



**REPUBLIC OF ZAMBIA**

**REPORT**

**OF THE**

**COMMITTEE ON LEGAL AFFAIRS, GOVERNANCE, HUMAN RIGHTS,  
GENDER MATTERS AND CHILD AFFAIRS**

**ON THE**

**CONSTITUTION OF ZAMBIA (AMENDMENT) (NO. ) BILL, N.A.B. NO. 17 OF  
2015**

**FOR THE**

**FIFTH SESSION OF THE ELEVENTH NATIONAL ASSEMBLY  
APPOINTED ON WEDNESDAY, 25<sup>TH</sup> SEPTEMBER, 2015**

*Printed by the National Assembly of Zambia*

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**REPORT OF THE COMMITTEE ON LEGAL AFFAIRS, GOVERNANCE, HUMAN RIGHTS, GENDER MATTERS AND CHILD AFFAIRS, ON THE CONSTITUTION OF ZAMBIA (AMENDMENT) (NO. ) BILL, N.A.B. NO. 17 OF 2015, FOR THE FIFTH SESSION OF THE ELEVENTH NATIONAL ASSEMBLY APPOINTED ON WEDNESDAY, 25<sup>TH</sup> SEPTEMBER, 2015**

*Consisting of:*

Mr C Mweetwa, MP (Chairperson); Ms V Kalima, MP; Mr M A Malama, MP; Mr S Masumba, MP; Mr H Kunda, MP; Mr B M Ntundu, MP; Mrs M Miti, MP; and Mr M Kapeya, MP.

The Honourable Mr Speaker  
National Assembly  
Parliament Buildings  
P O Box 31299  
**LUSAKA**

Sir

Your Committee has the honour to present its Report on the Constitution of Zambia (Amendment) (No. ) Bill, N.A.B. No. 17 of 2015, referred to it by the House on Thursday, 15<sup>th</sup> October 2015.

**FUNCTIONS OF THE COMMITTEE**

2. In addition to duties conferred upon the Committee under the Standing Orders of the House, the Honourable Mr Speaker, or any order of the House, your Committee may consider Bills referred to it by the House.

**MEETINGS OF THE COMMITTEE**

3. Your Committee held a total of thirteen (13) meetings to consider the Constitution of Zambia (Amendment) (No. ) Bill, N.A.B. No. 17 of 2015.

## **PROCEDURE ADOPTED BY THE COMMITTEE**

4. In considering the Bill, your Committee requested written submissions from various stakeholders, who also appeared before it and made oral submissions.

## **OBJECTS OF THE BILL**

5. The object of The Constitution of Zambia (Amendment) (No.) Bill, 2015, is to amend the Constitution of Zambia, Cap. 1, of the Laws of Zambia, so as to, among other things, revise the Preamble to the Constitution in order to recognise the multi-ethnic and multi-cultural character of Zambia to honour and recognise freedom fighters and ensure that all powers of the state are exercised in common interest reassert the supremacy of the Constitution; revise the provisions on citizenship in order to permit dual citizenship; provide for representation of the people through a majoritarian electoral system of electing the President of the Republic where the winning candidate must receive more than fifty percent of the valid votes cast and a mixed member proportional representation system of electing members of Parliament; provide for rights and obligations of political parties as well as the establishment and management of the Political Parties' Fund; revise the provisions relating to the composition and procedure of the Legislature; revise the provisions relating to the Executive; provide for the election of the Vice-President of the Republic as a running mate to a presidential candidate; revise the provisions relating to the Judiciary in order to provide for the establishment of the Court of Appeal and the Constitutional Court as well as revise the jurisdiction of superior courts; provide for a devolved system of governance, the institution of the Chieftaincy and traditional institutions, values and principles of public service, and defence and national security; and revise the provisions relating to public finance.

## **SPECIFIC PROVISIONS OF THE BILL**

6. The specific provisions of the Bill are set out below.

**The Preamble** - The Preamble to the Constitution sets out the aspirations of the people of Zambia, which are the basis of the Constitution.

### **Clause 1- Short Title**

Clause 1 provides the short title of the Bill.

### **Clause 2- Repeal and Replacement of Preamble**

This clause repeals and replaces the preamble to the Constitution. It outlines the principles, values and aspirations by which the people will be governed and on which the Constitution is based.

### **Clause 3 – Repeal and Replacement of Parts I and II**

Clause 3 repeals and replaces Parts I and II of the Constitution. The provisions of the proposed Parts I and II are briefly outlined hereunder.

#### **Part I: Supremacy of Constitution**

Under this part the Bill provides for inter-alia; the supremacy of the Constitution, defence of the Constitution which places an obligation on every person to defend the Constitution and prevent its abrogation, clothes the Republic with sovereignty and states its territorial boundaries, vests sovereign authority in the people of Zambia which they may exercise directly or through their elected or appointed representatives or institutions; prescribes the national symbols of the Republic, and provides for what will constitute the Laws of Zambia.

#### **PART II: National Values, Principles And Economic Policies**

In Part II the Bill lays out the national values and principles of the Republic, which include good governance and sustainable development, among others. It also sets out the manner in which the national values and principles are to be applied and further makes it mandatory for the President to make an annual report to the National Assembly on the progress made in the application of the values and principles.

### **Clause 4 – Repeal and Replacement of Part IV**

Clause 4 repeals and replaces Part IV of the Constitution and in addition it provides for a new Part V. The brief provisions of Parts IV and V are as set out below.

#### **PART IV**

Under this part, the Bill preserves the citizenship of persons who were citizens of the Republic prior to the commencement of the Constitution. The Bill also provides for the different categories of citizenship or means by which citizenship can be acquired.

This part also permits a Zambian citizen to acquire the citizenship of another country and mandates the Citizenship Board to bestow citizenship on a person who has applied for citizenship to the Citizenship Board, who before the commencement of the Constitution ceased to be a citizen by virtue of acquiring the citizenship of another country.

Further, Part IV permits a citizen to renounce their citizenship and also sets out the means by which a citizen can be deprived of citizenship. It further establishes the Citizenship Board of Zambia, sets out the entitlements of citizens including a document of identification. The responsibilities of a citizen are also set out under this part.

#### **PART V – Representation of the People**

This part makes provision for the conduct of elections to the offices of Republican President, Member of Parliament and councillor. It further provides for various aspects of an electoral process including the franchise, electoral systems, access to media, nomination of candidates, the electoral code of conduct, fixing of election date, by-elections and delimitation of constituencies and wards. It also makes provision for certain rights of political parties and values that political parties are supposed to adhere to.

#### **Clause 5: Renumbering and Renaming of Part V**

Clause 5 renumbers Part V of the Constitution as Part VI and deletes the heading to that part and substitutes it with the heading “LEGISLATURE” and the sub-heading “Legislative Authority”.

## **Clause 6 – Repeal and Replacement of Articles 62 to 78**

Clause 6 repeals and replaces Articles 62 to 78 of the Constitution. Some of the notable provisions under clause 6 include; Article 61, which provides for the legislative authority of the Republic and requires that it is exercised in a manner that protects the Constitution and promotes the democratic governance of the Republic. Article 62 establishes the Parliament of Zambia and vests legislative authority in it.

Other provisions are Article 63, which stipulates the functions of Parliament and the National Assembly, Articles 64 and 65 pertaining to the introduction of Bills and Money Bills, respectively, in the National Assembly, Articles 68 and 69 on the election to and composition of the National Assembly and nominations under party lists respectively, Article 70 on qualifications and disqualifications of Members of Parliament, Article 73 on petition to challenge the election of a Member of Parliament, Article 74 on leader of Government Business and Leader of the Opposition, and Article 76 which guarantees the Members of Parliament's freedom of speech, and powers, privileges and immunities of Members of Parliament as shall be prescribed in an Act of Parliament.

## **Clause 7 – Repeal and Replacement of Articles 80 to 90**

The clause repeals and replaces Articles 80 to 90 of the Constitution.

Under clause 7, some of the notable provisions include; Article 80, which empowers the National Assembly to establish parliamentary committees, Article 81, which makes provision for the term of Parliament, the circumstances under which Parliament can be dissolved and the procedure for dissolving Parliament by the President, and the prorogation of Parliament by proclamation of the President, in consultation with the Speaker.

Further, Article 82 makes provision for the election of the Speaker and two Deputy Speakers, by Members of Parliament, through secret ballot; the qualifications they require to hold office; the manner in which the offices of Speaker and Deputy Speaker become vacant; and it prohibits the transaction of business in the National Assembly during such vacancy other than an election to the office of Speaker or Deputy Speaker.



Other notable provisions include Article 83, which empowers the National Assembly to remove the Speaker or Deputy Speaker on specified grounds and the procedure for such removal. Further, Article 84 provides for the establishment of the office of Clerk of the National Assembly and for the appointment, qualifications, removal, retirement and resignation of the Clerk.

Furthermore, Article 86 makes provision for the Presidential address to the National Assembly and sending of messages by the President to the National Assembly. Article 87 provides for the censure of a Minister or Provincial Minister, where the Members of Parliament are dissatisfied with the conduct or performance of that Minister or Provincial Minister.

### **Clause 8 – Repeal and replacement of Parts VI to XIV**

Clause 8 repeals and replaces Parts VI to XIV of the Constitution, and further introduces new Parts XV to XX. Below is a summary of the provisions under these parts.

### **Part VII – Executive**

This part provides for the executive authority, which emanates from the people of Zambia, and sets out the manner in which it is to be exercised. It also makes provision for the President of the Republic, who is the Head of State and Government and Commander-in-Chief of the Defence Force. This part further vests executive authority in the President and empowers him/her to exercise various executive functions, including the appointment of certain officials to public office and the exercise of the prerogative of mercy.

Other provisions under this Part relate to protection of the President from legal proceedings, qualifications and disqualifications for nomination as a candidate for election as President, procedure for election of a President, transition period before assuming office, assumption of office, tenure of office and vacancy in office of the President, removal of President on various grounds.

Notable provisions under this part are the election of the Vice President as the running mate to a Presidential candidate, appointment of Ministers from outside Parliament and the appointment of Parliamentary Secretaries from among Members of Parliament.

### **Part VIII – Judiciary**

Under this part it is provided that judicial authority emanates from the people and should be exercised in a manner that promotes accountability. It vests judicial authority in the Courts of Zambia.

A notable provision under this part provides for the establishment of a Constitutional Court and ranks it as equal to the Supreme Court. The establishment, composition, sittings and jurisdiction of the Constitutional Court, the Supreme Court, the Court of appeal and the High Court are provided for. Provision is also made for the functional and financial independence of the Judiciary.

Further, under this part, the office of Chief Justice is established as head of the Judiciary and the functions of that office are set out. The part also establishes the office of Deputy Chief Justice and that of President of the Constitutional Court.

The Part further provides for appointment of judges, qualifications for appointment, tenure of office, and procedure for the removal of a judge among other important provisions. The Part also establishes the office of Chief Administrator of the Judiciary who is to be appointed by the Judicial Service Commission.

### **Part IX – General Principles of Devolved Governance**

This part provides for the devolution of power from national government level to local government level. It also sets out the system that is to be followed providing for the functions at national, provincial and local government level and sets out the principles that are to be adhered to by the different levels of government. It provides for local governance to be undertaken through sub-structures and it also makes it mandatory for the Government to provide adequate resources to the sub-structures to enable them perform their functions.

This part further sets out the circumstances under which national legislation will prevail over provincial legislation where there is a conflict between the two and mandates the Constitutional Court to interpret the legislation in a manner that avoids conflict where an apparent conflict between the two pieces of legislation exists.

### **Part X – Provinces, Districts, Wards and Provincial Administration**

This part sets out the number of Provinces, districts and wards in the country. It permits the President, subject to approval of the National Assembly, to create or divide a Province or merge two or more Provinces. It also permits sixty percent or more of the registered voters in a Province to petition the President to merge two Provinces or divide a Province. Notable under this part is provision for the establishment of a Provincial Assembly in each Province. This includes its composition and qualifications for the members of the Provincial Assembly and the term of the Assembly.

### **Part XI – Local Government**

This part establishes a local government system where, among other things, functions, responsibilities and resources will be transferred from the government to the local level while, at the same time, ensuring a local government system based on principles designed to enhance the performance of functions and the people's participation in democratic governance. The part provides for the functions of a local authority and prohibits the national Government, provincial administration and Provincial Assembly from interfering with or compromising a local authority's right to perform its functions.

Further, this part makes provision for the establishment of councils and the election of councillors and composition and tenure of councils. Provision is also made to empower a local authority to levy, impose, recover and retain local taxes as prescribed. The part also establishes the Constituency Development Fund and the Local Government Equalisation Fund and mandates Parliament to appropriate monies to these Funds yearly.

## **Part XII – Chieftaincy and House of Chiefs**

This part guarantees the existence of the institution of chieftaincy and traditional institutions. It establishes the institution of chieftaincy as a corporation sole with perpetual succession and the capacity to sue and be sued. In addition, the institution of chieftaincy has the capacity to hold property in trust for its subjects. The part also makes provision for the rights, privileges and benefits of chiefs and permits a chief to seek and hold a public office provided that a chief who seeks to hold office in a political party or contest an election or is appointed to a state office shall abdicate his or her throne.

This part also establishes the House of Chiefs and prescribes its composition, functions and the tenure of office of its members. There is also established the office of the Clerk of the House of Chiefs and other staff which shall be offices in the public service.

## **Part XIII – Public Service**

Under this part, the guiding values and principles of the public service and their application are set out. There is a provision, which vests the power to constitute and abolish public offices in the President, subject to recommendations of the relevant Service Commission.

Provisions under this part establish a number of constitutional offices in the public service and make provision for qualifications for appointment to such offices, functions, vacancy and removal or resignation from such offices. These offices include that of Secretary to the Cabinet, Attorney-General, Solicitor-General, Director of Public Prosecutions, Secretary to the Treasury, and Permanent Secretary.

Provisions under this part require a public officer who seeks election to resign. This requirement also extends to a Constitutional Office holder.

## **Part XIV – Pension Benefit**

This part introduces a right to a pension benefit to an employee, including a public officer and Constitutional Office holder, which shall not be withheld or altered to the employee's disadvantage. This right requires that a pension benefit is paid promptly and regularly; and

where a pension benefit is not paid on the person's last working day such person shall stop work but shall be retained on the payroll until the payment of the pension benefit based on the last salary received by that person while on the payroll.

### **Part XV – Defence and National Security**

Provisions under this part establish the Defence Force of Zambia as well as national security services and set out their composition and functions. This part also provides the principles that are to apply to the Defence Force and national security services and permits a member of the Defence Force and national security services to register as a voter and to vote in an election or referendum.

The part makes provision for the Defence Force and national security services to be subordinate to civilian authority as vested in the state organs and be adequately and properly equipped to enable them effectively perform their functions. Under this part, there is also provision for the qualifications of a person who can serve in the Defence Force and national security services; deployment outside the Republic by the President subject to informing the National Assembly and prohibition of activities relating to defence and national security.

### **Part XVI – Public Finance and Budget**

This part makes provision for the guiding principles of public finance, imposition of tax, establishment of a consolidated fund and withdrawals from and investment in the consolidated fund, establishment of the Compensation Fund for settling claims against the state, borrowing and lending by Government, and the mandate placed on the Minister responsible for finance to present a National Budget to Parliament every financial year. The part also makes provision for circumstances that will lead to the enactment of an Appropriation Act, Supplementary Appropriation Act and Excess Expenditure Appropriation Act.

Some other notable provisions under this part relate to budget and planning legislation; borrowing and lending by Government; public procurement and disposal of state assets; preparation and submission of the financial report for the Republic by the Minister of Finance to the Auditor-General; and preparation and submission of an audit report to the President and

the National Assembly by the Auditor-General; on the accounts of the Republic audited in respect of the preceding year.

### **Part XVII – Central Bank**

Under this part, the Bank of Zambia is established as the central bank of the Republic and its functions are set out. Further, there is provision for the constitution of a Board of Directors for the Bank in whom the functions of the Bank are vested. The central bank is granted autonomy in the performance of its functions.

The Bill also creates the office of Governor of the Bank of Zambia who shall be the Chairperson of the Board of Directors and is to be appointed by the President, subject to ratification by the National Assembly. Qualifications for appointment to the office of Governor are also set out.

### **Part XVIII – Services, Commissions and other Independent Offices**

This part sets out provisions for the principles that are to apply to commissions and establishes various services and service commissions. Some of the commissions established are the Parliamentary Service Commission; the Judicial Service Commission; the Civil Service Commission; the Teaching Service Commission; the Zambia Correctional Service Commission; the Electoral Commission; the Human Rights Commission; the Gender Equity and Equality Commission; and the Lands Commission. The Bill also establishes investigative Commissions, namely: the Judicial Complaints Commission and the Police Public Complaints Commission.

This part also makes provision for the financial independence and expenses of the commissions, functions and powers, qualifications for appointment and tenure of members of commissions.

The most notable provision under this part is the establishment of the office of Public Protector. There is also provision for the qualifications, functions, tenure of office, authority and independence of a person holding the said office. Further, there is provision for the procedure, staff, finances, financial management, administration and operations of the said

office and the decentralisation of the office to the provinces and progressively to districts. There is also requirement for the office of Public Protector to report to the National Assembly on matters concerning its affairs.

Further, provisions under this part establish the office of Auditor-General and provide for the qualifications for appointment and appointment to the said office, including the functions, operations, management and finances of the office; and the recruitment, supervision, grading, promotion and discipline of the staff of the Office of the Auditor-General. Additionally, there is provision for the decentralisation of the office to the provinces and progressively to districts.

### **Part XIX – Land, Environment and Natural Resources**

This part vests land in the President and sets out the principles upon which land is to be held, used and managed. It also makes provision for the delimitation and classification of land, the principles upon which the country’s environment and natural resources are to be governed, and the obligations of the State in the utilisation of natural resources and management of the environment.

### **Part XX – General Provisions**

This part provides for general provisions which include; the official language and status of other local languages; oath of office and prescribed oaths; conflict of interest in the performance of functions of public office; declaration of assets by public officers; interpretation of the Constitution; and power to make statutory instruments, among others.

## **SUMMARY OF STAKEHOLDERS’ CONCERNS AND RECOMMENDATIONS**

### **Preamble**

7.0 Some stakeholders, while agreeing with the idea of honouring freedom fighters in the Constitution, submitted that there was need to clearly define and classify “freedom fighters”.

*The stakeholders, therefore, proposed that details on freedom fighters could be drawn up in an Act of Parliament or a one-time Honours Declaration under the hand of the President.*

Other stakeholders submitted that the phrases “multi-ethnic”, “multi-racial”, and “multi-cultural” were not only unclear but unnecessary and need not be in the Constitution. In addition, the stakeholders were of the view that they could be a source of unnecessary challenges and litigation.

*The stakeholders, therefore, recommended that the phrases be deleted.*

## **Part I-Supremacy of the Constitution**

### **Article 1: Supremacy of Constitution**

Stakeholders recommended that Article 1 be amended to provide for the general rules of international law to form part of the Laws of Zambia. In addition, the stakeholders raised concern on the numerous international conventions that Zambia had ratified but which were not domesticated.

*The stakeholders recommended that a new Article be inserted in the Constitution to provide for a time frame within which Zambia should domesticate international conventions that it ratified.*

Some stakeholders expressed misgivings about Article 1(4) which provided that the legality or validity of the Constitution could not be challenged before any organ of the State. They submitted that the intended meaning of the provision was unclear.

*The stakeholders, therefore, submitted that in the absence of clarity, the provision should be deleted.*

## **Part II-National Values, Principles and Economic Policies**

### **Article 8: National Values and Principles**

Stakeholders submitted that Article 8, which provided for national values and principles and specified what the national values and principles were, was restrictive.



*The stakeholders, therefore, proposed that the list be inexhaustive to enable national values, principles, objectives and directive principles that may arise in future to be adopted without having to amend the Constitution.*

Other stakeholders recommended the recognition of culture and religious values as some of the national principles.

*The stakeholders, therefore, recommended that Article 8 be amended to provide for culture and religious values as some of the national values.*

#### **Article 9: Application of National Values and Principles**

Some stakeholders submitted that the principles of morality and ethics contained in Article 8 (a) could not easily be determined. This was because Zambia was a multi-cultural society comprising people with varying views on morality and ethics. The stakeholders, thus, submitted that to include morality and ethics as principles to give guidance on the interpretation of the Constitution and the law, as provided for under Article 9 (1), would create uncertainty, inconsistency and absurdity in the law and its application.

*The stakeholders, therefore, recommended that Article 9 be amended so as to exclude morality and ethics as principles to be applied in interpreting the Constitution and other laws.*

Other stakeholders expressed concern that Article 9 (2), which required the President to make an annual report to the National Assembly on the progress made in the application of the values, objectives and principles provided under Part II, was not only vague but lacked guidelines on how to measure such progress, thereby rendering the provision redundant.

*The stakeholders, therefore, recommended that the provision be deleted.*

#### **Article 10: Basis of Economic Policies**

Some stakeholders were concerned that while the marginal note for Article 10 made reference to the basis of economic policies, the Article brought out the measures the Government would put in place to promote economic development and investment. The stakeholders, however, acknowledged that the Article was important because it would guide the Government on the development and implementation of national policies.

*The stakeholders proposed that the provision be rewritten so as to provide for the basis of economic policies.*

Other stakeholders observed that it was important for Article 10 to include a provision compelling the Government to pursue prudent economic policies that were consistent over a period beyond five years.

*Therefore, the stakeholders submitted that the Article should be amended to include the following:*

- “(1) The Government shall, in consultation with the business communities through their representatives, associations and captains of industry, pursue and implement prudent economic policies and shall enable legislation that will safeguard Zambia’s economic assets, value and credit worthiness.*
- (2) The Government shall limit its monetary borrowing both locally and foreign, to no more than ten per centum, e.g. the national annual foreign exchange earnings, or five per centum of national GDP, or ten per centum of gross national tax earnings, whichever is greater.*
- (3) The Government shall limit its total deficit financing, at any time including amounts owing to suppliers, to no more than five percent of the budget for the year being budgeted.*
- (4) There shall be provided two separate budgets, with the first representing “Recurrent Expenditure” needed for the operation of Government administration, while the “second” shall represent the “Developmental Budget” which shall include capital programmes expenditure intended to advance the economic, social and generally infra-structural development of each region.*

*In compiling the developmental budget, Government shall be required to spread such development equitably between all provinces, districts and constituencies.*

- (5) *Government shall encourage research and development in industrial, agricultural production / products, livestock and fisheries and ICTs; to improve industrial production, business productivity in general and the development of products from Zambia’s natural resources endowment.*

## **Part IV- Citizenship**

### **Article 35: Citizenship by Birth**

Some stakeholders expressed concern about the use of the phrase “*whose nationality and parents are not known*” in Article 35 (2). They submitted that some foreign nationals could abuse the provision to obtain citizenship for their children. Additionally, the stakeholders submitted that since research had shown increasing cases of unaccompanied minors moving from one country to another, the provision would encourage the influx of minors into the country.

*The stakeholders, therefore, recommended that clause (2) be deleted.*

### **Article 39: Dual Citizenship**

The majority of stakeholders welcomed the provision for dual citizen. Some stakeholders, however, did not support dual citizenship arguing that it was important for people to decide which country they wished to belong to.

## **Part V-Representation of the People**

### **Article 45: Principles of Electoral Systems and Process**

Some stakeholders observed that Article 45 (1) (c), which provided for a fair representation of the various interest groups in society during the election of a President, Member of Parliament or Councillor, was too broad. The stakeholders were of the view that some interest groups such as persons with disabilities were usually forgotten when they were not specifically mentioned.

*The stakeholders, therefore, recommended that Article 45 1 (c) should be amended to read as follows:*

“45. (1) *The electoral systems provided for in Article 47 for the election of President, Member of Parliament or Councilor shall ensure-*

*(c) fair representation of various interest groups including persons with disabilities in society”*

#### **Article 46 - Franchise**

Some stakeholders were of the view that, if Article 46 considered a person aged eighteen (18) years mature enough to vote in an election, then such a person could also stand for any elective office under the Constitution. Therefore, they observed that Articles 70 and 100, which required a person seeking to contest in an election for Member of Parliament and President to have attained the age of 21 and 35, respectively, was discriminatory against adult persons who had not attained the ages of 21 and 35 years.

*The stakeholders recommended that Article 46 be amended to read as follows:*

*“A citizen who has attained the age of eighteen years is entitled to be registered as a voter, to vote and to hold elective office as Councillor, Member of Parliament and President as provided under this Constitution, by secret ballot or any other method as prescribed by this Constitution or by an Act of Parliament.”*

#### **Article 47: Electoral Systems**

The majority of stakeholders did not support the provision that a Presidential candidate must obtain more than fifty percent of the valid votes cast to win the election. They submitted that since none of the candidates in recent Presidential elections had managed to obtain fifty percent of the valid votes cast, this threshold would inevitably result in a rerun which would be costly for the country.

Some stakeholders expressed reservations about the new electoral system. They submitted that there was need for further research and adequate preparation and organisation before it was implemented. The stakeholders further submitted that the current electoral system was

adequate although it was prone to manipulation and that what needed to be addressed was how to prevent it from being manipulated.

*Most stakeholders, therefore, recommended that elections to the office of President be conducted directly under the first-past-the-post electoral system as per the provisions of the current Constitution, but that necessary measures should be put in place to avoid its manipulation.*

*Some stakeholders recommended the amendment of Article 47 to require a Presidential candidate to obtain a certain minimum percentage of valid votes cast in each province. This, the stakeholders submitted, would ensure an election result with a national character.*

#### **Article 50: Access to Media**

Some stakeholders observed that Article 50, which guaranteed political parties and candidates contesting an election access to the media during election campaigns, could result in many cases of litigation where a party or candidate alleged that they had not been availed access to the media during election campaigns. Furthermore, the stakeholders expressed concern that the provision did not specify whether the media being referred to was public or private.

*The stakeholders, thus, recommended that the provision should be recast to clarify which media was being referred to.*

*Further, other stakeholders recommended that Article 50 should be amended to mandate only the public media to provide equal and fair coverage of all political parties and candidates during election campaigns.*

#### **Article 56: Election Date for General Elections**

The majority of the stakeholders supported the concept of prescribing the date of the general elections in the Constitution. However, concern was expressed with regard to the 2016 general elections because the certification of the voter register was scheduled to end on 23<sup>rd</sup> July 2016, which would only be a few weeks before the election date.

### **Article 57: By-elections**

Stakeholders raised concern that despite the public outcry for the country to do away with by-elections which were costly to the nation, Article 57 provided for by-elections in the event that a vacancy occurred in the office of Member of Parliament for a constituency-based-seat, mayor, council chairperson or councillor.

*The stakeholders recommended that the clause be amended to do away with by- elections.*

### **Article 58: Constituencies, Wards and Delimitation**

Some stakeholders supported Article 58, on the division of Zambia into constituencies and wards for purposes of elections to the National Assembly and councils, respectively. The stakeholders further observed that Article 58 placed the power to determine the names and boundaries of constituencies and wards in the Electoral Commission. However, concern was raised on clause (7), which allowed a person to apply to the Constitutional Court for the review of a decision of the ECZ with regard to the delimitation of constituencies and wards. It was viewed that such an explicit provision would expose the ECZ to unnecessary litigation.

*The stakeholders, therefore, recommended that sub-clause (7) should be deleted.*

### **Article 59: Matters to Take into Account When Delimiting Constituencies and Wards**

Some stakeholders expressed concern that Article 59 did not provide a yardstick for balancing constituency boundaries.

*The stakeholders, therefore, recommended that the “population quota” provided under Article 77(4) of the current Constitution be replicated in Article 59 as this provided a reasonable yardstick for balancing constituency boundaries.*

### **Article 60: Political Parties**

Some stakeholders welcomed the regulation of political parties under Article 60, observing that this would strengthen internal party democracy and discourage the formation of one-man political parties. However, the stakeholders expressed concern that the Article did not specify which body would regulate the registration and funding of political parties.

*The stakeholders, thus, recommended that the Article should specify a body that would regulate the registration and funding of political parties. They further submitted that for purposes of transparency, these functions should not be performed by the ECZ.*

Further, some stakeholders submitted that under Article 60 (3), a political party was prohibited from being founded on, among others, religious ideologies or beliefs. The stakeholders stated that this contradicted the preamble to the Bill, which declared Zambia a Christian nation while upholding a person's right to freedom of conscience, belief or religion. Further, the preamble also proclaimed to uphold the human rights and fundamental freedoms of every person. The stakeholders were, thus, concerned that Article 60 (3) was inconsistent with the preamble.

*The stakeholders, therefore, proposed that the provision be recast so as to make it consistent with the preamble.*

Further, other stakeholders contended that it was within the democratic right of persons to form political parties on religious, gender or sectoral basis, and that in the past political parties had been formed on Christian values and principles and on sectoral basis. It was also contended that Article 60 (2) (b), which required a political party to have a national character, infringed on the rights of minority groups which may decide to form a political party.

*In view of this, the stakeholders recommended that clause (3) (a) be amended to delete the words "religious" "gender" and "sectoral" so that it reads as follows:*

*"(3) A political party shall not –  
(a) be founded on linguistic, racial, ethnic, tribal, or provincial basis or engage in propaganda based on any of these factors;"*

*In addition, it was recommended that clause (2) (b) be deleted.*

Some stakeholders were of the view that clause 60 (1) (b) and (c) were better placed under clause (2) so that a political party was mandated to undertake the actions thereunder, which would enhance democratic governance of political parties.

*The stakeholders, therefore, recommended that clauses (1) and (2) be amended to read as follows:*

*“60. (1) A political party has the right to disseminate information on social, political and economic programmes and of its political ideology.”*

*“(2) A political party shall –*

- a) promote the values and principles specified in this Constitution;*
- b) have a national character;*
- c) promote and uphold national unity;*
- d) promote and practice democracy through regular, free and fair elections within the party;***
- e) respect the rights of its members to participate in the affairs of a political party;*
- f) respect the right of its members to seek redress from a court or tribunal when aggrieved by a decision of the political party;*
- g) sponsor candidates for election or nomination to offices in respect of which elections are required to be held under this Constitution, other than a provincial assembly; and***
- h) subscribe to and observe the code of conduct for political parties, as prescribed.”*

Some stakeholders did not support the establishment of a Political Parties’ Fund in clause (4) for the following reasons:

- (i) the current economic status of Zambia rendered the establishment of the Fund untenable as the Government was already overburdened with massive economic and liquidity challenges;
- (ii) the proposal was open to abuse and had the potential to be misused as unscrupulous people may form political parties only for monetary gain;
- (iii) there was likelihood for beneficiaries of the Fund to be compromised and controlled by Government; and



- (iv) the funds from the Fund would not be distributed equitably as the ruling party was likely to get more funds than opposition parties.

However, other stakeholders supported the creation of the Political Parties' Fund, stating that it would enhance the participation of political parties in national matters, thereby strengthening their oversight role in the governance of the country.

## **Part VI-Legislature**

### **Article 63: Functions of Parliament and National Assembly**

Some stakeholders were of the view that Article 63 (2) (a) should have included as part of the National Assembly's oversight function, the approval of the National Vision and development plans.

### **Article 68: Election and Composition of National Assembly**

Some stakeholders supported the creation of one hundred and fifty-six (156) constituency-based seats and the introduction of ninety-four (94) seats to be allocated under the party-list system. However, other stakeholders expressed concern that Article 68 had deviated from the will of the majority of the people, who during the public consultative process had supported the composition of the National Assembly to consist of one hundred and fifty (150) elected MPs and one hundred (100) Members of Parliament under the party-list system.

*The stakeholders, therefore, recommended that clause (2) be amended so that it provides for one hundred and fifty (150) members elected directly under the first-past-the-post system and one hundred (100) members elected from party lists; as was provided in the initial draft constitution.*

Some stakeholders did not support the introduction of the proportional representation system arguing that the system was incompatible with a democratic society in which people elected their representatives through a secret ballot. The stakeholders further submitted that the composition of the National Assembly would be too large and hence too expensive to be sustained by the national budget which was already overstretched.

*The stakeholders, therefore, recommended maintaining the status quo where elections to the National Assembly were conducted under the first-past-the-post electoral system.*

*Other stakeholders recommended that elections to the National Assembly be conducted on the basis of a simple majority under the first-past-the-post segment of the mixed member proportional representation system as recommended by the National Constitutional Conference (NCC). This would entail a membership of 200 members as recommended by the NCC.*

Stakeholders also expressed concern that the formula used for the allocation of seats under the party-list under clause (3) was complicated. In addition, the stakeholders submitted that the Article made no reference to the number of seats to be allocated to particular people, who were severely under-represented in the National Assembly, such as the youth, women and the differently-abled.

Other stakeholders argued that the formula, in Article 68 (3), of allocating seats to political parties under the party list system, which based the calculation on the total aggregate vote to the National Assembly, did not represent the popularity and representation of that party. They stated that this was because while candidates of a political party to the National Assembly may have a smaller following, the presidential candidate of that party may have a bigger following.

*In view of this, they recommended that Article 68 be amended so that the calculation of the seats was based on the total average aggregate vote for elections to the National Assembly and for the Presidential candidate, and also to guarantee a number of seats for women, youth and persons with disabilities.*

## **Article 70: Qualifications and Disqualifications of Members of Parliament**

Some stakeholders held the view that clause (1) (b), which required a person to be at least 21 years old to qualify for election as a Member of Parliament, was discriminatory against adults who had not attained that age.

*They recommended that clause (1) (b) be amended to make a person who had attained the age of eighteen (18) years eligible to contest in an election for Member of Parliament.*

Other stakeholders submitted that a person who intended to contest for the office of Member of Parliament should not just be a citizen of Zambia, but a citizen by birth or descent, as was the case for a presidential candidate.

Other stakeholders submitted that clause (1) (d), which required a person to possess a minimum academic qualification of a grade twelve certificate to be eligible to contest elections for Member of Parliament, was discriminatory.

*The stakeholders recommended that the clause be deleted.*

### **Article 72: Vacation of Office as Member of Parliament and Dissolution of Political Party**

Some stakeholders were opposed to the idea of both the Speaker and the First Deputy Speaker remaining in office upon dissolution of Parliament.

*They recommended that only the Speaker should retain his/her office while the First Deputy Speaker should vacate his/her office, as was the case for the Second Deputy Speaker.*

### **Article 73: Petition of Election of Member of Parliament**

Some stakeholders raised concern that election petitions took long to be concluded. They submitted that while section 102 of the Electoral Act provided that the High Court should conclude an election petition within one hundred and eighty (180) days of it being filed, there was no time frame within which the Constitutional Court should conclude an appeal from the High Court under Article 73.

*Therefore, the stakeholders recommended that provision be made for the Constitutional Court to hear and determine an appeal within thirty (30) days.*

Other stakeholders submitted that it was not practical for the High Court to hear an election petition within thirty (30) days of it being filed in Court, due to the large number of witnesses the court needed to hear before determination of the matter. The stakeholders added that the provision only referred to the hearing of petitions by Courts when courts not only heard, but also determined matters before them..

*Therefore, the stakeholders recommended that the clause be amended to provide for an election petition to be heard **and determined** within one hundred and eighty (180) days.*

#### **Article 74: Leader of Government Business and Leader of Opposition**

Some stakeholders did not support the appointment of the Leader of Government Business from amongst parliamentary secretaries.

*They, thus, recommended that the current practice, where the Vice-President was the Leader of Government Business, be retained.*

#### **Article 82: Speaker, Deputy Speakers and Officers of National Assembly**

Some stakeholders expressed concern that Article 82 (1) (a) allowed the President to nominate a person for election as Speaker of the National Assembly. They submitted that the nomination of the Speaker by the President, who was the Head of the Executive, went against the principle of separation of powers and brought into question the Speaker's capacity to discharge his or her duties impartially.

*They, therefore, recommended that the Members of Parliament should nominate persons for the position of Speaker.*

Further, other stakeholders were opposed to the appointment of the First Deputy Speaker from outside the National Assembly as prescribed in clause (4).

*The stakeholders recommended that both the First and Second Deputy Speaker should be elected by Members of Parliament from amongst their number.*

#### **Article 89: Public Access and Participation**

Some stakeholders expressed concern that Article 89 (2), which allowed the National Assembly to exclude the public or the media from its meetings where there were justifiable reasons, was too broad.

*In this regard, they proposed that the provision be amended to state that the public can be excluded for justifiable reasons prescribed in the National Assembly rules on parliamentary practices and privilege.*

## **Part VII-Executive**

### **Article 91: Presidency and Vesting of Executive Authority**

Some stakeholders expressed concern that Article 91 (3), which provided the issues the President should take into consideration in exercising his or her executive authority, did not include having an equitable and corruption free government system.

*The stakeholders, thus, recommended that the following paragraph be included in Article 91(3):*

*“ensure an equitable and corruption free governance and government administration system.”*

### **Article 92: Executive Functions of President**

Some stakeholders observed that receiving consuls and heads of international organisations was a function, which ordinarily was exercised by the Minister of Foreign Affairs and not the President as provided in Article 92 (2) (b). The stakeholders, therefore, recommended that clause 2 (b) be amended to read:

*“(b) receive and recognise foreign ambassadors, high commissioners, plenipotentiaries and diplomatic representatives”.*

### **Article 98: Protection of President from Legal Proceedings**

Some stakeholders were of the view that since the immunity from criminal proceedings of a former President could be removed by the National Assembly to enable the prosecution of a former President on offences allegedly committed during his/her tenure of office as President, it was appropriate not to provide immunity to a former President.

*The stakeholders recommended that Article 98 be amended so that the immunity from criminal proceedings should cease when a President vacates office.*

### **Article 100: Qualifications and Disqualifications for Nomination as Presidential Candidate**

Some stakeholders submitted that the requirement for a presidential candidate to have attained a minimum age of thirty-five (35) was discriminatory.

*The stakeholders recommended that clause (1) (c) should be deleted.*

Other stakeholders raised concern that clause (1) (e), which required a Presidential candidate to have obtained a minimum of a grade twelve certificate, was discriminatory.

*The stakeholders recommended that clause 1 (e) be deleted.*

Other stakeholders submitted that clause (1) (e), did not recognise the current trend in the country in which a substantial number of people held tertiary qualifications. The stakeholders submitted that the minimum academic qualification proposed did not realistically take into consideration the duties of the Office of President nor portray the elevated and dignified position of the Office.

*The stakeholders, therefore, recommended that the minimum academic qualification should be a tertiary qualification obtained from a reputable local or international institution.*

Further, some stakeholders observed that Article 100 (1) (a), which required a presidential candidate to be a citizen by birth or descent, was discriminatory. They submitted that every citizen should have an opportunity to aspire for the office of President.

The stakeholders further opposed the requirement in clause 1 (f) for a presidential candidate to be fluent in the official language. The stakeholders further observed that the other qualifications for a presidential candidate introduced in clause (1) (d), (g) (f) and (h), were unnecessary and could be used maliciously to bar a person from contesting in an election.

Therefore, the stakeholders recommended that Article 100 be amended to provide for the qualifications of a presidential candidate as contained in the 1991 Constitution before it was amended in 1996, as follows:

*“A person shall be qualified to be a candidate for election as President if he –*

- (a) is a citizen of Zambia;*
- (b) has attained the age of thirty-five years;*
- (c) is a member of, or is sponsored by, a political party; and*
- (d) is otherwise qualified to be elected as a member of the National Assembly.”*

Further, some stakeholders observed that by implication Article 100 allowed an independent candidate to vie for the office of President. This was because unlike Article 34 (3) (d) of the current Constitution, which provided that a presidential candidate must be a member of, or be sponsored by a political party, to qualify to contest in a Presidential election, Article 100 had no such qualification.

*The stakeholders, thus, recommended that Article 100 should clearly state whether or not an independent candidate was qualified for election to the office of President.*

*Other stakeholders recommended that the requirement for a presidential candidate to be a member of or to be sponsored by a political party be provided for in Article 100, as was the current position.*

Further, stakeholders observed that in Article 100 (1) (b) the word “residency” had replaced the word “domiciled” in Article 34 (3) (f) of the current Constitution. The stakeholders were concerned that the term was restrictive and barred certain people who were ordinarily domiciled in Zambia from contesting the republican presidency.

*The stakeholders, therefore, proposed that the word “residency” be replaced with the word “domiciled” as is the case in Article 34 (3) (f) of the current Constitution.*

Stakeholders further submitted that Article 100 (2) (b), which disqualified a person from being nominated as a candidate for election as President if they held dual citizenship, had the effect of giving with one hand and taking away with the other. The stakeholders explained that people would shun dual citizenship so that they were not disqualified from contesting in a presidential election.

*The stakeholders, thus, recommended that the Article be amended to allow a person who holds dual citizenship, who wishes to run for the office of President, to do so upon renouncing his or her other citizenship.*

Other stakeholders were of the view that it was necessary for a person to have resided in the country for a reasonable period prior to his or her nomination as a presidential candidate. The stakeholders submitted that a period of at least ten (10) years was sufficient for this purpose.

*The stakeholders, therefore, recommended that Article 100 (1) (b) should read as follows:*

*“(b) has been ordinarily resident in Zambia **for a continuous period of ten years immediately preceding the election;**”*

With regard to the requirement for a presidential candidate to have the support of at least 100 registered voters in each province, as provided in Article 100 (1) (j), some stakeholders were of the view that the number was large and would disadvantage smaller parties.

*The stakeholders recommended that this Article be deleted and replaced with the current provision on the matter where a Presidential candidate was merely required to have the support of at least two hundred registered voters when filling his or her nomination.*

*Other stakeholders recommended that the number of registered voters from each Province, be reduced to twenty-five (25).*

Some stakeholders submitted that there was need for state security and transport to be provided to all presidential candidates and not only the Republican President during election campaigns. The stakeholders stated that this would level the playing field and help prevent



the country from being taken over by global mafias and unscrupulous business syndicates that sponsored campaigns out of self interest and the hope of personal benefit.

*The stakeholders, therefore, recommended that Article 100 should include a provision for all presidential candidates to be provided with state security from the moment they validly filed their nomination papers.*

#### **Article 101: Election of President**

Some stakeholders observed that Article 101 (3), which required a presidential candidate to attain more than fifty percent of the valid votes cast to win the election, provided for a rerun in the event that no candidate attained the fifty percent threshold. The stakeholders noted that holding a rerun would be costly for the country.

*They, therefore, recommended that in order to avoid the costs associated with a rerun, the first-past-the-post electoral system be retained. Others recommended that the Constitution should allow parties to form a coalition after the first election.*

Further, some stakeholders were concerned that the fourteen (14) day period provided under clause (5) for the Constitutional Court to hear a Presidential election petition was not practical. Further, the Article did not provide a time frame within which the Court should determine a Presidential election petition.

The stakeholders, therefore, recommended that clause (5) be recast to read as follows:

*“(5) The Constitutional Court shall hear **and determine** an election petition filed in accordance with clause (4) within **thirty** days of the filing of the petition.”*

#### **Article 104: Transition Period before assuming Office**

Stakeholders welcomed the provision for a transition period within which an incumbent President would hand over office to the President-elect. However, the stakeholders were of the view that the fourteen (14) days provided was inadequate for the smooth hand over of the executive functions.

*The stakeholders, thus, recommended that the period of fourteen (14) days be increased to thirty (30) days.*

#### **Article 110: Vice-President, Election to Office and Swearing-in and Article 111: Tenure of Office of Vice-President and Vacancy**

Some stakeholders welcomed the provision in Article 110 for the Vice-President to be elected as the running mate to a presidential candidate in a presidential election.

*Other stakeholders, however, recommended that Article 111 should be amended to provide that, where the Vice-President was expelled from the political party which sponsored him or her as a running mate, and such expulsion was confirmed by the High Court, or if the Vice-President joined another political party or formed a political party, he or she should vacate the office of Vice-President.*

#### **Article 116: Ministers**

Most stakeholders submitted that the proposed appointment of Ministers outside Parliament was not progressive and may result in challenges that may be difficult to anticipate at present. In addition, it was stated that some countries that had implemented this system were regretting it.

*The stakeholders, therefore, recommended that the President should appoint not more than 21 Ministers or such number of ministers as the National Assembly may approve from amongst members of the National Assembly. It was further recommended that the President should also appoint Provincial Ministers from amongst members of the National Assembly.*

### **Part VIII-Judiciary**

#### **Article 119: Principles of Judicial Authority**

Some stakeholders observed that Article 119 (1) provided that the courts should exercise judicial authority in a just manner that promoted accountability. They noted that the issue of

accountability was adequately covered under Article 120 (1), which stated that judicial authority should be exercised in accordance with the Constitution and other laws.

*Therefore, the stakeholders recommended that clause (1) be amended to read as follows:*

*“(1) The judicial authority of the Republic derives from the people of Zambia.”*

Further, the stakeholders observed that Article 119 (2) (b) provided for non-delay of justice as one of the guiding principles for the courts in exercising their judicial authority. They submitted that the Judiciary was a part of the justice delivery system comprising a number of stakeholders, equally important to the speedy dispensation of justice. In this regard, it would be difficult for the Judiciary to ensure speedy dispensation of justice independent of the other stakeholders.

*Therefore, they submitted that Article 119 (2) (b) should be deleted.*

Further, the stakeholders observed that Article 119 (2) (c) provided for the courts to award adequate compensation to a litigant, where compensation was payable, as one of the principles of judicial authority. The stakeholders submitted that an award of adequate compensation, where compensation was due, was a common law principle, which did not need to be provided for in the Constitution.

*In this regard, the stakeholders recommended that Article 119 (2) (c) should be deleted.*

The stakeholders further observed that Article 119 (2) (d) called upon the courts to promote dispute resolution mechanisms, including traditional dispute resolution mechanisms. They explained that traditional dispute resolution mechanisms did not fall within the jurisdiction of the Judiciary.

*Therefore, the stakeholders recommended that the clause be amended by the deletion of the words “including traditional dispute resolution mechanisms”.*

Furthermore, some stakeholders expressed concern about the principle of judicial authority, in Article 119 (2) (e), which stated that, “*justice shall be administered without undue regard*

*to procedural technicalities*". The stakeholders submitted that it was unclear what was meant by the phrase, "*without undue regard to procedural technicalities.*" The stakeholders added that Article 121 (3) (a) provided that the processes and procedures of the courts would be prescribed. In addition, courts adjudicated in accordance with prescribed rules of procedure so that the court process was predictable. Thus, the rules of procedure could not be said to be procedural technicalities. They submitted that non-observance of rules of procedure would lead to disorder in the litigation process and abuse in the exercise of discretion on procedural matters.

*Therefore, the stakeholders recommended that Article 119 (2) (e) be deleted.*

Some stakeholders observed that Article 119 (3) provided for principles for traditional dispute resolution mechanisms.

*The stakeholders recommended that since traditional dispute resolution mechanisms did not fall within the jurisdiction of the Judiciary, the provision should be deleted.*

#### **Article 120: Vesting of Judicial Authority and Performance of Judicial Function**

Some stakeholders expressed concern that by restricting the function of the court to hearing cases, Article 120 (2) (a) and (b) had neglected the other function of the court which was the determination of cases that it heard.

*Therefore, the stakeholders submitted that paragraphs (a) and (b) of clause (2) be amended by the insertion of the words "and determine" after the word "hear".*

#### **Article 121: System of Courts**

Stakeholders observed that local courts in the country were insufficient and that some rural communities were located far away from the nearest local court. The stakeholders further observed that Traditional Courts were not recognised and, therefore, not supported financially by the Government and yet they continued to provide justice to rural communities because they were closer to the communities, easily accessible and cheaper than local courts.

*The stakeholders, therefore, welcomed the inclusion of Article 121 (d), which provided for the creation of other courts.*

Stakeholders expressed concern that the listing of specialised courts in Article 121 (3) (b) restricted the establishment of other courts. They submitted that Article 94 (2) of the current Constitution, which made a general provision for the establishment of specialised courts and left the details of the courts to an Act of Parliament, allowed for flexibility in the establishment and naming of such courts.

*The stakeholders, therefore, recommended that Article 121 (3) (b) be deleted and substituted with Article 94 (2) of the current Constitution.*

The stakeholders further observed that Article 121 (4), which provided for devolution of the courts, except the Supreme Court and the Constitutional Court, to the province and progressively to districts meant that the Court of Appeal could be devolved to other provinces and districts. The stakeholders raised concern that the devolution of the Court of Appeal, which was an appellate Court, to provincial and district levels would be very costly because it meant establishing the Court as a permanent Court in provinces and districts.

*The stakeholders, therefore, submitted that Article 121 (4) be amended to include the Court of Appeal among the courts exempted from devolving to the provinces and districts.*

Further, the stakeholders observed that Article 121 (5) provided for superior courts to sit as circuit courts. The stakeholders submitted that the sitting of superior courts as circuit courts was an administrative matter, which did not need to be provided for in the Constitution.

*The stakeholders, therefore, recommended that Article 121 (5) should be deleted.*

### **Article 123: Functional Independence of Judiciary**

Some stakeholders observed that Article 123 (4) compelled persons holding public office to protect the independence, dignity and effectiveness of the Judiciary. The stakeholders

submitted that in order to strengthen the independence of judges this provision should include the protection of the independence of judges.

#### **Article 124: Financial Independence of Judiciary**

Some stakeholders expressed concern that while Article 124 (1) made the Judiciary a self-accounting institution, it did not provide for its financial autonomy. The stakeholders explained that without financial autonomy, the Judiciary could not be fully autonomous.

*The stakeholders, therefore, submitted that the Article be amended to provide for the financial autonomy of the Judiciary.*

The stakeholders further observed that Article 124 (2) provided for the Judiciary to be adequately funded in each financial year. They submitted that it was difficult to determine what amounted to adequate funding because the term “adequately” was subjective.

The stakeholders, therefore, recommended that the word “adequately” be replaced with the word “fully”.

#### **Article 126: Jurisdiction of Supreme Court**

Some stakeholders expressed concern that Article 126 (3), which provided that the Supreme Court was bound by its decision except in the interest of justice and development of jurisprudence, would fetter the Supreme Court and inhibit the development of the law.

*The stakeholders, therefore, recommended that Article 126 (3) be deleted.*

#### **Article 127: Sittings of Supreme Court**

Stakeholders expressed concern that by providing that in the absence of the Chief Justice the Supreme Court shall be presided over by the Deputy Chief Justice, Article 127 (4) (b) was ambiguous because it implied that the Chief Justice should be part of a constituted panel whenever he or she was within jurisdiction.

*Therefore, the stakeholders recommended that Article 127 (4) (b) be amended by the insertion of the words “from the constituted panel” after the words “Chief Justice”.*

### **Article 128: Establishment and Composition of Constitutional Court**

Stakeholders expressed concern that the Chief Justice, who was the head of the Judiciary, had been omitted from the composition of the final court of appeal on constitutional matters.

*Therefore, the stakeholders recommended that Article 128 be amended to include the Chief Justice as an ex-officio judge of the Constitutional Court.*

Further, the stakeholders observed that the composition of the Constitutional Court of eleven (11) judges in addition to the President and Deputy President of the Court was too high for a court that would only hear and determine constitutional matters.

*Therefore, the stakeholders recommended that Article 128 (c) be amended to reduce the number of judges of the Constitutional Court from eleven (11) to seven (7).*

### **Article 132: Jurisdiction of Court of Appeal**

Some stakeholders observed that Article 132 (2) provided for an appeal from a decision of the Court of Appeal to be made to the Supreme Court with leave of the Court of Appeal. The stakeholders further observed that as the Court of Appeal was an appellate court, its refusal to grant leave to appeal should be final. The stakeholders submitted that this would help eliminate frivolous appeals from the Court of Appeal to the Supreme Court.

*Therefore, the stakeholders recommended that Article 132 (2) be amended to provide that the refusal by the Court of Appeal to grant leave to appeal to the Supreme Court would be final.*

### **Article 143: Tenure of office of Judge**

Some stakeholders submitted that the provision of Article 143 (2) that a judge may retire, with full benefits, on attaining the age of sixty-five, was ambiguous.

*The stakeholders, therefore, recommended that clause (2) be amended by the insertion of the word “elect to” between the words “may” and “retire”.*

The stakeholders further observed that Article 143 (3) limited the term of office of the Chief Justice and President of the Constitutional Court to ten (10) years and allowed them to thereafter be re-engaged at the lower rank of Supreme Court Judge. The stakeholders expressed concern that this would erode the independence of the Judiciary and negatively affect the dignity of the office of Chief Justice and President of the Constitutional Court.

*Therefore, the stakeholders recommended that Article 143 (3) should be deleted.*

Further, the stakeholders expressed concern about Article 143 (6), which required a judge who was assigned or appointed to another office to resign as judge. They submitted that this would deny judges an opportunity to benefit from other equally important assignments. They further stated that the provision was contrary to international best practice, which encouraged the exposure of judges to international tribunals.

*Therefore, the stakeholders recommended that Article 143 (6) be deleted.*

#### **Article 144: Removal of Judge from Office**

Some stakeholders expressed concern that breach of the Judicial Code of Conduct Act, which regulated the conduct of judges, was not one of the grounds for the removal of a judge from office.

*Therefore, the stakeholders recommended that the Article should be amended to include breach of the Judicial Code of Conduct as one of the grounds for the removal of a judge from office.*

#### **Article 145: Procedure for Removal of Judge**

Some stakeholders observed that Article 145 mandated the Judicial Complaints Commission (JCC) to initiate or receive a complaint against a judge. The stakeholders further observed that, where the JCC established a *prima facie* case against a judge, the JCC was required to



submit a report to the President. The President was then required to suspend the judge within seven (7) days of receiving the report. The stakeholders expressed concern that this procedure did not afford a judge the opportunity to be heard before he or she was suspended and was, therefore, oppressive and contrary to the rules of natural justice. The stakeholders further felt that giving the JCC the power to initiate a complaint, establish a *prima facie* case and recommend the removal of a judge went against the principle of a fair hearing.

They further stated that placing the power to remove a judge in the JCC, took away the security of tenure guaranteed to judges under Article 98 of the current constitution and undermined the operations and independence of the Judiciary. The stakeholders were of the view that the question as to whether a judge ought to be removed from office should be inquired into by a tribunal and not the JCC.

*In this regard, the stakeholders recommended that Article 145 be deleted and replaced with the provisions of Article 98 (2) (3) (4) and (5) of the current Constitution, with the necessary modifications.*

The stakeholders also observed that while Article 137 gave the Chief Justice power to discipline judges, Article 145 did not involve the Chief Justice in the removal of a judge from office.

The stakeholders further observed that Article 145(1) empowered the JCC to recommend the removal of a judge for mental or physical disability. The stakeholders were concerned that mental or physical disability was not misconduct and, therefore, did not fall within the jurisdiction of the Judicial Complaints Commission.

*In this regard, the stakeholders recommended that the Judicial Service Commission and not the JCC should be mandated to inquire into the mental or physical disability of a judge.*

## **Part X-Provinces, Districts, Wards and Provincial Administration**

### **Article 151: Provinces, Districts and Wards**

Some stakeholders observed that Article 151 (1) gave power to the President to create or divide a Province or merge two or more Provinces subject to the approval of the National Assembly.

*The Stakeholders recommended that, in exercising this power, the President should also be required to consult the Chiefs concerned.*

*The stakeholders, therefore, recommended that Article 151 (1) be amended to read:*

*“The President may, **in consultation with Chiefs** and subject to the approval of the National Assembly, create or divide a Province or merge two or more Provinces, as prescribed.*

### **Article 153: Provincial Assemblies**

Stakeholders expressed concern that the creation of Provincial Assemblies would result in too many structures with legislative powers. They stated that this had the potential to overburden citizens with taxes, as each structure would have the power to impose taxes. Further, the stakeholders were of the view that the creation of Provincial Assemblies would merely create further bureaucracy for the local councils. They also stated that, due to their composition, the Provincial Assemblies appeared more accountable to the Executive than the people.

*They, therefore, recommended that the provisions on Provincial Assemblies be deleted. They, however, stated that if the provincial assemblies were to be maintained, their members should be elected directly by the people in the respective provinces.*

Some stakeholders observed that clause (1) provided for fewer representatives of organisations representing women, the youth, persons with disabilities and older members of society compared to the number of representatives for other organisations in a Provincial Assembly.

*The stakeholders recommended that clause (1) (g) (h) (i) and (j) be amended to increase the representatives of women, the youth, persons with disabilities and older members of society to three representatives so that all the organisations represented in a Provincial Assembly had equal representatives.*

Further, some stakeholders observed that the membership of Provincial Assemblies included three (3) Chiefs representing Chiefs in the Province. They expressed concern that some cultures did not allow chiefs to debate issues with ordinary people. In addition, there was a possibility of Members of the Provincial Assembly being uncomfortable contradicting the views of the Chiefs.

The stakeholders, therefore, recommended that in instances where the chief may not be comfortable to sit and deliberate with other Members, representatives of the chief should sit on the Provincial Assembly.

*They, therefore, recommended that clause (1) (c) should be amended to reads as follows:*

*“Three Chiefs **or their nominees** representing Chiefs in the Province.”*

Other stakeholders bemoaned the lack of representation of the labour movement in a Provincial Assembly.

*The stakeholders, therefore, recommended that the composition of a Provincial Assembly be amended to include eight trade union representatives.*

Some stakeholders observed that Article 153 (2) (g), which provided qualifications for membership to the Provincial Assemblies, precluded a person with a mental or physical disability that would make them incapable of performing the function of the office from being a member of the Provincial Assembly.

The stakeholders were of the view that this Article was discriminatory as the incapacity of any person to perform the functions of any office should be general and not based on physical or mental disability. They further submitted that the provision could be perceived as a deliberate attempt to prevent persons with disabilities from occupying office. The stakeholders further observed that the Article did not comply with the principles of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), which Zambia had ratified.

*The stakeholders, therefore, recommended that Article 153 (2)(g) be deleted.*

### **Article 157: Provincial Speaker and Deputy Provincial Speaker**

Some stakeholders expressed concern that Article 157(5) (b) (ii) prescribed physical and mental disability as a ground for the removal of the Provincial Speaker or Provincial Deputy Speaker from office where the disability made them incapable of performing the functions of their office. The stakeholders were of the view that this Article was discriminatory as the incapacity of any person to perform the functions of any office should be general and not based on physical or mental disability. The stakeholders further submitted that the provision could be perceived as a deliberate attempt to prevent persons with disabilities from occupying office.

*The stakeholders, thus, recommended the deletion of Article 157 (5) (b) (ii).*

### **General Comment on Part X**

Stakeholders submitted that Part X-Provinces, Districts, Wards and Provincial Administration as well as Part XI-Local Government were better provided for under other Acts of Parliament where details could be set out. The stakeholders added that including such details in the Constitution would make it unnecessarily voluminous.

### **Part XI-Local Government**

#### **Article 162: Election of Councillors, Composition of Councils and Tenure**

Some stakeholders held the view that as members of a council, chiefs represented almost all other members of a council and recommended that proxies should represent chiefs on a council.

*The stakeholders, thus, recommended that clause 2 (c) be amended to read as follows:*

*“(c) not more than three **Chiefs' proxies** representing chiefs in the district, elected by the chiefs in the district.”*

Other stakeholders expressed concern that some cultures did not allow chiefs to debate issues with ordinary people. In view of this, they recommended that Article 162 (2) (c) be amended as follows:

*“Not more than three Chiefs or their nominees representing Chiefs in the district, elected by the Chiefs in the district.”*

**Clause 163: Mayor, Deputy Mayor, Council Chairperson and Deputy Council Chairperson**

Some stakeholders observed that there were no justifiable grounds to deviate from the current method where a Mayor and a Council Chairperson ascended to office by appointment to the mayor and Council Chairperson being directly elected during elections for councillors. In addition, the stakeholders observed that the election of the mayor and Council Chairperson need not be provided for in the Constitution.

*The stakeholders, therefore, recommended that the status quo of appointing the mayor and council Chairperson as provided in the Local Government Elections, Act, Cap. 282 of the Laws of Zambia, be maintained.*

**Part XII-Chieftaincy and House of Chiefs**

**Article 174: Institution of Chieftaincy and Traditional Institutions**

Some stakeholders observed that Article 174 (2) (a) prohibited Parliament from enacting legislation, which conferred on any person or authority the right to recognise or withdraw the recognition of a chief.

The stakeholders were of the view that while it was important to protect the institution of chieftaincy, in order to maintain peace and order, there was need for the power to recognise chiefs or withdraw their recognition to vest in the President.

*The stakeholders, thus, recommended that Article 174 (2) (a) should be deleted.*

*The stakeholders further recommended that section 4 of the Chiefs Act, Chapter 287 of the Laws of Zambia, should be amended to require the President to seek the approval of the House of Chiefs and the Traditional Council concerned prior to the withdrawal of recognition of a chief.*

### **Article 178: House of Chiefs and Functions**

Some stakeholders observed that the one-year tenure of office for the Chairperson and Vice-Chairperson of the House of Chiefs was too short and did not give one sufficient time to settle in office.

*The stakeholders, therefore, recommended that the tenure of office should be increased to two years and six months.*

The stakeholders further observed that Article 178(4), which provided for the positions of Chairperson and Vice-Chairperson of the House of Chiefs to rotate annually amongst the Chiefs from each province, was not clear on whether or not the Chairperson and Vice-Chairperson could come from the same province.

*The stakeholders, therefore, recommended that the Article should provide that the Chairperson and Vice-Chairperson of the House of Chiefs should not come from the same Province.*

### **Article 180: Staff of House of Chiefs**

Some stakeholders observed that this provision created the office of the Clerk of the House of Chiefs and other staff and stated that they were Civil Servants who would work under the Department and Ministry responsible for Chiefs and Traditional Affairs.

The stakeholders were of the view that this would not enhance the autonomy of the House. They expressed the need for the House of Chiefs to be autonomous with its own administration and accounting system.

*In view of this, they recommended that Article 180 (2) should be deleted and replaced with a clause that would ensure the autonomy of the Clerk and the staff of the House of Chiefs.*

### **General Comment on PART XII**

Some stakeholders observed that it was unnecessary to include so much detail about the Chieftaincy and the House of Chiefs in the Constitution.

*The stakeholders, thus, recommended that the Chieftaincy and the House of Chiefs be established under a single provision, while the rest of the details pertaining to the two institutions be included in the Chiefs Act.*

Other stakeholders submitted that the provisions in the current Constitution on the subject of chiefs were sufficient.

*The stakeholders, therefore, suggested that the provisions in the current Constitution be retained.*

### **Part XIII- Public Service**

#### **Article 185: Secretary to Cabinet**

Some stakeholders raised concern on clause (3), which restricted the appointment of Secretary to the Cabinet to persons who had at least ten (10) years experience as Permanent Secretary or equivalent rank. They submitted that this would prevent the appointment of persons outside the public service who were suitably qualified to serve as Secretary to the Cabinet.

*The stakeholders recommended that the current constitutional provisions on the appointment of Secretary to the Cabinet be retained.*

#### **Article 187: Vacancy in Office of Attorney General and Article 188: Solicitor General**

Some stakeholders expressed concern that Articles 187 (1) (a) and (b) and 188 (4) (a) and (b), which provided that the offices of Attorney-General and Solicitor-General respectively became vacant when the office holders were removed by the President or when another person assumed the office of President, did not provide the offices with security of tenure.

*The stakeholders, therefore, recommended the deletion of Articles 187 (1) (a) and (b) and 188 (4) (a) and (b).*

### **Part XIV- Pension Benefit**

#### **Article 196: Pension Benefit**

Some stakeholders were concerned that Article 196, which provided for pension benefits, only protected civil servants' benefits.

*They recommended that the Article be amended to secure the benefits of all employees. They further recommended the establishment of a retirement fund.*

## **Part XVI- Public Finance and Budget**

### **Article 207: Principles relating to Public Finance**

Some stakeholders submitted that Article 207 (c) be amended to compel the Government to exercise prudence in its borrowing.

Therefore, the stakeholders submitted that Article 207 (c) be amended as follows:

*“(c) prudent public borrowing which shall ensure inter-generation sustainability and equity, ensuring long-term credit worthiness of the national currency.”*

### **Article 209: Consolidated Fund**

Some stakeholders expressed concern that the Article did not guarantee the financial autonomy of the Legislature and the Judiciary.

Therefore, the stakeholders submitted that Article 209 be amended by the inclusion of the following clause:

*“(c) The minimum funding allocation for operations of the National Assembly and Judiciary, shall be guaranteed at a minimum threshold of a certain percentage of the total budget, and shall be released “quarterly in advance”, and not later than seven days before the commencement of the ensuing quarter.”*

### **Article 212: Appropriation Act, Supplementary Appropriation Act and Excess Expenditure Appropriation Act**



Some stakeholders were concerned that Article 212 did not address the current problem where the Government was incurring expenditure before obtaining the approval of the National Assembly.

*They, therefore, recommended that Article 212(2) be amended to allow the National Assembly approve the supplementary estimates before the expenditure was incurred.*

The stakeholders further expressed concern that Article 212 (4), which mandated the President to issue a warrant authorising expenditure for matters of an urgent nature and on which it would not be in the public interest to delay the appropriation of the expenditure for which National Assembly approval had not been obtained, did not define what was meant by "public interest".

*Therefore, the stakeholders submitted that what amounts to "public interest" should be stated under clause (4).*

#### **Article 221: Auditor-General's Report**

Some stakeholders submitted that in order to ensure that audit reports relating to a financial year were considered within that particular financial year, this Article should be amended to read as follows:

*“The Auditor General shall not later than nine months after the end of the financial year, submit an audit report to the President and the National Assembly, on the accounts of the Republic audited in respect of the preceding financial year and the Speaker shall, not later than seven days after the first sitting of the National Assembly next after the receipt of such a report, cause it to be laid before the National Assembly.”*

Other stakeholders expressed concern that Article 221 did not make provision for the National Assembly to consider the Auditor-General's Report before it approved the following year's national Budget. They were further concerned that the Report did not include matters that had remained outstanding for over twelve (12) months.

*Therefore, the stakeholders recommended that Article 221 should be amended by the insertion of the following new clauses:*

- “(2) The National Assembly shall consider the Auditor-General’s Report within six (6) months of the last year end, and before consideration of the budget for the subsequent year to the current one.*
- (3) The Auditor-General’s Report shall include outstanding and unresolved matters which have exceeded twelve (12) months.”*

## **Part XVII-Central Bank**

### **Article 223: Governor of Bank of Zambia**

Some stakeholders acknowledged that Article 223 was progressive.

*The stakeholders, however, recommended that the appointment of the Governor should be made on the recommendation of banks and other financial institutions because they were better placed to identify and attest to the abilities of the appointee.*

Other stakeholders were concerned that Article 223 (2) made the Governor of the Bank of Zambia Chairperson of the Board of Directors. They submitted that to make the Governor, who was the Chief Executive Officer of the Bank of Zambia, the Chairperson of the Board was inconsistent with international best practice in corporate governance.

*Therefore, the stakeholders recommended that the President, in consultation with the Minister responsible for Finance, should appoint the Chairperson of the Board.*

## **Part XVIII-Services, Commissions, and Other Independent Offices**

### **Article 237: Local Government Service Commission**

Some stakeholders expressed concern that the Commission should not hear appeals from council officers in the Local Government Service, as this would not make it an impartial arbiter since the Commission also appointed, confirmed, promoted, and disciplined the officers.

*Therefore, the stakeholders recommended the deletion of the words “hear appeals from officers of the Local Government Service” in Article 237 (2) (c), and that an appeals body independent from the Commission should be established to deal with all appeals from the officers.*

#### **Article 238: Electoral Commission of Zambia**

Some stakeholders expressed concern that Article 238, which established the Electoral Commission of Zambia (ECZ), did not provide for its independence and autonomy as was the case under Article 76 of the current Constitution, which establishes the Commission as follows:

*“76. There is hereby established an autonomous Electoral Commission.....”*

*The stakeholders recommended that in line with the regional best practice, Article 238 should be amended to establish the Commission as an autonomous and independent body.*

Further, some stakeholders were concerned that the clause did not empower the ECZ to correct errors committed by electoral officers during elections nor the power to disqualify a person or political party that was in breach of electoral laws.

*The stakeholders, therefore, recommended that the clause be amended to empower the ECZ to correct errors committed by electoral officers and to disqualify persons or political parties who breached electoral laws during an election from participating in that election.*

#### **Article 239: Human Rights Commission**

Stakeholders submitted that clause (3) be amended to include the following as functions of the Human Rights Commission:

- i) recommend to Parliament the effective measures to promote human rights;*
- ii) monitor the Government’s compliance with obligations under international treaties and conventions on human rights;*

- iii) *conduct inquiries on matters relating to the infringement of human rights and the violation of principles of good governance;*
- iv) *if necessary, institute proceedings in court to prevent the violation of human rights or to restore a right violated by the infringement of human rights, or violation of principles of good governance;*
- v) *inquire into the conduct of any person or institution in relation to the ordinary performance of its duties or functions;*
- vi) *advise the Government, public and private institutions on human rights and good governance;*
- vii) *investigate complaints concerning practices and actions by persons, enterprises and other private institutions where such complaints allege violation of fundamental rights and freedoms under this Constitution;*
- viii) *visit prisons and places of detention or related facilities with a view to inspecting and assessing the conditions of the facilities and make the necessary recommendations to Government; and*
- ix) *constitute tribunals with power to render decisions enforceable in a court of law.*

*Some stakeholders further proposed that an Article requiring the appointing authority to appoint Commissioners of the Human Rights Commission within a specific period of time be provided in the Constitution, to avoid prolonged vacancies on the Commission.*

*Other stakeholders recommended the inclusion of an Article in the Constitution to provide for the compensation of victims of human rights violations or their families.*

#### **Article 243: Establishment of the State Audit Commission**

Some stakeholders were opposed to the establishment of a State Audit Commission. They submitted that countries which had established a State Audit Commission were experiencing enormous challenges in the operations of the Office of the Auditor-General. This was because of the conflict that existed in the operations of the two institutions.

*The stakeholders, therefore, recommended that the Article should be deleted.*

Other stakeholders supported the creation of the State Audit Commission, but expressed concern that it was not clear whether or not the Commission would report to the National Assembly through the Public Accounts Committee.

*Therefore, the stakeholders recommended that the State Audit Commission should submit its report to the National Assembly through the Committee on Public Accounts.*

### **Article 245: Judicial Complaints Commission**

Some stakeholders submitted that the power to enforce the Judicial Code of Conduct for judges and judicial officers placed in the Judicial Complaints Commission by Article 245 (2) (a) should instead vest in the Judicial Service Commission.

*The stakeholders, thus, recommended that Article 245 (2) (a) should be deleted.*

Stakeholders observed that Article 245 (2) (b) tasked the Judicial Complaints Commission with the responsibility of ensuring that judges and judicial officers were accountable to the people in the performance of their functions. The stakeholders were of the view that this was a supervisory function of the Chief Justice, which should not be given to an external body.

*The stakeholders, therefore, recommended that clause (2) (b) should be deleted.*

Furthermore, the stakeholders observed that Article 245 (2) (d) made provision for the Judicial Complaints Commission to hear a complaint against a judge or judicial officer. The stakeholders submitted that the duty of the Judicial Complaints Commission was to receive and investigate complaints against a judge or judicial officer, and not to determine complaints.

*The stakeholders recommended that the word “hear” in Article 245 (2) (d) be replaced with the word “investigate”.*

### **Article 258: Auditor-General**

Some stakeholders submitted that in order to ensure transparency in the appointment process of the Auditor General, clause (1) should be amended to read as follows:

*“There shall be an Auditor General who shall be appointed by the President subject to ratification by the National Assembly.”*

Other stakeholders expressed concern that the Article did not empower the Auditor-General to prosecute offenders. The stakeholders noted that the Auditor-General’s powers were limited to making recommendations to the Director of Public Prosecutions for prosecution of offenders.

*Therefore, the stakeholders recommended that Article 258 should be amended to empower the Auditor-General to prosecute offenders.*

#### **Article 259: Functions of Auditor-General**

Some stakeholders observed that the Article did not give the Auditor-General access to all books, records, reports and other documents relating to the expending of public funds. They submitted that without this access, it would be impossible for the Auditor-General to discharge his or her functions under the Constitution.

*The stakeholders, thus, recommended that Article 121(3) of the current Constitution, which provided that the Auditor-General and any officer authorised by him or her shall have access to all books, records, reports and other documents on accounts relating to the general revenues of the Republic, be replicated in Article 259.*

#### **Article 261: Tenure of Office of Auditor-General**

Some stakeholders submitted that there was need to align the retirement age of the Auditor-General with the United Nations Resolution A/66/209, and the International Standards for Supreme Audit Institutions, (ISSAIS) 1, 10 and 11, and the recent revision of the statutory retirement age for civil servants from fifty-five years to sixty years with the option to retire at sixty-five years.

*The stakeholders, therefore, proposed that the tenure of office of the Auditor-General be for a fixed-term of seven (7) years or until the office holder attained the age of sixty-five (65), whichever came earlier.*

Other stakeholders noted that when the retirement age for civil servants was at fifty-five (55) years, the Auditor-General was required to retire at sixty years (65). The stakeholder further noted that the retirement age of a judge had been revised from sixty-five (65) years to seventy (70) years.

*Therefore, the stakeholders recommended that the retirement age for the Auditor-General be increased to seventy (70) years.*

### **General Comments on Part XVIII**

Some stakeholders welcomed the creation of independent institutions such as the Zambia Correctional Service Commission, Gender Equity and Equality Commission and the Judicial Complaints Commission, stating that the bodies would enhance the promotion and protection of human rights.

The stakeholders, however, bemoaned the lack of proper coordination between these independent public institutions and other public bodies, which most often made the discharge of their functions difficult.

*In that regard, the stakeholders recommended the inclusion of an Article that would compel public bodies to provide necessary information and assistance to other institutions in the discharge their mandates.*

### **Part XIX- Land, Environment and Natural Resources**

#### **Article 264: Classification and Alienation of Land and Land Tenure**

Some stakeholders were concerned that Article 264(2) allowed the alienation of land to non-citizens.

*They, thus, recommended that land should not be alienated to non-citizens.*

## **Part XX- General Provisions**

### **Article 268: Official language and Use and Status of Local Languages**

Stakeholders observed that Article 268 prescribed English as the official language in Zambia. Some stakeholders observed that sign language was a language that was usually ignored. The stakeholders were of the view that if it was not explicitly recognised as one of the languages, it would continue to be ignored.

*The stakeholders, therefore, recommended that Article 268 be amended to include Sign Language as one of the official languages.*

### **Article 274: Emoluments Payable under Constitution**

Some stakeholders expressed concern that Article 274 (3), which protected the emoluments of specified persons holding public office from alteration, did not include judges. The stakeholders submitted that the omission of judges from the provision did not protect judges from having their emoluments altered to their disadvantage during their tenure of office. They stated that the failure to protect judges' emoluments from alteration would interfere with the independence of the Judiciary and was against the internationally accepted principle, particularly in the Commonwealth, that a sitting judge's conditions of service cannot be altered to the judge's detriment.

*Therefore, the stakeholders recommended that Article 274 (3) should be amended to include the words "office of the judge".*

### **Article 276: Definitions**

Some stakeholders raised concern that the definitions of the words "adult" and "youth" under Article 276 were inconsistent with that of the United Nations (UN) and African Youth Charter (AYC), to which Zambia was a State party. These defined a youth as a person between the ages of 15 to 24 years and 15 and 35 years, respectively. In view of this, and since Article 46 provided that a person attained the right to vote at the age of 18 years, the stakeholders recommended that the definitions of "adult" and "youth" be amended to read as follows:



“youth” means a person who has attained the age of fifteen (15) years, but is below the age of thirty-five (35) years.

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

Other stakeholders submitted that the definition of “child” as a person who had attained, or was below, the age of eighteen (18) years was contrary to the United Nations Convention on the Rights of a Child (CRC), to which Zambia was a party, which defined a child as a person below the age of eighteen (18). The stakeholders added that as Article 46 allowed a citizen who had attained the age of eighteen (18) to register as a voter, it was absurd to envisage a child voting.

*They, therefore, recommended that Article 276 should be recast to define a child as a person who had not attained the age of eighteen (18), so as to conform to the definition of child as provided for in the CRC.*

Further, some stakeholders observed that the definition of State Office and State Officer were new inclusions which were unnecessary. They noted that while a Public Officer had been defined as a person holding or acting in a public office, such officer did not include a State Officer, Councillor, Constitutional officer, an officer in the public service and a member of a Commission. On the other hand, a State Officer had been defined as a person holding or acting in a State office and included the office of the President, Vice-President, Speaker, Deputy Speaker, Member of Parliament, Minister, Provincial Minister, Provincial Speaker, Parliamentary Secretary, Provincial Deputy Speaker and Member of a Provincial Assembly

The Stakeholders observed that the classification of Public Officers and State Officers was not correct as state officials would not be liable for prosecution under the Anti-Corruption Act No. 3 of 2012 and other laws. This provision would, therefore, appear to provide immunity from prosecution for State Officers.

*They, therefore, recommended that the definitions of a State Office and State Officers should be merged with that of a Public Officer so that the definition is in conformity with the definition in the United Nations Convention Against Corruption (UNCAC) to which Zambia is a state party, which defines a Public official as follows:*

*“Public official” shall mean: (i) any person holding a legislative, executive, administrative or judicial office of a State Party, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person’s seniority; (ii) any other person who performs a public function, including for a public agency or public enterprise, or provides a public service, as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party; (iii) any other person defined as a “public official” in the domestic law of a State Party. However, for the purpose of some specific measures contained in chapter II of this Convention, “public official” may mean any person who performs a public function or provides a public service as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party.”*

## **GENERAL COMMENTS ON THE BILL**

8. Some stakeholders opted not to submit on the specific provisions of the Bill and instead made the following general comments on the Bill.

### **Mode of Adoption of the Constitution**

Some stakeholders submitted that the Constitution of Zambia Bill should not have been brought to Parliament in its current form, as it was evident that the Executive’s intention was not to amend the existing Constitution, but to enact an entirely new Constitution. They contended that the most important question that needed to be addressed was whether the Constitution Review Process was an amendment process or a revitalisation of the spirit of the Constitution, which would lead to a “new” constitution. They argued that what had been presented to Parliament was a new document which could not be altered by Parliament prior to adoption by the citizens.

The stakeholders were of the view that Parliament, being a creature of the Constitution, could not abrogate the constitution and come up with an entirely new Constitution, as abrogation of the Constitution required the exercise of the people’s constituent power.

The stakeholders further submitted that Article 79 of the current Constitution made a provision for the alteration of the Constitution and that the jurisdiction of Parliament under the Article was limited to altering it and not adopting an entirely new document. They emphasised that the Constitution-making process was a catalyst for enhancing national unity and identity. They argued that it was, therefore, necessary that the Constitution was accepted by the people, so as to enhance the legitimacy of the Government and acknowledge the sovereignty of the people affected by it.

Further, the stakeholders submitted that the presentation of a Constitution of Zambia (Amendment) Bill, which did not contain the Bill of Rights, was erroneous. They expressed concern that its enactment would create a crisis as it was uncertain whether or not the Bill of Rights and Article 79 would be adopted by referendum during the 2016 General Elections.

The stakeholders were of the view that the aspirations of the people of Zambia were for the enactment of a complete document and they argued that the Government was, therefore, wrong to single handedly resolve to enact the Constitution in a piecemeal manner.

*The stakeholders, thus, recommended that the Constitution of Zambia (Amendment) Bill be withdrawn in order to allow for the inclusion of the Bill of Rights and Article 79 in the Bill and the adoption of the entire Constitution by a constituent Assembly prior to a referendum during the 2016 General Elections before it is brought before Parliament for enactment. This, they emphasised was the legitimate means of passing a new constitution and would ensure that the process was fair and representative.*

Further, other stakeholders submitted that historical attempts at constitutional reform in Zambia had mainly been government-driven amendments and not people-driven amendments as demanded by the people of Zambia in the Mvunga, Mwanakatwe and Mung'omba Constitutional Review Commissions (CRCs). For this reason, the stakeholders did not see the need to address the contents of the Bill, as they were of the view that the process through which the Government had preferred to adopt the Constitution was illegitimate.

The stakeholders were opposed to the Constitution being adopted through the National Assembly on the following grounds:

- a) The preamble of the current Constitution as read with Article 1(2) of the Constitution of Zambia imperatively positioned the people of Zambia as the

ultimate determiners of how they should be governed and, therefore, any extensive changes to the Constitution, as was being proposed by the Bill, mandatorily required that the people of Zambia adopt the contents of the Bill before any such changes were made. The stakeholder contended that a national referendum was the most adequate, inclusive, legitimate and democratic means of making such consultations. It was further contended that by tabling the Bill in the absence of such a consultative process, the Government was usurping the powers of the people as provided in Article 1(2).

- b) Adoption of the Constitution through Parliament had previously not yielded any positive results for the people. In 2011, the process collapsed because politicians failed to reach a compromise on the content of the Bill. It was contended that the people of Zambia had consistently spoken through the various Constitutional Review Commissions that politicians assembled in Parliament could not be trusted to adopt the Constitution on behalf of the people. Parliament was a creature of the Constitution or was subordinate to the constitution and could, therefore, not legitimately adopt the Constitution.

### **Cost Versus Benefit of Holding a Referendum**

Some stakeholders contended that whatever the mode employed for adopting the Constitution, it was important to assess both the direct and opportunity costs involved. The stakeholders added that it was important to examine the economic bottom line in terms of justification of constitutional costs against the basis of democratic ideals and objectives and avoiding costs that could not be justified in relation to core democratic objectives. In light of this, although the referendum seemed to be the popular mode of adopting the proposed constitution among many Zambians, it appeared not to be based on tested capabilities, particularly for adopting a complex multidimensional document like a whole Constitution.

It was further contended that the proposed Constitution had 322 Articles and it would be unrealistic to expect the voters to vote on each item, given the amount of paper work that would be involved *vis-a-vis* the literacy levels of most voters. It was argued that a referendum would rob the electorate of the opportunity for optimal outcomes that could come with prudent amendments of the proposed Articles unless it was reserved for single issues

such as the Bill of Rights. Ultimately, therefore, the referendum would be a waste of resources, as its outcome would not reflect the will of the people.

The stakeholders further stated that while being aware that the most legitimate method of adopting the Constitution was through a referendum, there were cost implications in such an exercise as well as statistical challenges. It was argued, however, that with sufficient political will, these challenges could be overcome. To this end, the stakeholders were of the view that with regard to the mode of adoption, there should have been a legal framework in place to guide the mode of adoption.

With regard to the proposed 50+1% majoritarian mode of election of the President, the stakeholders wondered how it would be possible to get a majoritarian President in a run-off if the runoff attracted, for example, only 15% of the voters, and even if the candidate then obtained more than 50% of that 15%. The stakeholders termed this “the tyranny of the vigilant minority”. This point was illustrated as follows:

	<i>General</i>	<i>Run-off</i>
	<i>Election</i>	<i>Election</i>
Voter turnout	60%	15%
Total Voters	2,400,000	600,000
Winner	1,152,000 (48%)	312,000 (52%)
Total Population	4,000,000	4,000,000

### **Enactment of Budget Act**

Some stakeholders recommended that the Constitution should provide for the enactment of a Budget Act, which would formalise the budget process and take into account the demands of the Medium-Term Expenditure Framework.

### **Recount of Votes in an Election**

Some stakeholders submitted that there was need for the constitution to provide for the right of a candidate in an election to request for a recount of votes. They added that it was imperative for transparency and accountability for a candidate to be allowed a recount.

*The stakeholder, therefore, proposed that the Constitution should provide for the right of a candidate to request a recount of votes during elections.*

## **COMMITTEE’S OBSERVATIONS AND RECOMMENDATIONS**

9.

- (i) Your Committee observes that elections to the office of President shall be conducted directly, under a majoritarian electoral system, where the winning candidate must receive more than fifty per cent of the valid votes cast. Your Committee notes that most stakeholders were concerned that this threshold was inachievable, which would inevitably result in a re-run. The stakeholders were, thus, opposed to this system because of the costs associated with a re-run. Your Committee is however alive to the fact that the people of Zambia have on countless occasions submitted through various constitution review processes that a majoritarian electoral system for the election to the office of President was most preferred. Your Committee, therefore, finds the stakeholders recommendation inconsistent with the views of the people;
- (ii) Your Committee observes that the Bill adopts a mixed-member electoral system for the National Assembly with one hundred and fifty-six (156) elective seats and ninety-four (94) seats based on proportional representation. While some stakeholders supported the creation of the one hundred and fifty-six (156) constituency-based seats and the introduction of ninety-four (94) seats to be allocated under the party list system, others were opposed to it. They argued that the proportional representation system was incompatible with a democratic society in which people elected their representatives through a secret ballot. In addition, the formula for allocating seats under the proportional representation segment was too complex and did not represent the popularity of the parties. They further submitted that the composition of the National Assembly would be too large and expensive for the already overstretched national budget.

- (iii) Your Committee further observes that the majority of the stakeholders were opposed to the appointment of Ministers outside Parliament and submitted that some countries that had implemented the system were having challenges implementing it. Your Committee is, thus, of the view that there is need for further research to be conducted before adopting the system;
- (iv) Your Committee also notes stakeholders' dissatisfaction with various provisions pertaining to the Judiciary. These include the thirty (30) days given to the Constitutional Court to determine election petitions; the ten (10) year term limit given to the Chief Justice and President of the Constitutional Court and the procedure for the removal of a judge. Your Committee notes that these provisions had the potential to affect the operations and independence of the Judiciary.
- (v) Your Committee observes that Article 153 provides for the establishment of Provincial Assemblies. Most stakeholders were against this provision submitting that it would lead to the creation of more administrative and management structures and would be an added strain on the national coffers. Your Committee is inclined to agree with the stakeholders;
- (vi) Your Committee observes that despite the public outcry for the country to do away with by-elections which are costly to the nation, Article 57 provides for by-elections in the event of a vacancy in the office of Member of Parliament for a constituency-based-seat, mayor, council chairperson or councilor;
- (vii) Your Committee observes that Article 50 of the Bill guarantees access to the media by all political players during elections. Your Committee notes that stakeholder views were contrasting with some welcoming the provision and others arguing that it would lead to an increase in litigation as parties alleged being denied access to the media. Yet others submitted that it was not certain whether the provision applied to both public and private media and sought clarity on the matter; and

(viii) Your Committee after due and thorough consideration of the various written and oral submissions from stakeholders observes that there are still divergent views on issues of critical concern to the people of Zambia such as the mode of election of the President, the composition and electoral system for the National Assembly and the appointment of Ministers outside Parliament. Your Committee further notes that there are numerous provisions in the Bill that require amendment. In view of this, Your Committee recommends that the Constitution of Zambia (Amendment) (No.) Bill, N.A.B. No. 17 of 2015 be withdrawn in its entirety in order to allow for further consultation.

## CONCLUSION

10. In conclusion, your Committee expresses its gratitude to you, Mr Speaker, for the opportunity to scrutinise the Constitution of Zambia (Amendment) (No. ) Bill, N.A.B. No. 17 of 2015.

Your Committee also wishes to thank all the stakeholders for their oral and written submissions on the Bill. Your Committee further thanks the Clerk of the National Assembly and her staff for the services rendered to it during the consideration of the Bill.

We have the honour to be, Sir, your Committee on Legal Affairs, Governance, Human Rights, Gender Matters and Child Affairs tasked to scrutinise the Constitution of Zambia (Amendment) (No. ) Bill, N.A.B. No. 17 of 2015.

Mr C Mweetwa, MP  
**(Chairperson)**

Mr M A Malama, MP  
**(Member)**

Mr S Masumba, MP  
**(Member)**

Mr H Kunda, MP



**(Member)**

Mr B M Ntundu, MP

**(Member)**

Mrs M Miti, MP

**(Member)**

Mr M Kapeya, MP

**(Member)**

Ms V Kalima, MP

**(Member)**

## **APPENDIX I – WITNESSES**

### **Ministry of Justice**

Dr N Simbyakula, Minister

Mr A Nkunika, Acting Chief Parliamentary Counsel

Mr M Chola, Acting Deputy Chief Parliamentary Counsel

Ms D Kalunga, Senior Parliamentary Counsel

### **Young Africans Leadership Initiative (YALI)**

Mr A Ntewewe, President

Mr I Mwanza, Gov Advisor

Mr M Hakoola, B Secretary

Ms A Mate, Member

### **Zambia Law Development Commission (ZLDC)**

Ms J MacMillan, Deputy Director

Mr S Nyirongo, Research Officer

### **Zambia Congress of Trade Unions (ZCTU)**

Mr C Mukuka, Secretary General

Mr M Nyambose, Deputy Secretary General

Mr L Makinishi, Director – Education

Ms O S Mwanza, Provincial Coordinator

Mr M Kamanisha, Researcher

Mr S Nyumbu, Councillor

Mr A Sakala, Councillor

### **Human Rights Commission (HRC)**

Mr F Chibwasha, Director

Mr K Banda, Chief – Investigation and Legal Services

### **Electoral Commission of Zambia (ECZ)**

Mrs P M Isaac, Director

Mr C Chella, Deputy Director

Mr E M Kamwi, Commission Secretary

### **Members of the Public**

Prof M Hansungule, Professor of Law at University of Pretoria

### **Zambia Agency for Persons with Disabilities (ZAPD)**

Ms S Brotherta, Acting Director-General

Ms J Shinaka, Director

Mr M K Muya, Director

Mr Kapembwa, Director

Ms A M Kunda, Coordinator

Mr Kantontoka, Director

Mr Chisambi, Secretary

Mr S Mwale, Sign Language Interpreter

### **House of Chiefs**

Ms J Kabunda, Acting Clerk

Mr I Mukata, Acting Deputy Clerk

### **The Judiciary**

Mr M Malila, Supreme Court Judge

Ms A Sitali, High Court Judge

Mr M Zulu, Registrar

Ms Eimba, Senior Research Advocate

Mr E Pengele, Senior Research Advocate

**Law Association of Zambia (LAZ)**

Mr K M G Chisanga, President

Mr L Kasonde, Vice President

**Economics Association of Zambia (EAZ)**

Dr C Ng'andwe, Member

Mr K S Ndumba, Secretary

**Human Rights Commission (HRC)**

Ms F Chibwasha, Director

Mr K Banda, Chief – Investigations and Legal Services

**Movement for Multiparty Democracy (MMD)**

Mr R Nakacinda, IPC/Spokesperson

Mr W N Mazni, NEC Member

Mr E G Mulenga, NEC Member

Mr I Muntanga, NEC Member

**Forum for Democracy and Development (FDD)**

Mr G Phiri Jr, Administrative Secretary

**The Infotainment Movement**

Mr D Mvula, Assistant Executive Director

Mr O Tembo, Outreach

**The University of Zambia (UNZA)**

Mr L Banda, Lecturer

**UNZASU**

Mr H Himaanga, Acting President

Mr L K Clement, Secretary General

**United National Independence Party (UNIP)**

Mr A Banda, Deputy Secretary General

Ms F Summerton, National Secretary Women Affairs

Mr S Kamwengo, National Youth Coordinator

**Heritage Party**

Brig Gen G Miyanda

**Zambia Association of Chambers and Industry (ZACCI)**

Mr M Nyirenda, Board Member

Mr L Haangala, Board Member

Ms P M Chikwashi, Chief Executive Officer

**Office of the Auditor General**

Ms A Chifungula, Auditor General

Mr D K Mendamenda, Deputy Auditor General

Ms S Ross, Assistant Director

Mr C Chuma, Principal Auditor

Mr E Chikale, Public Relations Officer

## **APPENDIX II- STAFF OF THE NATIONAL ASSEMBLY**

Ms C Sikatele, Principal Clerk (Journals and Legal Services)

Mrs D N Kapumba, Senior Legal Officer

Ms C Musonda, Acting Committee Clerk (FC)

Mr G Zulu, Assistant Committee Clerk

Mrs C T M Kasonde, Assistant Committee Clerk

Ms S Sianga, Assistant Committee Clerk

Mrs M E Z Banda, Assistant Committee Clerk

Mr S Samuwika, Assistant Committee Clerk

Mr C Haambote, Journals Clerk

Mrs R M Banda, Legal Officer

Mr J Sianyabo, Legal Officer

Mrs R T Mwila, Stenographer

Ms A Maluwa, Typist

Mr R Mumba, Committee Assistant

Mr M Chikome, Parliamentary Messenger