

The State of Human Rights in the Zambian Constitution over the years

A Practical Guide for Citizens

SUPPLEMENT

Compiled and Edited

By

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Table of Contents

| | |
|--|------------|
| Preface to the Supplement | iii |
| PART 1: THE ZAMBIAN SEARCH FOR AN IDEAL CONSTITUTION | |
| Chapter 2: Constitutional Reviews | 1 |
| 2.4 National Constitutional Conference (2007-2010) | 1 |
| 2.5 Technical Committee Drafting the Zambian Constitution (2011-2014) | 81 |
| PART 3: CHALLENGES TO THE REALISATION OF HUMAN RIGHTS IN ZAMBIA | |
| Chapter 12: Enforcement Mechanism of Human Rights | 190 |
| 12.3 Human Rights Commission | 190 |
| 12.4 Gender Equality Commission | 193 |
| Conclusion | 195 |
| Comment on: Constitutional Amendment (2016) | 196 |
| References | 200 |

Preface to the Supplement

This is a supplement to Chapters 2 and 12 of the earlier edition of the unpublished manuscript that was compiled and edited by the author in 2008 in Accra, Ghana. The contents of the cited constitutional reviews processes have been kept in their original form. It is the hope of the author that the reader will be availed an opportunity to understand the values and aspirations of the submissions at the time they were made. Keeping the original content and format also affords a rare opportunity to the reader to have a feel of an on-spot analysis of people's submissions and what they wished to be in their Bill of Rights. This supplement contains the end product of the referendum and highlights the reasons behind the referendum failures. The updated versions of the supplement were made in June 2019. Comments on how the entire work could be improved are most welcome. Email your suggestions to: simsonmwale@yahoo.com.

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PART 1: THE ZAMBIAN SEARCH FOR AN IDEAL CONSTITUTION

Chapter 2: Constitutional reviews process

2.4. National Constitutional Conference (2007-2010)

The National Constitutional Conference (NCC), a brain child of the Zambia Centre for Inter-Party Dialogue, was established amid heated debates of the much contested National Constitutional Conference Act, No. 19 of 2007. In November 2007, NCC elected its leadership that was made up of Member of Parliament Chifumu Banda of Forum for Democracy and Development as Chairperson, Leonard Hikaumba of the Zambia Congress of Trade Unions and Member of Parliament Fostina Sinyangwe of Patriotic Front as Vice Presidents and Lusaka-based lawyer Mwangala Zaloumis as Spokesperson. In April 2008, the NCC resumed its operations presumably to complete its work according to the Act within one year's time. However, the NCC only managed to submit its final report and draft constitution in 2010.

NATIONAL CONSTITUTIONAL CONFERENCE REPORT, 2010

Part VI: Bill of Rights

10.1 Introduction

10.1.1 The Human rights is understood to mean all those conditions of life that men and women have a right to expect by virtue of being human. The concept involves claims, rights and privileges which every individual can expect, irrespective of colour, race, sex, religion, status in life, or origin.

10.1.2 Internationally, these rights have been grouped into three, namely,

- (a) civil and political rights (first generation rights);
- (b) economic, social and cultural rights (second generation rights); and
- (c) group or solidarity rights (third generation rights).

10.1.3 Civil and political (first generation) rights are normally phrased in such a manner as to require the State to refrain from interfering with the enjoyment of these rights by the individual. Examples of these rights are freedom of expression, freedom of conscience, freedom of assembly and association, freedom of movement, and the right to personal liberty.

10.1.4 By contrast, economic, social and cultural rights are demands that the State should take positive action in support of the individual by adopting measures which positively support the

individual to secure certain standards of life in areas such as education, health and social security.

10.1.5 While first generation rights are widely enshrined in the Constitutions of many countries, second generation rights are considered by many to still be aspirational, especially for developing countries which may not be able to realise them until such a time that their economies are able to support their realisation.

10.1.6 Similarly, though as important to the community as to the individual, group or solidarity rights have been recognised more recently and include the right to a clean, healthy and sustainable environment; the right to peace; the right to nurturing one's culture and to development. These rights are yet to be enshrined in the Constitutions of many countries.

10.1.7 In Zambia, civil and political rights are currently protected in the Constitution under the Bill of Rights, which forms Part III of the Constitution and are to be enjoyed by all individuals subject to limitations which are intended to protect the rights and freedoms of others as well as considerations of public interest. In contrast, are both economic, social and cultural and group rights currently provided in Part IX providing for directive principles of State policy and not justiciable.

10.1.8 The Commission summarised the major limitations of the current Bill of Rights as follows:

- (a) the number of rights protected is limited and does not, for example, adequately address the rights of children, women and other vulnerable groups;
- (b) the enjoyment of these rights is made subject to a number of derogation clauses. Most of the rights are restricted on the grounds of defence, public safety, public order, public morality and public health;
- (c) the anti-discrimination clause, [Article 23 (4) (c)], which sanctions discrimination in matters of personal law such as related to adoption, marriage, divorce, burial, devolution of property on death or other such matters;
- (d) only a person whose right or freedom is infringed or threatened can seek redress;
- (e) although the current Constitution tacitly recognises second generation rights, these are in the Directive Principles of State Policy and are therefore not enforceable; and
- (f) in respect of third generation rights, namely group or solidarity rights, these are completely ignored except for the directive principles of State policy relating to a clean and healthy environment.

10.1.9 All human rights are to be enjoyed by all individuals in Zambia, subject to limitations which are intended to protect the rights and freedoms of others as well as consideration of public interest.

10.2 Provision on the Bill of Rights in the Draft Constitution

The Bill of Rights is presented under Part VI of the Draft Constitution as follows:

- (a) with the exception of Article 50, Articles 27 to 66 inclusive, provide for civil and political rights; and
- (b) Articles 67 to 75 inclusive, provide for both economic, social and cultural rights and group rights.

10.3 Article 27: Fundamental Rights and Freedoms

10.3.1 Recommendations of the Commission

On the status, application and interpretation of the Bill of Rights the Commission recommended that the Constitution should not provide that the Bill of Rights is superior to other provisions of the Constitution.

10.3.2 Provisions in the Draft Constitution on Fundamental rights and freedoms

Article 27 provides as follows:

- “27. (1) The Bill of Rights is fundamental to Zambia’s democratic State and shall be the framework for the adoption of social, political, economic and cultural policies.
- (2) The purpose of the Bill of Rights is to fulfill the National goals, values and principles by preserving the dignity of individuals and communities, promoting social justice and realising the potential of all human beings.
- (3) The rights and freedoms set out in this Part –
- (a) are inherent in each individual and -
 - (i) are not granted by the State; and
 - (ii) cannot be taken away by the State;
 - (b) do not exclude other rights that are not expressly mentioned in this Part; and
 - (c) are subject only to the limitations contained or contemplated in this Constitution.”

10.3.3 Deliberations of the Conference on Article 27

10.3.3.1 In debating Article 27 (3) (b), the Conference observed that paragraph (b) of clause (3) referred to other rights that are not expressly mentioned in this Part. The view of the Conference was that the provision might cause more problems than solutions because the Bill of Rights should state expressly the rights and freedoms it protects. The Conference decided that clause (3) (b) should be deleted because of lack of clarity.

10.3.3.2 The Conference further observed that there was a conflict between paragraphs (a) and (c) of clause (3) of Article 27. Sub-paragraphs (i) and (ii) of paragraph (a) provide that the “State” cannot grant or take away the rights and freedoms of an individual and yet paragraph

(c) provides for limitations “contemplated” in the Constitution. The Conference further observed that the reference in paragraph (c) to “limitations contemplated” in this Constitution was ambiguous and a potential source of litigation as it was subject to different interpretations. The Conference, therefore, deleted the words “or contemplated.”

10.3.4 Resolutions of the Conference

10.3.4.1 The Conference adopted Article 27 with amendments and renumbered it as Article 36 as follows:

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

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

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

(a) inherent in each individual and -

(i) are not granted by the State; and

(ii) cannot be taken away by the State; and

(b) subject only to the limitations contained in this Constitution.”

10.4 Article 28: Duty of State to Promote Rights and Freedoms

10.4.1 Recommendations of the Commission

The Commission did not make any specific recommendations on the duty of the State to promote rights and freedoms but provided for it in Article 28.

10.4.2 Provisions in the Draft Constitution on Duty of State to promote rights and freedoms

Article 28 provides as follows:

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

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

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

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

10.4.3 Deliberations of the Conference on Article 28

10.4.3.1 In debating Article 28, the Conference observed that the primary responsibility of the State was to equip State organs and institutions to ensure that, within resources available, they provided for the needs of different sectors of the society with respect to the Bill of Rights.

10.4.3.2 The Conference decided that:

(a) clause (1), be amended to substitute the phrase "every State organ and State institution" with the term "State";

(b) clause (3), be amended to substitute the phrase "relevant State institutions including the Human Rights Commission, shall equip themselves" with the phrase "Subject to this Constitution, the State shall equip relevant State organs and State institutions".

10.4.3.3 The Conference approved clauses (2) and (4) without amendments but resolved that the term "civil society" in clause (2) be defined.

10.4.4 Resolutions of the Conference

10.4.4.1 The Conference, accordingly, adopted Article 28 with amendments and re-numbered it as Article 37 as follows:

"37. (1) It is a fundamental duty of the State to respect, protect, promote and fulfil the Bill of Rights.

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

(3) Subject to this Constitution, the State shall equip relevant State institutions and State organs, to meet the needs of different sectors of the society with respect to the Bill of Rights.

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

10.5 Article 29: Application of Bill of Rights

10.5.1 Recommendations of the Commission

The Commission did make any specific recommendations on the application of the Bill of Rights but provided for it in Article 29.

10.5.2 Provisions in the Draft Constitution on the Application of the Bill of Rights

Article 29 provides as follows:

"29. (1) This Part applies to the interpretation and application of the Laws and binds all State organs, State institutions and all persons.

(2) A natural or juristic person enjoys the benefit of any right or freedom in this Part, to the extent possible, given the nature of the right or freedom and of the person.

(3) This Part binds a natural or juristic person, to the extent possible, given the nature of the right or freedom and the nature of any duty imposed by that right or freedom.

(4) A person shall exercise a right or freedom in a manner consistent with this Bill of Rights.

(5) When applying this Bill of Rights a court –

(a) shall apply and, if necessary, develop the Law to the extent where legislation does not give effect to a right or freedom; and

(b) may develop rules of the Law to interpret a right or freedom in a manner consistent with the limitations and derogations permitted under this Bill of Rights.”

10.5.3 Deliberations of the Conference on Article 29

The Conference debated and adopted Article 29 without amendments.

10.5.4 Resolutions of the Conference

The Conference adopted Article 29 without amendments and re-numbered it as Article 38 as follows:

“38. (1) This Part applies to the interpretation and application of the laws and binds all State organs, State institutions and all persons.

(2) A natural or juristic person enjoys the benefit of any right or freedom in this Part, to the extent possible, given the nature of the right or freedom and of the person.

(3) This Part binds a natural or juristic person, to the extent possible, given the nature of the right or freedom and the nature of any duty imposed by that right or freedom.

(4) A person shall exercise a right or freedom in a manner consistent with this Bill of Rights.

(5) When applying this Bill of Rights a court-

(a) shall apply and, if necessary, develop the law to the extent where legislation does not give effect to a right or freedom; and

(b) may develop rules of the law to interpret a right or freedom in a manner consistent with the limitations and derogations permitted under this Bill of Rights.”

10.6 Article 30: Interpretation of Bill of Rights

10.6.1 Recommendations of the Commission

The Commission did not make any specific recommendations on interpretation of the Bill of Rights but provided for it in Article 30.

10.6.2 Provisions in the Draft Constitution on Interpretation of Bill of Rights

Article 30 provides as follows:

“30. (1) When interpreting and applying a provision of this Bill of Rights, a court, tribunal, the Human Rights Commission or any other body shall promote the values that underlie an open and democratic society based on human dignity, equality and freedom.

(2) When interpreting any legislation and when developing the Law, every court, tribunal, the Human Rights Commission or other body shall promote the spirit, purpose and objectives of the Bill of Rights."

10.6.3 Deliberations of the Conference on Article 30

The Conference debated and adopted Article 30 without amendments.

10.6.4 Resolutions of the Conference

The Conference adopted Article 30 without amendments and re-numbered it as Article 39 as follows:

"39. (1) When interpreting and applying a provision of this Bill of Rights, a court, tribunal, the Human Rights Commission or any other body shall promote the values that underlie an open and democratic society based on human dignity, equality and freedom.

(2) When interpreting any legislation and when developing the law, every court, tribunal, the Human Rights Commission or other body shall promote the spirit, purpose and objectives of the Bill of Rights."

10.7 Article 31: Right to Life

10.7.1 Recommendations of the Commission

The Commission recommended that:

- (a) for the time being, the death penalty be retained; and
- (b) further public debate and a national referendum should be conducted on the subject.

10.7.2 Provisions in the Draft Constitution on Right to life

Article 31 provides as follows:

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

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

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

- (a) in the defence of a person's property;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) for the purpose of suppressing a riot, insurrection, mutiny or due to a lawful act of war; or

(d) in order to prevent the commission by that person of a criminal offence."

10.7.3 Deliberations of the Conference on Article 31

10.7.3.1 In debating Article 31, the Conference observed that important provisions on the loss of life relating to the termination of pregnancy in deserving cases and for the defence of a person from violence had been omitted. The Conference consequently adopted clauses (2) and (3) (a) of Article 12 of the current Constitution.

10.7.3.2 Clauses (2) and (3) (a) of Article 12 of the current Constitution provide, respectively as follows:

"12. (2) A person shall not deprive an unborn child of life by termination of pregnancy except in accordance with the conditions laid down by an Act of Parliament for that purpose"; and

"(3) (a) for the defence of any person from violence or for the defence of property."

10.7.3.3 With regard to clause (2), the Conference adopted it without amendments after extensive debate. The Conference was divided between those who supported the retention of death penalty in the Constitution and those who supported its abolition.

10.7.3.4 Members who supported the abolition of the death penalty argued that:

(a) the life of a person should not be taken away under any circumstances. Therefore, a person who committed a serious crime, should be put in prison for life without an option of parole;

(b) there were no compelling reasons that justified the death sentence;

(c) to take the life of any person as a punishment did not benefit anyone because the executed person had no chance to repent. In addition, they stated that it was untrue that execution was a deterrent;

(d) having adopted the clause which stated that "every person had a right to life", it was contradictory to provide a clause that promoted the taking away of life;

(e) that the intention of evolution was to make human beings better and the death penalty was a departure from that trend;

(f) there was a call on everyone to forgive seventy times multiplied by seventy;

(g) that God said "revenge is mine" and Jesus Christ discouraged revenge based on "an eye for an eye" ; and

(h) that "two wrongs did not make a right".

10.7.3.6 Members who supported the retention of the death penalty queried as to why those who murdered people should be accorded human rights and yet the victims they killed were denied their right to life and argued that:

- (a) that the Bible supported capital punishment by giving power to the State to execute capital punishment and cited an example of persons such as David who were allowed to take life;
- (b) that there were crimes of treason, and terrorism which required those guilty not to be protected as they were likely to kill again;
- (c) that crime in some countries had escalated beyond control because those countries had removed the deterrent to crime by abolishing the death penalty;
- (d) that it would be traumatic for the families of the victims to live with the fact that the person who had killed their loved ones was still alive and that they continued to pay taxes for the welfare of the criminal;
- (e) that the lives of law enforcement agents would be endangered because they would be killed by criminals who would not have to fear for their own lives;
- (f) that convicted persons were given ample time to repent before they were executed;
- (g) that it was unfair for life to be taken away, but when one took away a life they too must be killed;
- (h) that criminals suspended their right to life when they killed another person; and
- (i) the death penalty was supported even in the Bible as evidence by different passages such as "whoever kills any man shall be put to death", "do unto others as you would have them do unto you", "let every soul be subject to the governing authority, "one who takes life of another should be prepared to lose their life", "those who sin will be judged and condemned to death", "the wages of sin is death", "the soul that sinneth shall surely die", "if a man commits a sin that leads to death, he must not be prayed for", and "he that lives by the sword shall die by the sword".

10.7.4 Resolutions of the Conference

The Conference adopted Article 31 with amendments and re-numbered it as Article 40 as follows:

- "40. (1) Every person has, subject to clauses (2) and (3), the right to life, which begins at conception.
- (2) A person shall not be deprived of life intentionally, except in the execution of a sentence of a court in respect of a criminal offence under the law in force of which that person has been convicted.

(3) A person shall not deprive an unborn child of life by termination of pregnancy except in accordance with the conditions laid down by an Act of Parliament for that purpose.

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

(a) for the defence of any person from violence or for the defence of a person's property;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) for the purpose of suppressing a riot, insurrection, mutiny or due to a lawful act of war; or

(d) in order to prevent the commission by that person of a criminal offence."

10.8 Article 32: Human Dignity

10.8.1 Recommendations of the Commission

The Commission recommended that:

(a) the provision in the current Constitution that guaranteed protection from cruel, inhuman and degrading treatment should be maintained; and

(b) the appropriate law should provide for stiffer penalties for anyone violating this right.

10.8.2 Provisions in the Draft Constitution on Human dignity

Article 32 provides as follows:

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

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

10.8.3 Deliberations of the Conference on Article 32

10.8.3.1 The Conference adopted clause (1) without amendments. The Conference further resolved to reinforce the Article by adopting Article 15 of the current Constitution.

10.8.3.2 Article 15 of the current Constitution provides as follows:

"15. A person shall not be subjected to torture or to inhuman or degrading punishment or other like treatment;"

10.8.3.3 The Conference decided to delete clause (2).

10.8.3.4 The Conference also observed that the provision of Article 32 was non-derogable as was provided for in Article 77 of the Draft Constitution. However, arising from its decision to provide for limitations, derogations and non-derogation in appropriate individual Articles as opposed to

providing for those matters in separate general limitations, derogation or non-derogation Articles, the Conference adopted a new clause (3) of Article 32 to provide for non-derogation.

10.8.3.5 The Conference also amended the marginal note to read "Protection from inhuman treatment."

10.8.4 Resolutions of the Conference

The Conference accordingly, adopted Article 32 with amendments and re-numbered it as Article 41 as follows:

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

(2) A person shall not be subjected to torture, or inhuman or degrading punishment or other like treatment.

(3) Notwithstanding any other provision in this Constitution, the protection from inhuman or degrading punishment or other like treatment shall not be derogated from."

10.9 Article 33: Equality Before Law

10.9.1 Recommendations of the Commission

The Commission recommended that the Constitution should:

- (a) not specify limitations to or derogations from the right to non-discrimination;
- (b) specify, but not limit the grounds on which discrimination is prohibited; and
- (c) that these should be extended to include different treatment on the basis of gender, religion, health status, economic and social status, disability and age.

10.9.2 Provisions in the Draft Constitution on Equality before law

Article 33 provides as follows:

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

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

10.9.3 Deliberations of the Conference on Article 33

The Conference debated and adopted Article 33 of the Draft Constitution without amendments and observed that the Article adequately provided broadly for every person by not limiting its application by itemising the possible grounds of protection.

10.9.4 Resolutions of the Conference

The Conference accordingly, adopted Article 33 of the Draft Constitution without amendments and re-numbered it as Article 42 as follows:

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

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

10.10 Article 34: Fair Administration

10.10.1 Recommendations of the Commission

The Commission did not make any specific recommendations on fair administration but provided for in Article 34.

10.10.2 Provisions in the Draft Constitution on Fair Administration

Article 34 provides as follows:

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

(2) Every person whose rights have been affected by administrative action has the right to be given written reasons for the action.

(3) Parliament shall enact legislation to -

(a) give effect to clauses (1) and (2);

(b) provide for the review of administrative action by a court or, where appropriate, an independent and impartial tribunal; and

(c) promote an efficient public administration.”

10.10.3 Deliberations of the Conference on Article 34

10.10.3.1 In debating Article 34, the Conference adopted clause (1) and deleted clauses (2) and (3).

10.10.3.2 In debating clause (2) of Article 34, the Conference decided that it was inappropriate to provide in the Constitution for a right of a person to written reasons for any administrative action taken against that person in all cases and therefore, deleted it.

10.10.3.3 Some members in debating clause (3) of Article 34, argued that:

(a) paragraph (a), would make Article 34 inoperative as long as Parliament did not pass an enabling legislation;

(b) paragraph (b), provided for possibility of creating another body or tribunal when institutions already existed to deal with matters of administrative impropriety; and

(c) paragraph (c), would apply only to the public sector when protection and promotion of human rights ought to be extended to private persons, institutions and entities as well.

10.10.3.4 The Conference, therefore, decided to replace clause (3) with the provision of Article 18 of the Constitution of Namibia which provides that:

“18. Administrative bodies and administrative officials shall act fairly and reasonably and comply with the requirements imposed upon such bodies and officials by common law

and any relevant legislation, and persons aggrieved by the exercise of such action and decisions shall have the right to seek redress before a competent Court or Tribunal."

10.10.4 Resolutions of the Conference

The Conference adopted Article 34 with amendments and re-numbered it as Article 43 as follows:

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

(2) Administrative bodies and administrative officials shall act fairly and reasonably and comply with requirements imposed upon such bodies and officials by common law and any relevant legislation, and persons aggrieved by the exercise of such acts and decisions shall have the right to seek redress before a competent Court or Tribunal."

10.11 Article 35: Right to Refuse Unlawful Instructions

10.11.1 Recommendations of the Commission

The Commission did not make specific recommendations on the right to refuse unlawful instructions but provided for it in Article 35.

10.11.2 Provisions in the Draft Constitution on Right to refuse unlawful instructions

Article 35 provides as follows:

"35. (1) Every person has a right to refuse to obey any unlawful instruction.

(2) A person who instigates or induces another to carry out an unlawful instruction or who, being able to prevent the carrying out of an unlawful instruction, fails to do so, shall be an accomplice and shall be liable to prosecution and to pay damages to any injured party.

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

10.11.3 Deliberations of the Conference on Article 35

10.11.3.1 In debating Article 35, most members argued that clause (1) was ambiguous because it was difficult to establish what a lawful instruction was and who would give an interpretation.

10.11.3.2 Some members who supported the provision argued that the clause was about rightful orders. It was argued that the clause would help to prevent corruption.

10.11.3.3 The Conference decided to delete clause (1) and as a consequence also deleted clauses (2) and (3).

10.11.4 Resolutions of the Conference

The Conference resolved to delete Article 35 of the Draft Constitution.

10.12 Article 36: Right To Justice

10.12.1 Recommendations of the Commission

10.12.1.1 The Commission recommended that:

- (a) the right of access to justice should be enshrined in the Constitution under the Bill of Rights;
- (b) legislation should be enacted to give the Chief Justice enough administrative powers to supervise, monitor and keep a record of timely delivery of judgments;
- (c) the Judicial Service Commission should be given supervisory powers by the Constitution;
- (d) Article 18 of the Constitution should be maintained, but should include a provision specifying that an accused person must be brought before a court within reasonable time, but in any case not later than 48 hours after arrest;
- (e) the right to legal representation should be enshrined in the Constitution;
- (f) the right to administrative justice as well as the right to judicial review of administrative actions should be enshrined in the Constitution;
- (g) appropriate legislation should be enacted to provide for the procedural and substantive details of these rights;
- (h) the ground for removal of Judges for incompetence in the Constitution should include failure to deliver judgment within a reasonable time and without undue delays;
- (i) the Legal Aid Department should be restructured, strengthened and decentralised to all provinces and districts;
- (j) that Small Claims Court established under the Small Claims Court Act should be re-established and strengthened;
- (k) individual accountability should be made a provision under the Constitution in order to enhance observance of the Bill of Rights, but this should be in addition to the existing provisions of the law on accountability; and
- (l) the Constitution should provide that no security for costs shall be ordered by Courts in matters of public interest litigation and that existing provisions on vexatious and frivolous litigation should be retained.

10.12.1.2 The Commission further recommended that in order to redress the abuse of immunity and deprivation of the right to justice:

- (a) the Constitution should explicitly provide relief to aggrieved parties against the State in enforcing judgments and that this relief should be extended to local authorities and other public institutions; and
- (b) the State Proceedings Act should be amended so that judgement can be executed after a period of six months.

10.12.2 Provisions in the Draft Constitution on Right to Justice

Article 36 provides as follows:

- “36. (1) Every person has the right to have any dispute resolved and decided timely and to have a fair public hearing before a court or, where appropriate, another independent and impartial tribunal.
- (2) Where a person has any claim or judgement against the State-
- (a) the claim may be instituted by proceedings against the State; and
 - (b) the judgment may be enforced by execution against the State, a local authority or other public institution after six months of the delivery of the judgement.
- (3) The State shall be liable in tort to the same extent as a private person of full age and capacity.
- (4) The courts shall not order any security for costs on matters of public interest litigation.
- (5) All offences are bailable but a court shall have the power to determine whether or not bail should be granted in any particular case either unconditionally or subject to reasonable conditions.
- (6) Illegally obtained evidence shall not be admissible in a trial against an accused person, unless excluding that evidence would be detrimental to the administration of justice.”

10.12.3 Deliberations of the Conference on Article 36

10.12.3.1 In debating paragraphs (a) and (b) of clause (2), the Conference acknowledged that the State should meet its obligations in time in order to resolve problems which beneficiaries encountered when seeking payments.

10.12.3.2 The members who supported the retention of the provision argued that:

- (a) it would be inhuman not to compel the Government to settle outstanding debts and let people die for lack of money for treatment;
- (b) Government would always budget for such funds under the Compensation Fund whose establishment was approved by the Conference when it adopted Article 308 of the Draft Constitution which has been re-numbered as Article 269;
- (c) although the period of six months was too long, the provision would assist to resolve a number of problems that workers had experienced both in Local Government Service and the Civil Service where some of them had died without receiving any compensation; and
- (d) some laws had been enacted which allowed individuals to take Government to court. Therefore, it would be a mockery of justice, if when individuals secured judgement against the State, nothing could compel the Government to pay them.

10.12.3.3 Members who opposed the provision argued that:

- (a) the budgeting cycle would make it difficult for the Government to settle the debts in the period proposed especially that some judgements would be passed after the budget had already been approved by Parliament or the amount of awards could be higher than the budgetary provision for a particular year;
- (b) such a law was dangerous to the wellbeing of the country as all debts needed to be paid within six months; and
- (c) laws must be put in place for the common good of all Zambians and not only for a few that were owed money by the State. National interest should override personal interests even in cases where the State had to compensate individuals.

10.12.3.4 However, the Conference was mindful of possible budget constraints that the State might face. To take that into account, the Conference deleted paragraph (b), which specified the period of six months during which the State could pay the beneficiary after the delivery of a judgement.

10.12.3.5 In further debate, the Conference decided to delete clauses (3), (4), (5) and (6) of Article 36. In deleting the clauses, the Conference observed the following:

- (a) that clause (3) provided for liability of Government which was comprehensively provided for in the State Proceedings Act. Therefore, there was no need to provide for the same matters in the Constitution;
- (b) that Courts did not normally award costs in cases of "public interest litigation" and, therefore, clause (4) should be deleted so that the discretion to awards costs in such matters continued to reside with the Courts.
- (c) that although some cases took long to conclude, and the suspects remained in detention for that period, the Conference resolved to retain the status quo where all cases are bailable, except those involving aggravated robbery, murder and treason and, therefore, clause (5) was deleted; and
- (d) that clause (6) was self-contradictory, in that it provided for inadmissibility of illegally obtained evidence against a person but at the same time provided for conditions under which such evidence could be admitted. However, since currently, illegally obtained evidence was admissible as long as it was relevant to the case at hand, the status quo should continue and clause (6) should be deleted.

10.12.4 Resolutions of the Conference

The Conference adopted Article 36 with amendments and re-numbered it as Article 44 as follows:

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

(2) Where a person has any claim or judgement against the State the claim may be instituted by proceedings against the State.”

10.13 Article 37: Rights of Suspects and Arrested Persons

10.13.1 Recommendations of the Commission

10.13.1.1 The Commission made extensive recommendations on the rights of suspects and persons held in custody. It recommended that the Constitution should provide that anyone who is a suspect or is arrested or is an accused person or remanded in custody for allegedly committing an offence should have the right:

- (a) to a fair hearing within a reasonable time by an independent and impartial court established by law;
- (b) to be informed promptly of the right to remain silent and the consequences of not remaining silent;
- (c) to be informed as soon as reasonably practicable, in a language that he or she understands in detail, of the nature of the offence charged;
- (d) to be given adequate time and facilities for the preparation of his defence;
- (e) to defend herself or himself before the court in person or at his own expense, by a legal representative of her or his own choice unless legal aid is granted in accordance with the law;
- (f) to be afforded facilities to examine, in person, or by her or his legal representative the witnesses called by the prosecution before the court and to obtain the attendance and carry out the examination of witnesses to testify on her or his behalf before the court on the same conditions as those applying to witnesses called by the prosecution;
- (g) to have, without payment, the assistance of an interpreter if he or she cannot understand the language used at the trial;
- (h) not to be compelled to make any confession or admission that could be used in evidence against her or him and that illegally obtained evidence should not be admissible, except where such evidence is relevant and excluding it would be detrimental to the administration of justice;
- (i) not to be compelled to give self-incriminating evidence;
- (j) to be brought before a court as soon as reasonably possible, but not later than 48 hours after arrest;

- (k) to be released on bail if it is in the interest of justice;
- (l) to compensation for wrongful detention;
- (m) to conditions of detention that are consistent with human dignity, including at least physical exercise and the provision, at State expense, of adequate accommodation, nutrition, reading material and medical treatment; and
- (n) of access to legal representation before, during and after arrest.

10.13.1.2 The Commission also recommended that persons detained under the Preservation of Public Security Regulations should be furnished with reasons for their detention within fourteen days.

10.13.1.3 The Commission further recommended that the Constitution should provide that every prisoner should have a right to:

- (a) be treated with the respect due to their inherent dignity and value as human beings; and
- (b) send and receive letters and visits, subject to such restrictions as may be necessary for the maintenance of discipline and order in prison and the prevention of crime.

10.13.1.4 The Commission also recommended that the Constitution should provide that:

- (a) while the power of the entry of nolle prosequi can be retained, the exercise of the same should be conditioned on the Director of Public Prosecutions being required to obtain leave of the court for entry of nolle prosequi and the court having power to inquire into the grounds thereof;
- (b) the entry of a nolle prosequi should not, automatically, result in an acquittal; and
- (c) where a nolle prosequi has been entered, an accused person should only be charged afresh on the same facts within a reasonable time (not being later than 12 months), after which period the person shall be deemed to have been acquitted.

10.13.1.5 With regard to bail, the Commission, recommended that the Constitution should explicitly provide that:

- (a) all offences are bailable;
- (b) the question of whether or not bail should be granted should be left to the discretion of courts; and
- (c) in the event of bail being denied, the accused person must be tried within 90 days or thereafter be released on bail unconditionally or upon reasonable conditions.

10.13.2 Provisions in the Draft Constitution on the Rights of Suspects and Arrested Persons

Article 37 provides as follows:

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

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

10.13.3 Deliberations of the Conference on Article 37

10.13.3.1 In debating Article 37, the Conference:

- (a) observed that the word "not" had been omitted in sub-paragraph (ii) of paragraph (b), between the words "of" and "remaining" and therefore, resolved to insert it;
- (b) observed that there was no provision for deaf persons and those who were visually impaired to be informed of the reasons for arrest or detention in a language they understood. Therefore, a new paragraph was inserted;
- (c) deleted the original paragraph (c) which provided for confession or admission of guilty as its provision was well covered in paragraph (b) which provided for both the right of an accused person to remain silent and the consequences of not remaining silent; and
- (d) deleted paragraph (f) as it was unnecessary because sub-paragraph (i) of paragraph (e) approved by the Conference also provided that a suspect had to be brought before a court within forty-eight hours after being arrested or detained. Therefore, paragraph (f) had to be deleted because it was superfluous.

10.13.4 Resolutions of the Conference

The Conference adopted Article 37 with amendments and re-numbered it as Article 45 as follows:

- “45. Subject to Article 62, a person who is a suspect, arrested or detained for allegedly committing an offence has the right -
- (a) to remain silent;
 - (b) to be informed in a language which that person understands of the -
 - (i) right to remain silent; and
 - (ii) consequences of not remaining silent; and
 - (c) to be informed as soon as reasonably practicable, in a language that the person understands, of the reasons for the arrest or detention, and in the case of a visually impaired person, in Braille, and a deaf person, in sign language;
 - (d) to be held separately from persons who are serving a sentence;
 - (e) to be brought before a court -
 - (i) within forty-eight hours after being arrested or detained;
 - (ii) not later than the end of the first court day after the expiry of the forty-eight hours, if the forty-eight hours expires outside ordinary court hours or on a day that is not an ordinary court day;
 - (iii) as speedily as possible, if that person is arrested or detained far from a court; or
 - (iv) to be tried within ninety days or be released on bail; and
 - (f) to be released on bond or bail, pending a charge or trial, on reasonable conditions, unless there are compelling reasons to the contrary.”

10.14 Article 38: Rights of Persons Detained or In Custody

10.14.1 Recommendations of the Commission

Recommendations of the Commission on the rights of persons detained or in custody are the same as those made under Article 37 providing for right of suspects and arrested persons.

10.14.2 Provisions in the Draft Constitution on Rights of Persons Detained or in Custody

Article 38 provides as follows:

- “38. (1) A person who is held in custody, whether sentenced or not, retains all that person’s rights and freedoms under this Constitution, except to the extent that a right or freedom is incompatible with the fact of being in custody.
- (2) A person who is held in custody has the right -
- (a) to be treated in a manner that respects that person’s inherent human dignity and not to be subjected to discrimination;

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

(3) The State shall ensure that prisons and the prison system are maintained and operated within minimum international standards."

10.14.3 Deliberations of the Conference on Article 38

10.14.3.1 In debating the Article, the Conference observed that the provision was progressive as it raised the threshold of human dignity by entitling a person in custody to all rights and freedom except those which were incompatible with being in custody such as right to liberty and freedom of movement.

10.14.3.2 In considering clause (2) (b), some members observed that since the provision dealt with a special case of a person detained under laws governing the preservation of public security, a matter that was provided for under Article 79 of the Draft Constitution, the period of furnishing the detained person with reasons for detention should be reduced from fourteen (14) days to seven (7) days. However, most members proposed fourteen days in order to provide the State with sufficient time to carry out investigations and therefore, approved paragraph (b) of clause (2) without amendments.

10.14.3.3 In debating clause (2), the Conference:

- (a) observed that the list of the rights specified for persons was not exhaustive and therefore amended clause (2) by substituting the words "a person who is held in custody has the right-" with the words "Without limiting clause (1), a person who is held in custody has the right-";
- (b) decided to delete paragraph (f) to avoid turning prisons into attractive sources of employment for some persons and that the right to exercise was currently available to all prisoners under the Prisons Act;
- (c) decided to delete paragraph (g) because the right to communicate with legal practitioners and other persons was adequately provided for under the Prisons Act;
- (d) observed that reference to sending and receiving letters in paragraph (h) was restrictive and did not take into account advances in information and communication technologies. Therefore, the Conference decided to amend paragraph (h) by substituting the words "to send and receive letters" with the words "to communications";
- (e) decided to amplify the paragraph by inserting the words "in conflict with the law" after the word "children";
- (f) observed that the provision of paragraph (j) was not adequate as it did not cater for persons with disabilities. Therefore, it was amended to cater for persons with disabilities;
- (g) recognised the need to provide for and strengthen the mechanism for prisoners and detained persons to complain against any violations of their rights in paragraph (m). Therefore, the provision was amended by including "visiting Judges, Magistrates and the Court as these were in a position to immediately order that the wrong be redressed; and
- (h) decided to delete paragraph (d) of clause (2) as a Conference of the resolution to delete Articles 73 and 74 providing for shelter and housing and food, water and sanitation respectively.

10.14.3.4 In considering clause (3), the Conference decided that the clause should be deleted and be provided for in subsidiary legislation.

10.14.4 Resolutions of the Conference

The Conference adopted Article 38 in the Draft Constitution with amendments and re-numbered it as Article 46 as follows:

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

(2) Without limiting clause (1), a person who is held in custody has the right -

- (a) to be treated in a manner that respects that person's inherent human dignity and not to be subjected to discrimination;
- (b) if detained under any law relating to the preservation of public security, to be furnished with the reasons for that person's detention within fourteen days of being taken into custody;
- (c) not to be exploited or abused by the staff of the prison service or fellow prisoners;
- (d) to reasonable health care at public expense and to pay for that person's health care by the person's doctors if the person so chooses;
- (e) to communications, visits of reasonable frequency and duration to the extent compatible with the preservation of law, order and prison discipline;
- (f) to be separated, women from men and children in conflict with the law from adults;
- (g) to be informed of the rules and decisions that affect that person in a language that the person understands, and in the case of a visually impaired person, in Braille, and deaf person, in Sign Language;
- (h) to fair consideration for parole or remission of sentence and for other rehabilitative measures;
 - (i) to compensation for wrongful detention; and
 - (j) to complain to the prison authorities, visiting Judges and Magistrates, the Court, the Human Rights Commission or any similar institution."

10.14 Article 39: Fair Trial

10.15.1 Recommendations of the Commission

The recommendations are as given in Article 37.

10.15.2 Provisions in the Draft Constitution on Fair Trial

Article 39 provides as follows:

- "39. (1) Every accused person has the right to a fair trial which includes the right –
- (a) to be presumed innocent until the contrary is proved;
 - (b) to be informed as soon as is reasonably practicable and in a language that person understands of the charge with sufficient detail to answer it;
 - (c) to have adequate time and facilities to prepare a defence;
 - (d) to a public trial before an independent and impartial court or tribunal;
 - (e) to have the trial commenced and concluded and judgement given without unreasonable delay;
 - (f) to compensation for wrongful detention or imprisonment;

- (g) to choose, and be represented by, a legal practitioner and to be informed of this right promptly;
- (h) to have a legal practitioner assigned to the accused person by the State and at public expense, if substantial injustice would otherwise result, and to be informed of this right promptly;
- (i) to remain silent and not to testify during the proceedings;
- (j) to adduce and challenge evidence;
- (k) not to be compelled to give self-incriminating evidence;
- (l) not to be compelled to make any confession or admission that could be used in evidence against that person;
- (m) to have, without payment, the assistance of an interpreter if the accused person cannot understand the language used at the trial;
- (n) not to be convicted for an act or omission that was not, at the time it was committed or omitted, an offence under the written Laws;
- (o) not to be tried for an offence in respect of an act or omission for which that person has previously been either acquitted or convicted;
- (p) to the benefit of the least severe of the prescribed punishments if the prescribed punishment for an offence has been changed between the time that offence was committed and the time of sentencing; and
- (q) of appeal to, or review by, a higher court.

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

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

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

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

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

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

10.15.3 Deliberations of the Conference on Article 39

10.15.3.1 In the debate on the Article, the Conference:

- (a) observed that paragraph (m) of clause (1) was inadequate as it did not cater for persons with disabilities. Therefore, it was amended by adding the words “and in the case of a deaf person, a Sign Language interpreter”.
- (b) observed that paragraph (o) of clause (1) was inadequate. Therefore, to make it comprehensive, the words “or for any other offence of which the person could have been convicted at the trial for that offence, except upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal” were taken from clause (5) of Article 18 of the current Constitution.
- (c) observed that clause (2) was inadequate as it did not provide for persons with disabilities and, therefore, approved it with amendments by adding the words “and in the case of a visually impaired person, in Braille, and a deaf person, in Sign Language” at the end of the provision; and
- (d) observed that whilst the Director of Public Prosecutions had the right to enter a *nolle prosequi*, an accused person did not have the right to a *nolle prosequi* as the clause seemed to imply. Therefore, while some members expressed concern with the abuse of the *nolle prosequi* and supported the need to prescribe the time-frame during which it should subsist, the Conference decided to delete clauses (6) and (7) of the Article.

10.15.3.2 The Conference debated and adopted Article 39 of the Draft Constitution with amendments in paragraphs (m), (n), and (o) of clause (1) and in clause (2).

10.15.4 Resolutions of the Conference

The Conference accordingly, approved Article 39, with amendments and re-numbered it as Article 47 as follows:

“47. (1) Every accused person has the right to a fair trial which includes the right –

- (a) to be presumed innocent until the contrary is proved;
- (b) to be informed as soon as is reasonably practicable, and in a language that the person understands, of the charge with sufficient detail to answer it;
- (c) to have adequate time and facilities to prepare a defence;
- (d) to a public trial before an independent and impartial court or tribunal;
- (e) to have the trial commenced and concluded and judgement given without unreasonable delay;
- (f) to choose, and be represented by, a legal practitioner and to be informed of this right promptly;

(g) to have a legal practitioner assigned to the accused person by the State and at public expense, if substantial injustice would otherwise result, and to be informed of this right promptly;

(h) to remain silent and not to testify during the proceedings;

(i) to adduce and challenge evidence;

(j) not to be compelled to give self-incriminating evidence;

(k) not to be compelled to make any confession or admission that could be used in evidence against that person;

(l) to have, without payment, the assistance of an interpreter if the accused person cannot understand the language used at the trial, and in the case of a deaf person, a Sign Language interpreter.

(m) not to be convicted for an act or omission that was not, at the time it was committed or omitted, an offence under any laws;

(n) not to be tried for an offence in respect of an act or omission for which that person has previously been either acquitted or convicted, or for any other offence of which the person could have been convicted at the trial for that offence, except upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal;

(o) to the benefit of the least severe of the prescribed punishments if the prescribed punishment for an offence has been changed between the time that offence was committed and the time of sentencing;

(p) of appeal to, or review by, a higher court; and

(q) to compensation for wrongful detention or imprisonment.

(2) Where this Article requires information to be given to a person, that information shall be given in a language which that person understands, and in the case of a visually impaired person, in Braille, and a deaf person, in sign language.

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

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

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

10.16 Article 40: Protection from Discrimination

10.16.1 Recommendations of the Commission

The recommendations for this provision are as described in Article 33 on "Equality before Law".

10.16.2 Provisions in the Draft Constitution on Protection from Discrimination

Article 40 provides as follows:

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

10.16.3 Deliberations of the Conference on Article 40

10.16.3.1 In debating the Article, the Conference observed that the use of the words "on any grounds including" made the provision too open to various interpretations including those which could indirectly allow for gay marriages, or right to sexual orientation of one's choice, in defence of the right not be discriminated against on the basis of marital status. Therefore, the Conference resolved to redraft Article 40 in order to:

- (a) specifically state the grounds on what basis a person could not be discriminated against;
 - (b) provide for grounds under which a person could be discriminated (positive discrimination) and define the term "discrimination" by adopting clauses (4) and (3), respectively, of Article 23 of the current Constitution of Zambia; and
 - (c) permit discrimination for qualification for service as public officer, member of a disciplined force or service of a district council or body corporate established by any law.
- (d) 10.16.3.2 Consequently, Article 40 as provided in the Draft Constitution was amended by:
- (e) substituting the words "on any grounds including" with the words "on the grounds of";
 - (f) by inserting the term "pregnancy". The Conference observed that although pregnancy was an important natural process that ensured procreation, it was looked down upon, and in some cases, discrimination based on pregnancy had contributed to existing inequalities and lack of parity between men and women at the work place. For that reason, discrimination based on pregnancy should also be outlawed by inserting the term "pregnancy" in the provision. Accordingly, the term "pregnancy" was inserted in the Article; and
 - (g) substituting the word "opinion" with the words "political opinion" on the grounds that the "opinion" that usually leads to discrimination when held or expressed is "political opinion".

10.16.3.3 The Conference noted that the grounds on the basis of which discrimination was allowed, was not provided for in the Draft Constitution. The Conference therefore decided to adopt Article 23 (4) of the current Constitution.

10.16.3.4 Further, the Conference also adopted Article 23 (3) of the current Constitution to define the word "discrimination".

10.16.4 Resolutions of the Conference

The Conference adopted Article 40 with amendments and re-numbered it as Article 48 as follows:

"48. (1) Every person has the right not to be discriminated against, directly or indirectly, on the grounds of race, tribe, sex, pregnancy, origin, colour, age, disability, religion, conscience, belief, political opinion, culture, language, birth or health, marital, ethnic, social or economic status.

(2) Clause (1) shall not apply to any law so far as that law makes provision –

(a) for the appropriation of the general revenues of the Republic;

(b) for qualifications for service as a public officer or as a member of a disciplined force or for the service of a district council or body corporate established directly by any law;

(c) with respect to persons who are not citizens of Zambia;

(d) with respect to adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law;

(e) for the application in the case of members of a particular race or tribe, of customary law with respect to any matter to the exclusion of any law with respect to that matter which is applicable in the case of other persons; or

(f) whereby persons of any such description as is mentioned in clause (3), may be subjected to any disadvantage or restriction or may be accorded any privilege or advantage which, having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description, is reasonably justified in a democratic society.

(3) For the purposes of this Article, "discrimination" means affording different treatment to different persons attributable wholly or mainly to their respective descriptions, race, tribe, sex, origin, political opinion, colour, pregnancy, culture, conscience, age, disability, religion, belief, birth or health, marital, ethnic, social or economic status whereby persons of one such description are subjected to disadvantages or restrictions to which persons of another such description are not made subject, or are accorded privileges or advantages which are not accorded to persons of another such description."

10.17 Article 41: Equality of both Gender

10.17.1 Recommendations of the Commission

10.17.1.1 The Commission made the following recommendations:

- (a) that the principle of gender equality should be enshrined in the Bill of Rights;
- (b) that the rights of women should be specifically stated in the Bill of Rights;
- (c) that the rights of women with disabilities should be specifically stated in the Bill of Rights;
- (d) that provisions of international and regional instruments on gender equality and women's rights, to which Zambia is a State Party or signatory, including the Convention on Elimination of Discrimination Against Women, Southern Africa Development Community Declaration on Gender and Development and Beijing Declaration and Plan of Action, should be incorporated into the Constitution, as appropriate;
- (e) that the principle of affirmative action should be enshrined in the Bill of Rights; and
- (f) that the Article which guarantees non-discrimination should not be limited by exceptions or derogation clauses.

10.17.1.2 The Commission further recommended that pursuant to the above recommendations, the Bill of Rights should include the following provisions:

- (a) women should be accorded full and equal dignity of the person with men and should be guaranteed the exercise and enjoyment of fundamental rights and freedoms on a basis of equality with men;
- (b) women should have the right to equal treatment with men and that right should include equal opportunities in political, economic and social activities;
- (c) the State should protect women and their rights, taking into account their unique status and natural maternal functions in society, their right to reproductive health, including family planning and access to related information and education;
- (d) women should have equal rights with men with respect to marriage;
- (e) women should have equal rights with men regarding ownership, use, transfer, administration and control of land and enjoy the same rights with men with respect to inheritance;
- (f) women should be protected against all forms of violence, physical or mental ill-treatment, cruelty, deprivation or exploitation;
- (g) custodial sentences should not be imposed on pregnant women and nursing mothers or mothers of young children except as a last resort for those women convicted of the most serious offences and who pose a danger to the community;

- (h) there should be developed and implemented educational programmes for criminal justice personnel on the subject of mothers and young children consistent with provisions of the Bill of Rights;
- (i) without prejudice to the foregoing provisions, women should have the right to affirmative action for the purpose of redressing the imbalances created by history, tradition or custom;
- (j) laws, cultures, customs or traditions which are against the dignity, rights, welfare or interest of women or which undermine their status should be prohibited by the Constitution; and
- (k) Parliament should make laws for giving effect to these provisions, including the establishment or designation of institutions for the protection of women against discrimination and promotion of their enjoyment of human rights and fundamental freedoms on a basis of equality with men.

10.17.2 Provisions in the Draft Constitution on Equality of Both Gender

Article 41 provides as follows:

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

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

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

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

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

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

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

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

10.17.3 Deliberations of the Conference on Article 41

10.17.3.1 In debating the provision, the Conference observed that it was based on Article 1 of the Universal Declaration of Human Rights which provided that all human beings were born free and equal in dignity and rights.

10.17.3.2 In further debate on the Article, the Conference:

- (a) observed that clause (2) was the same as clause (1) of Article 32 which had earlier been approved. Therefore clause (2) was deleted;
- (b) adopted clause (3) of Article 41 with amendments and re-numbered it as paragraph (a) of the new clause (2).
- (c) deleted clause (6) due to lack of clarity;
- (d) deleted clause (7) as its provision had been catered for in paragraph (f) of clause (2) of Article 48; and
- (e) deleted clause (8) because all the rights and freedoms declared in the Bill of Rights should become enforceable on the day the new Constitution comes into force.

10.17.4 Resolutions of the Conference

The Conference adopted Article 41 of the Draft Constitution with amendments and re-numbered as Article 49 as follows:

- “49. (1) Women and men have the right to equal treatment including the right to equal opportunities in cultural, political, economic and social activities.
- (2) Women and men have equal right-
- (a) to inherit, have access to, own, use, administer and control land and other property;
 - (b) to choose residence and domicile;
 - (c) to choose a family name;
 - (d) acquire, change or retain the nationality of their children; and
 - (e) to guardianship and adoption of children.
- (3) Women and men have equal rights with respect to marriage.
- (4) Any law, culture, custom or tradition that undermines the dignity, welfare, interest or status of women or men is prohibited.”

10.18 Article 42: Further Rights for Women

10.18.1 Recommendations of the Commission

The recommendations of the Commission on further rights of women are provided under Article 41.

10.18.2 Provisions in the Draft Constitution on Further rights for women

Article 42 provides as follows:

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

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

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

(a) to reproductive health, including family planning and access to related information and education;

(b) to acquire, change or retain their nationality including the nationality of their children;

(c) to choose residence and domicile;

(d) to guardianship and adoption of children;

(e) to choose a family name; and

(f) to non-custodial sentences if pregnant or are nursing mothers, except as a measure of last resort for serious offences and for those women who pose a danger to the community.

(4) Parliament shall enact legislation to provide for the protection of women against all forms of violence.

(5) For the purposes of this Article -

(a) “discrimination against women” means a distinction or exclusion made on the basis of sex which has the effect of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of marital status, of human rights and fundamental freedoms in all areas of human endeavour to which persons of another description are not made subject or are accorded privileges or advantages which are not accorded to persons of another description.

(b) “violence” includes –

(i) physical, sexual and psychological violence that occur in the family;

(ii) violence related to female genital mutilation or any traditional or religious practice that is harmful to women;

(iii) non-spousal violence or exploitation or physical, sexual or psychological violence that occurs within the general community;

(iv) rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere;

(v) trafficking in women and forced prostitution; and

(vi) economic and social deprivation.

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

10.18.3 Deliberations of the Conference on Article 42

10.18.3.1 In debating Article 42, the Conference:

- (a) observed that the provision of clause (1) was covered in clause (1) of Article 40 re-numbered as Article 48 as it applies to every person, including women. Therefore, clause (1) was deleted;
- (b) observed that it was not the Constitution which declared any law void but the Courts of Law. However, any law which was inconsistent with the Constitution was void, to the extent of the inconsistency. The Conference further noted that clause (2) was provided for in clause (4) of Article 41 re-numbered as Article 49;
- (c) observed that clauses (3)(a) and (3)(f) should be provided for under the Directive Principles of State Policy;
- (d) noted that there was a Bill pending presentation to Parliament to prohibit all forms of violence against women. Therefore, clause (4), was deleted; and
- (e) noted that clause (5) was unnecessary since clause (1) on which it was based had been deleted, and that a Bill to prohibit all forms of violence against women was to be presented to Parliament and would cover what it provided for. Therefore, the clause was also deleted.

10.18.4 Resolutions of the Conference

The Conference resolved to delete Article 42 of the Draft Constitution.

10.19 Article 43: Older Members of Society

10.19.1 Recommendations of the Commission

The Commission did not make any specific recommendations on older members of society but provided for it in Article 43.

10.19.2 Provisions in the Draft Constitution on Older Members of Society

Article 43 provides as follows:

- “43. (1) Older members of society are entitled to enjoy all the rights and freedoms set out in this Bill of Rights, including the right to –
- (a) participate fully in the affairs of society;
 - (b) pursue their personal development and retain their autonomy;
 - (c) freedom from all forms of discrimination, exploitation or abuse;
 - (d) live in dignity and respect; and

(e) receive care and assistance from the family and the Government.

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

10.19.3 Deliberations of the Conference on Article 43

10.19.3.1 In debating Article 43, three positions emerged.

10.19.3.2 Members who supported the retention of the Article in the Constitution argued as follows:

- (a) that it was the duty of the Government to provide for those who were unable to look after themselves;
- (b) that schemes such as the Poverty Alleviation Programme and social insurance for those who worked in the Public Service and the National Pension Scheme should be improved, in order to provide for the future welfare of the elderly;
- (c) that older members of society had played a role in contributing to the well-being of society and some still supported orphans, therefore, they needed to be provided for; and
- (d) that the population of old people was small and the standard of living was not as high as that in developed countries and so it could be managed;

10.19.3.3 Members who did not support the Article and proposed that it be deleted from the Constitution argued as follows:

- (a) that not all problems could be resolved through the constitution and that the standard practice was to include only matters of principle in the Constitution;
- (b) that the extended family system was well organised and worked well, therefore, Zambia should not emulate the Western culture;
- (c) that there were already provisions on the social security system; and
- (d) that the provision would promote laziness and many old people might scramble to be registered thereby burdening the Government.

10.19.3.4 Members who supported the Article but proposed that it be deleted from the Constitution and be provided for in an Act of Parliament argued as follows:

- (a) that the elderly were part of the larger society and did not need to be provided for separately, therefore, their rights should be provided for in an Act of Parliament;
- (b) that there were all kinds of rights enshrined in statutes already in existence;
- (c) that international human rights bodies were continually generating new conventions which could not all be provided for in the Constitution;
- (d) that Zambia should, like some countries enact a Human Rights Act because not all rights needed to be in the Constitution; and

- (e) that the extended family system was well structured and could be supported through statutes.

10.19.4 Resolutions of the Conference

The Conference resolved to delete the Article from the Constitution but to relegate it to a subordinate Act of Parliament.

10.20 Article 44: Children

10.20.1 Recommendations of the Commission

10.20.1.1 The Commission recommended that the following children's rights should be enshrined in the Bill of Rights:

- (a) the right to life, including the right of an unborn child subject to exceptions permitted by law;
- (b) the right to a name and a nationality;
- (c) the right to parental care, family care or appropriate or alternative care when removed from the family environment;
- (d) the right to survival and development;
- (e) the right to social security, including social insurance;
- (f) the right to basic nutrition and shelter;
- (g) the right to a standard of living adequate for the child's physical, mental, spiritual, moral and social development;
- (h) the right to protection from all forms of exploitation, maltreatment, neglect, abuse or degradation prejudicial to any aspect of the child's development and welfare;
- (i) the right to protection from all forms of sexual exploitation and sexual abuse;
- (j) the right to protection from exploitative labour practices and wars;
- (k) the right to basic education, which shall be the responsibility of the State and parents of the child;
- (l) the right to health care;
- (m) the right of the disabled child to special care;
- (n) the right to special protection for orphans and other vulnerable children;
- (o) the right not to be detained except as a measure of last resort and, in such a case, the child should have a right to be kept separately from adult detainees;
- (p) the right to legal representation at State expense in both civil and criminal proceedings affecting the child;
- (q) the right to be tried in Juveniles courts;
- (r) the right to identity protection against media exposure in criminal cases; and

- (s) the right not to be used directly in armed conflict and to be protected in times of armed conflict.

10.20.1.2 The Commission further recommended that the Constitution should:

- (a) provide that a child's best interests are of paramount importance in every matter concerning the child; and
- (b) define the term "child" as a person below eighteen years of age, including an unborn child as defined by law. However, an unborn child shall only be entitled to such rights as may be deemed appropriate by law.

10.20.2 Provisions in the Draft Constitution on Children

Article 44 provides as follows:

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

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

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

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

(5) Every child has a right -

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

- (b) to parental care or to appropriate alternative care where the child is separated from its parents;

- (c) to free basic education;

- (d) to be protected from discrimination, neglect, abuse and harmful cultural rites and practices, including female circumcision, tattooing and early marriage before attaining the age of eighteen years;

- (e) to be protected from all forms of exploitation and any work that is likely to be hazardous or adverse to the child's welfare;

- (f) to adequate nutrition, shelter, basic health care services, social security and social services;

- (g) not to be subjected to corporal punishment or any other form of violence or cruel and inhumane treatment in schools and other institutions responsible for the care of children;

- (h) to be protected in times of armed conflict and not to be recruited and used in armed conflict;

- (i) not to take part in hostilities;
- (j) not to be incarcerated on account of the mother's incarceration;
- (k) to a standard of living adequate for the child's physical, mental, spiritual, moral and social development;
- (l) to development and an individual development plan, where appropriate;
- (m) to protection from all forms of sexual exploitation or abuse;
- (n) not to be arrested or detained, except as a measure of last resort, in which case that child has the right to be -
 - (i) detained only for the shortest appropriate period of time;
 - (ii) kept separate from adults in custody;
 - (iii) accorded legal assistance by the State;
 - (iv) treated in a manner and be kept in conditions that take account of the child's gender and age; and
 - (v) tried in a juveniles court;
- (o) to know of decisions affecting the child, to express an opinion and have that opinion taken into account, having regard to the age and maturity of the child and the nature of the decision;
- (p) to protection of the child's identity and not be exposed by the media during criminal proceedings; and
- (q) generally to survival and development.

(6) Children with special needs, especially girls, orphans, a child whose parent is in prison, children with disability, refugee children and homeless children, are entitled to the special protection of the State and society.

(7) In this Article "child" means a person who is below the age of eighteen years.

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

10.20.3 Deliberations of the Conference on Article 44

10.20.3.1 The members who supported the Article and wanted it retained in the Constitution argued as follows:

- (a) some petitioners to the Commission wanted the rights of children known as the second generation rights to be enshrined in the Bill of Rights so that they could be justiciable;
- (b) many other countries like Zambia had appended their signatures to the Convention on Children's Rights of 1991, but had not yet domesticated it; and
- (c) it would provide commitment by the Government to ensure youths were provided for to avoid "street adults".

10.20.3.2 Members who opposed the Article and wanted it to be deleted from the Constitution and be provided for under a subordinate Act of Parliament argued that:

- (a) although it was an important clause, it should be relegated to subordinate law because allowing children to sue the family was not practical;
- (b) relegating it to an Act of Parliament did not mean that the law would not be enforced and that a family which neglected a child could be sued; and
- (c) most of the issues were already being addressed by various pieces of subsidiary legislation.

10.20.3.3 In debating clause (3), some members who supported the provision argued that it was not contentious and that it should, therefore, be in the Constitution.

10.20.3.4 Members who proposed that clause (3) should be relegated to an Act of Parliament argued as follows:

- (a) that it was already accepted that all children were equal and, therefore, continuing to discuss the rights of children was becoming monotonous. It was argued that "monotony" should not be allowed in the Constitution; and
- (b) that not all provisions of International Conventions were intended for inclusion in constitutions. It was stated that domestication was the answer to such treaties and conventions.

10.20.3.5 In debating clause (5) (c), the Conference observed that education was paramount and was the "driver" of the social and economic development of a nation; that the provision was progressive and was in line with the Millennium Development Goal of "Education for All". The Conference therefore:

- (a) approved the provision with amendments by inserting the words "and compulsory" before the words "basic education"; and
- (b) decided that the amended paragraph should be moved to Article 72 of the Draft Constitution which provided for the right to education.

10.20.3.6 In debating clause (5) (d), the Conference resolved to delete it and observed that the aspect dealing with early marriages could be moved to some other part of the Constitution.

10.20.3.7 The Conference approved clause (5) (e) with amendments by incorporating aspects of clause (1) of Article 32 of the United Nations Convention on the Rights of a Child (UNCRC) and the proviso to clause (1) of Article 24 of the current Constitution.

10.20.3.8 Clause (1) of Article 32 of the United Nations Convention on the Rights of a Child (UNCRC) provides as follows:

"32. (1) States Parties recognise the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere

with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development."

10.20.3.9 Clause (1) of Article 24 of the current Constitution provides as follows:

"24. (1) A young person shall not be employed and shall in no case be caused or permitted to engage in any occupation or employment which would prejudice his health or education or interfere with his physical, mental or moral development:

Provided that an Act of Parliament may provide for the employment of a young person for a wage under certain conditions."

10.20.3.10 The Conference approved clause (5) (f) with amendments by deleting the words "social security and social services" and substituting them with the words "and social protection services".

10.20.3.11 The Conference deleted clause (5) (g), (h), (i),(j), (k), (l), (n),(o), (p) and (q) and clauses (6), (7) and (8).

10.20.4 Resolutions of the Conference

The Conference adopted Article 44 with amendments and re-numbered it as Article 50 as follows:

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

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

(3) Every child has a right -

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

(b) to parental care or to appropriate alternative care where the child is separated from its parents;

(c) to be protected from all forms of exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development:

Provided that an Act of Parliament may provide for the employment of children for a wage under certain conditions;

(d) to adequate nutrition, shelter, basic health care services and social services;

(e) to protection from all forms of sexual exploitation or abuse.

(4) Parliament shall enact legislation to provide for:

(a) the promotion and protection of the rights of children; and

(b) the regulation of child health care services and child care facilities."

10.21 Article 45: Youth

10.21.1 Recommendations of the Commission

The Commission recommended that the Constitution should guarantee the rights of the youth.

10.21.2 Provisions in the Draft Constitution on the Youth

Article 45 provides as follows:

"45. (1) The youth constitute an integral part of society and, taking into account their unique needs, are entitled to enjoy all the rights and freedoms set out in this Bill of Rights, including –

- (a) access to quality and relevant education and training in order to achieve personal development and serve the community;
- (b) participation in governance;
- (c) access to gainful employment;
- (d) adequate opportunities in the social, economic and other spheres of national life;
- (e) freedom of association to further their legitimate interests;
- (f) protection from any culture, custom or tradition that undermines their dignity or quality of life; and
- (g) freedom from discrimination, exploitation or abuse.

(2) In this Article "youth" means a person who is eighteen years of age but below the age of thirty-five years.

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

10.21.3 Deliberations of the Conference on Article 45

10.21.3.1 In debating the Article, the members who supported the provision argued as follows:

- (a) that the inclusion of the provision in the Constitution was progressive as it addressed the special needs of this vulnerable group which was often abused in political circles and would compel Government to address the problems of the youths; and
- (b) that the population of Zambia was mostly youthful and needed specific rights.

10.21.3.2 In contrast most members were opposed to the adoption of the Article and inter alia, argued as follows:

- (a) that the rights provided under clause (1) of Article 45 were not unique to the youths because they were common to all citizens and, therefore, should not be stated separately;

- (b) that the right of access to education was already provided for in Article 72 of the Draft Constitution which has been re-numbered as Article 69 and therefore, there was no need for the duplication;
- (c) that splitting categories of people who could enjoy certain rights would create problems rather than provide solutions and exclude some people from enjoying certain rights; and
- (d) that there was need to define the term "youth".

10.21.4 Resolutions of the Conference

The Conference resolved to delete Article 45.

10.22 Article 46: Protection of Young Persons

10.22.1 Recommendations of the Commission

The Commission recommended that the Constitution should guarantee the rights of the youth.

10.22.2 Provisions in the Draft Constitution on Protection of Young Persons

Article 46 provides as follows:

"46. (1) A young person shall not be -

(a) employed;

(b) caused or permitted to engage in an occupation or employment which would prejudice the health or education or interfere with the physical, mental or moral development of that young person;

except that an Act of Parliament may provide for the employment of a young person for a wage under certain conditions specified in that Act.

(2) In this Article, "young person" means a person under the age of fifteen years."

10.22.3 Deliberations of the Conference on Article 46

10.22.3.1 The Conference considered Article 46 and resolved to import Article 24 of the current Constitution. This decision was intended to provide for legislation to encourage the State to ensure that young people were not exploited.

10.22.3.2 The members who supported the adoption of Article 24 of the current Constitution argued as follows:

- (a) that the provision would cure the present "scourge" of child labour such as that of children selling merchandise on the roads instead of being in school and of children under the age of 15 years being employed in jobs that interfered with their physical, health, moral or mental development;
- (b) that the concerns had been provided for in the current Constitution; and
- (c) that a State which allowed occupation and employment of the youth without protection was irresponsible.

10.22.3.3 The members who did not support the provision, as amended, argued that enforcement would be a problem, therefore, the provision would be better placed in subsidiary legislation.

10.22.4 Resolutions of the Conference

The Conference adopted Article 46, with amendments including amending its marginal note to read "Protection of Young Persons from Exploitation" and re-numbered it as Article 51 as follows:

"51. (1) A young person shall not be employed and shall in no case be caused or permitted to engage in any occupation or employment, which would prejudice the young person's health or education or interfere with the young person's physical, mental or moral development, except that an Act of Parliament may provide for the employment of a young person for a wage under certain conditions.

(2) All young persons shall be protected against physical or mental ill-treatment, all forms of neglect, cruelty or exploitation.

(3) A young person shall not be the subject of traffic in any form.

(4) In this Article, "young person" means a person under the age of fifteen years."

10.23 Article 47: Family

10.23.1 Recommendations of the Commission

The Commission recommended that the Constitution should:

(a) provide that eighteen years be the minimum age for marriage; and

(b) define marriage as a union between man and woman freely contracted by both parties.

10.23.2 Provisions in the Draft Constitution on the Family

Article 47 provides as follows:

"47. (1) The Republic recognizes the family as the natural fundamental unit of society and as the necessary basis of the social order.

(2) The family is entitled to the respect and protection of the State.

(3) A person who is eighteen years of age or older has the right to freely choose a spouse of the opposite sex and marry.

(4) Parties to a marriage are entitled to equal rights in the marriage, during the marriage and at the dissolution of the marriage.

(5) Recognising the importance of children to the future of society, the maternal role of women and the nurturing role of both parents, the Government shall -

(a) ensure the right of women to adequate maternity leave;

(b) ensure the availability of adequate paternal leave;

- (c) ensure the availability of adequate maternal and reproductive health care and child health care; and
- (d) promote the availability of adequate childcare facilities."

10.23.3 Deliberations of the Conference on Article 47

10.23.3.1 The Conference debated and adopted Article 47 of the Draft Constitution with amendments. In amending the Article, the Conference:

- (a) replaced the term "Republic" with the term "State" in clause (1) in order to provide for consistency with other provisions;
- (b) recognised the importance of both maternal and paternal roles of women and men in bringing up children, and therefore, approved clause (5) with amendments by replacing the phrase "the maternal role of women" with the phrase " the maternal and paternal role of women and men" and re-numbered it as clause (7);
- (c) introduced two (2) new clauses to make Article 47 applicable to both customary and statutory marriages and to expressly prohibit same sex marriages and numbered them as clauses (4) and (5), respectively, and re-numbered clause (4) as clause (6). The provisions of the new clauses (4) and (5) state that;
 - "(4) Clause (3) shall apply to statutory and customary law marriages.
 - (5) Marriage between persons of the same sex is prohibited";
- (d) introduce a new paragraph (a) in clause (8) to enable Parliament to enact legislation to specify what constituted a family;

10.23.4 Resolutions of the Conference

The Conference approved Article 47, re-numbered as Article 52 as follows:

- "52. (1) The State recognises the family as the natural and fundamental unit of society and as the necessary basis of the social order.
- (2) The family is entitled to the respect and protection of the State.
- (3) A person who is eighteen years of age or older has the right to freely choose a spouse of the opposite sex and marry.
- (4) Clause (3) shall apply to statutory and customary law marriages.
- (5) Marriage between persons of the same sex is prohibited.
- (6) Parties to a marriage are entitled to equal rights in the marriage, during the marriage and at the dissolution of the marriage.
- (7) Recognising the importance of children to the future of society, the maternal and paternal role of women and men and the nurturing role of both parents, the Government shall -
 - (a) ensure the right of women to adequate maternity leave;

- (b) ensure the availability of adequate paternal leave;
 - (c) ensure the availability of adequate maternal and reproductive health care and child health care; and
 - (d) promote the availability of adequate childcare facilities.
- (8) Parliament shall enact legislation to:
- (a) specify what constitutes a family;
 - (b) regulate customary law and statutory marriages;
 - (c) provide for the rights of parties during and at the dissolution of a marriage; and
 - (d) regulate matrimonial causes and court proceedings dealing with sexual offences so as to ensure anonymity and protection of the lives and dignity of the parties but without prejudice to the due process of the law."

10.24 Article 48: Persons with Disabilities

10.24.1 Recommendations of the Commission

10.24.1.1 The Commission recommended that the Constitution should make provision in the Bill of Rights for:

- (a) the protection of persons with disabilities;
- (b) the right of persons with disabilities to use sign language, braille or other appropriate means of communication as well as have access to other special facilities, devices and materials to enable them overcome constraints due to disability; and
- (c) parliament to enact laws to enable persons with disabilities realise their full potential.

10.24.1.2 The Commission further recommended that:

- (a) the State should establish social security schemes for persons who are totally impaired;
- (b) persons with disabilities should be given a much higher tax exemption on their income than is currently the case; and
- (c) all tax on devices used by persons with disabilities should be removed.

10.24.2 Provisions in the Draft Constitution on Persons with Disabilities

Article 48 provides as follows:

- "48. (1) Persons with disability are entitled to enjoy all the rights and freedoms set out in this Bill of Rights and shall have the right –
- (a) to education and facilities that are integrated into society as a whole to the extent compatible with the interests of persons with disability;
 - (b) to effective access to places and public transport;
 - (c) to use sign language, braille or other appropriate means of communication;

(d) to be addressed and referred to, in official or private contexts, in a manner that is not demeaning, derogatory or discriminatory;

(e) to access materials, facilities and devices to enable them overcome constraints due to disability;

(f) to equal treatment, including the right to equal opportunities in cultural, political, economic and social activities; and

(g) to inherit, have access to, own and control property.

(2) Any practice, custom or tradition that undermines the dignity, welfare, interest or status of persons with disability is prohibited.

(3) Parliament shall enact legislation to give affect to this Article."

10.24.3 Deliberations of the Conference on Article 48

10.24.3.1 In debating Article 48, the Conference:

(a) replaced the phrase "Persons with disability" with the phrase "Persons with disabilities" and by adding the words "on an equal basis with others" after the term "Bill of Rights" in the opening sentence of clause (1), in accordance with the terminologies used in the United Nations Convention on Rights of Persons with Disabilities (UNCRPD);

(b) observed that the rights enumerated in paragraphs (a) to (g) of clause (1), inclusive, were exhaustive and, therefore, there was a possibility of omitting some of such rights which may even be critical to the protection of persons with disabilities. For that reason, clause (2) of Article 49 was transferred to Article 48 as clause (4) while paragraphs (a) to (g) of clause (1) of Article 48 were deleted and replaced by the new paragraphs (a) to (f) of the new clause (4) which were drafted on the basis of the UNCRPD and provides as follows:

"(a) the promotion and protection of the rights of persons with disabilities;

(b) effective access by persons with disabilities to the physical environment, facilities and services open or provided to the public;

(c) the education and health needs of persons with disabilities, including early identification and intervention;

(d) the use of Sign Language, Braille or other appropriate means of communication;

(e) access to assistive devices and technologies, support services and facilities to enable persons with disabilities live independently and participate fully in all aspects of life; and

(f) the establishment of a social security scheme for persons who are totally impaired."

(c) in clause (2), inserted the word “law” after the word “Any” and replaced the words “hereby declared void” with the word “prohibited”;

(d) inserted a new clause (3) to provide for the recognition, protection and promotion by the State of the rights, dignity, welfare and interests of persons with disabilities.

(e) approved the insertion of the definition of the term “persons with disabilities” and its insertion in the Article providing for definitions. The definition adopted provides that:

“persons with disabilities” includes persons who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder the persons’ full and effective participation in society on an equal basis with others”; and

(f) deleted clause (3) as the Article should become enforceable when the new Constitution comes into force.

10.24.4 Resolutions of the Conference

The Conference:

(a) adopted Article 48 with amendments and re-numbered it as Article 53 as follows:

“53. (1) Persons with disabilities are entitled to enjoy all the rights and freedoms set out in this Bill of Rights on an equal basis with others.

(2) Any law, practice, custom or tradition that undermines the dignity, welfare, interest or status of persons with disabilities is prohibited.

(3) The State shall recognise, protect and promote the rights, dignity, welfare and interests of persons with disabilities.

(4) Parliament shall enact legislation to provide for-

(a) the promotion and protection of the rights of persons with disabilities;

(b) effective access by persons with disabilities to the physical environment, facilities and services open or provided to the public;

(c) the education and health needs of persons with disabilities, including early identification and intervention;

(d) the use of Sign Language, Braille or other appropriate means of communication;

(e) access to assistive devices and technologies, support services and facilities to enable persons with disabilities live independently and participate fully in all aspects of life; and

(f) the establishment of a social security scheme for persons who are totally impaired."

(b) adopted the definition of "persons with disabilities" as:

"persons with disabilities" includes persons who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder the persons' full and effective participation in society on an equal basis with others".

10.25 Article 49: Special Measures for Persons with Disabilities

10.25.1 Recommendations of the Commission

The recommendations of the Commission on special measures for persons with disabilities are the same as those on Article 48.

10.25.2 Provisions in the Draft Constitution on Special Measures for Persons with Disabilities

Article 49 provides as follows:

"49. (1) The State shall -

(a) promote measures to educate communities and the society on the causes of disability and the need to respect the dignity and rights of all persons;

(b) promote and ensure the use of sign language, braille or any other appropriate means of communication for the disabled; and

(c) not tax any device used by persons with disability.

(2) Parliament shall enact legislation to provide for the promotion of the rights of persons with disability and in particular establish a social security scheme for persons who are totally impaired."

10.25.3 Deliberations of the Conference on Article 49

The Conference debated and deleted Article 49 as a consequence of the decision taken earlier when considering Article 48. In considering Article 48, the Conference had resolved to delete paragraphs (a) to (g) of clause (1) of Article 48 and replaced them with new paragraphs (a) to (f) inclusive which included the provision of clause (2) of Article 49 and numbered the new provision as clause (4) of Article 48. Therefore, Article 49 had become redundant and was deleted.

10.25.4 Resolutions of the Conference

The Conference deleted Article 49.

10.26 Article 50: Language and Culture

10.26.1 Recommendations of the Commission

The Commission did not make any specific recommendations on the right to language and culture but provided for it in Article 50.

10.26.2 Provisions in the Draft Constitution on Language and Culture

Article 50 provides as follows:

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

(2) A person who belongs to a cultural or linguistic community shall not be denied the right, with other members of that community –

(a) to enjoy that person’s culture and use that person’s language; or

(b) to form, join and maintain cultural and linguistic associations.

(3) A person shall not be compelled -

(a) to perform, observe, participate in or be subjected to any cultural practice or rite; or

(b) to form, join, contribute, maintain or pay allegiance to any cultural, traditional or linguistic association, organisation, institution or entity.”

10.26.3 Deliberations of the Conference on Article 50

In debating the Article, the Conference:

(a) deleted clause (1) as it was considered to be ambiguous as it did not define the circumstances under which it would apply and was not curing any mischief; and

(b) moved the Article from “Civil and Political Rights” to “Economic, Social and Cultural Rights” and re-numbered the Article as Article 70.

10.26.4 Resolutions of the Conference

The Conference adopted Article 50 with amendments and re-numbered it as Article 70, as follows:

“70. (1) A person who belongs to a cultural or linguistic community shall not be denied the right, with other members of that community -

(a) to enjoy that person’s culture and use that person’s language; or

(b) to form, join and maintain cultural and linguistic associations.

(2) A person shall not be compelled -

(a) to perform, observe, participate in or be subjected to any cultural practice or rite; or

(b) to form, join, contribute, maintain or pay allegiance to any cultural, traditional or linguistic association, organisation, institution or entity.”

10.27 Article 51: Freedom and Security of Persons

10.27.1 Recommendations of the Commission

The Commission recommended that the right to the relief of an order of Habeas Corpus should be explicitly provided for and entrenched in the Bill of Rights.

10.27.2 Provisions in the Draft Constitution on Freedom and Security of Persons

Article 51 provides as follows:

"51. Every person has the right to freedom and security of the person which includes the right –

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

10.27.3 Deliberations of the Conference on Article 51

10.27.3.1 In debating Article 51, the Conference observed that its provision was inadequate in that it did not provide for instances when a person's liberty could be taken away for that person's good. For that reason its provision was deleted and replaced with that of Article 13 of the current Constitution which provides as follows:

"13. (1) A person shall not be deprived of his personal liberty except as may be authorised by law in any of the following cases:

- (a) in execution of a sentence or order of a court, whether established for Zambia or some other country, in respect of a criminal offence of which he has been convicted;
- (b) in execution of an order of a court of record punishing him for contempt of that court or of a court inferior to it;
- (c) in execution of an order of a court made to secure the fulfillment of any obligation imposed on him by law;
- (d) for the purpose of bringing him before a court in execution of an order of a court;
- (e) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law in force in Zambia;

- (f) under an order of a court or with the consent of his parent or guardian, for his education or welfare during any period ending not later than the date when he attains the age of eighteen years;
- (g) for the purpose of preventing the spread of an infectious or contagious disease;
- (h) in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol or a vagrant, for the purpose of his care or treatment or the protection of the community;
- (i) for the purpose of preventing the unlawful entry of that person into Zambia, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person while he is being conveyed through Zambia in the course of his extradition or removal as a convicted prisoner from one country to another; or
- (j) to such extent as may be necessary in the execution of a lawful order requiring that person to remain within a specified area within Zambia or prohibiting him from being within such area, or to such extent as may be reasonably justifiable for the taking of proceedings against that person relating to the making of any such order, or to such extent as may be reasonably justifiable for restraining that person during any visit that he is permitted to make to any part of Zambia in which, in consequence of any such order, his presence would otherwise be unlawful."

10.27.3.2 In addition, the marginal note was also amended to read "Protection of right to personal liberty" and the Article was re-numbered as Article 54.

10.27.4 Resolutions of the Conference

The Conference deleted Article 51 and, in its place, adopted Article 13 of the current Constitution, with amendments and re-numbered it as Article 54 as follows:

"54. A person shall not be deprived of that person's personal liberty except as may be authorised by law in any of the following cases:

- (a) in execution of a sentence or order of a court, whether established for Zambia or some other country, in respect of a criminal offence of which that person has been convicted;
- (b) in execution of an order of a court of record punishing that person for contempt of that court or of a court inferior to it;
- (c) in execution of an order of a court made to secure the fulfilment of any obligation imposed on that person by law;

- (d) for the purpose of bringing that person before a court in execution of an order of a court;
- (e) upon reasonable suspicion of that person having committed, or being about to commit, a criminal offence under the law in force in Zambia;
- (f) under an order of a court or with the consent of that person's parent or guardian, for that person's education or welfare during any period ending not later than the date when that person attains the age of eighteen years;
- (g) for the purpose of preventing the spread of an infectious or contagious disease;
- (h) in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol or a vagrant, for the purpose of that person's care or treatment or the protection of the community;
- (i) for the purpose of preventing the unlawful entry of that person into Zambia, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person while that person is being conveyed through Zambia in the course of that person's extradition or removal as a convicted prisoner from one country to another; or
- (j) to such extent as may be necessary in the execution of a lawful order requiring that person to remain within a specified area within Zambia or prohibiting that person from being within such area, or to such extent as may be reasonably justifiable for the taking of proceedings against that person relating to the making of any such order, or to such extent as may be reasonably justifiable for restraining that person during any visit that the person is permitted to make to any part of Zambia in which, in consequence of any such order, that person's presence would otherwise be unlawful."

10.28 Article 52: Slavery, Servitude and Forced Labour

10.28.1 Recommendations of the Commission

The Commission recommended that the current provisions of the Constitution relating to protection from slavery and forced labour should be maintained, but that appropriate legislation should spell out what constituted "forced labour".

10.28.2 Provisions in the Draft Constitution on Slavery, Servitude and Forced Labour

Article 52 provides as follows:

- "52. (1) A person shall not be held in slavery or servitude.
- (2) A person shall not be required to perform forced labour.

(3) Parliament shall enact legislation specifying what constitutes "forced labour."

10.28.3 Deliberations of the Conference on Article 52

In debating the Article, the Conference:

- (a) introduced two new clauses (2) and (3), as a result of an earlier decision to provide for limitations, derogations and non-derogations in appropriate individual Articles instead of providing for them separately in a general limitation or derogation or non-derogation Article, while the other, was a result of the decision to provide for the necessary exceptions to "forced labour";
- (b) amended the marginal note to read "Protection from slavery, servitude and forced labour"; and
- (c) re-numbered clause (2) as clause(3) and Article 52 as Article 55.

10.28.4 Resolutions of the Conference

The Conference adopted Article 52 with amendments and re-numbered it as Article 55, as follows:

- "55. (1) A person shall not be held in slavery or servitude.
- (2) Notwithstanding any other provision in this Constitution, the protection from slavery or servitude shall not be derogated from.
- (3) A person shall not be required to perform forced labour.
- (4) For purposes of this Article, "forced labour" does not include-
 - (a) any labour required in consequence of a sentence or order of a court;
 - (b) labour required of any person while that person is lawfully detained that, though not required in consequence of a sentence or order of a court, is reasonably necessary in the interest of hygiene or for the maintenance of the place at which the person is detained;
 - (c) any labour required of a member of a disciplined force in pursuance of that person's duties as such or, in the case of a person who objects, on religious grounds, to service as a member of a naval, military or air force, any labour that that person is required by law to perform in place of such service;
 - (d) any labour required during any period when the Republic is at war, under a state of public emergency, a threatened state of public emergency, a national disaster or in the event of any other emergency or calamity that threatens the life and well-being of the community, to the extent that the requiring of such labour is reasonably justifiable in the circumstances of any situation arising or existing during that period, or as a result of the emergency or calamity; or

(e) any labour required as part of reasonable and normal communal or other civic obligations.”

10.29 Article 53: Privacy

10.29.1 Recommendations of the Commission

The Commission did not make specific recommendations on the right to privacy but provided for it in Article 53.

10.29.2 Provisions in the Draft Constitution on Privacy

Article 53 provides as follows:

“53. All persons have the right to privacy, which includes the right not to have -

- (a) their person, home or property searched;
- (b) their possessions seized;
- (c) information relating to their family, health status or private affairs unnecessarily required or revealed; or
- (d) the privacy of their communications infringed.”

10.29.3 Deliberations of the Conference on Article 53

In debating the Article, the Conference:

- (a) observed that there was need to provide for exceptions when the provision in Article 53 could not apply to protect the greater public interest and adopted clause (2) of Article 17 of the current Constitution and numbered it as clause (2) of new Article 47;
- (b) deleted the word “unnecessarily” from paragraph (c) of clause (2) in order to ensure the protection of the privacy of a family and personal information; and
- (c) amended the marginal note to read “Protection of privacy of person , home and property”.

10.29.4 Resolutions of the Conference

The Conference adopted Article 53 with amendments and re-numbered it as Article 56 as follows:

“56. (1) A person has the right to privacy, which includes the right not to have -

- (a) their person, home or property searched;
- (b) their possessions seized;
- (c) information relating to their family, health status or private affairs required or revealed; or
- (d) the privacy of their communications infringed.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this Article to the extent that it is shown that the law in question makes provision-

(a) that is reasonably required in the interest of defence, public safety, public order, public morality, public health, town and country planning, the development and utilisation of mineral resources, or in order to secure the development or utilisation of any property for a purpose beneficial to the community;

(b) that is reasonably required for the purpose of protecting the rights or freedoms of other persons;

(c) that authorises an officer or agent of the Government, a district council or a body corporate established by law for a public purpose to enter on the premises of any person in order to inspect those premises or anything thereon for the purpose of any tax or rate due, or in order to carry out work connected with any property that is lawfully on those premises and that belongs to the Government, district council or body corporate, as the case may be; or

(d) that authorises, for the purpose of enforcing the judgment or order of a court in any civil proceedings, the search of any person or property by order of a court or entry upon any premises by such order."

10.30 Article 54: Freedom of Worship and Conscience

10.30.1 Recommendations of the Commission

The Commission recommended that:

(a) the current constitutional provisions on freedom of worship and conscience should be maintained;

(b) churches and other religious organisations should continue to be registered and monitored under relevant legislation, but that this legislation should be reviewed to provide criteria for registration, compatible with the freedom of worship; and

(c) churches and other religious organisations engaged in profit making ventures should continue paying tax, as required by law.

10.30.2 Provisions in the Draft Constitution on Freedom of Worship and Conscience

Article 54 provides as follows:

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

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

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

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

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

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

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

(6) A person shall not be compelled -

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

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

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

(d) by a public body to disclose that individual's religious conviction or belief; or

(e) to do any other act that is contrary to that individual's religion or belief."

10.30.3 Deliberations of the Conference on Article 54

10.30.3.1 In debating the Article, the Conference observed that it did not include the right to change one's religion and did not provide for exception to the rights. Therefore, the Conference resolved to delete its provision and replace it with that of Article 19 of the current Constitution which provided for freedom of conscience and also provided for one to change their religion or belief without any hindrance and numbered the Article as Article 57. Such a provision would protect those whose religions did not allow their followers the freedom to change religion to an extent that they did even execute or kill those that attempted to do so.

10.30.3.2 In addition, Article 19 provided for limitation of freedom of worship within its provision. Insertion of limitation in Article 57 was in accordance with the resolution of the Conference to place limitations within the individual Articles.

10.30.3.3 The Conference also amended the marginal note to read "Protection of freedom of conscience".

10.30.4 Resolutions of the Conference

The Conference adopted amendments to Article 54 and re-numbered it as Article 57 as follows:

"57. (1) A person shall not, except with that person's own consent, be hindered in the enjoyment of that person's freedom of conscience.

(2) For the purposes of this Article, "freedom of conscience" includes freedom of thought and religion, freedom to change the person's religion or belief, and freedom, either alone or in community with others, and both in public and in private, to manifest and propagate the person's religion or belief in worship, teaching, practice and observance.

(3) Except with the person's own consent, or, if the person is a minor, the consent of that person's guardian, a person attending any place of education shall not be required to receive religious instruction or to take part in or attend any religious ceremony or observance if that instruction, ceremony or observance relates to a religion other than the person's own.

(4) A religious community or denomination shall not be prevented from providing religious instruction for persons of that community or denomination in the course of any education provided by that community or denomination or from establishing and maintaining institutions to provide social services for such persons.

(5) A person shall not be compelled to take any oath which is contrary to that person's religion or belief or to take any oath in a manner which is contrary to that person's religion or belief.

(6) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this Article to the extent that it is shown that the law in question makes provision which is reasonably required-

(a) in the interests of defence, public safety, public order, public morality or public health; or

(b) for the purposes of protecting the rights and freedoms of other persons, including the right to observe and practice any religion without the interference of members of any other religion;

and except so far as that provision or, the thing done under the authority thereof as the case may be, is shown not to be reasonably justifiable in a democratic society."

10.31 Article 55: Freedom of Expression

10.31.1 Recommendations of the Commission

The Commission recommended that:

(a) the current constitutional provision should be maintained and the term “freedom of expression” should be defined by the Constitution and should include:

- (i) freedom of the Press and other media;
- (ii) freedom to receive and impart information or ideas;
- (iii) freedom of artistic creativity; and
- (iv) academic freedom and freedom of scientific research.

(b) Laws on civil libel and defamation should be maintained, as every right entails a corresponding duty in relations between people.

10.31.2 Provisions in the Draft Constitution on Freedom of Expression

Article 55 provides as follows:

“55. (1) Every person has the right to freedom of expression which includes-

- (a) freedom to hold an opinion;
- (b) freedom to receive or impart information or ideas;
- (c) freedom of artistic creativity; and
- (d) academic freedom, including freedom of scientific research.

(2) Clause (1) does not extend to -

- (a) propaganda for war;
- (b) incitement to violence; or
- (c) advocacy of hatred that -
 - (i) vilifies and disparages others or incites harm; or
 - (ii) is based on any prohibited ground of discrimination specified in this Constitution.”

10.31.3 Deliberations of the Conference on Article 55

In debating the Article, the Conference:

- (a) observed that the provisions in paragraphs (c) and (d) of clause (1) could be a licence for pornography in the name of creativity and for research that was not legally and morally acceptable. Therefore, they were deleted; and
- (b) incorporated and adopted clause (3) of Article 20 of the current Constitution to provide for limitations.

10.31.4 Resolutions of the Conference

The Conference approved Article 55 with amendments and re-numbered it as Article 58 as follows:

“58. (1) Every person has the right to freedom of expression which includes -

- (a) freedom to hold an opinion; and
 - (b) freedom to receive or impart information or ideas.
- (2) Clause (1) does not extend to -
- (a) propaganda for war;
 - (b) incitement to violence; or
 - (c) advocacy of hatred that -
 - (i) vilifies and disparages others or incites harm; or
 - (ii) is based on any prohibited ground of discrimination specified in this Constitution.
- (3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with, or in contravention of, this Article to the extent that it is shown that the law in question makes provision that is reasonably required for the purpose of -
- (a) the interests of defence, public safety, public order, public morality or public health;
 - (b) protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings;
 - (c) preventing the disclosure of information received in confidence;
 - (d) maintaining the authority and independence of the courts;
 - (e) regulating educational institutions in the interests of persons receiving instruction therein; or
 - (f) the registration of, or regulating the technical administration or the technical operation of, newspapers and other publications, telephony, telegraphy, posts, wireless broadcasting or television;
- and except so far as that provision or, the thing done under the authority thereof, as the case may be, is shown not to be reasonably justifiable in a democratic society."

10.32 Article 56: Access to Information

10.32.1 Recommendations of the Commission

The Commission recommended that the Constitution provide in the Bill of Rights that:

- (a) every person should have the right of access to public information, but that it should be subject to national security considerations;
 - (b) Parliament should enact a law that would facilitate the realisation of this right;
 - (c) no person should be hindered in the enjoyment of academic and intellectual freedom;
- and

- (d) political parties, individuals and organisations should be free to establish their own newspapers, publications and other media, subject to provisions of the law.

10.32.2 Provisions in the Draft Constitution on Access to Information

Article 56 provides as follows:

"56. (1) Every citizen has the right of access to -

(a) information held by the State; and

(b) any information that is held by another person which is required for the exercise or protection of any right or freedom.

(2) The President shall within six months of the submission of a report of any commission of inquiry, appointed by the President in the exercise of the President's executive functions, publish the report.

(3) Every person has the right to demand the correction or deletion of untrue or misleading information affecting that person.

(4) The State has the obligation to publicise any important information affecting the welfare of the Nation.

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

10.32.3 Deliberations of the Conference on Article 56

10.32.3.1 In debating the Article, some members supported paragraph (a) and argued as follows:

(a) that freedom of information was a co-principle of good governance; and respect for fundamental human rights;

(b) that access to information was essential for citizens to make informed decisions; and

(c) that Article 56 would have "buttressed" the Freedom of Information Bill which was hoped to be presented to Parliament by Government in due course.

10.32.3.2 However, most members did not support paragraph (a) of clauses (1) and argued as follows:

(a) that it was not desirable for everyone to probe into every information held by the State as some of it was "classified", and that even developed nations did not avail all classified information to the public;

(b) that under current practice, information deposited with the National Archives could only be accessed for research after a period of twenty years;

(c) that allowing the provision would compel the DPP to disclose reasons for entering the *nolle prosequi*, which was undesirable and not supported by law; and

(d) that the Freedom of Information Bill which is pending before Parliament is the best legislation for dealing with provision in clause (1).

10.32.3.3 Similarly, most members did not support paragraph (b) of clause (1) and argued as follows:

- (a) that the provision would allow for interference into other people's private lives; and
- (b) that since information had a price, it would be tempting for those who held custody of such information to sell State secrets for financial gains.

10.32.3.4 With regard to clause (2), the Conference noted that there were various reasons why commissions of inquiry were set up. Prescribing a time-frame in the Constitution was, therefore, not only inappropriate, but it was also undesirable as some information may not be published. Therefore, clause (2) was deleted.

10.32.3.5 Clause (5) was approved by the Conference with an amendment by deleting the word "public" from the provision.

10.32.4 Resolutions of the Conference

The Conference adopted Article 56 with amendments and re-numbered it as Article 59, as follows:

- "59. (1) Every person has the right to demand the correction or deletion of untrue or misleading information affecting that person.
- (2) The State has the obligation to publicise any important information affecting the welfare of the nation.
- (3) Parliament shall enact legislation to provide for access to information."

10.33 Article 57: Freedom of Media

10.33.1 Recommendations of the Commission

10.33.1.1 The Commission recommended that:

- (a) press freedom be specifically provided for under the Bill of Rights;
- (b) the current constitutional provision that prohibits derogations from this right should be maintained, except that this right should also acknowledge the importance of the law of libel which seeks to protect public interest and the interests of others in circumstances where there is disregard of these interests;

10.33.1.2 The Commission further recommended that the Constitution should provide that:

- (a) every person should have the right to freedom of the Press, media and artistic creativity;
- (b) press material or other communications should not be subjected to any form of censorship;
- (c) public-owned media should be managed in a manner that ensures impartiality of a diversity of opinions;

- (d) the courts should have the discretion of determining whether or not a journalist should be compelled to divulge their sources of information;
- (e) the registration or licensing of any media shall not be unreasonably withheld, withdrawn or refused; and
- (f) parliament should not enact any law abrogating freedom of the Press.

10.33.1.3 Further, the Commission recommended that the offences of criminal libel and defamation of the President should be repealed.

10.33.2 Provisions in the Draft Constitution on Freedom of Media

Article 57 provides as follows:

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

10.33.3 Deliberations of the Conference on Article 57

10.33.3.1 In debating Article 57, the Conference:

- (a) while supporting the provisions observed that there was need to insert limitations in the Article as an uncontrolled press could either create, build or destroy individuals or threaten the security of a country. For this reason, clause (3) of Article 20 of the current Constitution was adopted to provide for limitations and re-numbered as clause (3) of the new Article 60;
- (b) recognised that the right not to disclose the source was the bedrock of journalism and, therefore, adopted clause (1) of Article 58 of the Draft Constitution and re-numbered it as clause (2) of Article 60;
- (c) deleted clause (2) because it was unnecessary as the provision of Article 57 of the Draft Constitution was subject to limitations as it was not one of those protected under non-derogable rights. Ninety-seven (97) members tried to call for a division over the decision of the Conference to delete clause (2) but the decision was sustained as they were fewer than 100 members required to call for a vote;
- (d) deleted clause (5) because the use of words such as "...shall not require prior licensing for any form of publication or dissemination", and "...shall not harass or penalise a person for any opinion or view or content of any publication, broadcast or dissemination" could lead to publication and dissemination of undesirable content such as pornography; and
- (e) amended clause (6) by directing Parliament to enact legislation providing for an independent broadcasting authority, appropriate limitations and specifying the role of Government in securing and protecting public interest in broadcasting by adapting Article 192 of the Constitution of South Africa.

10.33.4 Resolutions of the Conference

The Conference adopted Article 57 with amendments and re-numbered it as Article 60 as follows:

"60. (1) There shall be freedom of the press and other media.

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

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this Article to the extent that it is shown that the law in question makes provision that is reasonably required for the purpose of -

(a) in the interests of defence, public safety, public order, public morality or public health;

(b) protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings;

(c) preventing the disclosure of information received in confidence;

(d) maintaining the authority and independence of the courts;
(e) regulating educational institutions in the interests of persons receiving instruction therein; or
(f) the registration of, or regulating the technical administration or the technical operation of, newspapers and other publications, telephony, telegraphy, posts, wireless broadcasting or television;
and except so far as that provision or, the thing done under the authority thereof; as the case may be, is shown not to be reasonably justifiable in a democratic society.

(4) Broadcasting and other electronic media are subject only to fair licensing procedures that are –

(a) administered by a body that is independent of control by the Government, political interests or commercial interests; and

(b) designed to ensure –

(i) the reasonable allocation of broadcast frequencies; and

(ii) adherence to codes of good practice.

(5) The registration or licensing of any media shall not unreasonably be withheld, withdrawn or refused.

(6) Parliament shall enact legislation to –

(a) establish an independent authority to regulate broadcasting in the public interest;

(b) ensure fairness and diversity of views broadly representing Zambian society; and

(c) specify the role of the Government in securing and protecting the public interest in broadcasting.”

10.34 Article 58: Freedom not to Disclose Source

10.34.1 Recommendations of the Commission

The recommendations to this provision are as given under Article 57.

10.34.2 Provisions in the Draft Constitution on Freedom not to disclose source

Article 58 provides as follows:

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

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

10.34.3 Deliberations of the Conference on Article 58

10.34.3.1 In debating Article 58, the Conference accepted and placed its clause (1) in clause (2) of Article 57 which was re-numbered as Article 60.

10.34.3.2 However, the Conference considered clause (2) to be misplaced as the Government was neither accountable to the media directly nor accountable to the people through the media but was accountable to the people either directly or through their elected representatives. For this reason, clause (2) of Article 58 was deleted.

10.34.4 Resolutions of the Conference

The Conference, by adopting and transferring clause (1) to Article 60 as clause (2) and resolving to delete clause (2), consequently deleted Article 58.

10.35 Article 59: Independence of Public Media

10.35.1 Recommendations of the Commission

The Commission did not make recommendations on the independence of public media but provided for it in Article 59.

10.35.2 Provisions in the Draft Constitution on Independence of Public Media

Article 59 provides as follows:

"59. (1) All public media shall -

(a) be independent and impartial; and

(b) afford fair opportunities and facilities to all persons for the presentation of divergent views and dissenting opinions.

(2) Parliament shall enact legislation to -

(a) promote the independence and impartiality of the public media; and

(b) provide for reasonable allocation of air time and space by the public media to political parties, either generally or during election campaigns, on the recommendation of the Electoral Commission."

10.35.3 Deliberations of the Conference on Article 59

In debating the Article, the Conference observed that the provisions adopted on the freedom of the media coupled with the ethics of journalism were sufficient to compel the media to be impartial. In addition, the need to be impartial should not be restricted to public media as the private media also affected the public. Consequently, Article 59 was deleted.

10.35.4 Resolutions of the Conference

The Conference resolved to delete Article 59.

10.36 Article 60: Freedom of Association

10.36.1 Recommendations of the Commission

10.36.1.1 The Commission recommended that the right to the freedoms of association, peaceful assembly, demonstration and petition should be reflected in the Constitution and each freedom should stand on its own.

10.36.1.2. The Commission also recommended that the Public Order Act should be reviewed and amended to:

- (a) provide that where it is shown that there is need for an urgent demonstration or gathering, the requirement of seven days notice should be waived or abridged to a shorter period;
- (b) exempt indoor meetings from the requirement of notification;
- (c) make the Act more flexible and permissive, taking into account factors such as the duty of the Police to provide security and surveillance at public meetings and the need for an independent appeals tribunal and to localise appeals; and
- (d) ensure that Police training programmes are appropriately structured so as to equip them with skills in administering the Act.

10.36.1.3 The Commission also recommended that the right to the freedoms of association, peaceful assembly, demonstration and petition should be reflected in the Constitution and each freedom should stand on its own.

10.36.2 Provisions in the Draft Constitution on Freedom of Association

Article 60 provides as follows:

“60. (1) Every person has the right to freedom of association.

(2) Freedom of association shall apply to the formation, operation and continued existence of any association.

(3) A person shall not be compelled to join an association of any kind.”

10.36.3 Deliberations of the Conference on Article 60

10.36.3.1 In debating the Article, the Conference took cognisance of the danger of proliferation of associations promoting undesirable activities such as gay rights if provisions such those in clause (2) of Article 60 of the Draft Constitution were adopted.

10.36.3.2 Consequently, the Conference:

- (a) deleted the provision of Article 60 and replaced it with that of Article 21 of the current Constitution; and

(b) amended the marginal note to read "Protection of the freedom of assembly and association" and re-numbered it as Article 61.

10.36.4 Resolutions of the Conference

The Conference resolved to delete Article 60 of the Draft Constitution and replace it with Article 21 of the current Constitution, and re-numbered it as Article 61, as follows:

"61. (1) A person shall not, except with the person's own consent, be hindered in the enjoyment of that person's freedom of assembly and association, that is to say, the person's right to assemble freely and associate with other persons and in particular to form or belong to any political party, trade union or other association for the protection of that person's interests.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with, or in contravention of, this Article to the extent that it is shown that the law in question makes provision-

(a) that is reasonably required in the interests of defence, public safety, public order, public morality or public health;

(b) that is reasonably required for the purpose of protecting the rights or freedoms of other persons;

(c) that imposes restrictions upon public officers; or

(d) for the registration of political parties or trade unions in a register established by or under a law and for imposing reasonable conditions relating to the procedure for entry on such a register including conditions as to the minimum number of persons necessary to constitute a trade union qualified for registration; and except so far as that provision or, the thing done under the authority thereof, as the case may be, is shown not to be reasonably justifiable in a democratic society."

10.37 Article 61: Assembly, Demonstration, Picketing, Lock Out and Petition

10.37.1 Recommendations of the Commission

The recommendations to this provision are as presented in Article 60.

10.37.2 Provisions in the Draft Constitution on Assembly, Demonstration, Picketing, Lock out and Petition

Article 61 provides as follows:

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

10.37.3 Deliberations of the Conference on Article 61

10.37.3.1 In debating Article 61, some members were of the view that the provision should be retained with amendment by deleting reference to the right to assemble which had been covered by the provision adopted in Article 21 of the current Constitution. They argued that the right to demonstrate, picket or lock-out and present a petition to public authorities should be retained in the Constitution.

10.37.3.2 However, most members supported the deletion of Article 61 because its provision was covered in subsidiary legislation such as the Public Order Act and the Industrial and Labour Relations Act.

10.37.3.3 Consequently the Conference deleted Article 61 of the Draft Constitution after observing that it had become redundant as a consequence of the resolution of the Conference to delete Article 60 and replace it with Article 21 of the current Constitution which also provided for the right of assembly.

10.37.4 Resolutions of the Conference

The Conference resolved to delete Article 61.

10.38 Article 62 : Right to Participate in Politics

10.38.1 Recommendations of the Commission

The Commission did not make recommendations on the right to participate in politics but provided for it in Article 62.

10.38.2 Provisions in the Draft Constitution on Right to Participate in Politics

Article 62 provides as follows:

"62. (1) Subject to this Constitution, every citizen has a right to make political choices which includes the right –

- (a) to form or participate in forming a political party;
- (b) to participate in the activities of, or recruit members for, a political party; and
- (c) to campaign for a political party or cause.

(2) Subject to this Constitution, every citizen has the right to be elected -

- (a) to any elective public body or office established by or under this Constitution; and
- (b) to an office of a political party of which the citizen is a member.

(3) Every citizen aged eighteen years and above has the right to be registered as a voter and to vote by secret ballot in elections or referenda, as provided by or under this Constitution.

(4) The State shall put in place measures to ensure that eligible citizens exercise their right to register as voters and to vote."

10.38.3 Deliberations of the Conference on Article 62

10.38.3.1 In debating Article 62 of the Draft Constitution, the Conference reiterated its earlier decision to adopt Article 21 of the current Constitution, which also provided for the right to form or belong to a political party, to replace Article 60 and deleted clauses (1) and (2).

10.38.3.2 In addition, clauses (3) and (4) were deleted because their provisions were provided for in clauses (1) and (2) of Articles 86 and clause (1) of Article 96 adopted by the Conference.

10.38.4 Resolutions of the Conference

The Conference resolved to delete Article 62 of the Draft Constitution.

10.39 Article 63: Freedom of Movement and Residence

10.39.1 Recommendations of the Commission

The Commission did not make recommendations on the freedom of movement and residence but provided for it in Article 63.

10.39.2 Provisions in the Draft Constitution on Freedom of Movement and Residence

Article 63 provides as follows:

“63. (1) Every person has the right to freedom of movement.

(2) Every person has the right to leave the Republic.

(3) Every citizen has the right to enter into, remain and reside anywhere in the Republic.

(4) Every citizen has a right to a passport.

(5) Parliament shall enact legislation for the imposition of restrictions on the entry, movement or residence of persons who are not citizens.”

10.39.3 Deliberations of the Conference on Article 63

10.39.3.1 In debating the Article, some members supported the retention of the provision and argued that:

(a) citizenship implied the right to a passport and that it was not the mandate of the National Constitutional Conference to predict criminal intent; and

(b) the right to a passport facilitated the freedom of movement and residence.

10.39.3.2 However, most members opposed clause (4) which provided for a right to a Passport and argued that:

(a) the right to a passport could not be granted as a “blanket right” like a National Registration Card because of serious considerations such as the right of the State to withdraw a passport in cases where an accused may escape from justice;

(b) a clause which compelled the State to give a passport to every citizen without limitation was dangerous; and that most countries in the world including the United Kingdom and the United States of America treated the passport as a restricted document;

- (c) freedom of movement should not be mixed up with the right to a passport which was a different matter altogether; and
- (d) the issue of the passport and National Registration Card ought to be left to subordinate legislation.

10.39.3.3 The Conference therefore deleted Article 63 and replaced it with Article 22 of the current Constitution and re-numbered it as Article 62.

10.39.4 Resolutions of the Conference

The Conference resolved to delete Article 63 of the Draft Constitution and replace it with Article 22 of the current Constitution, and re-numbered it as Article 62 as follows:

"62. (1) Subject to the other provisions of this Article and except in accordance with any written law, a citizen shall not be deprived of the citizen's freedom of movement.

(2) For the purposes of this Article, "freedom of movement" means-

- (a) the right to move freely throughout Zambia;
- (b) the right to reside in any part of Zambia; and
- (c) the right to leave Zambia and to return to Zambia.

(3) Any restrictions on a person's freedom of movement that relates to his lawful detention shall not be held to be inconsistent with or in contravention of this Article.

(4) Nothing contained in or done under the authority of any law shall be held to be inconsistent with, or in contravention of, this Article to the extent that it is shown that the law in question makes provision-

- (a) for the imposition of restrictions that are reasonably required in the interests of defence, public safety, public order, public morality or public health or the imposition of restrictions on the acquisition or use by any person of land or other property in Zambia, and except so far as that provision or, the thing done under the authority thereof as the case may be, is shown not to be reasonably justifiable in a democratic society;
- (b) for the imposition of restrictions on the freedom of movement of any person who is not a citizen of Zambia;
- (c) for the imposition of restrictions upon the movement or residence within Zambia of public officers; or
- (d) for the removal of a person from Zambia to be tried outside Zambia for a criminal offence or to undergo imprisonment in some other country in execution of the sentence of a court in respect of a criminal offence under the law in force in Zambia of which he has been convicted."

10.40 Article 64: Refugees and Asylum

10.40.1 Recommendations of the Commission

The Commission recommended that rights of refugees should be enshrined in the Constitution. However, details pertaining to grant of refugee status or asylum and other related issues should be in ordinary legislation.

10.40.2 Provisions in the Draft Constitution on Refugees and Asylum

Article 64 provides as follows:

"64. (1) An individual who has sought asylum or refuge in Zambia has a right not to be returned to the country of origin if that person has a well-founded fear of -

(a) persecution in the country of origin; or

(b) other treatment in that country that would justify that person being regarded as a refugee.

(2) Parliament shall enact legislation governing persons who seek refuge or asylum in Zambia."

10.40.3 Deliberations of the Conference on Article 64

The Conference debated and resolved to delete Article 64 of the Draft Constitution for the reason that matters dealing with refugees were subject to frequent changes and therefore, should best be provided for in a subordinate Act of Parliament.

10.40.4 Resolutions of the Conference

The Conference resolved to delete Article 64 of the Draft Constitution.

10.41 Article 65: Land And Other Property

10.41.1 Recommendations of the Commission

The Commission recommended that the right of the individual to property be included in the Constitution as a justiciable right.

10.41.2 Provisions in the Draft Constitution on Land and other Property

Article 65 provides as follows:

"65. (1) Every person has a right to access, acquire and own land and other property either individually or in association with others.

(2) The State shall not deprive a person of property of any description or of any interest in or right over property, except under an Act of Parliament.

(3) Legislation shall not authorise deprivation of any interest in or right over property of any description, except -

(a) where deprivation of any interest in or right over property is justifiable balancing -

(i) the public benefit; and

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

10.41.3 Deliberations of the Conference on Article 65

10.41.3.1 In debating Article 65, the Conference:

- (a) resolved to provide for the right to access, acquire and own land in clause (1) and the right to access, acquire and own other property in clause (2) and prefixed both clauses with the phrase "subject to this Constitution" in recognition of the fact that there were other provisions in the Constitution dealing with property including ownership of property by foreigners;
- (b) adopted Article 16 of the current Constitution to prohibit compulsory acquisition of property except under an Act of Parliament, provide for circumstances under which property could be compulsorily acquired, and the determination of compensation in default of agreement; and numbered its clauses (1), (2) and (3) as clauses (3), (4) and (5) of Article 63.

10.41.3.2 Accordingly, the Conference adopted Article 65 with amendments by restricting the right to access, acquire and own land to citizens while leaving the right to access, acquire and own other property to any person and re-numbered it as Article 63.

10.41.4 Resolutions of the Conference

The Conference adopted Article 65 with amendments by incorporating Article 16 of the current Constitution, and re-numbering it as Article 63 as follows:

“63. (1) Subject to this Constitution, every citizen has a right to access, acquire or own land either individually or in association with other citizens.

(2) Subject to this Constitution, a person has a right to access, acquire and own other property, either individually or in association with others.

(3) Except as provided in this Article, property of any description shall not be compulsorily taken possession of, and interest in or right over property of any description shall not be compulsorily acquired, unless by or under the authority of an Act of Parliament which provides for payment of adequate compensation for the property or interest or right to be taken possession of or acquired.

(4) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of clause (3) to the extent that it is shown that such law provides for the taking possession or acquisition of any property or interest therein or right thereover-

(a) in satisfaction of any tax, rate or due;

(b) by way of penalty for breach of any law, whether under civil process or after conviction of an offence;

(c) in execution of judgments or orders of courts;

(d) upon the attempted removal of the property in question out of or into Zambia in contravention of any law;

(e) as an incident of contract including a lease, tenancy, mortgage, charge, pledge or bill of sale or of a title deed to land;

(f) for the purpose of its administration, care or custody on behalf of, and for the benefit of, the person entitled to the beneficial interest therein;

(g) by way of the vesting of enemy property or for the purpose of the administration of such property;

(h) for the purpose of-

(i) the administration of the property of a deceased person, a person of unsound mind or a person who has not attained the age of eighteen years, for the benefit of the persons entitled to the beneficial interest therein;

(ii) the administration of the property of a person adjudged bankrupt or a body corporate in liquidation, for the benefit of the creditors of such bankrupt or body corporate and, subject thereto, for the benefit of other persons entitled to the beneficial interest in the property;

- (iii) the administration of the property of a person who has entered into a deed of arrangement for the benefit of that person's creditors; or
- (iv) vesting any property subject to a trust in persons appointed as trustees under the instrument creating the trust or by a court or, by order of a court, for the purpose of giving effect to the trust;
- (i) in consequence of any law relating to the limitation of actions;
- (j) in terms of any law relating to abandoned, unoccupied unutilised or undeveloped land, as defined in such law;
- (k) in terms of any law relating to absent or non-resident owners, as defined in such law, of any property;
- (l) in terms of any law relating to trusts or settlements;
- (m) by reason of a dangerous state or prejudicial to the health or safety of human beings, animals or plants;
- (n) as a condition in connection with the granting of permission for the utilisation of that or other property in any particular manner;
- (o) for the purpose of, or in connection with, the prospecting for, or exploitation of, minerals belonging to the Republic on terms which provide for the respective interests of the persons affected;
- (p) in pursuance of a provision for the marketing of property of that description in the common interests of the various persons otherwise entitled to dispose of that property;
- (q) by way of the taking of a sample for the purposes of any law;
- (r) by way of the acquisition of the shares, or a class of shares, in a body corporate on terms agreed to by the holders of not less than nine-tenths in value of those shares or that class of shares;
- (s) where the property consists of an animal, upon its being found trespassing or straying;
- (t) for so long as may be necessary for the purpose of any examination, investigation, trial or inquiry or, in the case of land, the carrying out thereon-
 - (i) of work for the purpose of the conservation of natural resources of any description; or
 - (ii) of agricultural development or improvement which the owner or occupier of the land has been required, and has without reasonable and lawful excuse refused or failed, to carry out;
- (u) where the property consists of any licence or permit;

(v) where the property consists of wild animals existing in their natural habitat or the carcasses of wild animals;

(w) where the property, is held by a body corporate established by law for public purposes and in which no moneys have been invested other than moneys provided by Parliament;

(x) where the property is any mineral, mineral oil or natural gases or any rights accruing by virtue of any title or licence for the purpose of searching for or mining any mineral, mineral oil or natural gases-

(i) upon failure to comply with any provision of such law relating to the title or licence or to the exercise of the rights accruing or to the development or exploitation of any mineral, mineral oil or natural gases; or

(ii) terms of any law vesting any such property or rights in the President;

(y) for the purpose of the administration or disposition of such property or interest or right by the President in implementation of a comprehensive land policy or a policy designed to ensure that the statute law, the common law and the doctrines of equity relating to or affecting the interest in or rights over land, or any other interests or rights enjoyed by chiefs and persons claiming through or under them, shall apply with substantial uniformity throughout Zambia;

(z) in terms of any law providing for the conversion of titles to land from freehold to leasehold and the imposition of any restriction on subdivision, assignment or sub-letting;

(aa) in terms of any law relating to-

(i) the forfeiture or confiscation of the property of a person who has left Zambia for the purpose or apparent purpose, of defeating the ends of justice; or

(ii) the imposition of a fine on, and the forfeiture or confiscation of the property of, a person who admits a contravention of any law relating to the imposition or collection of any duty or tax or to the prohibition or control of dealing or transactions in gold, currencies or securities.

(5) An Act of Parliament such as referred to in clause (3) shall provide that in default of agreement, the amount of compensation shall be determined by a court of competent jurisdiction."

10.42 Article 66: Consumer Rights

10.42.1 Recommendations of the Commission

The Commission did not make recommendations on consumer rights but provides for them in Article 66.

10.42.2 Provisions in the Draft Constitution on Consumer Rights

Article 66 provides as follows:

“66. (1) Consumers have the right to -

- (a) goods and services of appropriate quality, quantity and use;
- (b) information necessary for them to gain full benefit from the goods and services;
- (c) protection of their health, safety and economic interests; and
- (d) adequate compensation for defects that cause them loss or injury.

(2) This Article applies to goods and services offered by any person, State organ or State institution, whether in return for consideration, taxes or other form of revenue or free of any charge.

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

10.42.3 Deliberations of the Conference on Article 66

In debating Article 66, the Conference took cognisance of the following:

- (a) that while consumer rights were important, they were best provided for in subsidiary legislation; and
- (b) that a law was in the process of being formulated and would soon be submitted at the next sitting of Parliament on the protection of consumer rights. Therefore, there was no need to enshrine consumer rights in the Constitution and Article 66 should be deleted.

10.42.4 Resolutions of the Conference

The Conference resolved to delete Article 66.

ECONOMIC AND SOCIAL RIGHTS

10.43 Article 67: Progressive Realisation of Economic and Social Rights

10.43.1 Recommendations of the Commission

The Commission recommended that:

- (i) economic, social and cultural rights should be enshrined in the Bill of Rights and should be justiciable.
- (ii) the Constitution should provide that the State must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights.

(iii) Parliament should enact or amend appropriate legislation relating to the minimum wage, the poverty datum line, the employment of casual workers, the right to strike, the right of workers to adequate compensation and reasonable working hours as well as the right to maternity or paternity leave, with a view to ensuring that they are in line with the provisions of the Constitution.

10.43.2 Provisions in the Draft Constitution on Progressive Realisation of Economic and Social Rights

Article 67 provides as follows:

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

(2) The Government shall take measures, including –

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

(b) legislation –

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

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

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

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

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

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

10.43.3 Deliberations of the Conference on Article 67

10.43.3.1 The Conference debated the Article and two positions emerged. Some members supported the provision while other members opposed it and proposed that it should be deleted.

10.43.3.2 The members who supported the retention of the Article argued that:

- (a) the provision was actually meant to protect the State against litigations considering that resources may always be a constraint to provide for economic, social and cultural rights in their entirety and within a short period;
- (b) deleting clause (1) of Article 67 would mean that rights that were provided for under Articles 68 to 75, inclusive, would have to be fulfilled on demand and yet the State did not have sufficient resources to meet such instant demands and would put it at the risk of being flooded with litigation from citizens who were aggrieved by lack of realisation of these rights.

10.43.3.3 However, members who opposed the Article and wanted it deleted argued that:

- (a) the State might not be in a position to fulfil economic, social and cultural rights in view of resource constraints;
- (b) the Article could lead to citizens suing the State if such a provision was made;
- (c) the State has always the best intentions to provide for socio-economic development and there was no need to have such a provision in the Constitution; and
- (d) the Article was vague and, therefore, should not be included in the Constitution.

10.43.3.4 The Conference debated the provision at length but could not reach a consensus and a vote was held after 162 members had stood in their places to call for a division to oppose the deletion of the provision. The vote was also inconclusive as neither side obtained the two-thirds majority vote required for a decision to be sustained.

10.43.3.5 Since consensus could not be reached and the vote held could not break the deadlock, the matter was referred to a national referendum in accordance with paragraph (b) of subsection (1) of section 25 of the National Constitutional Conference Act, No. 19 of 2007 as amended.

10.43.3.6 In referring Article 67 to a referendum, the Conference amended clause (1) of Article 67 of the Draft Constitution by replacing the term "economic and social rights" with the term "economic social and cultural rights" in accordance with international classification of human rights but adopted clauses (2) and (3) of Article 67 of the Draft Constitution without amendment.

10.43.4 Resolutions of the Conference

The Conference resolved to refer clause (1) of Article 67 to the referendum and approved clauses (2) and (3), and re-numbered the Article as Article 64, as follows:

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

(2) The Government shall take measures, including -

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

(b) legislation –

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

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

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

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

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

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

10.44 Article 68: Freedom to Choose Trade, Occupation and Profession

10.44.1 Recommendations of the Commission

The Commission did not make recommendations on the freedom to choose trade, occupation and profession but provided for it in Article 68.

10.44.2 Provisions in the Draft Constitution on Freedom to Choose Trade, Occupation and Profession

Article 68 provides as follows:

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

10.44.3 Deliberations of the Conference on Article 68

The Conference debated and resolved to delete Article 68 of the Draft Constitution as it was not adding any value to the Constitution and its provision was already catered for in subordinate legislation providing for employment and labour and industrial relations.

10.44.4 Resolutions of the Conference

The Conference resolved to delete Article 68 of the Draft Constitution.

10.45 Article 69: Labour Relations and Pension

10.45.1 Recommendations of the Commission

10.45.1.1 The Commission recommended that the Constitution should provide for the right to:

- (a) enjoyment of just and favourable conditions of work which ensure fair wages, equal work for equal pay, safe and healthy working conditions, equal opportunity for promotion, rest, leisure and reasonable limitation of working hours and periodic holidays with pay as well as remunerations for public holidays;
- (b) form or join a trade union of one's choice;
- (c) free collective bargaining;
- (d) withdraw labour in accordance with the law; and
- (e) a pension; and payment of reasonable pension and/or gratuity as is commensurate with a person's rank, salary and length of service.

10.45.1.2 The Commission further recommended that:

- (a) pensions and gratuity should be exempted from tax by relevant legislation; and
- (b) Parliament should, by legislation, provide for regulation of pensions and pension schemes and in particular:
 - (i) make provisions for persons over sixty years of age to receive welfare support;
 - (ii) provide that all workers subscribe to pension schemes;
 - (iii) provide for equitable representation of both employees and employers on pension boards or similar supervisory bodies of pension schemes; and
 - (iv) provide for the prudent investment of pension funds.

10.45.2 Provisions in the Draft Constitution on Labour Relations and Pension

Article 69 provides as follows:

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

(2) A worker has the right to -

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

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

- (4) Every employer has the right to -
- (a) form and join an employers' organisation;
 - (b) participate in the activities and programmes of an employers' organisation; and
 - (c) lock out.
- (5) Every trade union and every employers' organisation has the right to -
- (a) determine its own administration, programmes and activities;
 - (b) organise; and
 - (c) form and join a federation.
- (6) A trade union, an employer's organisation and an employer have the right to engage in collective bargaining.
- (7) Parliament shall enact legislation to regulate pensions and pension schemes and in particular to make provision for -
- (a) persons over sixty-five years of age to receive welfare support;
 - (b) all workers to subscribe to pension schemes;
 - (c) equitable representation of both employees and employers on any supervisory or policy board established for a pension scheme; and
 - (d) the prudent investment of pension funds."

10.45.3 Deliberations of the Conference on Article 69

10.45.3.1 In debating the Article, the Conference decided to split the provision into two (2) Articles re-numbered as Articles 65 and 66. Article 65 provides for the "right to pension, gratuity and retrenchment benefits" while Article 66 provides for "labour relations"

10.45.3.2 In addition, the Conference:

(a) moved clauses (1) and (2) to Article 57 with amendments by replacing the word "employment" with the word "work" in clause (1) because a person was entitled to "work" and not to a "job" as such. In addition, clause (2) was amended by replacing its provision with one stating that:

"(2) Parliament shall enact legislation to provide for a worker's rights". This was in recognition of the fact that the list of worker's rights in clause (2) was not exhaustive and there was a risk of omitting some of them. Therefore, such provisions should be provided for in subordinate legislation;

(b) moved clauses (3) and paragraphs (b),(c) and (d) of clause (7) to Article 56 as paragraphs (a), (b), (c), and (d) of clause (4). In addition, introduced and adopted clauses (1), (2) and (3) in Article 56 to provide for a right to pension, gratuity and retrenchment benefits; protecting and exempting them from tax;

(c) moved paragraph (a) of clause (7) to Article 58 providing for social protection including social welfare; and (d) deleted clauses (4), (5) and (6) as they were details which should be provided for in subordinate legislation.

10.45.4 Resolutions of the Conference

The Conference adopted Article 69 with amendments by splitting its provision into two (2) Articles which were re-numbered as the new Article 65 providing for pension, gratuity and retrenchment benefits and Article 66 providing for labour relations as follows:

- “65. (1) Every worker has the right to a pension, gratuity or retrenchment benefits.
- (2) Any benefit to which a person is entitled under this Article shall not be withheld or altered to that person’s disadvantage, except to an upward adjustment to the extent provided by law.
- (3) Pension, gratuity and retrenchment benefits in respect of service is exempt from tax.
- (4) Parliament shall enact legislation to regulate pensions and pension schemes and in particular to make provision for -
- (a) all workers to subscribe to pension schemes;
 - (b) equitable representation of both employees and employers on any supervisory or policy board established for a pension scheme;
 - (c) the prudent investment of pension funds; and
 - (d) the prompt payment of pension or retrenchment benefits to a worker who retires or is retrenched or, where a worker who retires or is retrenched is not paid promptly, the retention on the pay roll of that worker, until payment of the pension or retrenchment benefits.
66. (1) A person has the right to work and to just and fair labour practices.
- (2) Parliament shall enact legislation to provide for a worker’s rights.”

2.5 Technical Committee on Drafting the Zambian Constitution (2011-2014)

In its 2011 party manifesto, the Patriotic Front committed itself to “establish in consultation with stakeholders, a committee of experts to review the recommendations of all previous constitutional review commissions in order to draft and present a constitution which will reflect the will and aspirations of the people for submission to a referendum and subsequent enactment only, by the national assembly”. Zambia’s seventh time constitution-making process was restarted on 16 November 2011 when the late President Michael Chilufya Sata appointed the TCDZC with a mandate to review the recommendations of all previous constitutional review commissions, in order to “draft and present a constitution that reflects the will and aspirations of

Zambians". However, the guarantee by the PF government that the entire process would be concluded within a 90-day period from the initial appointment of the TCDZC on 16 November 2011 (which merely became political rhetoric) was never fulfilled. The work by TCDZC only seriously started in April 2012 that included hosting of fora in all the districts, provincial consultative conventions were held between November 2012 and February 2013, and a national consultative convention were held at the end of April 2013. Following the completion of a national consultative convention, nevertheless, it emerged that there was no clear roadmap drawn up for the process after the TCDZC would complete its work by the initial 30 June 2013 deadline, in spite of appeals from civic groups to make the process clear. After completion of TCDZC's work in 2014, a stalemate ensued between the appointing office and the TCDZC over the release of the final documents. On one hand, government contended that being the appointing office, TCDZC was supposed to submit the documents (draft Constitution and final report) to the government; while on the other hand, commissioners argued that they wanted to simultaneously release the documents to both the government and the public. After several months of uncertainties, the PF government finally released the draft Constitution to the public on the eve of Zambia's Golden Jubilee celebrations.

TECHNICAL COMMITTEE ON DRAFTING THE ZAMBIAN CONSTITUTION FINAL REPORT, 2014

PART V: BILL OF RIGHTS

Status, Application and Interpretation

Article 24: Status of Bill of Rights

Recommendations in the First Draft Constitution

The following provisions were recommended in the First Draft Constitution:

"24. (1) The Bill of Rights provided for in this Part is fundamental to democracy and Constitutionalism and shall form the basis of Zambia's social, political, economic and cultural policies.

(2) The purpose of the Bill of Rights is to preserve the dignity of individuals and communities by promoting social justice and realizing the potential of all human beings.

(3) The rights and freedoms set out in the Bill of Rights–

- (a) are inherent in each individual;
- (b) are not granted by the State;
- (c) cannot be taken away by the State;

- (d) do not exclude rights and freedoms, consistent with this Constitution, not expressly provided for in the Bill of Rights; and
- (e) are subject only to the limitations contained or contemplated in the Bill of Rights."

Rationale for the Article

The rationale for the Article was that, as the supreme law of the land, the Constitution needed to provide for the rights and freedoms that would be enjoyed by persons in the country. The Committee observed that the term "human rights" was understood to mean all those conditions of life that every person had a right to enjoy by virtue of being human. The concept involves claims, rights and privileges which every individual could expect, irrespective of colour, race, sex, religion, status in life, or origin. The Committee, therefore, further observed that the challenge facing Zambia, following the new democratic dispensation, was building a country that was fair to all of its citizens; a country in which all individuals felt and knew that they were valued members of society and that they had rights in respect of human dignity, development, equality and freedom. The Article reflected these democratic principles.

Resolutions of the District Consultative Fora on Article 24

Eighty (80) District Consultative Fora resolved to retain the Article as stated in the First Draft Constitution while two (2) resolved to amend the Article by:

- (a) including a provision on unemployment benefits to citizens with necessary qualifications who are eligible to work, as a social security or safety-net (1 district); and
- (b) deleting paragraph (d) of clause (3) of the Article (1 district).

Resolutions of the Provincial Conventions on Article 24

Nine (9) Provincial Conventions resolved to retain the Article as stated in the First Draft Constitution while one Convention resolved as follows:

Amend the Article by deleting the words "or contemplated" from paragraph (e) of clause (3). This is in order to avoid abuse that may be facilitated if the word "contemplation" is maintained.

Resolutions of the Sector Groups Convention on Article 24

The Convention resolved to amend the Article by:

- (a) including in clause (1), the word "environmental" after the word "economic," in order to highlight the role the environment plays in the life of a human being;
- (b) deleting the word "contemplated" in paragraph (e) of clause (3) because the word "contemplated" would create a leeway for the State not to respect, promote and fulfil human rights; and
- (c) defining the term "human beings" in Article 311 of the First Draft Constitution.

Resolutions of the National Convention on Article 24

The Convention resolved to amend the Article by deleting the words “or contemplated” from paragraph (e) of clause (3) in order to avoid abuse that may arise if the word “contemplated” was maintained.

Deliberations of the Technical Committee on Article 24

The Committee considered the resolutions of the District Consultative Fora, the Provincial, Sector Groups and National Conventions.

The Committee amended the Article by deleting the words “provided for in this Part,” in order to rid the provision of excess words, and to add the words “and State actions” at the end of clause (1). The Committee observed that it was important to add the words “and State actions” in order to make the provision comprehensive.

The Committee also amended the Article by deleting clause (2) because it was a mere statement of fact and was not an instruction.

Further, the Committee amended clause (3) by deleting paragraphs (b) and (c) because the provisions in the two paragraphs were covered in paragraph (a).

Furthermore, the Committee amended the Article by incorporating into it provisions of Article 29. In addition, the Committee cross-referenced paragraph (e) to specific Articles in the Bill of Rights, to make it clearer, and agreed to re-number it as paragraph (d) following the deletion of paragraph (c).

Resolutions of the Technical Committee on Article 24

The Committee resolved to amend the Article by:

- (a) deleting the words “provided for under this Part” and adding the words “and State actions” at the end of clause (1);
- (b) deleting clause (2);
- (c) replacing paragraph (b) of clause (3) with provisions of Article 29;
- (d) deleting paragraph (c) of clause (3);
- (e) redrafting paragraph (d) and re-numbering it as paragraph (c); and
- (f) cross-referencing paragraph (e) to Articles 66, 67 and 68 and re-numbering the paragraph as paragraph (d).

Article 24 of the Final Draft Constitution reads:

“24. (1) The Bill of Rights is fundamental to democracy and constitutionalism and shall be the basis of Zambia’s social, political, legal, economic and cultural policies and State action.

(2) The rights and freedoms set out in the Bill of Rights –

- (a) are inherent in each individual;
- (b) protect the dignity of the person;

(c) include rights and freedoms which are consistent with this Constitution but not expressly provided for, except those that are repugnant to the morals and values of the people of Zambia; and

(d) are subject to the limitations, derogations and restrictions provided for in Articles 66, 67 and 68."

Article 25: Duty of State to Promote Rights and Freedoms

Recommendations in the First Draft Constitution

The following provisions were recommended in the First Draft Constitution:

"25. (1) The State shall respect, protect, promote and fulfil the Bill of Rights.

(2) The State shall recognise the role that civil society plays in the promotion and protection of the Bill of Rights.

(3) The President shall, each year, when addressing the National Assembly, report on the measures taken by, and the achievements of, the State in the realisation of the Bill of Rights."

Rationale for the Article

The rationale for the Article was that economic, social and cultural rights required that the State took positive action in support of the individual. The Committee observed that these rights impose obligations on the State to adopt measures which would positively support the individual to secure certain standards of life in areas such as education, health and social security. The Committee, therefore, resolved that the Article should define the duty of the State in promoting these rights and freedoms.

Resolutions of the District Consultative Fora on Article 25

Eighty (80) District Consultative Fora resolved to retain the Article as stated in the First Draft Constitution while two (2) resolved to amend the Article by including the right to health, food, clean and safe water, education, housing, social security for retirees, the aged, women and children (2 districts).

Resolutions of the Provincial Conventions on Article 25

Nine (9) Provincial Conventions resolved to retain the Article as stated in the First Draft Constitution while one Convention resolved to amend clause (2) of the Article by replacing the term "civil society" with the words "all human rights actors." This is because the civil society is not the only actor that promotes the bill of rights.

Resolutions of the Sector Groups Convention on Article 25

The Convention resolved to amend:

(a) clause (2) of the Article by inserting the words “and support” after the word “recognize,” replacing the term “civil society” with the term “non-State actors” and inserting the words “providing an enabling environment for” after the words “plays in.” This is because it is the duty of the State to support and recognise the role of non-State actors.

(b) clause (3) of the Article by including that the President shall submit a written report to Parliament in addition to addressing Parliament on the measures taken towards the realisation of the provisions of the Bill of Rights. This measure would oblige the State to enhance commitment towards the realization of the provisions of the Bill of Rights and highlight issues of Human Rights.

Resolutions of the National Convention on Article 25

The Convention resolved to amend the Article by:

(a) replacing the term, “civil society,” in clause (2) with the term, “non-State actors” as the term “non-State actors” is more encompassing as it includes other stakeholders apart from civil society; and

(b) defining the term “non-State actors” in Article 311 of the First Draft Constitution.

Deliberations of the Technical Committee on Article 25

The Committee considered the resolutions of the District Consultative Fora, the Provincial, Sector Groups and National Conventions.

The Committee amended the marginal note to read “Recognition of the Role of Civil Society,” in order to reflect the important role that the civil society played in the promotion of the Bill of Rights.

The Committee also amended the Article by having it redrafted in order to focus on the evolving role of the civil society in the enforcement of the Bill of Rights. The Committee also agreed to maintain the use of the term “civil society.” The Committee observed that the term “civil society” was a more familiar term compared to the term “non-State actors” proposed by some convention delegates.

Resolutions of the Technical Committee on Article 25

The Committee resolved to amend the Article by:

(a) changing the marginal note to read “Recognition of the Role of Civil Society”; and

(b) redrafting the Article.

Article 25 of the Final Draft Constitution reads:

“25. The State shall recognise the role of civil society in the promotion and protection of the Bill of Rights.”

Article 26: Application and Interpretation of Bill of Rights

Recommendations in the First Draft Constitution

The following provisions were recommended in the First Draft Constitution.

“26. (1) A natural or juristic person enjoys the benefit of, and is bound by the Bill of Rights, to the extent possible, given the nature of the right or freedom.

(2) A person shall exercise a right or freedom in a manner consistent with the Bill of Rights.

(3) When applying or interpreting the Bill of Rights, the Constitutional Court shall, if necessary, develop human rights jurisprudence where legislation does not give effect to a right or freedom as contemplated under the Bill of Rights.

(4) When applying the Bill of Rights, the Constitutional Court, a court, tribunal, the Human Rights Commission, any person or body shall interpret a right or freedom in a manner consistent with the spirit, purpose, objectives, limitations and derogations permitted under the Bill of Rights.”

Rationale for the Article

The rationale for the Article was that it was important for the Constitution to provide for the application and interpretation of the Bill of Rights, in order to guide individuals and courts in the exercise and interpretation of the fundamental rights and freedoms and the entire Bill of Rights.

Resolutions of the District Consultative Fora on Article 26

Seventy-nine (79) District Consultative Fora resolved to retain the Article as stated in the First Draft Constitution while three (3) resolved to amend the Article by:

- (a) incorporating into Article 26, provisions of paragraph (b) of clause (5) of Article 34 of the Mung'omba Draft Constitution. This is because it may be difficult to apply the Bill of Rights using Christian values (1 district);
- (b) deleting the words “if necessary” in clause (3) (1 district); and
- (c) deleting clause (3) of the Article (1 district).

Resolutions of the Provincial Conventions on Article 26

Nine (9) Provincial Conventions resolved to retain the Article as stated in the First Draft Constitution while one Convention resolved to amend the Article by:

- (a) replacing the phrase “a natural or juristic person” with the words, “every person” in clause (1) in order to cater for both associations and individuals; and
- (b) including the Gender Equality Commission and replacing the word “interpret” with the word “apply” in clause (4). The Gender Equality Commission would be instrumental in applying the Bill of Rights and the word “apply is more appropriate.

Resolutions of the Sector Groups Convention on Article 26

The Convention resolved to amend:

- (a) clause (1) by replacing the phrase “natural or juristic person” with the word “person” because the word “person” had been defined to include a “natural or juristic person” in Article 311 of the First Draft Constitution;
- (b) clause (3) by deleting the phrase “if necessary” because including the phrase in the provision would give the Constitutional Court wide discretionary powers and limit its jurisdiction to develop human rights jurisprudence; and
- (c) clause (4) by replacing the word “a” before the word “court” with the word “any” in order to broaden the number of courts which would apply the Bill of Rights.

Resolutions of the National Convention on Article 26

The Convention resolved to retain the Article as stated in the First Draft Constitution.

Deliberations of the Technical Committee on Article 26

The Committee considered the resolutions of the District Consultative Fora, the Provincial, Sector Groups and National Conventions.

The Committee redrafted the Article by placing emphasis on the role of the Constitutional Court in the interpretation of the Bill of Rights. The Committee also agreed to cross-reference the Article to Article 24, which is on the status of the Bill of Rights.

Resolutions of the Technical Committee on Article 26

The Committee resolved to amend the Article by redrafting it in a manner that placed emphasis on the role of the Constitutional Court in the interpretation of the Bill of Rights and by cross-referencing it to Article 24.

Article 26 of the Final Draft Constitution reads:

“26. (1) Where legislation does not give effect to a right or freedom, the Constitutional Court shall develop human rights jurisprudence.

(2) A court, the Human Rights Commission, State institution, a person or body shall interpret a right or freedom in a manner consistent with Article 24.”

Civil and Political Rights

Article 27: Protection from Discrimination

Recommendations in the First Draft Constitution

The following provisions were recommended in the First Draft Constitution:

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

(2) Subject to clause (3), a law shall not make any provision that is discriminatory either of itself or in its effect.

(3) Any law or measure that provides affirmative action, in respect of any group of persons or sector of the society, in order to address discrimination based on birth, race, sex, origin, colour, age, disability, religion, conscience, belief, culture, language, pregnancy, health, marital, ethnic, tribal, social or economic status, shall not be construed as discrimination."

Rationale for the Article

The rationale for the Article was that all people were created equal and shall not be discriminated against on any grounds including birth, race, sex, origin, colour, age, disability, religion, conscience, belief, culture, language, pregnancy, health, marital, ethnic, tribal, social or economic status.

The Committee, however, observed that non-discrimination was not a standard to be rigidly applied, because persons possess different potentials, abilities, attributes, personalities and occupy different stations in life such that rigid application could result in injustices. For example, women, children or persons with disabilities may require differential treatment because of their special circumstances. Therefore, in the context of human rights, the principle of non-discrimination accommodates the need for differential treatment such as affirmative action, where this is necessary, in order to achieve justice or redress imbalances.

Resolutions of the District Consultative Fora on Article 27

Eighty (80) District Consultative Fora resolved to retain the Article as stated in the First Draft Constitution while two (2) resolved to amend the Article by:

- (a) Adding the word "political" after the word "social" in clauses (1) and (3) (1 district); and
- (b) Deleting the words, "on any grounds" in clause (1) (1 district).

Resolutions of the Provincial Conventions on Article 27

Seven (7) Provincial Conventions resolved to retain the Article as stated in the First Draft Constitution while three (3) resolved to amend the Article by:

- (a) Deleting the words "on any grounds including" in clause (1) in order to exclude anti-social practices such as homosexuality (1 province);
- (b) Adding the words "and any other forms of discrimination" at the end of clause (1) in order to provide for other forms of discrimination not provided for in the clause (1 province); and
- (c) Adding the word "political" in clauses (1) and (3) so that political affiliation is one of the grounds on which a person should not be discriminated against (1 province).

Resolutions of the Sector Groups Convention on Article 27

The Convention resolved to amend clause (1) of the Article by adding the words “political” and “other” so that the ending of the clause reads “social, economic, political or other status.” This would include political affiliation as one of the grounds on which a person should not be discriminated against and provide for other status not mentioned in the clause.

Resolutions of the National Convention on Article 27

The Convention resolved to amend clause (1) of the Article by deleting the words “on any grounds” and adding the word “political” after the word “social.” This would include political affiliation as one of the grounds on which a person should not be discriminated against. The deletion of the words “on any grounds” would ensure that the interpretation of the provision does not include anti-social practices such as homosexuality as one of the grounds on which a person would not be discriminated against.

Deliberations of the Technical Committee on Article 27

The Committee considered the resolutions of the District Consultative Fora, the Provincial, Sector Groups and National Conventions.

The Committee retained the Article as stated in the First Draft Constitution with a minor amendment to clause (3) where the word “for” was included before the word “affirmative” in order to correct the typographical error.

Resolutions of the Technical Committee on Article 27

The Committee resolved to retain the Article as stated in the First Draft Constitution subject to a minor editorial correction in clause (3).

Article 28: Right to Life

Recommendations in the First Draft Constitution

The following provisions were recommended in the First Draft Constitution:

- “28. (1) A person has, subject to clauses (2) and (3), the right to life, which begins at conception.
- (2) A person shall not be deprived of life intentionally, except to the extent authorised by this Constitution or any other law.
- (3) A person may be deprived of life if that person has been convicted of a capital offence and sentenced to death.
- (4) A person who is sentenced to death has the right to seek a pardon or commutation of the sentence.
- (5) A court shall not impose a sentence of death on a convict—
 - (a) who is pregnant;
 - (b) who is a child; or

(c) where there are extenuating circumstances relating to the commission of the crime.

(6) A person shall not be regarded as having intentionally deprived another person of that person's life if the other person dies as a result of the application of force to such extent as is reasonably justifiable-

(a) for the defence of property or any person from violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) for the purpose of suppressing a riot, insurrection, mutiny or as a result of war; or

(d) in order to prevent the commission by that person of an offence."

Rationale for the Article

The rationale for the Article was that the right to life was inherent in all human beings and that a person shall not be arbitrarily deprived of his or her life. The Committee observed that Zambia was a party to the International Covenant on Civil and Political Rights, which under Article 6, protected the right to life.

With regard to the death penalty, the Committee observed that Zambia inherited the death penalty from the colonial era and that successive Constitutions had never abolished it. The Committee also observed that Zambians were divided on whether or not to retain the death penalty in the Constitution. The Committee, whilst resolving to retain the death penalty, identified it as a key issue that required to be referred to Constitution Conventions in order to allow Zambians to debate the matter further.

Resolutions of the District Consultative Fora on Article 28

Thirty-two (32) District Consultative Fora resolved to retain the Article as stated in the First Draft Constitution while fifty (50) resolved to amend the Article by:

(a) providing for the prohibition of abortion in clause (1) so that it reads: "(1) A person has, subject to clauses (2) and (3), the right to life which begins at conception and no life shall be deprived through abortion" (1 district);

(b) including the words "and should be allowed to its natural end" in clause (1) so that it reads "A person has, subject to clauses (2) and (3), the right to life, which begins at conception and should be allowed to its natural end" (1 district);

(c) deleting the words, "which begins at conception" in clause (1) (1 district);

(d) introducing a new provision to read "A person shall not deprive an unborn child of life by termination of pregnancy except in accordance with condition laid down by an Act of Parliament for that purpose." The proposed provision ensures that in exceptional

circumstances, lawful abortion should be authorized as long as it is intended to save endangered life(10 districts);

(e) replacing the death sentence with life imprisonment in clause (3) because the First Draft Constitution provides for the right to life. Since Zambia is a Christian nation, vengeance should be left to God (9 districts);

(f) adding a provision that a judge or a Chief Justice should be the one to sign a death warrant and that such a warrant should be signed within six months. This is because people who have been sentenced to death have languished in prison as a result of Presidents not signing death warrants (4 districts);

(g) deleting clauses (3), (4) and (5) because the provisions contradict the declaration of Zambia as a Christian nation. Further, the death penalty demeans the dignity of life and there is room for a person sentenced to life imprisonment to reform (18 districts);

(h) providing in paragraph (a) of clause (5) that a pregnant woman should be given a suspended sentence until she delivers, thereafter be sentenced to life imprisonment. Paragraph (b) should provide that the child should be sentenced to reformatory prison (5 districts); and

(i) inserting the words "a capital" before the word "offence" in paragraph (d) of clause (6) in order to prevent the use of unwarranted force on a person who has committed a minor offence (1 district).

Resolutions of the Provincial Conventions on Article 28

Seven (7) Provincial Conventions resolved to retain the Article as stated in the First Draft Constitution while three (3) resolved to amend the Article by:

(a) providing in clause (1) that conditions related to the health of the mother that may warrant termination of pregnancy are explicitly exempted from the provision in order to serve the life of a pregnant woman who equally has the right to life (1 province); and

(b) deleting clause (3) in order not to provide for the death sentence because there are instances when people are wrongly convicted and if fresh evidence emerges, after a wrongly convicted person has been executed, the verdict cannot be reversed. Further, many countries in the world are abolishing the death penalty as it is not in line with most international treaties on human rights. Moreover, the death sentence is contradictory to the Declaration of Zambia as a Christian nation (1 province).

Resolutions of the Sector Groups Convention on Article 28

The Convention resolved to replace the phrase "any other law" in clause (2) with an appropriate phrase in order to remove ambiguity.

Resolutions of the National Convention on Article 28

The Convention resolved to retain the Article as stated in the First Draft Constitution.

Deliberations of the Technical Committee on Article 28

The Committee considered the resolutions of the District Consultative Fora, the Provincial, Sector Groups and National Conventions.

The Committee amended clause (1) by simplifying it, deleting cross-referencing to clauses (2) and (3) and splitting it into two clauses to read:

“(1) A person has the right to life; and

(2) The life of a person begins at conception.”

The Committee also amended the Article by adding a provision that would enable the Advisory Committee on the Prerogative of Mercy to initiate a process of commuting a death sentence to life imprisonment if a convicted person is not executed within five (5) years after conclusion of the appeal process. The Committee observed that keeping people who had been sentenced to death indefinitely, without letting them know their fate was inhuman. The Committee also observed that it was important to provide for commutation of death sentences, given the background that most Presidents had not been signing death warrants.

Further, the Committee deleted clauses (2) and (6) of the Article for purposes of simplifying it, removing details and complying with international best practice as well as modern Constitution drafting style.

In considering clause (3) of the Article, which provided for a “death penalty,” the Committee considered views in support of the retention of the clause and those in support of redrafting the clause to read “A person shall not be deprived of life intentionally, except to the extent prescribed.”

The views in support of retaining the clause were that redrafting it would be against the will of the people who had overwhelmingly voted for the death penalty to be retained in the Constitution at various consultative fora.

The views in support of redrafting the clause were that there was need to present the provision in a manner that would enable the country to abolish the death penalty without going through a referendum should the need arise. It was observed that although the majority of the people currently supported the death penalty, a time might come when the death penalty would not be deemed necessary. It was proposed that the details in the Article could be best placed under an Act of Parliament so that the Article would be limited to providing for the Right to Life.

The Committee agreed to retain the clause providing for death penalty.

Furthermore, the Committee agreed to move clause (4), which provided for the right of a person who is sentenced to death to seek a pardon or commutation of the sentence to a new Article 95 on Prerogative of Mercy, which was an appropriate Article for such a provision.

The Committee observed that it was necessary to provide for a person's right to seek a pardon or commutation of a sentence. In addition, the Committee consequently retained clause (5) and re-numbered it as clause (4), observing that in view of the decision to retain the death penalty, it was necessary to have a 'claw-back' provision in the Article.

Resolutions of the Technical Committee on Article 28

The Committee resolved to amend the Article by:

- (a) deleting cross-referencing in clause (1);
- (b) splitting clause (1) into two clauses to read:
- (c) "(1) A person has the right to life; and
- (d) (2) The life of a person begins at conception."
- (e) deleting clauses (2) and (6);
- (f) retaining clause (3);
- (g) moving clause (4) to Article 95 on the Prerogative of Mercy; and
- (h) retaining clause (5) and re-numbering it as clause (4).

Article 28 of the Final Draft Constitution reads:

- 28. (1) A person has the right to life.
- (2) The life of a person begins at conception.
- (3) A person shall not be deprived of life intentionally, except for a capital offence the sentence of which is death and to the extent prescribed.
- (4) A court shall not impose a sentence of death on a convict –
 - (a) who is pregnant;
 - (b) who is a child; or
 - (c) where there are extenuating circumstances relating to the commission of the offence.

Article 29: Human Dignity

Recommendations in the First Draft Constitution

The following provision was recommended in the First Draft Constitution:

"29. A person has inherent dignity and the right to have that dignity respected and protected."

Rationale for the Article

The rationale for the Article was that, in a democratic State, every person had the right to protection of his or her dignity and shall, therefore, not be subjected to physical, mental or emotional torture. The Committee observed that torture or conditions that detract from the person's dignity and worth as a human being were against the provision of the Convention

Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT) and should not be allowed in a democratic State.

Resolutions of the District Consultative Fora on Article 29

All the eighty-two (82) District Consultative Fora resolved to retain the Article as stated in the First Draft Constitution.

Resolutions of the Provincial Conventions on Article 29

All the ten (10) Provincial Conventions resolved to retain the Article as stated in the First Draft Constitution.

Resolutions of the Sector Groups Convention on Article 29

The Convention resolved to retain the Article as stated in the First Draft Constitution.

Resolutions of the National Convention on Article 29

The Convention resolved to retain the Article as stated in the First Draft Constitution.

Deliberations of the Technical Committee on Article 29

The Committee considered the resolutions of the District Consultative Fora, the Provincial, Sector Groups and National Conventions.

In considering the Article, the Committee recalled its earlier decision to incorporate the provisions on human dignity into Article 24, on the Status of the Bill of Rights.

The Committee, therefore, deleted Article 29 in order to avoid scattering similar provisions across the Constitution.

Resolutions of the Technical Committee on Article 29

The Committee resolved to delete the Article and to incorporate its provisions into Article 24.

Article 30: Protection from Inhuman Treatment

Recommendations in the First Draft Constitution

The following provision was recommended in the First Draft Constitution:

“30. A person shall not be subjected to torture, cruel, inhuman or degrading punishment or other like treatment.”

Rationale for the Article

The rationale for the Article was that the right to protection from inhuman treatment was related to the issue of human dignity and that in a democratic society, the physical and mental integrity of every individual must be preserved. The Committee, therefore, resolved that a person should not be subjected to torture of any kind, whether physical, mental or emotional nor shall any person be subjected to cruel, inhuman or degrading treatment or punishment.

Resolutions of the District Consultative Fora on Article 30

All the eighty-two (82) District Consultative Fora resolved to retain the Article as stated in the First Draft Constitution.

Resolutions of the Provincial Conventions on Article 30

All the ten (10) Provincial Conventions resolved to retain the Article as stated in the First Draft Constitution.

Resolutions of the Sector Groups Convention on Article 30

The Convention resolved to retain the Article subject to the definition of the word “torture” in Article 311 of the First Draft Constitution. The Convention recommended that the definition should be in line with the Convention Against Torture and other cruel, inhuman or degrading treatment or punishment.

Resolutions of the National Convention on Article 30

The Convention resolved to retain the Article as stated in the First Draft Constitution.

Deliberations of the Technical Committee on Article 30

The Committee considered the resolutions of the District Consultative Fora, the Provincial, Sector Groups and National Conventions.

The Committee amended the Article by merging its provision with that of Article 32, on security of person, to create a new Article 30, and changed the marginal note to read “Protection from inhuman treatment and security of person” in order to avoid scattering similar provisions across the Constitution.

Resolutions of the Technical Committee on Article 30

The Committee resolved to amend the Article by:

- (a) incorporating the provisions of Article 32 in the Article; and
- (b) changing the marginal note to read “Protection from inhuman treatment and security of person.”

Article 30 of the Final Draft Constitution reads:

“30. (1) A person has the right not to be -

(a) subjected to torture; or

(b) treated or punished in a cruel, inhuman or degrading manner.

(2) A person has the right to security of the person which includes the right not to be subjected to human trafficking.”

Article 31: Freedom of Persons

Recommendations in the First Draft Constitution

The following provision was recommended in the First Draft Constitution:

“31. A person has the right to freedom of the person which includes the right not to be deprived of freedom arbitrarily or without just cause.”

Rationale for the Article

The rationale for the Article was that the right to freedom was fundamental and that a person should not be detained or held captive by another. The Committee observed that the right to freedom was a basic universal and common law right and that it was guaranteed under Article 13 of the current Constitution. The Committee further observed that like other fundamental rights, however, this right was not absolute but was subject to limitations as recognised by law.

Resolutions of the District Consultative Fora on Article 31

All the eighty-two (82) District Consultative Fora resolved to retain the Article as stated in the First Draft Constitution.

Resolutions of the Provincial Conventions on Article 31

All the ten (10) Provincial Conventions resolved to retain the Article as stated in the First Draft Constitution.

Resolutions of the Sector Groups Convention on Article 31

The Convention resolved to amend the Article by:

- (a) replacing the words “Freedom of person” with the phrase “Right to Liberty” in the marginal note in order to align it with international standards; and
- (b) replacing the word “freedom” with the word “liberty” and deleting the word “the.”

Resolutions of the National Convention on Article 31

The Convention resolved to retain the Article as stated in the First Draft Constitution.

Deliberations of the Technical Committee on Article 31

The Committee considered the resolutions of the District Consultative Fora, the Provincial, Sector Groups and National Conventions.

In considering the Article, the Committee deleted the words “without just cause” as they were a repetition of the word “arbitrarily” that preceded them. Further, the

Committee re-numbered the Article as Article 29, in order to improve the flow of the Articles in the Draft Constitution.

Resolutions of the Technical Committee on Article 31

The Committee resolved to amend the Article by:

- (a) deleting the words “without just cause”; and
- (b) re-numbering it as Article 29.

Article 29 of the Final Draft Constitution reads:

“29. A person has the right to freedom of the person which includes the right not to be deprived of freedom arbitrarily.”

Article 32: Security of Person

Recommendations in the First Draft Constitution

The following provision was recommended in the First Draft Constitution:

"32. A person has the right to security of the person which includes the right-

- (a) not to be subjected to human trafficking; and
- (b) to be free from all forms of violence."

Rationale for the Article

The rationale for the Article was that the right to security of the person was fundamental in ensuring that a person was not subjected to human trafficking or any form of violence.

Resolutions of the District Consultative Fora on Article 32

All the eighty-two (82) District Consultative Fora resolved to retain the Article as stated in the First Draft Constitution.

Resolutions of the Provincial Conventions on Article 32

All the ten (10) Provincial Conventions resolved to retain the Article as stated in the First Draft Constitution.

Resolutions of the Sector Groups Convention on Article 32

The Convention resolved to amend the Article by deleting the word "the" after the word "of" in the opening sentence.

Resolutions of the National Convention on Article 32

The Convention resolved to retain the Article as stated in the First Draft Constitution.

Deliberations of the Technical Committee on Article 32

The Committee considered the resolutions of the District Consultative Fora, the Provincial, Sector Groups and National Conventions.

The Committee deleted the Article, having earlier made a decision to merge its provisions with that of Article 30, on protection from inhuman treatment. The Committee had amended the marginal note for the new Article 30, to encompass the right of security of person so that it reads "Protection from inhuman treatment and security of person." The merging of provisions of Article 32 into Article 30 was done in order to avoid scattering similar provisions across the Constitution.

Resolutions of the Technical Committee on Article 32

The Committee resolved to delete the Article, having incorporated its provisions into Article 30.

Article 33: Slavery, Servitude and Forced Labour

Recommendations in the First Draft Constitution

The following provisions were recommended in the First Draft Constitution:

"33. (1) A person shall not be held in slavery or servitude.

(2) A person shall not be required to perform forced labour."

Rationale for the Article

The rationale for the Article was that the current Constitution had a similar provision relating to protection from slavery and forced labour, which provision needed to be maintained.

Resolutions of the District Consultative Fora on Article 33

Seventy-nine (79) District Consultative Fora resolved to retain the Article as stated in the First Draft Constitution while three (3) resolved to amend the Article by:

- (a) including a clause providing that the terms and conditions of service should be clearly spelt out by all prospective employers (1 district); and
- (b) providing for a clear definition of the term "forced labour" (2 districts).

Resolutions of the Provincial Conventions on Article 33

Nine (9) Provincial Conventions resolved to retain the Article as stated in the First Draft Constitution while one Convention resolved to replace the Article with Article 14 of the current Constitution.

Resolutions of the Sector Groups Convention on Article 33

The Convention resolved to retain the Article as stated in the First Draft Constitution. The Convention recommended that the terms "forced labour" and "slavery" be defined in Article 311 of the First Draft Constitution.

Resolutions of the National Convention on Article 33

The Convention resolved to amend the Article by replacing it with Article 14 of the current Constitution because it was necessary to provide for the protection from slavery and forced labour.

Deliberations of the Technical Committee on Article 33

The Committee considered the resolutions of the District Consultative Fora, the Provincial, Sector Groups and National Conventions.

The Committee retained the provisions of the Article as stated in the First Draft Constitution. The Committee, however, re-numbered the Article as Article 31 of the Final Draft Constitution.

Resolutions of the Technical Committee on Article 33

The Committee resolved to retain the provisions of the Article as stated in the First Draft Constitution and re-numbered it as Article 31.

Article 31 of the Final Draft Constitution reads:

- "31. (1) A person shall not be held in slavery or servitude.
- (2) A person shall not be required to perform forced labour."

Article 34: Protection of Privacy of Person, Home, Property and Communication

Recommendations in the First Draft Constitution

The following provisions were recommended in the First Draft Constitution:

- “34. All persons have the right to privacy, which includes the right not to have -
- (a) their person, home or property searched;
 - (b) their possessions seized;
 - (c) information relating to their family, health status or private affairs unlawfully required or revealed; or
 - (d) the privacy of their communications infringed.”

Rationale for the Article

The rationale for the Article was that the right of persons to privacy was fundamental, given that the freedom of the media and the advancement in the information and communication technology had a likelihood of infringing on the privacy of persons.

Resolutions of the District Consultative Fora on Article 34

Seventy-eight (78) District Consultative Fora resolved to retain the Article as stated in the First Draft Constitution while four (4) resolved to amend paragraphs (a) and (b) of clause (1) of the Article by adding the word “unlawfully” before the words “searched” and “seized”, respectively. This is to ensure that the clause would not provide for a search without a warrant and for an unlawful seizure of property (4 districts).

Resolutions of the Provincial Conventions on Article 34

Eight (8) Provincial Conventions resolved to retain the Article as stated in the First Draft Constitution while two (2) resolved to amend the Article by incorporating the word “unlawfully” in paragraphs (a), (b), (c) and (d) of clause (1). This is to prevent people from refusing lawful access (2 provinces).

Resolutions of the Sector Group Convention on Article 34

The Convention resolved to amend paragraph (d) of clause (1) by adding the phrase “in any form” after the word “communications” in order to provide for other forms of information.

Resolutions of the National Convention on Article 34

The Convention resolved to retain the Article as stated in the First Draft Constitution.

Deliberations of the Technical Committee on Article 34

The Committee considered the resolutions of the District Consultative Fora, the Provincial, Sector Groups and National Conventions.

The Committee amended the Article by redrafting it in singular form in order to simplify it. The Committee also re-numbered the Article as Article 32.

Resolutions of the Technical Committee on Article 34

The Committee resolved to amend the Article by simplifying it and re-numbering it as Article 32.

Article 32 of the Final Draft Constitution reads:

- “32. A person has the right to privacy, which includes the right not to -
- (a) be searched;
 - (b) have that person's home or property searched;
 - (c) have that person's possessions seized;
 - (d) have information relating to that person's family, health status or private affairs unlawfully required or revealed; or
 - (e) have the privacy of that person's communications infringed.”

Article 35: Freedom of Religion and Conscience

Recommendations in the First Draft Constitution

The following provisions were recommended in the First Draft Constitution:

- “35. (1) A person has the right to freedom of conscience, religion, thought, belief and opinion.
- (2) A person has the right, either individually or in community with others, in public or in private, to manifest any religion or belief through worship, observance, practice or teaching.
- (3) Clause (2) does not extend to-
- (a) anti-Christian teaching and practice;
 - (b) propaganda to incite religious wars; and
 - (c) any conduct that infringes the enjoyment of religious freedoms by others.
- (4) A religious community shall be entitled, at its own expense, to establish, maintain and manage educational institutions, facilities and programmes for, and to provide religious instruction to, members of that community.
- (5) Religious observance and instruction may be conducted at State or State-aided institutions as long as -
- (a) the facilities for that religious observance and instruction at that institution are made available on an equitable basis, having regard to the beliefs of the population served by that institution; and
 - (b) attendance, observance or instruction is voluntary.
- (6) A person shall not be deprived of access to any institution, employment or facility, or the enjoyment of any right or freedom because of that individual's religious beliefs.
- (7) A person shall not be compelled –
- (a) to take an oath that is contrary to that individual's religion or belief or that involves expressing a belief that the individual does not hold;

- (b) to take an oath in a manner that is contrary to that individual's religion or belief;
- (c) to receive instruction in a religion that is not that individual's religion or to attend a ceremony or observance of that religion;
- (d) by a public body or public officer to disclose that individual's religious conviction or belief; or
- (e) to do any other act that is contrary to that individual's religion or belief."

Rationale for the Article

The rationale for the Article was that it was necessary to have a substantive provision guaranteeing the freedom of religion and conscience in view of the Preamble of the first draft Constitution that declares Zambia as a Christian Nation whilst upholding the right of every person to enjoy that person's freedom of conscience and religion. This was because the Preamble did not have the force of law.

Resolutions of the District Consultative Fora on Article 35

Sixty-nine (69) District Consultative Fora resolved to retain the Article as stated in the First Draft Constitution while thirteen (13) resolved as follows:

- (a) Replacing the term "anti-Christian" with the term "anti-religious" in clause (2) because the former is discriminatory against non-Christians (1 district);
- (b) Amending clause (3) by:
 - (i) deleting paragraph (a) because the term "anti-Christian" is discriminatory to other religions (1 district);
 - (ii) replacing paragraph (a) with clauses (1) to (5) of Article 19 of the current Constitution in order to remove the contradiction between paragraph (a) of clause (3) and clause (1) of Article 35 of the First Draft Constitution (1 district); and
 - (iii) deleting paragraph (b) (3 districts).
- (c) Amending clause (4) by deleting the words "at its own expense" after the word "entitled" in order to provide for institutions that receive grants from the Government (1 district);
- (d) Replacing clause (4) with clause (3) of Article 19 of the current Constitution (1 district);
- (e) Replacing the word "may" with the word "should" in clause (5) (2 districts); and
- (f) adding the words "in conformity with the laws of Zambia" in clause (6) (2 districts).

Resolutions of the Provincial Conventions on Article 35

Seven (7) Provincial Conventions resolved to retain the Article as stated in the First Draft Constitution while three (3) resolved to amend the Article by:

- (a) deleting paragraph (a) of clause (3) because it is discriminatory and, therefore, not consistent with the provision that upholds the right of every person to enjoy that person's freedom of conscience in the declaration of Zambia as a Christian nation in the second paragraph of the Preamble (2 provinces); and
- (b) adding the words "but does not include teachings and practices of other religions" at the end of paragraph (a) of clause (3) in order to remove the discrimination against non-Christian religions (1 district).

Resolutions of the Sector Groups Convention on Article 35

The Convention resolved to retain the Article as stated in the First Draft Constitution. The Convention recommended that the phrase "anti-Christian teaching" be defined in Article 311 of the First Draft Constitution.

Resolutions of the National Convention on Article 35

The Convention resolved to amend the Article by deleting paragraph (a) of clause (3).

Deliberations of the Technical Committee on Article 35

The Committee considered the resolutions of the District Consultative Fora, the Provincial, Sector Groups and National Conventions.

The Committee amended the Article by deleting the words "thought" and "opinion" in clause (1). The Committee also deleted the word "either" and inserted the words "a specific day of worship" at the end of clause (2), in order to simplify the provision.

The Committee also redrafted clause (3) by removing excess details. Further, the Committee deleted clauses (4) and (5) because the two provisions contained details that would be better placed in subsidiary legislation.

Furthermore, the Committee deleted the word "employment" in clause (6) because the right to employment was separately provided for under provisions on labour relations. In addition, the Committee redrafted clause (7) by removing excess details and re-numbered it as clause (4).

The Committee also re-numbered the Article as Article 33 of the Final Draft Constitution.

Resolutions of the Technical Committee on Article 35

The Committee resolved to amend the Article by:

- (a) deleting the words "thought" and "opinion" in clause (1);
- (b) deleting the word "either" and inserting the words "a specific day of worship" at the end of clause (2);
- (c) redrafting clause (3) by removing excess details;
- (d) deleting clauses (4) and (5);
- (e) deleting the word "employment" in clause (6);
- (f) redrafting clause (7) by removing excess details and re-numbering it as clause (4); and

(g) re-numbering it as Article 33.

Article 33 of the Final Draft Constitution reads:

“33. (1) A person has the right to freedom of conscience, belief and religion.

(2) A person has the right, individually or in community with others, publicly or privately, to manifest any religion or belief through worship, observance, practice or teaching, including the observance of a day of worship.

(3) Clause (2) does not extend to conduct or statements that infringe the enjoyment of this freedom by others or that may incite religious wars.

(4) A person shall not be compelled to act, or engage in an act that is, contrary to that person's conscience, belief or religion.

(5) A person shall not be deprived of access to an institution or a facility on the basis of that person's belief or religion.”

Article 36: Freedom of Expression

Recommendations in the First Draft Constitution

The following provisions were recommended in the First Draft Constitution:

“36. (1) A person has the right to freedom of expression which includes-

(a) freedom to hold an opinion;

(b) freedom to receive or impart information or ideas;

(c) freedom of artistic creativity;

(d) academic freedom; and

(e) freedom of scientific research.

(2) Clause (1) does not extend to -

(a) propaganda for war;

(b) incitement to violence;

(c) advocacy of hatred that -

(i) vilifies or disparages others or incites harm; or

(ii) is based on any prohibited ground of discrimination specified in this Constitution; or

(d) any other unlawful purpose.

(3) In the exercise of the right to freedom of expression, a person shall respect the rights and reputations of others.”

Rationale for the Article

The rationale for the Article was that freedom of expression was a very important right in an open and democratic society that not only ensured individual self-fulfilment but also permitted a

multitude of ideas and philosophies. The Committee observed that under the current Constitution this freedom was protected in Article 20 on the freedom of expression. The Committee further observed that the freedom of expression was not explicitly defined by the current provision and, therefore, resolved to define it to include freedom to impart and receive information or ideas, freedom of artistic creativity and academic and scientific research freedom. The Committee also observed that academic and intellectual freedom included the freedom to undertake research in any field and impart knowledge in any form, as well as property rights in research results, which was essential to the intellectual development of the individual and beneficial to the political, social, economic, scientific and cultural development of any society.

Resolutions of the District Consultative Fora on Article 36

Eighty (80) District Consultative Fora resolved to retain the Article as stated in the First Draft Constitution while two (2) resolved to amend the Article by:

- a) adding the words "and express an" before the word "opinion" in paragraph (a) of clause (1) (1 district); and
- b) including a paragraph to deter media organisations from publishing information relating to national security and publishing obscene materials.

This is in order to uphold national security and avoid the corruption of good morals of society (1 district).

Resolutions of the Provincial Conventions on Article 36

Nine (9) Provincial Conventions resolved to retain the Article as stated in the First Draft Constitution while one Convention resolved to amend the Article by providing that the media should be regulated in terms of publishing of obscene material and information that can jeopardise State security.

Resolutions of the Sector Groups Convention on Article 36

The Convention resolved to amend the Article by moving paragraph (e) of clause (1) of the Article to an appropriate part of the Constitution which deals with Economic, Social and Cultural rights. This would be in line with the International Convention on Economic, Social and Cultural Rights which has placed the freedom of scientific research under the Convention.

Resolutions of the National Convention on Article 36

The Convention resolved to retain the Article as stated in the First Draft Constitution.

Deliberations of the Technical Committee on Article 36

The Committee considered the resolutions of the District Consultative Fora, the Provincial, Sector Groups and National Conventions.

The Committee amended the Article by inserting the words “and technological” and “as prescribed” before and after the word “research,” respectively, in paragraph (e) of clause (1). The Committee also redrafted clause (2) by simplifying it and removing unnecessary details. Further, the Committee deleted clause (3) because it was covered by other provisions.

Further, the Committee re-numbered the Article as Article 34 of the Final Draft Constitution.

Resolutions of the Technical Committee on Article 36

The Committee resolved to amend the Article by:

- (a) inserting the words “and technological” and “as prescribed” before and after the word “research,” respectively, in paragraph (e) of clause (1);
- (b) redrafting clause (2);
- (c) deleting clause (3); and
- (d) re-numbering it as Article 34.

Article 34 of the Final Draft Constitution reads:

“34. (1) A person has the right to freedom of expression which includes -

- (a) freedom to hold an opinion;
- (b) freedom to receive or impart information or ideas;
- (c) freedom of artistic creativity;
- (d) academic freedom; and
- (e) freedom of scientific and technological research, as prescribed.

(2) Clause (1) does not extend to -

- (a) conduct or statements which incite war, genocide, crimes against humanity or other forms of violence; or
- (b) statements which -
 - (i) vilify or disparage others; or
 - (ii) incite hatred.”

Article 37: Access to Information

Recommendations in the First Draft Constitution

The following provisions were recommended in the First Draft Constitution.

“37. (1) A citizen has the right of access to-

- (a) information held by the State; and
- (b) information that is held by another person; which is lawfully required for the exercise or protection of any right or freedom.

(2) A person has the right to demand the correction of untrue or misleading information recorded or published with respect to that person.

(3) The State has the obligation to publicise any information that is in the public interest or affects the welfare of the Nation."

Rationale for the Article

The rationale for the Article was that it was important to provide for access to information by the public, including information held by the State, to ensure good governance, transparency and accountability.

Resolutions of the District Consultative Fora on Article 37

Seventy-six (76) District Consultative Fora resolved to retain the Article as stated in the First Draft Constitution while six (6) resolved to amend the Article by:

- (a) deleting paragraph (b) of clause (1) because it is vague (1 district);
- (b) Adding a paragraph in clause (1) to provide for information to be made available in various forms such as Braille to meet the needs of persons with disabilities (1 district);
- (c) adding the words "in an appropriate language and format that they understand" at the end of paragraph (b) of clause (1) (1 district); and
- (d) providing for mandatory circulation of State documents such as Statutory Instruments and Government Gazettes so that the documents have a direct bearing on the lives of the people (3 districts).

Resolutions of the Provincial Conventions on Article 37

Nine (9) Provincial Conventions resolved to retain the Article as stated in the First Draft Constitution while one Convention resolved to amend the Article by adding the words "in appropriate language and format that they understand" after the word "nation" in clause (3) in order to enable all citizens get the information.

Resolutions of the Sector Groups Convention on Article 37

The Convention resolved to amend clause (2) of the Article by providing for media institutions to retract published false information in order for media houses to be held accountable for what they publish.

Resolutions of the National Convention on Article 37

The Convention resolved to amend paragraph (a) of clause (1) of the Article by inserting the words "and State institutions" at the end of the paragraph because the definition of "State" does not encompass all the organs and arms of Government set out in the definition of State organs in Article 311. Further, the Convention observed that State institutions hold information that is pertinent for individuals' participation in local and national development issues.

Deliberations of the Technical Committee on Article 37

The Committee considered the resolutions of the District Consultative Fora, the Provincial, Sector Groups and National Conventions.

The Committee amended clause (1) by replacing the term “citizen” with the term “person” in order to take care of the interests of all persons and not just the citizens.

The Committee observed that non-citizens were also entitled to public information relevant to their welfare. The Committee also re-numbered the Article as Article 35.

Resolutions of the Technical Committee on Article 37

The Committee resolved to amend the Article by replacing the word “citizen” with the word “person” and re-numbered the Article as Article 35.

Article 35 of the Final Draft Constitution reads:

“35. (1) A person has the right of access to information held by the State or another person which is lawfully required for the exercise or protection of a right or freedom.

(2) A person has the right to demand the correction of false or misleading information recorded or published about that person.

(3) The State shall proactively publicise information that is in the public interest or affects the welfare of the Nation.”

Article 38: Freedom of Media

Recommendations in the First Draft Constitution

The following provisions were recommended in the First Draft Constitution:

“38. (1) Freedom and independence of electronic, print and other types of media is guaranteed.

(2) The State shall not-

(a) exercise control over, or interfere with, any person engaged in broadcasting, the production or circulation of any publication or the dissemination of information by any medium; or

(b) penalise any person for any opinion or the content of any broadcast, publication or dissemination.

(3) Broadcasting and other electronic media shall be subject to licensing procedures that are -

(a) necessary to regulate signals and signal distribution; and

(b) free from political or commercial interference.

(4) All State-owned media shall-

(a) be free to determine independently the editorial content of their broadcasts or communications;

(b) be independent and impartial; and

(c) afford fair opportunity for the presentation of divergent views and dissenting opinions.

(5) Parliament shall enact legislation to give effect to clause (3)."

Rationale for the Article

The rationale for the Article was that in a democratic State, freedom of the press ought to be accorded a distinct place in the Bill of Rights because it was fundamental to the person's right to information and the development of the country. Whilst Article 20 of the current Constitution provided for press freedom, the provision did not adequately protect press freedom especially that no express mention of this freedom was made in the Article. In this regard, the Committee concluded that a free press was a pillar of democracy and that all legal and administrative mechanisms that tended to frustrate press freedom should be removed.

Resolutions of the District Consultative Fora on Article 38

Seventy-one (71) District Consultative Fora resolved to retain the Article as stated in the First Draft Constitution while eleven (11) resolved to amend the Article by:

(a) providing in clause (1) that freedom of the media be subject to conditions in the interest of security, public health, morality and avoidance of injury to others.

This is to respect other individuals and encourage journalists to be ethical in the dissemination of information and publication and not to threaten national peace (1 district);

(b) including the phrase "provided they operate within the confines of the law" at the end of paragraph (b) of clause (2) to ensure that freedom of media is subject to some conditions" (1 district);

(c) recasting clause (2) to read "The State shall not interfere with but regulate any person engaged in broadcasting, production or circulation of any publication or dissemination of information by any media" (1 district);

(d) replacing the term "State media" with the term "public media" in clause (4) because "State media" is likely to be abused since it is controlled by Government rather than by the rightful owners, the public (8 districts); and

(e) including a new clause providing that "Government shall not interfere with the appointment of top management but these should be employed by an independent body" (1 district).

Resolutions of the Provincial Conventions on Article 38

Seven (7) Provincial Conventions resolved to retain the Article as stated in the First Draft Constitution while three (3) resolved to amend the Article by:

- (a) including at the end of clause (1), a provision stating that “In the exercise of this freedom and independence, the media shall respect the rights and reputations of others.” This would ensure that persons are protected from media institutions who could ruin their reputation (1 province); and
- (b) replacing the word “State” with the word “public” in clause (4) because the use of the word “State” has a connotation of Government control over the media as State media is usually subject to abuse by those in authority and does not provide a level playing field for all stakeholders (2 provinces).

Resolutions of the Sector Groups Convention on Article 38

The Convention resolved to amend the Article by:

- (a) replacing the phrase “State media” with the phrase “public media” in clause (4) because the term “public media” is more appropriate when referring to media institution funded by public resources (tax payers). Further, the Convention recommended that the phrase “public media” be defined in Article 311 of the First Draft Constitution; and
- (b) replacing the word “opportunity” with the term “coverage” in paragraph (c) of clause (4) in order to ensure maximum enjoyment of the protection provided for in the clause.

Resolutions of the National Convention on Article 38

The Convention resolved to amend the Article by:

- (a) replacing the word “State” with the word “public” in clause (4);
- (b) replacing the word “opportunity” with the word “coverage” in paragraph (c) of clause (4); and
- (c) adopting the provisions of clause (2) of Article 20 of the current Constitution.

Deliberations of the Technical Committee on Article 38

The Committee considered the resolutions of the District Consultative Fora, the Provincial, Sector Groups and National Conventions.

The Committee amended the Article by making clause (1) subject to clause (3) in order to avoid conflict between the two provisions. The Committee also redrafted clause (2) in order to simplify and remove unnecessary detail.

Further, the Committee redrafted clause (3) by indicating that the State would only be responsible for licencing of media. Furthermore, the Committee deleted paragraph (b) of clause (3) because the provision was not a constitutional matter.

In addition, the Committee replaced the term “State-owned media” with the term “public media” in clause (4) in order to be more specific in relation to being funded by public resources. As a consequence of this amendment, paragraphs (a) to (c) of clause (4) were redrafted to put them in context of the amendment.

The Committee also deleted clause (5) as it would be provided for under a general Article on provisions requiring enactment of legislation. In addition, the Committee re-numbered the Article as Article 36 of the Final Draft Constitution.

Resolutions of the Technical Committee on Article 38

The Committee resolved to amend the Article by:

- (a) making clause (1) subject to clause (3);
- (b) redrafting clause (2);
- (c) redrafting clause (3) and deleting paragraph (b);
- (d) replacing the term "State-owned media" with the term "public media" in clause
- (e) (4) and redrafted the paragraphs;
- (f) deleting clause (5); and
- (g) re-numbering it as Article 36.

Article 36 of the Final Draft Constitution reads:

- "36. (1) Subject to clause (3), the freedom and independence of electronic, broadcasting, print and other forms of media is guaranteed.
- (2) The State shall not exercise control over or interfere with a person engaged in –
- (a) broadcasting or the production or circulation of publications; or
 - (b) the dissemination of information through any media.
- (3) The State may license broadcasting and other electronic media where it is necessary to regulate signals and signal distribution.
- (4) Public media shall-
- (a) independently determine the editorial content of their broadcasts or communications; and
 - (b) afford fair opportunity for the presentation of divergent views and dissenting opinions."

Article 39: Political Rights

Recommendations in the First Draft Constitution

The following provisions were recommended in the First Draft Constitution:

- "39. (1) Subject to this Constitution, a citizen has a right to participate in the political affairs of the nation and in the activities of a political party.
- (2) Subject to this Constitution, a citizen has the right to be elected to any elective public body or office established by or under this Constitution.
- (3) A citizen aged eighteen years and above and who is eligible to register as a voter has the right to vote in elections or referenda, as provided by or under this Constitution."

Rationale for the Article

The rationale for the Article was that participation in the political process of a country was an extremely important civic duty and obligation which should, therefore, be explicitly provided for in the Bill of Rights.

Resolutions of the District Consultative Fora on Article 39

Eighty (80) District Consultative Fora resolved to retain the Article as stated in the First Draft Constitution while two (2) resolved to amend the Article by:

- (a) including the phrase "with the exception of public servants and chiefs" at the end of clause (2) (1 district); and
- (b) providing for the Electoral Commission to create a conducive environment for persons with visual impairment, hard of hearing and persons with severe physical disabilities to participate freely, fairly and independently in voting in an election (1 district).

Resolutions of the Provincial Conventions on Article 39

All the ten (10) Provincial Conventions resolved to retain the Article as stated in the First Draft Constitution.

Resolutions of the Sector Groups Convention on Article 39

The Convention resolved to amend the Article to provide for participation by Citizens in the governance of the country whether directly or indirectly as provided for under Article 25 of the International Covenant on Civil and Political Rights.

Resolutions of the National Convention on Article 39

The Convention resolved to retain the Article as stated in the First Draft Constitution.

Deliberations of the Technical Committee on Article 39

The Committee considered the resolutions of the District Consultative Fora, the Provincial, Sector Groups and National Conventions.

The Committee redrafted the Article in order to simplify it and remove unnecessary details. The Committee also changed the marginal note to read "General political rights" in order to adequately reflect the content of the Article.

Further, the Committee agreed to expressly provide for the right to participate in political activities, without adding a limitation because all the limitations to the rights had been provided for in general provisions. Furthermore, the Committee deleted clauses (2) and (3) because the two provisions would narrow participation in political activities as they were just among the many political activities that an individual may participate in.

In addition, the Committee re-numbered the Article as Article 37.

Resolutions of the Technical Committee on Article 39

The Committee resolved to amend the Article by:

- (a) redrafting it in order to simplify it;
- (b) changing the marginal note to read "General political rights"; and
- (c) expressly provide for the right to participate in political activities, without adding a limitation;
- (d) deleting clauses (2) and (3); and
- (e) re-numbering it as Article 37.

Article 37 of the Final Draft Constitution reads:

"37. A citizen has a right to participate in political activities, as prescribed."

Article 40: Freedom of Association

Recommendations in the First Draft Constitution

The following provisions were recommended in the First Draft Constitution:

- "40. (1) A person has the right to freedom of association, which includes the right to form, join or participate in the activities of an association.
- (2) A person shall not be compelled to join an association of any kind.
- (3) Parliament shall enact legislation for the registration of associations."

Rationale for the Article

The rationale for the Article was that the right of association was provided for in the current Constitution and was a fundamental right which required to be retained. The Committee, therefore, observed that there was no justification for departing from the status quo.

Resolutions of the District Consultative Fora on Article 40

All the eighty-two (82) District Consultative Fora resolved to retain the Article as stated in the First Draft Constitution.

Resolutions of the Provincial Conventions on Article 40

Nine (9) Provincial Conventions resolved to retain the Article as stated in the First Draft Constitution while one Convention resolved as follows:

Amend the Article by including a clause (4) to read:

"Any legislation requiring the registration of an association of any kind shall provide that:

- (a) Registration may not be withheld or withdrawn unreasonably; and
- (b) There shall be a right to have a fair hearing before a registration is cancelled."

This is in order to limit powers of the Registrar of Societies and ensure that the office acts reasonably.

Resolutions of the Sector Groups Convention on Article 40

The Convention resolved to retain the Article as stated in the First Draft Constitution.

Resolutions of the National Convention on Article 40

The Convention resolved to retain the Article as stated in the First Draft Constitution.

Deliberations of the Technical Committee on Article 40

The Committee considered the resolutions of the District Consultative Fora, the Provincial, Sector Groups and National Conventions.

The Committee amended the Article by deleting clause (3) as a consequence of an earlier decision to provide for enactment of legislation under a general provision.

Further, the Committee re-numbered the Article as Article 38.

Resolutions of the Technical Committee on Article 40

The Committee resolved to amend the Article by deleting clause (3) and renumbering it as Article 38.

Article 38 of the Final Draft Constitution reads:

“38. (1) A person has the right to freedom of association, which includes the right to form, join or participate in the activities of an association.

(2) A person shall not be compelled to join an association.”

Article 41: Rights to Assemble, Demonstrate, Picket, Lock out and Petition

Recommendation in the First Draft Constitution

The following provision was recommended in the First Draft Constitution:

“41. A person has the right, peacefully and unarmed, to assemble, demonstrate, picket or lock out and present petitions to public authorities.”

Rationale for the Article

The rationale for the Article was that the right of assembly was inherent in the freedom of expression and freedom of association and, therefore, needed to be provided for in the Constitution. The Committee observed that Article 21 of the current Constitution protected those freedoms and this protection should be retained.

Resolutions of the District Consultative Fora on Article 41

All the eighty-two (82) District Consultative Fora resolved to retain the Article as stated in the First Draft Constitution.

Resolutions of the Provincial Conventions on Article 41

All the ten (10) Provincial Conventions resolved to retain the Article as stated in the First Draft Constitution.

Resolutions of the Sector Groups Convention on Article 41

The Convention resolved to amend the Article by:

(a) replacing the words “public authorities” with the words “relevant authorities” so that the provision is not restricted to public authorities only; and

(b) defining the word “unarmed” in Article 311 of the First Draft Constitution.

Resolutions of the National Convention on Article 41

The Convention resolved to retain the Article as stated in the First Draft Constitution.

Deliberations of the Technical Committee on Article 41

The Committee considered the resolutions of the District Consultative Fora, the Provincial, Sector Groups and National Conventions.

The Committee amended the marginal note by deleting the word “lock out.” The Committee observed that since the issue of lock out related to employers, it would be dealt with under the Article on labour relations.

The Committee also amended the Article by replacing the term “public authorities” with the term “State institutions.” The Committee observed that the amendment was necessary because the term “State institutions” covered a wider scope than the term “public authorities.”

Further, the Committee also re-numbered Article 41 as Article 39 of the Final Draft Constitution.

Resolutions of the Technical Committee on Article 41

The Committee resolved to amend the Article by:

- (a) changing the marginal note to read “Right to assemble, demonstrate, picket and petition”;
- (b) replacing the term “public authorities” with the term “State institutions”; and
- (c) re-numbering it as Article 39.

Article 39 of the Final Draft Constitution reads:

“39. A person has the right, peacefully and unarmed, to assemble, demonstrate or picket and present petitions to State organs and State institutions.”

Article 42: Freedom of Movement and Residence

Recommendations in the First Draft Constitution

The following provisions were recommended in the First Draft Constitution:

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

Rationale for the Article

The rationale for the Article was that the right of freedom of movement and residence was provided for in the current Constitution and that there was no justification for departing from the

status quo. The Committee also observed that this was a fundamental right in a democratic society.

Resolutions of the District Consultative Fora on Article 42

All the eighty-two (82) District Consultative Fora resolved to retain the Article as stated in the First Draft Constitution.

Resolutions of the Provincial Conventions on Article 42

All the ten (10) Provincial Conventions resolved to retain the Article as stated in the First Draft Constitution.

Resolutions of the Sector Groups Convention on Article 42

The Convention resolved to amend the Article by deleting clause (5) because the provision was covered in paragraph (b) of clause (1).

Resolutions of the National Convention on Article 42

The Convention resolved to retain the Article as stated in the First Draft Constitution.

Deliberations of the Technical Committee on Article 42

The Committee considered the resolutions of the District Consultative Fora, the Provincial, Sector Groups and National Conventions.

The Committee amended the Article by separating the right of freedom of movement from the right of residence, in order to simplify it.

The Committee also agreed to move clause (5) of the Article to the general provisions on Articles requiring enactment of legislation.

Further, the Committee re-numbered the Article as Article 40 of the Final Draft Constitution.

Resolutions of the Technical Committee on Article 42

The Committee resolved to amend the Article by:

- (a) separating the freedom of movement from the right of residence;
- (b) moving clause (5) of the Article to Article 318 in the Final Draft Constitution; and
- (c) re-numbering it as Article 40.

Article 40 of the Final Draft Constitution reads:

“40. A person has the right to freedom of movement, which includes the right-

(a) as a citizen -

(i) to enter, remain and reside anywhere in the Republic; and

(ii) to a passport; and

(b) to leave the Republic subject to the imposition of restrictions on the entry, movement or residence of persons who are not citizens, as prescribed.”

Article 43: Refugees and Asylum Seekers

Recommendations in the First Draft Constitution

The following provision was recommended in the First Draft Constitution:

“43. A person who has sought asylum or refuge in Zambia has a right not to be returned to the country of origin or a third country if that person has a well-founded fear of -
(a) persecution in the country of origin or a third country; or
(b) other treatment in that country that would justify that person being regarded as a refugee.”

Rationale for the Article

The rationale of the Article was that Zambia, which historically has been a refugee hosting country, should guarantee the protection of the status and rights of refugees in the Constitution as was the practice in many countries. The Committee resolved that this right should be guaranteed when it is established that there are well founded grounds that such persons are in fear of ill treatment or persecution in the country of origin or third country.

Resolutions of the District Consultative Fora on Article 43

All the eighty-two (82) District Consultative Fora resolved to retain the Article as stated in the First Draft Constitution.

Resolutions of the Provincial Conventions on Article 43

All the ten (10) Provincial Conventions resolved to retain the Article as stated in the First Draft Constitution.

Resolutions of the Sector Groups Convention on Article 43

The Convention resolved to amend the Article by:

- (a) Recasting the marginal note in the context of rights; and
- (b) Including and clarifying the application of the concept of “non-refoulment” in paragraph (b).

Resolutions of the National Convention on Article 43

The Convention resolved to retain the Article as stated in the First Draft Constitution.

Deliberations of the Technical Committee on Article 43

The Committee considered the resolutions of the District Consultative Fora, the Provincial, Sector Groups and National Conventions.

The Committee amended the Article by replacing the words “has sought asylum” with the words “has been granted asylum.” The Committee observed that the amendment was necessary to prevent people, who do not warrant to be granted asylum from abusing the provision. The Committee also made minor amendments to the Article in order to simplify it and remove unnecessary details.

Furthermore, the Committee re-numbered the Article as Article 41 of the Final Draft Constitution.

Resolutions of the Technical Committee on Article 43

The Committee resolved to amend the Article by:

- (a) replacing the words "has sought asylum" with the words "has been granted asylum";
- (b) simplifying it and removing unnecessary details; and
- (c) re-numbering it as Article 41.

Article 41 of the Final Draft Constitution reads:

"41. A person who is granted asylum or refuge in Zambia has a right not to be returned to the country of origin or a third country if that person has a well-founded fear of persecution, in the country of origin or a third country, which justifies that person's request for asylum or refuge."

Article 44: Acquisition and Protection of Property

Recommendations in the First Draft Constitution

The following provisions were recommended in the First Draft Constitution:

- "44. (1) A person has the right, either individually or in association with others, to acquire and own property-
- (a) of any description; and
 - (b) in any part of Zambia.
- (2) Parliament shall not enact a law that permits the State or any person to-
- (a) arbitrarily deprive a person of property of any description or of any interest in, or right over, any property of any description; or
 - (b) limit, or in any way restrict, the enjoyment of any right under this Article on the basis of any of the grounds specified or contemplated in Article 27 (1) and (2).
- (3) The State shall not compulsorily take possession of property of any description, or of any interest in, or right over, property of any description, unless the acquisition is for a public purpose or in the public interest and is done in accordance with this Constitution and any Act of Parliament that-
- (a) requires prompt, adequate and effective compensation to the person; and
 - (b) allows any person who has an interest in, or right over, that property a right of access to a court.
- (4) An Act of Parliament may provide for compensation to be paid to occupants who have acquired property in good faith and who may not hold title to the land.
- (5) The rights under this Article do not extend to any property that was unlawfully acquired."

Rationale for the Article

The rationale for the Article was that property was central to a country's economy which was driven by the enterprise of its citizens and that for enterprise to thrive, it was essential that it existed in an environment where the right to property was guaranteed and protected. To this effect, the right to property and protection of this right must be incorporated as a cornerstone to a country's Constitution. Currently, the Constitution guaranteed the right of a person to protection from deprivation of property.

Resolutions of the District Consultative Fora on Article 44

Seventy-five (75) District Consultative Fora resolved to retain the Article as stated in the First Draft Constitution while seven (7) resolved to amend the Article by:

(a) including, in clause (1), two new paragraphs as follows:

- (i) to be issued title deeds even if the property is on customary land; and
- (ii) own property of social and economic value but which shall not be a health hazard (1 district);

(b) including the word "lawfully" between the words "to" and "acquire" in clause (1) (2 districts); and

(c) replacing the word "may" with the word "shall" in clause (4) because the word "may" is discretionary and undesirable under the circumstances (4 districts).

Resolutions of the Provincial Conventions on Article 44

Seven (7) Provincial Conventions resolved to retain the Article as stated in the First Draft Constitution while three (3) resolved to amend the Article by:

- (a) replacing the word "person" with the word "citizen" in clause (1) in order to bar foreigners from owning land in Zambia unless in association with Zambians (1 province); and
- (b) replacing the word "may" with the word "shall" in clause (4) because it should not be optional for Parliament to enact legislation to provide for compensation (2 provinces).

Resolutions of the Sector Groups Convention on Article 44

The Convention resolved to retain the Article as stated in the First Draft Constitution.

Resolutions of the National Convention on Article 44

The Convention resolved to amend the Article by inserting the phrase "subject to Article 294," after the word "right" in clause (1) in order to ensure that land is only given to citizens.

Deliberations of the Technical Committee on Article 44

The Committee considered the resolutions of the District Consultative Fora, the Provincial, Sector Groups and National Conventions.

The Committee amended the Article by removing repetitions and unnecessary details in order to simplify it. This was done partly by defining the term "property" in Article 312 and incorporating details from the Article in the definition.

The Committee also amended clause (1) of the Article by deleting paragraph (a).

The Committee observed that paragraph (a) was an unnecessary detail.

Further, the Committee amended clause (2) by deleting paragraph (b). The Committee observed that the provisions of paragraph (b) would be taken care of under relevant provisions dealing with discrimination.

Furthermore, the Committee amended clause (3) by deleting the words "property of any description."

In addition, the Committee re-numbered the Article as Article 42 of the Final Draft Constitution.

Resolutions of the Technical Committee on Article 44

The Committee resolved to:

- (a) amend the Article by:
 - (i) removing repetitions and unnecessary detail;
 - (ii) deleting paragraph (a) of clause (1);
 - (iii) deleting paragraph (b) of clause (2);
 - (iv) deleting the words "property of any description" in clause (3);
 - (v) re-numbering it as Article 42; and
- (b) define the term "property" in Article 312 of the Final Draft Constitution.

Article 42 of the Final Draft Constitution reads:

- "42. (1) A person has the right, individually or in association with others, to own property in any part of Zambia.
- (2) The State or a person shall not arbitrarily deprive a person of property.
- (3) The State shall not compulsorily acquire a person's property unless the acquisition is in the public interest.
- (4) Where a person's property is compulsorily acquired in accordance with clause (3) –
 - (a) the State shall promptly, adequately and effectively compensate that person;
 - and
 - (b) that person, or any person who has an interest in or right over that property, has a right of access to a court.
- (5) Where the State compulsorily acquires land from occupants who have acquired the land in good faith and who do not hold title to the land, the State shall provide for compensation to be paid to the occupants, as prescribed.
- (6) The rights under this Article do not extend to property unlawfully acquired."

Article 45: Equality before Law

Recommendation in the First Draft Constitution

The following provision was recommended in the First Draft Constitution:

“45. All persons are equal before the law and have the right to equal protection and benefit of the law.”

Rationale for the Article

The rationale for the Article was that it was important to make a provision on equality of all persons before the law in the Constitution because the most general application of equality in the legal context was the principle that the rule of law should apply equally to all members of the community and that nobody should be exempt or treated differently, save for good reasons.

Resolutions of the District Consultative Fora on Article 45

Eighty-one (81) District Consultative Fora resolved to retain the Article as stated in the First Draft Constitution while one Forum resolved to delete the Article on the basis that it does not represent the truth in that the poor and the rich are not equal.

Resolutions of the Provincial Conventions on Article 45

All the ten (10) Provincial Conventions resolved to retain the Article as stated in the First Draft Constitution.

Resolutions of the Sector Groups Convention on Article 45

The Convention resolved to retain the Article as stated in the First Draft Constitution.

Resolutions of the National Convention on Article 45

The Convention resolved to retain the Article as stated in the First Draft Constitution.

Deliberations of the Technical Committee on Article 45

The Committee considered the resolutions of the District Consultative Fora, the Provincial, Sector Groups and National Conventions.

The Committee retained the Article as stated in the First Draft Constitution.

Further, the Committee re-numbered the Article as Article 43 of the Final Draft Constitution.

Resolutions of the Technical Committee on Article 45

The Committee resolved to retain the Article as stated in the First Draft Constitution and re-numbered it as Article 43.

Article 43 of the Final Draft Constitution reads:

“43. All persons are equal before the law and have the right to equal protection and benefit of the law.”

Article 46: Fair Administration

Recommendations in the First Draft Constitution

The following provisions were recommended in the First Draft Constitution:

- “46. (1) A person has the right to administrative action that is expeditious, lawful, just, reasonable and procedurally fair.
- (2) A person whose rights have been adversely affected by administrative action has the right to be given written reasons for the action.
- (3) Parliament shall enact legislation to -
- (a) provide for the review of administrative action by a court or, where appropriate, an independent and impartial tribunal; and
 - (b) promote an efficient public service.”

Rationale for the Article

The rationale for the Article was that the right to administrative action which entails accessing administrative structures of governance in an expeditious, lawful, just, reasonable and procedurally fair manner was one of the key factors in ensuring good governance and should, therefore, be guaranteed in the Constitution.

Resolutions of the District Consultative Fora on Article 46

All the eighty-two (82) District Consultative Fora resolved to retain the Article as stated in the First Draft Constitution.

Resolutions of the Provincial Conventions on Article 46

All the ten (10) Provincial Conventions resolved to retain the Article as stated in the First Draft Constitution.

Resolutions of the Sector Groups Convention on Article 46

The Convention resolved to amend the Article by:

- (a) Deleting clause (3) because the provisions therein were covered in clause (1) of the same Article; and
- (b) Defining the term “administrative action” in Article 311 of the First Draft Constitution.

Resolutions of the National Convention on Article 46

The Convention resolved to retain the Article as stated in the First Draft Constitution.

Deliberations of the Technical Committee on Article 46

The Committee considered the resolutions of the District Consultative Fora, the Provincial, Sector Groups and National Conventions.

The Committee amended clause (1) of the Article by deleting the word “just.” The Committee observed that using the words “lawful” and “just” was repetitive. The Committee also deleted clauses (2) and (3) which were considered to be mere details.

The Committee observed that the amendments were necessary in order to clearly highlight the provisions of natural justice in the Article.

Further, the Committee re-numbered the Article as Article 44 of the Final Draft Constitution.

Resolutions of the Technical Committee on Article 46

The Committee resolved to amend the Article by:

- (a) deleting the word "just" in clause (1);
- (b) deleting clauses (2) and (3); and
- (c) re-numbering it as Article 44.

Article 44 of the Final Draft Constitution reads:

"44. A person has the right to administrative action that is expeditious, lawful, reasonable and procedurally fair."

Article 47: Access and Right to Justice

Recommendations in the First Draft Constitution

The following provisions were recommended in the First Draft Constitution:

- "47. (1) A person has the right to access justice.
- (2) A person has the right to have any dispute resolved and decided timely and to have a fair hearing before a court or, where appropriate, any other independent and impartial tribunal.
- (3) Where a person has any claim or judgment against the State-
 - (a) the claim may be instituted by proceedings against the State; and
 - (b) the judgment may be enforced by execution against the State, after one year of the delivery of the judgment.
- (4) The State shall be liable in tort to the same extent as a private person of full age and capacity.
- (5) A court shall not order any security for costs on matters of public interest litigation."

Rationale for the Article

The rationale for the Article was that access and right to justice should be guaranteed in a democratic society and that this right needed to be enforced considering that citizens had always expressed concern about the legal representation for the poor and vulnerable, delays in the disposal of cases by courts and the detention of suspects for long periods without trial. Accordingly, the Committee resolved to guarantee the right to justice in the Constitution, which would entail: the right to be heard; the right to be informed of the nature of the offence; the right of access to courts of law which are fair, impartial and independent; and, the right to a well-reasoned and expeditiously delivered judgment.

Resolutions of the District Consultative Fora on Article 47

Seventy-four (74) District Consultative Fora resolved to retain the Article as stated in the First Draft Constitution while eight (8) resolved to amend the Article by:

- (a) reducing the period in which judgement may be enforced by execution against the State from one year to three (3) or six (6) months, in paragraph (b) of clause (3). This is because it is unfair to wait for one year when judgement had already been passed (3 districts);
- (b) providing, in clause (3) for immediate execution of judgement against the State upon delivery (1 district);
- (c) providing in clause (3), for all judgments of the High Court or Supreme Court to be registered in one central register book and for servicing of such judgments and payments to be made in order of registration (1 district);
- (d) introducing a clause to provide for how people will access Justice (1 district);
- (e) providing for a period of forty-eight (48) hours for holding of a suspect, in justifiable circumstances, in order to allow for investigations (1 district); and
- (f) replacing the phrase “after one year of the delivery of the judgment” with the phrase “as the Court may direct”, in paragraph (b) of clause (3), because the one year period is too long and open to abuse as litigants are entitled to the fruits of judgment (1 district).

Resolutions of the Provincial Conventions on Article 47

Four (4) Provincial Conventions resolved to retain the Article as stated in the First Draft Constitution while six (6) resolved to amend paragraph (d) of clause (3) by reducing the duration in which a judgement may be enforced by execution against the State to either three (3) or six (6) months because one year was too long for claims to be paid. The court process is traumatising, therefore, people should not be traumatised further by waiting for compensation for one year. Further, after one year the money would have lost value. In addition, Government would have means to pay promptly because Article 278 provides for a compensation fund. In the same way Government finds money for by-elections, it should find money for compensating people who have been aggrieved (6 provinces).

Resolutions of the Sector Groups Convention on Article 47

The Convention resolved to amend the Article by deleting clause (4) because the clause was not necessary.

Resolutions of the National Convention on Article 47

The Convention resolved to amend paragraph (b) of clause (3) by reducing the period to six months because the one year provided for was too long.

Deliberations of the Technical Committee on Article 47

The Committee considered the resolutions of the District Consultative Fora, the Provincial, Sector Groups and National Conventions.

The Committee amended the marginal note by deleting the words "and right" to read "Access to Justice."

The Committee also amended the Article by moving clause (2) to the Article on Fair Trial, which was the most appropriate place for the provision.

Further, the Committee deleted clause (4) because matters relating to 'torts' were adequately covered in other pieces of legislation.

Furthermore, the Committee re-numbered the Article as Article 45 of the Final Draft Constitution.

Resolutions of the Technical Committee on Article 47

The Committee resolved to amend the Article by:

- (a) changing the marginal note to read "Access to Justice";
- (b) moving clause (2) to the Article on Fair Trial;
- (c) deleting clause (4); and
- (d) re-numbering it as Article 45.

Article 45 of the Final Draft Constitution reads:

- "45. (1) A person has the right to access justice.
- (2) A person has the right to execute a judgment against the State after one year of the delivery of the judgment.
- (3) A court shall not order security for costs on matters of public interest litigation."

Article 48: Rights of Suspects and Arrested Persons

Recommendations in the First Draft Constitution

The following provision were recommended in the First Draft Constitution:

- "48. Subject to Article 68, a person who is a suspect, arrested or detained for allegedly committing an offence has the right –
- (a) to remain silent;
- (b) to be informed in a language which that person understands of the -
 - (i) right to remain silent; and
 - (ii) consequences of remaining silent;
- (c) to be informed, as soon as reasonably practicable, of the reasons for the arrest or detention -
 - (i) in a language which that person understands;
 - (ii) in the case of a visually impaired person, in Braille;
 - (iii) in the case of a deaf person, in sign language; or

- (iv) in such other appropriate means of communication as may be prescribed by or under an Act of Parliament ;
- (d) not to be compelled to make any confession or admission;
- (e) to be held separately from persons who are serving a sentence;
- (f) to be brought before a court -
 - (i) within forty-eight hours after being arrested or detained, or to be released on bond or bail;
 - (ii) not later than the end of the first court day after the expiry of the forty-eight hours, if the forty-eight hours expire outside ordinary court hours, or to be released on bond;
 - (iii) on a day that is not an ordinary court day, or to be released on bond;
 - (iv) as speedily as possible, if that person is arrested or detained far from a court, or to be released on bond or bail;
 - (v) to be tried within ninety days or where appropriate, to be released on bond or bail; or
 - (vi) which shall have the power to determine whether or not bail shall be granted, either unconditionally or subject to reasonable conditions; and
- (g) to be released on bond or bail, pending trial, on reasonable conditions, unless there are compelling reasons to the contrary, as determined by the court."

Rationale for the Article

The rationale for the Article was that suspects and arrested persons deserved dignified treatment and should, therefore, be protected from torture and inhuman and degrading treatment. The Committee observed that the rights of suspects and arrested persons had not been categorically provided for in the current Constitution but had been provided for under subsidiary legislation. The Committee, therefore, resolved that it was important to have a provision in the Constitution to guarantee the rights of suspects and arrested persons.

The Committee further observed that Zambia was a signatory to and had ratified a number of international human rights instruments such as the Convention Against Torture and other Cruel, Inhuman and Degrading Treatment (CAT) and that the State should, therefore, pursue policies and practices that enhanced the observance of human rights.

Resolutions of the District Consultative Fora on Article 48

Eighty (80) District Consultative Fora resolved to retain the Article as stated in the First Draft Constitution while two (2) resolved to amend the Article by:

- (a) providing in paragraph (f) that bail should be denied for spouse barterers (1 district); and

- (b) reducing the period within which trial should take place from “ninety (90) days” to “thirty (30) days”, in sub-paragraph (v) of paragraph (f), in order to promote speedy delivery of justice (1 district).

Resolutions of the Provincial Conventions on Article 48

Six (6) Provincial Conventions resolved to retain the Article as stated in the First Draft Constitution while four (4) resolved to amend the Article by:

- (a) adding the words “large print and audio” in sub-paragraph (ii) of paragraph (c) of clause (1) in order to cater for the various needs of visually impaired persons (1 province);
- (b) deleting sub-paragraphs (ii) and (iii) of paragraph (c) and consequentially apply the amendment to all the provisions which make reference to Braille as a language because Braille is not a language (1 province); and
- (c) replacing the period within which trial should take place from “ninety (90) days” to “thirty (30) days” in sub-paragraph (v) of paragraph (f) in order to promote speedy delivery of justice (2 provinces).

Resolutions of the Sector Groups Convention on Article 48

The Convention resolved to amend the Article by:

- (a) providing that a person who is a suspect, arrested or detained for allegedly committing an offence, has the right to legal representation; and
- (b) defining in Article 311, the term language as used in sub-paragraphs (i) and (iii) of paragraph (c).

Resolutions of the National Convention on Article 48

The Convention resolved to amend paragraph (c) of the Article by replacing the phrase “as soon as reasonably practical” with the word “immediately” and to further, include the phrase “and where this is not applicable, as soon as it is reasonably possible” at the end of the end of the paragraph, to read:

“(c) to be informed immediately, of the reasons for the arrest or detention and where this is not applicable, as soon as it is reasonably possible.”

The Convention observed that non specification of the timeframe, within which a person should be informed of the alleged offence, gives room for potential abuse of the clause. Further, there is need to reasonably accommodate existing limitations in the criminal justice system that may delay the application of the provision in paragraph (c) for persons with disabilities.

Deliberations of the Technical Committee on Article 48

The Committee considered the resolutions of the District Consultative Fora, the Provincial, Sector Groups and National Conventions.

The Committee amended the Article by splitting it into two (2) separate Articles numbered as Article 46 on "Rights of Suspects" and Article 48 on "Rights of Accused Persons and Detainees." The Committee observed that separating the "rights of suspects" and "rights of accused persons and detainees" would make these rights clearer so as to be easily understood.

Resolutions of the Technical Committee on Article 48

The Committee resolved to split the Article into two (2) separate Articles numbered as Article 46 on Rights of Suspects and Article 48 on Rights of Accused Persons and Detainees.

Articles 46 and 48 of the Final Draft Constitution read:

"46. A person who is suspected of committing an offence is entitled to –

(a) remain silent; and

(b) be informed in a language which that person understands of the -

(i) right to remain silent; and

(ii) consequences of remaining silent."

"48. Subject to Articles 65, 66, 67, 68 and 69 an accused person or a detainee has the right –

(a) to remain silent;

(b) to be informed in a language which that person understands of the -

(i) right to remain silent; and

(ii) consequences of remaining silent;

(c) to be informed, as soon as reasonably practicable, of the reasons for the arrest or detention -

(i) in a language which that person understands;

(ii) in the case of a visually impaired person, in Braille or tactile diagrams;

(iii) in the case of a deaf person, in sign language; or

(iv) in another appropriate means of communication;

(d) not to be compelled to make a confession or an admission;

(e) to be held separately from persons who are serving a sentence;

(f) to be released on bond, unless there is compelling reason to the contrary; and

(g) to be brought before a court -

(i) within forty-eight hours after being arrested or detained;

(ii) not later than the end of the first court day after the expiry of the forty-eight hours, if the forty-eight hours expire outside ordinary court hours;

(iii) as speedily as possible, if that person is arrested or detained far from a court;

(iv) for trial within ninety days of being arrested; or

(v) to be released on bail, as prescribed."

Article 49: Rights of Persons Detained or in Custody

Recommendations in the First Draft Constitution

The following provisions were recommended in the First Draft Constitution:

- "49. (1) A person shall not be detained without being charged and tried, except during a war, public emergency or threatened state of public emergency.
- (2) A person who is held in custody, whether sentenced or not, retains all that person's rights and freedoms under this Constitution, except to the extent that a right or freedom is incompatible with the fact of being in custody.
- (3) A person who is detained or held in custody is entitled to petition for a writ of habeas corpus.
- (4) Parliament shall enact legislation that-
- (a) provides for the humane treatment of persons detained, held in custody or imprisoned;
- (b) takes into account the relevant international human rights instruments on the rights of persons detained or in custody; and
- (c) provides for the regulation of the prison system, its operation and maintenance."

Rationale for the Article

The rationale for the Article was that it was important to protect the rights of persons detained or in custody. The Committee observed that the most effective way of guaranteeing these rights was by entrenching them in the Constitution.

Resolutions of the District Consultative Fora on Article 49

Seventy-eight (78) District Consultative Fora resolved to retain the Article as stated in the First Draft Constitution while four (4) resolved to amend the Article by:

- (a) providing that a suspect shall not be detained for more than forty-eight (48) hours without trial, in clause (1) (1 district);
- (b) including the phrase "for more than forty-eight (48) hours" in clause (1) in order to promote speedy delivery of justice (1 district);
- (c) including a provision to allow for consultation before detaining a person, and another to make provision for humane conditions for people awaiting trials in prison(1 district); and
- (d) introducing a provision to take into account the need to separate inmates with disabilities from those without disabilities (1 district).

Resolutions of the Provincial Conventions on Article 49

All the ten (10) Provincial Conventions resolved to retain the Article as stated in the First Draft Constitution.

Resolutions of the Sector Groups Convention on Article 49

The Convention resolved to amend the Article by subjecting clause (2) to clause (1) because clause (1) provides adequate limitations for the enjoyment of the rights and should, therefore, be read together with clause (2).

Resolutions of the National Convention on Article 49

The Convention resolved to retain the Article as stated in the First Draft Constitution.

Deliberations of the Technical Committee on Article 49

The Committee considered the resolutions of the District Consultative Fora, the Provincial, Sector Groups and National Conventions.

The Committee amended the Article by redrafting clauses (1), (2) and (3) to simplify them and remove unnecessary details. The Committee also deleted the words "detained or" in the marginal note in order for it to read "Rights of persons in custody."

Further, the Committee deleted clause (4) as there was a general provision on Articles requiring enactment of legislation.

Furthermore, the Committee re-numbered the Article as Article 47 of the Final Draft Constitution.

Resolutions of the Technical Committee on Article 49

The Committee resolved to amend the Article by:

- (a) re-drafting clauses (1), (2) and (3);
- (b) changing the marginal note to read "Right of Persons in Custody";
- (c) deleting clause (4); and
- (d) re-numbering it as Article 47.

Article 47 of the Final Draft Constitution reads:

- "47. (1) A person shall not be held in custody without being charged.
- (2) A person who is held in custody retains that person's rights and freedoms, except to the extent that a right or freedom is incompatible with being in custody.
- (3) A person who is held in custody is entitled to petition for a writ of habeas corpus."

Article 50: Fair Trial

Recommendations in the First Draft Constitution

The following provisions were recommended in the First Draft Constitution:

- "50. (1) An accused person has the right to a fair trial which includes the right –
 - (a) to be presumed innocent until the contrary is proved;
 - (b) to be informed, as soon as is reasonably practicable, of the charge with sufficient details to answer the charge-
 - (i) in a language which that person understands;

- (ii) in the case of a visually impaired person, in Braille;
- (iii) in the case of a deaf person, in sign language; or
- (iv) in such other appropriate form of communication as may be prescribed by or under an Act of Parliament ;

- (c) to have adequate time and facilities to prepare a defence;
- (d) to be present when being tried, unless the conduct or presence of the accused person makes it impossible for the trial to proceed;
- (e) to have the trial commenced and concluded and judgment given without unreasonable delay;
- (f) to compensation for wrongful detention or imprisonment;
- (g) to choose, and be represented by, a legal practitioner and to be informed of this right before taking plea;
- (h) to have a legal practitioner assigned to the accused person by the State and at public expense, if substantial injustice would otherwise result, and to be informed of this right promptly;
- (i) to remain silent during the trial and not to testify during the proceedings;
- (j) to adduce and challenge evidence;
- (k) not to have illegally obtained evidence admissible in the trial;
- (l) not to be compelled to give self-incriminating evidence;
- (m) not to be compelled to make any confession or admission;
- (n) to have, without payment, the assistance of an interpreter if the accused person cannot understand the language used at the trial, and in the case of a deaf person, a sign language interpreter;
- (o) not to be charged, tried or convicted for an act or omission that was not, at the time it was committed or omitted, an offence under any other law;
- (p) not to be tried for an offence in respect of an act or omission for which that person had previously been acquitted or convicted;
- (q) to the benefit of the least severe of the prescribed punishments if the prescribed punishment for an offence has been changed between the time that offence is committed and the time of sentencing; and
- (r) of appeal to, or review by, a higher court.

(2) Where this Article requires information to be given to a person, that information shall be given-

- (a) in a language which that person understands;
- (b) in the case of a visually impaired person, in Braille;

(c) in the case of a deaf person, in sign language; or

(d) in such other appropriate form of communication as may be prescribed by or under an Act of Parliament .

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

(4) A person who is convicted of a criminal offence is entitled, on request, to a copy of the record of the proceedings of the trial, within fourteen days after it has been transcribed.

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

(6) Where there is compelling evidence that a person, who has been convicted by a court, may be innocent of an offence, the State may petition the Supreme Court for it to examine such evidence and make a determination as to whether that person was guilty of the offence.

(7) The entry of a *nolle prosequi* is not an acquittal.

(8) Where a person in respect of whom a *nolle prosequi* has been entered is not charged on the same facts within twelve months of the entry of the *nolle prosequi*, the charge shall be void from the date on which that person was charged."

Rationale for the Article

The rationale for the Article was that, having provided for the rights of suspects and arrested persons and of persons detained or in custody in Articles 48 and 49 of the First Draft Constitution, it was necessary to have a separate Article on the right to fair trial to make it clearer. In respect of *nolle prosequi*, the Committee observed that it was common practice in Commonwealth countries to reserve the power to enter *nolle prosequi* in the Director of Public Prosecutions (DPP). This power had, however, persistently been abused, causing inconveniences and anxiety to individuals who were made to live with the threat of arrest indefinitely. The Committee, therefore, was of the view that public interest could still be protected but within restricted scope and incorporated a provision accordingly.

Resolutions of the District Consultative Fora on Article 50

Seventy-nine (79) District Consultative Fora resolved to retain the Article as stated in the First Draft Constitution while three (3) resolved to amend the Article by:

- (a) providing in paragraph (i) of clause (1) that a person on trial should not remain silent but should testify during the proceedings (1 district);

(b) deleting clause (8) of the Article because the clause is open to abuse by people with connections to higher authorities (1 district); and

(c) adding a provision to state the timeframe within which judgment should be delivered and the need for improved human resource in courts in order to enable the Judiciary to work effectively in serving the interests of the Zambian people (1 district).

Resolutions of the Provincial Conventions on Article 50

Eight (8) Provincial Conventions resolved to retain the Article as stated in the First Draft Constitution while two (2) resolved to amend the Article by:

(a) deleting sub-paragraphs (ii) and (iii) of paragraph (b) as a consequential amendment arising from the resolution in Article 48 (1 province); and

(b) replacing the words "the State" with the words "a person" in clause (6), so that it should not only be the State to petition the Supreme Court to examine evidence but any interested person (1 province).

Resolutions of the Sector Groups Convention on Article 50

The Convention resolved to amend the Article by deleting sub-paragraph (iii) of paragraph (b) of clause (1), as it was catered for in sub-paragraph (i) of paragraph (b) of clause (1).

Resolutions of the National Convention on Article 50

The Convention resolved to amend the Article by replacing the phrase "as soon as is reasonably possible" with the word "immediately" in clause (1) paragraph (b).

Deliberations of the Technical Committee on Article 50

The Committee considered the resolutions of the District Consultative Fora, the Provincial, Sector Groups and National Conventions.

The Committee amended the Article by incorporating provisions from clause (2) of Article 47 of the First Draft Constitution, as clause (1) of the Article. The Committee observed that the provisions were more relevant to matters of fair trial.

The Committee also re-numbered clause (1) of the Article as clause (2) and amended it by:

(a) inserting the words "and a detainee" after the word "person" in the opening sentence;

(b) inserting the words "or detainee" after the word "person" in paragraph (d) to make the provision more inclusive especially that detainees had basic rights included which can only be derogated from in times of emergency;

(c) including the words "tactile diagrams" in sub-paragraph (ii) of paragraph (b);

(d) splitting paragraph (h) into two paragraphs so that, paragraph (i): reads "to be informed of the right in paragraph (h) promptly"; and

(e) replacing the phrase "any other law" with the phrase "a written law" at the end of paragraph (o).

Further, the Committee re-numbered clause (2) as clause (3) and amended it by including the words "tactile diagrams" in paragraph (b) in order to ensure enhanced communication for visually impaired arrested persons.

Furthermore, the Committee deleted clauses (3) and (4) because they related to procedures on records of proceedings which could generate constitutional problems.

The Committee observed that such matters were better left to courts and subsidiary legislation.

In addition, the Committee amended the Article by moving clauses (5) and (6) to a new Article 50 in the Final Draft Constitution, on "Right to Retrial and Reexamination of Evidence," to maintain a logical flow of provisions.

The Committee also deleted clause (7) on the *nolle prosequi*, because it was a mere statement of fact.

The Committee moved clause (8) to Article 244 of the First Draft Constitution which had been re-numbered as Article 216 of the Final Draft Constitution on Director of Public Prosecutions. The Committee observed that clause (8) would be appropriately placed under Article 216 where such matters are provided for.

Resolutions of the Technical Committee on Article 50

The Committee resolved to amend the Article by:

- (a) incorporating provisions from clause (2) of Article 47 of the First Draft Constitution, as clause (1) of the Article;
- (b) redrafting clause (1) of the Article by:
 - (i) inserting the words "and a detainee" after the word "person" in the opening sentence;
 - (ii) inserting the words "or detainee" after the word "person" in paragraph (d);
 - (iii) including the words "tactile diagrams" in sub-paragraph (ii) of paragraph
- (b) splitting paragraph (h) into two paragraphs so that, paragraph (i): reads "to be informed of the right in paragraph (h) promptly";
 - (iv) replacing the phrase "any other law" with the phrase "a written law" at the end of paragraph (o); and
 - (v) re-numbering it as clause (2) of the Article;
- (c) redrafting clause (2) of the Article by including the words "tactile diagrams" in paragraph (b) and re-numbering it as clause (3);
- (d) deleting clauses (3), (4) and (7);
- (e) moving clauses (5) and (6) to a new Article 50 in the Final Draft Constitution;
- (f) moving clause (8) to Article 216 of the Final Draft Constitution on the Director of Public Prosecutions; and

(g) re-numbering it as Article 49.

Article 49 of the Final Draft Constitution reads:

"49. (1) A person has the right to have a dispute decided timely and to have a fair hearing before a court or, where appropriate, an independent and impartial tribunal.

(2) An accused person or a detainee has the right to a fair trial, which includes the right –

- (a) to be presumed innocent until the contrary is proved;
- (b) to be informed, as soon as is reasonably practicable, of the charge with sufficient details to answer the charge;
- (c) to have adequate time and facilities to prepare a defence;
- (d) to be present when being tried, unless the conduct of the accused person or detainee makes it impossible for the trial to proceed;
- (e) to have the trial commenced and judgment given without unreasonable delay;
- (f) to compensation for wrongful detention or imprisonment;
- (g) to choose, and be represented by, a legal practitioner and to be informed of this right before taking plea;
- (h) to have a legal practitioner assigned to the accused person by the State, at public expense, if substantial injustice would otherwise result;
- (i) to be informed promptly of the right in paragraph (h);
- (j) to remain silent during the trial and not to testify during the proceedings;
- (k) to challenge and adduce evidence;
- (l) not to have illegally obtained evidence admissible at the trial;
- (m) not to be compelled to give self-incriminating evidence;
- (n) to have, without payment, the assistance of an interpreter if the accused person cannot understand the language used at the trial and, in the case of a deaf person, a sign language interpreter;
- (o) not to be charged, tried or convicted for an act or omission that was not, at the time it was committed or omitted, an offence under a written law;
- (p) not to be tried for an offence in respect of an act or omission for which that person had previously been acquitted or convicted;
- (q) to the benefit of the least severe of the prescribed punishment, if the prescribed punishment for an offence was changed between the time that offence was committed and the time of sentencing; and
- (r) of appeal to, or review by, a higher court.

(3) Where this Article requires information to be given to a person, that information shall be given-

- (a) in a language which that person understands;
- (b) in the case of a visually impaired person, in Braille or tactile diagrams;
- (c) in the case of a deaf person, in sign language; or
- (d) in another appropriate form of communication."

Article 51: Equality of both Gender

Recommendations in the First Draft Constitution

The following provisions were recommended in the First Draft Constitution:

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

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

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

(4) Women and men have equal rights in the marriage, during the marriage and at the dissolution of the marriage.

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

Rationale for the Article

The rationale for the Article was that, taking into account the realities of the circumstances of women in relation to men, the situation warranted remedial constitutional intervention in order to enable women to enjoy fundamental rights and freedoms on an equal basis with men. The Committee observed that currently the constitutional provisions were inadequate. The Constitution assumed equality of the sexes without regard to the reality of inequalities created by the socio-cultural and economic construct of the society. In particular, some exceptions to discrimination under Article 23 of the current Constitution virtually took away women's right to enjoyment of human rights and freedoms on equal basis with men.

In addition, the fact that the language of the current Constitution was not gender neutral, but used expressions importing the male gender, had a negative effect on the status of women in relation to the Bill of Rights. The Committee, therefore, resolved that the Constitution should reaffirm the principle of equality of men and women in all respects and that there should be affirmative action in favour of women. The Committee was also of the view that all laws, customary practices and stereotyped attitudes which were against the dignity, welfare or

interest of women or which otherwise adversely affected their physical or mental well-being should be prohibited.

Resolutions of the District Consultative Fora on Article 51

Seventy-four (74) District Consultative Fora resolved to retain the Article as stated in the First Draft Constitution while eight (8) resolved to amend the Article by:

- (a) deleting the Article because it contradicts the Bible, which says the woman is under the authority of the husband. Further, the First Draft Constitution provides general rights and privileges applicable to both men and women (2 districts);
- (b) replacing the word "same" with the word "similar" in clause (2) (1 district);
- (c) adding a provision stating that boys and girls shall be subjected to the same cut off point in examinations in order to ensure equality of both gender (1 district);
- (d) including a provision to prohibit marriage interference (1 district);
- (e) adding that a man is a head of the house in clause (4) in accordance with Christian and Zambian norms (1 district);
- (f) replacing the word "equal" with the word "equitable" in clause (3) and (4) in order to align the provision to tradition, custom and cultural values (1 district); and
- (g) adding in clause (4) that, much as women and men may enjoy equal rights, in the marriage, during marriage and at the dissolution of marriage, there are some that may be enjoyed individually (1 district).

Resolutions of the Provincial Conventions on Article 51

All the ten (10) Provincial Conventions resolved to retain the Article as stated in the First Draft Constitution.

Resolutions of the Sector Groups Convention on Article 51

The Convention resolved to retain the Article as stated in the First Draft Constitution. The Convention, however, observed that clause (2) may need to be revisited in case it had been covered in the Article dealing with human dignity so as to avoid repetitions in the First Draft Constitution.

Resolutions of the National Convention on Article 51

The Convention resolved to retain the Article as stated in the First Draft Constitution.

Deliberations of the Technical Committee on Article 51

The Committee considered the resolutions of the District Consultative Fora, the Provincial, Sector Groups and National Conventions.

The Committee amended the Article by incorporating provisions of Article 52 on Further Rights for Women. The Committee observed that the right to reproductive health was not limited to women only but applied to men as well. The Committee also observed that both women and

men had an equal right to acquire, change or retain nationality, including the right to change the nationality of their children, if it was in the best interest of the child.

The Committee also amended the Article by deleting:

- (a) the words "including the right to" in clause (1) in order to remove excess detail;
- (b) clause (2) because it was provided for under the Article on discrimination and human dignity;
- (c) the words "have access to," in clause (3), because access to property was implied in the right to use or own property;
- (d) the words "during marriage," in clause (4), because they were unnecessary; and
- (e) clause (5) because it was repetitive of provisions in Article 45 and those on human dignity already provided for in other parts of the Constitution.

Further, the Committee re-numbered the Article as Article 50 of the Final Draft Constitution.

Resolutions of the Technical Committee on Article 51

The Committee resolved to amend the Article by:

- (a) incorporating provisions of Article 52 on Further Rights for Women; and
- (b) deleting:
 - (i) the words "including the right to" in clause (1);
 - (ii) clause (2);
 - (iii) the words "have access to" in clause (3);
 - (iv) the words "during marriage" in clause (4);
 - (v) clause (5); and

Article 51 of the Final Draft Constitution reads:

- "51. (1) Women and men have the right to equal treatment and opportunities.
- (2) Women and men have an equal right to inherit, own, use, administer and control property.
- (3) A woman and a man have equal rights in the marriage and at the dissolution of the marriage.
- (4) Without limiting a right or freedom, women and men have the right to-
- (a) reproductive health, including family planning and access to related information and education;
 - (b) acquire, change or retain their nationality, including the right to change the nationality of their child if this is in the best interest of the child;
 - (c) choose residence and domicile;
 - (d) guardianship or adoption of a child; and
 - (e) choose a family name."

Article 52: Further Rights for Women

Recommendations in the First Draft Constitution

The following provision was recommended in the First Draft Constitution:

“52. Without limiting any right or freedom guaranteed under the Bill of Rights, women have the right to-

- (a) reproductive health, including family planning and access to related information and education;
- (b) acquire, change or retain their nationality, including the right to change the nationality of their children if this is in the best interest of the children;
- (c) choose residence and domicile;
- (d) guardianship and adoption of children;
- (e) choose a family name; and
- (f) non-custodial sentences if pregnant or are nursing mothers, except as a measure of last resort for those women who pose a danger to the community.”

Rationale for the Article

The rationale for the Article was that, given the social, cultural, economic and physiological circumstances that have greatly disadvantaged women, there was need for the Constitution to provide additional measures that would uplift the status of women apart from those aimed at gender equality.

Resolutions of the District Consultative Fora on Article 52

Sixty-four (64) District Consultative Fora resolved to retain the Article as stated in the First Draft Constitution while eighteen (18) resolved to:

- (a) delete the Article because further rights for women seemed to be only applicable to single women and not married ones. This is because according to Zambian traditions, a woman can only choose a family name in consultation with the husband (9 districts).
- (b) amend the Article by:
 - (i) inserting the words “as the highest attainable standard of health including the right health care services and reproductive health care” after the word “information” in paragraph (a) (1 district);
 - (ii) deleting the wording “including the right to change the nationality of their children if this is in the best interest of children” in paragraph (b). This is to ensure that women do not have the right to change the nationality of their children even if it is in the best interest of the children (3 districts);

- (iii) introducing a new paragraph to read “The State shall ensure that the principle of equal representation applies to any consideration for appointment, nomination and election to offices in the Executive, Legislature and Judiciary” (1 district);
- (iv) adding the wording “but for those with children and/or with husbands to get consent from their husbands” at the end of the paragraph (b) (1 district);
- (v) providing in paragraph (c) that women who are married should choose residence and domicile in consultation with their husbands (1 district);
- (vi) adding the words “except in legal and Christian marriages, where mutual understanding and agreement is needed” at the end of paragraphs (c) and (e) (1 district);
- (vii) providing in paragraph (d) for guardianship and adoption of children in the best interest of the child(1 district); and
- (viii) including a phrase that acknowledges the role of the father in paragraph b) (1 district).

Resolutions of the Provincial Conventions on Article 52

Three (3) Provincial Conventions resolved to retain the Article as stated in the First Draft Constitution while seven (7) resolved to:

- (a) delete the Article because it is against the principle of equality of men and women as it gives further rights to women only (4 provinces); and
- (b) amend the Article by:
 - (i) including the words “subject to Article 28 (1) and (2)” at the end of paragraph (a) in order to cater for the rights of the unborn child (1 province);
 - (ii) adding the words “except in legal and Christian marriages, where mutual understanding and agreement is needed” at the end of paragraphs (c), (d) and (e). This is to make the provision explicit that where a woman is legally married, she needs to consult the spouse (1 province); and
 - (iii) deleting paragraph (e) in order to maintain family harmony(1 province).

Resolutions of the Sector Groups Convention on Article 52

The Convention resolved to amend the Article by:

- (a) deleting the word “further” in the marginal note to read “Rights of women”;
- (b) defining the phrase “Reproductive Health” in Article 311 of the First Draft
- (c) Constitution so that it is in conformity with the definition used by medical practitioners;

- (d) harmonising paragraph (a) with paragraph (a) of Article 28 of the First Draft Constitution so that the component of abortion in the definition of reproductive health does not contradict the principle of life beginning at conception; and
- (e) moving paragraph (b) of the Article to Article 51 of the First Draft Constitution.

Resolutions of the National Convention on Article 52

The Convention resolved to amend the Article by:

- (a) clarifying in paragraph (a) that reproductive health does not include abortion on demand in order to cater for the rights of the unborn child;
- (b) defining the term “reproductive health,” which should not include “abortion on demand,” in Article 311 of the First Draft Constitution;
- (c) amending paragraph (b) of the Article so that women should consult their spouses whenever they wanted to change the nationality of their children in order to maintain family harmony; and
- (d) adding the phrase “except in marriages” at the end of paragraphs (c), (d) and (e) in order to maintain family harmony.

Deliberations of the Technical Committee on Article 52

The Committee considered the resolutions of the District Consultative Fora, the Provincial, Sector Groups and National Conventions.

The Committee agreed to move paragraphs (a) to (e) to Article 51 of the Final Draft Constitution on “Equality of Both Gender.” The Committee also moved paragraph (f) to Article 60 on “Further protections and rights relating to marriage and family.”

Having incorporated the provisions of Article 52 of the First Draft Constitution into other Articles, the Committee, therefore, deleted the Article.

The Committee observed that it was necessary to delete the Article and to incorporate its provisions into relevant Articles because the Article was divisive as the right to reproductive health was not limited to women only but applied to men as well. The Committee also observed that both women and men had an equal right to acquire, change or retain nationality, including the right to change the nationality of their children if it was in the best interest of the child.

Resolutions of the Technical Committee on Article 52

The Committee resolved to delete the Article and incorporate its provisions into Articles 51 and 60 of the Final Draft Constitution.

Article 53: Older Members of Society

Recommendations in the First Draft Constitution

The following provision was recommended in the First Draft Constitution:

“53. Older members of society are entitled to enjoy all the rights and freedoms set out in the Bill of Rights, including the right to –

- (a) participate fully in the affairs of society;
- (b) personal development;
- (c) independent living;
- (d) freedom from all forms of discrimination, exploitation or abuse;
- (e) respect for physical and mental integrity;
- (f) live in dignity and respect; and
- (g) social security and protection.”

Rationale for the Article

The rationale for the Article was that there was a wide-spread concern that the aged appeared to be neglected by society and, therefore, the need to provide for their protection in the Constitution. It had been observed that the aged faced particular difficulties that included lack of adequate health care, shelter and other social amenities and social security which had been exacerbated by the breakdown of the extended family system and the fact that even those who had retired from employment were often unable to access their pensions due to various reasons. The Committee, therefore, recommended that the rights of persons above 60 years should be enshrined in the Bill of Rights and that the State should be obligated to set up a sustainable social security system.

Resolutions of the District Consultative Fora on Article 53

Seventy (70) District Consultative Fora resolved to retain the Article as stated in the First Draft Constitution while twelve (12) resolved to amend the Article by:

- (a) replacing the word “older” with the word “senior” in the marginal note and the opening sentences of the Article because the term “older member” is demeaning (1 district);
- (b) replacing the word “enjoy” with the words “but not limited to” after the word “including” in the opening sentence because the word “enjoy” is demeaning and implies a privilege (1 district);
- (c) inserting the word “violence” at the end of paragraph (d) (1 district);
- (d) adding new paragraphs to provide that:
 - (i) the State shall provide a monthly benefit for the vulnerable older members of society (5 districts);
 - (ii) elderly people shall have free medical services because they cannot provide for themselves (1 district);

- (iii) older members of society will be exempted from paying taxes (1 district);
 - (iv) freedom fighters and old people shall be entitled to an allowance (1 district);
 - (v) the State shall care for the aged and provide monthly income and give grants for wealth creation (1 district);
 - (vi) free social amenities to older members of society will be provided because they become destitute as they are unable to access social amenities (1 district);
- and

(e) defining "older members" of society as persons aged 65 years and above (1 district).

Resolutions of the Provincial Conventions on Article 53

Nine (9) Provincial Conventions resolved to retain the Article as stated in the First Draft Constitution while one Convention resolved to amend the Article by inserting the words "such as medical care and financial assistance" at the end of paragraph (g). This is because society has an obligation to care for its older members.

Resolutions of the Sector Groups Convention on Article 53

The Convention resolved to retain the Article as stated in the First Draft Constitution.

Resolutions of the National Convention on Article 53

The Convention resolved to retain the Article as stated in the First Draft Constitution.

Deliberations of the Technical Committee on Article 53

The Committee considered the resolutions of the District Consultative Fora, the Provincial, Sector Groups and National Conventions.

The Committee amended the marginal note by adding the words "Further Rights for" so that it reads "Further Rights for Older Members of Society." The Committee observed that the initial wording was discriminatory as older members of society were human beings who were entitled to enjoy all human rights and that the rights in Article 52 were necessary additional rights.

The Committee also amended the opening sentence in order to take into account the amendment made to the marginal note

Further, the Committee deleted paragraphs (d), (e), and (f) because the provisions were already provided for under the Article on human dignity.

Furthermore, the Committee deleted the words "security and" and added the words "as prescribed" in order to provide for social protection as opposed to social security in paragraph (g).

The Committee re-numbered the Article as Article 59 of the Final Draft Constitution.

Resolutions of the Technical Committee on Article 53

The Committee resolved to amend the Article by:

- (a) changing the marginal note to read "Further Rights for Older Members of Society";

- (b) redrafting the opening sentence to take into account the amendment made to the marginal note;
- (c) deleting paragraphs (d), (e), and (f) of the Article;
- (d) deleting the words "security and" and adding the words "as prescribed" in paragraph (g); and
- (e) re-numbering the Article as Article 59.

Article 59 of the Final Draft Constitution reads:

- "59. The older members of society are further entitled to the right to –
- (a) participate fully in the affairs of society;
 - (b) personal development;
 - (c) independent living; and
 - (d) social protection, as prescribed."

Article 54: Family

Recommendations in the First Draft Constitution

The following provisions were recommended in the First Draft Constitution:

- "54. (1) The State shall recognise and protect the family as the natural and fundamental unit of society and the necessary basis of the social order.
- (2) A person who is eighteen years of age or older has the right to freely choose a spouse of the opposite sex and marry.
- (3) The State shall, in recognition of the importance of children to the future of society, the maternal role of women and nurturing role of both parents -
- (a) ensure the right of women to adequate maternity leave;
 - (b) ensure the availability of adequate paternity leave;
 - (c) ensure the availability of adequate maternal health care and child health care; and
 - (d) promote the availability of adequate child-care facilities."

Rationale for the Article

The rationale for the Article was that the family was a fundamental unit of society that required special constitutional protection. The Committee resolved that the age of 18 years should be the minimum age for marriage in order to protect persons classified as children (under the age of 18 years) from getting married.

Resolutions of the District Consultative Fora on Article 54

Seventy-three (73) District Consultative Fora resolved to retain the Article as stated in the First Draft Constitution while nine (9) resolved to amend the Article by:

- (a) inserting the words “upon introduction of the would-be spouse to both families” at the end of clause (2) (1 district);
- (b) inserting the words “unless parents do not allow, agree or admit” at the end of clause (2) (1 district);
- (c) inserting the words “with consent or knowledge of both parents/guardians” at the end of clause (2) (1 district);
- (d) increasing the marriage age from eighteen (18) to twenty one (21) years in clause (2) in order to take into account the education system of Zambia in which children are expected to complete secondary education at 19 years (1 district);
- (e) inserting the words “with elderly or parental guidance” at the end of clause (2) (1 district);
- (f) providing, in paragraph (b) of clause (3), that the number of paternity leave days would be spelt out in labour laws (2 districts);
- (g) providing for ten (10) days as the period for paternity leave in paragraph (b) of clause (3) (1 district); and
- (h) including a definition of the term “Family” to read “A family is an intimate communion of life and love based on marriage between a man and a woman” in Article 311 of the First Draft Constitution(1 district).

Resolutions of the Provincial Conventions on Article 54

Seven (7) Provincial Conventions resolved to retain the Article as stated in the First Draft Constitution while three (3) resolved to amend the Article by:

- (a) including, in clause (1), that “the family is one where there is or was a marriage between spouses of the opposite sex, with children and relatives” in order to explicitly prohibit same sex marriages in the Constitution (1 province);
- (b) increasing the marriage age from eighteen (18) to twenty (20) years and providing for consent from parents in clause (2) because at that age a person is considered mature and responsible enough to start a family (1 province); and
- (c) replacing the words “availability of” with the words “right to” in paragraph (b) of clause (3) (1 province).

Resolutions of the Sector Groups Convention on Article 54

The Convention resolved to amend clause (2) of the Article by increasing the marriage age to a spouse of the opposite sex from eighteen (18) to twenty-one (21) years because at that age one would have matured and acquired survival skills.

Further, the increase in marriage age would strengthen the campaign against early marriages which predispose girls under the age of 18 to pregnancy-related complications.

Resolutions of the National Convention on Article 54

The Convention resolved to amend clause (2) of the Article by increasing the age of marriage from eighteen (18) to twenty (21) years to enhance the campaign against early marriages which disadvantage boys and girls, particularly girls.

Deliberations of the Technical Committee on Article 54

The Committee considered the resolutions of the District Consultative Fora, the Provincial, Sector Groups and National Conventions.

The Committee amended the marginal note so that it reads "Further Protections and Rights Relating to Marriage and Family," in order to provide for protections and rights relating to marriage and family. The Committee also amended the opening statement of clause (3) by removing unnecessary detail.

Further, the Committee, in line with its decision in Article 52, introduced paragraph (f) of Article 52 into article 54, as the new clause (4). The Committee observed that the provision would be best placed under this Article since it enhanced the rights of women by protecting pregnant women and nursing mothers from custodial sentences. The provision was introduced in the Article as a new clause (4).

Furthermore, the Committee re-numbered the Article as Article 60 of the Final Draft Constitution.

Resolutions of the Technical Committee on Article 54

The Committee resolved to amend the Article by:

- (a) changing the marginal note to read "Further Protections and Rights Relating to
- (b) Marriage and Family";
- (c) redrafting the opening statement of clause (3) by removing unnecessary detail.;
- (d) introducing paragraph (f) of Article 52 on Further Rights for Women as the new clause (4);
and
- (e) re-numbering it as Article 60.

Article 60 of the Final Draft Constitution reads:

"60. (1) The State shall recognise and protect the family as the natural and fundamental unit of society and the necessary basis of the social order.

(2) A person who is nineteen years of age or older has the right to choose a spouse of the opposite sex and marry.

(3) The State shall -

- (a) ensure the right of women to adequate maternity leave;
- (b) ensure the availability of adequate paternity leave;
- (c) ensure the availability of maternal health care and child health care; and
- (d) promote the establishment of child-care facilities.

(4) A pregnant or nursing woman has the right to a non-custodial sentence, except as a measure of last resort where she poses a danger to the community."

Article 55: Children

Recommendations in the First Draft Constitution

The following provisions were recommended in the First Draft Constitution:

"55. (1) It is the duty of parents and the State to nurture, protect and educate children.

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

(3) In all actions concerning a child, the best interests of the child shall be a primary consideration.

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

(5) Every child has a right -

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

(b) to parental care, or to appropriate alternative care, where the child is separated from its parents;

(c) to free basic education;

(d) to be protected from discrimination, neglect, abuse and harmful cultural rites and practices, including female genital mutilation and body mutilation, and to be protected from marriage before attaining the age of eighteen years;

(e) to be protected from any work that is exploitative or likely to be hazardous or adverse to the child's welfare;

(f) to adequate nutrition, shelter, basic health care services, social protection and social services;

(g) not to be subjected to corporal punishment or any other form of violence, or cruel and inhuman treatment, in the home, school and any institution responsible for the care of children;

(h) to be protected in times of armed conflict and not to be recruited and used in armed conflict;

(i) not to take part in hostilities;

(j) not to be incarcerated on account of the mother's incarceration;

(k) to a standard of living adequate for the child's physical, mental, spiritual, moral and social development;

(l) to protection from all forms of sexual exploitation or abuse;

(m) not to be detained or imprisoned, except as a measure of last resort, in which case that child has the right to be -

(i) detained for a period of not more than forty-eight hours;

(ii) kept separate from adults in custody;

(iii) accorded legal assistance by the State;

(iv) treated in a manner and be kept in conditions that take into account the child's gender and age; and

(v) tried in a Juvenile Court;

(n) to diversion programmes;

(o) to know of decisions affecting that child, to express an opinion and have that opinion taken into account, having regard to the age and maturity of the child and the nature of the decision;

(p) to protection of the child's identity from exposure by the media during criminal proceedings; and

(q) to survival and development.

(6) Children with special needs, orphans, a child whose parent is in prison, children with disability, refugee children and homeless children or children living or who spend time, on the streets, are entitled to the special protection of the State and society."

Rationale for the Article

The rationale for the Article was that the rights of the child were not specifically addressed in the Bill of Rights of the current Constitution yet Zambia was a party to the United Nations Convention on the Rights of the Child. The concern by most people was that the lives of many children in the country were blighted by abject poverty, child prostitution, child labour, sexual exploitation as well as parental neglect resulting in multitudes of children living on the streets. The Committee observed that there was, therefore, need for a change in attitude towards children to bring about recognition for their human rights. The Constitution should provide for additional protection for the children's rights particularly the right to parental care, the rights of the unborn child, the right to a name and nationality, the right to survive and develop.

Resolutions of the District Consultative Fora on Article 55

Fifty-three (53) District Consultative Fora resolved to retain the Article as stated in the First Draft Constitution while twenty-nine (29) resolved to amend the Article by:

(a) inserting the words "to family and" at the beginning of paragraph (b) of clause (5) in order to strengthen the provision (1 district);

- (b) providing for compulsory free and quality education from grade one to grade twelve in paragraph (c) of clause (5) in order to enable children without sponsorship from parents or guardians to complete school (10 districts);
- (c) providing for a certain level of corporal punishment in paragraph (g) of clause (5) for the purposes of instilling discipline in children (9 districts);
- (d) replacing the word "mother" with the word "caregiver" in paragraph (j) of clause (5) in order to provide for children who may be under the care of a person other than the mother (1 district);
- (e) replacing the word "Juvenile" with the word "children's" in sub-paragraph (v) of paragraph (m) of clause (5) because the word "children" is simpler to understand (1 district);
- (f) providing that inmates serving on defilement cases must not be pardoned by the
- (g) President and that a minimum sentence be removed and a maximum sentence be imposed in paragraph (l) of clause (5) (6 districts);
- (h) adding that it is the duty of the Government to sensitise the public on the existence of the Juvenile Court in sub-paragraph (vi) of paragraph (m) (1 district);
- (i) providing for the right to recreation as an additional right for children (1 district); and
- (j) providing for punishment of parents who fail to educate their children in order to enhance the children's right to education (1 district).

Resolutions of the Provincial Conventions on Article 55

Four (5) Provincial Conventions resolved to retain the Article as stated in the First Draft Constitution while five (5) resolved to amend the Article by:

- (a) deleting the word "basic" in paragraph (c) of clause (5) in order to provide for the right to higher education for children (2 provinces); and
- (b) providing for corporal punishment that would not be equated to cruelty, violence or inhuman treatment in paragraph (g) of clause (5) in order to allow discipline of children in homes and schools (3 provinces).

Resolutions of the Sector Groups Convention on Article 55

The Convention resolved as follows:

- (a) Amending clause (2) of the Article by deleting the words "whether born in or outside wedlock" in order to avoid classification of children;
- (b) Amending paragraph (c) of clause (5) by deleting the words "free basic" in order to avoid specifying the level of subsidy to be provided by Government;
- (c) Amending paragraph (d) of clause (5) by raising marriage age from "eighteen (18)" to "twenty-one (21) years; and

(d) Defining the phrase “corporal punishment” in Article 311 of the First Draft Constitution.

Resolutions of the National Convention on Article 55

The Convention resolved to amend the Article by deleting the words “free basic” in paragraph (c) of clause (5) because it is the duty of the State to provide education for children as every child has a right to education.

Deliberations of the Technical Committee on Article 55

The Committee considered the resolutions of the District Consultative Fora, the Provincial, Sector Groups and National Conventions.

The Committee amended the marginal note by including the words “Special Rights for” so that it reads “Special Rights for Children,” in order to make it nondiscriminatory since children also were entitled to enjoy all other rights.

The Committee also deleted clause (1) because it was a mere statement of fact and it was covered in the provisions on the obligations of parents to their children and the entitlements of a child in clauses (3) and (4), respectively.

Further, the Committee deleted the words “children born outside wedlock” in clause (2) because the wording was discriminatory as it categorised children.

Further, the Committee amended clause (3) by replacing the article “a” with the article “the” between the words “be” and “primary”. The Committee observed that the use of the article “a” relegated consideration of the best interest of the child to possibly being just one of the primary considerations, whereas the use of the article “the” made the best interest of the child the primary consideration. Furthermore, the Committee inserted the words “and decisions” after the word “actions” so that all actions and decisions made concerning a child, took into account the best interests of the child.

In addition, the Committee amended paragraph (c) of clause (5) by replacing the term “basic education” with the term, “secondary education” in order to allow children enjoy free education up to a level that would enable them qualify for any public office. The Committee also deleted the words “including female genital mutilation and harmful mutilation” in paragraph (d) because these were merely two examples of the many harmful cultural rites and practices.

Further, the Committee provided for mechanisms to be put in place for the care of children whose mothers were incarcerated. The Committee observed that paragraph (j) of clause (5) provided for the right of a child not to be incarcerated on account of the mother's incarceration. The Committee, therefore, made provision for the State to protect a child whose parent is incarcerated.

Furthermore, as a consequence of the deletion of clause (1), clauses (2), (3), (4) and (5) were re-numbered accordingly.

In addition, the Committee re-numbered the Article as Article 61 of the Final Draft Constitution.

Resolutions of the Technical Committee on Article 55

The Committee resolved to amend the Article by:

- (a) changing the marginal note to read "Special rights for children";
- (b) deleting clause (1);
- (c) deleting the words "children born outside wedlock" in clause (2);
- (d) replacing the word "a" with the word "the" between the words "be and primary" in clause (3);
- (e) replacing the term "basic" with the term "secondary" in paragraph (c) of clause(5);
- (f) deleting the words "including female genital mutilation and harmful body mutilation" in paragraph (d);
- (g) making provision for the State to protect a child whose parent is incarcerated in clause (5);
- (h) re-numbering clauses (2), (3), (4) and (5) as clauses (1), (2), (3) and (4) and
- (i) re-numbering it as Article 61.

Article 61 of the Final Draft Constitution reads:

"61. (1) A child is equal before the law.

(2) In all actions and decisions concerning a child, the best interest of the child shall be the primary consideration.

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

(4) A child is further entitled to the following civil and political rights:

- (a) to acquire a nationality;
- (b) to registration of birth and to a name;
- (c) not to be subjected to corporal punishment or other form of violence, cruel or inhuman treatment in the home, school or an institution responsible for the care of children;
- (d) to be protected in times of armed conflict and not to be recruited and used in armed conflict;
- (e) not to take part in hostilities;
- (f) to protection from all forms of sexual exploitation or abuse;
- (g) not to be subjected to harmful cultural rites and practices;
- (h) not to be incarcerated on account of the mother's incarceration;

(i) not to be held in custody, except as a measure of last resort, in which case the child shall be -

(i) held in custody for a period of not more than forty eight hours;

(ii) kept separate from adults in custody;

(iii) accorded legal assistance by the State;

(iv) treated in a manner and be kept in conditions that take into account the child's gender and age; and

(v) tried in a Children's Court;

(j) to protection of the child's identity from exposure by the media or person during criminal proceedings;

(k) not to be discriminated against, neglected or abused;

(l) not to be engaged in work that is exploitative or likely to be hazardous or adverse to the child's health or welfare;

(m) not to marry or be forced to marry, before the age of nineteen;

(n) to know of decisions affecting the child, to express an opinion and have that opinion taken into account, having regard to the age and maturity of that child and the nature of the decision; and

(o) to diversion programmes.

(5) A child is further entitled to the following economic and social rights:

(a) parental care or, where the child is separated from its parents, to appropriate alternative care;

(b) free primary and secondary education;

(c) survival and development;

(d) adequate nutrition, shelter, basic health care services, social protection and social services; and

(e) a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

(6) The State shall protect a child-

(i) with special needs;

(ii) who is orphaned;

(iii) whose parent or guardian is in prison;

(iv) whose parent or guardian is unfit to look after the child;

(v) with disability;

(vi) who is a refugee; and

(vii) who is homeless or lives or spends time on the streets."

Article 56: Youth

Recommendations in the First Draft Constitution

The following provisions were recommended in the First Draft Constitution:

“56. The youth constitute an integral part of society and, taking into account their unique needs, are entitled to enjoy all the rights and freedoms set out in the Bill of Rights, including –

- (a) access to quality and relevant education and training for personal development;
- (b) participation in governance;
- (c) access to gainful employment;
- (d) adequate opportunities in the social, economic and other spheres of national life;
- (e) freedom of association to further their legitimate interests;
- (f) protection from any culture, custom or
- (g) tradition that undermines their dignity or quality of life; and freedom from discrimination, exploitation or abuse.”

Rationale for the Article

The rationale for the Article was that the situation of the youth in the country was similar to that of the children as elaborated in Article 55 and hence the need for special constitutional measures to guarantee the rights of the youth.

Resolutions of the District Consultative Fora on Article 56

Seventy-nine (79) District Consultative Fora resolved to retain the Article as stated in the First Draft Constitution while three (3) resolved to amend the Article by:

- (a) providing for enforcement of the rights in the Article so that the youth should be able to sue government (1 district);
- (b) providing that the youth be given an opportunity to serve their nation in decision making (1 district); and
- (c) deleting the word “enjoy” in the opening statement of the Article because the word “enjoy” is demeaning and implies a privilege (1 district).

Resolutions of the Provincial Conventions on Article 56

All the ten (10) Provincial Conventions resolved to retain the Article as stated in the First Draft Constitution.

Resolutions of the Sector Groups Convention on Article 56

The Convention resolved to amend the Article by:

(a) adding the phrase “without limiting any right or freedom guaranteed under the Bill of Rights” at the beginning of the Article in order to strengthen the provision and ensure that other rights guaranteed under the Bill of Rights will not be limited by the exercise of these rights.

(b) adding new paragraphs to provide for:

- (i) the right of youths to access information and acquire property;
- (ii) equal treatment of youths; and
- (iii) equal opportunities for both females and males

(c) defining the term “gainful employment” in Article 311 of the First Draft Constitution.

Resolutions of the National Convention on Article 56

The Convention resolved to retain the Article as stated in the First Draft Constitution.

Deliberations of the Technical Committee on Article 56

The Committee considered the resolutions of the District Consultative Fora, the Provincial, Sector Groups and National Conventions.

The Committee amended the marginal note by including the words “Further Rights for” to read “Further Rights for Youth.” This was in order to avoid creating discriminatory provisions in the Constitution since youths also enjoy all other rights provided for the general citizenry. The Committee also amended the opening sentence by simplifying it and removing unnecessary detail.

Further, the Committee amended paragraph (d) by inserting the word “political” between the word “economic” and the word “and.” This is because the youth have the right and freedom to participate in the political sphere of their country.

Furthermore, the Committee deleted paragraphs (e), (f) and (g) because they were repetitions of rights already provided for in other Articles under the Bill of Rights.

In addition, the Committee re-numbered the Article as Article 62 of the Final Draft Constitution.

Resolutions of the Technical Committee on Article 56

The Committee resolved to amend the Article by:

- (a) changing the marginal note to read “Further rights for Youth”;
- (b) simplifying and removing unnecessary detail in the opening sentence;
- (c) inserting the word “political” in paragraph (d);
- (d) deleting paragraphs (e), (f) and (g); and
- (e) re-numbering it as Article 62.

Article 62 of the Final Draft Constitution reads:

“62. The youth are further entitled to the right to–

- (a) personal development;

- (b) participate in governance;
- (c) access gainful employment; and
- (d) participate in the social, economic, political and other spheres of national life."

Article 57: Protection of Young Persons

Recommendations in the First Draft Constitution

The following provisions were recommended in the First Draft Constitution:

"57. (1) Subject to clause (2), a young person shall not be caused or permitted to engage in an occupation or employment which would prejudice the health or education or interfere with the physical, mental or moral development of that young person.

(2) A young person may be employed for a wage under conditions specified in an Act of Parliament ."

Rationale for the Article

The rationale for the Article was that as the case was with children and the youth, young persons were a vulnerable group that required constitutional protection to avoid being engaged in hazardous occupations or employment.

Resolutions of the District Consultative Fora on Article 57

All the eighty-two (82) District Consultative resolved to retain the Article as stated in the First Draft Constitution.

Resolutions of the Provincial Conventions on Article 57

All the ten (10) Provincial Conventions resolved to retain the Article as stated in the First Draft Constitution.

Resolutions of the Sector Groups Convention on Article 57

The Convention resolved to move the Article to the section dealing with Children in the First Draft Constitution because the provisions in the Article would be more appropriately under that section.

Resolutions of the National Convention on Article 57

The Convention resolved to retain the Article as stated in the First Draft Constitution.

Deliberations of the Technical Committee on Article 57

The Committee considered the resolutions of the District Consultative Fora, the Provincial, Sector Groups and National Conventions.

The Committee amended the marginal note to read "Further protection of young person" in order to avoid creating discriminatory provisions in the Constitution since young persons were also entitled to enjoy all other rights provided for the general citizenry.

The Committee also amended clause (2) by replacing the words "specified in an Act of Parliament" with the word "as prescribed" because the words "Act of Parliament" was superfluous having defined the word "prescribed" to mean "provided for in an Act of Parliament," in Article 311 on Definitions.

Further, the Committee re-numbered the Article as Article 62 of the Final Draft Constitution.

Resolutions of the Technical Committee on Article 57

The Committee resolved to amend the Article by:

- (a) changing the marginal note to read "Further protection of young person";
- (b) replacing the words "specified in an Act of Parliament" with the word "prescribed," in clause (2); and
- (c) re-numbering it as Article 63.

Article 63 of the Final Draft Constitution reads:

"63. (1) Subject to clause (2), a person shall not engage a young person in an occupation or employment which would prejudice the health education or interfere with the physical, mental or moral development of that young person.

(2) A young person may be employed for a wage, as prescribed."

Article 58: Persons with Disabilities

Recommendations in the First Draft Constitution

The following provisions were recommended in the First Draft Constitution:

"58. (1) Persons with disabilities are entitled to enjoy all the rights and freedoms set out in the Bill of Rights and shall have the right to—

- (a) education and facilities that are integrated into society as a whole to the extent compatible with the interests of persons with disabilities;
- (b) access to physical environment, information and communications, public facilities and services, places and transportation;
- (c) access materials, facilities and devices to enable them overcome constraints due to disability;
- (d) use sign language, Braille or other appropriate means of communication;
- (e) be addressed and referred to, in any enactment, officially, publicly or privately, in a manner that is not demeaning, derogatory or discriminatory;
- (f) equal opportunities in cultural, political, public service, economic and social activities;
- (g) inherit, have access to, own and control property;
- (h) personal development and independent living; and

(i) social security and protection.

(2) Any law, practice, custom or tradition that undermines the dignity, welfare, interest or status of persons with disabilities is prohibited."

Rationale for the Article

The rationale for the Article was that disabled persons had unique needs that should be provided for in the Constitution. These should include the right to proper care, the right to respect and dignity, the right not to be discriminated against on account of disability and the right to equal opportunities. Many of the difficulties the persons with disabilities faced were as a result of inadequate resources being devoted to their welfare, discrimination in the laws and prejudice in the society. The Committee observed that the current Constitution did not have a provision specifically addressing the rights of that group of citizens.

Resolutions of the District Consultative Fora on Article 58

Seventy-four (74) District Consultative Fora resolved to retain the Article as stated in the First Draft Constitution while eight (8) resolved to amend the Article by:

- (a) including a provision for entitlements of mentally challenged persons (1 district);
- (b) replacing the term "disabilities" with the term "differently abled" in clause (1) (1 district);
- (c) adding paragraph (j) to read "Access to specialised schools and colleges for the mentally challenged" (2 districts);
- (d) deleting the word "enjoy" in clause (1) because the word "enjoy" is demeaning and implies a privilege (1 district);
- (e) providing that social amenities shall be provided free of charge to persons with disabilities because persons with disabilities generally have no means to look after themselves and are usually destitute (1 district);
- (f) adding the following provisions:
 - (i) the State should provide mobility aids to persons with disabilities to facilitate their mobility;
 - (ii) first priority should be given to qualified persons with disabilities whenever there are employment opportunities either in the private or public sectors;
 - (iii) persons with disabilities should be paid their retirement and pension benefits upon leaving employment; and
 - (iv) Government should provide special loan facilities for persons with disabilities"(1 district).

Resolutions of the Provincial Conventions on Article 58

Six (6) Provincial Conventions resolved to retain the Article as stated in the First Draft Constitution while four (4) resolved to amend the Article by:

- (a) inserting the word “free” at the beginning of paragraph (a) of clause (1) because free education and facilities are necessary for children with disabilities as they face a lot of hardships in accessing education (1 province);
- (b) adding the word “assistive” before the word “devices” in paragraph (c) of clause (1) in order to qualify that the devices are those that are designed to assist persons with disabilities to enable them overcome disability constraints (1 province);
- (c) adding a provision to specifically cater for persons with mental illness because there is no provision in the Article which specifically relates to people with mental illness (1 province); and
- (d) adding paragraph (j) to read “Access to specialised schools and colleges for the mentally challenged”(1 province).

Resolutions of the Sector Groups Convention on Article 58

The Convention resolved to amend the Article by including a provision empowering Parliament to enact legislation that would enhance the rights of persons with disabilities.

Resolutions of the National Convention on Article 58

The Convention resolved to amend the Article, in paragraph (c) of clause (1), by inserting the word “assistive” before the word “devices”.

Deliberations of the Technical Committee on Article 58

The Committee considered the resolutions of the District Consultative Fora, the Provincial, Sector Groups and National Conventions.

The Committee amended the marginal note by including the words “Further rights for” to read “Further rights for persons with disabilities” to avoid it being discriminatory since persons with disabilities were also entitled to enjoy all other rights for general citizenry provided for in the Constitution.

The Committee also amended clause (1) by adding a new paragraph granting people with disabilities, the right to free tax on materials and assistive devices.

Further, the Committee deleted clause (2) as the issues therein were already provided for under the Articles on discrimination and human dignity.

Furthermore, the Committee incorporated provisions of Article 59 of the First Draft Constitution into Article 58 so that provisions on persons with disabilities were in one Article.

In addition, the Committee agreed to provide for social protection as opposed to social security and also added the words “as prescribed” in paragraph (i) of clause (1). The Committee observed that social protection was broader than social security and included the same.

The Committee re-numbered the Article as Article 64 of the Final Draft Constitution. Resolutions of the Technical Committee on Article 58

The Committee resolved to amend the Article by:

- (a) changing the marginal to read "Further rights for persons with disabilities";
- (b) adding a new paragraph granting people with disabilities, the right to tax free materials and assistive devices;
- (c) deleting clause (2);
- (d) incorporating provisions of Article 59 of the First Draft Constitution;
- (e) providing for social protection as opposed to social security and also added the words "as prescribed" in paragraph (i) of clause (1); and
- (f) re-numbering it as Article 64.

Article 64 of the Final Draft Constitution reads:

"64. A person with disability is further entitled to the right to–

- (a) education and facilities that integrate the person into society;
- (b) access to the physical environment, information, communications, public facilities and services, places and transportation;
- (c) access materials, facilities and assistive devices for persons with disability;
- (d) use sign language, Braille or other appropriate means of communication;
- (e) be addressed or referred to in an enactment or officially, publicly or privately, in a manner that is not demeaning, derogatory or discriminatory;
- (f) equal opportunities in the public service and cultural, political, economic and social activities;
- (g) tax free materials and assistive devices;
- (h) personal development and independent living; and
- (i) social protection, as prescribed."

Article 59: Special Measures for Persons with Disabilities

Recommendations in the First Draft Constitution

The following provision was recommended in the First Draft Constitution:

"59. The State shall -

- (a) promote measures to educate communities and society on the causes of disabilities and the need to respect the dignity and rights of persons with disabilities;
- (b) promote and ensure the use of sign language, Braille or any other appropriate means of communication for persons with disabilities; and
- (c) not tax any assistive device used by persons with disabilities."

Rationale for the Article

The rationale for the Article was that addressing the circumstances of persons with disabilities required special measures in terms of additional and affirmative measures.

Resolutions of the District Consultative Fora on Article 59

Seventy-six (76) District Consultative Fora resolved to retain the Article as stated in the First Draft Constitution while six (6) resolved to amend the Article by:

- (a) adding the words "shall subsidise and" at the beginning of paragraph (c) (1 district);
- (b) adding a new paragraph to read "The state shall ensure the provision of a conducive environment for persons with disabilities"(1 district);
- (c) providing in paragraph (c) for technology devices not to be taxed (1 district);
- (d) adding a provision to allow people with disabilities to have representation in Parliament in order for Government to take issues of the disabled seriously (1 district); and
- (e) adding a provision in paragraph (c) to the effect that assistive devices should not be charged on public transport such as buses and taxis(1 district).

Resolutions of the Provincial Conventions on Article 59

Nine (9) Provincial Conventions resolved to retain the Article as stated in the First Draft Constitution while one Convention resolved to amend the Article by providing for the right to 'sheltered employment' for persons with disabilities, in line with international standards. Further, the Convention resolved to define 'sheltered employment' in Article 311 of the First Draft Constitution.

Resolutions of the Sector Groups Convention on Article 59

The Convention resolved to retain the Article subject to the term "assistive device" being defined in Article 311 of the First Draft Constitution in order to clarify the meaning of the term.

Resolutions of the National Convention on Article 59

The Convention resolved to retain the Article as stated in the First Draft Constitution.

Deliberations of the Technical Committee on Article 59

The Committee considered the resolutions of the District Consultative Fora, the Provincial, Sector Groups and National Conventions.

Following its earlier decision, in Article 58, to incorporate provisions of Article 59 into Article 58, the Committee deleted the Article.

Resolutions of the Technical Committee on Article 59

The Committee resolved to delete the Article from the Final Draft Constitution.

Article 60: Minority and Marginalised Groups

Recommendations in the First Draft Constitution

The following provision was recommended in the First Draft Constitution:

“60. The State shall put in place affirmative action programmes designed to ensure that minority and marginalised groups-

- (a) participate and are represented in governance and other spheres of life;
- (b) are provided with equal opportunities in cultural, political, public service, economic and social activities;
- (c) are provided special opportunities for access to employment; and
- (d) develop their cultural values, languages and practices.”

Rationale for the Article

The rationale for the Article was that apart from the groups already identified (i.e. women, children, youth, young people, older members of society and persons with disabilities), the minorities and other marginalised people were equally vulnerable and required special constitutional protection in terms of guaranteeing their unique rights.

Resolutions of the District Consultative Fora on Article 60

Seventy-two (72) District Consultative Fora resolved to retain the Article as stated in the First Draft Constitution while ten (10) resolved as follows:

- (a) Deleting the Article because not all the marginalised groups have been clearly identified, which can lead to hidden and undesirable definitions and manipulation of the Article (3 districts); and
- (b) Amending the Article by:
 - (i) introducing a provision which prohibits practicing of homosexuality and lesbianism in every form (1 district);
 - (ii) including the definition of minority and marginalized groups, in Article 311, and to specify that this does not include homosexuals and lesbians (4district);
 - (iii) adding the term “lawfully recognised” before the word “minority”(1district); and
 - (iv) adding a provision for Parliament to enact legislation to categorise the minority and marginalised groups (1 district).

Resolutions of the Provincial Conventions on Article 60

One Provincial Convention resolved to retain the Article as stated in the First Draft Constitution while nine (9) resolved as follows:

- (a) Deleting the entire Article to prohibit the practicing of homosexuality and lesbianism (2 provinces); and
- (b) Amending the Article by:

- (c) stating clearly who the minority and marginalised groups are and that the undesirable groups such as homosexuals, terrorists, Satanists, witches and any other practices inimical to Christian and cultural values are not allowed.

The provision in its current form could provide a loophole through which undesirable groups, whose practices are contrary to Christian values, could infiltrate the nation and get established (3 provinces);

- (ii) replacing the word "their" with the words "socially accepted" in paragraph (d) (1 province);
- (iii) adding the phrase "except for practices prohibited under this Constitution or any other law" at the end of the paragraph (d) (1 province); and
- (iv) deleting paragraph (d) (1 province).

Resolutions of the Sector Groups Convention on Article 60

The Convention resolved to retain the Article as stated in the First Draft Constitution subject to the term "minority and marginalised groups" being defined in line with international instruments taking into account the principles of culture and religion.

Resolutions of the National Convention on Article 60

The Convention resolved to amend the Article by:

- (a) adding the words "except for practices prohibited under this Constitution or any other law" to paragraph (d); and
- (b) re-defining the term "minority and marginalised groups" in order to align it to the definition in the United Nations Declaration on the Rights of Persons Belonging to National, Ethnic, Religious and Linguistic Minorities and in Article 27 of the International Covenant on Civil and Political Rights which refers to national, ethnic, religious and linguistic minorities.

Deliberations of the Technical Committee on Article 60

The Committee considered the resolutions of the District Consultative Fora, the Provincial, Sector Groups and National Conventions.

The Committee agreed to delete the Article from the Final Draft Constitution. The Committee observed that while it was important to provide for the rights of the minority and marginalised groups, the Article, during the consultative process, had caused controversy among most stakeholders. The Committee also observed that it was difficult to find another term that could expressly replace the term "minority and marginalised" which was a technical term under United Nations instruments.

Further, the Committee observed that the provisions in the draft Constitution sufficiently covered the rights of any group in society.

Resolutions of the Technical Committee on Article 60

The Committee resolved to delete the Article from the Final Draft Constitution. Economic, Social and Cultural Rights

Article 61: Progressive Realisation of Economic, Social and Cultural Rights

Recommendations in the First Draft Constitution

The following provisions were recommended in the First Draft Constitution:

“61. (1) Parliament shall enact legislation that provides measures, which are reasonable, to achieve the progressive realisation of the economic, social and cultural rights under the Bill of Rights.

(2) The State shall take measures, including the enactment of legislation that–

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

(b) ensures that the State, State organs and institutions fulfil the State's obligations under the Bill of Rights; and

(c) ensures that persons fulfil their obligations under the Bill of Rights; and where there is a claim before the Constitutional Court or with respect to the matters specified under this clause, the Constitutional Court may make a pronouncement on the matter, subject to clause (3).

(3) Where a claim is made by the State that it does not have the resources to implement a particular economic, social and cultural right–

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

(b) the Constitutional Court shall not interfere with a decision by the State concerning the allocation of available resources solely on the basis that the Constitutional Court would have reached a different conclusion.’’

Rationale for the Article

The rationale for the Article was that it was necessary to include economic, social and cultural rights in the Constitution in accordance with current trends in constitution-making. The Committee observed that there was wide spread concern about the inability of most Zambians to access health care, education, employment, shelter, food and clean water. While political and civil (first generation) rights had been included in the Bill of Rights in all the Constitutions of the country starting with the 1964 Constitution, economic, social and cultural (second generation) rights were only included in the Chapter on Directive Principles of State Policy after

the 1996 amendment to the Constitution. This notwithstanding, economic, social and cultural rights play an important role in the realisation of complete rights of an individual.

The Committee further observed that financial constraints should not be a factor in determining whether these rights should be justiciable or not and that protection of any right had a cost and the country should be prepared to spend resources in order to guarantee its citizens a minimum of economic, social and cultural rights. The fact that a country was poor did not constitute a legitimate excuse for it to avoid striving to ensure that its citizens enjoyed economic, social and cultural rights such as the right to adequate food, education and health care. The Committee also observed that there was now a trend worldwide, especially among countries that had ratified the International Covenant on Economic, Social and Cultural Rights, to make these rights justiciable by placing them in their Bills of Rights. Examples of countries that had followed this trend were Uganda, South Africa and Ghana.

Resolutions of the District Consultative Fora on Article 61

Seventy-two (72) District Consultative Fora resolved to retain the Article as stated in the First Draft Constitution while ten (10) resolved to amend the Article by:

- (a) inserting the word "education" before the word "economic" in clause (1) (1 district);
- (b) deleting the word "not" after the word "shall" in paragraph (b) of clause (3) (1 district);
- (c) deleting paragraph (b) of clause (3) because the Constitutional Court should be allowed to interfere with the decision of the State to provide checks and balances (2 districts);
- (d) redrafting paragraph (b) of clause (3) to read:
 - (i) "The State shall respect the Constitutional Court's decision concerning the allocation of available resources in the event that the Court arrived at a different conclusion." This is to make the State accountable to the people through the Constitutional Court in the event that the State does not provide or allocate the available resources as expected (1 district); and
 - (ii) "The State shall be held accountable to the people through the Constitutional Court in the event that the State does not provide or allocate the available resources as expected" (1 district);
- (e) redrafting paragraph (b) of clause (3) in order to ensure that stringent measures are put in place for the progressive realisation of economic social and cultural rights. This would allow government to be transparent in the utilisation of resources (1 district).
- (f) deleting clause (3) of the Article as it contradicts clauses (1) and (2). Clause (3) takes away the very right it is supposed to give as citizens should be entitled to question the

reasonableness of budgetary allocations towards realisation of these rights. In addition, the Constitutional Court should be empowered by the Constitution to exercise its jurisdiction over such action pursuant to clause (5) of Article 1 of the First Draft Constitution (2 districts); and

(g) adding a provision to compel the State to enter into social contracts with the people for the purpose of fulfilling the State's obligations under the Bill of Rights (1 district).

Resolutions of the Provincial Conventions on Article 61

Seven (7) Provincial Conventions resolved to retain the Article as stated in the First Draft Constitution while three (3) resolved to amend the Article by:

- (a) deleting the words "subject to clause (3)" at the end of clause (2) (1 province);
- (b) deleting clause (3) from the Article (1 province); and
- (c) replacing the word "shall" with the word "may" in paragraph (b) of clause (3) in order to leave room for the Constitutional Court to interfere with decisions of the State for the purpose of strengthening the enforcement of the economic, social and cultural rights (1 province).

Resolutions of the Sector Groups Convention on Article 61

The Convention resolved to amend clause (2) of the Article by replacing the word "pronouncement" with the word "judgement" in order to compel the Court to make a decision and not a mere pronouncement.

Resolutions of the National Convention on Article 61

The Convention resolved to retain the Article as stated in the First Draft Constitution.

Deliberations of the Technical Committee on Article 61

The Committee considered the resolutions of the District Consultative Fora, the Provincial, Sector Groups and National Conventions.

The Committee amended the Article by simplifying it and removing unnecessary detail. The Committee also re-numbered the Article as Article 58 of the Final Draft Constitution.

Resolutions of the Technical Committee on Article 61

The Committee resolved to amend the Article by:

- (a) simplifying and removing unnecessary detail; and
- (b) re-numbering it as Article 58.

Article 58 of the Final Draft Constitution reads:

"58. (1) The State shall take reasonable measures for the progressive realisation of economic, social, cultural and environmental rights.

(2) Where a claim is made against the State on the non-realisation of an economic, social, cultural or environmental right, it is the responsibility of the State to show that the resources are not available.

(3) The Constitutional Court shall not interfere with a decision by the State concerning the allocation of available resources for the progressive realisation of economic, social, cultural and environmental rights."

Article 62: Economic and Social Rights

Recommendations in the First Draft Constitution

The following provisions were recommended in the First Draft Constitution:

"62. (1) A person has the right to-

- (a) the highest attainable standard of health, which includes the right to health care services and reproductive health care;
- (b) accessible and adequate housing;
- (c) be free from hunger, and to have access to adequate food of acceptable quality;
- (d) clean and safe water in adequate quantities and to reasonable standards of sanitation;
- (e) social security and protection; and
- (f) education.

(2) A person shall not be denied emergency medical treatment.

(3) The State shall provide appropriate social security and protection to persons who are unable to support themselves and their dependants."

Rationale for the Article

The rationale for the Article was to ensure that specific economic and social rights were provided for in the Constitution, in line with other modern Constitutions.

Resolutions of the District Consultative Fora on Article 62

Seventy-six (76) District Consultative Fora resolved to retain the Article as stated in the First Draft Constitution while six (6) resolved to amend the Article by:

- (a) adding a new paragraph to clause (1) to read "land and livelihood" in order to provide for a person's right to land since land is most often a source of conflict(1 district);
- (b) including a new paragraph to clause (1) to read "hold and use land" (1 district);
- (c) replacing the words "be free from hunger, and" with the words "accessible and adequate agro-inputs fertilizer subsidies in order" in paragraph (c) of clause (1) (2 districts); and

(d) including the word "quality" before the word "education" in paragraph (f) of clause (1) in order to enhance the standard of education in the country (2 districts).

Resolutions of the Provincial Conventions on Article 62

Nine (9) Provincial Conventions resolved to retain the Article as stated in the First Draft Constitution while one Convention resolved to amend the Article by adding the word "quality" before the word "education" in paragraph (f) of clause (1).

Resolutions of the Sector Groups Convention on Article 62

The Convention resolved to amend the Article by:

(a) replacing the words "be free from hunger, and" with the words "have the right to adequate food of acceptable standards" in paragraph (c) of clause (1). This is because it would be difficult to determine the degree of hunger afflicting a person, which hunger is intended to be eradicated. Much as the objective is to ensure that the people of Zambia must be free from hunger, the Constitution should merely provide that a person should have the right to food;

(b) inserting the words "accessible and quality" before the word "education" in paragraph (f) of clause (1). This is because the Constitution needs to state the standard of education and to make the paragraph consistent with paragraph (b) of the same clause; and

(c) adding the word "social" before the word "protection" in paragraph (e) of clause (1).

Resolutions of the National Convention on Article 62

The Convention resolved to amend the Article by:

(a) inserting the words "accessible and quality" before the word "education" in paragraph (f) of clause (1) in order to qualify the standard of education a person would have the right to; and

(b) defining the phrase "health care services" in Article 311 of the First Draft Constitution.

Deliberations of the Technical Committee on Article 62

The Committee considered the resolutions of the District Consultative Fora, the Provincial, Sector Groups and National Conventions.

The Committee amended the opening statement by inserting the words "as prescribed" between the words "right" and "to." The Committee observed that the rights provided under the Article would be domesticated by the Government, and therefore, should be provided for under subsidiary legislation.

The Committee also amended clause (1) by:

- (a) deleting the words “be free from hunger” and replacing the word “quality” with the word “standard” in paragraph (c) of clause (1) because it may not be possible to ensure that every person is free from hunger;
- (b) providing for decent sanitation as opposed to reasonable standards of sanitation in paragraph (d); and
- (c) deleting the words “security and” in paragraph (e) so that the paragraph reads “social protection”.

Further, the Committee deleted clause (3) and incorporated its provisions on social security, to be referred to as “social protection” into clause (1). The Committee observed that while it was important for the State to guarantee social security for workers, providing for dependants would be unsustainable.

The Committee re-numbered the Article as Article 52 of the Final Draft Constitution.

Resolutions of the Technical Committee on Article 62

The Committee resolved to amend the Article by:

- (a) providing, in the opening statement, for the details of the rights to be prescribed in an Act of Parliament;
- (b) deleting, the words “be free from hunger, and replacing the word “quality” with the word “standard” in paragraph (c) of clause (1);
- (c) deleting the words “security and” in paragraph (e) of clause (1) so that the paragraph reads “social protection”;
- (d) providing for “decent sanitation” as opposed to “reasonable standards of sanitation” in paragraph (d) of clause (1);
- (e) deleting clause (3) and incorporated its provisions on social security into clause (1); and
- (f) re-numbering it as Article 52.

Article 52 of the Final Draft Constitution reads:

- “52. (1) A person has the right, as prescribed, to-
- (a) health care services;
 - (b) decent housing;
 - (c) food of acceptable standard;
 - (d) clean and safe water;
 - (e) decent sanitation;
 - (f) social protection; and
 - (g) education.
- (2) A person shall not be denied emergency medical treatment.”

Article 63: Language and Culture

Recommendations in the First Draft Constitution

The following provisions were recommended in the First Draft Constitution:

"63. (1) A person has the right to use the language and to participate in the cultural life of that person's choice.

(2) A person who belongs to a cultural or linguistic community has the right, with other members of that community to–

(a) enjoy that person's culture and use that person's language; or

(b) form, join and maintain cultural and linguistic associations.

(3) A person shall not be compelled to–

(a) perform, observe, participate in, or be subjected to, any cultural practice or rite; or

(b) form, join, contribute, maintain or pay allegiance to any cultural, traditional or linguistic association, organisation, institution or entity.

(4) The State shall–

(a) promote all forms of national and cultural expression through literature, the arts, traditional celebrations, science, communication, information, mass media, publications, libraries and other cultural heritage;

(b) recognise the role of science, technology and indigenous technology in the development of the Nation; and

(c) support, promote and protect the intellectual property rights of the owner, or the people of Zambia.

(5) Parliament shall enact legislation to–

(a) ensure that communities receive compensation or royalties for the use of their biological knowledge, medicinal plants and cultural heritage; and

(b) recognise and protect the ownership of indigenous seeds and plant varieties, their genetic and diverse characteristics."

Rationale for the Article

The rationale for the Article was to provide for the scope of a person's right to language and culture.

Resolutions of the District Consultative Fora on Article 63

Seventy-five (75) District Consultative Fora resolved to retain the Article as stated in the First Draft Constitution while seven (7) resolved as follows:

(a) Creating a new Article consisting of paragraphs (b) and (c) of clause (4) and paragraphs (a) and (b) of clause (5) because the paragraphs do not fall under language and culture (1 district);

(b) Amending the Article by:

(i) providing for measures that will prevent some languages from dominating other languages in clause (1) (1 district);

(ii) including a new paragraph in clause (4) to read "the state shall translate the Constitution into seven major languages" (1 district);

(iii) inserting the words "recognise" and "indigenous knowledge systems and" before the word "support" and between the words "protect" and "intellectual," respectively, in paragraph (c) of clause (4) (1 district);

(iv) including a provision, in clause (4), that will allow traditional healers to treat (patients) in the Government hospitals because there are diseases that hospitals fail to treat. This will promote useful traditional medicine and enhance scientific research(1 district);

(v) inserting the words "abiotic resources" after the word "indigenous" and the words "and indigenous fauna" at the end of paragraph (b) of clause (5) (1 district); and

(vi) including a new paragraph in clause (5) to read "protect traditional knowledge against any proprietary infringement of their rights as well as the protection of expressions of folklore against misappropriation, misuse and unlawful exploitation" (1 district).

Resolutions of the Provincial Conventions on Article 63

Nine (9) Provincial Conventions resolved to retain the Article as stated in the First Draft Constitution while one Convention resolved to amend the Article by deleting clause (3) in order to avoid eroding the authority of traditional chiefs. The provision gives an impression that communities are not subject to the traditional values and norms obtaining in their locality.

Resolutions of the Sector Groups Convention on Article 63

The Convention resolved to retain the Article as stated in the First Draft Constitution.

Resolutions of the National Convention on Article 63

The Convention resolved to retain the Article as stated in the First Draft Constitution.

Deliberations of the Technical Committee on Article 63

The Committee considered the resolutions of the District Consultative Fora, the Provincial, Sector Groups and National Conventions.

The Committee amended the marginal note by introducing the words “Intellectual Property Rights” so that it reads “Language, Culture and Intellectual Property Rights.” The Committee observed that it was necessary to amend the marginal note in order to capture the essence of the Article because it did not only deal with culture and language but also with intellectual property rights;

The Committee also amended the Article simplifying and removing unnecessary details in order to clearly highlight the rights therein.

Further, the Committee deleted clause (5) and its provision shifted to a general provision on Articles requiring enactment of legislation.

Furthermore, the Committee re-numbered the Article as Article 56 of the Final Draft Constitution.

Resolutions of the Technical Committee on Article 63

The Committee resolved to amend the Article by:

- (a) changing the marginal note to read “Language, culture and intellectual property rights”;
- (b) simplifying it and removing unnecessary details;
- (c) deleting clause (5); and
- (d) re-numbering the Article as Article 56.

Article 56 of the Final Draft Constitution reads:

“56. (1) Subject to Article 304, a person has the right to use a language of that person's choice.

(2) A person who belongs to a cultural or linguistic community has the right, with other members of that community to –

- (a) enjoy that person's culture; and
- (b) form, join or maintain cultural and linguistic associations.

(3) A person shall not be compelled to-

- (a) perform, observe or participate in cultural practices or rites; or
- (b) form, join, contribute, maintain or pay allegiance to a cultural or linguistic association.

(4) The State shall-

- (a) recognise the role of science, technology and indigenous technology in the development of the Nation; and
- (b) support, promote and protect intellectual property rights.”

Article 64: Freedom to Choose Trade, Occupation or Profession

Recommendations in the First Draft Constitution

The following provision was recommended in the First Draft Constitution:

“64. Every person has the right to choose a trade, an occupation or a profession.”

Rationale for the Article

The rationale for the Article was to provide for a person's freedom to choose trade, occupation of profession, in line with the rationale provided under Article 61.

Resolutions of the District Consultative Fora on Article 64

Eighty-one (81) District Consultative Fora resolved to retain the Article as stated in the First Draft Constitution while one resolved to amend the Article by including the word “lawful” before the word “trade.”

Resolutions of the Provincial Conventions on Article 64

All the ten (10) Provincial Conventions resolved to retain the Article as stated in the First Draft Constitution.

Resolutions of the Sector Groups Convention on Article 64

The Convention resolved to amend the Article by:

- (a) re-casting the marginal note to read “Right to work”.
- (b) re-casting the Article to read as follows:

“64.

- (a) Every person has the right to work.
- (b) A person has the right to opportunity to gain their living by work which they freely choose or accept.
- (c) A person has the right to choose a trade, an occupation or a profession.”

The Article in its present form did not comprehensively provide for the right to work but merely met certain aspects of the normative contents of the right to work.

Resolutions of the National Convention on Article 64

The Convention resolved to retain the Article as stated in the First Draft Constitution.

Deliberations of the Technical Committee on Article 64

The Committee considered the resolutions of the District Consultative Fora, the Provincial, Sector Groups and National Conventions.

The Committee amended the marginal note to read “choice of trade, occupation or profession.” The Committee also amended the Article by inserting the words “subject to limitations imposed by law” at the end of the sentence. The Committee observed that the amendment would appropriately deal with illegal occupations or professions such as prostitution.

Further, the Committee re-numbered the Article as Article 53 of the Final Draft Constitution.

Resolutions of the Technical Committee on Article 64

The Committee resolved to amend the Article by:

- (a) changing the marginal note to read "Choice of trade, occupation or profession";
- (b) inserting the words "subject to limitations imposed by law" at the end of the sentence; and
- (c) re-numbering it as Article 53.

Article 53 of the Final Draft Constitution reads:

"53. A person has the right to choose a trade, an occupation or a profession, subject to limitations imposed by law."

Article 65: Labour Relations

Recommendations in the First Draft Constitution

The following provisions were recommended in the First Draft Constitution:

- "65. (1) A person has the right to employment and to fair labour practices.
- (2) A worker has the right to-
- (a) fair remuneration;
 - (b) reasonable working conditions;
 - (c) a pension or gratuity commensurate with the worker's status, salary and length of service which shall be paid promptly, failure to which the worker shall be retained on the payroll until the pension or benefit is paid;
 - (d) form, join or participate in the activities and programmes of a trade union; and
 - (e) go on a lawful strike as may be prescribed.
- (3) An employer has the right to-
- (a) form and join an employers' organisation; and
 - (b) participate in the activities and programmes of an employers' organisation.
- (4) A trade union and an employers' organisation has the right to-
- (a) determine its own administration, programmes and activities; and
 - (b) form and join a federation."

Rationale for the Article

The rationale for the Article was to provide for the right to employment and to fair labour relations. The Committee observed that this was a contemporary subject that needed to be provided for in the Constitution.

Resolutions of the District Consultative Fora on Article 65

Seventy-five (75) District Consultative Fora resolved to retain the Article as stated in the First Draft Constitution while seven (7) resolved to amend the Article by:

- (a) replacing the words "fair remuneration" with the words "minimum wage" in paragraph (a) of clause (2). This is because the term "fair remuneration" is subjective (1 district);
- (b) adding provisions of clause (2) of Article 254 of the First Draft Constitution (1 district);
- (c) including a new provision on "casual" and "temporal" employment (1 district);
- (d) recasting paragraph (a) of clause (2) to read "equal pay for equal work" (1 district);
- (e) providing for penalties against any employer who abuses workers or flouts labour laws of the country (1 district);
- (f) providing for retrenchment and retirement package in paragraph (c) of clause (2) (1 district);
- (g) deleting the word "lawful" in paragraph (e) of clause (2) (1 district); and
- (h) replacing the words "fair labour practices" with the words "join and participate in the activities of a trade union" in clause (1) (1 district);
- (i) adding a new clause (5) to provide that a volunteer has the right to a just remuneration (1 district).

Resolutions of the Provincial Conventions on Article 65

Nine (9) Provincial Conventions resolved to retain the Article as stated in the First Draft Constitution while one Convention resolved to amend paragraph (c) of clause (2) by adding the following words at the end "and that this money paid, shall not be deducted from one's gratuity or pension". This is to ensure that pensioners are not punished for being retained on the payroll due to failure by the employer to pay benefits on time and only to deduct the payments from the retiree at the end of the day.

Resolutions of the Sector Groups Convention on Article 65

- (a) The Convention resolved to amend the Article by:
- (b) deleting the words "to employment and" in clause (1) in order to avoid issues of discrimination on the basis of sex, age, race, ethnicity, religion and marital status as well as to incorporate provisions of international conventions;
- (c) adding a new provision in clause (2) to provide for equal pay for equal work;
- (d) replacing the word "reasonable" with the words "under satisfactory, safe and healthy" in paragraph (b) of clause (2);
- (e) deleting all the subsequent words after the phrase "length of service" in paragraph (c) of clause (2) because these are details that can be dealt with under subsidiary legislation.

(f) replacing the word “and” with the word “or” between the words “form” and “join” in paragraph (a) of clause (3); and

(g) replacing the word “and” with the word “or” between the words “form” and “join” in paragraph (b) of clause (4) because forming and joining an organisation or federation should be optional.

Resolutions of the National Convention on Article 65

The Convention resolved to retain the Article as stated in the First Draft Constitution.

Deliberations of the Technical Committee on Article 65

The Committee considered the resolutions of the District Consultative Fora, the Provincial, Sector Groups and National Conventions.

The Committee amended clause (2) by:

(a) replacing the term “worker” with the phrase “a person in employment,” in the opening sentence because the former was demeaning;

(b) providing for fair remuneration which would be commensurate with the production or size of the enterprise, in paragraph (a); and

(c) replacing the word “reasonable” with the word “decent” in paragraph (b) in order to make the provision easier to interpret; and

(d) simplifying and removing unnecessary detail in paragraph (c).

The Committee also re-numbered the Article as Article 54 of the Final Draft Constitution.

Resolutions of the Technical Committee on Article 65

The Committee resolved to amend the Article by:

(a) replacing the term “worker” with a phrase “a person in employment,” in the opening sentence;

(b) providing for fair remuneration which would be commensurate with the production or size of the enterprise, in paragraph (a);

(c) replacing the word “reasonable” with the word “decent” in paragraph (b);

(d) simplifying and removing unnecessary detail in paragraph (c); and

(e) re-numbering it as Article 54.

Article 54 of the Final Draft Constitution reads:

“54. (1) A person has the right to employment and fair labour practices.

(2) A person in employment has the right to-

(a) fair remuneration commensurate to the productivity or size of the enterprise;

(b) decent working conditions;

(c) a pension benefit commensurate with that person's office, salary and length of service; and

(d) form, join or participate in the activities and programmes of a trade union, including going on a lawful strike.

(3) An employer has the right to-

(a) form and join an employers' organisation;

(b) participate in the activities and programmes of an employers' organisation; and

(c) lock out.

(4) A trade union and an employers' organisation have the right to-

(a) determine their own administration, programmes and activities; and

(b) form or join a federation."

Article 66: Consumer Rights

Recommendations in the First Draft Constitution

The following provisions were recommended in the First Draft Constitution:

"66. (1) Consumers have the right to-

(a) goods and services of reasonable quality;

(b) information necessary for them to gain full benefit from goods and services;

(c) the protection of their health, safety and economic interests;

(d) compensation for loss or injury arising from defects in goods or services; and

(e) fair, honest and decent advertising.

(2) This Article applies to goods and services offered by public entities and private persons."

Rationale for the Article

The rationale for the Article was to provide for the right of consumers. The Committee observed that this was a contemporary subject that needed to be provided for in the Constitution.

Resolutions of the District Consultative Fora on Article 66

Eighty (80) District Consultative Fora resolved to retain the Article as stated in the First Draft Constitution while two (2) resolved to amend the Article by:

(a) providing that the customer has a right to return the goods if they are defective or of unreasonable quality and exchange the goods or get a refund (1 district); and

(b) replacing the word "reasonable" with the word "acceptable" in paragraph (a) of clause (1) (1 district).

Resolutions of the Provincial Conventions on Article 66

All the ten (10) Provincial Conventions resolved to retain the Article as stated in the First Draft Constitution.

Resolutions of the Sector Groups Convention on Article 66

The Convention resolved to delete the Article from the First Draft Constitution because consumer protection could be adequately covered by subsidiary legislation and are not internationally recognised as Human Rights.

Resolutions of the National Convention on Article 66

The Convention resolved to amend the Article by replacing the words "reasonable quality" with the words "approved quality standards" in paragraph (a) of clause (1) in order to provide fundamental principles to protect consumer rights and to guide subsequent legislation.

Deliberations of the Technical Committee on Article 66

The Committee considered the resolutions of the District Consultative Fora, the Provincial, Sector Groups and National Conventions.

The Committee amended the Article by deleting paragraph (c) of clause (1) because it could be subject to various interpretations. The Committee observed that the matters the paragraph sought to provide for were covered in paragraphs (a) and (b).

The Committee also deleted clause (2) because it was a statement which had no constitutional significance. Further, the Committee amended the Article by simplifying it and removing unnecessary details.

The Committee also re-numbered the Article as Article 55 of the Final Draft Constitution.

Resolutions of the Technical Committee on Article 66

The Committee resolved to amend the Article by:

- (a) deleting paragraph (c) of clause (1) and clause (2);
- (b) simplifying it and removing unnecessary detail; and
- (c) re-numbering it as Article 55.

Article 55 of the Final Draft Constitution reads:

"55. A consumer has the right to-

- (a) goods and services of reasonable quality and standard;
- (b) information necessary to gain full benefit from goods and services;
- (c) compensation for loss or injury arising from a defect in goods or services; and
- (d) fair, honest and decent advertising of goods and services."

Article 67: Environment

Recommendations in the First Draft Constitution

The following provision was recommended in the First Draft Constitution:

"67. A person has the right to a clean and healthy living environment."

Rationale for the Article

The rationale for the Article was to provide for the right to a clean and healthy living environment. The Committee observed that environmental issues had become very throughout the world and, therefore, needed to be incorporated in the Constitution.

Resolutions of the District Consultative Fora on Article 67

Eighty (80) District Consultative Fora resolved to retain the Article as stated in the First Draft Constitution while two (2) resolved to amend the Article by:

- (a) including a new clause providing for legal action against the State or individual for not keeping a clean environment (1 district); and
- (b) providing for the role of Government in ensuring that the right to a clean and healthy living environment is realised by an individual so that it reads "and the state shall directly or through its agents provide reasonable services and an enabling environment for the attainment of this right" (1 district).

Resolutions of the Provincial Conventions on Article 67

All the ten (10) Provincial Conventions resolved to retain the Article as stated in the First Draft Constitution.

Resolutions of the Sector Groups Convention on Article 67

The Convention resolved to amend the Article by including the word "safe" before the word "clean" in order to ensure that the environment is not only clean and healthy but also safe.

Resolutions of the National Convention on Article 67

The Convention resolved to amend the Article by including the word "safe" before the word "clean" in order to complement a clean and healthy living environment.

Deliberations of the Technical Committee on Article 67

The Committee considered the resolutions of the District Consultative Fora, the Provincial, Sector Groups and National Conventions.

The Committee amended the Article by inserting the word "safe" before the word "clean," and deleting the word "living" so that the Article reads "A person has the right to a safe, clean and healthy environment," in order to make the provision more comprehensive.

The Committee also re-numbered the Article as Article 57 of the Final Draft Constitution.

Resolutions of the Technical Committee on Article 67

The Committee resolved to amend the Article by:

- (a) inserting the word "safe" before the word "clean," and deleting the word "living"; and
- (b) re-numbering it as Article 57.

Article 57 of the Final Draft Constitution reads:

"57. A person has the right to a safe, clean and healthy environment."

Limitations on Rights and Freedoms and Non-Derogable Rights

Article 68: Limitations on Rights and Freedoms

Recommendations in the First Draft Constitution

The following provisions were recommended in the First Draft Constitution:

"68. (1) A right or freedom set out in the Bill of Rights-

(a) is limited by any limitation or qualification expressly set out in the provision containing that right or freedom; and

(b) may be otherwise limited only by a law of general application which does not negate the core or the essential content of the right or freedom and is reasonable and justifiable in an open and democratic society and takes into account all relevant factors, including -

(i) the nature of the right;

(ii) the importance of the purpose of the limitation;

(iii) the value and extent of the limitation;

(iv) the relation between the limitation and its purpose; and

(v) whether there are less restrictive means to achieve the purpose.

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

(a) is reasonably required in the interest of the public, defence and security, public safety, public order, public morality, public health, national, provincial and local spatial planning, taxation and the development, management and utilisation of natural and mineral resources;

(b) relates to the acquisition of property to secure the development, management or utilisation of the property for a purpose beneficial to the community or the public generally, upon the payment of due compensation;

(c) forms or is an incident of a contract, including a lease, trust, settlement, deed, letter of administration, tenancy, mortgage, charge, pledge, bill of sale or title deed to land or other instruments provided under law;

(d) relates to property which consists of a licence or permit;

(e) is required to enforce a judgement or an order of a court or tribunal; or

(f) imposes restrictions on defence and security officers and other public officers.

(3) The State or any person claiming that a particular limitation is permitted under this Article shall prove to the Constitutional Court that the requirements of this Article have been satisfied."

Rationale for the Article

The rationale for the Article was that rights and freedoms could not be made absolute and that they needed to be limited in some way. One of the major weaknesses of the current Bill of Rights, however, was that there were too many limitation and derogation clauses to the guaranteed rights and freedoms. For this reason, the Committee resolved that there should be one Article of general application permitting derogations from and limitations to rights and freedoms in line with the trend in modern Constitutions.

The Committee also resolved that such limitations should not negate the essential content of the rights or freedoms in question and that such limitations should be reasonable and justifiable in an open and democratic society based on freedom and equality.

Resolutions of the District Consultative Fora on Article 68

All the eighty-two (82) District Consultative Fora resolved to retain the Article as stated in the First Draft Constitution.

Resolutions of the Provincial Conventions on Article 68

All the ten (10) Provincial Conventions resolved to retain the Article as stated in the First Draft Constitution.

Resolutions of the Sector Groups Convention on Article 68

The Convention resolved to provide for separation of limitations and derogations in order to avoid the application of the two terms interchangeably. Derogations by their nature are temporary and should only be applicable in specific or exceptional circumstances such as a state of war or a state of emergency, while limitations are perpetually applicable.

Resolutions of the National Convention on Article 68

The Convention resolved to retain the Article as stated in the First Draft Constitution.

Deliberations of the Technical Committee on Article 68

The Committee considered the resolutions of the District Consultative Fora, the Provincial, Sector Groups and National Conventions.

The Committee amended the Article by splitting it into two (2) Articles, one on "Limitations on rights and freedoms" and the other on "Limitations and restrictions under the law." The Committee also agreed to retain clause (1) in Article 68 and to move clause (2) to the new Article 67 on Limitations and Restrictions under the Law.

The Committee observed that there was need to make the Article clearer and allow for the logical flow of provisions.

Further, the Committee deleted clause (3) because it stated the obvious as it put the burden of proof on the claimant. The Committee observed that the Constitutional Court had jurisdiction over the matters articulated in the clause and that there was, therefore, no need to restate the facts.

Resolutions of the Technical Committee on Article 68

The Committee resolved to amend the Article by:

- (a) splitting it into two (2) Articles, one on “Limitations on rights and freedoms” and the other on “ Limitations and restrictions under the law”; and
- (b) retaining clause (1) in Article 68 and moving clause (2) to the new Article;
- (c) deleting clause (3);
- (d) splitting the Article into two and numbering them as Articles 66 and 67, respectively.

Articles 66 and 67 of the Final Draft Constitution read:

“66. A right or freedom is limited by -

- (a) a limitation, restriction or qualification expressly set out in the Article or clause containing that right or freedom;
- (b) the limitations and restrictions specified in this Article and Article 67; and
- (c) the limitations and restrictions provided in a law of general application as provided in Article 67, which do not negate the core or the essential content of the right or freedom and is reasonable and justifiable in a democratic society, taking into account -
 - (i) the nature of the right;
 - (ii) the purpose of the limitation or restriction;
 - (iii) the extent of the limitation or restriction; and
 - (iv) whether there are alternative means to achieve the required purpose.”

“67. A law that limits or restricts a right or freedom is valid only to the extent that the law -

- (a) is reasonably required in the interest of public defence and security, public safety, public order, public morality, public health, national, provincial and local spatial planning, taxation and the development, management and utilisation of natural and mineral resources;
- (b) relates to the acquisition of property to secure the development, management or utilisation of the property for a purpose beneficial to the community or the public generally, upon the payment of due compensation;
- (c) relates to a contract, lease, trust, settlement, deed, letter of administration, tenancy, mortgage, charge, pledge, bill of sale or title deed to land or other instrument;
- (d) provides for licensing of activities;
- (e) is required to enforce a judgment or an order of a court or tribunal; or

(f) imposes restrictions and duties on defence and security officers, other public officers and Constitutional office holders."

Article 69: Non-Derogable Rights and Freedoms

Recommendations in the First Draft Constitution

The following provision was recommended in the First Draft Constitution:

"69. Notwithstanding any other provision in this Constitution, a law shall not derogate from the following rights and freedoms:

- (a) a right to a fair trial;
- (b) freedom from torture, cruel, inhuman or degrading treatment or punishment;
- (c) the right not to perform forced labour as defined in an Act of Parliament ;
- (d) the right not to be subjected to human trafficking;
- (e) the right to be free from all forms of violence;
- (f) freedom from slavery or servitude;
- (g) freedom of conscience and religion; and
- (h) the right to a writ of habeas corpus."

Rationale for the Article

The rationale for the Article was that some rights and freedoms should be enjoyed in their totality without limitations or derogations. The Committee observed that, while it was an agreed approach that rights and freedoms could not be absolute and that they may only be limited by law in a manner which was reasonable and justifiable in an open and democratic society based on freedom and equality, there were some rights and freedoms that should be enjoyed in totality or absolutely.

Resolutions of the District Consultative Fora on Article 69

All the eighty-two (82) District Consultative Fora resolved to retain the Article as stated in the First Draft Constitution.

Resolutions of the Provincial Conventions on Article 69

All the ten (10) Provincial Conventions resolved to retain the Article as stated in the First Draft Constitution.

Resolutions of the Sector Groups Convention on Article 69

The Convention resolved to:

- (a) recast the Article by applying the terms "derogation" and "limitation" appropriately in the Bill of Rights because the terms had been interchangeably applied; and
- (b) include the "right to life," "freedom from enforced disappearance" and "non-refoulment" as non-derogable rights.

Resolutions of the National Convention on Article 69

The Convention resolved to amend the Article by adding provisions on the “Right to Life, freedom from enforced disappearance, non-refoulement and non-retrospective application of criminal laws,” to the list of non-derogable rights. These rights and freedoms are established international human rights standards and they cannot be subjected to derogations under any circumstances.

Deliberations of the Technical Committee on Article 69

The Committee considered the resolutions of the District Consultative Fora, the Provincial, Sector Groups and National Conventions.

The Committee amended the Article by simplifying and removing unnecessary detail so that the Article was clear and coherent. The Committee observed that the terms “limitations” and “derogations” were interchangeably used, thereby making it difficult to understand the Article.

The Committee also re-numbered the Article as Article 65 of the Final Draft Constitution.

Resolutions of the Technical Committee on Article 69

The Committee resolved to amend the Article by:

- (a) simplifying it and removing unnecessary detail; and
- (b) re-numbering it as Article 65.

Article 65 of the Final Draft Constitution reads:

“65. Notwithstanding any other provision, a law shall not derogate from the following rights and freedoms:

- (a) protection from inhuman treatment and security of person;
- (b) protection from slavery, servitude and forced labour;
- (c) freedom of conscience, belief and religion;
- (d) the right to a writ of habeas corpus;
- (e) non-refoulement under Article 41; and
- (f) a right to a fair trial.”

Article 70: Derogation of Rights and Freedoms during Emergency or National Disaster

Recommendations in the First Draft Constitution

The following provision was recommended in the First Draft Constitution:

“70. A provision contained in, thing or an act done under, any law shall not be inconsistent with or in contravention of this Part if–

- (a) the law authorises the taking, when a declaration of war, state of public emergency, threatened state of public emergency, or a national disaster is in force, of measures for dealing with such situations;

(b) the measures taken are reasonably justifiable for dealing with the war, state of public emergency, threatened state of public emergency or national disaster; and

(c) the law provides for the detention of persons when it is necessary for purposes of dealing with the war or other state of public emergency."

Rationale for the Article

The rationale for the Article was that apart from providing for general derogations to rights and freedoms, the Constitution needed to provide for specific limitations to rights and freedoms for purposes of dealing with emergencies and national disasters.

Resolutions of the District Consultative Fora on Article 70

All the eighty-two (82) District Consultative Fora resolved to retain the Article 70 as stated in the First Draft Constitution.

Resolutions of the Provincial Conventions on Article 70

All the ten (10) Provincial Conventions resolved to retain the Article as stated in the First Draft Constitution.

Resolutions of the Sector Groups Convention on Article 70

The Convention resolved to provide for a clear distinction between the provisions in Articles 69 and 70. The Convention observed that there was need to clarify that Article 70 does not apply to Article 69 and to consider interchanging the numbering of Articles 69 and 70.

Resolutions of the National Convention on Article 70

The Convention resolved to retain the Article as stated in the First Draft Constitution.

Deliberations of the Technical Committee on Article 70

The Committee considered the resolutions of the District Consultative Fora, the Provincial, Sector Groups and National Conventions.

The Committee amended the Article by simplifying and removing unnecessary detail so that it specifically stated the matters that would exist during the state of public emergency in two (2) paragraphs. The Committee also re-numbered the Article as Article 68 of the Final Draft Constitution.

Resolutions of the Technical Committee on Article 70

The Committee resolved to amend the Article by:

- (a) simplifying and removing unnecessary detail; and
- (b) re-numbering it as Article 68.

Article 68 of the Final Draft Constitution reads:

“68. An act or measure taken, under a law, during war, state of public emergency, threatened state of public emergency or a national disaster shall not be inconsistent with this Part –

(a) if the act or measure taken is reasonably justifiable for dealing with the war, state of public emergency, threatened state of public emergency or national disaster; and

(b) if the law provides for the necessary detention of persons during a war, state of public emergency or threatened state of public emergency, subject to Article 69.”

Article 71: Restriction and Detention during Emergency

Recommendations in the First Draft Constitution

The following provisions were recommended in the First Draft Constitution:

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

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

(i) in a language which that person understands;

(ii) in the case of a visually impaired person, in Braille;

(iii) in the case of a deaf person, in sign language; or

(iv) in such other appropriate means of communication as may be prescribed by or under an Act of Parliament ;

(v) specifying, in detail, the grounds of the restriction or detention;

(b) not more than seven days after the commencement of the restriction or detention a notification shall be published in the Gazette –

(i) stating the restriction or detention;

(ii) giving particulars of the place of the restriction or detention; and

(iii) stating the provision of the law under which the restriction or detention is authorised;

(c) if that person so requests, at any time during the period of the restriction or detention or not later than twenty-one days after the commencement of the restriction or detention and at intervals of not more than thirty days, the case shall be reviewed by the Constitutional Court;

(d) that person shall be afforded reasonable facilities to consult a legal practitioner of that person's own choice who shall be permitted to make representations to the authority by which the restriction or detention was ordered or to the Constitutional Court; and

(e) at the hearing of the case by the Constitutional Court, that person may-

(i) appear in person or by a legal practitioner, assigned to that person by the State or of that person's own choice;

(ii) challenge the detention or restriction; or

(iii) challenge the validity of the declaration of the state of public emergency or threatened state of public emergency and the measures taken during that period.

(2) The Constitutional Court shall make a determination on a matter reviewed by it under this Article.

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

Rationale for the Article

The rationale for the Article was that, given the extra ordinary nature of war, state of emergency or threatened state of public emergency, there may be need to restrict a person's freedom of movement.

Resolutions of the District Consultative Fora on Article 71

All the eighty-two (82) District Consultative Fora resolved to retain the Article 71 as stated in the First Draft Constitution.

Resolutions of the Provincial Conventions on Article 71

All the ten (10) Provincial Conventions resolved to retain the Article as stated in the First Draft Constitution.

Resolutions of the Sector Groups Convention on Article 71

The Convention resolved to provide a definition for the term "language" in Article 311 of the First Draft Constitution in order to ensure that the term "language" is not explicitly mentioned in the Article.

Resolutions of the National Convention on Article 71

The Convention resolved to retain the Article as stated in the First Draft Constitution.

Deliberations of the Technical Committee on Article 71

The Committee considered the resolutions of the District Consultative Fora, the Provincial, Sector Groups and National Conventions.

The Committee amended the Article by replacing the words “Restriction and Detention during” with the words “Measures applicable during war or,” in the marginal note so that it reads “Measures Applicable during War or Emergency,” in order to simplify the provision. The Committee also amended clause (1) by including the words “tactile diagrams” in sub-paragraph (ii) of paragraph (a) of clause (1) and deleting the words “as may be prescribed by or under an Act of Parliament” in sub-paragraph (iv) of paragraph (a). The Committee observed that a general provision on Articles requiring enactment of legislation had been included in the Final Draft Constitution.

The Committee also re-numbered the Article as Article 69 of the Final Draft Constitution.

Resolutions of the Technical Committee on Article 71

The Committee resolved to amend the Article by:

- (a) changing the marginal note to read “Measures applicable during war or emergency”;
- (b) including the words “tactile diagrams” in sub-paragraph (ii) of paragraph (a) of clause (1);
- (c) deleting the words “as may be prescribed by or under an Act of Parliament” in sub-paragraph (iv) of paragraph (a) of clause (1); and
- (d) re-numbering it as Article 69.

Article 69 of the Final Draft Constitution reads:

“69. (1) Where a person is detained during a war, state of public emergency or threatened state of public emergency, the following shall apply:

- (a) that person shall, as soon as is reasonably practicable, and in any case not more than fourteen days after the commencement of the detention or restriction, be furnished with a statement, in writing, specifying, in detail, the grounds of the restriction or detention;
- (b) not more than seven days after the commencement of the detention a notification shall be published in the Gazette –
 - (i) giving particulars of the place of detention; and
 - (ii) stating the provision of the law under which the detention is authorised;
- (c) if that person so requests, at any time during the period of the detention or not later than twenty-one days after the commencement of the detention and at intervals of not more than thirty days thereafter, the case shall be reviewed by the Constitutional Court;
- (d) that person shall be afforded reasonable facilities to consult a legal practitioner of that person's choice who shall be permitted to make

representations to the authority by which the detention was ordered or to the Constitutional Court; and

(e) at the hearing of the case by the Constitutional Court, that person challenge the -

(i) detention; or

(ii) validity of the declaration of war, state of public emergency or threatened state of public emergency and the measures taken during that period.

(2) The President may refer to the Constitutional Court for review the case of a person who has been or is detained under a detention order under any law.

(3) The Constitutional Court shall make a decision on a matter reviewed by it under this Article."

Enforcement of Bill of Rights

Article 72: Enforcement of Bill of Rights

Recommendations in the First Draft Constitution

The following provisions were recommended in the First Draft Constitution:

"72. (1) Where a person alleges that any provision of the Bill of Rights has been, is being or is likely to be contravened in relation to the person, that person may apply for redress to the Constitutional Court.

(2) Any person or organisation may bring an action against the violation of another person's or a group's human rights and freedoms.

(3) Parliament shall enact legislation to give effect to this Part and for the enforcement of the Bill of Rights."

Rationale for the Article

The rationale for the Article was that there was need to provide for enforcement mechanisms of the Bill of Rights otherwise if breaches were not redressed the Bill of Rights would be rendered meaningless.

Resolutions of the District Consultative Fora on Article 72

Seventy-nine (79) District Consultative Fora resolved to retain the Article as stated in the First Draft Constitution while three (3) resolved to amend the Article by:

(a) adding a clause to provide that the rights, duties, declarations and guarantees relating to the fundamental human rights and freedoms specifically mentioned in this Part should not be regarded as excluding others not specifically mentioned which are

considered to be inherent in a democracy and intended to secure freedoms and dignity of men and women. This should allow one to go to court on issues concerning social and economic rights (1 district);

(b) adding a clause to read “in interpreting this Constitution, Courts shall take into consideration international law and treaties or conventions that Zambia is party to” (1 district); and

(c) providing for procedure on how to apply for redress when these rights are violated (1 district);

Resolutions of the Provincial Conventions on Article 72

All the ten (10) Provincial Conventions resolved to retain the Article as stated in the First Draft Constitution.

Resolutions of the Sector Group Convention on Article 72

The Convention resolved to retain the Article as stated in the First Draft Constitution.

Resolutions of the National Convention on Article 72

The Convention resolved to retain the Article as stated in the First Draft Constitution.

Deliberations of the Technical Committee on Article 72

The Committee considered the resolutions of the District Consultative Fora, the Provincial, Sector Groups and National Conventions.

The Committee amended the Article by deleting the words “or is likely to be” in clause (1), because such wording could potentially cause problems since they did not explicitly state the actions which could culminate into provisions in the Bill of Rights being contravened. The Committee also observed that the Constitutional Court was established for the purpose of addressing actions that stood in the way of enforcement of the Bill of Rights and that, therefore, there was no need to restate that fact. The Committee also amended the Article by simplifying it and removing unnecessary details and deleted clause (3) as it contained provisions which had been provided for in a general Article on matters that required enactment of legislation.

The Committee re-numbered the Article as Article 70 of the Final Draft Constitution.

Resolutions of the Technical Committee on Article 72

The Committee resolved to amend the Article by:

(a) deleting the words “or is likely to be” in clause (1);

(b) simplifying the Article;

(c) deleting clause (3); and

(d) re-numbering it as Article 70.

Article 70 of the Final Draft Constitution reads:

“70. (1) A person who alleges that a provision of the Bill of Rights has been or is being contravened, in relation to the person, may apply for redress to the Constitutional Court or to another court which that person has immediate access to.

(2) A person may bring an action against the violation of another person's rights and freedoms.”

New Article 71: Report on Realisation of Rights and Freedoms

The Committee, following its observation in Article 25 of the First Draft Constitution that clause (3) had been misplaced, agreed to turn the clause into a separate Article on Report on Realisation of Rights and Freedoms and numbered it as Article 71 of the Final Draft Constitution.

Resolution of the Technical Committee on Article 71

The Committee resolved to create a new Article on Report on Realisation of Rights and Freedoms and number it as Article 71.

Article 71 of the Final Draft Constitution reads:

“71. The President shall, each year, when addressing the National Assembly, report on the measures taken by the State in the realisation of the Bill of Rights.”

PART 3: CHALLENGES TO THE REALISATION OF HUMAN RIGHTS IN ZAMBIA

Chapter 12: Enforcement Mechanism of Human Rights

12.3 Human Rights Commission

Article 73: Human Rights Commission

Recommendations in the First Draft Constitution

The following provisions were recommended in the First Draft Constitution:

“73. (1) There is established a Human Rights Commission which shall have offices in all the Provinces and progressively in the districts.

(2) In the performance of its functions, the Human Rights

Commission shall be subject only to this Constitution and any other law, and shall not be subject to the direction or control of any person or authority.

(3) The Human Rights Commission shall be responsible for ensuring that the Bill of Rights is upheld and protected and for such other functions as may be specified by or under an Act of Parliament.

(4) The Human Rights Commission shall, in the exercise of its functions, have power to -

- (a) investigate and to report on the observance of human rights;
- (b) take necessary steps to secure appropriate redress where human rights have been violated;
- (c) bring an action to the Constitutional Court in a case of a violation of the Bill of Rights;
- (d) carry out research; and
- (e) conduct civic education.

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

(6) Parliament shall enact legislation to provide for the functions, composition, appointment of members, tenure of office of members, procedures, operations, administration, finances and financial management of the Human Rights Commission."

Rationale for the Article

The rationale for the Article was that providing for the Human Rights Commission in the Constitution would enhance its status and strengthen respect for human rights.

Resolutions of the District Consultative Fora on Article 73

All the eighty-two (82) District Consultative Fora resolved to retain the Article as stated in the First Draft Constitution.

Resolutions of the Provincial Conventions on Article 73

All the ten (10) Provincial Conventions resolved to retain the Article as stated in the First Draft Constitution.

Resolutions of the Sector Groups Convention on Article 73

The Convention resolved as follows:

(a) Amending the Article by:

- (i) providing for the creation of the Human Rights Commission which should have autonomy and funding and should focus on spelling out rights, their limitations and enforcement while the details of its composition and functions should be relegated to subsidiary legislation in order to avoid entrenching the governance structure and functions of the Commission in the Bill of Rights, as this may provide challenges in future when responding to its evolving capacity; and
- (ii) adding provisions on the appointment and removal of Commissioners whose tenure of office should be similar to those enjoyed by Judges.

(b) Removing Article 73 from the Bill of Rights and placing it under Part XIV of the First Draft Constitution as the Commission would be best placed in that Part.

Resolutions of the National Convention on Article 73

The Convention resolved to retain the Article as stated in the First Draft Constitution.

Deliberations of the Technical Committee on Article 73

The Committee considered the resolutions of the District Consultative Fora, the Provincial, Sector Groups and National Conventions.

Following the Committee's decision to provide for all Commissions in one Part, the Committee agreed to move the Article from the Part on the Bill of Rights to a new Part on Commissions.

The Committee also amended the Article by only establishing the Commission and including its core functions so that other details would be relegated to subsidiary legislation. Further, the Committee agreed to redraft clauses (2), (3) and (4) in order to focus on the powers of the Human Rights Commission to exercise its core functions.

Furthermore, the Committee re-numbered the Article as Article 264 of the Final Draft Constitution.

Resolutions of the Technical Committee on Article 73

The Committee resolved to:

- (a) move the Article to a new Part on Commissions;
- (b) amend the Article by only establishing the Commission and providing for core functions only;
- (c) redraft clauses (2), (3) and (4) to focus on the powers of the Human Rights Commission to exercise its core functions; and
- (d) re-number it as Article 264.

Article 264 of the Final Draft Constitution reads:

"264. (1) There is established the Human Rights Commission which shall have offices in the Provinces and progressively in districts.

(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;
- (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 matters; and

(e) conduct civic education on rights and freedoms.”

12.4 Gender Equality Commission

Article 74: Gender Equality Commission

Recommendations in the First Draft Constitution

The following provisions were recommended in the First Draft Constitution:

“74. (1) There is established the Gender Equality Commission.

(2) In the performance of its functions, the Gender Equality Commission shall be subject only to this Constitution and any other law, and shall not be subject to the direction or control of any person or authority.

(3) The Gender Equality Commission shall be responsible for ensuring gender equality is attained and mainstreamed in public and private affairs and structures, and for such other functions as may be specified by or under an Act of Parliament.

(4) The Gender Equality Commission shall, in the exercise of its functions, have power to –
(a) monitor, investigate, research, educate, lobby, advise and report on issues concerning gender equality; and
(b) take steps to secure appropriate redress in complaints relating to gender equality.

(5) The expenses of the Gender Equality Commission, including emoluments payable to, or in respect of, persons serving with the Commission, shall be a charge on the Consolidated Fund.

(6) Parliament shall enact legislation to provide for the functions, composition, appointment of members, tenure of office of members, procedures, operations, administration, finances and financial management of the Gender Equality Commission.”

Rationale for the Article

The rationale for the Article was that although the Human Rights Commission, which currently exists, dealt with gender issues, which were human rights issues, matters of gender needed a specific Commission in order to ensure that they were completely and effectively included in public and private activities.

Resolutions of the District Consultative Fora on Article 74

Seventy-five (75) District Consultative Fora resolved to retain the Article as stated in the First Draft Constitution while seven (7) resolved to:

(a) amend the Article by adding the composition of the Gender Equality

Commission, which should include senior citizens of both genders (1 district); and
(b) delete the Article because functions of Gender Equality Commission can be performed by the Human Rights Commission. Alternatively, the two Commissions can be combined and be called the Human Rights and Gender Equality Commission to avoid duplication and reduce unnecessary expenditure especially that Articles 24, 51 and 52 have adequately taken care of all aspects of human rights regardless of sex, age and disability. Further, the current system in place is performing well (6 districts).

Resolutions of the Provincial Conventions on Article 74

Nine (9) Provincial Conventions resolved to retain the Article as stated in the First Draft Constitution while one Convention resolved to delete the Article from the First Draft Constitution because the creation of the Commission would duplicate the work of Ministers and organisations dealing in gender issues.

Resolutions of the Sector Groups Convention on Article 74

The Convention resolved to amend the Article by:

- (a) providing for the creation of the Gender Equality Commission, its autonomy and funding while the details of its composition and function would be relegated to subsidiary legislation; and
- (b) removing Article 74 from the Bill of Rights and placing it under Part XIV of the First Draft Constitution.

Resolutions of the National Convention on Article 74

The Convention resolved to:

- (a) amend the Article by including the words "which shall devolve progressively to provinces and districts" at the end of clause (1) in order to provide an appropriate institutional mechanism for the Commission to effectively carry out its mandate; and
- (b) define the term "Gender equality" in Article 311 of the First Draft Constitution.

Deliberations of the Technical Committee on Article 74

The Committee considered the resolutions of the District Consultative Fora, the Provincial, Sector Groups and National Conventions.

Following its earlier decision to provide for all Commissions in one Part, the Committee agreed to move the Article from the Part on the Bill of Rights to a new Part on Commissions. The Committee also amended clause (1) by providing for progressive decentralisation of the Gender Equality Commission to be devolved to the provinces and districts. Further, the Committee amended the Article by simplifying it and removing unnecessary detail so that such details would be placed in subsidiary laws, while providing only for the core functions of the Commission.

Furthermore, the Committee re-numbered the Article as Article 263 of the Final Draft Constitution.

Resolutions of the Technical Committee on Article 74

The Committee resolved to amend the Article by:

- (a) moving the Article from the Part providing for the Bill of Rights to a new Part providing for Commissions;
- (b) providing, in clause (1), for the Gender Equality Commission to be devolved progressively to the provinces and districts;
- (c) simplifying it and removing unnecessary detail; and
- (d) re-numbering it as Article 263.

Article 263 of the Final Draft Constitution reads:

- "263. (1) There is established the Gender Equality Commission which shall have offices in the Provinces and progressively in districts.
- (2) The Gender Equality Commission shall promote the attainment and mainstreaming of gender equality.
- (3) The Gender Equality Commission shall—
- (a) monitor, investigate, research, educate, advise and report on issues concerning gender equality;
 - (b) ensure institutions comply with legal requirements and other standards relating to gender equality; and
 - (c) take steps to secure appropriate redress to complaints relating to gender inequality, as prescribed."

Conclusion

The supplement has tried to reflect what citizens of Zambia submitted to the two constitutional review processes, the National Constitutional Conference and the Technical Committee on Drafting the Zambian Constitution. At the time of finalizing the compilation of this supplementary manuscript in December 2015, Parliament had submitted the Constitution of Zambia Amendment Bill for signing by the Head of State, His Excellency Mr. Edgar Changwa Lungu. The President indicated on the eve of the New Year 2016 that he was going to assent to the Bill on 5th January 2016. He also promised the people of Zambia that the other parts requiring subjection to a National Referendum such as the Bill of Rights shall be subjected to a referendum in 2016. The article below recounts why the national referendum failed to remedy Part III of the Constitution.

WHY DID A NATIONAL REFERENDUM IN ZAMBIA FAIL?

Euphoria and optimism engulfed the nation with the announcement of enhancing the Bill of Rights. But soon after, paranoia, uncertainty and scepticism ensued. Worse still, dissenting views from strong political contenders openly split the 'yes' and 'no' positions disturbing many politically disinterested individuals, already fatigued by a dragged constitutional review process dating way back to 2003. None of these political parties seemed to offer a balanced view, as the citizenry got even more polarised over the very heart of the Constitution, the Bill of Rights. Eventually, the referendum failed to meet the required threshold that was 50% of 7,528,091 being eligible voters. Sadly, only 3,345,471 votes were cast out of which 1,852,559 voted 'yes', 753,549 voted 'no' and 739,363 were rejected votes. This article offers a critical review of what went wrong so that similar mistakes can be avoided and/or overcome as calls for another referendum gather momentum.

HISTORICAL INJUSTICES

The protection of fundamental human rights and freedoms in Zambia has, since independence, suffered three constitutional setbacks: one, the narrowness in guaranteed rights and freedoms – which has mainly been civil and political rights; two, the limited enforcement mechanism – which has largely been through judicial activism (using courts for ensuring direct enforceability); and three, the restriction on the *locus standi* (the right of a party to appear before and be heard by a tribunal or court) – which has only allowed the injured individual to seek legal redress.

The Bill of Rights, a part of the Constitution which basically embodies rights and freedoms enjoyed by every individual (i.e., citizen or foreigner), is one colonial legacy that has survived the murkiness of constitutional reviews with minor modifications. The 1964 Independent Constitution and subsequent Constitutions (1973, 1991, 1996 and 2016) have largely retained the content of the 1953 Bill of Rights. It has primarily sought to protect civil and political rights such as freedom of expression, movement, assembly, and protection from slavery, forced labour and inhuman treatment. And sadly, these rights and freedoms have heavily been diluted by a number of derogations and limitations.

It is undeniable that recommendations to enhance the Bill of Rights were made to various constitution review commissions (Chona, Mvunga, Mwanakatwe and Mung'omba), the National Constitution Conference and the Technical Committee on Drafting the Zambian Constitution. Regrettably, most recommendations faced outright rejection and/or were incorporated with bias. Therefore, struggles for the inclusion of, for example, economic, social and cultural rights, women's and children's rights are not new demands, but have always been part of the greater search for an ideal Constitution.

REMEDYING A DEFECTIVE BILL OF RIGHTS

Remedying an inadequate Bill of Rights requires conducting a successful national referendum, which is a piece of constitutional machinery for obtaining from the electorate or eligible voters an expression of view on a specific question or questions. Such a question(s) is framed in such a manner as to require no other answer other than "yes" or "no". Since 1964, only the 1969 referendum that required removal of the requirement for a referendum when amendments are made to the Bill of Rights was successful with 85.02% approval. The 2016 referendum was held under Article 79 which entrenches both the article itself on the mode of altering the Constitution as well as the Bill of Rights so that people are consulted before these parts are changed. It partly provides that "A bill for the alteration of Part III of this Constitution or of this Article shall not be passed unless ... it has been put to a National referendum with or without amendment by not less than fifty per cent of persons entitled to be registered as voters for the purposes of Presidential and parliamentary elections" (Art. 79(3)). Unfortunately, it failed to meet the threshold for alteration of the Bill of Rights which could have been effected if not less than 50% of eligible voters (registered or not) accepted the proposed changes.

AMBIGUITIES EVIDENT IN FAILED REFERENDUM

The use of a double-barrelled question muddled the process as it was wrongly crafted: "Do you agree to the amendment of the Constitution to enhance the Bill of Rights contained in Part III of the Constitution of Zambia and to repeal and replace article 79 of the Constitution". Such a question erroneously put together two exclusively different issues. For example, it confused the 'yes' vote cast to either mean 'yes' to both 'enhancing the Bill of Rights and repealing article 79' or 'yes' to either expanding the Bill of Rights or repealing of article 79. The same could be true of the 'no' vote cast, rendering the entire voting results largely statistically incorrect. Hence, separate questions should have been asked to enable citizens aptly express their public opinion.

In addition, the referendum process was highly politicised. Its significance was trivialised by holding it alongside the general elections under a newly enacted electoral system. As such, politically charged adversaries crowded their campaigns with false political propaganda on the meaning of voting 'yes' or 'no' in a referendum. Other observers noticed ill-intentioned replacement provisions for Article 79 such as the appointment of Provincial Ministers from among Members of Parliament as part of entrenched provisions. They felt tricked by the government that earlier shelved a proposal for appointment of Ministers outside the National Assembly but sneaked in restrictions to ministerial positions – a move generally perceived as selfish and with the intention to secure jobs for parliamentarians. Similarly, the proposal to reduce the referendum threshold from 50% of eligible voters to 50% of registered voters was strongly opposed. Other fault lines were a lack of civic education on content of the enhanced Bill of Rights and replacement for Article 79, and a lack of sustained political will that repeatedly eroded public trust and defied people's will.

AN OPPORTUNITY WORTH PURSUING

However, an expanded Bill of Rights could have brought about a new constitutional culture. First, in terms of the normative framework (i.e., substantive rights and freedoms to be guaranteed), among the new entrants were: access to information (Art. 22), freedom of media (Art. 23), citizen's right to a passport (Art. 27(a)), the right of a detained or person held in custody to petition the writ of habeas corpus (an order requiring a person to be brought before a judge or into a court especially to investigate whether or not she or he should be released from prison) (Art. 34(3)), right to retrial and re-examination of evidence (Art. 37), equality of both gender (Art. 38), Economic, Social, Cultural and Environmental Rights (Arts. 39-44) including fair labour practices and consumer rights, special rights (Arts. 46-51) that included older members of society, recognition and protection of the family (Art. 47), children's rights (Art. 48), youth (Art. 49), and rights of persons with disabilities (Art. 51).

Second, with regard to the enforcement mechanism: judicial activism still formed the primary means through which denied and/or infringed rights and freedoms could be claimed. According to Article 57(1), "A person who alleges that a provision of the Bill of Rights has been or is being contravened, in relation to the person, may apply for redress to the Constitutional Court or to another court which that person has immediate access to".

Third, on expanding the *locus standi*: apart from identifying the actual “victim” to seek for legal redress, a concerned person could file a complaint on behalf of the victim even if that person was not directly affected. Accordingly, Article 57(2) provided that, “A person may bring an action against the violation of another person's rights and freedoms”.

Moreover, non-derogable rights and freedoms (Art. 52), that is, rights and freedoms which could not be suspended during a state of public emergency or war included: “security of person and protection from inhuman treatment; protection from slavery, servitude or forced labour; freedom of conscience, belief and religion; the right to a writ of *habeas corpus*; non-refoulement as provided for in Article 28 (non-refoulement is a ‘a right not to be returned to the country of origin or a third country if that person has a well-founded fear of persecution’); and a right to a fair trial” [Emphasis added].

CONDITIONS FOR A DURABLE CONSTITUTION

In conclusion, a good Constitution and good subsidiary laws are crucial to the promotion of a healthy democracy, good governance, the rule of law and the development of a country. As such, there is still a great expectation for a Bill of Rights that shall not only guarantee basic human rights and freedoms, but truly create an environment where most Zambians will feel their dignity is indeed respected. That is, a Constitution that legally obliges government to do everything in its power to facilitate every Zambian to acquire the essential necessities of life. Certainly, calls for a national referendum to expand the Bill of Rights must be revitalised!

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