



REPUBLIC OF ZAMBIA

**REPORT OF THE COMMITTEE ON NATIONAL SECURITY AND FOREIGN
AFFAIRS**

ON

THE DEFENCE (AMENDMENT) BILL, N.A.B. NO.12 OF 2023

FOR THE

THIRD SESSION OF THE THIRTEENTH NATIONAL ASSEMBLY

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FOREWORD

Honourable Madam Speaker, the Committee on National Security and Foreign Affairs has the honour to present its Report on the consideration of the Defence (Amendment) Bill, N.A.B. No 12 of 2023, for the Third Session of the Thirteenth National Assembly. The Committee is mandated to consider any Bills that may be referred to it by the House as per Standing Order 198(j) of the National Assembly of Zambia Standing Orders, 2021.

The Committee held nine meetings to consider the Defence (Amendment) Bill, N.A.B. No 12 of 2023. In order to acquaint itself with the ramifications of the Bill, the Committee sought both written and oral submissions from various relevant stakeholders. The stakeholders who appeared before the Committee are listed at Appendix II.

Madam Speaker, the Committee is grateful to the stakeholders who tendered both written and oral submissions. The Committee also wishes to thank you, for affording it an opportunity to scrutinise the Defence (Amendment) Bill, N.A.B. No 12 of 2023. Further, appreciation is extended to the Clerk of the National Assembly and his staff for the support and guidance throughout the Committee's deliberations.



Brig Gen Morgan Sitwala (Rtd), MP
CHAIRPERSON

November, 2023
LUSAKA

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1.0 COMPOSITION OF THE COMMITTEE

The Committee consisted of: Brig Gen Morgan Sitwala (Rtd), MP, (Chairperson); Ms Sibongile Mwamba, MP (Vice-Chairperson); Mr Lusale John Simbao, MP; Mr Philemon Twasa, MP; Mr Derricky Chilundika, MP; Mrs Chrizoster P Halwiindi, MP; Mr Christopher Chibuye, MP; Mr Mubika Mubika, MP; Mr Yotam Mtayachalo, MP; and Mr Cliff Mpundu, MP.

2.0 BACKGROUND

The *Defence Act, Chapter 106 of the Laws of Zambia* provided for a person, subject to military law to be punished by, among other punishments, the death penalty for certain military offences. However, the death penalty was viewed as inhumane, degrading and not in conformity with the fundamental human right to life and dignity, as enshrined in the *Constitution of Zambia Act, Chapter 1 of the Laws of Zambia*. Following the enactment of the *Penal Code (Amendment) Act, No 23 of 2022* and the *Criminal Procedure Code (Amendment) Act, No 22 of 2023*, there was need to amend the Defence Act. This was in order to align it with the *Penal Code Act, Chapter 87 of the Laws of Zambia* and the *Criminal Procedure Code Act, Chapter 88 of the Laws of Zambia* which were amended to remove the provisions relating to the death penalty. Further, the amendment was in line with the international best practice of sentencing a person subject to military law, to life imprisonment as the maximum sentence applicable.

In this regard, the Defence (Amendment) Bill, N.A.B. No 12 of 2023, sought to amend the *Defence Act, Chapter 106 of the Laws of Zambia*, in order to replace the death penalty with life imprisonment.

3.0 OBJECT OF THE BILL

The object of the bill was to amend the *Defence Act, Chapter 106 of the Laws of Zambia*, so as to:

- (a) replace the death penalty with life imprisonment; and
- (b) provide for matters connected with, or incidental to, the foregoing.

4.0 SALIENT PROVISIONS OF THE BILL

The salient provisions of the Bill were as set out below.

Amendment of sections 29, 30, 36, 37 and 73

Clauses 2, 3, 4, 5 and sought to amend sections 29(1), 30 (1), 36 (1), 37 (b) and 73 (3) of the principal Act respectively, by the deletion of the words "suffer death" and substituting them with the words "life imprisonment".

Clause 6 Repeal and replacement of section 71

Clause 6 sought to repeal and replace section 71 of the principal Act so as to provide for the punishment of persons who attempted to commit military offences.

Clause 9 Amendment of section 75

Clause 9 sought to amend section 72 (2) of the principal Act by deleting paragraph (a) so as to remove death from the scale of punishments that may be imposed on a soldier by a court-martial.

Clause 10 Amendment of section 88

Clause 10 sought to amend section 88 (1) by the deletion of the word “death” and substituting it with the words “life imprisonment”.

Clause 11 Amendment of section 95

Clause 11 sought to amend section 95 of the principal Act by the deletion of the word “death” and substituting it with the words “life imprisonment”.

Clause 12 Repeal of section 107

Clause 12 sought to amend the principal Act by repealing section 107 which required the approval of the President for executions of death sentences.

Clause 13 Amendment of section 116

Clause 13 sought to amend section 116 of the principal Act so as to replace the death sentence with life imprisonment.

Clause 14 Amendment of section 117

Clause 14 sought to amend section 117 of the principal Act by the deletion of the word “death” and substituting it with the words “life imprisonment”.

Clause 16 Amendment of section 136

Clause 16 sought to amend section 136 of the principal Act so as to replace the sentence of death with life imprisonment.

Clause 17 Amendment of section 137

Clause 17 sought to amend section 137(2) of the principal Act by replacing the sentence of death with life imprisonment.

Clause 18 Amendment of section 145

Clause 18 sought to repeal section 145 relating to the matters that must be considered in execution of death sentences in instances where an appeal had been lodged with the court.

5.0 SUMMARY OF SUBMISSIONS BY STAKEHOLDERS

Many stakeholders who appeared before the Committee supported the Defence (Amendment) Bill No. 12 of 2023. Stakeholders stated that the amendment of the Defence Act was consequential to the amendment of the *Penal Code Act, Chapter 87 of the Laws of Zambia*, through the *Penal Code (Amendment) Act No 23 of 2022*, following the abolishment of the death penalty in Zambia 2022.

Submission by the Permanent Secretary, Ministry of Home Affairs and Internal Security

The Permanent Secretary stated that over the past years, a number of civil society organisations had consistently advocated for the abolishment of the death penalty. This was necessitated by the need to comply with the principle of respect for the right to life which was enshrined in the *Constitution of Zambia*. Further, the elimination of the death penalty pursuant to the enactment of the *Penal Code (Amendment) Act, No. 23 of 2022*, meant that no court in Zambia would sentence offenders convicted of capital offences, but would instead pass sentences of life imprisonment.

The Permanent Secretary submitted that apart from being in contradiction with the Constitution, the death penalty went against the ethos of Zambia as a Christian Nation. He stated that the Defence (Amendment) Bill, No. 12 of 2023 was progressive.

Submission by the Permanent Secretary, Ministry of Defence

The Permanent Secretary submitted that the Defence (Amendment) Bill, No. 12 of 2023 was consequential to the enactment of the *Penal Code (Amendment) Act, No 23 of 2023*. He submitted that there were provisions in the subsidiary legislation, that is, the Defence (Procedure) Rules, where the death sentence was reflected. Accordingly, Procedure Rules 41(C), 6(i) and the 6th Schedule of the Rules required to be aligned to the provisions contained in the Penal Code.

6.0 COMMITTEE'S OBSERVATIONS AND RECOMMENDATIONS

The Committee observes that the amendment of the *Defence Act, Chapter 106 of the Laws of Zambia*, is consequential to the enactment of the *Penal Code (Amendment) Act, No 23 of 2022* and the *Criminal Procedure Code (Amendment) Act, No 22 of 2023* whose main objective was to remove the death penalty from the Statute Book. The Committee, therefore, agrees that there is need to amend the Defence Act so as to align it with the Penal Code and the Criminal Procedure Code as well as the international best practice, by making life imprisonment the maximum sentence applicable for a person subject to military law.

The Committee observes that the death penalty constitutes an act of torture, cruel, inhumane and degrading punishment or treatment, which acts are absolutely prohibited under Article 15 of the Constitution of Zambia. These acts are also against international and regional human rights instruments to which Zambia is a party.

In this regard, the Committee supports the Defence (Amendment) Bill, No. 12 of 2023 and recommends that the House should support the Bill, as it is progressive and meant to harmonise legislation that provides for the death penalty so as to abolish it.

7.0 CONCLUSION

The amendments contained in the Defence (Amendment) Bill, N.A.B, No. 12 of 2023 are progressive and consequential to the enactment of the *Penal Code (Amendment) Act, No 23 of 2022* and the *Criminal Procedure Code (Amendment) Act, No 22 of 2023*. The Bill is, therefore, progressive and in line with the abolishment of the death penalty in Zambia.

We have the honour to be, Madam Speaker, the Committee on National Security and Foreign Affairs, mandated to scrutinise the Defence (Amendment) Bill, N.A.B No 12 of 2023.



Brig Gen Morgan Sitwala (Rtd), MP
CHAIRPERSON

November, 2023
LUSAKA

APPENDIX I– List of National Assembly Officials

Mrs Doreen N C Mukwanka, Acting Principal Clerk of Committees (SC)

Mrs Chitalu K Mumba, Deputy Principal Clerk of Committees (SC)

Mr Geoffrey Zulu, Senior Committee Clerk (SC 1)

Mr Evans Chilongu, Committee Clerk

Ms Anita Mulale, Administrative Assistant

Mr Daniel Lupiya, Committee Assistant

Mr Muyembi Kantumoya, Parliamentary Messenger

APPENDIX II– List of Witnesses

Ministry of Justice
Drug Enforcement Commission
Zambia Correctional Service
Human Rights Commission
Judiciary
Chapter One Foundation
Zambia Police Service
Zambia Security Intelligence Service
Ministry of Home Affairs and Internal Security
Ministry of Defence