



## **REPUBLIC OF ZAMBIA**

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# **NATIONAL CONSTITUTIONAL CONFERENCE**

## **PUBLIC FINANCE COMMITTEE**

### **(COMMITTEE NO.10)**

## **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**

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## PART XVII

### PUBLIC FINANCE AND BUDGET

- Imposition of tax**      **304.** (1) A tax shall not be imposed except by or under an Act of Parliament.
- (2) Where legislation, enacted under clause (1), confers powers on any person or authority to waive or vary a tax imposed by that legislation, that person or authority shall make a report to the National Assembly on the exercise of those powers as provided by or under an Act of Parliament.
- Consolidated Fund**      **305.** (1) There shall be established a fund to be known as the Consolidated Fund of the Republic.
- (2) Subject to clause (3), all moneys raised or received for the purposes of, on behalf of, or in trust for, the Republic shall be paid into the Consolidated Fund.
- (3) The moneys referred to in clause (2), do not include moneys-
- (a) that are payable under this Constitution or an Act of Parliament into some other public fund established for a specific purpose; or
  - (b) that may, under this Constitution or an Act of Parliament, be retained by the State organ or State institution that receives it for the purpose of defraying the expenses of that State organ or State institution.
- Withdrawal from Consolidated Fund**      **306.** (1) Subject to Article 307, moneys shall not be withdrawn from the Consolidated Fund except -
- (a) to meet expenditure charged on the Consolidated Fund by this Constitution or by an Act of Parliament; or
  - (b) where the issuance of those moneys have been authorized by an Appropriation Act or a Supplementary Appropriation Act.

(2) Moneys shall not be withdrawn from any other public fund of the Republic unless withdrawal has been authorized by an Act of Parliament.

(3) Moneys shall not be withdrawn from the Consolidated Fund unless the withdrawal has been approved in the manner provided by an Act of Parliament.

**Expenditure in  
advance of  
appropriation**

**307.** (1) Where, in any financial year, the President is satisfied that the Appropriation Act in respect of that financial year will not come into operation by the beginning of that year, the President may authorize the withdrawal of moneys from the Consolidated Fund to meet expenditure necessary to carry on the services of the Government until the expiry of four months from the beginning of that financial year or the coming into force of the Appropriation Act, whichever is the earlier.

(2) Moneys withdrawn in any financial year from the Consolidated Fund under clause (1) in respect of any service of the Republic -

(a) shall not exceed the amount shown as required in respect of that service in the vote approved by the National Assembly for that financial year; and

(b) shall be set off against the amount provided in respect of that service in the Appropriation Act for that financial year when that Act comes into force.

**Compensation  
Fund**

**308.** (1) Parliament shall enact legislation to establish a Compensation Fund for purposes of paying claims against the State and to provide for the operation of the Compensation Fund.

(2) Moneys shall not be withdrawn from the Compensation Fund unless the withdrawal is authorised under an Act of Parliament.

**Annual financial  
statements**

**309.** (1) The President shall, subject to clause (2), cause to be prepared and laid before the National Assembly in each financial year, not later than ninety

days before the commencement of the financial year, estimates of revenues and expenditure of the Government for the next financial year.

(2) In any year where a general election takes place and an election petition has been filed challenging the election of a President-elect, the President shall cause to be prepared and laid before the National Assembly, within ninety days of the swearing in of the President, estimates of revenues and expenditure of the Government for that financial year.

(3) Not later than six months before the end of each financial year, the heads of each State organ and State institution, shall submit estimates of revenues and expenditure for the following financial year to the Minister responsible for finance.

(4) In the preparation of estimates and expenditure under clause (2), the inputs of the people in the wards, districts and provinces shall be sought.

(5) The estimates prepared under clause (2) shall be laid before the National Assembly by the Minister responsible for finance, on behalf of the President.

(6) Notwithstanding clause (1), the President may cause to be prepared and laid before the National Assembly -

- (a) fiscal and monetary programmes and plans for economic and social development covering periods exceeding one year; and
- (b) estimates of revenue and expenditure covering periods exceeding one year.

(7) Before the National Assembly considers the estimates of revenues and expenditure, laid before it by the Minister responsible for finance, the appropriate committee of the National Assembly shall discuss and review the estimates and make appropriate recommendations to the National Assembly.

(8) The committee referred to under clause (7) shall, in considering the estimates of the revenues and expenditure, seek public opinion from the districts and provinces on the estimates and expenditure and shall take these into consideration in its recommendations to the National Assembly.

(9) The National Assembly may, subject to clause (2), amend but shall not vary the total estimates of revenues and expenditure and shall in any case approve the budget not later than the thirty-first day of December.

**Budget Act**

**310.** Parliament shall enact a Budget Act which shall provide for matters that relate to the annual budget and shall include -

- (a) the method for the preparation of the budget;
- (b) the preparation of medium and long-term development plans indicating corresponding sources of financing;
- (c) the participation of the people at the district and provincial levels, ensuring representation from both gender, in the formulation of development plans and preparation of the annual budget;
- (d) the submission of anticipated revenues and expenditure for each financial year by the Minister responsible for finance to the appropriate committee of the National Assembly for prior consideration before the preparation and submission of the actual estimates for the financial year; and
- (e) the contents, subject to this Constitution, of the financial report of the Government provided for under Article 314.

**Appropriation  
Bill and  
supplementary  
Appropriation  
Bill**

**311.** (1) When the estimates of expenditure have been approved by the National Assembly they shall be appropriated in an Appropriation Bill for issue from the Consolidated Fund.

(2) Where in respect of a financial year the amount appropriated under an Appropriation Act is insufficient or a need arises for expenditure for a purpose for which an amount has not been appropriated, under that Act, a supplementary estimate showing the amount required shall be laid before the National Assembly for approval.

(3) Where a supplementary estimate is approved under clause (2) a Supplementary Appropriation Bill showing the estimates approved shall be laid before the National Assembly in the next financial year.

(4) Subject to this Constitution, the Minister responsible for finance shall release adequate appropriated funds, on quarterly basis and on time, to the institutions and bodies entitled to the appropriations.

**Borrowing by  
Government**

**312.** (1) The Government may, subject to this Article, borrow from any source.

(2) Government shall not borrow, guarantee or raise a loan on behalf of itself or any State organ, State institution, authority or person except as authorised by or under an Act of Parliament.

(3) Legislation enacted under clause (2) shall provide -

(a) that the terms and conditions of the loan shall be laid before the National Assembly and shall not come into operation unless they have been approved by a resolution of the National Assembly; and

(b) that any money received in respect of that loan shall be paid into the Consolidated Fund or into some other public fund which exists or is created for the purpose of the loan.

(4) The President shall, at such times as the National Assembly may determine, cause to be presented to the National Assembly information concerning any loan including -

(a) the source of the loan;

(b) the extent of the total indebtedness by way of principal and accumulated interest;

(c) the provision made for servicing or repayment of the loan; and

(d) the utilisation and performance of the loan.

(5) The National Assembly may, by resolution, authorize the Government to enter into an agreement for the giving of a loan or grant out of the Consolidated Fund or any other public fund or account.

(6) An agreement entered into under clause (5) shall be laid before the National Assembly and shall not come into force unless it has been approved by a resolution supported by the vote of not less than two-thirds of all the members of the National Assembly.

(7) For the purposes of this Article, "loan" includes any moneys lent or given to or by the Government on condition of return or repayment and any other form of borrowing or lending in respect of which moneys from the Consolidated Fund or any other public fund or account may be used for payment or repayment.

**Public debt**

**313.** (1) The public debt of Zambia shall be a charge on the Consolidated Fund and any other public fund.

(2) The National Assembly shall approve all direct borrowing by the Government, before these take effect, for the purposes of incurring public debt or loan guarantees.

(3) For the purposes of this Article, the public debt includes the interest on that debt, sinking fund payments in respect of that debt, the costs, charges and expenses incidental to the management of that debt.

**Financial  
report of  
Government**

**314.** (1) The Minister responsible for finance shall within six months after the end of each financial year prepare and submit to the Auditor-General the financial report of the Government in respect of the preceding financial year.

(2) The financial report, referred to under clause (1), shall include information on -

- (a) revenue and other moneys received by the Government during that financial year;
- (b) the expenditure of the Government during that financial year, including expenditure charged by this Constitution or any other law on the Consolidated Fund or other public fund;
- (c) debt repayments;

- (d) payment made in that financial year for purposes other than expenditure;
  - (e) the financial position of the Republic at the end of that financial year; and
  - (f) any other information as specified under the Budget Act.
- (3) The Auditor-General shall examine the financial report submitted by the Minister responsible for finance under clause (1) and express an opinion on the report.
- (4) The Minister responsible for finance shall within nine months after the end of the financial year lay the financial report of the Government, with the Auditor General's opinion, before the National Assembly.

**Disposal of  
State assets**

**315.** Any major State asset, such as a parastatal company or a commercial enterprise of the State, shall not be sold, transferred or disposed of, except with the prior resolution of the National Assembly supported by a vote of not less than two-thirds of all the members of the National Assembly.

**State Audit  
Commission**

- 316.** (1) There is hereby established a State Audit Commission, which shall be the policy body for the Auditor General's Office.
- (2) The State Audit Commission, established under clause (1), shall consist of five members who shall serve on a part-time basis.
- (3) The members of the State Audit Commission shall be persons from the private sector with -
- (a) expertise and experience in state audit, internal or external audit or finance;
  - (b) considerable experience in public finance; or
  - (c) professional qualifications of relevance to the work of the State Audit Commission.
- (4) The members of the State Audit Commission shall be nominated by the relevant professional civil society organisations with similar objectives as is



relevant to the work of the State Audit Commission and appointed by the President, subject to ratification by the National Assembly.

(5) A member of the State Audit Commission shall serve for a term of three years and shall be eligible to serve for only one further term of three years.

(6) The functions of the State Audit Commission shall include-

- (a) making recommendations to the President on the appointment of the Auditor-General;
- (b) providing policy direction to the office of the Auditor-General; and
- (c) performing such other functions as provided by this Constitution and by or under an Act of Parliament.

(7) The Auditor-General's Office shall be the secretariat for the State Audit Commission.

(8) The expenses of the State Audit Commission shall be a charge on the Consolidated Fund.

**auditor-General**

**317.** (1) There is hereby established the office of the Auditor-General the holder of which is the Auditor-General.

(2) The office of Auditor-General is a public office.

(3) The Auditor-General shall be appointed by the President on the recommendation of the State Audit Commission, subject to ratification by the National Assembly.

(4) The Auditor-General may only be removed from office on the same grounds and procedure that apply to a Judge of a superior court.

(5) The Auditor-General shall retire from office on the attainment of seventy years of age.

(6) The emoluments and other terms and conditions of service of the Auditor-General shall be as recommended by the Emoluments Commission and approved by the National Assembly.

(7) Parliament shall enact legislation to provide for -

- (a) the qualification and retirement from office of the Auditor-General;

- (b) the operations and management of the office of the Auditor-General;
- (c) the recruitment, supervision, grading, promotion and discipline of the staff of the Auditor-General; and
- (d) the finances of the office of the Auditor-General.

**Independence of Auditor-General**

**318.** In the performance of the functions conferred on the Auditor-General under this Constitution or any other law, the Auditor-General and the staff of the office of the Auditor-General shall not be subject to the direction or control of any person or authority.

**Funding of Auditor-General**

**319.** (1) The office of Auditor-General shall be adequately funded to enable the office to effectively carry out its mandate.

(2) The expenses of the office of the Auditor-General, including the emoluments of staff, shall be a charge on the Consolidated Fund.

**Functions of Auditor-General**

**320.** (1) The Auditor-General shall -

- (a) audit the accounts of -
  - (i) the National Government and local authorities;
  - (ii) all offices financed wholly or partly from public funds including the universities, the Central Bank, State organs and State institutions;
- (b) audit the accounts that relate to the stocks, shares and stores of the Government;
- (c) conduct financial and value for money audits, including environmental audits, forensic audits and any other type of audit, in respect of any project that involves the use of public funds;
- (d) ascertain that money appropriated by Parliament or raised by the Government and disbursed -

- (i) has been applied for the purpose for which it was appropriated;
    - (ii) was expended in conformity with the authority that governs it; and
    - (iii) was expended economically, efficiently and effectively;
  - (e) recommend to the Director of Public Prosecutions or any other law enforcement agency any matter, within the competence and functions of the Auditor-General, that may require to be prosecuted; and
  - (f) perform any other function specified by or under an Act of Parliament.
- (2) For the purposes of clause (1), the Auditor-General or a person authorised or appointed by the Auditor-General shall have access to all documents that relate to or are relevant to an audit.
- (3) Accounts which are subject to auditing by the Auditor-General shall be kept in the form approved by the Auditor-General.
- (4) The Auditor-General shall, not later than nine months after the end of each financial year, submit a report of the accounts audited under clause (1) in respect of the immediately preceding financial year to -
- (a) the President; and
  - (b) the National Assembly.
- (5) The National Assembly shall, within three months after the submission of the report referred to in clause (4), consider the report and take appropriate action.
- (6) The Auditor-General may conduct audits of public accounts at intervals and with the regularity that the Auditor-General considers necessary.
- (7) The President, the National Assembly or any public officer may, at any time, in the public interest, request the Auditor-General to audit the accounts of a State organ, State institution or body that is subject to audit under this Part.

(8) The office of the Auditor-General shall be audited and the report shall be submitted to the National Assembly and the President by external auditors appointed by the State Audit Commission.

**Reference  
by Auditor-  
General**

**321.** The Auditor-General may refer any case of malpractice or financial impropriety to any public institution which is competent in the matter for action.

**National  
Fiscal and  
Emoluments  
Commission**

**322.** (1) There is hereby established the National Fiscal and Emoluments Commission of which the membership, additional functions, operations, management, finances and structures shall be provided for by an Act of Parliament.

(2) Without limiting clause (1), the functions of the National Fiscal and Emoluments Commission shall include -

- (a) assessing the financial and fiscal policies of the Government and recommending to the Government equitable financial and fiscal allocations to be appropriated to the National Government, the provinces and local authorities;
- (b) recommending for the approval of the National Assembly the emoluments of public officers specified by this Constitution and other public officers, as may be provided by or under an Act of Parliament; and
- (c) any other function specified by this Constitution or any other law.

## **PART XVIII CENTRAL BANK**

**Central Bank**

**323.** (1) There is hereby established the Central Bank of Zambia.

(2) The Bank of Zambia shall be the Central Bank of Zambia and the only authority to issue the currency of Zambia.

(3) The authority of the Central Bank shall vest in the Board of Directors of the Bank as constituted by an Act of Parliament.

(4) Except as otherwise provided in this Constitution, the power to appoint, promote, discipline and determine the terms and conditions of service of staff and other employees of the Central Bank vests in the Board of Directors.

**Independence  
of Central  
Bank**

**324.** In the performance of the functions of the Central Bank, the Governor, Deputy Governor, directors and staff of the Bank shall be subject to this Constitution and any other law and shall not be subject to the direction or control of any person or authority.

**Governor of  
Central  
Bank**

**325.** (1) There shall be a Governor of the Central Bank who shall be –

- (a) a citizen by birth or descent;
- (b) not less than forty-five years old;
- (c) a person with extensive knowledge and experience in matters that relate to economics, finance or accounting, banking, law or other fields relevant to banking;
- (d) a person of proven integrity;
- (e) appointed by the President, subject to ratification by the National Assembly, for a fixed term of office as provided by or under an Act of Parliament;
- (f) the chairperson of the Board of Directors; and
- (g) removed from office only on the same grounds and procedure that apply to a judge of a superior court.

(2) The emoluments of the Governor shall be as recommended by the Emoluments Commission and approved by the National Assembly.

(3) The Governor shall before assuming office take the Official Oath, as set out in the Third Schedule.

**Legislation on  
Central Bank**

**326.** Parliament shall enact legislation to provide for –

- (a) the functions of the Bank, its operations and management;
- (b) the appointment, qualifications, tenure of office and other terms and conditions of service of the Board of Directors, other than the Governor;
- (c) election of a vice-chairperson from amongst the members of the Board of Directors;
- (d) the grounds for removal of a director of the Board, other than the Governor;
- (e) the appointment, qualifications, retirement, tenure of office and functions of the Deputy-Governor; and
- (f) other matters necessary for the effective performance of the functions of the Bank.