1. BACKGROUND

Zambia has undertaken four constitutional reviews since 1972.

The Chona Commission was appointed in 1972 to consider and recommend changes to the Constitution of the Republic and that of UNIP that were necessary to bring about a one-party participatory democracy. This resulted in the Constitution of 22nd February, 1973, which introduced the One-Party State under the UNIP Government.

The Mvunga Commission was appointed in 1990 to recommend a constitution that could serve a plural political system. This resulted in the 1991 Constitution. This was a compromised constitution and served as a transitional constitution for that period.

The Mwanakatwe Commission was appointed in 1993 with vast terms of reference relating to-

- collection of views on what type of constitution Zambia should enact, bearing in mind that the Constitution should exalt and effectively entrench and promote legal and institutional protection of fundamental human rights and stand the test of time;

- a system of government that would ensure that Zambia was governed in a manner that would promote the democratic principles of regular and fair elections, transparency and accountability, and that will guard against the re-emergence of a dictatorial form of government;

- ensuring the competence, impartiality and independence of the Judiciary, and for access of the public to the law;

- the composition and functions of the organs of State and their manner of operating, with a view of maximising their checks and balances and securing, as much as possible, their independence;

- a suitable system for a smooth transfer of power following election;
the relationship that should exist between the party in power and the parties in
opposition and whether or not political parties should be subsidised by
government and, if so, to what extent;

- effective grassroots participation in the political and district administration
  should be instituted; and

- subject matter of a constitutional or political nature which, in the commission’s
  view has relevance in the strengthening of parliamentary and multi-party
democracy.

This resulted in the 1996 amendment to the 1991 constitution. This Constitution brought
in the parental clause for the election of the President and re-introduced the simple
majority for the election of the President.

The Mung’omba Commission was appointed in 2003 with vast terms of reference,
which included, inter alia –

- recommending a Constitution that should exalt and effectively entrench
  and promote legal and institutional protection of fundamental human
  rights and stand the test of time;

- recommending a system of government that will promote democratic
  governance and guard against the emergence of a dictatorial form of
  government;

- reviewing the electoral system to ensure fairness in the conduct of
  presidential, parliamentary and local government elections;

- examining and recommending the composition and functions of the
  organs of government with the view to maximising on checks and
  balances and securing, as much as possible, their independence; and

- examining the local government system and recommending how a
democratic system of local government as specified in the Constitution
may be realized.

Following the submission of the Mung’omba Constitution to the Government, the
Government established the National Constitutional Conference (NCC) through the
National Constitutional Conference Act, No. 17 of 2007. The NCC submitted its draft
constitution in August, 2010. The 2010 draft Constitution was presented to Parliament
in 2011, but failed the two-third vote.

The Zaloumis Electoral Reforms Committee was established in 2003 to, inter alia-
• analyse and make recommendations regarding the legal framework of the electoral process;

• examine legislation that impacts on the electoral process, such as the Public Order Act and media laws in relation to elections;

• examine the Electoral Code of Conduct and recommend necessary modifications in order to establish suitable and efficacious electoral rules;

• assess the electoral system in Zambia and make recommendations regarding desirable or necessary modifications to ensure the democratic conduct of general or local government elections;

• study the role and responsibilities of the Electoral Commission and Government Institutions and Departments involved in the electoral process;

• examine the composition of the Electoral Commission and make recommendations on how to ensure the independence of the Commission, particularly in times of elections;

• assess the institutional and managerial capacity of the Electoral commission in the management and organisation of the electoral process and identify possible constraints;

• identify the organizational, managerial, legislative, financial and administrative needs for the process needed for conducting democratically sound, transparent and fair elections in future (e.g. training needs for the Electoral commission staff on the ground, improvement of logistics, etc);

• review the voter registration procedures and examine the effectiveness and feasibility of continuous registration and the related issuance of national registration cards;

• conduct broad consultations with national stakeholders- political parties, non-governmental organisations and donor community and make recommendations regarding their co-ordination so as to ensure consistency and complementarities of activities in the electoral process;
examine and recommend whether the date of general elections, time when or the season during such elections should be held should be specified in law; and

examine and make recommendations on the necessity of establishing an electoral tribunal.

This Committee handed over its technical report in 2005.

The Patriotic Front (PF) Party won the 20th September, 2011, Tripartite Elections, and in accordance with its party manifesto promised to give Zambia a people’s driven constitution within ninety days of coming into office. President Michael Chilufya Sata proceeded to appoint a Technical Committee to come up with a Constitution that will provide functions and structures necessary to ensure constitutional democracy and for the development of a constitutional culture to underpin Zambia’s political system.

2. TERMS OF REFERENCE (TORs)

The Technical Committee’s specific Terms of Reference are as follows:

(a) refer to Mvunga Constitution Review


i. reflect the values and aspirations of the people of Zambia;

ii. are relevant for the political, socio-economic, technological and scientific environment existing in Zambia; and

iii. establish a constitutional democracy and a culture of constitutionalism for Zambia; and

draft a National Constitution based on these objectives;

(c) draft a National Constitution incorporating the following principles and values:
i. guaranteeing peace, national unity and integrity of the Republic of Zambia in order to safeguard the well-being of the people of Zambia;

ii. establishing a free and democratic system of Government that guarantees good governance, constitutionalism, the rule of law, human rights, gender equity, gender equality and affirmative action;

iii. promoting the peoples’ participation in the governance of the country through democratic, free and fair elections and the devolution and exercise of power;

iv. respecting ethnic and regional diversity and communal rights, including the right of communities to ecnenta and participate in cultural activities and the expression of their identities;

v. ensuring the provision of basic needs of all Zambians through the establishment of an equitable framework for economic growth and equitable access to national resources;

vi. promoting and facilitating regional and international cooperation to ensure economic development, peace and stability and to support democracy and human rights;

vii. strengthening national integration and unity;

viii. creating conditions conducive to a free exchange of ideas;

ix. ensuring the participation of people in the management of public affairs; and

tax. ensuring a free, fair and responsible media;

(d) draft a National Constitution that ensures that the national structures of governance are inclusive and devolved to provincial and district levels, including to the chieftaincy, and the exercise of functions and powers is done transparently and that functionaries are accountable to the people;

(e) draft a National Constitution that ensures the separation of powers amongst the various State organs including the Executive, the Legislature and the Judiciary so as to create checks and balances between them and to ensure accountability of the State and its officers to the people of Zambia;

(f) draft a National Constitution that will ensure that excessive and unfettered powers are not given to any particular organ of the State, Commission or constitutional functionary;

(g) draft a National Constitution that will incorporate social, economic, cultural, religious and environmental rights for all Zambians, (paying particular attention to the rights of the child, the persons with disability,
women and other vulnerable sectors of the community) and ensure that these will be fully enjoyed by Zambians and upheld by everyone and every constitutional organ of the State;

(h) draft a National Constitution incorporating a democratic electoral system that will enhance representation of the various groups in society, an electoral process that is free and fair with a level playing field and an electoral environment that would ecentra electoral malpractices;

(i) draft a National Constitution providing for an independent Electoral Commission that will ensure credibility to the electoral system and process and which will be efficient and effective in the carrying out of its mandate as established in the Constitution and other laws of Zambia;

(j) draft a National Constitution that will provide for a democratically elected local government system that incorporates effective checks and balances, that ensures devolution of powers from the Central Government accompanied by fiscal ecentralization, while maintaining effective reporting structures with Central Government;

(k) identifying key issues to be presented to the provincial constitutional committees in all centre and facilitate debate of the key issues in all ten provincial centres and administratively support the ratification of the draft National Constitution by the provincial constitutional conventions; and

(l) provide for any other constitutional or democratic issues that will promote and enhance democratic good governance.

3. GUIDING PRINCIPLES

In the process of drafting, facilitating debate at the provincial level, and the ratification of the draft National Constitution by the provincial constitutional conventions, the Technical Committee shall observe, apply and cause to be observed and applied, the following principles:

(a) ensure that the national interest prevails over regional or sectoral interests;
(b) be accountable to the people of Zambia;
(c) recognize the importance of confidence building, engendering trust and developing a national consensus for the ratification process;
(d) not deny or interfere with any one’s right to attend the provincial constitutional conventions and the right to personal liberty, the freedoms of expression and conscience during the deliberations;
(e) ensure that the police protect the safety of all persons who attend the provincial constitutional conventions and prevent any occurrence of violence from whatever source;
(f) be guided by the principle of stewardship and responsible management;
(g) be guided by respect for the principles of human rights, equality, affirmative action, gender equity and democracy; and
(h) ensure that the outcome of the drafting process faithfully reflects the wishes of the people of Zambia and will bring about a National Constitution that will stand the test of time, exalt and effectively entrench and promote good governance, the rule of law and promote legal and institutional protection of fundamental human rights and freedoms.

4. METHODOLOGY AND PROGRAMME OF WORK

4.1 The Technical Committee shall, in carrying out its function –


(b) review the Mung’omba Draft Constitution, 2005 and use it as a basis on which to develop the new National Constitution;

(c) consult the following and take into account their submissions:
   i. local and international experts on constitutional law and practice;
   ii. the members of the public at all provincial centres and incorporate in the National Constitution, the views of the people as resolved in the provincial constitutional conventions; and
   iii. sector groups;

(d) draft a National Constitution based on its findings from the review process and best international constitutional practices and provisions of international conventions on human rights;
(e) draft the Constitution of Zambia Bill to set a commencement date for the new constitution, deal with the transitional and other issues for the effective transition into a new constitutional regime under a third Republic to be enacted by Parliament which shall have the Constitution of Zambia;

4.2 The Technical Committee shall draw up its programme of work and submit the programme to the Minister of Justice and the Secretary to the Cabinet within seven days of its first sitting.

5 COMPOSITION OF TECHNICAL COMMITTEE

The Technical Committee shall be composed of the following eminent experts:

1. Hon. Justice Annel Silungwe, SC Former Chief Justice shall be Chairperson
2. Dr. J.B. Sakala JB Sakala and Company shall be Vice-Chairperson
3. Rev. Susan Matale Council of Churches
4. Mr. Willa Mung’omba Mungo’omba Associates
5. Hon. Sebastian S. Zulu, SC Minister of Justice
6. Ms. Charity Mwansa Permanent Secretary-Lusaka Province
7. Professor Patrick Mvunga Mvunga and Associates
8. Chief Luchembe Northern Province
9. Prof. Margaret Munalula University of Zambia
10. Mr. Ernest Mwansa Mwansa Phiri and Partners
11. Dr. Rodger Chongwe Chongwe and Associates
12. Mr. Paulman Chungu Law Association of Zambia
13. Mr. Simon Kabanda Citizens Forum
14. Mr. Reuben Lifuka Transparency International-Zambia
15. Mrs. Mwangala Zaloumis Dove Chambers
16. Dr. Winnie Sithole-Mwenda Ministry of Justice
17. Mrs. Thandiwe D. Oteng Ministry of Justice, who shall be the Secretary to the Committee
18. Three Catholic Bishops

The Technical Committee shall be supported and advised by the following draftspersons:

(a) Mrs. Eva Jhala Bemvi Consultants
(b) Mrs. Patricia D. Jere Chief Parliamentary Counsel, Ministry of Justice
(c) Mr. Andrew Nkunika Acting Principal Parliamentary Counsel, Ministry of Justice

5. LOGISTICS AND EXPENSES

All logistics and expenses shall be provided and met by Cabinet Office and Ministry of Justice budget.

The Technical Committee shall operate from the new Government Complex as determined by the Secretary to the Cabinet.

6. COMMENCEMENT AND DURATION

The Technical Committee shall commence its work as and when they are ready and sworn in

The processes and proceedings of the Technical Committee and the final report shall be completed within a period of twelve months. It is expected that the draft Constitution of Zambia Bill, 2012, shall be tabled in Parliament in 2012.

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