



REPUBLIC OF ZAMBIA

REPORT

OF THE

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

ON THE

COURT OF APPEAL BILL N.A.B. NO. 9 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 COURT OF APPEAL BILL, N.A.B. NO. 9 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 Court of Appeal Bill, N.A.B. No. 9 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 Court of Appeal Bill, N.A.B. No. 9 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 Article 130 of the *Constitution of Zambia (Amendment) Act*, No. 2 of 2016, establishes the Court of Appeal and provides that its composition will be prescribed in an Act of Parliament. According to section 21 of the *Constitution of Zambia Act* No. 1 of 2016, all Articles in the Constitution that require an Act of Parliament to be passed shall not take effect until the Act has been passed. In this regard, for Article 130 of the Constitution to come into effect, the Court of Appeal Bill has to be enacted.

The Court of Appeal is an appellate Court to which people can appeal against decisions of the High Court and some tribunals. The rationale behind the establishment of this Court is to enhance access to justice and reduce the work load of the Supreme Court.

The Court of Appeal Bill, 2016 (hereinafter referred to as “the Bill”) therefore, provides for the jurisdiction and procedures of the Court of Appeal.

Objects of the Bill

6.0 The objects of the Bill are to provide for the jurisdiction and procedures of the Court of Appeal; and the hearing of appeals from the High Court and quasi-judicial bodies.

Salient Provisions of the Bill

7.0 The salient provisions of the Court of Appeal Bill, N.A.B. No. 9 of 2016 are set out hereunder.

PART II

Part II makes provision for the composition, jurisdiction and general powers of the Court.

Clause 3 - Constitution of Court

This provides for the composition of the Court. The clause provides for the President and Deputy President of the Court.

Clause 4 – Jurisdiction of Court

This clause makes provision for the jurisdiction of the Court. The Court has jurisdiction to hear all appeals from the High Court and quasi-judicial bodies except the Local Government Elections Tribunal. This is because appeals from the Local Government Elections Tribunal lie to the Constitutional Court.

Clause 5 - Sittings of Court

This clause makes provision for the sitting of the Court. It provides that the Court will usually sit in Lusaka, but will be a circuit court as specified by the Chief Justice. The provision also states that this will be the position until such a time that the court is devolved. This is in accordance with Article 120 (4) of the Constitution.

PART III

This part provides for criminal appeals from the High Court and civil appeals from the High Court or a quasi-judicial body. It further provides for appeals from the Court of Appeal to the Supreme Court.

Clause 16 - Determination of Criminal Appeals

This clause makes provision for the determination of criminal appeals by the Court of Appeal. Clause 16 (5) does not allow the Court of Appeal to substitute the trial court's sentence with its own unless the sentence is wrong in principle or comes to the Court with a sense of shock.

PART IV

This Part contains general provisions. It, among other things, provides for the appointment of a Registrar and other officers of the Court of Appeal. It further provides for the Chief Justice to prescribe rules for the Court.

Submissions from Stakeholders

8.0 All the stakeholders who submitted on the Bill fully supported its enactment. The stakeholders were of the view that the operationalisation of the Court of Appeal will bring into force Article 130 of the Constitution, which provides for the establishment of the Court of Appeal. It will also help reduce the workload of the Supreme Court as it will act as a filter on matters from the High

Court and quasi-judicial bodies. The stakeholders submitted that this enhances access to justice in Zambia.

Committee's Observations and Recommendations

9.0 Your Committee makes the observations and recommendations set out below.

- i) Article 131 of the Constitution also provides for the jurisdiction of the Court. Under Article 131, in addition to hearing appeals from the High Court and quasi-judicial bodies, the Court has jurisdiction to hear appeals from all other courts. This Article suggests that appeals from courts other than the High Court can also lie directly to the Court of Appeal. Clause 4 of the Bill, however, does not provide for this. Your Committee is of the view that this has created an inconsistency with the Constitution.

Your Committee, therefore, recommends that the provision be amended to include a provision that the Court of Appeal shall exercise its jurisdiction in accordance with Article 131 of the Constitution.

- ii) Your Committee observes that the marginal note under clause 12 reads 'Right of appeal.' This is inconsistent with the provision of clause 12 (2).

Your Committee, therefore, recommends that the marginal note should read 'Appeals to the Court'.

Conclusion

10.0 Your Committee wishes to express its gratitude to all the 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 Court of Appeal Bill, N.A.B. No. 9 of 2016, for the Fifth Session of the Eleventh National Assembly.

(Chairperson)

Mr H Kunda, MP
(Member)

Mr B 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

APPENDIX II

WITNESSES

Ministry of Justice (Permanent Witness)

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

Law Association of Zambia

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

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