



REPUBLIC OF ZAMBIA

**NATIONAL CONSTITUTIONAL CONFERENCE**

**ADOPTION OF THE CONSTITUTION**

**ARTICLES ADOPTED BY THE CONFERENCE**

**ON PUBLIC SERVICE**

**FROM THE MUNG'OMBA DRAFT CONSTITUTION 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 Service Committee which considered Articles 89 to 93 under Part VII (Code of ethics and conduct of Public Officers), Articles 267 to 287 under Part XIV (Public Service and Commissions, values and principles), Articles 288 to 295 under Part XV (Parliamentary Ombudsman) and Articles 296 to 303 under Part XVI (Defence and National Security) of the Draft Constitution.
- 1.3 In adopting the Report of the Public Finance Committee, the Conference:
- (i) adopted Articles 89, 90, 93, 272, 273 and 285 recommended by the Mung'omba Draft Constitution without amendments;
  - (ii) adopted Articles 267, 268, 269, 270, 271, 274, 276, 277, 282, 283, 284, 287, 288, 289, 291, 296 and 297 recommended by the Mung'omba Draft Constitution with amendments;
  - (iii) deleted Articles 91, 92, 275, 278, 279, 280, 281, 286, 290, 292 and 294 recommended by the Mung'omba Draft Constitution without replacement;
  - (iv) deleted Articles 287, 296, 297, 298, 299, 300, 301, 302 and 303 recommended by the Mung'omba Draft Constitution with replacements; and
  - (v) introduced new Articles 289, 290, 292, 293, 294 and 295.

### 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 rationale 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
1.	<p style="text-align: center;"><b>PART VII</b></p> <p><b>Article 89: Conflict of interest</b></p> <p>A public officer shall not act in a manner or be in a position where the personal interest of that officer conflicts or is likely to conflict with the performance of the functions of office.</p>	<p>The Conference did not make any amendments to this Article and adopted it as it is.</p>
2.	<p><b>Article 90: Declaration of assets</b></p> <p>(1) An Act of Parliament shall specify the categories of public officers who shall make declarations of their assets and liabilities, the form and manner of making the declaration and to whom the declaration shall be submitted to.</p>	<p>No amendments were made to this Article by the Conference and it was adopted word for word as proposed in the Mung’omba Draft Constitution.</p>

(2) A public officer specified in an Act of Parliament shall, in accordance with that Act, make a written declaration of the assets or liabilities of that public officer, whether owned or owed directly or indirectly-

- (a) within three months after the commencement of this Constitution or before taking office;
- (b) annually; and
- (c) at the end of the term of office.

(3) A public officer who fails to make and submit a declaration as required by clauses (1) and (2) or knowingly makes a false declaration commits an offence and shall be liable to any penalty imposed by an Act of Parliament.

(4) A declaration made and submitted under clauses (1) and (2) shall, on demand, be produced in evidence before -

- (a) a court or tribunal;
- (b) the Anti-Corruption Commission; or
- (c) any other investigative body established by or under an Act of Parliament.

3.	<p><b>Article 91: Spouse of public officer</b></p> <p>A spouse of a public officer shall declare that spouse's assets and liabilities, as provided under an Act of Parliament.</p>	<p>The Conference decided to delete this Article because members felt that it would be imprudent to include this Article in the Constitution but relegated it to subsidiary legislation.</p>
4.	<p><b>Article 92: Appointment to public body</b></p> <p>Parliament shall enact legislation prohibiting -</p> <p>(a) a member of the governing body of a statutory body or company in which the Government has a controlling interest from holding any other office in the service of that body or company, except for the Governor of the Central Bank and the Commissioner of Lands; and</p> <p>(b) a member of the National Assembly from being appointed to or hold office in a statutory body or company in which the Government has a controlling interest.</p>	<p>The Conference decided to delete this Article and relegate it to subsidiary legislation.</p>
5.	<p><b>Article 93: Codes of ethics for professionals and other vocations</b></p> <p>Parliament shall enact legislation providing for the compiling and publication of a code of conduct and ethics for any profession or vocation that involves the provision of services to the public.</p>	<p>The Conference adopted this Article word for word as proposed in the Mung'omba Draft Constitution.</p>

<p>6.</p>	<p style="text-align: center;"><b>PART XIV</b></p> <p><b>Article 267: Values and principles of public service</b></p> <p>The guiding values and principles of the public service shall include –</p> <ul style="list-style-type: none"> <li>(a) maintenance and promotion of the highest standards of professional ethics and integrity;</li> <li>(b) promotion of efficient, effective and economic use of resources;</li> <li>(c) effective, impartial, fair and equitable provision of services;</li> <li>(d) encouragement of people to participate in the process of policy making;</li> <li>(e) prompt, efficient and timely response to people’s needs;</li> <li>(f) commitment to the implementation of public policy and programmes;</li> <li>(g) accountability for administrative acts of omission and commission;</li> <li>(h) transparency fostered by providing</li> </ul>	<p>The Conference decided to amend the whole Article by removing all the guiding principles and relegated them to subsidiary legislation.</p> <p>In making this decision, the Conference noted that the Constitution only needed to provide guiding principles and not too much detail.</p> <p>The amendment was as follows:</p> <p><b>Article 267: Values and principles of public service</b></p> <ul style="list-style-type: none"> <li><b>(1) Parliament shall enact legislation to provide for the guiding values and principles of the public service.</b></li> <li><b>(2) the values and principles referred to under clause (1) shall apply to public service –</b> <ul style="list-style-type: none"> <li><b>(a) at national and local government level;</b></li> <li><b>(b) in all state organs and state institutions.</b></li> </ul> </li> </ul>
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	<p>the public with timely, accessible and accurate information;</p> <ul style="list-style-type: none"> <li>(i) subject to paragraph (k), merit as the basis of appointment and promotion;</li> <li>(j) adequate and equal opportunities for appointments, training and advancement of members of both gender and members of all ethnic groups; and</li> <li>(k) representation of Zambia's diverse communities and persons with disability in the composition of the public service at all levels.</li> </ul> <p>(2) The values and principles stated under clause (1) apply to public service -</p> <ul style="list-style-type: none"> <li>(a) at National and local government; and</li> <li>(b) in all State organs and State institutions.</li> </ul>	
7.	<b>ARTICLE 268: Offices for Republic</b>	In considering this Article, the Conference took into account

<p style="text-align: center;"><b>Public Offices</b></p> <p>(1) Subject to this Constitution and any other law –</p> <p>(a) the power to constitute public offices for the Republic and the power to abolish any of those offices vests in the President; and</p> <p>(b) the power to appoint persons to hold or act in offices constituted for the Republic, to confirm appointments, to exercise disciplinary control over persons holding or acting in those offices and to remove any of those persons from office vests in the President.</p> <p>(2) The expenses, including emoluments, of any public office constituted under this Part shall be a charge on the Consolidated Fund.</p> <p>(3) In this Part “public officer” does not include persons serving in the Judiciary, a member of any Commission established by this Constitution or an Act of Parliament, any officer serving in the Parliamentary Service Commission, a member of Parliament, a councillor or any person serving under a district council.</p>	<p>that the President is the Head of the Executive wing of Government where the public offices fall under. Therefore, the President should reserve the right to constitute or abolish these public offices and appoint persons to hold these offices because they facilitate the work of the Executive Arm of Government.</p> <p>The Conference also observed that Officers falling under the Judiciary, Parliamentary Service Commission and Councils have their own values and principles that govern them.</p> <p>Thus, the Conference adopted Clauses (1) and (2) without any amendments but amended clause (3) by adding that a public officer shall not include a judge or a judicial.</p> <p>The amendment was as follows:</p> <p>Subject to this Constitution and any other law –</p> <p>(3) In this Part “public officer” does not include <b>a judge, a judicial officer</b>, a member of any Commission established by this Constitution or an Act of Parliament, any officer serving in the Parliamentary Service Commission, a member of</p>
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		Parliament or a councillor or any person serving under a district council.
8.	<p><b>ARTICLE 269: Attorney General</b></p> <p>(1) There shall be an Attorney-General of the Republic whose office is a public office and who shall be appointed by the President on the recommendation of the Judicial Service Commission, subject to ratification by the National Assembly.</p> <p>(2) The person appointed Attorney-General under clause (1) shall not be appointed as a Minister or hold any other public office.</p> <p>(3) The Attorney-General shall be -</p> <p>(a) an ex-officio member of the Cabinet;</p> <p>(b) not less than forty-five years of age; and</p> <p>(c) a person qualified to be appointed as a Judge of a superior court.</p> <p>(4) Subject to this Article, a person holding the office of Attorney-General shall retire from office on attaining the age of sixty years and may retire on attaining the age of fifty-five years.</p> <p>(5) The Attorney-General shall only be removed</p>	<p>This Article was amended as follows:</p> <p>On Clause (1), the Conference noted that the Office of Attorney-General falls within the ambit of the Executive. Therefore, the President has the mandate to appoint him/her, without having the Judicial Service Commission to, which is part of the Judiciary to recommend a candidate. The President can however, consult the Commission in order to uphold professionalism and transparency.</p> <p>Clause (2), (3), (4) (5) and (7) were adopted without Amendments.</p> <p>In clause (3), the Conference decided to uphold the age limit of forty-five years of age for one to be eligible to be appointed Attorney-General of the Republic. This was considered because members felt the position needed a mature person to be able to handle the demands of the office.</p> <p>The Conference also noted that it is important to include the functions of the Attorney-General in the Constitution in</p>

from office on the same grounds and same procedure as those that apply to a Judge of a superior court.

(6) The Attorney-General may resign from office on giving three months notice in writing to the President.

(7) The functions of the Attorney-General shall include -

(a) being the principal legal adviser to the Government;

(b) the signing of all Government Bills to be presented to the National Assembly;

(c) representing the Government in the courts or any other legal proceedings to which Government is a party, and

(d) any other function assigned to the Attorney-General by the President or by any other law.

(8) Subject to this Constitution, an agreement, treaty or convention shall not be concluded without the legal advice of the Attorney-General, except where the National Assembly otherwise directs and subject to the conditions provided by an Act of Parliament.

(9) The Attorney-General shall not be subject to the direction or control of any other person or authority in the performance of the Attorney-General's functions under this Constitution.

order to consolidate its mandate and authority.

The amendment to this Article was as follows:

**ARTICLE 269: Attorney General**

(1) There shall be an Attorney-General of the Republic whose office is a public office and who shall be appointed by the President on the recommendation of the Judicial Service Commission, subject to ratification by the National Assembly.

(2) The person appointed Attorney-General under clause (1) shall not be appointed as a Minister or hold any other public office.

(3) The Attorney-General shall be -

(a) an ex-officio member of the Cabinet;

(b) not less than **forty-five** years of age; and

(c) a person qualified to be appointed as a Judge of a superior court.

(4) **Subject to this Article, a person holding the office of Attorney-General shall retire from office on attaining the age of sixty years and may retire on attaining the age of fifty-five years.**

(5) The Attorney-General shall only be removed from office on the same grounds and same procedure as those that apply to a Judge of a superior court.

		<p>(6) The Attorney-General may resign from office on giving three months notice in writing to the President.</p> <p>(7) The functions of the Attorney-General shall include -</p> <ul style="list-style-type: none"><li>(a) being the principal legal adviser to the Government;</li><li>(b) <b>Causing the drafting of and signing</b> of all to the National Assembly;</li><li>(d) <b>drawing and passing agreements, contracts, treaties, conventions and documents, by whatever name called, to which the Government is a party or in respect of which the Government has an interest;</b></li><li>(c) representing the Government in the courts or any other legal proceedings to which Government is a party, and</li><li>(d) any other function assigned to the Attorney-General by the President or by any other law.</li></ul> <p>(8) Subject to other provisions of this Constitution, and agreement, treaty or convention or document by whatever name called, to which Government is a party or in respect of which the Government is a party or in respect of which the Government shall not be concluded without the legal advice of the Attorney-General, except in such cases and subject to such</p>
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		<p>conditions as Parliament may by law prescribe.</p> <p><b>(9) In exercise of the power to give direction to the Director of Public Prosecutions conferred by clause (6) of Article 271, the Attorney-General shall not be subject to the direction or control of any other person or authority.</b></p>
9.	<p><b>ARTICLE 270: Solicitor General</b></p> <p>(1) There shall be a Solicitor-General of the Republic whose office is a public office and who shall be appointed by the President on the recommendation of the Judicial Service Commission, subject to ratification by the National Assembly.</p> <p>(2) A person shall not qualify to be appointed to the office of Solicitor-General unless that person is qualified for appointment as a Judge of a superior court.</p> <p>(3) Subject to this Article, a person holding the office of Solicitor-General shall retire from office on attaining the age of sixty years and may retire on attaining the age of fifty-five years.</p> <p>(4) The Solicitor-General shall only be removed from office on the same grounds and same procedure as those that apply to a Judge of a superior court.</p> <p>(5) The Solicitor-General may resign from office</p>	<p>The Conference adopted clauses (1), (2), (4) and (5) without amendments.</p> <p>The Conference felt that the retention of these clauses in the Constitution is necessary since the Committee recommended that the Solicitor General should be Deputy to the Attorney-General who has been provided for in the Constitution.</p> <p>In Clause (6), the Conference also felt the clause was inadequate as it did not outline the specific functions of this office.</p> <p>The Conference therefore, decided to draft specific functions which needed to stand out.</p> <p>It was noted that these functions need to be in the Constitution in order to consolidate the mandate of the</p>

	<p>on giving three months notice in writing to the President.</p> <p>(6) A function conferred on the Attorney-General by this Constitution or any other law may be performed by the Solicitor-General -</p> <p>(a) when the Attorney-General is unable to act owing to illness or absence from office for any reason; and</p> <p>(b) in any case where the Attorney-General has authorised the Solicitor-General to perform that function.</p>	<p>office.</p> <p>The Article reads as follows:</p> <p>(1) There shall be a Solicitor-General of the Republic whose office is a public office and who shall be appointed by the President on the recommendation of the Judicial Service Commission, subject to ratification by the National Assembly</p> <p>(2) A person shall not qualify to be appointed to the office of Solicitor-General unless that person is qualified for appointment as a Judge of a superior court.</p> <p>(3) <b>The office of Solicitor-General shall become vacant if the holder of the Office is removed from office by the President.</b></p> <p>(4) The Solicitor-General may resign from office on giving three months notice in writing to the President.</p> <p>(6) A function conferred on the Attorney-General by this Constitution or any other law may be performed by the Solicitor-General -</p> <p>(a) when the Attorney-General is unable to act owing to illness or absence from office for any reason; and</p> <p>(b) in any case where the Attorney-General has authorised the Solicitor-General to perform that function.</p>
<p>9.</p>	<p><b>ARTICLE 271: Director of Public Prosecution.</b></p>	

<p>(1) There shall be a Director of Public Prosecutions whose office is a public office and who shall be appointed by the President on the recommendation of the Judicial Service Commission, subject to ratification by the National Assembly.</p> <p>(2) A person shall not qualify to be appointed to the office of Director of Public Prosecutions unless that person -</p> <ul style="list-style-type: none"> <li>(a) is not less than forty-five years of age;</li> <li>(b) has experience in criminal prosecutions; and</li> <li>(c) is qualified to be appointed as a Judge of a superior court.</li> </ul> <p>(3) Except as otherwise provided in this Constitution or any other law, the Director of Public Prosecutions may -</p> <ul style="list-style-type: none"> <li>(a) institute and undertake criminal proceedings against a person before a court, other than a court-martial, in respect of an offence alleged to have been committed by that person;</li> <li>(b) take over and continue criminal proceedings instituted or undertaken by any other person or authority; and</li> </ul>	<p>The Conference decided to adopt the clause (1) with the removal of the phrase “<b>on the recommendation of the Judicial Service Commission</b>” for the reasons given earlier, under Article 269 on Attorney-General. Similarly, the age-requirement under clause 2 (a) was changed to thirty five years.</p> <p>Clause (4) was rejected by the Conference as recommended by the Committee on the understanding that the DPP should not seek permission from the Court which, in some cases would be the subject for entering a nolle prosequi etc, where the presiding Judge was allegedly comprised.</p> <p>The Conference made an additional provision from Article 56 clause (7) of the current Constitution which members felt was necessary for purposes of handling public policy-related issues, which the DPP may have to refer to the Attorney-General who is better placed to deal with such matters, since he is an ex-officio Member of Cabinet which formulate policies.</p> <p>With these changes, the Article was amended as follows:</p> <p><b>ARTICLE 271: Director of Public Prosecutions</b></p>
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<p>(c) discontinue, at any stage before judgment is delivered, criminal proceedings instituted or undertaken.</p> <p>(4) The Director of Public Prosecutions shall not enter a <u>nolle prosequi</u> except with the leave of the court.</p> <p>(5) The functions of the Director of Public Prosecutions under clause (3) may be exercised in person or by a public officer or class of public officers or legal practitioner, specified by the Director of Public Prosecutions, acting under the general or special instructions of the Director of Public Prosecutions.</p> <p>(6) For the purposes of clause (3) -</p> <p>(a) an appeal from a judgment in any criminal proceeding before a court or a case stated or question of law reserved for the purposes of proceedings to any other court, shall be part of the criminal proceedings; and</p> <p>(b) the power conferred on the Director of Public Prosecutions by paragraph (c) of that clause shall not be exercised in relation to an appeal by a person convicted in a criminal proceeding, to a case stated or to a question of law reserved at the instance of that person.</p> <p>(7) The Director of Public Prosecutions shall not be subject to the direction or control of any person or authority in the performance of the functions of Director of Public Prosecutions.</p>	<p>(1) There shall be a Director of Public Prosecutions whose office is a public office and who shall be appointed by the President on the recommendation of the Judicial Service Commission, subject to ratification by the National Assembly.</p> <p>(2) A person shall not qualify to be appointed to the office of Director of Public Prosecutions unless that person is qualified to be appointed as a Judge of a superior court <b>with experience biased towards criminal law.</b></p> <p>(3) Except as otherwise provided in this Constitution or any other law, the Director of Public Prosecutions may -</p> <p>(a) institute and undertake criminal proceedings against a person before a court, other than a court-martial, in respect of an offence alleged to have been committed by that person;</p> <p>(b) take over and continue criminal proceedings instituted or undertaken by any other person or authority; and</p> <p>(c) discontinue, at any stage before judgment is delivered, criminal proceedings instituted or undertaken.</p> <p>(4) The functions of the Director of Public Prosecutions under clause (3) may be exercised in person or by a</p>
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<p>(8) In exercising the powers conferred by this Article the Director of Public Prosecutions shall have regard to the public interest, the interests of the administration of justice and the need to prevent and avoid abuse of the legal process.</p>	<p>public officer or class of public officers or legal practitioner, specified by the Director of Public Prosecutions, acting under the general or special instructions of the Director of Public Prosecutions.</p> <p>(5) For the purposes of clause (3) -</p> <p>(a) an appeal from a judgment in any criminal proceeding before a court or a case stated or question of law reserved for the purposes of proceedings to any other court, shall be part of the criminal proceedings; and</p> <p>(b) the power conferred on the Director of Public Prosecutions by paragraph (c) of that clause shall not be exercised in relation to an appeal by a person convicted in a criminal proceeding, to a case stated or to a question of law reserved at the instance of that person.</p> <p>(6) The Director of Public Prosecutions shall not be subject to the direction or control of any person or authority in the performance of the functions of Director of Public Prosecutions:</p> <p><b>Provided that when the exercise of any power in any case may, in the judgment of the Director of Public Prosecutions involve general consideration of public policy, the Director of Public Prosecutions shall bring the case to the notice of the Attorney-General and shall in exercise of powers in relation to that case, act in accordance with any directions</b></p>
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		<p><b>of the Attorney-General.</b></p> <p>(7) In exercising the powers conferred by this Article the Director of Public Prosecutions shall have regard to the public interest, the interests of the administration of justice and the need to prevent and avoid abuse of the legal process.</p>
10.	<p><b>ARTICLE 272: Performance of functions of Director of Public Prosecutions during absence, illness or other causes</b></p> <p>Where the Director of Public Prosecutions is absent from Zambia or is unable to perform the functions of office because of illness or for any other cause, the President shall, on the recommendation of the Judicial Service Commission, appoint any other person to perform the functions of the Director of Public Prosecutions until that appointment is revoked.</p>	<p>The Conference decided that since the appointment of the DPP is provided for in the Constitution, the person appointed to act in the position should also be provided in the Constitution. But that this person will be recommended by the Judicial Service Commission, unlike the DPP.</p> <p>No amendments were made to this Article and it was adopted as proposed in the Draft Constitution.</p>
11.	<p><b>ARTICLE 273: Tenure of office of Director of Public Prosecutions</b></p> <p>(1) Subject to this Article, a person holding the office of Director of Public Prosecutions shall retire from office on attaining the age of sixty years and may retire on</p>	<p>The Conference felt that providing for the tenure of office of the DPP in the Constitution would guarantee security of</p>

	<p>attaining the age of fifty-five years.</p> <p>(2) The Director of Public Prosecutions may be removed from office on the same grounds and procedure as those that apply to a Judge of a superior court.</p> <p>(3) The Director of Public Prosecutions may resign from office on giving three months notice to the President.</p> <p>(4) Parliament shall enact legislation to provide for any other function of the Director of Public Prosecutions and for the decentralisation of that office to the provinces.</p>	<p>tenure to the office-holder.</p> <p>Hence no amendments were made to this Article and it was adopted as proposed in the Draft Constitution.</p>
12.	<p><b>ARTICLE 274: Permanent Secretaries</b></p> <p>(1) Subject to this Constitution, a ministry or department of the Government shall be under the supervision and administration of a Permanent Secretary whose office is a public office.</p> <p>(2) A Permanent Secretary shall be a career civil servant appointed by the President in accordance with the advice of the Civil Service Commission, subject to ratification by the National Assembly.</p> <p>(3) The functions of a Permanent Secretary shall include -</p> <p>(a) the organisation and administration of a department or</p>	<p>The Conference was agreed to the fact that it was important that the position be provided for in the Constitution in order to guarantee security of tenure and shield the office from possible political interference. It will also promote professionalism. Ratification by Parliament will shield the President in such appointments.</p> <p>The Conference decided that clause (3) which stipulated the functions of this office be relegated to subsidiary legislation.</p> <p>The word “<b>Province</b>” has been included in clause (1) and (3) because some Permanent Secretaries are responsible for Provincial Administration.</p> <p>The changes were as follows:</p>

	<p>ministry;</p> <p>(b) tendering advice to the responsible Minister in respect of the business and function of the department or ministry;</p> <p>(c) implementation of the policies of the Government; and</p> <p>(d) responsibility for the proper financial management and expenditure of public funds by or in connection with the department or ministry.</p>	<p>(1) Subject to this Constitution, a <b>province</b>, ministry or department of the Government shall be under the supervision and administration of a Permanent Secretary whose office is a public office.</p> <p>(2) A Permanent Secretary shall be a career civil servant appointed by the President in accordance with the advice of the Civil Service Commission, subject to ratification by the National Assembly.</p> <p>(3) <b>Parliament shall enact legislation to provide for the functions and qualifications of a Permanent Secretary.</b></p>
13.	<p><b>ARTICLE 275: Protection of public officers</b></p> <p>A public officer shall not be -</p> <p>(a) victimized or discriminated against for having performed functions in good faith in accordance with this Constitution or any other law; or</p> <p>(b) dismissed or removed from office or reduced in rank or otherwise punished without just cause and due process.</p>	<p>Although the Conference noted that this provision will protect rights of public officers against possible victimization for performing their duties in line with the Law, it was decided that the Article be deleted and be catered for under subsidiary legislation.</p>

14.	<p><b>ARTICLE 276: Services and service Commissions</b></p> <p style="text-align: center;"><b>Commissions</b></p> <p>There shall be established the following Services:</p> <ul style="list-style-type: none"> <li>(a) the Civil Service; and</li> <li>(b) the Teaching Service.</li> </ul> <p>(2) Parliament shall, subject to this Constitution, enact legislation to provide for each Service established under clause (1), for the establishment of a service commission for each Service and in particular to provide for -</p> <ul style="list-style-type: none"> <li>(a) the composition of each service commission;</li> <li>(b) the functions and powers of each service commission;</li> <li>(c) the operations, procedures and finances of each service commission;</li> <li>(d) the functions of each service;</li> <li>(e) the membership of each service; and</li> <li>(f) the structures and other provisions necessary for the proper and</li> </ul>	<p>The members of the Conference were cognizant of the importance of Service Commissions and therefore agreed that the Public Service and the Teaching Service be provided for in the Constitution for budgeting purposes. In making this decision, though, the Conference took note that the South African and Namibian Constitutions provided for the establishment, appointments, tenure and functions of Public Service Commissions.</p> <p>The Conference thus agreed to replace the whole Article as follows:</p> <p><b>275. (1) There is hereby established the Public Service Commission.</b></p> <p><b>(2) The Public Service Commission shall consist of a Chairperson and not less than four or more than six other members:</b></p> <p><b>Provided that at least one member shall be a person with a disability.</b></p> <p><b>(3) The Chairperson and members of the</b></p>
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	<p>efficient administration and operation of each Service and service commission.</p>	<p><b>Public Service Commission shall be appointed by the President.</b></p> <p><b>(4) A person shall not qualify to be appointed as a Chairperson or member of the Public Service Commission unless that person is -</b></p> <ul style="list-style-type: none"> <li><b>(a) a person of proven integrity; and</b></li> <li><b>(b) not a member of the National Assembly or a public officer.</b></li> </ul> <p><b>(5) Subject to clause (6) and (7), the Chairperson and members of the Public Service Commission shall hold office for a term of four years and shall be eligible for reappointment for only one further term of four years.</b></p> <p><b>(6) The office of Chairperson or member of the Public Service Commission shall become vacant if the holder of the office is removed from office by the President.</b></p> <p><b>(7) Subject to the other provisions of this Article, a Chairperson or member of the Public Service Commission shall vacate office -</b></p> <ul style="list-style-type: none"> <li><b>(a) at the expiry of the term of office specified under clause (5);</b></li> <li><b>(b) if any circumstances arise that,</b></li> </ul>
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if the person were not a member of the Commission, would cause the person to be disqualified for appointment as such; or

- (c) in the case of a member who represents a body or institution, if that body or institution nominates another person to represent it.

(8) The President may give to the Public Service Commission or to any person, to whom the functions or powers of the Commission are delegated by or under an Act of Parliament, such general directions with respect to the exercise of the functions or powers of the Commission, as the President may consider necessary and the Commission or that person shall comply with those directions.

(9) Except as otherwise provided by clause (8), the Public Service Commission shall not be person or authority in the exercise of its functions under this Constitution.

(10) Parliament shall enact legislation to

		<p><b>provide for the functions, powers, procedures, operations, administration, finances and financial management of the Public Service Commission.</b></p> <p>(11) Parliament may enact legislation to-</p> <ul style="list-style-type: none"> <li>(a) establish other commissions that may be necessary for the efficient and effective functioning of the public service; and</li> <li>(b) provide for the functions, <b>powers, independence,</b> composition, tenure of office, procedures, operations, administration, finances and financial management of a commission established by or under this clause.</li> </ul>
15.	<p><b>ARTICLE 277: Establishment of investigative commissions</b></p> <p>(1) There is hereby established the following investigative commissions -</p> <ul style="list-style-type: none"> <li>(a) the Anti-Corruption Commission;</li> <li>(b) the Anti-Drug Abuse Commission;</li> </ul>	<p>The Conference amended this Article by including the words “<b>powers and independence</b> in clause (2) and also added clause (3) to provide for functions and powers of any other Commissions that could be established in future. The listed commissions were therefore deleted under clause (1)</p>

	<p>(c) the Judicial Complaints Commission; and</p> <p>(d) the Police and Public Complaints Commission.</p> <p>(2) Parliament shall enact legislation to provide for the functions, composition, tenure of office, procedures, operations, administration, finances and financial management of a Commission established under this Article.</p>	<p>as the Conference noted that the commissions could not just be limited to these.</p> <p>This would be provided for under subsidiary legislations.</p> <p>The Article will now read as follows:</p> <p>(1) There is hereby established the <b>Republic</b> investigative commissions -</p> <p>(2) Parliament shall enact legislation to provide for the functions, <b>powers, independence</b>, composition, tenure of office, procedures, operations, administration, finances and financial management of an investigative Commission established under <b>clause (1)</b>.</p> <p><b>(3) Commissions, other than investigative commissions, may be established for the Republic by or under an Act of Parliament and shall have functions and powers as may be prescribed by or under an Act of Parliament.</b></p>
16.	<p><b>Article 278: Other additional commissions</b></p> <p>Parliament may enact legislation to -</p> <p>(a) establish other commissions that may be necessary for the efficient and effective functioning of the public service; and</p>	<p>The Conference agreed that other additional Commissions that may be necessary for the efficient and effective functioning of the Public Service be provided for in Subordinate Legislation.</p>

	<p>(b) provide for the functions, composition, tenure of office, procedures, operations, administration, finances and financial management of a commission established by or under this Article.</p>	<p>This is to avoid including in the Constitution, institutions that do not have specific mandates. This Article was therefore deleted.</p>
17.	<p><b>ARTICLE 279: Membership of commissions</b></p> <p>Subject to this Constitution, Parliament shall in enacting legislation in respect of a commission established under this Part ensure that -</p> <p>(a) a commission shall be composed of not less than three persons and not more than seven persons;</p> <p>(b) at least one member is a person with disability;</p> <p>(c) a person does not qualify to be appointed to a commission unless that person is -</p> <p>(i) a citizen;</p> <p>(ii) permanently resident in</p>	<p>When looking at this Article, the Conference took into account that the Provisions provides safe-guards to ensure that:</p> <ul style="list-style-type: none"> <li>• Persons with disabilities are also appointed to sit on the Commissions.</li> <li>• Persons who are bankrupt and dishonesty are not appointed to office of high responsibility.</li> <li>•</li> </ul> <p>However, members felt this could be catered for under subsidiary legislation and this Article was deleted.</p>

	<p>Zambia;</p> <p>(iii) not an office bearer or employee of any political party;</p> <p>(iv) a person who has not been convicted of theft, fraud, forgery, perjury or any other offence that involves dishonesty; and</p> <p>(v) a person of high moral standing and proven integrity; and</p> <p>(d) the members of a commission shall be appointed by the President, subject to ratification by the National Assembly.</p>	
18.	<p><b>ARTICLE 280: Independence and powers of commissions</b></p> <p>(1) In the performance of its functions under this Constitution or any other law, a commission established under this Part shall not be subject to the control or direction of any person or authority.</p> <p>(2) A commission established under this Part</p>	<p>This Article was deleted as the Conference felt it could be better to be in subsidiary legislation to avoid putting too much detail in the Constitution.</p>

	<p>shall be provided with adequate funding to enable it to effectively carry out its mandate.</p> <p>(3) A commission established under this Part -</p> <ul style="list-style-type: none"> <li>(a) shall have the power to appoint its staff;</li> <li>(b) may initiate its own investigations on information available to it;</li> <li>(c) may refer matters within its powers to appropriate State organs or State institutions for action;</li> <li>(d) may receive complaints from any person or group of persons on matters within its powers; and</li> <li>(e) shall submit annual reports to the National Assembly on its activities and any other report as provided by or under an Act of Parliament.</li> </ul>	
19.	<p><b>ARTICLE 281: Appointment of chief executive of commissions</b></p> <p>A commission established under this Part shall have a chief executive who shall be appointed by the respective commission.</p>	<p>This Article was deleted and relegated to subsidiary legislation.</p>

20.	<p><b>ARTICLE 282: Participation in politics</b></p> <p>A public officer who seeks election to a political office shall take early retirement in the national interest if that officer has served for at least twenty years or resign from the public service.</p>	<p>The Conference observed that the Provision of the Mung'omba Draft Constitution was intended to enhance professionalism and that a public servant owed his/her allegiance to the Government of the day (or at least was expected to do so) and therefore, should not be involved in partisan politics at all levels of political offices.</p> <p>In this regard, the Provision was approved, but with the creation of clause (1) which would serve as a preamble to the existing clause.</p> <p>The Article will therefore read as follows:</p> <p><b>(1) A public officer shall not, while remaining a public officer, join or participate in partisan politics.</b></p> <p>(2) A public officer who seeks election to a political office shall take early retirement in the national interest if that officer has served for at least twenty years or resign from the public service.</p>
21.	<p><b>ARTICLE 283: Retirement of public officers</b></p> <p>(1) A public officer shall, unless otherwise provided in this Constitution, retire from the public service on</p>	<p>When debating this Article, members observed that the additional provision in 283(1) is necessary because it</p>

	<p>attaining the age of sixty years and may retire with full benefits on the attainment of fifty-five years.</p> <p>(2) A public officer may, unless otherwise provided in this Constitution, retire from the public service at any time after a continuous service of twenty years, with the approval of the Government.</p> <p>(3) A public officer that has retired from the public service shall not be engaged, except that an officer that has special professional qualifications may be engaged on contract.</p>	<p>provides options for those officers who would want to retire earlier and pursue other careers in life.</p> <p>Further, that the raised retirement age to sixty years is acceptable particularly in the medical and teaching professions where people became more effective and experienced, the longer they practiced and stayed on the job.</p> <p>Although some members observed that, allowing officers to arbitrary retire with full benefits after 20 years of service would have costly finance and human resource implications to the National Treasury, as more employees would opt to retire early, clause (3) was adopted.</p> <p>The Article was approved with the addition of the words “has acquired special skills under clause (3) and it reads that:</p> <p>(3) A public officer that has retired from the public service shall not be engaged, except that an officer that has special professional qualifications <b>or has acquired special skills</b> may be engaged on contract.</p>
<p>22.</p>	<p><b>ARTICLE 284: Pension, gratuity or retrenchment</b></p>	

<p><b>benefit for public officers</b></p> <p>(1) The right of a public officer to a pension, gratuity or retrenchment benefit is hereby guaranteed.</p> <p>(2) Any benefit to which a public officer is entitled to by or under an Act of Parliament shall not be withheld or altered to that officer's disadvantage, except to an upward adjustment to the extent provided by law.</p> <p>(3) The law to be applied with respect to any pension benefits that were granted to any person before the commencement of this Constitution shall be the law that was in force at the date on which those benefits were granted or any law in force at a later date that is favourable to that person.</p> <p>(4) The law to be applied with respect to pension benefits, other than as provided in clause (2), shall -</p> <p>(a) where those benefits are wholly in respect of a period of service as a public officer, member of the Defence Forces or of the national security agencies that commenced</p>	<p>This Article, though may appear to be a detail in the Constitution, was retained by the Conference after lengthy and emotive deliberations, mainly because the current system was perceived to be less efficient in paying retirement benefits to retirees on time. Retaining it in the Constitution was believed to bind the Government to pay retirees on time.</p> <p>However, a few changes were made as follows:</p> <p>(1) The right of a public officer to a pension, gratuity or retrenchment benefit, <b>to which the public officer is entitled under the terms and conditions of service or by or under an Act of Parliament</b>, is hereby guaranteed.</p> <p>(2) Any pension, gratuity or retrenchment benefits which a public officer is entitled to <b>under the terms and conditions of service by or</b> under an Act of Parliament shall not be withheld or altered to that officer's disadvantage, except to an upward adjustment to the extent provided by law.</p> <p>(3) The law to be applied with respect to any pension benefits that were granted to any person before the</p>
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<p>before the commencement of this Constitution, be the law in force immediately before that date; or</p> <p>(b) where those benefits are wholly or partly in respect of a period of service as a public officer, member of the Defence Forces or national security agencies that commenced after the commencement of this Constitution, be the law in force on the date on which that period of service commenced;</p> <p>or any law in force at a later date that is not less favourable to that person.</p> <p>(5) All pension benefits, unless otherwise charged on a fund established by or under an Act of Parliament, shall be a charge on the Consolidated Fund.</p> <p>(6) In this Article "pension benefits" includes any pension, compensation and gratuity or similar allowance for persons in respect of their service as public officers, members of the Defence Forces and national security agencies or for the widows, children, dependants or personal representatives of those</p>	<p>commencement of this Constitution shall be the law that was in force at the date on which those benefits were granted or any law in force at a later date that is favourable to that person.</p> <p>(4) The law to be applied with respect to pension benefits, other than as provided in clause (2), shall -</p> <p>(a) where those benefits are wholly in respect of a period of service as a public officer, <b>as an officer in the department of the Clerk of the National Assembly</b>, member of the Defence Forces or of the national security agencies that commenced before the commencement of this Constitution, be the law in force immediately before that date; or</p> <p>(b) where those benefits are wholly or partly in respect of a period of service as a public officer, member of the Defence Forces or national security agencies that commenced after the commencement of this Constitution, be the law in force on the date on which that period of service</p>
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	<p>persons in respect of the service.</p>	<p>commenced;</p> <p>or any law in force at a later date that is not less favourable to that person.</p> <p>(5) All pension benefits or <b>retrenchment</b>, unless otherwise charged on a fund established by or under an Act of Parliament, shall be a charge on the <b>National Treasury Account</b>.</p> <p>(6) In this Article “pension benefits” includes any pension, compensation and gratuity or similar allowance for persons in respect of their service as public officers, <b>officers in the department of the Clerk of National Assembly</b>, members of the Defence Forces and national security agencies or for <b>surviving spouses</b>, children, dependants or personal representatives of those persons in respect of the service.</p>
23.	<p><b>ARTICLE 285: Pension to be reviewed</b></p> <p>(1) Pensions shall be reviewed upwards periodically to take into account changes in the value of money or a review of salaries.</p> <p>(2) Pension in respect of service in the public</p>	<p>The Conference adopted this Article because it is meant to guard against inflation eroding the value of the retiree’s benefits.</p>

	<p>service is exempt from tax.</p>	<p>The members also approved clause (2) to provide that pension shall be exempt from tax. This was on the premise that taxing pension leaves the retiree with very little income for a life-time livelihood, and may encourage destitution amongst retirees.</p>
<p>24.</p>	<p><b>ARTICLE 286: Pension and retrenchment benefits to be paid promptly</b></p> <p>(1) The payment of pension or retrenchment benefit shall be paid on the last working day and any installments of pension benefits shall be paid regularly and shall be easily accessible to pensioners.</p> <p>(2) Where pension or retrenchment benefit due is not paid on the last day of an employee's working day, the employee shall stop work but the retiree's or retrenchee's name shall be retained on the payroll until payment of the pension or retrenchment benefit.</p> <p>(3) A retiree or retrenchee who does not receive the retiree's pension or retrenchee's benefits on the last working day shall be entitled to -</p> <p>(a) be retained on the payroll;</p>	<p>This Article was deleted.</p>

	<p>(b) a salary and to any increment in salary given to public officers in the salary scale that the retiree or retrenchee was on at the date of retirement or retrenchment; and</p> <p>(c) a pension or retrenchment benefit based on the last salary received by the retiree or retrenchee while on the payroll by virtue of this Article.</p>	
25.	<p><b>ARTICLE 287: Legislation on pensions and gratuities</b></p> <p>Parliament shall enact legislation to provide for pensions and gratuities for service in the public service and for an efficient and effective system for the administration of pensions.</p>	<p><b>ARTICLE 281: Legislation on pension, gratuity and retrenchment benefits for public officers</b></p> <p>(1) Parliament shall enact legislation to-</p> <p><b>(a) provide for pensions, gratuities and retrenchment benefits for service in the Public Service and for an efficient and effective system for the administration of pensions;</b></p> <p><b>(b) specify the period, which period shall not exceed six months from the date of retirement or retrenchment,</b></p>

		<p><b>within which pension or retrenchment benefits shall be paid to a retired or retrenched public officer;</b></p> <p><b>(c) provide for the retention on the pay roll, until payment of the pension or retrenchment benefits, of a public officer who is retired or retrenched but is not paid pension or retrenchment benefits; and</b></p> <p><b>(d) specify what constitutes pension or retrenchment benefits for purposes of retaining a retired or retrenched public officer on the pay roll by virtue of this Article.</b></p> <p><b>(2) A public officer referred to under paragraph (c) of clause (1) shall stop work on their last working day but shall be entitled to -</b></p> <p><b>(a) a salary and to any increment in salary given to public officers in the salary scale that the public officer was on at the date of</b></p>
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		<p><b>retirement or retrenchment; and</b></p> <p><b>(b) a pension or retrenchment benefits based on the last salary received by the retired or retrenched public officer while on the pay roll by virtue of this Article.</b></p> <p><b>(3) Any salary which is paid to a retired or retrenched public officer while on the pay roll by virtue of this Article shall not be deducted from that retired or retrenched public officer's pension or retrenchment benefits.</b></p>
25.	<p><b>PART XV: PARLIAMENTARY OMBUDSMAN</b></p> <p><b>ARTICLE 288: Establishment of office of Parliamentary Ombudsman</b></p> <p>(1) There is hereby established the Office of the Parliamentary Ombudsman which shall have offices in all of the provinces and progressively in the districts.</p> <p>(2) The Ombudsman shall be appointed by the Parliamentary Service Commission, subject to ratification by the National Assembly.</p> <p>(3) Parliament shall enact legislation to provide</p>	<p>The Conference is recommending that the office retains the name “Investigator General” because the name “Ombudsman” was not only difficult to pronounce, but did not clearly define the functional mandate of the office.</p> <p>The Conference agreed to the amendment of the clause with the infusion of Article (90)(1) of the current Constitution. This is because the current system of the appointment of the Investigator General by the President in consultation with</p>

	<p>for the procedures, staff, financial resources, financial management and operations of the office of the Parliamentary Ombudsman.</p>	<p>the Judicial Service Commission has been effective and enables the Legislature and Judiciary participate in the process of appointing the Investigator General.</p> <p>With this rationale, the Article will read as follows:</p> <p>(1) There is hereby established the Office of the <b>Investigator General</b> which shall have offices in all of the provinces and progressively in the districts.</p> <p>(2) The <b>Investigator General</b> shall be appointed by the <b>President on the advice of</b> the Judicial Service Commission, subject to ratification by the National Assembly.</p> <p>(3) Parliament shall enact legislation to provide for the functions, powers, procedures, staff, financial resources, financial management and operations of the office of the <b>Investigator General</b>.</p>
26.	<p><b>ARTICLE 289: Qualifications for appointment and conditions of service</b></p> <p>(1) A person shall qualify to be appointed to the office of the Ombudsman if that person –</p> <p>(a) is qualified to be appointed as a Judge</p>	<p>In adopting this Article, the Conference was mindful to avoid conflict of interest, as the mandate of the Investigator General is so wide that in the long run she/he could be</p>

<p>of a superior court; and</p> <p>(b) does not hold the office of President, Vice-President, Minister, Provincial Minister, Deputy Minister, member of the National Assembly or councillor.</p> <p>(2) The terms and conditions of service of the Ombudsman, including the grounds and procedure for removal from office, shall be the same as apply to a Judge of a superior court.</p> <p>(3) The Ombudsman shall not hold any other office of profit or emolument.</p> <p>(4) Where the Ombudsman dies, resigns, is removed from office, is absent from Zambia or is for any other reason unable to perform the functions of office the National Assembly shall, on the recommendation of the Parliamentary Service Commission, appoint a person who is qualified to be appointed as Ombudsman to act until the Ombudsman resumes office or another Ombudsman is appointed.</p>	<p>compromised.</p> <p>The Conference members also felt that the retirement age of the Investigator General is implied in clause (2). Therefore, there was no need to have a stand-alone clause to provide for it.</p> <p>As for clause (4), the members agreed that it is an executive function. The Judicial Service Commission is better placed because the Investigator General is appointed from among the Judges.</p> <p>With that rationale, the changes were made as follows:</p> <p>(1) A person shall qualify to be appointed to the office of the <b>Investigator General</b>, if that person –</p> <p>(c) is qualified to be appointed as a Judge of a superior court; and</p> <p>(d) does not hold the office of President, Vice-President, Minister, Provincial Minister, Deputy Minister, member of the National Assembly or councillor.</p> <p>(2) The terms and conditions of service of the <b>Investigator General</b>, including the grounds and procedure for removal from office, shall be the same as apply to a Judge of a superior court.</p>
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		<p>(3) The <b>Investigator General</b>. shall not hold any other office of profit or emolument.</p> <p>(4) Where the <b>Investigator General</b>. dies, resigns, is removed from office, is absent from Zambia or is for any other reason unable to perform the functions of office the <b>President</b> shall, on the recommendation of the <b>Judicial Service Commission</b>, appoint a person who is qualified to be appointed as Ombudsman to act until the <b>Investigator General</b>. resumes office or another <b>Investigator General</b>. is appointed.</p>
27.	<p><b>ARTICLE 290: Functions of Ombudsman</b></p> <p>(1) The Ombudsman may investigate an action taken or omitted to be taken, as specified under clause (2), by or on behalf of any State institution in the performance of an administrative function.</p> <p>(2) An action taken or omitted to be taken under clause (1), is an action which is –</p> <ul style="list-style-type: none"> <li>(a) an abuse of office;</li> <li>(b) an unfair or unjust decision or action; or</li> <li>(c) an action not complying with the rules</li> </ul>	<p>Members of the Conference felt that the functions of the Investigator-General are a detail and therefore, should be relegated to an Act of Parliament.</p> <p>The members also felt that the decisions of the Investigator General are not binding and that she/he recommends to an administrative authority.</p> <p>In the event of failure to implement her/his recommendations on a particular case, the Investigator General would have recourse to the select Parliamentary Committee to secure enforcement.</p>

	<p>of natural justice.</p> <p>(3) For the purpose of clauses (1) and (2), the Ombudsman may -</p> <ul style="list-style-type: none"><li>(a) bring an action before a court and seek a remedy which is available from the court;</li><li>(b) hear and determine an appeal by a public officer serving in the public service or an employee of any State institution relating to an act or omission taken in respect of that officer which contravenes this Article;</li><li>(e) make any decision after investigations, and where appropriate, on any disciplinary action to be taken against a public officer serving in the public service which decision shall be implemented by the appropriate authority; and</li><li>(f) issue regulations regarding the manner and procedure for bringing complaints before the Ombudsman and the investigation of matters or complaints.</li></ul>	<p>With this rationale, the Article was therefore deleted.</p>
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	<p>(4) The Ombudsman may -</p> <ul style="list-style-type: none"><li>(a) issue a statement of opinion on the administration of State institutions;</li><li>(b) make recommendations on the review, harmonisation and development of the law for the purpose of improving administrative justice in State institutions; and</li><li>(c) perform any other function provided by an Act of Parliament.</li></ul> <p>(5) The Ombudsman shall have the powers of the High Court in -</p> <ul style="list-style-type: none"><li>(a) enforcing the attendance of witnesses and examining them on oath;</li><li>(b) compelling the production of documents; and</li><li>(c) issuing a commission or request to examine witnesses abroad.</li></ul> <p>(6) A person summoned to attend to give evidence or to produce a document before the</p>	
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	<p>Ombudsman shall be entitled, in respect of that evidence or the production of the document, to the same privileges and protections as those that a person would be entitled to before a court.</p> <p>(7) An answer by a person to a question put by the Ombudsman shall not be admissible in evidence against that person in any civil or criminal proceedings in any court, except for perjury under criminal law.</p>	
28.	<p><b>ARTICLE 291: Independence of Ombudsman</b></p> <p>(1) In the performance of functions conferred on the Ombudsman under this Constitution or any other law, the Ombudsman and the staff of the office of the Ombudsman shall be subject only to this Constitution and shall not be subject to the direction or control of any person or authority.</p> <p>(2) The appointment of staff of the office of Ombudsman shall be made by the Ombudsman.</p> <p>(3) The emoluments of the Ombudsman shall be determined by the Emoluments Commission and provided for in an Act of Parliament and shall be a charge on the Consolidated Fund.</p>	<p>On the involvement of the Emoluments Commission to determine the emoluments of the Investigator General's office, the Conference observed that there was no documented evidence to the effect that the existing arrangements had failed.</p> <p>Further, it was observed that the conditions of service for the office of Investigator General were tailored to that of Judge and as such, the same could apply with regard to the determination of the emoluments for this office.</p> <p>The Conference also observed that under clause (2), the</p>

	<p>(4) The Ombudsman shall take measures to educate the people on the functions of the Ombudsman.</p> <p>(5) The office of the Ombudsman shall be adequately funded to enable the office to effectively carry out its mandate.</p> <p>(6) The expenses of the office of the Ombudsman, including the emoluments of staff, shall be a charge on the Consolidated Fund.</p>	<p>Public Service Commission which currently has the mandate to engage staff in quasi- government institutions, including the Investigator General’s Office has the competence to do so. The current system allows the Office of Investigator General to concentrate on its key mandate. However, the Public Service Commission should not interfere with the lawful performance of the seconded staff to this office.</p> <p>Although it was further observed that the current Investigator-General who was called as a witness before the Committee bemoaned that one major constraint adversely affecting the performance of the office was erratic and inadequate funding releases the Conference only adopted clause (1) of this Article and relegated the rest to subsidiary legislation.</p> <p>Thus, Article 292 renumbered Article 284 shall read:</p> <p>In the performance of functions of the <b>Investigator-General, the Investigator-General</b> and the staff of the office of the <b>Investigator-General</b> shall be subject only to the Constitution and any other law and shall</p>
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		not be subject to the direction or control of any person or authority.
29.	<p><b>ARTICLE 292: Limitation of powers of Ombudsman</b></p> <p>The Ombudsman shall not investigate a matter -</p> <ul style="list-style-type: none"> <li>(a) which is before a court or a quasi-judicial tribunal;</li> <li>(b) involving the relations or dealings between the Government and any foreign government or international organization; or</li> <li>(c) relating to the exercise of the prerogative of mercy.</li> </ul>	The Conference deleted this Article.
30.	<p><b>ARTICLE 293: Accountability</b></p> <p>The Ombudsman shall be accountable to the National Assembly.</p>	<p>When looking at this Article, the Conference observed that it is important that while the Investigator General submits Reports to the National Assembly, he/she should be accountable to the President who is the appointing Authority.</p> <p>Therefore, the Conference made the following changes to</p>

		<p>this Article:</p> <p>Article 285 The <b>Investigator-General</b> shall <b>report to the National Assembly</b> and shall be accountable to the <b>President</b>.</p>
31.	<p><b>ARTICLE 294: Accounts and audit</b></p> <p>(1) The Ombudsman shall keep books of account and proper records in relation to the accounts in the form approved by the Auditor-General.</p> <p>(2) The Ombudsman shall, within three months after the end of the financial year, submit its accounts to the Auditor-General for audit.</p> <p>(3) The Auditor-General shall, within three months of the submission under clause (2), make a report on the audit to the Ombudsman with a copy of the report to the President and to the National Assembly.</p>	<p>This Article was relegated to subsidiary legislation.</p>
32.	<p><b>ARTICLE 295: Annual report</b></p> <p>The Ombudsman shall, within six months after the end of</p>	<p>This Article was relegated to subsidiary legislation.</p>

	<p>each financial year, submit an annual report on the activities of the office of Ombudsman, for the previous year, to the National Assembly with a copy to the President.</p> <p>(2) The annual report shall contain -</p> <ul style="list-style-type: none"> <li>(a) a review of all the complaints lodged with the Ombudsman;</li> <li>(b) a summary of the matters dealt with and the actions taken on them;</li> <li>(c) a summary of the remedies awarded to aggrieved persons; and</li> <li>(d) a statement on the areas where the Ombudsman failed to take action to remedy an injustice and the reasons for the failure.</li> </ul>	
33.	<p><b><i>PART XVI: DEFENCE AND NATIONAL SECURITY</i></b></p> <p><b>ARTICLE 296: Establishment of Defence Forces and functions</b></p> <p>(1) There shall be established the Defence Forces of Zambia consisting of the -</p> <ul style="list-style-type: none"> <li>(a) Zambia Army;</li> </ul>	<p>The Conference supported the Article, particularly the inclusion of “Zambia National Service” (ZNS) under this provision on Defence Forces, because although ZNS is mainly involved in agricultural production, the Conference took cognizance of the vital defence role this unit played during the liberation struggle in the African Sub-region.</p>

<p>(b) Zambia Air Force; and</p> <p>(c) Zambia National Service.</p> <p>(2) The Defence Forces shall -</p> <p>(a) preserve and defend the sovereignty and territorial integrity of the Republic;</p> <p>(b) foster harmony and understanding between the Zambia Army, Zambia Air Force and Zambia National Service and the members of the society;</p> <p>(c) co-operate with civilian authorities in times of public emergencies and National disasters;</p> <p>(d) engage in productive activities for the development of the country ; and</p> <p>(e) perform other functions provided for each force by or under an Act of Parliament.</p>	<p>Further, that ZNS was still actively involved in the maintenance of security along Zambia's borders.</p> <p>The Conference also agreed to put individual articles to carter for the different defence and security forces and provide for their functions and legislation. Thus, Articles 296 to 303 were deleted and new Articles 286 to 295 were created.</p> <p>With that rationale, the amendment to these Articles were as follows:</p> <p><b>286. Zambia Defence Force</b></p> <p><b>(1) There shall be an armed force to be known as the Zambia Defence Force.</b></p> <p><b>(2) The Zambia Defence Force shall be non-partisan, national in character, patriotic, professional, disciplined, productive and subordinate to the civilian authorities as established under this Constitution.</b></p> <p><b>(3) Members of the Zambia Defence Force shall be citizens of Zambia who do not have dual citizenship and are of good character.</b></p> <p><b>(4) A person shall not raise an armed force except in accordance with this Constitution.</b></p>
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34.	<p><b>ARTICLE 297: Establishment of national security agencies and functions</b></p> <p>(1) There shall be established national security agencies which shall consist of the -</p> <ul style="list-style-type: none"> <li>(a) Zambia Police Service;</li> <li>(b) Zambia Security Intelligence Service; and</li> <li>(c) Zambia Prisons Service.</li> </ul> <p>(2) The Zambia Police Service shall -</p> <ul style="list-style-type: none"> <li>(a) protect life and property;</li> <li>(b) preserve peace, law and order;</li> <li>(c) ensure the security of the people;</li> <li>(d) prevent and detect crime;</li> <li>(e) protect the rights and freedoms enshrined in this Constitution;</li> <li>(f) foster and promote good relationship with members of the society; and</li> <li>(g) perform other functions provided by or under an Act of Parliament.</li> </ul> <p>(3) The Security Intelligence Service shall be</p>	<p><b>287. Functions of Defence Force</b></p> <p><b>The functions of the Zambia Defence Force shall be to-</b></p> <ul style="list-style-type: none"> <li><b>(a) preserve and defend the sovereignty and territorial integrity of Zambia;</b></li> <li><b>(b) co-operate with the civilian authorities in emergency situations and in case of natural disasters;</b></li> <li><b>(c) foster harmony and understanding between the Zambia Defence Force and civilians; and</b></li> <li><b>(d) engage in productive activities for the development of Zambia.</b></li> </ul>

	<p>responsible for -</p> <ul style="list-style-type: none"> <li>(a) security intelligence and counter intelligence aimed at ensuring national security;</li> <li>(b) defence of this Constitution against any act of sabotage or subversion; and</li> <li>(c) other functions as provided by or under an Act of Parliament.</li> </ul> <p>(4) The Prisons Service shall be responsible for the management, control and security of prisoners and prisons and for other functions that relate to prisoners as provided by an Act of Parliament.</p>	
35.	<p><b>ARTICLE 298: Establishment of Security Intelligence Service and functions</b></p> <p>(1) There is hereby established the Police and Prisons Service Commission.</p> <p>(2) Parliament shall enact legislation to provide for the functions, composition, tenure or office, procedures, finances and financial management of the Police and Prisons Service Commission.</p>	<p><b>288. Legislation on Defence Force</b></p> <p><b>Parliament shall enact legislation to regulate the Zambia Defence Force and to provide for -</b></p> <ul style="list-style-type: none"> <li><b>(a) the organs and structures of the Zambia Defence Force;</b></li> <li><b>(b) the recruitment of persons into the Zambia Defence Force from every district of Zambia;</b></li> </ul>

	<p>(3) The provisions of Part XIV relating to the membership, independence, powers and appointment of the Chief Executive of a commission shall apply to the Police and Prisons Service Commission.</p>	<p><b>(c) the terms and conditions of service of members of the Zambia Defence Force; and</b></p> <p><b>(d) the deployment of troops outside of Zambia.</b></p>
36.	<p><b>ARTICLE 299: Objectives and expenses of defence and national security agencies</b></p> <p>(1) The primary objectives of the Defence Forces and the national security agencies shall be to -</p> <p>(a) safeguard the well-being of the people of Zambia; and</p> <p>(b) secure and guard the sovereignty, peace, national unity and territorial integrity of the Republic in accordance with the Constitution and other laws.</p> <p>(2) The Defence Forces and national security agencies shall be nationalistic, patriotic, professional, disciplined, competent and productive and their members shall be citizens who do not have dual citizenship.</p> <p>(3) The Defence Forces and the national security agencies shall not -</p>	<p><b>289. Zambia Police Service</b></p> <p><b>(1) There shall be a police service to be known as the Zambia Police Service and such other police services as Parliament may by law prescribe.</b></p> <p><b>(2) Subject to the other provisions of this Constitution, every police service in Zambia shall be organised and administered in such a manner and shall have such functions as Parliament may by law prescribe.</b></p> <p><b>(3) The Zambia Police Service shall be nationalistic, patriotic, non-partisan, professional, disciplined, competent and productive and its members shall be citizens of Zambia who do not have dual citizenship and are</b></p>

<p>(a) act in a partisan manner;</p> <p>(b) further the interests or cause of any political party; or</p> <p>(c) act against a political interest or cause permitted under this Constitution or any other law.</p> <p>(4) Clause (2) shall apply to every member of the Defence Forces and national security agencies but nothing this Constitution shall prevent a member of those forces and agencies from registering as a voter or voting in any National elections or referenda.</p> <p>(5) The Defence Forces and national security agencies-</p> <p>(a) shall be subject to civilian authority; and</p> <p>(a) shall be adequately and properly equipped to enable them effectively attain their objectives and perform their functions.</p> <p>(6) The expenses of the Defence Forces and national security agencies shall be a charge on the Consolidated Fund.</p>	<p><b>of good character.</b></p>
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37.	<p><b>ARTICLE 300: Peace-keeping missions</b></p> <p>Except where a mission or service is approved by the President, with the prior approval of the National Assembly signified by the votes of not less than two-thirds of all the members of the National Assembly, personnel of the Defence Forces shall not be deployed outside the Republic on a peace-keeping mission or other similar service.</p>	<p><b>290. Functions of Zambia Police Service</b></p> <p><b>The functions of the Zambia Police Service shall include the following:</b></p> <ul style="list-style-type: none"> <li><b>(a) to protect life and property;</b></li> <li><b>(b) to preserve law and order;</b></li> <li><b>(c) to detect and prevent crime; and</b></li> <li><b>(d) to co-operate with the civilian authorities and other security organs established under this Constitution and with the population generally.</b></li> </ul>
38.	<p><b>ARTICLE 301: Deployment outside Republic</b></p> <p>(1) Subject to any law relating to the procedure and rules for deployment of personnel of the Defence Forces outside the Republic, the President may -</p> <ul style="list-style-type: none"> <li>(a) at any time order that the whole or any part of the Forces shall be deployed out of or beyond Zambia;</li> <li>(b) order any officer of the Forces to proceed to any place outside Zambia to undergo instruction,</li> </ul>	<p><b>291. Legislation on Zambia Police Service</b></p> <p><b>Parliament shall enact legislation to regulate the Zambia Police Service and to provide for-</b></p> <ul style="list-style-type: none"> <li><b>(a) the organs and structures of the Zambia Police Service;</b></li> <li><b>(b) the recruitment of persons into the Zambia Police Service from every district of Zambia;</b></li> <li><b>(c) the terms and conditions of service of members of the Zambia Police Service; and</b></li> </ul>

	<p>training or duty; or</p> <p>(c) where the consent of the officer or soldier of the Defence Forces is first obtained, place the officer or soldier at the disposal of the military authorities of any other country or territory to be attached to the armed or air forces of that country or territory.</p> <p>(2) Where the President intends to exercise any power under clause (1) (a), the President shall obtain the prior approval of the National Assembly signified by not less than two-thirds of the votes of all the members of the Assembly.</p>	<p><b>(d) the regulation generally of the Zambia Police Service.</b></p>
39.	<p><b>ARTICLE 302: Prohibition of certain activities</b></p> <p>Except as provided for under this Constitution or by an Act of Parliament, a person shall not -</p> <p>(a) raise an armed force;</p> <p>(b) establish -</p> <p>(i) an air force;</p> <p>(ii) a national service;</p>	<p><b>292. Prisons Service</b></p> <p><b>(1) There shall be the Zambia Prisons Service.</b></p> <p><b>(2) Members of the Zambia Prisons Service shall be citizens of Zambia who do not have dual citizenship and are of good character.</b></p>

	<p>(iii) a police service;</p> <p>(iv) a prisons service; or</p> <p>(v) a security intelligence service; or</p> <p>(c) be concerned in the raising of an armed force or the establishment of any of the Defence Forces and national security agencies.</p>	
40.	<p><b>ARTICLE 303: Legislation to further regulate defence and national security agencies</b></p> <p>Subject to this Constitution, Parliament shall enact legislation to provide generally for the effective operation of the Defence Forces and national security agencies and shall provide for -</p> <p>(a) the regulation of the Defence Forces and national security agencies;</p> <p>(b) their organs and structures;</p> <p>(c) their operations and administration;</p> <p>(d) the recruitment of persons from every district of the country into the Defence Forces and national security</p>	<p><b>293. Legislation on Zambia Prisons Service</b></p> <p><b>Parliament shall enact legislation to regulate the Zambia Prisons Service and to provide for-</b></p> <p><b>(a) the functions, organs and structures of the Zambia Prisons service;</b></p> <p><b>(b) the recruitment of persons to the Zambia Prisons Service from every district of Zambia;</b></p> <p><b>(c) the terms and conditions of service of members of the Zambia Prisons Service; and</b></p> <p><b>(d) the regulation generally of the Zambia Prisons Service.</b></p>

	<p>agencies;</p> <p>(e) the appointment, qualifications, retirement, placement, transfer and discipline of defence and security chiefs and other personnel of the Defence Forces and national security agencies;</p> <p>(f) the terms and conditions of service of personnel and members;</p> <p>(a) such other functions as may be necessary for the effective operation of the Defence Forces and national security agencies;</p> <p>(b) other Defence Forces and national security agencies; and</p> <p>(i) the regulation of private security organisations.</p>	
		<p><b>294. Establishment of Police and Prisons Service Commission</b></p> <p><b>(1) There is hereby established the</b></p>

		<p><b>Police and Prisons Service Commission.</b></p> <p><b>(2) Parliament shall enact legislation to provide for the functions, powers, independence, composition, tenure of office, staff, procedures, operations, finances and financial management of the Police and Prisons Service Commission.</b></p>
		<p><b>295. Zambia Security Intelligence Service</b></p> <p><b>(1) There shall be a Zambia Security Intelligence Service.</b></p> <p><b>(2) Members of the Zambia Intelligence Service shall be citizens of Zambia who do not have dual citizenship and are of good character.</b></p> <p><b>(3) Parliament shall enact legislation to regulate the Zambia Security Intelligence Service and to provide for-</b></p> <ul style="list-style-type: none"> <li><b>(a) the functions, organs and structures of the Zambia Security Intelligence Service;</b></li> <li><b>(b) the recruitment of persons into the Zambia Security Intelligence</b></li> </ul>

		<p><b>Service from every district of Zambia;</b></p> <p><b>(c) the terms and conditions of service of members of the Zambia Security Intelligence Service; and</b></p> <p><b>(c) the regulation generally of the Zambia Intelligence Service.</b></p>
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