person shall cease to be a citizen of Zambia if that person-

Cesser of
citizenship

- (a) acquires the citizenship of a country other than Zambia by a voluntary act, other than marriage; and
- (b) does any act indicating that person's intention to adopt or make use of any other citizenship.

(2) A person who-

- (a) becomes a citizen of Zambia by registration; and
- (b) immediately after becoming a citizen of Zambia, is also a citizen of some other country;
shall, subject to clause (4), cease to be a citizen of Zambia at the expiration of three months after such person becomes a citizen of Zambia unless such person has renounced the citizenship of that other country, taken oath of allegiance and made and registered such declaration of his intention concerning residence as may be prescribed by or under an Act of Parliament.

(3) For the purpose of this Article, where, under the law of a country other than Zambia, a person cannot renounce the citizenship of that other country that person need not make such renunciation but may instead be required to make such declaration concerning that citizenship as may be prescribed by or under an Act of Parliament.

(4) Provision may be made by or under an Act of Parliament for extending the period within which any person may make a renunciation of citizenship, take oath or make or register a declaration for the purpose of this Article, and if such provision is made that person shall cease to be a citizen of Zambia only if at the expiration of the extended period that person has not then made the renunciation, taken the oath or made or registered the declaration, as the case may be.

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

Interpretation

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.

(3) For the avoidance of doubt, it is hereby declared that a person born in Zambia before the 1st April, 1986, whose father was an established resident shall continue to enjoy the rights and privileges, under, and remain subject to, the law prevailing immediately before that date.

PART III

PROTECTION OF THE FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL

11. It is recognised and declared that every person in Zambia has been and shall continue to be entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed, sex or marital status, but subject to the limitations contained in this Part, to each and all of the following, namely:

Fundamental rights and freedoms

- (a) life, liberty, security of the person and the protection of the law;
- (b) freedom of conscience, expression, assembly, movement and association;
- (c) protection of young persons from exploitation;
- (d) protection for the privacy of his home and other property and from deprivation of property without compensation;

and the provisions of this Part shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations of that protection as are contained in this Part, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.

12. (1) A person shall not be deprived of his life intentionally except 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.

Protection of right to life

(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.

(3) Without prejudice to any liability for a contravention of any other law with respect to the use of force in such cases as are hereinafter mentioned, a person shall not be regarded as having been deprived of his life in contravention of this Article if he 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 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 if he dies as a result of a lawful act of war; or
- (d) in order to prevent the commission by that person of a criminal offence.

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:

Protection of right
to personal liberty

- (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.

(2) Any person who is arrested or detained shall be informed as soon as reasonably practicable, in a language that he understands, of the reasons for his arrest or detention.

(3) Any person who is arrested or detained-

- (a) for the purpose of bringing him before a court in execution of an order of a court; or
- (b) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law in force in Zambia;
and who is not released, shall be brought without undue delay before a court; and if any person arrested or detained under paragraph (b) is not tried within a reasonable time, then, without prejudice to any further proceedings that may be brought against

him, he shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.

(4) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefor from that other person.

14. (1) A person shall not be held in slavery or servitude.

Protection from
slavery and forced
labour

(2) A person shall not be required to perform forced labour.

(3) For the purpose of this Article, the expression "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 he is lawfully detained that, though not required in consequence of a sentence or order of a court, is reasonably necessary in the interests of hygiene or for the maintenance of the place at which he is detained;
- (c) any labour required of a member of a disciplined force in pursuance of his duties as such or, in the case of a person who has conscientious objections 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 or a declaration under Article 30 or 31 is in force 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 that other emergency or calamity, for the purpose of dealing with that situation; or
- (e) any labour reasonably required as part of reasonable and normal communal or other civic obligations.

15. A person shall not be subjected to torture, or to inhuman or degrading punishment or other like treatment.

Protection from
inhuman treatment

16. (1) 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.

Protection from deprivation of property

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of clause (1) 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 his 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;
 - (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.

(3) An Act of Parliament such as is referred to in clause (1) shall provide that in default of agreement, the amount of compensation shall be determined by a court of competent jurisdiction.

17. (1) Except with his own consent, a person shall not be subjected to the search of his person or his property or the entry by others on his premises.

Protection for
privacy of home
and other property

(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, 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 local government authority 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, rate or due or in order to carry out work connected with any property that is lawfully on those premises and that belongs to the Government, authority 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;

and except so far as that provision or, as the case may be, anything done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

18. (1) If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

Provisions to
secure protection
of law

(2) Every person who is charged with a criminal offence-

(a) shall be presumed to be innocent until he is proved or has pleaded guilty;

(b) shall be informed as soon as reasonably practicable, in a language that he understands and in detail, of the nature of the offence charged;

(c) shall be given adequate time and facilities for the preparation of his defence;

(d) shall unless legal aid is granted to him in accordance with the law enacted by Parliament for such purpose be permitted to defend himself before the court in person, or at his own expense, by a legal representative of his own choice;

(e) shall be afforded facilities to examine in person or by 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 his behalf before the court on the same conditions as those applying to witnesses called by the prosecution; and

(f) shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the charge;

and except with his own consent the trial shall not take place in his absence unless he so conducts himself as to render the continuance of the proceedings in his presence impracticable and the court has ordered him to be removed and the trial to proceed in his absence.

(3) When a person is tried for any criminal offence, the accused person or any person authorised by him in that behalf shall, if he so requires and subject to payment of such reasonable fee as may be prescribed by law, be given within a reasonable time after judgement a copy for the use of the accused person of any record of the proceedings made by or on behalf of the court.

(4) A person shall not be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and a penalty shall not be imposed for any criminal offence that is severer in degree or description than the maximum penalty that might have been imposed for that offence at the time it was committed.

(5) A person who shows that he has been tried by a competent court for a criminal offence and either convicted or acquitted shall not again be tried for that offence or for any other criminal offence of which he 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.

(6) A person shall not be tried for a criminal offence if he shows that he has been pardoned for that offence.

(7) A person who is tried for a criminal offence shall not be compelled to give evidence at the trial.

(8) A person shall not be convicted of a criminal offence unless that offence is defined and the penalty is prescribed in a written law:

Provided that nothing in this clause shall prevent a court of record from punishing any person for contempt of itself notwithstanding that the act or omission constituting the contempt is not defined in a written law and

the penalty therefore is not so prescribed.

(9) Any court or other adjudicating authority prescribed by law for determination of the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such a court or other adjudicating authority, the case shall be given a fair hearing within a reasonable time.

(10) Except with the agreement of all the parties thereto, all proceedings of every court and proceedings for the determination of the existence or extent of any civil right or obligation before any other adjudicating authority, including the announcement of the decision of the court or other authority, shall be held in public.

(11) Nothing in clause (10) shall prevent the court or other adjudicating authority from excluding from the proceedings persons other than the parties thereto and their legal representatives to such extent as the court or other authority-

- (a) may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice or in interlocutory proceedings; or
- (b) may be empowered by law to do in the interest of defence, public safety, public order, public morality, the welfare of persons under the age of eighteen years or the protection of the private lives of persons concerned in the proceedings.

(12) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of-

- (a) paragraph (a) of clause (2) to the extent that it is shown that the law in question imposes upon any person charged with a criminal offence the burden of proving particular facts;
- (b) paragraph (d) of clause (2) to the extent that it is shown that the law in question prohibits legal representation before a subordinate court in proceedings for an offence under Zambian customary law, being proceedings against any person who, under that law, is subject to that law;

- (c) paragraph (e) of clause (2) to the extent that it is shown that the law in question imposes reasonable conditions that must be satisfied if witnesses called to testify on behalf of an accused person are to be paid their expenses out of public funds;
- (d) clause (2) to the extent that it is shown that the law provides that-
 - (i) where the trial of any person for any offence prescribed by or under the law has been adjourned and the accused, having pleaded to the charge, fails to appear at the time fixed by the court for the resumption of his trial after the adjournment, the proceedings may continue notwithstanding the absence of the accused if the court, being satisfied that, having regard to all the circumstances of the case, it is just and reasonable so to do, so orders; and
 - (ii) the court shall set aside any conviction or sentence pronounced in the absence of the accused in respect of that offence if the accused satisfies the court without undue delay that the cause of his absence was reasonable and that he had a valid defence to the charge;
- (e) clause (2) to the extent that it is shown that the law provides that the trial of a body corporate may take place in the absence of any representative of the body corporate upon a charge in respect of which a plea of not guilty has been entered by the court;
- (f) clause (5) to the extent that it is shown that the law in question authorises a court to try a member of a disciplined force for a criminal offence notwithstanding any trial and conviction or acquittal of that member under the disciplinary law of that force, so, however, that any court so trying such a member and convicting him shall in sentencing him to any punishment take into account any punishment awarded him under that disciplinary law.

(13) In the case of any person who is held in lawful detention, clause (1), paragraphs (d) and (e) of clause (3) shall not apply in relation to his trial for a criminal offence under the law regulating the discipline of persons held in such detention.

(14) In its application to a body corporate clause (2) shall have effect as if words "in person or" were omitted from paragraph (d) and (e).

(15) In this Article "criminal offence" means a criminal offence under

the law in force in Zambia.

19. (1) Except with his own consent, a person shall not be hindered in the enjoyment of his freedom of conscience, and for the purposes of this Article the said freedom includes freedom of thought and religion, freedom to change his religion or belief, and freedom, either alone or in community with others, and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance.

Protection of
freedom of
conscience

(2) Except with his own consent, or, if he is a minor, the consent of his 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 his own.

(3) 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 institutions to provide social services for such persons.

(4) A person shall not be compelled to take any oath which is contrary to his religion or belief or to take any oath in a manner which is contrary to his religion or belief.

(5) 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 purpose of protecting the rights and freedoms of other persons, including the right to observe and practice any religion without the unsolicited intervention 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.

20. (1) Except with his own consent, a person shall not be hindered in

Protection of

the enjoyment of his freedom of expression, that is to say, freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to impart and communicate ideas and information without interference, whether the communication be to the public generally or to any person or class of persons, and freedom from interference with his correspondence.

freedom of
expression

(2) Subject to the provisions of this Constitution, a law shall not make any provision that derogates from freedom of the press.

(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-

- (a) that is reasonably required in the interests of defence, public safety, public order, public morality or public health; or
- (b) that is reasonably required for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, regulating educational institutions in the interests of persons receiving instruction therein, or the registration of, or regulating the technical administration or the technical operation of, newspapers and other publications, telephony, telegraphy, posts, wireless broadcasting or television; or
- (c) that imposes restrictions upon public officers;
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.

21. (1) Except with his own consent a person shall not be hindered in the enjoyment of his freedom of assembly and association, that is to say, his 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 his interests.

Protection of
freedom of
assembly and
association

(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.

22. (1) Subject to the other provisions of this Article and except in accordance with any written law, a citizen shall not be deprived of his freedom of movement, and for the purposes of this Article freedom of movement means-

Protection of
freedom of
movement

- (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.

(2) 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.

(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-

- (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.

23. (1) Subject to clauses (4), (5) and (7), a law shall not make any provision that is discriminatory either of itself or in its effect.

Protection from discrimination on the ground of race, etc.

(2) Subject to clauses (6), (7) and (8), a person shall not be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.

(3) In this Article the expression "discriminatory" means affording different treatment to different persons attributable, wholly or mainly to their respective descriptions by race, tribe, sex, place of origin, marital status, political opinions, colour or creed whereby persons of one such description are subjected to disabilities 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.

(4) 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) with respect to persons who are not citizens of Zambia;
- (c) with respect to adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law;
- (d) 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
- (e) whereby persons of any such description as is mentioned in clause (3) may be subjected to any disability 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 justifiable in a democratic society.

(5) Nothing contained in any law shall be held to be inconsistent with or in contravention of clause (1) to the extent that it is shown that it makes reasonable provision with respect to qualifications for service as a public officer or as a member of a disciplined force or for the service of a local government authority or a body corporate established directly by any law.

(6) Clause (2) shall not apply to anything which is expressly or by necessary implication authorised to be done by any such provision or law as is referred to in clause (4) or (5).

(7) 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 whereby persons of any such description as is mentioned in clause (3) may be subjected to any restriction on the rights and freedoms guaranteed by Articles 17, 19, 20, 21 and 22, being such a restriction as is authorised by clause (2) of Article 17, clause (5) of Article 19, clause (2) of Article 20, clause (2) of Article 21 or clause (3) of Article 22, as the case may be.

(8) Nothing in clause (2) shall affect any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings in any court that is vested in any person by or under this Constitution or any other law.

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:

Protection of young persons from exploitation

Provided 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 any person under the age of fifteen years.

25. Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of Articles 13, 16, 17, 19, 20, 21, 22, 23 or 24 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 30 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.

Derogation from fundamental rights and detention

26. (1) Where a person's freedom of movement is restricted, or he is detained, under the authority of any such law as is referred to in Article 22 or 25, as the case may be, the following provisions shall apply-

Provisions relating to restriction and detention

(a) he shall, as soon as reasonably practicable and in any case not more than fourteen days after the commencement of his detention or restriction, be furnished with a statement in writing in a language that he understands specifying in detail the grounds upon which he is restricted or detained;

(b) not more than fourteen days after the commencement of his restriction or detention a notification shall be published in the

- Gazette* stating that he has been restricted or detained and giving particulars of the place of detention and the provision of law under which his restriction or detention is authorised;
- (c) if he so requests at any time during the period of such restriction or detention not earlier than three months after the commencement thereof or after he last made such a request during that period, as the case may be, his case shall be reviewed by an independent and impartial tribunal established by law and presided over by a person, appointed by the Chief Justice who is or is qualified to be a judge of the High Court;
 - (d) he shall be afforded reasonable facilities to consult a legal representative of his own choice who shall be permitted to make representations to the authority by which the restriction or detention was ordered or to any tribunal established for the review of his case; and
 - (e) at the hearing of his case by such tribunal he shall be permitted to appear in person or by a legal representative of his own choice.

(2) On any review by a tribunal under this Article the tribunal shall advise the authority by which it was ordered on the necessity or expediency of continuing his restriction or detention and that authority shall be obliged to act in accordance with any such advice.

(3) The President may at any time refer to the tribunal the case of any person who has been or is being restricted or detained pursuant to any restriction or detention order.

(4) Nothing contained in paragraph (d) or (e) of clause (1) shall be construed as entitling a person to legal representation at the public expense.

(5) Parliament may make or provide for the making of rules to regulate the proceedings of any such tribunal including, but without derogating from the generality of the foregoing, rules as to evidence and the admissibility thereof, the receipt of evidence including written reports in the absence of the restricted or detained person and his legal representative, and the exclusion of the public from the whole or any portion of the proceedings.

(6) Clauses (11) and (12) of Article 18 shall be read and construed subject to the provisions of this Article.

27. (1) Whenever-

Reference of
certain matters to
special tribunal

(a) a request is made in accordance with clause (2) for a report on a bill or statutory instrument; or

(b) the Chief Justice considers it necessary for the purpose of determining claims for legal aid in respect of proceedings under Article 30 or 31;

the Chief Justice shall appoint a tribunal which shall consist of two persons selected by him from amongst persons who hold or have held the office of a judge of the Supreme Court or the High Court.

(2) A request for a report on a bill or a statutory instrument may be made by not less than thirty members of the National Assembly by notice in writing delivered-

(a) in the case of a bill, to the Speaker within three days after the final reading of the bill in the Assembly;

(b) in the case of a statutory instrument, to the authority having power to make the instrument within fourteen days of the publication of the instrument in the *Gazette*.

(3) Where a tribunal is appointed under this Article for the purpose of reporting on a bill or a statutory instrument, the tribunal shall, within the prescribed period, submit a report to the President and to the Speaker of the National Assembly stating-

(a) in the case of a bill, whether or not in the opinion of the tribunal any, and if so which, provisions of the bill are inconsistent with this Constitution;

(b) in the case of a statutory instrument, whether or not in the opinion of the tribunal any, and if so which, provisions of the instrument are inconsistent with this Constitution;

and, if the tribunal reports that any provision would be or is inconsistent with this Constitution, the grounds upon which the tribunal has reached that conclusion:

Provided that if the tribunal considers that the request for a report on a bill or statutory instrument is merely frivolous or vexatious, it may so report to the President without entering further upon the question whether the bill or statutory instrument would be or is inconsistent with this Constitution.

(4) In determining any claim for legal aid as referred to in clause (2), the tribunal may grant to any person who satisfies it that-

(a) he intends to bring or is an applicant in proceedings under clause (1) or (4) of Article 28;

(b) he has reasonable grounds for bringing the application; and

(c) he cannot afford to pay for the cost of the application;
a certificate that the application is a proper case to be determined at the public expense:

Provided that paragraph (c) shall not apply in any case where the application relates to the validity or a provision in respect of which the tribunal has reported that it would be or is inconsistent with this Constitution or where it appears to the tribunal that issues are or will be raised in the application which are of general public importance.

(5) Where a certificate is granted to any person by the tribunal in pursuance of clause (4), there shall be paid to that person out of the general revenues of the Republic such amount as the tribunal, when hearing the application, may assess as the costs incurred by that person in connection with the application; and the sums required for making such payment shall be a charge on the general revenues of the Republic.

(6) For the purposes of clause(5)-

(a) the costs incurred in an application shall include the cost of obtaining the advice of a legal representative and, if necessary, the cost of representation by a legal representative in any court in steps preliminary or incidental to the application;

(b) in assessing the costs reasonably incurred by a person in an application, regard shall be had to costs awarded against that person or recovered by him in those proceedings.

(7) In this Article, "prescribed period" means-

(a) in relation to a bill, the period commencing from the appointment of the tribunal to report upon the bill and ending thirty days thereafter or if the Speaker, on the application of the tribunal considers that owing to the length or complexity of the bill thirty days is insufficient for consideration of the bill, ending on such later day as the Speaker may determine;

(b) in relation to a statutory instrument, the period of forty days commencing with the day on which the instrument is published in the *Gazette*.

(8) Nothing in clause (1), (2) or (3) shall apply to a bill for the appropriation of the general revenues of the Republic or a bill containing only proposals for expressly altering this Constitution or the Constitution of Zambia Act.

28. (1) Subject to clause (5), if any person alleges that any of the provisions of Articles 11 to 26 inclusive has been, is being or is likely to be contravened in relation to him, then, 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 which shall-

Enforcement of protective provisions

(a) hear and determine any such application;

(b) determine any question arising in the case of any person which is referred to it in pursuance of clause(2);

and which may, make such order, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of, any of the provisions of Articles 11 to 26 inclusive.

(2) (a) If in any proceedings in any subordinate court any question arises as to the contravention of any of the provisions of Articles 11 to 26 inclusive, the person presiding in that court may, and shall if any party to the proceedings so requests, refer the question to the High Court unless, in his opinion the raising of

the question is merely frivolous or vexatious.

- (b) Any person aggrieved by any determination of the High Court under this Article may appeal therefrom to the Supreme Court:

Provided that an appeal shall not lie from a determination of the High Court dismissing an application on the ground that it is frivolous and vexatious.

(3) An application shall not be brought under clause (1) on the grounds that the provisions of Articles 11 to 26 (inclusive) are likely to be contravened by reason of proposals contained in any bill which, at the date of the application, has not become a law.

(4) Parliament may confer upon the Supreme Court or High Court such jurisdiction or powers in addition to those conferred by this Article as may appear to be necessary or desirable for the purpose of enabling that Court more effectively to exercise the jurisdiction conferred upon it by this Article or of enabling any application for redress to be more speedily determined.

29. (1) The President may, in consultation with Cabinet, at any time, by Proclamation published in the *Gazette* declare war. Declaration of 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).

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. Declaration 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) 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.

31. (1) The President may at any time by Proclamation published in the *Gazette* declare that a situation exists which, if it is allowed to continue may lead to a state of public emergency.

Declaration relating to threatened 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) will 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 or anything previously done in reliance on such declaration.

32. (1) In this Part, unless the context otherwise requires-

Interpretation and savings

"contravention", in relation to any requirement, includes a failure to comply with that requirement and cognate expressions shall be construed accordingly;

"court" means any court of law having jurisdiction in Zambia, other than a court established by a disciplinary law; and in Articles 12 and 14 includes a court established by a disciplinary law;

"disciplinary law" means a law regulating the disciplined force;

"disciplined force" means-

(a) a naval, military or air force;

(b) the Zambia Police Force; or

(c) any other force established by or under an Act of Parliament;

"legal representative" means a person entitled to practice in Zambia as an advocate; and

"member", in relation to a disciplined force, includes any person who, under the law regulating the discipline of that force is subject to that discipline.

(2) In relation to any person who is a member of a disciplined force raised under the law of Zambia, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Part other than Articles 12, 14 and 15.

(3) In relation to any person who is a member of a disciplined force raised otherwise than as aforesaid and lawfully present in Zambia, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Part.

PART IV

THE EXECUTIVE

(As amended by Act No. 18 of 1996)

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

(2) The executive power of the Republic of Zambia shall vest in the President and, subject to the other provisions of this Constitution, shall be exercised by him either directly or through officers subordinate to him.

34. (1) The election of the President shall be direct by universal adult suffrage and by secret ballot and shall be conducted in accordance with this Article and as may be prescribed by or under an Act of Parliament. Election of President

(2) An election to the office of President shall be held whenever the National Assembly is dissolved and otherwise as provided by Article 38.

(3) A person shall be qualified to be a candidate for election as President if-

- (a) he is a Zambian citizen;
- (b) both his parents are Zambians by birth or descent;
- (c) he has attained the age of thirty-five years;

- (d) he is a member of, or is sponsored by, a political party;
- (e) he is qualified to be elected as a member of the National Assembly; and
- (f) has been domiciled in Zambia for a period of at least twenty years.

(4) A candidate for election as President (hereinafter referred to as a Presidential candidate) shall deliver his nomination papers to the Returning Officer in such manner, on such day, at such time and at such place as may be prescribed by or under an Act of Parliament.

(5) A Presidential candidate shall not be entitled to take part in an election unless-

- (a) he has paid such election fee as may be prescribed by or under an Act of Parliament on or before the date fixed by the Electoral Commission in that behalf;
- (b) he makes a statutory declaration, of his assets and liabilities, which shall be open to public inspection at such time and at such place as may be prescribed by or under an Act of Parliament; and
- (c) his nomination is supported by not less than 200 registered voters.

(6) At an election to the office of President-

- (a) all persons registered in Zambia as voters for the purposes of elections to the National Assembly shall be entitled to vote in the election;
- (b) the poll shall be taken by a secret ballot on such day, at such time, in such places and in such a manner as may be prescribed by or under an Act of Parliament; and
- (c) after the expiration of the time fixed for polling, the votes cast shall be counted and the Returning Officer shall declare the result.

(7) Where there is only one qualified Presidential candidate nominated for election, that candidate shall be declared as elected without an election taking place.

(8) The Returning Officer shall declare the candidate who receives the highest number of the total votes cast to have been duly elected as

President.

(9) A person elected as President under this Article shall be sworn in and assume office immediately but not later than twenty-four hours from the time of declaring the election.

(10) The person who has held office of President shall immediately hand over the office of President to the person elected as President and shall complete the procedural and administrative handing over process within fourteen days from the date the person elected as President is sworn in.

(11) The person who has held office as President shall not, within the period referred to in clause (10), perform any functions of the office of President under this Constitution or any other law.

35. (1) Subject to clauses (2) and (4) every President shall hold office for a period of five years.

Tenure of office of President

(2) Notwithstanding anything to the contrary contained in this Constitution or any other law a person who has twice been elected as President shall not be eligible for re-election to that office.

(3) The President may, at any time by writing under his hand addressed to the Speaker of the National Assembly, resign his office.

(4) A person assuming the office of the President in accordance with this Constitution shall, unless-

(a) he resigns his office;

(b) he ceases to hold office by virtue of Article 36 or 37; or

(c) the National Assembly is dissolved;
continue in office until the person elected at the next election to the office of President assumes office.

36. (1) If it is resolved by a majority of all the members of the Cabinet that the question of the physical or mental capacity of the President to discharge the functions of his office ought to be investigated, and they so inform the Chief Justice, then the Chief Justice shall appoint a board consisting of not less than three persons selected by him from among persons who are qualified as medical practitioners under the law of Zambia or under the law of any other country in the Commonwealth, and the board shall inquire into the matter and report to the Chief Justice

Removal of President on grounds of incapacity

on whether or not the President is, by reason of any infirmity of body or mind, incapable of discharging the functions of his office.

(2) If the board reports that the President is incapable of discharging the functions of his office, the Chief Justice shall certify in writing accordingly and shall table such certificate, with the report of the board before the National Assembly who shall on a motion, passed by a two thirds majority-

- (a) ratify the decision of the board, and thereupon the President shall cease to hold office; or
- (b) reject the decision of the board and cause a further inquiry into whether or not the President is incapable of discharging the functions of his office and shall thereafter decide on such question by a two-thirds majority vote, which decision shall be final.

(3) Where the Cabinet resolves that the question of the physical and mental capacity of the President to discharge the functions of his office should be investigated, the President shall, until another person assumes the office of President or the board appointed under clause (1) reports that the President is not incapable of discharging the functions of his office, whichever is the earlier, cease to perform the functions of his 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 his 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 nor, except on the advice of the Cabinet, revoke any appointment made by the President.

(4) A motion for the purposes of clause (1) may be proposed at any meeting of the Cabinet.

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,

Impeachment of
President for
violation of
Constitution

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 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 continued under this Article at any time when Parliament is dissolved.

38. (1) If the office of the President becomes vacant by reason of his death or resignation or by reason of his ceasing to hold office by virtue of Article 36, 37 or 88, an election to the office of the President shall be held in accordance with Article 34 within ninety days from the date of the office becoming vacant.

Vacancy in office of President

(2) Whenever the office of the President becomes vacant, 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 discharge the functions of his office, a member of the Cabinet elected by the Cabinet shall perform the functions of the office of the President until a person elected as President in accordance with Article 34 assumes office.

(3) The Vice-President or, the member of the Cabinet as the case may be, performing the functions of the office of President under clause (2) shall not dissolve the National Assembly nor, except on the advice of the Cabinet, revoke any appointment made by the President.

39. (1) Whenever the President is absent from Zambia or considers it desirable so to do by reason of illness or for any other cause, he may by direction in writing, authorise the Vice-President, or where the Vice-President is absent from Zambia or is incapable of discharging the functions of the office of President, any other person, to discharge such functions of the office of President as he may specify, and the Vice-President or such other person may discharge those functions until his authority is revoked by the President.

Discharge of functions of President during absence, illness etc.

(2) If the President is incapable by reason of physical or mental infirmity of discharging the functions of his office 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) during any period when the Vice-President is absent from

Zambia or is himself, by reason of physical or mental infirmity, unable to perform the functions of his office, such member of the Cabinet as the Cabinet shall elect;

shall perform the functions of the office of the President:

Provided that any person performing the functions of the office of President under this clause shall not dissolve the National Assembly nor, 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 he 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 discharging the functions of his 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 his 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.

40. A person assuming the office of President shall, before entering the office, take and subscribe to such oaths as may be prescribed by or under an Act of Parliament.

Oaths of President

41. (1) The Chief Justice shall be the Returning Officer for the purpose of elections to the office of President.

Returning Officer;
questions relating
to elections

(2) Any question which may arise as to whether-

- (a) any provision of this Constitution or any law relating to election of a President has been complied with; or
- (b) any person has been validly elected as President under Article 34;
shall be referred to and determined by the full bench of the Supreme Court.

42. (1) 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.

Salary and allowances of President

(2) The salary and allowances of the President shall not be altered to his disadvantage during his term of office.

(3) A person who has held the office of President shall receive such pension and such gratuity as may be prescribed by an Act of Parliament, and that pension and gratuity shall be a charge on the general revenues of the Republic.

43. (1) Civil proceedings shall not be instituted or continued against the person holding the office of President or performing the functions of that office in respect of which relief is claimed against him in respect of anything done or omitted to be done in his private capacity.

Protection of President in respect of legal proceedings

(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 his tenure of that office or, as the case may be, during his performance of the functions of that office.

(3) 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 him in his personal capacity while he held office of President, unless the National Assembly has, by resolution, determined that such proceedings would not be contrary to the interests of the State.

(4) 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 such proceedings as are mentioned in clause (1) and (3) may be brought against the person.

44. (1) As the Head of State, the President shall perform with dignity and leadership all acts necessary or expedient for, or reasonably incidental to, the discharge of the executive functions of Government subject to the overriding terms of this Constitution and the Laws of Zambia which he is constitutionally 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 88;
- (b) accredit, receive and recognise ambassadors, and to appoint ambassadors, plenipotentiaries, diplomatic representatives and consuls;
- (c) pardon or reprieve offenders, either unconditionally or subject to such conditions as he may consider fit;
- (d) negotiate and sign international agreements and delegate the power to do so;
- (e) establish and dissolve such Government Ministries and departments subject to the approval of the National Assembly;
- (f) confer such honours as he considers appropriate on citizens, residents and friends of Zambia in consultation with interested and relevant persons and institutions; and
- (g) appoint such persons as are required by this Constitution or any other law to be appointed by him.

(3) Subject to the provisions of this Constitution dealing with assent to laws passed by Parliament and the promulgation and publication of such laws in the *Gazette*, the President shall have power to-

- (a) sign and promulgate any proclamation which by law he is entitled to proclaim as President; and
- (b) initiate, in so far as he considers it necessary and expedient, laws

for submission and consideration by the National Assembly.

(4) When any appointment to an office to be made by the President is expressed by any provision of this Constitution to be subject to ratification by the National Assembly-

- (a) the National Assembly shall not unreasonably refuse or delay such ratification but the question whether the National Assembly has so acted unreasonably shall not be enquired into by any court;
- (b) if such ratification is refused the President may appoint another person to the office in question and shall submit the appointment for ratification; or
- (c) if the National Assembly refuses to ratify the second appointment it shall be invited to ratify an appointment for the third time but the third appointment shall take effect irrespective of whether such ratification is refused, or is delayed for a period of more than fourteen days.

(5) 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.

(6) In the exercise of any functions conferred upon him under this Article, the President shall, unless he otherwise obliges, act in his own deliberate judgement and shall not be obliged to follow the advice tendered by any other person or authority.

(7) Nothing in this Article shall prevent Parliament from conferring functions on persons or authorities other than the President.

45. (1) There shall be an office of Vice-President of the Republic.

Vice-President

(2) The Vice-President shall be appointed by the President from amongst the members of the National Assembly.

(3) Subject to the provisions of this Constitution the Vice-President shall vacate that office upon the assumption by any person of the office of President.

(4) In addition to the powers and functions of the Vice-President specified in this Constitution or under any other law, the Vice-President shall perform such functions as shall be assigned to him by the President.

(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.

46. (1) There shall be such Ministers as may be appointed by the President. Minister

(2) Appointment to the office of Minister shall be made from amongst members of the National Assembly.

(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.

(4) The salaries and allowances of a Minister shall be such as may be prescribed by an Act of Parliament, and shall be a charge on the general revenues of the Republic.

47. (1) The President may appoint such Deputy Ministers as he may consider necessary to assist Ministers in the performance of their functions and to exercise or perform on behalf of Ministers such of the Ministers' functions as the President may authorise in that behalf. Provincial Deputy Minister and Deputy Minister

(2) A Provincial Deputy Minister shall be responsible for the administration of any province as the President may assign to such Provincial Deputy Minister.

(3) Appointment to the office of Provincial Deputy Minister and Deputy Minister shall be made from amongst members of the National Assembly.

(4) The salaries and allowances of Provincial Deputy Minister and Deputy Ministers shall be such as may be prescribed by an Act of Parliament, and shall be a charge on the general revenues of the Republic.

48. A Vice-President, Minister or Deputy Minister shall not enter upon the duties of his office unless he has taken and subscribed to the oath of allegiance and such other oath for the due execution of his office as may be prescribed by or under an Act of Parliament. Oaths of Vice-President, Minister and Deputy Ministers

49. (1) There shall be a Cabinet which shall consist of the President, the Vice-President and the Ministers. Cabinet

(2) There shall preside at meetings of the Cabinet-

(a) the President; or

(b) in the absence of the President, the Vice-President.

(3) The Cabinet may act notwithstanding any vacancy in its membership.

50. The Cabinet shall formulate the policy of the government and shall be responsible for advising the President with respect to the policy of the Government and with respect to such other matters as may be referred to it by the President. Functions of Cabinet

51. The Cabinet and Deputy Ministers shall be accountable collectively to the National Assembly. Accountability of Cabinet and Deputy Ministers

52. All Ministers and Deputy Ministers shall conduct themselves, during their tenure of office, in accordance with a code of conduct promulgated by Parliament. Code of conduct

53. (1) There shall be a Secretary to the Cabinet whose office shall be a public office and who shall, subject to ratification by the National Assembly, be appointed by the President. Secretary to the Cabinet

(2) The Secretary to the Cabinet shall-

(a) be the Head of the Public Service and shall be responsible to the President for securing the general efficiency of the Public Service;

(b) have charge of Cabinet Office and be responsible, in accordance with the instructions given to him by the President, for arranging the business for, and keeping the minutes of the Cabinet and for conveying decisions made in Cabinet to the appropriate

authorities; and

- (c) have such other functions as may be prescribed by or under an Act of Parliament or as the President may direct.

54. (1) There shall be an Attorney-General of the Republic who shall, Attorney-Generals
subject to ratification by the National Assembly, be appointed by the President and shall be-

- (a) an ex-officio member of the Cabinet; and
- (b) the principal legal adviser to the Government.

(2) Without prejudice to the general functions under clause (1), the functions of the Attorney-General shall be to-

- (a) cause the drafting of, and sign, all Government Bills to be presented to Parliament;
- (b) draw and peruse 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;
- (c) represent the Government in courts or any other legal proceedings to which Government is a party; and
- (d) perform such other functions as may be assigned to him by the President or by law.

(3) 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.

(4) A person shall not be qualified to be appointed to the office of Attorney-General unless he is qualified for appointment as Judge of the High Court.

(5) The office of Attorney-General shall become vacant if the holder of the office is removed from office by the President.

(6) The person holding the office of Attorney-General may resign upon giving three months' notice to the President.

(7) In the exercise of the power to give directions to the Director of Public Prosecutions conferred by clause (7) of Article 56, the Attorney-General shall not be subject to the direction or control of any other person or authority.

55. (1) There shall be a Solicitor-General of the Republic whose office shall be a public office and who shall, subject, to ratification by the National Assembly, be appointed by the President. Solicitor-General

(2) A person shall not be qualified to be appointed to the office of Solicitor-General unless he is qualified for appointment as a Judge of the High 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 person holding the office of Solicitor-General may resign upon giving three months notice to the President.

(5) Any power or duty imposed on the Attorney-General by this Constitution or any other written law may be exercised or performed by the Solicitor-General-

(a) whenever the Attorney-General is unable to act owing to illness or absence; and

(b) in any case where the Attorney-General has authorised the Solicitor-General to do so.

56. (1) There shall be a Director of Public Prosecutions who shall, subject to ratification by the National Assembly, be appointed by the President.

Director of Public
Prosecutions

(2) A person shall not be qualified to be appointed to the office of Director of Public Prosecutions unless he is qualified for appointment as Judge of the High Court with experience biased towards criminal law.

(3) The Director of Public Prosecutions shall have power in any case

which he considers it desirable so to do-

- (a) to institute and undertake criminal proceedings against any person before any court, other than a court-martial, in respect of any offence alleged to have been committed by that person;
- (b) to take over and continue any such criminal proceedings as may have been instituted or undertaken by any other person or authority; and
- (c) to discontinue, at any stage before judgement is delivered, any such criminal proceedings instituted or undertaken by himself or any other person or authority.

(4) The powers of the Director of Public Prosecutions under clause (3) may be exercised by him in person or by such public officer or class of public officers as may be specified by him, acting, in accordance with his general or special instructions:

Provided that nothing in this clause shall preclude the representation of the Director of Public Prosecutions before any court by a legal practitioner.

(5) The powers conferred on the Director of Public Prosecutions by paragraphs (b) and (c) of clause (3) shall be vested in him to the exclusion of any other person or authority:

(6) For the purposes of this Article, any appeal from any judgement in any criminal proceedings before any court, or any case stated or question of law reserved for the purposes of any such proceedings, to any other court in Zambia shall be deemed to be part of those proceedings:

Provided that the power conferred on the Director of Public Prosecutions by paragraph (c) of clause (3) shall not be exercised in relation to any appeal by a person convicted in any criminal proceedings or to any case stated or question of law reserved at the instance of such a person.

(7) In the exercise of the powers conferred on him by this Article, the Director of Public Prosecutions shall not be subject to the direction or control of any other person or authority:

Provided that when the exercise of any such 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 his powers in relation to that case, act in accordance with any directions of the Attorney-General.

57. Whenever the Director of Public Prosecutions is absent from Zambia or the President considers it desirable so to do by reason of the illness of the Director of Public Prosecutions or for any other cause, he may on the advice of the Judicial Service Commission appoint any person to discharge the functions of the Director of Public Prosecutions until such appointment is revoked.

Discharge of functions of Director of Public Prosecutions during absence, illness, etc.

58. (1) Subject to the provisions of this Article, a person holding the office of Director of Public Prosecutions shall vacate his office when he attains the age of sixty years.

Tenure of office of Director of Public Prosecutions

(2) A person holding the office of Director of Public Prosecutions may be removed from office only for incompetence or inability to perform the functions of his office whether arising from infirmity of body or mind or misbehaviour and shall not be so removed except in accordance with the provisions of this Article.

(3) If the President considers that the question of removing a person holding the office of Director of Public Prosecutions from office ought to be investigated, then-

(a) he shall 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 President and advise the President whether the person holding the office of Director of Public Prosecutions ought to be removed from office under this Article for incompetence or inability or for misbehaviour.

(4) Where a tribunal appointed under clause (2) advises the President that a person holding the office of Director of Public Prosecutions ought to be removed from office for incompetence or inability or for misbehaviour, the President shall remove such person from office.

(5) If the question of removing a person holding the office of Director

of Public Prosecutions from office has been referred to a tribunal under this Article, the President may suspend that person from performing the functions of his 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 person ought not to be removed from office.

(6) A person appointed Director of Public Prosecutions may resign upon giving three months' notice to the President.

59. The President may-

Prerogative of
mercy

- (a) grant to any person convicted of any offence pardon, either free or subject to lawful conditions;
- (b) grant to any person a respite, either indefinite or for a specified period, of the execution of any punishment imposed on that person for any offence;
- (c) substitute a less severe form of punishment for any punishment imposed on any person for any offence; and
- (d) remit the whole or part of any punishment imposed on any person for any offence or any penalty or forfeiture or confiscation otherwise due to the Government on account of any offence.

60. (1) There shall be an advisory committee on the prerogative of mercy which shall consist of such persons as may be appointed by the President.

Advisory
committee

(2) The President may appoint different persons to the advisory committee for the purposes of advising him in relation to persons convicted by courts-martial and for purposes of advising him in relation to persons convicted by other courts.

(3) A member of the advisory committee shall hold office at the pleasure of the President.

(4) Where any person has been sentenced to death for any offence the President shall cause the question of the exercise in relation to that person of the powers conferred by Article 59 to be considered at a meeting of the advisory committee.

(5) Subject to the provisions of clause (4), the President may refer to the advisory committee any questions as to the exercise of the powers conferred upon him by Article 59.

(6) The President, if present, shall preside at any meeting of the advisory committee.

(7) The President may determine the procedure of the advisory committee.

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. Offices for Republic

(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.

PART V

THE LEGISLATURE

(As amended by Act No. 18 of 1996, except for Article 79)

62. The legislative power of the Republic of Zambia shall vest in Parliament which shall consist of the President and the National Assembly. Legislative power and membership of Parliament

63. (1) The National Assembly shall consist of- Composition of and election to National Assembly

(a) one hundred and fifty elected members;

(b) not more than eight nominated members; and

(c) the Speaker of the National Assembly.

(2) Subject to the other provisions of this Constitution, the election of members of the National Assembly shall be direct, by universal adult suffrage and by secret ballot and shall be conducted in accordance with the provisions of this Constitution and as may be prescribed by or under an Act of Parliament.

64. Subject to Article 65, a person shall be qualified to be elected as a member of the National Assembly if- Qualifications for election to National Assembly

- (a) he is a citizen of Zambia;
- (b) he has attained the age of twenty-one years; and
- (c) he is literate and conversant with the official language of Zambia.

65. (1) A person shall not be qualified to be elected as a member of the National Assembly if- Disqualifications for election to National Assembly

- (a) that person is under a declaration of allegiance to some country other than Zambia;
- (b) that person is under any law in force in Zambia, adjudged or otherwise declared to be of unsound mind;
- (c) that person is under a sentence of death imposed on him by a court in Zambia or a sentence of imprisonment, by whatever name called, imposed on him by such a court or substituted by a competent authority for some other sentence imposed on him by such a court;
- (d) that person is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any law in force in Zambia;
- (e) that person's freedom of movement is restricted, or that person is detained under the authority of the law; or
- (f) that person, within a period of five years before his nomination

for election, has served a sentence of imprisonment for a criminal offence.

(2) A person who holds, or is a validly nominated candidate in an election for, the office of the President shall not be qualified for election as a member of the National Assembly.

(3) A Chief shall not be qualified for election as a member of the National Assembly.

(4) A Chief who intends to stand for elections to the National Assembly shall abdicate his chieftaincy before lodging his nomination.

(5) Parliament may provide that a person who holds or is acting in any office that is specified by Parliament and the functions of which involve responsibility for, or in connection with, the conduct of any election to the National Assembly or the compilation of any register of voters for the purposes of such an election shall not be qualified to be elected as a member of the National Assembly.

(6) Parliament may provide that a person who is convicted by any court of any offence that is prescribed by Parliament and that is connected with election of the members of the National Assembly or who is reported guilty of such an offence by the court trying an election petition shall not be qualified to be elected as a member of the National Assembly for such period, not exceeding five years following his conviction or the report of the court, as the case may be, as may be so prescribed.

(7) A person holding or acting in any post, office of appointment-

(a) in the Zambia Defence Force as defined in the Defence Act, the Combined Cadet Force, the Zambia National Service, or any other force or service established for the preservation of security in Zambia;

(b) in the Zambia Police Force, the Zambia Police Reserve, the Zambia Security Intelligence Service, the Anti-Corruption Commission, the Drug Enforcement Commission, the Zambia Prison Service or in any other force or service established for the

- preservation of security in Zambia;
 - (c) in the Public Service including an office to which Article 61 applies;
 - (d) in the Teaching Service;
 - (e) in any statutory body or any company or institution in which the Government has any interest; or
 - (f) prescribed in that behalf or under an Act of Parliament;
- shall not be qualified for election as a member of the National Assembly.

(8) 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.

66. (1) Nominations for election to the National Assembly shall be delivered to the Returning Officer appointed by the Electoral Commission on such day and at such time and at such place as may be prescribed by the Electoral Commission.

Nomination for
election to
National Assembly

(2) Any nomination for election to the National Assembly shall not be valid unless-

- (a) the candidate has paid the election fees prescribed by or under an Act of Parliament; and
- (b) the nomination is supported by not less than nine persons registered as voters in the constituency in which the candidate is standing for the purpose of elections to the National Assembly.

67. (1) When a vacancy occurs in the seat of a member of the National Assembly as a result of the death or resignation of the member or by virtue of Article 71, a by-election shall be held within ninety days after the occurrence of the vacancy.

By-election for
National Assembly

(2) Parliament may by an Act of Parliament prescribe the manner in which a by-election shall be held.

68. (1) The President may, at any time after a general election to the National Assembly and before the National Assembly is next dissolved, appoint such number of persons as he considers necessary to enhance the representation in the National Assembly as regards special interests or skills, to be nominated members of the National Assembly, so, however, that there are not more than eight such members at any one time.

Nominated
members

(2) Subject to the provisions of this Article, a person may be appointed as a nominated member if he is qualified under Article 64 for election as an elected member and is not disqualified under Article 65 for election as an elected member.

(3) A person may not be appointed as a nominated member if he was candidate for election in the last preceding general election or in any subsequent by-election.

69. (1) There shall be a Speaker of the National Assembly who 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.

Speaker

(2) The Speaker shall vacate his office-

- (a) if any circumstances arise that, if he were not Speaker, would disqualify him for election as such;
- (b) when the National Assembly first sits after any dissolution of the National Assembly; or
- (c) if the National Assembly resolves, upon a motion supported by the votes of not less than two-thirds of all the members thereof, that he shall be removed from office.

(3) No business shall be transacted in the National Assembly, other than

an election to the office of Speaker, at any time when the office of Speaker is vacant.

70. (1) There shall be a Deputy Speaker of the National Assembly who shall be elected by the members of the Assembly from among the members of the Assembly. Deputy Speaker

(2) The members of the National Assembly shall elect a person to the office of Deputy Speaker when the Assembly first sits after any dissolution of the National Assembly and, if the office becomes vacant otherwise than by reason of the dissolution of the National Assembly, at the first sitting of the Assembly after the office becomes vacant.

(3) The Deputy Speaker shall vacate his office-

- (a) if he ceases to be a member of the National Assembly;
- (b) if he 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; or
- (c) if the National Assembly resolves that he should be removed from office.

71. (1) Every member of the National Assembly, with the exception of the Speaker, shall vacate his seat in the Assembly upon a dissolution of the National Assembly. Tenure of office of members of National Assembly

(2) A member of the National Assembly shall vacate his seat in the Assembly-

- (a) if he ceases to be a citizen of Zambia;
- (b) if he acts contrary to the code of conduct prescribed by an Act of Parliament;
- (c) in the case of an elected member, if he becomes a member of a political party other than the party of which he was an authorised

- candidate when he was elected to the National Assembly or, if having been an independent candidate, he joins a political party or having been a member of a political party, he becomes an independent;
- (d) if he assumes the office of President;
 - (e) if he is sentenced by a court in Zambia to death or to imprisonment, by whatever name called, for a term exceeding six months;
 - (f) if any circumstances arise that, if he were not a member of the Assembly, would cause him to be disqualified for election as such under Article 65;
 - (g) if, under the authority of any such law as is referred to in Article 22 or 25-
 - (i) his freedom of movement has been restricted or he has been detained for a continuous period exceeding six months;
 - (ii) his freedom of movement has been restricted and he has immediately thereafter been detained and the total period of restriction and detention together exceeds six months; or
 - (iii) he has been detained and immediately thereafter his freedom of movement has been restricted and the total period of detention and restriction together exceeds six months.

(3) Notwithstanding anything contained in clause (2), where any member of the National Assembly has been sentenced to death or imprisonment, adjudged or declared to be of unsound mind, adjudged or declared bankrupt or convicted or reported guilty of any offence prescribed under clause (4) of Article 65 appeals against the decision or applied for a free pardon in accordance with any law, the decision shall not have any effect for the purpose of this Article until the final determination of such appeal or application:

Provided that-

- (i) such member shall not, pending such final determination, exercise his functions or receive any remuneration as a member of the National Assembly; and

(ii) if, on the final determination the member's appeal or application, his conviction is set aside, or he is granted a free pardon, or is declared not to be of unsound mind or bankrupt or guilty of an offence prescribed under clause (4) of Article 65, he shall be entitled to resume his functions as a member of the National Assembly unless he has previously resigned, and to receive remuneration as a member for the period during which he did not exercise his functions by reason of the provisions of paragraph (i) of this proviso.

72. (1) The High Court shall have power to hear and determine any question whether-

Determination of questions as to membership of National Assembly

(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.

73. There shall be a Clerk of the National Assembly and such other offices in the department of the Clerk of the National Assembly as may be prescribed by an Act of Parliament.

Clerk and Staff of National Assembly

74. The President may, at any time, terminate the appointment of any nominated member appointed under Article 68 and appoint any other person in that member's stead.

Removal of nominated member by President

75. (1) Every citizen of Zambia who has attained the age of eighteen years shall, unless he is disqualified by Parliament from registration as a voter for the purposes of elections to the National Assembly, be entitled

The franchise

to be registered as such a voter under a law in that behalf, and no other person may be so registered.

(2) Every person who is registered in any constituency as a voter for the purposes of elections to the National Assembly shall, unless he is disqualified by Parliament from voting in such elections on the grounds of his having been convicted of an offence in connection with elections or, on the grounds of his having been reported guilty of such an offence by the court trying an election petition or, on the grounds of his being in lawful custody at the date of the election, be entitled so to vote in that constituency in accordance with the provisions made by or under an Act of Parliament, and no other person may so vote.

76. (1) There is hereby established an autonomous Electoral Commission to supervise the registration of voters, to conduct Presidential and Parliamentary elections and to review the boundaries of the constituencies into which Zambia is divided for the purposes of elections to the National Assembly.

Electoral
Commission

(2) An Act of Parliament shall provide for the composition and operations of the Electoral Commission appointed by the President under this Article.

77. (1) Zambia shall be divided into constituencies, for purposes of elections to the National Assembly so that the number of such constituencies, the boundaries of which shall be such as the Electoral Commission prescribes, shall be equal to the number of seats of elected members in the National Assembly.

Constituencies and
elections

(2) In delimiting the constituencies, the Commission shall have regard to the availability of means of communication and the geographical features of the area to be divided into constituencies:

Provided that the constituencies shall be so delimited that there shall be at least ten constituencies in each administrative Province.

(3) Each constituency shall return one member only to the National Assembly.

(4) The boundaries of each constituency shall be such that the number of inhabitants thereof is as nearly equal to the population quota as is reasonably practicable:

Provided that the number of inhabitants of a constituency may be greater or less than the population quota in order to take account of means of communication, geographical features and the difference between urban and rural areas in respect of density of population and to take account of the proviso to clause (2).

(5) The Electoral Commission shall, where it is reviewing the boundaries of the constituencies, review the boundaries and may, in accordance with the provisions of this Article, alter the constituencies to such extent as it considers desirable:

Provided that the Commission shall, where a census of the population has been held and the Commission considers that the changes in the distribution of population reported in the census do not justify an alteration in the boundaries, it shall so report to the President without entering upon a review of the boundaries of the constituencies.

(6) any alteration of the constituencies shall come into effect upon the next dissolution of Parliament.

(7) In this Article, "the population quota" means the number obtained by dividing the number of inhabitants of Zambia by the number of constituencies into which Zambia is to be divided under this Article.

(8) For the purposes of this Article, the number of inhabitants of Zambia shall be ascertained by reference to the latest census of the population held in pursuance of any law.

(9) During any period when the Presidential and Parliamentary elections are being held, the Electoral Commission shall be responsible for the registration of voters and the conduct of elections in every constituency.

78. (1) Subject to the provisions of this Constitution, the legislative

Exercise of

power of Parliament shall be exercised by Bills passed by the National Assembly and assented to by the President.

legislative power of Parliament

(2) A Bill (other than such a Bill as is mentioned in clause 8 of Article 27) shall not be presented to the President until after the expiration of three days from the third reading of the Bill by the National Assembly, and where a Bill is referred to a tribunal in accordance with Article 27, that Bill shall not be presented to the President for assent until the tribunal has reported on the Bill or the time for making a report has expired, whichever is the earlier.

(3) Where a Bill is presented to the President for assent, he shall either assent or withhold his assent.

(4) Subject to clause (5), where the President withholds his assent to a Bill, the President may return the Bill to the National Assembly with a message requesting that the National Assembly reconsiders the Bill or any specified provision thereof and, in particular, any such amendments as he may recommend in his message, and when a Bill is so returned, the National Assembly shall reconsider the Bill accordingly, and if the Bill is passed by the National Assembly on a vote of not less than two thirds of all the members of the National Assembly, with or without amendment, and presented to the President for assent, the President shall assent to the Bill within twenty-one days of its presentation, unless he sooner dissolves Parliament.

(5) Notwithstanding clause (4), where the President withholds his assent to a Bill, the Bill shall not again be presented for assent.

(6) Where a Bill that has been duly passed is assented to in accordance with the provisions of this Constitution it shall become law and the President shall thereupon cause it to be published in the *Gazette* as a law.

79. (1) Subject to the provisions of this Article, Parliament may alter this Constitution or the Constitution of Zambia Act.

Alteration of Constitution

(2) Subject to clause (3) a bill for the alteration of this Constitution or the Constitution of Zambia Act 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 members of the Assembly.

(3) A bill for the alteration of Part III of this Constitution or of this Article shall not be passed unless before the first reading of the bill in the National Assembly it has been put to a National referendum with or without amendment by not less than fifty per cent of persons entitled to be registered as voters for the purposes of Presidential and parliamentary elections.

(4) Any referendum conducted for the purposes of clause (3) shall be so conducted and supervised in such manner as may be prescribed by or under an Act of Parliament.

(5) In this Article-

- (a) references to this Constitution or the Constitution of Zambia Act, include reference to any law that amends or replaces any of the provisions of this Constitution or that Act; and
- (b) references to the alteration of this Constitution or the Constitution of Zambia Act or of any Part or Article include references to the amendment, modification or re-enactment with or without amendment or modification, of any provision for the time being contained in this Constitution, that Act, Part or Article, the suspension or repeal of any such provision and the making of different provision in lieu of such provision, and the addition of new provisions, to this Constitution, that Act, Part or Article.

(6) Nothing in this Article shall be so construed as to require the publication of any amendment to any such bill as is referred to in the clause (2) proposed to be moved in the National Assembly.

(7) A law made by Parliament shall not come into operation until it has

been published in the *Gazette*, but Parliament may postpone the coming into operation of any such law and may make laws with retrospective effect.

(8) All laws made by Parliament shall be styled "Acts" and the words of enactment shall be "Enacted by the Parliament of Zambia."

80. (1) Nothing in Article 62 shall prevent Parliament from conferring on any person or authority power to make statutory instruments.

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 shall be void from the date on which it was made.

(3) Where a tribunal appointed under Article 27 reports to the President that any provision of a statutory instrument is inconsistent with any provision of this Constitution, the President may, by order annul that statutory instrument and it shall thereupon be void from the date on which it was made.

81. Except upon the recommendation of the President signified by the Vice-President or a Minister, the National Assembly shall not-

Restrictions with
regard to certain
financial matters

(a) proceed upon any Bill (including an amendment to a Bill) that, in the opinion of the person presiding, makes provision for any of the following purposes:

(i) for the imposition of taxation or the alteration of taxation otherwise than by reduction;

(ii) for the imposition of any charge upon the general revenues of the Republic or the alteration of any such charge otherwise than by reduction;

(iii) for the payment, issue or withdrawal from the general revenues of the Republic of any moneys not charged thereon or any increase in the amount of such payment, issue or withdrawal; or

- (iv) for the composition or remission of any debt due to the Government; or
- (b) proceed upon any motion (including any amendment to a motion) the effect of which, in the opinion of the person presiding, would be to make provision for any of those purposes.

82. (1) The President may, at any time, attend and address the National Assembly.

President may address National Assembly

(2) The President may send messages to the National Assembly and any such 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.

83. There shall preside at any sitting of the National Assembly-

President at National Assembly

- (a) the Speaker of the National Assembly;
- (b) in the absence of the Speaker, the Deputy Speaker; or
- (c) in the absence of the speaker and of the Deputy Speaker, such member of the Assembly as the Assembly may elect for that purpose.

84. (1) 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.

Voting and quorum

(2) The Speaker or the person acting as such shall not vote in the first instance, but shall have and exercise a casting vote if there is an equality of votes.

(3) The National Assembly shall have power to act notwithstanding any vacancy in the membership thereof, and any proceedings in the National Assembly shall be valid notwithstanding that it is discovered subsequently that some person who was not entitled to do so, voted or otherwise took part in the proceedings.

(4) The quorum for a meeting of the National Assembly shall be one

third of the total number of members of the National Assembly and if at any time during a meeting of the National Assembly objection is taken by any member present that there is no quorum, it shall be the duty of the Speaker or the person acting as such, either to adjourn the National Assembly or, as he may think fit, to suspend the meeting until there is a quorum.

85. Any person who sits or votes in the National Assembly knowing or having reasonable grounds for knowing that he is not entitled to do so, shall be liable to a penalty not exceeding one thousand penalty units or such other sum as may be prescribed by Parliament for each day on which he so sits or votes, which penalty shall be recoverable by action in the High Court at the suit of the Attorney-General

Unqualified person, sitting or voting

86. (1) Subject to the provisions of this Constitution, the National Assembly may determine its own procedure.

Procedure in National Assembly

(2) The National Assembly may act notwithstanding any vacancy in its membership (including any vacancy not filled when the National Assembly first meets after any dissolution of Parliament) and the presence or participation of any person not entitled to be present or to participate in the proceedings of the National Assembly shall not invalidate those proceedings.

(3) In the selection of members of committees, the National Assembly shall seek to ensure that there shall be 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 such parties or groups.

87. (1) The National Assembly and its members shall have such privileges, powers and immunities as may be prescribed by an Act of Parliament.

Privileges and immunities of National Assembly

(2) Notwithstanding subclause (1) the law and custom of the Parliament of England shall apply to the National Assembly with such modifications as may be prescribed by or under an Act of Parliament.

88. (1) Subject to the provisions of clause (4) each session of Parliament shall be held at such place within Zambia and shall

Dissolution of Parliament and related matters

commence at such time as the President may appoint.

(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 President may at any time summon a meeting of the National Assembly.

(4) Subject to the provisions of clause (1) of Article 37, 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 National Assembly shall appoint.

(5) The President may at any time prorogue Parliament.

(6) Subject to clause (9) the National Assembly-

(a) shall, unless sooner dissolved, continue for five years from the date of its first sitting after the commencement of this Constitution or after any dissolution and shall then stand dissolved;

(b) may, by a two thirds majority of the numbers thereof, dissolve itself; or

(c) may be dissolved by the President at any time.

(7) Whenever the National Assembly is dissolved under this Article, there shall be Presidential Elections and elections to the National Assembly and the first session of the new Parliament shall commence within three months from the date of the dissolution.

(8) At any time when the Republic of Zambia is at war, Parliament may from time to time extend the period of five years specified in clause (6) for not more than twelve months at a time:

Provided that the life of the National Assembly shall not be extended under this clause for more than five years.

(9) If, after a dissolution of Parliament and before the holding of the general elections, the President considers that, owing to the existence of a state of war or of a state of emergency in Zambia or any part thereof, it is necessary to recall Parliament, the President may summon the Parliament that has been dissolved to meet and that Parliament shall be deemed to be the Parliament for the time being, but the general election of members of the National Assembly shall proceed and the Parliament that has been recalled shall, if not sooner dissolved again, stand dissolved on the day appointed for the nomination of candidates in that general election.

89. The Speaker of the National Assembly, before assuming the duties of his office, and every member of the National Assembly before taking his seat therein, shall take and subscribe before the National Assembly to the oath of allegiance.

Oaths to be taken
by Speaker and
members

90. (1) There shall be an Investigator-General of the Republic who shall be appointed by the President in consultation with the Judicial Service Commission and shall be the Chairman of the Commission for Investigations.

The Investigator-
General

(2) A person shall not be qualified for appointment as Investigator-General-

(a) unless he is qualified to be appointed a judge of the High Court;
or

(b) if he holds the office of the President, Vice-President, Minister or Deputy Minister, is a member of the National Assembly or is a public officer.

(3) Subject to the provisions of this section, a person appointed Investigator-General shall vacate his office on attaining the age of sixty-five years:

Provided that the President may permit a person who has attained that

age to continue in office for such period as may be necessary to complete and submit any report on, or do any other thing in relation to, any investigation that was commenced by him before he attained that age.

(4) A person appointed as Investigator-General shall forthwith vacate any office prescribed by an Act of Parliament.

(5) A person appointed as Investigator-General may be removed from office for incompetence or inability to perform the functions of his office (whether arising from infirmity of body or mind or from any other cause) or for misbehaviour, but shall not be so removed except in accordance with the provisions of this Article.

(6) If the National Assembly by resolution supported by votes of not less than two-thirds of all the members of that House, resolves that the question of removing the Investigator-General ought to be investigated, the Speaker of the National Assembly shall send a copy to the Chief Justice who shall appoint a tribunal consisting of a Chairman and two other persons to inquire into the matter.

(7) The Chairman and one other member of the tribunal shall be persons who hold or have held high judicial office.

(8) The tribunal shall inquire into the matter and report thereon to the President.

(9) Where such a tribunal advises the President that the Investigator-General ought to be removed from office for incompetence or inability or for misbehaviour, the President shall remove the Investigator-General from office.

(10) If the question of removing the Investigator-General from office has been referred to a tribunal under this Article, the President may suspend him from performing the functions of his 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 shall advise the President that the Investigator-General ought not to be removed.

(11) If there is a vacancy in the office of the Investigator-General, or if the Investigator-General is temporarily absent from Zambia or otherwise unable to exercise the functions of his office, the President may appoint a person qualified to be a Judge of the High Court to exercise the functions of the office of the Investigator-General under this Article.

(12) A person appointed to the office of Investigator-General may resign upon giving three months' notice to the President.

(13) The functions, powers and procedures of the Investigator-General shall be as provided by an Act of Parliament.

PART VI

THE JUDICATURE

(As amended by Act No. 18 of 1996)

91. (1) The Judicature of the Republic shall consist of: Courts

- (a) the Supreme Court of Zambia;
- (b) the High Court for Zambia;
- (c) the Industrial Relations Court;
- (d) the Subordinate Courts;
- (e) the Local Courts; and
- (f) such lower Courts as may be prescribed by an Act of Parliament.

(2) The Judges, members, magistrates and justices, as the case may be, of the courts mentioned in clause (1) 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.

(3) The Judicature shall be autonomous and shall be administered in accordance with the provisions of an Act of Parliament.

92. (1) There shall be a Supreme Court of Zambia which shall be the final court of appeal for the Republic and shall have such jurisdiction and powers as may be conferred on it by this Constitution or any other law.

Supreme Court

(2) The judges of the Supreme Court shall be-

(a) the Chief Justice;

(b) the Deputy Chief Justice;

(c) seven Supreme Court judges or such greater number as may be prescribed by an Act of Parliament.

(3) The office of Chief Justice, Deputy Chief Justice or of Supreme Court Judge shall not be abolished while there is a substantive holder thereof.

(4) The Supreme Court shall be superior court of record, and, except as otherwise provided by Parliament, shall have all the powers of such a court.

(5) When the Supreme Court is determining any matter, other than an interlocutory matter, it shall be composed of an uneven number of judges not being less than three except as provided for under Article 41.

(6) The Chief Justice may make rules with respect to the practice and procedure of the Supreme court in relation to jurisdiction and powers of the Supreme Court.

93. (1) The Chief Justice and the Deputy Chief Justice shall, subject to ratification by the National Assembly, be appointed by the President.

Appointment of
judges of Supreme
Court

(2) The judges of the Supreme Court shall, subject to ratification by the National Assembly, be appointed by the President.

(3) If the office of Chief Justice is vacant or if the Chief Justice is on leave or is for any reason unable to perform the functions of that office, then, until a person has been appointed to, and has assumed the functions of, that office, or until the person holding that office has resumed those functions, as the case may be, the President may appoint the Deputy Chief Justice or a Supreme Court judge to perform such functions.

(4) Without prejudice to the generality of clause (5), if the office of Deputy Chief Justice is vacant or the Deputy Chief Justice is on leave or is for any other reason unable to perform the functions of his office, the President may appoint a Judge of the Supreme Court to act as Deputy Chief Justice.

(5) If the office of a Supreme Court judge is vacant, or if any reason a Supreme Court judge is appointed to act as Chief Justice or Deputy Chief Justice, or if any Supreme Court judge is on leave or is for any reason unable to perform the functions of that office, the President may appoint a person qualified for appointment as a judge of the Supreme Court to act as a Supreme Court Judge.

(6) A person may act as Chief Justice, Deputy Chief Justice or Supreme Court judge notwithstanding that he has attained the age prescribed by Article 98.

(7) A puisne judge appointed to act as Deputy Chief Justice or Supreme Court judge, as the case may be, pursuant to clause (4) or (5), shall continue to be a judge of the High Court and may continue to perform the functions of the office of Puisne judge.

94. (1) There shall be a High Court for the Republic which shall have, except as to the proceedings in which the Industrial Relations Court has exclusive jurisdiction under the Industrial and Labour Relations Act, unlimited and original jurisdiction to hear and determine any civil or criminal proceedings under any law and such jurisdiction and powers as may be conferred on it by this Constitution or any other law.

High Court

(2) The High Court shall be divided into such divisions as may be determined by an Act of Parliament.

(3) The Chief Justice shall be an ex-officio judge of the High Court.

(4) The other judges of the High Court shall be such number of puisne judges as may be prescribed by an Act of Parliament.

(5) The office of a puisne judge shall not be abolished while there is a substantive holder thereof.

(6) The High Court shall be a superior court of record and, except as otherwise provided by Parliament, shall have the powers of such a court.

(7) The High Court shall have jurisdiction to supervise any civil or criminal proceedings before any subordinate court or any court-martial and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of ensuring that justice is duly administered by any such court.

(8) The Chief Justice may make rules with respect to the practice and procedure of the High Court in relation to the jurisdiction and power conferred on it by clause (7).

95. (1) The puisne judges shall, subject to ratification by the National Assembly, be appointed by the President on the advice of the Judicial Service Commission.

Appointment of
puisne judges,
Chairman and
Deputy Chairman
of Industrial
Relations Court

(2) The Chairman and the Deputy Chairman of the Industrial Relations Court shall be appointed by the President on the advice of the Judicial Service Commission.

(3) The provisions of Articles 98 and 99 shall with the necessary

modifications apply to the Chairman and the Deputy Chairman of the Industrial Relations Court.

96. Any person appointed under Article 93 to act as a judge of the Supreme Court shall continue to act for the period of that person's appointment or, if no such period is specified, until such appointment is revoked by the President:

Acting Judge of Supreme Court or of High Court to act or hold office until appointment expires or is revoked

Provided that the President may permit a person whose appointment to act as a judge of the Supreme Court has expired or been revoked to continue to act for such period as may be necessary to enable that person to deliver judgement or to do any other thing in relation to proceedings that were commenced before such person.

97. (1) Subject to clause (2), a person shall not be qualified for appointment as a judge of the Supreme Court, a puisne judge or Chairman or Deputy Chairman of the Industrial Relations Court unless-

Qualifications for appointment as Supreme Court Judge, Puisne Judge, Chairman and Deputy Chairman of Industrial Relations Court

(a) he holds or has held high judicial office; or

(b) he holds one of the specified qualifications and has held one or other of the following qualifications-

(i) in the case of a Supreme Court Judge, for a total period of not less than fifteen years; or

(ii) in the case of a puisne judge, the Chairman and Deputy Chairman of the Industrial Relations Court, for a total period of not less than ten years.

(2) Where the President or the Judicial Service Commission, as the case may be, is satisfied that, by reason of special circumstances, a person who holds one of the specified qualifications is worthy, capable and suitable to be appointed as a judge of the Supreme Court, a puisne judge or Chairman or Deputy Chairman of the Industrial Relations Court,

notwithstanding that he has not held one or other of those qualifications for a total period of not less than fifteen years or ten years, as the case may be, the President acting in the case of a judge of the Supreme Court, puisne judge or Chairman or Deputy Chairman of the Industrial Relations Court in accordance with the advise of the Judicial Service Commission, may dispense with the requirement that such person holds one or other of the specified qualifications for a total period of not less than the period specified in clause (1).

(3) In this Article," the specified qualifications " means the professional qualifications specified in the Legal Practitioners Act, one of which must be held by any person before he may apply under that Act to be admitted as a practitioner in the Republic.

(4) For the purposes of this Article and of Articles 93 and 94, "a person qualified for appointment" means a judge of the Supreme Court, a puisne judge or Chairman or Deputy Chairman of the Industrial Relations Court and includes a person in respect of whom the President or Judicial Service Commission, as the case may be, is satisfied as provided for in clause (2).

98. (1) Subject to the provisions of this Article, a person holding the office of a judge of the Supreme Court or the office of a judge of the High Court shall vacate that office on attaining the age of sixty-five years:

Tenure of office of
Judges of Supreme
Court and High
Court

Provided that the President-

- (a) may permit a judge of the High Court in accordance with the advice of the Judicial Service Commission, or a judge of the Supreme Court, who has attained that age to continue in office for such period as may be necessary to enable him to deliver judgement or to do any other thing in relation to proceedings that were commenced before him before he attained that age;
- (b) may appoint a judge of the High Court in accordance with the advice of the Judicial Service Commission or a judge of the Supreme Court, who has attained the age of sixty-five years, for such further period, not exceeding seven years, as the President may determine.

(2) A Judge of the Supreme Court, High Court, Chairman or Deputy Chairman of the Industrial Relations Court may be removed from office only for inability to perform the functions of office, whether arising from infirmity of body or mind, incompetence or misbehavior and shall not be so removed except in accordance with the provision of this Article.

(3) If the President considers that the question of removing a judge of the Supreme Court or of the High Court under this Article ought to be investigated, then-

(a) he shall 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 President and advise the President whether the judge ought to be removed from office under this Article for inability as aforesaid or for misbehaviour.

(4) Where a tribunal appointed under clause (3) advises the President that a judge of the Supreme Court or of the High Court ought to be removed from office for inability, or incompetence or for misbehaviour, the President shall remove such judge from office.

(5) If the question of removing a judge of the Supreme Court or of the High Court from office has been referred to a tribunal under clause (3), the President may suspend the judge from performing the functions of his 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.

(6) The provisions of this Article shall be without prejudice to the provisions of Article 96.

99. A judge of the Supreme Court or of the High Court shall not enter upon the duties of his office unless he has taken and subscribed to the oath of allegiance and such oath for the due execution of his office as may be prescribed by or under an Act of Parliament:

Oaths to be taken
by Judge

Provided that a person who has once taken and subscribed to the said oaths may enter upon the duties of any such office without again taking and subscribing such oaths.

PART VII

DEFENCE AND NATIONAL SECURITY

(As amended by Act No. 18 of 1996)

100. (1) There shall be an armed force to be known as the Zambia Defence Force.

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 authority as established under this Constitution.

(3) Members of the Zambia Defence Force shall be citizens of Zambia and of good character.

(4) A person shall not raise an armed force except in accordance with this Constitution.

101. The functions of the Zambia Defence Force shall be to-

Functions of
Defence Force

- (a) preserve and defend the sovereignty and territorial integrity of Zambia;
- (b) co-operate with the civilian authority in emergency situations and in cases 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.

102. Parliament shall make laws regulating the Zambia Defence Force, and in particular, providing for-

Parliament to
regulate Defence
Force

- (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.

103. (1) There shall be a police force to be known as the Zambia Police Force and such other police forces as Parliament may by law prescribe. Zambia Police Force

(2) Subject to the other provisions of this Constitution, every police force in Zambia shall be organised and administered in such a manner and shall have such functions as Parliament may by law prescribe.

(3) The Zambia Police Force shall be nationalistic, patriotic, professional, disciplined, competent and productive; and its members shall be citizens of Zambia and of good character.

104. The functions of the Zambia Police Force shall include the following: Functions of Zambia Police Force

- (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 authority and other security organs established under this Constitution and with the population generally.

105. Parliament shall make laws regulating the Zambia Police Force, and in particular, providing for- Parliament to regulate Zambia Police Force

- (a) the organs and structures of the Zambia Police Force;
- (b) the recruitment of persons into the Zambia Police Force from every district of Zambia;
- (c) terms and conditions of service of members of the Zambia Police Force; and
- (d) the regulation generally of the Zambia Police Force.

106. There shall be the Zambia Prison Service. Prison Service

- 107.** Parliament shall make laws regulating the Zambia Prison Service, and in particular, providing for-
- Parliament to regulate Zambia Prison Service
- (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.

- 108.** (1) There shall be a Zambia Security Intelligence Service.
- 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.

PART VIII

LOCAL GOVERNMENT SYSTEM

(As amended by Act No. 18 of 1996)

- 109.** (1) There shall be such system of local government in Zambia as may be prescribed by an Act of Parliament.
- Local Government System

(2) The system of local government shall be based on democratically

elected councils on the basis of universal adult suffrage.

PART IX

DIRECTIVE PRINCIPLES OF STATE POLICY AND THE DUTIES OF A CITIZEN

(As amended by Act No. 18 of 1996)

110. (1) The Directive Principles of State Policy set out in this Part shall guide the Executive, the Legislature and the Judiciary, as the case may be, in the-

Application of
Directive
Principles of State
Policy

- (a) development of national policies;
- (b) implementation of national policies;
- (c) making and enactment of laws; and
- (d) application of the Constitution and any other law.

(2) The application of the Directive Principles of State Policy may be observed only in so far as State resources are able to sustain their application, or if the general welfare of the public so unavoidably demands, as may be determined by Cabinet.

111. 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.

Directives not to be
justiciable

112. The following Directives shall be the Principles of State Policy for the purposes of this Part:

Directive
Principles of State
Policy

- (a) the State shall be based on democratic principles;
- (b) the State shall endeavour to create an economic environment which shall encourage individual initiative and self reliance among the people and promote private investment;
- (c) the State shall endeavour to create conditions under which all citizens shall be able to secure adequate means of livelihood and

- opportunity to obtain employment;
- (d) the State shall endeavour to provide clean and safe water, adequate medical and health facilities and decent shelter for all persons, and take measures to constantly improve such facilities and amenities;
 - (e) the State shall endeavour to provide equal and adequate educational opportunities in all fields and at all levels for all;
 - (f) the State shall endeavour to provide to persons with disabilities, the aged and other disadvantaged persons such social benefits and amenities as are suitable to their needs and are just and equitable;
 - (g) the State shall take measures to promote the practice, enjoyment and development by any person of that person's culture, tradition, custom or language insofar as these are not inconsistent with this Constitution;
 - (h) the State shall strive to provide a clean and healthy environment for all;
 - (i) the State shall promote sustenance, development and public awareness of the need to manage the land, air and water resources in a balanced and sustainable manner for the present and future generation; and
 - (j) the State shall recognise the right of every person to fair labour practices and safe and healthy working conditions.

113. It shall be the duty of every citizen to-

Duties of citizen

- (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.

PART X

FINANCE

(As amended by Act No. 18 of 1996)

114. (1) Subject to the provisions of this Article, taxation shall not be imposed or altered except by or under an Act of Parliament. Imposition of
taxation

(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.

(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 Bill relating to those estimates is passed by Parliament.

115. (1) Moneys shall not be expended from the general revenues of the Republic unless-

Withdrawal of
moneys from
general revenues

(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.

116. Where in any financial year any expenditure has been authorised by a warrant issued by the President under paragraph (d) of clause (2) Article 115, the Minister responsible for finance shall cause a supplementary estimate 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.

Supplementary estimates in respect of expenditure authorised by warrant

117. (1) The Minister responsible for finance shall cause to be prepared and shall lay before the National Assembly within three months after the commencement of each financial year estimates of the revenues and expenditure of the Republic for that financial year.

Appropriation Acts and Supplementary Appropriation Acts

(2) 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 shall be included in a Bill to be known as 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.

(3) Nothing in this Article shall be construed as requiring the approval of the National Assembly for that part of any estimates which relate to, or as requiring the inclusion in an Appropriation Bill of provisions authorising the expenditure of, sums which are charged on the general revenues of the Republic by this Constitution or any other law.

(4) Where any supplementary expenditure has been authorised in respect of any financial year for any purpose and-

(a) an amount has not been appropriated for that purpose under any head of expenditure by the Appropriation Act for that financial year; or

(b) the amount of the supplementary expenditure is such that the total amount expended for the purposes of the head of expenditure in which expenditure for that purpose was included is in excess of the amount so appropriated under that head, the Minister responsible for finance shall introduce in the National Assembly not later than fifteen months after the end of that

financial year or, if the National Assembly is not sitting at the expiration of that period, within one month of the first sitting of the National Assembly thereafter, a Bill, to be known as a Supplementary Appropriation Bill, confirming the approval of Parliament of such expenditure, or excess of expenditure, as the case may be.

(5) Where, in any financial year, expenditure has been incurred without the authorisation of Parliament, the Minister responsible for finance shall, on approval of such expenditure by the appropriate committee of the National Assembly, introduce in the National Assembly, not later than thirty months after the end of that financial year or, if the National Assembly is not sitting at the expiration of that period, within one month of the first sitting of the National Assembly thereafter, a Bill to be known as the Excess Expenditure Appropriation Bill, for the approval by Parliament of such expenditure.

118. (1) The Minister responsible for finance shall cause to be prepared and shall lay before the National Assembly not later than nine months after the end of each financial year, a financial report in respect of that year. Financial report

(2) A financial report in respect of a financial year shall include accounts showing the revenue and other moneys received by the Government in that financial year, the expenditure of the Government in that financial year other than expenditure charged by this Constitution or any other law on the general revenues of the Republic, the payments made in the financial year otherwise than for the purposes of expenditure, a statement of the financial position of the Republic at the end of the financial year and such other information as Parliament may prescribe.

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. Remunerations of certain officers

(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.

120 (1) There shall be charged on the general revenues of the republic all debt charges for which the Government is liable. Public debt

(2) For the purposes of the Article, debt charges include interest, sinking fund charges, the repayment or amortisation of debt, and all expenditure in connection with the raising of the loans on the security of the revenues of the former Protectorate of Northern Rhodesia or the Republic and on the service and redemption of debt thereby created.

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. Auditor-General

(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.

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

Tenure of office of Auditor-General

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.

PART XI

SERVICE COMMISSIONS

(As amended by Act No. 18 of 1996)

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.

(3) 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 Act.

(4) Nothing in the foregoing precludes provision being made by or under an Act of Parliament to confer on a Service Commission functions and powers in relation to matters other than public employment.

124. (1) 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 not less favourable to that person.

(2) The law to be applied with respect to any pension benefits not being benefits to which clause (1) applies, shall-

(a) in so far as those benefits are wholly in respect of a period of service as a public officer, as any officer in the department of the Clerk or the National Assembly, or as a member of the armed forces, that commenced before the commencement of this Constitution, be the law that was in force immediately before

that date; and

- (b) in so far as those benefits are wholly or partly in respect of a period of service as a public officer, as any officer in the department of the Clerk of the National Assembly, or as a member of the armed forces, 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.

- (3) Where a person is entitled to exercise an option as to which of two or more laws shall apply in his case, the law for which he opts shall, for the purposes of this Article, be deemed to be more favourable to him than the other law or laws.

- (4) All pension benefits shall, except to the extent to which they are a charge on a fund established by or under any law and have been duly paid out of that fund to the person or authority to whom payment is due, be a charge on the general revenues of the Republic.

- (5) In this Article "pension benefits" means any pensions, compensation, gratuities or other like allowances for persons in respect of their service as public officers, as officers in the department of the Clerk of the National Assembly or as members of the armed forces or for the widows, children, dependants or personal representatives of such persons in respect of such service.

- (6) References in this Article to the law with respect to pension benefits include, without prejudice to their generality, references to the law regulating the circumstances in which such benefits may be granted or in which the grant of such benefits may be refused, the law regulating the circumstances in which any such benefits that have been granted may be withheld, reduced in amount or suspended, and the law regulating the amount of any such benefits:

Provided that, notwithstanding anything to the contrary contained in this Constitution or any other written law, such references shall not be so construed as to include the law regulating the age of compulsory retirement.

(7) In this Article-

- (a) references to service as a public officer includes references to service as a public officer under the Government of the territories which on the 24th October, 1964, became the sovereign Republic of Zambia and references to service as a member of the teaching service of the said Government;
- (b) references to service as an office in the department of the Clerk of the National Assembly includes reference to service as an officer in the department of the Clerk of the Legislative Assembly of the said territories; and
- (c) references to service as a member of the armed forces include references to service as a member of the armed forces of the said territories.

PART XII

HUMAN RIGHTS COMMISSION

(As amended by Act No. 18 of 1996)

125. (1) There is hereby established a Human Rights Commission. Establishment of Human Rights Commission and its independence

(2) The Human Rights Commission shall be autonomous.

126. The functions, powers, composition, funding and administrative procedures, including the employment of staff, of the Human Rights Commission shall be prescribed by or under an Act of Parliament. Functions, powers, composition, procedure, etc. of Human Rights Commission

PART XIII
CHIEFS AND HOUSE OF CHIEFS

(As amended by Act No. 18 of 1996)

127. (1) Subject to the provisions of 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.

The Institution of Chief

(2) In any community, where the issue of a Chief has not been resolved, the issue shall be resolved by the community concerned using a method prescribed by an Act of Parliament.

128. The following concepts and principles shall apply to Chiefs:

Concept and principles relating to Institution of Chiefs

- (a) the Institution of Chief 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 concerned;
- (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 traditional leader or cultural leader shall enjoy such privileges and benefits as may be conferred by the Government and the local government or as that leader may be entitled to under culture, custom and tradition.

129. A person shall not, while remaining a Chief, join or participate in partisan politics.

Chief not to be partisan

130. There shall be 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.

House of Chiefs

131. Notwithstanding Article 130, the House of Chiefs may-

Functions of House of Chiefs

- (a) consider and discuss any Bill dealing with, or touching on, custom or tradition before it is introduced into the National Assembly;

- (b) initiate, discuss and decide on matters that relate to customary law and practice;
- (c) consider and discuss any other matter referred to it for its consideration by the President or approved by the President for consideration by the House; and
- (d) submit resolutions on any Bill or other matter referred to it to the President, and the President shall cause such resolutions to be laid before the National Assembly.

132. (1) The House of Chiefs shall consist of twenty-seven Chiefs.

Composition of
House of Chiefs

(2) The members referred to in clause (1) shall consist of three chiefs elected by the Chiefs from each of the nine Provinces of the Republic.

(3) The Chairman and the Vice-Chairman shall be elected from amongst the members.

133. (1) A member of the House of Chiefs-

Tenure of office
and vacancy

(a) shall hold office for a period of three years and may be re-elected for a further period of three years; or

(b) may resign upon giving one month's notice in writing to the Chairman.

(2) The office of member shall become vacant-

(a) upon his death;

(b) if he ceases to be a Chief;

(c) if any other circumstances arise that would cause him to be disqualified for election;

(d) if he becomes a candidate to any election, or accepts an appointment, to any office in a political party;

- (e) if he is adjudged or becomes an undischarged bankrupt; or
- (f) if he is declared or becomes of unsound mind under any law in Zambia.

134. The Chairman and every member of the House of Chiefs shall take an oath of allegiance. Oaths of members of House of Chiefs

135. 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. Staff of House of Chiefs

136. Subject to the provisions of this Constitution, the President may by statutory instrument, make regulations for- President may make regulations

- (a) the appointment of the Clerk and other officers of the House of Chiefs;
- (b) provide for the remuneration of the Chairman, the Vice-Chairman and other members of the House;
- (c) the proceedings and conduct of the House of Chiefs;
- (d) 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
- (e) such other matters as are necessary or conducive to the better carrying out of the purposes of this Part.

PART XIV

MISCELLANEOUS

(As amended by Act No. 18 of 1996)

137. (1) Any person who is appointed or elected to any office established by this Constitution may resign from that office by writing under his hand addressed to the persons or authority by whom he was appointed or elected: Resignations

Provided that in the case of a person who holds office as Speaker or Deputy Speaker of the National Assembly his resignation from that

office shall be addressed to the National Assembly, and in the case of an elected or nominated member of the National Assembly his resignation shall be addressed to the Speaker.

(2) The resignation of any person from any office established by this Constitution shall take effect when the writing signifying the resignation is received by the person or authority to whom it is addressed or by any person authorised by that person or authority to receive it.

138. (1) Where any person has vacated any office established by this Constitution he may, if qualified, be appointed or elected again to hold that office in accordance with the provisions of this Constitution.

Re-appointment
and concurrent
appointment

(2) Where a power is conferred by this Constitution upon any person to make any appointment to any office, a person may be appointed to that office notwithstanding that some other person may be holding that office, when that other person is on leave of absence pending the relinquishment of the office; and where two or more persons are holding the same office by reason of an appointment made in pursuance of this clause, then for the purposes of any function conferred upon the holder of that office, the person last appointed shall be deemed to be the sole holder of the office.

139. (1) In this Constitution, unless the context otherwise requires-

Interpretation

"Act of Parliament" means a law enacted by Parliament;

"Article" means an Article of this Constitution;

"Chief" means a person who is recognised by the President under the provisions of the Chiefs Act or any law amending or replacing that Act as the Litunga of Western Province, a Paramount Chief, Senior Chief, Chief or Sub-Chief or a person who is appointed as Deputy Chief;

"clause" means a clause of the Article in which the word occurs;

"the Commonwealth" includes any dependency of a country which is a member of the Commonwealth;

"financial year" means the period of twelve months ending on the 31st December in any year or on such other day as may be prescribed by or under an Act of Parliament:

Provided that by or under an Act of Parliament prescribing a day other than the 31st December as the terminal day of the financial year the said period of twelve months may be extended or reduced for

any one financial year for the purposes of effecting such prescribed change;

"the *Gazette*" means the official Gazette of the Government of Zambia;

"High Court" means the High Court established by this Constitution;

"high judicial office" means the office of a judge of a court of unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or in the Republic of Ireland or the office of a court having jurisdiction in appeals from such a court;

"House" means the National Assembly;

"meeting" means all sittings of the National Assembly held during a period beginning when the National Assembly first sits after being summoned at any time and terminating when the Assembly is adjourned *sine die* or at the conclusion of a session;

"oath" includes affirmation;

"the oath of allegiance" means such oath of allegiance as may be prescribed by law;

"paragraph" means a paragraph of the clause in which the word occurs;

"person" includes any company or association or body of persons, corporate or unincorporate;

"public office" means an office of emolument in the public office;

"public officer" means a person holding or acting in any public office;

"the public service" subject to clauses (2) and (3) shall have the meaning assigned to it by an Act of Parliament;

"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;

"statutory instrument" means any proclamation, regulation, order, rule, notice or other instrument, (not being an Act of Parliament) of a legislative as distinct from an executive character; and

"Supreme Court" means the Supreme Court of Zambia established by this Constitution.

(2) In this Constitution, references to offices in the public service shall not be construed as including references to the offices of judges of the

Supreme Court and of the High Court, and to the offices of Chairman, Deputy Chairman, and members of the Industrial Relations Court.

(3) In this Constitution references to an office in the public service shall not be construed as including references to the office of Attorney-General, or a member of any Commission established by this Constitution or by an Act of Parliament or to the office of the Clerk of the National Assembly or any office in the department of the Clerk of the National Assembly.

(4) For the purposes of this Constitution, a person shall not be considered as holding a public office by reason only of the fact that he is in receipt of a pension or other like allowance in respect of service under the Government of Zambia or of its predecessor Government.

(5) 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 he holds a public office if he is on leave of absence pending relinquishment of that office.

(6) In this Constitution, unless the context otherwise requires, a reference to the holder of an office by the term designating his office shall be construed as including a reference to any person for the time being lawfully acting in or performing the functions of that office:

Provided that nothing in this clause shall apply to references to the President or Vice-President in Articles 36, 37, 39 or 45.

(7) References in this Constitution to the power to remove a public officer from his 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:

Provided that nothing in this clause shall be construed as conferring on any person or authority power to require a judge of the Supreme Court or of the High Court, the Investigator-General, the Auditor-General or the Director of Public Prosecutions to retire from the public service.

(8) Any provision in this Constitution that vests in any person or

authority power to remove any public officer from his office shall be without prejudice to the power of any person or authority to abolish any office or to any law providing for the compulsory retirement of public officers generally or any class of public officers on attaining an age specified therein.

(9) Where power is vested by this Constitution in any person or authority to appoint any person to act in or perform the functions of any office if the holder thereof is himself unable to perform those functions, no such appointment shall be called in question on the ground that the holder of the office was unable to perform those functions.

(10) Provisions of this Constitution that any person or authority shall not be subject to the direction or control of any other person or authority in the exercise of any functions under this Constitution shall not be construed as precluding a court of law from exercising jurisdiction in relation to any question whether that person or authority has performed those functions in accordance with this Constitution or any other law.

(11) When any power is conferred by this Constitution to make any proclamation, statutory instrument, order, regulation or rule, or to issue any direction or certificate or confer recognition, the power shall be construed as including the power, exercisable in like manner, to amend or revoke any such proclamation, statutory instrument, order, regulation, rule, direction or certificate or to withdraw any such recognition:

Provided that nothing in this clause shall apply to the power to issue a certificate conferred by clause (2) of Article 36.

(12) (a) 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.

(b) Where any Act passed after the commencement of this Constitution repeals and re-enacts, with or without modification, any provisions thereof, references in this Constitution to the provisions so repealed shall, unless the contrary intention appears, be construed as references to the provisions so re-enacted.

(c) Where any Act passed after the commencement of this Constitution repeals any provision thereof then, unless the contrary intention appears, the repeal shall not-

(i) revive anything not in force or existing at the time at which the repeal takes effect; or

(ii) affect the previous operation of any provision so repealed or anything duly done or suffered under any provision so repealed; or

(iii) affect any right, privilege, obligation or liability acquired, accrued or incurred under any provision so repealed; or

(iv) affect any penalty, forfeiture or confiscation or punishment incurred under provision so repealed; or

(v) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or confiscation or punishment as aforesaid, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or confiscation or punishment may be imposed, as if the repealing Act had not been passed.

(13) In this Constitution, unless the context otherwise requires, words and expressions importing the masculine gender includes females.

(14) In this Constitution, unless the context otherwise requires, words and expressions in the singular include the plural and words and expressions in the plural include the singular.

(15) 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.

(16) Where by any Act which repeals and re-enacts, with or without modification, any provision of this Constitution, and which is not to come into force immediately on the publication thereof, there is conferred-

(a) a power to make or a power exercisable by making statutory instruments; or

(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*:

Provided 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.

(17) 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.