

Electoral Commission of Zambia



Your Vote, Your Right, Your Choice!

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ELECTORAL COMMISSION OF ZAMBIA

Voter Education Facilitator's Handbook 2016

June 2016

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This **Referendum Handbook** is not for sale.

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OUR VISION

To be a model Electoral Management Body that meets the aspiration of the Zambian people.

MISSION STATEMENT

An Independent and Autonomous Constitutional Body that delivers credible elections.

CORE VALUES

We embrace the values of:

- Transparency
- Impartiality
- Teamwork
- Equity and Equality
- Credibility
- Integrity
- Innovativeness

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PREFACE

The Electoral Commission of Zambia is required, under the Constitution to conduct Referenda. The Commission is also mandated by law to conduct Voter education to citizens and stakeholders. This huge responsibility is meant to ensure that all Zambian citizens eligible to vote in Referendum have the knowledge and information on the Referendum process. The Electoral Commission of Zambia is to increase knowledge among Zambians on Referendum and the importance of taking part in the process.



This Referendum Handbook is to provide comprehensive and up-to-date information to citizens. It is designed to be of use to Voter Education Facilitators (VEFs) and other organizations providing voter education on Referendum.

The Handbook is also based on three principles:

- **Non-partisanship** - the Handbook provides information that does not lead voters in answering a Referendum question in a particular way. It is focused on providing voters with knowledge in a neutral manner.
- **Objectivity** - the Handbook contains factual and objective information. It does not seek to interpret or make decisions for the voter. Its purpose is to have informed voters who are capable of making decisions on their own.
- **Transparency** - all voter education activities should be conducted in a transparent and open manner

Facilitators and organizations using this Handbook are expected to follow these principles at all times.

It is the hope of the Electoral Commission of Zambia that this Handbook will give a balanced, comprehensive and uniform provision of voter education on Referendum in the country.

A handwritten signature in black ink, appearing to be 'ESAU E. CHULU', written over a horizontal line.

Hon. Mr. Justice Esau E. Chulu

Chairperson

Electoral Commission of Zambia



ACKNOWLEDGEMENTS



The Electoral Commission of Zambia would like to express sincere gratitude and appreciation to all the stakeholders that contributed to the development and publication of this Handbook.

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A handwritten signature in dark ink, appearing to read 'Priscilla M. Isaac'.

Priscilla M. Isaac

Director

Electoral Commission of Zambia



ACRONYM

ECZ- Electoral Commission of Zambia

NRC- National Registration Card

VEFs -Voter Education Facilitators

UNDP-United Nations Development Programme



1. INTRODUCTION

In modern systems of governance, representative democracy has been exceedingly adopted by various countries. Under representative democracy, leaders run the affairs of the nation and make decisions on behalf of the people. This could be done through the laws being made by the legislature or policy direction by the executive. However, this has not prevented countries from practicing direct democracy on issues that require the approval of the citizens. The process of seeking citizen approval on an issue is called Referendum. Referendum is a form of election where citizens are given the opportunity to agree or disagree on an issue that will provide guidance to the government.

In 2016, Zambia will be holding a Referendum to *agree or disagree to the amendment to the Constitution to enhance the Bill of Rights contained in part 111 of the constitution of Zambia and to repeal and replace Article 79 of the Constitution of Zambia*

Referendum Question

“Do you agree to the amendment to the Constitution to enhance the Bill of Rights contained in part 111 of the constitution of Zambia and to repeal and replace Article 79 of the Constitution of Zambia?”

1.1 What is a Referendum?

A Referendum is a process that allows citizens to approve or reject a law to be passed by the Legislature. In a Referendum voters are given the opportunity to directly decide through a vote on a particular subject matter. All eligible citizens have the right to either accept or reject a question posed. A voter is expected to choose “**Yes**” or “**No**” on the question given. This may be regarding a new constitution, a constitutional amendment or a proposed law.

In Zambia, a Referendum was last held on 17 June 1969. This Referendum proposed amending the constitution to remove the requirement for future amendments of clauses protecting fundamental rights to go to a public Referendum, and instead require only a two-thirds majority in the National Assembly. The Referendum was passed with 85% voting in favour of the change. Voter turnout was 69.5%.



Note: According to the Referendum Act, the President, by statutory Order, directs that a Referendum be held on any issue or law. According to the Act, he shall specify the date or days on which the Referendum shall take place. Accordingly, the 2016 Referendum will be held on 11th August, 2016 alongside the general election.

1.2 Importance of voting in a Referendum

The Referendum provides an opportunity for citizens to directly decide on whether government should undertake an issue/law or not.

For example this Referendum will,

- give a chance to the citizens to decide whether the Bill of Rights under part III of the constitution should be altered and enhanced or not.
- give a chance to the citizens to decide whether to repeal and replace Article 79 of the Constitution of Zambia which talks about the alteration of the Constitution.

1.3 Requirements for one to vote in the Referendum

In order to qualify to vote in this Referendum, a person should:

- Be a Zambian citizen and in possession of a green National Registration Card (NRC).
- Be 18 years and above at the time of voting in this Referendum i.e., Eligible voters in this Referendum are those who were born on or before 11th August 1998.

1.4 Why vote in this Referendum?

According to the Constitution of Zambia, any alterations on the Bill of Rights and Article 79 require that a Referendum be held where citizens are expected to either accept or reject the question relating to the alterations.

Therefore, it is the citizens' right, duty and obligation to vote in the Referendum.

1.5 What are you voting for in this Referendum?

1.5.1 Referendum Question

“Do you agree to the amendment to 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 of Zambia?”

1.5.2 What are you voting in this Referendum?

According to the Constitution of Zambia, any alterations to the Bill of Rights and Article 79 require that a Referendum be held where citizens are expected to either accept or reject the question relating to the alterations.

The Bill of Rights is contained in part three of the Constitution of Zambia.

During this Referendum, eligible citizens are voting to agree or disagree to:

- **amend and enhance the Bill of Rights; and**
- **repeal and replace Article 79 of the Constitution of Zambia.**

You **VOTE** either “Yes” or “No”

If you vote **“Yes”**, it means that you are agreeing or accepting to the proposed amendments to the Bill of Rights and repealing and replacing of Article 79.

If you vote **“No”**, it means that you want the current Bill of Rights and Article 79 to remain unchanged.

a. What is being altered (amended) in the Bill of Rights?

- Civil and Political Rights.

These are provided for in the current Bill of Rights. In the proposed Bill of Rights, some of the Articles have been included while others have been modified.



b. What will be new in the Bill of Rights?

- Economic, Social, Cultural and Environmental Rights;
- Further and Special Rights.



c. What is being proposed to be repealed and replaced in the Constitution of Zambia?

Article 79 of the Constitution of Zambia is being proposed for repealing.

The proposal is to replace it with PART 19A (Articles 301 to 303).

d. Comparison between Article 79 of the current Constitution and proposed Articles 301 to 303

Article 79	Articles 301 – 303
<ul style="list-style-type: none"> • Process of amending the constitution and the Bill of Rights 	<ul style="list-style-type: none"> • Process of amending the constitution and the Bill of Rights
Amendments requiring Referendum <ul style="list-style-type: none"> • Bill of Rights • Article 79 	Amendments requiring Referendum; <ul style="list-style-type: none"> 1 -Supremacy of the Constitution 4 - Sovereignty of the Republic 5 -Sovereign authority of the people of Zambia 47 - Electoral System for Presidential and Parliamentary 106 - Tenure of office of the President and vacancy 110 - Vice Presidency election to office and swearing in 116 - Ministers (appointment, role and vacancy) 117 - Provincial Ministers (appointment, role and vacancy) Part 3 - Bill of Rights Article 301 to 303
Referendum threshold – 50% of eligible voters voting yes	303 – Referendum threshold – 50% of registered voters voting and more than 50% voting in favour
No Time frame	303 – Referendum to be held within 120 days after first reading of the bill
Requirement – Holder of green NRC and attained the age of 18	303 – Requirement – Registered voter



BILL OF RIGHTS

2.1 What Is A Right?

It is a moral or legal entitlement that a person can claim or have or do. It is an entitlement or a lawful claim a citizen expects from the country or government.

2.2 What are Human rights?

- These are basic entitlements and freedoms that humans are guaranteed and belong to any individual as a consequence of being human regardless of his/her race, gender, sex, pregnancy, marital status, colour, age, disability, national origin, religion, conscience, belief, culture, language, birth or social status.
- They are universal legal guarantees protecting individuals and groups against actions which interfere with fundamental freedoms and human dignity.
- Human rights are those liberties, immunities and benefits which, by accepted contemporary values, all human beings should be able to claim as a right of the society in which they live.
- They are fundamental rights that empower human beings to shape their lives in accordance with liberty, equality and respect for human dignity.

Human rights are the **only universally recognised system of values** codified in international, regional and national legal systems. They constitute a set of performance standards against which duty-bearers at all levels of society- but especially organs of the State- can be held accountable.

2.3 What is a Bill of Rights?

- A Bill of Right is a set of legal guarantees that are specially set out within the Constitution to protect fundamental rights and freedoms of individuals. These guarantees and freedoms include freedom of conscience, expression, assembly, association, liberty, life, security of the person, protection of the law, protection for privacy of the home and other property and from deprivation of property without compensation.
- The Bill of Rights is fundamental to democracy and constitutionalism and is the basis of Zambia's social, political, legal, economic and cultural policies and State action. It formally enshrines those fundamental rights and liberties considered essential for all people in the country. It affirms the democratic values that border on human dignity, equality and freedom.
- It is a declaration of individual rights and freedoms, usually issued by a national government.

2.4 Summary of the proposed Bill of Rights

a. Civil and Political Rights

Civil and political rights are a class of rights that protect individuals' freedom from infringement by government, social organisations and private individuals. They ensure one's ability to participate in the civil and political life of the society and state without discrimination or repression.

- Protection from discrimination
- Right to life
- Freedom of person



- Protection from inhuman treatment and security of person
- Protection from slavery, servitude and forced labour
- Protection of privacy of person, home, property and communication
- Freedom of conscience, belief and religion
- Freedom of expression
- Access to information
- Freedom of media
- General political rights
- Freedom of association
- Right to assemble, demonstrate, picket and petition
- Freedom of movement and residence
- Non refoulment for asylum seekers and refugees
- Acquisition and protection of property
- Equality before law
- Fair administration
- Access to justice
- Rights of suspects
- Rights of persons in custody
- Rights of accused persons and detainees
- Fair trial
- Right to retrial and re-examination of evidence
- Equality of both gender

b. Economic, Social, Cultural and Environmental Rights

Social and economic rights guarantee that every person be afforded conditions under which they are able to meet their needs.

Cultural rights relate to art and culture. The objective of these rights is to guarantee that people and communities have an access to culture and can participate in the culture of their choice.

Environmental rights are about access to a safe. Clean and healthy environment.

- Economic and social rights
- Choice of trade, occupation or profession
- Consumer rights
- Labour relations
- Language, culture and intellectual property rights
- Environment

c. Further and Special Rights

Further and special rights are rights meant to protect the interests of older members of society, children, youths and persons with disability. They further protect the rights relating to marriage and family.

- Further rights for older members of society
- Further protections and rights relating to marriage and family
- Special and further rights for children
- Further rights for youth
- Further protection of young person
- Further rights for persons with disabilities



QUALIFICATIONS TO VOTE IN A REFERENDUM



Note: Eligible voters are those born on or before 11th August 1998

Voting Day: 11th August 2016



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REFERENDUM

VOTING DAY: 11th AUGUST 2016



Do you agree to the amendment to 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 of Zambia?

INSTRUCTIONS MARK ONE CROSS X ONLY IN THE BLANK BOX AGAINST YES OR NO			
QUESTION	ANSWER	SYMBOL	MARK X IN THIS COLUMN
Do you agree to the amendment to 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 of Zambia?	YES		
	NO		



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2.5 Detailed proposed Bill of Rights

CIVIL AND POLITICAL RIGHTS

Protection from discrimination

No person shall be discriminated against, except under a law that provides for affirmative action.

Note: Affirmative action is the policy of favouring particular segment of people or members of particular and specified group who suffer or historically suffered from discrimination within a culture

Right to Life.

- The life of a person begins at conception.
- A person shall not be deprived of life intentionally, except for a capital offence the sentence of which is death, subject to limitations, defences and extent prescribed.
- 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 explanatory circumstances relating to the commission of the offence.

Freedom of person

A person has the right to freedom of the person which includes the right not to be deprived of that freedom arbitrarily.

Protection from inhuman treatment and security of person

- (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.

Protection from slavery, servitude and forced labour

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

Protection of privacy of person, home, property and communication

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.

Freedom of conscience, belief and religion

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 freedom of conscience, belief and religion 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.

Freedom of expression

- (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) which -
 - (i) vilify or disparage others; or
 - (ii) incite hatred.

Access to information

- (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.

Freedom of media

- (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.

General political rights

A citizen has a right to participate in political activities.

Freedom of association

- (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.

Right to assemble, demonstrate, picket and petition

A person has the right, peacefully and unarmed, to assemble, demonstrate or picket and present petitions to State organs and State institutions.

Freedom of movement and residence

- (1) A person has the right to freedom of movement, which includes the right-
 - (a) as a citizen, to a passport; and
 - (b) to enter, remain, leave and reside anywhere in the Republic; subject to the imposition of restrictions on the entry, movement or residence of persons who are not citizens, as prescribed.

Non-refoulement for refugees and asylum seekers

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.

Acquisition and protection of property

- (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.

Equality before law

All persons are equal before the law and have the right to equal protection and benefit of the law.

Fair administration

A person has the right to administrative action that is expeditious, lawful, reasonable and procedurally fair.

Access to justice

- (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.

Rights of suspects

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.

Rights of persons in custody

- (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.

Rights of accused persons and detainees

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.

Fair trial

- (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.

Right to re-trial and re-examination of evidence

- (1) A person who is convicted of an 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 re-trial if new and compelling evidence is available.
- (2) Where there is compelling evidence that a person may be innocent of an offence, the State may petition the Supreme Court to re-examine that evidence and determine whether that person committed the offence or not.



Equality of both gender

- (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.

ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS

Economic and social rights

- (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.

Choice of trade, occupation or profession

A person has the right to choose a trade, an occupation or a profession, subject to limitations imposed by law.

Labour relations

- (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.

Consumer rights

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.

Language, culture and intellectual property rights

- (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.

Environment

A person has the right to a safe, clean and healthy environment.

Progressive realisation of economic, social, cultural and environmental rights

- (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.

FURTHER AND SPECIAL RIGHTS

Further rights for older members of society

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.

Further protections and rights relating to marriage and family

- (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

Special and further rights for children

- (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;
 - (i) accorded legal assistance by the State;
 - (ii) treated in a manner and be kept in conditions that take into account the child's gender and age; and
 - (iii) 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;
- (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-

- (a) with special needs;
- (b) who is orphaned;
- (c) whose parent or guardian is in prison;



- (d) whose parent or guardian is unfit to look after the child;
- (e) with disability;
- (f) who is a refugee; and
- (g) who is homeless or lives or spends time on the streets.

Further rights for youth

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.

Further protection of young person

- (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.

Further rights for persons with disabilities.

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.

NON-DEROGABLE RIGHTS AND FREEDOMS, LIMITATIONS AND DEROGATIONS

Non-derogable rights and freedoms

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 or forced labour;
- (c) freedom of conscience, belief and religion;
- (d) the right to a writ of habeas corpus;
- (e) non-refoulement as provided for in Article 41; and
- (f) a right to a fair trial.

Limitations on rights and freedoms

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.

Limitations and restrictions under law

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 or 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.

Derogation of rights and freedoms during emergency or national disaster

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.

Measures applicable during war or emergency

- (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 may 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

Enforcement of Bill of Rights

- (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.

Report on realisation of rights and freedoms

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.



3. VOTING IN THE REFERENDUM

3.1 Persons allowed in the polling station

- Members of the Commission
- Members of staff of the Commission
- The Provincial Electoral Officer
- The District Electoral Officer
- Accredited Monitors and Observers
- Accredited media personnel

3.2 The conditions that contribute to the holding of credible Referendum

- A well-organized Referendum exercise is that which gives an opportunity to eligible Zambians to vote.
- Free access to information by all voters without being intimidated or threatened.
- Objective and balanced media coverage on Referendum campaign/question
- Referendum conducted according to the law and procedures.
- All eligible voters are able to cast their votes without any difficulty.
- The voting and counting process are conducted according to laid down procedures.

3.3 Threshold for alteration of the Bill of Rights in the Constitution

The Zambian constitution in Article 79 provides that any alteration of the Bill of Rights requires a Referendum where not less than fifty per cent (50%) of eligible voters accept the proposed changes.



3.3.1 Where to vote from?

a. Registered Voters

Registered voters are citizens who have attained the age of 18 and are in possession of both the green National Registration Card and voter's card. Their details are appearing in the register of voters.

Registered voters will vote from the polling station where they are registered.

b. Unregistered voters

Unregistered voters are citizens who have attained the age of 18 and are in possession of a green National Registration Card but do not possess a voter's card and their details are not in the register of voters.

Unregistered voters can vote from any polling station at the stream designated for Referendum only.

3.4 Voting time

- On poll day, polling stations open at 06:00 hours and close at 18:00 hours.
- Voters who are in the polling station before 18:00 hours will be allowed to vote.
- If the polling station opens late, the time lost will be added to the closing time.
- A registered voter must vote at a polling station appearing on their voter's card while those not registered but are eligible are to vote from **ANY** polling station convenient to them.



3.5 Voting procedure

a. Registered Voters

Registered voters shall vote from polling stations for regular elections where they will vote for the Presidential, National Assembly, Mayoral/ Council Chairperson, Ward Councilor elections and Referendum.

During the Referendum voting day, a voter shall do the following;

Step 1: Preparing to go to the polling station;

A voter must take the following documents with them to the polling station:

- Their Green National Registration Card; and
- Their Voter's Card.

Step 2: Upon arrival at the polling station;

- Voters are expected to observe all rules and regulations governing the polling station.
- At a polling station with streams, voters will be directed by an usher to the correct queue.
- A voter lines up with other voters to wait for their turn to be allowed inside the polling station to cast their vote.

Step 3: Inside the polling station. Ascertaining the identity of voters.

- The voter shows the polling assistant his/her NRC and Voter's Card.
- The polling assistant checks the details on the NRC and Voter's



Card against those appearing in the voters' register.

Inking

- The voter's hand is checked to ascertain that he/she has not voted already
- The right hand thumb is then marked with indelible ink.

Issuance of ballot Papers

- The voter is issued with five stamped ballot papers. These are;
 - Presidential,
 - Referendum,
 - National Assembly,
 - Mayoral/ Council Chairperson and
 - Ward Councillor.

Marking of the ballot paper

- The voter marks the ballot papers in the polling booth.

Vote casting

- The voter deposits the marked ballot papers in the respective transparent ballot boxes.
- The following are the colours for ballot box lids which correspond with the colours of the ballot papers;

BALLOT BOX LIDS

Presidential.....	Orange
Referendum.....	Brown
National Assembly.....	Red
Mayoral/ Council Chairperson.....	Purple
Ward Councillor.....	Black



The voter walks out of the polling station

b. Unregistered voters

Unregistered voters can vote from any polling station at the stream designated for Referendum only.

Step 1: Preparing to go to the polling station

A voter must be in possession of his/her green National Registration Card.

Step 2: Upon arrival at the polling station

- Voters are expected to observe all rules and regulations governing the polling station.
- At a polling station with streams, voters will be directed by an usher to the stream for Referendum only.
- A voter lines up with other voters in a Referendum stream to wait for their turn to be allowed inside the polling stream to cast their vote.

Step 3: Inside the polling station. Ascertaining the identity of voters



Polling Assistant at Table1 – Verification of Voter’s Identity

- Checks the date of birth on the NRC to ensure that the person has attained the age of 18 years on poll day.
- Compares the voter’s face and that on the NRC.
- If satisfied, enters the following details of the voter in the note book;
 - Surname
 - Other names
 - NRC number
 - Date of birth

Inking

- The voter’s hand is checked to see that he/she has not voted already.



- The right hand thumb is then marked with indelible ink.

Issuance of ballot paper

- The voter is issued with one stamped Referendum ballot paper.

Marking of the ballot paper

- The voter marks the ballot paper in the polling booth.

Vote casting



- The voter deposits the marked ballot paper in the ballot box with a brown lid.

The voter walks out of the polling station



3.6 Marking Ballot papers correctly

A ballot paper must be marked with “X” in the square on either “YES” or “NO”.

INSTRUCTIONS MARK ONE CROSS X ONLY IN THE BLANK BOX AGAINST YES OR NO			
QUESTION	ANSWER	SYMBOL	MARK X IN THIS COLUMN
Do you agree to the amendment to 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 of Zambia?	YES		
	NO		



3.6.1 What should not be done on the ballot paper?

The voter shall not:

- write their name on the ballot paper;
- write their signature or any mark that may identify them on the ballot paper;
- leave the ballot paper unmarked;
- remove the ballot paper from the polling station;
- come with a ballot paper or any other paper from outside the polling station.

3.6.2 A rejected ballot paper is one:

- Which does not bear the official mark;
- Which is marked more than once;
- Which has the identity of the voter;
- Which is not marked by the voter;
- Which is not clear what the voter has voted for; and

3.7 Spoilt ballot paper

A ballot paper is spoilt if:

- It is accidentally torn by the Polling Assistant while issuing it to the voter;
- It is accidentally torn by the voter while marking on it;
- The voter realizes that they have marked it wrongly before depositing it in the ballot box;
- it is found in or around the polling station.

3.8 Counting of votes at the polling station

This is a process of allocating and adding up the votes cast for either **YES** or **NO**. It is done immediately after the close of the polling station.

At the polling station, votes for each stream are counted separately.

- The Presiding Officer/Assistant Presiding Officer and Polling Assistants count the votes in the presence of accredited stakeholders.
- The Presiding Officer/Assistant Presiding Officer records the number of votes for each answer for that polling station/stream.
- Copies of the signed results form are then given to each accredited person present in the polling station



The accredited stakeholders are expected to confirm that the votes have been counted correctly by signing on the results form.

Persons who are not accredited are not allowed to witness the counting in the polling station.

3.9 Announcement of results at the polling station

The Presiding Officer announces the results of the polling station. This is done outside the entrance of the polling station.

A copy of the polling station results form is posted on the wall outside the polling station for the general public to see.

3.10 Announcement of results at a Totalling Centre

The Returning Officer is responsible for adding up the results from all the polling stations in the constituency.

The Returning Officer announces and adds polling station results as they are received. The totalling of results is done in the presence of accredited stakeholders.

When all the polling station results have been added, the Returning Officer announces the results. Thereafter, results are then transmitted electronically to the National Results Centre in Lusaka.

3.11 Referendum Petition

This is the procedure of challenging the validity of the Referendum when it is alleged that there was breach of the law. A petition is made to the High Court outlining the grounds on which the petition is founded within twenty one (21) days. A Referendum petition may be presented by any person who voted or is eligible to vote in the Referendum.



A Referendum petition may be presented on the following grounds;

- That corrupt practices prevailed extensively the Referendum process.
- On ground of error or misconduct (whether by an act or omission) on the part of any Referendum officer
- In respect of the declared result of the Referendum, on the ground of error on the part of the Commission



4.0 CORRUPT PRACTICES AND REFERENDUM OFFENCES

4.1 Bribery

4.1.1 Any person who directly or indirectly, by himself, herself or any other person—

- (a) gives, lends or procures, or agrees to give, lend or procure or offers, promises or promises to procure, any money to, or for, any person on behalf of any voter or to, or for, any other person in order to induce any voter to vote or refrain voting or who corruptly does any such act as aforesaid on account of such voter having voted or refrained from voting at an Referendum;
- (b) gives, lends or agrees to give or lend, or offers, or promises to procure or to endeavour to procure, any money to, or for, any voter or to, or for, any other person on behalf of any voter or to, or for, any other person for acting or joining in any processing or demonstration before, during or after, any Referendum;
- (c) makes any such gift, loan, offer, promise, procurement or agreement to, or for, any person in order to induce such person to procure or to endeavour to procure the vote of any voter at any Referendum;
- (d) upon or in consequence of any such gift, loan, offer, promise, procurement or agreement, procures or engages, promises, endeavours to procure, the vote of any voter at any Referendum;

advances or pays or causes to be advanced or paid any money to or for the use of any other person with the intent that such money or any part thereof shall be expended in bribery at any Referendum, or who knowingly pays or causes to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any Referendum;



- (e) before or during any Referendum receives or contracts for any money or loan for himself or for any other person for voting or agreeing to vote or for refraining or agreeing to refrain from voting at such Referendum;
- (f) after any Referendum receives any money on account of any person having voted or refrained from voting or having induced any other person to vote or refrain from voting at such Referendum; or
- (g) conveys or transfers or is concerned with the conveyance or transfer of any property, or pays or is concerned with the payment of any money, to any person for the purpose of inducing him to vote or refrain from voting; shall be guilty of the offence of bribery.

4.1.2 Nothing in this regulation shall be construed as applying to any money paid or agreed to be paid for or on account of any expenditure bona fide and lawfully incurred in respect of the conduct or management of a Referendum.

4.2 Personation

4.2.1 Any person who—

- (a) at any Referendum applies for a ballot paper in the name of some other person, living or dead, or of a fictitious person;
- (b) having voted once at any Referendum applies again at the same Referendum for a ballot paper; or
- (c) votes or induces or procures any person to vote at any Referendum knowing that he or that person is not entitled to vote at that Referendum; shall be guilty of the offence of personation.

4.3 Treating

4.3.1 Any person who corruptly by himself or by any other person either before, during or after the Referendum, directly or indirectly, gives



or provides or pays wholly or in part the expenses of giving or providing any food, drink, entertainment, lodging or provisions to, or for, any person for the purpose of corruptly influencing that person or any other person to give or refrain from giving his vote at a Referendum shall be guilty of the offence of treating.

4.4 Undue Influence

4.4.1 Any person who directly or indirectly, by himself or by any other person—

(a) makes use of or threatens to make use of any force, violence or restraint upon any other person;

inflicts or threatens to inflict by himself or by any other person, or by any supernatural or non-natural means or pretended supernatural or non-natural means, any temporal or spiritual injury, damage, harm or loss upon or against any person; or

(b) does or threatens to do anything to the disadvantage of any person;

in order to induce or compel that person to vote or refrain from voting or an account of that person having voted or refrained from voting at any Referendum, shall be guilty of the offence of undue influence.

4.4.1 Any person who, by abduction, duress, or any fraudulent device or contrivance, impedes or prevents the free exercise of his vote by any voter or thereby compels, induces or prevails upon any voter either to give or to refrain from giving his vote at any Referendum, shall be guilty of the offence of undue influence.

4.5 Corrupt practices and penalties



Any person who is guilty of the offence of bribery, personation, treating or undue

influence shall be guilty of a corrupt practice and shall be liable on conviction to a fine not exceeding two thousand penalty units or to imprisonment for a period not exceeding two years, or to both.

REFERENDUM

Voting Day: 11th August 2016





INSTRUCTIONS MARK ONE CROSS X ONLY IN THE BLANK BOX AGAINST YES OR NO			
QUESTION	ANSWER	SYMBOL	MARK X IN THIS COLUMN
Do you agree to the amendment to 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 of Zambia?	YES		
	NO		



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REFERENDUM

VOTING DAY: 11th AUGUST 2016



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