

# CONSTITUTION OF ZAMBIA (AMENDMENT) ACT NO 13 OF 2025: AN OVERVIEW OF MAJOR CHANGES

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## POLICY BRIEF

# CONSTITUTION OF ZAMBIA (AMENDMENT) ACT NO 13 OF 2025: AN OVERVIEW OF MAJOR CHANGES

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## 1. INTRODUCTION

President Hakainde Hichilema, on 13th December, 2025, assented to the Constitution of Zambia (Amendment) Act No13 of 2025, following its unanimous passage by the National Assembly. This followed a protracted process, since the Minister of Justice announced government's intention to amend the Constitution in March 2025. This policy brief highlights some key changes introduced through this amendment to the national Constitution. The key changes are five and relate to the introduction of the mixed member proportional representation electoral system (PR); increase in the number of parliamentary seats; cancellation of nominations; dissolution of parliament and cabinet; and the introduction of members of parliament (MPs) to the council. These are discussed in more detail below. The policy brief is not evaluative or justificatory but is merely expository.

## II. AN OVERVIEW OF MAJOR CHANGES

### a) Introduction of the Mixed Member Proportional Representation System

The Constitution of Zambia (Amendment) Act No 13 of 2025 changed the electoral system used for electing Members of Parliament (MPs) and local government councillors. Prior to the amendment, these were elected based on geographical constituencies and wards only. The amendment introduced two ways of electing MPs and councillors. Article 47(2) states that elections to the National Assembly shall be run under two systems: a) first-past-the-post electoral system (simple majority) constituency-based seats, and b) proportional representation for seats reserved for women, youths and persons with disabilities. Similarly, article 47(3) introduces the mixed member proportional representation at local government level, except for the election of the mayor and council chairperson (who will continue to be elected by simple majority).

The simple majority system, which the country has been using since independence, poses no implementation challenges as voters and institutional stakeholders are familiar with it. With regard to the proportional representation strand, article 47(4) indicates that the seats under this strand shall be distributed by the Electoral Commission, to political parties, in proportion to the number of valid votes received by a presidential candidate.

This has several implications. First, the reserved seats for women, youth and persons with disabilities will only be distributed based on (in proportion to) the performance of the party presidential candidate. Therefore, there will be no separate ballot for reserved seats. This is an improvement from the earlier proposal in The Constitution of Zambia (Amendment) Bill No 7 of 2025 which suggested a separate ballot for proportional representation candidates, as having a separate ballot would have been extremely expensive and administratively more burdening for the Electoral Commission. Second, considering that the constitution does not prohibit independent presidential candidates, reference to a political party in article 47(4) entails that independent presidential candidates may not get parliamentary and local government seats based on the PR route.

There are also three gaps that may need to be clarified in subordinate legislation. First, while article 68 sets out the number of parliamentary seats via the PR route, the same is not stated at local government level. An Act of Parliament may need to determine the number and the formula to be used across the country to avoid the appearance of arbitrariness in setting the numbers for the local government PR system. Second, article 47(4) simply empowers the ECZ to allocate PR seats based on the presidential ballot. Considering that Zambia implements a majoritarian presidential system where the winner must get more than 50 percent of the votes, there is always the possibility of a runoff election. In the event of a runoff election, it is not clear which election should be used as a benchmark for allocating PR seats. Should it be the first round or the run-off election? This needs to be clarified in the law to avoid unnecessary electoral disputes.

Third, the constitution has not specified the exact formula ECZ will be using in allocating PR seats based on a party's performance at presidential level. There are generally two options the law could take. One possible formula would be the direct use of the percentage of the results of a presidential candidate relative to the number of reserved seats. That is, a party whose presidential candidate gets, for example, 40 percent of the votes, would be entitled to 40 percent of the PR seats concerned. The other approach would be to divide the number of valid votes by the number of reserved seats for each category, thereby establishing a quota as a basis for allocating seats. For example, if there are 5,000,000 valid votes following a general election for presidential candidates in total, this is then divided by 20 reserved PR seats for women. The result would be 250,000. This then would be considered a quota so that for every 250,000 votes gained a party would be given a seat. Considering that in practice, whichever formula is preferred, may lead to fractions, the law should further guide on how remainders should be dealt with.

#### **b) Number and Distribution of Parliamentary Seats**

Prior to the amendment, the National Assembly had 156 constituency-based seats. Article 68 adjusts the numbers upwards as follows: 226 MPs holding constituency-based seats; 40 (20 women, 15 youths, and 5 persons with disabilities) MPs coming through proportional representation; and not more than 11 nominated MPs.

The increase in the number of the MPs invariably entails an increase in the cost of running the legislature. But beyond that, it remains to be seen how the new constituency-based seats will be carved out and distributed across the country. For the process to be credible, there will be need for a transparent and fair process leading to the delimitation of constituencies. This is important to avoid suspicion of gerrymandering and to ensure that representation in the National Assembly respects the sanctity of every vote.

#### **c) Cancellation of Nominations**

Prior to the amendment, article 52(6) required that when a candidate died, resigned or was disqualified after close of nominations but prior to the holding of the election, the Electoral Commission would cancel the election, conduct new nominations and hold the election 30 days after the new nominations.

While there are no or minimal incentives for a candidate to trigger their death in order to disrupt the electoral process through death or disqualification, the strand of cancelling an election based on the resignation, leaves it within the power of the individual candidates to hold the electorate and the nation at ransom. Since 2016, several candidates have resigned or withdrawn from the election for various reasons, leading to the disruption of elections and the printing of new ballot papers at great cost to the nation.

Article 52(6) was amended to cure this mischief. Where a candidate dies, as was the case before the amendment, the election is cancelled and new nominations are held. However, article 52(6)(c) expressly refers to a candidate sponsored by a political party. This entails that where the deceased is an independent candidate, the election may proceed.

The amendment makes a significant shift in relation to a candidate who resigns or is disqualified. Where a candidate resigns or is disqualified by the Court, the election shall proceed as scheduled, but the concerned candidate shall not be eligible to contest the election.

#### **d) Dissolution of Parliament and Cabinet**

Before the amendment, parliament dissolved 90 days prior to the holding of the general election. The Constitution of Zambia (Amendment) Bill No 7 of 2025 had proposed to do away with this and only dissolve parliament the day before the holding of elections. Article 81(3) was amended to strike a compromise between the proposal in Bill 7 and the practice before. It now provides that “Parliament shall stand dissolved ninety days before the holding of the next general election but Members of Parliament shall be deemed to have served until a day before the next general election.” This suggests that Parliament shall dissolve as was the practice, but the MPs’ benefits shall be computed on the basis of their mandate of five years.

The constitutional amendment has also clarified when ministers should leave office prior to the holding of the general elections. Articles 116(4) and 117(3) provide that the office of a minister and provincial minister, respectively, shall become vacant 90 days prior to the holding of the general election. This provision resolves the ambiguity and legal confusion identified in the case of *Katuka and Law Association of Zambia v Attorney-General and 64 Others* Selected Judgment No 29 of 2016, making it clear that ministers, like MPs, also vacate office on dissolution of parliament.

#### **e) Introducing Members of Parliament into the Council**

The debate whether MPs should be part of the Council or not has been raging for many years. Those opposed point to the fact that MPs are part of central government, with a specific legislative and oversight mandate, while local government officials are elected to deliver services at subnational level, and, therefore, the two spheres of government should be separated. Those who favour having MPs in the Council generally argue that MPs have an incentive to push for the appropriate use of resources such as the Constituency Development Fund (CDF) as they need performance legitimacy in order to enhance their re-election chances.

The amendment resolves the debate in favour of those who seek to have MPs in the Council. Article 153 (2) lists an MP as a member of the Council in the district within which the constituency falls.

## **CONCLUSION/RECOMMENDATIONS**

The Constitution of Zambia (Amendment) Act No 13 of 2025 has introduced at least five major changes. That is, the introduction of the mixed member representation system; increasing the number of MPs; reforming the law on cancellation of nominations once a candidate resigns or is disqualified by the courts; tinkering with the dissolution of parliament and cabinet; and introducing MPs in the Council. From the implementation perspective, it is the introduction of the mixed member representation electoral system as well as increasing the number of MPs that raises issues that need further clarification in subordinate legislation as well as at administrative level. To smoothly implement these changes, we make the following recommendations:

1. The law should clarify presidential ballot that will be used for allocating proportional representation seats, that is, whether it will be the first round or the run off presidential ballot.
2. The law should establish the number of local government seats for each council that will be allocated based on the proportional representation system.
3. The delimitation of constituencies to carve out new constituencies should be done in a transparency and fair manner to avoid the suspicion and danger of gerrymandering.
4. The law should provide a more detailed formula ECZ will use to allocate PR seats to political parties and how ECZ should deal with remainders.



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