



REPUBLIC OF ZAMBIA

REPORT

OF THE

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

ON THE

CONSTITUTIONAL COURT BILL N.A.B. NO. 10 OF 2016

FOR THE

**FIFTH SESSION OF THE ELEVENTH NATIONAL ASSEMBLY
APPOINTED ON 24TH 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 CONSTITUTIONAL COURT BILL, N.A.B. NO. 10 OF 2016 FOR THE FIFTH SESSION OF THE ELEVENTH NATIONAL ASSEMBLY APPOINTED ON 24TH SEPTEMBER, 2015

Consisting of:

Mr C Mweetwa, MP (Chairperson); Mr H Kunda, MP; Mr B M Ntundu, MP; Ms V Kalima, MP; Mr M A Malama, MP; Ms M Miti, MP; Mr M Kapeya, MP; and Mr S Masumba, MP.

The Honourable Mr Speaker
National Assembly
Parliament Buildings
LUSAKA

Sir,

Your Committee has the honour to present its Report on the Constitutional Court Bill, N.A.B. No. 10 of 2016, for the Fifth Session of the Eleventh National Assembly referred to it by the House on Tuesday, 19th April, 2016.

Functions of the Committee

2.0 In addition to any other duties conferred upon it by the Honourable Mr Speaker, or any other order of the House, your Committee is mandated to consider any Bills that may be referred to it by the House.

Meetings of the Committee

3.0 Your Committee held four meetings to consider the Constitutional Court Bill, N.A.B. No. 10 of 2016.

Procedure adopted by the Committee

4.0 In order to acquaint itself with the ramifications of the Bill, your Committee sought both written and oral submissions from stakeholders. The stakeholders who appeared before your Committee are listed at Appendix II.

Background

5.0 A Constitutional Court is a specialised superior court that deals primarily with constitutional issues. Its functions are usually restricted to constitutional interpretation and issues connected with decisions on constitutional matters of a country.

The Constitutional Court is a new phenomenon in Zambia, which has been established by Article 127 of the Constitution, Chapter 1 of the Laws of Zambia, through the enactment of the *Constitution of Zambia (Amendment) Act No. 2 of 2016*. The Court is solely responsible for determining matters arising from the application and interpretation of the Constitution. Further, the Court is a unique organ of the Judiciary whose decisions are not amenable to appeal.

The Constitutional Court Bill of 2016 provides for the constitution, procedures, functions and powers of the Constitutional Court. Its enactment will result in the coming into force of Article 127 of the Constitution which establishes the Constitutional Court.

Objects of the Constitutional Court Bill, N.A.B. No. 10 of 2016

6.0 The objects of the Bill are to provide for the procedure of the Constitutional Court; and prescribe the powers of the Court.

Salient Provisions of the Bill

7.0 The salient provisions of the Constitutional Court Bill, N.A.B. No. 10 of 2016 are set out hereunder.

PART II – CONSTITUTION AND GENERAL POWERS OF THE COURT

This Part provides for the constitution of the Court, sittings of the Court, powers of the single judge of the Court and restriction regarding sitting on appeals. It further provides for the jurisdiction of the Court, practice and procedure, processes and execution of a judgment of the Court and the right of audience.

Clause 3 - Constitution of Court

Clause 3 (3) provides that the full bench of the Court shall be constituted by an uneven number of not less than five judges when determining matters that require a full bench. This provision is consistent with Article 129 (3) of the Constitution, which expressly provides for what amounts to a full bench of the Court.

Clause 6 - Restriction regarding sitting on appeals

This clause provides that a judge of the Court shall not sit to hear an appeal or exercise power under section 5 in respect of an appeal from a judgment given by the judge or a judgment given by a court of which that judge sat as a member. This provision precludes a judge who had earlier adjudicated on the matter from being part of the panel in the event that the decision is appealed against.

Clause 8 - Jurisdiction of Court

This clause makes provision for the jurisdiction of the court. Clause 8(1) gives the court original and final jurisdiction over, among other things, matters relating to the interpretation or violation of the Constitution. This is consistent with Article 128(1) of the Constitution.

Clause 11 - Right of audience

This clause provides for the right of audience and institution of proceedings in Court. Clause 11 (2) (c) allows a person acting in the public interest to institute proceedings in the Court, while clause 11 (3) mandates the Public Protector to bring an action before the Constitutional Court in accordance with the Constitution.

PART III – EVIDENCE

This part deals with summoning and compelling attendance of witnesses, refusal to be sworn or to give evidence, evidence of bystander, evidence of a prisoner and inspection. The part also deals with evidence of the Zambian customary law, record of evidence and perjury.

Clause 13 - Summoning and compelling attendance of witnesses

Clause 13 (2) mandates the Court to, at any stage of a suit or matter, summon or examine a witness on its own motion or on the application of a party to the suit.

Clause 14 - Refusal to be sworn or to give evidence

This clause provides that a person who appears before the Court to give evidence and refuses to take oath, answer a question lawfully or produce a document in that person's possession, shall be committed to prison.

Clause 19

This clause provides that in any matter in which a question of Zambian customary law is material, the Court may call as a witness a person with special knowledge of Zambian customary law; or a chief or a person to assist the Court as an assessor of Zambian customary law.

PART IV – APPEALS

This part provides for the right of appeal, restrictions on appeals and powers of Court on appeal.

PART V – GENERAL PROVISIONS

This Part deals with general provisions, and these include providing for the Registrar and officers of the Court, establishment of Registry, rules of the Court and transitional provisions.

Submissions from Stakeholders

8.0 All the stakeholders who submitted to the Bill fully supported its enactment. The stakeholders submitted that the Constitutional Court Bill is a progressive piece of legislation as it gives effect to the Constitutional provisions with regard to establishment of the Constitutional Court in Zambia. They further submitted that establishment of this Court will enhance access to justice in the country.

Committee's Observations and Recommendations

9.0 Your Committee observes that the Constitutional Court is a vital ingredient for enhancing democracy, the rule of law and constitutionalism in a country.

CONCLUSION

10.0 Your Committee wishes to express its gratitude to all stakeholders who appeared before it and tendered both oral and written submissions; and to thank you, Mr Speaker, for affording it an opportunity to scrutinise the Bill. Your Committee also appreciates the services rendered 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, your Committee on Legal Affairs, Governance Human Rights, Gender Matters and Child Affairs mandated to consider the Constitutional Court Bill, N.A.B. No. 10 of 2016, for the Fifth Session of the Eleventh National Assembly.

Mr C Mweetwa, MP

(Chairperson)

Mr H Kunda, MP
(Member)

Mr B M M Ntundu, MP
(Member)

Ms V Kalima, MP
(Member)

Mr M A Malama, MP
(Member)

Ms M Miti, MP
(Member)

Mr M Kapeya, MP
(Member)

Mr S Masumba, MP
(Member)

April 2016
LUSAKA

APPENDIX I

List of National Assembly Officers

Mr S C Kawimbe, Principal Clerk of Committees
Ms M K Sampa, Deputy Principal Clerk of Committees
Mr F Nabulyato, Committee Clerk (SC)
Ms C Musonda, Committee Clerk (FC)
Mrs D Mukwanka, Assistant Committee Clerk
Mrs M K Siwo, Assistant Committee Clerk
Mr S Samuwika, Assistant Committee Clerk
Mrs A S Lloyd, Stenographer
Mr C Bulaya, Committee Assistant
Mr M Chikome, Parliamentary Messenger

WITNESSES

Ministry of Justice (Permanent Witness)

Mr A Nkunya, Chief Parliamentary Counsel
Mr G Muntengwa, Parliamentary Counsel

Human Rights Commission

Mrs K Nkombo, Deputy Director
Mr K Banda, chief Legal Services

Judicial Service Commission

Ms A M Sitali, Judge
Mr M Zulu, Secretary
Mr E Pengele, Deputy Secretary
Ms E Zimba, Senior Research Advocate

Law Association of Zambia

Mr E Mwitwa, Vice President
Ms S N Kateka, Hon Secretary
Prof M P Mvunga, Member