



## **REPUBLIC OF ZAMBIA**

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### **NATIONAL CONSTITUTIONAL CONFERENCE**

#### **HUMAN RIGHTS COMMITTEE**

#### **(COMMITTEE NO. 3)**

#### **DETAILED TERMS OF REFERENCE**

Approved by the National Constitutional Conference during the 8<sup>th</sup> January to 10<sup>th</sup> January 2008 Sitting

National Constitutional Conference  
Mulungushi International Conference Centre  
**LUSAKA**

August, 2008

## PART VI

### BILL OF RIGHTS

#### Status, application and interpretation

#### Fundamental rights and freedoms

27. (1) The Bill of Rights is fundamental to Zambia's democratic State and shall be the framework for the adoption of social, political, economic and cultural policies.

(2) The purpose of the Bill of Rights is to fulfill the National goals, values and principles by preserving the dignity of individuals and communities, promoting social justice and realising the potential of all human beings.

(3) The rights and freedoms set out in this Part -

(a) are inherent in each individual and -

(i) are not granted by the State; and

(ii) cannot be taken away by the State;

(b) do not exclude other rights that are not expressly mentioned in this Part; and

(c) are subject only to the limitations contained or contemplated in this Constitution.

#### Duty of State to promote rights and freedoms

28. (1) It is a fundamental duty of every State organ and **State** institution to respect, protect, promote and fulfill the Bill of Rights.

(2) The State shall allow civil society to play its role in the promotion and protection of the Bill of Rights.

(3) Relevant State institutions, including the Human Rights Commission, shall equip themselves to meet the needs of different sectors of the society with respect to the Bill of Rights.

(4) The President shall, when addressing the National Assembly each year, report on the measures taken and the achievements of the State in giving effect to, and the progress achieved by the Nation in the realization of the Bill of Rights.

**Application  
of Bill of  
Rights**

- 29.** (1) This Part applies to the interpretation and application of the Laws and binds all State organs, State institutions and all persons.
- (2) A natural or juristic person enjoys the benefit of any right or freedom in this Part, to the extent possible, given the nature of the right or freedom and of the person.
- (3) This Part binds a natural or juristic person, to the extent possible, given the nature of the right or freedom and the nature of any duty imposed by that right or freedom.
- (4) A person shall exercise a right or freedom in a manner consistent with this Bill of Rights.
- (5) When applying this Bill of Rights a court -
- (a) shall apply and, if necessary, develop the Law to the extent where legislation does not give effect to a right or freedom; and
  - (b) may develop rules of the Law to interpret a right or freedom in a manner consistent with the limitations and derogations permitted under this Bill of Rights.

**Interpretation  
of Bill of  
Rights**

- 30.** (1) When interpreting and applying a provision of this Bill of Rights, a court, tribunal, the Human Rights Commission or any other body shall promote the values that underlie an open and democratic society based on human dignity, equality and freedom.
- (2) When interpreting any legislation and when developing the Law, every court, tribunal, the Human Rights Commission or other body shall promote the spirit, purpose and objectives of the Bill of Rights.

## Civil, Political and Cultural Rights

### Right to life

**31.** (1) Every person has, subject to clause (2), the right to life, which begins at conception.

(2) A person shall not be deprived of life intentionally, except in the execution of a sentence of a court in respect of a criminal offence under the law in force of which that person has been convicted.

(3) Without limiting any liability for a contravention of any other law with respect to the use of force, a person shall not be regarded as having been deprived of that person's life in contravention of this Article if that person dies as a result of the use of force to such extent as is reasonably justifiable in the circumstances of the case -

- (a) in the defence of a person's property;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) for the purpose of suppressing a riot, insurrection, mutiny or due to a lawful act of war; or
- (d) in order to prevent the commission by that person of a criminal offence.

### Human dignity

**32.** (1) Every person has an inherent dignity and the right to have that dignity respected and protected.

(2) Every person has the right not to have their reputation disparaged.

### Equality before law

**33.** (1) Every person is equal before the law and has the right to equal protection and benefit of the law.

(2) Equality includes the full and equal enjoyment of all rights and freedoms.

### Administrative

**34.** (1) Every person has the right to administrative action that is expeditious, lawful, reasonable and procedurally fair.

- (2) Every person whose rights have been affected by administrative action has the right to be given written reasons for the action.
- (3) Parliament shall enact legislation to -
  - (a) give effect to clauses (1) and (2);
  - (b) provide for the review of administrative action by a court or, where appropriate, an independent and impartial tribunal; and
  - (c) promote an efficient public administration.

refuse  
I  
ons

- 35.** (1) Every person has a right to refuse to obey any unlawful instruction.
- (2) A person who instigates or induces another to carry out an unlawful instruction or who, being able to prevent the carrying out of an unlawful instruction, fails to do so, shall be an accomplice and shall be liable to prosecution and to pay damages to any injured party.

(3) A person shall not be convicted or punished under any law for disobeying an unlawful instruction.

right to Justice

**36.** (1) Every person has the right to have any dispute resolved and decided timely and to have a fair public hearing before a court or, where appropriate, another independent and impartial tribunal.

- (2) Where a person has any claim or judgement against the State -
- (a) the claim may be instituted by proceedings against the State; and
  - (b) the judgment may be enforced by execution against the State, a local authority or other public institution after six months of the delivery of the judgement.

(3) The State shall be liable in tort to the same extent as a private person of full age and capacity.

(4) The courts shall not order any security for costs on matters of public interest litigation.

(5) All offences are bailable but a court shall have the power to determine whether or not bail should be granted in any particular case either unconditionally or subject to reasonable conditions.

(6) Illegally obtained evidence shall not be admissible in a trial against an accused person, unless excluding that evidence would be detrimental to the administration of justice.

rights of suspects  
and arrested  
persons

37. Subject to Article 79, a person who is a suspect, arrested or detained for allegedly committing an offence has the right -

- (a) to remain silent;
- (b) to be informed in a language which that person understands of the -
  - (i) right to remain silent; and
  - (ii) consequences of remaining silent;
- (c) not to be compelled to make any confession or admission that could be used in evidence against that person and, if a person freely chooses to make a confession, to do so before a court;
- (d) to be held separately from persons who are serving a sentence;
- (e) to be brought before a court -
  - (i) within forty-eight hours after being arrested or detained;
  - (ii) not later than the end of the first court day after the expiry of the forty-eight hours, if the forty-eight hours expires outside ordinary court hours or on a day that is not an ordinary court day;
  - (iii) as speedily as possible, if that person is arrested or detained far from a court; or
  - (iv) to be tried within ninety days or be released on bail;
- (f) to be arraigned before a court after being arrested or detained or to be released; and

- (g) to be released on bond or bail, pending a charge or trial, on reasonable conditions, unless there are compelling reasons to the contrary.

rights of persons  
detained or in  
custody

38. (1) A person who is held in custody, whether sentenced or not, retains all that person's rights and freedoms under this Constitution, except to the extent that a right or freedom is incompatible with the fact of being in custody.

(2) A person who is held in custody has the right -

- (a) to be treated in a manner that respects that person's inherent human dignity and not to be subjected to discrimination;
- (b) if detained under any law relating to the preservation of public security, to be furnished with the reasons for that person's detention within fourteen days of being taken into custody;
- (c) not to be exploited or abused by the staff of the prison service or fellow prisoners;
- (d) to accommodation and facilities that satisfy the standards of decent clothing, housing, food, health and sanitation guaranteed in this Bill of Rights;
- (e) to reasonable health care at public expense and to pay for their own health care by their own doctors if they so choose;
- (f) to exercise and to work in return for reasonable remuneration;
- (g) to communicate with their legal practitioners, other persons whose assistance they consider necessary, religious advisers and close family;
- (h) to send and receive letters and to visits of reasonable frequency and duration to the extent compatible with the preservation of law, order and prison discipline;
- (i) to be separated, women from men and children from adults;
- (j) to be informed of the rules and decisions that affect them;

- (k) to fair consideration for parole or remission of sentence and for other rehabilitative measures;
  - (l) to compensation for wrongful detention; and
  - (m) to complain to the prison authorities, the Human Rights Commission or any similar institution.
- (3) The State shall ensure that prisons and the prison system are maintained and operated within minimum international standards.

ir trial

- 39.** (1) Every accused person has the right to a fair trial which includes the right –
- (a) to be presumed innocent until the contrary is proved;
  - (b) to be informed as soon as is reasonably practicable and in a language that person understands of the charge with sufficient detail to answer it;
  - (c) to have adequate time and facilities to prepare a defence;
  - (d) to a public trial before an independent and impartial court or tribunal;
  - (e) to have the trial commenced and concluded and judgement given without unreasonable delay;
  - (f) to compensation for wrongful detention or imprisonment;
  - (g) to choose, and be represented by, a legal practitioner and to be informed of this right promptly;
  - (h) to have a legal practitioner assigned to the accused person by the State and at public expense, if substantial injustice would otherwise result, and to be informed of this right promptly;
  - (i) to remain silent and not to testify during the proceedings;
  - (j) to adduce and challenge evidence;
  - (k) not to be compelled to give self-incriminating evidence;
  - (l) not to be compelled to make any confession or admission that could be used in evidence against that person;



- (m) to have, without payment, the assistance of an interpreter if the accused person cannot understand the language used at the trial;
- (n) not to be convicted for an act or omission that was not, at the time it was committed or omitted, an offence under the written Laws;
- (o) not to be tried for an offence in respect of an act or omission for which that person has previously been either acquitted or convicted;
- (p) to the benefit of the least severe of the prescribed punishments if the prescribed punishment for an offence has been changed between the time that offence was committed and the time of sentencing; and
- (q) of appeal to, or review by, a higher court.

(2) Where this Article requires information to be given to a person, that information shall be given in a language which that person understands.

(3) An accused person charged with an offence is entitled on request to a copy of the record of the proceedings of the trial.

(4) An accused person has the right to a copy of the record of proceedings of the trial within fourteen days after they are transcribed in return for a reasonable fee if prescribed by law.

(5) A person who is convicted of a criminal offence and whose appeal has been dismissed by the highest court, to which that person is entitled to appeal, may petition the Supreme Court for a new trial if new and compelling evidence has become available.

(6) The entry of a *nolle prosequi* is not an acquittal and shall be valid for twelve months.

(7) Where a person in respect of whom a *nolle prosequi* has been entered is not charged on the same facts, within twelve months of the entry of the *nolle prosequi*, that person shall be deemed to have been acquitted.

**Protection from discrimination**

**40.** Every person has the right not to be discriminated against, directly or indirectly, on any grounds including race, sex, pregnancy, health, marital, ethnic, tribal, social or economic status, origin, colour, age, disability, religion, conscience, belief, culture, language or birth.

**Equality of both gender**

**41.** (1) Women and men have the right to equal treatment including the right to equal opportunities in cultural, political, economic and social activities.

(2) Women and men are entitled to be accorded the same dignity and respect of the person.

(3) Women and men have an equal right to inherit, have access to, own, use, administer and control land and other property.

(4) Women and men shall have equal rights with respect to marriage.

(5) Any law, culture, custom or tradition that undermines the dignity, welfare, interest or status of women or men is prohibited.

(6) The Government shall provide reasonable facilities and opportunities to enhance the welfare of women and men to enable them to realise their full potential and advancement.

(7) The Government shall take special measures aimed at achieving equality between both gender which measures shall not be construed as discrimination in so far as the measures are not maintained beyond what is required to achieve equality between both gender.

(8) Parliament shall enact legislation to give effect to this Article.

**Further rights for women**

**42.** (1) The State shall ensure that women are not discriminated against as guaranteed in this Constitution.

(2) All laws, customary or regulatory, that permit or have the effect of discriminating against women are hereby declared void.

(3) Without limiting any right or freedom guaranteed under this Bill of Rights, women shall have and be accorded the right -

- (a) to reproductive health, including family planning and access to related information and education;
  - (b) to acquire, change or retain their nationality including the nationality of their children;
  - (c) to choose residence and domicile;
  - (d) to guardianship and adoption of children;
  - (e) to choose a family name; and
  - (f) to non-custodial sentences if pregnant or are nursing mothers, except as a measure of last resort for serious offences and for those women who pose a danger to the community.
- (4) Parliament shall enact legislation to provide for the protection of women against all forms of violence.
- (5) For the purposes of this Article -
- (a) “discrimination against women” means a distinction or exclusion made on the basis of sex which has the effect of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of marital status, of human rights and fundamental freedoms in all areas of human endeavour to which persons of another description are not made subject or are accorded privileges or advantages which are not accorded to persons of another description.
  - (b) “violence” includes -
    - (i) physical, sexual and psychological violence that occur in the family;
    - (ii) violence related to female genital mutilation or any traditional or religious practice that is harmful to women;
    - (iii) non-spousal violence or exploitation or physical, sexual or psychological violence that occurs within the general community;

- (iv) rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere;
- (v) trafficking in women and forced prostitution; and
- (vi) economic and social deprivation.

(6) Parliament shall enact legislation to regulate matrimonial causes and court proceedings dealing with sexual offences so as to ensure anonymity and protection of the lives and dignity of the parties but without prejudice to the due process of the law.

**Older members of society**

**43.** (1) Older members of society are entitled to enjoy all the rights and freedoms set out in this Bill of Rights, including the right to –

- (a) participate fully in the affairs of society;
- (b) pursue their personal development and retain their autonomy;
- (c) freedom from all forms of discrimination, exploitation or abuse;
- (d) live in dignity and respect; and
- (e) receive care and assistance from the family and the Government.

(2) Parliament shall enact legislation to provide for a sustainable social security system for the older members of society.

**Children**

**44.** (1) It is the duty of parents, wider family, society and the State to nurture, protect and educate children for the benefit of society as a whole.

(2) All children, whether born in or outside wedlock, are equal before the law and have equal rights under this Constitution.

(3) A child's best interests are of paramount importance in every matter concerning the child.

(4) A child's mother and father, whether married to each other or not, have an equal duty to protect and provide for the child.

(5) Every child has a right -

- (a) to a name and a nationality from birth and to have the birth registered;

- (b) to parental care or to appropriate alternative care where the child is separated from its parents;
- (c) to free basic education;
- (d) to be protected from discrimination, neglect, abuse and harmful cultural rites and practices, including female circumcision, tattooing and early marriage before attaining the age of eighteen years;
- (e) to be protected from all forms of exploitation and any work that is likely to be hazardous or adverse to the child's welfare;
- (f) to adequate nutrition, shelter, basic health care services, social security and social services;
- (g) not to be subjected to corporal punishment or any other form of violence or cruel and inhumane treatment in schools and other institutions responsible for the care of children;
- (a) to be protected in times of armed conflict and not to be recruited and used in armed conflict;
- (b) not to take part in hostilities;
- (c) not to be incarcerated on account of the mother's incarceration;
- (d) to a standard of living adequate for the child's physical, mental, spiritual, moral and social development;
- (l) to development and an individual development plan, where appropriate;
- (m) to protection from all forms of sexual exploitation or abuse;
- (n) not to be arrested or detained, except as a measure of last resort, in which case that child has the right to be -
  - (i) detained only for the shortest appropriate period of time;
  - (ii) kept separate from adults in custody;
  - (iii) accorded legal assistance by the State;
  - (iv) treated in a manner and be kept in conditions that take account of the child's gender and age; and

- (v) tried in a juveniles court;
  - (o) to know of decisions affecting the child, to express an opinion and have that opinion taken into account, having regard to the age and maturity of the child and the nature of the decision;
  - (a) to protection of the child’s identity and not be exposed by the media during criminal proceedings; and
  - (q) generally to survival and development.
- (6) Children with special needs, especially girls, orphans, a child whose parent is in prison, children with disability, refugee children and homeless children, are entitled to the special protection of the State and society.
- (7) In this Article “child” means a person who is below the age of eighteen years.
- (8) Parliament shall enact legislation to give effect to this Article.

**Youth**

- 45. (1)** The youth constitute an integral part of society and, taking into account their unique needs, are entitled to enjoy all the rights and freedoms set out in this Bill of Rights, including –
- (a) access to quality and relevant education and training in order to achieve personal development and serve the community;
  - (b) participation in governance;
  - (c) access to gainful employment;
  - (d) adequate opportunities in the social, economic and other spheres of national life;
  - (e) freedom of association to further their legitimate interests;
  - (f) protection from any culture, custom or tradition that undermines their dignity or quality of life; and
  - (g) freedom from discrimination, exploitation or abuse.
- (2) In this Article “youth” means a person who is eighteen years of age but below the age of thirty-five years.
- (3) Parliament shall enact legislation to give effect to this Article.

**Protection  
of young  
persons**

- 46.** (1) A young person shall not be -
- (a) employed;
  - (b) caused or permitted to engage in an occupation or employment which would prejudice the health or education or interfere with the physical, mental or moral development of that young person;
- except that an Act of Parliament may provide for the employment of a young person for a wage under certain conditions specified in that Act.
- (2) In this Article, “young person” means a person under the age of fifteen years.

**Family**

- 47.** (1) The Republic recognizes the family as the natural fundamental unit of society and as the necessary basis of the social order.
- (2) The family is entitled to the respect and protection of the State.
- (3) A person who is eighteen years of age or older has the right to freely choose a spouse of the opposite sex and marry.
- (4) Parties to a marriage are entitled to equal rights in the marriage, during the marriage and at the dissolution of the marriage.
- (5) Recognising the importance of children to the future of society, the maternal role of women and the nurturing role of both parents, the Government shall -
- (a) ensure the right of women to adequate maternity leave;
  - (b) ensure the availability of adequate paternal leave;
  - (c) ensure the availability of adequate maternal and reproductive health care and child health care; and
  - (d) promote the availability of adequate childcare facilities.

**Persons with  
disability**

- 48.** (1) Persons with disability are entitled to enjoy all the rights and freedoms set out in this Bill of Rights and shall have the right -

- (a) to education and facilities that are integrated into society as a whole to the extent compatible with the interests of persons with disability;
  - (b) to effective access to places and public transport;
  - (c) to use sign language, braille or other appropriate means of communication;
  - (d) to be addressed and referred to, in official or private contexts, in a manner that is not demeaning, derogatory or discriminatory;
  - (e) to access materials, facilities and devices to enable them overcome constraints due to disability;
  - (f) to equal treatment, including the right to equal opportunities in cultural, political, economic and social activities; and
  - (g) to inherit, have access to, own and control property.
- (2) Any practice, custom or tradition that undermines the dignity, welfare, interest or status of persons with disability is prohibited.
- (3) Parliament shall enact legislation to give affect to this Article.

**Special measures for persons with disabilities**

- 49.** (1) The State shall -
- (a) promote measures to educate communities and the society on the causes of disability and the need to respect the dignity and rights of all persons;
  - (b) promote and ensure the use of sign language, braille or any other appropriate means of communication for the disabled; and
  - (c) not tax any device used by persons with disability.
- (2) Parliament shall enact legislation to provide for the promotion of the rights of persons with disability and in particular establish a social security scheme for persons who are totally impaired.

**Language and culture**

- 50.** (1) Every person has the right to use the language and to participate in the cultural life of that person's choice.



- (2) A person who belongs to a cultural or linguistic community shall not be denied the right, with other members of that community -
  - (a) to enjoy that person's culture and use that person's language; or
  - (b) to form, join and maintain cultural and linguistic associations.
- (3) A person shall not be compelled -
  - (a) to perform, observe, participate in or be subjected to any cultural practice or rite; or
  - (b) to form, join, contribute, maintain or pay allegiance to any cultural, traditional or linguistic association, organisation, institution or entity.

**Freedom and security of person**

- 51.** Every person has the right to freedom and security of the person which includes the right -
- (a) not to be deprived of freedom arbitrarily or without just cause;
  - (b) not to be the subject of human trafficking;
  - (c) not to be detained without trial, except during a state of war, public emergency or state of threatened public emergency;
  - (d) to be free from all forms of violence;
  - (e) not to be tortured in any manner, whether physically or psychologically; and
  - (f) not to be subjected to corporal punishment or to be treated or punished in a cruel, inhuman or degrading manner.

**Slavery, servitude and forced labour**

- 52.**
- (1) A person shall not be held in slavery or servitude.
  - (2) A person shall not be required to perform forced labour.
  - (3) Parliament shall enact legislation specifying what constitutes "forced labour".

**Privacy**

- 53.** All persons have the right to privacy, which includes the right not to have -
- (a) their person, home or property searched;
  - (b) their possessions seized;

- (c) information relating to their family, health status or private affairs unnecessarily required or revealed; or
- (d) the privacy of their communications infringed.

**Freedom of  
worship and  
conscience**

54. (1) Every person has the right to freedom of conscience, religion, thought, belief and opinion.

(2) Every person has a right, either individually or in community with others, in public or in private, to manifest any religion or belief through worship, observance, practice or teaching.

(3) Every religious community shall be entitled at its own expense to establish, maintain and manage educational institutions, facilities and programmes for, and to provide religious instruction to, members of that community.

(4) Religious observance and instruction may be conducted at State or State-aided institutions so long as -

(a) the facilities of that institution are made available or the observance and instruction are conducted on an equitable basis, having regard to the beliefs of the population served by that institution; and

(b) attendance at the observance or instruction is free and voluntary.

(5) A person shall not be deprived of access to any institution, employment facility or the enjoyment of any right or freedom because of that individual's religious beliefs.

(6) A person shall not be compelled -

(a) to take an oath that is contrary to that individual's religion or belief or that involves expressing a belief that the individual does not hold;

(b) to take an oath in a manner that is contrary to that individual's religion or belief;

(c) to receive instruction in a religion that is not that individual's religion or to attend a ceremony or observance of that religion;

- (d) by a public body to disclose that individual's religious conviction or belief; or
- (e) to do any other act that is contrary to that individual's religion or belief.

**Freedom of expression**

55. (1) Every person has the right to freedom of expression which includes
- (a) freedom to hold an opinion;
  - (b) freedom to receive or impart information or ideas;
  - (c) freedom of artistic creativity; and
  - (d) academic freedom, including freedom of scientific research.
- (2) Clause (1) does not extend to -
- (a) propaganda for war;
  - (b) incitement to violence; or
  - (c) advocacy of hatred that -
    - (i) vilifies and disparages others or incites harm; or
    - (ii) is based on any prohibited ground of discrimination specified in this Constitution.

**Access to information**

56. (1) Every citizen has the right of access to -
- (a) information held by the State; and
  - (b) any information that is held by another person which is required for the exercise or protection of any right or freedom.
- (2) The President shall within six months of the submission of a report of any commission of inquiry, appointed by the President in the exercise of the President's executive functions, publish the report.
- (3) Every person has the right to demand the correction or deletion of untrue or misleading information affecting that person.
- (4) The State has the obligation to publicise any important information affecting the welfare of the Nation.

(5) Parliament shall enact legislation to provide for access to public information.

**Freedom of media**

57. (1) There shall be freedom of the press and other media.
- (2) Subject to this Constitution, a law shall not make any provision that derogates from freedom or independence of the press and other media.
- (3) Broadcasting and other electronic media are subject only to fair licensing procedures that are –
- (a) administered by a body that is independent of control by the Government, political interests or commercial interests; and
- (b) designed to ensure -
- (i) the reasonable allocation of broadcast frequencies; and
- (ii) adherence to codes of good practice.
- (4) The registration or licensing of any media shall not unreasonably be withheld, withdrawn or refused.
- (5) A person, State organ or State institution shall not -
- (a) require prior licensing for any form of publication, broadcast or dissemination of information, comment or opinion;
- (b) impose censorship on any form of publication, broadcast or dissemination of information, comment or opinion;
- (c) otherwise interfere with the freedom of expression of any writer, editor, publisher or broadcaster; or
- (d) harass or penalise a person for any opinion or view or the content of any publication, broadcast or dissemination.
- (6) Parliament shall enact legislation that regulates freedom to broadcast in order to ensure fair election campaigning.

**Freedom not to disclose source**

58. (1) A journalist shall not be compelled to disclose a source of information, except as may be determined by a court.

(2) An agent of the media is free, at all times, to uphold the principle, provisions and objectives of this Constitution and the responsibility and accountability of the Government to the people of Zambia.

**Independence  
of public media**

- 59.** (1) All public media shall -
- (a) be independent and impartial; and
  - (b) afford fair opportunities and facilities to all persons for the presentation of divergent views and dissenting opinions.
- (2) Parliament shall enact legislation to -
- (a) promote the independence and impartiality of the public media; and
  - (b) provide for reasonable allocation of air time and space by the public media to political parties, either generally or during election campaigns, on the recommendation of the Electoral Commission.

**Freedom of  
association**

- 60.** (1) Every person has the right to freedom of association.
- (2) Freedom of association shall apply to the formation, operation and continued existence of any association.
- (3) A person shall not be compelled to join an association of any kind.

**Assembly,  
demonstration,  
picketing, lock  
out and petition**

- 61.** Every person has the right, peacefully and unarmed, to assemble, demonstrate, picket or lock out and present petitions to public authorities.

**Right to  
participate in  
politics**

- 62.** (1) Subject to this Constitution, every citizen has a right to make political choices which includes the right -
- (a) to form or participate in forming a political party;
  - (b) to participate in the activities of, or recruit members for, a political party; and
  - (c) to campaign for a political party or cause.
- (2) Subject to this Constitution, every citizen has the right to be elected -

- (a) to any elective public body or office established by or under this Constitution; and
  - (b) to an office of a political party of which the citizen is a member.
- (3) Every citizen aged eighteen years and above has the right to be registered as a voter and to vote by secret ballot in elections or referenda, as provided by or under this Constitution.
- (4) The State shall put in place measures to ensure that eligible citizens exercise their right to register as voters and to vote.

**Freedom of movement and residence**

- 63.** (1) Every person has the right to freedom of movement.
- (2) Every person has the right to leave the Republic.
- (3) Every citizen has the right to enter into, remain and reside anywhere in the Republic.
- (4) Every citizen has a right to a passport.
- (5) Parliament shall enact legislation for the imposition of restrictions on the entry, movement or residence of persons who are not citizens.

**Refugees and asylum**

- 64.** (1) An individual who has sought asylum or refuge in Zambia has a right not to be returned to the country of origin if that person has a well-founded fear of -
- (a) persecution in the country of origin; or
  - (b) other treatment in that country that would justify that person being regarded as a refugee.
- (2) Parliament shall enact legislation governing persons who seek refuge or asylum in Zambia.

**and other property**

- 65.** (1) Every person has a right to access, acquire and own land and other property either individually or in association with others.
- (2) The State shall not deprive a person of property of any description or of any interest in or right over property, except under an Act of Parliament.

- (3) Legislation shall not authorise deprivation of any interest in or right over property of any description, except -
- (a) where deprivation of any interest in or right over property is justifiable balancing -
    - (i) the public benefit; and
    - (ii) hardship that may result to any person who has an interest in or right over the property;
  - (b) where the legislation specifies the consequence for non-compliance with the law;
  - (c) where a property consists of a licence or permit; and
  - (d) to the extent permitted under this Constitution.
- (4) Subject to this Constitution, prompt payment of full and fair compensation shall be made prior to acquiring, assuming occupation or possession of any property, as provided under an Act of Parliament.
- (5) Every owner of -
- (a) a leasehold interest in land has the right to be issued a certificate of title setting out that interest and, at the expiry of the lease, to a renewal of the lease; and
  - (b) any other right or interest in land has the right to register that right or interest.
- (6) The rights recognised and protected under this Article do not apply to any property that has been unlawfully acquired.

**Consumer rights**

- 66.** (1) Consumers have the right to -
- (a) goods and services of appropriate quality, quantity and use;
  - (b) information necessary for them to gain full benefit from the goods and services;
  - (c) protection of their health, safety and economic interests; and
  - (d) adequate compensation for defects that cause them loss or injury.
- (2) This Article applies to goods and services offered by any person, State organ or State institution, whether in return for consideration, taxes or other form of revenue or free of any charge.

(3) Parliament shall enact legislation to provide for consumer protection and for fair, honest and decent advertising.

### **Economic and Social Rights**

**Progressive  
realisation of  
economic and  
social rights**

67. (1) Parliament shall enact legislation which provides measures which are reasonable in order to achieve the progressive realization of the economic and social rights under this Bill of Rights.

(2) The Government shall take measures, including –

(a) affirmative action programmes designed to benefit disadvantaged persons or groups;

(b) legislation –

(i) that promotes equity, equality and freedom from discrimination and establishes or provides for standards relating to the achievement of those measures;

(ii) that ensures that State organs and State institutions fulfill the obligations of the State under this Bill of Rights; and

(iii) that ensures that persons fulfill their obligations under this Bill of Rights.

(3) Where a claim is made, by the State, that the State does not have the resources to implement a particular right or freedom –

(a) it is the responsibility of the State to show that the resources are not available; and

(b) a court, tribunal or the Human Rights Commission shall not interfere with a decision by a State organ or State institution concerning the allocation of available resources solely on the basis that the court, tribunal or Human Rights Commission would have reached a different conclusion.

**Freedom to  
choose trade,  
occupation and  
profession**



68. Every person has the right to choose a trade, occupation or profession.

69. (1) A person has the right to employment and to just and fair labour practices.

(2) A worker has the right to -

- (a) fair remuneration and equal pay for equal work;
- (b) work under satisfactory, safe and healthy conditions;
- (c) equal opportunity for promotion;
- (d) rest, leisure and reasonable limitation of working hours;
- (e) periodic holidays with pay and remuneration for public holidays;
- (f) form, join or participate in the activities and programmes of a trade union, including the right to strike;
- (g) withdraw labour in accordance with the law; and
- (h) a reasonable pension or gratuity commensurate with that worker's status, salary and length of service.

(3) Where pension or retrenchment benefit is not paid promptly the retiree's or retrenchee's name shall be retained on the payroll until the pension or benefit is paid.

(4) Every employer has the right to -

- (a) form and join an employers' organisation;
- (b) participate in the activities and programmes of an employers' organisation; and
- (c) lock out.

(5) Every trade union and every employers' organisation has the right to -

- (a) determine its own administration, programmes and activities;
- (b) organise; and
- (c) form and join a federation.

(6) A trade union, an employer's organisation and an employer have the right to engage in collective bargaining.

(7) Parliament shall enact legislation to regulate pensions and pension schemes and in particular to make provision for -

- (a) persons over sixty-five years of age to receive welfare support;
- (b) all workers to subscribe to pension schemes;
- (c) equitable representation of both employees and employers on any supervisory or policy board established for a pension scheme; and
- (d) the prudent investment of pension funds.

**Social security** 70. Every person has the right to social security, including, where appropriate, social welfare for that person and dependants of that person.

**Health** 71. (1) Every person has the right to health which includes the right to health care services and reproductive health care.  
(2) A person shall not be refused emergency medical treatment.

**Education** 72. (1) Every person has the right to education.  
(2) The State shall -  
(a) ensure the right of every child to free and compulsory basic education; and  
(b) make secondary, post-secondary, technical and vocational education progressively available and accessible.  
(3) Every person has the right to establish and maintain, at that person's own expense, independent educational institutions that meet standards provided by or under an Act of Parliament.

**Shelter and housing** 73. (1) Every person has the right to have access to adequate shelter and housing.  
(2) Parliament shall not enact any legislation that permits or authorises arbitrary eviction.

**Food, water and sanitation**

74. (1) Every person has the right to be free from hunger and to have access to food in adequate quantities, of adequate quality and cultural acceptability.
- (2) Every person has the right to water in adequate quantities and of satisfactory quality.
- (3) Every person has the right to a reasonable standard of sanitation.

**Environment**

75. Every person has the right to -
- (a) an environment that is safe for life and health;
- (b) free access to information about the environment;
- (c) the protection of the environment for present and future generations; and
- (a) compensation for damage arising from the violation of the rights recognised under this Article.

**Limitations on Rights and Freedoms and Non-Derogable Rights**

**Limitations on rights and freedoms**

76. (1) A right or freedom set out in this Bill of Rights -
- (a) is limited by any limitation or qualification expressly set out in the provision containing that right or freedom; and
- (b) may be otherwise limited only by a law of general application which is subject to clauses (2), (3) and (4).
- (2) A law that has the effect of limiting a right or freedom is inconsistent with this Constitution unless -
- (a) that enactment specifically expresses the intention to limit that specific right or freedom; and
- (b) the limitation satisfies the requirements of clause (3).

(3) A limitation made under clause (1) (b) or (2) shall be invalid if it negates the core or the essential content of the right or freedom and is not reasonable and justifiable in an open and democratic society -

- (a) based on human dignity, equality and freedom;
- (b) taking into account all relevant factors including -
  - (i) the nature of the right;
  - (ii) the importance of the purpose of the limitation;
  - (iii) the value and extent of the limitation;
  - (iv) the relation between the limitation and its purpose; and
  - (v) whether there are less restrictive means to achieve the purpose.

(4) A limitation made under clause (1) (b) or (2) shall be valid only to the extent that the limitation -

- (a) is reasonably required in the interest of defence and security, public safety, public order, public morality, public health, town and country planning, taxation, the development, management and utilization of natural and mineral resources;
- (b) relates to the acquisition of property to secure the development, management or utilization of the property for a purpose beneficial to the community or the public;
- (c) forms or is an incident of a contract, including a lease, trust, settlement, deed, letter of administration, tenancy, mortgage, charge, pledge, bill of sale or title deed to land or other instruments provided under law;
- (d) relates to property which consists of a licence or permit;
- (e) is required to enforce a judgement or an order of a court or tribunal; or
- (f) imposes restrictions on defence and security officers and other public officers.

(5) The State or any person claiming that a particular limitation is permitted under this Article shall prove to a court, tribunal, the Human Rights Commission or any other appropriate body that the requirements of this Article have been satisfied.

**Non-derogable rights and freedoms**

77. Notwithstanding any other provision in this Constitution, the following rights and freedoms shall not be derogated from :

- (a) freedom from torture, cruel, inhuman or degrading treatment or punishment;
- (b) freedom from slavery or servitude;
- (c) the right to a fair hearing; and
- (d) the right to an order of *habeas corpus*.

**Derogation of rights and freedoms during emergency or national disaster**

78. (1) A provision contained in, or an act or a thing done under, an Act of Parliament shall not be inconsistent with or in contravention of this Part if –

- (a) the law in question authorizes the taking, when a declaration of war, state of public emergency or threatened state of public emergency or a National disaster is in force, of measures for dealing with such situations; and
- (b) the measures taken are reasonably justifiable for dealing with the war, state of public emergency, threatened state of public emergency or National disaster.

(2) Legislation enacted under clause (1) may provide for the detention of persons when it is necessary for purposes of dealing with the war or other state of public emergency.

**Restriction and detention during emergency**

79. (1) Where a person's freedom of movement is restricted or that person is detained, during a war, state of public emergency or threatened state of public emergency, the following shall apply:

- (a) that person shall, as soon as is reasonably practicable and in any case not more than fourteen days after the commencement of the detention or restriction, be furnished with a statement in writing in a language which

that person understands specifying in detail the grounds of the restriction or detention;

- (b) not more than fourteen days after the commencement of the restriction or detention, a notification shall be published in the *Gazette* stating the restriction or detention and giving particulars of the place of the restriction or detention and the provision of the law under which the restriction or detention is authorised;
  - (c) if that person so requests, at any time during the period of the restriction or detention or not later than twenty-one days after the commencement of the restriction or detention and at intervals of not more than thirty days, the case shall be reviewed by the Constitutional Court;
  - (d) that person shall be afforded reasonable facilities to consult a legal practitioner of that person's own choice who shall be permitted to make representations to the authority by which the restriction or detention was ordered or to the Constitutional Court; and
  - (e) at the hearing of the case, by the Constitutional Court, that person shall be permitted to appear in person or by a legal practitioner of that person's own choice and may, in addition to any grounds challenging that person's detention or restriction, challenge the validity or genuineness of the declaration of the state of public emergency or threatened state of public emergency and the measures taken during that period.
- (2) On a review by the Constitutional Court under this Article, the Court shall advise the authority, by which the detention or restriction of the person was ordered, on the necessity or expediency of continuing the restriction or detention and that authority shall act in accordance with that advice.

(3) The President may, at any time, refer to the Constitutional Court the case of a person who has been or is being restricted or detained under a restriction or detention order under any law.

(4) Clause (1) (d) or (e) shall not be construed as entitling a person to legal representation at public expense.

## **Enforcement of Bill of Rights**

### **Enforcement of Bill of Rights**

- 80.** (1) Where a person alleges that any provision of this Bill of Rights has been, is being or is likely to be contravened in relation to that person, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply for redress to the Constitutional Court.
- (2) Any person or organisation may bring an action against the violation of another person's or a group's human rights and freedoms.
- (3) Parliament shall enact legislation for the enforcement of the Bill of Rights.

## **Human Rights Commission and Gender Equality Commission**

### **Establishment and composition of Human Rights Commission**

- 81.** (1) There is hereby established a Human Rights Commission which shall have offices in all of the provinces and progressively in the districts.
- (2) The Commission shall consist of the following members:
- (a) a person qualified to be appointed a Judge of the High Court, nominated by the Judicial Service Commission, as the chairperson;
  - (b) a person qualified to be appointed a Judge of the High Court, nominated by the Judicial Service Commission, as the vice-chairperson; and
  - (c) three persons, who have qualifications and proven experience in human rights issues, nominated by human rights civil society organisations.
- (3) A member of the Commission shall be appointed by the President, subject to ratification by the National Assembly.

### **Functions of Human Rights Commission**

- 82.** (1) The functions of the Human Rights Commission shall be to -
- (a) investigate, at its own initiative or on a complaint made by a person or group of persons, an allegation of a violation of any human right or freedom;

- (b) investigate complaints in State institutions relating to allegations of abuse of human rights or freedoms;
  - (c) establish a continuing programme of research, education, information, dissemination and rehabilitation of victims of human rights abuses in order to enhance awareness and the protection of human rights and freedoms;
  - (d) recommend to the National Assembly measures to promote human rights and freedoms, including the provision of compensation to victims of violations of human rights and their families;
  - (e) promote civic education and public awareness of the Bill of Rights;
  - (f) monitor the Government's compliance with international treaties and conventions on human rights and freedoms;
  - (g) formulate and implement programmes intended to inculcate, in the citizen, an awareness of civic responsibilities and an appreciation of the rights, freedoms and obligations under this Constitution;
  - (h) visit prisons and places of restriction or detention or related facilities in order to assess and inspect conditions of the inmates and make recommendations to appropriate authorities;
  - (i) investigate complaints against practices and actions, by persons, private enterprises and any other institution on alleged violations of the Bill of Rights;
  - (j) take appropriate action to call for remedying, correction and reversal of instances of breach of the Bill of Rights;
  - (k) prosecute cases of human rights violations, subject to the approval of the Director of Public Prosecutions; and
  - (l) report regularly to the National Assembly on the performance of its functions.
- (2) Clause (1) shall not prevent any person, on behalf of any other person unable to act, from bringing an action to the Constitutional Court in a case of a violation of the Bill of Rights.
- (3) The Commission shall not investigate a matter -



- (a) which is pending before a court or quasi-judicial tribunal;
- (b) that involves the relations or dealings between the Government and any foreign government or an international organisation; or
- (c) that relates to the exercise of the prerogative of mercy.

**Independence  
of human  
Rights  
Commission**

**83.** In the performance of its functions, the Human Rights Commission shall be subject only to this Constitution and the Laws and shall not be subject to the direction or control of any person or authority.

**Tenure of office  
of members of  
Human Rights  
Commission**

**84.** (1) A member of the Human Rights Commission shall hold office on full-time basis for a term of four years and shall be eligible for re-appointment for only one further term.

(2) A member of the Commission may in writing resign from office and may be removed from office on the same grounds and procedure as applies to a Judge of a superior court.

(3) A member of the Commission shall not hold any other office of profit or emolument while serving as a member of the Commission.

**Funds of  
Human  
Rights  
Commission**

**85.** (1) The funds of the Human Rights Commission shall include –

(a) moneys appropriated by Parliament for the purposes of the Commission; and

(b) any other moneys received by the Commission for the performance of its functions.

(2) The Commission shall be a self-accounting institution and shall deal directly with the Ministry responsible for finance on matters relating to its finances.

(3) The Commission shall, in any financial year, be adequately funded in order to enable it to effectively carry out its mandate.

**Expenses of  
Human Rights  
Commission**

86. The expenses of the Human Rights Commission, including emoluments payable to or in respect of persons serving with the Commission, shall be a charge on the Consolidated Fund.

**Legislation on powers of Human Rights Commission**

87. Parliament may enact legislation to give effect to this Part, including the power of the Human Rights Commission to -

- (a) issue subpoenas requiring the attendance of a person before the Commission;
- (b) require the production of documents or records relevant to an investigation by the Commission;
- (c) cause a person contemptuous of the Commission to be prosecuted before a court;
- (d) question a person in respect of a subject matter under investigation by the Commission;
- (e) require a person to disclose any information, within that person's knowledge, relevant to an investigation by the Commission;
- (f) make regulations providing for the manner and procedure for bringing complaints before it and for the investigation of complaints; and
- (g) appoint the employees of the Commission and determine their terms and conditions of service.

**Establishment of Gender Equality Commission**

88. (1) There is hereby established the Gender Equality Commission.

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