

**THE CONSTITUTION OF ZAMBIA (AMENDMENT)
BILL, 2019**

MEMORANDUM

The object of this Bill is to amend the Constitution of Zambia so as to—

- (a) revise the Preamble in order to reaffirm the Christian character of Zambia;
- (b) revise the principles and values of the Constitution;
- (c) revise the electoral system for elections to the National Assembly;
- (d) revise the period for dissolution of the National Assembly;
- (e) revise the period of hearing and determination of a presidential election petition;
- (f) revise the manner of election of mayor and council chairperson;
- (g) establish the office of deputy minister;
- (h) revise the composition of the Cabinet;
- (i) revise the provisions relating to the establishment of commissions;
- (j) revise the provisions relating to the payment of pension benefits and retention on the payroll;
- (k) provide for the membership of Members of Parliament in councils;
- (l) establish the Drug Enforcement Commission as the Anti-Drugs, Economic and Financial Crimes Agency and re-define its function as a national security service;
- (m) revise the functions of the Public Protector;
- (n) revise the functions of the Bank of Zambia;
- (o) revise the functions of the Auditor-General; and
- (p) provide for matters connected with, or incidental to, the foregoing.

L. KALALUKA,
Attorney-General

N.A.B. 10, 2019

21st June, 2019

A BILL

ENTITLED

An Act to amend the Constitution of Zambia.

ENACTED by the Parliament of Zambia

Enactment

1. This Act may be cited as the Constitution of Zambia (Amendment) Act, 2019, and shall be read as one with the Constitution of Zambia, in this Act referred to as the Constitution.

Short title

Cap. 1

5 2. The Preamble is amended by the deletion of the words “multi-religious” and the substitution therefor of the word “Christian”.

Amendment
of preamble

3. Article 1 of the Constitution is amended by the deletion of clause (5) and the substitution therefor of the following:

Amendment
of Article 1

10 (5) Subject to Article 28, a matter relating to this Constitution shall be heard and determined by the Constitutional Court.

4. Article 4 of the Constitution is amended by the deletion of Clause (3) and the substitution therefor of the following:

Amendment
of Article 4

15 (3) The Republic is a Christian, unitary, indivisible, multi-ethnic, multi-racial, multi-cultural and multi-party democratic State.;

20 5. Article 8 of the Constitution is amended by the deletion of paragraph (a) and the substitution therefor of the following paragraph:

Amendment
of Article 8

(a) Christian morality and ethics.;

6. Article 10 of the Constitution is amended by the deletion of Clause (4) and the substitution therefor of the following:

Amendment
of Article 10

25 (4) Subject to Article 16, the Government shall not compulsorily acquire an investment.;

- Amendment of Article 38 **7.** Article 38 of the Constitution is amended by the insertion of the words “as prescribed” immediately after the word “adoption”.
- Amendment of Article 46 **8.** Article 46 of the Constitution is amended by the insertion of the words “as prescribed” immediately after the word “ballot”.
- Amendment of Article 47 **9.** Article 47 of the Constitution is amended by the deletion of clause (2) and the substitution therefor of the following: 5
- (2) Elections to the National Assembly shall be conducted under a mixed member electoral system, as prescribed.
- Repeal and replacement of Article 51 **10.** The Constitution is amended by the repeal of Article 51 and the substitution therefor of the following: 10
- 51.** A person is eligible for election as an independent candidate for a National Assembly seat if the person meets the qualifications specified in Article 70 for election as a Member of Parliament.
- Amendment of Article 52 **11.** The Constitution is amended by the repeal of Article 52. 15
- Repeal and replacement of Article 60 **12.** The Constitution is amended by the repeal of Article 60 and the substitution therefor of the following:
- 60.** (1) A political party shall be established as prescribed.
- (2) A political party shall—
- (a) promote the values and principles specified in this Constitution; 20
- (b) have a national character;
- (c) promote and uphold national unity;
- (d) promote and practice democracy through regular, free and fair elections within the party; and 25
- (e) subscribe to and observe the code of conduct for political parties, as prescribed.
- (3) A political party shall not—
- (a) be founded on a religious, linguistic, racial, ethnic, tribal, gender, sectoral or provincial basis or engage in propaganda based on any of these factors; 30
- (b) engage in or encourage violence or intimidate its members, supporters, opponents or other persons;
- (c) engage in corrupt practices; and
- (d) except as prescribed, use public resources to promote its interest or that of its members. 35

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13. Article 63 (2) of the Constitution is amended by the deletion of paragraphs (d) and (e). Amendment of Article 63
14. Article 67 of the Constitution is amended— Amendment of Article 67
5 (a) in clause (3), by the deletion of the words “within fourteen days of the publication of the statutory instrument in the *Gazette*”; and
(b) by the deletion of clauses (4), (5) and (6).
15. The Constitution is amended by the repeal of Article 68 and the substitution therefor of the following: Repeal and replacement of Article 68
- 10 **68.** Subject to Article 47, the election, nomination, qualification and vacation of office of a Member of Parliament shall be as prescribed. Election, nomination, qualification and vacation of office of a Member of Parliament
16. The Constitution is amended by the repeal of Articles 69, 70, 71 and 72. Repeal of Articles 69, 70, 71 and 72
- 15 17. Article 73 of the Constitution is amended in clause (2), by the insertion of the words “and determined” between the words “heard” and “within”. Amendment of Article 73
18. Article 74 of the Constitution is amended by the deletion of clause (1), and the substitution therefor of the following: Amendment of Article 74
- 20 (1) The Vice-President shall be the Leader of Government Business in the National Assembly.
19. Article 75 of the Constitution is amended— Amendment of Article 75
25 (a) in clause (1), by the deletion of the word “sitting” and the substitution therefor of the word “meeting”;
(b) in clause (2), by the deletion of the word “sittings” and the substitution therefor of the word “meetings”;
(c) by the deletion of clause (3) and the substitution therefor of the following:
- 30 (3) Notwithstanding clause (2), the President, or two-thirds of the Members of Parliament, may, in writing, request the Speaker to summon a meeting of the National Assembly.; and
(d) in the marginal note, by the deletion of the word “sittings” and the substitution therefor of the word “meetings”.

Amendment
of Article 78**20.** Article 78 of the Constitution is amended—*(a)* in clause (2), by the deletion of paragraph (b) and the substitution therefor of the following:*(b)* in the case of a tie, another vote shall be taken.*(b)* by the insertion of the following new clause immediately 5
after clause (2):

(3) If at the conclusion of a second vote, there is a tie, a third vote shall be taken, and in the event of a tie, the question shall be lost.

Amendment
of Article 80**21.** Article 80 (2) of the Constitution is amended by the deletion 10
of the word “sitting” and the substitution therefor of the word “meeting”.Repeal and
replacement
of Article 81**22.** The Constitution is amended by the repeal of Article 81
and the substitution therefor of the following:Term and
Prorogation
of
Parliament**81.** (1) The term of Parliament shall be five years 15
commencing from the date that the Members of Parliament are sworn into office after a general election and ending on the date of the next general election.

(2) The National Assembly may, when the Republic is at war, by resolution supported by a simple majority vote of the 20
Members of Parliament, extend the term of Parliament for not more than twelve months at a time.

(3) Subject to clauses (4), (5) and (6), the President may dissolve Parliament if the Executive cannot effectively govern 25
the Republic due to the failure of the National Assembly to objectively and reasonably carry out its legislative function.

(4) Where the President intends to dissolve Parliament in accordance with clause (3), the President shall inform the public and refer the matter, within seven days, to the 30
Constitutional Court.

(5) The Constitutional Court shall hear and determine the matter, referred to it in accordance with clause (4), within seven days of receipt of the matter.

(6) The Constitutional Court shall, where it decides that the situation in clause (3) exists, inform the President and the 35
President shall dissolve Parliament.

(7) Where Parliament is dissolved under clause (3), the President shall, until the President-elect assumes office, continue to perform the executive functions, in accordance with Article 104.

5 (8) Where Parliament is dissolved under clause (3), general elections shall be held within ninety days of the dissolution.

10 (9) The President may, due to a state of war, state of public emergency or threatened state of public emergency, after the dissolution of Parliament and before the holding of general elections, recall the National Assembly that was dissolved.

(10) The President may, in consultation with the Speaker, prorogue Parliament by proclamation.

15 **23.** Article 83 of the Constitution is amended—

Amendment
of Article 83

(a) in clause (1), by the deletion of paragraph (b) and the substitution therefor of the following:

20 (b) been legally disqualified from performing the functions of the Office of Speaker or Deputy Speaker;

(b) clause (5), by the deletion of paragraph (a) and the substitution therefor of the following:

25 (a) are not substantiated, the National Assembly shall, reinstate the Speaker or Deputy Speaker; or; and

(c) in the marginal note, by the insertion of the words “or Deputy Speaker” after the word “Speaker.”

24. The Constitution is amended by the repeal of Article 84 and the substitution therefor of the following:

Repeal and
replacement
of Article 84

30 **84.** (1) There shall be a Clerk of the National Assembly who shall be appointed as prescribed.

Clerk of
National
Assembly

25. Article 88 of the Constitution is amended by the deletion of clause (1) and the substitution therefor of the following:

Amendment
of Article 88

40 (1) A citizen may petition the National Assembly to—

(a) initiate the enactment, amendment or repeal of legislation; or

(b) consider any other matter that falls within the jurisdiction of the National Assembly.

- Amendment of Article 92 **26.** Article 92(2) of the Constitution is amended—
 (a) in paragraphs (a) and (b), by the deletion of the word “consuls,” and the substitution therefor of the words “consuls general”; and
 (b) by the deletion of paragraph (c) and the substitution therefor of the following:
 (c) negotiate and sign international agreements and treaties and, ratify or accede to, or withdraw from, international agreements and treaties; 5
- Repeal and replacement of Article 94 **27.** The Constitution is amended by the repeal of Article 94 and the substitution therefor of the following: 10
- Approval of appointment and measures by National Assembly **94.** (1) Where in this Constitution, an appointment to an office or the taking of a measure by the President is subject to approval by the National Assembly, the National Assembly shall, in the sitting next after receipt of the request for approval, give its approval within thirty days of the commencement of the sitting. 15
- (2) Where the National Assembly does not give its approval within the period specified in clause (1), the President shall propose another measure or appoint another person to that office, and submit that measure or appointment for approval by the National Assembly. 20
- (3) Where the National Assembly refuses or delays the approval for the second time, the President shall propose another measure or appoint another person to that office and shall submit that measure or appointment for approval by the National Assembly. 25
- (4) Where the National Assembly refuses or delays the approval of the measure or appointment for the third time, that measure or appointment shall take effect. 30
- Amendment of Article 95 **28.** Article 95(1) of the Constitution is amended by the deletion of the words “twenty-one” and the substitution therefor of the word “thirty”.
- Amendment of Article 100 **29.** Article 100(2) of the Constitution is amended by the deletion of paragraph (f) and the substitution therefor of the following: 35
 (f) is legally disqualified from performing the executive functions.

30. The Constitution is amended by the repeal of Articles 101, 102, 103 and 104 and the substitution therefor of the following:

Repeal and replacement of Articles 101, 102, 103 and 104

101. (1) A President shall be elected by registered voters in accordance with Article 47(1) and this Article.

Election of President

5 (2) The Returning Officer shall declare the presidential candidate who receives more than fifty percent of the valid votes cast during the election as President-elect.

10 (3) If at the initial ballot, a presidential candidate does not receive more than fifty percent of the valid votes cast, the candidate with the highest number of vote cast shall, within fourteen days of the declaration by the Returning Officer of the presidential election results negotiate and form a coalition government with a presidential candidate that participated in the initial ballot, except that the combined votes of that
15 presidential candidate and the preferred presidential candidate forming the coalition government meet the threshold of more than fifty percent of the valid votes cast.

20 (4) Where the candidate with the highest number of votes fails to form a coalition government within the period specified in clause (3), a second ballot shall be held within thirty-seven days of the initial ballot, where the only candidates shall be the presidential candidates who obtained—

25 (a) the highest and second highest number of valid votes cast in the initial ballot; or

(b) an equal number of the valid votes cast in the initial ballot, being the highest votes amongst the presidential candidates that stood for election to the office of President.

30 (5) The Returning Officer shall declare as President-elect—

(a) the presidential candidate who obtains more than fifty percent of the valid votes cast;

40 (b) in the event of the formation of a coalition, the presidential candidate who obtains the highest number of valid votes cast; and

(c) in the case of a second ballot, the presidential candidate who obtained the majority of the valid votes cast in the second ballot.

- (6) A losing candidate may petition a presidential election in accordance with Article 103.
- Disqualifica-
tion for
run-off
- 102.** (1) A presidential candidate shall not take part in the second ballot, if that presidential candidate—
- (a) resigns for a reason other than ill- health; 5
 - (b) becomes disqualified as specified in Article 100;
 - (c) is disqualified by a decision of the Constitutional Court in accordance with Article 103;
- (2) Where a presidential candidate does not take part in a second ballot because of a reason specified in clause (1), a 10 candidate who scored the third highest number of valid votes cast in the initial ballot, shall be a presidential candidate in the second ballot, together with the remaining presidential candidate that had initially qualified for the second ballot.
- (3) If a presidential candidate— 15
- (a) dies; or
 - (b) resigns due to ill health; before the taking of a second ballot, the running mate to that presidential candidate in the initial ballot shall assume the place of that presidential candidate. 20
- (4) The presidential candidate who assumes the place of the previous presidential candidate in accordance with clause (2) shall appoint a running mate.
- (5) Where both presidential candidates— 25
- (a) resign;
 - (b) become disqualified under Article 100;
 - (c) become disqualified by a decision of the Constitutional Court under Article 103; or
 - (d) die;
- before the taking of the second ballot, fresh nominations shall be 30 filed with the Electoral Commission, as prescribed.
- Election
petition
- 103.** (1) A losing candidate may, within seven days of the declaration made under Article 101(2) and (5), petition the Constitutional Court to nullify the election of a presidential candidate who took part in the initial ballot on the ground 35 that—
- (a) the person was not validly elected; or
 - (b) a provision of this Constitution or other written law relating to presidential elections was not complied with. 40

(2) The Constitutional Court shall hear and determine an election petition filed in accordance with clause (1) within thirty days of the filing of the petition.

5 (3) The Constitutional Court may, after hearing an election petition—

(a) declare the election of the President-elect valid;

(b) nullify the election of the President-elect;

(c) disqualify the President-elect from being a candidate in the second ballot; or

10 (d) grant any other relief the court considers just.

(4) A decision of the Constitutional Court made in accordance with clause (3) is final.

15 (5) A losing candidate may, within seven days of the declaration of President-elect, by the Returning Officer following the second ballot, petition the Constitutional Court to nullify the election of the President-elect on the ground that—

(a) the person was not validly elected; or

20 (b) a provision of this Constitution or other written law relating to presidential elections was not complied with.

(6) The Constitutional Court shall hear and determine an election petition relating to the President-elect within thirty days of the filing of the petition.

25 (7) Where the election of the President-elect and Vice-President is nullified by the Constitutional Court, a presidential election shall be held within sixty days from the date of the nullification.

30 **104.** (1) The President-elect shall be sworn into office and assume office in accordance with Article 105.

Transition
period before
assuming
officer

(2) Subject to clauses (3) and (4), where the Returning Officer declares a presidential candidate as President-elect, the incumbent shall continue to perform the executive functions until the President-elect assumes office, except the power to—

35 (a) make an appointment; or

(b) dissolve the National Assembly.

(3) Subject to Article 105, and except where the incumbent is the President-elect, the incumbent President shall, on the assumption of office by the President-elect, begin and complete the procedural and administrative handing over of the executive functions, to the President-elect, within 5 fourteen days from the day the President-elect assumes office.

Amendment
of Article
107

31. Article 107 of the Constitution is amended by the deletion of the words “physical or mental” wherever the words appear.

Amendment
of Article
108

32. Article 108 of the Constitution is amended by the deletion of— 10

(a) clause (8)(a) and the substitution therefor of the following:

(a) is not substantiated, the National Assembly shall not take further proceedings in respect of the allegation; or; and

(b) by the deletion of clause (9) and the substitution 15 therefor of the following:

(9) The President shall, on the passing of the resolution in accordance with—

(a) clause (8)(a), resume to perform the executive functions; or 20

(b) clause (8)(b), cease to hold office and be amenable to prosecution without the need to lift the immunity under Article 98.

Amendment
of Article
111

33. Article 111 of the Constitution is amended— 25

(a) by the deletion of clauses (3) and (6); and

(b) by the renumbering of clauses (4) and (5) as clauses (3) and (4), respectively.

Repeal and
replacement
subheading

34. The Constitution is amended by the deletion of the sub-heading immediately after Article 112 and the substitution therefor 30 of the following:

“Cabinet, Minister, Provincial Minister and Deputy Minister”.

Amendment
of Article
113

35. Article 113 of the Constitution is amended by the deletion of paragraph (d) and the substitution therefor of the following:

(d) Provincial Ministers; and 35

(e) the Attorney-General and the Chief Whip, as ex-officio members.

36. Article 114 (1) of the Constitution is amended by the deletion of paragraphs (d) and (e) and the substitution therefor of the following:
- 5 (d) accede or ratify or withdraw from international agreements and treaties; and
- (e) approve—
- (i) loans to be contracted by the state; and
- (ii) guarantees on loans contracted by State institutions;
- 10 37. Article 116 (3) of the Constitution is amended—
- (a) by the deletion of paragraph (f) and the substitution therefor of the following:
- (f) the Minister is legally disqualified from performing the functions of that office; and
- 15 (b) by the insertion of the following new clause immediately after clause (3):
- (4) Subject to this Constitution, a Minister shall continue to hold office until the next general election.
- 20 38. The Constitution is amended by the insertion of the following new Article immediately after Article 117:
- 25 **117A.** The President may appoint a prescribed number of Deputy Ministers as the President may consider necessary to assist Ministers in the performance of the Ministers functions and to exercise or to perform on behalf of Ministers functions of the Ministers that the President may authorise in that behalf.
39. Article 119 (2) of the Constitution is amended by the insertion of the words “and determine” immediately after the word
- 30 “hear” wherever it appears.
40. Article 120 of the Constitution is amended—
- (a) in clause (3) by the deletion of—
- (i) paragraph (b) and the substitution therefor of the following:
- 35 (b) jurisdiction, powers and sittings of the courts and other prescribed courts;; and
- (ii) paragraph (e) and the substitution therefor of the following:

Amendment
of Article
114

Amendment
of Article
116

Insertion of
Article
117A

Deputy
Minister

Amendment
of Article
119

Amendment
of Article
120

- (e) jurisdiction, powers and sittings of the courts and other prescribed courts; and
(b) by the deletion of clause (5).
- Amendment of Article 122 **41.** Article 122 of the Constitution is amended by the deletion of clause (1) and the substitution therefor of the following: 5
- (1) In the exercise of the judicial authority, the Judiciary shall be autonomous and shall be subject only to this Constitution and the law and not be subject to the control or direction of a person or an authority.
- Amendment of Article 124 **42.** Article 124 of the Constitution is amended by the deletion of paragraph (c) and the substitution therefor of the following: 10
- (c) an uneven number of judges, as prescribed.
- Repeal and replacement of Article 127 **43.** The Constitution is amended by the repeal of Article 127 and the substitution therefor of the following:
- Establishment and composition of Constitutional Court **127.** There is established the Constitutional Court which consists of— 15
- (a) the Chief Justice;
(b) the President of the Constitutional Court; and
(c) an uneven number of judges, as prescribed.
- Repeal and replacement of Article 129 **44.** The Constitution is amended by the repeal of Article 129 and the substitution therefor of the following: 20
- Sittings of Constitutional Court **129.** The sittings of the Constitutional Court shall be as prescribed.
- Repeal of Articles 138 and 139 **45.** The Constitution is amended by the repeal of Articles 138 and 139. 25
- Amendment of Article 140 **46.** Article 140 of the Constitution is amended by the—
- (a) deletion of paragraph (d); and
(b) the renumbering of paragraph
(e) as paragraph (d).
- Amendment of Article 142 **47.** Article 142 (3) of the Constitution is amended by the deletion of the words “and President of the Constitutional Court”. 30
- Amendment of Article 143 **48.** Article 143 of the Constitution is amended by the deletion of paragraph (a) and the substitution therefor of the following:
- (a) is legally disqualified from performing judicial functions.

49. The Constitution is amended by the repeal of Article 144 and the substitution therefor of the following: Repeal and replacement of Article 144

5 **144.** (1) The removal of a judge may be initiated by the Judicial Service Commission or by a complaint made to the Judicial Service Commission, based on the grounds specified in Article 143. Procedure for removal of judge

(2) The Judicial Service Commission shall, where it decides that a *prima facie* case has been established against a judge, submit a report to the President.

10 (3) The President shall, within seven days from the date of receiving the report, submitted in accordance with clause (2), suspend the judge from office and appoint a Tribunal.

15 (4) The Tribunal shall consist of a Chairperson and at least two members, who all hold or have held the office of judge.

(5) The Tribunal shall, within thirty days of the judge being suspended from office, under clause (3)—

20 (a) hear and determine the matter against the judge on the grounds specified in Article 143 (b), (c) or (d); or

(b) constitute a medical board, in consultation with the body responsible for regulating health practitioners, to inquire into an allegation based on the ground specified in Article 143(a).

25 (6) Where the Tribunal decides that an allegation based on a ground specified in Article 143 (b), (c) or (d) is—

30 (a) not substantiated, the Tribunal shall recommend, to the President, the revocation of the judge's suspension and the President shall immediately revoke the suspension; or

(b) substantiated, the Tribunal shall recommend, to the President, the removal of the judge from office and the President shall immediately remove the judge from office.

35 (7) The proceedings under clause (5) (a) shall be held in camera and the judge is entitled to appear, be heard and represented by a legal practitioner or other person chosen by the judge.

(8) The medical board, constituted in accordance with clause (5) (b), shall consist of not less than three registered health practitioners.

(9) The medical board shall, within thirty days of being constituted, examine the judge and report to the Tribunal on the judge's capacity to perform the judicial functions.

(10) Where the medical board recommends to the Tribunal that the judge is—

(a) capable of performing the judicial functions, the Tribunal shall recommend to the President the revocation of the judge's suspension and the President shall immediately revoke the suspension; or

(b) incapable of performing the judicial functions, the Tribunal shall recommend to the President the removal of the judge from office and the President shall immediately remove the judge from office.

(11) A judge who refuses to submit to an examination, in accordance with clause (9), shall immediately be removed from office by the President.

Amendment
of Article 147

50. Article 147 of the Constitution is amended by the deletion of clause (2) and the substitution therefor of the following:

(2) The concurrent and exclusive functions of the national, provincial and local government levels shall be as prescribed.

Repeal and
replacement
of Article
149

51. The Constitution is amended by the repeal of Article 149 and the substitution therefor of the following:

Provinces
and districts

149. (1) The President may create or divide a province or merge two or more provinces, as prescribed.

(2) A province shall consist of such number of districts, as prescribed.

Repeal and
replacement
of Article
153

52. The Constitution is amended by the repeal of Article 153 and the substitution therefor of the following:

Election of
councillors,
composition
of councils
and tenure

153. (1) A councillor shall be elected in accordance with Article 47(3) by registered voters' resident within the ward.

(2) A council shall consist of the following councillors:
(a) persons elected in accordance with clause (1);

- (b) a mayor or council chairperson;
- (c) not more than three chiefs or three chief's representatives in the district, elected by the chiefs in the district, except that where a district has three or fewer number of chiefs, each chief may nominate a representative; and
- (d) a Member of Parliament elected in accordance with Articles 47(2);
- (3) The system of electing chiefs specified in clause (2) shall be as prescribed.
- (4) A person qualifies to be elected as a councillor, if that person—
- (a) is eighteen years of age or above;
- (b) has obtained, as a minimum academic qualification, a grade twelve school certificate or its equivalent;
- (c) is a citizen resident in the district;
- (d) declares that person's assets and liabilities, as prescribed; and
- (e) has paid that person's taxes or made arrangements satisfactory to the appropriate tax authority for the payment of the taxes.
- (5) A council may invite a person, whose presence is in the council's opinion desirable, to attend and participate in the deliberations of the council but that person shall have no vote.
- (6) The term of a council shall be five years commencing from the date the councillors are sworn into office after a general election and ending on the date of the next general election.

53. The Constitution is amended by the repeal of Article 154 and the substitution therefor of the following:

Repeal and replacement of Article 154

154. (1) There shall be a mayor and a deputy mayor or council chairperson and a deputy council chairperson for every council, as prescribed.

Mayor or council chairperson and deputy mayor or deputy council chairperson

(2) A mayor and deputy mayor or a council chairperson and deputy council chairperson shall be elected-

- (a) by councilors among themselves, as prescribed; and
- (b) for a term of five years and may be re-elected for one further term of five years.

- Repeal and replacement of Article 157
- 54.** The Constitution is amended by the repeal of Article 157 and the substitution therefor of the following:
- Vacation of office or councillors and vacancy
- 157.** (1) A councillor shall vacate office on dissolution of a council.
- (2) The vacation of office of a councillor shall be as 5 prescribed.
- Repeal and replacement of Article 158
- 55.** The Constitution is amended by the repeal of Article 158.
- Repeal and replacement of Article 159
- 56.** The Constitution is amended by the repeal of Article 159 and the substitution therefor of the following:
- Local government elections tribunal
- 159.** The Chief Justice shall establish a number of ad 10 hoc local government election tribunals for election petitions of a councillor as prescribed.
- Repeal and replacement of Article 165
- 57.** The Constitution is amended by the repeal of Article 165 and the substitution therefor of the following:
- Institution of chieftaincy and traditional institutions
- 165.** (1) Subject to clause (2), the institution of 15 chieftaincy and traditional institutions are guaranteed and shall exist in accordance with the culture, customs and traditions of the people to whom they apply.
- (2) The recognition or withdrawal of a person as a chief shall be as prescribed. 20
- (3) Where there is a dispute in respect of an appointment or election of a chief and the dispute is not resolved in accordance with the culture, customs and tradition of the people to whom it applies the dispute shall be resolved by the House of Chiefs. 25
- Amendment of Article 168
- 58.** Article 168 (2) of the Constitution is amended by the deletion of the words “except that of councillor”.
- Repeal and replacement of Article 169
- 59.** The Constitution is amended by the repeal of Article 169 and the substitution therefor of the following:
- House of Chiefs and Function
- 169.** (1) There is established a House of Chiefs. 30
- (2) The House of Chiefs shall consist of five chiefs from each province, elected by the chiefs in a Province, as prescribed.

(3) The members of the House of Chiefs shall elect a Chairperson and Vice-Chairperson of the House of Chiefs, every five years from among themselves.

(4) The functions of the House of Chiefs are to—

5 (a) consider and discuss a Bill relating to custom or tradition referred to it by the President, before the Bill is introduced into the National Assembly;

10 (b) initiate, discuss and make recommendations to the National Assembly regarding socio-economic development in the Province;

(c) initiate, discuss and decide on matters relating to customary law and practice;

15 (d) initiate, discuss and make recommendations to a local authority regarding the welfare of communities in a local authority;

(e) make proposals on areas in customary law that require codification;

(f) advise the Government on traditional and customary matters;

20 (g) resolve succession and any other disputes relating to chieftaincy as prescribed; and

(h) perform other functions as prescribed.

60. Article 170(2) of the Constitution is amended by the deletion of paragraph (d) and the substitution therefor of the following: Amendment of Article 170

25 (d) is convicted of an offence and sentenced to imprisonment for a period exceeding six months without the option of a fine.

61. Article 176 of the Constitution is amended by the deletion— Amendment of Article 176

(a) in clause (1), of the words “in consultation with the Civil Service Commission”;

30 (b) of clause (3) and the substitution therefor of the following:

(3) A person qualifies to be appointed as Secretary to the Cabinet if that person has served in a senior management position in the public service for at least ten years.

35 **62.** The Constitution is amended by the repeal of Article 178 and the substitution therefor of the following:

178. (1) The term of office of the Attorney-General shall be five years and shall run concurrently with the term of the President. Repeal and replacement of Article 178

- (2) The office of the Attorney-General becomes vacant if—
- (a) the Attorney-General is removed from office by the President;
 - (b) another person assumes the office of President; 5
 - (c) the Attorney General dies;
 - (d) the Attorney-General resigns; or
 - (e) the Attorney-General is legally disqualified from performing the functions of that office.
- Amendment of Article 179 **63.** Article 179 of the Constitution is amended— 10
- (a) by the deletion of the words “Solicitor-General” wherever the words appear and the substitution therefor of the words “Deputy Attorney-General”;
- Amendment of Article 183 **64.** Article 183 of the Constitution is amended— 15
- (a) in clause (1), by the deletion of the words “in consultation with the Civil Service Commission”;
 - (b) in clause (3) (a) (ii), by the deletion of the words “province, local authority, State institution or other prescribed body” and the substitution thereof of the words “public body”;; 20
 - and
 - (c) by the deletion of clause (3)(b) and the re-numbering of paragraphs (c), (d) and (e) as paragraphs (b), (c) and (d).
- Amendment of Article 184 **65.** Article 184 (2) is amended by the deletion of paragraph (d). 25
- Amendment of Article 186 **66.** Article 186 is amended by the insertion of the following clause immediately after clause (2):
- (3) A public officer who seeks election under clause (1) shall resign at least two years before the date of election.
- Repeal and replacement of Article 189 **67.** The Constitution is amended by the repeal of Article 189 30 and the substitution therefor of the following:
- Payment of pension benefit 189. **189.** A pension benefit shall be paid promptly and regularly.
- Amendment of Article 192 **68.** Article 192 (2) of the Constitution is amended by the insertion of the following paragraph immediately after paragraph (c): 40
- (d) perform other functions as may be prescribed.

69. Article 193 (1) of the Constitution is amended by the— Amendment of Article 193
(a) insertion of the following paragraph immediately after paragraph (c):
(d) the Anti-Drugs, Economic and Financial Crimes Agency;; and
5 (b) renumbering of paragraph (d) as paragraph (e).
70. The Constitution is amended by the repeal of Article 199 and the substitution therefor of the following: Repeal and replacement of Article 199
- 10 199. A tax shall not be imposed, waived or varied, except as prescribed. Imposition of tax
71. Article 213 of the Constitution is amended by the deletion of clause (2) and the substitution therefor of the following: Amendment of Article 213
(2) The function of the Bank of Zambia is to formulate and implement monetary policy.
- 15 72. Article 214(1) of the Constitution is amended by the deletion of paragraph (b) and the substitution therefor of the following: Amendment of Article 214
(b) a person who has specialised training and proven experience relevant to the functions of the central bank, as prescribed.
- 20 73. Article 215 (d) of the Constitution is amended by the insertion of the word “qualifications,” immediately before the word “tenure”. Amendment of Article 215
74. The Constitution is amended by the repeal of Part XVIII and the substitution therefor of the following: Repeal and replacement of Part XVIII

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PART XVIII

SERVICE, INVESTIGATIVE AND OTHER COMMISSIONS AND INDEPENDENT OFFICES

216. (1) A service, investigative or other commission may be established as prescribed. Commissions
- 30 (2) A commission shall—
(a) be subject only to this Constitution and the law;
(b) be independent;
(c) act with dignity, professionalism, propriety and integrity;
35 (d) be non-partisan; and
(e) be impartial in the exercise of its authority.

Financial
and
independence
of
Commission

217. (1) A commission shall be a self-accounting institution which deals directly with the Ministry responsible for finance in matters relating to its finances.

(2) A commission shall be adequately funded in a financial year to enable it to effectively perform its functions. 5

Expenses of
Commission

218. The expenses of a commission, including emoluments payable to, or in respect of, persons serving with that commission, shall be a charge on the Consolidated Fund.

Electoral Commission of Zambia

Electoral
Commission
of Zambia

219. (1) There is established the Electoral Commission 10 of Zambia which shall be independent and have offices in Provinces and in districts, progressively.

(2) The Electoral Commission shall—

(a) implement the electoral process;

(b) conduct elections and referenda; 15

(c) register voters;

(d) settle minor electoral disputes, as prescribed;

(e) regulate the conduct of voters and candidates;

(f) accredit observers and election agents, as prescribed;

(g) delimit electoral boundaries; and 20

(h) perform such other functions, as prescribed.

Human Rights Commission

Human
Rights
Commission

220. (1) There is established the Human Rights Commission which shall have offices in the provinces and districts, progressively. 25

(2) The Human Rights Commission shall ensure that the Bill of Rights is upheld and protected.

(3) The Human Rights Commission shall—

(a) investigate and report on the observance of rights and freedoms; 30

(b) take necessary steps to secure appropriate redress where rights and freedoms are violated;

(c) endeavour to resolve a dispute through negotiation, mediation or conciliation;

(d) carry out research on rights and freedoms and related 40 matters;

(e) conduct civic education on rights and freedoms; and

(f) perform such other functions as prescribed.

Investigative Commissions

221. (1) There is established the Anti-Corruption Commission as an Investigative Commission. Investigative Commission

5 (2) The functions of the Anti-Corruption Commission shall be as prescribed.

Other Independent Offices

222. (1) There is a Public Protector appointed by the President, subject to ratification by the National Assembly. Public Protector

10 (2) A person qualifies for appointment as Public Protector if that person—

(a) is qualified to be appointed as a judge; and

(b) does not hold a State office or Constitutional office.

(3) The office of Public Protector shall progressively be decentralised to the Provinces and to districts, as prescribed.

15 223. (1) The Public Protector may investigate an action or decision taken or omitted to be taken by a State institution in the performance of an administrative function. Functions of Public Protector

(2) For purposes of clause (1), an action or decision taken or omitted to be taken is an action or decision which is—

20 (a) unfair, unreasonable or illegal; or

(b) not compliant with the rules of natural justice.

(3) For purposes of clauses (1) and (2), the Public Protector may—

25 (a) bring an action before a court;

(b) hear an appeal by a person relating to an action or decision taken or omitted to be taken in respect of that person; and

30 (c) make a decision on an action to be taken against a public office or Constitutional office holder, which decision shall be implemented by an appropriate authority.

(4) The Public Protector shall not be subject to the direction or control of a person or an authority in the performance of the functions of office.

35 (5) The Public Protector has the same powers as those of the High Court in—

(a) enforcing the attendance of witnesses and examining them on oath;

(b) examining witnesses outside Zambia;

(c) compelling the production of documents;
(d) enforcing decisions issued by the Public Protector;
and

(e) citing a person or an authority for contempt for failure
to carry out a decision. 5

(6) A person summoned to give evidence or to produce
a document before the Public Protector is entitled, in respect
of that evidence or the production of the document, to the
same privileges and protection as those that a person would 10
be entitled to before a court.

(7) An answer by a person to a question put by the Public
Protector is not admissible in evidence against that person in
civil or criminal proceedings, except for perjury.

Limitation of
powers of
Public
Protector

224. The Public Protector shall not investigate a 15
matter which—

(a) is before a court, court martial or a quasi-judicial
body;

(b) relates to an officer in the Parliamentary Service or
Judicial Service; 20

(c) involves the relations or dealings between the
Government and foreign government or an
international organisation; and

(d) relates to the exercise of the prerogative of mercy;
or 25

(e) is criminal in nature.

Performance
of functions
of Public
Protector
during,
absence
illness or
other cause

225. Where the Public Protector is absent from
Zambia or is unable to perform the functions of office due to
illness or other cause, the President shall appoint a person
qualified to perform the functions of the Public Protector until 30
that appointment is revoked or until the Public Protector
returns to office.

Tenure of
Office of
Public
Protector

226. (1) Subject to this Article, the Public Protector shall
retire from office on attaining the age of sixty years.

(2) The Public Protector may retire, with full benefits, 35
on attaining the age of fifty-five years.

(3) The Public Protector may be removed from office
on the same grounds and procedure as apply to a judge, with
the necessary modification.

(4) The Public Protector may resign from office by three 40
months' notice, in writing, to the President.

227. The office of the Public Protector shall report to the National Assembly on matters concerning its affairs. Report to National Assembly
228. (1) There is an Auditor-General appointed by the President, subject to ratification by the National Assembly. Auditor-General
- 5 (2) The office of Auditor-General shall be decentralised to the Provinces and to districts progressively, as prescribed.
- (3) The following shall be prescribed:
- (a) the qualifications of the Auditor-General;
- 10 (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.
229. (1) The Auditor-General shall— Functions of Auditor-General
- 15 (a) audit the accounts of—
- (i) State organs, State institutions, provincial administration and local authorities; and
- (ii) institutions financed from public funds;
- (b) audit the accounts that relate to the stocks, shares and stores of the Government;
- 20 (c) conduct financial and value for money audits, including forensic audits and any other type of audit, in respect of a project that involves the use of public funds;
- 25 (d) ascertain that money appropriated by Parliament or raised by the Government and disbursed-
- (i) has been applied for the purpose for which it was appropriated or raised;
- (ii) was expended in conformity with the authority that governs it; and
- 30 (iii) was expended economically, efficiently and effectively; and
- (e) recommend to the Director of Public Prosecutions or a law enforcement agency any matter within the competence of the Auditor-General, that may require to be prosecuted.
- 35 (2) The Auditor-General and any other officer authorised by the Auditor-General shall have access to all books, records, reports and other documents relating to any of the accounts referred to in clause (1).
- 40

(3) The Auditor-General shall not be subject to the direction or control of a person or an authority in the performance of the functions of that office.

Performance of functions of Auditor-General during absence, illness or other cause

230. Where the Auditor-General is absent from Zambia or is unable to perform the functions of office due to illness or other cause, the President shall appoint a person qualified to perform the functions of the Auditor-General until that appointment is revoked or until the Auditor-General returns to office.

Tenure of office of Auditor-General

231. (1) Subject to this Article, the Auditor-General shall hold office for a term of seven years or retire from office on attaining the age of sixty-five years, whichever is earlier.

(2) The Auditor-General may retire, with full benefits, on attaining the age of fifty-five years.

(3) The Auditor-General may be removed from office on the same grounds and procedure as apply to a judge, with the necessary modifications.

(4) The Auditor-General may resign from office by giving three months' notice in writing, to the President.

Repeal of Article 264

75. The Constitution is amended by the repeal of Article 264.

Amendment of Article 266

76. Article 266 of the Constitution is amended—

(a) by the deletion of the definitions of “adult”, “chief”, “child”, “commission”, “councillor”, “devolution”, “pension benefit”, “public office”, “public officer”, “public service”, “service commissions”, “State institution”, “sub-national”, “young person” and “youth” and the substitution therefor of the following:

“adult” means a person who has attained, or is above, the age of eighteen years;

“chief” means a person bestowed as chief and who derives allegiance from birth or descent, in accordance with the customs, traditions, usage or consent of the people in a chiefdom or is recognised as prescribed;

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

“councillor” means a person elected to sit in the council in accordance with Article 47(3) during the local government elections;

“Deputy Minister” means a person appointed as a Deputy Minister;

5 “devolution” means a form of decentralisation where there is a transfer of rights, functions and powers of an office from the central government or State institution to a province or district authority and the word “devolved” shall be construed accordingly;

10 “pension benefit” includes a pension, gratuity or compensation in respect of a person’s service;

“province” means an administrative division of government at provincial or district level;

15 “public office” means an office whose emoluments and expenses are a charge on the Consolidated Fund or other prescribed public fund;

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

20 “public service” includes a commission, Judicial Service Commission, Public Service Commission and Teaching Service Commission;

“young person” means a person who has attained the age of fifteen years, but is below the age of eighteen years; and

25 “youth” means a person between the age of fifteen years and thirty-five years.; and

(b) by the insertion, of the following new definitions in alphabetical order:

30 “appropriate authority” means an authority responsible for determining the emoluments of public officers, chiefs and members of the House of Chiefs as provided in this Constitution or as prescribed;

“legally disqualified” means a disqualification by a court or quasi-judicial body established by law;

35 “meeting” means a series of sittings of the National Assembly, for a period beginning when the National Assembly first sits after being summoned and terminating when the National Assembly is adjourned sine die;

“public body” means the Government, a Ministry or department of the Government, the National Assembly, the Judicature, a local authority, parastatal, Commission or other body appointed by the Government or established by or under, 5 any law, except a private body and “public bodies” shall be construed accordingly;

“sitting” in relation to a calendar day means the period between the time when the Speaker calls the Assembly to Order and the time when the 10 Assembly is adjourned; and

“Standing Orders” means the Standing Orders of the National Assembly made under Article 77.

Amendment of Article 272 **77.** Article 272 of the Constitution is amended by the insertion of the words “within such period as it shall determine” between 15 the words “may” and “enact”.

Repeal of Annex **78.** The Constitution is amended by the repeal of the Annex. 10

General amendment **79.** The Constitution is amended by the deletion of—
 (a) the words “the Emoluments Commission” wherever the words appear and the substitution therefor of the words 20 “an appropriate authority”;
 (b) the words “Director of Public Prosecutions” wherever the words appear and the substitution therefor of the words “Prosecutor-General”;
 (c) the words “progressively to districts” and the substitution 25 therefor of the words “to districts progressively”.