



REPUBLIC OF ZAMBIA

REPORT

OF THE

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

ON THE

**ELECTORAL COMMISSION OF ZAMBIA (AMENDMENT) BILL, N.A.B. NO. 5 OF
2019**

FOR THE

THIRD SESSION OF THE TWELFTH NATIONAL ASSEMBLY

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REPORT OF THE COMMITTEE ON LEGAL AFFAIRS, HUMAN RIGHTS, NATIONAL GUIDANCE, GENDER MATTERS AND GOVERNANCE ON THE ELECTORAL COMMISSION OF ZAMBIA (AMENDMENT) BILL, N.A.B. NO. 5 OF 2019, FOR THE THIRD SESSION OF THE TWELFTH NATIONAL ASSEMBLY

1.0 COMPOSITION OF THE COMMITTEE

The Committee consists of Mr M Jere, MP (Chairperson); Mrs P G M Jere, MP (Vice Chairperson); Ms M Langa, MP; Mr T S Ngulube, MP; Mr C Nanjuwa, MP; Mr C L Bwalya, MP; Mr H Shabula, MP; Mr R Bulaya, MP; Mr E Singøombe, MP; and Mr S Banda, MP.

The Honourable Mr Speaker
National Assembly
Parliament Buildings
LUSAKA

Sir,

The Committee has the honour to present its Report on the Electoral Commission of Zambia (Amendment) Bill, N.A.B. No. 5 of 2019 for the Third Session of the Twelfth National Assembly referred to it by the House on Thursday 21st February 2019.

2.0 FUNCTIONS OF THE COMMITTEE

The functions of the Committee are set out in Standing Order 157 (2). Among the functions, the Committee is mandated to consider any Bills that may be referred to it by the House.

3.0 MEETINGS OF THE COMMITTEE

The Committee held seven meetings to consider the Electoral Commission of Zambia (Amendment) Bill, N.A.B. No. 5 of 2019.

4.0 PROCEDURE ADOPTED BY THE COMMITTEE

In order to acquaint itself with the ramifications of the Bill, the Committee sought both written and oral submissions from the stakeholders listed in Appendix II.

5.0 OBJECTS OF THE BILL

The object of the Bill is to amend the Electoral Commission of Zambia Act No. 25 of 2016, so as to ó

- (a) revise the functions of the Commission;
- (b) revise the qualifications of the members of the Commission;
- (c) revise the procedure for the removal of a member of the Commission; and
- (d) provide for matters connected with, or incidental to, the foregoing.

6.0 BACKGROUND

The Electoral Commission of Zambia (ECZ) is established pursuant to Article 229 of the *Constitution of Zambia, Chapter 1 of the Laws of Zambia*, as an autonomous Electoral Management Body (EMB) for the Republic of Zambia. The operations of the ECZ are governed by the *Electoral Commission of Zambia Act No. 25 of 2016* (principal Act) and the *Electoral Process Act No. 35 of 2016*.

In order to generally enhance the effectiveness and efficiency of the ECZ, and in particular, to enhance the credibility of the Commission and remove ambiguity in the functions of the Commission, the Government has introduced the Electoral Commission of Zambia (Amendment) Bill, N.A.B. No. 5 of 2019.

7.0 SALIENT PROVISIONS OF THE BILL

In order to meet the objects outlined above, the Bill amends sections 4, 5, 6, 14 and 16 of the principal Act.

7.1 Clause 1 – Short Title

Clause 1 provides for the short title of the principal Act and that the Act shall be read as one with the principal Act.

7.2 Clause 2 – Amendment of Section 4

Clause 2 amends section 4(2) of the principal Act so as to revise the functions of the Commission in order to remove ambiguity, and streamline and harmonise the functions with the *Electoral Process Act No. 35 of 2016* for purposes of clarity and ease of reference between the two pieces of legislation.

7.3 Clause 3 - Amendment of Section 5

Clause 3 amends section 5 of the principal Act, so as to revise the qualifications of members of the Commission, in order to provide security of tenure for the members of the Commission in accordance with best practices and also enhance the credibility of the Commission.

7.4 Clause 4 – Amendment of Section 6

Clause 4 amends section 6(2) and (4) of the principal Act, so as to allow the Commission to meet to transact its business monthly, instead of quarterly and also to provide for the quorum for the meeting from five members to three members.

7.5 Clause 5 - Amendment of Section 14

Clause 5 amends section 14(4) of the principal Act, so as to allow the Commission to invest its funds, as it considers necessary without the approval of the President.

7.6 Clause 6 – Amendment of Section 16

Clause 6 amends section 16(2) of the principal Act, so as to allow the Commission to appoint its own external auditors to conduct specified audits as opposed to the Auditor-General.

8.0 STAKEHOLDERS' SUBMISSIONS AND CONCERNS

All the stakeholders welcomed the amendments but proposed some changes to the Bill.

8.1 Clause 2

Stakeholders were concerned that the functions of the Commission stipulated in clause 2 of the Bill, left out a general provision to the effect that the Commission should perform other functions that are incidental to its mandate. Stakeholders, therefore, proposed an additional section 4(2) (k), which should read as follows: "perform other functions incidental to its functions." With regard to the proposed section 4(2) (i), which mandates the Commission to establish and maintain liaison and cooperation with political parties, stakeholders were of the view that political parties are not the only electoral stakeholders. In this regard, it was proposed that the Commission should also have liaison and cooperation with other stakeholders such as the church, media organisations, civil society organisations and traditional leaders among others.

8.2 Clause 3

Stakeholders were of the view that the qualification requiring a member not to hold a political office, should be extended to cover those who are members of, or affiliated to a political party. Further, stakeholders noted that clause 3 had amended section 5(2) of the principal Act by removing the qualifications required of the Chairperson and Vice Chairperson of the Commission to hold or qualify to hold the office of Judge of a Superior Court.

Stakeholders were of the view that the current section 5(2) of the principal Act should be maintained because there was no mischief in the Act, which the amendment sought to cure. Further, the provisions of Article 99 of the Constitution, which states that "the Chairperson of the Electoral Commission shall be the Returning Officer in an election to the office of President," placed a huge quasi judicial responsibility on the Chairperson, which required the holder of the office to be either a Judge or qualify to hold the office of Judge of a Superior Court.

Stakeholders also submitted that in most jurisdictions within and beyond the SADC Region, Chairpersons of Electoral Management Bodies, were persons who qualified to hold high judicial office. This was a good practice that Zambia need not depart from.

With respect to the amendment of section 5(3) of the principal Act which provides for members of the Commission to serve for 7 years, which may be renewable for a further term of 7 years, some stakeholders were of the view that this should be reduced to at least 3 to 5 year renewable terms, so as to allow other qualified Zambians to serve the Commission. Others however, were of the view that the 7 years term was ideal, given that members of the Commission were appointed at different times and were cardinal in maintaining the institutional memory in the event that their tenure exceeded the 5 years electoral cycle.

Stakeholders also submitted that the proposed amendment of section 5(7) was not clear as it had been retained or couched in exactly the same words as the existing provision. It was proposed that this amendment was unnecessary. With regard to the appointment and removal of members of the Commission by the President as proposed in clause 3 of the Bill, some stakeholders raised concern that the President as a player in the electoral process should not be the one to appoint members of the Commission, as this had the potential to compromise the independence of the members in relation to the appointing authority. Other stakeholders however, argued that the appointment of members of the Commission under the principal Act, were subject to ratification by Parliament upon nomination by the President. They opined that the proposed sections 5(12) and 5(14) insulate the security of tenure of members, because they provide for an elaborate removal procedure, which requires the Chief Justice to appoint a tribunal to investigate the removal of a member of the Commission.

8.3 Clause 5

With regard to the provisions of clause 5 which amends section 14 of the principal Act, by empowering the Commission to invest funds that it does not immediately require in the performance of its functions without seeking prior approval from the President, some stakeholders expressed concern that if the Commission is so empowered, it may deviate from its core functions and concentrate on investing funds for profit making. Other stakeholders welcomed this particular amendment, because it would enhance the financial independence of the Commission and would enable the Commission to implement some of its activities without waiting for funding from the Treasury.

8.4 Clause 6

On the provisions of clause 6 which seeks to amend Section 16 of the principal Act relating to the appointment of an external auditor to conduct a specified audit, some stakeholders held the view that the Office of the Auditor General had the constitutional mandate to carry out audits of all government spending including that of the ECZ. To this end, it was not necessary to appoint an external auditor to undertake a special audit. Other stakeholders, submitted to the contrary that the proposed amendment was necessary as it would enable

the Commission to use the services of external auditors to carry out special or forensic audits, given that the Office of the Auditor General had the overarching responsibility to check and verify all audits conducted on Government and quasi-government institutions, by private auditors.

9.0 COMMITTEE'S OBSERVATIONS AND RECOMMENDATIONS

In supporting the Bill, the Committee makes the observations and recommendations as set out hereunder.

- (i) The Committee observes that the proposed amendment of section 4 (2), on the functions of the Commission does not provide for a function that allows the Commission to perform any other function incidental to its mandate. The Committee, therefore, recommends that such a function be included, in keeping with one of the objectives of the Bill, which is to remove ambiguity in the functions of the Commission.
- (ii) With regard to the amendment of section 5 of the principal Act, the Committee observes that in as much as the qualifications for members of the Commission have been enhanced, the requirement for the Chairperson and Vice Chairperson to be either Judge or qualify to hold the position of Judge of a Superior Court has been removed. The Committee agrees with the stakeholders that the nature of the office of Chairperson requires to be manned by a person who qualifies to hold high judicial office, as is the case in most jurisdictions. The Committee, therefore, recommends that the provisions of section 5(2) of the principal Act should be maintained.
- (iii) With respect to the amendment of section 5 (3) of the principal Act, the Committee observes that the 7 year-tenure of office for members of the Commission has been maintained with the possibility of renewal for a further term of 7 years, which means that a member can potentially serve for 14 years. The Committee however, recommends that a member should only serve for a single term of 7 years, so as to avoid a situation where members overstay in the institution at the expense of other qualified Zambians who can be appointed to the Commission.
- (iv) The Committee observes that it is unclear why section 5(7) is being replaced with a similar provision under the principal Act. The Committee recommends that it is unnecessary to proceed with this particular amendment, as a similar provision already exists under the principal Act.
- (v) The Committee observes that the amendment of section 14(4) of the principal Act, which permits the Commission to invest some of its funds, will enhance its independence. The Committee, therefore, supports this amendment and urges the Government to ensure that the ECZ is adequately funded to enable it implement its functions.

- (vi) The Committee observes that clause 3 of the Bill, which introduces section 5 (14) provides for the procedure for the investigation and subsequent removal of a Commission member by a tribunal appointed by the Chief Justice, at the instigation of the President. The Committee supports the amendment as it protects the members from arbitrary removal from office.
- (vii) The Committee welcomes the amendment of section 16 of the principal Act, to allow the Commission to appoint an external auditor to conduct special audits. The Committee, however, recommends that in order to promote transparency and the integrity of such audits, the external auditors, should be appointed by the Commission subject to approval by the Ministry of Finance.

10.0 CONCLUSION

The Committee wishes to profoundly thank all the stakeholders who appeared before it and rendered both written and oral submissions. The Committee also wishes to thank you, Mr Speaker, for affording it an opportunity to scrutinise the Bill. The Committee is equally grateful to the Office of the Clerk of the National Assembly for the services and courtesies rendered during its deliberations.

We have the honour to be, Sir, the Committee on Legal Affairs, Human Rights, National Guidance, Gender Matters and Governance mandated to consider the Electoral Commission of Zambia (Amendment) Bill, N.A.B. No. 5 of 2019.

M Jere, MP
(Chairperson)

Mrs P G M Jere, MP
(Vice Chairperson)

Ms M Langa, MP
(Member)

Mr T S Ngulube, MP
(Member)

Mr C Nanjuwa, MP
(Member)

Mr C L Bwalya, MP
(Member)

Mr H Shabula, MP
(Member)

Mr R Bulaya, MP

(Member)

Mr E Singombe, MP
(Member)

Mr S Banda, MP
(Member)

March 2019
LUSAKA

APPENDIX I – NATIONAL ASSEMBLY OFFICIALS

Ms C Musonda, Principal Clerk of Committees
Mr F Nabulyato, Deputy Principal Clerk of Committees (SC)
Mr J Sianyabo, Deputy Parliamentary Legal Counsel
Mr S Chiwota, Senior Committee Clerk (SC)
Mr G Zulu, Committee Clerk
Mrs E Chilongu, Committee Clerk
Ms M Kaoma, Legal Officer
Mr L Kabwata, Legal Assistant
Ms C Ndimba, Stenographer
Mr M C Chikome, Committee Assistant
Mr D Lupiya, Parliamentary Messenger

APPENDIX II - THE WITNESSES

Ministry of Justice

Mr G Muntengwa, Senior Parliamentary Counsel

Mr M Kumwenda, Parliamentary Counsel

Human Rights Commission

Ms F Chibwasha, Director

Mr K Banda, Chief Investigations and Legal Services

Zambia Police Service

Mr B Kapeso, Deputy Inspector General - Operations

Mr H Kapika, Planner (Research)

Mr J Shawa, Legal Officer

Women and Law in Southern Africa (WILSA)

Mrs M S Tresha, National Director

Mr D Chiwama, Programmes Officer

Electoral Commission of Zambia

Hon Justice E E Chulu, Chairperson

Mr B M Masenga, Commission Secretary

Southern African Centre for the Constructive Resolution of Disputes (SACCORD)

Mr B Cheembe, Executive Director

Mr C Chifuwe, Programme Officer

Mr A Muyunda, Programmes Manager

Governance, Elections, Advocacy Research Services (GEARS)

Mr M Chipenzi, Executive Director

Mr M Inyambo Yeta, Member