



THE CONSTITUTION OF ZAMBIA (AMENDMENT) BILL NO. 7 OF 2025

JOINT CIVIL SOCIETY POSITION PAPER

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I. INTRODUCTION

On 26 March, 2025 the Minister of Justice, Honourable Princess Kasune, announced the constitution amendment process. The Minister provided a roadmap for the process and stated that the reforms would focus on “non-contentious issues”.¹ She further indicated that, to avoid a protracted and costly process, the government would undertake the process premised on the requirements of Article 79 of the Zambian Constitution.²

According to the published roadmap, the constitutional amendment Bill should have been published on 21 May, 2025 and introduced into the National Assembly on 24 June, 2025. The Ministry of Justice (MOJ) duly published the Bill on 23 May 2025, two days behind schedule.

The current government-led process mirrors previous failed processes from 2003-2005 (Mung'omba Commission) and 2007 (National Constitutional Conference), in that the executive has controlled both the substantive reform agenda and the manner through which the voices of ordinary Zambians, civil society, chiefs, clergy and others are heard and incorporated into the draft amendment Bill. Experience from around the world demonstrates that a “good” constitution making process achieves two things: it builds a degree of consensus among the diverse political community on the essential content of the constitution (political settlement) and it fosters a sense of popular legitimacy where text represents the will and values of the people and promotes the common good. Without these foundations, a constitution is merely a tool of power yielded by the powerful. To support constitutional consensus and legitimacy, a constitutional reform process must be broadly inclusive and consistently transparent – with meaningful opportunities for a wide range of citizens to both understand and deliberate on the issues at stake, and to make submissions to the government for consideration within the amendment Bill.

The current process, as outlined by the Minister, falls far short of these standards. Public consultation opportunities are limited, sporadic and tightly controlled. There is no transparency in how the government will review or respond to public views to update the amendment Bill prior to submission to parliament, if at all. No reports on the underlying justifications for the amendment issues, nor the outcomes of the consultation process, have been offered. ***Moreover, the issues selected by the government for amendment are not “non-contentious.”*** While some topics enjoy broad support for revision, the proposed solutions lack popular support and suffer from technical defects. Other topics are highly contentious, as demonstrated by the significant concerns raised by citizens, political parties, and religious and traditional leaders.

As a result, there is a danger that the proposed reforms might be more focused on the short-term political interests of the ruling government rather than fundamental structural reforms aimed at improving democratic governance and human development in the country. It pairs these problematic provisions with a handful of desirable changes that, on their face, would appear to enhance representation and community development, but which in practice would do little to

¹ Lusaka Times, “New Dawn for Zambia: Justice Minister Announces Constitutional Changes,” 26 March 2025, <<https://www.lusakatimes.com/2025/03/26/new-dawn-for-zambia-justice-minister-announces-constitutional-changes/>>

² Article 79 of the Zambian Constitution requires, inter alia, that a constitution Bill be published at least 30 days prior to its introduction to the National Assembly, sets the threshold for passing constitutional Bills at two-thirds majority, and requires a referendum in order to alter the Bill of Rights and article 79 itself. It does not provide for broad-based public participation.

achieve these aims or even run counter to democratic good practice.

This paper reviews the major issues in the Constitution of Zambia (Amendment) Bill No 7 of 2025. It highlights the major areas of concern in the Bill to illustrate that, *contrary to assertions by the government, the proposed reforms are contentious; they undermine democratic separation of powers and checks and balances, and raise serious implementation concerns – including by significantly raising costs to the public and through defective technical drafting. The amendment package, and the entire reform approach, needs to be rethought.*

II. COMMENTS ON KEY ISSUES IN BILL 7

1. Addition of a “Mixed Member Proportional Representation” System

Civil society and citizens have long advocated for Zambia’s representative bodies to better reflect the diversity of the Zambian population—in particular, for parliament and district councils to include the voices of women, youth, and persons with disabilities, as mandated under Articles 45(1)(c) and (d). In addition to multiple civil society proposals and regional and international examples of electoral mechanisms that would enhance the representation of these groups, the Electoral Commission Technical Committee (ERTC) Report of 2025, calls for a mixed-member proportional representation system for election to the National Assembly based on a quota system, and for election to councils to be based on the proportional representation system using closed party lists of nominated members per ward, one of whom shall be a youth, and comprise an equal number of male and female primary candidates. Calls to increase the representation of women and other marginalized groups have featured prominently in various constitutional review submissions. Many of these submissions proposed that women's representation be increased to between 30% and 50%. The Mungomba Commission summarized these views as follows: “On the subject of gender equality in governance, the Commission notes that several petitioners called for a constitutional provision to guarantee equality of the sexes in participation and representation at all levels of Government. Some of these petitioners called for a minimum quota of 30% to 50% parliamentary seats and ministerial positions to be reserved for women. Others said that representation in political parties should reflect the principle of gender equality.”³

Summary of Bill 7 Clauses:

Clause 47 adjusts the electoral system and purports to introduce a “mixed member proportional representation” system at parliamentary level. The Bill provides two pathways to becoming a member of parliament (MP): (i) by being elected to represent a geographical constituency using the current first-past-the-post (FPTP) system (i.e. the candidate who wins the most votes in a given constituency), and (ii) through party candidate lists based on a seat allocation based on proportional representation (PR). Clause 68, discussed in greater depth below, proposes not more than 20 reserved seats for women, 12 for youths, and 3 for persons with disabilities.

Key Issues:

Not only does this amendment fail to meaningfully address the chronic underrepresentation of the groups it purports to aid and fall short of stakeholder recommendations, the PR portion of the system outlined in Bill 7 lacks clarity for how it would work in practice and suffers from technical defects.

- Clause 47(3) states only that seats under the PR system “shall be distributed, after an election, by the Electoral Commission, to political parties, in proportion to the total number of votes obtained by a political party on *the proportional representation ballot*, as prescribed.” Critically, this language suggests that a separate “proportional representation

³ Report of the Constitution Review Commission (Willa Mungomba) 2005, part 7.2.19

ballot” would be used to allocate PR seats rather than allocation being based on parties’ performance at the parliamentary or presidential level, as a true “Mixed Member Proportional” system would demand. Rather, the system described in Bill 7 is a ‘parallel’, rather than mixed system since the PR and FPTP allocations are not linked.

- Further, the fact that the PR system applies to only a small subset of reserved seats makes it exceedingly difficult to implement in practice – even if subsidiary legislation elaborates details. Such a small number of PR seats would not achieve any of the benefits of a PR or Mixed Member Proportional system more broadly – namely, balancing exaggerated outcomes from the FPTP system to support a more representative political diversity across the country. Further, the modalities of operationalizing the PR system for such a small number of seats do not lend themselves to proportional allocation among parties; How would 3 seats for persons with disabilities be allocated in a proportional way?
- In terms of costs, operations and clarity for voters, It is also unclear if a separate ballot, or indeed, three separate ballots, will be used for the PR lists to determine the level of support for political parties (one each for women, youth and persons with disabilities), as the basis for the distribution of the additional seats. When considered together with the geographic constituency seats, voters may be faced with four distinct ballots on election day.
- The government does not provide any analysis as to how it arrived at this electoral design proposal, the cost implications of additional ballots and associated voter education. The lack of clarity in the amendment text cannot be remedied by subordinate legislation.
- The Silungwe Technical Committee on Drafting the Constitution, for example, had suggested a relatively more straightforward way of conducting the mixed member PR system. It stated: “The Committee also agreed on a system where PR seats would be allocated ***according to the proportion of votes obtained by each party’s presidential candidate***. Each party would be required to provide a PR party list, to the Electoral Commission of Zambia, from which MPs would be selected upon the declaration of presidential election results.”⁴

The government also does not explain why the ***MOJ has seemingly rejected the recommendation from the ERTC that representation for these groups should also be mandated at the local council level.***

- Clause 45 of the current Constitution requires “fair representation” of various interest groups and “gender equity” in both the National Assembly and the councils. Yet the proposed amendments in Bill 7 apply exclusively to the National Assembly.

Whilst we recognize, and indeed have advocated for, the need to increase the representation of women, youth, and people with disabilities in government at all levels, and agree with the use of mixed member proportional representation systems to mitigate the disproportionalities created by the simple majority geographical seats, ***these systems must be designed carefully to mitigate unwanted consequences and to remedy the prevailing challenges.*** Many countries have implemented these types of systems, none of which are perfect, and there is much to be learned by comparative experience. Unintended harms of the proposed approach in Bill 7 are well documented from comparative experience. They include:

- ***Incentivizing political parties to shift women candidates away from competing in geographic FPTP constituencies*** and pushing them exclusively to the “reserved” seats

⁴ Silungwe Technical Committee Report 2012, 194

PR lists, thus *reducing* their political influence and representation over time. Research by Lihilu in Zimbabwe notes that “The PR system in this case does not give women with special seats electability status, attach women to geographical areas for accountability purposes, nor does it provide uniform procedures to guide party nomination for these seats.”⁵ He also notes that “There is an unspoken presumption within the political parties that if the Constitution provides for 60 seats for women, then the FPTP constituencies are designated for men...since 2013 [the institution of the system], the number of women elected from FPTP constituencies has declined.” This was also noted by the ERTC when it stated that: “Research shows that countries with the lowest levels of female political representation have either a weak variant of a Proportional Representation System (where voting for party lists and seats are distributed proportionately, but the leading party receives extra seats as a result of reaching a certain level or threshold of votes) or a Majoritarian system.”⁶

- ***Operating as a ceiling on representation for these groups rather than as a floor of minimal representation.***
 - ***The 20 seats reserved for women would be less than eight percent of the total membership of the National Assembly;***
 - ***the 12 seats for youth would be less than five percent; and***
 - ***the (3) three seats for people with disabilities would be less than two percent.***
- ***Incentivizing parties to push PR list candidates to expend resources and political capital to campaign for (mainly men) candidates for the constituency seats rather than in their own name; and***
- ***Limiting the ability of women, youth and persons with disabilities on the PR lists from building a constituency or from accessing constituency development funds (CDF), as access to CDF is limited to MPs with geographic constituencies.***

Additionally, the government has provided additional statements to the effect that the 20 seats for women will be divided as two per province. This explanation is not reflected in the text of the Bill and fails to address how the 12 seats for youth and 3 seats for persons with disabilities will be similarly divided by the 10 provinces.

Further, the proposed amendments do not address the underlying dynamics affecting the low numbers of women elected, nominated by political parties, or putting themselves forward to parties or as independent candidates for nomination

The government has not advanced any analysis or study of different types of systems to demonstrate to stakeholders how it arrived at the proposed system, which provides inadequate numbers of representatives, how it would work, or how the well-documented potential harms would be mitigated.

2. Increasing from 156 to 256 Members of Parliament

An analysis of the existing constituencies demonstrates a clear need to adjust constituency delineation. Currently, there is a severe lack of equality of the vote due to significant variations from the population quota, undermining a core democratic principle. For example, Lufubu’s 11, 424 registered voters are represented by one MP, whereas Kanyama’s 177, 826 registered voters

⁵ Victoria Melkisedek Lihiru, “Exploring Suitable Electoral Systems for Promotion of Women’s Representation in Tanzania and Rwanda,” (2022) 21 African Studies Quarterly, 68

⁶ Report of the Electoral Reforms Technical Committee 2025, 105

are also represented by a single MP, undermining their ability to be adequately represented.⁷ ***However, Clause 68 of Bill 7 neither effectively ensures equality in voting power, nor provides a basis for adjusting constituency delineation in a fair and politically neutral manner. Rather, Clause 68 seemingly arbitrarily increases the size of the National Assembly from the current 156 seats to 256, without providing any indication of the criteria used to establish the creation of new geographic constituencies nor justification as to why the creation of these constituencies furthers Zambia’s democratic practice.*** Increasing constituencies, particularly with Zambia’s historical voting patterns, ***is inherently contentious.***

The government has stated that the amendment is needed to “actualize the delimitation report by the Electoral Commission;” however, since its production in 2019, the report has remained secret, despite numerous calls for its publication and contrary to international practice. ***There is no precedent in democratic countries for the delimitation of electoral boundaries to be treated as a state secret, particularly as the delimitation exercise is funded by the public purse and subject to monitoring, like all of Zambia’s electoral processes. The proposed increase in the number of MPs risks arbitrarily awarding a two-thirds supermajority to the ruling party, facilitating future constitutional changes.***

Summary of Bill 7 Clauses:

The amendment text provides for the increase in the number of MPs to include reserved seats for women, youth, and people with disabilities, as discussed above (35 seats in total), as well as an increase from eight to ten members to be nominated by the president and 211 elected members of parliament. Combined, this increases the total size of the National Assembly to 256 seats. The Bill does not specify where new constituencies will be. Further, Article 58(6) of the Constitution provides that the delimitation of new constituencies comes into effect with the dissolution of Parliament (see point 6 below on proposed changes to the timing of parliamentary dissolution).

Key Issues:

The power to draw electoral boundaries and to create new constituencies has profound implications for Zambia’s, or indeed any country’s, democracy. For this reason, boundary delimitation procedures are often prescribed with precision to curtail the risk of political influence and the delimitation of electoral boundaries for political advantage. The ERTC report recommends delimitation and the increase of constituencies in line with the “principle of a non-partisan approach [to] ensure that delimitation is conducted without political bias or manipulation” using “population equality, which ensures that each vote carries equal weight.”⁸

- ***Bill 7, however, attempts to increase the number of constituencies without any discernible basis and without legitimate justification. This sets a concerning precedent for the constitution and the electoral system to be at the mercy of those who control the government at any particular time.***
- This situation increases the chances that any ruling party could delimit constituencies in such a way as to ensure themselves a two-thirds supermajority for future constitutional changes.

For example, ahead of the 2008 election in Zimbabwe, the Mugabe regime increased the size of parliament from 120 to 210 members and allocated most of the new seats to rural areas where it had support rather than the urban areas where support had eroded. While not all ruling parties will

⁷ CCMG final report, EOM report

⁸ 2025 ERTC Report, 176

be so inclined to manipulate the system in such a way, common sense demands that protections be put in place to prevent bad actors from doing so in the future.

Rather than addressing the real, persistent challenges of equality of the vote under the current system, the proposed amendment risks severely undermining Zambia's democracy and, in particular, Parliament's oversight role.

- Although it may be argued that an increase in the number of constituencies may enhance development, particularly in rural areas, ***there are multiple mechanisms through which to achieve the more equitable allocation of constituency resources that do not involve similarly risking political manipulation of electoral boundaries.*** Constituency Development Funds, for example, are allocated on the basis of legislation, and therefore may be distributed in a progressive manner (equitably) across constituencies based on specified indicators, rather than in a regressive manner (equally) as is currently the case.

Further, the costs of the increased parliamentary seats and constituencies has not been considered, nor has the government explained how these costs will be covered.

- Specifically, the government has not explained how the additional salary, allowances, and other benefits' costs for the increased number of MPs would be supported in the current ***financial climate***, nor any cost to development priorities that these added expenses might engender.

Stakeholders have recommended additional provisions for the delimitation of electoral boundaries to insulate the process and the Electoral Commission of Zambia, which is mandated to carry out delimitation.

- In other countries in the region, constitutional provisions prescribe population quotas and other mechanisms to guard against arbitrary increases, ensuring that changes to electoral boundaries are grounded in transparent procedures.
- Indeed, the 2019 boundary delimitation report purportedly recommends creating over 90 constituencies, however neither the government nor the ECZ has provided how this original recommendation was developed, nor how Bill 7's proposed 55 constituencies were determined.

The Bill 7 amendment and the failure of the government to release the 2019 boundary delimitation report is a step backwards in Zambia's democratic trajectory.

3. Increasing the Number of Nominated Members of Parliament

Among the other increases to the number of MPs, Clause 68(e) also provides for an increase in the number of MPs directly nominated by the president. ***An anomaly in modern constitutional practice, this clause further undermines the independence of Parliament, increases the costs to the public, and arbitrarily increases the executive's power.*** The government has not provided a rationale for how this increase furthers Zambia's development and democracy.

Summary of Bill 7 Clauses:

In addition to the increase in the number of geographic constituencies and reserved seats, Clause 68(e) increases the number of MPs nominated by the president from eight to ten..

Key Issues:

While five MPs were nominated by the president in the independence constitution of 1964, these provisions are considered regressive and have been removed from constitutions in modern constitutional reform processes globally as they provide for MPs without a mandate from citizens. ***Bill 7's expansion of nominated MPs is therefore contrary to democratic practice, and yet the***

government has not provided any justification for the increase.

- The government has not addressed the analysis provided in the Chona Commission and *the recommendation by the Mung'omba Commission, reflecting strong public sentiment, that “the constitutional provision for nominating MPs should be repealed.”*⁹
- The Mungomba Commission further noted that, *“the concept of nominated MPs is perceived as not being in conformity with ideals of competitive democracy and the sovereign will of the people.* The Commission notes that in countries where this concept exists, it is used either to enhance the strength of the ruling party in Parliament and/or integrate targeted minority or disadvantaged groups...Further, when viewed especially against the background of dominance by the ruling party in Parliament, this provision seems intended to tilt the balance in favour of the ruling party.”¹⁰
- Similarly, the Mvunga Commission noted that “the majority of petitioners favoured a National Assembly comprising elected members only, arguing that nominated members do not have a constituency to represent.”¹¹

With this explicit recommendation against such an increase in the most recent constitutional review commission, and a lack of any other discernible recommendations from stakeholders to increase the number of MPs, *there is no justification for this increase.*

4. Parliamentary Vacancies due to Disqualification

The amendment Bill proposes to provide for the disqualification of members of parliament, rendering the office vacant, by the constitution, rather than the current judicial process undertaken by the Constitutional Court. As the constitution does not detail a separate process for disqualifying candidates, this creates *uncertainty in the process for disqualifying candidates, leaving the process open to potential political manipulation.*

Summary of Bill 7 Clauses:

Article 72(2) of the Constitution of Zambia (Amendment) Act, 2016 provides the circumstances whereby the office of a Member of Parliament becomes vacant, with (h) noting a situation in which the MP “is disqualified as a result of a decision of the Constitutional Court.” However, the Bill proposes to amend this language to “disqualified in accordance with this constitution.”

Key Issues:

Rather than according MPs a judicial process through the Constitutional Court in the case of a disqualification, the Bill’s proposed amendment seemingly removes this due process and allows for a more arbitrary disqualification. While such a change may not be intended, it would likely be the functional result of the plain text of the amendment. Accordingly, this change could leave the disqualification of MPs open to political manipulation. At the very least, it inserts ambiguity in the process for disqualifying MPs duly elected by their constituents.

The ERTC report proposes a more clear wording, which makes it clear that the disqualification relates to nullification of an election where there was a petition. The wording proposed by the ERTC is as follows: “..loses the seat as a result of the decision of the Constitutional Court where there is an appeal or the High Court where there is no appeal.”¹²

5. By-Elections and Replacement of Members of Parliament by Political Parties

⁹ Ibid, 304

¹⁰ Ibid, 304

¹¹ Mvunga Commission Constitution Report October, 1990, 33

¹² Report of the Electoral Reforms Technical Committee 2025, 223

Frequent by-elections have raised concerns about the cost and effectiveness of the by-election mechanism for filling vacancies at the local and parliamentary levels. While stakeholders have recommended reducing by-elections, the Bill 7 proposal for filling vacancies in Parliament by the sponsoring party deprives citizens of the fundamental right to choose their representatives. Further, the proposal undermines democratic practice given the lack of subsidiary legislation to ensure that internal democracy operates the same at the party level. Lastly, the proposed amendments do not follow the recommendations contained in the ERTC report. ***While the cost of by-elections is not insignificant, these electoral practices are important to maintain the legitimacy of the National Assembly. Solutions to resolving the challenges of frequent by-elections should be developed in consultation with stakeholders and may involve more democratically acceptable methods such as open party primaries or pre-declared party lists.***

Past constitutional review commissions suggest that the public has consistently opposed by-elections triggered by floor crossing by Members of Parliament. Submissions often made a distinction between by-elections caused by the death of an MP and those resulting from voluntary defection to another political party. In this regard, the Mungomba Commission report noted: “The Commission notes that an overwhelming majority of petitioners were not in favour of by-elections. Among these, many expressed the view that by-elections should only be held where a vacancy arises due to death or incapacitation of an MP or nullification of an election.”¹³ More specifically, the Mungomba Commission noted: “Further, they lamented that the system encourages what they term “political prostitution” among MPs, that is, defections from one party to another, in total disregard of the interests of the electorate.” To balance between the need to avoid by-elections, and to maintain the power in the people to choose their own representatives, the Mungomba Commission recommended as follows:

“In light of the grave misgivings expressed by petitioners and the arguments in support of these submissions, the Commission recommends that the proposed electoral system, which should be prescribed in the electoral laws, should be designed in such a way that:

- where a vacancy arises due to nullification of an election, death, incapacitation of an MP or where a vacant seat was held by an independent MP, a by-election should be held;
- an MP who resigns from a party or joins another party should lose the seat and not be eligible to contest by elections for the duration of that Parliament;
- an MP of a dissolved party should retain the seat as an independent where such MP holds the seat on the basis of the First-Past-The-Post electoral system;
- the seat of an MP whose party is dissolved should be reallocated on the basis of Proportional Representation if that seat was held on the basis of that system; and
- any vacancy arising otherwise should be filled by the party holding the seat. In the case of an expelled MP who contests the expulsion, he/she should continue until the matter has been determined and, if found to have been wrongfully expelled, such an MP should retain the seat as an independent MP, and that this should be determined within 90 days.¹⁴”

Summary of Bill 7 Clauses:

Clause 72(8) states that when a vacancy occurs in the National Assembly, the party that sponsored the candidate elects a replacement.

Key Issues:

Elections provide voters the opportunity to choose their representatives, electing individuals to carry their voices and concerns in decision-making processes.

¹³ Report of the Constitution Review Commission 2005, part 7.2.11

¹⁴ Ibid, 9.2.4

- While key actors in a democratic system, and important stakeholders in policy making and accountable governance, political parties cannot provide the same legitimacy as a candidate duly elected by constituents, particularly in choosing representatives to fill vacancies. This full claim to democratic legitimacy, as noted by political scientist Juan Linzi, only accrues to the legislature and head of the executive as directly elected by the people.¹⁵
- The proposal also faces technical challenges, Article 60(1)(b) of the current Constitution empowers political parties to sponsor candidates but does not require candidates to be members of any party. Similarly, Articles 70 or 71, which establish the qualifications of candidates and nomination procedures, simply require a candidate to pay the fee and present 15 registered supporters. Voters then make their choice at the polls. Accordingly, the constitution currently does envision political parties to play a constitutional role in the election of MPs to seats. ***The Bill 7 amendment would therefore endow parties with a power not envisioned in other articles of the existing constitution.*** Additionally, without subsidiary legislation providing fair and accountable governance and procedures within political parties, the proposed mechanism fails to define legitimate processes for party elections of candidates. Failure to do so ***encourages potentially undemocratic procedures within parties as well as the disqualification of a party's process for electing a replacement.***

6. No Dissolution of Parliament for the Campaign Period

Under the guise of harmonizing the term of MPs, Bill 7 proposes to remove the dissolution of parliament for the campaign period and instead dissolve parliament only one day prior to the election. Rather, during the intervening 89-day period prior to an election, Parliament would stand but MPs would undertake no activities. ***The current mechanism helps to level the playing field during campaigns and limit the potential misuse of state resources. The Bill 7 proposal adds to the cost to the public*** due to the need to continue paying MPs for this ninety day period during which, per Bill 7 they do not conduct any work on behalf of citizens.

Benefits of incumbency, at the very least, and documented cases of abuse of state resources are real concerns for ensuring a fair campaign period, and the proposed amendment undermines this key priority for Zambia's democratic practice. Further, the proposed timing of the dissolution would complicate any boundary delimitation which, per the current constitution, comes into effect upon the dissolution of parliament.

Summary of Bill 7 Clauses:

Clause 81(3) proposes to only dissolve parliament the day before the general election. Clause 81(4), however, states that parliament shall not sit to conduct business during the 90 days preceding a general election. The rationale for this change is therefore unclear and the government does not provide a compelling rationale for this amendment.

Key Issues:

Abuse of incumbency of office and misuse of state resources in campaigns have been recurring issues in Zambia's electoral processes. Indeed, the Supreme Court in *Lewanika and Others v Chiluba* (1998) and recommendations by stakeholders have made repeated recommendations to restrict the use of public funds for campaigns.

- ***The proposal to afford MPs the benefits of office with none of the duties therefore creates a situation ripe for abuse*** and undermines the work of stakeholders and the desire of citizens for a level playing field during elections.

¹⁵ Juan Linz, "The Perils of Presidentialism" (1990) 1 Journal of Democracy, 51-69

7. Appointment of Members of Parliament to District Councils

Stakeholders and citizens have long championed devolution as a mechanism for bringing decision-making and, ultimately, development and greater democratic participation to the grassroots. Local government structures, primarily district councils, perform key roles in local governance. ***Inserting MPs into local councils blurs the separation between national and local government structures and weakens accountability, undermining the work of local councils and potentially overtaxing MPs by providing additional duties at the local level.*** Further, the government has not demonstrated that this was a recommendation from stakeholders, and it is not contained in the ERTC report.

Summary of Bill 7 Clauses:

Clause 153(2)(b) intends to make an MP a member of the Council by right of office.

Key Issues:

While progress has been made in Zambia's devolution process, decentralizing key government functions and allowing greater input and, ultimately, benefit at the grassroots level, further decentralisation is required to ensure accountable, participatory governance.

- Against this backdrop, ***the proposal to return MPs to the councils puts in jeopardy the progress Zambia has made thus far in devolution and risks sending us backwards.*** The government has not provided any analysis of the benefits of this amendment, nor does such a recommendation appear in the ERTC or other reports.
- Indeed, the Mungomba Commission report noted the need for devolution of power, "instead of a concentration of these in institutions at the national or central level."¹⁶ Regionally and internationally, the holding of dual roles, at the national and local levels, is generally discouraged or requires direct election to both bodies, with the exception of Zimbabwe.

Practically, the proposal does not enhance the accountability of governance at either the local or national levels.

- Rather, it undermines the distinctions between the roles of MP, who are charged with law-making, executive oversight, and of representing their constituents in national matters, and of Council Members, who are charged under the principle of subsidiarity in furthering the common good of local communities and managing local matters. While these interests may sometimes overlap, they may also conflict. Further, voters must be clear about who is responsible for which issues impacting them.
- Virtually no other country mandates that MPs sit in local councils as a matter of right; though Zimbabwe is one example. In most other countries where dual mandates are allowed, candidates earn seats in both the National Assembly and the Local Council through direct election to each.

The arbitrary appointment of MPs to local councils undermines the legitimacy of local governance structures, whose members are directly elected by their communities to those roles. ***This provision is regressive and unravels hard won progress in devolution.***

8. Additional Issues: Experience of Secretary to Cabinet, Term Limits for Mayors

Two additional amendments have also been proposed in Bill 7:

¹⁶ Report of the Constitution Review Commission (Mungomba Commission) December 2005, 362

- the lowering of the years of experience for the Secretary to Cabinet, and
- the removal of term limits for mayors.

The government has failed to demonstrate that either of these amendments are curing a true democratic or development challenge.

Decreasing the years of experience for the Secretary to Cabinet from ten years to five years, as is proposed, reflects not a shortage of qualified candidates, but perhaps rather a shortage of politically acceptable candidates. The current constitution provides for qualifications at the equivalent rank to a Permanent Secretary, which allows for a significantly diverse and qualified pool of candidates, including many qualified women.

Regarding removing term limits for mayors, this recommendation is noted in the ERTC Report. However,

- Mayors or council chairpersons, like the president, are executive office holders.
- As such, mayors should be subject to term limits to guard against entrenchment of patronage networks, decreased accountability, and to promote democratic renewal at the local level.
- This position is supported by an analysis by the Venice Commission of term limits for Mayors, MPs and President/PMs in 63 countries. The Commission held that “...the position of adirectly elected mayor may be more comparable to that of a president in a presidential system, to the extent that the incumbent could abuse of his or her office in order to distort the electoral competition and the equality of opportunity of all candidates, and also to concentrate powers to an excessive extent. These risks prevail over the advantages of accountability and competence incentives. The check on their powers exercised by the sub-national or municipal councils might not be sufficient. For this reason, the imposition of term limits on directly elected sub-national or local executive officials could appear more justifiable. Comparative law supports this conclusion” (paragraph 60)¹⁷

III. CONCLUSION

Notwithstanding the need for comprehensive, transparent, inclusive, participatory constitutional reforms, grounded in serious analysis and research, ***Bill 7 should be rejected*** on the basis that not only does the government’s process fail to meet minimum standards for a credible reform process, but the content of the amendments pose a grave threat to Zambia’s democracy both now and for future generations.

¹⁷ [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)007-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)007-e)

