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GOVERNMENT OF ZAMBIA

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STATUTORY INSTRUMENT NO. 26 OF 2008

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**The National Constitutional Conference Act**  
(Act No. 19 of 2007)

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**The National Constitutional Conference**  
**(Disciplinary Committee Proceedings)**  
**Rules, 2008**

ARRANGEMENT OF RULES

PART I

PRELIMINARY

1. Title
2. Interpretation
3. Disciplinary Committee
4. Functions of Committee

PART II

COMPLAINT AGAINST MEMBERS AND MEMBERS OF STAFF

5. Complaint against member and member of staff
6. Frivolous, vexatious, etc; complaints
7. Dismissal of complaint
8. Committee may require further information
9. Notice of hearing
10. Interim measures
11. Inspection of documents
12. Legal representation
13. Failure to appear
14. Evidence
15. Report of findings
16. Recommendation of Committee

## PART III

## GENERAL PROVISIONS

17. Quorum
  18. Hearing in private
  19. Withdrawal of complaint
  20. Adjournment of hearing
  21. Amendment, etc., of affidavit
  22. Record of proceedings and inspection thereof
  23. Proceedings and reports to be translated into braille
  24. Service of documents
  25. Power of Committee to dispense with documents, etc.
  26. Extension of time
  27. Appeals
- SCHEDULE—Prescribed forms

IN EXERCISE of the powers contained in section *thirty-three* of the National Constitutional Conference Act, 2007, and on the recommendation of the Conference, the following Rules are hereby made:

## PART I

### PRELIMINARY

- |   |                        |
|---|------------------------|
|   | Title                  |
| 1. These Rules may be cited as the National Constitutional Conference (Disciplinary Committee Proceedings) Rules, 2008.   | Interpretation         |
| 2. In these Rules, unless the context otherwise requires—   |                        |
| “Act” means the National Constitutional Conference Act, 2007;   | Act No. 19 of 2007     |
| “Conference” has the meaning assigned to it in the Act;   |                        |
| “Committee” means the Standing Committee established under subsection (2) of section <i>sixteen</i> of the Act and for purposes of these Rules referred to as the Disciplinary Committee; |                        |
| “legal practitioner” has the meaning assigned to it in the Legal Practitioners Act;   | Cap. 30                |
| “member” means a member of the Conference;  |                        |
| “Secretariat” means the Secretariat of the Conference;  |                        |
| “Secretary” means the Secretary to the Conference; and  |                        |
| “Vice-Chairperson” has the meaning assigned to it in the Act.   |                        |
| 3. (1) The Committee shall comprise the three Vice-Chairpersons of the Conference and eight other members elected by the Conference:  | Functions of Committee |
| Provided that at any meeting of the Committee, only one Vice-Chairperson as the members of the Committee may determine shall attend and preside over the proceedings of the Committee.    |                        |
| (2) One member of the Committee shall be a legal practitioner.  |                        |

Disciplinary  
Committee

4. The Committee shall—
- (a) consider and determine disciplinary matters relating to the members and the members of staff;
  - (b) inquire into the conduct of any member or member of staff; and
  - (c) consider any other disciplinary matter referred to it by the Conference.

## PART II

### COMPLAINT AGAINST MEMBER AND MEMBERS OF STAFF

Complaint  
against  
member and  
member of  
staff

5. (1) A complaint may be lodged with the Disciplinary Committee against a member or member of staff where it is alleged that the member or member of staff has -

- (a) breached the principles under section *fourteen* of the Act or contravened any other provision of the Act;
- (b) during the deliberations—
  - (i) conducted oneself in a manner that causes discord; or
  - (ii) been violent, threatened any person with violence or did anything that is provocative;
- (c) interfered with any person's right to hold or attend a meeting of a committee or the Conference or the person's personal liberty or the freedom of expression or conscience, except in accordance with the law;
- (d) taken any political, administrative or other action that adversely affected the deliberations or the operation or success of the adoption process; or
- (e) in the case of the Secretariat, contravened the terms of employment.

(2) A complaint shall be in Form I set out in the Schedule and shall be sent to the Secretary together with an affidavit in Form II set out in the Schedule stating the matters of fact on which the person relies in support of the complaint.

(3) Where the complaint is made by the Conference, the complaint shall be signed and the affidavit sworn on behalf of the Conference by the Secretary.

(4) A complaint under these Rules shall be made within thirty days from the occurrence of the omission, action or event upon which the complaint is made:

Provided that the Committee may extend the time specified for lodging a complaint under this sub-rule where the Committee considers that the complainant was prevented by sufficient cause from lodging the complaint within the time specified.

(5) Where a complaint is in respect of the Secretary, the complaint shall be lodged with any of the Deputy Secretaries to the Conference.

6. (1) The Committee may decline to act on a complaint received by it where the Committee considers that—

Frivolous,  
vexatious, etc  
complaints

- (a) the complaint is frivolous or vexatious;
- (b) the complaint is misconceived or lacking in substance;
- (c) the complaint is trivial;
- (d) there is a more appropriate method of dealing with the complaint available; or
- (e) the complaint has already been dealt with adequately.

(2) The Committee shall, where an issue in a complaint has been determined by a court or tribunal authorised to determine the issue at law, after consideration of the matters raised by the complaint, decline to act on the complaint to the extent that the complaint attempts to re-open the issue.

7. (1) The Committee may, where no *prima facie* case is established in the complaint, dismiss the complaint, without requiring the member or member of staff against whom the complaint is made to answer the allegations, and without hearing the complainant.

Dismissal of  
complaint

(2) The Committee shall, where required either by the complainant or the member or member of staff, make a formal order dismissing the complaint.

8. Before fixing a date for the hearing, the Committee may require the complainant to supply such further information and documents relating to the complaint as it considers necessary.

Committee  
may require  
further  
information

9. (1) The Committee shall, where a *prima facie* case is established in the complaint, fix a date for the hearing.

Notice of  
hearing

(2) The Secretary shall, where a date for the hearing is fixed under sub-rule (1)—

- (a) serve notice of the complaint to the person against whom the complaint has been made in Form III set out in the Schedule and the date for the hearing on each party to the proceedings;
- (b) serve on each party, other than the complainant, a copy of the complaint and the affidavit; and
- (c) request the person against whom the complaint is made to answer to the complaint in Form III set out in the Schedule.

(3) There shall be at least twenty† one days between the service of the notice and the date for the hearing.

(4) The notice to the complainant shall be in Form IV set out in the Schedule and shall require the party to whom it is addressed to furnish to the Committee and to every other party, at least fourteen days before the date fixed for the hearing, unless the Committee directs otherwise, a list and copies of all the documents on which the party intends to rely.

Inspection of documents

10. (1) Any party may inspect the documents included in the list furnished by any other party under sub-rule (4) of rule 9.

(2) A party shall furnish the other party a copy of any document mentioned in the list within three days after the receipt of the complaint.

(3) All inspections under this rule shall be completed not less than seven days before the date fixed for the hearing.

Legal representation

11. Any party to the proceedings under these Rules may be represented by a legal practitioner of that party's choice.

Failure to appear

Evidence

12. The Committee may, where any party fails to appear at the hearing twice, upon proof of service on such party of the notice of hearing, proceed to hear and determine the complaint in that party's absence.

13. (1) The Committee may accept, admit or call for any evidence at any stage of the proceedings and in any manner it considers appropriate.

(2) The Committee may, either as to the whole matter or as to any particular fact or facts, proceed and act upon evidence given by affidavit.

(3) Any party to the proceedings may—

(a) call witnesses to testify on their own behalf; and

(b) require the attendance upon subpoena of any person for the purpose of giving evidence, unless the Committee is satisfied that the requirement of the attendance of the person is made with the sole object of causing delay.

(4) The Committee may issue a subpoena in Form V set out in the Schedule.

(5) The Committee may require a witness to give evidence on oath or affirmation.

14. (1) The Committee shall, on the termination of the hearing present its findings in the form of a report to the Conference for information purposes only, which shall be signed and filed with the Secretary, and shall be open to inspection by the member or member of staff to whom the complaint relates and by the complainant, but shall not be open to public inspection.

Report of findings

(2) The evidence taken and the documents put in evidence at the hearing shall be filed with the Secretary to the Conference at the same time as the findings and the report.

15. (1) Where the Committee, at the close of a hearing of a complaint, is satisfied that -

Recommendation of Committee

(a) a case for taking disciplinary action against a member or member of staff has been established, the Committee may—

(i) admonish the member or member of staff in writing and order them to apologise and desist from conducting themselves in the manner complained about; or

(ii) recommend to the Secretary to the Cabinet, through the Chairperson, that the member or member of staff be suspended from office for such period as the Disciplinary Committee may advise or that the member or member of staff be removed from office; or

(b) a case for taking of disciplinary action against a member or member of staff has not been established against the person to whom the complaint relates, the Committee shall dismiss the complaint.

(2) The Committee shall inform the member or member of staff of the action taken against the member or member of staff and give the reason for the decision.

(3) The Secretary to the Cabinet shall, where a member is removed on the recommendation of the Disciplinary Committee under these Rules, appoint another member to replace the member who is removed in accordance with section four of the Act.

PART III  
GENERAL PROVISIONS

- Quorum 16. One half of the members of the Committee shall form a quorum.
- Hearing in private 17. The Committee shall hear all complaints in private.
- Withdrawal of complaint 18. (1) Unless the Committee directs otherwise, a complaint may be withdrawn.  
(2) Where a party has applied for leave to withdraw the complaint, the Committee may, on such terms as it shall consider appropriate, grant such leave, or of its own motion or upon the complaint of any party, adjourn the hearing.
- Adjournment of hearing 19. The Committee may, of its own motion or upon the application of any party, adjourn the hearing on such terms as the Committee considers appropriate.
- Amendment, etc., of affidavit 20. (1) The Committee may, where it appears that the allegations in the affidavit require to be amended, or added to, permit the amendment or addition.  
(2) Where in the opinion of the Committee an amendment or addition is not within the scope of the affidavit, the Committee may require the amendment or additions to be embodied in a further affidavit.  
(3) The Committee shall grant an adjournment of the hearing, where any amendment or addition is such as to take any party by surprise or prejudice the conduct of the case, on such terms as the Committee considers appropriate.
- Notes of proceedings and inspection thereof 21. (1) A record of proceedings shall be taken by the Committee.  
(2) Any party who appeared at the proceedings may inspect the record of proceedings.  
(3) The Committee may give a copy of the record of proceedings to any person entitled to be heard upon an appeal against an order of the Committee, and to the Conference.
- Proceedings and reports to be translated into braille 22. All proceedings and reports of the Committee prepared under these Rules shall be translated into braille to facilitate access to the information by visually impaired persons.



23. Service of any notice or document may be effected under these Rules by registered letter addressed, in the case of a member, to the member's place of business appearing in the register of members and, in every other case, to the last known place of business or abode of the person to be served, and such service shall be deemed to be effected at the time when the letter would be delivered in the ordinary course of post.

Service of documents

24. The Committee may dispense with any requirements of these Rules respecting notices, affidavits, documents, service, or time, in any case where it appears to the Committee to be just so to do.

Power of Committee to dispense with documents, etc.

25. The Committee may extend the time for service and submission of a complaint and other documents which are required to be served and submitted under these Rules, where the Committee is satisfied that the person required to serve or submit the complaint or other document had good reason for failing to do so within the specified period.

Extension of time

26. A member or member of staff aggrieved by the decision of the Secretary to the Cabinet to suspend or remove the member or member of staff from office on the recommendation of the Committee made under rule 16 may appeal to the High Court within thirty days of receipt of the decision.

Appeals

SCHEDULE  
PRESCRIBED FORMS

(Rules 5(2), 9(2),9(4) and 13 (4))

FORM I  
(Rule 5(2))

FORM OF COMPLAINT AGAINST A MEMBER/STAFF MEMBER

TO: THE DISCIPLINARY COMMITTEE

IN THE MATTER OF C.D.\* \_\_\_\_\_, A MEMBER/STAFF MEMBER AND  
IN THE MATTER OF THE NATIONAL CONSTITUTIONAL CONFERENCE ACT, NO. 19 OF 2007.

I, the undersigned, .....hereby make complaint—

(a) that .....of .....  
member /staff member, may be required to answer the allegations contained in the affidavit which accompanies this complaint;

(b) that the Committee determines the matter as the Committee considers appropriate.

In witness whereof I have hereunto set my hand this.....day of....., 20.....

..... Signature.

..... Address.

..... Occupation.

\* The full name must be stated.

Initials are not sufficient.

FORM II  
(Rule 5 (2))

FORM OF AFFIDAVIT BY COMPLAINANT

INTHE MATTER OF C.D. \_\_\_\_\_, A MEMBER/ STAFF MEMBER AND INTHE MATTER OF THE NATIONAL CONSTITUTIONAL CONFERENCE ACT, NO. 19 OF 2007.

I, \* A.B., of .....make oath and say as follows:

(1) C.D., of ....., .....

(2) (Here state the facts concisely in numbered paragraphs)

.....  
.....  
.....

Sworn by the said .....}

at ..... on the ..... day}

of.....,20..... }

Before me .....}

Commissioner for Oaths

\* Insert full name, address and occupation.

FORM III  
(Rule 9(2))

FORM OF NOTICE TO MEMBER/STAFF MEMBER BY THE DISCIPLINARY COMMITTEE

IN THE MATTER OF C.D \_\_\_\_\_, A MEMBER /STAFF MEMBER, AND IN THE MATTER OF THE NATIONAL CONSTITUTIONAL CONFERENCE ACT, NO. 19 OF 2007.

To: C.D., of \_\_\_\_\_, member /staff member.

A complaint has been made by A.B., of \_\_\_\_\_ to the Disciplinary Committee constituted under the National Constitutional Conference Act, 2007, that you may be required to answer the allegations contained in the affidavit, whereof a copy accompanies this notice.

The \_\_\_\_\_day of \_\_\_\_\_, 20\_\_\_\_, is the day fixed by the Committee for the hearing of the complaint.

The Committee will sit at \_\_\_\_\_Lusaka at \_\_\_\_\_ hours.

If you fail to appear, the Committee may, in accordance with the National Constitutional Conference (Disciplinary Committee Proceedings) Rules, 2008, proceed in your absence.

You are required by the said Rules to furnish to every other party to the complaint and to the Disciplinary Committee at \_\_\_\_\_ Lusaka, at least fourteen days before the said \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, an answer together with a list and copies of all the documents on which you propose to rely.

Any party may inspect the documents included in the list furnished by the other party, and a copy of any document mentioned in the list of any party must be furnished to that party by the other within three days after receipt of such application.

You are required to acknowledge the receipt of this notice without delay.

Dated this \_\_\_\_\_day of \_\_\_\_\_, 20\_\_\_\_\_.

Secretary

ANSWER BY MEMBER/MEMBER OF STAFF

To: The Disciplinary Committee

The member/staff member respectfully submits her/his/their answer as herein stated (set out in numbered paragraphs the member's/staff member's answer to the complaint).....

.....  
.....  
.....

Date: ..... Signed: .....

(N.B. A print of the National Constitutional Conference (Disciplinary Committee Proceedings) Rules, 2008, is sent herewith for your information and guidance.)

FORM IV  
(Rule 9(4))

FORM OF NOTICE TO COMPLAINANT BY THE  
DISCIPLINARY COMMITTEE

IN THE MATTER OF C.D. \_\_\_\_\_, A MEMBER/STAFF MEMBER, AND IN THE MATTER  
OF THE NATIONAL CONSTITUTIONAL CONFERENCE ACT, NO. 19 OF 2007.

To: A.B. .... of .....

The ..... day of ....., 20....., is the day fixed by the Disciplinary Committee constituted under the National Constitutional Conference Act, 2007, for the hearing of your complaint in the matter of C.D., member /staff member.

The Committee will sit at ..... Lusaka, at ..... hours.

You are required by the National Constitutional Conference (Disciplinary Committee Proceedings) Rules, 2008, to furnish to every other party to the complaint and to the Disciplinary Committee at ..... Lusaka, at least fourteen days before the said day of ....., 20....., an answer together with a list and copies of all the documents on which you propose to rely.

Any party may inspect the documents included in the list furnished by the other party, and a copy of any document mentioned in the list of any party must be furnished to that party by the other within three days after receipt of such application.

If any party shall fail to appear and the Committee decides to proceed in the party's absence, any party appearing must be prepared to prove service, in accordance with the National Constitutional Conference (Disciplinary Committee Proceedings) Rules, 2008, of the list and copies of documents and any other notice or correspondence since the lodging of the complaint. You are requested to acknowledge the receipt of this notice without delay.

Dated this ..... day of ....., 20.....

.....  
Chairperson  
The Disciplinary Committee

(N.B.—A print of the National Constitutional Conference (Disciplinary Committee Proceedings) Rules, 2008, is sent herewith for your information and guidance.)

FORM V  
(Rule 13 (4))

FORM OF SUBPOENA DUCES TECUM

IN THE MATTER OF C.D. \_\_\_\_\_, A MEMBER/STAFF MEMBER, AND IN THE  
MATTER OF THE NATIONAL CONSTITUTIONAL CONFERENCE ACT, NO. 19 OF 2007.

To: \_\_\_\_\_

You are commanded to attend before the Disciplinary Committee constituted under the National Constitutional Conference Act, 2007, at.....on the ..... day of....., 20....., at..... hours and so from day to day until the complaint in the above matter is heard, to give evidence on behalf of.....and also to bring with you and produce at the time and place aforesaid (specify documents to be produced).

.....  
Chairperson  
The Disciplinary Committee

G. KUNDA,  
*Minister of Justice*

LUSAKA  
12th February, 2008  
[MOJ/SI/07/19]

