



**Jesuit Centre for Theological Reflection  
(JCTR)**

**Memorandum on**

**The Constitution of Zambia (Amendment) Bill N.A.B 7 of 20225**

**Submitted to**

**THE NATIONAL ASSEMBLY SELECT COMMITTEE ON  
CONSTITUTIONAL AMENDMENT BILL N.A.B 7 OF 2025**

**December 2025,**

***“A Just Zambian Society Guided By Faith, Where Everyone Enjoys the  
Fullness of Life”***

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## **List of Abbreviations**

ACHP: African Charter on Human and People's Rights

BOR: Bill of Rights

CCZ: Council Churches of Zambia

CDF: Constituency Development Fund

CDFC: Constituency Development Fund Committee

CPR: Civil and Political Rights

CST: Catholic Social Teaching

ECZ: Electoral Commission of Zambia

EFZ: Evangelical Fellowship of Zambia

ESCR - Economic, Social and Cultural Rights

ERTC: Electoral Reform Technical Committee

FPTP: First Past the Post

ICESCR: International Covenant on Economic, Social and Cultural Rights

ICPCR: International Covenant on Civil and Political Rights

JCTR: Jesuit Centre for Theological Reflection

LAZ: Law Association of Zambia

MMPR: Mixed Member Proportional Representation

MLGRD: Ministry of Local Government and Rural Development

MoJ: Ministry of Justice

N.A.B: National Assembly Bill

NAZ: National Assembly of Zambia

NGOCC: Non-Government Gender Organisations' Coordinating Council

PWD: Person with disability

TI-Z: Transparency International Zambia

UDHR: Universal Declaration of Human Rights

ZCCB: Zambia Conference of Catholic Bishops

## 1.0 Organisational Background

The Jesuit Centre for Theological Reflection (JCTR), a faith-based organisation and a ministry of the Society of Jesus (Jesuits), was established in 1988 to translate Christian principles and values into action in its pursuit of promoting social justice in Zambia. It provides, from a faith-inspired perspective, a critical understanding of current social, political and economic issues and generates action to address them. Key to its mission is the gathering and analysis of pertinent and topical data on issues, whose results are then employed in popular education and engagement with policymakers, service providers, and other duty bearers on the identified issues. Additionally, JCTR builds capacities and creates platforms for community members to participate in dialogue for legislative, policy, as well as practical change.

JCTR's ethos is derived primarily from a Christian faith and its Church Social Teaching (CST), a body of social wisdom rooted in the Christian scriptures, the teachings of Popes, theologians, social sciences, common human experiences, and the insights of other influential church leaders. Its mission is outlined in the following statement: "From a faith-inspired perspective, the JCTR promotes justice for all in Zambia, especially for the poor, through research, education, advocacy and consultations". Its vision is: "A Just Zambian society guided by faith, where everyone enjoys the fullness of life".

Over the years, JCTR has passionately advocated for constitutional reforms using a holistic approach as opposed to constitutional reviews and piecemeal amendments. One of the major aspects of reforming the constitution has been about expanding the Bill of Rights to include Economic, Social and Cultural Rights (ESCR) for citizens as well as ensuring the internal logical coherence of the constitution to safeguard Zambia's democracy and human rights.

## 2.0 Introduction

On 8<sup>th</sup> December 2025, the Jesuit Centre for Theological Reflection (JCTR) received a letter from the National Assembly of Zambia, dated 4<sup>th</sup> December, to make a submission on the ramifications of the Constitution of Zambia (Amendment) Bill N.A.B no 7 of 2025. The memorandum commences by giving a brief historical background to the constitutional amendment developments in the last 6 months. One of the most significant highlights in the brief

history hinges on the concerns about the methodology and process leading to the presentation of the Bill to parliament. The Centre category elucidates its dissatisfaction of the process as it undermined the constitutional provisions of Article 79 of the Constitution of Zambia (Amendment 2016). Thereafter, the memorandum elucidates the guiding principles in the formation and creation of a new constitutional order. Under this section, the fundamental argument's fulcrum pivots on any constitutional reform abiding by guiding principles, and it is the principles that show whether the proposed amendments are in tandem with the guiding principles or not. After highlighting the key guiding principles as was the case in South Africa and Kenya during the constitutional reforms, the memorandum speedily delves into analysing the key content of the Constitution of Zambia (Amendment) Bill N.A.B no 7 of 2025. In the analysis section, JCTR gives submission and justification for either agreeing or disagreeing to the proposed amendment. Broadly, it shows that the amendments focus on Part V - Representation of the people, Part V- the legislature, Part VII -the Executive, Part XI, which focuses on the Local Government, Part XIII on public service and part XX on general provisions. JCTR rejects most of the proposed amendments based on some of the current constitutional provisions, understanding of human rights like freedom of expression and the concept of the right to vote, political concepts like separation of powers and the understanding of the key fundamental constitutional concept in Zambia, which is representation. Nevertheless, JCTR agrees to some of the proposed amendments, especially those that promote access to justice and clarity of definitions. At the end, the memorandum concludes with key recommendations. The ramifications urges that need to pay extra caution on conceptual understanding of concepts like representation and the need for internal logical cogent of the Constitution of Zambia (amendment 2016).

### **3.0 Brief History of the 2025 Proposed Constitutional Amendments**

In March 2025, the Ministry of Justice, led by Hon. Princess Kasune, presented to the National Assembly of Zambia (NAZ) thirteen thematic areas of the proposed constitutional amendments, along with a roadmap for expediting their implementation. The amendments were termed as non-contentious. However, the interrelatedness of the provisions of the Constitution makes them all important and contentious. Also, the preamble of the Zambian Constitution underscores the need for an inclusive constitutional reform process as the Constitution is the Supreme Law of the land,

expressing the Will of the people: “WE THE PEOPLE OF ZAMBIA...”. The Constitution not only affirms people’s rights to govern themselves, but it is also a book of limitations and protections of rights at its core.

The release of the 2025 draft constitutional amendment Bill in Zambia raises profound questions about the trajectory of constitutional reform, the balance between executive efficiency and democratic accountability, and the role of political parties in a representative democracy. The draft proposes amending twenty-two articles of the Constitution, mainly concerning Ministers, political parties, elections, Members of Parliament, citizens’ right to directly choose their representative, the Secretary to the Cabinet, the Attorney General, the Solicitor General, Mayors or Council Chairpersons, Deputy Mayors or Deputy Chairpersons and Councillors, representing virtually every facet of government. The draft was published in the Government Gazette on 23 May 2025, 30 days prior to its first reading, as per Article 79 of the Constitution. Note notwithstanding to the legislative authority mandated to the National Assembly of Zambia, Article 79 of the Constitution of Zambia (amendment 2016), limits the absolute powers of Members of Parliament to alter the Constitution. However, its understated and inaccessible release, bereft of press briefings, widespread dissemination, or proactive public engagement, was widely panned considering the legislation’s gravity. This Nicodemus release contradicts the government’s stated openness to public input and undermines the spirit of participatory constitutionalism. The Gazette notice is dated 23<sup>rd</sup> May 2025, but it was only published in the government paper, *The Daily Mail*, on 28<sup>th</sup> May 2025. The people must be at the centre of any amendment; the government’s role is simply to facilitate the collection and refining of their submissions. The amendments are in part driven by the Electoral Reform Technical Committee (ERTC) recommendations from their 10-province consultative tour; however, the Bill does not consider the full spectrum of submissions made to the ERTC by both civil society and the public.

It is both disappointing and telling that the Constitution Amendment Bill No. 7 of 2025 omits key institutional reforms explicitly recommended by the ERTC, particularly those aimed at strengthening executive-legislative separation and enhancing gender parity in presidential leadership. The Committee had urged amendments to Articles 116 and 117 to allow for the appointment of cabinet ministers from outside Parliament, subject to legislative ratification. This proposal rightly sought to address the longstanding institutional tension and functional overload

faced by Members of Parliament who simultaneously serve in the Executive, an arrangement that undermines both legislative scrutiny and ministerial performance. Similarly, the Committee recommended an amendment to Article 110(2) to require that presidential candidates and their running mates be of different genders, an affirmative step towards institutionalising gender inclusion at the highest level of political leadership. The exclusion of these provisions from Bill No. 7 reflects a retreat from meaningful reform. It suggests a calculated avoidance of structural changes that would dilute executive dominance or alter elite bargaining arrangements. Such omissions raise questions about the political will behind the bill and betray the spirit of constitutional transformation envisioned by the consultative process.

Attempts by the CSO alliance, formed to oppose the amendments and the three Church Mother Bodies, to sway the President were unsuccessful. Despite numerous statements, detailed analyses, and an in-person meeting with the President, the government appears determined to proceed with this amendment.

The Bill was presented in the NAZ, and a Select Committee was constituted on 25<sup>th</sup> June 2025. There was some hope that the government would act on the concerns raised after the President ordered the Minister of Justice to defer Bill 7 a day later. Furthermore, the Constitutional Court in the case of Celestine Mukandila and Munir Zulu vs Attorney General ruled on 27<sup>th</sup> June 2025 that the process went against the spirit of the constitution, i.e., Articles 1, 2, 5, 7, 8, 9, 61, 90, 91 and 92 of the Constitution of Zambia (as Amended by Act No 2 of 2016). It needed to be people-driven, conducted by an independent body of experts, and consultations must be broad-based. However, President Hichilema called it a “requirement” to amend the constitution, despite the Constitutional Court ruling that the government’s process to reach Bill 7 was unconstitutional.

In early October 2025, President Hichilema appointed a Technical Committee to draft constitutional amendments, which conducted public consultations across provincial capitals from late October through mid-November. As the process advanced, tensions emerged when the Oasis Forum (comprising CCZ, ZCCB, NGOCC, LAZ, and EFZ) planned a protest for November 28th. Following presidential intervention and police warnings citing security concerns, the Forum agreed to dialogue, preceded by a prayer rally on the planned protest date. On December 1st, the President received the Committee's report and met with stakeholders who endorsed the bill. The following day, Bill 7 was reintroduced to parliament, with the Select Committee

resuming live sittings on December 5th. The government has set an ambitious timeline, targeting completion of the second and third readings by December 15-16th, 2025.

## 4.0 Constitutional Reform Guiding Principles

The Centre firmly believed that constitutional processes must be illuminated by guiding principles. Constitutional reform guiding principles are principles that directly govern the structure and functioning of the State and the exercise of public power (Iain Curie, Johan de Waal , 2013). Creating a robust structure and system to guide the exercise of public power is key. The guiding principles become cardinal because they inform the interpretation of the Bill of Rights, ensure legality, promote democracy, foster accountability, and provide checks and balances. Additionally, they provide an interpretation of other provisions of the constitution, shape ordinary law, and influence how legislation is drafted and interpreted (Iain Curie, Johan de Waal, 2013). In a similar argument, an article titled “*What Basic Principles May Guide a New Constitutional Order in Zambia?*”<sup>1</sup>, the author strongly argued that a well-ordered constitutional order was only attained by a country setting firm guiding principles. Presently, as Zambia embarks on creating a new constitutional order, there is a need for framing fundamental guiding principles like:

- **Separation of Powers:** This is the principle that necessitates a divine dance among the different arms of Government. In the context of Zambia, there is an executive, judiciary and legislature. As such, this serves as a guiding principle for framing constitutional clauses, with the aim of strengthening the working relationship among these three arms. And so, it makes sense for us to ask: Will the proposed amendments strengthen or weaken this principle?
- **Accountability:** This is a principle that focuses on the responsibility of those entrusted to govern. Zambia’s principle of democracy is understood in the context of stewardship. This implies that those entrusted with leadership remain accountable to the people of Zambia. And this is in the context of those governing being able to account to citizens on the public decisions and utilisation of public resources. Therefore, during the process of

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<sup>1</sup> John Kunda Sauti. **What Basic Principles may Guide a New Constitutional Order in Zambia?”** Pp 9-10, JCTR Second Quarter Bulletin, Vol.127. 2022.

creating a new constitutional order, there is a need to explore the possibilities, avenues, and platforms for those elected to be accountable to the people of Zambia.

- **Transparency:** This principle emphasises the government's openness. It serves as the basis for fairness in the distribution of public resources and the delivery of services. For instance, there may be numerous instances of inequalities, such as in development (rural versus urban). It becomes the duty of the government to ensure that development and resources are distributed equitably. From a social justice perspective, transparency becomes the backbone of justice (understood as fairness).
- **Democracy:** Zambia operates under a unicameral, representative democracy in which citizens directly elect their leaders at the presidential, parliamentary, and local government levels. Complementing this system, the National Assembly of Zambia (NAZ) functions within a parliamentary framework, exercising oversight of government administration to strengthen accountability and deepen democratic governance.<sup>2</sup> Therefore, as we embark on creating a new constitutional order, we must strive to strengthen, rather than weaken, our democracy.
- **Rule of Law:** This principle aims to create and sustain a healthy community that enables all citizens to flourish. This entails that systems, laws, institutions and norms must be guided by laws. And now no institution must be above the law. This also enhances accountability, access to justice and facilitates an open government. Therefore, as we consider embarking on a new constitutional order, we must examine how the proposed amendments can promote the rule of law.
- **Bill of Rights:** This serves as the foundation for the enjoyment of human rights by all citizens in a country. The rights ought to be protected, respected and remedied by the government. And therefore, as any nation embarks on creating a new constitutional order, it must reflect the possibility of enshrining and consolidating the Bill of Rights.
- **Human rights:** They are inherent in every human being, serving as a crucial anchor in a democratic country like Zambia. It shapes governance, policymaking, and speaks to the daily lives of the Zambian citizens. Therefore, human rights are relevant to underscore the role of human rights in Zambia's democracy. Under the constitutional framework, the

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<sup>2</sup> National Assembly of Zambia. "Committee System". <https://www.principleaims.com/zambia/committee-system/>

Zambian Constitution lays the foundation for the protection and promotion of the human rights and freedoms of all individuals, as enshrined in the Bill of Rights.<sup>3</sup> Zambia, being among the international community, while sovereign in nature, is a signatory to the international human rights treaties, which include: the International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), the Universal Declaration of Human Rights (UDHR) and the African Charter on Human and People's Rights (AChP). Hence, these commitments put Zambia in an obligatory situation to RESPECT, PROTECT, PROMOTE AND FULFIL HUMAN RIGHTS AND A DEMOCRATIC ENVIRONMENT.<sup>4</sup> In addition to this, the other stakeholders like CSOs, Faith based Org, and many other are essential partners in making sure that human rights are upheld, in a way, holding the government of the day accountable on so many issues such as the electoral process and human rights, the economic and social rights, as well as the judicial autonomous and human rights. The Jesuit Centre for Theological Reflections has worked in this regard to ensure that human rights are well respected, as we understand that they are fundamental in maintaining and enhancing democracy in Zambia. Note: These rights ensure that citizens of Zambia can actively engage in governance and have their voices heard. All the factors mentioned are collectively playing a significant role in ensuring that human rights become an anchor to democracy in Zambia, rather than being dictated by the words of political powers.

This represents one of the best practices observed during the constitutional reform processes of South Africa and the Republic of Kenya. The significance of the guiding principles lies in their ability to provide direction and coherence to the reform efforts.

## **5.0 Analysis of the Constitution of Zambia (Amendment) Bill N.A.B 7 OF 2025**

This section focuses on the content of the Constitution of Zambia (Amendment) N.A.B. no 7 of 2025. JCTR perceives the context of amendments in three ways which include:

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<sup>3</sup> Constitution of Zambia, Chapter 1(Bill of Rights)

<sup>4</sup> United Nations Human Rights Treaty Bodies Report(2020)

1. **Amendment as addition:** Some of the clauses or articles are not in the current constitution. And so, they are proposed to be inserted into the constitution.
2. **Amendment as changing:** Some of the proposed amendments are already existing in the constitution, but the proposal is to either change the wording or numbering
3. **Amendment as removing/deletion:** Some amendments aim at completing removing or deleting certain constitutional provisions.

The Bill proposes to make numerous changes to the current constitution. The Bill has fourteen (14) objectives, which include:

- A. Revise the composition of the National Assembly to provide for the increase in the number of constituency-based seats from one hundred and fifty-six to two hundred and eleven to actualise the delimitation proposals made by the Electoral Commission;
- B. Revise the electoral system for election to the National Assembly to provide for a mixed-member proportional representation electoral system to guarantee the representation of women, youths and persons with disabilities;
- C. Revise the provision relating to the filing of fresh nominations on the resignation of a candidate;
- D. Revise the provisions relating to by-elections;
- E. Revise the number of nominated Members of Parliament;
- F. Harmonise the terms of Parliament and council to achieve a five-year term;
- G. Provide for a vacancy in the office of Minister and Provincial Minister ninety days before a general election;
- H. Remove the two-term limit for the office of mayor and council chairperson;
- I. Revise the composition of the council to include Members of Parliament holding constituency-based seats;
- J. Revise the qualifications for appointment to the office of Secretary to the Cabinet; (k) provide for the Attorney-General and Solicitor-General to continue in office, after a general election, until new office bearers are appointed;
- K. Revise the definition of the words “child” and “adult”;
- L. Provide for clarity on the period within which an election petition shall be concluded; and
- M. Provide for matters connected with, or incidental to, the foregoing.

The following is the analysis of each proposed amendment:

### **5.1 Amend Article 47 of the Constitution of Zambia**

The Bill proposes to delete clause (2) of the current constitution and replace it with clause (2), which states that elections to the National Assembly shall be conducted under a mixed-member proportional representation electoral system, as follows:

- (a) first-past-the-post electoral system for Members of Parliament contesting for constituency-based seats; and
- (b) proportional representation electoral system for women, youths and persons with disabilities as prescribed.

This amendment proposal falls under Part V of the Constitution of Zambia, which pertains to the representation of the people. The earmarked clause for amendment concerns changing the recruitment of Members of Parliament to the National Assembly. According to Article 63 of the Constitution of Zambia, the National Assembly of Zambia has the following functions:

Article 63 provides for the functions of the National Assembly as follows:

- enacting legislation;
- approving the Budget (appropriation of funds);
- providing Oversight over the Executive;
- citizens' representation.<sup>5</sup>

JCTR submits that the current status quo of Members of Parliament, as determined by the First-Past-the-Post (FPTP) system, remains unchanged. The following are the reasons for substantiating the submission:

1. **Complicated electoral system:** Article 45 (2d) of the current constitution states that the elections must be conducted in a simple and practical system for voting and tabulating votes. The proposed mixed-member proportional representation is not simple and practical. This is because, firstly, it is a mixture of FPTP and MMPR, which complicates the election system in Zambia. Also, in a situation where constituency-based seats give more women, youth and Persons with Disabilities (PWD), then it renders the MMPR

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<sup>5</sup> See the National Assembly of Zambia strategic plan 2022 to 2026. Page 1. <https://www.parliament.gov.zm/sites/default/files/documents/page MPs's/Strategic%20Plan%202022-2026.pdf>

redundant and a mere constitutional requirement. Secondly, it is not simple because it requires a significant amount of voter education, especially for voters who cast split-ticket ballots. Noting that during general elections, Zambia conducts tripartite elections, this entails that a voter is at liberty to choose representatives for the President, Parliament, and local government. But it is not binding that the three a split-ticket voter selects must come from the same political party. A voter can choose a Presidential candidate from political party A, an MP who is an independent and a Councillor belonging to political party B. So, if the proportional representation is about voting for political parties, which one must this candidate choose?

2. **Duplication of representation:** The elected Members of Parliament represent all individuals in their respective constituencies. The MPs selected through the proportional votes will not have any physical constituency. This implies that, if they are going to represent their respective quotas, then the quotas in the constituencies will be double represented. Additionally, the coupling of MMPR and FPTP insinuates that MPs elected through FPTP will not have the burden to represent women, youth and PWDs as these will be represented through the MMPR.
3. **Annihilation of MPs' accountability:** MPs who voted through the MMPR will be held accountable by their political parties, and their loyalty will be to their parties. Additionally, it will be impossible to hold them accountable for their duties, unlike elected MPs. Contrary to the MMPR, FPTP allows electorates and community members to hold their elected MPs accountable. This is because they have physical constituencies, interact with their community members, and their offices are known. Therefore, the introduction of the MMPR would erode citizen representation and undermine the possibility for citizens to hold their MPs accountable.
4. **Shifting the electoral mandate:** Currently, citizens have the mandate to directly elect their representatives. On the contrary, the proposed amendments suggest shifting this mandate to political parties through MMPR. Under the current Constitution of Zambia, this is not the mandate or function of political parties in Zambia. Therefore, it would be overstretching the constitutional functions and responsibilities of political parties prescribed in Article 60 of the Zambian Constitution.

**5. Contradicting Article 60 of the Constitution of Zambia (Amendment 2016):** The MMPR is a total contradiction with the current standing of article 60 of the Constitution of Zambia. Article 60 guides on the functions of the political parties, and it is not a function of political parties to recruit candidates to the National Assembly of Zambia.

### **5.2 Amend Article 51(a) of the Constitution of Zambia.**

The Bill proposes to amend Article 51(a) of the Constitution of Zambia by deleting the words “of the election” and substituting them with the words “for nominations”. This proposed amendment falls under Part V of the Constitution of Zambia, which pertains to the representation of the people. According to the Constitution of Zambia, Article 51(a) states that a person is eligible for election as an independent candidate for a National Assembly seat if the person - (a) is not a member of a political party and has not been a member of a political party for at least two months immediately before the date of the election.

Currently, the people of Zambia are represented through elected officials, including Members of Parliament, the President, Councillors, Mayors, and Council Chairpersons. These elected officials are either sponsored by political parties or run as independent candidates. Given the above scenario, deleting the term ‘elections’ and replacing it with ‘nominations’ has fundamental implications on the quality of representation. JCTR submits that the current status quo is maintained because of the following reasons:

- **Nomination key to freedom of association:** Noting that the date of nominations is not constitutionally prescribed, this will inhibit those who would want to abandon a political party and contest on an independent ticket. This proposal will limit the enjoyment of the freedom of association, as a candidate who belongs to a political party will be constitutionally required to contest under the party’s umbrella.
- **Confusion within political parties:** Seating or serving candidates like MPs, Councilors, Mayors and the President will have to serve their unexpired term, knowing that they have not been nominated. This will breed intraparty confusion and the possibility of decamping from their own political parties, internal protest, and termination of their political careers.

- **Paradox of belonging:** This proposal will create a constitutional paradox of belonging. For instance, a serving sponsored MP or Councillor will face a dilemma of either abandoning their political party earlier and being replaced or finishing a term and failing to contest as an independent candidate. This would be contrary to the spirit of the current constitution, which promotes political liberty to participate meaningfully in democratic governance processes, such as elections.

### **5.3 Amend Article 52 of the Constitution of Zambia**

The Bill proposes to amend Article 52 of the Constitution of Zambia by deleting clause (1) and replacing it with a clause that includes the term 'constituency-based seat'. The provision is in Part V of the Constitution, which pertains to the representation of the people. JCTR objects to this amendment as the Centre has not agreed to the Mixed-Member Proportional Representation (MMPR) in the earlier submission. On the contrary, concerning Article 52(4), to include the word 'determine' after the word 'hear', noting that it is a change in semantics, this proposal will enhance the quality of accessing justice.

Article 52(6) in the current constitution states that where a candidate dies, resigns or becomes disqualified in accordance with Article 70, 100 or 153 or a court disqualifies a candidate for corruption or malpractice, after the close of nominations and before the election date, the Electoral Commission shall cancel the election and require the filing of fresh nominations by eligible candidates, and elections shall be held within thirty days of the filing of the fresh nominations. On the contrary, the Bill proposes that Where a candidate — (a) resigns after having been nominated in accordance with this Article, the candidate shall not be eligible to contest the election, and the election shall proceed to be held on the date prescribed for holding the election; (b) has been disqualified by a court, after close of nominations, the candidate shall not be eligible to contest the elections, and the election shall proceed to be held on the date prescribed for holding the election; or (c) dies before the date prescribed for the holding of the election, the Electoral Commission shall cancel the election, and call for the filing of fresh nominations, and the election shall be held within thirty days of receipt of the fresh nominations. JCTR recognises the deeper problem associated with contesting candidates withdrawing either through resignation or a court ruling. This constitutional dilemma was apparent in the case of the Bwacha and Kabushi Constituencies by-elections, where the Electoral Commission of Zambia

was constrained by the 90-day clause under which they were supposed to conduct by-elections, yet there were pending court cases to determine the eligibility of candidates. Equally, the withdrawals of candidates disrupt the election management mechanisms. However, JCTR submits that the current constitutional provisions are more democratically progressive than the suggested amendments because:

- **Political party representation:** Political parties play a fundamental role in connecting the people to their government. Additionally, these political parties support the possibility of alternating those in power (at whatever level), as is expected in a democratic society. As such, amending this clause will reduce the principle of alternating the government in a democratic society.
- **Resignation due to political duress:** Given Zambia's history and record of political violence, some political parties or influential figures may pressure a leading or popular candidate to resign. This would occur under political duress, potentially depriving a candidate of the opportunity to seek justice and, in turn, jeopardising both the candidate and their political party. While the amendment aims to safeguard against frivolous resignations at the 11th hour, it could also disadvantage parties whose candidates have a valid reason for resigning, such as health reasons.
- We therefore recommend that the amendment allow for a specific time period, such as a month before an election, during which fresh nominations can be filed due to resignations, corruption or malpractice.
- Further, we recommend maintaining that candidates should be disqualified for corruption or electoral malpractice rather than just a court decision, as is suggested in Bill 7. This will prevent the weaponisation of the courts against candidates.

#### **5.4 Amend Article 57 of the Constitution of Zambia**

The Bill proposes to amend Article 57 of the Constitution of Zambia. This Article falls under Part V of the Constitution of Zambia, which pertains to the representation of the people. According to Article 57 of the Constitution of Zambia, the provision states that (1) where a vacancy occurs in the office of Member of Parliament, mayor, council chairperson or councillor, a by-election shall be held within ninety days of the occurrence of the vacancy; (2) A by-election shall not be held within the one hundred-and-eighty day period that precedes a general election;

(3) the Electoral Commission shall, by regulation, set the place where, and the date and time when, a by-election is to be held.

On the contrary, the Bill proposes that 57(1) Where a vacancy occurs in the office of an independent Member of Parliament holding a constituency-based seat, independent mayor, council chairperson or councillor, a by-election shall be held within ninety days of the occurrence of the vacancy; 57(2) A by-election referred to in clause (1) shall not be held within the one hundred-and eighty-day period that precedes a general election; 57(3) The Electoral Commission shall, by regulations, set the place where, and the date and time when, a by-election is to be held.

JCTR submits that the current provision of the Constitution of Zambia remains as the status quo. This is because:

- **Undermining Consistent Representation:** All elected officials are elected based on the fundamental principle of representation. Hence, limiting by-elections to independent candidates will be democratically inhibiting and inconsistent. The inconsistency arises because, at first, people voted for all constituency-based MPs, while inhibiting by limiting the by-elections to the independent elected officials. Moreover, abrogating by-elections for constituency-based MPs transfers the electorate's constitutional mandate to elect representatives of their choice to political parties— a grave form of disenfranchisement.
- In the Bill, there is a curtailment of by-elections, which is coupled with internal party “elections” for non-independent vacancies for MPs, mayors, council chairpersons and councillors. The amendment to Article 57 recasts democratic renewal as a fiscal inconvenience, with only independent seats being subject to renewal of their mandate, and the rest through opaque internal party processes. These amendments are intended to reduce costly elections. The rationale for this amendment is that the government cites a K264 million cost; this figure, while significant, does not justify substituting direct popular mandates with party appointments, especially in the absence of a functional Political Parties Act that caters to Article 60(4). At times, political parties in Zambia act like cults of personality, with a single voice or a few individuals making the decisions.

There are no guarantees that this will not continue if they are allowed to fill electoral vacancies internally.<sup>67</sup>

- Without legal frameworks to enforce internal party democracy, transparency, and accountability, party-controlled replacements risk consolidating elite control and weakening voter sovereignty. This gives the political parties and their agendas more control in Parliament and local government, as well as over their officials during the ever-critical five-year term.<sup>8</sup>
- The deeper question is not whether by-elections are costly, but whether they are necessary for our democratic legitimacy. If cost is the primary concern, alternatives such as campaign finance reform, spending caps, or improved electoral administration would offer better returns on democratic integrity.
- Moreover, it does not address the primary reason for the majority of seat nullifications, which are typically a result of court cases. It is our recommendation that the protections and immunities for MPs under Article. 76 should be increased to grant them immunity similar to that of the President under Article 98, except for cases involving gross misconduct. Additionally, as state officers, they should also be represented by the Attorney General, as seen in the case of *2025-CCZ-0015, Law Association of Zambia vs Speaker of the National Assembly – November 2025 – Justice Munalula, Shilimi, Musaluke, Chisunka, Mulongoti, Mwandega, and Mulife JJC*. The Constitutional Court ruled that the Attorney General serves as the legal representative in all cases related to the duties of officials across the three branches of government.

## **5.5 Amend Article 58 of the Constitution of Zambia**

The Bill proposes to amend Article 58 of the Constitution of Zambia. Article 58 of the Constitution falls under Part V dealing with the representation of the people. Article 58 (2) in the current constitution states that the number of constituencies shall be equal to the number of seats of elected members in the National Assembly. On the contrary, the Bill proposes

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<sup>6</sup> Burnell, P. (2001). The party system and party politics in Zambia: continuities past, present and future. *African Affairs*, 100(399), 239-263.

<sup>7</sup> Bwalya, J., & Sichone, O. B. (2018). Refractory frontier: intra-party democracy in the Zambian polity. *Modern Africa: Politics, History and Society*, 6(2), 7-31.

<sup>8</sup> TIZ – “Elections and Money: Perspectives from Members of Parliament in Zambia”: winning an election in Zambia is at K3.8 million; *Elections and Money: Perspectives from Members of Parliament in Zambia* (2024)

restructuring the clause to read as follows: "The number of constituencies shall be equal to the number of constituency-based seats in the National Assembly, as specified in Article 68(a)." Given JCTR's submission on the concept of MMPR, the Centre proposes that Article 58(2) remain the status quo.

### **5.6 Amend Article 68 of the Constitution of Zambia**

Article 68 of the Constitution of Zambia falls under Part VI, which is about the legislature. The legislature has core functions as constitutionally established under Article 63. Some of the functions include making laws, representing the people, approving the national budget, approving international treaties, and approving public debt, among others.

Article 68 of the Constitution of Zambia provides for the election and composition of the National Assembly of Zambia. Article 68 of the current constitution states that (1) a Member of Parliament shall be elected in accordance with Article 47 (2). Article 68 (2) states that the National Assembly shall consist of— (a) one hundred and fifty-six members directly elected based on a simple majority vote under the first-past-the-post system; (b) not more than eight nominated members; (c) the Vice-President; (d) the Speaker; (e) the First and Second Deputy Speakers.

On the contrary, the Bill proposes to amend Article 68 on the election and composition of the National Assembly of Zambia by proposing that:

- (a) two hundred and eleven Members of Parliament are to be directly elected on the basis of a simple majority vote under the first-past-the-post electoral system, in accordance with Article 47(2)(a);

JCTR notes the need to reduce the MP-to-constituency population ratio. However, given the country's economic outlook and the approaching 2026 general elections, it is imperative that this exercise is postponed. The massive increase in constituency seats (Article 68(a)) is ostensibly meant to "actualise the delimitation report", yet the 2019 proposals remain secret. This current procedure leaves too much opportunity for the politicisation of boundaries. Zimbabwe provides a stark precedent: ahead of the 2008 election, Mugabe's government unilaterally enlarged parliament from 120 to 210 seats and parcelled out the new districts in its strongholds. In

Zambia, where constitutional amendments need only two-thirds of MPs, a future regime could similarly stack the deck by carving up constituencies to its advantage. Such manoeuvres would not reflect the will of the voters but rather the will of those in power, thereby undermining constitutional stability and subverting democratic norms. JCTR submits that the current status quo, with 156 directly elected MPs, should be maintained.

Further, the Bill proposes to amend Article 68 by introducing clauses stating that:

- (b) not more than twenty women elected on the basis of the proportional representation electoral system in accordance with Article 47(2)(b) as prescribed;
- (c) not more than twelve youths elected on the basis of the proportional representation electoral system in accordance with Article 47(2)(b) as prescribed;
- (d) not more than three persons with disabilities elected on the basis of the proportional representation electoral system in accordance with Article 47(2)(b) as prescribed;
- (e) not more than ten nominated members;

JCTR acknowledges the need to enhance the representation and participation of women, Youth and People Living with Disabilities at the parliamentary level. However, the Centre submits that these clauses should be rejected by maintaining the current provisions because:

- ❖ **Undetailed Vacation of MMPR MPs:** The clause does not give provisions that would lead to the MMPR MPs vacating the office. Unlike the nominated and elected MPs, where the Constitution provides for the vacation, qualifications and disqualifications of MPs, the proposal in the Bill does not give details as to the vacation of MMPR MPs, their qualifications and what may disqualify them.
- ❖ **Definition of PWD MPs:** Under Article 266 of the current Constitution of Zambia (Amendment 2016), disability is defined as “*a permanent physical, mental, intellectual or sensory impairment that alone, or in combination with social or environmental barriers, hinders the ability of a person to fully or effectively participate in an activity or perform a function as specified in this Constitution or as prescribed*”
- ❖ **Definition of Youth MP:** Knowing that a youth would mean someone between 19 and 34 years old. In the case of a youth MP, must that MP remain a youth the whole life of the National Assembly or it is only an entry age. For instance, after 2026 elections, if a

political party appoints a youth MP aged 33 years, does it mean after 2 years, that youth MP must be replaced or it is only an entry age?

- ❖ **MMPR as a reward to political party loyalists:** There is a high possibility that MMPR MPs will be loyal to their political parties rather than to their constituents. Given that the MMPR would operate through political parties, MMPR MPs are likely to prioritise their party's interests over those of their constituents. This becomes even more pronounced when we consider the whip system (our current system) and the lack of constitutional provisions regarding the vacation of MMPR MPs.
- ❖ **Constitutional redundancy of MMPR:** The main objective of the MMPR is to enhance the representation of women, youth and people living with disability at the parliamentary level. However, this proposal does not address a situation where more women, more youth and more PWDs are elected through the constituency-based seats. For instance, in a situation where after elections, the electorates have voted for over 50% women MPs, 23 youth MPs and 9 PWD MPs, does this entail constitutional redundancy of the article? Perhaps, the assumption for less representation of the targeted quotas is misguided, and the Bill seems to be dealing with the effect and not the cause.
- ❖ **Tautologous Nature of Nominated and MMPR MPs:** The rationale for granting the President the Power to nominate MPs is to expand the scope of forming an effective Cabinet. Equally, it appears that the rationale behind the MMPR is to expand the President's authority in forming an effective Cabinet. Therefore, if the MMPR is to be adopted, then it would be politically prudent to abolish the Presidential powers to nominate MPs.
- ❖ **MMPR Making it Difficult for an Independent President to Govern:** The current constitution provides for an Independent candidate to contest for Presidential seat. In the case that Zambia has an independent President; the MMPR can easily make it difficult for an Independent Presidential candidate to govern the country.
- ❖ **Everyone Is Represented through Elected MPs:** In the current Constitution, an elected MP represents the Entire Constituency (including women, youths and people with disabilities). On the contrary, the MMPR MPs would not have a physical constituency, and therefore, their representative role would merely be hypothetical.

- ❖ In this regard, JCTR suggests that Article 60 of the Constitution should be prescribed by an Act of Parliament. The ERTC also recommended the full operationalisation of Article 60 of the Constitution through the enactment of comprehensive legislation to regulate political parties. This legislation should establish clear mechanisms for the registration and public financing of political parties, as well as enforce internal party democracy. It should also regulate political party financing under Article 60(4)(a)–(d) and address any incidental matters necessary to uphold democratic norms within the party system. The ERTC underscored that operationalising Article 60 will promote transparency, equity, and institutional order in the management of political parties. Art. 60 also states that the maximum amount be prescribed for campaigning, which would lessen the ability of wealthy individuals, usually men, to buy nominations and influence the electorate.
- ❖ Following the amendment of the Constitution in 2016, which introduced Article 60, the Government attempted to create a Political Parties Bill in 2017, although the Bill was withdrawn and has never seen the light of day again.
- ❖ According to studies it costs about K3.8 million per candidate to win a constituency election.<sup>9</sup><sup>10</sup><sup>11</sup> Additionally, due to this financial hurdle the profile of an MP is that of an older male, with above-average education and a professional or engaged in business. This gender gap and the barriers women, youths and PWD face, would be handled by prescribing for Art. 60 and capping campaign spending.

## 5.7 Amend Article 71 of the Constitution of Zambia

Article 71 of the Constitution of Zambia falls under Part VI, which is about the legislature. Article 71 (b) states that a candidate is supported by at least fifteen persons registered as voters in the constituency in which the candidate is standing for election. On the contrary, the Bill proposes to amend the provision by stating that in the case of a constituency-based seat, a candidate is supported by at least fifteen persons registered as voters in the constituency in which

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<sup>9</sup> Transparency International Zambia (2024). Elections and Money: Perspectives from Members of Parliament in Zambia.

<sup>10</sup> Financial Intelligence Centre. (2021). Trends report 2021. Lusaka: Financial Intelligence Centre.

<sup>11</sup> Wahman, M. (2023). The cost of politics in Zambia: Implications for political participation and development.

the candidate is contesting an election. JCTR submits that the provision remains as the current status quo given the detailed submission on the MMPR.

### **5.8 Amend Article 72 of the Constitution of Zambia**

Article 72 falls under part VI of the Constitution of Zambia which focuses on the legislature. The article states that the office of Member of Parliament becomes vacant if the member is disqualified as a result of a decision of the Constitutional Court. On the contrary, the Bill proposes to amend this clause by changing the wording to read as (h) is disqualified in accordance with this Constitution. JCTR submits that the current status quo is maintained.

### **5.9 Amend Article 73(2) of the Constitution of Zambia**

Article 73(2) states that an election petition shall be heard within ninety days of the filing of the petition. On the contrary, the Bill proposes that Article 73(2) of the Constitution should be amended by the insertion of the words “and determined” immediately after the word “heard”. Given that it’s a matter of semantics, it is envisioned that this inclusion may aid the access to justice.

### **5.10 Amend Article 81 of the Constitution of Zambia**

Article 81 (1) of the Constitution states that the term of Parliament shall be five years commencing from the date that the Members of Parliament are sworn into office after a general election and ending on the date that Parliament is dissolved. On the contrary, the Bill proposes to amend the term by proposing an amendment to read as the term of Parliament and term of office of a Member of Parliament shall be five years commencing from the date of the first sitting of Parliament after a general election.

JCTR submits that the current status quo is maintained. This is because:

- **Definition of the term for an MP:** The current constitution defines a “term” as a period of five years commencing when the National Assembly first sits, after a general election, and ending when Parliament is dissolved.<sup>12</sup> Therefore, the bigger issue in the definition is not necessary time (As in 5 years), but the duration (starting and ending point). Therefore, the use of the word five years is figurative.

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<sup>12</sup> See article 266 on the definition of a term.

- **Impossibility of attaining the 5 years:** Noting that the date of general elections is constitutionally set, it would be impossible for MPs to serve a full five-year term. Considering the suggestion of starting a term at swearing in, then it implies that the date for next general elections would fall before the actual five years. Additionally, in an instance where there is a petition on presidential elections, would it mean that the MPs would not serve a full five-year term?

Given the above scenario, JCTR submits that the status quo should be maintained.

Furthermore, the Bill proposes to amend Article 81(3), which states that Parliament shall stand dissolved ninety days before the holding of the next general election. On the contrary, the Bill proposes that article 81(3) read as Parliament shall stand dissolved a day preceding the date of the next general election. JCTR submits that the current status quo be maintained because:

- **Biased campaigning field:** The proposal undermines the ability to ensure a level campaigning field by allowing incumbent MPs to retain the benefits of office, risking the abuse of state resources.
- **Economic burden:** It is also economically problematic as MPs would continue to draw a salary, fuel allowances and support from parliamentary staff during a 90-day period during which they are constitutionally barred from conducting any business. In this case, where is value for money?
- **Inhibiting freedom of Association by MPs:** With the proposed amendment to Article 81(2) of Parliament being dissolved a day before the elections, it gives any MPs wishing to go independent very little manoeuvrability and limits their freedom of association.

The proposed amendments to Article 81 aim to harmonise the term of MPs, moving the dissolution of Parliament from 90 days before the general election to "a day preceding the date of the next general election".

- Moreover, this contravenes the Supreme Court's Lewanika v. Chiluba (1998) ruling, which called for a strict "closed season" during elections: no government or official activity (including state-sponsored charity) should sway voters.<sup>13</sup> Lewanika also underscored that "elections are the sole lawful constitutional and legitimate method for the peaceful and legal

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<sup>13</sup> Supreme Court of Zambia. (1998). Lewanika and Others v. Chiluba (1998) Z.R. 79 (S.C.).

acquisition of political power”. By keeping the legislature in office through the campaign, Bill 7 would reopen avenues for vote-buying and abuse of incumbency, which is precisely what past reforms had sought to prevent. In sum, across its PR design, its expansion of seats and appointees, and its undermining of electoral safeguards, Bill 7 tilts the balance of power back toward the party, not the people. It risks reversing hard-won constitutional gains and violating the dual-legitimacy principle that the people’s Will be expressed through free and fair elections.

- The rationale for this is that it ensures that independent candidates are truly free of any connections to parties to safeguard the public’s interests. We put to you that the public should determine for themselves who they want to vote for through their freedom of conscience, and the candidates should be free to contest the election even if they resign from their party on the day of nominations. The electorate can choose themselves through their right of franchise who they wish to represent them.

### **5.11 Amend Article 103(2) of the Constitution of Zambia**

Article 103(2) of the Constitution of Zambia falls under Part VII, which is the Executive. In the current constitution, Article 103 (2) states that the Constitutional Court may, after hearing an election petition— (a) declare the election of the President-elect valid; (b) or nullify the election of the President-elect and Vice- President-elect. On the contrary, the Bill proposes to amend the article by the insertion of the words “and determine” immediately after the word “hear”. Given that it’s a matter of semantics, it is envisioned that this inclusion may aid the access to justice.

### **5.12 Amend Article 116 of the Constitution of Zambia**

Article 116 of the constitution of Zambia falls under Part VII which is about the Executive. In the Bill, there is a proposal to amend the clause by the insertion of the following new clause immediately after clause (3): (4) Notwithstanding clause (3), the office of Minister shall become vacant ninety days before a general election. In this case, new clauses are proposed requiring that Cabinet Ministers Article 116(4)) vacate their offices ninety days before a general election. This is seen as a progressive, non-contentious amendment aligned with previous court rulings, intended to avoid the illegal stay of ministers in office and the misuse of public resources during campaigns.

JCTR submits that the proposal is progressive. However, the Centre is not in agreement with the construction of the proposed article. The Centre suggests a further constitutional amendment to article 116 to constitutionally mandate the President to appoint Cabinet Ministers outside of NAZ. This will strengthen the separation of powers between the Legislature and Executive.

### **5.13 Amend Article 117 of the Constitution of Zambia**

Article 117 of the Constitution of Zambia falls under part VII focuses on the Executive. The Bill proposes to insert another clause (3) stating that notwithstanding clause (2), the office of Provincial Minister shall become vacant ninety days before a general election. This new clause is proposed requiring that the Provincial Ministers (Article 117(3)) vacate their offices ninety days before a general election. Using the same logic as the Cabinet Ministers, the Provincial Ministers should also not be allowed to campaign with public resources. JCTR is not in agreement with the construction of the article in the proposed Bill, JCTR submits a further amendment to Article 117(1) to allow for Provincial Ministers to be elected. This will increase decentralisation and accountability over provincial development.

### **5.14 Amend Article 153 of the Constitution of Zambia**

Article 153 of the Constitution of Zambia falls under Part XI, which focuses on the Local Government. Article 153 (2) states the composition of the local government which includes a mayor or council chairperson elected in accordance with Article 154; and not more than three chiefs representing chiefs in the district, elected by the chiefs in the district. On the contrary, the Bill proposes to amend article 153(2) by adding clause (b) to facilitate the inclusion of a Member of Parliament from each constituency within the district. JCTR submits that the current status quo for the composition of local councils be maintained. This is because:

- **Undermining separation of powers:** This is strongly opposed as retrogressive because it compromises the fundamental principle of the separation of powers and decentralisation. It will also imply that returning MPs to councils will make them fall under the Ministry of Local Government and Rural Development.
- **Contradicting the functions of MPs:** The proposed amendment will be a contradiction to Article 63 on the functions of National Assembly of Zambia. By bringing MPs to

Councils, it will mean they will have functions that are not constitutionally enshrined or functions against Article 63.

- **Contradicting constitutional provision of Article 152(2):** Article 152(2) states that the national Government and the provincial administration shall not interfere with or compromise a local authority's ability or right to perform its functions. Therefore, by bringing MPs to Councils, it will entail that the Central Government will be interfering with the functions of the local authorities.
- **Already existing oversight role:** Through the current provisions, the MPs have oversight over the dealings and performance of their respective councils.
- **Politicizing Councils:** For some Councils, they house more than three (3) constituencies. Each MP would like to push the agenda of their political parties. This will breed politicisation of Council programmes and projects. Possibly, the argument of bringing back MPs to councils would have worked better if each district housed one constituency.
- **Undermining MP's oversight role of the executive's performance (Article 63):** Making them members of the Council, involved in policy implementation (like the CDF), creates an inherent conflict of interest and politicises the decentralisation machinery. It also constitutes interference with the local authority's ability to perform its functions, contrary to Article 152(2).
- **Unavailability of MPs for Council Programmes:** During the life of Parliament, Members of Parliament are expected to be at the National Assembly performing their functions as prescribed under Article 63. And often, MPs visit their Councils and constituencies during holidays and weekends or when parliament is at break. Therefore, the MPs will become absentee members of the councils.
- The High Court of Malawi addressed a similar issue in the *Registered Trustees of the Malawi Local Government Association v. Ministry of Local Government and the Attorney General* (26 May 2025). The Court held that allowing Members of Parliament to control or direct local development programmes violated the separation of powers and undermined the independence of local authorities.

- This was also the case in Kenya with the *Judgment Petition 1 of 2018, The Institute for Social Accountability and another Vs the National assembly and others*. The Court reasoned that once legislators begin to participate in executive processes, even under the banner of community representation, the neutrality of local government and accountability of the Executive are compromised.
- That logic applies with equal force to Zambia's CDF framework. While community representation is important, MPs' dual role as legislators and CDFC influencers risks distorting both accountability and institutional transparency.

### **5.15 Amend Article 154 of the Constitution of Zambia**

Article 154 of the Constitution of Zambia falls under Part XI, which is about the Local Government. The article states that (1) there shall be a mayor and deputy mayor or council chairperson and deputy council chairperson for every council, as prescribed. (2) A mayor and council chairperson shall be elected— a. directly, in accordance with Article 47 (3) during elections for councillors, as prescribed; and (b) for a term of five years and may be re-elected for one further term of five years. (3) A deputy mayor and a deputy council chairperson shall be elected by the councillors from amongst themselves.

On the contrary, the Bill proposes to repeal and replace the whole article by the following provisions:

154 (1) There shall be a mayor and deputy mayor or council chairperson and deputy council chairperson for every council, as prescribed.

(2) A person is eligible to be elected as a mayor or council chairperson, if that person— (a) is a citizen; (b) is at least twenty-one years old; (c) is a registered voter; (d) has obtained, as a minimum academic qualification, a grade twelve certificate or its equivalent; and (e) declares that person's assets and liabilities, as prescribed.

(3) A mayor and council chairperson shall be elected directly, in accordance with Article 47(4) during elections for councillors, as prescribed.

(4) A deputy mayor and a deputy council chairperson shall be elected by the councillors from amongst themselves

From the analysis, the proposal aims to remove the two-term limit for mayors and council chairpersons (Article 154). JCTR is concerned about the removal of term limits for executive positions like the mayor, which risks fostering structural corruption and might incentivise future arguments to remove the presidential term limits. Critics argue that a more progressive stance would be to impose term limits on all elected officials (MPs and Councillors) to enhance accountability. Additionally, it only leaves one office in the land with term limits, that being of the President.

JCTR, therefore, submits that the term limits for the mayors and council chairpersons be maintained as provided for in the current constitution of Zambia. Furthermore, JCTR wishes to propose that all elective positions in Zambia have term limits.

### **5.16 Amend Article 158 of the Constitution of Zambia**

Article 158 of the Constitution of Zambia belongs to part XII, which focused on the Local Government. This clause is about by-elections at local government level. The article states thus (1). Where a vacancy occurs in the office of mayor, council chairperson or councillor— a. the Town Clerk or Council Secretary of the local authority shall, within seven days of the occurrence of the vacancy, inform the Electoral Commission, in writing, of the vacancy; and (b) a by-election shall be held in accordance with Article 57.

2. If a person is elected to the office of mayor, council chairperson or councillor in a by-election, that mayor, council chairperson or councillor shall serve for the unexpired term of the council and be deemed— a) to have served a full term as mayor, council chairperson or councillor if, at the date on which the councillor assumed office, at least three years remain before the date of the next general election; b) or not to have served a term of office as mayor, council chairperson or councillor if, at the date on which the councillor assumed office, less than three years remain before the date of the next general election.

On the contrary, the Bill proposes to amend Article 158 by inserting that where a vacancy occurs in the office of mayor, council chairperson or councillor, the Town Clerk or Council Secretary of the local authority shall, within seven days of the occurrence of the vacancy, inform the Electoral Commission of the vacancy, in writing, and the political party that sponsored the

mayor, council chairperson or councillor who held the seat, shall elect another person to replace that mayor, council chairperson or councillor, and that person shall assume that seat in a council.

JCTR submits that the current status quo as provided for in the constitution remains. This is because:

- **Politicization of Councils:** Article 158 amendments would align council vacancies with the party appointment mechanism proposed for MPs, further politicising local development and entrenching party politics into the local authority.

#### **5.17 Amend Article 159 of the Constitution of Zambia**

Article 159 falls under part XI of the Constitution of Zambia, which is concerned with local government. Article 159(4) states that an election petition shall be heard within thirty days of the filing of the petition. On the contrary, the Bill proposes that the Constitution is to be amended by the insertion of the words “and determined” immediately after the word “heard”. Given that it’s a matter of semantics, it is envisioned that this inclusion may aid the access to justice and timely conclusion of election disputes.

#### **5.18 Amend Article 176 (3) of the Constitution of Zambia**

Article 176 (3) of the Constitution of Zambia belongs to part XIII on public service. The article states that a person qualifies to be appointed as Secretary to the Cabinet if that person has or had at least ten years’ experience as a permanent secretary or equivalent rank. On the contrary, the Bill proposes the deletion of article 176(3). In this regard, the Bill 7 seeks to reduce the required years of experience for the Secretary to the Cabinet (Article 176(3)) from ten years to five years. JCTR submits that the status quo as provided for in the constitution remains unchanged, largely because:

- **Lowering the calibre:** This is viewed as lowering the calibre of the office, risking the politicisation of appointments, and potentially weakening public service structures rather than strengthening service delivery.

Further, JCTR submits that it is not in agreement with the phrasing of the proposed amendments. The Centre suggests there is an amendment of Article 184 to allow the Civil Service

Commission to appoint Permanent Secretaries, increasing professionalism and building a meritocracy.

### **5.19 Amend Article 178 of the Constitution of Zambia**

Article 178 (1) of the Constitution of Zambia belongs to Part XIII on public service. The article states that the Attorney-General is removed from office by the President. On the contrary, the Bill proposes that clause 178 (1) is completely deleted. The proposal seeks to ensure that the Attorney-General (Article 178) remains in office until their successor is appointed, avoiding a vacuum upon a change of President.

- While this is acknowledged as a progressive measure aimed at maintaining service continuity, we suggest that the Attorney-General vacate office when there is a new President elect, while the Solicitor-General can remain in office. Moreover, it must be coupled with additional protections and professionalisation of the Office of the Solicitor General.

### **5.20 Amend Article 179 of the Constitution of Zambia**

Article 179 (1) of the Constitution of Zambia belongs to part XIII on public service. The Article 179(1) states that there shall be a Solicitor-General who shall be appointed by the President, subject to ratification by the National Assembly. Perhaps, the proposal seeks to ensure that the Solicitor-General (Article 179) remains in office until their successor is appointed, avoiding a vacuum upon a change of President.

- This is also acknowledged as a progressive measure aimed at maintaining service continuity. However, the Office of the Solicitor -General should also be de-politicised by allowing the Judicial Service Commission to appoint the SG. This will ensure balance and preservation of institutional memory.

### **5.21 Amend Article 266 of the Constitution of Zambia**

The Bill proposes several definitional amendments including revising the definition of "adult" to mean a person aged 18 years or above (Article 266) and adding the definition of "youth" (aged 18 to 35).

- These changes are suggested under Art. 266 can be maintained, with the removal of the “Constituency based seat” as we do not recommend MMPR.
- We also recommend relooking at the definition of disability, which currently reads “*a permanent physical, mental, intellectual or sensory impairment that alone, or in combination with social or environmental barriers, hinders the ability of a person to fully or effectively participate in an activity or perform a function as specified in this Constitution or as prescribed*”
- Definition of “youth”: If Bill 7 went through, what would be the implications of this definition on the MMPR Youth MPs, should the youth MMPR MP remain a youth the entire life of Parliament or its merely an entrant age?

## 6.0 Conclusion

On 8<sup>th</sup> December 2025, JCTR received a letter from the National Assembly of Zambia, dated 4<sup>th</sup> December 2025, to make a submission on the ramifications of the Constitution of Zambia (Amendment) Bill N.A.B no 7 of 2025. The memorandum commenced by giving a brief historical background to the constitutional amendment developments in the last 6 months. One of the most significant highlights in the brief history hinged on the concerns about the methodology and process leading to the presentation of the Bill to parliament. Thereafter, the memorandum elucidated the guiding principles in the formation and creation of a new constitutional order. Under this section, the fundamental argument’s fulcrum pivoted on any constitutional reform abiding by guiding principles. After highlighting the key guiding principles as was the case in South Africa and Kenya during the constitutional reforms, the memorandum speedily delved into analysing the key content of the Constitution of Zambia (Amendment) Bill N.A.B no 7 of 2025. In the analysis section, JCTR gave submission and justification for either agreeing or disagreeing to the proposed amendment. Broadly, it showed that the amendments focused on Part V - Representation of the people, Part V- the legislature, Part VII -the Executive, Part XI, which focuses on the Local Government, Part XIII on public service and Part XX on general provisions. JCTR rejected most of the proposed amendments based on some of the current constitutional provisions, understanding of human rights like freedom of expression and the concept of the right to vote, political concepts like separation of powers and the understanding of the key fundamental constitutional concept in Zambia, which is representation. On the contrary,

JCTR agreed to some of the proposed amendments, especially those that promoted access to justice and clarity of definitions.

The act of constitution making is also nation building, therefore any endeavour to amend the constitution must seek to create a stronger and more united Zambia. It must reflect the Will of the people, their hopes and aspirations for their land and how they wish to be governed. While we acknowledge that not everyone will realistically be able to contribute, it is our hope that all who wish to do so should be given the opportunity. Thus, fulfilling and legitimising the words in our preamble “WE, THE PEOPLE OF ZAMBIA...”

Constitutional Amendment Bill No. 7 of 2025 contains progressive and regressive provisions, which risk undermining democratic integrity, consolidating power in political parties, and weakening institutional checks and balances, eroding citizen's representation, restructuring Zambia's democracy model. While some amendments (ministerial vacancies, officer continuity) are progressive, the majority require substantial revision or outright rejection to protect Zambia's constitutional democracy.

## **7.0 Recommendations**

This section highlights the recommendations by JCTR. The recommendations will be grouped according to the sections of the proposed amendments. Based on our analysis of Constitutional Amendment Bill No. 7 of 2025, JCTR proposes the following amendments and considerations:

### **7.1 Electoral System and Representation (Articles 47, 68, and 69)**

- The proposed electoral system is technically incompatible, operating as a "parallel" system rather than a true mixed-member proportional representation (MMP) system.
- The allocated quotas, 20 seats for women (9.5%), 12 for youth (5.7%), and 3 for persons with disabilities (1.4%), are symbolic and risk becoming ceilings rather than floors for representation, falling short of regional best practices in Uganda and Rwanda. The participation of women in Ugandan national politics is guaranteed by the national Constitution of 1995, the Parliamentary Elections Act (2005) and the Local Government

Act (1997).<sup>14</sup> Women in Uganda hold 46% of local government positions, 33% of parliamentary seats and 43% of the cabinet positions. Rwanda's new constitution in 2003 introduced a 30 percent gender quota for all elected positions in government.<sup>15</sup>

- ECZ must conduct a fresh delimitation review to adequately guide the delimitation exercise.
- Prescribe and operationalise for the Gender Equity and Equality Commission under Article 231 to enhance advocacy and oversight.

## 7.2 Political Party Regulation (Article 60)

Article 60 of the Constitution must be fully operationalised through comprehensive legislation.

We recommend to:

- Enact comprehensive legislation under Article 60 to regulate political party registration, public financing, and internal democracy;
- Establish maximum campaign spending limits under Article 60 to reduce the ability of wealthy individuals to buy nominations;
- Implement mechanisms to enforce transparency in political party financing under Article 60(4)(a)–(d).

## 7.3 Nominated MPs by the President (Articles 68(e) and 69)

The proposal to increase presidential nominations from eight to ten members is regressive and contrary to competitive democracy principles, granting power to members without citizen mandate.

We recommend to:

- Amend Article 69 to ensure more equitable appointment processes;
- Amend Article 116(1) to allow Cabinet Minister appointments outside the National Assembly;
- Amend Article 117(1) to allow Provincial Ministers to be elected.

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<sup>14</sup> Gender Equity Unit. *Rwanda: A Gender Equity Report*. April 2023. <https://genderhealthdata.org/wp-content/uploads/2024/03/Rwanda-Gender-Report-website.pdf>

<sup>15</sup> United Nations Development Programme. *UNDP Uganda Gender Equality Strategy 2022-2025*. February 2023. <https://www.undp.org/sites/g/files/zskgke326/files/2023-02/UNDP%20UGANDA%20Gender%20Equality%20Strategy%202022-2025.pdf>

- Maintain the current provision of 8 nominated MPs

#### **7.4 Candidate Nominations (Article 52)**

While the amendment aims to prevent frivolous last-minute resignations, it could disadvantage political parties whose candidates have valid reasons for withdrawing, such as health issues, political duress etc.

We recommend the following:

- Allow a specific time period (such as one month before an election) during which fresh nominations cannot be filed due to resignations;
- Disqualify candidates for corruption or malpractice based on evidence rather than requiring final court decisions, preventing the weaponisation of courts against candidates.
- The other candidates should not have to pay additional nomination fees, so as not to disadvantage them.

#### **7.5 By-Elections and Party Appointments (Articles 57, 72, and 158)**

The curtailment of by-elections, replacing them with internal party appointments for non-independent vacancies, fundamentally undermines democratic legitimacy. The government cites K264 million in costs, but this figure does not justify substituting direct popular mandates with party appointments, especially without a functional Political Parties Act.

Without legal frameworks enforcing internal party democracy, party-controlled replacements risk consolidating elite control and weakening voter sovereignty. Zambian political parties often operate as cults of personality, and there are no guarantees against this continuing if they fill electoral vacancies internally.

We recommend these:

- Reject the proposed curtailment of by-elections;
- If cost reduction is necessary, implement campaign finance reform, spending caps, or improved electoral administration instead;
- Increase protections and immunities for MPs under Article 76 to match presidential protections under Article 98, with exceptions only for gross misconduct;

- Ensure MPs as State Officers are represented by the Attorney General, consistent with the Constitutional Court ruling in *Law Association of Zambia v. Speaker of the National Assembly* (2025-CCZ-0015).

## 7.6 Parliamentary Term and Dissolution (Articles 51, 81, and 72)

The proposed amendment moving Parliament's dissolution from 90 days before elections to "a day preceding the date of the next general election" creates multiple problems. It allows incumbent MPs to retain office benefits during campaigns, risking abuse of state resources. It is economically wasteful, as MPs would draw salaries and allowances while constitutionally barred from conducting business.

This contravenes the Supreme Court's *Lewanika v. Chiluba* (1998) ruling, which established a strict "closed season" during elections: no government or official activity should sway voters. The ruling emphasised that "elections are the sole lawful constitutional and legitimate method for the peaceful and legal acquisition of political power."

The proposed changes to Article 51(a), requiring independents not to have been party members for two months before nomination, combined with the dissolution timeline and Article 72(2)(d) & (e) requirements that MPs vacate seats upon resignation or expulsion from their party, create an impossible dilemma for potential independent candidates.

We recommend to:

- Reject the proposed amendment to Article 81(2);
- Maintain the 90-day dissolution period before elections;
- Add to the definition of "term" under Art. 266 that MPs, mayors, council chairpersons and councillors are deemed to have served their five year terms at the dissolution of Parliament
- Protect candidates' freedom to contest elections even if they resign from parties on nomination day, allowing the electorate to decide through their right of franchise.

## 7.7 Ministers' Office Vacancies (Articles 116(4) and 117(3))

The requirement that Cabinet and Provincial Minister offices become vacant 90 days before elections is progressive and aligned with court rulings against illegal stays in office and misuse of public resources during campaigns.

We recommend the following:

- Support this amendment as proposed.
- Additionally, amend Article 116(1) to allow Cabinet Minister appointments outside the National Assembly.
- Additionally, amend Article 117(1) to allow Provincial Ministers to be elected.

### **7.8 Council Composition (Article 153)**

The proposal to automatically include MPs from each constituency as council members is strongly opposed as retrogressive. It violates the separation of powers by creating a conflict of interest: MPs responsible for executive oversight (Article 63) would simultaneously be involved in policy implementation through councils, including the Constituency Development Fund.

This constitutes interference with local authorities' independence, contrary to Article 152(2). The High Court of Malawi addressed this in *Registered Trustees of the Malawi Local Government Association v. Ministry of Local Government* (26 May 2025), holding that allowing MPs to control local development programmes violated the separation of powers. Similarly, Kenya's Constitutional Court in *The Institute for Social Accountability v. The National Assembly* (Petition 1 of 2018) found that legislators participating in executive processes compromised local government neutrality and executive accountability.

We recommend:

- Reject the proposed amendment to Article 153(2)
- Maintain the separation of powers between legislative oversight and executive implementation

### **7.9 Term Limits for Mayors and Council Chairpersons (Article 154)**

Removing the two-term limit for mayors and council chairpersons is politically driven and dangerous. It risks fostering structural corruption and might incentivise future arguments to remove presidential term limits, leaving the President as the only office in the land with term limits.

We recommend:

- Reject the removal of term limits for mayors and council chairpersons

- Consider imposing term limits on all elected officials (MPs and Councillors) to enhance accountability and the principle of alternating power.
- Further, removing term limits for mayors and council chairpersons will open the vulnerable arguments to term limits, as this will only leave the President with term limits. In future, a similar argument may be used to remove term limits.

### **7.10 Secretary to the Cabinet Qualifications (Article 176(3))**

Reducing the required experience from ten to five years lowers the calibre of this office, risks politicising appointments, and potentially weakens public service structures.

We recommend:

- Reject the reduction in experience requirements
- Amend Article 184 and Article 222 to allow the Civil Service Commission to appoint Permanent Secretaries, with appointments subject to Parliamentary ratification, this will increase professionalism and building a meritocracy

### **7.11 Attorney-General and Solicitor-General Continuity (Articles 178 and 179)**

Ensuring these officers remain until successors are appointed is progressive and maintains service continuity.

We recommend:

- Support this amendment.
- Additionally, depoliticise the Office of the Solicitor General by allowing the Judicial Service Commission to advertise for the role and nominate a candidate for the position of SG, with NAZ ratifying the nomination.

### **7.12 Definitions (Article 266)**

The proposed definitions of "adult" (18 years or above) and "youth" (18 to 35) can be maintained with modifications.

We recommend:

- Removal of the "Constituency-based seat" definition as we do not recommend MMPR;
- Review of the definition of "disability" to ensure it adequately captures the spectrum of disabilities and aligns with international best practices.

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