



REPUBLIC OF ZAMBIA

REPORT

OF THE

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

ON

THE CONSTITUTION OF ZAMBIA BILL, N.A.B. NO. 16 OF 2015

FOR THE

**FIFTH SESSION OF THE ELEVENTH NATIONAL ASSEMBLY
APPOINTED ON WEDNESDAY, 25TH 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 BILL, N.A.B. NO. 16 OF 2015 FOR THE FIFTH SESSION OF THE ELEVENTH NATIONAL ASSEMBLY APPOINTED ON WEDNESDAY, 25TH 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 Bill, N.A.B. No. 16 of 2015, referred to it by the House on **Thursday, 17th October, 2015**.

FUNCTIONS OF THE COMMITTEE

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

MEETINGS OF THE COMMITTEE

3. Your Committee held a total of twelve (12) meetings to consider the Constitution of Zambia Bill, N.A.B. No. 16 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 objects of the Bill are to provide for the: printing and publication of the Constitution; savings and transitional provisions of existing State organs, State institutions, administrations, offices, institutions and laws; savings of succession to assets, rights, liabilities, obligations and legal proceedings and for matters connected with or incidental to the foregoing.

PROVISIONS OF THE BILL

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

Clause 2 – Interpretation

Clause 2 defines certain words used in the Bill, including the meanings ascribed to the terms “Constitution” and “effective date”. By “Constitution” is meant the Constitution of Zambia, 1991, Chapter 1 of the Laws of Zambia and “effective date” means the date on which the Constitution of Zambia Act, 2015 and the Constitution of Zambia (Amendment) (No.) Bill, N.A.B. No. 17 of 2015, come into operation.

Clause 3 – Amendment of Constitution of Zambia Act, 1991, and Schedule thereto

This clause provides for the general amendment of the Constitution of Zambia Act, 1991, and the Constitution in the Schedule to that Act.

Clause 4 – Commencement of Constitution as amended

Clause 4 ties the commencement of the Constitution as amended to the commencement date of the Constitution of Zambia Act, 2015.

Clause 5 – Printing and Publication of Constitution

Clause 5 authorises the Government Printer to print and publish the Constitution separately from the Act.

Clause 6 – Existing Laws

Clause 6 provides for the continuance of existing laws, to the extent that they are consistent with the Constitution as amended, after the commencement of the Constitution of Zambia Act, 2015. The clause further requires Parliament to make amendments to any existing law so as to bring that law into conformity with, or to give effect to, the Act and the Constitution as amended.

Clause 7 – Executive

Clause 7 provides for the continuation in office of the President for the unexpired term of that office as specified in the Constitution. It also provides that the Vice-President, Minister or Deputy Minister shall continue in their respective positions in accordance with the Constitution until the appointment to such office is terminated by the President in accordance with the Constitution.

Clause 8 – Prerogative of Mercy

Clause 8 stipulates that the President may exercise the prerogative of mercy bestowed in terms of the Constitution as amended in respect of an offence committed before the commencement of the Constitution as amended.

Clause 9 – Rights, Duties and Obligations of Government

This clause preserves the rights, duties and obligations of the Government existing immediately before the effective date as the rights, duties and obligations of the Government under the Constitution as amended.

Clause 10 – Succession of Institutions, Offices, Assets and Liabilities

Clause 10 provides for succession of an office or institution where the Constitution as amended alters the name of such office or institution. Further, the clause preserves the status quo in relation to assets and liabilities of the President, the State, Government or the Republic.

Clause 11 – Existing Offices

Clause 11 permits a person holding or acting in an office established under the Constitution immediately before the effective date to continue to hold or act in that office as if appointed under the Constitution as amended. The aforementioned applies to a public officer holding or acting in an office. The clause further provides circumstances, which will not be affected by the provision, and persons to whom the provision will not apply. Additionally, the clause sets the date on which the process of appointing persons to fill vacancies arising after the effective date is to begin and the authority of such appointments.

Clause 12 – Pensions, Gratuities and other Benefits

Clause 12 preserves accrued pension rights of public officers.

Clause 13 – Legislature

Clause 13 sets out the areas of the legislature and legislative power that are to be maintained after the effective date as being under or in accordance with the Constitution as amended. For instance, it provides that the National Assembly shall continue as such for purposes of the Constitution as amended and members of the National Assembly shall remain as such until the expiry of their term of office in accordance with the Constitution. The clause further provides that the Speaker and Deputy Speaker of the National Assembly shall continue as such until other persons are elected to those offices under the Constitution as amended.

Clause 14 – By-elections

Clause 14 requires a by-election held after the effective date to be held in accordance with the Constitution as amended.

Clause 15 – Judicature

Clause 15 preserves the tenure of judges and judicial officers and to that effect provides that a judge or judicial officer shall continue to hold office as if appointed under the Constitution as amended, but may opt to retire within twelve months from the effective date.

Clause 16 – Judicial and Tribunal proceedings and pending Matters

Clause 16 sets out the manner in which proceedings pending before a court or tribunal and proceedings pending before a commission, office or authority are to be dealt with.

Clause 17 – Local Government

Clause 17 sets out the structure of local government subsequent to the effective date of the Constitution as amended. The clause further sets out the limitations of pertinent aspects of local government subsequent to the effective date of the Constitution as amended.

Clause 18 – Political Parties

Clause 18 requires political parties in existence immediately before the effective date to comply with the Constitution as amended or any legislation enacted by Parliament in accordance with the Constitution as amended. The clause further provides a period within which compliance is to take place and penalises a political party which fails to comply.

Clause 19 – Commissions

Clause 19 provides for the continued existence of commissions existing immediately before the effective date.

Clause 20 – Currency

Clause 20 preserves the currency in place immediately before the effective date.

Clause 21 – Transitional Provisions

This clause provides that where an Act of Parliament is required to give effect to an Article of the Constitution as amended, the Article shall come into effect when the Act of Parliament is published on a date prescribed by or under the Act of Parliament.

STAKEHOLDERS’ CONCERNS AND RECOMMENDATIONS

Clause 18: Political Parties

7. A stakeholder submitted that clause 18, which concerned, inter alia, the dissolution of political parties, was an abridgement of the unequivocal rights conferred under Article 21 of Part III of the current Constitution which, protected freedom of assembly and association.

The stakeholder, therefore, proposed that the clause be deleted, as it was an unnecessary, contradictory and discriminatory clause, which added no value to the Constitution.

Another stakeholder was of the view that the provisions of clause 18 need not to be in the Constitution but in subordinate legislation governing political parties.

Other stakeholders observed that the Bill provided for transitional provisions from the current Constitution to the Constitution as would have been amended by The Constitution of Zambia (Amendment) (No.) Act, 2015.

COMMITTEE’S OBSERVATIONS AND RECOMMENDATION

8. Your Committee after due and thorough consideration of the various written and oral submissions from stakeholders, recommends that the Constitution of Zambia Bill, N.A.B. No. 16 of 2015 be withdrawn in its entirety.

CONCLUSION

10. In conclusion, your Committee wishes to express its gratitude to you, Mr Speaker, for granting it the opportunity to scrutinise the Constitution of Zambia Bill, N.A.B. No. 16 of 2015.

Your Committee pays tribute to all the stakeholders who appeared before it and tendered both oral and written submissions. 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 Bill, N.A.B. No. 16 of 2015.

Mr C Mweetwa, MP
(Chairperson)

Ms V Kalima, MP
(Member)

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)

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

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