



REPORT

OF THE

**COMMITTEE ON LEGAL AFFAIRS, HUMAN RIGHTS AND GOVERNANCE ON
THE PETITION BY MR GEORGE CHINTANKWA MALIPILO FOR THE
INITIATION OF THE ENACTMENT OF AN ACT OF PARLIAMENT TO PROVIDE
FOR THE PROCEDURE AND FORUM FOR CITIZENS TO PETITION THE
NATIONAL ASSEMBLY CONCERNING THE ENACTMENT, AMENDMENT AND
REPEAL OF LEGISLATION**

FOR THE

FIRST SESSION OF THE THIRTEENTH NATIONAL ASSEMBLY

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1.0 Membership of the Committee

The Committee consisted of Dr C Andeleki, MP (Chairperson); Ms T E Lungu, MP (Vice Chairperson); Mr G K Chisanga, MP; Mr A M Kasandwe, MP; Mr C Miyutu, MP; Mr E Sing'ombe, MP; Mr F M Fube, MP; Mr L Hamwaata, MP; Mr M Chinkuli, MP; and Mr J E Banda, MP.

The Honourable Madam Speaker
National Assembly of Zambia
Parliament Buildings
LUSAKA

Madam

The Committee has the honour to present its Report on the Petition by Mr George Chintankwa Malipilo for the initiation of the enactment of an Act of Parliament to provide for procedure and forum for citizens to petition the National Assembly concerning the enactment, amendment and repeal of legislation for the First Session of the Thirteenth National Assembly.

2.0 Functions of the Committee

Pursuant to Standing Order No. 125(2) of the National Assembly of Zambia Standing Orders, 2021, a Petition that has been laid on the Table of the House shall be referred to an appropriate Committee for consideration. The Committee was tasked to consider the Petition for the initiation of the enactment of an Act of Parliament to provide for the procedure and forum for citizens to petition the National Assembly concerning the enactment, amendment and repeal of legislation (hereinafter referred to as “the Petition.”

3.0 Meetings of the Committee

The Committee held six meetings to consider the Petition by Mr George Chintankwa Malipilo.

4.0 Procedure Adopted by the Committee

The Committee requested for written memoranda from stakeholders listed at Appendix II, and invited them to appear before it in order to clarify any issues arising from their written submissions.

5.0 Background

The right to petition legislative authorities has existed since the emergence of political power. This is premised on the idea that political power is legitimate only if there is a direct correlation between the people and that power. Petitions are, therefore, a valued means of bringing public concerns to the attention of Parliament.

Article 88(1) of the Constitution of Zambia, as amended by Act No. 2 of 2016, provides for the right of all citizens to petition the National Assembly to initiate the enactment, amendment or repeal of legislation, as well as comment on a deliberation, statement or decision of the National Assembly. Article 88(3) further provides that the manner of petitioning and commenting referred to shall be prescribed.

It is noteworthy that the National Assembly Standing Orders, 2021, provide for the right of citizens to petition the National Assembly to initiate the enactment, amendment or repeal of legislation in accordance with Article 88(1) of the Constitution. This, notwithstanding, the petitioner, a Zambian citizen, is of the view that the National Assembly ought to enact legislation that will adequately provide for the manner of petitioning the National Assembly, thereby upholding the constitutional provision in Article 88(3).

6.0 SUBMISSIONS BY STAKEHOLDERS

6.1 Legal and Regulatory Framework Governing Petitions to the National Assembly

The Committee took note that the enabling Article of the Constitution which provides for the right to petition and make comment on a deliberation, statement or decision of the National Assembly is Article 88 of the Constitution of Zambia, as amended by Act No.2 of 2016. The Article stipulates that:

88(1) A citizen may petition the National Assembly to initiate the enactment, amendment or repeal of legislation.

- (2) A citizen may comment on a deliberation, statement or decision of the National Assembly.
- (3) The manner of petitioning and commenting referred to in this Article shall be prescribed.

Stakeholders submitted that currently there was no Act of Parliament to operationalise Article 88 of the Constitution. However, the National Assembly, pursuant to Article 77(1) of the Constitution promulgated the National Assembly of Zambia Standing Orders. The Standing Orders regulated how citizens could petition the National Assembly.

In particular, Standing Orders number 123 to 126 provide as follows:

“123. (1) A citizen may petition the Assembly to initiate an enactment, amendment or repeal of legislation in accordance with Article 88 (1) of the Constitution.

(2) A citizen may also petition the Assembly on any subject matter within the jurisdiction of the Assembly.

(4) A citizen who wishes to petition the Assembly under paragraphs (1) and (2), shall submit to the office of the Clerk, during normal working hours, a type-written letter or a completed form in Appendix I of these Standing Orders.

(4)The letter under paragraph (3) shall:

- (a) be addressed to the Speaker;*
- (b) ask the House to take action on a specified subject matter;*

- (c) *be signed by the petitioner;*
- (d) *be in the English Language; and*
- (e) *have the full name of the petitioner, address and a day time telephone number.*

(5) *A petition may be submitted electronically provided it bears an electronic signature.*

124. *A petition is admissible if –*

- (a) *it is not addressed to a Government Minister or the Vice President;*
- (b) *the subject matter of the petition is not pending determination before a court of law;*
- (c) *the petitioner has exhausted all channels for remedial action;*
- (d) *it is not similar to a petition that has already been considered by the House during that term of Parliament;*
- (e) *it is written in a respectful manner and civil language; or*
- (f) *it does not involve expenditure from the Consolidated Fund.*

125. (1) *On receiving the petition, the Speaker shall, if the Speaker considers that the petition qualifies as a parliamentary petition, cause it to be laid on the Table.*

(2) *The petition under paragraph (1) shall, upon being laid on the Table, be referred to an appropriate Committee for consideration.*

126. (1) *The report of the Committee on the petition shall be laid on the Table for debate and, upon adoption by the House, the recommendations of the Committee shall be submitted to the relevant institution for possible action.*

(2) *The Clerk shall, in writing, inform the petitioner of the manner in which the petition is dealt with and the resolution of the Assembly on the matter.”*

The Committee was informed that the word ‘prescribed’ in the Constitution was given a technical meaning. According to Article 266, ‘*prescribed*’ means provided for in an Act of Parliament. Therefore, the constitutional requirement to prescribe the manner of petitioning the National Assembly required that it should be set out in an Act of Parliament.

6.2 Adequacy of the Legal and Regulatory Framework in Addressing Petitions

Some stakeholders were of the view that although the National Assembly of Zambia Standing Orders, 2021, provided an adequate framework with regards to the procedure and form for petitioning the National Assembly, they did not meet the constitutional requirement as stipulated by Article 88(3). In that regard, the regulations in the Standing Orders fell short of the dictates of the Constitution. The stakeholders submitted that what was envisaged in Article 88(3) was the promulgation of subordinate legislation in form of an Act of Parliament, as opposed to the National Assembly Standing Orders. Stakeholders, therefore, recommended that an Act of Parliament, enshrining the requirements and procedure for petitions to the National Assembly by citizens be considered for enactment, as required under Article 88 of the Constitution.

Other stakeholders were of the view that the National Assembly Standing Orders did not carry the force of law, but simply regulated the procedure of the National Assembly and prescribed the internal procedure for the conduct of its business. The Standing Orders were, therefore, not a ‘prescription’ in line with the provisions of Article 88 of the Constitution.

6.3 Gaps in the Legal and Regulatory Framework

While most stakeholders were of the view that the existing legal and regulatory framework to address petitions by citizens was adequate, they were quick to state that there were some gaps that needed to be reviewed and necessary improvements made. Some of the gaps are set out below.

(a) The Manner of Petitioning National Assembly not 'Prescribed'

Stakeholders submitted that the Constitution required that the manner of petitioning the National Assembly should be prescribed. That is, the manner of petitioning and commenting should be set out in an Act of Parliament. The National Assembly Standing Orders were not an Act of Parliament, as contemplated by the Constitution. In addition, the Standing Orders were meant for internal use by the National Assembly.

(b) Limitations in the Provisions of the Standing Orders

The Committee was informed that the lack of an Act of Parliament left the Standing Orders as the only legal instrument which spoke to how a citizen could petition the National Assembly of Zambia. However, this did not satisfy the constitutional requirement that the manner of petitioning the National Assembly should be 'prescribed' even though the Standing Orders, to a certain extent, established a system for submitting and determining petitions.

(c) Restrictive Formal Requirements of the Regulations in the Standing Orders

Stakeholders submitted that the provisions of the Standing Orders were problematic in that the formal requirements for preparing and submitting a petition could have the effect of stifling public participation in the petitioning process. The stakeholders submitted that the provision that petitions should be in English, excluded the majority of Zambians from being heard, as they were not comfortable expressing themselves in English. This created a situation where the petitioning process was dominated by the highly educated at the expense of the less educated. There was, therefore, need for petitions to be drafted in any of Zambia's seven official local languages and braille. This would encourage and augment citizenry participation in Parliamentary Business.

Stakeholders further submitted that the provision that petitions must be in written form was also restrictive because not all Zambians could read and write very well. They submitted that developments in Information and Communication Technology (ICT) allowed people to communicate in documentary formats not limited to writing such as audio-visual formats.

(d) Lack of Provision requiring Government's Response to the Petition before Debate

Stakeholders submitted that the National Assembly of Zambia Standing Orders did not require the Executive to submit a response to the petition before it was presented for debate to Parliament. This created the risk that petitions, which could otherwise be addressed by the Government without need for legislation, were debated by the National Assembly.

(e) Lack of Provision for Transition from a Petition to a Bill

The Committee took note that Standing Order No. 126 of the National Assembly of Zambia Standing Orders, 2021 provided for the petition to be debated and the outcome of the debate to be communicated to the petitioner. However, the Standing Orders did not make any reference to the transition from a petition into a Bill. This was a critical omission in terms of Article 88(1) which stipulated that a citizen may petition the National Assembly to initiate the enactment, amendment or repeal of legislation. The silence in the Standing Orders regarding

how a petition could be transformed into a Bill and presented to Parliament was a critical oversight.

(f) Lack of Timelines for Steps taken within National Assembly

Stakeholders submitted that the National Assembly Standing Orders did not provide any timelines within which all the steps with regard to the petition could be taken. This posed a threat to the right to petition the National Assembly since a citizen could not compel the National Assembly to give them feedback on the petition. In that regard, there was need to provide for timelines for the Clerk of the National Assembly to submit petitions to the Speaker; for the Speaker to submit the petition to the appropriate Committee; for the Committee to produce its report; for the report to be debated; for the petitioner to be advised of the outcome of the debate; for the drafting of a Bill; and for the Bill to be presented to Parliament.

6.4 International Best Practice

The Committee noted that the constitutional right to petition Parliament had been given effect through legislation passed by Parliament in several jurisdictions as set out below.

(a) Kenya

In Kenya, petitions to Parliament were provided for in Articles 37 and 119 of the Constitution of the Republic of Kenya. Article 37 related to the right to assemble, demonstrate, picket and present petitions to public authorities. Article 119(2) provided that Parliament shall make provision for the procedure for the exercise of this right. These provisions were given effect through the *Petition to Parliament (Procedure) Act, No. 22 of 2012*, which provided that petitions made there under were to be in writing, in the form prescribed by the Act. The Committee took note of some of the salient features of the Kenyan *Petition to Parliament (Procedure) Act, No. 22 of 2012*, including the provision that petitions could be handwritten or typed, and written in English or Kiswahili.

(b) South Africa

The Committee heard that South Africa's Parliament was composed of two separate bodies; the National Assembly and the National Council of Provinces. The National Assembly comprised elected representatives of the people while the National Council of Provinces represented the provinces by providing a national forum for public consideration of issues affecting the provinces. Petitions to the South African Parliament were made pursuant to Articles 56(d) and 69(d) of the Constitution of the Republic of South Africa which stipulated that the National Assembly or any of its committees may receive petitions, representations or submissions from any interest persons or institutions, and that the National Council of Provinces or any of its committees may receive petitions, representations or submissions from any interested persons or institutions, respectively.

The Committee noted that the presentation of petitions in South Africa was governed by the rules of Parliament, and petitions must be formally submitted and supported by a Member of Parliament. The Speaker of the National Assembly prescribed the form in which petitions to the Assembly should take. However, as with petitions to the Kenyan National Assembly, petitions to the South African Parliament may be in any of the official languages of that country and in braille.

(c) India

The Committee noted that the framework governing petitions in India were the Rules of Procedure and Conduct of Business in the Council of States. The said Rules prescribed a form in which a petition may be submitted either in English or Hindi. The petition was addressed to the Council of States and must be signed by the petitioner and countersigned by a Member of Parliament and may be sent to the office of the Secretary-General, Parliament House. Upon receipt, petitions were examined in terms of Rules of the Council of States and once found to be in conformity with the Rules and Procedure of Council of States, were admitted by the Chairman of the Parliament House.

The petitions were then presented to the House and then referred to the Committee on Petitions for examination and report. The mandate of the Committee was to examine those petitions which were presented to the House and offered an opportunity to the petitioner or principal petitioner, in case of many petitioners, to appear before it to explain their views on the petition. It also submitted its recommendations in the form of a report to the House. Thereafter, the recommendations received due consideration of the appropriate ministry or department of Government of India.

The Committee heard that anonymous petitions and petitions raising individual grievances or trivial matters were liable to being summarily rejected. The Committee was also authorised to consider representations from individuals or associations which were strictly not covered by the rules relating to petitions and gave directions for their disposal. Representations that came from anonymous letters or letters on which names and/or addresses of senders were not given or were illegible, and whose endorsed copies were addressed to authorities other than the Chairman or House, were not considered by the Committee, but were filed on receipt in the Secretariat.

(d) Scotland

With respect to Scotland, Rule 15 of the Standing Orders of the Scottish Parliament provided that a petition may be brought in any language by an individual person, other than a Member of Parliament, a body corporate or an unincorporated association of persons. The petition must clearly indicate the name and address of the petitioner and that of the person supporting the petition as well as the name and address of any person supporting the petition. The Citizen Participation and Public Petitions Committee determined the proper form of petitions and published its determinations in such manner as it considered appropriate. The Committee was obliged to notify the petitioner of its decision and of the reasons for that decision. A petition could be lodged with the Clerk, or sent to the Clerk by e-mail, at any time when the office of the Clerk was open and the Parliament was not dissolved.

6.5 Proposals on the Reform of the Law that Governs Petitions

Stakeholders made various proposals for reform of law on the framework governing petitions to the National Assembly as set out below.

- (i) There was need to enact a law to empower citizens to petition the National Assembly to initiate the process of enacting, amending or repeal of legislation in order to give effect to the constitutional requirement. In so doing, some synergy with the Standing Orders should be maintained. The Standing Orders could mirror the requirements set out in the Act.

- (ii) The legislation enacted to give effect to the right to petition the National Assembly should make provision for civil society organisations (CSOs) and non-governmental organisations (NGOs) to petition Parliament on their own behalf or on behalf of a particular group of citizens or in public interest. The Act should also provide for citizens to be able to petition in association with each other, and on behalf of other citizens and collectively.
- (iii) Campaigns should be conducted to educate the public about the right to petition the National Assembly concerning the enactment, amendment and repeal of legislation. For example, pending petitions could be published on the Parliament website so that the general public could follow the progression of the petition.
- (iv) The Act providing for petitions to the National Assembly should make provision for citizens to approach Members of Parliament to seek support for their petitions.
- (v) A requirement should be provided for in the legislation for the Government to commence work on a Bill after debate on a petition is concluded for presentation to the Assembly within six months.
- (vi) Petitions should not only be drafted in English but in any of the country's seven official local languages as well as braille, and in all electronic formats.
- (vii) There was need to ensure that there was a timeframe within which a petition should be considered by the National Assembly and feedback given to the petitioner to promote transparency and accountability in governance matters. As an illustration, the Clerk could take seven days to review the petition; sixty days for the appropriate Committee to consider the petition; twenty-one days in which the petition should be debated; fifteen days in which the petitioner could be informed of the outcome; thirty days for the Executive to commence work on a Bill, and present it to the National Assembly within 180 days.
- (viii) Petitions submitted to Parliament and the decisions of Parliament on those petitions should be recorded in a register that was open to inspection by the public and accessible online.

7.0 COMMITTEE'S OBSERVATIONS AND RECOMMENDATIONS

Taking into account both the written and oral submissions from the stakeholders, the Committee makes the observations and recommendations as set out hereunder.

- (i) The Committee notes that presently, there is no Act of Parliament that prescribes the procedure of how a citizen can petition the National Assembly in accordance with Article 88 of the Constitution. The Committee is of the view that since it is a requirement under the Constitution for an Act of Parliament to prescribe the manner of petitioning the National Assembly, there is need to enact subsidiary legislation that will empower citizens to petition the National Assembly to initiate enactment, amendment and repeal of legislation. The Committee, therefore, implores the Executive to promulgate an Act of Parliament to operationalise the dictates of Article 88 of the Constitution.

- (ii) The Committee also notes that although the National Assembly of Zambia Standing Orders, 2021, are elaborate in terms of procedure and forum for citizens to petition the National Assembly, the Standing Orders do not meet the constitutional requirement as stipulated by Article 88(3) that the manner of petitioning and commenting shall be ‘prescribed’. In this regard, the Committee recommends that an Act of Parliament be enacted to give effect to the constitutional requirement in Article 88(3) by taking a leaf from Kenya which has enacted the Petition to Parliament (Procedure) Act No. 22 of 2021.

Further, the Committee recommends that timelines be given to various actors in the petition process as is the case with Kenya, because unlimited time within which to perform their obligations infringed on the right of citizens to petition the National Assembly. The Committee proposes that seven days be taken for the Clerk to review the petition; sixty days for the appropriate Committee to consider the petition; twenty-one days in which the National Assembly can debate the petition; fifteen days in which the petitioner can be informed of the outcome; thirty days in which the Executive can commence working on a Bill; and 180 days in which the Bill can be presented to Parliament.

- (iii) The Committee is of the view that Standing Order No. 123(4)(d) which provides that petitions to the National Assembly should be in the English language is restrictive and excluded the majority of Zambians who may not express themselves very well in English. The Committee, therefore, recommends that the Act of Parliament, when enacted, should provide certain safeguards such as petitions to be drafted in any of Zambia’s seven official local languages and audio-visual formats, subject to translation and transcription, respectively, by the office of the Clerk, and/or braille, in order to augment citizens’ participation in the legislative process of the National Assembly.
- (iv) The Committee observes that the National Assembly Standing Orders do not make reference to the transition of a petition to a Bill, but simply states that the Clerk shall, in writing, inform the petitioner of the manner in which the petition is dealt with and the resolution of the Assembly. The Committee is of the view that this is a serious oversight which ought to be addressed in the Act when enacted. The Committee urges the Executive to consider including the transition period from Petition to Bill as a safeguard for citizens who petition the Assembly.
- (v) The Committee observes that Standing Order No. 123 provides for the right of a citizen to petition the National Assembly. This provision limits the petitions to natural persons. The Committee, in this regard, recommends that the legislation should make provision for civil society organisations (CSOs) and non-governmental organisations (NGOs) to petition the National Assembly on their own behalf or on behalf of a particular group of citizens or in public interest. The Committee further recommends that the said Act must provide for citizens to be able to petition in association with each other, on behalf of other citizens and collectively.
- (vi) The Committee observes that although Standing Order No. 123 allows citizens to directly petition the National Assembly, there is no provision for citizens to garner support for their petition from their elected representatives who are the Members of Parliament. The Committee, therefore, recommends that the Act must make provision for citizens to approach their Members of Parliament to seek support for their petitions.

- (vii) The Committee notes with concern the low awareness levels of citizens of their right to petition the National Assembly to initiate enactment, amendment and repeal of legislation. The Committee recommends that campaigns should be conducted to educate the general public about their right to petition the National Assembly concerning the enactment, amendment and repeal of legislation. The Committee recommends that pending petitions should be published on the Parliament website so that the general public can follow their progress.
- (viii) The Committee notes that Standing Order No. 124(d) provides that a petition is admissible if it is not similar to a petition that has already been considered by the House during that term of Parliament. The Committee, therefore, recommends that all the petitions submitted to the National Assembly and the decisions of Parliament on those petitions should be recorded in a register which is open to the general public and accessible online.

8.0 CONCLUSION

The Committee agreed with the petitioner that the legitimate exercise of legislative power was dependent on the ability of the elected representatives to accurately reflect the interest of the electorate. One of the ways in which this was ensured was by petitions to Parliament.

The Committee took note that the Constitution of Zambia provided for the right of all citizens to petition the National Assembly to initiate the enactment, amendment or repeal of legislation. The Committee also noted that the Constitution required an Act of Parliament to prescribe the manner of petitioning the National Assembly. The Committee was of the view that enacting subsidiary legislation would give effect to the constitutional requirement, as provided in Article 88 of the Constitution, on the citizens' right to petition Parliament.

The Committee wishes to thank the petitioner and all the stakeholders for their oral and written submissions on the petition. The Committee further wishes to express its gratitude to the Office of the Speaker and the Clerk of the National Assembly for the guidance and services rendered to it during the consideration of the petition.

Dr C Andeleki, MP
(Chairperson)

Ms T E Lungu, MP
(Vice-Chairperson)

Mr G K Chisanga, MP
(Member)

Mr A M Kasandwe, MP
(Member)

Mr C Miyutu, MP
(Member)

Mr E Sing'ombe, MP
(Member)

Mr F M Fube, MP
(Member)

Mr L Hamwaata, MP
(Member)

Mr M Chinkuli, MP
(Member)

Mr J E Banda, MP
(Member)

December, 2021
LUSAKA

APPENDIX I

List of National Assembly Officials

Mr F Nabulyato, Deputy Principal Clerk of Committees (SC)

Mrs A M Banda, Senior Committee Clerk (SC)

Ms B Zulu, Committee Clerk

Mrs R N Mwiinga, Typist

Mr D Lupiya, Committee Assistant

APPENDIX II — List of Witnesses

MINISTRY OF JUSTICE

Honourable M Haimbe, Minister

Ms M K Bwalya, Acting Permanent Secretary (Administration)

Ms B Chibbonta, Chief Parliamentary Counsel

Mr Lastone Banda, Senior Parliamentary Counsel

Ms Mutale Kamangu, Parliamentary Counsel

MAGISTRATES' AND JUDGES' ASSOCIATION OF ZAMBIA

Mr N C Simaubi, National Secretary/Assistant Senior Research Advocate

ZAMBIA LAW DEVELOPMENT COMMISSION

Ms H M Ndhlovu-Chanda, Director/Commission Secretary

Mr M Mwenda, Research Coordinator

Mr N Chulu, Research Officer

CHAPTER ONE FOUNDATION

Ms L Kasonde, Executive Director

LAW ASSOCIATION OF ZAMBIA

Mr K Kapianga, Legal Practitioner

Mr C Ngoma, Legal Practitioner

Ms M Siwale, Legal Practitioner