



REPUBLIC OF ZAMBIA

NATIONAL CONSTITUTIONAL CONFERENCE

ADOPTION OF THE CONSTITUTION

**PROVISIONS ON PUBLIC FINANCE RECOMMENDED BY THE
MUNG'OMBA DRAFT CONSTITUTION AND THOSE ADOPTED BY THE
CONFERENCE**

AND THE RATIONALE FOR THE RESOLUTIONS OF THE CONFERENCE

May 2009

THE NCC ADOPTION PROCESS OF THE MUNG'OMBA DRAFT CONSTITUTION

1.0 INTRODUCTION

- 1.1 The mandate of the National Constitutional Conference (NCC) is to adopt, amend, vary or replace the provisions in the Draft Constitution recommended by the Mung'omba Constitutional Review Commission.
- 1.2 From May 5 to June 26, 2009, the NCC Plenary reviewed and deliberated on the reports from its various committees on the articles recommended by Mung'omba Constitutional Review Commission (CRC). One of the Reports adopted the Conference was the Report of the Public Finance Committee which considered Articles 304 to 326 under Part XVII and Part XVIII of the Draft Constitution.
- 1.3 In adopting the Report of the Public Finance Committee, the Conference:
 - (i) adopted Article 318 recommended by the Mung'omba Draft Constitution without amendments;
 - (ii) adopted Articles 305, 308, 309, 310, 311, 312, 313, 314, 315, 319, 321, 323, 324, 325 and 326 recommended by the Mung'omba Draft Constitution with amendments;
 - (iii) deleted Articles 307, 322, 316 and 320 recommended by the Mung'omba Draft Constitution without replacement;
 - (iv) deleted Articles 304, 306 and 317 recommended by the Mung'omba Draft Constitution with replacements; and
 - (v) introduced new Articles 311, 314 and 318.

2.0 ARTICLES ADOPTED BY THE CONFERENCE

- 2.1 The table below shows articles as proposed in the Mung'omba Draft Constitution, brief rationale of the decision of the Conference and the provisions of the Articles adopted by the Conference.

2.2 In the table below, Column 1 provides the serial number of the article considered, column 2 provides the provisions of the articles recommended by the Mung’omba Draft Constitution and column 3 provides the rational for the Resolutions made by the Conference and the provisions of the articles adopted by the Conference.

| ITEM NO. | PROVISIONS OF MUNG’OMBA DRAFT CONSTITUTION | PROVISIONS OF THE ARTICLES ADOPTED BY THE CONFERENCE AND THE RATIONALE |
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| 1. | <p>Article 304: Imposition of tax</p> <p>(1) A tax shall not be imposed except by or under an Act of Parliament.</p> <p>(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</p> | <p>Article 304: Imposition of Tax</p> <p>The Conference took into account the important role played by the President in levying taxes namely; to approve the tax bill to be introduced in Parliament and to assent to all taxation Bills before they become law.</p> <p>The Conference also rejected the notion of Parliament enacting legislation conferring power on “<i>any person</i>” other than itself or an authority established for the purposes of local government to waive or vary a tax, in order to prevent possible abuse. Therefore, tax can only be waived, varied or dealt with by Parliament directly or by a local government authority authorized to do so by Parliament.</p> <p>In addition, the Conference considered the provisions</p> |

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| | | <p>recommendation in Article 304 of the Mung'omba Draft Constitution to be inadequate and therefore, replaced them with provisions of Article 114 of the current Constitution of Zambia which was wider in scope.</p> <p>Article 114 of the current Constitution of Zambia which the Conference adopted to replace Article 304 of the Mung'omba Draft Constitution states that:</p> <p>304. (1) Subject to the provisions of this Article, taxation shall not be imposed or altered except by or under an Act of Parliament.</p> <p>(2) Except as provided by clauses (3) and (4), Parliament shall not confer upon any other person or authority power to impose or to alter, otherwise than by reduction, any taxation.</p> <p>(3) Parliament may make provisions under which the President, the Vice-President or a Minister may, by order, provide that, on or after the publication of a Bill being a Bill approved by the President that it is proposed to introduce into the National Assembly and providing for the</p> |
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| | | <p>imposition or alteration of taxation, such provisions of the Bill as may be specified in the order shall, have the force of law for such period and subject to such conditions as may be prescribed by Parliament:</p> <p>Provided that any such order shall, unless sooner revoked, cease to have effect -</p> <ul style="list-style-type: none">(a) if the Bill to which it relates is not passed;(b) within such period from the date of its first reading in the National Assembly as may be prescribed by Parliament;(c) if, after the introduction of the Bill to which it relates, Parliament is prorogued or the National Assembly is dissolved;(d) if, after the passage of the Bill to which it relates, the President refuses to assent to it; or(e) at the expiration of a period of three months from the date on which it came into operation or such longer period from that date as may be specified in any resolution |
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| | | <p>passed by the National Assembly after the Bill to which it relates has been introduced.</p> <p>(4) Parliament may confer upon any authority established by law for the purposes of local government power to impose taxation within the area for which that authority is established and to alter taxation so imposed.</p> <p>(5) Where the Appropriation Act in respect of a financial year has not come into force at the expiration of six months from the commencement of that financial year, the operation of any law relating to the collection or recovery of any tax upon any income or profits or any duty, customs or excise shall be suspended until that Act comes into force:</p> <p>Provided that -</p> <p>(a) in any financial year in which the National Assembly stands dissolved at the commencement of that year, the period of six months shall begin from the day upon which the National Assembly first sits following that dissolution instead of from the commencement of the financial year;</p> |
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| | | <p>and</p> <p>(b) the provisions of this clause shall not apply in any financial year in which the National Assembly is dissolved after the laying of estimates in accordance with Article 307 and before the appropriation by Parliament.</p> |
| 2. | <p>Article 305: Consolidated Fund</p> <p>(1) There shall be established a fund to be known as the Consolidated Fund of the Republic.</p> <p>(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.</p> <p>(3) The moneys referred to in clause (2), do not include moneys-</p> <p>(a) that are payable under this Constitution or an Act of Parliament into some other public fund established for a specific purpose; or</p> <p>(b) that may, under this Constitution or an Act of Parliament, be retained by the State</p> | <p>Article 305: National Treasury Account</p> <p>The proposed “<i>Consolidated Fund</i>” was renamed the “<i>National Treasury Account</i>” as there were too many institutions in the country called “Fund” and the name “Consolidated Fund” was a hangover from the British exchequer system.</p> <p>In addition, the Conference observed that the proposed “Consolidated Fund” was a mere renaming of Control 99 at the Bank of Zambia in which revenue of the Republic is deposited. Therefore, the Conference resolved to amend the Article by replacing the term “Consolidated Fund” with the term “National Treasury Account”.</p> <p>The Conference further observed that currently there was no</p> |

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| | <p>organ or State institution that receives it for the purpose of defraying the expenses of that State organ or State institution</p> | <p>proper accounting for gifts, grants, donations and aid-in-kind received on behalf of the Republic; and how they were disposed of. Therefore, the Conference decided to create a separate Article, (Article 311), in order to account for the receipt and disposal of gifts, grants, donations and aid-in-kind on behalf of the Republic.</p> <p>Article 305: National Treasury Account adopted by the Conference with amendments provides that:</p> <p>305. (1) There shall be a National Treasury Account for the Republic which shall be held at the Central Bank.</p> <p>(2) Subject to clause (3), all moneys raised or received for the purposes of, on behalf of, or in trust for, the Republic shall be paid into the National Treasury Account.</p> <p>(3) The moneys referred to in clause (2) do not include moneys –</p> <ul style="list-style-type: none"> (a) that are payable under this Constitution or an Act of Parliament into some other public account operated for a specific purpose; or (b) that may, under this Constitution or an Act of |
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| | | <p>Parliament, be retained by a State organ or State institution that receives it for the purpose of defraying the expenses of that State organ or State institution.</p> |
| <p>3.</p> | <p>Article 306: Withdrawal from consolidated fund.</p> <p>(1) Subject to Article 307, moneys shall not be withdrawn from the Consolidated Fund except –</p> <p>(a) to meet expenditure charged on the Consolidated Fund by this Constitution or by an Act of Parliament; or</p> <p>(b) where the issuance of those moneys have been authorized by an Appropriation Act or a Supplementary Appropriation Act.</p> <p>(2) Moneys shall not be withdrawn from any other public fund of the Republic unless withdrawal has been authorized by an Act of Parliament.</p> | <p>Article 306: Withdrawal from National Treasury Account</p> <p>The Conference took into account the role of the President in authorising withdrawals from the general revenues by way of Presidential warrants after appropriation by Parliament.</p> <p>The Conference, therefore, approved the recommendations of the Public Finance Committee to adopt with amendments the provisions of Article 115 of the current Constitution to replace those recommended in Article 306 of the Mung’omba Draft Constitution. The term “National Treasury Account” was inserted in the provisions adopted in accordance with the resolution made in Article 305.</p> <p>In addition, provisions of clause (2) of Article 307 were moved, with amendments, to Article 306 and renumbered as clause (3). However, in doing so, the Conference amended paragraph (a) of clause (2) by limiting the amount to be</p> |

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| <p>(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.</p> | <p>withdrawn for the services of the Republic before the Appropriation Account came into force to twenty-five percent of the total proposed for the year.</p> <p>Therefore, Article 306 adopted by the Conference states that:</p> <p>306. (1) Moneys shall not be expended from the general revenues in the National Treasury Account of the Republic unless -</p> <ul style="list-style-type: none"> (a) the expenditure is authorized by a warrant under the hand of the President; (b) the expenditure is charged by this Constitution or any other law on the general revenues of the Republic; or (c) the expenditure is of moneys received by a department of government and is made under the provisions of any law which authorises that department to retain and expend those moneys for defraying the expenses of the department. <p>(2) A warrant shall not be issued by the President authorizing expenditure from the general revenues of the</p> |
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| | | <p>Republic unless -</p> <ul style="list-style-type: none"> (a) the expenditure is authorized by an Appropriation Act or a Supplementary Appropriation Act; (b) the expenditure is necessary to carry on the services of the Government in respect of any period, not exceeding three months, beginning at the commencement of a financial year during which the Appropriation Act for that financial year is not in force; (c) the expenditure has been proposed in a supplementary estimate approved by the National Assembly and is authorized in a Supplementary Appropriation Act; (d) provision does not exist for the expenditure and the President considers that there is such an urgent need to incur the expenditure that it would not be in the public interest to delay the authorization of |
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| | | <p>the expenditure until such time as a supplementary estimate can be laid before, and approved by, the National Assembly; or</p> <p>(e) the expenditure is incurred on capital projects continuing from the previous financial year and is so incurred before commencement of the Appropriation Act for the current financial year.</p> <p>(3) Moneys withdrawn in any financial year from the National Treasury Account under paragraph (b) of clause (2) in respect of any service of the Republic -</p> <p>(a) shall not exceed twenty-five per centum of the amount shown as required in respect of that service in the budget estimates for that financial year; and</p> <p>(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.</p> <p>(4) The President shall, immediately after signing</p> |
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| | | <p>any warrant authorizing expenditure from the general revenues of the Republic, cause a copy of the warrant to be transmitted to the Auditor-General.</p> <p>(5) The issue of warrants under paragraph (d) of clause (2), the investment of moneys forming part of the general revenues of the Republic and the making of advances from such revenues shall be subject to such limitations and conditions as Parliament may prescribe.</p> <p>(6) For purposes of this Article, the investment of moneys forming part of the general revenues of the Republic or the making of recoverable advances there from shall not be regarded as expenditure, and the expression “investment of moneys” means investment in readily marketable securities and deposits with a financial institution approved by the Minister responsible for finance.</p> |
| 4. | <p>Article 307: Expenditure in advance of appropriation.</p> <p>(1) Where, in any financial year, the President is satisfied that the Appropriation Act in respect of that</p> | <p>Article 307: Expenditure in Advance of appropriation</p> <p>Expenditure in Advance of appropriation was <i>deleted</i> by the Conference. In deleting the Article, the Conference observed that Article 306, and particularly paragraph (b) of clause (1),</p> |

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| <p>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.</p> <p>(2) Moneys withdrawn in any financial year from the Consolidated Fund under clause (1) in respect of any service of the Republic -</p> <p>(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</p> <p>(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.</p> | <p>which had been adopted provided for most of what clause (1) of Article 307 contained; and recalled that the provisions in clause (2) had been infused into Article 306 as the new clause (3) with amendment by limiting the amount withdrawn for the services before the Appropriation Act comes into effect to twenty-five percent (25%) of the amount proposed in the budget. Therefore, there was no provision left in Article 307. For this reason the Article had to be <i>deleted</i>.</p> |
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| <p>5.</p> | <p>Article 308: Compensation Fund.</p> <p>(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.</p> <p>(2) Moneys shall not be withdrawn from the Compensation Fund unless the withdrawal is authorized under an Act of Parliament.</p> | <p>Article 307: Compensation fund</p> <p>The Public Finance Committee was against the creation of the “<i>Compensation Fund</i>” and recommended for its deletion. However, the Conference observed with great concern the suffering that affected parties undergo when seeking compensation from the State, including favouritism practiced by the Administrative Committee, (which grants disbursements on the Awards and Compensation vote of the Ministry of Finance and National Planning), in deciding who should be compensated and when. For this reason the Conference rejected the recommendation of the Public Finance Committee to delete Article 308 establishing the “<i>Compensation Fund</i>”.</p> <p>In addition, the Conference resolved that the “<i>Compensation Fund</i>” should be created by the Constitution itself instead of leaving it to be created later by a subsidiary law as recommended by the Mung’omba Draft Constitution. The proposed subsidiary legislation should only provide for operational and management of the fund.</p> |
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| | | <p>Article 308 adopted by the Conference and renumbered as Article 307 provides that:</p> <p>307. (1) There is hereby established the Compensation Fund for purposes of paying claims against the State.</p> <p>(2) Moneys shall not be withdrawn from the compensation Fund unless the withdrawal is authorized under an Act of Parliament.</p> <p>(3) Parliament shall enact legislation to provide for -</p> <ul style="list-style-type: none"> (a) the operation of the Compensation Fund; (b) the control and management of the Compensation Fund; and (c) any other matter necessary for the efficient and effective operation of the Compensation Fund. |
| 6. | <p>Article 309: Annual Financial Estimates.</p> <p>(1) The President shall, subject to clause (2), cause to be prepared and laid before the National</p> | <p>Article 308: Annual Financial Estimates</p> <p>The Conference observed that there was urgent need to change the Budget Cycle to allow for the Budget to be</p> |

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| <p>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.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> | <p>presented and approved before the financial year to which it applied started. That would provide the spending institutions sufficient time in which to implement development projects.</p> <p>The Conference, therefore, resolved that the Annual Financial Estimates of Revenue and Expenditure for each financial year should be presented not later than 30th September of the preceding year; be presented at a later date than September in each election year; be prepared with input from State Organs, institutions, Provinces, Districts, Constituencies, and Wards; be accompanied by longer term development plans and should allow for the National Assembly to alter individual items but not the overall budget total.</p> <p>Consequently, the Conference adopted the recommendation of the Mung'omba Draft Constitution with minor amendments by including "constituencies" and replacing the term "<i>estimates</i>" with the term "estimates of revenue and expenditure".</p> <p>Article 309 adopted by the Conference and renumbered as</p> |
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| <p>(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.</p> <p>(6) Notwithstanding clause (1), the President may cause to be prepared and laid before the National Assembly -</p> <p>(a) fiscal and monetary programmes and plans for economic and social development covering periods exceeding one year; and</p> <p>(b) estimates of revenue and expenditure covering periods exceeding one year.</p> <p>(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</p> | <p>Article 308 provides that:</p> <p>308. (1) The President shall, subject to clause (2), cause to be prepared and laid before the National Assembly in each financial year, not later than ninety days before the commencement of the financial year, estimates of revenue and expenditure of the Government for the next financial year.</p> <p>(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 swearing in of the President, estimates of revenue and expenditure of the Government for that financial year.</p> <p>(3) Not later than six months before the end of each financial year, the heads of each State organ and State institution shall submit estimates of revenue and expenditure for the following financial year to the Minister responsible for finance.</p> <p>(4) In the preparation of estimates of revenue and expenditure under clause (1) or (2), the inputs of the people in the wards, constituencies or districts and provinces shall be</p> |
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| <p>recommendations to the National Assembly.</p> <p>(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.</p> <p>(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.</p> | <p>sought.</p> <p>(5) The estimates of revenue and expenditure prepared under clause (1) or (2) shall be laid before the National Assembly by the Minister responsible for finance, on behalf of the President.</p> <p>(6) Notwithstanding clause (1), the President shall cause to be prepared and laid before the National Assembly -</p> <ul style="list-style-type: none"> (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. <p>(7) Before the National Assembly considers the estimates of revenue and expenditure, laid before it by the Minister responsible for finance, the appropriate committee of the National Assembly shall discuss and review the estimates and make appropriate recommendations to the National Assembly.</p> <p>(8) The committee referred to under clause (7) shall,</p> |
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| | | <p>in considering the estimates of the revenue and expenditure, seek public opinion on the estimates and expenditure and shall take these into consideration in its recommendations to the National Assembly.</p> <p>(9) The National Assembly may amend, but shall not vary, the total estimates of revenue and expenditure and shall, in any case, subject to clause (2), approve the budget not later than the thirty-first day of December.</p> |
| 7. | <p>Article 310: Budget Act</p> <p>Parliament shall enact a Budget Act which shall provide for matters that relate to the annual budget and shall include -</p> <ul style="list-style-type: none"> (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 | <p>Article 309: Planning and Budget Act</p> <p>The Conference observed that the scope of the proposed Budget Act included both long term and medium term development planning. Therefore, the Conference resolved to rename the Article as the “Planning and Budget Act”. The Conference also made minor amendments to what was proposed in the Mung’omba Draft Constitution by including “constituencies” and replacing the term “<i>estimates</i>” with the term “estimates of revenue and expenditure”.</p> <p>In addition, the Conference took note of the provisions of</p> |

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| | <p>and provincial levels, ensuring representation from both gender, in the formulation of development plans and preparation of the annual budget;</p> <p>(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</p> <p>(e) the contents, subject to this Constitution, of the financial report of the Government provided for under Article 314.</p> | <p>clause (4) of Article 309 (renumbered as Article 308) which provided for State organs to participate in the formulation of the budget. Therefore, the Conference introduced a new paragraph (c) to provide for the participation of the State organs and the people at ward, constituency, district and provincial levels in preparation of the budgets.</p> <p>Article 310 adopted by the Conference and renumbered as Article 309 provides that:</p> <p>309. Parliament shall enact a Planning and Budget Act which shall provide for matters that relate to the annual budget and to medium and long-term development plans and shall include -</p> <ul style="list-style-type: none"> (a) the method for the preparation of the budget; (b) the preparation of medium and long-term development plans indicating corresponding sources of financing; (c) the participation in the formulation of medium and long-term development plans and the preparation of the annual budget of |
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| | | <p>-</p> <ul style="list-style-type: none"> (i) State organs and State institutions; and (ii) the people at the ward, constituency, district and provincial levels, ensuring representation of both gender; <p>(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</p> <p>(e) the contents, subject to this Constitution, of the financial report of the Government provided for under Article 315.</p> |
| 8. | <p>Article 311: Appropriation Bill and Supplementary Appropriation Bill.</p> <p>(1) When the estimates of expenditure have been</p> | <p>Article 310: Appropriation Bill and Supplementary Appropriation Bill</p> <p>While most members of the Conference wished to</p> |

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.

discourage supplementary expenditure requests, they were alive to the possibility of unforeseen circumstances making supplementary expenditure unavoidable. The members were, however, unanimous in rejecting the practice of presenting the Supplementary Appropriation Bill the following year. They therefore, resolved that all supplementary expenditure requests should be approved by the National Assembly before the expenditure is effected. That applied even to the expenditure authorised by the President for emergency purposes which must be approved by the National Assembly within a period of four months of such expenditure. For that reason there would be no supplementary expenditure before approval by the National Assembly.

Article 311 adopted by the Conference with amendments by the Conference and renumbered as Article 310 provides that:

310. (1) When the estimates of the expenditure have been approved by the National Assembly, **the heads of the estimates together with the amount approved in respect of**

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| | | <p>each head shall be included in an Appropriation Bill which shall be introduced in the National Assembly to provide for the payment of those amounts for the purposes specified, out of the general revenues of the Republic.</p> <p>(2) Where in respect of a financial year the amount appropriated under an Appropriation Act is insufficient or a need arises for expenditure for a purpose for which an amount has not been appropriated under that Act, a supplementary estimate showing the amount required and the sources of the revenue to cover the amount shall be laid before the National Assembly for approval by the Minister responsible for finance:</p> <p>Provided that subject to paragraph (d) of clause (2) of Article 306, no supplementary expenditure shall be incurred before the approval of the supplementary estimate by the National Assembly.</p> <p>(3) Where in a financial year expenditure has been authorized by a warrant issued by the President under paragraph (d) of clause (2) of Article 306, the Minister responsible for finance shall cause supplementary estimates</p> |
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| | | <p>relating to that expenditure to be laid before the National Assembly for its approval before the expiration of a period of four months from the issue of the warrant or, if the National Assembly is not sitting at the expiration of that period, at the first sitting of the National Assembly thereafter.</p> <p>(4) Where a supplementary estimate is approved under clause (2) or (3), a Supplementary Appropriation Bill showing the estimates approved shall immediately be laid before the National Assembly for approval.</p> <p>(5) Subject to this Constitution, the Minister responsible for finance shall release the appropriated funds, on a quarterly basis and on time, to the institutions and bodies entitled to the appropriations.</p> |
| 9. | There was no provision for accounting for Grants, gifts, aid-in-kind and donations | <p>Article 311: Grants, donations, etc.</p> <p>When adopting Article 309 which provided for Annual Financial Estimates, the Conference endorsed the observation made by the Public Finance Committee that there was need to account for the receipt of gifts, grants, donations and aid -in-</p> |

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| | | <p>kind received on behalf of the Republic and their disposal.</p> <p>Consequently, the Conference adopted a new article to provide for the accounting for and the appropriation of gifts, grants, donations and Aid-in-kind. The new Article was numbered as Article 311: Grants, donations, etc.</p> <p>The provision of the new Article states that:</p> <p>311. The Minister responsible for finance shall cause to be valued all donations, gifts and aid-in-kind received in any financial year on behalf of the Republic, from any source within or outside the Republic, and shall include that value in the financial report prepared and laid before the National Assembly for that financial year under Article 315.</p> |
| 10. | <p>Article 312: Borrowing by Government</p> <p>(1) The Government may, subject to this Article, borrow from any source.</p> <p>(2) Government shall not borrow, guarantee or raise a loan on behalf of itself or any State organ, State</p> | <p>Article 312: Borrowing and lending by Government</p> <p>The Conference expressed serious concern on the seemingly uncoordinated borrowing by Government. To improve on accountability, the Conference amended Article 312 by replacing the terms “Government” and “President” with the</p> |

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| <p>institution, authority or person except as authorized by or under an Act of Parliament.</p> <p>(3) Legislation enacted under clause (2) shall provide -</p> <p>(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</p> <p>(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.</p> <p>(4) The President shall, at such times as the National Assembly may determine, cause to be presented to the National Assembly information concerning any</p> | <p>term “Minister responsible for finance” in contracting debt and in reporting to the National Assembly.</p> <p>The Conference also provided for a ceiling for borrowing by the Minister responsible for finance. In each financial year, the Minister responsible for finance will only borrow up to a maximum authorised by the National Assembly when approving aggregate debt stoke for the year.</p> <p>However, the Conference could not reach agreement on paragraph (a) of clause (3) either through consensus or secret ballot; and therefore, the provisions of that paragraph was referred to the National Referendum.</p> <p>Article 312 adopted by the Conference with amendments (including the renaming of the Article as “Borrowing and lending by Government”) provides that:</p> <p>312. (1) Subject to this Article, the Minister responsible for finance may borrow from any source, on behalf of the Republic:</p> |
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| <p>loan including -</p> <ul style="list-style-type: none"> (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 utilization and performance of the loan. <p>(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.</p> <p>(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.</p> | <p>Provided that the Minister responsible for finance shall not, in any financial year, borrow beyond the aggregate debt stock, including interest and fees on the debt, approved by the National Assembly for that year.</p> <p>(2) The Minister responsible for finance shall not borrow, guarantee or raise a loan on behalf of any State organ, State institution, authority or person except as authorized by or under an Act of Parliament.</p> <p>(3) Legislation enacted under clause (2) shall provide</p> <ul style="list-style-type: none"> (a) <i>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 (Referred to Referendum).</i> (b) that any money received in respect of that loan shall be paid into the National Treasury Account or into some other public fund which exists or is created for the purpose of the loan. <p>(4) The Minister responsible for finance shall, at</p> |
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| <p>(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.</p> | <p>such times as the National Assembly may determine, present to the National Assembly information concerning any loan including -</p> <ul style="list-style-type: none"> (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 utilization and performance of the loan. <p>(5) The National Assembly may, by resolution, authorize the Minister responsible for finance to enter into an agreement for the giving of a loan or grant out of the National Treasury Account or any other public fund or account.</p> <p>(6) An agreement entered into under clause (5) shall be laid before the National Assembly by the Minister responsible for finance and shall not come into force unless it has been approved by a resolution of the National Assembly.</p> |
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| | | <p>(7) For the purposes of this Article, "loan" includes any moneys lent or given to or by the Minister responsible for finance on condition of return or repayment and any other form of borrowing or lending in respect of which moneys from the National Treasury Account or any other public fund or account may be used for payment or repayment.</p> |
| <p>11.</p> | <p>Article 313: Public Debt</p> <p>(1) The public debt of Zambia shall be a charge on the Consolidated Fund and any other public fund.</p> <p>(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.</p> <p>(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.</p> | <p>Article 313: <i>Management of Public debt</i></p> <p>The Conference accepted the observations made by the public Finance Committee that Article 313 on Public debt actually dealt with management of debt. Therefore, clause (2) was deleted as it covered borrowing which was provided for under Article 312 dealing with borrowing and lending by Government.</p> <p>In addition, the Conference approved two new clauses (2) and (3) providing for compelling of the Minister responsible for finance to report annually to the National Assembly all borrowing by any State institution or authority and charging the Minister responsible for finance with the responsibility of</p> |

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| | | <p>managing the national debt.</p> <p>Consequently, the Article 313 as recommended by the Mung’omba Draft Constitution was amended.</p> <p>Article 313 adopted by the Conference with amendments provides that:</p> <p>313. (1) The public debt of Zambia shall be a charge on the National Treasury Account and any other public account.</p> <p>(2) The Minister responsible for finance shall report all borrowings by any State institution or authority in value, annually, to the National Assembly.</p> <p>(3) The Minister responsible for finance shall manage the public debt of Zambia.</p> <p>(4) For the purposes of this Article, “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.</p> <p>(5) Parliament shall enact legislation to provide for the management of public debt.</p> |
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| 12. | | <p>Article 314: Remuneration of certain officers</p> <p>The Conference endorsed the observation made by the Public Finance Committee that Fiscal and Emoluments Commission was simply going to duplicate and introduce conflict in the performance of functions currently performed by the Ministry responsible for finance and national planning and the National Assembly. Therefore, the Conference endorsed the replacement of Article 322 - National Fiscal and Emoluments Commission of the Mung'omba Draft Constitution and provide for the remuneration of holders of constitutional offices, by adopting Article 119 of the current Constitution.</p> <p>Consequently, Article 314 adopted by the Conference provides that:</p> <p>314. (1) There shall be paid to the holders of the offices to which this Article applies such salary and such allowances as may be prescribed by or under an Act of Parliament.</p> <p>(2) The salaries and any allowances payable to the holders of offices to which this Article applies shall be a</p> |
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| | | <p>charge on the general revenues of the Republic.</p> <p>(3) The salary payable to the holder of any office to which this Article applies and the terms of office shall not be altered to the person's disadvantage after the person's appointment.</p> <p>(4) Where a person's salary or terms of office depend upon the person's option, the salary or terms for which the person opts shall, for the purposes of clause (3), be deemed to be more advantageous to the person than any others for which the person might have opted.</p> <p>(5) This Article applies to the offices established by this Constitution and to such other offices as may be prescribed by an Act of Parliament.</p> |
| 13. | <p>Article 314: Financial Report of Government</p> <p>(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.</p> <p>(2) The financial report, referred to under</p> | <p>Article 315: Financial Report of Government</p> <p>The Conference endorsed the recommendation by the Mung'omba Draft Constitution on the contents of the Financial Report of the Government and the need for the Minister responsible for finance to lay the report before the National Assembly and the Auditor-General to express appropriate comments and opinion on such a report within</p> |

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| <p>clause (1), shall include information on -</p> <ul style="list-style-type: none"> (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. <p>(3) The Auditor-General shall examine the</p> | <p>nine months after the end of the financial year.</p> <p>In addition, the Conference introduced two new paragraphs under clause (2) to include information on receipt and disposal of grants, donations and-in-aid and on loans and grants given out by the government under Article 312.</p> <p>Article 314 adopted by the Conference with amendments and re-numbered as Article 315 provides that:</p> <p>315. (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.</p> <p>(2) The financial report referred to under clause (1) shall include information on -</p> <ul style="list-style-type: none"> (a) revenue and other moneys received by Government during that financial year; (b) the expenditure of the Government during that financial year, including expenditure charged by this Constitution or any other |
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| <p>financial report submitted by the Minister responsible for finance under clause (1) and express an opinion on the report.</p> <p>(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.</p> | <p>law on the National Treasury Account or other public fund;</p> <p>(c) the payments made in the financial year otherwise than for the purposes of expenditure;</p> <p>(d) debt repayments;</p> <p>(e) gifts, donations and aid-in-kind received on behalf of the Republic in that financial year and how they were disposed off;</p> <p>(f) loans and grants given out by the Government under Article 312;</p> <p>(g) the financial position of the Republic at the end of that financial year; and</p> <p>(h) any other information as specified under the Planning and Budget Act.</p> <p>(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.</p> <p>(4) The Minister responsible for finance shall within</p> |
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| | | <p>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.</p> |
| <p>14.</p> | <p>Article 315: Disposal of State Assets</p> <p>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.</p> | <p>Article 316: Disposal of State Assets</p> <p>The Conference endorsed the need to provide for Parliamentary oversight in all sales of major State assets especially State companies. In doing so the Conference observed that requiring two-thirds majority of all Members of Parliament may prove restrictive in practice. Debating the disposal/sale of any major State asset in the National Assembly was sufficient to provide details of the transaction to the people and their representatives. Therefore, the Conference favoured the simple majority resolution of the National Assembly and provided for enacting of subsidiary legislation to provide for the disposal of State assets.</p> <p>Article 315 adopted by the Conference with amendments provides that:</p> |

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| | | <p>316. Parliament shall enact legislation to -</p> <ul style="list-style-type: none"> (a) regulate the manner in which State assets shall be sold, transferred, disposed of or otherwise dealt with; (b) provide for the role of Parliament in the processes referred to under paragraph (a); and (c) provide for the effective management of State assets. |
| <p>15.</p> | <p>Article 316: State Audit Commission</p> <p>(1) There is hereby established a State Audit Commission, which shall be the policy body for the Auditor General’s Office.</p> <p>(2) The State Audit Commission, established under clause (1), shall consist of five members who shall serve on a part-time basis.</p> <p>(3) The members of the State Audit Commission shall be persons from the private sector with -</p> | <p>Article 317: State Audit Commission</p> <p>The Conference rejected the establishment of the State Audit Commission recommended in the Mung’omba Draft Constitution and endorsed by the Public Finance Committee. The Conference observed that:</p> <p>(1) The Office of the Auditor-General (OAG) was currently performing well. What was needed was to strengthen that office by:</p> <ul style="list-style-type: none"> (i) enhancing efficiency by providing adequate funding and personnel; (ii) providing mechanisms to ensure enforcement of |

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| | <p>(a) expertise and experience in state audit, internal or external audit or finance;</p> <p>(b) considerable experience in public finance; or</p> <p>(c) professional qualifications of relevance to the work of the State Audit Commission.</p> <p>(4) The members of the State Audit Commission shall be nominated by the relevant professional civil society organizations 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.</p> <p>(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.</p> <p>(6) The functions of the State Audit</p> | <p>the recommendations of the Office of the Auditor-General.</p> <p>(2) The establishment of the State Audit Commission would not only increase running costs for the Government but that it would also compromise the independence of the Office of the Auditor-General who should continue to retain operational independence and autonomy.</p> <p>Therefore, based on the above observations the Conference resolved to <i>delete</i> Article 316.</p> |
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| | <p>Commission shall include-</p> <ul style="list-style-type: none">(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. <p>(7) The Auditor-General's Office shall be the secretariat for the State Audit Commission.</p> <p>(8) The expenses of the State Audit Commission shall be a charge on the Consolidated Fund.</p> | |
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| <p>16.</p> | <p>Article 317: Auditor General</p> <p>(1) There is hereby established the office of the Auditor-General the holder of which is the Auditor-General.</p> <p>(2) The office of Auditor-General is a public office.</p> <p>(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.</p> <p>(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.</p> <p>(5) The Auditor-General shall retire from office on the attainment of seventy years of age.</p> <p>(6) The emoluments and other terms and conditions of service of the Auditor-General shall be as recommended by the Emoluments Commission and</p> | <p>Article 317: Auditor-General</p> <p>The Conference observed that the provision on the Auditor-General in the Mung’omba Draft Constitution was essentially the same as that provided for in the current Constitution but split in clauses. For instance clauses (1), (2) and (3) of Article 317 of the Mung’omba Draft Constitution is a split of the provision in clause (1) of Article 121 of the current Constitution. Similarly Article 320 in Mung’omba Draft Constitution is an adoption of clause (2) of Article 121 of the current Constitution of Zambia providing for functions of the Auditor-General.</p> <p>Therefore, the Conference resolved to replace Article 317 and 320 of the Mung’omba Draft Constitution with Articles 121 and 122 of the current Constitution of Zambia.</p> <p>Consequently, Article 317: Auditor-General, adopted by the Conference combines clauses (1) of Article 121 and clauses (1), (2), (3), (4), (5) and (6) of Article 122 of the current Constitution of Zambia.</p> |
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| <p>approved by the National Assembly.</p> <p>(7) Parliament shall enact legislation to provide for -</p> <ul style="list-style-type: none"> (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. | <p>The other provisions of Article 317 of the Mung'omba Draft Constitution were deleted by the Conference.</p> <p>The provisions of Articles 317 adopted by the Conference provides that:</p> <p>318. (1) There shall be an Auditor-General for the Republic whose office shall be a public office and who shall be appointed by the President, subject to ratification by the National Assembly.</p> <p>(2) Subject to the provisions of this Article, the Auditor-General shall retire from office on the attainment of sixty years of age.</p> <p>(3) A person holding the office of Auditor-General may be removed from office only for inability to perform the functions of the office, whether arising from infirmity of body or mind, or for incompetence or for misbehavior and shall not be so removed except in accordance with the provisions of this Article.</p> <p>(4) If the National Assembly resolves that the</p> |
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| | | <p>question of removing a person holding the office of Auditor-General from office under this Article ought to be investigated, then-</p> <ul style="list-style-type: none">(a) the National Assembly shall, by resolution appoint a tribunal which shall consist of a Chairperson and not less than two other members, who hold or have held high judicial office;(b) the tribunal shall inquire into the matter and report on the facts thereof to the National Assembly; and(c) the National Assembly shall consider the report of the tribunal at the first convenient sitting of the National Assembly after it is received and may, upon such consideration, by resolution, remove the Auditor-General from office. <p>(5) If the question of removing the Auditor-General from office has been referred to a tribunal under this Article, the National Assembly may, by resolution,</p> |
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| | | <p>suspend that person from performing the functions of the office, and any such suspension may at any time be revoked by the National Assembly by resolution and shall in any case cease to have effect if, upon consideration of the report of the tribunal in accordance with the provisions of this Article, the National Assembly does not remove the Auditor-General from office.</p> <p>(6) A person who holds or has held the office of Auditor-General shall not be appointed to hold or to act in any other public office.</p> <p>(7) A person who holds the office of Auditor-General may resign upon giving three months' notice to the President.</p> |
| 17. | | <p>Article 318: Functions of Auditor General</p> <p>As stated above, the Conference separated the appointment and tenure of the Auditor-General and the functions of the Auditor-General by providing for these matters in Articles 317 and 318 respectively.</p> <p>Article 318: Functions of Auditor-General, combines clauses</p> |

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| | | <p>(2), (3), (4) and (5) of Article 121 and clauses (1), (2), (4), (5), (6), (7) and (8) of Article 320 of Mung'omba Draft Constitution. The other provisions of Article 320 Paragraph (e) of clause (1) providing for the Auditor- General reporting matters requiring prosecution to the Director of Public Prosecutions and other such bodies and clause (3) requiring the Auditor-General to approve the format in which accounts should be kept were <i>deleted</i> by the Conference. Paragraph (e) of Article (1) is sufficiently covered under Article 321 dealing with reference by the Auditor-General.</p> <p>However, in adopting clause (7) of Article 320 of the Mung'omba Draft Constitution, the Conference observed that confining the right to request the Auditor-General to audit accounts of a State organ or Institution to the President, the National Assembly and public officers was too restrictive. Even though some members expressed concern that the Auditor-General would be inundated with complaints and rumors if this right was extended to members of the public, most members observed that it was the duty of the Auditor-General to sift through those requests, complaints and</p> |
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| | | <p>rumors and to identify those with merit.</p> <p>Therefore, the Conference replaced the words “<i>public officer</i>” with the word “citizen” in clause (7).</p> <p>The Article 318: Functions of Auditor-General adopted by the Conference provides that:</p> <p>318. (1) The Auditor-General shall -</p> <ul style="list-style-type: none">(a) ensure that the provisions of this Part are being complied with;(b) ensure that the moneys expended have been applied to the purposes for which they were appropriated by the Appropriation Act or by the Supplementary Appropriation Act, in accordance with the approved estimates or supplementary estimates, as the case may be, and that the expenditure conforms to the authority that governs it;(c) audit the accounts relating to the moneys |
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| | | <p>from the general revenues of the Republic appropriated by Parliament to the National Assembly and the Judiciary and the expenditure of such moneys by those institutions;</p> <p>(d) audit the accounts relating to the stocks and stores of the Government and the accounts of such other bodies as may be prescribed by or under any law; and</p> <p>(e) audit the accounts relating to any expenditure charged by this Constitution or any other law on the general revenues of the Republic and to submit a report thereon to the President not later than nine months after the end of each financial year.</p> <p>(2) The Auditor-General and any officer authorized by the Auditor-General shall have access to all books, records, reports and other documents relating to any</p> |
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| | | <p>of the accounts referred to in clause (2) and which are relevant to an audit.</p> <p>(3) The Auditor-General shall, not later than nine months after the end of each financial year, submit a report on the accounts referred to in paragraph (c) of clause (2) in respect of that financial year to the President who shall, not later than seven days after the first sitting of the National Assembly next after the receipt of such report, cause it to be laid before the National Assembly.</p> <p>(4) If the President defaults in laying the report before the National Assembly, the Auditor-General shall submit the report to the Speaker of the National Assembly or, if the office of the Speaker is vacant or if the Speaker is for any reason unable to perform the functions of the office, to the Deputy Speaker, who shall cause it to be laid before the National Assembly.</p> <p>(5) The National Assembly shall, within three months after the submission of the report referred to in clause (4), consider the report and take appropriate action including referring any cases of malpractice or financial impropriety</p> |
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| | | <p>to any public institution which is competent in the matter for necessary action.</p> <p>(6) The Auditor-General shall perform such other duties and exercise such other powers in relation to all accounts of the Government or the accounts of other public authorities or other bodies as may be prescribed by or under an Act of Parliament.</p> <p>(7) The President, the National Assembly or any citizen may, at any time, in the public interest, request the Auditor-General to audit the accounts of a State organ, State institution or body that is subject to audit under this Part.</p> <p>(8) The office of the Auditor-General shall be audited and the report shall be submitted to the National Assembly and the President by external auditors appointed by the Minister responsible for finance.</p> |
| 18. | <p>Article 318: Independence of the Auditor General</p> <p>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</p> | <p>Article 319: Independence of Auditor General</p> <p>The Conference adopted Article 318 of the Mung’omba Draft Constitution without amendments and re-numbered it as Article 319.</p> |

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| | <p>control of any person or authority.</p> | <p>Article 319 adopted by the Conference provides that:</p> <p>319. 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.</p> |
| <p>19.</p> | <p>Article 319: Funding of Auditor General</p> <p>(1) The office of Auditor-General shall be adequately funded to enable the office to effectively carry out its mandate.</p> <p>(2) The expenses of the office of the Auditor-General, including the emoluments of staff, shall be a charge on the Consolidated Fund.</p> | <p>Article 320: Funding of Auditor General</p> <p>The Conference amended clause (2) of Article 319 of the Mung’omba Draft Constitution by inserting the words “National Treasury Account” at the end of the provision. The Conference also re-numbered Article 319 as Article 320.</p> <p>Article 320 adopted by the Conference provides that:</p> <p>320. (1) The office of Auditor-General shall be funded to enable the office to effectively carry out its mandate.</p> <p>(2) The expenses of the office of the Auditor-General shall be a charge on the National Treasury Account.</p> |

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| <p>20.</p> | <p>Article 320: Functions of Auditor General</p> <p>(1) The Auditor-General shall -</p> <p>(a) audit the accounts of -</p> <p>(i) the National Government and local authorities;</p> <p>(ii) all offices financed wholly or partly from public funds including the universities, the Central Bank, State organs and State institutions;</p> <p>(b) audit the accounts that relate to the stocks, shares and stores of the Government;</p> <p>(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;</p> <p>(d) ascertain that money appropriated by Parliament or raised by the Government</p> | <p>Article 320: Functions of the Auditor General</p> <p>The Conference resolved to <i>delete</i> Article 320 of the Mung’omba Draft Constitution and fused clauses (1), (2), (4), (5) (7) and (8) into the new Article 318. This was done as part of the resolution of the Conference to replace Article 317 and Article 320 of the Draft Constitution with Articles 121 and Article 122 of the current Constitution and clauses of (7) and (8) of Article 320 of the Mung’omba Draft Constitution as new provisions.</p> <p>Therefore, Article 320 of the Draft Constitution was <i>deleted</i>.</p> |
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| | <p>and disbursed -</p> <ul style="list-style-type: none"> (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; <p>(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</p> <p>(f) perform any other function specified by or under an Act of Parliament.</p> <p>(2) For the purposes of clause (1), the Auditor-General or a person authorized or appointed by the Auditor-General shall have access to all documents that relate to or are relevant to an audit.</p> | |
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(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,

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| | <p>request the Auditor-General to audit the accounts of a State organ, State institution or body that is subject to audit under this Part.</p> <p>(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.</p> | |
| 21. | <p>Article 321: Reference by Auditor General</p> <p>The Auditor-General may refer any case of malpractice or financial impropriety to any public institution which is competent in the matter for action.</p> | <p>Article 321: Reference by Auditor General</p> <p>The Conference observed that there was rampant increase in cases of financial malpractice or impropriety in the management of public funds so revealed by the Annual Auditor-General’s Reports. In order to curb those practices, the Conference resolved to make it compulsory for the Auditor-General to report cases of financial malpractices and impropriety to any public institution competent in the matter.</p> <p>Therefore, the Conference adopted Article 321 with amendments by replacing the word “<i>may</i>” with the word “shall”.</p> |

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| | | <p>Article 321 adopted by the Conference provides that:</p> <p>321. The Auditor-General shall refer any case of mal-practice or financial impropriety to any public institution which is competent in the matter for action.</p> |
| 22. | <p>Article 322: National Fiscal and Emoluments Commission</p> <p>(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.</p> <p>(2) Without limiting clause (1), the functions of the National Fiscal and Emoluments Commission shall include -</p> <p>(a) assessing the financial and fiscal policies of the Government and recommending to the Government equitable financial and fiscal</p> | <p>Article 322: National Fiscal and Emoluments Commission</p> <p>The Conference observed that the functions that the proposed National Fiscal and Emoluments Commission was to perform were already being performed by existing competent State Institutions and organs.</p> <p>Therefore, the Conference decided against creating the National Fiscal and Emoluments Commission but instead to adopt Article 119: Remunerations of Certain Officers from the current Constitution of Zambia and re-numbered it as Article 314. The provision of Article 314 is presented in this summary.</p> <p>Therefore, the Conference <i>deleted</i> Article 322 recommended by the</p> |

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| | <p>allocations to be appropriated to the National Government, the provinces and local authorities;</p> <p>(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</p> <p>(c) any other function specified by this Constitution or any other law.</p> | <p>Mung'omba Draft Constitution.</p> |
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| <p>23.</p> | <p>Article 323: Central Bank</p> <p>(1) There is hereby established the Central Bank of Zambia.</p> <p>(2) The Bank of Zambia shall be the Central Bank of Zambia and the only authority to issue the currency of Zambia.</p> <p>(3) The authority of the Central Bank shall vest in the Board of Directors of the Bank as constituted by an Act of Parliament.</p> <p>(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.</p> | <p>Article 322: Central Bank</p> <p>The Conference amended Article 323 by inserting clause (2) which assigns the name “Bank of Zambia” to the Central Bank of Zambia.</p> <p>Article 323 adopted by the Conference and re-numbered as Article 322 provides that:</p> <p>323. (1) There is hereby established the Central Bank of Zambia.</p> <p>(2) The Central Bank of Zambia shall be called the Bank of Zambia and shall be the only authority to issue the currency of Zambia.</p> <p>(3) The authority of the Central Bank shall vest in the Board of Directors of the Bank as constituted by an Act of Parliament.</p> |
| <p>24.</p> | <p>Article 324: Independence of Central Bank</p> <p>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</p> | <p>Article 323: Independence of Central Bank</p> <p>The Conference observed that although the Governor, Directors and staff of the Central Bank should enjoy operational independence and autonomy, they should remain</p> |

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| | <p>law and shall not be subject to the direction or control of any person or authority.</p> | <p>subject to policy direction of the Government of the day. Therefore, the Central Bank should function within the general policy framework set by the Government. For this reason, the Conference amended Article 324 of the Mung’omba Draft Constitution by subjecting the Governor, Board of Directors and staff of the Central Bank subject to policy direction of the Minister responsible for Finance.</p> <p>Article 324 adopted by the Conference and re-numbered as Article 323 provides that:</p> <p>323. (1) Subject to clause (2), in the performance of the functions of the Central Bank, the Governor, the Board of Directors and staff of the Bank shall be subject to this Constitution and any other law and shall not be subject to the direction or control of any person or authority.</p> <p>(2) The Minister responsible for finance may give policy direction to the Central Bank on any matter.</p> |
| 25. | <p>Article 325: Governor of Central Bank</p> <p>(1) There shall be a Governor of the Central</p> | <p>Article 324 Governor of Central Bank</p> <p>The Conference observed that provisions in paragraph (b), (c)</p> |

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| <p>Bank who shall be –</p> <ul style="list-style-type: none"> (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. | <p>(e), (f) and (g) of clause (1) and clauses (2) and (3) were minute details which would best be provided for in subsidiary legislation.</p> <p>Therefore, those provisions were <i>deleted</i> and replaced with paragraph (d) providing for Parliament to enact subsidiary law specifying other qualifications of the Governor of the Central Bank that may be required.</p> <p>Article 325 adopted by the Conference with amendments and re-numbered as Article 324 provides that:</p> <p>324. There shall be a Governor of the Central Bank who shall –</p> <ul style="list-style-type: none"> (a) be a citizen by birth or descent; (b) be a person of proven integrity; (c) be appointed by the President, subject to ratification by the National Assembly, for a fixed term of office as provided by or under an Act of Parliament; and (d) hold such other qualifications as may be |
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| | <p>(2) The emoluments of the Governor shall be as recommended by the Emoluments Commission and approved by the National Assembly.</p> <p>(3) The Governor shall before assuming office take the Official Oath, as set out in the Third Schedule.</p> | <p>specified by or under an Act of Parliament.</p> |
| <p>26.</p> | <p>Article 326: Legislation on Central Bank</p> <p>Parliament shall enact legislation to provide for –</p> <ul style="list-style-type: none"> (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, | <p>Article 325: Legislation on Central Bank</p> <p>The Conference adopted Article 325 with amendments by inserting paragraph (b) which provides for Parliament to enact legislation providing for the removal of the Governor.</p> <p>Article 326 adopted by the Conference with amendments and re-numbered as Article 325 provides that:</p> <p>325. Parliament shall enact legislation to provide for –</p> <ul style="list-style-type: none"> (a) the functions of the Bank, its operations and management; (b) the removal from office of the Governor; (c) the appointment, qualifications, tenure of office and other terms and conditions of service of the Board of Directors, other than the Governor; and |

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| | <p>tenure of office and functions of the Deputy-Governor; and</p> <p>(f) other matters necessary for the effective performance of the functions of the Bank.</p> | <p>(d) other matters necessary for the effective performance of the functions of the Bank.</p> |
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