



REPUBLIC OF ZAMBIA

REPORT

OF THE

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

ON THE

**NATIONAL DIALOGUE (CONSTITUTION, ELECTORAL PROCESS, PUBLIC
ORDER AND POLITICAL PARTIES) BILL, N.A.B. NO. 6 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 NATIONAL DIALOGUE (CONSTITUTION, ELECTORAL PROCESS, PUBLIC ORDER AND POLITICAL PARTIES) BILL, N.A.B. NO. 6 OF 2019 FOR THE THIRD SESSION OF THE TWELFTH NATIONAL ASSEMBLY

1. MEMBERSHIP OF THE COMMITTEE

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

The Honourable Mr Speaker
National Assembly
Parliament Buildings
LUSAKA

Sir,

The Committee has the honour to present its Report on the National Dialogue (Constitution, Electoral Process, Public Order and Political Parties) Bill, N.A.B. No. 6 of 2019 for the Third Session of the Twelfth National Assembly referred to it by the House on Tuesday, 19th March, 2019.

2. FUNCTIONS OF THE COMMITTEE

The functions of the Committee are as set out under Standing Order 157 (2). Among the functions, the Committee is mandated to consider Bills referred to it by the House.

3. MEETINGS OF THE COMMITTEE

The Committee held seven meetings to consider the National Dialogue (Constitution, Electoral Process, Public Order and Political Parties) Bill, N.A.B. No. 6 of 2019.

4. 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 at Appendix II.

5. OBJECTS OF THE BILL

The objects of the Bill are to:

- (a) facilitate the implementation of the Siavonga Resolutions of political parties relating to constitutional and institutional reforms, separation of powers and judicial independence, tolerance, freedom of assembly and civility in politics and electoral reforms;
- (b) provide for the national dialogue process to facilitate the Constitution refinement process and regulation of political parties, public order and electoral process reforms;
- (c) establish the National Dialogue Forum and provide for its functions; and
- (d) provide for matters connected with, or incidental to, the foregoing.

6. BACKGROUND TO THE BILL

Zambia is in the process of reforming, refining or enacting several pieces of legislation, which are critical to the country's governance system. These are; the *Constitution of Zambia, Chapter 1 of the Laws of Zambia, the Public Order Act, Chapter 113 of the Laws of Zambia, the Electoral Process Act, No. 35 of 2016* and the draft Political Parties Bill, 2019. To ensure that there is sufficient dialogue and consensus among the major stakeholders on the content of the legislation to be reviewed and enacted, the Government has instituted a national dialogue process.

The *National Dialogue (Constitution, Electoral Process, Public Order and Political Parties) Bill, N.A.B No. 6 of 2019*, provides a legal framework for the national dialogue process in order to protect the process and ensure that it is inclusive and transparent. The introduction of the Bill, therefore, is intended to provide for a systematic and inclusive consultative process in the amendment of the *Constitution of Zambia Act, the Public Order Act, the Electoral Process Act* and the enactment of the Political Parties Bill.

7.0 SALIENT PROVISIONS OF THE BILL

The salient features of the Bill are as set out below.

7.1 Clause 1 – Short title and commencement

This clause provides for the short title and commencement of the Act. The Act, upon enactment may be cited as the National Dialogue (Constitution, Electoral Process, Public Order and Political Parties) Bill, 2019. Additionally, this Bill, once enacted, shall come into operation on the date appointed by the Minister by statutory instrument.

7.2 Clause 2 - Interpretation

This clause defines the key terms in the Bill. Some of the key terms defined are: draft Bills, Forum, review process and Siavonga resolutions.

7.3 Clause 3 – Principles of national dialogue

This clause provides for the principles on which the national dialogue process shall be undertaken, namely; transparency, accountability, inclusiveness, democratic decision-making and patriotism.

This clause additionally provides for the tenets that shall guide the process. Some of the tenets outlined are that the Government, the National Dialogue Forum, political parties, non-governmental organisations and the people shall -

- (a) acknowledge that the legislative authority of the Republic derives from the people;
- (b) recognise the legislative power vested in Parliament by Article 62 of the Constitution;
- (c) ensure that the meetings of the Forum are held in peace; and
- (d) desist from any political or administrative action that adversely affects or is likely to adversely affect the operation or success of the review process.

7.4 Clause 4 – Establishment, functions and powers of National Dialogue Forum

The clause establishes the National Dialogue Forum. The National Dialogue Forum shall subject to the Constitution, implement and enhance the Siavonga resolutions for proposals to alter the Constitution based on submissions from stakeholders and reform the law on the electoral process, public order and regulation of political parties.

This clause additionally empowers the National Dialogue Forum to vary, confirm, add or remove any provision of the draft amendments to the Constitution, the *Electoral Process Act*, the Public Order Act and the draft Political Parties Bill, 2019.

7.5 Clause 5 – Composition of Forum

This clause provides for the composition of the National Dialogue Forum. The members of this Forum shall be appointed by the Secretary to the Cabinet. Some notable representatives shall, in keeping with the principle of inclusiveness and transparency, be appointed from ó

- (a) political parties;
- (b) religious organisations;
- (c) law enforcement agencies;
- (d) civil society organisations;
- (e) higher education institutions; and
- (f) ordinary members of the public who would make submissions to the National Dialogue Forum, appointed by the minister.

The Forum members shall be nominated by their respective institutions, and where an institution is required to nominate two or more representatives, the institution shall be required to ensure gender equality of representation.

This clause also empowers the President to appoint a chairperson of the National Dialogue Forum. However, this appointment shall be subject to ratification by the National Dialogue Forum. The National Dialogue Forum shall nominate and elect two vice-chairpersons who are not members of the National Dialogue Forum.

7.6 Clause 6 – Tenure of office and vacancy

This clause provides for the tenure of office of a member of the National Dialogue Forum, which shall be a period of ten (10) days commencing from the date of appointment to the tenth day of the Forum's sittings.

This clause additionally provides for instances when the office of a member of the National Dialogue Forum becomes vacant. The office of a member becomes vacant on the death or resignation of a member; on a member being adjudged bankrupt; or, in the case of a Member of Parliament, that person ceasing to be a Member of Parliament.

Further, this clause empowers the Secretary to the Cabinet, on recommendation of the standing committee, of the Forum, to remove a member from office if, during the deliberations of the Forum, the member, among other grounds,

- (a) behaves in a manner which causes discord; or
- (b) is violent, threatens any person with violence or does anything that is provocative.

In the event of the office of a member of the Forum becoming vacant, this clause permits the Secretary to Cabinet to appoint another member in that member's place.

7.7 Clause 7 - Committees

This clause establishes the standing committee of the National Dialogue Forum, consisting of one of the Vice-Chairpersons of the Forum and eight other members of the Forum elected by the members of the Forum from among themselves at the first meeting of the Forum.

The core mandate of the standing committee shall be to consider and determine disciplinary matters relating to the members of the National Dialogue Forum. The standing committee shall be presided over by the Vice-Chairperson.

This clause additionally permits the National Dialogue Forum to constitute a committee other than the standing committee to which the National Dialogue Forum may delegate its functions.

7.8 Clause 8 – Proceedings of Forum

This clause provides for the proceedings of the National Dialogue Forum. The National Dialogue Forum shall hold a number of meetings or sittings in a manner that the members shall consider necessary. However, the National Dialogue Forum shall not hold any meetings or sittings at any time during sittings of the National Assembly.

7.9 Clause 9 – Attendance of meeting or sittings by members of the Public

This clause provides for Public attendance of the Forum meetings or sittings. A member of the public wishing to attend any of the meetings or sittings of the National Dialogue Forum shall be permitted to do so upon giving at least two days notice and being accredited. Despite this, the members of the Forum shall not be precluded from holding deliberations in private.

7.10 Clause 10 – Publication of deliberations

This clause obligates the Forum to publicise its deliberations, and states that the National Dialogue Forum shall publicise its deliberations or avail a record of the proceedings of any meeting through the print and electronic media or the Gazette.

7.11 Clause 11 – Secretary and Secretariat

This clause provides for the appointment of a Secretary to the National Dialogue Forum, who shall be the head of the Secretariat. For the purposes of this National Dialogue Forum, the Ministry responsible for justice is the Secretariat.

7.12 Clause 12 – Prohibition of publication of or disclosure of information to unauthorised persons

This clause seeks to prohibit the publication of or disclosure of information to third parties without the consent in writing of the National Dialogue Forum.

7.13 Clause 13 – Immunity of members, Secretary and staff of Secretariat

This clause provides for the immunity of the members, Secretary and the staff of the Secretariat in respect of an act, or thing done or omitted to be done in the performance of any of their functions under this Act.

7.14 Clause 14 – Duration of process and submission of draft Bills

This clause provides for the duration of the review process which shall be for a period of ten days from the date of the first sitting of the members. Despite the prescribed ten day duration, this clause allows the Minister to extend the duration by way of a Statutory Instrument.

Where an extension of time is granted to the National Dialogue Forum under this clause, the members shall expeditiously conclude their work in accordance with the provision of the Act.

This clause further mandates the National Dialogue Forum to review, prepare and adopt the draft Bills at the conclusion of the review process. Subsequently, the ministries responsible for the statutory functions to which the draft Bills relate, shall be expected within a period of thirty days to:

- (a) in the case of the draft Constitution, cause the Bill to be published in the Gazette in accordance with Article 79 of the Constitution; and
- (b) introduce the published Bills in the National Assembly for possible enactment by Parliament.

7.15 Clause 15 – Members’ expenses relating to Forum

This clause places the responsibility of meeting the members’ allowances, emoluments or other costs in respect of their attendance of the Forum’s meetings and sittings, on the institutions they represent.

7.16 Clause 16 – Funds for expenses of Forum

This clause provides that the expenses incurred for, and incidental to, the purposes of the National Dialogue Forum shall be paid out of moneys appropriated by Parliament for the purposes of constitutional reform. However, the National Dialogue Forum shall not be precluded from receiving grants, gifts, donations or bequests for the purposes of the Act.

7.17 Clause 17 – Offences relating to work of Forum

This clause creates offences relating to the work of the National Dialogue Forum. For instance, a person commits an offence who, when required to attend before the National Dialogue Forum, absents oneself from the meeting or sitting without reasonable excuse or permission.

7.18 Clause 18 – Prohibition of external interference with member, Secretary or staff of Secretariat

This clause provides for the prohibition of external interference with the members, Secretary, or staff of the Forum Secretariat. This clause thereby creates an offence against a person who obstructs, interferes with, or threatens violence against a member, Secretary or staff of the Secretariat.

7.19 Clause 19 – Dissolution of Forum

This clause provides for the dissolution of the National Dialogue Forum and states that the National Dialogue Forum shall stand dissolved once the draft Bills are submitted in accordance with the procedure laid down in clause 14. Despite the foregoing, the President is empowered to dissolve the National Dialogue Forum if ó

- (a) at any stage of the review process, the members conduct themselves or the meeting in a manner that they fail to perform their functions; or
- (b) the members fail to agree on the provisions of the draft Bills.

7.20 Clause 20 – Repeal of Act

This clause provides that the Act shall stand repealed when the National Dialogue Forum presents the draft Bills to the relevant Ministers. However, the secretariat shall continue to operate after the repeal for the purpose of winding up the administrative affairs of the National Dialogue Forum.

8.0 SUBMISSIONS AND CONCERNS BY STAKEHOLDERS

General Concerns

- (i) Some stakeholders who appeared before the Committee supported the Bill. However, in supporting the Bill they observed that what was being proposed under the Bill to create the Forum was not different from the past constitution-making processes which had failed to produce a desirable and legitimate Constitution. They were of the view that apart from the change in name, the Bill was a replica of the

National Constitutional Conference Act, No. 19 of 2007. Therefore, it was difficult for them to appreciate how the proposed process would yield a different result.

- (ii) Stakeholders pointed out that the major weaknesses of the previous constitution-making processes were that the initiatives were being driven by the Executive. They submitted that in previous processes, after extensive consultations with the members of the public, the Executive reserved the right to pick and choose what it desired to include in the final document. Against this backdrop, they submitted that the current Bill did not appear to depart from previous practice. They argued that whatever resolutions would be made by the Forum under the Bill would only be considered as suggestions by the Executive, because it still had the power to determine what to do with the information received.
- (iii) Stakeholders were also concerned that the rationale of the Bill was not clear. They wondered whether the Bill intended to foster dialogue or refine the named laws. They stated that the process to refine laws could be accomplished without addressing underlying political problems or challenges affecting the country. In their view, dialogue could not be legislated because it could be accomplished through a process of deliberate compromises and consensus building. Therefore, it was unlikely that the Bill could foster national dialogue in the current circumstances where the church-led initiative had stalled.
- (iv) The Committee was informed that the Bill had made reference to the Siavonga Resolutions, to which stakeholders were not privy to, and which were not attached to the Bill. This made it difficult for them to support some of the recommendations contained in the Resolutions because they were not sure whether the recommendations addressed their concerns.
- (v) Some stakeholders were concerned that they had been listed on the schedule under Section 4(1) of the Bill as having made submissions to the Constitution refinement process, despite not having done so. Further, some stakeholders noted that they had only been consulted in some aspects such as on the Public Order Act and not on the entire process. Based on the foregoing, stakeholders were of the view that failure to carry out a robust consultative exercise had rendered the process devoid of consensus. In this vein, some stakeholders recommended that the Bill be withdrawn and subjected to thorough scrutiny and further consultations.
- (vi) Some stakeholders submitted that the introduction of the National Dialogue (Constitutional, Electoral Process, Public Order and Political Parties) Bill was premature as the three church mother bodies, namely: Council of Churches in Zambia, Evangelical Fellowship of Zambia and the Zambia Conference of Catholic Bishops, were still facilitating a process of national dialogue and reconciliation. Stakeholders, therefore, recommended that the Bill be withdrawn until the National Dialogue and reconciliation process being spearheaded by the three church mother bodies was exhausted.

- (vii) Stakeholders expressed concern that the refining of the Constitution had been lumped with other legislation and this would, therefore, dilute its refinement. Stakeholders were of the view that since the constitution was the supreme law of the land, its refinement process should be considered on its own, after which other pieces of legislation may be considered.
- (viii) Stakeholders were concerned that consideration of the Bill was being done in a hasty manner, resulting in stakeholders not being given sufficient time to study its contents so as to enable them make substantive and comprehensive submissions to the Committee. Stakeholders, therefore, recommended that, in future, sufficient time should be given to allow stakeholders to fully scrutinise legislation.

Specific concerns

8.1 Clause 2: Interpretation

Stakeholders expressed concern that the definition in Clause 2 of non government organizations left out organisations that were registered under pieces of legislation other than the *Non Governmental Organisations' Act, No. 16 of 2009*. Stakeholders proposed that for the purpose of the Bill, organisations ought to be recognised as such, and should not be required to register under the *Non Governmental Organisations' Act*. Stakeholders were further concerned that the Siavonga Resolutions were not captured in the Bill. They proposed that there was need to include the Siavonga Resolutions as a schedule to the Bill for easy reference.

8.2 Clause 4: Establishment, functions and powers of National Dialogue Forum

Stakeholders observed that the provisions in Clause 4 were not clear as the Siavonga Resolutions were not contained in the Bill. They, therefore, proposed that the Siavonga Resolutions be included in the Bill.

Additionally, stakeholders were concerned that the draft Political Parties Bill, 2019, which was one of the pieces of legislation to be considered by the Forum, was a new piece of legislation that comprised provisions that were neither draft amendments nor repeals or replacements. In that regard, stakeholders submitted that Clause 4(2) needed to be amended to include the words "draft provisions" in order to cater for the Political Parties Bill.

8.3 Clause 5: Composition of Forum

Stakeholders were concerned that Clause 5(6) provided that the members shall elect two Vice Chairpersons of the Forum from among persons, who shall be nominated from outside the Forum. They, therefore, recommended that contrary to this, the two Vice Chairpersons be appointed from among the members of the forum.

Stakeholders expressed concern that some key stakeholders were excluded from the list of members of the Forum. These included the Department of the Clerk of the National Assembly, organisations representing persons with disabilities, the Islamic Supreme Council of Zambia, the Human Rights Commission, the Ministry of National Guidance and Religious Affairs, the Ministry of Gender, the Independent Churches of Zambia, the

Seventh Day Adventist Church, the Apostolic Council of Churches, and the Christian Mission in Many Lands. Stakeholders, therefore, recommended that clause 5(1) be amended to include the above organisations. Furthermore, stakeholders noted that the Judiciary had only been allocated one slot on the Forum, despite being an arm of government that had played an important role in the constitution refining process. It was proposed that the Judiciary should be represented by at least three members.

Stakeholders also observed that Clause 5(5) of the Bill empowered the President to appoint the Chairperson of the Forum subject to ratification by the Forum. Stakeholders were of the view that a presidential appointee would be subject to be influenced by the appointing authority; therefore, it was proposed that the Chairperson should be elected from among the members of the Forum. In addition, stakeholders observed that Clause 5(6) which provides for the members to elect two Vice Chairpersons of the Forum from outside the Forum should be amended so that the two Vice Chairpersons should be appointed from among the members of the Forum so as to ensure their legitimacy.

8.4 Clause 6: Tenure of office and vacancy

With regard to the tenure of office of a member of the National Dialogue Forum and where a vacancy occurred under clause 6, stakeholders were concerned that the Bill had not stipulated what would happen to the office of a member who was a representative of a political party, who either stopped being a member of that political party or joined another political party during their tenure of office as a member of the Forum. Stakeholders, therefore, recommended that the Bill explicitly state what would happen to the office of a member who was a representative of a political party, who either stopped being a member of that political party or joined another political party during their tenure of office as a member of the Forum.

8.5 Clause 9: Attendance of Meeting or Sitting by Members of the Public

Stakeholders were concerned that in Clause 9(2), a member of the public who wished to attend any of the meetings or sittings of the National Dialogue Forum needed to be permitted to do so upon giving at least two days notice and being accredited. Some stakeholders recommended that the members of the public needed to be allowed to attend the National Dialogue Forum freely without seeking prior permission.

Stakeholders were also concerned that in clause 9(3), the minimum punishment for a person disrupting the proceedings of the Forum, becoming violent or threatening violence was a one year sentence without the option of a fine. They were of the view that offences that had no option of a fine were usually serious crimes. Stakeholders, therefore, submitted that Clause 9(3) need to be amended in order to reduce the sentence to a maximum of six months imprisonment and also to provide for the option of a fine.

8.6 Clause 14: Duration of process and submission of draft Bills

Under clause 14(1), stakeholders submitted that the ten day period from the first sitting for the Forum to finish its work was too short, especially that there were Bills to be prepared. They proposed that thirty days be allocated, subject to extension.

8.7 Clause 15 – Members’ expenses relating to Forum

Stakeholders submitted that this activity may not have been budgeted for by some institutions invited to the Forum, and failure to meet the costs related to participation could lead to their non participation at the event. Stakeholders recommended that members’ expenses be a charge on the Consolidated Fund as had been the case for similar processes such as the various constitutional review processes that the nation had undertaken.

8.8 Clause 16: Funds for Expenses of Forum

Stakeholders were concerned that Clause 16 provided that the National Dialogue Forum shall not be precluded from receiving grants, gifts, donations or bequests for the purposes of this Act. Stakeholders recommended that the Forum should not receive grants, gifts, donations or bequests as that could directly or indirectly influence and make the Forum susceptible to undue external pressure.

8.9 Clause 19: Dissolution of Forum

Stakeholders were concerned that Clause 19 provided that the Secretary to the Cabinet was the appointing Authority and yet the power to dissolve the National Dialogue Forum is vested in the President. Stakeholders, therefore, recommended that the dissolution of the Forum be done by the Secretary to the Cabinet as the appointing Authority.

9. RESPONSES BY THE MINISTER OF JUSTICE TO THE CONCERNS RAISED BY STAKEHOLDERS

The Committee presented the concerns raised by the stakeholders who made both written and oral submissions to the Committee, to the Minister of Justice. The Minister responded as set out hereunder.

- (i) With regard to the concern that the proposed Forum would not be any different from past constitution making processes that had allowed the Government of the day the discretion to decide what provisions to include in the constitution and which to omit, the Minister pointed out that most of the consultative processes had already been undertaken and agreed upon with both political and non political stakeholders. In this regard, the Forum was going to be a much smaller platform, which would largely include those parties that had already made submissions to the various consultative fora. Additionally, the Minister submitted that the proposed Bill itself provided for the protection of the decisions and outcomes of the Forum in Clause 4(3) of the Bill. This would ensure that nobody would circumvent or adulterate the decisions of the Forum.
- (ii) The Minister commented on the likelihood of some members of the Forum failing to meet the costs of participating in the dialogue process and the proposal that the Government should meet all the costs associated with the work of the Forum. He stated that the Government was mindful of the need to avoid a recurrence of the situation during previous constitution making processes where some stakeholders were only motivated by the financial benefits associated with the process, such as sitting allowances. He explained that in the proposed process, the Government

would cover all the basic logistical costs related to the meetings of the Forum, but called upon participating organisations to exhibit patriotism by sponsoring their delegates to the Forum through provision of necessary remuneration to such delegates.

- (iii) As regards the issue of the penalty of one year imprisonment without the option of a fine to be meted out against a person who disrupted the proceedings of the Forum by becoming violent or threatening violence, the Minister submitted that although there was evidence to show that in past constitutional making processes there were persons who had deliberately disrupted proceedings, it was important to be lenient and he was, therefore, open to suggestions for amendments to this particular provision.
- (iv) With regard to the concern that if the Chairperson of the Forum was appointed by the President, such an appointee would pay allegiance to the appointing authority, the Minister responded that even though the Bill empowered the President to nominate the Chairperson, the Bill provided for ratification of the appointment by the Forum, thus giving the Forum the right to vet the President's choice. He also noted that the Bill did not provide for what would happen if the nominee was rejected by the Forum. To this end, he informed the Committee that he would be moving an amendment to cure this defect.
- (v) On the suggestion that the Siavonga Resolutions should have been annexed to the Bill, the Minister explained that the Resolutions were not attached to the Bill because the essence of the Bill was to agree on the process of engagement first, before dealing with the content. He submitted that if the Siavonga Resolutions or indeed other documents were released at this stage, attention would be diverted from the legislative process as stakeholders would concentrate on the content and not the process.
- (vi) Commenting on the concern that a dialogue process could not be legislated but should be accomplished through a process of deliberate compromises and consensus building, the Minister stated that dialogue at whatever level of governance or human relations needed to be orderly and guided. In this regard, the Bill was critical in ensuring that the important national issues involved in the dialogue process could be deliberated on in an orderly and guided manner.
- (vii) With regard to the list of stakeholders attached to the Bill, which contained some stakeholders who were not party to any consultative processes, the Minister acknowledged that the list contained errors as it included some stakeholders who should not have been included and excluded others who should have been included. In this regard, he pointed out that he would be moving an amendment to correct these errors and would welcome any indications of stakeholders who were inadvertently omitted from the list.

- (viii) With regard to the concern on the brevity of the period of ten days in which the Forum should conclude its work, the Minister responded that the Bill provided for an option to extend the period by the Minister at the request of the Forum. He added that since there were no allowances to be paid to delegates, there would be no incentive by the Forum to unnecessarily prolong the dialogue process as all delegates would approach it with the knowledge that it was time bound.
- (ix) Asked to comment on the concern that the Government had hijacked the dialogue process and therefore, the Bill should be rejected, the Minister submitted that one of the main reasons why the Bill was developed was in response to a Private Member's Motion which was moved in the House to urge the Government to refine the Constitution and improve the electoral, political and governance platform. This was in addition to the numerous requests and calls by other stakeholders like civil society organisations, appealing to the Government to refine the Constitution of Zambia as amended by Act No. 2 of 2016. He explained further that political parties had agreed on the contents of the Siavonga Resolutions collectively and the Government had no intentions of changing what was agreed. The Minister also explained that while the Government had no intention of hijacking this process, it also had a constitutional mandate and legitimate responsibility to govern and provide the necessary leadership on matters of national interest, in accordance with the Constitution.
- (x) With regard to the inclusion of Members of Parliament as members of the Forum, the Minister pointed out that the power to make laws was vested in Parliament; Members of Parliament were both as political stakeholders and representatives of the people, hence the need for them to form part of the Forum. It was important to have buy-in from the Members of Parliament because they would be the ones to analyse the Bills that would emanate from the Forum and would thus act as a safety net to protect the content of the documents from the Forum.
- (xi) Regarding the concern on the provision that the Vice Chairpersons would be elected from outside the Forum, the Minister explained that the rationale behind this proposal was that each organisation on the Forum would nominate only two representatives. Therefore, to ensure that each organisation had at least the two voices on the Forum, it was felt that the vice chairpersons should be from outside the Forum since, as Vice Chairpersons, they would be constrained to contribute to the proceedings. He however, stated that he would be open to alternative suggestions.
- (xii) With regard to the concern that the Judiciary only had one representative on the Forum, the Minister acknowledged the amount of work the Judiciary had done with respect to the constitution refining process. To this end, he agreed to move an amendment to increase the representation of the Judiciary to two members.
- (xiii) On the concern that the refining of the Constitution had been lumped with other legislation and that this would therefore, dilute its refinement, the Minister

responded that the sequence of the refinement would take after the nomenclature of the Bill. The Constitution would be dealt with first and after it was finalised, the other laws would follow so that they could all be in consonance with the Constitution as the supreme law of the land.

10.0 COMMITTEE’S OBSERVATIONS AND RECOMMENDATIONS

The Committee observes that while some stakeholders were in support of the Bill, others were not in support of it due to the concerns which the Committee has highlighted in its report. In this regard, the Committee recommends that the National Dialogue (Constitution, Electoral Process, Public Order and Political Parties) Bill, N.A.B No 6 of 2019, be deferred until the concerns raised are addressed in the manner proposed hereunder.

- (i) The Committee observes that the definition of “Non Governmental Organisation” in Clause 2 leaves out organisations that are not registered under the *Non Governmental Organisations’ Act, No.16 of 2009*. The Committee, therefore, recommends that the definition should be revised so as to extend to all non governmental organisations registered under other pieces of legislation, in keeping with the Bill’s objective of inclusiveness.
- (ii) The Committee observes that the proposed Political Parties Bill, 2019, which is one of the pieces of legislation to be considered by the Forum, is a new piece of legislation whose provisions are neither draft amendments nor repeals or replacements. In this regard, the Committee recommends that Clause 4(2) be amended by the inclusion of the words “draft provisions” in order to cater for the Political Parties Bill.
- (iii) The Committee observes that the Composition of the Forum in Clause 5(1) does not include representation from the Department of the Clerk of the National Assembly and representation from an organisation representing persons with disabilities. The Committee, therefore, strongly recommends that clause 5 (1) be amended to include a representative from the Department of the Clerk of the National Assembly and a Member from an organisation representing persons with disabilities.
- (iv) The Committee observes that Clause 5(6) provides that “the members shall elect two Vice Chairpersons of the Forum from among persons who shall be nominated from outside the Forum”. The Committee, however, recommends that the two Vice Chairpersons be appointed from among the members of the Forum so as to ensure their legitimacy.
- (v) With regard to the tenure of office and vacancy of a member as provided in Clause 6, the Committee is concerned that the Bill does not stipulate what will happen to the office of a member of the Forum who is a representative of a political party who either stops being a member of that political party or joins another political party during their tenure of office as a member of the Forum. The Committee, therefore,

recommends that the Bill should explicitly state what will happen in those circumstances.

- (vi) The Committee observes that under Clause 9(3), the minimum punishment for a person who disrupts the proceedings of the Forum by becoming violent or threatening violence is a one year sentence without the option of a fine. The Committee, further, observes that offences that have no option of a fine are usually serious crimes. The Committee, therefore, recommends that Clause 9(3) be amended in order to reduce the sentence to at least six months imprisonment and also provide for the option of a fine.
- (vii) With respect to Clause 14(1), the Committee observes that the ten day period allocated to the Forum to sit and complete its work is inadequate. The Committee, therefore, recommends that the clause be amended to increase the period from ten to thirty days.
- (viii) The Committee is greatly concerned that the work of the Forum and its activities may not have been budgeted for by most institutions that are proposed to constitute the membership of the Forum. This would therefore, lead to some of those organisations failing to participate in the activities of the Forum. The Committee, therefore, recommends that provisions be included in the Bill so as to allow members' expenses to be a charge on the Consolidated Fund as has been the case for similar processes that the nation has undertaken such as the various constitutional review processes.
- (ix) The Committee observes that Clause 5(1) provides that the Secretary to the Cabinet is the appointing authority for Members of the Forum and yet the power to dissolve the National Dialogue Forum is vested in the President under Clause 19(2). The Committee, therefore, recommends that the power to dissolve the Forum be vested in the Secretary to the Cabinet as the appointing authority.

11.0 CONCLUSION

The Committee wishes to express its gratitude to all stakeholders who appeared before it and rendered both oral and written submissions. The Committee also wishes to thank you, Mr Speaker, for according it an opportunity to scrutinise the Bill. The Committee also appreciates the services rendered to it by the Office of the Clerk of the National Assembly and the permanent witnesses from the Ministry of Justice.

We have the Honour, to be, Sir, the Committee on Legal Affairs, Human Rights, National Guidance, Gender Matters and Governance mandated to consider the National Dialogue (Constitution, Electoral Process, Public Order and Political Parties) Bill, N.A.B. No. 6 of 2019 for the Third Session of the Twelfth National Assembly.

Mr M Jere, MP
(Chairperson)

Mrs P G M Jere, MP
(Vice Chairperson)

Mr C L Bwalya, MP
(Member)

Mr S Banda, MP
(Member)

Mr C Nanjuwa, MP
(Member)

Mr T S Ngulube, MP
(Member)

Mr H Shabula, MP
(Member)

Mr E Singøombe, MP
(Member)

Mr R Bulaya, MP
(Member)

Ms M P Langa, 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 S Chiwota, Senior Committee Clerk (SC)
Mr D Mwinamo, Acting Senior Legal Officer
Mr G Zulu, Committee Clerk
Ms ChitaluMulenga, Committee Clerk
Mr E Chilongu, Committee Clerk
Mrs S B M Nyirongo, Committee Clerk
Ms C Ndimba, Stenographer
Mr M Kantumoya, Parliamentary Messenger

APPENDIX II – THE WITNESSES

Ministry of Justice

Hon Given Lubinda, Minister of Justice
Mr Andrew Nkunika, Permanent Secretary
Ms Hope M N Chanda, Director ó ZLDC
Mrs Mwenya K Bwalya, Chief Parliamentary Counsel
Mr Francis Chilunga, Principal Legal Counsel
Ms Leah Chileshe Mukuka, Parliamentary Counsel

Ministry of National Guidance and Religious Affairs

Ms Katongo S M Chifwepa, Permanent Secretary
Ms Tiza Nkumbula, Director
Mr Yengwe Kakusa, Director - National Guidance
Mr Mumba Tembo, Chief Planner
Mr William S Kabwe, Monitoring and Evaluation Officer

Ministry of Home Affairs

Mr Patrick H Choolwe, Acting Permanent Secretary
Ms Thandiwe Mhende, Chief Registrar
Mr Siphon Banda, Principal Registrar
Ms Cecilia M Simumba, Registrar
Mr Boss Mbindawina, Registrar
Mr Desmond M Mwanza, Deputy Director - Legal
Mr Alex Mukisi, Acting Principal Planner

Judiciary

Mr Chuba Paul, Registrar- High Court
Ms Mercy Arida Chulu, Registrar - Chambers
Ms Twaambo Musonda, Registrar - Subordinate Courts
Ms M Malama, Registrar - Constitutional Court

Zambia Open University

Prof Gevase Maipose, Dean
Dr Micheal Mabenga, Head of Department
Mr Kalazo Chanda, Acting Dean-School of Law

Gears Initiative

Mr McDonald Chipenzi, Executive Director
Mr Gideon Musonda, Director of Programmes

Women and Law in Southern Africa

Ms Maureen Samulela Tresha, National Director
Ms Precious Bilima, Legal Intern

University of Zambia

Prof Chuma Himoonga, Dean - School of Law
Mr Obrien Kaaba, Lecturer

MISA Zambia

Mr Martin Akende, Board Member
Ms Jane Chirwa, Programmes Manager

Foundation for Democratic Process

Mr Chimfwembe Mweenge, Executive Director
Mr Jacob Ngoma, National Secretary

Movement for Multi- Party Democracy

Hon Raphael Nakachinda, National Director
Hon Gaston Sichilima, Chairperson of Elections
Mr Kamufumkache, Chairperson of Energy
Mr Gerald Chiluba, Office Staff
Mr Pengele Filimaba, Office Staff
Mr K Kanchele, Office Staff
Mr Prince Ndoyi, Office Staff

Forum for Democracy and Development

Mr Chifumu Banda, Vice President
Mr Clement Kangwa, Youth Chairman
Mr Anthony Chibuye, Legal Committee Secretary

Civil Society for Constitution Agenda

Bishop John Mambo, Chairperson
Ms Judith Mulenga, Vice Chairperson
Mr Nicholas Phiri, Member
Mr Mwamina Muloshi, Member
Ms Monde Mlengwa, Member
Mr MacDonald Chipenzi, Member

Electoral Commission of Zambia

Mr Bob M Musenge, Commission Secretary
Mr Dylan Kasonde, Director ó ICT
Ms Chana K Zambezi, Director ó Electoral Operations

Patriotic Front Party

Hon Brian Mundubile, Legal Committee Chairperson
Hon Makebi Zulu, Legal Committee Member
Mr Jonas Zimba, Legal Committee Member

United Party for National Development

Mr Stephen Katuka, Secretary General

Mr Patrick Mucheleka, Vice Secretary General

United Liberal Party

Mr Sakwiba Sikota, President

Mr Inambao Inambao, Secretary General

Law Association of Zambia

Mrs Nkusuwila N Mbao, Council Member

Church Mother Bodies

Zambia Conference of Catholic Bishops

Bishop George Lungu, President

Fr. Cleophas Lungu, Secretary General

Council of Churches in Zambia

Fr. E Chikoya, General Secretary

Rev. Sauros Phaika, Board Member

Mr Michael Mazakaza, Communications Officer

Evangelical Fellowship of Zambia

Bishop Fortune L Mwiza, Vice Chairperson

Rev. Pukuta Mwanza, Consultant

