



**REPUBLIC OF ZAMBIA**

**REPORT**

**OF THE**

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

**ON THE**

**TRANSITIONAL PERIOD AND INAUGURATION OF PRESIDENT BILL N.A.B. NO. 32  
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 TRANSITIONAL PERIOD AND INAUGURATION OF PRESIDENT BILL N.A.B. NO. 32 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 Transitional Period and Inauguration of President Bill N.A.B. No. 32 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 Transitional Period and Inauguration of President Bill N.A.B. No. 32 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 105 of the *Constitution of Zambia (Amendment) Act No. 2 of 2016*, provides for the transitional period before the President - elect assumes office, while Article 106 provides for the assumption of office. The Transitional Period and Inauguration of President Bill N.A.B. No. 32 of 2016, is consequential legislation to the Constitution and it is, therefore, necessary that this legislation be enacted.

**Objects of the Bill**

6.0 The Transitional Period and Inauguration of President Bill, 2016, provides for the administrative and security procedures during the transitional period; the procedure for safeguarding public documents and information during the transitional period; the procedures and formalities for the inauguration and assumption of office of President by the President-elect; the venue and place for the inauguration ceremony; the process for the handover of the symbols and instruments of office and

presidency by the former President to the President; the procedures relating to the transitional period when a President dies in office; and the funding of the inauguration ceremony.

### **Salient Provisions of the Bill**

7.0 The salient provisions of the Transitional Period and Inauguration of President Bill N.A.B. No. 32 of 2016, are set out hereunder.

#### **Clause 3 - Application**

This clause seeks to provide for matters to which the Act shall apply. The clause provides that the Act applies to the swearing in and inauguration of the President-elect as President, the swearing-in of the Vice-President-elect as Vice-President, inauguration and swearing of the Vice-President as President and the transitional period when a President dies in office.

#### **Clause 4 – Guiding principles**

This clause seeks to compel the Presidential Inauguration Committee to adhere and be guided by the values and principles as set out in Article 173 of the Constitution.

#### **Clause 5 – Establishment of Presidential Inauguration Committee**

This clause seeks to establish the Presidential Inauguration Committee as an ad-hoc Committee for the transitional period. The clause further provides for the composition of the Committee which shall consist among others, the Secretary to the Cabinet as Chairperson and the Deputy Secretary to the Cabinet as the Deputy Chairperson.

#### **Clause 6 - Functions and powers of Committee**

This clause seeks to provide for the functions of the Committee in relation to matters of transitional period and inauguration of President-elect and the Vice-President-elect. The clause further empowers the Committee to facilitate communication between the outgoing President and the President-elect for purposes of orderly handover of the office of President and also prepare programmes for a State Funeral and organise a State Funeral.

#### **Clause 9 – Administration during transitional period**

This clause provides that the administration of the affairs of the Government during the transitional period.

#### **Clause 10 – Transitional provisions pending second ballot**

This clause provides for transitional provisions pending the second ballot by stating that the Chairperson of the Committee shall within seven days of the declaration of the election results, meet separately with the presidential candidates who obtained the highest and second highest number of valid votes cast in the initial ballot. The clause further compels the Committee to provide adequate security for both Presidential candidates and their running mates.

#### **Clause 11 – Security detail**

This clause empowers the Committee to ensure that the President-elect and Vice-President-elect are accorded full security for their persons and that of their families.

#### **Clause 12 – Security briefing**

This clause seeks to vest the security and intelligence services with the power to provide the outgoing President and President-elect with appropriate security and intelligence briefings on a daily basis until the President-elect is sworn in as President.

### **Paragraph 13 – Preparation for assumption of office and provision of information**

This clause provides that the President-elect shall, in consultation with the Committee, carry out such activities or give such instructions as may be necessary to ensure an orderly transition of Government and assumption of office of the President-elect.

### **Clause 14 – Swearing-in ceremony**

The clause provides that the swearing-in of the President-elect shall be conducted in a public ceremony held in the capital city and that the Committee shall publish, by notice in the Gazette, the date and place for the swearing-in ceremony.

### **Clause 15 – Taking of oath**

This clause compels the President-elect to take and subscribe to the Oath of Office during the swearing-in ceremony. Further, the clause requires the Chief Justice or in the absence of the Chief Justice the Deputy Chief Justice to administer the Oath.

### **Clause 16 – Handing over of instruments of power and authority**

This clause compels the outgoing President, immediately after the President-elect is sworn-in to handover to the President the following instruments of power and authority:

- (i) the Constitution of Zambia;
- (ii) the National Flag; and
- (iii) the Presidential Standard.

### **Clause 17 – Swearing-in of Vice-President-elect**

This clause compels the Vice-President-elect to take and subscribe to the Oath of office.

### **Clause 18 – Inauguration speech**

This clause compels the President to give an inauguration speech to the nation after being sworn in.

### **Clause 19 – Death of President while in office**

This clause provides for instances where the President dies in office thereby creating a vacancy in the office of the President as specified in the Constitution.

The clause provides that the Vice-President shall immediately assume the office of President in accordance with Article 106 (5) (a) of the Constitution. The clause further provides that where the Vice-President is unable to assume office for any reason, the provisions of Article 106 (5)(b) of the Constitution shall apply and the Speaker shall perform the Executive functions in accordance with that Article and an election shall be held within sixty days from the date the then President died.

### **Clause 20 – Approval of programme for State Funeral**

This clause compels the President in circumstances where a President dies, to call upon the Secretary to the Cabinet to present the programme for the State Funeral to the President. The clause requires the President to approve the programme and funds to be spent on the expenses relating to the State Funeral. The Secretary to Cabinet is authorised by the President to make such intermittent announcements to the nation in relation to the State Funeral.

#### **Clause 21 – Report to National Assembly**

This clause compels the Vice-President to submit a report on the death of the President to the National Assembly at the sitting of the National Assembly next after the death of the President. The report shall include a statement on the expenditures incurred for the State Funeral.

#### **Clause 25 – Management of records**

This clause compels the Presidential Inauguration Committee to publish and publicise all important information within its mandate affecting the nation. The clause further provides for specifications for requests for information in the public interest by a citizen. The clause requires every member and staff assigned to the Committee to sign a confidentiality agreement.

#### **Submissions from Stakeholders**

8.0 All the stakeholders who submitted on the Bill welcomed the introduction of this new piece of legislation and fully supported its enactment, stating that it was non contentious.

The stakeholders stated that the proposed law would promote transparency and predictability in the handing over of power to the President-elect and also in the handling of the death of a sitting President. In addition, the new law would provide clear guidance as regards how the affairs of the State would be handed during the transitional period.

#### **Committee’s Observations and Recommendations**

9.0 Your Committee supports the enactment of the Transitional Period and Inauguration of President Bill N.A.B. No. 32 of 2016 and observes that the enactment of the new law will help ensure a smooth transition and proper inauguration into office of the President-elect. Further, the new law would ensure a smooth transition in the unfortunate event of the death of a sitting President. Furthermore, the new law will help to ensure that public documents and information are safeguarded during the transitional period.

Your Committee observes that clause 23 of the Bill obligates the Inauguration Committee to publish and publicise all important information within its mandate. In addition, sub-clause (2) gives a right to a citizen to request from the Inauguration Committee information within its custody. However, there are circumstances when the information so requested may not be availed to the person requesting it. These circumstances as prescribed in sub-clause (3) are made subject to Article 35 of the Constitution. Sub-clause (4) provides that: “The right of access to information under Article 35 of the Constitution shall be limited to the nature and extent specified under this section.” From this provision thus, it is evident that the Article 35 being referred to in sub-clauses (3) and (4) of clause 23 deals with the right of access to information.

Your Committee further observes that the reference to Article 35 is erroneous because Article 35 of the Constitution as amended by Act No. 2 of 2016 deals with the subject of ‘citizenship by birth’. Additionally, none of the Articles in Part III of the Bill of the Rights, which has not been altered by Act No. 2 of 2016, provides for the right of access to information.

Your Committee, therefore, recommends that clause 23 (3) be amended by deletion of the words “Subject to Article 35 of the Constitution”. Your Committee further recommends the deletion of Clause 23 (4).

### **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 Transitional Period and Inauguration of President Bill N.A.B. No. 32 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)

May, 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 C 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

### **Judiciary**

Mr M Zulu, Registrar  
Mr C Zulu, Deputy Registrar  
Ms E Zimba, Senior Research Advocate  
Mr E Pengele, Senior Research Advocate

### **Secretary to the Cabinet**

Ms M B Miyoba, Permanent Secretary  
Mr K Soko, Assistant Director

### **Law Association of Zambia**

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