



ZiCA

Competence, Integrity and Virtue

Zambia Institute of Chartered Accountants

**Comments on the
Constitution of Zambia
(Amendment) Bill, 2019**

ZICA

1.0 Introduction

The Zambia Institute of Chartered Accountants (ZICA) is a professional membership body whose function, among others, is to advise Government on matters of national and economic development. The Institute is also mandated to develop, promote and enforce internationally comparable practice standards in Zambia as well as protect and assist the public in all matters relating to the practice of accountancy. With this mandate in mind, our Comments on the Constitution of Zambia (Amendment) Bill, 2019 have been made with full cognizance of our obligations as promulgated in the Accountant Act as well as our professional resolve to act in the public interest.

2.0 Comments on the Bill

In submitting these comments, the Institute desires to see a framework for the Constitution of Zambia that will stand the taste of time.

Therefore, the Institute welcomes the process of amending the Constitution to rectify the key gaps, promotes Human rights and improves the Governance of the Nation.

In this regard, we provide the detailed analysis on the proposed amendments to the Constitution as stated below:

1) Establish the Office of Deputy Ministers

The Constitution is amended by the insertion of the following new article immediately after article 117:

117A. The President may appoint a prescribed number of Deputy Ministers as the President may consider necessary to assist Ministers in the performance of the Ministers functions and to exercise or to perform on behalf of Ministers functions of the Ministers that the president may authorise in that behalf.

Recommendation:

The Bill proposes that the President appoints Deputy Ministers as he considers necessary. This is not a welcome amendment as Deputy Ministers were previously removed because their positions were seen to be redundant and not cost-effective. The re-introduction of Deputy Ministers is unnecessary given the fact that Provincial Ministers are already in existence notwithstanding the

fact that the funds required to finance the appointment of Deputy Ministers could be utilised for more pressing needs in light of the austerity measures implemented.

2) Revise the functions of the Bank of Zambia

Article 213 of the Constitution is amended by the deletion of clause (2) and the substitution therefore of the following:

(2) The function of the Bank of Zambia is to formulate and implement monetary policy.

Recommendation:

The deletion of clause (2) of Article 213 which deals with the functions of the Bank of Zambia. The functions of the Bank of Zambia that have to do with issuing currency and its supervisory authority of regulating banking and financial services will be taken away from the central bank and there is no mention of which body will be responsible for these functions. We propose that that these functions should not be taken away from the central bank and should be explicitly stated as functions of the central bank as indicated in the current constitution.

3) Tenure of Office of the Auditor General

Article 231, (1) Subject to this Article, the Auditor General shall hold office for a term of seven years or retire from office on attaining the age of sixty five years, whichever is earlier.

Recommendation:

The Bill proposes to limit the term of office of the Auditor-General to 7 years or retirement, we feel this could influence the independence of the office and should therefore be dropped.

4) Establish the Drug Enforcement Commission as the Anti-Drugs, Economic and Financial Crimes Agency and redefine its function as a national security service

Article 193(1) of the Constitution is amended by the

- (a) insertion of the following paragraph immediately after paragraph (c):
 - (d) The Anti-Drugs, Economic and Financial Crimes Agency; and
 - (b) Re numbering of paragraph (d) as paragraph (e).

Recommendation:

The Government wants the creation of the Anti-Drugs, Economic and Financial Crimes Agency. There is need to ensure that the newly created Anti-Drugs, Economic and Financial Crimes Agency's role will not overlap with that of the Financial Intelligence Centre which currently investigates financial crimes. The Anti-Drugs, Economic and Financial Crimes Agency's role should be complementary to that of the Financial Intelligence Centre by prosecuting those identified as being involved in financial crimes by the Financial Intelligence Centre.

5) Contraction of Loans and International Treaties

Article 114(1) of the Constitution is amended by the deletion of paragraphs (d) and (e) and the substitution therefor of the following:

- (d) Accede or ratify or withdraw from international agreements
And treaties; and
- (e) Approve—
 - (i) Loans to be contracted by the state; and
 - (ii) Guarantees on loans contracted by State Institutions;

Recommendation:

The proposed Bill has stripped the National Assembly of many of its oversight powers and functions, for instance, it repeals provisions in the existing Constitution which previously gave the National Assembly oversight over approving public debt before it is contracted into. The Bill also now gives the President power to enter into international treaties and agreements without the approval of the National Assembly.

We submit that this provision remains unchanged because removing National Assembly oversight in this manner deliberately concentrates power in the hands of the Executive. Additionally, the President should be accountable to the people's elected representatives who are Members of Parliament and should be assisted to make good decisions by scrutinizing and approving matters of public interest such as loans and agreements.

6) Repeal and replacement of Article 101 to 104

The Constitution is amended by the repeal of Articles 101, 102, 103 and 104 and the substitution therefor of the following:
Article 101, (1) A President shall be elected by registered voters in accordance with Article 47(1) and this Article.

(2) The Returning Officer shall declare the Presidential candidate who receives more than fifty percent of the valid votes cast during the election as President-elect.

(3) If at the initial ballot, a Presidential candidate does not receive more than fifty percent of the valid votes cast, the candidate with the highest number of vote cast shall, within fourteen days of the declaration by the Returning Officer of the presidential election results negotiate and form a coalition government with a presidential candidate that participated in the initial ballot, except that the combined votes of that presidential candidate and the preferred presidential candidate forming the coalition government meet the threshold of more than fifty percent of the valid votes cast.

(4) Where the candidate with the highest number of votes fails to form a coalition government within the period specified in clause (3), a second ballot shall be held within thirty-seven days of the initial ballot, where the only candidates shall be the presidential candidates who obtained—

- (a) the highest and second highest number of valid votes cast in the initial ballot; or
- (b) an equal number of the valid votes cast in the initial ballot, being the highest votes amongst the presidential candidates that stood for election to the office of President.

Recommendation:

The Bill proposes a change to the electoral system. Furthermore, the Bill also makes an allowance for a coalition Government. The Bill does not define a coalition government in the Zambian context, leaving it open to be interpreted in a manner that could serve the interests of any ruling party, and leaving the voter in a position of uncertainty. This means that a presidential candidate who is not supported by 50 percent of registered voters could still be appointed into office through a coalition.

Within seven days of the declaration of President-elect, the Constitutional Court may be petitioned to challenge the election process. Whilst the period provided to the court to hear and determine the petition has been proposed to increase from 14 to 30 days, the initial seven days within which the petition must be filed remains a barrier to access to justice.

There is no guidance of how a coalition government would be formed; will the vice president be entitled to cabinet appointments? What other functions and duties will the vice president under the coalition government perform?

7) Revise the provisions relating to the payment of pension benefits and retention on the payroll

The Constitution is amended by the repeal of Article 189 and the substitution therefor of the following:

A pension benefit shall be paid promptly and regularly.

Recommendation:

The Bill proposes to remove Pensioners from the Government payroll once they retire. We submit that this provision remain unchanged as it has brought dignity to pensioners who do not have to chase up the benefits in the process use up the little resources they may have, but rather compels management to pay for fear of staff cost implications. This is working very well and has minimized poverty in society. It is one of the best provisions in the constitution and as such should be retained. If anything, interest should accrue for the time delayed to pay because retirement is foreseen and to that effect a six (6) months’ notice is given. Therefore, good managers are able to plan and pay once pension dues fall due.

8) Deleting of Article 63(2)(d) &(e)

Article 63 (2) of the Constitution is amended by the deletion of paragraphs (d) and (e).

Recommendation:

We submit that this proposed amendment should be rejected; the President should be accountable to the people who are the elected representatives of the people and should be assisted to make good decisions by scrutinizing and approving public expenditure.

9) Repeal and replacement of Article 84

The Constitution is amended by the repeal of Article 84
And the substitution therefor of the following (1) There shall be a Clerk of the National Assembly who shall be appointed as prescribed.
And the substitution therefor of the following (1) There shall be a Clerk of the National Assembly.

Recommendation:

We submit that this proposed amendment should be rejected; There should be clearly prescribed guidelines for the appointment of the Clerk of the National Assembly.

10) Amendment of Article 92

Article 92(2) of the Constitution is amended—
(a) in paragraphs (a) and (b), by the deletion of the word “consuls,” and the substitution therefor of the words “consuls general”; and
(b) By the deletion of paragraph (c) and the substitution therefor of the following:
(c) Negotiate and sign international agreements and treaties and, ratify or accede to, or withdraw from, international agreements and treaties;

Recommendation:

We submit that this proposed amendment of clause (c) should be rejected; the President should be accountable to Members of Parliament who are the peoples' elected representatives.

11) Repeal and replacement of Article 94

The Constitution is amended by the repeal of Article 94 and the substitution thereof of the following: 94. (1)

(1) Where in this Constitution, an appointment to an office or the taking of a measure by the President is subject to approval by the National Assembly, the National Assembly shall, in the sitting next after receipt of the request for approval, give its approval within thirty days of the commencement of the sitting.

(2) Where the National Assembly does not give its approval within the period specified in clause (1), the President shall propose another measure or appoint another person to that office, and submit that measure or appointment for approval by the National Assembly.

(3) Where the National Assembly refuses or delays the approval for the second time, the President shall propose another measure or appoint another person to that office and shall submit that measure or appointment for approval by the National Assembly.

(4) Where the National Assembly refuses or delays the approval of the measure or appointment for the third time, that measure or appointment shall take effect.

Recommendation:

We submit that this proposed amendment should be rejected; With reference to sub article 4, where the National Assembly refuses or delays to approve for the third time, it should not be forced on the Nation to take effect that which has not been approved.

12) Amendment of Article 111

Article 111 of the Constitution is amended—

(a) by the deletion of clauses (3) and (6); and

(b) by the renumbering of clauses (4) and (5) as clauses (3) and (4), respectively.

Recommendation:

We submit that this proposed amendment should be rejected; With reference to deletion of clause 3, this allows the vice president to be in office for more than two terms, limiting opportunities for other capable citizens to run for office that would be to the advantage of the Nation.

13) Amendment of Article 127

The Constitution is amended by the repeal of Article 127 and the substitution therefor of the following:

There is established the Constitutional Court which
Consists of—

- (a) The Chief Justice;
- (b) The President of the Constitutional Court; and
- (c) An uneven number of judges, as prescribed.

Recommendation:

We submit that this proposed amendment should be rejected; what is the purpose of having the constitution court when it is headed by the head of the judiciary. This is as good as doing away with the constitutional court. Our proposal is that the Constitutional Court Composition should remain the same.

14) Amendment of Article 149

The Constitution is amended by the repeal of Article 149 and the substitution thereof of the following:

149. (1) The President may create or divide a province or merge two or more provinces, as prescribed.

Recommendation:

We submit that this proposed amendment should be rejected; these decisions should be subjected to the National Assembly ratification by at least two thirds majority.

15) Amendment of Article 158

The Constitution is amended by the repeal of Article 158.

Recommendation:

We submit that this proposed amendment should be rejected as no alternative is offered after repealing 158.

3.0 Conclusion

It is our hope that as Parliament passes this legislation, Members of Parliament must give the citizens a Constitution that will stand the taste of time. We hope for a Constitution that respects human rights and respects the principle of separation of powers. In this regard, we appeal to the Parliamentary Select Committee to consider the expert views before enacting this Bill.