



REPUBLIC OF ZAMBIA

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NATIONAL CONSTITUTIONAL CONFERENCE

GENERAL CONSTITUTIONAL PRINCIPLES COMMITTEE

(COMMITTEE NO.1)

DETAILED TERMS OF REFERENCE

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

National Constitutional Conference
Mulungushi International Conference Centre
LUSAKA

August, 2008

THE CONSTITUTION OF THE REPUBLIC OF ZAMBIA

PREAMBLE

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

ACKNOWLEDGE the supremacy of God Almighty;

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

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

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

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

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

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

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

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

DO HEREBY SOLEMNLY ADOPT AND GIVE TO OURSELVES THIS CONSTITUTION :

PART I

SUPREMACY AND DEFENCE OF CONSTITUTION

Supremacy of Constitution

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

Defence of Constitution

2. (1) Every person has the right and duty -
 - (a) to defend this Constitution;
 - (b) to resist or prevent any person or group of persons from overthrowing, suspending, abrogating or unlawfully amending or reviewing this Constitution; and
 - (c) to do all in that person's power to secure the continuous operation of this Constitution.
- (2) A punishment imposed on a citizen for any action in defence of this Constitution is void from the date of its imposition.

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

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

**Continuous
force and
effect of
Constitution**

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

PART II REPUBLIC OF ZAMBIA AND ITS SOVEREIGNTY

**Republican
status of
Zambia**

4. (1) Zambia is a sovereign Republic the territorial boundaries of which are described and delineated in the map set out in the First Schedule.

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

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

**Sovereignty
of Zambia**

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

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

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

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

**National
symbols**

6. The National symbols of the Republic set out in the Second Schedule are -
- (a) the National Flag;
 - (b) the National Anthem;
 - (c) the Coat of Arms;
 - (d) the Public Seal; and
 - (e) the National Motto.

languages

7. (1) The official language of Zambia is the English language.
- (2) Any language, other than the official language, may be used as a medium of instruction in educational institutions or for legislative, administrative or judicial purposes, as provided by or under an Act of Parliament.
- (3) All local languages in Zambia are equal and the State shall respect, promote and protect the diversity of languages of the people of Zambia.

PART III

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

Application of national values, principles, objectives and directive principles of State policy

8. (1) The national values, principles, objectives and directive principles of State policy contained in this Part apply to all State organs, State institutions, public officers, citizens, political parties and private bodies whenever any of them -
- (a) applies or interprets this Constitution or any other law; or
 - (b) applies, makes or implements policy decisions.
- (2) The President shall, once in every year, report to the National Assembly on the progress made in the realisation of the objectives and principles under this Part.

Political values, principles and objectives

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

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

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

Socio- economic values, principles and objectives

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

- (a) the State and citizens shall endeavour to build a strong socio-economic order and avoid undue dependence on other countries and foreign institutions;
- (b) as far as possible, moneys for the annual budget shall be derived from the resources of Zambia;
- (c) the State shall endeavour to create an economic environment which encourages individual initiative and self-reliance among the people and promotes private investment;
- (d) the Government shall take all necessary steps to involve the people in the formulation and implementation of development plans and programmes which affect them;

- (e) the Government shall pursue policies that stimulate agricultural, industrial, technological and scientific development and ensure that legislation is enacted to support these policies;
- (f) the State shall protect and promote human rights and fundamental freedoms and enhance the dignity of individuals and communities;
- (g) the Government shall ensure access of the people to independent, impartial, competent and affordable institutions of justice;
- (h) the Government shall ensure and endeavour to maintain national security and peace;
- (i) the State shall endeavour to fulfill the Bill of Rights to achieve social justice and economic development;
- (j) the State shall recognize the significant role that women play in the socio-economic development of society;
- (k) the Government shall guarantee and respect institutions which are charged by the State with responsibility for protecting and promoting human rights and freedoms by providing them with adequate resources to function effectively;
- (l) the State shall give the highest priority to the enactment of legislation establishing measures that protect and enhance the right of the people to equal opportunities in development;
- (m) the Government shall make reasonable provision for the welfare and maintenance of the older members of society;
- (n) the State shall recognize the right of persons with disability to respect and human dignity;
- (o) the State shall promote recreation and sports for the citizens;
- (p) the Government shall strive to eradicate poverty and illiteracy;
- (q) the Government shall promote free and compulsory basic education;

- (r) the Government shall take appropriate measures to afford every citizen equal opportunity to attain the highest educational standard possible;
- (s) the State shall protect the family as it is the natural and basic unit of society;
- (t) the Government shall institute adequate measures for disaster preparedness and management;
- (u) the Government shall take necessary measures to bring about balanced development of the different areas of the Republic especially between the rural and urban areas;
- (v) the State shall devise land policies which recognize ultimate ownership of land by the people;
- (w) the Government shall strive to create conditions under which all citizens are able to secure adequate means of livelihood and opportunity to obtain employment;
- (x) the Government shall recognise the right of every person to fair labour practices and to safe and healthy working conditions;
- (y) the State shall pursue policies that encourage food security;
- (z) the State shall take measures to preserve, protect and conserve the environment;
- (aa) the Government shall strive to provide clean and safe water, adequate medical and health facilities and shelter for all persons and take measures to consistently improve such facilities and amenities; and
- (bb) the State shall promote sustainable development and the utilization of national resources of Zambia in such a way as to safe-guard –
 - (i) the bio-diversity of the country and to meet the developmental and environmental needs of present and future generations; and

- (ii) the ecological balance and protect national resources, including land, water, wetlands, minerals, oil, fauna and flora.

Cultural values, principles and objectives

11. The following are the cultural values, principles and objectives of the Nation on which all policies shall be based:

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

Foreign policy, principles and objectives

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

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

Principles and objectives of accountability and transparency

- 13.** The State shall be governed democratically based on the following principles and objectives:
- (a) the State shall ensure open and transparent government and accountability of public officers, State organs and State institutions;
 - (b) all State organs, State institutions and public officers are accountable to the people; and
 - (c) the Government shall put in place effective measures to expose and eradicate corruption both in the public and private sectors.

PART IV

LAWS OF ZAMBIA

Laws of Zambia

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

PART XXI

REVIEW, ADOPTION AND AMENDMENT OF CONSTITUTION

**Review,
adoption and
amendment of
Constitution**

344. (1) A complete review or replacement of this Constitution shall be done by the people of Zambia exercising their constituent power in accordance with an Act of Parliament which provides for the conditions, the process and method of review.

(2) Nothing in this Constitution or any other law shall be construed as preventing the people of Zambia from adopting a Constitution in exercise of their constituent power through any means, including the use of a Constituent Assembly or referendum.

(3) Subject to this Constitution, a provision of this Constitution may be amended by an Act of Parliament.

(4) An amendment of a provision of this Constitution shall be in accordance with the procedure laid down in this Part.

(5) A Bill to amend a provision of this Constitution shall have the sole purpose of amending that provision and shall not provide for any other matter.

(6) A Bill to amend a provision of this Constitution which is on the objectives, principles or structures of local government, shall not be introduced in the National Assembly unless the Bill has been approved by a resolution supported by the votes of not less than two-thirds of all councillors of the district councils.

(7) For the purpose of this Part, “amend” means to alter, repeal, replace, vary, add to or cancel, whether in part or in whole, a provision of this Constitution.

**Amendment by
referendum**

345. (1) A Bill to amend this Constitution in respect of any of the following areas shall be by a referendum and in accordance with this Article:

(a) the supremacy and defence of this Constitution and the Republic of Zambia and its sovereignty, Parts I and II;

(b) citizenship, Part V;

(c) the Bill of Rights, Part VI;

(d) Representation of the People, Articles 93 to 109;

(e) the Executive, Articles 121, 122, 123, 124, 129, 130, 131, 132, 133, 135, 136, 137, 138, 139;

- (a) the Legislature, Articles 158 and 170;
- (b) the Judiciary, Articles 193, 194 and 216;
- (c) Review, adoption and amendment of Constitution, Part XXII;
- (d) Local Government, Part XII; and
- (e) Chieftaincy and House of Chiefs, Part XIII.

(2) A Bill to amend any provision of this Constitution, in the areas specified under clause (1), shall be published in the *Gazette* and shall be laid before the National Assembly for first reading at the end of one month after the publication.

(3) After the first reading, the Speaker shall suspend further action on the Bill, referred to under clause (2), and refer the Bill to the Electoral Commission for a referendum to be held on the Bill within ninety days of receipt of the Bill.

(4) If in a referendum at least fifty percent of the registered voters vote and seventy percent vote in favour of the amendment the National Assembly shall proceed to pass the Bill referred to under clause (2).

**Amendment
without
referendum**

346. (1) A Bill to amend a provision of the Constitution, other than a Bill specified in Article 345, shall be in accordance with this Article.

(2) A Bill referred to, under clause (1), shall be published in the *Gazette*.

(3) A Bill referred to, under clause (1), shall be laid before the National Assembly one month after the date of its publication,

(4) A Bill referred, to under clause (1), shall not be taken as passed by the National Assembly unless the Bill is approved at the second and third readings by the votes of at least two-thirds of all the members of the National Assembly, by a secret vote.

**Certificate of
compliance**

347. A Bill for the amendment of a provision of this Constitution which has been passed in accordance with this Part shall be assented to by the President only if -

(a) it is accompanied by a certificate from the Speaker that this Part has been complied with in relation to it; and

(b) in the case of a Bill to amend a provision that requires a referendum, it is accompanied by a certificate from the Electoral Commission, signed by the Chairperson of the Commission and

bearing the seal of the Commission, signifying that the Bill was approved at a referendum in accordance with this Part.

**PART XXII
MISCELLANEOUS**

Legal Aid

- 348.** (1) For the purposes of enforcing any provision of this Constitution, a person is entitled to legal aid in connection with any proceedings relating to this Constitution and any other matter if that person has reasonable grounds for taking, defending, prosecuting or being a party to the proceedings.
- (2) Parliament shall enact legislation to regulate the grant of legal aid.

**Interpretation
of Constitution**

- 349.** (1) This Constitution shall be interpreted in a manner that -
- (a) promotes its purposes, values and principles;
 - (b) advances the Bill of Rights and the rule of law;
 - (c) permits the development of the law; and
 - (d) contributes to good governance.
- (2) If there is a conflict between different language versions of this Constitution the English language version shall prevail.
- (3) Every provision of this Constitution shall be construed according to the doctrine of interpretation that the law is always speaking and accordingly -
- (a) a power granted or duty imposed by this Constitution may be exercised or performed, as occasion requires, by the person holding the office to which the power is granted or the duty is assigned;
 - (b) any reference in this Constitution or any other law to a person holding an office under this Constitution or under any other law, includes a reference to the person lawfully performing the functions of that office at any particular time;
 - (c) a reference in this Constitution or any other law to an office, State organ or State institution or locality named in this Constitution

shall be read with any formal alteration necessary to make it applicable in the circumstances;

- (d) a reference in a provision applying that provision to another provision shall be read with any formal modification necessary to make it applicable in the circumstances; and
- (e) a reference in this Constitution to an office, body or organisation is a reference to that office, body or organisation, or if the office, body or organisation has ceased to exist, to its successor or to the equivalent office, body or organisation.

(4) For the purposes of this Constitution and any other law, a person shall not be considered as holding a public office by reason only of the fact that the person is in receipt of emoluments in respect of service under or for the Government.

(5) Under this Constitution or any other law, power to appoint a person to hold or to act in an office in the public service includes the power to confirm appointments, to exercise disciplinary control over the person holding or acting in the office and to remove that person from office.

(6) A provision of this Constitution or of any other law, to the effect that a person, an authority or institution is not subject to the direction or control of any other person or authority in the performance of any functions under this Constitution or that law, does not preclude a court from exercising jurisdiction in relation to any question whether that person, authority or institution has performed those functions in accordance with this Constitution or the law.

(7) Where in this Constitution or any other law, power is given to a person or an authority to do or enforce the doing of an act, the power includes the necessary and ancillary powers to enable that person or authority to do or enforce the doing of the act.

(8) Where in this Constitution or any other law, power is conferred on a person or an authority to issue orders, make rules, regulations, other statutory instrument, a resolution or direction, the power includes the power to be

exercised in the same manner, to amend or revoke the orders, rules, regulations other statutory instrument, resolution or direction.

- (9) In this Constitution, unless the context otherwise requires -
- (a) persons include corporations;
 - (b) words in the singular include the plural and words in the plural include the singular; and
 - (c) where a word or expression is defined any grammatical variation or cognate expression of that word shall be read with the changes required by the context.
- (10) A person shall not be regarded as disqualified for appointment to any office to which a public officer is not qualified to be appointed by reason only that that person holds a public office if that person is on leave of absence pending relinquishment of that office.
- (11) Subject to this Constitution, reference in this Constitution to the power to remove a public officer from office shall be construed as including references to any power conferred by any law to require or permit that officer to retire from public service.
- (12) Any reference in this Constitution to a law that amends or replaces any other law shall be construed as including a reference to a law that modifies, re-acts, with or without amendment or modification, or makes different provision in lieu of that other law.
- (13) Subject to this Constitution, where any Act to amend a provision of this Constitution, amends any provision then, unless the contrary intention appears, the amendment shall not -
- (a) revive anything not in force or existing at the time at which the amendment takes effect;
 - (b) affect the previous operation of any provision so amended or anything duly done or suffered under any provision so amended;

- (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any provision so amended;
- (d) affect any penalty, forfeiture or confiscation or punishment incurred under the provision so amended; or
- (e) affect any investigation, legal proceeding or remedy in respect of any right, privilege, obligation, liability, penalty, forfeiture or confiscation or punishment and any investigation, legal proceeding or remedy may be instituted, continued or enforced and any penalty, forfeiture or confiscation or punishment may be imposed, as if the amending Act had not been passed.

(14) Where this Constitution confers any power or imposes any duty, the power may be exercised and the duty shall be performed from time to time as occasion requires.

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

- (a) a power to make or a power exercisable by making statutory instruments;
- (b) a power to make appointments; or
- (a) a power to do any other thing for the purposes of the provision in question;

that power may be exercised at any time on or after the date of publication of the Act in the Gazette, except that an instrument, appointment or thing made or done under that power shall not, unless it is necessary to bring the Act into force, have any effect until the commencement of the Act.

(16) In computing time for the purposes of any provision of this Constitution, unless a contrary intention is expressed -

- (a) a period of days from the happening of an event or the doing of any act or thing shall be deemed to be exclusive of the day on which the event happens or the act or thing is done;

(b) if the last day of the period is Sunday or a public holiday, which days are in this clause referred to as “excluded days”, the period shall include the next following day, not being an excluded day;

(c) where any act or proceeding is directed or allowed to be done or taken on a certain day, then, if that day happens to be an excluded day the act or proceeding shall be considered as done or taken in due time if it is done or taken the next day afterwards, not being an excluded day;

(d) where an act or proceeding is directed or allowed to be done or taken within any time not exceeding six days, excluded days shall not be reckoned in the computation of the time.

(17) Where any person is empowered to make appointments under this Constitution that person shall ensure that either gender is not less than thirty percent of the total appointments made.

(18) Where any person is empowered to make an appointment under this Constitution that person shall ensure that equitable consideration is given to persons of both gender.

Definitions

352. In this Constitution, unless the context otherwise requires -

“adult” means an individual who has attained the age of eighteen years;

“affirmative action” includes any measure designed to overcome or ameliorate an inequity or the systematic denial or infringement of a right or freedom;

“Bill” means a draft of a proposed law;

“Bill of Rights” means the rights and freedoms set out in Part VI and includes their status, application, interpretation, derogations, and enforcement as specified under that Part;

“chief” means a person recognised as chief and who derives allegiance from the fact of birth or descent in accordance with the customs, traditions, usage or consent of the people led by that chief;

“child” means a person who is below the age of eighteen years;

“citizen” means a citizen of Zambia;

“commission” means a commission established by or under this Constitution;

“constituency” means any of the constituencies into which Zambia is divided as provided by this Constitution;

“constituency-based seat” means a National Assembly seat which has been contested for or won through the first-past-the-post segment of the mixed member representation system;

“Constitutional Court” means the Supreme and Constitutional Court when it is sitting as a Constitutional Court;

“councillor” means a member of a city, municipal or district council;

“court” means a court of competent jurisdiction established by or under the authority of this Constitution;

“direct election” means an election –

- (a) to the office of President;
- (b) for a member of the National Assembly ; or
- (c) for a councillor of a district council;

“district council” includes a city or municipal council;

“disability” means any restriction resulting from an impairment or inability to perform any activity in the manner or within the range considered normal for a human being;

“election tribunal” means an ad hoc Presidential Election Tribunal, Parliamentary Election Tribunal or Local Government Election Tribunal constituted by this Constitution;

“Electoral Commission” means the Electoral Commission of Zambia established under this Constitution;

“emolument” includes salaries, allowances, benefits and rights that form an individual’s remuneration for services rendered, including pension, gratuity and other benefits on retirement;

“Emoluments Commission” means the National Fiscal and Emoluments Commission established under this Constitution;

“executive functions” means the functions of the President set out in this Constitution;

“First Deputy Speaker” means the person elected First Deputy Speaker under Article 166 (3) (a);

“functions” includes powers and duties;

“gender” means female or male and the role individuals play in society as a result of their sex and status;

“general election” means Presidential, National Assembly and local government elections when these are held on the same day;

“individual” means a natural person;

“incumbent President” means a person who is currently in office as President and who is to hand over to the President-elect;

“judgment” includes a decision, an order or decree of a court or any authority prescribed by an Act of Parliament;

“judicial officer” includes a magistrate, local court justice and a senior employee of the Judicial Service;

“Laws” means the Laws of Zambia;

“mayor” includes a chairperson of a municipal or district council;

“Minister” means a Cabinet Minister;

“mixed member representation system” means the electoral system specified by this Constitution for –

(a) electing a person as a member of the National Assembly or as a councillor; and

(b) nominating a person on a part list to represent a political party that is contesting a proportional representation seat in a National Assembly election or district council election;

“oath” includes an affirmation;

“office holder” means a person who holds an office of trust as a public leader or in the public sector;

“older member of society” means an individual who is above the age of sixty-five years;

“Ombudsman” means the Parliamentary Ombudsman whose office is established under this Constitution;

“party list” means a list of candidates submitted by a political party in accordance with a law relating to elections;

“person” includes an individual, a company, an association of persons whether corporate or unincorporated;

“political party” means an association or organisation whose members are citizens and whose objectives include the contesting of election in order to form government or influence the policy of the National or local government;

“power” includes privilege, authority and discretion;

“public office” includes an office the emoluments of which are a charge on or paid out of the Consolidated Fund, other public fund or out of moneys appropriated by Parliament;

“public officer” means a person holding or acting in a public office;

“public service” includes service in a public office or State institution;

“President-elect” means the person who has been declared by the Returning Officer as having won an election to the office of President;

“presidential candidate” means a person nominated to stand for election as President;

“presidential election” means an election to the office of President and includes the election of a Vice-President as a running mate to the President;

“proportional representation seat” means a National Assembly or district council seat contested for or won through the proportional representation segment of the mixed member representation system;

“Provincial Minister” means a Minister appointed by the President for a province;

“Republic” means the Republic of Zambia;

“Second Deputy Speaker” means the person elected Second Deputy Speaker under Article 166 (3) (b);

“State organ” means the Executive, Legislature or Judiciary;

“Speaker” means the person elected Speaker of the National Assembly under Article 166;

“State institution” includes a ministry or department of the Government, a public office, agency or institution, statutory body or company in which the Government has a controlling interest or commission or body, other than a State organ, established under this Constitution or by or under an Act of Parliament;

“statutory instrument” means a rule, regulation, by-law, order or other similar law made under a power conferred by an Act of Parliament;

“superior court” means the Supreme and Constitutional Court, the Court of Appeal and the High Court;

“Supreme Court” means the Supreme and Constitutional Court when it is sitting as a Supreme Court;

“taxes” includes rates, levies, charges, tariffs, tolls and duties;

“treason” includes -

- (a) instituting a war against the Republic or assisting any state or person or inciting or conspiring with any state or person to institute war against the Republic;
- (b) effecting or attempting to effect by force of arms or other violent means the overthrow of a State organ or State institution;
- (c) effecting or attempting or being concerned in any act to overthrow, abrogate or suspend the operation of this Constitution;

“ward” means any of the units into which a district council area is divided under or by an Act of Parliament; and

“ward-based seat” means a district council seat contested for or won through the first-past-the-post segment of the mixed member representation system.

THE CONSTITUTION OF ZAMBIA BILL, 2005

MEMORANDUM

The objectives of this Bill are to provide for the –

- (a) commencement of the new Constitution of the Republic of Zambia;
- (b) printing and publication of the Constitution;
- (c) savings and transitional provisions of existing State organs, State institutions, administrations, offices, institutions and laws;
- (d) succession to assets, rights, liabilities, obligations and legal proceedings;
- (e) repeal of the Constitution of Zambia Act, 1991 and the Constitution in the Schedule to that Act; and
- (f) matters connected with or incidental to the foregoing.

Attorney-General

THE CONSTITUTION OF ZAMBIA BILL, 2005

ARRANGEMENT OF ARTICLES

1. Short title
2. Interpretation
3. Repeal of Constitution of Zambia Act, 1991 and existing Constitution Cap. 1
4. Commencement of Constitution

5. Printing and publication of Constitution
6. Existing laws
7. Executive
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A BILL

ENTITLED

An Act to provide for the commencement of the new Constitution of the Republic of Zambia; to provide for the printing and publication of the Constitution; to provide for the savings and transitional provisions of existing State organs, State institutions, administrations, offices, institutions and laws; to provide for succession to assets, rights, liabilities, obligations and legal

proceedings; to provide for the repeal of the Constitution of Zambia Act, 1991 and the Constitution in the Schedule to that Act; and to provide for matters connected with or incidental to the foregoing.

Enactment	ENACTED by the Parliament of Zambia
Short title	1. This Act may be cited as the Constitution of Zambia Act, 2005.
Interpretation	2. (1) In this Act, unless the context otherwise requires – “Constitution” means the Constitution set out in the Schedule to this Act; “effective date” means the date of the commencement of this Act and the Constitution as provided under section <u>four</u> ; “existing Constitution” means the Constitution of Zambia, 1991 in force immediately before the effective date; and “existing law” means the Laws of Zambia as they existed immediately before the effective date, including any statutory instrument issued or made before that date which is to come into force on or after the effective date. (2) Except where the context otherwise requires, words and expressions used in this Act have the same meaning as in the Constitution.
Repeal of Constitution of Zambia Act, 1991 and existing Constitution p. 1	3. The Constitution of Zambia Act, 1991 and the existing Constitution in the Schedule to that Act are hereby repealed.
Commencement of Constitution	4. Subject to this Act, the Constitution shall come into operation on the date of assent of this Act.

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

Existing laws

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

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

Executive

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

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

Prerogative of mercy

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

Rights, duties and obligations of Government

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

Succession of institutions, offices, assets and liabilities

10. (1) If any provision of the Constitution has altered the name of an office or institution existing immediately before the effective date the office or

institution as known by the new name shall be the legal successor of the first named office or institution.

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

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

Existing offices

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

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

(3) This section shall not -

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

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

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

**Pensions,
gratuities
and other
benefits**

12. The law applicable to pensions, gratuities or emoluments in respect of public officers shall be the law that was in force at the date on which those benefits were granted or any law in force at a later date that is not less favourable.

Legislature

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

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

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

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

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

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

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

By-elections

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

Judiciary

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

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

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

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

**Judicial and
tribunal
proceedings
and pending
matters**

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

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

commission, office or authority or corresponding commission, office or authority established under the Constitution.

**Local
government**

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

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

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

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

**Political
parties**

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

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

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

Commissions

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

- (a) the Civil Service Commission;
- (b) the Teaching Service Commission;
- (c) the Judicial Service Commission;

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

Currency

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

Budget

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