



**REPUBLIC OF ZAMBIA**

**REPORT**

**OF THE**

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

**ON THE**

**ELECTORAL PROCESS BILL N.A.B. NO. 35 OF 2016**

**FOR THE**

**FIFTH SESSION OF THE ELEVENTH NATIONAL ASSEMBLY  
APPOINTED ON 24<sup>TH</sup> 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 ELECTORAL PROCESS BILL N.A.B. NO. 35 OF 2016, FOR THE FIFTH SESSION OF THE ELEVENTH NATIONAL ASSEMBLY APPOINTED ON 24<sup>TH</sup> 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 Electoral Process Bill N.A.B. No 35 of 2016, for the Fifth Session of the Eleventh National Assembly referred to it by the House on Friday, 6<sup>th</sup> May 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 five meetings to consider the Electoral Process Bill N.A.B. No. 35 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 The Electoral Process Bill N.A.B. No. 35 of 2016 has been introduced in order to operationalise Part V of the Constitution with regard to electoral process.

**Objects of the Bill**

6.0 The objects of the Electoral Process Bill are to provide for a comprehensive for the process for general election; provide for the conduct of elections by the Electoral Commission of Zambia and empower the Commission to make regulations in matters relating to elections; provide for the registration of voters and the keeping of voters registers; prescribe the procedures for nominations for elections; provide for the role of presiding officers, election officers and conflict management officers; prescribe the procedure for voting during an election; provide for the accreditation and roles of observers and monitors; criminalise corrupt practices and their illegal practices related to elections and provide for penalties in connection with an election; provide for election petitions and the hearing and

determination of applications relating to a general election; provide for voter education; prescribe the electoral code of conduct; and repeal and replace the *Electoral Act* No. 12 of 2006.

### **Specific Provisions of the Bill**

7.0 The Specific Provisions of the Electoral Process Bill N.A.B. No. 35 of 2016 are as set out hereunder.

#### **Part I - Preliminary**

This part contains clauses 1 to 6 and deals with the short title; interpretation; principles of electoral system and process; administration, enforcement and prosecution; elevation of powers and duties by Commission; and delegation of powers and duties by Chief Election Officer.

#### **Part II - Register and Registration of Voters**

This part contains clauses 7 to 20 and has provisions on the continuous voter registration; qualification for registration as voters; disqualification from registration as voter; de-registration of voter; notification by registration of voters; suspension of registration of voters; provisional register of voters; register of voters; application to change registration details; amendment to register of voters; objections concerning details in provisional register of voters; publication of register of voters; inspection of register of voters; and cut off dates for registration of voters and register of voters.

#### **Part III - Polling Districts and Boundaries**

This part contains clauses 21 to 27 and has provisions on the establishment of polling districts; criteria for determining polling district boundaries; inspection and copies of maps of polling district; establishment of polling station; division of area of councils into wards; election in newly created council; and relocation of polling station in emergencies.

#### **Part IV - Nomination for Elections**

This part contains clauses 28 to 36 and has provisions on the election timetable; electoral campaign; nomination of Presidential and Vice-Presidential Candidate; nomination for election constituency; conduct of Local Government Elections; nomination of candidates in district or ward; restriction on nomination papers; appointment of election agents and polling agents; and powers and duties of election or polling agents.

#### **Part IV - Election Officers**

This part contains clauses 37 to 43 and has provisions on the appointment of presiding officer; powers and duties of presiding officer; appointment of polling assistant; powers and duties of polling assistant; appointment of additional persons as election officers; general provisions concerning appointment of election officer; and immunity of election officer.

#### **Part VI - Voting**

This part contains clauses 44 to 76 and has provisions on the qualifications for voting; identification of voter; one vote and secrecy; disqualification from voting; special vote; election officers at polling stations; hours of voting; ballot paper design of ballot paper; ballot boxes; voting compartments; conduct of general election; postponement of voting at polling station; postponement of by-election; voting materials; initial procedures; voting procedure; assistance to voters with disabilities; issuance of new ballot papers; spoiled ballot papers; objections concerning voting; sealing of full ballot boxes; completion of ballot paper account and sealing of voting materials; place and time of counting votes; counting votes and announcement or provisional results; objections concerning sorting of ballot

papers; objections concerning counting of voters and announcement of provisional result; procedure concerning provisional results and voting materials; announcement and declaration of results by returning officer; announcement and declaration of results in Presidential election; electronic transmission of results; re-voting at polling station; and correction of mistakes.

#### **Part VII - Observers, Monitors and Voter Education**

This part contains clauses 77 to 80 and has provisions on the accreditation of observers and monitors; powers and duties of accredited observers and monitors; provisions of voter education generally; and voter education.

#### **Part VIII - Corrupt and Illegal Practices and Other Election Offences**

This part contains clauses 81 to 95 and has provisions on bribery; impersonation; undue influence; illegal practice of publishing false statements in respect of candidates; illegal practice in respect of nomination of candidates; illegal practices in respect of public meetings; illegal practices relating to the poll; penalty for illegal practices; other election offences; property in certain election material; secrecy and penalty for breach of secrecy; offences by election officers; offences by printers and publishers; obstruction of officer; and attempts to commit offence.

#### **Part IX - Election Petitions**

This part contains clauses 96 to 109 and has provisions on the application to members and officers of Parliament; avoidance of elections; presentation of election petition; relief which may be claimed in election petition; form and procedure for presentation of election petition; duty of Registrar and designated person to make out list of election petition; rules of practice and procedure security for costs etc; withdrawal of election petition; substitution of new petitioners; abatement of election petitions; trial of election petitions; witnesses conclusion of trial of election petition; and costs.

#### **Part X - General Provisions**

This part contains clauses 110 to 126 and has provisions on the code of conduct; appeal against decision of registration officer; powers to decide objections and appeals; constitution of conflict management Committees; printing, manufacture, use, removal etc, of election materials; ownership of voting and election material and disposal; effect of certain irregularities; inspection and copying of documents; when incapacity may be removed; person not required to state how person voted; evidence as to holding of election; validation of certain documents; powers of officer; power of arrest; general penalty; regulations; and repeal of the *Electoral Act* No 12 of 2006.

#### **Schedule**

This contains the Code of Conduct that must be adhered to in relation to elections.

#### **Submissions from Stakeholders**

8.0 The stakeholders submitted that a transparent, credible, efficient, and easily understood electoral process played an important role in ensuring free and fair elections and the legitimacy of those elected. It also ensured that post-election disputes were minimised, thereby averting social unrest. Most of the stakeholders who appeared before your Committee submitted that it was against this background that they were supporting the enactment of the Electoral Process Bill. They, however, lamented that considering the importance of the proposed law, the time given for stakeholder consultation was limited.

Your Committee was informed that the proposed piece of legislation presented an opportunity for greater detail on the management of the electoral process in Zambia and more time should have been availed to the stakeholders for scrutiny of the Bill.

### **Committee's Observations and Recommendations**

9.0 Your Committee notes that the Electoral Process Bill N.A.B. No. 35 of 2016, is consequential to Part V of the *Constitution of Zambia (Amendment) Act* No. 2 of 2016, with regard to the electoral process. Your Committee, however, makes the observations outlined hereunder.

- i) Clause 22, 24 and 27 give the Electoral Commission of Zambia powers to make decisions in relation to the determination of boundaries of polling districts and the establishment and the location of polling stations. Your Committee observes that it is not mandatory for the Commission to carry out these exercises in consultation with relevant stakeholders.

Your Committee, therefore, recommends that consultation with stakeholders as regards the determination of boundaries of polling districts and the establishment and the location of polling stations is prescribed as a mandatory exercise.

- ii) Clause 30 provides for the nomination procedure and requirements for Presidential and Vice Presidential Candidates. Clause 30 (3) provides that a candidate delivering nomination paper to the Returning Officer shall be accompanied by one hundred supporters from each province who are registered voters in that province.

Your Committee recommends that the term 'accompanied' be substituted with the term 'supported' in line with Article 100 (1) (j) of the Constitution.

- iii) Clause 33 provides for the nomination of mayors and council chairpersons in districts and councillors in wards. Your Committee observes that qualifications for mayors and council chairpersons are missing in both the Bill and the Constitution.

Your Committee, therefore, recommends that the qualifications for one to be elected as mayor or council chairperson be introduced in clause 33.

- iv) Clause 35 empowers a candidate to appoint two polling agents in each polling station and two election agents for each venue where voting will take place. Your Committee observes that the two polling agents under clause 35 (1) (a) will already be available at the polling stations where voting will take place and therefore, the clear intention of clause 35 (1) (b) is for the election agents to witness the totalling of the votes cast.

Your Committee, therefore, recommends that clause 35 (1) (b) should read "two election agents for each venue where the totalling of the votes shall take place".

- v) Clause 41 (3) provides that an appeal shall not be brought against a decision by the Electoral Commission of Zambia to appoint a person as an election officer or to dismiss such an officer. Your Committee observes that this gives the Commissions far reaching powers to appoint persons that may be of questionable character without any challenge.

Your Committee, therefore, recommends that this provision be amended to allow for appeals in the event that there is evidence that an election officer meets the criteria provided for under clause 42 (3).

- vi) Clause 47 outlines the circumstances under which a voter shall be disqualified from voting. Your Committee is of the view that it is not justifiable to preclude a person from exercising their right to vote if they have been convicted and sentenced and have duly served their sentence.

Your Committee, therefore, recommends that a provision be made to allow persons that have served their sentence to vote, even if that sentence is within a period of five years preceding an election.

- vii) Clause 62 entitles a voter to a new ballot paper if the voter accidentally marks the ballot in a way that does not clearly show whom the voter voted for. Your Committee, however, observes that clause 63 specifies the manner of handling a ballot paper that has been spoiled.

Your Committee, therefore, recommends the deletion of clause 62.

Your Committee further observes that the choice of the company used to print ballot papers has over the years caused a lot of controversy in the country and the upcoming election is no exception. Your Committee notes that the Electoral Commission of Zambia as an independent referee in the election process has an important role to play in maintaining its integrity and credibility. Your Committee, therefore, urges the Commission to ensure that the process of procuring a company to print the ballot papers is transparent so that it can be accepted by all stakeholders as this will go a long way in enhancing the credibility of the election results.

## **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 Electoral Process Bill N.A.B. No. 35 of 2016, for the Fifth Session of the Eleventh National Assembly.



Mr C Mweetwa, MP  
(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)

## **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 M Chikome, Committee Assistant  
Mr C Nkandu, House Messenger

## **APPENDIX II**

### **WITNESSES**

#### **Ministry of Justice (Permanent Witness)**

Mr F Chilunga, Parliamentary Counsel  
Ms N Sitali, Parliamentary Counsel  
Mr A Nkunika, Chief Parliamentary Counsel  
Mr G Muntengwa, Parliamentary Counsel

#### **Transparency International Zambia (TIZ)**

Mr G Lungu, Director  
Mr M Malambi, Country Administrator

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

Mr B Cheembe, Executive Officer  
Mr O Kapili, Publicity Officer

#### **Law Association of Zambia (LAZ)**

Mr A Musenge, Honorary Treasurer  
Mr L Banda, Counsel Member

#### **Electoral Commission of Zambia**

Ms P M Isaac, Director  
Ms E J Sikazwe, Commissioner  
Mr D Matongo, Commissioner  
Mr E E Chuma, Chairperson  
Mr C S Mushabati, Commissioner  
Mr E M Kamwi, Secretary